

# Chapter 10

## Processes, Permits and Fees

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Porter County  
Unified Development  
Ordinance

# Processes, Permits and Fees Introduction

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# Processes, Permits and Fees Introduction

## 10.01 Types of Applications

The following Section recognizes and outlines each permit, formal approval and appeal.

- A. Porter County hereby requires that an application and filing fee be submitted for the following formal applications (permits, formal approvals and appeals):
- Administrative Appeal
  - Amendment to Ordinance Text
  - Amendment to Zoning Map (Rezone)
  - Certificate of Zoning Compliance
  - Design Waiver
  - Development Standards Variance
  - Development Plan
  - Easements; Modification
  - Easements; Termination
  - Easements; Vacation
  - Erosion Control Permit
  - Floodplain Standards Appeal
  - Floodplain Standards Variance
  - Improvement Location Permit
  - Mineral Extraction Permit
  - Planned Unit Development; PUD District Ordinance and Establishment Plan
  - Planned Unit Development; Detailed Development Plan
  - Planned Unit Development; Final Development Plan
  - Planned Unit Development; Modification
  - Sign Permit
  - Special Exception
  - Subdivision Control; General
  - Subdivision Control; Primary Plat
  - Subdivision Control; Secondary Plat or Replat
  - Subdivision Control; Plat Vacation
  - Surety Standards; Performance Surety
  - Surety Standards; Maintenance Surety
  - Surety Standards; Certificate of Final Acceptance
  - Telecommunication Facility Review (Improvement Location Permit)
  - Telecommunication Facility Review (Special Exception)
  - Temporary Use Permit
  - Use Variance
  - Schedule of Fees
- B. All application forms may be obtained through the Plan Commission Office. Fees shall be paid at the Plan Commission Office at the time of assignment of a docket number.
- C. A project shall not proceed without first successfully being granted the applicable permits, formal approvals, and/or appeals. Any project that proceeds otherwise is subject to fines, penalties and court action (see *Chapter 11: Enforcement and Penalties*).

# Telecommunication Facility Review (SE)

## 10.02 Telecommunication Facility Review; Special Exception

- A. Authority and Purpose: Telecommunication facilities shall not be constructed, erected, placed, modified or altered until a Special Exception has been granted and an Improvement Location Permit has been issued.
- B. Prerequisites:
1. *Ownership*: The petitioner must:
    - a. Own a controlling interest in the parcel that is the subject of the petition; or
    - b. Provide documentation authorizing the petitioner to act as the agent of the owner of the parcel that is the subject of the petition.
  2. *Pre-application Meeting*: Prior to submitting an application, the petitioner shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed use and development of the property. The Plan Commission Office shall aid and advise the petitioner in preparing the application and supporting documents as necessary.
- C. Applicability:
1. Telecommunication facilities shall not be constructed, erected, placed, modified or altered until a Special Exception has been approved and an Improvement Location Permit has been obtained.
  2. *Exceptions*: Once a Special Exception has been granted for a telecommunication facility, minor alterations made thereafter do not require a Special Exception; the facility need only obtain a new Improvement Location Permit and Site Plan Review (see §10.03: *Telecommunication Facility Review; Improvement Location Permit*).
- D. Application:
1. *Filing Deadline*: The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Board of Zoning Appeals.
  2. *Application Packet*: The petitioner shall submit the completed application to the Plan Commission Office.
  3. *Supporting Information*: The application shall include, but not be limited to, the following documents:
    - a. *Pre-application Meeting*: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project. The application shall include:
      - i. Name, address and telephone number of petitioner, property owner, owner of the telecommunication facility, intended lessee or user, and contractor.
      - ii. A report from a professional engineer licensed in the State of Indiana which:
        - [a] Describes the height of the telecommunication facility or tower height and the structural design of the facility and all footings or anchors. Cross-section and elevations of telecommunication towers shall be shown on a scaled drawing;
        - [b] Describes the height above grade for all potential mounting positions for collocated antennas and the minimum separation distances between antennas;
        - [c] Describes the telecommunication facility's capacity, including the number and type of antennas it can accommodate and their effective range;
        - [d] Includes a copy of the stress sheets and calculations showing the structure's dead load and wind pressure capacities;
        - [e] Includes a detailed Site Plan of the lot showing the position of the telecommunication tower and facility in relation to existing structures, easements, rights-of-way and applicable setback lines. Detailed Site Plans shall include adjoining lots, if located within a distance equal to one hundred twenty percent (120%) of the tower height;
        - [f] Includes a description of any right-of-way cuts and utility service to be installed.

# Telecommunication Facility Review (SE)

- iii. Written consent or other proof of authorization of the owner of the building, structure or land to which or on which the telecommunication facility is to be erected.
  - iv. Written documentation or other proof that the telecommunication facility will be in service within one (1) month of completion of construction.
  - v. Copies of any necessary easements.
  - vi. A written commitment by the petitioner to notify the County not less than sixty (60) days prior to any changes in ownership of the telecommunication facility or ownership of the property.
  - vii. Written proof of adequate liability insurance covering the telecommunication facility owner and operator, together with a written commitment to file proof of such insurance with the County on an annual basis.
  - viii. A document committing the owner and his successors to allow the shared use of the tower, if an additional user agrees in writing to meet reasonable terms and conditions for shared use. This document shall be recorded in the County Recorder's office and proof given to the Plan Commission Office before a Certificate of Zoning Compliance shall be issued.
  - ix. A plan delineating any existing, proposed or anticipated telecommunication facilities within the County for the purpose of promoting long-range planning over the next three (3) years.
- c. **Additional Information:** Such other additional information as may be required by the Plan Commission Office or other members of the Development Advisory Committee to evaluate the application.
- E. **Fees:**
- 1. The Plan Commission Office shall calculate the total of the application fee and any other applicable fees, and shall then apprise the petitioner of the total fee.
  - 2. The petitioner shall submit the filing fee when the Plan Commission Office issues the docket number.
- F. **Independent Consultant:**
- 1. At any point in the review process, the County may hire one (1) or more independent consultants of its own choosing. These consultants shall be qualified professionals with an appropriate combination of training, record of service, and/or certification in one or more of the following fields: telecommunications/radio frequency engineering; structural engineering; electromagnetic fields (EMF); and, if determined by the Executive Director or the Board of Zoning Appeals, other fields;
  - 2. The Plan Commission Office shall provide the independent consultant with a copy of the complete application for analysis and review.
  - 3. The independent consultant shall provide an estimate for the cost of reviewing the application to the Plan Commission Office. The Plan Commission Office shall forward this estimate in writing to the petitioner; and the petitioner shall promptly pay this fee during the review process (separate from the general application fee). The estimate shall be regarded as a decision of the Executive Director. No application will be processed and no public hearings shall be scheduled until full payment has been made.
  - 4. The consultant shall work under the direction of the Board of Zoning Appeals. Copies of the consultant's findings and reports shall be made available to the petitioner not less than seven (7) days prior to any scheduled public hearing, and the petitioner shall be given the opportunity to respond to said reports in writing and at the applicable public hearing.
- F. **Plan Commission Office:**
- 1. *Review:*
    - a. **Plan Commission Office:** The Plan Commission Office shall review the petition upon receipt of a complete application and supporting documents.
  - 2. *Development Advisory Committee:*
    - a. **Determination:** The Executive Director shall determine whether the petition merits Development Advisory Committee review.
    - b. **Agenda:** Once the Plan Commission Office has determined that it has received a submittal that is sufficiently complete for Development Advisory Committee review, the Plan Commission Office shall place the item on an agenda of the Development Advisory Committee and inform the petitioner of the time, date, and place of the meeting.

# Telecommunication Facility Review (SE)

3. *Complete Submittal*: Once the Plan Commission Office has determined that the petitioner has made a complete submittal, the Plan Commission Office shall:
    - a. Assign the item a docket number;
    - b. Place the item on an agenda of the Board of Zoning Appeals;
    - c. Inform the petitioner of the time, date, and place of the meeting.
  4. *Inspection*: The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of a Special Exception petition.
  5. *Department Report*: The Plan Commission Office shall prepare a written report outlining its findings with respect to the Special Exception. The Plan Commission Office report may incorporate, or incorporate by reference, any items that remain outstanding with the other members of the Development Advisory Committee.
  6. *Record*: The Plan Commission Office shall maintain records of all applications, plans, and permits filed for a Special Exception.
- G. Development Advisory Committee:
1. *Determination*: The Development Advisory Committee shall review Special Exception petitions that have been forwarded by the Plan Commission Office.
  2. *Copies*: The petitioner shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Development Advisory Committee.
  3. *Meeting Date*: The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Advisory Committee. Incomplete submittals may result in the petition's being held off the Development Advisory Committee agenda to allow the petitioner time to complete the submittal. The Development Advisory Committee shall review the submittal for compliance with the provisions of the Unified Development Ordinance and shall make recommendations to the Board of Zoning Appeals within thirty (30) days of the meeting.
  4. *Attendance*: The petitioner should be present at the Development Advisory Committee meeting to address concerns posed by the committee members. Failure to appear may result in the petition's being continued to the Development Advisory Committee agenda for the following month.
  5. *Revisions*: Following Development Advisory Committee review, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Development Advisory Committee. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to be delivered to the Plan Commission Office.
- H. Board of Zoning Appeals:
1. *Procedure*: The Board of Zoning Appeals procedure for Special Exceptions can be found in §10.22: *Special Exception; §I: Board of Zoning Appeals*.
  2. *Additional Findings of Fact*: The Board of Zoning Appeals shall not grant approval of a Special Exception for a telecommunication facility unless the following criteria have been satisfied:
    - a. No new telecommunication tower for a commercial wireless communications service shall be approved unless the Board of Zoning Appeals finds the telecommunication equipment planned for the tower cannot be accommodated on an existing or approved tower or building within a two-mile search radius of the proposed tower due to one (1) or more of the following reasons:
      - i. The planned equipment would exceed the structural capacity of the existing or approved telecommunication tower or buildings, as documented by a qualified and licensed Indiana professional engineer, and the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.
      - ii. The planned equipment would cause interference, materially impacting the usability of other existing or planned equipment at the telecommunication tower or building, as documented by a qualified and licensed Indiana professional engineer, and the interference cannot be prevented at a reasonable cost.

# Telecommunication Facility Review (SE)

- iii. Existing or approved telecommunication towers and buildings within the two-mile search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed Indiana professional engineer.
  - iv. Other unforeseen reasons that make it unfeasible to locate the planned telecommunication equipment upon an existing or approved tower or building.
- b. The petitioner has submitted all required application materials, including without limitation the plan of existing and proposed telecommunication facilities and the written commitment to notify the County of changes in ownership of the facility or its land.
  - c. The proposed telecommunication facility meets the requirements of *Chapter 05; §TC: Telecommunication Facility Standards*.
  - d. The petitioner has furnished evidence of appropriate licensure and approval by the Federal Communications Commission (FCC) for the construction and operation of the telecommunication facility, and the telecommunication tower approval by the Federal Aviation Administration (FAA), as applicable.
3. *Mandatory Condition of Approval:* As a condition of the granting of the Special Exception, the petitioner shall be required to send written notice by certified mail to all commercial wireless communications service providers then licensed by the FCC that provide service within the County, indicating the availability of the petitioner's facility for collocation of future equipment or services. The petitioner shall furnish proof of such notification prior to issuance of a Improvement Location Permit.
- I. Duration:
1. In the case of new construction or modifications to an existing structure, a Special Exception granted by the Board of Zoning Appeals shall expire two (2) years after the date granted by the Board of Zoning Appeals, unless a Building Permit has been obtained and construction of the structure or structures has commenced.
  2. In the case of occupancy of land which does not involve new construction, a Special Exception granted by the Board of Zoning Appeals shall expire two (2) years after the date granted by the Board of Zoning Appeals, unless a Certificate of Zoning Compliance has been obtained and the use has commenced.
  3. *Extension:* The Board of Zoning Appeals may provide by rule for the granting of extensions of Special Exception approvals.
- J. Changes or Amendments:
1. Any modification or intensification of a Special Exception that alters the essential character or operation of the use in a way not intended by the Board of Zoning Appeals at the time the Special Exception was granted shall require a new Special Exception approval. The property owner/operator or his authorized representative shall apply for such Special Exception approval prior to any modification of the use or property.
  2. The Executive Director shall determine in writing whether the proposed modification or intensification represents an alteration in the essential character of the original Special Exception as approved. The operator of the Special Exception use shall provide the Executive Director with all the necessary information to render this determination.

# Telecommunication Facility Review (ILP)

## 10.03 Telecommunication Facility Review; Improvement Location Permit

- A. Authority and Purpose: Telecommunication facilities shall not be constructed, erected, placed, modified or altered until a Special Exception has been granted and an Improvement Location Permit has been issued.
- B. Prerequisites:
1. *Ownership*: The applicant must:
    - a. Own a controlling interest in the parcel that is the subject of the petition; or
    - b. Provide documentation authorizing the applicant to act as the agent of the owner of the parcel that is the subject of the petition.
  2. *Evidence of Special Exception*: The applicant shall file evidence demonstrating that a Special Exception has been granted or demonstrating the facility's compliance with *Chapter 09: Nonconformance*.
  3. *Proof of Written Notice*: The applicant for an Improvement Location Permit for the construction or erection of a new Telecommunication Facility shall file proof of delivery of the written notice required in §10.02(H)(3): *Mandatory Condition of Approval* prior to issuance of a Improvement Location Permit.
  4. *Pre-application Meeting*: Prior to submitting an application, the applicant shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed use and development of the property. The Plan Commission Office shall aid and advise the applicant in preparing the application and supporting documents as necessary.
- C. Applicability:
1. Telecommunication facilities shall not be constructed, erected, placed, modified or altered until an Improvement Location Permit has been obtained.
  2. *Exceptions*:
    - a. *Antennas Mounted on Roofs or Walls*: Installation of antennas for commercial wireless telecommunication service on existing roofs and walls may be approved by the Building Commissioner and the Executive Director without obtaining a Special Exception provided that:
      - i. *Evidence of Special Exception*: The applicant shall file evidence demonstrating that a Special Exception has been duly granted pursuant to the provisions of §10.02: *Telecommunication Facility Review; Special Exception*, or demonstrating the communication facility's compliance with the provisions of §9.08: *Nonconforming Telecommunication Facilities*;
      - ii. *FCC and FAA Approval*: The applicant shall furnish evidence of appropriate licensure and approval by the Federal Communications Commission (FCC) for the construction and tower approval by the Federal Aviation Administration (FAA), as applicable.
      - iii. *Notification of Other Providers*: The applicant for an Improvement Location Permit for the construction or erection of a new communications facility shall file proof of delivery of the written notice required in §10.02(H)(3): *Mandatory Condition of Approval*.
      - iv. *Compliance with Design Standards*: The proposed communications facility shall meet the design criteria specified in *Chapter 05; §TC: Telecommunication Facility Standards*.
      - v. The applicant submits a report prepared by a qualified and licensed Indiana professional engineer, indicating the suitability of the antenna, and specifying the proposed method of affixing the antenna to the structure. Complete detail of all fixtures and couplings, and the precise point of attachment shall be indicated.



# Telecommunication Facility Review (ILP)

## D. Application:

1. *Filing Deadline:* An Improvement Location Permit is an administrative approval, and an application may be filed at any time following the approval of the Special Exception by the Board of Zoning Appeals.
2. *Application Packet:* The applicant shall submit the completed application to the Plan Commission Office.
3. *Supporting Information:* The application shall include, but not be limited to, the following documents:
  - a. *Pre-application Meeting:* The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
  - b. *Application Packet:* The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project. The application shall include:
    - i. Name, address and telephone number of all of the following people: applicant, property owner, owner of the telecommunication facility, intended lessee or user, and contractor.
    - ii. A report from an Indiana licensed professional engineer which:
      - [a] Describes the height of the telecommunication facility or tower height and the structural design of the facility and all footings or anchors. Cross-section and elevations of telecommunication towers shall be shown on a scaled drawing;
      - [b] Describes the height above grade for all potential mounting positions for collocated antennas and the minimum separation distances between antennas;
      - [c] Describes the telecommunication facility's capacity, including the number and type of antennas it can accommodate and their effective range;
      - [d] Includes a copy of the stress sheets and calculations showing the structure's dead load and wind pressure capacities;
      - [e] Includes a detailed site plan of the lot showing the position of the telecommunication tower and facility in relation to existing structures, easements, rights-of-way and applicable setback lines. Detailed site plans shall include adjoining lots, if located within a distance equal to one hundred twenty percent (120%) of the tower height;
      - [f] Includes a description of any right-of-way cuts and utility service to be installed.
    - iii. Written consent or other proof of authorization of the owner of the building, structure or land to which or on which the telecommunication facility is to be erected.
    - iv. Written documentation or other proof that the telecommunication facility will be in service within one (1) month of completion of construction.
    - v. Copies of any necessary easements.
    - vi. A written commitment by the applicant to notify the County not less than sixty (60) days prior to any changes in ownership of the telecommunication facility or ownership of the property.
    - vii. Written proof of adequate liability insurance covering the telecommunication facility owner and operator, together with a written commitment to file proof of such insurance with the County on an annual basis.
    - viii. A document committing the owner and his successors to allow the shared use of the tower, if an additional user agrees in writing to meet reasonable terms and conditions for shared use. This document shall be recorded in the County Recorder's office and proof given to the Plan Commission Office before a Certificate of Zoning Compliance shall be issued.
    - ix. A plan delineating any existing, proposed or anticipated telecommunication facilities within the County for the purpose of promoting long-range planning over the next three (3) years.
  - c. *FCC and FAA Approval:* The applicant shall furnish evidence of appropriate licensure and approval by the Federal Communications Commission (FCC) for the construction and tower approval by the Federal Aviation Administration (FAA), as applicable.

- E. Fees: Once a complete submittal has been filed, the Plan Commission Office shall calculate the total of the application fee and any other applicable fees. The applicant shall be responsible for paying the fees prior to issuance of the Improvement Location Permit.

# Telecommunication Facility Review (ILP)

## F. Plan Commission Office:

1. *Review:* The Plan Commission Office shall review the application and Site Plan for compliance with the Unified Development Ordinance.
2. *Development Advisory Committee:*
  - a. *Determination:* The Executive Director shall determine whether the application merits Development Advisory Committee review.
  - b. *Agenda:* Once the Plan Commission Office has determined that it has received a submittal that is sufficiently complete for Development Advisory Committee review, the Plan Commission Office shall place the item on an agenda of the Development Advisory Committee and inform the applicant of the time, date, and place of the meeting.
3. *Complete Submittal:* Once the Plan Commission Office has determined that the petitioner has made a complete submittal and the Development Advisory Committee has made its recommendations, the Executive Director shall approve or deny the Site Plan within thirty (30) days. An Improvement Location Permit shall be issued within thirty (30) days of the approval of the Site Plan and satisfaction of the criteria specified in §C(2): *Exceptions*.
4. *Inspection:* The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of an Improvement Location Permit application.
5. *Record:* The Plan Commission Office shall maintain records of all applications, plans, and permits filed for a Special Exception.

## G. Development Advisory Committee:

1. *Determination:* The Development Advisory Committee shall review Improvement Location Permit applications that have been forwarded by the Plan Commission Office.
2. *Copies:* The applicant shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Development Advisory Committee.
3. *Meeting Date:* The applicant shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Advisory Committee. Incomplete submittals may result in the petition's being held off the Development Advisory Committee agenda to allow the applicant time to complete the submittal.
4. *Attendance:* The applicant should be present at the Development Advisory Committee meeting to address concerns posed by the committee members. Failure to appear may result in the petition's being continued to the Development Advisory Committee agenda for the following month.
5. *Revisions:* Following Development Advisory Committee review, the applicant shall submit revised copies of the plans that address the comments and concerns of the Development Advisory Committee. The applicant shall refer to the application packet to determine the format and number of copies of the revised plans to be delivered to the Plan Commission Office.

## H. Duration:

1. *Expiration:* Once an Improvement Location Permit has been issued, the applicant shall have twelve (12) months to commence construction on the project or the Improvement Location Permit shall expire. Once construction has commenced, the applicant shall have eighteen (18) months to complete the project and obtain a Certificate of Zoning Compliance.
2. *Extension:* The applicant may apply to the Plan Commission Office for an extension of the duration of an Improvement Location Permit. The Executive Director may extend the Improvement Location Permit as needed by the applicant, up to an additional eighteen (18) months.

## Telecommunication Facility Review (ILP)

- I. Changes or Amendments: The Executive Director shall decide if the proposed changes require review by the Development Advisory Committee and if the applicant will need to apply for a new Improvement Location Permit. If the extent of the changes is deemed significant enough for a new Improvement Location Permit, the applicant shall reapply by filing the new plans with the Plan Commission Office as detailed in §D: *Application*. Applications for an Improvement Location Permit for alteration or modification of an existing communications facility shall be submitted to the Plan Commission Office for Site Plan approval prior to issuance of an Improvement Location Permit. No Improvement Location Permit for alteration or modification of an existing communications facility may be issued without the Executive Director's approval of the application and Site Plan hereunder.

# Planned Unit Development; General

## 10.04 Planned Unit Development; General

- A. Prohibition Effective Date: Pursuant to *Chapter 04: Planned Unit Development Districts; §4.02(A)(1): Prohibition Effective Date*, effective [**insert effective date of the UDO**], the County shall not accept petitions for new Planned Unit Developments. The Planned Unit Development Standards found in *Chapter 10: Processes, Permits, and Fees* have been retained to allow the County to administer those Planned Unit Developments approved and adopted prior to the prohibition effective date.
- B. Purpose and Intent:
1. *Purpose and Intent; Generally*: A Planned Unit Development (PUD) zoning district may be established to provide for the development of mixed zoning classifications, densities, and uses under a common classification, when presented to the Plan Commission in a well-prepared, organized and documented plan. This classification is intended to provide for:
    - a. Greater flexibility in applying the ordinances to mixed zoning classifications;
    - b. Innovative approaches to meet the demands of the housing, commercial, and business markets;
    - c. The recognition of the interdependency of the housing, commercial, and business markets;
    - d. The establishment of creative and unique developments that would not otherwise be able to be developed under the provisions of the County's standard zoning district regulations;
    - e. The planning and development of mixed zoning classifications to be consistent with the best interest of the jurisdictional area of the County, and the applicable ordinances.
  2. *Process Outline*: The three steps of the Planned Unit Development process are:
    - a. *PUD District Ordinance & Establishment Plan*: The PUD District Ordinance & Establishment Plan is the first step in the process for establishing a Planned Unit Development. During this step, the petitioner's proposed development requirements for the Planned Unit Development are reviewed by the Plan Commission and Board of County Commissioners. The approved standards are codified in a PUD District Ordinance that has the effect of rezoning the subject property to a Planned Unit Development zoning district, and establishing the development requirements that will be applied in all subsequent reviews. An Establishment Plan provides the Plan Commission and Board of County Commissioners with a general vision for the development of the site.
    - b. *Detailed Development Plan*: The Detailed Development Plan is the second step in establishing a Planned Unit Development. During this step, the petitioner's overall plan for the site is reviewed by the members of the Development Advisory Committee and the Plan Commission. For a Planned Unit Development that is going to be subdivided, this step also serves as the Primary Plat.
    - c. *Final Development Plan*: The Final Development Plan is the third step in establishing a Planned Unit Development. During this step, the petitioner's specific plan for the entire site or a portion of the site is reviewed by the members of the Development Advisory Committee and the Development Review Committee. For a Planned Unit Development that is going to be subdivided, this step also serves as the Secondary Plat. Following approval of the Final Development Plan, the petitioner may apply for either an Improvement Location Permit and/or an Erosion Control Permit.
- C. Development Plan:
1. *Development Plan Required*: Every Planned Unit Development zoning district within the County's planning jurisdiction shall require Detailed Development Plan and Final Development Plan approvals pursuant to the procedures outlined in this Chapter for Planned Unit Developments.
- D. Development Review Committee:
1. *Delegation of Authority*: Per IC 36-7-4-1511(c), the Board of County Commissioners hereby delegates authority to the Development Review Committee established per §10.09: *Development Plan; §I: Development Review Committee* to act as a Hearing Examiner with the authority to review and approve Final Development Plan petitions for commercial and industrial projects.

# Planned Unit Development; Establishment Plan

## 10.05 Planned Unit Development; PUD District Ordinance and Establishment Plan

### A. Purpose and Intent:

1. *PUD District Ordinance:* The purpose of the PUD District Ordinance is to:
  - a. Designate a parcel of real property as a Planned Unit Development zoning district;
  - b. Specify uses or a range of uses permitted in the Planned Unit Development zoning district;
  - c. Specify development requirements in the Planned Unit Development zoning district;
  - d. Specify the plan documentation and supporting documentation that may be required;
  - e. Specify any limitation applicable to the Planned Unit Development zoning district; and
  - f. Meet the requirements of IC 36-7-4-1500 *et seq.*
2. *Establishment Plan:* The purpose of an Establishment Plan is to delineate basic elements such as land uses, vehicular and pedestrian traffic plans, drainage, perimeter buffer yards, *etc.*

### B. Prerequisites:

1. *Ownership:* The petitioner must:
  - a. Own a controlling interest in each parcel within the area that is the subject of the petition; or
  - b. Provide written permission from the owner of each parcel of land within the area that is the subject of the petition authorizing the petitioner to act as the agent of the owner of each parcel.
2. *Pre-application Meeting:* Prior to submitting a Planned Unit Development application, the petitioner shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed use and development of the property. The Plan Commission Office shall aid and advise the petitioner in preparing the application and supporting documents as necessary.

### C. Applicability:

1. This section is applicable to new Planned Unit Development proposals, and to any proposed amendment to an existing Planned Unit Development that would affect either the text of the PUD District Ordinance or the general layout of any element of the Establishment Plan.
2. *Exceptions:* Not applicable.

### D. Application:

1. *Filing Deadline:* The petitioner shall refer to the Schedule of Meeting Dates included in the application packet to determine the filing deadline for any given meeting of the Plan Commission.
2. *Application Packet:* The petitioner shall submit the completed application to the Plan Commission Office.
3. *Supporting Information:* The application shall include, but not be limited to, the following documents:
  - a. *Pre-application Meeting:* The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
  - b. *Application Packet:* The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
  - c. *Additional Information:* Such other additional information as may be required by the Plan Commission Office or other members of the Development Advisory Committee to evaluate the application.

### E. Fees:

1. The Plan Commission Office shall calculate the total of the application fee and any other applicable fees, and shall then apprise the petitioner of the total fee.
2. The petitioner shall submit the application fee when the Plan Commission Office issues the docket number.

# Planned Unit Development; Establishment Plan

## F. Plan Commission Office:

1. *Review:* The Plan Commission Office shall review a PUD District Ordinance & Establishment Plan application upon receipt of a complete application, supporting documents, and the appropriate fees.
  - a. *PUD District Ordinance Draft:* The Plan Commission Office shall prepare a draft of the proposed PUD District Ordinance. The draft of the PUD District Ordinance shall incorporate the Establishment Plan by reference. The petitioner shall supply a legible 8½” by 11” reduction of the Establishment Plan to be included as an exhibit attached to the PUD District Ordinance draft.
  - b. *Plan Commission Attorney:* The Plan Commission Office shall forward a copy of the PUD District Ordinance draft to the Plan Commission Attorney for review.
2. *Complete Submittal:* Once the Plan Commission Office has determined that the petitioner has made a complete submittal, the Plan Commission Office shall:
  - a. Assign the item a docket number;
  - b. Place the item on an agenda of the Plan Commission for public hearing;
  - c. Inform the petitioner of the time, date, and place of the Plan Commission meeting.
3. *Inspection:* The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of a PUD District Ordinance & Establishment Plan petition.
4. *Department Report:* The Plan Commission Office shall prepare a written report outlining its findings with respect to the PUD District Ordinance & Establishment Plan.
5. *Record:* The Plan Commission Office shall maintain records of all applications, plans, and permits filed for a PUD District Ordinance & Establishment Plan.

## G. Plan Commission:

1. *Public Notice:*
  - a. *Responsibility:* The petitioner shall be responsible for publishing and mailing public notice pursuant to the Plan Commission Rules of Procedure. The Plan Commission Office shall be responsible for posting public notice pursuant to the Plan Commission Rules of Procedure.
  - b. *Proof:* The petitioner shall be responsible for returning proof of published and mailed notice to the Plan Commission Office. The petitioner shall refer to the application packet to determine the deadline for submittal of proof of notice. Failure to submit proof of notice by the deadline may result in the petition’s being continued to the Plan Commission agenda for the following month.
2. *Submittal:* The petitioner shall refer to the application packet to determine the format and number of copies of the informational packet to be delivered to the Plan Commission Office for distribution to the members of the Plan Commission. Incomplete submittals shall result in the petition’s being held off the Plan Commission agenda to allow the petitioner time to complete the submittal.
3. *Attendance:* The petitioner is required to be present at the Plan Commission meeting to address and discuss comments and concerns posed by the Plan Commission members. Failure to appear shall result in the petition’s being dealt with as outlined in the Plan Commission Rules of Procedure.
4. *Public Hearing:* A public hearing shall be held in accordance with the Plan Commission Rules of Procedure.

# Planned Unit Development; Establishment Plan

5. *Review:* At their regularly scheduled public meeting, the Plan Commission shall review:
  - a. The written statement and supporting material submitted by the petitioner;
  - b. The PUD District Ordinance draft;
  - c. The Establishment Plan;
  - d. The Comprehensive Plan;
  - e. Current conditions and the character of current structures and uses in the area;
  - f. The most desirable use for which the land in the area is adapted;
  - g. The conservation of property values throughout the jurisdiction;
  - h. Responsible development and growth;
  - i. The testimony of the petitioner;
  - j. Relevant evidence presented by other persons;
  - k. The limitations, standards, and requirements of *Chapter 04: Planned Unit Developments*;
  - l. The applicable standards of the Unified Development Ordinance;
  - m. The applicable standards of the County's engineering manuals;
  - n. The Plan Commission Office report; and
  - o. Such other additional information as may be required by the Plan Commission to evaluate the petition.
6. *Decision:* The Plan Commission shall:
  - a. Certify and forward the petition to the Board of County Commissioners with:
    - i. A favorable recommendation;
    - ii. A favorable recommendation and with recommendations for conditions and/or commitments;
    - iii. A negative recommendation;
    - iv. No recommendation; or
  - b. Continue the petition to a definite future meeting date.
7. *Commitments:* In conjunction with its recommendation to the Board of County Commissioners regarding a PUD District Ordinance & Establishment Plan, the Plan Commission may recommend that the Board of County Commissioners permit or require the petitioner to make written commitments concerning the use or development of the parcel.
8. *Conditions of Approval:* In conjunction with its recommendation to the Board of County Commissioners regarding a PUD District Ordinance & Establishment Plan, the Plan Commission may recommend that the Board of County Commissioners impose conditions of approval concerning the use or development of the parcel.
9. *Revisions:* Following certification of the PUD District Ordinance draft by the Plan Commission:
  - a. PUD District Ordinance: The Plan Commission Office shall revise the PUD District Ordinance draft to accurately represent the text certified by the Plan Commission.
  - b. Establishment Plan: The petitioner shall revise the Establishment Plan to address the comments and concerns of the Plan Commission. The petitioner shall refer to the application packet to determine the format and number of copies of the revised Establishment Plan to be delivered to the Plan Commission Office. The petitioner shall also supply a legible 8½" by 11" reduction of the Establishment Plan to be included as an exhibit to be attached to the certified PUD District Ordinance draft.

# Planned Unit Development; Establishment Plan

## H. Board of County Commissioners:

1. *First Reading*: Following Plan Commission certification of the PUD District Ordinance, the Board of County Commissioners shall hold the first reading of the PUD District Ordinance.
  - a. *Review*: At their regularly scheduled public meeting, the Board of County Commissioners shall review:
    - i. The written statement and supporting material submitted by the petitioner;
    - ii. The PUD District Ordinance draft;
    - iii. The Establishment Plan;
    - iv. The Comprehensive Plan;
    - v. Current conditions and the character of current structures and uses in the area;
    - vi. The most desirable use for which the land in the area is adapted;
    - vii. The conservation of property values throughout the jurisdiction;
    - viii. Responsible development and growth;
    - ix. The testimony of the petitioner;
    - x. Relevant evidence presented by other persons;
    - xi. The limitations, standards, and requirements of *Chapter 04: Planned Unit Developments*;
    - xii. The applicable standards of the Unified Development Ordinance;
    - xiii. The applicable standards of the County's engineering manuals;
    - xiv. The Plan Commission Office report;
    - xv. The Plan Commission recommendation; and
    - xvi. Such other additional information as may be required by the Board of County Commissioners to evaluate the petition.
2. *Second Reading*:
  - a. *Decision*: At second reading the Board of County Commissioners shall:
    - i. Adopt the PUD District Ordinance & Establishment Plan;
    - ii. Adopt the PUD District Ordinance & Establishment Plan with conditions and/or commitments;
    - iii. Return the PUD District Ordinance & Establishment Plan to the Plan Commission with proposed amendments; or
    - iv. Deny the PUD District Ordinance & Establishment Plan.
  - b. *Meaning of Approval*: Approval of the PUD District Ordinance by the Board of County Commissioners shall act as a zoning map amendment and an overall guide for the Planned Unit Development, setting forth concepts that shall be consistent in the Detailed Development Plan and Final Development Plan.
3. *Commitments*:
  - a. *Acceptance*: In conjunction with the approval of a PUD District Ordinance & Establishment Plan, the Board of County Commissioners may permit or require the petitioner to make written commitments concerning the use or development of the parcel.
  - b. *Form*: The petitioner shall prepare the commitment instrument in a form approved by the County Attorney. The petitioner and the President of the Board of County Commissioners shall sign the commitment instrument.
  - c. *Recording*: The petitioner shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the PUD District Ordinance & Establishment Plan. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office before filing a Detailed Development Plan petition.
  - d. *Modification or Termination*: A commitment made under this section may be modified or terminated only by a decision of the Board of County Commissioners made at a public hearing. Public notice of the public hearing shall be provided per the Board of County Commissioners Rules of Procedure. The petitioner shall prepare and record a commitment modification instrument or commitment termination instrument in the same manner required for a commitment instrument. A modified commitment shall be enforced in the same manner as any other commitment.
  - e. *Enforcement*: The County may enforce any commitment the Board of County Commissioners has accepted as if the commitment were a standard of the Unified Development Ordinance.



# Planned Unit Development; Establishment Plan

4. *Conditions of Approval:*
  - a. **Requirement:** In conjunction with the approval of a PUD District Ordinance & Establishment Plan, the Board of County Commissioners may impose conditions of approval concerning the use or development of the parcel that will, in its judgment, substantially secure the objectives of these regulations.
  - b. **Form:** The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the County Attorney. The President of the Board of County Commissioners shall sign the conditions of approval instrument.
  - c. **Recording:** The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the PUD District Ordinance & Establishment Plan. The Plan Commission Office shall deliver a copy of the recorded conditions of approval instrument to the petitioner within thirty (30) days of recording.
  - d. **Modification or Termination:** A condition of approval under this section may be modified or terminated only by a decision of the Board of County Commissioners made at a public hearing. Public notice of the public hearing shall be provided per the Board of County Commissioners Rules of Procedure. The Plan Commission Office shall prepare and record a conditions of approval modification instrument or conditions of approval termination instrument in the same manner required for a conditions of approval instrument. A modified condition of approval shall be enforced in the same manner as any other condition of approval.
  - e. **Enforcement:** The County may enforce any condition of approval the Board of County Commissioners has imposed as if the condition were a standard of the Unified Development Ordinance.
- I. **Duration:** Not applicable.
- J. **Changes or Amendments:**
  1. *UDO/PUD Text Amendment:* Changes of amendments to the text of the PUD District Ordinance or to an Establishment Plan that has been made a part of the PUD District Ordinance shall be filed pursuant to §10.23: *Amendment to Ordinance Text*.
  2. *Establishment Plan:* Changes or amendments to an Establishment Plan that has not been made a part of the PUD District Ordinance may be amended in the same manner as a Detailed Development Plan.
  3. *Commitments and Conditions of Approval:* Commitments and Conditions of Approval associated with a PUD District Ordinance & Establishment Plan petition shall only be modified or terminated by a decision of the Board of County Commissioners made at a public hearing.

# Planned Unit Development; Detailed Plan

## 10.06 Planned Unit Development; Detailed Development Plan

- A. Purpose and Intent: The purpose of a Detailed Development Plan is to divide land into lots, blocks and common areas.
- B. Prerequisites:
1. *Ownership*: The petitioner must:
    - a. Own a controlling interest in each parcel within the area that is the subject of the petition; or
    - b. Provide written permission from the owner of each parcel of land within the area that is the subject of the petition authorizing the petitioner to act as the agent of the owner of each parcel.
  2. *Pre-application Meeting*: Prior to submitting a Detailed Development Plan application, the petitioner shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed use and development of the property. The Plan Commission Office shall aid and advise the petitioner in preparing his application and supporting documents as necessary.
- C. Applicability:
1. This section is applicable to new Planned Unit Development proposals, and to any proposed amendment to an existing Planned Unit Development that would affect the previously approved Detailed Development Plan.
  2. *Exceptions*: Not applicable.
- D. Application:
1. *Filing Deadline*: The petitioner shall refer to the Schedule of Meeting Dates included in the application packet to determine the filing deadline for any given meeting of the Plan Commission.
  2. *Application Packet*: The petitioner shall submit the completed application to the Plan Commission Office.
  3. *Supporting Information*: The application shall include, but not be limited to, the following documents:
    - a. *Pre-application Meeting*: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. *Additional Information*: Such other additional information as may be required by the Plan Commission Office or other members of the Development Advisory Committee to evaluate the application.
- E. Fees:
1. The Plan Commission Office shall calculate the total of the application fee and any other applicable fees, and shall then apprise the petitioner of the total fee.
  2. The petitioner shall submit the application fee when the Plan Commission Office issues the Docket Number.
- F. Plan Commission Office:
1. *Review*: The Plan Commission Office shall review a Detailed Development Plan upon receipt of a complete application, supporting documents, and the appropriate fees.
  2. *Development Advisory Committee*: Once the Plan Commission Office has determined that it has received a submittal that is sufficiently complete for Development Advisory Committee review, the Plan Commission Office shall place the item on an agenda of the Development Advisory Committee and inform the petitioner of the time, date, and place of the meeting.
  3. *Complete Submittal*: Once the Plan Commission Office has determined that the petitioner has made a complete submittal, the Plan Commission Office shall:
    - a. *Docket Number*: Assign a docket number;
    - b. *Agenda*: Place the item on an agenda of the Plan Commission;
    - c. *Notification*: Inform the petitioner of the time, date, and place of the Plan Commission meeting.
  4. *Inspection*: The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of a Detailed Development Plan petition.

## Planned Unit Development; Detailed Plan

5. *Department Report:* The Plan Commission Office shall prepare a written report outlining its findings with respect to the Detailed Development Plan. The Plan Commission Office report may incorporate, or incorporate by reference, any items that remain outstanding with the other members of the Development Advisory Committee.
  6. *Record:* The Plan Commission Office shall maintain records of all applications, plans, and permits filed for a Detailed Development Plan.
- G. Development Advisory Committee:
1. *Determination:* The Development Advisory Committee shall review Detailed Development Plans.
  2. *Copies:* The petitioner shall refer to the application packet to determine the format and number of copies to be delivered to the Plan Commission Office for distribution to the members of the Development Advisory Committee.
  3. *Meeting Date:* The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Advisory Committee. Incomplete submittals may result in the petition's being held off the Development Advisory Committee agenda to allow the petitioner time to complete the submittal.
  4. *Attendance:* The petitioner should be present at the Development Advisory Committee meeting to address concerns posed by the committee members. Failure to appear may result in the petition's being continued to the Development Advisory Committee agenda for the following month.
  5. *Revisions:* Following Development Advisory Committee review, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Development Advisory Committee. The petitioner shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office.
- H. Plan Commission:
1. *Public Notice:*
    - a. *Responsibility:* The petitioner shall be responsible for publishing and mailing public notice pursuant to the Plan Commission Rules of Procedure. The Plan Commission Office shall be responsible for posting public notice on site pursuant to the Plan Commission Rules of Procedure.
    - b. *Proof:* The petitioner shall be responsible for returning proof of published and mailed notice to the Plan Commission Office. The petitioner shall refer to the application packet to determine the deadline for submittal of proof of notice. Failure to submit proof of notice by the deadline may result in the petition's being continued to the Plan Commission agenda for the following month.
  2. *Submittal:* The petitioner shall refer to the application packet to determine the format and number of copies of the informational packet to be delivered to the Plan Commission Office for distribution to the members of the Plan Commission. Incomplete submittals shall result in the petition's being held off the Plan Commission agenda to allow the petitioner time to complete the submittal.
  3. *Attendance:* The petitioner is required to be present at the Plan Commission meeting to address and discuss comments and concerns posed by the Plan Commission members. Failure to appear shall result in the petition's being dealt with as outlined in the Plan Commission Rules of Procedure.
  4. *Public Hearing:* A public hearing shall be held in accordance with the Plan Commission Rules of Procedure.

# Planned Unit Development; Detailed Plan

5. *Review:* At their regularly scheduled public meeting, the Plan Commission shall review:
  - a. The written statement and supporting material submitted by the petitioner;
  - b. The PUD District Ordinance;
  - c. The Establishment Plan;
  - d. The Detailed Development Plan;
  - e. Any commitments or conditions of approval attendant to prior approvals;
  - f. The testimony of the petitioner;
  - g. Relevant evidence presented by other persons;
  - h. The requirements of *Chapter 04: Planned Unit Developments*;
  - i. The applicable standards of the Unified Development Ordinance;
  - j. The applicable standards of the County's engineering manuals;
  - k. The procedures of *Chapter 10; §Subdivision Control*, when applicable;
  - l. All information presented by the members of the Development Advisory Committee;
  - m. The Plan Commission Office report; and
  - n. Such other additional information as may be required by the Plan Commission to evaluate the petition.
6. *Decision:* The Plan Commission shall:
  - a. Approve the petition;
  - b. Approve the petition with conditions and/or commitments;
  - c. Deny the petition; or
  - d. Continue the petition to a definite future meeting date.
7. *Commitments:*
  - a. **Acceptance:** In conjunction with the approval of a Detailed Development Plan, the Plan Commission may permit or require the petitioner to make written commitments concerning the use or development of the parcel.
  - b. **Form:** The petitioner shall prepare the commitment instrument in a form approved by the Plan Commission Attorney. The petitioner and the President of the Plan Commission shall sign the commitment instrument.
  - c. **Recording:** The petitioner shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the Detailed Development Plan. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office before filing a Final Development Plan petition.
  - d. **Modification or Termination:** A commitment made under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The petitioner shall prepare and record a commitment modification instrument or commitment termination instrument in the same manner required for a commitment instrument. A modified commitment shall be enforced in the same manner as any other commitment.
  - e. **Enforcement:** The County may enforce any commitment the Plan Commission has accepted as if the commitment were a standard of the Unified Development Ordinance.
8. *Conditions of Approval:*
  - a. **Requirement:** In conjunction with the approval of a Detailed Development Plan, the Plan Commission may impose conditions of approval concerning the use or development of the parcel that will, in its judgment, substantially secure the objectives of these regulations.
  - b. **Form:** The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the Plan Commission Attorney. The President of the Plan Commission shall sign the conditions of approval instrument.
  - c. **Recording:** The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the Detailed Development Plan. The Plan Commission Office shall deliver a copy of the recorded conditions of approval instrument to the petitioner within thirty (30) days of recording.

# Planned Unit Development; Detailed Plan

- d. **Modification or Termination:** A condition of approval imposed under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The Plan Commission Office shall prepare and record a conditions of approval modification instrument or conditions of approval termination instrument in the same manner required for a conditions of approval instrument. A modified condition of approval shall be enforced in the same manner as any other condition of approval.
  - e. **Enforcement:** The County may enforce any condition of approval the Plan Commission has imposed as if the condition were a standard of the Unified Development Ordinance.
9. **Meaning of Approval:** Approval of the Detailed Development Plan by the Plan Commission shall act as a Primary Plat, show restrictions placed on the land, and act as a zoning control device. No construction, site grading, *etc.* is authorized by adoption of a Detailed Development Plan.
  10. **Revisions:** Following Plan Committee approval, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Plan Commission. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to be delivered to the Plan Commission Office.
- I. **Duration:**
1. **Duration:** A Final Development Plan application shall be filed not later than twenty-four (24) months after the date of approval of the Detailed Development Plan, otherwise the Detailed Development Plan approval shall be considered expired.
  2. **Extension:** One (1) extension of up to six (6) months may be authorized by the Executive Director for reason/cause. The petitioner shall submit the request for extension in writing to the Executive Director, and the Executive Director shall make a written determination regarding his decision to extend or deny extension. Both the request and the determination shall be made part of the Detailed Development Plan record.
- J. **Changes or Amendments:**
1. The Plan Commission Office shall determine if the proposed changes are of a significant nature to require resubmittal of a Detailed Development Plan.
  2. If the Plan Commission Office determines that the proposed changes warrant resubmittal, the petitioner shall follow the procedures set forth for the Detailed Development Plan.
  3. The Plan Commission Office may determine that the changes are of a less significant nature, in which case the Development Review Committee may act as the review body.
  4. **Detailed Development Plan Amendment:**
    - a. **Applicability:** A Detailed Development Plan Amendment shall be required when:
      - i. A condition of approval is proposed to be modified or terminated;
      - ii. A commitment is proposed to be modified or terminated;
      - iii. An increase in the density or intensity of the project is proposed (*e.g.* additional lots, structures, square footage, *etc.*); or
      - iv. A new right-of-way is proposed; or
      - v. A right-of-way is proposed to be removed from the approved Detailed Development Plan; or
      - vi. The ratio of platted lot area to common area and/or open space is being increased; or
      - vii. The boundary of the area included in the Detailed Development Plan is proposed to be:
        - [a] Expanded to incorporate additional area; or
        - [b] Contracted to exclude area previously included and for which a Secondary Plat has not been recorded.
    - b. **Procedure:** Detailed Development Plan Amendment applications shall be processed in the same manner as Detailed Development Plan applications.
  5. **Current Standards:** Changes, amendments or resubmittals shall be subject to the County engineering standards in effect at the time the application for such changes, amendment or resubmittal is made.

# Planned Unit Development; Final Plan

## 10.07 Planned Unit Development; Final Development Plan

- A. Purpose and Intent: The purpose of a Final Development Plan is to clearly define all construction matters and special conditions such as construction techniques, materials and the like, as well as prepare for official recording of the document.
- B. Prerequisites:
1. *Ownership*: The petitioner must:
    - a. Own a controlling interest in each parcel within the area that is the subject of the petition; or
    - b. Provide written permission from the owner of each parcel of land within the area that is the subject of the petition authorizing the petitioner to act as the agent of the owner of each parcel.
  2. *Pre-application Meeting*: Prior to submitting a Final Development Plan application, the petitioner shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed use and development of the property. The Plan Commission Office shall aid and advise the petitioner in preparing the application and supporting documents as necessary.
- C. Applicability:
1. This section is applicable to new Planned Unit Development proposals, and to any proposed amendment to an existing Planned Unit Development that would affect a previously approved or recorded Final Development Plan.
  2. *Exceptions*: Not applicable.
- D. Application:
1. *Filing Deadline*:
    - a. Executive Director: A Final Development Plan that is eligible for approval by the Executive Director may be filed at any time.
    - b. Development Review Committee: The petitioner shall refer to the Schedule of Meeting Dates included in the application packet to determine the filing deadline for any given meeting of the Development Review Committee.
  2. *Application Packet*: The petitioner shall submit the completed application to the Plan Commission Office.
  3. *Supporting Information*: The application shall include, but not be limited to, the following documents:
    - a. Pre-application Meeting: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. Application Packet: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. Additional Information: Such other additional information as may be required by the Plan Commission Office or other members of the Development Advisory Committee to evaluate the application.
- E. Fees:
1. The Plan Commission Office shall calculate the total of the application fee and any other applicable fees, and shall then apprise the petitioner of the total fee.
  2. *Commercial Projects*: The petitioner shall submit the application fee at least thirty (30) calendar days prior to the Development Review Committee meeting at which the item is scheduled to be heard.
- F. Plan Commission Office:
1. *Review*: The Plan Commission Office shall review a Final Development Plan upon receipt of a complete application, supporting documents, and the appropriate fees.
  2. *Development Advisory Committee*: Once the Plan Commission Office has determined that it has received a submittal that is sufficiently complete for Development Advisory Committee review, the Plan Commission Office shall place the item on an agenda of the Development Advisory Committee and inform the petitioner of the time, date, and place of the meeting.

# Planned Unit Development; Final Plan

3. *Complete Submittal*: Once the Plan Commission Office has determined that the petitioner has made a complete submittal, the Plan Commission Office shall:
  - a. Docket Number: Assign a docket number;
  - b. Agenda; Commercial Projects: Place the item on an agenda of the Development Review Committee;
  - c. Notification; Commercial Projects: The Plan Commission Office shall inform the petitioner of the time, date, and place of the Development Review Committee meeting.
4. *Inspection*: The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of a Final Development Plan petition.
5. *Department Report*: The Plan Commission Office shall prepare a written report outlining its findings with respect to the Final Development Plan. The Plan Commission Office report may incorporate, or incorporate by reference, any items that remain outstanding with the other members of the Development Advisory Committee.
6. *Review; Residential Projects*: The Executive Director shall review:
  - a. The written statement and supporting material submitted by the petitioner;
  - b. The PUD District Ordinance;
  - c. The Establishment Plan;
  - d. The Detailed Development Plan;
  - e. The Final Development Plan;
  - f. Any commitments or conditions of approval attendant to prior approvals;
  - g. The requirements of *Chapter 04: Planned Unit Developments*;
  - h. The applicable standards of the Unified Development Ordinance;
  - i. The applicable standards of the County's engineering manuals;
  - j. The procedures of *Chapter 10; §Subdivision Control*, when applicable;
  - k. All information presented by the members of the Development Advisory Committee;
  - l. The Plan Commission Office report; and
  - m. Such other additional information as may be required by the Executive Director to evaluate the application.
7. *Decision; Residential Projects*: The Executive Director shall approve or deny applications for residential development.
  - a. Approval:
    - i. Sign and Seal: Upon approval of the Final Development Plan, the Executive Director shall sign and seal the Final Development Plan at the appropriate locations.
    - ii. Notification: The Plan Commission Office shall then notify the petitioner in writing of the Executive Director's actions.
    - iii. Recording: The Final Development Plan may then be filed for recording in the County Recorder's office, as required by law.
  - b. Denial:
    - i. Notification: The Plan Commission Office shall then notify the petitioner in writing of the Executive Director's decision.
    - ii. Right to Appeal: The Plan Commission Office shall also notify the petitioner in writing that a decision of the Executive Director may be appealed to the Plan Commission within thirty (30) days after said decision by the Executive Director.
8. *Surety Requirement*: In conjunction with the approval of a Final Development Plan, the petitioner shall provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards*.
9. *Meaning of Approval; Residential Projects*:
  - a. Subdivision: For a Planned Unit Development that is being subdivided, approval of the Final Development Plan shall be considered to be the Secondary Plat for recording purposes.
  - b. Commencement of Construction: No construction or site grading shall begin prior to the issuance of an ILP or ECP, whichever may be required.

# Planned Unit Development; Final Plan

10. *Revisions*: Following approval by the Executive Director, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Executive Director. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to deliver to the Plan Commission Office.
11. *Right to Appeal*: A decision of the Executive Director may be appealed to the Plan Commission within thirty (30) days after said decision by the Executive Director.
12. *Record*: The Plan Commission Office shall maintain records of all applications, plans, and permits filed for a Final Development Plan. The original copy of the Final Development Plan shall be filed with the County Recorder's office and one (1) reproducible copy of the recorded plat as well as a copy in electronic media shall be submitted to the Plan Commission Office.

## G. Development Advisory Committee:

1. *Determination*: The Development Advisory Committee shall review Final Development Plans.
2. *Copies*: The petitioner shall refer to the application packet to determine the format and number of copies to be delivered to the Plan Commission Office for distribution to the members of the Development Advisory Committee.
3. *Meeting Date*: The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Advisory Committee. Incomplete submittals may result in the application's being held off the Development Advisory Committee agenda to allow the petitioner time to complete the submittal.
4. *Attendance*: The petitioner is required to be present at the Development Advisory Committee meeting to address concerns posed by the committee members. Failure to appear may result in the application's being continued to the Development Advisory Committee agenda for the following month.
5. *Revisions*: Following Development Advisory Committee review, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Development Advisory Committee. The petitioner shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office.

## H. Plan Commission:

1. *Appeal of a Decision of the Executive Director or Development Review Committee*: The Plan Commission shall review an appeal of a Final Development Plan decision made by either the Executive Director or the Development Review Committee at a regularly scheduled meeting as though it were a Final Development Plan application filed with the Plan Commission *de novo*.
  - a. *Public Notice*:
    - i. *Responsibility*: The appellant shall be responsible for publishing and mailing public notice pursuant to the Plan Commission Rules of Procedure. The Plan Commission Office shall be responsible for posting public notice pursuant to the Plan Commission Rules of Procedure.
    - ii. *Proof*: The appellant shall be responsible for returning proof of published and mailed notice to the Plan Commission Office. The appellant shall refer to the application packet to determine the deadline for submittal of proof of notice. Failure to submit proof of notice by the deadline may result in the petition's being continued to the Plan Commission agenda for the following month.
  - b. *Submittal*: The appellant shall refer to the application packet to determine the format and number of copies of the informational packet to be delivered to the Plan Commission Office for distribution to the members of the Plan Commission. Incomplete submittals may result in the petition's being held off the Plan Commission agenda to allow the appellant time to complete the submittal.
  - c. *Attendance*: The appellant or the appellant's representative is required to be present at the Plan Commission meeting to address and discuss comments and concerns posed by the Plan Commission members. Failure to appear shall result in the petition's being dealt with as outlined in the Plan Commission Rules of Procedure.
  - d. *Public Hearing*: A public hearing shall be held in accordance with the Plan Commission Rules of Procedure.



# Planned Unit Development; Final Plan

- e. Review: At their regularly scheduled public meeting, the Plan Commission shall review:
    - i. The written statement and supporting material submitted by the appellant;
    - ii. The PUD District Ordinance;
    - iii. The Establishment Plan;
    - iv. The Detailed Development Plan;
    - v. The Final Development Plan materials submitted by the petitioner for review by the Executive Director or Development Review Committee;
    - vi. The record of action supplied by the Executive Director or Development Review Committee;
    - vii. The testimony of the appellant;
    - viii. The testimony of the petitioner, if the petitioner is not the appellant;
    - ix. The testimony of the Executive Director or Development Review Committee;
    - x. Relevant evidence presented by other persons;
    - xi. Any commitments or conditions of approval attendant to prior approvals;
    - xii. The requirements of *Chapter 04: Planned Unit Developments*;
    - xiii. The applicable standards of the Unified Development Ordinance;
    - xiv. The applicable standards of the County's engineering manuals;
    - xv. The procedures of *Chapter 10; §Subdivision Control*, when applicable;
    - xvi. All information presented by the members of the Development Advisory Committee;
    - xvii. The Plan Commission Office report; and
    - xviii. Such other additional information as may be required by the Plan Commission to evaluate the appeal.
  - f. *Decision*: The Plan Commission shall:
    - i. Affirm the decision of the Executive Director or Development Review Committee;
    - ii. Affirm the decision of the Executive Director or Development Review Committee with additional conditions and/or commitments;
    - iii. Reverse the decision of the Executive Director or Development Review Committee;
    - iv. Reverse the decision of the Executive Director or Development Review Committee with additional conditions and/or commitments;
    - v. Modify the decision of the Executive Director or Development Review Committee;
    - vi. Modify the decision of the Executive Director or Development Review Committee with additional conditions and/or commitments; or
    - vii. Continue the petition to a definite future meeting date.
- I. Development Review Committee:
1. *Review*: The Development Review Committee shall review a Final Development Plan upon receipt of a complete application, supporting documents, and the appropriate fees.
  2. *Submittal*: The petitioner shall refer to the application packet to determine the format and number of copies of the informational packet to be delivered to the Plan Commission Office for distribution to the members of the Development Review Committee. Incomplete submittals shall result in the petition's being held off the Development Review Committee agenda to allow the petitioner time to complete the submittal.
  3. *Attendance*: The petitioner is required to be present at the Development Review Committee meeting to address concerns posed by the Development Review Committee members. Failure to appear shall result in the petition's being dealt with as outlined in the Plan Commission Rules of Procedure.
  4. *Review; Commercial Projects*: At their regularly scheduled public meeting, the Development Review Committee shall review:
    - a. The written statement and supporting material submitted by the petitioner;
    - b. The PUD District Ordinance;
    - c. The Establishment Plan;
    - d. The Detailed Development Plan;
    - e. The Final Development Plan;
    - f. Any commitments or conditions of approval attendant to prior approvals;

# Planned Unit Development; Final Plan

- g. The requirements of *Chapter 04: Planned Unit Developments*;
  - h. The applicable standards of the Unified Development Ordinance;
  - i. The applicable standards of the County's engineering manuals;
  - j. The procedures of *Chapter 10; §Subdivision Control*, when applicable;
  - k. All information presented by the members of the Development Advisory Committee;
  - l. The Plan Commission Office report; and
  - n. Such other additional information as may be required by the Development Review Committee to evaluate the application.
5. *Decision; Commercial Projects*: The Development Review Committee shall approve or deny applications for commercial development.
- a. Approval:
    - i. Sign and Seal: Upon approval of the Final Development Plan, a majority of the members of the Development Review Committee shall sign and seal the Final Development Plan at the appropriate locations.
    - ii. Notification: The Plan Commission Office shall then notify the petitioner in writing of the Development Review Committee's actions.
    - iii. Recording: The Final Development Plan may then be filed for recording in the County Recorder's office, as required by law.
  - b. Denial:
    - i. Notification: The Plan Commission Office shall then notify the petitioner in writing of the Development Review Committee's decision.
    - ii. Right to Appeal: The Plan Commission Office shall also notify the petitioner in writing that a decision of the Development Review Committee may be appealed to the Plan Commission within thirty (30) days after said decision by the Development Review Committee.
6. *Surety Requirement*: In conjunction with the approval of a Final Development Plan, the petitioner shall provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards*.
7. *Meaning of Approval; Commercial Projects*:
- a. Subdivision: For a Planned Unit Development that is being subdivided, approval of the Final Development Plan shall be considered to be the Secondary Plat for recording purposes.
  - b. Commencement of Construction: No construction or site grading shall begin prior to the issuance of an ILP or ECP, whichever may be required.
8. *Revisions*: Following Development Review Committee approval, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Development Review Committee. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to deliver to the Plan Commission Office.
9. *Right to Appeal*: A decision of the Development Review Committee may be appealed to the Plan Commission within thirty (30) days after said decision by the Development Review Committee.
- J. Duration:
1. *Duration*: The work or use authorized by a Final Development Plan must be commenced within six (6) months of the date of issuance; otherwise, the Final Development Plan approval shall lapse and become null and void. All work authorized by a Final Development Plan shall be completed within twenty-four (24) months of the date of approval of the Final Development Plan, unless good cause for an extension of time for completion is shown to the Executive Director.
  2. *Extension*: One (1) extension of up to six (6) months may be authorized by the Executive Director for reason/cause. The petitioner shall submit the request for extension in writing to the Executive Director, and the Executive Director shall make a written determination regarding his decision to extend or deny extension. Both the request and the determination shall be made part of the Final Development Plan record.

# Planned Unit Development; Final Plan

## K. Changes or Amendments:

1. The Plan Commission Office shall determine if proposed changes are of a significant nature to require resubmittal of a Final Development Plan.
2. If the Plan Commission Office determines that the proposed changes warrant resubmittal, the petitioner shall follow the procedures set forth for the Final Development Plan.
3. The Plan Commission Office may determine that the changes are of a less significant nature, in which case the Development Review Committee may act as the review body.
4. *Final Development Plan Amendment:*
  - a. *Applicability:* A Final Development Plan Amendment shall be required when:
    - i. An element of the Final Development Plan is proposed to be amended (*e.g.* Landscape Plan, Sign Plan, *etc.*);
    - ii. A recorded street name change is proposed;
    - iii. A recorded development name change is proposed;
    - iv. A recorded address change is proposed;
    - v. Lots are being joined;
    - vi. Lots are being split (also requires a Detailed Development Plan Amendment);
    - vii. Platted easements are being modified or vacated (see also *Chapter 10; §Easements*);
    - viii. A public way is being vacated [**Note:** per IC 36-7-3-12, right-of-way vacation also requires that an ordinance be adopted by the Board of County Commissioners]; or
    - ix. Other significant changes to the Final Development Plan are proposed.
  - b. *Procedure:* Final Development Plan Amendment applications shall be processed in the same manner as Final Development Plan applications.
5. *Current Standards:* Changes, amendments or resubmittals shall be subject to the County engineering standards in effect at the time the application for such changes, amendment or resubmittal is made.

# Planned Unit Development; Modification

## 10.08 Planned Unit Development; Modification

- A. **Purpose and Intent:** The purpose of this Section is to outline the process by which the Plan Commission considers petitions for Modifications of the permitted uses or development requirements that are specified in a PUD District Ordinance. The term “Modification” in the context of a PUD District Ordinance bears the meaning set forth in the 1500 Series of IC 36-7-4, and is distinct from the use of the term in the context of the amendment of Easements, Commitments or Conditions of Approval.
- B. **Prerequisites:**
1. *Ownership:* The petitioner must:
    - a. Own a controlling interest in each parcel within the area that is the subject of the petition; or
    - b. Provide written permission from the owner of each parcel of land within the area that is the subject of the petition authorizing the petitioner to act as the agent of the owner of each parcel.
  2. *Detailed Development Plan Application:* The petitioner shall only file a Modification application in conjunction with a Detailed Development Plan or Detailed Development Plan Amendment petition.
  3. *Pre-application Meeting:* Prior to submitting an application, the petitioner shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed use and development of the property. The Plan Commission Office shall aid and advise the petitioner in preparing the application and supporting documents as necessary.
- C. **Applicability:**
1. *Delegation of Authority:* Pursuant to IC 36-7-4-1511(b), the Board of County Commissioners hereby delegates to the Plan Commission the authority to approve or deny Modifications of the permitted uses or development requirements that are specified in a PUD District Ordinance.
  2. *Eligibility:* Only permitted uses or development requirements that are specified in a PUD District Ordinance are eligible for consideration of Modifications by the Plan Commission.
  3. *Exceptions:* Requirements set forth in the text of the Unified Development Ordinance (e.g. *Chapter 04: Planned Unit Development Districts; Chapter 05: Zoning District Development Standards; Chapter 07: Subdivision, Development Plan & PUD Design Standards; etc.*) are not eligible for consideration of a Modification petition.
- D. **Application:**
1. *Filing Deadline:* The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Plan Commission.
  2. *Application Packet:* The petitioner shall submit the completed application to the Plan Commission Office.
  3. *Supporting Information:* The application shall include, but not be limited to, the following documents:
    - a. *Pre-application Meeting:* The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. *Application Packet:* The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. *Additional Information:* Such other additional information as may be required by the Plan Commission Office or other members of the Development Advisory Committee to evaluate the application.
- E. **Fees:**
1. The Plan Commission Office shall calculate the total of the application fee and any other applicable fees, and shall then apprise the petitioner of the total fee.
  2. The petitioner shall submit the filing fee when the Plan Commission Office issues the Docket Number.

# Planned Unit Development; Modification

## F. Plan Commission Office:

1. *Review:* The Plan Commission Office shall review the petition upon receipt of a complete application and supporting documents.
2. *Development Advisory Committee:*
  - a. *Determination:* The Executive Director shall determine whether the petition merits Development Advisory Committee review.
  - b. *Agenda:* Once the Plan Commission Office has determined that it has received a submittal that is sufficiently complete for Development Advisory Committee review, the Plan Commission Office shall place the item on an agenda of the Development Advisory Committee and inform the petitioner of the time, date, and place of the meeting.
3. *Complete Submittal:* Once the Plan Commission Office has determined that the petitioner has made a complete submittal, the Plan Commission Office shall:
  - a. Assign the item a docket number;
  - b. Place the item on an agenda of the Plan Commission;
  - c. Inform the petitioner of the time, date, and place of the meeting.
4. *Inspection:* The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of a Modification petition.
5. *Department Report:* The Plan Commission Office shall prepare a written report outlining its findings with respect to the Modification. The Plan Commission Office report may incorporate, or incorporate by reference, any items that remain outstanding with the other members of the Development Advisory Committee.
6. *Record:* The Plan Commission Office shall maintain records of all applications, plans, and permits filed for a Modification.

## G. Development Advisory Committee:

1. *Determination:* The Development Advisory Committee shall review Modification petitions that have been forwarded by the Plan Commission Office.
2. *Copies:* The petitioner shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Development Advisory Committee.
3. *Meeting Date:* The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Advisory Committee. Incomplete submittals may result in the petition's being held off the Development Advisory Committee agenda to allow the petitioner time to complete the submittal.
4. *Attendance:* The petitioner should be present at the Development Advisory Committee meeting to address concerns posed by the committee members. Failure to appear may result in the petition's being continued to the Development Advisory Committee agenda for the following month.
5. *Revisions:* Following Development Advisory Committee review, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Development Advisory Committee. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to be delivered to the Plan Commission Office.

# Planned Unit Development; Modification

## H. Plan Commission:

1. *Public Notice:*
  - a. *Responsibility:* The petitioner shall be responsible for publishing and mailing public notice pursuant to the Plan Commission Rules of Procedure. The Plan Commission Office shall be responsible for posting public notice pursuant to the Plan Commission Rules of Procedure.
  - b. *Proof:* The petitioner shall be responsible for returning the affidavit of public notice and proof of published and mailed notice to the Plan Commission Office. The petitioner shall refer to the application packet to determine the deadline for submittal of the affidavit of public notice and proof of published and mailed notice. Failure to submit the affidavit of public notice and proof of published and mailed notice by the deadline may result in the petition's being continued to the Plan Commission agenda for the following month.
2. *Submittal:* The petitioner shall refer to the application packet to determine the format and number of copies of the informational packet to be delivered to the Plan Commission Office for distribution to the members of the Plan Commission. Incomplete submittals shall result in the petition's being held off the Plan Commission agenda to allow the petitioner time to complete the submittal. Materials submitted by the petitioner after the informational packets have been distributed shall be subject to action pursuant to the Plan Commission Rules of Procedure.
3. *Attendance:* The petitioner is required to be present at the Plan Commission meeting to address concerns posed by the Plan Commission members. Failure to appear shall result in the petition's being dealt with as outlined in the Plan Commission Rules of Procedure.
4. *Public Hearing:* A public hearing shall be held in accordance with the Plan Commission Rules of Procedure.
5. *Review:* The Plan Commission shall review:
  - a. The application and required supporting material submitted by the petitioner;
  - b. The Comprehensive Plan;
  - c. The PUD District Ordinance;
  - d. The Detailed Development Plan;
  - e. Any commitments or conditions of approval attendant to prior approvals;
  - f. The testimony of the petitioner;
  - g. Relevant evidence presented by other persons;
  - h. Any applicable provisions of the Unified Development Ordinance;
  - i. The applicable standards of the County's engineering manuals;
  - j. Any information presented by the members of the Development Advisory Committee;
  - k. The Plan Commission Office report; and
  - l. Such other additional information as may be required by the Plan Commission to evaluate the application.
6. *Decision:* The Plan Commission shall:
  - a. Approve the petition;
  - b. Approve the petition with conditions and/or commitments;
  - c. Deny the petition; or
  - d. Continue the petition to a definite future meeting date.

# Planned Unit Development; Modification

7. *Findings of Fact:*
  - a. **Development Requirements:** The Plan Commission may grant a Modification of the development requirements of a PUD District Ordinance if, after a public hearing, it makes written findings of fact that:
    - i. The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and
    - ii. The use and value of the area adjacent to the property included in the Modification will not be affected in a substantially adverse manner; and
    - iii. The strict application of the terms of the PUD District Ordinance will result in a practical difficulty. This situation shall not be self-imposed, nor be based on a perceived reduction of or restriction of economic gain.
  - b. **Permitted Uses:** The Plan Commission may grant a Modification of the uses permitted in a PUD District Ordinance if, after a public hearing, it makes written findings of fact that:
    - i. The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and
    - ii. The use and value of the adjacent areas to the subject property are not adversely affected; and
    - iii. The need for a Modification stems from a condition unusual or peculiar to the subject property itself; and
    - iv. The strict application of the terms of the PUD District Ordinance will result in an unnecessary hardship if they were applied to the subject property; and
    - v. The approval of the Modification does not contradict the goals and objectives of the Comprehensive Plan.
  - c. **Certification:** The findings of fact shall be signed by the President of the Plan Commission.
  - d. **Notification:** In the case of a denied petition, the Plan Commission shall furnish the petitioner with a copy of its decision.
8. **Surety Requirement:** In conjunction with the approval of a Modification, the petitioner shall provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards*.
9. **Commitments:**
  - a. **Acceptance:** In conjunction with the approval of a Modification, the Plan Commission may permit or require the petitioner to make written commitments concerning the use or development of the parcel.
  - b. **Form:** The petitioner shall prepare the commitment instrument in a form approved by the Plan Commission Attorney. The petitioner and the President of the Plan Commission shall sign the commitment instrument.
  - c. **Recording:** The petitioner shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the Modification. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office before applying for any permits for the site.
  - d. **Modification or Termination:** A commitment made under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The petitioner shall prepare and record a commitment modification instrument or commitment termination instrument in the same manner required for a commitment instrument. A modified commitment shall be enforced in the same manner as any other commitment.
  - e. **Enforcement:** The County may enforce any commitment the Plan Commission has accepted as if the commitment were a standard of the Unified Development Ordinance.


# Planned Unit Development; Modification

10. *Conditions of Approval:*
    - a. **Requirement:** In conjunction with the approval of a Modification, the Plan Commission may impose conditions of approval concerning the use or development of the parcel that will, in its judgment, substantially secure the objectives of these regulations.
    - b. **Form:** The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the Plan Commission Attorney. The President of the Plan Commission shall sign the conditions of approval instrument.
    - c. **Recording:** The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the Modification. The Plan Commission Office shall deliver a copy of the recorded conditions of approval instrument to the petitioner within thirty (30) days of recording.
    - d. **Modification or Termination:** A condition of approval imposed under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The Plan Commission Office shall prepare and record a conditions of approval modification instrument or conditions of approval termination instrument in the same manner required for a conditions of approval instrument. A modified condition of approval shall be enforced in the same manner as any other condition of approval.
    - e. **Enforcement:** The County may enforce any condition of approval the Plan Commission has imposed as if the condition were a standard of the Unified Development Ordinance.
  11. *Revisions:* Within thirty (30) calendar days of Plan Commission approval, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Plan Commission to the Plan Commission Office. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to deliver to the Plan Commission Office.
- I. Duration:
1. Unless a more stringent standard is applied pursuant to a commitment or condition of approval, a Modification granted by the Plan Commission shall run with the parcel until such time as the property conforms with the PUD District Ordinance as written.
  2. *Regulation of Tall Structures:* Before approval of a Modification involving a structure regulated under IC 8-21-10: Regulation of Tall Structures may become effective, the petitioner shall submit to the Plan Commission Office:
    - a. A copy of:
      - i. The permit for the structure issued by the Indiana Department of Transportation; or
      - ii. The Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration; and
    - b. Evidence that notice was delivered to a public use airport as required in IC 8-21-10-3: Permit Requirements not less than sixty (60) days before the Modification petition was considered.
- K. Changes or Amendments: Any change to an approved Modification shall be the subject of a new Modification petition.



# Development Plan

## 10.09 Development Plan

- A. **Purpose and Intent:** The purpose of this section is to outline the procedure employed by the County when considering an application for the approval of a Development Plan. Further, the intent of this section is to ensure the statutory requirements established in the 1400 Series of IC 36-7-4 for the consideration of a Development Plan application are met.
- B. **Prerequisites:**
1. *Ownership:* The petitioner must:
    - a. Own a controlling interest in each parcel within the area that is the subject of the petition; or
    - b. Provide written permission from the owner of each parcel of land within the area that is the subject of the petition authorizing the petitioner to act as the agent of the owner of each parcel.
  2. *Pre-application Meeting:* Prior to submitting an application, the petitioner shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed use and development of the property. The Plan Commission Office shall aid and advise the petitioner in preparing the application and supporting documents as necessary.
- C. **Applicability:**
1. *Zoning Districts:* Development Plans are required in the following zoning districts:  

  2. *Exceptions:*
    - a. Detailed Development Plan: A Detailed Development Plan required for a Planned Unit Development shall be considered pursuant to §10.06: *Planned Unit Development; Detailed Development Plan*.
    - b. Final Development Plan: A Final Development Plan required for a Planned Unit Development shall be considered pursuant to §10.07: *Planned Unit Development; Final Development Plan*.
- D. **Application:**
1. *Filing Deadline:* The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Plan Commission.
  2. *Application Form:* The petitioner shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation:* The application shall include, but not be limited to, the following information and documents:
    - a. Pre-application Meeting: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. Application Packet: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. Additional Information: Such other additional information as may be required by the Plan Commission Office or other members of the Development Advisory Committee to evaluate the application.
- E. **Fees:** Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The petitioner shall be responsible for paying the fees at the time of application submittal.

# Development Plan

## F. Plan Commission Office:

1. *Review:* The Plan Commission Office shall review the petition upon receipt of a complete application and supporting documents.
2. *Development Advisory Committee:*
  - a. *Determination:* The Executive Director shall determine whether the petition merits Development Advisory Committee review.
  - b. *Agenda:* Once the Plan Commission Office has determined that it has received a submittal that is sufficiently complete for Development Advisory Committee review, the Plan Commission Office shall place the item on an agenda of the Development Advisory Committee and inform the petitioner of the time, date, and place of the meeting.
3. *Complete Submittal:* Once the Plan Commission Office has determined that the petitioner has made a complete submittal, the Plan Commission Office shall:
  - a. Assign the item a docket number;
  - b. Place the item on an agenda of the Development Review Committee or the Plan Commission;
  - c. Inform the petitioner of the time, date, and place of the meeting.
4. *Inspection:* The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of a Development Plan petition.
5. *Department Report:* The Plan Commission Office shall prepare a written report outlining its findings with respect to the Development Plan. The Plan Commission Office report may incorporate, or incorporate by reference, any items that remain outstanding with the other members of the Development Advisory Committee.
6. *Record:* The Plan Commission Office shall maintain records of all applications, plans, and permits filed for a Development Plan.

## G. Development Advisory Committee:

1. *Determination:* The Development Advisory Committee shall review Development Plans.
2. *Copies:* The petitioner shall refer to the Development Plan application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Development Advisory Committee.
3. *Meeting Date:* The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Advisory Committee. Incomplete submittals may result in the application's being held off the Development Advisory Committee agenda to allow the petitioner to complete the submittal.
4. *Attendance:* The petitioner is required to be present at the Development Advisory Committee meeting to address concerns posed by the committee members. Failure to appear may result in the application's being continued to the Development Advisory Committee agenda for the following month.
5. *Revisions:* Following Development Advisory Committee review, the petitioner shall submit revised copies of the Development Plan that address the comments and concerns of the Development Advisory Committee. The petitioner shall refer to the Development Plan application packet to determine the format and number of copies of the revised Development Plan to be delivered to the Plan Commission Office.

# Development Plan

## H. Plan Commission:

1. *Public Notice:* If a public hearing is required per §4: *Public Hearing*, then public notice shall be accomplished as follows:
  - a. *Responsibility:* The petitioner shall be responsible for publishing and mailing public notice pursuant to the Plan Commission Rules of Procedure. The Plan Commission Office shall be responsible for posting public notice pursuant to the Plan Commission Rules of Procedure.
  - b. *Proof:* The petitioner shall be responsible for returning the affidavit of public notice and proof of published and mailed notice to the Plan Commission Office. The petitioner shall refer to the application packet to determine the deadline for submittal of the affidavit of public notice and proof of published and mailed notice. Failure to submit the affidavit of public notice and proof of published and mailed notice by the deadline may result in the petition's being continued to the Plan Commission agenda for the following month.
2. *Submittal:* The petitioner shall refer to the application packet to determine the format and number of copies of the informational packet to be delivered to the Plan Commission Office for distribution to the members of the Plan Commission. Incomplete submittals shall result in the application's being held off the Plan Commission agenda to allow the petitioner time to complete the submittal.
3. *Attendance:* The petitioner is required to be present at the Plan Commission meeting to address and discuss comments and concerns posed by the Plan Commission members. Failure to appear shall result in the petition's being dealt with as outlined in the Plan Commission Rules of Procedure.
4. *Public Hearing:* A public hearing shall be held in accordance with the Plan Commission Rules of Procedure if any of the following conditions apply:
  - a. The site is not a lot in a platted commercial or industrial subdivision; or
  - b. The petitioner has filed one (1) or more Design Waiver petitions in conjunction with the Development Plan petition (see §10.10: *Design Waiver*).
5. *Review:* At their regularly scheduled public meeting, the Plan Commission shall review:
  - a. The application and required supporting material submitted by the petitioner;
  - b. The Comprehensive Plan;
  - c. The Development Plan;
  - d. Any commitments or conditions of approval attendant to prior approvals;
  - e. The testimony of the petitioner;
  - f. Relevant evidence presented by other persons;
  - g. Any applicable provisions of the Unified Development Ordinance;
  - h. The applicable standards of the County's engineering manuals;
  - i. Any information presented by the members of the Development Advisory Committee;
  - j. The Plan Commission Office report; and
  - k. Such other additional information as may be required by the Plan Commission to evaluate the application.
6. *Decision:* The Plan Commission shall:
  - a. Approve the application;
  - b. Approve the application with conditions and/or commitments;
  - c. Deny the application; or
  - d. Continue the application to a definite future meeting date.

# Development Plan

7. *Findings of Fact:*
  - a. The Plan Commission shall approve the application for a Development Plan only upon making written findings that the Development Plan:
    - i. Is consistent with the Comprehensive Plan;
    - ii. Satisfies the development requirements of *Chapter 02: Zoning Districts*;
    - iii. Satisfies the development requirements of *Chapter 05: Zoning District Development Standards*;
    - iv. Satisfies the development requirements of *Chapter 07: Subdivision, Development Plan & PUD Design Standards*;
    - v. Satisfies any other applicable provisions of the Unified Development Ordinance;
    - vi. Satisfies the development requirements of the County's engineering manuals; and
    - vii. Satisfies the requirements of agencies represented by the members of the Development Advisory Committee.
  - b. Certification: The findings shall be signed by the President of the Plan Commission.
  - c. Notification: If the Plan Commission denies approval of the Development Plan, the Plan Commission Office shall furnish the petitioner with a copy of the decision.
8. *Surety Requirement:* In conjunction with the approval of a Development Plan, the petitioner shall provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards*.
9. *Commitments:*
  - a. Acceptance: In conjunction with the approval of a Development Plan, the Plan Commission may permit or require the petitioner to make written commitments concerning the use or development of the parcel.
  - b. Form: The petitioner shall prepare the commitment instrument in a form approved by the Plan Commission Attorney. The petitioner and the President of the Plan Commission shall sign the commitment instrument.
  - c. Recording: The petitioner shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the Development Plan. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office before applying for an ILP or an ECP.
  - d. Modification or Termination: A commitment made under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The petitioner shall prepare and record a commitment modification instrument or commitment termination instrument in the same manner required for a commitment instrument. A modified commitment shall be enforced in the same manner as any other commitment.
  - e. Enforcement: The County may enforce any commitment the Plan Commission has accepted as if the commitment were a standard of the Unified Development Ordinance.
10. *Conditions of Approval:*
  - a. Requirement: In conjunction with the approval of a Development Plan, the Plan Commission may impose conditions of approval concerning the use or development of the parcel that will, in its judgment, substantially secure the objectives of these regulations and that are reasonably necessary to satisfy the development requirements specified in the Unified Development Ordinance.
  - b. Form: The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the Plan Commission Attorney. The President of the Plan Commission shall sign the conditions of approval instrument.
  - c. Recording: The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the Development Plan. The Plan Commission Office shall deliver a copy of the conditions of approval instrument to the petitioner within thirty (30) days of recording.

# Development Plan

- d. **Modification or Termination:** A condition of approval imposed under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The Plan Commission Office shall prepare and record a conditions of approval modification instrument or conditions of approval termination instrument in the same manner required for a conditions of approval instrument. A modified condition of approval shall be enforced in the same manner as any other condition of approval.
  - e. **Enforcement:** The County may enforce any condition of approval the Plan Commission has imposed as if the condition were a standard of the Unified Development Ordinance.
11. **Revisions:** Following Plan Commission approval, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Plan Commission. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to be delivered to the Plan Commission Office.
  12. **Appeal of a Decision of the Development Review Committee:** The Plan Commission shall review an appeal of a Development Plan decision by the Development Review Committee at a regularly scheduled meeting as though it were a Development Plan petition filed with the Plan Commission *de novo*.
- I. **Development Review Committee:**
1. **Authorization:** Per IC 36-7-4-1402(c)(2), the Board of County Commissioners hereby authorizes the Development Review Committee to act as a Hearing Examiner with the authority to review and approve Development Plan petitions under the following circumstances:
    - a. The site is a lot in a platted commercial or industrial subdivision; and
    - b. A public hearing is not required per §H(4): *Public Hearing*.
  2. **Membership:** The members of the Development Review Committee shall be:
    - a. The President of the Board of County Commissioners or a representative appointed by the President of the Board of County Commissioners (the appointee may be another member of the Board of County Commissioners);
    - b. The Plan Commission President or another member of the Plan Commission appointed by the Plan Commission President;
    - c. The Executive Director or his designee;
    - d. An at-large member who is not a member of either the Board of County Commissioners or the Plan Commission; and
    - e. An at-large member who is:
      - i. An architect licensed in the State of Indiana;
      - ii. A landscape architect licensed in the State of Indiana; or
      - iii. A member of the American Institute of Certified Planners.
  3. **Residency Requirement:** The at-large members of the Development Review Committee must reside within the jurisdictional area of the Plan Commission.
  4. **Term:** Each member of the Development Review Committee shall be appointed to a one-year term that begins at the first regular Plan Commission meeting of the new year, and ends at the first regular meeting of the Plan Commission the following year. The Plan Commission may set forth procedures for the replacement of members midterm and for the removal of members in the Plan Commission Rules of Procedure.
  5. **Official Action:** Action of the Development Review Committee is not official unless it is authorized by a majority of the entire membership of the Development Review Committee.
  6. **Powers and Duties:** Regardless of the enabling text found here and elsewhere in *Chapter 10*, the Development Review Committee shall only have and exercise those powers and duties granted by the Plan Commission in the Plan Commission Rules of Procedure.
  7. **Review:** The Development Review Committee shall review a Development Plan upon receipt of a complete application, supporting documents, and the appropriate fees.

# Development Plan

8. *Submittal*: The petitioner shall refer to the application packet to determine the format and number of copies of the informational packet to be delivered to the Plan Commission Office for distribution to the members of the Development Review Committee. Incomplete submittals shall result in the petition's being held off the Development Review Committee's agenda to allow the petitioner time to complete the submittal.
9. *Attendance*: The petitioner is required to be present at the Development Review Committee meeting to address concerns posed by the Development Review Committee members. Failure to appear shall result in the petition's being dealt with as outlined in the Plan Commission Rules of Procedure.
10. *Review*: At their regularly scheduled public meeting, the Development Review Committee shall review:
  - a. The application and required supporting material submitted by the petitioner;
  - b. The Comprehensive Plan;
  - c. The Development Plan;
  - d. Any commitments or conditions of approval attendant to prior approvals;
  - e. The testimony of the petitioner;
  - f. Relevant evidence presented by other persons;
  - g. Any applicable provisions of the Unified Development Ordinance;
  - h. The applicable standards of the County's engineering manuals;
  - i. Any information presented by the members of the Development Advisory Committee;
  - j. The Plan Commission Office report; and
  - k. Such other additional information as may be required by the Development Review Committee to evaluate the application.
11. *Decision*: The Development Review Committee shall:
  - a. Approve the application;
  - b. Approve the application with conditions and/or commitments;
  - c. Deny the application;
  - d. Continue the application to a definite future meeting date; or
  - e. Forward the application to the Plan Commission for consideration.
12. *Findings of Fact*:
  - a. The Development Review Committee shall approve the application for a Development Plan only upon making written findings that the Development Plan:
    - i. Is consistent with the Comprehensive Plan;
    - ii. Satisfies the development requirements of *Chapter 02: Zoning Districts*;
    - iii. Satisfies the development requirements of *Chapter 05: Zoning District Development Standards*;
    - iv. Satisfies the development requirements of *Chapter 07: Subdivision, Development Plan & PUD Design Standards*;
    - v. Satisfies any other applicable provisions of the Unified Development Ordinance;
    - vi. Satisfies the development requirements of the County's engineering manuals; and
    - vii. Satisfies the requirements of agencies represented by the members of the Development Advisory Committee.
  - b. *Certification*: The findings shall be signed by the Chair of the Development Review Committee.
  - c. *Sign and Seal*: Upon approval of the Development Plan, the Chair of the Development Review Committee shall sign and seal the Development Plan at the appropriate locations.
  - d. *Notification*: The Plan Commission Office shall notify the petitioner in writing of the Development Review Committee's actions.
  - e. *Right to Appeal*: The Plan Commission Office shall also notify the petitioner in writing that a decision of the Development Review Committee may be appealed to the Plan Commission within thirty (30) days after said decision by the Development Review Committee.
13. *Surety Requirement*: In conjunction with the approval of a Development Plan, the petitioner shall provide financial surety for all public improvements pursuant to *Chapter 10: §Surety Standards*.

# Development Plan

## 14. *Commitments:*

- a. **Acceptance:** In conjunction with the approval of a Development Plan, the Development Review Committee may permit or require the petitioner to make written commitments concerning the use or development of the parcel.
- b. **Form:** The petitioner shall prepare the commitment instrument in a form approved by the Plan Commission Attorney. The petitioner and the Chair of the Development Review Committee shall sign the commitment instrument.
- c. **Recording:** The petitioner shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the Development Plan. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office before applying for an ILP or an ECP.
- d. **Modification or Termination:** A commitment made under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The petitioner shall prepare and record a commitment modification instrument or commitment termination instrument in the same manner required for a commitment instrument. A modified commitment shall be enforced in the same manner as any other commitment.
- e. **Enforcement:** The County may enforce any commitment the Development Review Committee has accepted as if the commitment were a standard of the Unified Development Ordinance.

## 15. *Conditions of Approval:*

- a. **Requirement:** In conjunction with the approval of a Development Plan, the Development Review Committee may impose conditions of approval concerning the use or development of the parcel that will, in its judgment, substantially secure the objectives of these regulations and that are reasonably necessary to satisfy the development requirements specified in the Unified Development Ordinance.
- b. **Form:** The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the Plan Commission Attorney. The Chair of the Development Review Committee shall sign the conditions of approval instrument.
- c. **Recording:** The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the Development Plan. The Plan Commission Office shall deliver a copy of the conditions of approval instrument to the petitioner within thirty (30) days of recording.
- d. **Modification or Termination:** A condition of approval imposed under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The Plan Commission Office shall prepare and record a conditions of approval modification instrument or conditions of approval termination instrument in the same manner required for a conditions of approval instrument. A modified condition of approval shall be enforced in the same manner as any other condition of approval.
- e. **Enforcement:** The County may enforce any condition of approval the Development Review Committee has imposed as if the condition were a standard of the Unified Development Ordinance.

16. **Revisions:** Following Development Review Committee approval, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Development Review Committee. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to deliver to the Plan Commission Office.

17. **Right to Appeal:** A decision of the Development Review Committee may be appealed to the Plan Commission within thirty (30) days after said decision by the Development Review Committee.

# Development Plan

## J. Duration:

1. *Commencement of Construction:* No construction or site grading shall begin prior to the issuance of an ILP and/or ECP, as required.
2. *Expiration of Approval:* An approved Development Plan shall be valid for a period of two (2) years from the date the Plan Commission or the Development Review Committee granted approval. If development of the project has not begun by the end of the two-year period (or by the end of the six-month extension), the approval expires and a new Development Plan application must be submitted.
3. *Extension:* The Executive Director may grant one (1) six-month extension for reason/cause. The petitioner shall submit the request for extension in writing to the Executive Director, and the Executive Director shall make a written determination regarding the decision to extend or deny extension. Both the request and the determination shall be made part of the Development Plan record.

## K. Changes or Amendments:

### 1. *Development Plan Amendment:*

#### a. *Applicability:*

- i. *Public Hearing Items:* A public hearing shall be required for a Development Plan Amendment when:
  - [a] A commitment or a condition of approval is proposed to be modified or terminated;
  - [b] An increase in the density of the project is proposed for a residential development or the residential component of a mixed-use development (*i.e.* additional dwelling units, regardless of whether the combined floor area of all the dwelling units increases, remains constant, or decreases);
  - [c] An increase or a cumulative increase of greater than twenty-five percent (>25%) in the intensity of a commercial or industrial project that is not on a lot in a platted commercial or industrial subdivision is proposed (*e.g.* additional structures, additional square footage, additional impervious surface, *etc.*);
  - [d] A new right-of-way is proposed;
  - [e] A right-of-way is proposed to be removed from the approved Development Plan (Note: per IC 36-7-3-12, right-of-way vacation also requires that an ordinance be adopted by the Board of County Commissioners);
  - [f] The ratio of platted lot area to common area and/or open space is being increased;
  - [g] The boundary of the area included in the Development Plan is proposed to be expanded to incorporate additional area (regardless of whether the subject area was part of the original Development Plan or excluded by a previous Development Plan Amendment); or
  - [h] The boundary of the area included in the Development Plan is proposed to be contracted to exclude area previously included (regardless of whether the subject area was part of the original Development Plan or incorporated by a previous Development Plan Amendment).
- ii. *Non-public Hearing Items:* A public hearing shall not be required for a Development Plan Amendment when:
  - [a] An element of the Development Plan is proposed to be amended (*e.g.* Landscape Plan, Sign Plan, *etc.*).
  - [b] A proposed amendment to a residential development or the residential component of a mixed-use development does not increase in the density of the project; or
  - [c] An increase or a cumulative increase of twenty-five percent or less ( $\leq 25\%$ ) in the intensity of a commercial or industrial project that is not on a lot in a platted commercial or industrial subdivision is proposed (*e.g.* additional structures, additional square footage, additional impervious surface, *etc.*).

- b. *Procedure:* Development Plan Amendment applications shall be processed in the same manner as Development Plan applications.

2. *Current Standards:* Changes, amendments or resubmittals shall be subject to the County engineering standards in effect at the time the application for such changes, amendment or resubmittal is made.



# Design Waiver

## 10.10 Design Waiver

- A. Purpose and Intent: When the Plan Commission finds that hardships or practical difficulties may result from strict compliance with these regulations and/or that the purposes of these regulations may be served to a greater extent by an alternative proposal, the Plan Commission may approve Design Waivers to specified provisions of *Chapter 06: Subdivision Regulations* or *Chapter 07: Subdivision, Development Plan & PUD Design Standards* so that substantial justice may be done and the public interest secured, provided that such Design Waivers shall not have the effect of nullifying the intent and purpose of these regulations.
- B. Prerequisites:
1. *Primary Plat or Development Plan Application*: The petitioner may only file a Design Waiver petition in conjunction with a Primary Plat, Primary Plat Amendment, Development Plan, or Development Plan Amendment application.
  2. *Pre-application Meeting*: Prior to submitting an application, the petitioner shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed development of the property. The Plan Commission Office shall aid and advise the petitioner in preparing the application and supporting documents as necessary.
- C. Applicability:
1. *Exclusive Control*: Except for the provisions of *Chapter 07; §FL: Floodplain Standards*, it shall not be within the jurisdiction of the Board of Zoning Appeals to grant Development Standards Variances to *Chapter 06: Subdivision Regulations* or *Chapter 07: Subdivision, Development Plan & PUD Design Standards*.
  2. *Eligible Chapters*: Design standards set forth in the following Chapters are eligible for consideration of Design Waivers by the Plan Commission:
    - a. *Chapter 06: Subdivision Regulations*; and
    - b. *Chapter 07: Subdivision, Development Plan & PUD Design Standards*.
  3. *Exceptions*:
    - a. *PUD District Ordinance Modification*: Applications for waivers from the provisions of a PUD District Ordinance shall be the subject of a petition filed under *§10.08: Planned Unit Development; Modification*.
    - b. *Floodplain Standards Variance*: Applications for waivers from the provisions of *Chapter 05; §FP: Floodplain Standards* or *Chapter 07; §FL: Floodplain Standards* shall be the subject of a petition filed under *§10.19: Floodplain Standards Variance*.
    - c. *Development Standards Variance*: Except as provided in *§a: Floodplain Standards Variances*, applications for waivers from the provisions of *Chapter 02: Zoning Districts* or *Chapter 05: Zoning District Development Standards* shall be the subject of a petition filed under *§10.20: Development Standards Variance*.
- D. Application:
1. *Filing Deadline*: The petitioner shall refer to the Schedule of Meeting Dates included with the application packet to determine the filing deadline.
  2. *Application Form*: The petitioner shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. *Pre-application Meeting*: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. *Additional Information*: Such other additional information as may be required by the Plan Commission Office to evaluate the application.

# Design Waiver

- E. **Fees:** Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The petitioner shall be responsible for paying the fees at the time of application.
- F. **Plan Commission Office:**
1. *Review of Application:* Upon receipt of a complete application, supporting documents, and the appropriate fees, the Plan Commission Office shall review the application for technical conformity with the standards fixed in the Unified Development Ordinance.
  2. *Development Advisory Committee:* Once the Plan Commission Office has determined that it has received a submittal that is sufficiently complete for Development Advisory Committee review, the Plan Commission Office shall place the item on an agenda of the Development Advisory Committee and inform the petitioner of the time, date, and place of the meeting.
  3. *Complete Submittal:* Once the Plan Commission Office has determined that the petitioner has made a complete submittal, the Plan Commission Office shall:
    - a. Assign the item a docket number;
    - b. Place the item on an agenda of the Plan Commission with the Primary Plat;
    - c. Inform the petitioner of the time, date, and place of the meeting.
  4. *Inspection:* The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of a Design Waiver petition.
  5. *Department Report:* The Plan Commission Office shall prepare a written report outlining its findings with respect to the Design Waivers. The Plan Commission Office report may incorporate, or incorporate by reference, any items that remain outstanding with the other members of the Development Advisory Committee.
  6. *Record:* The Plan Commission Office shall maintain records of all applications, plans, and permits filed for a Design Waiver.
- G. **Development Advisory Committee:**
1. *Determination:* The Development Advisory Committee shall review Design Waiver petitions in conjunction with a Development Plan or Primary Plat.
  2. *Copies:* The petitioner shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Development Advisory Committee.
  3. *Meeting Date:* The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Advisory Committee. Incomplete submittals may result in the petition's being held off the Development Advisory Committee's agenda to allow the petitioner time to complete the submittal.
  4. *Attendance:* The petitioner is required to be present at the Development Advisory Committee meeting to address concerns posed by the committee members. Failure to appear may result in the petition's being continued to the Development Advisory Committee's agenda for the following month.
  5. *Revisions:* Following Development Advisory Committee review, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Development Advisory Committee. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to be delivered to the Plan Commission Office.

# Design Waiver

## H. Plan Commission:

1. *Public Notice:*
  - a. **Responsibility:** The petitioner shall be responsible for publishing and mailing public notice pursuant to the Plan Commission Rules of Procedure. The Plan Commission Office shall be responsible for posting public notice on site pursuant to the Plan Commission Rules of Procedure.
  - b. **Proof:** The petitioner shall be responsible for returning proof of published and mailed notice to the Plan Commission Office pursuant to the Plan Commission Rules of Procedure. The petitioner shall refer to the application packet to determine the deadline for submittal of proof of notice. Failure to submit proof of notice by the deadline may result in the petition's being continued to the Plan Commission's agenda for the following month.
2. *Submittal:* The petitioner shall refer to the application packet to determine the format and number of copies of the informational packets to be delivered to the Plan Commission Office for distribution to the members of the Plan Commission. Incomplete submittals shall result in the petition's being held off the Plan Commission's agenda to allow the petitioner time to complete the submittal.
3. *Attendance:* The petitioner or the petitioner's representative is required to be present at the Plan Commission meeting to address concerns posed by the Plan Commission members. Failure to appear shall result in the petition's being dealt with as outlined in the Plan Commission Rules of Procedure.
4. *Public Hearing:* A public hearing shall be held in accordance with the Plan Commission Rules of Procedure. The public hearing may be held concurrently with the public hearing for the Primary Plat or Development Plan.
5. *Review:* At their regularly scheduled meeting, the Plan Commission shall review:
  - a. The written statement and supporting material submitted by the petitioner;
  - b. The Primary Plat or Development Plan;
  - c. Any commitments or conditions of approval attendant to prior approvals;
  - d. The testimony of the petitioner;
  - e. Relevant evidence presented by other persons;
  - f. The Comprehensive Plan;
  - g. The applicable standards of the Unified Development Ordinance;
  - h. The applicable standards of the County's engineering manuals;
  - i. The procedures of *Chapter 10; §Subdivision Control*, when applicable;
  - j. All information presented by the members of the Development Advisory Committee;
  - k. The Plan Commission Office report; and
  - l. Such other additional information as may be required by the Plan Commission to evaluate the petition.

# Design Waiver

6. *Findings of Fact:*
  - a. The Plan Commission may grant a waiver of development requirements specified in *Chapter 06: Subdivision Regulations* or *Chapter 07: Subdivision, Development Plan & PUD Design Standards* if, after a public hearing, the Plan Commission makes written findings of fact that:
    - i. The approval will not be injurious to the public health, safety, morals, and general welfare of the community, nor injurious to other property; and
    - ii. The use and value of the areas adjacent to the subject property will not be affected in a substantially adverse manner; and
    - iii. The need for a Design Waiver stems from a condition unusual or peculiar to the subject property itself; and the conditions upon which the request for a Design Waiver is based are unique to the subject property and are not applicable generally to other property; and
    - iv. Because of the particular physical surroundings, shape, or topographical conditions of the subject property, the strict application of the terms of the Unified Development Ordinance would result in an unnecessary hardship to the owner, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out. Financial hardship shall not constitute grounds for a Design Waiver; and
    - v. The approval shall not in any manner vary the provisions of *Chapter 02: Zoning Districts* or *Chapter 05: Zoning District Development Standards*; and
    - vi. The approval does not contradict the goals and objectives of the Comprehensive Plan.
  - b. Certification: The findings shall be signed by the President of the Plan Commission.
  - c. Notification: The Plan Commission shall furnish the petitioner with a copy of its decision.
7. *Decision:* The Plan Commission shall:
  - a. Approve the petition;
  - b. Approve the petition with conditions and/or commitments;
  - c. Deny the petition; or
  - d. Continue the petition to a definite future meeting date.
8. *Commitments:*
  - a. Acceptance: In conjunction with the approval of a Design Waiver, the Plan Commission may permit or require the petitioner to make written commitments concerning the use or development of the parcel.
  - b. Form: The petitioner shall prepare the commitment instrument in a form approved by the Plan Commission Attorney. The petitioner and the President of the Plan Commission shall sign the commitment instrument.
  - c. Recording: The petitioner shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the Design Waiver. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office before submitting a Secondary Plat application.
  - d. Modification or Termination: A commitment made under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The petitioner shall prepare and record a commitment.
  - e. Enforcement: The County may enforce any commitment the Plan Commission has accepted as if the commitment were a standard of the Unified Development Ordinance.

# Design Waiver

9. *Conditions of Approval:*
    - a. **Requirement:** In conjunction with the approval of a Design Waiver, the Plan Commission may impose conditions of approval concerning the use or development of the parcel that will, in its judgment, substantially secure the objectives of these regulations.
    - b. **Form:** The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the Plan Commission Attorney. The President of the Plan Commission shall sign the conditions of approval instrument.
    - c. **Recording:** The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the Design Waiver. The Plan Commission Office shall deliver a copy of the recorded conditions of approval instrument to the petitioner within thirty (30) days of recording.
    - d. **Modification or Termination:** A condition of approval imposed under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The Plan Commission Office shall prepare and record a conditions of approval modification instrument or conditions of approval termination instrument in the same manner required for a conditions of approval instrument. A modified condition of approval shall be enforced in the same manner as any other condition of approval.
    - e. **Enforcement:** The County may enforce any condition of approval the Plan Commission has imposed as if the condition were a standard of the Unified Development Ordinance.
  10. *Revisions:* Following Plan Commission approval, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Plan Commission. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to deliver to the Plan Commission Office.
- J. Duration:
1. Unless a more stringent standard is applied pursuant to a Commitment or Condition of Approval, a Design Waiver granted by the Plan Commission shall run with the parcel until such time as the property conforms with the Unified Development Ordinance as written.
  2. *Regulation of Tall Structures:* Before approval of a Design Waiver involving a structure regulated under IC 8-21-10: Regulation of Tall Structures may become effective, the petitioner shall submit to the Plan Commission Office:
    - a. A copy of:
      - i. The permit for the structure issued by the Indiana Department of Transportation; or
      - ii. The Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration; and
    - b. Evidence that notice was delivered to a public use airport as required in IC 8-21-10-3: Permit Requirements not less than sixty (60) days before the Design Waiver petition was considered.
- J. Changes or Amendments:
1. Any change to an approved Design Waiver shall be the subject of a new Design Waiver petition.
  2. *Current Standards:* Changes, amendments or resubmittals shall be subject to the County engineering standards in effect at the time the application for such changes, amendment or resubmittal is made.

# Improvement Location Permit

## 10.11 Improvement Location Permit

- A. **Purpose and Intent:** The purpose of an Improvement Location Permit is to encourage the development of the Plan Commission's jurisdictional area in such a manner as to provide for the improvement of the health, safety, convenience, and welfare of its citizens by affording the County the ability to confirm the conformance of plans to the requirements of the Unified Development Ordinance prior to the issuance of a Building Permit.
- B. **Prerequisites:**
1. **Ownership:** The petitioner must:
    - a. Own a controlling interest in each parcel within the area that is the subject of the application; or
    - b. Provide written permission from the owner of each parcel of land within the area that is the subject of the application authorizing the applicant to act as the agent of the owner of each parcel.
  2. **General:** The following criteria must be met before an Improvement Location Permit will be issued:
    - a. **Entrance and Driveway:** Where culverts are required, the design must be filed with and approved by the County Highway Department.
    - b. **Parking:** For commercial, industrial, institutional, and multifamily projects, the stone base for the parking lot must be in place.
    - c. **Sanitary Sewer:**
      - i. **Public:** The sanitary sewer must be in place, inspected and approved by the waste water utility.
      - ii. **Private:** Where an on-site, private treatment plant has been proposed, said plant must be constructed and operational, and inspected and approved by the County.
    - d. **Storm Water Management:** The storm water management facilities and infrastructure must be in place and approved by the County.
    - e. **Street:** For sites deriving access from new streets, the asphaltic binder must be down and approved by the County Engineer.
  3. **Tall Structures:** For structures regulated under IC 8-21-10: Regulation of Tall Structures, Improvement Location Permits shall not be processed until the applicant has filed with the Plan Commission Office a copy of:
    - a. The permit for the structure issued by INDOT; and/or
    - b. The Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration.
  4. **Noise-sensitive Purposes:**
    - a. **Applicability:** This section applies to any use identified as a noise-sensitive purpose per *Chapter 03; §APO: Airport Overlay District* located:
      - i. Within a Noise-sensitive Zone that has had a Use Variance approved by the Board of Zoning Appeals; or
      - ii. Outside a Noise-sensitive Zone, but within proximity to the extended runway centerline established in *§c: Proximity*.
    - b. **Noise-sensitive Zone:** An Improvement Location Permit shall not be processed for the establishment or expansion of a noise-sensitive purpose within a Noise-sensitive Zone until the Board of Zoning Appeals has granted a Use Variance, and the applicant has filed with the Plan Commission Office a copy of:
      - i. The recorded Permit for Construction in a Noise-sensitive Area issued by INDOT; and
      - ii. The recorded deed restriction acknowledging awareness of the airport facilities and operations, awareness of the airport's intention to expand those facilities and operations, and committing not to remonstrate against such expansion.
    - c. **One Nautical Mile:** An Improvement Location Permit shall not be issued or processed for the establishment or expansion of a noise-sensitive purpose within one (1) nautical mile of a runway centerline, extended one (1) nautical mile from each end of the runway, until the applicant has filed with the Plan Commission Office a copy of the recorded deed restriction acknowledging awareness of the airport facilities and operations, awareness of the airport's intention to expand those facilities and operations, and committing not to remonstrate against such expansion.

# Improvement Location Permit

5. *Surety*: For projects that include a surety requirement, Improvement Location Permits shall not be issued or processed if the surety lapses or the improvements covered by the surety remain incomplete after two (2) years from the start of construction.
  6. *Primary Plat*: For any site for which a Primary Plat has been approved, Improvement Location Permits and Building Permits shall not be issued or processed until the Secondary Plat has been approved. This prerequisite shall not prevent the commencement of construction of infrastructure for which Construction Plans have been approved.
  7. *Pre-application Meeting*: It is suggested the applicant request a meeting with the County Engineer, the County Surveyor and the Executive Director before formal application is made.
- C. Applicability:
1. *Start of Construction*:
    - a. No structure, improvement, or use of land may be altered, changed, placed, erected or located on platted or unplatted lands, unless the structure, improvement, or use and its location conform with the Unified Development Ordinance and an Improvement Location Permit has been issued.
    - b. *Erosion Control*: Prior to the start of construction, the erosion control measures shown on the approved Erosion & Sediment Control Plan (for commercial, industrial, institutional, or multifamily) or Erosion & Sediment Control Sketch Plan (for a single-family residential dwelling) must be in place.
  2. *Exceptions*: Not applicable.
- D. Application:
1. *Filing Deadline*: For projects for which a Building Permit is required, the Improvement Location Permit application shall be filed before or at the same time as the Building Permit application. All other Improvement Location Permit applications may be filed at any time.
  2. *Application Form*: The applicant shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. *Pre-application Meeting*: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. *Additional Information*: Such other additional information as may be required by the Plan Commission Office or other members of the Development Advisory Committee to evaluate the application.
- E. Fees: Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The applicant shall be responsible for paying the fees at the time of application.

# Improvement Location Permit

## F. Plan Commission Office:

1. *Notification:* When application for an Improvement Location Permit is filed, the Plan Commission Office shall notify the County Highway Department of the proposed improvement.
2. *Review:* The Plan Commission Office shall review the application upon receipt of a complete application and supporting documents.
3. *Development Advisory Committee:*
  - a. *Determination:* The Executive Director shall determine whether the application merits Development Advisory Committee review.
  - b. *Agenda:* Once the Plan Commission Office has determined that it has received a submittal that is sufficiently complete for Development Advisory Committee review, the Plan Commission Office shall place the item on an agenda of the Development Advisory Committee and inform the applicant of the time, date, and place of the meeting.
4. *Decision:* An Improvement Location Permit shall be issued by the Plan Commission Office after the Development Advisory Committee has reviewed the application and determined that all requirements of the Improvement Location Permit process have been satisfactorily completed and the proposed project meets the regulations in the Unified Development Ordinance and other applicable regulations.
5. *Inspection:* The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of an Improvement Location Permit application.
6. *Record:* The Plan Commission Office shall maintain records of all applications, plans, and permits filed for an Improvement Location Permit.

## G. Development Advisory Committee:

1. *Determination:* The Development Advisory Committee shall review Improvement Location Permit applications that have been forwarded by the Plan Commission Office.
2. *Copies:* The applicant shall refer to the application packet to determine the format and number of copies to be delivered to the Plan Commission Office for distribution to the members of the Development Advisory Committee.
3. *Meeting Date:* The applicant shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Advisory Committee. Incomplete submittals may result in the application's being held off the Development Advisory Committee agenda to allow the applicant time to complete the submittal.
4. *Attendance:* The applicant is required to be present at the Development Advisory Committee meeting to address concerns posed by the committee members. Failure to appear may result in the application's being continued to the Development Advisory Committee agenda for the following month.
5. *Revisions:* Following Development Advisory Committee review, the applicant shall submit revised copies of the plans that address the comments and concerns of the Development Advisory Committee. The applicant shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office.

## H. Duration:

1. *Expiration:* Once an Improvement Location Permit has been issued, the applicant shall have twelve (12) months to commence construction on the project or the Improvement Location Permit shall expire. Once construction has commenced, the applicant shall have eighteen (18) months to complete the project and obtain a Certificate of Zoning Compliance.
2. *Extension:* The applicant may apply to the Plan Commission Office for an extension of the duration of an Improvement Location Permit. The Executive Director may extend the Improvement Location Permit as needed by the applicant, up to an additional eighteen (18) months.

## I. Changes or Amendments:

1. Any change to the project requires review and approval by the Plan Commission Office. The Executive Director shall decide if the proposed changes require review by the Development Advisory Committee and if the applicant will need to apply for a new Improvement Location Permit. If the extent of the changes is deemed significant enough for a new Improvement Location Permit, the applicant shall reapply by filing the new plans with the Plan Commission Office as detailed in §D: *Application*.
2. *Current Standards:* Changes, amendments or resubmittals shall be subject to the County engineering standards in effect at the time the application for such changes, amendment or resubmittal is made.



# Certificate of Zoning Compliance

## 10.12 Certificate of Zoning Compliance

- A. Purpose and Intent: The purpose of this section is to outline the procedure employed by the County in order to ensure compliance with all applicable ordinances and regulations when considering the granting of a final Certificate of Occupancy for a structure, or confirming full compliance with any other land use approval.
- B. Prerequisites: Not applicable.
- C. Applicability:
  1. *Permanent Structures*: A Certificate of Zoning Compliance shall be obtained prior to the occupancy or use of a structure in each of the following situations:
    - a. Erection of a new single-family residence, multifamily building, business building, industrial facility, or similar building that people will occupy permanently or temporarily.
    - b. Build-out of a flex commercial, flex office, flex industrial space, or the like.
    - c. Relocation of a single-family residence, multifamily building, business building, industrial facility, or similar building that people will occupy permanently or temporarily.
    - d. Addition to a single-family residence, multifamily building, business building, industrial facility, or similar building that people will occupy permanently or temporarily. Parts of an existing building that is not a part of the addition may continue to be occupied.
    - e. Situations that present similar public health and safety risks to those above in which the Executive Director requires a Certificate of Zoning Compliance.
  2. *Temporary Structures*: An Certificate of Zoning Compliance shall be obtained prior to the temporary occupancy or use of the following types of building:
    - a. Temporary classrooms;
    - b. Sales trailers;
    - c. Model homes; or
    - d. Similar types of buildings for which the Executive Director requires a Certificate of Zoning Compliance.
  3. *Failure to Obtain Permit*: If a Certificate of Zoning Compliance is required, it is unlawful and a violation of the Unified Development Ordinance for anyone to occupy or utilize a structure until the Certificate of Zoning Compliance is issued by the Executive Director. Anyone who is required to obtain a Certificate of Zoning Compliance and fails to do so is subject to a Stop Work Order, mitigation, or fines and penalties as specified in *Chapter 11: Enforcement & Penalties*.
  4. *Exceptions*: None.
- D. Application:
  1. *Filing Deadline*:
    - a. *Building Permit*: A Certificate of Zoning Compliance application shall be part of the application for a Certificate of Occupancy.
    - b. *Improvement Location Permit*: For projects that do not require a Building Permit and/or Certificate of Occupancy, the Certificate of Zoning Compliance application shall be part of the application for an Improvement Location Permit.
  2. *Application Form*: The applicant shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - b. *Additional Information*: Such other additional information as may be required by the Plan Commission Office to evaluate the application.
- E. Fees: Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The applicant shall be responsible for paying the fees on or before the date of issuance of the Certificate of Zoning Compliance.

# Certificate of Zoning Compliance

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- F. Plan Commission Office: A Certificate of Zoning Compliance shall be issued after completion of all requirements of the Improvement Location Permit and Building Permit. However, due to weather or other circumstances, a conditional Certificate of Zoning Compliance may be issued without the required landscaping, building finishes, parking lot finishes, or the like; provided some sort of surety has been posted to satisfy the Executive Director.
- G. Duration: Not applicable.
- H. Changes or Amendments: Each new use shall obtain a new Certificate of Zoning Compliance.

# Sign Permit

## 10.13 Sign Permit

- A. Purpose and Intent: The purpose of a Sign Permit is to encourage the effective use of signs as a means of communication within the County; to maintain the County's aesthetic environment by ensuring compatibility of signs with the area surrounding them; to encourage the use of signs appropriate to residential and commercial activities; to ensure the safety of vehicular and pedestrian traffic; to encourage economic development within the County; and to ensure compliance with *Chapter 05; §SI: Sign Standards*.
- B. Prerequisites: None.
- C. Applicability:
1. *Sign Permit Required*: No sign shall be erected without first obtaining a Sign Permit from the Plan Commission Office.
  2. *Exceptions*:
    - a. *Cross Reference*: Signs that do not require a Sign Permit are listed in *Chapter 05; §SI: Sign Standards*.
    - b. *Entryway Feature*: A permanent sign that is part of an entryway feature established pursuant to *Chapter 07; §EF: Entryway Feature Standards* that has been reviewed and approved by the Plan Commission as part of a Development Plan, Primary Plat, or PUD Detailed Development Plan approval shall not require a Sign Permit.
- D. Application:
1. *Filing Deadline*: There is no filing deadline for a Sign Permit application.
  2. *Application Form*: The applicant shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - b. *Additional Information*: Such other additional information as may be required by the Plan Commission Office to evaluate the application.
- E. Fees: Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The applicant shall be responsible for paying the fees on or before the date of issuance of the Sign Permit.
- F. Plan Commission Office:
1. *Review*: The Executive Director shall review the application upon receipt of a complete application, supporting documents, and the appropriate fees.
  2. *Decision*: The Executive Director shall examine such plans, specifications, and other data submitted with the application, and, if necessary, the building or premises upon which it is proposed to erect the sign. If the proposed sign is in compliance with all the requirements of the Unified Development Ordinance, a Sign Permit shall be issued.
- G. Duration: A Sign Permit shall be good for one (1) year from the date of issuance, after which, if the sign has not been erected, a new Sign Permit application shall be submitted in accordance with *§D: Application*.
- H. Changes or Amendments: Any proposed changes or alterations to the sign shall require a new sign review and a new Sign Permit.

# Temporary Use Permit

## 10.14 Temporary Use Permit

- A. Purpose and Intent: Temporary use provisions allow short-term and minor deviations for uses which are temporary in nature, which will not adversely impact the surrounding properties and land uses, and which can be terminated and removed at will.
- B. Prerequisites: None.
- C. Applicability:
1. Temporary use provisions allow deviations for uses that are minor and temporary in nature, and which will not adversely impact the surrounding properties and land uses. Temporary uses are regulated pursuant to *Chapter 05; §TU: Temporary Use & Structure Standards*.
  2. *Exceptions*: The following uses do not require a Temporary Use Permit:
    - a. Residential garage sale; and
    - b. Residential yard sale.
- D. Application:
1. *Filing Deadline*: There is no filing deadline for a Temporary Use Permit application.
  2. *Application Form*: The applicant shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - b. *Additional Information*: Such other additional information as may be required by the Plan Commission Office to evaluate the application.
- E. Fees: Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The applicant shall be responsible for paying the fees on or before the date of issuance of the Temporary Use Permit.
- F. Plan Commission Office:
1. *Review*: The Executive Director shall review the application upon receipt of a complete application, supporting documents, and the appropriate fees.
  2. *Decision*: The Executive Director shall examine such plans, specifications, and other data submitted with the application, and, if necessary, the building or premises upon which it is proposed to place the temporary use. If the proposed temporary use is in compliance with all the requirements of the Unified Development Ordinance, a Temporary Use Permit shall be issued.
- G. Duration: A Temporary Use Permit shall be issued for the amount of time requested by the applicant within the allowable duration permitted for the given use by *Chapter 05; §TU: Temporary Use & Structure Standards* of the Unified Development Ordinance. The expiration date shall be displayed on the Temporary Use Permit.
- H. Changes or Amendments: Not applicable.

# Erosion Control Permit

## 10.15 Erosion Control Permit

- A. Purpose and Intent: The intent of the Erosion Control Permit is to ensure that the erosion control measures approved in the Erosion & Sediment Control Plan are implemented. The Erosion Control Permit applies to land-disturbing activities, as defined herein, including but not limited to those land-disturbing activities associated with commercial, industrial, institutional, nonresidential and residential development.
- B. Prerequisites:
1. *Erosion & Sediment Control Plan*: An Erosion Control Permit shall not be issued until the Erosion & Sediment Control Plan has been approved.
  2. *Financial Surety*: An Erosion Control Permit shall not be issued until a financial security has been received as described in *Chapter 07; §EC-01(G): Financial Security*.
- C. Applicability:
1. *Erosion Control Permit Required*: Before commencing any land-disturbing activity to which *Chapter 07; §EC: Erosion Control Standards* applies, the applicant shall be required to file an application and obtain an Erosion Control Permit.
  2. *Issuance of Erosion Control Permit*:
    - a. *Scope of Work*: The issuance of an Erosion Control Permit shall constitute an authorization to do only that work described and shown on the approved Erosion & Sediment Control Plan.
    - b. *Plans and Permits on Site*: The Erosion Control Permit holder shall maintain a copy of the approved Erosion & Sediment Control Plan and Erosion Control Permit at the job site during working hours.
- D. Application:
1. *Filing Deadline*: There is no filing deadline for an Erosion Control Permit application.
  2. *Application Form*: The applicant shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project. The Erosion Control Permit application shall contain at a minimum the following general information:
      - i. That written approval is obtained from the Plan Commission Office prior to making any modifications to the approved Erosion & Sediment Control Plan;
      - ii. That all erosion and sediment control measures required in the Erosion & Sediment Control Plan be installed.
      - iii. That all erosion and sediment control measures are maintained during construction;
      - iv. Such other conditions as the Plan Commission Office deems appropriate.
    - b. *Additional Information*: Such other additional information as may be required by the Plan Commission Office to evaluate the application.
- E. Fees: Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The applicant shall be responsible for paying the fees on or before the date of issuance of the Erosion Control Permit.
- F. Plan Commission Office:
1. *Review*: The Executive Director shall review the application upon receipt of a complete application, supporting documents, and the appropriate fees.
  2. *Decision*: The Executive Director shall examine such plans, specifications, and other data submitted with the application, and, if necessary, the premises for which the Erosion Control Permit is being sought. If the Erosion & Sediment Control Plan is in compliance with all the requirements of the Unified Development Ordinance, an Erosion Control Permit shall be issued.

# Erosion Control Permit

## 3. *Inspections:*

- a. The Executive Director may make periodic inspections and either approve that portion of the work completed or notify the Erosion Control Permit holder that the work fails to comply with the Erosion & Sediment Control Plan.
- b. In addition to periodic inspections, the Erosion Control Permit holder is required to obtain the following inspections, and is responsible to notify the Executive Director at least forty-eight (48) hours prior to the following required inspections:
  - i. Start of land-clearing activities to assure access to site is installed and perimeter erosion and sediment control measures are in place;
  - ii. Completion of site clearing, prior to grading;
  - iii. Completion of rough grading;
  - iv. Completion of final grading;
  - v. Close of the construction season or when a significant postponement of construction activities may occur;
  - vi. At completion of project:
    - [a] For subdivisions, this would be at the close of the project, prior to the release of the Performance Surety for roads and other infrastructure;
    - [b] For single- or two-family dwellings or other covered applications, at the time of final inspection for Certificate of Occupancy.
- c. The Erosion Control Permit holder or agent is responsible for making regular inspections of all control measures in accordance with the inspection schedule required by the Plan Commission, in order to determine the effectiveness of the Erosion & Sediment Control Plan and the need for additional control measures. Depending on circumstances of the project, this may be weekly, bi-weekly, or monthly.
- d. All inspections shall be documented in written form and inspection reports retained by the Erosion Control Permit holder. Said inspection reports are to be made available to the Executive Director within two (2) business days of request. Said inspection reports shall continue until the end of the project; for subdivisions, this is the release of the performance surety; for other sites, this is the final inspection.
- e. The Executive Director may enter the site at any time during regular business hours, as deemed necessary to make regular inspections. The Executive Director may also enter the site whenever necessary in the event of an emergency threatening the health or safety of persons or property.

G. Duration: An Erosion Control Permit shall be issued for the amount of time requested by the applicant within the allowable duration permitted by *Chapter 07; §EC: Erosion Control Standards* of the Unified Development Ordinance. The expiration date shall be displayed on the Erosion Control Permit.

### 1. *Expiration:*

- a. Erosion Control Permit: In the event that land-disturbing activities are not started within six (6) months and/or work has not been completed within two (2) years from the date of issuance of the Erosion Control Permit, said Erosion Control Permit shall expire and a new Erosion Control Permit shall be obtained.
- b. Erosion & Sediment Control Sketch Plan: An Erosion & Sediment Control Sketch Plan shall expire for a single- or two-family dwelling site when the issued Building Permit expires.

## H. Changes or Amendments:

1. Changes or amendments to the Erosion & Sediment Control Plan shall be reviewed by the Plan Commission Office. No work that is the subject of such an amendment shall commence until the Plan Commission Office has approved the change or amendment in writing.
2. *Current Standards:* Changes, amendments or resubmittals shall be subject to the County engineering standards in effect at the time the application for such changes, amendment or resubmittal is made.

# Mineral Extraction Permit

## 10.16 Mineral Extraction Permit

- A. **Purpose and Intent:** The purpose of the Mineral Extraction Permit is to regulate the recovery of mineral resources in the unincorporated area of Porter County within the jurisdiction of the Unified Development Ordinance and to ensure compliance with *Chapter 05; §SE-11(A)(1): Mineral Extraction*.
- B. **Prerequisites:**
1. **Ownership:** The petitioner must:
    - a. Own a controlling interest in each parcel within the area that is the subject of the application; or
    - b. Provide written permission from the owner of each parcel of land within the area that is the subject of the application authorizing the applicant to act as the agent of the owner of each parcel.
  2. **Pre-application Meeting:** Prior to submitting an application, the applicant shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, and review the procedures. The Plan Commission Office shall aid and advise the applicant in preparing the application and supporting documents as necessary.
  3. **Special Exception:** No mineral extraction shall be undertaken, nor shall a Mineral Extraction Permit for the same be issued until the Board of Zoning Appeals grants a Special Exception.
  4. **Proof of Liability Insurance:** Prior to obtaining a Mineral Extraction Permit, the applicant shall be required to provide proof of liability insurance by which the County, its agents, employees, elected and appointed officials are named as additional insurers, in an amount not less than three hundred thousand dollars (\$300,000.00) per incident, and one million dollars (\$1,000,000.00) aggregate, which liability insurance insures against all forms of loss arising from the excavation, hauling of extracted materials, and any related activities of the applicant;
  5. **Performance Surety:** Prior to obtaining a Mineral Extraction Permit, the applicant shall be required to post a surety performance bond, indemnity bond, or other form of bond or indemnity as required by the County, issued by an insurance company in good standing with the Commissioner of Insurance of the State of Indiana, in an amount established by the Board of County Commissioners or its designee, and sufficient to provide for the cost of restoration to that condition specified in the Special Exception, and to repair and/or replace any streets or highways within the County that may be damaged by the hauling of excavated materials, to construct adequate safety barriers, where appropriate, to abate any public nuisance that may be caused by the excavation, to pay the attorney's fees incurred in enforcing the provisions of the Unified Development Ordinance pertaining to mineral extraction operations, and to protect against any other specified and foreseeable loss or damage that the Board of County Commissioners may find; provided that no such bond shall be required of a governmental agency or body.
- C. **Applicability:**
1. **Mineral Extraction Permit Required:** No person shall undertake any mineral extraction in the unincorporated areas of the County without first having secured a Mineral Extraction Permit issued by the Plan Commission Office, and having paid the fee for the same as is set from time to time by the Plan Commission.
  2. **Legal Nonconforming Uses:** The provisions of this section shall apply to new Mineral Extraction Permits and renewal Mineral Extraction Permits applied for from and after June 13, 1997. Mineral extraction operations conducted pursuant to previous permitting procedures in effect or that were in effect at any time within the one hundred eighty (180) days prior to June 13, 1997, may be issued Mineral Extraction Permits pursuant to the renewal provisions outlined in *§G(2): Renewal*, notwithstanding any lapse of such Mineral Extraction Permit within such one hundred eighty-day period.
  3. **Issuance of Mineral Extraction Permit:**
    - a. **Scope of Work:** The issuance of a Mineral Extraction Permit shall constitute an authorization to do only that work described and shown on the approved plans.
    - b. **Plans and Permits on Site:** The Mineral Extraction Permit holder shall maintain a copy of the approved plans and Mineral Extraction Permit at the job site during working hours.
  4. **Exceptions:** A Mineral Extraction Permit shall not be required for any emergency activity that is immediately necessary for the protection of life, property or natural resources.

# Mineral Extraction Permit

## D. Application:

1. *Filing Deadline*: The Mineral Extraction Permit application shall be filed at the same time as the Special Exception application (see §10.22: *Special Exception*).
2. *Application Form*: The applicant shall submit the completed application to the Plan Commission Office.
3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
  - a. *Pre-application Meeting*: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
  - b. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project. The Mineral Extraction Permit application shall contain at least the following information:
    - i. The street address of the extraction site;
    - ii. The legal description of the extraction site;
    - iii. The full name, street address, and post office address of the applicant and the owner of record if different than the applicant;
    - iv. The purpose for which the proposed extraction is being undertaken;
    - v. The traffic routes that will be used for the hauling of the extracted materials from the extraction site;
    - vi. Scaled drawings from a licensed engineer or surveyor showing boundaries of the property proposed to be included in the plan area and the land within two hundred (200) feet in all directions. The drawing shall show the existing conditions on the mapped lands, including:
      - [a] Existing contours (with a contour interval appropriate to the site which accurately reflects the topographic condition) including contour lines at two-foot (2') intervals on the property to be excavated and the elevations of the adjoining properties;
      - [b] Water bodies and drainage courses; depth of water table below existing terrain;
      - [c] Estimate of depth and extent of mineral deposit;
      - [d] The present use of adjoining properties (residential, commercial, industrial, institutional, recreational, agricultural, *etc.*);
      - [e] The present zoning classification of subject and adjoining properties and setback requirements;
      - [f] All publicly-owned lands;
      - [g] Public rights-of-way and road classifications;
      - [h] Easements;
      - [i] Railroad lines; and
      - [j] Soil boring information.
    - vii. A Plan of Operational Area showing:
      - [a] Area proposed for excavation;
      - [b] Area proposed for settling ponds and wash water outlets;
      - [c] Area proposed for processing facilities and storage;
      - [d] Drainage calculations documenting that flowage will not adversely affect adjoining properties;
      - [e] Area proposed for production facilities (if any) for resource-related industry; and
      - [f] Area proposed for plant entrance, office, dispatcher headquarters, off-street parking and equipment storage.
    - viii. A Plan of Excavation showing:
      - [a] Estimated dates for the rehabilitation of the tract;
      - [b] Methods to be used to minimize the effect of erosion by wind and water on the entire tract, such as the planting of ground cover vegetation; and
      - [c] Potential methods of screening the area of operations from view, such as planting screens or the use of earth mounds.



# Mineral Extraction Permit

- ix. A Conceptual Plan of Development for the rehabilitation and re-use of the entire plan area following extraction showing:
    - [a] Proposed final Topographical Plan at two-foot (2') contour intervals;
    - [b] Proposed Landscape Rehabilitation Plan including grading, drainage, planting, and similar appropriate installations; and
    - [c] The proposed water area (if any) resulting from excavation.
  - c. **Additional Information:** Such other additional information as may be required by the Plan Commission Office to evaluate the application.
- E. **Fees:** Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The applicant shall be responsible for paying the fees on or before the date of issuance of the Mineral Extraction Permit.
- F. **Plan Commission Office:**
1. **Review:** The Executive Director shall review the application upon receipt of a complete application, supporting documents, and the appropriate fees.
  2. **Decision:** The Executive Director shall examine such plans, specifications, and other data submitted with the application, and, if necessary, the premises for which the Erosion Control Permit is being sought. If the plans are in compliance with all the requirements of the Unified Development Ordinance, a Mineral Extraction Permit shall be issued.
  3. **Inspections:**
    - a. The Executive Director may make periodic inspections and either approve that portion of the work completed or notify the Mineral Extraction Permit holder that the work fails to comply with the approved plans.
    - b. In addition to periodic inspections, the Mineral Extraction Permit holder is required to obtain the following inspections, and is responsible to notify the Executive Director at least forty-eight (48) hours prior to the following required inspections:
      - i. Start of land-clearing activities to assure access to site is installed and perimeter erosion and sediment control measures are in place;
      - ii. Completion of site clearing, prior to grading;
      - iii. Completion of rough grading;
      - iv. Completion of final grading;
      - v. Close of the construction season or when a significant postponement of construction activities may occur; and
      - vi. At completion of project, prior to the release of the Performance Surety for roads and other infrastructure.
    - c. The Mineral Extraction Permit holder or agent is responsible for making regular inspections of all activities in accordance with the inspection schedule required by the Board of Zoning Appeals, in order to determine the effectiveness of the plans. Depending on circumstances of the project, this may be weekly, bi-weekly, or monthly.
    - d. All inspections shall be documented in written form and inspection reports retained by the Mineral Extraction Permit holder. Said inspection reports are to be made available to the Executive Director within two (2) business days of request. Said inspection reports shall continue until the final inspection.
    - e. The Executive Director may enter the site at any time during regular business hours, as deemed necessary to make regular inspections. The Executive Director may also enter the site whenever necessary in the event of an emergency threatening the health or safety of persons or property.

# Mineral Extraction Permit

## G. Duration:

1. *Expiration:* Any Mineral Extraction Permit issued pursuant to §10.16: *Mineral Extraction Permit* shall expire and be of no further force and effect two (2) years after the date of issuance. The expiration date shall be displayed on the Mineral Extraction Permit.
2. *Renewal:*
  - a. Any Mineral Extraction Permit may be renewed upon the:
    - i. Payment of the applicable fee;
    - ii. Determination being made by the Plan Commission Office that the terms and conditions of the preceding Mineral Extraction Permit are still applicable, and the bonding requirements as outlined herein are met; and
    - iii. Determination by the Plan Commission Office that the preceding Mineral Extraction Permit has not expired or lapsed.
  - b. A renewal Mineral Extraction Permit must be applied for prior to the expiration of the existing Mineral Extraction Permit in order to avoid a lapse between Mineral Extraction Permits.

## H. Changes or Amendments:

1. Changes or amendments to the approved plans shall be reviewed by the Plan Commission Office. No work that is the subject of such an amendment shall commence until the Plan Commission Office has approved the change or amendment in writing.
2. *Current Standards:* Changes, amendments or resubmittals shall be subject to the County engineering standards in effect at the time the application for such changes, amendment or resubmittal is made.

# Administrative Appeal

## 10.17 Administrative Appeal

- A. Purpose and Intent: The purpose of the Administrative Appeal section is to outline the procedure employed by the County in order to provide an avenue of appeal when there is some doubt that an administrative official, hearing officer, staff member, administrative board or other body (“administrative official”), except the Plan Commission or Floodplain Administrator, has rendered a correct interpretation of the applicable ordinances and regulations while administering or enforcing of any part of this Unified Development Ordinance. Further, the intent of the Administrative Appeal section is to ensure the statutory requirements established in the 900 Series and in the 1000 Series of IC 36-7-4 for the consideration of an Administrative Appeal application are met.
- B. Prerequisites: None.
- C. Applicability:
1. *Jurisdiction*: An Administrative Appeal taken from any order, requirement, decision, or determination made by an administrative official, except the Plan Commission or the Floodplain Administrator, charged with the administration or enforcement of any part of this Unified Development Ordinance shall be filed with the Board of Zoning Appeals.
  2. *Stay of Work*:
    - a. *Authority*:
      - i. *Board of Zoning Appeals*: When an Administrative Appeal from the decision of an administrative official has been filed, the Board of Zoning Appeals may stay the proceedings and work on the premises affected unless the administrative official certifies to the Board of Zoning Appeals that, by reason of the facts stated in the certificate, a Stay of Work would cause imminent peril to life or property. In that case, proceedings or work may not be stayed except by a Restraining Order (see §b: *Restraining Order*).
      - ii. *Other*: After the owner of, or a person in charge of the work on, the premises affected has received notice that an Administrative Appeal has been filed with the Board of Zoning Appeals, the administrative official charged with the enforcement of an ordinance, under the 600 Series of IC 36-7-4, may order the work stayed and call on the police power of the County to give effect to that order.
    - b. *Restraining Order*: After application, after notice to the administrative official and to the owner of the premises affected, and after due cause is shown, the circuit or superior court of Porter County may grant the Restraining Order.
  3. *Exceptions*:
    - a. *Plan Commission*: Any order, requirement, decision, or determination made by the Plan Commission in relation to the enforcement of the Unified Development Ordinance shall not be the subject of an Administrative Appeal.
    - b. *Indiana Code*:
      - i. *Mandatory*: Where the Indiana Code requires that a given appeal be made to either the Plan Commission or to the Board of County Commissioners, such appeal shall be made in accordance with the applicable statutes, ordinances and Rules of Procedure, and shall not be the subject of an Administrative Appeal.
      - ii. *Elective*: Where the Indiana Code provides the option for a given appeal be made to either the Plan Commission or to the Board of County Commissioners, and the Unified Development Ordinance provides for such, said appeal shall be made in accordance with the applicable statutes, ordinances and Rules of Procedure, and shall not be the subject of an Administrative Appeal.
    - c. *Floodplain Standards Appeals*: Appeals of any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of *Chapter 05*; §FP: *Floodplain Standards* or *Chapter 07*; §FL: *Floodplain Standards* shall be the subject of a petition filed under §10.18: *Floodplain Standards Appeal*.

# Administrative Appeal

- D. Application:
1. *Filing Deadline*: The appellant shall submit a written statement specifying the grounds for the appeal and any applicable supporting material within thirty (30) days of the decision alleged to be in error.
- E. Fees: Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The appellant shall be responsible for paying the fees at the time of application submittal.
- F. Board of Zoning Appeals:
1. *Public Notice*: Administrative Appeals require public notice in the newspaper per IC 5-3-1-2 and IC 5-3-1-4.
  2. *Public Hearing*: A public hearing shall be held in accordance with the Board of Zoning Appeals Rules of Procedure.
  3. *Review*: The Board of Zoning Appeals shall review:
    - a. The written statement and supporting material submitted by the appellant;
    - b. The record of action supplied by the administrative official from whom the appeal is taken;
    - c. The testimony of the appellant;
    - d. Relevant evidence presented by other persons; and
    - e. The testimony of the administrative official from whom the appeal is taken.
  4. *Decision*: The Board of Zoning Appeals may reverse, affirm or modify the order, requirement, decision or determination from which the appeal stems.
  5. *Appeal*: Any person aggrieved by the decision of the Board of Zoning Appeals may appeal such decision to the circuit or superior court of Porter County, as provided in IC 36-7-4-1000 *et seq.*
- G. Duration: Not applicable.
- H. Changes or Amendments: Not applicable.

# Floodplain Standards Appeal

## 10.18 Floodplain Standards Appeal

- A. Purpose and Intent: The purpose of the Floodplain Standards Appeal section is to outline the procedure employed by the County in order to afford the public an avenue of appeal when there is some doubt that the Floodplain Administrator has rendered a correct interpretation of the applicable ordinances and regulations while administering or enforcing the requirements of *Chapter 05*; *§FP: Floodplain Standards* or *Chapter 07*; *§FL: Floodplain Standards*.
- B. Prerequisites:
  1. *Pre-application Meeting*: Prior to submitting a Floodplain Standards Appeal application, the appellant shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, and review the procedures. The Plan Commission Office shall aid and advise the appellant in preparing the application and supporting documents as necessary.
- C. Applicability:
  1. The Board of Zoning Appeals shall hear and decide Floodplain Standards Appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of *Chapter 05*; *§FP: Floodplain Standards* or *Chapter 07*; *§FL: Floodplain Standards*.
  2. *Stay of Work*:
    - a. *Authority*: When an appeal from the decision of the Floodplain Administrator has been filed, the Board of Zoning Appeals may stay the proceedings and work on the premises affected.
    - b. *Restraining Order*: If the Floodplain Administrator certifies to the Board of Zoning Appeals that, by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property, a Stay of Work shall not be issued. In that case, proceedings or work may not be stayed except by a Restraining Order. After application, after notice to the Floodplain Administrator and to the owner of the premises affected, and after due cause is shown, the Board of Zoning Appeals or the circuit or superior court of Porter County may grant the Restraining Order.
  3. *Exceptions*: Not applicable.
- D. Application:
  1. *Filing Deadline*: The appellant shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Board of Zoning Appeals.
  2. *Application Packet*: The appellant shall submit the completed application to the Plan Commission Office.
  3. *Supporting Information*: The application shall include, but not be limited to, the following documents:
    - a. *Pre-application Meeting*: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. *Application Packet*: The application shall include all documentation specified in the application packet unless certain documentation is deemed superfluous by the Floodplain Administrator due to the specific circumstances of the particular project.
    - c. *Additional Information*: Such other additional information as may be required by the Plan Commission Office or other members of the Development Advisory Committee to evaluate the petition.
- E. Fees: Once a complete submittal has been filed, the Plan Commission Office shall calculate the total of the application fee and any other applicable fees. The appellant shall be responsible for paying the fees at the time of application submittal.

# Floodplain Standards Appeal

## F. Plan Commission Office:

1. *Review:* The Plan Commission Office shall review a Floodplain Standards Appeal petition upon receipt of a complete application and supporting documents.
2. *Complete Submittal:* Once the Plan Commission Office has determined that the petitioner has made a complete submittal, the Plan Commission Office shall:
  - a. *Docket Number:* Assign the item a docket number;
  - b. *Agenda:* Place the item on an agenda of the Board of Zoning Appeals;
  - c. *Notification:* Inform the appellant of the time, date, and place of the meeting.
3. *Inspection:* The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of a Floodplain Standards Appeal petition.
4. *Department Report:* The Plan Commission Office shall prepare a written report outlining its findings with respect to the Floodplain Standards Appeal. The Plan Commission Office's report shall incorporate, or incorporate by reference, any items that remain outstanding with the other members of the Development Advisory Committee.
5. *Record:* The Floodplain Administrator shall maintain records of all applications, plans, and permits filed for a Floodplain Standards Appeal.

## G. Board of Zoning Appeals:

1. *Designation of Floodplain Standards Variance & Appeals Board:* The Board of Zoning Appeals is hereby designated the Floodplain Standards Variance & Appeals Board, and, as such, shall hear and decide Floodplain Standards Appeals.
2. *Public Notice:*
  - a. *Responsibility:* The appellant shall be responsible for publishing and mailing public notice pursuant to the Board of Zoning Appeals Rules of Procedure. The Plan Commission Office shall be responsible for posting public notice pursuant to the Board of Zoning Appeals Rules of Procedure.
  - b. *Proof:* The appellant shall be responsible for returning the affidavit of public notice and proof of published and mailed notice to the Plan Commission Office. The appellant shall refer to the application packet to determine the deadline for submittal of the affidavit of public notice and proof of published and mailed notice. Failure to submit the affidavit of public notice and proof of published and mailed notice by the deadline may result in the petition's being continued to the Board of Zoning Appeals agenda for the following month.
3. *Submittal:* The appellant shall refer to the application packet to determine the format and number of copies of the informational packet to be delivered to the Plan Commission Office for distribution to the members of the Board of Zoning Appeals. Incomplete submittals may result in the petition's being held off the Board of Zoning Appeals agenda to allow the appellant time to complete the submittal. Materials submitted by the petitioner after the informational packets have been distributed shall be subject to action pursuant to the Board of Zoning Appeals Rules of Procedure.
4. *Attendance:* The appellant is required to be present at the Board of Zoning Appeals meeting to address concerns posed by the Board of Zoning Appeals members. Failure to appear shall result in the petition's being dealt with as outlined in the Board of Zoning Appeals Rules of Procedure.
5. *Public Hearing:* A public hearing shall be held in accordance with the Board of Zoning Appeals Rules of Procedure.

# Floodplain Standards Appeal

6. *Review*: The Board of Zoning Appeals shall review:
    - a. The written statement and supporting material submitted by the appellant;
    - b. The record of action supplied by the Floodplain Administrator;
    - c. The testimony of the appellant;
    - d. The testimony of the Floodplain Administrator;
    - e. Relevant evidence presented by other persons;
    - f. All technical evaluations;
    - g. All relevant factors;
    - h. All standards specified in other sections of the Unified Development Ordinance;
    - i. The danger of life and property due to flooding or erosion damage;
    - j. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
    - k. The importance of the services provided by the proposed facility to the community;
    - l. The necessity to the facility of a waterfront location, where applicable;
    - m. The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage;
    - n. The compatibility of the proposed use with existing and anticipated development;
    - o. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
    - p. The safety of access to the property in times of flood for ordinary and emergency vehicles;
    - q. The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site;
    - r. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges;
    - s. The applicable standards of the Unified Development Ordinance;
    - t. The applicable standards of the County's engineering manuals;
    - u. All information presented by the members of the Development Advisory Committee;
    - v. The Plan Commission Office report; and
    - w. Any additional information provided at or prior to the public hearing.
  7. *Decision*: The Board of Zoning Appeals may reverse, affirm or modify the order, requirements, decision, or determination of the Floodplain Administrator.
  8. *Appeal*: Any person aggrieved by the decision of the Board of Zoning Appeals may appeal such decision to the circuit or superior court of Porter County, as provided in IC 36-7-4-1000 *et seq.*
- H. Duration: Not applicable.
- I. Changes or Amendments: Not applicable.

# Floodplain Standards Variance

## 10.19 Floodplain Standards Variance

- A. **Purpose and Intent:** The purpose of the Floodplain Standards Variance section is to outline the process by which the Board of Zoning Appeals considers petitions for variances from the floodplain standards of the Unified Development Ordinance, and approves those that will not be contrary to the public interest, where, owing to special conditions, literal enforcement of the Unified Development Ordinance will result in unnecessary hardship, and so that the spirit of the Unified Development Ordinance shall be observed and substantial justice done. Further, it is the purpose of this Section to make federally subsidized flood insurance available for structures and their contents in the planning and zoning jurisdiction of the County by fulfilling the requirements of the National Flood Insurance Program.
- B. **Prerequisites:**
1. **Ownership:** The petitioner must:
    - a. Own a controlling interest in each parcel within the area that is the subject of the petition; or
    - b. Provide written permission from the owner of each parcel of land within the area that is the subject of the petition authorizing the petitioner to act as the agent of the owner of each parcel.
  2. **Pre-application Meeting:** Prior to submitting a Floodplain Standards Variance application, the petitioner shall meet with the Floodplain Administrator to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed use and development of the property. The Plan Commission Office shall aid and advise the petitioner in preparing the application and supporting documents as necessary.
- C. **Applicability:** The Board of Zoning Appeals shall approve or deny variances from the floodplain standards of the Unified Development Ordinance.
1. **Eligible Sections:** Floodplain standards set forth in the following sections are eligible for consideration of Floodplain Standards Variances:
    - a. *Chapter 05; §FP: Floodplain Standards;* and
    - b. *Chapter 07; §FL: Floodplain Standards.*
  2. **Residential Use:** No Floodplain Standards Variance for a residential use within a floodway subject to *Chapter 05; §FP-01(D)(3): Critical Facility* or *§FP-01(D)(5): Standards for Identified Fringe* shall be granted.
  3. **Permit Requirement:** In addition to the local Floodplain Development Permit, any Floodplain Standards Variance granted in a floodway subject to *Chapter 05; §FP-01(D)(3): Critical Facility* or *§FP-01(D)(5): Standards for Identified Fringe* shall require a Permit for Construction in a Floodway from the Indiana Department of Natural Resources.
  4. **Area Restriction:** Floodplain Standards Variances to *Chapter 05; §FP-01(D)(2): Specific Standards*, may be granted only when a new structure is to be located on a lot of one-half acre (½ Ac.) or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.
  5. **Historic Structures:** A Floodplain Standards Variance may be granted for the reconstruction or restoration of any structure individually listed on the Register of Historic Places or the Indiana State Survey of Historic Architectural, Archaeological & Cultural Sites, Structures, Districts, & Objects.
  6. **Exceptions:** Not applicable.



# Floodplain Standards Variance

## D. Application:

1. *Filing Deadline:* The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Board of Zoning Appeals.
2. *Application Packet:* The petitioner shall submit the completed application to the Plan Commission Office.
3. *Supporting Information:* The application shall include, but not be limited to, the following documents:
  - a. *Pre-application Meeting:* The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
  - b. *Application Packet:* The application shall include all documentation specified in the application packet unless certain documentation is deemed superfluous by the Floodplain Administrator due to the specific circumstances of the particular project.
  - c. *Additional Information:* Such other additional information as may be required by the Plan Commission Office or other members of the Development Advisory Committee to evaluate the application.
4. *Time Limitation:* The Plan Commission Office shall refuse to accept a petition for a Floodplain Standards Variance within six (6) months of the date of denial when said petition involves the same subject matter. However, the Floodplain Administrator shall have the authority and discretion to determine that a petition containing major changes may justify re-filing within said six-month period.

## E. Fees:

1. The Plan Commission Office shall calculate the total of the application fee and any other applicable fees, and shall then apprise the petitioner of the total fee.
2. The petitioner shall submit the filing fee when the Plan Commission Office issues the docket number.

## F. Plan Commission Office:

1. *Review:* The Plan Commission Office shall review a Floodplain Standards Variance petition upon receipt of a complete application and supporting documents.
2. *Development Advisory Committee:*
  - a. *Determination:* The Floodplain Administrator shall determine whether the petition merits Development Advisory Committee review.
  - b. *Agenda:* Once the Plan Commission Office has determined that it has received a submittal that is sufficiently complete for Development Advisory Committee review, the Plan Commission Office shall place the item on an agenda of the Development Advisory Committee and inform the petitioner of the time, date, and place of the meeting.
3. *Complete Submittal:* Once the Plan Commission Office has determined that the petitioner has made a complete submittal, the Plan Commission Office shall:
  - a. *Docket Number:* Assign the item a docket number;
  - b. *Agenda:* Place the item on an agenda of the Board of Zoning Appeals;
  - c. *Notification:* Inform the petitioner of the time, date, and place of the meeting.
4. *Inspection:* The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of a Floodplain Standards Variance petition.
5. *Department Report:* The Plan Commission Office shall prepare a written report outlining its findings with respect to the Floodplain Standards Variance. The Plan Commission Office's report shall incorporate, or incorporate by reference, any items that remain outstanding with the other members of the Development Advisory Committee.
6. *Record:* The Floodplain Administrator shall maintain records of all applications, plans, and permits filed for a Floodplain Standards Variance. The Floodplain Administrator shall maintain the records of Floodplain Standards Variance actions and report any Floodplain Standards Variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request. The Floodplain Administrator shall maintain a record of all Floodplain Standards Variance actions, including justification for their issuance, and report such Floodplain Standards Variances issued in the County's biennial report submission to the Federal Emergency Management Agency.

# Floodplain Standards Variance

## G. Development Advisory Committee:

1. *Determination:* The Development Advisory Committee shall review Floodplain Standards Variance petitions that have been forwarded by the Plan Commission Office.
2. *Copies:* The petitioner shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Development Advisory Committee.
3. *Meeting Date:* The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Advisory Committee. Incomplete submittals may result in the petition's being held off the Development Advisory Committee's agenda to allow the petitioner time to complete the submittal.
4. *Attendance:* The petitioner should be present at the Development Advisory Committee meeting to address and discuss comments and concerns posed by the committee members. Failure to appear may result in the petition's being continued to the Development Advisory Committee's agenda for the following month.
5. *Revisions:* Following Development Advisory Committee review, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Development Advisory Committee. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to be delivered to the Plan Commission Office.

## H. Board of Zoning Appeals:

1. *Designation of Floodplain Standards Variance & Appeals Board:* The Board of Zoning Appeals is hereby designated the Floodplain Standards Variance & Appeals Board, and, as such, shall hear and decide requests for Floodplain Standards Variances from the requirements of *Chapter 05; §FP: Floodplain Standards* and *Chapter 07; §FL: Floodplain Standards*.
2. *Public Notice:*
  - a. *Responsibility:* The petitioner shall be responsible for publishing and mailing public notice pursuant to the Board of Zoning Appeals Rules of Procedure. The Plan Commission Office shall be responsible for posting public notice pursuant to the Board of Zoning Appeals Rules of Procedure.
  - b. *Proof:* The petitioner shall be responsible for returning the affidavit of public notice and proof of published and mailed notice to the Plan Commission Office. The petitioner shall refer to the application packet to determine the deadline for submittal of the affidavit of public notice and proof of published and mailed notice. Failure to submit the affidavit of public notice and proof of published and mailed notice by the deadline may result in the petition's being continued to the Board of Zoning Appeals agenda for the following month.
3. *Submittal:* The petitioner shall refer to the application packet to determine the format and number of copies of the informational packet to be delivered to the Plan Commission Office for distribution to the members of the Board of Zoning Appeals. Incomplete submittals shall result in the petition's being held off the Board of Zoning Appeals agenda to allow the petitioner time to complete the submittal. Materials submitted by the petitioner after the informational packets have been distributed shall be subject to action pursuant to the Board of Zoning Appeals Rules of Procedure.
4. *Attendance:* The petitioner is required to be present at the Board of Zoning Appeals meeting to address and discuss comments and concerns posed by the Board of Zoning Appeals members. Failure to appear shall result in the petition's being dealt with as outlined in the Board of Zoning Appeals Rules of Procedure.
5. *Public Hearing:* A public hearing shall be held in accordance with the Board of Zoning Appeals Rules of Procedure.

# Floodplain Standards Variance

6. *Review:* The Board of Zoning Appeals shall review:
  - a. The application;
  - b. The required supporting information;
  - c. The testimony of the petitioner;
  - d. Relevant evidence presented by other persons;
  - e. The Floodplain Administrator's report;
  - f. All technical evaluations;
  - g. All relevant factors;
  - h. All standards specified in other sections of the Unified Development Ordinance;
  - i. The danger of life and property due to flooding or erosion damage;
  - j. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - k. The importance of the services provided by the proposed facility to the community;
  - l. The necessity to the facility of a waterfront location, where applicable;
  - m. The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage;
  - n. The compatibility of the proposed use with existing and anticipated development;
  - o. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
  - p. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - q. The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site;
  - r. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges;
  - s. The applicable standards of the Unified Development Ordinance;
  - t. The applicable standards of the County's engineering manuals;
  - u. All information presented by the members of the Development Advisory Committee;
  - v. The Plan Commission Office report; and
  - w. Any additional information provided at or prior to the public hearing.
7. *Decision:* The Board of Zoning Appeals shall:
  - a. Approve the petition;
  - b. Approve the petition with conditions and/or commitments;
  - c. Deny the petition; or
  - d. Continue the petition to a definite future meeting date.

# Floodplain Standards Variance

8. *Findings of Fact:*
  - a. The Board of Zoning Appeals may grant a variance from the floodplain standards of the Unified Development Ordinance if, after a public hearing, the Board of Zoning Appeals makes written findings of fact that:
    - i. The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and
    - ii. The use and value of the area adjacent to the property included in the Floodplain Standards Variance will not be affected in a substantially adverse manner; and
    - iii. The strict application of the terms of the Unified Development Ordinance will result in a practical difficulty. This situation is not self-imposed, nor based on a perceived reduction of or restriction of economic gain; and
    - iv. The Floodplain Standards Variance is the minimum necessary, considering the flood hazard, to afford relief; and
    - v. The petitioner has shown good and sufficient cause; and
    - vi. A determination that failure to grant the Floodplain Standards Variance would result in exceptional hardship; and
    - vii. A determination that the granting of a Floodplain Standards Variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
  - b. Findings of Fact for a Historic Structure: The Board of Zoning Appeals may grant a variance from the floodplain standards of the Unified Development Ordinance for the repair or rehabilitation of “historic structures” if, after a public hearing, the Board of Zoning Appeals makes written findings of fact that:
    - i. The proposed repair or rehabilitation shall not preclude the structure’s continued designation as an “historic structure”; and
    - ii. The Floodplain Standards Variance is the minimum to preserve the historic character and design of the structure.
  - c. Certification: The findings of fact shall be signed by the Chair of the Board of Zoning Appeals.
  - d. Notification:
    - i. Approval: The Board of Zoning Appeals shall give the petitioner written notice specifying the difference between the base flood elevation and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. The Board of Zoning Appeals shall give the petitioner written notice over the signature of the Chair of the Board of Zoning Appeals that:
      - [a] The issuance of a Floodplain Standards Variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage; and
      - [b] Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the County Recorder’s office and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
    - ii. Denial: In the case of a denied petition, the Board of Zoning Appeals shall furnish the petitioner with a copy of its decision.
9. *Surety Requirement:* In conjunction with the approval of a Floodplain Standards Variance, the petitioner shall provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards.*

# Floodplain Standards Variance

## 10. *Commitments:*

- a. **Acceptance:** In conjunction with the approval of a Floodplain Standards Variance, the Board of Zoning Appeals may permit or require the petitioner to make written commitments concerning the use or development of the parcel.
- b. **Form:** The petitioner shall prepare the commitment instrument in a form approved by the Board of Zoning Appeals Attorney. The petitioner and the Chair of the Board of Zoning Appeals shall sign the commitment instrument.
- c. **Recording:** The petitioner shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the Floodplain Standards Variance. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office before applying for a Floodplain Development Permit.
- d. **Modification or Termination:** A commitment made under this section may be modified or terminated only by a decision of the Board of Zoning Appeals made at a public hearing. Public notice of the public hearing shall be provided per the Board of Zoning Appeals Rules of Procedure. The petitioner shall prepare and record a commitment modification instrument or commitment termination instrument in the same manner required for a commitment instrument. A modified commitment shall be enforced in the same manner as any other commitment.
- e. **Enforcement:** The County may enforce any commitment the Board of Zoning Appeals has accepted as if the commitment were a standard of the Unified Development Ordinance.

## 11. *Conditions of Approval:*

- a. **Requirement:** Upon the consideration of the factors listed in §6: *Review*, and the purposes of *Chapter 05; §FP: Floodplain Standards* or *Chapter 07; §FL: Floodplain Standards*, the Board of Zoning Appeals may attach such conditions to the granting of Floodplain Standards Variances as it deems necessary to further the purposes of *Chapter 05; §FP: Floodplain Standards* or *Chapter 07; §FL: Floodplain Standards*.
- b. **Form:** The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the Board of Zoning Appeals Attorney. The Chair of the Board of Zoning Appeals shall sign the conditions of approval instrument.
- c. **Recording:** The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the Floodplain Standards Variance. The Plan Commission Office shall deliver a copy of the recorded conditions of approval instrument to the petitioner within thirty (30) days of recording.
- d. **Modification or Termination:** A condition of approval imposed under this section may be modified or terminated only by a decision of the Board of Zoning Appeals made at a public hearing. Public notice of the public hearing shall be provided per the Board of Zoning Appeals Rules of Procedure. The Plan Commission Office shall prepare and record a condition of approval modification instrument or conditions of approval termination instrument in the same manner required for a condition of approval instrument. A modified condition of approval shall be enforced in the same manner as any other condition of approval.
- e. **Enforcement:** The County may enforce any condition of approval the Board of Zoning Appeals has imposed as if the condition were a standard of the Unified Development Ordinance.

## 12. *Revisions:* Within thirty (30) calendar days of approval, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Board of Zoning Appeals to the Plan Commission Office. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to deliver to the Plan Commission Office.

- I. **Duration:** Unless a more stringent standard is applied pursuant to a commitment or condition of approval, a Floodplain Standards Variance granted by the Board of Zoning Appeals shall run with the parcel until such time as the property conforms to the Unified Development Ordinance as written.
- J. **Changes or Amendments:** Any change to an approved Floodplain Standards Variance shall be the subject of a new Floodplain Standards Variance petition.

# Development Standards Variance

## 10.20 Development Standards Variance

- A. **Purpose and Intent:** The purpose of this section is to outline the process by which the Board of Zoning Appeals considers petitions for variances from the development standards of the Unified Development Ordinance, and approve those that will not be contrary to the public interest, where, owing to special conditions, literal enforcement of the Unified Development Ordinance will result in unnecessary hardship, and so that the spirit of the Unified Development Ordinance shall be observed and substantial justice done.
- B. **Prerequisites:**
1. **Ownership:** The petitioner must:
    - a. Own a controlling interest in each parcel within the area that is the subject of the petition; or
    - b. Provide written permission from the owner of each parcel of land within the area that is the subject of the petition authorizing the petitioner to act as the agent of the owner of each parcel.
  2. **Pre-application Meeting:** Prior to submitting an application, the petitioner shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed use and development of the property. The Plan Commission Office shall aid and advise the petitioner in preparing the application and supporting documents as necessary.
- C. **Applicability:** Pursuant to IC 36-7-4-918.5, the Board of Zoning Appeals shall approve or deny variances from the development standards of the Unified Development Ordinance.
1. **Eligible Chapters:** Development standards set forth in the following Chapters are eligible for consideration of Development Standards Variances:
    - a. *Chapter 02: Zoning Districts;*
    - b. *Chapter 03: Overlay Districts;*
    - c. *Chapter 04: Planned Unit Development Districts;*
    - d. *Chapter 05: Zoning District Development Standards;* and
    - e. *Chapter 09: Nonconformance.*
  2. **Exceptions:**
    - a. **PUD District Ordinance Modification:** Applications for variances from the development requirements of a PUD District Ordinance shall be the subject of a petition filed under §10.08: *Planned Unit Development; Modification.*
    - b. **Design Waiver:** Except as provided in §10.19: *Floodplain Standards Variance*, applications for variances from the provisions of *Chapter 06: Subdivision Regulations* and *Chapter 07: Subdivision, Development Plan & PUD Design Standards* shall be the subject of a petition filed under §10.10: *Design Waiver.*
    - c. **Floodplain Standards Variance:** Applications for variances from the provisions of *Chapter 05; §FP: Floodplain Standards* or *Chapter 07; §FL: Floodplain Standards* shall be the subject of a petition filed under §10.19: *Floodplain Standards Variance.*
- D. **Application:**
1. **Filing Deadline:** The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Board of Zoning Appeals.
  2. **Application Packet:** The petitioner shall submit the completed application to the Plan Commission Office.
  3. **Supporting Information:** The application shall include, but not be limited to, the following documents:
    - a. **Pre-application Meeting:** The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. **Application Packet:** The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. **Additional Information:** Such other additional information as may be required by the Plan Commission Office or other members of the Development Advisory Committee to evaluate the application.

# Development Standards Variance

## E. Fees:

1. The Plan Commission Office shall calculate the total of the application fee and any other applicable fees, and shall then apprise the petitioner of the total fee.
2. The petitioner shall submit the filing fee when the Plan Commission Office issues the Docket Number.

## F. Plan Commission Office:

1. *Review:* The Plan Commission Office shall review the petition upon receipt of a complete application and supporting documents.
2. *Development Advisory Committee:*
  - a. *Determination:* The Executive Director shall determine whether the petition merits Development Advisory Committee review.
  - b. *Agenda:* Once the Plan Commission Office has determined that it has received a submittal that is sufficiently complete for Development Advisory Committee review, the planning staff shall place the item on an agenda of the Development Advisory Committee and inform the petitioner of the time, date, and place of the meeting.
3. *Complete Submittal:* Once the Plan Commission Office has determined that the petitioner has made a complete submittal, the Plan Commission Office shall:
  - a. *Docket Number:* Assign the item a docket number;
  - b. *Agenda:* Place the item on an agenda of the Board of Zoning Appeals;
  - c. *Notification:* Inform the petitioner of the time, date, and place of the meeting.
4. *Inspection:* The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of a Development Standards Variance petition.
5. *Department Report:* The Plan Commission Office shall prepare a written report outlining its findings with respect to the Development Standards Variance. The Plan Commission Office report may incorporate, or incorporate by reference, any items that remain outstanding with the other members of the Development Advisory Committee.
6. *Record:* The Plan Commission Office shall maintain records of all applications, plans, and permits filed for a Development Standards Variance.

## G. Development Advisory Committee:

1. *Determination:* The Development Advisory Committee shall review Development Standards Variance petitions that have been forwarded by the Plan Commission Office.
2. *Copies:* The petitioner shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Development Advisory Committee.
3. *Meeting Date:* The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Advisory Committee. Incomplete submittals may result in the petition's being held off the Development Advisory Committee agenda to allow the petitioner time to complete the submittal.
4. *Attendance:* The petitioner should be present at the Development Advisory Committee meeting to address and discuss comments and concerns posed by the committee members. Failure to appear may result in the petition's being continued to the Development Advisory Committee agenda for the following month.
5. *Revisions:* Following Development Advisory Committee review, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Development Advisory Committee. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to be delivered to the Plan Commission Office.

# Development Standards Variance

## H. Board of Zoning Appeals:

1. *Public Notice:*
  - a. *Responsibility:* The petitioner shall be responsible for publishing and mailing public notice pursuant to the Board of Zoning Appeals Rules of Procedure. The Plan Commission Office shall be responsible for posting public notice pursuant to the Board of Zoning Appeals Rules of Procedure.
  - b. *Proof:* The petitioner shall be responsible for returning the affidavit of public notice and proof of published and mailed notice to the Plan Commission Office. The petitioner shall refer to the application packet to determine the deadline for submittal of the affidavit of public notice and proof of published and mailed notice. Failure to submit the affidavit of public notice and proof of published and mailed notice by the deadline may result in the petition's being continued to the Board of Zoning Appeals agenda for the following month.
2. *Submittal:* The petitioner shall refer to the application packet to determine the format and number of copies of the informational packet to be delivered to the Plan Commission Office for distribution to the members of the Board of Zoning Appeals. Incomplete submittals shall result in the petition's being held off the Board of Zoning Appeals agenda to allow the petitioner time to complete the submittal. Materials submitted by the petitioner after the informational packets have been distributed shall be subject to action pursuant to the Board of Zoning Appeals Rules of Procedure.
3. *Attendance:* The petitioner is required to be present at the Board of Zoning Appeals meeting to address and discuss comments and concerns posed by the Board of Zoning Appeals members. Failure to appear shall result in the petition's being dealt with as outlined in the Board of Zoning Appeals Rules of Procedure.
4. *Public Hearing:* A public hearing shall be held in accordance with the Board of Zoning Appeals Rules of Procedure.
5. *Review:* The Board of Zoning Appeals shall review:
  - a. The written statement and supporting material submitted by the petitioner;
  - b. Any commitments or conditions of approval attendant to prior approvals;
  - c. The testimony of the petitioner;
  - d. Relevant evidence presented by other persons;
  - e. The applicable standards of the Unified Development Ordinance;
  - f. The applicable standards of the County's engineering manuals;
  - g. All information presented by the members of the Development Advisory Committee;
  - h. The Plan Commission Office report; and
  - i. Such other additional information as may be required by the Board of Zoning Appeals to evaluate the petition.
6. *Decision:* The Board of Zoning Appeals shall:
  - a. Approve the petition;
  - b. Approve the petition with conditions and/or commitments;
  - c. Deny the petition; or
  - d. Continue the petition to a definite future meeting date.



# Development Standards Variance

7. *Findings of Fact:*
  - a. The Board of Zoning Appeals may grant a variance from the development standards of the Unified Development Ordinance (such as height, bulk, area) if, after a public hearing, it makes written findings of fact in compliance with IC 36-7-4-900 *et seq.* and the requirements of the Unified Development Ordinance, that:
    - i. The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and
    - ii. The use and value of the area adjacent to the property included in the Development Standards Variance will not be affected in a substantially adverse manner; and
    - iii. The strict application of the terms of the Unified Development Ordinance will result in a practical difficulty. This situation shall not be self-imposed, nor be based on a perceived reduction of or restriction of economic gain.
  - b. Certification: The findings of fact shall be signed by the Chair of the Board of Zoning Appeals.
  - c. Notification: In the case of a denied petition, the Board of Zoning Appeals shall furnish the petitioner with a copy of its decision.
8. *Surety Requirement:* In conjunction with the approval of a Development Standards Variance, the Board of Zoning Appeals may require that the petitioner provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards.*
9. *Commitments:*
  - a. Acceptance: In conjunction with the approval of a Development Standards Variance, the Board of Zoning Appeals may permit or require the petitioner to make written commitments concerning the use or development of the parcel.
  - b. Form: The petitioner shall prepare the commitment instrument in a form approved by the Board of Zoning Appeals Attorney. The petitioner and the Chair of the Board of Zoning Appeals shall sign the commitment instrument.
  - c. Recording: The petitioner shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the Development Standards Variance. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office before applying for any permits for the site.
  - d. Modification or Termination: A commitment made under this section may be modified or terminated only by a decision of the Board of Zoning Appeals made at a public hearing. Public notice of the public hearing shall be provided per the Board of Zoning Appeals Rules of Procedure. The petitioner shall prepare and record a commitment modification instrument or commitment termination instrument in the same manner required for a commitment instrument. A modified commitment shall be enforced in the same manner as any other commitment.
  - e. Enforcement: The County may enforce any commitment the Board of Zoning Appeals has accepted as if the commitment were a standard of the Unified Development Ordinance.

# Development Standards Variance

10. *Conditions of Approval:*
    - a. **Requirement:** In conjunction with the approval of a Development Standards Variance, the Board of Zoning Appeals may impose conditions of approval concerning the use or development of the parcel that will, in its judgment, substantially secure the objectives of these regulations.
    - b. **Form:** The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the Board of Zoning Appeals Attorney. The Chair of the Board of Zoning Appeals shall sign the conditions of approval instrument.
    - c. **Recording:** The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the Development Standards Variance. The Plan Commission Office shall deliver a copy of the recorded conditions of approval instrument to the petitioner within thirty (30) days of recording.
    - d. **Modification or Termination:** A condition of approval imposed under this section may be modified or terminated only by a decision of the Board of Zoning Appeals made at a public hearing. Public notice of the public hearing shall be provided per the Board of Zoning Appeals Rules of Procedure. The Plan Commission Office shall prepare and record a conditions of approval modification instrument or conditions of approval termination instrument in the same manner required for a conditions of approval instrument. A modified condition of approval shall be enforced in the same manner as any other condition of approval.
    - e. **Enforcement:** The County may enforce any condition of approval the Board of Zoning Appeals has imposed as if the condition were a standard of the Unified Development Ordinance.
  11. *Revisions:* Within thirty (30) calendar days of Board of Zoning Appeals approval, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Board of Zoning Appeals to the Plan Commission Office. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to deliver to the Plan Commission Office.
- I. Duration:
1. Unless a more stringent standard is applied pursuant to a commitment or condition of approval, a Development Standards Variance granted by the Board of Zoning Appeals shall run with the parcel until such time as the property conforms with the Unified Development Ordinance as written.
  2. *Regulation of Tall Structures:* Before approval of a Development Standards Variance involving a structure regulated under IC 8-21-10: Regulation of Tall Structures may become effective, petitioner shall submit to the Board of Zoning Appeals:
    - a. A copy of:
      - i. The permit for the structure issued by the Indiana Department of Transportation; or
      - ii. The Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration; and
    - b. Evidence that notice was delivered to a public use airport as required in IC 8-21-10-3: Permit Requirements not less than sixty (60) days before the Development Standards Variance petition was considered.
- J. Changes or Amendments: Any change to an approved Development Standards Variance shall be the subject of a new Development Standards Variance petition.

# Use Variance

## 10.21 Use Variance

- A. Purpose and Intent: The purpose of this section is to outline the process by which the Board of Zoning Appeals considers petitions for variances of use, and approve those that will not be contrary to the public interest, where, owing to special conditions, literal enforcement of the Unified Development Ordinance will result in unnecessary hardship, and so the spirit of the Unified Development Ordinance shall be observed and substantial justice done.
- B. Prerequisites:
1. *Ownership*: The petitioner must:
    - a. Own a controlling interest in each parcel within the area that is the subject of the petition; or
    - b. Provide written permission from the owner of each parcel of land within the area that is the subject of the petition authorizing the petitioner to act as the agent of the owner of each parcel.
  2. *Pre-application Meeting*: Prior to submitting a Use Variance application, the petitioner shall meet with the Plan Commission Office to review the zoning classification of the site, review regulatory ordinances and materials, review the procedures, examine the proposed use and development of the property. The Plan Commission Office shall aid the petitioner in preparing the application and supporting documents.
- C. Applicability:
1. Pursuant to IC 36-7-4-918.4, the Board of Zoning Appeals shall approve or deny variances of use from the terms of the Unified Development Ordinance. A Use Variance may be approved under this section only upon a determination in writing that:
    - a. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
    - b. The use and value of the area adjacent to the property included in the Use Variance will not be affected in a substantially adverse manner;
    - c. The need for the Use Variance arises from some condition peculiar to the property involved;
    - d. The strict application of the terms of the Unified Development Ordinance will constitute an unnecessary hardship if applied to the property for which the Use Variance is sought; and
    - e. The approval does not interfere substantially with the Comprehensive Plan adopted under the 500 Series of IC 36-7-4.
  2. *Exceptions*: Applications for variances from the permitted uses of a PUD District Ordinance shall be the subject of a petition filed under §10.08: *Planned Unit Development; Modification*.
- D. Application:
1. *Filing Deadline*: The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Board of Zoning Appeals.
  2. *Application Form*: The petitioner shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. *Pre-application Meeting*: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. *Additional Information*: Such other additional information as may be required by the Plan Commission Office to evaluate the application.
  4. *Development Plan*: A Use Variance petition that involves new construction shall also be the subject of a Development Plan petition before the Plan Commission (see §10.09: *Development Plan*). In such cases, approval of the Use Variance petition by the Board of Zoning Appeals confirms the appropriateness of the use on the subject property under any conditions that the Board of Zoning Appeals may specify, and does not in any way diminish the Plan Commission's ability to exercise its authority over the Development Plan. Although the Use Variance and Development Plan petitions may be taken through their respective processes concurrently, an approved Development Plan is without effect unless and until the Board of Zoning Appeals approves the necessary Use Variance petition.

# Use Variance

- E. Fees:
1. The Plan Commission Office shall calculate the total of the application fee and any other applicable fees, and shall then apprise the petitioner of the total fee.
  2. The petitioner shall submit the filing fee when the Plan Commission Office issues the docket number.
- F. Plan Commission Office:
1. *Review*: The Plan Commission Office shall review the petition upon receipt of a complete application and supporting documents.
  2. *Development Advisory Committee*:
    - a. *Determination*: The Executive Director shall determine whether a given Use Variance petition merits Development Advisory Committee review.
    - b. *Agenda*: Once the Plan Commission Office has determined that it has received a submittal that is sufficiently complete for Development Advisory Committee review, the Plan Commission Office shall place the item on an agenda of the Development Advisory Committee and inform the petitioner of the time, date, and place of the meeting.
  3. *Complete Submittal*: Once the Plan Commission Office has determined that the petitioner has made a complete submittal, the Plan Commission Office shall:
    - a. Assign the item a docket number;
    - b. Place the item on an agenda of the Board of Zoning Appeals;
    - c. Inform the petitioner of the time, date, and place of the meeting.
  4. *Inspection*: The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of a Use Variance petition.
  5. *Department Report*: The Plan Commission Office shall prepare a written report outlining its findings with respect to the Use Variance. The Plan Commission Office report may incorporate, or incorporate by reference, any items that remain outstanding with the other members of the Development Advisory Committee.
  6. *Record*: The Plan Commission Office shall maintain records of all applications, plans, and permits filed for a Use Variance.
- G. Development Advisory Committee:
1. *Determination*: The Development Advisory Committee shall review Use Variance petitions that have been forwarded by the Plan Commission Office.
  2. *Copies*: The petitioner shall refer to the Use Variance application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Development Advisory Committee.
  3. *Meeting Date*: The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Advisory Committee. Incomplete submittals may result in the petition's being held off the Development Advisory Committee agenda to allow the petitioner to complete the submittal.
  4. *Attendance*: The petitioner should be present at the Development Advisory Committee meeting to address and discuss comments and concerns posed by the committee members. Failure to appear may result in the petition's being continued to the Development Advisory Committee agenda for the following month.
  5. *Revisions*: Following Development Advisory Committee review, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Development Advisory Committee. The petitioner shall refer to the Use Variance application packet to determine the format and number of copies of the revised plans to be delivered to the Plan Commission Office.

# Use Variance

## H. Board of Zoning Appeals:

1. *Public Notice:* A public notice shall be completed in accordance with the Board of Zoning Appeals Rules of Procedure.
2. *Submittal:* The petitioner shall refer to the application form to determine the format and number of copies of the plans application to be delivered to the Plan Commission Office for distribution to the members of the Board of Zoning Appeals.
3. *Attendance:* The petitioner is required to be present at the Board of Zoning Appeals meeting to address and discuss comments and concerns posed by the Board of Zoning Appeals members. Failure to appear shall result in the application being dealt with as outlined in the Board of Zoning Appeals Rules of Procedure.
4. *Public Hearing:* A public hearing shall be held in accordance with the Board of Zoning Appeals Rules of Procedure.
5. *Review:* The Board of Zoning Appeals shall review:
  - a. The written statement and supporting material submitted by the petitioner;
  - b. The Comprehensive Plan;
  - c. Any commitments or conditions of approval attendant to prior approvals;
  - d. The testimony of the petitioner;
  - e. Relevant evidence presented by other persons;
  - f. The importance of the services provided by the proposed use to the community;
  - g. The availability of alternative locations for the proposed use that are consistent with those locations' zoning districts;
  - h. The compatibility of the proposed use with existing and anticipated development;
  - i. The applicable standards of the Unified Development Ordinance;
  - j. The applicable standards of the County's engineering manuals;
  - k. All information presented by the members of the Development Advisory Committee;
  - l. The Plan Commission Office report; and
  - m. Such other additional information as may be required by the Board of Zoning Appeals to evaluate the petition.
6. *Decision:* The Board of Zoning Appeals shall:
  - a. Approve the application;
  - b. Approve the application with conditions and/or commitments;
  - c. Deny the application; or
  - d. Continue the application to a definite future meeting date.
7. *Findings of Fact:*
  - a. *Approval:* The Board of Zoning Appeals may grant a variance of use if, after a public hearing, it makes written findings of fact in compliance with IC 36-7-4-900 *et seq.* and the requirements of the Unified Development Ordinance, that:
    - i. The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and
    - ii. The use and value of the adjacent areas to the subject property are not adversely affected; and
    - iii. The need for a variance stems from a condition unusual or peculiar to the subject property itself; and
    - iv. The strict application of the terms of the Unified Development Ordinance will result in an unnecessary hardship if they were applied to the subject property; and
    - v. The approval of the Use Variance does not contradict the goals and objectives of the Comprehensive Plan.
  - b. *Certification:* The findings of fact shall be signed by the Chair of the Board of Zoning Appeals.
  - c. *Notification:* The Board of Zoning Appeals shall furnish the petitioner with a copy of its decision.
8. *Surety Requirement:* In conjunction with the approval of a Use Variance, the Board of Zoning Appeals may require that the petitioner provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards.*

# Use Variance

9. *Commitments:*
  - a. **Acceptance:** In conjunction with the approval of a Use Variance, the Board of Zoning Appeals may permit or require the owner of a lot to make written commitments concerning the use or development of the lot.
  - b. **Form:** The petitioner shall prepare the commitment instrument in a form approved by the Board of Zoning Appeals Attorney. The commitment instrument shall be signed by the petitioner and the Chair of the Board of Zoning Appeals.
  - c. **Recording:** The petitioner shall record the commitment instrument in the County Recorder's office. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office prior to applying for a Certificate of Zoning Compliance.
  - d. **Modification or Termination:** A commitment made under this section may be modified or terminated only by a decision of the Board of Zoning Appeals made at a public hearing. Public notice of the public hearing shall be provided per the Board of Zoning Appeals Rules of Procedure.
  - e. **Enforcement:** The County may enforce any commitment the Board of Zoning Appeals has accepted as if the commitment were a standard of the Unified Development Ordinance.
10. *Conditions of Approval:*
  - a. **Requirement:** In conjunction with the approval of a Use Variance, the Board of Zoning Appeals may impose conditions of approval concerning the use or development of the lot.
  - b. **Form:** The Plan Commission Office shall prepare the conditions of approval in a form approved by the Board of Zoning Appeals Attorney. The conditions of approval instrument shall be signed by the Chair of the Board of Zoning Appeals.
  - c. **Recording:** The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office.
  - d. **Modification or Termination:** A condition of approval imposed under this section may be modified or terminated only by a decision of the Board of Zoning Appeals made at a public hearing. Public notice of the public hearing shall be provided per the Board of Zoning Appeals Rules of Procedure.
  - e. **Enforcement:** The County may enforce any condition of approval the Board of Zoning Appeals has imposed as if the condition were a standard of the Unified Development Ordinance.
11. *Revisions:* If changes were requested for approval of the application by the Board of Zoning Appeals, the petitioner shall submit revised copies of the plans that address the comments and concerns to the Executive Director within thirty (30) days of the variance approval.
- I. **Duration:** A Use Variance granted by a Board of Zoning Appeals may run with the parcel or petitioner until such time as:
  1. The use permitted by the Use Variance ends, is vacated, or is unused for at least one (1) year;
  2. A standard applied pursuant to a commitment or condition of approval that has the effect of terminating the Use Variance is met;
  3. A commitment or condition of approval is violated;
  4. The property is brought into conformance with the Unified Development Ordinance as written; or
  5. The use is changed.
- J. **Changes or Amendments:** Any change to an approved Use Variance shall be the subject of a new Use Variance petition.

# Special Exception

## 10.22 Special Exception

- A. Purpose and Intent: A Special Exception use is a use for which more stringent development standards may be required before the use can be established at a given location. The use shall be permitted by the Board of Zoning Appeals if the Board of Zoning Appeals determines the development standards are met.
- B. Prerequisites:
1. *Ownership*: The petitioner must:
    - a. Own a controlling interest in each parcel within the area that is the subject of the petition; or
    - b. Provide written permission from the owner of each parcel of land within the area that is the subject of the petition authorizing the petitioner to act as the agent of the owner of each parcel.
  2. *Pre-application Meeting*: Prior to submitting an application, the petitioner shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed use and development of the property. The Plan Commission Office shall aid and advise the petitioner in preparing the application and supporting documents as necessary.
- C. Applicability:
1. The Board of Zoning Appeals, in accordance with the procedures and standards set out in this Chapter, may grant Special Exception approval authorizing the development of uses listed as Special Exceptions in the regulations applicable to the zoning district in which the subject property is located.
  2. The grant of a Special Exception authorizes the use and establishes the terms of use. Special Exceptions are also subject to Site Plan requirements, all necessary permits and approvals, and other applicable requirements.
  3. *Exceptions*: Not applicable.
- D. Application:
1. *Filing Deadline*:
    - a. *General*: The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Board of Zoning Appeals.
    - b. *Mineral Extraction*: The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Plan Commission.
  2. *Application Form*:
    - a. *General*: The applicant shall submit the completed application to the Plan Commission Office.
    - b. *Mineral Extraction*: The applicant shall submit the completed application to the Plan Commission Office. Each application shall be signed under oath, dated, and shall recite under penalties for perjury that the applicant has read the relevant sections of the applicable ordinances and accepts the obligations hereby imposed. Each application shall be accompanied by a nonrefundable fee that the Plan Commission may set from time to time.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. *Pre-application Meeting*: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. *Additional Information*:
      - i. *General*: Such other additional information as may be required by the Plan Commission Office to evaluate the application.
      - ii. *Mineral Extraction*: The petitioner shall submit the application for a Mineral Extraction Permit at the same time as the Special Exception application. The materials submitted with the Mineral Extraction Permit application shall be reviewed by the Plan Commission and Board of Zoning Appeals during the Special Exception process.

# Special Exception

- E. Fees: Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The applicant shall be responsible for paying the fees at the time of application submittal.
- F. Plan Commission Office:
1. *Review*: The Plan Commission Office shall review the application upon receipt of a complete application, supporting documents, and the appropriate fees.
  2. *Development Advisory Committee*:
    - a. *Determination*: The Executive Director shall determine whether the petition merits Development Advisory Committee review.
    - b. *Agenda*: Once the Plan Commission Office has determined that it has received a submittal that is sufficiently complete for Development Advisory Committee review, the Executive Director shall place the item on an agenda of the Development Advisory Committee and inform the petitioner of the time, date, and place of the meeting.
  3. *Complete Submittal*:
    - a. *General*: Once the Plan Commission Office has determined that the applicant has made a complete submittal, the Executive Director shall:
      - i. Assign the item a docket number;
      - ii. Place the item on an agenda of the Board of Zoning Appeals;
      - iii. Inform the applicant of the time, date, and place of the meeting.
    - b. *Mineral Extraction*: Once the Plan Commission Office has determined that the applicant has made a complete submittal, the Executive Director shall:
      - i. Assign the item a docket number;
      - ii. Place the item on an agenda of the Plan Commission;
      - iii. Inform the applicant of the time, date, and place of the meeting.
  4. *Inspection*: The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of a Special Exception petition.
  5. *Department Report*: The Plan Commission Office shall prepare a written report outlining its findings with respect to the Special Exception. The Plan Commission Office's report shall incorporate, or incorporate by reference, any items that remain outstanding with the other members of the Development Advisory Committee.
  6. *Record*: The Plan Commission Office shall maintain records of all applications, plans, and permits filed for a Special Exception.
- G. Development Advisory Committee:
1. *Determination*: The Development Advisory Committee shall review Special Exception petitions that have been forwarded by the Plan Commission Office.
  2. *Copies*: The petitioner shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Development Advisory Committee.
  3. *Meeting Date*: The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Advisory Committee. Incomplete submittals may result in the petition's being held off the Development Advisory Committee agenda to allow the petitioner time to complete the submittal.
  4. *Attendance*: The petitioner should be present at the Development Advisory Committee meeting to address and discuss comments and concerns posed by the committee members. Failure to appear may result in the petition's being continued to the Development Advisory Committee agenda for the following month.
  5. *Revisions*: Following Development Advisory Committee review, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Development Advisory Committee. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to be delivered to the Plan Commission Office.



# Special Exception

## H. Plan Commission:

### 1. *Review of Special Exception Applications:*

- a. **General:** The Plan Commission is not required to review Special Exception applications.
- b. **Mineral Extraction:**
  - i. **Review:** The Plan Commission shall review all pertinent information regarding the proposed mineral extraction activity and forward, within forty-five (45) days following receipt of the complete Special Exception application, a report to the Board of Zoning Appeals.
  - ii. **Recommendation:** The Plan Commission shall forward the application with:
    - [a] A favorable recommendation; or
    - [b] A negative recommendation; or
    - [c] No recommendation.
  - iii. **Commitments:** In conjunction with its recommendation to the Board of Zoning Appeals, the Plan Commission may recommend that the Board of Zoning Appeals permit the petitioner to make written commitments concerning the use and/or development of the parcel.
  - iv. **Conditions of Approval:** In conjunction with its recommendation to the Board of Zoning Appeals, the Plan Commission may recommend that the Board of Zoning Appeals impose conditions of approval concerning the use and/or development of the parcel.

## I. Board of Zoning Appeals:

1. **Plan Commission Report:** If the Plan Commission has not filed its report with the Board of Zoning Appeals within the forty five-day time period, the Board of Zoning Appeals may proceed to process the application and hold a public hearing pursuant to the Board of Zoning Appeals Rules of Procedure.
2. **Public Notice:**
  - a. **Published:** The applicant shall be responsible for publishing notice pursuant to the Board of Zoning Appeals Rules of Procedure.
  - b. **Mailed:** The applicant shall be responsible for mailing notice pursuant to the Board of Zoning Appeals Rules of Procedure.
  - c. **Posted:** The applicant shall be responsible for posting notice on site pursuant to the Board of Zoning Appeals Rules of Procedure.
  - d. **Proof:** The applicant shall be responsible for returning proof of published and mailed notice to the Plan Commission Office. The applicant shall refer to the application form to determine the deadline for submittal of proof of notice. Failure to submit proof of notice by the deadline may result in the petition's being continued to the Board of Zoning Appeals agenda for the following month.
3. **Submittal:** The applicant shall refer to the application form to determine the format and number of copies of the informational packet to be delivered to the Plan Commission Office for distribution to the members of the Board of Zoning Appeals. Incomplete submittals may result in the petition's being held off the Board of Zoning Appeals agenda to allow the applicant time to complete the submittal.
4. **Attendance:** The applicant is required to be present at the Board of Zoning Appeals meeting to address and discuss comments and concerns posed by the Board of Zoning Appeals members. Failure to appear shall result in the petition's being dealt with as outlined in the Board of Zoning Appeals Rules of Procedure.
5. **Public Hearing:** A public hearing shall be held in accordance with the Board of Zoning Appeals Rules of Procedure.

# Special Exception

6. *Review:* The Board of Zoning Appeals shall review:
  - a. The written statement and supporting material submitted by the petitioner;
  - b. The Comprehensive Plan;
  - c. Any commitments or conditions of approval attendant to prior approvals;
  - d. The testimony of the petitioner;
  - e. Relevant evidence presented by other persons;
  - f. In the case of a mineral extraction use, the Plan Commission report;
  - g. The compatibility of the proposed use with existing and anticipated development;
  - h. The potential use of adjoining land for uses permitted in the district;
  - i. The current trends of development of lands in the vicinity;
  - j. The effect of the proposed use on the natural features of the site and adjoining lands;
  - k. The quality and capacity of existing or proposed access roads to accommodate traffic generated by the proposed use;
  - l. The applicable standards of the Unified Development Ordinance;
  - m. The applicable standards of the County's engineering manuals;
  - n. All information presented by the members of the Development Advisory Committee;
  - o. The Plan Commission Office report; and
  - p. Such other additional information as may be required by the Board of Zoning Appeals to evaluate the application.
7. *Decision:* The Board of Zoning Appeals shall:
  - a. Approve the application;
  - b. Approve the application with conditions and/or commitments;
  - c. Deny the application; or
  - d. Continue the application to a definite future meeting date.
8. *Findings of Fact:*
  - a. The Board of Zoning Appeals may grant a Special Exception if, after a public hearing, it makes written findings of fact that:
    - i. The proposed Special Exception is to be located in a zoning district that wherein such use may be permitted; and
    - ii. The requirements set forth in *Chapter 05; §SE: Special Exception Standards* for such Special Exception shall be met; and
    - iii. The Special Exception is consistent with the spirit, purpose, and intent of the Unified Development Ordinance; and
    - iv. The Special Exception shall not substantially and permanently injure the appropriate use of the neighboring property; and
    - v. The Special Exception shall serve the public convenience and welfare.
  - b. Certification: The findings of fact shall be signed by the Chair of the Board of Zoning Appeals.
  - c. Notification: In the case of a denied petition, the Board of Zoning Appeals shall furnish the petitioner with a copy of its decision.
9. *Surety Requirement:* In conjunction with the approval of a Special Exception, the applicant shall provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards*.

# Special Exception

10. *Commitments:*
  - a. **Acceptance:** In conjunction with the approval of a Special Exception, the Board of Zoning Appeals may permit or require the owner of a parcel of property to make written commitments concerning the use or development of the lot.
  - b. **Form:** The applicant shall prepare the commitment instrument in a form approved by the Board of Zoning Appeals Attorney. The commitment instrument shall be signed by the applicant and the Chair of the Board of Zoning Appeals.
  - c. **Recording:** The applicant shall record the commitment instrument in the County Recorder's office. The applicant shall deliver a copy of the recorded commitment instrument to the Plan Commission Office prior to applying for a Certificate of Zoning Compliance.
  - d. **Modification or Termination:** A commitment made under this section may be modified or terminated only by a decision of the Board of Zoning Appeals made at a public hearing. Public notice of the public hearing shall be provided per the Board of Zoning Appeals Rules of Procedure.
  - e. **Enforcement:** The County may enforce any commitment the Board of Zoning Appeals has accepted as if the commitment were a standard of the Unified Development Ordinance.
11. *Conditions of Approval:* The Board of Zoning Appeals may impose such conditions and limitations as may be necessary to minimize adverse effects upon other property in the vicinity or upon public facilities and services or to satisfy applicable criteria. Such conditions shall be expressly set forth in the record of the grant of the Special Exception, and the Board of Zoning Appeals may require the commitment of the applicant to such conditions.
  - a. **Requirement:**
    - i. **General:** In conjunction with the approval of a Special Exception, the Board of Zoning Appeals may impose conditions of approval concerning the use or development of the lot.
    - ii. **Mineral Extraction:** The Board of Zoning Appeals shall review the report from the Plan Commission and investigate the area to be developed, as well as the surrounding area, in order to determine the conditions of approval to be prescribed so as to protect surrounding property.
  - b. **Form:** The Plan Commission Office shall prepare the conditions of approval in a form approved by the Board of Zoning Appeals Attorney. The conditions of approval instrument shall be signed by the Chair of the Board of Zoning Appeals.
  - c. **Recording:** The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office.
  - d. **Modification or Termination:** A condition of approval imposed under this section may be modified or terminated only by a decision of the Board of Zoning Appeals made at a public hearing. Public notice of the public hearing shall be provided per the Board of Zoning Appeals Rules of Procedure.
  - e. **Enforcement:** The County may enforce any condition of approval the Board of Zoning Appeals has imposed as if the condition were a standard of the Unified Development Ordinance.
  - f. **Compliance:** Whenever any Special Exception granted pursuant to this Chapter is made subject to conditions or limitations to be met by the applicant, the applicant shall meet such conditions as may be applicable prior to the issuance of a permanent Certificate of Occupancy.
12. *Revisions:* Within thirty (30) calendar days of Board of Zoning Appeals approval, the applicant shall submit revised copies of the plans that address the comments and concerns of the Board of Zoning Appeals to the Plan Commission Office. The applicant shall refer to the application form to determine the format and number of copies of the revised plans to deliver to the Plan Commission Office.

# Special Exception

- J. Duration: Any Special Exception granted by the Board of Zoning Appeals shall expire:
1. In the case of new construction or modifications to an existing structure:
    - a. Two (2) years after the date granted by the Board of Zoning Appeals, unless a Building Permit has been obtained and construction of the structure or structures has commenced; or
    - b. At the date of termination established by the Board of Zoning Appeals as a condition of approval or commitment if different from §1(a) above.
  2. In the case of occupancy of land which does not involve new construction:
    - a. Two (2) years after the date granted by the Board of Zoning Appeals, unless a Certificate of Zoning Compliance has been obtained and the use has commenced; or
    - b. At the date of termination established by the Board of Zoning Appeals as a condition of approval or commitment if different from §2(a) above.
    - c. If an appeal is taken from an order granting a Special Exception, the time during which such appeal is pending shall not be counted in determining whether the Special Exception approval has expired under §a or §b of this Section.
    - d. Extension: The Board of Zoning Appeals may provide by rule for the granting of extensions of Special Exception approvals.
- K. Changes or Amendments:
1. *Amendments to Special Exception Approvals*:
    - a. Any modification or intensification of a Special Exception that alters the essential character or operation of the use in a way not intended by the Board of Zoning Appeals at the time the Special Exception was granted shall require a new Special Exception approval. The property owner/operator or an authorized representative shall apply for such Special Exception approval prior to any modification of the use or property.
    - b. The Executive Director shall determine in writing whether the proposed modification or intensification represents an alteration in the essential character of the original Special Exception as approved. The operator of the Special Exception use shall provide the Executive Director with all the necessary information to render this determination.
    - c. If so authorized in the Plan Commission Rules of Procedure, the Hearing Officer may hear requests for amendments to a Special Exception.
    - d. No use classified as conditional may be conducted without first obtaining a Special Exception approval, and no such use shall be conducted except in compliance with all applicable provisions of this Unified Development Ordinance and with any conditions upon such Special Exception approval.
  2. *Current Standards*: Changes, amendments or resubmittals shall be subject to the County engineering standards in effect at the time the application for such changes, amendment or resubmittal is made.

# Amendments to Ordinance Text

## 10.23 Amendments to Ordinance Text

- A. Purpose and Intent: The Plan Commission has the authority to hear a proposal to amend the text of the Unified Development Ordinance or a PUD District Ordinance and make a recommendation to the Board of County Commissioners concerning that proposal. The Board of County Commissioners have the power to approve or reject a proposal to amend the text of the Unified Development Ordinance or a PUD District Ordinance.
- B. Prerequisites:
1. *Unified Development Ordinance*:
    - a. Petitions Originating with the Plan Commission or Board of County Commissioners: Only the Plan Commission or the Board of County Commissioners have standing to initiate a proposal to amend the text of the Unified Development Ordinance.
    - b. Petitions Originating outside the Plan Commission or Board of County Commissioners:
      - i. Initiation: Persons who wish to propose an amendment to the text of the Unified Development Ordinance and who are not members of either group shall request that either the Plan Commission or Board of County Commissioners initiate the proposal.
      - ii. Pre-application Meeting: Prior to submitting a proposal to amend the text of the Unified Development Ordinance, the petitioner shall meet with the Plan Commission Office to review the regulatory ordinances and materials, review the procedures and examine the effect of the proposal.
    - c. Floodplain Standards: Amendments to the text of §1.27: *Summary of Duties; Floodplain Standards Variance & Appeals Board*, §1.28: *Summary of Duties; Floodplain Administrator, Chapter 05; §FP: Floodplain Standards, Chapter 07; §FL: Floodplain Standards, §10.18: Floodplain Standards Appeal*, or §10.19: *Floodplain Standards Variance* must be submitted to and approved by the Division of Water of the Indiana Department of Natural Resources before becoming effective.
  2. *PUD District Ordinance*:
    - a. Petitions Originating with the Plan Commission or Board of County Commissioners: The Plan Commission or the Board of County Commissioners have standing to initiate a proposal to amend the text of a PUD District Ordinance.
    - b. Petitions Originating outside the Plan Commission or Board of County Commissioners:
      - i. Initiation: Persons who wish to propose an amendment to the text of a PUD District Ordinance and who are not members of either group may:
        - [a] Request that either the Plan Commission or Board of County Commissioners initiate the proposal; or
        - [b] Present a petition signed by property owners who own at least fifty percent (50%) of the land involved.
      - ii. Pre-application Meeting: Prior to submitting a proposal to amend the text of a PUD District Ordinance, the petitioner shall meet with the Plan Commission Office to review the regulatory ordinances and materials, review the procedures and examine the effect of the proposal. The Plan Commission Office shall aid and advise the petitioner in preparing the application and supporting documents as necessary.

- C. Applicability: No text within the Unified Development Ordinance or a PUD District Ordinance may be amended without an Ordinance Amendment.

# Amendments to Ordinance Text

## D. Application:

1. *Petitions Originating with the Plan Commission or Board of County Commissioners:* The Plan Commission Office shall file the application and required supporting information at least thirty (30) calendar days prior to the regularly scheduled Plan Commission meeting.
2. *Petitions Originating outside the Plan Commission or Board of County Commissioners:*
  - a. **Filing Deadline:** The petitioner shall refer to the Schedule of Meeting Dates included in the application packet to determine the filing deadline for any given meeting of the Plan Commission.
  - b. **Application Packet:** The petitioner shall submit the completed application to the Plan Commission Office.
  - c. **Supporting Information:** The application shall include, but not be limited to, the following documents:
    - i. **Pre-application Meeting:** The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - ii. **Application Packet:** The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular proposal.
    - iii. **Additional Information:** Such other additional information as may be required by the Plan Commission Office to evaluate the application.

## E. Fees: Not applicable.

## F. Plan Commission Office:

1. *Preparation:* The Plan Commission Office shall prepare the proposal upon the direction of either the Plan Commission or the Board of County Commissioners. The Plan Commission Office shall prepare the proposal so that it is consistent with IC 36-7-4-601.
2. *Review:*
  - a. The Plan Commission Office shall review a text amendment application upon receipt of a complete application and supporting documents.
  - b. **Plan Commission Attorney:** The Plan Commission Office shall forward a copy of the text amendment ordinance draft to the Plan Commission Attorney for review.
3. *Complete Submittal:* The Plan Commission Office shall:
  - a. Assign the item a docket number;
  - b. Place the item on an agenda of the Plan Commission for public hearing.
  - c. Inform the Plan Commission of the time, date, and place of the meeting.
4. *Department Report:* The Plan Commission Office shall prepare a written report outlining its findings with respect to the Unified Development Ordinance or PUD District Ordinance text amendment.
5. *Record:* The Plan Commission Office shall maintain records of all applications, plans, and permits filed for a Text Amendment.
6. *Copies:* The Plan Commission Office shall keep additional copies of the text amendment ordinance in the office for the purpose of sale or distribution.

# Amendments to Ordinance Text

## G. Plan Commission:

1. *Initiation:* The Plan Commission may initiate a proposal to amend the Unified Development Ordinance text.
2. *Preparation:* The Plan Commission shall prepare the proposal so that it is consistent with IC 36-7-4-601. The Plan Commission may direct the Plan Commission Office to prepare the proposal.
3. *Public Notice:* Public notice shall be completed in accordance with the Plan Commission Rules of Procedure.
4. *Public Hearing:* Within sixty (60) days of initiating a proposal to amend the Unified Development Ordinance text or receiving a proposal from the Board of County Commissioners requiring the Plan Commission to prepare the proposal, the Plan Commission shall hold a public hearing in accordance with the Plan Commission Rules of Procedure.
5. *Review:* In preparing and considering proposals to amend the text, the Plan Commission shall pay reasonable regard to:
  - a. The Comprehensive Plan;
  - b. Current conditions and the character of current structures and uses in each zoning district;
  - c. The most desirable use for which the land in each zoning district is adapted;
  - d. The conservation of property values throughout the jurisdiction; and
  - e. Responsible development and growth.
6. *Decision:* The Plan Commission shall:
  - a. Certify and forward the proposal to the Board of County Commissioners with:
    - i. A favorable recommendation;
    - ii. A negative recommendation;
    - iii. No recommendation; or
  - b. Continue the proposal to a definite future meeting date.
7. *Certification:* Within ten (10) business days after the Plan Commission determines its recommendation (if any), the Plan Commission shall certify the proposal to the Board of County Commissioners.
8. *Commitments; Petitions Originating outside the Plan Commission or Board of County Commissioners:* In conjunction with its recommendation to the Board of County Commissioners of a PUD District Ordinance text amendment, the Plan Commission may recommend that the Board of County Commissioners permit the petitioner to make written commitments concerning the use and/or development of the parcel.
9. *Conditions of Approval; Petitions Originating outside the Plan Commission or Board of County Commissioners:* In conjunction with its recommendation to the Board of County Commissioners of a PUD District Ordinance text amendment, the Plan Commission may recommend that the Board of County Commissioners impose conditions of approval concerning the use and/or development of the parcel.
10. *Rejection or Amendment by the Board of County Commissioners:* If the Board of County Commissioners return the proposal, the Plan Commission shall consider the rejection or amendment, and shall vote on the proposal within forty-five (45) days in accordance with IC 36-7-4-607.
11. *Publication:* If the proposal is adopted by the Board of County Commissioners pursuant to IC 36-7-4-607, the Plan Commission shall arrange for the inclusion of the amended text in the Unified Development Ordinance or PUD District Ordinance printed by the County.
12. *Notice of Adoption:* Within thirty (30) calendar days after adoption of a text amendment, the Plan Commission Office shall publish a notice of adoption in accordance with IC 5-3-1-2(h). The notice of adoption shall:
  - a. Summarize the subject matter of the text amendment ordinance;
  - b. Give the date of adoption;
  - c. Specify the places or areas that would be directly affected by the text amendment ordinance (this does not require the identification of any real property by metes and bounds);
  - d. Specify the penalty or forfeiture prescribed for a violation of the Unified Development Ordinance; and
  - e. Give two (2) locations open to the public where the entire text of the ordinance is available for inspection.

# Amendments to Ordinance Text

## H. Board of County Commissioners:

1. *Action:* The Board of County Commissioners may initiate a proposal to amend the Unified Development Ordinance text or shall vote on a proposal from the Plan Commission to amend the text within ninety (90) days of certification by the Plan Commission in accordance with IC 36-7-4-607, which governs whether the proposal is adopted or defeated.
2. *Review:* In preparing and considering proposals to amend the Unified Development Ordinance text, the Board of County Commissioners shall pay reasonable regard to:
  - a. The Comprehensive Plan;
  - b. Current conditions and the character of current structures and uses in each zoning district;
  - c. The most desirable use for which the land in each zoning district is adapted;
  - d. The conservation of property values throughout the jurisdiction; and
  - e. Responsible development and growth.
3. *Public Notice:* If the Plan Commission forwards the proposal to the Board of County Commissioners with either a negative or no recommendation, then the Board of County Commissioners shall be responsible for publishing notice of the meeting at which it will consider the proposal. Such notice shall be accomplished in accordance with IC 5-14-1.5-5.
4. *Publication:* If the proposal is adopted by the Board of County Commissioners pursuant to IC 36-7-4-607, the Plan Commission shall arrange for the inclusion of the amended text in the Unified Development Ordinance printed by the County.
5. *Notice of Adoption:* Within thirty (30) calendar days after adoption of a text amendment, the Executive Director shall publish a notice of adoption in accordance with IC 5-3-1-2(h). The notice of adoption shall:
  - a. Summarize the subject matter of the text amendment ordinance;
  - b. Give the date of adoption;
  - c. Specify the places or areas that would be directly affected by the text amendment ordinance (this does not require the identification of any real property by metes and bounds);
  - d. Specify the penalty or forfeiture prescribed for a violation of the Unified Development Ordinance; and
  - e. Give two (2) locations open to the public where the entire text of the ordinance is available for inspection.
6. *Commitments; PUD District Ordinance Amendment:*
  - a. *Acceptance:* In conjunction with the approval of a PUD District Ordinance Amendment, the Board of County Commissioners may permit or require the owner of a lot to make written commitments concerning the use or development of the affected property.
  - b. *Form:* The petitioner shall prepare the commitment instrument in a form approved by the County Attorney. The commitment instrument shall be signed by the petitioner and the President of the Board of County Commissioners.
  - c. *Recording:* The petitioner shall record the commitment instrument in the County Recorder's office. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office prior to applying for any permits under the amended PUD District Ordinance.
  - d. *Modification or Termination:* A commitment made under this section may be modified or terminated only by a decision of the Board of County Commissioners made at a public hearing. Public notice of the public hearing shall be provided per the Board of County Commissioners Rules of Procedure.
  - e. *Enforcement:* The County may enforce any commitment the Board of County Commissioners has accepted as if the commitment were a standard of the Unified Development Ordinance.



# Amendments to Ordinance Text

7. *Conditions of Approval; PUD District Ordinance Amendment:*
    - a. **Requirement:** In conjunction with the approval of a PUD District Ordinance Amendment, the Board of County Commissioners may impose conditions of approval concerning the use or development of the affected property.
    - b. **Form:** The Plan Commission Office shall prepare the conditions of approval in a form approved by the County Attorney. The conditions of approval instrument shall be signed by the President of the Board of County Commissioners.
    - c. **Recording:** The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office.
    - d. **Modification or Termination:** A condition of approval imposed under this section may be modified or terminated only by a decision of the Board of County Commissioners made at a public hearing. Public notice of the public hearing shall be provided per the Board of County Commissioners Rules of Procedure.
    - e. **Enforcement:** The County may enforce any condition of approval the Board of County Commissioners has imposed as if the condition were a standard of the Unified Development Ordinance.
  8. *Recording:* The Plan Commission Office shall record in the County Recorder's office any amendment to the content of *Chapter 06: Subdivision Regulations, Chapter 07: Subdivision, Development Plan & PUD Design Standards, Chapter 10; §Subdivision Control*, or any other amendment that affects the subdivision of land.
- I. County Auditor:
1. *File Copies:* Two (2) copies of the adopted text amendment ordinance shall be filed with the County Auditor, and these copies shall be kept in the County Auditor's office for public inspection.
  2. *Additional Copies:* The County Auditor shall keep additional copies of the text amendment ordinance in the office for the purpose of sale or distribution
- J. Duration:
1. *Effective Date:* Unless a text amendment ordinance provides for a later effective date, the ordinance takes effect when it is adopted under IC 36-7-4-607.
  2. *Provision for a Penalty:* When a provision prescribing a penalty or forfeiture for a violation is approved, it may not take effect until fourteen (14) days after the later of the following:
    - a. The final day on which notice of its adoption is published; or
    - b. The day on which it is filed in the County Auditor's office.
- K. Changes or Amendments: Not applicable.

# Amendment to Zoning Map (Rezoning)

## 10.24 Amendment to Zoning Map

- A. **Purpose and Intent:** The Plan Commission has the authority to hear a petition to amend the zoning map (rezoning) and make a recommendation to the Board of County Commissioners. The Board of County Commissioners consider the Plan Commission's recommendation, approves or rejects the recommendation, and makes the final decision approving or rejecting the zoning map amendment application.
- B. **Prerequisites:**
1. *Standing:* Only the members of the Board of County Commissioners, the Plan Commission, or property owners who own at least fifty percent (50%) of the land involved (*i.e.* a controlling interest in each parcel of land proposed for rezoning) shall have standing to initiate an application for rezoning.
  2. *Pre-application Meeting:* Prior to submitting a rezoning application, the petitioner shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed use and development of the property. The Plan Commission Office shall aid and advise the petitioner in preparing the application and supporting documents as necessary.
- C. **Applicability:**
1. No changes may be made to the zoning map without first obtaining approval from the Board of County Commissioners.
  2. *Exceptions:* Not applicable.
- D. **Application:**
1. *Filing Deadline:* The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Plan Commission.
  2. *Application Form:* The petitioner shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation:* The application shall include, but not be limited to, the following information and documents:
    - a. *Pre-application Meeting:* The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. *Application Packet:* The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. *Agricultural Use Disclosure:* All parcels bordered by or within 2,500 feet of an existing agricultural operation shall be required to submit an Agricultural Use Disclosure. The Agricultural Use Disclosure language shall be provided by the Plan Commission and is available in the Plan Commission Office.
    - d. *Additional Information:* Such other additional information as may be required by the Plan Commission Office to evaluate the application.
- E. **Fees:** Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The petitioner shall be responsible for paying the fees at the time of application submittal.
- F. **Plan Commission:**
1. *Public Notice:*
    - a. *General:* Public notice shall be completed in accordance with the Plan Commission Rules of Procedure.
    - b. *Wellhead Protection Overlay (WPO) District:* Per IC 13-18-17-6(d), a person that requests the establishment of a WPO District is responsible for sending written public notice to the owner of record, any mineral owner, and any mineral leaseholder of record of every parcel affected by the petition.
  2. *Public Hearing:* Within sixty (60) days of initiating a proposal to amend the zoning map of the Unified Development Ordinance or of receiving a proposal from the Board of County Commissioners, the Plan Commission shall hold a public hearing in accordance with the Plan Commission Rules of Procedure.

## Amendment to Zoning Map (Rezoning)

3. *Review:* The Plan Commission shall pay reasonable regard to:
    - a. The written statement and supporting material submitted by the petitioner;
    - b. The Comprehensive Plan;
    - c. Any commitments or conditions of approval attendant to prior approvals;
    - d. The testimony of the petitioner;
    - e. Relevant evidence presented by other persons;
    - f. Current conditions and the character of current structures and uses in each zoning district;
    - g. The most desirable use for which the land in each zoning district is adapted;
    - h. The conservation of property values throughout the jurisdiction;
    - i. Responsible development and growth;
    - j. In the case of a petition to establish a WPO District, the testimony of the owner of record, any mineral owner, and any mineral leaseholder of record;
    - k. The Plan Commission Office report; and
    - l. Such other additional information as may be required by the Plan Commission to evaluate the application.
  4. *Decision:* The Plan Commission shall:
    - a. Forward the application to the Board of County Commissioners with:
      - i. A favorable recommendation;
      - ii. A negative recommendation;
      - iii. No recommendation; or
    - b. Continue the application to a definite future meeting date.
  5. *Commitments:* In conjunction with its recommendation to the Board of County Commissioners, the Plan Commission may recommend that the Board of County Commissioners permit the petitioner to make written commitments concerning the use and/or development of the parcel.
  6. *Conditions of Approval:* In conjunction with its recommendation to the Board of County Commissioners, the Plan Commission may recommend that the Board of County Commissioners impose conditions of approval concerning the use and/or development of the parcel.
- G. Board of County Commissioners:**
1. *Review:* The Board of County Commissioners shall pay reasonable regard to:
    - a. The written statement and supporting material submitted by the petitioner;
    - b. The Comprehensive Plan;
    - c. Any commitments or conditions of approval attendant to prior approvals;
    - d. The testimony of the petitioner;
    - e. Relevant evidence presented by other persons;
    - f. Current conditions and the character of current structures and uses in each zoning district;
    - g. The most desirable use for which the land in each zoning district is adapted;
    - h. The conservation of property values throughout the jurisdiction;
    - i. Responsible development and growth;
    - j. In the case of a petition to establish a WPO District, the testimony of the owner of record, any mineral owner, and any mineral leaseholder of record;
    - k. The Plan Commission Office report;
    - l. The Plan Commission recommendation; and
    - m. Such other additional information as may be required by the Board of County Commissioners to evaluate the application.
  2. *Public Notice:* If the Plan Commission forwards the proposal to the Board of County Commissioners with either a negative or no recommendation, then the Board of County Commissioners shall be responsible for publishing notice of the meeting at which it will consider the proposal. Such notice shall be accomplished in accordance with IC 5-14-1.5-5.

## Amendment to Zoning Map (Rezoning)

3. *Decision:* The Board of County Commissioners shall act on the application within ninety (90) days of certification by the Plan Commission in accordance with IC 36-7-4-608. The Board of County Commissioners shall:
    - a. Approve the application;
    - b. Approve the application with conditions and/or commitments;
    - c. Deny the application; or
    - d. Continue the application to a definite future meeting date.
  4. *Commitments:*
    - a. *Acceptance:* In conjunction with the approval of a rezoning, the Board of County Commissioners may permit or require the owner of a lot to make written commitments concerning the use or development of the lot.
    - b. *Form:* The petitioner shall prepare the commitment instrument in a form approved by the County Attorney. The commitment instrument shall be signed by the petitioner and the Board of County Commissioners.
    - c. *Recording:* The petitioner shall record the commitment instrument in the County Recorder's office. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office prior to applying for a Certificate of Zoning Compliance.
    - d. *Modification or Termination:* A commitment made under this section may be modified or terminated only by a decision of the Board of County Commissioners made at a public hearing. Public notice of the public hearing shall be provided per the Board of County Commissioners Rules of Procedure.
    - e. *Enforcement:* The County may enforce any commitment the Board of Zoning Appeals has accepted as if the commitment were a standard of the Unified Development Ordinance.
  5. *Conditions of Approval:*
    - a. *Requirement:* In conjunction with the approval of a rezoning, the Board of County Commissioners may impose conditions of approval concerning the use or development of the lot.
    - b. *Form:* The Plan Commission Office shall prepare the conditions of approval in a form approved by the County Attorney. The conditions of approval instrument shall be signed by the Board of County Commissioners.
    - c. *Recording:* The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office.
    - d. *Modification or Termination:* A condition of approval imposed under this section may be modified or terminated only by a decision of the Board of County Commissioners made at a public hearing. Public notice of the public hearing shall be provided per the Board of County Commissioners Rules of Procedure.
    - e. *Enforcement:* The County may enforce any condition of approval the Board of County Commissioners has imposed as if the condition were a standard of the Unified Development Ordinance.
- H. Duration: A rezoning shall be effective from the date of its final approval pursuant to Indiana Code.
- I. Changes or Amendments: Not applicable.

# Easements; General

## 10.25 Easements; General

- A. Applicability: *Chapter 10; §Easements* governs easements that have been established as:
  1. A requirement of a provision of the Unified Development Ordinance or its predecessor ordinances; or
  2. A commitment offered by or required of the petitioner; or
  3. A condition of approval imposed by the Plan Commission or Board of Zoning Appeals; or
  4. Part of a recorded plat.
- B. Form: The petitioner shall render the easement instrument in a form acceptable to the County Attorney.
- C. Easement Instrument Specifications: When applicable, the easement instrument shall conform to the easement instrument specifications found in *Chapter 07; §EA: Easement Standards* for the given type of easement.
- D. Recording: The petitioner shall record the approved easement instrument in the County Recorder's office. The petitioner shall deliver one (1) copy of the recorded easement instrument to each grantee for the given type of easement and one (1) copy to the Plan Commission Office within ten (10) business days of recording and prior to the issuance of any permits. Easement instruments shall be independently recorded documents only modifiable, terminable, or vacatable as provided in *Chapter 10; §Easements* of the Unified Development Ordinance.

# Easements; Modification of Platted or Unplatted

## 10.26 Easement Modification

- A. Purpose and Intent: The purpose of the Easement Modification section is to outline the procedure employed by the County when considering an application for the modification of platted or unplatted easements that have been required by the provisions of the Unified Development Ordinance. Further, the intent of the Easement Modification section is to ensure that the statutory requirements established in the Indiana Code for the modification of easements are met.
- B. Prerequisites:
1. *Pre-application Meeting*: Prior to submitting an Easement Modification application, the petitioner shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed development of the property. The Plan Commission Office shall aid and advise the petitioner in preparing the application and supporting documents as necessary.
- C. Applicability:
1. *Modification of Easements*: When an easement has been established pursuant to a provision of the Unified Development Ordinance or its predecessor ordinances, offered as a commitment by the petitioner, or required as a condition of approval by the Plan Commission or Board of Zoning Appeals, either the grantor or grantee may apply to the approving body (*i.e.* the Board of Zoning Appeals or Plan Commission) for modification of the easement.
  2. *Affected Easements*: This section governs easements that are:
    - a. Established pursuant to a provision of the Unified Development Ordinance or its predecessor ordinances;
    - b. Established pursuant to a commitment by the petitioner;
    - c. Established pursuant to a condition of approval by the Plan Commission or Board of Zoning Appeals; or
    - d. Shown on a recorded plat.
  3. *Exceptions*: This Section does not govern private easements that do not meet the requirements of §C(2): *Affected Easements*.
- D. Application:
1. *Filing Deadline*: The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Board of Zoning Appeals or Plan Commission, whichever may be applicable.
  2. *Application Form*: The petitioner shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. *Pre-application Meeting*: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. *Additional Information*: Such other additional information as may be required by the Plan Commission Office to evaluate the application.
  4. *Time Limitation*: If an Easement Modification application has been denied, the petitioner shall not file a new application with the same or substantially similar request for a period of six (6) months.
- E. Fees: Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The petitioner shall be responsible for paying the fees at the time of application submittal.

# Easements; Modification of Platted or Unplatted

## F. Plan Commission Office:

1. *Review:* The Plan Commission Office shall review the application upon receipt of a complete application and supporting documents. When an easement has been established pursuant to a provision of the Unified Development Ordinance, offered as a commitment by the petitioner, or required as a condition of approval by the Plan Commission or Board of Zoning Appeals, and the County is the grantee, either the grantor or grantee may apply to the Plan Commission Office for administrative modification of the easement in the manner outlined in this Section.

## G. Plan Commission:

1. *Jurisdiction:* When an easement has been established pursuant to a provision of the Unified Development Ordinance or its predecessor ordinances, offered as a commitment by the petitioner, or required as a condition of approval by the Plan Commission, either the grantor or grantee may apply to the Plan Commission for modification of the easement.
2. *Public Notice:*
  - a. *Responsibility:* The petitioner shall be responsible for publishing and mailing public notice pursuant to the Plan Commission Rules of Procedure. The Plan Commission Office shall be responsible for posting public notice pursuant to the Plan Commission Rules of Procedure.
  - b. *Proof:* The petitioner shall be responsible for returning proof of published and mailed notice to the Plan Commission Office. The petitioner shall refer to the application packet to determine the deadline for submittal of proof of notice. Failure to submit proof of notice by the deadline may result in the application's being continued to the Plan Commission agenda for the following month.
3. *Submittal:* The petitioner shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Plan Commission. Incomplete submittals shall result in the application's being held off the Plan Commission agenda to allow the petitioner time to complete the submittal.
4. *Attendance:* The petitioner is required to be present at the Plan Commission meeting to address and discuss comments and concerns posed by the Plan Commission members. Failure to appear shall result in the application's being dealt with as outlined in the Plan Commission Rules of Procedure.
5. *Public Hearing:* A public hearing shall be held in accordance with the Plan Commission Rules of Procedure.
6. *Review:* The Plan Commission shall review:
  - a. The application and required supporting material submitted by the petitioner;
  - b. The easement modification instrument draft;
  - c. Any commitments or conditions of approval attendant to prior approvals;
  - d. The testimony of the petitioner;
  - e. Relevant evidence presented by other persons;
  - f. Any applicable provisions of the Unified Development Ordinance;
  - g. The applicable standards of the County's engineering manuals;
  - h. Any information presented by the members of the Development Advisory Committee;
  - i. The Plan Commission Office report; and
  - j. Such other additional information as may be required by the Plan Commission to evaluate the application.
7. *Decision:* The Plan Commission shall:
  - a. Approve the application;
  - b. Approve the application with conditions and/or commitments;
  - c. Deny the application; or
  - d. Continue the application to a definite future meeting date.
8. *Surety Requirement:* In conjunction with the approval of an Easement Modification, the petitioner shall provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards.*

# Easements; Modification of Platted or Unplatted

9. *Commitments:*
  - a. *Acceptance:* In conjunction with the approval of an Easement Modification, the Plan Commission may permit or require the petitioner to make written commitments concerning the use or development of the lot.
  - b. *Form:* The petitioner shall prepare the commitment instrument in a form approved by the County Attorney. The petitioner and the President of the Plan Commission shall sign the commitment instrument.
  - c. *Recording:* The petitioner shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the Easement Modification. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office
  - d. *Modification or Termination:* A commitment made under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The petitioner shall prepare and record a commitment modification instrument or commitment termination instrument in the same manner required for a commitment instrument. A modified commitment shall be enforced in the same manner as any other commitment.
  - e. *Enforcement:* The County may enforce any commitment Plan Commission has accepted as if the commitment were a standard of the Unified Development Ordinance.
10. *Conditions of Approval:*
  - a. *Requirement:* In conjunction with the approval of an Easement Modification, the Plan Commission may impose conditions of approval concerning the use or development of the lot that will, in its judgment, substantially secure the objectives of these regulations.
  - b. *Form:* The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the County Attorney. The President of the Plan Commission shall sign the conditions of approval instrument.
  - c. *Recording:* The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the Easement Modification. The Plan Commission Office shall deliver a copy of the recorded conditions of approval instrument to the petitioner within thirty (30) days of recording.
  - d. *Modification or Termination:* A condition of approval imposed under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The Plan Commission Office shall prepare and record a conditions of approval modification instrument or conditions of approval termination instrument in the same manner required for a conditions of approval instrument. A modified condition of approval shall be enforced in the same manner as any other commitment.
  - e. *Enforcement:* The County may enforce any condition of approval the Plan Commission has imposed as if the condition were a standard of the Unified Development Ordinance.
11. *Revisions:* Following Plan Commission approval, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Plan Commission. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to deliver to the Plan Commission Office.
12. *Recording:* The petitioner shall record the easement modification instrument in the County Recorder's office. The petitioner shall deliver one (1) copy of the recorded easement modification instrument to every other party to the easement and one (1) copy to the Plan Commission Office within ten (10) business days of recording.



# Easements; Modification of Platted or Unplatted

## H. Board of Zoning Appeals:

1. *Jurisdiction:* When an easement has been established pursuant to a provision of the Unified Development Ordinance or its predecessor ordinances, offered as a commitment by the petitioner, or required as a condition of approval by the Board of Zoning Appeals, either the grantor or grantee may apply to the Board of Zoning Appeals for modification of the easement.
2. *Public Notice:*
  - a. *Responsibility:* The petitioner shall be responsible for publishing and mailing public notice pursuant to the Board of Zoning Appeals Rules of Procedure. The Plan Commission Office shall be responsible for posting public notice pursuant to the Board of Zoning Appeals Rules of Procedure.
  - b. *Proof:* The petitioner shall be responsible for returning proof of published and mailed notice to the Plan Commission Office. The petitioner shall refer to the application packet to determine the deadline for submittal of proof of notice. Failure to submit proof of notice by the deadline may result in the petition's being continued to the Board of Zoning Appeals agenda for the following month.
3. *Submittal:* The petitioner shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Board of Zoning Appeals. Incomplete submittals shall result in the petition's being held off the Board of Zoning Appeals agenda to allow the petitioner time to complete the submittal.
4. *Attendance:* The petitioner is required to be present at the Board of Zoning Appeals meeting to address and discuss comments and concerns posed by the Board of Zoning Appeals members. Failure to appear shall result in the petition's being dealt with as outlined in the Board of Zoning Appeals Rules of Procedure.
5. *Public Hearing:* A public hearing shall be held in accordance with the Board of Zoning Appeals Rules of Procedure.
6. *Review:* The Board of Zoning Appeals shall review:
  - a. The application and required supporting material submitted by the petitioner;
  - b. The easement modification instrument draft;
  - c. Any commitments or conditions of approval attendant to prior approvals;
  - d. The testimony of the petitioner;
  - e. Relevant evidence presented by other persons;
  - f. Any applicable provisions of the Unified Development Ordinance;
  - g. The applicable standards of the County's engineering manuals;
  - h. Any information presented by the members of the Development Advisory Committee;
  - i. The Plan Commission Office report; and
  - j. Such other additional information as may be required by the Board of Zoning Appeals to evaluate the application.
7. *Decision:* The Board of Zoning Appeals shall:
  - a. Approve the application;
  - b. Approve the application with conditions and/or commitments;
  - c. Deny the application; or
  - d. Continue the application to a definite future meeting date.
8. *Surety Requirement:* In conjunction with the approval of an Easement Modification, the petitioner shall provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards.*

# Easements; Modification of Platted or Unplatted

## 9. *Commitments:*

- a. **Acceptance:** In conjunction with the approval of an Easement Modification, the Plan Commission may permit or require the petitioner to make written commitments concerning the use or development of the lot.
- b. **Form:** The petitioner shall prepare the commitment instrument in a form approved by the County Attorney. The petitioner and the President of the Plan Commission shall sign the commitment instrument.
- c. **Recording:** The petitioner shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the Easement Modification. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office
- d. **Modification or Termination:** A commitment made under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The petitioner shall prepare and record a commitment modification instrument or commitment termination instrument in the same manner required for a commitment instrument. A modified commitment shall be enforced in the same manner as any other commitment.
- e. **Enforcement:** The County may enforce any commitment Plan Commission has accepted as if the commitment were a standard of the Unified Development Ordinance.

## 10. *Conditions of Approval:*

- a. **Requirement:** In conjunction with the approval of an Easement Modification, the Plan Commission may impose conditions of approval concerning the use or development of the lot that will, in its judgment, substantially secure the objectives of these regulations.
- b. **Form:** The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the County Attorney. The President of the Plan Commission shall sign the conditions of approval instrument.
- c. **Recording:** The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the Easement Modification. The Plan Commission Office shall deliver a copy of the recorded conditions of approval instrument to the petitioner within thirty (30) days of recording.
- d. **Modification or Termination:** A condition of approval imposed under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The Plan Commission Office shall prepare and record a conditions of approval modification instrument or conditions of approval termination instrument in the same manner required for a conditions of approval instrument. A modified condition of approval shall be enforced in the same manner as any other commitment.
- e. **Enforcement:** The County may enforce any condition of approval the Plan Commission has imposed as if the condition were a standard of the Unified Development Ordinance.

11. **Revisions:** Following Board of Zoning Appeals approval, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Board of Zoning Appeals. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to deliver to the Plan Commission Office.

12. **Recording:** The petitioner shall record the easement modification instrument in the County Recorder's office. The petitioner shall deliver one (1) copy of the recorded easement modification instrument to every other party to the easement and one (1) copy to the Plan Commission Office within ten (10) business days of recording.

I. **Duration:** Not applicable.

J. **Changes or Amendments:** Any change to an approved Easement Modification shall be the subject of a new Easement Modification application.

# Easements; Termination of Unplatted

## 10.27 Easement Termination

- A. Purpose and Intent: The purpose of the Easement Termination section is to outline the procedure employed by the County when considering an application for the termination of an unplatted easement. Further, the intent of the Easement Termination section is to ensure that the statutory requirements established in the Indiana Code for the termination of easements are met.
- B. Prerequisites:
1. *Pre-application Meeting*: Prior to submitting an Easement Termination application, the petitioner shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed development of the property. The Plan Commission Office shall aid and advise the petitioner in preparing the application and supporting documents as necessary.
- C. Applicability:
1. *Termination of Unplatted Easements*: When an easement has been established pursuant to a provision of the Unified Development Ordinance or its predecessor ordinances, offered as a commitment by the petitioner, or required as a condition of approval by the Plan Commission or Board of Zoning Appeals, either the grantor or grantee may apply to the approving body (*i.e.* the Board of Zoning Appeals or Plan Commission) for termination of the easement.
  2. *Affected Easements*: This section governs easements that are:
    - a. Established pursuant to a provision of the Unified Development Ordinance or its predecessor ordinances;
    - b. Established pursuant to a commitment by the petitioner;
    - c. Established pursuant to a condition of approval by the Plan Commission or Board of Zoning Appeals; or
    - d. Not shown on a recorded plat.
  3. *Exceptions*: This Section does not govern private easements that do not meet the requirements of §C(2): *Affected Easements*.
- D. Application:
1. *Filing Deadline*: The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Board of Zoning Appeals or Plan Commission, whichever may be applicable.
  2. *Application Form*: The petitioner shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. *Pre-application Meeting*: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. *Additional Information*: Such other additional information as may be required by the Plan Commission Office or other members of the Development Advisory Committee to evaluate the application.
  4. *Time Limitation*: If an Easement Termination application has been denied, the petitioner shall not file a new application with the same or substantially similar request for a period of six (6) months.
- E. Fees: Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The petitioner shall be responsible for paying the fees at the time of application submittal.

# Easements; Termination of Unplatted

## F. Plan Commission Office:

1. *Review:* The Plan Commission Office shall review the application upon receipt of a complete application and supporting documents. When an easement has been established pursuant to a provision of the Unified Development Ordinance, offered as a commitment by the petitioner, or required as a condition of approval by the Plan Commission or Board of Zoning Appeals, and the County is the grantee, either the grantor or grantee may apply to the Plan Commission Office for administrative termination of the easement in the manner outlined in this Section.

## G. Plan Commission:

1. *Jurisdiction:* When an easement has been established pursuant to a provision of the Unified Development Ordinance or its predecessor ordinances, offered as a commitment by the petitioner, or required as a condition of approval by the Plan Commission, either the grantor or grantee may apply to the Plan Commission for termination of the easement.
2. *Public Notice:*
  - a. *Responsibility:* The petitioner shall be responsible for publishing and mailing public notice pursuant to the Plan Commission Rules of Procedure. The Plan Commission Office shall be responsible for posting public notice pursuant to the Plan Commission Rules of Procedure.
  - b. *Proof:* The petitioner shall be responsible for returning proof of published and mailed notice to the Plan Commission Office. The petitioner shall refer to the application packet to determine the deadline for submittal of proof of notice. Failure to submit proof of notice by the deadline may result in the application's being continued to the Plan Commission agenda for the following month.
3. *Submittal:* The petitioner shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Plan Commission. Incomplete submittals shall result in the application's being held off the Plan Commission agenda to allow the petitioner time to complete the submittal.
4. *Attendance:* The petitioner is required to be present at the Plan Commission meeting to address and discuss comments and concerns posed by the Plan Commission members. Failure to appear shall result in the application's being dealt with as outlined in the Plan Commission Rules of Procedure.
5. *Public Hearing:* A public hearing shall be held in accordance with the Plan Commission Rules of Procedure.
6. *Review:* The Plan Commission shall review:
  - a. The application and required supporting material submitted by the petitioner;
  - b. The easement termination instrument draft;
  - c. Any commitments or conditions of approval attendant to prior approvals;
  - d. The testimony of the petitioner;
  - e. Relevant evidence presented by other persons;
  - f. Any applicable provisions of the Unified Development Ordinance;
  - g. The applicable standards of the County's engineering manuals;
  - h. Any information presented by the members of the Development Advisory Committee;
  - i. The Plan Commission Office report; and
  - j. Such other additional information as may be required by the Plan Commission to evaluate the application.
7. *Decision:* The Plan Commission shall:
  - a. Approve the application;
  - b. Approve the application with conditions and/or commitments;
  - c. Deny the application; or
  - d. Continue the application to a definite future meeting date.
8. *Surety Requirement:* In conjunction with the approval of an Easement Termination, the petitioner shall provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards.*

## Easements; Termination of Unplatted

9. *Commitments:*
  - a. **Acceptance:** In conjunction with the approval of an Easement Modification, the Plan Commission may permit or require the petitioner to make written commitments concerning the use or development of the lot.
  - b. **Form:** The petitioner shall prepare the commitment instrument in a form approved by the County Attorney. The petitioner and the President of the Plan Commission shall sign the commitment instrument.
  - c. **Recording:** The petitioner shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the Easement Modification. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office
  - d. **Modification or Termination:** A commitment made under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The petitioner shall prepare and record a commitment modification instrument or commitment termination instrument in the same manner required for a commitment instrument. A modified commitment shall be enforced in the same manner as any other commitment.
  - e. **Enforcement:** The County may enforce any commitment Plan Commission has accepted as if the commitment were a standard of the Unified Development Ordinance.
10. *Conditions of Approval:*
  - a. **Requirement:** In conjunction with the approval of an Easement Modification, the Plan Commission may impose conditions of approval concerning the use or development of the lot that will, in its judgment, substantially secure the objectives of these regulations.
  - b. **Form:** The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the County Attorney. The President of the Plan Commission shall sign the conditions of approval instrument.
  - c. **Recording:** The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the Easement Modification. The Plan Commission Office shall deliver a copy of the recorded conditions of approval instrument to the petitioner within thirty (30) days of recording.
  - d. **Modification or Termination:** A condition of approval imposed under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The Plan Commission Office shall prepare and record a conditions of approval modification instrument or conditions of approval termination instrument in the same manner required for a conditions of approval instrument. A modified condition of approval shall be enforced in the same manner as any other commitment.
  - e. **Enforcement:** The County may enforce any condition of approval the Plan Commission has imposed as if the condition were a standard of the Unified Development Ordinance.
11. *Removal of Improvements:* When applicable, the petitioner shall remove any improvements associated with the use of the easement prior to the termination of the easement.
12. *Revisions:* Following Plan Commission approval, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Plan Commission. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to deliver to the Plan Commission Office.
13. *Recording:* The petitioner shall record the easement termination instrument in the County Recorder's office. The petitioner shall deliver one (1) copy of the recorded easement termination instrument to each grantee for the given type of easement and one (1) copy to the Plan Commission Office within ten (10) business days of recording.

# Easements; Termination of Unplatted

## H. Board of Zoning Appeals:

1. *Jurisdiction:* When an easement has been established pursuant to a provision of the Unified Development Ordinance or its predecessor ordinances, offered as a commitment by the petitioner, or required as a condition of approval by the Board of Zoning Appeals, either the grantor or grantee may apply to the Board of Zoning Appeals for termination of the easement.
2. *Public Notice:*
  - a. *Responsibility:* The petitioner shall be responsible for publishing and mailing public notice pursuant to the Board of Zoning Appeals Rules of Procedure. The Plan Commission Office shall be responsible for posting public notice pursuant to the Board of Zoning Appeals Rules of Procedure.
  - b. *Proof:* The petitioner shall be responsible for returning proof of published and mailed notice to the Plan Commission Office. The petitioner shall refer to the application packet to determine the deadline for submittal of proof of notice. Failure to submit proof of notice by the deadline may result in the application's being continued to the Board of Zoning Appeals agenda for the following month.
3. *Submittal:* The petitioner shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Board of Zoning Appeals. Incomplete submittals shall result in the application's being held off the Board of Zoning Appeals agenda to allow the petitioner time to complete the submittal.
4. *Attendance:* The petitioner is required to be present at the Board of Zoning Appeals meeting to address and discuss comments and concerns posed by the Board of Zoning Appeals members. Failure to appear shall result in the application's being dealt with as outlined in the Board of Zoning Appeals Rules of Procedure.
5. *Public Hearing:* A public hearing shall be held in accordance with the Board of Zoning Appeals Rules of Procedure.
6. *Review:* The Board of Zoning Appeals shall review:
  - a. The application and required supporting material submitted by the petitioner;
  - b. The easement termination instrument draft;
  - c. Any commitments or conditions of approval attendant to prior approvals;
  - d. The testimony of the petitioner;
  - e. Relevant evidence presented by other persons;
  - f. Any applicable provisions of the Unified Development Ordinance;
  - g. The applicable standards of the County's engineering manuals;
  - h. Any information presented by the members of the Development Advisory Committee;
  - i. The Plan Commission Office report; and
  - j. Such other additional information as may be required by the Board of Zoning Appeals to evaluate the application.
7. *Decision:* The Board of Zoning Appeals shall:
  - a. Approve the application;
  - b. Approve the application with conditions and/or commitments;
  - c. Deny the application; or
  - d. Continue the application to a definite future meeting date.
8. *Surety Requirement:* In conjunction with the approval of an Easement Termination, the petitioner shall provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards.*

## Easements; Termination of Unplatted

9. *Commitments:*
    - a. **Acceptance:** In conjunction with the approval of an Easement Modification, the Board of Zoning Appeals may permit or require the petitioner to make written commitments concerning the use or development of the lot.
    - b. **Form:** The petitioner shall prepare the commitment instrument in a form approved by the Board of Zoning Appeals Attorney. The petitioner and the Chair of the Board of Zoning Appeals shall sign the commitment instrument.
    - c. **Recording:** The petitioner shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the Easement Modification. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office
    - d. **Modification or Termination:** A commitment made under this section may be modified or terminated only by a decision of the Board of Zoning Appeals made at a public hearing. Public notice of the public hearing shall be provided per the Board of Zoning Appeals Rules of Procedure. The petitioner shall prepare and record a commitment modification instrument or commitment termination instrument in the same manner required for a commitment instrument. A modified commitment shall be enforced in the same manner as any other commitment.
    - e. **Enforcement:** The County may enforce any commitment Board of Zoning Appeals has accepted as if the commitment were a standard of the Unified Development Ordinance.
  10. *Conditions of Approval:*
    - a. **Requirement:** In conjunction with the approval of an Easement Modification, the Board of Zoning Appeals may impose conditions of approval concerning the use or development of the lot that will, in its judgment, substantially secure the objectives of these regulations.
    - b. **Form:** The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the Board of Zoning Appeals Attorney. The Chair of the Board of Zoning Appeals shall sign the conditions of approval instrument.
    - c. **Recording:** The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the Easement Modification. The Plan Commission Office shall deliver a copy of the recorded conditions of approval instrument to the petitioner within thirty (30) days of recording.
    - d. **Modification or Termination:** A condition of approval imposed under this section may be modified or terminated only by a decision of the Board of Zoning Appeals made at a public hearing. Public notice of the public hearing shall be provided per the Board of Zoning Appeals Rules of Procedure. The Plan Commission Office shall prepare and record a conditions of approval modification instrument or conditions of approval termination instrument in the same manner required for a conditions of approval instrument. A modified condition of approval shall be enforced in the same manner as any other commitment.
    - e. **Enforcement:** The County may enforce any condition of approval the Board of Zoning Appeals has imposed as if the condition were a standard of the Unified Development Ordinance.
  11. *Removal of Improvements:* When applicable, the petitioner shall remove any improvements associated with the use of the easement prior to the termination of the easement.
  12. *Revisions:* Following Board of Zoning Appeals approval, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Board of Zoning Appeals. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to deliver to the Plan Commission Office.
  13. *Recording:* The petitioner shall record the easement termination instrument in the County Recorder's office. The petitioner shall deliver one (1) copy of the recorded easement termination instrument to each grantee for the given type of easement and one (1) copy to the Plan Commission Office within ten (10) business days of recording.
- I. Duration: Not applicable.
  - J. Changes or Amendments: Not applicable.

# Easements; Vacation of Platted

## 10.28 Easement Vacation

- A. Purpose and Intent: The purpose of the Easement Vacation section is to outline the procedure employed by the County when considering an application for the vacation of a platted easement. Further, the intent of the Easement Vacation section is to ensure that the statutory requirements established in the Indiana Code for the vacation of easements are met.
- B. Prerequisites:
1. *Pre-application Meeting*: Prior to submitting an Easement Vacation application, the petitioner shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed development of the property. The Plan Commission Office shall aid and advise the petitioner in preparing the application and supporting documents as necessary.
  2. *Commitment or Condition of Approval*: If the easement to be vacated was established as a result of a commitment or as a condition of approval accepted or imposed by either the Board of Zoning Appeals or the Plan Commission, the body that accepted or required the commitment or imposed the condition of approval shall have considered and approved a commitment or condition of approval modification or termination petition prior to the filing of the Easement Vacation petition.
- C. Applicability:
1. *Vacation of Platted Easements*: When an easement has been established on a plat either the grantor or grantee may application the Board of County Commissioners for vacation of the easement in accordance with the requirements of IC 36-7-3-16.
  2. *Exceptions*: This section does not govern easements that are:
    - a. Not required pursuant to a provision of the Unified Development Ordinance or its predecessor ordinances; and
    - b. Not offered as a commitment by the petitioner; and
    - c. Not required as a condition of approval by the Plan Commission or Board of Zoning Appeals; and
    - d. Not shown on a recorded plat.
- D. Application:
1. *Filing Deadline*: The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Board of County Commissioners.
  2. *Application Form*: The petitioner shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. *Pre-application Meeting*: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. *Additional Information*: Such other additional information as may be required by the Plan Commission Office to evaluate the application.
  4. *Time Limitation*: If an Easement Termination application has been denied, the petitioner shall not file a new application with the same or substantially similar request for a period of six (6) months.
- E. Fees: Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The petitioner shall be responsible for paying the fees at the time of application submittal.



# Easements; Vacation of Platted

## F. Board of County Commissioners:

1. *Public Notice:* The County Clerk shall give public notice of the application and of the time and place of the hearing.
  - a. Public notice shall be published one (1) time, at least ten (10) days before the date of the public hearing.
  - b. Public notice shall be sent by certified mail to each owner of land that abuts the easement proposed to be vacated.
  - c. The cost of the public notice shall be borne by the petitioner.
2. *Public Hearing:* The Board of County Commissioners shall hold a hearing on the application within thirty (30) calendar days after it is received.
3. *Review:* The Board of County Commissioners shall review:
  - a. The application and required supporting material submitted by the petitioner;
  - b. The easement vacation ordinance draft;
  - c. Any commitments or conditions of approval attendant to prior approvals;
  - d. The testimony of the petitioner;
  - e. Relevant evidence presented by other persons;
  - f. Any applicable provisions of the Unified Development Ordinance;
  - g. The applicable standards of the County's engineering manuals;
  - h. Any information presented by the members of the Development Advisory Committee;
  - i. The Plan Commission Office report; and
  - j. Such other additional information as may be required by the Board of County Commissioners to evaluate the application.
4. *Decision:* The Board of County Commissioners shall:
  - a. Approve the application;
  - b. Approve the application with conditions and/or commitments;
  - c. Deny the application; or
  - d. Continue the application to a definite future meeting date.
5. *Surety Requirement:* In conjunction with the approval of an Easement Vacation, the petitioner shall provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards*.
6. *Removal of Improvements:* When applicable, the petitioner shall remove any improvements associated with the use of the easement prior to the vacation of the easement.
7. *Commitments:*
  - a. *Acceptance:* In conjunction with the approval of an Easement Modification, the Board of County Commissioners may permit or require the petitioner to make written commitments concerning the use or development of the lot.
  - b. *Form:* The petitioner shall prepare the commitment instrument in a form approved by the County Attorney. The petitioner and the President of the Board of County Commissioners shall sign the commitment instrument.
  - c. *Recording:* The petitioner shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the Easement Modification. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office
  - d. *Modification or Termination:* A commitment made under this section may be modified or terminated only by a decision of the Board of County Commissioners made at a public hearing. Public notice of the public hearing shall be provided per the Board of County Commissioners Rules of Procedure. The petitioner shall prepare and record a commitment modification instrument or commitment termination instrument in the same manner required for a commitment instrument. A modified commitment shall be enforced in the same manner as any other commitment.
  - e. *Enforcement:* The County may enforce any commitment Board of County Commissioners has accepted as if the commitment were a standard of the Unified Development Ordinance.

## Easements; Vacation of Platted

8. *Conditions of Approval:*
  - a. **Requirement:** In conjunction with the approval of an Easement Modification, the Board of County Commissioners may impose conditions of approval concerning the use or development of the lot that will, in its judgment, substantially secure the objectives of these regulations.
  - b. **Form:** The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the County Attorney. The President of the Board of County Commissioners shall sign the conditions of approval instrument.
  - c. **Recording:** The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the Easement Modification. The Plan Commission Office shall deliver a copy of the recorded conditions of approval instrument to the petitioner within thirty (30) days of recording.
  - d. **Modification or Termination:** A condition of approval imposed under this section may be modified or terminated only by a decision of the Board of County Commissioners made at a public hearing. Public notice of the public hearing shall be provided per the Board of County Commissioners Rules of Procedure. The Plan Commission Office shall prepare and record a conditions of approval modification instrument or conditions of approval termination instrument in the same manner required for a conditions of approval instrument. A modified condition of approval shall be enforced in the same manner as any other commitment.
  - e. **Enforcement:** The County may enforce any condition of approval the Board of County Commissioners has imposed as if the condition were a standard of the Unified Development Ordinance.
9. *Revisions:* Following Board of County Commissioners approval, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Board of County Commissioners to the Plan Commission Office. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to deliver to the Plan Commission Office.
10. *Recording:* The County Auditor shall record the easement vacation ordinance in the County Recorder's office.
  - a. The Board of County Commissioners shall deliver one (1) copy of the easement vacation ordinance to the County Auditor.
  - b. The Board of County Commissioners shall deliver one (1) copy of the recorded easement vacation ordinance to the grantor, one (1) copy to each grantee for the easement, and one (1) copy to the Plan Commission Office.

G. Duration: Not applicable.

H. Changes or Amendments: Not applicable.

# Surety Standards; Performance Surety

## 10.29 Performance Surety

- A. Purpose and Intent: Prior to or at the time of approval, the applicant shall be required to provide financial performance guarantee, by performance bond or an irrevocable, unconditional, acceptable letter of credit issued by a financial institution acceptable to the County, that all public facility improvements and installations required under the provisions of this Unified Development Ordinance and the *General & Detailed Specifications* shall be completed.
- B. Prerequisites: None.
- C. Applicability:
  1. A performance agreement between the applicant and the County, supported by a performance bond or irrevocable letter of credit, shall be required ensuring the timely and proper installation of required public improvements.
  2. The Plan Commission and Board of Zoning Appeals shall not approve any project that involves public improvements without a performance bond or irrevocable letter of credit to cover the proposed improvements and installation.
  3. The performance guarantee for each individual public facility improvement or installation may be handled separately and shall in no way be contingent on the completion of any of the other individual public facility improvements and installations or their performance guarantees.
  4. The posting of a performance guarantee may be accepted for incomplete requirements that will be completed as per a written agreement with the County. The time period and amount of the performance guarantee shall be determined by the Executive Director.
  5. *Exceptions*: Not applicable.
- D. Application:
  1. *Filing Deadline*: The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Board of County Commissioners.
  2. *Application Form*: The applicant shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. Construction Cost Estimate: Estimate prepared by a Professional Engineer for the amount of the performance bond or letter of credit.
    - b. Additional information as may be required by the Executive Director to evaluate the application.
- E. Fees: Not applicable.
- F. Plan Commission Office:
  1. *Review*: Upon receipt of a complete application and supporting documents, the Plan Commission Office shall forward the Performance Surety to the County Engineer to review the estimate.
- G. Board of County Commissioners:
  1. *Review*: The Board of County Commissioners shall consider the County Engineer's report.
  2. *Decision*: The Board of County Commissioners shall:
    - a. Accept the Performance Surety;
    - b. Require adjustment to the amount of the Performance Surety; or
    - c. Reject the Performance Surety.

# Surety Standards; Performance Surety

## H. Duration:

1. *Time Limit:* The completion of public facility improvements and installations shall be within two (2) years of the approval of the project.
2. *Extension of Completion Time:* Should the applicant not complete the public facility improvements and installations as herein required within a two-year period, the County Engineer may approve the applicant's written request for an extension of time of up to two (2) additional years, granted at six-month intervals, for completion of the required public facility improvements and installations.
3. *Nonperformance:* Should the applicant not complete the public facility improvements and installations as herein required within the two-year period or within any time extension approved by the County Engineer, the County may take the necessary steps to proceed with the completion of the public facility improvements and installations, making use of the performance bond or letter of credit.
4. *Expiration:* The performance bond or letter of credit shall be in effect and shall not terminate until thirty (30) calendar days after the Maintenance Surety has been accepted.

## I. Changes or Amendments:

1. *Performance Surety Reductions:*
  - a. Periodic partial releases of Performance Sureties held by the County may be approved by the Board of County Commissioners.
  - b. Bonds held by the County shall be reduced in accordance with the County's bonding policy.
  - c. The applicant shall apprise the Plan Commission Office of any request for a reduction in the amount of a performance surety. The Plan Commission Office shall inspect the project site and make its recommendation to the Board of County Commissioners concurrently with that of the County Engineer.
  - d. Upon recommendation of the County Engineer, the Board of County Commissioners shall act within thirty (30) days of the receipt of any written request for a bond reduction, unless the County Engineer notifies the applicant in writing of nonreceipt of approval by applicable State agencies or of any specified defects or deficiencies in construction and suggested corrective measures prior to the expiration of the thirty-day period.
2. *Standards:* The following standards shall apply to any request for a bond reduction:
  - a. No more than three (3) reductions shall be permitted within any twelve-month period.
  - b. Periodic partial releases shall not occur before completion of at least thirty percent (30%) of the improvements covered by the Performance Surety.
3. *Inspection:* The Plan Commission Office, the County Engineer, and/or the County Surveyor may inspect at any reasonable time any structure, other improvement, or site that is the subject of a Performance Surety Reduction.

# Surety Standards; Maintenance Surety

## 10.30 Maintenance Surety

- A. Purpose and Intent: The purpose of the Maintenance Surety shall be to:
1. Assure and guarantee the maintenance of all improvements and installations during a three (3) year period following preliminary acceptance of the improvements;
  2. Assure and guarantee the maintenance of all bridges and improvements and installation made without a proper inspection during a five (5) year period following preliminary acceptance of the improvement;
  3. Provide maintenance surety satisfactory to the County;
  4. Warrant the workmanship and all materials used in the construction, installation and completion of said improvements and that the installations are of good quality and have been constructed and completed in a workmanlike manner in accordance with:
    - a. The standards, specifications and requirements of this Unified Development Ordinance;
    - b. The approved Construction Plans and specifications therefor;
    - c. The *Storm Water Design Manual*; and
    - d. The *General & Detailed Specifications*.
  5. Provide that for a period of three (3) to five (5) years after the Board of County Commissioners meeting at which said installations and improvements have been completed and are preliminarily accepted for public maintenance by the County or agency thereof, the applicant shall at his own expense make all repairs to said improvements and installations.
- B. Prerequisites: None.
- C. Applicability:
1. When any project for which a Performance Surety has been submitted has been completed, the applicant shall provide a Maintenance Surety.
  2. *Exceptions*: None.
- D. Application:
1. *Filing Deadline*: The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Board of County Commissioners.
  2. *Application Form*: The applicant shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. Certification by a Professional Engineer that all improvements were installed as shown and in conformance with the Unified Development Ordinance and the *General & Detailed Specifications*.
    - b. Estimate prepared by a Professional Engineer for the amount of the performance bond or letter of credit.
    - c. Additional information as may be required by the Executive Director to evaluate the application.
- E. Fees: Not applicable.
- F. Plan Commission Office:
1. *Review*: Upon receipt of a complete application and supporting documents, the Plan Commission Office shall forward the Maintenance Surety to the County Engineer to review the estimate.
- G. Board of County Commissioners:
1. *Review*: The Board of County Commissioners shall consider the County Engineer's report.
  2. *Decision*: The Board of County Commissioners shall:
    - a. Accept the Maintenance Surety;
    - b. Require adjustment to the amount of the Maintenance Surety; or
    - c. Reject the Maintenance Surety.

# Surety Standards; Maintenance Surety

## H. Duration:

1. *Time Limit:* The period of the Maintenance Surety shall be a period of time to be determined by the Board of County Commissioners, not to exceed five (5) years from the date of acceptance by the Board of County Commissioners.
2. *Nonperformance:* Should the improvements and installations require maintenance within the three-year period and the applicant fails to perform such maintenance, the County shall take the necessary steps to maintain the improvements and installations, making use of the maintenance bond or letter of credit.
3. *Expiration:* The maintenance bond or letter of credit shall be in effect and shall not terminate until thirty (30) calendar days after the Certificate of Final Acceptance is approved by the Board of County Commissioners.

## I. Changes or Amendments: Not applicable.

# Surety Standards; Certificate of Final Acceptance

## 10.31 Certificate of Final Acceptance

- A. Purpose and Intent: The purpose of the Certificate of Final Acceptance section is to outline the procedure employed by the County in order to ensure compliance with all applicable ordinances and regulations when considering an application for a Certificate of Final Acceptance.
- B. Prerequisites: None.
- C. Applicability:
  1. When the required public facility improvements and installations for any project for which a Maintenance Surety has been submitted has been completed, the owner or developer shall apply for a Certificate of Final Acceptance from the County.
  2. *Exceptions*: None.
- D. Application:
  1. *Filing Deadline*: The applicant shall refer to the Schedule of Meeting Dates included in the application packet to determine the filing deadline for any applicable meeting dates.
  2. *Application Packet*: The applicant shall submit the completed application to the Plan Commission Office.
  3. *Supporting Information*: The application shall include, but not be limited to, the following documents:
    - a. *Certification*: Certification by a Professional Engineer that all improvements were installed as shown and in conformance with the Unified Development Ordinance and the *General & Detailed Specifications*.
    - b. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. *Additional Information*: Such other additional information as may be required by the Plan Commission Office or County Engineer to evaluate the application.
- E. Fees: Not applicable.
- F. Plan Commission Office:
  1. *Review*: Upon receipt of a complete application and supporting documents, the Plan Commission Office shall forward the Certificate of Final Acceptance application to the County Engineer for review. The County Engineer shall report to the Board of County Commissioners on the condition of the work and recommend that the Maintenance Surety be released, extended, or declared in default. The Board of County Commissioners shall act on the release, extension, or default of the Maintenance Surety.


# Surety Standards; Certificate of Final Acceptance

- G. Board of County Commissioners:
1. *Review:* The Board of County Commissioners shall consider the County Engineer's report.
  2. *Conditions for Final Acceptance of Public Improvements:* The Board of County Commissioners shall accept public improvements that meet the following conditions:
    - a. The completed public improvements shall comply with the design standards of *Chapter 07: Subdivision, Development Plan & PUD Design Standards*; have been constructed in accordance with the *General & Detailed Specifications*; and have been installed in accordance with the approved plans;
    - b. All final inspections required by the County Code of Ordinances have been completed and the improvements found to be acceptable by the County Engineer;
    - c. The applicant has prepared and submitted two (2) sets of prints of record plans that accurately depict the improvements as actually built (as-built plans); and
    - d. The applicant, by appropriate instrument, has conveyed to the County good title, free of all liens, to all public improvements for which the County is to be responsible for operation and maintenance. Any required easement shall be deeded to the appropriate governmental entity by instrument approved in form by the County Attorney and bearing acceptance on behalf of the appropriate entity. The applicant shall have furnished a copy of the recording receipt to the County prior to Maintenance Surety release.
  3. *Decision:* The Board of County Commissioners shall:
    - a. Release the Maintenance Surety and accept the public improvements;
    - b. Require that the public improvements be brought up to County standards prior to acceptance; or
    - c. Reject the public improvements.
- H. Duration: Not applicable.
- I. Changes or Amendments: Not applicable.



# Subdivision Control; General

## 10.32 Subdivision Control; General

- A. **Purpose and Intent:** The purpose of this Subdivision Control Ordinance section is to guide the development of the County's planning jurisdiction in such a manner as to provide for the improvement of the health, safety, convenience and welfare of its citizens and to plan for the future development of the community; to the end that streets and highways are carefully planned; that new areas grow only with adequate street/utility, health, education and recreational facilities. Further, that the needs of public utilities and facilities be recognized in the future growth; that residential areas provide healthy surroundings for family life and that the growth of the community is commensurate with the efficient and economical use of public funds.
- B. **Establishment of Control:** No plat or replat of a subdivision of land or amendment, including plans or specifications and amendments thereto, or corrections to an already recorded plat (Certificate of Corrections, or Certificate of Error) located within the County's planning jurisdiction shall be recorded until it shall have been approved by the Plan Commission and the Board of County Commissioners, and such approval shall have been entered in writing on the plat by the President of the Plan Commission and the President of the Board of County Commissioners, if applicable. All corrections or amendments to an approved plat shall be cited as an addendum to and on said approved plat, including the copy at the County Recorder's office.
- C. **Authorization to Subdivide:**
1. **Standard Zoning Districts:** The subdivision of land may occur in the following zoning districts:  

  2. **Planned Unit Development Zoning Districts:** The subdivision of land may occur in those Planned Unit Development zoning districts for which the applicable PUD District Ordinance makes specific provision.
- D. **Adoption and Jurisdiction:** The Plan Commission hereby recommends to the Board of County Commissioners this ordinance containing provisions for subdivision control, which ordinance shall be adopted, amended, or repealed in the same manner as other sections of the Unified Development Ordinance. After the Subdivision Control Ordinance has been adopted and a certified copy of the ordinance has been filed in the County Recorder's office, the Plan Commission shall have exclusive control over the approval of all plats and replats involving land covered by the Subdivision Control Ordinance.
- E. **Condominiums:** The Subdivision Control Ordinance does not apply to Condominiums regulated by IC 32-25.
- F. **Plat Committee:**
1. **Authority to Appoint:** The Plan Commission may appoint a Plat Committee.
  2. **Membership:** The Plat Committee shall consist of either three (3) or five (5) persons, with at least one (1) of the members being a member of the Plan Commission.
  3. **Term:** Each appointment of a member of the Plat Committee is for a term of one (1) year.
  4. **Removal of Members:** The Plan Commission may remove a member from the Plat Committee. The Plan Commission must mail notice of the removal, along with written reasons, if any, for the removal, to the member at his residence address. A member who is removed may not appeal the removal to a court or otherwise.
  5. **Powers and Duties:** Regardless of the enabling text found here and elsewhere in *Chapter 10; §Subdivision Control*, the Plat Committee shall only have and exercise those powers and duties granted by the Plan Commission in the Plan Commission Rules of Procedure.
  6. **Official Action:** The Plat Committee may take action only by a majority vote.
- G. **Agricultural Use Disclosure:** All subdivisions bordered by or within 2,500 feet of an existing agricultural operation shall be required to have an Agricultural Use Disclosure recognizing that they may cause a nuisance to the existing or future property owner. The Agricultural Use Disclosure may also require restricting the existing or future property owner from remonstrating against those agricultural practices in perpetuity. This disclosure shall be a binding covenant or deed restriction tied to each new or residual parcel. The Agricultural Use Disclosure language shall meet the expectations of the Plan Commission and draft language may be provided by the Plan Commission Office.

# Subdivision Control; General

## H. Exemptions:

1. Any subdivision of land in the A1 Zoning District where all new or residual parcels are at least ten (10) acres in area shall be exempt from the Subdivision Control Process as described in this Chapter and the Design Standards in Chapter 11. However, these "exempt subdivisions" shall still be required to submit a land survey showing the parent tract of land and the proposed property lines creating each parcel, with property line and area measurements, to the Plan Commission Office. The Executive Director shall review the proposed exempt subdivision to confirm the lots being created meet the ten (10) acre minimum, the minimum lot requirements as per the applicable zoning district, and to add reasonable restrictions and/or requirements. This review and administrative approval shall be conducted prior to recording the new parcels.
2. If deemed necessary, the Executive Director may:
  - a. Restrict driveway access for each lot to specific road segments where deemed safe for such a curb cut.
  - b. Restrict portions of any new parcel from development due to drainage or ponding constraints.
  - c. Restrict portions of any new parcel from development due to topographical constraints.
  - d. Require an Agricultural Use Disclosure, recognizing existing farm operations adjacent to or within 2500 feet that may cause a nuisance to the existing or future property owner. The Executive Director may also require restricting the existing or future property owner from remonstrating against those agricultural practices in perpetuity.
3. The Executive Director shall review the proposed exempt subdivision and draft a letter indicating approval, denial, or approval with restrictions and/or requirements. Denials shall only be based on one or more parcels not meeting the minimum applicable zoning district requirements. Approvals with restrictions and/or requirements shall describe the restrictions and/or requirements in writing and/or on a drawing. Restrictions must be reasonable and based on protecting public health, safety, and welfare, and on avoiding drainage problems on-site or on neighboring sites. If the owner wishes to complete the subdividing of the parent tract, each parcel shall be recorded with deed restrictions achieving the Executive Director's restrictions and/or requirements. A copy of the recorded documents shall be submitted to the Plan Commission Office for filing.
4. If the land owner disagrees with the Executive Director's restrictions placed on any one or more of the parcels, the Executive Director's decision is not appealable. The method of resolution shall be for the land owner to submit an application for subdivision approval through the traditional process as a "nonexempt subdivision."
5. Failure to gain review and administrative approval prior to recording shall render all parcels undevelopable until the time the subdivision has been reviewed and administratively approved. The Plan Commission Office will not recognize any parcel that has not been approved through the traditional subdivision process or the exempt subdivision process.

# Subdivision Control; Primary Plat

## 10.33 Subdivision Control; Primary Plat

- A. Purpose and Intent: The purpose of the Primary Plat section is to outline the procedure employed by the County when considering a petition for the platting of a subdivision. Further, the intent of the Primary Plat section is to ensure that the statutory requirements established in the Indiana Code for the subdivision of land are met.
- B. Prerequisites:
1. *Ownership*: The petitioner must:
    - a. Own a controlling interest in each parcel within the area that is the subject of the petition; or
    - b. Provide written permission from the owner of each parcel of land within the area that is the subject of the petition authorizing the petitioner to act as the agent of the owner of each parcel.
  2. *Pre-application Meeting*: Prior to submitting a Primary Plat application, the petitioner shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed development of the property. The Plan Commission Office shall aid and advise the petitioner in preparing the application and supporting documents as necessary.
- C. Applicability:
1. A Primary Plat shall be prepared in conjunction with any proposal to subdivide or plat property within the jurisdictional area of the Plan Commission.
  2. *Exceptions*:
    - a. *Right-of-way Vacation*: Per IC 36-7-3-12, public ways are vacated by the Board of County Commissioners.
    - b. *Easement Vacation*: Per IC 36-7-3-16, platted easements are vacated by the Board of County Commissioners (see §10.28: *Easement Vacation*).
- D. Application:
1. *Filing Deadline*: The petitioner shall refer to the Schedule of Meeting Dates included with the application packet to determine the filing deadline.
  2. *Application Form*: The petitioner shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. *Pre-application Meeting*: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. *Additional Information*: Such other additional information as may be required by the Plan Commission Office to evaluate the application.
  4. *Computation of Time*: For purposes of computing any time period, an application is not deemed filed until the Executive Director has determined that the submission is complete and has assigned a docket number, under the provisions of §F(3): *Complete Submittal* below.
- E. Fees: Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The petitioner shall be responsible for paying the fees at the time of application.

# Subdivision Control; Primary Plat

## F. Plan Commission Office:

1. *Review of Application:* Upon receipt of a complete application, supporting documents, and the appropriate fees, the Plan Commission Office shall review the application for technical conformity with the standards fixed in the Unified Development Ordinance. The Plan Commission Office shall then decide to:
  - a. Assign the Primary Plat to the Plat Committee for review; or
  - b. Assign the Primary Plat to the Plan Commission for review.
2. *Development Advisory Committee:* Once the Plan Commission Office has determined that it has received a submittal that is sufficiently complete for Development Advisory Committee review, the Plan Commission Office shall place the item on an agenda of the Development Advisory Committee and inform the petitioner of the time, date, and place of the meeting.
3. *Complete Submittal:* Once the Plan Commission Office has determined that the petitioner has made a complete submittal, the Plan Commission Office shall:
  - a. Assign the item a docket number;
  - b. Place the item on an agenda of either the Plat Committee or the Plan Commission;
  - c. Inform the petitioner of the time, date, and place of the meeting.
4. *Inspection:* The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of a Primary Plat petition.
5. *Department Report:* The Plan Commission Office shall prepare a written report outlining its findings with respect to the Primary Plat.
6. *Record:* The Plan Commission Office shall maintain records of all applications, plans, and permits filed for a Primary Plat.

## G. Development Advisory Committee:

1. *Determination:* The Development Advisory Committee shall review Primary Plats.
2. *Copies:* The petitioner shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Development Advisory Committee.
3. *Meeting Date:* The petitioner shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Advisory Committee. Incomplete submittals may result in the petition's being held off the Development Advisory Committee's agenda to allow the petitioner time to complete the submittal.
4. *Attendance:* The petitioner is required to be present at the Development Advisory Committee meeting to address and discuss comments and concerns posed by the committee members. Failure to appear may result in the petition's being continued to the Development Advisory Committee's agenda for the following month.
5. *Revisions:* Following Development Advisory Committee review, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Development Advisory Committee. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to be delivered to the Plan Commission Office.

## Subdivision Control; Primary Plat

### H. Plan Commission:

1. *Public Notice:*
  - a. **Responsibility:** The petitioner shall be responsible for publishing and mailing public notice pursuant to the Plan Commission Rules of Procedure. The Plan Commission Office shall be responsible for posting public notice on site pursuant to the Plan Commission Rules of Procedure.
  - b. **Proof:** The petitioner shall be responsible for returning proof of published and mailed notice to the Plan Commission Office pursuant to the Plan Commission Rules of Procedure. The petitioner shall refer to the application packet to determine the deadline for submittal of proof of notice. Failure to submit proof of notice by the deadline may result in the petition's being continued to the Plan Commission's agenda for the following month.
2. *Submittal:* The petitioner shall refer to the application packet to determine the format and number of copies of the informational packets to be delivered to the Plan Commission Office for distribution to the members of the Plan Commission. Incomplete submittals may result in the petition's being held off the agenda to allow the petitioner time to complete the submittal.
3. *Attendance:* The petitioner is required to be present at the Plan Commission meeting to address and discuss comments and concerns posed by the Plan Commission members. Failure to appear shall result in the petition's being dealt with as outlined in the Plan Commission Rules of Procedure.
4. *Public Hearing:* A public hearing shall be held in accordance with the Plan Commission Rules of Procedure.
5. *Review:* At their regularly scheduled meeting, the Plan Commission shall review:
  - a. The written statement and supporting material submitted by the petitioner;
  - b. The Primary Plat;
  - c. Any commitments or conditions of approval attendant to prior approvals;
  - d. The testimony of the petitioner;
  - e. Relevant evidence presented by other persons;
  - f. The Comprehensive Plan;
  - g. The applicable standards of the Unified Development Ordinance;
  - h. The applicable standards of the County's engineering manuals;
  - i. All information presented by the members of the Development Advisory Committee;
  - j. The Plan Commission Office report; and
  - k. Such other additional information as may be required by the Plan Commission to evaluate the petition.
6. *Decision:* The Plan Commission shall:
  - a. Approve the petition;
  - b. Approve the petition with conditions and/or commitments;
  - c. Deny the petition; or
  - d. Continue the petition to a definite future meeting date.
7. *Findings of Fact:* The Plan Commission may grant Primary Plat approval if, after a public hearing, it makes written findings of fact that the Primary Plat:
  - a. Meets the standards prescribed by *Chapter 06: Subdivision Types*; and
  - b. Meets the standards prescribed by *Chapter 07: Subdivision, Development Plan & PUD Design Standards*; and
  - c. Meets all other applicable standards of the Unified Development Ordinance;
  - d. Conforms to the Comprehensive Plan; and
  - e. Is not a detriment to the public health, safety and welfare.

## Subdivision Control; Primary Plat

8. *Commitments:*
  - a. *Acceptance:* In conjunction with the approval of a Primary Plat, the Plan Commission may permit or require the petitioner to make written commitments concerning the use or development of the parcel.
  - b. *Form:* The petitioner shall prepare the commitment instrument in a form approved by the County Attorney. The petitioner and the President of the Plan Commission shall sign the commitment instrument.
  - c. *Recording:* The petitioner shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the Primary Plat. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office before Secondary Plat approval is granted.
  - d. *Modification or Termination:* A commitment made under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The petitioner shall prepare and record a commitment modification instrument or commitment termination instrument in the same manner required for a commitment instrument. A modified commitment shall be enforced in the same manner as any other commitment.
  - e. *Enforcement:* The County may enforce any commitment the Plan Commission has accepted as if the commitment were a standard of the Unified Development Ordinance.
9. *Conditions of Approval:*
  - a. *Requirement:* In conjunction with the approval of a Primary Plat, the Plan Commission may impose conditions of approval concerning the use or development of the parcel that will, in its judgment, substantially secure the objectives of these regulations, specifying:
    - i. The manner in which public ways shall be laid out, graded, and improved;
    - ii. A provision for water, sewage, and other utility services;
    - iii. A provision for lot size, number, and location;
    - iv. A provision for drainage design; and
    - v. A provision for other services as specified in *Chapter 07: Subdivision, Development Plan & PUD Design Standards*.
  - b. *Form:* The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the County Attorney. The President of the Plan Commission shall sign the conditions of approval instrument.
  - c. *Recording:* The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the Primary Plat. The Plan Commission Office shall deliver a copy of the recorded conditions of approval instrument to the petitioner within thirty (30) days of recording.
  - d. *Modification or Termination:* A condition of approval imposed under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The Plan Commission Office shall prepare and record a conditions of approval modification instrument or conditions of approval termination instrument in the same manner required for a conditions of approval instrument. A modified condition of approval shall be enforced in the same manner as any other condition of approval.
  - e. *Enforcement:* The County may enforce any condition of approval the Plan Commission has imposed as if the condition were a standard of the Unified Development Ordinance.
10. *Revisions:* Following Plan Commission approval, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Plan Commission. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to deliver to the Plan Commission Office.

# Subdivision Control; Primary Plat

11. *Appeal of a Decision of the Plat Committee:*
    - a. Procedure: The Plan Commission shall review an appeal of a Primary Plat approval granted by the Plat Committee at a public hearing as though it were a Primary Plat application filed with the Plan Commission.
    - b. Decision: The Plan Commission shall:
      - i. Affirm the decision of the Plat Committee;
      - ii. Affirm the decision of the Plat Committee with additional and/or amended conditions and/or commitments;
      - iii. Reverse the decision of the Plat Committee; or
      - iv. Continue the petition to a definite future meeting date.
- I. Plat Committee:
1. *Jurisdiction:* The Plat Committee may grant Primary Plat or Primary Plat Amendment approval to a subdivision of land that:
    - a. Does not involve the opening of a new public way;
    - b. Does not include Design Waiver applications;
    - c. Complies in all other respects with the Subdivision Control Ordinance;
    - d. Complies in all other respects with the remainder of the Unified Development Ordinance; and
    - e. Does not create more than four (4) lots.
  2. *Submittal:* The petitioner shall refer to the application packet to determine the format and number of copies of the informational packets to be delivered to the Plan Commission Office for distribution to the members of the Plat Committee. Incomplete submittals may result in the petition's being held off the Plat Committee agenda to allow the petitioner time to complete the submittal.
  3. *Attendance:* The petitioner is required to be present at the Plat Committee meeting to address and discuss comments and concerns posed by the Plat Committee members. Failure to appear shall result in the petition's being dealt with as outlined in the Plan Commission Rules of Procedure.
  4. *Public Hearing:* A public hearing before the Plat Committee is not required.
  5. *Review:* At their regularly scheduled meeting, the Plat Committee shall review:
    - a. The written statement and supporting material submitted by the petitioner;
    - b. The Primary Plat;
    - c. Any commitments or conditions of approval attendant to prior approvals;
    - d. The testimony of the petitioner;
    - e. Relevant evidence presented by other persons;
    - f. The Comprehensive Plan;
    - g. The applicable standards of the Unified Development Ordinance;
    - h. The applicable standards of the County's engineering manuals;
    - i. All information presented by the members of the Development Advisory Committee;
    - j. The Plan Commission Office report; and
    - k. Such other additional information as may be required by the Plat Committee to evaluate the petition.
  6. *Decision:* The Plat Committee shall:
    - a. Approve the petition;
    - b. Approve the petition with conditions and/or commitments;
    - c. Deny the petition;
    - d. Forward the petition to the Plan Commission for consideration; or
    - e. Continue the petition to a definite future meeting date.

## Subdivision Control; Primary Plat

7. *Findings of Fact:* The Plat Committee may grant Primary Plat approval if, after a public hearing, it makes written findings of fact that:
  - a. The Primary Plat meets the standards prescribed by *Chapter 06: Subdivision Types*;
  - b. The Primary Plat meets the standards prescribed by *Chapter 07: Subdivision, Development Plan & PUD Design Standards*;
  - c. The Primary Plat meets all other applicable standards of the Unified Development Ordinance; and
  - d. The Primary Plat conforms to the Comprehensive Plan.
8. *Commitments:*
  - a. *Acceptance:* In conjunction with the approval of a Primary Plat, the Plat Committee may permit or require the petitioner to make written commitments concerning the use or development of the parcel.
  - b. *Form:* The petitioner shall prepare the commitment instrument in a form approved by the County Attorney. The petitioner and the Chair of the Plat Committee shall sign the commitment instrument.
  - c. *Recording:* The petitioner shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the Primary Plat. The petitioner shall deliver a copy of the recorded commitment instrument to the Plan Commission Office before Secondary Plat approval is granted.
  - d. *Modification or Termination:* The Plat Committee may not modify or terminate any commitment; a commitment made under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The petitioner shall prepare and record a commitment modification instrument or commitment termination instrument in the same manner required for a commitment instrument. A modified commitment shall be enforced in the same manner as any other commitment.
  - e. *Enforcement:* The County may enforce any commitment the Plat Committee has accepted as if the commitment were a standard of the Unified Development Ordinance.
9. *Conditions of Approval:*
  - a. *Requirement:* In conjunction with the approval of a Primary Plat, the Plat Committee may impose conditions of approval concerning the use or development of the parcel that will, in its judgment, substantially secure the objectives of these regulations, specifying:
    - i. The manner in which public ways shall be laid out, graded, and improved;
    - ii. A provision for water, sewage, and other utility services;
    - iii. A provision for lot size, number, and location;
    - iv. A provision for drainage design; and
    - v. A provision for other services as specified in *Chapter 07: Subdivision, Development Plan & PUD Design Standards*.
  - b. *Form:* The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the County Attorney. The Chair of the Plat Committee shall sign the conditions of approval instrument.
  - c. *Recording:* The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the Primary Plat. The Plan Commission Office shall deliver a copy of the recorded conditions of approval instrument to the petitioner within thirty (30) days of recording.
  - d. *Modification or Termination:* The Plat Committee may not modify or terminate any condition of approval; a condition of approval imposed under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The Plan Commission Office shall prepare and record a conditions of approval modification instrument or conditions of approval termination instrument in the same manner required for a conditions of approval instrument. A modified condition of approval shall be enforced in the same manner as any other condition of approval.
  - e. *Enforcement:* The County may enforce any condition of approval the Plat Committee has imposed as if the condition were a standard of the Unified Development Ordinance.



## Subdivision Control; Primary Plat

10. *Revisions*: Following Plat Committee approval, the petitioner shall submit revised copies of the plans that address the comments and concerns of the Plat Committee. The petitioner shall refer to the application packet to determine the format and number of copies of the revised plans to deliver to the Plan Commission Office.
  11. *Public Notice & Right to Appeal*: Within ten (10) days after Primary Plat approval by the Plat Committee, the Plan Commission Office shall provide for due notice to interested parties of the Plat Committee's approval and of their right to appeal to the Plan Commission. The notice shall be given in the following manner:
    - a. *Published*: The Plan Commission Office shall be responsible for publishing notice pursuant to the Plan Commission Rules of Procedure.
    - b. *Mailed*: The Plan Commission Office shall be responsible for mailing notice pursuant to the Plan Commission Rules of Procedure.
  12. *Notice of Appeal*: An interested party may appeal the Plat Committee approval to the Plan Commission by filing a Notice of Appeal with the Plan Commission not more than ten (10) days after the Plan Commission Office has mailed a copy of the Plat Committee's action to the interested party.
- J. Duration:
1. *Duration*: A Secondary Plat application shall be filed not later than twenty-four (24) months after the date of approval of the Primary Plat, otherwise the Primary Plat approval shall be considered expired.
  2. *Extension*:
    - a. *Administrative*: One (1) extension of up to six (6) months may be authorized by the Executive Director for reason/cause. The petitioner shall submit the request for extension in writing to the Executive Director, and the Executive Director shall make a written determination regarding his decision to extend or deny extension. Both the request and the determination shall be made part of the Primary Plat record.
    - b. *Phasing*: If the Primary Plat identifies that the subdivision is to be developed in phases, then the Executive Director may extend the Primary Plat for up to one (1) year. Additional extensions may be granted by the Plan Commission, but not to exceed an additional four (4) years.
- K. Changes or Amendments:
1. *Primary Plat Amendment*:
    - a. A Primary Plat Amendment shall be required when:
      - i. An increase in the density of the subdivision is proposed (*i.e.* additional lots); or
      - ii. A new right-of-way is proposed; or
      - iii. A right-of-way is proposed to be removed from an approved Primary Plat (Note: per IC 36-7-3-12, if the right-of-way has already been established by way of metes and bounds dedication or on a recorded Secondary Plat, the right-of-way vacation also requires that an ordinance be adopted by the Board of County Commissioners); or
      - iv. The ratio of platted lot area to common area and/or open space is being increased; or
      - v. Any element of the plan that was approved as part of the Primary Plat is proposed to be amended (*e.g.* Common Area Landscape Plan, Subdivision Sign Plan, *etc.*); or
      - vi. The boundary of the subdivision is proposed to be:
        - [a] Expanded to incorporate additional area; or
        - [b] Amended to exclude area originally or subsequently included and for which a Secondary Plat has not been recorded.
    - b. *Procedure*: Primary Plat Amendment applications shall be processed in the same manner as Primary Plat applications.
  2. *Current Standards*: Changes, amendments or resubmittals shall be subject to the County engineering standards in effect at the time the application for such changes, amendment or resubmittal is made.

# Subdivision Control; Secondary Plat or Replat

## 10.34 Subdivision Control; Secondary Plat or Replat

- A. Purpose and Intent: The purpose of the Secondary Plat or Replat section is to outline the procedure employed by the County when considering a petition for the platting of a subdivision. Further, the intent of the Secondary Plat or Replat section is to ensure that the statutory requirements established in the Indiana Code for the subdivision of land are met.
- B. Prerequisites:
1. *Primary Plat*: The Plan Commission or Plat Committee shall have approved the Primary Plat; and the Primary Plat must not be expired.
  2. *Pre-application Meeting*: Not required.
- C. Applicability:
1. No Secondary Plat or Replat of a subdivision of land located within the jurisdiction and territorial limits of the Plan Commission shall be recorded in the County Recorder's Office until the plat shall have been approved by the Plan Commission in accordance with the following requirements, standards, and specifications, and such approval has been entered in writing on the plat by the President of the Plan Commission, Chair of the Plat Committee, or the Executive Director.
  2. *Exceptions*:
    - a. *Easement Vacation*: The Replat procedure shall not be used to vacate platted easements; per IC 36-7-3-16, platted easements are vacated by the Board of County Commissioners (see §10.28: *Easement Vacation*).
- D. Application:
1. *Filing Deadline*: The applicant shall refer to the Schedule of Meeting Dates included with the application packet to determine the filing deadline.
  2. *Application Form*: The applicant shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. *Pre-application Meeting*: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. *Additional Information*: Such other additional information as may be required by the Plan Commission Office to evaluate the application.
  4. *Time Limitation*: The applicant may submit an application within the time provided for appeal under IC 36-7-4-708; however, approval of a Secondary Plat shall not be granted until:
    - a. Thirty (30) days after the approval of a Primary Plat by the Plan Commission; or
    - b. Ten (10) days after:
      - i. The approval of a Primary Plat by the Plat Committee for which a public hearing was held; or
      - ii. The mailing of notice by the Plan Commission Office of the approval of a Primary Plat by the Plat Committee for which a public hearing was not held.
- E. Fees: Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The applicant shall be responsible for paying the fees at the time of application.

# Subdivision Control; Secondary Plat or Replat

## F. Plan Commission Office:

1. *Review of Application:* Upon receipt of a complete application, the Plan Commission Office shall review the application for technical conformity with the standards fixed in the Unified Development Ordinance. The Plan Commission Office shall then:
  - a. Utilize the administrative approval process; or
  - b. Assign the Secondary Plat or Replat to the Plat Committee for approval; or
  - c. Assign the Secondary Plat or Replat to the Plan Commission for approval.
2. *Development Advisory Committee:* Once the Plan Commission Office has determined that it has received a submittal that is sufficiently complete for Development Advisory Committee review, the Plan Commission Office shall place the item on an agenda of the Development Advisory Committee and inform the applicant of the time, date, and place of the meeting.
3. *Complete Submittal:* Once the Plan Commission Office has determined that the applicant has made a complete submittal, the Plan Commission Office shall:
  - a. Assign a docket number;
  - b. Agenda:
    - i. Begin the administrative review process; or
    - ii. Place the item on an agenda of the Plat Committee; or
    - iii. Place the item on an agenda of the Plan Commission.
  - c. Inform the applicant of the time, date, and place of either the Plat Committee meeting or the Plan Commission meeting.
4. *Inspection:* The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of a Secondary Plat or Replat petition.
5. *Department Report:* The Plan Commission Office shall prepare a written report outlining its findings with respect to the Secondary Plat or Replat.
6. *Review:* The Plan Commission Office shall review:
  - a. The written statement and supporting material submitted by the applicant;
  - b. The Primary Plat;
  - c. The Secondary Plat;
  - d. The Replat, when applicable;
  - e. Any commitments or conditions of approval attendant to prior approvals;
  - f. The testimony of the applicant;
  - g. Relevant evidence presented by other persons at the Primary Plat hearing, when applicable;
  - h. The applicable standards of the Unified Development Ordinance;
  - i. The applicable standards of the County's engineering manuals;
  - j. All information presented by the members of the Development Advisory Committee;
  - k. The Plan Commission Office report; and
  - l. Such other additional information as may be required by the Plan Commission Office to evaluate the petition.

## Subdivision Control; Secondary Plat or Replat

### 7. *Decision:*

- a. *Revision:* The Plan Commission Office shall, based upon the facts presented for review, notify the applicant in writing what revisions, changes, or further changes in the application are needed for approval.
  - b. *Approval:* Following the applicant's submittal of revised copies of the plans, the Plan Commission Office shall approve the Secondary Plat or Replat.
  - c. *Sign and Seal:* Upon approval of the Secondary Plat or Replat, the Executive Director or his designee shall sign and seal the plat at the appropriate locations.
  - d. *Notification:* The Plan Commission Office shall then notify the applicant in writing of the Plan Commission Office's actions.
  - e. *Recording:* The applicant shall then file the Secondary Plat or Replat for recording in the County Recorder's office, as required by law.
  - f. *Within thirty (30) days of recording the plat, the applicant shall provide the Plan Commission Office with:*
    - i. A copy of recorded mylar; and
    - ii. A digital copy of the recorded mylar in the format specified by the Plan Commission Office.
8. *Surety Requirement:* In conjunction with the approval of a Secondary Plat or Replat, the applicant shall provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards.*
9. *Record:* The Plan Commission Office shall maintain records of all applications, plans, and permits filed for a Secondary Plat or Replat.

### G. Development Advisory Committee:

1. *Determination:* The Development Advisory Committee shall review Secondary Plat and Replat applications.
2. *Copies:* The applicant shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Development Advisory Committee.
3. *Meeting Date:* The applicant shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Advisory Committee. Incomplete submittals may result in the petition's being held off the Development Advisory Committee's agenda to allow the applicant time to complete the submittal.
4. *Attendance:* The applicant is required to be present at the Development Advisory Committee meeting to address and discuss comments and concerns posed by the committee members. Failure to appear may result in the petition's being continued to the Development Advisory Committee's agenda for the following month.
5. *Revisions:* Following Development Advisory Committee review, the applicant shall submit revised copies of the plans that address the comments and concerns of the Development Advisory Committee. The applicant shall refer to the application packet to determine the format and number of copies of the revised plans to be delivered to the Plan Commission Office.

## Subdivision Control; Secondary Plat or Replat

### H. Plan Commission:

1. *Submittal:* The applicant shall refer to the application packet to determine the format and number of copies of the informational packets to be delivered to the Plan Commission Office for distribution to the members of the Plan Commission. Incomplete submittals may result in the petition's being held off the agenda to allow the applicant time to complete the submittal.
2. *Attendance:* The applicant is required to be present at the Plan Commission meeting to address and discuss comments and concerns posed by the Plan Commission members. Failure to appear shall result in the petition's being dealt with as outlined in the Plan Commission Rules of Procedure.
3. *Public Hearing:* A public hearing is not required.
4. *Review:* At their regularly scheduled public meeting, the Plan Commission shall review:
  - a. The written statement and supporting material submitted by the applicant;
  - b. The Primary Plat;
  - c. The Secondary Plat;
  - d. The Replat, when applicable;
  - e. Any commitments or conditions of approval attendant to prior approvals;
  - f. The testimony of the applicant;
  - g. Relevant evidence presented by other persons at the Primary Plat hearing, when applicable;
  - h. The applicable standards of the Unified Development Ordinance;
  - i. The applicable standards of the County's engineering manuals;
  - j. All information presented by the members of the Development Advisory Committee;
  - k. The Plan Commission Office report; and
  - l. Such other additional information as may be required by the Plan Commission to evaluate the petition.
5. *Decision:*
  - a. *Revision:* The Plan Commission shall, based upon the facts presented for review, notify the applicant in writing what revisions, changes, or further changes in the application are needed for approval.
  - b. *Approval:* Following the applicant's submittal of revised copies of the plans, the Plan Commission shall approve the Secondary Plat or Replat.
  - c. *Sign and Seal:* Upon approval of the Secondary Plat or Replat, the President of the Plan Commission shall sign and seal the plat at the appropriate locations.
  - d. *Notification:* The Plan Commission Office shall then notify the applicant in writing of the Plan Commission's actions.
  - e. *Recording:* The applicant shall then file the Secondary Plat or Replat for recording in the Office of the Recorder of Porter County, as required by law.
  - f. Within thirty (30) days of recording the plat, the applicant shall provide the Plan Commission Office with:
    - i. A copy of recorded mylar; and
    - ii. A digital copy of the recorded mylar in the format specified by the Plan Commission Office.
6. *Surety Requirement:* In conjunction with the approval of a Secondary Plat or Replat, the applicant shall provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards.*

# Subdivision Control; Secondary Plat or Replat

## I. Plat Committee:

### 1. *Jurisdiction:*

- a. Secondary Plat: The Plat Committee may grant Secondary Plat approval to a subdivision of land that:
  - i. Complies in all respects with the approved Primary Plat; and
  - ii. Complies in all respects with the Subdivision Control Ordinance; and
  - iii. Complies in all respects with the remainder of the Unified Development Ordinance.
- b. Replat: The Plat Committee may grant Replat approval to a subdivision of land that:
  - i. Does not involve the opening of a new public way;
  - ii. Does not involve the vacation of a platted public way;
  - iii. Does not increase the number of buildable lots in the subdivision;
  - iv. Complies in all respects with the approved Primary Plat;
  - v. Complies in all other respects with the Subdivision Control Ordinance; and
  - vi. Complies in all other respects with the remainder of the Unified Development Ordinance.

2. *Submittal:* The applicant shall refer to the application packet to determine the format and number of copies of the informational packet to be delivered to the Plan Commission Office for distribution to the members of the Plat Committee. Incomplete submittals may result in the petition's being held off the agenda to allow the applicant time to complete the submittal.

3. *Attendance:* The applicant is required to be present at the Plat Committee meeting to address and discuss comments and concerns posed by the Plat Committee members. Failure to appear shall result in the petition's being dealt with as outlined in the Plan Commission Rules of Procedure.

4. *Public Hearing:* A public hearing is not required.

5. *Review:* At their regularly scheduled meeting, the Plat Committee shall review:

- a. The written statement and supporting material submitted by the applicant;
- b. The Primary Plat;
- c. The Secondary Plat;
- d. The Replat, when applicable;
- e. Any commitments or conditions of approval attendant to prior approvals;
- f. The testimony of the applicant;
- g. Relevant evidence presented by other persons at the Primary Plat hearing, when applicable;
- h. The applicable standards of the Unified Development Ordinance;
- i. The applicable standards of the County's engineering manuals;
- j. All information presented by the members of the Development Advisory Committee;
- k. The Plan Commission Office report; and
- l. Such other additional information as may be required by the Plat Committee to evaluate the petition.

### 6. *Decision:*

- a. Revision: The Plat Committee shall, based upon the facts presented for review, notify the applicant in writing what revisions, changes, or further changes in the application are needed for approval.
- b. Approval: Following the applicant's submittal of revised copies of the plans, the Plat Committee shall approve the Secondary Plat or Replat.
- c. Sign and Seal: Upon approval of the Secondary Plat or Replat, the Chair of the Plat Committee shall sign and seal the plat at the appropriate locations.
- d. Notification: The Plan Commission Office shall then notify the applicant in writing of the Plat Committee's actions.
- e. Recording: The applicant shall then file the Secondary Plat or Replat for recording in the Office of the Recorder of Porter County, as required by law.
- f. Within thirty (30) days of recording the plat, the applicant shall provide the Plan Commission Office with:
  - i. A copy of recorded mylar; and
  - ii. A digital copy of the recorded mylar in the format specified by the Plan Commission Office.

7. *Surety Requirement:* In conjunction with the approval of a Secondary Plat or Replat, the applicant shall provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards*.

# Subdivision Control; Secondary Plat or Replat

## J. Duration:

1. *Recording Deadline:* The applicant shall record an approved Secondary Plat or Replat within one hundred twenty (120) days of approval. If the plat has not been recorded within the prescribed period, the approval shall be considered null and void; and the applicant shall submit a new Secondary Plat or Replat application.
2. *Commencement of Construction:* No construction or site grading shall begin prior to the issuance of an ILP and/or ECP, as required.
3. *Construction Plans; Expiration of Approval:* Construction Plans approved in conjunction with a Secondary Plat or Replat are valid for twenty-four (24) months from the date of approval of the Secondary Plat or Replat. If development of the project has not begun by the end of the two-year period (or by the end of the one-year extension), the approval expires and a new Construction Plans must be submitted for Development Advisory Committee review and approval by the County.
4. *Extension:* The Executive Director may grant one (1) one-year extension for reason/cause. The petitioner shall submit the request for extension in writing to the Executive Director, and the Executive Director shall make a written determination regarding the decision to extend or deny extension. Both the request and the determination shall be made part of the Secondary Plat or Replat record.

## K. Changes or Amendments:

1. *Secondary Plat Amendment:*
  - a. *Applicability:* A Secondary Plat Amendment shall be required when:
    - i. A street name change is proposed; or
    - ii. A subdivision name change is proposed; or
    - iii. A platted address change is proposed; or
    - iv. The Plan Commission Office determines that the proposed change to the recorded Secondary Plat is insufficient to warrant a Replat.
  - b. *Procedure:* Secondary Plat Amendment applications shall be processed in the same manner as Secondary Plat applications.
2. *Replat:*
  - a. *Applicability:* A Replat shall be required when:
    - i. Lots are being joined;
    - ii. Lots are being split (also requires a Primary Plat Amendment); or
    - iii. Platted easements are being modified or vacated (see also *Chapter 10; §Easements*);
    - iv. A public way has been vacated (requires Board of County Commissioners action); or
    - v. Other significant changes to the Secondary Plat are proposed.
  - b. *Procedure:* Replat applications shall be processed in the same manner as Secondary Plat applications.
3. *Current Standards:* Changes, amendments or resubmittals shall be subject to the County engineering standards in effect at the time the application for such changes, amendment or resubmittal is made.

# Subdivision Control; Plat Vacation

## 10.35 Subdivision Control; Plat Vacation

- A. Purpose and Intent: The purpose of the Plat Vacation section is to outline the procedure employed by the County when considering a petition for the vacation of a subdivision. Further, the intent of the Plat Vacation section is to ensure that the statutory requirements established in the Indiana Code for the vacation of a subdivision of land are met.
- B. Prerequisites:
1. *Ownership*: The owner of land in a Secondary Plat may file with the Plan Commission a petition to vacate all or part of the plat pertaining to the land owned by the applicant.
  2. *Pre-application Meeting*: Prior to submitting a Plat Vacation application, the applicant shall meet with the Plan Commission Office to review the zoning classification of the site, review the regulatory ordinances and materials, review the procedures and examine the proposed development of the property. The Plan Commission Office shall aid and advise the applicant in preparing the application and supporting documents as necessary.
- C. Applicability:
1. *Secondary Plat*: The owner of land in a Secondary Plat may file with the Plan Commission a petition to vacate all or part of the Secondary Plat pertaining to the land owned by the applicant.
  2. *Rights-of-way*: The Plat Vacation procedure shall not be used to vacate platted rights-of-way. Rights-of-way shall be vacated pursuant to IC 36-7-3-12.
  3. *Covenants or Commitments*: The Plat Vacation petition may include a request to vacate any recorded covenants or commitments filed as part of the Secondary Plat. The covenants or commitments are then also subject to vacation.
  4. *Easements*: The Plat Vacation procedure shall not be used to vacate platted easements; per IC 36-7-3-16, platted easements are vacated by the Board of County Commissioners. Platted easements shall be vacated pursuant to §10.28: *Easement Vacation*.
  5. *Exceptions*:
    - a. *Public Utilities*: Notwithstanding this Chapter, plat vacation proceedings do not deprive a public utility of the use of all or part of a public way or public place to be vacated, if, at the time the proceedings are instituted, the utility is occupying and using all or part of that public way or public place for the location and operation of its facilities. However, the utility may waive its rights under this Subsection by filing its written consent in the plat vacation proceedings.
    - b. *Easement Vacation*: Per IC 36-7-3-16, platted easements are vacated by the Board of County Commissioners (see §10.28: *Easement Vacation*).
- D. Application:
1. *Filing Deadline*: The applicant shall refer to the Schedule of Meeting Dates included with the application packet to determine the filing deadline.
  2. *Application Form*: The applicant shall submit the completed application to the Plan Commission Office.
  3. *Supporting Documentation*: The application shall include, but not be limited to, the following information and documents:
    - a. *Pre-application Meeting*: The application shall include all documentation specified by the Plan Commission Office during the pre-application meeting.
    - b. *Application Packet*: The application shall include all documentation specified on the application packet unless certain documentation is deemed superfluous by the Plan Commission Office due to the specific circumstances of the particular project.
    - c. *Additional Information*: Such other additional information as may be required by the Plan Commission Office to evaluate the application.
  4. *Time Limitation*: After the termination of a Plat Vacation proceeding under this Chapter, a subsequent vacation proceeding affecting the same property and asking for the same relief may not be initiated for two (2) years.



## Subdivision Control; Plat Vacation

- E. Fees: Once the Plan Commission Office has received a complete submittal, the Executive Director shall calculate the total of the application fee and any other applicable fees. The applicant shall be responsible for paying the fees at the time of application.
- F. Plan Commission Office:
1. *Review of Application*: Upon receipt of a complete application, the Plan Commission Office shall review the application for technical conformity with the standards fixed in the Unified Development Ordinance.
  2. *Development Advisory Committee*: Once the Plan Commission Office has determined that it has received a submittal that is sufficiently complete for Development Advisory Committee review, the Plan Commission Office shall place the item on an agenda of the Development Advisory Committee and inform the applicant of the time, date, and place of the meeting.
  3. *Complete Submittal*: Once the Plan Commission Office has determined that the applicant has made a complete submittal, the Plan Commission Office shall:
    - a. Assign a docket number;
    - b. Place the item on an agenda of the Plan Commission.
    - c. Inform the applicant of the time, date, and place of either the Plat Committee meeting or the Plan Commission meeting.
  4. *Inspection*: The Plan Commission Office may inspect at any reasonable time any structure, other improvement, or site that is the subject of a Plat Vacation petition.
  5. *Department Report*: The Plan Commission Office shall prepare a written report outlining its findings with respect to the Plat Vacation. The Plan Commission Office report may incorporate, or incorporate by reference, any items that remain outstanding with the other members of the Development Advisory Committee.
  6. *Record*: The Plan Commission Office shall maintain records of all applications, plans, and permits filed for a Plat Vacation.
- G. Development Advisory Committee:
1. *Determination*: The Development Advisory Committee shall review Plat Vacation petitions.
  2. *Copies*: The applicant shall refer to the application packet to determine the format and number of copies of the plans to be delivered to the Plan Commission Office for distribution to the members of the Development Advisory Committee.
  3. *Meeting Date*: The applicant shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Development Advisory Committee. Incomplete submittals may result in the petition's being held off the Development Advisory Committee's agenda to allow the applicant time to complete the submittal.
  4. *Attendance*: The applicant is required to be present at the Development Advisory Committee meeting to address and discuss comments and concerns posed by the committee members. Failure to appear may result in the petition's being continued to the Development Advisory Committee's agenda for the following month.
  5. *Revisions*: Following Development Advisory Committee review, the applicant shall submit revised copies of the plans that address the comments and concerns of the Development Advisory Committee. The applicant shall refer to the application packet to determine the format and number of copies of the revised plans to be delivered to the Plan Commission Office.

# Subdivision Control; Plat Vacation

## H. Plan Commission:

1. *Public Notice:*
  - a. *Responsibility:* The applicant shall be responsible for publishing and mailing public notice pursuant to the Plan Commission Rules of Procedure. The Plan Commission Office shall be responsible for posting public notice on site pursuant to the Plan Commission Rules of Procedure.
  - b. *Mailed:* In addition to those persons identified as required to receive notice in the Plan Commission Rules of Procedure, every owner of property within the area of the Secondary Plat which is the subject of the petition shall also receive mailed notice.
  - c. *Proof:* The applicant shall be responsible for returning proof of published and mailed notice to the Plan Commission Office. The applicant shall refer to the application packet to determine the deadline for submittal of proof of notice. Failure to submit proof of notice by the deadline may result in the petition's being continued to the Plan Commission's agenda for the following month.
2. *Submittal:* The applicant shall refer to the application packet to determine the format and number of copies of the informational packet to be delivered to the Plan Commission Office for distribution to the members of the Plan Commission.
3. *Meeting Date:* The applicant shall refer to the Schedule of Meeting Dates to determine the filing deadline for any given meeting of the Plan Commission. Incomplete submittals shall result in the petition's being held off the Plan Commission's agenda to allow the applicant time to complete the submittal.
4. *Attendance:* The applicant or the applicant's representative is required to be present at the Plan Commission meeting to address and discuss comments and concerns posed by the Plan Commission members. Failure to appear shall result in the petition's being dealt with as outlined in the Plan Commission Rules of Procedure.
5. *Public Hearing:* A public hearing shall be held in accordance with the Plan Commission Rules of Procedure; however, regardless of overall time limits set within the Plan Commission Rules of Procedure, each owner of land in the Secondary Plat shall have an opportunity to comment on the petition, subject to individual time limits.
6. *Grounds for Remonstrances and Objections:* A remonstrance or objection may be filed or raised by any person aggrieved by the proposed Plat Vacation, but only on one (1) or more of the following grounds:
  - a. The Plat Vacation would hinder the growth or orderly development of the unit or neighborhood in which it is located or to which it is contiguous;
  - b. The Plat Vacation would make access to the lands of the aggrieved person by means of public way difficult or inconvenient;
  - c. The Plat Vacation would hinder the public's access to a church, school, or other public building or place; and/or
  - d. The Plat Vacation would hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous.
7. *Decision:* The Plan Commission shall:
  - a. Approve the petition;
  - b. Approve the petition with conditions and/or commitments;
  - c. Deny the petition; or
  - d. Continue the petition to a definite future meeting date.

# Subdivision Control; Plat Vacation

8. *Findings of Fact:*
  - a. The Plan Commission shall approve the petition for Plat Vacation of all or part of a Secondary Plat only upon making written findings that:
    - i. Conditions in the platted area have changed as to defeat the original purpose of the Secondary Plat;
    - ii. It is in the public interest to vacate all or part of the Secondary Plat; and
    - iii. The value of that part of the land in the Secondary Plat not owned by the applicant will not be diminished by vacation.
  - b. Certification: The findings shall be signed by the President of the Plan Commission.
  - c. Recording: The Plan Commission shall furnish a copy of an approved decision to the County Recorder for recording. This copy may be an Exhibit attached to the plat vacation instrument recorded by the petitioner per §10(b): *Recording*.
  - d. Notification: The Plan Commission shall furnish the applicant with a copy of its decision.
9. *Surety Requirement:* In conjunction with the approval of a Plat Vacation, the applicant shall provide financial surety for all public improvements pursuant to *Chapter 10; §Surety Standards*.
10. *Plat Vacation Instrument:*
  - a. Certification: The President of the Plan Commission and the owner of the vacated property shall sign the plat vacation instrument.
  - b. Recording: The applicant shall record the plat vacation instrument in the County Recorder's office within thirty (30) days of the approval of the Plat Vacation. The applicant shall deliver a copy of the recorded plat vacation instrument to the Plan Commission Office before applying for any permits for the site.
11. *Commitments:*
  - a. Acceptance: In conjunction with the approval of a Plat Vacation, the Plan Commission may permit or require the applicant to make written commitments concerning the use or development of the parcel.
  - b. Form: The applicant shall prepare the commitment instrument in a form approved by the County Attorney. The applicant and the President of the Plan Commission shall sign the commitment instrument.
  - c. Recording: The applicant shall record the commitment instrument in the County Recorder's office within thirty (30) days of the approval of the Plat Vacation. The applicant shall deliver a copy of the recorded commitment instrument to the Plan Commission Office before applying for any permits for the site.
  - d. Modification or Termination: A commitment made under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The applicant shall prepare and record a commitment modification instrument or commitment termination instrument in the same manner required for a commitment instrument. A modified commitment shall be enforced in the same manner as any other commitment.
  - e. Enforcement: The County may enforce any commitment the Plan Commission has accepted as if the commitment were a standard of the Unified Development Ordinance.

## Subdivision Control; Plat Vacation

### 12. *Conditions of Approval:*

- a. **Requirement:** In conjunction with the approval of a Plat Vacation, the Plan Commission may impose conditions of approval concerning the use or development of the parcel.
- b. **Form:** The Plan Commission Office shall prepare the conditions of approval instrument in a form approved by the County Attorney. The President of the Plan Commission shall sign the conditions of approval instrument.
- c. **Recording:** The Plan Commission Office shall record the conditions of approval instrument in the County Recorder's office within thirty (30) days of the approval of the Plat Vacation. The Plan Commission Office shall deliver a copy of the recorded conditions of approval instrument to the applicant within thirty (30) days of recording.
- d. **Modification or Termination:** A condition of approval imposed under this section may be modified or terminated only by a decision of the Plan Commission made at a public hearing. Public notice of the public hearing shall be provided per the Plan Commission Rules of Procedure. The Plan Commission Office shall prepare and record a conditions of approval modification instrument or conditions of approval termination instrument in the same manner required for a conditions of approval instrument. A modified condition of approval shall be enforced in the same manner as any other condition of approval.
- e. **Enforcement:** The County may enforce any condition of approval the Plan Commission has imposed as if the condition were a standard of the Unified Development Ordinance.

I. Duration: Not applicable.

J. Changes or Amendments: Not applicable.

# Schedule of Fees

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## 10.36 Schedule of Fees

- A. Cross Reference: The fees cited in the Unified Development Ordinance can be found in *the Porter County Code of Ordinances*. The aforementioned section of the *Porter County Code of Ordinances* is hereby incorporated into the Unified Development Ordinance by reference.
- B. Availability: The official fee schedule shall be available to the public in the County Clerk's office and the Plan Commission Office.
- C. Payment of Fees: Until all applicable fees, charges, and expenses have been paid in full, no final action shall be taken on any permit application, appeal, or application.

