

ORDINANCE NO. 2020-34

AN ORDINANCE CONCERNING ZONING MAPS WITHIN THE ZONING ORDINANCE OF THE TOWN OF WHITESTOWN, INDIANA

Zoning Map Amendments
PC20-044-ZA

WHEREAS, the Petitioner, Braun Property Development, LLC, filed its Zoning Amendment Application before the Whitestown Plan Commission seeking to rezone approximately 438.19 acres, more or less, in the Town of Whitestown, Indiana, **from the AG (Agriculture) and R3 (Medium Density Single Family) Zoning Classifications to the MU-COR (Mixed Use- Commercial, Office, and Residential) Zoning Classification**; and

WHEREAS, pursuant to Indiana Code § 36-7-4-608, the Whitestown Plan Commission conducted the required public hearing and determined a **favorable recommendation**, by a 7-0 vote, on November 9, 2020; and

WHEREAS, the Whitestown Plan Commission certified its favorable recommendation to the Whitestown Town Council on November 11, 2020; and

WHEREAS, pursuant to Indiana Code § 36-7-4-608, the Town Council of the Town of Whitestown, having considered the application and the recommendation of the Whitestown Plan Commission, now adopts the proposal and approves the requested rezoning amendment.

IT IS THEREFORE CONSIDERED, ORDAINED, AND ADOPTED as follows:

- Section 1.** That the Applicant is Braun Property Development, LLC on behalf of Sandra Essex, Braun Timber Industries, LLC, and Braun Property Development, LLC property owners.
- Section 2.** That the Applicant seeks to have three separate parcels of property rezoned from the AG (Agriculture) and/or R3 (Medium Density Single Family) Zoning Classifications to the MU-COR (Mixed Use- Commercial, Office, and Residential) Zoning Classification.
- Section 3.** Parcel West-A is described in the attached Exhibit 1, incorporated herein by reference ("Parcel West-A"), and the Plan Commission recommended rezoning Parcel West-A to the MU-COR (Mixed Use- Commercial, Office, and Residential) Zoning Classification.
- Section 4.** Parcel West-B is described in the attached Exhibit 2, incorporated herein by reference ("Parcel West-B"), and the Plan Commission recommended

rezoning Parcel West-B to the MU-COR (Mixed Use- Commercial, Office, and Residential) Zoning Classification.

Section 5. Parcel East-C is described in the attached Exhibit 3, incorporated herein by reference ("Parcel East C"), and the Plan Commission recommended rezoning Parcel East-C to the MU-COR (Mixed Use- Commercial, Office, and Residential) Zoning Classification.

Section 6. In order to induce the Town Council and as a condition of granting the requested rezone of Parcels West-A, West-B, and East-C, the Applicant has made certain written commitments attached hereto as Exhibit 4 and incorporated herein as a part of this Ordinance ("Commitments"). The rezone is subject to and contingent upon the Commitments, as applicable. The Applicant shall further record this Ordinance and the Commitments in the chain of title for each of Parcels West-A, West-B, and East-C.

Section 7. That the Town Council of Whitestown has paid reasonable regard to the comprehensive plan; current conditions and the character of current structures and uses in each district; the most desirable use for which the land in each district is adapted; the conservation of property values throughout the jurisdiction; and responsible development and growth.

Section 8. That the Town Council hereby approves the requested amendment to the zoning map with respect to Parcel West-A, such that Parcel West-A is zoned MU-COR, subject to the Commitments, upon completion of annexation of Parcel West-A into the Town of Whitestown.

Section 9. That the Town Council hereby approves the requested amendment to the zoning map with respect to Parcel West-B, such that Parcel West-B is zoned MU-COR, subject to the Commitments, upon completion of annexation of Parcel West-B into the Town of Whitestown.

Section 10. That the Town Council hereby approves the requested amendment to the zoning map with respect to Parcel East-C, such that Parcel East-C is zoned MU-COR, subject to the Commitments.

Section 11. This Ordinance shall be in full force and effect from and after its passage as provided by applicable law, and upon presentation of proof by Petitioner to the Town that this Ordinance and the Commitments have been recorded; provided, however, that (i) the rezone of Parcel West-A under this Ordinance shall become effective upon the completion of annexation of Parcel West-A as set forth in Section 8 hereof, and (ii) the rezone of Parcel West-B under this Ordinance shall become effective upon the completion of annexation of Parcel West-B as set forth in Section 9 hereof.

Section 12. Any ordinances or parts thereof in conflict herewith are hereby superseded. The terms and provisions of this Ordinance, and the areas rezoned under this Ordinance, are severable, and the invalidity or unenforceability of any term, provision, or area shall not affect the remaining portions of this Ordinance.

ALL OF WHICH IS ADOPTED this ____ day of _____, 20____, by the Town Council of the Town of Whitestown, Indiana.

TOWN COUNCIL OF WHITESTOWN, INDIANA.

Clinton Bohm, President

ATTEST:

Matt Sumner, Town Clerk-Treasurer

Ordinance prepared by Brittany Garriott, Town Planner

Exhibit 1

Legal Description for the Area Identified in the Staff Report for Case No. PC20-044-ZA as “West-A (To be Annexed)”

RECORD LAND DESCRIPTION: (INSTRUMENT NUMBER 0315475)

A part of the East Half of Section 13, Township 18 North, Range 1 East, described as follows, to-wit:

Commencing at the Northwest corner of the Southeast Quarter of the Northeast Quarter of Section 13, Township 18 North, Range 1 East, and running South 32.62 chains to the North line of the former right-of-way of the Terre Haute, Indianapolis and Eastern Tract Line, thence South 64 1/2 degrees East 22.45 chains, with the North right-of-way, thence North 42.25 chains, thence West 20.19 chains to the Point of Beginning, containing 75.63 acres.

Exhibit 2

Legal Description for the Area Identified in the Staff Report for Case No. PC20-044-ZA as "West-B (To be Annexed)"

MODERNIZED LAND DESCRIPTION:

A part of Section 13, Township 18 North, Range 1 East, Worth Township, Boone County, Indiana, being that 78.73 acre parcel surveyed by Jonathan E. Hause, P.S. 20600040 and shown on a plat of survey certified on March 6, 2019 as Hause Surveying and Engineering Job Number 19S111 (all monuments herein referenced are as set or found on the aforesaid Hause Survey), being more particularly described as follows:

Beginning at a 5/8-inch diameter rebar with blue plastic cap stamped "HAUSE PLS20600040" (hereafter called capped rebar) set marking the Southwest corner of the Northeast Quarter of the Southwest Quarter of said Section 13; thence North 00 degrees 36 minutes 15 seconds West 1632.93 feet along the West line of the Northeast Quarter of the Southwest Quarter of said Section 13 and along the West line of the Southeast Quarter of the Northwest Quarter of said Section 13 to the Southwesterly Right-of-way line of the former Cleveland, Cincinnati, Chicago and St. Louis Railroad and a capped rebar; thence South 64 degrees 27 minutes 25 seconds East 1493.16 feet along the Southwesterly Right-of-way line of said railroad to the East line of the Southwest Quarter of said Section 13; thence North 00 degrees 32 minutes 10 seconds West 5.57 feet along the East line of the Southwest Quarter of said Section 13 to the Southwesterly Right-of-way line of said railroad; thence South 64 degrees 27 minutes 25 seconds East 1483.82 feet along the Southwesterly Right-of-way line of said railroad to the East line of the West Half of the Southeast Quarter of said Section 13 and a found railroad spike; thence South 00 degrees 48 minutes 52 seconds East 857.60 feet along the East line of the West Half of the Southeast Quarter of said Section 13 to a magnetic nail with metal washer stamped "HAUSE PLS20600040"; thence North 88 degrees 08 minutes 52 seconds West 1583.00 feet to a capped rebar; thence North 00 degrees 48 minutes 52 seconds West 449.00 feet to a capped rebar; thence South 88 degrees 28 minutes 31 seconds West 1092.43 feet to the West line of the Southeast Quarter of the Southwest Quarter of said Section 13 and a capped rebar; thence North 00 degrees 36 minutes 15 seconds West 31.70 feet along the West line of the Southeast Quarter of the Southwest Quarter of said Section 13 to the Point of Beginning.

Containing 78.73 acres, more or less and being Subject to all Legal Highways, Rights-of-way and Easements of Record.

AND

MODERNIZED LAND DESCRIPTION:

A part of Section 13, Township 18 North, Range 1 East, Worth Township, Boone County, Indiana, being that 7.53 acre parcel surveyed by Jonathan E. Hause, P.S. 20600040 and shown on a plat of survey certified on March 5, 2019 as Hause Surveying and Engineering Job Number 19S110 (all monuments herein referenced are as set or found on the aforesaid Hause Survey), being more particularly described as follows:

Commencing at a Harrison Monument found marking the Southwest corner of the Northwest Quarter of said Section 13; thence North 00 degrees 34 minutes 28 seconds West 963.28 feet along the West line of the Northwest Quarter of said Section 13 to the Southwesterly Right-of-way line of the former Cleveland, Cincinnati, Chicago and St. Louis Railroad and a magnetic nail with metal washer stamped "HAUSE PLS20600040" (hereafter called mag nail with washer), said point also being the Point of Beginning of this description; thence continuing North 00 degrees 34 minutes 28 seconds West 84.24 feet to the Northeasterly Right-of-way line of said railroad and a mag nail with washer; thence South 63 degrees 29 minutes 26 seconds East 413.35 feet along the Northeasterly Right-of-way line of said railroad to the point of curvature of an arc to the left having a radius of 19068.59 feet and a capped rebar; thence Southeasterly 321.64 feet along said arc and the Northeasterly Right-of-way line of said railroad to the point of tangency and a capped rebar, said arc also having a long chord bearing South 63 degrees 58 minutes 25 seconds East 321.64 feet; thence South 64 degrees 27 minutes 25 seconds East 3739.50 feet along the Northeasterly Right-of-way line of said railroad to the East line of the West Half of the Southeast Quarter of said Section 13 and a mag nail with washer; thence South 00 degrees 48 minutes 52 seconds East 78.12 feet along the East line of the West Half of the Southeast Quarter of said Section 13 to the Southwesterly Right-of-way line of said railroad and a found railroad spike; thence North 64 degrees 27 minutes 25 seconds West 1483.82 feet along the Southwesterly Right-of-way line of said railroad to the West line of the Southeast Quarter of said Section 13 and a capped rebar; thence South 00 degrees 32 minutes 10 seconds East 5.57 feet along the West line of the Southeast Quarter of said Section 13 to the Southwesterly Right-of-way line of said railroad and a capped rebar; thence North 64 degrees 27 minutes 25 seconds West 2292.81 feet along the Southwesterly right-of-way line of said railroad to the point of curvature of an arc to the right having a radius of 19143.59 feet and a capped rebar; thence Northwesterly 322.91 feet along said arc and the Southwesterly Right-of-way line of said railroad to the point of tangency and a capped rebar, said arc also having a long chord bearing North 63 degrees 58 minutes 25 seconds West 322.90 feet; thence North 63 degrees 29 minutes 26 seconds West 374.99 feet along the Southwesterly Right-of-way line of said railroad to the Point of Beginning.

Containing 7.53 acres, more or less and being Subject to all Legal Highways, Rights-of-way and Easements of Record.

Exhibit 3

Legal Description for the Area Identified in the Staff Report for Case No. PC20-044-ZA as "East-C"

RECORD LAND DESCRIPTION: (INSTR. # 2019011779, PARCEL 1)

One Hundred Ten (110) acres of uniform width off of and across the entire West side of the Northwest Quarter of Section 17, Township 18 North, Range 2 East of the Second Principal Meridian, subject to Legal Highways, Rights-of-way and Easements, located in Worth Township, Boone County, Indiana.

EXCEPT THEREFORM: (NOW D.R. 217, PG. 684)

A part of the Northwest Quarter of Section 17, Township 18 North, Range 2 East of the Second Principal Meridian, in Worth Township, Boone County, Indiana, and more particularly described as follows, to-wit:

BEGINNING on the West line of said Tract 570.54 feet North of the Southwest corner thereof, thence deflecting Right 89 degrees 10 minutes 00 seconds East measure along an existing fence line and its extension a distance of 586.00 feet; thence Northerly 210.90 feet, thence deflecting Left 87 degrees 30 minutes 00 seconds measure along an existing fence line and its extension a distance of 586.60 feet to the West line of the Northwest Quarter of aforesaid Section 17, thence South on said West line 251.00 feet to the Place of Beginning, containing 2.918 acres, more or less.

AND

RECORD LAND DESCRIPTION: (INSTR. # 200900004175)

The Northwest Quarter of the Southwest Quarter of Section 17, Township 18 North, Range 2 East, Worth Township, Boone County, Indiana, containing 40 acres, more or less.

The West Half of the East Half of the Southwest Quarter of Section 17, Township 18 North, Range 2 East, Worth Township, Boone County, Indiana, containing 40 acres, more or less.

The East Half of the East Half of the Southwest Quarter of Section 17, Township 18 North, Range 2 East, Worth Township, Boone County, Indiana, containing 40 acres, more or less.

The Southwest Quarter of the Southwest Quarter of Section 17, Township 18 North, Range 2 East of the Second Principal Meridian, containing 40 acres, more or less, EXCEPT the following described real estate, to-wit: Commencing at the Southwest corner of said Quarter Quarter Section, Township and Range aforesaid and running thence North 300 feet, running thence East 171 feet, running South 300 feet, running West 171 feet to the place of beginning, containing 1.17 acres, more or less, leaving after said exception 38.83 acres, more or less, but subject to legal highways, rights-of-way and easements, located in Worth Township, Boone County, Indiana.

EXCEPT THEREFROM:

A part of the Southwest Quarter of the Southwest Quarter of Section 17, Township 18 North, Range 2 East, Worth Township, Boone County, Indiana, more fully described:

Commencing at the Southeast corner of the Southwest Quarter of said Section 17; thence South 90 degrees 00 minutes 00 seconds West along the Section line and approximate centerline of County Road 300 South, a distance of 1325.20 feet to the Southeast corner of the Southwest Quarter of the Southwest Quarter of said Section 17; thence continuing South 90 degrees 00 minutes 00 seconds West along the Section line and approximate centerline of County Road 300 South, a distance of 558.31 feet to the Point of Beginning; thence continuing South 90 degrees 00 minutes 00 second West, along the Section line and approximate centerline of County Road 300 South, a distance of 140.69 feet; thence North 00 degrees 00 minutes 00 seconds West, along the East described line of the Collier Property, as recorded in Deed Record 241, Page 254, a distance of 140 feet; thence South 90 degrees 00 minutes 00 seconds West, along the north described line of said Collier Property, a distance of 106.00 feet; thence North 00 degrees 00 minutes 00 seconds West, a distance of 123.22 feet; thence North 90 degrees 00 minutes 00 seconds East 246.69 feet; thence South 00 degrees 00 minutes 00 seconds east, a distance of 263.22 feet to the Point of Beginning. Subject to the right of way of County Road 300 South, on and along the Entire Southernmost boundary.

EXCEPT: (INSTR. # 0320565)

A part of the Southwest Quarter of the Southwest Quarter of Sect. 17, Township 18 North, Range 2 East of the Second Principal Meridian & more particularly described as follows: Beginning at a point 699 feet West of the Southeast corner of the Southwest Quarter of the Southwest Quarter of Sect. 17, Township 18 North, Range 2 East, and run thence West 106 feet, following the Section line and the center of the public road; thence North 140 feet to a point; thence East 106 feet to a point; thence South 140 feet to the Section line, center of the public road and the place of beginning. Located in Worth Township, Boone County, Indiana. Containing 0.34 acres, more or less.

Containing after all exceptions 157.49 acres, more or less, and being subject to all Legal Highways, Rights-of-way and Easements of Record.

AND

A part of the Southwest Quarter of the Southwest Quarter of Section 17, Township 18 North, Range 2 East of the Second Principal Meridian and more particularly described as follows: Beginning at a point 699 feet West of the Southeast corner of the Southwest Quarter of the Southwest Quarter of Section 17, Township 18 North, Range 2 East, and run thence West 106 feet, following the Section line and center of the public road; thence North 140 feet to a point; thence East 106 feet to a point, thence South 140 feet to the Section line, center of the public road and the place of beginning, located in Worth Township, Boone County, Indiana. Containing 0.34 acres, more or less.

AND

A part of the Southeast Quarter of the Southeast Quarter of Section 18, Township 18 North, Range 2 East of the Second Principal Meridian, situated in Worth Township, Boone County, Indiana.

Beginning at a point 529.5 feet North of the Southeast corner of Section 18; and run thence West, at right angles to section line, 175.5 feet, thence North 140 feet, thence East 175.5 feet to the center of public road and the section line, thence South on section line 140 feet to the place of beginning.

AND

A PART OF THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 18 NORTH, RANGE 2 EAST, OF THE SECOND PRINCIPAL MERIDIAN, IN BOONE COUNTY, INDIANA, BEING THAT PART OF 117.99+/- ACRES TRACT OF LAND SHOWN ON THE PLAT OF SURVEY CERTIFIED BY TERRY D. WRIGHT, INDIANA REGISTERED PROFESSIONAL LAND SURVEYOR LS#9700013 ON 03/03/2020 BY HAMILTON DESIGNS, LLC PROJECT NUMBER 2019-0340 (ALL REFERENCES TO MONUMENTS AND COURSES HEREIN AS SHOWN ON SAID PLAT OF SURVEY) MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER; THENCE NORTH 00 DEGREES 28 MINUTES 11 SECONDS WEST ON AND ALONG THE EAST LINE OF SAID QUARTER SECTION 480.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIBED PARCEL; THENCE SOUTH 88 DEGREES 21 MINUTES 53 SECONDS WEST 175.50 FEET; THENCE SOUTH 00 DEGREES 28 MINUTES 12 SECONDS EAST 280.00 FEET; THENCE SOUTH 88 DEGREES 21 MINUTES 51 SECONDS WEST 314.50 FEET; THENCE NORTH 00 DEGREES 28 MINUTES 11 SECONDS WEST 269.51 FEET; THENCE SOUTH 88 DEGREES 21 MINUTES 51 SECONDS WEST 94.64 FEET; THENCE SOUTH 75 DEGREES 31 MINUTES 36 SECONDS WEST 227.00 FEET; THENCE NORTH 26 DEGREES 44 MINUTES 39 SECONDS WEST 627.09 FEET; THENCE NORTH 57 DEGREES 55 MINUTES 44 SECONDS EAST 136.89 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 53 SECONDS WEST 50.38 FEET; THENCE NORTH 89 DEGREES 40

MINUTES 07 SECONDS EAST 129.43 FEET TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT; WITH A RADIUS OF 50.00 FEET, SUBTENDED BY A CHORD BEARING OF SOUTH 87 DEGREES 15 MINUTES 24 SECONDS EAST AND A CHORD DISTANCE OF 93.22; THENCE ON SAID CURVE AN ARC LENGTH OF 194.10 FEET ; THENCE NORTH 89 DEGREES 39 MINUTES 34 SECONDS EAST 127.44 FEET; THENCE NORTH 00 DEGREES 14 MINUTES 51 SECONDS WEST 29.12 FEET; THENCE NORTH 88 DEGREES 41 MINUTES 00 SECONDS EAST 440.14 FEET; THENCE SOUTH 00 DEGREES 28 MINUTES 11 SECONDS EAST 587.41 FEET; THENCE NORTH 89 DEGREES 31 MINUTES 49 SECONDS EAST 175.50 FEET TO THE EAST LINE OF SAID QUARTER SECTION; THENCE SOUTH 00 DEGREES 28 MINUTES 11 SECONDS EAST ALONG SAID LINE 49.50 FEET TO THE POINT OF BEGINNING OF THIS DESCRIBED PARCEL, CONTAINING 13.80 ACRES MORE OR LESS.

Exhibit 4

Commitments

ZONING COMMITMENTS

Case No. PC20-044-ZA

1. Petitioner commits and agrees that there shall be no commercial uses permitted within the areas shown on the attached Exhibit A and identified in the Staff Report for PC20-044-ZA (the "Staff Report") as "West-A (To Be Annexed)" and "West-B (To Be Annexed)".
2. Petitioner commits and agrees that in connection with the development of the area shown on the attached Exhibit B and identified in the Staff Report as "East-C", the following portions of "East-C" shall be reserved for park or open space uses:
 - a. the approximately 8 – 10 acres located in the northwest corner of Jackson Run North as shown on the attached Exhibit C as "Jackson Run Park (North)"; and
 - b. the portion of the approximately 46.2 acres as shown on the attached Exhibit C as "Jackson Run Park (South)" which is owned by Petitioner.

Braun Property Development, LLC

By: _____

Adam Braun
Title: President

Braun Property Development, LLC

By: _____

Brian J. Tushy
Title: Attorney

Exhibit A

West-A (To Be Annexed)



West-B (To Be Annexed)



Exhibit B

East-C



Exhibit C

