

**ORDINANCE NO. 2022- 28**

**AN ORDINANCE AMENDING ZONING MAPS WITHIN THE ZONING ORDINANCE  
OF THE TOWN OF WHITESTOWN, INDIANA**

Zoning Map Amendments  
PC22-032-ZA

WHEREAS, the Petitioner, Platinum Properties Management Company, LLC., filed its Zoning Amendment Application before the Whitestown Plan Commission seeking to rezone approximately 9.97 acres, more or less, in the Town of Whitestown, Indiana, **from the General Business (GB) and General Agriculture (AG) Zoning Classifications to the Planned Unit Development – Ellis Acres (PUD) Zoning Classification**; and

WHEREAS, pursuant to Indiana Code § 36-7-4-608, the Whitestown Plan Commission conducted the required public hearing and determined No Recommendation, by a 4-1 vote, on July 11, 2022; and

WHEREAS, the Whitestown Plan Commission certified No Recommendation to the Whitestown Town Council on July 11, 2022; and

WHEREAS, after the required public hearing and the Whitestown Plan Commission certified their No Recommendation, the Applicant revised and resubmitted their PUD request, a copy of which is attached hereto as Exhibit B; 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 as revised and described in Exhibit B.

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

**Section 1.** That the Applicant is Platinum Properties Management Company, LLC. on behalf of Ellis Acres, LLC., Owner.

**Section 2.** That the Applicant seeks to have the described property attached hereto as Exhibit A, which is currently located in the General Business (GB) and General Agriculture (AG) Zoning Classifications to the Planned Unit Development – Ellis Acres (PUD) Zoning Classification;

**Section 3.** Pursuant to Indiana Code § 36-7-4-1500 series, a PUD District ordinance to be known as the Ellis Acres Planned Unit Development District attached hereto as Exhibit B, is hereby adopted for the property. Pursuant to Indiana Code § 36-7-4-1509 (a)(1), the purpose of this Ordinance is to express in general terms the development requirements that will apply to the development of the real property included in this District Area.

**Section 4.** In order to induce to the Town Council and as a condition of granting the requested rezone of the Property, the Applicant has made certain written commitments attached hereto as Exhibit C and incorporated herein as a part of this Ordinance ("Commitments"). The Applicant shall further record this Ordinance and the Commitments in the chain of title for the Property.


**Section 5.** 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 6.** That the Town Council hereby adopts the amendment to the zoning map with respect to the Property, such that the Property is rezoned to Planned Unit Development – Ellis Acres (PUD) Zoning Classification.

**Section 7.** This Ordinance shall be in full force and effect from and after its passage and upon presentation of proof by Petitioner to the Town that this Ordinance and the Commitments have been recorded.

ALL OF WHICH IS ADOPTED this 14<sup>th</sup> day of September, 2022, by the Town Council of the Town of Whitestown, Indiana.

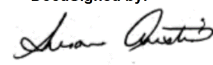
TOWN COUNCIL OF WHITESTOWN, INDIANA.

DocuSigned by:  
  
0679437181F34FA...  
Clinton Bohm, President

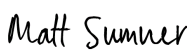
DocuSigned by:  
  
EF803D77909324A...  
Eric Nichols

Eric Miller, Vice President

Jeff Wishek

DocuSigned by:  
  
47D9F6C45D254F4...  
Susan Austin

ATTEST:

DocuSigned by:  
  
049483A78E9B4B3...  
Matt Sumner, Town Clerk-Treasurer

*Ordinance prepared by Jill Conniff, Planning Staff*

## **Exhibit A**

---

### **Legal Description**

#### **Tract I**

A part of the northwest quarter of the southeast quarter of Section 7, Township 17 North, Range 2 East, Second Principal Meridian, and more particularly described as follows, to wit: Beginning at the northwest corner of the northwest quarter of the southeast quarter of said Section 7, and run thence east 537.25 feet, then south 1306.5 feet to the South line of said quarter quarter section, thence west 538 feet, thence north 1304 feet to the place of beginning, containing 16.12 acres more or less but subject to all legal highways, rights of way and easements of record.

Excepting from Tract 1, the following

A part of the northwest quarter of the southeast quarter of Section Seven (7), Township Seventeen (17) North, Range two (2) East of the Second Principal Meridian, situated in Eagle Township, Boone County, Indiana, and containing 11.36 acres, more or less, and more particularly described as follows: Beginning at a point 385 feet south of the northwest corner of the northwest quarter of the southeast quarter of Section 7, Township 17 North, Range 2 East and run thence south 919 feet; thence east 538 feet; thence north 921.50 feet; thence west 538.50 feet to the place of beginning.

#### **Tract II**

A part of the north half of the Southeast Quarter of Section Seven (7), Township Seventeen (17) north, Range Two (2) East of the Second Principal Meridian, situated in Eagle Township, Boone County, Indiana, and 5.00 acres, more or less, and particularly described as follows: Beginning at a point 537.25 feet east of the northwest corner of the northwest quarter of the southeast quarter of Section 7, Township 17 North, Range 2 East, and run thence east 224.20 feet to the center of State Road #52 as existing in 1943, thence south 41 degrees 42 minutes east 657.75 feet to a point in the center of U.S. #52 as existing in 1943, thence west 670 feet to an existing fence, thence north 490 feet following said fence to the place of beginning.

**Exhibit B**

---

# **Ellis Acres Planned Unit Development Ordinance**

## **ARTICLE 1**

### **ELLIS ACRES PUD**

#### **SECTION 1.1. LEGISLATIVE INTENT.**

Having given reasonable regard to (i) the comprehensive plan, (ii) current conditions and the character of current structures and uses in the Real Estate, (iii) the most desirable use for which the Real Estate is adapted, (iv) conservation of property values throughout the Town of Whitestown, and (v) responsible development and growth, it is the intent of the WPC in recommending, and the Town Council in adopting, to:

- A. Encourage improved land development and building site design;
- B. Encourage and allow a variety of innovative uses, building types, and arrangements;
- C. Allow development of land areas so planned, located, or situated as to merit and justify consideration as a PUD district.

#### **SECTION 1.2. PROJECT NARRATIVE.**

The Project proposes to build 65 townhomes on approximately 10 acres of land located at the southwest quadrant of the intersection of East 750 South and Indianapolis Road. The site is surrounded to the immediately south and west by the Eagles Nest Community, to the north by single family homes and the Westwood Landing Community and to the east by the I-65 and I-865 interchange. While the site and surrounding real estate are shown as “Low Density Residential” in the Comprehensive Plan, the adjoining Eagles Nest Community and nearby Westwood Landing Community are zoned R-3 “Medium Density Single-Family and Two-Family Residential”. The Comprehensive Plan notes “Medium Density Residential” as including residential development between 3.5 and 7 units per acre and intended for small lot subdivisions with single-family detached houses, duplexes, Townhomes, small apartment complexes, or similar density residential. In that regard, the proposed Project is compatible with the surrounding area and provides an appropriate transition between densities and land uses in this area while utilizing exhibit roads and utility networks to capitalize on undeveloped land.

#### **SECTION 1.3. EFFECT.**

This Ordinance shall be in full force and effect in accordance with the laws of the State of Indiana and shall be applicable to the real estate described in Exhibit 1 (the “Real Estate”). Unless specifically stated in the terms of this Ordinance, all terms of the UDO, as may be amended, shall apply. Nothing in this Ordinance shall be interpreted to alter, change, exclude, delete or modify any rules or regulations beyond those contained in this Ordinance, unless specifically provided herein. To the extent that this Ordinance conflicts with the terms of the UDO, the terms of this Ordinance shall prevail.

## **SECTION 1.4. DEFINITIONS.**

Unless otherwise specified in (i) this Ordinance or (ii) what is attached hereto and incorporated herein by reference as Exhibit 2, the definitions of the UDO, as may be amended, shall apply to the words and terms used in this Ordinance.

## **ARTICLE II.**

### **PUD STANDARDS**

#### **SECTION 2.1. ZONING CLASSIFICATION.**

The Real Estate is reclassified on Town of Whitestown Zoning Map (the “Zone Map”) from the District Classifications to the Planned Unit Development District (PUD) Classification. The underlying base zoning shall be the UDO's MU-COR District.

#### **SECTION 2.2. LOCATION.**

The Real Estate is located as shown on the Concept Plan (Exhibit 3).

#### **SECTION 2.3. CONCEPT PLAN.**

The Development is depicted on the Concept Plan, which shall serve as the illustrative concept plan (Exhibit 3).

#### **SECTION 2.4. USES.**

The permitted uses shall include Townhomes in addition to the following permitted uses in the MU-COR District, as set forth in the UDO: Residential Primary Uses; Civic, and Public & Institutional Primary Uses. Notwithstanding the UDO, the following MU-COR District uses shall not be permitted uses: Commercial Sales, Service, and Repair Primary Uses; or Industrial, Manufacturing, and Wholesale Primary Uses.

#### **SECTION 2.5. DEVELOPMENT STANDARDS.**

1. Development of Townhomes shall be in accordance with the MU-COR standards in the UDO *except where otherwise indicated* by the Development Standards noted below by the addition or modification of the provisions and text thereof:
2. Development in the MU-COR shall be generally in accordance with the Townhome Concept Plan and in accordance with the Townhome Architectural Building Requirements in Exhibit 4.
3. Grounds and lawn maintenance in the Area shall be the responsibility of an association of the owner of the lots within the Area.

## 4. Development Standards:

Standard	Townhomes
Minimum Lot Size	1,000 sq. ft
Minimum Street Frontage	18'
Minimum Building Setback	
Front Yard	5'
Garage Along Street	20'
Side Yard	
Sharing a Common Wall with another building	0'
The end unit of a building	5'
Rear Yard	5'
Minimum Distance Between Buildings	10'
Minimum Street Side Setback	5'
Maximum Lot Coverage	90%
Minimum Lot Width	20'
Maximum Attached Dwelling Units Per Building	6
Maximum Building Height	3 Stories

**SECTION 2.6. LANDSCAPING STANDARDS.**

The applicable standards for landscaping shall be as set forth in the UDO, except that there shall be:

1. A tree preservation easement shall be established between the proposed Townhomes and the common boundary with Eagles Nest subdivision as generally depicted in Exhibit 5A. The length of the easement running west to east may vary to accommodate stormwater, sanitary, and/or other utilities that may be required to meet design standards.
2. Mounding having a minimum height of four feet (4') and accompanying evergreen trees having a minimum installation height of six feet (6') shall be established in the common area south of the Indianapolis Road entrance as generally depicted in Exhibit 5B. The minimum total of planted evergreen trees shall be thirty-five (35). The configuration of mounding and trees may vary to accommodate stormwater, sanitary, and/or other utilities that may be required to meet design standards.
3. Mounding having a minimum height of four feet (4') and accompanying evergreen trees having a minimum installation height of six feet (6') shall be established in the common area north of the Indianapolis Road entrance as generally depicted in Exhibit 5B. The minimum total of

planted evergreen trees shall be twenty-four (24). The configuration of mounding and trees may vary to accommodate stormwater, sanitary, and/or other utilities that may be required to meet design standards.

#### **SECTION 2.7. SIGNAGE.**

The applicable standards for signage shall be as set forth in the UDO.

#### **SECTION 2.8. LIGHTING.**

The applicable standards for lighting shall be as set forth in the UDO.

#### **SECTION 2.9. PARKING.**

In lieu of the standards under Chapter 7 – Parking and Loading Standards, the Development shall provide:

1. A minimum of 4.0 vehicle parking spaces per Townhome to be satisfied by the combination of the garage and driveway for each Townhome unit.
2. No bicycle parking is required.

#### **SECTION 2.10. I-65 CORRIDOR OVERLAY.**

Provided the Real Estate develops in compliance with the Concept Plan, the I-65 Corridor Overlay standards shall not apply to the Real Estate as the I-65 Corridor Overlay has a primary focus to address commercial, industrial and retail development. However, in the event the Real Estate develops in a manner outside the scope of the Concept Plan, the standards applicable under the I-65 Corridor Overlay shall be applicable.

#### **SECTION 2.11. SUBDIVISION REGULATIONS.**

The applicable Subdivision Regulations set forth in Chapter 9 of the UDO shall apply except what is amended by the Townhome Architectural Building Requirements referenced in Exhibit 4 and the following:

1. No amenities shall be required within the Development.
2. Open space shall be calculated as any area not encumbered by a lot or an area within the public right-of-way.
3. For the purposes of a pedestrian network, the sidewalks along the internal and perimeter streets shall satisfy the required standards.
4. The length of a dead ended street adjacent to a boulevard shall be measured from the centerline of the travel lane adjacent to the dead-end street.
5. Any performance sureties will be provided in accordance with the provisions of Indiana House Bill 1128, as shown and referenced in Exhibit 6 attached hereto.

Exhibit 1.	Land Description
Exhibit 2.	Definitions
Exhibit 3.	Concept Plan
Exhibit 4.	Townhome Architectural Building Requirements and Character Exhibits
Exhibit 5A.	Tree Preservation Detail
Exhibit 5B.	Landscape Buffer Detail
Exhibit 6.	House Enrolled Act No. 1128

**Exhibit 1**

**LAND DESCRIPTION**

***Tract I***

A part of the northwest quarter of the southeast quarter of Section 7, Township 17 North, Range 2 East, Second Principal Meridian, and more particularly described as follows, to wit: Beginning at the northwest corner of the northwest quarter of the southeast quarter of said Section 7, and run thence east 537.25 feet, thence south 1306.5 feet to the South line of said quarter quarter section, thence west 538 feet, thence north 1304 feet to the place of beginning, containing 16.12 acres more or less but subject to all legal highways, rights of way and easements of record.

- Excepting from Tract I, the following –

A part of the northwest quarter of the southeast quarter of Section Seven (7), Township Seventeen (17) North, Range two (2) East of the Second Principal Meridian, situated in Eagle Township, Boone County, Indiana, and containing 11.36 acres, more or less, and more particularly described as follows: Beginning at a point 385 feet south of the northwest corner of the northwest quarter of the southeast quarter of Section 7, Township 17 North, Range 2 East and run thence south 919

feet; thence east 538 feet; thence north 921.50 feet; thence west 538.50 feet to the place of beginning.

***Tract II***

A part of the north half of the Southeast Quarter of Section Seven (7), Township Seventeen (17) north, Range Two (2) East of the Second Principal Meridian, situated in Eagle Township, Boone County, Indiana, and containing 5.00 acres, more or less, and more particularly described as follows: Beginning at a point 537.25 feet east of the northwest corner of the northwest quarter of the southeast quarter of Section 7, Township 17 North, Range 2 East, and run thence east 224.20 feet to the center of State Road #52 as existing in 1943, thence south 41 degrees 42 minutes east 657.75 feet to a point in the center of U.S. #52 as existing in 1943, thence west 670 feet to an existing fence, thence north 490 feet following said fence to the place of beginning.

## **Exhibit 2**

### **DEFINITIONS**

The following words and terms, not defined elsewhere in the Ellis Acres PUD, its Exhibits or the UDO, shall have the following meanings:

1. **Area.** The Real Estate depicted on the Concept Plan.
2. **Concept Plan.** The depiction of the illustrative concept plan for the Development set forth in Exhibit 3.
3. **Development.** The project depicted on the Concept Plan set forth in Exhibit 3.
4. **Director.** The Director of Development Services for the Town of Whitestown.
5. **Plan Commission.** The Town of Whitestown Plan Commission.
6. **Real Estate.** The real estate, as described in Exhibit 1.
7. **Townhome.** Two or more Single-family dwellings arranged side by side, separated by common walls between living areas, each having more than one story on individually deeded lots.
8. **Townhome Architectural Building Requirements.** The architectural guidelines set forth in Exhibit 4 applicable to the development of the Townhome.
9. **Unified Development Ordinance (UDO).** The Town of Whitestown Unified Development Ordinance as may be amended.

Exhibit 3  
Concept Plan



**ELLIS ACRES**  
**Concept Plan**  
**65 Units**

#### **Exhibit 4**

### **TOWNHOME ARCHITECTURAL BUILDING REQUIREMENTS**

- A. **Building Materials:** Permitted exterior building materials are: masonry (brick or cultured stone), composite trim, composite veneer panels, vinyl shutters, aluminum fascia, aluminum soffits, aluminum downspouts/gutters.
1. To improve the architectural diversity along a streetscape, units of the same color scheme are not permitted next to or directly across the street from each other.
  2. All Townhomes shall have 30-year dimensional shingles.
- B. **Minimum Overhang:** The primary/main roof overhang or eaves shall be a minimum of eleven inches (11”) on all facades of each Townhome, as measured prior to the installation of any masonry materials.
- C. **Garages:** All Townhomes shall have a two (2) car garage.
- D. **Roof Pitch:**
1. The minimum primary/main and secondary roof pitches of all Townhomes shall be no less than 6:12.
  2. Shed roof dormer accents shall be no less than 3:12.
- E. **Front Building Façade Requirements:** At a minimum, each Townhome shall utilize the following architectural elements on the front building façade unless specifically noted otherwise:
1. Shall consist of masonry material and two (2) of the following materials:, composite veneer panels, horizontal siding, shake siding or board and batten siding.
  2. A minimum of fifty percent (50%) masonry shall apply to the front façade.
  3. Shutters or a six-inch (6”) nominal trim board on all operable windows shall apply unless wrapped in masonry.
  4. A minimum of one (1) offset at least one-foot (1’) deep by a minimum height equivalent to one-story (exclusive of relief for doors, windows and other openings). Said relief could be either on the first floor or second floor.
  5. A minimum of five (5) windows.
  6. Front door entranceways shall be covered by a porch not less than three feet (3’) deep by five feet (5’) wide (prior to installation of any masonry material).
  7. The roof design shall consist of at least one (1) of the following features: dormer, jerkinhead roof, shed roof accent, cornice returns, gables, or two (2) or more roof planes.

8. Gable ends shall include a minimum of one of the following architectural treatments: brackets, trim detail, change in material pattern, sub-rake board not less than four-inch (4") nominal width or composite veneer panels.

F. Side Building Façade Requirements: At a minimum, the side elevation for each end unit on each Townhome building shall utilize the following architectural elements (exclusive of common firewalls separating units contained in same building structure):

1. A minimum of two (2) windows.
2. All windows shall have a minimum four-inch (4") nominal width trim.
3. A minimum of fifty percent (50%) masonry shall apply to all side elevations.
4. Architectural treatment (shake siding and louvered fypons above the second floor for three story units and horizontal trim boards at the height of the first floor and louvered fypons for two story units) shall be utilized on gable ends and shall be required on the corresponding end unit's garage side elevation.
5. A masonry knee wall (at a minimum to the bottom of the first floor window) shall apply to façade(s) abutting a common area or public street.

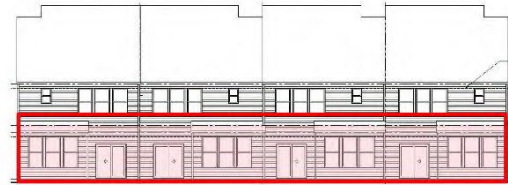
G. Rear Building Façade Requirements: At a minimum, each Townhome shall utilize the following architectural elements on the rear façade:

1. A minimum of three (3) windows and a patio door.
2. All windows shall have a minimum four-inch (4") nominal width trim.
3. A minimum of fifty percent (50%) masonry shall apply to the rear elevations.

## TOWNHOME ARCHITECTURAL BUILDING CHARACTER EXHIBITS



**2-Story Townhome Architecture**



*Typical Rear Elevation*

**\* Area outlined in red intended area of masonry**





3-Story Townhome Architecture

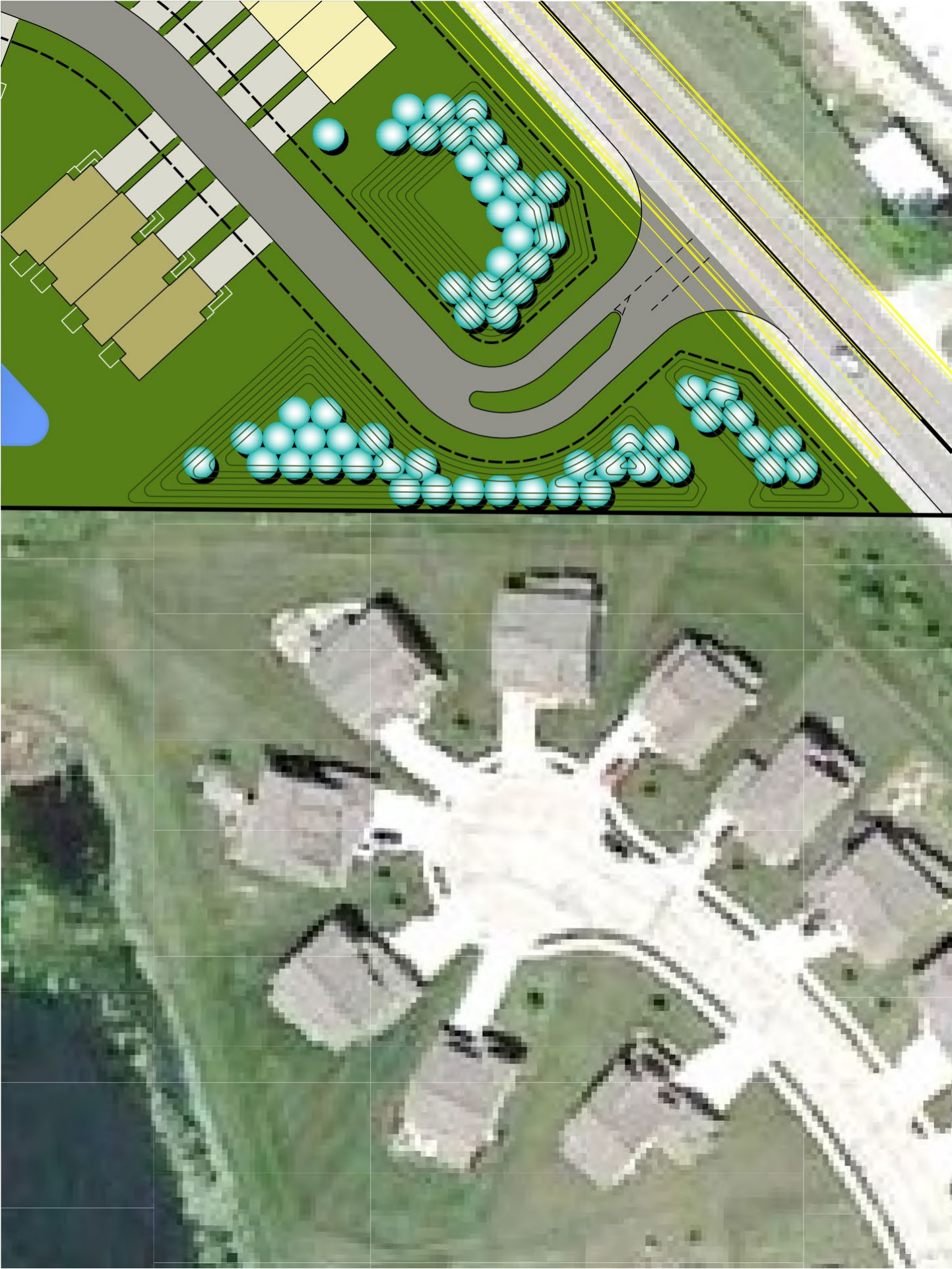


\* Area outlined in red intended area of masonry

Tree Preservation Detail



Landscape Buffer Detail



## Exhibit 6

First Regular Session of the 121st General Assembly (2019)

PRCNTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in **tins style type**

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* ortfri:nt:nrfnH'reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1128

AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana.*

SECTION I. IC 36-7-4-709 AS AMENDED BY P.L.135-2017, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY I 2019]: Sec. 709. (a) Secondary approval under section 710 of th.is chapter may be granted to a plat for a subdivision in which the improvements and installations have not been completed as required by the subdivision control ordinance, if:

(1) the applicant provides a bond, or other proof of financial responsibility as prescribed by the legislative body in the subdivision control ordinance, that

(A) is an amount detennined by the plan commission or plat committee to be sufficient to complete the improvements and installations in compliance with the ordinance; and

(B) provides surety satisfactory to the plan commission or plat conunittee; or

(2) with respect to the installation or extension of water, sewer, or other utility service:

(A) the applicant shows by written evidence that it has entered into a contract with the political subdivision or utility providing the service; and

(B) the plan commission or plat committee determines based on written evidence that the contract provides satisfactory assurance that the service will be installed or extended in

REA 1128

compliance with the subdivision control ordinance.

(b) Any money received from a bond or otherwise shall be used only for making the improvements and installations for which the bond or other proof of financial responsibility was provided. This money may be used for these purposes without appropriation. The improvement or installation must conform to the standards provided for such improvements or installations by the municipality in which it is located, as well as the subdivision control ordinance.

(c) The plan commission shall, by rule, prescribe the procedure for determining whether all improvements and installations have been constructed and completed as required by the subdivision control ordinance. The rule must designate the person or persons responsible for making the determination.

(d) As used in this section, "land developer" has the meaning set forth in IC 6-1.1-4-12(a).

(e) As used in this section, "under development" means a situation with respect to land in which a primary plat has been filed and approved and work has commenced to make substantive physical improvements to the land, excluding any work performed for the purpose of preparing the land.

(f) Notwithstanding subsection (a), a local unit may not adopt or enforce an ordinance, rule, or other policy requiring a land developer of Class I or Class 2 structures to do any of the following:

(1) Obtain a performance bond or other surety before the date on which the land developer records an approved secondary plat. However, a local unit may require the land developer to obtain a performance bond or other surety before an approved secondary plat is recorded if the area under development is:

(A) within the existing public right-of-way; or

(B) related to erosion control.

(2) Obtain a maintenance bond that has an effective period greater than three (3) years.

(g) After a secondary plat is approved, a local unit may require, as a condition precedent to recording the secondary plat, that the land developer obtain a performance bond or other surety for any incomplete or unfinished streets, sanitary piping, storm water piping systems, water mains, sidewalks and ornamental landscaping in common areas, and erosion control that:

(1) are:

(A) in the approved development; or

(B) required to service the approved development; and

(2) are included within:

- (A) the legal description of the recorded plat; or
  - (B) a section in the legal description of the recorded plat; identified in the land developer's secondary plat filing.
- (h) Any ordinance, rule, or policy requiring a land developer to obtain a performance bond or other surety under subsection (g) must include a provision for:
  - (1) the release of a performance bond or other surety upon completion to the satisfaction of the local unit of the subject matter upon which the performance bond or other surety was obtained; and
  - (2) the partial release of the performance bond or other surety on an annual or on a more frequent basis in accordance with a partial release schedule agreed to in a signed writing by:
    - (A) the local unit, or the local unit's designated official or body; and
    - (B) the land developer or the land developer's designated agent;before or during development.
- (i) A performance bond or other surety requirement under subsection (f)(I) or subsection (g):
  - (I) must be based on a value provided for in an engineer's estimate or an actual contract amount, if available, to complete:
    - (A) the portion of the area or improvement of the project; or
    - (B) the designated section in the project;**being bonded;
  - (2) may be based on an amount in excess of the full value of the engineer's estimate or actual contract amount, as appropriate, provided that any excess amount is based upon a reasonable adjustment for the estimated cost of inflation of materials and labor encompassed within the subject matter of the performance bond or other surety; and
  - (3) may not include any land that is not under development at the time the bond or other surety is required, such as sections of adjacent or contiguous land that remain undeveloped, except to the extent that the land not then under development is used to access the site or provide utilities or other necessary services to the land that is under development.
- (j) A local unit may not require, as a condition precedent to granting, issuing, or approving for any Class I or Class 2 structures:**
  - (1) a building permit;**
  - (2) an improvement location permit; or**

**(3) a structural building permit;**  
**the completion of the subject matter upon which the performance bond or other surety was obtained under subsection (g).**

**(k) This subsection applies to a local unit's grant, issuance, or approval of a certificate of occupancy. A local unit may not require, as a condition precedent to granting, issuing, or approving a certificate of occupancy for any Class 1 or Class 2 structure, the completion of the subject matter upon which the performance bond or other surety was obtained under subsection (g), unless required under:**

- (1) IC 22-12;**
- (2) IC 22-13;**
- (3) IC 22-15; or**
- (4) another law;**

**to meet a local unit's basic needs for public health and safety.**

SECTION 2. TC 36-7-4-1109, AS AMENDED BY P.L.211-2017, SECTION 2, TS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1109. (a) As used in this section, "local governmental agency" includes any agency, officer, board, or commission of a local unit of government that may issue:

- (1) a permit; or
- (2) an approval of a land use or an approval for the construction of a development, a building, or another structure.
- (b) As used in this section, "permit" means any of the following:
  - (1) An improvement location permit.
  - (2) A building permit.
  - (3) A certificate of occupancy.
  - (4) Approval of a site-specific development plan.
  - (5) Approval of a primary or secondary plat.
  - (6) Approval of a contingent use, conditional use, special exception or special use.
  - (7) Approval of a planned unit development.

(c) If a person files a complete application as required by the effective ordinances or rules of a local unit of government or a local governmental agency for a permit with the appropriate local governmental agency, the granting of the permit, and the granting of any secondary, additional, or related permits or approvals required from the same local governmental agency with respect to the general subject matter of the application for the first permit, are governed for at least three (3) years after the person applies for the permit by the statutes, ordinances, rules, development standards, and regulations in effect and applicable to the property when the application is filed, even

if before the issuance of the pennit or while the pennit approval process is pending, or before the issuance of any secondary, additional, or related pennits or approvals or while the secondary, additional, or related pennit or approval process is pending, the statutes, ordinances, rules, development standards, or regulations governing the granting of the pennit or approval are changed by the general assembly or the applicable local legislative body or regulatory body, regardless of whether such changes in the statutes, ordinances, rules, development standards, or regulations are part of a zoning ordinance, a subdivision control ordinance, or a statute, ordinance, or regulation that is based on the general police powers of the local unit of government. However, this subsection does not apply if the development or other activity to which the pennit relates is not completed within ten (10) years after the development or activity is commenced.

(d) Subsection (e) applies if:

(1) either:

(A) a local governmental agency issues to a person a pennit or grants a person approval for the construction of a development, a building, or another structure; or

(B) a pennit or approval is not required from the local governmental agency for the construction of the development, building, or structure;

(2) before beginning the construction of the development, building, or structure, the person must obtain a pennitor approval for the construction of the development, building, or structure from a state governmental agency; and

(3) the person has applied for the pennitor requested the approval for the construction of the development, building, or structure from the state governmental agency within ninety (90) days of issuance of the pennit by the local governmental agency.

(e) Subject to subsection (f), if the conditions of subsection (d) are satisfied:

(1) a pennit or approval issued or granted to a person by the local governmental agency for the construction of the development, building, or structure; or

(2) the person's right to construct the development, building, or structure without a pennit or approval from the local governmental agency;

is governed for at least three (3) years after the person applies for the pennit by the statutes, ordinances, rules, development standards, regulations, and approvals in effect and applicable to the property when the person applies for the permit or requests approval from the state

governmental agency for the construction of the development, building, or structure, even if before the commencement of the construction or while the permit application or approval request is pending with the state governmental agency the statutes governing the granting of the permit or approval from the local governmental agency are changed by the general assembly or the ordinances, rules, development standards, or regulations of the local unit of government or the local governmental agency are changed by the applicable local legislative body or regulatory body, regardless of whether such changes in the statutes, ordinances, rules, development standards, or regulations are part of a zoning ordinance, a subdivision control ordinance, or a statute, ordinance, or regulation that is based on the general police powers of the local unit of government. However, this subsection does not apply if the development or other activity to which the permit or approval request relates is not completed within ten ( 10 ) years after the development or activity is commenced.

(t) Subsection (d) does not apply to property when it is demonstrated by the local or state governmental agency that the construction of the development, building, or structure would cause imminent peril to life or property.

(g) This section does not apply to building codes under IC 22-13.

(h) The following provision is considered to be included in any regulation adopted under section 60 l(d)(2)(B) of this chapter that sets forth requirements for signs:

"The owner of any sign that is otherwise allowed by this regulation may substitute noncommercial copy in place of any other commercial or noncommercial copy. This substitution of copy may be made without the issuance of any additional permit by a local government agency. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or the favoring of any particular noncommercial message over any other noncommercial message. This provision prevails over any more specific provision in this regulation to the contrary."

(i) **Notwithstanding any other law, a local governmental agency must, not later than twelve (12) business days after a person has filed a complete application for a permit for which approval is ministerial under IC 36-7-4-402 or an improvement location permit issued under the 800 series of this chapter and meets all conditions required under this chapter and any other statute, issue the permit to the person.**

---

Speaker of the House of Representatives

---

President of the Senate

---

President Pro Tempore

---

Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**REA 1128**



## **Exhibit C**

---

## **COMMITMENTS CONCERNING USE AND DEVELOPMENT OF REAL ESTATE**

Document Cross Reference: Warranty Deed recorded on April 23, 2008, in the Office of the Recorder of Boone County, Indiana as Instrument No. 2008-00004314.

**WHEREAS**, the owner of the below described real estate is Ellis Acres, LLC (“Owner”) and the Owner consents to these Commitments as evidenced by its signature hereto.

**WHEREAS**, Platinum Properties Management Company, LLC (“Applicant”), filed a rezone petition under Docket Number PC22-032-ZA with the Whitestown Plan Commission (“Plan Commission”) to rezone the subject real estate described below to the “Ellis Acres PUD” in order to develop a townhome community (“Rezone Request”);

**WHEREAS**, the subject real estate consists of two (2) parcels which are identified by the Auditor of Boone County, Indiana as Tax Identification Numbers 06-04-07-000-001.000-021 and 06-04-07-000-002.000-021 and are legally described and visually depicted on **Exhibit A-1 and Exhibit A-2** which is attached hereto and incorporated herein by reference (collectively the “Real Estate”);

**WHEREAS**, Owner shall require any builder for townhomes to be constructed on the Real Estate if the Rezone Request is approved by the Town of Whitestown Town Council (“Council”) to comply with these Commitments;

**WHEREAS**, the Owner and Applicant are requesting the Plan Commission and Council to consider approval of the Rezone Request subject to the following commitments (“Commitments”);

**NOW THEREFORE**, the Owner makes the following Commitments to the Plan Commission and Council regarding the use and development of the Real Estate:

**Section 1.**     **Commitments.** The Real Estate is subject to the following Commitments:

1. Owner shall require any Builder of the Townhomes, to agree and covenant that it shall not sell, transfer and/or convey title to more than twenty (20) Townhome Units to an Investor.
2. Owner shall require any Builder to record Covenants, Conditions and Restrictions (“Covenants”) governing the use and development of the Real Estate as part of establishing the Ellis Acres Homeowners Association (“HOA”).
3. The Covenants shall include the following requirements pertaining to the leasing/renting of any Townhome Units by owners within the Ellis Acres community to a lessee/tenant:
  - a. The rental of any Townhome Unit shall be for at least 12 months in duration.

- b. Any rental agreement shall be on a form prescribed and approved by the Ellis Acres HOA and such rental agreement shall include an acknowledgement by the lessee/tenant that they shall comply with all of the Ellis Acres HOA's Covenants and HOA Rules and Regulations.
- c. Air BNB and/or any other similar short-term rentals shall be strictly prohibited and shall be strictly enforced by the Ellis Acres HOA.
- d. The Ellis Acres HOA shall be required to engage a third party, outside professional management company to manage and enforce the Ellis Acres HOA and Covenants.

**Section 2. Definitions.**

- A. Owner. Ellis Acres, LLC.
- B. Builder. Any individual or entity that constructs a Townhome, Townhome Building or Townhome Unit.
- C. Developer. Any individual or entity that prepares the Real Estate for the construction of a Townhome, Townhome Building or Townhome Unit.
- D. Applicant. Platinum Properties Management Company, LLC.
- E. Department. The Planning Department of the Town of Whitestown.
- F. Investor. An individual or entity that is in the business of leasing/renting a Townhome Unit to a tenant.
- G. Townhomes or Townhome Building. A residential building consisting of individual townhome living units within a single building.
- H. Townhome Unit. An individual living unit within a townhome.

**Section 3. Modification of Commitments.** These Commitments shall continue in effect until modified or terminated. These Commitments shall only be modified or terminated in accordance with the Plan Commission's Rules of Procedure.

**Section 4. Effective Date.** These Commitments shall be effective upon the Council's Approval of the Rezone Request to the Ellis Acres PUD and the development of the Real Estate.

**Section 5. Recording.** These Commitments shall be recorded with the Office of the Recorder of Boone County, Indiana by the Owner. After recording these Commitments, Owner shall provide to the Department a recorded copy of these Commitments.

Residing in \_\_\_\_\_  
County of \_\_\_\_\_ Printed Name \_\_\_\_\_

I affirm under the penalties of perjury that I have taken reasonable care to redact each social security number in this document, unless required by law. James E. Shinaver.

# **Ellis Acres Planned Unit Development Ordinance**

## **ARTICLE 1**

### **ELLIS ACRES PUD**

#### **SECTION 1.1. LEGISLATIVE INTENT.**

Having given reasonable regard to (i) the comprehensive plan, (ii) current conditions and the character of current structures and uses in the Real Estate, (iii) the most desirable use for which the Real Estate is adapted, (iv) conservation of property values throughout the Town of Whitestown, and (v) responsible development and growth, it is the intent of the WPC in recommending, and the Town Council in adopting, to:

- A. Encourage improved land development and building site design;
- B. Encourage and allow a variety of innovative uses, building types, and arrangements;
- C. Allow development of land areas so planned, located, or situated as to merit and justify consideration as a PUD district.

#### **SECTION 1.2. PROJECT NARRATIVE.**

The Project proposes to build 65 townhomes on approximately 10 acres of land located at the southwest quadrant of the intersection of East 750 South and Indianapolis Road. The site is surrounded to the immediately south and west by the Eagles Nest Community, to the north by single family homes and the Westwood Landing Community and to the east by the I-65 and I-865 interchange. While the site and surrounding real estate are shown as “Low Density Residential” in the Comprehensive Plan, the adjoining Eagles Nest Community and nearby Westwood Landing Community are zoned R-3 “Medium Density Single-Family and Two-Family Residential”. The Comprehensive Plan notes “Medium Density Residential” as including residential development between 3.5 and 7 units per acre and intended for small lot subdivisions with single-family detached houses, duplexes, Townhomes, small apartment complexes, or similar density residential. In that regard, the proposed Project is compatible with the surrounding area and provides an appropriate transition between densities and land uses in this area while utilizing exhibit roads and utility networks to capitalize on undeveloped land.

#### **SECTION 1.3. EFFECT.**

This Ordinance shall be in full force and effect in accordance with the laws of the State of Indiana and shall be applicable to the real estate described in Exhibit 1 (the “Real Estate”). Unless specifically stated in the terms of this Ordinance, all terms of the UDO, as may be amended, shall apply. Nothing in this Ordinance shall be interpreted to alter, change, exclude, delete or modify any rules or regulations beyond those contained in this Ordinance, unless specifically provided herein. To the extent that this Ordinance conflicts with the terms of the UDO, the terms of this Ordinance shall prevail.

## **SECTION 1.4. DEFINITIONS.**

Unless otherwise specified in (i) this Ordinance or (ii) what is attached hereto and incorporated herein by reference as Exhibit 2, the definitions of the UDO, as may be amended, shall apply to the words and terms used in this Ordinance.

## **ARTICLE II.**

### **PUD STANDARDS**

#### **SECTION 2.1. ZONING CLASSIFICATION.**

The Real Estate is reclassified on Town of Whitestown Zoning Map (the “Zone Map”) from the District Classifications to the Planned Unit Development District (PUD) Classification. The underlying base zoning shall be the UDO's MU-COR District.

#### **SECTION 2.2. LOCATION.**

The Real Estate is located as shown on the Concept Plan (Exhibit 3).

#### **SECTION 2.3. CONCEPT PLAN.**

The Development is depicted on the Concept Plan, which shall serve as the illustrative concept plan (Exhibit 3).

#### **SECTION 2.4. USES.**

The permitted uses shall include Townhomes in addition to the following permitted uses in the MU-COR District, as set forth in the UDO: Residential Primary Uses; Civic, and Public & Institutional Primary Uses. Notwithstanding the UDO, the following MU-COR District uses shall not be permitted uses: Commercial Sales, Service, and Repair Primary Uses; or Industrial, Manufacturing, and Wholesale Primary Uses.

#### **SECTION 2.5. DEVELOPMENT STANDARDS.**

1. Development of Townhomes shall be in accordance with the MU-COR standards in the UDO *except where otherwise indicated* by the Development Standards noted below by the addition or modification of the provisions and text thereof:
2. Development in the MU-COR shall be generally in accordance with the Townhome Concept Plan and in accordance with the Townhome Architectural Building Requirements in Exhibit 4.
3. Grounds and lawn maintenance in the Area shall be the responsibility of an association of the owner of the lots within the Area.

4. Development Standards:

Standard	Townhomes
Minimum Lot Size	1,000 sq. ft
Minimum Street Frontage	18'
Minimum Building Setback	
Front Yard	5'
Garage Along Street	20'
Side Yard	
Sharing a Common Wall with another building	0'
The end unit of a building	5'
Rear Yard	5'
Minimum Distance Between Buildings	10'
Minimum Street Side Setback	5'
Maximum Lot Coverage	90%
Minimum Lot Width	20'
Maximum Attached Dwelling Units Per Building	6
Maximum Building Height	3 Stories

**SECTION 2.6. LANDSCAPING STANDARDS.**

The applicable standards for landscaping shall be as set forth in the UDO, except that there shall be:

1. A tree preservation easement shall be established between the proposed Townhomes and the common boundary with Eagles Nest subdivision as generally depicted in Exhibit 5A. The length of the easement running west to east may vary to accommodate stormwater, sanitary, and/or other utilities that may be required to meet design standards.
2. Mounding having a minimum height of four feet (4'), measured from the adjacent right-of-way, and accompanying evergreen trees having a minimum installation height of six feet (6') shall be established in the common area south of the Indianapolis Road entrance as generally depicted in Exhibit 5B. The minimum total of planted evergreen trees shall be thirty-nine (39). The configuration of mounding and trees may vary to accommodate stormwater, sanitary, and/or other utilities that may be required to meet design standards.
3. Mounding having a minimum height of four feet (4'), measured from the adjacent right-of-way, and accompanying evergreen trees having a minimum installation height of six feet (6') shall be established in the common area north of the Indianapolis Road entrance as generally

depicted in Exhibit 5B. The minimum total of planted evergreen trees shall be twenty-four (24). The configuration of mounding and trees may vary to accommodate stormwater, sanitary, and/or other utilities that may be required to meet design standards.

#### **SECTION 2.7. SIGNAGE.**

The applicable standards for signage shall be as set forth in the UDO.

#### **SECTION 2.8. LIGHTING.**

The applicable standards for lighting shall be as set forth in the UDO.

#### **SECTION 2.9. PARKING.**

In lieu of the standards under Chapter 7 – Parking and Loading Standards, the Development shall provide:

1. A minimum of 4.0 vehicle parking spaces per Townhome to be satisfied by the combination of the garage and driveway for each Townhome unit.
2. No bicycle parking is required.

#### **SECTION 2.10. I-65 CORRIDOR OVERLAY.**

Provided the Real Estate develops in compliance with the Concept Plan, the I-65 Corridor Overlay standards shall not apply to the Real Estate as the I-65 Corridor Overlay has a primary focus to address commercial, industrial and retail development. However, in the event the Real Estate develops in a manner outside the scope of the Concept Plan, the standards applicable under the I-65 Corridor Overlay shall be applicable.

#### **SECTION 2.11. SUBDIVISION REGULATIONS.**

The applicable Subdivision Regulations set forth in Chapter 9 of the UDO shall apply except what is amended by the Townhome Architectural Building Requirements referenced in Exhibit 4 and the following:

1. No amenities shall be required within the Development.
2. Open space shall be calculated as any area not encumbered by a lot or an area within the public right-of-way.
3. For the purposes of a pedestrian network, the sidewalks along the internal and perimeter streets shall satisfy the required standards.
4. The length of a dead ended street adjacent to a boulevard shall be measured from the centerline of the travel lane adjacent to the dead-end street.
5. Any performance sureties will be provided in accordance with the provisions of Indiana House Bill 1128, as shown and referenced in Exhibit 6 attached hereto.

Exhibit 1.	Land Description
Exhibit 2.	Definitions
Exhibit 3.	Concept Plan
Exhibit 4.	Townhome Architectural Building Requirements and Character Exhibits
Exhibit 5A.	Tree Preservation Detail
Exhibit 5B.	Landscape Buffer Detail
Exhibit 6.	House Enrolled Act No. 1128

**Exhibit 1**

**LAND DESCRIPTION**

*Tract I*

A part of the northwest quarter of the southeast quarter of Section 7, Township 17 North, Range 2 East, Second Principal Meridian, and more particularly described as follows, to wit: Beginning at the northwest corner of the northwest quarter of the southeast quarter of said Section 7, and run thence east 537.25 feet, thence south 1306.5 feet to the South line of said quarter quarter section, thence west 538 feet, thence north 1304 feet to the place of beginning, containing 16.12 acres more or less but subject to all legal highways, rights of way and easements of record.

- Excepting from Tract I, the following –

A part of the northwest quarter of the southeast quarter of Section Seven (7), Township Seventeen (17) North, Range two (2) East of the Second Principal Meridian, situated in Eagle Township, Boone County, Indiana, and containing 11.36 acres, more or less, and more particularly described as follows: Beginning at a point 385 feet south of the northwest corner of the northwest quarter of the southeast quarter of Section 7, Township 17 North, Range 2 East and run thence south 919

feet; thence east 538 feet; thence north 921.50 feet; thence west 538.50 feet to the place of beginning.

*Tract II*

A part of the north half of the Southeast Quarter of Section Seven (7), Township Seventeen (17) north, Range Two (2) East of the Second Principal Meridian, situated in Eagle Township, Boone County, Indiana, and containing 5.00 acres, more or less, and more particularly described as follows: Beginning at a point 537.25 feet east of the northwest corner of the northwest quarter of the southeast quarter of Section 7, Township 17 North, Range 2 East, and run thence east 224.20 feet to the center of State Road #52 as existing in 1943, thence south 41 degrees 42 minutes east 657.75 feet to a point in the center of U.S. #52 as existing in 1943, thence west 670 feet to an existing fence, thence north 490 feet following said fence to the place of beginning.

## **Exhibit 2**

### **DEFINITIONS**

The following words and terms, not defined elsewhere in the Ellis Acres PUD, its Exhibits or the UDO, shall have the following meanings:

1. **Area.** The Real Estate depicted on the Concept Plan.
2. **Concept Plan.** The depiction of the illustrative concept plan for the Development set forth in Exhibit 3.
3. **Development.** The project depicted on the Concept Plan set forth in Exhibit 3.
4. **Director.** The Director of Development Services for the Town of Whitestown.
5. **Plan Commission.** The Town of Whitestown Plan Commission.
6. **Real Estate.** The real estate, as described in Exhibit 1.
7. **Townhome.** Two or more Single-family dwellings arranged side by side, separated by common walls between living areas, each having more than one story on individually deeded lots.
8. **Townhome Architectural Building Requirements.** The architectural guidelines set forth in Exhibit 4 applicable to the development of the Townhome.
9. **Unified Development Ordinance (UDO).** The Town of Whitestown Unified Development Ordinance as may be amended.

Exhibit 3  
Concept Plan



**ELLIS ACRES**  
**Concept Plan**  
**65 Units**

## **Exhibit 4**

### **TOWNHOME ARCHITECTURAL BUILDING REQUIREMENTS**

- A. **Building Materials:** Permitted exterior building materials are: masonry (brick or cultured stone), composite trim, composite veneer panels, vinyl shutters, aluminum fascia, aluminum soffits, aluminum downspouts/gutters.
1. To improve the architectural diversity along a streetscape, units of the same color scheme are not permitted next to or directly across the street from each other.
  2. All Townhomes shall have 30-year dimensional shingles.
- B. **Minimum Overhang:** The primary/main roof overhang or eaves shall be a minimum of eleven inches (11") on all facades of each Townhome, as measured prior to the installation of any masonry materials.
- C. **Garages:** All Townhomes shall have a two (2) car garage.
- D. **Roof Pitch:**
1. The minimum primary/main and secondary roof pitches of all Townhomes shall be no less than 6:12.
  2. Shed roof dormer accents shall be no less than 3:12.
- E. **Front Building Façade Requirements:** At a minimum, each Townhome shall utilize the following architectural elements on the front building façade unless specifically noted otherwise:
1. Shall consist of masonry material and two (2) of the following materials: composite veneer panels, horizontal siding, shake siding or board and batten siding.
  2. A minimum of fifty percent (50%) masonry shall apply to the front façade.
  3. Shutters or a six-inch (6") nominal trim board on all operable windows shall apply unless wrapped in masonry.
  4. A minimum of one (1) offset at least one-foot (1') deep by a minimum height equivalent to one-story (exclusive of relief for doors, windows and other openings). Said relief could be either on the first floor or second floor.
  5. A minimum of five (5) windows.
  6. Front door entranceways shall be covered by a porch not less than three feet (3') deep by five feet (5') wide (prior to installation of any masonry material).
  7. The roof design shall consist of at least one (1) of the following features: dormer, jerkinhead roof, shed roof accent, cornice returns, gables, or two (2) or more roof planes.

8. Gable ends shall include a minimum of one of the following architectural treatments: brackets, trim detail, change in material pattern, sub-rake board not less than four-inch (4") nominal width or composite veneer panels.

F. Side Building Façade Requirements: At a minimum, the side elevation for each end unit on each Townhome building shall utilize the following architectural elements (exclusive of common firewalls separating units contained in same building structure):

1. A minimum of two (2) windows.
2. All windows shall have a minimum four-inch (4") nominal width trim.
3. A minimum of fifty percent (50%) masonry shall apply to all side elevations.
4. Architectural treatment (shake siding and louvered fypons above the second floor for three story units and horizontal trim boards at the height of the first floor and louvered fypons for two story units) shall be utilized on gable ends and shall be required on the corresponding end unit's garage side elevation.
5. A masonry knee wall (at a minimum to the bottom of the first floor window) shall apply to façade(s) abutting a common area or public street.

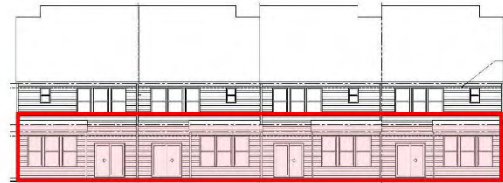
G. Rear Building Façade Requirements: At a minimum, each Townhome shall utilize the following architectural elements on the rear façade:

1. A minimum of three (3) windows and a patio door.
2. All windows shall have a minimum four-inch (4") nominal width trim.
3. A minimum of fifty percent (50%) masonry shall apply to the rear elevations.

## TOWNHOME ARCHITECTURAL BUILDING CHARACTER EXHIBITS



2-Story Townhome Architecture



*Typical Rear Elevation*

\* Area outlined in red intended area of masonry





**3-Story Townhome Architecture**

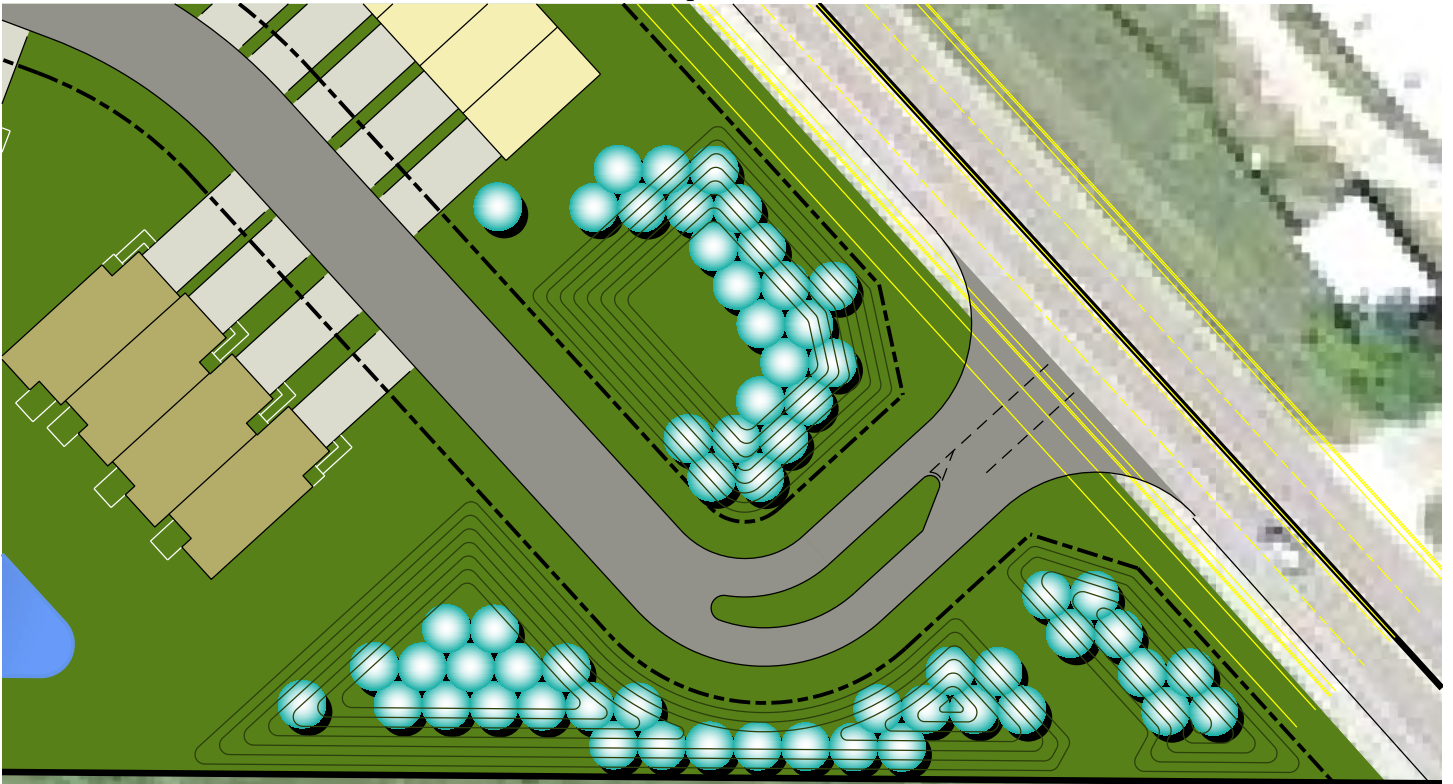


**\* Area outlined in red intended area of masonry**

Exhibit 5A  
Tree Preservation Detail



**Exhibit 5B**  
Landscape Buffer Detail



**Exhibit 6**

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1128

---

AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 36-7-4-709, AS AMENDED BY P.L.135-2017, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 709. (a) Secondary approval under section 710 of this chapter may be granted to a plat for a subdivision in which the improvements and installations have not been completed as required by the subdivision control ordinance, if:

(1) the applicant provides a bond, or other proof of financial responsibility as prescribed by the legislative body in the subdivision control ordinance, that:

(A) is an amount determined by the plan commission or plat committee to be sufficient to complete the improvements and installations in compliance with the ordinance; and

(B) provides surety satisfactory to the plan commission or plat committee; or

(2) with respect to the installation or extension of water, sewer, or other utility service:

(A) the applicant shows by written evidence that it has entered into a contract with the political subdivision or utility providing the service; and

(B) the plan commission or plat committee determines based on written evidence that the contract provides satisfactory assurance that the service will be installed or extended in

HEA 1128



compliance with the subdivision control ordinance.

(b) Any money received from a bond or otherwise shall be used only for making the improvements and installations for which the bond or other proof of financial responsibility was provided. This money may be used for these purposes without appropriation. The improvement or installation must conform to the standards provided for such improvements or installations by the municipality in which it is located, as well as the subdivision control ordinance.

(c) The plan commission shall, by rule, prescribe the procedure for determining whether all improvements and installations have been constructed and completed as required by the subdivision control ordinance. The rule must designate the person or persons responsible for making the determination.

(d) As used in this section, "land developer" has the meaning set forth in IC 6-1.1-4-12(a).

(e) As used in this section, "under development" means a situation with respect to land in which a primary plat has been filed and approved and work has commenced to make substantive physical improvements to the land, excluding any work performed for the purpose of preparing the land.

(f) Notwithstanding subsection (a), a local unit may not adopt or enforce an ordinance, rule, or other policy requiring a land developer of Class 1 or Class 2 structures to do any of the following:

(1) Obtain a performance bond or other surety before the date on which the land developer records an approved secondary plat. However, a local unit may require the land developer to obtain a performance bond or other surety before an approved secondary plat is recorded if the area under development is:

- (A) within the existing public right-of-way; or
- (B) related to erosion control.

(2) Obtain a maintenance bond that has an effective period greater than three (3) years.

(g) After a secondary plat is approved, a local unit may require, as a condition precedent to recording the secondary plat, that the land developer obtain a performance bond or other surety for any incomplete or unfinished streets, sanitary piping, storm water piping systems, water mains, sidewalks and ornamental landscaping in common areas, and erosion control that:

(1) are:

- (A) in the approved development; or
- (B) required to service the approved development; and

(2) are included within:

**HEA 1128**



- (A) the legal description of the recorded plat; or
- (B) a section in the legal description of the recorded plat; identified in the land developer's secondary plat filing.
- (h) Any ordinance, rule, or policy requiring a land developer to obtain a performance bond or other surety under subsection (g) must include a provision for:
  - (1) the release of a performance bond or other surety upon completion to the satisfaction of the local unit of the subject matter upon which the performance bond or other surety was obtained; and
  - (2) the partial release of the performance bond or other surety on an annual or on a more frequent basis in accordance with a partial release schedule agreed to in a signed writing by:
    - (A) the local unit, or the local unit's designated official or body; and
    - (B) the land developer or the land developer's designated agent; before or during development.
- (i) A performance bond or other surety requirement under subsection (f)(1) or subsection (g):
  - (1) must be based on a value provided for in an engineer's estimate or an actual contract amount, if available, to complete:
    - (A) the portion of the area or improvement of the project; or
    - (B) the designated section in the project; being bonded;
  - (2) may be based on an amount in excess of the full value of the engineer's estimate or actual contract amount, as appropriate, provided that any excess amount is based upon a reasonable adjustment for the estimated cost of inflation of materials and labor encompassed within the subject matter of the performance bond or other surety; and
  - (3) may not include any land that is not under development at the time the bond or other surety is required, such as sections of adjacent or contiguous land that remain undeveloped, except to the extent that the land not then under development is used to access the site or provide utilities or other necessary services to the land that is under development.
- (j) A local unit may not require, as a condition precedent to granting, issuing, or approving for any Class 1 or Class 2 structures:**
  - (1) a building permit;**
  - (2) an improvement location permit; or**



(3) a structural building permit;  
the completion of the subject matter upon which the performance bond or other surety was obtained under subsection (g).

(k) This subsection applies to a local unit's grant, issuance, or approval of a certificate of occupancy. A local unit may not require, as a condition precedent to granting, issuing, or approving a certificate of occupancy for any Class 1 or Class 2 structure, the completion of the subject matter upon which the performance bond or other surety was obtained under subsection (g), unless required under:

- (1) IC 22-12;
- (2) IC 22-13;
- (3) IC 22-15; or
- (4) another law;

to meet a local unit's basic needs for public health and safety.

SECTION 2. IC 36-7-4-1109, AS AMENDED BY P.L.211-2017, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1109. (a) As used in this section, "local governmental agency" includes any agency, officer, board, or commission of a local unit of government that may issue:

- (1) a permit; or
- (2) an approval of a land use or an approval for the construction of a development, a building, or another structure.
- (b) As used in this section, "permit" means any of the following:
  - (1) An improvement location permit.
  - (2) A building permit.
  - (3) A certificate of occupancy.
  - (4) Approval of a site-specific development plan.
  - (5) Approval of a primary or secondary plat.
  - (6) Approval of a contingent use, conditional use, special exception or special use.
  - (7) Approval of a planned unit development.

(c) If a person files a complete application as required by the effective ordinances or rules of a local unit of government or a local governmental agency for a permit with the appropriate local governmental agency, the granting of the permit, and the granting of any secondary, additional, or related permits or approvals required from the same local governmental agency with respect to the general subject matter of the application for the first permit, are governed for at least three (3) years after the person applies for the permit by the statutes, ordinances, rules, development standards, and regulations in effect and applicable to the property when the application is filed, even

HEA 1128



if before the issuance of the permit or while the permit approval process is pending, or before the issuance of any secondary, additional, or related permits or approvals or while the secondary, additional, or related permit or approval process is pending, the statutes, ordinances, rules, development standards, or regulations governing the granting of the permit or approval are changed by the general assembly or the applicable local legislative body or regulatory body, regardless of whether such changes in the statutes, ordinances, rules, development standards, or regulations are part of a zoning ordinance, a subdivision control ordinance, or a statute, ordinance, or regulation that is based on the general police powers of the local unit of government. However, this subsection does not apply if the development or other activity to which the permit relates is not completed within ten (10) years after the development or activity is commenced.

(d) Subsection (e) applies if:

(1) either:

(A) a local governmental agency issues to a person a permit or grants a person approval for the construction of a development, a building, or another structure; or

(B) a permit or approval is not required from the local governmental agency for the construction of the development, building, or structure;

(2) before beginning the construction of the development, building, or structure, the person must obtain a permit or approval for the construction of the development, building, or structure from a state governmental agency; and

(3) the person has applied for the permit or requested the approval for the construction of the development, building, or structure from the state governmental agency within ninety (90) days of issuance of the permit by the local governmental agency.

(e) Subject to subsection (f), if the conditions of subsection (d) are satisfied:

(1) a permit or approval issued or granted to a person by the local governmental agency for the construction of the development, building, or structure; or

(2) the person's right to construct the development, building, or structure without a permit or approval from the local governmental agency;

is governed for at least three (3) years after the person applies for the permit by the statutes, ordinances, rules, development standards, regulations, and approvals in effect and applicable to the property when the person applies for the permit or requests approval from the state

**HEA 1128**



governmental agency for the construction of the development, building, or structure, even if before the commencement of the construction or while the permit application or approval request is pending with the state governmental agency the statutes governing the granting of the permit or approval from the local governmental agency are changed by the general assembly or the ordinances, rules, development standards, or regulations of the local unit of government or the local governmental agency are changed by the applicable local legislative body or regulatory body, regardless of whether such changes in the statutes, ordinances, rules, development standards, or regulations are part of a zoning ordinance, a subdivision control ordinance, or a statute, ordinance, or regulation that is based on the general police powers of the local unit of government. However, this subsection does not apply if the development or other activity to which the permit or approval request relates is not completed within ten (10) years after the development or activity is commenced.

(f) Subsection (d) does not apply to property when it is demonstrated by the local or state governmental agency that the construction of the development, building, or structure would cause imminent peril to life or property.

(g) This section does not apply to building codes under IC 22-13.

(h) The following provision is considered to be included in any regulation adopted under section 601(d)(2)(B) of this chapter that sets forth requirements for signs:

"The owner of any sign that is otherwise allowed by this regulation may substitute noncommercial copy in place of any other commercial or noncommercial copy. This substitution of copy may be made without the issuance of any additional permit by a local government agency. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or the favoring of any particular noncommercial message over any other noncommercial message. This provision prevails over any more specific provision in this regulation to the contrary."

**(i) Notwithstanding any other law, a local governmental agency must, not later than twelve (12) business days after a person has filed a complete application for a permit for which approval is ministerial under IC 36-7-4-402 or an improvement location permit issued under the 800 series of this chapter and meets all conditions required under this chapter and any other statute, issue the permit to the person.**



\_\_\_\_\_  
Speaker of the House of Representatives

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
President Pro Tempore

\_\_\_\_\_  
Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**HEA 1128**

