

ORDINANCE NO. 2024-15

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

Text Amendments
PC24-021-TA

WHEREAS, the Petitioner, Pulte Homes of Indiana, filed an Amendment Application before the Whitestown Plan Commission seeking to modify the commitments in the Peabody PUD Ordinance (Ordinance #2022-04); and

WHEREAS, the proposed text amendments to the Peabody PUD Ordinance (Ordinance #2022-04) is attached as **Exhibit A**; and

WHEREAS, pursuant to Indiana Code § 36-7-4-607, the Whitestown Plan Commission conducted a public hearing and determined its favorable recommendation on the proposed amendments, by a 4-0-0 vote, on September 10, 2024; and

WHEREAS, the Whitestown Plan Commission certified a favorable recommendation to the Whitestown Town Council on September 17, 2024; and

WHEREAS, pursuant to Indiana Code § 36-7-4-607, the Town Council of the Town of Whitestown, having considered the proposals and the recommendation to the Whitestown Plan Commission, now adopts the proposal and approves the text amendments, all as hereinafter set out.

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

Section 1. The Whitestown Plan Commission seeks to generally amend the text of the Peabody PUD Ordinance (Ordinance #2022-04) to modify the commitments set forth in **Exhibit A**. A legal description that relates to the text amendment is attached as **Exhibit B**. And a map of the proposed development is attached as **Exhibit C**. **Exhibit A, Exhibit B and Exhibit C** are attached and incorporated herein by reference.

Section 2. 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 3. That the Town Council hereby adopts the proposed amendments of the Peabody PUD Ordinance, and hereby adopt the revisions set forth in **Exhibit A** as text amendments to the Peabody PUD Ordinance. All other

provisions of the Peabody PUD Ordinance not otherwise specifically amended in **Exhibit A** remain in full force and effect.

Section 4. The terms or provisions of other ordinances in conflict with the terms or provisions hereof, if any, are hereby superseded. The terms, paragraphs, sentences, words, and acts of this Ordinance and the UDO are separable, and if a court of competent jurisdiction hereof declares and portion of this Ordinance or UDO unconstitutional, invalid, and unenforceable for any reason, such declaration shall not affect the remaining portion or acts hereof and the court shall substitute such provisions or acts with a constitutional, valid, and enforceable provision or act as would be necessary to effectuate the enforceability of the applicable provision.

Section 5. This Ordinance shall be in full force and effect from and after its passage as provided by applicable law.

ALL OF WHICH IS ADOPTED this ____ day of _____, 2024, by the Town Council of the Town of Whitestown, Indiana.

TOWN COUNCIL OF WHITESTOWN, INDIANA.

Dan Patterson, President

Courtenay Smock

Eric Nichols, Vice President

Cheryl Hancock

Tobe Thomas

ATTEST:

Matt Sumner, Town Clerk-Treasurer

Ordinance prepared by Allan Henderson, Planning Administrator

Exhibit A

MODIFIED COMMITMENTS

The following Commitments are hereby made in connection with a Planned Unit Development Ordinance (PC 24-021-TA; Peabody) and pertain to the Real Estate more particularly described in Exhibit A attached hereto.

- I. The Real Estate on the East side of CR 575 E is subject to the following Commitments, which shall also be incorporated into the Covenants:
 - A. **Limits on the Number of Rented Lots (“Rental Cap”)**. Subject to the further terms of Section II.B hereof, no Lots depicted in red or orange on Exhibit B, attached hereto, and no more than twenty percent (20%) of the Lots depicted in blue and green on Exhibit B may be rented to a third party for income, except as may be otherwise provided in this Article (the “Rental Cap”). The three blue lots which are outlined in the red box in Exhibit B may not be rented to a third party for income, except as may be otherwise provided in this Article, but may be included in the calculation of the Rental Cap. Lots owned by an immediate family member of the occupant or a trust in which the occupant is the settlor, grantor, trustee, or beneficiary shall not be subject to the Rental Cap and shall effectively be considered to be owner-occupied. Neither shall the Rental Cap apply to Lots acquired by a lender through foreclosure, deed in lieu, or similar proceedings for the period that they are owned by the lender.
 - B. **Limits on the Number of Lots Owned by One Person or Entity**. A legal entity may not own more than two (2) Lots for lease at the same time.
 - C. **Hardship Exceptions and Waiver**. If an Owner wishes to rent his or her Lot, but the Rental Cap has been reached, the Owner may submit a written request to the HOA to waive the “Rental Cap” because of hardship. The Hardship Exceptions and Waiver provisions of this Section II.C shall be available to all Lots depicted on Exhibit B, regardless of color designation or red box outlining. The Owner must inform the Association of the specific circumstances of the hardship and provide the Association with a copy of the lease. The approval and finding of hardship shall be at the discretion of the Association. Examples of hardship may include:
 - i. Temporary or permanent relocation of the residence of an Owner to a point outside of a two hundred (200) mile radius of the perimeter of Peabody PUD made necessary due to a change of employment or location of employment of at least one (1) such Owner;
 - ii. The Owner is a reservist in the United States Armed Forces who is called to temporary active duty or active-duty personnel in the United State Armed Forces, and is temporarily deployed;

- iii. Death of an Owner;
- iv. Divorce or marriage of an Owner;
- v. Medical conditions of the Owner which make continued residence in the Dwelling difficult or impractical;
- vi. The Owner's relocation to a long-term care facility; or
- vii. Any other personal or financial situation that, without allowing renting or leasing of a Dwelling Unit, will cause significant financial harm occur to the Owner

The HOA may approve or deny such requests as it deems appropriate on a case-by-case basis. Prior to the turnover of the HOA from the developer to the residents, the developer shall appoint two (2) residents to an advisory committee to consult with the developer-controlled HOA with respect to applications for Hardship Exceptions and Waivers pursuant to this Section 11.C. The duration of an Hardship Exception and Waiver granted pursuant to this Section II.C shall be at the discretion of the HOA; provided, however, that the duration may not exceed three (3) years unless the Owner shall request an extension of the Hardship Exception and Waiver in writing prior to the expiration of the then current term, which the HOA may grant for good cause shown.

D. General Lease Conditions; HOA Ledger.

- i. All leases, including renewals, must be in writing, and no lease shall be entered into for an initial term of no less than six (6) months without the prior written approval of the HOA. Owners cannot lease, rent or operate their Lot on a hotel, transient or short-term rental basis, which is defined as a term of less than six (6) months. This short-term rental prohibition includes, without limitation, the use of a short-term rental platform through which unaffiliated parties offer to rent a Lot, home or portion thereof to an occupant and collects consideration for the rental from the occupant (for example, Airbnb or VRBO). Any single-family dwelling leased hereunder shall comply with the Town of Whitestown's Rental Registration and Inspection Program as set forth in Ordinance 2014-25 to the extent individual provisions of said Ordinance may be applicable to the particular lease transaction.
- ii. All leases shall provide for direct action by the HOA and/or any Owner against the tenant with or without joinder of the Owner of

such Lot. If such provision is not in the lease, it will be deemed to be in such lease.

- iii. To ensure any leased property is properly maintained during the term of the lease, in addition to providing a copy of the lease to the HOA, the Owner must also provide a copy of the service plan for the property, to include mowing, fertilization, weed control, trimming, and landscape bed maintenance. This plan must include frequency for each item as well as the service provider that will be providing said services to the property for approval by the HOA.

To document compliance with these Commitments, the HOA shall maintain a ledger documenting the number of Lots for rent on the East side of CR 575 E, and such ledger shall: identify the number of units leased under Sections II.A and II.C hereof, respectively, and with respect to units leased pursuant to the hardship provisions of Section II.C. above, identify the nature of the hardship; and be provided to the Town of Whitestown annually on or before the fifteenth day following the close of the third calendar quarter.

Exhibit B

Peabody Property EAST – Whitestown

AS-SURVEYED LAND DESCRIPTION

Part of the Northeast Quarter and part of the Southeast Quarter, all in Section 24, Township 18 North, Range 1 East of the Second Principal Meridian, in Worth Township, Boone County, Indiana, as depicted on an ALTA/NSPS Land Title Survey prepared by Michael G. Judt, Professional Surveyor Number 21500017, HWC Engineering Job Number 2020-092, dated August 20, 2021, more particularly described as follows:

COMMENCING at the northeast corner of said Northeast Quarter, said corner marked by a Harrison monument found per Boone County Surveyor reference ties; thence South 00 degrees 37 minutes 35 seconds East (grid bearing, Indiana State Plane – West Zone, NAD 83, 2011, EPOCH 2010.0000) along the east line of said Northeast Quarter a distance of 350.00 feet to the POINT OF BEGINNING, being the southeast corner of Lot 32 in Walker Addition, per plat recorded in Plat Book 3, Page 130 in the Office of the Recorder of Boone County, Indiana; thence South 89 degrees 54 minutes 34 seconds West along a south line of said Walker Addition a distance of 1335.86 feet (1333.00 feet per plat) to the west line of the East Half of said Northeast Quarter; thence South 00 degrees 36 minutes 36 seconds East along said west line a distance of 2294.66 feet to the southwest corner of said Half-Quarter Section; thence South 00 degrees 40 minutes 19 seconds East along the west line of the East Half of said Southeast Quarter a distance of 2383.30 feet to the northwest corner of a right-of-way tract for Albert S. White Drive, as described in Instrument Number 201300006208 in said Recorder's Office, the following six (6) courses being along the north and east lines of said right-of-way; (1) thence North 89 degrees 22 minutes 46 seconds East a distance of 17.79 feet; (2) thence South 25 degrees 42 minutes 09 seconds East a distance of 38.64 feet; (3) thence South 00 degrees 37 minutes 14 seconds East a distance of 125.00 feet; (4) thence South 18 degrees 11 minutes 55 seconds East a distance of 47.08 feet; (5) thence North 89 degrees 12 minutes 28 seconds East a distance of 991.83 feet; (6) thence North 89 degrees 03 minutes 10 seconds East a distance of 293.82 feet to the west line of Walker Farms, Section 11, per plat recorded in Plat Book 19, Page 69 as Instrument Number 200800010858 in said Recorder's Office; thence North 00 degrees 37 minutes 11 seconds West along said west line and along the west line of Walker Farms, Section 8, per plat recorded in Plat Book 17, Page 20 as Instrument Number 200600006386 in said Recorder's Office, a distance of 2580.04 feet to the northeast corner of said Southeast Quarter, marked by a Harrison monument; thence continuing North 00 degrees 37 minutes 11 seconds West along the east line of said Northeast Quarter, being also along the west line of said Walker Farms, Section 8, along the west line of Walker Farms, Section 7, per plat recorded in Plat Book 20, Page 41 as Instrument Number 201000010339 in said Recorder's Office, along the west line of Walker Farms, Section 6, per plat recorded in Plat Book 18, Page 50 as Instrument Number 200700008496 in said Recorder's Office, and along the northerly

extension of said west line of Walker Farms, a distance of 2285.79 feet to the POINT OF BEGINNING, containing 149.290 acres, more or less.

