



MEMORANDUM

November 21, 2022, Town Council Meeting

TO: Town of Zionsville Town Council
FROM: Mike Dale Director of Community and Economic Development
RE: Plan Commission Docket # 2022-45-OA and 2022-46-OA
Ordinance Amendment request related to the Board of Zoning Appeals and Plan Commission Rules of Procedure

The Board of Zoning Appeals and Plan Commission Rules of Procedure are currently incorporated into the Zionsville Zoning Ordinance. The Rules are intended to be a stand-alone document that is *not* incorporated into the Zoning Ordinance but rather adopted, managed, and amended by the Board and Commission alone. When the Rules were incorporated into the Zoning Ordinance, it transitioned from "rule" to "law." That is not the intent of the Indiana Code statutes.

Board of Zoning Appeals: This proposed Zoning Ordinance Amendment is for the purpose of removing the Rules from the Zoning Ordinance. The Board's Rules are found in Zoning Ordinance Sections 190.01, 190.02, 190.03, 190.04, 190.05, 190.06, 190.07, 190.08, and 190.09 and are attached for your convenience and reference. The Rules as a stand-alone document will simultaneously be considered and adopted by the Board with an effective date that coincides with the effective date of this Zoning Ordinance Amendment.

Plan Commission: This proposed Zoning Ordinance amendment is for the purpose of removing the Rules from the Zoning Ordinance. The Plan Commissions Rules are found in Zoning Ordinance Sections 190.20, 190.21, 190.22, 190.23, 190.24, 190.25, 190.26, 190.27, and 190.28, 190.29 and are attached for your convenience and reference. The Rules as a stand-alone document will simultaneously be considered and adopted by the Plan Commission with an effective date that coincides with the effective date of this Zoning Ordinance Amendment.

Please note that no text changes to the Rules are being proposed at this time or through this process. This first step is to simply remove the Rules from the zoning ordinance and establish them as a stand-alone document. Changes to the Rules thereafter may be considered and adopted by the Board/Commission.

With approval from the Town Council the Rules of Procedure will be re-adopted by the Board of Zoning Appeals and Plan Commission at their next regularly scheduled meeting

Respectfully Submitted:

Mike Dale, AICP
Director of Community and Economic Development

ORDINANCE NO. 2022-26
OF THE TOWN OF
ZIONSVILLE, INDIANA

AN ORDINANCE TO AMEND THE
TOWN OF ZIONSVILLE
ZONING ORDINANCE FOR
THE
TOWN OF ZIONSVILLE,
BOONE COUNTY, INDIANA

AND FIXING A TIME WHEN THE SAME SHALL TAKE
EFFECT

Plan Commission Petition No.
2022-46-OA

WHEREAS, I.C. § 36-7-4, ~~et seq.~~, empowers the Town of Zionsville Advisory Plan Commission, Boone County, Indiana, to hold public hearings and make recommendations to the Town Council of the Town of Zionsville, Boone County, Indiana, concerning ordinances for the zoning and districting of all lands within the incorporated areas of the Town of Zionsville, Boone County, Indiana: and;

WHEREAS, in accordance with I.C. 36-7-4-600 ~~et seq.~~, the Town of Zionsville Advisory Plan Commission, Boone County, Indiana conducted a public hearing on October 17, 2022, to consider a proposal to amend the Town of Zionsville Zoning Ordinance for the Town of Zionsville, Boone County, Indiana, (the "Ordinance"); filed as petition 2022-46-OA; and,

WHEREAS, the Town of Zionsville Advisory Plan Commission certified the proposal to amend the Ordinance to the Town Council of the Town of Zionsville, Boone County, Indiana, with a favorable recommendation on October 17, 2022 (Exhibit A); and,

WHEREAS, the Town Council of the Town of Zionsville, Boone County, Indiana, considered the Proposal to amend the Ordinance at its regular meeting on November 21, 2022.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ZIONSVILLE, BOONE COUNTY, INDIANA, IN ACCORDANCE WITH I.C.36 7-4-600 et.seq., AND ALL ACTS AMENDATORY AND SUPPLEMENTAL THERETO, AS FOLLOWS:

Section 1. Amend the Town of Zionsville Zoning Ordinance to remove the RULES OF PROCEDURE for the Plan Commission from the Zoning Ordinance Sections 190.20, 190.21, 190.22, 190.23, 190.24, 190.25, 190.26, 190.27, 190.28, and 190.29; to provide for a stand-alone document.

Section 2. Savings Clause: If any title, section, subsection, phrase, clause, sentence, or word of this Ordinance shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby and shall remain in full force and effect.

Section 3. Construction of Clause Headings: The clause headings appearing herein have been provided for convenience and reference and do not purport and shall not be deemed to define, limit or extend the scope or intent of the clause to which they appertain.

Section 4. Repeal of Conflicting Ordinances: The provisions of all other Town ordinances in conflict with the provisions hereof, if any, are of no further force or effect and are hereby repealed.

Section 5. Severability: If any part of this Ordinance shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remainder of this Ordinance.

Section 6. Duration and Effective Date: The provisions of this Ordinance shall become and remain in full force and effect upon adoption and publication on January 1, 2023 according to Indiana Law and until its repeal by ordinance.

Introduced and filed on the 17th day of October, 2022. A motion to consider on First Reading was sustained by a vote of 5 in favor and 0 opposed, pursuant to Indiana Code 36-5-2-9.8.

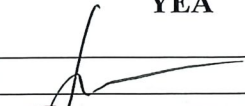
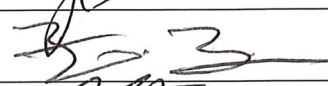
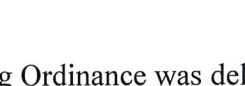
DULY PASSED AND ADOPTED this 21st day of November 2022, by the Town Council of the Town of Zionsville, Boone County, Indiana, having been passed by a vote of 7 in favor and 0 opposed.

Ordinance 2022-26

**TOWN COUNCIL OF THE TOWN OF ZIONSVILLE,
BOONE COUNTY, INDIANA**

YEA

NAY

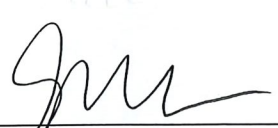
Jason Plunkett, President		
Brad Burk, Vice-President		
Josh Garrett		
Alex Choi		
Joe Culp		
Craig Melton		
Bryan Traylor		

I hereby certify that the foregoing Ordinance was delivered to the Town of Zionsville mayor Emily Styron on the 21st day of November, 2022 at 10:30 A.M./P.M.

ATTEST:


Amy Lacy, Municipal Relations Coordinator

**MAYOR'S
APPROVAL**


Emily Styron, Mayor

11/21/2022
DATE

**MAYOR'S
VETO**

Emily Styron, Mayor

DATE

EXHIBIT A

Plan Commission Certification

[attached]



Town of Zionsville | 1100 West Oak Street | Zionsville, Indiana 46077 | www.zionsville-in.gov

**CERTIFICATION TO THE TOWN COUNCIL
OF THE TOWN OF ZIONSVILLE, BOONE COUNTY, INDIANA**

October 17, 2022

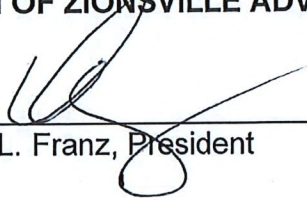
To the Town Council of the Town of Zionsville, Indiana:

Be it advised that, pursuant to Indiana Code 36-7-4, on October 17, 2022, the Town of Zionsville Advisory Plan Commission (the "Commission"), by a vote of 5 in favor and 0 opposed, gave a Favorable Recommendation to proposal 2022-46-OA to amend the text of the Town of Zionsville Zoning Ordinance, applicable to all real property located in the Town of Zionsville, Boone County Indiana.

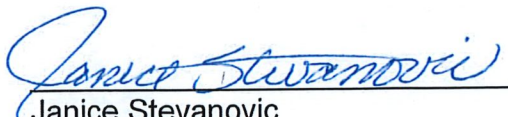
The proposal amends various Articles within the Town of Zionsville Zoning Ordinance related to the Plan Commission Rules of Procedure for the purpose of removing the Rules of Procedure out of the Zoning Ordinance allowing for a stand-alone document.

The Town of Zionsville Advisory Plan Commission hereby certifies proposal #2022-46-OA to amend the Town of Zoning Ordinance (a copy of which is attached to the Certification and incorporated here by this reference) to the Town Council of Zionsville Indiana, with a Favorable Recommendation.

TOWN OF ZIONSVILLE ADVISORY PLAN COMMISSION



David L. Franz, President



Janice Stevanovic
Secretary, Town of Zionsville Advisory Plan Commission

PLAN COMMISSION; RULES OF PROCEDURE

Exhibit B

§ 190.20 MEETINGS.

(A) *Regular meetings.* The Plan Commission shall hold its regular meeting on the third Monday of each month at 7:00 p.m. in the Town Hall (1100 West Oak Street, Zionsville, Indiana). If the third Monday of the month is a holiday as recognized by the town, or if it is impossible to conduct the meeting at that time or place, the regular monthly meeting shall be scheduled for the first Tuesday following the third Monday of the month.

(B) *Special meetings.*

(1) Special meetings of the Plan Commission may be called by the President or by two members of the Plan Commission upon written request to the Secretary. The Secretary shall send to all members, at least three days before the special meeting, a written notice fixing the time and place of the meeting.

(2) Written notice of a special meeting shall not be required if:

- (a) The date, time and place of a special meeting is fixed at a regular meeting; and
- (b) All members of the Plan Commission are present at the regular meeting.

(C) *Executive session.* The Plan Commission may meet in executive session pursuant to I.C. 5-14-1.5-6.1.

(D) *Public meetings.* All meetings of the Plan Commission, except legally constituted executive sessions, shall be open to the public who shall have the right to give testimony during the public hearing portion of the meeting, in accordance with these rules of procedure.

(E) *Minutes.* The Plan Commission shall maintain minutes of all meetings.

(Ord. passed 9-28-1998; Amended 6-19-2000; Amended 10-15-2001)

§ 190.21 PROPOSALS; REPLACEMENT, AMENDMENT AND REPEAL OF SUBDIVISION OR ZONING TEXT.

(A) *Who may initiate.* A proposal to adopt a replacement zoning ordinance after repealing the entire Town of Zionsville Zoning Ordinance, including amendments and zone maps, (Ch. 194 of Volume 2 of this code of ordinances) or Town of Zionsville Subdivision Control Ordinance, including amendments, (Ch. 193 of Volume 2 of this code of ordinances) or to amend or partially repeal the text of Ch. 193 or 194 of this code of ordinances may be initiated by the Plan Commission or the Town Council.

(B) *Preparation of a proposal.* The Plan Commission shall prepare the proposal consistent with the requirements of I.C. 36-7-4-601. The Plan Commission may engage other professionals to assist in the actual writing of the proposal consistent with the policies and directives of the Plan Commission or the Town Council.

(C) *Considerations.* In preparing and considering a proposal, the Plan Commission and Town Council shall pay reasonable regard to:

- (1) The Comprehensive Plan for the town (Ch. 191 of Volume 2 of this code of ordinances);
- (2) Current conditions and the character of current structures and uses in each district;
- (3) The most desirable use for which the land in each district is adapted;
- (4) The conservation of property values throughout the town; and
- (5) Responsible development and growth.

(D) *Public hearings.* The Plan Commission must hold at least one public hearing on a proposal prior to certification of the proposal to the Town Council.

(E) *Notice.* The Plan Commission hereby declares that all property owners in the town are interested parties in relation to a proposal to adopt a replacement zoning ordinance after repealing the entire Town of Zionsville Zoning Ordinance, including amendments and zone maps, ((Ch. 194 of Volume 2 of this code of ordinances) or Town of Zionsville Subdivision Control Ordinance, including amendments, (Ch. 193 of Volume 2 of this code of ordinances) or to amend or partially repeal the text of Ch. 193 or 194 of this code of ordinances. The Plan Commission shall provide notice to all such interested parties by publication in accordance with I.C. 5-3-1 at least ten days prior to the date set for a public hearing. Published notice shall comply with the provisions of I.C. 36-7-4-604. No further notice by the Plan Commission shall be required.

(F) *Certification of proposals.*

(1) A proposal to adopt a replacement zoning ordinance after repealing the entire Town of Zionsville Zoning Ordinance, including amendments and zone maps, ((Ch. 194 of Volume 2 of this code of ordinances) or Town of Zionsville Subdivision Control Ordinance, including amendments, (Ch. 193 of Volume 2 of this code of ordinances) shall only be certified by the Plan Commission to the Town Council if the proposal receives a favorable recommendation from the Plan Commission.

(2) A proposal to amend or partially repeal the text of Ch. 193 or 194 of this code of ordinances may be certified by the Plan Commission to the Town Council with a favorable recommendation, an unfavorable recommendation or with no recommendation from the Plan Commission.

(G) *Publication of notice of adoption of proposals.*

(1) After adoption of a proposal to adopt a replacement zoning ordinance after repealing the entire Town of Zionsville Zoning Ordinance, including amendments and zone maps, ((Ch. 194 of Volume 2 of this code of ordinances) or Town of Zionsville Subdivision Control Ordinance, including amendments, (Ch. 193 of Volume 2 of this code of ordinances), the Plan Commission shall publish a notice of adoption in accordance with I.C. 5-3-1. Notice of adoption shall:

- (a) Summarize the subject matter of the ordinance;
- (b) Give the date of adoption;
- (c) Specify the places or area that would be directly affected by the ordinance (this does not require identification of real property by metes and bounds);
- (d) Specify the penalty or forfeiture prescribed for a violation of the ordinance; and
- (e) Give two locations open to the public where the entire text of the ordinance is available for inspection.

(2) After adoption of a proposal to amend or partially repeal the text of Ch. 193 or 194 of this code of ordinances, the Plan Commission shall print the text of the ordinance in book or pamphlet form. No other printing or publication of any zoning ordinance is required.

(H) *Public inspection.* If Ch. 193 or 194 of this code of ordinances is not included in the code of ordinances for the town, two copies of the book or pamphlet (and supplement, if any) shall be filed in the office of the Clerk and shall be kept on file in that office for public inspection.

(I) *Effective date.* Unless the proposal specifies a later effective date, the ordinance takes effect when it is adopted unless the ordinance contains a penalty or forfeiture for a violation, in which case the ordinance may not take effect until 14 days after the later of the following:

- (1) The final day on which notice of its adoption is published; or
- (2) The day on which the ordinance is filed with the Clerk's office.

(Ord. passed 9-28-1998; Amended 6-19-2000; Amended 10-15-2001)

§ 190.22 FILING PETITIONS; ZONE MAP CHANGES, MODIFICATIONS OF COMMITMENT, SUBDIVISION PLANS OR VACATIONS OF LAND.

(A) *Who may file.*

(1) Zone map changes shall be initiated by the Plan Commission or by a petition signed by property owners of at least 50% of the land involved in the petition.

(2) Modification of commitments, subdivision plats and development plans shall be initiated by a petition signed by all of the owners of the land involved in the petition.

(3) Vacations of land in a plat shall be initiated by a petition signed by the owner(s) of all or part of the plat pertaining to the land contained in the petition.

(4) An owner may be represented by an authorized agent. An authorized agent shall file a written statement with the Plan Commission, signed by the owner on a form acceptable to the Plan Commission, at the time of filing a petition.

(B) *Filing deadline.* Petitions for public hearing before the Plan Commission shall be filed with the Plan Commission no later than 3:00 p.m. on a date which is at least 31 days prior to the initial hearing before the Plan Commission at which the petition is to be considered.

(C) *Form of filing.* All petitions to the Plan Commission shall be on forms provided by the Plan Commission and shall include all materials requested on said forms. In addition, site plans, surveys, legal descriptions, building elevations, sign details, proposed commitments and any other relevant supporting documentation shall be of a usable scale and quality.

(D) *Findings of fact.* When findings of fact are required by applicable law, Ch. 193 of this code of ordinances, Ch. 194 of this code of ordinances or these rules of procedure, the petitioner shall, at the time of filing of the petition, file proposed detailed written findings of fact.

(E) *Specifying of request.*

(1) All petitions shall specify the approvals requested. Any items, including proposed waivers of development requirements in connection with a development plan approval or waivers of the standards set forth in Ch. 193 of this code of ordinances, even if indicated on the proposed plans, shall not be considered a part of the request presented to the Plan Commission for its consideration unless such waivers are specified in the petition.

(2) A petition for the vacation of land must:

- (a) State the reasons for and circumstances prompting the request;
- (b) Specifically describe the property in the plat proposed to be vacated; and

(c) Give the name and address of each owner of land in the plat.

(3) A petition for the vacation of land may include a request to vacate any recorded covenant or commitments filed as part of the plat.

(F) *Primary and secondary plats.* The procedures related to the filing for and obtaining approval of primary and secondary plats contained in these rules of procedure are provided for convenience purposes only. The complete outline of procedures to be followed in the filing for and obtaining approval of primary and secondary plats is set forth in Ch. 193 of this code of ordinances. In case of conflict between any portion of these rules of procedure and Ch. 193 of this code of ordinances related to the filing for and obtaining approval of primary and secondary plats, Ch. 193 of this code of ordinances shall control.

(Ord. passed 9-28-1998; Amended 6-19-2000; Amended 10-15-2001)

§ 190.23 DOCKETING OF PETITIONS; ORDER OF HEARINGS; INVESTIGATION OF PETITIONS.

(A) *Docketing by Secretary.* Each petition filed in proper form pursuant to the guidelines established by the Plan Commission shall, within ten days of submitting a complete filing, be numbered and docketed by the Secretary for an initial hearing by the Plan Commission. Such petitions shall be numbered consecutively in the order of their filing according to the type of petition.

(B) *Order of hearings.*

(1) On the date of the public hearing, the Plan Commission shall hear petitions in the order of their numbers as follows.

(a) *Continued petitions.*

1. Zone map changes;
2. Modification of commitments;
3. Subdivision plats;
4. Development plan approvals; and
5. Vacation of land.

(b) *Initial hearing petitions.*

1. Zone map changes;
2. Modification of commitments;
3. Subdivision plats;
4. Development plan approvals; and
5. Vacation of land.

(2) The Plan Commission may, in its discretion and at a public hearing, change the order in which petitions shall be heard at the public hearing.

(Ord. passed 9-28-1998; Amended 6-19-2000; Amended 10-15-2001)

§ 190.24 NOTICE REQUIREMENTS FOR PETITIONS; ZONE MAP CHANGES, MODIFICATIONS OF COMMITMENT, SUBDIVISION PLATS, DEVELOPMENT PLANS OR VACATIONS OF LAND.

Notice of all petitions for zone map change, modification of commitments, subdivision plats, development plans or vacation of land for public hearing before the Plan Commission shall be given to all interested parties or property owners in the following manner.

(A) *Notice by publication.*

(1) Notice, in a form approved by the Secretary, shall be published by the petitioner in accordance with I.C. 5-3-1 at least ten days prior to the date of the public hearing.

(2) The petitioner shall be responsible for the cost of such publication.

(B) *Notice by mailing.*

(1) Notice, in a form approved by the Secretary in accordance with the requirements of I.C. 36-7-4-604, shall be mailed to each interested party.

(2) Notice by mailing shall be given by certified mail, return receipt requested, at least ten days prior to the date of the hearing.

(3) The requirements of mailing notice shall not be applicable to petitions initiated by the Plan Commission.

(C) *Interested parties.*

(1) Interested parties for a petition for zone map change, modification of commitments, subdivision plat and development plan approval shall include:

- (a) All owners of property within the area included in the petition who are not petitioners; and
- (b) All owners of adjoining parcels to a depth of one ownership surrounding the perimeter of the area included in the petition.

1. In the case of property which has been submitted to the Horizontal Property Law (I.C. 36-1-6), notice shall be given only to the association of co-owners. 2022-

2. For the purpose of notice requirements contained in this division (C)(1), where any immediately adjoining parcel is owned by the petitioner, the subject property of the petition shall be deemed to include the immediately adjoining parcel owned by the petitioner.

3. For the purpose of notice requirements contained in this division (C)(1), where any immediately adjoining parcel is a dedicated right-of-way, railroad right-of-way or private alley or street, the subject property of the petitioner shall be deemed to include the portion of the right-of-way or private street that is contiguous and adjacent to the parcel owned by the petitioner.

(2) Interested parties for a petition for the vacation of land in a plat shall include all property owners within said plat.

(3) In determining the name and address of legal title owners, the records of the County Auditor, or the appropriate office designated in an adjoining county, at a point in time within 14 days of the date of filing, shall be deemed to be the true names and addresses of all persons entitled to receive notice.

(D) *Affidavit of notice.* The petitioner shall file an affidavit of notice with the Secretary, in a form as specified by the Plan Commission, indicating compliance with all notice requirements of these rules, at least three business days prior to the public hearing. Copies of all "receipt for certified mail" (white slips) shall be filed with the affidavit of notice. The originals of the "domestic return receipts" (green cards) shall be filed with the Secretary upon the later of:

- (1) The public hearing; or
- (2) Receipt by the petitioner.

(E) *Defective notice.* If proper notice has not been given, a petition may be continued until a later date to allow time for un-notified persons to prepare for the public hearing. Personal appearance shall waive any defect in notice unless the defect in notice is timely raised at the beginning of the public hearing on the petitioner's petition.

(Ord. passed 9-28-1998; Amended 6-19-2000; Amended 10-15-2001)

§ 190.25 CONDUCT OF PUBLIC HEARINGS.

(A) *Time allowed and procedure for hearing of petitions.*

(1) In order to provide all interested parties with a fair hearing, petitioners and remonstrators shall be afforded a reasonable amount of time for the presentation of evidence, statements and argument at the public hearing of every petition before the Plan Commission. The order of the presentation of evidence, statements and arguments shall be as follows.

(a) Petitioners and persons appearing in support of a petition shall be allotted a total of 15 minutes to present evidence, statements and arguments in support of the matter being considered.

(b) Remonstrators and persons appearing in opposition to a petition shall then be allotted a total of 15 minutes to present evidence, statements and arguments in opposition to the matter being considered.

(c) The petitioner shall then have a total of five minutes for rebuttal, which shall include only evidence, statements and argument in rebuttal of remonstrators' evidence and a brief closing statement.

(d) Remonstrators shall then have a total of five minutes for rebuttal, which shall include only evidence, statements and argument in rebuttal of remonstrators' evidence and a brief closing statement.

(2) At the conclusion of remarks by any party, the Plan Commission shall have the right to ask questions pertaining to the evidence, statements and argument presented. Time involved in responding to questions by the Plan Commission by either the petitioners or remonstrators shall not be considered for purposes of calculating equal time for presentation.

(3) The presiding officer shall have authority to cut off repetitious and irrelevant testimony and to extend the time allotted to petitioners and remonstrators, but shall make reasonable efforts to allow equal time for petitioners and remonstrators.

(B) *Testimony.* All persons giving testimony to the Plan Commission regarding any pending petition shall be deemed to have been given under oath. A person giving testimony shall state his or her name and address for the record prior to beginning testimony.

(C) *Orderly conduct.* All persons appearing at a public hearing shall act in an orderly and courteous manner. Discourteous, disorderly or contemptuous conduct shall be regarded as a breach of the privileges extended by the Plan Commission and shall be dealt with by the presiding officer as is deemed fair and proper.

(D) *Continuances.*

(1) Requests for continuances by petitioners or remonstrators shall be considered at the beginning of each public hearing agenda prior to calling the first petition for public hearing listed on the agenda.

(2) A continuance request may be made in person or in writing and shall:

(a) Specify the date to which the continuance is requested; and

(b) Indicate whether it is the first request made by the party for a continuance of the hearing on the subject petition.

(3) If a first request for a continuance is requested in writing and filed with the Secretary, at least one week prior to the date of the public hearing, with a copy of the request being sent to the petitioner (in the case of a remonstrator's request) or to all those entitled to receive notice (in the case of a petitioner's request), the petition shall be considered continued to the next regularly scheduled meeting of the Plan Commission. Such written request shall include the date of the next regularly scheduled meeting of the Plan Commission. However, the matter shall not be considered continued if it is a petition for zone map change and the Plan Commission is required to conduct a public hearing within 60 days of its submission according to I.C. 36-7-4-608(b). Once a public hearing on a rezoning is held, it may be continued from time to time as may be found necessary by the Plan Commission pursuant to I.C. 36-7-4-604(b)(8).

(4) Continuances may be granted by motion of the Plan Commission at the hearing upon a showing of good cause (e.g., the need for additional time for negotiation between petitioners and remonstrators which will reasonably increase the likelihood of agreement between the parties; the unforeseeable need for additional information; or the unforeseeable absence of a key witness); and, provided that, the non-requesting party does not suffer a significant hardship because of the grant of a continuance (e.g., presence of remonstrators at the hearing who would be inconvenienced by having to reappear; or additional expense incurred by petitioner as a result of time delay).

(5) The Plan Commission may, at any time, in its discretion, continue the hearing of any petition.

(6) This discretion shall include the ability to continue a hearing if additional documentation, amendments or revisions to a petition were not received by 4:00 p.m. on the Monday prior to the scheduled hearing of a petition, and the late receipt of such items did not allow for adequate review by the Plan Commission, Secretary or staff.

(7) On its own motion, Plan Commission may determine if re-notification of interested property owners shall be required for any continued hearing.

(8) Neither petitioners nor remonstrators shall be granted more than two requests for continuance of a petition unless, in the determination of the Plan Commission, a significant hardship can be demonstrated by the requesting party. If a significant hardship cannot be demonstrated, the petition shall be heard as scheduled.

(E) *No hearing after 10:00 p.m.*

(1) The Plan Commission may elect to not begin the hearing on any matter after 10:00 p.m., local time. If a hearing on a petition has not been called for by the presiding officer prior to 10:00 p.m., local time, such petition may be continued until the next regularly scheduled or special meeting of the Plan Commission.

(2) Any hearing which has been called for by the presiding officer prior to 10:00 p.m., local time, may be completed.

(F) *Contacting Plan Commission members regarding pending petition prohibited.*

(1) No person shall contact any member of the Plan Commission in advance of a public hearing on any pending petition with intent to influence the Plan Commission member's action on such petition.

(2) A written request for continuance as provided for by these rules shall not be construed to be a prohibited contact of a Plan Commission member.

(3) A contact with a Plan Commission member who is also a member of the Town Council shall not be construed to be a prohibited contact; provided that:

(a) All contact is limited to that member's official duties as a Town Council member; and

(b) The Plan Commission member who is also a member of the Town Council reports on the substance of such contacts to the other members of the Plan Commission during the public hearing.

(G) *Points of order.* The presiding officer of the Plan Commission shall, subject to these rules of procedure, decide all points of order or procedure, unless otherwise directed by a majority of the members of the Plan Commission present.

(H) *Secretary's written report.* Nothing in these rules of procedures shall be deemed to prohibit the Secretary from submitting a written report, stating any facts concerning the physical characteristics of the area involved in the petition, together with a recital of surrounding land use and public facilities available to service the area, or other pertinent facts. A copy of such statement shall be made available to the petitioner and all remonstrators of record, if any.

(I) *Disqualification of Plan Commission member in case of personal or financial interest.* A member of the Plan Commission who has a direct or indirect personal or financial interest in any petition presented shall:

(1) Disqualify himself or herself insofar as the particular petition is concerned;

(2) Not sit as a member of the Plan Commission during the hearing of the particular petition; and

(3) Not participate as a member in the Plan Commission's hearing or decision in such petition.

(J) *Amendments.* Requests to amend any petition may be filed in writing prior to or at the beginning of any hearing, or may be made orally at the hearing. Any remonstrators present shall have the right to be heard on any objections they may have to such proposed amendment and may request a continuance of the hearing to allow time to study the proposed amendments. It shall be within the discretion of the Plan Commission to grant or deny requests for such continuances and to require re-notification. In making this determination, consideration shall be given to whether or not the Plan Commission, Secretary, petitioner or any remonstrators have had sufficient time to adequately review these new amendments or supporting documents; provided, however, any proposed amendment to change the zoning classification to a higher or more inclusive zoning classification shall be redocketed and readvertised.

(Ord. passed 9-28-1998; Amended 6-19-2000; Amended 10-15-2001)

§ 190.26 FINAL DISPOSITION OF PETITIONS.

(A) *Quorum and official vote.* A majority of the entire membership of the Plan Commission constitutes a quorum. Action of the Plan Commission is not official unless it is authorized at a regular or properly called special meeting by a majority of the entire membership of the Plan Commission.

(B) *Indecisive vote.* When a vote of the Plan Commission does not result in an official action of the Plan Commission as set forth in division (A) above, the petition shall be automatically redocketed and heard at the next regularly scheduled meeting of the Plan Commission.

(C) *Compliance with Indiana Code.* In the event that divisions (A) and (B) above are in contravention with I.C. 36-7-4-301 and I.C. 36-7-4-302, the Indiana Code provisions, as amended from time to time, shall prevail.

(D) *Dismissal of petitions.*

(1) The Plan Commission may dismiss a petition for lack of prosecution when the petitioner has failed to appear at two meetings. The Plan Commission may dismiss a petition for lack of jurisdiction.

(2) Any petition which has been dismissed by the Plan Commission for lack of prosecution shall not again be filed for consideration within a period of three months from the date of the dismissal, except upon motion to permit re-filing adopted by a majority vote of all members of the Plan Commission at a regular or special meeting, for good cause shown.

(E) *Withdrawal of petitions.*

(1) Prior to the issuance or publication of notice for any public hearing to be conducted by the Plan Commission, a petition may be withdrawn by the petitioner upon request made in writing. If the request for the withdrawal is received prior to the issuance or publication of notice, the staff shall not place the item on the agenda for the public hearing at which it was to be considered.

(2) If a petitioner wishes to withdraw a petition after notice of the public hearing has been published, the petitioner shall submit a written request to the Plan Commission or its staff prior to the public hearing, or at the public hearing prior to the receipt of evidence or testimony on the petition. The decision to accept the withdrawal shall be made at the public hearing when the petition was to be considered, and shall be at the discretion of the Plan Commission. If the withdrawal of the petition is approved by the Plan Commission, the petitioner shall not re-file a substantially similar request within a period of six months from the date of said withdrawal.

(3) No petition may be withdrawn by the petitioner after the Plan Commission has received any evidence or testimony regarding the petition at the public hearing scheduled on the petition.

(F) *Re-filing following adverse decision.*

(1) *Petitions for zone map change, modification of commitments, subdivision plat or development plan approval.*

(a) No parcel of ground, or part of a parcel, which has been the subject of an adverse decision of a petition for zone map change by the Town Council, an adverse decision of a petition for modification of commitments, subdivision plat or development plan approval by the Plan Commission, or an adverse decision of a petition for variance of use, variance of development standards or special exception by the Board of Zoning Appeals, shall again be included in a petition for either a zone map change, modification of commitments, subdivision plat or development plan approval for a substantially similar request, absent a substantial change in circumstances involving the development within one year from the date of the adverse decision, unless the body making the adverse decision, by an official vote at a public hearing, decides for good cause shown, to allow the re-filing.

(b) Written notice of a special request to include a parcel subject to an adverse decision in another petition, as noted above, shall be provided to the following at least ten days prior to the date of consideration of the special request by the Town Council, the Plan Commission or the Board of Zoning Appeals:

1. Adjoining property owners; and
2. The applicable of either the Secretary of the Plan Commission or Board of Zoning Appeals.

(2) *Petitions for the vacation of land.*

(a) After the termination of a vacation proceeding, a subsequent vacation proceeding affecting the same property and asking for the same relief may not be initiated for two years.

(b) The Plan Commission only has jurisdiction regarding the vacation of a plat per I.C. 36-7-3-10 and 36-7-3-11. A vacation of any public way is strictly the function of the Town Council, per I.C. 36-7-3-12. Platted easements are considered public ways and, therefore, may only be vacated by the Town Council, per I.C. 36-7-3-16(a).

(G) *Certification of Plan Commission's recommendation.* Within ten days after making a favorable recommendation, an unfavorable recommendation, or no recommendation on a petition for zone map change the Plan Commission shall certify such recommendation to the Town Council.

(H) *Findings of fact.*

(1) When the Plan Commission is required by applicable law, Ch. 193 or 194 of this code of ordinances or these rules of procedure to enter written findings of fact in support of its determination, such findings of fact may be entered at the initial public hearing or, at the Plan Commission's discretion, the public hearing on the petition may be continued until the next regularly scheduled meeting of the Plan Commission for the adoption of the findings of fact.

(2) If a petition is continued for the adoption of findings of fact, no further testimony need be taken by the Plan Commission prior to adoption of the findings of fact.

(I) *Notification of grant or denial; petition for modification of commitments, subdivision plat, development plan approval or vacation of land.*

(1) Following final action on a modification of commitments, subdivision plat, development plan approval or vacation petition by the Plan Commission, the Secretary, within 30 days after the final action, shall notify the petitioner of the final decision by sending the petitioner.

(a) A letter of grant or denial; and

(b) A copy of the Plan Commission's written findings of fact, which shall be incorporated into the letter of grant or denial.

(2) If the petition was granted, the letter shall include all commitments or conditions imposed, and shall incorporate the approved findings of fact into the grant.

(Ord. passed 9-28-1998; Amended 6-19-2000; Amended 10-15-2001)

§ 190.27 WAIVER OF RULES.

The Plan Commission shall have the right to waive any portion of these rules of procedure upon their own motion, or upon request of any interested party, for good cause shown, provided, however, the Plan Commission may not waive any portion of these rules beyond the minimum requirements established by statute.

(Ord. passed 9-28-1998; Amended 6-19-2000; Amended 10-15-2001)

§ 190.28 AMENDMENTS.

Amendments to these rules of procedure may be made by the Plan Commission upon the affirmative vote of a majority of the members of the Plan Commission.

(Ord. passed 9-28-1998; Amended 6-19-2000; Amended 10-15-2001)

§ 190.29 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AUTHORIZED AGENT. Any party duly authorized in writing by the owner of a subject parcel to act on the owner's behalf with respect to a petition for zone map change, modification of commitments, subdivision plat, development plan approval or vacation of land.

BUSINESS DAY. A day when the offices of the town are open to the public for the transaction of business for the entire period of its normal operating hours.

FINDINGS OF FACT. A written statement, based upon the evidence presented at a public hearing and the requirements of applicable law, Ch. 193 or 194 of this code of ordinances or these rules of procedure, in support of a decision made by the Plan Commission.

PLAN COMMISSION. The Town of Zionsville Plan Commission established pursuant to the Advisory Planning Law of the state.

PETITION. An application for zone map change, modification of commitments, subdivision plat, development plan approval or vacation of land filed for public hearing before the Plan Commission in compliance with applicable state laws, local ordinances and rules or procedure.

PETITIONER. The owner of a parcel or the owner's duly authorized agent, attorney or representative who makes

application for a zone map change, modification of commitments, subdivision plat, development plan approval or vacation of land filed for public hearing before the Plan Commission.

PROPOSAL. A draft of an ordinance to adopt a replacement zoning ordinance after repealing Ch. 193 or 194 of this code of ordinances, or a draft of an ordinance to amend or partially repeal the text of Ch. 193 or 194 of this code of ordinances.

SECRETARY. The Secretary of the Plan Commission as duly appointed by the Plan Commission in accordance with I.C. 36-7-4-304.

(Ord. passed 9-28-1998; Amended 6-19-2000; Amended 10-15-2001)

APPENDIX A: BOARD OF ZONING APPEALS COMMITMENT FORM

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APPENDIX A: BOARD OF ZONING APPEALS COMMITMENT FORM

ZIONSVILLE BOARD OF ZONING APPEALS FILE: XXXX-XX-XXX

COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE VOLUNTARILY MADE IN CONNECTION WITH DEVELOPMENT STANDARDS VARIANCE APPROVALS

In accordance with IND. CODE § 36-7-4-918.5, XXX and XXX (hereinafter collectively referenced as "OWNERS") represent and warrant that Owners are the owners of certain real estate located in the Town of Zionsville, Boone County, Indiana, which real estate is more particularly described in Exhibit A attached hereto (the "Real Estate") and is commonly known as XXX, Zionsville, Indiana, and as the owners of said Real Estate, Owners have the authority to, and do hereby voluntarily make, the following COMMITMENTS concerning the use and development of the Real Estate, including any portion thereof.

STATEMENT OF COMMITMENTS

Owners voluntarily agree and commit that approval by the Zionsville Board of Zoning Appeals of Docket # XXXX-XX-XXX, requesting approval of a development standards variance to allow deviation from (a) the requirement for a parcel to provide XXX Zoning District, is conditioned on the following:

- 1.
- 2.
- 3.

These COMMITMENTS shall be binding on Owners, subsequent owners of the Real Estate, and other persons or entities acquiring an interest therein. Owners shall have an affirmative duty to inform any third parties with whom Owners negotiate for a possible sale, lease, assignment, mortgage, or transfer of the Real Estate of the existence of these COMMITMENTS. In the event any sale, lease, assignment, mortgage, or transfer occurs, Owners shall ensure that a copy of these COMMITMENTS is incorporated into any such written agreement with the third party. If Owners fail to comply with the terms of this paragraph and the third party fails to perform and/or comply with these COMMITMENTS, the Town of Zionsville shall be entitled to receive from Owners and from each such corporation and/or other

third party, jointly and/or severally, any and all damages which arise from this failure and shall be entitled to injunctive relief to terminate any non-compliance herewith.

These COMMITMENTS may be modified or terminated by a decision of the Town of Zionsville Board of Zoning Appeals made after a public hearing for which proper notice is given, including hearings for other land use or zoning approvals involving the Real Estate or any portion thereof.

These COMMITMENTS shall be effective upon approval of Board of Zoning Appeals Docket # XXXX-XX-XXX by the Town of Zionsville Board of Zoning Appeals and shall continue in effect until modified or terminated as specified above.

These COMMITMENTS may be enforced jointly and/or severally by the Town of Zionsville Board of Zoning Appeals, the Director of Planning for the Town of Zionsville, the Town and/or owners of any parcel of ground adjoining the Real Estate. Owners agree to indemnify the Town of Zionsville Board of Zoning Appeals and the Town (including a successor city or municipality) and hold said entities and their respective authorized representatives, including the Director of Planning for the Town, harmless from any liability, expense (including reasonable attorney fees and court costs), costs, or damages which result from the failure to perform Owners' obligations under the terms and conditions of these COMMITMENTS. Throughout these COMMITMENTS any reference to "Town" or "Town of Zionsville" shall also include any successor city, municipality, or other governmental body having land use, planning, and zoning jurisdiction over the Real Estate.

In the event it becomes necessary to enforce these COMMITMENTS in a court of competent jurisdiction and Owners and/or any subsequent owners, jointly and/or severally, are found to be in violation of these COMMITMENTS, such violators shall pay all reasonable costs and expenses the Town and the Town's Board of Zoning Appeals and other authorized representative(s) incur in the enforcement of these COMMITMENTS, including reasonable attorney fees, expert witness fees, and court costs.

Owners and all subsequent owners of all or a portion of the Real Estate shall be obligated hereunder, jointly and/or severally, to indemnify the Town of Zionsville Board of Zoning Appeals and/or the Town and hold said entities and their respective authorized representative(s), including the Director of Planning for the Town, harmless from any liability, expense (including reasonable attorney fees and court costs), costs or damages which result from failure to perform Owners' obligations hereunder and/or to comply with the terms and conditions of these COMMITMENTS.

Owners shall be responsible, at their expense, for recording these Statements of Commitments in the Office of the Recorder of Boone County, Indiana, within sixty (60) days after approval of Board of Zoning Appeals Docket # XXXX-XX-XXX and shall promptly provide the Planning Department of the Town of Zionsville with a copy of such recording as a condition precedent to commencing work upon the Real Estate or receiving a permit therefor.

These COMMITMENTS shall be considered a covenant running with the Real Estate, including any portion thereof.

The undersigned each represents and warrants that at the time of executing this document XXX and XXX are the sole owners of all the Real Estate, that execution of these COMMITMENTS by XXX and XXX is being voluntarily undertaken and requires no authorization of a third party, and that these COMMITMENTS shall be binding upon Owners as to all the particulars herein and shall be considered a COVENANT running with the land described herein as the Real Estate, including any portion thereof.

IN WITNESS WHEREOF, XXX and XXX, as owners of the Real Estate, have executed this instrument this ____ day of _____, 2016.

XXX

XXX

STATE OF INDIANA)
) SS:
COUNTY OF BOONE)

Before me, a Notary Public in and for said County and State, personally appeared XXX, an owner of the Real Estate described above, who acknowledged the execution of the foregoing instrument and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this ____ day of _____, 2016.

My Commission Expires: _____

County of Residence: _____ Printed: _____

STATE OF INDIANA)

COUNTY OF BOONE) SS:
)

Before me, a Notary Public in and for said County and State, personally appeared XXX, an owner of the Real Estate described above, who acknowledged the execution of the foregoing instrument and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this ____ day of _____, 2016.

My Commission Expires: _____

County of Residence: _____ Printed: _____

This instrument was prepared by Wayne DeLong, 1100 W. Oak Street, Zionsville, IN 46077

I affirm, under the penalties for perjury that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

By: XXX

**EXHIBIT A
LEGAL DESCRIPTION**

APPENDIX B: PLAN COMMISSION COMMITMENT FORM

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APPENDIX B: PLAN COMMISSION COMMITMENT FORM

ZIONSVILLE PLAN COMMISSION

FILE#: _____

AMENDED/MODIFICATION/TERMINATION OF COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE IN CONNECTION WITH APPROVALS REQUIRED BY THE TOWN OF ZIONSVILLE ZONING ORDINANCE

In accordance with I.C. § 36-7-4-1015, _____ ("Owner"), represents and warrants that Owner is the owner of certain real estate located in Boone County, Indiana, which real estate is more particularly described in Exhibit A attached hereto (the "Real Estate"), and as the owner of said Real Estate, has authority to and does hereby voluntarily make the following COMMITMENTS concerning the use and development of the Real Estate.

STATEMENT OF AMENDED/MODIFICATION TERMINATION OF COMMITMENTS

Owner voluntarily agrees and commits that the approval of Docket No(s) _____ requesting approval to _____ is conditioned on the following:

1. [text]
2. [text]
3. [text]

These COMMITMENTS shall be executed and recorded by Owner in the Office of the Boone County Recorder, Boone County, Indiana, and shall be considered a covenant running with the land described herein as the Real Estate, as set out in Exhibit A.

These COMMITMENTS shall be binding on Owner, subsequent owners of the Real Estate, and other persons or entities acquiring an interest therein (hereinafter collectively the "Owners"). Owner shall have an affirmative duty to inform any third parties with whom Owner negotiates for a possible sale, lease, assignment, mortgage, or transfer of the Real Estate of the

existence of these COMMITMENTS. In the event any sale, lease, assignment, mortgage, or transfer occurs, Owner shall ensure that a copy of these COMMITMENTS is incorporated into any such written agreement with the third party. If Owner fails to comply with the terms of this paragraph and the third party fails to perform and/or comply with these COMMITMENTS, the Town of Zionsville shall be entitled to receive from Owner and from each corporation and/or other third party identified above as Owners, jointly and/or severally, any and all damages which arise from this failure and shall be entitled to injunctive relief to terminate any non-compliance herewith.

These COMMITMENTS may be modified or terminated by a decision of the Town of Zionsville Plan Commission made after a public hearing for which proper notice is given, including hearings for other land use or zoning approvals involving the Real Estate or any portion thereof. These COMMITMENTS shall be effective upon the approval of Plan Commission Docket # _____ by the Town of Zionsville Plan Commission, and shall continue in effect until modified or terminated as specified above.

These COMMITMENTS may be enforced, jointly and/or severally, by the Town of Zionsville Plan Commission, the Director of Planning for the Town of Zionsville, the Town, and owners of any parcel of ground adjoining the Real Estate. Owner and all Owners shall be obligated hereunder to indemnify the Town of Zionsville Plan Commission, the Town, and hold said entities and their respective authorized representatives, including the Director of Planning for the Town, harmless from any liability, expense (including reasonable attorney fees and court costs), costs, or damages which result from the failure to perform Owner's and/or Owners' obligations under the terms and conditions of these COMMITMENTS.

In the event it becomes necessary to enforce these COMMITMENTS in a court of competent jurisdiction and Owner and/or any of the Owners, jointly and/or severally, are found to be in violation of these COMMITMENTS, such Owner and/or Owners shall pay all reasonable costs and expenses the Town and the Town's Plan Commission and other authorized representative(s) incur in the enforcement of these COMMITMENTS, including reasonable attorney fees, expert witness fees, and court costs.

Owner and all subsequent Owners of all or a portion of the Real Estate shall be obligated hereunder, jointly and/or severally, to indemnify the Town of Zionsville Plan Commission and/or the Town and hold said entities and their respective authorized representative(s), including the Director of Planning for the Town, harmless from any liability, expense (including reasonable attorney fees and court costs), costs, or damages which result from failure to perform

Owner's and/or Owners' obligations hereunder and/or to comply with the terms and conditions of these COMMITMENTS.

Any controversy arising under or in relation to these COMMITMENTS shall be litigated exclusively in the applicable state courts of Indiana without regard to conflicts of laws principles. Owner irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which Owner or Owners might be entitled by virtue of domicile, habitual residence, or otherwise.

Owner shall be responsible, at its expense, for recording this Statement of Commitments in the Office of the Recorder of Boone County, Indiana, and shall promptly provide the Planning Department of the Town of Zionsville with a copy of such recording as a condition precedent to commencing work within the Development Plan. These COMMITMENTS shall be considered a covenant running with the Real Estate, including any portion thereof.

Owner represents and warrants that it is the sole owner of all the Real Estate; and that these COMMITMENTS shall be binding upon Owner as to all the particulars herein, and shall be considered a COVENANT running with the land described herein as the Real Estate, including any portion thereof.

IN WITNESS WHEREOF, Owner has executed this instrument this _____ day of _____, 20____.

(Individual Owner)

Signature _____

Printed _____

(Organization Owner)

By _____

Printed _____

Title _____

(Organization Acknowledgment)

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared

_____, the _____ of

_____, a(n) _____, Owner(s) of the Real Estate described in Exhibit A who acknowledged the execution of the foregoing instrument in such capacity and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand an Notarial Seal this _____ day of _____, 20_____.

Signature _____

Printed _____

County of Residence _____

My Commission expires _____

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

Signature _____

Printed _____

This instrument prepared by:

Name

Title

Company

Address

Phone Number

EXHIBIT A – LEGAL DESCRIPTION

[Insert legal description here]