



Reprinted
February 26, 2014

ENGROSSED HOUSE BILL No. 1216

DIGEST OF HB 1216 (Updated February 25, 2014 4:15 pm - DI 87)

Citations Affected: IC 36-7.

Synopsis: Zoning commitments and annexation. Allows a municipal legislative body that annexes real property subject to a zoning commitment to modify, terminate, or enforce the commitment after the annexation takes effect. Provides that the legislative body of a unit may modify or terminate a commitment if the commitment is part of a rezoning proposal being considered by the legislative body. Provides that a decision of the legislative body regarding modification or termination of a zoning commitment is a legislative act and is not subject to judicial review.

Effective: July 1, 2014.

Truitt, Price, Klinker

(SENATE SPONSOR — HEAD)

January 14, 2014, read first time and referred to Committee on Local Government.
January 28, 2014, amended, reported — Do Pass.
January 30, 2014, read second time, ordered engrossed. Engrossed.
February 3, 2014, read third time, passed. Yeas 88, nays 6.

SENATE ACTION

February 10, 2014, read first time and referred to Committee on Local Government.
February 20, 2014, amended, reported favorably — Do Pass.
February 25, 2014, read second time, amended, ordered engrossed.

EH 1216—LS 7078/DI 87



Reprinted
February 26, 2014

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1216

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

1 SECTION 1. IC 36-7-4-1015, AS AMENDED BY P.L.126-2011,
2 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 1015. (a) As a condition to the:
4 (1) adoption of a rezoning proposal;
5 (2) primary approval of a proposed subdivision plat or
6 development plan;
7 (3) approval of a vacation of all or part of the plat; or
8 (4) approval of an application for a:
9 (A) special exception;
10 (B) special use;
11 (C) contingent use;
12 (D) conditional use; or
13 (E) variance;
14 the owner of a parcel of real property may be required or allowed to
15 make a commitment to the ~~plan commission or board of zoning~~
16 ~~appeals, as applicable~~, concerning the use or development of that

EH 1216—LS 7078/DI 87



- 1 parcel.
- 2 (b) Commitments are subject to the following provisions:
- 3 (1) A commitment must be in writing.
- 4 (2) Unless the written commitment is modified or terminated in
- 5 accordance with this subsection, a written commitment is binding
- 6 on the owner of the parcel.
- 7 (3) A commitment shall be recorded in the office of the county
- 8 recorder. After a commitment is recorded, it is binding on a
- 9 subsequent owner or any other person who acquires an interest in
- 10 the parcel. However, a commitment is binding on the owner who
- 11 makes the commitment even if the commitment is unrecorded. An
- 12 unrecorded commitment is binding on a subsequent owner or
- 13 other person acquiring an interest in the parcel only if that
- 14 subsequent owner or other person has actual notice of the
- 15 commitment.
- 16 (4) A commitment may contain terms providing for its own
- 17 expiration. A commitment may also contain terms providing that
- 18 the commitment automatically terminates:
- 19 (A) if the zoning district or classification applicable to the
- 20 parcel is changed;
- 21 (B) if the land use to which the commitment relates is
- 22 changed; or
- 23 (C) otherwise in accordance with the rules of the plan
- 24 commission, ~~or~~ board of zoning appeals, **or legislative body**
- 25 to which the commitment is made.
- 26 (5) Except for a commitment that expires or automatically
- 27 terminates under subdivision (4), **or except as provided in**
- 28 **subdivision (9)**, a commitment may be modified or terminated:
- 29 (A) ~~only~~ by a decision of the plan commission or board of
- 30 zoning appeals to which the commitment was made; **or**
- 31 **(B) by the decision of the legislative body, if the**
- 32 **commitment is made as part of a rezoning proposal being**
- 33 **considered by the legislative body under the 600 or 1500**
- 34 **series of this chapter.**
- 35 ~~The A~~ **decision by a plan commission or board of zoning**
- 36 **appeals** must be made at a public hearing after notice of the
- 37 hearing has been provided under the rules of the plan commission
- 38 or board of zoning appeals, as the case may be.
- 39 (6) During the time a rezoning proposal is being considered by the
- 40 legislative body under the 600 or 1500 series of this chapter, the
- 41 owner may make a new commitment to the ~~plan commission~~
- 42 **legislative body** or modify the terms of a commitment that was



1 made when the proposal was being considered by the plan
 2 commission. **This subdivision does not apply to a commitment**
 3 **to which subdivision (9) applies.**

4 (7) No further action of the plan commission is required for a new
 5 commitment made an action taken by the legislative body under
 6 subdivision (6) to be effective.

7 (8) If a commitment is modified under subdivision (6)

8 (A) no further action is required by the plan commission for
 9 the commitment to be effective if the effect of the modification
 10 is to make the commitment more stringent; or

11 (B) the modified commitment must be ratified by the plan
 12 commission if the effect of the modification is to make the
 13 commitment less stringent.

14 (9) (8) Requiring or allowing a commitment to be made does not
 15 obligate the plan commission, board of zoning appeals, or
 16 legislative body, as applicable, to adopt, approve, or favorably
 17 recommend the proposal or application to which the commitment
 18 relates.

19 (9) This subdivision applies only to a commitment that is
 20 made before the parcel subject to the commitment is annexed
 21 by a municipality. A commitment may be modified or
 22 terminated only by a decision of the legislative body of the
 23 annexing municipality. The decision must be made by the
 24 legislative body of the annexing municipality after considering
 25 the recommendation of the municipal plan commission
 26 certified to the legislative body after a public hearing held by
 27 the plan commission in accordance with the commission's
 28 rules. The rules of the municipal plan commission must
 29 include a provision requiring notice to be sent by certified
 30 mail at least ten (10) days before the date of the hearing to the
 31 following:

32 (A) The plan commission to which the commitment was
 33 made.

34 (B) Each owner of real property, as shown on the county
 35 auditor's current tax list, whose real property is located
 36 within three hundred (300) feet of the parcel subject to the
 37 commitment.

38 (c) The plan commission or board of zoning appeals may adopt
 39 rules:

40 (1) governing the creation, form, recording, effectiveness,
 41 modification, and termination of commitments **that are made**
 42 **before the plan commission or board of zoning appeals;** and



- 1 (2) designating which specially affected persons and classes of
 2 specially affected persons are entitled to enforce commitments.
- 3 (d) An action to enforce a commitment may be brought in the circuit
 4 or superior court of the county by:
- 5 (1) the plan commission, ~~or the~~ board of zoning appeals, ~~to or the~~
 6 **legislative body before** which the commitment was made;
- 7 **(2) in the case of a commitment:**
- 8 **(A) modified under subsection (b)(9); or**
 9 **(B) continued in effect upon annexation;**
 10 **the legislative body of a municipality that annexed the real**
 11 **property subject to the commitment, if the annexation is**
 12 **effective after the date the commitment was made;**
- 13 ~~(2)~~ **(3)** any person who was entitled to enforce a commitment
 14 under the rules of the plan commission or board of zoning appeals
 15 in force at the time the commitment was made; or
- 16 ~~(3)~~ **(4)** any other specially affected person who was designated in
 17 the commitment.
- 18 (e) A person bringing an action to enforce a commitment may
 19 request mandatory or prohibitory injunctive relief through the granting
 20 of a temporary restraining order, preliminary injunction, or permanent
 21 injunction. If an action to enforce a commitment is successful, the
 22 respondent shall bear the costs of the action. A change of venue from
 23 the county may not be granted in such an action.
- 24 (f) In an action to enforce a commitment, it is not a defense that:
- 25 (1) no consideration was given for the commitment;
 26 (2) the commitment does not benefit any designated parcel of
 27 property;
 28 (3) the document setting forth the commitment lacks a seal;
 29 (4) there is no privity of estate;
 30 (5) there is not privity of contract; or
 31 (6) there is no proof of damages.
- 32 (g) The following types of conditions, as authorized by this chapter,
 33 are not considered commitments and are not subject to subsection (b):
- 34 (1) A condition imposed upon primary approval of a plat that
 35 must be met before secondary approval of the plat may be granted
 36 under the 700 series of this chapter.
- 37 (2) A condition imposed upon the approval of an exception, a use,
 38 a variance, or a development plan that must be met before an
 39 improvement location permit may be issued under the 800 series
 40 of this chapter.
- 41 (3) A condition imposed upon an approval relative to any other
 42 development requirement that must be met before any other



1 secondary approval may be granted or building permit may be
2 issued under this chapter.

3 (4) A condition that was imposed before July 1, 2011, on a
4 approval relative to any development requirement. However, this
5 subdivision applies only if a copy of the condition has been filed
6 and permanently maintained as a public record in the office of the
7 plan commission or board of zoning appeals that imposed the
8 condition.

9 (h) Covenants, easements, equitable servitudes, and other land use
10 restrictions created in accordance with law are not considered
11 commitments and are not subject to subsection (b).

12 **(i) This subsection applies only to a commitment made as part**
13 **of a rezoning proposal being considered by the legislative body**
14 **under the 600 or 1500 series of this chapter. A written commitment**
15 **may not abrogate the authority of a legislative body to modify or**
16 **terminate a commitment under this section.**

17 SECTION 2. IC 36-7-4-1016, AS AMENDED BY P.L.126-2011,
18 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2014]: Sec. 1016. (a) Final decisions of the board of zoning
20 appeals under:

21 (1) the 900 series of this chapter (administrative appeals,
22 exceptions, uses, and variances); or

23 (2) section 1015 of this chapter (appeals of commitment
24 modifications or terminations);

25 are considered zoning decisions for purposes of this chapter and are
26 subject to judicial review in accordance with the 1600 series of this
27 chapter.

28 (b) The following decisions of the plan commission are considered
29 zoning decisions for purposes of this chapter and are subject to judicial
30 review in the same manner as that provided for the appeal of a final
31 decision of the board of zoning appeals under subsection (a):

32 (1) A final decision under the 700 series of this chapter
33 (subdivision control).

34 (2) A final decision under section 1015 of this chapter (appeal of
35 a commitment modification or termination).

36 (3) A final decision under the 1400 series of this chapter
37 (development plans).

38 (4) A final decision under the 1500 series of this chapter (planned
39 unit development), when authority to make a final decision is
40 delegated to the plan commission by the legislative body under
41 section 1511 of this chapter.

42 **(c) Notwithstanding subsection (b)(2), decisions of a legislative**



1 **body under section 1015(b)(6) or 1015(b)(9) of this chapter are not**
 2 **considered zoning decisions for purposes of this chapter and are**
 3 **not subject to judicial review in accordance with the 1600 series of**
 4 **this chapter.**

5 (c) (d) Final decisions of preservation commissions under
 6 IC 36-7-11, IC 36-7-11.1, IC 36-7-11.2, or IC 36-7-11.3 (certificates of
 7 appropriateness) are considered zoning decisions for purposes of this
 8 chapter and are subject to judicial review in the same manner as that
 9 provided for the appeal of a final decision of the board of zoning
 10 appeals under subsection (a).

11 (d) (e) Final decisions of zoning administrators under IC 14-28-4-18
 12 (improvement location permits within flood plain areas) are considered
 13 zoning decisions for purposes of this chapter and are subject to judicial
 14 review in the same manner as that provided for the appeal of a final
 15 decision of the board of zoning appeals under subsection (a).

16 (e) (f) The following actions are legislative acts and are not
 17 considered zoning decisions for purposes of this chapter:

18 (1) Adopting or approving a comprehensive plan under the 500
 19 series of this chapter.

20 (2) Certifying with or without a recommendation a proposal under
 21 the 600 series of this chapter.

22 (3) Adopting, rejecting, or amending a zoning ordinance under
 23 the 600 series of this chapter.

24 (4) Adopting, rejecting, or amending an impact fee ordinance
 25 under the 1300 series of this chapter.

26 (5) Designating a zoning district where a development plan is
 27 required under the 1400 series of this chapter.

28 (6) Adopting, rejecting, or amending a PUD district ordinance
 29 under the 1500 series of this chapter.

30 (7) Adopting, rejecting, or amending a flood plain zoning
 31 ordinance under IC 14-28-4.

32 **(8) Certifying a recommendation, or modifying or terminating**
 33 **a commitment, under section 1015(b)(6) or 1015(b)(9) of this**
 34 **chapter.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1216, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 13, delete "This subdivision applies only to a commitment that is".

Page 3, line 14, delete "made after June 30, 2014."

Page 3, line 20, delete "at" and insert "**after considering the recommendation of the municipal plan commission certified to the legislative body after**".

Page 3, line 20, delete "after" and insert "**held by the plan commission in accordance with the commission's rules.**".

Page 3, delete line 21.

Page 3, line 22, delete "municipal legislative body."

Page 3, line 23, delete "legislative body" and insert "**plan commission**".

Page 5, line 28, delete "Decisions" and insert "**Notwithstanding subsection (b)(2), a decision**".

Page 5, line 29, delete "are considered zoning decisions" and insert "**is not considered a zoning decision**".

Page 5, line 30, delete "are" and insert "**is not**".

Page 6, after line 16, begin a new line block indented and insert:

"(8) Certifying a recommendation, or modifying or terminating a commitment, under section 1015(b)(10) of this chapter.

SECTION 3. IC 36-7-4-1112 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 1112. (a) This section applies to any municipality that proposes to make zoning changes for an area:**

(1) that the municipality is proposing to annex under IC 36-4-3; and

(2) that is not already within the municipality's planning and zoning jurisdiction under this chapter.

(b) The plan commission of the municipality may give notice, hold a public hearing, and certify a zoning change to the legislative body of the municipality under section 602 of this chapter before the expected effective date of the proposed annexation. In addition, the zoning change may be considered by the legislative body and duly adopted before the expected effective date of the proposed



annexation. However, the zoning change must provide for an effective date that is on or after the effective date of the proposed annexation.

(c) Subject to subsection (b), section 602(b) of this chapter applies to the initiation of any proposals to amend or partially repeal the text of the municipal zoning ordinance as it may apply to the area proposed to be annexed.

(d) Subject to subsection (b), section 602(c) of this chapter applies to the initiation of any zone map changes for the area proposed to be annexed in the same manner as it applies to the initiation of zone map changes for an area that is already within the municipality's planning and zoning jurisdiction.

(e) If the proposed annexation by the municipality does not take place under IC 36-4-3, the adoption of a zoning change under this section is void.

(f) The board of zoning appeals of the municipality may adopt rules, in accordance with IC 36-7-4-916, to allow hearings to be heard on applications for variances, special exceptions, special uses, contingent uses, and conditional uses in the area proposed to be annexed before the expected effective date of the proposed annexation. However, the rules must require that any approval of such an application provide for an effective date that is on or after the effective date of the proposed annexation. If the proposed annexation by the municipality does not take place under IC 36-4-3, any action taken by the board under this subsection is void.

(g) Nothing in this section is intended to supersede:

- (1) IC 36-4-3-4.1 regarding the annexation of any territory that is classified for zoning purposes as agricultural; or
- (2) IC 36-7-4-1109 regarding property rights."

and when so amended that said bill do pass.

(Reference is to HB 1216 as introduced.)

NEESE, Chair

Committee Vote: yeas 9, nays 1.



COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred House Bill No. 1216, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 16, begin a new paragraph and insert:

"SECTION 1. IC 36-7-4-1015, AS AMENDED BY P.L.126-2011, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1015. (a) As a condition to the:

- (1) adoption of a rezoning proposal;
- (2) primary approval of a proposed subdivision plat or development plan;
- (3) approval of a vacation of all or part of the plat; or
- (4) approval of an application for a:
 - (A) special exception;
 - (B) special use;
 - (C) contingent use;
 - (D) conditional use; or
 - (E) variance;

the owner of a parcel of real property may be required or allowed to make a commitment to the ~~plan commission or board of zoning appeals, as applicable,~~ concerning the use or development of that parcel.

(b) Commitments are subject to the following provisions:

- (1) A commitment must be in writing.
- (2) Unless the written commitment is modified or terminated in accordance with this subsection, a written commitment is binding on the owner of the parcel.
- (3) A commitment shall be recorded in the office of the county recorder. After a commitment is recorded, it is binding on a subsequent owner or any other person who acquires an interest in the parcel. However, a commitment is binding on the owner who makes the commitment even if the commitment is unrecorded. An unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the parcel only if that subsequent owner or other person has actual notice of the commitment.
- (4) A commitment may contain terms providing for its own expiration. A commitment may also contain terms providing that the commitment automatically terminates:
 - (A) if the zoning district or classification applicable to the



parcel is changed;

(B) if the land use to which the commitment relates is changed; or

(C) otherwise in accordance with the rules of the plan commission, ~~or~~ board of zoning appeals, **or legislative body** to which the commitment is made.

(5) Except for a commitment that expires or automatically terminates under subdivision (4), **or except as provided in subdivision (10)**, a commitment may be modified or terminated:

(A) ~~only~~ by a decision of the plan commission or board of zoning appeals to which the commitment was made; **or**

(B) by the decision of the legislative body, if the commitment is made as part of a rezoning proposal being considered by the legislative body under the 600 or 1500 series of this chapter.

~~The~~ **A decision by a plan commission or board of zoning appeals** must be made at a public hearing after notice of the hearing has been provided under the rules of the plan commission or board of zoning appeals, as the case may be.

(6) During the time a rezoning proposal is being considered by the legislative body under the 600 or 1500 series of this chapter, the owner may make a new commitment to the ~~plan commission~~ **legislative body** or modify the terms of a commitment that was made when the proposal was being considered by the plan commission. **This subdivision does not apply to a commitment to which subdivision (10) applies.**

(7) No further action of the plan commission is required for ~~a new commitment made~~ **an action taken by the legislative body** under subdivision (6) to be effective.

(8) If a commitment is modified under subdivision (6) **or (10)**:

(A) no further action is required by the plan commission for the commitment to be effective if the effect of the modification is to make the commitment more stringent; or

(B) the modified commitment must be ratified by the plan commission if the effect of the modification is to make the commitment less stringent.

(9) Requiring or allowing a commitment to be made does not obligate the plan commission, board of zoning appeals, or legislative body, as applicable, to adopt, approve, or favorably recommend the proposal or application to which the commitment relates.

(10) This subdivision applies only to a commitment that is



made before the parcel subject to the commitment is annexed by a municipality. Subject to subdivision (8), a commitment may be modified or terminated only by a decision of the legislative body of the annexing municipality. The decision must be made by the legislative body of the annexing municipality after considering the recommendation of the municipal plan commission certified to the legislative body after a public hearing held by the plan commission in accordance with the commission's rules. The rules of the municipal plan commission must include a provision requiring notice to be sent by certified mail at least ten (10) days before the date of the hearing to the following:

(A) The plan commission to which the commitment was made.

(B) Each owner of real property, as shown on the county auditor's current tax list, whose real property is located within three hundred (300) feet of the parcel subject to the commitment.

(c) The plan commission or board of zoning appeals may adopt rules:

- (1) governing the creation, form, recording, effectiveness, modification, and termination of commitments **that are made before the plan commission or board of zoning appeals;** and
- (2) designating which specially affected persons and classes of specially affected persons are entitled to enforce commitments.

(d) An action to enforce a commitment may be brought in the circuit or superior court of the county by:

(1) the plan commission, ~~or the~~ board of zoning appeals, ~~to or the~~ legislative body before which the commitment was made;

(2) in the case of a commitment:

(A) modified under subsection (b)(10); or

(B) continued in effect upon annexation;

the legislative body of a municipality that annexed the real property subject to the commitment, if the annexation is effective after the date the commitment was made;

~~(2)~~ (3) any person who was entitled to enforce a commitment under the rules of the plan commission or board of zoning appeals in force at the time the commitment was made; or

~~(3)~~ (4) any other specially affected person who was designated in the commitment.

(e) A person bringing an action to enforce a commitment may request mandatory or prohibitory injunctive relief through the granting



of a temporary restraining order, preliminary injunction, or permanent injunction. If an action to enforce a commitment is successful, the respondent shall bear the costs of the action. A change of venue from the county may not be granted in such an action.

(f) In an action to enforce a commitment, it is not a defense that:

- (1) no consideration was given for the commitment;
- (2) the commitment does not benefit any designated parcel of property;
- (3) the document setting forth the commitment lacks a seal;
- (4) there is no privity of estate;
- (5) there is not privity of contract; or
- (6) there is no proof of damages.

(g) The following types of conditions, as authorized by this chapter, are not considered commitments and are not subject to subsection (b):

- (1) A condition imposed upon primary approval of a plat that must be met before secondary approval of the plat may be granted under the 700 series of this chapter.
- (2) A condition imposed upon the approval of an exception, a use, a variance, or a development plan that must be met before an improvement location permit may be issued under the 800 series of this chapter.
- (3) A condition imposed upon an approval relative to any other development requirement that must be met before any other secondary approval may be granted or building permit may be issued under this chapter.
- (4) A condition that was imposed before July 1, 2011, on an approval relative to any development requirement. However, this subdivision applies only if a copy of the condition has been filed and permanently maintained as a public record in the office of the plan commission or board of zoning appeals that imposed the condition.

(h) Covenants, easements, equitable servitudes, and other land use restrictions created in accordance with law are not considered commitments and are not subject to subsection (b).

(i) This subsection applies only to a commitment made as part of a rezoning proposal being considered by the legislative body under the 600 or 1500 series of this chapter. A written commitment may not abrogate the authority of a legislative body to modify or terminate a commitment under this section."

Delete pages 2 through 4.

Page 5, delete lines 1 through 2.

Page 5, line 28, delete "a decision" and insert "**decisions**".



Page 5, line 29, after "section" insert "**1015(b)(6) or**".
Page 5, line 29, delete "is" and insert "**are**".
Page 5, line 29, delete "a".
Page 5, line 30, delete "decision" and insert "**decisions**".
Page 5, line 30, delete "is" and insert "**are**".
Page 6, line 18, after "section" insert "**1015(b)(6) or**".
Page 6, delete lines 19 through 42.
Delete page 7.

and when so amended that said bill do pass.

(Reference is to HB 1216 as printed January 28, 2014.)

HEAD, Chairperson

Committee Vote: Yeas 5, Nays 4.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1216 be amended to read as follows:

Page 2, line 28, delete "(10)," and insert "**(9)**".

Page 3, line 3, delete "(10)" and insert "**(9)**".

Page 3, line 7, strike "(8) If a commitment is modified under subdivision (6)".

Page 3, line 7, delete "or (10):".

Page 3, strike lines 8 through 13.

Page 3, line 14, strike "(9)" and insert "**(8)**".

Page 3, line 19, delete "(10)" and insert "**(9)**".

Page 3, line 21, delete "Subject to subdivision (8), a" and insert "A".

Page 4, line 8, delete "(b)(10);" and insert "**(b)(9)**";".

Page 6, line 1, delete "1015(b)(10)" and insert "**1015(b)(9)**".

Page 6, line 33, delete "1015(b)(10)" and insert "**1015(b)(9)**".

(Reference is to EHB 1216 as printed February 21, 2014.)

HEAD

