

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.

HOUSE ENROLLED ACT No. 1216

AN ACT to amend the Indiana Code concerning local government.

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

SECTION 1. IC 36-7-4-1015, 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

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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) **Except as provided in subdivision (8)**, 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)

(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 **and** the effect of the modification is to make the commitment less stringent, **the modified commitment shall be referred to the plan commission for further review. The plan commission shall, not later than forty-five (45) days after referral of the modified commitment:**

(A) **ratify the modified commitment; or**

(B) **certify a recommendation to the legislative body that the commitment be further modified.**

After considering the recommendation of the plan commission, the legislative body shall then make the final decision on the terms of the modified commitment.

(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 and after the annexation, the parcel becomes subject to the jurisdiction of a plan commission, board of zoning appeals, or legislative body other than the plan commission, board of zoning appeals, or legislative body to which the commitment was made. 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, board of zoning appeals, or legislative body 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 the 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.

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

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

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

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

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

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



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

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

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

(c) Notwithstanding subsection (b)(2), decisions of a legislative body under section 1015(b)(6) or 1015(b)(10) of this chapter are not considered zoning decisions for purposes of this chapter and are not subject to judicial review in accordance with the 1600 series of this chapter.

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

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

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

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

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

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

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

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

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

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

(8) Certifying a recommendation, or modifying or terminating a commitment, under section 1015(b)(6) or 1015(b)(10) of this



chapter.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

