

HOUSE BILL No. 1399

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-7-4.

Synopsis: Commitments concerning use of real property. Provides that a commitment that is part of a rezoning proposal being considered by the legislative body, may be: (1) made to the legislative body; and (2) modified or terminated by the legislative body. Provides that the decision of the legislative body in adopting, modifying, or terminating the commitment is subject to judicial review.

Effective: July 1, 2014.

Soliday

January 16, 2014, read first time and referred to Committee on Local Government.



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 BILL No. 1399



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



- 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), a commitment may be modified
- 28 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 a decision of the legislative body, if the commitment**
- 32 **is made as part of a rezoning proposal being considered by**
- 33 **the legislative body under the 600 or 1500 series of this**
- 34 **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 is~~



1 made when the proposal ~~was is~~ being considered by the ~~plan~~
 2 ~~commission. legislative body.~~

3 ~~(7) No further action of the plan commission is required for a new~~
 4 ~~commitment made under subdivision (6) to be effective.~~

5 ~~(8) If a commitment is modified under subdivision (6):~~

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

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

12 ~~(9) (7) Requiring or allowing a commitment to be made does not~~
 13 ~~obligate the plan commission, board of zoning appeals, or~~
 14 ~~legislative body, as applicable, to adopt, approve, or favorably~~
 15 ~~recommend the proposal or application to which the commitment~~
 16 ~~relates.~~

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

19 (1) governing the creation, form, recording, effectiveness,
 20 modification, and termination of commitments **that are made**
 21 **before the plan commission;** and

22 (2) designating which specially affected persons and classes of
 23 specially affected persons are entitled to enforce commitments.

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

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

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

31 (3) any other specially affected person who was designated in the
 32 commitment.

33 (e) A person bringing an action to enforce a commitment may
 34 request mandatory or prohibitory injunctive relief through the granting
 35 of a temporary restraining order, preliminary injunction, or permanent
 36 injunction. If an action to enforce a commitment is successful, the
 37 respondent shall bear the costs of the action. A change of venue from
 38 the county may not be granted in such an action.

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

40 (1) no consideration was given for the commitment;

41 (2) the commitment does not benefit any designated parcel of
 42 property;



- 1 (3) the document setting forth the commitment lacks a seal;
 2 (4) there is no privity of estate;
 3 (5) there is not privity of contract; or
 4 (6) there is no proof of damages.
- 5 (g) The following types of conditions, as authorized by this chapter,
 6 are not considered commitments and are not subject to subsection (b):
 7 (1) A condition imposed upon primary approval of a plat that
 8 must be met before secondary approval of the plat may be granted
 9 under the 700 series of this chapter.
 10 (2) A condition imposed upon the approval of an exception, a use,
 11 a variance, or a development plan that must be met before an
 12 improvement location permit may be issued under the 800 series
 13 of this chapter.
 14 (3) A condition imposed upon an approval relative to any other
 15 development requirement that must be met before any other
 16 secondary approval may be granted or building permit may be
 17 issued under this chapter.
 18 (4) A condition that was imposed before July 1, 2011, on an
 19 approval relative to any development requirement. However, this
 20 subdivision applies only if a copy of the condition has been filed
 21 and permanently maintained as a public record in the office of the
 22 plan commission or board of zoning appeals that imposed the
 23 condition.
- 24 (h) Covenants, easements, equitable servitudes, and other land use
 25 restrictions created in accordance with law are not considered
 26 commitments and are not subject to subsection (b).
- 27 **(i) This subsection applies only to a commitment made as part**
 28 **of a rezoning proposal being considered by the legislative body**
 29 **under the 600 or 1500 series of this chapter. A written commitment**
 30 **may not abrogate the authority of a legislative body to modify or**
 31 **terminate a commitment under this section.**
- 32 SECTION 2. IC 36-7-4-1016, AS AMENDED BY P.L.126-2011,
 33 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2014]: Sec. 1016. (a) Final decisions of the board of zoning
 35 appeals under:
 36 (1) the 900 series of this chapter (administrative appeals,
 37 exceptions, uses, and variances); or
 38 (2) section 1015 of this chapter (appeals of commitment
 39 modifications or terminations);
 40 are considered zoning decisions for purposes of this chapter and are
 41 subject to judicial review in accordance with the 1600 series of this
 42 chapter.



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

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

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

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

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

15 **(c) Decisions of a legislative body in adopting, modifying, or**
 16 **terminating a commitment made as part of a rezoning proposal**
 17 **being considered by the legislative body under the 600 or 1500**
 18 **series of this chapter are considered zoning decisions for purposes**
 19 **of this chapter and are subject to judicial review in accordance**
 20 **with the 1600 series of this chapter.**

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

27 ~~(d)~~ **(e)** Final decisions of zoning administrators under IC 14-28-4-18
 28 (improvement location permits within flood plain areas) 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 ~~(e)~~ **(f)** The following actions are legislative acts and are not
 33 considered zoning decisions for purposes of this chapter:

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

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

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

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

42 (5) Designating a zoning district where a development plan is



- 1 required under the 1400 series of this chapter.
- 2 (6) Adopting, rejecting, or amending a PUD district ordinance
- 3 under the 1500 series of this chapter.
- 4 (7) Adopting, rejecting, or amending a flood plain zoning
- 5 ordinance under IC 14-28-4.

