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CHAPTER 6

LAND RE-ADJUSTMENT

6.01 Resubdivision of Land.

- A. **Procedure for Resubdivision.** Whenever a developer desires to resubdivide an already approved final subdivision plat, the developer shall first obtain approval for the resubdivision by the same procedures prescribed for the subdivision of land.
- B. **Resubdivision Includes:**
1. Any change in any street layout or any other public improvement.
 2. Any change in any lot line;
 3. Any change in the amount of land reserved for public use or the common use of lot owners;
 4. Any change in any easements shown on the approved plat.
- C. **Waiver.** Whenever the Planning Commission, in its sole discretion, makes a finding on the record that the purposes of these regulations may be served by permitting resubdivision by the procedure established in this Section 6.01 (C), the Planning Commission may waive the requirement of Section 6.01 (A). The Planning Commission, after an application for resubdivision that includes an express request for waiver, shall publish notice of the application in a local newspaper of general circulation and shall provide personal notice to property owners in the subdivision. The notice shall include:
1. The name and legal description of the subdivision affected by the application;
 2. The proposed changes in the final subdivision plat;

3. The place and time at which the application and any accompanying documents may be reviewed by the public;
4. The place and time at which written comments on the proposed resubdivision may be submitted by the public;
5. The place and time of the public meeting at which the Planning Commission will consider whether to approve, conditionally approve, or disapprove the proposed resubdivision. No sooner than thirty (30) days, and no later than forty-five (45) days after notice is published, the Planning Commission shall consider the application for resubdivision at a public meeting and shall approve, conditionally approve, or disapprove the application.

D. **Procedure for Subdivisions When Future Resubdivision is Indicated.** When land is subdivided and the subdivision plat shows

one or more lots containing more than one (1) acre of land and there is reason to believe that such lots eventually will be resubdivided, the Planning Commission may require that the applicant allow for the future opening of streets and the ultimate extension of adjacent streets. Easements providing for the future opening and extension of streets may be made a requirement of plat approval.

6.02 **Plat Vacation.**

A. **Owner Initiated Plat Vacation.** The owner or owners of lots in any approved subdivision, including the developer, may petition the Planning Commission to vacate the plat with respect to their properties. The petition shall be filed in triplicate on forms provided by the Planning Commission and one (1) copy shall be referred to the governing body by the Planning Commission.

1. **Notice and Hearing.** The Planning Commission shall publish notice in a land newspaper of general circulation and provide personal notice of the petition for vacation to all owners of property within the affected subdivision and shall state in the notice the time and place for a public

hearing on the vacation petition. The public hearing shall be no sooner than thirty (30) and no later than forty-five (45) days after the published and personal notice.

2. **Criteria.** The Planning Commission shall approve the petition for vacation on such terms and conditions as are reasonable to protect public health, safety, and welfare; but in no event may the Planning Commission approve a petition for vacation if it will materially injure the rights of any non-consenting property owner or any public rights in public improvements unless expressly agreed to by the governing body.
3. **Recordation of Revised Plat.** Upon approval of any petition for vacation, the Planning Commission shall direct the petitioners to prepare a Revised Final Subdivision Plat in accordance with these regulations. The Revised Final Subdivision Plat may be recorded only after having been signed by the Chairman of the Planning Commission and the Local Government Attorney.
4. **Developer Initiated Vacation.** When the developer of the subdivision, or its successor, owns all of the lots in the subdivision, the developer or successor may petition for vacation of the subdivision plat and the petition may be approved, conditionally approved, or disapproved at a regular public meeting of the Planning Commission subject to the criteria in Section 6.02 (A) (2). The petition shall be made in triplicate on forms provided by the Planning Commission at least thirty (30) days prior to a regular Planning Commission public meeting and the Commission shall refer one (1) copy of the petition to the governing body. Regardless of the Planning Commission's action on the petition, the developer or its successor will have no right to a refund of any monies, fees, or charges paid to the municipality nor to the return of any property or consideration dedicated or delivered to the municipality except as may have previously been agreed to by the Planning Commission, the governing body, and the developer.

B. Government Initiated Plat Vacation.

1. **General Conditions.** The Planning Commission, on its motion, may vacate the plat of an approved subdivision when:
 - a. No lots within the approved subdivision have been sold within five (5) years from the date that the plat was signed by the Chairman of the Planning Commission;
 - b. The developer has breached a subdivision improvement agreement and the municipality is unable to obtain funds with which to complete construction of public improvements, except that the vacation shall apply only to lots owned by the developer or its successor.
 - c. The plat has been of record for more than five (5) years and the Planning Commission determines that the further sale of lots within the subdivision presents a threat to public health, safety, and welfare, except that the vacation shall apply only to lots owned by the developer or its successor.

2. **Procedure.** Upon any motion of the Planning Commission to vacate the plat of any previously approved subdivision, in whole or in part, the Commission shall publish notice in a newspaper of general circulation and provide personal notice to all property owners within the subdivision and shall also provide notice to the governing body. The notice shall state the time and place for a public hearing on the motion to vacate the subdivision plat. The public hearing shall be no sooner than thirty (30) days and no later than forty-five (45) days from the date of the published and personal notice. The Planning Commission shall approve the resolution effecting the vacation only if the criteria in Section 6.02 (A) (2) are satisfied.

3. **Recordation of Notice.** If the Planning Commission adopts a resolution vacating a plat in whole, it shall record a copy of the resolution in the Clerk and Recorder's Office of Whitley County. If the Planning Commission adopts a resolution vacating a plat in part, it shall record a copy of the resolution as described above and cause a Revised Final Subdivision Plat to be recorded which shows that portion of the original subdivision plat that has been vacated and that portion that has not been vacated.

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