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Revision: 2-3-97

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SUBDIVISION CONTROL ORDINANCE

36-7-4-700

CHAPTER 1 - GENERAL PROVISIONS

1.01 Title: These regulations shall hereafter be known and cited as "The Columbia City, Whitley County, Indiana, Subdivision Control Ordinance."

1.02 Policy.

- A. It is hereby declared to be the policy of the City/County to consider the subdivision of land and the subsequent development of the subdivided plat as subject to the official Comprehensive Plan and related (such as those embodied in the City/County Zoning Ordinance) policies for the orderly and efficient development of the City/County.
- B. Land to be subdivided shall be of such a character that it can be developed without peril to health or peril from flood, fire, or other menace, and land shall not be subdivided until having access to available existing public facilities and until improvements and proper provision have been made for drainage, water, sewerage, other necessary new public improvements such as schools, parks, recreational facilities, and transportation facilities adequate for serving the subdivision. Private wells and septic systems in lieu of public water and sewer facilities are allowable where permitted under the City Zoning Ordinance and approved by the County Health Department.
- C. Both existing and proposed public facilities serving the subdivision shall be properly related and conform to the official City Comprehensive Land Use Plan, related policies and implementation programs including the Zoning Ordinance and Map, the Thoroughfare Plan and Housing and Building Codes.

1.03 Purposes of These Regulations.

- A. To protect and provide for the public health, safety, and general

welfare of the City/County.

- B.** To guide the future development and renewal of the City/County in accordance with the Comprehensive Plan and related policies.
- C.** To provide for the safety, comfort, and soundness of the built environment and related open spaces.
- D.** To protect the compatibility, character, economic stability and orderliness of all development through reasonable design standards.
- E.** To guide public and private policy and action to provide adequate and efficient public and private facilities, the most aesthetically pleasing and beneficial interrelationship between land uses, conserve natural resources such as natural beauty, woodlands, open spaces, and energy both during and after development.

1.04 Authority and Jurisdiction.

- A.** This ordinance is enacted pursuant to Indiana home rule and planning enabling legislation (Indiana Code, titles 36-1-3-4 and the 36-7-4-700 series, as amended) authorizes the City/County Plan Commission to review and approve or disapprove plats for subdivision throughout the City/County and its jurisdictional areas, which show lots, blocks, or sites with or without new streets and highways. This authority extends to the development or resubdivision of undeveloped portions of already recorded plats.
- B.** No Building Permit or Certificate of Occupancy shall be issued for any parcel or plat of land which was created by subdivision after the effective date of, and not in conformity with, the provisions of these subdivision regulations, and no construction of any public or private improvements shall take place or be commenced except in conformity with the regulations contained herein and in conformity with the regulations contained herein and in conformity with construction standards adopted by the City/County.
- C.** No plat or replat of land located within the jurisdiction of the Commission shall be filed with the County Auditor and recorded by the County Recorder unless it has first been granted secondary approval by the City/County Plan Commission, and such approval shall have been signed and certified on the plat by the President and Secretary of the Commission.

1.05 Enactment. In order that land may be subdivided in accordance with these purposes and policies, these subdivision regulations are hereby adopted.

1.06 Interpretation, Conflict, and Separability.

A. In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.

B. Conflict with Public and Private Provisions.

1. Public Provisions. The regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provisions of law. Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations or any other ordinance, rule of regulation, or other provision of law, whichever provisions are more restrictive or impose higher standards shall control.

2. Private Provisions. These regulations are not intended to abrogate any easement, covenant, or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant, or private agreement restriction impose duties or obligations more restriction, or higher standards than the requirements of these regulations, or the determinations of the Commission in approving a subdivision or the determinations of the Commission in approving a subdivision or in enforcing these regulations, such private provisions shall be operative and supplemental to these regulations and determinations made thereunder. [Note: Private provisions can only be enforced privately unless a public agency has been made party to such agreements.]

C. Separability, Validity. If any part or provision of these regulations or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all

controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of these regulations or the application thereof to other persons or circumstances. The City/County hereby declares that it would have enacted the remainder of these regulations even without any such part, provision, or application.

1.07 Saving Provision.

These regulations shall not be construed as abating any action now pending under, or by virtue of, prior existing subdivision regulations, or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the City/County under any section or provision existing at the time of adoption of these regulations, or as vacation or annulling any rights obtained by any person, firm, or corporation, by lawful action of the City/County except as shall be expressly provided for in these regulations.

1.08 Repealer.

Upon the adoption of this Ordinance according to law, the Subdivision Control Ordinance of City/County, adopted _____, as amended is hereby repealed, except for such sections expressly retained herein.

1.09 Amendments.

For the purposes of providing for the public health, safety, and general welfare, the City/County, on recommendation of the Commission, may from time to time amend the provisions imposed by these subdivision regulations. Public hearings on all proposed amendments shall be held by the Commission and/or the City/County in the manner prescribed by law. (Ref. I.C. 36-7-4)

1.10 Conditions.

Regulation of the subdivision of land and the attachment of reasonable conditions to land subdivision is an exercise of valid police power delegated by the State to the City/County. The developer has the duty of compliance with reasonable conditions laid down by the Commission for design, dedication, improvement, and restrictive use of the land in order to conform to the physical and economical development of the City/County, and to the safety and general welfare of the future plot owners in the

subdivision and of the City/County at large.

1.11 Resubdivision of Land.

- A. **Procedure for Resubdivision.** For any change in a map of an approved or recorded subdivision plat, if such change affects any street layout shown on such map, or area reserved thereon for public use, or any lot line, or it affects any map or plan legally reached prior to the adoption of any regulations controlling subdivisions, such parcel shall be approved by the Commission by the same procedure rules, and regulations as for a subdivision.

- B. **Procedure for Subdivisions where Future Resubdivision is Indicated.** Whenever a parcel of land is subdivided and the subdivision plat shows one or more lots containing more than one acre of land and there are indications that such lots will eventually be resubdivided into smaller building sites, the Commission may require that such parcel of land allow for the future opening of streets and the ultimate extension of adjacent streets. Easements providing for the future openings and extensions of such streets may be made a requirement of the plat.

1.12 Vacation of Plats.

Any recorded plat or part of any recorded plat may be vacated only in accordance with I.C. 36-7-3 as amended in 1982, 1983, 1986, and subsequently.

1.13 Variances.

- A. **General.** Where the Commission finds that extraordinary hardships or practical difficulties may result from strict compliance with these regulations and/or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve variances to these subdivision regulations so that substantial justice may be done the public interest secured, provided that such variances shall not have the effect of nullifying the intent and purpose of these regulations; and further provided the Commission shall not approve variances unless it shall make findings based upon the evidence presented to it in each specific case that:
 - 1. The granting of the variance will not be detrimental to the public safety, health, or welfare, or injurious to other nearby

property;

2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.
3. Because of the particular surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations are carried out;
4. The variance will not in any manner contravene the provisions of the Zoning Ordinance, Comprehensive Plan, or Official Map as interpreted by the Commission;

B. Conditions. In approving variances, the Commission may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements of these regulations.

C. Procedures. A petition for any such variance shall be submitted in writing by the subdivider at the time when the preliminary plat is filed for the consideration of the Commission. The petition shall state fully the grounds for the application and all of the facts relied upon by the petitioner.

1.14 Enforcement, Violations, and Penalties.

A. General (Ref. 36-7-1000; 1000 Series-Remedies and Enforcement.

1. It shall be the duty of the Administrator to enforce these regulations and to bring any violations or lack of compliance to the attention of the Commission Attorney.
2. No owner, or agent of the owner, of any parcel of land located in a proposed subdivision shall transfer or sell any such parcel before a plat of such subdivision has been approved by the Commission, in accordance with the provisions of these regulations, and filed with the County Recorder.
3. The division of any lot or any parcel of land into a

subdivision, as defined in this Ordinance, by the use of metes and bounds description for the purpose of sale, or transfer, or lease resulting in the creation of one or more new building sites shall be considered to be subject to all of the appropriate requirements of this Ordinance.

4. No Improvement Location Permit or Building Permit required under the Uniform Building Code, the Zoning Ordinance, or this Ordinance, shall be issued on any property subject to this Ordinance until the provisions of this Ordinance have been complied with.
5. Any structure erected, raised, or converted, or land or premises used, in violation of this Chapter of the Code, is a common nuisance and the owner or possessor of the structure, land or premises is liable for maintaining a common nuisance.

B. Violations and Penalties. Any person who violates a provision of this Ordinance or any regulations herein contained, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00) for each day's violation.
(Reference I.C. 36-1-3-B)

C. Restraining Provisions.

1. Any land within the participating jurisdictions subdivided in violation of the terms of this Ordinance after the effective date hereof, is hereby declared to be a common nuisance, which may be restrained, enjoined or abated in any appropriate action or proceeding.
2. The Commission may institute an injunction suite requesting an individual or governmental unit be directed to remove a structure erected in violation of this Ordinance, or to make the same comply with its terms. If the Commission is successful

in its suit, the respondent shall bear the costs of the action.

- 3.** The Commission may institute a suit for mandatory injunction, requesting an individual or governmental unit be directed, where such individual or governmental unit has violated any provisions of this Ordinance, to comply with the provisions of this Ordinance. If the Commission is successful in its suit, the respondent shall pay the Commission's reasonable attorney fees and all costs related to the enforcement of this Ordinance.

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