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Filed for Record in
HAMILTON COUNTY, INDIANA
JENNIFER J HAYDEN
02-18-2005 At 11:39 am.
ORDINANCE 33.00

ORDINANCE NO. 04-43

AN ORDINANCE OF THE TOWN OF WESTFIELD CONCERNING AMENDMENT TO TITLE 16 – LAND USE CONTROLS

WHEREAS, The Town of Westfield, Indiana and the Township of Washington, both of Hamilton County, Indiana are subject to the Westfield Washington Township Zoning Ordinance; and

WHEREAS, the Westfield-Washington Township Plan Commission ("Commission") considered a petition (docket 0407-REZ-05) filed with the Commission to rezone certain lands; and

WHEREAS, the Westfield Washington Township Plan Commission did take action to forward the request to the Westfield town Council with a positive recommendation under the provision of IC 36-7-4-605; and

WHEREAS, the Secretary of the Commission certified the action of the commission to the Town Council on November 23, 2004; and

WHEREAS, the Westfield Town Council is subject to the provision of IC 36-7-4-608(g) concerning any action on this request.

NOW THEREFORE BE IT ORDAINED BY THE WESTFIELD TOWN COUNCIL THAT TITLE 16 OF THE WESTFIELD CODE OF ORDINANCE BE AMENDED AS FOLLOWS:

SECTION 1. WC-16-04.
The Zoning Ordinance and the Zone Map of the Zoning Ordinance are hereby amended as described in the attached "Change in Zoning Classification 129 acres, North of 159th Street and West of Towne Road" document. The real estate property is reclassified from AG-SF1 to SF-2.

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SECTION 2. This ordinance shall be in full force and effect from and after its passage.

ALL OF WHICH IS HEREBY ADOPTED BY THE TOWN COUNCIL OF WESTFIELD, HAMITON COUNTY, INDIANA THIS 13 DAY OF Dec ,2004

WESTFIELD TOWN COUNCIL

Voting For	Voting Against	Abstain
Teresa Otis Skelton	Teresa Otis Skelton	Teresa Otis Skelton
Jack Hart	Jack Hart	Jack Hart
David Mikesell	David Mikesell	David Mikesell
Bob Smith	Bob Smith	Bob Smith
Ron Thomas	Ron Thomas	Ron Thomas

ATTEST:

Clerk-Treasurer, Cindy Gossard

This ordinance prepared by
Jerry Rosenberger, Town Manager

12/8/2004

Ordinance 04-43
159th and Town Road

WESTFIELD WASHINGTON TOWNSHIP ADVISORY PLAN COMMISSION CERTIFICATION

The Westfield Washington Township Advisory Plan Commission met in regular session on Monday, November 22, 2004, to consider an amendment of the Comprehensive Zoning Ordinance of Westfield-Washington Township 1977, as amended. Notice of public hearing on November 22, 2004, was presented to the Plan Commission. Notice was shown to have been published in a newspaper of general circulation in Hamilton County, Indiana. The proposed amendment is as follows:

A change in zoning classification, from AG SF 1 to SF 2,
at the northwest corner of 159th Street and Towne Road, generally
(WWTAPC petition 0407-REZ-05).

A motion was approved to forward this request to the Westfield Town Council with a recommendation to approve (7-0-1(Peyton)).

I, Kevin G. Buchheit, AICP, being the Secretary of the Westfield Washington Township Plan Commission, do hereby certify that the above is a true and accurate record of the minutes of the meeting of the Westfield Washington Township Plan Commission held on November 22, 2004.

Kevin G. Buchheit

Kevin G. Buchheit, AICP, Secretary

November 23, 2004
Date

COMMITMENTS CONCERNING THE USE AND DEVELOPMENT OF REAL ESTATE

Towne Road Development, Inc., the contract purchaser of the real estate located in Hamilton County, Indiana, and described in what is attached hereto and incorporated herein by referenced as Exhibit "A" (the "Real Estate"), makes the following Commitments (the "Commitments") applicable to the Real Estate.

Section 1. **Exhibits**. The following exhibits are attached hereto and incorporated herein by reference:

Exhibit "A". Attached hereto and incorporated herein by reference as Exhibit "A" is the legal description of the real estate (the "Real Estate");

Exhibit "B". Attached hereto and incorporated herein by reference as Exhibit "B" (the "Drawing") is the map outlining the perimeter of the Real Estate.

Section 2. **Definitions**. Different words and terms are defined throughout these Commitments and, further, the following definitions shall apply throughout these Commitments:

1. ARB: The Architectural Review Board established by the Developer in the Declaration of Covenants.

2. Buffer Area One: That area of the Real Estate along part of the northern boundary of the Real Estate as indicated on the Drawing.

3. Buffer Area Two: The area along the southern boundary of the Real Estate and part of the eastern boundary of the Real Estate, as indicated on the Drawing.

4. Corner Home. A home that is constructed on a Corner Lot.

5. Corner Lot. A Lot having frontage on two (2) public streets.

6. Declaration of Covenants. A Declaration of Covenants, Conditions and Restrictions for the Real Estate which shall be prepared by the Developer and recorded in the office of the Recorder of Hamilton County, Indiana, and which may, from time to time, be amended.

7. Department. The Community Development Department of the Town of Westfield, Indiana.

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8. Developer. Towne Road Development, Inc., its successors and assigns.

9. Front Facing Garage Doors. A garage door that is parallel to the front elevation of the home.

10. Historical Architectural Style. Historical Architectural Styles are established by and shall mean and refer to such homes as (i) colonial homes, (ii) cape cod homes, (iii) craftsman homes, (iv) traditional farmhouse homes, (v) french country homes, or (vi) homes with various exterior architectural elements, taken from the foregoing, to create more recent versions of the foregoing.

    The Department shall have the authority to determine whether a specific house plan qualifies as a Historical Architectural Style entitled to the modification, in the manner specified in these guidelines, of the standards set forth in these guidelines. The Department shall have the authority to approve a house plan as a Historical Architectural Style. The denial by the Department of a house plan as a Historical Architectural Style may be appealed by the Developer to the Council.

11. Homeowners Association. A nonprofit corporation established for the promotion of the health, safety and welfare of the residents of the Real Estate once developed, and to manage, maintain, and repair the common areas within the Real Estate and any improvements located thereon.

12. Lot. A parcel of land designated as such upon the Plat (as hereinafter defined) upon which there is constructed one (1) single detached home.

13. Masonry. (i) Brick, limestone, natural stone, cultured stone, or other similar building material or a combination of the same, bonded together with mortar to form a wall, buttress or similar mass and (ii) EIFS and stucco.

14. Overhang. The portion of the roof structure that extends beyond the exterior framing walls of a home.

15. Permitted Exterior Building Materials. Masonry, wood, concrete fiber board (Hardi-Plank or similar materials) or resin based products (fypon).

16. Plat. The subdivision plat or plats for the Real Estate recorded with the Hamilton County Recorder.

17. Ridgeline. The intersection of two horizontal roof planes, or the angle formed by them, which form the peak of a pitched area.

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Section 3. Commitments Applicable to the Real Estate. The following commitments are applicable to the Real Estate:

1. Density:
   A. No more than 168 single family residences shall be constructed upon the Real Estate.

2. Masonry Requirements:
   A. All homes shall have Masonry on the first floor, front, sides and rear.

   B. The Masonry requirements may be modified by the Developer's Architectural Review Board (the "ARB") for up to 55 of the residences with a Historical Architectural Style.

3. Minimum Square Footage:
   A. One-story homes shall have a minimum living area of 2,300 square feet, exclusive of garages, basements, porches, carports and any unfinished area. This commitment shall be incorporated into the Declaration of Covenants.

   B. Two-story homes shall have a minimum living area of 2,800 square feet, exclusive of garages, basements, porches, carports and any unfinished area. This commitment shall be incorporated into the Declaration of Covenants.

   C. At least seventy percent (70%) of the residences shall have a minimum living area in excess of 2,800 square feet, exclusive of garages, basements, porches, carports, and any unfinished area. This commitment shall be incorporated into the Declaration of Covenants.

4. Permitted Exterior Building Materials:
   A. Permitted Exterior Building Materials shall be used in all exterior areas other than windows, doors, garage doors, and roofs. Vinyl siding and aluminum siding are prohibited as exterior building materials.

5. Buffer Area One:
   A. Developer shall install the Buffer Area One consisting of fifty (50) feet in width, which shall be common area and shall not be part of any Lot or Lots.

   B. Within such Buffer Area One, Developer shall plant two rows of spruce evergreen trees, each row being twenty (20) feet on center with such evergreen trees being at least five (5) feet in height at time of planting. Such trees shall be installed

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contemporaneously with the commencement of development of the Real Estate and shall be completed prior to the initial paving of any roads.

C. The Declaration of Covenants shall provide (i) for the establishment of such Buffer Area One, (ii) that such Buffer Area One shall be maintained by the Homeowners Association and (iii) that any trees located in Buffer Area One that die or are damaged shall be replaced by the Homeowners Association.

6. Buffer Area Two:

A. Developer shall install Buffer Area Two consisting of thirty (30) feet in width which, in the Developer's discretion, may be either (i) partially or wholly within a common area or (ii) wholly or partially within a landscape easement located upon an adjacent lot.

B. Within such Buffer Area Two, the Developer shall install a mound which shall vary in height between two (2) and three (3) feet and, further, shall install landscaping in compliance with the landscape provisions of the Westfield/Washington Township Zoning Ordinance.

C. The Declaration of Covenants shall provide (i) that Buffer Area Two shall be maintained by the Homeowners Association, regardless of whether Buffer Area Two is located entirely within a common area or wholly or partially upon an adjacent lot and (ii) that any trees located within Buffer Area Two that die or are damaged shall be replaced by the Homeowners Association.

7. Declaration of Covenants and Homeowners Association:

A. In connection with the development of the Real Estate, a Declaration of Covenants shall be recorded, and a Homeowners Association shall be established.

8. Roof Pitch:

A. The roof pitch on the main roofline shall be 8 feet vertical to 12 feet horizontal, from front to back. The roof pitch on front gables shall be 10 feet vertical to 12 feet horizontal. Ancillary roofs such as porches, bays or walkways may be less than the minimum requirement.

9. Roof Ridgeline:

A. A one-story home shall have a minimum of three (3) ridgelines; provided, however, that when fewer is consistent with a Historical Architectural Style, a minimum of two (2) ridgelines shall be permitted.

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B. A two-story home shall have a minimum of three (3) ridgelines; provided, however, that when fewer is consistent with a Historical Architectural Style, a minimum of two (2) ridgelines shall be permitted.

C. Ridgelines shall only be considered if they are horizontal ridges which form the peak of a pitched area. Covered and enclosed porches shall count as a ridgeline.

10. Corner Breaks:

A. Each home shall have a minimum of three (3) corner breaks on the front and rear elevations. The exterior corners of a covered porch, the outermost corners of the home, and a projection with a height of no less than six feet (6') shall count toward this requirement.

11. Front Landscaping:

A. Front yard landscaping shall include sixteen (16) shrubs, eighteen (18) inches in height at the time of planting.

B. Front yard landscaping shall include at least 1 yard tree (2" minimum caliper outside planting bed)

12. Miscellaneous

A. All new home, landscaping and exterior color plans must be approved by the ARB prior to beginning construction.

B. All driveways shall be concrete unless otherwise approved by the ARB.

C. Uniform mailboxes, as determined by the ARB, shall be required.

D. Dusk to dawn yard lights shall be required in a uniform location, as determined by the ARB.

Section 4. Binding on Successors

These Commitments are binding on the Developer, each other person acquiring an interest in the Real Estate, unless modified or terminated by the Commission. These Commitments may be modified or terminated only by a decision of the Plan Commission after a public hearing wherein notice as provided by the rules of the Plan Commission has been made. The provisions of this Section 4 notwithstanding, these Commitments shall terminate as to any part or parts of the Real Estate hereafter reclassified (rezoned) on the Town's Official Zone Map.

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Section 5. **Effective Date**

The Commitments contained herein shall be effective upon the occurrence of all of the following events:

1. The adoption of an ordinance by the Town Council of Westfield, Indiana, assigning the requested SF2 Classification to the Real Estate; and

2. The commencement of the development of the Real Estate in accordance with the assignment of the requested SF2 classification.

Section 6. **Recording**

The undersigned hereby authorizes the Secretary of the Commission to record these Commitments in the Office of the Recorder of Hamilton County, Indiana.

Section 7. **Enforcement**

These Commitments may be enforced by the Town Council of Westfield, Indiana and any property owner within the Real Estate.

IN WITNESS WHEREOF, DEVELOPER has caused these Commitments to be executed as of the date first written above.

TOWNE ROAD DEVELOPMENT, INC.

By: _____
James A. Caito, President

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STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared James A. Caito, President of Towne Road Development, Inc., and having been duly sworn, acknowledged execution of the foregoing Commitments.

Witness my hand and Notarial Seal this 22nd day of December, 2004.

My Commission Expires:

_____

Residing in _____ County

LAWRENCE J. KEMPER, NOTARY PUBLIC
HAMILTON COUNTY
Notary Public
PUBLIC
SEAL
JULY 1, 2005
STATE OF INDIANA

Lawrence J. Kemper
Printed Name

Prepared By: Charles D. Frankenberger, Nelson & Frankenberger, 3105 East 98th Street, Suite 170, Indianapolis, Indiana 46280 (317) 844-0106.

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EXHIBIT "A" - Page 1 of 2

A part of the Northeast Quarter and the Southeast Quarter Section 8, Township 18 North, Range 3 East, Washington Township, Hamilton County, Indiana, more particularly described as follows:

Beginning at the Southwest corner of said Northeast Quarter Section; thence North 00 degrees 02 minutes 15 seconds East along the West line of said Quarter Section a distance of 1,308.29 feet to the Northwest corner of the Southwest Quarter of said Quarter Section; thence North 89 degrees 30 minutes 21 seconds East along the North line of said Quarter-Quarter Section a distance of 795.62 feet; thence South 00 degrees 02 minutes 15 seconds West parallel to the West line of said Quarter Section a distance of 2,408.31 feet to the centerline of 159th Street; thence North 89 degrees 46 minutes 19 seconds West along said centerline 797.10 feet to the West line of said Southeast Quarter Section; thence North 00 degrees 07 minutes 02 seconds East along said West line 1,089.99 feet to the place of beginning, containing 43.913 acres, more or less.

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EXHIBIT "A" - Page 2 of 2

A part of the Northeast Quarter and the Southeast Quarter Section 8, Township 18 North, Range 3 East, Washington Township, Hamilton County, Indiana, more particularly described as follows:

Beginning at the Northeast corner of said Southeast Quarter Section; thence South 00 degrees 17 minutes 04 seconds West along the East line of said Quarter Section a distance of 1,253.47 feet to the centerline of 159th Street; thence along the centerline of 159th Street by the next two (2) courses; 1) North 84 degrees 08 minutes 56 seconds West 1,409.41 feet; 2) North 89 degrees 46 minutes 19 seconds West 440.65 feet to the Southeast corner of the real estate described in Instrument Number 98-10055 in the Office of the Recorder, Hamilton County, Indiana; thence North 00 degrees 02 minutes 15 seconds East along the East line of said real estate 2,408.31 feet to the North line of the Southwest Quarter of said Northeast Quarter Section; thence North 89 degrees 30 minutes 21 seconds East along said North line 528.21 feet to the Northeast corner of said Quarter-Quarter Section; thence along the westerly and southerly boundary lines of the real estate described in Instrument Number 98-39293 in said Recorder's Office by the next three (3) courses; 1) South 00 degrees 38 minutes 10 seconds West 292.77 feet; 2) South 00 degrees 03 minutes 47 seconds West 349.85 feet; 3) North 88 degrees 08 minutes 00 seconds East 1,325.98 feet to the East line of said Northeast Quarter Section; thence South 00 degrees 12 minutes 04 seconds West along said East line 705.44 feet to the place of beginning, containing 85.829 acres, more or less.

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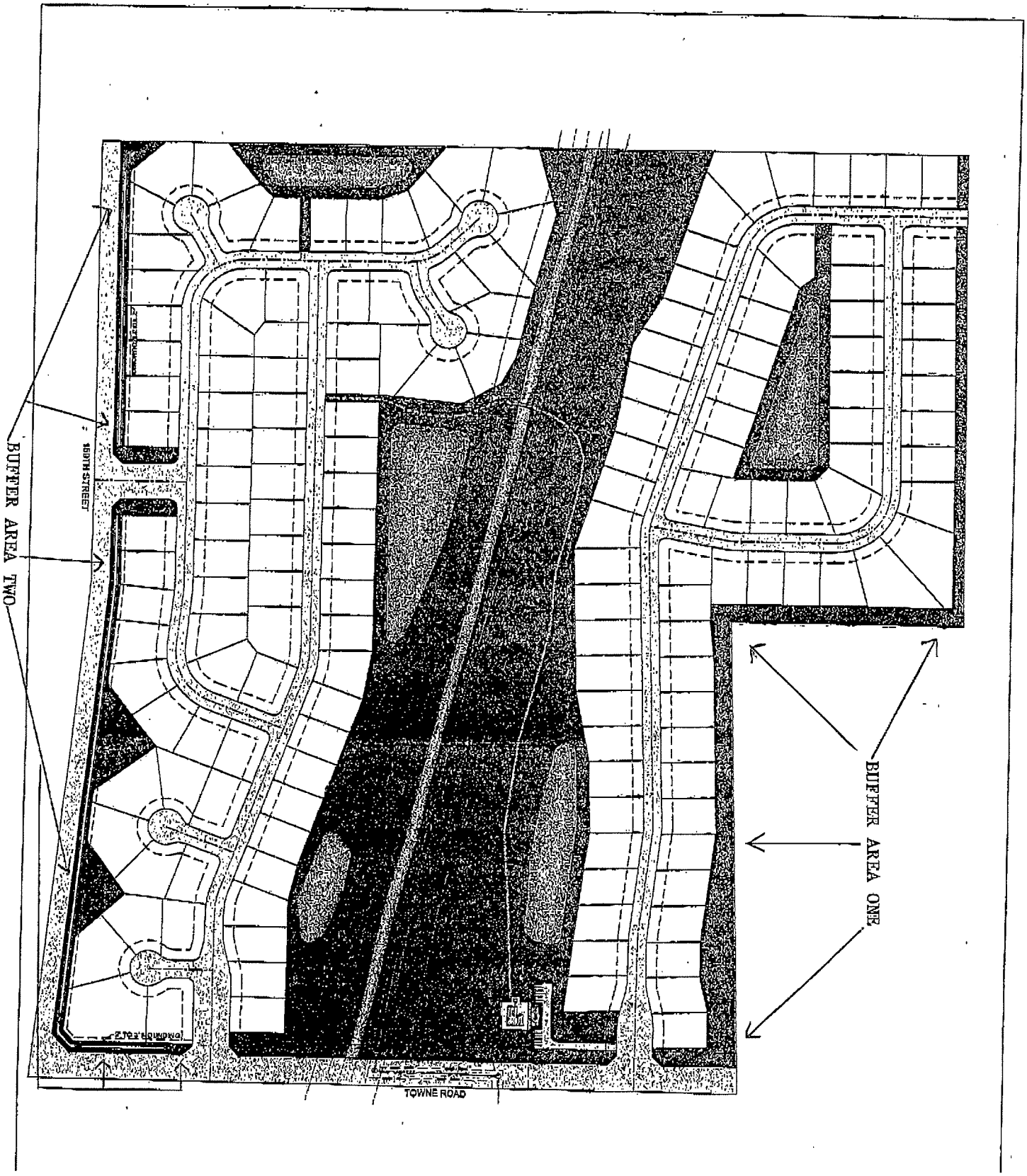
EXHIBIT "B"