

# DEKALB COUNTY DEPARTMENT OF DEVELOPMENT SERVICES

PLANNING • BUILDING • GIS

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## AGENDA

### DeKalb County Plan Commission

Commissioners Court – 2<sup>nd</sup> Floor DeKalb County Court House

Wednesday, December 20, 2023

**8:30 AM**

To view the livestream, click here: <https://tinyurl.com/YouTubeDCPC>

1. Roll call
2. Pledge of Allegiance
3. Prayer
4. Approval of Minutes: October 18, 2023
5. Consideration of Claims: October & November 2023

Payroll	\$31,075.13
Office Supplies (various vendors)	\$42.02
Building Inspections by Auburn	\$270.00
Ben Davis – truck maintenance	\$1,234.05
Sanderson Auto – truck maintenance	\$420.70
Citizen Planner Education – webinar with PC/BZA members	\$85.00
Legal Fees – Kruse & Kruse PC	\$2,567.64
Gas for truck	\$664.58
EagleView Pictometry LiDAR – updated contour mapping	\$122,357.15
SmartGov – online permitting contract	\$15,542.98
Verizon Wireless	\$155.66
TOTAL: \$174,414.91	

6. Old Business: None

7. New Business:

2024 Attorney Fee Agreement: Vote Needed

Auburn Extra Territorial Jurisdiction: Update & Revisions: Vote Needed

Fee Schedule: Vote Needed

Discussion of UDO Amendments:

- Definition of Accessory Building or Structure
- Non-Conforming Lots, Structures & Uses

8. Reports from Officers, Committees, Staff and/or Town/City Liaisons
9. Comments from Public in Attendance
10. Adjournment

Next Meeting: January 17, 2024

**If you cannot attend, please contact Chris Gaumer:**  
**[cgaumer@co.dekalb.in.us](mailto:cgaumer@co.dekalb.in.us) | (260) 925-1923**

**\*PLEASE ENTER THROUGH THE NORTH DOOR OF  
COURTHOUSE LOCATED ON SEVENTH STREET.**

**\*\*No cellphones, tablets, laptops, or weapons are permitted.**

**MINUTES**  
**DEKALB COUNTY PLAN COMMISSION**  
**Wednesday October 18, 2023**

The Regular Meeting of the DeKalb County Plan Commission was called to order at 7:00 p.m. in the DeKalb County Commissioner's Courtroom by Plan Commission President, Jason Carnahan.

**ROLL CALL:**

**Members Present:** Jason Carnahan, Angie Holt, Mike Watson, Jerry Yoder, Frank Pulver, Bill VanWye, Sandy Harrison, Elysia Rodgers, and Suzanne Davis

**Members Absent:** Glenn Crawford

**Staff Present:** Plan Commission Attorney Andrew Kruse, Director/Zoning Administrator Chris Gaumer, and Secretary Andrea Noll

**Community Representatives Present:** None

**Public in Attendance:** Scott Graham, Stacy Wagner, Ryan Gibson, Bryan & Sara Provines, Lori Schaffer, Penny Hawkins, Jeff & Vickie Tuttle, Garrett & Ellissa Helf, Theresa Dickerhoof, Van Kirk Hire, Jennifer Thomas, Justin & Kyleigh Reinig, Michelle & Casey Davis, Linda Ruckman, Amy Prosser, George & Shelley Bennett, Kelly Brock, Carol Helbert, Todd Cheek, Trent Eguia, Joshua Powell, Nicole Steury, Josh Ayers, Randy & Terry Houser, Kip Howard, Jason Yoder, Andrew Ehle, Sara Shull, Tina Krafft, Angela Provines, Sue Chapman, Jeff & Margaret Morr, Will Spangler, Ben & Kyla Krafft, Chris & Judy Krafft, Nicholas Miller, Josh Godsey, Zoe Jackson, Rodney Wilcox, Susan Hurraw, Terri Rosenbury, Colben Steury, Bill Shultz, Melissa Collingsworth, Janet Provines, Mike & Anita Bultemeier, Ginger & Brian Miller, Cheryl Boltz, Julie Fetters, Doug McLaughlin, Laura Wengzer, Brad & Beth Holman, Karl, Erin, Meredith, Grant, & Alexzandra Reith, Brian Carr, Ryan Hoover, Jennifer Harty, Brent Houser, Todd Treesh, Chad & Allison Carnahan, Kelly Brown, Robert Glick, Charles (Chip) Hampel, Kelly Watson, Andrew Provines, Ann Forti, and Brett Helbert.

**PLEDGE OF ALLEGIANCE:**

Jason Carnahan led The Pledge of Allegiance.

**PRAYER:**

Jerry Yoder led prayer.

**APPROVAL OF MINUTES:**

Sandy Harrison moved to approve the October 3, 2023, meeting minutes. Seconded by Mike Watson. None opposed. Motion carried.

**CONSIDERATION OF CLAIMS:**

None. Will approve October 2023 during the November meeting.

**OLD BUSINESS:**

None

**BEFORE NEW BUSINESS:**

Jason Carnahan advised the board and the large public in attendance of how the rest of the meeting would be administered.

**NEW BUSINESS:**

Petition #23-28 – Sculpin Solar LLC requesting an Amendment to the Commercial Solar Energy Overlay District. The purpose of the amendment request is for the inclusion of properties in the CSES Overlay District per Article 03, Section 3.13 B(1)(a) & (b) of the DeKalb County Unified Development Ordinance. The underlying Zoning District will not be amended, and this is not a request for a Development Plan Application. The properties are generally located south of County Road 34, west of County Road 79, north of County Road 75A/County Road 71, and east of State Road 1, Butler, Indiana.

Prior to reviewing the staff report, Chris Gaumer briefly explained the process in steps of an energy systems project and that there are currently zero acres in the county which are part of this overlay district.

Before welcoming questions amongst the board, Jason Carnahan briefly explained that there are no traditional findings that answer yes or no questions, but that they need to pay reasonable regard to five Unified Development Ordinance requirements listed at the end of the staff report.

Jerry Yoder clarified that they were only voting on the overlay district tonight, and not the actual development plan.

Then, Mr. Carnahan invited the representative for Sculpin Solar to present to the board.

Sarah Massara approached the podium to outline the petition for the Commercial Solar Energy Systems Overlay (CSESO) District and to present a power point presentation. Ms. Massara then invited Erin Bowen, real estate appraiser and property value expert from CohnReznick LLP, to provide additional expert knowledge regarding property values.

Erin Bowen apprised that she has studied the potential impacts that solar facilities may or may not have on adjacent property values, then expanded on her findings. In conclusion, Ms. Bowen advised that their academic studies and review of similar studies have shown there is no consistent negative impact on property value that has occurred to adjacent property that could be attributed to the proximity of solar farms.

Ms. Massara thanked the Plan Commission for reviewing and considering Sculpin Solar's application for the inclusion of the parcels within the CSESO District, then welcomed any questions.

Mr. Carnahan invited any questions from the Plan Commission for Sarah Massara.

Angie Holt confirmed with Mr. Carnahan that when the Plan Commission and the County Commissioners approve an overlay, the CSESO District will remain unless it's removed at some point in the future.

Ms. Holt inquired if Ms. Massara's data is peer-reviewed, in terms of the conclusions. Ms. Massara referenced the Property Value Study and referred to Ms. Bowen, who confirmed that the cited published academic studies from several universities were peer reviewed.

Ms. Holt inquired if they had distinguished between the impact of smaller solar complexes and very large ones, as compared to something more similar to a 200-megawatt facility. Ms. Bowen indicated that they had studied over 35 solar facilities from 2 up to 240 megawatts, concluding that they have not found any correlation to size, location, or any other factor that could be attributed to a negative impact on property values.

Ms. Holt inquired about how Ms. Bowen cites her percentages of impact, if the data cited was an average of all sizes of solar facilities or finds separate percentages for each size she studied. Ms. Bowen responded that the aggregate results from all of the studies results in +1.6% but indicated there are positive and negative variations that do not exceed 5%.

Ms. Holt asked if her studies were focused on homesteads or if the cost of the farmland was averaged in as well. Ms. Bowen cited the various university and CohnReznick studies that focused on farmland, homes in rural areas, and homes on various sized lots.

Ms. Holt asked Ms. Bowen to elaborate on the “control” versus the “test” that she had mentioned in her studies. Ms. Bowen explained their methodology of keeping all of the included properties within the same school district so that they’re accounting for similar buyers, adding that the distance from the solar panels is 3 miles so that there’s no direct relationship to the impact the solar facility might have on the controlled sales. Angie Holt stated that the test sale is the home directly adjacent to the solar facilities and the control sales were the ones that were making sure that they removed the influence of solar, being beyond 3 miles away but located in the same school district.

Jerry Yoder cited the economic benefits of the county with a \$30-35 million tax revenue at the life of the project and questioned the basis for the 40-year term.

Sarah Massara cited their agreements with the landowners, stating that the life of the project holds a maximum term of 40 years. She also stated that they have a signed power purchase agreement with AEP / I&M that holds a 30-year term.

Mr. Yoder asked about the maintenance schedule for the solar panels. Ms. Massara replied that they will hire 2-4 full-time EDF Renewables employees to serve as the operations and maintenance technicians for this project. Those employees will be there however often they are needed to maintain the facility.

Mr. Yoder inquired about the life of the project being limited to 40 years. Ms. Massara stated that the property owner agreements are up to 40 years because that’s what those folks have chosen to allow. She also added that the life of the project has to do with where the technology for a solar facility is and the expected life of a solar panel module.

Angie Holt inquired about the areas on the properties that don’t have the actual solar array if those areas will continue to be farm ground. Ms. Massara stated that they have approximately 1,778 acres in the overlay that reflects the actual parcels’ boundaries and what they have leased and the area behind the fence is about 1,000 acres. She added that it will be dependent on what their landowners want to do based on the setback requirements in the Unified Development Ordinance. She indicated that the acreage that cannot be built upon is possibly too small or shaped in a way that will not be able to be farmed. Sculpin Solar will remain responsible for maintaining it.

Mr. Yoder inquired if there had been any studies or trials of incorporation of Agriculture with the panels. Ms. Massara suggested researching “Jack’s Solar Farm” for an example located in Colorado, shared that EDF Renewables are actively exploring the concept of “Ag Voltaics” in Canada and New York projects, and stated that it’s not actively contemplated for this Sculpin Solar project.

Mr. Yoder inquired about the distance the panels are from each other and the possibility of bailing hay in between them. Ms. Massara responded that it depends on the design of the site, adding that EDF Renewables tries to look to the community to have any potential of Ag Voltaics, but it wasn’t a commitment they were willing to make today.

Then, Mr. Yoder asked about grazing. Ms. Massara responded that grazing for sheep is a very viable option, adding that EDF Renewables has multiple projects within its portfolio that utilize sheep grazing.

Referring to one of two studies he’s reviewed, Bill Van Wye shared that a solar field in Iowa had put their panels far enough apart for smaller farming equipment can get through them to bale hay and allow for sheep grazing. He added that they couldn’t put goats or cattle on those properties because goats liked to climb on the solar panels.

Ms. Massara stated that she was aware of a Purdue study actively in progress, where there are test facilities for different iterations of how that could go.

Referring to what Mr. Yoder had mentioned about utilizing areas without any solar panels, Elysia Rodgers stated that there have been several studies done not only with Purdue, but also across other universities that are actively looking at especially vegetable farming underneath the solar panels due to shade tolerance. Ms. Rodgers shared that this past spring, the Indiana Sheep Association had an entire

field day designated to grazing sheep and solar projects, concluding that there is a lot of information out there about both of those topics.

Suzanne Davis clarified that all the owners of the parcels that would be covered by this, have agreed with Sculpin Solar. Referencing the signed property owner acknowledgement forms in the white Sculpin Solar binders, Sarah Massara responded yes, adding that the only reason they're allowed to even entertain the idea of this development is because these landowners have entered into lease agreements with us, specifically for a solar facility.

Jerry Yoder inquired if there were any studies regarding conservation, ground-nesting birds, CRP, and/or native grasses. Ms. Massara responded that, as part of the Unified Development Ordinance Development Plan requirements, they would be required to plant native forbs and grasses underneath the panels and in the setback areas for their site plan. Specifically speaking to studies, Ms. Massara believed that the University of Wisconsin might have one.

Regarding the interviews with the real estate agents and assessors on property values, Angie Holt inquired if the data was validated, if they took their word for it, or if the same methods were used for the test and control data. Citing the Northstar solar facility, Erin Bowen stated that the county assessor was independently curious and conducted his own study. Ms. Bowen indicated that they did not study themselves because the results corroborated her own firm's results.

Ms. Bowen indicated that they typically call assessors who have solar in their jurisdiction and shared a few examples of questions she directs to county assessors including:

- If they noticed any trends and sale prices in their jurisdiction for homes that are adjacent to solar facilities,
- if they have changed their methodology in the way they assess those properties, and
- if they have had homeowners request and be granted to reduce their assessed values.

She shared that after speaking with over 65 assessors, they reported that they hadn't noticed any trends for those homes, have not changed their methodology of assessment, nor have they encountered any requests from homeowners to reduce their assessed values. Ms. Bowen advised that, with CohnReznick, they sometimes do not have the opportunity to do studies on everything and aren't necessarily able to do a full-scale analysis on that particular facility themselves. So, they rely on the county and township assessors, and at this point, they haven't really identified any feedback from assessors that have shown that there is a negative impact that they have been able to track and monitor.

Angie Holt asked Ms. Bowen to confirm that not a single one of the assessors reported a negative impact. Ms. Bowen indicated she does not believe that any of the assessors have been able to definitively corroborate such, and that there is no evidence whatsoever of a negative impact on property values.

Ms. Holt inquired about the recency of the data Ms. Bowen reviewed, giving an example of a March 7, 2023, study with data being valid through the end of the previous year.

For their previous studies they have completed, Ms. Bowen responded that they are actively reviewing them every month to ensure there have been no additional transactions, adding that CohnReznick are at about 6 new studies per year. Concluding that the data is probably good for at least 6 months with 12 months being reasonable, Ms. Bowen stated that the data from March of 2023 is still relevant today and they could update that data for the next meeting if that was a concern.

Other than the infrastructure, Jason Carnahan inquired about their reasoning for targeting open areas for solar projects instead of already developed areas first. After confirming that infrastructure meant existing transmission lines and power lines, Sarah Massara responded that their reasoning—quite simply is because that is the land that is best suited for the engineering requirements of a solar facility. Ms. Massara

added that the land generally needs to be flat, non-shaded, and open. They don't look toward wooded acreage or highly developed areas where there's potential for shading to site these facilities.

Jason Carnahan elaborated by questioning why they wouldn't explore, for example, the existing roof or parking lot of a giant Wal-Mart.

Admitting that they do explore those areas as well, Sarah Massara explained the multiple classes of solar developments. Advising that EDF Renewables have multiple branches within their company, she advised that a utility-scale project (within the grid-scale branch of EDF Renewables) is the scale that the Sculpin Solar facility is at, in terms of the number of megawatts that they can commit to the existing electric grids, adding that a 180-megawatt facility requires 340,000 modules. Ms. Massara advised that this type of facility is physically too large for carports or a Wal-Mart roof, which would be under their distribution scale—the branch that develops these types of smaller-facility projects and ties to distribution lines. Utility-scale projects connect to transmission facilities at a higher voltage and a higher amount of power they're able to provide to the grid.

Mike Watson commented on the structural differences. Sarah Massara responded that in terms of the wattage and the literal megawatts that a utility has demand for, those existing structures cannot physically support that quantity. She explained that it is a coupling of both existing infrastructure, as well as existing demand from utilities or other customers.

Angie Holt asked Ms. Massara if they were tying into the high voltage transmission lines, versus the medium voltage transmission lines that run throughout the county. Ms. Massara responded, for this facility, they were tying into the existing high voltage line that runs south of Butler, to Hicksville.

Ms. Holt further inquired if this scale of a project could potentially tie into the numerous medium voltage transmission lines that crisscross north-south-east-west throughout the county. Ms. Massara advised that it could as long as they're not the distribution level lines.

Bill Van Wye inquired about the number of houses this project would provide electricity for. Ms. Massara responded that this project would generate electricity for the equivalent of 33,600 houses annually.

Determining there were no further questions or comments amongst the Plan Commission members, Jason Carnahan opened the public portion of the hearing. He advised the public audience that there would only be 20 minutes for them to speak in favor of and 20 minutes not in favor of the petition, with a maximum of 3 minutes per person.

Kip Howard approached the podium to speak in favor of the petition, on behalf of IBEW 305 Fort Wayne and the 49 members in DeKalb County, which EDF Renewables has committed to utilize. Mr. Howard outlined numerous examples of how the proposed solar project represents a significant, positive, and responsible economic development opportunity for Indiana. The proposed project will create more than 200 construction jobs during peak construction and is anticipated to employ a significant number of IBEW members of local 305. Mr. Howard shared examples of how good union jobs create an economic ripple effect:

- union members incomes contribute directly or indirectly to state and local payroll taxes,
- increased spending in local businesses and local construction vendors,
- investments in job training,
- increased local charitable contributions,
- increased tourism, and more.

Mr. Howard mentioned the proposed project is estimated to provide \$300-\$400 million in total economic benefit and approximately \$80-\$130 million in direct payments to local government,

communities, schools, and private landowners. Mr. Howard went on to share some positive informational facts about the IBEW and Signatory Contractors.

Scott Graham approached the podium to speak in favor of the proposed solar project, by sharing his opinions on doing what's best for the greater good of the county, state, and nation.

Robert Glick approached the podium to speak in favor of the petition, citing missed opportunities of revenue for the county and decreasing taxes by not allowing solar into the county sooner.

Participating landowner in the Sculpin Solar project, Chip Hampel approached the podium to speak on behalf of Hampel Farms. He suggested that it all comes back to the issue of controlled development and controlled growth, with this project potentially being the second largest investment, in terms of assessed value, in the history of this county, without the negatives of traffic and noise. He commented on the arrival of SDI in the 90's being the first largest investment and shared a few positive results of this investment. He also acknowledged that he will personally benefit from the project, but also believes it will be a benefit to the county as a whole.

Speaking on behalf of LIUNA Local 1112 Muncie and LIUNA Local 213 DeKalb County, Kelly Watson approached the podium. Advocating for the high-quality construction workers throughout northeastern Indiana, Mr. Watson advised of the electrical projects he and his fellow members have and are currently working on in Indiana. He explained how those electrical projects were beneficial to their respective counties, including Randolph and Blackford counties.

Nick Miller, from Allen County, approached the podium to speak in favor of the petition. He encouraged everyone to seek the opinions of the employees of Nucor and Steel Dynamics, because they are two of the largest employers in the county who make the most money. Citing that Steel Dynamics just signed a monumental contract within the last few months, to take 16% of their annual power resources, coming from projects like the proposed Sculpin Solar energy project. Mr. Miller commended Steel Dynamics and Nucor, two of the four largest steel companies in America, who are switching to this technology of solar power; and 40% of all new generating energy is solar powered. He advocated for property owner's rights and cited energy.gov, that solar often increases the value of a home. Mr. Miller also argued that only taking 1,000 acres of land isn't comparable to the 30 million acres of farm ground that are idled by the federal government every year.

William Miles, a participating landowner, approached the podium to declare his support for solar in the county and his interest to participate in a future solar program. He argued that farmers' expenses are increasing but the selling prices are not. He indicated that the proposed 30- or 40-year solar project is only temporary, and his land will return to farm ground at the end of the agreed upon term. Mr. Miles applauded that the money from the proposed project which would come into the area, wouldn't be coming out of his pocket.

Jason Carnahan determined there was no one else who wanted to speak in favor of the petition, so he announced that anyone who wishes to speak against the petition may come forward.

Nicole Steury approached the podium to speak on behalf of a no-solar group in DeKalb County, who are all in opposition to the petition. She advised the board members that she would be addressing the same questions regarding the Unified Development Ordinance that the Plan Commission is required to pay reasonable regard to. Noting her disappointment that more people didn't speak who were involved in the proposed project, Ms. Steury urged the board to consider all the county residents when making their decision—including the non-participating landowners, who represent thousands of residents. Referencing the Unified Development Ordinance, Ms. Steury commented that our comprehensive plan prioritizes the protection of farmland. Nicole Steury added that when reviewing how economic development fits within the comprehensive plan, all strategies revolve around strengthening the quality of life and providing employment opportunities. Referencing a comment from Kip Howard, a public audience member, Ms.



Steury stated that most of these jobs created by this project are temporary. Stating that the overlay request is incompatible with the underlying zoning district, Ms. Steury indicated that the Sculpin Solar project does not comply with the specific land uses for A1 and A2.

Ginger Miller, a local realtor, approached the podium to speak against the petition. Ms. Miller shared her professional opinion that the overlay request does not pay reasonable regard to the conservation of property values throughout the jurisdiction. She explained the desirability of property in the county and shared her knowledge of buyers changing their minds based solely on the possibility of solar coming here. Citing the CohnReznick studies on property values, Ms. Miller indicated that CohnReznick Capital is an affiliated company that stands to profit from solar. She added that the solar developers' studies are funded by them to provide the results they want. Regarding small scale versus large scale solar, Ms. Miller cited a CohnReznick study which looked at values around 9 solar plants located in Indiana and Illinois, to see how property values would be impacted. She added that this study has been used across the Midwest as evidence that solar plants do not affect property values, however, it is a small-scale solar study and none of those projects had affected homes on more than one side of the property—Sculpin will be on multiple sides of multiple properties in DeKalb County. Those 9 projects, near a town, ranging from 13 to 160 acres are small scale solar installations. For large scale solar, she mentioned that they had examples of 10 solar projects that range from 1,400 to 5,000 acres each, concluding that the CohnReznick studies do not compare with the Sculpin Solar project. Ms. Miller cited a report from real estate appraiser Mary McClinton Clay dated June of 2022, quoting that, "...though the amount of devaluation varies, the evidence presented by these case studies of 100 megawatts or less solar farms, indicated that solar farms damage property values by at least 6-30%." Ms. Miller indicated that Sculpin's proposed project is 180 megawatts—almost double—and asked if we could assume that the property devaluation will be 12-60%. Ms. Miller shared that Mary's study highlighted 3 different solar companies' financial incentives for non-participating neighboring landowners that range from \$5,000 to \$50,000, stating, "...these good neighbor payments are significant because the developers' own appraisers have determined that the solar farms will have no adverse impact on property values. However, the payments can only be interpreted as an admission of value impairment.

Andrew Provines approached the podium to speak against the petition, indicating what ways the overlay request does not pay reasonable regard to the most desirable use for which the land is adapted. He urged the need to protect farmland, citing a presentation from the Land Use Summit, called "American Farmland Trust: Farms Under Threat." He indicated that the entire Midwest is super fertile ground that has really good soil for farming, insisting there are tons of desert area in the rest of the country that makes sense for solar fields because they can't produce. He cited a study indicating a need for 70% more food production by 2050. Then, Mr. Provines explained why the overlay does not pay reasonable regard to responsible development and growth. He rhetorically questioned if it was responsible to apply extra land rights that benefit a few at the cost of many, adding that 7 landowners will benefit from the proposed project, with at least 70 landowners within a half mile are going to have their properties suffer. Mr. Provines also expressed concern about foreign-owned companies having control of land in the county. He further debated how irresponsible it is to wrap people up in solar farms, which he classified not as a "farm" but as a power generation facility. Urging everyone to "do better," he persuaded that if they can't sell their homes because of solar being so close in proximity to their land, it is not responsible to trap them in their current situation. Mr. Provines concluded by asking when we consider the concerns of 2,000 people and stop picking winners and losers and catering to businesses at the expense of the people.

Jessica Shull approached the podium to speak against the petition. She directly addressed several topics including noise from the inverters, NIPSCO requesting additional funding every month from their customers to accommodate the cost of renewable energy, not installing solar on top of commercial buildings because of the profit margin decrease, lost revenue for seed and diesel companies, and the current 6,000-acre cap on land in the county used for solar panels. Clarifying a previous statement from public audience member, Nick Miller, Ms. Shull clarified that SDI is investing 16% of their money into

renewable energy so that they can purchase carbon credits—purchasing the ability to pollute further. She further noted that no one gets to do what they want with their land—which is why we have the Board of Zoning Appeals, the landowners who are participating in the proposed project are making a choice that makes some of the landowners rich—while increasing electric bills for others, hurting property values, and a decrease in the quality of life for the people who live in DeKalb County.

Justin Reinig approached the podium to speak in opposition of the proposed solar project. He shared his concerns of insignificance of the data that was presented and advised on his concerns of the direct negative impact of the proposed solar project to surround his dream property that he moved to DeKalb County to enjoy. He expressed concerns leadership is considering the seduction of increased revenue at the expense of the values they are supposed to protect.

Mike Bultemeier approached the podium to speak against the petition. After recently building a home on his hunting property in DeKalb County, he explained how solar would destroy wildlife habitat and some of the best farm ground in the country. Mr. Bultemeier shared his concerns about his property values decreasing, tax dollars being spent on solar, and electric bills increasing. He also commented on the rules for structures that were put in place via the Unified Development Ordinance.

Jeff Morr approached the podium to share that he is a retired operating engineer and that these labor organizations do not speak for him.

Amy Prosser approached the podium to state that she does not support the proposed project.

Joshua Godsey approached the podium to state that he does not support this project.

Ann Forti approached the podium to share her concerns about her grandchildren having to visit her and see solar instead of corn fields.

Judy Krafft approached the podium to state that she is against this project.

Ben Krafft approached the podium to state that he does not support this project.

Lori Schaffer approached the podium to state that she does not support this project.

Tina Krafft approached the podium to state that she does not support this project.

Terri Rosenbury approached the podium to state that her household does not support this project.

Colbin Steury approached the podium to state that he does not support Sculpin Solar coming to our county.

Janet Provines approached the podium to state that she does not support this project.

Anita Bultemeier approached the podium to state that she does not support this project.

Brian Provines approached the podium to state that he does not support this project.

Kyla Krafft approached the podium to state that she does not support this project.

Vicki Tuttle approached the podium to state that neither her husband nor herself do not support this project.

Then, Jason Carnahan announced that the public portion for this petition was concluded to give more time for the board to deliberate amongst each other.

Andrew Kruse suggested the Plan Commission members discuss the 5 different areas that they are required to pay reasonable regard to: The Comprehensive Plan; Current conditions and the character of current structures and uses in each district; The most desirable use for which the land in each district is adapted; The conservation of property values throughout the jurisdiction; and Responsible development and growth.

Angie Holt shared with the board that she has really gone through and tried her best to make an honest assessment by focusing on those 5 questions. She cited items from the Comprehensive Plan, intending to provide some guidance:

- **The Comprehensive Plan**

- Section 2: History & Community Character
  - 1) “The small town and rural character of DeKalb County is very important to the residents of the community. There is a strong desire to maintain this character while allowing for progress and development.”
- Section 3: Focus & Manage Growth
  - 1) “The rural character and abundance of farmland is one of the most important land use attributes of the County. Generally, agricultural should be considered to be the primary land use beyond the planned growth areas outside of each municipality.”
  - 2) “Conservation of agricultural land not only requires limiting its residential development, but also proper management of surrounding development, examples include green spaces and buffers between the ag land and other development zones.”
  - 3) “To assure the best fiscal future for the County and its municipalities, development is encouraged in, or adjacent to, established cities and towns, where developers can connect to already available lines.”
  - 4) “Agricultural zoning is used by communities across Indiana that desire to protect farmland and the industry of farming.”
- Section 5: Environmental, Cultural & Natural Resources
  - 1) “The citizens of the community recognize the value of natural resources found in the rural landscapes and waterways, and the need to care for them while respecting the rights of property owners to use their land.”
  - 2) “As communities develop and grow, there is the potential for increased threats to the natural and built environment. For example, new development near the waterways and floodplain areas can cause increased risk of flooding for other property owners or in adjoining areas...”
- Section 6: Economic Development
  - 1) “Strategies that strengthen and diversify the local economy will improve the quality of life for the citizens of DeKalb County.”
  - 2) “Economic growth that improves the quality of life and creates job diversification, high-paying jobs, and private investment constitutes the focus of economic objectives detailed further in the Comprehensive Plan.”
- Section 7: Policies & Strategies
  - 1) L.5.1 Discourage development in predominately agricultural areas that impedes farming practices.
  - 2) ED.2.2 Promote quality of life initiatives that foster business retention and attraction.

Then, Angie Holt shared a few of her own takeaways from the abovementioned points:

- The Unified Development Ordinance (UDO) allows for Commercial Solar Energy Systems (CSES) in the A1 and A2 Zoning Districts but must use Comprehensive Plan as a guide to determine which A1 and A2 is appropriate.
- Does not support the rural character that is outlined in the Comprehensive Plan.

Jason Carnahan commended all of Ms. Holt’s homework, adding that he agreed with most of what she had said and emphasized that the correct A1 and A2 areas are important. After going back and forth for

months trying to study through all of this, Mr. Carnahan stated that he is convinced that either side is 100% right.

Sandy Harrison stated that fiscal development and economic development are important parts of the Comprehensive Plan, which are two factors that we have to look at in regard to this solar overlay.

Jason Carnahan asked Sandy Harrison to expand on her comment.

Sandy. Harrison stated that when you look at solar going into agricultural A1 and A2, you have to think about the fiscal and economic development, stated by Angie Holt. Ms. Harrison added that you can't say that only parts of it are fitting, and parts are not fitting and suggested the board ask if the fiscal or the economic development that part that fits. Ms. Harrison further stated that she thinks the solar overlay fits in that confined area.

Although the Comprehensive Plan references the Auburn Renewables Project, Angie Holt stated that it doesn't foresee mass utility-scale solar projects. So, in regard to economic development, Ms. Holt shared that in her mind, the missing piece is those high paying jobs and making DeKalb County a desirable place to live; concluding that she doesn't believe the solar overlay in this formatted area supports that.

Sandy Harrison commented on the number of jobs.

Ms. Holt responded that they haven't even talked about the net jobs because there is going to be some number of jobs lost who would be farming that land, and she didn't have that data at the time. She added that for the size of the area and investment, the creation of only 2 to 4 jobs wouldn't be ideal.

Bill Van Wye mentioned one of the earlier comments of a retiree who was farming and signed a contract to lease his land for solar. Mr. Van Wye stated that you can't judge him for utilizing this project as a retirement program. He added that with the equipment they have today, the farmers will come in 2 or 4 guys at a time to farm a field, which is the same number of jobs created by the solar project. Ms. Holt agreed that it was probably a wash and therefore not a relevant point.

Suzanne Davis stated that when she was looking at the map, she only saw a couple of houses in the overlay district, which she assumed were the people who signed up for the solar project. She further explained that no one is surrounded by the solar on all four sides of their property except one little thing on the west side; some people might be surrounded on three sides but that's not a lot of areas. Ms. Davis referred to current conditions and the character of current structure, stating that she couldn't tell from this map because she didn't go out to the site and look, but it looked as though there weren't a lot of structures that are going to be surrounded.

Because of some of the studies Ms. Holt had reviewed online, referencing that half mile within the edge of the solar overlay, earlier in the week she had asked Chris Gaumer to provide a map which showed this. From that map, Ms. Holt advised that there are 73 homesteads, not including additional homes within a half mile of the outline of the proposed overlay. She suggested you could probably find data on both sides whether that impacts property values or not. She concluded that her focus would be how many are within that half mile from the edge of the proposed overlay.

Ms. Davis advised that she lives in the country, and she cannot see anything within a half mile from her house, with fields in the way. So, she didn't know that the solar would be visible.

Jason Carnahan inquired if Frank Pulver or Jerry Yoder had any comments regarding the Comprehensive Plan side of it. Chris Gaumer advised that it was mentioned with the current conditions and character, so he suggested they move on to the most desirable use for which the land in each zoning district is adapted, inviting Angie Holt to speak.

Angie Holt stated that she drove around the area of the proposed overlay and shared what she had noticed in regard to the current conditions and character: the properties were relatively level in open areas, the majority of the land was in active crop production with corn and beans, as well as the homes that were

within this area. In regard to the most desirable use for which the land is adapted, Ms. Holt referenced the CoCiGIS Map provided earlier that week by Chris Gaumer, stating that the type of land use is overwhelmingly tillable.

Mr. Gaumer interjected by explaining that the map Ms. Holt was referring to was received by all of the Plan Commission members and came from the county assessor's office, showing which layers they have for how the county's residents see their properties assessed. Mr. Gaumer provided an example to further explain: if someone has 40 acres and they have a house and some barns, one acre of that is assessed as your residential and the remaining 39 acres would be assessed as tillable land. He commented on percentages or acreage of streams and creeks, open ditches, tillable land, right-of-way, etc., stating that map shows how the land is currently used.

Ms. Holt confirmed that Mr. Gaumer had also gone back to the 1999 maps and the land use has generally been the same over time; it's been farmed again and again. Mr. Gaumer stated that the earliest aerial maps they have are 1999 per their GIS data and the most current map they have is 2023—which has generally been the same except for some pop-up homes here and there.

Ms. Holt commented that 1,610 of those acres are marked as tillable in that report. She went on to reference the NCCPI Productivity Index in the Sculpin Binder, quoting that Sculpin said of the proposed overlay area was rated approximately 61.71 on a scale of 100. Ms. Holt noted that indicated a moderately high inherent productivity category, citing the addendum report dated 3/7/2023. She shared that she had recently attended the Indiana Land Use Summit hosted by Purdue Extension. While at this presentation, Ms. Holt shared that they had gone through the Farmland Productivity, Versatility, and Resiliency (PVR) Values. The most recent study Purdue presented from 2016, included data from Indiana Farmland Trust, which indicated that the vast majority of the land in the proposed overlay had moderate to high PVR values. However, there are other areas in the county, though limited, have much lower PVR values, which made her question whether this is the most desirable use for which the land is adapted in this specific A1 and A2 area proposed for the overlay.

Jason Carnahan advised that this was the one point out of the five that he had studied and thought the most about. Mr. Carnahan stated that the land is not 100% farmed right now, so its efficiency is not 100%, but based on what Mr. Gaumer has provided about the proposed solar project, it would be closer to 60% used based on the usable acres versus the leased acres. Mr. Carnahan added that when looking at the tracts themselves, not just the maps, it's going to be hard to use any of those 707 acres for production agricultural. He also stated that it would be great to utilize the areas in between the panels, but that's going to reduce the number of panels they can put in, which is going to lower the efficiency even more. So, Mr. Carnahan questions that desirable use of the land, adding that he had a problem with the usable percentage of the land when they were going back and forth over the setback distances. He stated that, to him, it lowered the amount of the land being used no matter what—granted, that may change and maybe some of that in the proposed Development Plan will address it differently, having some of that land clumped together being more usable.

Without having the proposed Development Plan to review simultaneously, Ms. Holt stated that we can't make assumptions about using the land for grazing or farming. There have been no commitments made and there are no requirements in the Unified Development Ordinance, so we cannot make any assumptions about what would be nice to have if it were approved, concluding that we have to make a decision based on a bit of an unknown.

Elysia Rodgers shared some of her research about the potential yield of crops on that ground compared to the type of actual soil that's there. While we had the report from the Farmland Trust, Ms. Rodgers advised that when you look at the physical soil itself, it is fairly limited on the yield that the ground can supply. She utilized a web soil survey from the Natural Resource Conservation Service that allows you to pinpoint the exact acres you want to test. So, Ms. Rodgers looked at a broader view than what the proposed acreage is, by looking at about 6,000 acres encompassing these 1,700 acres. She found that,

looking at the ground specifically itself on average—granted this year was a bit of a drought and there are some farmers who produce better than others—according to what the soil is on that site, we should be getting about 132 bushels of corn per acre. Ms. Rodgers found that currently, corn is priced at \$4.38 a bushel at Eden Farmers Co-op that nets \$574.20 per acre that a farmer is going to be getting off of that field on corn. When looking at soybeans in that specific area, Ms. Rodgers stated that an average of about 43 bushels per acre, with beans currently priced at \$12.67 per bushel, that would result in \$545.03 per acre that would be produced. Considering the county as a whole, according to the USDA National Ag Statistics Survey from 2022, the average corn yield was 186.6 bushels per acre and the average soybean yield was 54.2 bushels per acre. Stating that Indiana does have fertile farm ground, Elysia Rodgers stated that when you look at the actual soil itself in that section of DeKalb County, it might not be as productive as other areas in the county.

Mike Watson indicated that was a good question—what comes off of that \$500 per acre in expenses.

Sandy Harrison stated that it takes \$600 per acre—in expenses—to produce corn, so that farmer would already be in the hole by \$100.

Ms. Rodgers reiterated that the numbers she shared were just average figures, but based upon the soil types she was looking at, that's what she found. She noted that farmers have a bunch of different practices and/or there could have been tiling that occurred that helped with some of that.

Andrew Kruse suggested that they discuss the conservation of property values next.

Jerry Yoder shared his excitement regarding seasonal grasses and things seeded in between the panels. Stating that his farms come off of about 20 years in a Conservation Reserve Program (CRP), Mr. Yoder indicated that after resting in seasonal grasses for that amount of time, the productivity of his farm ground increased, and that his ground is similar to the proposed leased ground. Sharing that he's a conservationist who likes ground-nesting birds, Mr. Yoder advised that when you plant that kind of grass, you're going to get some wildlife back and the fences aren't going to do anything to prohibit them from flying over onto the land.

Angie Holt inquired if there's some portion of this overlay that's currently in a CRP and if that impacts any of it.

Chris Gaumer responded that he had answered a little bit of that in the email that went out to the Plan Commission members. He indicated that there are no maps of that information available to anyone unless they request receipts of monies paid to these farmers, to figure out how much acreage of their land is involved in a CRP. Mr. Gaumer added that all of that information is protected by the Privacy Act, inviting Sandy Harrison for clarification. He advised that if any of these properties are in a CRP, they would no longer be allowed to be part of the CRP because of rules and regulations. Ms. Harrison advised that you can't farm your land or get any other funding if you're enrolled in a CRP because those programs are strictly financial support from the government.

Mike Watson shared his concerns with the property value issue, stating that he understands a legitimate concern about what your home is worth or if you want to sell it but as of right now if the project goes through, the participating landowners' land is valued at \$900 an acre for the next 25 or 30 years. If the project does not get approved, the land will be valued at whatever cash rent is and probably less than \$200. So, Mr. Watson agrees that solar has an effect on property values, indicating that there are definitely two sides to the equation. He also addressed the "greedy neighbor" comments, advising that those comments are not productive and certainly not a reasonable evaluation of the folks who want to participate in the proposed project.

Bill Van Wye commented on the CPR ground, advising that the farmer is paid for about 60 feet on each side of the ditch in a waterway, so it protects the water from running. Sandy Harrison added that there are two forms. Mr. Van Wye suggested that maybe they have to keep those programs in place because of the

ability to waste the ground but maintain the creeks. So, you're going to be limited on how close you can put something on top of that, adding that he doesn't know if there are any waterways or anything going through these properties.

Chris Gaumer advised that we don't know if any of these properties are involved in CRP, reiterating that he wasn't able to get any information on them.

Sandy Harrison added that there are short-term and long-term CRP options.

Frank Pulver inquired about the numbers regarding the short-term and long-term CRP.

Ms. Harrison replied that short-term is year to year or every 2 years and it's usually filter strips along ditches and the long-term is when someone applies to put a large section of property into a CRP which is usually a 10-to-15-year program.

Mr. Pulver asked if there was a minimum amount of time that the solar company could lease the land.

Ms. Harrison replied that it's a contract between the landowner and the government, and either the landowner, Sculpin Solar, or the government would have to break that agreement if solar panels took over that property.

Jason Carnahan advised that they were getting into a hypothetical conversation.

Suzanne Davis shared her concerns, like Mike Watson, about people who are adjacent to any solar projects do not having their property values harmed. She stated it wasn't fair that they would lose any money on their properties because of this and not be compensated in one way or another. Ms. Davis added that it was kind of hypothetical right now and she's heard a little bit about different studies, but she hasn't personally looked at them.

Angie Holt shared her concerns about the assumptions on property values, indicating that using averages is a little difficult. Citing a newer study from Lawrence Berkeley National Laboratory, she stated that resale prices were 1.5% less when averaged across 6 states. Ms. Holt added that 3 of those states were California, Connecticut, and Massachusetts, which I would say that DeKalb County probably doesn't resemble those areas. Then, she shared that if you take those out, the average of the 3 remaining states is - 5% impact on property values, indicating if certain data is picked, you can get one result and by the opposite side you can pick other data and get different results. Fundamentally, Ms. Holt stated that there just aren't a lot of data points and she thought they saw a lot of anecdotal evidence and a lot of very limited data points, down to a specific property in a specific area, which she thought was very difficult to assume that the results from those limited data points over a limited period of time on a type of development—mass industrial solar—that is still very new. She believes it is just really hard to determine and doesn't think we should average those increases in pure farmland with the decreases in homesteads that would average out to zero. Referring to Ms. Davis's previous comment, Ms. Holt stated that we need to consider those individually because if 7 large properties average out with 74 smaller properties to zero, then it's still not a zero result—there is still a potential for impact on property values. She shared from personal experience of having purchased several homesteads and several rural properties over the years, she stated that she wouldn't ever build anywhere near solar. Ms. Holt indicated that drawing new people into the county, growing as an employer, and trying to bring people into the county to work, she doesn't think solar is going to help with the desirability of the county, going off of anecdotal evidence because the data that was there just isn't conclusive.

Bill Van Wye clarified with Chris Gaumer that this was just a vote on the overlay district, not a final vote on whether this moves forward, and that we still have another vote where we can turn it down.

Chris Gaumer responded that the County Commissioners will get a vote. He explained that tonight, the Plan Commission will make a recommendation to the County Commissioners, then the County Commissioners will take your recommendation into account, but they have the ultimate approval or denial of the overlay.

Mr. Van Wye clarified with Mr. Gaumer and Mike Watson that tonight's recommendation is not approving the whole project. Then he inquired if it could move on, and the Plan Commission could deny it next time, all while getting more information.

Jason Carnahan responded that it gets to a stage where we have to follow the development standards and if it meets the development standards, you can't say you don't like it and deny it. He further explained that the Plan Commission doesn't pay reasonable regard to these things in the next step; the next step is the findings of fact and jurisdictional findings—so, does it meet check box a-b-c-d, yes or no.

Mr. Gaumer directed the board to move on to responsible development and growth, adding that when you look at this, you're looking at responsible development and growth out here in the proposed 1,778 acres.

Mike Watson shared a few things he recently found out about that have to do with growth and development and land use. He stated that many, closing in on most, manufacturing companies now are citing in places where they have alternative energy available. For instance, Mr. Watson indicated that Metal Technologies has to buy credits in order to satisfy the requirements of one of their contracts for the use of alternative energy. Whether that's a good policy or not, he stated that's a fact and an important criterion in citing for industrial and manufacturing. Mr. Watson referred to development, in terms of what the requirements are going to be going forward with energy, sharing that he had a meeting with I & M because he was curious as to how that worked with the current proposed project and some of the other projects they're involved with. From I & M's standpoint, he said it had nothing to do with being green, instead it was a financial decision on their part to expand their portfolio just like any wise investor would. Mr. Watson indicated that, in terms of the 5 solar projects they're doing in Indiana, the Rockport Coal Plan is going to be retired or decommissioned by 2028, which leaves them 2,300 megawatts short of peak power. He added that Cook Nuclear supplies most of I & M's power needs on a day-to-day basis, but they also rely on Rockport. Mr. Watson indicated that the other part of Rockport is probably going to get converted to natural gas; long story short, they're expecting to replace 50% of those 2,300 megawatts with solar power—in regard to development and growth. One last fact regarding property values that Mr. Watson wanted to share, was that ground-laying fowl under the solar panels—with some kind of grass—actually improves the soil condition and consequently the property values once the panels are pulled.

Mr. Gaumer inquired if the board members had any further questions or comments, then directed Andrew Kruse to review the jurisdictional findings.

### **JURISDICTIONAL FINDINGS:**

The petitioner has complied with the rules and regulations of the Plan Commission in filing appropriate forms and reports.

1. Application completed and filed on **September 15, 2023**.
2. Legal notice published in The Star on **October 6, 2023**, and Publishers Affidavit given to staff.
3. Certificate of mailing notices sent, and receipts given to staff.
4. Report from the County Board of Health, dated **September 14, 2023**.
5. Report from the County Highway Department, dated **September 12, 2023**.
6. Report from the DeKalb County Soil & Water Conservation District, dated **August 31, 2023**.
7. Report from the County Surveyor, dated **September 13, 2023**.

A motion for a favorable recommendation to the County Commissioners was made by Sandy Harrison and seconded by Bill Van Wye.

A roll-call vote was made, resulting in a tie of 4-4.

Chris Gaumer advised that motion would be dead, and we would have to take another motion for an unfavorable recommendation.



A motion for an unfavorable recommendation to the County Commissioners was made by Angie Holt and seconded by Jerry Yoder. Mr. Gaumer clarified to the board that when they vote yes, they would be voting to agree with Ms. Holt's unfavorable recommendation.

Another roll-call vote was made, again resulting in a tie of 4-4.

Mr. Gaumer and Andrew Kruse then advised the board that the last motion would be for no recommendation.

Ms. Holt inquired if the board doesn't come about with a majority vote, then can the County Commissioners move forward. Mr. Gaumer advised that we would be going through votes until the board can get a recommendation for the County Commissioners.

Suzanne Davis verified with Mr. Gaumer that the board can vote on no recommendation.

Andrew Kruse advised that a lot of times, a non-recommendation comes because everyone on the majority of the board just sits. He added that this is a little bit different because half of the board is in favor of the petition and half is against it, so a no recommendation vote is sort of a mutual compromise that both sides could potentially live with.

IT IS, THEREFORE, THE DECISION OF THE PLAN COMMISSION THAT THIS AMENDMENT TO THE COMMERCIAL SOLAR ENERGY OVERLAY DISTRICT, PETITION #23-28, SCULPIN SOLAR, HEREBY GIVES NO RECOMMENDATION TO THE COUNTY COMMISSIONERS 18<sup>TH</sup> DAY OF OCTOBER 2023.

Motion made by Frank Pulver, Seconded by Mike Watson.

Vote tally: Yes: 5 No: 3

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Jason Carnahan

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Frank Pulver

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Mike Watson

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Jerry Yoder

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Bill VanWye

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Suzanne Davis

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Angie Holt

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Sandy Harrison

**REPORTS FROM OFFICERS, COMMITTEES, STAFF OR TOWN/CITY LIAISONS:**

Sandy Harrison reported that Waterloo cancelled their meeting, Hamilton had a rezone, and Butler has a meeting in December.

Frank Pulver did not have anything to report for Garrett.

**COMMENTS/QUESTIONS FROM THE PUBLIC IN ATTENDANCE:**

A man from the public audience approached the podium to express his displeasure that the Plan Commission cut off the public comments on the petition earlier in the meeting.

Commissioner Bill Hartman approached the podium to admonish the Plan Commission members also for cutting off public comments on the petition.

Commissioner Mike Watson commented on knowing the difference.

Bill Van Wye inquired if Commissioner Hartman would want them to give people less time to speak.

**ADJOURNMENT:**

Jason Carnahan adjourned the meeting at 9:20 p.m.

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President – Jason Carnahan

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Secretary – Andrea Noll

**DEKALB COUNTY PLAN COMMISSION  
AND BOARD OF ZONING APPEALS**

**ATTORNEY FEE AGREEMENT FOR THE YEAR 2024**

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**THIS AGREEMENT** entered into by and between **Andrew D. Kruse**, Attorney at Law, and the **Plan Commission of DeKalb County, Indiana**, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**WHEREAS**, the Plan Commission desires to hire an attorney for itself and the Board of Zoning Appeals of DeKalb County, Indiana;

**NOW, THEREFORE**, in consideration of the mutual premises herein, it is agreed as follows, to-wit:

1. Andrew D. Kruse shall render legal services to the Plan Commission and the Board of Zoning Appeals upon the terms hereafter set forth for the year 2024 and thereafter until modified by the parties.
2. The Plan Commission shall pay a retainer fee for 2024 of \$5,871.30 to the attorney for attending the regular meetings of the Plan Commission and the Board of Zoning Appeals.
3. The Plan Commission shall pay the attorney \$150.00 per meeting for extra meetings of the Plan Commission or Board of Zoning Appeals.
4. The Plan Commission shall pay the attorney \$150.00 per hour, plus paralegal and expenses incurred, for zoning violation enforcement work and for any litigation work for the Plan Commission and the Board of Zoning Appeals and/or extra work.

**IN WITNESS HEREOF**, the parties hereto set their hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**DEKALB COUNTY PLAN COMMISSION**

by:

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
**Andrew D. Kruse**, #23555-17  
KRUSE & KRUSE, PC, Attorneys at Law  
143 East Ninth Street  
Auburn, Indiana 46706  
Phone: 260-925-0200

**INTER-LOCAL COOPERATION AGREEMENT BETWEEN  
DeKALB COUNTY AND THE CITY OF AUBURN, INDIANA  
REGARDING PLANNING, ZONING, SUBDIVISION CONTROL, PERMITTING  
AND ENFORCEMENT JURISDICTION**

- WHEREAS, Indiana Code § 36-1-7-1 et seq. permits governmental entities to jointly exercise powers through Inter-Local Cooperation Agreements; and
- WHEREAS, Indiana Code § 36-7-4-205 authorizes a municipality to exercise planning and zoning jurisdiction in unincorporated areas up to two (2) miles beyond the corporate boundaries, with permission of the County; and
- WHEREAS, The governmental entities have determined that it is prudent, rational, and in the best interest of the citizens for the City to exercise planning, zoning, subdivision control, permit issuance, and enforcement over specific unincorporated areas that are surrounded by or immediately adjacent to areas within the City boundaries, to be known as Extra-territorial Jurisdiction (ETJ); and
- WHEREAS, This Inter-Local Cooperation Agreement reflects the commitments and understandings agreed to by the legislative bodies of the governmental entities in order to efficiently and effectively provide the delegation of powers from DeKalb County to the City of Auburn.
- WHEREAS, This Inter-Local Cooperation Agreement shall replace the Inter-Local Cooperation Agreement dated July 31, 2017 and effective September 1, 2017 as Document Number: 201704224

NOW, THEREFORE, DeKalb County and the City of Auburn, Indiana hereby agree as follows:

**PART 1: DEFINITIONS**

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- Agreement: Shall mean the Inter-Local Cooperation Agreement between DeKalb County and the City of Auburn, Indiana regarding planning, zoning, subdivision control, permitting and enforcement jurisdiction.
- City: Shall mean the City of Auburn.
- County: Shall mean DeKalb County.

## PART 2: ZONING

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- Section 2.1 The City shall have zoning jurisdiction over the unincorporated areas designated as described in Part 5 and in Exhibit A, Extra-territorial Jurisdiction Map as amended.
- Section 2.2 The City shall assign a zoning classification to an area when it is brought into the Extra-territorial Jurisdiction. Proposed zoning classifications are identified on Exhibit E, Extra Territorial Jurisdiction Zoning and will be finalized after a Public Hearing by the Auburn Plan Commission and adoption of a Zoning Map Amendment ordinance by the Auburn Common Council.
- Section 2.3 The City shall maintain a valid comprehensive plan that acknowledges the boundaries of the ETJ and designates future land uses consistent with the County's comprehensive plan.
- Section 2.4 The City shall maintain a valid zoning ordinance that is complementary of the City's comprehensive plan, especially the Future Land Use Map.
- Section 2.5 The City's zoning ordinance shall contain, and meet or exceed the following development standards.
- A. Drainage
    1. Projects shall be subject to review by and approval of the DeKalb County Surveyor and /or DeKalb county Drainage Board.
  - B. Floodplain Management
    1. Restrict all structures from the floodway, except bridges, pedestrian trails, park equipment, park structures, open pavilions and stages, ball fields, flood mitigation measures, dams, levies, and underground utilities.
    2. Restrict all residential uses from building in the flood fringe unless the structure meets or exceeds the local Flood Control Ordinance and a permit is issued.
    3. ~~Require homes within 75 feet of the flood fringe to be established at an elevation where the lowest habitable floor is two (2) feet above the established 100-year flood elevation.~~
    4. Restrict filling of the floodplain that will result in an increase to the base flood elevation by fourteen-hundredths (0.14) of one foot or greater.
  - C. Wellhead Protection
    1. Restrict dry cleaners, gas stations, chemical or fuel storage over 500 gallons, junk yards, hazardous waste or material storage, transfer stations, confined feeding operations, waste treatment facilities, cemeteries, chemical processing, open lagoons associated with raising of farm animals or industrial use, and automobile mechanics from locating within wellhead protection areas.
    2. Require any facility that stores 50 gallons or more of fuel or chemicals for over 24 hours to establish a secondary containment area equal to 110% of the volume in the tank. Such secondary containment shall be built to control the escape of contaminants into ground water for a minimum of 72 hours, and to not contain rainwater, such that it impairs the capacity to contain a 100% spill.
    3. Allow a special exception or conditional use provision for gas stations if they can prove that no other viable sites are available within the appropriate zoning in the community. Special exceptions or conditional uses shall only be granted if the underground fuel storage tanks are double walled, have a release detection system, all piping has release detection, and maintenance of the facilities is required. Also, a provision that would allow the municipality, at its discretion, to

require the gas station to pay for up to two test wells to be drilled per any given calendar year to monitor for contaminants shall be written into the ordinance.

4. Excavation Activities:

- a. Require the extraction of sand, gravel or other minerals when done below the ground water level to be done so with dragline, floating dredge, or alternative wet excavation method.
- b. Restrict de-watering of sites utilized for mining or extraction.
- c. Excavation sites shall not utilize anything other than clean natural earth fill materials to fill or alter the contour of the site. Construction debris shall not be considered clean natural earth fill.
- d. Restrict all fuel, oil, lubricant, hydraulic fluid, petroleum products or similar material from being stored on site without fully being within a secondary containment area with 110% capacity to contain a 100% spill.

D. Sewer Hookup

1. Require all new development and new construction of homes, businesses, industries, and institutions within 300 feet of a gravity sewer system to hook into the municipal system. Require all other new development and new construction of homes, businesses, industries, and institutions to hook into the city sewer system unless the cost of doing so is two times (2X) the cost of installing a septic system on the site. For developments with two or more lots, the cumulative cost of installing septic systems for each lot shall be used. The City may bridge the financial gap on a project where sewer hookup will exceed the two times (2X) rule in order to require the development to connect to the sewer system.

E. Airport Overlay

1. If the City's extra-territorial jurisdiction extends within five (5) nautical miles of the airport take-off and landing flight path of the DeKalb County airport, the City shall adopt the county's overlay district designed to protect this vital component of the regional and national transportation network.
2. The County reserves the right to revoke extra-territorial jurisdiction within five (5) nautical miles of the airport take-off and landing flight path of the airport if the City grants one or more waivers or variances allowing incompatible uses or structures into the airport protection areas, counter to FAA Advisory Circulars, terms of the DeKalb County Airport's Grant-In-Aid contracts, or best management practices.

### PART 3: SUBDIVISION CONTROL

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- Section 3.1      The City shall have authority and control over hearing of subdivisions of land over the unincorporated areas designed as described in part 5 and in Exhibit A, Extra-territorial Jurisdiction Map, as amended.
- Section 3.2      The City shall maintain a valid subdivision control ordinance that is complementary of the City's comprehensive plan and zoning ordinance.
- Section 3.3      The City's subdivision control ordinance shall contain, and meet or exceed the following design standards.
- A. Drainage
    - 1. Projects shall be subject to review by and approval of the DeKalb County Surveyor and/or DeKalb County Drainage Board.
  - B. Street Standards: As per Exhibit B
  - C. Sidewalk Standards: As per Exhibit C
  - D. Cul-de-sac Standards: As per Exhibit D
  - E. Addressing
    - 1. The City and County shall coordinate the issuance of new addresses. Address numbers shall follow the County's address schema and be endorsed by County planning staff prior to being presented to the City's Plan Commission for final approval.
    - 2. The City shall distribute new addresses within the ETJ to the appropriate agencies.
    - 3. Address postings shall meet both the City's address posting requirements, per §95.71 of the Auburn City Code and the County's posting requirements per Ordinance 98-5 as amended.

## PART 4: PERMITTING, ADMINISTRATION, PETITIONS, APPEALS AND ENFORCEMENT

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- Section 4.1 The City shall have permitting, administration, petitions, appeals and enforcement authority and control over the unincorporated areas designated as described in Part 5 and in Exhibit A, Extra-territorial Jurisdiction Map, as amended.
- Section 4.2 Permitting shall include:
- A. Improvement Location Permits, zoning compliance, and building code/permits compliance.
- Section 4.3 Administration shall include:
- A. Receiving submittals and collecting payments
  - B. Reviewing plans and developments
  - C. Determining compliance with the zoning and subdivision control ordinance.
  - D. Exercising administrative discretions, as the City's ordinances allow
  - E. Maintaining records and archiving
  - F. Scheduling projects for hearings and review by the Plan Commission and BZA
  - G. Assuring that documents and drawings are recorded as mandated by law (e.g. covenants, commitments, conditions, plats).
  - H. Coordinating the issuance of addresses and the disbursement of address information (refer to Section 3.3-E)
- Section 4.4 Petitions shall include:
- A. Utilizing the City's Board of Zoning Appeals to hear and decide variance requests, conditional uses, and special exceptions when applicable.
  - B. Utilizing the City's Plan Commission to hear and decide waiver requests, rezoning requests, and planned development requests.
- Section 4.5 Appeals shall include:
- A. Utilizing the City's Board of Zoning Appeals to hear administrative appeals.
- Section 4.6 Enforcement shall include:
- A. Documenting complaints
  - B. Investigating complaints and notices of violations
  - C. Searching for violations as staff resources allow
  - D. Citing violators and correcting violations
  - E. Litigating violations as appropriate and necessary
- Section 4.7 Enforcement shall NOT include:
- A. Any enforcement in the ETJ area that is enforced by the Public Nuisance Ordinance for DeKalb County



## PART 5: EXTRA-TERRITORIAL JURISDICTION AREA DETERMINATION

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- Section 5.1 When a development proposal **or application** meets the criteria listed below, the City shall have the planning authority and control determined by this Agreement. Extra-territorial jurisdiction shall be either static or dynamic. The static jurisdiction shall be documented on Exhibit A, Extra-territorial Jurisdiction Map, as amended. The dynamic jurisdiction shall be documented by policy and not illustrated on Exhibit A, Extra-territorial Jurisdiction Map.
- Section 5.2 Static jurisdiction shall be comprised of the following criteria. These criteria shall be directly translated to Exhibit A, Extra-territorial Jurisdiction Map, as amended.
- A. Wellhead protection areas: The following methods for interpretation apply:
    - 1. All areas within the one-year and five-year flow district as delineated by a certified wellhead protection area study shall be included in Exhibit A, Extra-territorial Jurisdiction Map, as amended.
  - B. Projected growth areas: The following methods for interpretation apply:
    - 1. Through the use of formula, the estimated land area necessary to accommodate ten years of growth and development shall be included in Exhibit A, Extra-territorial Jurisdiction Map, as amended. The formula for calculating the projected growth areas shall be as follows:
      - a. The best available information shall be used to determine the projected growth rate for the municipality over the next ten years. If sufficient data is not available, the growth rate of 6.5% over ten years shall be used. This percentage is based on U.S. Census Bureau projections for DeKalb County. Use this percentage to calculate the projected population in ten years.
      - b. Determine the projected increase in population by subtracting the current population from the projected population.
      - c. Determine the average number of persons per acreage within the City's corporate limit.
      - d. Determine the amount of land necessary to accommodate ten years of projected growth. Do this by multiplying the projected increase in population by the average number of persons per acreage. This number is the acreage necessary to accommodate 10 years of growth and development in the City.
    - 2. The geographic placement of this area shall be determined by the City.
  - C. Island areas: The following methods for interpretation apply:
    - 1. Any area that is fully surrounded by City jurisdiction (i.e. an island) as of the effective date of this Agreement shall be included in Exhibit A, Extra-territorial Jurisdiction Map, as amended.
  - D. Immediate fringe areas: The following methods for interpretation apply:
    - 1. All areas within 300 feet of the City's corporate limit shall be included in Exhibit A, Extra-territorial Jurisdiction Map, as amended. However, upon mutual agreement between the City and County, this 300-foot area can be waived where existing conditions merit that it remain within the County's jurisdiction.
  - E. Areas formerly considered dynamic: Areas where water and sewer utility services have been established, but that are not yet incorporated into the City of Auburn.
  - F. By owner's request: The owner of a parcel may request a development be incorporated into the Extra-territorial jurisdiction. The development shall utilize both City water and sewer utility services. Both the City and the County shall approve the request.

- Section 5.3 Dynamic jurisdiction shall be comprised of the following policies.
- A. Sewer and water utility service availability: The following methods for interpretation apply:
1. Any parcel utilizing City water and sewer service or if any portion of the parcel is within 300-feet of City water and sewer service may be considered the City's planning jurisdiction if each of the following statements is true.
    - a. The owner wishes to be served by City water and sanitary sewer.
    - b. The City's utility has documentation that indicates it has the capacity to serve the site/development; and either has the distribution system in place or has a plan to do so prior to occupancy of the improvement.
  2. As per State law, in no case shall ETJ be extended partially or fully beyond two-miles. If a parcel straddles the two-mile threshold, it shall be the County's planning jurisdiction.

- Section 5.4 Any parcel that straddles an imaginary line created by applying the static or dynamic rules in Section 5.2 or 5.3 shall be the City's planning jurisdiction and the property shall be included in the extra territorial jurisdiction and the City of Auburn and DeKalb County GIS map shall be adjusted to reflect such change if either of these statements are true:
1. The owner of the property has submitted a full and complete application to improve the property and has paid the applicable application fee; and the proposed structure (not the lot) is fully within the City's jurisdiction.
  2. The owner of the property has submitted a full and complete application to improve the property and has paid the applicable application fee; and 50% or more of the lot is fully within the City's jurisdiction.

- Section 5.5 The County reserves the right to increase, but not decrease, the static extra-territorial jurisdiction boundaries by amending the currently updated and recorded Exhibit A, Extra-territorial Jurisdiction Map, as amended, by vote of the County Commissioners at a normally scheduled County Commissioner meeting.

PART 6: RECITALS OF COMMITMENT, PURPOSE, DURATION AND RENEWAL OF AGREEMENT

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- Section 6.1 The level of cooperation recited in this Agreement is intended to exist in perpetuity to provide government services to the citizens of DeKalb County in the most efficient and effective manner possible; and to reduce redundancy of process, to minimize county and municipal staff resources, to improve consistency of regulations, and to improve clarity in planning jurisdictions. However, both parties recognize that modifications may be required, both to the Agreement itself and to the practices, procedures and terms that bring the intent of the inter-local agreement to fruition.
- Section 6.2 The spirit of good planning and fiscally responsible decision making shall prevail on behalf of the Cities, Towns and DeKalb County to the end that:
- A. Under no circumstances shall the City engage in approving a residential subdivision that it cannot feasibly annex within a reasonable period of time under current State Statutes.
  - B. Under no circumstances shall the City fail to initiate annexation of residential subdivisions, commercial developments and industrial developments within a reasonable period from the time of the development's approval as are subject to the current annexation regulations of the State of Indiana.
  - C. Under no circumstances shall the City zone property or otherwise approve a tall structure within 5 nautical miles of the take-off and landing flight path of any private or public airport unless the structure does not exceed the imaginary surfaces as defined by FAR part 77 or IC 8-21-10 and does not raise the published minimums at any public-use airport.
  - D. Under no circumstances shall the City zone property or otherwise approve incompatible land uses (e.g. residential dwellings, nursing homes, schools, churches, and the like) within the planning jurisdiction of the DeKalb County airport property.
  - E. The above statements of commitment may be waived under special circumstances by the County Commissioners if determined that the development is be well within the spirit of good planning and fiscally responsible decision making.
- Section 6.3 The City shall maintain a legally established Plan Commission and BZA under State Law, including maintaining representation from the unincorporated planning jurisdiction.
- Section 6.4 The City shall collect all fees associated with zoning and subdivision control processes, reviews, permits and the like in the areas noted in Exhibit A, Extra-territorial Jurisdiction Map, as amended. Until corporate limits change, all road funds shall continue to be collected by the County and used at their discretion to maintain the roads in the unincorporated areas.
- Section 6.5 The Agreement shall be valid for approximately four years, effective on \_\_\_\_\_. Other terms of the Agreement include:
- A. Both parties agree to begin formal review and amend extra-territorial jurisdiction boundaries on a four-year basis.
  - B. Four-year revisions of the Agreement are intended to primarily adjust Exhibit A, Extra-territorial Jurisdiction Map, as amended, to reflect additional extra-territorial jurisdiction for the City; unless no annexation had occurred in the preceding four-year period of time.
  - C. If the agreement is not revised, it shall remain in full force and effect until modified by the City and County.
  - D. Termination of the Agreement may be initiated by the County Commissioners for cause. Cause shall be interpreted to mean that the participating municipality is not

complying with the spirit, intent, or a term of the Agreement. Termination for cause shall be done in the two-step process as follows:

1. Notice: The City shall be given written notice that it no longer is in compliance with the spirit, intent or a term of the Agreement. The City shall have three (3) months to fully comply with the notice. If the City fully corrects the issue, the County shall not terminate the Agreement.
  2. Termination: After the three-month notice period, if the City still fails to comply with the spirit, intent, or a term of the Agreement identified in the notice, the County has the right to terminate the Agreement. Termination of the Agreement shall be initiated and decided at a regularly scheduled meeting of the County Commissioners.
  3. The County shall also have the right to terminate the agreement if the City repeats the same violation of spirit, intent or term of the agreement within two years from the original offense cited in 1. Notice.
- D. The Agreement shall be void if any State of Indiana or Federal law; or case law is determined to prohibit such delegation of planning jurisdiction.

1<sup>ST</sup> READING \_\_\_\_\_  
2<sup>ND</sup> READING \_\_\_\_\_

EFFECTIVE DATE OF AGREEMENT: January 17, 2024

The City of Auburn Plan Commission has recommended APPROVAL/DENIAL of this agreement to the City of Auburn Common Council on this 12<sup>th</sup> day of December, 2023 by a vote of:

\_\_\_\_\_ in favor and \_\_\_\_\_ opposed.

\_\_\_\_\_  
Don Myers, President

\_\_\_\_\_  
James Finchum, Vice-President

**PASSED AND ADOPTED** by the Common Council of the City of Auburn, Indiana, this 16th day of January, 2024.

\_\_\_\_\_  
\_\_\_\_\_, Council Member

**ATTEST:**

\_\_\_\_\_  
Lorrie K. Pontius, Clerk-Treasurer

Presented by me to the Mayor of the City of Auburn, Indiana, this 16th day of January, 2024.

\_\_\_\_\_  
**Lorrie K. Pontius, Clerk-Treasurer**

**APPROVED AND SIGNED** by me this 16th day of January, 2024.

\_\_\_\_\_  
**David Clark, Mayor**

EFFECTIVE DATE OF AGREEMENT: \_\_\_\_\_

The DeKalb County Plan Commission has recommended APPROVAL/DENIAL of this agreement to the DeKalb County Commissioners on this 20<sup>th</sup> day of December 2023 by a vote of: \_\_\_\_\_ in favor and \_\_\_\_\_ opposed.

\_\_\_\_\_  
Jason Carnahan, President

\_\_\_\_\_  
Frank Pulver, Vice-President

AND NOW IS *DULY PASSED, ORDAINED AND ADOPTED* on this \_\_\_\_\_ day of \_\_\_\_\_, by the County Commissioners of DeKalb County, Indiana.

\_\_\_\_\_  
William L. Hartman, President

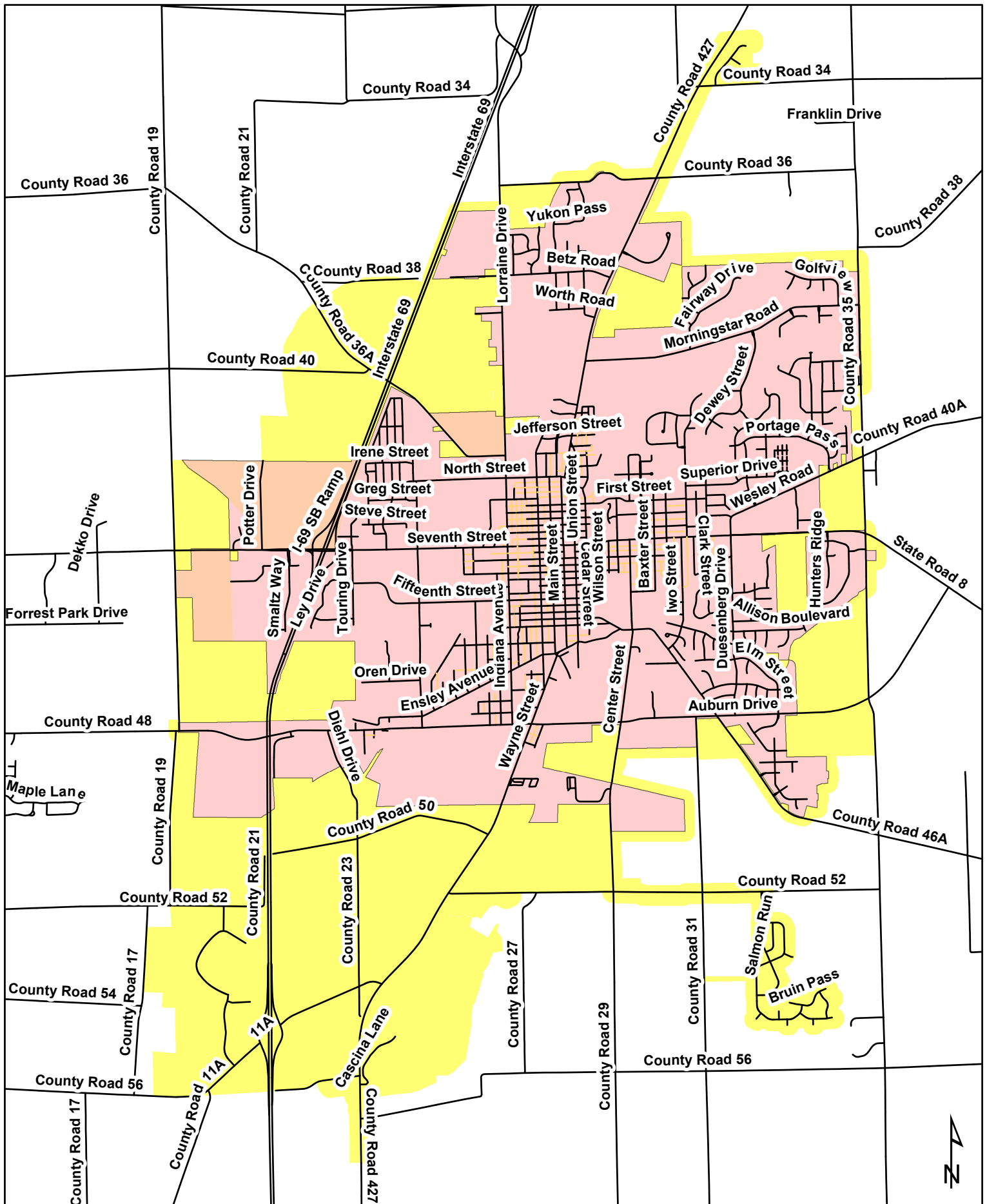
\_\_\_\_\_  
Michael V. Watson, Vice President

\_\_\_\_\_  
Todd R. Sanderson, Vice President

\_\_\_\_\_  
Attest, Susan Sleeper, Auditor

This instrument prepared by: Chris Gaumer, Director/Zoning Administrator, Department Development Services, DeKalb County.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Susan S. Sleeper, Auditor, DeKalb County, Indiana



# Auburn ETJ Area

## EXHIBIT B

Street Type	Minimum Road Width	Minimum Right-of-Way	Minimum Asphalt Base	Minimum Asphalt Surface	Minimum Concrete Base	Minimum Concrete Surface
<b>Major Arterial</b>	<ul style="list-style-type: none"> <li>12 foot lanes</li> <li>On-street parking in urban areas optional</li> </ul>	<ul style="list-style-type: none"> <li>Class I: 105 feet</li> <li>Class II: 120 feet</li> </ul>	<ul style="list-style-type: none"> <li>12 inches total aggregate</li> <li>8 inches of #1 or #2</li> <li>4 inches of #53 or #73</li> </ul>	<ul style="list-style-type: none"> <li>4 inches of intermediate</li> <li>2 inches of finish</li> </ul>	<ul style="list-style-type: none"> <li>6 inches total aggregate</li> <li>#53 of #73</li> </ul>	<ul style="list-style-type: none"> <li>8 inches of concrete</li> </ul>
<b>Minor Arterial</b>	<ul style="list-style-type: none"> <li>12 foot lanes</li> <li>On-street parking in urban areas optional</li> </ul>	<ul style="list-style-type: none"> <li>100 feet</li> </ul>	<ul style="list-style-type: none"> <li>12 inches total aggregate</li> <li>8 inches of #1 or #2</li> <li>4 inches of #53 or #73</li> </ul>	<ul style="list-style-type: none"> <li>4 inches of intermediate</li> <li>2 inches of finish</li> </ul>	<ul style="list-style-type: none"> <li>6 inches total aggregate</li> <li>#53 of #73</li> </ul>	<ul style="list-style-type: none"> <li>8 inches of concrete</li> </ul>
<b>Collector Street</b>	<ul style="list-style-type: none"> <li>11 foot lanes</li> <li>8 foot on-street parking lane optional</li> </ul>	<ul style="list-style-type: none"> <li>80 feet</li> </ul>	<ul style="list-style-type: none"> <li>12 inches total aggregate</li> <li>8 inches of #1 or #2</li> <li>4 inches of #53</li> </ul>	<ul style="list-style-type: none"> <li>4 inches of intermediate</li> <li>2 inches of finish</li> </ul>	<ul style="list-style-type: none"> <li>6 inches total aggregate</li> <li>#53 of #73</li> </ul>	<ul style="list-style-type: none"> <li>7 inches of concrete</li> </ul>
<b>Local Street</b>	<ul style="list-style-type: none"> <li>Minimum 32 feet back of curb to back of curb</li> <li>Parking permitted</li> </ul>	<ul style="list-style-type: none"> <li>60 feet</li> </ul>	<ul style="list-style-type: none"> <li>12 inches total aggregate</li> <li>8 inches of #1</li> <li>4 inches of #53</li> </ul>	<ul style="list-style-type: none"> <li>4 inches of intermediate</li> <li>2 inches of finish</li> </ul>	<ul style="list-style-type: none"> <li>6 inches total aggregate</li> <li>#53 of #73</li> </ul>	<ul style="list-style-type: none"> <li>6 inches of concrete</li> </ul>

## Exhibit C

	Required	Minimum Width	Minimum Thickness	Joint Spacing	Location
<b>Sidewalks</b>	<ul style="list-style-type: none"> <li>Required in all subdivisions</li> <li>Both sides of internal streets</li> </ul>	<ul style="list-style-type: none"> <li>5 feet for internal streets</li> <li>6 feet along perimeter streets</li> <li>8 feet if along a proposed trail route</li> </ul>	<ul style="list-style-type: none"> <li>4 inches</li> <li>6 inches at driveways</li> </ul>	<ul style="list-style-type: none"> <li>5 feet maximum</li> </ul>	<ul style="list-style-type: none"> <li>1 foot from right-of-way line</li> </ul>

## Exhibit D

	Minimum Pavement Radius	Minimum Right-of-Way	Length
<b>Cul-de-sacs</b>	<ul style="list-style-type: none"> <li>45 foot</li> <li>Street width minimum of 32 feet</li> </ul>	<ul style="list-style-type: none"> <li>60 feet</li> </ul>	<ul style="list-style-type: none"> <li>Residential: 20 lots maximum 140 feet minimum length 600 feet maximum length</li> <li>Commercial: 140 feet minimum length 600 feet maximum length</li> </ul>



## **ARTICLE TWELVE:**

### **DeKalb County Fee Schedule\*:**

#### **Improvement Location Permits: (Shall include Certificate of Occupancy if required)**

1. Structures ~~350~~ 300 square feet or less.....\$30.00  
(Including additions to existing structures)
2. Structures larger than ~~350~~ 300 square feet.....\$50.00  
(Including additions to existing structures)
3. Commercial Structures - \$.02 per square foot..... Min.....\$ 75.00  
Max.....\$250.00
4. Industrial Structures - \$.02 per square foot.....Min.....\$100.00  
Max.....\$500.00
5. Commercial Solar Energy System.....~~\$500.00~~ \$50 per acre or \$5,000 max.
6. Commercial Solar Energy System upgrade, replace or new equipment.....~~\$50.00~~ \$250.00 per  
piece of equip.
7. Residential/Private Accessory Solar Energy System .....~~\$30.00~~ \$50.00
8. Fence/Retaining Wall Permit.....~~\$ 15.00~~ 50.00
9. Ponds (Including detention/retention/recreation ponds) .....~~\$100.00~~ 150.00
10. All other Permits (signs, in & above ground pools) .....\$ 50.00
11. Zoning Affidavit/Conformance Letters.....\$25.00

#### **Board of Zoning Appeals Public Hearing Meetings:**

1. Special Meeting.....\$600.00
2. Appeal Decision of Zoning Administrator.....~~\$150.00~~ 1,000.00
3. ~~Appeal Decision of Zoning Administrator~~.....~~\$500.00~~  
(Zoning Administrator determines appeal will take longer than one half hour)
4. Development Standards Variance Petition.....\$150.00  
Each Additional Variance Requests.....\$50.00
5. Special Exception Petition.....~~\$150.00~~ 300.00
6. Use Variance Petition.....\$500.00
7. Amendment to ~~Special Exception~~ BZA Petition.....~~\$150.00~~ 500.00
8. ~~All Other Meetings Before the BZA~~.....~~\$200.00~~

#### **Plan Commission/Plat Committee Public Hearing Meetings:**

1. Special Meeting Requested by Petitioner.....~~\$600.00~~ 1,000.00
2. Zone Map ~~Zoning Ordinance~~ Amendment .....~~\$150.00~~ 300.00
3. Plat Vacation.....~~\$150.00~~ 200.00
4. Conservation Agricultural Subdivision.....\$300.00
5. Minor Division of Land.....~~\$150.00~~ 300.00
6. Conventional Subdivision (First ~~two~~ three (2 3) lots) .....~~\$150.00~~ 300.00  
(Each Addition Lot) .....\$50.00
7. Commercial Development Plan.....~~\$200.00~~ 500.00
8. Industrial Development Plan.....~~\$400.00~~ 800.00
9. Commercial Solar Energy System Overlay District Request.....\$25 per acre or \$5000 max
10. Commercial Solar Energy System Development Plan.....~~\$25~~ \$50 per acre or ~~\$5,000~~ \$10,000 max
11. Amendment to Development Plan (If not approved by Zoning Administrator).....~~\$200.00~~ 500.00
12. ~~All Other Meetings Before the Plan Commission (30 min max)~~ .....~~\$200.00~~

#### **Plat Committee:**

1. Primary Plat.....\$100.00
2. Secondary Plat.....\$100.00

\*Building Permits & Fees are controlled by an Ordinance of the DeKalb County Commissioners

**Accessory Building or Structure (see also Storage Buildings, if applicable):** A building or structure which:

- Is subordinate to a primary building or structure in area, intent, and/or purpose,
- Contributes to the comfort, convenience, or necessity of occupants of the primary building, structure, or principal use,
- Does not alter or change the character of the premises,
- Is located on the same parcel or lot and zoning district zoning lot as the primary building, structure, or use,
- Conforms to the setback, height, bulk, lot impervious surface coverage, and other development standards or requirements of the Unified Development Ordinance unless otherwise provided for,
- May not be constructed prior to the time of construction of the primary building or structure, unless used for agricultural or personal storage or otherwise specified in the Unified Development Ordinance,
- Is not designed for human occupancy as a dwelling or commercial use but may have bathroom, kitchen, sink or other facilities needed for sanitary purposes so long as there is Health Department approval, and,
- In the case of a private/noncommercial telecommunications tower, antenna, or other radio or cellular communications or equipment, the tower, antenna, or other radio or cellular communications or equipment is exempt from accessory structure setbacks. a The subordinate structure (typically considered a cabinet) the use of which is incidental and accessory to that of the principal private/noncommercial telecommunications tower, antenna, or other radio or cellular communications equipment that is detached from but located on the same site shall be considered an accessory structure and must comply with accessory structure setback requirements.
- Exemptions to the accessory structure setback requirements are:
  - Flag Poles, private/noncommercial telecommunication towers, antennas or other radio or cellular communications equipment (except cabinets – see above in Accessory Building or Structure definition), freestanding chicken coops, animal cages/runs, lawn art or lawn statues, water features (except recreational ponds), or other items as deemed exempt by the Zoning Administrator and is not specifically defined in the Unified Development Ordinance.

Definitions:

**Abandonment of Use:** A use that has not been occupied by residing in, doing business in, or what the intended use was by the time set in Article 8 shall be considered abandoned. Proof of occupancy cannot be by proof of maintenance or utility bills, payment of taxes or similar. The Zoning Administrator shall determine if there has been abandonment.

**Legal Nonconforming Building or Structure:** Any continuously occupied, lawfully established structure or building prior to the effective date of the Unified Development Ordinance, or its subsequent amendments, that no longer meets the development standards, unless otherwise noted in Article 8.

**Legal Nonconforming Lot of Record:** Any legally established and recorded lot prior to the effective date of this Ordinance, or its subsequent amendments, that no longer meet the lot-specific development standards.

**Legal Nonconforming Sign:** Any sign lawfully existing on the effective date of this Unified Development Ordinance, or amendment thereto, that does not conform to all the standards and regulations of the Unified Development Ordinance, unless otherwise noted in Article 8.

**Legal Nonconforming Use:** Any continuous, lawful use of structures, land, or structures and land in combination established prior to the effective date of the Unified Development Ordinance or its subsequent amendments that is no longer a permitted use in the district where it is located, unless otherwise noted in Article 8.

## **Article 8: Nonconforming Lots, Structures & Uses**

### **8.01 Intent**

As new zoning regulations are adopted or zoning map changes are made, lots, structures, and uses that were previously compliant with zoning regulation are sometimes made noncompliant. *Article 08: Nonconformance* specifies the provisions that apply to these legal nonconforming (informally referred to as grandfathered) lots, structures, and uses.

### **8.02 Transitional Rule**

Any enforcement action being conducted prior to the effective date of the Unified Development Ordinance for a known or suspected violation of the preceding zoning ordinance and/or subdivision control ordinance shall be continued under the terms of enforcement and penalties of the preceding zoning ordinance and/or subdivision control ordinance, assuming the Unified Development Ordinance does not make what was previously a violation a non-violation (i.e. fully conforming). All other enforcement actions for known or suspected violation shall be conducted using the Unified Development Ordinance.

### **8.03 Distinction Between Conforming, Illegal Nonconforming, and Legal Nonconforming and a Change From Illegal Nonconforming or Legal Nonconforming to Conforming**

Each structure, use, and lot is either “conforming” or “nonconforming.” Conforming is used to describe a structure, use, or lot as being in full compliance with the Unified Development Ordinance. Nonconforming is used to describe a structure, use, or lot that is in violation of the current Unified Development Ordinance. Nonconforming structures, uses, and lots are either “illegal nonconforming” or “legal nonconforming.” The following sections determine the nonconforming status of a structure, use, or lot and determines when status changes from legal nonconforming to conforming:

#### A. Illegal Nonconforming:

1. *Structure*: A structure constructed in violation of the zoning ordinance that was in effect at the time of construction which remains in violation of the current Unified Development Ordinance is an illegal structure.
2. *Use*: A use initiated in violation of the zoning ordinance that was in effect at the time of initiation which remains in violation of the current Unified Development Ordinance is an illegal use. In addition, a use that was legally established that now is not permitted under the current Unified Development Ordinance but has been abandoned or discontinued for a period of at least one year, is an illegal use.
3. *Lot*: A lot established in violation of the zoning or subdivision control ordinance that was in effect at the time of establishment which remains in violation of the current Unified Development Ordinance is an illegal lot.

#### B. Legal Nonconforming:

1. *Structure*: A structure that does not meet one or more development standards of the Unified Development Ordinance, but was legally established prior to the effective date of the Unified Development Ordinance shall be deemed a legal nonconforming structure. Generally, a structure is rendered legal nonconforming by an amendment to the zoning regulations or a zoning map change. However, a legal nonconformity may be caused by a governments use of eminent domain or right-of-way acquisition.
2. *Use*: The use of a structure or land (or a structure and land in combination) that was legally established and has since been continuously operated, that is no longer permitted by the Unified Development Ordinance in the zoning district in which it is located, shall be deemed a legal nonconforming use. Generally, a use is rendered legal nonconforming by an amendment to the zoning regulations or zone map change.
3. *Lot*: A lot that does not meet one or more lot standards of the Unified Development Ordinance, but was legally established and recorded prior to the effective date of the Unified Development Ordinance shall be deemed a legal nonconforming lot of record. Generally, a lot is rendered legal nonconforming by an amendment to the zoning regulations or a zoning map change. Periodically, a legal nonconformity may be caused by a governments use of eminent domain or right-of-way acquisition.

C. The status of an Illegal Nonconforming or Legal Nonconforming structure and/or use may change or become a Conforming structure and/or use if the structure and/or use has been in continual use or existence for 20 years. For example: a parcel that has a small engine or mower repair shop that may be an illegal nonconforming use shall become a legal conforming use if the use is 20 years or older. If the use is 20 years or newer, it shall be deemed in violation of the Unified Development Ordinance.

#### 8.04 Illegal Nonconforming Structure, Use, and Lot

An illegal structure, use, or lot is subject to the enforcement procedures and penalties of the Unified Development Ordinance as amended, unless otherwise noted in this Article.

#### 8.05 Legal Nonconforming Structure

The following provisions apply to a legal nonconforming structure, a structure associated with legal nonconforming uses, and structures associated with legal nonconforming lots that are 20 years or newer:

A. Legal Nonconforming Building Provisions: The provisions for legal nonconforming buildings, a subcategory of structures, are as follows:

1. *Building Expansion*: A legal nonconforming building shall be permitted to expand in area and height as long as the nonconformity is not increased and the expansion otherwise meets the current Unified Development Ordinance. For example, if a building is in violation of the maximum height standard, it can be expanded in area as long as the new addition does not exceed the maximum height standard and is otherwise in compliance with current Unified Development Ordinance.
2. *Building Exterior Alteration*: The exterior walls of a building shall not be moved except as provided in the previous clause. Otherwise, the roof and exterior walls may be maintained, repaired, re-faced, and modified, resulting in the original aesthetic character or an altered exterior character, as long as the building's nonconformity is not increased and the alteration otherwise meets the current Unified Development Ordinance.
3. *Building Interior Alteration*: Ordinary repair and replacement of interior finishes, heating systems, fixtures, electrical systems, or plumbing systems; and interior wall modifications are not regulated by the Unified Development Ordinance.
4. *Building Relocating*: A legal nonconforming building may be relocated if, by moving the building, it decreases the legal nonconformity and the relocation otherwise meets the current Unified Development Ordinance.

B. Legal Nonconforming Structure Provisions: The provisions for legal nonconforming structures, excluding the subcategory of buildings, are as follows:

1. *Structure Alteration*: A legal nonconforming structure shall be permitted to be altered in height, area, mass, and time as long as the nonconformity is not increased and the alteration otherwise meets the current Unified Development Ordinance. For example, if a permanent sign is in violation of the maximum height standard, it can be altered as long as the alteration does not exceed the currently allowed maximum height standard and is otherwise in compliance with Unified Development Ordinance.
2. *Structure Relocating*: A legal nonconforming structure may be relocated if, by moving the structure, it decreases the legal nonconformity and the relocation otherwise meets the current Unified Development ordinance.
3. *Conversion for Longevity*: Converting a structural component of a legal nonconforming structure to a more permanent material in order to prolong legal nonconformity shall not be permitted. For example, a legal nonconforming permanent pole sign would not be permitted to replace its existing wood posts with metal posts even if dimensionally the same size.

C. Loss of Legal Nonconforming Structure Status: The following provisions apply to all types of structures:

1. *Condemned Structures*: If a structure, through lack of maintenance, is declared by an authorized official to be condemned due to its physical or unsafe condition, it shall lose its legal nonconforming status and become illegal nonconforming; unless the structure is restored or repaired within three months of the declaration. The Zoning Administrator may grant an appropriate extension of time if work was started within the initial three month period and reasonable attempts are being made by the owner to remedy the condemnation.
2. *Removal of Permanent Structures*: If a permanent structure is fully or significantly removed or razed (i.e. 80% or more of the exterior walls, structure area, structure height), the remaining

permanent structure shall lose its legal nonconforming status and become illegal nonconforming; unless by significantly removing or razing the permanent structure the remaining permanent structure is in compliance or more in compliance with the current Unified Development Ordinance.

3. *Removal of Temporary Structures*: If a temporary structure is removed (e.g. moved inside, taken off-site, or replaced by a new temporary structure), the temporary structure shall lose its legal nonconforming status and become illegal nonconforming.

4. *Flood*: If a structure is severely damaged from a flood, resulting in a loss of either 50% of its market value or 50% of its structure, all reconstruction shall be required to meet the current Unified Development Ordinance. All other flood damaged structures shall be allowed to rebuild the structure that previously existed.

5. *Acts of God*: If a structure is severely damaged from an act of god, excluding flooding, resulting in a loss of either 70% of its market value or 70% of its structure, all reconstruction shall be required to meet the current Unified Development Ordinance. All other structures damaged by an act of god shall be allowed to rebuild the structure that previously existed.

D. Maintenance and Repair: Nothing in this section shall be deemed to prevent the maintenance or repair of a structure to keep it in a safe, aesthetic, and functional condition.

#### 8.06 Legal Nonconforming Lot

The following provisions apply to legal nonconforming lots:

A. Legal Nonconforming Lot Provisions: A legal nonconforming lot shall be permitted to be developed as long as the desired structure and use meets the current Unified Development Ordinance. If the application of the current Unified Development Ordinance renders the lot undevelopable (e.g. the current setbacks don't allow a developable building envelope), reasonable variances shall be applied for by the County to the Board of Zoning Appeals for relief.

B. Loss of Legal Nonconforming Lot Status:

1. *Combining Lots Results in Conformity*: If a legal nonconforming lot is combined with an adjacent lot resulting in conformity with the current Unified Development Ordinance, it shall lose its legal nonconforming status. Therefore, future division of the combined lot shall conform to the current Unified Development Ordinance.

2. *Lots in Combination*: If a legal nonconforming lot is owned by the same person as the adjacent lot, and the owner uses both lots in combination for a duration of more than five years, the legal nonconforming lot shall lose its legal nonconforming status; provided the two or more lots in combination would constitute a single conforming lot.

3. *Permanent Structure Across Property Lines*: If a legal nonconforming lot is owned by the same person as the adjacent lot, and the owner constructs a permanent structure across the property line, thus permanently using two lots in combination, the legal nonconforming lot shall lose its legal nonconforming status; provided the two lots in combination would constitute a single conforming lot.

#### 8.07 Legal Nonconforming Use

The following provisions apply to legal nonconforming uses **that are 20 years or newer**:

A. Cross Reference:

1. *Agricultural*: With respect to agricultural legal nonconforming uses, nothing in this section shall be interpreted in a manner that is inconsistent with *IC: 36-7-4-616: Zoning ordinance; agricultural nonconforming use*.

B. Legal Nonconforming Use Provisions: The provisions for legal nonconforming uses are as follows:

1. *Utilizing Existing Enlarged, New or Relocated Buildings*: A legal nonconforming use shall be permitted to occupy or use an existing building, enlarged existing building, newly constructed building, or relocated building, provided the building meets the current Unified Development Ordinance.
2. *Utilizing Existing, Altered, New or Relocated Structures*: A legal nonconforming use shall be permitted to utilize an existing structure, altered existing structure, newly constructed structure, or relocated structure, provided the building meets the current Unified Development Ordinance.
3. *Utilizing Land*: Any legal nonconforming use shall be permitted to utilize its lot, or lots owned in combination upon the effective date of the Unified Development Ordinance, provided the utilization of land meets the current Unified Development Ordinance.
4. *Increase in Nonconformity*: No legal nonconforming use shall be permitted to increase its nonconformity. The size of operation, number of employees, increase to vehicular traffic and similar increases in size does not increase nonconformity of a use. For example, a five acre legal nonconforming junkyard that expands its operations onto five more acres of land it previously owned, does not qualify as an increase in nonconformity, its still a junkyard. However, if the same junkyard adds a compactor facility which previously did not exist, that would qualify as an increase in nonconformity.

C. Loss of Legal Nonconforming Use Status:

1. *Abandonment of Use*: If a legal nonconforming use is abandoned or is discontinued for one year or more, except when a government action impedes access to the premises, it shall lose its legal nonconforming status. Any subsequent use shall conform to the provisions of the current Unified Development Ordinance. [See definition.](#)
2. *Change of Use*: When a legal nonconforming use is changed, altered, or evolves to be in compliance or more in compliance with the current Unified Development Ordinance, the legal nonconforming use status is lost or partially lost. The current use cannot revert back to the original legal nonconforming use or increments thereof.