

## ARTICLE 5 PLANNED UNIT DEVELOPMENT DISTRICT

### SECTION 21-05 PLANNED UNIT DEVELOPMENT DISTRICT.

**(a) Intent**

The *Planned Unit Development (PUD) District* is designed and intended to: encourage creativity and innovation in the design of developments; provide for more efficient use of land; permit special consideration of property with outstanding natural or topographical features; facilitate use of the most appropriate construction techniques in the development of land; and, provide for any individual land use not otherwise specified elsewhere in this Ordinance. The *PUD District* encourages imaginative uses of *open space*, promotes high standards in design and construction, and furthers the purposes of the *Comprehensive Plan*.

The *PUD District* is not intended for the development of residential *subdivisions* or other developments which are provided for as a matter of right within any *district* of this Ordinance.

**(b) Permitted Uses, Development Standards And Minimum Requirements**

**(1) *Permitted Uses.***

*Primary uses* in the *PUD District* shall be any *use* or range of *uses* specified in the *PUD District Ordinance* establishing such *District*, either in text form or as noted in the *preliminary plan* filed with the petition for zone map change, or any combination thereof. *Primary uses*, by way of example, may include any residential, commercial or industrial land *use*, or any individual land *use* or combination of land *uses* deemed appropriate for the real estate.

*Accessory uses, home occupations* or *temporary uses*, unless otherwise specified in the petition for zone map change to the *PUD District* and incorporated into the *PUD District Ordinance* establishing such *District*, shall be permitted in a manner customarily associated with the *primary use* specified in the *PUD District ordinance*.

**(2) *Development Standards.***

*Development standards* applicable to a *PUD* shall be those standards specified in the *PUD District Ordinance* establishing such *district*, either in text form or as noted on the *preliminary plan* filed with the petition for zone map change, or any combination thereof. Every petition for zone map change to the *PUD District* shall specify *development standards* applicable to each *permitted use* in the *PUD* and, at a minimum, shall adopt or include a variation of each *development*

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*standard* that is applicable to each such *use* in the *district* in which each such *use* is first permitted. In any case in which an applicable *development standard* has not been specified in the petition for zone map change to the *PUD District*, the *development standard* shall be that which is specified in the *district* in which the *use* is first permitted unless the petition for zone map change to the *PUD District* contains: (i) a statement that the petitioner does not want an otherwise applicable *development standard* for any *permitted use* in the PUD to be applicable; (ii) an alternate *development standard*; and, (iii) such statement and alternate *development standard* are included in the *PUD District Ordinance* establishing such *district*.

(3) Area Requirements.

Minimum Area Requirements – There shall be no minimum area requirement for the filing of a petition for zone map change to the *PUD District*, provided however, for any petition which does not exceed:

- (A) In-fill development – five (5) acres.
- (B) All other developments – twenty (20) acres.

the petitioner shall file a statement with the petition for zone map change to the *PUD District* as to why a *PUD District* is required and how the proposed *PUD District* meets the intent of this Section.

**(c) Procedure For Approval Of A Planned Unit Development**

The complete review and approval process for a *Planned Unit Development* consists of three (3) elements:

- *Concept Plan Review*;
- *Zone Map Change and Preliminary Plan Approval*; and,
- *Secondary Approval*.

To facilitate the use of this *PUD District*, a petitioner may elect to proceed with each element listed above separately or may elect to combine certain elements for joint approval as set forth in Section 21-05 (c) (3) (B), below. If a petitioner elects to combine certain elements, all elements elected to be combined shall be docketed before the *Area Plan Commission* for a joint hearing.

If filed separately, the procedure for filing for approval of a zone map change shall be the same as that required for any other petition for zone map change before the *Area Plan Commission*, except as otherwise provided for in this Section. The procedure for filing for *secondary approval* is set forth in this Section 21-05 (c).

(1) Filing Of A *Concept Plan* For Review By *Staff*

The petitioner shall submit a *concept plan*, which may be supplemented with a written description of the proposed *PUD*, for review by the *Staff* prior to filing a petition for zone map change to the *PUD District*.

*Staff* shall review the proposed *concept plan* taking into consideration information regarding the terrain of the site and any unique natural features of the site. In doing so, the review by *Staff* may include, but shall not be limited to, the following:

- (A) Protection of unique topographical features on the site, including, but not limited to, slopes, streams, natural water features, floodways, floodplains and regulated drains;
- (B) Protection and preservation of wooded areas, individual trees of significant size, wetlands, or other environmentally sensitive features;
- (C) Development of common areas, *open space* or recreational areas (passive or active) accessible to the residents or users of the *PUD* by way of *sidewalks*, footpaths or combined *walkways/bikeways*;
- (D) A more efficient use of the land including the reduction of land area disturbed for utility lines and motor vehicle access;
- (E) Creation of innovative residential and business environments;
- (F) Minimize the alteration of the natural site features through the design and situation of individual *lots*, *streets* and *buildings*;
- (G) Diversity and originality in *lot* layout;
- (H) Utilization of individual *building* designs which achieve an enhanced relationship between the development and the land; and,
- (I) Relationship to surrounding properties.

The *Executive Director* shall notify the petitioner of any *Staff* comments related to the design of the proposed *concept plan* submitted for review within fifteen (15) business days of the such submittal. Upon receipt of *Staff* comments, the Petitioner may: (i) modify the proposed *concept plan* and resubmit a revised *concept plan* for a second round of review by *Staff*; or, (ii) file a petition for zone map change as set forth below.

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Notwithstanding anything contained in this Ordinance to the contrary, neither the *Staff's* review of the proposed *concept plan* submitted for review nor *Staff's* comments to the petitioner relating thereto shall be considered a denial, approval or decision concerning the proposed *concept plan*.

(2) Filing Petition For Zone Map Change

*Petition* – A *PUD District Ordinance* petition shall contain a *preliminary plan* that satisfies the requirements below, and shall specify in either *general terms* or *detailed terms* the *permitted uses* and *development standards* that will apply to the real property included in said petition.

*Detailed Terms* – A *preliminary plan* which includes a detailed description of all *development requirements* that apply to the proposed *PUD* on any of the site plans, *building elevations*, *landscape plans*, *sign plans*, or any other plan required by this Ordinance in sufficient detail to fulfill the requirements for the issuance of an *improvement location permit*, shall be deemed to have expressed, in *detailed terms*, the *development requirements* that apply.

*General Terms* – All *preliminary plans* or submittals which do not comply with the requirements above for *detailed terms* shall be deemed to have expressed the *development requirements* that apply to the proposed *PUD* in *general terms* only and shall require the *secondary approval*, as set forth below, prior to the issuance of an *improvement location permit*.

*Preliminary Plan* – A *preliminary plan* shall satisfy the following requirements:

(A) *Preliminary Plan* contents:

- i. A drawing, map, plan or other graphic representation of the overall development which:
  - a. depicts the location of proposed land *uses* and maximum land *use* densities; and,
  - b. expresses *development standards* in either *general terms* or *detailed terms*;
- ii. Proposed layout of *streets*, open space and other basic elements of the development;
- iii. Proposals for handling traffic, parking, sewage disposal, drainage, tree preservation, and other pertinent development features;

- iv. The current zoning of the area proposed to be developed as well as the current zoning of the adjacent land;
  - v. A proposed breakdown of sections to be contained in the overall development along with a statement as to the order and timing of development;
  - vi. All public and private *streets* and pedestrian ways within two-hundred (200) feet of the site;
  - vii. North arrow, written and graphic scale, general location map; and,
  - viii. Percentage of site devoted to open space.
- (B) The *Preliminary Plan* shall be drawn to a scale of not more than 1"=100' and shall be on plan sheets shall not exceed 24" X 36" in size.
- (C) Determination by the *Area Plan Commission*.

In its determination of the appropriateness of the proposed *PUD* and whether to recommend approval of the zone map change to the Common Council, the *Area Plan Commission* shall pay reasonable regard to the extent to which the proposal:

- i. accomplishes the intent set forth in Section 21-05 (a), above; and,
  - ii. provides for the protection or provision of the site features and amenities outlined in Section 21-05 (c) (1), above.
- (3) *Preliminary Plan Approval And Secondary Approval*

- (A) *Preliminary Plan Approval.*

If the *preliminary plan* expresses *development standards* in *general terms*, as described above, *secondary approval* as set forth in Section 21-05 (c) (5), below, shall be required prior to the issuance of an *improvement location permit* for any development pursuant to the *PUD District Ordinance*.

- (B) *Combined Preliminary Plan Approval and Secondary Approval.*

If the *preliminary plan* expresses *development standards* in *detailed terms*, as described above, the Petitioner may also request *secondary approval* in connection with the approval of the zone map change to the *PUD District*, provided that any such approval shall be conditioned upon the Common

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Council adopting the zone map change to the *PUD District*. The requirements for a *secondary approval* are set forth in Section 21-5 (c) (5), below. If the *preliminary plan* expresses the *development standards* in *detailed terms*, as described above, the *PUD District Ordinance* must specify any plan documentation or supporting information that must be supplied before an *improvement location permit* may be issued for development of real property in the *planned unit development district*.

(4) *Commitments, Conditions Or Surety*

(A) *Commitments.*

*Commitments* may be permitted or required of the owner of the real property in connection with: (i) a zone map change for a *PUD District*; (ii) a *secondary approval* of a *PUD*; or, (iii) a modification of *permitted uses* or *development requirements* of a *PUD*, as set forth in Section 21-09.02 (d) – Commitments of this Ordinance.

(B) *Conditions.*

Conditions may be imposed on the approval of a *PUD District* which are reasonably necessary to assure compliance with the *permitted use*, *development standards* and minimum requirements of the *PUD District Ordinance*.

(C) *Surety.*

Bonds or other written assurance may be required which are reasonably necessary to guarantee the timely completion of a public *improvement* required by the proposed by the *PUD District Ordinance*. Such bond or other written assurance shall be satisfactory to the *Executive Director* and shall run to the Board of Public Works.

(5) *Secondary Approval*

(A) *Secondary Approval Required - Secondary approval* is required in the *PUD District* as a prerequisite to the issuance of an *improvement location permit* for development of any real property in such *district*.

(B) *Time Period for Obtaining Secondary Approval - If secondary approval* is not obtained from the *Area Plan Commission* in a joint hearing with the petition for zone map change to the *PUD District*, petitioner shall have a period of up to three (3) years from the date of the approval of the petition for zone map change to the *PUD District* by the Common Council in

which to file for *secondary approval*, in total or in phases, for approval by the *Executive Director*. The *Executive Director* shall review the request for *secondary approval* for consistency with the *preliminary plan* approved by the Common Council in connection with the petition for zone map change to the *PUD District*. If a *secondary approval* is filed for in phases, each subsequent phase shall be filed for within three (3) years of the approval of the prior phase.

In the event that *secondary approval* is not obtained for all or a portion of the *PUD* within the time frames outlined above, the *preliminary plan* shall be deemed to have expired for that portion of the *PUD* that has not received *secondary approval*, except for the location and density of proposed land *uses* depicted on such *preliminary plan*. Once a *preliminary plan* has expired for any portion of the *PUD*, no development shall occur within the expired portions of the *PUD* until: (i) a new *preliminary plan* is approved by the *Area Plan Commission* at a public hearing, notice of which shall be given in the same manner as for a petition for zone map change; and, (i) a *secondary approval*, as required by this Section, has been obtained.

- (C) *Secondary Approval* – *Secondary approval* authority is hereby delegated to the *Executive Director*. The *Executive Director* shall have a period of not more than fifteen (15) business days in which to review the proposed *secondary approval* application and either:
- i. Render a decision of approval or denial concerning the *secondary approval*; or
  - ii. Request, in writing, additional information from the applicant. If additional information is requested, the *Executive Director* shall have an additional period of fifteen (15) business days to review the information from the date the requested information is received.

The *Executive Director* may seek the advice and comment of the Executive Committee of the *Area Plan Commission* or other *Staff* members, as deemed appropriate, prior to making a decision.

Any decision of the *Executive Director* under this Article, may be appealed by any interested party to the *Area Plan Commission* in accordance with the procedures of Section 21-05 (h), below.

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If, in the sole discretion of the *Executive Director*, there are questions regarding how the application for *secondary approval* fulfills the intent of the *PUD District Ordinance* or how the *secondary approval* expresses in *detailed terms* the *general terms* approved as part of the *preliminary plan* and zone map change to the *PUD District*, the *Executive Director* may refer the proposed *secondary approval* to the *Area Plan Commission* for review and determination.

- (D) Proceedings / Notice – The proceedings required for *secondary approval* shall be the same as those required by this zoning ordinance for the review and issuance of an *improvement location permit*.
- (E) Expiration of *Secondary Approval* – A *secondary approval* shall expire one (1) year after the date of final approval unless an *improvement location permit* has been issued for the *use* or development of the property. Once a *secondary approval* has expired for any portion of the *PUD*, no development shall occur within the expired portions of the *PUD* until a new *secondary approval*, as required by this Section, has been approved.
- (F) Supporting Documentation – Before the issuance of a *secondary approval*, the petitioner must file an application requesting *secondary approval* and submit plans consisting of the following:
  - i. Area map insert showing the general location of the proposed development referenced to major *streets* and section lines.
  - ii. Location map showing the names of all metes and bounds property owners, boundary lines of recorded *subdivisions*, zoning and land *uses* of adjacent properties.
  - iii. Proposed name of the *PUD*.
  - iv. Legal description of the real estate.
  - v. Boundary lines of the proposed *PUD*.
  - vi. Location and name of all existing and proposed public or private *streets*, roads, *access easements* and *rights-of-way* within two-hundred (200) feet of the real estate.

- vii. Location of all existing and proposed utility facilities and easements, including, but not limited to: sanitary sewer, water, storm water management, electric, gas, telephone and cable within two-hundred (200) feet of the real estate.
- viii. Layout, number and dimension of all *lots* and *out lots* with zoning *setback* lines.
- ix. Location, delineation and elevation of all floodway and floodway fringe areas within the boundaries of the *PUD*.
- x. Drainage plan.
- xi. Landscape plan.
- xii. *Sign* plan.
- xiii. An erosion control plan for all areas of site disturbance.
- xiv. Topographic contour every two (2) feet superimposed upon the proposed site plan portion of the site covered by the submitted plans.
- xv. Proposed elevation of all *building* pads within the proposed development.
- xvi. All improvements to *street* system, on-site and off-site.
- xvii. *Sidewalk* plan or alternate plan for *walkways* or other pedestrian ways.
- xviii. Plans and specifications for all infrastructure improvements required or proposed in the *PUD*.
- xix. Areas reserved for park, conservation, wetland, common area, lake or other similar *uses*.
- xx. Proposed covenants, conditions and restrictions, if any.
- xxi. The character and approximate density of all proposed *uses* and *structures* in the plan area.
- xxii. Any other information specified elsewhere in the this Ordinance as a prerequisite to the issuance of an *improvement location permit*.

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- xxiii. Any other information requested in writing by the *Executive Director* or *Area Plan Commission* in connection with the *preliminary plan* approval or requested in writing by the *Executive Director* within fifteen (15) business days of filing.

The *Area Plan Commission* or *Executive Director*, during *secondary approval* review, shall specify any additional plan documentation or supporting information beyond that required by this Section 21-05 (c) (5) (F), which must be supplied before an *improvement location permit* may be issued for the development of any real estate located in the *PUD District*.

- (G) Required Findings – The *Area Plan Commission* or *Executive Director* may issue a *secondary approval* only upon a finding that:
- i. the plans submitted for *secondary approval* satisfy the *permitted uses* and *development standards* specified in the *PUD District Ordinance* establishing such *PUD District*;
  - ii. the plans submitted for *secondary approval* accomplish the intent set forth in Section 21-05 (a), above; and,
  - iii. the plans submitted for *secondary approval* provide for the protection or provision of the site features and amenities outlined in Section 21-05 (c) (1), above.

Written findings of each determination to approve or disapprove a *secondary approval*. If the *Area Plan Commission* makes a determination regarding a *secondary approval*, the written findings shall be signed by the President of the *Area Plan Commission*. If the *Executive Director* makes a determination regarding a *Secondary Approval*, the written findings shall be signed by the *Executive Director*.

Said *secondary approval* and written findings, upon approval, shall be sealed with the Seal of the *Area Plan Commission* and retained in the office of the *Area Plan Commission* to be used in its continuing administration of the *PUD*.

**(d) Modification Of Preliminary Plan Or Secondary Approval**

Minor modifications to a *preliminary plan* or *secondary approval* which has already received approval from the *Area Plan Commission* or the *Executive Director* and which do not involve: (a) an increase in height, area, bulk or intensity of land *uses*; (b) the designation of additional land *uses*; (c) the reduction in perimeter yards; (d) an encroachment into any drainage easement, regulated drain setback or floodplain; (e) the addition of *driveways* or *access* points; or, (f) reduction in the amount of parking for any *use* below that which is required by Section 21-07.04 of this Ordinance, may be authorized by the *Executive Director* without a public hearing in its continuing administration of the *PUD* if, in the determination of the *Executive Director*, the requested minor modifications do not adversely impact the purpose or intent of the overall development.

If the *Executive Director* determines that the proposed modification is of such a nature as to adversely impact the purpose or intent of the overall development, or if the proposed modification includes: (a) an increase in height, area, bulk or intensity of land *uses*; (b) the designation of additional land *uses*; (c) the reduction in perimeter yards; (d) an encroachment into any drainage easement, regulated drain setback or floodplain; (e) the addition of *driveways* or *access* points; or, (f) reduction in the amount of parking for any *use* below that which is required by Section 21-07.04 of the Ordinance, Petitioner shall be required to file a new petition for zone map change.

**(e) Secondary Plat Approval**

The process for the approval and recording of a *secondary plat* for any development in a *PUD* approved pursuant to this Section 21-05 shall be issued in a manner consistent with that for any other *subdivision* within the City of South Bend as set forth in Chapter 21, Article 8 – Subdivisions (or any successor Subdivision Control Ordinance) and with any additional requirements or commitments entered into in connection with the approval of the *preliminary plan* pursuant to this Section 21-05. The approval and recording of a *secondary plat* is required prior to the issuance of a *improvement location permit* for any *improvements* on a *lot*.

**(f) Maintenance Of Common Open Space**

In those *PUD Districts* in which *open space*, common areas or recreation areas are provided for the use and enjoyment of residents or users of the *PUD District*, the petitioner shall file documentary assurances that the permanent dedication and continuous maintenance of *open space*, common areas or recreation areas shall be made in accordance with the approved *preliminary plan* and *secondary approval*, and that the *open space*, common areas and recreation areas shall be made available to the residents and users of the overall development in the *PUD* at a reasonable and non-discriminatory rate of charge. Such documentary assurances shall be incorporated into the *secondary*

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*plat* that is recorded in the Office of the St. Joseph County Recorder or otherwise provided for through legally binding perpetual agreements as approved by the *Area Plan Commission*. Such *open space* shall perpetually run with the *PUD* and shall not be developed or separated from the overall development in the *PUD* at a later date (unless no development of any portion of the *PUD* which is benefited by the *open space*, common areas or recreation areas has occurred and the entire area subject to the *PUD* is presented for zone map change).

**(g) Extensions**

Extensions of time, in six (6) month increments not to exceed a total of two (2) years, for obtaining *secondary approval* may be granted by the *Executive Director* for good cause shown. In the event that the *Executive Director* disallows a requested extension, the petitioner may appeal said determination to the *Area Plan Commission* within thirty (30) days of being notified of such determination.

**(h) Appeals Of Executive Director's Decisions**

**(1) Appeal Process**

Any order, requirement, decision or determination by the *Executive Director* regarding a *secondary approval*, or a modification of a *preliminary plan* or *secondary approval*, may be appealed to the *Area Plan Commission* by any person claiming to be adversely affected by that order, requirement, decision or determination. The procedures for such an appeal are as follows:

- (A) Every appeal shall be filed within thirty (30) days from the order, requirement, decision or determination.
- (B) All appeals shall be determined by the *Area Plan Commission* at a public hearing for which notice has been provided as follows:
  - i. a remonstrator shall send notice to the owner of the real estate, the applicant for the *secondary approval*, or a modification of a *preliminary plan* or *secondary approval*, and all abutting property owners;
  - ii. a petitioner shall send notice to the owner of the real estate and all abutting property owners;
  - iii. notice shall be sent as provided by rule of *Area Plan Commission*.

- (C) The *Area Plan Commission* hearing shall be de novo, in the same manner as though the application was originally filed with the *Area Plan Commission*.
- (D) The decision of the *Area Plan Commission* with respect to a *secondary approval*, or a modification of a *preliminary plan* or *secondary approval*, shall be a final decision that may be reviewed only by certiorari procedures as provided in I.C. 36-7-4-1016.