PC-R-12-10

WARRICK COUNTY COMMISSIONERS ORDINANCE # 2012-17

AN ORDINANCE TO AMEND THE WARRICK COUNTY, INDIANA COMPREHENSIVE ZONING ORDINANCE BY REZONING CERTAIN REAL ESTATE IN WARRICK COUNTY, INDIANA

BE IT ORDAINED BY THE COUNTY COMMISSIONERS OF WARRICK COUNTY, INDIANA:

Section 1. That the Warrick County, Indiana Comprehensive Zoning Ordinance and the Warrick County Zoning District Maps dated February 1, 2005, and made a part of said Ordinance, be and the same are hereby amended as follows:

That the boundaries of the R-O, as shown on said Warrick County Zoning District Maps, be amended as to the following described real estate:

Part of the Northwest Quarter of the Northwest Quarter of Section 28, Township 6 South, Range 9 West in Ohio Township, Warrick County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said quarter quarter section; thence along the north line of said quarter quarter section, South 89 degrees 52 minutes 48 seconds East 327.51 feet; thence South 00 degrees 31 minutes 49 seconds West 1014.88 feet to the point of beginning; thence South 89 degrees 52 minutes 43 seconds East 655.00 feet; thence South 00 degrees 31 minutes 53 seconds West 187.66 feet to a point on the north right-of-way line of an existing frontage road; thence along said north line the following 3 calls, 1) North 89 degrees 52 minutes 43 seconds West 81.01 feet; 2) thence South 38 degrees 24 minutes 41 seconds West 79.43 feet; 3) thence North 89 degrees 52 minutes 43 seconds West 525.22 feet to the southeast corner of Grimm Road Commercial, as per plat thereof, recorded as Doc. No. 2006R-007044 in the office of the Recorder of Warrick County, Indiana; thence along the east line of Grimm Road Commercial, North 00 degrees 31 minutes 49 seconds East 250.00 feet to the Point of Beginning containing 157,176 square feet (3.61 acres).

Section 2. All Ordinance and parts of Ordinances in conflict herewith are hereby repealed.

Section 3. This Ordinance shall be in full force and effect from and after its passage by the Board of Commissioners of the County of Warrick, State of Indiana.

Section 4. The subject property herein rezoned shall be used and developed only in accordance with the use and development commitment which is attached hereto and incorporated herein and no improvement location permits shall be issued until the petitioner records said use and development commitment in the office of the Recorder of Warrick County, Indiana.

Tim Mosley
President

Mark Weisheit
Member

Don Wellman
Member

ATTEST:

BOARD OF COMMISSIONERS
WARRICK COUNTY, INDIANA

LB Dugan
County Auditor

4-9-12
Date Approved

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.

Krista Lockyear
Signature

Krista Lockyear
Printed Name

This document prepared by: Krista B. Lockyear

USE AND DEVELOPMENT COMMITMENT

WHEREAS, the undersigned, **Delta Properties, LLC**, an Indiana limited liability company, is Petitioner and Owner (hereinafter referred to as the "Petitioner") of certain real estate situated in Warrick County, Indiana and more particularly described on Exhibit "A," attached hereto and by this reference made a part hereof (the "Real Estate"); and

WHEREAS, the Real Estate is currently classified as an **R-O** zoning district under the Warrick County Comprehensive Zoning Ordinance and is so indicated on the zoning maps maintained by the staff of the Warrick County Area Plan Commission; and

WHEREAS, Petitioner has requested that the Real Estate be reclassified to zoning district **General Commercial (C-4)**; and

WHEREAS, Petitioner is desirous of accommodating possible concerns of the surrounding property Owner by making a written commitment concerning the use and development of the Real Estate pursuant to I.C. 36-7-4-1015;

NOW, THEREFORE, in consideration of the foregoing, Petitioner makes the following use and development commitments concerning the use of the Real Estate:

1. **Use of the Real Estate**. The use of the Real Estate shall be limited to those use groups permitted in the General Commercial (C-4) District as set forth in the General Commercial (C-4) Districts of the Comprehensive Zoning Ordinance of Warrick County (the "Zoning Code"); provided, however, the following uses shall be **prohibited**:

a. Food locker and/or plants;
b. Monuments (sale and display only);
c. Pawn shop;
d. Sales and service of industrial equipment;
e. Self storage warehouse facilities;
f. Sharpening and grinding shop;
g. Wholesale merchandise broker;
h. Wholesale and retail sales of bulk rock, sand and gravel;
i. Contractor equipment sales and service;
j. Freight or truck yard or terminal;
k. Industrial equipment rental facilities;
l. Welding supplies and equipment sales and service.

2. **Enforcement**. All commitments and undertakings herein expressed shall be binding on the Petitioner and the Petitioner's heirs, legal representatives, successors and assigns, and shall run in favor of the Area Plan Commission of Warrick County and all the Owners of the real estate lying within the radius of one (1) mile from the Real Estate and shall be enforced by invoking any legal, equitable or special remedy, including specific performance, injunction or other equitable relief pursuant to the manner of enforcement as set forth in I.C. 36-7-4-1015. If it is necessary to initiate administrative or judicial proceedings to enforce any such commitment or undertaking, the person or entity obtaining enforcement in such proceedings shall also recover its reasonable attorneys' fees and costs of suit from the undersigned.

3. **Expiration of Commitments**. The commitments and undertakings herein made and expressed shall terminate, expire and be of no further force or effect if the Real Estate should be rezoned due to the filing of some subsequent petition to amend the zoning classification of the Real Estate.

4. **Recording**. This Commitment shall be recorded in the office of the Recorder of Warrick County, Indiana, and shall take effect upon the adoption of the zoning classification of the Real Estate from an **R-O** District to a **C-4** District with a Use and Development Commitment.

5. **Miscellaneous**. In the event that ambiguity exists or is deemed to exist in any provision of this Agreement, said ambiguity is not to be construed by reference to any doctrine calling for such ambiguity to be construed against the drafter of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, not including the choice of law rules thereof, and each party hereto by execution of this Agreement, consents to the exercise of jurisdiction over any matter arising in connection with this Agreement in the Superior Court of Warrick County, State of Indiana. All headings set forth herein are included for the convenience of reference only and shall not affect the interpretation hereof, nor shall any weight or value be given to the relative position of any part or provision hereof in relation to any other provision in determining such construction. The recitals set forth in the above preamble are incorporated herein by this reference and made a part of this Agreement.

IN WITNESS WHEREOF, this Use and Development Commitment is hereby made and entered into this 9th day of February, 2012 for the purpose set forth herein.

Petitioner: Delta Properties, LLC

By: _____ Date: 2-9-12

Evan Beck, Manager

STATE OF INDIANA)
) SS:
COUNTY OF WARRICK)

Before me, a Notary Public in and for said County and State, personally appeared the within named **Evan Beck**, as Manager of Delta Properties, LLC, and acknowledged the execution of the above and foregoing to be the free and voluntary act and deed of said limited liability company.

WITNESS my hand and seal this 9th day of February, 2012.

Regina S Haley
Notary Public
My Commission Expires: 8-12-17

Regina S Haley
Printed Name
My County of residence: Vanderburgh

This instrument was prepared by Krista B. Lockyear, **RUDOLPH, FINE, PORTER & JOHNSON, LLP,** 221 N.W. Fifth Street, P.O. Box 1507, Evansville, IN 47706, Telephone (812) 422-9444
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.

Krista B. Lockyear

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