



City of Bloomington Common Council

Legislative Packet

Regular Session

immediately followed by

Committee of the Whole Discussion

04 November 2009

Office of the Common Council
P.O. Box 100
401 North Morton Street
Bloomington, Indiana 47402

812.349.3409

council@bloomington.in.gov
<http://www.bloomington.in.gov/council>



Packet Related Material

Memo

Agenda

Calendar

Notices and Agendas:

None

Legislation for Final Action:

- **Ord 09-20** To Amend Title 2 of the Bloomington Municipal Code Entitled “Administration and Personnel” - Re: Expanding the Bloomington Commission on Sustainability to Include an Appointment from Monroe County Government and an Ex-Officio Representative from Indiana University
Contact: Adam Wason at 349-3406 or wasona@bloomington.in.gov
- **Res 09-16** Approving the Enlargement of the Adams Crossing Economic Development and Tax Allocation Area
*Contact: Lisa Abbott at 349-3401 or abbottl@bloomington.in.gov
Margie Rice at 349-3426 or ricem@bloomington.in.gov*
- **Ord 09-21** To Amend Title 8 of the Bloomington Municipal Code, Entitled “Historic Preservation and Protection” To Establish a Historic District - Re: Elks Lodge #446 Located at 400 North Walnut Street (Bloomington Historic Preservation Commission, Petitioner)
Contact: Nancy Hiestand at 349-3507 or hiestann@bloomington.in.gov
- **Res 09-17** To Authorize the Purchase of Real Property in Monroe County-
Re: 3301 W. Tapp Road
*Contact: Lisa Abbott at 349-3401 or abbottl@bloomington.in.gov
Margie Rice at 349-3426 or ricem@bloomington.in.gov*

- **App Ord 09-10** To Specially Appropriate From the General Fund Expenditures Not Otherwise Appropriated (To Purchase and Renovate Property on Tapp Road for an Affordable Housing Project)
 - Memo from Mike Trexler, Controller
 - Contact: Mike Trexler at 349-3416 or trexlerm@bloomington.in.gov
Lisa Abbott at 349-3401 or abbottl@bloomington.in.gov*

Please see the:

- [October 21st Legislative Packet](#) for the legislation, background materials and summaries regarding [Ord 09-20](#) and [Ord 09-21](#), and
- [October 28th Legislative Packet](#) for the legislation, background materials and summaries regarding [Res 09-16](#), [Res 09-17](#), and [App Ord 09-10](#).

Legislation and Background Material for Items for Discussion at the Committee of the Whole on November 4th Immediately Following the Regular Session

- **Res 09-19** Authorizing Representatives to Act on Behalf of the City of Bloomington with Respect to Certain Matters Related to Brownfields Financial Assistance to Be Awarded by the Indiana Finance Authority
 - Memo to the Council from Alisa Wood, Budget Research and Grants Manager; Sample Agreement; Map
 - Contact: Alisa Wood at 349-3480 or wooda@bloomington.in.gov*
- **Ord 09-22** To Amend the Bloomington Zoning Maps from Commercial Limited (CL) to Planned Unit Development (PUD) and to Adopt the Preliminary Plan for the 1.6 Acres McDoel Station PUD - Re: 223 W. Dodds Street (Bryan White, Petitioner)
 - Certification (6-0-0); Map of Surrounding Zoning; Aerial Photo; Memo to the Council from Eric Greulich, Zoning Planner;); Environmental Commission Memo (9/25/09); Bicycle and Pedestrian Safety Commission (8/25/09); Petitioner Statement; Conditions and Restrictions; Elevations; Site Plan; Preliminary Plat; Letter from Storage Express (Neighbor)
 - Contact: Eric Greulich at 349-3526 or greulice@bloomington.in.gov*

Minutes from Regular Session:

None

Memo

Holidays in November Mean No Meetings on November 11th and 25th and a Regular Session Immediately Followed by a Committee of the Whole on November 4th and 18th

The month of November has City Holidays on Veterans' Day and at Thanksgiving which means that the Council will not meet on November 11th and 25th and that both a Regular Session and a Committee of the Whole will be held on November 4th and 18th. Next week the Council is scheduled to take final action on five items at the Regular Session. Those items can be found in Council Legislative Packets noted above. There are two items for discussion at the Committee of the Whole that immediately follows the Regular Session. One of those items is an ordinance that will be introduced at the Regular Session and the other is a resolution that will be introduced at the Committee of the Whole. Both of these pieces of legislation and the related information are included in this packet.

Items for First Readings and/or Discussion at the Committee of the Whole on November 4th

Item One – Res 09-19 -- Authorizing Representatives to Act on Behalf of the City of Bloomington With Respect to Certain Matters Related to Brownfields Financial Assistance to Be Awarded by The Indiana Finance Authority

Res 09-19 accepts an award of financial assistance from the Indiana Finance Authority for a Brownfields Stipulated Remediation Grant to offset the costs associated with remediation of the Phase II portion of the B-Line Trail. The resolution also acknowledges the terms and conditions of the assistance and authorizes the Mayor to act on behalf of the City in executing the grant agreement.

In January 2009, the City was awarded \$400,000 by the Indiana Finance Authority (IFA) for Phase II remediation. Phase II includes the area from Rogers to Adams and Second Street to Grimes (*See* attached map). Remediation does not include the switchyard. As outlined in the accompanying memo by Alisa Wood, Budget, Research and Grants Manager, before the funding agreement is executed, the IFA requires that the Council authorize the City's intent to execute an agreement with IFA. This is a new requirement for all Indiana communities receiving Stipulated Assessment or Remediation Grant funds. This was not a requirement when the City received brownfield funds for the remediation of Phase I of the B-Line.

The rail bed along the B-Line contains coal ash and cinder and requires removal per the Project Workplan approved by the IFA Brownfields Program. As with the remediation of Phase I, the remediation of Phase II will involve hauling the ash off site or encapsulating the ash and covering the land with impervious material. The funding agreement requires that the remediation be completed within two years of the receipt of grant monies. Dave Williams, Operations and Development Director for Parks and Recreation advises that this timeline is fully achievable. As the \$300,000 granted to City for Phase I remediation was entirely sufficient, Williams also expects that the \$400,000 granted for Phase II remediation will fully cover the cost of clean up.

While the \$400,000 for remediation has been granted to the City by IFA, exactly which entity disperses these funds hinges on whether the City receives another grant through the American Recovery and Reinvestment Act (ARRA, also known as the economic “stimulus” package) for the *construction* of the balance of the B-Line. If the City receives stimulus funds, such funds are passed through the Indiana Department of Transportation (INDOT) and INDOT disburses the funds for both construction and remediation related work. This is how remediation funds were administered in Phase I of the B-Line.

The agreement for Phase II remediation anticipates that the City will receive stimulus funds. In the event the City does not receive stimulus money, the remediation funds would be dispersed by IFA’s Brownfield Program. In this case, a separate agreement would be required between the City and IFA for which Council approval is not needed. In the event stimulus funds are not received for the construction of the rest of the B-Line, the City will use TIF funds to complete the project.

City Attorney Margie Rice has reviewed the terms of the agreement and advises that the terms are acceptable and are not onerous.

Both Alisa Wood and Dave Williams have worked closely with the staff of IFA Brownfields Program and note that IFA has been extremely helpful and cooperative with this project. Williams and Wood also point out that this remediation is particularly significant in that is the first remediation of a linear brownfield in Indiana. IFA has highlighted this pioneering project in its recent newsletters.

As the Mayor announced in his *State of the City* address earlier this year, this grant, plus a \$950,000 earmark from Congressman Baron Hill, have expedited the B-Line's construction and City staff anticipates a spring 2011 completion date for the final two phases of the B-Line Trail, from Adams Street south to Rogers Street, and from Second Street south to Country Club Road. The final two phases total about 2.4 miles.

**Item Two – Ord 09-22 – Amending Zoning Maps to Rezone 1.6 Acres of Land from Commercial Limited to Planned Unit Development (PUD) and Approve a Preliminary Plan for 17 Single Family Lots
– Re: 233 West Dodds (Bryan White, Petitioner)**

Ord 09-22 amends the zoning maps to rezone 1.6 acres at 233 West Dodds from Commercial Limited (CL) to Planned Unit Development (PUD) and approves a Preliminary Plan to construct single family homes on 17 lots (for a density of 11 units per acre) in what will be known as McDoel Station. The petitioner is Bryan White of Arvis Homes, Inc.

Highlights of the Project The petitioner wishes to:

- Place 17 single family homes on narrow lots that face the B-Line trail on the west and a widened alley on the east;
- Construct homes using silver level green building standards (but without any requirement that they be certified) and in five styles harkening back to the latter half of the 1800's;
- Work with the HAND Department to offer some affordable housing in this development;
- Remove two Off-Premises signs; and
- Have the Plan Commission (Commission):
 - Waive the 5-acre minimum for a PUD;
 - Approve the preliminary plat; and
 - Delegate the review of the final plan to staff.

Site and Surroundings This 1.6 acre site is a vacant former quarry property with scattered trees mostly on the southern two-thirds of the property and a floodplain at the southwest corner. It is surrounded, in a clockwise direction, by:

- offices on Dodds to the north;
- offices, warehouses, auto junk yard, and retail on the east (some of which would share the alley with this development);
- miniware-houses to the south; and

- the B-Line Trail, Morton Street and Industrial and residential properties (McDoel Neighborhood) to the west.

Preliminary Plan and Final Plat Issues

Growth Policies Plan The site is designated as a Community Activity Center (CAC) within the McDoel Switchyard Subarea Plan, which runs along the B-Line Trail from 11th Street on the north to past Tapp Road on the south. While CACs are intended for mid-scale commercial development, the Report notes that the “petition accomplishes many of the goals of a (CAC)” with its “direct connections (to) the city-wide greenway system ... compact urban form, and a design sensitive to the surrounding residences.”

Perhaps the strongest support for this development comes from the McDoel Subarea Plan, which recommends that developments:

- be focused towards creating a high quality urban greenway;
- occur, where appropriate, at industrial sites along the Morton Street corridor; and
- orient uses and buildings to the future greenway area.

Right-of-way, Access and Parking The property lies south of Dodds and west of a north-south alley which will run between Dodds and Allen Street. The alley will serve the rear of these homes as well as continue to serve some of the adjacent commercial properties to the east and south. The petitioner will dedicate the land and widen the alley from 16.5 feet to 20 feet along the length of the site. Each home will have a short driveway connecting with the alley. Please see the letter from Storage Express in the packet requesting additional setback to allow stacked parking for those homes and better visibility when exiting the driveways.

Final Plat: Must show dedication of an additional 4.5 feet to widen alley;
Dedicates 25 feet of right-of-way from the centerline of Dodds

Pedestrian Facilities Small, decorative sidewalks will lead from these homes to four openings in a 4-foot tall, wrought iron fence that will separate McDoel Station from the 500 foot-segment of the B-Line Trail. A 5-foot wide sidewalk will be installed along Dodds (and, thereby, completing a missing link on that side of the street). No sidewalks will be constructed along the alley.

Final Plat: Shows a 5-foot sidewalk and street trees within 40 feet of the centerline of Dodds. The sidewalk will connect with the B-Line Trail;
Includes 10-foot pedestrian easement along the B-Line Trail.

Building Architecture and Energy Saving Features The petitioner statement and restrictive covenants indicate that the houses will be designed in one of five styles popular during the latter half of the 1800’s: Greek Revival, Gothic Revival, Italianate, Folk Victorian, and Stick Victorian. They also indicate that the houses would “follow the Silver Level guidelines set forth in the National Green Building Standards 2008 Edition” without the requirement that the houses be enrolled or certified. Among other features, this will mean the houses will have “high R-value insulation, high U value windows and doors, tankless water heaters, energy star appliances and passive solar lighting.”

Environmental and Landscaping The site contains several large -crowned trees scattered throughout the property and part of the 100-year floodplain for Jackson Creek on the southeast corner of the property. The petitioner will be preserving some trees along the B-Line trail and adding 20 new ones and 58 “foundational” plants in that area as well. The Commission required that a drainage easement encompassing the floodplain be placed on the final plat. The Commission also required that the driveways on the two affected lots (1 & 2) be raised and constructed with permeable material (which will need approval from the Indiana Department of Natural Resources).

Final Plat: Must include drainage easement for property located in 100-year floodplain.
Must clearly label tree preservation easement on Lots 11-15.

Affordable Housing The petitioner foresees the homes costing between \$175,000 and \$300,000 and is working with the HAND department with the goal of providing some affordable housing with the project.

Development Standards The petitioner is proposing to use modified Residential Core (RC) development standards as noted below:

	<u>Residential Core</u>	<u>McDoel Station</u>
Minimum Lot Size	7,200 s.f.	Lots 1 & 17: 5,908 – 6,248 s.f. Lots 2 – 16: 3,990 s.f.

Minimum Lot Width	55 feet	28 feet
Minimum Front Building Setback	15 feet	15 - 30 feet (Build to Line) <i>Note: Larger setback will be on lots where trees will be preserved.</i>
Minimum Side Building Setback	6 feet plus 4 feet per each story above ground floor	4 feet
Minimum Rear Building Setback	25 feet	20 feet <i>Note presence of a 15 feet drainage and utility easement.</i>
Maximum Number of Primary Structures	1 residential unit per lot	Same
Maximum Number of Accessory Structures	2 per lot	1 per lot (carport, detached garage or attached garage permitted)
Maximum Impervious Coverage	45%	same
Maximum Height	Primary structure – 35 feet; secondary structure – 20 feet	same
Maximum Width to Depth Ratio	4:1	5:1 (28 feet by 142 feet)

Utilities The petitioner intends to connect with sanitary sewers along Morton Street and use a series of “bioswales” (trenches with grass over sand) that will follow the alleyway (which will need to be approved by CBU). Please note that the driveways will cross these bioswales and will be built with permeable materials to allow the water to flow south along the alley and that the property owners will be responsible for maintaining them.

Final Plan: Includes easement for these utilities.

Neighborhood Input The Staff Report notes that there was a meeting with neighbors in August where about 25 people attended, many of which were supportive of the project. The questions dealt with: architecture and green features of the

buildings; access to the B-Line Trail; preservation of trees; and impact of traffic on Dodds.

Environmental Commission Report The Environmental Commission made several recommendations which, in some cases, were incorporated into the approval and, in some cases, were not. These are briefly noted below:

- the Final Plat should be reviewed by the Commission and not staff -
 - Response: The level of detail gives staff adequate guidance to review the plan.
- The design should be modified to protect the floodplain and remove the two southernmost lots before the final Plat is approved -
 - Response: The project meets all UDO floodplain requirements (including the establishment of the drainage easement).
- The petitioner should create a Special Flood Hazard Area Easement complete with signage and defined and delineated on the plat -
 - Response: This is shown on the plat.
- The petitioner should obtain a permit to develop within the Special Flood Hazard Area *prior* to receiving any City permits –
 - Response: This has been included as a condition of approval.
- A proper bio-filtration basin should be planned for the two southernmost lots in the floodplain –
 - Response: The proposed drainage plan meets all CBU stormwater quality and detention requirements and must be reviewed by CBU and the City before any land-disturbing activity begins.
- The petitioner should plant more trees (in addition to the twenty committed to) particularly along the northern edge to create a buffer between the homes and Dodds Street and in the drainage easement along the alley way to make up for lost tree canopy –
 - Response : The tree preservation plan is adequate. The UDO limits landscaping requirements for single family subdivisions to street trees and the petitioner has met that requirement along Dodds.
- The petitioner should modify the plans such that the buildings are clustered and biofiltration and native phytofiltrating vegetation can be included –
 - Response: The current configuration provides a good balance between reasonable development and environmental protection.

Conditions of Approval After hearings on September 14th and October 5th, the Plan Commission, by a 6 – 0 vote, approved this proposal with the following conditions:

- A grading permit is required before any land-disturbing activities commence;
- Prior to any land-disturbing activity in the floodplain, the Indiana Department of Natural Resources must either issue a permit or provide a letter indicating that no permit is necessary. The driveways on Lots 1 & 2 must be raised above the 100-year floodplain elevation;
- The trees shown to be preserved on Lots 9-13 must be clearly indicated on the site plan and plat;
- The houses constructed on these lots must have a design and elements which match the photos and elevations provided for each architectural style; and
- The final plan will be reviewed by staff.

Happy Birthday Nick Worland, City Clerk, Intern – November 4th

**NOTICE AND AGENDA
BLOOMINGTON COMMON COUNCIL REGULAR SESSION
AND COMMITTEE OF THE WHOLE
7:30 P.M., WEDNESDAY, NOVEMBER 4, 2009
COUNCIL CHAMBERS
SHOWERS BUILDING, 401 N. MORTON ST.**

I. ROLL CALL

II. AGENDA SUMMATION

III. APPROVAL OF MINUTES FOR: None

IV. REPORTS FROM:

- 1. Councilmembers**
- 2. The Mayor and City Offices**
- 3. Council Committees**
- 4. Public**

V. APPOINTMENTS TO BOARDS AND COMMISSIONS

VI. LEGISLATION FOR SECOND READING AND RESOLUTIONS

1. Ordinance 09-20 To Amend Title 2 of the Bloomington Municipal Code Entitled “Administration and Personnel” - Re: Expanding the Bloomington Commission on Sustainability to Include an Appointment from Monroe County Government and an Ex-Officio Representative from Indiana University

Committee Recommendation: Do Pass 8 – 0

2. Resolution 09-16 Approving the Enlargement of the Adams Crossing Economic Development and Tax Allocation Area

Committee Recommendation: N/A

3. Ordinance 09-21 To Amend Title 8 of the Bloomington Municipal Code, Entitled “Historic Preservation and Protection” to Establish a Historic District – Re: Elks Lodge #446 Located at 400 North Walnut Street (Bloomington Historic Preservation Commission, Petitioner)

Committee Recommendation: Do Pass 3 – 0 – 5

4. Resolution 09-17 To Authorize the Purchase of Real Property in Monroe County – Re: 3301 W. Tapp Road

Committee Recommendation: N/A

5. Appropriation Ordinance 09-10 To Specially Appropriate from the General Fund Expenditures Not Otherwise Appropriated (To Purchase and Renovate Property on Tapp Road for an Affordable Housing Project)

Committee Recommendation: Do Pass 8 – 0

VII. LEGISLATION FOR FIRST READING

1. Ordinance 09-22 To Amend the Bloomington Zoning Maps From Commercial Limited (CL) to Planned Unit Development (PUD) and to Adopt the Preliminary Plan for the 1.6 Acres McDoel Station PUD – Re: 223 W. Dodds Street (Bryan White, Petitioner)

VIII. PRIVILEGE OF THE FLOOR (This section of the agenda will be limited to 25 minutes maximum, with each speaker limited to 5 minutes)

IX. ADJOURNMENT

(and immediately reconvene for)

(over)

COMMITTEE OF THE WHOLE

Chair: Steve Volan

1. Resolution 09-19 Authorize Representatives to Act on Behalf of the City of Bloomington with Respect to Certain Matters Related to Brownfields Financial Assistance to be Awarded by the Indiana Finance Authority

Asked to Attend: Alisa Wood, Budget, Research & Grants Manager

2. Ordinance 09-22 To Amend the Bloomington Zoning Maps From Commercial Limited (CL) to Planned Unit Development (PUD) and to Adopt the Preliminary Plan for the 1.6 Acres McDoel Station PUD – Re: 223 W. Dodds Street (Bryan White, Petitioner)

Asked to Attend: Eric Greulich, Zoning Planner



**City of Bloomington
Office of the Common Council**

To: Council Members
From: Council Office
Re: Calendar for the Week of November 2-7, 2009

Monday, November 2, 2009

4:00 pm Bloomington's American Indian Heritage Month Kickoff Celebration, Atrium
5:00 pm Redevelopment Commission, McCloskey
5:30 pm Bicycle and Pedestrian Safety Commission Work Session, HookerP

Tuesday, November 3, 2009

1:30 pm Development Review Committee, McCloskey
7:30 pm Telecommunications Council, Council Chambers

Wednesday, November 4, 2009

12:00 pm Bloomington Urban Enterprise Association, McCloskey
2:00 pm Hearing Officer, Kelly
5:30 pm Commission on Hispanic and Latino Affairs, McCloskey
7:30 pm Common Council Regular Session *immediately followed by a* Committee of the Whole, Council Chambers

Happy Birthday, Nick Worland, Intern, Office of the City Clerk!

Thursday, November 5, 2009

11:30 am Solid Waste Management District, Monroe County Courthouse, Judge Nat U. Hill, III Room
4:00 pm Bloomington Digital Underground Advisory Council, McCloskey
5:30 pm Commission on the Status of Women, McCloskey

Friday, November 6, 2009

5:00 pm Bloomington Watercolor Society Opening Reception, Atrium

Saturday, November 7, 2009

9:00 am Bloomington Community Farmers' Market, Showers Common, 401 N Morton

Posted and Distributed: Friday, October 30, 2009

ORDINANCE 09-22

**TO AMEND THE BLOOMINGTON ZONING MAPS
FROM COMMERCIAL LIMITED (CL) TO PLANNED UNIT DEVELOPMENT (PUD)
AND TO ADOPT THE PRELIMINARY PLAN FOR
THE 1.6 ACRES McDOEL STATION PUD
- Re: 223 W. Dodds Street
(Bryan White, Petitioner)**

WHEREAS, Ordinance 06-24, which repealed and replaced Title 20 of the Bloomington Municipal Code entitled, "Zoning", including the incorporated zoning maps, and incorporated Title 19 of the Bloomington Municipal Code, entitled "Subdivisions", went into effect on February 12, 2007; and

WHEREAS, the Plan Commission has considered this case, PUD-32-09; recommended that the petitioner, Bryan White, be granted his request to rezone the property from Commercial Limited (CL) to a Planned Unit Development (PUD) and that the preliminary plan be approved; and, thereby requests that the Common Council consider this petition;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. Through the authority of IC 36-7-4 and pursuant to Chapter 20.04 of the Bloomington Municipal Code, the property located at 223 W. Dodds Street shall be rezoned from Commercial Limited (CL) to a Planned Unit Development (PUD) and the preliminary plan be approved. The property is further described as follows:

A part of the Southwest Quarter of Section 4, Township 8 North, Range 1 West, Monroe County, Indiana, being more particularly described as follows:

Lots No. 3, 4, 5,6,7,8, and 9 in Lowe's Addition to the City of Bloomington, Indiana, excepting a strip of ground 13 ½ feet in width off of and along the North side of Lot No. 9 in Lowe's Addition to the City of Bloomington, Indiana.

Also, that portion of Park Avenue in said City of Bloomington, Indiana, in Seminary Lot Number 64 described as follows, to-wit: Beginning at the Southwest corner of Lot No. 6 in Lowe's Addition to said City, thence East along Sough line of said lot a distance of 132 feet, to the Southeast corner thereof; thence South 66 feet, to the Northeast corner of Lot No. 5 in Lowe's Addition; thence West along the North line of said Lot No. 5, in Lowe's Addition, a distance of 132 feet, to the Northwest corner thereof; thence North to the place of beginning.

Also, beginning at a point on the West line of Lot 9 in Lowe's Addition to the City of Bloomington, Indiana, which point is 13 ½ feet South of the Northwest corner of said lot; running thence West 14 feet to a point 5 feet East of the East rail of the East track of the Chicago, Illinois and Louisville Railway, thence South parallel with said East rail and 5 feet therefrom 538 feet, thence East 14 feet, more or less, to the West line of Lot No. 2 in said Lowe's Addition, the same being also the West line of said Seminary Lot, of Lowe's Addition, thence North 538 feet to the place of beginning, all of the above in the City of Bloomington, Monroe County, Indiana, and as vacated, as appears in the City Clerk's Office in Record 24, pages 180-181, in the City of Bloomington, Indiana.

SECTION 2. The Preliminary Plan shall be attached hereto and made a part thereof.

SECTION 3. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 4. This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2009.

ANDY RUFF, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2009.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2009.

MARK KRUZAN, Mayor
City of Bloomington


SYNOPSIS

This ordinance approves the rezoning of 1.6 acres of land at 233 West Dodds Street from Commercial Limited (CL) to a Planned Unit Development (PUD) and approves a Preliminary Plan to provide 17 single family lots in what will be known as the McDoel Station PUD.

****ORDINANCE CERTIFICATION****

In accordance with IC 36-7-4-605 I hereby certify that the attached Ordinance Number 09-22 is a true and complete copy of Plan Commission Case Number PUD-32-09 which was given a recommendation of approval by a vote of 6 Ayes, 0 Nays, and 0 Abstentions by the Bloomington City Plan Commission at a public hearing held on October 5, 2009.

Date: October 15, 2009



 Thomas B. Micuda, Secretary
 Plan Commission

Received by the Common Council Office this 15th day of OCTOBER, 2009.



 Regina Moore, City Clerk

Appropriation Ordinance # _____	Fiscal Impact Statement Ordinance # _____	Resolution # _____
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Type of Legislation:

Appropriation Budget Transfer Salary Change Zoning Change New Fees	End of Program New Program Bonding Investments Annexation	Penal Ordinance Grant Approval Administrative Change Short-Term Borrowing Other
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If the legislation directly affects City funds, the following must be completed by the City Controller:

Cause of Request:

Planned Expenditure _____	Emergency _____
Unforeseen Need _____	Other _____

Funds Affected by Request:

Fund(s) Affected	_____	_____
Fund Balance as of January 1	\$ _____	\$ _____
Revenue to Date	\$ _____	\$ _____
Revenue Expected for Rest of year	\$ _____	\$ _____
Appropriations to Date	\$ _____	\$ _____
Unappropriated Balance	\$ _____	\$ _____
Effect of Proposed Legislation (+/-)	\$ _____	\$ _____
Projected Balance	\$ _____	\$ _____

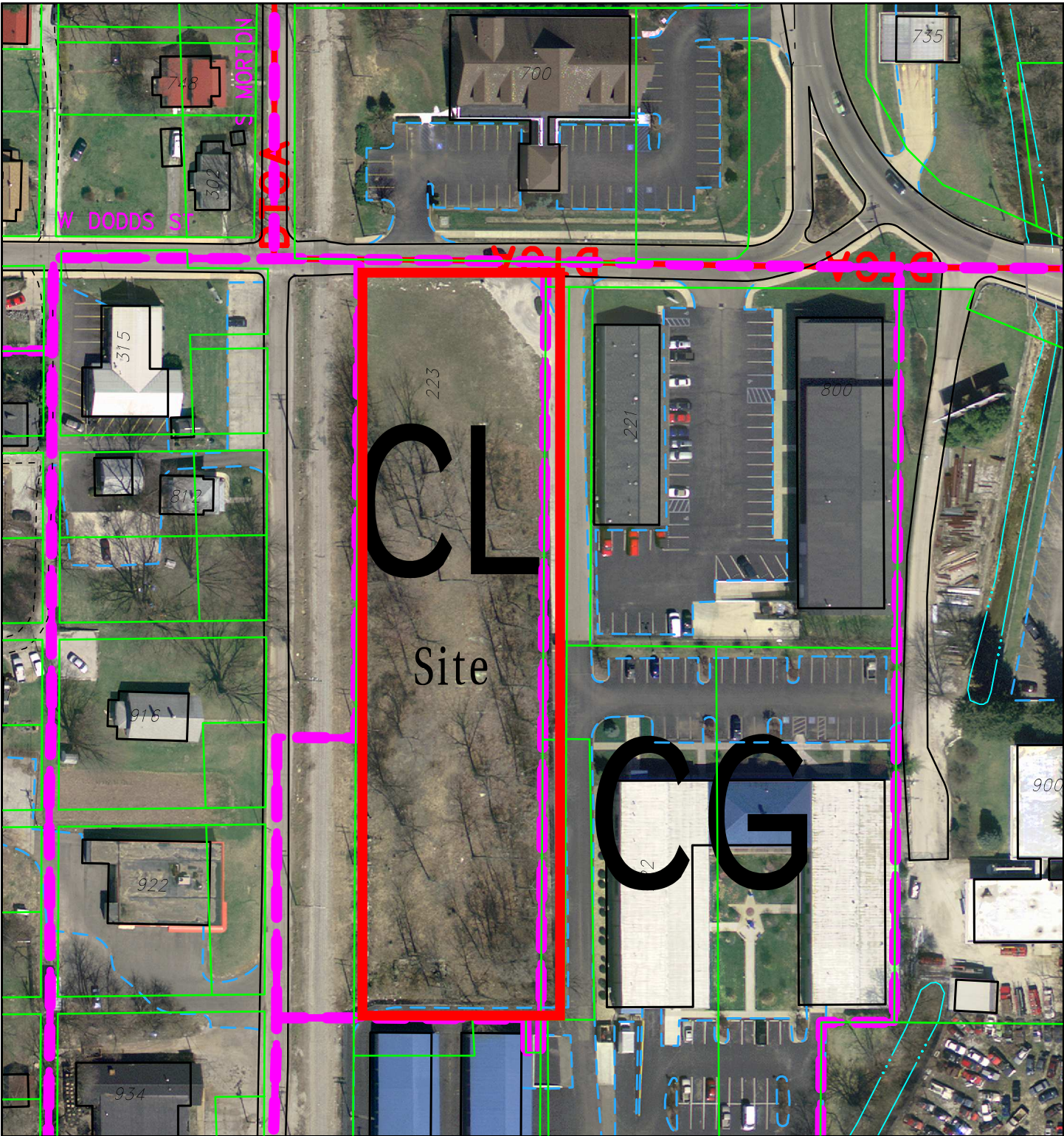
Signature of Controller

Will the legislation have a major impact on existing City appropriations, fiscal liability or revenues?

Yes _____ No _____

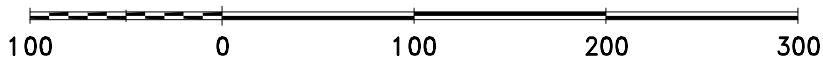
If the legislation will not have a major fiscal impact, explain briefly the reason for your conclusion.

If the legislation will have a major fiscal impact, explain briefly what the effect on City costs and revenues will be and include factors which could lead to significant additional expenditures in the future. Be as specific as possible. (Continue on second sheet if necessary.)

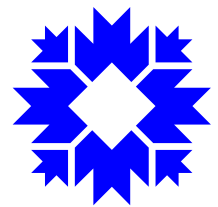


Morton and Dodds PUD
Aerial Photograph

By: greulice
7 Aug 09

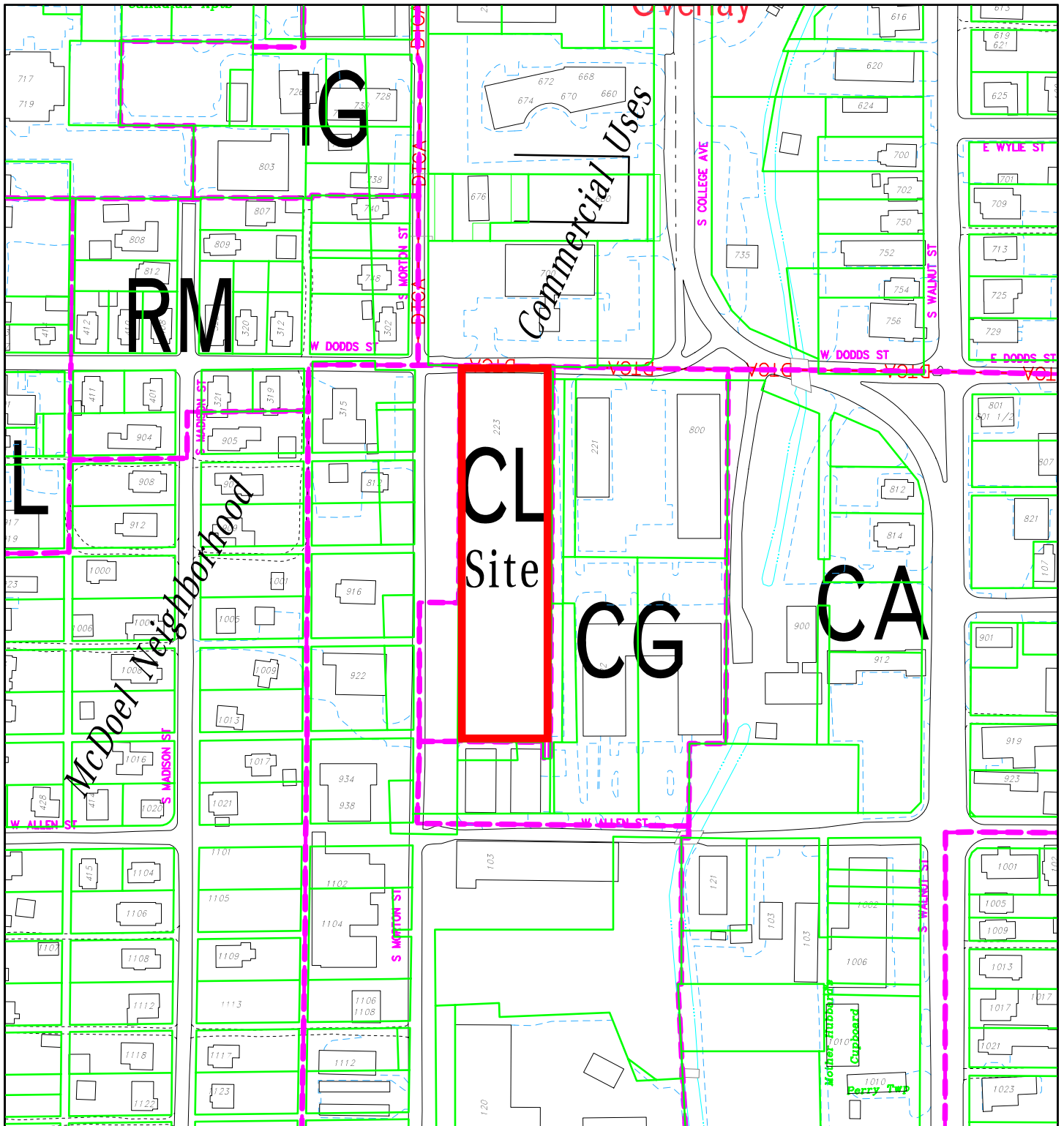


City of Bloomington
Planning



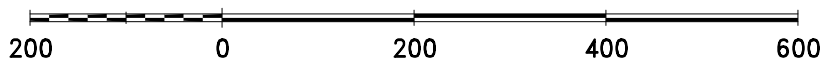
Scale: 1" = 100'

For reference only; map information NOT warranted.



PUD-32-09 Bryan White
 223 W Dodds Street
 Plan Commission
 Site Location, Zoning, Lot Lines, Land Use

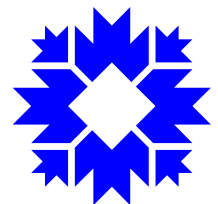
By: greulice
 26 Aug 09



For reference only; map information NOT warranted.



City of Bloomington
 Planning



Scale: 1" = 200'

Interdepartmental Memo

To: Members of the Common Council
From: Eric Greulich, Zoning Planner
Subject: Case # PUD-32-09
Date: October 15, 2009

Attached are the staff report, petitioner's statements, maps, and exhibits which pertain to Plan Commission Case # PUD-32-09. The Plan Commission heard this petition at its October 5, 2009 meeting and voted 6-0 to send this petition to the Common Council with a favorable recommendation.

REQUEST: The petitioner is requesting preliminary plan approval to rezone a 1.6 acre property from Commercial Limited (CL) to a Planned Unit Development (PUD) to allow 17 single family dwelling units to be constructed. Also requested are preliminary plat approval, delegation of final plan approval to staff level, and a waiver of the 5 acre minimum PUD requirement.

SITE INFORMATION:

Lot Area:	1.6 acres
Proposed Lots:	17 lots (11 units/acre)
Current Zoning:	Commercial Limited (CL)
Proposed Zoning:	Planned Unit Development
GPP Designation:	McDoel Switchyard - Community Activity Center
Existing Land Use:	Vacant
Proposed Land Use:	Single Family Residential
Surrounding Uses:	North – Offices South – Mini-warehouse East – Offices/Warehouse Storage/Retail West – Industrial/Single Family Residences (McDoel Neighborhood)

REPORT: The site is located at the southeast corner of W. Dodds St. and S. Morton St. and is currently vacant. The property is an open field with several scattered mature trees throughout the property. The B-Line Trail (Phase 2) will run parallel with the property along the west property line.

The petitioner is requesting a rezoning of the property to a PUD (to be known as "McDoel Station") to allow for 17 single family homes to be constructed. The residences would all face the B-Line Trail to the west and would be constructed using a high level of green building standards, similar to the Evergreen Village project that the City constructed on Rockport Road. In addition, the petitioner has committed to continue to work with Housing and Neighborhood Development Department (HAND) to try and provide affordable housing with this project.

The petitioner is proposing to subdivide the property into 17 individual lots, with each lot containing one single family residence. The petitioner is proposing narrow lots that are approximately 28' wide and reduced building setbacks to

create a rowhouse style appearance from the B-Line trail. There is an existing alley that runs behind the proposed houses to the east that would be widened to provide access to individual driveways for each lot. As part of this petition there would also be two off-premise signs removed from this property.

PRELIMINARY PLAN ISSUES:

Growth Policies Plan: This property is located in the McDoel Switchyard Subarea in the 2002 Growth Policies Plan and is designated as a “*Community Activity Center*”. The GPP notes that redevelopment along the McDoel Switchyard Subarea should include the following-

- *“Redevelopment of the McDoel Switchyard and rail corridor should be focused towards creating a high quality urban greenway.”* The long length of property that faces the B-Line trail allows for an opportunity to create a long, uniform look along the trail. This project has committed to a high level of architectural requirements to insure that a quality product faces the B-Line trail.
- *“In order to beautify the railway, explore redevelopment opportunities of industrial sites along the Morton Street corridor.”* This former quarry property provides an excellent opportunity to redevelop a former industrial site directly on the B-Line trail. The proposed single family residences provide owner occupied housing directly on the trail, which meets one of the goals envisioned when the B-Line was being created.
- *“Ensure that new development and redevelopment within this subarea has appropriate orientation of uses and buildings to the future greenway area.”* All of the residences will have the fronts of the houses facing the trail to the west. In addition, each house will have a small sidewalk network in front that will provide consolidated connection points to the B-Line trail.

This petition incorporates many goals described within the GPP including redevelopment of underutilized property, providing the potential for affordable housing, compact urban form, and high quality, environmentally friendly, owner occupied housing next to the B-Line trail. Although this petition does not include a commercial component, it is only located in a small section of the McDoel subarea corridor that is identified as a community activity center. The Plan Commission found that this petition accomplishes many of the goals of a community activity center such as direct connections to a city-wide greenway system, use of appropriate higher density to provide a compact urban form, and a design sensitive to surrounding residences.

Pedestrian Facilities: This property has over 500’ of frontage directly adjacent to Phase 2 of the B-Line trail, which is projected to be constructed in 2010. The petitioner has worked with the City Parks and Recreation Department to determine the appropriate connectivity to the trail. To achieve the desired

connection, the petitioner is proposing a series of small, internal decorative sidewalks from each house that would lead to 4 connection points along the property. These 4 points would then have a small, paved section to directly connect to the trail. A 4' tall wrought iron style fence would be installed along the entire west property line next to the B-Line trail to insure pedestrians use the designated access points. In addition, a new 5' wide concrete sidewalk is required along Dodds St. and will be installed with this petition. This sidewalk section will also connect to the B-Line trail and will complete a missing segment of sidewalk along the south side of Dodds St.

Architecture: The petitioner has committed to specific architectural requirements for all of the residences. The architecture of the buildings will follow the designs of Greek Revival, Gothic Revival, Italianate, Folk Victorian, and Stick Victorian. A complete list of specific standards, including building materials, is listed in the petitioner's statement. Additionally, a scaled drawing showing 4 house elevations has been provided.

Access: There is an existing 16.5' wide alley that runs north and south along the east property line. This alley connects Dodds St. to Allen St. As part of this petition, the alley would be widened to 20' to allow the Fire Department adequate area to set up their vehicles. The petitioner is dedicating additional right-of-way along the alley to accommodate the widening. Each lot would have a driveway directly to the alley.

Parking: The petitioner is proposing to provide a small driveway in the rear of the lots to provide parking. The driveways would be accessed directly from the alley located along the east property line and would be constructed of a permeable material, either permeable pavement or concrete, or paver blocks. The Plan Commission required that the driveways on lots #1 and #2 must be raised above the 100-year flood elevation.

Landscaping: There are several large, canopy trees along the front of the property and scattered throughout the property. The petitioner is proposing to save many of the existing trees along the front to improve the view of the property from the trail. In addition, there would be 20 new trees and 58 foundation plants installed along the front of the houses.

Environmental: The property is mostly an open field with several scattered mature trees. A portion of the southeast corner of the property is located in the 100-year floodplain of Clear Creek. A drainage easement is required on the final plat for the floodplain. The Plan Commission required that the driveways on lots #1 and 2 be raised above the 100-year floodplain elevation and that they be constructed of permeable material. Any fill or excavation would require approval from the Indiana Department of Natural Resources prior to issuance of a grading permit.

Green Building Features: All of the residences that will be constructed in this subdivision would follow the National Green Building Standard requirements for a "silver" rated structure. Although the petitioner is not proposing that the structures

be certified, they will be designed to meet the silver standards. Some of the features of the residences include high R-value for insulation, high U value windows and doors, tankless water heaters, energy star appliances, and passive solar lighting. In addition, several components of the UDO Green Development Standards will be utilized including utilization of building materials within 500' of the project site, use of permeable pavement, providing possible affordable housing units, and location within one-quarter mile of a public multi-use trail facility.

Affordable Housing: The petitioner has met with the Department of Housing and Neighborhood Development (HAND) to discuss the number of lots that could be included in an affordable housing program. At this time, the petitioner is still working on providing HAND with the information needed for them to make a determination if any affordable housing can be provided with this petition. The petitioner has stated they would like to provide affordable housing with this project and is still working toward that goal.

Development Standards: With this rezoning petition the petitioner is proposing to use the Residential Core (RC) district standards with the modifications listed in the petitioner statement. The petitioner is proposing lots that are a minimum of 28' wide. Each lot would have a side yard setback of 4' for both primary and accessory structures with a rear (east) yard setback of 20' for both primary and accessory structures.

Neighborhood Input: A neighborhood meeting was held on August 13, 2009 to hear comments from the McDoel Neighborhood. There were approximately 25 neighbors at the meeting who had questions regarding the architecture and design of the houses, access to the trail, traffic impacts to Dodds St., the types of green building features the houses would have, and tree preservation. In general many of the neighbors were supportive of the project.

PRELIMINARY PLAT ISSUES:

Utilities: The petitioner is proposing to connect to an existing sanitary sewer line located along Morton Street. A series of stormwater quality trenches are proposed to meet stormwater detention requirements. The trenches will be covered with a grass/sand mixture to allow water infiltration and water quality improvements. Initial review of the submitted grading and drainage plans indicates that the proposed drainage plan is possible. Final approval from City of Bloomington Utilities is needed prior to any land disturbing activity.

Sidewalk/Street Trees: With the subdivision, the petitioner is required to dedicate right-of-way 25' from centerline of Dodds St, which has been shown on the plat. A 5' wide concrete sidewalk and street trees not more than 40' from center are required to be installed on Dodds St. The proposed site plan shows the sidewalk. The sidewalk should be shown to connect to the B-Line trail. The site plan needs to be modified to show the required street trees and species.

Right-of-Way: The petitioner is also dedicating approximately 4.5' of right-of-way along the alley which must be shown on the plat.

Easements: A Drainage Easement is required for the portions of the property that are located within the 100-year floodplain. The tree preservation easement along the fronts of lots #11-15 should be clearly labeled on the final plat. Easements have been provided for all utility lines and pedestrian paths. All easements should be defined on the plat with the definitions listed in the UDO.

Addresses: The lots will be addressed from Morton Street. The Fire Department has asked that the addresses be posted on the front and back sides of the houses. All addresses should be noted on the final plat.

Lot Layout: The petitioner is proposing a front build-to-line that has a maximum 10' setback to allow slight flexibility in the setback from the front property line. The front setback line should be re-labeled as a build-to-line on the plat. The proposed lots also exceed the maximum width to depth ratio of 4:1; the proposed lots are 28' wide and 146' long and have a width to depth ratio of 5:1.

ENVIRONMENTAL COMMISSION MEMO:

1. **“Final plan should come back to Plan Commission”** – Staff believes that there is adequate detail with this proposal so that final plan review by the Plan Commission is not necessary.
2. **“The design should be modified to protect the floodplain and remove the two southernmost lots before a final Plat is approved.”** – The proposed site plan meets all UDO requirements for floodplain protection. The UDO requires that a drainage easement be platted for areas within a 100-year floodplain and this has been shown on the plat.
3. **“The petitioner should create a Special Flood Hazard Area Easement complete with signage and defined and delineated on the plat.”** – This has been shown on the proposed plat.
4. **“The petitioner should obtain a permit to develop within a Special Flood Hazard Area prior to receiving any City of Bloomington permits.”** – A condition of approval has been included for this recommendation.
5. **“A proper biofiltration basin should be planned for the two southernmost lots in the floodplain”** – Although biofiltration basins have not been provided on the two southernmost lots, The proposed drainage plan has been designed to meet all CBU stormwater quality and detention requirements. Approval from the City and the Utilities Department is required prior to any land disturbing activity.
6. **“The petitioner should plant trees (in addition to the twenty committed to) along the north edge to create a buffer between the**

homes and Dodds Street and in the floodplain.” – Staff believes the amount of tree preservation in addition to the plantings the petitioner is proposing, is adequate for the site. The UDO does not have any landscaping requirements for single family subdivisions except for street trees. The petitioner has shown the required street trees along Dodds St.

7. **“The petitioner should modify the plan such that buildings are clustered and biofiltration and native phytofiltrating vegetation can be included.”** – Staff believes the current configuration and plan achieves the desired goals of the City and provides a good balance between reasonable development of the site along with environmental protection.

RECOMMENDATION: The Plan Commission voted 6:0 to forward this petition to the Common Council with a positive recommendation including the following conditions of approval:

1. A grading permit is required prior to any land disturbing activity.
2. The design and elements of the houses must match the photos and elevations provided for each architectural style.
3. The trees shown to be preserved in front of lots #9-13 must be clearly shown on the site plan and plat.
4. With this approval, final site plan approval is delegated to Staff level.
5. A permit from the Indiana Department of Natural Resources or a letter stating no permit is needed, is required prior to any land disturbing activity in the floodplain. The driveways on lots #1 and 2 must be raised above the 100-year floodplain elevation.

MEMORANDUM

Date: 25 September 2009

To: Bloomington Plan Commission

From: Bloomington Environmental Commission

Through: Linda Thompson, Senior Environmental Planner

Subject: PUD-32-09, McDoel Station Planned Unit Development
223 W. Dodds Street

This memorandum contains the Environmental Commission's (EC) input regarding the request of 1.6 acres to be rezoned as a new Planned Unit Development (PUD) District named McDoel Station. The site is located along Phase II of the B-Line Trail with plans for 17 lots with single-family houses that face the trail. The houses will be built using some environmentally conscientious practices and features, as defined in the National Green Building Standards 2008 Silver rating. The developer will be receiving financial assistance from the Housing and Neighborhood Development Department to sell two houses (~12% of total houses) affordably. It is possible that additional funds may be provided from the City in the future to offer additional affordable houses.

The EC is in favor of the general vision of this PUD and appreciates the level of green building commitments. The plan reflects many of the District Intents for PUDs as outlined in the UDO 20.04.010. However, the EC believes that the plan falls short with regard to 20.04.010 (f); "Promote and protect the environmental integrity of the site and its surroundings and provide suitable design responses to the specific environmental constraints of the site and surrounding area." The EC is particularly disappointed that the petitioner has not committed to protection of the floodplain (Special Flood Hazard Area), nor have they committed to stormwater-quality practices that will result in enhanced water quality after a neighborhood is built compared to its current wooded quality.

A PUD is a large-scale unified development with its own set of development standards that may differ from the UDO. Nevertheless, the EC holds that PUD requirements should not be less protective of natural resources than the UDO regulations. These regulations are defined with the individual PUD request. A PUD District Ordinance must be adopted by the Common Council and specifies the "uses and development regulations for the PUD site in lieu of the regulations for a standard zoning district."

ISSUES OF SOUND ENVIRONMENTAL DESIGN FOR MCDOEL PUD:

1. PETITIONER REQUESTS:

The petitioner is requesting:

a.) Rezone from Commercial Limited (CL) district to PUD district
The EC supports the approval of this change in zoning.

b.) A Preliminary Plan approval from the Plan Commission
The EC supports this approval with conditions

c.) Delegation to staff for Final Plan approval
The EC does not support this request because it is not satisfied that the floodplain, tree cover, and stormwater quality are planned as well as they could be. The EC would like to have the opportunity to continue to work with the developer at the final plan stage to improve these features.

d.) A waiver for a PUD less than five (5) acres
The EC supports the request to allow this PUD to be less than five (5) acres.

e.) A Preliminary Plat approval
The EC does not support this request because it believes that the two southernmost lots should be eliminated or the configuration changed to construct a proper biofiltration basin in the flood plain. The EC is not in favor of driveways crossing a floodplain and doubts that the future homeowners will maintain a swale within a driveway. In addition, to construct even a pervious driveway requires grading to install the gravel base, which is defined by FEMA as development and not generally allowed.

2. FLOODPLAIN PROTECTION:

A floodplain is also termed a Special Flood Hazard Area (SFHA) or the surface of the Base Flood Elevation (BFE). The UDO states in 20.05.048 [Floodplain Standards;] that “No development or other activity which might impair the flow of water in the floodplain shall be permitted.” It is easy to imagine that a future homeowner may want to construct a shed, garage, carport, or fence, or perhaps fill in the low areas on their property (particularly the driveways) within the SFHA. In addition, during construction no equipment will be allowed to be parked or staged within the floodplain. The EC therefore recommends that an easement be created for the Special Flood Hazard Area. An Easement will define what is allowed and prohibited within it, and require signage that will assist in delineating it to future homeowners.

The EC also believes that the petitioner should obtain a permit from the Indiana Department of Natural Resources for development within a Special Flood Hazard Area before any City of Bloomington permits are granted. FEMA defines development as “any man-made change to improve or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of

equipment or materials.” A permit may be denied, in which case the site plan and the objective of this PUD would likely change.

3. WATER QUALITY:

The EC is concerned about the lack of stormwater quality protection practices. Shallow swales between the houses will guide water flow to detention trenches on the west and east edges of the site and rooftop water will also be directed to these swales. This configuration allows little time for rainwater infiltration. The collected water will flow through perforated pipes connected to the City stormwater system. This system is convenient given the size of the lots, but provides little actual filtration because they are very narrow, will be planted with turf grass, and direct the water to the storm system. When the houses are occupied, pollutants such as fertilizers, herbicides, and pesticides will flow directly into the detention trenches and then to the storm water system leading to our local waterways. The EC is concerned that this will result in lower water quality than the empty, vegetated lot currently provides.

The EC recommends additional water quality best management practices (BMPs) and suggests the ditches be directed into a constructed biofiltration basin where water can be filtered by soil and native plants. The logical location for such a biofiltration basin is on the two southernmost lots within the floodplain. This would serve the dual purpose of protecting the floodplain from human disturbance and provide water filtration for the stormwater.

4. TREE PRESERVATION:

The site is relatively wooded at this time but, as a result of grading and construction, almost no existing trees can be saved from construction and grading. Tree cover provides numerous benefits in the city, including carbon sequestration; habitats for birds and other organisms; aesthetic beauty; and shading, reflectivity, and evaporative cooling that help to provide a comfortable environment and reduce demand for air conditioning and associated costs in energy, money, and greenhouse gas emissions. The petitioner has committed to planting 20 new trees between the houses and the B-Line Trail. The EC believes that in addition to the 20 trees, more should be planted along the setback on the north edge of the site and in the floodplain to attempt to make up for the loss of tree canopy allowed through the PUD process. The EC recommends these trees be a diverse mixture of species native to the south central Indiana bioregion.

5. DENSITY:

The EC favors high density for the sake of compact urban form and clustered site-design for the sake of preserving natural resources. However, at this site because of tree canopy loss, little water quality protection, no dwelling clustering, and floodplain encroachment, the EC believes that fewer lots should be created in favor of adequate natural resource protection. The EC recommends that the southernmost two lots be eliminated so that water quality and vegetation planting can occur, and the other lots clustered tighter together if that is possible.

EC RECOMMENDATIONS FOR CONDITIONS IF REQUESTS ARE APPROVED:

1. Final plan should come back to Plan Commission.
2. The design should be modified to protect the floodplain and remove the two southernmost lots before a final Plat is approved.
3. The petitioner should create a Special Flood Hazard Area Easement complete with signage and defined and delineated on the plat.
4. The petitioner should obtain a permit to develop within a Special Flood Hazard Area prior to receiving any City of Bloomington permits.
5. A proper biofiltration basin should be planned for the two southernmost lots in the floodplain.
6. The petitioner should plant trees (in addition to the twenty committed to) along the north edge to create a buffer between the homes and Dodds Street and in the floodplain.
7. The petitioner should modify the plan such that buildings are clustered and biofiltration and native phytofiltrating vegetation can be included.

MEMORANDUM

TO: PLAN COMMISSION MEMBERS

FROM: JOE FISH, TRANSPORTATION PLANNER
Planning Dept. liaison to the Bloomington Bicycle and Pedestrian Safety Commission

RE: MORTON & DODDS

DATE: AUGUST 25, 2009

The Bloomington Bicycle and Pedestrian Safety Commission reviewed the proposed site plan for the Morton & Dodds project at its regular meeting on August 17, 2009. The Commission believes that the proposal is appropriate for the area, and that the project will be an exciting development for the B-Line Trail. The following recommendations were made:

- A sidewalk is not necessary along north-south alley; traffic calming would be preferred to a sidewalk.
- A short fence between the B-Line Trail and residential entries should be provided to channel residents to consolidated access points along the trail.

McDoel Station



A Traditional Neighborhood Development

Presented by: Arvis Homes, Inc.
Bryan White, President

VISION

McDoel Station will be the ultimate combination of an Urban lifestyle with the intimacy of hometown living of days gone by. McDoel Station homeowners will enjoy a front porch experience that few others will know; the B-Line trail right outside their front door will offer evening conversation with their neighbors as Bloomington residents stroll by on their way in to downtown for an ice cream sundae.

These homeowners will also exhibit a tremendous sense of pride as those that pass by their homes compliment them on the beauty of the homes. Beautifully crafted custom homes that will take everyone back to the warmth and sense of community demonstrated by the architecture of the mid to late 1800's; a tribute to the charm and character the community of Bloomington is known for.

As the residents of McDoel Station live their lives within their homes, they will do so knowing that they are contributing to the betterment of the environment. They will raise their children and entertain their families within the walls of a state of the art home with the latest in efficient design, Green materials and technologies designed to reduce the carbon foot print and offer the families a peace of mind.

The design of this community also embodies the fundamental principles of Bloomington, sense of community, safety of Bloomington residents, maintaining the traditional charm and character of the community, beauty, efficiencies and the opportunity for those that may not otherwise have it.

Bynum Fanyo & Associates, a local architectural and engineering firm, has been engaged to implement the Civil Engineering design for this site.

Request

- The Petitioner is requesting plan approval to rezone a 1.6 acre property from Commercial Limited (CL) to a Planned Unit Development (PUD) to allow 17 single family dwelling units to be constructed. Also requested are preliminary plat approval, delegation of final plan approval to staff level, a waiver of the 5 acre minimum PUD requirement.

Site Information

223 West Dodds St.

Category	Description
Lot Area	1.6 Acres
Proposed Lots	17 (11 units per acre)
Current Zoning	Commercial Limited (CL)
Proposed Zoning	Planned Unit Development
GPP Designation	McDoel Switchyard – Community Activity Center
Existing Land Use	Vacant
Proposed Land Use	Single Family Residential
Surrounding Uses	North – Offices
	South – Mini-Warehouse
	East – Offices/Warehouse Storage/Retail
	West – Industrial/Single Family Residences (McDoel Neighborhood)

Benefits of PUD

- Bloomington's only new Green, efficient community in downtown.
- 24 Hour presence on the trail.
- Sense of increased security on trail.
- Within the Bloomington Urban Enterprise District.
- Price Range 175k to 300k
- Increased Property Values
- Designated tree preservation area.
- Covenants and Restrictions will preserve the original beauty and design of McDoel Station.
- PUD designation is more restrictive of exterior materials, architecture and less density than current CL Zoning.
- Fulfills goals of the GPP.
- Predetermined access points to B line.

Site Specifications

1. **GREEN**

All homes built on this site shall be built following the guidelines of a “Green Program”. All homes will follow the SILVER LEVEL guidelines as set forth in the NATIONAL GREEN BUILDING STANDARDS 2008 EDITION as approved and adopted by the AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) on January 29, 2009. There shall no requirement that an individual home be enrolled and certified in the program. The property is located within the Bloomington Urban Enterprise Zone. The design of this PUD follows many of the aspects of the Green Development standards of the UDO. Examples are: Goal 1 (e): Goal 2 (a, b): Goal 3: Goal 4

2. **UTILITIES AND STORM WATER MANAGEMENT**

Utilities will connect to existing services located on Morton, Dodds and Allen Streets. Water and storm lines will be located in the dedicated right of way east of the property. Sewer line will be located on the west edge of the property along Morton Street. Storm water management will be facilitated by a filtered bio swale along the east right of way. This system will best serve the site design as well as correct a current existing drainage condition in the right of way. There is also an additional filtered bio swale along the southwestern edge of the property that will ensure water quality as well as improve a flooding condition for the property to the south. Driveways crossing this system will be of the wearing tread design or traditional size driveways constructed with permeable materials such as permeable pavers, geo grids or other approved designs. Maintenance of the drainage features will be the responsibility of the Owners and HOA.

3. **AFFORDABILITY**

HAND staff has agreed to sponsor two homes, based on HAND's funding availability and commitments for this year. HAND has expressed an interest in sponsoring additional homes in their next fiscal year depending on the program specifics and funding availability in their next fiscal year.

4. **LANDSCAPING**

Twenty (20) additional trees and fifty eight (58) foundation plants will be planted in the front yards of the homes along the Trail to accentuate the tree preservation area. Hardscape materials will be of natural style and colors to enhance the look and feel of the Trail and in keeping with the period correct theme and architectural style of the homes. In addition, a wrought iron style fence will be installed along the western edge of the property along the "trail" edge.



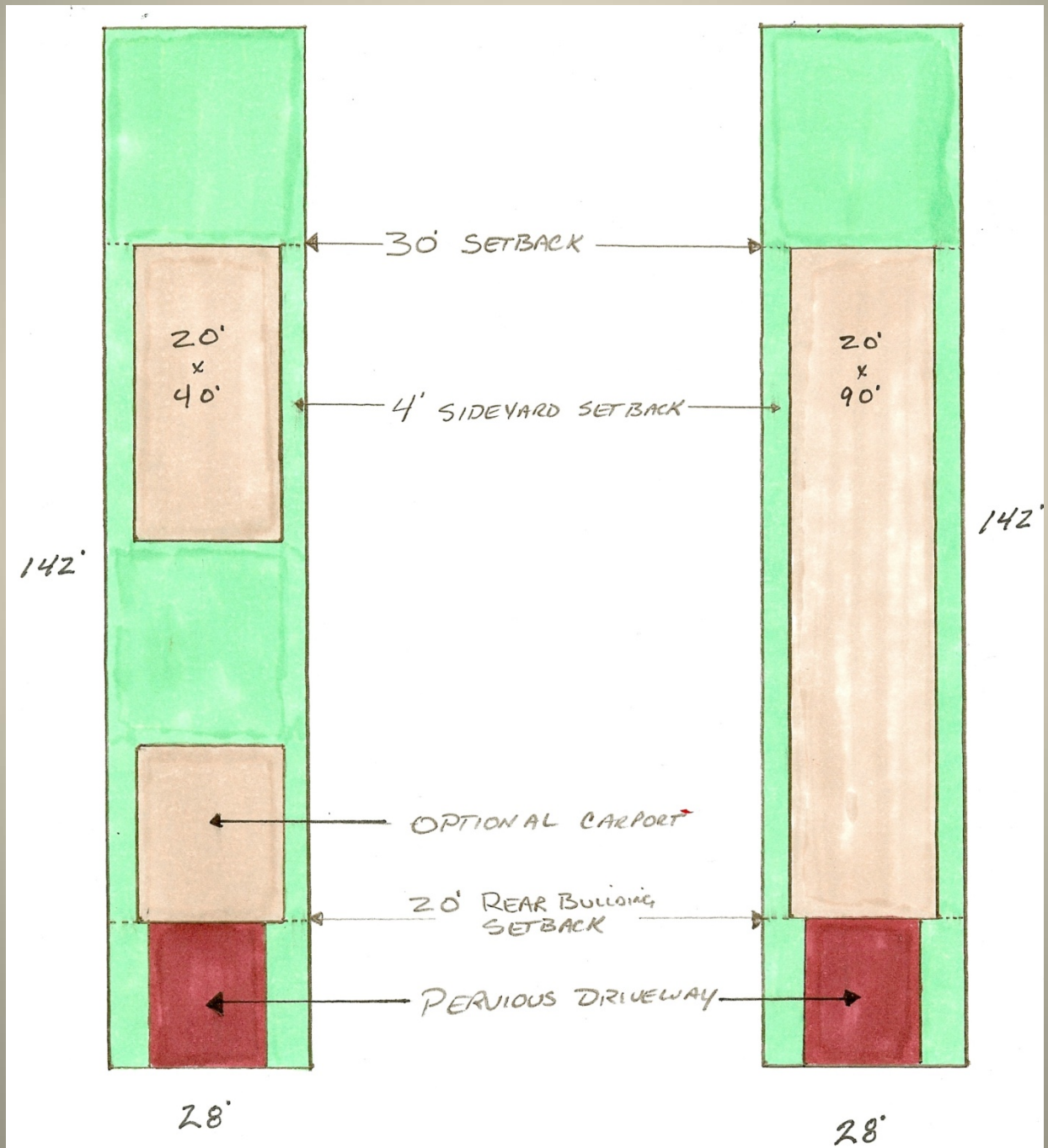
Lot Standards

Residential Core (RC) District

(Except as noted Below)

Category	Description
Lot 1	6,248 SQFT
Lot 2 thru 16	3,990 SQFT
Lot 17	5,908 SQFT
Min Lot Width	28 Feet
Min Front Bldg Setback	30 Feet
Min Side Setback	4 Feet
Min Rear Setback	20 Feet 15 Feet DU&E Easement Within
Max Number of Primary Structures	1 Residential Unit per Lot
Max Number of Accessory Structures	1 Structure per Lot Carport, Detached Garage or Attached Garage Permitted
Max Impervious Coverage	45%
Max Height	Primary 35 Feet Accessory 20 Feet


Typical Lot Layout



ARCHITECTURAL STANDARDS

- Build to line: Building fronts must be placed within ten (10) feet of the Build to Line or a maximum setback of ten (10) feet. Porch may not encroach.
- Eave Height: 9-24 feet (Measured from ground floor)
- Entrance: Primary Entrance or Front porch must face west. (Trail)
- Gable Width: Maximum gable width 22 feet
- Wall Materials: Wood, Composite, Cementitious siding, Brick, Stone, Steel
- Trim Materials: Wood, Composite, Cementitious, Cellular PVC, Fiberglass
- Roof Materials: Asphalt, Fiberglass, Steel, composite shingles, Steel standing seam
- Roof Slope: Minimum 5/12 Maximum 10/12
- Porch: Minimum Depth: 6 feet. Minimum eave height 8 feet.
- Windows: Double Pane
- Accessory Structure: Must be built using substantially the same materials and in the same design as primary structure.
- Any new exterior materials must maintain or enhance the architectural styles of the homes and the site. Example photos on next slide.

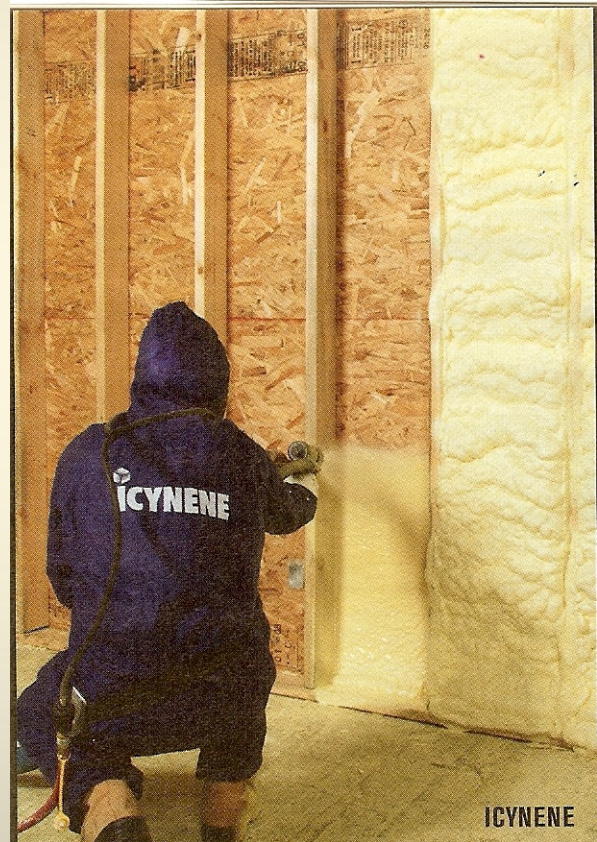

New Material Examples



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Architectural Styles

- Greek Revival 1825-1860
- Gothic Revival 1840-1880
- Italianate 1840-1885
- Stick Victorian 1860-1890
- Folk Victorian 1870-1910

Greek Revival



- Pedimented Front Gable or Hipped Low Pitch Roof 5/12
- Wide Heavy Banded Cornice Line, Wide Plain Frieze
- Prominent Square or Round Columns
- Pediment Gable
- Simulated six pane window sashes
- Horizontal lap, stucco, or Brick

Gothic Revival



- Steep Pitched Roof 10/12
- Decorative Verge Board
- Simulated two pane window sashes
- Horizontal lap, Vertical board and batten siding, or Brick
- Flattened, pointed gothic arches on porch columns
- Wall surface extending into gable uninterrupted

Italianate



- Front Gable or Hipped Low Pitch Roof 5/12
- Decorative brackets beneath eaves
- Tall narrow one or two pane sash windows with elaborate crowns
- Wide projecting cornices with brackets
- Front door with large glass
- Horizontal lap, Stucco or Brick

Stick Victorian



- Mid to Steep pitch roof 6/12 to 10/12
- Decorative trusses at apex/gable
- Horizontal lap, fish scale, and/or shingles with horizontal, vertical and/or diagonal trim boards
- Simulated one or two pane window sashes

Folk Victorian



- Low , Mid or Steep pitch roof 5/12 to 10/12
- Decorative Spindle work and trim on front porch
- Horizontal lap, fish scale, and/or shingles with horizontal, vertical and/or diagonal trim boards
- Simulated one or two pane window sashes

Single Family House Types

The homes of McDoel Station will be a variety of 2, 3 and 4 bedroom homes ranging in approximate size from 900 to 1900 square feet. Some homes will feature attached two car garages, Remaining homes will have the option of an attached or detached carport.

Structure Specifications

- Efficient Framing Techniques
- Thermally Sealed
- High R value insulation
- High U value Windows and Doors
- High efficiency HVAC Systems
- Internal Duct work
- Tank less water heaters or equal
- Renewable finish materials, reclaimed floors, glass tiles, concrete counter tops etc.....
- Permeable Driveways
- Energy Star appliances

Declaration of Conditions, Restrictions, Reservations, and Protective Covenants for

McDoel Station Subdivision

THESE CONDITIONS, RESTRICTIONS, RESERVATIONS, AND PROTECTIVE COVENANTS for McDoel Station Subdivision ("Covenants") made this _____ day of _____, 2009, by Bryan E.White, President, Arvis Homes Incorporated ("Declarant"), on its own behalf and on behalf of its successors and assigns.

WITNESSETH:

Whereas, Declarant owns certain property located at Morton and Dodds Streets in the city of Bloomington, Indiana more particularly described as :

Lot numbers 3, 4, 5, 6, 7, 8, and 9 in Lowe's Addition to the City of Bloomington, Indiana, excepting a strip of ground 13 ½ feet in width off of and along the North side of Lot 9 in Lowe's Addition to the City of Bloomington, Indiana.

Also, that portion of Park Avenue in said City of Bloomington, Indiana, in Seminary Lot 64 described as follows, to wit: Beginning at the Southwest corner of Lot 6 in Lowe's Addition to the City of Bloomington, thence East along South line of said lot a distance of 132 feet, to the Southeast corner thereof; Thence South 66 feet, to the Northeast corner of lot 5 in Lowe's Addition, thence West along the North line of Lot 5 in Lowe's Addition, a distance of 132 feet, to the Northwest corner thereof; thence North to the place of beginning.

Also, beginning at a point on the West line of lot 9 in Lowe's Addition to the City of Bloomington, Indiana, which point is 13 ½ feet South of the Northwest corner of said lot; running thence West 14 feet to a point 5 feet East of the East rail of the East track of the Chicago, Illinois and Louisville Railway, thence South parallel with said East rail and 5 feet there from 538 feet, thence East 14 feet, more or less, to the West line of lot 2 in said Lowe's Addition, the same being also the West line of said Seminary Lot, of Lowe's Addition, thence North 538 feet to the place of the beginning, all of the above in the City of Bloomington, Monroe County, Indiana, and as vacated, as appears in the City Clerk's Office in Record 24, Pages 180-181, in the City of Bloomington, Indiana.

Which Declarant has subdivided and named McDoel Station Subdivision ("Subdivision") by a plat recorded on _____, 2009 as Instrument Number _____ in plat cabinet ____ Envelope ____ in the office of the Recorder of Monroe County Indiana; and

WHEREAS, Declarant desires to impose upon the Real Estate these Covenants that will provide reasonable and beneficial conditions, restrictions and reservations for the benefit of the Real Estate and will protect the value and desirability of the Real Estate; and

WHEREAS, a drawing of each Lot within the Subdivision is attached hereto as Attachment A and incorporated herein by reference, which drawings depict certain areas on each Lot that are dedicated herein as drainage, utility and landscaping easements that the lot owners are required to maintain as provided herein; and

WHEREAS, the Covenants are specifically intended to run with the Real Estate and bind all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, successors, grantees and assigns, and shall be for the benefit of each owner thereof;

NOW, THEREFORE, Declarant hereby declares the Real Estate shall be held, sold and conveyed subject to the following conditions, restrictions, reservations and protective covenants which are for the purpose of protecting the value and desirability of, and which will run with the Real Estate and be binding upon all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, successors, grantees and assigns.

1. Definitions:

“Homeowners Association” means the McDoel Station Homeowners Association established in Section 13 Herein.

“House” means a primary single family House structure built on a Lot.

“Lot” means any or each of the Lots shown on the recorded Plat(s) of the Real Estate which are subject to these Covenants.

“Owner” includes every person whose name is listed on the recorded deed to a Lot.

“Plat” means the initial Plat as recorded at the Office of the Recorder of Monroe County, Indiana, Plat Cabinet ____, Envelope__.

2. Use: Each Lot in the Subdivision shall be used only for single family residential purposes, provided, however, that the home occupations that comply with the City of Bloomington zoning ordinance are permitted.
3. Prohibited Activities. No activity shall be conducted on the Real Estate which may be or may become an annoyance or a nuisance to the neighborhood in general.
4. Carports; Parking. Carports may NOT be enclosed without obtaining prior approval from the Homeowners Association. Each Lot shall contain two off-street parking spaces, which may include space in the carports.
5. Subdivision of a Lot Prohibited. There shall be no subdivision of any Lot or Lots nor sale thereof in parcels, except that a portion of a Lot may be sold to the owner of an adjoining Lot if no new Lot is created, provided that the conveyance complies with all applicable ordinances.
6. Driveways. Driveways may not be enlarged without obtaining prior approval from the Homeowners Association. Driveways shall be constructed of wearing treads, porous pavers or other pervious materials and shall NOT be paved with asphalt or other non-pervious surfaces. Parking of vehicles upon any part of a Lot except a driveway is not permitted.
7. Fences. Fencing for rear yards shall be made of wood or wood simulated product, unless another material is approved by the Homeowners Association, and shall not be greater than six (6) feet in height. Fences for Front yards shall be made of wrought iron or simulated product,

unless another material is approved by the Homeowners Association, and shall not be greater than four (4) feet in height. No fence shall in any way impede storm water drainage.

8. Satellite Dishes. No satellite dishes greater than two (2) feet in diameter may be installed on any Lot. All satellite dishes shall be attached to a House, toward the rear of the mid-point of the main body of the House, and shall not impede the performance of any roof mounted solar device.
9. Tanks. The installation or maintenance of above ground bottle gas on the Real Estate shall be prohibited except for residential gas grill tanks and the collection of rainwater for irrigation purposes. Rainwater collection containers shall not exceed 33 gallons in size.
10. Easements. All Lots are subject to any and all easements, including but not limited to utility, detention, and drainage easements, as shown on the Plat. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may, in the opinion of the Declarant, damage or interfere with the purpose of the easement. The Owner of each Lot shall maintain the easement areas of the Lot and all landscaping and drainage improvements in the easement areas continuously, except for those improvements for which a public authority or utility company is responsible.
11. Landscaping. Lot Owners shall be responsible to maintain and upkeep landscaping only with plants listed on the Plant list for that area. Lot owners shall maintain the drainage feature on their Lot or in the public right-of-way immediately adjacent to their Lot in compliance with the Operations Manual. Declarant reserves the right to revise the Operations Manual and Plant List. Declarant shall provide a copy of any revisions to the Operations Manual and Plant List to the Owner of each Lot.
12. Enforcement of Maintenance of Drainage Features. All Drainage Features and other areas that provide a storm water control function, including but not limited to, swales, culverts, banks, detention areas and other areas, shall be maintained in a manner which allows these areas to function as designed. If the Declarant determines that such an area is not being maintained properly, Declarant may give the Lot Owner written notice of the problem and 30 days to correct it. If it is not corrected within 30 days, Declarant may perform the work or contract for its performance and bill the Lot owner. By acquiring ownership of a Lot, each Owner of the Lot hereby grants to Declarant, and its agents, successors and assigns, a right of entry to enter upon the Lot for purposes of performing work Declarant deems necessary. By acquiring ownership of a Lot, each Lot Owner consents to imposition by Declarant of a lien upon the Lot for the cost of any work performed by Declarant to bring the Lot into compliance with these Covenants that is performed after the lot Owner has failed or refused to perform said work after notice and a reasonable opportunity to perform, as provided herein. Any action required to enforce such a lien shall include costs and reasonable attorney fees.

13. Homeowners Association and Review Process.

- a. Homeowners Association. The Corporation shall be incorporated by Declarant upon sale of 75% of lots. The Declarant shall appoint an initial Board of Directors consisting of an Association President and two additional members. The Declarant shall appoint the Board of Directors until such time as the Declarant no longer holds title to any lot(s) in the development. The Owners of each Lot in the Subdivision shall be members of the Homeowners Association. Each Lot shall have one vote at meetings of the Homeowners Association, regardless of the number of Owners of a Lot. Upon transfer of ownership of a Lot, membership for that Lot shall automatically transfer to the new Owner of the Lot.
- b. Meetings. The Association shall hold an annual meeting of the membership not later than March 31 of each year. Each member of the association shall be given not less than 14 days notice of any meeting of the membership. Notice shall contain the date, time and place of the meeting and shall be sent to the owners as disclosed by the records of the Auditor of Monroe County, Indiana. After the date the Declarant no longer holds title to any lot(s) in the development, the membership, at the next annual meeting shall elect a Board of Directors.
- c. Responsibilities. The Homeowners Association shall have the responsibilities for the following items: (1) maintenance and repair of drainage swales, rain gardens, and associated items; (2) Maintenance of common area items, example: fence along the trail; (3) liability insurance in an amount sufficient to protect corporation and its officers and directors, (4) payment of professional fees and any other monies resulting from activities of the corporation; (5) an annual audit of the financial records of the corporation by a certified public accountant and publication of audit at annual meeting; (6) any other responsibility that the membership accepts by majority vote at any annual meeting.
- d. Assessments. The Homeowners Association shall have the right to assess the Owners of Lots an amount to cover the costs of maintaining, replanting and repairing drainage features and landscaping, mowing, snow removal , and the costs of any other work the Homeowners Association deems reasonably necessary on or adjacent to Lots to allow the storm water control features in the Subdivision to function as designed in compliance with statutes or ordinances, and any other amounts to cover the costs of improvements the Homeowners Association deems will reasonably benefit the entire Subdivision, such as the cost of a sign at the Subdivision Entrance identifying the Subdivision.
- e. Approvals by Homeowners Association. Modifications to the House after completion of construction, or additions or changes to the approved plans during construction, must be approved in advance by the Homeowners Association. Approval is not required to paint the House, or to replace the roof or other components with duplicate(s) of the original material. Significant new landscaping, grading and any removal or substantial pruning of trees or plants must be approved by the Homeowners Association in advance and must comply with these Covenants. Matters to be submitted for approval shall

include construction plans and specifications, including all materials; elevations of all proposed improvements; proposed clearing, grading and landscaping; and all other items required by the Homeowners Association. Plans and specifications for review shall be submitted in the form required by the Homeowners Association. The Homeowners Association may provide lists of approved materials and may delegate approval of routine or minor matters.

14. Underground Utilities. All telephone, data transmission, electrical and cable television or similar connection from the utilities' lines shall be underground from the street, unless deemed impractical by the company providing the service in writing. As soon as underground installation becomes practical, then such connections shall be placed underground.
15. Roof Mounted Solar Devices. The roof mounted solar devices (solar panels) shall not be removed from a House without permission of the Homeowners Association. Owner's shall take no action that impedes the functioning of the roof mounted solar devices on the owner's House or an adjoining House without permission from the Homeowners Association.
16. Building Setbacks and Build-To Lines. No structure shall be located on any Lot nearer to the front, side or rear Lot lines than the minimum set backs shown by the lines or table on the Plat. Structures shall be located within ten (10) feet of the build-to line as shown by lines or table on recorded Plat.
17. Architectural Standards. Each lot is allowed one (1) residential building for the purpose of a residential Home. Homes shall be built with one of the following architectural styles unless a different style is approved by the Homeowners Association: Greek Revival, Gothic Revival, Italianate, ~~Queen Anne~~, Folk Victorian and ~~Craftsman~~. Any exterior changes or alterations to approved drawings must be approved by the Homeowners association. All homes shall be built following the guidelines of the NATIONAL GREEN BUILDING STANDARDS 2008 or another equal program.
18. General. The foregoing Covenants shall run with the land and shall be binding on all Owners of Lots. The initial terms of the Covenants shall continue until January 1, 2029, at which time the Covenants shall be automatically extended for successive periods of ten (10) years unless a majority of the present Owners of the Lots covered by the Covenants votes to change the Covenants in whole or in part. Prior to January 1, 2029, the Covenants may be amended by vote of a majority of the present Owners of Lots covered by the Covenants, provided that the Declarant also gives its written approval of the amendment. For purposes of this section, each Lot shall have one vote. Invalidation of any part of the Covenants by judgment or court order shall in no way affect any other provisions of the Covenants, which shall remain in full force and effect.

The rights to enforce these Covenants by injunction together with the right to cause the removal by due process of law of any structure of part thereof erected or maintained in violation hereof is hereby dedicated to the public and reserved to the Declarant and the owners of the Lots in this subdivision, and to their heirs and assigns.

CITY OF BLOOMINGTON, INDIANA

By: _____ By: _____

STATE OF INDIANA)

)SS:

COUNT OF MONROE)

Before me, the undersigned, a Notary Public in and for said County and State this ___ day of _____, 2009 personally appeared, Bryan E. White, as President of Arvis Homes Incorporated, and executed the foregoing as his voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires

Notary Public

Printed

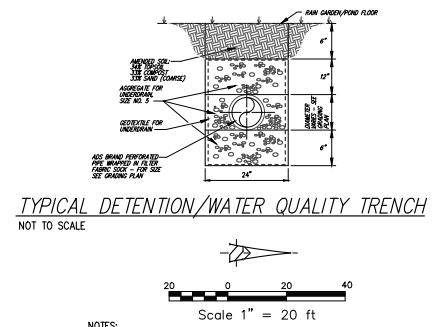
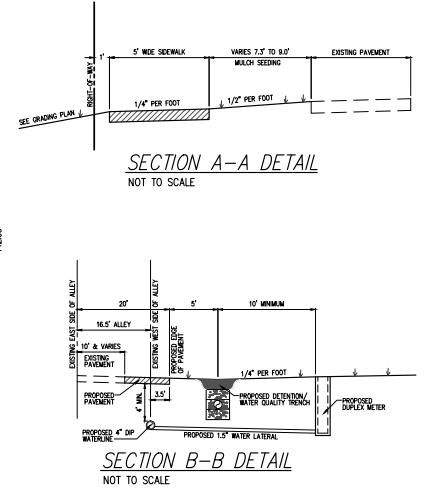
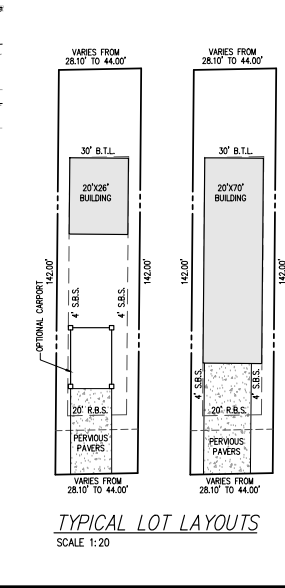
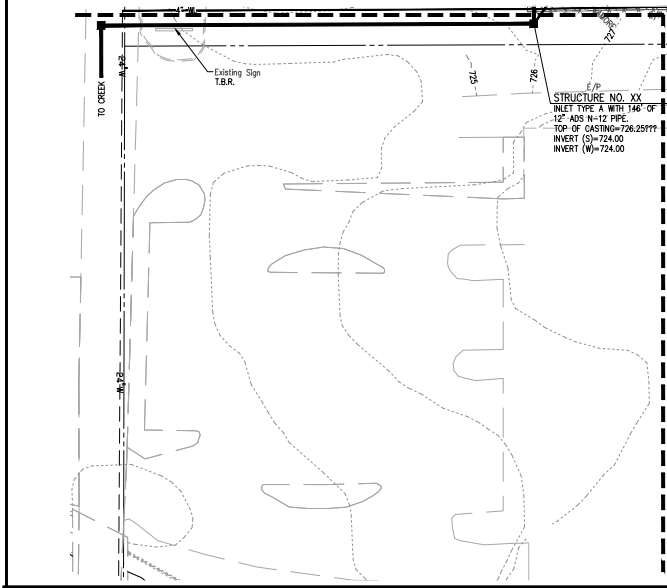
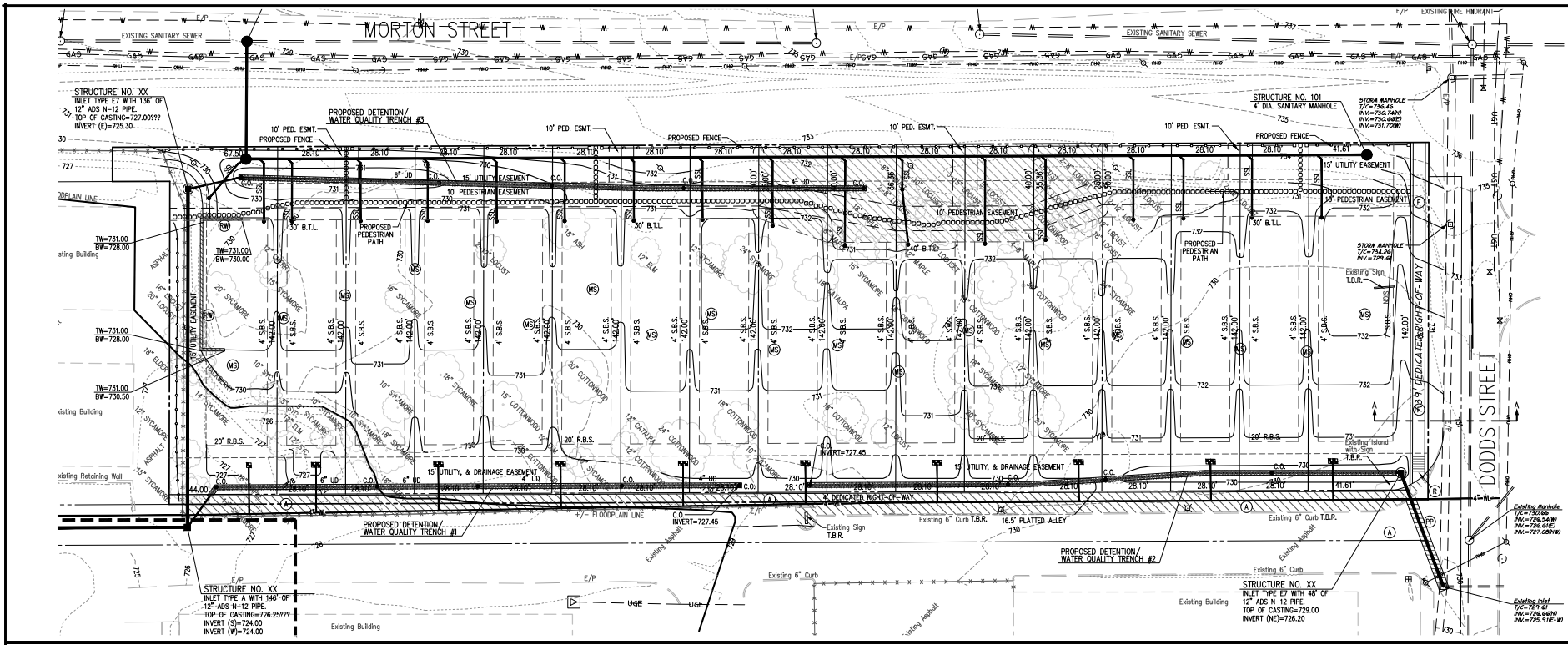
This instrument prepared by _____



McDOEL STATION

BLOOMINGTON, INDIANA





NOTES:
 1. MINIMUM CRAWL SPACE ELEVATION=731.00
 2. MINIMUM SLAB ON GRADE ELEVATION=731.00

NOTE: CONTRACTOR SHALL VERIFY ALL UTILITY LOCATIONS & DEPTHS AND NOTIFY ENGINEER OF ANY INACCURACIES IN LOCATION OR ELEVATION OR ANY CONFLICTS PRIOR TO & AFTER ANY EXCAVATION. NO PAYMENT SHALL BE MADE TO CONTRACTOR FOR UTILITY DESTRUCTION OR UNDERGROUND CHANGES REQUIRED DUE TO CONFLICTING ELEVATIONS.

revisions:

ARCHITECTURE
 CIVIL ENGINEERING
 PLANNING

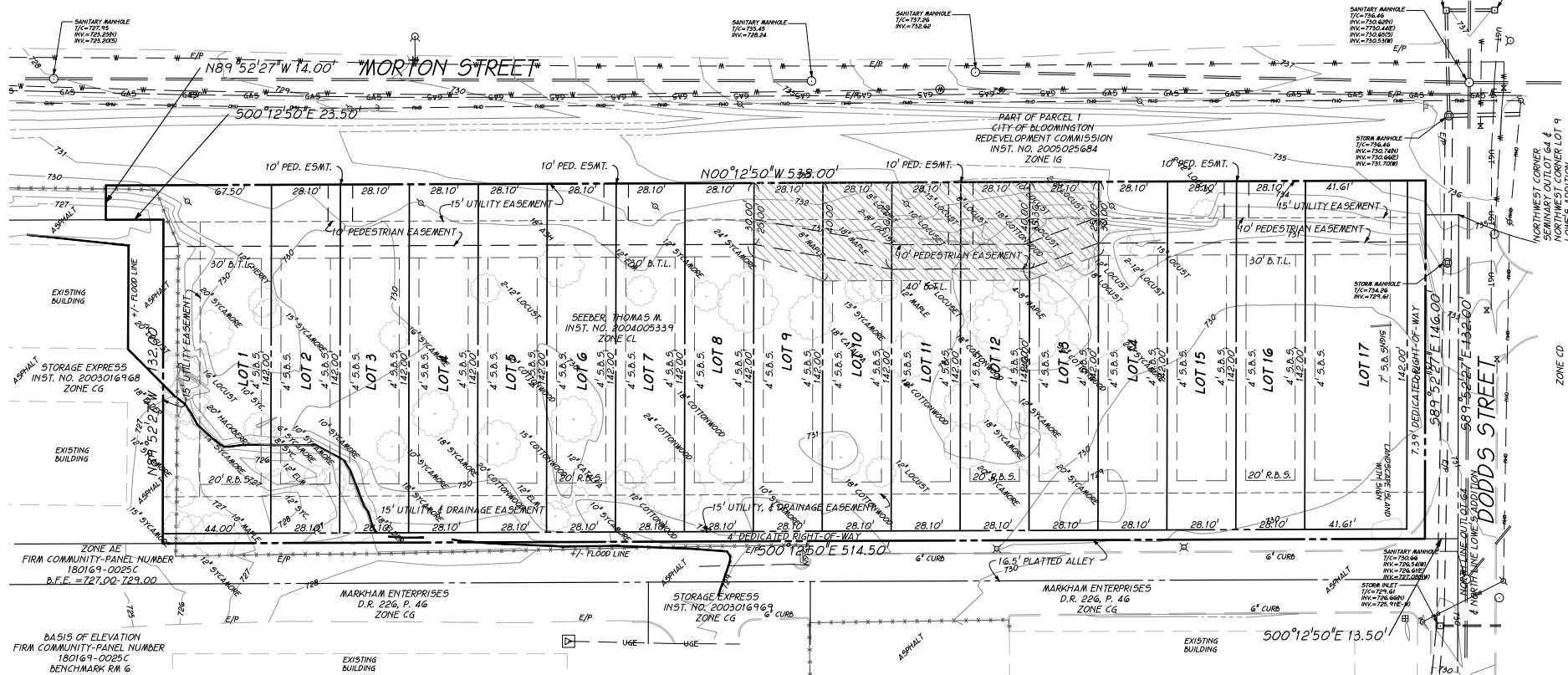
BPM
 BYNUM FANTO & ASSOCIATES, INC.
 528 north walnut street
 Bloomington, Indiana
 (812) 332-8030

certified by:

Proposed:
MORTON & DODDS PUD
 Bloomington Indiana

title: SITE GRADING, UTILITY & EROSION CONTROL PLAN

designed by: JBF
 drawn by: JR
 sheet no: 2
 project no: 40096



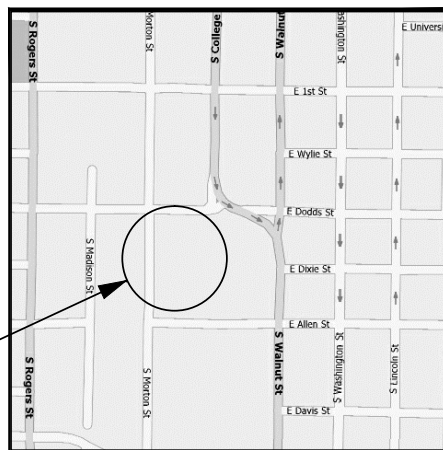
NOTE: BUILD TO LINE B.T.L.
 MINIMUM SETBACK 0'
 MAXIMUM SETBACK 10'
 SIDE BUILDING SETBACK S.B.S.
 REAR BUILDING SETBACK R.B.S.

LOT 17 SHALL HAVE AN ATTACHED GARAGE

TREE PRESERVATION EASEMENT

TREE PRESERVATION EASEMENT PROHIBITS REMOVAL OF ANY TREE OVER 6" IN DIAMETER AT BREAST HEIGHT. REMOVAL OF DEAD AND DISEASED TREES THAT POSE A SAFETY RISK OR IMPEDE DRAINAGE, ONLY AFTER FIRST OBTAINING WRITTEN APPROVAL FROM THE PLANNING DEPARTMENT.

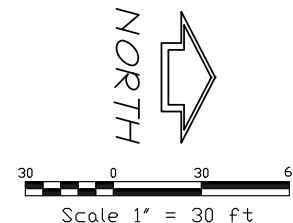
PEDESTRIAN PATH SHALL BE FIELD LOCATED TO COMPLY WITH THE ABOVE.



LOCATION MAP

LEGEND

PROPERTY LINE	---
EASEMENT LINE	- - - -
FENCE	- X - X -
OVERHEAD UTILITIES	- OHU -
OVERHEAD ELECTRIC LINE	- E -
UNDERGROUND ELECTRIC LINE	- USE -
UNDERGROUND GAS LINE	- GAS -
UNDERGROUND TELEPHONE LINE	- UGT -
WATER LINE	- W -
SANITARY SEWER LINE	- S -
DEED RECORD BOOK AND PAGE	XXX/XXX
5/8" REBAR WITH CAP SET	S
MAG NAIL SET	NY
RECORD	R
MEASURED	M
RIGHT-OF-WAY	ROW
UTILITY POLE	□
FIRE HYDRANT	□
ELECTRIC METER	□
WATER METER	□
TELEPHONE RISER	□
ELECTRIC TRANSFORMER	□
STORM BASH	□
WATER VALVE	□
SIGN	X
AREA LIGHT	X
SANITARY SEWER CLEAN OUT	○
CABLE T.V. BOX	○
GAS METER	○
LANDSCAPE AREA	L.S.
INGRESS AND EGRESS EASEMENT	I.E.E.
DRAINAGE AND UTILITY EASEMENT	D.I.E.
UTILITY POLE ANCHOR	←
ANTENNA	△
MAIL BOX	□
AIR CONDITIONING PAD	AC
GENERATOR	GEN
L.P. GAS TANK	GAS
HANDICAP PARKING SPACE	♿



MORTON & DODDS SUBDIVISION
 PRELIMINARY PLAT
 223 W. DODDS STREET
 AUGUST 4, 2009
 SHEET 1 OF 2

STORAGE EXPRESSSM

September 28, 2009

Dear Plan Commission Members:

I own the real estate immediately east of the proposed Morton and Dodds PUD. An office building sited on the real estate houses my business, Storage Express. This office building, known as The Star Center, also houses Bloomington Hospital's Diabetes Care Clinic, as well as classrooms used by Indiana Wesleyan University and Rose-Hulman, and six other small businesses.

In addition, my neighbor, Lamar Advertising (formerly Hoosier Outdoor Advertising) uses the existing alley and my office building's front parking lot to access its business from the south. Jim Gordon, Inc. and other businesses are also located east of the proposed development and north of my property.

As a consequence of the presence of and resulting activity from these businesses and the clinic, there is substantial traffic across the 16.5 foot platted alley that runs north and south between the proposed development and Mr. Gordon's and my properties. There are upwards of 75 parking spaces on my property, and I have 40 employees. While heavier use occurs during normal business hours, my business office is open 17 hours a day, seven days a week. The classroom space is primarily used in the evening hours by Indiana Wesleyan.

I am not opposed to Mr. White's proposed development. However, I do have access, safety and parking concerns relating to the proposed design of the project. I am aware that the petitioner has agreed to grant an additional 4' of right of way along the alley. This, along with the heavy use that is already present will turn this right-of-way into a defacto street. However, there is not sufficient room for on street parking. Since the front of the homes face on to the B-Line trail, there is also no available parking to the west of the proposed homes as would normally be the case in a traditional block and alley type development. Therefore, all parking for these homes will have to be located onsite, including autos of teenage children, relatives, guests, visitors and delivery vehicles.

I was originally advised that the rear building setback would be 20 feet for homes with attached garages -- and only five feet for detached garages or carports. A five foot setback from the street R-O-W which, in this case, will also be the pavement edge, would not allow any site distance for cars backing out of these garages or carports. This would create a safety hazard for my employees using the alley, Diabetes Care Center patients, other patrons and employees, and likely even the residents of the new development. Such a small setback would not permit any additional off street parking.

I subsequently learned that there is a 15 foot drainage and utility easement on the subject property, adjacent to and west of the new west R-O-W line of the alley, that should prevent the construction of garages that close to the street. I request that, at a minimum, this become the new rear yard setback line for all accessory structures -- and that, preferably, the accessory structure setback be extended to 20 feet. This would allow for stacked parking for delivery vehicles or guests behind the garages and carports (whether attached or detached). It would also provide better visibility for drivers backing out onto what is now a busy thoroughfare that will be even more heavily used with this development.

I plan to relocate parking for my employees from the west edge of the alley R-O-W to the paved area on my property east of the alley that is adjacent to my building. This will mean that the new street will, in fact, be only 20.5 feet in width. Therefore, I want to confirm that no parking will be allowed on either side of the street.

As a point of information -- at the south end of the alley, after it leaves the edge of the proposed development, it runs between two pieces of property that I own, and will only be 16.5 feet in width, for a length of about 132 feet.

Thanks for taking my particular concerns with this development into consideration. I hope that you will support my request for additional setback of the garages, carports and accessory structures to the same standard as the main dwelling unit, and that this will be added as a required condition to this PUD. I look forward to discussing these issues with you at the upcoming plan commission meeting on October 5th.

Cordially,



Jefferson Shreve

PUD-32-09
Neighbor letter

RESOLUTION 09-19

AUTHORIZING REPRESENTATIVES TO ACT ON BEHALF OF THE CITY OF BLOOMINGTON WITH RESPECT TO CERTAIN MATTERS RELATED TO BROWNFIELDS FINANCIAL ASSISTANCE TO BE AWARDED BY THE INDIANA FINANCE AUTHORITY

- WHEREAS, The City of Bloomington, Indiana, has applied to the Indiana Finance Authority for a Brownfields Stipulated Remediation Grant to offset costs associated with remediation on additional lengths of the B-Line Trail; and,
- WHEREAS, The Indiana Finance Authority has approved the award of State Financial Assistance to be used for the above-stated remediation; and,
- WHEREAS, The Council of the City of Bloomington hereby acknowledges the terms and conditions associated with the State Financial Assistance, by way of an example of such terms and conditions which is attached hereto and incorporated herein as Exhibit A, and authorizes the Mayor to execute a Stipulated Remediation Grant Agreement (“Agreement”) on behalf of the City with the Indiana Finance Authority documenting the terms and conditions related to the City’s receipt and use of the State Financial Assistance;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. The Council hereby accepts the award of State Financial Assistance and acknowledges the terms and conditions associated with such State Financial Assistance, including but not limited to the requirement that certain “investment” (as defined in the Agreement) shall be made in this project or the State Financial Assistance will be required to be repaid.

SECTION 2. The Council hereby acknowledges that the deadline to satisfy the investment requirement (as defined in the Agreement) is two years from the Execution Date of the Agreement.

SECTION 3. The Council hereby authorizes the Mayor to act on behalf of the City of Bloomington and execute a Stipulated Remediation Grant Agreement and all other documents related to the award of State Financial Assistance with respect to this project.

SECTION 4. This resolution shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and approval of the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2009.

ANDY RUFF, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2009.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2009.

MARK KRUZAN, Mayor
City of Bloomington

Synopsis

This resolution accepts the award of financial assistance from the Indiana Finance Authority for a Brownfields Stipulated Remediation Grant to offset the costs associated with remediation of Phase II of the B-Line Trail. The resolution also acknowledges the terms and conditions of the assistance and authorizes the Mayor to act on behalf of the City in executing the grant agreement and all related documents therewith.



MARK KRUZAN
MAYOR

CITY OF BLOOMINGTON

401 N Morton St
Post Office Box 100
Bloomington IN 47402

Alisa Wood
Budget, Research & Grants Manager

CONTROLLER'S OFFICE

p 812.349.3412
f 812.349.3456
wooda@bloomington.in.gov

Memorandum

To: Council Members
From: Alisa Wood
Date: October 28, 2009
Re: Resolution 09-19

In Resolution 09-19, the City is asking for authorization from Council to affirm its intent to execute an agreement between the City of Bloomington and the Indiana Finance Authority Brownfields Program to receive a \$400,000 Stipulated Remediation Grant.

The resolution is a new requirement and must precede the execution of the agreement. Once executed, funding can be used to remediate areas along the next phases of the B-Line Trail that are known to contain coal ash and cinder, which require removal and soil replacement as deemed appropriate by a Project Workplan approved by the Brownfields Program.

If you have questions, please feel free to contact me at wooda@bloomington.in.gov or by phone at 349-3412.

Thank you.

Resolution 09-19

Exhibit A

**INDIANA FINANCE AUTHORITY
REMEDATION GRANT AGREEMENT**

This **Remediation Grant Agreement** (“Agreement”) has been entered into and shall be effective as of the “Execution Date” (as denoted on the attached Master Schedule, which is incorporated herein by this reference, the “Master Schedule”), between the Indiana Finance Authority (“Authority”) and the Grant Recipient (as denoted in the Master Schedule). The parties to this Agreement in consideration of the mutual covenants, obligations and stipulations set forth in this Agreement, agree as follows:

1. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to make a conditional grant in the amount not to exceed the Grant Funds (as denoted in the Master Schedule as modified from time to time) from the Environmental Remediation Revolving Loan Fund (“Brownfields Fund”) to the Grant Recipient to provide for the payment of qualified costs and expenses incurred by the Grant Recipient in the completion of all activities, work, services and reports required to be undertaken pursuant to this Agreement (“Project Activities”) at the site denoted in the attached Master Schedule (“Site”). The Project Activities are part of a recreational use Trail Project being overseen by the Indiana Department of Transportation: the Trail is entitled “B-Line Trail” (Phase II) and is located in Bloomington, IN. The Grant Funds will be transferred from the Authority to the Grant Recipient, and shortly thereafter by the Grant Recipient to the Indiana Department of Transportation (“INDOT”) to serve as the match for a separate grant awarded by INDOT for this Site. The letting for the Contract by INDOT has not yet occurred; therefore, INDOT’s contractor has not been selected at the time of the execution of this Agreement. However, the INDOT Contract will include the Remediation Workplan that is submitted to and approved by the Authority.

Grant Funds shall be used exclusively in accordance with this Agreement and in accordance with Ind. Code 13-19-5 et. seq. (the “Act”). As used in this Agreement, “Project Activities” means those remediation activities that are:

- A. Generally described in the Grant Recipient’s grant application as denoted on the Master Schedule (“Grant Application”), which Grant Application is attached as Exhibit A to this Agreement and is incorporated herein by this reference; and,
- B. Specifically described in INDOT’s Contract and as outlined in the Authority-approved Workplan, which is to be reviewed and approved by the Authority at a later date. The Workplan denoted on the Master Schedule shall be attached as Exhibit B to this Agreement upon its approval by the Authority and incorporated herein by this reference.

2. COMPLETION OF PROJECT ACTIVITIES:

Within 2 years from the Execution Date or, if sooner, by each activity-based deadline otherwise noted in the Grant Application, Exhibit A, any Workplan or Exhibit B (each a “Completion Deadline Date”), all Project Activities must be completed to the satisfaction of the Authority consistent with its rules, regulations, policy memoranda, guidelines and directives applicable to a grant of the type applied for with the Grant Application as denoted on the Master Schedule as modified from time to time by the Authority’s board (“Guidelines”). The Grant Recipient may request that any such Completion Deadline Date be extended. If approved by the Authority, the Completion Deadline Date will be extended to the date set forth in such approval; however, all other provisions of this Agreement shall remain the same and in full force and effect. Additionally, in the event the Authority determines that the Grant Recipient is not working with reasonable dispatch toward completing its Project Activities under this Agreement, the Authority may unilaterally fix and determine the new Completion Deadline Date to be any date that is at least 90 days after the date notice is given by the Authority to the Grant Recipient, provided that such new Completion Deadline Date is no sooner than 1 year after the Execution Date. This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

3. **DUTIES, RESPONSIBILITIES OF GRANT RECIPIENT:**

A. **Work to be Performed**

The Workplan, as it is approved, together with any amendments made to it with the approval of the Authority, shall be made Exhibit B to this Agreement. The scope of Project Activities described in the Workplan may be modified in a material way only if approved by the Authority. Notwithstanding any review, approval, inspection or other activity related to the Project Activities undertaken (or to be undertaken) by the Authority, the Grant Recipient shall be solely responsible for the proper design, implementation and other activities related to the Project Activities and their compliance with applicable Federal, State and local laws, including ordinances, regulations and rules and other legal authority, to which the Authority and the Grant Recipient are subject inclusive of the Act ("Law").

B. **Notifications**

The Grant Recipient is responsible for providing notice to the Authority of the date and times upon which Project Activities will be performed. Communication of any changes to the date and times of the Project Activities is also the responsibility of the Grant Recipient.

C. **Consent of Landowner**

The Grant Recipient represents that it and the Authority have the right to enter the Site and to perform or cause to be performed the Project Activities throughout the term of this Agreement. In the event the Site is not owned by the Grant Recipient, the Grant Recipient has obtained a letter of consent from the appropriate and duly authorized person or persons that it, its Consultant and the Authority have the right to access the Site to perform the Project Activities throughout the term of this Agreement. Such consent, if necessary, is attached as Exhibit C to this Agreement and is incorporated herein by this reference.

D. **Compliance with Program, Laws**

All Project Activities shall be performed in compliance with this Agreement and all Guidelines and Law. The Grant Recipient acknowledges that this Agreement is subject to all requirements of applicable Law. The Grant Recipient agrees to be solely responsible to ensure that the use of the Grant Funds is in compliance with all Law. The Grant Recipient acknowledges and agrees that the Grant Recipient is subject to repayment of Grant Funds for failure to comply with this Agreement and the Law. Without limiting the generality of the foregoing, the Grant Recipient acknowledges, certifies, represents, warrants and agrees as follows:

- (1) The Grant Recipient and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the Authority or the State of Indiana ("State"), as set forth in Indiana Code 4-2-6 et seq., the regulations promulgated thereunder, Executive Order 04-08, dated April 27, 2004, Executive Order 05-12, dated January 10, 2005, and 25 Indiana Administrative Code 6, effective January 1, 2006. If the Grant Recipient or any of its agents are not familiar with these ethical requirements, they should refer any questions to the State Ethics Commission, or visit the State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If the Grant Recipient or any of its agents violate any applicable ethical standards, the Authority may, in its sole discretion, terminate this Agreement immediately upon notice to the Grant Recipient. In addition, the Grant Recipient may be subject to penalties under Indiana Code 4-2-6-12.
- (2) The Grant Recipient certifies by entering into this Agreement, that it is not presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the Authority or the State. The Grant Recipient agrees that any payments currently due to the Authority or the State may be withheld from payments due to the Grant Recipient. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the Grant Recipient is current in its payments and have submitted proof of such payment to the Authority or the State.
- (3) The Grant Recipient warrants that it has no pending or outstanding criminal, civil, or enforcement actions initiated by the Authority or the State, and agrees that it will immediately notify the Authority of any such actions. During the term of such actions, the Grant Recipient

agrees that the Authority may delay, withhold, or deny work under this Agreement and any supplements or amendments.

- (4) The Grant Recipient warrants that it and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of Project Activities under this Agreement. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further rights to contract with the Authority.
- (5) The Grant Recipient affirms that it is properly registered if necessary and owes no outstanding reports with the Indiana Secretary of State.
- (6) The Grant Recipient agrees that the Authority may confirm, at any time, that no liabilities exist to the Authority, and, if such liabilities are discovered, that Authority may bar the Grant Recipient from contracting with the Authority in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the Grant Recipient is current in its payments on its liability to the Authority and has submitted proof of such payment to the Authority.
- (7) As required by Indiana Code 5-22-3-7:
 - (a) The Grant Recipient certifies that (A) the Grant Recipient, except for de minimis and nonsystematic violations, has not violated the terms of (i) Indiana Code 24-4.7 [Telephone Solicitation Of Consumers], (ii) Indiana Code 24-5-12 [Telephone Solicitations] , or (iii) Indiana Code 24-5-14 [Regulation of Automatic Dialing Machines] in the previous 365 days, even if Indiana Code 24-4.7 is preempted by federal law; and (B) the Grant Recipient will not violate the terms of Indiana Code 24-4.7 for the duration of this Agreement, even if Indiana Code 24-4.7 is preempted by federal law.
 - (b) The Grant Recipient certifies that its respective affiliates, principals and agents: (A) except for de minimis and nonsystematic violations, have not violated the terms of Indiana Code 24-4.7 in the previous 365 days, even if Indiana Code 24-4.7 is preempted by federal law; and (B) will not violate the terms of Indiana Code 24-4.7 for the duration of this Agreement, even if Indiana Code 24-4.7 is preempted by federal law.

E. Reports, Records, Evaluations, Inspections

- (1) The Grant Recipient shall document all uses of Grant Funds and maintain adequate books and accounts in accordance with generally accepted accounting principles or generally accepted governmental accounting principles, as applicable, consistently applied. The Grant Recipient shall permit the Authority and its agents, employees, officers and representatives at any reasonable time to inspect, audit and examine such books and accounts. The Grant Recipient agrees to cooperate fully with any such inspection, audit or examination.
- (2) The Grant Recipient agrees to submit to the Authority at any time and from time to time such records and reports as may be required by the Authority.
- (3) The Grant Recipient shall continue to submit technical reports and documents as requested by the Authority until the Authority receives the final Consultant's Report (as denoted in the Master Schedule) and deems it acceptable.
- (4) Within thirty (30) days following receipt of a Closure Letter from the Authority stating that the activities outlined in Exhibit B have been completed to the satisfaction of the Authority, the Grant Recipient shall submit to the Authority a completed "Brownfields Project Survey" form (current form attached as Exhibit G) available online at <http://www.in.gov/ifa/files/projectsurvey.xls>. The Brownfields Project Survey form will provide the Authority with current information regarding remediation and redevelopment plans for the

Site and should be expected to be updated by the Grant Recipient on a periodic basis in the future until redevelopment at the Site is complete.

- (5) The Authority or its authorized representative(s) may, with reasonable notice to the Grant Recipient, enter the Site for the purpose of conducting any activity related to implementation of the Project Activities required by this Agreement (“Oversight Activities”), including, but not limited to, the following activities:
- (a) monitoring the work;
 - (b) verifying any data or information submitted to the Authority;
 - (c) conducting investigations relating to contamination at or near the Site;
 - (d) obtaining samples;
 - (e) assessing the need for, planning, or implementing additional response actions at or near the Site;
 - (f) assessing implementation of quality assurance/quality control and/or health and safety practices
 - (g) assessing the Grant Recipient’s compliance with this Agreement; and
 - (h) determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Agreement.

The Grant Recipient will ensure the cooperation of its employees and agents in any Oversight Activities, including using best efforts to ensure the cooperation of Tri-County Builders Co., Inc. and its subcontractors. The Grant Recipient will take all reasonable action necessary to correct or cure any problems or deficiencies identified by the Authority or its authorized representative(s) during its Oversight Activities or at any point during implementation of the Project Activities. During any Project Activities and Oversight Activities at the Site, all parties to this Agreement will adhere to the requirements of the health and safety plan, which shall be specific to the Site. Notwithstanding any provision of this Agreement, the State retains all of its access authorities and rights under IC 13-25-4-5, IC 13-24-1, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901*et seq.*, and any other applicable statutes or regulations.

F. Grant Recipient Investment

Consistent with the Authority’s Guidelines in effect as of the Execution Date, the Grant Recipient agrees to cause qualified investment to be made from a source other than the Grant Funds in the amount required by such Guidelines and as denoted on the Master Schedule (“Investment”). Consistent with such Guidelines, the Investment shall be expended or otherwise committed by the Grant Recipient for the benefit of or directly related to the Site no later than the Completion Deadline Date. Grant Funds may not be the source of the Investment. No later than the Completion Deadline Date or periodically upon the request of the Authority, the Grant Recipient shall provide adequate documentation of the qualified Investment made with respect to the Site.

4. PROJECT ACTIVITIES, BUDGET DETAIL:

A. Budget Detail

Bids to perform remediation activities will be received through a competitive bid process and selected by INDOT.

Unless specified, all references in this Agreement to contamination are to the contamination denoted in the Workplan that shall be approved by the Authority and incorporated into the INDOT Contract.

The Grant Recipient certifies that the approved bid related to remediation as specified in the INDOT Contract, as included as Exhibit B to this Agreement, is no greater than the Grant Funds and is in the amount required for, or reflects costs associated with, performing Project Activities in accordance with the type(s), volume(s) and location(s) of contaminants of concern on the Site noted in the approved bid solicitation (the “Area(s) of Concern”). In the event the actual cost of remediation incurred by the Grant Recipient is less than the cost for the Project Activities estimated in the approved bid solicitation for any

reason (including, but not limited to, reduced actual contaminant volume), the Grant Recipient will return to the Authority any unused portions of the Grant Funds (“Unused Grant Funds”) following their release to the Grant Recipient by INDOT upon the completion of any necessary audits. The Grant Recipient will immediately notify the Authority of INDOT’s decision to release any Unused Grant Funds.

B. Limitation on Use of Grant Funds

No costs may be incurred by the Grant Recipient prior to the Execution Date without the consent of the Authority. All costs and expenses incurred by the Grant Recipient must be directly related to the conduct of Project Activities at the Area(s) of Concern, as identified in the INDOT Contract which incorporated the Workplan approved by the Authority.

In the event previously undiscovered contaminants of concern (“Unknown Contaminants”), in any media (or in any containers) not previously identified in the approved bid solicitation, that are the objective of remediation activities under this Agreement, are identified at the Site during implementation of the Workplan, the Authority is under no obligation to fund the cost of addressing such Unknown Contaminants. In the event that additional activity related to such Unknown Contaminants is deemed necessary or beneficial by the Authority and the Grant Recipient, such supplemental activity may be considered for reimbursement by the Authority only following the acceptance by the Authority of the change order, which order shall describe the nature and cost of the proposed additional activity,

C. Limitation on Amount of Grant Funds

Notwithstanding anything in this Agreement to the contrary, the Authority shall not be obligated to provide more than the Grant Funds provided under this Agreement.

5. PAYMENT OF GRANT FUNDS:

A. Schedule, Timeliness of Payment

The Grant Recipient will not authorize or approve disbursement by INDOT of Grant Funds until the following has occurred: The Grant Recipient will submit the payment request received from the INDOT Contractor, when selected, to the Authority within three (3) days of its receipt. The Authority’s project manager assigned to the Site will review the payment request upon receipt from the Grant Recipient, and will provide written approval or denial of the payment request within seven (7) days. Upon the Authority’s written approval of the payment request, Grant Recipient shall authorize INDOT to disburse Grant Funds for the approved expenditures.

B. Denial of Payment Request for Project Activities

If the Grant Recipient authorizes INDOT to disburse Grant Funds for (1) any Project Activities that have not been approved in writing by the Authority upon its review of a payment request, or (2) any Project Activities that have not been presented to the Authority for review in a payment request, the Grant Recipient shall repay the amount equal to the Grant Funds disbursed by INDOT for such Project Activities consistent with the terms of Section 6 below.

6. CONVERSION TO LOAN:

Notwithstanding any provision of this Agreement to the contrary, in the event any Project Activities (including satisfaction of the Investment requirement) are (1) not completed to the satisfaction of the Authority consistent with this Agreement by any Completion Deadline Date, or (2) any other entity involved in redeveloping the Site is adjudged, by final, non-appealable order within 10 years of the date of this Agreement, to be a party responsible for the contamination being remediated with Grant Funds, or (3) if the Grant Recipient is adjudged, by final, non-appealable order, to be a party responsible for causing or contributing to the contamination being remediated with Grant Funds, the Grant Recipient acknowledges, understands and agrees that it will be obligated to repay an amount equal to the Grant Funds disbursed to or for the benefit of the Grant Recipient, together with an amount equal to interest as if accruing on the disbursed Grant Funds, at a per annum rate of 3%, from the dates of such disbursements until repaid to the Authority (collectively, the “Repayment Amount”). Such repayment shall commence with an initial repayment to be made by the Grant Recipient to the Authority on that date which is the first day of the fourth calendar month that follows the second annual anniversary of the Final Execution Date, and shall continue quarterly thereafter on the first day for the next 19 quarters. Each of such 20 payments shall be

approximately equal in amount and shall in total equal the Repayment Amount. If requested by the Authority, the Grant Recipient agrees to execute a note (in a form approved by the Authority) payable to the Authority (or its designee) in a principal sum and with such terms (including the provision of interest at a rate of 3% per annum) to evidence its obligation under this Section and to deliver the same to the Authority within 14 days after being presented with such a note.

7. **TERMINATION, RETURN OF FUNDS:**

If the Authority, through monitoring or reviewing of the Project Activities or otherwise, determines that the Grant Recipient is not performing or completing the Project Activities in accordance with their respective obligations under this Agreement, the Authority may inform the Grant Recipient of such determination. The Grant Recipient acknowledges and agrees that if it does not (a) use the Grant Funds as agreed or (b) correct any reasonable non-compliance determination by the Authority within a reasonable time, it shall forfeit any right to additional disbursements and will be obligated to repay to the Authority previously disbursed Grant Funds pursuant to the terms of Section 6 of this Agreement.

8. **ENVIRONMENTAL REPRESENTATIONS:**

The Grant Recipient represents and warrants that:

- A. the Grant Recipient did not generate or transport hazardous substances, pollutants, or contaminants at or to the Site;
- B. the Grant Recipient did not own the Site or operate any facility at the Site at the time of disposal of hazardous substances, pollutants and contaminants at the Site;
- C. all disposal of hazardous substances, pollutants and contaminants at the Site occurred before the Grant Recipient acquired the Site (if applicable);
- D. the Grant Recipient has not caused, contributed to or exacerbated the release of hazardous substances, pollutants or contaminants on or from the Site;
- E. no other entity involved in redeveloping the Site is potentially liable under CERCLA or IC 13-25-4 for the contamination at the Site or that, if they are, they qualify for a defense to liability under CERCLA or IC 13-25-4. Such determination of responsibility shall have been made by the Grant Recipient through its own investigation and said determination is not binding upon the Authority. Furthermore, if (1) any other entity involved in redeveloping the Site is adjudged, by final, non-appealable order within 10 years of the date of this Agreement, to be a party responsible for the contamination being remediated with Grant Funds, or (2) if the Grant Recipient is adjudged, by final, non-appealable order, to be a party responsible for causing or contributing to the contamination being remediated with Grant Funds, the Grant Recipient shall forfeit any right to additional disbursements and will be obligated to repay to the Authority previously disbursed Grant Funds pursuant to the terms of Section 6 of this Agreement; and,
- F. to the best of the Grant Recipient's knowledge, all other information provided by the Grant Recipient in its Grant Application is true and accurate.

9. **STOP WORK ORDER:**

- A. The Authority may order the Grant Recipient to stop all Project Activities immediately in the event of a demonstrated imminent and substantial threat to human health or the environment. In the event that such an order is issued, the Grant Recipient will take all reasonable action necessary to ensure INDOT's cooperation in ceasing Project Activities as a result of the order. The Grant Recipient will use its best efforts to have INDOT submit to the Authority an estimate of additional costs, if any, which result from the order. If the Authority determines that the Site conditions resulting in the stop work order were not caused by INDOT's Contractor or one of its subcontractors through disregard for conditions that would be reasonably expected at similar remediation sites, or through a negligent act

or omission by INDOT's Contractor or a subcontractor to INDOT's Contractor, then INDOT's Contractor. will be eligible for reimbursement of reasonable additional project costs through approval for supplemental disbursement by the Grant Recipient following written approval by the Authority in accordance with Section 5 of this Agreement.

- B. Notwithstanding any provision of this Agreement, the State retains all of its authorities and rights under IC 13-25-4-5, IC 13-24-1, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901*et seq.*, and any other applicable statutes or regulations to address an imminent and substantial threat to human health or the environment.

10. **GOVERNING LAW:**

This Agreement shall be construed in accordance with and governed by the laws of the State and any suit must be brought in the State.

11. **COMPLIANCE WITH LAW:**

The Grant Recipient agrees to comply with all licensing and permitting requirements for the Project Activities, if any, and all applicable Law required by such licensing and permitting requirements to be included in this Agreement are incorporated by this reference. The Grant Recipient agrees to comply with all applicable Law. The enactment of any Federal or State statute, or the promulgation of regulations under such statute, after the Execution Date may be reviewed by the Authority in its discretion to determine whether or not this Agreement is required to be amended to effectuate such new statute or regulation.

12. **PENALTIES, INTEREST, ATTORNEY'S FEES:**

The Authority will in good faith perform its required obligations under this Agreement, however it does not agree to pay any penalties, liquidated damages, interest, court costs or attorney's fees unless specifically required by State law.

13. **INDEMNIFICATION:**

By the Grant Recipient: To the extent permitted by Law, the Grant Recipient agrees to indemnify, defend and hold harmless the State, the Authority and their agents, officers, and employees from any and all claims, demands, losses, expenses, damages (general, punitive or otherwise) and suits, including (but not limited to) court costs, attorney's fees and other costs and expenses caused by any negligent act or omission of the Grant Recipient. To the extent permitted by Law, the Grant Recipient agrees to indemnify and hold harmless the Authority from and against any and all costs and expenses including (but not limited to) court costs, attorney's fees and other costs and expenses, incurred by the Authority in its enforcing this Agreement against the Grant Recipient.

Neither the State nor the Authority is providing any indemnification, either jointly or severally, to the Grant Recipient or the Consultant or any subcontractors.

14. **INDEPENDENT CONTRACTOR:**

All the parties, in their performance of this Agreement, are acting in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. No party will assume any liability for any injury, including death, to any other party or person or any damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of another party.

15. **DISCRIMINATION PROHIBITED:**

Pursuant to Indiana Code 22-9-1-10, and the Civil Rights Act of 1964, the Grant Recipient and INDOT's Contractor and any subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to the employee's or applicant's hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, religion, sex, disability, national origin or ancestry. Acceptance of this Agreement also signifies compliance with applicable Federal laws, regulations and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran. Breach of one or both of these covenants may be regarded as a material breach of this Agreement.

The Grant Recipient and INDOT's Contractor agree to assure that all parties performing work on the Project Activities comply fully with the provisions of any MBE/WBE participation plans that have been submitted.

16. **NOTICE TO PARTIES:**

Whenever any notice, statement or other communication shall be sent to the Authority or the Grant Recipient, it shall be sent to the following address, unless otherwise specifically advised by notice:

A. Notice to the Authority shall be sent to:

Director of Environmental Programs
Indiana Finance Authority
100 North Senate Avenue, RM 1275
Indianapolis, IN 46204

B. Notice to the Grant Recipient shall be sent to the "Grant Recipient's Notice Address" as set out in the Master Schedule

Electronic submission of information about this Agreement or the Project Activities or otherwise is encouraged through use of the Authority's online project management system.

17. **STATUTORY AUTHORITY:**

The Grant Recipient, in accordance with Indiana Code 13-19-5 *et seq.*, represents and warrants to the Authority that it is legally eligible to receive the Grant Funds and the Grant Recipient agrees to repay to the Authority pursuant to Section 6 of this Agreement all Grant Funds should a legal determination of ineligibility be made by any court of competent jurisdiction.

18. **AUTHORITY TO BIND:**

Notwithstanding anything in this Agreement to the contrary, the signatories for the Grant Recipient represent that he or she is duly authorized to execute this Agreement on behalf of the Grant Recipient. Each approval, acceptance, power, review, consent or other action recited in this Agreement as being vested in the Authority may only be undertaken by an instrument signed in advance by the Public Finance Director of the State or Director of Environmental Programs of the Authority (or any Authority representative to whom the Authority's board from time to time empowers by its general or specific resolution to act in matters related to the Brownfields Fund) or their designees, and may be withheld or delayed in their discretion.

19. **MAINTAINING DRUG-FREE WORKPLACE (EXECUTIVE ORDER NO. 90-5):**

- A. The Grant Recipient covenants and agrees to make a good faith effort to provide and maintain during the term of this Agreement a drug-free workplace. The Grant Recipient will give notice to the Authority within 10 days after receiving actual notice that an employee of the Grant Recipient, who serves in or could be expected to serve in a capacity related to the Project Activities, is convicted of a criminal drug violation occurring in the Grant Recipient's workplace.
- B. In addition to subdivision A. of this Section 20, if the Grant Funds exceed \$25,000, the Grant Recipient further agrees that this Agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Grant Recipient and made a part of the contract or agreement as part of the contract documents.

The Grant Recipient certifies and agrees that each will provide a drug-free workplace by:

- (1) Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grant Recipient's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
 - (2) Establishing a drug-free awareness program to inform its employees of (a) the dangers of drug abuse in the workplace; (b) the Grant Recipient's policy of maintaining a drug-free workplace; (c) any available drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
 - (3) Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (a) abide by the terms of the statement; and (b) notify the Grant Recipient of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;
 - (4) Notifying the State within 10 days after receiving notice from an employee under subdivision (3)(b) above, or otherwise receiving actual notice of such conviction;
 - (5) Within 30 days after receiving notice under subdivision (3)(b) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (a) taking appropriate personnel action against the employee, up to and including termination; or (b) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
 - (6) Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (1) through (5) above.
- C. The Grant Recipient further agrees that the failure of the Grant Recipient to comply in good faith with subdivision A. of this Section 20, or falsifying or otherwise violating subdivision B. of this Section 20, shall constitute a material breach of this Agreement. Any breach entitles the Authority to impose sanctions against the Grant Recipient including (but not limited to) recovery of the Grant Funds, cancellation of this Agreement, and debarment of the Grant Recipient from doing further business with the Authority or the State for up to 3 years.

20. **FORCE MAJEURE:**

In the event that the Authority or the Grant Recipient is unable to perform any of its obligations under this Agreement, or to enjoy the benefits of this Agreement, as a result of natural disaster, actions or decrees of governmental bodies or communication line failure not the fault of the affected party (“Force Majeure Event”), the party who has been so affected shall immediately give notice to the other parties and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds 30 days from the receipt of notice of the Force Majeure Event, the parties whose ability to perform have not been affected may, by giving notice, terminate this Agreement. If so terminated, the Grant Recipient will be paid for previously unreimbursed Project Activities. Such payment shall be made following receipt by the Authority of required documentation and review by the Authority of the same. Upon cancellation by the Authority and following final payment to the Grant Recipient by the Authority, the Authority shall not be obligated to disburse additional Grant Funds.

21. **SEVERABILITY:**

The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Agreement.

22. **REMEDIES NOT IMPAIRED:**

No delay or omission of the Authority in exercising any right or remedy available under this Agreement shall impair any such right or remedy or constitute a waiver of any default or acquiescence to any default. A single or partial exercise of any power does not preclude the further exercise of that power or right or the exercise of any other power or right.

23. **TAXES:**

The Authority is exempt from Federal, State and local taxes. The Authority will not be responsible for payment of any taxes levied on the Grant Recipient or the Consultant or any subcontractors as a result of this Agreement.

24. **WAIVER OF RIGHTS:**

No right conferred on any party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse shall be by the party claimed to have waived such right.

25. **ACCESS TO RECORDS:**

The Grant Recipient shall ensure that Contractor selected by INDOT and any subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the costs incurred under this Agreement. Such materials shall be made available at the Grant Recipient’s and the Contractor’s and any subcontractors’ respective offices at all reasonable times during the term of this Agreement and for 5 years after (a) the Completion Deadline Date or (b) the resolution of any applicable findings regarding this Agreement by the State Board of Accounts, whichever is later. The Grant Recipient shall ensure the cooperation of their respective employees and subcontractors in such monitoring and evaluation efforts. The Grant Recipient will take all actions necessary to correct or cure any problems or deficiencies identified by the Authority during its monitoring and evaluations.

26. **CHANGES, EXHIBITS, ATTACHMENTS TO AGREEMENT:**

This Agreement may not be changed, amended or modified orally. Any change, amendment or modification must be in writing and signed by all the parties. Any consent, approval, review, determination, notice, order, waiver, excused action, request or other action required or allowed under this Agreement shall only be effective if done in writing signed in advance by the applicable party and prior to the other party taking any action in reliance on such writing. This Agreement merges and supersedes all prior agreements, negotiations and representations of any kind between the Authority and the Grant Recipient relating in any manner to the subject matter and transactions contemplated by this Agreement. This Agreement and its exhibits and any other attachments constitute the entire

agreement between the Authority and the Grant Recipient concerning the Agreement. All exhibits and any other attachments referred to in this Agreement, and all exhibits, other attachments, Law and papers are incorporated into this Agreement by reference are deemed incorporated into this Agreement by this reference as though fully set forth in this Agreement. In the event of any inconsistency between this Agreement and anything contained in an Exhibit to this Agreement or in any subsequent document or paper referenced herein, this Agreement shall prevail.

27. **CONFLICT OF INTEREST:**

A. As used in this section:

“Immediate Family” means the spouse and the emancipated children of an individual.

“Interested Party” means:

- (1) The individual executing this Agreement;
- (2) Any individual who has an interest of three percent or more of the Grant Recipient or the Consultant; or
- (3) Any member of the Immediate Family of an individual specified under subdivision (1) or (2).

“Commission” means the State Ethics Commission.

- B. The Authority may cancel this Agreement without recourse by the Grant Recipient if an Interested Party is an employee of the Authority or the State.
- C. The Authority will not exercise its right to cancel this Agreement under this Section 28 if the Grant Recipient gives the Authority an opinion of the Commission indicating that the existence of this Agreement and the employment by the Authority or the State of the Interested Party does not violate any statute or code relating to ethical conduct of employees of the Authority or State employees. The Authority may take action, including cancellation of this Agreement, consistent with an opinion of the Commission.
- D. The Grant Recipient has an affirmative obligation under this Agreement to disclose to the Authority when an Interested Party is, or becomes, an employee of the Authority or the State. The obligation under this Section 28 extends only to those facts that the Grant Recipient knew or reasonably should have known.

28. **CANCELLATION OF GRANT:**

The Authority may cancel this Agreement upon the occurrence of any one of the following events:

A. **Multi-Term Funding**

The Director of the State Budget Agency makes a determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement. (A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.)

B. **False, Misleading Representations**

A finding that any representation or warranty the Grant Recipient made in this Agreement, the Grant Application or otherwise is false or misleading in any material respect when made.

C. **Improper Use of Grant Funds**

A finding that Grant Funds were used for a purpose other than Project Activities as provided in this Agreement.

D. Convenience

The Authority determines that termination of the Agreement, or a reduction in the amount of the Grant Funds, is in its best interest and/or the best interest of the State.

If the Authority determines to terminate or cancel this Agreement, the Grant Funds may be used to pay for previously unreimbursed Project Activities. Any payment for previously unreimbursed Project Activities shall be made in accordance with Section 5 of this Agreement. Upon termination or cancellation by the Authority and following final approval of a payment request by the Grant Recipient under the terms of Section 5 of this Agreement, the Grant Recipient will return to the Authority any Unused Grant Funds in accordance with the terms of Section 4 of this Agreement.

29. ASSIGNMENT; SUCCESSORS:

The Grant Recipient shall not assign or subcontract the whole or any part of this Agreement without the Authority's consent. The Grant Recipient may assign its right to receive payments to a third party without the Authority's consent, provided that Grant Recipient gives notice (including evidence of such assignment) to the Authority 30 days in advance of any payment so assigned.

30. EXECUTION; COUNTERPARTS:

Copies of this Agreement may be executed separately by the parties, and once executed by the parties to this Agreement; all such copies taken together shall constitute a single contract. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original for all purposes.

31. NON-COLLUSION, ACCEPTANCE:

The Grant Recipient attests under penalties of perjury that he or she (a) is a contracting party or the representative, agent, member or officer of a contracting party, (b) has not (nor has any other member, employee, representative, agent or officer of such contracting party) directly or indirectly, to the best of his or her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay (and that he or she has not received or paid) any sum of money or other consideration for the execution of this Agreement other than that which may appear upon the face of this Agreement.

[Remainder of Page Left Intentionally Blank]

The parties represent and warrant that they have read and understand the terms of this Agreement, and the parties, by their respective signatures, do thereby agree to the terms of this Agreement as of the Execution Date.

“Grant Recipient”

City of Bloomington, Indiana

By _____

PRINTED NAME, TITLE

DATE

ATTEST:

By _____

PRINTED NAME, TITLE

DATE

“Authority”

Indiana Finance Authority

By _____

James P. McGoff, Director of Environmental Programs

DATE

ATTEST:

By _____

Kendra W. York, General Counsel

DATE

APPROVED:

INDIANA STATE BUDGET AGENCY

By: _____

Christopher A. Ruhl, Director

DATE

Instructional Notes
for creating a Complete Agreement

1. No changes should be made in pages 1-14 of the Agreement.
2. The Grant Recipient's municipal or corporate name needs to be inserted in the blank below "***Grant Recipient***" on page 14 and in Exhibit F.
3. Complete the Master Schedule (including checking the appropriate boxes); when complete, it should be initialed by the Grant Recipient & IFA at the bottom.
4. Exhibits A, C, D and E should be complete before the Agreement is sent to the Grant Recipient for signature.
5. Exhibit B may or may not be available at the time of the Agreement is signed; if available, attach the Remedial Bid and Workplan(s). If not, when they are available, correspondence should clearly identify it as the materials constituting Exhibit B.
6. Discard this page after preparing the Agreement; it is not part of the Agreement.

**MASTER SCHEDULE
TO
REMEDATION GRANT AGREEMENT**

Grant Recipient is: City of Bloomington, Indiana

Execution Date shall be: _____, 2009

Grant Funds shall be: Up to \$400,000 has been approved by Authority. (The exact amount depends on the bid that is accepted by INDOT.) Subsequent to INDOT selecting the INDOT Contractor pursuant to its bidding process, all or a portion of the Grants Funds shall be transferred to the Grant Recipient.

Investment (as set forth in Section 3G) shall be an amount equal to 50% of the Grant Funds disbursed pursuant to this Agreement.

“Grant Recipient’s Notice Address” shall be: Mayor’s Office
c/o Budget, Research and Grants Manager
Controller’s Office
401 N. Morton, Suite 240
Bloomington, IN 47404

Site shall be: **B-Line Trail, Phase II**

Site Number: 4010029

Applicable terms denoted by the marking of boxes below, whether by checkmark or use of any other distinguishing marks:

Grant Application: Stipulated Remediation Grant Application dated November 3, 2008

Workplan: Underground /Aboveground Storage Tank Closure Workplan.
 Further Site Investigation Workplan.
 Corrective Action Plan.
 Remediation Work Plan under IC 13-25-5 (Voluntary Remediation Program).

Consultant’s Report, inclusive of all interim data and reports: Underground /Aboveground Storage Tank Closure Report.
 Further Site Investigation Report.
 Remediation Completion Report.

Initials:

Grant Recipient’s Representative: _____
Authority’s Representative: _____

EXHIBIT A

- Grant Application as denoted on the Master Schedule.

EXHIBIT B

- The Authority-approved Workplan is unavailable at the time of this Agreement's execution; however, the parties agree that it will be incorporated into the Agreement as Exhibit B once it receives approval by the Authority.

EXHIBIT C

- Consent from Property Owner (if required)

EXHIBIT D

- Parts of the Guidelines applicable to a grant of the type applied for with the Grant Application as denoted on the Master Schedule.

EXHIBIT E

- Sample Brownfields Project Survey Form

CITY OF BLOOMINGTON B-LINE TRAIL PHASE 2

NORTH SIDE OF COUNTRY CLUB ROAD TO THE EAST SIDE OF ADAMS STREET

2.41± MILES

