



City of Bloomington Common Council

Legislative Packet – Addendum

Posted on Wednesday, 5 February 2025

Wednesday, 5 February 2025

Regular Session at 6:30 pm



City of Bloomington Indiana

City Hall | 401 N. Morton St. | Post Office Box 100 | Bloomington, Indiana 47402

Office of the Common Council | (812) 349-3409 | Fax: (812) 349-3570 | email: council@bloomington.in.gov

MEMO FROM COUNCIL OFFICE ON:

To: Members of Common Council

From: Lisa Lehner, Council Administrator/Attorney

Date: February 4, 2025

Re: Ordinance 2025-01 – To Amend the District Ordinance and Preliminary Plan of A 3.2 Acre Planned Unit Development (PUD), The Curry PUD, In Order to Amend the Workforce Housing Contribution. – Re: 105 S. Pete Ellis Drive (SPCW Bloomington JV, LLC, Petitioner)

Update

A revised Payment in Lieu Zoning Commitment has been provided to Council's Office for informational purposes. This Zoning Commitment is not a part of Ordinance 2025-01. My understanding is that this Zoning Commitment was drafted to satisfy Condition #2 imposed by the Plan Commission. The Zoning Commitment was recently revised to add paragraph 15, which specifies the timing of the payment in lieu as well as the termination of the 2023 Zoning Commitment.

PAYMENT-IN-LIEU ZONING COMMITMENT

WHEREAS, Indiana Code § 36-1-24.2-4 allows the owner of real property to make a written commitment as part of its request for incentives or grants from a municipality; and

WHEREAS, Bloomington SPCW JV, LLC (“Owner”), is the owner of the property located at 105 N. Pete Ellis Drive, Bloomington, Indiana the property is identified by the following Monroe County Parcel Number 53-05-35-300-043.000-005 (the “Property”); and

WHEREAS, Owner petitioned the City of Bloomington Plan Commission (the “Commission”) to rezone 3.2 acres from Commercial Limited to a Planned Unit Development (“PUD”) and to approve a preliminary plan and district ordinance; and

WHEREAS, the Commission recommended approval of Owners’ petition PUD-34-19; and

WHEREAS, the Common Council of the City of Bloomington approved the PUD through Ordinance 20-01 on February 7, 2020; and

WHEREAS, the Mayor of the City of Bloomington signed Ordinance 20-01 on February 10, 2020; and

WHEREAS, Owner pledged its intent to record a Commitment, which was presented for consideration during the Council’s consideration of its petition; and

WHEREAS, Owner executed said Commitment on January 4, 2023 and recorded it on April 27, 2023, in the Office of the Recorder of Monroe County, Indiana, as Instrument Number 2023004318 MIS; and

WHEREAS, Questions and concerns arose regarding said Commitment and Owner’s ability to qualify tenants under the same; and

WHEREAS, In furtherance of the City’s efforts to create affordable housing, Owner and the City desire for Owner to make a payment to the City in an amount equal to One Million Forty Thousand and No/100 Dollars (\$1,040,000.00) (based on the current UDO fee schedule of \$20,000 per bed applied to the 52 bedrooms currently enrolled in the workforce housing program) to fully satisfy all obligations under said Commitment and the Workforce Housing Commitment (the “Payment in Lieu”); and

WHEREAS, Pursuant to Section 11 of said Commitment, the Commitment shall only terminate with the approval from the Commission after notice of hearing has been provided in accordance with the Rules and Procedures of the Commission; and

WHEREAS, Owner satisfied such obligation under Section 11 of the Zoning Commitment at the public hearing held for petition PUD-44-24 by the Plan Commission on December 9, 2024; and

WHEREAS, The Plan Commission recommended approval of amendment to the District Ordinance and Preliminary Plan originally approved with petition PUD-34-19 to allow acceptance of a financial payment in lieu of accepting on-site workforce housing units; and

WHEREAS, The Plan Commission included three (3) conditions of approval in its recommendation of approval for petition PUD-44-24, two of which are related to workforce housing; and

WHEREAS, Condition 2 reads: The petitioner will record the proposed Payment-in-lieu Zoning Commitment approved by the Housing and Neighborhood Development Department within four weeks of approval of the PUD Amendment; and

WHEREAS, Condition 3 reads: The petitioner will honor the existing leases of the 25 units that currently exist from the workforce housing commitment, and the petitioner will renew those leases upon request by those specific tenants, as long as they continue to qualify; and

WHEREAS, Owner presented a “Payment In Lieu Agreement and Termination of Zoning Commitment and Workforce (Affordable) Housing Requirements” to the City; and

WHEREAS, Said Agreement outlines the termination of the April 27, 2023 Zoning Commitment, terms for a new payment-in-lieu agreement, terms for the continuation of existing workforce housing leases, and acknowledgement of this Zoning Commitment; and

WHEREAS, The terms agreed upon to satisfy Plan Commission Condition 3 are included in this Payment In Lieu Zoning Commitment below, and

WHEREAS, the Common Council of the City of Bloomington adopted Ordinance 2025-01 on February 5, 2025.

NOW THEREFORE, in recognition of its ability to voluntarily provide a written commitment under Indiana Code § 36-1-24.2-4, the Owner hereby voluntarily provides and records this Zoning Commitment for the Property.

1. Legal Description for the Property. The Property is located at 105 N. Pete Ellis Drive (Parcel No. 53-05-35-300-043.000-005), Bloomington, Indiana, with the following legal description:

A part of the Southwest Quarter of Section Thirty five (35), Township nine (9) North, Range one (1) West, in Monroe County, Indiana, more particularly described as follows: Lot Number 8 in the Deckard East Third Street Subdivision as shown on the final plat thereof, recorded in Plat Cabinet C, Envelope 334 in the Office of the Recorder of Monroe County Indiana. AND ALSO EXCEPTING that part platted as Arlington Park, Phase I as per plat thereof, recorded in Plat Cabinet C Envelope 196, in the office of the Recorder of Monroe County, Indiana.

2. Commitments. Owner hereby commits to the following:

- a. Pursuant to Condition 2, owner will record this Payment-in-lieu Zoning Commitment approved by the Housing and Neighborhood Development Department within four weeks of approval of Ordinance 2025-01 by the Common Council and approval by the Mayor.
- b. Pursuant to Condition 3, all existing leases at the Property of, at a minimum, the twenty-five (25) workforce housing units that existed at the time of the Plan Commission meeting, shall remain in full force and effect with the applicable tenant thereunder (herein a “**Workforce Housing Tenant**”). Provided that the Workforce Housing Tenant is not in breach

or default thereunder, Owner shall (i) honor all current leases of the workforce housing units for the remainder of their respective lease terms, and (ii) allow such Workforce Housing Tenants to renew their leases, if requested by such Workforce Housing Tenant(s), at the then applicable workforce housing rates, conditioned upon such Workforce Housing Tenant meeting the workforce housing qualifications as of the date of renewal. Within 45 days of adoption of Ordinance 2025-01, the Owner shall notify the Workforce Housing Tenants in writing by certified mail of their right to renew their leases at the then applicable workforce housing rates, for as long as such Workforce Housing Tenant continues to meet the workforce housing qualifications as established in coordination with Bloomington's Housing and Neighborhood Development Policies. The Owner shall continue to comply with reporting and monitoring to the City until such time that the Owner no longer has Workforce Housing Tenants.

3. Binding. This written Commitment is binding on the owner of the Property. Upon the written Commitment being recorded in the office of the Monroe County Recorder, this written Commitment shall be binding on Owner's successors and assigns, including but not limited to any subsequent owner or any other person who acquires an interest in the Property, and shall run with the land.
4. Recording. This written Commitment shall be recorded in the office of the Monroe County Recorder within 30 days of the signing of this Commitment.
5. Modification. This written Commitment shall only be modified by the City of Bloomington Plan Commission after notice of the hearing in which the modification will be considered has been provided in accordance with the Rules and Procedures of said Commission.
6. Base Rental Rate. The base rental rate shall be inclusive of utilities with the exception of cable, internet, and/or electricity. In the event that the individual units within the Property are separately metered or sub-metered for water or sewer utility purposes, Owner shall have the right to pass through to its tenants the amount of the monthly billing that exceeds the average monthly billing for similar sized units at the Property, regardless of whether such tenant is a workforce housing tenant or not. Location premiums, unit finish premiums, furniture premiums, and washer/dryer premiums are not considered base rental rate amounts and shall not be included in base rental rates. Rather, said premiums will be in addition to any base rental rates for all units at the Property, including workforce housing.
7. Workforce Housing Qualifications. The workforce housing qualifications and rents shall be set in coordination with Bloomington's Housing and Neighborhood Development ("HAND") Department policies. HAND will annually provide income eligibility guidelines and rent structure guidelines to the Owner for use in this workforce housing project. The income eligibility and rent structure may be modified from time to time in accordance with guidelines provided by HAND, or its successor City department, in which case notice shall issue to Owner by HAND.
8. Unit Types. Owner shall make units available to tenants, as outlined in 2(b) above.
9. Term of Commitment. Consistent with paragraph 2(b), the term of this Commitment shall be the earlier of either 99 years or through and including the expiration, or termination according to its terms, of the final Workforce Housing Tenant's lease agreement at the Property. .
10. Notice of Compliance. Owner shall provide HAND and the Commission an affidavit affirming that the Owner has complied with this Commitment on or before January 1 of each year until the end of the 99-year term of this Commitment. As part of this affidavit, the City may require information from Owner concerning (1) the number of Workforce Housing Units occupied; (2) the rent of the Workforce Housing Units; (3) the wage rates and/or salaries of the persons living in the Workforce Housing Units, and (4) the Market rate rent for a unit comparable to the Workforce Housing Units. Notwithstanding the

foregoing, and consistent with paragraph 2(b), the requirements of this paragraph 10 shall terminate on the date of expiration, or termination according to its terms, of the final Workforce Housing Tenant's lease agreement at the Property.

11. Termination. This written Commitment shall only terminate with approval from the City of Bloomington Plan Commission after notice of the hearing in which the termination will be considered has been provided in accordance with the Rules and Procedures of said Commission. Notwithstanding the foregoing, and consistent with paragraph 2(b), this written Commitment shall terminate on the date of expiration, or termination according to its terms, of the final Workforce Housing Tenant's lease agreement at the Property.
12. Sale or Transfer. In the event that Owner or any subsequent owner of the Property sells or transfers title to the Property or otherwise alters any ownership interest in the Property, he/she/they shall provide HAND with thirty (30) days advance written notice of the transaction and shall provide HAND with contact information for the party with whom the transaction is being conducted. Notwithstanding the foregoing, and consistent with paragraph 2(b), the requirements of this paragraph 12 shall terminate on the date of expiration, or termination according to its terms, of the final Workforce Housing Tenant's lease agreement at the Property.
13. Violation and Enforcement. Failure to honor this Commitment shall constitute a violation of the City of Bloomington's Unified Development Ordinance and, in particular, of the Plan Commission's preliminary plan and district ordinance amendment (PUD-XX-24) approval. A violation shall be subject to the penalties and remedies provided by Bloomington Municipal Code § 20.10, and shall subject person(s) obligated hereby to revocation or denial of occupancy permits and any other appropriate legal action. An action to enforce any provision of this written Commitment may be brought in the Monroe County Circuit Court by the Plan Commission, any person who was entitled to enforce a Commitment under the Rules and Procedures of the Plan Commission in force at the time this written Commitment is made, or any other specially affected person that is so designated in this written commitment.
14. Copy. A copy of this written Commitment shall be provided to the City of Bloomington's Planning and Transportation Department.
15. Termination of 2023 Zoning Commitment Upon Payment. Upon receipt of the Payment in Lieu described herein and the recording of this Payment In Lieu Zoning Commitment, both of which shall occur within five (5) business days of approval of Ordinance 2025-01 by the Common Council and approval by the Mayor, the Zoning Commitment recorded on April 27, 2023 as Instrument 2023004318 shall automatically terminate and be of no further force and effect.

DATED this _____ day of _____, 2025.

Bloomington SPCW JV, LLC

By: _____
Signature

Print Name and Title

ATTEST:

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Personally appeared before me, a Notary Public in and for said County and State,
_____, Owner who acknowledged execution of the above and foregoing
instrument to be his or her voluntary act and deed.

WITNESS my hand and Notarial Seal this _____ day of _____, 2025.

Printed Name of Notary Public

Signature of Notary Public

My Commission Expires: _____

County of Residence: _____

Commission Number: _____

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Enedina Kassamanian/s.

This instrument was prepared by Enedina Kassamanian, Attorney at Law, City of Bloomington, P.O. Box 100, Bloomington, Indiana 47402.

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DATED this _____ day of _____, 2025.

Bloomington SPCW JV, LLC

By: _____
Signature

Print Name and Title

ATTEST:

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Personally appeared before me, a Notary Public in and for said County and State,
_____, Owner who acknowledged execution of the above and foregoing
instrument to be his or her voluntary act and deed.

WITNESS my hand and Notarial Seal this _____ day of _____, 2025.

Printed Name of Notary Public

Signature of Notary Public

My Commission Expires: _____

County of Residence: _____

Commission Number: _____

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Enedina Kassamanian/s.

This instrument was prepared by Enedina Kassamanian, Attorney at Law, City of Bloomington, P.O. Box 100, Bloomington, Indiana 47402.