

ORDINANCE NO. 813

**AN ORDINANCE OF THE OGDEN DUNES TOWN COUNCIL  
AMENDING PORTIONS OF THE TEXT OF  
THE ZONING AND SUBDIVISION CONTROL ORDINANCE OF THE TOWN OF  
OGDEN DUNES, INDIANA**

WHEREAS, the Ogden Dunes Town Council has adopted a Zoning and Subdivision Control Ordinance of the Town of Ogden Dunes, Porter County, Indiana which is located at Chapter 152 of the Ogden Dunes Town Code; and

WHEREAS, the Ogden Dunes Advisory Plan Commission has initiated an amendment to the text portion of the Zoning and Subdivision Control Ordinance; and

WHEREAS, a public hearing has been held before the Town of Ogden Dunes Advisory Plan Commission, which has certified its proposal to amend portions of the text of the Zoning and Subdivision Control Ordinance to the Ogden Dunes Town Council; and

WHEREAS, notice has been given in accordance with Indiana Code of all proceedings concerning this text amendment to the Zoning and Subdivision Control Ordinance; and

WHEREAS, the Ogden Dunes Town Council concurs with its Advisory Plan Commission and accepts its proposal to amend portions of the text of the Zoning and Subdivision Control Ordinance;

NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the Ogden Dunes Town Council as follows:

**SECTION ONE:** That the following Sections 152.175 through 152.179 shall be added to the Town of Ogden Dunes Zoning and Subdivision Control Ordinance:

**§152.175 APPLICABILITY.**

The regulations contained in Sections 152.176 through 152.179 shall apply to all subdivisions and to all construction and land disturbing activities conducted within the Town, regardless of whether a permit is required.

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## **§152.176 PRESERVATION OF NATURAL FEATURES.**

(A) *Conservation of natural resources.* The purpose of this section is to conserve the land, water and other natural resources of Ogden Dunes and to promote the public health and welfare, of the people by establishing requirements for the control of erosion and sedimentation and by establishing procedures whereby these requirements shall be administered and enforced. This chapter recognizes the unique terrain, soil and topography of Ogden Dunes which is peculiarly vulnerable to environmental impact, such as: slope damage, live and moving dunes, blowing sand, erosion and inability to easily restore vegetation.

(B) *Slope control.* No structure, planting or other material shall be placed or permitted to remain or be removed or other activities undertaken which may damage or interfere with established slope terrain or vegetation of adjoining property, create erosion or cause water drainage problems or which may change water drainage or obstruct or retard the flow of water. Each lot and all improvements in them shall be maintained in compliance with this ordinance continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

(C) *Restrictions on tree removal in conjunction with building permit and generally.*

(1) Trees are declared to be beneficial public resources. To that end, it shall be unlawful to cut down, damage, poison or in any other manner, destroy or cause to be destroyed any trees covered by this chapter, except in accordance with the provisions herein.

(2) A permit is required to remove or transplant any tree with a trunk diameter of three inches or more. Written application and fee listed in 151.019 is required with the site plan sufficient to make determination. The site plan shall show the following information at a scale sufficient to enable the determination of matters required under these regulations:

(a) The shape and dimensions of the lot or parcel, together with the existing and proposed locations of structures and improvement, if any;

(b) Locations of all trees with size shall be identified. Mark trees to be removed or transplanted;

(c) All trees to be retained shall be so identified by some method, such as painting, flagging and the like prior to field inspection, if required.

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(3) The permit is valid for four months.

(4) Criteria for tree removal permit.

(a) The tree is located in an area where a structure or improvements will be placed according to an approved plan, it unreasonably restricts the economic enjoyment of the property, and the tree cannot be relocated on the site because of age, type or size of the tree.

(b) The tree is diseased, injured, in danger of falling too close to existing or proposed structures, interferes with existing utility service, creates unsafe vision clearance, conflicts with other ordinances or regulations or is a non-protected tree such as the female populus (cottonwood).

(5) The Building Commissioner, upon a determination that an application is to be denied, shall state the basis for such denial specifically and shall notify the applicant of the criteria upon which denial is predicated.

(6) Replacement of trees. When any trees are removed from any lots, a minimum number of replacement trees will be required based on the following square footage areas:

<i>Lot Size Square Footage</i>	<i>Minimum Replacements</i>
3,500 - 7,500	4
7,500 - 10,000	6
Over 10,000	8

(7) Tree protection during construction. It shall be unlawful for any person in the construction of any structures or other improvements to place solvents, material, construction machinery or temporary soil deposits within six feet or two-thirds of the drip line, as defined herein, whichever is greater, of any tree trunk having a three-inch or greater d. b. h. above grade.

(8) In case of emergencies, such as windstorm, flood, freeze or other disasters, the requirements of these regulations may be waived by the Building Commissioner.

- (9) In addition to the penalties otherwise provided herein, any person who violates any provision of this chapter shall forfeit and pay to the town a civil penalty equal to the total value of those trees illegally removed or damaged, as computed from the International Society of Arboriculture shade tree value formula. The sum shall accrue to the town and may be recovered in a civil action brought by the town. The sum so collected shall be placed in a special fund and shall be expended for the purchase of tree(s) for placement in public properties in the town. Replacement of illegally removed trees may be required as restoration in lieu of money. This replacement will be computed on an inch-for-inch ratio based on the total diameter measured at d. b. h. in inches of the illegally removed trees. A combination of money and tree replacement may be required.
- (10) Tree removal companies: construction companies. All provisions of this Building Code shall apply to any person removing trees on behalf of any other person, including all tree removal construction companies or persons in the business of removing trees or constructing. It shall be unlawful for any person or company to remove or cause to be removed any tree, or undertake any work for which a permit is required pursuant to this section, unless a valid permit therefore is in effect and is displayed in accordance with the provisions of this section. If any such work or removal is performed without the permit being displayed as required by this section, such removal or work shall constitute a violation of this section and shall subject the person or company violating this section to all penalties provided herein.
- (11) The applicant shall prominently display on the site the permit issued. Such permit shall be displayed continuously while trees are being removed or replaced or work done as authorized on the permit, and for ten days thereafter. As a condition for the issuance of the permit, the applicant shall agree in writing to entry onto his premises by representatives of the town and all law enforcement officers to inspect the permit at any time and such entry shall be lawful. Failure to allow such entry shall be unlawful, shall constitute a violation of this section and shall constitute failure to display the permit as required under this section.
- (12) Destruction or removal of trees from public property. No person shall cut down or otherwise destroy any tree on any town parkway, street right-of-way, park or on any land belonging to the town, without obtaining written permission from the Building Commissioner.

#### **§152.177 LAND DISTURBING ACTIVITIES.**

- (A) *Purpose.* This Section is enacted to preserve the natural terrain and contours, to regulate and control drainage and the blowing of sand, to prevent erosion and to protect adjacent property from damage resulting from land disturbing activities.



(B) *Regulated land disturbing activities.*

- (1) No person shall engage in any land disturbing activity until such plan has been submitted to the Building Commissioner and has been reviewed and approved.
- (2) Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to construction contract, the preparation, submission and approval of a plan shall be the responsibility of the owner of the land.

(C) *Land disturbing activity plans.*

- (1) An application for a permit for a land disturbing activity shall be made through the Building Commissioner on the application form prescribed by the town. Applications for any such permit shall include the following in addition to the requirements in 151.015 (G) above.
  - (a) A general description of streets, highways or other landmarks in the immediate area surrounding the proposed land disturbing activity.
  - (b) A description of what shall be done to the property and location.
  - (c) An accurate estimate of the amount of sand or other natural or man-made material in cubic yards expected to be excavated, graded, filled or transported during the life of the permit.
  - (d) A statement explaining in detail the protection and precautionary methods to be employed by the applicant to prevent the natural or man-made material from blowing over or spilling upon other private or public property in the immediate area of the project.

(2) *Permit conditions.*

- (a) The Building Commissioner may impose any specifications or special conditions in the granting of a land disturbing activity permit, that in his or her opinion may be required for the protection of public health, safety and welfare. Any specifications or special conditions shall be in writing and shall be attached to the permit itself and shall be a part of the permit granted.
- (b) When sand or other natural or man-made materials are to be added or removed or moved in connection with the construction, alteration of structures or for accessory

uses, approval by the Building Commissioner shall be required. Construction drawings, plat plans and, when deemed necessary, topographic maps shall be presented to the Building Commissioner for review.

- (3) Any changes in the approved plan must be submitted to and approved by the Building Commissioner in writing.

(D) *Bond.*

- (1) The applicant shall be required to post a liability bond payable to, and satisfactory to, the town prior to the issuance of any permit. A cash escrow or other such legal arrangement, as approved by the town, may be used. The amount of the bond for each applicant shall be not less than \$1,000 nor more than \$5,000 as determined by the Building Commissioner; or any excess amount deemed necessary based on the project shall be determined by the Town Council.
- (2) In the event of damage to private or public property in the immediate area of excavation or fill site, the town is authorized to declare a forfeiture of the bond or other financial arrangement posted by the applicant and collect the amount of damages for payment to the damaged party.

(E) *Exemptions.* For the following listed exceptions, no permit or bond or other such financial arrangement shall be necessary, but all other provisions of this chapter pertaining to the protection of private or public property in the immediate area of the land disturbing activity shall remain in full force and effect:

- (1) Sand or other natural or man-made materials which is removed or moved in cases involving public health and safety.
- (2) Sand or other natural or man-made materials which are moved or in connection with the installation or repair of public utilities, street grading, sewer installation or other public purpose.
- (3) All cases where the aggregate volume of land, black dirt or other natural or man-made material excavated, filled, graded or transported within any period of 365 days does not exceed ten cubic yards.



#### **§152.178 SLOPE STABILITY.**

(A) *Plans or specifications.* Plans or specifications submitted for any building permit will include the design for any necessary sand (ground mass) retention system. The drawings shall clearly show the ground surface areas that have or will have a slope greater than 20 degrees with the horizontal.

(B) *Slope greater than 20 degrees.* Any stabilization or retention system (walls, piling and the like) applications where the ground surface slope is greater than 20 degrees shall have a minimal design life of 40 years, and the design shall be approved by an Indiana-registered professional engineer.

#### **§152.179 DRAINAGE.**

(A) *Drainage construction materials.* A driveway or parking area shall be constructed of materials and in such a manner which prevents sand, stone, cinders or other ground materials from being washed, thrown or carried onto public roads.

(B) *Suitable drainage system.* A driveway or parking area which slopes toward a public road shall be constructed with a suitable drainage system on the property of the owner to prevent water from running or draining from the driveway or parking area onto public roads. Grated drainage systems shall be designed to cross no less than 80% of the driveway width and shall be located at the lowest point. Grated or other drainage systems shall be connected to drywells or provided with gravel for absorbing run-off. Residents shall be responsible for maintenance.

(C) *Installation of drainage system.* If drainage control will be enhanced and if approval of the Town Council is applied for and received in writing, the required drainage system may be installed on public property in accordance with the approved plans.

(D) *Responsibility of homeowner.* It is the responsibility of the home owner to ensure that all run-off from roofs, drives, walks, patios or any other man-made services do not drain onto adjacent public or private property.

(1) Because of drainage problems, no private party shall pave adjacent public property, except for driveway access, and this not to exceed 22 feet wide.

(2) Every effort shall be made by the home owner to maintain and encourage natural drainage.

- (3) Plans shall include a designed drainage system to handle a one-inch rainfall in a two-hour period.

**SECTION TWO:** That §152.204 of the Ogden Dunes Town Code shall be amended and hereafter read as follows:

**§152.204 ADVISORY BOARD OF ZONING APPEALS**

- A. Establishment - The Ogden Dunes Advisory Board of Zoning Appeals (hereafter "BZA") is hereby re-established in accordance with I.C. 36-7-4-900, as same shall be amended from time to time.
- B. Duties and Responsibilities - The BZA shall have all duties and powers prescribed by I.C. 36-7-4-900, *et. seq.* and all acts now or hereafter amendatory or supplemental thereto.
- (1) *Officers.* At the first meeting of the BZA each year, the board shall elect a chairperson, vice-chairperson and a secretary from among its members.
- (2) *Secretarial services.* The BZA may appoint, engage or hire a recording secretary or secretarial services as the case may be and such employee or independent contractor, as necessary, for the discharge of its duties all in conformity and compliance with the salaries, compensation and budgets fixed by the Town Council.
- C. Rules of Procedure - The BZA shall adopt rules concerning the filing of appeals, the application of variances, special exceptions, conditional uses, the giving of notice, the conducting of hearings, and all other matters within its jurisdiction. The rules of practice and procedure, regulations, and instructions of the BZA are attached to this Ordinance as an appendix. These rules may be changed at any time by the BZA by a majority vote of the entire membership without the necessity of a public hearing being held. Any such changes will automatically be deemed a change to this Ordinance.
- D. Meetings and Records - All meetings of the BZA shall be open to the public, unless executive sessions are conducted in accordance with Indiana law. The BZA shall keep minutes of its meetings and all other official actions, prepare written findings of fact, and record of the vote of each member voting upon each question. All minutes and records shall be filed in the office of the Clerk-Treasurer and shall be public records.
- E. Conflict of Interest - A member of the BZA may not participate in a hearing or decision of the BZA concerning a matter in which he has a direct or indirect financial interest or for other reasons brought to the attention of the BZA and which disqualification is approved by the BZA. The BZA shall enter in its records the fact regular member has such a disqualification and the name of the alternate member, if any, who participates in the hearing or decision. Said alternate member, if any, shall be appointed by the authority of the appointing body of the regular member who has



been disqualified. Communication with BZA members by any person with intent to influence action prior to a hearing or decision regarding matters pending before the BZA is prohibited. However, the staff may file with the BZA a written statement setting forth any facts or opinions relating to the matter.

F. The BZA shall also have all other powers and duties allowed by Indiana law.

**SECTION THREE:** That Section 95.02 of the Town Code shall be deleted in its entirety.

**SECTION FOUR:** This ordinance shall be in full force and effect from and after its adoption and publication as required by law.

ALL OF WHICH IS PASSED AND ADOPTED by the Ogden Dunes Town Council this  
7th day of DECEMBER, 2015.

**OGDEN DUNES TOWN COUNCIL**

Bill Gregory  
Bill Gregory

Allen Johnson  
Allen Johnson

Charlie Costanza  
Charlie Costanza

Paul Panther  
Paul Panther

Tom Clouser  
Tom Clouser

ATTEST:

Jean Manna  
Jean Manna, Clerk Treasurer