ORDINANCE 2014-14

AN ORDINANCE OF THE CUMBERLAND TOWN COUNCIL ANNEXING CERTAIN TERRITORY REFERRED TO AS “US 40 EAST – Phase 2” INTO THE TOWN

WHEREAS, the Town Council of the Town of Cumberland has adopted a policy regarding the expansion of the corporate boundaries of the Town through the annexation of contiguous real estate located outside the Town’s boundaries; and

WHEREAS, this Annexation Policy sets forth certain criteria as a guide for the Town Council to use in deciding whether areas contiguous to the town should be considered for annexation including the following:

- Annexation areas must have at least 1/8th contiguity with the Town’s existing corporate limits
- Annexation shall conform to an effective and efficient plan for providing Town services
- Annexation shows an increase in efficiency for delivery of service to Town residents
- Annexation should be undertaken if the continuity of the Town’s borders can be expanded and thereby improving uniformity of boundaries
- Legally eligible parcels can be considered for annexation, if approved by the Town Council and if they show potential for future development
- Voluntary annexation at the request of the property owner(s) must be financially feasible and responsible.
- Annexations must be supported by the Town Council; and

WHEREAS, this area fits the Annexation Policy’s criteria for areas that should be considered for annexation for the following reasons:

- The proposed annexation area is more than 1/8th contiguous to the current corporate limits of the Town
- The proposed annexation will provide continuity of the Town’s corporate boundary along the south
- Utilities are already located in the annexation area
- The Street Department already drives through this area to get to current neighborhoods and can effectively provide service to the additional road miles;
- The proposed annexation is needed for future development; and

WHEREAS, the boundaries of this area are over one eighth contiguous; and

WHEREAS, a written fiscal plan for the provision of services to this area has been prepared showing how the requirements of Indiana Code 36-4-3-13(d) can be satisfied in the annexation of this real estate and how services will be provided to this real estate if it is annexed; and
WHEREAS, the Town Council will have adopted a fiscal plan and conducted a public hearing in regards to the annexation of this real estate prior to this ordinance’s adoption; and

WHEREAS, the Town of Cumberland now finds the following:

1. Land to be annexed is needed and will be used for development in the near future as development has already begun in this corridor.
2. That the annexation will be in the best interest of the landowners and residents because it will provide access to the town’s services and amenities, increase the value of property in the annexation area, allow residents in the annexation area to participate in municipal elections in the Town, and otherwise benefit the landowners and residents.
3. Existing services are not being adequately provided because the Cumberland Police Department is closer to respond when an emergency arises and the Town has a more rigid street improvement master plan.
4. The annexation will not have a significant financial impact on land owners.

NOW THEREFORE, BE IT ORDAINED THAT, by the powers vested in the Town Council pursuant to Indiana Code 36-4-3-1 et seq., the real estate that is shown on the attached legal description (Exhibit A) and map (Exhibit B), consisting of approximately 286 acres and all of the roadway and rights-of-way of the roads that are a part of, or lie adjacent to, the described real estate, shall be annexed into the Town of Cumberland, Indiana, and made part of the Town’s corporate boundaries subject to the following terms and conditions:

1. The territory shall be made part of Council District 3.
2. As soon as practical after the adoption of this ordinance, the Clerk-Treasurer of Cumberland shall cause a copy of this ordinance to be published in the newspaper qualified to publish legal notices of the Town of Cumberland.
3. The annexation will take effect ninety (90) days from the date of the publication of this ordinance and the Clerk-Treasurer’s filing of a copy of the ordinance with the County Auditor and the Circuit Court Clerk of Hancock County and recording of the Ordinance in the Office of the County Recorder of Hancock County.
4. Any commitments or conditions imposed on this property, resulting from actions taken by governmental officials, boards or agencies of Hancock County, shall continue to be in effect and the extent allowable by law, be enforceable by the Town of Cumberland.
5. The zoning of the property shall revert to the closest Town of Cumberland classification, for properties zoned CN, neighborhood commercial, will be B-1, neighborhood business; B2 (Business 2) will be B-2, community business. Please refer to Exhibit C for proposed zoning. Any property owners who requested and obtained from Hancock County a rezoning approval or other zoning entitlement will have the right to use their land consistent with such grant. Any conditions imposed with such grant or commitments made by the owner related to such grant will remain enforceable and binding upon both the owner and the Town of Cumberland. This continuation of any land use entitlement will specifically include, but not be limited to, the grant of land use entitlement obtained by MT Comfort Commons II LLC 31.6% Int & Grant, Thomas A Inc 68.40% Int and Cumberland Storage LLC on February 9, 2004 and their successors-in-interest. Further, the entitlement/vesting also would not be subject to current overlay ordinances.
6. Properties to be annexed by the Town of Cumberland which are currently used primarily for agricultural or farming purposes shall be allowed to retain the right to use the property for such purposes and continue to engage in activities on the property which are incidental to farming operations, notwithstanding the obligations and limitations of
the Cumberland Zoning Ordinance. Such permitted continued uses and activities shall include, but not be limited to, the following:

- Occasional open burning for purposes including, but not limited to clearing land, cleaning fence rows, burning of silage.
- The application of chemicals to the land for purposes of weed control, insect control and fertilization.
- The movement of soil and waterways for purposes of soil and waterway conservation.
- Use of the land for pastures, meadows and uncultivated and/or unmown fields as necessary to comply with government set aside programs.
- Use of the land for growing crops and raising livestock including horses.
- The discharge of firearms for the protection of livestock, crops and property.
- The parking and storage of farm vehicles, equipment and implements.
- Any other use or activity customary and necessary for the continuation of farming activities including but not limited to grain drying operations and its associated sounds and storage of fuel.

Adopted this 21st day of January, 2015.

CUMBERLAND TOWN COUNCIL

Joe Siebler, President

Anna Pea, Vice President

Nicole Bell, Member

Brian Gritter, Member

Mark Reynolds, Member

Attest: 

Erica Salmon, Clerk-Treasurer

I affirm under penalties for perjury that I have taken reasonable care to redact each Social Security Number in this document unless required by law.

Darren Chadd
EXHIBIT “A”
LEGAL DESCRIPTION
TOWN OF CUMBERLAND
PHASE II ANNEXATION

PART OF SECTION 1, TOWNSHIP 15 NORTH, RANGE 5 EAST, SUGAR CREEK TOWNSHIP, HANCOCK COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 1 AND THE EAST BOUNDARY OF COUNTY ROAD 700 WEST; THENCE EAST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 1, TO THE NORTHWEST CORNER OF EASTWAY COURT, THE PLAT OF WHICH IS RECORDED IN PLAT RECORD 5 PAGE 61 IN THE HANCOCK COUNTY RECORDER’S OFFICE, SAID POINT ALSO BEING THE NORTHWEST CORNER OF THE EAST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 1; THENCE SOUTHERLY, EASTERLY AND NORTHERLY AROUND THE PERIMETER OF SAID EASTWAY COURT TO THE NORTHEAST CORNER OF SAID EASTWAY COURT, SAID POINT BEING ON THE NORTH LINE OF SAID SECTION 1; THENCE EAST, ALONG THE NORTH LINE OF SAID SECTION 1, TO THE SOUTHEAST CORNER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 15 NORTH, RANGE 5 EAST, SAID POINT ALSO BEING THE NORTHEAST CORNER OF A TRACT OF LAND CONVEYED TO DAVID & LENORE LARK RECORDED AS INSTRUMENT 13-13290 IN SAID RECORDER’S OFFICE; THENCE ALONG SAID LENORE TRACT THE FOLLOWING FIVE COURSES: 1) SOUTH ALONG THE EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 1 TO THE SOUTHWEST CORNER OF SAID LENORE TRACT; 2) EAST ALONG THE SOUTH LINE OF SAID LENORE TRACT TO A SOUTHEAST CORNER THEREOF; 3) NORTH TO A SOUTHEAST CORNER THEREOF; 4) EAST TO A SOUTHEAST CORNER THEREOF; 5) NORTH TO THE NORTHEAST CORNER THEREOF AND THE NORTH LINE OF SAID SECTION 1; THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 1 TO THE INTERSECTION OF THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 15 NORTH, RANGE 5 EAST AND THE EAST BOUNDARY OF COUNTY ROAD 600 WEST; THENCE SOUTH ALONG THE EAST BOUNDARY OF SAID COUNTY ROAD 600 WEST TO THE NORTHEAST CORNER OF A TRACT OF LAND CONVEYED TO THE STATE OF INDIANA RECORDED AS INSTRUMENT 85-0330 IN SAID HANCOCK COUNTY RECORDER’S OFFICE; THENCE SOUTH TO THE SOUTHEAST CORNER OF SAID STATE OF INDIANA TRACT, ALSO BEING ON THE WEST LINE OF A TRACT OF LAND CONVEYED TO GAS AMERICA RECORDED AS INSTRUMENT 050005687 IN SAID RECORDER’S OFFICE; THENCE SOUTH ALONG THE WEST LINE OF SAID GAS AMERICA TRACT TO THE NORTH LINE OF A TRACT OF LAND CONVEYED TO THE STATE OF INDIANA RECORDED AS INSTRUMENT NUMBER 851367 IN SAID RECORDER’S OFFICE; THENCE SOUTHEASTERLY ALONG THE WEST LINE OF SAID STATE OF INDIANA TRACT TO A SOUTH CORNER OF SAID STATE OF INDIANA TRACT; THENCE SOUTHERLY TO THE SOUTH LINE OF A TRACT OF LAND CONVEYED TO THE STATE OF INDIANA RECORDED AS INSTRUMENT NUMBER 855305 IN SAID RECORDER’S OFFICE; THENCE SOUTHWESTERLY ALONG SAID STATE OF INDIANA TRACT TO THE EAST BOUNDARY OF SAID COUNTY ROAD 600 WEST; THENCE SOUTH ALONG THE EAST BOUNDARY OF SAID COUNTY ROAD 600 WEST TO THE NORTH LINE OF TIME CAPSULE PARK RECORDED AS INSTRUMENT NUMBER 060005274 IN SAID RECORDER’S OFFICE; THENCE EAST ALONG THE NORTH LINE OF SAID TIME CAPSULE PARK TO THE EAST BOUNDARY OF SAID COUNTY ROAD 600 WEST; THENCE SOUTH ALONG THE EAST BOUNDARY OF SAID COUNTY ROAD 600 WEST TO THE PROLONGED SOUTH LINE OF THE PENNSY TRAIL CONVEYED TO THE TOWN OF CUMBERLAND RECORDED AS INSTRUMENT
NUMBER 080009294 IN SAID RECORDER’S OFFICE; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID PENNSY TRAIL TO THE EAST BOUNDARY OF COUNTY ROAD 700 WEST; THENCE NORTH ALONG THE EAST BOUNDARY OF COUNTY ROAD 700 WEST TO THE SOUTHWEST CORNER OF A TRACT OF LAND CONVEYED TO THE STATE OF INDIANARecorded as Instrument Number 0117757 in Said Recorder’s Office; THENCE NORTHEASTERLY ALONG SAID STATE OF INDIANA TRACT TO THE SOUTHEAST CORNER OF SAID STATE OF INDIANA TRACT; THENCE NORTH ALONG SAID STATE OF INDIANA TRACT TO THE SOUTHWEST CORNER OF A TRACT OF LAND CONVEYED TO CALVARY CHRISTIAN FELLOWSHIP OF INDIANAPOLIS INC. RECORDED AS INSTRUMENT NUMBER 130013813 IN SAID RECORDER’S OFFICE; THENCE EAST ALONG THE SOUTH LINE OF SAID CALVARY CHRISTIAN FELLOWSHIP OF INDIANAPOLIS INC. TRACT TO THE SOUTHEAST CORNER OF SAID CALVARY CHRISTIAN FELLOWSHIP OF INDIANAPOLIS INC. TRACT; THENCE NORTH ALONG THE EAST LINE OF SAID CALVARY CHRISTIAN FELLOWSHIP OF INDIANAPOLIS INC. TRACT TO THE NORTH LINE OF A TRACT OF LAND CONVEYED TO THE STATE OF INDIANA RECORDED AS INSTRUMENT NUMBER 0118883 IN SAID RECORDER’S OFFICE; THENCE WESTERLY ALONG THE NORTH LINE OF SAID STATE OF INDIANA TRACT TO THE EAST LINE OF SAID STATE OF INDIANA TRACT; THENCE NORTHERLY ALONG THE EAST LINE OF SAID STATE OF INDIANA TRACT TO THE NORTH CORNER OF SAID STATE OF INDIANA TRACT AND THE EAST BOUNDARY OF SAID COUNTY ROAD 700 WEST; THENCE NORTH ALONG THE EAST BOUNDARY OF SAID COUNTY ROAD 700 WEST TO THE PLACE OF BEGINNING.

CONTAINING 286 ACRES, MORE OR LESS.