

ORDINANCE 2008-34

**AN ORDINANCE AMENDING THE
TAX ABATEMENT PROCEDURE OF THE TOWN OF AVON**

WHEREAS, the Tax Abatement Procedure of the Town of Avon is in need of revision because of changes in applicable laws, town policy, and operational concerns;

AND WHEREAS, the Town Council has determined that it is in the best interests of the citizens of Avon that the Tax Abatement Procedure be revised;

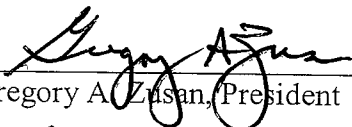
IT IS THEREFORE ORDAINED AS FOLLOWS:

Section 1: Chapter 4, Article 15 of the Town Code, which contains the Town's Tax Abatement Procedure, shall be replaced with the ARTICLE 15: TAX ABATEMENT PROCEDURE attached and marked Exhibit A.

Section 2: This amendment shall be effective January 23, 2009

Adopted this 22ND day of January, 2009

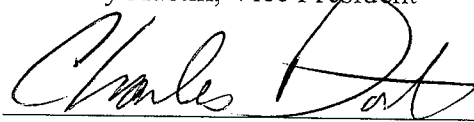
A Majority of the Avon Town Council



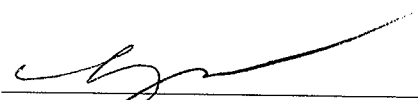
Gregory A. Zusan, President



Beverley Austin, Vice President



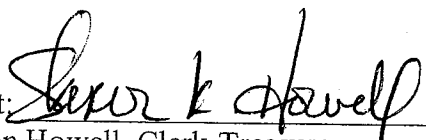
Charles Dorton



Nicole Corby



Michael C. Rogers

Attest: 

Sharon Howell, Clerk-Treasurer

EXHIBIT A

ARTICLE 15: TAX ABATEMENT PROCEDURE

Section

Division I: General Provisions

- 4-180 Legislative findings
- 4-181 Definitions
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DIVISION I: GENERAL PROVISIONS

§ 4-180 LEGISLATIVE FINDINGS.

Legislative findings, in accordance with I.C. 6-1.1-12.1-2, are hereby made by the Town Council as follows:

- (A) The Council hereby finds that there is a need to develop tax abatement procedures which set forth the philosophy, regulations, and procedures which the town believes are necessary to encourage economic development within the town limits.
- (B) The Council therefore declares that the following tax abatement procedures shall govern tax abatement requests filed for consideration with the town.
- (C) The following tax abatement procedures are promulgated pursuant to the "Home Rule" powers vested in the town pursuant to I.C. 36-1-3-1 *et seq.*, and the property tax abatement statutes as set forth in I.C. 6-1.1-12.1 *et seq.* These provisions shall be interpreted and applied consistently with I.C. 6-1.1-12.1 *et seq.* and shall incorporate any amendments to I.C. 6-1.1-12.1 *et seq.* that have been made or may be made after the adoption of this section. All persons who desire to seek real or personal property tax abatement consideration have the duty to comply with the applicable provisions set forth in this article, as well as all state law requirements. However, those persons who petition pursuant to § 4-186 must only comply with the applicable state law provisions and the requirements of annual review as provided for in § 4-191.

(Ord. 98-12, passed 3-26-98; Am. Ord. 2000-19, passed 11-30-00)

§ 4-181 DEFINITIONS.

- (A) For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DESIGNATING BODY. The Town Council of the Town of Avon, Indiana.

ECONOMIC REVITALIZATION AREA or ERA. An area which is within the limits of the town which has become undesirable or impossible for normal development and occupancy because of a lack of development, cessation of growth, deterioration of improvements or character of occupancy, age, obsolescence, substandard buildings or other factors which have impaired values or prevent a normal development of property or use of property. **ECONOMIC REVITALIZATION AREA** shall also include: any area, where a facility or a group of facilities that are technologically, economically or energy obsolete are located

and where the obsolescence may lead to a decline in employment and tax revenues.

HARD DOLLAR COSTS. Expenses directly related to the proposed new construction or rehabilitation excluding costs of financing, architecture, engineering and attorney fees. For the purpose of this article, the **HARD DOLLAR COST** to that cost certified, on the statement of benefits, Form SB-1, Section 4, "Net Estimated Values Upon Completion of Project."

NEW MANUFACTURING EQUIPMENT. Tangible personal property which was

- (1) Installed during the period beginning February 28, 1983, and ending January 1, 2006, in an area that is declared an economic revitalization area (ERA) after February 28, 1983, in which a deduction for tangible personal property is allowed;
- (2) Is used in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining or finishing of other tangible personal property; and
- (3) Was acquired by its owner for use as described in subsection (2) above and was never before used by its owner for any purpose in Indiana.

PROPERTY. A building or structure, but shall not include land.

REDEVELOPMENT. The construction of new structures, in economic revitalization areas either on unimproved real estate or on real estate upon which a prior existing structure is demolished to allow for a new construction.

REHABILITATION. The remodeling, repair or betterment of property in any manner or any enlargement or extension of property.

TAX ABATEMENT COMMITTEE. The Committee established pursuant to this article to review petitions for tax abatement.

(Ord. 98-12, passed 3-26-98; Am. Ord. 98-27, passed 6-25-98)

§ 4-182 FINANCIAL INCENTIVES.

It is the policy of the town not to offer financial incentives for economic development projects that involve the relocation of a business from another Indiana jurisdiction to the town. The town's decision to offer financial incentives to relocate an economic development project from another Indiana jurisdiction to Avon will be based on a project by project review.

(Ord. 98-12, passed 3-26-98)

§ 4-183 COUNCIL'S AUTHORITY TO ENLARGE STANDARDS; POWERS.

- (A) The Town Council believes that pursuant to its Home Rule authority set forth in I.C. 36-1-3-1 *et seq.*, and the authority granted to it under I.C. 6-1.1-12.1-1 *et seq.*, and it has the authority to declare areas within the town as economic revitalization areas which do not meet the general standards for real property tax abatement set forth in §§ 4-195 through 4-199.
- (B) The Town Council therefore declares that individuals who desire to petition for real property tax abatement which do not meet the general standards set forth herein but nevertheless have a business or business development that is unique in the total number of jobs created, salary levels of the jobs, total investment in building and equipment or similar characteristics, may do so by filing proper petitions and forms of the Town's standard Declaratory and Confirmatory Resolutions with the Clerk-Treasurer, as defined. The forms shall set forth in detail the reasons why they believe their circumstances create a unique opportunity for the town and that they should be granted abatement and declared an economic revitalization area.
- (C) The Tax Abatement Committee, as the preliminary review body, shall review petitions, and Declaratory and Confirmatory Resolutions on a project by project basis and make its report to the Town Council which shall have the sole absolute authority as the designating body to declare an area to be an economic revitalization area for tax abatement purposes. The Hendricks County Economic Development Partnership staff shall assist in the review of petitions.
- (D) The Tax Abatement Committee in its report and the Town Council in its decision shall make specific findings supporting their conclusion that there is or is not a rational basis for the determination that the area should be declared an economic revitalization area.
- (E) Real property tax abatement granted under this section shall be limited to the specific amount of years determined by the Town Council to be appropriate under the circumstances. The Town Council shall have the sole and absolute discretion to determine the specific amount of years of tax abatement.
- (F) Nothing herein shall be considered mandatory upon the Council to grant a petition for abatement. The Avon Town Council expressly reserves the right to accept or reject any petition.

(Ord. 98-12, passed 3-26-98)

§ 4-184 AGREEMENT FOR TAX ABATEMENT.

The Town Council shall require that all applicants for economic revitalization area designation enter into an agreement with the Town Council following adoption of the confirmatory resolution. The memorandum of agreement shall contain the investment levels, job creation and/or retention levels and wage rates the applicant has committed to the town in order to receive consideration for economic revitalization area designation.

(Ord. 98-12, passed 3-26-98)

§ 4-185 CORPORATE CITIZENSHIP.

Applicants receiving tax abatements from the Town Council are encouraged to contribute to the development of the overall town community through participation in professional, volunteer, service and not-for-profit organizations.

(Ord. 98-12, passed 3-26-98)

§ 4-186 APPLICATION FOR DESIGNATION.

- (A) *Owners must file.* Owners seeking to make an investment of real property or new manufacturing equipment located within the town may petition the Town Council on forms/petitions provided by the Clerk-Treasurer for real or personal property tax abatement consideration. All information attachments required by the designation application must be completed and filed with the Clerk-Treasurer together with a fee of \$500 to cover processing and administrative costs.
- (B) *Petition information.* Property owners petitioning for tax abatement shall provide the following information on the petition to enable the Town Council to consider their request:
- (1) The name(s) and address(es) of the real property owners(s) and personal property owner(s), in the case of a petition for personal property tax abatement, any other person(s) leasing, intending to lease or having an option to purchase the property and a brief description of the business.
 - (2) If the business organization is publicly held, the name of the corporate parent and the name under which the corporation is filed with the Securities Exchange Commission.
 - (3) The legal description and commonly known address of the real property for which real property abatement is being petitioned or the legal description and commonly known address of the facility at

which the new manufacturing equipment for which tangible personal property tax abatement is being petitioned will be located. In addition, the petition must include the complete parcel number (14 characters) for each parcel to be designated an ERA. The parcel number can be determined in the real estate records of the office of the Hendricks County Auditor.

- (4) A map and/or plat identifying the area where the ERA designation is being requested.
- (5) If applicable, the current assessed valuation of the real property improvement before rehabilitation, redevelopment, economic revitalization or improvement. The current assessed valuation of the personal property to be purchased or replaced.
- (6) A description of the proposed project, whether rehabilitation, new construction or installation of new manufacturing, including information about physical improvements to be made or the new manufacturing equipment to be installed, an estimate of the cost of the project, the amount of land to be used, the proposed use of the improvements, and a general statement as to the value of the project to the business.
- (7) An estimate of the number of new permanent jobs to be created by the project a statement of the current number of permanent and part-time jobs at the location and impact on those current jobs to be caused by the project, and the projected annual salaries for each position to be created.
- (8) A statement that no building permit has been issued for construction on the property for the improvement proposed or verification that the new manufacturing equipment has not been installed.
- (9) The Standard Industrial Classification Manual major group, within which the proposed project would be classified, by number and description.
- (10) The Internal Revenue Service Code of principal business activity by which the proposed project would be classified, by number and description.
- (11) A description of actual or anticipated public financing for the project.
- (12) For real property tax abatement, a description of how the property in question has become undesirable for or impossible of normal development and occupancy because of lack of development,

cessation of growth, deterioration of improvements, character of occupancy, age, obsolescence, substandard buildings or other factors which have impaired values and prevent a normal development of the property or property use.

- (13) For personal property tax abatement replacement, provide a description of why the personal property to be replaced is technologically, economically or energy obsolete, whereby the obsolescence may lead to a decline in employment and tax revenues; together with a verification that any proposed new manufacturing equipment will be used in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining or refinishing of other tangible personal property. "Verificaton/ Evidence/ statement that" the new manufacturing equipment has not been used by its owner for any purpose in Indiana.
- (14) The name, address and telephone number of the person to contact regarding notice of Town Council meetings and public hearings concerning the petition.
- (15) An estimate of the after-rehabilitation market value of the real property or an estimate of the market value of the new manufacturing equipment after installation.

(Ord. 98-12, passed 3-26-98)

§ 4-187 STATEMENT OF BENEFITS AND RESOLUTIONS.

- (A) In addition to the completed petition, filing fee and related documents required by this section, the owners of real property or new manufacturing equipment must file a completed statement of benefits form at the time of filing the petition.
- (B) Proposed forms of declaratory and confirmatory resolutions are also required of the owner at time of filing the petition.
- (C) The provisions of I.C. 6-1.1-12.1-3 shall be followed by the designating body when reviewing the documents required by this section.

(Ord. 98-12, passed 3-26-98)

§ 4-188 REVIEW BY COMMITTEE.

- (A) The Tax Abatement Committee shall have four members appointed by the Town Council with representatives as follows: one member of the Redevelopment Commission, one member of the Economic Development Commission, one member of the Avon Advisory Plan Commission and one member from the Town staff. The Superintendent of the Avon Community School Corporation, or his/her designee may serve as the fifth member of the Committee. The Hendricks County Economic Development Partnership staff shall serve in an advisory role to the Committee.

All members shall serve on the Committee until they resign or are replaced by the Town Council or the School Superintendent responsible for their appointment.

- (B) Upon the filing of a completed tax abatement petition, including all attachments, filing fee, statement of benefits form, and the declaratory and confirmatory resolutions by the owner, the Clerk-Treasurer shall review the documents and make a determination that the application is complete or not complete. If the application or information is incomplete, the Clerk-Treasurer shall contact the applicant and advise the applicant of the deficiencies in the application. If the application and information is complete, the application shall be submitted to the Tax Abatement Committee for review. The review shall be for informational purposes only and shall not be binding on the designating body.
- (C) The Tax Abatement Committee shall review the petition, statement of benefits and all attachments thereto. It shall also have the authority to request additional information from the petitioner which is relevant to the petition and statement of benefits.
- (C) No later than 30 days from the receipt of the documents from the Clerk-Treasurer, the Avon Tax Abatement Committee shall prepare a written report setting forth its advisory findings. The report shall be provided to the Town Council members, the Clerk-Treasurer and the petitioner.
- (D) The report shall address, but not be limited to addressing the following:
- (1) Whether all required information was originally submitted by the petitioner. In the event that additional information was requested of the petitioner, the report shall address the requests and the response received from the petitioner.
 - (2) Whether the information contained in the petition and statement of benefits indicates that the requirements of this article are met by the project as described in the petition.

- (3) Whether zoning requirements have been met, and, if not, the zoning issues to be resolved.
- (4) Whether the project is to be located in a tax allocation area, as defined in I.C. 36-7-14-39, and if so, whether the Avon Redevelopment Commission has adopted a resolution approving the application. A copy of a resolution, if required, shall be attached to the report.
- (5) If additional terms of tax abatement have been proposed, a copy of the proposed agreement shall be attached to the report.
- (6) Whether, in the EDC's opinion, a deduction should be allowed based on the following:
 - (a) Whether the estimate of the value of the redevelopment or rehabilitation to reasonable for projects of this nature.
 - (b) Whether the estimate of the number of individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed described redevelopment or rehabilitation.
 - (c) Whether the estimate of the annual salaries of those individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed described redevelopment or rehabilitation.
 - (d) Whether any other benefits about which information was requested are benefits that can be reasonably expected to result from the proposed described redevelopment or rehabilitation.

(D) The Committee's report shall also have attached to it a copy of the petition and statement of benefits form and any attachments.

(Ord. 98-12, passed 3-26-98)

§ 4-189 REVIEW BY TOWN COUNCIL.

- (A) The Town Council shall hold a public hearing on the petitioner's declaratory resolution pursuant to I.C. 6-1.1-12.1-2.5
- (B) The petitioner, and/or its representative, shall be required to attend the public hearing and present evidence to the Town Council as to why it believes it qualifies for the requested abatement.

- (D) If the Town Council finds that the property qualifies as an ERA under the terms of this section and I.C. 6-1.1-12.1-1 (1), the Town Council may adopt a resolution declaring the property as an ERA for purposes of tax abatement. The resolution shall specify whether the abatement is for real property tax deduction or for personal property tax deduction, the length of time during which the area shall be so designated, and the general boundaries of the area by describing its location in relation to public ways. If the abatement is for real property taxes, the Town Council shall specify the length of the abatement. Upon the adoption of the declaratory resolution, the Clerk-Treasurer shall file the resolution with the Hendricks County Assessor, together with supporting data required by I.C. 6-1.1-12.1-2.5.
- (E) If the area is located within an allocation area as defined in I.C. 36-7-14-39, as declared by the Avon Redevelopment Commission, the Town Council shall not adopt a declaratory resolution declaring an area to be an ERA for the purposes of either real property tax deduction or personal property tax deduction if the Commission has not adopted a resolution approving the petition.
- (E) Upon adoption of the declaratory resolution, the Clerk-Treasurer shall cause notice of the adoption to be published pursuant to I.C. 5-3-1, and shall include in the notice information about the adoption of the declaratory resolution, the substance of the resolution that a description of the affected area is available and can be inspected in the Hendricks County Assessor's Office, the date when the Town Council will receive and hear all remonstrance and objections from interested persons and any other information required by I.C. 6-1.1-12.1-2.5.

(Ord. 98-12, passed 3-26-98)

§ 4-190 CONFIRMATORY RESOLUTIONS.

- (A) Following the legal publication and on the date published in the legal notice, a public hearing on the confirmatory resolution shall be held by the Town Council. The petitioner and/or its representative shall be present and shall be required to present evidence why it believes the tax abatement requested should be granted. At which time the Council shall receive and hear all remonstrance and objections from interested persons pertaining to the petition. At the public hearing, the Council shall determine whether the petition complies with this article and with I.C. 6-1.1-12.1 *et seq.*, and shall consider all pertinent requirements for ERAs prior to taking final action determining whether the petition meets qualifications for an ERA and confirming, modifying and confirming or rescinding the declaratory resolution. The determination of the Town Council is final except that an appeal may be taken and heard as provided by I.C. 6-1.1-12.1-2.5 (d) and (e).

- (B) The Town Council must make a determination as to whether the deductions shall be allowed and make specific findings, pursuant to I.C. 6-1.1-12.1-3. The Council must further comply with I.C. 6-1.1-12.1-4.5 and make specific findings thereto when considering personal property tax abatement requests.
- (C) In declaring an area an ERA, the designating body may:
- (1) Limit the time period to a certain number of calendar years during which the area shall be so designated;
 - (2) Limit the type of deductions that will be allowed within the ERA to either the deduction allowed under I.C. 6-1.1-12.1-3, or the deduction allowed under I.C. 6-1.1-12.1-4.5;
 - (3) Limit the dollar amount of the deduction that will be allowed with respect to new manufacturing equipment if a deduction had not been filed before July 1, 1987, for that equipment;
 - (4) Limit the dollar amount of the deduction that will be allowed with respect to redevelopment and rehabilitation occurring in areas that are designated as ERAs on or after September 1, 1988; or
 - (5) Impose reasonable conditions related to the purpose of state law or the general standards adopted herein for allowing the deduction for the redevelopment or rehabilitation of the property or the installation of new manufacturing equipment.
- (D) To exercise one or more of the above described powers, the Town Council must include this fact in the resolutions adopted.

(Ord. 98-12, passed 3-26-98)

§ 4-191 ANNUAL REVIEW OF PETITIONS.

- (A) All property owners who receive approval of their real and/or personal property tax abatement requests as a result of the Town Council's action under this section shall be required to appear before the Town Council. Appearances shall take place at a Town Council meeting following the petitioners filing of the first certified declaration application with the Clerk-Treasurer required by the State Board of Tax Commissioners, pursuant to I.C. 6-1.1-12.1-5.
- (B) Additionally, the petitioner shall file with the Town Council an annual report that shall include, but not be limited to the following information:

- (1) Completed compliance with statement of benefits form;
- (C) A property owner who fails to file an annual report shall be subject to revocation of their tax abatement for said year pursuant to § 4-192.
- (D) The Town Council shall review the material presented by the petitioner in comparison to the information published by the Clerk-Treasurer as required by I.C. 6-1.1-12.1-8.
- (E) The Town Council shall specifically advise each property owner in writing as to whether subsequent appearances before the Town Council shall be necessary. If the additional appearances are not required, the property owner shall be duly advised that their future annual reports may be mailed. Failure to mail the completed reports may result in revocation of the tax abatement by the Town Council.

(Ord. 98-12, passed 3-26-98)

§ 4-192 COMPLIANCE.

- (A) The town believes that the granting of a request for real and/or personal property tax abatement under the terms and conditions of this article results in a contractual arrangement between the town and the property owner granted abatement.
- (B) Therefore, a petitioner who fails to achieve the estimates set forth in its original petition for tax abatement consideration and its statement of benefits may have its tax abatement revoked by the Town Council.
- (C) A petitioner who fails to file its annual report and meet with the Town Council as required herein shall have the tax abatement revoked by the Town Council.
- (D) Petitioners who comply with the annual report and meeting requirements, but fail to provide evidence as to why they have not achieved the estimates set forth in their documents used by the Town Council when granting the abatement, may have the tax abatement revoked by the Town Council.

(Ord. 98-12, passed 3-26-98)

§ 4-194 STATUTORY TERMS AND CONDITIONS FOR TAX ABATEMENTS.

It is the intention of the Town Council that the specific standards for tax abatement set forth in the Town Code of Ordinances be interpreted and applied consistently with I.C. 6-1.1-12.1 *et seq.* and shall incorporate any amendments to I.C. 6-1.1-12.1 *et seq.* that have been made or may be made after the adoption

of this section. Therefore, any authorization under I.C. 6-1.1-12.1 *et seq.* for tax abatements under terms, conditions or standards differing from those specifically set forth in this Code shall be incorporated in the town's tax abatement procedures.

(Ord. 2000-19, passed 11-30-00)

