

ORDINANCE NO. 2013-05

AN ORDINANCE OF THE COMMON COUNCIL FOR THE CITY OF LEBANON, INDIANA, REZONING PROPERTY AND CHANGING THE ZONING MAPS AND AMENDING THE ZONING ORDINANCE TEXT FOR THE CITY OF LEBANON, INDIANA (Golfside at Ulen and Waggoner; LPC Case No. 13-4)

WHEREAS, the Petitioner, The City of Lebanon, Indiana (“City”), has initiated a re-zoning and zoning text amendment of the real estate known as Golfside at Ulen Subdivision and property owned by Michael and Nancy Waggoner, pursuant to I.C. 36-7-4-607, and I.C. 36-7-4-1500 et seq., and said proposal being sent to the Lebanon Plan Commission, pursuant to Indiana law, for its consideration, which request seeks to rezone approximately 47 acres, more or less, in Center Township, Boone County, Indiana, and said real estate being described as Sections 1 & 2 of the Golfside at Ulen Subdivision (said plats being recorded in the Office of the Recorder of Boone County on August 14, 1992 in Plat Book 7 Page 74, and on August 16, 1994 in Plat Book 8, Page 51) and the real estate owned by Michael and Nancy Waggoner with a common address of 2220 Golfside Drive, Lebanon, Indiana, and having tax parcel ID #s 015-48000-01 through 015-48000-79 (excluding 015-48000-22) [Golfside at Ulen Subdivision] and tax parcel ID # 015-46100-00 [Waggoner], collectively hereinafter referred to as the “Property”, from the SF-1 (Single Family Residential) zoning classification to the PUD (Planned Unit Development) zoning classification; and

WHEREAS, pursuant to Indiana Code 36-7-4-608, the Lebanon Area Plan Commission conducted the required Public Hearing and voted (6-0) to send a favorable recommendation of the re-zoning and text amendment for the Property on April 15, 2013; and certified its favorable recommendation to the legislative body, the Lebanon City Council on April 16, 2013; and

WHEREAS, pursuant to Indiana Code 36-7-4-608, the Lebanon City Council, having considered the proposal and the recommendation of the Lebanon Area Plan Commission now adopts the proposal and approves the requested rezoning.

IT IS THEREFORE CONSIDERED, ORDAINED AND ADOPTED as follows:

1. The City has sought a re-zoning and text amendment to establish a Planned Unit Development zoning designation (“PUD”) for the Property and determined the requisite standards and uses in accordance with I.C. 36-7-4-1503.
2. The City seeks to have the Property known as Golfside at Ulen, Section 1 (as recorded in the Office of the Recorder of Boone County in Plat Book 7, Page 74 on August 24, 1992); Golfside at Ulen Section 2 (as recorded in

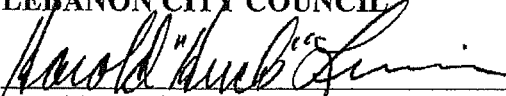
the Office of the Recorder of Boone County in Plat Book 8, Page 51, on August 16, 1994); and the real estate owned by Michael and Nancy Waggoner located at 2220 Golfside Drive, having tax parcel IDs # 015-48000-01 through 79, excluding 22 (Golfside at Ulen Sections 1 & 2) and 015-46100-00 (Waggoner), re-zoned from the SF-1 (Single Family Residential) zoning classification to the PUD (Planned Unit Development) Zoning Classification, said Property comprising approximately 47 acres.


3. That the Lebanon City Council has paid reasonable regard to applicable comprehensive plan; current conditions and the character of current structures and uses in each district; the most desirable use for which the land in each district is adapted; the conservation of property values throughout the jurisdiction; and responsible development and growth. Additionally, the Council adopts the development standards and uses as set forth in Exhibit "A" attached hereto and incorporated herein.
4. That from and after this date, the official zoning maps of the City of Lebanon, Indiana shall be changed to rezone the subject Property from the SF-1 zoning classification to the PUD zoning classification, subject to and in reliance on the development standards and uses as attached in Exhibit "A". Further, the Plan Director of the City of Lebanon Plan Commission is hereby authorized to change the official zoning maps consistent with this ordinance.

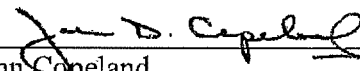
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ALL OF WHICH IS ADOPTED this 13th day of May, 2013
by the Lebanon City Council of the City of Lebanon, Indiana.

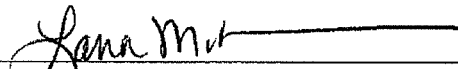
LEBANON CITY COUNCIL

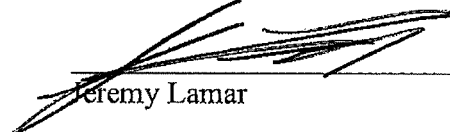

Harold "Huck" Lewis, Mayor


Keith Campbell


John Copeland


Mike Kincaid


Lana Kruse


Jeremy Lamar

ABSENT
Steve Harge


Preston Myers

ATTEST:

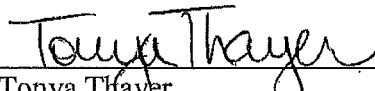

Tonya Thayer,
Clerk-Treasurer, City of Lebanon, Indiana

EXHIBIT “A”

**CITY OF LEBANON, INDIANA
ZONING ORDINANCE**

**ORDINANCE ESTABLISHING
THE GOLFSIDE AT ULEN
PLANNED UNIT DEVELOPMENT DISTRICT**

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**AN ORDINANCE ESTABLISHING THE GOLFSIDE AT ULEN
PLANNED UNIT DEVELOPMENT DISTRICT**

Section 1. Legislative Intent.

Having given reasonable regard to the City's most recent Comprehensive Plan, the current and likely future uses of the Real Estate, and the other matters specified in Chapter 5 of the UDO, the Council's intent in adopting this Ordinance is to retain a PUD zoning classification for the current and future single-family residences now or which may in the future be located in the Real Estate subject to the terms and conditions of this Ordinance. This action is intended to approve as pre-existing and conforming the current existing uses and structures in the Real Estate and approve those future uses and structures that may occur hereafter, providing they meet the requirements and standards of the recorded plats and of the Amended and Restated Declaration of Covenants and Restrictions for Golfside at Ulen ("Covenants") as recorded on October 19, 2001 as Instrument No. 0112776 in the office of the Recorder of Boone County, Indiana or as hereinafter amended. The current and future owners of the Waggoner Lot shall also be bound by the terms and standards of the plats and Covenants. This action is considered to be in the best interests of the current and future owners of the Real Estate and the City as a whole.

Section 2. Applicability of Ordinance.

2.1. The City's official zoning map, which is a part of the UDO, shall retain the zoning classification of PUD for the Real Estate in accordance with the terms of this Golfside at Ulen PUD District Ordinance.

2.2. The City or other owners of land adjacent to the Real Estate shall have the right to file a written application seeking the inclusion of additional parcels of land contiguous to the Real Estate as part of the District, but such inclusion shall occur only upon the approval by the Council, after public hearing and recommendation of the Plan Commission, on such terms and conditions as the Council may establish, pursuant to the procedures in I.C. 36-7-4.

2.3. Development in the District shall be governed entirely by the provisions of this Ordinance with the exception that provisions of the UDO shall also apply to the extent not expressly prohibited by this Ordinance.

2.4. The Commission, the owner of land or any lot in the District, or the Golfside at Ulen Property Owners Association or its successor shall have the right to initiate litigation in a court of competent jurisdiction to enforce and compel compliance with all of the terms and provisions of this Ordinance, as currently adopted or hereafter amended.

Section 3. Definitions.

Unless otherwise stated, the following words shall, for the purpose of this Golfside at Ulen PUD District Ordinance, have the meaning herein indicated. Any word used in this Ordinance which is not defined herein and which is defined in the City of Lebanon Unified Development Ordinance shall, for the purposes of this Ordinance, have the meaning ascribed to such work in the UDO, unless the context otherwise requires:

“Accessory Structure” shall mean an incidental and subordinate structure which is commonly associated with the operation of the principle use of the lot.

“Architectural Review Board” means the entity established pursuant to the Declaration for the purposes stated therein stated.

“Articles” mean the Articles of Incorporation of the Corporation, as amended from time to time.

“Assessments” mean all sums lawfully assessed against the Members of the Corporation, as amended from time to time.

“Board of Directors” means the governing body of the Corporation elected by the Members in accordance with the By-Laws.

“By-Laws” means the Code of By-Laws of the Corporation, as amended from time to time.

“Golfside at Ulen” means the name by which the Real Estate shall be known.

“Common Area” means any area referred to on a Plat as a Common Area.

“Community Area” means (i) the Drainage System, (ii) the Entry Ways, (iii) the Roadways to the extent not maintained by public authority, (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that serve more than one Lot, and (v) any area of land (1) shown on the Plat or (2) conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.

“Corporation” or “Association” means Golfside at Ulen Property Owners Association, Inc., an Indiana not-for-profit corporation, including its successors and assigns.

“Drainage Board” means the City of Lebanon Storm Water Management Board or the Boone County Drainage Board, whichever has jurisdiction under the appropriate statutes and/or ordinances, their successor or assigns.

“Drainage System” means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention areas, and the other structures, fixtures, properties, equipment and facilities located in the Real Estate and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Real Estate, including, but not limited to, those shown or referred to on the Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

“Entry Ways” means the structures, which may be located within a Community Area, constructed as an entrance to Elm Swamp Road or County Road 250 North (Anderson Lane) or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic island, if any, and the grassy area surrounding such structures, whether located within or without the Real Estate.

“Landscape Easement” means a portion of a Lot denoted on the Plat as an area to be landscaped and maintained by the Corporation (if any).

“Front Yard” shall mean a yard extending across the full width of the Lot, unoccupied other than by steps, sidewalks, pathways, walkways, trails, terraces, interior access driveways, lampposts, and similar structures, the depth of which is perpendicular distance between the street right-of-way line and the front setback line as denoted on the Golfside at Ulen Plats for Section 1 and 2.

“Lot” means a platted lot as shown on the Plat.

“Lot Development Plan” means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including, but not limited to, the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

“Owner” means a Person who at this time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

“Person” means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

“Plat” means the final plat of the Real Estate recorded in the Office of the Recorder of Boone County, Indiana.

“Public Street” shall mean a publicly dedicated, accepted and maintained right-of-way, with the exception of alleys, open to the general public for the purposes of vehicular and pedestrian travel, which may also afford access to abutting property, whether referred to

as a street, road or any other term commonly applied to a public right-of-way for said purposes. A public street may be comprised of pavement, shoulders, gutters, curbs, sidewalks, parking space, and the like.

“Rear Yard” shall mean a yard extending across the full width of the lot, unoccupied other than by steps, sidewalks, pathways, walkways, trails, terraces, interior access driveways, lampposts, and similar structures, the depth of which is the perpendicular distance between the rear lot line and rear setback line as denoted on the Golfside at Ulen recorded plats for Section 1 and 2.

“Residence” means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including a private garage and outbuildings and recreational facilities usual and incidental to the use of a single-family lot.

“Restrictions” means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth on the final recorded Plat.

“Side Yard” shall mean a yard extending across the full length of the lot, unoccupied other than by steps, sidewalks, pathways, walkways, trails, terraces, interior access driveways, lampposts, and similar structures, the depth of which is the perpendicular distance between the side lot line and side setback line as denoted on the recorded Golfside at Ulen plats for Section 1 and 2.

Section 4. Modification of the Ordinance or Development Requirements.

4.1 Modification of this Ordinance may occur only upon official action of the Council following the Plan Commission’s review and recommendation of the proposed changes in accord with I.C. 36-7-4.

4.2. The Plan Commission may, upon the petition of any interested party, including the City, after notice and opportunity for input on the matter at a public hearing, modify any Development Requirements specified in this Ordinance in accordance with the provisions of this section; provided, however, that any proposed modification of the Covenants may be effective only upon satisfaction of the requirements for amendment contained in the Covenants.

Section 5. Permitted Principal Uses.

Only single-family residential uses are permitted in the District or parts thereof, subject to compliance with the terms of the recorded plats and Covenants, as currently or hereafter in effect. No commercial, institutional, mixed-use or multi-family uses shall be permitted.

Section 6. Permitted Accessory Uses.

6.1 Permitted accessory uses and structures shall be subject to the applicable standards set herein in the Golfside at Ulen PUD Ordinance. Accessory structures shall be operated and maintained under the same ownership and on the same lot or contiguous lot as the primary use.

The following accessory uses and structure be permitted in accordance with the Improvement Location Permits and Architectural Review Board approval: porches, decks, patios, swimming pools, hot tubs and other accessory structure buildings or structures similar and comparable in character to these permitted uses.

6.2 **Prohibited Accessory Structures.** Outbuildings and sheds are specifically prohibited. No trailer, tent, shack, detached garage, boat, barn, or other outbuildings shall at any time be used as a residence or for any other purpose, temporarily or permanently, on any building site, except as otherwise permitted herein.

6.3 **Building Setbacks.** An accessory structure shall be clearly subordinate in height, area, bulk, extent and purpose to the principal use served and shall not exceed the established front, side, and rear setbacks found in Section 13 of this Ordinance. No accessory structure may be erected in the front of a main building or in the required front yard on the side of a corner lot unless the accessory building is attached to the main building by a common wall. In the event, an Owner seeks to encroach into building setback line, a formal application for Development Standard Variance must be sought and approved by the City of Lebanon Board of Zoning Appeals.

Section 7. Residential Development.

7.1 **Number of Lots.** No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of residences in Golfside at Ulen than the number of Lots depicted on the Plat.

7.2 **Use of Lot.** Lots may be used only for single-family residential purposes and only one residence not to exceed two and one half (2 ½) stories. Notwithstanding any provision in this Ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single-family dwellings.

Section 8. Commercial Development.

No commercial development shall be allowed as a principal use on the Real Estate.

Section 9. Dedicated Public Streets.

The following streets have been dedicated to the public: Turnberry Drive, Golfside Drive, Spyglass Court, Turnberry Court, South Muirfield Circle, Muirfield Circle and Sawgrass Court.

Section 10. Open Space.

10.1 Dedicated Open Space-Section 1 of Golfside at Ulen. The Common Area denoted as Block "A" containing 1.65 acres will remain in perpetuity as open space for Section 1, unless a formal application for Plan Amendment approving a reduction in open space by the Plan Commission.

10.2 Dedicated Open Space-Section 2 of Golfside at Ulen- The Common Area denoted as Landscape Easement (L.S.E.) found the rear lot lines of Section 2 Real Estate owners will remain open space in perpetuity, unless a formal application for Plat Amendment approving the amendment of the Landscape Easements in Section 2 of Golfside at Ulen.

Section 11. Area and Development Regulations.

11.1 Minimum Ground Floor Area; Section 1 of Golfside at Ulen. Except as otherwise provided herein, no residence may be constructed on any Lot in Section One unless such residence, exclusive of open porches, attached garages and basements, shall have a ground floor area of One Thousand Nine Hundred (1,900) square feet is a one-story structure, or a ground floor area of One Thousand Five Hundred (1,500) square feet exclusive of open porches, attached garages and basements, if the residence is two (2) or more stories. Total square footage for a two-story structure shall total a minimum of Two Thousand Six Hundred (2,600) square feet.

11.2 Minimum Ground Floor Area; Section 2 of Golfside at Ulen. Except as otherwise provided herein, no residence may be constructed on any Lot in Section Two unless such residence, exclusive of open porches, attached garages and basements, shall have a ground floor area of One Thousand Six Hundred (1,600) square feet if a one-story structure, or a ground floor area of One Thousand Two Hundred (1,200) square feet exclusive of open porches, attached garages and basements, if the residence is two (2) or more stories. Total square footage for a two-story structure shall total a minimum of One Thousand Six Hundred (1,600) square feet.

11.3 Minimum Front Yard Setback; Section 1 of Golfside at Ulen. No building may be erected between the 30' Building Setback Line (BSL) and the front Lot line as denoted on the recorded Section 1 plat for Golfside at Ulen.

11.4 Minimum Front Yard Setback; Section 2 of Golfside at Ulen. No building may be erected between the 30' Building Setback Line (BSL) and the front Lot line as denoted on the recorded Section 2 plat for Golfside at Ulen.

11.5 Minimum Side Yard Setback; Section 1 of Golfside at Ulen. No building may be erected between the 10' Side Yard Setback line and the side property line as denoted on the recorded Section 1 plat for Golfside at Ulen. Lots exempt from the Side Yard

Requirement of 10' feet include Lots numbered 49, 57, 58, 61, 64, 65, 70, and 71. Lots number 49, 57, 58, 61, 64, 65, 70 and 71 are required to have a minimum side yard setback of 5' feet, to remain without erected buildings.

11.6 Minimum Side Yard Setback; Section 2 of Golfside at Ulen. No building may be erected between the 10' Side Yard Setback line and the side property line as denoted on the recorded Section 2 plat for Golfside at Ulen.

11.7 Minimum Rear Yard Setback; Section 1 of Golfside at Ulen. No building may be erected between Rear Setback line and rear property line as denoted on the recorded Section 1 plat for Golfside at Ulen.

11.8 Minimum Rear Yard Setback; Section 2 of Golfside at Ulen. No building may be erected 20' feet from the rear property line as denoted on the recorded Section 2 plat for Golfside at Ulen.

11.9 Maximum Height for Structure; Section 1 of Golfside at Ulen. Lots may be used for single-family residential purposes and only one residence not to exceed two and one half (2-1/2) stories.

Section 12. Vehicle Parking.

No boat, camper boat trailer, house trailer, recreational vehicles, truck larger than a pick-up truck, or any part thereof shall be stored or permitted to remain on any residential lot unless the same is stored or placed in a garage or fully enclosed space, except for temporary storage for a period not to exceed thirty (30) consecutive days in duration, with such temporary occurrences not to exist more than one (1) time in any calendar year.

Section 13. Signs.

13.1 Except for such signs as the Homeowners Association may in its absolute discretion display in connection with the identification or development of Golfside at Ulen and the sale of Lots therein and such signs as may be located in any Community Area, no sign of any kind shall be displayed to the public view on any Lot except that two (2) signs of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale, or may be displayed by a builder to advertise the property during construction and sale. A builder may display a "sold" sign on the Lot when he has sold the property. Other than the aforementioned, the only signs that may be erected by Lot owners in this subdivision are: those required by law, a single sign placed by a builder or financial institution to advertise a property during the construction and sales period, a single yard sale or garage sale sign placed by the owner no more often than two days, twice each calendar year, a single sign placed by an owner to advertise the property for sale or rent. No sign shall exceed four (4) square feet in size.

13.2 **Improvement Location Permits for Sign.** Except where noted in this ordinance, the erection, construction, enlargement, movement or conversion of all permanent and temporary signs, banners, exterior graphic displays and sign structures shall require a sign permit to be obtained from the City of Lebanon Planning and Building Department in accordance with development standards for signage found in this Ordinance.

13.3 **Entryway Signage.** Subdivision entry signs shall identify the subdivision and enhance the character of the entrance. Only one double-sided or two single-sided sign structures identifying a residential subdivision or multifamily development shall be permitted per entrance. The maximum size sign area shall not exceed thirty-two (32) square feet in sign area. The sign structure shall not exceed a height of six (6) feet measured from the adjacent ground level. In no case may mounding or other alterations of the natural ground level be used as a point of reference for measuring sign height.

13.4 **Illumination of Entryway Signage.** Internal illumination shall not be permitted for signs for the Golfside at Ulen development.

13.5 **Right-of-Way.** The sign structure shall be set back a minimum of five (5) feet from the right-of-way and shall be located of the Sight Visibility Triangle (No sign shall be located in the "Clear Vision Triangle"). Entry signs placed in the right-of-way of a public street, such as in the median of a boulevard, shall be prohibited unless approved by the Lebanon Street Department and Planning and Zoning Administrator.

Section 14. Landscaping.

14.1 **Entry Way Landscaping.** The Corporation shall maintain the Entry Ways and the Landscape Easements and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way or a Landscape Easement shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to the Real Estate. All entrance signs located on an Entry Way shall be maintained at all times in good condition.

14.2 **Preservation.** Trees, vegetation, irrigation systems, fences, walls and other landscape elements are considered elements of a project in the same manner as parking and other site details. The Corporation shall be responsible for the continuous proper maintenance of all landscaping materials, and shall keep them free from refuse and debris and in good repair at all times.

14.3 **Maintenance.** Landscape materials are intended to grow, spread and mature over time. Landscaping materials used to fulfill requirements of this Ordinance may not be pruned or otherwise treated so as to reduce overall height or level of opacity. Pruning, branch trimming, topping, and other inhibiting measures including removal may only be practiced to insure the public safety or to preserve the relative health of the material involved.

Section 15. Detention and Retention Basins.

The Corporation shall maintain the existing Drainage System in good satisfactory condition for the purpose for which it was constructed until the earlier of the completion of its development activities within the Real Estate or the date the Drainage System is accepted as a legal drain by the Boone County Drainage Board and the Lebanon Storm Water Management Board, or the Corporation notifies in writing its intention to cease maintenance to the Golfside at Ulen Homeowners Association, Inc. The Corporation shall maintain the Drainage System to the extent not maintained by the Boone County Drainage Board or the Lebanon Storm Water Management Board, and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment.

Section 16. Exterior Lighting.

No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

Section 17. Fences and Walls.

17.1 Fence and Wall Approvals. No fences or walls shall be permitted except after approval and review by the Architectural Review Board. Chain-link fencing and animal containment type fencing shall be prohibited. All approved fences shall be designed and constructed so as to be compatible with the neighborhood and shall be designed and constructed so as to not constitute a nuisance or offensive effect on other persons residing within the subdivision. Shrubbery and other vegetation planted in a manner as to constitute a hedge shall be subject to this zoning provision and subject to approval of the Architectural Review Board. Upon approval from the Architectural Review Board, an application for fence permit must be approved from the City of Lebanon Department of Planning and Zoning Administration.

17.2 Setbacks and Easements. The location of any proposed fence must be located 3' feet away from the property line. Fences are prohibited in dedicated easements denoted on the recorded plats for Section 1 and 2 of Golfside at Ulen.

17.2 Drainage. No fence or wall shall disrupt the flow of water in any drainage easement, or otherwise result in impediments for storm water runoff. Any fence or wall located in an easement may be removed by the easement holder when accessing the easement.

Section 18. Certification and Recordation of the Plats.

The certification and recordation of Section 1 and 2 of the Golfside at Ulen can be obtained in the Recorder's Office in the County of Boone.

Section 19. Improvement Location Permits.

Prior to the issuance of an Improvement Location Permit by the City of Lebanon Planning and Zoning Administration Department, all Owners must provide complete and detailed application materials, including but not limited to: a completed application for development, certified plot plans, construction drawings, and any other requested information necessary for the issuance of an Improvement Location Permit. No Improvement Location Permit will be issued without written verification from the Association that its Architectural Review Board has approved the plans as required by the Golfside Covenants.

Section 20. Filing Fees.

The filing fees associated with development process applications such as variances, appeal of director's decision, or improvement location permits are established in the enacted City of Lebanon Fee Schedule. The filing fees are subject to change from time to time by a vote of the Council.