

From: [Eduardo Castellanos](#)
To: [Boyle, Douglas J \(DHS\)](#)
Subject: HBA - Ordinance of Ogden Dunes
Date: Monday, May 4, 2020 4:25:59 PM
Attachments: [image004.png](#)

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Hello Mr. Boyle,

I am reaching out to you on behalf of the Home Builders Association of NWI and it's members. I know there is a meeting scheduled on Wednesday, May 6th with the Fire Prevention & Building Safety Commission. I plan on attending the online meeting (if the it is fine with the chair), as we have some concerns with the Ordinance of the Ogden Dunes Town Council, which includes:

- **Ordinance: page 3, Sec. 156.005 Authority**
HBA Position: As appointees, plan commission members are not employees of local units of government and therefore should not administer and enforce provisions of this ordinance.
- **Ordinance: page 6, (D) Application Review Period and pages 6-7 (E) Plans and Specifications (3) Examination state "Within 30 calendar days, or as soon thereafter as is practical, following the filing of required plans, specifications, applications and fees with the Building Commissioner. The Building Commissioner or the Plan Commission shall examine the plans and specifications and determine their eligibility for permit."**
HBA Position: This provision directly contradicts Indiana statute [IC 36-7-4-1109\(i\)](#), which requires the building permit to be issued in 12 days.

Please contact me to further discuss before Wednesday's meeting. I have been partially working from home, so you can contact me on my cell phone, if you cannot reach me at the office: Cell No. 219-577-3619.

Thank you, I look forward to speaking with you.

Eddie -

Eddie Castellanos
Executive Officer
Home Builders Association of Northwest Indiana
800 East 86th Ave, Ste. A, Merrillville, IN 46410
P: 219-464-2944
F: 219-525-4132
www.HBANWI.com



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From: [Tom Frain](#)
To: [Boyle, Douglas J \(DHS\)](#)
Subject: Ordinance 855 review 5-6-2020
Date: Monday, May 4, 2020 11:08:11 PM
Attachments: [Fire Prevention & Building Safety Commission.pdf](#)

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Mr. Boyle,

Please forward the attached letter to the members of the Commission for review prior to the upcoming meeting on 5-6-2020. Thank you for your assistance in relaying our thoughts about the proposed Ordinance 855 in the Town of Ogden Dunes.

Sincerely,

Tom Frain

Fire Prevention & Building Safety Commission

Indiana Department of Homeland Security
Indiana Government Center South
302 W. Washington Street, Room E241
Indianapolis, IN 46204

Douglas J. Boyle
Commission Director

Robin E. Nicoson
Chairman

Commission Members,

Thank you for taking your time to review my concerns with Ordinance 855 to amend the Building Code of the Town of Ogden Dunes as I do know and believe that your commission will do that which is best for all the people that live in and serve those in the Town of Ogden Dunes.

The sections 156.009 (E)(2)(3) of the proposed ordinance are concerning to me as a one-time resident of the Town of Ogden Dunes for 22 years and a contractor in the Town for 19 years. The language clearly equates the Building Commissioner with the Plan Commission and goes further to subordinate the position of the Building Commissioner. Unfortunately, my company has experienced this inversion of authority resulting in homeowners' properties being left in mid-construction for over a year. By using the word approval in section 2 instead of recommendation, the Building Commissioner is subordinated. By using the word or in section 3, the officials are made interchangeable and the phrase determine their eligibility makes the Building Commissioner irrelevant.

As a Commission you are being asked to approve the Town of Ogden Dunes to change or eliminate the relationship between officials tasked respectively with legislating, interpreting and enforcing local ordinances. The foundational governmental implications of this alone is reason enough to reject Ordinance 855.

A similar scenario would be for the Fire Prevention and Building Safety Commission to approve building plans and inspect structures instead of the State Building Commissioner based on its authority of creating a statewide code of fire safety laws and building laws which the State Building Commissioner enforces. If a multitude of other reasons didn't exist for rejecting Ordinance 855, the consolidation of power in an appointed advisory planning commission is more than adequate reason to reject. Ordinance 855 reads contrary to IC 22-13-5-3 "Written interpretation binding on interested person and county or municipality."

Sec. 3. (a) A written interpretation issued under section 2 of this chapter binds the interested person and the county or municipality with whom the interested person has the dispute until the written interpretation is overruled in a proceeding under IC 4-21.5.

(b) For purposes of IC 4-21.5, the commission is the ultimate authority regarding a written interpretation issued under section 2 of this chapter. As added by P.L.71-1999, SEC.1

On page 3 of Ordinance 855 Article 156.005 Authority, the consolidation of power in unelected individuals is made explicit. As appointees, plan commission members are not employees of local units of government and therefore should not administer and enforce provisions of this ordinance. This is another reason to reject Ordinance 855.

In section 156.009 (E)(1) of the proposed ordinance the requirement that any slope stabilization system shall have a minimum design life of 40 years is subjective and arbitrary. Designs and plans are created to meet tolerances and specifications of the proposed materials. Materials are manufactured for specific strengths not guaranteed longevity which makes this requirement impossible to comply with and should be rejected.

Lastly, section 156.009 (D)(1) of the proposed ordinance is in clear and open contradiction to the Indiana Statute [IC 36-7-4-1109\(i\)](#), which requires the building permit to be issued in 12 days. The statute is as follows;

“Notwithstanding any other law, a local governmental agency must, not later than twelve (12) business days after a person has filed a complete application for a permit for which approval is ministerial under [IC 36-7-4-402](#) or an improvement location permit issued under the 800 series of this chapter and meets all conditions required under this chapter and any other statute, issue the permit to the person.”

Agents of the Town of Ogden Dunes have continued with their 30-day review even though this State Statute took effect July 1, 2019. The Ogden Dunes Town Council didn't adopt Ordinance 855 until 11-4-2019 yet their agents have enforced the ordinance for years to the confusion and frustration of residents and contractors alike. The sections of Ordinance 855 that are relevant to my concerns are attached.

I respectfully ask you to disapprove Ordinance 855 to protect the people that live in and serve those in the Town of Ogden Dunes.

Sincerely,

Thomas Frain - Owner, Duneland Landscape LLC

Patrick Poland - Owner, HP Construction Inc.

Anthony Gaul - 8 Beach Lane Court, Ogden Dunes

David Domke - 12 Deer Trail, Ogden Dunes

Charles Costanza - 68 Ski Hill Rd., Ogden Dunes / Owner, Tie Masters

Richard Wallace - 70 Ogden Rd., Ogden Dunes / IN, IL Licensed Architect

Noel Frigo - 72 Shore Dr., Ogden Dunes

Ordinance 855 of the Town of Ogden Dunes pages 6-7 of the proposed ordinance follow in part.

156.009 APPLICATION FOR BUILDING PERMIT.

(D) Application review period.

(1) A review period of 30 days from the date received by the Building Commissioner is required for each application prior to approval.

(E) Plans and Specifications.

(1) *Filing requirements.* Three copies of a site plan shall be submitted to the Building Commissioner, along with an application for building permit, all applicable building permit fees and an application for a certificate of occupancy. The site plan and all drawings required hereunder shall be in a scale not less than one-fourth inch equaling one foot. Site plans shall include and be accompanied by, at a minimum, site grading, slope destabilization, erosion control with all appropriate details for the preceding, elevations, a typical wall section, and floor plans with building specifications. It is to be noted that any slope stabilization system shall have a minimum design life of 40 years.

(2) *Design and structural approval.* The Building Commissioner shall submit documents that meet the requirements of this chapter to the Plan Commission for approval before a building permit may be granted.

(3) *Examination.* Within 30 calendar days, or as soon thereafter as is practical, following the filing of required plans, specifications, applications and fees with the Building Commissioner. The Building Commissioner or the Plan Commission shall examine the plans and specifications and determine their eligibility for permit. ('99 Code, 10-140 - 10-143) (Ord. 643, passed 3-2-98; Am. Ord. 707, passed 9-11-06)

Ordinance 855 of the Town of Ogden Dunes page 3 of the proposed ordinance follows in part.

156.005 AUTHORITY.

The Plan Commission is hereby authorized and directed to administer and enforce all of the provisions of this Code. Whenever in this Code it is provided that anything must be done to the approval of or subject to the direction of the Plan Commission, this shall be construed to give such Officer only the discretion of determining whether this Code has been complied with and no such provision shall be construed as giving any Officer discretionary powers as to what this Code shall be, or power to require conditions not prescribed by ordinances or to enforce this Code in an arbitrary or discriminatory manner. The Plan Commission may also, and shall in accordance with state statutes, delegate to the Building Commissioner such duties as issuing permits, conducting field inspections and reporting violations. The Plan Commission is further authorized and directed to administer and enforce variances granted in accordance with IC 22-13-2-11 and Orders issued under IC 22-12-7.