

ORDINANCE 2018-01

AN ORDINANCE ANNEXING CERTAIN
CONTIGUOUS LAND TO THE TOWN OF

CHESTERTON, PORTER COUNTY, INDIANA
WHEREAS, Peter M. Ballestero and Hedwig M. Ballestero as Trustees under the Ballestero Revocable Living Trust, dated July 11, 2016, ("Ballestero") have petitioned the Chesterton Town Council for the annexation of a parcel of real estate owned by them, which is more particularly described as follows, to-wit:

See attached Exhibit "A", legal description
(Commonly known as 219 E. 1200 N., Chester-
ton, IN 46304)

and is hereinafter referred to as the "Real Es-
tate"; and,

WHEREAS, Ballestero is the sole owner of the
Real Estate and, therefore, owns one hundred
percent (100%) of the land sought to be an-
nexed; and,

WHEREAS, at least one-eighth (1/8) of the ag-
gregate external boundaries of the Real Estate
coincide with the boundaries of Chesterton;
and,

WHEREAS, the Chesterton Town Council has
adopted Resolution No. 2018-03, which is a
Resolution establishing a written fiscal plan and
definite policy pursuant to Indiana law for the
annexation of approximately 11.89 acres peti-
tioned for by Bellestero; and,

WHEREAS, the Chesterton Town Council pur-
suant to I.C. 36-4-3-1.5 also desires to annex
the rights-of-way of the public highway known
as County Road 1200 North, but not the fee
simple title for the following described real es-
tate, to-wit:

The entire South 50 feet of the parcel hereto-
fore described, lying North of the centerline of
Porter Avenue (formerly known as
LaPorte-Chesterton Road), described as fol-
lows:

A parcel of land lying in the Northwest Quarter
of Section 5, Township 36 North, Range 5 West
of the Second Principal Meridian in Westches-
ter Township, Porter County, Indiana.

WHEREAS, the Chesterton Town Council has
conducted a public hearing in accordance with
Indiana law and given appropriate notice
thereof; and,

WHEREAS, the Chesterton Town Council has
determined that the annexation of the Real Es-
tate and that certain rights-of-way of the public
highway known as County Road 1200 North, as
previously described, is in the best interest of
the Town of Chesterton; and,

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

SECTION 1: That the Real Estate hereto de-
scribed is hereby annexed to the Town of Ches-
terton, Porter County, Indiana, and given an in-
terim zoning of R-1.

SECTION 2: That the Real Estate shall be
given a final zoning after the receipt of the rec-
ommendation of the Chesterton Advisory Plan
Commission for a change in the Zoning Map,
and shall be assigned to Chesterton Legislative
District 5.

SECTION 3: That an Annexation and Develop-
ment Agreement entered into between the
Town of Chesterton and Ballestero is attached
hereto, incorporated herein and marked as Ex-
hibit "B". The intent of the Annexation and De-
velopment Agreement is to provide terms and
conditions fairly calculated to make the annexa-
tion equitable to the property owners and also
to the residents of the Town of Chesterton.

SECTION 4: That the real estate as aforede-
scribed which affects the rights-of-way of the
public highway known as County Road 1200
North but not including fee simple title, is
hereby annexed to the Town of Chesterton,
Porter County, Indiana.

SECTION 5: That this Ordinance shall be in full
force and effect thirty (30) days after its publica-
tion as required by I.C. 36-4-3-7(f) and upon the
filing required by I.C. 36-4-3-22(a).

ALL OF WHICH IS PASSED AND ADOPTED
by the Chesterton Town Council, Porter County,
Indiana, this 11th day of June, 2018.

CHESTERTON TOWN COUNCIL

Lloyd Kittredge, Jr., President

Emerson DeLaney

Nathan Cobbs

Dane Lafata

James G. Ton

ATTEST:

Stephanie Kuziela, Clerk-Treasurer

All that part lying North of the centerline of the LaPorte-Chesterton Road of the East Half of the following described parcel of land to-wit: Commencing at a point 15 chains and 38 Links West of the Northeast corner of the Northwest 1/4 of Section 5, Township 36 North, Range 5 West of the Second Principal Meridian, and running thence South parallel with the East line of said 1/4 to the South line of said 1/4 Section; thence West on the South line of said 1/4 to the Southwest corner of said 1/4 Section; thence North on the West line of said 1/4 to the Northwest corner of said 1/4; and thence East on the North line of said 1/4 to the Place of Beginning, excepting therefrom: Commencing at the Northeast corner of the Northwest 1/4 of Section 5, Township 36 North, Range 5 West of the Second Principal Meridian, thence South 89 degrees 39 minutes 37 seconds West along the Northline of Section 5, 1015.08 feet to the Point of Beginning, thence South 1 degree 2 minutes 54 seconds East and parallel with the East line of the Northwest 1/4, Section 5, 772.04 feet to the Physical Centerline of the LaPorte-Chesterton Road (known as Porter Ave.) thence Northwesterly along said centerline and along a 325.42 feet radius curve to the left and arc distance of 71.17 feet to the P.T. (said ARC Subtending a chord which bears North 81 degrees 33 minutes 3 seconds West a distance of 71.05 feet) thence North 88 degrees 10 minutes 44 seconds West along said centerline a distance of 13.00 feet to the P.C. of a 825.90 feet radius curve to the left, thence Southwesterly along said centerline and said curve an arc distance of 80.58 feet (said ARC Subtending a chord which bears South 89 degrees 1 minute 58 seconds West, a distance of 80.56 feet), thence North 1 degree 2 minutes 54 seconds West, 761.34 feet to the North line of Section 5, thence North 89 degrees 39 minutes 37 seconds East along the North line of Section 5, 165.17 feet to the Point of Beginning.

And

The entire South 50 feet of the parcel heretofore described, lying North of the centerline of Porter Avenue (formerly known as LaPorte-Chesterton Road), described as follows: A parcel of land lying in the Northwest Quarter of Section 5, Township 36 North, Range 5 West of the Second Principal Meridian in Westchester Township, Porter County, Indiana.

Exhibit "A"

Annexation and Development Agreement

THIS ANNEXATION AND DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of May, 2018 by and between the TOWN OF CHESTERTON, an Indiana municipal corporation located in Porter County, Indiana (the "Town") and Peter M. Ballestero and Hedwig M. Ballestero, as Trustees under the Ballestero Revocable Living Trust dated July 11, 2016, (the "Owner"). The Town and Owner are collectively referred to as the "Parties."

RECITALS

A. The Owner proposes to develop the property legally described on Exhibit "A" attached hereto, consisting of approximately 11.89 acres situated in unincorporated Porter County and commonly known as 219 E. 1200 N., in Chesterton, Indiana.

B. The Owner is the record title holder of 100% of the fee title to the Subject Property and the owner of 100% of the total assessed value of the Subject Property.

C. The Subject Property is adjacent and contiguous to the existing corporation boundaries of the Town.

D. The Town desires to annex and the Owner desires to have the Subject Property annexed to the Town and the Parties desire to enter into a binding agreement with respect to the annexations, zoning and development of the Subject Property. To that end, the Owner has filed a Petition for Annexation with the Town (the "Petition for Annexation").

Exhibit "B"

E. The Owner will be bringing in to the Town 1 parcel of land. The existing home and 3 outbuildings will be considered conforming structures upon annexation and 1 of the driveways will be deemed legal non-conforming.

F. Prior to this Agreement the Town has given

... prior to this Agreement, the Town has given all notices and held all required public hearings in order to proceed with the approval and execution of this Agreement.

G. The Parties have materially changed their positions in reliance upon the representations, covenants and agreements contained in this Agreement.

NOW, THEREFORE, the Parties, in consideration of the mutual representations, covenants and agreements contained in this Agreement, do hereby agree as follows:

SECTION 1. INCORPORATION OF RECITALS

The foregoing Recitals are hereby incorporated into this Agreement as if fully set forth in this Section 1.

SECTION 2. MUTUAL ASSISTANCE

The Parties agree to do all things necessary or appropriate to carry out and expedite the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms and objectives of this Agreement and the intentions of the Parties as required by said terms, including, without limitations, the giving of notices, the holding of public hearings, the enactment by the Town of such resolutions and ordinances and the taking of such other actions as may be necessary to give effect to the terms and provisions of this Agreement. Whenever any assistance, approval or consent of the Town or any of its departments, commissions, officials, agents, employees, attorneys or consultants is called for under this Agreement, the same shall not be unreasonably withheld or delayed. This section does not contemplate, imply nor grant any pre-approval by the Town to the Owner of any ordinance, including a PUD ordinance, amending the zoning classification of the Subject Property arising out of this Agreement.

SECTION 3. ANNEXATION AND ZONING

3.1 Upon the approval by the Town Council of the Town's execution of this Agreement, the Parties shall execute and deliver this Agreement to each other. The Town shall thereupon (at the same meeting at which this Agreement is approved) annex the Subject Property to the Town. Owner shall not file any remonstrance to the Town's annexation of the Subject Property as provided in this Agreement.

3.2 At the same meeting of the Town Council at which the Town annexes the Subject Property to the Town, the Town Council, as part of the annexation ordinance, shall zone the Subject Property as R-1.

SECTION 4. UTILITIES

4.1 Water

The Subject Property is currently serviced by a private well.

4.2 Sanitary Sewer

A. The Owner has already constructed, installed and paid for a sanitary sewer line and other improvements required by the Town to serve the Subject Property with sanitary sewer service, all in accordance with the final engineering plans to be approved by the Town. Said installation was done in accordance with that certain Sanitary Sewer Connection and Treatment Agreement dated September 19, 2016. The Owner also shall grant or dedicate all easements required by the Town for construction of the necessary sanitary sewer improvements serving the Subject Property. It is the intent of the Parties that upon the Town's inspection and approval of Owner's construction and installation of all on-site and off-site sanitary sewers and other improvements required to serve the subject property with sanitary sewer service as aforesaid, the Town shall accept the public sanitary sewer improvements for maintenance purposes as the term "public sewer" is defined in Chapter 25 of the Chesterton Town Code, subject to Owner's posting of the necessary security related thereto pursuant to the Chesterton Town Code.

B. The Town represents and warrants that there is presently adequate sewage treatment capacity to provide sanitary sewage treatment services to the Subject Property for the proposed development of the Subject Property. The Town represents and warrants that at all times during the five-year period from and after the date of this Agreement there shall be adequate sewage treatment capacity to provide sanitary sewage treatment services to the Subject Property for the proposed development of the Subject Property. Such sanitary sewer service shall be made available to the Subject Property, sub

be made available to the Subject Property, subsequent to the annexation of the Subject Property to the Town, upon payment to the Town of the Town's customarily imposed and generally applicable sanitary sewer connection fees and user rates.

4.3 Stormwater.

A. The Owner shall provide, construct and pay for on-site stormwater drainage systems, storm drainage detention area(s) in accordance with final engineering plans approved by the Town, the Indiana Department of Environmental Management (IDEM), and/or the Army Corps of Engineers, as needed, for any new construction at the Subject Property. Storm conveyances, drainage detention, and/or retention areas and easements, including wetlands conservation easements, shall be granted by the Owner on the Subject Property as required in accordance with such final engineering plans. It is the intent of the Owner not to install any stormwater control improvements for the Subject Property. In the event the Town approves Owner's final engineering plans for on-site storm water drainage system, and storm drainage detention, if any, the Town shall cooperate with the Owner in any application to any governmental agency or governmental unit relating to wetlands, flood plain, or storm water or any permit or license required in connection with the proposed development of the Subject Property, provided such proposed development does not violate the terms to this Agreement and is not in violation of any applicable law or regulation and provided further that the Owner shall reimburse the Town for all reasonable costs and expenses incurred by the Town with respect to such applications.

4.4 Roadway

The property will continue to be accessed off of the existing driveway on County Road 1200 North.

SECTION 5. NOTICES

All notices required or permitted to be delivered hereunder shall be in writing and shall be (i.) personally delivered; (ii) sent by facsimile, followed by a mailed copy by regular mail; (iii) sent by registered or certified mail, return receipt requested, with postage prepaid, or (iv) sent by nationally recognized overnight express carrier to the parties at the following addresses or to such other or further addresses as the parties may hereafter designate by like notice similarly served:

If to Town:

Town of Chesterton
1490 Broadway
Chesterton, Indiana 46304
Attn: Town Council President
Fax No. 219/926-762

with a copy to:

L. Charles Lukmann III
Harris, Welsh & Lukmann
107 Broadway
Fax No. 219/926-2115
Chesterton, Indiana 46304

If to Owner:

Peter M. Ballestero
Hedwig M. Ballestero
219 E. 1200 N.
Chesterton, IN 46304

with a copy to:

Gregory T. Babcock
Attorney at Law
111 S. Calumet Road
Chesterton, IN 46304

Any notice given hereunder shall be deemed received (1) upon receipt if personally delivered or sent by facsimile; (2) on the earlier of the third business day following the day sent or when actually received if sent by registered or certified mail; or (3) on the next business day immediately following the day sent if sent by nationally recognized overnight express carrier.

SECTION 6. PARK PROVISIONS

The Owner is aware that the Town of Chesterton has enacted an impact fee for park and recreation uses as found in Chesterton Town Council Ordinance 2015-02, and any amendments thereto. The Owner agrees to pay a park impact fee of \$889.00 for the existing single family residential structure on the property to be annexed within 30 days after the Annexation Ordinance has been approved by the Town Council. The Owner further agrees that any other residential construction that takes place on the property

annexed herein in the future shall be subject to Chesterton's park impact fees. The Owner agrees to execute any additional documents as determined by the Chesterton Town Attorney so that this Agreement becomes binding upon Successor-in-interest to the real estate which is the subject of this Annexation. Further, should the Town Council enact impact fee increases prior to the issuance of any building permit for a new home, the Owner acknowledges that the higher impact fee is applicable.

SECTION 7. COVENANTS RUNNING WITH THE LAND/SUCCESSORS AND ASSIGNS

The rights and obligations contained in this Agreement shall constitute covenants running with the land that are to bind, and inure to the benefit of, the Parties and their respective successors and assigns. If any portion of the Subject Property is sold to a third party, the seller thereof shall have the right to assign to the purchaser thereof, all of its rights and obligations under this Agreement which may affect the portion of the Subject Property sold, and, provided the purchaser thereof assumes such obligations in writing, the seller thereof shall have no further obligations under this Agreement with respect to the portion of the Subject Property sold.

SECTION 8. REMEDIES

8.1 Upon a breach of this Agreement, any of the Parties, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. In any such action or proceeding, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and litigation expenses. No action taken by any Party pursuant to the provisions of this Section or any other provision of this

Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy set forth herein or available to such Party at law or in equity.

8.2 Time is of the essence in the performance of all requirements by the Owner pursuant to this Agreement. In the event that Owner fails to perform any of its obligations contained herein, the Town has the right (but not the obligation) to take such action, as in its sole discretion and judgment, shall be necessary to cure such default. Regardless of whether the Town takes action to cure the default, the Owner agrees to pay any and all attorney's fees and/or costs incurred in enforcing the terms of this Agreement, including the cost of paid staff, whether or not litigation ensues.

8.3 The failure of any Party to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions contained in this Agreement, or any of them, upon the Party imposed, shall not constitute or be construed as a waive or relinquishment of such Party's right thereafter to enforce any such terms.

SECTION 9. REIMBURSEMENT OF FEES

The Owner shall reimburse the Town for reasonable attorney's fees (at the attorney's customary prevailing hourly rate), reasonable engineering fees (at the Town engineer's customary prevailing hourly rate), and reasonable fees of other consultants deemed necessary by the Town in connection with the negotiation, approval, execution and follow-up required for this Agreement including, but not limited to, the Town's planning consultant, London Witte. The Owner shall promptly reimburse the Town for all such fees and expenses. In addition to the foregoing, the

Owner shall reimburse the Town for reasonable fees and expenses, including reasonable attorney's fees, up to a total aggregate amount of not more than \$15,000 that the Town may incur in connection with the defense of any suits, actions or causes of action brought against the Town by third parties arising from or in connection with the Town's approval of the annexation and this Agreement.

SECTION 10. MISCELLANEOUS PROVISIONS

10.1 This Agreement and the Exhibits attached hereto embody the entire agreement between

the Parties with respect to the annexation of the Subject Property and there are no oral or parole agreements, representations or inducements existing among the Parties which are not expressly set forth herein. No amendment, modification or alteration of this Agreement shall be binding upon the Parties unless authorized in accordance with law and reduced to writing and signed by them.

10.2 The captions, section numbers and subsection numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope or intent of such paragraphs or articles of this Agreement nor in any way affect this Agreement.

10.3 The benefits and burdens of this Agreement shall inure to and be binding upon any and all successors in interest or assigns of the Parties.

10.4 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Indiana and any litigation that arises out of this Agreement shall have as its only venue the Superior or Circuit Courts in Porter County, Indiana.

10.5 This Agreement may be executed in multiple original counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

10.6 An original copy of this Agreement shall be recorded in the Office of the Porter County Recorder of Deeds at the Owner's expense.

10.7 The Ordinance annexing the Subject Property to the Town of Chesterton, Porter County, Indiana must be published after its approval and the Owners agree that they shall promptly pay the Town's cost of publication of said Ordinance.

10.8 Time is of the Essence of this Agreement and each and every provision hereof.

[Remainder of this page intentionally left blank]
IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first set forth above.

TOWN:
TOWN OF CHESTERTON
an Indiana Municipal Corporation
By: Lloyd Kittridge
President of Town Council

ATTEST:
By: Stephanie Kuziela
Its: Clerk-Treasurer
State of Indiana
County of Porter

Before me, the undersigned, a Notary Public in and for said County and State, this 29th day of May, 2018, personally appeared Lloyd Kittridge, Jr., President of Town Council and Stephanie Kuzielza, Clerk-Treasurer, and acknowledged the execution of the foregoing Annexation and Development Agreement. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

Kathryn A. Hrapek
Notary Public

My Commission Expires:
January 24, 2026

OWNER:
Peter M. Ballestero, Trustee
Hedwig M. Ballestero, Trustee
State of Indiana
County of Porter

Before me, the undersigned, a Notary Public in and for said County and State, this 29th day of May, 2018, personally appeared Peter M. Ballestero and Hedwig M. Ballestero, as Trustees and acknowledged the execution of the foregoing Annexation and Development Agreement. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

Gregory T. Babcock
Notary Public

My Commission Expires:
November 18, 2023

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. Gregory T. Babcock

This instrument prepared by:
Attorney Gregory T. Babcock
111 S. Calumet Road
Chesterton, IN 46304
219-926-1738
7/30/18 - hspaxlp