

# **Chapter Ten**

## **Organizational Structure**

Board of Zoning Appeals and Plan Commission

## Chapter Ten

# Board of Zoning Appeals

### 10.1 Authority, Duties

The Whitley County Board of Zoning Appeals (hereinafter called “Board”) exists as an advisory board of zoning appeals under the authority of Indiana Code 36-7-4-901, and the Whitley County Zoning Ordinance (hereinafter called “Ordinance”), and any amendments thereto. These requirements are adopted in accordance with the requirements of the IC 900 Series.

#### Duties

The duties of the Board shall be those set forth in the IC 900 Series and the Ordinance.

#### Membership

The Board shall consist of 5 voting members, appointed in accordance with IC 36-7-4-902.

- A. Three (3) citizen members appointed by the executive of the county, of whom one (1) must be a member of the plan commission and two (2) must not be members of the plan commission.
- B. One (1) citizen member appointed by the fiscal body of the county, who must not be a member of the plan commission.
- C. One (1) citizen member appointed by the advisory plan commission, who must be a member of the plan commission other than the member appointed under Section A above.

#### Rules

In all matters not otherwise provided for by statute, ordinance, or these rules, the most recent edition of *Robert’s Rules of Order*, as interpreted by the Board’s presiding officer, shall govern the conduct of Board meetings.

#### Meetings

All meetings of the Board shall be conducted in accordance with IC 5-14-1.5, the Indiana Open Door Law, and any amendments thereto.

- A. Regular Meetings. The Board shall hold a regular meeting on the fourth Tuesday of each month at an established time. Whenever the regular meeting date falls on an official holiday of the County of Whitley, or upon the date of a primary or general election, another date shall be selected. A schedule of all regular meetings shall be published by the staff of the Board. All regular meetings will be held in an established location, unless another location is published.
- B. Special Meetings: Special meetings of the Board may be called by a majority of the Board membership, and must conform to any applicable requirements of IC 5-14-1.5.
- C. Cancellation: Whenever there is a lack of business for Board consideration, the Chairman may dispense with a regular meeting. In such cases, the staff of the Board shall give written or oral notice to all members and the news media. Whenever it is determined that a quorum is not available for a regular or special meeting, the presiding officer of the Board may dispense with such meeting and all business scheduled for such meeting will be automatically continued to the next regular or special meeting. In such cases, the staff of the Board shall give written notice to those having business before the Board, and written or oral notice to Board members and the news media. The Chairman of the Board may also dispense with a scheduled regular or special meeting in the event of natural disaster, snow emergency or similar causes. In such cases the staff of the Board shall give written or oral notice, if possible, to the Board members, those having business before the Board, and the news media. In the event of cancellation for any reason, the Chairman may require renotification to interested parties, with such notice to be paid by the petitioner.

## 10.2 Officers and Staff

At its first regular meeting each year, the Board shall elect from its members a Chairman, Vice Chairman, and Secretary.

### Duties of Board Officers

- A. Chairman. The Chairman shall preside over Board meetings and on behalf of the Board shall exercise general supervision over the affairs of the Board, including the execution of contracts and agreements, the appointment of committees and representatives (except as otherwise provided by statute, ordinance, or these rules), the determination of points of order and procedure, and the signing of all official documents.
- B. Vice-Chairman. The Vice-Chairman shall have authority to act as president of the Board during the absence or disability of the Chairman.
- C. Secretary. The Secretary shall certify all official acts of the Board. In the event of the absence or disability of both the Chairman and Vice-Chairman, the Secretary shall preside.

### Board Staff

- A. Appointment. The Executive Director (hereinafter "Director") shall be appointed by the Joint Budgetary Board of the Joint Columbia City/Whitley County Planning and Building Department, with the consent of the Columbia City and Whitley County Plan Commissions.
- B. Duties. The Joint Columbia City/Whitley County Planning and Building Department shall serve as staff for the Board, and the Director shall be the designated executive of the staff. All Board requests for information or technical advice shall be made to the Director who will be responsible for assigning staff members to gather such information or provide such advice and for conveying such information or advice to the Board. The Director shall be responsible for the administration of the Board's office, the employment and compensation of employees, and administration of any funds allocated to the Board by the City and County Councils. The Director shall be the delegated authority to perform ministerial acts in all cases except where final action of the Board is necessary. The Director shall also employ the Board's recording secretary and shall be responsible for the keeping of an accurate record of all Board proceedings, including the keeping of records and minutes, the custody and preservation of all papers and documents of the Board, the maintenance of a current roster and qualifications of members, and records of attendance. The staff shall prepare each year an annual report of the Board's activities. When the Board approves the report, the staff will forward copies of it to the City Council, County Council, County Commissioners, Churubusco Town Board, South Whitley Town Board, and make copies available to the public.
- C. Directives. Any policies or assignments to the staff not covered by these regulations shall be by resolution of the Board.

## 10.3 Conduct of Meetings

### Quorum

Three (3) voting members of the Board shall constitute a quorum. No business may be transacted and no public hearing may be opened at any meeting of the Board unless a quorum is in attendance.

### Voting

- A. Majority. In accordance with IC 36-7-4-911, no action of the Board is official unless it is authorized at a regular or special meeting by a majority of the entire membership of the Board.
- B. Method. All votes of the Board on matters requiring a public hearing shall be by ballot, sign, or voice vote, as the Board shall decide. A motion may be made by any Board member, except for the presiding officer, on any petition before the Board. If no motion is made by any Board member, then the presiding

officer will call for a vote. If the outcome of a particular vote is unclear, the Chairman, or any member, may request a roll call vote.

- C. Conflict of Interest. In accordance with IC 36-7-4-909, a Board member may not participate in a hearing or direct decision concerning a zoning matter in which he/she has a direct or indirect financial interest. The Board shall enter in its records:

1. the fact that a regular member has such a disqualification; and
2. the name of the alternate member, if any, who participates in the hearing or decision in place of the regular member.

Questions as to whether such conflict exists may be determined by the Board attorney. When there is uncertainty as to the applicability of this section, the member shall be disqualified. Members are expected to disclose any personal, non-financial interest in any matter before the Board, and may abstain from participation and voting on such matter. A member who has a conflict of interest shall not give testimony on the matter before the Board. Nothing in this section shall prevent a member of the Board from presenting a petition on his/her own behalf, but members shall not appear before the Board on behalf of others.

- D. Required. Except as provided in “C” above, all Board members present shall vote on each matter for which a public hearing is held. An abstention for any other reason shall have the same effect as a negative vote.

- E. Absentee. Absentee or proxy voting shall not be permitted. Members must be present for the public hearing in order to vote on any matter. In the event that a member is absent for part of a public hearing, such member’s eligibility to vote on the matter shall be at the discretion of the presiding officer.

### **Order of Business**

The order of business of regular and special meetings shall be as listed below, except that said order of business may be changed by the Chairman upon the consenting vote of a majority of those members present.

1. Call to Order,
2. Roll Call,
3. Minutes,
4. Correspondence Received,
5. Oath to Witnesses,
6. Old Business,
7. New Business,
8. Other Business,
9. Adjournment.

## **10.4 Public Hearings**

### **Procedures**

- A. Opening the hearing. The Chairman shall call the petition number of the item scheduled for public hearing and declare the public hearing open.

- B. Order of testimony. The order of testimony shall be as follows:

1. Background and comments by the Board’s staff.
2. Presentation of request by petitioner
3. Testimony heard from those in favor.
4. Questions of the petitioner by audience members and remonstrators.
5. Remonstrator’s presentation.

6. Questions of the remonstrators by audience members and petitioners.
7. Rebuttal by the applicant.
8. Public hearing closed.
9. Discussion by Board members.
10. Motion and vote.
11. Results.

Board members and staff may ask questions at any point of the proceeding.

- C. Closing the hearing. After all public comments have been heard under the rules of this section; the presiding officer shall declare the hearing closed and shall call for a motion or vote. Additional public comment shall not be permitted after the close of the hearing. Any motion that has been made and seconded is open for discussion by the Board members, but such motion is closed to discussion by the public unless the Board votes to specifically allow such discussion. The presiding officer shall have the authority to limit such discussion by the public.
- D. Decision. The Board will come to a decision after all testimony and discussion has been completed. The Board may approve a petition, approve a petition with conditions, deny a petition, or continue a petition. The Board will follow the voting procedure outlined in these rules when reaching a decision.

### **Conduct**

- A. Representation. The petitioner may appear in person, by agent, or attorney. The petitioner, or representative, may present any supporting witnesses, evidence, statements and arguments in favor of the request. Other persons in favor of the petition may appear in person, by agent, or by attorney. Remonstrators may appear in person, by agent, or attorney, and present any supporting witnesses, evidence, statements, and arguments. Any person shall have the right to enter a written appearance on any petition. This appearance shall be filed no later than 12:00 p.m. on the day of the meeting at which the petition will be heard.
- B. Board Participation. The Board members shall be provided adequate opportunity to examine witnesses and question any evidence, statements, and arguments in the interest of a fair hearing.
- C. Identification. All persons wishing to be heard on any matter in a public hearing must come before the Board and provide their names and addresses for the record.
- D. Commentary Addressed to the Board. All commentary at a public hearing shall be addressed to the Board through its presiding officer. Such commentary shall not be permitted between opposing parties without the consent of said officer.
- E. Authority of Presiding Officer. The presiding officer shall have the authority to prohibit repetitious and irrelevant testimony and shall have authority to limit the length of testimony by each speaker deemed appropriate to a fair public hearing.
- F. Orderly Conduct. Every person appearing before the Board shall abide by the order and direction of the presiding officer. Discourteous, disorderly or contemptuous conduct shall not be tolerated, and the presiding officer may take such action as is deemed necessary to prevent such conduct.

## **10.5 Disposition of Petitions**

### **Motions**

The final disposition of any petition duly filed and brought before the Board shall be either in the form of:

- A. If there are conditions of approval to be made by the Board, then a motion will be made and seconded by members of the Board, excluding the presiding officer.

- B. If there are no conditions of approval, and no motion has been made, the presiding officer may call for a vote on the petition as it has been presented.

### **Dismissal**

- A. Want of Prosecution. The Board may dismiss, or continue a petition if the petitioner or authorized representative does not appear to present and speak in favor of said petition.
- B. Lack of Jurisdiction. The Board shall dismiss a petition if it finds it has no jurisdiction over such matter.
- C. Improper Filing. The Board shall dismiss a petition if it finds that a petition has been improperly filed.

### **Withdrawal**

- A. Any petition may be withdrawn provided a written request for withdrawal, signed by the petitioner or an authorized representative, is received by the Board's staff before the public hearing on the petition. Any petition withdrawn by a petitioner shall not appear again on the agenda for hearing for a period of six (6) months from the date of the originally scheduled hearing. A petition can be replaced if three (3) members of the Board approve a motion for allowing the petition to appear on the agenda.
- B. No petition may be withdrawn after a motion has been made and seconded, or a vote has been called by the presiding officer.

### **Continuance**

- A. Requests by Interested Party. An interested party may request a continuance in writing prior to the hearing and/or orally at the beginning of the hearing. The party requesting such continuance shall be required to show good and sufficient cause for such continuance, and it shall be within the discretion of the Board to grant or deny such request.
- B. Any member of the Board may, at any time, move to continue a petition. Such a motion seconded and adopted shall continue the hearing to the time specified by the motion. The Board may include in the motion specific instructions for the readvertising and/or renotification of interested parties. If such renotification is required, the petitioner shall pay for the costs associated therewith.
- C. Automatic. In the event that the Board does not achieve the required three (3) votes to approve or deny a petition, such vote shall be declared indecisive, and the petition shall be continued automatically.
- D. Improper Notice. If proper notice under applicable laws and "Notice Requirements" of these rules has not been given, the Commission has several options available. These are:
  - 1. If the Certification of Public Notice (newspaper advertisement) is improperly done, the petition shall be automatically continued and the petitioner shall redo the notification at the petitioner's expense.
  - 2. If the Certification of Notice to Adjacent Property Owners (neighbor notification) is improperly done, the Board shall require the petitioner to complete waiver(s) of this notice, and shall condition any approval of the petition upon proper completion of the waiver(s). In the event that the waiver(s) cannot be properly completed, the approval shall be declared null and void, and the petitioner will be required to renotify the adjacent property owners by certified mail at the petitioner's expense, and may be required to redo the public notice at the petitioner's expense.

### **Notification of Board Action**

The Board shall give notification of any action to the petitioner in writing, within five (5) days following the date of the Board's action. Said notification shall include any conditions attached by the Board.

### **Commitments**

In the case of a petition for a special exception or variance from the terms of the zoning ordinance, the Board may permit or require the owner of a parcel of property to make a written commitment concerning the use or

development of that parcel. The commitment(s) will be made and submitted on forms prescribed by the Board. These forms will be available in the Board's office.

The Board will designate which specially affected persons and classes of specially affected persons are entitled to enforce commitments. Commitments will be recorded in the office of the county recorder and shall take effect upon granting of the variance and/or special exception and recording of the commitments. Unless modified or terminated by the Board, a commitment is binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel. A commitment may be modified or terminated only by a decision of the Board made at a public hearing.

By permitting or requiring commitments, the Board does not obligate itself to approve or deny any request.

Conditions imposed on the granting of a special exception or variance is not subject to the rules applicable to commitments.

**Planned Unit Developments and Mobile Home Parks.** Due to their nature, and the requirements of the Zoning Ordinance, these three uses have a different approval procedure than other special exception or variance requests. In applying for approval of any of these, the following procedure shall apply:

- A. Submit application and plans.
- B. Complete notice requirements as per Section 10.6 of these Rules.
- C. Preliminary review by the Board. The Board will conduct a public hearing on the petition and approve the submitted plans, approve the plans with conditions, or deny the request. If the plans are approved, they will be forwarded to the Plan Commission for review and recommendation(s).
- D. Final review and approval by the Board. The Board will review the final plans in light of the preliminary review by the Board, and the recommendations from the Plan Commission. At this time, the Board will approve the final plans, approve the final plans with conditions, or deny the request.

#### **10.6 Filing Procedures**

- A. Each petition to the Board shall be made on the official form prescribed by the Board.
- B. All information called for by the official form shall be furnished by the applicant in the manner therein prescribed.
- C. The Board's staff shall reject, and not place on the agenda, all applications in which the information required by the application form, or by the Zoning Ordinance, is incorrect, incomplete, illegible, or in any way inadequate to insure complete understanding of the case.
- D. Any applicant or petitioner, aggrieved by a decision of the staff under Paragraph C, above, may appeal this decision to the Board at any regular meeting. If the Board finds that the decision of the staff is in error, the appeal or application shall be placed on the agenda of the next regular meeting, or special meeting if one is called.
- E. Any communication from an applicant or petitioner purporting to be an appeal shall be regarded by the staff as mere notice to seek relief until it is made in the form required by these rules.

#### **Eligible Applicants**

The owner(s) of property included in any petition before the Board must consent to the filing of the application. Such consent may be evidenced by the owner's signature on said application, by signature of a person having power of attorney, or by submission of a properly completed Agent Statement. In the case of property which is being purchased under a land contract, the signatures of both the contract purchasers and the contract sellers, or their duly authorized agents, shall be required.

## Notice Requirements

All appeal, variance, and special exception requests shall comply with the notice requirements of state law and the zoning ordinance. Such notice will be completed by the petitioner, at the petitioner's expense.

A. Contents. Any notice of public hearing shall contain the following information:

1. Petition number and the substance of the matter to be heard.
2. General location by address and other identifiable geographical characteristics of the property.
3. Name of the person or agency initiating the matter to be heard.
4. Time and place of the hearing.
5. Statement that the petition may be examined at the office of the Board.
6. Statement that interested parties may offer an oral opinion at the hearing or may file written comments concerning the matter to be heard prior to or at the hearing.
7. Any other information which may be required by law to be contained in such notice.

B. Certification of Public Notice (newspaper advertisement). The applicant or petitioner shall submit to the Board's office the original proof of publication from the newspaper showing the advertisement, and date of publication. A photocopy of said notice will not be considered as properly completing this requirement. This notification must appear in the newspaper not less than ten (10) days before the meeting at which the petition is to be heard.

C. Certification of Notice to Adjacent Property Owners. The petitioner shall cause notification of said hearing to all property owners of record of all land ~~adjacent~~ adjoining to the area included in the petition to a depth of two (2) property ownerships, or 660 feet, whichever is less, from the property lines of the area included in the petition. Adjacent property will include those properties across roads since roads are not considered a barrier. This notification can be by certified mail, with the green cards submitted for the file, or by certificate of mailing, with the postmarked certificate of mailing submitted for the file, or by signature of the adjacent property owner on the certification form, or by a combination of these methods. In any case, the notification to all adjacent property owners ~~and completion of the certification form~~ must be accomplished no less than ten (10) days prior to the meeting at which the petition is being heard.

~~C.D.~~ On-site Notice. The Petitioner shall place a notice of the public hearing on the property included in the petition at least ten (10) days before the date of the hearing. The notice shall remain on-site until final action on the petition has been taken. The on-site notice shall consist of a sign to be provided by the Board Staff. The sign must be placed on the subject property within five (5) feet of the right-of-way line of the public road adjacent to the property. For properties with more than one road frontage, the sign must be placed adjacent to the road deemed by the Board Staff to have a higher traffic volume. The sign text must be visible from the public road. The Board Staff may require additional notices to be posted for properties with more than one road frontage and/or those properties with greater than 600 feet of road frontage, at a reasonable rate as determined by the Board Staff.

## Mobile Home Special Exceptions; Conditions; Renewals and Changes of Ownership

Whenever the Board approves a special exception for the placement of a mobile home, the special exception shall be subject to the conditions set forth in this Rule unless the Board specifically provides otherwise. In any case, the Board may modify the conditions set forth in this Rule and may attached additional conditions to the special exception.

- A. The special exception shall be limited to the parties who are requesting the special exception. Any change with respect to the ownership of the mobile home or the person(s) residing in the mobile home shall require approval in accordance with this Rule. In the absence of such approval, the mobile home must be removed from the property within six (6) months of such change.
- B. So long as the mobile home remains on the property, the special exception must be renewed each year through the Columbia City/Whitley County Joint Planning and Building Department (the



“Department”). As a condition of such annual renewal, the Applicant-Resident shall provide the Department with any documentation or other information requested by the Department verifying that the Applicant-Resident and the mobile home are in compliance with: (a) all applicable ordinances; and (b) all applicable conditions relating to the special exception.

- C. The Applicant-Resident must provide documentation and/or other evidence satisfactory to the Department that the model year of the mobile home is 1981 or newer.
- D. No additions or structures shall be attached to the mobile home.
- E. The special exception is granted for a period of five (5) years. If the applicant wishes to continue the use of the mobile home, an application must be filed for the renewal of the special exception in accordance with the Rule.
- F. The Department shall initially review all five-year renewals and all requests for approval of changes of ownership with respect to Board approved mobile homes. A formal application will be filed with the Department. No filing fees or legal notifications will be required. The Department will verify that there are no violations of any: (a) conditions placed on the original approval or (b) ordinances relating to or affecting the mobile home, the use thereof, or the property on which the mobile home is situated. If no such violation is found to exist, the Department may approve the renewal or change of ownership without any action by the Board except as herein provided. The renewal or change of ownership will be reviewed by the Board if: (a) any such violation is found to exist; (b) any complaints have been received by the Department with respect to the mobile home or the property on which the mobile home is situated; or (c) approve the renewal or change with additional conditions.
- G. Subsection 6, above, shall also apply with respect to renewals and changes of ownership for mobile home special exceptions that were approved prior to the effective date of this Rule.

## **10.7 Miscellaneous**

### **Minutes**

The staff shall prepare an accurate record of all hearings and official actions of the Board, and the minutes representing such record shall be made available within a reasonable time after such hearing or action to all members of the Board. Following approval of the draft minutes by the Board, copies of such minutes shall be made available to interested parties.

### **Recordings**

The recording secretary may make taped or other mechanical recordings of the Board's proceedings. Such recording products shall remain on file in the Board's office for a period not less than one year from the date of the hearing or determination, whichever is later. Such recordings shall not be removed from the Board's office other than by order of a court of competent jurisdiction. Interested parties may listen to such recordings in the Board's office and may copy such recordings, under the supervision of the Board's staff.

### **Files**

A file shall be maintained for each item placed on the agenda of the Board. Such files shall contain a minimum, the application form and supporting materials any exhibits pertinent to the decision, conditions, safeguards, or other material related to the binding effects of the Board's action.

### **Records**

The records and files of the Board shall be made available to the public under the provisions of IC 5-14-3, the Indiana Access to Public Records Law, and any amendments thereto. The Director is hereby designated as the officer responsible for determining which documents of the staff and Board are public records. Any person may file a written objection to a decision of the Director under this section. Upon receipt of such

objection, the Director shall consult the Board Chairman and Board Attorney who shall decide whether a requested document is a public record.

### **Fees**

In no case shall the Board take action on any petition for which applicable fees have not been paid in full. No part of any fee paid pursuant to this section shall be returnable to the petitioner.

### **Waivers**

Nothing herein shall be construed to require a fee for actions initiated in the public interest by the Board.

### **Amendments and Suspension**

- A. Amendments. Amendments to the Rules of Procedure may be made by the Board at any regular or special meeting upon the affirmative vote of three members.
- B. Suspension. The suspension of any rule of procedure herein may be authorized by the Board at any regular or special meeting upon the affirmative vote of three members, provided that no rule which is required to comply with federal, state, or local law may be so suspended.

### **Separability**

In any section, clause, provision, or portion of these rules shall be held invalid or unconstitutional by a court of competent jurisdiction; such decision shall not affect the validity or constitutionality of any other section, clause, provision, or portion of these rules.

## **10.8 Appeals**

The Board shall have the power to hear and decide appeals from any order, requirement, decision, grant or refusal made by the Executive Director in the administration of this Ordinance.

Every decision of the Board of Zoning Appeals shall be subject to review by a writ of certiorari as prescribed in IC 36-7-4-1000 series. Such appeals shall be presented to a court of jurisdiction within thirty (30) days of the Board's decision and not thereafter.

## **10.9 Special Exceptions**

There shall be no cases or application therefore, nor any particular situation in which these rules authorize special exceptions without the approval of the BZA. Further, no previous applications shall set precedence for any other application before the BZA.

- A. The Board may grant a special exception for a use in a district if the following requirements are met:
  - 1. the special exception shall not involve any elements or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with the performance standards;
  - 2. the special exception shall be sited, or oriented and landscaped to produce a harmonious relationship of building and grounds to adjacent buildings and properties;
  - 3. the special exception shall produce a total visual impression and environment that is consistent with the environment of the neighborhood;
  - 4. the special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood; and,
  - 5. the special exception shall preserve the purpose of this Ordinance as stated in Section 1.4.
- B. When considering a Special Exception the Board of Zoning Appeals may examine the following performance standards:

1. Fire Protection – Fire prevention and fighting equipment acceptable to the National Insurance Association shall be readily available when any activity involving the handling or storage of flammable or explosive materials is carried on.
  2. Electrical disturbance – No activity shall cause an electrical disturbance adversely affecting radio or other equipment in the vicinity.
  3. Noise – Noise which is determined to be objectionable because of volume, frequency, or beat shall be muffled or otherwise controlled. Fire sirens and related apparatus used solely for public purposes shall be exempt from this requirement.
  4. Vibrations – Vibrations detectable without instruments on neighboring property in any district shall be prohibited.
  5. Odors – No malodorous gas or matter shall be permitted which is discernable on any adjoining lot or property.
  6. Air Pollution – No pollution of air by flyash, dust, smoke, vapors, or other substance shall be permitted which is harmful to health, animals, vegetation or property.
  7. Erosion – No erosion by wind or water shall be permitted which shall carry objectionable substances onto neighboring properties.
  8. Water Pollution – Water pollution shall be subject to the standards established by the State Stream Pollution Control Board.
- C. The Board may impose such reasonable conditions upon its approval as it deems necessary to find that Section 10.11 above will be served.
- D. The Board may require the owner of the parcel of property to make written commitment concerning the use or development of the parcel as specified under IC 36-7-4-921 and have such commitment recorded in the Whitley County Recorder's Office.
- E. The Board may limit special exceptions to a specific individual and/or a specific time period and for a specific use.
- F. A use authorized by special exception may not be expanded, extended, or enlarged unless reauthorized by the Board under the procedures set forth in these rules for granting a special exception.
- G. If the Board grants the special exception, it shall direct the applicant to apply for a Location Improvement Permit and/or a Building Permit for the use authorized by special exception shall be issued.
- H. A special exception may be terminated by the Board of Zoning Appeals under the following conditions:
1. Upon the filing of a complainant application by an interested person or member of the staff, a public hearing is held with notice to the property owner; and,
  2. At the public hearing a finding is made by the Board that one or more of the following has not been complied with:
    - a. The terms of this Ordinance,
    - b. Conditions of approval
    - c. Written Commitments.

3. A complainant may not file for the same cause within the twelve (12) months.

#### **10.10 Variances**

The Board, upon appeal, shall have the power to authorize variances from the requirements of this Ordinance. In exercising this power, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from as in its opinion ought to be done in the premises, and to that end shall have all the powers of the officer or board from whom the appeal is taken. It may impose such conditions regarding the location, character and other features of the proposed building, structure or use with which the appeal before it is concerned, as it may deem advisable in the furtherance of the purposes of this Ordinance and the protection of the public convenience and welfare. A variance may be permitted only if all of the following requirements are met:

- A. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
- C. The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction or restriction of economic gain.

#### **10.11 Exclusion**

Nothing in these rules, regulations or orders issued pursuant to this Ordinance shall be deemed to restrict or regulate the power of eminent domain by the State of Indiana or by any state agency. Nor shall they be deemed to authorize any unit of government, legislative body, plan commission, or board of zoning appeals to restrict or regulate the power of eminent domain by the State of Indiana or a state agency.

As used in this section, the term "state agency" shall mean and include all agencies, boards, commissions, departments, and institutions, including state educational institutions of the State of Indiana.

#### **10.12 Amendments**

Amendments to these rules of procedure may be made by the Board at any regular meeting upon the affirmative vote of a majority of the members of the Board. The suspension of any rule may be ordered at any meeting by a two-thirds (2/3rds) vote of the entire Board.

### **Plan Commission**

#### **10.13 Authority**

The County of Whitley County Plan Commission (hereinafter called "Commission") exists as an advisory plan commission under authority of Indiana Code 36-7-4-202, and Section 36-7-4-200 of the Code of Whitley County, Indiana, and any amendments thereto. These requirements are adopted in accordance with the requirements of IC 36-7-4-401.

##### **Duties**

The duties of the Commission shall those set forth in IC 36-7-4-400, *Commission Duties and Powers*, and such other responsibilities as may be assigned to it by the Whitley County Board of Commissioners.

##### **Membership**

The Commission shall consist of 9 voting members, appointed in accordance with IC 36-7-4-207 and IC 36-7-4-214. One (1) member must be a County Commissioner, one (1) the County Surveyor (or a qualified deputy appointed by the surveyor), and the County Extension Educator in Agriculture, and one (1) is named by the County Council. The other five (5) citizen members, of whom no more than three (3) may be of the same political party and all five (5) must be residents of unincorporated areas of the county, are appointed by

the County Commissioners. In the event there is no County Surveyor, the County Commissioners may appoint an additional citizen member.

### **Rules**

In all matters not otherwise provided for by statute, ordinance, or these rules, the most recent edition of Robert's Rules of Order, as interpreted by the Commission's presiding officer, shall govern the conduct of Commission meetings.

### **Meetings**

All meetings of the Commission shall be conducted in accordance with IC 5-14-1.5, the Indiana Open Door Law, and any amendments thereto. On-site inspections of property involved in petitions before the Commission shall not be considered meetings.

- A. Regular Meetings. The Commission shall hold a regular meeting on the third Wednesday of each month at an established time. Whenever the regular meeting date falls on an official holiday of the County of Whitley, another date shall be selected. A schedule of all regular meetings shall be published by the staff of the Commission. All regular meetings will be held in an established location, unless another location is published.
- B. Special Meetings. In accordance with the provisions of IC 36-7-4-307, special meetings of the Commission may be called at any time by the president or by two members upon written request to the Commission's staff. The staff shall notify Commission members of such special meeting at least three (3) days in advance of such meeting. Written notice of special meeting shall be required if the time and place of the special meeting has been fixed in a regular meeting of the Commission, unless all members of the Commission are present at that regular meeting.
- C. Cancellation. Whenever there is a lack of business for Commission consideration, the president may dispense with a regular meeting. In such cases, the staff of the Commission shall give written notice to all members, and the news media shall be notified of such cancellation. Whenever it is determined that a quorum is not available for a regular or special meeting, the president of the Commission may dispense with such meeting, and all business scheduled for such meeting will be automatically continued to the next regular or special meeting. In such cases, the staff of the Commission shall give written or oral notice to the Commission members, those having business before the Commission, and to the news media. The president of the Commission may also dispense with a scheduled regular or special meeting in the event of natural disaster, snow emergency or similar causes. In such cases, the staff of the Commission shall give written or oral notice to the Commission members and to those having business before the Commission if possible, and the staff shall notify the news media of the cancellation. In the event of cancellation for any reason, the president may require renotification to interested parties, with such notice to be paid by the petitioner or by the Commission as the president deems appropriate.

## **10.14 Officers and Staff**

At the first regular meeting in each year, the Commission shall elect from its members a president, vice-president, and secretary.

### **Duties of Commission Officers**

- A. President. The president shall preside over Commission meetings and on behalf of the Commission shall exercise general supervision over the affairs of the Commission, including the execution of contracts and agreements, the appointment of committees and representatives (except as otherwise provided by statute, ordinance, or these rules), the determination of points of order and procedure, and the signing of all official documents.
- B. Vice-President. The vice-president shall have the authority to act as president of the Commission during the absence or disability of the president.

- C. Secretary – The secretary shall certify all official acts of the Commission, including the written votes of the Commission on any and all matters for which such vote is required. In the event of the absence or disability of both the president and the vice-president, the secretary shall preside, provided, however, the first and only item of business to be presented by such presiding officer shall be the election of a president pro-tempore. In the event of the absence or disability of the secretary, the president of the Commission shall select a secretary pro-tempore.

### **Commission Staff**

- A. Appointment. The Planning Director shall be appointed by the Columbia City/Whitley County Joint Budgetary Board with the consent of the Columbia City and Whitley County Plan Commissions.
- B. Duties. The Columbia City/Whitley County Planning Department shall serve as staff to the Commission, and the planning director shall be the designated executive of the staff. All Commission requests for information or technical advice shall be made to the director who will be responsible for assigning staff members to gather such information or provide such advice and for conveying such information or advice to the Commission. The director shall be responsible for the administration of the Commission's office, the employment and compensation of employees, and administration of any funds allocated to the Commission by the City and County Councils. The director shall be the delegated authority to perform ministerial acts in all cases except where final action of the Commission is necessary. The director also shall employ the Commission's recording secretary and shall be responsible for the keeping of an accurate record of all Commission proceedings, including the keeping of records and minutes, the custody and preservation of all papers and documents of the Commission, the maintenance of a current roster and qualification of members, and records of attendance. The staff shall prepare each year an annual report of the Commission's activities. When the Commission approves the report, the staff will forward it to the City Council, County Council, and County Commissioners and make copies available to the public.
- C. Directives. Any policies or assignments to the staff not covered by these regulations shall be resolution of the Commission.

## **10.15 Conduct of Meetings**

### **Quorum**

Five (5) voting members of the Commission shall constitute a quorum. No business may be transacted and no public hearing may be opened at any meeting of the Commission unless a quorum is in attendance.

### **Voting**

- A. Majority. In accordance with IC 36-7-4-302, no action of the Commission is official unless it is authorized at a regular or special meeting by a majority of the entire membership of the Commission.
- B. Method. All votes of the Commission on matters requiring a public hearing shall be by ballot, sign, or voice vote, as the Commission shall decide. A motion may be made by any Commission member, except for the presiding officer, on any petition before the Commission. If no motion is made by any Commission member, then the presiding officer will call for a vote. If the outcome of a particular vote is unclear, the President, or any member, may request a roll call vote.
- C. Conflict of Interest. In accordance with IC 36-7-4-233, a Commission member may not participate in a hearing or direct decision concerning a zoning matter in which he/she has a direct or indirect financial interest. Questions as to whether such conflict exists may be determined by the Commission attorney. When there is uncertainty as to the applicability of this section, the member shall be disqualified. Members are expected to disclose any personal, non-financial interest in any matter before the Commission, and may abstain from participation and voting on such matter. A member who has a conflict of interest shall not give testimony on the matter before the Commission. Nothing in this section

shall prevent a member of the Commission from presenting a petition on his/her own behalf, but members shall not appear before the Commission on behalf of others.

- D. Required. Except as provided in “C” above, all Commission members present shall vote on each matter for which a public hearing is held. An abstention for any other reason shall have the same effect as a negative vote.
- E. Absentee. Absentee or proxy voting shall not be permitted. Members must be present for the public hearing in order to vote on any matter. In the event that a member is absent for part of a public hearing, such member’s eligibility to vote on the matter shall be at the discretion of the presiding officer.

### **Order of Business**

The order of business of regular and special meetings shall be as listed below, except that said order of business may be changed by the Chairman upon the consenting vote of a majority of those members present.

1. Call to Order,
2. Roll Call,
3. Minutes,
4. Correspondence Received,
5. Oath to Witnesses,
6. Old Business,
7. New Business,
8. Other Business,
9. Adjournment.

## **10.16 Public Hearings**

### **Procedures**

- A. Opening the hearing. The President shall call the petition number of the item scheduled for public hearing and declare the public hearing open.
- B. Order of testimony. The order of testimony shall be as follows:
  1. Background and comments by the Commission’s staff.
  2. Presentation of request by petitioner
  3. Testimony heard from those in favor.
  4. Questions of the petitioner by audience members and remonstrators.
  5. Remonstrator’s presentation.
  6. Questions of the remonstrators by audience members and petitioners.
  7. Rebuttal by the applicant.
  8. Public hearing closed.
  9. Discussion by Board members.
  10. Motion and vote.
  11. Results of the vote and disposition of the case will be announced before proceeding with the next item.

Commission members and staff may ask questions at any point of the proceeding.

- C. Closing the hearing. After all public comments have been heard under the rules of this section; the presiding officer shall declare the hearing closed and shall call for a motion or vote. Additional public comment shall not be permitted after the close of the hearing. Any motion that has been made and seconded is open for discussion by the Commission members, but such motion is closed to discussion by the public unless the Commission votes to specifically allow such discussion. The presiding officer shall have the authority to limit such discussion by the public.

- D. Decision. The Commission will come to a decision after all testimony and discussion has been completed. The Commission may approve a petition, approve a petition with conditions, deny a petition, or continue a petition. The Commission will follow the voting procedure outlined in Section 10.15 of these rules when reaching a decision.

### **Conduct**

- A. Representation. The petitioner may appear in person, by agent, or attorney. The petitioner, or representative, may present any supporting witnesses, evidence, statements and arguments in favor of the request. Other persons in favor of the petition may appear in person, by agent, or by attorney. Remonstrators may appear in person, by agent, or attorney, and present any supporting witnesses, evidence, statements, and arguments. Any person shall have the right to enter a written appearance on any petition. This appearance shall be filed no later than 12:00 p.m. on the day of the meeting at which the petition will be heard.
- B. Commission Participation. The Commission members shall be provided adequate opportunity to examine witnesses and question any evidence, statements, and arguments in the interest of a fair hearing.
- C. Identification. All persons wishing to be heard on any matter in a public hearing must come before the Commission and provide their names and addresses for the record.
- D. Commentary Addressed to the Commission. All commentary at a public hearing shall be addressed to the Commission through its presiding officer. Such commentary shall not be permitted between opposing parties without the consent of said officer.
- E. Authority of Presiding Officer. The presiding officer shall have the authority to prohibit repetitious and irrelevant testimony and shall have authority to limit the length of testimony by each speaker deemed appropriate to a fair public hearing.
- F. Orderly Conduct. Every person appearing before the Commission shall abide by the order and direction of the presiding officer. Discourteous, disorderly, or contemptuous conduct shall not be tolerated, and the presiding officer may take such action as is deemed necessary to prevent such conduct.

## **10.17 Disposition of Petitions**

### **Motions**

The final disposition of any petition duly filed and brought before the Commission shall be in the form of a motion, properly adopted specifically setting forth such disposition and restrictions, if any.

### **Dismissal**

- A. Want of Prosecution. The Commission may dismiss, or continue, a petition if the petitioner or authorized representative does not appear to present and speak in favor of said petition.
- B. Lack of Jurisdiction. The Commission shall dismiss a petition if it finds it has no jurisdiction over such matter.
- C. Improper Filing. The Commission shall dismiss a petition if it finds that a petition has been improperly filed.

### **Withdrawal**

- A. Any petition may be withdrawn provided a written request for withdrawal, signed by the petitioner or an authorized representative, is received by the Board's staff before the public hearing on the petition. Any petition withdrawn by a petitioner shall not appear again on the agenda for hearing for a period of six (6) months from the date of the originally scheduled hearing. A petition can be replaced if three (3) members of the Board approve a motion for allowing the petition to appear on the agenda.



- B. No petition may be withdrawn after a motion has been made and seconded, or a vote has been called by the presiding officer.

#### **Amendment**

- A. Increased density or intensity. No petition can be amended in a manner which increases the intensity of use (e.g., adds additional lots or land, changed to a zoning district permitting more uses or more intensive uses) after the filing deadline. Any such amendment request will result in postponing the docket of the petition for one (1) month. If notice in accordance with "Notice Requirements" already has been given, the item as amended shall be readvertised and new notice given to interested parties. The petitioner shall be required to pay the costs of such readvertising and renotification.
- B. Decreased density or intensity. It shall be within the discretion of the Commission to approve a petitioner's request to amend the petition in a manner which decreases the intensity of use (e.g., removes lots or land, changes to a zoning district which is more restrictive). Any interested parties may be heard on the subject of such amendment. The Commission may require such amended petition to be continued and may require readvertising and renotification in the interest of providing a fair and adequate hearing.

#### **Continuance**

- A. Requests by Interested Party. An interested party may request a continuance in writing prior to the hearing and/or orally at the beginning of the hearing. The party requesting such continuance shall be required to show good and sufficient cause for such continuance, and it shall be within the discretion of the Commission to grant or deny such request.
- B. Motion by Petition. Any member of the Commission may, at any time, move to continue the petition. Such a motion seconded and adopted shall continue the hearing to the time specified by the motion. The Commission may include in the motion specific instructions for the readvertising and/or renotification of interested parties. If such renotification is required, the petitioner shall pay for the costs associated therewith.
- C. Automatic. In the event that the Commission does not achieve the required five (5) votes to approve or deny a petition, such vote shall be declared indecisive, and the petition shall be continued automatically. Before, declaring a petition continued on this basis, the presiding officer shall call for another motion. No petition for rezoning shall be continued more than two (2) successive times under the provision of this paragraph. If upon the third successive consideration of a rezoning petition resulting from continuances under the provisions of this paragraph, the Commission does not arrive at a recommendation with the necessary five-vote majority, it shall forward the petition to the County Commissioners with a report stating the Commission's inability to arrive at a recommendation within a reasonable time, and the County Commissioners decide the petition without the recommendation to approve or deny from the Commission.
- D. Improper Notice. If proper notice under applicable laws and Section 10.18 of these rules has not been given, the Commission has several options available. These are:
1. If the Certification of Public Notice (newspaper advertisement) is improperly done, the petition shall be automatically continued and the petitioner shall redo the notification at the petitioner's expense.
  2. If the Certification of Notice to Adjacent Property Owners (neighbor notification) is improperly done, the Commission shall require the petitioner to complete waiver(s) of this notice, and shall condition any approval of the petition upon proper completion of the waiver(s). In the event that the waiver(s) cannot be properly completed, the approval shall be declared null and void, and the petitioner will be required to renotify the adjacent property owners by certified mail at the petitioner's expense, and may be required to redo the public notice at the petitioner's expense.

### **Approval**

Subdivisions and Final Planned Unit Developments. The Commission has the authority to approve subdivisions of land under the terms of the Subdivision Control Ordinance and final planned unit developments under the terms of the Zoning Ordinance. Such approval may be conditional or unconditional.

- A. Condition Approval. A motion to approve a petition may be conditional upon a petitioner's compliance with a requirement or requirements imposed by the Commission. Such condition(s) of approval shall be specifically stated and recited to the petitioner. The Commission may impose a time limit upon the fulfillment of any such requirement(s). The petitioner shall be required to notify the Commission's staff of the fulfillment of such requirement. In the event any condition of the decision has not been fulfilled or the time for compliance has expired, the staff shall issue a request to the petitioner to show cause why the decision should not be revoked and rescinded. The Commission may investigate the matter and take such remedy as it deems appropriate.
- B. Unconditional Approval. If there are no conditions imposed upon the approval of a petition, the president and secretary shall sign the permanent drawing(s) and shall direct the staff to affix the Commission's seal thereon.

Zoning Ordinance Amendments. If the Commission recommends favorably upon a petition for amendment to the Zoning Ordinance, the president and secretary shall sign the resolution recommending such amendment and direct the staff to forward it together with a report describing the Commission's action to the County Commissioners for consideration.

### **Disapproval**

- A. Subdivisions, Preliminary, and Final Planned Unit Developments. If the Commission finds that a petition does not meet the criteria established by ordinance(s) for approval, it shall deny the request.
- B. Zoning Ordinance Amendments. If the Commission disapproves of a zoning ordinance amendment which has been referred to it for recommendation, the Commission shall direct the staff to forward its recommendation together with a report describing the Commission's action to the County Commissioners for consideration.
- C. Refiling. No petition for subdivision of land which has been denied by the Commission and no petition for amendment to the Zoning Ordinance which has been denied by the County Commissioners shall again be placed on the docket for hearing within a period of one year from the date of such disapproval, unless the Commission finds that there is a substantial change in the petition or circumstances affecting the petition, in which case the matter may again be placed on the docket only if a motion to permit redocketing is duly adopted by the Commission.

## **10.18 Filing Procedures**

### **Application**

Each petition to the Commission shall be on application forms prescribed by the staff and shall be accompanied by such information and exhibits as specified on such forms and/or required by applicable ordinances. Any communication purporting to be a petition not on the prescribed forms or not containing the information required shall be considered incomplete and shall not be docketed.

### **Filing Deadlines**

The staff shall prepare a schedule of the filing deadlines for the ensuing year. Such schedule shall provide for adequate time for the proposal, and offer technical advice to the Commission and shall provide adequate time for issuances of required notices. Any application which is incomplete at the time of the filing deadline shall not be docketed.

### **Eligible Applicants**

The owner(s) of property included in any petition before the Commission must consent to the filing of the application. Such consent may be evidenced by the owner's notarized signature on said application or by signature of a person having power of attorney authorizing such signature. In the case of property which is being purchased under a land contract, the signatures of both the contract purchasers and the contract sellers or their duly authorized agents shall be required.

## **10.19 Notice Requirements**

### **Contents**

- A. Any notice of public hearing required by Federal, State, or Local law shall contain as a minimum the following information:
- B. Docket number and the substance of the matter to be heard.
- C. General location by address or other identifiable geographical characteristics of the property.
- D. Name of the person or agency initiating the matter to be heard.
- E. Time and place of the hearing.
- F. Statement that the petition may be examined at the office of the Commission.
- G. Statement that interested parties may offer an oral opinion at the hearing or may file written comments concerning the matter to be heard prior to or at the hearing.
- H. Any other information which may be required by law to be contained in such notice.

### **Publication**

When the Commission is required by law to publish a newspaper of general circulation a notice prior to any hearing of the Commission, the staff shall cause such notice to be published in accordance with the time periods established by the applicable law. Proof of such publication shall be obtained by the staff and kept in the appropriate file.

### **Notice**

Method of Notice. ~~The petitioner shall cause notification of said hearing to all property owners of record of all land adjoining the area included in the petition to a depth of two (2) property ownerships, or 660 feet, whichever is less, from the property lines of the area included in the petition. Adjacent property will include those properties across roads since roads are not considered a barrier. The petitioner shall cause notification of said hearing to all property owners, of record, of all land abutting, or facing the area included in the petition.~~ The petitioner shall also cause due notification to any property owners involved within the petitioned area. ~~Notification to the property owners shall be given on a form supplied by the Plan Commission.~~ This notification can be by certified mail, with the green cards submitted for the file, or by certificate of mailing, with the postmarked certificate of mailing submitted for the file. In any case, the notification to all adjacent property owners and completion of the certification form must be accomplished no less than ten (10) days prior to the meeting at which the petition is being heard.

On-site Notice. The Petitioner shall place a notice of the public hearing on the property included in the petition at least ten (10) days before the date of the hearing. The notice shall remain on-site until final action on the petition has been taken. The on-site notice shall consist of a sign to be provided by the Commission Staff. The sign must be placed on the subject property within five (5) feet of the right-of-way line of the public road adjacent to the property. For properties with more than one road frontage, the sign must be placed adjacent to the road deemed by the Commission Staff to have a higher traffic volume. The sign text must be visible from the public road. The Commission Staff may require additional notices to be posted for

properties with more than one road frontage and/or those properties with greater than 600 feet of road frontage, at a reasonable rate as determined by the Commission Staff.

### **Evidence of Notice**

Affidavit of notice to adjacent property owners must be notarized to the considered evidence. Certified mail receipts or postmarked certificate of mailing ~~personal signatures of the adjacent property owners~~ shall be considered as proof of proper notification.

## **10.20 Committees**

### **Authority**

The presiding officer is hereby authorized to appoint permanent and temporary committees to facilitate the work of or advise the Commission. Such committees may be comprised of Commission members only, or they may include other interested parties. A chairman shall be appointed for each committee, and reports on their assignments shall be made a part of the record. The president shall be an ex officio member of any committee so appointed.

### **Standing Committees**

The following shall be standing committees:

Executive Committee. An executive committee consisting of the officers of the Commission shall be a permanent committee which shall be authorized to act on behalf of the Commission on all matters except those where final action of the Commission or Plat Committee is required. The president shall be chairman of said committee.

Plat Committee: A plat committee consisting of up to five (5) members shall be a permanent committee. At least one of the members must be a citizen member of the Plan Commission. Each member of the committee shall be appointed by the Commission for one year. The Commission may appoint alternative members to the Plat Committee who may serve as voting members in the event the regular member is unable to attend or abstains from voting. The alternate for the Commission member(s) shall be another citizen member of the Commission.

Subdivision Review Committee. A Subdivision Review Committee shall be permanent committee consisting of the following members: planning director, county engineer, county sanitarian, representative of United Telephone Company, representative of Northern Indiana Public Service Company, representative of REMC, representative of Columbia City Municipal Utilities, and such other representative as the planning director may invite to aid in the review of scheduled petitions. Members may designate representatives to participate in any and all meetings of the committee. The planning director or his/her designee shall serve as chairman of the committee. The Subdivision Review Committee is established for the purposes listed below. In no way is the existence of the committee to be construed to limit the scope of discussion or findings of fact on any matter before the Commission or to prevent any member of the committee for raising additional issues which may come to light after the committee meeting.

1. To review all subdivision petitions filed with the Commission for compliance with the technical requirements of the Subdivision Control Ordinance.
2. To enhance the coordination of efforts to evaluate proposed land development.
3. To encourage cooperation between the Commission, staff, and petitioners by resolving problems at the staff level where possible.
4. To provide non-binding findings of fact and recommendations on subdivision petitions before the Commission.

Nominating Committee. A nominating committee consisting of at least three (3) Commission members shall be appointed no later than the December meeting each year to provide candidates for Commission officers.

### **Committee Meetings**

The staff shall assist any and all committees established under this section in scheduling the times and places for meetings. In the case of the Subdivision Review Committee, the staff shall prepare, no later than the first day of December each year, a schedule of the meetings for the ensuring year and shall make such schedule available to committee members and interested parties.

## **10.21 Commission Records**

### **Responsibility**

It shall be the duty of the staff of the Commission to maintain all Commission files and records, including the official minutes of all meetings.

### **Minutes**

The staff shall prepare an accurate record of all hearings and official actions of the Commission, and the minutes representing such record shall be made available within a reasonable time after such hearing or action to all members of the Commission. Upon approval by the Commission, copies of such minutes shall be made available to interested parties.

### **Tape Recordings**

The recording secretary may make taped or other mechanical recordings of the Commission's proceedings. Such recording products shall remain on file in the Commission's office for a period not less than one (1) year from the date of the hearing or determination, whichever is later. Such recordings shall not be removed from the Commission's office other than by order of a court of competent jurisdiction. Interested parties may listen to such recordings in the Commission's office and may copy such recordings, under the supervision of the Commission's staff.

### **Commission Cases Files**

A file shall be maintained for each item placed on the docket of the Commission. Such files shall contain, as a minimum, the application form and supporting materials and any exhibits pertinent to the decision, conditions, or safeguards or other material related to the binding effects of the Commission's action.

### **Public Records**

The records and files of the Commission shall be made available to the public under the provisions of IC 5-14-3, The Indiana Access to Public Records Law, and any amendments thereto. The planning director is hereby designated as the officer responsible for determining which documents of the staff and Commission are public records. Any person may file a written objection to a decision of the director under this section. Upon receipt of such objection, the director shall consult the Commission president and county attorney who shall decide whether a requested document is a public record.

## **10.22 Fees**

### **Schedule of Fees**

The Commission shall, in accordance with the requirements of IC 36-7-4-411 and IC 36-7-4-704, establish a uniform schedule of fees to defray the administrative costs connected with processing and hearing petitions for rezonings, special uses, and planned unit developments, for the checking and verifying of proposed subdivision plats, and for other official acts taken under provisions of the 400 Series, COMMISSION DUTIES AND POWERS, of the Indiana Code. Such fees shall not exceed the actual costs of providing such services. Fees established shall include fees for copying documents under the provisions of IC 5-14-3-89(d).

### **Payment Required**

In no case shall the Commission take action on any petition for which applicable fees have not been paid in full. No part of any fee paid pursuant to this section shall be returnable to the petitioner.

## **Waivers**

Nothing herein shall be construed to require a fee for actions initiated in the public interest by the Commission.

## **10.23 Amendments and Suspension**

### **Amendments**

Amendments to the Rules of Procedure may be made by the Commission at any regular or special meeting upon the affirmative vote of five (5) members, provided, however, that the proposed amendment shall have been presented in writing at a previous regular meeting of the Commission.

### **Suspension of Rules**

The suspension of any rule of procedure herein may be authorized by the Commission at any regular or special meeting upon the affirmative vote of seven (7) members, provided however, that no rule which is required to comply with Federal, State, or Local law may be so suspended.

## **10.24 Separability**

If any section, clause, provision, or portion of these rules shall be held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section, clause, provision, or portion of these rules.

## **10.25 Appendix**

- A. Serve The Public Interest. The obligation of planners and public planning officials is to serve the public interest.
- B. Support Citizen Participation In Planning. Because the definition of the public interest is continuously modified, the planner and public planning official must recognize the right of citizens to influence planning decisions that affect their well-being. They should advocate a forum for meaningful citizen participation and expression in the planning process and assist in the clarification of community goals, objectives, and policies in plan-making.
- C. Recognize The Comprehensive And Long-Range Nature Of Planning Decisions. The planner and public planning official must recognize and have a special concern for the comprehensive and long-range nature of planning decisions. The planner and official must balance and integrate physical (including historical, cultural, and natural), economic, and social characteristics of the community or area affected by those decisions. The planner and official must continuously gather and consider all relevant facts, alternatives, and means of accomplishing them. The planner and official should explicitly evaluate all consequences before making a recommendation or decision.
- D. Expand Choice And Opportunity For All Persons. The planner and public planning official must strive to expand choice and opportunity for all persons, recognize a special responsibility to plan for the needs of disadvantaged people, and urge changing policies, institutions, and decisions that restrict their choices and opportunities.
- E. Facilitate Coordination Through The Planning Process. The planner and public planning official must facilitate coordination. The planning process should enable all those concerned with an issue to learn what other participants are doing, thus permitting coordination of activities and efforts and accommodation of interests. The planner and official must ensure that individuals and public and private agencies possibly affected by a prospective planning decision receive adequate information far enough in advance of the decision.
- F. Avoid Conflict Of Interest. Conflict of Interest. In accordance with IC 36-7-4-233, a Commission member may not participate in a hearing or direct decision concerning a zoning matter in which he/she has a direct or indirect financial interest. Questions as to whether such conflict exists may be determined

by the Commission attorney. When there is uncertainty as to the applicability of this section, the member shall be disqualified. Members are expected to disclose any personal, non-financial interest in any matter before the Commission, and may abstain from participation and voting on such matter. A member who has a conflict of interest shall not give testimony on the matter before the Commission. Nothing in this section shall prevent a member of the Commission from presenting a petition on his/her own behalf, but members shall not appear before the Commission on behalf of others.

- G. Render Thorough And Diligent Planning Service. The planner and public planning official must render thorough and diligent planning service. Should the planner or official believe she/he can no longer render such service in a thorough and diligent manner, she/he should resign from the position. If the official has not sufficiently reviewed relevant facts and advice affecting a public planning decision, the official must not participate in that decision.
- H. Not Seek Or Offer Favors. The public sector planner and public planning official must seek no favor. The planner and official must not directly or indirectly solicit any gift or accept or receive any gift, (whether in money, services, loans, travel, entertainment, hospitality, promises, or in some other form) under circumstances in which it could be reasonably inferred that the gift was intended or could reasonably be expected to influence them in the performance of their duties or was intended as a reward for any recommendation or decision on their part. The private sector planner should oppose such action by a client.
- I. Not Disclose Or Improperly Use Confidential Information For Financial Gain. The planner and public planning official must not disclose or improperly use confidential information for financial gain. The planner and official must not disclose to others confidential information acquired in the course of their duties or use it to further a personal interest. Exceptions to this requirement of non-disclosure may be made only when (a) required by process of law, or (b) required to prevent a clear violation of law, or (c) required to prevent substantial injury to the public. Disclosure pursuant to (b) and (c) must not be made until after the planner or official has verified the facts and issues involved, has exhausted efforts to obtain reconsideration of the matter, and has sought separate opinion on the issue from other planners or officials.
- J. Ensure Access To Public Planning Reports And Studies On An Equal Basis. The public planning official must ensure that reports and records of the public planning body are open equally to all members of the public. All non-confidential information available to the official must be made available in the same form to the public in a timely manner at reasonable or no cost.
- K. Ensure Full Disclosure At Public Hearings. The public planning official must ensure that the presentation of information on behalf of any party to a planning question occurs only at the scheduled public hearing on the question, not in private, unofficially, or with other interested parties absent. The official must make partisan information regarding the question received in the mail or by telephone or other communication part of the public record.
- L. Maintain Public Confidence. The public planning official must conduct himself/herself publicly so as to maintain public confidence in the public planning body, the official's unit of government, and the official's performance of the public trust.
- M. Respect Professional Codes Of Ethics And Conduct. The planner and public planning official must respect the professional codes of ethics and conduct established by the American Institute of Certified Planners (AICP) Commission and by several professions related to the practice of planning. Professional codes commonly establish standards of professional conduct and include provisions that protect the integrity of professional judgement and describe the professional's responsibility to the public, clients, employers and colleagues.

