

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 citizen 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 citizen member of the plan commission other than the member appointed under Section A above.
- D. Alternate members may also be appointed in accordance with IC 36-7-4-907.

Rules

The Board shall adopt Rules of Procedure consistent with IC 36-7-4-916 that direct the meetings, procedures, and processes for the Board that are not otherwise provided for by statute or ordinance.

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. The Rules of Procedure shall set regular meeting dates and establish procedures for conducting special meetings and cancelling meetings.

10.2 Officers

At its first regular meeting each year, the Board shall elect from its members a chair and a vice chair. The duties of the officers shall be as set forth in state statute and the Rules of Procedure.

Board Staff

The Executive Director (hereinafter “Director”) shall be appointed by the Joint Advisory Board of the Columbia City/Whitley County Joint Planning and Building Department, with the consent of the Columbia City and Whitley County Plan Commissions.

The Columbia City/Whitley County Joint Planning and Building Department shall serve as staff for the Board, and the Director shall be the designated executive of the staff, in accordance with the Rules of Procedure.

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 physically 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 in its Rules.
- C. Absentee. Absentee voting shall not be permitted. The Rules of Procedure shall define a member's eligibility for voting if not physically present at the public hearing.

Order of Business

The Rules of Procedure shall set forth the order of business at regular and special meetings.

10.4 Public Hearings

Procedures

The Rules of Procedure shall provide procedures for conducting public hearings, including, but not limited to, the order of testimony, any time limitations of petitioner and public comments, calls for motions, electronic participation, and any other items necessary for conducting an organized hearing.

Conduct

- A. Representation. As further stipulated in the Rules of Procedure, 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.
- 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 provide their names and addresses for the record.
- D. Authority of Presiding Officer. As further stipulated in the Rules of Procedure, 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.

E. Orderly Conduct. As further stipulated in the Rules of Procedure, 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

The Rules of Procedure shall include provisions regarding motions to take action, dismissal of cases, withdrawal of cases, and continuances.

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

As provided in IC 36-7-4-1015 and the Rules of Procedure, 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.

The Board may designate which specially affected persons and classes of specially affected persons are entitled to enforce commitments. The Board may require commitments to be recorded in the office of the county recorder. Unless modified or terminated by the Board, a recorded 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.

10.6 Filing Procedures

The Rules of Procedures shall set forth requirements and processes for filing petitions with the Board.

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. Any applicant or petitioner may appeal such rejection 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.

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 minimum notice requirements of state law, Rules of Procedure, and this 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(s) showing the advertisement, and date of publication. This notification must appear in the newspaper(s) 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 adjoining the area included in the petition within two (2) property owner depths, or 660 feet of the area included in the petition, whichever is satisfied first. 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. In any case, the notification to all adjacent property owners must be accomplished no less than ten (10) days prior to the meeting at which the petition is being heard.
- 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 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 the rate of one (1) sign per 600 feet.

10.7 Miscellaneous

Conflict of Interest

In accordance with IC 36-7-4-909, a Board member shall not participate in a hearing or decision concerning a zoning matter in which he/she has a direct or indirect financial interest in the outcome of the hearing or decision, or is biased or prejudiced or otherwise unable to be impartial.

The Board shall enter in its records:

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

The Rules of Procedure may provide additional criteria or details for determining a conflict of interest. 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.

A member who has a conflict of interest shall not give testimony on the matter before the Board. Nothing in this subsection shall prevent a member of the Board from presenting a petition on his/her own behalf, but a member shall not appear before the Board on behalf of others.

Minutes

The staff shall prepare minutes of each meeting that represent an accurate record of all hearings and official actions of the Board conducted at the meeting. Such minutes shall be made available within a reasonable time after the meeting 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 staff may make audio and/or video recordings of the Board's proceedings. The Rules of Procedure and state law shall govern the keeping and retention of such recordings.

Files

A file shall be maintained for each petition placed on the agenda of the Board. Such files shall contain the application form and submitted 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 Chair and legal counsel 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.

Suspensions

The adopted Rules of Procedure shall include provisions for suspending the Rules as may be necessary.

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 and staff 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

The Board shall have the power to hear and authorize requests for special exception uses. There shall be no cases or applications, nor any particular situation, that may authorize a special exception use without the approval of the Board. Further, no previous applications shall set a precedent for any other application before the Board.

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 performance standards and environmental standards of Chapter 5, in addition to other pertinent facts, testimony, maps, and materials.

- C. The Board may impose such reasonable conditions or written commitments upon its approval as it deems necessary to find that the criteria above will be served.
- D. The Board may limit special exceptions to a specific individual and/or a specific time period and for a specific use.
- E. A use authorized by special exception may not be expanded, extended, or enlarged unless reauthorized by the Board under the procedures for granting a special exception.
- F. If the Board grants the special exception, the applicant may apply for a Location Improvement Permit and/or a Building Permit for the use authorized by special exception.
- G. 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 in accordance with the notice requirements above; 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 twelve (12) months.

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 F, 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.

10.10 Variances

The Board shall have the power to authorize variances from the requirements of this Ordinance. 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

The adopted Rules of Procedure shall include provisions for amending the Rules from time to time as may be found necessary.

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.

Duties

The duties of the Commission shall those set forth in IC 36-7-4-400 *et seq*, this Ordinance, the adopted Rules of Procedure, 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 36-7-4-208.

- A. One (1) member must be a County Commissioner.
- B. One (1) member must be the County Surveyor (or a qualified designee appointed by the Surveyor who is a resident of the county).
- C. One (1) member must be the County Extension Educator in Agriculture (or an appointee of the Extension Board if the Educator is not a county resident).
- D. One (1) member must be a member of the County Council.
- E. 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, appointed by the County Commissioners.

In the event there is a vacancy in the office of County Surveyor, the County Engineer shall serve during the vacancy.

Alternate members may be appointed in accordance with IC 36-7-4-220.

Rules

The Commission shall adopt Rules of Procedure consistent with IC 36-7-4-401 that direct the meetings, procedures, and processes for the Commission that are not otherwise provided for by statute or ordinance.

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. The Rules of Procedure shall set regular meeting dates and establish procedures for conducting special meetings and cancelling meetings.

10.14 Officers and Staff

At the first regular meeting in each year, the Commission shall elect from its members a president and a vice president. The duties of the officers shall be as set forth in state statute and the Rules of Procedure.

Commission staff

The Executive Director (hereinafter “Director”) shall be appointed by the Joint Advisory Board of the Columbia City/Whitley County Joint Planning and Building Department, with the consent of the Columbia City and Whitley County Plan Commissions.

The Columbia City/Whitley County Joint Planning and Building Department shall serve as staff for the Commission, and the Director shall be the designated executive of the staff, in accordance with the Rules of Procedure.

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 physically 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 in its Rules.
- C. Absentee. Absentee voting shall not be permitted. The Rules of Procedure shall define a member’s eligibility for voting if not physically present at the public hearing.

Conflict of interest

In accordance with IC 36-7-4-223, a Commission member shall not participate in any hearing or decision or recommendation in which he/she has a direct or indirect financial interest. Further, a Commission member shall not participate in a hearing concerning a zoning decision, as defined in IC 36-7-4-1016, in which the member is biased or prejudiced or otherwise unable to be impartial.

The Commission shall enter in its records:

- A. the fact that a regular member has such a disqualification; and
- B. 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 Commission legal counsel. When there is uncertainty as to the applicability of this section, the member shall be disqualified.

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.

Order of business

The Rules of Procedure shall set forth the order of business at regular and special meetings.

10.16 Public Hearings

The Rules of Procedure shall provide procedures for conducting public hearings, including, but not limited to, the order of testimony, any time limitations of petitioner and public comments, calls for motions, electronic participation, and any other items necessary for conducting an organized hearing.

Conduct

- A. Representation. As further stipulated in the Rules of Procedure, 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.
- 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 provide their names and addresses for the record.
- D. Authority of Presiding Officer. As further stipulated in the Rules of Procedure, 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.
- E. Orderly Conduct. As further stipulated in the Rules of Procedure, 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

The Rules of Procedure shall include provisions regarding motions to take action, dismissal of cases, withdrawal of cases, and continuances.

Amendments to petitions

- 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 has already been given, the item as amended shall be readvertised and new notice given to interested parties.
- 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.

Authorized actions

The Plan Commission is authorized to make recommendations, approve or deny requests, request or require conditions or commitments, transmit reports, or take other necessary action as prescribed by the State Statute, the Zoning Ordinance, or the Subdivision Control Ordinance.

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 the period stated in the Rules of Procedure, 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 as provided in the Rules.

Commitments

As provided in IC 36-7-4-1015 and the Rules of Procedure, the Commission 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 Commission.

The Commission may designate which specially affected persons and classes of specially affected persons are entitled to enforce commitments. The Commission may require commitments to be recorded in the office of the county recorder. Unless modified or terminated by the Commission, a recorded 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 Commission made at a public hearing.

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

10.18 Filing Procedures

The Rules of Procedures shall set forth requirements and processes for filing petitions with the Commission.

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. Any application which is incomplete at the time of the filing deadline shall not be docketed.

Filing Deadlines

The staff shall prepare a schedule of the filing deadlines for the ensuing year as specified in the Rules. 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.

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.

Notice Requirements

All petitions to the Commission shall comply with the minimum notice requirements of state law, Rules of Procedure, and this zoning ordinance. Such notice will be completed by the petitioner, at the petitioner's expense.

- A. Contents. Any notice of public hearing required by Federal, State, or Local law shall contain as a minimum the following information:
 - 1. Docket number and the substance of the matter to be heard.
 - 2. General location by address or 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 Commission.
 - 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 or rule to be contained in such notice.

- B. Certification of Public Notice (newspaper advertisement). The applicant or petitioner shall submit to the Commission's office the original proof of publication from the newspaper(s) showing the advertisement, and date of publication. When the Commission is required by law to publish notice of a public hearing in newspaper(s) of general circulation, the staff shall cause such notice to be published in accordance with the time periods established by the applicable law. Notification must appear in the newspaper(s) not less than ten (10) days before the meeting at which the petition is to be heard. Proof of such publication shall be obtained by the staff and kept in the appropriate file.

- 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 adjoining the area included in the petition within two (2) property owner depths, or 660 feet of the area included in the petition, whichever is satisfied first. Adjacent property will include those properties across roads since roads are not considered a barrier. The petitioner shall also cause due notification to any property owners involved within the petitioned area. 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.

- 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 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 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 the rate of one (1) sign per 600 feet.

10.19 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.

The Indiana Open Door Law may apply to any committee depending on its purpose and nature. The Commission's legal counsel shall determine if a committee is subject to the law.

Standing committees

The following shall be standing committees, the composition and duties of which shall be further defined in the Rules of Procedure:

- A. Development Plan Committee. A Development Plan Committee, as described in Chapter 7, shall be a permanent committee.
- B. Technical Review Committee. A Technical Review Committee shall be permanent committee, 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 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.

Committee Meetings

The staff shall assist any and all committees established under this section in scheduling the times and places for meetings.

10.20 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 minutes of each meeting that represent an accurate record of all hearings and official actions of the Commission conducted at the meeting. Such minutes shall be made available within a reasonable time after the meeting to all members of the Commission. Following approval of the draft minutes, copies of such minutes shall be made available to interested parties.

Recordings

The staff may make audio and/or video recordings of the Board's proceedings. The Rules of Procedure and state law shall govern the keeping and retention of such recordings.

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.

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 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 legal counsel, who shall decide whether a requested document is a public record.

10.21 Fees

Schedule of Fees

The Department 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 the checking and verifying of proposed subdivision plats, and for other official acts taken by the Commission and the Board of Zoning Appeals.

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.

10.22 Amendments and Suspensions

Amendments

The adopted Rules of Procedure shall include provisions for amending the Rules from time to time as may be found necessary.

Suspensions

The adopted Rules of Procedure shall include provisions for suspending the Rules as may be necessary.

10.23 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.

10.24 Ethical Principles

All planners, planning officials, elected and appointed officials, and others involved in the process of planning are to adhere to the following guiding principles from the “Ethical Principles in Planning” adopted by the American Planning Association:

The planning process must continuously pursue and faithfully serve the public interest.

Participants in planning processes should:

- A. Recognize the rights of citizens to participate in planning decisions;
- B. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
- C. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
- D. Assist in the clarification of community goals, objectives and policies in plan-making;
- E. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
- F. Strive to protect the integrity of the natural environment and the heritage of the built environment;
and
- G. Pay special attention to the interrelatedness of decisions and the long-range consequences of present actions.

Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

Participants in planning processes should:

- A. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;

- B. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker;
- C. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
- D. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
- E. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;
- F. Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;
- G. Serve as advocates only when the client's objectives are legal and consistent with the public interest;
- H. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;
- I. Not use confidential information acquired in the course of their duties to further a personal interest;
- J. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
- K. Not misrepresent facts or distort information for the purpose of achieving a desired outcome;
- L. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service; and
- M. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations.