

# WHITLEY COUNTY ZONING ORDINANCE

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# **Chapter One**

## Basic Provisions

# Chapter One

## Basic Provisions

### 1.1 Title

This Ordinance shall be formally known as the "Whitley County Zoning Ordinance", and it may be cited and referred to as the "Zoning Ordinance".

### 1.2 Defined Words

Words used in a special sense in this Ordinance are defined in Article Fourteen.

### 1.3 Authority

This Zoning Ordinance is adopted by the County pursuant to its authority under the laws of the State of Indiana, 36-7-4 et seq. Whenever codes cited in this ordinance refer to Indiana Code which has been amended or superseded, this Ordinance shall be deemed amended in reference to the new or revised code.

### 1.4 Purpose

This Ordinance is intended to guide the growth and development of the County in accordance with the Whitley County Comprehensive Plan and for the following purpose.

- A. To secure adequate light, air, and convenience of access; and safety from fire, flood, and other dangers;
- B. To promote the public health, safety, comfort, convenience, morals and general welfare;
- C. To plan for the future development of the County to the end;
  - 1. That the community grows only with adequate public ways, utility, health, educational, and recreational facilities;
  - 2. That the needs of agriculture, industry, and business be recognized in future growth;
  - 3. That residential areas provide healthful surroundings for family life;
  - 4. That the growth of the community is commensurate with and promotes the efficient and economical use of public funds; and
  - 5. That the community strives for high aesthetic value, quality planning and design.

### 1.5 Compliance

No structure shall be located, erected, constructed, reconstructed, moved, altered, converted, or enlarged, nor shall any structure or land be used or existing use be expanded, except in full compliance with all provisions of this Ordinance and after the lawful issuance of all permits and certificates required by this Ordinance.

### 1.6 Severability

If any provision of this Ordinance or the application of any provision to particular circumstances is held unconstitutional or invalid by the courts, the remainder of the Ordinance or the application of such provision to other circumstances shall not be affected.

### 1.7 Interpretation

The provisions of this Ordinance shall be held to be the minimum requirements for the protection of the health, safety, comfort, morals, convenience, and general welfare of the people at large, and are designed to encourage the establishment and maintenance of reasonable community standards for the physical environment. If two or more provisions within this ordinance are in conflict or are inconsistent with one another, then the provision, which is most restrictive, shall control.

### 1.8 Jurisdiction Area

This Ordinance shall apply to all land within the limits of Whitley County, Indiana but not the planning jurisdictions of incorporated cities and towns.

## **1.9 Application**

It is not intended by this Ordinance to interfere with, abrogate or amend any existing easements, covenants, or other agreements, between parties, nor is it intended by this Ordinance to repeal, abrogate, annul, or in any way interfere with any existing provisions of laws or ordinances or any rules, regulations, or permits previously adopted or issued pursuant to law relating to the use of building or premises.

Where this Ordinance imposes a greater restriction upon the use of buildings or premises than is imposed or required by such existing provisions of law or by such rules, regulations, agreements, covenants, or permits, the provisions of this Ordinance shall control; but where private covenants, permits, agreements, rules or regulations impose a greater restriction than is imposed by this Ordinance, the greater restriction shall control.

## **1.10 Repealer**

The Zoning Ordinance of Whitley County, Indiana, Title XV, Chapter 153 adopted on May 20, 1969, and all subsequent amendments thereto, are hereby repealed effective coincident with the effective date of this Ordinance.

## **1.11 Amendments**

In accordance with IC 36-7-4-602, the legislative body may amend or partially repeal the text of this Ordinance or they may amend the zoning maps of this Ordinance as follows:

The legislative body or the Plan Commission may initiate a proposal to amend or partially repeal the text according to the procedure of I.C.36-7-4-602(b) and I.C.36-7-4-607 and according to the Commission Rules and Procedures.

The legislative body, Plan Commission, or at least fifty percent (50%) of the affected property owners may initiate a petition to change the zoning maps according to the procedure of IC 36-7-4-602(c) and I.C.36-7-4-608 and according to the Commission rules.

In its review of the text and zone map amendments, the legislative body and the Plan Commission shall pay reasonable regard to:

- A. The most recently adopted Comprehensive Plan.
- B. Current conditions and the character of structures and uses in each district.
- C. The most desirable use of which the land in each district is adapted.
- D. The conservation of property values throughout the jurisdiction.
- E. Responsible development and growth.
- F. The public health, safety and welfare.

**1.12 Effective Date**

This Ordinance shall be in full force and effect after its adoption, subject to the procedures of approval and notice of adoption as required by law.

Certified by the Plan Commission of Whitley County, Indiana on the 15<sup>th</sup> day of February, 2006.

Mark Roach  
Valynnda K. Slack  
Brandon Forrester  
Timothy Hearld  
David Schilling  
Richard Buchanan  
Joel Vance  
Douglas Eber

Passed and adopted by the Whitley County Board of Commissioners, Indiana on the 6th day of March, 2006.

Tom Rethlake  
James Pettigrew  
Douglas Eber

ATTEST:

Linda J. Gerig  
Whitley County Auditor



## **Chapter Two**

### General Zoning Districts

## Chapter Two

# General Zoning Districts

### 2.1 Establishment of Districts

For the purpose of this Ordinance, the Planning Jurisdiction is divided into the following zoning districts for the general uses as stated:

**AG, Agricultural (Section 3.1 and 3.2):** This district is designed for agricultural use while permitting residential development which meets the requirements of the Whitley County Zoning Ordinance.

**AGP, Agricultural Production(Section 3.3 and 3.4):** This district is composed of land to be used for production farming, raising of livestock, and homes and buildings associated with agricultural production. These districts are not expected to develop for urban uses. It is the intent of this district to allow agricultural uses, to conserve the desirable characteristics of the land, to preserve agricultural land, to preserve the farming industry, and to protect these areas from the encroachment of scattered urban-type uses.

**RR, Rural Residential (Section 3.5 and 3.6):** This district is primarily established for single family homes near the village centers and are to be used for housing, hobby farming and other uses characteristic of rural residential living.

**MR, Multi-Family Residential (Section 3.7 and 3.8):** This district is established for small to moderate sized multi-family apartments, duplexes, condominiums, and/or similar units.

**LR, Lake Residential (Section 3.9 and 3.10):** This district is generally intended to meet the special issues and land use goals for properties located around Whitley County's lakes.

**MP, Manufactured Home Park (Section 3.11 and 3.12):** This district is established for manufactured home parks which lease dwelling sites for single-wide and double-wide manufactured homes.

**PR, Parks and Recreation (Section 3.13 and 3.14):** This district is established for parks, open space, recreational areas both public and private.

**VC, Village Commercial (Section 3.15 and 3.16):** This district is generally intended to meet the special issues and land use goals for the unincorporated villages in Whitley County.

**GC, General Commercial (Section 3.17 and 3.18):** This district is generally intended for a wide variety of retail, commercial, service, entertainment, and eating establishments.

**IPM, Industrial Park/Manufacturing (Section 3.19 and 3.20):** This district is generally intended for business parks, light or heavy manufacturing facilities, and manufacturing parks.

**IN, Intensive Use (Section 3.21 and 3.22):** This district is primarily established for intensive uses that may be considered noxious under certain circumstances

**PUD, Planned Unit Development (Section 6.1 – 6.9):** This district is intended to encourage a more creative approach in land development and site planning.

**2.2 District Land Uses**

Land uses are either Permitted, Non-Permitted or a Special Exception in each Zoning District. Whitley County's permitted and special exception uses for each district are noted in the Permitted Use and Special Exception column in Chapter 3.

**2.3 Unlisted or Questionable Land Uses**

Any use not listed as a Permitted Use or Special Exception is considered Non-Permitted unless the Plan Commission or Zoning Administrator makes a determination otherwise. The Plan Commission or Zoning Administrator may determine into which category any questionable use is placed if not specifically listed and is similar to another use that is Permitted or a Special Exception. This determination may be appealed to the Board of Zoning Appeals.

**2.4 District Intent**

For each Zoning District there is listed a District Intent which describes the intended purposes of the District. These statements are general in nature and are not to be interpreted as specific regulations or considered as requirements. The specific list of uses and standards in Chapter 3 are the requirements for each District, which will be enforced.

# **Chapter Three**

## Zoning Districts

# AG Agricultural District

## 3.1 "AG" District Intent, Permitted Uses, and Special Exception Uses

District Intent	Permitted Uses	Special Exception Uses ***
<p>The "AG" (Agriculture) District is intended for agricultural use while permitting residential development, which meets the requirements of Section 3.2 of the Whitley County Zoning Ordinance.</p>	<p><b>Residential</b></p> <ul style="list-style-type: none"> <li>• child care home (owner occupied home)</li> <li>• dwelling, single family</li> <li>• dwelling, Type I manufactured home</li> <li>• residential facility for developmentally disabled (small)*</li> <li>• residential facility for mentally ill*</li> </ul> <p><b>Agricultural Uses</b></p> <ul style="list-style-type: none"> <li>• agricultural crop production</li> <li>• agricultural feed and seed sales</li> <li>• confined feeding operation (1200 animal units or less)****</li> <li>• cider mill</li> <li>• commercial raising of non-farm animals (subject to maximum animal unit limits)</li> <li>• farm market (produced on-site)</li> <li>• grazing and pasture land</li> <li>• greenhouse</li> <li>• orchards</li> <li>• plant nursery</li> <li>• processing agricultural crop products produced on site</li> <li>• riding stables/trails</li> <li>• storage of farm vehicles, equipment, and materials (used in the farming operation-not for sale)</li> <li>• storage of agricultural products</li> <li>• tree farms</li> <li>• vineyard</li> </ul> <p><b>Miscellaneous</b></p> <ul style="list-style-type: none"> <li>• home occupation (non-traffic generating)</li> </ul>	<p><b>Residential</b></p> <ul style="list-style-type: none"> <li>• bed and breakfast facility</li> <li>• dwelling, mobile home</li> <li>• residential facility for developmentally disabled (large)</li> <li>• temporary second dwelling unit</li> </ul> <p><b>Agricultural Uses</b></p> <ul style="list-style-type: none"> <li>• confined feeding operation (1201 up to 3000 animal units)****</li> <li>• farm equipment Sales/Service</li> <li>• processing of agricultural products not produced on site, not to include slaughterhouses</li> <li>• storage of agricultural products not produced on site</li> </ul> <p><b>Business: General Business</b></p> <ul style="list-style-type: none"> <li>• kennel</li> <li>• landing strip</li> <li>• mini-warehouse</li> <li>• sawmill (temporary)</li> <li>• plant nursery (including office, retail and landscaping services)</li> </ul> <p><b>Business: Auto Sales/Service</b></p> <ul style="list-style-type: none"> <li>• automobile body shop (enclosed)</li> <li>• automobile repair (enclosed)</li> </ul> <p><b>Business: Food Sales/Service</b></p> <ul style="list-style-type: none"> <li>• farmer's market</li> </ul> <p><b>Business: Retail</b></p> <ul style="list-style-type: none"> <li>• antique shop</li> <li>• bait/tackle shop</li> <li>• electrical supply shop</li> <li>• fabric shop</li> <li>• flower shop</li> <li>• furniture store</li> <li>• gift shop</li> <li>• hardware store</li> <li>• heating/cooling/sales service</li> <li>• jewelry store</li> <li>• lumber yard</li> <li>• plumbing supply store</li> <li>• variety store</li> <li>• winery</li> </ul> <p><b>Industrial Uses</b></p> <ul style="list-style-type: none"> <li>• gravel/sand/mixing**</li> <li>• liquid/dry fertilizer storage and distribution</li> <li>• machine shop</li> </ul> <p><b>Institutional/Public Facilities</b></p> <ul style="list-style-type: none"> <li>• church</li> <li>• school, public or private</li> <li>• cemetery</li> <li>• corporate retreat center</li> <li>• recycling collection point (no outdoor storage)</li> </ul>

**“AG” District Intent, Permitted Uses, and Special Exception Uses (Cont.)**

		<b>Special Exception Uses</b>	
		<p><b>Communication/Utility</b></p> <ul style="list-style-type: none"> <li>• cellular/communication/radio/television tower</li> <li>• pipeline pumping station</li> <li>• utility substation</li> <li>• public well</li> <li>• telephone exchange</li> </ul> <p><b>Miscellaneous</b></p> <ul style="list-style-type: none"> <li>• home occupation (traffic generating)</li> </ul>	

- \* As provided by Indiana Code (IC 12-2-28-4-8 and IC 12-28-4-7).
- \*\* State law permits mining in rural areas (areas within 7 or less homes within a square mile) regardless of local decision making. In these cases, a Public Hearing is primarily to discuss and mitigate traffic impacts, noise, etc.
- \*\*\* Only sites in the Agriculture District (AG ) that have a Primary Structure in conjunction with a Permitted Use are allowed Special Exception Uses on the same lot with BZA approval.
- \*\*\*\* Confined feeding operations are the same as defined by IDEM (IC 13-11-2-40), with animal units being listed in Chapter 5, Section 5.17 MS-02 of this Ordinance.

# AG District

## 3.2 "AG" District Standards

**Minimum Lot Area:**

- 80,000 square feet (1.837 acre) Without Central Sewage
- 20,000 square feet (0.459 acre) With Central Sewage
- 10,000 square feet (0.230 acre) With Central Sewage & Water Lines \*\*

**Minimum Lot Width:**

- 225 feet Without Central Sewage
- 100 feet With Central Sewage
- 75 feet With Central Sewage & Water Lines \*\*

**Minimum Lot Frontage:**

- 50 feet on a Public Street with access from said Public Street
- 50 feet on the radius of a cul-de-sac

**Maximum Lot Depth:**

- 3 times the lot width

\*\* Requires that all lots enter onto a new developer created street, built and bonded to the Whitley County Highway Specifications Manual or that all lots enter onto a past developer created street which is dedicated and maintained by Whitley County.

**Minimum Front Yard Setback:**

- 50 feet when adjacent to a Principal Arterial
- 40 feet when adjacent to a Minor Arterial
- 40 feet when adjacent to a Collector or Local Road.
- 35 feet with Central Sewage & Water Lines\*\*

**Minimum Side Yard Setback:**

- 25 feet for the Primary Structure
- 10 feet for Accessory Structures
- 10 feet with Central Sewage & Water Lines\*\*

**Minimum Rear Yard Setback:**

- 30 feet for a Primary Structure
- 10 feet for Accessory Structures
- 20 feet for a Primary Structure With Central Sewage & Water Lines\*\*

**Maximum Structure Height:**

- 50 feet for a Non-Residential Primary Structure
- 35 feet for a Residential Primary Structure
- 30 feet for Accessory Structures
- all agricultural related structures are exempt.

**Maximum Lot Coverage:**

- square feet of Primary and Accessory Structures, and impervious surface cannot exceed 20% of the Lot Area for an 80,000 square foot parcel, and 40% of the Lot Area for a 10,000 – 20,000 square foot parcel.

**Minimum Main Floor Area:**

- 950 square feet for one story Primary Structure; or
- 850 square feet for multiple story Primary Structures, provided that the total Finished Floor Area is 1,200 square feet or more.

Development Standards that Apply		
<b>Lot/Yard(LY)</b> LY-01.....Section 5.3	<b>Floodplain(FP)</b> FP-01.....Section 5.9	<b>Telecommunication Facilities(TF)</b> TF-01.....Section 5.16
<b>Height(HT)</b> HT-01.....Section 5.4	<b>Parking(PK)</b> PK-02,03,05...Section 5.10	<b>Miscellaneous(MS)</b> MS-02.....Section 5.17
<b>Accessory Structures(AS)</b> AS-02.....Section 5.5	<b>Loading(LD)</b> LD-01.....Section 5.11	<b>Manufactured Home(MH)</b> MH-01-08...Section 5.18
<b>Performance Standards(PS)</b> PS-01.....Section 5.7	<b>Sight Triangle Clearance(STC)</b> STC-01.....Section 5.12	<b>Pond(PD)</b> PD-01-13....Section 5.19
<b>Environmental (EN)</b> EN-01,02...Section 5.8	<b>Home Occupation(HO)</b> HO-01.....Section 5.14	

# AGP Agricultural Production District

## 3.3 "AGP" District Intent, Permitted Uses, and Special Exception Uses

District Intent	Permitted Uses	Special Exception Uses
<p>The "AGP" (Agricultural Production) District is intended to provide a land use category for intensive agricultural uses and to recognize certain needs of the agricultural community. The goals of this land use district would be for enhanced Right-to-Farm protection, recognition by community, and to promote agricultural economic development.</p> <p>Non-agriculture uses that are located within this zoning district may not object to any permitted agriculture use, whether such uses currently exist, are enlarged, or change in the future to another agricultural use.</p> <p>Whitley County's Plan Commission and Board of Zoning Appeals should strive to protect this district from conflicting land uses, non-agriculture oriented businesses, and any use that may inflict significant environmental impacts or be injurious to neighbors.</p>	<p><b>Agricultural Uses</b></p> <ul style="list-style-type: none"> <li>• agricultural crop production</li> <li>• agricultural seed sales</li> <li>• confined feeding operation (up to 3000 animal units)****</li> <li>• commercial raising of non-farm animals (subject to maximum animal unit limits)</li> <li>• farm market</li> <li>• grazing and pasture land</li> <li>• orchards</li> <li>• processing agriculture crop products produced on site</li> <li>• storage of farm vehicles, equipment, and materials (used in the farming operation-not for sale)</li> <li>• storage of agricultural products</li> <li>• tree farms</li> </ul> <p><b>Residential Uses</b></p> <ul style="list-style-type: none"> <li>• residential housing (only for owners of the agricultural operation or immediate family members involved in the agricultural operation on the premises).</li> </ul>	<p><b>Agricultural Uses</b></p> <ul style="list-style-type: none"> <li>• confined feeding operation (3001 animal units or more)</li> </ul> <p><b>Residential Uses</b></p> <ul style="list-style-type: none"> <li>• residential housing (only for employees or tenants employed in the agricultural operation on the premises)</li> </ul>

\*\*\*\* Confined feeding operations are the same as defined by IDEM (IC 13-11-2-40), with animal units being listed in Chapter 5.17 MS-02.



# AGP District

## 3.4 "AGP" District Standards

**Minimum Parcel Size:**

- 40 acres or contiguous to an existing AGP zoning district.
- 80 acres if the use is to establish a new confined feeding operation.

**Minimum Lot Width:**

- 225 feet

**Minimum Lot Frontage:**

- 100 feet on a Public Street with access from said Public Street

**Maximum Structure Height:**

- 50 feet for the Primary Structure
- 30 feet for Accessory Structures
- all agricultural related structures are exempt.

**Additional Provision:**

Any future residential subdivision of property within 300 feet of an AGP zoned property must address as part of the requested Primary Approval the following:

- a. Off site surface drainage impacts
- b. Subsurface tiling system impacts
- c. Security of AGP zoned property from residential uses.
- d. Subdivision plat notes and restrictive covenants on the property deeds holding harmless agricultural production in the AGP District when operating under normal practices.

**Minimum Front Yard Setback:**

- 50 feet when adjacent to a Principal Arterial
- 40 feet when adjacent to a Minor Arterial
- 40 feet when adjacent to a Collector or Local Road.

**Minimum Side Yard Setback:**

- 25 feet for the Primary Structure
- 10 feet for Accessory Structures

**Minimum Rear Yard Setback:**

- 30 feet for a Primary Structure
- 10 feet for Accessory Structures

**Maximum Lot Coverage:**

- square feet of Primary and Accessory Structures, and --- impervious surface cannot exceed 20% of the Lot Area.

**Minimum Main Floor Area:**

- 950 square feet for one story Primary Structure; or
- 850 square feet for multiple story Primary Structures, provided that the total Finished Floor Area is 1,200 square feet or more.

**Agricultural Use Notice:**

To help reduce conflicts between farmers and non-farm neighbors, the property owner must post signs along county roads within an AGP District. The signs would identify the areas as an Agricultural Production District and give notice that dust, noise, odors, and other inconveniences may occur due to normal farming activities. Size, design and location of these signs are to be approved by the Plan Commission Staff

- e. A petition to rezone property within Whitley County to the Agricultural Production District, or a petition to rescind such rezoning, must be filed by the owner of the property in question, or with the expressed written consent of the property owner.

Development Standards that Apply		
<b>Lot/Yard(LY)</b> LY-01.....Section 5.3	<b>Floodplain(FP)</b> FP-01.....Section 5.9	<b>Miscellaneous(MS)</b> MS-01..... Section 5.17
<b>Height(HT)</b> HT-01.....Section 5.4	<b>Parking(PK)</b> PK-02,03,05..Section 5.10	<b>Manufactured Home(MH)</b> MH-01-08...Section 5.18
<b>Accessory Structures(AS)</b> AS-02.....Section 5.5	<b>Loading(LD)</b> LD-01.....Section 5.11	<b>Pond(PD)</b> PD-01-13...Section 5.19
<b>Performance Standards(PS)</b> PS-01.....Section 5.7	<b>Sight Triangle Clearance(STC)</b> STC-01.....Section 5.12	
<b>Environmental (EN)</b> EN-01,02...Section 5.8	<b>Home Occupation(HO)</b> HO-01.....Section 5.14	

# RR District

## 3.5 "RR" District Intent, Permitted Uses, and Special Exception Uses

District Intent	Permitted Uses	Special Exception Uses
<p>The "RR" (Rural Residential) District is intended to provide a land use category for single family detached homes in and around the village centers. The provisions that regulate this land use district should protect, promote and maintain "rural character" in Whitley County.</p> <p>Whitley County's Plan Commission and Board of Zoning Appeals should strive to protect this district from conflicting land uses, and non-family oriented businesses.</p>	<p><b>Residential</b></p> <ul style="list-style-type: none"> <li>• child care home (owner occupied home)</li> <li>• dwelling, Type I manufactured home</li> <li>• dwelling, single family</li> <li>• residential facility for developmentally disabled (small)*</li> <li>• residential facility for mentally ill*</li> </ul> <p><b>Agricultural Uses</b></p> <ul style="list-style-type: none"> <li>• agricultural crop production</li> <li>• farm markets (produced on-site)</li> <li>• hobby farming</li> </ul> <p><b>Miscellaneous</b></p> <ul style="list-style-type: none"> <li>• home occupation (non-traffic generating)</li> </ul>	<p><b>Residential</b></p> <ul style="list-style-type: none"> <li>• bed and breakfast facility</li> <li>• dwelling, two-family</li> <li>• dwelling, multi-family</li> <li>• group home</li> <li>• residential facility for developmentally disabled (large) *</li> </ul> <p><b>Institutional Uses</b></p> <ul style="list-style-type: none"> <li>• adult day care</li> <li>• cemetery</li> <li>• child care (5 to 15 children; State License required)</li> <li>• churches</li> <li>• clinics</li> <li>• community services (ambulance depot, emergency and protective shelters, fire stations, water towers, water treatment plants, etc.)</li> <li>• funeral homes</li> <li>• mental health facilities</li> <li>• nursing home</li> <li>• schools, public or private, primary or secondary</li> </ul> <p><b>Miscellaneous</b></p> <ul style="list-style-type: none"> <li>• home occupation (traffic generating)</li> </ul>

\* As provided by Indiana Code (IC 12-28-4-8 and IC 12-28-4-7).

# RR District

## 3.6 "RR" District Standards

**Minimum Lot Area:**

- 80,000 square feet (1.837 acres) Without Central Sewage
- 15,000 square feet (0.344 acre) With Central Sewage
- 10,000 square feet (0.230 acre) With Central Sewage & Water Lines \*\*

**Minimum Lot Width:**

- 225 feet Without Central Sewage
- 100 feet With Central Sewage
- 70 feet With Central Sewage & Water Lines \*\*

**Minimum Lot Frontage:**

- 50 feet on a Public Street with access from said Public Street
- 35 feet on the radius of a cul-de-sac

\*\* Requires that all lots enter onto a new developer created street, built and bonded to Whitley County Highway Specifications Manual or that all lots enter onto a past developer created street which is dedicated and maintained by Whitley County.

**Minimum Front Yard Setback:**

- 50 feet when adjacent to a Principal Arterial
- 40 feet when adjacent to a Minor Arterial
- 40 feet when adjacent to a Collector or Local Road.
- 35 feet with Central Sewage & Water Lines\*\*

**Minimum Side Yard Setback:**

- 10 feet for the Primary Structure
- 5 feet for Accessory Structure

**Minimum Rear Yard Setback:**

- 20 feet for a Primary Structure
- 5 feet for Accessory Structure

**Maximum Structure Height:**

- 50 feet for the Non-Residential Primary Structure
- 35 feet for the Residential Primary Structure
- 20 feet for Accessory Structures

**Maximum Lot Coverage:**

- square feet of Primary and Accessory Structures, and impervious surface cannot exceed 40% of the Lot Area.

**Minimum Main Floor Area:**

- 950 square feet for one story Primary Structure; or
- 850 square feet for multiple story Primary Structures, provided that the total Finished Floor Area is 1,200 square feet or more.

Development Standards that Apply		
<b>Lot/Yard(LY)</b> LY-01.....Section 5.3	<b>Floodplain(FP)</b> FP-01.....Section 5.9	<b>Miscellaneous(MS)</b> MS-02.....Section 5.17
<b>Height(HT)</b> HT-01.....Section 5.4	<b>Parking(PK)</b> PK-03,05.....Section 5.10	<b>Manufactured Home(MH)</b> MH-01-08.....Section 5.18
<b>Accessory Structures(AS)</b> AS-01.....Section 5.5	<b>Loading(LD)</b> LD-01.....Section 5.11	<b>Pond(PD)</b> PD-01-13.....Section 5.19
<b>Performance Standards(PS)</b> PS-01.....Section 5.7	<b>Sight Triangle Clearance(STC)</b> STC-01.....Section 5.12	
<b>Environmental (EN)</b> EN-01,02....Section 5.8	<b>Home Occupation(HO)</b> HO-01.....Section 5.14	

# MR District

## 3.7 "MR" District Intent, Permitted Uses, and Special Exception Uses

District Intent	Permitted Uses	Special Exception Uses
<p>The "MR" (Multi-Family Residential) District is intended to provide a land use category for small to medium scale multi-family developments. The provisions that regulate this land use district should protect, promote and maintain areas in Whitley County for existing and future multi-family housing growth.</p> <p>Whitley County's Plan Commission and Board of Zoning Appeals should strive to sensitively integrate this district into other Residential Districts and the VC and GC Commercial Districts. This district should be within close proximity to parks, open space, services and retail if possible. Avoid locating near conflicting land uses and non-family oriented businesses.</p> <p>The Plan Commission and Board of Zoning Appeals should strive to promote an average net density of 6 to 8 dwelling units per acre community-wide in the "MR" district.</p>	<p><b>Residential</b></p> <ul style="list-style-type: none"> <li>• dwelling, single family</li> <li>• dwelling, two-family</li> <li>• dwelling, multi-family**</li> <li>• dwelling, multi-family, apartment**</li> <li>• nursing home**</li> <li>• retirement community**</li> <li>• residential facility for developmentally disabled (small)*</li> <li>• residential facility for mentally ill*</li> <li>• child care home (owner occupied home)</li> <li>• home occupation (non-traffic generating)</li> </ul>	<p><b>Residential</b></p> <ul style="list-style-type: none"> <li>• residential facility for developmentally disabled (large)*</li> </ul> <p><b>Institutional/Public Facilities</b></p> <ul style="list-style-type: none"> <li>• adult day care</li> <li>• child care (5 to 15 children; State License required)</li> <li>• church</li> <li>• clinics</li> <li>• community center</li> <li>• community services (ambulance depot, emergency and protective shelters, fire stations, water towers, water treatment plants, etc.)</li> <li>• funeral homes</li> <li>• library</li> <li>• mental health facilities</li> <li>• nursing home</li> <li>• post office</li> <li>• public park/recreation center</li> <li>• schools, public or private, primary or secondary</li> </ul> <p><b>Communication/Utilities</b></p> <ul style="list-style-type: none"> <li>• public wells</li> </ul> <p><b>Miscellaneous</b></p> <ul style="list-style-type: none"> <li>• home occupation (traffic generating)</li> </ul>

\* As provided by Indiana Code (IC 12-28-4-8 and IC 12-28-4-7).

\*\* Permitted use subject to Plan Development Review.

# MR District

## 3.8"MR" District Standards

### Minimum Lot Area:

- 80,000 square feet (1.837 acre) \*\*\*  
Without Central Sewage
- 10,000 square feet (0.229 acre)  
With Central Sewage
- 10,000 square feet (0.229 acre)  
With Central Sewage &  
Water Lines \*\*

### Minimum Lot Width:

- 225 feet Without Central Sewage
- 100 feet With Central Sewage
- 70 feet With Central Sewage  
& Water Lines \*\*

### Minimum Lot Area Per Dwelling Unit:

- 5,000 square feet (with sewer hookup)
- 25,000 square feet (with septic system)

### Minimum Lot Frontage:

- 50 feet on a Public Street with  
access from said Public Street
- 35 feet on the radius of a cul-de-sac

\*\* Requires that all lots enter onto a new developer created street, built and bonded to Whitley County Highway Specifications Manual or that all lots enter onto a past developer created street which is dedicated and maintained by Whitley County.

### Minimum Front Yard Setback:

- 50 feet when adjacent to a Principal Arterial
- 40 feet when adjacent to a Minor Arterial
- 40 feet when adjacent to a Collector or  
Local Road.

### Minimum Side Yard Setback:

- 10 feet for the Primary Structure  
(plus buffer yard)
- 5 feet Accessory Structures  
(plus buffer yard)

### Minimum Rear Yard Setback:

- 20 feet for the Primary Structure  
(plus buffer yard)
- 5 feet for Accessory Structures  
(plus buffer yard)

### Maximum Structure Height:

- 50 feet for the Primary Structure
- 20 feet for Accessory Structures

\*\*\* 80,000 square feet minimum standard, alternative systems maybe considered to reduce the lot size subject to State and Local approval.

### Maximum Lot Coverage:

- square feet of Primary and  
Accessory Structures, and  
impervious surface cannot  
exceed 60% of the Lot Area.

### Minimum Main Floor Area:

- 950 square feet per Primary  
Structure for single family
- 750 square feet per multi-  
family unit

### Minimum Floor Area Per Unit:

- 850 square feet average per  
dwelling unit in a multiple-  
unit Primary Structure.

### Development Standards that Apply

Lot/Yard(LY)	Floodplain(FP)	Home Occupation(HO)
LY-01..... Section 5.3	FP-01..... Section 5.9	HO-01.....Section 5.14
Height(HT)	Parking(PK)	Manufactured Home(MH)
HT-01.....Section 5.4	PK-01,03,05.....Section 5.10	MH-01..... Section 5.18
Accessory Structures(AS)	Loading(LD)	
AS-01.....Section 5.5	LD-01.....Section 5.11	
Performance Standards(PS)	Sight Triangle Clearance(STC)	
PS-01..... Section 5.7	STC-01.....Section 5.12	
Environmental (EN)	Open Space(OS)	
EN-01,02.....Section 5.8	OS-01.....Section 5.13	

# LR District

## 3.9 "LR" District Intent, Permitted Uses, and Special Exception Uses

District Intent	Permitted Uses	Special Exception Uses (Cont.)
<p>The "LR" (Lake Residential) District is intended to provide a land use category for lots adjacent to lakes. The provisions that regulate this land use district should protect, maintain, and promote where possible the "lake character" around the lakes in Whitley County.</p> <p>Whitley County's Plan Commission and Board of Zoning Appeals should strive to protect this district from business encroachment, conflicting land uses, and non-family oriented businesses.</p> <p>The Plan Commission and Board of Zoning Appeals should strive to promote an average net density of 5 to 7 dwelling units per acre community-wide in the "LR" district.</p>	<p><b>Residential</b></p> <ul style="list-style-type: none"> <li>• boarding or lodging house (owner-occupied)</li> <li>• child care home (owner occupied home)</li> <li>• dwelling, Type I manufactured home</li> <li>• dwelling, single family</li> <li>• residential facility for developmentally disabled (small)*</li> <li>• residential facility for mentally ill*</li> </ul> <p><b>Miscellaneous</b></p> <ul style="list-style-type: none"> <li>• home occupation (non-traffic generating)</li> </ul> <p style="text-align: center;"><b><u>Special Exception Uses</u></b></p> <p><b>Residential</b></p> <ul style="list-style-type: none"> <li>• bed and breakfast facility</li> <li>• dwelling, multi-family, apartment</li> <li>• dwelling, two-family</li> <li>• residential facility for developmentally disabled(large)</li> </ul> <p><b>Business: Food Sales/Service</b></p> <ul style="list-style-type: none"> <li>• convenience store</li> <li>• convenience store (with gas pumps)</li> <li>• open, unenclosed business (farmer's market, etc.)</li> <li>• restaurant</li> <li>• restaurant (with drive-in)</li> </ul> <p><b>Business: Retail</b></p> <ul style="list-style-type: none"> <li>• antique shop</li> <li>• apparel shop</li> <li>• art gallery</li> <li>• bait shop</li> <li>• bookstore/news dealer</li> <li>• flower shop</li> <li>• garden shop</li> <li>• gift shop</li> <li>• music store</li> <li>• sporting goods</li> </ul>	<p><b>Business: Personal Service</b></p> <ul style="list-style-type: none"> <li>• barber/beauty shop</li> <li>• coin laundry</li> <li>• medical/dental clinic</li> <li>• fingernail salon</li> <li>• tanning salon</li> </ul> <p><b>Business: Recreation</b></p> <ul style="list-style-type: none"> <li>• banquet hall</li> <li>• bar/night club</li> <li>• billiard/arcade room</li> <li>• camping</li> <li>• country club</li> <li>• lodge or private club</li> <li>• miniature golf</li> <li>• public docks</li> </ul> <p><b>Business: General Business</b></p> <ul style="list-style-type: none"> <li>• boat sales/service</li> <li>• marina (including gas pumps)</li> <li>• enclosed mini-storage facility</li> <li>• recycling collection point (no outdoor storage)</li> </ul> <p><b>Institutional/Public Facilities</b></p> <ul style="list-style-type: none"> <li>• adult day care</li> <li>• child care (5 to 15 children; State License required)</li> <li>• church</li> <li>• community services (ambulance depot, emergency and protective shelters, fire stations, water towers, water treatment plants, etc.)</li> <li>• government building</li> <li>• library</li> <li>• post office</li> <li>• public park/recreation center</li> </ul> <p><b>Communication/Utility</b></p> <ul style="list-style-type: none"> <li>• public well</li> <li>• sewage treatment plants</li> <li>• telephone exchange</li> <li>• utility substation</li> </ul> <p><b>Miscellaneous</b></p> <ul style="list-style-type: none"> <li>• home occupation (traffic generating)</li> <li>• retirement community</li> </ul>

\* As provided by Indiana Code (IC 12-28-4-8 and IC 12-28-4-7).

# LR District

## 3.10 "LR" District Standards

**Minimum Lot Area:**

- 10,000 square feet (with sewer hookup)
- 80,000 square feet (with septic system)\*\*\*

**Minimum Lot Area Per Dwelling Unit:**

- 5,000 square feet (with sewer hookup)
- 80,000 square feet (with septic system)\*\*\*

**Minimum Lot Width:**

- 70 feet (with sewer hookup)
- 225 feet (with septic system)

**Minimum Lot Frontage:**

- 50 feet on a Public Street with access from said Public street (with central sewage)
- 35 feet on the radius of cul-de-sac

**Maximum Structure Height:**

- 35 feet for Primary Structure
- 20 feet for Accessory Structures

\*\*\* 80,000 square feet minimum standard, alternative system maybe considered to reduce the lot size, subject to State and Local approval.

**Minimum Front Yard Setback:**

- 50 feet when adjacent to a Principal Arterial
- 40 feet when adjacent to a Minor Arterial
- 35 feet when adjacent to a Collector or Local Road, or when lake front property

**Minimum Side Yard Setback:**

- 5 feet for both the Primary Structure and Accessory Structures
- 10 feet for both the Primary Structure and Accessory Structures on lots created after (date of Ord. Adoption)

**Minimum Rear Yard Setback:**

- 15 feet for both the Primary Structure and Accessory Structures
- 5 feet for Accessory Structures when located on a lot that does not have lake frontage

**Maximum Lot Coverage:**

- square feet of all Primary and Accessory Structures, and impervious surface cannot exceed 75% of the Lot Area.

**Minimum Main Floor Area:**

- 950 square feet for one story Primary Structure; or
- 700 square feet for multiple story Primary Structures provided that the total Finished Floor Area is 950 square feet or more.

Development Standards that Apply		
Lot/Yard(LY)	Floodplain(FP)	Manufactured Home(MH)
LY-01..... Section 5.3	FP-01..... Section 5.9	MH-01-08.....Section 5.18
Height(HT)	Parking(PK)	
HT-01..... Section 5.4	PK-03.....Section 5.10	
Accessory Structures(AS)	Loading(LD)	
AS-01..... Section 5.5	LD-01..... Section 5.11	
Performance Standards(PS)	Sight Triangle Clearance(STC)	
PS-01..... Section 5.7	STC-01.....Section 5.12	
Environmental (EN)	Home Occupation(HO)	
EN-01, 02..... Section 5.8	HO-01.....Section 5.14	

# MP District

## 3.11 "MP" District Intent, Permitted Uses, and Special Exception Uses

District Intent	Permitted Uses	Special Exception Uses
<p>The "MP" (Manufactured Home Park) District is intended to provide a land use category for manufactured home parks community as attractive and decent affordable housing. Manufactured Home Parks shall be in accordance with IC 16-11-27-1 et. seq., Rule 410 IAC 6-6 and their subsequent amendments, the State Board of Health Requirements, and the requirements of this Ordinance.</p> <p>This district should be within close proximity to parks, open space, services and retail if possible. Avoid locating near conflicting land uses.</p> <p>The Plan Commission and Board of Zoning Appeals should strive to promote an average net density of 7 to 9 dwelling units per acre community-wide in the "MP" district.</p>	<p><b>Residential</b></p> <ul style="list-style-type: none"> <li>• dwelling, manufactured home</li> <li>• dwelling, mobile home</li> <li>• manufactured home park</li> <li>• public/private sewage treatment plant</li> <li>• residential facility for developmentally disabled (small)*</li> <li>• residential facility for mentally ill*</li> </ul> <p><b>Institutional/Public Facilities</b></p> <ul style="list-style-type: none"> <li>• church</li> <li>• community center</li> <li>• public park/recreation center</li> </ul> <p><b>Miscellaneous</b></p> <ul style="list-style-type: none"> <li>• home occupation (non-traffic generating)</li> <li>• coin-operated laundries and vending machines</li> </ul>	<p><b>Residential</b></p> <ul style="list-style-type: none"> <li>• child care home (owner occupied home)</li> </ul> <p><b>Institutional/Public Facilities</b></p> <ul style="list-style-type: none"> <li>• police/fire station</li> <li>• school, public/private</li> </ul> <p><b>Communication/Utility</b></p> <ul style="list-style-type: none"> <li>• public well</li> </ul>

\* As provided by Indiana Code (IC 12-28-4-8 and IC 12-28-4-7).

\* Preliminary plan to be submitted and approved as part of the "MP" District approval.



# MP District

## 3.12 "MP" District Standards

**Minimum Parcel Area:**

- 5 acres

**Minimum Parcel Width:**

- 300 feet

**Minimum Dwelling Site Size:**

- 4,500 square feet

**Minimum Dwelling Site Width:**

- 45 feet  
- 35 feet on the radius of a cul-de-sac

**Minimum Dwelling Site Depth:**

- 100 feet

**Sewer and Water:**

- Requires municipal water and central sewage or a community well and a private community sewerage system

**Maximum Structure Height:**

- 25 feet for the Primary Structure  
- 15 feet for Accessory Structures

**Minimum Parcel Front Yard Setback:**

- 60 feet when adjacent to a Principal Arterial  
- 40 feet when adjacent to an Minor Arterial  
- 40 feet when adjacent to a Collector or Local Road.

**Minimum Parcel Side Yard Setback:**

- 20 feet for the Primary and Accessory Structures

**Minimum Parcel Rear Yard Setback:**

- 20 feet for the Primary and Accessory Structures

**Minimum Dwelling Lot Front Yard Setback:**

- 10 feet from edge of pavement of interior private streets

**Minimum Dwelling Lot Side Yard Setback:**

- 8 feet for Primary and Accessory Structures

**Minimum Dwelling Site Rear Yard Setback:**

- 10 feet for Primary and Accessory Structures

**Maximum Lot Coverage:**

- square feet of Primary and Accessory Structures, and impervious surface cannot exceed 65% of the Lot Area.

**Minimum Main Floor Area per Dwelling Unit:**

- 750 square feet per Primary-Structure

Development Standards that Apply		
<b>Lot/Yard(LY)</b> LY-01.....Section 5.3	<b>Floodplain(FP)</b> FP-01.....Section 5.9	<b>Home Occupation(HO)</b> HO-01.....Section 5.14
<b>Height(HT)</b> HT-01.....Section 5.4	<b>Parking(PK)</b> PK-01,03,05....Section 5.10	<b>Manufactured Home(MH)</b> MH-01.....Section 5.18
<b>Accessory Structures(AS)</b> AS-04.....Section 5.5	<b>Loading(LD)</b> LD-01.....Section 5.11	
<b>Performance Standards(PS)</b> PS-01.....Section 5.7	<b>Sight Triangle Clearance(STC)</b> STC-01.....Section 5.12	
<b>Environmental (EN)</b> EN-01,02.....Section 5.8	<b>Open Space(OS)</b> OS-01.....Section 5.13	

# PR District

## 3.13 "PR" District Intent, Permitted Uses, and Special Exception Uses

District Intent	Permitted Uses	Special Exception Uses
<p>The "PR" (Parks and Recreation) District is intended to provide a land use category for parks, open space, playgrounds, and recreational areas. This zoning district may also serve as a buffer between commercial or industrial uses and adjacent residential districts.</p>	<p><b>Institutional/Public Facilities</b></p> <ul style="list-style-type: none"> <li>• public park/recreation center</li> <li>• nature center</li> <li>• nature preserve</li> <li>• small park/playground</li> </ul> <p><b>Business: Recreation</b></p> <ul style="list-style-type: none"> <li>• ball fields</li> <li>• golf course</li> <li>• public docks</li> <li>• tennis courts</li> </ul>	<p><b>Business: Recreation</b></p> <ul style="list-style-type: none"> <li>• amusement park</li> <li>• arcades</li> <li>• batting cages</li> <li>• BMX track</li> <li>• banquet hall</li> <li>• camping</li> <li>• country club</li> <li>• diving range</li> <li>• fitness center</li> <li>• go-carts</li> <li>• miniature golf</li> <li>• movie theater, drive-in</li> <li>• recreational vehicle park</li> <li>• skate board park</li> <li>• skating rink</li> <li>• theater, outdoor</li> <li>• zoo</li> </ul> <p><b>Business: General Business</b></p> <ul style="list-style-type: none"> <li>• marina</li> </ul> <p><b>Institutional/Public Facilities</b></p> <ul style="list-style-type: none"> <li>• cemetery or crematory</li> <li>• community center</li> <li>• public swimming pool</li> <li>• museum</li> <li>• school, public/private</li> <li>• trade or business school</li> </ul>

# PR District

## 3.14 "PR" District Standards

**Minimum Lot Area:**

- 5,000 square feet

**Minimum Lot Width:**

- 50 feet

**Minimum Lot Frontage:**

- 40 feet on a Public Street with access from said Public Street.

**Minimum Front Yard Setback:**

- 60 feet when adjacent to a Principal Arterial  
 - 40 feet when adjacent to a Minor Arterial  
 - 40 feet when adjacent to a Collector or Local Road.

**Minimum Side Yard Setback:**

- 15 feet for Primary and Accessory Structures

**Minimum Rear Yard Setback:**

- 20 feet for the Primary Structure and Accessory Structures

**Maximum Lot Coverage:**

- square feet of Primary and Accessory Structures, and impervious surface cannot exceed 65% of the Lot Area.

**Maximum Structure Height:**

- 50 feet for the Primary Structure  
 - 20 feet for Accessory Structures

<b>Development Standards that Apply</b>	
<b>Lot/Yard(LY)</b> LY-01.....Section 5.3	<b>Floodplain(FP)</b> FP-01.....Section 5.9
<b>Height(HT)</b> HT-01.....Section 5.4	<b>Parking(PK)</b> PK-02,03,05....Section 5.10
<b>Accessory Structures(AS)</b> AS-01,02.....Section 5.5	<b>Loading(LD)</b> LD-01.....Section 5.11
<b>Performance Standards(PS)</b> PS-01.....Section 5.7	<b>Sight Triangle Clearance(STC)</b> STC-01.....Section 5.12
<b>Environmental (EN)</b> EN-01,02.....Section 5.8	

# VC District

## 3.15 "VC" District Intent, Permitted Uses, and Special Exception Uses

<p>The "VC" (Village Commercial) District is intended to provide a land use category for normal commercial uses in rural small towns. The provisions that regulate this land use district should make the district compatible with the "RR", "MR", and "LR" residential districts.</p> <p>Whitley County's Plan Commission and Board of Zoning Appeals should strive to use this district only in the downtown area and its immediate surroundings.</p> <p>The Plan Commission and Board of Zoning Appeals should strive to minimize parking lots between buildings, rather, encouraging parking behind buildings and on the street.</p> <p style="text-align: center;"><b><u>Permitted Uses</u></b></p> <p><b>Residential</b></p> <ul style="list-style-type: none"> <li>• bed &amp; breakfast facility</li> <li>• dwelling, single-family (upper floors)</li> </ul> <p><b>Agricultural Uses/Services</b></p> <ul style="list-style-type: none"> <li>• agricultural seed sales</li> <li>• farm markets</li> <li>• greenhouse facilities</li> <li>• lawn and garden equipment sales/service</li> <li>• plant nursery</li> <li>• roadside produce sales</li> <li>• sales of farm materials</li> <li>• storage of agricultural products</li> </ul> <p><b>Business: Auto Sales/Services</b></p> <ul style="list-style-type: none"> <li>• automobile body shop, enclosed</li> <li>• automobile wash, automatic and self</li> <li>• automobile part sales, new</li> <li>• automobile repair</li> <li>• automobile sales</li> <li>• automobile service station</li> <li>• filling/gas station</li> <li>• oil change service</li> </ul> <p><b>Business: Retail</b></p> <ul style="list-style-type: none"> <li>• antique shop</li> <li>• apparel shop</li> <li>• art gallery</li> <li>• building material sales</li> </ul>	<ul style="list-style-type: none"> <li>• department store</li> <li>• drug store</li> <li>• electrical supplies</li> <li>• fabric shop</li> <li>• floor coverings</li> <li>• flower shop</li> <li>• furniture store</li> <li>• garden shop</li> <li>• gift shop</li> <li>• hardware store</li> <li>• home electronics/appliance store</li> <li>• jewelry store</li> <li>• liquor store</li> <li>• music store</li> <li>• news dealer/bookstore</li> <li>• office supplies</li> <li>• paint store</li> <li>• pet shop</li> <li>• plumbing supplies</li> <li>• satellite dish sales/service</li> <li>• shoe sales</li> <li>• sporting goods</li> <li>• variety store</li> </ul> <p><b>Business: Food Sales/Service</b></p> <ul style="list-style-type: none"> <li>• bakery retail</li> <li>• convenience store</li> <li>• delicatessen</li> <li>• farmers market</li> <li>• grocery store/supermarket</li> <li>• meat market</li> <li>• restaurant</li> <li>• roadside food sales stand</li> </ul> <p><b>Business: Personal Service</b></p> <ul style="list-style-type: none"> <li>• barber/beauty shop</li> <li>• coin laundry</li> <li>• day care facility</li> <li>• dry-cleaning service</li> <li>• fingernail salon</li> <li>• fitness center/gym</li> <li>• health spa</li> <li>• shoe repair</li> <li>• tailor/pressing shop</li> <li>• tanning salon</li> <li>• tattoo/piercing parlors</li> </ul> <p><b>Business: Office/Professional</b></p> <ul style="list-style-type: none"> <li>• accounting office</li> <li>• architecture office</li> <li>• bank/credit union</li> <li>• drive-through bank/credit union</li> <li>• bank machine/ATM</li> </ul>	<p><b>Business: Office/Professional</b></p> <ul style="list-style-type: none"> <li>• contractor office/shop</li> <li>• drive-through bank machine/ATM</li> <li>• design services</li> <li>• insurance office</li> <li>• investment firm</li> <li>• landscaping business</li> <li>• law office</li> <li>• planning offices</li> <li>• professional offices</li> <li>• reading clinics</li> <li>• real estate office</li> <li>• secretarial service</li> <li>• service organization office</li> <li>• temporary service agency</li> <li>• title company</li> <li>• travel agency</li> </ul> <p><b>Business: General Business</b></p> <ul style="list-style-type: none"> <li>• clinic medical/dental</li> <li>• funeral home/mortuary</li> <li>• motor-bus station</li> <li>• pet grooming</li> <li>• photographic studio</li> <li>• print/copy center</li> <li>• recycling collection point (indoor)</li> <li>• sign painting/fabrication</li> </ul> <p><b>Business: Recreation</b></p> <ul style="list-style-type: none"> <li>• dance/aerobics/gymnastics/martial arts</li> <li>• video store</li> </ul> <p><b>Institutional/Public Facilities</b></p> <ul style="list-style-type: none"> <li>• church</li> <li>• community center</li> <li>• government office</li> <li>• library</li> <li>• museum</li> <li>• police/fire station</li> <li>• post office</li> <li>• public park/recreation center</li> <li>• public/private parking area</li> <li>• recycling collection point (no outdoor storage)</li> <li>• school</li> <li>• trade or business school</li> </ul>
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<p><b>“VC” District (Continued)</b>  <u><b>Permitted Uses (Cont.)</b></u></p> <p><b>Commercial/Utilities</b></p> <ul style="list-style-type: none"> <li>• public wells</li> <li>• telephone exchange</li> </ul>	<p style="text-align: center;"><u><b>Special Exception Uses</b></u></p> <p><b>Residential</b></p> <ul style="list-style-type: none"> <li>• dwelling, two-family (upper floors)</li> <li>• dwelling, multi-family (upper floors)</li> </ul> <p><b>Agricultural</b></p> <ul style="list-style-type: none"> <li>• commercial processing of agricultural products</li> <li>• processing agricultural products</li> <li>• storage of agricultural fertilizer and chemicals</li> </ul> <p><b>Business: Food Sales/Service</b></p> <ul style="list-style-type: none"> <li>• restaurant (with drive-in)</li> </ul> <p><b>Business: General Business</b></p> <ul style="list-style-type: none"> <li>• boat &amp; recreational vehicle sales/service</li> <li>• hotel/motel</li> <li>• marina</li> <li>• mini-warehouse</li> <li>• mini-storage facility</li> <li>• warehouse</li> <li>• wholesale business</li> </ul> <p><b>Business: Recreation</b></p> <ul style="list-style-type: none"> <li>• banquet hall</li> <li>• bar/night club</li> <li>• billiard/arcade room</li> <li>• bowling alley</li> <li>• lodge or private club</li> <li>• miniature golf</li> <li>• theater, indoor</li> </ul> <p><b>Industrial Uses</b></p> <ul style="list-style-type: none"> <li>• light manufacturing</li> </ul> <p><b>Communication/Utilities</b></p> <ul style="list-style-type: none"> <li>• storage tanks non-hazardous</li> </ul>	
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# VC District

## 3.16 "VC" District Standards

**Minimum Lot Area:**

- 5,000 square feet

**Minimum Lot Width:**

- 50 feet

**Minimum Lot Frontage:**

- 50 feet on a Public Street with access from said Public Street

**Sewer and Water:**

- Requires municipal water or sewer hookup unless it is not available in the community.

**Minimum Front Yard Setback:**

- 0 feet

**Minimum Side Yard Setback:**

- 0 feet (plus buffer yard)

**Minimum Rear Yard Setback:**

- 10 feet for the Primary Structure when no alley exists.  
 - 10 feet for the Accessory Structure when no alley exists.  
 - 0 feet for both the Primary and Accessory Structures when an alley exists.

**Maximum Lot Coverage:**

- square feet of Primary and Accessory Structures, may cover 100% of the Lot Area.

**Minimum Living Area Per Dwelling Unit:**

- 720 square feet per Dwelling Unit.

**Maximum Structure Height:**

- 50 feet for the Primary Structure  
 - 20 feet for the Accessory Structure

Development Standards that Apply		
<b>Lot/Yard(LY)</b> LY-01.....Section 5.3	<b>Environmental(EN)</b> EN-01,02.....Section 5.7	<b>Home Occupation(HO)</b> HO-01.....Section 5.14
<b>Height(HT)</b> HT-01.....Section 5.4	<b>Floodplain(FP)</b> FP-01.....Section 5.9	<b>Miscellaneous(MS)</b> MS-01.....Section 5.17
<b>Accessory Structures(AS)</b> AS-03.....Section 5.5	<b>Parking(PK)</b> PK-02,03,04,05....Section 5.10	
<b>Buffer Yard(BY)</b> BY-01.....Section 5.6	<b>Loading(LD)</b> LD-01.....Section 5.11	
<b>Performance Standards(PS)</b> PS-01.....Section 5.7	<b>Sight Triangle Clearance(STC)</b> STC-01.....Section 5.12	

# GC District

## 3.17 "GC" District Intent, Permitted Uses, and Special Exception Uses

<p>The "GC" (General Commercial) District is intended to provide a land use category for most general business uses. The provisions that regulate this land use district should not overly restrict normal business practices. This district is intended to be used adjacent to all other commercial districts and the "RR", "MR", "LR", and "MP" residential districts.</p> <p>Whitley County's Plan Commission and Board of Zoning Appeals should strive to use this district with the "VC" district to encourage a strong and stable area for commerce.</p> <p>The Plan Commission and Board of Zoning Appeals should not encourage "strip development", rather development in clusters which share resources and minimize the cost of utilities and services. The Plan Commission and Board of Zoning Appeals should also strive to minimize lighting, parking lots fronting the major streets, and traffic conflicts in the "GC" District.</p> <p style="text-align: center;"><b><u>Permitted Uses</u></b></p> <p><b>Agricultural Uses/Services</b></p> <ul style="list-style-type: none"> <li>• agricultural seed sales</li> <li>• crop production</li> <li>• farm markets</li> <li>• greenhouse facilities</li> <li>• lawn and garden equipment sales/service</li> <li>• plant nursery</li> <li>• sales of farm materials</li> </ul> <p><b>Business: Retail</b></p> <ul style="list-style-type: none"> <li>• antique shop</li> <li>• apparel shop</li> <li>• art gallery</li> <li>• department store</li> <li>• drug store</li> <li>• electrical supplies</li> <li>• fabric shop</li> <li>• floor coverings</li> <li>• flower shop</li> <li>• furniture store</li> <li>• garden shop</li> </ul>	<ul style="list-style-type: none"> <li>• hardware store</li> <li>• heating &amp; cooling sales/service</li> <li>• home electronics/appliance store</li> <li>• jewelry store</li> <li>• liquor store</li> <li>• lumberyard</li> <li>• music store</li> <li>• news dealer/bookstore</li> <li>• office supplies</li> <li>• paint store</li> <li>• plumbing supplies</li> <li>• satellite dish sales/service</li> <li>• shoe sales</li> <li>• sporting goods</li> <li>• variety store</li> </ul> <p><b>Business: Auto Sales/Services</b></p> <ul style="list-style-type: none"> <li>• automobile body shop, enclosed</li> <li>• automobile repair/minor, enclosed</li> <li>• automobile repair/major, enclosed</li> <li>• automobile part sales, new</li> <li>• automobile service station</li> <li>• automobile wash, automatic and self</li> <li>• automobile sales</li> <li>• filling/gas station</li> <li>• oil change service</li> <li>• motor home sales</li> </ul> <p><b>Business: Food Sales/Service</b></p> <ul style="list-style-type: none"> <li>• bakery retail</li> <li>• convenience store</li> <li>• delicatessen</li> <li>• farmers market</li> <li>• grocery/supermarket</li> <li>• meat market</li> <li>• restaurant</li> <li>• restaurant (with drive-in)</li> <li>• roadside food sales stand</li> </ul> <p><b>Business: Personal Service</b></p> <ul style="list-style-type: none"> <li>• barber/beauty shop</li> <li>• coin laundry</li> <li>• day care facility</li> <li>• dry-cleaning service</li> <li>• fingernail salon</li> <li>• fitness center/gym</li> <li>• health spa</li> <li>• shoe repair</li> <li>• tailor/pressing shop</li> <li>• tanning salon</li> <li>• tattoo/piercing parlor</li> </ul>	<p><b>Business: Recreation</b></p> <ul style="list-style-type: none"> <li>• banquet hall</li> <li>• bar/night club</li> <li>• billiard/arcade room</li> <li>• bowling alley</li> <li>• dance/aerobics/gymnastics studio</li> <li>• lodge or private club</li> <li>• miniature golf</li> <li>• public docks</li> <li>• theater, indoor</li> <li>• theater, outdoor</li> <li>• video store</li> <li>• commercial riding stables</li> </ul> <p><b>Business: Office/Professional</b></p> <ul style="list-style-type: none"> <li>• accounting office</li> <li>• architecture office</li> <li>• bank/credit union/financial services</li> <li>• drive-through bank machine/ATM</li> <li>• contractor office</li> <li>• design services</li> <li>• insurance office</li> <li>• investment firm</li> <li>• landscape business</li> <li>• law office</li> <li>• planning offices</li> <li>• professional offices</li> <li>• real estate office</li> <li>• secretarial service</li> <li>• service organization offices</li> <li>• temporary service agency</li> <li>• title company</li> <li>• travel agency</li> </ul> <p><b>Business: General Business</b></p> <ul style="list-style-type: none"> <li>• boat &amp; recreational vehicles sales/service</li> <li>• clinic medical/dental</li> <li>• funeral home/mortuary</li> <li>• hospital</li> <li>• hotel/motel</li> <li>• marina</li> <li>• mini-warehouse</li> <li>• mini-storage facility</li> <li>• motor bus station</li> <li>• photographic studio</li> <li>• print shop/copy center</li> <li>• sign painting/fabrication</li> <li>• welding</li> <li>• wholesale business</li> </ul>
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<p><b>“GC” District (Continued)</b>  <u><b>Permitted Uses (Cont.)</b></u></p> <p><b>Institutional/Public Facilities</b></p> <ul style="list-style-type: none"> <li>• church</li> <li>• government offices</li> <li>• police/fire station</li> <li>• post office</li> <li>• school, public/private</li> <li>• trade or business school</li> </ul> <p><b>Communication/Utility</b></p> <ul style="list-style-type: none"> <li>• public wells</li> <li>• radio/TV station</li> <li>• telephone exchange</li> <li>• utility substation</li> </ul>	<p><u><b>Special Exception Uses</b></u></p> <p><b>Agricultural Uses/Service</b></p> <ul style="list-style-type: none"> <li>• storage of agricultural fertilizer and chemicals</li> </ul> <p><b>Business: General Business</b></p> <ul style="list-style-type: none"> <li>• adult bookstore</li> <li>• adult entertainment business</li> <li>• kennel</li> </ul> <p><b>Business: Recreation</b></p> <ul style="list-style-type: none"> <li>• race track</li> </ul> <p><b>Communication/Utility</b></p> <ul style="list-style-type: none"> <li>• cellular/communication/radio/television tower</li> </ul> <p><b>Industrial Uses</b></p> <ul style="list-style-type: none"> <li>• light manufacturing</li> </ul> <p><b>Miscellaneous</b></p> <ul style="list-style-type: none"> <li>• nursing home</li> <li>• retirement community</li> </ul>	
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# GC District

## 3.17 "GC" District Standards

**Minimum Lot Area:**

- 10,000 square feet

**Minimum Lot Width:**

- 75 feet

**Minimum Lot Frontage:**

- 75 feet on a Public Street with access from said Public Street

**Maximum Structure Height:**

- 50 feet for the Primary Structure  
- 20 feet for Accessory Structures

**Minimum Front Yard Setback:**

- 60 feet when adjacent to a Principal Arterial  
- 40 feet when adjacent to a Minor Arterial  
- 40 feet when adjacent to a Collector or Local Road.

**Minimum Side Yard Setback:**

- 10 feet

**Minimum Rear Yard Setback:**

- 20 feet for the Primary and Accessory Structure.

**Maximum Lot Coverage:**

- square feet of Primary and Accessory Structures, and impervious surface cannot exceed 80% of the Lot Area.

Development Standards that Apply		
<b>Lot/Yard(LY)</b> LY-01.....Section 5.3	<b>Environmental (EN)</b> EN-01,02.....Section 5.8	<b>Home Occupation(HO)</b> HO-01.....Section 5.14
<b>Height(HT)</b> HT-01.....Section 5.4	<b>Floodplain(FP)</b> FP-01.....Section 5.9	<b>Adult Uses(AU)</b> AU-01.....Section 5.15
<b>Accessory Structures(AS)</b> AS-03.....Section 5.5	<b>Parking(PK)</b> PK-02,03,05.....Section 5.10	<b>Telecommunication Facilities(TF)</b> TF-01.....Section 5.16
<b>Buffer Yard(BY)</b> BY-01.....Section 5.6	<b>Loading(LD)</b> LD-01.....Section 5.11	<b>Miscellaneous(MS)</b> MS-01.....Section 5.17
<b>Performance Standards(PS)</b> PS-01.....Section 5.7	<b>Sight Triangle Clearance(STC)</b> STC-01.....Section 5.12	

# IPM District

## 3.18 "IPM" District Intent, Permitted Uses, and Special Exception Uses

District Intent	Permitted Uses	Permitted Uses (Cont.)
<p>The "IPM" (Industrial Park/Manufacturing) District is intended to provide a land use category for most light to moderate impact industrial park and heavy industrial facilities. This district can be used adjacent to the "GC" commercial district and agriculture districts.</p> <p>Environmental, public safety and public welfare should be a high priority. The Plan Commission and Board of Zoning Appeals should also strive to minimize glare, parking lots fronting the major streets, excessive use of signs, and traffic conflicts in the "IPM" District.</p> <p>Buffer yards are mandatory and all outdoor storage shall be screened.</p>	<p><b>Agricultural Uses/Services</b></p> <ul style="list-style-type: none"> <li>• agricultural crop production</li> <li>• agricultural seed sales</li> <li>• farm equipment sales/service</li> <li>• orchards</li> <li>• plant nursery</li> <li>• processing of agricultural products</li> <li>• commercial processing of agricultural products</li> <li>• tree farms</li> <li>• greenhouse facilities, wholesale only</li> </ul> <p><b>Business: Retail</b></p> <ul style="list-style-type: none"> <li>• lumberyard</li> <li>• sawmill</li> </ul> <p><b>Business: Auto Sales/Services</b></p> <ul style="list-style-type: none"> <li>• automobile body shop, enclosed</li> <li>• automobile repair, major</li> <li>• automobile repair, minor</li> <li>• automobile sales area</li> <li>• automobile wash, automatic &amp; self</li> <li>• motor home sales</li> </ul> <p><b>Business: Office/Professional</b></p> <ul style="list-style-type: none"> <li>• bank machine/ATM</li> <li>• drive-thru bank machine/ATM</li> <li>• drive-thru bank/credit union</li> <li>• building contractor</li> <li>• electrical contractor</li> <li>• landscape contractor</li> <li>• landscape business</li> <li>• plumbing contractor</li> </ul> <p><b>Business: General</b></p> <ul style="list-style-type: none"> <li>• enclosed mini-storage facility</li> <li>• kennel/humane shelter</li> <li>• mini-warehouse</li> <li>• recycling collection point (indoor)</li> <li>• sign painting/fabrication</li> <li>• truck stop</li> <li>• warehouse</li> <li>• welding</li> <li>• wholesale business</li> </ul> <p><b>Communication/Utility</b></p> <ul style="list-style-type: none"> <li>• public wells</li> <li>• radio/TV station</li> <li>• telephone exchange</li> <li>• utility substation</li> </ul>	<p><b>Industrial Uses</b></p> <ul style="list-style-type: none"> <li>• distribution center</li> <li>• light manufacturing</li> <li>• industrial park</li> </ul> <p><b>Institutional/Public Facilities</b></p> <ul style="list-style-type: none"> <li>• police/fire station</li> <li>• post office</li> </ul> <p><b><u>Special Exception Uses</u></b></p> <p><b>Business: General</b></p> <ul style="list-style-type: none"> <li>• airport and landing field</li> <li>• outside storage facility (shall be enclosed with privacy fence)</li> <li>• recycling collection point (outdoor storage)</li> </ul> <p><b>Communication/Utility</b></p> <ul style="list-style-type: none"> <li>• cellular/communication/radio/television tower</li> <li>• electrical generator</li> <li>• pipeline pumping station</li> <li>• sewage treatment plants</li> <li>• storage tanks non-hazardous</li> </ul> <p><b>Industrial Uses</b></p> <ul style="list-style-type: none"> <li>• bottled gas storage/distribution</li> <li>• gravel/sand mining*</li> <li>• heavy manufacturing</li> <li>• liquid fertilizer storage/distribution</li> <li>• research center</li> </ul>

\* State law permits mining in rural areas with 7 or less homes within a square mile. Within urban areas with 8 or more homes a Special Exception is required.

# IPM District

## 3.20 "IPM" District Standards

**Minimum Lot Area:**

- 1 acre

**Minimum Lot Width:**

- 100 feet

**Minimum Lot Frontage:**

- 100 feet on a Public Street with access from said Public Street

**Maximum Structure Height:**

- 50 feet for the Primary Structure  
 - 50 feet for Accessory Structures  
 - certain industrial structures may be exempt.

**Minimum Front Yard Setback:**

- 60 feet when adjacent to a Principal Arterial  
 - 40 feet when adjacent to a Minor Arterial  
 - 40 feet when adjacent to a Collector or Local Road.

**Minimum Side Yard Setback:**

- 20 feet (plus buffer yard)

**Minimum Rear Yard Setback:**

- 20 feet for the Primary and Accessory Structure (plus buffer yard)

**Maximum Lot Coverage:**

- square feet of Primary and Accessory Structures, and impervious surface cannot exceed 65% of the Lot Area.

<b>Development Standards that Apply</b>		
<b>Lot/Yard(LY)</b> LY-01.....Section 5.3	<b>Floodplain(FP)</b> FP-01.....Section 5.9	<b>Miscellaneous(MS)</b> MS-01.....Section 5.17
<b>Height(HT)</b> HT-01.....Section 5.4	<b>Parking(PK)</b> PK-02,03,05....Section 5.10	
<b>Buffer Yard(BY)</b> BY-01.....Section 5.6	<b>Loading(LD)</b> LD-01.....Section 5.11	
<b>Performance Standards(PS)</b> PS-01.....Section 5.7	<b>Sight Triangle Clearance(STC)</b> STC-01.....Section 5.12	
<b>Environmental (EN)</b> EN-01,02.....Section 5.8	<b>Telecommunication Facilities(TF)</b> TF-01.....Section 5.16	

# IN District

## 3.21 “IN” District Intent, Permitted Uses, and Special Exception Uses

District Intent	Permitted Uses	Special Exception Uses
<p>The "IN" (Intensive Use) District is intended to provide a land use category for intensive uses that may be considered noxious under certain circumstances. This district can be used adjacent to the "IMP" industrial district and agricultural districts. This district should be used sparingly and only when absolutely necessary.</p> <p>Environmental, public safety, and public welfare should be a high priority. The Plan Commission and Board of Zoning Appeals should also strive to minimize glare, parking lots fronting the major streets, excessive use of signs, and traffic conflicts in the "IN" District.</p> <p>Buffer yards are mandatory and all outdoor storage shall be screened.</p>	<p><b>Agricultural Uses/Services</b></p> <ul style="list-style-type: none"> <li>• processing of agricultural products</li> </ul> <p><b>Communication/Utility</b></p> <ul style="list-style-type: none"> <li>• electrical generator</li> <li>• pipeline pumping station</li> <li>• sewage treatment plants</li> <li>• storage tanks non-hazardous</li> <li>• utility substation</li> </ul> <p><b>Institutional/Public Facilities</b></p> <ul style="list-style-type: none"> <li>• police/fire station</li> </ul> <p><b>Industrial Uses</b></p> <ul style="list-style-type: none"> <li>• asphalt and ready mix plants</li> <li>• heavy manufacturing</li> <li>• liquid fertilizer storage/distribution</li> </ul>	<p><b>Agricultural Uses/Services</b></p> <ul style="list-style-type: none"> <li>• slaughterhouse</li> </ul> <p><b>Business: General</b></p> <ul style="list-style-type: none"> <li>• airport and landing field</li> <li>• junkyard</li> <li>• scrap metal yard</li> <li>• recycling collection point (outdoor storage)</li> </ul> <p><b>Communication/Utility</b></p> <ul style="list-style-type: none"> <li>• cellular/communication/radio/television tower</li> </ul> <p><b>Industrial Uses</b></p> <ul style="list-style-type: none"> <li>• incinerator</li> <li>• flammable/hazardous chemical storage (above ground)</li> <li>• rendering plant</li> <li>• sanitary landfill/refuse dump</li> </ul> <p><b>Institutional/Public Facilities</b></p> <ul style="list-style-type: none"> <li>• penal or correctional institutions</li> </ul> <p><b>Other</b></p> <ul style="list-style-type: none"> <li>• any use not listed as a permitted use or special exception in any other district.</li> </ul>

# IN District

## 3.22 "IN" District Standards

**Minimum Lot Area:**

- 2 acres

**Minimum Lot Width:**

- 225 feet

**Minimum Lot Frontage:**

- 100 feet on a Public Street with access from said Public Street

**Maximum Structure Height:**

- 50 feet for the Primary Structure  
 - 50 feet for Accessory Structures  
 - certain industrial structures may be exempt.

**Minimum Front Yard Setback:**

- 150 feet when adjacent to a Principal Arterial  
 - 150 feet when adjacent to a Minor Arterial  
 - 150 feet when adjacent to a Collector or Local Road.

**Minimum Side Yard Setback:**

- 50 feet (plus buffer yard)

**Minimum Rear Yard Setback:**

- 50 feet for the Primary Structure and Accessory Structures (plus buffer yard)

**Maximum Lot Coverage:**

- square feet of Primary and Accessory Structures, and impervious surface cannot exceed 65% of the Lot Area.

Development Standards that Apply		
<b>Lot/Yard(LY)</b> LY-01.....Section 5.3	<b>Floodplain(FP)</b> FP-01.....Section 5.9	<b>Miscellaneous(MS)</b> MS-01.....Section 5.17
<b>Height(HT)</b> HT-01.....Section 5.4	<b>Parking(PK)</b> PK-02,03,05...Section 5.10	
<b>Buffer Yard(BY)</b> BY-01.....Section 5.6	<b>Loading(LD)</b> LD-01.....Section 5.11	
<b>Performance Standards(PS)</b> PS-01.....Section 5.7	<b>Sight Triangle Clearance(STC)</b> STC-01.....Section 5.12	
<b>Environmental (EN)</b> EN-01,02.....Section 5.8	<b>Telecommunication Facilities(TF)</b> TF-01.....Section 5.16	



# **Chapter Four**

## Zoning Map

## Chapter Four

# Zoning Map

### 4.1 Official Zoning Map

The zoning map for Whitley County, officially labeled "Whitley County Zoning Map", is hereby included as part of this ordinance. The map may also be known as and referred to as the Official Zoning Map.

### 4.2 Official Zoning Map Copies

Copies of the Official Zoning Map may be made and distributed to interested parties. The Official Zoning Map Copies shall be labeled as copies and have the date which they were last modified printed on them.

### 4.3 Location of the Official Zoning Map

The Official Zoning Map will be located in the office of the Zoning Administrator (Planning and Building Department).

### 4.4 Zoning District Boundaries

The Zoning District boundaries shall be shown on the Zoning Map. The abbreviations for the zoning districts appearing in this ordinance shall be used to identify the zoning districts on the map.

### 4.5 Regular Revisions

The Zoning Map should be formally revised annually, or as the Plan Commission determines necessary. During interim periods of time, hand drawn lines and text on the Official Zoning Map will be appropriate to note zoning changes. Copies may be made after the amendments are noted, and each copy shall be noted as an update with the "date last changed" noted on the map. Other revisions may be made to correct drafting or other errors or omission in the prior map, but shall not have the effect of amending the Zoning Map except as adopted by the County Commissioners.

### 4.6 Damaged, Destroyed, or Lost Official Zoning Map

In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the County Commissioners may, by resolution, adopt a new Official Zoning Map which shall to the extent possible, duplicate the accuracy of the damaged, destroyed or lost map.

### 4.7 Official Zoning Map Standards

District boundaries on the Zoning Map shall be interpreted as follows:

- A. District boundaries shown within the lines of roads, easements, and transportation right-of-ways shall be deemed to follow the center lines.
- B. District boundaries indicated as following section or fractional sectional lines, platted lot lines, or city or town corporation lines shall be constructed as following such lines.
- C. District boundaries indicated as parallel to or extensions of above features shall be construed as so.
- D. District boundaries indicated as approximately following the center line of streams, rivers, or other bodies of water shall be construed to follow such center lines.
- E. Where a district boundary line divides a lot at the time such line is adopted, the regulations for the less restricted portion of such lot shall extend not more than twenty-five (25) feet into the more restrictive portion, provided the lot has frontage on a street in the less restricted district. Further, the exact location of where the line crosses the property shall be determined by the Zoning Administrator.
- F. The vacation of streets and roads shall not affect the location of such district boundaries.



- G. When the Zoning Administrator cannot definitely determine the location of a district boundary by such center lines, by scale or dimensions stated on the Official Zoning Map, or by the fact that it does not clearly coincide with a property line, the Administrator shall refuse action and the Plan Commission shall interpret the location of the district boundary with reference to the scale of the Zoning Map and the purposes set forth in all relevant provisions of this Ordinance.
- H. Any ruling of the Zoning Administrator pertaining to the district boundaries may be appealed to the Board of Zoning Appeals.

# **Chapter Five**

## Development Standards

## Chapter Five

# Development Standards

### 5.1 Introduction

All structures, buildings, land uses, land use changes, structural alterations, structural relocations, structural additions, and structural enlargements that are constructed, created, established, or occur after the Effective Date of this ordinance (except as may otherwise be provided within this ordinance) shall be subject to all Development Standards and regulations for the applicable Zoning District.

### 5.2 Development Standards that Apply

Under the sections below are development standards arranged by category. The relevant four digit codes listed below (eg, LY-01) are referred to in the "Development Standards that Apply" section for each Zoning District.

### 5.3 Lot/Yard Standards (LY)

LY-01: All existing conflicts with the lot/yard regulations at the Effective Date of this Ordinance shall be considered a Legal Non-Conforming Lot.

Except hereinafter provided, no building or structure shall be erected unless such building or structure conforms: and no building or structure shall be altered, enlarged or reconstructed unless such alteration, enlargement, or reconstruction conforms with the lot/yard regulations of the district in which it is located, as follows:

- A. Front Yard Setbacks: The minimum Front Yard setbacks are designated for each Zoning District in Chapter 3.
- B. Side Yard Setbacks: The minimum Side Yard setbacks are designated for each Zoning District in Chapter 3.
- C. Rear Yard Setbacks: The minimum Rear Yard setbacks are designated for each Zoning District in Chapter 3.
- D. Lake Front Setbacks: In the LR District where a lot adjoins both a lake or lake channel and road right-of-way and where twenty-five (25) percent or more of the lots for a distance within three hundred fifty (350) feet of the proposed building on the same side of the road are occupied by existing buildings, the lake side shall be considered the front yard and the road side may be considered the rear yard. In this case, the lake side shall comply with the normal front yard setback regulations, but in no case shall the rear yard be less than fifteen (15) feet for either the principle or accessory structures. If less than twenty-five (25) percent of the lots are occupied by existing buildings, both the lake side and road side shall be considered front yards and shall comply with normal front yard setback requirements.

Where twenty-five (25) percent or more of the lots for a distance within three hundred fifty (350) feet of the proposed building on the same side of the road are occupied by existing buildings, the average setback of those buildings shall determine the front yard setback.

### 5.3.1 Lake Access Development Standards (LAD)

LAD-01: Lakeshore Frontage Requirements – The intent of this provision is to minimize the impact of Lake Access Developments and lake front developments on the shoreline and to (1) limit the funneling of lake access for multiple residences located on non-waterfront lots through waterfront lots, (2) establish a balanced and orderly relationship between Lake Access Developments and the amount of shoreline available for use by the owners of non-waterfront lots, and (3) to protect the natural lake assets of Whitley County from overburdening Lake Access Developments. This provision limits the practice of funneling numerous lake users through a waterfront lot intended for residential use. Funneling promotes very high density use of limited lakeshore property. It often results in undesirable overcrowding, access conflicts, sanitation, noise, parking and public safety problems.

Lake Access Developments in all zoning districts shall provide shoreline in compliance with the following linear footage requirements:

First Residential Unit	50 Feet of Shoreline
Second Residential Unit	25 Feet of Shoreline
Each Additional Residential Unit	15 Feet of Shoreline

The Developer of any Lake Access Development shall submit, with its exception, preliminary plat or development plan application, a certificate of survey depicting the waterfront lot shoreline and calculating the shoreline length. Such application may be granted only after submission of the required waterfront lot certificate of survey. In addition, the zoning administrator shall independently confirm the accuracy of the shoreline length calculation prior to the public hearing, or other determination required, for approval of the application.

This Amendment shall apply to modification of legal, non-conforming uses unless the change or alteration of the legal, non-conforming use maintains the same number of waterfront users or fewer waterfront users that the use had on the date of this Amendment, as calculated under this section of the ordinance. This number shall be supported through historical documentation and is subject to the requirements of all federal, state, and local regulations and requirements.

### 5.4 Height Standards (HT)

HT-01: No structure may be erected or changed so as to make its height greater than specified in its applicable Zoning District, except as noted below. Exceptions to height standards include:

- A. These specified height exceptions may exceed the permitted height regulations by twofold (x2) or seventy-five (75) feet: whichever is less.
  1. Church steeples
  2. Water Towers, and
  3. Transmission towers
- B. These specified height exceptions may exceed the permitted height standards by up to fifteen (15) feet.
  1. Necessary mechanical appurtenances, and
  2. Elevator bulkheads
- C. Telecommunication towers height standards shall be governed by Section 5.16 Telecommunication Facilities Standards of this Article.
- D. The following structures may exceed normal height requirements if their total height does not exceed their distance from the nearest lot line.

1. Agricultural structures such as: barns, silos, tanks, bins and windmills.
2. Industrial uses such as gas and liquid fertilizer tanks, power generating plants, substations, smokestacks, grain elevators, and other agricultural product processing and storage facilities, and industries requiring a vertical production procedure, such as flour mills, steel mills and refineries.
3. Special structures such as monuments, fire towers and flag poles.

## 5.5 Accessory Structures Standards (AS)

AS-01: The following Accessory Structure/Buildings Standards apply to the residential district(s). Accessory Structures/Buildings shall comply with all Development Standards for the Zoning District.

- A. The following Accessory Structures/Buildings are permitted, but must abide by all applicable Standards:
  - Antennas or satellite dishes,
  - Bath houses or saunas,
  - Decks,
  - Detached garages,
  - Gazebos,
  - Greenhouses,
  - Hot tubs,
  - Pole barns,
  - Mini barns,
  - Sheds,
  - Sport courts,
  - Storage buildings, and
  - Swimming pools.
- B. Accessory Structure/Buildings are not deemed to include: fences/screening, walks, driveways, decorative highway entrance features, curbs, retaining walls, utility installations for local service, such as pole lines and hydrants, landscaping, mailboxes, lamp posts, recreational equipment, bus hut, dog houses, and other such incidentals except as otherwise stated in this Ordinance.
- C. No mobile home or manufactured home may be used as an accessory structure in any district.
- D. No Accessory Structure/Buildings shall encroach on any platted easement unless written consent is granted by the agency, which utilizes the easement.

AS-02: The following Accessory Structure/Buildings Standards apply to the agricultural district(s). Accessory Structures/Buildings shall comply with all Development Standards for the Zoning District.

- A. The following Accessory Structures/Buildings are permitted, but must abide by all applicable Standards:
  - Agricultural buildings,
  - Antennas or satellite dishes,
  - Bath houses or saunas,
  - Decks,
  - Detached garages,
  - Gazebos,
  - Greenhouses,
  - Hot tubs,
  - Mini barns,

- Pole barns,
- Sheds,
- Sport courts,
- Storage buildings, and
- Swimming pools.

B. Dumpsters are permitted.

C. Accessory Structure/Buildings are not deemed to include: fences/screening, walks, driveways, decorative highway entrance features, curbs, retaining walls, utility installations for local service, such as pole lines and hydrants, landscaping, mailboxes, lamp posts, recreational equipment, bus hut, dog houses, and other such incidentals except as otherwise stated in this Ordinance.

D. No Accessory Structures/Buildings shall encroach on any platted easement unless written consent is granted by the agency, which utilizes the easement.

E. No mobile home or manufactured home may be used as an accessory structure in any district.

AS-03: The following Accessory Structure/Buildings Standards apply to the commercial district(s). Accessory Structures/Buildings shall comply with all Development Standards for the Zoning District.

A. The following Accessory Structure/Buildings are permitted, but must abide by all applicable Standards:

- Antennas or satellite dishes,
- Decks,
- Gazebos,
- Sheds,
- Storage buildings,
- Dumpsters, and
- Similar structures related to the primary use.

B. No Accessory Structures/Buildings shall encroach on any platted easement unless written consent is granted by the agency, which utilizes the easement.

C. No mobile home or manufactured home may be used as an accessory structure in any district.

AS-04: Manufactured Home Park Accessory Structure/Use standards are as follows:

A. Management offices, storage, mini-warehouses, laundry, dry cleaning facilities, and other structures customarily incidental to manufactured home parks shall be permitted, provided that the following criteria are met:

1. They are subordinate to the residential character of the park.
2. They are located, designed and intended to serve only the needs of the park.
3. The establishments shall present no visible evidence of their business nature to areas outside the park.
4. Parking shall be regulated in Section PK-01, PK-02, PK-03 and PK-05.

B. Each manufactured home lot is entitled to one (1) accessory structure in addition to a carport or garage. Attached or detached garages, mini-barns, barns, etc. are to be counted toward the total accessory building area. Unenclosed structures such as carports and gazebos are not to be

counted. The total area of all accessory structures shall not exceed 20% of the dwelling site. Permitted accessory structures are as follows:

- Carports,
- Decks,
- Garages
- Gazebos,
- Hot tubs,
- Mini barns,
- Patios,
- Sheds,
- Dog houses, and
- Swing sets.

C. Model manufactured homes as sales units are permitted provided the number of model homes is limited to 10% of the authorized units in the park.

D. No mobile home or manufactured home may be used as an accessory structure in any district.

## 5.6 Buffer Yard Standards (BY)

BY-01: A buffer yard provides transitional space and visual protection for differing land uses. Buffer Yard Standards include the following:

- A. If a property in an IPM or IN District is adjacent to AG, RR, LR, VC, or GC, a buffer shall be installed on the property located in the IPM or IN district. The following buffer standards shall apply:
1. The developer or owner of the subject property is responsible for installing the Buffer Yard.
  2. The adjacent property owner shall not have to participate in installing the Buffer Yard.
  3. An additional ten (10) feet of setback shall be required in addition to the normal setback on the yard(s) abutting the other zoning district.
  4. One (1) deciduous canopy tree planted a minimum of every thirty (30) feet, or coniferous every twenty (20) feet.
  5. All trees must be planted within five (5) to fifteen (15) feet from the property line and on the subject property.
  6. All trees must have at least a one and one-half (1 1/2") caliper, be properly maintained, and be replaced if the tree dies, is diseased, or is damaged from natural causes.
- B. In addition, a structure in an IN district must be a minimum of two-hundred (200) feet from any residential district. A buffer yard must be depicted on the development plan and installed prior to the issuance of an occupancy permit.
- C. If a property in a commercial district is adjacent to AG, RR, or LR, an additional ten (10) feet of setback shall be required in addition to the normal setback on the yard(s) abutting the other zoning district.

## 5.7 Performance Standards (PS)

PS-01: All uses established or placed into operation after the effective date of this Ordinance shall comply with the following performance standards in the interests of protecting public health, safety, and general welfare and lessening damage to property. No use on a property shall exhibit obnoxious characteristics to the extent that it constitutes a public nuisance or interferes with reasonable enjoyment of neighboring properties. No use in existence on the effective date of this Ordinance shall be altered or modified to conflict with these standards. The Right to Farm laws per current Indiana Code may supercede these regulations as they pertain to farming/agricultural uses.

- A. Air Pollution: No use on a property shall release fly ash, dust, smoke, vapors, noxious, toxic or corrosive matter or other air pollutants in such concentration as to be detrimental to health, animals, vegetation or property, or conflict with public air quality standards.
- B. Electrical Disturbance: No use on a property shall cause electrical disturbance adversely affecting radio, television or other equipment in the vicinity.
- C. Fire Protection: Fire fighting equipment and prevention measures acceptable to the local Fire Departments shall be readily available and apparent when any activity involving the handling and storage of flammable or explosive materials is conducted.
- D. Noise: No use on a property shall produce noise in such a manner as to be objectionable because of volume, frequency, intermittence, beat, shrillness, or vibration. Such noise shall be muffled or otherwise controlled so as not to become detrimental. Public safety sirens and related apparatus used solely for public purposes shall be exempt from this standard.
- E. Odor: No use on a property shall emit across lot lines any gas or matter with a bad odor in such quantity as to be readily detectable at any point along such lines.
- F. Vibration: No use on a property shall cause vibrations detectable beyond lot lines without the aid of instruments.
- G. Heat and Glare: No use on a property shall produce heat and glare in such a manner as to create a hazard to neighboring property, or transportation function.
- H. Waste Matter: No use on a property shall accumulate within the lot or discharge waste matter beyond the lot lines.
- I. Water Pollution: No use on a property shall produce erosion or other pollutants in such a quantity as to be detrimental to adjacent properties or to conflict with public water quality standards.

## 5.8 Environmental Standards (EN)

EN-01: The following standards pertain to environmental concerns in Whitley County, some of which are state regulated. This is not to imply that the county is enforcing state regulations, but to make the petitioner aware of them.

- A. Land Suitability: No land shall be used or structure erected where the land is unsuitable for such use or structure due to slopes greater than ten percent (10%), adverse soil or rock formation, erosion susceptibility, low percolation rate or bearing strength, or any other feature likely to be harmful to the health, safety, prosperity, aesthetics, and general welfare of the community.
- B. Drainage: Drainage swales (ditches) along dedicated roadways and within the right-of-way or on dedicated drainage easements are not to be altered, except for maintenance as originally constructed and as approved by Whitley County Highway Department, the Whitley County Drainage Board, or Indiana Department of Transportation. Driveways may be constructed over these or other approved structures as permitted by the appropriate agency.
- C. Permanent Structures: No permanent structures other than a fence may be erected within seventy-five (75) feet of the center line of any regulated tile ditch, or within seventy-five (75) feet of the existing top edge of any regulated open ditch or tile, or within any platted regulated subdivision easement, unless approved by the Whitley County Drainage Board.



- D. Code Compliance/Hazardous Waste: All development must be in compliance with Title 7 of the Indiana Code, as amended, as it relates to hazardous waste, low level nuclear waste, underground storage tanks, waste tires, and other applicable chapters of said Title.
- E. Code Compliance/Environmental Quality: All development must be in compliance with Title 13 of the Indiana Code, as amended, as it relates to air pollution control, water pollution control, solid waste management, and other applicable chapters of said Title.
- F. Waste Disposal: No waste materials such as garbage, rubbish, gasoline, oil, flammables, soils, tars, chemicals, greases, industrial or agricultural waste, or any other material of such nature, quantity, obnoxiousness, toxicity, or temperature so as to contaminate, pollute, or harm the waters shall be deposited, located stored, or discharged on any lot in a way that would be likely to runoff, seep, or wash into surface or ground water.
- G. Fuel Storage: No highly flammable or explosive liquids, solids, or gases specified by the State Fire Marshal shall be stored in bulk above ground, except tanks or drums of fuel connected directly with energy devices or heating appliances located and operated on the same lot as the tanks or drums of fuel.
- H. Projects Affecting Regulated Drains: Regulated drains are under the jurisdiction of the Whitley County Drainage Board. The Whitley County Drainage Board or Whitley County Surveyor shall review and approve all development or projects directly affecting a regulated open ditch or tile per IC 36-9-27, the Indiana Drainage Code.

EN-02: It shall be the responsibility of the owner of any lot or parcel of land developed for any use other than for agriculture to provide for adequate surface water drainage. Existing natural surface drainage should be utilized. Whenever the evidence available indicates that the natural surface drainage is inadequate the owner shall provide the parcel with an adequate water drainage system which shall be integrated into the drainage pattern of surrounding properties. All drainage plans shall be reviewed and approved by the Whitley County Drainage Board.

## 5.9 Floodplain Standards (FP)

FP-01: Statutory Authorization, Findings of Fact, Purpose and Objectives.

### A. Statutory Authorization.

The Indiana Legislature has in IC 36-7-4 and IC 14-28-4 granted the power to local government units to control land use within their jurisdictions. Therefore, the Board of Commissioners of Whitley County does hereby adopt the following floodplain management regulations.

### B. Findings of Fact.

1. The flood hazard areas of Whitley County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

C. Statement of Purpose.

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights or velocities.
2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters.
4. Control filling, grading, dredging, and other development which may increase erosion or flood damage.
5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
6. Make federally subsidized flood insurance available for structures and their contents in the County by fulfilling the requirements of the National Flood Insurance Program.

D. Objectives.

The objectives of this ordinance are:

1. To protect human life and health.
2. To minimize expenditure of public money for costly flood control projects.
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
4. To minimize prolonged business interruptions.
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains.
6. To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas.
7. To ensure that potential homebuyers are notified that property is in a flood area.

FP-02: Definitions.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

A zone means portions of the SFHA in which the principal source of flooding is runoff from rainfall, snowmelt, or a combination of both. In A zones, floodwaters may move slowly or rapidly, but waves are usually not a significant threat to buildings. These areas are labeled as Zone A, Zone AE, Zones A1-A30,

Zone AO, Zone AH, Zone AR and Zone A99 on a FIRM or FHBM. The definitions are presented below:

Zone A: Areas subject to inundation by the one-percent annual chance flood event. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown. Mandatory flood insurance purchase requirements apply.

Zone AE and A1-A30: Areas subject to inundation by the one-percent annual chance flood event determined by detailed methods. Base flood elevations are shown within these zones. Mandatory flood insurance purchase requirements apply. (Zone AE is on new and revised maps in place of Zones A1-A30.)

Zone AO: Areas subject to inundation by one-percent annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone. Mandatory flood insurance purchase requirements apply.

Zone AH: Areas subject to inundation by one-percent annual chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone. Mandatory flood insurance purchase requirements apply.

Zone AR: Areas that result from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection. Mandatory flood insurance purchase requirements apply.

Zone A99: Areas subject to inundation by the one-percent annual chance flood event, but which will ultimately be protected upon completion of an under-construction Federal flood protection system. These are areas of special flood hazard where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Zone A99 may only be used when the flood protection system has reached specified statutory progress toward completion. No base flood elevations or depths are shown. Mandatory flood insurance purchase requirements apply.

Accessory structure (appurtenant structure) means a structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

Addition (to an existing structure) means any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance or a request for a variance.

Area of shallow flooding means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Base Flood Elevation (BFE) means the elevation of the one-percent annual chance flood.

Basement means that portion of a structure having its floor sub-grade (below ground level) on all sides.

Building - see "Structure."

Community means a political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

Community Rating System (CRS) means a program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

Critical facility means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire, and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

Development means any man-made change to improved or unimproved real estate including but not limited to:

1. construction, reconstruction, or placement of a structure or any addition to a structure;
2. installing a manufactured home on a site, preparing a site for a manufactured home or installing a recreational vehicle on a site for more than 180 days;
3. installing utilities, erection of walls and fences, construction of roads, or similar projects;
4. construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;
5. mining, dredging, filling, grading, excavation, or drilling operations;
6. construction and/or reconstruction of bridges or culverts;
7. storage of materials; or
8. any other activity that might change the direction, height, or velocity of flood or surface waters.

"Development" does not include activities such as the maintenance of existing structures and facilities such as painting, re-roofing; resurfacing roads; or gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent structures.

Elevated structure means a non-basement structure built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, filled stem wall foundations (also called chain walls), pilings, or columns (posts and piers).

Elevation Certificate is a certified statement that verifies a structure's elevation information.

Emergency Program means the first phase under which a community participates in the NFIP. It is intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.

Encroachment means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing Construction means any structure for which the "start of construction" commenced before the effective date of the community's first floodplain ordinance.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the community's first floodplain ordinance.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA means the Federal Emergency Management Agency.

Five-hundred year flood (500-year flood) means the flood that has a 0.2 percent chance of being equaled or exceeded in any year.

Flood means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.

Flood Boundary and Floodway Map (FBFM) means an official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as Zone A.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) is the official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FBFM (where applicable), and the water surface elevation of the base flood.

Flood Prone Area means any land area acknowledged by a community as being susceptible to inundation by water from any source. (See "Flood")

Flood Protection Grade (FPG) is the elevation of the regulatory flood plus two feet at any given location in the SFHA. (See "Freeboard")

Floodplain means the channel proper and the areas adjoining any wetland, lake, or watercourse which have been or hereafter may be covered by the regulatory flood. The floodplain includes both the floodway and the fringe districts.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain management regulations means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage. Floodplain management regulations are also referred to as floodplain regulations, floodplain

ordinance, flood damage prevention ordinance, and floodplain management requirements.

Floodproofing (dry floodproofing) is a method of protecting a structure that ensures that the structure, together with attendant utilities and sanitary facilities, is watertight to the floodproofed design elevation with walls that are substantially impermeable to the passage of water. All structural components of these walls are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy, and anticipated debris impact forces.

Floodproofing certificate is a form used to certify compliance for non-residential structures as an alternative to elevating structures to or above the FPG. This certification must be by a Registered Professional Engineer or Architect.

Floodway is the channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flood flow of the regulatory flood of any river or stream.

Freeboard means a factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.

Fringe is those portions of the floodplain lying outside the floodway.

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

Hardship (as related to variances of this ordinance) means the exceptional hardship that would result from a failure to grant the requested variance. The Whitley County Board of Commissioners requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

Historic structure means any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.

Increased Cost of Compliance (ICC) means the cost to repair a substantially damaged structure that exceeds the minimal repair cost and that is required to bring a substantially damaged structure into compliance with the local flood damage prevention ordinance. Acceptable mitigation measures are elevation, relocation, demolition, or any combination thereof. All renewal and new business flood insurance policies with effective dates on or after June 1, 1997, will include ICC coverage.

Letter of Map Amendment (LOMA) means an amendment to the currently effective FEMA map that establishes that a property is not located in a SFHA. A LOMA is only issued by FEMA.

Letter of Map Revision (LOMR) means an official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

Letter of Map Revision Based on Fill (LOMR-F) means an official revision by letter to an effective NFIP map. A LOMR-F provides FEMA's determination concerning whether a structure or parcel has been elevated on fill above the BFE and excluded from the SFHA.

Lowest adjacent grade means the lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

Lowest floor means the lowest of the following:

1. the top of the lowest level of the structure;
2. the top of the basement floor;
2. the top of the garage floor, if the garage is the lowest level of the structure;
3. the top of the first floor of a structure elevated on pilings or pillars;
4. the top of the floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of flood waters unless:
  - a. the walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters by providing a minimum of two openings (in addition to doorways and windows) in a minimum of two exterior walls having a total net area of one (1) square inch for every one square foot of enclosed area. The bottom of all such openings shall be no higher than one (1) foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher; and,
  - b. such enclosed space shall be usable solely for the parking of vehicles and building access.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Map amendment means a change to an effective NFIP map that results in the exclusion from the SFHA of an individual structure or a legally described parcel of land that has been inadvertently included in the SFHA (i.e., no alterations of topography have occurred since the date of the first NFIP map that showed the structure or parcel to be within the SFHA).

Map panel number is the four-digit number followed by a letter suffix assigned by FEMA on a flood map. The first four digits represent the map panel, and the letter suffix represents the number of times the map panel has been revised. (The letter "A" is not used by FEMA, the letter "B" is the first revision.)

Market value means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (actual cash value), or adjusted assessed values.

Mitigation means sustained actions taken to reduce or eliminate long-term risk to people and property from

hazards and their effects. The purpose of mitigation is two fold: to protect people and structures, and to minimize the cost of disaster response and recovery.

National Flood Insurance Program (NFIP) is the federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry.

National Geodetic Vertical Datum (NGVD) of 1929 as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means any structure for which the “start of construction” commenced after the effective date of the community’s first floodplain ordinance.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the community’s first floodplain ordinance.

North American Vertical Datum of 1988 (NAVD 88) as adopted in 1993 is a vertical control datum used as a reference for establishing varying elevations within the floodplain.

Obstruction includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, canalization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water; or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

One-hundred year flood (100-year flood) is the flood that has a one percent (1%) chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See “Regulatory Flood”.

One-percent annual chance flood is the flood that has a one percent (1%) chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See “Regulatory Flood”.

Participating community is any community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.

Physical Map Revision (PMR) is an official republication of a community’s FEMA map to effect changes to base (1-percent annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.

Post-FIRM construction means construction or substantial improvement that started on or after the effective date of the initial FIRM of the community or after December 31, 1974, whichever is later.

Pre-FIRM construction means construction or substantial improvement, which started on or before December 31, 1974, or before the effective date of the initial FIRM of the community, whichever is later.

Probation is a means of formally notifying participating communities of violations and deficiencies in the administration and enforcement of the local floodplain management regulations.



Public safety and nuisance means anything which is injurious to the safety or health of an entire community, neighborhood or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Recreational vehicle means a vehicle which is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as quarters for recreational camping, travel, or seasonal use.

Regular program means the phase of the community's participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a FIS.

Regulatory flood means the flood having a one percent (1%) chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in FP-03(B) of this ordinance. The "Regulatory Flood" is also known by the term "Base Flood", "One-Percent Annual Chance Flood", and "100-Year Flood".

Repetitive loss means flood-related damages sustained by a structure on two separate occasions during a 10-year period ending on the date of the event for which the second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the structure at the time of each such flood event.

Section 1316 is that section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

Special Flood Hazard Area (SFHA) means those lands within the jurisdictions of the County subject to inundation by the regulatory flood. The SFHAs of Whitley County are generally identified as such on the Whitley County Indiana Uninc. Areas Flood Insurance Rate Map prepared by the Federal Emergency Management Agency and dated April 1, 1988. (These areas are shown on a FHBM or FIRM as Zone A, AE, A1- A30, AH, AR, A99, or AO).

Start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation.

Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a structure that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a manufactured home, or a prefabricated building. The term also includes recreational vehicles to be installed on a site for more than 180 days.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "repetitive loss" or "substantial damage" regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements or any alteration of a "historic structure", provided that the alteration will not preclude the structures continued designation as a "historic structure".

Suspension means the removal of a participating community from the NFIP because the community has not enacted and/or enforced the proper floodplain management regulations required for participation in the NFIP.

Variance is a grant of relief from the requirements of this ordinance, which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

Violation means the failure of a structure or other development to be fully compliant with this ordinance. A structure or other development without the elevation, other certification, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Water surface elevation means the height, in relation to the North American Vertical Datum of 1988 (NAVD 88) or National Geodetic Vertical Datum of 1929 (NGVD) (other datum where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

X zone means the area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent FIRMs (B zones on older FIRMs) designate areas subject to inundation by the flood with a 0.2 percent chance of being equaled or exceeded (the 500-year flood). Unshaded X zones (C zones on older FIRMs) designate areas where the annual exceedance probability of flooding is less than 0.2 percent.

Zone means a geographical area shown on a FHBM or FIRM that reflects the severity or type of flooding in the area.

Zone A (see definition for A zone)

Zone B, C, and X means areas identified in the community as areas of moderate or minimal hazard from the principal source of flood in the area. However, buildings in these zones could be flooded by severe, concentrated rainfall coupled with inadequate local drainage systems. Flood insurance is available in participating communities but is not required by regulation in these zones. (Zone X is used on new and revised maps in place of Zones B and C.)

FP-03: General Provisions.

A. Lands to Which This Ordinance Applies.

This ordinance shall apply to all SFHAs and known flood prone areas within the jurisdiction of Whitley County.

B. Basis for Establishing Regulatory Flood Data.

This ordinance's protection standard is the regulatory flood. The best available regulatory flood data is listed below. Whenever a party disagrees with the best available data, the party submitting the detailed engineering study needs to replace existing data with better data and submit it to the Indiana Department of Natural Resources for review and approval.

1. The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of Whitley County, delineated as an "A Zone" on the Whitley County Indiana Uninc. Areas Flood Insurance Rate Map prepared by the Federal Emergency Management Agency and dated April 1, 1988, shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile.
2. In the absence of a published FEMA map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in the community's known flood prone areas shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile.

C. Establishment of Floodplain Development Permit.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities in areas of special flood hazard.

D. Compliance.

No structure shall hereafter be located, extended, converted or structurally altered within the SFHA without full compliance with the terms of this ordinance and other applicable regulations. No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this ordinance and other applicable regulations.

E. Abrogation and Greater Restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

F. Discrepancy between Mapped Floodplain and Actual Ground Elevations.

1. In cases where there is a discrepancy between the mapped floodplain (SFHA) on the FIRM and the actual ground elevations, the elevation provided on the profiles shall govern.
2. If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.
3. If the elevation (natural grade) of the site in question is above the base flood elevation, that site shall be considered outside the SFHA and the floodplain regulations will not be applied. The property owner should be advised to apply for a LOMA.

#### G. Interpretation.

In the interpretation and application of this ordinance all provisions shall be:

1. Considered as minimum requirements.
2. Liberally construed in favor of the governing body.
3. Deemed neither to limit nor repeal any other powers granted under state statutes.

#### H. Warning and Disclaimer of Liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this ordinance does not create any liability on the part of Whitley County, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this ordinance or any administrative decision made lawfully thereunder.

#### I. Penalties for Violation.

Failure to obtain a Floodplain Development Permit in the SFHA or failure to comply with the requirements of a Floodplain Development Permit or conditions of a variance shall be deemed to be a violation of this ordinance. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Zoning Code for Whitley County. All violations shall be punishable by a fine not exceeding \$50.00 for each offense.

1. A separate offense shall be deemed to occur for each day the violation continues to exist.
2. The Whitley County Planning Commission shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.
3. Nothing herein shall prevent the County from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

#### J. Increased Cost of Compliance (ICC)

In order for the buildings to qualify for a claim payment under ICC coverage as a “repetitive loss structure”, the National Reform Act of 1994 requires that the building be covered by a contract for flood insurance and incur flood-related damages on two occasions during a 10-year period ending on the date of the event for which the second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25 percent of the market value of the building at the time of each such flood event.

#### FP-04: Administration.

##### A. Designation of Administrator.

The Board of Commissioners of Whitley County hereby appoints the Executive Director of the Whitley County Joint Planning and Building Department to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

## B. Permit Procedures.

Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically the following information is required:

1. Application stage.
  - a. A description of the proposed development.
  - b. Location of the proposed development sufficient to accurately locate property and structure in relation to existing roads and streams.
  - c. A legal description of the property site.
  - d. A site development plan showing existing and proposed development locations and existing and proposed land grades.
  - e. Elevation of the top of the lowest floor (including basement) of all proposed buildings. Elevation should be in NAVD 88 or NGVD.
  - f. Elevation (in NAVD 88 or NGVD) to which any non-residential structure will be floodproofed.
  - g. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
2. Construction stage.

Upon placement of the lowest floor; or floodproofing, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the NAVD 88 or NGVD elevation of the lowest floor or floodproofed elevation, as built. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular structure said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holders' risk. (The Floodplain Administrator shall review the lowest floor and floodproofing elevation survey data submitted.) The permit holder shall correct deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

## C. Duties and Responsibilities of the Floodplain Administrator.

The Floodplain Administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this ordinance. The administrator is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose.

Duties and Responsibilities of the Floodplain Administrator shall include, but not be limited to:

1. Review all floodplain development permits to assure that the permit requirements of this ordinance have been satisfied.

2. Inspect and inventory damaged structures in the SFHA and complete substantial damage determinations.
3. Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to FP-05, Section E and G (1) of this ordinance, and maintain a record of such authorization (either copy of actual permit or floodplain analysis/regulatory assessment).
4. Ensure that all necessary federal or state permits have been received prior to issuance of the local floodplain development permit. Copies of such permits are to be maintained on file with the floodplain development permit.
5. Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.
6. Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map Amendment (LOMA), Letters of Map Revision (LOMR), copies of DNR permits and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and “as-built” elevation and floodproofing data for all buildings constructed subject to this ordinance.
7. Utilize and enforce all Letters of Map Revision (LOMR) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community.
8. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
9. Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with FP-04, Section B.
10. Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed in accordance with FP-04, Section B.
11. Review certified plans and specifications for compliance.

FP-05: Provisions for Flood Hazard Reduction.

A. General Standards.

In all SFHAs and known flood prone areas the following provisions are required:

1. New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
2. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.
3. New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG.
4. New construction and substantial improvements shall be constructed by methods and

practices that minimize flood damage.

5. Electrical, heating, ventilation, plumbing, air conditioning equipment, utility meters, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.
6. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
7. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
8. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
9. Any alteration, repair, reconstruction or improvements to a structure that is in compliance with the provisions of this ordinance shall meet the requirements of “new construction” as contained in this ordinance.
10. Any alteration, repair, reconstruction or improvement to a structure that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not further extended, or replaced.

#### B. Specific Standards.

In all SFHAs, the following provisions are required:

1. In addition to the requirements of FP-05, Section A, all structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:
  - a. Construction or placement of any new structure having a floor area greater than 400 square feet.
  - b. Addition or improvement made to any existing structure:
    - i.) where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value of the land).
    - ii.) with a previous addition or improvement constructed since the community’s first floodplain ordinance.
  - c. Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to it’s before damaged condition equals or exceeds 50% of the market value of the structure (excluding the value of the land) before damage occurred.
  - d. Installing a travel trailer or recreational vehicle on a site for more than 180 days.
  - e. Installing a manufactured home on a new site or a new manufactured home on an existing site. This ordinance does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to

avoid flood damage.

- f. Reconstruction or repairs made to a repetitive loss structure.
2. Residential Construction. New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor; including basement, at or above the FPG (two feet above the base flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of FP-05, Section B (4).
  3. Non-Residential Construction. New construction or substantial improvement of any commercial, industrial, or non-residential structure (or manufactured home) shall either have the lowest floor, including basement, elevated to or above the FPG (two feet above the base flood elevation) or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of FP-05, Section B (4). Structures located in all "A Zones" may be floodproofed in lieu of being elevated if done in accordance with the following:
    - a. A Registered Professional Engineer or Architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the official as set forth in FP-04, Section C (10).
    - b. Floodproofing measures shall be operable without human intervention and without an outside source of electricity.
  4. Elevated Structures. New construction or substantial improvements of elevated structures shall have the lowest floor at or above the FPG.

Elevated structures with fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. Designs must meet the following minimum criteria:

- a. Provide a minimum of two openings located in a minimum of two exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area).
- b. The bottom of all openings shall be no more than one foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher.
- c. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
- d. Access to the enclosed area shall be the minimum necessary to allow for parking for vehicles (garage door) or limited storage of maintenance



equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).

- e. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
- f. The interior grade of such enclosed area shall be at an elevation at or higher than the exterior grade.

5. Structures Constructed on Fill. A residential or nonresidential structure may be constructed on a permanent land fill in accordance with the following:

- a. The fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method.
- b. The fill should extend at least ten feet beyond the foundation of the structure before sloping below the FPG.
- c. The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than 3 horizontal to 1 vertical.
- d. The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.
- e. The top of the lowest floor including basements shall be at or above the FPG.

6. Standards for Manufactured Homes and Recreational Vehicles. Manufactured homes and recreational vehicles to be installed or substantially improved on a site for more than 180 days must meet one of the following requirements:

- a. The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site;
  - i.) outside a manufactured home park or subdivision;
  - ii.) in a new manufactured home park or subdivision;
  - iii.) in an expansion to an existing manufactured home park or subdivision; or
  - iv.) in an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as a result of a flood.
- b. The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elevations that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site in an existing manufactured home

park or subdivision that has not been substantially damaged by a flood.

- c. Manufactured homes with fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in FP-05, Section B. 4.
- d. Recreational vehicles placed on a site shall either:
  - i.) be on site for less than 180 days; and,
  - ii.) be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
  - iii.) meet the requirements for “manufactured homes” as stated earlier in this section.

#### C. Standards for Subdivision Proposals.

1. All subdivision proposals shall be consistent with the need to minimize flood damage.
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
4. Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than the lesser of fifty lots or five acres.
5. All subdivision proposals shall minimize development in the SFHA and/or limit density of development permitted in the SFHA.
6. All subdivision proposals shall ensure safe access into/out of the SFHA for pedestrians and vehicles (especially emergency responders).

#### D. Critical Facility.

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible.

#### E. Standards for Identified Floodways.

Located within SFHAs, established in FP-03, Section B, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. If the site is in an identified floodway, the Floodplain Administrator shall require the

applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for a permit for construction in a floodway. Under the provisions of IC 14-28-1 a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing and paving etc. undertaken before the actual start of construction of the structure. However, it does exclude non-substantial additions/improvements to existing (lawful) residences in a non-boundary river floodway. (IC 14-28-1-26 allows construction of non-substantial additions/ improvements to residences in a non-boundary river floodway without obtaining a permit for construction in the floodway from the Indiana Department of Natural Resources. Please note that if fill is needed to elevate an addition above the existing grade, prior approval (construction in a floodway permit) for the fill is required from the Indiana Department of Natural Resources.)

No action shall be taken by the Floodplain Administrator until a permit (when applicable) has been issued by the Indiana Department of Natural Resources granting approval for construction in the floodway. Once a permit for construction in a floodway has been issued by the Indiana Department of Natural Resources, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in FP-05 of this ordinance have been met. The Floodplain Development Permit cannot be less restrictive than the permit for construction in a floodway issued by the Indiana Department of Natural Resources. However, a community's more restrictive regulations (if any) shall take precedence.

No development shall be allowed which acting alone or in combination with existing or future development, will increase the regulatory flood more than 0.14 of one foot.

For all projects involving channel modifications or fill (including levees) the County shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data.

#### F. Standards for Identified Fringe.

If the site is located in an identified fringe, then the Floodplain Administrator may issue the local Floodplain Development Permit provided the provisions contained in FP-05 of this ordinance have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the FPG.

#### G. Standards for SFHAs Without Established Base Flood Elevation and/or Floodways/Fringes.

##### 1. Drainage area upstream of the site is greater than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.

No action shall be taken by the Floodplain Administrator until either a permit for construction in a floodway or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.

Once the Floodplain Administrator has received the proper permit for construction in a floodway or floodplain analysis/regulatory assessment approving the proposed development, a Floodplain Development Permit may be issued provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural

Resources and the provisions contained in Article 5 of this ordinance have been met.

2. Drainage area upstream of the site is less than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Floodplain Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodplain and one-percent annual chance flood elevation for the site.

Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in FP-05 of this ordinance have been met.

3. The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the regulatory flood more than 0.14 of one foot and will not increase flood damages or potential flood damages.

#### H. Standards for Flood Prone Areas.

All development in known flood prone areas not identified on FEMA maps, or where no FEMA published map is available, shall meet applicable standards as required per FP-05.

#### FP-06: Variance Procedures.

##### A. Designation of Variance and Appeals Board.

The Board of Zoning Appeals shall hear and decide appeals and requests for variances from requirements of this ordinance.

##### B. Duties of Variance and Appeals Board.

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the Whitley County Circuit Court.

##### C. Variance Procedures.

In passing upon such applications, the Board of Zoning Appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and;

1. The danger of life and property due to flooding or erosion damage.
2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
3. The importance of the services provided by the proposed facility to the community.
4. The necessity to the facility of a waterfront location, where applicable.
5. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
6. The compatibility of the proposed use with existing and anticipated development,

7. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
8. The safety of access to the property in times of flood for ordinary and emergency vehicles.
9. The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site.
10. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

D. Conditions for Variances.

1. Variances shall only be issued when there is:
  - a. A showing of good and sufficient cause.
  - b. A determination that failure to grant the variance would result in exceptional hardship.
  - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
2. No variance for a residential use within a floodway subject to FP-05, Section E or Section G (1) of this ordinance may be granted.
3. Any variance granted in a floodway subject to FP-05, Section E or Section G (1) of this ordinance will require a permit from the Indiana Department of Natural Resources.
4. Variances to the Provisions for Flood Hazard Reduction of FP-05, Section B, may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.
5. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
6. Variances may be granted for the reconstruction or restoration of any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.
7. Any application to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation (See FP-06, Section E).
8. The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request (See FP-06, Section E).

E. Variance Notification.

Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

1. The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and;
2. Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in the community's biennial report submission to the Federal Emergency Management Agency.

F. Historic Structure.

Variances may be issued for the repair or rehabilitation of "historic structures" upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an "historic structure" and the variance is the minimum to preserve the historic character and design of the structure.

G. Special Conditions.

Upon the consideration of the factors listed in FP-06, and the purposes of this ordinance, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

**5.10 Parking Standards (PK)**

PK-01: This section applies to multi-family residential uses and manufactured home parks. A minimum of two (2) off-street parking spaces are required per dwelling unit. Off-street parking is not permitted in a public right-of-way. Each space must be at least nine (9) feet wide and eighteen (18) feet long.

PK-02: All parking lots for commercial and industrial uses must be paved with asphalt or concrete, provided, however, that any parking lot that is located in the Agricultural Districts and is used in connection with a use that is designated as a permitted use, (under Sections 3.1 and 3.2), shall not be required to be paved with asphalt or concrete, but such parking lot shall be surfaced with a dust free and durable material. In addition, these parking lots must also conform to all the following requirements:

- A. All ingress/egress into parking areas must be paved with asphalt, concrete or other dust free and durable material.
- B. Parking areas must be constructed to allow proper drainage.
- C. Parking area must be designed as to prevent vehicles from having to back into public streets.
- D. Parking lots shall have a minimum front yard setback of ten (10) feet and a minimum side and rear yard setback of five (5) feet.
- E. Parking spaces required in this standard must be located either on the premises or on a lot approved by the Plan Commission. All required off-street parking spaces, however, must be

located within six-hundred (600) feet of the respective lot.

- F. Parking spaces shall be a minimum of 9' X 18'. Indoor retail uses and food markets shall provide parking spaces a minimum of 10' X 18'. Parking aisle widths shall be as follows:
- 90 degree angle space - 24' wide parking aisle
  - 60 degree angle space - 18' wide parking aisle
  - 45 degree angle space - 14' wide parking aisle
- G. A group of adjacent uses, within a development, may provide a joint parking area. The number of required parking spaces for each use within a development may be combined and then reduced by twenty (20) percent. A permanent written agreement signed by all property owners involved which shall include but is not limited to the following items: maintenance, snow removal, ownership, and liability. The agreement shall be reviewed/approved by the Zoning Administrator and/or Plan Commission Attorney, and then recorded in the office of the Whitley County Recorder with all properties involved in the agreement.

PK-03: To reduce traffic congestion and hazards along roadways, off-street parking shall be required for business and industrial uses. The following is a schedule of required parking spaces:

A. Residential and Lodging Uses:

1. Dwellings (one-family, two-family, multi-family, mobile home, or city authorized emergency dwelling) – Two (2) spaces per dwelling unit, excluding garages.
2. Dormitories, congregate housing or group homes – One (1) space for every two (2) beds, plus one (1) space for every 1,000 square feet of floor area.
3. Motel/Hotel – One (1) space per guest room plus one (1) space per every two (2) employees on the maximum shift.
4. Rooming or Boarding House – One (1) space for each guest room, but no less than two (2) total spaces in any event.

B. Commercial Uses:

1. Indoor Retail Uses – Five (5) spaces for each 1,000 square feet of floor area, except as otherwise herein noted.
2. Personal Service Uses – Five (5) spaces per 1,000 square feet of floor area except as otherwise herein noted.
3. General Offices – Five (5) spaces per 1,000 square feet of floor area.
4. Financial Institutions – Five (5) spaces per 1,000 square feet of floor area, plus one (1) space for each automatic teller unit. In addition, where the use involves drive-up banking, five (5) stacking spaces shall be provided for each drive-up window or delivery station.
5. Automobile, Truck, Recreational Vehicle, and Equipment Sales and Service Facility – One (1) parking space per 3,000 square feet of open sales lot area devoted to the sale, display, or rental of said vehicles or equipment; or four (4) spaces for every 1,000 square feet of interior showroom, whichever is greater; plus three (3) spaces for every service bay in garage repair areas, as well as one (1) space for every two employees on the maximum shift.
6. Automobile Service Station – One (1) space for each fuel dispenser nozzle, plus three (3) spaces for each service bay, or similar facility plus one (1) space for each vehicle used

directly in conduct of the business or stored on the premises, as well as one (1) space for every two employees on the maximum shift.

7. Automobile, Truck, Recreational Vehicle Quick Repair Facility – Three (3) spaces for each service bay, or similar facility plus one (1) space for each vehicle used directly in conduct of the business or stored on the premises. Parking for employees is to be one (1) space for every two employees on the maximum work shift. There shall also be five (5) stacking spaces for each service bay.
8. Car Wash – Mechanical – Ten (10) customer parking spaces, plus stacking area five (5) times the capacity of the car wash.
9. Car Wash – Self Service – Three (3) stacking spaces for each car washing stall and two (2) drying spaces for each car washing stall.
10. Clubs, Lodges – Spaces equivalent to the combined requirements of the uses being conducted, such as hotel, restaurant, auditorium, etc.
11. Food Markets – Six (6) spaces for every 1,000 square feet of floor area. In those instances where the use involves a drive-up window, five (5) stacking spaces shall be provided for each window or delivery station.
12. Funeral Homes, Mortuaries – One (1) space for every 4 seats in the auditorium or chapel with ten (10) total spaces provided minimum.
13. General Contracting Services – Four (4) spaces for every 1,000 square feet of floor area, plus two (2) spaces for every three employees on the maximum shift, plus one (1) space for every vehicle customarily used in operation of the use or stored upon the property.
14. Research Facilities and Laboratories – Four (4) spaces for every 1,000 square feet of floor area up to 50,000 square feet, plus two (2) spaces for every 1,000 square feet of floor area over 50,000 square feet.
15. Restaurants, Bars, Taverns without drive-through or carry-out facilities – Sixteen (16) spaces per 1,000 square feet of seating area, plus two (2) spaces for every three employees on the maximum shift.
16. Restaurants, Bars, Taverns with drive-through or carry-our facilities – Thirty (30) spaces for every 1,000 square feet, of seating area plus two (2) spaces for every three employees on the maximum shift. There will be ten (10) stacking spaces for each drive-in window or delivery station.
17. Vehicle Storage Lots – Two (2) spaces for every 3 employees on the maximum shift, plus one (1) space for every vehicle customarily used in the conduct of the business or stored upon the premises.
18. Veterinary Clinics and Animal Hospitals – Four (4) spaces for every doctor plus one (1) space for every additional employee.

C. Industrial and Transportation Related Uses:

1. Manufacturing Plants – One (1) space for every employee on the maximum shift, plus one (1) space for every 400 square feet of office floor area.



2. Storage Warehouses – One (1) space for every 1,000 square feet of floor area within the warehouse, plus four (4) spaces for every 1,000 square feet of floor area in office use.
3. Terminal (air, bus, railroad, truck, and heliport) – One (1) space for every 200 square feet of lobby area, plus two (2) spaces for every three employees on the maximum shift, plus one (1) space for every vehicle used in the operation of the use or stored on the premises.
4. Storage or Extraction of Raw Materials – Two (2) spaces for every three employees on the maximum shift, plus one (1) space for every vehicle used in the operation of the use, or stored on the premises.

D. Cultural and Recreational Uses:

1. Amusement Parks – One (1) square foot of parking for each square foot of public activity area.
2. Athletic Fields – Thirty (30) spaces for every diamond or athletic field, or one (1) space for every 8 seats, whichever is greater. (One seat is equal to 2 feet of bench length.)
3. Auditoriums, Theaters, Meeting Rooms and Places for Public Assembly (except as noted herein) – One (1) space for every 4 seats or one (1) space for every 50 square feet gross floor area when there is no fixed seating.
4. Bowling Alleys – Five (5) spaces for every alley.
5. Camping – One (1) dust free 10 X 30 space for every campsite.
6. Community Centers and Private, Not-for-Profit Recreation Centers, including Gymnasiums and Indoor Swimming Pools – Four (4) spaces for every 1,000 square feet of gross floor area.
7. Fairgrounds – Sufficient open land to accommodate all parking needs.
8. Golf Courses – Space Equivalent to one (1) percent of the total land area. Parking areas along roads or private drives internal to the use may be used to fulfill this requirement.
9. Miniature Golf Courses – Two (2) spaces per hole, plus one (1) space for each two employees on the maximum work shift.
10. Golf Driving Ranges – Two (2) spaces for every tee.
11. Gymnasium without bleachers or fixed seating (except as noted herein) – One (1) space for every 100 square feet gross floor area.
12. Handball, Racquetball Courts – Three (3) spaces for every court.
13. Ice and Roller Rinks – One (1) space for every 100 square feet of skating area or playing surface.
14. Indoor Soccer – Fifty (50) spaces for every playing field, plus one (1) space for every three seats of spectator seating (one seat equals two feet of bench length), plus two (2) spaces for every three employees on the maximum shift, but in no case less than one hundred (100) spaces.

15. Parks, Playgrounds, Picnic Grounds – Space equivalent to one percent of the total land area. Parking area available along park roads or private drives integral to the use may be used to fulfill this requirement.
16. Racetracks – One (1) space for every 4 seats. (One seat is equal to 2 feet of bench length.)
17. Retreats, having dormitories – One (1) space for every dormitory dwelling unit, plus two (2) spaces for every three employees on the maximum shift, plus one (1) space for every vehicle customarily used in operation of the use or stored on the premises.
18. Retreats, without dormitories – Sufficient parking area such that no vehicle need be parked on any street.
19. Stadiums, Sports Arenas, and Gymnasiums with spectator facilities – One (1) space for every 4 seats. (One seat is equal to 2 feet of bench length.)
20. Swimming Pools – Two (2) spaces for every 100 square feet of water area.
21. Tennis Courts – Four (4) spaces for every court.

E. Institutional Uses:

1. Churches – One (1) space for every 4 seats, (one seat equals 2 feet of bench length) plus one (1) space for every vehicle customarily used in operation of the use or stored on the premises.
2. Fire Stations – One (1) space for every employee on the maximum shift.
3. Group Homes – One (1) space for every 3 beds, plus one (1) space for every 2 employee on the maximum shift.
4. Hospitals – Two (2) spaces for every 3 beds, plus one (1) space for every staff doctor and employee on the maximum shift.
5. Libraries, Reading Rooms – Five (5) spaces for every 1,000 square feet of gross floor area, one (1) space for every 6 seats in an accessory auditorium, and two (2) spaces for every 3 employees on the maximum shift.
6. Nursing Homes – One (1) space for every 5 beds, one (1) space for every self-care unit, and one (1) space for every 2 employees on the maximum shift.
7. Police Stations – One (1) space for every 1 employee on the maximum shift, plus one (1) space for every vehicle customarily used in operation of the use or stored on the premises, one (1) visitor space per 1,000 square feet.
8. Postal Stations – Four (4) spaces for every customer service station, two (2) spaces for every 3 employees on the maximum shift, plus one (1) space for every vehicle customarily used in operation of the use or stored on the premises.
9. Schools, Public and Private, all Grades and Vocational – One (1) space for every employee, and one (1) space for every 3 students over 16 years of age plus one (1) space per bus stored at the facility.
10. Schools, Special – One (1) space for every employee.

PK-04: The following shall apply to the Village Commercial District.

- A. Off-street parking is not required.
- B. If the property owner chooses to have off-street parking the following will apply:
  - a. All ingress/egress into parking areas must be paved with asphalt, concrete or other durable material.
  - b. Parking areas must be constructed to allow proper drainage.
  - c. Parking areas must be designed as to prevent vehicles from having to back into public streets.
  - d. Parking lots shall have a minimum five (5) foot setback from the property.
  - e. Parking spaces shall be a minimum of 9' X 18'. Indoor retail uses and food markets shall provide parking spaces a minimum of 10' X 18'. Parking aisle widths shall be as follows:
    - 90 degree angle space - 24' wide parking aisle
    - 60 degree angle space - 18' wide parking aisle
    - 45 degree angle space - 14' wide parking aisle

PK-05: No vehicle or tractor/trailer of any type may be used for the purpose of permanent storage.

### 5.11 Loading Standards (LD)

LD-01: There shall be provided off-street loading berths not less than the minimum requirements specified in this section in connection with any building or structure which is to be erected or substantially altered, and which requires the receipt or distribution of materials or merchandise by trucks or similar vehicles.

- A. Location: All required off-street loading berths shall be located on the same lot as the use to be served, and no portion of the vehicle shall project into a street or alley. No permitted or required loading berth shall be located within twenty-five (25) feet of the nearest point of intersection of any two streets.
- B. Size: Off-street loading berths for over-the-road tractor-trailers shall be one hundred and twenty (120) feet including the apron. For local pick-up and delivery trucks, off-street loading berths shall be at least sixty (60) feet total including the apron.
- C. Access: Each required off-street loading berth shall be designed with appropriate means of vehicular access to a street or alley in a manner which will not interfere with traffic movements. There shall be no maneuvering within the right-of-way.
- D. Surfacing: All open off-street loading berths shall be improved with a compacted base asphalt, concrete or some comparable all-weather, dustless material.
- E. Space Allowed: Space allowed to any off-street loading berth shall not, while so allocated, be used to satisfy the space requirements of any off-street parking areas or portions thereof.
- F. Waiver: In situations where the structure clearly does not need loading docks, the Plan Commission shall reduce the number required or eliminate the requirement.

### 5.12 Sight Triangle Clearance Standard (STC)

STC-01: The intent of the Sight Triangle Clearance Standard is to provide for visibility at intersections, driveways, curb cuts, and entrances for the safe movement of vehicles and pedestrians. Sight Triangle Clearance Standards apply to all intersections, drives, curb cuts and entrances and are determined by the Whitley County Highway Superintendent and specified in the County subdivision ordinance.

All intersections must maintain an area (Sight Triangle) where primary or accessory structures, trees, vegetation (other than agriculture crops), or signs (other than road signs) are not allowed to be placed or to project into the area. The Clear Sight Triangle is illustrated below.

The following triangle segment lengths will apply to the determination of a clear sight triangle:

- 1. along Principal Arterials 40 feet
- 2. along Minor Arterials 40 feet
- 3. along Collectors 20 feet
- 4. along Local Roads 20 feet

**5.13 Open Space Standard (OS)**

OS-01: The intent of the Open Space Standard is to allow adequate open space in the MP, Manufactured Home Parks District and the MR Multi-Family Residential District:

A minimum of 400 square feet per dwelling site, or a ¼ acre whichever is greater, shall be dedicated to open space, and a portion of which shall be an active recreational area. Open space shall be configured for the activity for which it is designed.

**5.14 Home Occupation Standards (HO)**

HO:01: Home Occupation: The intent of the Home Occupation provisions is to allow minimal commercial and professional activity within the residentially and agriculturally zoned districts, and which is clearly incidental and secondary to the use of the principal structure for dwelling purposes.

A. General Restrictions and Limitations: Home occupations shall be permitted as an accessory use to a permitted residential use in any residentially or agriculturally zoned district subject to the requirements of this Section.

- 1. Permitted home occupations (non-traffic generating) shall be limited to those occupations conducted entirely by, internet, mail or telephone, those occupations in which the offered goods or services are delivered directly to a location other than the property where the home occupation is located, or those occupations where items are picked up from the customer at a location other than the property where the home occupation is located, the work performed, and then returned to the customer at the customer’s location.

**Note:** Home occupations (traffic generating) requiring customer visits to the location of the home occupation for the purpose of receiving the goods or services offered may only be permitted by the Board of Zoning Appeals as a Special Exception.

- 2. Home occupations shall be entirely operated from an enclosed, four-walled structure, provided that all doors (including garage doors greater than four (4) feet in width) shall be kept closed during use of the structure for a home occupation, except during incidental use for ingress and egress.
- 3. Such use shall not occupy a total floor area greater than the amount of square footage represented by twenty percent (20%) of the total square footage of the principal structure whether operated from within the dwelling or in an accessory structure. For the purposes of this section, “total floor area of the dwelling” may include habitable basements, but shall not include cellars, garages (whether attached or detached), attics, or other non-habitable portions of the residence. For the purposes of this section, the total floor area occupied by the home occupation activity shall include the total floor area of any room or rooms, where the home occupation is conducted or supplies, material, inventory, or equipment is stored.

4. The use of the property for an accessory home occupation shall be clearly incidental and subordinate to its principal use as a residence by its occupants, and shall not dominate or cause variations in the residential character of the property, principal structure, or surrounding neighborhood.
  5. There shall be no visible evidence of the home occupation, including but not limited to alterations to the exterior of the residence which changes the character thereof as a residence, exterior displays, or the outdoor storage of materials or equipment used in the home occupation. For the purpose of this section, "outdoor storage" shall include not only equipment or materials generally used in the occupation, but also the accumulation of used, discarded, or worn-out materials or manufactured products, any of which may or may not be reusable or saleable.
  6. Parking generated by the conduct of the home occupation shall be provided off-street and in conformance with the Zoning Ordinance. The conducting of the home occupation shall in no way result in the parking of any motorized vehicle, other than those owned and registered in the name of the residents, either upon the lot upon which the home occupation is conducted, or the adjoining public or private street, overnight or longer.
  7. The home occupation shall comply with the requirements of the General Performance Standards of Chapter 2. In no case shall any equipment or process be used which creates visual or audible interference in any radio or television receiver located off the lot which such home occupation is conducted, or which causes fluctuation in line voltage beyond the property line of the lot upon which the home occupation is conducted.
  8. The use of any tool or equipment powered by electricity, gasoline or diesel engine, or high pressure gas shall not be used before 8:00 A.M. or after 8:00 p.m. on any day.
  9. Persons who are not residents of the dwelling where the home occupation is being conducted, and who are engaged either as employees, subcontractors, independent contractors, or otherwise in the home occupation, shall not exceed two (2).
  10. Signage: Non-illuminated home occupation wall sign not exceeding two (2) square feet wall-mounted on the dwelling; and, if allowed with the Special Exception, one (1) non-illuminated yard sign not exceeding six (6) square feet in size per face. Other restrictions may apply. See Chapter 8, Signs.
- B. Home Occupation Approvals Non-Transferable: All home occupation approvals shall be for the originating applicant for a specific location, and may not be transferred to any other location by that applicant. Should the property upon which the home occupation is conducted be sold or conveyed to a different ownership or resident, a new home occupation approval will be required.
- C. Revocation of Home Occupation Approval: Upon a finding that an approved home occupation has become unsuitable or incompatible with the residential nature of the property or neighborhood where it is located through non-compliance with any of the requirements of this Ordinance, the Board of Zoning Appeals reserves full authority to revoke the home occupation. The Board, or its designee, shall notify the property owner that such an action is imminent, that the property owner will have thirty (30) days in which to prepare a response to the violations specified in the letter-of-intent to revoke the home occupation, and that the Board shall schedule the matter for a public hearing at the next available regular meeting date following the thirty (30) day notice period, at which time, all interested citizens will be given the opportunity to be heard. Said notice to the property owner of the intent to revoke the home occupation shall be delivered

by either the United States Mail or through personal service. The public hearing shall be advertised in accordance with State Law and the Rules and Procedures of the Board of Zoning Appeals.

### 5.15 Adult Uses Standards (AU)

AU-01: Sexually Oriented Businesses: A Sexually Oriented Business may be permitted only in accordance with this section. A Sexually Oriented Business may be permitted as a Special Exception, in the General Commercial District, if it complies with the requirements of this Section, in addition to all other requirements for special exceptions.

- A. The Sexually Oriented Business must be at least 1,000 feet from any church, school, public park or day care center. However, if the Sexually Oriented Business is located within an incorporated city or town, the Sexually Oriented Business must be at least 500 feet from any church, school, public park or day care center. Measurements shall be made from the nearest portion of any building or structure used as part of the premises of the Sexually Oriented Business, to the nearest point on the property line boundary of the premises upon which is located a church, school, public park or day care center.
- B. The Sexually Oriented Business must be at least 1,000 feet from the boundary of any residential district (i.e., RR, MR, LR, or MP). However, if the Sexually Oriented Business is located within an incorporated city or town, the Sexually Oriented Business must be at least 50 feet from the boundary of any residential district. Measurements shall be made from the nearest portion of any building or structure used as part of the premises of the Sexually Oriented Business, to the nearest point on the boundary line of the residential district.
- C. The Sexually Oriented Business must be at least 1,000 feet from any residence that is not located within a residential district. However, if the Sexually Oriented Business is located within an incorporated city or town, the Sexually Oriented Business must be 50 feet from any residence that is not located within a residential district. Measurements shall be made from the nearest portion of any building or structure used as part of the premises of the Sexually Oriented Business, to the nearest portion of any building or structure used as a residence.
- D. The Sexually Oriented Business must be at least 1,000 feet from any other sexually oriented business. However, if the Sexually Oriented Business is located within an incorporated city or town, the Sexually Oriented Business must be 500 feet from any other Sexually Oriented Business. Measurements shall be made from the nearest portion of any building or structure used as part of the premises of the Sexually Oriented Business, to the nearest portion of any building or structure used as part of the premises of the other Sexually Oriented Business.
- E. For the purposes of this Section, all measurements shall be made in a straight line, without regard to intervening structures or objects.
- F. Definitions:
  - 1. Adult Arcade: Any place to which the public is permitted or invited where coin-operated or slug-operated, or electronic, or manual devices are maintained to show images to ten or less persons per machine at any one time, and where the images displayed are distinguished or characterized by the depicting or describing of “specific sexual activities” or “specified anatomical areas”.
  - 2. Adult Bookstore or Adult Video Store: A commercial establishment which, as one of its principle business purposes offers for sale or rental, for any form of consideration, any one

or more of the following:

- a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, or video reproductions, slides, or other visual representations which depict or describe “specific sexual activities” or “specified anatomical areas”, or
- b. Instruments, devices or paraphernalia, which are designated for use in connection with “specified sexual activities”.

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specific sexual activities” or “specified anatomical area” and still be categorized as Adult Bookstores, or Adult Video Stores. Such other business purposes will not serve to exempt said commercial establishments from being categorized as an Adult Bookstore or Adult Video Store as long as one of its principal business purposes is the offering for sale or rental for consideration the specified material which depicts or describes “specified sexual activities” or “specified anatomical areas”.

3. Adult Cabaret: A nightclub, bar, restaurant, or similar commercial establishment which regularly features:
  - a. Persons who appear in a state of nudity or semi-nudity; or
  - b. Live performances which are characterized by the exposure of “specific sexual activities” or “specified anatomical areas”; or
  - c. Files, motion pictures, videocassettes, slides, or other photographic reproductions, which are characterized by the depiction or description of “specific sexual activities” or “specified anatomical areas”.
4. Adult Entertainment Facilities: Any commercial establishment, business or service, or portion thereof, which offers sexually oriented material, devices, paraphernalia or specific sexual activities, services, performances or any combination thereof, or in any other form whether printed, filed, recorded or live. The term “adult entertainment facilities” shall include but not be limited to such activities as included in the definition of sexually oriented business.
5. Adult Motel: A hotel, motel, or similar commercial establishment which offers a sleeping room for rent, which can be rented by the hour for a time period less than 10 hours. This does not mean that someone cannot check in and out of a room in a time period that is less than 10 hours, only that the cost for the room cannot be at a rate that is for less than 10 hours.
6. Adult Theater: A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity, or live performances which are characterized by the exposure of “specific sexual activities” or “specified anatomical areas”.
7. Areola: A circular area of a different color, surrounding a central point, as such an area surrounding the nipple of the breast.
8. Buttock: One of the two masses of muscle and fat tissue, divided by a cleft, that is prominent at the lower back of the torso, with both masses forming the seat.

9. Massage Establishment: Any business or enterprise which offers, sells, or provides, or which holds itself out as offering, selling or providing, massages which include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating or other tactile stimulation of the human body, by either male or female employees or attendants, by hand or other physical means including but not limited to any electrical or mechanical device.
  
10. Nude Model Studio: Any place where, for money or any other form consideration, a person who appears in a state of nudity, or displays “specified anatomical areas”, is provided to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons who pay such money or other form of consideration. A nude model studio does not include and an exemption shall be made if a person appearing in a state of nudity did so in a modeling class operated:
  - a. By a school (licensed by the State of Indiana), a college, junior college, or university supported entirely or partly by taxation.
  - b. By a private college or university who maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.
  - c. In a structure: (i) which does not have a sign visible from the exterior of the structure and no other advertisement that indicates a nude person is available for viewing; and (ii) where in order to participate in a class a student must enroll at least three days in advance of the class; and (iii) where no more than one nude model is on the premises at any one time.
  
11. Nudity or a State of Nudity: Means the appearance or display of bare human buttocks, anus, male genitals, female genitals or female breast.
  
12. Semi-Nude: A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.
  
13. Sexual Encounter Center: A business or commercial enterprise that as one of its primary business purposes, offers for any form of consideration:
  - a. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
  - b. “Specified Sexual Activities” between male and female persons and or persons of the same sex when one or more of the persons are in a state of nudity or semi-nude.
  
14. Sexually Oriented Business: Includes an adult arcade, adult bookstore or adult video store, adult cabaret, adult entertainment facility, adult motel, adult motion picture theater, adult theater, nude model studio, or sexual encounter center.
  
15. Specified Anatomical Areas: Male genitals in a state of sexual arousal, and or the vulva or more intimate parts of the female genitals or a simulation thereof.
  
16. Specified Sexual Activities: Means and includes any of the following:
  - a. The fondling or other erotic touching, actual or simulated, of human genitals, pubic region, buttocks, anus, or female breasts;



- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- c. Masturbation, actual or simulated; or
- d. Excretory functions, actual or simulated, as a part of or in connection with any of the activities set forth in A through C above.

## 5.16 Telecommunication Facilities Standards (TF)

TF-01: Intent: The intent of the following standards is to provide sensible and reasonable use of land for wireless telecommunications facilities and services. It is also intended to encourage sharing of telecommunication towers to make the best use of every tower location. Lastly, these standards are intended to minimize adverse, undesirable visual effects of towers through careful design, siting, and vegetative screening.

Wireless Telecommunication Facilities shall be located only in the AG, GC, IPM and IN Districts, and only with a Special Exception approval from the Board of Zoning Appeals.

All Wireless Telecommunication Facilities shall meet the following provisions:

- A. It shall be fully automated and unattended on a daily basis, and shall be visited only for periodic maintenance and emergencies.
- B. A proposal for a new telecommunications tower shall only be approved if the applicant provides evidence that co-locating can not be done to provide the needed coverage. The applicant must submit coverage maps as if they are using the existing facilities/towers in the area. The applicant must demonstrate that adequate coverage can not be found by using other facilities/towers or other tall structures in the area. The applicant shall show the need for the tower and that all alternatives have been exhausted, including cost details. The applicant shall locate on other tall structures such as grain legs, water towers, and utility poles if available in the service area. The Board must approve the overall coverage plan before the tower is placed.
- C. A propagation study will accompany an application for a new telecommunications tower (if co-location cannot be achieved.)
- D. Any proposed telecommunication tower shall be designed, and engineered structurally, electrically and in all other respects to accommodate both the applicants height and at least three (3) additional users. Towers must be designed to allow for future rearrangement of antennas upon the tower and accept antennas mounted at varying heights. The lot where the tower if located (or lease area) shall be large enough to accommodate all future anticipated accessory structures needed by future antenna users.
- E. No part of any wireless telecommunications facility nor any lines, cables, equipment, wires or braces in connection with either shall at any time extend across or over any part of the right-of-way, public street, highway, sidewalk, trails or property line.
- F. All antennas, tower and accessory structure constructed within the Whitley County Plan Commission jurisdiction, shall comply with the following requirements:
  - 1. All applicable provisions of the Building Code of the State of Indiana and the Federal Communications Commission.

2. Towers shall be certified by a qualified and licensed professional engineer to conform to the latest structural standards and wind loading requirements of the Uniform Building Code.
  3. Towers and antennas shall be designed to conform to accepted electrical engineering methods and practices and to comply with the provisions of the National Electrical Code.
  4. Towers shall be constructed to conform to the requirements of Occupational Safety and Health Administration.
  5. An engineers certification shall be submitted to document and verify the design specifications but not limited to, the foundation for the tower, and anchors for the guy wires if used, co-location, strength requirements, for natural forces: ice, wind, earth movements, etc.
  6. Towers and antennas shall be designed and constructed, at a minimum, to withstand wind gusts of at least eighty (80) miles per hour with one-half inch of ice and to accommodate any co-location requirements.
  7. Except as required by Federal Aviation Administration or Federal Communications Commission, the antenna support structure shall not be illuminated by any artificial means and shall not display strobe lights.
  8. Applicant must submit evidence of a contract with at least one carrier/provider before an improvement location permit will be issued.
- G. The following requirements shall apply:
1. Minimum front, side and rear property setbacks equal to the height of the tower plus fifty (50) feet.
  2. Maximum height of tower; three hundred (300) feet
  3. Maximum height of accessory structure; fifteen (15) feet
  4. Tower shall be placed no closer than five hundred (500) feet from any residential zoning district or commercial zoning district.
  5. An eight (8) foot high security fence shall completely surround the tower and equipment building.
- H. The following buffer plantings shall be located around the perimeter of the security fence of a wireless communications facility:
1. An evergreen screen shall be planted around the entire facility.
    - a. If hedges are used they shall be a minimum of five (5) feet tall and planted a maximum of ten (10) feet on center.
    - b. If evergreens are used they shall be a minimum of five (5) feet tall and planted a maximum of ten (10) feet on center.
  2. Existing vegetation (trees and shrubs) shall be preserved to the maximum extent possible.
- I. The following shall apply to Existing Antennas and Towers:

1. Existing towers and antennas may continue in use for their current purpose but may not be replaced or structurally altered without complying in all respects to the requirements in this Ordinance.
  2. Any request submitted to the Whitley County Plan Commission to install an antenna to be located on an existing approved or "grandfathered" tower will only require a building permit and a copy of the contract between the applicant company and the owner of the tower.
  3. If such towers are hereafter damaged or destroyed due to any reason or cause whatsoever, the tower may be repaired and restored to its former location, and physical dimensions upon obtaining a building permit. However, if the cost of repairing the tower to the former use, physical dimensions, and location would be ten percent (10%) more than the cost of a new tower of like kind and quality, then the tower may not be repaired or restored except in full compliance with all requirements in this Ordinance.
- J. Any tower, whether existing or approved under these regulations, unused or left abandoned for one hundred and eighty (180) consecutive days shall be removed by the tower owner or land owner at their expense.

**5.17 Miscellaneous Standards (MS)**

MS-01: Junkyards and Scrap Metal Yards shall have an eight (8) foot opaque fence enclosing the junkyard and/or scrap metal yard area.

MS-02: The following information applies to the RR District and lots 80,000 square feet (1.837 acres) and less in the AG District. A minimum parcel size of one (1) acre is required for any farm animal unit, as determined from the following chart. The Zoning Administrator shall determine the minimum acreage for farm animals listed. A confined feeding operation must maintain not more than the number of animal units as prescribed for each use listed in the AG or AGP Districts as determined from the following chart:

Animal Type	Units
Calves (150-750 lbs.)_____	.5
Feeder cattle (750-1,200 lbs.)_____	.75
Cows_____	1
Nursery pigs (up to 15 lbs.)_____	.1
Nursery pigs (15-50 lbs.)_____	.2
Grower/feeder pigs (50-100 lbs.)_____	.3
Finishing hogs (100 lb.-market wt.)_____	.4
Sows_____	.5
 Animal Type (Continued)	 Units
Boars_____	.5
Sheep and Goats_____	.3
Turkeys and Geese_____	.10
Chickens_____	.05
Ducks_____	.05
Horses_____	1

**5.18 Manufactured Home Standards (MHS)**

MHS-01: The following standards pertain to manufactured homes and mobile homes, and are intended to define the various types and their uses. Type I, II and III Manufactured homes must meet the requirements

and specifications of Manufactured Homes as defined under Chapter 14 of the Zoning Ordinance of Whitley County, as amended hereto. Recreational vehicles or any manufactured structure, including but not limited to Park Models, which must be titled through the Indiana Bureau of Motor Vehicles (BMV) are prohibited.

A. Type I - Manufactured Home:

1. shall have been constructed after January 1, 1981 and must exceed nine hundred and fifty (950) square feet of occupied space in a double section or larger multi-section unit,
2. be placed onto a permanent foundation, crawlspace or basement,
3. be anchored to the ground or foundation, in accordance with the Indiana Residential Code and to the manufacturer's specifications,
4. have wheels, axles, and hitch mechanisms removed,
5. have utilities connected, in accordance with the Indiana Residential Code and to the manufacturer's specifications,
6. have siding material of a type customarily used on site-constructed residences, in accordance with the Indiana Residential Code,
7. have roofing material of a type customarily used on site-constructed residences, in accordance with the Indiana Residential Code.

B. Type II - Manufactured Home:

1. shall have been constructed after January 1, 1981 must exceed three hundred and twenty (320) square feet of occupied space in a single, double, expando, or multi-section unit (including those with add-a-room units), must be a minimum of eight feet or more in width and forty feet or more in length, and must bear a seal certifying that it was built in compliance with the Federal Manufactured Housing Construction and Safety Standards Law, 42 U.S.C. 5410, et seq., as amended.
2. be placed onto a permanent foundation, piers or other approved support system in accordance with the Indiana Residential Code,
3. be enclosed with foundation siding/skirting in accordance to the manufacturer's specifications,
4. be anchored to the ground or foundation in accordance to the manufacturer's specifications,
5. have hitch mechanisms removed,
6. have utilities connected in accordance to the manufacturer's specifications.

C. Type III – Manufactured Home:

1. shall have been constructed after January 1, 1981 must exceed three hundred and twenty (320) certifying that it was built in compliance with the Federal Manufactured Housing Construction and certifying that it was built in compliance with the Federal Manufactured Housing Construction and Safety Standards Law, 42 U.S.C. 5410, et seq., as amended.
2. be placed onto piers or an approved support system in accordance with the manufacturer's specifications,

3. be enclosed with foundation siding/skirting in accordance to the manufacturer's specifications,
  4. be anchored to the ground or foundation in accordance to the manufacturer's specifications,
  5. have utilities connected in accordance to the manufacturer's specifications.
- Existing mobile homes, which were constructed prior to June 15, 1976, are considered to be legal non-conforming uses, and for the purpose of the provisions of this ordinance shall be considered Type III manufactured homes.

MHS-02: Non-Conforming Manufactured Homes: A manufactured home placed and maintained on a tract of land and deemed to be a legal non-conforming use prior to the adoption of this ordinance shall continue to be a legal non-conforming use. If the non-conforming use is discontinued for a period of one (1) year, the land thereafter shall be used in conformity with all provisions of this ordinance.

MHS-03: Replacement of a Non-Conforming Manufactured Homes: A manufactured home deemed a legal non-conforming use, may be replaced by a manufactured home, provided the replacement is of an equal or higher type.

MHS-04: Placement of Type II and III Manufactured Homes on a Construction Site: A Type II or III manufactured home may be placed on a building lot during the course of the construction of a conventional dwelling unit. The permit for the manufactured home must be issued in conjunction with the conventional dwelling unit permit or thereafter, and will expire within one (1) year, at which time the manufactured home must be removed from the property.

MHS-05: A Type II and III Manufactured Home may be occupied by a relative of the family residing in the permanent dwelling unit, when situated upon at least four (4) acres of land, provided the district specifications and requirements are met.

MHS-06: No manufactured home, mobile home or recreational vehicle may be used as an accessory structure in any district.

MHS-07: Due to the integral design, any structural alteration or modification of a manufactured home after it is placed on the site shall be approved by the County Building Inspector.

MHS-08: No recreational vehicle, as defined in Chapter 14, may be used as a dwelling unit in any district. For purposes of this ordinance, recreational vehicles include, but are not limited to, Park Models, or any other manufactured unit which is titled through the Indiana Bureau of Motor Vehicles.

### 5.19 Pond Standards (PD)

PDS-01: The following standards pertain to the installation, expansion or alteration of ponds, and are intended to define the various types and their uses.

PDS-02: Definitions. For the purposes of this Section, the following terms shall have the following meanings:

- A. "Application" means all documents, forms and other information that the Department may require an Owner to complete or provide in order to assist the Department in determining whether a proposed pond complies with the terms of this Section or otherwise to assist the Department in the enforcement of this Section.

- B. "Department" means the Whitley County/Columbia City Joint Planning and Building Department. In performing its duties under this Section, the Department may consult with, and may rely on any opinions or conclusions of, the County Engineer.
- C. "Owner" means the owner(s) of the tract or parcel of land on which the pond is located or is to be located.
- D. "Site Plan" means all drawings, descriptions, plans and/or specifications for the proposed pond and the tract or property on which it is located that are requested by the Department in order to assist the Department in determining whether a proposed pond complies with the terms of this Section.

PDS-03: Permit Required. In any zoning district, no new pond shall be constructed and no existing pond shall be substantially altered or expanded without a permit issued by the Department. The Department shall issue a permit in accordance with the provisions of this Section only if:

- A. The owner (or its authorized agent) signs and files with the Department an Application, including a Site Plan, and pays the required fee to the Department.
- B. The Department determines that the pond will comply with the terms of this Section based on the completed Application and Site Plan, any inspections, and any other information available to the Department.

PDS-04: Expiration: Revocation of Permit. A permit shall be valid for one (1) year after the date of issuance. If no substantial work has occurred in connection with the permit after one (1) year, the permit shall be null and void and the Owner shall be required to apply for and obtain a new permit. A permit shall be subject to revocation by the Department as follows:

- A. In the event of a violation of this Section, as hereinafter provided.
- B. If the applicant makes any material misrepresentation in connection with the Application and the issuance of the permit.
- C. If (i) the permit was issued as the result of an error or oversight by the Department or the Department determines for any reason that, under the terms of this Section, the permit should not have been issued and (ii) no substantial work has occurred in connection with the permit.

PDS-05: Minimum Standards. All ponds, and all activity in connection with the construction, expansion and maintenance of any pond, shall comply with the following minimum standards and requirements:

- A. All ponds shall be constructed and maintained in compliance with the following set back requirements:
  1. No portion of the water constituting the pond shall encroach upon any area within fifty (50) feet from the right-of-way of any public road.
  2. No portion of the water constituting the pond shall encroach upon any area within twenty (20) feet from any boundary line of the Owner's property; provided, however, that this set back requirement shall not prevent a pond from being constructed on two or more tracts of property if: (A) the permit Application is signed by the owner(s) of all of the tracts of property on which the pond will be constructed or (B) the location of the pond, as shown on a subdivision plat, is approved by the Whitley County Plan

Commission as part of the approval of a subdivision under the Whitley County Subdivision Ordinance.

3. No fill shall be placed within the right-of-way of any public road. Within ten (10) feet of the right-of-way of any public road, no fill shall be placed above an elevation six (6) inches below the elevation at the edge of the road surface.
- B. No excavation shall occur and no fill shall be placed within seventy-five (75) feet of any regulated drain unless authorized by the Whitley County Drainage Board in accordance with the Indiana drainage statute.
- C. If the pond has an outlet, the outlet shall be subject to the following requirements:
1. If the outlet opens into the Owner's property, the outlet opening must be located at least fifteen (15) feet from the Owner's property boundary line and at least twenty (20) feet away from the right-of-way of any public road. Compliance with this provision shall not relieve the Owner from any additional duties under Indiana law with respect to the discharge of such water onto an adjoining property.
  2. If the outlet opens into or connects to a county drain, the owner must obtain the prior approval of the County Surveyor or County Engineer in accordance with Indiana drainage statute.
  3. If the outlet opens into or connects to an outlet on another tract or parcel, the Owner must prove to the satisfaction of the Department that the Owner has all easement rights necessary to access such outlet.
- D. The pond shall be constructed so as not to increase the volume of water that exits the tract under normal conditions. Fill areas shall not obstruct the flow of surface water onto the Owner's property from adjacent properties. The Owner shall be responsible for the repair, replacement or relocation of any tiles, open ditches or other drainage facilities to the extent necessary to maintain the amount of drainage through the parcel or tract that existed prior to the construction of the pond.
- E. All ponds shall be constructed and maintained so as to prevent any soil erosion or other condition that obstructs or damages or threatens to obstruct or damage any public drain or drainage related improvements. The Owner shall remove spoil and resurface and re-seed degraded open ditch banks.

PDS-06: Variances. The Board of Zoning Appeals may (but shall never be required to) grant a variance from the setback requirements set forth in this Section in accordance with and subject to the following limitations:

- A. A variance may only be granted with respect to the setback requirements set forth in this Section PDS-05 (A). No other standards set forth in this Section may be subject of a variance.
- B. The Board of Zoning Appeals shall approve a variance only if it finds: (i) the approval will not be injurious to the public health, safety or general welfare of the community; (II) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; (iii) the proposed pond cannot comply with the setback requirements due to unique feature(s) existing on the property and either natural or man-made features exist or could be provided which would allow the pond to achieve the purposes of the setback requirements; and (iv) the variance has been approved by the Whitley County Drainage Board.

- PDS-07: Right of Entry. The Owner shall notify the Department when work commences on the construction of the pond. The Department (including any person acting on its behalf) may enter onto the property at any reasonable time for the purposes of inspecting the property and determining or enforcing compliance with the provisions of this Section. By applying for a permit as provided in this Section, an Owner consents to such entry.
- PDS-08: Enforcement Official. The Executive Director (or the equivalent officer or employee) of the Department is hereby designated as the official authorized to make decisions and take action on behalf of the Department in connection with the enforcement of this Section.
- PDS-09: Complaints. Any person who believes a violation of this Section has occurred may file a written complaint with the Department. The complaint shall describe the alleged violation sufficiently so that the Department can investigate the matter. The Department shall investigate and may take action upon such complaint as provided in this Section.
- PDS-10: Common Nuisance. A violation of this Section is declared to be a common nuisance.
- PDS-11: Notice of Violation. In the event of a violation of this Section, the Department shall send written notice to the Owner describing the nature of the violation and the action required to correct the violation (“Violation Notice”). The notice requirement shall be satisfied if the Department mails the Violation Notice by U.S. Certified Mail, Return Receipt Requested, to the address of the Owner as shown in the records of the office of the Whitley County Auditor. The Violation Notice shall state a date on or before which the violation must be corrected, which date shall not be earlier than ten (10) days from the date the notice is mailed.
- PDS-12: Stop Work Orders. At the time of giving the Violation Notice, or at any time thereafter, the Department may issue a stop work order requiring the immediate cessation of all work in connection with the pond. The stop work order shall be mailed to the Owner in the same manner as the Violation Notice and may be included with the Violation Notice. Upon the issuance of a stop work order, all work in connection with the pond shall cease immediately (except any corrective work required in the Violation Notice) until the Department gives notice that the violation has been corrected and the stop work order is released. If the Owner fails to comply with the stop work order, the Department may proceed immediately with any enforcement remedy and the Owner shall be deemed to have waived any right to cure or correct the defect within the time stated in the Violation Notice.
- PDS-13: Remedies and Penalties. At the time of giving the Violation Notice, or at any time thereafter, the Department may issue a stop work order requiring the immediate cessation of all work in connection with the pond. The stop work order shall be mailed to the Owner in the same manner as the Violation Notice and may be included with the Violation Notice. Upon the issuance of a stop work order, all work in connection with the pond shall cease immediately (except any corrective work required in the Violation Notice) until the Department gives notice that the violation has been corrected and the stop work order is released. If the Owner fails to comply with the stop work order, the Department may proceed immediately with any enforcement remedy and the Owner shall be deemed to have waived any right to cure or correct the defect within the time stated in the Violation Notice.
- A. Revocation of Permits. The Department may revoke any permit issued for work on the property, including the permit for the pond. If a pond permit is revoked under this section, the Owner shall forfeit the right to obtain a pond permit for a period of five (5) years from the date of the revocation of the permit.



- B. Civil Lawsuit. The Department may refer the matter to its attorney to file a lawsuit and to invoke any legal, equitable or special remedy for the enforcement of this Section, including the right to enjoin a person or entity from violating, or continuing to violate any provision of this Section and/or maintaining a common nuisance and the right to have the violation removed or abated.
- C. Civil Penalty. The County shall have the right to recover from the Owner, in a civil action, a penalty in the amount of \$2,500.00 for each violation.
- D. Other Remedies. The Department may pursue any other applicable remedy or penalty provided by the ordinances of Whitley County, or by Indiana law, for the enforcement of this Section or the prosecution of the violation.

**5.20 WIND ENERGY CONVERSION SYSTEM (WECS) OVERLAY DISTRICT**

WECS, Wind Energy Conversion System Overlay District: This district establishes special land use and development requirements for Wind Energy Conversion Systems. Specifically, it creates a supplemental zone that lies on top of an existing zoning district and is intended to add additional design standards and restrictions beyond those of the underlying zoning district in which it is created. The purpose of this district is to protect the special public interests incident to industrial wind farming and may cover parts of several zones or only a portion of a single zone. The WECS overlay district is limited to the following zoning districts: Agricultural (AG), Agricultural Production (AGP), Industrial Park Manufacturing (IPM) and Intensive Use (IN).

WECS-01 Permitting and application requirements are as follows:

- A) An application for re-zoning to a WECS Overlay District must be submitted to the Plan Commission and may be a combined application provided all property owners where the WECS facilities are to be located are Co-Applicants. The application shall include the following items:
  - 1. A WECS Project Summary, including:
    - a. A general description of the project including its approximate name plate generating capacity, the potential equipment manufacturer, the type of WECS, the number of WECS Towers, the name plate generating capacity of each WECS Tower, the maximum height of the WECS Towers, the maximum diameter of the WECS rotors and the general location of the project.
    - b. A description of the applicant, owner, and operator, including their respective business structures.
    - c. A description of substations, maintenance structures, storage yards, permanent meteorological towers and equipment, and other buildings that are a direct functional part of the WECS. These structures, within the proposed overlay district, shall be considered accessory uses.
  - 2. The names, addresses and phone numbers of the applicants, owners and operators, and a list of all co-applicants. Additional co-applicants may be added at a later date.
  - 3. A topographic map of the project site and the surrounding area which shall encompass an area at least a quarter mile radius from the proposed project site with contours of not more

than two (2) foot intervals.

B) Following the creation of a WECS Overlay District, a Development Plan together with a petition for Development Plan Review, as specified in Chapter 7 of the Zoning Ordinance, must be submitted to the Plan Commission.

1. The petition for Primary Development Plan Approval shall include:

- a. A site plan at an appropriate scale showing the proposed location of the Wind Energy Conversion System Facility (including locations of each WECS Tower, guy lines and anchor bases (if any); WECS access roads; substations; maintenance structures; storage yards; permanent Meteorological Towers; electrical cabling; ancillary equipment; and any other structures that are a direct functional part of the WECS). Each tower and/or structure should be assigned a unique identification number on the site plan. In addition, the site plan shall show: primary structures within one quarter mile of any WECS; property lines, including identification of adjoining properties; setback lines; public roads; County regulated drains, open ditches, or tiles; location of all above-ground utility lines within a distance of two (2) times the WECS Tower Height of any WECS Tower; location of all existing underground utility lines associated with the WECS site; recognized historic or heritage sites as noted by the Indiana Department of Natural Resources; floodplains; and any wetlands based upon a delineation prepared in accordance with the applicable U.S. Army Corps of Engineer requirements and guidelines. This site plan must also be distributed to the Emergency Management Agency, any Fire Departments serving any part of the site, and to the County Sheriff.
- b. A Transportation Plan (as defined) recommended by the WECS Transportation Committee (as defined) and approved by the Whitley County Commissioners.
- c. A Drainage Plan approved by the Whitley County Drainage Board. The Transportation Plan and/or the Drainage Plan shall establish that the newly constructed WECS access roads shall not impede the flow of water and will comply with the county drainage ordinance or standards and policies of the Engineer/Surveyors Office and Drainage Board, as applicable.
- d. A Projected Sound Emissions Study (as defined) for the proposed WECS.
- e. A decommissioning plan approved by the Board of Commissioners providing for the method and payment of the anticipated cost of removing a WECS at the end of its serviceable life or upon it's becoming a discontinued or abandoned use to ensure that the WECS is properly decommissioned.

1. Content

A decommissioning plan shall include, at a minimum, the following:

a. Assurance

Written assurance that the WECS will be properly decommissioned upon the expiration of its serviceable life or in the event of its discontinuance or abandonment.

b. Cost estimates

For all WECS except Micro WECS, an estimate of the costs of decommissioning and removing the WECS upon the expiration of its useful life, or in the event of its discontinuance or abandonment. The cost estimates shall be made by a

professional engineer, contractor, or other person with expertise or experience in decommissioning and removal of WECS, and shall be updated every five (5) years for approval by the Board of Commissioners.

c. Financial assurance

The cost of removal and site restoration is the full responsibility of the applicant and/or owner/operator. In order to provide the greatest possible financial assurance that there will be sufficient funds to remove the wind energy system and to restore the site, the following steps shall be followed:

- 1). For each wind energy system, the applicant/owner/operator shall determine an amount of money equal to the estimated removal and restoration cost.
- 2). The Planning Commission shall require independent verification of the adequacy of this amount.
- 3). This money shall be deposited in an escrow account specified by Whitley County, which may be an interest-bearing account. There shall be no alternative to such an account. A surety bond, letter of credit, or other financial promise shall not be accepted.

d. Abandonment

Verification under penalties for perjury, that all easements and/or leases for the WECS contain terms that provide financial assurances to the property owners to ensure that the WECS are properly decommissioned within one (1) year of the expiration of its serviceable life or in the event of its discontinuance or abandonment.

2. Discontinuation and abandonment

a. Discontinuation

All WECS shall be considered abandoned and a discontinued use after six (6) months without energy production, unless a plan is developed by the owner/applicant and approved by the Building Inspector outlining the steps and schedule for returning the WECS to service.

b. Removal

An applicant's obligations shall include removal of all physical material pertaining to the project improvements to no less than a depth of four (4) feet below ground level within three hundred sixty-five (365) days of the discontinuation or abandonment of the WECS or WECS project, and restoration of the project area to as near as practicable the condition of the site immediately before construction of such improvements.

c. Written notices

Prior to implementing procedures to resolve any alleged failure to comply with the Decommissioning Plan, the appropriate County body shall first provide written notice to the owner and/or operator, setting forth the alleged default(s). Such written notice shall provide the owner and/or operator a reasonable time period, not to exceed sixty (60) days, to resolve the alleged default(s).

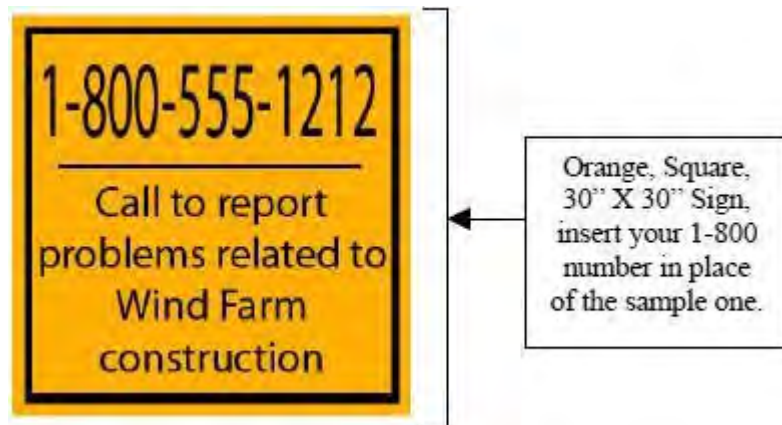
- d. Costs incurred by the County  
If the County removes a WECS Tower and appurtenant facilities, it may sell the salvage to defray the costs of removal. Each permittee, by virtue of the issuance of its construction permit or Inspection Certificate grants a license to Whitley County to enter the property and to remove all WECS Towers and appurtenant facilities pursuant to the terms of its approved decommissioning plan.
- 3. Declaration of public nuisance  
Any WECS, structure or portion thereof declared to be unsafe by the Whitley County Building Inspector by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition or removal in accordance with the approved Decommissioning Plan.
- f. A detailed shadow flicker assessment model and plan prepared by a registered professional regularly engaged in this type of work with not less than three years experience, which contains the following information and meets the following requirements:
  - 1. The study area will examine areas where shadow flicker will occur within a one mile radius of each wind turbine.
  - 2. The study will include:
    - a. The location of each turbine.
    - b. The location of each receptor (dwelling or occupied structure, structure permitted for construction or intersections between any of the following road types: Interstate, Principal Arterial, Minor Arterial, Major Collector or Minor Collector) where the WECS may cause shadow flicker to occur.
    - c. Existing topography (elevation contours and vegetation)
    - d. Rotor diameter and hub height
    - e. Joint wind speed and direction distribution (wind rose table)
    - f. Hours of sunshine (long term monthly references)
  - 3. The study may be prepared by use of current aerial photography, GIS, and topographical maps. A site visit by the preparer is required to identify receptors and verify the existing conditions.
  - 4. The study shall calculate the locations and durations of shadow flicker caused by the proposed WECS within the study area, and model shall clearly indicate the duration of shadow flicker at each receptor and across the entire study area showing the total number of hours per year anticipated.
  - 5. Wind Turbines shall be sited such that shadow flicker will not fall on a receptor, unless the owner of such dwelling or intersection as described in Section WECS 01 B.1.f.2.b. has agreed to in writing the allowance of shadow flicker. A waiver by an affected participating landowner or non-participating landowner or owner of a public building or intersection is an encumbrance on the real property, runs with the land until the wind energy system is decommissioned, and shall be recorded in the office of the Whitley County Recorder. Said waiver shall include the legal description of the property with a cross reference to the current deed's document number, and shall include verbiage to bind the grantees, their heirs, assigns, and

successors in interest to the terms of the waiver.

6. Problem zones where shadow flicker will interfere with existing and future receptors shall be identified, and measures to mitigate problems shall be described, including but not limited to siting changes, operational procedures, grading or landscaping.
  - g. A communications study verifying that the WECS Project will not interfere with any public or public serving utility microwave transmissions, and including any actions which may be required to mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS Project.
    1. The petition for Secondary Development Plan Approval shall include:
      - a. A revised site plan as described in Section WECS-01(B)(1)(a).
      - b. A Security and Safety Plan which must include adequate provisions for site security and safety. If the plan includes using county services, then it should include signatures indicating those parties are aware of their role and capable of performing it.
      - c. Adequate Assurance of the Completion and Continued Operation of the WECS Project from the date of the commencement of construction through the tenth (10th) year of operation of the WECS. The owner/applicant/operator shall demonstrate such Adequate Assurance of Completion and Continued Operation of the WECS Project by providing evidence of: (1) adequate funding of one hundred percent (100%) of the estimated cost of construction of the WECS; (2) performance and payment bonds or other sureties from the Owner Applicant/Operator and/or major equipment suppliers and contractors; (3) the existence of written warranties from contractors and/or manufacturers which have demonstrated financial ability to repair and/or replace defective work, materials, and equipment; and (4) adequate casualty, builders risk, business interruption, and liability insurance for the replacement of the WECS and the individual components thereof, and the funding of on an ongoing basis, and the payment of all liabilities occurring during, arising from, or related to a casualty loss. The applicant/owner/operator shall upon request provide such cost estimates, bids, contracts, warranties, feasibility studies, engineering studies and reports, insurance certificates, loan and other financing commitments to provide the requested information to provide adequate assurance of completion and continued operation.
      - d. An Economic Development Agreement (as defined) approved by the Whitley County Board of Commissioners. This agreement must be developed in conjunction with the Whitley County Economic Development Corporation and Whitley County Council.
- C) After Secondary Development Plan approval is obtained, but before any construction commences or Improvement Location Permits may be acquired, all applicable state and federal permits, approvals and licenses must be obtained and all state and federal statutes and regulations must be complied with and the following requirements satisfied:

1. The owner or operator of the WECS shall maintain liability policies covering (1) bodily injury and property damage and (2) environmental contamination arising from construction, operation, maintenance, and decommissioning of the WECS, with nationally recognized, well-capitalized insurance companies initially approved by the County Board of Commissioners and annually thereafter by the executive director of the Plan Commission and name Whitley County as an additional insured. Limits on the bodily injury and property damage policy shall be of at least \$2 million per occurrence and \$5 million in the aggregate with a deductible of no more than \$20,000 and on the environmental contamination policy shall be of at least \$1 million per occurrence and \$2 million in the aggregate with a deductible of no more than \$50,000.
  
2. The applicant/owner/operator shall establish a 24-hour toll-free phone number for the registering of complaints and concerns. This number shall be posted at every road intersection identified on the Transportation Plan throughout the project area before Improvement Location Permits are issued and before any construction or earth moving can commence. If legitimate complaints are not remedied within 48 hours the county may address these complaints with any expenses incurred to be reimbursed by the WECS Applicant according to the fee rate established as described in Section WECS-02(A)(7).

Required toll-free number sign example:



3. The applicant/owner/operator must attend a Pre-Construction Meeting between the Plan Commission Executive Director, Plan Commission President, Whitley County Building Inspector, and any other public officer or official whose input is deemed appropriate and WECS Applicant to verify that all requirements in the Zoning Ordinance have been met. This meeting shall take place as the final step before construction and all other requirements should already have been met. Once reviewed, if all requirements have been met, the WECS Applicant may then obtain Improvement Location Permits. If any requirements have not been met then further pre-construction meetings will be held until it can be verified that the identified issues have been resolved.
  
4. All Improvement Location Permit fees must be paid for the entire WECS

project before any Improvement Location Permits will be issued.

- D) The Rezoning Application, Development Plan (including but not limited to Decommission Plan and each update thereof and the assurance of completion and continued operations), and Improvement Location Permit applications shall be reviewed by Plan Commission staff, counsel, an independent professional engineer, and any other professionals deemed necessary as selected or approved by the Plan Commission. Within 30 days of submission, the owner/applicant/operator shall reimburse the Plan Commission for all costs and expenses associated with the initial or any subsequent review of the Development Plan including but not limited to the employment of a professional engineer, financial consultant, or other professional advisors consulted by the Plan Commission. A Professional Engineer shall also certify, as part of the Improvement Location Permit application that the foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.

WECS-02 Construction and Standards:

- A) Prior to and during construction the applicant, owner and operator shall be responsible for:
1. Implementing reasonable dust control measures during construction as approved by an authorized county official.
  2. Complying with existing septic and well regulation as required by the Whitley County Health Department and the Indiana Department of Public Health.
  3. Repairing all damages to non-participating landowner or county regulated waterways, drainage ditches, field tiles, or any other infrastructures caused by the construction, maintenance, or decommissioning of the WECS. Damages must be completely repaired to original or better condition, and so as not to impede the flow of water. All repairs must be completed in a timely manner and the WECS owner, operator, and/or applicant shall be responsible for loss or damage proximately resulting from its impairment of such drainage structures. All repairs to county regulated drainage structures must be completed within ten days of notification by the Surveyor/Engineer or his agent.
  4. Unless otherwise approved with the drainage plan, all subsurface power transmission lines shall be located four (4) feet below tile drains and six (6) feet below open ditches. Additionally, unopened bags of premixed concrete shall be laid on top of the transmission lines to cover six inches on both sides of the line and eight feet to each side of the County regulated drain the line is crossing. Open drain and transmission line intersections where the line is below the invert of the open drain shall be armored using the same technique. Red warning tape (printed with "warning electrical line below" or similar language) shall be buried no closer than 12 inches above the actual power line at all crossing locations. The Surveyor/Engineer or his agent shall inspect every such crossing before backfilling. Concrete armoring techniques will not be required in cases where directional boring is used, but the depth requirements listed shall be met.
  5. Installing permanent, visible markers where directional boring is used. Markers shall be placed within the line of sight indicating directional changes and borings.
  6. Submitting a daily plan of work submitted at a time of day specified by the Plan Commission detailing where construction and transportation activities will occur to the Plan Commission Executive Director, County Highway Supervisor, County Sheriff,

County Engineer, Soil & Water Conservation District, the Superintendent(s) of the School District(s) and County Board of Commissioners in which construction is occurring and to the emergency services with jurisdiction over the areas in which construction is occurring. This shall include notification of any oversized or overweight loads entering or exiting the project each day as well as any work on roads, drainage, or access roads.

7. Adhering to the approved Transportation Plan. The Whitley County Highway Supervisor shall conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage. The Whitley County Highway Supervisor may choose to require remediation of road damage during or upon completion of the project and is authorized to collect fees for oversized load permits. If the applicant does not make repairs in a timely manner, the Supervisor is authorized to make repairs and charge the applicant a fee to cover the costs of repair. Such fees shall be established at the start date of construction and may be revised at three-month intervals. Further, a corporate surety bond shall be required by the Whitley County Highway Supervisor to insure the county that future repairs are completed to the satisfaction of the county. The cost of bonding is to be paid by the applicant. A \$1,000 fine shall be assessed for each occurrence where WECS oversized or overweight construction and maintenance equipment utilizes any route(s) in violation of the approved Transportation Plan. If the applicant/owner/operator or its contractors require material changes from the approved Transportation Plan or if post completion repairs, improvements, or expansions require oversized and overweight loads or involve new routes, an Amended Transportation Plan must be approved in the same manner as the initial plan. When all road repairs are completed to his satisfaction the Whitley County Highway Supervisor will issue a County Highway Remediation Release Form.
8. Adhering to the approved Development Plan. Any non-material proposed changes, modifications, or amendments to the Development Plan must be approved by the Executive Director of the Plan Commission. All material changes to the Plan must be approved by the Plan Commission. The Executive Director shall have the authority and discretion, considering all relevant factors, to determine whether the proposed Development Plan change is material.

B) Design and installation shall be as follows:

1. WECS Towers shall conform to applicable industry standards. Applicant shall submit certificates of design compliance that wind turbine manufacturers have obtained from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energie, or an equivalent third party.
2. All WECS Towers shall be installed with a tubular, monopole type tower. Meteorological towers may be guyed. All structures shall be uniform in design and appearance.
3. All WECS Towers shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.
4. All electrical components and Collectors (as defined) of the WECS shall conform to applicable local, state, and national codes, and relevant national



and international standards. All WECS Collectors between WECS towers shall be located underground.

5. Towers and blades shall be painted with non-reflective white or gray color. The Applicant shall comply with all applicable Federal Aviation Administration color requirements. No advertising or signage shall be allowed on a WECS Tower, except for manufacturers name on the nacelle.
  6. A visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
  7. All WECS Tower designs must include features to deter climbing or be protected by anti-climbing devices such as: 1) fences with locking portals at least 8 feet high, 2) anti-climbing devices 15 feet vertically from the base of the WECS Tower, and/or 3) locked WECS Tower doors.
  8. Red strobe lights are preferred during the night to reduce impacts on migrating birds and red pulsating incandescent lights shall be avoided. White strobe lights at night are not allowed. If technology is available, lighting shall be "On Demand" utilizing the Obstacle Collision Avoidance System (OCAS) or equivalent. All lighting shall also be in compliance with applicable Federal Aviation Administration regulations. All lighting shall be shielded so that no direct light extends substantially beyond the boundaries of the wind farm facilities.
- C) NOISE: At any non-participating landowner residentially used structure, public school, or public library, for a period of more than 10% out of every hour, the audible A-weighted sound pressure levels as a result of the sound emitted by the WECS shall not exceed 45 decibels at Critical Wind Speeds. At any non-participating landowner property line for a period of more than 10% out of every hour, the audible A-weighted sound pressure levels as a result of the sound emitted by the WECS shall not exceed 51 decibels at Critical Wind Speeds. All methods for measuring and reporting acoustic emissions shall be equal to or exceed the minimum standards for precision described in the International Electrotechnical Commission IEC 61400-11 Standard: Wind turbine generator systems – Part 11: acoustic noise measurement techniques. Noise and vibration levels shall also be in compliance with all other applicable county, state and federal regulations.
- D) The minimum distance between the ground and any protruding blade(s) utilized on a WECS shall be fifty (50) feet, as measured at the lowest point of the arc of the blades. The minimum distance shall be increased as necessary to provide for vehicle clearance in locations where over-sized vehicles might travel.
- E) Setbacks shall be as follows:
1. No WECS shall be constructed in any setback, dedicated public easement or dedicated public right-of-way without prior written authorization from the county.
  2. Except as provided herein, installation of any WECS may not be nearer than 1.1 times the height of the WECS including the blade at its highest point, to any dedicated roadway, railroad right-of-way or overhead electrical transmission or distribution lines. A minimum setback of not less than 6.5 times the height of the WECS including the blade at its highest point,

or 2,640 feet, whichever is greater, is required from a participating landowner residence. Also, the minimum setback distance for all turbines, substations, maintenance structures, storage yards, permanent Meteorological Towers, and other buildings that are a direct functional part of the WECS shall be not less than 2,640 feet or 6.5 times the height of the WECS including the blades at the highest point, whichever is greater, from any non-participating landowner property line, public building, or Municipal Jurisdictional Boundary. Distance shall be measured at the time of application for Improvement Location Permit from the center of the foundation at the base of the tower.

3. A non-participating landowner or participating landowner may waive the applicable wind turbine setback distance from their respective property line or residence, however, the WECS shall maintain a minimum setback distance of 1.1 times the height of the WECS including the blade at its highest point. A waiver by an affected participating landowner or non-participating landowner or owner of a public building is an encumbrance on the real property, runs with the land until the wind energy system is decommissioned, and shall be recorded in the office of the Whitley County Recorder. Said waiver shall include the legal description of the property with a cross reference to the current deed's document number, and shall include verbiage to bind the grantees, their heirs, assigns, and successors in interest to the terms of the waiver.
4. The WECS Tower shall not be nearer than 1.1 times the height of the WECS Tower including the blade at its highest point from any other WECS Tower.

WECS-03 Post-construction and continued maintenance requirements are as follows:

- A) All solid waste whether generated from supplies, equipment, parts, packaging, or operation or maintenance of the facility, including old parts and equipment, shall be removed from the site in a timely manner. All hazardous waste generated by the operation and maintenance of the facility, including but not limited to lubricating materials, shall, be handled in a manner consistent with all local, state and federal rules and regulations.
- B) The following operation, maintenance and inspection standards shall be met:
  1. Any physical modification to the WECS that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification. Like-kind replacements shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement), the Owner or Operator shall confer with the Building Inspector to determine whether the physical modification requires re-certification.
  2. The Whitley County Building Inspector, approved designees, along with licensed 3rd party engineers/professionals retained by the County for the specific purpose of conducting inspections of the WECS shall have the right, at any reasonable time and with sufficient prior notice, to accompany the owner or operator, or his agent, on the premises where a WECS has been constructed, to inspect all parts of said WECS installation and to require that repairs or alterations be made. The owner or operator of a WECS may retain a licensed 3rd party professional engineer familiar with WECS systems to prepare and submit to the Whitley County Building Inspector a written report which addresses the repairs or alterations requested, and which suggest alternate

methods for addressing the concerns or provides evidence that said repairs or alterations are unnecessary, within fifteen (15) days after receiving notice from the Whitley County Building Inspector that repairs or alterations are requested, or within a longer period of time mutually acceptable to both parties. The Whitley County Building Inspector will consider any such written report and determine whether the repairs or alterations should be made as originally requested or as suggested in the written report. In the event of a dispute between the Whitley County Building Inspector and the owner or operator, or a 3<sup>rd</sup> party professional engineer retained by them, as to the repairs or alterations which are required, the decision of the Building Inspector shall be final.

3. INTERFERENCE

Applicant, owner and/or operator shall take such actions as may be required to mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. In addition, the applicant, owner and/or operator shall comply with the following:

- a. If a WECS Inspection Certificate has been issued, the owner or operator receives a written complaint related to interference with the broadcast of residential television, telecommunication, communication or microwave transmissions, the owner or operator shall take reasonable steps to mitigate said interference. Interference with private telecommunications systems such as GPS shall be between the company and the complainant.
- b. Failure to remedy a complaint. If the Building Inspector determines that an owner or operator has unreasonably failed to remedy verified interference with the broadcast of residential television, telecommunication, communication or microwave transmissions within ninety (90) days after owner or operator received a written complaint related thereto, the Building Inspector may take appropriate action to rescind the owner's or operator's WECS Inspection Certificate. This does not apply to interference with private telecommunications systems.

4. The WECS applicant, owner or operator shall submit to all providers of emergency services serving the WECS Project area a copy of the as-built site map in digital format, if requested. Upon request by the local fire department, the owner or operator shall cooperate with the local fire department to develop the fire department's emergency response plan. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.
5. On completion of construction the WECS applicant, owner or operator shall submit to the County Engineer/Surveyor a site map in digital format, preferably GIS detailing all ground disturbed through construction activity, surface/subsurface structure/infrastructure and all routes over which trucks and equipment traveled. The scale and format of the submitted map shall conform to the County Engineer's specifications.
6. For a period of five (5) years following the completion of construction the WECS applicant, owner or operator shall be liable to the county for all costs of repair, as determined by the County Surveyor/Engineer, to county drain tiles, regulated drains and ditches and other county regulated surface and subsurface structures and private tiles located in the public right of way within fifty (50) feet of the routes and disturbed ground as described in Section WECS-03(B)(5).

C) Any post-construction proposed non-material modifications, alterations, expansions,

or changes of any type or size to the Development Plan must be approved by the Executive Director of the Plan Commission and all material post construction proposed changes must apply in the same way as a new WECS following the process in WECS 01. The Executive Director shall have the authority and discretion, considering all relevant factors, to determine whether the proposed post-construction change is material.

D) POST-CONSTRUCTION SOUND MEASUREMENTS

1. Within twelve (12) months after issuance of a WECS Inspection Certificate, and annually thereafter, the applicant, owner or operator of all WECS except private WECS shall submit a post-construction noise profile study prepared by a Qualified Independent Acoustical Consultant which includes sufficient information, including sound modeling and actual measurements, for the Building Inspector to verify, after consultation with a Qualified Independent Acoustical Consultant retained by the County, that the WECS continues to meet the requirements of WECS-02.C of this Chapter.
2. Post construction measurement methods will be based on good-engineering practices and industry-recognized international standards for the measurement of WTG noise emissions, (IEC 61400-11) when applicable.
3. Post-construction sound measurements shall include measurements taken 1) at each non-participating landowner's dwelling or primary structure on a direct line between such dwelling or primary structure and the nearest WECS Tower, and 2) at the point on each non-participating landowner's property line which is closest to the nearest WECS Tower.
4. Post-construction sound measurements shall be collected during meteorological conditions which result in full electrical output of the WECS.
5. If post-construction sound measurements of ambient noise (WECS noise plus all non-WECS related noise) are less than or equal to the WECS-only noise limits specified in WECS-02.C, the WECS will be in conformance with noise limitations of this Chapter. Otherwise, WECS-only noise levels may be determined using practical acoustical measurement and/or analysis techniques including but not limited to: 1) conducting measurements with all WTGs locked-out, to estimate WECS-only noise levels, 2) use of spectral analysis techniques to estimate WECS-only noise levels, 3) use of acoustical models to propagate 'close-in' WECS measurements to 'far-field' receiver locations, etc.
6. If the Building Inspector determines, after consultation with a Qualified Independent Acoustical Consultant retained by the County, that the post-construction noise profile study fails to demonstrate continued compliance with the requirements of WECS-02.C of this Chapter, the Building Inspector shall notify the owner or operator of such failure in writing, and the owner or operator shall have ninety (90) days to cure such failure and provide written documentation of compliance to the Building Inspector. If the Building Inspector determines that an owner or operator of the WECS has failed to take reasonable steps to remedy such non-compliance within ninety (90) days, the Building Inspector may order the owner or operator of the WECS to take such actions as may be required to cure such failure, including, but not limited to, curtailing operation of the WECS, or components thereof, under the specific meteorological conditions which were in existence at the time the actual measurements contained in the report were taken, until the owner or operator has demonstrated to the satisfaction of the Building Inspector that it is in compliance with the standards set out in WECS-02.C and WECS-03

regarding the issues raised in the post-construction noise profile study. Any curtailment order shall specify the 1) hub height wind speed as measured at the WTG nearest to the complainant 2) wind direction as measured at the WTG nearest to the complainant 3) specific hour of the day (ranging from 7am to 10 pm) or specific hour of the night (from 10pm to 7am) and (4) days of the year for which curtailment applies. If curtailment does not return the WECS to compliance, the Building Inspector may revoke the owner or operator's WECS Inspection Certificate upon 15 days prior written notice thereof. An owner or operator whose WECS Inspection Certificate has been revoked may apply for reinstatement of its WECS Inspection Certificate after curing any compliance issues.

E) COMPLAINT RESOLUTION

1. After a WECS Inspection Certificate has been issued, a person aggrieved by an alleged failure of the owner or operator of the WECS to comply with the Construction Design and Installation Standards set out in WECS-02 or the Operation and Maintenance Standards set out in WECS-03 (the Standards) may file a written complaint with the Building Inspector specifying the factual basis for the alleged failure.

If the Building Inspector determines that the facts alleged, if true, would constitute a violation of the Standards, or otherwise has reason to believe that a violation has occurred, the Building Inspector shall notify the owner or operator of the alleged violation in writing, and deliver a copy of the complaint, if any, to the owner or operator.

The owner or operator shall:

- a. log the complaint,
  - b. log the WECS operating and meteorological conditions for the reported time of the complaint,
  - c. take reasonable steps to remedy such complaint,
  - d. provide a written response to the complainant, and
  - e. submit a copy of the complaint, the response, the operating and meteorological condition log, and documentation of compliance to the Building Inspector within 10 business days after receiving a copy of the written complaint.
2. Complaint resolution shall be deemed satisfactory when the owner or operator has demonstrated to the satisfaction of the Building Inspector that it has complied with the standards set out in WECS-02 and WECS-03 with respect to the issues raised in such written complaint.
  3. If the Building Inspector determines that an owner or operator of the WECS has failed to take reasonable steps to remedy a complaint as set out in Subsection 2. above within ninety (90) days after receipt thereof, the Building Inspector may order the owner or operator of the WECS to take such actions as may be required to cure such failure, including, but not limited to, curtailing operation of the WECS, or components thereof, under the specific meteorological conditions which were in existence at the reported time of the complaint until the owner or operator has demonstrated to the satisfaction of the Building Inspector that it is in compliance with the standards set out in WECS-02 and WECS-03 regarding the issues raised in such written complaint. Any curtailment order shall specify the 1) hub height wind speed as measured at the WTG nearest to the complainant 2) wind direction as measured at the WTG nearest to the complainant 3) specific hour of the day (ranging from 7am to 10pm) or specific hour of the night (from 10pm to 7am) and (4) days of the year for which curtailment applies. If curtailment does not return the WECS to compliance, the Building Inspector may revoke the owner or operator's WECS

Inspection Certificate upon 15 days prior to written notice thereof; provided however the Building Inspector's decision may be appealed to the Board of County Commissioners within thirty (30) days. An owner or operator whose WECS Inspection Certificate has been revoked may apply for reinstatement of its WECS Inspection Certificate after curing any compliance issues.

- F) Nothing in this Ordinance is intended to preempt other applicable state and federal laws and regulations.

WECS-04 All owners of new building lots and new dwellings approved in the Wind Energy Conversion System Overlay District shall submit and record a signed agreement in the office of the County Recorder. Such written agreement shall recognize that the current owner and all subsequent owners of such building site (lot) shall not remonstrate nor file suit against any Wind Energy Conversion System or Whitley County so long as it follows industry accepted wind farming operation, construction, and maintenance standards and complies with the Whitley County Zoning Ordinance. Such agreement language shall be approved by the Commission Attorney.

**Non-Commercial, Private, & MET Towers:**

**WIND ENERGY CONVERSION SYSTEM (WECS) – NON-COMMERCIAL**

A Non-Commercial Wind Energy Conversion System shall meet the following standards:

WECS-05 Permitting and application requirements are as follows:

- A) An application for Special Exception approval must be submitted to the Board of Zoning Appeals and may be a combined application provided all property owners where the WECS facilities are to be located are co-applicants. The applicant may also submit a joint application for any Variances that are needed for the project area. The application shall include the following items, in addition to the regular Special Exception Requirements:
1. A WECS project summary, including:
    - a. A general description of the project, including its approximate name plate generating capacity, the potential WECS equipment manufacturer, type of WECS, number of WECS, the name plate generating capacity of each WECS, the maximum height of the WECS Towers, the maximum diameter of the WECS rotors, and the general location of the project
    - b. A description of the applicant, owner, and operator, including their respective business structures.
  2. The names, addresses and phone numbers of the applicants, owners and operators, and all co-applicants with WECS on their properties.
  3. A map of the project area, encompassing an area at least a quarter mile radius from the project site.
- B) After Special Exception approval is obtained, but before any construction commences or Improvement Location Permits may be acquired, all applicable state and federal permits, approvals and licenses must be obtained and all state and federal statutes and regulations must be complied with and the following requirements satisfied:

1. A site plan at an appropriate scale showing the proposed location of the wind energy facility (including planned locations of each WECS Tower, guy lines and anchor bases (if any); electrical cabling; ancillary equipment; and any structures that are a direct functional part of the WECS). In addition, the site plan shall show: primary structures within one quarter of one mile of any WECS; property lines, including identification of adjoining properties; setback lines; public roads; county regulated drains, open ditches, or tiles; private septic systems, tiles, and wells; location of all above-ground utility lines within a distance of two (2) times the WECS Tower Height of any WECS Tower; location of all existing underground utility lines associated with the WECS site; floodplains; and any wetlands based upon a delineation prepared in accordance with the applicable U.S. Army Corps of Engineer requirements and guidelines.
2. If any oversize or overweight vehicles will be utilizing public county roads for construction or maintenance activities the WECS applicant, owner, or operator must contact the County Highway Supervisor to develop a Transportation Plan.
3. Written Whitley County Drainage Board and Whitley County Health Department Approval must be submitted with the application for Development Plan Review.
4. A copy of a recorded agreement between all applicants detailing provisions for maintenance and decommissioning shall be submitted with the application for Development Plan Review.

C) Design and installation standards shall be as follows:

1. Turbines of 50 kW name plate generating capacity or greater must be installed with a tubular, monopole type tower.
2. The minimum distance between the ground and any protruding blades for turbines of 50 kW name plate generating capacity or greater is twenty-five (25) feet. The minimum distance between the ground and any protruding blades for turbines of less than 50 kW name plate generating capacity is fifteen (15) feet.
3. No WECS Turbine or Tower may be attached to any residence or dwelling structure, either as freestanding or by guy wires.
4. For all guyed towers install either (A) visible reflective colored objects such as flags, reflectors, or tape on the anchor points of guy wires and along the guy wires up to a height of not less than 15 feet from the ground or (B) a single visible fence to a height of not less than four (4) feet such that it surrounds the tower and all anchors points of the guy wires.
5. All electrical components and Collectors (as defined) of the WECS shall conform to applicable local, state, and national codes, and relevant national and international standards. All WECS Collectors between WECS Towers shall be located underground.
6. All WECS turbines shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Stall regulation shall not be considered a sufficient braking system for over-speed protection.

7. Towers and blades shall be painted with non-reflective white or gray color. The Applicant shall comply with all applicable Federal Aviation Administration color requirements. No advertising or signage shall be allowed on a WECS Tower, except for manufacturers name on the nacelle.
8. All blades shall utilize stick-free surface coatings to minimize ice buildup.
9. A visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
10. All WECS Tower designs must include features to deter climbing or be protected by anti-climbing devices such as: 1) fences with locking portals at least 8 feet high, 2) anti-climbing devices 15 feet vertically from the base of the WECS Tower, and/or 3) locked WECS Tower doors.
11. At any non-participating landowner residentially used structure, public school, or public library, for a period of more than 10% out of every hour, the audible A-weighted sound pressure levels as a result of the sound emitted by the WECS shall not exceed 45 decibels at Critical Wind Speeds. At any non-participating landowner property line for a period of more than 10% out of every hour, the audible A-weighted sound pressure levels as a result of the sound emitted by the WECS shall not exceed 51 decibels at Critical Wind Speeds. All methods for measuring and reporting acoustic emissions shall be equal to or exceed the minimum standards for precision described in the International Electrotechnical Commission IEC 61400-11 Standard: Wind turbine generator systems – Part 11: Acoustic noise measurement techniques. Noise and vibration levels shall also be in compliance with all other applicable county, state and Federal regulations.
12. Red strobe lights are preferred during the night to reduce impacts on migrating birds and red pulsating incandescent lights shall be avoided. White strobe lights at night are not allowed. All lighting shall also be in compliance with applicable Federal Aviation Administration regulations and the lighting requirements in of the Zoning Ordinance. All lighting shall be shielded so that no glare extends substantially beyond the boundaries of the wind farm facilities.
13. Electricity generated from the WECS may not be sold to a utility. Net metering is permitted.
14. Setbacks shall be as follows:
  - a. No WECS shall be constructed in any setback, dedicated public easement or dedicated public right-of-way without prior written authorization from the county.
  - b. Except as provided herein, installation of any WECS may not be nearer than 1.1 times the height of the WECS including the blade at its highest point, to any dedicated roadway, participating landowner residences, non-participating landowner property lines, railroad right-of-way or overhead electrical transmission or distribution lines. Also, the minimum setback distance for all turbines, substations, maintenance structures, storage yards, permanent Meteorological Towers, and other buildings that are a direct functional part of the WECS shall be not less than 3.1 times the height of the WECS including the blade at its highest point from any non-participating landowner residences, public building, or Municipal Jurisdictional Boundary.



Distance shall be measured at the time of application for Improvement Location Permit from the center of the foundation at the base of the tower.

- c. A non-participating landowner may waive the applicable wind turbine setback distance from their respective residence, however, any residence or public building on a non-participating landowner property shall maintain a minimum setback distance of 1.1 times the height of the WECS including the blade at its highest point. A waiver by an affected non-participating landowner or owner of a public building is an encumbrance on the real property, runs with the land until the wind energy system is decommissioned, and shall be recorded in the office of the Whitley County Recorder. Said waiver shall include the legal description of the property with a cross reference to the current deed's document number, and shall include verbiage to bind the grantees, their heirs, assigns, and successors in interest to the terms of the waiver.
- d. The WECS Tower shall not be nearer than 1.1 times the height of the WECS Tower including the blade at its highest point from any other WECS Tower.

**WECS-06 WIND ENERGY CONVERSION SYSTEM (WECS) – PRIVATE**

A Private Wind Energy Conversion System shall meet the following standards:

WECS-06 Permitting and application requirements are as follows:

- A) Prior to receiving an Improvement Location Permit the applicant must provide a map of the project area, including distances of the proposed WECS Turbine from all property lines, public easements and right-of-ways, wells and septic systems, county-regulated drains, open ditches or tiles, and overhead transmission or distribution lines or dwellings.
- B) The applicant must submit turbine technical specifications with the application. At a minimum, the specifications must include; rated power generating capacity, rotor diameter, swept area, and the level of sound generated. If manufacturer's specifications are not available the Applicant may submit results from a reliable testing entity such as the National Renewable Energy Laboratory or the Small Wind Certification Council. If no specifications are available the Applicant must submit a report from a qualified engineer.
- C) The applicant must submit tower specifications with the application including type and height of tower (guyed, lattice, monopole, etc.) and combined height of the tower and turbine with vertically extended blade.
- D) Design and installation standards shall be as follows:
  - 1. The minimum distance between the ground and any protruding turbine blades is fifteen (15) feet.
  - 2. Installation of any WECS Tower may not be nearer than 1.1 times the height of the Tower including the blade at its highest point, to any property lines, dedicated roadway, railroad right-of-way or overhead electrical transmission or distribution lines. Distance shall be measured from the center of the foundation at the base of the tower.
  - 3. No WECS Turbine may be attached to any dwelling structure, including by guy

wires.

4. For all guyed towers install either (A) visible reflective colored objects such as flags, reflectors, or tape on the anchor points of guy wires and along the guy wires up to a height of not less than 15 feet from the ground or (B) a single visible fence to a height of not less than four (4) feet such that it surrounds the tower and all anchor points of the guy wires.
5. All electrical components of the WECS shall conform to applicable local, state, and national codes, and relevant national and international standards.
6. All WECS turbines shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Stall regulation shall not be considered a sufficient braking system for over-speed protection.
7. Towers and blades shall be painted with non-reflective white or gray color. The Applicant shall comply with all applicable Federal Aviation Administration color requirements. No advertising or signage shall be allowed on a WECS, except for manufacturer's name on the nacelle.
8. All blades shall utilize stick-free surface coatings to minimize ice buildup.
9. Sound pressure levels may not exceed 45 decibels at six (6) feet in height at any adjacent lot line.
10. Electricity generated from the WECS may not be sold to a utility. Net metering is permitted.
11. Minimal lighting should be used. All lighting shall be in compliance with applicable Federal Aviation Administration regulations and the lighting requirements in the Zoning Ordinance. Red strobe lights are preferred during the night to reduce impacts on migrating birds and red pulsating incandescent lights should be avoided. White strobe lights at night are not allowed. All lighting shall be shielded so that no glare extends substantially beyond the WECS Tower.

WECS-07 METEOROLOGICAL TEST TOWERS Meteorological Test Towers must comply with the following standard:

- A) The structure shall not be nearer than 1.1 times the height of the structure from the nearest property line or right-of-way.
- B) The structure shall not be installed for a period of more than two (2) years, with up to two (2) renewals by the Plan Commission Executive Director, for no more than a total of six (6) years.
- C) A financial assurance in an amount of 125% of the estimated cost of said demolition and removal shall be filed in the form of a bond, letter of credit or other security acceptable to the county prior to Improvement Location Permit issuance.
- D) The structure shall comply with all Federal Aviation Administration and other federal and state regulations and all building codes.
- E) Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the

anchor point of guy wires and along the guy wires up to a height of not less than 15 feet from the ground. ]

Wind Related Definitions:

**ADEQUATE ASSURANCE OF COMPLETION AND CONTINUED OPERATIONS OF THE WECS PROJECT:**

The term “Adequate Assurance of Completion and Continued Operations of the WECS Project” shall mean the financial commitments, insurance certificates, warranties, and all other information and data provided pursuant to Section WECS-01(B)(2)(c).

**AMBIENT BASELINE SOUND PRESSURE LEVEL:** The  $L_{90}$  A-weighted sound pressure emissions level (the level of sound exceeded 90% of the time) for a WECS Project area prior to construction as determined by a baseline acoustics emissions study.

**APPLICANT:** The term “Applicant” when used in connection with or in respect of a WECS shall mean the person(s) and/or entity(ies) which is/are the developer and/or promoter of the WECS Project which prepares and files the initial application with the Plan Commission for a WECS Project, and the term shall include all successors and assigns of the initial Applicant. The term “Applicant” shall not include any person or entity which signs the application solely in the capacity as an Owner of an interest in real property in which the WECS shall be located.

**CO-APPLICANT:** The term “Co-Applicant” when used in connection with or in respect of a WECS shall mean a person or entity which executes an application for a WECS solely because of an ownership interest in real property to be used in connection with the WECS.

**COLLECTOR:** Any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electrical power grid, in the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving the WECS.

**CRITICAL WIND SPEED:** The wind speed at which WECS turbine sound pressure levels are at greatest variance with ambient background sound pressure levels.

**DECOMMISSIONING PLAN:** The term “Decommissioning Plan” with regards to a WECS shall have the meaning and include the requirements set forth at WECS-01(B)(1)(e).

**DEVELOPMENT PLAN (WECS):** The term “Development Plan” with regards to a WECS shall have the meaning and content and meet the requirements set forth in WECS-01(B).

**DRAINAGE PLAN:** The term “Drainage Plan” with regards to a WECS shall mean the storm water management plan approved by Whitley County Drainage Board for the WECS Project as required by WECS-01(B)(1)(c).

**ECONOMIC DEVELOPMENT AGREEMENT (WECS):** With regards to WECS-01(B)(2)(d), an agreement between the WECS Applicant, Owner and/or Operator and the county setting forth the applicant, owner and/or operator’s financial commitment to support economic development and/or provide other financial assistance to the county, or any portion thereof.

**NON-PARTICIPATING LANDOWNER:** The person, firm, corporation, trust or other entity or entities with an equity interest in property contiguous to a WECS Project which is not a Participating Landowner.

**OPERATOR:** The term “Operator” when used in connection with or in respect of a WECS shall mean any person or entity which has the primary involvement with or responsibility for the use, operation, or maintenance of all or a portion of the WECS.

**OWNER (WECS):** The term “Owner” when used in connection with or in respect of a WECS shall mean any person or entity and his, her, or its assigns and successors in interest which has any ownership interest in any or all of the necessary devices to convert wind energy into electricity as herein defined as a WECS. The term “Owner” does not include any person or entity whose ownership interest in a WECS is limited to an interest in real property which is used in a WECS.

**PARTICIPATING LANDOWNER:** A landowner upon whose land a WECS is constructed, or who has contractually granted rights to an Owner or Developer with respect to a WECS.

**PRIMARY STRUCTURE:** The building or structure in which the primary or principal use of the premises is located or conducted, with respect to residential uses, the primary building or structure shall be the main dwelling.

**PROJECTED SOUND EMISSIONS STUDY:** A study predicting the sound pressure levels that will be produced by a WECS Project. This study shall include a brief summary of the study methodology and a sound contour map in five (5) decibel increments displayed as an overlay on an aerial photograph of the project area to a minimum of 40 decibels. The study shall be done at the maximum turbine sound level as provided by the manufacturer.

**QUALIFIED INDEPENDENT ACOUSTICAL CONSULTANT:** A specialist with demonstrated competence in the area of environmental acoustics obtained through academic training or work experience with full membership in the Institute of Noise Control Engineering (INCE), Acoustical Society of America (ASA), or National Council of Acoustical Consultants, or equivalent credentials.

**SHADOW FLICKER:** The condition which occurs when the blades of a Wind Turbine pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his or her immediate environment.

**SHADOW FLICKER RECEPTOR:** Any occupied structure, structure permitted for construction, or roadway where the WECS may cause shadow flicker to occur.

**TRANSPORTATION PLAN:** Detailed route plan recommended by the WECS Transportation Committee and approved by the Whitley County Commissioners used for construction and maintenance by a WECS including plans for temporary road closures and traffic re-routing, plans for the repairs, replacement and/or reconstruction of all damage to roads, bridges, signage, vehicles, drainage structures, and other public or private improvements damaged by the WECS construction and maintenance, and the posting of repair, replacement, and maintenance bonds and such other matters as may be determined to be necessary and appropriate to protect the health and safety of motorists and to preserve and maintain the affected roads, bridges, and other public and private improvements.

**SECURITY AND SAFETY PLAN:** The WECS Project site security and safety plan as provided by WECS-01(B)(2)(b).

**WECS INSPECTION CERTIFICATE:** The Certificate issued by the Building Inspector to verify continued compliance with all requirements of this Chapter which were in effect when the original Improvement Location Permit for the WECS or WECS project was issued.

**WECS NET SALVAGE VALUE:** The net value of the towers, nacelles, generators, turbines, blades, wires, transformers, and all other saleable parts and commodities which make up the WECS whether sold as used parts or on a commodity/scrap basis or any combination thereof (whichever is greater) after deducting all estimated costs and expenses of dismantling, removal, and transportation and all costs and expenses of sale (including but not limited to all commissions and fees) and the amount necessary to pay and satisfy all liens, security interests, and other encumbrances attaching to the WECS. The commodity/scrap value shall be based on the prior five (5) years average scrap value of the commodity.

**WECS PROJECT:** The collection of WECS - Commercial (as defined) as specified in the Development Plan (alternatively "the WECS Overlay Application") pursuant to this ordinance.

**WECS TOWER:** The support structure to which the nacelle and rotor are attached, freestanding or guyed structure that supports a wind turbine generator.

**WECS TOWER HEIGHT:** The distance from the rotor blade at its highest point to the top surface of the WECS foundation.

**WECS TRANSPORTATION COMMITTEE:** A committee chaired by the County Highway Supervisor and including the County Sheriff or designee, School Superintendent(s) of the district(s) the WECS will be constructed in or designee(s), Fire Chief(s) with jurisdiction over the WECS Project Area or designee(s), Whitley County Engineer or

designee(s), Soil & Water Conservation District Board Representative or designee(s), and other identified individuals which will review and recommend to the County Commissioners the proposed Transportation Plan submitted by a WECS Applicant.

**WIND ENERGY CONVERSION SYSTEM (WECS) – COMMERCIAL:** All necessary devices referred to in Chapter 5.20, WECS that together convert wind energy into electricity and deliver that electricity to a utility's transmission lines, including but not limited to the rotor, nacelle, generator, WECS Tower, electrical components, WECS foundation, transformer, and electrical cabling from the WECS Tower, the substations, switching stations, meteorological towers, communications facilities and other required facilities and equipment, as related to the WECS Project.

**WIND ENERGY CONVERSION SYSTEM (WECS) - NON-COMMERCIAL:** A WECS facility referred to in WECS-05 of one or more turbines with a total name plate generating capacity of greater than 20 Kilowatts (kW) but no more than one Megawatt (MW) for the purpose of producing electricity on one or more contiguous parcels and not for resale or distribution by interconnection with a utility.

**WIND ENERGY CONVERSION SYSTEM (WECS) – PRIVATE:** A WECS facility referred to in WECS-06 consisting of not more than one turbine and with a total name plate generating capacity of no more than 20 Kilowatts (kW) for the purpose of generating supplemental electricity for the parcel on which the facility is located.

## **Chapter Six**

### **Planned Unit Developments**

## Chapter Six

# Planned Unit Development (PUD)

### 6.1 Intent

It is the intent of this chapter to:

- A. Implement the comprehensive plan;
- B. Encourage a more creative approach in land development and site planning.

### 6.2 Applicability

- A. The provisions of this chapter may apply to any tract of land where it is in the best interest of the county to provide for added flexibility and creativity in development design.
- B. Uses permitted in a PUD may include any use or combination of uses that the commission and county commissioners find to be consistent with the comprehensive plan.
- C. Any development standard in this ordinance may be modified for a PUD; provided that, the commission and/or county commissioners find(s) that such modification promotes the purposes of this chapter and is consistent with the spirit and intent of this chapter. It is the responsibility of the applicant to provide justification for modification of any development standard.

### 6.3 Procedure for Authorization, Approval, Modifications, Extensions.

The authorization of a PUD shall be subject to the procedures expressed as follows:

- A. A petition to rezone property to a PUD may be filed by the following:
  1. The owners of all lots or parcels within the area proposed for rezoning;
  2. In the case of a single lot or parcel with multiple owners, all those having ownership interest in the lot or parcel.
- B. A petition to modify an approved PUD may be filed by the following:
  1. The owners of all lots or parcels within the area proposed for modification and other owners in the PUD affected by such modification;
  2. In the case of a single lot or parcel with multiple owners, all those having ownership interest in the lot or parcel.
- C. The commission shall hold a public hearing and make a recommendation to the county commissioners on the proposed PUD ordinance and PUD zoning in the same manner as for a map amendment. The commission may recommend approval or disapproval of the rezoning request. The commission may impose conditions on a favorable recommendation and/or request written commitments in accordance with the provisions of the zoning ordinance.
- D. The county commissioners may impose reasonable conditions on a proposed PUD and allow or require the owner of the real property to make written commitments in accordance with the provisions of the zoning ordinance.

- E. Adoption of the PUD ordinance by the county commissioners constitutes final approval of the preliminary PUD plan. After the PUD ordinance is adopted, the commission shall exercise continuing jurisdiction. The commission is authorized to conduct secondary reviews, grant approvals and make modifications to approved detailed PUD plans. The commission shall not modify the preliminary PUD plan or any condition or commitment allowed or required by the county commissioners.
- F. In the exercise of its continuing jurisdiction, the commission may from time to time allow the petitioner to modify the approved detailed PUD in a manner consistent with the approved preliminary PUD plan to allow for changed circumstances and conditions unforeseen at the time of original approval. Except as provided below, such modifications shall be considered in the same manner as the secondary review, and notice shall be given and a hearing held in accordance with the commission's rules of procedure.
- G. The staff is authorized to approve minor modifications as specified herein.

#### **6.4 Preliminary and Secondary Review.**

- A. An application for rezoning to PUD shall include or incorporate by reference the following:
  - 1. Legal description of the property involved in the request;
  - 2. Boundaries of the tract and all existing lots or parcels within the tract;
  - 3. Drawing of the site and adjacent land showing the physical features, topography, drainage ways, regulated drains, easements, water bodies, tree cover, existing buildings, existing land uses, and existing zoning and the relationship of the proposed development to these features;
  - 4. Streets on and in the vicinity of the tract;
  - 5. Ingress and egress to the tract;
  - 6. A listing of all principal and accessory uses and all temporary uses to be permitted in the PUD district, the location of each general land use area proposed to be developed, and the land area to be devoted to each use;
  - 7. Proposed density levels of each residential area;
  - 8. Proposed square footage of nonresidential buildings and areas, if any;
  - 9. Preliminary plan for permanent and temporary signs;
  - 10. Proposed general location of major vehicular circulation, showing how this circulation pattern relates to the official thoroughfare plan of the county;
  - 11. Location of existing or proposed schools, parks and other community facility sites, if any;
  - 12. Time schedule of projected development and any proposed phasing of the project;
  - 13. An enumeration of covenants, in general terms, proposed to be made a part of the development;
  - 14. A preliminary analysis of the traffic impact of the development and measures proposed to mitigate traffic problems;
  - 15. A written narrative describing the relationship and consistency of the proposed development with the comprehensive plan;
  - 16. Any other materials or information the commission deems necessary for a fair and complete evaluation of the proposed development.
- B. The commission shall conduct secondary review as specified in Indiana law and further described in this section.



1. The commission may approve a detailed PUD plan only after a public hearing. Notice shall be given to interested parties and the hearing conducted in accordance with the commission's rules of procedure.
  2. No development shall take place until the commission has approved a detailed PUD plan. If a subdivision plat is filed in conjunction with the detailed PUD plan, appropriate plans and details listed below may be included on the subdivision plat rather than on the PUD plan. The detailed PUD plan or subdivision plat shall include the following:
    - a. Accurate boundaries of all lots;
    - b. Township lines;
    - c. Drainage plan;
    - d. Sewage disposal plan;
    - e. Water system plan;
    - f. Accurate location and size of recreational facilities;
    - g. Site perimeter treatment and other pertinent site development features, including parking and circulation;
    - h. Landscape plan, including sizes, types and location of plants and other landscape features;
    - i. Land uses on each parcel and/or in each building shown on the plan;
    - j. Locations and features of proposed buildings. Unless required by the commission to ensure compatibility with neighboring properties, the detailed PUD plan need not show precise building locations, but the plan shall set forth the development standards for all buildings and uses;
    - k. Sign plan, providing for all permanent and temporary signs to be placed on the property;
    - l. Any other details needed to ensure compliance with the preliminary PUD plan.
  3. Approval of the detailed PUD plan shall be granted only upon a finding by the commission that the plan is consistent with the approval preliminary PUD plan.
  4. The approved detailed PUD plan shall be marked, "Approved Detailed Planned Unit Development" be signed by the president and secretary of the commission, and bear the commission's seal. One recorded copy shall be permanently retained in the offices of the commission.
- C. Any decision of the commission to approve or deny approval of a detailed PUD plan hereunder is a final decision that may be appealed to the county commissioners; provided that, any refusal by the commission to approved a detailed PUD plan shall not limit the right of the petitioner to continue to seek approval, nor shall it impair the right of the petitioner to request an extension of time for approval, if no appeal is filed.
- D. The commission may allow the petitioner to develop the property involved in phases. If such phasing is permitted, the petitioner shall submit detailed PUD plans which correspond to the phases involved, and the phases shall be developed in the order approved by the commission. Such detailed PUD plans for phases, when approved, shall be treated in the same manner as the approved detailed PUD plan for an entire PUD.

- E. Where platting, replatting or vacation of streets within all or a portion of the land involved is contemplated, the commission shall handle such matters in accordance with its regular procedures in accordance with law.
- F. No construction or installation work shall be done on any public improvement until satisfactory plans and specifications therefore have been approved by the commission as part of the approved detailed PUD plan or as part of a subdivision in accordance with the subdivision ordinance.

## **6.5 Minor Modifications.**

- A. Minor modifications are changes that do not do any of the following:
  - 1. Alter the basic relationship of the proposed development to adjacent property;
  - 2. Change the uses permitted;
  - 3. Increase any of the following by more than fifteen (15) percent (this total is cumulative for all modifications to the PUD):
    - a. The maximum density,
    - b. The maximum floor area,
    - c. The maximum height.
  - 4. Decrease the amount of off-street parking to an amount not adequate for the use. In determining the amount of parking that is adequate, the staff shall consider the amount otherwise required by the zoning ordinance for this use and empirical studies of the parking needs for the use;
  - 5. Reduce the approved yards or setbacks by more than fifteen percent;
  - 6. Alter site ingress or egress in any way or create a substantial change to on-site circulation, as determined by the county engineer.
- B. Upon receiving a request for a minor modification, the staff shall have ten (10) working days to respond to the petitioner, by either approving or rejecting the request. An application may appeal the decision of the staff to the commission.

## **6.6 Abandonment or Expiration**

- A. The county commissioner's approval of the preliminary PUD plan shall be valid for two (2) years after the date the county commissioners adopt the PUD ordinance. Within this two (2) year period, the PUD shall receive approval of the final detailed PUD plan for the first section or the entire development. Should the planned development not receive approval of the detailed PUD plan for at least one section or the entire development within the two (2) years, the county commissioners, commission or property owner may initiate a rezoning of the property. The commission may extend the approval period, not to exceed five successive periods of no more than two (2) years each. The approval of the detailed PUD plan for each section of the preliminary PUD plan shall extend the approval length of the preliminary PUD plan for two (2) years.
- B. Commission approval of a detailed PUD plan shall expire if the plan is not recorded as required within six (6) months after the approval date. Commission approval of a detailed PUD plan shall expire after a period of five (5) years from the approval of a detailed PUD unless the development in any phase has been substantially begun and pursued with due diligence. The commission may grant extensions of time not to exceed five successive periods of no more than two (2) years each. If the detailed PUD plan expires as provided in this section, the commission may require the plan to be resubmitted for approval, and they shall conduct a secondary review as if the plan

were a new filing. Alternatively, the commission may opt to initiate a rezoning of the property to a classification other than PUD.

- C. A development approved under this chapter shall be deemed to be abandoned or discontinued if it has expired under subsection B of this section or when no improvements have been made pursuant to the detailed PUD plan for a period of twenty-four (24) consecutive months. When a PUD has been abandoned or discontinued, the detailed PUD plan shall no longer be valid, and no development shall be permitted until the plan is reapproved, a new plan is approved, or the property is rezoned.

#### **6.7 Permits and Enforcement**

- A. The staff shall not issue a building permit for development or improvements in a PUD district unless all recording required by this chapter has been effected. No certificate of occupancy shall be issued for a PUD district unless the development complies with the approved detailed PUD.
- B. All development shall be in conformity with the approved detailed PUD. In the exercise of its continuing jurisdiction, the commission shall take cognizance of any material deviations from the approved detailed PUD and take appropriate enforcement action. Only those uses shown on the approved detailed PUD plan shall be permitted; all other uses are prohibited.

#### **6.8 Covenants and Maintenance – Financial Guarantees**

- A. Covenants may be required by the commission as an ingredient for stability and longevity of the PUD. If submitted, the covenants shall set forth in detail provisions for the ownership, administration and maintenance of facilities held in common so as to ensure their continuity and conservation. Such covenant provisions shall include specific remedies in the event facilities held in common are permitted to deteriorate or are not maintained in a condition consistent with the best interests of the entire county in such event the county may take those remedial steps provided for such provision. The covenants shall be recorded with the detailed PUD plan.
- B. The commission may require the recording of covenants for any reasonable public or semi-public purpose, including but not limited to the allocation of land by the petitioner for public thoroughfares, parks, schools, recreational facilities and other public and semi-public purposes wherever necessary in conformity with the land use plan of current adoption. Such covenants may provide that if a governmental unit or agency thereof does not proceed with acquisition of the allocated land within the specified period of time, the applicable elements of the covenants shall automatically terminate. If such termination occurs, the petitioner shall then submit for approval by the commission a modified detailed PUD plan for such land consistent with the approved preliminary PUD plan. Such modified detailed PUD plans, when approved, shall be treated in the same manner as approved detailed PUD plans for an entire PUD.
- C. The commission may require the recording of covenants for any other reasonable purpose, including but not limited to imposing standards for development of property in a PUD. Such development standards may include, but are not limited to, requirements as of the following:

1. Lot area;
  2. Floor area;
  3. Ratios of floor space to land area;
  4. Buildable area or the area in which structures may be built;
  5. Open space;
  6. Setback lines and minimum yards;
  7. Building separations;
  8. Height of structures;
  9. Signs;
  10. Off-street parking and loading spaces;
  11. Design standards;
  12. Phasing of development.
- D. The petitioner shall provide financial assurance for the satisfactory installation of all public facilities in the form of bonds or such other assurances as are required in the normal procedures of platting pursuant to the provisions of the subdivision ordinance.
- E. Adequate provision shall be made for a private organization with direct responsibility to and control by the property owners involved to provide for the operation and maintenance of all common facilities, including private streets. Assurances or guarantees, satisfactory to the commission, shall be provided to demonstrate that the private organization is self-perpetuating and adequately funded to accomplish its purposes.
- F. Common facilities which are not dedicated to the public shall be maintained to standards assuring continuous and adequate maintenance at a reasonable and nondiscriminatory rate of charge to the beneficiaries thereof. Common facilities not dedicated to the public shall be operated and maintained at no expense to any governmental unit.
- G. All private streets shall be maintained by the responsible private organization in such a manner that adequate access is provided at all times to vehicular traffic, so that fire, police, health, sanitation and public utility vehicles can serve the properties contiguous or adjacent thereto, and so that such vehicles will have adequate maneuvering area. Such private streets shall be developed in accordance with the subdivision ordinance.

## **6.9 Financial Guarantees**

As a condition of approval, the commission and/or county commissioners shall require any appropriate financial guarantees to insure the timely completion of any improvement related to the PUD.

# **Chapter Seven**

## Development Plan

## Chapter Seven

# Development Plan

### 7.1 Intent

It is recognized by this Ordinance that there is a value to the public in establishing safe and convenient traffic movement to and from higher density sites, both within the site and on the access streets; that there is value in encouraging a harmonious relationship of buildings and uses both within a site and in relation to adjacent uses; that there is a value in insuring that new development is an investment in the continued quality of life of the community rather than a cost; and further, that there are benefits to the public in conserving natural resources. Toward this end, the review and approval of a development plan by the Development Plan Committee of the Plan Commission is required of certain buildings and types of development that can be expected to have an impact on natural resources, traffic patterns and intensity, adjacent land uses, and the character of future urban development.

### 7.2 Buildings, Structures, and Uses Requiring a Development Plan:

Neither an Improvement Location Permit nor a Building Permit shall be issued for the construction of the following buildings, structures, or uses until a development plan in accordance with the requirements of this Ordinance has been reviewed and approved by the Development Plan Committee of the Plan Commission:

- A. Construction of any primary commercial or industrial building.
- B. Construction of an addition to a commercial or industrial building of five thousand (5,000) square feet of gross floor area; or, the construction of a secondary commercial or industrial building of five thousand (5,000) square feet of gross floor area.
- C. Construction of a multiple-family building containing three (3) or more dwelling units.
- D. Construction of an addition or renovation of an existing residential structure which would increase the total number of dwelling units within the structure to three (3) or more. This includes rooming or boarding establishments.
- E. Construction of three (3) or more residential structures on one lot, parcel, or tract of land, where each structure contains two (2) or more dwelling units.
- F. Construction in the Village Commercial District where the proposed development does not conform to the setback lines.
- G. Additional or multiple signs may be permitted by the Development Plan Committee for one or more entrances to a residential development.

### **7.3 Development Plan Required**

A. Except as otherwise specifically stated in this section, a Development Plan is required for all developments in the following zoning districts: AG, RR, MR, LR, VC & GC, and the Commission has exclusive authority to approve or disapprove development plans in these districts. A Development Plan is not required for the following land uses:

1. Adult or Child care center/institution
2. Cemetery
3. Commercial Forestry Production
4. Communication tower
5. Dwelling, single-family
6. Dwelling, two-family
7. Farm
8. Fish hatchery
9. Group Home
10. Home Adult, Child or Day Care
11. Home Occupations
12. Kennel
13. Livestock operations, minor or intensive
14. Manufactured Home Type I or II
15. Park
16. Planned Unit Development
17. Plant nursery
18. Utility service structure, station or yard

B. No Improvement Location Permit or Building Permit shall be issued until a Development Plan is approved.

### **7.4 Application for Development Plan**

A. The following items shall be submitted to the Department to initiate reviews of a Development Plan:

1. Completed application form signed by the property owner.
2. Site plan, drawn on one or more sheets of paper measuring not more than twenty-four (24) inches by thirty-six (36) inches, drawn to a scale as large as practical, and including the following information:
  - a. Scale, date, north arrow, vicinity map, and title of the project;
  - b. The boundaries, dimensions, and gross acreage of the property;
  - c. The relationship of the development to the surrounding road system, including the width of the adjacent roadways;
  - d. The location and dimensions of existing manmade features such as roads, utilities, and structures, with indication as to which are to be removed, relocated, or altered.

- e. The location and dimensions of existing easements, watercourses, county drains, water and sewer lines, well and septic tank locations, and other existing important physical features in and adjoining the development;
  - f. The location and delineation of existing trees (12” in diameter or larger) and information as to which trees will be removed. Existing woods may be indicated as such on the plan;
  - g. Identification of existing land use and zoning of the petitioned site and adjacent properties;
  - h. A layout of the proposed building site including the following site data:
    - (1) Finished floor elevations
    - (2) Common open areas
    - (3) Landscaping and buffer areas
    - (4) Internal circulation patterns including off-street parking and loading facilities
    - (5) Total project density (residential)
    - (6) Building area
    - (7) Percentage of impervious and near impervious surface coverage
    - (8) Percentage of open space areas
    - (9) The shape, size, location, and height of all structures
  - i. Size, location, and orientation of proposed signs;
  - j. Proposed lighting of the premises;
  - k. Name and address of developers/property owners; and
  - l. Size and location of site utilities, including: sanitary sewer or septic, storm sewer, water, gas, and electricity.
3. Stormwater Management Plan, which shall include the following information:
- a. Contours of the site with elevations of the predeveloped site and proposed finished grade
  - b. Size of the watershed
  - c. Method of calculation of stormwater run-off
  - d. Location, size, and capacity of drainage facilities serving the development



- e. Proposal for the management of stormwater
- 4. Traffic Management Plan, which shall include the following information:
  - a. Traffic generation analysis for proposed use
  - b. Distribution and assignment of traffic
  - c. Adjacent roadway/intersection improvements
  - d. Future right-of-way dedications
  - e. Additional roadway needs
- 5. A description of the nature and intensity of proposed uses in the development.
- 6. Statement on capacity of sanitary sewer system to service the development.
- 7. Legal description of the property proposed for development.

**7.5 Development Requirements**

The following development requirements shall be satisfied before approval of a Development Plan:

- A. Availability of potable water, sanitary sewer or septic system, and other utilities necessary to operate and maintain the development in a manner that protects the health, safety, and welfare of the general public.
- B. An approved stormwater detention facility.
- C. Compliance with the following development standards, as required in the applicable zoning district:
  - 1. lot size
  - 2. lot frontage
  - 3. building setbacks
  - 4. building coverage
  - 5. building separation
  - 6. parking
  - 7. landscaping
  - 8. signs
  - 9. building height
  - 10. building width
  - 11. any other development standard in the applicable zoning district
- D. Management of traffic in a manner that creates conditions favorable to health, safety, convenience, and the harmonious development of the community by ensuring that:
  - 1. the design and location of proposed street and highway access points minimize safety hazards and congestion;

2. the capacity of adjacent streets and highways is sufficient to safely and efficiently accept traffic that will be generated by the new development; and
3. the entrances, streets, and internal traffic circulation facilities in the Development Plan are compatible with existing and planned streets and adjacent developments.

#### **7.6 Development Plan Review**

- A. Development Plans shall be reviewed by the Development Plan Committee in accordance with the Plan Commission Rules of Procedure.
- B. The Department shall establish a meeting date, time, and place for the Development Plan Committee to review the Development Plan.
- C. The Department may prepare a staff report, and may make a recommendation to the Committee.
- D. The Development Plan Committee may receive evidence from any person regarding the Development Plan.
- E. The Development Plan Committee shall review a Development Plan to determine if it;
  1. satisfies the development requirements as specified; and
  2. is consistent with the Comprehensive Plan.
- F. The Development Plan Committee shall make written findings concerning each decision to approve or disapprove a Development Plan. The chairperson of the Development Plan Committee, or the Director in the absence of the chairperson, shall sign the written findings of the Committee.

#### **7.7 Waiver of Development Requirements**

The Development Plan Committee may waive the following development requirements under the specific conditions listed:

- A. Section 7.2(c) – Availability of Stormwater detention facilities, if the development will have a negligible effect on increasing stormwater run-off or altering the flow of stormwater run-off.
- B. Section 7.2(d) – Traffic Management Plan, if the development will have a negligible effect on traffic generation, traffic congestion, or traffic safety.

#### **7.8 Conditions of Approval**

Prior to approval of a Development Plan, or amendment to an approved Development Plan, the Development Plan Committee, or Director in the case of an amended Development Plan that does not require Development Plan Committee approval, may:

- A. Impose conditions on the approval of a Development Plan if the conditions are reasonably necessary to satisfy the development requirements specified in Section 7.3;

- B. Require the submittal of a bond or written assurance that guarantees the timely completion of a proposed public improvement in the proposed development and is in a form that is satisfactory to the Committee; and
- C. Permit or require the owner of real property to make a written commitment concerning the use or development of the property. Such commitment shall be completed in accordance with the Plan Commission Rules of Procedure, and applicable law.

**7.9 Amendment to an Approved Development Plan**

- A. A property owner may file a written application with the Director to amend an approved Development Plan on property they own.
- B. The Director shall review modifications to the Development Plan and determine compliance with applicable land use and development standards and requirements and also determine whether a substantial deviation from the approved Development Plan has occurred.
  - 1. A substantial deviation shall include, but is not limited to:
    - a. Modification of building location which would affect setback distances or buffering from adjacent residential property;
    - b. Relocation of an access point to the site;
    - c. Major redesign of the parking and vehicular use area; or
    - d. Fundamental change in the overall concept of the development.
  - 2. If the Director determines that the proposed modification is inconsistent with the standards and requirements, or that a substantial deviation exists, the modified Development Plan must be resubmitted and approved by the Development Plan Committee in the same manner as an original Development Plan and prior to the issuance of an Improvement Location Permit.
- C. If the modified plan is consistent with applicable land use and development standards and requirements, and if no substantial deviation exists, the Director may approve the amended Development Plan.
- D. The Director shall make written findings concerning each decision to approve or disapprove an amendment to a Development Plan. The Director shall sign the written findings.

**7.10 Duration of Approval of Development Plan**

- A. Development Plan approval expires if an Improvement Location Permit is not issued within two (2) years from the date of approval.
- B. Upon request, and after good cause if shown, the time period within which an Improvement Location Permit must be issued may be extended by the Development Plan Committee for a time period not to exceed one (1) year.

- C. If the time period has expired without extension and without the issuance of such permit, the Director shall file with the records of the Plan Commission a certificate of non-compliance and no Improvement Location Permit shall be issued until a new application for Development Plan is approved.

**7.11 Limitation of Authority**

- A. A Development Plan authorizes only the development set forth in such approved plans and applications. Development different from the approved Development Plan, including any approved modifications thereto, shall constitute a violation of the Zoning Code.
- B. Approval of the Development Plan shall in no way exempt the applicant from strict observation of applicable provisions of the Zoning Code and all other applicable law.

**7.12 Appeals**

- A. Any decision or determination of the Development Plan Committee or of the Director may be appealed to the Plan Commission. The following procedures shall apply:
  - 1. Appeal shall be filed with the Department on a form provided by the Department within fourteen (14) days of the date of issuance of the decision.
  - 2. The Commission shall review the appeal request at its next regular meeting, provided the appeal is filed at least ten (10) days prior to the meeting. If this requirement cannot be met, the appeal shall be scheduled for the next following Commission meeting.
  - 3. The Commission may affirm, rescind, or modify the decision of the Director or Development Plan Committee. Only the item or items to which an appeal is filed shall be heard and decided by the Commission.
  - 4. No filing fee is required for an appeal.
- B. The decision by the Commission on an appeal request is a final decision of the Commission that may be reviewed as provided in IC 36-7-4-1016.

# **Chapter Eight**

## Sign Regulations

## Chapter Eight

# Sign Regulations

### 8.1 Intent

The intent of this Article is to further the goals of the Comprehensive Plan; avoid the proliferation of signage; encourage signs to be compatible with the scale of buildings and the surrounding features; to maintain and enhance the aesthetic environment of the county; eliminate potential hazards to motorists and pedestrians resulting from signs; and promote the health, safety, and welfare of the residents of Whitley County.

### 8.2 Administration and Enforcement:

- A. Administration: Except where herein otherwise stated, the provisions of this Section shall be administered by the Columbia City/Whitley County Joint Planning and Building Department, or by its designee.

The Department (or its authorized representative) is hereby empowered in performance of Departmental functions to enter upon any land in the County for the purpose of making inspections, examinations, and surveys, or to place and maintain thereon markers, notices, or signs required to effect provisions of this Chapter. The above authorized person shall be required to present proper credentials upon demand when entering upon any land or structure for the purpose of this Chapter.

- B. Duties of the Columbia City/Whitley County Joint Planning and Building Department: The Department shall have the power to grant sign permits, and to make inspections of buildings or premises necessary to carry out the Departments duties in the enforcement of this Chapter.

It shall be improper for the Department to approve plans or issue any permits or certificates for any sign until such plans have been inspected in detail and found to be in conformance with this Chapter, nor shall the Department vary or change any terms of this Chapter.

If the Department shall find that any of the provisions of this Chapter are being violated, the Department shall notify in writing the person responsible for such violations, indicating the nature of the violation. The Department shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal signage; discontinuance of any illegal work being done; or shall take any other action authorized by this Chapter to insure compliance with or to prevent violation of its provisions.

- C. Permit Required: It shall be unlawful to commence or to proceed with the erection, construction, reconstruction, conversion, alteration, enlargement, extension, or moving of any sign or sign structure or any portion thereof without first having obtained the necessary permits. Primary responsibility for securing the necessary permits shall be the property owner's. However, if the property owner should contract part or all of the proposed work, it shall become the responsibility of the person or firm hired to ensure that all required permits and approvals have been secured prior to any work being initiated.

Any sign permit under which no construction work has been commenced within six (6) months after the date of issuance of said permit or under which proposed construction has not been completed within one (1) year of the time of issuance shall expire by limitation.

- D. Voiding of Sign Permit: A permit may be revoked by the Department at any time prior to the completion of the sign for which the same was issued, when it shall appear that there is any departure from the plans, specifications, or conditions, as required under terms of the permit, that the same was procured by false representation, or that any provisions of this Ordinance are being violated. Written notice of such revocation shall be served upon the owner, the agent, or contractor, or upon any person employed within the building or structure for which such permit was issued, via a stop-work order, which shall be posted

in a prominent location, and thereafter no such construction shall proceed until the violation is remedied.

- E. Compliance with Sign Permits: Sign permits issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in the approved plans and applications, and no other use, arrangement, or construction.
- F. Violations: If it is found that a sign is in violation of this Ordinance, the Department, or its designee, shall give notice to the owner of the sign, or if the owner cannot be located, to the owner or property management agent of the premises on which the sign is located or, if the sign erection is not complete, to the sign erector, either personally, by certified United States Mail, or by posting such a notice on the premises, such notice stating:
  - 1. The violation found; and
  - 2. That the violations must be brought into compliance within the requirements of this and all other County Ordinances within ten (10) days from the date of such notice; and
  - 3. The requirements which must be met; and
  - 4. That any person found to be in violation of any provision of this Ordinance shall be subject to the penalties established in the Enforcement and Penalties, Chapter 13, Section 13.9, of this Ordinance.

### 8.3 General Sign Standards

GS-01: Except as otherwise provided herein, it shall be unlawful for any person to erect, construct, enlarge, move or convert any sign, within the jurisdiction of the Whitley County Plan Commission or cause the same to be done without first obtaining a sign permit from the Planning Department. The following sign standards apply to all signs within the jurisdiction of the Whitley County Plan Commission.

- A. Inspection: Signs for which a permit is required may be inspected periodically by the Plan Commission or Zoning Administrator for compliance with this Article.
- B. Structural Requirements: All signs shall comply with the pertinent requirements of the Indiana Building Code.
- C. Safety: Any existing sign which is or becomes an immediate danger or hazard to persons or property because of being in an unsafe condition, or which obstructs any fire escape, window, or door, is subject to immediate removal without notice and at the expense of the property and/or sign owner.
- D. Removal of Sign: The Plan Commission or Zoning Administrator may order the removal of any sign erected or maintained in violation of this Article. A written notice shall be given to the owner or business operator describing the violation and stating that the sign must be either removed or brought into compliance within thirty (30) days of the date of the letter. The Plan Commission or Zoning Administrator may remove a sign immediately and without notice if the condition of the sign presents an immediate threat to the safety of the public. Any cost associated with signs removed by the Plan Commission and/or its agent, pursuant to the provisions of this Article, shall be reimbursed by the owner of said sign. Should said sign not be picked up from the County, within sixty (60) days of its removal, it may be disposed of in any manner deemed appropriate by the County.
- E. Maintenance: All signs and components thereof shall be kept in good repair and in safe, neat, clean and attractive condition. If failure to maintain a sign is determined by the Plan

Commission or Zoning Administrator, a written notice will be given to the owner, business operator, or lessee of the property. Thirty (30) days shall be given to the owner, business operator, or lessee of the property to comply with the regulations. After thirty (30) days if the owner/business operator fails to comply penalties may be imposed according to Chapter 13.

- F. Abandoned Signs: A sign shall be removed by the owner or lessee of the premises upon which the sign is located when the business, which it advertises, is no longer conducted on the premises. If the owner or lessee fails to remove the sign, the Plan Commission or Zoning Administrator shall give the owner thirty (30) days written notice to remove it. Upon failure to comply with this notice, the Plan Commission or Zoning Administrator may remove the sign at cost to the property owner or lessee.
- G. Illumination: Neither the direct nor reflected light from primary light sources shall create a traffic hazard to operators of motor vehicles on public thoroughfares, nor shall the light sources be oriented such that either direct or reflected light creates a nuisance to adjoining properties.
- H. State Right-of-Way Requirements: All signs erected within the jurisdiction of State right-of-way requirements shall meet both State and County requirements. Signs shall not project over any city or county public right-of-way.
- I. Lot lines: Signs shall not project over lot lines.
- J. Exempt Signs: The following signs are exempt from all provisions of this ordinance:
  - 1. Flags of any country, state, unit of local government, institution of higher learning, or similar institutional flags. No commercial messages or logos are permitted on such flags.
  - 2. Names of building, date of erection, monumental citations, commemorative tablets and the like when carved into stone, concrete or similar material or made of bronze, aluminum, or other permanent type construction and made an integral part of the structure. No commercial messages or logos are permitted on such integral signs.
  - 3. Public signs erected by or on the order of public officer(s) in the performance of public duty, such as signs to promote safety, no trespassing, or traffic signs, memorial plaques, signs of historical interest, and signs directing people to public and quasi-public facilities.
  - 4. Utility signs are permitted to mark cables and lines for public and private utilities unless determined to be a hazard by the Plan Commission or the Zoning Administrator.
  - 5. Seasonal or holiday signs, including lighting erected in connection with the observance of holidays.
  - 6. Political signs or signs announcing political candidates or issues on private property.
  - 7. Residential garage, patio or yard sale signs not to exceed six (6) square feet and located upon the premises where the sale is taking place.
  - 8. Property Real Estate Signs not exceeding six (6) square feet in area on each street frontage of a lot, which advertise the sale, rental, or lease of the premises upon which said signs are located only. The Real Estate Signs shall not exceed six (6) feet in height, and shall not be illuminated in any way.



9. Bulletin boards not over thirty-two (32) square feet in area, for public, charitable, or religious institutions, which are located on the premises of, said institutions. The bulletin board shall not exceed 12 feet in height, and illumination, if any, shall be by constant light.
10. Professional name plates, or occupational signs, and home occupation signs not exceeding two (2) square foot in area, wall-mounted and unlit, adjacent to the main entrance of the building.

K. Prohibited Signs: The following type of signs are expressly prohibited in all Zoning Districts:

1. Animated signs;
2. Any sign erected in a location prohibited by this Chapter.
3. Any sign erected in a public easement or right-of-way;
4. Any sign erected so as to prevent free ingress to or egress from any door or window, or any other exit-way required by the building or fire codes of the County;
5. Any sign attached to any public utility pole, tree, fire hydrant, curb, sidewalk or other surface located on public property;
6. Any sign erected in any location where, by reason of its location, will obstruct the view of any authorized traffic sign, signal, or other traffic control device. Nor may any sign, by reason of its shape, position or color interfere with or be confused with any authorized traffic signal sign or device. Further, no sign shall be erected in a location where it will obstruct vision of the public right-of-way to a vehicle operator during ingress to, egress from, or while traveling on public right-of-way;
7. Any on-premises sign advertising an article or product not manufactured, assembled, processed, repaired or sold or a service not rendered upon the premises upon which the sign is located, and not located or constructed such as to qualify as a “standard outdoor advertising structure or billboard”;
8. Any sign or advertising device such as banners and pennants affixed on poles, wires, ropes or streamers, wind-operated devices, fluttering signs, pinwheels, streamers, banners, street banners, and “A” frames or other portable signs of like nature, and other similar contraptions or techniques except that these devices may be used for a period of thirty (30) days in any twelve-month period by permit from the Department and must be kept in a safe and orderly fashion;
9. Vehicle signs, except for standard advertising or identification markings, which are painted on or permanently, attached to the side of a business or commercial vehicle. Such business or commercial vehicles shall not be parked in any required parking space, nor in any excess parking space adjacent to a street right-of-way;
10. Off-site or off-premises signs except as provided in this Section;
11. Flashing signs including electronic message centers; however, not including digital time and temperature signs, involving only that information and no further or additional information of an advertising nature. Such time/temperature signs shall be constant or steady in nature, and shall not grow, melt, x-ray, up or down scroll, write on, travel, inverse, roll, twinkle, snow or present pictorials or other animation;

12. Portable signs, signs not permanently affixed to the ground;
13. Signs which contain characters, or cartoons, or contain statements, words, or pictures of any obscene, indecent, prurient, or immoral character.

#### 8.4 General Sign Requirements

GS-02: Residential and Agricultural Signage: One, Two, Multi-Family Residential, and Agricultural Signs must comply with the General Sign Standards in Section 8.3 of this Chapter. The allowable signage includes all exempt signs in Section 8.3, GS-01,J.

##### A. Allowable Signs:

1. Identification Signs: One identification sign may be erected on each perimeter street frontage of a multi-family development, manufactured/mobile home park, single-family subdivision, or permitted non-residential uses, including Special Exceptions. The sign shall not be permitted to exceed thirty-two (32) square feet of display surface area. The sign shall not exceed twelve (12) feet in height, and illumination, if any, shall be by a constant light. Additional or Multiple signs may be permitted by the Executive Committee for one or more entrances.
2. Church, Public or Semi-Public Buildings, or Public Park Identification Sign: Not more than one sign per street frontage not exceeding fifty (50) square feet in size per face. The sign shall not exceed twelve (12) feet in height, and illumination, if any, shall be by constant light.
3. Construction Sign: During the period of construction, a temporary sign advertising the construction of improvements on the premises, may be erected on each perimeter street of frontage of the development. The sign shall not exceed thirty-two (32) square feet in surface area, or twelve (12) feet in height, and illumination, if any, shall be by constant light.
4. Directional Signs: Two signs per entry/exit not exceeding six (6) square feet in size per face.
5. Memorial or Tablet Signs: One sign not exceeding six (6) square feet in size per face unless such signs are installed by the Federal, State, County, or City government or agencies thereof.
6. Property Real Estate Signs: One sign per lot frontage not exceeding six (6) square feet in size per face.
7. Special Displays and Other Temporary Signs: See Section 8.3,GS-04 of this Chapter.
8. Informational signs not exceeding two (2) square feet in size per side nor a height of four (4) feet from the ground which identify the occupants, occupation, address, and/or information. Examples of permitted informational signs generally include: privacy sign, trespassing sign, seed sign, etc.
9. Non-illuminated Home Occupation wall sign not exceeding two (2) square feet wall-mounted on the dwelling, and; if allowed with a Special Exception, one (1) non-illuminated yard sign not exceeding six (6) square feet in size per face.

##### B. Location and Height:

1. No sign placed upon the ground shall be located closer than ten (10) feet to any property line

and shall meet the sight triangle requirements of Chapter 5 of this Ordinance.

2. No sign attached to the wall of a building or other structure shall extend above the roof line of that building or structure.
3. For residential signs without a specific height standard, the sign(s) shall not exceed eight (8) feet in height from the surrounding grade to the highest point of the sign.
4. Directional Signs: No sign shall exceed three and one-half (3.5) feet above the elevation of the adjacent driveway at the point where it meets the road right-of-way.
5. Memorial or Tablet Signs: No sign shall exceed six (6) feet in height from the surrounding grade to the highest point on the sign.
6. Property Real Estate Signs: No sign shall exceed six (6) feet in height from the surrounding grade to the highest point on the sign.

C. Other Requirements:

1. Mobile Construction Signs: Signs identifying mechanics, painters, architects, engineers, and similar artisans and workmen which are attached to or on trailers on the site of construction shall be permitted provided that upon completion of the project the trailer must be removed within one week. These trailers shall not be located closer than ten (10) feet to the property line if such signs are visible from the street.
2. Residential Construction Project Sign:
  - a. On-Site Sign: Such sign shall be removed either at such time as the permanent subdivision entrance sign is erected, or when eighty percent (80%) of the lots and/or dwelling units have been sold, whichever circumstances occurs first.
  - b. Off-Site Signs: Such signs shall be removed either within two (2) years from the date of issuance of the sign permit, or when eighty percent (80%) of the lots and/or dwelling units have been sold, whichever circumstance occurs first.
3. Property Real Estate Signs: Shall be removed within ten (10) days following the date of closing or lease initiation.
4. Directional Sign: May contain the street address and/or name of the business center or the name of the use of the building, trademark, logo, or similar matter, provided that not more than fifty percent (50%) of the sign area is used for this purpose.

GS-03: Business and Industrial Signage: Commercial Signs must comply with the General Sign Standards in Section 8.3 of this Chapter. The allowable signage includes all exempt signs in Section 8.3, J.

A. Allowable Signs:

1. Pole Signs: One (1) pole sign per lot and shall not have an aggregate (total from each side combined) surface area greater than three (3) square feet for each foot of width of the principal structure on the premises. Total pole signage shall not exceed three hundred (300) square feet.
2. Ground-Mounted Signs: One (1) ground mounted sign per lot may be substituted for the allowable pole sign. Same surface area requirements as for pole signs.

3. Attached Signs: One attached sign for each side of the building not exceeding ten percent (10%) of the total square footage of the building face upon which it is placed.
4. Window/Door Signs: Shall not cover more than fifty percent (50%) of the total window area or door to which they are applied.
5. Under Canopy Sign: One sign not exceeding two (2) square feet in size displaying the name, occupation, address and/or service located upon the premises.
6. Directories: For buildings with multiple occupancies, a directory sign may be substituted in lieu of the allowable pole sign subject to review and approval by the Board of Zoning Appeals as to height and overall square footage.

B. Location and Height:

1. Pole Signs: Such signs shall not exceed thirty (30) feet in height from the surrounding grade to the highest point on the sign and the overhand shall not be located any closer than one (1) foot to any property line. Such signs shall meet the sight triangle requirements of Chapter 5.
2. Ground-Mounted Sign: Such signs shall not exceed six (6) feet in height from the surrounding grade to the highest point on the sign and shall be located no closer than one (1) foot to any property line. Such signs shall meet the sight triangle requirements of Chapter 5.
3. Attached Signs: Shall be face mounted on the building wall, projecting no more than twelve (12) inches from the face of the building. Such signs shall not project above the parapet wall, mansard, or other roof line, shall maintain a clearance of eight (8) feet above the ground or pavement, and shall be recessed where involving a pitched roof location.
4. Window/Door Signs: Such signs may be attached to either the interior or exterior of a window or glass door and shall be maintained in good repair.
5. Under Canopy Signs: Such signs may be attached to the building or canopy and shall maintain a head clearance of eight (8) feet.
6. Directories: As approved by the Board of Zoning Appeals.

C. Other Requirements:

1. Canopy Use: An attached or detached sign may be used as an attached and/or pole sign. However, the canopy's size does not add to the width or face of the building when calculating for allowable signage.
2. Portable Signs: The use of portable signs for the advertisement of cigarettes, food, or other sundry items are specifically prohibited.
3. Changeable Copy Signs: A manual changeable copy sign may be incorporated as an integral part of the permanent pole, ground, or attached signage permitted upon the property.

GS-04: Special Displays and Other Temporary Signs: Banners and Pennants are a permitted use. However, the Executive Director of the Planning Department can require removal of such Banners and Pennants if they are not kept in a safe and orderly fashion. The following temporary signs may be approved by the Executive Director for up to a thirty (30) day time period. Such signs may be extended beyond the thirty (30) day time period, but only upon review and approval by the Board of Zoning Appeals as a Special Exception.

- A. Signs announcing Openings.
- B. Seasonal or special occasion signs such as special events and special business hours.
- C. Yard signs, such as “Siding by ...”.
- D. Subdivision Directional Signs not exceeding three (3) square feet in size per face.
- E. All other temporary signs not specifically referenced in this Ordinance.
- F. Portable signs, signs not permanently affixed to the ground.

GS-05: Standard Outdoor Advertising Structure (Billboards):

A. Where Permitted: Advertising signs complying with all the requirements of this Ordinance shall only be allowed if they are located on U.S. Highway 24, U.S. Highway 30, U.S. Highway 33 or any State Road. Additionally, they are required to be in the GC General Commercial, IPM Industrial Park/Manufacturing, and IN Industrial zoning districts.

B. Area:

1. On U.S. Highway 24 & 30: The maximum area for any one sign shall not exceed six hundred seventy-two (672) square feet in size per face excluding extensions and embellishments, with a maximum height of fourteen (14) feet and a maximum width of forty-eight (48) feet inclusive of border and trim, but excluding the base, apron, supports, and other structural members.
2. On U.S. Highway 33 or any State Road: The maximum area for one sign shall not exceed three hundred (300) square feet per face.
3. On U.S. Highway 24 & 30: Extensions to the top of advertising signs are permitted. However, in no case shall any extension exceed ninety-six (96) square feet in total feet in total area or extend more than five and one-half (5 ½) feet in height above top of said sign. Other extensions are permitted as follows:
  - a. Side Extension: Two (2) feet on each side.
  - b. Bottom Extension: One (1) foot.
  - c. Embellishments to advertising signs shall not exceed one (1) foot out from the facing of said sign.
4. The maximum size limitations shall apply to each side of a sign structure, and signs may be placed back-to-back or in V-Type construction with not more than three side-by-side displays to each facing, but such sign structures shall be considered as one sign. A group of not more than two (2) advertising signs shall be permitted on one sign structure. However, there shall be no vertical stacking signs.

C. Height:

1. On U.S. Highway 24 & 30: The maximum height shall not exceed fifty (50) feet from the highest point on the sign to surrounding grade or street level, whichever is higher.
2. On U.S. Highway 33 or any State Road: The maximum height shall not exceed thirty-five (35) feet from the highest point on the sign to surrounding grade or street level, whichever is higher.

D. Location:

1. No such sign shall be erected within one thousand (1,000) lineal feet of an existing sign on the same side of the road.
2. No such sign shall be located within five hundred (500) lineal feet of a residential zoning district along the street on which the sign is intended to be located.
3. No sign shall be located in such a manner as to obstruct or otherwise physically interfere with the effectiveness of an official traffic sign, signal or device, or obstruct or physically interfere with a motor vehicle operator's view of approaching, merging, or intersecting traffic.
4. No such sign shall be placed closer than five hundred (500) feet to an intersection with a Limited Access Highway and measured from the nearest edge of the right-of-way. No such sign shall be so located to obstruct the vision of traffic using entrance ways, driveways, or any public road intersection.
5. On U.S. Highway 24 & 30: The minimum front yard setback for such signs shall be a minimum of fifty (50) feet from any public right-of-way and/or private roadway easement.  
  
On U.S. Highway 33 or any State Road: The minimum front yard setback for such signs shall be a minimum of twenty (20) feet from any public right-of-way and/or private roadway easement.
6. No sign shall be located on any public or private utility easement, road, drainage easement or railroad right-of-way.
7. All lineal distances required by this section shall be measured from the nearest outside edge of the subject sign, whether a support, structural member, or the sign surface itself to the nearest outside edge of the corresponding sign, building, right-of-way or easement involved.

E. Plans Required: An application to erect such a sign shall be accompanied by the following:

1. A set of plans, to scale, approved and sealed by a licensed engineer in the State of Indiana, providing all necessary construction and electrical details of the sign and sign structure, including height.
2. A site plan, to scale containing:
  - a. The proposed location of the sign upon the property.
  - b. The distance from the proposed sign location to any buildings upon the property, and adjoining road right-of-way lines, and driveway entrances.
  - c. The distance from the proposed sign location to the next nearest billboard sign on either side of the road in either direction.
  - d. The distance from the proposed sign location to the nearest road intersection in either direction.
3. A representation of the proposed sign, to scale, including the width and length of the sign faces, and height from surrounding grade.

F. Construction Specifications: Henceforth, any such sign erected under this Ordinance shall be a single pedestal type, constructed of non-flammable material, excluding wood. Construction of the sign and material specifications shall comply with the following Sections of the Indiana Department of Highways Standard Specifications: 802, 803, 909.14, 909.19, and 912.10, as applicable, and must meet the structural requirements of the City's Building Code.

G. Prohibited Outdoor Advertising Structure Signage:

1. Roof-mounted signs or signs affixed directly to the side of any building.
2. Flashing signs, including automatic changing signs such as time, temperature, and date signs as well as electronically controlled message centers.
3. Fluttering signs, pinwheels, pennants, streamers and banners.
4. Moving signs or swinging signs.
5. Signs which contain characters, cartoons or statements, words, or pictures of any obscene, indecent, prurient or immoral character.
6. Signs which contain or are an imitation of any official traffic sign or signal, or which are of a size, location, movement, content, coloring or manner of illumination which may be confused with or constructed as a traffic control device, or which may hide from view any traffic or street sign or signal.
7. Any sign constructed or located in such a manner such that it becomes an immediate hazard or danger to persons or property because of being in an unsafe condition, or which obstructs any window, door, or fire escape of an adjacent building. Such signs will be subject to immediate removal by the Building Commissioner or his designee, without notice, at the expense of the property owners.

## **Chapter Nine**

### **Nonconforming Structures, Lots and Uses**



## Chapter Nine

# Nonconforming Structures, Lots, and Uses

### 9.1 Intent

Upon adoption of this Ordinance and Zoning Map, some buildings, structures, lots and uses may no longer conform to the regulations of the Zoning District where they are located. For this reason, this Article has been generated to provide the rules, policies, and regulations that apply to these buildings, structures, lots, and uses referred to as Legal Nonconforming.

### 9.2 Distinction Between Illegal Nonconforming and Legal Nonconforming

A building, structure, or lot, which was constructed or is being used without an approved Building Permit, Location Improvement Permit, or approval from the Board of Zoning Appeals or Plan Commission, is considered illegal nonconforming. All illegal nonconforming properties shall be subject to actions and penalties allowed by this Ordinance and all other applicable County law and shall be altered to conform to all applicable standards and regulations of this Ordinance. Further, an illegal nonconforming building, structure, lot or use is created at the fault of the owner, tenant or property manager.

Legal Nonconforming differs from Illegal Nonconforming in that the reason for the nonconformance is caused by the enactment of a Zoning Ordinance or a change to the Zoning Ordinance. The building, structure, lot or use has not changed, but due to the enactment of a Zoning Ordinance or a change in the Ordinance, the property no longer conforms to the policies and standards of the Zoning District in which the property is located. When this situation occurs, the property is deemed Legal Nonconforming or another term commonly used is “Grandfathered”.

### 9.3 Nonconforming Buildings and Structures

Any continuously occupied, lawfully established structure or building prior to the effective date of this Ordinance, or its subsequent amendments that no longer meets the development standards due to reasons stated below shall be deemed a Legal Nonconforming Building(s) or Structure(s).

Legal Nonconforming Building(s) or Structure(s) no longer meet one or more of the following development standards of this Ordinance:

- a. Front, Side and Rear Yard Setbacks,
- b. Maximum Lot Coverage,
- c. Minimum Main Floor Area,
- d. Minimum Finished Floor Area,
- e. Height,
- f. Bufferyard,
- g. Parking,
- h. Accessory Structures/Buildings, and
- i. Any other provision of this Ordinance that is applicable to the building or structure.

A legal nonconforming building or structure may continue provided that it remains the same or fits within the below described tolerances:

- A. Any legal nonconforming building(s) or structures(s) shall not be enlarged or altered in a manner that increases its nonconformity but any building(s) or structures(s) or portion thereof may be altered to decrease its nonconformity.
- B. Any legal nonconforming building(s) or structure(s) which is damaged or destroyed by fire, flood, explosion, or other casualty may be reconstructed and used as before if such reconstruction is performed within twelve (12) months of that casualty, and if the restored structure has no greater coverage or square footage than before that casualty.

- C. If a building or structure is moved for any reason, for any distance, it shall thereafter conform to the provisions of this Ordinance.

#### **9.4 Nonconforming Lots of Record**

All legally established and recorded lots prior to the effective date of this Ordinance, or its subsequent amendments, that no longer meet the lot standards listed below shall be deemed a Legal Nonconforming Lot of Record.

A Legal Nonconforming Lot of Record no longer meets one or more of the following lot standards of this Ordinance:

- a. Lot Area,
- b. Lot Width,
- c. Lot Depth,
- d. Lot Frontage, and
- e. Any other provision of this Ordinance that is applicable to Lots.

A Legal Nonconforming Lot of Record may be built upon only if the proposed use is permitted and all development standards of the applicable zoning district of this Ordinance are met.

#### **9.5 Nonconforming Uses of Structures, Land, or Structures and Land in Combination**

Any continuous, lawful use of structures, land, or structures and land in combination established prior to the effective date of this Ordinance or its subsequent amendments that is no longer a permitted use in the district where it is located shall be deemed a Legal Nonconforming Use. A legal nonconforming use may continue provided that it remains otherwise lawful, subject to the following conditions:

- A. No existing structure devoted to a legal nonconforming use shall be enlarged, expanded, increased, extended, constructed, reconstructed, moved, or structurally altered except as to change the use of the structure to a use permitted in the district in which it is located or as otherwise specified in this Chapter.
- B. No building or structure shall be constructed in connection with an existing legal nonconforming use of land.
- C. Any legal nonconforming use or a structure may be extended throughout any parts of a building which were plainly arranged or designed for such use at the effective date of this Ordinance or its subsequent amendments, but no such use shall be extended to occupy any land outside the building.
- D. In the case of a legal nonconforming use of structure, the structure may be expanded not to exceed twenty percent (20%) of the floor area as of the date of adoption of this Ordinance. The expansion shall conform to all applicable development standards, unless a variance of developmental standards is received from the Board of Zoning Appeals. If the structure is a commercial or industrial use in a residential district, Section 5.10 shall be used for parking standards.
- E. If no structural alterations are made, a legal nonconforming use of structure or structure and land in combination may be changed to another legal nonconforming use, provided that the zoning administrator shall make specific findings that the proposed use is equally appropriate or more appropriate to the district than the existing legal conforming use. With the exception that if the new use requires more parking or loading than the previous use, such new use will comply with the requirements of Section 5.10 and 5.11 of this Ordinance, unless a variance from development standards is granted by the Board of Zoning Appeals.
- F. If a legal nonconforming use is discontinued or abandoned for two (2) years, except when government action impedes access to the premises, any subsequent use of such land, structure or land and structure shall conform to the provisions of this Ordinance.

- G. When a legal nonconforming use is superceded by a permitted use, it shall thereafter conform to regulations of the district; the legal nonconforming use may not thereafter be resumed.

**9.6 Repairs and Maintenance**

The following applies to legal nonconforming structures or buildings, and legal nonconforming uses of structures, or structures and land in combination:

- A. Work may be done for ordinary repairs or replacement of walls, heating, fixtures, wiring or plumbing; under the condition that the square footage existing when the structure became nonconforming shall not be increased.
- B. If a structure or portion of a structure were to become unsafe or condemned due to lack of repairs or maintenance, and is declared by an authorized official to be unsafe or condemned due to physical condition; the building or structure shall be restored, repaired or rebuilt within six (6) months of the declaration. If the improvements have not been made within the six (6) months, all future improvements must conform to all standards and regulations within this ordinance.
- C. If a building or structure becomes unsafe or unlawful due to physical condition and is razed, the building or structure shall be rebuilt in conformity with the district in which it is located.
- D. Nothing in this Section shall be deemed to prevent the strengthening, repairing, or restoring to a safe condition of any building or structure or part thereof declared to be unsafe by any official charged with protecting public safety upon order of such official.

# **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 to 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 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.

## **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.
- 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" 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 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.

### Evidence of Notice

Affidavit of notice to adjacent property owners must be notarized to the considered evidence. Certified mail receipts or 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 ensuing 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 Appendum**

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.

# **Chapter Eleven**

## **Administration**

## Chapter Eleven

# Administration

### 11.1 Administrative Officer

The Zoning Administrator in Whitley County, Indiana will have the principal responsibility for administration and enforcing or coordinating the enforcement of this Ordinance within the Plan Commission's planning jurisdiction.

### 11.2 Effect on Vacation of Zoning

Whenever any street, alley, public way, railroad right-of-way, waterway, or other similar area is vacated by proper authority, the Zoning District adjoining each side of vacated areas shall be extended automatically to the center of the vacated area. All areas included in the vacation shall then and henceforth be subject to all appropriate regulations of the extended Zoning Districts. In the event of a partial vacation, the adjoining Zoning District, or Zoning District nearest the portion vacated, shall be extended automatically to include all of the vacated area. Any disputes as to the exact zoning district boundaries shall be determined by the Zoning Administrator. Appeals of the Zoning Administrator's determination may be brought before the Board of Zoning Appeals.

### 11.3 Summary of Powers and Duties of the County Commissioners

The powers and duties of the County Commissioners are described below. Duties should be interpreted as activities that are obligations. Powers should be interpreted as activities that are optional to be initiated.

#### A. County Commissioners' Duties:

1. Adopt, reject or amend the Comprehensive Plan, Strategic Plans, Zoning Ordinance, or Subdivision Control Ordinance that have been certified and submitted by the Plan Commission.
2. Adopt, reject or amend proposals to amend or partially repeal the text of the Comprehensive Plan, Strategic Plans, Zoning Ordinance, or Subdivision Control Ordinance that has been certified and submitted by the Plan Commission.
3. Adopt, reject or amend proposals for a Official Zoning Map that has been certified and submitted by the Plan Commission.
4. Adopt, reject or amend proposals for a Planned Development District that have been certified and submitted by the Plan Commission.
5. Adopt, reject or amend proposals to adopt or amend a Fee Schedule that have been certified and submitted by the Plan Commission.
6. All duties as permitted by Indiana State Code.

#### B. County Commissioners' Powers:

1. Initiate amendments to the text of the Comprehensive Plan, Strategic Plans, Zoning Ordinance, or Subdivision Control Ordinance.
2. Initiate amendments to the Official Zoning Map.
3. All powers as permitted by Indiana State Code.

#### **11.4 Summary of Powers and Duties of the Plan Commission**

The powers and duties of the Plan Commission are described below. Duties should be interpreted as activities that are obligations. Powers should be interpreted as activities that are optional to be initiated.

##### **A. Plan Commission Duties:**

1. Adopt and maintain a County Commissioners approved Comprehensive Plan, Zoning Ordinance and Subdivision Control Ordinance as authorized under Indiana State Law.
2. Adopt and maintain rules and procedures for holding meetings, holding public hearings, and administrating and enforcing the Comprehensive Plan, Zoning Ordinance, and Subdivision Control Ordinance.
3. Maintain complete records of all meetings, hearings, correspondences, and affairs of the Plan Commission.
4. Record and file bonds and contracts for development and land use functions.
5. Publish and make available to the public all plans, ordinances, and other related material that are the responsibility of the Plan Commission.
6. Adopt and maintain a permitted process and seal used to certify official or approved documents.
7. Certify and submit recommendations to the County Commissioners including new versions of and revisions to the Comprehensive plan, Zoning Ordinance, Subdivision Control Ordinance, and Official Zoning Map.
8. Certify and submit recommendations to the County Commissioners for adopting a Planned Development District.
9. Maintain monetary and fiscal records of the Plan Commission.
10. Prepare and submit an annual budget to the County Council.
11. Approve or deny plats or replats of Subdivisions.
12. Approve or deny development plans and amendments to development plans.
13. Assign street numbers to new lots and structures, renumber lots and structures, assign street names, and approve or deny proposed street names in new developments.
14. Establish and maintain a County Commissioner approved Fee Schedule that assigns a fee to permits, processes, and official actions of the Plan Commission in order to defray the administrative costs of such duties and powers.
15. Enforce regulations and procedures of the Comprehensive Plan, Zoning Ordinance, and Subdivision Control Ordinance to the extent of the local Resolutions, Ordinances, and State of Indiana Law.
16. All duties as permitted by Indiana State Code.

##### **B. Plan Commission Powers:**

1. Delegate to a committee or person the role as Zoning Administrator.
2. Review job descriptions for support staff to the Plan Commission.

3. Recommend the compensation for the Plan Commission members as provided within the annual budget of the Plan Commission.
4. Establish advisory committees as necessary made up of County officials and the general public.
5. Establish an executive committee.
6. Seek funding assistance through grant programs as necessary.
7. Distribute copies or summaries of the Comprehensive Plan, Zoning Ordinance, or Subdivision Control Ordinance to the general public and development community.
8. All powers as permitted by Indiana State Code.

### **11.5 Summary of Powers and Duties of the Board of Zoning Appeals**

The powers and duties of the Board of Zoning Appeals are described below. Duties should be interpreted as activities that are obligations. Powers should be interpreted as activities that are optional to be initiated.

#### **A. Board of Zoning Appeals Duties:**

1. Review and hear appeals of decisions made under this Ordinance by the Zoning Administrator, Plan Commission Staff, Building Commissioner, Committees or Administrative Boards or other body except Plan Commission.
2. Review and hear appeals of decisions in relation to the enforcement of this Ordinance by an Administrative Board or other body except Plan Commission.
3. Review, hear, and approve or deny all petitions for special exceptions based on the provisions of this ordinance and Indiana State Code.
4. Review, hear, and approve or deny all petitions for variances from development standards (such as height, bulk, or area) of this Ordinance.
5. Review, hear, and approve or deny all petitions for variances of use regulations in this Ordinance.
6. All duties as permitted by Indiana State Code.

#### **B. Board of Zoning Appeals Powers:**

1. Review job descriptions for support staff (as necessary).
2. Recommend the compensation for BZA members as provided within the annual budget of the Board of Zoning Appeals.
3. All powers as permitted by Indiana State Code.

# **Chapter Twelve**

## **Processes, Permits and Fees**

## Chapter Twelve

# Processes, Permits, and Fees

### 12.1 Types of Petitions

Whitley County hereby requires that an application and filing fee be submitted for the following petitions:

1. Administrative Appeals
2. Improvement Location Permit
3. Special Exception
4. Subdivision
5. Variance
6. Zoning Map Amendments

All applications may be filed through the Zoning Administrator's Office with applicable fees being paid at the time of filing the application. A Docket Number will be assigned.

### 12.2 Processes per Type of Petition (See 10.11)

A. Administrative Appeal: The following procedure applies to Administrative Appeals.

1. Submit a written statement specifying the grounds for the appeal and any applicable supporting material within thirty (30) days of the decision alleged to be in error.
2. The administrative official or body from which the appeal is taken shall transmit to the Board of Zoning Appeals all documents, plans and papers constituting the record of action from which the appeal is taken.
3. Administrative appeals require public notice in the newspaper per IC 5-3-1-2 and 5-3-1-4.
4. At their next regularly scheduled public meeting, the Board shall then review:
  - a. The written statement and supportive material by the petitioner.
  - b. The record of action supplied by the administrative official or body from which the appeal is taken.
  - c. Testimony of the petitioner.
  - d. Testimony of the administrative official or body from which the appeal is taken, and
  - e. Testimony by members of the public.

B. Improvement Location Permit: The following procedure applies to Improvement Location Permit Applications.

1. **Permits Required:** No building, structure, or major infrastructure shall be erected, moved, added to or demolished, without an Improvement Location Permit issued by the Zoning Administrator. No Improvement Location Permit shall be issued by the Zoning Administrator unless the project is in conformity with the provisions of this Ordinance. Changes of use or expansions of use also require an Improvement Location Permit.



2. Application for an Improvement Location Permit: All applications for Improvement Location Permits shall be accompanied by:
  - a. the common address for the subject property and parcel number (if applicable),
  - b. a site location map showing the actual dimensions and shape of the lot to be built upon (Certificate of Survey is preferred),
  - c. the exact locations on the lot of all buildings, wells, and septic systems already existing, if any,
  - d. the location and dimensions of the proposed building or alteration,
  - e. building setback distances from all property lines, and from existing and proposed road right-of-ways,
  - f. location of floodplain boundaries or wetlands (if applicable), and
  - g. drainage tile, ditches or outlets.
3. The application shall also include such other information as lawfully required by the Planning Commission or Zoning Administrator to determine conformance with and provide for the enforcement of this ordinance including:
  - a. elevations of the existing or proposed building or alteration,
  - b. detailed description of the existing or proposed uses of the building and land,
  - c. the number dwelling units, or rental units the building is designed to accommodate,
  - d. natural, physical or hazardous conditions existing on the lot, and
  - e. landscape plan,
  - f. lighting plan,
  - g. drainage plan.
4. The approved plans and application materials shall be retained by the Commission or Zoning Administrator.
5. Expiration of Permits:
  - a. Initiation of Work: If the work described in any Improvement Location Permit has not begun within twelve (12) months from the date of issuance, said permit shall expire, no written notice shall be given to the persons affected.
  - b. Completion of Work: If the work described in the Improvement Location Permit has not shown any meaningful or good faith progress, within a twelve (12) month period, said permit shall expire, no written notice of expiration shall be given to the persons affected. Work shall not proceed until a new Improvement Location Permit has been obtained.
  - c. Extensions of the Improvement Location Permit may be granted at the discretion of the Zoning Administrator.

6. Construction According to Permits and Permit Application: Improvement Location Permits issued on the basis of plans and applications only authorize the use, arrangement, and construction set forth in such approved plans and applications. Any other use, arrangement, or construction not authorized shall be deemed as a violation of this ordinance and subject to an order of removal, mitigation, or penalty fees.
7. Whitley County hereby requires that an Improvement Location Permit be obtained for the following:
  - a. all residential dwellings,
  - b. placement and replacement of manufactured or mobile homes,
  - c. accessory structures
  - d. signs,
  - e. swimming pools,
  - f. additions to all structures,
  - g. demolition,
  - h. all commercial, industrial, and institutional buildings,
  - i. structures other than buildings (including towers),
  - j. parking lot construction or alteration,
  - k. ponds or lakes
  - l. mineral extraction,
  - m. telecommunications facilities,
  - n. any exterior construction that adds to or alters the height of the existing structure, and
  - o. any change of use or expansion of use of the property.

C. Special Exceptions: The following procedure applies to Special Exception Petitions.

1. File a Special Exception application by submitting the required supportive information and paying the application fee.
2. The Board of Zoning Appeals will then review the special exception application and required supportive information, receive testimony of the petitioner and the public at their next regularly scheduled public meeting. The Board may approve, deny or table the petition. (See Section 10.09) The Board may add conditions to an approval.

D. Subdivisions: The following procedure applies to Subdivision Petitions.

1. File a Subdivision application by submitting the required supportive information and paying the application fee.
2. The Plan Commission will then review the subdivision application and required supportive information, receive testimony of the petitioner and the public at their next regularly scheduled public meeting. The Commission may approve, deny or table the petition. The Commission may add conditions to an approval.

E. Variances: The following procedure applies to Variance Petitions.

1. File a Variance application by submitting the required supportive information and paying the application fee.
2. The Board of Zoning Appeals will then review the variance application and required supportive information, receive testimony of the petitioner and the public at their next regularly scheduled public meeting. The Board may approve, deny or table the petition. The Board may add conditions to an approval. Approvals shall only be granted upon finding of fact that there is a hardship.
3. The intensity of the variance may be reduced at the public hearing if approved by the Board.

F. Zoning Map Amendments: The following procedure applies to Zoning Map Amendment Petitions (zoning map/rezoning).

1. File a Zoning Map Amendment application by submitting the required supportive information and paying the application fee.
2. The Plan Commission will then review the application and required supportive information, receive testimony of the petitioner and the public at their next regularly scheduled public meeting. The Commission may recommend approval, recommend denial, table the petition or make no recommendation.
3. If the petition has not been continued, it will then be forwarded to County Commissioners for review. The County Commissioners will then review the application, required supportive material and Plan Commission recommendation. The Commissioners may approve, deny, or table the petition.
4. Upon reviewing a zoning map amendment the following should be considered:
  - a. The most recently adopted Comprehensive Plan.
  - b. Current conditions and character of structures and uses in each district.
  - c. The most desirable use for which the land in each district is adapted.
  - d. The conservation of property values throughout the jurisdiction.
  - e. Responsible development and growth.
  - f. The public health, safety and welfare.

### **12.3 Schedule of Fees**

The County Commissioners shall maintain an official Fees Schedule for permits and processes outlined in this Ordinance. Penalties, collection procedures for permits and penalties, appeals process, and other petition processes pertaining to this Ordinance are a part of this, the Zoning Ordinance. The Fees Schedule shall be available to the public in the office of the Zoning Administrator. The Fees Schedule may be amended by a recommendation submitted to the County Commissioners by the Joint Advisory Board followed by the County Commissioners approving said amendments by resolution.

Until all applicable fees, charges, and expenses have been paid in full, no final action shall be taken on any permit application, appeal, or petition.

Any person or persons who shall initiate construction of a structure or change of use of a structure or property, prior to obtaining a Location Improvement Permit or any other required permit, may be subject to fines and penalties of up to \$500.00 per day.

# **Chapter Thirteen**

## **Enforcement and Penalties**

## Chapter Thirteen

# Enforcement and Penalties

### 13.1 Authority

The Plan Commission, Board of Zoning Appeals, County Commissioners, and/or Zoning Administrator are designated to enforce the provisions, regulations, and intent of this Ordinance. All remedies and enforcement shall comply with the powers set forth in IC 36-7-4-1000 et. al. and all other applicable State law.

### 13.2 Violations

Complaints made pertaining to the Zoning Ordinance shall be investigated by the Zoning Administrator. Also, any suspected violations by the Plan Commission, Board of Zoning Appeals, County Commissioners, or Zoning Administrator shall be investigated. Action may or may not be taken depending on the findings. The degree of action will be to the discretion of the investigating person(s) and should reflect what is warranted by the violation.

### 13.3 Inspection of Property

Investigations of property may be done so by the Zoning Administrator either from a right-of-way without permission of the property owner, or adjacent property (with permission), or from the property suspected of a violation once the inspector has presented sufficient evidence of their authorization and described the purpose of the inspection to the owner, tenant, or occupant at the time of the inspection.

In the event that the investigator(s) is (are) denied entry, the Plan Commission, Board of Zoning Appeals, County Commissioners or Zoning Administrator may apply to the court of jurisdiction to invoke legal, applicable, or special remedy for the enforcement of this Ordinance or any applicable ordinances adopted under State code. The application shall include the purpose, violation(s) suspected, property address, owner's name if available, and all relevant facts. Additional information may be necessary as requested by the court.

Pursuant to applicable regulations the owner, tenant, or occupant shall permit entry by the Zoning Administrator.

### 13.4 Responsibility of Violations

The owner, tenant, or occupant of any property of building, or part thereof, shall be responsible for the violation. Architects, builders, developers, or agents thereof may also be found responsible for the violation if evidence of their involvement or negligence is found. Ultimately, if fault is not clearly found in whole or in part in persons other than the owner, the owner shall be held responsible in whole or in part as warranted by the Plan Commission, Board of Zoning Appeals, County Commissioners, or Zoning Administrator.

### 13.5 Liability

A structure that is raised or converted, or land used in violation of this Ordinance or its subsequent amendments may be deemed a common nuisance and the owner or possessor of the structure, or land is liable for said nuisance.

### 13.6 Violations During the Construction/Building Process

The Plan Commission and/or Zoning Administrator may place a Stop-Work-Order or Violation Notice on any land/property improvement process. Stop-Work-Orders shall be issued by written letter which shall state the violation and that work or illegal activity must stop immediately until the matter is resolved. This letter shall be posted in a conspicuous place or be delivered/mailed to the owner, developer, property manager, tenant, or occupant. The Plan Commission or Zoning Administrator must meet with the person(s) served the Stop-Work-Order notice within seven (7) days of such a request to meet. A Memorandum of Agreement shall be drafted stating the conditions in which construction or action may be resumed. This Memorandum

of Agreement must be signed by the owner, developer, property manager, tenant, or occupant that has caused or is responsible for the violation and the Zoning Administrator or Plan Commission President.

Reasons for a Stop-Work-Order include:

- A. Not complying with Development Standards and/or any regulations of the Zoning or Subdivision Control Ordinance.
- B. Not obtaining an Improvement Location Permit.
- C. Not meeting the conditions or commitments of a Special Exception, Variance, or building permit.
- D. Not meeting the conditions of Development Commitments, Development Plans, Detail Plans, or covenants, which are enforceable by the Plan Commission.
- E. Not obtaining any other permit necessary for site/property improvement as called out in local code, Zoning Ordinance or Subdivision Control Ordinance.
- F. Illegal use or expansion of use of building/structures or building/structures and land in combination.

### **13.7 Types of Violations**

The following items shall be deemed civil zoning violations, enforceable by the Plan Commission, Board of Zoning Appeals, County Commissioners and/or Zoning Administrator. Penalties may be imposed based on the provisions set forth in this Article.

- A. The placement or erection of a primary structure, secondary structure, sign, structures or any other element determined by the Plan Commission or Zoning Administrator to not conform to the provisions or explicit intent of the Zoning Ordinance and that has not specifically been granted.
- B. The maintenance of a primary structure, secondary structure, sign, accessory structure, or any other element determined by the Plan Commission or Zoning Administrator to not conform to the provisions or explicit intent of the Zoning Ordinance and that has not specifically been granted.
- C. Failure to obtain an Improvement Location Permit when required.
- D. Conducting a use or uses that do not comply with the provisions or explicit intent of the Zoning Ordinance, Subdivision Control Ordinance, Sign Ordinance, or Floodplain regulations, and which have not specifically been granted.
- E. Any failure to comply with the Development Standards and/or any regulations of the Zoning Ordinance, Subdivision Control Ordinance, Sign Ordinance, or Floodplain regulations, and Improvement Location Permit, and approved Development Plan.
- F. Proceeding with work under a Stop-Work-Order or a violation of a Memorandum of Agreement.
- G. Any failure to comply with commitments or conditions made in connection with a Rezoning, Special Exception, Development Standards, Variance, Use Variance or other similar or documentable commitment, including verbal agreements during official Plan Commission, Board of Zoning Appeals, and County Commissioners meetings.

### **13.8 Procedure for Violations**

There shall be a three-step procedure for violations of this Ordinance. These steps are as follows:

- A. The Plan Commission, Zoning Administrator or designated representative of the Plan Commission or County Commissioners shall issue a Notice of Fines and Penalties to the person(s) who have committed,

in whole or in part, a violation. The Notice of Fines and Penalties is a warning to the violator(s) that a Violation has been determined and that it must be corrected within ten (10) days of the mailed date of notice or posting of notice.

- B. The Plan Commission, Zoning Administrator or designated representative of the Plan Commission or County Commissioners shall issue a Notice of Violation to the person(s) who have committed, in whole or in part, a violation. The Notice of Violation is a citation that states the fines and penalties for the violation. The person(s) in violation will have fifteen (15) days to pay said fees and/or comply with the penalties. The person(s) in violation must correct the violation within fifteen (15) days or face additional Notices of Violation.
- C. If the person(s) in violation refuse to pay or comply with the penalties, or correct the violation, after Notice, the Plan Commission or County Commissioners may pursue court action through the court of jurisdiction. Fines and liens against the property may also be pursued until the matter is resolved.

**13.9 Fines and Penalties**

The Board of Zoning Appeals by mandatory injunction in the Circuit or Superior Court of the county against the owner or possessor of the real estate, may require the removal of a structure erected in violation of this Ordinance, or the removal of any use or condition in violation of this Ordinance. Monetary fines will be imposed for each civil violation determined upon a single inspection as follows:

First Violation	\$50.00
Additional Violations	\$50.00 each

Additional monetary fines will be imposed for each additional notification for each civil violation. Notices for violations shall be sent no sooner than fifteen days after the previous notice.

Second Notice	\$ 75.00 per civil violation
Third Notice	\$125.00 per civil violation
Fourth Notice	\$200.00 per civil violation
Each Additional Notice	\$250.00 per civil violation

No single civil violation shall exceed two thousand dollars (\$2000.00). Payment of any violation shall be made to the County Clerk who shall deposit the funds in the General Fund or Planning Commission Fund as determined by the County Commissioners. A receipt of payment must be recorded and a receipt issued to the person making payment.

**13.10 Appeals or Trials**

- A. Any person receiving a notice of violation and/or fines may appeal the violation and/or fine to the Board of Zoning Appeals or to the court of jurisdiction. A written statement from the person in violation shall be submitted to the Zoning Administrator via Certified Mail at least three (3) days prior to the date the fine is due.
- B. Fines due will be postponed until the BZA or court of jurisdiction have made a ruling as to the violation and/or fine. The person(s) in violation shall have thirty (30) days to file for a hearing with the BZA or court of jurisdiction. Also the person(s) in violation shall have a maximum of two (2) years to complete the hearing process with the BZA. Failure to meet these deadlines will reinstate all fines due by the person(s) in violation.
- C. No additional notices will be issued by the Plan Commission in the event the person(s) in violation has (have) submitted a written statement of their intention to Appeal or go to trial.

### **13.11 Enforcement, Remedies and Injunctive Relief**

- A. The Plan Commission or any enforcement official designated by this Ordinance may bring an action in the Circuit or Superior Court of the County to evoke any legal, equitable, or special remedy, for the enforcement of any ordinance or regulation created under IC 36-7-4, and its subsequent amendments this includes but is not limited to the Zoning Ordinance, Subdivision Control Ordinance, Sign Ordinance, etc. The Plan Commission or any enforcement official designated by this Ordinance may also bring an action in the Circuit or Superior Court of the County to enforce:
  - 1. All agreements between the Plan Commission or its designees, which have been recorded as covenants in connection with a subdivision plat, a development plan, or a planned development.
  - 2. All commitments made in accordance with IC 36-7-4 et al.
  - 3. All conditions imposed in accordance with IC 36-7-4 et al.
- B. The Board of Zoning Appeals, or any enforcement official designated by this Ordinance may bring action in the Circuit or Superior Court of the County to restrain a person violating IC 36-7-4 et al. or any ordinance adopted under IC 36-7-4 et al. which includes but is not limited to the Zoning Ordinance, Subdivision Control Ordinance, Sign Ordinance, etc.
- C. The Board of Zoning Appeals or any enforcement official designated by this Ordinance may also bring an action in the Circuit or Superior Court of the County for a mandatory injunction, directing the removal of a structure erected in violation of this Ordinance or applicable State code.
- D. If the Board of Zoning Appeals, or its designated enforcement official is successful in its action, the respondent shall bear all costs of the action.
- E. An action to enforce a commitment made in accordance with IC 36-7-4 et al. may be brought in the Circuit or Superior Court of the County by:
  - 1. Any person who is entitled to enforce a commitment made in accordance with 36-7-4 et al. under the rules of the Plan Commission or the Board of Zoning Appeals in force at the time the commitment was made; or
  - 2. Any other specially affected person who was designated in the commitment.



# **Chapter Fourteen**

## Definitions

## Chapter Fourteen

# Definitions

### 14.1 General:

The definitions contained in this Chapter shall be observed and applied in the interpretation of all Chapters in this Ordinance, except where the context clearly indicates otherwise. Words used in the present tense shall include the future; words used in the singular number shall include the plural and the plural the singular; words used in the masculine gender shall include the feminine.

### 14.2 Defined Words:

The following terms shall have the following meanings:

**Abandonment:** The relinquishment of property or a cessation of the use of the property for a continuous period of two (2) years by the owner with the intention neither of transferring rights to the property to another owner nor of resuming the use of the property.

**Abutting:** Having a common border with, or being separated from such a common border by a right-of-way, alley, or easement.

**Accessory Building, or Structure:** A building or structure which:

- A. is subordinate to a principal building or structure in area, intent, and/or purpose,
- B. contributes to the comfort, convenience, or necessity of occupants of the principal building, structure, or principal use,
- C. does not alter or change the character of the premises,
- D. is located on the same zoning lot as the principal building, structure, or use,
- E. conforms to the setback, height, bulk, lot coverage, and other requirements of this Ordinance unless otherwise provided for by this Ordinance, and,
- F. is not designed for human occupancy as a dwelling or commercial use.

**Accessory Use:** A structure or use that:

- A. is clearly incidental to and customarily found in connection with a principal building or use,
- B. is subordinate to and serves a principal building or a principal use;
- C. is subordinate in area, extent, or purpose to the principal building or principal use served;
- D. contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal building or principal use served; and
- E. is located on the same lot as the principal building or use served.

**Adult Arcade:** An establishment where, for any form of consideration, one or more motion picture projectors, slide projectors, or similar machines, for viewing by five or fewer persons, are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

**Adult Bookstore:** An establishment having as a majority of its stock in trade or its dollar volume in trade, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing or relating to sexual activities or sexual anatomical areas.

**Adult Cabaret:** A nightclub, bar, restaurant, or similar establishment that regularly features live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities, or films, motion pictures, video cassettes, slides, or other photographic reproductions in which a substantial portion of the total presentation time is devoted to the showing of material that is characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

**Adult Day Care Center:** A commercial enterprise located in a business district, which provides non-overnight care, supervision, and protection of adults.

**Adult Day Care Home:** An establishment providing non-overnight care, supervision, and protection of adults in private residences, which is ancillary to the primary use of residential. An adult day care home would require a Special Exception.

**Adult Entertainment Business:** An establishment having up to twenty-five percent (25%) of its stock in trade or its dollar volume in trade as an adult bookstore, adult motion picture theater, adult cabaret, or adult live entertainment arcade, or like uses.

**Adult Motion Picture Theater:** An establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions in which a substantial portion of the total presentation time is devoted to the showing of material that is characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

**Adult Theater:** A theater, concert hall, auditorium, or similar establishment characterized by (activities featuring) the exposure of specified anatomical areas or by specified sexual activities.

**Advisory Plan Commission:** A planning commission serving a single local government jurisdiction established as defined under the Indiana Code, 36-7-1-2 (1983) as amended. The Whitley County Plan Commission is an Advisory Plan Commission.

**Agriculture:** The use of land for agriculture purposes, including farming, dairying, pasturage, apiculture, agriculture, horticulture, floriculture, viticulture, forestry, animal and poultry husbandry, and the necessary accessory uses for packing, treating, or storing the produce, provided however, that the operation of any accessory uses shall be secondary to that of the normal agricultural activities.

**Agricultural Zoning District:** Refers to the AG District.

**Airport:** An area of land or water that is used or intended to be used for the landing and take-off of aircraft, and includes its buildings and facilities, if any.

**Alley:** A public right-of-way, other than a street, road, crosswalk, or easement that provides secondary access for the special accommodation of the abutting property.

**Alteration:** An addition, removal, extension, or change in the construction or occupancy of an existing building or structure.

**Amusement Arcade:** A building or part of a building in which five or more pinball machines, video games, or other similar player-operated amusement devices are maintained.

**Antenna:** A structure or device that is used for the purpose of receiving and or transmitting signals, images, sounds, or information of any nature by radio, visual, or electromagnetic waves, including but not limited to directional or omni-directional antennas, panels, and microwave or satellite dishes.

**Apartment:** One (1) or more rooms in an apartment building or combination apartment and commercial building, arranged, intended, designed, or occupied on a rental basis as a dwelling unit of a single family, an individual, or a group of individuals.

**Apartment Building:** A multi-family housing structure designed and constructed to accommodate three (3) or more apartments, in contrast to single or two-family dwellings converted for multi-family use.

**Apartment, Guest:** One (1) or more rooms that are designed and intended as an independent living facility for a relative or guest of the persons living in the principle dwelling unit on the property.

**Appellant:** An “appellant” refers to any person, firm, partnership, corporation or other business organization, public official, head of any administrative department, or member of any public board which appeals a decision of the Administrator or any building inspector of the building and zoning division.

**Applicant:** The owner(s) or legal representative of real estate who makes application to the Whitley County Plan Commission and/or Board of Zoning Appeals for action by said commission or board affecting the real estate owned thereby.

**Aquaculture:** Land devoted to the hatching, raising, and breeding of fish or other aquatic plants or animals for sale or personal use.

**Aquifer:** A geological unit in which porous and permeable conditions exist and thus are capable of yielding usable amounts of water.

**Aquifer Recharge Area:** An area that has soils and geological features that are conducive to allowing significant amounts of surface water to percolate into ground water.

**Attached Building:** A building that is structurally connected to another building by a foundation, walls, or roofline. Carports, garages, porch awnings and the like shall be considered attached buildings and abide by all regulations pertaining to primary buildings.

**Auto Repair, Major:** Engine rebuilding or major reconditioning of worn or damaged motor vehicles or trailers: collision service, including body, frame or fender straightening or repair: and overall painting of vehicles.

**Auto Repair, Minor:** Incidental repairs, replacement of parts, and motor service to automobiles but excluding any operation specified under "Automobile Repair, Major".

**Automobile Service Station:** Any building or premises used for the dispensing, sale, or offering for sale at retail to the public, automobile fuels stored only in underground tanks and located wholly within the lot lines: lubricating oil or grease for the operation of automobiles: and the sale and installation of tires, batteries, other minor accessories, and minor auto repair, but not including a bulk plant, conducting of major auto repairs, automobile wrecking, automobile sales.

**Basement:** A floored and walled substructure of a building at least fifty (50) percent below the average finished grade of the building.

**Bed and Breakfast Facility:** An owner occupied or owner employee occupied residence containing no more than six (6) guest rooms for hire, for lodging by pre-arrangement for periods not to exceed three (3) consecutive weeks and providing for occasional meals daily (usually breakfast) and not a hotel, boarding, lodging house or motel.

**Berm:** A man-made, formed, earth mound of definite height and width used for landscaping and obscuring purposes, the intent of which is to provide a transition between uses of differing intensity.

**Billboard:** See "Sign, Outdoor Advertising".

**Block:** Property abutting on one side of a street and lying between the two (2) nearest intersecting or intercepting streets, intersecting railroad, intersecting waterway, or the end of a dead end street.

**Board of Zoning Appeals (Board):** The Whitley County Board of Zoning Appeals or any division thereof.

**Boarding House:** A building or part of a building that contains accommodation facilities for lodging, and typically with meals reserved solely for the occupants thereof for a fee. Boarding houses do not include bead and breakfasts, multi-family dwellings, hotels, or motels.

**Bond:** Any form of security including a cash deposit, surety bond, collateral, property, or instrument of credit in an amount and form satisfactory to the Plan Commission. All bonds shall be approved by the Commission wherever a bond is required by these regulations.

**Buffer Area:** A landscaped area intended to separate and partially or substantially obstruct the view of two adjacent land uses or properties from one another.

**Buffer Landscaping:** Any trees, shrubs, walls, fences, berms, space, or related landscaping features required under this Ordinance on private lots, and privately maintained, for buffering lots from adjacent properties or public right-of-way for the purpose of increasing visual or other aspects of privacy and aesthetics.

**Buffer Yards:** An area adjacent to front, side and rear property lines, measured perpendicularly from adjacent property lines and/or right-of-way lines, intended to provide attractive spaces to reduce the impacts of proposed uses on adjacent property or natural features and to screen incompatible uses from each other. Buffers also help to maintain existing trees or natural vegetation, to block or reduce noise, glare or other emissions and to maintain privacy. Buffer yards are in addition to (separate from) front, rear, or side yard setbacks.

**Building:** A structure having a roof, supported by columns or walls, for the shelter, support, or enclosure of persons, property, or animals; and when separated by division walls from the ground up and without openings, each portion of such building shall be deemed as a separate building.

**Building Area:** The horizontal area of the buildings on a lot, measured from the outside exterior walls, excluding open areas or terraces, unenclosed porches or decks, and architectural features that project no more than two (2) feet.

**Building Code:** The Indiana Building Code establishing and controlling the standards for constructing mechanical equipment, and all forms of permanent structures and related matters within Whitley County. Also referred to herein as the Whitley County Building Code.

**Building Coverage:** The proportion of the lot area, expressed as a percent, that is covered by the maximum horizontal cross-section of a building or buildings.

**Building Envelope:** The setback lines that establish an area on a lot in which building can occur.

**Building Line or Setback Line:** A line parallel to a street right-of-way line, edge of a stream, or other property line established on a parcel of land or lot for the purpose of prohibiting construction of a building or structure in the area between such building line and right-of-way, stream bank, or other property line.

**Bulk:** The term used to indicate the size and setback of building or structure and the location of same with respect to another building or structure or to a lot line and includes the following: size and height of building or structure; location of exterior walls of a building in relation to lot lines, streets, or other buildings; the floor area of a building in relation to the area of the lot on which it is located; the open space allocated to surrounding a building; and the amount of lot area per dwelling unit.

**Business:** The engaging in the purchase, sale, barter, or exchange of goods, wares, merchandise, or services, or the maintenance or operation of offices, recreational, or amusement enterprises.

**Business District:** Refers to the VC and GC District.

**BZA:** See Board of Zoning Appeals

**Campground:** Any site, lot, field, or tract of land designed with facilities for short term occupancy by recreational vehicles and other camping equipment but not including mobile homes.

**Capital Improvement Plan:** A proposed schedule of future objects listed in order of construction priority together with cost estimates and the anticipated means of financing each project. Major projects requiring the expenditure of public funds, over and above the annual local government's operating expenses, for the purchase, construction, or replacement of the capital improvements for the community are included.

**Cemetery:** Includes any crematory, mausoleum, or mortuary operated in conjunction with and on the same tract as the cemetery.

**Central Water System:** A community water supply system including existing and new wells and/or surface water sources and intakes, treatment facilities, and distribution lines and includes such of the above facilities established by the developer to serve a new subdivision or commercial/industrial development.

**Certificate of Occupancy:** A certificate stating that the occupancy and use of a building or structure complies with the provisions of the Whitley County Building Code.

**Child Care Home:** An establishment providing non-overnight care, supervision, and protection of children in private residences, which is ancillary to the primary use of residential. The maximum of four (4) non-related children, may currently be cared for in the home without State Licensing. Five (5) to fifteen (15) children, excluding those who reside in the residence, may be cared for in the home if the resident obtains a Special Exception and maintains continuous State Licensing.

**Child Care Center:** Any institution operated for the care of children, licensed pursuant to IC 12-3-2-3.1. et seq. and as defined by Indiana Code Section 12-3-2-3.

**Child Care Institution:** a) A residential facility that provides for the care, supervision and protection of children on a twenty-four (24) hour basis; or b) An institution that operates under a license issued under IC 12-16-4: provides for delivery of mental health services that are appropriate to the needs of the individual: and, complies with the rules adopted under IC 4-22-2 by the Division of Family and Children. (For reference see Indiana Code 12-7-2)

**Children's Home:** See Child Care Institution

**Church:** An institution that people regularly attend to participate in or hold religious services, meetings, and other activities. The term "church" shall not carry a secular connotation and shall include buildings in which the religious services of any denomination are held. This term does not include accessory uses such as bingo parlors, coffeehouses, day care centers, rental halls, etc.

**Clinic:** An establishment in which human patients are admitted for medical or dental study or treatment and in which the services of at least two physicians or dentists are provided.

**Commercial District:** Refers to the VC and GC Districts.

**Comprehensive Plan:** Refers to the Whitley County Comprehensive Plan. The plan includes goals, objectives, and strategies for land use, growth management, transportation/thoroughfares, community facilities and services, environment concerns, infrastructure, aesthetics and identity, economic development, parks and recreation. The plan was developed and adopted by the Commission pursuant to the IC 36-7-4-500 series and includes any part and/or policies separately adopted and any amendment to such plan and/or policies, or parts thereof.

**Condition of Approval:** Stipulations or provisions set forth by the Board of Zoning Appeals or Plan Commission required as a prerequisite for approval of a petition.

**Condominium:** Real estate lawfully subject to IC 32-1-6 (1-31), (the Horizontal Property Law), by the recordation of condominium instruments, in which undivided interests in the common areas and facilities are vested in the condominium unit owners.

**Congregate Housing:** A residential facility for three (3) or more persons within which are provided living and sleeping facilities, meal preparation, laundry services, and room cleaning. Such facilities may also provide other accessory services, such as transportation for routine social and medical appointments and counseling.

**County:** Whitley County, Indiana

**Covenants:** Private and legal restrictions of various kinds on the usage of lots, typically within a subdivision and applied by the subdivider. In the case of public health, safety and welfare, covenants may be applied by the Commission, that are recorded with the plat and deed. Covenants can also be placed on commercial and industrial developments. Covenants are not enforceable by the Plan Commission or its designees. However, they are enforceable in civil court by interested or affected parties.

**Cul-De-Sac:** A street having only one (1) outlet and having an appropriate terminal for the safe and convenient

reversal of traffic movement including public safety vehicles.

**Day Care Center:** See Adult and Child Care Center(s).

**Dedication:** The setting apart of land or interest in land for use by the municipality or public by ordinance, resolution, or entry in the official minutes as by the recording of a plat.

**Detached Building:** A building that has no structural connection with the principal building.

**Developer:** A person submitting a plat, condominium regime, horizontal property regime, mobile home park, or a development plan of any kind or of any similar nature, of the type of character described in the definition of a Lake Access Development. The Developer may be the owner or a person or entity operating in their self interest but with the consent of the owner of the real estate in question.

**District:** A section of Whitley County for which uniform zoning regulations governing use, height, area, size, intensity or use of buildings and land, and open spaces about buildings, are established by this Ordinance.

**Domestic Pets:** Animals commonly used as household pets, protection, companions, and for the assistance to disabled persons. Domestic pets shall include animals that are cared for and treated in a manner acceptable for pet dogs, cats, and birds. Domestic pets shall include, but not be limited to, dogs, cats, parakeets, parrots, finches, spiders, guinea pigs, hamsters, gerbils, rats, mice, rabbits, aquarium fish, pot belly pigs, ferrets, and snakes if cared for in the manner described above.

**Dormitory:** A building used as group living quarters for a student body, religious order, or other group as an associated use to a college, university, boarding school, orphanage, convent, monastery, farm labor camp, or other similar use.

**Drive-In (Drive-Thru):** An establishment selling food, frozen desserts, or beverages to consumers, the establishment being designed, intended or used for the consumption of such items on the premises outside of the building in which they were prepared.

**Drives, Private:** Vehicular streets and driveways, paved or unpaved, which are wholly within private property except where they interact with public streets within public rights-of-way.

**Duplex:** A residential building containing two (2) dwelling units designed for occupancy by not more than two (2) families.

**Dwelling:** A building or structure or portion thereof, conforming to all requirements applicable to the residential use districts and Whitley County Building Code/Indiana Building Code used exclusively for residential occupancy, including single-family dwelling units, two-family dwelling units, multi-family dwelling units, guest apartments, mobile homes, and manufactured homes, but excluding hotels, boarding houses, and lodging houses.

**Dwelling, Manufactured Home:** A single-family dwelling unit designed and built in a factory, installed as a permanent residence, which bears a seal certifying that it was built in compliance with the Federal Manufactured Housing Construction and Safety Standards Law (1974 U.S.C. 5401 et seq.). Specifications for Type I, II and III Manufactured Homes are listed in Section 5.18 of this ordinance.

**Dwelling Multi-Family:** A residential building designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

**Dwelling, Single-Family:** A detached residential dwelling unit designed for and occupied by one (1) family. A single-family dwelling shall be at least 23 feet wide for sixty percent (60%) of its length.

**Dwelling Site:** A site within a manufactured home park and/or mobile home park with required improvements and utilities that is leased for the long term placement of manufactured homes and/or mobile homes.

**Dwelling, Two-Family:** A residential building containing two (2) dwelling units designed for occupancy by not more than two (2) families.

**Dwelling Unit:** Any structure or portion thereof designed for or used for residential purposes as a self-sufficient or individual unit by one (1) family or other social association of persons and having permanently installed sleeping, cooking, and sanitary facilities.

**Dwelling Unit, Secondary:** Can be either a portion of the principle dwelling or a separate building which is utilized as an independent living facility, or a Type II or III manufactured home, located on the same parcel and occupied exclusively by a relative of the family residing in the principle dwelling.

**Easement:** A grant by a property owner to specific persons, the general public, corporations, utilities, or others, for the purpose of providing services or access to the property.

**Executive Committee:** A panel established by the Plan Commission to provide technical services to the Plan Commission in the administration of this Ordinance.

**Family:** An individual, or two (2) or more persons related by blood, marriage, or adoption, or a group of not more than four (4) persons, not related by blood, marriage, or adoption, living together as a single housekeeping unit in a dwelling unit.

**Farm:** An area used for agricultural operations, forestry, the operating of a tree or plant nursery, or the production of livestock and poultry as well as those properties classified by the Internal Revenue Service as a farm.

**Farm Animals:** Animals commonly used for transportation, food, skins, and other by-products. Farm animals include, but are not limited to, horses, cattle, pigs, sheep, goats, mules, donkeys, miniature horses, miniature donkeys, camels, emu, ostrich, llamas, alpacas, mink, fox, buffalo, chickens, turkeys, quail, pheasants, and other animals or fowl of similar characteristics.

**Flood Hazard Areas:** Those flood plains which have not be adequately protected from flooding caused by the regulatory flood, and are shown on the zoning map and/or on the Flood Hazard or Floodway-Flood Boundary Maps of the Federal Insurance Administration or maps provided to the Commission from the Indiana Natural Resources Commission.

**Flood Plain:** The relatively flat area or low land adjoining the channel of a river or stream which has been or may be covered by flood water. The flood plain includes the channel, floodway, and floodway fringe. Flood plain boundaries are to be determined by using the Floodway-Flood Boundary Maps of the Federal Insurance Administration/Federal Emergency Management Administration.

**Flood Protection Grade:** The elevation of the lowest floor of a building, including the basement, which shall be two feet above elevation of the regulatory flood.

**Floodway (Regulatory):** The channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to efficiently carry and discharge peak flow of the regulatory flood or any river or stream and, is that area covered by floodwaters in significant downstream motion or covered by significant volumes of stored water during the occurrence of the regulatory flood.

**Floodway Fringe:** That portion of the flood plain lying outside the floodway, which is inundated by the regulatory flood.

**Floor Area:** The sum of all horizontal surface areas of all floors of all roofed portions of a building enclosed by and within the surrounding exterior walls or roofs, or to the centerline(s) of party walls separating such buildings or portions thereof. Floor area of a building shall exclude exterior open balconies and open porches.

**Floor Area, Finished:** That portion of floor area constructed, completed, and usable for living purposes with normal living facilities which includes sleeping, dining, cooking, working, entertainment, common space linking rooms, areas for personal hygiene, or combination thereof. Floor area or portion thereof used only for storage



purposes and not equipped for the facilities mentioned above shall not be considered Finished Floor Area.

**Floor Area, Main:** That portion of Finished Floor Area located on the first (or nearest ground level) floor of the dwelling unit. The Main Floor Area of a primary structure does not include a garage, carport, deck, unfinished storage, patio, or open porch.

**Foundation:** The supporting member of a wall or structure.

**Front Line:** With respect to a building, the foundation line that is nearest to the front lot line.

**Front Lot Line:**

- A. For an interior or through lot, the line marking the boundary between the lot and the abutting street right-of-way or a Lake or watercourse; and
- B. For a corner lot, the line marking the boundary between the lot and the shorter of the two abutting street segments.

**Front Yard:** A yard extending across the full width of the lot, the depth of which shall be the least distance between the road right-of-way and the foundation of the principle structure. Whenever a lot fronts more than one road right-of-way, each frontage will be considered a front yard for setback purposes. See Chapter 5, Development Standards, Section 5.3 for additional lake front setback provisions.

**Frontage:** See Lot Frontage

**Garage:** An attached or detached structure whose principal use is to house motor vehicles or personal property for the accommodation of related dwelling units or related business establishments.

**Grade:** The finished ground level adjoining the building at all exterior walls.

**Ground Floor Area:** The area of a building in square feet, as measured in a horizontal plane at the ground level within its largest outside dimensions, exclusive of open porches, breezeways, terraces, garages, and exterior stairways.

**Group Home:** A single self-contained children's home established and operated by the county department of welfare, licensed private child placement agency or licensed incorporated group established for the purpose of receiving and caring for up to eight (8) children who are attended by house "parents". (Also see Congregate Housing.)

**Halfway House:** A licensed home for inmates on release from more restrictive custodial confinement or initially placed in lieu of such more restrictive custodial confinement, wherein supervision, rehabilitation, and counseling are provided to mainstream residents back into society, enabling them to live independently. Such placement is pursuant to any court of competent jurisdictional and/or the State Department of Correction.

**Hardship:** A difficulty with regard to one's ability to improve land stemming from the application of the development standards of this Ordinance, which may or may not be subject to relief by means of variance. In and of themselves, self-imposed situations and claims based on a perceived reduction of or restriction on economic gain shall not be considered hardships. Self-imposed situations include: the purchase of land with actual or constructive knowledge that, for reasons other than physical characteristics of the property, the development standards herein will inhibit the desired improvement: any improvement initiated in violation of the standards of this Ordinance: any result of land division requiring variance from the development standards of this Ordinance in order to render that site buildable.

**Height:** With respect to a building, means the vertical distance from the lot ground level to the highest point, for a flat roof; to the deck line, for a mansard roof; and to the mean height between eaves and ridges for a gable, hip, or gambrel roof.

**Hobby Farming:** Hobby farming cannot be the principal income source for the owner, operator or household on site. The use of land for purposes, including: pasturage, apiculture, agriculture, horticulture, floriculture, viticulture, and animal and poultry husbandry. Processing and storage of harvested produce or other end products shall not be allowed on site. Hobby farming shall not include feed lots, stock yards, or the commercial feeding of garbage or offal to swine or other animals.

**Home Occupation :** A commercial or professional activity, regardless of whether engaged in for profit, conducted by one or more residents in his, her, or their dwelling, or structure accessory thereto, is clearly incidental and secondary to the use of the principal structure for dwelling purposes, and located within a residentially or agriculturally zoned district. A home occupation, which generates traffic, requires a special exception.

**Hotel:** A building in which lodging or board and lodging are provided and offered to the public for compensation and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge at all hours. As such, it is open to the public. Compensation is usually assessed on a day-to-day basis.

**Hospital:** An institution devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or care for three (3) or more unrelated individuals suffering from illness, disease, injury, deformity, or other abnormal physical conditions. The term "hospital" as used in this Ordinance does not apply to institutions operating primarily for treatment of insane persons, drug addicts, liquor addicts, and other types of cases necessitating restraint of patients, and the term "hospital" shall not include convalescent, nursing, shelter, or boarding homes.

**Impervious Surface:** Any material that prevents absorption of stormwater into the ground.

**Improvement Location Permit:** A permit issued under this Ordinance permitting a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish any building or structure within its jurisdiction, or cause the same to be done or to change the use or condition of the land.

**Improvement Plan(s):** The maps or drawings showing the specific location and design of improvements to be installed in accordance with the requirements of this Ordinance and the Indiana Building Code as a condition of the approval.

**Incidental:** A minor occurrence or condition, which is customarily associated with a permitted use and is likely to ensue from normal operations.

**Indiana Residential Code:** The nationally recognized model building code adopted by the Indiana Department of Fire Prevention and Building Safety as mandated by Public Law 360, Act of 1971, and which includes those supplements and amendments promulgated by this agency. Previously named the One and Two Family Dwelling Code.

**Industrial District:** Refers to the IPM and IN Districts.

**Interior Lot:** A lot other than a corner lot or a through lot.

**Interested Parties:** Those parties who are owners of properties adjoining or adjacent to the property under consideration.

**Junk:** An automobile, truck, other motor vehicle, large appliance, furniture or like materials which has been damaged to such an extent that it cannot be operated under its own power or used and/or will require major repairs before being made usable. This could also include such a vehicle, which does not comply with State or County vehicle laws or ordinances.

**Junk Yard:** A place, usually outdoors, where waste or discarded used property other than organic matter, including but not limited to automobiles, farm implements and trucks, is accumulated and is or may be salvaged for reuse or resale: this shall not include any industrial scrap metal yard.

The storage, dealing in or the permitting of the accumulation of significant quantities of combustible, organic or nonmetal scrap materials such as, but not limited to, wood, paper, rags, garbage, tires, bones and shattered glass on the premises of such an establishment will disqualify it from being classified as a scrap metal yard, and the same will be classified as a junk yard.

**Jurisdiction Area:** All land within the limits of Whitley County, Indiana but not the planning jurisdictions of incorporated cities and towns.

**Kennel:** A place primarily for keeping four (4) or more adult dogs, or other small animals that are ordinarily bred for sale as pets. Also could include temporary care facility for compensation.

**Lake Access Development:** Any development (i) that has a portion of its perimeter bound by a Public Freshwater Lake or (ii) that contains as a part of the development or through the grant of an easement, license or other interest, the right of owners in the development to use a Waterfront Lot for access to the waters of any Public Freshwater Lake and, (iii) that requires any type of approval by the Board of Zoning Appeals or Plan Commission. A Lake Access Development shall include by way of example, but not be limited to lake front recreational areas, beaches, parks, playgrounds, regardless of whether such area has been specifically denominated as a common area or access point, whether located in a residential subdivision, apartment building development, condominium, cooperative, used by a neighborhood association, or associated with an organization, club, retirement community, mobile home park, mobile home subdivision, subdivisions subject to the provisions of the subdivision control ordinance, or multi-family residential units, mobile home parks, and camp grounds, planned unit developments with a residential component, residential development under the Indiana Horizontal Property Regime Act, platted or exempt residential subdivisions and any other residential use in all zoning districts.

**Landscaping:** The improvements of a lot with grass, shrubs, trees and other vegetation and/or ornamental objects. Landscaping may include pedestrian walks, flower beds, berms, fountains and other similar natural and man-made objects designed and arranged to produce an aesthetically pleasing effect.

**Limited Access Highway:** Any roadway that operates at a high service level, consists of limited access, is divided, carries region-wide traffic and is generally classified as part of the interstate system.

**Local Road:** A street designed primarily to provide access to abutting properties and discourage through traffic, as depicted by the Transportation Plan element within the Comprehensive Plan.

**Lodging House:** A building, not available to transients, in which lodgings are regularly provided for compensation for at least three persons in addition to the owner occupant or lessor.

**Lot/Parcel:** A tract, plot, or portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership or of building development

**Lot, Buildable:** A lot upon which a structure or building can be constructed and occupied. The lot shall have frontage on and access to an improved street, meet minimal setbacks, and have all necessary utilities available to the lot such as sewer, water, electricity, etc.

**Lot, Corner:** A lot situated at the intersection of two (2) streets or which fronts a street on two (2) or more sides forming an interior angle of less than one-hundred and thirty-five (135) degrees.

**Lot Coverage:** The area of a zoning lot occupied by the principal building and any accessory structures.

**Lot Depth:** The horizontal distance between the front and rear lot lines.

**Lot, Developed:** A lot with buildings or structures.

**Lot Frontage:** All property or a lot fronting on a street right-of-way, as measured between side lot lines.

**Lot, Interior:** A lot other than a corner lot or a through lot.

**Lot of Record:** A lot which is a part of a subdivision recorded in the office of the County Recorder, or a parcel or lot described by metes and bounds, and a description of what has been so recorded. Lots recorded prior to the enactment of this Ordinance. All lots recorded after the enactment of this Ordinance shall meet all the requirements of this Ordinance.

**Lot, Through:** A lot fronting on two (2) parallel or approximately parallel streets, or abutting two (2) streets which do not intersect at the boundaries of the lot. Also includes lots fronting on both a street and a watercourse or Lake.

**Lot Width:** The distance as measured between the side lot lines. The lot width of a property that has irregular boundaries shall be the narrowest distance between side lot lines. Cul-de-Sacs front lot widths shall be measured at the front set back line.

**Maneuvering Aisle:** A maneuvering space which services two or more parking spaces, such as the area between two rows of parking spaces and/or the driveway leading to those spaces.

**Maneuvering Space:** An open space in a parking area which:

- A. is immediately adjacent to a parking space;
- B. is used for and/or is necessary for turning, backing or driving forward a motor vehicle into such parking space, but
- C. is not used for the parking of or storage of motor vehicles

**Manufactured Home:** A single-family dwelling unit designed and built in a factory, installed as a permanent residence, which bears a seal, attached to the exterior of the home, certifying that it was built in compliance with the Federal Manufactured Housing Construction and Safety Standards Law, 42 U.S.C. 5401 et seq.). Specifications for Type I, II and III Manufactured Homes are listed in Section 5.18 of this ordinance.

**Manufactured Home Park:** A parcel of land containing two (2) or more dwelling sites, with required improvements and utilities, that are leased for long term placement of mobile home dwellings and/or manufactured home dwellings, and shall include any street used or intended for use as part of the facilities of such mobile home park. A manufactured home park does not involve sales for mobile home dwellings or manufactured home dwellings in which unoccupied units are parked for inspection or sale.

**Manufacturing, Heavy:** The assembly, fabrication or processing of goods and materials using processes that ordinarily have greater than minimal impacts on the environment, or that otherwise do not constitute light manufacturing, and which may include open uses and outdoor storage. Heavy manufacturing generally includes processing and fabrication of products made from extracted or raw materials. Heavy manufacturing shall not include any use that is otherwise listed specifically in any zoning district as a permitted use or special exception.

**Manufacturing, Light:** The assembly, fabrication or processing of goods and materials using processes that ordinarily do not create noise, smoke fume odors, glare or health or safety hazards outside of the building or lot where such assembly, fabrication, or processing of goods are housed entirely within an enclosed building. Light manufacturing generally includes processing and fabrication of finished products predominantly from previously prepared materials. Light manufacturing shall not include any use that is otherwise listed specifically in any zoning district as a permitted use or special exception.

**Marker (survey):** A stake, pipe, rod, nail, or any other object which is not intended to be a permanent point for record purposes.

**Master Plan:** See Comprehensive Plan.

**Mobile Home:** A transportable dwelling unit which is a minimum of 8' in width and which is built on a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical system contained therein, and which was manufactured prior to June 15, 1976 and bears a seal attached under Indiana Public law 135, 1971, certifying that it was built in compliance with the standards established by the Indiana Administrative Building Council: or, subsequent to or on June 15, 1976 and bears a seal, certifying that it was built in compliance with the Federal Mobile Home Construction and Safety Standards. For the purpose of the provisions of this ordinance, a mobile home shall be considered a Type III manufactured home.

**Monument (survey):** A permanent physical structure, which marks the location of a corner or other survey point.

**Motel:** An establishment consisting of a group of attached or detached living or sleeping accommodations with bathroom and closet space, located on a single zoning lot, and designed for use by transient automobile tourists. A motel furnishes customary services such as maid service and laundering of linen, telephone, secretarial, or desk service, and the use and upkeep of furniture.

**Motor Vehicle:** Any passenger vehicle, truck, tractor, tractor-trailer, trailer, or semi-trailer propelled or drawn by mechanical power.

**Non-Conforming Use:** A building, structure or use of land existing at the time of enactment of this ordinance, which does not conform to the regulations of the district in which it is situated.

**Non-Waterfront Lot:** Any parcel of real estate not having as one of its boundaries the shoreline of a public freshwater lake.

**Nursing Home/Rest Home:** A private home for the care of the aged or infirm, or any other person in need of nursing care and which does not contain equipment for surgical care or for the treatment of disease or injury, and is not primarily designed for mental patients or alcoholics.

**Occupied Space:** The total area of earth horizontally covered by the structure, excluding garages, patios and porches and other accessory structures.

**Official Zoning Map:** A map of Whitley County, Indiana, that legally denotes the boundaries of zoning districts as they apply to the properties within the planning jurisdiction.

**Off-site Improvements:** Any premises not located within the area of the property to be subdivided, used, or built upon whether or not in the same ownership of the applicant for subdivision approval.

**Open Space:** An area of land not covered by buildings, parking structures, or accessory uses except for recreational structures. Open space may include nature areas: streams and flood plains: meadows or Open Space does not include street right-of-way, platted lot area, private yard, patio areas, or land scheduled for future development.

**Open Use:** The use of a lot without a building, or a use for which a building with a floor area no larger than five percent of the lot area is only incidental.

**Outdoor Storage:** The outdoor accumulation of goods, junk, cars, busses, tractor trailers, railroad cars, equipment, products, or similar materials for permanent or temporary holding.

**Owner:** Any person, group, of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to or sufficient proprietary interest in the land sought to be subdivided under these regulations, or their legal representative.

**Parent Tract:** A lot of record as recorded (location, size, shape, etc) on the effective date of this Ordinance; or a lot as defined by its last conditional transfer of ownership by recorded contract transacted before the effective date of this Ordinance. Multiple lots owned by one (1) person, persons in partnership, or a company shall each be

considered one (1) Parent Tract. Easements shall not constitute a separation of two (2) or more pieces of land owned by one (1) person, persons in partnership, or a business. A lot of record with an existing public road that splits it shall be considered two (2) parent tracts.

**Parking Space, Automobile:** Space within a public or private parking area for the storage of one (1) passenger automobile or commercial vehicle under a one and one-half (1-1/2) ton capacity.

**Performance Bond:** An amount of money or other negotiable security paid by the subdivider, developer, or property owner or his surety to the County which guarantees that the subdivider will perform all actions required by the County regarding an approved plat or in other situations as stated forth in this Ordinance and/or as deemed by the Zoning Administrator, and provides that if the subdivider, developer, or property owner defaults and fails to comply with the provisions of his approval, the subdivider, developer, or property owner or his surety will pay damages up to the limit of the bond, or the surety will itself complete the requirements of the approval.

**Permanent Foundation:** A structural system for transferring loads from a structure to the earth at a depth below the established frost line without exceeding the safe bearing capacity of the supporting soil.

**Permanent Perimeter Enclosure:** A permanent perimeter structural system completely enclosing the space between the floor joists of the home and the ground, except for the necessary openings, constructed in accordance with the Indiana Residential Code.

**Person:** An individual, corporation, firm, partnership, association, organization, unit of government, or any other group that acts as a unit, as well as a natural person.

**Plan Commission (Commission):** The Advisory Plan Commission of Whitley County.

**Planned Unit Development:** A large-scale unified development meeting the requirements for zoning approval under the provisions of Article Five of this Ordinance. Generally a planned development consists of a parcel or parcels of land, controlled by a single landowner, to be developed as a single entity which does not correspond in size of lots, bulk or type of buildings, density, lot coverage, and required open space to the regulations established in any district of this Ordinance. This may result in more attractive and affordable development than conventional developments would allow. Clustered housing (dwellings built in innovative lot arrangements around common open space) and zero lot line housing (dwellings built immediately adjacent to lot lines) are possible as part of planned developments. A planned development requires approval through a zoning map amendment.

**Planning Jurisdiction:** The area that a municipality has planning authority as drawn by each community in compliance with IC 36-7-4 et al. For the planning jurisdiction of this ordinance see Jurisdiction Area.

**Plat:** A map indicating the subdivision, or resubdivision of land, filed, or intended to be filed, for record with the County Recorder.

**Plat, Primary:** The primary plat, pursuant to IC 36-7-4-700 series, is the plat and plans upon which the approval of a proposed subdivision are based. The primary plat and plans shall be subject to the public notice and public hearing according to law and according to Plan Commission rules. (Under former state statutes, the primary plat was referred to as a "preliminary" plat.).

**Plat, Secondary:** The secondary plat, pursuant to IC 36-7-4-700 series, is the final plat document in recordable form. A secondary plat shall substantially conform with the preceding primary plat, or section thereof. The secondary plat and plans are not subject to public notices and public hearings.

**Porch:** A roofed-over structure projecting out from the wall or walls of a main structure and commonly open to the weather in part.

**Practical Difficulty:** A difficulty with regard to one's ability to improve land stemming from regulations or this Ordinance. A practical difficulty is not a "hardship", rather is it a situation where the owner could comply with the regulations within this ordinance, but would like a variance from the Development Standards to improve his site in a practical manner. For instance, a person may request a variance from a side yard setback due to a large

tree which is blocking the only location that would meet the Development Standards for a new garage location.

**Primary/Principal Use:** The main use of land or buildings as distinguished from an accessory use. A primary/principal use may be either a permitted use or a special exception.

**Principal Building/Structure:** The building or structure in which the principal use of the lot or premises is located or conducted, with respect to residential uses, the principal building or structure shall be the main dwelling.

**Private School:** A school other than a public school.

**Professional Office:** An office used by members of a recognized profession such as architects, artists, dentists, engineers, lawyers, musicians, physicians, surgeons or pharmacists, and realtors or insurance agents and brokers.

**Public Freshwater Lake:** Shall have the definition stated in IC 14-26-2-3 as amended from time to time.

**Public Improvements:** Any storm drainage facility, street, highway, parkway, sidewalk, pedestrian-way, tree, lawn, off-street parking area, lot improvement, utility, or other facility for which the local government may ultimately assume the responsibility for maintenance and operation, or which may affect an improvement for which local government responsibility is established.

**Public/Private Parking Area:** A group of parking spaces in an open area not including any part of a street or alley, designed or used for temporary parking or motor vehicles.

**Public Street:** All property dedicated or intended for public highway, freeway, or roadway purpose and subdivision to public easements therefore.

**Public Utility:** Any person, firm, or corporation duly authorized to furnish under public regulation to the public, electricity, gas, steam, telephone, fiber optics, transportation, water, or sewerage systems.

**Racetrack:** Any venue for the sport of racing or competing where participants drive, ride, or control motorized vehicles. A racetrack may or may not have areas for spectators. Racetrack includes, but is not limited to oval track racing, drag racing, motorcross, tractor pulling, go-carts racing, remote control airplane flying, and similar uses.

**Rear Lot Line:** The lot line that is opposite the front lot line and farthest from it, except that for a triangular or other irregularly-shaped lot, the line ten feet long, parallel to the front lot line, and wholly within the lot, that is farthest from the lot line.

**Rear Yard:** The yard extending the full width of the lot between the rear of the principle structure and the rear lot line, the depth of which shall be the least distance between the rear lot line and the rear of that principle structure.

**Recreational Vehicle:** A vehicular-type portable structure that can be towed, hauled, or driven and designed as a temporary living accommodation for recreational, camping, and travel use and including but not limited to, travel trailers, truck campers, camping trailers, self-propelled motor homes and Park Models.

**Recreational Vehicle Park:** Any site, lot, field, or tract of land under single ownership, or ownership of two or more people, designed with facilities for short term occupancy for recreational vehicles only.

**Registered Land Surveyor:** A land surveyor properly licensed and registered or through reciprocity permitted to practice in the State of Indiana.

**Registered Professional Engineer:** An engineer properly licensed and registered or through reciprocity permitted to practice in the State of Indiana.

**Regulatory Floodway:** The channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to efficiently carry and discharge peak flow of the regulatory flood of any

river or stream and, is that area covered by floodwaters in significant downstream motion or covered by significant volumes of stored water during the occurrence of the regulatory flood.

**Residential District:** Refers to the RR, MR, LR and MP Districts.

**Residential Facility for the Developmentally Disabled (large):** A residential facility which provides residential services for more than eight (8) developmentally disabled individuals as described in IC 12-28-4.

**Residential Facility for the Developmentally Disabled (small):** A residential facility, which provides residential services for eight (8) or less developmentally disabled individuals as described in IC 12-28-4.

**Residential Facility for the Mentally Ill:** A residential facility, which provides residential services for mentally ill individuals as described in IC 12-28-4. No two Residential Facilities for the Mentally Ill shall be within three thousand (3,000) feet of one another in the Whitley County planning jurisdiction as stated in Indiana Code.

**Rest Home/Nursing Home:** A private home for the care of the aged or infirm, or any other person in need of nursing care and which does not contain equipment for surgical care or for treatment of disease or injury, and is not primarily designed for mental patients or alcoholics.

**Re-subdivision:** A change in a recorded subdivision plat if such change effects any street layout or area reserved thereon for public use or any lot line or easement; or if it affects any map or plan legally recorded.

**Right-of-Way (ROW):** A strip of land occupied or intended to be occupied by transportation facilities, public utilities, or other special public uses. Rights-of-way intended for any use involving maintenance by a public agency shall be dedicated to the public use by the maker of the plat on which such right-of-way is established.

**Roof Mounted Antenna:** Any device attached to a building, or structure that is used for wireless tele-communications service. (not included in these definitions are AM radio, non-commercial, but residential type radio, TV, ham two-way radio, short-wave radio, antennas, and satellite dishes but which may be included in other sections of this zoning ordinance).

**Satellite Dish/Antenna:** An apparatus capable of receiving communications from a transmitter relay located in a planetary orbit, or broadcasted signals from transmitting towers.

**School:** A public or private institution which offers instruction in any of the branches of learning and study comparable to that taught in the public schools under the Indiana School Laws, including pre-kindergarten, kindergarten, elementary school, and junior and senior high schools, but excluding trade, business, or commercial schools.

**Scrap Metal Yard:** A general industrial use established independent or ancillary to and connected with another general industrial use, which is concerned exclusively in new and salvaged metal pipes, wire, beams, angles, rods, machinery, parts, filings, clippings, and all other metal items of every type, and which acquires such items incidental to its connection with the other general industrial use or by purchase, consignment or bailment which stores, grades, processes, melts, cuts, dismantles, compresses, cleans, or in any way prepares said items for reuse by the connected other general industrial use or for storage, sale or shipment and use in other industries or businesses including open hearth, electric furnaces and foundry operations; such an establishment shall not include junk yards, dumps, or automobile graveyards.

The storage, dealing in or the permitting of the accumulation of significant quantities of combustible, organic or nonmetal scrap materials such as, but not limited to, wood, paper, rags, garbage, tires, bones and shattered glass on the premises of such an establishment will disqualify it from being classified as a scrap metal yard, and the same will be classified as a junk yard.

**Setback:** A line parallel to and equidistant from the relevant lot line (front, back, side) between which no building may be erected as prescribed in this Ordinance.

**Shared Housing:** Any dwelling unit which the owner allows to be occupied by unrelated persons living as a



single housekeeping unit, provided that the number of occupants does not exceed twice the number of bedrooms, and that the total number of unrelated occupants does not exceed four (4) regardless of the number of bedrooms.

**Shoreline:** Shall have the definition stated in IC 14-26-2-4 as amended from time to time.

**Side Yard:** The yard between the principle structure and the side lot line, extending from the front and rear corners of the principle structure, to the side lot line. The width of the required side yard shall be measured horizontally and perpendicular from the nearest point of the side lot line toward the nearest part of the principle structure.

**Sign:** Any name, identification, description, display, or illustration which is affixed to, painted, or represented directly or indirectly upon a building, structure, or piece of land, and which directs attention to an object, product, place, activity, person, institution, organization, or business.

**Sign, Outdoor Advertising:** A sign which directs attention to a business, commodity, service, or entertainment conduct, sold, or offered elsewhere than upon the premises where such sign is located or to which it is affixed. Also called billboard or off-premise sign.

**Sign, Temporary:** An on-premise advertising device not fixed to a permanent foundation, for the purpose of conveying information, knowledge, or ideas to the public about a subject related to the activities on the premises upon which it is located.

**Signs, Types of:** The graphic below depicts the primary types of signs. Regulations for the type of signs permitted will vary by zoning district.

**Site Plan:** A plan, prepared to scale, showing accurately and with complete dimensioning, the boundaries of a site and the location of all buildings, structures, uses, and principal site development features proposed for a specific parcel of land.

**Special Exception:** The authorization of a use that is designated as such by this ordinance as being permitted in the district concerned if it meets special conditions, is found to be appropriate and upon application, is specifically authorized by the BZA.

**Story:** That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it. Any portion of a story exceeding fourteen (14) feet in height shall be considered as an additional story for each fourteen (14) feet or fraction thereof.

**Street:** A public or private thoroughfare used, or intended to be used, for passage or travel by motor vehicles. Streets are further classified by the functions they perform.

**Arterial, Minor:** A street intended to move through-traffic to and from such major attractions as central business districts, regional shopping centers, colleges and/or universities, military installations, major industrial areas, and similar traffic generators within the City and County; and/or as a route for traffic between communities; a major intra or intercity thoroughfare as designed by and shown on the Thoroughfare Plan. (E.g. State Roads 9 and 114)

**Arterial, Principle:** A street with access control, restricted parking, and that collects and distributes traffic to and from secondary arterials, as depicted by the Thoroughfare Plan element within the Comprehensive Plan. (E.g. US 30)

**Collector, Major:** A street with signals at important intersections and stop signs on side streets, and that collects and distributes traffic to and from Minor Collectors, as depicted by the Transportation Plan element within the Comprehensive Plan. (E.g. State Roads 5, 14, 105, 109, 205 & US 33)

**Collector, Minor:** A street designed to facilitate the collection of traffic from Local Roads and to provide circulation within neighborhood areas and convenient ways to reach Major Collectors or Primary

Arterials, as depicted by the Transportation Plan element within the Comprehensive Plan.  
(E.g. Airport Road, Anderson Road, County Roads 250 West, 800 East and 800 South, Lincolnway, Old Trail Road, Meridian Road, and Washington Road)

**Expressways:** A street, which is intended to have limited access on interregional routes. They are designed exclusively for unrestricted movement, have limited private access, and intersect only with selected arterial highways or major streets by means of interchanges whenever possible.

**Local Road:** A street designed primarily to provide access to abutting properties and discourage through traffic, as depicted by the Thoroughfare Plan element within the Comprehensive Plan.

**Private:** Vehicular streets and driveways, paved or unpaved, which are wholly within private property except where they intersect with other streets within public rights-of-way and maintained by the owner(s).

**Public:** All property dedicated or intended for public highway, freeway, or roadway purpose and subdivision to public easements therefore.

**Structural Alterations:** Any change in the supporting members of a building or structure such as bearing walls, partitions, columns, beams or girders, or any substantial change in the footprint or increasing size of living space. Also, substantial roofing and siding work when repairs are made to the structure beneath.

**Subdivision:** The division of a parcel of land into two (2) or more lots, parcels, sites, units, plats, or interests for the purpose of offer, sale, lease, or development, either on the installment plan or upon any and all other plans, terms, and conditions, including re-subdivision.

**Swimming Pool:** A self-contained body of water at least eighteen (18) inches deep and eight (8) feet in diameter or width and used for recreational purposes. It may be above or below ground level, and shall be considered an accessory structure/use.

**Telecommunications Tower (Tower):** A ground pole, spire, structure, or combination thereof including supporting lines, cables, wires, braces, and masts intended primarily for the purpose of mounting an antenna, a meteorological device, and other similar apparatus.

**Temporary Improvement Location Permit:** A permit issued under the Zoning Ordinance permitting a temporary use or structure not to exceed three (3) months.

**Temporary Use/Structure:** A land use or structure established for a limited and fixed period of no more than three (3) months with the intent to discontinue such use or structure upon the expiration of the time period.

**Thoroughfare Plan:** The official plan, now and hereafter adopted, which includes a street plan, sets for the location, alignment, dimensions, identification, and classification of existing and proposed streets, and other thoroughfares.

**Tower:** A ground pole, spire, structure, or combination thereof including supporting lines, cables, wires, braces, and masts intended primarily for the purpose of mounting an antenna, a meteorological device, or other similar apparatus above ground for use as a wireless telecommunications facility. (not included in these definitions are AM radio, non-commercial but residential type radio, TV, ham two-way radio, short-wave radio, antennas and satellite dishes but which may be included in other sections of this zoning ordinance).

**Use:** The purposes of which land, building, or structure thereon is designed, arranged, or intended, or for which it is occupied, maintained, let or leased.

**Variance:** A specific approval granted by the Board of Zoning Appeals in the manner prescribed by this Ordinance, to deviate from the development (such as height, bulk, area) where owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship to the applicant.

**Waterfront Lot:** Any parcel of real estate having as one of its boundaries the shoreline of a public freshwater lake.

**Wireless Telecommunications Facility:** A wireless telecommunications facility consists of the tower, antennas, electronics equipment and all other structures in conjunction with the tower and antenna.

**Wireless Telecommunications Services:** Licensed public commercial telecommunications services, including but not limited to cellular, digital, personal communication services (PCS), enhanced specialized mobilized radio (ESMR), paging, and other similar services that are marketed to the general public.

**Yard:** A space on the same lot with a principal building that is open and unobstructed except as otherwise authorized by this ordinance.

**Zoning Administrator:** The officer appointed by and/or delegated the responsibility for the administration of this ordinance's regulations by the Advisory Plan Commission. The Plan Commission is hereby designated as the Administrator for the purpose of administering and enforcing this ordinance and is the County officer referred to herein wherever the term Administrator or Zoning Administrator appears.

**Zoning Map:** See Official Zoning Map.