# JAY COUNTY ZONING & SUBDIVISION ORDINANCE

## With Plan Commission and Board of Zoning Appeals Rules of Procedure



**ORDINANCES 1991-4 and 1991-5**
**AMENDED ORD. 2000-4 May 2000**
**AMENDED ORD. 2002-4 May 2002**
**AMENDED ORD. 2007-8 May 2007**
**AMENDED ORD. 2009-8 Apr 2009**
**AMENDED ORD. 2010-1 Jam 2010**
**AMENDED ORD. 2012-6 Sept 2012**
**AMENDED ORD. 2014-7 Nov 2014**
**AMENDED ORD. 2016-7 & 9 Oct 2016**
**AMENDED ORD. 2019-12 Dec 2019**
**AMENDED ORD's. 2026-02,04,06,08 May 2026**
**AMENDED ORD. 2026-11 July 2026**

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# *Article 1*

# General Provisions

A Zoning Ordinance establishing regulations for Jay County, Indiana, and providing for the administration, enforcement, and amendment thereof, and prescribing penalties for violations in accordance with the provisions of Indiana Code §§36-7-4 et. seq. And all acts supplemental and amendatory thereto.

**101 TITLE**
The official title of this Ordinance is: "The Zoning Ordinance of Jay County, Indiana."

**102 AUTHORITY**
This Ordinance is adopted pursuant to Indiana Code 36-7-4 and all acts supplemental and amendatory thereto.

**103 COMPLIANCE**
No structure, permanent or temporary, shall be located, erected, constructed, reconstructed, moved, converted, or enlarged; nor shall any structure or land be used or be designed to be used, except in full compliance with all the provisions of this Ordinance which shall include the Subdivision Control Ordinance (Ordinance No. 1995-1 as amended), and after the lawful issuances of the permits required by this Ordinance. A confined feeding operation, as defined, shall nevertheless be regulated as spelled out in Section 216.

**104 SEVERABILITY**
If any provision of this Ordinance or the application of any provision to articulate circumstances is held invalid, the remainder of the Ordinance or the application of such provision to other circumstances shall not be affected.

**105 APPLICATION**
It is not intended by this Ordinance to interfere with, abolish 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to repeal, abrogate, annul or in any way interfere with any existing provisions of laws or ordinances not specifically repealed by this Ordinance, or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings or premises provided, however, that 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 such private covenants, permits, agreements, rules or regulations impose a greater restriction than is imposed by this Ordinance, the greater restriction shall control.

**106 JURISDICTIONAL AREA**
This Ordinance shall apply to all land within Jay County not covered by the ordinances of Portland, Dunkirk, Bryant, or Redkey, Indiana.

**107 CONFLICT**
Whenever there is a difference between minimum standards or dimensions specified herein and those contained in other regulations, resolutions or ordinances, including any subdivision control ordinance, of the Towns, City, County or State, the most restrictive standards shall govern.

**108 REQUIRED NOTIFICATIONS**
In order that the Board of Commissioners of Jay County may be cognizant of the development within its jurisdiction, the Plan Commission shall forward a copy, when submitted, of the primary plats of all subdivisions, either minor or major upon receipt thereof, to the Board of commissioners of Jay County and will, ten (10) days before secondary approval of either major or minor subdivisions is anticipated, notify said Board of Commissioners of said anticipated action.

# *Article 2*

# District Regulations

**201 ZONING MAPS**

A map of Jay County, Indiana, by township, is to be adopted as part of this Ordinance. Maps of all incorporated cities and towns in Jay County, Indiana, within the Jurisdictional area are also to be adopted as a part of this Ordinance. These Ordinance Maps shall be kept on file and available for examination at the offices of the Jay County Recorder and the Jay County Plan Commission.

**202 ZONING DISTRICTS**

All areas of Jay County, Indiana, Salamonia, and Pennville not covered under the ordinances of Portland, Dunkirk, Redkey, or Bryant, Indiana, are to be divided into the districts stated in this Ordinance as shown by the district boundaries on the Zoning Maps. Planned Unit Development Districts are governed under Article 3, Section 310 of this Ordinance. The Districts are:

"FP" Flood Plain
"AR" Agriculture Residential
"RR" Rural Residential
"COM" Commercial
"IND" Industrial
"EP" Environmental Protection
"PUD" Planned Unit Development

Additional Districts for Pennville are stated in Article 8

**203 DISTRICT BOUNDARIES**

District boundaries shown within the lines of streets, streams, and transportation rights-of-way shall be deemed to follow their centerlines. The vacation of streets shall not affect the location of such district boundaries. When the zoning administrator cannot definitely determine the location of a district boundary by such center lines, by the scale or dimensions stated on the Zoning Map, or by the fact that it clearly coincides with a property line, he shall refuse action, and the Board of Zoning Appeals, upon appeal, 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.

**204 PERMITTED USES AND SPECIAL EXCEPTIONS**

The Permitted Uses for each district are shown in Sections 205 through 211 of this Article, 310 of Article 3, and Article 8 of this Ordinance. The uses that are listed for the various districts shall be according to the common meaning of the term or according to definitions given in Article 7. Uses not specifically listed or defined to be included in the categories under this Article shall not be permitted. The Special Exceptions for each district that may be permitted by the Board of Zoning Appeals are also shown in sections 205 through 211, 310 and Article 8 of this Ordinance. The Board of Zoning Appeals shall follow the provisions of Section 504 and any other applicable sections when considering any application for special exception.

# 205 'FP' - Flood Plain District — Article 2

## District Intent, Permitted Uses, and Special Exception Uses

The purpose of the Flood Plain, "FP", District is to guide development of the Flood Hazard areas of Jay County, Indiana, which could result in the potential loss of life and property, create health and safety hazards and lead to extraordinary public expenditures for flood protection and relief. The development of these areas is not essential to the orderly growth of the county, and such areas are suitable for open space uses that do not require structures or fill.

### 205.2 Permitted Uses

A. Agricultural uses such as the production of crops, pastures, orchards, plant nurseries, vineyards, and general farming.

B. Forestry, wildlife areas, and nature preserves.

C. Parks and recreational uses, such as golf courses, driving ranges, and play areas.

### 205.3 Special Exceptions – *Require BZA Approval*

The following special exception uses may be permitted in the Flood Plain District only after a proper permit for same has been granted by the Indiana Department of Natural Resources. All terms and conditions imposed by the Department of Natural Resources will be incorporated in any permit issued by the Plan Commission.

A. Water management and use facilities, such as dams, docks, dolphins, channel improvements, dikes, jetties, grains, marinas, piers, wharves, levees, seawalls, floodwalls, weirs, and irrigation facilities.

B. Transportation facilities, such as streets, bridges, roadways, fords, airports, pipe lines, railroads, and utility transmission facilities.

C. Temporary or seasonal flood plain occupancy, such as circus sites, fair sites, carnival sites, boat ramps, camps, roadside stands, and transient amusement facility sites.

D. Water-related urban uses, such as wastewater treatment facilities, storm sewers, electric generating and transmission facilities, and water treatment facilities.

E. Other flood-tolerant or open space urban uses, such as flood-proofed industrial and commercial buildings, race tracks, tennis courts, park buildings, outdoor theaters, fills, truck freight terminals, radio or TV towers, parking lots, and mineral extractions.

F. Any other such intended uses.

# 205 'FP' - Flood Plain District
## Development Standards

**Article 2**

### Lot & Yard Standards

**Minimum Lot Size:**
Served by wells & septic system – 2 Acres

Served by public or other approved community sewer systems – As required in overlaid district

**Roadway Setback Regulations:**
30 feet from the road right-of-way, unless otherwise stated in this Ordinance

**Height Regulations****
As required in overlaid Districts

### Additional Development Standards That MAY Apply

| | |
|---|---|
| Accessory Uses & Structures | Section 302 |
| Campgrounds | Section 307 |
| Fences, Hedges and Walls | Section 302 |
| Home Occupation | Section 308 |
| Industrial Standards | Section 309 |
| Mobile Homes | Section 301.8 |
| Mobile Home Parks | Section 305 |
| Non-conforming Uses | Section 301 |
| Performance Standards | Section 309 |
| Recreational Vehicles | Section 306 |
| Residential New Homes Construction | Section 311 |
| Temporary Uses of Land or Structures | Section 304 |
| Visual Clearance Standards | Section 303 |
| Waste Pits and Lagoons | Section 302.6 |
| Confined Feeding | Section 216 |
| Wind Farms Commercial | Section 217 |
| Small Wind Energy System | Section 218 |
| Solar Energy Standards | Section 219 |
| Commercial Battery Storage | Section 220 |
| Data Center Facilities | Section 221 |
| CO2 Carbon Sequestration | Section 222 |

****Height Regulation / Variances:**

1. No accessory building shall exceed sixteen (16) feet in height above average ground level unless approved by the Board of Zoning Appeals.

2. The Board may authorize a variance to these height regulations in any district provided the following conditions:
   a. All front and side yard depths are increased one foot for each additional foot or height.
   b. The structure is any of the following and does not constitute a hazard to an established airport; television and radio towers, church spires, belfries, monuments, tanks, water and fire towers, stage towers and scenery lofts, cooling towers, ornamental towers and spires, chimneys, silos, elevator bulkheads, smokestacks, conveyers, flag poles, and electrical substations structures.

# 206 'AR' – Agricultural Residential District Article 2

## District Intent, Permitted Uses, and Special Exception Uses

### 206.1 Purpose

The Agricultural/Residential District, "AR", is intended to permit agriculture as defined; preserve the natural environment; prevent the adverse change of wildlife habitat, wildlife, plants, animals, water and the air; and to protect agricultural land from unrestricted growth.

### 206.2 Permitted Uses

a. Accessory Uses
b. Agriculture Uses *(see 1 below)*
c. Child Day Care – In home
d. Churches and Cemeteries
e. Dwellings / Single-Family
f. Ponds *(see 2 below)*
g. Public Parks
h Roadside Agricultural Produce Stands
i. Schools - Public and Private
j. Small Wind Energy Systems *(see 3 below)*
k. Wind Farms – Commercial *(see 4 below)*
l. Solar Energy Systems *(see 5 below)*

1. A confined feeding operation is regulated separately and is subject to the regulations as stated in Section 216 of this Ordinance.
2. If a pond is maintained on the property, including but not limited to a retaining pond, recreational pond or fish stocking pond, there shall be a setback of 50' from the property line to the edge of the dam or the edge of the water, and a setback of 75' from the road right-of-way to the dam or edge of the water. All ponds also shall comply with the Jay County Drainage Ordinance and the requirements of IDEM Rule 5.
3. Small Wind Energy Systems privately/personally owned are regulated separately and are subject to the regulations stated in Section 218 of this Ordinance.
4. Commercial Wind Farms are regulated separately and are subject to the regulations as stated in Section 217 of this Ordinance.
5. Solar Energy Systems both privately/personally owned and Commercial Solar Farms are regulated separately and are subject to the regulations as stated in Section 219 of this Ordinance.

### 206.3 Special Exceptions Uses – *Require BZA Approval*

a. Auction or Sale Barns *(see 2 below)*
b. Campgrounds
c. Child Day Care Facilities
d. Commercial Recreational Uses
e. Dwellings /Two-Family
f. Feed Mills & Fertilizer Sales *(see 2 below)*
g. General Stores *(see 1 below)*
h. Golf Courses
i. Grain Elevators *(see 2 below)*
j. Greenhouses and Nurseries - Commercial
k. Hospitals and Clinics
l. Mineral Excavations *(see 2 below)*
m. Nursing Home Facilities
n. Private Air Strips *(see 2 below)*
o. Private Clubs and Camps
p. Supply Yards
q. Swimming Pools (Public)
r. Truck Terminals *(see 2 below)*
s. Veterinary Hospitals and Kennels
t. Warehouses & Storage Facilities
u. Any other such intended uses

1. Building shall not exceed 2,500 square feet and merchandise shall be confined to building unless otherwise stated in request.

2. Use or facility must be 500 feet from any residence, church or school or 250 feet from any property line.

# 206 'AR' – Agricultural Residential District Article 2
## Development Standards

### Lot & Yard Standards

**Minimum Lot Size:**
Served by wells & septic systems -- 2 Acres

Served by public or other approved community sewer systems – No Minimum

**Roadway Setback Regulations:**
30 feet from the road right-of-way, unless otherwise stated in this Ordinance.

**Yard Setback Regulations:**
5 feet from property lines, unless otherwise stated in this Ordinance

**Height Regulations****
Maximum Height -- 100 feet

Small Wind Energy Tower – Private
*- See Section 218 for all regulations*

Commercial Wind Turbine –
*- See Section 217 for all regulations*

### Additional Development Standards That MAY Apply

| | |
|---|---|
| Accessory Uses & Structures | Section 302 |
| Campgrounds | Section 307 |
| Fences, Hedges and Walls | Section 302 |
| Home Occupation | Section 308 |
| Industrial Standards | Section 309 |
| Mobile Homes | Section 301.8 |
| Mobile Home Parks | Section 305 |
| Non-conforming Uses | Section 301 |
| Performance Standards | Section 309 |
| Recreational Vehicles | Section 306 |
| Residential New Homes Construction | Section 311 |
| Temporary Uses of Land or Structures | Section 304 |
| Visual Clearance Standards | Section 303 |
| Waste Pits and Lagoons | Section 302.6 |
| Confined Feeding | Section 216 |
| Wind Farms Commercial | Section 217 |
| Small Wind Energy System | Section 218 |
| Solar Energy Standards | Section 219 |
| Commercial Battery Storage | Section 220 |
| Data Center Facilities | Section 221 |
| CO2 Carbon Sequestration | Section 222 |

****Height Regulation Variances:**

1. No accessory building shall exceed sixteen (16) feet in height above average ground level unless approved by the Board of Zoning Appeals.

2. The Board may authorize a variance to these height regulations in any district provided the following conditions:
   a. All front and side yard depths are increased one foot for each additional foot of height; or
   b. The structure is any of the following and does not constitute a hazard to an established airport; television and radio towers, church spires, belfries, monuments, tanks, water and fire towers, stage towers and scenery lofts, cooling towers ornamental towers and spires, chimneys, silos, elevator bulkheads, smokestacks, conveyers, flag poles, and electrical substation structures.

# 207 'RR' – Rural Residential District Article 2

## District Intent, Permitted Uses, and Special Exception Uses

### 207.1 Purpose

The Rural Residential District, "RR", is intended to differentiate between a rural dwelling which is on and part of an established agricultural enterprise and one that is occupied by persons that are not engaged in agricultural operations or are not engaged in agricultural operations at that particular location.

### 207.2 Permitted Uses

a. Accessory Uses
b. Boarding Houses and Rentals
c. Child Day Care Homes
d. Churches
e. Dwellings / Single-Family
f. Dwellings / Two-Family
g. Dwellings / Multi-Family
h. Essential Services
i. Public Parks and Playgrounds
j. Schools - Public and Private

### 207.3 Special Exceptions – *Require BZA Approval*

a. Beauty Shops
b. Child Day Care Centers
c. Craft Shops
d. Funeral Homes
e. Home Occupations
f. Hospitals and Clinics
g. Mobile Home
h. Mobile Home Parks
i. Nursery Schools
j. Nursing Homes
k. Ponds *(see 3 below)*
l. Private Clubs
m. Professional Offices
n. Public Utility Structures
o. Real Estate Offices
p. Small Wind Energy System - Privately Owned
q. Swimming Pools (Public)
r. Veterinary Offices
s. Water & Wastewater Treatment Plants *(see 1 & 2 below)*
t. Any other such intended uses

1. Water Treatment Plants shall:
   a. Have 250 feet setback from property line and any dwelling within this district.
   b. Have adequate on-site parking so as to prevent the parking or standing of vehicles waiting to be unloaded or loaded.
   c. Be returned to an A/R District once the operations has ceased and prohibit dwellings, businesses or industries thereafter.
   d. Limit earthen structures to 20 feet maximum in height and excavations to 20 feet maximum in depth.

2. Wastewater Treatment Plants shall:
   a. Have 500 feet setback from property line and any dwelling within this district.
   b. Have adequate on-site parking so as to prevent the parking or standing of vehicles waiting to be unloaded or loaded.
   c. Be returned to an A/R District once the operations has ceased and prohibit dwellings, businesses or industries thereafter.
   d. Limit earthen structures to 20 feet maximum in height and excavations to 20 feet maximum in depth.

3. If a pond is maintained on the property, including but not limited to a retaining pond, recreational pond or fish stocking pond, there shall be a setback of 50' from the property line to the edge of the dam or the edge of the water and a setback of 75' from the road right-of-way to the dam or edge of the water. All ponds also shall comply with the Jay County Drainage Ordinance and the requirement of IDEM Rule 5.

## Lot & Yard Standards

**Minimum Lot Size:**
Served by wells & septic systems – 2 Acres
Served by public or other approved community sewer systems -- 5,000 Sq. Ft.

**Roadway Setback Regulation:**
30 feet from the road right-of-way

**Front Yard Limits**:**
Each lot shall have a front yard with a minimum depth measured from, and parallel to, the property line adjacent to the road of 15 feet.

**Side Yard Limits:**
Each lot shall have 2 side yards with each having a minimum width of 5 feet measured from, and parallel to, the property line.
***Exception:*** Row dwellings and/or buildings with common party walls shall be considered as 1 building occupying 1 lot.

**Rear Yard Limits:**
5 feet minimum rear yard depth per lot

**Height Regulations****
Maximum Height:
Primary Structures -- 30 Feet
Secondary Structures -- 16 Feet

Small Wind Energy Tower – Private
*- See Section 218 for all regulations*

## Additional Development Standards That MAY Apply

| | |
|---|---|
| Accessory Uses & Structures | Section 302 |
| Campgrounds | Section 307 |
| Fences, Hedges and Walls | Section 302 |
| Home Occupation | Section 308 |
| Industrial Standards | Section 309 |
| Mobile Homes | Section 301.8 |
| Mobile Home Parks | Section 305 |
| Non-conforming Uses | Section 301 |
| Performance Standards | Section 309 |
| Recreational Vehicles | Section 306 |
| Residential New Homes Construction | Section 311 |
| Temporary Uses of Land or Structures | Section 304 |
| Visual Clearance Standards | Section 303 |
| Waste Pits and Lagoons | Section 302.6 |
| Confined Feeding | Section 216 |
| Wind Farms Commercial | Section 217 |
| Small Wind Energy System | Section 218 |
| Solar Energy Standards | Section 219 |
| Commercial Battery Storage | Section 220 |
| Data Center Facilities | Section 221 |
| CO2 Carbon Sequestration | Section 222 |

****Height Regulations / Variances:**

1. No accessory building shall exceed 16 feet in height above average ground level unless approved by the Board of Zoning Appeals.

2. The Board may authorize a variance to these height regulations in any district provided the following conditions:
   a. All front and side yard depths are increased one foot for each additional foot of height; or
   b. The structure is any of the following and does not constitute a hazard to an established airport; television and radio towers, church spires, belfries, monuments, tanks, water and fire towers, stage towers and scenery lofts, cooling towers, ornamental towers and spires, chimneys, silos, elevator bulkheads, smokestacks, conveyers, flag poles, and electrical substation structures.

**Front Yard Limit Exceptions:**

1. Where a lot is situated between 2 lots, each of which has an existing main building thereon, the front yards of which are less than the minimum required front yards established herein, the front yard limit of such lot shall be the average of the front yards of said existing buildings.
2. Where a lot abuts only 1 lot having an existing main building thereon, the front yard of which is less than the minimum required front yard established herein, the front yard limit of such lot shall be the average of the front yard of said existing building and 15 feet.
3. In the case of a corner lot the side yard width to the side street line shall be equal to at least 7 1/2 feet.

# 209 'COM' – Commercial District Article 2

## District Intent, Permitted Uses, and Special Exception Uses

### 209.1 Purpose

The Commercial District**,** "COM", is limited to business, public, and certain residential uses. By establishing compact districts for such uses, more efficient traffic movement, parking facilities, fire protection and police protection may be provided. Industrial uses are excluded in order to reduce the hazards caused by extensive truck and rail movements normally associated with such uses. The purpose of these districts is to provide unified shopping districts conveniently located.

### 209.2 Permitted Uses

a. Accessory Uses
b. Automobile Sales, Service & Repair
c. Child Day Care Centers
d. Eating and Drinking Establishments
e. Essential Services
f. Hotels and Motels
g. Offices and Banks
h. Personal and Professional Services
i. Private Utilities
j. Public Parks and Playgrounds
k. Public Utility Structures
l. Retail Business

### 209.3 Special Exceptions – *Require BZA Approval*

a. Adult Bookstore & Video Store *(see 1 below)*
b. Animal Boarding/Kennel
c. Animal Hospital/Veterinarian
d. Campgrounds
e. Churches
f. Commercial Recreation
g. Dwelling / Single-Family
h. Dwelling / Two-Family
i. Dwelling / Multi-Family
j. Farm Implement Sales, Service & Repair
k. Grain Elevator *(see 1 below)*
l. Hospitals and Clinics
m. Livestock Auction *(see 1 below)*
n. Manufacturing *(see 3 below)*
o. Mineral Excavation *(see 1 below)*
p. Mobile Home *(see 4 below)*
q. Mobile Home Parks
r. Private Utilities
s. Public Transportation Terminal
t. Schools - Public and Private
u. Small Wind Energy System-Private
v. Supply Yards
w. Theater (Indoor and Outdoor)
x. Towers *(see 5 below)*
y. Truck/Railroad Terminals *(see 1 & 2 below)*
z. Warehouses
aa. Wholesale Business
bb. Any other such intended uses

1. Use or facility must be 500 feet from any residence, church or school or 250 feet from any property line.

2. Operation shall be a minimum of 5 acres and not to exceed 10 acres.

3. Building shall not exceed 2,500 square feet and materials shall be confined to building unless otherwise stated in appeal. An agricultural processing facility that cannot be defined as an agricultural accessory shall be defined as a "COM" manufacturing special exception.

4. No mobile homes will be allowed in the incorporated areas, except in a qualified mobile home park.

5. Should a tower or similar structure be utilized on the property the Board of Zoning Appeals may require additional setbacks to assure the tower does not cause damage to neighboring buildings or property in the event the tower falls.

## Lot & Yard Standards

**Minimum Lot Size:**
Served by wells & septic systems -- 3 Acres
Served by public or other approved community sewer systems -- No minimum

**Roadway Setback Regulation:**
30 feet from the road right-of-way

**Front Yard Limits:**
No limits

**Side Yard Limits:**
Each lot shall have 2 side yards with each having a minimum width of 5 feet measured from, and parallel to, the property line.
***Exception:*** Row dwellings and/or buildings with common party walls shall be considered as 1 building occupying 1 lot.

**Rear Yard Limits:**
5 feet minimum rear yard depth per lot

**Other Regulations:**
1. Accessory Buildings shall not be located less than 5 feet from any property line.
2. The minimum distance between structures and/or excavations to adjacent residential or agricultural structures and/or excavations shall be 100 feet.

**Height Regulations****
Maximum Height:
Primary Structures -- 50 Feet
Secondary Structures -- 16 Feet

Small Wind Energy Tower – Private
*- See Section 218 for all regulations*

## Additional Development Standards That MAY Apply

| | |
|---|---|
| Accessory Uses & Structures | Section 302 |
| Campgrounds | Section 307 |
| Fences, Hedges and Walls | Section 302 |
| Home Occupation | Section 308 |
| Industrial Standards | Section 309 |
| Mobile Homes | Section 301.8 |
| Mobile Home Parks | Section 305 |
| Non-conforming Uses | Section 301 |
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| Solar Energy Standards | Section 219 |
| Commercial Battery Storage | Section 220 |
| Data Center Facilities | Section 221 |
| CO2 Carbon Sequestration | Section 222 |

****Note: Height Regulation Variances:**

1. No accessory building shall exceed sixteen (16) feet in height above average ground level unless approved by the Board of Zoning Appeals.

2. The Board may authorize a variance to these height regulations in any district provided the following conditions:
   a. All front and side yard depths are increased one foot for each additional foot of height; or
   b. The structure is any of the following and does not constitute a hazard to an established airport; television and radio towers, church spires, belfries, monuments, tanks, water and fire towers, stage towers and scenery lofts, cooling towers ornamental towers and spires, chimneys, silos, elevator bulkheads, smokestacks, conveyers, flag poles, and electrical substation structures.

# 210 'IND' – Industrial District Article 2

## District Intent, Permitted Uses, and Special Exception Uses

### 210.1 Purpose

The Industrial District, "IND", is intended to provide suitable space for existing industries and their expansion as well as for future industrial development. Performance standards, parking specifications, and yard regulations, are set forth in the Ordinance in order to insure safe industrial development that is compatible with adjacent uses. The locations of the districts should be near railroads or highways in order to meet the transportation needs of industry.

### 210.2 Permitted Uses

a. Accessory Uses
b. Commercial bulk propane storage
c. Essential Services
d. Grain Elevators
e. Lumber Yards
f. Manufacturing
g. Offices
h. Supply Yards *(see 1 below)*
i. Truck and Railroad Terminals
j. Warehouses
k. Wind Farms Commercial
l. Wholesale Businesses

1. Materials shall be stored in a safe and orderly manner and the property shall be fenced in.

### 210.3 Special Exceptions – *Require BZA Approval*

a. Airports
b. Child Day Care Centers
c. Concrete Manufacturing and Mixing
d. Fertilizer and Herbicide Manufacturing Operations *(see 1 through 5 below)*
e. Fire Stations and Municipal Buildings
f. Outdoor Storage *(see 5 below)*
g. Small Wind Energy System - Privately Owned
h. Stockyards and Slaughter Houses *(see 1 through 3 below)*
i. Towers *(see 6 below)*
j. Water and Wastewater Treatment Plants *(see 1 through 4 below)*
k. Any other such intended uses

1. Shall have 500 feet buffer between property line and any facility or excavation.

2. Adequate on-site parking must be provided to prevent the parking or standing of vehicles waiting to be unloaded or loaded.

3. Earthen structures may be built to 20 feet maximum height and excavations to 20 feet or less are permissible.

4. Once the operation has ceased, the property shall be returned to an AR District where no dwelling, business, or industry shall be permitted on the property.

5. Materials shall be stored in a safe and orderly manner and the property shall be fenced in.

6. Should a tower or similar structure be utilized on the property the Board of Zoning Appeals may require additional setbacks to assure the tower does not cause damage to neighboring buildings or property in the event the tower falls.

# 210 'IND' – Industrial District — Article 2
## Development Standards

### Lot & Yard Standards

**Minimum Lot Size:**
Served by wells & septic systems -- 5 Acres

Served by public or other approved community sewer systems -- 3 Acres

**Roadway Setback Regulation:**
30 feet from the road right-of-way

**Front Yard Limits:**
No limits

**Side Yard Limits:**
Each lot shall have 2 side yards with each having a minimum width of 5 feet measured from, and parallel to, the property line.
***Exception:*** Row dwellings and/or buildings with common party walls shall be considered as 1 building occupying 1 lot.

**Rear Yard Limits:**
5 feet minimum rear yard depth per lot

**Other Regulations:**
1. Accessory Buildings shall not be located less than 5 feet from any property line.
2. The minimum distance between structures and/or excavations to adjacent residential or agricultural structures and/or excavations shall be 300 feet.

**Height Regulations****
Maximum Height:
Primary Structures -- 70 Feet
Secondary Structures -- 16 Feet

Small Wind Energy Tower – Private
- *See Section 218 for all regulations*

### Additional Development Standards That MAY Apply

| | |
|---|---|
| Accessory Uses & Structures | Section 302 |
| Campgrounds | Section 307 |
| Fences, Hedges and Walls | Section 302 |
| Home Occupation | Section 308 |
| Industrial Standards | Section 309 |
| Mobile Homes | Section 301.8 |
| Mobile Home Parks | Section 305 |
| Non-conforming Uses | Section 301 |
| Performance Standards | Section 309 |
| Recreational Vehicles | Section 306 |
| Residential New Homes Construction | Section 311 |
| Temporary Uses of Land or Structures | Section 304 |
| Visual Clearance Standards | Section 303 |
| Waste Pits and Lagoons | Section 302.6 |
| Confined Feeding | Section 216 |
| Wind Farms Commercial | Section 217 |
| Small Wind Energy System | Section 218 |
| Solar Energy Standards | Section 219 |
| Commercial Battery Storage | Section 220 |
| Data Center Facilities | Section 221 |
| CO2 Carbon Sequestration | Section 222 |

****Note: Height Regulation Variances:**

1. No accessory building shall exceed sixteen (16) feet in height above average ground level unless approved by the Board of Zoning Appeals.

2. The Board may authorize a variance to these height regulations in any district provided the following conditions:
   a. All front and side yard depths are increased one foot for each additional foot of height; or
   b. The structure is any of the following and does not constitute a hazard to an established airport; television and radio towers, church spires, belfries, monuments, tanks, water and fire towers, stage towers and scenery lofts, cooling towers ornamental towers and spires, chimneys, silos, elevator bulkheads, smokestacks, conveyers, flag poles, and electrical substation structures.

# 211 'EP' – Environmental Protection District Article 2
## District Intent, Permitted Uses, and Special Exception Uses

**211.1 Purpose**

The Environmental Protection District, "EP", is intended to provide safe locations for potentially environmentally hazardous uses, to regulate such uses so as to protect the environment, and to protect the citizens of Jay County, Indiana.

**211.2 Permitted Uses**

a. Accessory Uses
b. Agriculture
c. Commercial Bulk Fuel Storage
d. Commercial Fertilizer & Pesticide Operations
e. Commercial Incinerators
f. Essential Services
g. Explosive Material Manufacturing Operations
h. Intermediate Processing Facility
i. Licensed Salvage Yard
j. Materials Recovery Facility
k. Pond *(See 3b below)*
l. Prison and Correctional Facilities
m. Sanitary Landfills
n. Stockyards and Slaughter Houses
o. Transfer Stations
p. Water and Wastewater Treatment Plant
q. Any other such intended uses
r. Satellite Manure Storage Structure *(See 2 below)*

**211.3 Concerning all Permitted Uses above, the following regulations shall apply:**

1. **Local Reporting Requirements:**
   A copy of all required State and/or Federal permit application shall be filed with the Jay County Plan Commission before Jay County shall issue an Improvement Location Permit or a Certificate of Compliance.

2. **Concerning any Satellite Manure Storage Structure / "SMSS"**
   Any SMSS must also comply with the regulations as set forth in Section 216 of this Ordinance

3. **Setbacks:**
   a. For Permitted Uses c and k, the operation shall have a 1,000 foot buffer between its property line and the facility or excavation. For permitted uses d-i, l-n, and q, a 100 foot buffer shall be maintained between the property line and the facility or excavation. For permitted uses a, b, and o, a 30' buffer shall be maintained.

   b If a pond is maintained on the property, including but not limited to a retaining pond, recreational pond or fish stocking pond, there shall be a setback of 50' from the property line to the edge of the dam or the edge of the water and a setback of 75' from the road right-of-way to the dam or edge of the water. All ponds also shall comply with the Jay County Drainage Ordinance and the requirement of IDEM Rule 5.

4. **Screening:**
   For Permitted Uses c through g, the operation shall provide a screen of vegetation. This screen shall be identified and located on a site map and submitted to and approved by the Plan Commission prior to the issuance of a Certificate of Compliance. In lieu of a screen of vegetation a fence may be employed to screen the operation. The fence must be sufficient to screen the operation from sight as well as provide for public safety. The proposed fence must be submitted to and approved by the Plan Commission prior to the issuance of a Certificate of Compliance.

5. **Lot Requirements:**
   The minimum lot size or all of the above Permitted Uses shall be 5 acres. Adequate on-site parking must be provided to prevent the parking or standing of vehicles on public thoroughfares waiting to be unloaded or loaded. Once the operation has ceased, the property shall be returned to an AR District where no new dwelling, business or industry shall be permitted on the property.

**211.3 Concerning all Permitted Uses (EP - Environmental Protection District) *Continued...***

**6. Height Requirements:**
Height regulations shall be 50 feet, with the following exception: all earthen structures shall be built to a 20 feet maximum height and excavations of a 20 feet maximum depth.

**7. Public Hearings:**
A public hearing prior to the issuance of the Improvement Location Permit shall be required even though rezoning is not necessary for the development.

**8. Performance Standards:**
All EP uses shall conform to the Performance Standards as established in Section 309 of this Ordinance.

**9. Concerning Sanitary Landfills:**
It is not the proper use of the land to convert a solid waste disposal site into a hazardous waste (as defined in State of Indiana Environmental Rules, 329 IAC 3-.3-3) disposal site either during the granting of the Improvement Location Permit or Certificate of Compliance.

Therefore, a solid waste landfill, transfer station or depository. It is also not the proper use of the land to accept special waste (as defined in State of Indiana Environmental Rules, 329 IAC 2-21-1) to a solid waste landfill, transfer station or depository. A solid waste landfill, transfer station or depository shall not be converted to a special waste landfill, transfer station or depository.

**211.4 Special Exception Uses – *Require BZA Approval***

**There are no special exception uses for EP-Environmental Protection District**

# 211 'EP' – Environmental Protection District Article 2
## Development Standards

### Lot & Yard Standards

**Minimum Lot Size:**
Served by wells & septic systems – 5 Acres
Served by public or other approved community sewer systems – 5 Acres

**Roadway Setback Regulation:**
30 feet from the road right-of-way

**Other Regulations:**
Accessory Buildings shall not be located less than 5 feet from any property line.

**Height Regulations****
Maximum Height:
Primary Structures -- 50 Feet
Secondary Structures -- 16 Feet

**Exception** – All earthen structures shall be built to a 20 feet maximum height and excavations of a 20 feet maximum depth.

### Additional Development Standards That MAY Apply

| | |
|---|---|
| Accessory Uses & Structures | Section 302 |
| Campgrounds | Section 307 |
| Fences, Hedges and Walls | Section 302 |
| Home Occupation | Section 308 |
| Industrial Standards | Section 309 |
| Mobile Homes | Section 301.8 |
| Mobile Home Parks | Section 305 |
| Non-conforming Uses | Section 301 |
| Performance Standards | Section 309 |
| Recreational Vehicles | Section 306 |
| Residential New Homes Construction | Section 311 |
| Temporary Uses of Land or Structures | Section 304 |
| Visual Clearance Standards | Section 303 |
| Waste Pits and Lagoons | Section 302.6 |
| Confined Feeding | Section 216 |
| Wind Farms Commercial | Section 217 |
| Small Wind Energy System | Section 218 |
| Solar Energy Standards | Section 219 |
| Commercial Battery Storage | Section 220 |
| Data Center Facilities | Section 221 |
| CO2 Carbon Sequestration | Section 222 |

****Note: Height Regulation Variances:**

1. No accessory building shall exceed 16 feet in height above average ground level unless approved by the Board of Zoning Appeals.

2. The Board may authorize a variance to these height regulations in any district provided the following conditions:
   a. All front and side yard depths are increased one foot for each additional foot of height; or
   b. The structure is any of the following and does not constitute a hazard to an established airport; television and radio towers, church spires, belfries, monuments, tanks, water and fire towers, stage towers and scenery lofts, cooling towers ornamental towers and spires, chimneys, silos, elevator bulkheads, smokestacks, conveyers, flag poles, and electrical substation structures.

## 216 CONFINED FEEDING OPERATION (CFO) REGULATIONS

**PURPOSE:** The purpose of this Section is to impose construction and operational requirements for Animal Feeding Operations (AFO's) and Confined Feeding Operations (CFO's) and to provide standards to help safe-guard life, human health and the environment. The purpose of setback regulations is to separate the homeowner and others from the normal noises and odors which may accompany a confined feeding operation.

### 216.1 CONFINED FEEDING PERMITS REQUIRED

1. A person, firm or corporations may not start:
   a. construction of a confined feeding operation (CFO); or
   b. the expansion of a confined feeding operation (CFO) including any alterations to and/or any additional structures and manure/waste storage structure/facility;

   without first obtaining a Building Permit from the Zoning Administrator/Director.
2. Any animal feeding operation that falls under the definition of a CFO as defined in Section 216.2(C) shall comply with all regulations as set forth in this Ordinance.
3. Any manure/waste storage structure/facility will require a permit and must meet all setback requirements that are applicable to the permitted AFO/CFO, including any IDEM requirements
5. Any animal composting structure/facility will require a permit and must comply with the regulations as set forth in Section 216.5, including any IDEM requirements.
6. Any Satellite Manure Storage Structure (SMSS) will require a permit and must comply with the regulations as set forth in Section 216.6, including any IDEM requirements.

### 216.2 DEFINITIONS

The following words and terms shall, for the purpose of this Section and used elsewhere in this Ordinance, have the meaning shown herein.

**A. Animal Feeding Operation or "AFO" defined**

327 IAC 19-2-3 "Animal feeding operation" or "AFO" defined

Animal feeding operation or "AFO" means a lot or facility, other than an aquatic animal production facility, where all of the following conditions are met:

(1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period.

(2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over at least fifty percent (50%) of the lot or facility.

**B. Confined Feeding defined:**

327 IAC 19-2-6 "Confined feeding" defined

(a) Confined feeding, *as defined in IC 13-11-2-39*, means the confined feeding of animals for food, fur, or pleasure purposes in lots, pens, ponds, sheds, or buildings where:

(1) animals are confined, fed, and maintained for at least forty-five (45) days during any twelve (12) month period; and

(2) ground cover or vegetation is not sustained over at least fifty percent (50%) of the animal confinement area.

(b) The term does not include the following:

(1) A livestock market:

(A) where animals are assembled from at least two (2) sources to be publicly auctioned or privately sold on a commission basis; and

(B) that is under state or federal supervision.

(2) A livestock sale barn or auction market where animals are kept for not more than ten days.

**C. Confined Feeding Operation of "CFO" is further defined as:**

1. Any existing or proposed animal feeding operation or an expansion of an existing animal feeding operation regardless of acreage on which there are animal numbers equal to or exceeding:
    a. 100 Cattle or Horses
    b. 300 Swine or Sheep
    c. 500 Ducks or Turkeys
    d. 5,000 Chickens
2. Any AFO or CFO using open waste storage and/or a waste holding pit.
3. Where any animal feeding operation involves less than 100 cattle or horses, 300 swine or sheep, 500 ducks or turkeys, 5,000 chickens *but there is more than one species of animal*, the total number of animals in each category shall be divided by 100 in the case of cattle or horses, 300 in the case of swine or sheep, 500 in the case of ducks or turkeys and 5,000 in the case of chickens. The resulting percentages shall be added together. If the total of such percentages equals or exceeds 100, then the operation is a confined feeding operation as defined herein, and as such, shall be subject to the provisions of this ordinance.
4. Any animal feeding operation facility where the owner and/or operator elects to be subject to IDEM, IC 13-18-10 / Chapter 10 Confined Feeding Control.
5. Any animal feeding operation facility causing a violation of water pollution control laws and/or any rules of the water pollution control board; or as determined by the Water Pollution Control Board or its successors.

**D. Construction defined:**

327 IAC 19-2-9 "Construction" defined

"Construction", as defined in IC 13-11-2-40.8, for purposes of IC 13-18-10, means the fabrication, erection, or installation of a facility or manure control equipment at the location where the facility or manure control equipment is intended to be used. The term does not include the following:

(1) The dismantling of existing equipment and control devices.
(2) The ordering of equipment and control devices.
(3) Off-site fabrication.

**E. Feedlot defined:**

327 IAC 19-2-14 "Feedlot" defined

"Feedlot" means an outside lot or pen used for confined feeding, including areas that may be covered, partially covered, or uncovered.

**F. Flood Plain defined per FEMA:**

FEMA: Floodplain--Any land area susceptible to being inundated by floodwaters from any source.
Flood Hazard Boundary Map (FHBM)--Official map of a community issued by FEMA, where the boundaries of the flood, mudflow and related erosion areas having special hazards have been designated.

**G. Manure/Waste defined:**

327 IAC 19-2-25 "Manure" defined

"Manure", as defined in IC 13-11-2-126.5, means the following:

(1) Liquid or solid animal excreta.
(2) Waste liquid generated at a livestock or poultry production area, including the following:
    (A) Excess drinking water.
    (B) Cleanup water.
    (C) Contaminated livestock truck or trailer washwater.
    (D) Milking parlor wastewater.
    (E) Milk house washwater.
    (F) Egg washwater.
    (G) Silage leachate.
(3) Any precipitation or surface water that has come into contact with the following:
    (A) Liquid or solid animal excreta. (B) Used bedding. (C) Litter.
    (D) Liquid described in subdivision (4).
(4) Any other materials generated at a livestock or poultry production area commingled with the materials listed in subdivisions (1) through (3).

**H. Manure/Waste Storage Facility defined:**

327 IAC 19-2-28 "Manure storage facility" defined

"Manure storage facility" means any:

(1) pad; (2) pit; (3) pond; (4) lagoon; (5) tank; (6) building; or (7) manure containment area;

used to store or treat manure, including any portions of buildings used specifically for manure storage or treatment.

**I. Mortality Management / "Animal Composting"**

327 IAC 19-7-6 Mortality management (Water Pollution Control Division)

(a) CFOs must carry out proper management of dead livestock as required by 345 IAC 7-7 to ensure that there shall be:

(1) no discharge of mortality or liquids that have been in contact with mortality to waters of the state; and Indiana Administrative Code Page 17(2) no disposal in a manure storage facility that is not specifically designed to treat animal mortalities.

(b) Mortality composting sites must meet all of the following criteria:

(1) Be constructed and operated:

(A) to prevent:

(i) leaching, either through the use of earthen compaction or a concrete pad; and

(ii) run-on and runoff of storm water; and

(B) in accordance with IC 15-17-11.

(2) Comply with setbacks listed in 327 IAC 19-12-3.

**J. Owner/Operator defined:**

327 IAC 19-2-32 "Owner/operator" defined

"Owner/operator" means the person:

(1) that owns the waste management systems at the CFO;

(2) that:

(A) owns the livestock at the CFO; and

(B) applies for or has received an approval under this Section; or

(3) in direct or responsible charge or control of one (1) or more CFOs..

**K. Process Wastewater defined:**

327 IAC 19-2-33 "Process wastewater" defined

(a) "Process wastewater" means water directly or indirectly used in the operation of the AFO for any or all of the following:

(1) Spillage or overflow from animal or poultry watering systems.

(2) Washing, cleaning, or flushing any of the following:

(A) Pens; (B) Barns; (C) Manure pits; (D) Other AFO facilities.

(3) Direct contact swimming, washing, or spray cooling of animals.

(4) Dust control at the production area.

(b) The term includes any water that comes into contact with or is a constituent of any raw materials, products, or byproducts, including the following:

(1) Manure; (2) Litter; (3) Feed; (4) Milk; (5) Eggs; (6) Bedding.

**L. Production Area defined:**

327 IAC 19-2-34 "Production area" defined

"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes, but is not limited to, lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment area includes, but is not limited to, settling basins, and areas within berms and diversions that separate uncontaminated storm water. The term includes any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

**M. Surface Water defined**

327 IAC 19-2-45 "Surface water" defined

"Surface water" means waters present on the surface of the earth, including:

(1) streams; (2) lakes; (3) ponds; (4) rivers; (5) swamps; (6) marshes; or (7) wetlands.

**N. Waste Management System defined**

327 IAC 19-2-48 "Waste management system" defined

"Waste management system" means any approved method of managing manure or process wastewater at the CFO, including:

(1) manure storage facilities;
(2) manure transfer systems;
(3) manure treatment systems, such as a:
  (A) constructed wetland;
  (B) vegetative management system; or
  (C) wastewater treatment system under a valid national pollutant discharge elimination system (NPDES) permit;
(4) feedlots;
(5) confinement buildings; or
(6) waste liquid handling, storage, and treatment systems.

**O. Waters defined**

327 IAC 19-2-49 "Waters" defined

(a) "Waters", as defined in IC 13-11-2-265, means:

(1) the accumulations of water, surface and underground, natural and artificial, public and private; or
(2) a part of the accumulations of water; that are wholly or partially within, flow through, or border upon Indiana.

(b) The term does not include:

(1) an exempt isolated wetland;
(2) a private pond; or
(3) an off-stream pond, reservoir, wetland, or other facility built for reduction or control of pollution or cooling of water before discharge.

(c) The term includes all waters of the United States, as defined in Section 502(7) of the federal Clean Water Act (33 U.S.C.1362(7)), that are located in Indiana.

**216.3 JAY COUNTY REGULATIONS: Setback requirements For CFO's without the use of any open waste storage:** For confined feeding operations *without* the use on any open waste storage, all confined lots, feedlots and structures designed to house or contain livestock shall meet the following setbacks applicable to the operation:

**A. SETBACKS USING 2 TIER SYSTEM**

| | | | |
|---|---|---|---|
| **TIER 1** | 100 – | 500 | Cattle or Horses |
| | 300 – | 10,000 | Swine or Sheep |
| | 500 – | 24,000 | Ducks |
| | 500 – | 30,000 | Turkeys – Finishers |
| | 500 – | 48,000 | Turkeys – Starters |
| | 5,000 – | 1,000,000 | Chickens |

**Tier 1 Setbacks:**
750' from any Residence not owned by the CFO owner/operator;
1,250' from church, school, business, public building and any area zoned Commercial (COM);
1,550' from Rural Residential (RR);
100' from Property lines;
100' from Road right of way
300' from Flood Plain as designated on the FEMA Flood Hazard Boundary Map (FHBM).
300' from any surface waters of the state, including any county ditch, stream, or waterway.
See 216.3(B) for additional setback requirements

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**TIER 2** **Any animal number greater than those numbers listed in Tier 1**

**Tier 2 Setbacks:**
1,320' from any Residence not owned by the CFO owner/operator;
1,750' from church, school, business, public building and any area zoned Commercial (COM);
2,050' from Rural Residential (RR);
150' from Property lines;
150' from Road right of way
350' from Flood Plain as designated on the FEMA Flood Hazard Boundary Map (FHBM).
350' from any surface waters of the state, including any county ditch, stream, or waterway.
See 216.3(B) for additional setback requirements

**B. Additional Setback Requirements for CFO's without the use of any open waste storage:**

1. 1 mile (5,280 ft) from the corporate limits of Pennville, 1 mile (5,280 ft) from the corporate limits of Redkey, 1/2 mile (2,640 ft) from the corporate limits of Salamonia and 2 miles (10,560 ft) from the corporate limits of Portland. (See City of Portland Zoning Ordinance for regulations).

2. 1 mile to the west, 1 mile to the south, 1/2 mile to the north, and 1/2 mile to the east of the property lines of any Commercial (COM) zoned Recreational Area.

3. 2,000 feet from any nature preserve, park and/or recreational use including such uses as permitted in the Floodplain (FP) District, Section 205 of the Jay County Zoning Ordinance; to include property owned by IDNR, Friends of the Limberlost and/or any such property associated with the Loblolly reconstruction project/area.

**216.4 JAY COUNTY REGULATIONS: Setback Requirements for any Open Waste Storage:**
ALL open waste storage facilities and/or structures shall meet the following setbacks applicable to the operation based on the number of animals:

**A. SETBACKS USING 2 TIER SYSTEM**

| | | | |
|---|---|---|---|
| **TIER 1** | 100 – | 500 | Cattle or Horses |
| | 300 – | 10,000 | Swine or Sheep |
| | 500 – | 24,000 | Ducks |
| | 500 – | 30,000 | Turkeys – Finishers |
| | 500 – | 48,000 | Turkeys – Starters |
| | 5,000 – | 1,000,000 | Chickens |

**Tier 1 Setbacks:**
1,250' from any Residence not owned by the CFO owner/operator;
1,500' from church, school, business, public building and any area zoned Commercial (COM);
2,000' from Rural Residential (RR);
100' from Property lines;
100' from Road right of way
300' from any surface waters of the state, including any county ditch, stream, or waterway
See 216.4(B) for additional setback requirements

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**TIER 2** **Any animal number greater than those numbers listed in Tier 1**

**Tier 2 Setbacks:**
1,500' from any Residence not owned by the CFO owner/operator;
2,000' from church, school, business, public building and area zoned Commercial (COM);
2,500' from Rural Residential (RR);
150' from Property lines;
150' from Road right of way
350' from any surface waters of the state, including any county ditch, stream, or waterway
See 216.4(B) for additional setback requirements

**B. Additional Setback Requirements for CFO's with any open waste storage**

1. 1 mile (5,280 ft) from the corporate limits of Pennville, 1 mile (5,280 ft) from the corporate limits of Redkey, 1/2 mile (2,640 ft) from the corporate limits of Salamonia and 2 miles (10,560 ft) from the corporate limits of Portland. (See City of Portland Zoning Ordinance for regulations).
2. 1 mile to the west, 1 mile to the south, 1/2 mile to the north, and 1/2 mile to the east of the property lines of any Commercial (COM) zoned recreational area.
3. 2,000 feet from any nature preserve, park and/or recreational use including such uses as permitted in the Floodplain (FP) District, Section 205 of the Jay County Zoning Ordinance; to include property owned by IDNR, Friends of the Limberlost and/or any such property associated with the Loblolly reconstruction project/area.
4. Setback from any Floodplain area as designated on the FEMA Flood Hazard Boundary Map (FHBM) as listed below:
    a. 1 million gallon lagoon -- 500 feet from the flood plain
    b. 5 million gallon lagoon -- 1,200 feet from the flood plain
    c. 10 million gallon lagoon -- 1,800 feet from the flood plain
    d. 15 million gallon lagoon -- 2,000 feet from the flood plain

    In a case where the gallon amount falls between two of the stated amounts listed above, the further setback distance will be used.
5. Setbacks for any new and/or expansion of existing open waste storage facility will be based on the number of animals of the operation per the 2 Tier System.

**216.5 Animal Composting Structure/Facility Regulations & Setbacks**

Any animal composting structure/facility shall meet the setbacks as required for the permitted CFO as stated in Subsections 216.3 and 216.4 *and/or* shall comply with the following setbacks including all setbacks required by IDEM per 327 IAC 19-7-6 Mortality Management/Animal Composting (Water Pollution Control Division) and 327 IAC 19-12-3 Setbacks.

1. 1,000 feet from a public water supply well or public water supply surface intake structure.
2. 300 feet from the following:
    a. Surface water.
    b. Drainage inlets, including water and sediment control basins.
    c. Sinkholes, as measured from the surficial opening or the lowest point of the feature.
    d. Off-site water wells
3. 100 feet from the following:
    a. On-site water wells.
    b. Property lines.
    c. Public roads.
4. 400 feet from any existing off-site residential and public buildings.

**216.6 Satellite Manure Storage Structure/Facility "SMSS"**

A satellite manure storage structure (SMSS) means a structure and any associated structures that are designed to store off site manure, both solid and liquid (regardless of the size or storage capacity), and is not located at a privately owned livestock or poultry production area. A SMSS includes, but is not limited to a building, pad, lagoon, pit, pond or tank. A SMSS must also comply with all regulations as set forth by IDEM along with the regulations as set forth in this Section and Ordinance.

**A. Zoning Classification:**

A SMSS is considered a business and shall only be permitted on property with a zoning classification of Environmental Protection (EP) per Section 211 of this Ordinance.

**B. Setback Requirements:**

All SMSS structures and/or manure storage structures (open and/or enclosed) must comply with the following setback requirements:

1. 2,640' (1/2 Mile) from any residence;
2. 3,000' from any church, school, business, public building and area zoned Commercial (COM);
3. 3,500' from Rural Residential (RR);
4. 1,000' from Property lines;
5. 1,000' from Road right of way;
6. 1 mile from the corporate limits of Bryant, Dunkirk, Pennville, Redkey, Salamonia, and 2 miles from the corporate limits of Portland (Portland has a 2-mile jurisdictional area);
7. 1 mile from the property lines of any Commercial (COM) zoned Recreational Area;
8. 500 feet from any surface waters of the state, including any county ditch, stream, or waterway;
9. 2,640 feet from any nature preserve, park and/or recreational use including such uses as permitted in the Floodplain (FP) District, Section 205 of the Jay County Zoning Ordinance. This includes property owned by IDNR, Friends of the Limberlost and/or any such property associated with the Loblolly reconstruction project/area;
10. Setback from any Floodplain area as designated on the FEMA Flood Hazard Boundary Map (FHBM) as listed below:

    a. 0 - 1 million gallon lagoon -- 750 feet from the flood plain
    b. 5 million gallon lagoon -- 1,500 feet from the flood plain
    c. 10 million gallon lagoon -- 2,250 feet from the flood plain
    d. 15 million gallon lagoon -- 3,000 feet from the flood plain

    In a case where the gallon amount falls between two of the stated amounts listed above, the further setback distance will be used.

**C. Screening:**
The SMSS facility shall provide a screen of vegetation and/or a fence may be employed to screen the operation. The vegetation and/or fence must be sufficient to screen the operation from sight as well as provide for public safety. The proposed vegetation and/or fence shall be identified and located on a site map and submitted to and approved by the Zoning Administrator/Director prior to the issuance of a Certificate of Compliance.

**D. Application and Permitting:**
The application and permitting process for a proposed SMSS shall be the same as for a proposed confined feeding operation (see Subsection 216.8).

## 216.7 SETBACK PROTECTION FOR THE CONFINED FEEDING OPERATOR

No residence (except that of the confined feeding owner/operator), no church, school, business, public building, area zoned Commercial (COM) or any recreational area under public or private ownership zoned Commercial (COM) may be constructed within the setback requirements applicable to an existing or granted (permitted or otherwise) confined feeding operation per the Tier System as set forth in Sections 216.3 and 216.4 of this Ordinance without an approved variance from the Board of Zoning Appeals.

## 216.8 CONFINED FEEDING OPERATION APPLICATIONS & PERMITS

**A. Intent to Build/Confined Feeding Application Requirements:**
Prior to any construction or expansion of a confined feeding operation (CFO), the applicant/operator shall file with the Zoning Administrator/Director an application referred to in this Ordinance as a "Intent to Build/Confined Feeding Application**".** The filing shall include, but not limited to, the following:

1. The completed application signed by the applicant/operator and property owner (when applicable)

2. A site plan drawn to scale to include the following:
   a. The entire property and the features of the property including all rights-of-way, easements, property lines and setbacks;
   b. All existing and proposed buildings, structures, waste containment areas and/or other site improvements with the dimensions of such improvements including the number of stories and/or the height of proposed buildings and/or structures;
   c. The use to be made of the proposed buildings, structures and/or land;
   d. The distances from all proposed buildings, structures and/or site improvements to the property lines and right-of-ways;
   e. The location of any existing or proposed water well and/or septic field;
   f. The location of any existing or proposed driveway(s) and/or parking areas;

3. If the applicant/operator elects to be, or the operation is required to be subject to IDEM regulations, a copy of such proposal as submitted to IDEM may be required at the time of filing.

4. If the proposed animal feeding operation does not meet the requirements to be subject *to* IDEM regulations, a copy of the supplier's contract certifying the number of animals to be supplied to the confined feeding operation may be required.

5. Any other information required by the Zoning Administrator/Director for the proper enforcement of this Ordinance.

6. Payment of all required fees for filing of the Intent-To-Build/Confined Feeding Application including those fees for all notices published and/or mailed.

**B. Intent To Build/Confined Feeding Application Review & Approval:**

1. Upon receiving the application and site plan, the Zoning Administrator/Director shall:

    a. Contact the Jay County Surveyor, Jay County Engineer and Jay County Highway Department. All will review the site plan and make a site inspection and report back to the Zoning Administrator/Director within two (2) weeks of any concerns they may have with the proposed plan;

    b. Notify all property owners and/or tenants within a 1/2 mile radius of the proposed construction site via regular mail of the proposed plan**.** A legal notice shall also be published in the local newspaper of the proposed plan. All required notices will be paid for by the applicant along with the applicable filing fee at the time of filing;

    c. Accept public comments, in writing only, for a period of 30 days from the date of the notice. All public comments will be reviewed by the Zoning Administrator/Director, Jay County Surveyor, Jay County Engineer, Jay County Highway Department and the Jay County Commissioners.

2. After reviewing the application, results of the site inspection and public comments received, if the applicant is in compliance with the regulations as set forth in this Section and Ordinance, along with approval from, but not limited to, the following Departments applicable to the project,

    a. Jay County Soil & Water Conservation District (*local IDEM Rule 5 Regulations*),
    b. Indiana Department of Environmental Management (*IDEM*),
    c. Jay County and/or Indiana Health Department (*septic systems & water wells*).

    The applicant/operator may then obtain a Building Permit and shall pay the applicable fees associated with the construction and/or expansion of the project.

3. If the applicant/operator is subject to IDEM regulations and has received IDEM approval for the project, the Intent to Build/Confined Feeding Application and Building Permit will be valid for the length of time the IDEM approval is valid.

4. If the applicant/operator is subject to IDEM regulations but does not file with IDEM, the Intent to Build/Confined Feeding Application will only be valid for a period of 1 year (12 months) from the date of application.

5. If the applicant/operator is not subject to IDEM approval, the Intent to Build/Confined Feeding Application will be valid for a period of 1 year (12 months) from the date of application approval. The Building Permit will be valid for a period of 12 months/1 year from the date of issuance.

**C. Confined Feeding Operation Permits & Fees:**

The Intent to Build/Confined Feeding Application, including all required documentation shall be filed with the Zoning Administrator/Director together with the application filing fee as specified in the Official Fee Schedule along with payment for all notices published and/or mailed.

When the project has final approval from the Zoning Administrator/Director, prior to the undertaking of any construction, expansion or alteration on the subject site, the applicant must obtain a Building Permit and pay the applicable permit fee(s) as specified in the Official Fee Schedule, which is maintained by the Zoning Administrator/Director.

No Building Permit will be issued unless the project is in conformity with the provisions of this Section and/or Ordinance, and no construction may begin at the project site without the proper permit(s) issued by the Zoning Administrator/Director.

**216.9 Violations:**

Any person/operator/owner in violation of this Section and/or Ordinance will be subject to the provisions as set forth in Article 4, Section 404 of this Ordinance.

## 217 WIND FARM STANDARDS

**PURPOSE & APPLICABILTY:** This Section governs the siting of any Wind Energy Conversion System (WECS) and substation that generate electricity to be sold to wholesale or retail markets, and has been adopted to assure that any development and production of wind-generated electricity in Jay County is safe and effective. The Section also provides a regulatory scheme for the construction and operation of wind energy facilities in the County. Subject to reasonable restriction, these regulations are intended to preserve the health and safety of the public.

### 217.1 PROHIBITION:

No entity shall construct or operate a WECS within Jay County without having fully complied with the provisions of this Section and/or Ordinance.

### 217.2 DEFINITIONS:

The following words and terms shall, for the purpose of this Section and used elsewhere in this Ordinance, have the meaning shown herein.

**Wind Energy Conversion Systems (WECS) - Commercial:** All necessary devices 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.

**WECS Project:** The collection of WECS (as defined) as specified in the siting approval 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.

**Wind Turbine Generator (WTG):** Includes only the WTG nacelle, tower and blades

**Substation (WECS):** An apparatus that connects the electrical collection system of the WECS and increases the voltage for connection with the utility's transmission lines.

**Switching Station (WECS):** An apparatus / structure in the system similar to a substation but not necessarily increasing voltage into the grid.

**Primary Structure:** Means, for each property, the structure that one or more persons occupy the majority of time on that property for either business or personal reasons. Primary Structure includes structures such as residences, commercial buildings, hospitals, and day care facilities. Primary Structure excludes structures such as hunting sheds, storage sheds, pool houses, unattached garages and barns.

**Applicant:** The entity or person who submits to the County, an application for the siting of any WECS or Substation or thereafter operates or owns a WECS.

**Operator:** Means the entity responsible for the day-to-day operation and maintenance of the WECS, including any third party subcontractors.

**Owner:** Means the entity or entities with an equity interest in the WECS, including their respective successors and assigns. Owner does not mean (i) the property owner from whom land is leased for locating the WECS (unless the property owner has an equity interest in the WECS; or (ii) any person holding a security interest in the WECS solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell the WECS within one year of such event.

**Financial Assurance:** Means reasonable assurance from a credit-worthy party, examples of which include a surety bond, trust instrument, cash escrow, or irrevocable letter of credit or combinations thereof.

**Professional Engineer:** Means a qualified individual who is licensed as a professional engineer in any state in the United States.

**217.3 WECS PRE-DEDVELOPMENT CONSULTATION MEETING**

A pre-project development consultation meeting is required between the developer/applicant and the Zoning Administrator prior to presenting the proposed project to any County Government Officials for approval with regards to any wind farm energy system (WECS) project located within the Jay County Plan Commissions jurisdictional area.. The purpose of this meeting is to acquaint the developer/applicant with the standards and requirements of all applicable ordinances; to review procedures for permitting and/or development plan submission including fees and public hearings; and for the developer/applicant to provide contact information for the general public regarding questions that may arise. ~~during the process.~~

**217.4 WECS DEVELOPMENT PLAN & PERMITTING**

Prior to the construction of any SFES, the applicant, owner and operator shall be required to obtain the following:

**A.** Development Plan approval for the project from the Jay County Plan Commission prior to obtaining approvals for an Economic Development Plan and/or Tax Abatement from the Jay County Council and/or Jay County Commissioners.

**B.** Approval from the Jay County Board of Zoning Appeals for any required variances or special exceptions anticipated for the project.

**C.** Improvement Location Permits associated with the project from the Zoning Administrator.

**217.5 DEVELOPMENT PLAN APPLICATION & REVIEW**

Prior to the construction of any WECS, the applicant, owner and operator shall file with the Zoning Administrator an application for Development Plan review. Development Plan review is provided for by the IC 36-7-4-1400 series. The Development Plan review process is not intended to provide an alternative to rezoning, variance, special exception, platting, or other established procedures; but rather to allow for the administrative review of site conditions and plans for consistency with applicable requirements prior to the issuance of Improvement Location Permits. The filing shall include but not be limited to the following:

**A.** **Application:** The application for Development Plan review shall include the names, addresses and contact information of the applicant, owner, and/or operator along with their respective business structures.

**B.** **Development Plan**: The Development Plan shall include, but not be limited to the following information and requirements:

1. **Summary Statement & Site Description:** A WECS Project Summary shall include, but not be limited to:
   a. a general description of the project including its approximate name plate generating capacity;
   b. the general location of the project;
   c. the type of WECS to be used and the potential equipment manufacturer;
   d. the number of WECS towers;
   e the maximum height of the WECS tower and max diameter of the WECS rotor;
   f. the nameplate generating capacity of each WECS;
   g. the construction start date and completion date of the project

2. **The names,** addresses, and contact information for all property owners with WECS towers proposed on their properties.

3. **Site Plan:** A site plan at a scale approved by the Zoning Administrator showing:
   a. the proposed location of the wind energy facility including planned locations of each WECS tower and substations;
   b. primary structures within one quarter of one mile of any WECS;
   c. property lines, including identification of adjoining properties;
   d. public roads;
   e. any recognized historic or heritage sites as noted by the Division of Historic Preservation and Archeology of the Indiana Department of Natural Resources;
   f. and any wetlands based upon a delineation prepared in accordance with the applicable U.S. Army Corps of Engineer requirements and guidelines.

4. **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 five feet intervals

5. **Approved and signed Road Use Agreement** *(Reference Section 217.14)*

6. **Approved and signed Decommissioning Plan Agreement** *(Reference Section 217.15)*

7. **Proof of Liability Insurance Plan approval** *(Reference Section 217.16)*

8. **Any other information** required by the Zoning Administrator determined to be necessary for the proper enforcement of this Ordinance

**C.** **Development Plan Application Fee:** The development plan application fee in the amount of $50,000.00 shall be payable at the time of submission of the application.

**D.** **Zoning Administrator Review:** The Zoning Administrator shall review the Development Plan, including all supporting information. When the proposed Development Plan is in compliance with the requirements of the Ordinance, the Development Plan shall be forwarded to the Plan Commission for review in a public hearing.

**E.** **Public Hearing Notification:** Notification for the scheduled public hearing regarding the Development Plan shall be completed consistent with the requirements of the Rules & Procedures of the Plan Commission along with the requirements of IC 5-3-1 for publication.

**F.** **Plan Commission Review:** The Plan Commission shall, in a public hearing, review the development plan. The review of the development plan shall be in compliance with the requirements of IC 36-7-4-1405 as amended.

**G.** **Findings of Fact (IC 36-7-4-1406):** The Zoning Administrator shall prepare and sign written findings of fact documenting the action taken by Plan Commission.

**H.** **Permits:** Prior to any construction activity, the applicant, owner and operator shall be required to obtain the appropriate Improvement Location Permits and any other required permits specified by this Ordinance. (Reference Section 217.9)

## 217.6 REVISIONS AND/OR AMENDMENTS TO WECS DEVELOPMENT PLAN

Any revisions and/or amendments to the approved Development Plan requires approval from the Zoning Administrator and/or Plan Commission prior to obtaining approval from the Jay County Council and/or Jay County Commissioners for any other agreements related to the project, and shall require approval prior to the issuance of any Improvement Location Permits. The proposed revisions and/or amendments along with all required supporting information shall be submitted to the Zoning Administrator for review to assure that the revisions are in compliance with the Ordinance. If the Zoning Administrator determines that the revisions require Plan Commission approval, the applicant, owner and/or operator shall file a petition to the Plan Commission along with any supporting documents including a statement of intent and pay the required filing fee of $2,500.00. The petition will then be placed on the agenda of the next scheduled meeting of the Plan Commission for review. If the Plan Commission determines that a public hearing is necessary, notification for the public hearing will be consistent with the requirements of the Rules & Procedures of the Plan Commission. The review shall be in compliance with the requirements of IC 36-7-4-1405 as amended. The Plan Commission reserves the right to limit the number of revisions and/or amendments to the Development Plan before the Development Plan as a whole will require resubmission to the Plan Commission and comply with any current Zoning regulations and pay the fees associated with the submission.

## 217.7 VARIANCES AND SPECIAL EXCEPTIONS

Any application for variance or special exception approval may be a combined application provided all property owners subject to the variance or special exception 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 variance or special exception requests will be considered by the Jay County Board of Zoning appeals in a public hearing. Notification for the public hearing will be consistent with the requirements of the Rules & Procedures of the Board of Zoning Appeals along with the requirements of IC-5-3-1 for publication.

**217.8 LIMITED CONSTRUCTION ACTIVITIES**

Any limited construction activities associated with the proposed WECS project prior to obtaining the Improvement Location Permit for the entire project shall require approval from the Plan Commission. The applicant, owner and/or operator shall file a petition to the Plan Commission along with any supporting documents including a statement of intent and pay the required filing fee of $2,500.00. The petition will then be placed on the agenda of the next scheduled meeting of the Plan Commission for review. If the Plan Commission determines that a public hearing is necessary, notification for the public hearing will be consistent with the requirements of the Rules & Procedures of the Plan Commission. The review shall be in compliance with the requirements of IC 36-7-4-1405 as amended. If approved, the permit fee for said limited construction activities will be equivalent to 25% of the overall project's Improvement Location Permit fee as referenced in Section 217.9 (C) of this Ordinance.

**217.9 REQUIREMENTS FOR IMPROVEMENT LOCATION PERMIT & FEES**

Prior to any construction associated with the WECS project, the applicant, owner and/or operator shall file with the Zoning Administrator a separate application for each wind turbine site along with any other structures associated with the project and pay the according permit fees.

**A. Application:** Each application shall include, but not be limited to the following:

1. A plot plan for each wind turbine parcel showing the following:
   a. the location of the turbine and/or structure including all access roads, property lines and showing all setbacks;
   b. the location of all above-ground utility lines within a radius equal to two (2) times the height of the proposed WECS;
   c. the location of all underground utility lines associated with the WECS site;
   d. the location of all guy lines, anchor bases (if any), electrical cabling and ancillary equipment.

2. Copies of any necessary recorded setbacks, access easements and/or necessary recorded utility easements if any.

3. Dimensional representation of the structural components of the tower construction including the base and footings.

4. Schematic of electrical systems associated with the WECS including all existing and proposed electrical connections.

5. Manufacturer's specifications and installation and operation instructions or specific WEC design information.

6. Certification by a registered professional engineer that the tower design is sufficient to withstand wind load requirement for structure as defined by International Code Council.

7. Certification by a professional engineer that the foundation and tower design of the WTG is within accepted professional standards, given local soil and climate conditions.

8. No appurtenances other than those associated with the wind turbine operations shall be connected to any wind tower except with express, written prior approval by the JBZA.

**B. Additional Requirements:** The following may be submitted one time for the entire project, but must be submitted prior to the issuance of any permits.

1. **Emergency Safety Plan.** An emergency safety plan approved by the Jay County Emergency Management Agency.

2. **Fire Safety Plan.** A fire safety plan approved by the local fire departments whose jurisdiction is included, in whole or in part, within the WECS project area.

3. **Drainage Plan**. A drainage plan for construction and operation must be approved by the Jay County Drainage Board.

4. **Erosion Control Plan.** If applicable, an erosion control plan must be approved by the Jay County Soil & Water Conservation District regarding IDEM Rule 5 requirements.

5. **Proof of Correspondence and Cooperation with Wildlife Agencies.** For the purposes of preventing harm to any bats and/or migratory birds and in compliance with the Migratory Bird Treaty Act, the applicant shall provide written documentation of their direct correspondence and cooperation with the US Fish and Wildlife Services and the Indiana Department of Natural Resources.
6. **Any other information** required by the Zoning Administrator determined to be necessary for the proper enforcement of this Ordinance.

**C. Improvement Location Permit Fees**

Each WECS tower shall require a separate Improvement Location Permit. The fee for each tower shall be $2,500.00 per MW. Any other structure associated with the project shall require a separate Improvement Location Permit the fee of which shall be in accordance with the Official Fee Schedule maintained by the Zoning Administrator. All fees shall be paid prior to the issuance of any Improvement Location Permit.

**217.10 WIND ENERGY CONVERSION SYSTEM SETBACK REQUIREMENTS**

**A. The minimum setback distances shall be as follows:**

| **Distance from …** | **Minimum Setback Distance** |
|---|---|
| **Property line**, measured from the center of the WECS to the property line | **1,500 feet** - May be waived in writing by participating and non-participating landowners |
| **Property line** of any residential dwelling, church, school, business, public building; parcels zoned Rural Residential (RR) and Commercial (COM) including commercial recreational areas, measured from the center of the WECS to the property line | **1,500 feet** - May be waived in writing by participating and non-participating landowners |
| **Road right-of-way**, measured from the center of the WECS to the edge of the right-of-way | **1.1 times the total height** (where the blade tip is at its highest point), provided that the distance is no less than 350 feet |
| **Access driveways** to the WECS measured from the center of the WECS to the property line | **50 feet** - May be waived in writing by participating and non-participating landowners |
| **Incorporated limits of a municipality** measured from the center of the WECS to the corporate limits | **1,500 feet** from the corporate limits of Bryant, Pennville, Redkey & Salamonia<br>**1/2 mile** from Dunkirk corporate limits<br>**2 miles** from Portland corporate limits<br>- May be waived in writing by municipality |
| **Nature preserve, park and/or recreational use** including property owned by IDNR, Friends of the Limberlost and/or any such property associated with the Loblolly reconstruction project area, and Public conservation lands, measured from the center of the WECS to the property line | **2,640 feet** (1/2 mile) from property lines |
| **Wetlands,** as defined by the U.S. Army Corps of Engineers, measured from the center of the WECS to the nearest point of the wetland in question | As determined by a permit obtained from the Army Corps of Engineers |

**B.** Any new primary structure built adjacent to a WECS shall maintain the same minimum setback requirements.

**C.** No part of a WECS shall be constructed in any setback, dedicated public easement or dedicated public right-of-way without prior written authorization from the County.

## 217.11 WECS SAFETY DESIGN & INSTALLATION STANDARDS

**A.** Design Safety Certification: Any WTG shall conform to applicable industry standards. The applicant, owner and/or operator shall submit certificates of design compliance that wind turbine manufactures have obtained from Underwriters Laboratories, Det Norske Vertas, Germanishcer Lloyd Wind Energie, and/or an equivalent third party. Following the granting of siting approval under this Ordinance, a professional engineer shall certify, as part of the Improvement Location Permit application that the foundation and tower design of the WTG is within accepted professional standards, given local soil and climate conditions.

**B.** **Equipment Type:** All turbines shall be new equipment commercially available. Used, experimental or proto-type equipment still in testing shall require approval by the BZA as per the normal special exception process.

**C.** **Electrical Components, Cabling & Wiring:** All electrical components of the WECS shall conform to applicable local, state, and national codes, and relevant national and international standards. All WECS electrical collection cables between each WECS shall be located underground unless they are located on public or utility rights-of-way or with prior County approval.

All underground work shall comply with the regulations as follows:

1. All underground cabling buried no less than 60” (sixty inches) deep.
2. All underground cabling will have warning mesh at 36’’ (thirty six inches) deep.
3. All underground cabling will be marked at road crossings, creeks, river beds and property lines with a metal or fiberglass post at least 5 feet in height with a cement base.

**D.** **Utility Interconnection:** Any WECS, if interconnected to a utility system, shall meet the requirements for interconnection and operate as set forth in the electrical utility's then-current service regulations applicable to WECS.

**E.** **Warnings:** A visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations. Visible, reflective, colored objects such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of not more than 15 feet from the ground.

**F.** **Lighting:** All lighting shall be shielded so that no glare extends substantially beyond the boundaries of the wind farm facilities. A radar activated lighting system will be required regarding the red warning lights on the wind turbines. All lighting shall be in compliance with all applicable FAA regulations.

**G.** **Color:** Towers and blades shall be painted with non-reflective white or gray color, and shall be in compliance with all applicable FAA regulations.

**H.** **Blade Clearance:** The minimum distance between the ground and any protruding blade utilized on a WTG shall be 15 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.

**I.** **Controls and Brakes:** All WECS 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.

**J.** **Noise and Vibration Standards:** All WECS shall be located so that the level of noise produced by the mechanics of the turbine and/or wind turbine operation heard off-site shall not exceed 55 dBA when measured from any primary structure. This standard shall supersede any noise standard as set forth in any other Article in the Zoning Ordinance.

**K.** **Climb Prevention:** 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 6 feet high; (2) anti-climbing devices 15 feet vertically from the base of the WECS tower, and/or; (3) locked WECS tower doors.

**L.** **Damage & Repairs:** All damages including, but not limited to waterways, drainage ditches, field tiles, and/or any other infrastructures caused by the construction or maintenance of the WECS, must be completely repaired to original or better condition, and so as not to impede the flow of water. All repairs must be completed within a reasonable amount of time as agreed upon between the County and the applicant, owner and/or operator.

**M.** **Waste Handling & Disposal:** All solid waste whether generated from supplies, equipment, parts, packaging, operation and/or maintenance of the facility, including but not limited to old parts and equipment, shall be removed from the site promptly and disposed of in accordance with all local, state and federal, laws. All hazardous materials and/or waste related to the construction, operation and/or maintenance of the facility, including but not limited to lubrication materials, shall be handled, stored, transported and disposed of in accordance with all local, state and federal laws.

### 217.12 UNDERGROUND WORK AFTER CONSTRUCTION

To help insure the safety of the public, no underground work, including but not limited to farm drainage, gas lines, and/or any other such work, shall be performed on land within the WECS project area without an employee of the WECS operation on site. This includes but is not limited to, property owners, sub-contractors, utility workers and/or County employees.

### 217.13 OPERATION, MAINTENANCE AND INSPECTIONS

**A.** **Maintenance:** 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 modifications (other than a like-kind replacement), the owner and/or operator shall confer with the County Building Inspector to determine whether the physical modification requires re-certification.

**B.** **Interference:** If, after construction of the WECS, the owner and/or operator receives a written complaint related to interference with local broadcast residential television, telecommunication, communication, microwave transmissions and including shadow flicker, the WECS owner and/or operator shall take reasonable steps to respond to minimize the complaint.

**C.** **Inspections:** The Jay County Building Inspector, and/or licensed third party 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 and/or operator and/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 and/or operator of a WECS may retain a licensed third party professional engineer familiar with WECS systems to prepare and submit to the County Building Inspector 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 thirty (30) days after receiving notice from the County Building Inspector that repairs or alterations are requested, or within a longer period of time mutually acceptable to both parties. The 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 County Building Inspector and the owner and/or operator, or a third party professional engineer retained by them, as to the repairs or alterations which are required, the decision of the County Building Inspector shall be final. Any fees for inspections made by a third party professional inspector and/or engineer retained by the County shall be paid by the owner and/or operator.

**D.** **Declaration of a Public Nuisance:** Any WECS thereof declared to be unsafe by the Jay County Building Inspector by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, 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 Agreement. Nothing in this Ordinance is intended to preempt any other applicable state and federal laws and regulations.

**217.14 ROAD USE AGREEMENT**

Prior to receiving Development Plan approval and/or construction approval for the WECS project along with the use of any county road for the purpose of transporting WECS or substation parts and/or equipment for construction, operation, or maintenance of the WECS or substation, the applicant, owner and/or operator shall provide a signed Road Use Agreement that has been approved by the County Highway Department Superintendent, the Zoning Administrator, and County Commissioners. The Road Use Agreement must include, but not be limited to the following:

**A.** **Identification of all such public roads:** Any proposed routes that will be used for construction and/or maintenance purposes of the WECS project shall be identified and approved by the County Highway Department Superintendent. A pre-construction baseline survey to determine existing road conditions for assessing potential future damage shall be conducted by the County Highway Superintendent and/or a third party engineer, the cost of which will be covered by the owner and/or operator.

**B.** Any road damage caused by the construction of the WECS project equipment, the installation of same, or the removal of same, must be repaired to the satisfaction of the County. The County may choose to require either remediation of road damage upon completion of the project or is authorized to collect fees for oversized load permits. Further, a corporate surety bond in an amount to be fixed by a professional engineer may be required by the County 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 owner and/or operator.

**C.** Newly constructed WECS access roads may not impede the flow of water and shall comply with the Jay County Drainage Ordinance and Drainage Plan Agreement.

**D.** No part of the WECS including, but not limited to above ground transmission lines and poles or below ground transmission lines shall be constructed and/or placed in any County road right-of-way or dedicated easement without prior written approval from the County.

**E.** Any road and/or right-of-way damage caused by maintenance to the WECS and/or substation during the life of the project shall be repaired to the satisfaction of the County Highway Department Superintendant and/or County Commissioners; the cost of which shall be covered by the owner and/or operator.

**217.15 DECOMMISSIONING PLAN AGREEMENT**

Prior to receiving Development Plan approval and/or construction approval for the WECS project, the applicant, owner and/or operator shall provide a signed Decommissioning Plan Agreement that has been approved by the Zoning Administrator and County Commissioners. The Decommissioning Plan is to ensure that the WECS facilities are properly decommissioned upon the end of the project life or facility abandonment. The Decommissioning Plan shall include but not be limited to the following:

**A.** Assurance that the facilities are properly decommissioned upon the end of the project life or facility abandonment. The applicant, owner and/or operator's obligations with respect to decommissioning shall include removal of all physical material pertaining to the project improvements to a depth of 48" beneath the soil surface, and restoration of the area occupied by the project improvements to the same or better condition that existed immediately before construction of such improvements. Prior to issuance of a Improvement Location Permit, the applicant, owner and/or operator shall provide a contractor cost estimate for demolition and removal of the WECS facility and will provide financial assurance, taking into consideration any salvage value, in an amount at least equal to said demolition and removal contractor cost estimate, through the use of a bond, letter of credit or other security acceptable to the County, the cost of decommissioning each tower to be constructed under the building permit, which security shall be released when such tower is properly decommissioned as determined by the County Building Inspector. In the event of abandonment by the owner and/or operator, the applicant will provide an affidavit to the Zoning Administrator representing that all easements for wind turbines shall contain terms that provide financial assurance, including access to the salvage value of the equipment, for the property owners to ensure that facilities are properly decommissioned within twelve (12) months of expiration or earlier termination of the project.

**B.** The applicant, owner, and/or operator's failure to comply with, or make reasonable progress in getting into compliance any of the above provisions shall constitute a default under this Ordinance.

**C.** Prior to implementation of the existing County procedures for the resolution of each default, the appropriate County body shall first provide written notice to the owner and operator, setting forth the alleged default. Such written notice shall provide the owner and operator a reasonable time period, not to exceed 60 days, for good faith negotiations to resolve the alleged default.

**D.** If the County determines, in its discretion, that the parties cannot resolve the alleged default within the good faith negotiation period, the existing County ordinance provisions addressing the resolution of such default shall govern.

**217.16 LIABILITY INSURANCE**

The owner or operator of the WECS shall maintain general comprehensive liability insurance coverage naming Jay County as an additional party insured with a company and under terms approved by Jay County with combined limits for bodily injury and property damage in the aggregate amount of $5 million per occurrence with a commercially reasonable deductible approved by Jay County.

**217.17 INDEMNIFICATION**

The applicant, owner and/or operator of the WECS project shall defend, indemnify, and hold harmless the County and its officials from and against any and all claims, demands, losses, suites, causes of action, damages, injuries, costs, expenses, and liability whatsoever, including attorney's fees, without limitation, arising out of acts or omissions of the applicant, owner and/or operator associated with the construction and/or operations of the WECS project

**217.18 CHANGE IN OWNERSHIP**

It is the responsibility of the owner and/or operator listed in the application to inform the Zoning Administrator of all changes in ownership and operation during the life of the project, including the sale or transfer of ownership and/or operation. In the event of project ownership changes, by sale or transfer, such new owner shall agree in writing to conform to all provisions of the previously approved development plan, road use agreement, decommissioning plan agreement and/or any other approved agreements with the County along with the provisions as set forth in this Ordinance

**217.19 WAIVING REQUIREMENTS**

Requirements of this Section may be waived by the County BZA upon application and after public hearings. All fees for filings and notices shall be paid by the applicant.

## 218 SMALL WIND ENERGY SYSTEMS / PRIVATE:

**PURPOSE:** Defined for the purpose of this Ordinance as a privately owned or residential wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kilowatts (kW) and which is intended to primarily reduce on-site consumption of utility power. Any system over the 100 kW size must comply with the regulations as set forth in Section 217 of this Ordinance.

### 218.1 ALLOWABLE USE:

Small wind energy systems shall be allowed as a permitted use in areas zoned Agricultural Residential (AR) and by Special Exception Use in Rural Residential (RR), Commercial (COM) and Industrial (IND) zoned districts subject to the requirements of this Section.

### 218.2 SMALL WIND ENERGY STANDARDS AND REGULATIONS

**A.** **Wind Turbine Equipment:** Small wind turbines shall be approved under the state public benefits program or any other small wind certification program recognized by the American Wind Energy Association.

**B.** **Setbacks:** The base of the tower shall be set back from all property lines, public right-of-ways, and public utility lines equal to 1.5 times the tower extended height, which is defined as the height above grade to the blade tip at its highest point of travel.

**C.** **Tower Height:** Tower height is defined as the height above grade of the fixed portion of the tower, excluding the wind turbine itself. There are no specific height limitations for said towers except as imposed by the FAA regulations. However, any tower exceeding 100' in height shall require variance approval from the BZA.

**D.** **Requirement for Engineered Drawings:** Improvement Location Permit applications for small wind energy systems shall be accompanied by standard drawings of the wind turbine structure and engineered drawings of the tower, base, footings, and/or foundation as provided by the manufacturer. Wet stamps shall not be required.

**E.** **Soil Studies:** For standard soil conditions (not including gravel, sand, or muck), foundations developed by the wind turbine manufacturer shall be acceptable for turbine installations of 20kW or less and will not require project-specific soils studies or an engineer's wet stamp.

**F.** **Compliance with FAA Regulations:** No wind energy tower shall be constructed, altered or maintained so as to project above any of the imaginary airspace surfaces described in FAR Part 77 of the FAA guidance on airspace protection.

**G.** **Compliance with National Electric Code:** Improvement Location Permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components, as supplied by the manufacturing, in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.

**H.** **Utility Notification:** No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

**I.** **Sound:** Sound produced by the turbine under normal operating conditions, as measured at the property line, shall not exceed the zoning performance standards. Sound levels, however, may be exceeded during short-term events out of anyone's control such as utility outages and/or severe wind storms.

**J.** **Lighting:** No illumination of the turbine or tower shall be allowed unless required by the FAA.

**K.** **Signage:** All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a small wind energy system visible from any public road shall be prohibited.

**L.** **Access:** Any climbing foot pegs or rungs below 12 feet of a freestanding tower shall be removed to prevent unauthorized climbing. For lattice or guyed towers, sheets of metal or wood may be fastened to the bottom tower section such that it cannot readily be climbed.

**M.** **Insurance:** Additional insurance beyond homeowners' coverage shall not be required.

**N.** **Abandonment:** If a wind turbine is inoperable for six consecutive months the owner shall be notified that they must, within six months of receiving the notice, restore their system to operation condition. If the owner(s) fails to restore their system to operating condition within the six-month time frame, then the owner shall be required, at his expense, to remove the wind turbine from the tower for safety.

**O.** **Any other information** required by the Zoning Administrator for the proper enforcement of this Ordinance.

**218.3 APPLICATION, PERMIT & FEES:**

The applicant shall submit an application accompanied by a site plan showing all required setbacks and provide the required information as stated in Sub-section 218.2. When the project is in compliance with the Ordinance, a Improvement Location Permit may be issued by the Zoning Administrator. The permit fee will be in accordance with the Official Fee Schedule, which is maintained by the Zoning Administrator.

## 219 SOLAR ENERGY SYSTEM STANDARDS

**PURPOSE & APPLICABILTY:** The purpose of these regulations is to provide a uniform and comprehensive set of standards for the installation and use of any Personal Solar Energy Systems (PSES) and Solar Farm Energy Systems (SFES) designed for commercial energy production. Subject to reasonable restriction, these regulations are intended to preserve the health and safety of the public. No entity shall construct or operate a PSES and/or SFES within the jurisdiction of the Jay County Plan Commission without having fully complied with the provisions of this Section and/or Ordinance.

### 219.1 DEFINITIONS

The following words and terms shall, for the purpose of this Section and used elsewhere in this Ordinance, have the meaning shown herein.

**Ground Mount Solar Energy System:** A solar energy system that is directly installed into the ground and is not attached or affixed to an existing structure.

**Structure Mount Solar Energy System**: A solar energy system in which solar panels are mounted on top of a roof structure as either a flush mounted system or as modules fixed to frames which can be tilted toward the south at an optical angle.

**Solar Energy System (SES):** The components and subsystems required to convert solar energy into electric or thermal energy suitable for use. The area of system includes all the land inside the perimeter of the system, which extends to any fencing.

**Personal Solar Energy System (PSES)**: Any device or combination of devices or elements which rely upon direct sunlight as an energy source including but no limited to any substance or device which collects sunlight for generating electricity for use on-site. However, the energy output may be delivered to a power grid to offset the cost of energy on-site.

**Solar Farm Energy System (SFES):** A commercial facility, on a parcel(s) of five acres or more that converts sunlight to electricity, whether by photovoltaics concentrating solar thermal devices, or various experimental technologies for on-site or off-site use with the primary purpose of selling wholesale or retail generated electricity.

**Solar Farm Energy System Project Area:** A SFES project area may be compromised of a single parcel of land or two or more contiguous parcels of land providing that the total area of SFES project area consists of five acres of land or more

**Primary Structure:** Means, for each property, the structure that one or more persons occupy the majority of time on that property for either business or personal reasons. Primary Structure includes structures such as residences, commercial buildings, hospitals, and day care facilities. Primary Structure excludes structures such as hunting sheds, storage sheds, pool houses, unattached garages and barns.

**Applicant:** The entity or person who submits to the County, an application for the siting of any SFES or Substation or thereafter operates or owns a SFES.

**Operator:** The entity responsible for the day-to-day operation and maintenance of the SFES, including any third party subcontractors.

**Owner:** The entity or entities with an equity interest in the SFES, including their respective successors and assigns. Owner does not mean the property owner from whom land is leased for locating the SFES (unless the property owner has an equity interest in the SFES); or any person holding a security interest in the SFES solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell the SFES within one year of such event.

## 219.2 PERSONAL SOLAR ENERGY SYSTEM (PSES):

**A. PSES Purpose & Standards**

The purpose of these regulations is to provide a uniform and comprehensive set of standards for the installation and use of PSES's designed for on-site home, farm and small commercial use that are used primarily to reduce on-site consumption of utility power. The intent of these regulations is to protect the public health, safety, and community welfare without unduly restricting the development of PSES's.

**B. Permitted Use**

A PSES shall be considered an accessory use to a principal permitted use only in districts in the unincorporated areas of the County that are covered by this Ordinance. The PSES shall provide power for on-site use only by the owner.

**C. Special Requirements**

A PSES shall also be subject to the requirements per zoned district as shown in Sections 205 thru 211 of this Ordinance unless otherwise stated herein.

1. **Ground Mounted PSES Height:** Shall not be greater than twenty (20) feet at the maximum tilt of the solar panel(s) in any zoning district.

2. **Setbacks for Ground Mounted PSES:** The PSES shall maintain perimeter setbacks including side and rear yard setbacks of 10 feet. No PSES shall be permitted to be located in the required front yard setback unless at least 100 feet back from the edge of the right of way with a vegetative buffer toward any neighboring residential structure.

3. **Structure Mounted PSES Height:** Shall not be greater than the allowable height of any structure within the zoning district in which the PSES is to be installed.

4. **Roof Mounted PSES:** Prior to installation, a certificate from a licensed engineer is required stating the structure can handle the panels. The panels shall be installed per manufactures specifications and have a Visible Disconnect.

5. **Approved Solar Components:** Electric solar energy system components must have an Underwriters laboratory (UL) listing or approved equivalent.

6. **Building Codes**: All county, state and national construction codes shall be followed.

7. **Glare:** The PSES shall be designed and located in order to prevent glare toward any inhabited buildings or adjacent properties as well as adjacent highways or right-of-ways.

**D. Permitting**

Before a Improvement Location Permit is issued, the following shall be submitted to the Zoning Administrator for review including, but not limited to:

1. Site plan showing:
    a. Name, address and phone number of the property owner;
    b. Property lines; all structures; septic field; setback lines;
    c. Location of all solar panels and associated equipment; and
    d. Location of the electrical disconnect for the PSES.
2. Evidence that the local electric utility has been informed of the customer's intent to install a customer-owned solar energy system.
3. Evidence that the site plan has been submitted to the local fire protection district.

**E. Permit Fee**

Before issuing any permits, the applicant must pay the required fee as set forth in the Official Fee Schedule which is maintained by the Zoning Administrator.

**219.3 SOLAR FARM ENERGY SYSTEM (SFES)**

This Section also governs the siting of any solar farm energy system (SFES) designed for commercial energy production and to assure that any development and production of solar generated electricity in Jay County is safe and effective by providing a regulatory scheme for the construction and operation of any SFES in the County.

**219.4 SFES PRE-DEDVELOPMENT CONSULTATION MEETING**

A pre-project development consultation meeting is required between the developer/applicant and the Zoning Administrator prior to presenting the proposed project to any County Government Officials for approval with regards to any solar farm energy system (SFES) project located within the Jay County Plan Commission jurisdictional area.. The purpose of this meeting is to acquaint the developer/applicant with the standards and requirements of all applicable ordinances; to review procedures for permitting and/or development plan submission including fees and public hearings; and for the developer/applicant to provide contact information for the general public regarding questions that may arise. during the process.

**219.5 SFES DEVELOPMENT PLAN & PERMITTING**

Prior to the construction of any SFES, the applicant, owner and operator shall be required to obtain the following:

**A.** Development Plan approval for the project from the Jay County Plan Commission prior to obtaining approvals for an Economic Development Plan and/or Tax Abatement from the Jay County Council and/or Jay County Commissioners.

**B.** Approval from the Jay County Board of Zoning Appeals for any required variances or special exceptions anticipated for the project.

**C.** Improvement Location Permits associated with the project from the Zoning Administrator.

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**219.6 SFES DEVELOPMENT PLAN APPLICATION & REVIEW**

Prior to the construction of any SFES, the applicant, owner and/or operator shall file with the Zoning Administrator an application for Development Plan review. Development Plan review is provided for by the IC 36-7-4-1400 series. The Development Plan review process is not intended to provide an alternative to rezoning, variance, special exception, platting, or other established procedures; but rather to allow for the administrative review of site conditions and plans for consistency with applicable requirements prior to the issuance of Improvement Location Permits. The filing shall include but not be limited to the following:

**A.** **Application:** The application for Development Plan review shall include the names, addresses and contact information of the applicant, owner, and/or operator along with their respective business structures.

**B.** **Development Plan**: The Development Plan shall include, but not be limited to the following information and requirements:

1. **Summary Statement & Site Description:** A SFES project summary shall include, but not be limited to:
   a. a general description of the project including its approximate generating capacity;
   b. the general location of the project;
   c. the type of SFES to be used and the potential equipment manufacturer;
   d. the number of panels to be installed.
   e. the construction commencement date and completion date of the project

2. The names, addresses, phone numbers and/or contact information for all property owners with the SFES proposed on their properties.

3. **Site Plan**: A site plan at a scale approved by the Zoning Administrator showing:
   a. the proposed location of the SFES showing the boundaries of the site;
   b. the location of all proposed SFES structures including substations;
   c. the location of all proposed fencing;
   d. property lines, including identification of adjoining properties;
   e. location of all primary structures within 1/4 mile of the site;
   f. all public roads;

g. any floodplain location and elevation as determined by the most recently issued FEMA Flood Insurance Rate Maps
h. any wetlands based upon a delineation prepared in accordance with the applicable US Army Corps of Engineer requirements and guidelines.

4. **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 five feet intervals

5. **Approved and signed Road Use Agreement** (*Reference Section 219.14*)

6. **Approved and signed Decommissioning Plan Agreement** (*Reference Section 219.15*)

7. **Proof of Liability Insurance Plan** (*Reference Section 219.16*)

8. **Any other information** required by the Zoning Administrator determined to be necessary for the proper enforcement of this Ordinance

**C.** **Development Plan Application Fee:** The development plan application fee in the amount of $50,000.00 shall be payable at the time of submission of the application..

**D.** **Zoning Administrator Review:** The Zoning Administrator shall review the Development Plan, including all supporting information. When the proposed Development Plan is in compliance with the requirements of the Ordinance, the Development Plan shall be forwarded to the Plan Commission for review in a public hearing.

**E.** **Public Hearing Notification:** Notification for the scheduled public hearing regarding the Development Plan shall be completed consistent with the requirements of the Rules & Procedures of the Plan Commission along with the requirements of IC 5-3-1 for publication.

**F.** **Plan Commission Review:** The Plan Commission shall, in a public hearing, review the development plan. The review of the development plan shall be in compliance with the requirements of IC 36-7-4-1405 as amended.

**G.** **Findings of Fact (IC 36-7-4-1406):** The Zoning Administrator shall prepare and sign written findings of fact documenting the action taken by Plan Commission.

**H.** **Permits:** Prior to any construction activity, the applicant, owner and/or operator shall be required to obtain the appropriate Improvement Location Permits and any other required permits specified by this Ordinance. (Reference Section 219.9)

## 219.7 REVISIONS AND/OR AMENDMENTS TO SFES DEVELOPMENT PLAN

Any revisions and/or amendments to the approved Development Plan requires approval from the Zoning Administrator and/or Plan Commission prior to obtaining approval from the Jay County Council and/or Jay County Commissioners for any other agreements related to the project, and shall require approval prior to the issuance of any Improvement Location Permits. The proposed revisions and/or amendments along with all required supporting information shall be submitted to the Zoning Administrator for review to assure that the revisions are in compliance with the Ordinance. If the Zoning Administrator determines that the revisions require Plan Commission approval, the applicant, owner and/or operator shall file a petition to the Plan Commission along with any supporting documents including a statement of intent and pay the required filing fee of $2,500.00. The petition will then be placed on the agenda of the next scheduled meeting of the Plan Commission for review. If the Plan Commission determines that a public hearing is necessary, notification for the public hearing will be consistent with the requirements of the Rules & Procedures of the Plan Commission. The review shall be in compliance with the requirements of IC 36-7-4-1405 as amended. The Plan Commission reserves the right to limit the number of revisions and/or amendments to the Development Plan before the Development Plan as a whole will require resubmission to the Plan Commission and comply with any current Zoning regulations and pay the fees associated with the submission.

**219.8 LIMITED CONSTRUCTION ACTIVITIES**

Any limited construction activities associated with the proposed SFES project prior to obtaining the Improvement Location Permit for the entire project shall require approval from the Plan Commission. The applicant, owner and/or operator shall file a petition to the Plan Commission along with any supporting documents including a statement of intent and pay the required filing fee of $2,500.00. The petition will then be placed on the agenda of the next scheduled meeting of the Plan Commission for review. If the Plan Commission determines that a public hearing is necessary, notification for the public hearing will be consistent with the requirements of the Rules & Procedures of the Plan Commission. The review shall be in compliance with the requirements of IC 36-7-4-1405 as amended. If approved, the permit fee for said limited construction activities will be equivalent to 25% of the overall project's Improvement Location Permit fee as referenced in Section 219.9 (C) of this Ordinance.

**219.9 REQUIREMENTS FOR IMPROVEMENT LOCATION PERMIT & FEES**

Prior to any construction associated with the SFES project, the applicant, owner and/or operator shall file with the Zoning Administrator an application for the project site along with any other structures associated with the project and pay the according permit fees.

**A. Application:** The application shall include, but not be limited to the following:

**1. A plot plan showing the following:**
- a. the location of all SFES structures and substations;
- b. location, number and spacing of solar panels;
- c. location of fencing;
- d. property lines, setbacks and any existing easements;
- e. location of access roads and access points
- f the location of all above ground and underground utility lines associated with the site;
- g. the location of electrical cabling, ancillary equipment and transmission lines;
- h. field tile locations if known;
- i. existing and/or abandoned wells and septic fields if known;
- j. Floodplain location and elevation and wetland locations, if any.

**B. Additional Requirements:** The following may be submitted one time for the entire project, but must be submitted prior to the issuance of any Improvement Location Permits.

**1. Emergency Safety Plan.** An emergency safely plan approved by the Jay County Emergency Management Agency.

**2. Fire Safety Plan.** A fire safety plan approved by the local fire departments whose jurisdiction is included in whole or in part within the SFES project area.

**3. Drainage Plan**. A drainage plan for the construction and operation of the SFES approved by the Jay County Drainage Board.

**4. IDEM Rule 5** approval**,** if applicable, from the Jay County Soil & Water Conservation District.

5. **Landscaping/Buffer Agreements**. Approved landscaping and/or buffer agreements between the applicant, owner and/or operator and all participating and non-participating landowners. Landscaping and/or buffering may be waived by the participating and non-participating landowners as part of their agreements.

6. **Any other information** required by the Zoning Administrator determined to be necessary for the proper enforcement of this Ordinance.

**C. Improvement Location Permit Fees**

Prior to the issuance of any Improvement Location Permits for the SFES project, the applicant, owner and/or operator shall pay the required permit fee of $2,500.00 per MW of the entire project**.** Any other structure associated with the project shall require a separate Improvement Location Permit the fee of which shall be in accordance with the Official Fee Schedule maintained by the Zoning Administrator. All fees shall be paid prior to the issuance of any Improvement Location Permit.

## 219.10 SOLAR FARM ENERGY SYSTEM SETBACK REQUIREMENTS

**A. The minimum setback distances shall be as follows:**

| Distance from … | Minimum Setback Distance |
|---|---|
| **Property line,** measured from the edge of the equipment to the property line | **250 feet** - May be waived in writing by participating and non-participating landowners |
| **Property line** of any residential dwelling, church, school, business, public building; parcels zoned Rural Residential (RR) and Commercial (COM) including commercial recreational areas, measured from the edge of the equipment to the property line | **250 feet** - May be waived in writing by participating and non-participating landowners |
| **Road right-of-way (ROW)**, measured from the edge of the equipment to the edge of the right-of-way | **50 feet** |
| **Access driveways** to the property line | **50 feet** - May be waived in writing by participating and non-participating landowners |
| **Incorporated limits of County municipalities** measured from the edge of the equipment to the corporate limits | **1,500 feet** from the corporate limits of Bryant, Pennville, Redkey & Salamonia<br>**1/2 mile** from Dunkirk corporate limits<br>**2 miles** from Portland corporate limits<br>- May be waived in writing by municipality |
| **Nature preserve, park and/or recreational use** including property owned by IDNR, Friends of the Limberlost and/or any such property associated with the Loblolly reconstruction project area, and public conservation lands; measured from the edge of the SFES to the property line | **250 feet** |
| **Wetlands**, as defined by the U.S. Army Corps of Engineers, measured from the edge of the SFES to the nearest point of the wetland in question | As determined by a permit obtained from the Army Corps of Engineers |

**B.** **Flood Plain:** If the project is proposed within a floodway, a permit from the DNR Division of Water is required under the Flood Control Act.

**C.** **Fencing**: All SFES equipment, panels and structures shall be fully enclosed by a security fence with a minimum height of 6 feet but no taller than 8 feet and must be setback no less than 200 feet from any property line. The setback distance may be waived in writing by participating and non-participating landowners.

**D.** Any new primary structure built adjacent to a SFES shall maintain the same minimum setback requirements.

**E.** No part of a SFES shall be constructed in any setback, dedicated easement or County road right-of-way without prior written authorization from the County.

## 219.11 SFES DESIGN & INSTALLATION STANDARDS

**A. Manufacturer's Specifications & Certification:**
The applicant shall provide standard manufacturer's specifications and recommended installation methods for all major equipment, including solar panels, mounting systems and foundations for poles and racks. Specifications for the actual equipment to be used in the SFES shall be required before a Improvement Location Permit is issued. All SFESs shall conform to applicable industry standards, including those from the UL and Federal Aviation Administration (FAA).

**B. Equipment Type:** All equipment shall be new equipment commercially available. Used, experimental or proto-type equipment still in testing shall require approval by the BZA as per the normal special exception process.

**C. Electrical Components, Cabling & Wiring:** All electrical components of the SFES shall conform to applicable local, state, and national codes, and relevant national and international standards. All SFES electrical collection cables shall be located underground unless they are located on public or utility rights-of-way or with prior County approval.

All underground work outside of the solar field shall comply with the regulations as follows:

1. All underground cabling will be buried no less than 60" (sixty inches) deep.
2. All underground cabling will have warning mesh at 36'' (thirty six inches) deep.
3. All underground cabling will be marked at road crossings, creeks, river beds and property lines with a metal or fiberglass post at least 5 feet in height with a cement base.

**D. Utility Interconnection:** Must be in compliance with all applicable local, state and federal codes.

**E. Signage & Warnings:** All SFES shall comply with the following requirements:

1. All driveway entry points shall have the assigned 911 address clearly posted.
2. A sign shall be posted on each locked gate entry point clearly displaying a 24 hour emergency contact number.
3. Clearly visible "High Voltage" and any other applicable warning signs shall be posted at each entry point and along the perimeter of the SFES area.
4. No portion of the SFES shall contain or be used to display any advertising signage.
5. The manufacturer's name and equipment information and/or indication of ownership shall be allowed on any equipment of the SFES provided they comply with the prevailing sign regulations.

**F. Lighting:** If lighting is provided at the project, lighting shall be shielded and downcast such that the light does not spill on to the adjacent parcel and/or residence and/or primary structure.

**G. Height:** Shall not exceed twenty (20) feet in maximum tilt of the solar panel(s).

**H. Glare:** The SFES shall be designed and located in order to prevent glare toward any inhabited buildings or adjacent properties as well as adjacent highways or right-of-ways.

**I. Noise:** Noise levels shall not exceed 50 decibels when measured from any primary structure. This standard shall supersede any noise standard as set forth in any other Article in the Zoning Ordinance.

**J. Outdoor Storage:** Only the outdoor storage of materials, vehicles and equipment that directly support the operation and maintenance of the solar farm shall be allowed.

**K. Damage & Repairs:** All damages including, but not limited to waterways, drainage ditches, field tiles, and/or any other infrastructures caused by the construction or maintenance of the SFES, must be completely repaired to original or better condition, and so as not to impede the flow of water. All repairs must be completed within a reasonable amount of time as agreed upon between the County and the applicant, owner and/or operator.

**L.** **Waste Handling & Disposal:** All solid waste whether generated from supplies, equipment, parts, packaging, operation and/or maintenance of the facility, including but not limited to old parts and equipment, shall be removed from the site promptly and disposed of in accordance with all local, state and federal, laws. All hazardous materials and/or waste related to the construction, operation and/or maintenance of the facility, including but not limited to lubrication materials, shall be handled, stored, transported and disposed of in accordance with all local, state and federal laws

**219.12 UNDERGROUND WORK AFTER CONSTRUCTION**

To help insure the safety of the public, no underground work, including but not limited to farm drainage, gas lines, and/or any other such work, shall be performed on land within the SFES project area without an employee of the SFES operation on site. This includes but is not limited to, property owners, sub-contractors, utility workers and/or County employees.

**219.13 SFES OPERATION, MAINTENANCE AND INSPECTIONS**

**A.** **Maintenance:** Any physical modification to the SFES 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 modifications (other than a like-kind replacement), the owner and/or operator shall confer with the County Building Inspector to determine whether the physical modification requires re-certification.

**B.** **Interference & Glare:** If, after construction of the SFES, the owner and/or operator receives a written complaint related to interference with any local broadcast residential television, telecommunication, communication, microwave transmissions and/or glare, the SFES owner and/or operator shall take reasonable steps to respond to minimize the complaint.

**C.** **Inspections:** The County Building Inspector, and/or licensed third party professionals retained by the County for the specific purpose of conducting inspections of the SFES shall have the right, at any reasonable time and with sufficient prior notice, to accompany the owner and/or operator and/or his agent, on the premises where a SFES has been constructed, to inspect all parts of said SFES installation and to require that repairs or alterations be made. The owner and/or operator of a SFES may retain a licensed third party professional engineer familiar with systems to prepare and submit to the County Building Inspector 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 thirty (30) days after receiving notice from the County Building Inspector that repairs or alterations are requested, or within a longer period of time mutually acceptable to both parties. The 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 County Building Inspector and the owner and/or operator, or a third party professional engineer retained by them, as to the repairs or alterations which are required, the decision of the County Building Inspector shall be final. Any fees for inspections made by a third party professional inspector and/or engineer retained by the County shall be paid by the owner and/or operator.

**D.** **Declaration of a Public Nuisance:** Any SFES thereof declared to be unsafe by the Jay County Building Inspector by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, 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 Agreement. Nothing in this Ordinance is intended to preempt any other applicable state and federal laws and regulations.

**219.14 SFES ROAD USE AGREEMENT**

Prior to receiving Development Plan approval and/or construction approval for the SFES project along with the use of any county road for the purpose of transporting parts and/or equipment for construction, operation, and/or maintenance of the SFES or substation, the applicant, owner and/or operator shall provide a signed Road Use Agreement that has been approved by the County Highway Department Superintendent, the Zoning Administrator, and County Commissioners. The Road Use Agreement shall include, but not be limited to the following requirements:

**A.** **Identification of all such public roads**: Any proposed routes that will be used for construction and/or maintenance purposes of the SFES project shall be identified and approved by the County Highway Department Superintendent. A pre-construction baseline survey to determine existing road conditions for assessing potential future damage shall be conducted by the County Highway Superintendent and/or a third party engineer, the cost of which will be covered by the owner and/or operator.

**B.** Any road damage caused by the construction of the SFES project equipment, the installation of same, or the removal of same, must be repaired to the satisfaction of the County The County may choose to require either remediation of road damage upon completion of the project or is authorized to collect fees for oversized load permits. Further, a corporate surety bond in an amount to be fixed by a professional engineer may be required by the County 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 owner and/or operator.

**C.** Newly constructed SFES access roads may not impede the flow of water and shall comply with the Jay County Drainage Ordinance and Drainage Plan Agreement.

**D.** No part of the SFES including, but not limited to above ground transmission lines and poles or below ground transmission lines shall be constructed and/or placed in any County road right-of-way or dedicated easement without prior written approval from the County

**E.** Any road damage caused by maintenance to the SFES and/or substation during the life of the project shall be repaired to the satisfaction of the County Highway Department Superintendant and/or County Commissioners; the cost of which shall be covered by the owner and/or operator.

**219.15 SFES DECOMMISSIONING PLAN AGREEMENT**

Prior to receiving Development Plan approval and/or construction approval for the SFES project, the applicant, owner and/or operator shall provide a signed Decommissioning Plan Agreement that has been approved by the Zoning Administrator and County Commissioners. The Decommissioning Plan is to ensure that the SFES facilities are properly decommissioned upon the end of the project life or facility abandonment. The Decommissioning Plan shall include but not be limited to the following:

**A.** Assurance that the facilities are properly decommissioned upon the end of the project life or facility abandonment. The applicant, owner and/or operator's obligations with respect to decommissioning shall include removal of all physical material pertaining to the project improvements to a depth of 48" beneath the soil surface, and restoration of the area occupied by the project improvements to the same or better condition that existed immediately before construction of such improvements. Prior to issuance of a Improvement Location Permit, the applicant, owner and/or operator shall provide a contractor cost estimate for demolition and removal of the SFES facility and will provide financial assurance, taking into consideration any salvage value, in an amount at least equal to said demolition and removal contractor cost estimate, through the use of a bond, letter of credit or other security acceptable to the County, the cost of decommissioning the solar field(s) under the building permit, which security shall be released when said solar field(s) is properly decommissioned as determined by the County Building Inspector. In the event of abandonment by the owner and/or operator, the applicant will provide an affidavit to the Zoning Administrator representing that all easements for the solar field(s) shall contain terms that provide financial assurance, including access to the salvage value of the equipment, for the property owners to ensure that facilities are properly decommissioned within twelve (12) months of expiration or earlier termination of the project.

**B.** The applicant, owner, and/or operator's failure to comply with, or make reasonable progress in getting into compliance any of the above provisions shall constitute a default under this Ordinance.

**C.** Prior to implementation of the existing County procedures for the resolution of each default, the appropriate County body shall first provide written notice to the owner and operator, setting forth the alleged default. Such written notice shall provide the owner and operator a reasonable time period, not to exceed 60 days, for good faith negotiations to resolve the alleged default.

**D.** If the County determines, in its discretion, that the parties cannot resolve the alleged default within the good faith negotiation period, the existing County ordinance provisions addressing the resolution of such default shall govern.

**219.16 LIABILITY INSURANCE**

The owner or operator of the SFES shall maintain general comprehensive liability insurance coverage naming Jay County as an additional party insured with a company and under terms approved by Jay County with combined limits for bodily injury and property damage in the aggregate amount of $5 million per occurrence with a commercially reasonable deductible approved by Jay County.

**219.17 INDEMNIFICATION**

The applicant, owner and/or operator of the SFES project shall defend, indemnify, and hold harmless the County and its officials from and against any and all claims, demands, losses, suites, causes of action, damages, injuries, costs, expenses, and liability whatsoever, including attorney's fees, without limitation, arising out of acts or omissions of the applicant, owner and/or operator associated with the construction and/or operations of the SFES project.

**219.18 CHANGE IN OWNERSHIP**

It is the responsibility of the owner and/or operator listed in the application to inform the Zoning Administrator of all changes in ownership and operation during the life of the SFES project, including the sale or transfer of ownership and/or operation. In the event of project ownership changes, by sale or transfer, such new owner shall agree in writing to conform to all provisions of the previously approved development plan, road use agreement, decommissioning plan agreement and/or any other approved agreements with the County along with the provisions as set forth in this Ordinance.

**219.19 WAIVING REQUIREMENTS**

Requirements of this Section may be waived by the County BZA upon application and after public hearings. All fees for filings and notices shall be paid by the applicant

## 220 COMMERCIAL BATTERY ENERGY STORAGE SYSTEM STANDARDS

### PURPOSE & APPLICABILITY

The purpose of these regulations is to provide a uniform and comprehensive set of standards for the construction and use of Commercial Battery Energy Storage System CBESS. Subject to reasonable restrictions, these regulations are intended to preserve the health and safety of the public. No entity shall construct or operate a CBESS within the jurisdiction of the Jay County Plan Commission without having fully complied with the provisions of this Section and/or Ordinance.

### 220.1 DEFINITIONS

For the purpose of this Ordinance, the following words and terms shall have the meanings shown herein.

**Energy Storage System (ESS):** Per NFPA 855 (2020 edition) 3.3.9*:One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time to the local power loads, to the utility grid, or for grid support.

**Battery Energy Storage System (BESS):** Means one or more electrochemical devices (batteries) that charge, or collect, energy from the grid or a generation facility, store that energy, and then discharge that energy at a later time to provide electricity or other grid services.

**Commercial Battery Energy Storage System (CBESS):** A battery energy storage system most generally used in conjunction with solar and wind farms.

**Enclosure/Container:** To protect the battery modules from weather and temperature fluctuations, they are housed in protective enclosures that also contain critical equipment. These enclosures can range from refrigerator-sized utility cabinets to structures as large as shipping containers.

### 220.2 PRE-DEVELOPMENT CONSULTATION MEETING

A pre-project development consultation meeting is required between the owner, developer, operator and/or agent and the Zoning Administrator prior to presenting the proposed project to any County Government Officials for approval with regards to any Commercial Battery Energy Storage System project within the Jay County Plan Commissions jurisdictional area. The purpose of this meeting is to acquaint the owner, developer, operator and/or agent with the standards and requirements of all applicable ordinances; to review procedures for permitting including fees and public hearings; to determine that there are no unforeseen issues with the proposed project area such as zoning, flood plain, County ditches and/or tiles etc…; and for the owner, developer, operator and/or agent to provide contact information for the general public regarding questions that may arise.

### 220.3 ZONE DISTRICT

Only permitted in Agricultural Residential (AR) zoned district by Special Exception Use approval from the Jay County Board of Zoning Appeals.

### 220.4 SPECIAL EXCEPTION USE APPROVAL

The Special Exception Use request will be considered by the Jay County Board of Zoning Appeals in a public hearing pursuant to IC 36-7-4-920. Notification for the public hearing shall be completed consistent with the requirements of the Rules of Procedure of the Board with the exception of the notification area that will be expanded to property owners and/or tenants within a one (1) mile radius of the project parcel along with the requirements of IC-5-3-1 for publication. All fees and required notices shall be paid for by the applicant. The approval is conditional on the applicant complying with the requirements as listed in this Ordinance along with the applicant obtaining the Improvement Location Permit within 1 year (12 months) from the date of approval. Other conditions may be attached to the approval at the discretion of the Board per IC 36-7-4-918.2.

## 220.5 COMMERCIAL BATTERY ENERGY STORAGE SYSTEM SETBACK REQUIREMENTS

**A. The minimum setback distances shall be as follows:**

| Distance from … | Minimum Setback Distance |
|---|---|
| **Property line,** measured from the edge of the equipment to the property line | **500 feet** - May be waived in writing by the adjoining landowners |
| **Property line** of any residential dwelling, church, school, business, public building; parcels zoned Rural Residential (RR) and Commercial (COM) including commercial recreational areas, measured from the edge of the equipment to the property line | **500 feet** - May be waived in writing by the adjoining landowners |
| **Road right-of-way (ROW)**, measured from the edge of the equipment to the edge of the right-of-way | **100 feet** |
| **Access driveways** to the property line | **50 feet** - May be waived in writing by the adjoining landowners |
| **Incorporated limits of County municipalities** measured from the edge of the equipment to the corporate limits | **1,500 feet** from the corporate limits of Bryant, Pennville, Redkey & Salamonia<br>**1/2 mile** from Dunkirk corporate limits<br>**2 miles** from Portland corporate limits<br>- May be waived in writing by municipality |
| **Nature preserve, park and/or recreational use** including property owned by IDNR, Friends of the Limberlost and/or any such property associated with the Loblolly reconstruction project area, and public conservation lands; measured from the edge of the equipment to the property line | **1,500 feet** |
| **Wetlands**, as defined by the U.S. Army Corps of Engineers, measured from the edge of the SFES to the nearest point of the wetland in question | As determined by a permit obtained from the Army Corps of Engineers |

**B.** **Flood Plain:** Shall not be located within the 100 year flood plain. An Elevation Certificate is required if any structure is located less than ½ mile (2,640 feet) from the nearest 100 year flood plain as determined by the most recently issued FEMA Flood Insurance Rate Maps. All of the system's equipment must be located at least 2 feet above the 100 year flood elevation

**C.** **Fencing**: All CBESS equipment and structures shall be fully enclosed by a security fence with a minimum height of 7 feet and must be setback a minimum of 50 feet from any property line. The setback distance may be waived in writing by the adjoining landowners

**D.** Any new primary structure built adjacent to a CBESS shall maintain the same minimum setback requirements.

**220.6 Requirements for Improvement Location Permit**

Prior to any construction, the owner, developer, operator and/or agent shall file with the Zoning Administrator an application for project review.

**A. Application**: The application filing shall include, but not be limited to the following:

1. **Summary Statement & Site Description of the project to include:**
   a. Owner and Operator name, address, phone, email (contact information)
   b. A general description of the project including its total generating capacity;
   c. The number of battery enclosures on site
   d. The generating capacity of each enclosure

2. **Site Plan to include the following:**
   a. Location of all battery enclosures
   b. Location of all other structures
   c. Property lines showing setback distances and any easements
   d. Location of all access drives and/or entry points
   e. Location of fencing
   f. any floodplain location and elevation as determined by the most recently issued FEMA Flood Insurance Rate Maps

**B. Additional Requirements:** All applicable requirements including, but not limited to the following shall be submitted along with the application prior to the issuance of any Improvement Location Permits.

1. **All signed waivers** from adjoining property owners shall be provided at time of filing
2. **911 address** issued by the Jay County 911 Department
3. **Driveway Approval** from Jay County Highway Department
4. **Compliance with** Indiana Code IC 22-14-8 and any other regulations and/or requirements of the State of Indiana
5. **Fire Safety/Protection Plan** approved by the local fire departments whose jurisdiction the property is located in and shall be in compliance with NFPA 855 regulations.
6. **Emergency Safety Plan** approved by the Jay County Emergency Management Agency.
7. **Drainage Plan** approval from the Jay County Surveyor and/or Jay County Drainage Board
8. **IDEM Rule 5** approval, if applicable, from Jay County Soil & Water Conservation District office
9. **Health Department** Approval: If applicable, shall comply with any septic and well regulations as required by the Jay County Health Department and the Indiana Department of Public Health.
10. **Road Use Agreement** signed and approved by the Jay County Commissioners *(Reference Section 220.10)*
11. **Decommissioning Plan Agreement** signed and approved by the Jay County Commissioners *(Reference Section 210.11)*
12. **Any other information** required by the Zoning Administrator determined to be necessary for the proper enforcement of this Ordinance

**C. Compliance:** When the application and supporting documentation has been found to be in compliance with the requirements of this Ordinance, the Improvement Location Permit(s) may be issued.

**220.7 IMPROVEMENT LOCATION PERMITS & FEES**

Prior to the issuance of any Improvement Location Permit for the project, the owner, developer, operator, and/or agent, shall pay the required permit fee of $2,500.00 per MW of the entire project. Any other structure associated with the project shall require a separate Improvement Location Permit the fee of which shall be in accordance with the Official Fee Schedule maintained by the Zoning Administrator.

**220.8 APPROVAL AND CONSTRUCTION TIME LIMITATIONS**

The Special Exception Use approval from the County BZA is conditional on the issuance of the Improvement Location Permit within 1 year (12 months) from the date of approval. If the ILP has not been obtained by the end of the 12 months the Special Exception Use approval is void and the owner, developer, operator, and/or agent shall be required to reapply to the BZA for approval along with paying all required fees for filings and notices.

**A.** The Improvement Location Permit shall be valid for 2 years (24 months) from the date of issuance, during which time construction shall commence. If construction of the project has not commenced within the 2 year (24 month) time frame, the permit shall expire and the owner, developer, operator and/or agent shall be required to reapply to the County BZA for approval along with paying all required fees for filings and notices.

**B.** If construction of the project has commenced but is not completed at the end of the 2 years (24 months), an extension may be granted at the discretion of the Zoning Administrator for a period of no longer than 6 months for a fee of 25% of the overall cost of the original ILP. The Zoning Administrator may grant additional extensions of no longer that 6 months each for a fee of 25% of the overall cost of the original ILP for each extension until the project is completed.

**220.9 EXPANSION AND/OR ALTERATION OF PROJECT**

Any expansion and/or alteration of the approved and/or permitted project shall require approval from the County BZA, along with complying with the other requirements of this Ordinance. All fees for filings and notices shall be paid for by the applicant. Minor alteration approval shall be at the discretion of the Zoning Administrator.

**220.10 ROAD USE AGREEMENT**

Prior to receiving a Improvement Location Permit for the CBESS project along with the use of any county road for the purpose of transporting parts and/or equipment for construction, operation and/or maintenance of the CBESS, the owner, developer, operator, and/or agent shall provide a signed Road Use Agreement that has been approved by the County Highway Department Superintendent, the Zoning Administrator, and County Commissioners. The Road Use Agreement shall include, but not be limited to the following requirements:

**A.** **Identification of all such public roads.** Any proposed routes that will be used for construction and/or maintenance purposes of the CBESS project shall be identified and approved by the County Highway Department Superintendent. A pre-construction baseline survey to determine existing road conditions for assessing potential future damage shall be conducted by the County Highway Superintendent or a third party engineer, the cost of which will be paid for by the owner, developer, operator, and/or agent.

**B.** **Road Damage:** Any road damage caused during the construction of the CBESS project, the installation of equipment, and/or during any maintenance undertaken to the CBESS project during the life of the project shall be repaired to the satisfaction of the County Highway Department Superintendant, and/or County Commissioners. The cost of any such repairs shall be paid for by the owner, developer, operator, and/or agent. Further, a corporate surety bond in an amount to be fixed by a professional engineer may be required to insure that future repairs are completed to the satisfaction of the County. The cost of bonding shall be paid by the owner, developer, operator, and/or agent

**220.11 DECOMMISSIONING PLAN AGREEMENT**

Prior to receiving a Improvement Location Permit for the CBESS project, the owner, developer, operator and/or agent shall provide a signed Decommissioning Plan Agreement that has been approved by the Zoning Administrator and County Commissioners. The Decommissioning Plan is to ensure that the CBESS facility is properly decommissioned upon the end of the project life or facility abandonment. The Decommissioning Plan shall include but not be limited to the following:

**A.** Steps for restoring the site of the project to pre-construction environmental and physical condition to the maximum extent possible within 12 months of ceasing operations;

**B.** The estimated cost for restoration less the project's estimated salvage value ("Net Cost for Restoration");

**C.** An assurance in the form of a Bond, letter of credit, or other form, to be established in an agreement between the County and the owner and/or developer to cover the cost of decommissioning.

**D.** The Decommissioning Plan is to be reviewed every 5 years for the purpose of updating the costs for decommissioning and, if applicable, updating the financial agreement for decommissioning with the County. Such updates shall be subject to approval by the County.

**220.12 LIABILITY INSURANCE**

The owner or/or operator of the CBESS shall maintain general comprehensive liability insurance coverage naming Jay County as an additional party insured with a company and under terms approved by Jay County with combined limits for bodily injury and property damage in the aggregate amount of $5 million per occurrence with a commercially reasonable deductible approved by Jay County.

**220.13 INDEMNIFICATION**

The owner and/or operator of the CBESS project shall defend, indemnify, and hold harmless the County and its officials from and against any and all claims, demands, losses, suites, causes of action, damages, injuries, costs, expenses, and liability whatsoever, including attorney's fees, without limitation, arising out of acts or omissions of the applicant, owner and/or operator associated with the construction and/or operations of the CBESS project.

**220.14 CHANGE IN OWNERSHIP**

It is the responsibility of the owner listed on the application to inform the Zoning Administrator of all changes in ownership and operation during the life of the CBESS project including the sale or transfer of ownership and or operation. Prior notice to the Zoning Administrator of the intent to sell or transfer ownership of the project shall be done in a timely manner. In the event of project ownership changes, by sale or transfer, such new owner shall agree in writing to conform to all provisions of the already approved Special Exception Use and the provisions as set forth in this Ordinance. At the discretion of the Zoning Administrator, the new owner may be required to file for Special Exception Use approval from the County BZA for the project to continue. All fees for filings and notices shall be paid for by the applicant.

**220.15 WAIVING REQUIREMENTS**

Requirements of this Section may be waived by the County BZA upon application and after public hearings. All fees for filings and notices shall be paid by the applicant.

## 221 DATA CENTER FACILITIY STANDARDS

### PURPOSE & APPLICABILITY

The purpose of these regulations is to provide a uniform and comprehensive set of standards for the installation and use of any Data Center Facility. Subject to reasonable restriction, these regulations are intended to preserve the health and safety of the public. No entity shall construct or operate a Data Center Facility within the jurisdiction of the Jay County Plan Commission without having fully complied with the provisions of this Section and/or Ordinance.

### 221.1 DATA CENTER FACILITY DEFINED

For the purpose of this Ordinance, a data center facility shall be defined as a facility and/or structure or portion of a facility and/or structure housing networked computer systems and associated components such as telecommunications equipment and storage systems used for remote storage, processing and/or distribution of data. This includes new construction projects along with the use of existing structures. A data center facility shall not be considered a public utility

### 221.2 PRE-DEVELOPMENT CONSULTATION MEETING

A pre-project development consultation meeting is required between the owner, developer, operator and/or agent and the Zoning Administrator prior to presenting the proposed project to any County Government Officials for approval with regards to any data center facility project within the Jay County Plan Commissions jurisdictional area. The purpose of this meeting is to acquaint the owner, developer, operator and/or agent with the standards and requirements of all applicable ordinances; to review procedures for permitting including fees and public hearings; to determine that there are no unforeseen issues with the proposed project area such as zoning, flood plain, County ditches and/or tiles etc…; and for the owner, developer, operator and/or agent to provide contact information for the general public regarding questions that may arise.

### 221.3 ZONE DISTRICT

Only permitted in Agricultural Residential (AR) zoned district by Special Exception Use approval from the Jay County Board of Zoning Appeals.

### 221.4 SPECIAL EXCEPTION USE APPROVAL

The Special Exception Use request will be considered by the Jay County Board of Zoning Appeals in a public hearing pursuant to IC 36-7-4-920. Notification for the public hearing shall be completed consistent with the requirements of the Rules of Procedure of the Board with the exception of the notification area that will be expanded to property owners and/or tenants within a one (1) mile radius of the project parcel along with the requirements of IC-5-3-1 for publication. All fees and required notices shall be paid for by the applicant. The approval is conditional on the applicant complying with the requirements as listed in this Ordinance. Other conditions may be attached to the approval at the discretion of the Board per IC 36-7-4-918.2.

### 221.5 DATA CENTER FACILITY DESIGN & CONSTRUCTION STANDARDS

The applicant must comply with, including but not limited to the following standards and requirements prior to the issuance of a Improvement Location Permit

**A. Setback Requirements**

The minimum setback distances shall be as follows:

1. 1,000 feet from Property Lines; may be waived in writing by the adjoining property owner.
2. 2.500 feet from any residential dwelling, church, school, business, public building; parcels zoned Rural Residential (RR) and Commercial (COM) including commercial recreational areas; may be waived in writing by the adjoining property owner.
3. 500 feet from any Road right-of-way (ROW)
4. Flood Plain**:** Shall not be located within the 100 year flood plain. An Elevation Certificate is required if any structure is located less than ½ mile (2,640 feet) from the nearest 100 year flood plain as determined by the most recently issued FEMA Flood Insurance Rate Maps. All of the system's equipment must be located at least 2 feet above the 100 year flood elevation

**B. Buildings and/or Structures Height:**
Maximum height of any building and/or structure on the site is 35 feet

**C. Water Usage for Cooling:**
Any water cooling must use a closed loop cooling system with no continuous discharge

**D. Generators:**
1. Generators will require IDEM approval for air pollution control
2. Unless the generators are supplying backup electrical supply during a power outage, any routine generator exercise maintenance is limited to Monday – Friday, excluding holidays, between the hours of 9 a.m. and 5 p.m.
3. Generators must me contained within an enclosed building, structure or walled area of sufficient height to limit the sound to 50 dBA measured at 1,000 feet from the generator.

**E. Noise**:
1. Noise levels shall not exceed 50 decibels (50 dBA) when measured from the property line of the facility.
2. The data center must be designed and built to incorporate sound mitigation methods sufficient to prevent the sound levels emanating from the Data Center as determined by a third-party acoustic engineer. Design specifications for such sound mitigation must be provided to the Zoning Administrator before building permit approval.

**F. Buffer Area**:
A berm with a minimum height of 6 feet shall be used as a sound buffer between adjoining residential and/or commercial properties.

**G. Equipment**:
All equipment necessary for cooling, ventilating, or otherwise operating the facility including all generators must be contained within an enclosed building, structure or walled area of sufficient height to eliminate visibility of the equipment from public view and/or adjacent properties.

**H. Lighting**:
All lighting shall be shielded and downcast such that the light does not spill on to the adjacent parcel and/or residence and/or primary structure.

**I. Battery Energy Storage System Enclosures:**
The use of any onsite battery energy storage system shall further comply with, including but not limited to, the requirements as follows:
1. Shall have an Emergency Safety Plan approved by the Jay County Emergency Management Agency
2. Shall have a Fire Safety/Protection Plan approved by the local fire departments whose jurisdiction the property is located in and shall be in compliance with NFPA 855 regulations
3. Shall be in Compliance with Indiana Code IC 22-14-8 and any other regulations and requirements of the State of Indiana
4. Any battery energy storage system equipment and/or enclosures shall be fully enclosed by a security fence with a minimum height of 7 feet
5. Shall comply with the setback requirements as listed in Section 221.5 of this Ordinance

**221.6 REQUIREMENTS FOR IMPROVEMENT LOCATION PERMIT (ILP)**
Prior to any construction, the developer/applicant shall file with the Zoning Administrator an application for project review.

**A. Application**: The application filing shall include, but not be limited to the following:

1. **Summary Statement & Site Description of the project to include:**
   a. Owner and Operator name, address, phone, email (contact information)
   b. The number of proposed buildings including height
   c. The number of backup generators
   d. The number of fuel tanks and the amount of fuel to be stored on site
   e. A description of approved water cooling system
   f. Architectural Drawings approved by IDHS (State Design Release)

2. **Site Plan to include the following:**
   a. Location of all proposed buildings and any other structures including any battery storage structures showing setback distances and right-of-ways
   b. Location of generators
   c. Location of fuel storage tanks
   d. Location of berm area
   e. any floodplain location and elevation as determined by the most recently issued FEMA Flood Insurance Rate Maps

**B.** **Additional Requirements:** All applicable requirements including, but not limited to the following shall be submitted along with the application prior to the issuance of any Improvement Location Permits.

1. **All signed waivers** from adjoining property owners shall be provided at time of filing

2. **IDEM approval** for generators & any other systems they monitor

3. **Approval from Indiana Department of Homeland Security (IDHS)**

4. **Driveway Approval** from Jay County Highway Department

5. **911 address** issued by the Jay County 911 Department

6. **Fire Safety/Protection Plan** approved by the local fire departments whose jurisdiction the property is located in and shall be in compliance with NFPA 855 regulations

7. **Emergency Safety Plan** approved by the Jay County Emergency Management Agency

8. **Drainage Plan** approval from the Jay County Surveyor and/or Drainage Board

9. **IDEM Rule 5** approval, if applicable, from Jay Co Soil & Water Conservation District

10. **Health Department** Approval: If applicable, shall comply with any septic and well regulations as required by the Jay County Health Department and the Indiana Department of Public Health

11. **Any other information** required by the Zoning Administrator determined to be necessary for the proper enforcement of this Ordinance

**C.** **Inspections:** The Zoning Administrator reserves the right to hire a licensed third party inspector, engineer and/or professional for the specific purpose of assisting with conducting inspections of the data center facility during and post construction. The County Building Inspector and/or licensed third party professional(s) shall have the right at any reasonable time and with sufficient prior notice to accompany the owner, developer, operator and/or agent on the premises to inspect all parts of the data facility installation and to require that repairs or alterations be made if necessary. The owner, developer, operator and/or agent agrees to and shall pay all fees for all servicers provided by any third party professional retained by the County.

**D.** **Compliance:** When the application and supporting documentation has been found to be in compliance with the requirements of this Ordinance, the Improvement Location Permit(s) may be issued.

**221.7 IMPROVEMENT LOCATION PERMITS & FEES**

Prior to the issuance of any Improvement Location Permit for the project, the owner, developer, operator and/or agent, shall pay the required permit fee figured at .06 ¢ (six cents) per cubic foot for each structure used for the data storage. Any other structure associated with the project shall require a separate Improvement Location Permit the fee of which shall be in accordance with the Official Fee Schedule maintained by the Zoning Administrator.

**221.8 EXPANSION AND/OR ALTERATION OF PROJECT**

Any expansion and/or alteration of the approved and/or permitted project shall require approval from the County BZA, along with complying with the other requirements of this Ordinance. All fees for filings and notices shall be paid for by the applicant. Minor alteration approval shall be at the discretion of the Zoning Administrator.

**221.9 CHANGE IN OWNERSHIP**

it is the responsibility of the owner listed on the application to inform the Zoning Administrator of all changes in ownership and operation during the life of the project including the sale or transfer of ownership. Prior notice to the Zoning Administrator of the intent to sell or transfer ownership of the project shall be done in a timely manner. In the event of project ownership change, by sale or transfer, said new owner shall agree in writing to conform to all provisions of the approved Special Exception Use and the provisions as set forth in this Ordinance. At the discretion of the Zoning Administrator, the new owner may be required to file for Special Exception Use approval from the County BZA for the project to continue. All fees for filings and notices shall be paid for by the applicant.

***Ordinance #2026-11 Adopted July 27, 2026***

## 222 $CO_2$ GEOLOGICAL CARBON SEQUESTRATION STORAGE FACILITY STANDARDS

**Purpose & Applicability:**
The purpose of these regulations is to provide a uniform and comprehensive set of standards for the construction and use of any $CO_2$ Geological Carbon Sequestration storage facility. Subject to reasonable restrictions, these regulations are intended to preserve the health and safety of the public. No entity shall construct or operate a $CO_2$ Geological Carbon Sequestration Storage Facility within the jurisdiction of the Jay County Plan Commission without having fully complied with the provisions of this Section and/or Ordinance.

### 222.1 $CO_2$ Geological Carbon Sequestration Defined
For the purpose of this Ordinance, $CO_2$ Geological Carbon Sequestration is the process of capturing carbon dioxide ($CO_2$) from industrial sources, compressing and injecting it deep into underground rock formations for long-term storage.

### 222.2 Pre-Development Consultation Meeting with the Zoning Administrator
A pre-project development consultation meeting is required between the owner, developer, operator and/or agent and the Zoning Administrator prior to presenting the proposed project to any City Government Officials for approval with regards to any Carbon Sequestration project within the Jay County Plan Commissions jurisdictional area. The purpose of this meeting is to acquaint the owner, developer, operator and/or agent with the standards and requirements of all applicable ordinances; to review procedures for permitting including fees and public hearings; to determine there are no unforeseen issues with the proposed project area such as zoning, flood plain, County ditches and/or tiles etc…; and for the owner, developer, operator and/or agent to provide contact information for the general public regarding questions that may arise.

### 222.3 Special Exception Use Approval
The Special Exception Use request will be considered by the Jay County Board of Zoning Appeals in a public hearing pursuant to IC 36-7-4-920. Notification for the public hearing shall be completed consistent with the requirements of the Rules of Procedure of the Board with the exception of the notification area that will be expanded to property owners and/or tenants within a one (1) mile radius of the injection well head, along with the requirements of IC-5-3-1 for publication. All fees and required notices shall be paid for by the applicant. The approval is conditional on the applicant complying with the requirements as listed in this Ordinance. Other conditions may be attached to the approval at the discretion of the Board per IC 36-7-4-918.2.

### 222.4 Setback Requirements

**A.** An applicant for an improvement location permit shall engage an independent third-party approved by the BZA, to complete an in depth Well Release and Dispersion Modeling (“WRDM”) analysis based on site specific data and inputs. Said analysis shall include, but not be limited to, reservoir pressure information, planned injection volumes based on Class VI permit filing, and well design specifications. The costs for said analysis shall be at the applicant’s expense and the results of said analysis shall be included in the applicant’s development plan submission to the BZA.

**B.** The BZA may, in its sole discretion, accept or reject the findings of the independent third-party analysis and may engage additional third-parties to conduct additional WRDM analysis of the applicant’s proposed Carbon Sequestration project.

**C.** The BZA shall determine site specific setback standards utilizing the analysis and recommendations provided by an independent third-party WRDM analysis. All setbacks shall be determined from the distance of the injection well to occupied dwellings or structures which are used for human occupancy.

**D.** An applicant shall include in its emergency response plan detailed procedures and processes for controlling access to the area surrounding the injection well in the event of a release of CO2.

**E.** Site specific setbacks may be waived, in writing, by an adjoining landowner, however, a waiver of a setback that would pose an immediate danger to life and health as determined by the standards set forth by the National Institute of Occupational Safety and Health shall not be permitted.

**222.5 Seismic Testing Standards**

Before seismic testing can start for the project, he developer and/or owner shall notify the Zoning Administrator, Jay County Emergency Management Agency Director and all residences within the area of testing in writing that seismic testing will be done, The notice shall including the time frame of said testing and provided contact information regarding questions. If any properties in the defined area have damages due to seismic testing activity the developer and/or owner shall pay for the remediation. Seismic testing will be limited to the hours of 7am-7pm, Monday thru Friday excluding holidays.

**222.6 Design & Construction Standards**

**A.** There shall be **an alarm/warning system** in place to warn the area of any leak or malfunction to the system that will require evacuation of the area.

**B.** **Fencing:** The well head shall be enclosed by a chain link fence with a minimum height of 6 feet with a locking gate at any entrance point. No portion of the fencing shall contain or be used to display advertisement.

**C.** **Signage** shall be posted on each locked gate entry point and must clearly display warning signs and 24 hour contact information for emergencies.

**D.** **Lighting &/or Noise:** Any lighting and/or noise concerns shall be directed to the owner/operator of the facility for remediation.

**E.** For the purpose of this ordinance, the CO2 can only be piped and injected on the property where the CO2 is being produced unless otherwise approved by the BZA.

**F.** **No outside CO2** shall be allowed to be brought in from an outside source and injected into the approved site.

**222.7 Requirements for Improvement Location Permit**

Prior to any construction activities, the owner, developer or applicant shall file with the Zoning Administrator the following documents and required information for review:

**A.** **Application:** A completed application form provided by the Zoning Administrator

**B.** **Site/Plot plan to include, but not limited to the following**:

a. the location of the well head
b. the location of all structures and/or equipment associated with the project
c. the location of fencing and locking gates
d. the location of any driveways and/or access lanes
e. setback distance from all property lines to the well head
f. setback distances from all residential and/or commercial structures to the well head
g. a map of the projected plum area
h. the location of any structure located over the projected plum area

**C.** **Additional Requirements:** All applicable requirements including, but not limited to the following shall be submitted along with the application and site/plot plan prior to the issuance of any Improvement Location Permits.

**1.** A list of all properties located within the plume area to include property owner name, parcel ID number, owner address, phone number and/or email.

2. **Emergency Safety Plan** approved by the Jay County Emergency Management Agency.

3. **Fire Safety/Protection Plan** approved by the local fire departments whose jurisdiction the property is located in and shall be **in compliance with NFPA 855 regulations.**

4. Shall be in compliance with all state and federal regulations and requirements and shall provide documentation of all approvals.

5. **Any other information required by the Zoning Administrator** determined to be necessary for the proper enforcement of this Ordinance

**D.** **Compliance:** When the application and supporting documentation has been found to be in compliance with the requirements of this Ordinance, the Improvement Location Permit(s) may be issued.

**222.8 Improvement Location Permits & Fees:**
Prior to the issuance of any Improvement Location Permit for the project, the owner, developer, operator and/or agent shall pay the required permit fee or $50,000.00. Any other structure associated with the project shall require a separate Improvement Location Permit the fee of which shall be in accordance with the Official Fee Schedule maintained by the Zoning Administrator.

**222.9 Expansion and/or Alteration of Project**
Any expansion and/or alteration of the approved and/or permitted project including but not limited to the drilling any new well(s) shall require approval from the Jay County Board of Zoning Appeals, along with complying with the other requirements of this Ordinance. All fees for filings and notices shall be paid for by the owner and/or applicant. Minor alteration approval shall be at the discretion of the Zoning Administrator.

**222.10 Contact Information**
There must be updated contact information on file with the Zoning Administrator at all times.

**222.11 Change in Ownership**
It is the responsibility of the owner of record to notify the Zoning Administrator of all changes in ownership and/or operation, including the sale or transfer of ownership, during the life of the project. The Zoning Administrator must receive notification of any ownership and/or management changes including their contact information prior to the changes being finalized and a meeting scheduled to go over the requirements of this Ordinance.

In the event of project ownership change, by sale or transfer, said new owner shall agree in writing to conform to all provisions of the approved Special Exception Use, the provisions as set forth in this Ordinance along with any other agreements between the owner and the County. At the discretion of the Zoning Administrator, the new owner may be required to file for Special Exception Use approval from the Jay County BZA for the project to continue. All fees for filings and notices shall be paid for by the applicant.

# *Article 3*

# General Regulations

## 301 NON-CONFORMING USES OF LAND AND STRUCTURES

If a lawful use of land, a structure, or of a structure and land in combination exists at the effective date of the adoption or amendment of this Ordinance, that would not be permitted in the district under the terms of this Ordinance, that use may be continued subject to the following provisions.

**301.1** No existing land or structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed reconstructed, moved or structurally altered except in changing the use of the land or structure to a use permitted in the district in which it is located. This provision may be modified by the Board of Zoning Appeals

**301.2** Any non-conforming use may be extended throughout any parts of a building, accessory use, earthen or excavation which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building, accessory use, earthen structure or excavation.

**301.3** Any non-conforming use of land, a structure, or structure and land together, may be changed to another non-conforming use provided that the Board, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use. In permitting such change, the Board may require appropriate conditions and safeguards in accord with the provisions of this Ordinance.

**301.4** Any land, structure, or structure and land in combination, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located and the non-conforming use may not thereafter be resumed.

**301.5** When a non-conforming use of land, a structure, or structure and premised in combination, is discontinued or abandoned for 12 consecutive months, the structure or structure and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located.

**301.6** Where non-conforming structure use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land.

**301.7** Any non-conforming structure damaged by fire, flood, explosion, or other casualty may be reconstructed and used as before if such reconstruction is undertaken within 12 months of such casualty, and if the restored structure has no greater coverage and contains no greater cubic content than before such casualty.

**301.8 Mobile Homes - Temporary Installations & Permanent Installations**

All mobile homes installed before the effective date of this Ordinance on any lot within Jay County, but outside of the zoning areas of Portland and Dunkirk, Indiana, are hereby specifically declared to be legal non-conforming uses. Such mobile homes may be enlarged or replaced without Board approval upon the condition that such enlargement or replacement conforms with all other provisions of this Ordinance and the necessary permits are obtained. ***No mobile homes will be allowed in the incorporated areas under the jurisdiction of the Jay County Zoning Ordinance, except in a qualified mobile home park.***

All other mobile homes shall comply with the following conditions:

1. That said mobile home shall be placed on a permanent foundation, that it be secured by tie-downs, and complies with the Indiana Residential Code.

2. That said mobile homes, exclusive of carports, partitions, and other necessary additions, shall have a floor space of not less than 600 square feet.

3. Each mobile home shall be skirted on all sides with a permanently attached, substantial material, such as painted metal, fiberglass, concrete, or masonry, that will not detract from the appearance of the mobile home.

4. That all other requirements relating to permanent housing and special exceptions, within the respective district, be fulfilled.

5. A Certificate of Compliance is required.

**Mobile Homes Classified as:**

***A. Type I (T1) Temporary for Construction Purposes***

A mobile home may be moved on to a lot, plot or tract of land and be used as a temporary residence for a period of one year during the construction time of a permanent residence on the same lot, plot or tract.

1. Prior to the moving of any mobile home onto any lot, plot or tract, for said purpose, the owner shall obtain a temporary use permit from the Zoning Administrator. Said permit shall run for a period of one year. Upon expiration, the grant may be extended for one additional year by the Zoning Administrator, upon adequate showing by the owner that the construction of the residence has not progressed to a livable stage due to conditions beyond his control. Only one such extension shall be allowed for said grant; after the final expiration of said grant one year extension, the owner must appear before the Board of Zoning Appeals and show just cause said mobile home shall not be vacated and removed.

2. The temporary residence shall comply with all county and state health requirements which would be imposed upon a permanent residence on the same lot, plot or tract.

3. All those conditions listed under 301.8 (A) 1 through 5 shall apply to a Type I mobile home except that, with respect to (A) 1, that no permanent foundation is required but that the remaining conditions of (A) shall apply.

***B. Type II (T2) Temporary For Family Member***

A mobile home is permitted as a temporary accessory use without regard to the other provisions of this ordinance except as specified in this subsection, and providing that the following conditions are met:

1. Such mobile home shall be permitted only on property having an existing permanent dwelling.

2. Such mobile home shall be occupied by a member of the property owners family (father, mother, son or daughter, etc.) residing in the permanent dwelling and being within the Agricultural Residential District.

3. Such mobile home shall not be permitted to encroach on the required yard or setback as specified by the zoning ordinance.

4. Such mobile home shall not be moved onto a property unless an improvement location permit has been issued, and it shall not be used for dwelling purposes until a certificate of occupancy has been issued.

5. The application for the improvement location permit and the certificate of occupancy shall be accompanied by a letter or permit from the County Board of Health stating that the proposed method of water supply and sanitary waste disposal meets their requirements.

6. The Zoning Administrator has the authority to issue the improvement location permit and certificate of occupancy if the above and all other applicable regulations and requirements are met.

7. Mobile Home shall remain on the property, no longer than 60 days after the end of the permitted need.

8. Notice to Adjacent Property-owners: In this instance the applicant shall be required to notify all immediately adjacent property-owners of his or her intent. The notice shall include a complete description of the proposed intent. The notice shall be sent by Certified Mail and the signed receipts returned to the Planning Commission Office prior to the issuance of the permit. Property-owners will have thirty (30) days from the date the certified letters are sent, to send objections in writing to the Planning Commission Office. If legitimate objections are received by the Zoning Administrator the application shall be denied and a new application can be submitted as a Type IV (T4), under this section.

***C. Type III (T3) Permanent Installations***

A mobile home may be moved onto a lot, plot or tract of land and be used as a dwelling in an Agricultural Residential District. Prior to moving any mobile home onto any lot, the owner or his agent shall first obtain an improvement location permit. The Zoning Administrator may issue the permit subject to the following conditions:

1. Each mobile home shall be located on a lot and shall be the only principal structure on the lot.

2.. The mobile home shall be at least three hundred (300) feet from an adjoining Rural Residential District.

3. The minimum lot and yard requirement shall be the same as required by this ordinance.

4. Each mobile home shall contain a flush toilet, sleeping accommodations, a tub or shower bath, kitchen facilities and plumbing and electrical connections designed for and attached to appropriate external systems.

5. All health and sanitary regulations of the Jay County and the Indiana State Boards of Health are met.

6. Notice to Adjacent Property-owners: In this instance the applicant shall be required to notify all immediately adjacent property-owners of his or her intent. The notice shall include a complete description of the proposed intent. The notice shall be sent by Certified Mail and the signed receipts returned to the Planning Commission Office prior to the issuance of the permit. Property-owners will have thirty (30) days from the date the certified letters are sent, to send objections in writing, to the Planning Commission Office. If legitimate objections are received by the Zoning Administrator the application shall be denied and a new application can be submitted as a Type IV (T4), under this section.

### *D. Type IV (T4) All Other*

1. All other Mobile Home installations will be treated as a non-conforming use special exception, application to be submitted to the Jay County Board of Zoning Appeals.

2. Any mobile home that does not comply with the conditions of Types I, II, or III above shall be treated as a non-conforming use special exception as a Type IV mobile home and require an application to be submitted for consideration before the Jay County Board of Zoning Appeals.

## 302 ACCESSORY USES AND STRUCTURES

**302.1** Fences, hedges, walks, driveways, curbs, retaining walls, latticework screens, trees, flowers, plants, mail boxes, nameplates, lamp posts, bird baths, benches, and landscaping of a like nature are permitted in or on any lot provided they do not violate the requirements of Section 303 of this Ordinance.

**302.2** Accessory structures shall be permitted on any lot provided any structure over 100 square feet in area (whether temporary or permanent) shall require a permit and the structure shall not be located less than five (5) feet from any property line.

**302.3** Migrant housing facilities of all types may be permitted as accessory uses in conjunction with an agricultural operation provided that the housing is not occupied more than six (6) months in any calendar year, that the migrant housing conforms to all applicable County and State requirements, and is located at least 200 feet from a residential lot or district boundary line.

**302.4** A private swimming pool shall be permitted as an accessory use.

**302.5** Fences shall be setback one (1) foot from the property line unless it is a joint fence, in which case the fence shall be placed on the property line, and provided the fence shall conform to Section 303 of this Ordinance.

**302.6** Animal waste pits and lagoons are only allowed in an Agricultural District, Environmental Protection District or an Industrial District, and must comply with the regulations as set forth in these specific districts along with Section 216 of this Ordinance.

## 303 VISUAL CLEARANCE ON CORNER LOTS

On a corner lot in any district, nothing shall be erected, placed, planted, or allowed to grow in such manner as to materially impede vision between a height of two (2) and ten (10) feet above the center line grade of the intersecting roads or streets for a distance of fifty (50) feet in either direction from any driveway or entrance way or exit way along said roads or streets. It shall be the property owner's responsibility to keep these areas of his or her property clear.

## 304 TEMPORARY USES OF LAND OR STRUCTURES

A permit for a temporary structure or land use such as carnivals, revival meetings, construction facilities, seasonal sales, or use of a similar nature may be issued by the Zoning Administrator provided the following conditions are adhered to:

**304.1** The use is, in fact, temporary and will terminate at a specific time.

**304.2** The proposed site is of adequate size to accommodate the use without creating congestion in the streets or inadequate circulation for fire and other emergency vehicles.

**304.3** Adequate parking, both off-street and on-street, is available for the proposed site.

**304.4** Outdoor lighting, if necessary, will be shielded or directed away from adjoining residential property and streets.

**304.5** Neighboring uses are not adversely affected.

## 305 MOBILE HOME PARKS

In any district in which mobile home parks are permitted, the following minimum requirements shall apply:

**305.1** The construction of a mobile home park shall not be permitted without an approved development plan and a license to operate a mobile home park from the State Board of Health.

**305.2** Conditions of soil, groundwater level, drainage, geologic structures and topography shall not create hazards to the park site or to the health and safety of occupants, nor shall the site be subject to the hazards of objectionable smoke, odor, or noise, or the possibility of subsidence, sudden flooding or severe erosion.

**305.3** The minimum area of a mobile home park shall be five (5) acres.

**305.4** The density of a park shall not exceed eight (8) mobile homes per acre of gross site area.

**305.5** All sites within the park must be served by a community sanitary sewer systems, approved by the State Board of Health. Water must be provided to all sites within the park. Public utilities must be provided for hookup to all sites within the park. Fire hydrants shall be installed in the mobile home park so that no mobile home lot or structure is further than 500 feet from a fire hydrant.

**305.6** Each mobile home site shall be provided with adequate quality hookups for water, sewage, electricity, gas (if available), and telephone.

**305.7** Each mobile home site shall be provided with a solid concrete slab and two concrete ribbons of a thickness and size adequate to support the maximum anticipated loads during all seasons.

**305.8** Each mobile home lot shall contain a mobile home slab. The slab shall provide adequate support for the placement and tie-down of the mobile home so that it is secure against uplift, sliding, rotation, and overturning. The slab shall be constructed so that it does not heave, shift, or settle unevenly under the weight of the mobile home due to freeze/thaw cycles, inadequate drainage, or vibration. The slab shall be provided with anchors and tie-downs such as cast-in-place "dead men", eyelets embedded in concrete foundations, or other devices securing the stability of the mobile home, as per Indiana Building Code, as amended.

**305.9** Each mobile home lot shall contain two parking spaces, a minimum of 10 feet wide by 20 feet deep.

**305.10** No mobile home and enclosed accessory structures designed for living space shall be located closer than twenty (20) feet from any other mobile home or permanent building within the mobile home park.

**305.11** Mobile home parks shall have direct access to an adequate public thoroughfare with sufficient frontage thereon for the proper construction of entrances and exits. Such entrances and exits shall be designed for the safe movement of mobile homes into and out of the park.

**305.12** All mobile homes shall be located 25 feet or more from the right-of-way line of an abutting dedicated public thoroughfare and 10 feet or more from other boundary lines of the park.

**305.13** Internal mobile home park streets, if dedicated to public use, shall meet the minimum standards for design and construction as required by State Law.

**305.14** Each mobile home shall be supported under the I-beams and shall be skirted on all sides with a permanently attached, substantial material, such as painted metal, fiberglass, concrete, or masonry, which will not detract from the appearance of the mobile home.

**305.15** The storage, collection, and disposal of refuse in mobile home parks shall be conducted as to create no health hazards, opportunities to harbor rodents or insects, or to create the potential for accidents, fire hazards, or pollution. All refuse shall be stored in water tight, rodent-proof containers that are located not more than 150 feet from any mobile home lot. The containers shall be designed to prevent spillage, tipping, and deterioration. Refuse shall be collected at least once weekly. All refuse shall be transported in covered vehicles or containers.

**305.16** Each mobile home park shall provide a recreational area or areas equal to the size of at least 10 percent of the area of the mobile home park. Streets, parking areas, and park service facilities shall not be included in the required recreational area.

## 306 RECREATIONAL VEHICLES

Recreational vehicles shall not be occupied continuously for longer than twelve (12) weeks in any county location other than approved campground.

## 307 CAMPGROUNDS

In any district in which campgrounds are permitted, the following requirements shall apply:

**307.1** Campgrounds shall have direct access to a public highway or road with sufficient frontage thereon for the proper construction of entrances and exits. Such entrances and exits shall be designed for the safe movement of recreational vehicles into and out of the park.

**307.2** Conditions of soil, groundwater level, drainage, geologic structure and topography shall not create hazards to the park site or to the health and safety of occupants, nor shall the site be subject to the hazards of objectionable smoke, odor, or noise, or the possibility of subsidence, sudden flooding or severe erosion.

**307.3** Unless listed as a "Primitive" campsite, all sites within a campground must have access to electricity, water, and a sanitary sewer system approved by the State Board of Health within the campground.

**307.4** "Primitive" campsites must be provided with sanitary dumping facilities within the park.

**307.5** The density of a campground shall not exceed 15 campsites per acre of gross site area.

**307.6** The minimum area of a campground shall be 5 acres.

**307.7** Recreational vehicles shall be separated from each other and from other park buildings or structures by at least 10 feet.

**307.8** No campsite shall be nearer than twenty-five (25) feet to the right-of-way line of highway or road.

**307.9** Where the boundary line of a campground coincides with that of a residential district other than along a thoroughfare or alley, a yard separation of at least 25 feet in width shall be required.

**307.10** At least one centrally located recreational play area shall be provided in each campground. In addition, food stores, restaurants, sporting good, Laundromats, dry-cleaning pick-up stations and similar convenience and service shops may be permitted in campgrounds containing 50 or more spaces, provided such shops and the area required for their use shall be primarily for the use of occupants of the campground.

**307.11** Management offices and storage, playground and picnic equipment, sanitation and laundry facilities, informational signs and other structures customarily incidental to a campground shall be permitted as necessary uses.

## 308 HOME OCCUPATIONS

### 308.1 General Restrictions and Limitations

Home occupations shall be permitted as an accessory use to a permitted residential use, in Rural Residential zoned districts subject to the requirements of this Section. **Agricultural Residential zoned districts must meet the requirements of this Section if the home occupation area is within one thousand (1,000) feet of a Residentially Zoned Area or any area that has a recorded residential plot. Home Occupation requirements in the Pennville, Indiana jurisdictional area are described in Article 8.**

### 308.2 Home Occupations as a Permitted Use

A home occupation is a permitted use in all unincorporated areas, if it complies with the following requirements:

A. It is a gainful occupation carried on by occupants of a dwelling unit as a use which is secondary to the use of the dwelling unit for residential purposes.

B. Any "home occupation" shall be conducted wholly within the principal building or within a building accessory to it, and only by occupants of the residence.

C. There shall be no article sold or offered for sale on the premises.

D. There shall be no service sold or offered for sale on the premises that would generate vehicle or customer/client traffic to the premises.

E. There shall be no signs.

F. There shall be no display or exterior storage of materials or products or other exterior indication of the "home occupation" or variation from the residential character of the principal building.

G. The home occupation shall not produce any noise, vibration, smoke, dust, odors, heat or glare which can be detected beyond the premises as defined in Section 309 of this ordinance.

H. Any home occupation meeting these standards shall be a permitted use in all districts. A Home Occupation Permit is required.

### 308.3 Home Occupations as a Special Exception

A home occupation requires a Special Exception from the Jay County Board of Zoning Appeals (BZA) under all other conditions, including but not limited to the following conditions:

A. One (1) person other than the residents of the dwelling unit on the subject premises named in the application may be engaged in such home occupation.

B. No more than twenty-five (25) percent of the total gross floor area of the said dwelling unit shall be used for such home occupation. The home occupation may not utilize more than fifty (50) percent of any one floor of the dwelling unit.

C. No outdoor storage or display of products, equipment or merchandise is permitted.

D. Retail sales are permitted only as an accessory use to the primary home occupation.

E. Exterior evidence of the conduct of a home occupation is not permitted except one (1) non-illuminated sign not to exceed six (6) square feet in area. The required front setback of the sign shall not be less than fifteen (15) feet from the front or side right-of-way.

F. The home occupation shall be conducted exclusively within the dwelling unit or accessory structure.

G. No equipment, process, or activity shall be used in a home occupation which creates noise, vibration, glare, fumes, odors, or electrical or television interference which is detectable to the normal senses outside the dwelling unit or accessory structure, as defined in Section 309 of this ordinance.

H. No traffic shall be anticipated by a home occupation in substantially greater volumes than would normally be expected by one (1) dwelling unit in a residential neighborhood. No vehicle or delivery truck shall block or interfere with normal traffic circulation.

I. A minimum of two (2) off-street parking spaces, in addition to those required for the dwelling unit, shall be provided for use by patrons of the home occupation. The Board of Zoning Appeals may require additional off-street parking based upon the use and location of the property.

J. No use, storage, or parking of tractor trailers, semi-trucks, or heavy equipment (e.g. construction equipment) shall be permitted on or about the premises.

**308.4 Home Occupation Permits**

No building or structure or part thereof shall hereafter be used for the purposes of a home occupation without first having applied, at least thirty (30) days in advance, in writing to the Plan Commission's designated Administrator for a home occupation permit to do so, and the required permit is issued.

***NOTE**: In those instances where a special exception is required, the home occupation permit shall not be issued until after the special exception has been granted by the Board of Zoning Appeals. Application must be received at least 35 days prior to the Board of Zoning Appeals scheduled meeting.

**308.5 Home Occupation Permits Non-Transferable**

All home occupation permits shall be approved 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 renewal of the home occupation permit will be required.

**308.6 Revocation of Home Occupation Permit**

Upon a finding that an approved home occupation permit 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 Plan Commission reserves full authority to revoke the permit at anytime.

**308.7 Notice to Adjacent Property-owners**

In those instances where a special exception is required, the applicant for a home occupation permit shall be required to notify all immediately adjacent property-owners of his intent to pursue said occupation. The notice shall include a complete description of the proposed home occupation as well as a copy of the "General Restrictions and Limitations" under which it must operate as contained within the Ordinance. The notice shall be sent by Certified Mail and the signed receipts returned to the Plan Commission Office prior to issuance of the home occupation permit. Property-owners will have thirty (30) days from the date the certified letters are sent, to send objections in writing, to the Planning Commission Office, or attend the stated public hearing of the Board of Zoning Appeals.

## Commercial/Business, Industrial, Environmental Protection

### 309 PERFORMANCE STANDARDS

All commercial/business, industrial and environmental protection 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 the public health, safety and welfare, and lessen injury to property. No use in existence on the effective date of the Ordinance shall be so altered or modified to conflict with these standards. Additional standards for the Pennville jurisdictional area are listed in Article 8.

**309.1 Fire Protection**
Fire fighting equipment and prevention measures acceptable to the local Fire Department shall be readily available and apparent when activity involving the handling or storage of flammable or explosive materials is conducted.

**309.2 Electrical Disturbance**
No use shall cause electrical disturbance adversely affecting radio, television, or other equipment in the vicinity.

**309.3 Noise**
No use shall produce noise in such a manner as to be objectionable because of volume frequency, intermittence, beat, shrillness or vibration. Said noise shall be muffled or otherwise controlled so as not to become detrimental, provided, however, public safety sirens and related apparatus used solely for public purposes shall be exempt from this standard.

**309.4 Vibration**
No use shall cause vibrations or concussions detectable beyond the lot lines with the aid of instruments.

**309.5 Odor**
No use shall emit across the lot lines malodorous gas or matter in such quantity as to be readily detectable at any point along lot lines.

**309.6 Air Pollution**
No use shall discharge across the lot lines 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.

**309.7 Heat and Glare**
No use shall produce heat or glare in such a manner as to create a nuisance perceptible from any point beyond the lot lines.

**309.8 Water Pollution**
No use shall produce erosion or other pollutants in such quantity as to be detrimental to adjacent properties and conflict with water pollution standards established by the public agencies.

**309.9 Waste Matter**
No use shall accumulate within the lot or discharge beyond the lot lines any waste matter, whether liquid or solid, in violation of applicable public health, safety and welfare standards and regulations.

**309.10 Surface Water Runoff**
No use shall produce increased rate of surface water runoff into any legal open drain or tile so that any flooding or ponding occurs.

**309.11 Loose Material**
No use shall allow any loose material to be blown, carried, fall or otherwise leave the use property.

## 310 PLANNED UNIT DEVELOPMENT DISTRICT – INTENT OF PLANNED UNIT DEVELOPMENT DISTRICTS

The purposes of these regulations are to provide greater design flexibility in the development of land when consistent with the Comprehensive Plan and intent of the Jay County Zoning Ordinance. The use of Planned Unit Development zoning classifications shall be encouraged when the use of such regulations promotes a harmonious variety of uses, and/or provides for an economy of shared services and facilities, and/or are compatible with surrounding areas and/or foster the creation of attractive, healthful, efficient and stable environments for living, shopping or working.

The Planned Unit Development regulations and procedures may apply to the development of existing developed lands, or vacant lands, and may apply to small and large scale parcels and their relationship with other surrounding uses and the overall characteristic of the area in which it is located.

Planned Unit Development regulations are intended to encourage innovations in land development techniques so that the growing demands of the community may be met with greater flexibility and variety in type, design and layout of sites and buildings and by the conservation and more efficient use of open spaces and other amenities generally enhancing the quality of life. Planned Unit Development projects should also encourage a more efficient use of land, which reflects the changes in the technology of land development, so that resulting economies may accrue to the benefit of the community at large. Examples of this concept would include the preservation of existing trees and inclusion of recreation areas within new subdivisions.

### 310.1 Standards and Classifications of Planned Unit Developments

A. Residential Planned Unit Development PUD-R:
Any development in which the primary use of the land will be for residential purposes or those accessory purposes customarily related to residential use.

B. Business Planned Unit Development PUD - B
Any development in which the primary use of the land included in the development will be for Business/Commercial purposes.

C. Industrial Planned Unit Development PUD-I
Any development in which the primary use of the land and interior and exterior area of all sites and structures will be uses for manufacturing, warehousing, or other light to medium intensity industrial uses.

D. Extraordinary Planned Unit Development PUD-E
A development not otherwise distinguishable under any previous classification in which the proposed uses of interior and exterior spaces require unusual design flexibility to achieve a completely logical and complementary conjunction of uses and functions.

### 310.2 Origination of Proposals

Any person or group of persons united in interest, acting jointly, and pursuant to an agreement to carry out a proposal may propose a Planned Unit Development District in accordance with the procedures hereinafter established. Such person or group of persons making such proposal, however, must demonstrate the requisite capabilities to carry out such a proposal.

A parcel or site proposed for Planned Unit Development need not be under single ownership where the proposed development consists of a group of structures or improvements capable of being developed separately but in accordance with a single, unitary plan, and in which the separate owners have given their expressed intentions to enter into such private agreements between or among themselves as will facilitate their mutual enterprise, and assure its completion as planned to the satisfaction of the Commission.

**310.3 Filing Procedures**

The authorization of a Planned Unit Development (PUD) shall be subject to the following procedures:

A. A petition for rezoning to an appropriate PUD classification shall be submitted, which shall be signed by the owner or owners of all real estate involved in the petition for the Planned Unit Development, which petition shall have attached thereto letters of consent of all such owners prior to the filing of such petition, and to the change to a PUD classification of the real estate included.

B. The petition, which shall include a Preliminary Development Plan and plat for any area proposed for development as a Planned Unit Development, shall be filed with the Zoning Administrator.

**310.4 Preliminary Development Plan**

The following shall be included in the Preliminary Development Plan:

A.. Proposed layout of streets, open space and other basic elements of the plan;

B. General description of, location of, and types of structures on the site;

C. Proposals for handling traffic, parking, sewage disposal, drainage, tree preservation and removal, lighting, signage, landscaping, and other pertinent development features;

D. A separate location map, to scale, shall show the boundary lines of adjacent land and the existing zoning of the area proposed to be developed as well as the adjacent land;

E. A general statement of the covenants to be made a part of the Planned Unit Development as well as the order and estimated time of development;

F. A statement of the proposed order of development of the major elements of the project, including whether the development will be in phases, and, if so, the order and content of each phase;

G. The use categories within the area, including proposed densities of said uses.

H. Twelve (12) copies of the preliminary plan, to a scale ration not to exceed 100’ = 1” shall be presented to the Administrator. The preliminary plan may include any additional graphics which will explain the features of the development. The Administrator may consult the following checkpoint agencies for their review and comment:

·Review Board, appointed by the Plan Commission
·Sheriff’s Department
·Designated Fire Department
·Jay County Soil and Water Conservation District
·Jay County Drainage Board
·Any other individual or group with relevant knowledge or expertise

Within thirty (30) days after filing, the Administrator shall meet with the Petitioner regarding the preliminary plan and checkpoint agency comments. Checkpoint agency personnel may attend this meeting to provide comments. After such consultation, the petitioner may make modifications to the petition.

After the meeting described above and after making any modifications to the proposed preliminary plans, the petitioner shall file twelve (12) copies of the “Final Proposed Preliminary Plan” which shall:

1. Include all documents included in the preliminary plan.

2. Include an index identifying all documents included in the preliminary plan.

3. Include a cover sheet indicating that it is the Final Proposed Preliminary Plan and indicating the date and zoning case number.

4. Be bound or stapled together and all documents therein reduced to a size no larger than 8 ½ x 14 inches except for the maps, sketches and plat (if any).

5. Include a proposed PUD District Ordinance, not included in the binding.

Such final proposed preliminary plan shall be filed with the Zoning Administrator at least twenty (20) days prior to the preliminary plan hearing.

**310.5 Preliminary Plan Hearing**

The Plan Commission shall consider the application at public hearing following proper notice and shall refer the PUD District application to the Jay County Commissioners with a recommendation for approval as submitted, approval with modifications and/or conditions, with no recommendation, or with a recommendation for denial.

**310.6 Approval of Final Detailed Plan**

A. Before any development takes place, the petitioner shall file with the Plan Commission a minimum of twelve (12) sets of the final detailed plan specifying the location, composition, and engineering features of all lots, storm drainage, sanitary sewage, water supply facilities, public or private streets, recreation facilities, site perimeter treatment, landscaping, plat and other site development features including locations of buildings.

   The petitioner shall also file the original of all signed and notarized documents pertaining to restrictive covenants, condominium declaration and/or the creation of a homeowners' association, along with financial assurance for the satisfactory installation of all public improvements in the form of bonds or such other assurances as are required in the normal procedures for platting pursuant to the provisions of the Jay County Subdivision Control Ordinance. The Plan Commission shall then approve said final detailed plans by resolution duly adopted, upon an affirmative finding that the final detailed plan is consistent with the approved Preliminary Planned Unit Development as adopted and passed by the Commissioners of Jay County upon rezoning. Having so once approved the final detailed plan, the Plan Commission shall have no further authority to review or act thereon, except as to enforcement, except as to an amendatory ordinance and except as hereafter provided for.

B. The approved Preliminary Plan may provide for development of the property involved in phases. If such phasing is included as a part of the approval of the preliminary plan, the petitioner may submit partial final detailed plans which correspond to the phases involved. Such partial final detailed plans, when approved, shall be treated in the same manner as approved final detailed plans for an entire Planned Unit Development.

C. The approved final detailed plan or phase thereof shall be stamped "Approved Final Detailed Planned Unit Development" and be signed by the President and Secretary with one copy permanently retained in the office of the Plan Commission following recording as specified in Section 310.8.

D. Unless extended by the Plan Commission pursuant to Section 310.11 or as otherwise stated in the PUD Ordinance, approval of the first phase of the final detailed plan shall be obtained within two (2) years and approval of the balance of the final detailed plan shall be obtained within five (5) years after adoption of the Planned Unit Development District by the Commissioners of Jay County.

E. In the event that approval of a final detailed plan is not timely obtained, the Plan Commission may initiate an amendment to the zoning map relating to said land.

F. In the exercise of continuing jurisdiction, the Administrator may from time to time approve only minor modifications of the approved Final Detailed Planned Development in a manner consistent with the approved Preliminary Planned Development. Such modifications shall not include any increase in density, any lessening of aesthetic treatments, any alteration of frontage, setbacks, heights or building location, any change in type of use, or any change in access points. Such modifications of the final Detailed Planned Unit Development must be presented to the Plan Commission for Approval.

G. Approval of a final detailed plan shall expire after a period of five (5) years from the approved phasing of the preliminary plan unless the development is fifty percent (50%) completed in terms of public improvements including streets, parks, walkways, utility installations and sanitary sewers. Determination of the amount of completion shall be made by the Plan Commission, upon a recommendation of the Administrator. Following expiration of the Final Detailed Plan, the County of Jay shall declare the bond to be in expiration of the Final Detailed Plan, the County of Jay shall declare the bond to be in default and cause all public improvements to be installed according to the Final Detailed Plan.

H. In the event the Plan Commission does not approve the Final Detailed Plan submitted by the petitioner, the petitioner may appeal this decision to the Jay County Commissioners who shall have the authority to approve the Final Detailed Plan or return the Final Detailed Plan to the Plan Commission for further consideration.

### 310.7 Covenants and Maintenance

A. All covenants, when required by the Plan Commission, shall be set forth in detail and shall provide for the release of such restriction by execution of a document so stating and suitable for recording, signed by the Plan Commission and President and Secretary upon authorization by the Plan commission and all of the owners of property in the area involved in the petition for whose benefit the covenant was created. Such covenants shall provide that their benefits run to the Plan Commission and shall be specifically enforceable by the Plan Commission in addition to the property owners.

B. The Plan Commission may require the recoding 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. Such covenants shall provide that if a governmental unit or agency thereof does not proceed with acquisition of the allocated land within a specified period of time, the covenants shall automatically terminate. If such a specified period of time, the covenants shall automatically terminate. If such termination occurs, the petitioners shall then submit for approval by the Plan Commission a Modified Final Detailed Plan for such land, otherwise consistent with the approved Preliminary Plan.

C. The Commission requires the recording of covenants for any other reasonable purpose, including, but no limited to, imposing standards for development of property in a Planned Unit Development. Such development standards include, but are not limited to, requirements as to the following:

1. Lot area
2. Floor area
3. Ratios of floor space to land space.
4. Area in which structures may be built (“buildable area”)
5. Open space
6. Setback lines and minimum yards
7. Building separations
8. Height of structures
9. Signs
10. Off street parking and loading space
11. Design standards (including landscaping requirements)
12. Phasing of development
13. Road Maintenance.

D. 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 jointly shared by such property owners if such facilities are a part of the Planned Unit Development, and, in such instance legal assurances shall be provided and recorded which show that the private organization is self-perpetuating.

E. Common facilities that are not dedicated to the public shall be maintained to standards assuring continuous and adequate maintenance. Common facilities not dedicated to the public shall be operated and maintained at no expense to any governmental unit.

F. All private streets shall be maintained by the aforementioned 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 said vehicles will have adequate turning area. All streets and roadways not dedicated to the public shall be operated and maintained at no expense to any governmental unit.

**310.8 Recording**

All approved Final Detailed Plans and Plats and modifications thereof shall be recorded in the Office of the Jay County recorder within two (2) years after approval, but before any development takes place. Failure to so record shall automatically void the approval of the Final Detailed Plan. Upon completion of all development, the exact measurements, as to the location of buildings or structures erected during the development, may be deemed desirable for the public record. At the discretion of the Zoning Administrator such an “as built” plan may be required to be recorded.

The developer shall submit an “as built” copy of the Planned Unit Development upon the request of the Administrator, with exact measurements thereon shown, and upon being satisfied that the measurements are substantially the same as indicated on the original approved Final Detailed Plan, the Plan Commission shall re-approve, date and sign said amended approved Final Detailed Plan, which the developer shall then record within fourteen (14) days of the approval.

**310.9 Permit**

A Location Improvement Permit shall be issued for a Planned Unit Development District upon full compliance with the approved final Detailed Plan.

**310.10 Construction**

A. No construction or installation work shall be done on any public improvements until and unless the petitioner has, at least twenty-four (24) hours in advance, notified the appropriate Governmental Inspectors(s) of his intention to begin such work, in order that inspections may be made as the work progresses.

B. All development shall be in conformity with the approved and recorded Final Detailed Plan and any material deviation from the approved and recorded Final Detailed Plan shall be subject to appropriate enforcement action as provided for in this Ordinance.

**310.11 Extensions, Abandonment, and Expiration**

A. Extensions of the time for accomplishing any matters set forth herein may be granted by the Plan Commission for good cause shown.

B. For a development which has not been completed and has been abandoned, an amendment may be initiated as provided by law to the zoning map so that the land will be zoned into a category or categories which most nearly approximate its then existing use or such other zoning category or categories which the legislative body deems appropriate. Abandonment shall be deemed to have occurred when no improvements have been made pursuant to the approved Final Detailed Plan for one year or sufficient evidence of abandonment is presented to the board, or upon the expiration of five (5) years from the approval of a Final Detailed Plan.

**310.12 Rules of Procedure**

All proceedings brought under this section shall be subject tot he Rules of Procedure of the Plan Commission, where not inconsistent with the procedure otherwise stated herein.

**310.13 Limitation of Rezoning**

The Plan Commission shall not initiate any amendments to the zoning map concerning the property involved in a Planned Unit Development before completion of the development as long as the development is in conformity with the Approved Final Detailed Plan and is proceeding in accordance with the time requirements imposed herein, subject to any modification of the time requirements set out in the Approved Final Detailed Plan itself.

**310 RESIDENTIAL NEW HOME CONSTUCTION**

All residential homes hereafter constructed shall be larger than 950 square feet of occupied space, shall be placed on a permanent foundation, and shall comply with all local and state zoning and building codes.

# *Article 4*

# Administration And Enforcement

## 401 ADMINISTRATIVE RESPONSIBILITY

The County Plan Commission shall establish the procedures and responsibilities for the administration and enforcement of this Ordinance in accordance with the following provisions and State legislation.

## 402 PERMITS

No permit shall be issued unless the proposed structure or use of structure or land is in complete conformity with provisions of this Ordinance, or unless a written order is received from the Board of Zoning Appeals, the County Plan Commission, or a court in accordance with this Ordinance and State legislation.

### 402.1 General Provisions

If the work described in any permit has not begun within 90 days from the date of issuance thereof, said permit shall expire and a written cancellation notice shall be sent to the property owner via certified letter.

If the work described in any permit has not been substantially completed within one (1) year of the date of issuance thereof, said permit shall expire and a written cancellation notice shall be sent to the property owner via certified letter. If a written reason of non-compliance is presented to the Zoning Administrator, the Zoning Administrator shall have the power to renew the Improvement Location Permit for one additional six (6) month period.

If a written reason of non-compliance is presented to the Board of Zoning Appeals, the Board of Zoning Appeals may extend the permit for up to an additional year if the Board feels the delay is substantiated.

### 402.2 Improvement Location Permit

A. No building or structure shall be erected, reconstructed, enlarged or moved until an Improvement Location Permit shall have been applied for in writing and issued by the Zoning Administrator. Said permit shall be posted in a prominent place on the premises prior to and during the period of erection, reconstruction, enlargement, or moving. The permit shall be valid for twelve (12) months after the date of issuance. The Zoning Administrator shall have the power to renew the Improvement Location Permit for one additional six (6) month period.

   The Zoning Administrator shall issue an Improvement Location Permit, upon written application, when the proposed structure, improvement or use and its location conform in all respects to the Master Plan.

B. Every application for an Improvement Location Permit shall be accompanied by:
   1. A site plan drawn to scale showing the ground area of the building or structure, the building lines in relation to lot lines, the number of stories or the height of building or structure, the use to be made of the building, or structure, or land, and all other information required by the Zoning Administrator for the proper enforcement of this Ordinance.

   2. The site plan shall be attached to the application for an Improvement Location Permit when it is submitted to the Zoning Administrator and shall be retained by the Plan Commission as a public record.

C. Approval of Improvement Location Permit
   1. The Zoning Administrator shall endeavor to review, and make a determination on all permit applications within three (3) business days of filing. The review period may extend beyond three (3) business days where circumstances require additional review.

   2. Upon receipt of the completed permit application, payment of required permit fees, and if the proposed project otherwise conforms to applicable law, an improvement location permit shall be issued in the name of the applicant. The applicant shall then be provided a permit card authorizing the work to commence. The permit card shall be prominently posted on the property at all times and protected from the elements. A fee of $5.00 shall be assessed to the applicant for each replacement card issued by the Department.

D. Any decision of the Zoning Administrator concerning the issuance of an Improvement Location Permit may be appealed to the Board of Zoning Appeals by any person claiming to be adversely affected by that decision.

E. The issuance of an Improvement Location Permit cannot substitute for or supercede the requirement of any ordinance adopted by the Jay County Commissioners which requires the issuance of a Building Permit before the construction of any building or structure. The issuance of Improvement Location Permit does not waive any requirement of any pertinent Municipal, County, State or Federal ordinance, rule, regulation, or law.

F. No Improvement Location Permit for erection of any building shall be issued before application has been made for a Certificate of Compliance.

**402.3 Certificate of Compliance**

Certificates of Compliance and Improvement Location Permits issued on the basis of plans and applications approved by the Commission or its staff authorize only the use, arrangement, and construction set forth in such approved plans and applications; and any other use, arrangement, or construction not authorized shall be deemed as a violation of the Ordinance.

No occupancy, use or change of use shall take place until a Certificate of Compliance has been applied for, in writing, and issued by the Zoning Administrator in the following cases:

A. Occupancy and use of a building or structure hereafter erected or enlarged.

B. Change in use of an existing building or structure.

C. Occupancy and use of vacant land except for agricultural operations.

D. Change in the use of land to a use of a different classification except for agricultural operations.

E. Any change in the use of a non-conforming use.

Written application for a Certificate of Compliance for a new building or for an existing building which will be enlarged shall be made at the same time as the application for an Improvement Location Permit.

Written application for a Certificate of Compliance shall be applied for within ten (10) days of a contemplated change in use of a building or land. If the proposed use is in conformity with the provisions of this Ordinance, the Certificate of Compliance therefore shall be issued within four (4) days after the application for the same was made.

A record of all Certificates of Compliance shall be kept on file in the office of the Commission and a copy shall be forwarded, on request, to any person having proprietary or temporary interest in the building or land affected.

Pending the issuance of such a certificate, a temporary Certificate of Compliance may be issued by the Zoning Administrator for a period of not more than six (6) months during the completion of the construction of the building or of alterations which are required under the terms of any law or ordinance. Such temporary certificate may be renewed, but it shall not be construed in any way to alter the respective rights, duties or obligations of the owner or of the County relating to the use of or occupancy of the land or building, or any other matter covered by this ordinance, and such temporary certificate shall not be issued except under such restrictions and provisions as will adequately insure the safety of the occupants.

**403 FEES**

Applications filed pursuant to the provisions of this Ordinance requiring Plan Commission or Board of Zoning Appeals' approval shall be accompanied by the filing fees specified by the fees schedule created by the Inter-local Board, under the Inter-local Agreement between the City of Portland and Jay County, and adopted by Commission resolution. The fee schedule shall not be a part of this Ordinance and may be revised by Commission resolution.

**404 VIOLATIONS AND PENALTIES, & APPEALS**

A. It shall be the duty of the Administrator to enforce these regulations and to bring any violations or lack of compliance to the attention of the attorney representing the Jay County Planning Commission or the Jay County Board of Zoning Appeals, who may file a complaint against the person and prosecute the alleged violation. Any such complaint shall be filed for and on behalf of "Planning Commission of Jay County and/or Board of Zoning Appeals of Jay County," as plaintiff.

B. The Board of Zoning Appeals by mandatory injunction in the circuit 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 permitted in violation of this Ordinance.

C. A use that violates this Ordinance shall be treated as if it were a common nuisance, and the owner or possessor of the structure, land, or premises upon which the use is maintained shall be liable for such nuisance.

D. Any person or entity whether owner or possessor, who shall violate, or who permits or allows a violation, of any of the provisions of this Ordinance, or who fails to comply therewith or with any requirements there under, or who shall build, reconstruct, or structurally alter any building in violation of any detailed statement or plan submitted upon which an approval or grant is given under this Ordinance, shall, upon complaint filed in any court of the county and upon judgment finding such a violation, be fined not less than five hundred dollars ($500.00) nor more than twenty-five hundred dollars ($2,500.00) for a first violation. If said violation continues thereafter or in the event of any second or subsequent violation, a fine of not less than five hundred dollars ($500.00) nor more than seventy-five hundred dollars ($7,500.00) shall be imposed per day for such violation. Each day a violation continues shall be considered a second or subsequent violation.

*The fines and penalties herein specified are imposed pursuant to Indiana Code Section 36-1-3-8 (a)(10).*

E. No Improvement Location Permit or Building Permit required under the Indiana Building Codes or this ordinance shall be issued on any property subject to this ordinance in violation of the provisions of this ordinance.

F. Attorney's Fees. Notwithstanding any thing contained in this Ordinance to the contrary or appearing to be to contrary, and in addition and supplementary to other provisions of this Ordinance, if the Planning Commission, Board of Zoning Appeals or the County is required to utilize the services of the County attorney or any other attorney in investigating a possible violation of this ordinance or enforcing the provisions of this Ordinance pursuant to parts B, C, D, or E of this section, or any other Section, before any board or court (including appeals), and such investigation results in a determination that a violation has occurred or if the Board of Zoning Appeals or County is successful in its enforcement of the Ordinance by way of suit, appeal or other appropriate proceedings, the respondent, defendant or party investigated for a violation shall pay the County's reasonable attorney fees and all costs related to the investigation of the violation and /or the enforcement of this Ordinance, unless such attorney fees or costs are specifically waived by the Board of County Commissioners of Jay County.

G. Costs on Appeal. As to any appeal from a decision of the Board of Zoning Appeals, costs may not be allowed against the Board of Zoning Appeals unless it appears to the court that the Board acted with gross negligence or in bad faith in making the decision brought up for review.

H. The Administrator, his staff or any person or persons assisting the Administrator in the application and enforcement of this Ordinance is hereby authorized to go onto private property for the purpose of conducting inspections required by the Ordinance or any order of the Plan Commission and Board of Zoning Appeals, or required to determine if this Ordinance is being violated, or required to enforce this Ordinance. Such inspection or inspections shall occur at reasonable times and shall be conducted in a manner not to disturb the peace.

## 405 CONFLICT OF INTEREST

The purpose of this section is to satisfy the requirements of IC 36-1-27-4.

A. As used in this section, “conflict of interest” means a direct or indirect financial interest in the issuance of a permit, pursuant to IC 36-1-27-1.

B. As used in this section, “permit” has the meaning set forth in IC 36-7-4-1109(b).

C. A building commissioner, building code official or inspector for the County, may not issue a permit or oversee the issuance of a permit through a subordinate if the building commissioner, building code official or inspector has a conflict of interest.

D. Any conflict of interest shall be reported to the County Attorney. Upon receipt of a conflict of interest report made under this subsection, the County Attorney shall appoint a qualified temporary replacement for the building commissioner, building code official or inspector.

# *Article 5*

# Board of Zoning Appeals

## 501 GENERAL

In accordance with State Law, a Board of Zoning Appeals shall be appointed, which Board may adopt rules to govern its procedure. The Board of Zoning Appeals shall hold meetings, keep minutes, and, pursuant to notice shall conduct hearings, compel the attendance of witnesses, take testimony, and render decisions in writing, all as required by law. When permitting any appeal, variance, special exception or change of a non-conforming use, the Board may impose such conditions and requirements, as it deems necessary for the protection of adjacent property and the public interest.

**501.1** With respect to appeals, variances, special exceptions or changes on non-conforming uses within the jurisdiction encompassed by the cities and towns of Jay County, Indiana that do not have their specific zoning ordinances, one of the said conditions is that the town council or governing body of said town shall be notified at least ten (10) days prior to processing of any such appeals, variances, special exceptions or changes of a non-conforming use with sufficient detail to advise the nature of such action.

## 502 APPEALS

The Board shall have the power to hear and decide appeals from any order, requirement, decision, grant or refusal made by the administrator of the Ordinance. The appeal shall not be granted until public notice has been given.

## 503 VARIANCES

The Board of Zoning Appeals, upon appeal, shall have the power to authorize variances from the requirements of this Ordinance, and to attach such conditions to the variances as it deems necessary to assure compliance with the purpose of this Ordinance. A variance may be permitted if all of the following requirements are met:

**503.1** Literal enforcement of the Ordinance would result in unnecessary hardship with respect to the property; and

**503.2** Such unnecessary hardship results because of the unique characteristics of the property; and

**503.3** The variance observes the spirit of this Ordinance, produces substantial justice, and is not contrary to the public interest; and

**503.4** The Board of Zoning Appeals may not grant a variance to any of the requirements of the FP Flood Plain District without the written approval of the Indiana Department of Environmental Management.

## 504 SPECIAL EXCEPTIONS

The Board of Zoning Appeals shall have the power to authorize special exceptions if the following requirements are met:

**504.1** The special exception shall be listed as such in this Ordinance for the district requested.

**504.2** The special exception can be served with adequate utilities, access roads, drainage, and other necessary facilities.

**504.3** The special exception shall not involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with the performance standards section 309.

**504.4** The special exception shall be sited, oriented, and landscaped to produce a harmonious relationship of buildings and grounds to adjacent buildings and properties.

**504.5** The special exception shall produce a total visual impression and environment, which is consistent with the environment of the neighborhood.

**504.6** The special exception shall plan vehicle access and parking to minimize traffic congestion in the neighborhood.

**504.7** The special exception shall preserve the purposes of this Ordinance.

## 505 NON-CONFORMING USES OF LAND AND STRUCTURES

The Board shall have the power to authorize change of lawful non-conforming uses in accordance with section 301 of this Ordinance.

## 506 TRANSITIONAL USES

The Board of Zoning Appeals shall have the power to authorize a Transitional Use and to attach such conditions to the Transitional Use as it deems necessary to assure compliance with the purposes of this Ordinance. A Transitional use may be permitted if all the following requirements are met:

**506.1** The Board shall request and receive a recommendation concerning the proposed Transitional Use from the Advisory Plan Commission after a public hearing by the Plan Commission.

**506.2** The Transitional Use shall adjoin or be across the street from a Zoning District that permits the proposed Transitional Use.

**506.3** Unless otherwise modified by the Board, the Transitional Use shall meet all of the requirements of this Ordinance such as setback, yard parking and loading for the existing Zoning District.

**506.4** The Transitional Use shall be capable of being served with adequate utilities, access roads, drainage, and other necessary facilities.

**506.5** The Transitional use shall not involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with the performance standards of Section 309.

**506.6** The Transitional Use shall be sited, oriented, and landscaped to produce a harmonious relationship of buildings and grounds to adjacent buildings and properties.

**506.7** The Transitional Use shall produce a total visual impression and environment, which is consistent with the environment of the neighborhood.

**506.8** The Transitional use shall plan vehicle access and parking to minimize traffic congestion in the neighborhood.

**506.9** The Transitional Use shall preserve the purposes of this Ordinance.

**506.10** A Transitional use may be considered only for a specific use and if granted by the Board, no other use or modification of the use shall be permitted except as authorized by the Board.

# *Article 6*

# Amendments

**601 AMENDMENTS TO TEXT**

The proposal to amend the text of this Zoning Ordinance may be initiated by either the Plan Commission or the Jay County Commissioners, and follow the procedures according to I.C. §36-7-4-602 (b) and I.C. §36-7-4-607.

**602 AMENDMENTS TO ZONING MAPS**

The proposal to amend the Zoning Maps, as incorporated by reference into this Zoning Ordinance, may be initiated by the Plan Commission, the Jay County Commissioners, or by a petition signed by property owners who own at least fifty percent (50%) of the land involved, and follow the procedures according to I.C. §36-7-4-602 (c) and I.C. §36-7-4-608.

**603 PETITIONS**

Petitions for amendment shall be filed with the Plan Commission, and the Petitioner, upon such filing, shall, whether or not the proposed amendment is enacted, pay a filing fee and the cost of public notice that is required. Petitions initiated by the Plan Commission or the Jay County Commissioners are exempt from the filing fee.

# *Article 7*

# Definitions

## 701 WORD INTERPRETATION

For the purpose of this Ordinance, the following terms have the meanings indicated below.

**701.1** The present tense includes the future tense.

**701.2** The singular number includes the plural, and the plural includes the singular.

**701.3** The word "shall" is a mandatory requirement; the word "may" is a permissive requirement; the word "should" is a preferred requirement.

**701.4** The word "used" includes "designed" or "intended to be used".

**701.5** The word "person" includes an individual, firm, association, organization, partnership, trust, company, corporation or any other entity.

**701.6** The masculine includes the feminine.

## 702 WORD DEFINITIONS

Certain words used in this Ordinance are defined below. Any words not defined as follows shall be construed in their general accepted meanings as defined by Webster's Dictionary.

***Abandonment***

The relinquishment of property or a cessation of the use of the property for a continuous period of one year by the owner without the intention neither of transferring rights to the property to another owner nor of resuming the use of the property.

***Accessory Use or Structure***

A building, structure, or use which:

A. is subordinate to and serves a principal building, structure, or use in area, extent or purpose; and
B. contributes to the comfort, convenience, or necessity of occupants of the principal buildings, structures, or principal uses served; and
C. does not alter or change the character of the premises; and
D. is located on the same zoning lot as the principal building, structure, or use; and
E. conforms to the setback, height, built, lot coverage, and other requirements of this Ordinance unless otherwise provided for by this Ordinance; and
F. may not be constructed prior or the time of construction of the principal building or structure; and
G. is not designed for human occupancy as a dwelling or commercial use.

***Administrator***

The officer appointed and/or delegated the responsibility for the administration of this Ordinance's regulations.

***Aesthetics***

The pleasantness of the total environment related to the perceptual aspects of the surroundings including their appearance to the eye and the comfort and enjoyment offered to the other senses.

***Adult Bookstore/Video Store***

Any premises from which minors are excluded and in which the retail sale of books, magazines, newspapers, movie films, video tapes, devices, slides, or other photographic or written reproduction is conducted as a principal use of the premises; or as an adjunct to some other business activity, but which constitutes the primary or major attraction to the premises.

***Agriculture***
The use of land or structures for agricultural purposes, including farming, dairying, pasturage, aquaculture, horticulture, floriculture, viticulture, and animal and poultry husbandry, and the necessary accessory structures and uses such as tenant housing and for the packing, treating, processing, or storing of produce; provided however, that the operation of any such accessory uses shall be secondary to that of the normal agriculture activities.

***Air Pollution***
Presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to property or which unreasonably interfere with the comfortable enjoyment of life and property.

***Alley***
A public right-of-way, other than a street, road, crosswalk, or easement, that provides secondary access to abutting properties

***Animal Boarding***
Any premises or portions thereof on which more than four animals, (except those properties defined as a kennel), over four months of age are maintained, boarded, bred, or cared for in return for remuneration, or are kept for the purpose of sale.

***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 dwelling units (apartments), in contrast to a single or two-family dwelling converted for multi-family use.

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

***Attached Building***
A building that is structurally connected to another building by a foundation, wall, or roof line is an attached building.. 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, motor vehicle fuels stored only in underground tanks and located wholly within the lot lines.

***Average Level***
The average height of land above sea level as determined by the latest topographical maps for the immediate area in question.

***Awning***
An awning is a temporary roof-like cover that projects from the wall of a building and overhangs the public way.

***Bicycle Lane***
A lane at the edge of a roadway reserved and marked for the exclusive use of bicycles.

***Bicycle Path***
A pathway designed to be used by bicyclists.

***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.

***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*:**
The Jay County Board of Zoning Appeals.

***Boarding House***
A building, not available to transients, in which meals are regularly provided for compensation for at least three (3) but not more than thirty (30) persons.

***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 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 rights-of-way for the purpose of increasing 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.

***Buildings***
A structure built for the support, enclosure, shelter, or protection of persons, animals, chattels, or movable property of any kind, and which is permanently affixed to the land.

***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 County or Town ordinance establishing and controlling the standards for constructing mechanical equipment, and all forms of permanent structures and related matters within the County or Town.

***Building, Detached***
A building having no structural connection with another building.

***Building Footprint***
The profile of a building or structure as viewed from above the roof looking downward toward ground level.

***Building Line***
The line that establishes the minimum permitted distance on a lot between the building and property lines or right-of-way.

***Building, Principal***
A building in which is conducted the main or principal use of the lot on which said building is situated. Where a substantial part of an accessory building is attached to the principal building in a substantial manner, as by a roof, such accessory building shall be counted as a part of the principal building.

***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.

***Campground***
An area or tract of land on which accommodations for temporary occupancy are located or may be placed, including cabins, tents, travel trailers, pick-up truck campers, and motor homes, and which is primarily used for recreational purposes and retains an open air or natural character.

***Car Wash***
Any permanent structure or facility used for the principal purpose of washing, cleaning, or polishing the exterior and/or interior of motor vehicles for a fee.

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

***Central Sewerage System***
The community sewer system including collection and treatment facilities owned and maintained by the County or Town.

***Central Water System***
The 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 this Ordinance and the Building Code of the jurisdictional area.

***Child Day Care Center***
Means the facility where the care, supervision and guidance of a child, not related to the operator by blood or marriage, on a regular basis, for periods of less than 24 hours per day, in a place other than the child's own home. A child day care center serves between eight (8) and twelve (12) children with one operator or twelve (12) or more children with or without an assistant(s).

***Child Day Care Home***
Means the facility where the care, supervision and guidance of a child, not related to the operator by blood or marriage, on a regular basis, for periods of less than 24 hours per day, in a place other than the child's home. A child day care home serves eight (8) or fewer children with one operator (or with one operator and an assistant) or twelve (12) or fewer children with an assistant.

***Clinic***
Any establishment where human patients are examined and treated by doctors or dentists but not hospitalized overnight.

***Club***
A building or portion thereof or premises owned or operated by a person for a social, literacy, political, educational or recreational purpose primarily for the exclusive use of members and their guests, but not including any organization, group or association, the principal activity of which is to render a service usually and ordinarily carried on as a business.

***Commission*:**
The Jay County Advisory Plan Commission.

***Composting Facility***
Any location, structure, or facility where composting takes place.

***Conditional Use***
Special provisions or requirements applicable to specific uses in certain zoning districts. If specified conditions are met as determined in this Ordinance, the Planning Commission, the BZA or by the Zoning Administrator, no further approval is required.

***Condominium***
Real estate lawfully subject to I.C. 32-25, (Condominium), by the recordation of condominium instruments, in which undivided interests in the common areas and facilities are vested in the condominium unit owners.

***Confined Feeding Operation***
Refer to Section 216 of this Ordinance for definitions & regulations

***Contingent Use***
A use that is essential or desirable to the public convenience or welfare but is not necessarily a permitted use.

***Convenience Store***
Any commercial location, facility, or structure where motor vehicle fuel and groceries (including food, drink, and household items) are sold on the same premises.

***Correctional Facility***
A building or series of buildings used for the purpose of confining criminals.

***Covenants***
Private and legal restrictions of various kinds on the usage of lots within a subdivision which are proposed by the subdivider and, in the case of public health, safety and welfare, by the Commission, that are recorded with the plat and deed. Covenants can also be placed on commercial and industrial developments.

***Cul-De-Sac***
A short street having one (1) end open to traffic and being permanently terminated by a vehicular turn-around.

***Culvert***
A structure designed to convey a watercourse not incorporated in a closed drainage system under a road or pedestrian walk.

***Curb***
A vertical or sloping edge of a roadway.

***Day Care Center***
Any institution operated for the care of children, licensed pursuant to I.C. 12-17.2-4, et seq., and as defined by Indiana Code Section 12-7-2-28.4.

***Dedication***
The setting apart of land or interests in land for use by the public by ordinance, resolution, or entry in the official minutes as by the recording of a plat.

***Density***
The number of buildings, offices, or housing units on a particular area of land.

***Density, High***
Those residential districts in which the density is not in excess of ten (10) dwelling units per acre.

***Density, Low***
Those residential districts in which the density is equal to or less than four (4) dwelling units per acre.

***Density, Medium***
Those residential districts in which the density is less than or equal to eight (8) dwelling units per acre, but not less than five (5) dwelling units per acre.

***Design Standards***
Standards that set forth specific improvement requirements, including but not limited to *Standards for Acceptance of Municipal Improvements* as adopted by the Town of Pennville, Indiana.

***Detached Building***
A building that has no structural connection with the principal building.

***Detention Basin***
A man-made or natural water collector facility designed to collect surface and subsurface water in order to impede its flow and to release the same, gradually, at a rate not greater than that prior to the development of the property, into natural or man-made outlets.

***Developer***
The owner or legal representative of land proposed to be subdivided or commercially/industrially utilized. Consent for making applications for development approval shall be required from the legal owner of the premises.

***Design Review Board***
A group of citizens appointed by the Jay County Planning Commission for the purpose of protecting visual character and community aesthetics through the recommendation and/or establishment of published design guidelines.

***Digital Dish System***
A small dish of approximately one (1) to two (2) feet (.3-.6m) in diameter installed on or adjacent to a building for the purpose of receiving audio/video signals transmitted by a private telecommunications company.

***District***
A section for which uniform zoning regulations governing use, height, area, size, intensity of use of buildings and land, and open spaces about buildings, as established by this Ordinance.

***Drainage***
The removal of surface water or groundwater from land by drains, grading, or other means.

***Drainage Facility***
Any component of the drainage system.

***Drainage System***
The system through which water flows from the land, including all watercourses, water bodies, and wetlands.

***Drive-In***
An establishment selling foods, 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.

***Duplex***
Any structure which contains only two (2) dwelling units; a two-family dwelling.

***Dwelling***
A permanent building, or portion thereof but not a mobile home, designed or used exclusively for residential occupancy, including single-family dwellings, two-family dwellings, and multiple-family dwellings, but not including hotels, motels, or lodging homes.

***Dwelling Unit***
One or more common rooms, which are arranged, designed or used as living quarters for one family.

***Dwelling, Single-Family***
A dwelling containing one dwelling unit only.

***Dwelling, Two-Family***
A dwelling containing two dwelling units only.

***Dwelling, Multiple-Family***
A dwelling or portion thereof, containing three of more dwelling units including condominiums.

***Earthen Structure***
Any structure constructed of earth, either whole or in part. This includes, but is not limited to, walls, dikes, dams, sanitary landfills, fill dirt, weir, levees, animal waste pits, and riverbanks. This excludes structures of six (6) months or less duration.

***Essential Services***
The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies of underground or overhead gas, electrical, telephone, sewer, water transmission drains, sewers, pipes, conduit cables, fire alarm boxes, police call boxes, traffic signals, hydrants, street signs, and other similar equipment and for the furnishing of adequate services by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare but not including buildings.

***Easement***
A grant by a property owner to specific persons, the general public, corporations, utilities, or others, f or the purpose of providing services or access to the property.

***Environmental Constraints***
Features, natural resources, or land characteristics that are sensitive to improvements and may require conservation measures or the application of creative development techniques to prevent degradation of the environment, or may require limited development, or in certain instances may preclude development.

***Escrow***
A deed, a bond, money, or a piece of property delivered to a third person to be delivered by him to the grantee only upon fulfillment of a condition.

***Facility***
The entire operation, including but not limited to buildings, other structures and outside storage.

***Family*:**
One or more persons each related to the other by blood, marriage, or adoption, or a group of not more than three persons not all so related, together with his or their domestic servant, maintaining a common household in a dwelling unit. A family may include not more than two roomers, boarders, or permanent guests – whether or not gratuitous.

***Fence***
A structure or barrier, consisting of living or not-living material, designed and constructed to prevent escape or intrusion, mark a boundary, or for enclosures and/or screening. Such a structure or barrier being made of posts and wire or boards. A hedge serving the same purposes as a fence shall be considered a fence.

***Filling Station***
Any establishment supplying and selling motor vehicle fuel or oil directly to motor vehicles.

***Flood Plain***
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 as approved by the Department of Natural Resources (DNR).

***Flood Protection Grade***
The elevation of the lowest point around the perimeter of a building at which flood waters may enter the interior of the building.

***Floor Area***
The horizontal area of all floors of buildings or structures.

***Foundation***
The supporting member of a wall or structure.

***Front Line***
With respect to a building, the foundation line that is nearest 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 right-of-way segments; except as deed restrictions specify otherwise.

***Front Yard***
The horizontal space between the nearest foundation of a building to the Front Lot Line, extending to the side lines of the lot, and measured as the shortest distance from that foundation to the Front Lot Line, unless deed restrictions specify otherwise.

***Frontage***
All property of a lot fronting on a street right-of-way, as measured between side lot lines.

***Garage, Private***
A detached accessory building or an accessory portion of the principal building, including a carport which is intended for and used for storing the private passenger vehicles of the family or families resident upon the premises, and in which no business, service or industry connected directly or indirectly with the automotive vehicles is carried on, provided that not more than one-half of the space may be rented for the private passenger vehicles of persons not resident on the premises, except that all the space in a garage of one or two-car capacity may be so rented.

***Garage, Public***
Any building, except those defined herein as a private garage, used for the storage or care of motor vehicles, or where such vehicles are equipped for operation, repaired, or kept for remuneration, hire or sale.

***Grade***
The average level of the finished surface of the ground adjacent to the exterior walls of the building or structure.

***Greenhouse, Commercial***
Any location, facility, or structure where plants are grown indoors for sale.

***Greenhouse, Residential***
Any accessory use, structure, or addition to a residential property where plants are grown indoors for hobby, personal use, or personal consumption. Also, any accessory use, structure, or addition to a residential property being primarily constructed of glass or other translucent materials.

***Ground Cover***
A planting of low-growing plants or sod that in time forms a dense mat covering the area, preventing both soil from being blown or washed away and the growth of unwanted plants.

***Group Home***
A residential facility licensed by the Community Residential Facilities Council, or its successor in authority, and authorized by I.C. 12-17.4-5 in which care is provided on a twenty-four (24) hour basis for not more than ten children in need of services or who have committed a delinquent act.

***Gutter***
A shallow channel usually set along a curb or the pavement edge of a road for purposes of catching and carrying off runoff water.

***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 of Building***
The vertical distance measured from the highest ground level at the foundation to the highest point of the roof, or any projection thereof.

***Historic District***
An area related by historical events or themes, by visual continuity or character, or by some other special feature that helps give it a unique historical identity, which may be designated as such by local, state, or federal government. (Refer to Historic District Map)

***Historic Site***
A structure or place of historical significance, which may be designated as such by local, state, or federal government.

***Home Occupation***
An occupation or activity conducted entirely within a dwelling by the occupants thereof, which is clearly incidental and secondary to the use of the building for dwelling purposes.

***Hospital***
An institution devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or care for three (3) or more non-related 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, alcoholics, and other types of cases necessitating restraint of patients, and the term "hospital" shall not include convalescent, nursing, shelter, or boarding homes.

***Hotel (Motel)***
A building, group of buildings or portion thereof in which more than five (5) guest rooms are provided as temporary accommodations for compensation to transient guests.

***Impervious Surface***
A surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water, such as concrete, cement, asphalt, brick, paving block, rooftops, etc.

***Integrated Center***
A building containing a number of individual, unrelated and separately operated uses which share common site facilities and services such as driveway entrances and exits, parking areas, truck loading, maintenance, sewer and water utilities, or similar common facilities and services; or one or more buildings containing individual, unrelated and separately operated uses, occupying a site under one ownership of management for leave, and utilizing one or a combination of the aforementioned common services.

***Intermediate Processing Facility IPF***
Any facility that processes, collects or handles waste products, other than tires, which have been separated, for recycling, from the raw or general solid waste stream prior to arrival at the processing site. The processed waste is then sold to manufacturers to be used as raw materials in the production of their products.

***Junk***
Old, cast off, or discarded article or material which is ready for destruction or has been collected or stored for salvage or conversion to some use. Any article of material which is composed of, but not limited to, copper, brass, rags, batteries, paper, trash, rubber, stone, wrecked or dismantled automobiles, trucks, trailers, farm machinery or other vehicles or equipment, or parts thereof, iron, steel and other old or scrap ferrous or non-ferrous metal.

***Junk Yard***
An open area where waste or scrapped or junked materials or five or more mechanical vehicles or equipment not in running or operable condition or parts thereof are bought, sold, exchanged, stored, baled, packed, disassembled, and/or handled. This is definition excludes uses established entirely within enclosed buildings and/or the storage of farming equipment within AR Districts that are used for parts.

***Kennel***
Any premises or portions thereof on which more than four dogs, cats, or other household domestic animals over four months of age are maintained, boarded, bred, or cared for in return for remuneration, or are kept for the purpose of sale.

***Landscaping***
The improvement of a lot with grass, shrubs, trees, and other vegetation and/or ornamental objects. Landscaping may include pedestrian walks, flowerbeds, berms, fountains and other similar natural and manmade objects designed and arranged to produce an aesthetically pleasing effect.

***Licensed Salvage Yard***
As defined and licensed by the State of Indiana. A valid license must be issued to the occupant by the State of Indiana.

***Light Industrial Use***
Manufacturing, processing, heavy repairing, dismantling, or storage, in which all operations, other than transportation, are performed entirely within enclosed buildings and for which all loading and unloading facilities are enclosed.

***Loading and Unloading Berths***
The off-street area required for the receipt or distribution by vehicles of material or merchandise, which in this Ordinance is held to be, at minimum, a twelve (12) feet by thirty (30) feet loading space with a fourteen (14) feet height clearance, paved with a hard surface.

***Lodging House***
A building, not available to transients, in which lodgings are regularly provided for compensation for at least three (3) but not more than thirty (30) persons.

***Lot of Record***
A lot which is part of a subdivision, the plat of which has been recorded in the Office of the Recorder; or a parcel of land, the deed to which was recorded in the Office of said Recorder prior to the adoption of this Ordinance.

***Lot***
A tract or parcel of land of at least sufficient size to meet minimum zoning requirements for use and area and to provide such yards and other open spaces as are herein required.

***Lot, Corner*:**
A lot situated at the intersection of two or more roads or streets.

***Lot Coverage***
The area of a lot occupied by the principal building and any accessory buildings.

***Lot Depth***
The horizontal distance between the front and rear lot lines.

***Lot, Interior***
A lot other than a corner lot or through lot.

***Lot Line, Front***
In the case of an interior lot, a line separating the lot from the street or place; and in the case of a corner lot, a line separating the lot from each street or place.

***Lot Line, Rear***
A lot line which is opposite and most distant from the front lot line, and in case of an irregular or triangular-shaped lot, a line ten (10) feet in length within the lot, parallel to and at a maximum distance from the front lot line.

***Lot Line, Side***
Any lot boundary line not a front lot line or a rear lot line.

***Lot, Through***
A lot fronting on two (2) parallel or approximately parallel streets and includes lots fronting on both a street and a watercourse or lake.

***Lot Width***
The distance between the side lot lines as measured on the building line.

***Maintenance Guarantee***
Any security which may be required and accepted by a governmental agency to ensure that necessary improvements will function as required for a specific period of time.

***Maneuvering Space***
An open space in a parking area which is immediately adjacent to a parking space; is used for and/or is necessary for turning, backing or driving forward a motor vehicle into such parking space, but is not used for the parking or storage of motor vehicles.

***Manufactured Home***
A dwelling unit designed and constructed to the "National Manufactured Housing Construction and Safety Standards Act of 1974" as amended and published by the United States Department of Housing and Urban Development and having the HUD Manufactured Home Label attached to the unit.

***Materials Recovery Facility (MRF)***
A transfer station at which recyclable solid waste is separated from the raw or general solid waste stream. The recycled waste is then sold to manufacturers for use as raw materials in the production of their products. The remaining solid waste is transferred into vehicles or containers for final disposal.

***Mobile Home***
A factory-fabricated building built on a chassis and so constructed as to permit its being towed upon public thoroughfares and designed to be used for year-round living when connected to the required utilities. The term "manufactured home" is defined as a dwelling unit built in a factory and bearing a seal of compliance with Federal Manufactured Housing Construction and Safety Standards of Indiana Public Law 360, Acts of 1971, as amended, which is of at least 600 square feet of occupied space and is installed on a permanent foundation and perimeter wall. Its pitched roof and siding are of materials customarily used for site constructed dwellings. A manufactured home is a single-family dwelling for the purposes of this Ordinance.

***Mobile Home Park***
Any site, lot, field, or tract of land under single ownership, or ownership of two or more persons upon which two or more mobile homes to be used for human habitation are parked, either free of charge or for revenue purposes, and shall include any street used or intended for use as part of the facilities of such mobile home park. A mobile home park does not include a mobile home sales area on which unoccupied mobile homes are parked for inspection or sale.

***Mobile Home Site***
The area of land in a mobile home park for the parking of one (1) mobile home.

***Mobile Home Subdivision***
A residential subdivision designed exclusively for and occupied by mobile homes in which the same person owns the homes and the land.

***Mobile Commercial Structure***
A mobile structure consisting to two (2) or more single-story units.

***Mobile Structure***
Means any part of a fabricated unit that is designed to be towed on its own chassis and connected to utilities for year round occupancy or used as a Class 1 structure, a Class 2 structure, or another structure, as defined by the Indiana Building Code, as amended. The term includes two or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units that are separately towable but designed to be joined into one integral unit. Whenever any mobile system is placed on a permanent foundation, the mobile system shall be considered an industrialized building system.

***Mobile Transitory Structure***
A mobile structure consisting of one (1) single-story unit certified under IC 22-15-4-2, with the Indiana Mobile Unit Insignia attached to the unit.

***Modular Home***
A factory-fabricated transportable building designed to be used alone or to be incorporated with similar units at a building site and designed and constructed with a perimeter frame to become a permanent structure on a site, with all outside walls supported by a permanent foundation. A modular home is a single-family dwelling for purposes of this Ordinance.

***Modular Commercial Structure***
A modular structure of one (1) or more units or enclosed panels to be used or occupied as a Class 1 structure or an accessory structure thereto, based upon the number of stories and a specific completed structure configuration.

***Modular Residential Structure***
A modular structure of one or more units or enclosed panels to be used or occupied as a one or two family dwelling (Class 2 structure, as defined by the Indiana Building Code, as amended) or an accessory structure thereto, based upon the number of stories, not to exceed three, and a specific completed structure configuration.

***Modular Structure***
An industrialized building system other than a mobile structure intended for placement upon a permanent foundation.

***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 hotel services such as maid service and laundering of linen, telephone, secretarial, or desk service, and the use and upkeep of furniture.

***Natural Resources***
The Indiana Natural Resources Commission.

***Non-Conforming Structure***
A structure designed, converted, or adapted for a use prior to the adoption of provisions prohibiting such use or structure in such location.

***Non-Conforming Use***
Non-conforming use is any use or arrangement of land or structures legally existing at the time of enactment of this Ordinance or any of its amendments, which does not conform to the provisions of this Ordinance.

***Nuisance***
The use of land or behavior that brings harm or substantial annoyance to adjacent property owners or the public in general.

***Official Fee Schedule***
Schedule of fees established by the Jay County Commissioners and maintained in the Jay/Portland Building and Planning Department, which specifies all current permit fees, rates, penalties, etc.

***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 fields containing baseball, football, and soccer fields; golf courses, swimming pools, bicycle paths, etc. Open Space does not include street rights-of-way, platted lot area, private yard, patio areas, or land scheduled for future development.

***Open Space, Public***
An open space area conveyed or otherwise dedicated to a municipality, municipal agency, board of education, state or county agency, or other public body for recreational or conservational uses.

***Owner***
Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

***Parcel***
A piece of land having a legal description formally set forth in a conveyance together with a description of its location, shape, and size, in order to make possible its easy identification.

***Parking, Off-Street***
A parking space provided in a parking lot, parking structure, or private driveway.

***Parking, On-Street***
A parking space that is located on a dedicated street right-of-way.

***Parking Area, Public***
An open area, other than a street or alley, designed for use or used for the temporary parking of more than four motor vehicles when available for public use, whether free or for compensation or as an accommodation for clients or customers, and paved with a hard surface.

***Parking Lane***
A lane generally located on the sides of streets, designed to provide on-street parking for vehicular traffic.

***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 ½) ton capacity.

***Pavement***
An asphalt, concrete, cement, or brick surface.

***Performance Bond***
An amount of money or other negotiable security paid by the subdivider or his surety to the County which guarantees that the subdivider will perform all actions required by the County regarding an approved plat, and provides that if the subdivider defaults and fails to comply with the provisions of an approved plat, the subdivider or his surety will pay damages up to the limit of the bond, or the surety will itself complete the requirements of the approved plat.

***Permanent Foundation***
A structural system for transposing 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.

***Person***
A corporation, firm, partnership, association, organization, unit of government, or any other group that acts as a unit, as well as a natural person.

***Pervious Surface***
A surface that permits full or partial absorption of storm water, such as grass and other vegetation, soil, water bodies, gravel, approved open-center paving block, etc. Decks made of wood and other materials shall be considered pervious if not built over an impervious slab or foundation and if slats are spaced a minimum of 1/8-inch apart.

***Plan***
In reference to documentation, The Comprehensive Plan of Jay County, Indiana, and any other supporting or accompanying ordinances, plans, resolutions, rules, or regulations and including their provisions, except where the context clearly indicates otherwise.

***Plan, Capital Improvement***
A proposed schedule of future projects 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.

***Plan Commission***
The Advisory Plan Commission of Jay County.

***Plan, Comprehensive***
A long-range plan intended to guide the growth and development of the community; inclusive physical, social, and economic analysis, recommendations, proposals, plans, and policies in graphic statement forms for the development of the jurisdiction and adopted by the Commission pursuant to the I.C. 36-7-4-500 series and including any part and/or policies separately adopted and any amendment to such plan or parts thereof.

***Plan, Conceptual***
A preliminary presentation and attendant documentation of a proposed subdivision or site plat showing the specific location and design of improvements to be installed for the subdivision or site in accordance with the requirements of this Plan as a condition of the approval of the plat.

***Plan, Development***
A drawing, including a legal or site description of the real estate involved, which shows the location and size of all existing and proposed easements; widths and lengths of all entrances and exits to and from said real estate; location of all adjacent or adjoining streets; all of which presents a unified and organized arrangement of buildings and service facilities and other improvements such as planting areas, which shall have a functional relationship to the real estate comprising the planned development and to the uses of properties immediately adjacent to the proposed development.

***Plan, General Development***
A plan outlining general, rather than detailed, development intentions. It describes the basic parameters of a major development proposal, rather than giving full engineering details. As such, it allows general intentions to be proposed and discussed without the extensive costs involved in submitting a detailed proposal.

***Plan, Thoroughfare***
A plan which includes a street plan, sets forth the location, alignment, dimensions, identification, and classification of existing and proposed streets, and other thoroughfares.

***Planned Development (PUD)***
A large-scale unified development meeting the requirements for zoning approval under the provisions of Section 310 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 specified in 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.

***Plat***
A map or chart that shows a division of land and is intended to be filed for record.

***Plat, Primary***
The primary plat, pursuant to I.C. 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 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 I.C. 36-7-4-700 series, is the final plat document in recordable form. A secondary plat shall substantially conform to the preceding primary plat, or section thereof. The secondary plat and plans are not subject to public notices and public hearings. Secondary plat approval is an administrative function to be carried out in the manner prescribed by the written rules of the Advisory Plan Commission rules, either in public meeting or by Zoning Administrator. (Under former state statutes, the secondary plat was referred to as the "Final" Plat.)

***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 of this Ordinance. A practical difficulty is not a "hardship", rather it is 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.

***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.

***Principal Use***
The main use of land or buildings as distinguished from an accessory use. A principal use may be either a permitted use or a special exception.

***Private School***
Private preprimary, primary, grade, high or preparatory school or academy.

***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 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 Notice***
That act of notifying all interested partied to any proposed action concerning the business of the administration and enforcement of the Ordinance.

***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 of motor vehicles.

***Public Utility Structure***
Electric and telephone substations and distribution centers; filtration plant, pumping station, and water reservoir; public or package sewage treatment plants; telephone exchange; radio and television transmitting or relay stations; antenna towers and other similar public utility service structures.

***Recreational Vehicle***
Any boat, boat trailer, trailer, any camping trailer, travel trailer, pick-up, motor coach, motor home or other unit built or mounted on a vehicle or chassis, without permanent foundation, which may legally be driven or towed by a motor vehicle on a highway or street.

***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 by recreational vehicles only.

***Regulatory Flood***
A flood having a peak discharge which can be equaled or exceeded on the average of once in a one hundred (100) year period, as calculated by a method and procedure which is acceptable to and approved by the Indiana Natural Resources Commission; this flood is equivalent to a flood having a probability of occurrence of one percent (1%) in any given year.

***Regulatory Flood Profile***
A longitudinal profile along the thread of a stream showing the maximum water surface elevation attained by the regulatory flood.

***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.

***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.

***Retention Basin***
A pond, pool, or basin used for the permanent storage of water runoff.

***Right-of-Way***
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.

***Road (Street)***
A partially or fully improved public right-of-way which affords the principal means of access to abutting property.

***Roadway***
The actual road surface area from curb line to curb line, which may include travel lanes, parking lanes, and deceleration and acceleration lanes. Where there are no curbs, the roadway is that portion between the edges of the paved, or hard surface, width.

***Rule 5***
Any construction activity, which includes clearing, grading, excavation, and other land disturbing activities that results in the disturbance of one (1) or more acres of total land area which is regulated by the Jay County Soil and Water Conservation District and the Indiana Department of Environmental Management (IDEM).

***Scrap Metal Yard***
A general industrial use, including, but not limited to, 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, fittings, clippings, vehicle parts, 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 and shipment and use in other industries or businesses; such an establishment shall not include junk yards, dumps, or automobile graveyards.

***Screen***
An area within a property or site, generally adjacent to and parallel with the property line, either consisting of natural existing vegetation or created by the use of trees, shrubs, fences, and/or beams, designed to limit continuously the view of and/or sound from the site to adjacent sites or properties.

***Setback***
The minimum horizontal distance between the front line of a building or structure and the street or road right-of-way or property line.

***Side Lot Line***
A lot boundary line other than a front or rear lot line.

***Sidewalk***
That portion of the road right-of-way outside the roadway, which is improved for the use of pedestrian traffic.

***Side Yard***
The horizontal space between the nearest foundation of a building to the side lot line and that side lot line, unoccupied other than by architectural appurtenances projecting not more than twenty-four (24) inches into that space; steps or terraces not higher than the level of the first floor of the building; and open lattice-enclosed fire escapes, fireproof outside stairways and balconies projecting not over twenty-four (24) inches into that space.

***Sight Triangle***
A triangular-shaped portion of land established at street or alley intersections in which nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection.

***Sign***
A 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 conducted, sold, or offered elsewhere than upon the premises where such sign is located or to which it is affixed. Also called billboard or off-premises sign.

***Sign, Temporary***
A sign intended to display either commercial or noncommercial messages of a transitory or temporary nature. Portable signs or any sign not permanently embedded in the ground, or not permanently affixed to a building or sign structure that is permanently embedded in the ground, are considered temporary signs.

***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, and upon application, is specifically authorized by the Plan Commission and granted by the Board of Zoning Appeals.

***Storage, Outdoor***
The outdoor accumulation of goods, junk, vehicles, equipment, products, or materials for permanent or temporary holding.

***Street, Arterial***
A street designed for high volume traffic.

***Street, Collector***
A street designed to facilitate the collection of traffic from local streets and to provide circulation within neighborhood areas and convenient ways to reach arterial streets.

***Street, Local***
A street designed primarily to provide access to abutting properties and discourage through traffic.

***Street, 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 are maintained by the owner(s).

***Street, Public***
Any publicly dedicated, accepted and maintained right-of-way, with the exception of alleys, essentially open to the sky and open to the general public for the purposes of vehicular and pedestrian travel affording access to abutting property, whether referred to as a street, easement, lane, road, drive, expressway, arterial, thoroughfare, highway, or any other term commonly applied to a right-of-way for said purposes. A public street may be comprised of pavement, shoulders, gutters, curbs, sidewalks, parking space, and similar features.

***Strip Development***
Uncoordinated and often unsightly development that generally occurs along main highways and thoroughfares leading into and out of a community. Strip development often includes fast food restaurants, filling stations, used car lots, and shopping centers.

***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.

***Structure***
Anything constructed, erected or placed, the use of which requires location on the ground or attached to something having a permanent location on the ground, except public utility, communication and electrical transmission lines and equipment and facilities supporting the same and/or incidental thereto.

***Supply Yards***
A commercial establishment storing or offering for sale building supplies, steel supplies, coal, heavy equipment, feed and grain, and similar goods. Supply yards do not include the wrecking, salvaging, dismantling, or storage of automobiles and similar vehicles.

***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 and use.

***Tourist Home***
A building in which one (1) but not more than five (5) guest rooms are used to provide or offer overnight accommodations for transients. Also known as "bed and breakfast inns." For the purpose of this Ordinance, a tourist home shall be defined as home occupation.

***Trade or Business School***
A secretarial or business school or college that is not publicly owned, is not owned, conducted, or sponsored by a religious, charitable, or non-profit organization, and is not a school conducted as a commercial enterprise for teaching instrumental music, dancing, barbering, hairdressing, or the industrial or technical arts and like skills.

***Transfer Station***
Any facility at which raw or general solid waste is transferred into larger capacity vehicles or containers for shipment to a materials recovery facility or final disposal facility. This does not include neighborhood recycling centers or transfer activities at generating facilities.

***Truck***
Truck tractors, trucks, and tractors and trailers as the same are defined by I.C. §9-4-1-3 through I.C.§ 9-4-1-5.

***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.

***Vegetative Screen***
Planting of vegetation sufficient to obscure the sight of a passerby on foot or in a standard motor vehicle of the facility or operation. The Commission shall from time to time provide suggested plants or trees and layouts determined in conjunction with the County Agricultural Agent.

***Veterinary Animal Hospital or Animal Clinic***
A place used for the care, diagnosis and treatment of sick, ailing, infirm or injured animals, and those who are in need of medical or surgical attention, and may include overnight accommodations on the premises for treatment, observation and/or recuperation. It may also include boarding that is incidental to the principal activity or use.

***Yard***
A space on the same lot with a principal building that is open and unobstructed except as otherwise authorized by this ordinance.

***Yard, Front***
The horizontal space between the nearest foundation of a building to the front lot line, extending to the side lines of the lot, and measured as the shortest distance from the nearest foundation to the front lot line. A corner lot shall have two (2) front yards abutting both streets on which the corner lot has frontage, except as deed restrictions specify otherwise.

***Yard, Rear***
The horizontal space between the nearest foundation of a building to the rear lot line and that rear lot line, extending to the side lines of the lot, and measured as the shortest distance from the nearest foundation to the rear lot line. The rear yard of a corner lot shall be that yard at the opposite end of the lot from the front yard.

***Yard, Side***
The horizontal space between the nearest foundation of a building to the side lot line and that side lot line, unoccupied other than by architectural appurtenances projecting not more than twenty-four (24) inches into that space; steps or terraces not higher than the level of the first floor of the building; and open lattice-enclosed fire escapes, fireproof outside stairways and balconies projecting not over twenty-four (24) inches into that space.

# *Article 8*

# Town of Pennville Regulations

# *DISTRICT REGULATIONS AND JURISDICTIONAL AREA FOR THE PARTICIPATING INCORPORATED AREA OF PENNVILLE, INDIANA*

## 801 ESTABLISHMENT

*The purpose of this Article is to set forth in detail the Pennville development standards, jurisdictional area and restrictions for permitted uses.*

The jurisdictional area of Article 8 shall be the corporate limits of Pennville, Indiana.

## The Town of Pennville is divided into additional districts for purposes as stated:

**SFR: Single Family Residential District - *(R8 on eGIS)***
The Single Family Residential District (SFR) is established to provide areas appropriate for single family residential structures. The intended density for this district is 2 - 4 dwelling units per acre.

**MFR: Multi-Family Residential District - *(R10 on eGIS)***
The Multi-Family Residential District (MFR) is established to provide areas appropriate for multi-family housing (including senior housing) where residents have convenient access to commercial services and public recreation areas. The intended density for this district is 5 - 6 dwelling units per acre.

**COM: Commercial District - *(COM on eGIS)***
The Commercial District (COM) is established to provide an area, in downtown Pennville, for neighborhood and specialty commercial development that meets the needs of local residents and encourages visitors to shop in Pennville. It is not the intent of this district to accommodate “big box” retailers.

**LI: Light Industrial District - *(IND on eGIS)***
The Light Industrial District (LI) is established to provide appropriate areas for light industrial, larger commercial, office and research and development activities in Pennville. The Light Industrial District is intended for the types of uses that would typically be accommodated in an industrial perk and those requiring more space than would be appropriate for the downtown commercial core.

**Historical District**
A district established by Pennville Town Ordinance to govern exterior restoration and maintenance of buildings and esthetics in the Historic District.

# 802 'SFR' – Single Family Residential District Article 8

## District Intent, Permitted Uses, and Special Exception Uses

**District Intent**

The Single Family Residential District (SFR) is established to provide areas appropriate for single family residential structures. The intended density for this district is 2 - 4 dwelling units per acre.

**Permitted Uses**

***Residential Uses***
Single family dwellings
Manufactured Homes

***Other Uses***
Accessory Uses
Decks
Home Occupations
Private Swimming Pools

**Special Exception Uses**

***Residential Uses***
Adult Day Care Center
Apartment
Bed and Breakfast
Boarding or Lodging House
Child Care Home
Duplex

**Special Exception Uses**

***Institutional/Public Uses***
Community Center
Fire Station Public
Park/Recreation
Religious Institution
School

**Special Exception Uses**

***Miscellaneous Uses***
Public Wells

The Plan Commission, upon hearing a recommendation from the Zoning Administrator, shall determine into which category any use shall be placed which is not specifically listed or defined herein.

# 803 'SFR' – Single Family Residential District — Article 8
## District Development Standards

### Lot & Yard Standards

**Minimum Lot Area:**
7,000 Sq. Ft.

**Minimum Lot Width:**
40 feet

**Minimum Lot Frontage:**
40 feet on a public or private street with access from the public street.

**Minimum Front Yard Setback:**
25 feet from Right of Way line

**Minimum Side Yard Setback:**
10 feet from Right of Way or property line

**Minimum Rear Yard Setback:**
25 feet for primary structure
10 feet for accessory structure

**Maximum Height Regulations:**
30 feet primary structure
17 feet accessory structure

**Minimum Main Floor Area:**
Total finished floor area is 950 sq. ft. or more

### Additional Development Standards That Apply


| | |
|---|---|
| Accessory Uses & Structures | Pg 8-10 |
| Buffer Yard Standards | Pg 8-11 |
| Entrance & Driveway Standards | Pg 8-15 |
| Environmental Standards | Pg 8-16 |
| Fences, Hedges & Wall Standards | Pg 8-19 |
| Home Occupation Standards | Pg 8-20 |
| Industrial Standards | Pg 8-23 |
| Loading Standards | Pg 8-27 |
| Miscellaneous Standard | Pg 8-28 |
| Parking Standards | Pg 8-30 |
| Sight Visibility Standards | Pg 8-33 |
| Mobile Home Standards | Article 3 / Pg 3-11 |
| Mobile Home Park Standards | Article 3 / Pg 3-11 |
| Small Wind Energy System Privately Owned | Article 2 / Pg 2-28 |


### *Notes:*

1. **Conflicts –** All conflicts concerning lot/yard regulation specified in this Article in existence prior to the time of adoption of this ordinance shall be considered legal nonconforming lots or structures and are subject to Article 3 (301) of this ordinance.

2. **Setbacks –** No building or structure shall be erected, altered, enlarged, or reconstructed unless such improvement conforms to the yard regulations of the District in which it is located.

### Plan Commission Development Requirements:

1. Compatibility of the development with surrounding land uses.
2. Availability and coordination of water, sanitary sewers, storm water drainage, and other utilities.
3. Management of traffic in a manner that creates conditions favorable to health, safety, convenience, and the harmonious development of the community.
4. Building setback lines.
5. Building coverage.
6. Building separation.
7. Vehicle and pedestrian circulation.
8. Parking.
9. Landscaping.
10. Height, scale, materials, and style of improvements.
11. Signage.
12. Recreation space.
13. Outdoor lighting.
14. Other requirements considered appropriate by the Planning Commission.

# 804 'MFR' – Multi-Family Residential District Article 8

## District Intent, Permitted Uses, and Special Exception Uses

**District Intent**

The Multi-Family Residential District (MFR) is established to provide areas appropriate for multi-family housing (including senior housing) where residents have convenient access to commercial services and public recreation areas. The intended density for this district is 5 - 8 dwelling units per acre.

**Permitted Uses**

***Residential Uses***
Apartments
Multi-family dwellings
Single Family Residence
Duplex
Assisted Living Facility
Nursing Home
Retirement Community

***Other Uses***
Accessory Uses
Private Swimming Pools

**Special Exception Uses**

***Residential Uses***
Mobile Home Park

***Commercial Uses:***
Adult Day Care Facility
Child Care Facility

**Special Exception Uses**

***Institutional/Public Uses***
Community Center
Fire Station
Government Buildings
Post Office
Religious Institution
School

**Special Exception Uses**

***Miscellaneous Uses***
Home Occupations
Public Wells
Pumping Facilities

The Plan Commission, upon hearing a recommendation from the Zoning Administrator, shall determine into which category any use shall be placed which is not specifically listed or defined herein.

# 805 'MFR' – Multi-Family Residential District Article 8

## District Development Standards

### Lot & Yard Standards

**Minimum Lot Area:**
15,000 Sq. Ft.

**Minimum Lot Width:**
80 feet

**Minimum Lot Frontage:**
40 feet on a public or private street with access from public street

**Minimum Front Yard Setback:**
25 feet from right-of-way line

**Minimum Side Yard Setback:**
20 feet from right-of-way or property line

**Minimum Rear Yard Setback:**
25 feet Primary Structure
10 feet Accessory Structure

**Minimum Main Floor Area:**
2,000 Sq. Ft. for single story primary structures, or
1,500 Sq. Ft. for multi-story primary structures provided finished floor area is at least 2,000 sq. ft.

**Maximum Height:**
40 feet for Primary Structure
17 feet for Accessory Structure

### Additional Development Standards That Apply


| | |
|---|---|
| Accessory Uses & Structures | Pg 8-10 |
| Buffer Yard Standards | Pg 8-11 |
| Entrance & Driveway Standards | Pg 8-15 |
| Environmental Standards | Pg 8-16 |
| Fences, Hedges & Wall Standards | Pg 8-19 |
| Home Occupation Standards | Pg 8-20 |
| Industrial Standards | Pg 8-23 |
| Loading Standards | Pg 8-27 |
| Miscellaneous Standard | Pg 8-28 |
| Parking Standards | Pg 8-30 |
| Sight Visibility Standards | Pg 8-33 |
| Mobile Home Standards | Article 3 / Pg 3-11 |
| Mobile Home Park Standards | Article 3 / Pg 3-11 |
| Small Wind Energy System Privately Owned | Article 2 / Pg 2-28 |


### *Notes:*

1. **Conflicts –** All conflicts concerning lot/yard regulation specified in this Article in existence prior to the time of adoption of this ordinance shall be considered legal nonconforming lots or structures and are subject to Article 3 (301) of this ordinance.

2. **Setbacks –** No building or structure shall be erected, altered, enlarged, or reconstructed unless such improvement conforms to the yard regulations of the District in which it is located.

### Plan Commission Development Requirements:

1. Compatibility of the development with surrounding land uses.
2. Availability and coordination of water, sanitary sewers, storm water drainage, and other utilities.
3. Management of traffic in a manner that creates conditions favorable to health, safety, convenience, and the harmonious development of the community.
4. Building setback lines.
5. Building coverage.
6. Building separation.
7. Vehicle and pedestrian circulation.
8. Parking.
9. Landscaping.
10. Height, scale, materials, and style of improvements.
11. Signage.
12. Recreation space.
13. Outdoor lighting.
14. Other requirements considered appropriate by the Planning Commission.

# 806 'COM' – Commercial District Article 8

## District Intent, Permitted Uses, and Special Exception Uses

**District Intent**

The Commercial District (COM) is established to provide an area in downtown Pennville, for neighborhood and specialty commercial development that meets the needs of local residents and encourages visitors to shop in Pennville. It is not the intent of this district to accommodate "big box" retailers.

**Permitted Uses**

***Residential Uses***
Upper floors Single-Family
Upper floors Multi-Family

***Commercial Uses:***
ATM
Antique Shop
Apparel Shop
Arcade or Billiard Room
Architecture Office
Bakery
Bank or Credit Union
Barber Shop/Beauty Salon
Book Store
Candy Store
Clinic
Community Center
Dance Studio
Day Spa

**Permitted Uses**

***Commercial Uses: (cont)***
Department Store
Design Services
Drug Store
Electronics Sales/Service
Fabric Shop
Flower Shop
Fruit/Vegetable Market
Gift Shop
Government Offices
Grocery Store
Gymnastics Studio
Hardware Store
Insurance Office
Jewelry Store
Law Offices
Lodge or Private Club
Martial Arts Studio
Meat Market

**Permitted Uses**

***Commercial Uses: (cont)***
Museum
Music Store
Office Supply Store
Planning Office
Professional Offices
Real Estate Office
Religious Institution
Restaurant/Delicatessen
Secretarial Service
Shoe Sales/Repairs
Sporting Good Store
Tailor
Theater Travel Agency
Variety Store
Video Store

**Special Exception Uses**

***Residential Uses***
Bed and Breakfast
Boarding/Lodging House

***Commercial Uses:***
Auto Parts Store
Convenience Store
Farmer's Market
Funeral Home/Mortuary
Gas Station
Liquor Store
Wind Energy System -
Privately Owned

**Special Exception Uses**

***Public/Institution Uses:***
Fire Station
Parking
Police Station

**Special Exception Uses**

***Miscellaneous Uses***
Accessory Uses
Bar/Club
Coin Laundry
Communications - Antenna
Communications -
Equipment Building
Communications - Tower
Dry Cleaners
Home Occupations
Print Shop

The Plan Commission, upon hearing a recommendation from the Zoning Administrator, shall determine into which category any use shall be placed which is not specifically listed or defined herein.

**Lot & Yard Standards**

**Minimum Lot Area:**
2,000 Sq. Ft.

**Minimum Lot Width:**
25 feet

**Minimum Lot Frontage:**
25 feet on a public or private street with access from a public street.

**Minimum Lot Coverage:**
80% minimum

**Minimum Front Yard Setback:**
0 feet

**Minimum Side Yard Setback:**
0 feet

**Minimum Rear Yard Setback:**
0 feet

**Minimum Main Floor Area:**
1,500 sq. ft. for primary structure

**Minimum Structure Height:**
30 feet

**Maximum Structure Height:**
40 feet
Wind Energy Tower - Privately Owned - 100 feet

**Additional Development Standards That Apply**


| | |
|---|---|
| Accessory Uses & Structures | Pg 8-10 |
| Buffer Yard Standards | Pg 8-11 |
| Entrance & Driveway Standards | Pg 8-15 |
| Environmental Standards | Pg 8-16 |
| Fences, Hedges & Wall Standards | Pg 8-19 |
| Home Occupation Standards | Pg 8-20 |
| Industrial Standards | Pg 8-23 |
| Loading Standards | Pg 8-27 |
| Miscellaneous Standard | Pg 8-28 |
| Parking Standards | Pg 8-30 |
| Sight Visibility Standards | Pg 8-33 |
| Mobile Home Standards | Article 3 / Pg 3-11 |
| Mobile Home Park Standards | Article 3 / Pg 3-11 |
| Small Wind Energy System Privately Owned | Article 2 / Pg 2-28 |


***Notes:***

1. **Conflicts –** All conflicts concerning lot/yard regulation specified in this Article in existence prior to the time of adoption of this ordinance shall be considered legal nonconforming lots or structures and are subject to Article 3 (301) of this ordinance.

2. **Setbacks –** No building or structure shall be erected, altered, enlarged, or reconstructed unless such improvement conforms to the yard regulations of the District in which it is located.

**Plan Commission Development Requirements:**

1. Compatibility of the development with surrounding land uses.
2. Availability and coordination of water, sanitary sewers, storm water drainage, and other utilities.
3. Management of traffic in a manner that creates conditions favorable to health, safety, convenience, and the harmonious development of the community.
4. Building setback lines.
5. Building coverage.
6. Building separation.
7. Vehicle and pedestrian circulation.
8. Parking.
9. Landscaping.
10. Height, scale, materials, and style of improvements.
11. Signage.
12. Recreation space.
13. Outdoor lighting.
14. Other requirements considered appropriate by the Planning Commission.

# 808 'LI' – Light Industrial District Article 8

## District Intent, Permitted Uses, and Special Exception Uses

**District Intent**

The Light Industrial District (LI) is established to provide appropriate areas for light industrial, larger commercial, office and research and development activities in Pennville. The Light Industrial District is intended for the types of uses that would typically be accommodated in an industrial park and those requiring more space than would be appropriate for the downtown commercial core.

| Permitted Uses | Permitted Uses | Permitted Uses |
|---|---|---|
| ***Agricultural Uses:*** | ***Commercial Uses:*** | ***Commercial Uses: (cont)*** |
| Agricultural Business | Automotive Service Shop (enclosed) | Painting |
| Commercial Greenhouse | "Big" Box Retail | Print Shop |
| Farm Implement - Sales/Service/Repair | Clinic | Recycling |
| Processing of Agricultural Products | Contractor Offices | Research |
| Seed Sales | Distribution Center | Trade School |
| | Fabrication | Warehousing |
| | "Flex - Space" | Welding |
| | Light Manufacturing | Wholesale Business |
| | Mini Warehouses | |
| | Office | |

| Special Exception Uses | Special Exception Uses | Special Exception Uses |
|---|---|---|
| ***Commercial Uses:*** | ***Public Uses:*** | ***Other Uses:*** |
| Bottle Gas Storage/Distribution | Communications - Antenna | Miscellaneous Accessory Uses |
| Liquid Fertilizer Production & Distribution | Communications - Equipment Buildings | |
| Outdoor Storage | Communications - Towers | |
| Small Wind Energy System - Privately Owned | Public Wells | |
| | Water Treatment Plant | |
| | Wastewater Treatment Plant | |

The Plan Commission, upon hearing a recommendation from the Zoning Administrator, shall determine into which category any use shall be placed which is not specifically listed or defined herein.

**Lot & Yard Standards**

**Minimum Lot Area:**
2 Acres

**Minimum Lot Width:**
200 feet

**Minimum Lot Frontage:**
100 feet on a public or private street with access from public or street

**Maximum Lot Coverage:**
Square footage of all structures and impervious surface cannot exceed 60% of the lot area.

**Minimum Front Yard Setback:**
50 feet from right-of-way line

**Minimum Side Yard Setback:**
40 feet from right-of-way or property line

**Minimum Rear Yard Setback:**
40 feet primary or accessory structure

**Minimum Floor Area:**
3,000 sq. ft. for primary structure

**Maximum Structure Height:**
40 feet for primary
30 feet for accessory
Wind Energy Tower - Privately Owned - 100 feet

**Additional Development Standards That Apply**


| | |
|---|---|
| Accessory Uses & Structures | Pg 8-10 |
| Buffer Yard Standards | Pg 8-11 |
| Entrance & Driveway Standards | Pg 8-15 |
| Environmental Standards | Pg 8-16 |
| Fences, Hedges & Wall Standards | Pg 8-19 |
| Home Occupation Standards | Pg 8-20 |
| Industrial Standards | Pg 8-23 |
| Loading Standards | Pg 8-27 |
| Miscellaneous Standard | Pg 8-28 |
| Parking Standards | Pg 8-30 |
| Sight Visibility Standards | Pg 8-33 |
| Mobile Home Standards | Article 3 / Pg 3-11 |
| Mobile Home Park Standards | Article 3 / Pg 3-11 |
| Small Wind Energy System Privately Owned | Article 2 / Pg 2-28 |


***Notes:***

1. **Conflicts –** All conflicts concerning lot/yard regulation specified in this Article in existence prior to the time of adoption of this ordinance shall be considered legal nonconforming lots or structures and are subject to Article 3 (301) of this ordinance.

2. **Setbacks –** No building or structure shall be erected, altered, enlarged, or reconstructed unless such improvement conforms to the yard regulations of the District in which it is located.

**Plan Commission Development Requirements:**

1. Compatibility of the development with surrounding land uses.
2. Availability and coordination of water, sanitary sewers, storm water drainage, and other utilities.
3. Management of traffic in a manner that creates conditions favorable to health, safety, convenience, and the harmonious development of the community.
4. Building setback lines.
5. Building coverage.
6. Building separation.
7. Vehicle and pedestrian circulation.
8. Parking.
9. Landscaping.
10. Height, scale, materials, and style of improvements.
11. Signage.
12. Recreation space.
13. Outdoor lighting.
14. Other requirements considered appropriate by the Planning Commission.

## 810 ACCESSORY USES

Accessory uses such as the following are authorized in all districts subject to the provisions of any and all recorded restrictive covenants running with the land:

A. Bird Baths and birdhouses
B. Accessory buildings/garages***Note 1 & 4***
C. Curbs
D. Driveways
E. Fences, Hedges and Walls ***Note 2***
F. Lamp posts
G. Mail boxes
H. Name plates
I. Parking spaces
J. Private swimming pools enclosed by a 5 feet high fence or 5 feet vertical enclosure integral with an above ground pool, or a horizontal pool cover approved as per the specifications and requirements of the Indiana Swimming Pool Code.
K. Public utility installations for local service (such as poles, lines, hydrants, and Telephone booths)
L. Retaining walls
M. Trees, shrubs, plants, and flowers (Subject to the Visual Sight Triangle Requirement)
N. Walks
O. Temporary toilets ***Note 3***

***Note 1:*** All accessory buildings, garages and carports must comply with the Indiana Building Code requirements. All Accessory structures must be subordinate to the primary structure. Truck Boxes, Buses and miscellaneous vehicle bodies are prohibited.

***Note 2:*** See Standards page 8-19.

***Note 3:*** Temporary toilets may be placed and maintained at any construction site for the duration of construction activities without a permit.

***Note 4:*** Accessory building, structure, or use which:

A. is subordinate to and serves a principal building, structure, or use in area, extent, or purpose; and
B. contributes to the comfort, convenience, or necessity of occupants of the principal buildings, structures, or principal uses served; and
C. does not alter or change the character of the premises; and
D. is located on the same zoning lot as the principal building, structure, or use; and
E. conforms to the setback, height, bulk, lot coverage, and other requirements of this Ordinance, unless otherwise provided for by this Ordinance; and
F. may not be constructed prior to the time of construction of the principal building or structure; and
G. is not designed for human occupancy as a dwelling or commercial use.

## 811 Buffer Yard Standards

### A. General

In addition to regular setback (yard) requirements for structures, a buffer yard shall be provided and maintained by the owner or lessee of a property in accordance with this section. Buffer yards are required between most land uses on adjacent properties in order to reduce the impact of one use or another. Generally, more intensive uses require greater amounts of buffering than less intensive uses. This section applies only to changes of use, the construction of a principal structure on a lot or the expansion of any existing principal structure by thirty percent (30%) or more. In the event that residential uses are developed adjacent to legally existing industrial or commercial uses, said industrial or commercial uses shall not be required to retroactively provide required buffer yards, except in the event of a change or expansion of use, as stated above.

### B. Application

Buffer yard, where required, shall be located along side and rear property lines. In the COM or I Districts, buffer yards shall also be required along the front property line when adjacent to or facing SFR, or MFR residential districts. On lots which abut a street along more than one property line, the site plan shall designate which property line shall be considered the front and buffer yards shall be provided along all other lines. Buffer yards shall have the necessary widths and planting and fencing material as required below.

### C. Determining Requirements

To determine the minimum requirements for buffer yards, the following procedure shall be used:

1. Identify the Buffer Yard Classification (Buffer Class A, B, C, D, or E) of the proposed use and/or structure by referring to Buffer Yard Standards in Section 811 of this Ordinance.
2. Identify the Buffer Yard Classification (Buffer Class A, B, C, D, or E) of the existing adjacent use by referring to Section 811 of this Ordinance. For vacant land and for existing, adjacent uses, refer to the Zoning map for the district classification of the land and/or use.
3. Determine the buffer yard requirements for the proposed use and/or structure by referring to Table H. Go down the left column to the Buffer Yard Classification of the proposed use and then go across the matrix either to the land use class or the adjacent vacant land zoning district and refer to the numbers (1 through 5) in the corresponding box which indicates the buffer yard type illustrated in Figure 8.0.
4. Refer to the buffer yard type in Figure 8.0 illustrations 1 through 5. Any of the alternative buffer yards may be selected for the determined buffer yard.

### D. Additional Standards

The following additional standards apply to buffer yards;

1. All buffer yards shall be maintained and kept free of debris, rubbish, weeds, and tall grass.
2. There shall be no structures, outdoor storage, parking, or loading facilities in buffer yards, except for agricultural or residential uses. However, buffer yards may be coterminous with the required front, side or rear setback areas but in case of conflict, the larger yard area regulation shall apply.
3. All plants shall be planted within one year of the Improvement Location Permit issuance or within six months of project completion, whichever is shorter, and all live landscaping required by this code shall be properly maintained. All dead or dying landscaping shall be replaced immediately and all sodded areas mowed, fertilized, and irrigated on a regular basis.
4. All dead or deciduous trees shall be a minimum of eight feet in height when planted. Deciduous shrubs shall be a minimum of six feet in height when planted.
5. Evergreens shall be a minimum of four feet in height when planted.
6. Berms shall be a minimum of four feet in height.
7. Flowering trees and shrubs shall be encouraged in buffer yards.

**E. Exceptions**

1. On any parcel of land where there is an existing use or structure, the Zoning Administrator may waive up to fifty percent of the required buffer yard if it is physically impossible to locate the required buffer yard due to con-conforming lot size, existing structure or parking lot location, or other similar reasons.
2. No buffer yard is required when a less-intense use is newly located adjacent to a more intense and established land use.
3. Two or more undeveloped lots abutting one another are not required to provide buffer yards. However, upon development, the appropriate buffer yard will be required.

**F. Responsibility**

The owner of the most intense land use must be responsible for providing the necessary buffer yard, and all costs associated therewith, and contain the buffer yard completely within their property limits.

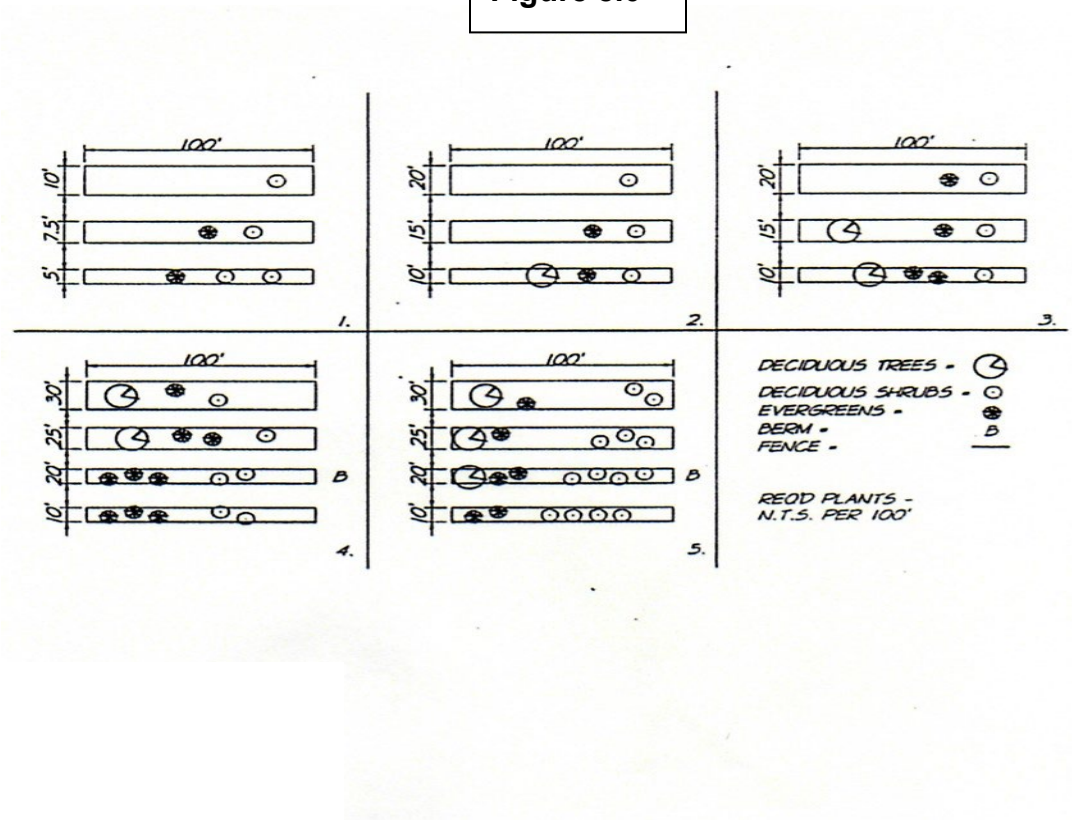
| Use | Use | Use |
|---|---|---|
| **Buffer Yard Class A**<br>Dwelling, Single-Family<br>Dwelling, Two-Family<br>Duplex<br>Manufactured Home<br>Artificial Lake, 3 plus Acres<br>Cropland or Orchard<br>Pasture & Grazing<br>Plant Nursery<br>Pond<br><br>**Buffer Yard Class B**<br>Cemetery/Crematorium<br>Church/Temple/Mosque<br>Funeral/ Mortuary Home<br>Museum<br>Public Park<br>Public or Private Parking Area<br><br>**Buffer Yard Class C**<br>Apartment<br>Bed and Breakfast 1-5 Rooms<br>Boarding or Lodging House<br>Childcare Facility<br>Dwelling, Multi-Family<br>Golf Course/Driving Range<br>Group Home<br>Nursing Home<br>Retirement Community<br>Riding Stable and Trails<br>School &/or College<br><br>**Buffer Yard Class D**<br>Accountant<br>Adult Bookstore/Entertainment<br>Agricultural Seed Sales<br>Animal Clinic/Veterinarian<br>Appliance/Electronics S & S<br>Archery/Firearms Range-Indoor Auction House<br>Audio/Video Sales & Service<br>Auto Parts Store<br>Automotive Sales & Service<br>Bank/Credit Union/ATM<br>Billiard Room<br>Bingo Parlor<br>Boat Sales/Service/Storage<br>Bowling Alley<br>Business Office | **Buffer Yard Class D (cont)**<br>Car Wash<br>Commercial Greenhouse<br>Convenience Store<br>Corporate Offices<br>Dance/Gymnastic Center<br>Department Store<br>Dry Cleaning Shop<br>Equine Massage Therapy<br>Farm Equip Sales/Service<br>Fitness Center<br>Gasoline Filling Station<br>Government Offices<br>Grocery Store<br>Hardware/Building Supply Store<br>Health Spa<br>Hospital/Medical Clinic<br>Hotel/Motel/Inn<br>Kennel/Pet Boarding<br>Liquor/Wine/Beer Store<br>Livestock Auction Barn<br>Meat Market/Butcher Shop<br>Medical Office<br>Mobile Home Park<br>Night Club/Bar/Tavern<br>Personal Services<br>Pet Store<br>Photography Studio<br>Police/Fire Station<br>Printing/Design Shop<br>RV/Camper Sales & Service<br>Radio/TV Station<br>Reception Hall<br>Restaurant<br>Retail/Variety Store<br>Seamstress/Shoe Repair<br>Self-Service Laundry<br>Sidewalk Café<br>Small Engine Sales & Service<br>Theater, Indoor<br>Thrift/Second Hand Store<br>Video Arcade | **Buffer Yard Class E**<br>Above Ground Water Tank Airport<br>Archery/Firearm Range (Outdoor)<br>Bottled Gas Storage/Distribution<br>Communication Relay Tower<br>Concrete Operation<br>Correctional Facility<br>Fertilizer Storage/Distribution<br>Food Processing<br>General Contracting<br>General Manufacturing<br>Gravel/Sand/Mining Operation<br>Highway/Municipal Garage<br>Incinerator<br>Industrial/Commerce Park<br>Junk/Salvage Yard<br>Light Manufacturing<br>Livestock &/or Feed Yard Machine Shop<br>Manufacturing of Explosives<br>Pipeline Pumping Station Product Assembly<br>Recycling Center<br>Sewage Treatment Facilities<br>Slaughter House<br>Storage of Explosives<br>Theme/Amusement Park<br>Theater, Outdoor<br>Truck Stop<br>Utility Substation<br>Warehouse/Distribution Center<br>Warehouse/Mini Storage<br>Water Treatment Facilities<br>Welding Shop<br>Wood Shop<br>Zoo<br><br>**Buffer Yard No Requirement**<br>Allowable Livestock Operation<br>Roadside Produce Stand<br>Outdoor Advertising/Billboard (County Roads Only) |

## TABLE H

### MINIMUM BUFFER YARD REQUIREMENTS

| | ADJACENT EXISTING BUFFERYARD CLASSIFICATION | | | | | ADJACENT ZONING DISTRICT (IF LAND IS VACANT) | | | |
|---|---|---|---|---|---|---|---|---|---|
| BUFFERYARD CLASSIFICATION (FROM TABLE A) | A | B | C | D | E | A | SFR MFR | COM | I LI |
| A | NA | 1 | 2 | 3 | 4 | NA | NA | 3 | 5 |
| B | 2 | 1 | 2 | 2 | 3 | 1 | 2 | 2 | 4 |
| C | 3 | 2 | 1 | 2 | 2 | 2 | 3 | 3 | 3 |
| D | 4 | 3 | 2 | 1 | 2 | 3 | 4 | 3 | 2 |
| E | 5 | 4 | 3 | 2 | 1 | 4 | 5 | 4 | 2 |

**Figure 8.0**



## 812 ENTRANCES/DRIVEWAYS

### A. Spacing

Entrances and driveways must be spaced away from intersections for vehicular and pedestrian safety and to reduce traffic congestion.

Spacing should be as follows in Table G (see Figure 8.1 for reference).

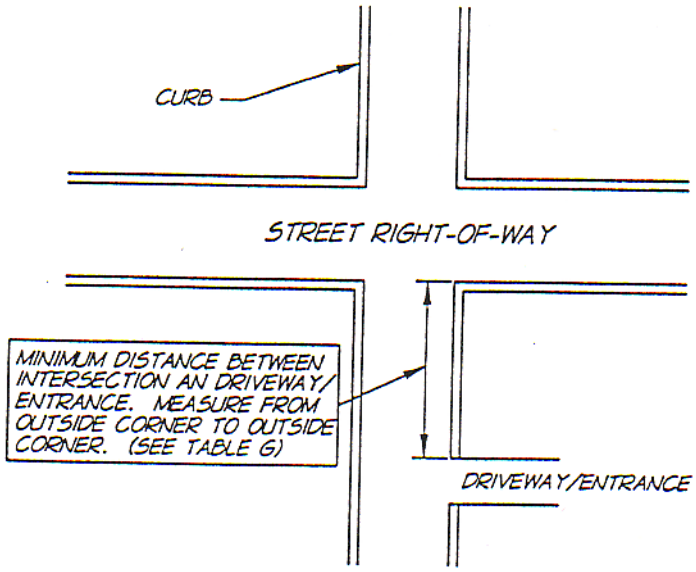
**TABLE G**
**DRIVEWAY / ENTRANCE TO INTERSECTION REQUIREMENTS**

| ROAD CLASS. / DISTRICT | A | SFR | MFR | C | I |
|---|---|---|---|---|---|
| ARTERIAL | 60 FT | 60 FT | 60 FT | 70 FT | 80 FT |
| COLLECTOR (FEEDER) | 40 FT | 40 FT | 40 FT | 50 FT | 60 FT |
| LOCAL STREET | 30 FT | 30 FT | 30 FT | 40 FT | 50 FT |

### B. Width

Driveway width shall be a minimum of twenty-four (24) feet for commercial and multi-family housing uses and thirty-four (34) feet for industrial uses. There are no minimum driveway widths for single-family residential uses.

**Figure 8.1**



## 813 ENVIRONMENTAL REGULATIONS

**A. General**

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. In addition, the following standards must be met:

**B. Surface Water**

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. When possible, existing natural surface drainage may be utilized. Whenever the evidence available indicates that the natural surface drainage is inadequate, the owner shall provide the parcel with an adequate surface water system, which shall be integrated into the drainage pattern of surrounding properties. When the surface drainage is adequate, easement for such surface drainage shall be provided. On-site detention shall be required where necessary to prevent harm to adjoining properties.

**C. 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 the County Highway Department, the Jay County Drainage Board, City Street Department, or Indiana Department of Transportation. Driveways may be constructed over these or other approved structures as permitted by the appropriate agency. All Class 1 Commercial or Industrial structures must have the approval of the Jay County Drainage Board, before a permit can be issued.

**D. Permanent Structures**

No permanent structures other than a fence may be erected, and if erected in violation of this section, no such structure may be used if the location is within seventy-five feet of the centerline of any legal tile ditch or within seventy-five feet of the existing top edge of any legal open ditch or tile unless approved by the Jay County Drainage Board and the Portland Plan Commission.

**E. Preservation of Natural/Historic Features**

Existing natural and historic features which would add value to development of natural or manmade assets of the county such as trees, streams, vistas, lakes, historical landmarks, and similar irreplaceable assets, shall be preserved through harmonious and careful design. Land to be developed shall be designed and improved as far as practical in conformity to existing topography in order to minimize storm water runoff, and conserve the natural cover and soil.

**F. Landscaping**

Any part or portion of non-farm parcel which is not used for structures, loading or parking spaces, sidewalks and accessory uses shall be landscaped or left in a natural state. If landscaped, they shall be planted with an all-season ground cover and shall be landscaped with trees and shrubs in accordance with the Development Plan and/or site plan and shall be in keeping with natural surroundings. All live landscaping required by this code shall be properly maintained. All dead or dying landscaping shall be replaced immediately and all sodded areas mowed, fertilized and irrigated on a regular basis.

**G. Cut/Fill Grade**

No cut or fill grade shall exceed a slope of 3:1 or 33 1/3 percent. This provision shall apply to all cuts and fills exceeding 100 square feet in exposed surface area, including cuts or fills on land naturally exceeding 3:1 in slope.

**H. Erosion Prevention**

All land, regardless of slope, from which structures or natural cover has been removed or otherwise destroyed, shall be appropriately graded and seeded within a reasonable time of such activity to prevent erosion.

**I. Alterations to Shoreline**

No alteration of the shoreline or bed of a river or public lake shall be made until written approval is obtained from the Indiana Department of Natural Resources, and the provisions of this ordinance are complied with. Alterations include, among other things, filling of a river or wetlands, dredging of a riverbed, and ditch excavation within one-half mile of a water body.

**J. 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.

**K. 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.

**L. Waste Disposal (Including Hazardous 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 run off, seep, or wash into surface or groundwater's.

**M. 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 and except for permitted agricultural uses and permitted uses in an I District.

**N. Treatment of Fill**

Bricks, concrete, lumber, and other material used for fill where permitted by this ordinance and/or by the IDEM, DNR, or other governmental agency, shall be promptly covered and seeded.

**O. View Requirements**

Where a proposed structure will eliminate more than fifty percent of an adjacent structure's view or exposure to the sun, an additional yard area setback may be required by the Zoning Administrator so that the fifty percent (50%) view or exposure may be maintained.

**P. Improvement Location Permit Requirements**

Requirements for Improvement Location Permits can be found in Section 11of this Ordinance. The following activities are permitted, however, with no Improvement Location Permit required, provided all other applicable standards are met:

1. Normal plowing and preparing the land for gardens and yards.
2. Normal trimming and/or removal of trees and shrubs for maintenance and/or site preparation.
3. Earth movements related to farming and other agricultural activity, including sod farming.
4. Public and private road construction.
5. Drain tile laying and ditch cleaning.
6. Top soil removal, other than Mineral Extraction.

**Q. Health and Safety**

No use shall be permitted which is injurious in health and safety of humans, animals, or vegetation, or which is noxious by reason of the emission of odor, visual pollution, or other undesirable nuisances which effects extend beyond the lot line where the use exists. For purposes of this ordinance, any junkyard, whether a non-conforming use, or a conforming use, contained or existing on any lot or lots adjacent to or within five hundred (500) feet of a public street, road, highway or right-of-way is deemed to be noxious, constitutes visual pollution, and shall be abated, terminated, removed and evacuated within one year from the date of signing of this amendatory ordinance unless such junk yard shall be fenced or screened on each side visible from any public street, road, highway or right-of-way with natural objects, plantings, fences, or other appropriate means, the top of which shall be not less that eight (8) feet and which fence shall be sufficient to remove the junk yard and all contents of the junk yard from sight so as not to be visible from the main-traveled way of any street, road, highway of right-of-way. If the fencing cannot be completed within one year, the owner may obtain a one year extension by filing specifications and a surety bond sufficient to guarantee the completion of said fencing within one year after the Board of Zoning Appeals approves said specifications and surety bond.

## 814 FENCES, HEDGES AND WALLS

### PURPOSE

This Section is intended to provide for the regulation of the height and location of fences, hedges, and walls in order to provide adequate light, air, and privacy, and to protect the public welfare by preventing visual obstructions along public ways.

**A.** **Setbacks:** Fences, latticework, screens, hedges, or walls shall be set back to the front line of the house. All district rear yard setbacks shall apply. This restriction shall also apply to corner lots that are considered to have two front yards. Such fences or hedges shall be placed a minimum of 3 feet inside the property line of the Owner's lot. All setbacks are subject to the Sight Visibility Standards Requirement, Section).

If a fence or hedge is to be placed closer than 3 feet or centered on the property line, an agreement must be signed by all adjoining property owner's affected by the fence placement. This form must then be filed in the office of the Jay County Clerk prior to any permit being issued. If a fence or hedge is to be cost-shared with the adjoining property owner, then written statements from each of the property owners declaring the intent to cost share the fence must be submitted with the application for the permit. A cost-shared fence or hedge may be centered on the property line.

**B.** **Height Measurements:** In any residential district, ornamental fences and hedges shall not exceed 3 feet in height in the required front yard or 7 feet in height in the required side or rear yard, except that open chain link fences may be erected to 4 feet in height in the front yard.

**C.** **Prohibited Fences:** No residential fence may be constructed of metal siding, barbed wire, nor may it be electrified. These restrictions do not apply in regard to construction or maintenance of a fence of any height in connection with an agricultural use. In no instance shall this be interpreted as prohibiting the use of invisible fences.

**D.** **Permitting:** All fences or hedges, which serves the same purposes as a fence, require a permit prior to installation. Applications for a permit to construct or install a fence or hedge, which serves the same purposes as a fence, shall be submitted to the Zoning Administrator.

## 815 HOME OCCUPATION STANDARDS

**A.** **Purpose and Intent** – It is the purpose and intent of this Section to provide for certain types of home occupations to be conducted within a dwelling unit or accessory structure on the resident's premises. Two classes of home occupations are established based on the type and intensity of the home occupation. Accordingly, minimum standards have been established for each class of home occupation in order to assure compatibility of home occupations with other uses permitted in the applicable district and to preserve the character of residential neighborhoods.

**B.** **Home Occupations** – Home occupations shall not be permitted except in compliance with this section and other applicable law.

**C.** **Application for Home Occupation** – An application for an administrative Permit for a Type I Home Occupation or Special Exception for a Type II Home Occupation shall be signed by all owners and adult residents of the property in question and filed with the Department on forms provided by the Department. The Administrator shall review the application and classify the proposed Home Occupation as a Type I or Type II based upon:

1. The established standards for Type I and Type II Home Occupations described in D and E herein, and
2. General planning and zoning standards established by the Zoning Code.

**D.** **Type I Home Occupation**

The following standards are applicable to all Type I Home Occupations:

1. No persons other than the residents of the dwelling unit on the subject premises names in the application shall be engaged in such home occupation.
2. No more than fifteen (15) percent of the total gross floor area of the said dwelling unit shall be used for such home occupation. The home occupation may not utilize more than fifty (50) percent of any one floor of the dwelling unit.
3. No outdoor storage or display of products, equipment, or merchandise is permitted.
4. No publication or advertising shall use the residential address of the home occupation.
5. Exterior evidence of the conduct of a home occupation is not permitted. No signage.
6. The home occupation shall be conducted exclusively within the dwelling unit or accessory structure.
7. No traffic shall be anticipated by a home occupation in substantially greater volumes than would normally be expected by one (1) dwelling unit in a residential neighborhood. No vehicle or delivery truck shall block or interfere with normal traffic circulation.
8. No specific outside entrance or exit for the home occupation shall be permitted.
9. No use, storage, or parking of tractor trailers, semi-trucks, or heavy equipment (e.g. construction equipment) shall be permitted on or about the premises.

The following uses are examples of home occupation, which may be classified as a Type I:

a. Telephone answering and solicitation
b. Home crafts, but no home sales.
c. Computer programming, desktop publishing
d. Typing or secretarial service
e. Painting, sculpturing or writing
f. Dressmaking, sewing, or tailoring
g. Consulting services
h. Mail order business, not including retail sales from site
i. Sales representative, office only

**E. Type II Home Occupation**

The following standards are applicable to all Type II Home Occupations:

1. One (1) person other than the residents of the dwelling unit on the subject premises named in the application may be engaged in such home occupation.
2. No more than fifteen (15) percent of the total gross floor area of the said dwelling unit shall be used for such home occupation. Inventory and supplies shall not occupy more than fifty (50) percent of the area permitted to be used as a home occupation.
3. No outdoor storage or display of products, equipment or merchandise is permitted.
4. Retail sales are permitted only as an accessory use to the primary home occupation (e.g. beauty salon can sell shampoo and beauty products).
5. Exterior evidence of the conduct of a home occupation is not permitted except one (1) non-illuminated sign not to exceed eight (8) square feet, which must be mounted flat against the exterior wall of the dwelling unit.
6. The home occupation shall be conducted exclusively within the dwelling unit or accessory structure.
7. No equipment, process, or activity shall be used in a home occupation which creates noise, vibration, glare, fumes, odors, or electrical or television interference which is detectable to the normal senses outside the dwelling unit or accessory structure.
8. No traffic shall be anticipated by a home occupation in substantially greater volumes than would normally be expected by one (1) dwelling unit in a residential neighborhood. No vehicle or delivery truck shall block or interfere with normal traffic circulation.
9. A minimum of two (2) off-street parking spaces, in addition to those required for the dwelling unit, shall be provided for use by patrons of the home occupation. The Board of Zoning Appeals may require additional off-street parking based upon the use and location of the property.
10. No use, storage, or parking of tractor trailers, semi-trucks, or heavy equipment (e.g. construction equipment) shall be permitted on or about the premises.

The following uses are examples of home occupation which may be classified as a Type II:

a. Carpentry, cabinet makers
b. Ceramics which involve the use of a kiln
c. Catering or food preparation
d. Pet grooming service
e. Barber or Beauty shop
f. Nail Salon

**F. General Provisions**

All home occupations shall conform to the following standards:

1. Approval of a home occupation is not transferable to a location other than that which was approved.
2. In no case shall a home occupation be open to the public at times earlier than 7:00 a.m. nor later than 9:00 p.m.
3. All home occupations shall be subject to periodic inspections. Reasonable notice shall be provided to the permittee prior to the time requested for an inspection.
4. The Administrator, in the case of an Administrative Permit for a Type I Home Occupation, or the Board of Zoning Appeals in the case of a Special Exception Permit for a Type II Home Occupation, may impose reasonable conditions necessary to protect the public health, safety, and welfare, or to protect against a possible nuisance condition.
5. Administrative Permits issued by the Administrator, or Special Exception Permits issued by the Board of Zoning Appeals may be revoked by the issuing authority for cause after reasonable notice to the permittee and an opportunity for hearing on the matter.
6. Home occupations shall commence only after the receipt of an Administrative Permit if classified as a Type I, or Special Exception Permit if classified as a Type II. Permits are annually renewable and valid for one year from date of issue.

**G. Permit Review Process**

Applications for a home occupation shall be reviewed as follows:

1. Application filed, with authorization from property owner.
2. Review of application by Administrator to determine classification as Type I or Type II.
3. If classified as a Type I:
   a. Administrator can approve or deny the application.
   b. If approved, an Administrative Permit for the home occupation shall be issued.
   c. Administrator may impose reasonable conditions as part of the approval.
   d. Applicant may appeal to the Board of Zoning Appeals if application is denied or if conditions are unacceptable. On appeal of a condition(s), appeal must be filed within fourteen (14) days of the date of the Administrator's approval of the Administrative Permit.
4. If classified as a Type II, the application shall be reviewed and treated as a Special Exception request.
5. The standards set forth in this section shall be incorporated as minimum conditions of approval.

**H. Enforcement**

In the event the Administrator determines that the operation of any home occupation is in violation of this Section or any permit condition, notice shall be provided to the permittee setting forth a description of the violation, corrective action required, and a date by which such corrective action must be accomplished. The permit may be revoked if not corrected in the manner and by the date specified in the notice in accordance with the revocation procedures applicable to Special Exceptions. In addition, violations of this Section are subject to the penalties provided for in this Ordinance.

## 816 INDUSTRIAL PERFORMANCE STANDARDS

**A. General**

No Light Industrial use shall be located within the jurisdiction of the Jay County Advisory Plan Commission which is injurious to the health or safety of humans or animals, injurious to vegetation, or which is noxious or offensive, by reason of the omission of smoke, particulate matter, dust, odor, gas and fumes, glare, vibration or noise and sound beyond the confines of the building in which such industry is conducted.

**B. Exceptions**

The restrictions of this section shall not apply to:

1. The activities of site preparation or construction, maintenance, repair, alteration, modification or improvement of buildings.
2. The operation of motor vehicles or other facilities for the transportation of personnel, materials or products.
3. Conditions beyond the control of the user such as fire, explosion, accidents, failure or breakdown or equipment or facilities of emergencies.
4. Safety or emergency warning signals or alarms necessary for the protection of life, limb or property, or
5. Processes for which there are no known means of control. Research shall be promptly conducted to discover methods of control leading to installation of corrective equipment.

**C. Interpretation**

For the purpose of this section, certain terms and words shall be interpreted and defined as follows:

DECIBEL - A unit of measurement of the intensity or loudness of sound. Sound level meters are used to measure such intensities and are calibrated in decibels.

FLASH POINT - The lowest temperature at which a combustible liquid under prescribed conditions will give off a flammable vapor which will burn momentarily using the closed cup method.

FREE BURNING - A rate of combustion described by a material which burns actively and easily supports combustion.

INTENSE BURNING - A rate of combustion described by a material that burns with a high degree of activity and is consumed rapidly.

MODERATE BURNING - A rate of combustion described by a material which supports combustion and is consumed slowly as it burns.

PARTICULATE MATTER - Finely divided liquid or solid material which is discharged and carried along in the air.

RINGELMANN NUMBER - The number of the area on the Ringelmann chart that most nearly matches the light-obscuring capacity of smoke. The Ringelmann chart is described in the U.S. Bureau of Mines Information Circular 6888, on which are illustrated graduated shades of gray for use in estimating smoke density. Smoke below the density of Ringelmann No. 1 shall be considered no smoke or Ringelmann No. 0.

SLOW BURNING OR INCOMBUSTIBLE - Materials which do not in themselves constitute an active fuel for the spread of combustion. A material which will not ignite, nor actively support combustion during an exposure for five (5) minutes to a temperature of 1,200 degrees F.

SMOKE - Small gas-borne particles resulting from incomplete combustion, consisting predominantly of carbon and other incombustible material, excluding metallurgical fume and dust, and present in sufficient quantity to be observable independently or the presence of other solids.

VIBRATION - Oscillatory motion transmitted through the ground.

**D. Application**

The following general performance standards shall apply to all Light Industrial uses:

1. SMOKE - In any 24-hour period, visible emissions and malfunctions shall not exceed forty percent (40%) of No. 2 of the Ringelmann's Scale for more than an accumulated fifteen (15) minutes.

2. DUST - No dust of any kind produced by the industrial operations shall be permitted to escape beyond the confines of the building in which it is produced.
3. ODOR - No noxious odor of any kind shall be permitted to extent beyond the lot lines.

4. GASES AND FUMES - No gases or fumes, toxic to persons or injurious to property shall be permitted to escape beyond the building in which they occur.
5. GLARE - No bright dazzling light produced by the industry shall be seen from any street or any residential area.

6. WATER POLLUTION - No industrial operation or activity shall discharge, or cause to be discharged, liquid or solid wastes into public waters unless in conformance with the provisions of the Stream Pollution Control Law of the State of Indiana (Chapter 214, Acts of 1943, as amended) and the regulations promulgated thereunder. Plans and specifications for proposed sewage and industrial waste treatment and disposal facilities shall be submitted to and approval obtained from the Stream Pollution Control Board of the State of Indiana.

7. FIRE HAZARDS - The storage, utilization or manufacture of solid materials or products ranging from incombustible to moderate burning is permitted.
   The storage, utilization or manufacture of flammable liquids or gases which produce flammable or explosive vapors, shall be permitted in accordance with State and Federal statutes and regulations.

8. PARTICULATE MATTER -
   Boiler-Generated - No particulate matter from a flue or stack leading from a boiler shall exceed .8 pounds per million BTU's.

Foundry-Generated - No particulate matter resulting from a foundry process shall exceed the following:

| Rate of Process (Pounds Per Hour) | Pounds of Particulate Matter Per Hour |
|---|---|
| 1,000 | 3.00 |
| 2,000 | 4.70 |
| 3,000 | 6.35 |
| 4,000 | 8.00 |
| 5,000 | 9.65 |
| 6,000 | 11.30 |
| 7,000 | 12.90 |
| 8,000 | 14.00 |
| 9,000 | 15.50 |
| 10,000 | 16.65 |
| 12,000 | 18.70 |
| 16,000 | 21.60 |
| 18,000 | 22.80 |
| 20,000 | 24.00 |
| 30,000 | 30.00 |
| 40,000 | 36.00 |
| 50,000 | 42.00 |
| 60,000 | 48.00 |
| 70,000 | 49.00 |
| 80,000 | 50.50 |
| 90,000 | 51.60 |
| 100,000 | 52.60 |

Incinerator-Generated - No particulate matter resulting from an incinerator with a capacity to process 200 or less pounds per hour shall exceed .3 pounds per thousand pounds of dry gas at standard conditions. All other incinerators shall not exceed five (5) pounds per thousand pounds of dry gas at standard conditions. Further, all incinerators shall have a primary and secondary combustion chamber.

All other processes - For all other processes, no particulate matter from any stack or flue shall exceed a level determined by the following formulae:

Process under 60,000 pounds per hour

$$E = 4.1P^{\frac{.67}{}}$$

Process over 60,000 pounds per hour

$$E = 55P^{\frac{.11}{}} - 4P$$

Where:
E = Rate of emissions in pounds per hour
P = Rate of process in pounds per hour

9. EXPLOSIVE MATERIALS - No activity involving the storage, utilization or manufacture of materials or products which decompose by detonation shall be permitted unless specifically licensed by the Council... Such activity shall be conducted in accordance with the rules promulgated by the State Fire Marshal and the State Administrative Building Council. Such materials shall include, but are not limited to, all primary explosives such as lead azide, lead styphnate, fulminated, and tetracene; all high explosives such as TNT, RDX, HMX, PETN, and picric acid; propellants and components thereof; such as nitrocellulose, black powder, boron hydrides, hydrazine and its derivatives; pyrotechnics and fireworks such as magnesium powder, potassium chlorate, and potassium nitrate; blasting explosives such as dynamite and nitrogylcerine; unstable organic compounds such as acetylides, tetrazoles, and ozonides; strong oxidizing agents such as liquid oxygen, perchloric acid, perchlorates, chlorates, and hydrogen peroxide in concentrations greater than thirty-five percent (35%); and nuclear fuels, fissionable materials and products, and reactor elements such as Uranium 235 and Plutonium 239.

10. If the State or Federal government shall adopt more restrictive environmental controls, those requirements shall apply to the provisions of this ordinance.

## 817 LOADING STANDARDS

**A. General**

There shall be provided off-street loading berths not less than the minimum requirements specified in this chapter 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.

**B. 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, nor shall it be located in a required front yard, or side yard adjoining a street.

**C. Size**

Off-street loading berths for over-the-road tractor-trailers shall be at least fourteen (14) feet in width by at least sixty (60) feet in length with a sixty (60) feet maneuvering apron, and shall have a vertical clearance of at least fifteen (15) feet. For local pick-up and delivery trucks, off-street loading berths shall be at least twelve (12) feet in width by at least thirty (30) feet in length with a thirty (30) feet maneuvering apron, and shall have a vertical clearance of at least fourteen (14) feet.

**D. 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 least interfere with traffic movements.

**E. Surfacing**

All open off-street loading berths shall be improved with a compacted base not less than six (6) inches thick, or equal, surfaced with not less than two (2) inches of asphalt, concrete, or some comparable all-weather, dustless material.

**F. 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.

**G. Off-Street Loading Berth Requirements**

| Minimum Number Required | Gross Floor Area |
|---|---|
| 1 | up to 40,000 sq. ft. |
| 2 | 40,000 to 80,000 sq. ft. |
| 3 | 80,000 to 120,000 sq. ft. |
| 4 | 120,000 to 160,000 sq. ft. |
| 5 | 160,000 to 240,000 sq. ft. |
| 6 | 240,000 to 320,000 sq. ft. |

One additional off-street loading space shall be required for each additional 80,000 square feet after 320,000 square feet.

## 818 MISCELLANEOUS RESTRICTIONS

**A. Through-Lots**

In the case of a through-lot, the area at each end of the lot between the setback line and the right-of-way line shall be considered as if it were a part of the front yard.

**B. Access to Public Streets**

Every principal building hereafter erected shall be on a zoning lot or parcel of land which adjoins a public street or a permanent easement of access to a public street; such easement to be at least twenty (20) feet wide unless a lesser width was duly established and received prior to the effective date of this ordinance.

**C. Residential Home Requirements**

1. All residential homes hereafter constructed shall be larger than 950 square feet of occupied space, shall be placed on a permanent foundation as described herein, and shall have a roof pitch and roofing materials as described herein.

2. All dwelling units must be at least 23 feet in width, with the front entrance facing the street or roadway, as per the designed floor plan of the home.

3. All residential homes shall have a roof composed of a material customarily used on site-built residential dwellings, such as asbestos, fiberglass, shake asphalt, or tile, which shall be installed onto a surface appropriately pitched for the materials used and not having a roof pitch of less than 2 ½ to one.

**D. Specific Standards for Manufactured Homes**

The establishment, location, and use of manufactured homes which have been constructed and manufactured after January 1, 1981 as scattered site residences shall be permitted in any zone permitting installation of a dwelling unit, subject to requirements and limitations applying generally to that residential use in the district and providing such homes meet the following requirements and limitations:

1. The home shall meet all requirements applicable to single-family dwellings and possess all necessary improvement location, building, and occupancy permits and other certificates required by the Code.
2. The home shall be larger than 950 square feet of occupied space as defined in IC 36-7-4-1106(a) or meet the minimum square footage requirements for the appropriate zone.
3. All dwelling units must have an underfloor space enclosure that serves as the foundation or weight-bearing and supporting foundation for the dwelling unit, and which totally encloses said underfloor space and removes from exterior view all underfloor space of the dwelling unit and which must be of continuous exterior masonry or concrete.
4. The home shall be attached and anchored to a permanent foundation in conformance with the regulation in the Indiana One and Two Family Dwelling Code and with manufacturer's installation specifications.
5. The home shall be covered with an exterior material customarily used on site-built residential dwellings, and this material shall extend over the top of the foundation (or meet the community's site-built residential dwelling home standards).
6. The home shall be located on the site with the front entrance door facing the street or roadway, as per the designed floor plan of the home.

**E. Pond Requirements**

If a pond is maintained on the property, either a retaining pond or a recreational pond, there shall be a setback of 50' from the property line to the edge of the dam and 50' from the road right-of-way, if applicable. If there is no dam or levee then the water must be 50' from the property line and 50' from the road right-of-way if applicable. All ponds must comply with the Jay County Drainage Ordinance.

**F. Satellite and Digital Dish Systems**

1. All satellite and digital dish receiving systems shall be located within the rear or side yard of any residential zoned lot.
2. In the case of a corner lot, the satellite receiving system shall not be placed in either yard adjacent to a street.
3. All satellite receiving systems shall be placed a minimum of five (5) feet inside the property line of the owner's lot. No system shall be placed in any right-of-way.
4. No satellite system, if elevated, shall exceed a height of 20 feet.
5. If affixed to a structure, digital dish systems shall be attached to a side or rear of the structure when possible.
6. A permit shall be obtained prior to the placement of any satellite dish system and a fee paid as specified in the official fee schedule maintained in the Office of Jay Co. / Portland Building & Planning Department .

**G. Awnings**

Fixed awnings conforming to the provisions of this section shall be permitted on all buildings.

1. Every fixed awning shall be located as to not interfere with the operation of any exterior standpipe, stairway, or exit from any building.
2. No fixed awning shall be used as a landing for any fire escape or exterior stair.
3. Fixed awnings, including supporting frames, arms, brackets, and other devices shall be constructed throughout of incombustible material, except that glass or fragile material shall not be used in any part of the awning.
4. No part of a fixed awning projecting over a public way shall be less than seven (7) feet above the existing or finished grade under that awning where pedestrian traffic is a consideration.
5. No part of a fixed awning projecting over a public way shall be less than fourteen (14) feet above the existing grade where vehicular traffic is a consideration.
6. The Zoning Administrator shall have the right to compel the removal of any awning erected, altered, or repaired in violation of this section.

**H. Accessory Buildings**

Accessory buildings shall not be located less than five (5) feet from any property line. Accessory structures shall be permitted on any lot provided any structure over 100 square feet in area (whether temporary or permanent) shall require a permit.

**I. Mobile Homes**

Mobile Homes are only allowed in a mobile home park in the jurisdictional area.

## 819 PARKING STANDARDS

### A. General

To reduce traffic problems and hazards by eliminating unnecessary on-street parking, every use of land must include on-premises parking sufficient for the needs normally generated by the use, as provided by this Chapter. Parking spaces or bays contiguous to the street, required by subdivision or other ordinances, are in addition to and not in place of the spaces so required.

### B. Parking Spaces

As used in this Chapter, the term "parking space" means an area, not including any part of a street or alley, designed or used for the temporary parking of a motor vehicle, with each parking space laid out in each of the following designs having the following minimum dimensions:

| | | |
|---|---|---|
| 1. | Handicapped | As per ADA and Indiana Accessibility Standards* |
| 2. | Parallel | 10 feet wide by 20 feet long |
| 3. | Right Angle ($90^0$) | 9 feet wide by 18 feet long |
| 4. | Sixty degree ($60^0$) | 9 feet wide by 18 feet long |
| 5. | Forty-five degree ($45^0$) | 9 feet wide by 22 feet long |

The length for the right angle, sixty degree, and forty-five degree parking space shall be measured at right angles to the edge of usable parking area forming the angles, exclusive of passageway.

All uses which are required to provide handicapped parking areas shall be required to (a) provide the minimum number of handicapped parking spaces required for said use, with each parking space conforming to the dimensions shown above. (b) show the proposed dimensions and location of all such handicapped parking spaces on all site plans, plats, and other plans which will be reviewed by the Commission or BZA; and (c) comply with all appropriate parking, traffic, safety, and handicapped accessibility codes.

Except for providing for the minimum number of off-street parking spaces required in this Chapter for residential uses (exclusive of any commercial or lodging operations associated with residential uses), parking spaces shall not be located in required front yards except in business and industrial districts.

Parking spaces for any commercial or lodging operations associated with a residential use shall be provided either in one of the side yards or the rear yard of such dwelling, substantially out of public view from (a) the street fronting the front yard or an interior lot (or both street frontages on a through-lot), and (b) both streets which front the side and front yards on a corner lot (or all street frontages on corner lots which run the entire length of a block).

Off-street parking shall be provided as shown in Table F. Refer to Table A in Section IV to determine which parking classification shall be met. (Example: if parking class is "3" for a use listed on Table A, the parking requirement found on Table F for the use "3" shall apply).

**C. Parking Areas**

As used in this Chapter, "parking area" means a group of parking spaces or an open area not including any part of a street or alley, designed or used for the temporary parking of motor vehicles.

Parking areas prescribed in this section for commercial and industrial uses must be located either on the premises of such commercial or industrial use or on a site approved by the Commission. Said off-street parking, however, must be located within three hundred (300) feet of the respective commercial or industrial site.

All parking lots for commercial, industrial, business, public and private employee parking, offices, and places of assembly, and all interior drives for commercial and light industrial developments must be paved with an impervious hard surface. In addition, all parking lots must also conform to all the following requirements:

1. Be striped so as to show each parking space;
2. Meet all of the parking space requirements in Table F;
3. Be constructed to allow proper drainage;
4. Be designed to prevent vehicles from having to back into public streets; and
5. No point of ingress or egress shall be allowed closer than twenty-five (25) feet of any right- of-way line of any intersecting street or alley.

A group of business and/or industrial uses may provide a joint parking area if the number of spaces required for all uses is adequate, and at least eighty percent (80%) of the total sum required for each use. The Zoning Administrator shall approve aggregate parking lots such as mentioned above.

A church or temple or like uses may request to the Commission a down-sizing of parking requirements if adequate parking is located near the use and which is available during the times of use by the church or temple.

All parking areas are encouraged to be located in the rear and side yards for all uses of property. The Commission shall hear requests for variations from this Chapter's requirements only if the parking areas are located in the side or rear lots; front lot parking shall have no flexibility.

**TABLE F - MINIMUM PARKING REQUIREMENTS**

**Residential Required Parking Spaces**

| | |
|---|---|
| 4 spaces | Per Single-Family Dwelling |
| 2 spaces | Per Household in a Two-Family Dwelling or Duplex |
| 2 spaces | Per Household in a Multi-Family Dwelling or Apartment |
| 2 spaces | Per Household in a Mobile Home Park or Retirement Community |

**Parking Standards Table F (Continued)**

**Spaces Required:** The minimum number of parking spaces required per property shall be determined by ***adding*** up the spaces required for each applicable statement in the table that follows:

| **Non-Residential Required Parking Spaces (sq. ft. indicates square feet of gross floor area)** | |
|---|---|
| **The following number of parking spaces is required...** | **...for every...** |
| 1 space | employee working on the largest shift |
| 1 space | business vehicle stored on-site |
| **...in addition to...** | **...for every** |
| 1 space | 3 seats in a restaurant, auditorium, gymnasium, church or movie theater |
| 1 space | 500 sq. ft. in all auto/boat/RV or farm implement sales facility show rooms |
| 1 space | item on display at an auto/boat/RV or farm implement dealership (to be used for each display item) |
| 1 space | 400 sq. ft. of gross floor area in all hardware home improvement, furniture, and large appliance stores |
| 1 space | 200 sq. ft. of gross floor area in all medical or dental office or clinic |
| 1 space | 200 sq. ft. of gross floor area in any fitness center, health spa, or entertainment center |
| 1 space | 250 sq. ft. in any administrative or professional business office, library, museum, or art gallery |
| 1 space | 200 sq. ft. in any car wash, repair, or modification center |
| 1 space | 300 sq. ft. of gross floor area in all convenience stores, banks, gas stations, grocery stores, department stores, and other retail facilities |
| 1 space | 6 children permitted by capacity in any day care facility |
| 1 space | sleeping unit in a hotel, motel, and bed and breakfast |
| 20 spaces | nine holes at any golf course |
| 2 spaces | classroom in elementary and middle schools or high schools with a gym or auditorium |
| 1 space | 4 students for which a high school without an auditorium or gym is designed |
| 1 space | 20 student for which a high school with an auditorium or gym is designed |
| 1 space | 4 students for which a community college, business, vocational, trade, or commuter-based school is designed |
| 1 space | 2 on-campus residents of a resident-student based college or university |
| 1 space | 100 sq. ft. of recreational area at a swimming pool or skating rink |
| 20 spaces | field or court at a sports facility |
| 1 space | 3 patient beds at a hospital or nursing home |
| 1 space | 200 sq. ft. in a personal service business, beauty or barber shop, or dry cleaners |
| 5 spaces | lane at a bowling alley |
| 1 space | 5000 sq. ft. at a self-storage facility |
| 1 space | for every 5 hanger or tie-down spaces at an airport or heliport |

## 820 SIGHT VISIBILITY STANDARDS

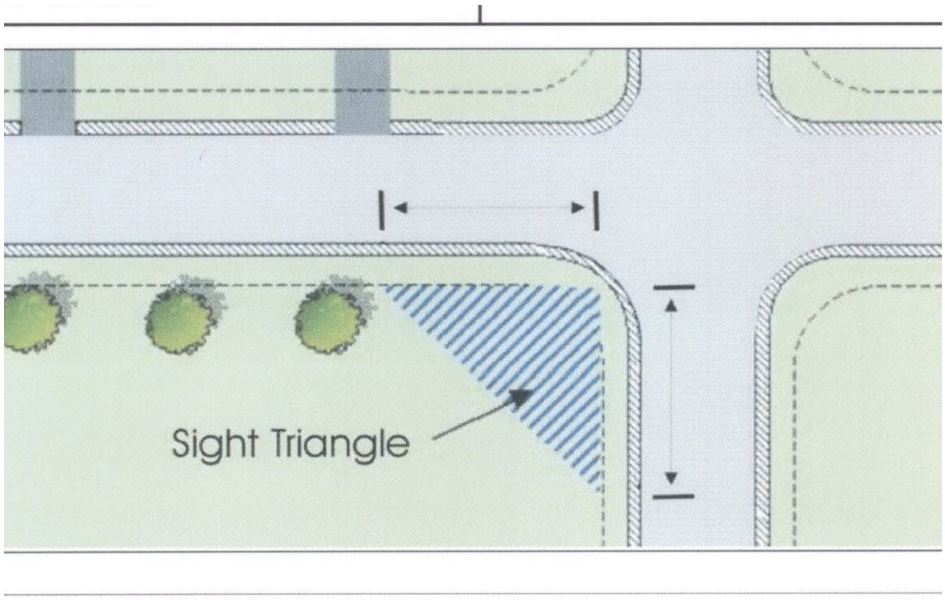
**PURPOSE:** The intent of this Chapter is to provide for a safe vehicular and pedestrian transportation system. The visibility at intersections, driveways, curb cuts, and entrances are particularly important for the safe movement of vehicles and pedestrians.

**A. Sight Visibility Requirements:** All intersections must maintain an area (Sight Visibility Triangle) where primary or accessory structures, fences, trees, vegetation (other than agricultural crops), or signs, (other than road signs), are not allowed to be placed or to project over a height of 2.5 feet measured from the nearest top-of-curb or edge of pavement where curbs are not present.

**B. Sight Visibility Triangle Dimensions:** The Sight Visibility Triangle shall be established by connecting points located along the intersecting rights-of-way at the distances from the point of intersection required by the Sight Triangle Dimensions table.

**Sight Triangle Dimensions**

| When the following type of street intersects any other type of street.. | | ...the distance from the point of intersection shall be... |
|---|---|---|
| Arterial | | 25 ft. |
| Collector / Local | | 25 ft. |
| Alley | | 10 ft. |



# *Article 9*

# Subdivision Control Ordinance

# Subdivision Control Ordinance of Jay County, Indiana

## Ordinance No. 1991-5

## As Amended By
## Ordinance 2002-04 / Adopted May 28, 2002

# JAY COUNTY
# SUBDIVISION CONTROL ORDINANCE
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# SUBDIVISON CONTROL ORDINANCE - JAY COUNTY, INDIANA

An Ordinance regulating the subdivision of land for the purpose of sale or building development; defining terms; providing regulations, requirements and design standards; prescribing procedures for the presentation, approval and recording of plats, and prescribing penalties for violations.

## ARTICLE 1-GENERAL PROVISIONS

**101** **SHORT TITLE**: This Ordinance shall be known and may be cited as the Subdivision Control Ordinance of Jay County, Indiana.

**102** **AUTHORITY:** This Ordinance is adopted pursuant to IC 36-7-4 and all amendments thereto.

**103** **PURPOSE:** This Ordinance is adopted in accordance with the Jay County Comprehensive Plan or the following purposes:

**103.1** To assist the orderly and efficient development of the County.

**103.2** To provide for the coordination of new thoroughfares with existing and planned thoroughfares.

**103.3** To promote the health, safety, and general welfare of the residents of the County.

**103.4** To ensure the coordination with and extension of community facilities and utilities.

**103.5** To secure equitable handling of all subdivision plans by providing uniform procedure and standards.

**104** **COMPLIANCE:** No lot in a subdivision shall be sold, no permit to erect, alter or repair any building upon land in a subdivision shall be issued, and no building shall be erected in a subdivision, unless and until a secondary subdivision plat has been approved and recorded, and until the improvements required by the Plan Commission in connection therewith have either been constructed or guaranteed, as herein provided.

**105** **SEVERABILITY:** If any provision of this Ordinance or the application of any provision to particular circumstances is held invalid, the remainder of the Ordinance or the application of such provision to other circumstances shall not be affected.

**106** **HARDSHIP:** Where, owing to special conditions, a literal enforcement of this Ordinance would result in unnecessary hardship, the Advisory Plan Commission may make such reasonable exception thereto as will not be contrary to the public interest, and may permit the sale of a lot, issuance of a permit, and erection of a building, subject to conditions necessary to assure adequate streets and other public improvements.

**107** **CONFLICT:** Whenever there in a difference between minimum standards or dimensions specified herein and those contained in other regulations, resolutions or ordinances of the Towns, City, County or State, the most restrictive standards shall govern.

**108** **JURISDICTIONAL AREA:** This Ordinance shall apply to all unincorporated land within Jay County not covered by the Ordinances of Portland, Indiana; Dunkirk, Indiana; Redkey, Indiana; Bryant, Indiana; and Pennville, Indiana.

**109** **REQUIRED NOTIFICATIONS:** In order that the Board of Commissioners of Jay County may be cognizant of the development within its jurisdiction, the Plan Commission shall forward a copy, when submitted, of the primary plats of all subdivisions, either minor or major upon receipt thereof, to the Board of Commissioners of Jay County and will, ten (10) days before secondary approval of either major or minor subdivisions is anticipated, notify said Board of Commissioners of said anticipated action.

# ARTICLE 2 - DEFINITIONS

**201** **WORD INTERPRETATIONS:** For the purpose of this Ordinance, the following terms have the meanings indicated below.

**201.1** The present tense includes the future tense.

**201.2** The singular number includes the plural, and the plural includes the singular.

**201.3** The word "shall" is mandatory; the word "may" is permissive.

**201.4** The word "used" includes "designed" or "intended to be used."

**202** **WORD DEFINITIONS:** Certain words used in this ordinance are defined below. Any word not defined as follows shall be construed in their general accepted meanings as defined by Webster's Dictionary.

**202.1** **Accepted Scales:** one inch (1") equals fifty feet (50'), one inch (1") equals one hundred feet (100'), and one inch (1") equals two hundred feet (200').

**202.2** **Agricultural Purpose:** The use of a tract of land for agricultural purposes only, including farming, dairying, pasturing, agriculture, horticulture, floriculture, viticulture, and animal and poultry husbandry.

**202.3** **Building Line:** A line drawn parallel to a lot line at a distance therefrom equal to the depth of the minimum required yard for the zone in which the lot is located as established by the Zoning Ordinance.

**202.4** **Commission:** Jay County Advisory Plan Commission.

**202.5** **Comprehensive Plan:** A composite of the mapped and written proposals recommending the physical development of Jay County which has been duly adopted by the County and is on file in the Office of the County Recorder.

**202.6** **Cross Walkway:** A strip of land dedicated to public use, which is reserved across block to provide pedestrian access to adjacent areas.

**202.7** **Director:** The Director of the Jay County Advisory Plan Commission who is appointed by the Plan Commission to administer the affairs of the Plan Commission.

**202.8** **Easement:** A grant by a property owner for the use of a strip of land by the general public, a corporation, or a certain person or persons for a specific purpose or purposes.

**202.9** **Feasibility Report:** A written report prepared by a professional engineer or land surveyor pertaining to the suitability of the site for various types of water and newer systems; for drainage retention or disbursement; and the subsoil conditions for various methods of street construction.

**202.10** **Lot:** A parcel or portion of land separated from other parcels or portions by a description as on a subdivision or record of survey map, or by metes and bounds for subdivision, any portion remaining to the owner and not intended for sale shall, nevertheless, be considered a lot.

**202.11** **Lot, Double Frontage:** A lot, other than a corner lot, which fronts on two streets.

**202.12** **No Access Easements:** Public easement along a public right-of-way across which access to the property is not permitted.

**202.13** **Owner:** Any individual, firm, association, syndicate, co-partnership or corporation having sufficient proprietary interest in the land sought to be subdivided, to commence and maintain proceedings to subdivide the same under this Ordinance.

**202.14** **Performance Guarantee:** Any guarantee which may be accepted in lieu of a requirement that certain improvements be made before the Commission approves the secondary plat, including by way of illustration but not limitation, performance bonds, escrow agreements, deposit agreements, and other similar collateral or surety arrangements approved as valid and enforceable by the County.

**202.15** **Primary Plat:** The map and supporting information indicating the proposed layout of the subdivision which is presented to the Commission for consideration and approval in accordance with these regulations.

**202.16** **Reserve Strip:** An area of land adjacent to a public right-of-way which is retained in ownership by the subdivider for the purpose of denying acess to the adjacent land.

**202.17** **RIght-Of-Way:** A strip of land appropriated for public use as a street, highway, driveway, alley or walkway or for any drainage or public utility purpose or other similar uses.

**202.18** **Secondary Plat:** A drawing, in final form, showing the subdivider's subdivision plan and containing all the information required to be presented to the Plan Commission for approval and which, if approved, may be duly filed or recorded by the applicant in the office of the County Recorder.

**202.19** **Sewage Disposal Report**: A report of the suitability of the soil for on-lot septic systems, based on a mechanical analysis, soil classification, or other methods as determined acceptable by the Commission.

**202.20** **Sketch Plan:** A sketch plan of a proposed subdivsion used to show the Plan Commission the location, proposed street and lot layout, and any other significant features of the proposed subdivision.

**202.21** **Street:** The space or area between the lot lines, abutting upon a right-of-way and designed as a way for vehicular traffic, whether designated as an alley, street, highway, throughway, freeway, expressway, road, avenue, boulevard, lane, place, or however otherwise designated and which shall include, but not be limited to, those illustrated in the Comprehensive Plan for Jay County. For the purpose of this Ordinance, streets shall be classified as follows:

**202.21a** **Principal Arterials** are limited-access highways which carry large volumes of interstate traffic and have more importance regionally than locally. They often contain four or more moving lanes and permit a continuous high speed traffic flow. These highways have a high order of design and construction requirements.

**202.21b** **Minor Arterials** are those Federal and State roads of regional importance. These are high capacity highways moving traffic at fast rates of speed. They provide good continuity between distant points and are constructed to high standards. Arterial Highways provide two to four traffic lanes and should have a median strip whenever possible. Crossing traffic from other roads and access to abutting properties is often controlled or partially so.

**202.21c** **Major Collector Highways** have less regional importance than the Arterial Highways and more county or inter-county significance. They are medium capacity highways, moving traffic at relatively fast rates of speed. They include both State-designated routes and County roads. Major Collector Highways provide two traffic lanes.

**202.21d** **Minor Collector Roads** are moderate capacity thoroughfares designed to accommodate relatively low speed traffic. They should, however, provide a smooth flow of traffic. Two moving lanes, unseparated, but wider than Local Road lanes are required.

**202.21e** **Local Roads** are low capacity and low speed roads whose function is to provide direct access to homes and property. Through-traffic and heavy use of these roads should be discouraged. To the extent possible, residence driveways and ingress and egress points to other uses or structures should be oriented to the Local Roads rather than to the Arterials or Collectors.

**202.21f** **Marginal Access Streets** are Local Roads which are parallel to the adjacent to arterial streets and highways, and which provide access to abutting properties and protection from through-traffic.

**202.21g** **Cul-de-Sac Street** is a Local Road with only one outlet, having a paved, circular turn-around area at the closed end.

**202.21h** **Alley** is a minor way which is used primarily for vehicular service access to the back or side or properties otherwise abutting on street.

**202.22** **Subdivider:** The registered owner or the authorized agent of the registered owner of a subdivision being responsible for preparing and recording the plat of the subdivsion and for carrying out all appropriate requirements outlined in these regulations for the subdividing of land.

**202.23** **Subdivision:** The division by conveyance of a single lot, tract, or parcel of land or a part thereof, shown as a unit on the last preceding transfer of ownership record, into more than three (3) lots, tracts or parcels of land any one of which is less than 10 acres in area in any 18-month period of time for the purpose, whether immediate or future, of transfer of ownership for residential, commercial, or industrial purposes.

Provided, however, that "subdivision" shall not include (1) divisions of land for agricultural purposes only, unless any new street or new easement of access is required; and (2) the sale or exchange of lots between adjoining landowners that do not create additional building sites.

A subdivision shall be considered either a "minor subdivision" or a "major subdivision". A minor subdivision is the division of a single lot into 3 or less lots which:

1. Do not require any new streets
2. Do not require new public water facilities; or
3. Do not require new sewer facilities.

Any other subdivision shall be considered a "major subdivision".

All division of land meeting the above described definitions shall have, after the enactment of this Ordinance, a plat recorded in the Office of the Recorder of Jay County, Indiana. Said plat shall comply with all provisions of this Ordinance and any amendments hereto.

# ARTICLE 3 - MINOR SUBDIVISION

## 301 SUBMISSION

**301.1 Plat:** A subdivider shall submit to the Plan Commission office a plat drawn on reproducible material, eighteen (18) inches by twenty-four (24) inches, at an accepted scale and five (5) prints of the plat showing:

a Legal description of the minor subdivision
b. Lot numbers
c. Easements
d. Right-of-way line
e. Land surveyor's certification and seal
f. Deed of dedication
g. Owner's certification
h. Notary seal
i. Scale, graphic scale, north point, and date.

**301.2 Supporting Data:** In addition to the minor plat, the subdivider shall submit one copy of the supporting data drawn at an accepted scale showing:

a. Legal description and tract boundary drawing of the entire property which is being subdivided.
b. Significant physical and topographical features of the tract.
c. The name of the owners of adjoining property.
d. If the property is adjacent to land presently being developed, a proposed street and lot arrangement of the entire tract with the minor subdivision lots clearly identified.
e. The adjoining road and the nearest major intersection.
f. Name and address of subdivider.
g. Type of sewage disposal system proposed.

## 302 REVIEW PROCEDURE

**302.1** Upon receipt of a minor plat, the Zoning Administrator shall review the minor plat and determine whether or not the following conditions have been satisfied:

a. That the subdivision will not impede the normal and orderly development of improvements of the parcel or surrounding properties.
b. That necessary and adequate utilities and drainage facilities have been or are being provided.
c. That adequate measures will be taken to provide ingress and egress to the remainder of the parcel and surrounding properties.
d. That the subdivision will not be detrimental to or endanger the public health, Minor Subdivision safety, or general welfare.

**302.2** If the Zoning Administrator finds that the proposed minor subdivision meets all the requirements as set forth in this Article and any applicable provisions of Articles 5 and 6, he shall approve the plat and fix the Commission's seal upon the plat along with a certificate of approval.

**302.3** If the Zoning Administrator finds that the proposed subdivision does not meet all the requirements as set forth in this Article or in Articles 5 and 6, he shall disapprove the plat, set forth the reasons in writing, and provide the subdivider with a copy. The subdivider may appeal any decision of the Zoning Administrator to the Plan Commission.

**302.4** Upon approval of the Zoning Administrator, the developer or subdivider shall record the plat with the County Recorder within six (6) months. If not recorded within this time, the approval shall be null and void unless renewed.

## 303 WAIVER OF REQUIREMENTS:

The Plan Commission is hereby authorized to waive any or all requirements of this Section when a literal enforcement of Article three (3) would result in unnecessary hardships and when such waiver will not be contrary to the public interest.

# ARTICLE 4 - MAJOR SUBDIVISION - PRIMARY PLAT

**401** **SKETCH PLAN:** Prior to the submission of a major subdivision plat, the subdivider is encouraged to submit a sketch plan and a soils report and consult informally with the Zoning Administrator. This will enable the subdivider to become familiar with the general requirements and condition which might affect the subdivision and thus avoid unnecessary revisions. The sketch plan should be in a tentative form with sufficient detail for review and comments.

**402** **SUBMISSION:** At least fifteen (15) days prior to the regular meeting of the Commission, the subdivider shall submit a written application for primary plat approval together with the following:

**402.1** **Primary Plat:** Ten (10) copies of the primary plat drawn on material twenty-four (24) inches by thirty-six (36) inches, at a minimum scale of 1"= 100' and encompassing all contiguous parcels of property owned by or under the control of the subdivider and showing the following:

a. Proposed name of subdivision
b. Location by township, section, town and range, or by other legal description
c. Name and address of subdivider
d. Name, address and registration number of surveyor
e. Graphic scale, northpoint and date
f. Boundary line of subdivision
g. Boundary line of adjacent tracts of unsubdivided or subdivided land, showing ownership where possible.
h. Existing zoning of proposed subdivision and adjacent tracts.
i. Topographic contours at 5 feet intervals except where the topography of the tract demands 2 feet contour intervals as determined by the Plan Commission.
j. All existing permanent features either natural or manmade that may influence the design of the subdivision, such as watercourses, tree groves, swamps, outstanding natural topographic features, power transmission towers, scenic or historic areas, existing buildings, sewers, water mains, culverts, utility lines, and fire hydrants. Where underground utilities exist within or adjacent to the tract, the approximate location, pipe size, and direction of flow shall be indicated.
k. Location, width, and names of all existing or prior platted streets or other public ways, railroad and utility rights-of-way, parks or other public open spaces, permanent buildings or structures, and section or corporate lines, on or within two hundred (200) feet of the subdivision
l. The layout of all proposed and existing lots with appropriate dimensions including the minimum lot area in square feet for the smallest lot(s) in the subdivision and the proposed front yard setback lines.
m. Layout of streets, widths of rights-of-way, proposed cross-sections of roadways, and also the widths of cross-walkways and easements.
n. Parcels of land intended to be dedicated or temporarily reserved for public use or set aside for use of property owners in the subdivision.

**402.2** **Soils Report:** A soils report from the technical personnel of the Jay County Soil and Water Conservation District is required. This report shall indicate the degree of limitations of the soils in the proposed subdivision with respect to the proposed building development, road construction, drainage, sewage disposal system, erosion control, and such other information that might assist the Plan Commission in its review of the primary plat.

**402.3** **Watershed Map:** A watershed map using USGS contour information and showing:

a. Delineation of the drainage area in which the subdivision is located.
b. Location of drainage courses or reaches within the drainage area.

**402.4** **Engineering Feasibility Report:** A feasibility report including but not limited to the following:

a. **Existing System:** The feasibility of connecting to an existing sewage system and water supply. This portion of the study shall include the distance to the nearest public sewer, its capacity and present load, and its capacity to handle the additional sewage load created by the subdivision. The same information shall be submitted for water supply. A letter from the accepting sewage and/or water authority allowing connection with the systems or demonstrating sufficient capacity will also meet this requirement.
b. **Community System:** If connection to an existing sewage or water system is not feasible, the feasibility of constructing a community sewerage and water system shall be studied. The study shall give consideration to treatment works, receiving stream, lagoon, etc. and community water supplies.
c. **Drainage Facilities:** A study of the storm water drainage for the area, a method of dispersion or retention and adequacy of downstream facilities. This study shall give consideration to both water entering the subdivision from adjacent land and water within the boundaries of the subdivision.
d. **Street Construction:** A preliminary report on the type(s) of street construction based on the specifications outlined in Article 6.

## 403 REVIEW PROCEDURE:

**403.1** Upon receipt of an application for primary plat approval, the Zoning Administrator shall review the primary plat and make a report to the Commission within fifteen (15) days after the final filing date.

a. If the Zoning Administrator finds that the primary plat has been prepared in accordance with the terms of this ordinance, he shall forward a report so stating to the Commission for consideration.
b. If the Zoning Administrator finds that the primary plat has not been prepared in accordance with the terms of this Ordinance, he shall return the plat to the subdivider with a written specification of the items of non-conformance and shall submit a copy of same to the Commission.

**403.2** The Commission shall set a date for a hearing at which the proposed plat will be publicly examined. Notice of such public hearing shall be given by the Zoning Administrator as follows:

a. By publication in accordance with the law;
b. To the applicant, in writing, by means of regular United States mail, postage prepaid, addressed to the applicant at the address listed in the application for approval; and
c. To such other persons (i.e., adjacent property owners) as the Commission may designate by rule or regulation duly adopted.
d. The Commission shall send a copy of the plat and written notice of the date, place and time of the public hearing thereupon, to all public agencies and governmental units having a probable interest in the proposed subdivision and plat, requesting their written comments with regard to the primary plat proposed by the applicant.

**403.3** Following the public hearing, the Commission may then approve the primary plat (grant plat approval), approve subject to conditions, or refer it back to the Zoning Administrator for review or study on a specific technical matter, or disapprove it. The Commission may require such changes or revisions as are deemed necessary in the interest and needs of the community.

Approval of a primary plat shall not constitute approval of a secondary plat. Rather, it shall be deemed an expression of approval to the layout submitted on the primary plat as a guide to the preparation of the secondary plat and shall permit the subdivider to proceed with construction of permanent improvements for which designs and specifications shall have been approved by the appropriate agencies. Approval of the primary plat will terminate two (2) years after the date of approval unless further extended by the Commission upon written request of the subdivider.

**403.4** Upon approval of the plat, the Commission will indicate upon each copy that it has been approved. One copy shall be returned to the subdivider along with a written statement indicating the action taken by the Commission. If approved with conditions, a written copy of the conditions shall accompany each copy of the approved plat. If disapproved the Commission shall return to the subdivider three (3) copies of the plat marked "Disapproved by the Jay County Advisory Plan Commission," along with a written statement indicating the reason or reasons for its disapproval.

# ARTICLE 5 - MAJOR SUBDIVSION - SECONDARY PLAT

**501** **GENERAL:** The secondary plat will not be considered for approval until the action taken by the Commission on the required primary plat has been completed. When the secondary plat submitted does not substantially conform to the approved primary plat, the subdivider shall not file an application for secondary plat approval until said primary plat has been amended in accordance with the same procedure required for primary plat approval.

**502** **PHASING:** The subdivider may request secondary plat approval for all or any portion of the approved primary plat, provided, however, that submission of a secondary plat covering only a portion of the area contained in the approved primary plat may be permitted only after consideration of the effect of the continuity of roads, utilities and services.

**503** **SECONDARY PLAT:** At least fifteen (15) days prior to the regular meeting of the Commission, the subdivider shall submit for secondary plat approval the original ink drawing on tracing cloth or film, a maximum of twenty-four (24) inches by thirty-six (36) inches, at a scale of 1"-100, and five (5) prints of the plat. Said plat shall include:

**503.1** Name of subdivision

**503.2** Location by section, township and range, and the legal description of the property platted.

**503.3** The name and certification and signature of the Land Surveyor preparing or certifying the plat (Appendix A).

**503.4** Scale shown graphically, date, and northpoint.

**503.5** Boundary of plat, based on an accurate traverse, with angular bearings and lineal dimensions (metes and bounds description).

**503.6** Exact location, right-of-way width and name of all streets within and adjoining the plat, and the exact location and width of all alleys and walks.

**503.7** True angles, bearings, and distances (metes and bounds) to the nearest established street lines or official monuments, which shall be accurately described in the plat. Also, the locations of the subdivision cornerpoints and the location at the elevation benchmarks.

**503.8** Municipal, township, county or section lines, or previously platted land accurately tied to the lines of the subdivision by distances and bearings.

**503.9** Radius of intersection, tangent length, length of curve, P.C.'s and P.T.'s, radii, bearings, tangent bearings and lengths of all arcs.

**503.10** All easements for rights-of-way provided for public services, activities and utilities.

**503.11** All lot numbers and lines, with accurate dimensions in feet and hundredths.

**503.12** Accurate location of all monuments.

**503.13** Accurate outlines of any area other than public ways to be dedicated or reserved for public or semi-public use, with the purposes indicated thereon; and for any areas to be reserved for use of all property owners.

**503.14** Building setbacks, accurately shown with dimensions which are not in conflict with the Zoning Ordinance.

**503.15** Acknowledgment, by owner, as required by law of the adoption of the plat and the dedication of streets, other public areas, and utility and drainage easements (See Appendix B).

**503.16** Each secondary plat submitted to the Commission for approval shall carry a certificate signed by the owner (Appendix C).

**503.17** A notarized statement indicating that the applicant is the owner of the land to be subdivided and that the subdivision shown on the recording plat is made with his or their free consent (Appendix C). .

**503.18** Proper form for the acceptance of dedications by the Board of County Commissioners or Town Council (Appendix D).

**503.19** Restrictive form for the approval of the Commission (Appendix E).

**503.20** Restrictive covenants regulating the use and development of the lots shall be lettered on the plat or made a part thereof, subject to the approval of the Commission. Said protective covenants shall include the clauses as outlined in Articles 5 and 6.

**504** **ENGINEERING PLANS:** Engineering plans which include, when applicable, street plans, profiles and cross-sections, sanitary sewer plans and profiles, water plans, sidewalk plans and cross-sections, street and sidewalk lighting fixture locations. Also include the following:

a. **Drainage Plan:** A drainage plan drawn at an accepted scale and showing:

1. Natural watercourses, marshes, etc.
2. Existing drainage facilities, culverts, etc.
3. Proposed contours and subdivision grading plan using the same contour intervals as shown on the primary plat.
4. Proposed drainage plan for the subdivision and analysis of existing drainage facilities to nearest watercourse, showing culverts, retention ponds, etc.
5. Storm sewer plan and profile.

b. **On-Lot System:** If connection to a public or a private sewerage system is not feasible, a report on the feasibility of on-lot sewage disposal, including a detailed map of the physical conditions of the site, contours, finished grades, watercourses, groundwater table elevations, and the results of soil percolation tests for each individual lot conducted in accordance with the recommended practices of the Indiana Dept. of Environmental Management.

c. **Erosion Control Plan:** An erosion control plan drawn at an accepted scale showing the following:

1. Soil areas which, according to the soil maps and interpretations prepared by the U.S.D.A. Soil Conservation Service, are subject to erosion by wind or water.
2. A proposed plan for adequately controlling erosion during construction, and stabilizing these areas after construction. These erosion control measures shall be in accordance with standards and specifications on file in the Jay County Soil and Water Conservation District Office.

**505** **SECONDARY PLAT APPROVAL PREREQUISITE:** Prior to the Commission action on the application for secondary plat approval, the Commission shall have received notice from the Board of County Commissioners or Town Council that there has been filed with and approved by said Board or Council either a performance guarantee or a completion affidavit.

**506** **PERFORMANCE GUARANTEE:** If the subdivider files a performance guarantee (Appendices F and G) to the Board of County Commissioners or Town council for approval, with the subdivider or some other person satisfactory to the Board or Council as principal, the performance guarantee shall:

a. Run to the County Board of Commissioners or Town Council.
b. Be in an amount equal to one hundred percent (100%) of the cost, as estimated by the Board of County Commissioners or Town Council, or certified by the developer's engineer, of all improvements and installations as required by Article 6 of this Ordinance, excluding, however, the cost of any said required improvements and installations which have been constructed, installed and complete in compliance with the requirements of this Ordinance prior to the providing of this bond and for which sufficient written proof of such construction, installations and completion and acceptance has been furnished the Commission.
c. Be with surety satisfactory to the Board of County Commissioners or Town Council.
d. Run until and terminate sixty (60) days after the filing with the Commission of the completion affidavit obtained from the Board of County Commissioners or Town Council.

**506.1** Any funds received from the performance guarantees required by this Ordinance shall be used only for the purposes of making the improvements or installations for which said guarantees were provided and in accordance with the standards, specifications and requirements of this Ordinance.

**507** **COMPLETION AFFIDAVIT:** If the subdivider files a completion affidavit (Appendix H) to the Board of County Commissioners or Town Council for approval, the subdivider shall certify to the effect that the streets, sewers, water facilities, monuments and other utilities and facilities that have been required as a precedent to approval have been accepted for public maintenance and have been graded, improved and installed in accordance with the specifications of this ordinance.

**507.1** **Maintenance Guarantee:** Acceptance of said improvements, whether before or after Secondary Plat Approval, shall be conditional and is based upon the posting of a maintenance guarantee (Appendices X and J) with said Board or Council, with the subdivider or some other person satisfactory to the Board or Council as principal, which shall:

a. Run to the County Board of Commissioners or Town Council.
b. Be in an amount equal to twenty-five percent (25%) of the cost, as estimated by the Board of County Commissioners or Town Council, of all improvements and installations as required by Article 6 of this ordinance.
c. Be with surety satisfactory to the Board of County Commissioners or Town Council.
d. Warrant the workmanship and all materials used in the construction, installation and completion of said improvements, and installations to be of good quality and have been constructed and completed in a workmanlike manner in accordance with the standards, specifications and requirements of this Ordinance and the satisfactory plans and specifications therefore submitted and satisfactory to the Commission and the Board of County Commissioners or Town Council.
e. Provide that for a period of not less than three (3) years after said installations and improvements have been completed or are accepted for public maintenance by the Board of County Commissioners or Town Council, the applicant will, at his own expense, make all repairs to said improvements and installations, or the foundations thereof, which may become necessary by reason of improper workmanship or materials, but not including damage to said improvements and installations resulting from forces or circumstances beyond the control of said applicant or occasioned by the inadequacy of the standards, specifications, or requirements of this Ordinance.

**507.2** Any funds received from the maintenance guarantee required by this Ordinance shall be used only for the purpose of making repairs for which said guarantees were provided and in accordance with the standards, specifications and requirements of this Ordinance.

## 508 REVIEW PROCEDURE:

**508.1** Upon receipt of an application for secondary plat approval, the Zoning Administrator shall review the secondary plat and make a report to the Commission within fifteen (l5) days after the final filing date.

a. If the Zoning Administrator finds that the secondary plat has been prepared in accordance with the terms of this Ordinance, he shall forward a report so stating to the Commission for consideration.
b. If the Zoning Administrator finds that the secondary plat has not been prepared in accordance with the terms of this Ordinance, he shall submit to the subdivider a written specification of the items of nonconformance and shall submit a copy of same to the Commission.

**508.2** The Commission shall, upon the filing of an application for secondary plat approval, review the secondary plat along with the accompanying data, hear the report of the Zoning Administrator, and determine whether or not the secondary plat meets all minimum requirements and standards of this Ordinance and of all other applicable Ordinances in the County. The Commission shall then take one of the following actions on the secondary plat within thirty (30) days after its submission or a mutually agreed upon extension.

a. **Conditional Approval:** If the Commission determines that upon the satisfactory completion of one or more specified conditions consistent with the requirements, standards and specifications of this ordinance, said secondary plat would comply with the terms of this Ordinance, the Commission may give conditional approval to said plat. Conditional approval of a secondary plat may include a construction agreement which is acceptable to the Commission and would permit the subdivider to proceed with the installation of improvements prior to recording. Written notices of such conditional approval shall constitute formal authorization to the subdivider to construct and install all or a part of the required improvements, subject to inspection and acceptance procedures required by this Ordinance. The subdivider shall furnish sufficient evidence to the Commission of the satisfactory completion of such conditions before said plat will be deemed "approval for record".
b. **Secondary Approval for Record:** The Commission shall approve the secondary plat for record only after it has determined that the secondary plat meets the minimum requirements of this Ordinance and all applicable ordinances in the County and that sufficient performance guarantees have been submitted in accordance with this Article.
c. **Disapproval:** Should the Commission decide to disapprove the plat, written notice of such action, together with reasons therefore, shall be transmitted to the subdivider. Such action shall also be entered on the official records of the Commission; provided, however, that nothing contained therein shall prejudice the subdivider's ability to make reapplication for secondary plat approval according to the terms of this Ordinance.
d. **Refer to Zoning Administrator:** Should the Commission have a question regarding a specific technical aspect of the plat which had not previously been studied by the Zoning Administrator, the Plan Commission may refer the plat along with a detailed statement of the question to the Zoning Administrator for a finding.

**508.3** Upon approval of the secondary plat, the Commission shall indicate upon each copy that it has been approved. One copy shall be returned to the subdivider, along with the written statement indicating the action taken by the Commission if approved with conditions, a written copy of the conditions shall accompany each copy of the Approved Secondary Plat.

**508.4** Approval of a secondary plat by the Commission shall not be construed as an acceptance by the public of the offer of dedication of any street improvement, way, place, structure, utility improvement, or open space improvements, within such areas shown upon the plat unless such acceptance is endorsed by the Board of County Commissioners, or Town Council by written notice of approval then add to the original tracing of the secondary plat.

**508.5** After the Commission has granted approval of the secondary plat for record, the officers shall affix their signatures to the original tracing and the subdivider shall record the plat with the Recorder of the County within six (6) months. If not recorded within this time, the approval shall be null and void.

The subdivider shall pay the recording fee and file with the Commission four (4) prints of the Approved Plat, including restrictive covenants, as recorded one reproducible print of the plat, as recorded, shall be filed and retained in the Office of the County Surveyor of the County. Until such prints have been so filed, no improvement location permit, occupancy permit, or other such permits shall be issued for any lot shown upon said plat.

# ARTICLE 6 - DESIGN PRINCIPLES AND STANDARDS

## 601 GENERAL:

**601.1** In determining whether an application for approval shall be granted, the Commission shall determine that the plat conforms to the principles and standards required in this Article, which shall be deemed as minimal; and whenever the applicable requirements of other County or Town Ordinances are more restrictive, those requirements shall control any application for plat approval.

**601.2** In the subdividing of any land, due regard shall be shown for all natural features, such as tree growth, watercourses, historic spots, or similar conditions which, if preserved, will add attractiveness and value to the proposed development.

**601.3** Due consideration shall be given to the prevention of air and stream pollution, proper treatment and disposal of refuse and other waste, and the elimination of other blighting characteristics.

**601.4** The subdivision layout shall be of such a character that it protects the health, safety, and general welfare of the County and its residents.

**601.5** In designing a street system, the subdivider shall be guided by the following principles:

a. Adequate vehicular and pedestrian access shall be provided to all parcels.
b. Local or residential street systems shall be designed to minimize through traffic movement, but street connections into and from adjacent areas may be required.
c. Local street patterns shall provide reasonable direct access to the primary circulation system.
d. Local circulation systems and land development patterns shall not conflict with the efficiency of bordering arterial routes.
e. Elements in the local circulation system should be designed with the least amount of interruptions possible in order to function effectively and safely.
f. Traffic generators within residential areas shall be considered in the design of the circulation pattern.
g. The planning and construction of residential streets shall clearly relate to their local function.
h. Local streets shall be designed to discourage excessive speeds.
i. Pedestrian-vehicular conflict points shall be minimized.
j. The space devoted to street uses shall be minimized.
k. The number of intersections shall be minimized.
l. Local streets shall be related to the topography.

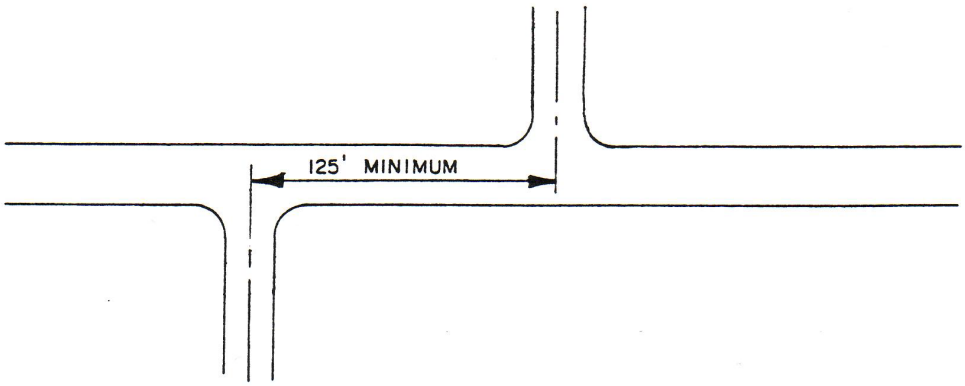
## 602 GEOMETRIC STREET STANDARDS:

**602.1** All dedicated rights-of-way shall conform to the following minimum dimensions:

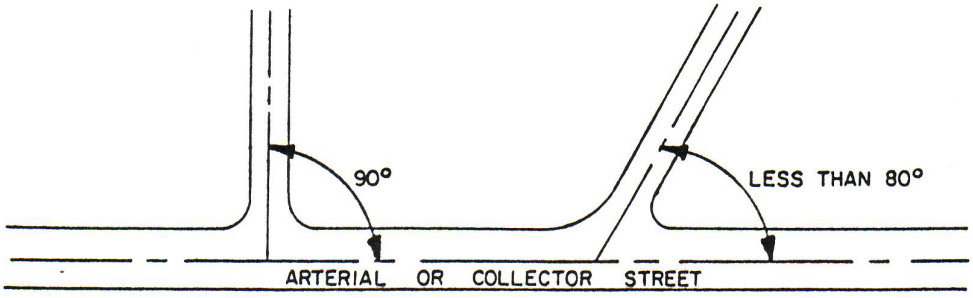
Arterial Streets .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. 130 feet
Major Collector Streets .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. ..100 feet
Minor Collector Streets .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. 70 feet
Local Streets (curb and gutter) .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .50 feet
Local Streets (side ditches) .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. ... ..60 feet
Cul-De-Sacs .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. ..50 feet*
Crosswalks .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. 10 feet
Utility Easements .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. 15 feet

*Radius

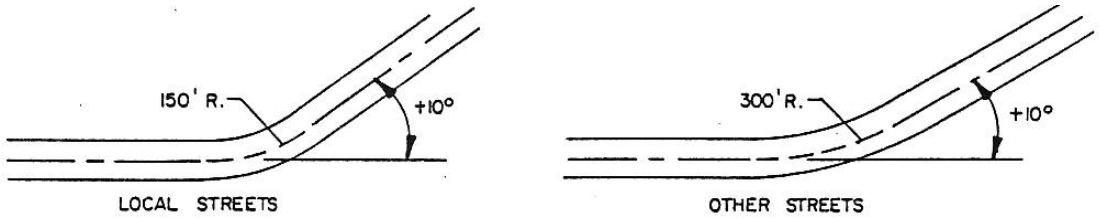
**602.2** Street jogs with centerline offsets of less than 125 feet shall not be permitted.



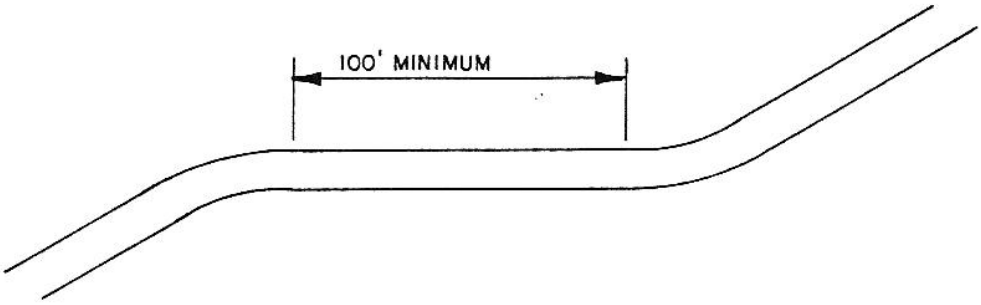

**602.3** All streets shall intersect at 90 degrees whenever possible for a minimum distance of 100 feet.



**602.4** To insure adequate sight distance, when the street centerlines deflect more than 10 degrees, connections shall be made by horizontal curves. The minimum centerline radius for local residential streets shall be 150 feet and for all other streets shall be 300 feet.




**602.5** A tangent of at least 100 feet shall be introduced between reversed curves on local and collector streets.




**602.6** Clear visibility, measured along the centerline of the street, shall be provided for at least 300 feet on all arterial streets, 200 feet on collector streets, and at least 100 feet on all local streets.

**602.7** The maximum vertical grade for arterial streets shall not exceed 7 percent.

**602.8** The maximum length cul-de-sac shall not exceed 800 feet measured along the centerline from the intersection at origin through center of circle to end of right-of-way. Each cul-de-sac shall have a terminus of nearly circular shape with a minimum right-of-way diameter of 100 feet for residential use and 120 feet for industrial use, unless the Commission approves an equally safe and convenient form of space instead of the required turning circle.

## 603 GENERAL STREET STANDARDS AND REQUIREMENTS

**603.1** Only one street, driveway or point of vehicle access shall be permitted from a subdivision onto a Major Collector Street or an Arterial Street or road. Two or more streets, driveways, or points of vehicle access may be permitted by the Commission only if they are definitely needed to improve the safety and traffic circulation in the area.

**603.2** No street names may be used which will duplicate, or be confused with, the names of existing streets, unless for special reasons to be considered as exceptions by the Commission. The streets which are logical extensions or continuations of, or obviously in alignment with, any existing streets, either constructed or appearing on any validly recorded plat, shall bear the names of such existing streets.

**603.3** Rights-of-way for proposed streets shall be extended to the boundary lines of the proposed subdivision so that a connection can be made to all adjacent properties unless such extension in not feasible because of topography or other physical conditions, or unless, in the opinion of the Commission, such extension is not necessary or desirable for the coordination with existing streets or the most advantageous development of adjacent tracts. In any event, no subdivision shall be designed so as to create or perpetuate the land-locking of adjacent undeveloped land.

**603.4** A temporarily dead-ended street shall be permitted in any case in which a street is proposed to be and should logically be extended but is not yet constructed. An adequate easement for turn-around shall be provided for any such temporary dead-end street which extends 200 feet or more in length. Such easement shall be automatically vacated to abutting property owners when said dead-ended street is legally extended.

**603.5** In subdivisions that adjoin or include existing streets that do not conform to the minimum right-of-way dimensions as established by this Ordinance, the subdivider shall dedicate additional width along either one or both sides of such streets of inadequate width so as to bring them up to standards, provided the area to be used for widening is owned by the subdivider or under his control.

**603.6** The following paragraphs shall be required as a provision of the restrictive covenants of all plats to which they apply and shall be in conformance with the requirements of the Zoning Ordinance.

a. No fence, wall, hedge, tree or shrub planting which obstructs sight lines and elevations between 2.5 and 8 feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting points 40 feet from the intersection of said street lines (40 feet for local streets and 75 feet for collector or arterial streets), or in the case of a rounded property corner, from the intersection of the street right-of-way lines extended.
b. Sight line limitations shall also apply within 10 feet of the intersection of a street right-of-way line with the edge of a driveway pavement or alley line. No driveway shall be located within 70 feet of the intersection of two street lines.

## 604 BLOCK STANDARDS

**604.1** Block length and width or acreage within bounding streets shall be such as to accommodate the size of lot required in the area by the Zoning Ordinance and to provide for convenient access, circulation control, and safety of street traffic. Blocks that are unreasonably large or small will not be approved.

**604.2** The maximum block length shall be 1,200 feet. In the design of blocks longer than 800 feet, the Commission may specify the provision of pedestrian crosswalks near the center, or wherever most useful to facilitate pedestrians' circulation to a school, park, recreation area, shopping center, or other significant neighborhood destination.

**604.3** Residential blocks shall be of sufficient depth to accommodate two tiers of lots of minimum depth, except where reverse frontage lots bordering a freeway, arterial street, or floodplain are used and shall be in conformance with the requirements of the Zoning Ordinance.

**604.4** No specific rule concerning the shape of blocks is made, but blocks must fit easily into the overall plan of the subdivision, and their design must evidence consideration of lot planning, traffic flow, and public areas.

## 605 LOT STANDARDS

**605.1** Subdivision lots shall be adequate for the type of development and land use proposed and shall conform to the Zoning Ordinance requirements.

**605.2** The lot size, width, depth, shape, grade, location and orientation shall be in proper relation to street and block design and to existing and proposed topographical conditions.

**605.3** Every lot or parcel shall have sufficient frontage and access to a public street designated, designed and improved in accordance with the terms of this Ordinance.

**605.4** The depth to width ratio of any single-family residential lot shall not be greater than three to one for any lot smaller than one acre and shall be in conformance with the requirements of the Zoning Ordinance.

**605.5** The minimum lot width shall conform to the Zoning Ordinance Requirements.

**605.6** The minimum yard sizes (setback lines) required for each lot shall be in conformance with the requirements of the Zoning Ordinance.

**605.7** Corner lots shall be sufficiently larger than interior lots to allow maintenance of setback lines on both streets and shall be in conformance with the requirements of the Zoning Ordinance.

**605.8** Side lines of lots shall be approximately at right angles or radial to the street line.

**605.9** Lots abutting a watercourse, drainageway, channel or stream shall have additional width or depth as required to provide an adequate building site and provide the minimum usable area for front, rear and side yards.

## 606 EASEMENTS

**606.1** Adequate areas of suitable size and location shall be allocated for utility easements. As a general principal, such easements shall be at least 15 feet in width, shall provide reasonable continuity from block to block, and shall be located at rear lot lines and along side and front lot lines when deemed necessary.

**606.2** Where a subdivision is traversed by a watercourse, drainagaway, channel or stream, adequate areas for storm water or drainage easements shall be allocated for the purpose of widening, deepening, sloping, improving or protecting said watercourses in accordance with the requirements of the County Drainage Board.

**606.3** Whenever practicable, the subdivider shall be encouraged to design for the placement of utility lines underground, following the required standards and specifications established by each utility company. The location of each underground utility system shall be shown by appropriate easement lines on the proposed plat.

## 607 COMMERCIAL AND INDUSTRIAL SUBDIVISIONS

It is recognized that the subdivider, in creating commercial and industrial subdivisions, faces unique problems of lot design not normally encountered in residential subdivisions. For this reason, the initial emphasis of the Commission shall be upon street layout and block arrangement. Generally, the procedure requirements shall be for the owner to follow the regular procedure outlined in these regulations; however, the subdivider need show only two lots along with the street and block layout. Then, from time to time, as prospective buyers or users express interest in lots sized to their required specifications, the owner shall submit an amendment to the approved recorded subdivision plat for consideration. Regular procedural requirements of the Commission following the receipt of a subdivision plat shall then apply, except those streets that have been built by following an approved set of plans on the previously approved plat, shall not have to be rebuilt because of the adoption of new criteria by the County. This shall also apply to storm drainage facilities within said subdivision unless runoff characteristics have been changed by the newly proposed improvements or unauthorized existing improvements and shall be in conformance with the requirements of the Zoning Ordinance.

# ARTICLE 7 - IMPROVEMENTS AND INSTALLATIONS

## 701 GENERAL

**701.1** Subdivision improvements shall be designed, furnished and installed by the subdivider in accordance with requirements of this Article, State, County or Town Road Standards, and other requirements of the State, County, or Town, and whatever the applicable requirements of any other governmental unit are higher or more restrictive, those requirements shall control any application or plat approval. No subdivision plat shall be approved by the Commission unless the following improvements have been completed as herein specified and required, or the subdivider provides a performance guarantee therefore as specified in Article 4 of this Ordinance.

**701.2** After Commission approval of the primary plat and prior to any construction in the subdivision, the subdivider shall submit copies of the construction drawings for streets and drainage facilities to the Board of County Commissioners or Town Council at least 45 days before construction is to begin.

**701.3** Supervision and inspection of construction of all required improvements shall be under the direction of the Board of County Commissioners or the Town Council.

## 702 STREETS: Improvements for streets shall be performed to meet the following minimum standards and requirements:

**702.1 Paved Surface Dimensions**: (Minimum Requirements)

a. **Local and Cul-de-Sac Streets:**
Width with curb and gutter……28’ back to back of curb
Width without curb and gutter…… 20’ back to back of curb
Terminus dia. on cul-de-sac…… 80’ back to back of curb
Radius at intersections…… 20’ back to back of curb

b. **Collector Streets:**
Width with curb and gutter…… 38’ back to back of curb
Width without curb and gutter…… 22’ back to back of curb
Radius at intersections…… 35’ back to back of curb

c. At an intersection of a subdivision collector street with an arterial or major collector street or road, the Commission may require the subdivider to install deceleration and passing lanes along the arterial or collector street in accordance with the graphical specifications shown on the following page.

**702.2 Pavement Construction:** The minimum thickness of subbase, base course, and pavement shall be as follows:

a. **Local and Cul-de-Sac Streets:**
A six (6) inch plain concrete pavement, or

A three (3) inch Hot Asphalt Concrete pavement on eight (8) inches of compacted aggregate base on a compacted subgrade, or A deep-strength Hot Asphalt Concrete design with minimum total depth of eight (8) inches on a compacted subgrads.

b. **Collector Streets:**
A four (4) inch Hot Asphalt Concrete pavement on twelve (12) inches of compacted aggregate base on a compacted subgrade, or

A seven (7) inch plain concrete pavement on three (3) inches of compacted subgrade, or

A deep-strength Hot Asphalt Concrete design with a minimum total depth of ten (10) inches on a compacted subgrads.

c. Higher standards than indicated in this section may be required by the Commission, the Board of County Commissioners, or the Town Council to provide adequately for unusual soil conditions, extraordinary traffic volumes, or other abnormal characteristics.

d. All materials, mixtures and workmanship shall conform to Indiana State Highway Specifications except those modified by County Specifications.

**702.3** **Curb and Gutter:** Wherever a proposed subdivision lies adjacent to or in proximity of other developed areas having curb and gutter, or when any proposed subdivision contains more than three (3) lots per acre of land platted into lots; the subdivider shall provide curb and gutter in the proposed subdivision. Curb and gutter in residential areas may be approved roll type with 4-inch curb and 24-inch minimum width made of 4,000 p.s.i. concrete; or shall be 6-inch vertical face in other areas and on arterial streets.

**702.4** **Sidewalks:** Wherever a proposed subdivision lies adjacent to or in proximity of other developed areas having sidewalk, or when any proposed subdivision contains more than three lots per acre of land platted into lots; the subdivider shall provide sidewalks in the proposed subdivision. Sidewalks shall be at least 3 feet wide and 4 inches thick, sloped 1/4-inch per foot toward the street and shall be located one foot from the property line within the street right-of-way.

**702.5** **Roadside Street Swales:** Streets not having curb and gutter shall provide the following:

a. Side ditch swales measuring 12 inches deep at a point 5 feet inside the right-of-way line;
b. A culvert at all driveways sized according to amount of storm water flow;
c. Culverts under the roadway, where necessary size of culvert to be according to amount of storm water flow but not less than 12 inches (all culverts shall extend at least 5 feet beyond either edge of the paved roadway) and
d. Relief of side ditches and swales along the roadway through the use of off-street retention basins or existing County drainage channels.

**702.6** **Street Identification Signs:** It shall be the responsibility of the subdivider to provide and install street identification signs at all street intersections within the subdivision prior to the construction of any permanent improvements other than those specifically set forth by this Ordinance. Said signs and posts shall conform to the following standards or be of a design approved by the Commission after appropriate consideration of future maintenance.

a. Each sign post shall consist of a 2-inch galvanized pipe 10 feet long weighing 2 pounds per foot.
b. Each sign shall be of a metal double blade design, white reflectorized with 3-inch black gothic letters, mounted at the top of the post with the street name on both sides at an elevation of 7 feet above the paved street.
c. All signs shall be located within the street right-of-way but no closer than 6 feet from the edge of the traveled portion of the street.

## 703 DRAINAGE

**703.1** A drainage system shall be designed and constructed by the subdivider to provide for the proper drainage of the surface water of the subdivision and the drainage area of which it is a part. The system shall be constructed and installed in accordance with plans and specifications approved by the County Surveyor.

**703.2** In designing a drainage system, the subdivider shall be guided by the following standards:

a. All streets shall be provided with an adequate storm drainage system consisting of curbs, gutters and storm sewers or side ditches and culverts as determined by the Plan Commission.
b. Street drainage shall serve as the primary drainage system, and it shall be designed to carry at least the street, adjacent land, and house storm water drainage.
c. Whenever the evidence available to the Commission indicates the natural surface drainage is inadequate, the subdivider shall provide the subdivision with an adequate storm water sewer system. When the surface drainage is adequate, easements for such surface drainage shall be provided.

**703.3** When topsoil has been removed from the surface of a lot on a slope where erosion will cause a displacement of loose materials, the subdivider shall be required to seed or provide other means to prevent the wash from damaging adjacent property or accumulating on street surfaces. These erosion control measures shall be in accordance with standards and specifications on file in the Jay County Soil and Water Conservation District office.

**703.4** In order to insure the maintenance of a properly designed and installed drainage system, the following paragraphs shall be required as a provision of the restrictive covenants of all final plats and shall be included in all deeds written relative to said plats. The proposed owner shall sign, and such signed copy of this covenant shall be filed with the County Surveyor.

a. Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tiled, or otherwise changed without the written permission of the Jay County Surveyor. Property owners must maintain these swales as sodded grassways, or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriately sized culverts or other approved structures have been permitted by the County Surveyor.
b. Any property owner altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given 10 days notice by registered mail to repair said damage, after such time, if no action is taken, the Jay County Surveyor will cause said repairs to be accomplished, and the bill for such repairs will be sent to the affected property owners for immediate payment.

**704** **SANITARY SEWAGE DISPOSAL:** A sanitary sewage system shall be designed and constructed by the subdivider to provide adequate sewage service for all lots in the proposed subdivision. A subdivision plat shall not be considered for secondary approval until improvement plans for a sewage system by one of the following methods have been submitted:

**704.1** A permanent sanitary sewer collection system including all pipes and manholes shall be provided, and said collection system shall be connected to a new or existing public or private sewage system in accordance with satisfactory plans and specifications therefore.

**704.2** A private sewage disposal system for each lot shall be designed in accordance with the minimum requirements of the County health Department and the Indiana Department of Environmental Management (IDEM). In no case will any part of the private system, including seepage field or leaching field, be located closer than 10 feet to a property line or within 50 feet of a private well.

**705** **WATER SYSTEM:** A water distribution system shall be designed and constructed by the subdivider to provide adequate water service for all lots in the proposed subdivision. A subdivision plat shall not be considered for secondary approval until improvement plans for a water system by one of the following methods has been submitted:

**705.1** A permanent water distribution system including all pipes, fire hydrants, valves and other appurtenances shall be provided, and said distribution system shall be connected with an approved public or private water system in accordance with the satisfactory plans and specifications therefor.

**705.2** If the area proposed to be platted in not so located with regard to such an adequate public or group water supply system, before any structure on any lot therein is occupied, an individual water supply system for such lot shall be constructed and installed in accordance with the satisfactory plans and specifications therefore. In no case will any part of the private water system be located closer than 10 feet to a property line or within 50 feet of a private sewage disposal system and shall be in compliance with current regulations of the County Board of Health and IDEM.

**706** **MONUMENTS AND MARKERS**

**706.1** Monuments and markers shall be installed by the subdivider so that the top thereof at or below the proposed finished grade adjoining it and shall be in conformance with current State regulations addressing monuments and markers.

**706.2** All U.S., State, County or other official benchmarks, monuments, or triangulation stations in or adjacent to the property shall be preserved in precise position.

# ARTICLE 8 - MODIFICATIONS AND EXCEPTIONS

**801** **INTENT:** The Jay County Plan Commission is hereby authorized and empowered to grant such modifications and exceptions to the terms of this Ordinance, as will not be contrary to the public interest, where owing to special conditions, fully demonstrated an the basis of the facts presented, strict compliance with specific provisions of the Ordinance will result in extreme practical difficulties or undue misuse of property.

**801.1** In the exercise of this authorization, the Commission shall grant said modification or exception only upon the determination that:

a. The grant will not be detrimental to the public health, safety, and general welfare of the community.
b. The grant will not adversely affect the reasonable development of adjacent property.
c. The grant is justified because of topographic or other special conditions unique to the property involved, in contradistinction to mere inconvenience or financial disadvantage.
d. The grant is consistent with the objectives of this Ordinance and will not have the effect of nullifying the intent and purpose of this Ordinance.

**801.2** A written application for modifications or exceptions shall be submitted by the subdivider indicating the specific section of this Ordinance under which the modification or exception is sought and stating the grounds on which it is requested. After said application has been docketed for hearing, proper publication of notice has been published, and due consideration has been given, the Commission shall render a decision which shall be:

a. Recorded in the minutes of the Commission, which minutes shall include the reasoning on which the modification or exception was disapproved.
b. Transmitted to the subdivider and applicable governmental units in accordance with the terms of this Ordinance.
c. Attached with such conditions as will in the Commission's judgment secure substantially the objectives of the requirements, standards and specifications of this Ordinance so modified or excepted.
d. Attached with such covenants or other legal provisions as will in the Commission's judgment assure general conformity to and achievement of the subdivision plan.

**801.3** Before any modification or exception shall be granted, the Commission shall determine that satisfactory provision and arrangement has been made concerning the following, where applicable:

a. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety, convenience, and access in case of fire or catastrophe.
b. Automotive and pedestrian traffic flow with reference to adequacy, circulation and function within the broader planning unit.
c. Off-street and on-street parking and loading areas with reference to the needs of adjoining land uses.
d. Utilities, with reference to locations, availability and comparability.
e. Clear identification of property for land records.
f. Screening and buffering with reference to type, dimensions, and character of materials.

**802** **PLANNED UNIT DEVELOPMENT:** Replaced by Section 310 in the Jay County Zoning Ordinance; Ordinance 2000-4, dated May 8, 2000.

# ARTICLE 9 - ADMINISTRATION

**901** **AMENDMENT:** In accordance with State statutes, the Board of County Commissioners may introduce and consider amendments to the Ordinance as proposed by the County Commissioners, the Plan commission, or by a citizen's petition. Any proposed amendment shall be referred to the Plan Commission for public hearing, consideration, and report before any final action is taken by the County Commissioners.

**902** **ENFORCEMENT:** No plat of any subdivision shall be entitled to record in the County Recorder's Office or have any validity until it shall have been approved in the manner prescribed by this Ordinance.

**903** **RECORD OF PLATS:** All plats of subdivision, after the same have been submitted and approved, as provided in this Ordinance, shall be copied upon a book of plats of said County of Jay and shall be filed and kept by the said County among the records of the County.

**904** **VIOLATIONS AND PENALTIES:** Any person, whether as principal, agent, owner, lessee, tenant, contractor, builder, architect, engineer or otherwise, who violates any provisions of this Ordinance shall, upon entry of judgment, be fined not less than Ten Dollars ($10.00) nor more than Three Hundred Dollars ($300.00) for each offense plus all attorney fees and costs. Each day the violation continues shall constitute a separate offense.

**905** **EFFECT:** All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance shall not be repealed by the passage of this Ordinance except where such repeal is specifically designated by Ordinance, but the Ordinance with the more restrictive applicable provisions shall be the Ordinance that applies.

**906** **APPEAL:** Any person feeling himself aggrieved at any action of the Commission, or Commission Staff, or lack of action of the Commission, or Commission staff, upon a proposed plat or replat, may apply in writing to the Commission, prior to the next regular meeting, for modification of the action complained of, or lack of action, on the proposed plat or replat. Such application shall be considered by the Commission at such time in such manner as it may determine, but within seventy (70) days following the regular meeting.

**907** **FEES:** Applications filed pursuant to the provisions of this Ordinance requiring Plan Commission or Board of Zoning Appeals' approval shall be accompanied by the filing fees specified by the fee schedule adopted by Commission resolution. The fee schedule shall not be a part of this Ordinance and may be revised annually by Commission resolution. These fees are defined by the Plan Commission in its rules and procedures.

# ARTICLE 10 - ORDAINING CLAUSE

**1001 JAY COUNTY:**

**1001.1** This Ordinance shall take effect upon its passage and publication as required by law.

**1001.2** All ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

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**NOW, THEREFORE, BE IT ORDAINED** by the Commissioners of Jay County, Indiana, that this Subdivision Control Ordinance be passed and enacted on this 12th day of November 1991, as General Ordinance numbered 1991-5 .

**THE BOARD OF COMMISSIONERS OF THE COUNTY OF JAY, STATE OF INDIANA**

John D. Mink

Milo M. Miller, Jr.

Ernest Muhlenkamp

**ATTEST:**

Marilyn Coleman
Auditor of Jay County, Indiana

# *Section 10*

# Jay County Advisory Plan Commission Rules of Procedure

# JAY COUNTY
# ADVISORY
# PLAN COMMISSION

## RULES OF PROCEDURE

**PASSED BY RESOLUTION**
**BY THE**
**ADVISORY PLAN COMMISSION**
**OF JAY COUNTY, INDIANA**

**Adopted January 8, 2004**

# JAY COUNTY ADVISORY PLAN COMMISSION

## ADOPTED RULES OF PROCEDURE

Pursuant to the requirements of IC 36-7-4-401, the Planning Commission of Jay County, Indiana, does hereby adopt the following rules:

## ARTICLE I - OFFICERS

### 1. ELECTION OF OFFICERS

At its first regular meeting each year, the Commission shall, from its membership, elect a president, vice president and secretary. Each officer is to serve in such capacities during the period of their membership on the Commission for the balance of such calendar year. Upon resignation or replacement of any officer, as a member of the Plan Commission, the Commission shall elect a successor at its next regularly scheduled meeting.

### 2. DUTIES OF OFFICERS

**A. President**
The president shall preside over the 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 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.

### 3. TERM OF OFFICERS AND ENTIRE PLAN COMMISSION

**A. Term of Office**
The state statutes defining the term of office of the members of the Plan Commission are 36-7-4-207, 208, 212, 213, 214, 216, and 217.

**B. Removal of Plan Commission Members**
The state statute defining the process for removing Plan Commission members is 36-7-4-218.

**C. Vacancies on the Plan Commission**
The state statute defining the process for appointing a vacancy on the Plan Commission is 36-7-4-220.

# ARTICLE II - MEETINGS

## 1. DATE AND PLACE OF MEETINGS

All meetings 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 2nd Thursday of each month at the Jay County Courthouse Auditorium. Whenever the regular meeting date falls on an official holiday of the county, another date shall be selected. A schedule of all regular meetings shall be published each year by the Jay/Portland Building and Planning Department. All regular meetings shall be held at the Jay County Court House, unless another location is published.

**B. Special Meetings**

The Commission may hold special meetings in accordance with IC 36-7-4-307 and any amendments thereto.

**C. Cancellations**

Whenever there is a lack of business for Commission consideration, the president may dispense with a regular meeting. In such cases, the secretary 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 secretary 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 also may dispense with a scheduled regular or special meeting in the event of natural disaster, snow emergency, or similar causes. In such cases, the secretary 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 secretary shall notify the news media of the cancellation. In the event of cancellation for any reason, the president may require re-notification to interested parties, with such notice to be paid for by the petitioner or by the Commission, as the president deems appropriate.

## 2. CONDUCT OF MEETINGS

**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 Plan Commission.

**B. Voting**

**(1) Quorum**

A quorum shall be required for a vote. A majority of the members of the Commission who are qualified to vote 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.

**(2) Method**

All votes of the Commission shall be decided by voice vote. If the outcome of a particular vote is unclear, the president or any member may request a roll call vote or a ballot vote. In the case of a ballot vote, each ballot shall bear the signature of the member voting by such ballot. Secret ballot votes shall not be permitted.

**(3) Conflict of Interest**

In accordance with IC 36-7-4-223, a Commission member may not participate in a hearing or decision concerning a matter in which he has a direct or indirect financial interest. A member shall declare his/her known conflict of interest. Questions as to whether such conflict exist may be determined by the president or the Commission attorney. When there is uncertainty as to the applicability of this section, the member shall be disqualified. The Commission shall enter in its records the fact that its member has a disqualification. 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 leave the Commission table. Such member may join the audience but may not give testimony or comment 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.

**(4) Required Vote**

Except as provided in (3) 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. Action of the Plan Commission is not official, unless it is authorized, at a regular or special meeting, by a majority of the entire membership of the Plan Commission. (IC 36-7-4-302)

**(5) Absentee**

Absentee or proxy voting shall not be permitted. Members must be present for the public hearing in order to be eligible 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.

**C. Order of Business**

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

1. Roll call of members
2. Minutes
3. Public Hearings
4. Communications
5. Old Business
6. New Business
7. Reports and Recommendations
8. Adjournment

**D. Commission Records**

**(1) Responsibility**

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

**(2) Minutes**

The secretary of the Commission 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.

**(3) 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. All records and minutes shall be filed in the office of the Jay/Portland Building and Planning Department.

# ARTICLE III - PUBLIC HEARINGS

## 1. PROCEDURE

### A. Opening the Hearing

The President shall call 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
2. Presentation of request by petitioner
3. Comments and questions by members of the audience and Commission
4. Rebuttals
5. Summations by Commission president

### C. Closing the Hearing

After all public comments have been heard under the rules of this section, the presiding shall declare the hearing closed and shall call for a motion. Additional public comment shall not be permitted after the close of the hearing. Any motion which 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 presiding officer specifically allows such discussion. The presiding officer shall have the authority to limit such discussion by the public or the Commission members.

### D. Voting

Each motion on a matter requiring a public hearing shall be made in accordance with the provisions of Article II, 2, b. of these rules.

## 2. CONDUCT

### A. Representation

The petitioner may appear in person, by agent or attorney, and present any supporting witnesses, evidence, statements and arguments in favor of the request. Remonstrators and persons in favor of the request may appear in person, by agent or by attorney and present witnesses, evidence, statements and arguments. Any person interested in any petition shall have the right but shall not be required to enter a written appearance in the hearing.

### B. Commission Representation

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 stand before the Commission and provide their names and addresses for the record.

### D. Commentary Addressed to 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. Either before or during the public hearing, the president may set reasonable limits on the time allowed for presentation by each interested person in a manner that is reasonable and fair to all concerned.

**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. To maintain orderly procedure, each side shall proceed without interruption.

**G. Continuance**

The Commission may, at their sole discretion, continue or postpone the public hearing in any case.

# ARTICLE IV - DISPOSITION OF PETITIONS

## 1. 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. If no "second" is received on the disposition, there shall be no discussion and the disposition is rejected.

## 2. DISMISSAL

**A. Want of Prosecution**
The Commission may dismiss a petition if the petitioner or authorized representative does not appear to present and speak in favor of such petition or if such petition has been improperly filed.

**B. Lack of Jurisdiction**
The Commission shall dismiss a petition if it finds it has no jurisdiction over such matter.

## 3. WITHDRAWAL

**A. Without Prejudice**
Any petition may be withdrawn without prejudice provided a written request for withdrawal signed by the petitioner or an authorized representative is received by the Commission's staff at least seven (7) days before the scheduled hearing.

**B. With Prejudice**
Any request for withdrawal made less than seven (7) days before the scheduled hearing may be granted or denied by the Commission. Such request may be in writing or oral and must state the reasons for the request. If the Commission votes to permit withdrawal, the petition shall not again be placed on the agenda for hearing within a period of three months from the date of the originally scheduled hearing, except upon a motion duly adopted by a majority of the members of the Commission to permit such rescheduling.

**C. Not Permitted**
No petition may be withdrawn after a motion has been made and seconded and a vote has been ordered by the presiding officer.

## 4. 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, changes to a zoning district permitting more uses or more intensive uses) after the filing deadline. Any such amendment request will result in postponing the scheduling of the petition for one month. If notice in accordance with Article VI has been given, the item as amended shall be re-advertised and new notice given to interested parties. The petitioner shall be required to pay the costs of such re-advertising and re-notification.

**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 re-advertising and re-notification in the interest of providing a fair and adequate hearing.

## 5. CONTINUANCE

### A. Requests by Interested Party

Any 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 Commission

Any member of the Commission may at any time move to continue the hearing of any petition. Such a motion duly seconded and adopted shall continue the hearing to the time specified in the motion. The Commission may include in the motion specific instruction for re-advertising and/or re-notification of interested parties. If such re-notification is required, the petitioner may be required to pay the costs associated therewith.

## 6. APPROVAL

### A. Development Plans

The Commission has the authority to approve development plans under the terms of the Zoning Ordinance. Such approval may be with or without conditions.

#### (1) With Conditions

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 the fulfillment of any such requirement(s). The petitioner shall be required to notify the Commission 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 Commission 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.

#### (2) Without Conditions

If there are no conditions imposed upon the approval of the petition, the president and secretary shall sign the permanent drawing(s).

### B. 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.

## 7. DISAPPROVAL

### A. Development Plans

If the Commission finds that a petition does not meet the criteria and standards 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 secretary to forward its recommendation together with a report describing the Commission's action to the County Commissioners for consideration.

### C. Re-filing

No petition for an amendment to the Zoning Ordinance which has been denied by the Commissioners shall again be placed on the agenda 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 agenda only if a motion to permit rescheduling is duly adopted by the Commission.

# ARTICLE V - FILING PROCEDURES

## 1. SUBJECT JURISDICTION

Any entity requesting approval of a development plan, vacation of street or alley, change in zoning or any other matter for consideration by the Commission may file an application, petition or appeal with the Plan Commission within the time period allowed by law or these rules.

## 2. FILING PETITIONS

Petitions shall be filed with the Zoning Administrator in legible form at least twenty (20) days prior to the date of the hearing to be held by the Commission and shall be accompanied by such information as required by applicable ordinances.

## 3. 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 evidence by the owner's notarized signature and 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.

# ARTICLE VI - NOTICE REQUIREMENTS

## 1. PUBLISHED NOTICE

Published notice of public hearing shall be given at least ten (10) days prior to the public hearing by one (1) insertion of legal advertisement in a newspaper of general circulation in Jay County, Indiana. Proof of publication of the notice shall be furnished to the Commission by the petitioner prior to or at the public hearing. The notice shall be paid for by the petitioner. Notice of hearing shall contain the following information:

a. Substance of the matter to be heard.

b. General location by address or other identifiable geographic characteristic of the property.

c. Name of the person or agency initiating the matter to be heard.

d. Time and place of the hearing.

e. Statement that the petition may be examined at the office of the Commission.

f. 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.

g. Any other information which may be required by law to be contained in such notice.

## 2. MAILED NOTICE

At least twenty (20) days prior to the public hearing, the petitioner shall also obtain written acknowledgments of notice or cause written notice to be mailed by certified mail, return receipt requested, and postage prepaid, to the adjacent property owners (including those situated immediately across a public thoroughfare) as determined by the transfer records of the Jay County Auditor's Office as of the date of filing the application, unless stated otherwise in the Jay County Zoning Ordinance. Other notices may be required by the Commission, or its designee, in particular circumstances. The notices shall be paid for by the petitioner.

## 3. EVIDENCE OF NOTICE

Proof of publications, certified mail receipts and personal appearance at the public hearing shall be considered evidence that notice has been given. Evidence of notice shall be provided to the Commission at or before the publish hearing.

# ARTICLE VII - COMMITTEES

## 1. AUTHORITY

The President is hereby authorized to appoint standing and ad hoc 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 by the committee, and reports on their assignments shall be made to the Commission. The President shall be an ex-officio member of any committee so appointed.

## 2. STANDING COMMITTEES

The following shall be standing committees:

**A. 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 offices.

## 3. AD HOC COMMITTEES

Ad hoc committees may be appointed from time to time to accomplish specific assignments. Once the assignment(s) have been completed or the time limit for the completion of such assignment(s) has expired, such committee shall be discontinued. Such committees may be appointed for the purposes of master plan revisions, zoning ordinance amendments, and other business of the Commission.

# ARTICLE VIII - GENERAL

## 1. 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.

## 2. AMENDMENTS AND SUSPENSIONS

Amendments to these rules of procedure may be made by the Plan Commission at any meeting upon the affirmative vote of a quorum. The suspension of any rule or procedure may be ordered at any meeting by the affirmative vote of a quorum when circumstances or justice warrant.

## 3. SUBSTANTIAL COMPLIANCE

If there is substantial compliance with these rules of procedure, any technical, non-material, or minor violation shall not void nor vacate the proceedings or actions of the Board.

## 4. 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.

## 5. APPLICABILITY

These rules of procedure shall be applicable to all pending and future matters before the Plan Commission.

# ARTICLE IX - ADOPTION

The foregoing Rules of Procedure of the Jay County, Indiana, Plan Commission are hereby adopted by the affirmative vote of the Commission this 8th day of January, 2004.

ATTEST:

| | |
|---|---|
| John Knipp | Scott Hilfiker |
| James Zimmerman | Donald Loy |
| Jerry Thornburg | Gary Theurer |
| Shane Houck | Bill Davis |
| | |

# *Section 11*

# Jay County Advisory Board of Zoning Appeals Rules of Procedure

# JAY COUNTY
# ADVISORY
# BOARD OF ZONING APPEALS

## RULES OF PROCEDURE

**PASSED BY RESOLUTION**
**BY THE**
**BOARD OF ZONING APPEALS**
**OF JAY COUNTY, INDIANA**

**Adopted April 16, 2009**

# JAY COUNTY
# ADVISORY BOARD OF ZONING APPEALS

## ADOPTED RULES OF PROCEDURE

Pursuant to the requirements of IC 36-7-4-916, the Board of Zoning Appeals of Jay County, Indiana, does hereby adopt the following rules:

## ARTICLE I - OFFICERS

### 1. ELECTION OF OFFICERS

At its first regular meeting each year, the Board shall, from its membership, elect a chairman, vice chairman and secretary. Each officer is to serve in such capacities during the period of their membership on the Board for the balance of such calendar year. Upon resignation or replacement of any officer, as a member of the Board of Zoning Appeals, the appointing authority shall appoint an alternate member for the unexpired term of the vacating member.

### 2. DUTIES OF OFFICER

**A. Chairman**
The chairman shall preside over the Board of Zoning Appeals meetings and on behalf of the Board shall exercise general supervision over the affairs of the BZA, including the determination of points of order and procedure, and the signing of all official documents (except as otherwise provided by statute, ordinance, or these rules).

**B. Vice Chairman**
The vice chairman shall have authority to act as chairman of the Board of Zoning Appeals during the absence or disability of the president.

**C. Secretary**
The secretary shall certify all official acts of the Board, including the written votes of the Board on any and all matters for which such vote is required. In the event of the absence or disability of both the chairman and the vice chairman, 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 chairman pro tempore. In the event of the absence or disability of the secretary, the chairman of the Board shall select a secretary pro tempore.

### 3. TERM OF OFFICERS AND ENTIRE BOARD OF ZONING APPEALS

**A. Term of Office**
The state statutes defining the term of office of the members of the Board of Zoning Appeals are 36-7-4-902, 903, 904, 905, and 906.

**B. Removal of Board of Zoning Appeals Members**
The state statute defining the process for removing Board of Zoning Appeals members is 36-7-4-906 and 909.

**C. Vacancies on the Board of Zoning Appeals**
The state statute defining the process for appointing a vacancy on the Board of Zoning Appeals is 36-7-4-907.

**D. Alternate member on the Board of Zoning Appeals**
The state statute defining the process for appointing an alternate member is 36-7-4-907.

# ARTICLE II - MEETINGS

## 1. DATE AND PLACE OF MEETINGS

All meetings 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 Board of Zoning Appeals shall not be considered meetings.

**A. Regular Meetings**

The Board of Zoning Appeals shall hold a regular meeting on the 3rd Thursday of each month at the Jay County Courthouse Auditorium. Whenever the regular meeting date falls on an official holiday of the county, another date shall be selected. A schedule of all regular meetings shall be published each year by the Board secretary. All regular meetings shall be held at the Jay County Courthouse, unless another location is published.

**B. Special Meetings**

The Board of Zoning Appeals may hold special meetings or hearings when necessary.

**C. Cancellations**

Whenever there is a lack of business for Board consideration, the chairman may dispense with a regular meeting. In such cases, the secretary of the Board shall give written or oral 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 chairman of the BZA may dispense with such meeting, and all business scheduled for such meeting will be automatically rescheduled to the next regular or special meeting. In such cases, the secretary of the Board shall give written or oral notice to the BZA members, those having business before the Board, and to the news media. The chairman of the Board also may dispense with a scheduled regular or special meeting in the event of natural disaster, snow emergency, or similar causes. In such cases, the secretary of the Board of Zoning Appeals shall give written or oral notice to the Board members and to those having business before the BZA, if possible, and the secretary shall notify the news media of the cancellation. In the event of cancellation for any reason, the chairman may require re-notification to interested parties, with such notice to be paid for by the petitioner or by the Board of Zoning Appeals, as the chairman deems appropriate.

## 2. CONDUCT OF MEETINGS

**A. Majority**

In accordance with IC 36-7-4-910 and 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 of Zoning Appeals.

**B. Voting**

**(1) Quorum**

A quorum shall be required for a vote. A majority of the entire membership of the Board who are qualified to vote shall constitute a quorum. No business may be transacted and no public hearing may be opened at any meeting of the BZA unless a quorum is in attendance.

**(2) Method**

All votes of the Board shall be decided by voice vote. If the outcome of a particular vote is unclear, the chairman or any member may request a roll call vote or a ballot vote. In the case of a ballot vote, each ballot shall bear the signature of the member voting by such ballot. Secret ballot votes shall not be permitted.

**(3) Conflict of Interest**

In accordance with IC 36-7-4-909, a BZA member may not participate in a hearing or decision concerning a matter in which he has a direct or indirect financial interest. A member shall declare his/her known conflict of interest. Questions as to whether such conflict exist may be determined by the chairman or the Board attorney. When there is uncertainty as to the applicability of this section, the member shall be disqualified. The Board shall enter in its records the fact that its member has a disqualification. 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 leave the Board table. Such member may join the audience but may not give testimony or comment on the matter before the Board. Nothing in this section shall prevent a member of the BZA from presenting a petition on his/her own behalf, but members shall not appear before the Board on behalf of others.

**(4) Required Vote**

Except as provided in (3) 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. Action of the Board of Zoning Appeals is not official, unless it is authorized, at a regular or special meeting, by a majority of the entire membership of the Board of Zoning Appeals.

**(5) Absentee**

Absentee or proxy voting shall not be permitted. Members must be present for the public hearing in order to be eligible 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. The appointing authority may appoint an alternate member to participate with the board in any hearing or decision if the regular member it has appointed has a disqualification under section 909 of this chapter or is unavailable to participate in the hearing or decision. An alternate member shall have all of the powers and duties of the regular member while participating in the hearing or decision. (IC 36-7-4-907)

**C. Order of Business**

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

1. Roll call of members
2. Minutes
3. Public Hearings
4. Communications
5. Old Business
6. New Business
7. Reports and Recommendations
8. Adjournment

## D. Board of Zoning Appeals Records

### (1) Responsibility

It shall be the duty of the secretary of the Board to maintain all Board of Zoning Appeals files and records, including the official minutes of all meetings.

### (2) Minutes

The secretary of the Board 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. Upon approval by the Board of Zoning Appeals, copies of such minutes shall be made available to interested parties.

### (3) Public 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. All records and minutes shall be filed in the office of the Jay/Portland Building and Planning Department.

# ARTICLE III - PUBLIC HEARINGS

## 1. PROCEDURE

### A. Opening the Hearing

The Chairman shall call 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
2. Presentation of request by petitioner
3. Comments and questions by members of the audience and Board of Zoning Appeals
4. Rebuttals
5. Summations by Board chairman

### 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. Additional public comment shall not be permitted after the close of the hearing. Any motion which 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 presiding officer specifically allows such discussion. The presiding officer shall have the authority to limit such discussion by the public or the Board members.

### D. Voting

Each motion on a matter requiring a public hearing shall be made in accordance with the provisions of Article II, 2, b. of these rules.

## 2. CONDUCT

### A. Representation

The petitioner may appear in person, by agent or attorney, and present any supporting witnesses, evidence, statements and arguments in favor of the request. Remonstrators and persons in favor of the request may appear in person, by agent or by attorney and present witnesses, evidence, statements and arguments. Any person interested in any petition shall have the right but shall not be required to enter a written appearance in the hearing.

### B. Board of Zoning Appeals Representation

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 stand before the Board and provide their names and addresses for the record.

### D. Commentary Addressed to 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. Either before or during the public hearing, the chairman may set reasonable limits on the time allowed for presentation by each interested person in a manner that is reasonable and fair to all concerned.

**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. To maintain orderly procedure, each side shall proceed without interruption.

**G. Continuance**

The Board may, at their sole discretion, continue or postpone the public hearing in any case.

# ARTICLE IV - DISPOSITION OF PETITIONS

## 1. MOTIONS

The final disposition of any petition duly filed and brought before the Board shall be in the form of a motion, properly adopted, specifically setting forth such disposition. If no "second" is received on the disposition, there shall be no discussion and the disposition is rejected.

## 2. DISMISSAL

**A. Want of Prosecution**
The Board may dismiss a petition if the petitioner or authorized representative does not appear to present and speak in favor of such petition or if such petition has been improperly filed.

**B. Lack of Jurisdiction**
The Board shall dismiss a petition if it finds it has no jurisdiction over such matter.

## 3. WITHDRAWAL

**A. Without Prejudice**
Any petition may be withdrawn without prejudice provided a written request for withdrawal signed by the petitioner or an authorized representative is received by the Board's staff at least seven (7) days before the scheduled hearing.

**B. With Prejudice**
Any request for withdrawal made less than seven (7) days before the scheduled hearing may be granted or denied by the Board. Such request may be in writing or oral and must state the reasons for the request. If the Board votes to permit withdrawal, the petition shall not again be placed on the agenda for hearing within a period of three months from the date of the originally scheduled hearing, except upon a motion duly adopted by a majority of the members of the Board to permit such rescheduling.

**C. Not Permitted**
No petition may be withdrawn after a motion has been made and seconded and a vote has been ordered by the presiding officer.

## 4. CONTINUANCE

**A. Requests by Interested Party**
Any 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. Motion by Board**
Any member of the Board may at any time move to continue the hearing of any petition. Such a motion duly seconded and adopted shall continue the hearing to the time specified in the motion. The Board may include in the motion specific instruction for re-advertising and/or re-notification of interested parties. If such re-notification is required, the petitioner may be required to pay the costs associated therewith.

## 5. APPROVAL / DENIAL

**A.** A board of zoning appeals shall approve or deny all (a) special exceptions; (b) special uses; (c) contingent uses; and (d) conditional uses; from the terms of the zoning ordinance, but only in the classes of cases or in the particular situations specified in the zoning ordinance, which are:

1. The special exception shall be listed as such in this Ordinance for the district requested.

2. The special exception can be served with adequate utilities, access roads, drainage, and other necessary facilities.

3. The special exception shall not involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with the performance standards in section 309 of the Ordinance.

4. The special exception shall be sited, oriented, and landscaped to produce a harmonious relationship of buildings and grounds to adjacent buildings and properties.

5. The special exception shall produce a total visual impression and environment, which is consistent with the environment of the neighborhood.

6. The special exception shall plan vehicle access and parking to minimize trafficcongestion in the neighborhood.

7. The special exception shall preserve the purposes of this Ordinance.

The board may impose reasonable conditions as a part of its approval. (IC 36-7-4-918.2)

**B.** A board of zoning appeals shall approve or deny variances of use or transitional uses from the terms of the zoning ordinance. The board may impose reasonable conditions as a part of its approval. A variance may be approved under this section only upon a determination in writing that the following and specific findings required by statute or by the Jay Zoning and Subdivision Control Ordinance are met:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;

3. the need for the variance arises from some condition peculiar to the property involved;

4. the strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and

5. the approval does not interfere substantially with the comprehensive plan adopted under the 500 series of this chapter.

6. a variance to any of the requirements of the FP Flood Plain District without the written approval of the Indiana Department of Environmental Management or the governing agency.

**C.** A board of zoning appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. A variance may be approved under this section only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;

2. Use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. However, the zoning ordinance may establish a stricter standard than the "practical difficulties" standard prescribed by this subdivision.

4. A variance to any of the requirements of the FP Flood Plain District without the written approval of the Indiana Department of Environmental Management or the governing agency.

**D.** A board of zoning appeals shall approve or deny administrative appeals as per Indiana Code 36-7-4-920.

1. Public notice in accordance with IC 5-3-1-2 and IC 5-3-1- and due notice to interested parties shall be given at least ten (10) days before the date set for the hearing.

2. The party making the appeal shall be required to pay an appeal fee and to assume the cost of public notice and due notice to interested parties. At the hearing, each party may appear in person, by agent, or by attorney.

3. The board shall, by rule, determine who are interested parties, how notice is to be given to them, and who is required to give the notice.

4. The staff (as defined in the zoning ordinance), may appear before the board at the hearing and present evidence in support of or in opposition to the granting of the appeal.

5. Other persons may appear and present relevant evidence.

6. A person may not communicate with any member of the board before the hearing with intent to influence the member's action on a matter pending before the board. Not less than five (5) days before the hearing, however the staff may file with the board a written statement setting forth any facts or opinions relating to the matter.

7. The board may require any party adverse to any pending appeal to enter a written appearance specifying the party's name and address. If the written appearance is entered more than four (4) days before the hearing, the board may also require the petitioner to furnish each adverse party with a copy of the petition and a plot plan of the property involved.

# ARTICLE V - FILING PROCEDURES

## 1. SUBJECT JURISDICTION

**A.** An appeal filed with the board of zoning appeals must specify the grounds of the appeal and must be filed within such time and in such form as may be prescribed by the board of zoning appeals by rule.

**B.** The administrative official, hearing officer, administrative board, or other body from whom the appeal is taken shall, on the request of the board of zoning appeals, transmit to it all documents, plans, and papers constituting the record of the action from which an appeal was taken.

**C.** Certified copies of the documents, plans, and papers constituting the record may be transmitted for purposes of subsection (b).

**D.** Upon appeal, the board may reverse, affirm, or modify the order, requirement, decision, or determination appealed from. For this purpose, the board has all the powers of the official, officer, board, or body from which the appeal is taken.

**E.** The board shall make a decision on any matter that it is required to hear under the 900 series either:

**(1)** at the meeting at which that matter is first presented; or

**(2)** at the conclusion of the hearing on that matter, if it is continued.

**F.** Within five (5) days after making any decision under the 900 series, the Board of Zoning Appeals shall file in the office of the board a copy of its decision.

## 2. FILING PETITIONS

Petitions shall be filed with the Zoning Administrator in legible form at least twenty (20) days prior to the date of the hearing to be held by the Board of Zoning Appeals and shall be accompanied by such information as required by applicable ordinances.

## 3. 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 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, the signatures of both the contract purchasers and the contract or their duly authorized agents shall be required.

# ARTICLE VI - NOTICE REQUIREMENTS

## 1. PUBLISHED NOTICE

Published notice of public hearing shall be given at least ten (10) days prior to the public hearing by one (1) insertion of legal advertisement in a newspaper of general circulation in Jay County, Indiana. Proof of publication of the notice shall be furnished to the Board by the petitioner prior to or at the public hearing. The notice shall be paid for by the petitioner. Notice hearing shall contain the following information:

a. Substance of the matter to be heard.

b. General location by address or other identifiable geographic characteristic of the property.

c. Name of the person or agency initiating the matter to be heard.

d. Time and place of the hearing.

e. Statement that the petition may be examined at the office of the Commission.

f. 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.

g. Any other information which may be required by law to be contained in such notice.

## 2. MAILED NOTICE

At least twenty (20) days prior to the public hearing, the petitioner shall also obtain written acknowledgments of notice or cause written notice to be mailed by certified mail, return receipt requested, and postage prepaid, to the owner of all adjacent tracts of land (including those situated immediately across a public thoroughfare) as determined by the transfer records of the Jay County Auditor's Office as of the date of filing the application. Other notices may be required by the Board, or its designee, in particular circumstances. The notices shall be paid for by the petitioner.

## 3. EVIDENCE OF NOTICE

Proof of publications, certified mail receipts and personal appearance at the public hearing shall be considered evidence that notice has been given. Evidence of notice shall be provided to the Board at or before the publish hearing.

# ARTICLE VII - GENERAL

## 1. AMENDMENTS AND SUSPENSIONS

Amendments to these rules of procedure may be made by the Board of Zoning Appeals at any meeting upon the affirmative vote of a quorum. The suspension of any rule or procedure may be ordered at any meeting by the affirmative vote of a quorum when circumstances or justice warrant.

## 2. SUBSTANTIAL COMPLIANCE

If there is substantial compliance with these rules of procedure, any technical, non-material, or minor violation shall not void nor vacate the proceedings or actions of the Board.

## 3. 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.

## 4. APPLICABILITY

These rules of procedure shall be applicable to all pending and future matters before the Board of Zoning Appeals.

# ARTICLE VIII - ADOPTION

The foregoing Rules of Procedure of the Jay County, Indiana, Board of Zoning Appeals are hereby adopted by the affirmative vote of the Board this 16th day of April, 2009.

ATTEST:

Dennis Rodgers

Scott Hilfiker

Stephen W. Fennig

Carl Walker