

# Boone County Area Board of Zoning Appeals Rules of Procedure

Adopted 1997

Amended December 8, 1999 and October 26, 2005

## Article 1 General Statement

The following rules as adopted by the Boone County Area Board of Zoning Appeals (Board) shall be utilized to conduct all Board business. These rules shall be used in conjunction with the Boone County, Indiana Comprehensive Zoning Ordinance and I.C. 36-7-4-900 et. seq.

## Article 2 Powers and Composition of the Board

2.1 Powers. The powers of the Board shall be those set forth in I.C. 36-7-4-918.1 through 36-7-4-918.5 in conjunction with the Boone County, Indiana Comprehensive Zoning Ordinance.

2.1.1 Variance of Development Standards. Pursuant to I.C. 36-7-4-918.5, the Board may grant a variance with respect to specific property if, after a public hearing, the Board finds that:

- 1) the variance will not be injurious to the public health, safety, morals, and general welfare of the community.
- 2) the use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
- 3) the strict application of the terms of the Ordinance will continue the unusual and unnecessary hardship as applied to the property for which the variance is sought.

Per I.C. 36-7-4-921(a)(5) the Board may require the owner of the parcel to make a written commitment concerning the use or development of that parcel.

2.1.2 Variance of Use. The Board shall not grant a variance from a Use district or classification.

2.1.3 Special Exception. Pursuant to I.C. 36-7-4-918.2, the Board may grant a special exception with respect to specific property if, after a public hearing, the Board finds that:

- 1) the establishment, maintenance, or operation of the special exception will not be detrimental to or endanger public health, safety, morals, or general welfare.
- 2) the special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted.
- 3) the establishment of the special exception will not impede or substantially alter the normal and orderly development and improvement of surrounding property for uses permitted in the District.
- 4) adequate utilities, access road, drainage, and other necessary facilities have been or are being provided.
- 5) adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion on the public roadways.
- 6) the special exception/variance will be located in a district where such use is permitted and all other requirements set forth in the Boone County Zoning Ordinance which are applicable to such use will be met.

Per I.C. 36-7-4-918.2, the Board may impose reasonable conditions as part of any approval. Per I.C. 36-7-4-921(a)(1), the Board may also require the owner of the parcel to make a written commitment concerning the use or development of that parcel.

- 2.1.4 Classification of Use. Pursuant to the Boone County, Indiana, Comprehensive Zoning Ordinance, the Board may classify uses not listed in Table 1, Authorized Uses, of the Zoning Ordinance.

The Director shall first attempt to determine if the requested use is similar to a permitted use. In case of uncertainty, the Director may refer the request for clarification or classification to the Board for consideration.

In classifying a use, the Board shall first make a finding that all of the following conditions exist:

- 1) that investigations have disclosed that the subject use and its operations are compatible with the uses permitted in the District wherein it proposed to be located; and
- 2) that the subject use is similar to one or more uses permitted in the District within which it is proposed to be located; and
- 3) that the subject use will not cause substantial injury to the values of property in the neighborhood or District within which it is proposed to be located; and
- 4) that the subject use will be so designed, located, and operated that the public health, safety, and general welfare will be protected.

The Board shall classify such use as to permitting such use by right or subject to Special Exception.

- 2.1.5 Appeal. Pursuant to I.C. 36-7-4-918.1, the Board shall hear and determine an appeal from any order, requirement, decision or determination made by the Executive Director in enforcement of the Zoning Ordinance. The Board shall have all of the powers of the Executive Director from whom the appeal is taken.

When an appeal from the Executive Director has been filed with the Board, all proceedings, operation, and work on the premises concerned shall be stayed, unless the Executive Director shall certify to the Board that, by reasons of facts stated in the certificate, a stay would cause imminent peril to life or property.

- 2.2 Composition. The Board shall consist of five (5) members and shall be appointed as follows:

- 2.2.1 One (1) citizen member appointed by the Boone County Area Plan Commission from its membership.
- 2.2.2 One (1) citizen member, who may not be a member of the Boone County Area Plan Commission, appointed by the executive of the largest municipality in the County participating in the Plan Commission.
- 2.2.3 One (1) citizen member, who must be a member of the Boone County Area Plan Commission, appointed by the county legislative body.
- 2.2.4 One (1) citizen member, who may not be a member of the Boone County Area Plan Commission, appointed by the county legislative body.
- 2.2.5 One (1) citizen member, who may not be a member of the Boone County Area Plan Commission, appointed by the executive of the second largest municipality in the county participating in the commission. However, if there is only one (1) municipality in the county participating in the commission, then the county legislative body shall make this appointment.

### **Article 3 Officers and Staff**

- 3.1 Election of Officers. At its first regular meeting of each year, the Board shall elect from its members a Chairperson and a Vice-Chairperson. The election shall be a public process and is to be accomplished as follows:
- 3.1.1 The currently elected Chairperson shall preside over the election process. The process shall begin by hearing comments and discussion by Board members.
  - 3.1.2 Upon the end of discussion, the Chairperson shall request nominations for the position of Chairperson and nominations shall be heard. Upon completion, the Chairperson shall request a motion to close nominations.
  - 3.1.3 If only one member has been nominated, election may comprise of a standard vote. However, if more than one individual has been nominated, each member shall choose one (1) candidate by paper ballot. Any Board member receiving three (3) or more votes shall be elected Chairperson.
  - 3.1.4 Once the ballots have been tallied and a new Chairperson chosen, the current Chairperson will step down. The newly appointed Chairperson shall then preside over the election of the Vice-Chairperson using a similar process.
  - 3.1.5 The outcome of each vote shall be publicly stated by the Chairperson at the meeting and shall be reflected in the minutes of the meeting.
- 3.2 Duties of Officers.
- 3.2.1 Presiding at Meetings. If present and able, the Chairperson shall preside at all meetings and hearings. If the Chairperson is absent or unable to preside, the Vice-Chairperson shall preside. If both are absent or unable to preside, the members present shall appoint a temporary Chairperson to preside.  
  
In accordance with these and other applicable rules, the presiding officer shall decide all points of procedure or order, unless otherwise directed by a majority of the members in attendance on a motion duly made and passed. The Chairperson shall maintain order and decorum, and to that end may order the removal of disorderly, discourteous or disruptive persons.
  - 3.2.2 Contracts, Agreements and Committees. The Chairperson, on behalf of the Board, shall exercise general supervision over the affairs of the Board upon Board approval, including the execution of contracts and agreements, the appointment of committees and representatives (except as otherwise provided by statute, ordinance, or these rules), and the signing of all official documents.
  - 3.2.3 Other Responsibilities and Duties of the Chairperson and Vice-Chairperson. The Chairperson shall have further duties and responsibilities as designated by the Board or as required by law. The Vice-Chairperson shall perform all duties so delegated, and in case of absence or incapacity of the Chairperson, on approval by a majority of the Board, shall perform any or all duties of the Chairperson whether or not delegated.
- 3.3 Board Staff. The staff of the Boone County Area Plan Commission, including the designated Attorney to the Area Plan Commission, shall serve as staff to the Board, and the Executive Director shall be the designated executive of the staff. The Director shall be delegated authority to perform ministerial acts in all cases except where final action of the Board is necessary. The Executive Director shall be responsible for the keeping of an accurate record of all Board proceedings, including the keeping of records and minutes, the custody and preservation of all papers and documents of the Board, the maintenance of a current roster and qualification of members, records of attendance, and shall provide the Board with information pursuant to I.C. 36-7-4-919.

## **Article 4 Meetings**

All meetings shall be in accordance with I.C. 5-14-1.5, et. seq. the Indiana Open Meeting Law, and any amendments thereto.

- 4.1 Regular Meetings. Regular meetings of the Board shall be held on the fourth Wednesday of each month, unless otherwise noted by the Board, as scheduled in a calendar published by staff and approved by the Board on or before the final meeting of each year.

All meetings shall be held at 7:00 pm at the Annex Meeting Room, unless otherwise publicly announced.

All meetings shall adjourn by 11:00 pm and no new cases shall be heard after 10:30 pm, unless otherwise determined by the Board. To consider cases on the agenda not heard, the Board will recess and agree upon a date, time and place to reconvene. A recessed meeting shall not be considered a special meeting, although the Executive Director shall be required to notify all members who were not in attendance at the regular meeting of the date, time and place of such recess.

- 4.2 Special Meetings. Special meetings of the Board may be called at any time by the Chairperson or by two members upon request to the Board's staff. The staff shall notify Board members of such special meeting at least three days in advance of such meeting. Written notice of a special meeting shall not be required if the time and place of the special meeting has been fixed in a regular meeting of the Board, provided that all members of the Board are present at that regular meeting.

- 4.3 Executive Session. Executive sessions by the Board, which means a meeting from which the public is excluded, may be held where authorized by IC 5-14-1.5-6.

- 4.4 Cancellation. If no business is scheduled before the Board, or if it is apparent that a quorum will not be available, any meeting may be canceled by the Chairperson by giving notice to all members prior to the time set for each meeting. If no quorum is present at the meeting, the Chairperson shall cancel the meeting and all items scheduled to be heard shall be rescheduled by the staff.

- 4.5 Recess. Any meeting may be recessed from day to day, or to the time of any previously announced regular or special meeting, and such recess to a specified time and place shall not require additional public notice provided that all Board members are present at the meeting; however, all Board members shall be notified. No new information shall be submitted at a public hearing which has been recessed from a previous day or time.

## **Article 5 Filing Procedures**

- 5.1 Application.

5.1.1 All petitions not initiated by the Board shall require application with Board staff. Filing deadlines shall be, at minimum, 30 days prior to each regular meeting as scheduled in a calendar published by staff and approved by the Board on or before the final meeting of each year. Incomplete applications will not be accepted.

5.1.2 Applications not initiated by the Board shall be accompanied by a fee as established by Ordinance. The filing fee shall be non-refundable, except in the instance of applications withdrawn no less than 15 days prior to the public hearing.

- 5.2 Staff Report.

5.2.1 After a thorough examination of information in public record and findings from additional research, staff shall release a report providing analysis of each item placed on the agenda. Such report shall be released in correspondence with the agenda no later than ten (10) days prior to the meeting. The staff report shall include:

- 1) a docket number, a detailed description of the request, location of the property, size of the property, and the name of the applicant;
- 2) planning and/or building history of the project or parcel;

- 3) zoning information, including definitions and specific restrictions;
- 4) issues for Board consideration; and
- 5) pertinent sections of the Boone County Comprehensive Plan.

5.2.2 Upon approval of the Chairperson, staff shall propose recommended action for a particular petition in the staff report.

5.2.3 Items to be Delivered with Staff Report. Any party may provide support documentation to be delivered to Board members along with the staff report. To do so, the party must provide sufficient copies to staff for each member of the Board, one (1) copy for public record and one (1) copy for legal counsel. Information to be delivered with the staff report should be submitted no less than fifteen (15) days prior to the meeting.

5.3 Additional Information Submitted.

- 1) All parties shall be allowed to submit documents into public record up to no less than five (5) days prior to the meeting. Documents to be studied and considered by staff for use in the staff report should be submitted no later than fifteen (15) days prior to the meeting.
- 2) The term “document” as used in this chapter is to be interpreted in the broadest sense of that term and means the product of any means of recording information, whether by writing or otherwise. “Document” includes, but is not limited to, correspondence, letters, ledger sheets, contracts, negotiable instruments, agreements, memoranda, reports, notes, diaries, logs, calendars, telegraphs, telexes, facsimile transmissions, summaries, invoices, bills, bills of lading, receipts, checks, checkbooks, charts, graphs, drawings, blueprints, diagrams, worksheets, studies, bulletins, notices, instructions, books, manuals, pamphlets, periodicals, journals, logs, indices, photographs, microfiche, microfilm, telephone records, tape recordings, movies, video tapes, computer disks, and other data compilations.

5.4 Agenda.

5.4.1 Staff shall review all applications to be placed on the agenda for completeness, technical, and legal compliance with the terms of the Zoning Ordinance. Upon the submittal of an application, staff shall assign the application a unique docket number.

5.4.2 Staff shall review the application for completeness; applications deemed incomplete shall not be considered filed and will not be placed on the agenda. All applications shall be reviewed at least once by TAC before staff determines completeness. Once an application is complete, it shall be placed on the agenda of the Board and a date and time set for a public hearing. Cases shall come before the Board in the regular order of their consecutive docket numbers unless otherwise ordered by the Board.

5.4.3 An agenda for a regular meeting, including executive session, shall be released by staff ten (10) days prior to the meeting. However, upon approval by the Executive Director and the Chairperson, the agenda of the meeting may be amended no less than five (5) days prior to the hearing.

5.5 Public Notice.

In all appeals and applications for variances and special exceptions, a legal notice of the public hearing shall be prepared by the petitioner and advertised in a newspaper of general circulation in the County not less than fifteen (15) days prior to the hearing, not including the date of the hearing itself. The petitioner shall assume the cost of said notice and one (1) copy of an affidavit from the publisher shall be submitted to the Board prior to the public hearing. Proof of publication, more specifically the return receipts from mailings and newspaper publication, shall be submitted to public record no less than two (2) days prior to the public hearing

- 5.5.1 The applicant is encouraged to use the standard “Public Notice” form available in the application packet.
- 5.5.2 The petitioner shall also serve notice to owners of property within 660 feet of the boundaries of the affected area, including property across a public right-of-way or municipal or county boundary. Such notification shall be by certified mail with return receipts requested. Notification must be postmarked not less than fifteen (15) days prior to the public hearing. The petitioner shall be responsible for obtaining a list of the names and current addresses of the owners of such property owners from the records on file in the office of the Boone County Auditor in Lebanon, Indiana or the Auditor of a neighboring county, where applicable, and shall provide staff with a copy of the list against which to check the signed receipts of the notice at the time of application submission.
- 5.5.3 Notice shall include the following:
- 1) substance of the petition;
  - 2) general location by mailing address or landmark (such as “beginning approximately 520 feet from the intersection of 600 North and 400 West”), township, and recorded legal description of the property;
  - 3) name of the person or agency initiating the petition;
  - 4) time, date and place of the hearing;
  - 5) statement that the petition may be examined in the office of the Boone County Area Plan Commission;
  - 6) statement that the interested parties may offer an oral opinion at the hearing or may file written comments concerning the petition no less than five (5) days prior to the public hearing; and
  - 7) any other information which may be required by law to be contained in such notice.
- 5.6 Limit to Public Record.
- 5.6.1 Limits, generally. While applications shall be complete by the appropriate filing deadline, additional information shall be allowed into public record up to no less than five (5) days prior to the meeting. No information will be accepted into public record less than five (5) days prior to the meeting.

## **Article 6 Conduct of Meetings**

- 6.1 Quorum. The majority of the members of the Board shall constitute a quorum. No action of the Board, however, will be official unless authorized by the affirmative vote of the majority of the entire membership of the Board.
- 6.2 Minutes and Records.
- 6.2.1 The Board shall keep minutes of all regular and special meetings. Recorded minutes shall state the date, time and place of each meeting; reflect the business conducted; and show names of all Board members and staff present, indicating the late arrival or early departure of these personnel. Minutes shall include the vote of each member present and voting on every question, whether or not a final decision is rendered. The minutes of each meeting shall be amended, if necessary, and approved at the next regular meeting, or if such is not practicable, as soon thereafter as is possible. The approved minutes shall become the “official minutes” when signed by the Chairperson or acting Chairperson and the Executive Director. Copies of the minutes of the previous meeting shall be submitted to Board members along with the agenda and staff report no less than ten (10) days prior to the meeting.
- 6.2.2 The Board may tape record the proceedings of each meeting to substantiate and clarify the official minutes.

- 6.2.3 The Board shall keep all material relevant to each agenda item in public record, including, but not limited to, required documents from the petitioner and his or her supporters or by remonstrators at the public hearing; if applicable, completed Findings of Fact forms; and any correspondence received by the Board pertinent to the item. All records shall be kept in the office of the Boone County Area Plan Commission and shall be a matter of public record, open for inspection during business hours.
- 6.3 Representation of Applicant. The petitioner, petitioner's attorney or their representative must be present in order for a public hearing to be held as scheduled. Failure of the petitioner or their representative to appear will result in the petition being tabled and rescheduled for the next meeting. Public announcement of this change at the originally scheduled meeting will be deemed sufficient notice to all parties.
- 6.4 Dismissal Due to Excessive Tabling. Petitions which have been tabled at the request of the petitioner, petitioner's attorney, or their representative for a period in excess of three (3) months may be dismissed at the discretion of the Board.
- 6.5 Order of Business. The order of business on the agenda for each regular meeting shall be as follows:
- 1) Call to Order
  - 2) Pledge of Allegiance
  - 3) Approval of Agenda
  - 4) Public Hearings - Old Business
  - 5) Public Hearings - New Business
  - 6) Approval of the Minutes & Findings of Fact
  - 7) Reports, Resolution, Communications & General Discussion
  - 8) Adjournment
- 6.6 Public Hearing.
- 6.6.1 Opening the Hearing. The Chairperson shall call the docket number of the item scheduled for public hearing and declare the hearing open. The Chair shall explain the order of testimony for the public hearing and remind those wishing to speak to give their name, address and comments for the record. The Chairperson may ask for the number of persons planning to speak on behalf of the applicant or in opposition, as well as the amount of time expected to be necessary, for purposes of considering suspension, or amendment of the time limitations specified in Rules 6.6.3, 6.6.4, and 6.6.5.
- 6.6.2 Background and Comments by Staff. Staff shall present initial findings publicly to the Board, including information provided in the staff report, as necessary.
- 6.6.3 Presentation by Petitioner.
- 1) Petitioner(s) and persons appearing in support of the applicant shall have fifteen (15) minutes for the presentation of evidence, statements and argument in support of the matter being considered.
  - 2) The Board may seek clarification on any issue raised by the petitioner. The petitioner shall not be penalized for time required to clarify requests by the Board.
- 6.6.4 Presentation by Opposition.
- 1) Opposition shall have twenty-five (25) minutes for the presentation of evidence, statements and argument in opposition to the matter being considered.
  - 2) The Board may seek clarification on any issue raised by opposition. Opposition shall not be penalized for time required to clarify requests by the Board.
- 6.6.5 Rebuttal by Petitioner. Petitioner(s) shall have five (5) minutes for rebuttal, which shall only include evidence, statements and arguments in rebuttal of remonstrator's evidence and Board comments.

- 6.6.6 Closing the Hearing. Upon completion of rebuttal, the Chairperson shall declare the public hearing officially closed and invite the Board to initiate discussion of the petition. Public comment without solicitation by the Board is not permitted after the public hearing has closed. However, Board members may question both petitioner and opposition to clarify their understanding.
- 6.6.7 Motion. Upon conclusion of initial discussion, the Chairperson shall call for a motion. Any motion that is made and seconded is open for further Board discussion. Each motion which has received a second shall be voted upon, with the vote of each member recorded in the meeting minutes.
- 6.6.8 Waiver or Amendment of Time Limits. Time limits may be suspended or amended and new time limits established only upon motion by of the Board.
- 6.6.9 Posting of Procedures. A copy of Sections 6.6 and 6.7 of these Rules shall be available to the public at each meeting.
- 6.7 Conduct.
  - 6.7.1 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. When necessary, the Board may allow or require sign-up sheets.
  - 6.7.2 Commentary Addressed to the Board. All commentary at a public hearing shall be addressed to the Board through its Chairperson. Such commentary will not be permitted between opposing parties without the consent of the Chairperson, nor will commentary addressed to any specific member of the Board, staff, or their counsel be permitted without the explicit consent of the Chairperson.
  - 6.7.3 Authority of the Chairperson. The Chairperson shall have the authority to prohibit repetitious and irrelevant testimony and shall have the authority to limit the length of testimony by each speaker as deemed appropriate to a fair and efficient public hearing.
  - 6.7.4 Orderly Conduct. Every person appearing before the Board shall abide by the order and direction of the Chairperson. Discourteous, disorderly or contemptuous conduct shall not be tolerated, and the Chairperson may take such action as is deemed necessary to prevent such conduct.
- 6.8 Final Disposition of Cases.
  - 6.8.1 All decisions of the Board, on the matters heard in public hearings, shall be by record vote. The vote of each member shall be a matter of public record.
  - 6.8.2 Voting shall be by a show of hands. A majority of the entire membership of the Board is required to take official action on a petition. In the event that a vote on an application before the Board results in a tie vote or does not receive a majority of the entire membership, a “no decision vote” will be declared, resulting in a continuance to the next regular meeting and allowing time for further investigation.
  - 6.8.3 The final disposition of an appeal before the Board shall be in the form of an order either reversing or modifying the requirement, order, decision or determination appealed from or affirming the order and denying the appeal. The Board may dismiss an appeal for lack of jurisdiction.
  - 6.8.4 An application withdrawn by the applicant shall not be placed on the agenda for consideration within a period of three (3) months following the date of withdrawal from the agenda of the Board.
  - 6.8.5 A specific application which has been adversely decided to the petitioner shall not be placed on the agenda for consideration for a period of six (6) months following the date of the adverse decision issued by the Board.
- 6.9 Commitments
  - 6.9.1 Authority. In the case of a petition or an application for a variance or special exception, the Board may permit or require the owner of a parcel of property to make a written Commitment concerning the use or development of that parcel.\

- 6.9.2 Form. A Commitment must be in substantially the form set forth in the Appendix to these rules, and must identify any specially affected persons or class of specially affected persons who may enforce the Commitment. A Commitment must authorize its recording by the Executive Director in the Office of the Boone County Recorder.
- 6.9.3 Recording; Copies. A Commitment shall be recorded in the Office of the Boone County Recorder and takes effect upon the approval of the variance or special exception to which it relates. Following the recording of a Commitment, the Executive Director shall return the original recorded Commitment to the applicant and shall retain a copy of the recorded Commitment in the Board's file.
- 6.9.4 Persons Bound. Unless it is modified or terminated by the Board in accordance with paragraph 6.8.5 below, a recorded Commitment is binding on the owner of the parcel, a subsequent owner of the parcel, and any other person who acquires an interest in the parcel. An unrecorded Commitment is binding on the owner of the parcel who makes the Commitment. An unrecorded Commitment is binding on a subsequent owner of the parcel or a person acquiring an interest in the parcel only if the subsequent owner or the person acquiring the interest has actual notice of the Commitment.
- 6.9.5 Modification or Termination by Board. A Commitment may be modified or terminated only by a decision of the board made at a public hearing after notice of the hearing has been given under these rules.
- 6.9.6 Rezone Proposals; Automatic Termination. A Commitment made under this paragraph 6.9 automatically terminates if after the approval of the variance or special exception to which it relates:
- 1) the zone map applicable to the parcel is changed; or
  - 2) the parcel is designated as a Planned Unit Development district under the Zoning Ordinance.

## **Article 7                      Conduct of Board Members**

- 7.1 No member of the Board shall represent applicants or appellants on matters on which the Board is to make determinations.
- 7.2 Conflict of Interest. No member of the Board shall participate in any case in which he/she has financial or personal interest in the property or action concerned, or will be directly affected by the decision, or believes he/she has any other conflict of interest as defined by applicable law. No member of the staff of the Board or of any agency serving the Board shall prepare or present arguments or reports, or attempt to influence decisions on the Board, in any case in which he/she has similar interest.
- 7.2.1 Relationships Constituting a Conflict of Interest. Relationships to persons either actual or legal as follows:
- 1) Any relationship or kinship, whether by blood or affinity.
  - 2) Any appointment as legal guardian.
  - 3) Any appointment as trustee.
  - 4) Any appointment as administrator of an estate.
  - 5) Any appointment as agent.
  - 6) Any appointment as broker.
  - 7) Any appointment on retainer, whether or not service was provided.
  - 8) Any consultantship.
  - 9) Any employer-employee relationship.
  - 10) Any mortgagor-mortgagee relationship.

- 11) Any option to purchase, preliminary sales agreement, or sales agreement for real property.
- 12) Any contract for goods and/or services.
- 13) Any of the above legal or contractual relationships associated with the following third parties: any relationship of kinship, members or partnerships (general or limited) or officer or board member of a corporation in which the Board member holds interest.
- 14) Serving as an officer or board member of a professional, fraternal, civic or public service organization, neighborhood association or community organization.
- 15) Serving as an officer or board member of a nonprofit corporation.

7.2.2 Relationship to real property as follows:

- 1) Any interest in real property enjoyed by a member of the Board or any of the above third parties, lying near or otherwise affected by the decision of the Board.
- 2) Any interest in real property enjoyed by a corporation of which a Board member is an officer or board member lying near or otherwise affected by the decision of the Board.

7.2.3 Relationships That Do Not Constitute a Conflict of Interest.

- 1) Holding membership in a professional, fraternal, civic or public service organization, neighborhood association or community organization.
- 2) Holding personal accounts, commercial accounts or liens of credit in financial institutions.
- 3) Holding appointment to the Boone County Area Plan Commission.
- 4) Election or appointment to other public office, prior to taking such office.

7.2.4 Notification of Conflict of Interest. Upon suspicion of any potential conflict of interest in any case to come before the Board, the Board member shall notify the Chairperson, acting Chairperson or counsel of the situation. Upon suspicion of a potential conflict by the Chairperson, he/she shall notify the Vice-Chairperson or counsel.

Should any member(s) be disqualified from participating and voting on any application pursuant to I.C. 36-7-4-909, an alternative may be placed by the appointing body to fulfill the duties of the disqualified member(s).

When a member has reasonable doubt as to whether a conflict exists, the member shall seek legal advice from legal counsel for the Board. Determination as to whether a conflict of interest exists shall be made by the Board as a whole. A majority of members present, excluding the member being discussed, shall be required to make a decision.

The outcome of such decision shall be publicly stated by the Chairperson at the meeting and shall be reflected in the minutes of the meeting.

7.3 Disqualification. A member may disqualify himself/herself from voting whenever any applicant, or his agent, has sought to influence the vote of the member on his appeal or application, other than in the public hearing.

7.4 Ex Parte Contacts. Each member of the Board shall exercise due care in responding to and reporting any external contacts related to matters pending or yet to be presented to the Board.

7.4.1 Whenever a person who is not a member of the Board, staff or counsel initiates contact with a Board member, the member shall refer that person to staff and suggest presentation of the information for inclusion in Board deliberations.

7.4.2 Whenever an external contact persists in offering information, the member, staff or legal counsel shall report the information and identify the source and date of the contact to the full Board for inclusion in its formal record. Where the informant is unwilling to have the information reported, the member shall

refuse further contact, but shall still report the incident to the Board, along with a full disclosure of the content of the contact and any comments or stated positions.

- 7.4.3 Written information transmitted to a Board member shall be forwarded directly to staff for review and incorporation into its report.
- 7.5 Expressions of Bias, Prejudice or Individual Opinion. Board members may seek information from other members, counsel to the Board or staff prior to the public meeting, but no member shall discuss the case with any other parties thereto prior to the public meeting or shall any member, staff or legal counsel express any bias, prejudice or individual opinion on proper judgment of the case prior to its hearing and determination.
- 7.6 Presence to Vote. No Board member shall vote on any matter deciding an application or appeal requiring a public hearing, except after attending the public hearing on the application or appeal.

## **Article 8                      Suspension and Amendment**

- 8.1 Suspension. The Board shall have the right to suspend these rules or any portion thereof, except where otherwise controlled by State Statute or the Boone County, Indiana Comprehensive Zoning Ordinance, at any meeting, upon the majority of the Board.
- 8.2 Amendment. The Board shall have the right to amend these rules or any portion thereof at any regular or special meeting, provided that the amendment(s) are approved by a majority of the Board.
- 8.3 Should any court of any jurisdiction declare these rules to be in part null or void, such ruling shall not affect the remainder of these rules, and they shall stay in full force and effect as if the omitted portion did not exist.

WHEREFORE, the Rules of Procedure of the Boone County Area Board of Zoning Appeals, Boone County, Indiana, are approved by the affirmative vote of all members of the Board in attendance at the regularly scheduled meeting on October 26, 2005. These Rules of Procedure are to become effective immediately and their formal adoption and implementation shall be considered revocation of any prior Rules of Procedure and amendments thereto.

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Quella Rutledge, Vice-Chairperson

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Date