

City of Nappanee Indiana

Unified Zoning and Subdivision Control Ordinance



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Prepared by the Nappanee Advisory plan Commission
With the Assistance of

BONAR
GROUP

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1.1 TITLE

These regulations shall be known and cited as the Unified Zoning & Subdivision Control Ordinance of Nappanee, Indiana.

1.2 PURPOSE

This Ordinance is intended to encourage the growth and development of the City in accordance with the Comprehensive Plan for the City of Nappanee. The Comprehensive Plan and all amendments thereto are incorporated herein by reference with copies of the same maintained in the Office of the Clerk-Treasurer and being open for public inspection during regular business hours.

1.3 JURISDICTION

This Ordinance shall apply to all lands within the corporate limits of the City of Nappanee, Indiana, or as other agreements may allow.

1.4 INTERPRETATION

The provisions of this Ordinance shall be held as the minimum requirements for the protection of the health, safety, comfort, morals, convenience, and general welfare of the people at large, and are designed to encourage the establishment and maintenance of reasonable community standards for the physical environment.

1.5 APPLICATION

It is not intended by this Ordinance to interfere with, abrogate or amend any existing easements, covenants, or other agreements between parties, nor is it intended by this Ordinance to repeal, abrogate, annul, or in any way interfere with any existing provisions of laws or ordinances (other than previous zoning and subdivision control ordinances), or any rules, regulations, or permits previously adopted or issued pursuant to law relating to the use of building 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 private covenants, permits, agreements, rules or regulations impose a greater restriction than is imposed by this Ordinance, the greater restriction shall control. Such greater restrictions as may be imposed shall not be the responsibility of the City of Nappanee for enforcement.

1.6 SAVING PROVISION

This Ordinance shall not be construed as abating any action now pending under, or by virtue of, prior existing zoning and/or subdivision regulations, or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue.

1.7 COMPLIANCE

No structure shall be located, erected, constructed, reconstructed, moved, altered, converted, or enlarged; nor shall any structure or land be used, unless in full compliance with all provisions of this Ordinance and under the lawful issue of all permits and certificates required by this Ordinance.

1.8 SEVERABILITY

If any provision of this Ordinance is held unconstitutional or invalid by the courts, the remainder of the Ordinance shall not be affected.

1.9 REPEALER

This Ordinance repeals all prior zoning and subdivision control ordinances and zoning maps.

1.10 AMENDMENTS

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

- A The legislative body or the Plan Commission may initiate a proposal to amend or partially repeal the text according to the procedure of I.C. 36-7-4-602(b) and I.C. 36-7-4-607 and according to the Commission Rules and Procedures.
- B. The legislative body, Plan Commission, or at least fifty percent of the affected property owners may initiate a petition to change the zoning maps according to the procedure of I.C. 36-7-4-602(c) and I.C. 36-7-4-608 and according to the Commission rules.
- C. In its review of the text and zoning map amendments, the legislative body and the Plan Commission shall pay reasonable regard to:
 - 1. The most recently adopted Comprehensive Plan.
 - 2. Current conditions and the character of structure and uses in each district.
 - 3. The most desirable use for which the land in each district is adapted.
 - 4. The conservation of property values throughout the jurisdiction.
 - 5. Responsible development and growth.

1.11 ENFORCEMENT, VIOLATION, AND PENALTIES

- 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 City Attorney who may file a complaint against the person and prosecute the alleged violation.
- B. The Board of Zoning Appeals by mandatory injunction in the circuit court of the county c1gainst 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 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 thereunder, 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 violation, be fined not less than ten dollars (\$10.00) and not more than two thousand five hundred dollars (\$2,500.00), and each day that such violation or noncompliance shall be permitted to exist, shall constitute a separate violation.
- E. No Improvement Location Permit or Building Permit required under the Uniform Building Code or this Ordinance shall be issued on any property subject to this Ordinance in violation of the provisions of this Ordinance.
- F. Notwithstanding anything 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 Board of Zoning Appeals or the City is required to utilize the services of the City Attorney or any other attorney in investigating a possible violation of this ordinance or enforcing the provisions of this Ordinance pursuant to Section 1.11C, 1.11D, or 1.11E, 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 City is successful in its enforcement of the Ordinance by way of suit, appeal or other appropriate proceeding, the respondent, defendant, or party investigated for a violation shall pay the City'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 Nappanee City Council.
- G. 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.

1.12 ADMINISTRATIVE OFFICER

The Nappanee Plan Commission's appointed Zoning Administrator shall have the principal responsibility for implementation and enforcement of this Ordinance.

2.1 GENERAL

The definitions contained in this section shall be observed and applied in the interpretation of all sections of this Ordinance, except where the context clearly indicates otherwise. Furthermore, words used in the present tense, singular number, and masculine gender, shall also mean the future, plural, and feminine.

2.2 SPECIFIC

The following words and terms appearing in this Ordinance shall have the following meanings:

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 of transferring rights to the property to another owner nor of resuming the use of the property.

Accessory Building, Structure, or Use

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, 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; and
- H. does not generate income (with the exception of carports or garages).

Administrator

The officer appointed and/or delegated the responsibility for the administration of this Ordinance's regulations by the Mayor and approved by the City Council.

Adult Bookstore

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

Adult Entertainment Business

An adult bookstore, adult motion picture theater, adult cabaret, adult live entertainment arcade, or any other use where entertainment of a sexually explicit nature is provided, regardless of whether or not such entertainment is ongoing or periodic.

Advisory Plan Commission

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

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.

Agriculture

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

"Agriculture" shall not include feed lots, stock yards, or the commercial feeding of garbage or offal to swine or other animals.

Airport Hazard

Any structure or object of natural growth located on or in the vicinity of a public airport or any use of land near such airport, which obstructs the air space required for the flight of aircraft in landing or takeoff or is otherwise hazardous to aircraft.

Aisle - See "Maneuvering Space."

Alley

A public right-of-way, other than a street, road, crosswalk, or easement, that provides secondary access to abutting properties.

Animal Hospital/Clinic - See "Veterinary Animal Hospital/Clinic."

Animal Shelter - See "Kennel."

Annexation

The process by which a municipality may add territory to itself, as specified in Indiana Code 36-4-3-1 to 36-4-3-21, as amended.

Antenna

means any system of wires, poles, rods, reflecting discs, or similar devices used for the transmission or reception of electromagnetic waves when such system is either external to or attached to the exterior of a structure. Antennas shall include devices having active elements extending in any direction, and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be a part of the antenna. Antennas shall include cellular on wheels (COWs) and cellular on light trucks (COLTs) facilities; as well as dispatch carriers for Specialized Mobile Radio (SMR) services and Enhanced SMR (ESMR).

Antenna - Building Mounted

means any antenna, other than an antenna with its supports resting on the ground, directly attached or affixed to a building, tank, tower, building mounted mast less than 10 feet tall and 6 inches in diameter, or structure other than a telecommunication tower.

Antenna - Directional (also known as a panel antenna)

transmits and/or receives radio frequency signals in a directional pattern of less than 360 degrees.

Antenna - Ground Mounted

means any antenna with its base, single or multiple posts, placed directly on the ground or a mast less than 10 feet tall and 6 inches in diameter.

Antenna - Omni-directional

transmits and/or receives radio frequency signals in a 360-degree radial pattern. For the purpose of this Chapter, an omni-directional antenna is up to fifteen feet (15') in height and up to four inches (4") in diameter.

Antenna - Parabolic (also known as satellite dish antenna)

means any device incorporating a reflective surface that is solid, open mesh, or bar configured that is shallow dish, cone, horn, bowl or cornucopia shaped and is used to transmit and/or receive electromagnetic or radio frequency communication/signals in a specific directional pattern. This definition is meant to include, but is not limited to, what are commonly referred to as satellite earthstations, TVROs and satellite microwave antennas.

Antenna - Portable

means any device used to transmit and/or receive electromagnetic or radio frequency communication/signals in a specific directional pattern, located on a portable or moveable base designed to be placed either for temporary or long-term use at a given site.

Antenna - Vertical

means a vertical type antenna without horizontal cross-sections greater than one half inch in diameter.

Apartment

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

Apartment Building

A multi-family housing structure designed and constructed to accommodate three (3) or more apartments, in contrast to 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.

Arterial Street - See Street, Arterial**Attached Building**

A building that is structurally connected to another building by a foundation, wall, or roof line. Carports, garages, porch awnings and the like shall be considered attached buildings and abide by all regulations pertaining to primary buildings.

Auto Repair, Major

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

Auto Repair, Minor

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

Automobile Service Station

Any building or premises used for the dispensing, sale, or offering for sale at retail to the public, automobile fuels stored only in underground tanks and located wholly within the lot lines; lubricating oil or grease for the operation of automobiles; and the sale and installation of tires, batteries, other minor accessories, and minor auto repair, but not including a bulk plant, conducting of major auto repairs, automobile wrecking, automobile sales, or automobile laundries; provided, however, that the washing of individual automobiles where no chain conveyor is employed may be included.

Awning

A covering mounted over doors and/or windows, usually made of canvas or other cloth material on an aluminum frame and extending from the building not more than eight (8) feet, attached to the building for protection from rain or for aesthetic purposes.

Barrier Curb - See "Curb, Barrier."Bed and Breakfast Facility

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

Berm

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

Bicycle-Compatible Roadway

A road designed to accommodate the shared use of the roadway by bicycles and motor vehicles.

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 and/or pedestrians.

Billboard - See "Sign, Outdoor Advertising."Block

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

Blow-Off

An outfall in a pipe through which water or sediment can be discharged from a lower sewer.

Board

The City of Nappanee Advisory Board of Zoning Appeals or any division thereof, as the case may be.

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, spece, 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.

Bufferyards

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.

Building

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

Building Area

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

Building Code

The City ordinance establishing and controlling the standards for constructing mechanical equipment, and all forms of permanent structures and related matters within the City. Also referred to herein as the Nappanee Building Code.

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 (See Figure 2.1).

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.

Burn Barrel

Any container used for the outdoor incineration of waste material, yard debris, etc.

Business

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

Business District

Refers to B-1, B-2, and PD-B Districts.

BZA

The Advisory Board of Zoning Appeals of the City of Nappanee, Indiana.

Campground

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

Capital Improvement Plan - See "Plan, Capital Improvement."

Capped System

A completed water supply and/or sewerage system put in place for future use (contingent upon expansion), rather than to meet immediate development needs.

Cartway

The actual road surface area from curblineline to curblineline, which may include travel lanes, parking lanes, and deceleration and acceleration lanes. Where there are no curbs, the cartway is that portion between the edges of the paved, or hard surface, width.

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 City of Nappanee.

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 Nappanee Building Code.

Channel

The bed and banks of a natural stream which convey the constant or intermittent flow of the stream.

Channelization

The straightening and deepening of channels and/or the surfacing thereof to permit water to move rapidly and/or directly.

City

The City of Nappanee, Indiana

Clinic

An establishment in which human patients are admitted for medical or dental study or treatment and in which the services of at least two (2) physicians or dentists are provided.

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.

Cluster Development - See "Planned Unit Development."

Collector Street - See "Street, Collector."

Co-location - see telecommunication facility - co-located.

Commercial Use

means a use that involves the exchange of cash, goods or services, barter, forgiveness of indebtedness, or any other remuneration in exchange for goods, services, lodging, meals, entertainment in any form, or the right to occupy space over any period of time.

Commission

The City of Nappanee Advisory Plan Commission.

Common Open Space - See "Open Space, Common."

Component Home - See "Manufactured Home."

Composting

A controlled process of degrading organic material by microorganisms.

Composting Facility

Any location, structure, or facility where composting takes place.

Comprehensive Plan - See "Plan, Comprehensive."

Conceptual Plan - See "Plan, Conceptual."

Conditional Use

Special provisions or requirements applicable to specific uses in certain zoning districts. If specified conditions are met as determined in this Ordinance or by the Zoning Administrator, no further approval is required.

Condominium

Real estate lawfully subject to I.C. 32-1-6 (1-31), (the Horizontal Property Law), by the recordation of condominium instruments, in which undivided interests in the common areas and facilities are vested in the condominium unit owners.

Conforming Manufactured Home

Pursuant to Public Law 312, Acts of 1981 (I.C. 36-7-4-1106), a residence constructed after January 1, 1981, that exceeds nine hundred fifty (950) square feet of occupied space and which is installed

as a permanent dwelling unit which may be placed or constructed providing it complies with setback, side and rear yard, parking space, and minimum square footage requirements for the district in which it is located, and the underfloor space requirements of the Nappanee Unified Zoning and Subdivision Control Ordinance.

Construction Plan - See "Plan, Conceptual."

Contingent Use

A use contemplated by the Ordinance, which is likely or liable but not certain to occur, and is compatible with the essential design of a particular district although the use is contrary to the restrictions imposed thereon.

Convenience Store

Any commercial location, facility, or structure where gasoline and groceries (including food, drink, and household items) are sold on the same premises.

Conventional Development

Development other than planned unit development.

Council

The Common Council of the City of Nappanee, Indiana.

County

Elkhart County or Kosciusko County, Indiana, as may be appropriate.

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.

Curb, Barrier

A steep-faced curb intended to prevent encroachments.

Curb, Mountable

A low curb with a flat slope designed to be crossed easily without discomfort.

Day Care Center

Any institution operated for the care of children, licensed pursuant to I.C. 12-3-2-3.1, et seq., and as defined by Indiana Code Section 12-3-2-3.

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

Residential development having a density in excess of ten (10) dwelling units per gross acre. Also refers to an R-3 zoning district.

Density, Low

Residential development having a density equal to or less than six (6) dwelling units per gross acre. Also refers to an R-1 zoning district.

Density, Medium

Residential development having a density of seven (7) to ten (10) dwelling units per gross acre. Also refers to an R-2 zoning district.

Design Flood - See "Regulatory Flood."

Design Review Board

A group of citizens appointed by the Mayor and approved by the City Council for the purpose of protecting visual character and community aesthetics through the recommendation and/or establishment of design guidelines.

Design Standards

Standards that set forth specific improvement requirements.

Design Standards Variance - See "Variance, Design Standards/Development Regulations."

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 for any use or utilized for commercial or industrial purposes. Consent for making applications for development approval shall be required from the legal owner of the premises.

Development Plan - See "Plan, Development."

Development Regulation

Zoning, subdivision, site plan, official map, flood plain regulation, or other governmental regulation of the use and development of land.

Development Regulation Standards - See "Design Standards."

Development Regulation Variance - See "Variance, Design Standards/Development Regulations."

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.

Direct Broadcast Satellite Service

is a system in which signals are transmitted directly from a satellite to a small (not exceeding 18") home receiving dish. DBS competes with cable television.

District

A section of the City of Nappanee for which uniform zoning regulations exist governing use, height, area, size, intensity of use of buildings and land, and open spaces about buildings, as established by this Ordinance.

Divided Street - See "Street, Divided."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.

Drives, Private - See "Street, Private."Duplex

Any structure which contains only two (2) dwelling units; a two-family dwelling.

Dwelling

A building or structure or portion thereof, conforming to all requirements applicable to the residential use districts and Nappanee Building Code, used exclusively for residential occupancy, including single-family dwelling units, two-family dwelling units, and multi-family dwelling units, but excluding hotels, boarding houses, and lodging houses.

Dwelling, Multi-Family

A residential building designed for or occupied by two (2) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, Single-Family

A detached residential dwelling unit designed for and occupied by one (1) family.

Dwelling, Two-Family

A detached residential building containing two (2) dwelling units designed for occupancy by not more than two (2) families. (See also "Duplex.")

Dwelling Unit

Any structure or portion thereof designed for or used for residential purposes as a self-sufficient or individual unit by one (1) family or other social association of persons and having permanently installed cooking and sanitary facilities.

Easement

A grant by a property owner to specific persons, the general public, corporations, utilities, or others, for the purpose of providing services or access to the property.

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.

Equipment building, shelter or cabinet

means a cabinet or building used to house equipment used by telecommunication providers to house equipment at a facility.

Erosion

The detachment and movement of soil or rock fragments, or the wearing away of the land surface by water, wind, ice or gravity.

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.

Essential Services

The phrase "Essential Services" means the erection, construction, alteration or maintenance by public utilities or municipal departments or commissions of underground, surface, or overhead electrical, gas, steam or water transmission or distribution systems, collection, communication, supply or disposal systems, including mains, drains, sewers, pipes, conduits, wires, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, towers, poles and other similar equipment and accessories in connection therewith, but not including buildings reasonably necessary for the furnishing of adequate service by such public utilities or municipal departments or commissions or including electrical substations. No permit is required for essential services.

Expressway/Freeway

Any roadway that operates at a high service *level*, consists of limited access, is divided, carries region-wide traffic, and is generally classified as part of an interstate system.

Family

An individual, or two (2) or more persons related by blood, marriage, or adoption, or a group of not more than three (3) persons, not related by blood, marriage, or adoption, living together as a single housekeeping unit in a dwelling unit.

Farm

An area used for agricultural operations, forestry, the operating of a tree or plant nursery, or the production of livestock and poultry.

Fence

A structure designed and constructed for enclosures and/or screening. A hedge serving the same purposes as a fence shall be considered a fence.

Fee Schedule - See "Official Fee Schedule."

Filling Station

Any establishment supplying and selling motor fuel or oil direct to motor vehicles.

Final Approval

The official action of the Plan Commission taken on a preliminarily approved major subdivision or site plan, after all conditions, engineering plans, and other requirements have been completed or fulfilled and the required improvements have been installed, or guarantees properly posted for their completion, or approval conditioned upon the posting of such guarantee (generally referred to as secondary approval).

Final Plat

The final map of all or a portion of a development which is presented for final approval (generally referred to as secondary plat.)

Flood Control

The prevention of floods, the control, regulation, diversion or confinement of flood water or flood flow, and the protection therefrom, according to sound and accepted engineering practice, to minimize the extent of floods, and the death, damage, and destruction caused thereby.

Flood Plain

The relatively flat area or low land adjoining the channel of a river or stream which has been or may be covered by flood water. The flood plain includes the channel, floodway, and floodway fringe. Flood plain boundaries are to be determined by using the Floodway- Flood Boundary Maps of the Federal Insurance Administration.

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.

Floodway - See "Regulatory Floodway."

Floor Area

The horizontal area of all floors of buildings or structures.

Footprint - See "Building Footprint."

Foundation

The supporting member of a wall or structure.

Freeway - See Expressway

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 may otherwise specify (See Figure 2.1).

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. The front yard of a corner lot shall be that yard abutting the street upon which the lot has its least frontage, except as deed restrictions may otherwise specify. (See Figure 2.1)

Frontage

All property of a lot fronting on a street right-of-way, as measured between side lot lines.

Garage, Private

An accessory building with capacity for not more than three (3) motor vehicles per family, not more than one (1) of which may be a commercial vehicle of not more than three (3) tons GVW. A garage designed to house two (2) motor vehicles for each family housed in a multi-family dwelling shall be classed as a private garage.

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.

Garage Sale - See "Sale, Garage/Yard."

General Development Plan - See "Plan, General Development."

General Industrial Use

Manufacturing, processing, heavy repairing, dismantling, or storage, in which a majority of operations are performed within enclosed buildings.

Governing Body - See "Council."

Grade

The slope of a street, or other public way, specified in percentage (%) terms.

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.

Ground Floor Area

See Building Area

Group Home

- A. Developmentally Disabled: A residential facility for the developmentally disabled, as defined and regulated under IC. 16-13-21-12.

- B. Mentally Disabled A residential facility for the mentally disabled as defined and regulated under I.C. 16-13-21-11.5.

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.

High Density - See "Density, High."

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.

Historic Preservation Commission

A commission of local jurisdiction created in accordance with the provisions of I.C. 18-7-22 for the purposes of reviewing the establishment of Historic Preservation Overlay Districts, adopting, and amending development standards for Historic Preservation Overlay Districts, and identifying local landmarks.

Historic Preservation Overlay District

A district which may be established to promote the cultural, economic, and general welfare of the public through the preservation and protection of structures and areas of local historical and cultural interest.

Historic Site

A structure or place of historical significance, which may be designated as such by local, state, or federal government.

Home Occupation

A An occupation carried on in a dwelling by the resident thereof, not involving:

1. retail sales as a primary function;
2. the employment of any additional persons in the performance of such services except members of the immediate family residing on the premises;
3. the use of any mechanical equipment, other than is usual for purely domestic or hobby purposes; or
4. exterior storage of equipment or materials used in connection with the home occupation.

5. the use of more than twenty-five percent (25%) of the total floor area of one-story.
 6. the substantial alteration of the "residential" appearance of the residence.
 7. the paving and/or allowing of additional parking on the front, side or rear yard of a residential property.
 8. substantial increases in vehicular traffic to and from the Home Occupation location.
- B. Permitted home occupations shall be of a personal service nature limited to domestic crafts and professional services.
- C. Permitted uses are deemed so until the Council, Commission or BZA rule the use to be a nuisance, or until all adjacent neighbor's petition to the City that the use is a nuisance.
- D. A permit must be acquired to begin the conversion of a home and the start of operations as a Home Occupation.
- E. A business telephone in itself does not define a home occupation or a permitted home occupation.
- F. A home occupation permit is not transferrable upon the transfer of property.

Hotel

A building in which lodging, or board and lodging are provided and offered to the public for compensation and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge at all hours. As such, it is open to the public. Compensation is usually assessed on a day-to-day basis.

Hospital

An institution devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or care for three (3) or more 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.

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.

Impoundment

A body of water, such as a pond, confined by a dam, dike, floodgate, or other barrier.

Improvement

Any man-made, immovable item which becomes part of, is placed upon, or is affixed to, real estate; facilities which aid in land development.

Improvement Location Permit

A permit signed by the Zoning Administrator stating that a proposed improvement complies with the provisions of this Ordinance and such other ordinances as may be applicable.

Incinerator

A device, structure, or facility designed to reduce waste volume by combustion, consisting of refuse handling and storage facilities, furnaces, combustion chambers, subsidence chambers, residue handling and removal facilities, and chimneys.

Industrial District

Refers to the 1-1 and PD-I Districts.

Industrial Park

An industrial development not less than twenty (20) acres in area developed within the I or PD-I zoning districts, in which buildings and land may be used for research, office, experimental or testing laboratories, light industrial, manufacturing, storage and distribution facilities, and other customary uses.

Inhabited Area

means any residence, any other structure regularly occupied by people, or any outdoor area used by people on a regular basis.

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 or management for lease, and utilizing one or a combination of the aforementioned common services.

Interior Lot - See "Lot, Interior."

Interstate - See "Expressway."

Island

With respect to street design, a raised area, usually curbed, placed to guide traffic and separate lanes, or uses for landscaping, signing, or lighting.

Junk

An automobile, truck, other motor vehicle, large appliances, furniture or like material which has been damaged to such an extent that it cannot be operated under its own power or used and/or will require major repairs before being made usable. This could include such a vehicle which does not comply with State or City vehicle laws or ordinances.

Junk Yard

A place, usually outdoors, where waste or discarded used property other than organic matter, including but not limited to, automobiles, farm implements and trucks, is accumulated and may be salvaged for reuse or resale; this shall not include any industrial scrap metal yard.

Jurisdiction

The territory under the regulatory control of the Nappanee Plan Commission, including all lands inside the corporate limits of the City of Nappanee.

Kennel

Any lot on which four (4) or more dogs, or small animals at least four (4) months of age, are kept.

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.

Lattice Tower

means a self-supporting support structure, erected on the ground, which consists of metal crossed strips or bars to support antennas and related equipment.

Limited Access Highway

A highway to which abutting properties are denied access or where access is limited to certain locations.

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) foot by thirty (30) foot loading space with a fourteen (14) foot height clearance, paved with a hard surface.

Local Street - See "Street, Local."**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

A parcel of land occupied or to be occupied by one (1) or more buildings and uses including the open spaces required under this Ordinance. A lot may be land so recorded on official records or it may include parts or a combination of such lots when adjacent to one another, provided such ground is used for only one (1) principal use, or may be a parcel of land described by metes and bounds.

Lot, Corner

A lot situated at the intersection of two (2) streets, or which fronts a street on two (2) or more sides. (See Figure 2.1)

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. (See Figure 2.1)

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. (See Figure 2.1)

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. (See Figure 2.1)

Lot Line, Side

Any lot boundary line not a front lot line or a rear lot line. (See Figure 2.1)

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.

Low Density - See "Density, Low."

Main

In any system of continuous piping, the principal artery of the system to which branches may be connected.

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:

- A is immediately adjacent to a parking space;
- B. is used for and/or is necessary for turning, backing or driving forward a motor vehicle into such parking space, but
- C. is not used for the parking or storage on motor vehicles.

Manufactured Home

A single-family dwelling unit designed and built in a factory, installed as a permanent residence, which bears a seal certifying that it was built in compliance with the Federal Manufactured Housing Construction and Safety Standards Law (1974 U.S.C. 5401 et seq.), and which also complies with the following specifications:

- A shall have been constructed after January 1, 1981, and must exceed nine hundred fifty (950) square feet of occupied space per I.C. 36-7-4(d);
- B. is attached to a permanent foundation of masonry construction and has a permanent perimeter enclosure constructed in accordance with the One and Two-Family Dwelling Code;
- C has wheels, axles, and towing chassis removed;
- D. has a pitched roof with a minimum rise of 2/12; and
- E. consists of two (2) or more sections which, when joined, have a minimum dimension of twenty (20) feet in both length and width.

Marker (Survey)

A stake, pipe, rode, nail, or any other object which is not intended to be a permanent point for record purposes.

Master Plan - See "Plan, Comprehensive."

Maximum Credible Earthquake

means the maximum earthquake predicted to affect a given location based on the known lengths of the active faults in the vicinity.

Median

That portion of a divided highway separating lanes of traffic proceeding in opposite directions.

Medium Density - See "Density, Medium."

Mobile Home

Any housing unit defined or titled by the State of Indiana as a "Mobile Home" and/or any portable structure eight (8) feet or more wide, thirty (30) feet or more long, designed primarily for year-round residency, was originally designed and transported with its own running gear, and by the nature of its design does not require a permanent foundation.

Mobile Home Parks

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 Park Street

A public or private way other than an alley which affords a primary means of access to abutting property within a mobile home park.

Mobile Home Subdivision

Any site, lot, field, or tract of land under single ownership, or ownership of two or more persons, which is to be divided into smaller sites, lots, fields, or tracts of land, which smaller sites, lots, fields, or tracts of land are to be sold for use by the purchaser to park such purchaser's mobile homes.

Modular Home

A residence built pursuant to regulations promulgated by the Fire Prevention and Building Safety Commission or its successor for industrialized building systems pursuant to I.C. 22-13-4-2 as amended from time to time and which is permanently placed upon a foundation.

Monopole

is a wireless communication facility which consists of a monopolar structure, erected on the ground to support wireless communication antennas and connecting appurtenances.

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.

Motor Vehicle

Any passenger vehicle, truck, tractor, tractor-trailer, truck-trailer, trailer, or semi-trailer propelled or drawn by mechanical power.

Mountable Curb - See "Curb, Mountable."

Moving Lane

Any traffic lane where traffic movement is the primary if not sole function.

Mulch

A layer of wood chips, dry leaves, straw, hay, plastic, or other materials placed on the surface of the soil around plants to retain moisture, prevent weeds from growing, hold the soil in place, aid in plant growth, or improve the general aesthetic quality.

NIER

means non-ionizing electromagnetic radiation (i.e., electromagnetic radiation primarily in the visible, infrared, and radio frequency portions of the electromagnetic spectrum).

Non-Conforming Building

A building, structure, or portion thereof, which was designed, erected, or structurally altered such that it does not conform to the regulations of the district in which it is located.

Non-Conforming Use

A use which does not conform with the use regulations of the district in which it is located.

Nuisance

The use of land or behavior that brings harm or substantial annoyance to adjacent property owners or the public in general.

Nursing Home - See "Rest Home."Official Fee Schedule

Schedule of fees established by City Council and maintained in the Clerk-Treasurer's office which specifies all current permit fees, rates, etc.

Off-Site

Located outside the lot lines of the lot in question but within the property (of which the lot is a part) that is the subject of a development application, or in a contiguous portion of a street or right-of-way.

Off-Site Improvements

Any premises not located within the area of the property to be subdivided, whether or not in the same ownership of the applicant for subdivision approval, upon which is located improvements required by or related to the property to be subdivided.

Off-Street Parking Space - See "Parking Space, Off-Street."Off-Tract

Not located on the property that is the subject of a development application nor on a contiguous portion of a street or right-of-way.

On-Site

Located on the lot in question.

On-Street Parking Space - See "Parking Space, On-Street."On-Tract

Located on the property that is the subject of a development application or on a contiguous portion of a street right-of-way.

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, Common

Land within or related to a development. not individually owned or dedicated for public use, which is designed and intended for the common use or enjoyment of the residents of the development. It may include complementary structures and improvements.

Open Space, District

Refers to an "O" District.

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.

Outdoor Advertising - See "Sign, Outdoor Advertising."

Outdoor Cafe

Any portion of food establishment or eating or drinking place located on a public sidewalk or public open space that provides waiter or waitress service and is unenclosed.

Outdoor Sales - See "Sales ..."

Outdoor Storage - See "Storage, Outdoor."

Owner

Any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to or sufficient proprietary interest in the land sought to be subdivided under these regulations, or their legal representative.

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, brick, or clay surface.

Performance Bond

An amount of money or other negotiable security paid by the subdivider or his surety to the City which guarantees that the subdivider will perform all actions required by the City 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.

Permanent Perimeter Enclosure

A permanent perimeter structural system completely enclosing the space between the floor joists of the home and the ground, except for the necessary openings, constructed in accordance with the Nappanee Building Code.

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 stormwater, 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 Nappanee, 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 the City of Nappanee.

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 written or graphic forms for the development of the jurisdiction and adopted by the Commission pursuant to the J.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. Construction - See "Plan. Conceptual."

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 - See "Thoroughfare Plan".

Planned Unit Development (PUD) (also planned development)

A large-scale unified development meeting the requirements for zoning approval under the provisions of Section 6 of this Ordinance.

Generally, a planned unit development consists of a parcel or parcels of land 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 unit development requires approval through a zoning map amendment and development plan approval process as specified in Section 6 herein.

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 with 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.

Prefabricated Home

Either a "Mobile Home", "Manufactured Home", or "Modular Home" as defined herein.

Primary Plat - See "Plat, Primary."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.

Private Street - See "Street, Private."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 Open Space - See "Open Space, Public."Public Parking Area - See "Parking Area, Public."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 service use or facility

means a use operated or used by a public body or public utility in connection with any of the following services: water, waste water management, public education, parks and recreation, fire and police protection, solid waste management, transportation or utilities.

Public Street - See "Street, Public."Public Structure - See "Structure, Public."

Public Utility

Any person, firm, or corporation duly authorized to furnish under public regulation to the public, electricity, gas, steam, telephone, fiber optics, transportation, water, or sewerage systems.

Public way

means and includes all public streets and utility easements, now and hereafter owned by the City, but only to the extent of the City's right, title, interest or authority to grant a license to occupy and use such streets and easements for telecommunications facilities.

PUD - See "Planned Unit Development."

Quasi-Public Use

means a use serving the public at large and operated by a private entity under a franchise or other similar governmental authorization, designed to promote the interests of the general public or operated by a recognized civic organization for the benefit of the general public.

Readily Visible

means an object that stands out as a prominent feature of the landscape when viewed with the naked eye.

Rear Lot Line - See "Lot Line, Rear."

Rear Yard - See "Yard, Rear."

Recreational Vehicle

A portable vehicular structure designed as a temporary dwelling for travel and vacation uses which:

- A. is identified on the unit by the manufacturer as a travel trailer
- B. is not more than eight feet in body width
- C. is of any weight provided its body length does not exceed twenty-nine feet
- D. is a structure mounted on an automobile or truck
- E. is designed to be used for sleeping and human habitation

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.

Recycling

A resource recovery method involving the collection and processing of a waste product for use as raw material in the manufacture of new products.

Recycling Center

Any permanent structure or facility where recyclable materials are stored or processed.

Recycling Drop-Off

Any structure, facility, or location, either temporary or permanent, where recyclable materials from more than one household are left for transport to a recycling center.

Recycling, Mobile Unit

Any vehicle, wagon, cart, trailer, or moveable bin used for the collection and/or temporary storage of recyclable materials.

Registered Land Surveyor

A land surveyor properly licensed and registered or through reciprocity permitted to practice in the State of Indiana.

Registered Professional Engineer

An engineer properly licensed and registered or through reciprocity permitted to practice in the State of Indiana.

Regulatory 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.

Related equipment

means all equipment ancillary to the transmission and reception of *voice* and data via radio frequencies. Such equipment may include, but is not limited to, cable, conduit and connectors.

Residential District

Refers to an R-1, R-2, R-3, R-4, or PD-R District.

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, drug addicts, or alcoholics.

Resubdivision

A change in a recorded subdivision plat if such change affects any street layout or area reserved thereon for public use or any lot line; or if it affects any map or plan legally recorded prior to the adoption of any regulations controlling subdivisions.

Retaining Wall

A structure erected between lands of different elevation to protect structures and/or to prevent the washing down or erosion of earth from the upper slope *level*.

Retention Basin

A pond, pool, or basin used for the permanent storage of water runoff. By definition, a retention pond has standing water at all times.

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.

Sale, Garage/Yard

A sale of household goods, furniture, equipment, utensils, appliances, tools, personal clothing or effects, novelty items, glassware, farm products, or similar personal property, including, but not limited to any sale commonly termed "PORCH SALE," "YARD SALE," "LAWN SALE," "GROUP FAMILY SALE," "RUMMAGE SALE," "WHITE ELEPHANT SALE," "FLEA MARKET SALE," or "ATTIC SALE."

Sale, Roadside

Sale of goods by one or more vendor over the age of eighteen (18), having transported such goods or services by car, truck, bicycle, trailer, or cart to a temporary roadside location (additional conditions specified in Section 4.5 of the Nappanee Unified Zoning and Subdivision Control Ordinance).

Sale, Sidewalk

Sale of goods or services by one or more vendor on a sidewalk or public open space immediately outside of the commercial establishment in which such goods or services are typically sold (additional conditions specified in Section 4.5 of the Nappanee Unified Zoning and Subdivision Control Ordinance).

Sanitary Landfill

A site on which solid wastes are disposed of in a manner protective to the environment, such that wastes are spread in thin layers, compacted to the smallest practical volume, and covered with soil at the end of each workday.

Satellite Dish

An apparatus capable of receiving audio/visual broadcasts from a transmitter relay located in planetary orbit, generally four (4) to eight (8) feet (1.2 to 2.4 m) in diameter.

Satellite Earth Station

means a telecommunication facility consisting of more than a single satellite dish smaller than 10 feet in diameter that transmits to and/or receives signals from an orbiting satellite.

School

A public or private institution which offers instruction in any of the branches of learning and study comparable to that taught in the public schools under the Indiana School Laws, including pre-kindergarten, kindergarten, elementary school, and junior and senior high schools, but excluding trade, business, or commercial schools.

Scrap Metal Yard

A general industrial use established independent or ancillary to and connected with another general industrial use, which is concerned exclusively in new and salvaged metal pipes, wire, beams, angles, rods, machinery, parts, fittings, clippings, and all other metal items of every type, and which acquires such items incidental to its connection with the other general industrial use or by purchase, consignment or bailment which stores, grades, processes, melts, cuts, dismantles, compresses, cleans, or in any way prepares said items for reuse by the connected other general industrial use or for sale and shipment and use in other industries or businesses including open hearth, electric furnaces and foundry operations; such an establishment shall not include junk yards, dumps, or automobile graveyards.

The storage, dealing in or the permitting of the accumulation of significant quantities of combustible, organic or nonmetal scrap materials such as wood, paper, rags, garbage, bones and shattered glass

on the premises of such an establishment will disqualify it from being classified as a scrap metal yard, and the same will be classified as a junk yard.

Seasonal Business

A temporary business operating at a non-permanent location for certain months of the year or during special events.

Secondary Plat - See "Plat, Secondary."

Service Station - See "Automobile Service Station."

Setback

The minimum horizontal distance between the building line and a lot line or right-of-way. (See Figure 2.1)

Shared Housing

Any dwelling unit which the owner allows to be occupied by unrelated persons living as a single housekeeping unit, provided that the number of occupants does not exceed twice the number of bedrooms, and that the total number of occupants does not exceed four (4) regardless of the number of bedrooms.

Shoulder

The graded or paved part of the right-of-way that lies between the edge of the main pavement (cartway) and the curb or ditch.

Side Lot Line

A lot boundary line other than a front or rear lot line. (See Figure 2.1)

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. (See Figure 2.1)

Sight Triangle

A triangular-shaped portion of land established at street 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

An on-premise advertising device not fixed to a permanent foundation. for the purpose of conveying information. knowledge, or ideas to the public about a subject related to the activities on the premises upon which it is located.

Silhouette

means a representation of the outline of the towers and antenna associated with a telecommunication facility, as seen from an elevation perspective.

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 per Section 11.3 of this Ordinance.

Storage. Outdoor

The outdoor accumulation of goods. junk. vehicles. equipment. products. or materials for permanent or temporary holding.

Story

That portion of a building included between the surface of any floor and the surface of the floor next above it. or if there be no floor above it. then the space between the floor and the ceiling next above it.

Any portion of a story exceeding fourteen (14) feet in height shall be considered as an additional story for each fourteen (14) feet or fraction thereof.

Street

Any street. avenue, boulevard, road, parkway, viaduct, drive, or other roadway.

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. Divided

A street having an island or other barrier separating moving lanes.

Street Furniture

Man-made. above-ground items that are generally found in street rights-of-way. including benches. kiosks. plants, canopies, waste receptacles. shelters, and phone booths.

Street Hardware

The mechanical and utility systems within a street right-of-way. such as hydrants, manhole covers. traffic lights and signs, utility poles and lines. and parking meters.

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

All property dedicated or intended for public highway, freeway, or roadway purpose or subject to public easements therefor.

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.

Structure

Any building or thing, constructed or erected, which requires location on the ground or attachment to something having a location on the ground.

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 Ridgeline

means the line along the top of a roof or top of a structure if it has no roof.

Subdivision

The division of a parent tract or other piece of land into at least two (2) smaller lots or the combination of two or smaller lots into one lot so that either now or in the future the subdivider can do any of the following with one or more of the subdivided lots:

- A. transfer ownership
- B. construct buildings
- C. create new building sites for leasehold.

The actual location, shape and size of a parent tract to be divided is determined by the official record of the last transfer of its ownership transacted before the Nappanee Unified Zoning and Subdivision Control Ordinance enacted or by its last conditional transfer of ownership by recorded contract transacted before the Nappanee Unified Zoning and Subdivision Control Ordinance was enacted. The following kinds of divisions are not subdivisions and are exempt from the rules of the Nappanee Unified Zoning and Subdivision Control Ordinance:

- A. A division of land into two (2) or more tracts, all of which are at least ten (10) acres in size;
- B. A division of land for the transfer of a tract or tracts to correct errors in an existing legal description, provided that no additional principal use building sites are created by the division;
- C. A division of land for federal, state or local government to acquire street right-of-way; and
- D. A division of land for the transfer of a tract or tracts between adjoining lots provided that no additional principal use building sites are created by the division. The lots so created hereunder shall have only one principal use building site each.
- E. Property legally divided prior to adoption of this Ordinance.

Survey Marker - See "Marker."

Survey Monument - See "Monument."

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.

Tattoo Parlor

A place of business where tattooing is performed, also including the instruction, schooling, or education of tattooing. Tattooing means the placement in human tissue of any indelible design, letter, scroll, figure or symbol or other mark placed with the aid of needles or other instruments: or any design, letter, scroll, figure, or symbol done by scarring upon or under the skin.

Telecommunication Facility

means a facility that transmits and/or receives electromagnetic signals. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures supporting said equipment, equipment buildings, parking area, and other accessory development.

Telecommunications Facility - Exempt

include, but are not limited to, the following unless located within a recognized Historic District:

- A. A single ground or building mounted receive-only radio or television antenna including any mast, for the sole use of the tenant occupying a residential parcel on which the radio or television antenna is located; with an antenna height not exceeding twenty-five feet (25');
- B. A ground or building mounted citizens band radio antenna including any mast, if the height (post and antenna) does not exceed thirty-five feet (35');
- C. A ground, building, or tower mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, if the height (post and antenna) does not exceed thirty-five feet (35').
- D. A ground or building mounted received only radio or television satellite dish antenna, which does not exceed thirty-six inches (36") in diameter, for the sole use of the resident occupying a residential parcel on which the satellite dish is located; provided the height of said dish does not exceed the height of the ridgeline of the primary structure on said parcel.
- E. All citizens band radio antenna or antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service which existed at the time of the adoption of this Ordinance.
- F. Mobile services providing public information coverage of news events of a temporary nature.
- G. Handheld devices such as cell phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers and similar devices as determined by the Zoning Administrator.
- H. City government owned and operated receive and/or transmit telemetry station antennas for supervisory control and data acquisition (SCADA) systems for water, flood alert, traffic control devices and signals, storm water, pump stations and/or irrigation systems, with heights not exceeding thirty-five feet (35')

Telecommunications Facility - Major

are all telecommunication facilities not clearly set forth and included in the definition of exempt, minor or mini facilities.

Telecommunication Facility - Mini

is an attached wireless communication facility consisting, but not limited to, the following unless located on a structure recognized as a Historic landmark:

- A. A single ground or building mounted receive-only radio or television antenna including any mast, for the sole use of the tenant occupying the parcel on which the radio or television antenna is located; with an antenna height not exceeding fifty feet (50');
- B. A ground or building mounted citizens band radio antenna including any mast, if the height (tower, support structure, post and antenna) does not exceed seventy feet (70');
- C. A ground, building, or tower mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, if the height (post and antenna) does not exceed seventy feet (70').
- D. A ground or building mounted received only radio or television satellite dish antenna, with diameter exceeding thirty-six inches (36") but less than 8' in diameter, for the sole use of the resident occupying a residential parcel on which the satellite dish is located; provided the height of said dish does not exceed the height of the ridgeline of the primary structure on said parcel.
- E. Exempt telecommunication facility located with a recognized Historic District.
- F. City owned and operated antennae used for emergency response services, public utilities, operations and maintenance if the height does not exceed seventy feet (70'). If a facility does not meet these criteria then it is considered either an "exempt", "minor", or "major" telecommunication facility.

Telecommunication Facility - Minor

means any of the following:

- A. Antenna which meet the definition of "mini"; with the exception of the height limit.
- B. Telecommunication facilities less than thirty-five feet (35') in height and that adhere to Section 13.10 of this Ordinance.
- C. A single ground or building mounted whip (omni) antenna without a reflector, less than four inches (4") in diameter whose total height does not exceed thirty-five feet (35'); including any mast to which it is attached, located on commercial and/or industrial zoned property.
- D. A ground or building mounted panel antenna whose height is equal to or less than four feet (4') and whose area is not more than 480 square inches in the aggregate (e.g.: one foot (1') diameter parabola or 2' x 1.5' panel) as viewed from any one point, located on commercial or industrial zoned property. The equipment cabinets shall be designed, placed and screened to be unobtrusive and effectively unnoticeable.
- E. More than three (3) antennas, satellite dishes (greater than 3' in diameter), panel antennas, or combination thereof, are proposed to be placed on the commercial or industrial parcel, including existing facilities.

- F. Building mounted antennas which, in the opinion of the Zoning Administrator, are unobtrusive or undetectable by way of design and/or placement on the building, regardless of number, when located on commercial or industrial zoned property.
- G. Telecommunication facilities less than fifty feet (50') in height, in compliance with the applicable Sections of this Chapter, located on a parcel owned by the City of Nappanee and utilized for public and/or quasi-public uses where it is found by the Zoning Administrator to be compatible with the existing City uses of the property.
- H. Telecommunication facilities, including multiple antennas, in compliance with the applicable Sections of this Chapter, located on an industrial parcel and utilized for the sole use and purpose of a research and development tenant of said parcel, where it is found by the Zoning Administrator to be aesthetically compatible with the existing and surrounding structures.
- I. Telecommunication facilities located on a structure recognized as a Historic Landmark. If a facility does not meet these criteria, then it is considered a "major" telecommunication facility.

Telecommunication Facility - Co-Located

means a telecommunication facility comprised of a single telecommunication tower or building supporting one or more antennas, dishes, or similar devices owned or used by more than one public or private entity.

Telecommunication Facility - Commercial

means a telecommunication facility that is operated primarily for a business purpose or purposes.

Telecommunication Facility - Multiple User

means a telecommunication facility comprised of multiple telecommunication towers or buildings supporting one or more antennas owned or used by more than one public or private entity, excluding research and development industries with antennas to serve internal uses only.

Telecommunications Facility - Non-Commercial

means a telecommunication facility that is operated solely for a non-business purpose.

Telecommunications Tower

means a mast, pole, monopole, guyed tower, lattice tower, free-standing tower, or other structure designed and primarily used to support antennas. A ground or building mounted mast greater than ten feet (10') tall and six inches (6") in diameter supporting one or more antenna, dishes, arrays, etc. shall be considered a telecommunications tower.

Television Antenna

A metal tower located on or adjacent to a residence or other structure, for the purpose of receiving broadcast messages from signal and/or relay towers.

Temporary Business

Any business operating at or within a moveable location or structure, or any business operating at a location which lacks permanent infrastructure including full utilities, parking, permanent signage, etc.

Temporary Sign - See "Sign, Temporary."

Territorial Jurisdiction - See "Jurisdiction."

Thoroughfare Plan

The portion of the comprehensive plan now and hereafter adopted, which includes the identification and discussion of existing transportation systems, as well as the future needs of the community with respect to roads and streets.

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.

Tree

A woody perennial plant that reaches a mature height of at least eight (8) feet (2.4 m).

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.

Utility - See "Public Utility."

Variance, Use

The approval of a use other than that prescribed by this Ordinance; an act granted by I.C. 36-7-4-918.3. (See Section 11.4)

Variance, Development Regulations/Design Standards

A specific approval granted by a Board of Zoning Appeals in the manner prescribed in Section 11.4 of this Ordinance, to deviate from the development standards (such as height, bulk, area) that the Ordinance otherwise prescribes.

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.

Vision Clearance on Corner Lots - See "Sight Triangle."

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 that foundation to the Front Lot Line. The front yard of a corner lot shall be that yard abutting the street upon which the lot has its least frontage, except as deed restrictions may otherwise specify. (See Figure 2.1)

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. (See Figure 2.1)

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. (See Figure 2.1)

Zone - See "District"

Zoning Administrator - See "Administrator."

Zoning District - See "District."

Zoning Map

The official zoning map of the City of Nappanee, Indiana, denoting zoning districts.

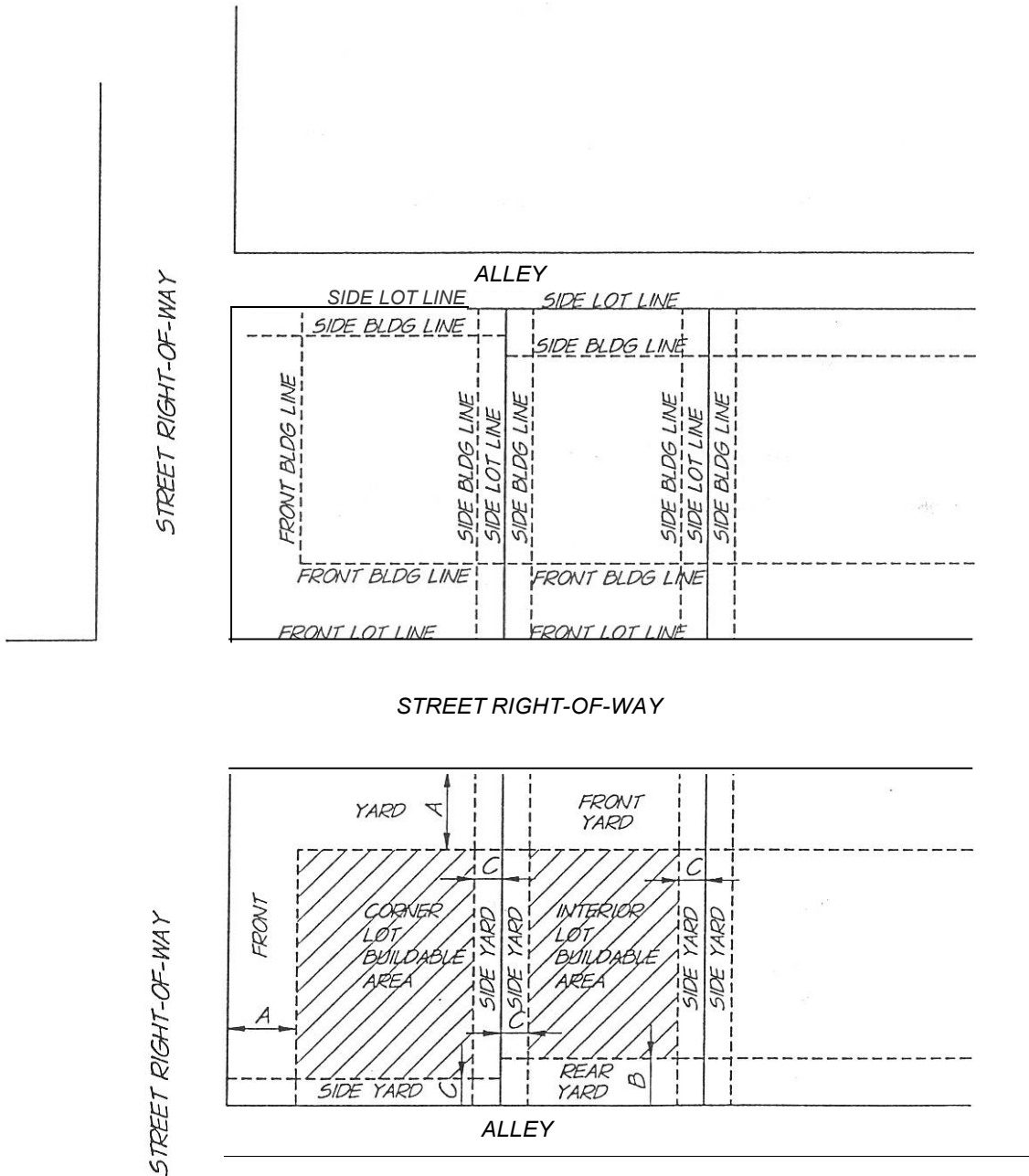
Zoning Ordinance

A set of development guidelines, specifications, and regulations enacted by the Council to create districts which permit certain land uses and character specifications and prohibit others; in reference to documentation, the Nappanee Unified Zoning and Subdivision Control Ordinance, and any other supporting or accompanying ordinances, plans, resolutions, rules, or regulations and including their provisions, except where the context clearly indicates otherwise.

Zoo

A permanent location, building, or structure where more than one exotic animal is kept, indoors and/or outdoors, as an attraction, and where admission is collected.

FIGURE 2.1



- A – FRONT YARD MINIMUM AS SPECIFIED IN SECTION 5.3 TABLE B
- B – REAR YARD MINIMUM AS SPECIFIED IN SECTION 5.2 TABLE D
- C – SIDE YARD MINIMUM AS SPECIFIED N SECTION 5.2 TABLE C

3.1 ESTABLISHMENT

The City is divided into the following districts for purposes as stated:

0: Open Space District

The purpose of the Open Space District (0) is to provide areas for public and quasi-public uses, areas for passive and active recreation, and conservation of unique and/or environmentally sensitive natural areas.

R-1: Low Density Residential District

This district (R-1) is established for low density single-family residential development with a density of six (6) dwelling units or less per gross acre. The regulations applicable to this district are intended to promote the new development of larger lot housing opportunities within the community.

R-2: Medium Density Residential District

This district (R-2) is established for medium density, single-family and two-family residential development with a density of seven (7) to ten (10) dwelling units per gross acre. This district applies to a large portion of Nappanee's existing residential areas. It is the intent of the regulations applicable to this district to promote the development and redevelopment of housing which is supportive in character and proportion to existing residential development adjacent to downtown areas.

R-3: High Density Residential District

This district (R-3) is established for relatively high density single-family, two-family, and multi-family residential development with a density of more than ten (10) or more dwelling units per gross acre. The regulations applicable to this district are intended to facilitate a wide variety of multi-family housing opportunities.

R-4: Residential-Office District

This district (R-4) is established to facilitate the responsible development of residential, office and other compatible uses adjacent to the U.S. 6, S.R. 19, and other important arterial corridors throughout the jurisdiction.

B-1: Limited Business District

This district (B-1) is established for the purpose of promoting the responsible development and operation of small business establishments which primarily serve the limited shopping and service needs of surrounding residential neighborhoods.

8-2: General Business District

The General Business (B-2) District is established to promote and regulate a variety of urban uses within the downtown area and other commercial nodes which will preserve and promote a level of vitality necessary for the regional attraction of commerce.

1-1: Industrial District

The Industrial District (1-1) designates areas for the development and expansion of general industrial, manufacturing, and wholesale business establishments which are clean, quiet, and free of hazardous or objectional elements.

HPOD: Historic Preservation Overlay District

This overlay district (HPOD) is established to promote the cultural, economic, and general welfare of the public through the preservation and protection of structures and areas of historical and cultural interest.

RCOD: Regional Corridor Overlay District

This overlay district (RCOD) is established to promote the welfare and safety of the public through the protection of local portions of transportation corridors of regional importance. The Regional Corridor Overlay District (RCOD) designation is given to areas within the local jurisdiction along corridors having increased significance for regional travel and commerce. Generally, front yard requirements are greater in such a district, and curb cuts are effectively minimized.

PD: Planned Development Districts

These districts (PD-R, PD-B, PD-I, and PD-E) may be established by a zoning map amendment in order to provide greater design flexibility in the development of land when consistent with the Comprehensive Plan and the intent of the Zoning and Subdivision Control Ordinance. The intent of these districts, as well the classifications, procedures, and other requirements for establishing a PD district are set forth in Section 6 herein.

3.2 OFFICIAL ZONING MAP

The zoning map of the City of Nappanee is hereby included as part of this Ordinance. The map shall be known as the Official Zoning Map of the City of Nappanee, Indiana.

- A. The Zoning Map is a public document with the original map located in the Nappanee Municipal Building.
- B. The Zoning District boundaries shall be shown on the Zoning Map. The abbreviations for the zoning districts appearing throughout this Ordinance shall be used to identify the zoning districts on the map. Planned developments shall also be shown on the map and shall be identified by the number and date of passage of the Ordinance approving the Planned Development.
- C. The Zoning Map shall be revised annually, or as the Plan Commission determines, with certified copies made thereof, to show the amendments adopted by the City Council during the previous year. Such revisions may correct drafting or other errors or omissions in the prior map but shall not have the effect of amending the Zoning Map except as adopted by the City Council during the previous year. Such revisions shall be necessary only to correct previous errors.
- D. In the event that the Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the City Council may, by resolution, adopt a new Zoning Map which shall supersede the prior Zoning Map.

3.3 BOUNDARIES

District boundaries on the Zoning Maps shall meet the following standards:

- A. District boundaries shown within the lines of roads, easements, and transportation rights-of-way shall be deemed to follow the centerlines.
- B. Boundaries indicated as following section or fractional section lines, platted lot lines, or City corporation lines shall be construed as following such lines.
- C. Boundaries indicated as parallel to or extensions of above features shall be so construed as so.

- D. Boundaries indicated as approximately following the centerline of streams, rivers, or other bodies of water shall be construed to follow such centerlines as established on the effective date of this Ordinance.
- E. Where a district boundary line divides a lot in single or joint ownership of record at the time such line is adopted, the regulations for the less restricted portion of such lot shall extend not more than fifty feet into the more restricted portion, provided the lot has frontage on a street in the less restricted district.
- F. The vacation of streets and roads shall not affect the location of such district boundaries.
- G. When the Zoning Administrator cannot definitely determine the location of a district boundary by such centerlines, by scale or dimensions stated on the Zoning Map, or by the fact that it clearly does not coincide with a property line, the Administrator shall refuse action and the Plan Commission shall interpret the location of the district boundary with reference to the scale of the Zoning Map and the purposes set forth in all relevant provisions of this Ordinance. If subject to appeal, the BZA shall interpret.
- H. Where existing physical or cultural features are at conflict with those shown on the Zoning Map, or in other circumstances not covered by subsections A through G above, the Plan Commission shall interpret the district boundaries. If subject to appeal, the BZA shall interpret.

3.4 SUBDIVISIONS, CLUSTER DEVELOPMENTS, PLANNED DEVELOPMENTS, CONDOMINIUMS AND ZERO LOT LINE DEVELOPMENTS

The subdivision of land pursuant to the requirements of Section 8 herein shall be permitted in all districts, provided that the intended principal use or uses of the land to be subdivided is in accordance with the provisions of this ordinance. The intended principal use of each of the proposed lots within a proposed subdivision shall govern the specific district or districts appropriate to the land to be subdivided, as defined in Section 4.1 of this Ordinance.

Planned Developments shall also be permitted in all districts, per Section 6 of this Ordinance. In order to provide greater design flexibility, and to encourage innovative land development techniques and a more efficient use of land, the design and development of uses within these districts may deviate from the standards prescribed in Sections IV and V herein.

Condominiums, as defined and regulated in IC 32-1-6 (the Horizontal Property Law), cluster residential developments, zero lot line residential developments, and all developments of the minimum sizes specified in Section 6.2 of this Ordinance and larger, shall be considered for zoning purposes to be Planned Developments.

4.1 PRINCIPAL USES

Principal uses authorized in the districts established under section 3.1 are shown by a "P" in Table A at the end of this section. Where designated with an "S", the use is permitted in that district only if the special use has been approved according to the procedure established under Section 11.3.

4.2 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 bird houses
- B. Accessory buildings/garages
- C. Curbs
- D. Driveways
- E. Fences and Hedges
- F. Lamp posts
- G. Mailboxes
- H. Name plates
- I. Parking spaces
- J. Private, in-ground swimming pools enclosed by a 5-foot-high fence *OR* a private, above-ground pools which are integral with a 5-foot vertical enclosure
- K. Public utility installations for local service (such as poles, lines, hydrants, pump stations and telephone booths)
- L. Retaining walls
- M. Trees, shrubs, plants, and flowers
- N. Walks
- O. Temporary toilets*

4.3 NONCONFORMING USES AND STRUCTURES

A. Intent

Within the districts established by this ordinance or by amendments that may later be adopted, there may exist:

* Temporary toilets may be placed and maintained at any construction site for the duration of construction activities without a permit. In all other cases, a permit must be obtained, prior to the placement of any temporary toilet, from the Zoning Administrator for a fee specified in the Official Fee Schedule maintained in the office of the Clerk-Treasurer.

1. Nonconforming lots;
2. Nonconforming structures;
3. Nonconforming uses of land;
4. Nonconforming uses of land and structures in combination; and
5. Nonconforming characteristics of use.

These were lawful before this ordinance was passed or amended, but they are prohibited, regulated, or restricted under the terms of this ordinance or may be under future amendments hereto. It is the intent of this ordinance to permit these nonconforming uses to continue until they are removed but not to encourage their prolonged existence. It is further the intent of this ordinance that nonconforming uses shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses which are prohibited elsewhere in the same district. (Note: Illegal uses existing at the time this ordinance is enacted shall not be validated by virtue of its enactment.)

B. Incompatibility of Nonconforming Uses

Nonconforming uses are declared by this ordinance to be incompatible with permitted uses in the districts in which such use is located. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be generally prohibited in the district in which such use is located.

C. Avoidance of Undue Hardship

To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building or development on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been carried on diligently. Where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried on diligently. Actual construction is hereby defined as work done which is beyond the preparation stage and into that stage where the changes or additions are made permanent.

D. Single Nonconforming Lots of Record

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record after the effective date of adoption or amendment of this ordinance notwithstanding limitations imposed by other provisions of this ordinance. Such lots must be in separate ownership or included in a subdivision of record in the office of the County Recorder at the time of passage of this ordinance. This provision shall apply even though such lots fail to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area and/or width of the lots shall conform to the regulations for the district in which such lots are located. (Also see Section 5.2). Variances of requirements listed in Section 5 of this ordinance, other than lot area or lot width shall be obtained only through action of the Board of Zoning Appeals as provided in Section 11.4. (Note This section shall apply only to single-family residences.)

E. Nonconforming Lots of Record in Combination

If two or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance and if all or part of the lots with no buildings do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance and no portion of said parcel shall be used or sold in a manner which diminishes compliance with the lot width and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this ordinance.

F. Nonconforming Uses of Land

Where, at the time of adoption of this ordinance, lawful uses of land exist which would not be permitted by the regulations imposed by this ordinance, the uses may be continued so long as they remain otherwise lawful, provided:

1. No such conforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance.
2. No such nonconforming uses shall be moved in a whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this ordinance.
3. If any such nonconforming uses of land are discontinued or abandoned for more than one year (except when government action impedes access to the premises), any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.
4. No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such nonconforming use of land.

G. Nonconforming Structures

Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not now be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, bulk, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to the extent of more than 50 percent of the fair market value of the building immediately prior to the damage, it shall not be reconstructed except in conformity with the provisions of this ordinance.
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

H. Nonconforming Uses of Structures and Land in Combination

If a lawful use involving individual structures, or if a structure and land in combination, exists at the effective date of adoption or amendment of this ordinance that would not now be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing 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 structure to a use permitted in the district in which it is located.
2. A nonconforming use may be extended throughout any parts of a building 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.
3. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed.
4. When a nonconforming use of a structure, or structure and land in combination is discontinued or abandoned for more than one year (except when government action impedes access to the premises), the structure or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.
5. Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

I. Repairs and Maintenance

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of twelve consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten percent of the current replacement cost of the nonconforming structure and market value of real estate, or nonconforming portion of the structure, whichever the case may be, provided that the cubic content existing when it became nonconforming shall not be increased. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official. If a nonconforming use becomes physically unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

4.4 GARAGE OR YARD SALE

- A As used herein "garage or yard sale" is defined as a sale of household goods, furniture, equipment, utensils, appliances, tools, personal clothing or effects, novelty items, glassware, farm products, or similar personal property, including, but not limited to, any sale commonly termed "Porch Sale", "Yard Sale", "Lawn Sale", "Group Family Sale", "Rummage Sale", "White Elephant Sale", "Flea Market Sale", or "Attic Sale."

- B. Any garage or yard sale may be conducted two times in any one calendar year on any premises, but no such sale shall be conducted for more than three (3) consecutive days.
- C. All Items of personal property sold at such garage or yard sale shall be owned by the owner or occupier of the premises, unless permission for sale of items not owned is given at the time of issuance of the permit provided for herein by the person issuing the permit.
- D. Such garage or yard sale shall only be conducted during the hours between 7:00 a.m. and 7:00 p.m.
- E. All personal property exhibited for sale during such garage or yard sale shall be removed from the outside and placed within a structure immediately following the last day of such sale. All signs erected for such garage or yard sale shall likewise be removed.
- F. No such garage or yard sale shall be held without the owner or occupier of the premises having first obtained a permit therefor. Such permit shall be obtained by applying therefor from the City Clerk who shall issue such permit upon payment of a fee as specified in the official Nappanee Fee Schedule. Such permit shall specify the address and date of such sale.
- G. Additionally, all such garage sales shall conform to the provisions of the City of Nappanee Ordinance No. 700.

4.5 OTHER OUTDOOR SALES

As used herein "outdoor sales" shall include "roadside sales" and "sidewalk sales" as defined in Section II of the Nappanee Unified Zoning and Subdivision Control Ordinance. The regulation of each shall be accomplished as follows:

A. General

- 1. An outdoor sale may be held up to two (2) times per calendar year per applicant, but no such sale shall be conducted for more than fourteen (14) consecutive days, except as otherwise authorized by City Resolution.
- 2. No such outdoor sale shall be held without the owner or occupier of the premises having first obtained a permit therefor. Such permit shall be obtained through an application to the Zoning Administrator who may issue such permit upon payment of a fee as specified in the official Nappanee Fee Schedule. Such permit shall specify the address and date of such sale and shall expire on December 31 of each year. Any permit issued by the City does not license the holder to utilize private property for such purposes.

B. Roadside Sales

- 1. No sign, stand, structure or other physical component of a roadside sale shall be placed within ten (10) feet of the curb or pavement edge.
- 2. All items for sale, signs, stands, or temporary structures associated with a roadside sale shall be stored in a secure and enclosed condition upon close of the sale each day or removed.
- 3. A permitted roadside sale may be conducted only in an R-4, B-1, B-2, or RCOD District between the hours of sunrise and sunset.

C. Sidewalk Sales

1. No sign, stand, structure, or other physical component of a sidewalk sale shall be placed so that it:
 - a. Obstructs greater than 60% of the width of the public sidewalk,
 - b. Obstructs the sight triangle of motorists on adjacent rights-of-way, or
 - c. Otherwise threatens the health and/or safety of City residents.
2. All items for sale, signs, stands or temporary structures associated with a sidewalk sale shall be placed inside the store upon close of sale each day.

D. Automobiles, Boats, Motorcycles, and other Vehicles

1. Vehicles owned by owners or tenants of a private residence may be displayed for sale on the premises of such residence, subject to the following requirements:
 - a. No more than one (1) vehicle shall be displayed for sale at any one time.
 - b. Vehicles may be displayed for sale for not more than fourteen (14) consecutive days, and not more than twice per calendar year.
 - c. Vehicles displayed for sale must be in running condition.
 - d. A permit must be obtained from the Zoning Administrator.
 - e. Vehicles in running condition having current license plates which are parked in a private driveway are exempt from these regulations.

4.6 DISTRICTS IN WHICH USES ARE PERMITTED

- A. The permitted and non-permitted uses for each District, as well as those uses which may be considered for special exceptions, are shown in Table A.

Permitted:

Where the District column is marked with a "P", the use corresponding with that row is permitted in the District.

Non-Permitted:

Where the District column is not marked (blank), the use corresponding with that row is not permitted in the District.

Special Exceptions:

Where the District Column is marked with an "S", the use will be permitted if a special exception is granted from the Board of Zoning Appeals as specified in Section 11.3 of this ordinance.

- B. 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 in Table A.

1. The principal use of the land, building(s), structure(s), or operation shall determine the use. "Principal Use" is defined as being greater than fifty percent (50%), even in the event that three or more land use categories apply, or
 2. When no single use is greater than fifty percent (50%), the land usage category with the greatest restriction on the land, building(s), structure(s), or operation will apply.
- C Where there are two or more land use categories that apply to one proposed development, the following should be used to determine the applicable land use category:
1. The principal use of the land, building(s), structure(s), or operation shall determine the use. "Principal use" is defined as being greater than fifty percent (50%), even in the event that three or more land use categories apply, or
 2. When no single use is greater than fifty percent (50%), the land usage category with the greatest restriction on the land, building(s), structure(s), or operation will apply.

TABLE A

DISTRICTS IN WHICH USES ARE PERMITTED

P=PERMITTED S=SPECIAL EXCEPTION X=PER PLANNED DEVELOPMENT REGULATIONS

RESIDENTIAL USES	O	R-1	R-2	R-3	R-4	B-1	B-2	I-1	PD	Buffer Class	Parking Class
DWELLING, SINGLE-FAMILY	S	P	P	P	P	S			X	A	1
DWELLING, TWO-FAMILY / DUPLEX			P	P					X	A	2
DWELLING, MULTI-FAMILY / APARTMENT				P	P		S		X	C	2
MANUFACTURED HOME		P	P	P		S			X	A	2
MOBILE HOME				S						A	2
MOBILE HOME PARK				S					X	D	2
HOME OCCUPATION		S	S	S	P	P	P		X	A	2
BOARDING OR LODGING HOUSE				S	P	S	S		X	C	13
GROUP HOME				S	P	S	S		X	C	13
NURSING HOME			S	S	P	S	S		X	C	14
CHILDREN'S HOME				S	P	S	S		X	C	14
RETIREMENT COMMUNITY			S	S	P	S	S		X	C	2
BED AND BREAKFAST		S	S	S	P	S	S		X	C	14

AGRICULTURAL USES	O	R-1	R-2	R-3	R-4	B-1	B-2	I-1	PD	Buffer Class	Parking Class
ARTIFICIAL LAKE OF 3 OR MORE ACRES	S	S	S	S	S			P	X	A	N/A
COMMERCIAL GREENHOUSE					P	P	S	P	X	D	12
CROPLAND OR ORCHARD	P							P	X	A	N/A
PASTURE AND GRAZING	P							P	X	A	N/A
PLANT NURSERY	P				S			P	X	A	10
LIVESTOCK AND / OR FEEDING YARD										E	N/A

DISTRICTS IN WHICH USES ARE PERMITTED

P=PERMITTED S=SPECIAL EXCEPTION X=PER PLANNED DEVELOPMENT REGULATIONS

INDUSTRIAL USES	0	R-1	R-2	R-3	R-4	B-1	B-2	I-1	PD	Buffer Class	Parking Class
BOTTLED GAS STORAGE /DISTRIBUTION					S			P	X	E	11
LIGHT MANUFACTURING								P	X	E	11
GENERAL MANUFACTURING								P	X	E	11
MFG / STORAGE / USE OF EXPLOSIVES								S	X	E	11
FOOD PROCESSING								P	X	E	11
SLAUGHTERHOUSE								S	X	E	11
PRODUCT ASSEMBLY								P	X	E	11
WAREHOUSING/ DISTRIBUTION CENTER								P	X	E	11
FERTILIZER STORAGE/ DISTRIBUTION								p	X	E	11
JUNK YARD/ SCRAP METAL YARD								S	X	E	10
RECYCLING CENTER					S	S	S	S	X	E	18
COMPOSTING CENTER					S	S	S	S	X	E	18
SANITARY LANDFILL								S	X	E	10
INCINERATOR								S	X	E	10
HAZARDOUS WASTE DISPOSAL										E	10
RESEARCH CENTER					S	P	P	P	X	E	10
INDUSTRIAL/ COMMERCE PARK							S	P	X	E	19
GRAVEL/ SAND/ MINING OPERATIONS								S	X	E	19
GENERAL CONTRACTING					S	S	S	P	X	E	10
MACHINE SHOP								P	X	E	10
WOOD SHOP					S	S		P	X	E	10

DISTRICTS IN WHICH USES ARE PERMITTED

P=PERMITTED S=SPECIAL EXCEPTION X=PER PLANNED DEVELOPMENT REGULATIONS

PUBLIC FACILITIES	0	R-1	R-2	R-3	R-4	B-1	B-2	I-1	PD	Buffer Class	Parking Class
AIRPORT								S	X	E	19
CHURCH / TEMPLE/ MOSQUE		P	P	P	P	P	P		X	B	6
GOVERNMENT OFFICES					S	P	P		X	D	10
CHILDCARE		S	S	S	P	P	S	P	X	C	10
POLICE / FIRE STATION		S	S	S	P	P	P		X	D	10
HIGHWAY / MUNICIPAL GARAGE							P	P	X	E	10
MUSEUM					S	P	P	P	X	B	11
PUBLIC PARK	P	P	P	P	P	P	P	P	X	B	19
THEME/ AMUSEMENT PARK	S						S		X	E	19
GOLF COURSE/ DRIVING RANGE	P	S	S	S	S				X	C	21
PUBLIC OR PRIVATE SCHOOL		P	P	P	P	S	S		X	C	19
TRADE/ VOCATIONAL SCHOOL/COLLEGE					S	S	S	P	X	C	19
ZOO	S						S		X	E	19
RECYCLING CENTER					S	S	S	S	X	E	18
COMPOSTING CENTER					S	S	S	S	X	E	18
SANITARY LANDFILL								S	X	E	10
INCINERATOR								S	X	E	10
PUBLIC OR PRIVATE PARKING AREA	P	P	P	P	P	P	P	P	X	B	-

DISTRICTS IN WHICH PRIMARY USES ARE PERMITTED

P=PERMITTED S=SPECIAL EXCEPTION X=PER PLANNED DEVELOPMENT REGULATIONS
C=CONDITIONAL USE PERMIT REQUIRED

COMMUNICATION / UTILITIES	O	R-1	R-2	R-3	R-4	B-1	B-2	I-1	PD	Buffer Class	Parking Class
RADIO/ TV STATION					P	S	P	P	X	D	10
UTILITY SUBSTATION	S				S	S		P	X	E	19
PIPELINE PUMPING STATION	P	S	S	S	S	S	S	P	X	E	19
ELECTRICAL GENERATOR	P	S	S	S	S	S	S	P	X	E	19
PUBLIC WELLS	P	S	S	S	S	S	S	P	X	E	19
ABOVE GROUND WATER STORAGE TANK	P							P	X	E	19
SEWAGE TREATMENT FACILITIES	S							P	X	E	19
WATER TREATMENT FACILITIES	S							P	X	E	19
TELECOMMUNICATIONS FACILITY - MINOR	C							C	C	E	19
TELECOMMUNICATIONS FACILITY - MAJOR	C							C	C	E	19

BUSINESS USES / AUTOMOBILE	O	R-1	R-2	R-3	R-4	B-1	B-2	I-1	PD	Buffer Class	Parking Class
AUTOMOBILE REPAIR						S	P	P	X	D	18
AUTO PARTS STORE						P	P		X	D	12
AUTO/ TRUCK SALES & SERVICE						S	P	P	X	D	18
BODY SHOP						S	P	P	X	D	18
CAR WASH						S	P		X	D	18
ENGINE REPAIR						S	P	P	X	D	18
GASOLINE STATION WITH REPAIR						S	P	P	X	D	18
GASOLINE STATION WITHOUT REPAIR						S	P	P	X	D	10
RV/ CAMPER SALES & SERVICE						S	P	P	X	D	18

DISTRICTS IN WHICH USES ARE PERMITTED

P=PERMITTED S=SPECIAL EXCEPTION X=PER PLANNED DEVELOPMENT REGULATIONS

BUSINESS USES / CLOTHING	0	R-1	R-2	R-3	R-4	B-1	B-2	I-1	PD	Buffer Class	Parking Class
CLOTHING RETAIL					S	S	P		X	D	12
DRY CLEANING SHOP						P	P		X	D	12
FABRIC SHOP						S	P		X	D	12
SELF-SERVICE LAUNDRY						P	P		X	D	19
SHOE REPAIR SHOP					S	P	P		X	D	12
TAILOR/ DRESSMAKER SHOP					S	P	P		X	D	12
THRIFT / SECOND HAND CLOTHING STORE					S	S	P		X	D	12

BUSINESS USES / ELECTRONICS	0	R-1	R-2	R-3	R-4	B-1	B-2	I-1	PD	Buffer Class	Parking Class
APPLIANCE SALES & SERVICES						S	P		X	D	11
AUDIO / VIDEO EQUIP. SALES & SERVICES						S	P		X	D	11
SATELLITE DISH SALES & SERVICES						S	P		X	D	11
COMPUTER SALES & SERVICE						S	P		X	D	12
VIDEO ARCADE						S	P		X	D	19
BUSINESS EQUIPMENT SALES & SERVICES						S	P		X	D	12
VIDEO / MUSIC STORE						S	P		X	D	12

DISTRICTS IN WHICH USES ARE PERMITTED

P=PERMITTED S=SPECIAL EXCEPTION X=PER PLANNED DEVELOPMENT REGULATIONS

BUSINESS USES / FOOD & DRINK	O	R-1	R-2	R-3	R-4	B-1	B-2	I-1	PD	Buffer Class	Parking Class
BAKERY, RETAIL						S	P		X	D	12
DAIRY, RETAIL						S	P		X	D	12
DELICATESSEN						S	P		X	D	12
MEAT MARKET / BUTCHER SHOP						S	P		X	D	12
FAST FOOD WITH DRIVE-THROUGH / IN						S	P		X	D	12
GROCERY STORE						S	P		X	D	12
CONVENIENCE STORE						P	P		X	D	12
LIQUOR / WINE / BEER STORE						S	P		X	D	12
RESTAURANT WITH ALCOHOLIC BEV.					S	S	P		X	D	12
RESTAURANT WITHOUT ALCOHOLIC BEV.					S	S	P		X	D	12
SIDEWALK CAFE						S	S		X	D	19
ROADSIDE FOOD STAND					S	S	S		X	--	19
ROADSIDE PRODUCE STAND					S	S	S		X	--	19
OTHER SIMILAR USES											

DISTRICTS IN WHICH USES ARE PERMITTED

P=PERMITTED S=SPECIAL EXCEPTION X=PER PLANNED DEVELOPMENT

BUSINESS USES / OFFICE	O	R-1	R-2	R-3	R-4	B-1	B-2	I-1	PD	Buffer Class	Parking Class
ACCOUNTANT OFFICE					P	S	P		X	D	10
CONTRACTOR OFFICE					P	S	P		X	D	10
CORPORATE OFFICE					P	S	P		X	D	10
DESIGN SERVICES					P	S	P		X	D	10
HOME OCCUPATION		S	S	S	P	P	P		X	A	19
INSURANCE OFFICE					P	S	P		X	D	10
REAL ESTATE OFFICE					P	S	P		X	D	10
SECRETARIAL SVC. OFFICE					P	S	P		X	D	10
SERVICE ORG. OFFICE					P	S	P		X	D	10
TRAVEL AGENCY					P	S	P		X	D	10

BUSINESS USES / PERSONAL SERVICES	O	R-1	R-2	R-3	R-4	B-1	B-2	I-1	PD	Buffer Class	Parking Class
ACCOUNTING / TAX PREPARATION					P	P	P		X	D	10
BARBER SHOP					P	P	P		X	D	18
BEAUTY SHOP / SALON					P	P	P		X	D	18
BED AND BREAKFAST					P	P	S		X	C	13
DENTIST'S OFFICE / PRIVATE PRACTICE					P	P	P	P	X	D	22
DOCTOR'S OFFICE / PRIVATE PRACTICE					P	P	P	P	X	D	22
HEALTH SPA / FITNESS CENTER					S	S	P		X	D	19
HOSPITAL						S	S	P	X	D	17
HOTEL / MOTEL					S	S	P	P	X	D	13
LARGE ANIMAL CLINIC / VETRINARIAN							S	P	X	D	10
MEDICAL CLINIC					S	P	P	P	X	D	22
PSYCHIC / PALM READER					P	P	P		X	D	10
SMALL ANIMAL CLINIC / VETRINARIAN					S	P	P	P	X	D	10
TANNING SALON					P	P	P		X	D	18
TATTOO PARLOR							S	S	X	D	11

DISTRICTS IN WHICH USES ARE PERMITTED

P=PERMITTED S=SPECIAL EXCEPTION X=PER PLANNED DEVELOPMENT

BUSINESS USES / RECREATION	O	R-1	R-2	R-3	R-4	B-1	B-2	I-1	PD	Buffer Class	Parking Class
ARCHERY/ FIREARMS TARGET RANGE (INDOOR)	S						P	P	X	D	18
ARCHERY/ FIREARMS TARGET RANGE (OUTDOOR)	S							S	X	E	18
BAIT & TACKLE SHOP					S	S	P		X	D	12
BILLIARD ROOM						S	P		X	D	19
BINGO PARLOR						S	P		X	D	19
BOWLING ALLEY						S	P		X	D	18
CAMPGROUND, TENT AND OR RV	S						S		X	E	18
DANCE / GYMNAS TIC STUDIO					S	S	P		X	D	19
GOLF COURSE OR DRIVING RANGE	P	S	S	s	S		S		X	C	21
LODGE OR PRIVATE CLUB		S	S	s	S	S	S	S	X	D	19
NIGHT CLUB/ BAR/ TAVERN					S	S	P		X	D	12
PAINTBALL RECREATION FACILITY	S				S	S	S	S	X	D	19
PRIVATE CAMP	S	S							X	D	19
RIDING STABLE AND TRAILS	S	S							X	C	19
SPORTING GOODS STORE. RETAIL						S	P		X	D	12
THEATER, INDOOR						S	P		X	D	5
THEATER,OUTDOOR	S						S		X	E	5
THEME/ AMUSEMENT PARK	S						S		X	E	19
VIDEO ARCADE						S	P		X	D	19

DISTRICTS IN WHICH USES ARE PERMITTED

P=PERMITTED S=SPECIAL EXCEPTION X=PER PLANNED DEVELOPMENT

BUSINESS USES / RETAIL SALES	0	R-1	R-2	R-3	R-4	B-1	B-2	I-1	PD	Buffering Class	Parking Class
ANTIQUÉ SHOP					P	P	P		X	D	12
APPAREL/ CLOTHINGSTORE					S	S	P		X	D	12
DEPARTMENT STORE						S	P		X	D	12
DRUG STORE							P		X	D	12
FLORAL SHOP					S	P	P		X	D	12
FURNITURE STORE						S	P		X	D	II
GIFT/ CARD SHOP					S	S	P		X	D	12
HARDWARE STORE						P	P		X	D	12
JEWELRY STORE					S	P	P		X	D	12
LIQUOR/ WINE/ BEERSTORE						S	P		X	D	12
LUMBER/ BUILDING SUPPLY SALES						S	P		X	E	19
MUSIC STORE						S	P		X	D	12
NEWS/ BOOK / MAGAZINE STORE						S	P		X	D	12
PET STORE						S	P		X	D	12
RETAIL SHOWROOM						S	P	P	X	D	12
SHOE STORE					S	S	P		X	D	12
SPORTING GOODS STORE						S	P		X	D	12
T013ACCO / CIGAR STORE					S	S	P		X	D	12
VARIETY STORE						S	P		X	D	12
VIDEO STORE						S	P		X	D	12

DISTRICTS IN WHICH USES ARE PERMITTED

P=PERMITTED S=SPECIAL EXCEPTION X=PER PLANNED DEVELOPMENT

BUSINESS USES / MISCELLANEOUS	O	R-1	R-2	R-3	R-4	B-1	B-2	I-1	PD	Buffer Class	Parking Class
ADULT BOOKSTORE / ENTERTAINMENT							S	S	X	D	12
AGRICULTURAL SEED SALES						S	S		X	D	12
BANK / CREDIT UNION					P	P	P	P	X	D	19
BANK MACHINE / A.T.M.					P	P	P	P	X	D	19
BOAT SALES / SERVICE/ STORAGE						S	P	P	X	D	19
BUILDING TRADES CONTRACTOR					S	S	S	P	X	E	10
BUS STATION	P	P	P	P	P	P	P	P	X	D	19
CEMETERY / CREMATORIUM	P								X	B	19
FARM EQUIPMENT SALES & SERVICE						S	P	P	X	D	19
HOME OCCUPATION		S	S	S	P	P	P		X	A	19
KENNEL, PET BOARDING						S	P	P	X	D	10
LIVESTOCK AUCTION BARN							S	P	X	D	19
MORTUARY/ FUNERAL HOME	S	S	S	S	P	P	P		X	13	19
PHOTOGRAPHY STUDIO					P	P	P		X	D	10
PRINTING SHOP					S	S	P	P	X	D	11
SIGN PAINTING					S	S	P	P	X	D	11
TRUCK STOP							P	P	X	E	19
WAREHOUSE / MINI STORAGE						S	P	P	X	E	19
WELDING SHOP							S	P	X	E	11

DISTRICTS IN WHICH USES ARE PERMITTED

P=PERMITTED S=SPECIAL EXCEPTION X=PER PLANNED DEVELOPMENT

BUSINESS USES / MISCELLANEOUS	O	R-1	R-2	R-3	R-4	B-1	B-2	I-1	PD	Buffer Class	Parking Class
ADULT BOOKSTORE / ENTERTAINMENT							S	S	X	D	12
AGRICULTURAL SEED SALES						S	S		X	D	12
BANK / CREDIT UNION					P	P	P	P	X	D	19
BANK MACHINE / A.T.M.					P	P	P	P	X	D	19
BOAT SALES / SERVICE / STORAGE						S	P	P	X	D	19
BUILDING TRADES CONTRACTOR					S	S	S	P	X	E	10
BUS STATION	P	P	P	P	P	P	P	P	X	D	19
CEMETERY / CREMATORIUM	P								X	B	19
FARM EQUIPMENT SALES & SERVICE						S	P	P	X	D	19
HOME OCCUPATION		S	S	S	P	P	P		X	A	19
KENNEL, PET BOARDING						S	P	P	X	D	10
LIVESTOCK AUCTION BARN							S	P	X	D	19
MORTUARY / FUNERAL HOME	S	S	S	S	P	P	P		X	B	19
PHOTOGRAPHY STUDIO					P	P	P		X	D	10
PRINTING SHOP					S	S	P	P	X	D	11
SIGN PAINTING					S	S	P	P	X	D	11
TRUCK STOP							P	P	X	E	19
WAREHOUSE / MINI STORAGE						S	P	P	X	E	19
WELDING SHOP							S	P	X	E	11

4.7 TATTOO PARLOR

A tattoo parlor shall be permitted by special exception in a B-2 or an 1-1 district, provided that any such tattoo parlor shall:

- A. Be located a minimum distance of four hundred (400) feet from any church building, licensed day care center, public park, school building, school playground, school parking lot, public library, boys and/or girls club, or residential use; and
- B. Have any and all rooms where tattooing is performed separated and not visible from each other or from any other use in the same building and shall have any room where tattooing is performed separated from and not visible by pedestrian circulation to and from other uses within the same building or, from outside the building where the tattooing is performed; and
- C. Not operate at any time between 10:00 p.m. and 8:00 a.m. prevailing time in Nappanee, Indiana; and
- D. Not have any outside display of merchandise related to tattooing, shall have no merchandise related to tattooing visible from outside the premises where tattooing is performed and shall have no outside advertising permitted except that a sign may be flush mounted on the building no more than eight (8) square feet in area and an additional flush mounted sign on the building SHALL BE REQUIRED at least two (2) square feet, but not larger than four (4) square feet in area indicating that persons being tattooed must be at least eighteen (18) years of age unless a parent or legal guardian of the person being tattooed is present at the time of tattooing and provides written permission for such tattooing prior to the time of such tattooing; and
- E. Comply with any and all other applicable federal, state, and local laws, statutes, ordinances, regulations, and requirements, including but not limited to any regulations adopted by the Indiana State Department of Health concerning the sanitary operation of tattoo parlors.

4.8 ADULT BOOKSTORE/ADULT ENTERTAINMENT BUSINESS

An adult bookstore or adult entertainment business as defined under Section 2 herein, shall be permitted by special exception in a B-2 or an 1-1 district, provided that any such adult bookstore or adult entertainment business shall:

- A. Be located a minimum distance of four hundred (400) feet from any church building, licensed day care center, public park, school building, school playground, school parking lot, public library, boys and/or girls club, or residential use; and
- B. Have any room where adult entertainment occurs or where materials of a sexually explicit or otherwise adult nature exist separated from and not visible by pedestrian circulation to and from other uses within the same building or, from outside the building where the adult entertainment occurs, or adult materials are located; and
- C. Not operate at any time between 12:00 midnight and 8:00 a.m. prevailing time in Nappanee, Indiana; and
- D. Not have any outside advertising permitted except that a sign may be flush mounted on the building no more than eight (8) square feet in area and an additional flush mounted sign on the building SHALL BE REQUIRED at least two (2) square feet, but not larger than four (4) square feet in area indicating that persons entering the premises must be at least the minimum age provided by applicable federal, state, and local laws, statutes, ordinances, and requirements for attendance at such an establishment; and
- E. Comply with any and all other applicable federal, state, and local laws, statutes, ordinances, regulations, and requirements.

5.1 GENERAL

The purpose of this section is to set forth in detail the development standards and restrictions for permitted uses. Such development standards have been developed to promote the goals, policies, and objectives set forth in the Comprehensive Plan of Nappanee.

5.2 LOT/YARD REGULATIONS

A. Conflicts

All conflicts concerning lot/yard regulations specified in this section in existence prior to the time of adoption of this ordinance shall be considered legal nonconforming lots or structures and are subject to Section 4.3 of this ordinance.

B. Setbacks

No building or structure shall be erected, altered, enlarged, or reconstructed unless such improvement conforms with the yard regulations of the District in which it is located as follows:

I. Front Yard Requirements:

Each lot shall have a front yard with a minimum depth measured from and parallel to the right-of-way as specified in Table B.

**TABLE B
MINIMUM FRONT YARD REQUIREMENTS**

TYPE OF FRONTAGE / DISTRICT	O	R-1	R-2	R-3	R-4	B-1	B-2	I-1
IN RECORDED SUBDIVISIONS	30 FT	30 FT	30 FT	30 FT	20 FT	15 FT	10 FT	25 FT
PRIMARY ARTERIAL (NOT IN RECORDED SUBDIVISION)	50 FT	50 FT	50 FT	50 FT	50 FT	50 FT	50 FT	50 FT
SECONDARY ARTERIAL (NOT IN RECORDED SUBDIVISION)	50 FT	50 FT	50 FT	50 FT	50 FT	50 FT	50 FT	50 FT
COLLECTOR OR FEEDER (NOT IN A RECORDED SUBDIVISION)	30 FT	30 FT	30 FT	30 FT	30 FT	30 FT	30 FT	30 FT
LOCAL STREET (NOT IN A RECORDED SUBDIVISION)	30 FT	30 FT	30 FT	30 FT	30 FT	30 FT	30 FT	30 FT

* Minimum front yard requirements are as indicated above unless an existing setback is clearly established by adjacent properties with similar uses on the block or street. In the latter case, the minimum front yard shall be equal to the average set back of the existing buildings on the block or street, and shall be established by the Zoning Administrator.

- II. Side Yard Requirements:
 Two side yards shall exist for each lot with minimum width as specified in Table C. Side yard requirements vary, as shown, depending upon the adjacent district. Applicants should find the appropriate district at the top of the table and follow the column down to the adjacent district to find the minimum side yard requirement.

**TABLE C
 MINIMUM SIDE YARD REQUIREMENTS**

DISTRICT / ADJACENT DISTRICT	O	R-1	R-2	R-3	R-4	B-1	B-2	I-1
OPEN SPACE (O)	15 FT	15 FT	5 FT	5 FT	5 FT	5 FT	5 FT	10 FT
SINGLE-FAMILY RESIDENTIAL (R-1)	15 FT	15 FT	15 FT	15 FT	15 FT	15 FT	15 FT	15 FT
TWO-FAMILY RESIDENTIAL (R-2)	15 FT	15 FT	5 FT	5 FT	5 FT	10 FT	10 FT	10 FT
MULTI-FAMILY RESIDENTIAL (R-3)	15 FT	15 FT	5 FT	5 FT	5 FT	10 FT	10 FT	10 FT
RESIDENTIAL OFFICE (R-4)	15 FT	15 FT	5 FT	5 FT	5 FT	5 FT	5 FT	10 FT
LIMITED BUSINESS (B-1)	15 FT	15 FT	5 FT	5 FT	5 FT	5 FT	5 FT	10 FT
GENERAL BUSINESS (CB)	15 FT	15 FT	5 FT	5 FT	5 FT	5 FT	5 FT	10 FT
INDUSTRIAL (I-1)	15 FT	15 FT	5 FT	5 FT	5 FT	5 FT	5 FT	10 FT

- III. Rear Yard Requirements:
 A rear yard shall exist for each lot (with the exception of corner lots which have two front yards and two side yards by definition) having a minimum depth as specified in Table D. Applicants should find the appropriate district at the top of the table and follow the column down to the adjacent district to find the minimum required rear yard. One-half of an alley abutting the rear lot line may be included in the required rear yard.

**TABLE D
 MINIMUM REAR YARD REQUIREMENTS**

DISTRICT / ADJACENT DISTRICT	O	R-1	R-2	R-3	R-4	B-1	B-2	I-1
OPEN SPACE (O)	20 FT	20 FT	20 FT	20 FT	20 FT	15 FT	15 FT	15 FT
SINGLE-FAMILY RESIDENTIAL (R-4)	20 FT	20 FT	20 FT	20 FT	20 FT	15 FT	15 FT	15 FT
TWO-FAMILY RESIDENTIAL (R-8)	20 FT	20 FT	20 FT	20 FT	20 FT	15 FT	15 FT	15 FT
MULTI-FAMILY RESIDENTIAL (R-10)	20 FT	20 FT	20 FT	20 FT	20 FT	15 FT	15 FT	15 FT
RESIDENTIAL OFFICE (R-4)	20 FT	20 FT	20 FT	20 FT	20 FT	15 FT	15 FT	15 FT
LIMITED BUSINESS (B-1)	20 FT	20 FT	20 FT	20 FT	20 FT	10 FT	10 FT	15 FT
GENERAL BUSINESS (B-2)	20 FT	20 FT	20 FT	20 FT	20 FT	10 FT	10 FT	15 FT
INDUSTRIAL (I-1)	20 FT	20 FT	20 FT	20 FT	20 FT	10 FT	10 FT	10 FT

C. Lot Width

No building or structure shall be erected on a lot not meeting minimum lot width standards per Table E.

D. Lot Coverage

All lots must conform to the maximum lot coverage standards per Table E.

E. Lot Area

No building or structure shall be erected on a lot not conforming with the minimum lot area standards per Table E.

**TABLE E
GENERAL LOT REQUIREMENTS**

REGULATION / DISTRICT	O	R-1	R-2	R-3	R-4	B-1	B-2	I-1
MINIMUM LOT SIZE* (SANITARY SEWERS REQUIRED)	NA	7,920S.F.	7,920S.F.	7,920S.F.	7,920S.F.	10,890S.F.	10,890S.F.	43,560 S.F.
MINIMUM LOT WIDTH*	NA	66 FT	66 FT	66 FT	NA	NA	NA	NA
MAXIMUM LOT COVERAGE*	5%	25%	25%	25%	25%	50%	75%	75%
MINIMUM FRONT YARD*	SEE TABLE B	SEE TABLE B	SEE TABLE B	SEE TABLE B	SEE TABLE B	SEE TABLE B	SEE TABLE B	SEE TABLE B
MINIMUM SIDE YARD*	SEE TABLE C	SEE TABLE C	SEE TABLE C	SEE TABLE C	SEE TABLE C	SEE TABLE C	SEE TABLE C	SEE TABLE C
MINIMUM REAR YARD*	SEE TABLE D	SEE TABLE D	SEE TABLE D	SEE TABLE E	SEE TABLE D	SEE TABLE D	SEE TABLE D	SEE TABLE D
MAXIMUM WIDTH:DEPTH*	NA	1:3	1:3	1:3	1:3	NA	NA	NA

** Only applicable to lots platted subsequent to the adoption of this ordinance.*

5.3 HEIGHT REGULATIONS

A. General

Structures may be erected or modified to heights no greater than the maximum heights specified in Table F.

**TABLE F
GENERAL HEIGHT REQUIREMENTS**

TYPE OF STRUCTURE	O	R-1	R-2	R-3	R-4	B-1	B-2	I-1
PRIMARY STRUCTURES (WITH ONLY MINIMUM SIDE YARDS)	35 FT	35 FT	35 FT	35 FT	55 FT	40 FT	60 FT	60 FT
PRIMARY STRUCTURES (IF 15 FOOT OR GREATER SIDE YARDS ARE PROVIDED)	45FT	45FT	45 FT	45 FT	N/A	N/A	N/A	N/A
ACCESSORY STRUCTURES	18 FT	18 FT	18 FT	18 FT

** 18 feet or half of the height of the primary structure*

B. Special

1. The height of primary structures in an 8-1, B-2, or 1-1 district may be increased an additional two (2) feet for every one (1) foot that front, side, or rear yards are increased.
2. Spires, church steeples, chimneys, cooling towers, elevator bulkheads, fire towers, scenery lofts, penthouses for mechanical equipment, stacks, tanks, water towers, transmission towers for electric lines, telecommunications towers, and agricultural structures may be erected or changed to any height, subject to the approval of the Zoning Administrator.

5.4 LOADING

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) foot 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) foot 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 asphaltic 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 off-street loading berth requirements are as specified in Table G.

**TABLE G
MINIMUM 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.

5.5 PARKING

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 Table H. Parking spaces or bays contiguous to the street are in addition to and not in place of the spaces so required. Public parking spaces available within three (3) blocks of a given premises shall be considered in meeting the off-street parking requirements specified by Table H.

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. Parking spaces of the following type have the following minimum dimensions:

- | | | |
|----|-------------------------|------------------------------|
| 1. | Handicapped | 12 feet wide by 20 feet long |
| 2. | Parallel | 10 feet wide by 20 feet long |
| 3. | Right Angle (90°) | 10 feet wide by 20 feet long |
| 4. | Sixty degree (60°) | 10 feet wide by 18 feet long |
| 5. | Forty-five degree (45°) | 10 feet wide by 17 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 (B-1 and B-2) and industrial (1-1} 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 G. Refer to Table A in Section 4 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 H 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 H;
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 such aggregate parking lots.

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.

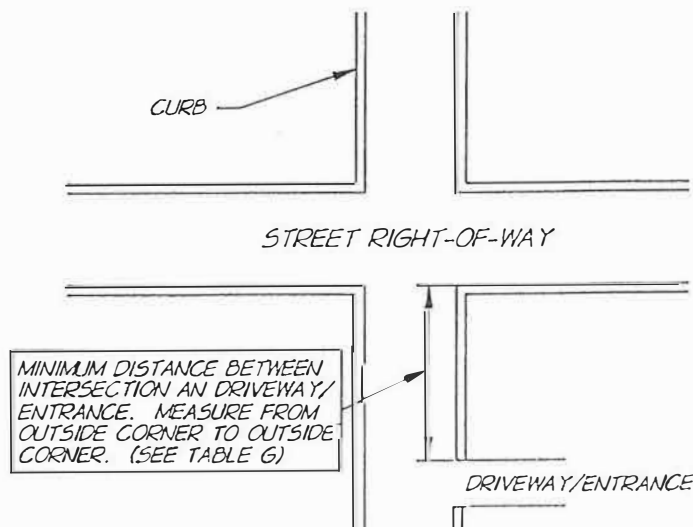
All parking areas are encouraged to be located in the rear and side yards for all uses of property. The Commission shall hear requests for variations from this Chapter's requirements only if the parking areas are located in the side or rear lots; front lot parking shall have no flexibility.

TABLE H
MINIMUM PARKING REQUIREMENTS

PARKING CLASS*	REQUIRED MINIMUM NUMBER OF SPACES
1	4 PER HOUSEHOLD / DWELLING UNIT
2	2 PER HOUSEHOLD / DWELLING UNIT
3	1 PER HOUSEHOLD / DWELLING UNIT
4	1 PER 6 SPECTATOR SEATS
5	1 PER 3 SPECTATOR SEATS
6	1 PER 2 SPECTATOR SEATS
7	1 PER 4 EMPLOYEES
8	1 PER 3 EMPLOYEES
9	1 PER 2 EMPLOYEES
10	2 PER 1 EMPLOYEE
11	1 PER 300 SQ. FT. (UP TO 9,000 SQ. FT.)
	1 PER 500 SQ. FT. (9,001 TO 50,000 SQ. FT.)
	1 PER 1,000 SQ. FT. (OVER 50,000 SQ. FT.)
12	1 PER 200 SQ. FT. (UP TO 1,000 SQ. FT.)
	1 PER 400 SQ. FT. (OVER 1,000 SQ. FT.)
13	1 PER SLEEPING ROOM
14	1 PER 2 SLEEPING ROOMS
15	1 PER 5 BEDS PLUS 1 FOR EACH EMPLOYEE
16	1 PER SLEEPING ROOM PLUS 1 PER 2 EMPLOYEES
17	1 PER 4 HOSPITAL BEDS PLUS 1 PER 2 EMPLOYEES
18	2 PER BAY / BOOTH / ALLEY
19	PER PLAN COMMISSION RECOMMENDATION
20	ADD ONE ADDITIONAL SPACE
21	3 PER GOLF HOLE
22	2 PER TREATMENT ROOM

*As established in Table A, Section IV

FIGURE 5.1



5.6 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 I (see Figure 5.1 for reference).

**TABLE I
DRIVEWAY/ ENTRANCE TO INTERSECTION REQUIREMENTS**

ROAD CLASS. / DISTRICT	0	R-1	R-2	R-3	R-4	D-1	B-2	I-1
PRIMARY ARTERIAL	60 FT	60H	60 FT	60 FT	70 FT	70 FT	70 FT	80 FT
SECONDARY ARTERIAL	50 FT	50 FT	50 FT	50 FT	60 FT	60 FT	60 FT	70 FT
COLLECTOR (FEEDER)	40 FT	40 FT	40 FT	40 FT	50 FT	50 FT	50 FT	60FT
LOCAL STREET	30 FT	30 FT	30 FT	30 FT	40 FT	40 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.

5.7 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. Satellite and Digital Dish Systems

1. All satellite receiving systems having a diameter greater than four (4) feet shall be located within the rear or side yard of any residential zoned lot.
2. In the case of a comer 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.

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 (excluding digital dish systems of less than 24 inches in diameter) and a fee paid as specified in the official fee schedule maintained in the Office of the Clerk-Treasurer.

D. Fences

1. No fence on a residential property shall be constructed of barbed wire, nor shall it be electrified.

5.8 ENVIRONMENTAL REGULATIONS

A. General

No land shall be used, or structure erected if the City or its designated agent determines it to be 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. Failure of the City or its designated agent to make such a determination shall not give rise to any liability or cause of any action against the City or its agent.

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 County Drainage Board, City Street Department, or Indiana Department of Transportation, as may be applicable. Driveways may be constructed over these or other approved structures as permitted by the appropriate agency.

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 County Drainage Board and the Nappanee 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 stormwater 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.

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

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 groundwaters.

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 1-1 District, unless in conformance with applicable state statutes or regulations

N. Debris/Refuse

Debris and refuse shall not accumulate on any property, in any zoning district.

O. Treatment of Fill

Bricks, concrete, lumber, and other material used for fill where permitted by this ordinance and/or by the Indiana Department of Environmental Management (IDEM), Indiana Department of Natural Resources (IDNR), or other governmental agency, shall be promptly covered and seeded.

P. Improvement Location Permit Requirements

Requirements for Improvement Location Permits can be found in Section 11 .1 of this Ordinance. The following activities are permitted, however, with no Improvement Location Permit required, provided all other applicable standards are met:

1. Normal excavation for structural foundations, driveways, utility installations, and similar preparation activities.
2. Normal plowing and preparing of the land for gardens and yards.
3. Normal trimming and/or removal of trees and shrubs for maintenance and/or site preparation.
4. Earth movements related to farming and other agricultural activity, including sod farming.
5. Public and private road construction.
6. Drain tile laying and ditch cleaning.
7. Topsoil removal, other than mineral extraction.

5.9 BUFFERING

A. General

In addition to regular setback (yard) requirements for structures, a bufferyard shall be provided and maintained by the owner or lessee of a property in accordance with this section. Bufferyards 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 bufferyards, except in the event of a change or expansion of use, as stated above.

B. Application

Bufferyard, where required, shall be located along side and rear property lines. In the 1-1 District, bufferyards shall also be required along the front property line when adjacent to or facing R-1, R-2, R-3 or R-4 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 bufferyards shall be provided along all other lines. Bufferyards shall have the necessary widths and planting and fencing material as required below.

C. Determining Requirements

To determine the minimum requirements for bufferyards, the following procedure shall be used:

1. Identify the Bufferyard Classification (Buffer Class A, B, C, D, or E) of the proposed use and/or structure by referring to Table A (Column, Buffer Class) in Section 4 of this ordinance.
2. Identify the Bufferyard Classification (Buffer Class A, B, C, D, or E) of the existing adjacent use by referring to Table A 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 bufferyard requirements for the proposed use and/or structure by referring to Table J. Go down the left column to the Bufferyard 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 bufferyard type illustrated in Figure 5.2.
4. Refer to the bufferyard type in Figure 5.2 illustrations 1 through 5. Any of the alternative bufferyards may be selected for the determined bufferyard.

D. Additional Standards

The following additional standards apply to bufferyards:

1. All bufferyards 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 bufferyards, except for agricultural or residential uses. However, bufferyards 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 plants shall be properly maintained. Any plants which do not live or are destroyed shall be promptly replaced.
4. 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 bufferyards.

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 bufferyard if it is physically impossible to locate the required bufferyard due to non-conforming lot size, existing structure or parking lot location, or other similar reasons.
2. No bufferyard 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 bufferyards. However, upon development, the appropriate bufferyard will be required.

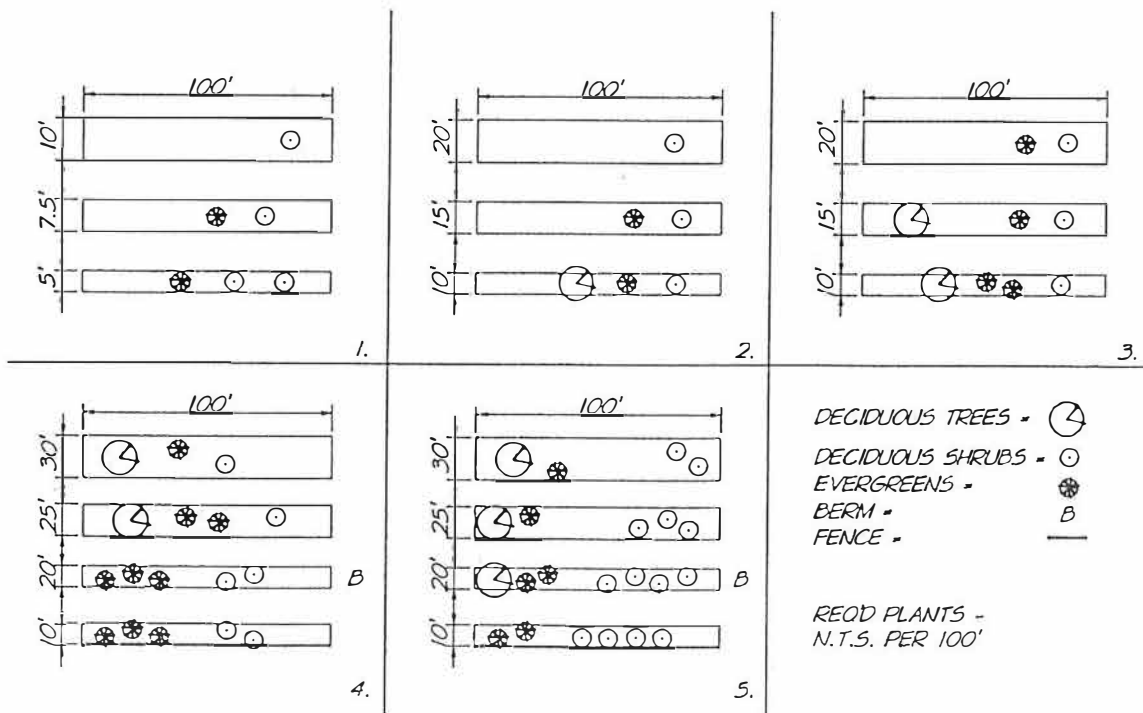
F. Responsibility

The owner of the most intense land use must be responsible for providing the necessary bufferyard, and all costs associated therewith, and contain the bufferyard completely within their property limits.

TABLE J
MINIMUM BUFFERYARD REQUIREMENTS

BUFFERYARD CLASSIFICATION (FROM TABLE A)	ADJACENT EXISTING BUFFERYARD CLASSIFICATION					ADJACENT ZONING DISTRICT (IF LAND IS VACANT)			
	A	B	C	D	E	O	R-1 R-2 R-3 R-4	B-1 B-2	I-1
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 5.2



5.10 INDUSTRIAL PERFORMANCE STANDARDS

A. General

No Industrial use shall be located within the jurisdiction of the Nappanee 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 of 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 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 extend 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 matter from a flue or stack leading from a boiler shall exceed 0.8 pounds per million BTU's.

Foundry-Generated - No particulate matter resulting from a foundry process shall exceed the following:

<u>Rate of Process</u> (Pounds Per Hour)	<u>Pounds of Particulate Matter Per Hour</u>
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

$$E = \frac{.67}{4.1} P$$

Process over 60,000 pounds per hour

$$E = \frac{.11}{55P - 4P}$$

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, ROX, 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 nitroglycerine; 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.

6.1 INTENT OF PLANNED 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 Unified Zoning Ordinance. The use of Planned 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 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 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 of Nappanee residents.

Planned 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 the inclusion of recreation areas within new subdivisions.

6.2 CLASSIFICATIONS OF PLANNED DEVELOPMENTS

A PD-R Residential Planned Development

Any development consisting of not less than five (5) acres in which more than eighty percent of the interior floor area of all buildings to be included in the development is used for residential purposes or those accessory purposes customarily related to residential use.

B. PD-B Business Planned Development

Any development consisting of not less than four (4) acres in which eighty percent of the interior floor area of all buildings to be included in the development is to be used for commercial purposes.

C. PD-I Industrial Planned Development

Any development consisting of not less than ten (10) acres in which eighty percent of the total interior and exterior area of all sites and structures be used for manufacturing, warehousing, or other light to medium intensity industrial use.

D. PD-E Planned Development - Extraordinary

A development not otherwise distinguishable under any previous classification, containing less than the minimum land area and/or less than the stated minimum proportions of any single dominant use or function, and 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.

6.3 ORIGINATION OF PROPOSALS

Any person or group of persons united in interest, acting jointly, and in pursuance to an agreement to carry out a proposal may propose a Planned 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 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.

6.4 FILING PROCEDURE

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

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

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

6.5 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 sep-arate 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 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. The preliminary plan shall be presented in triplicate and to a scale ratio not to exceed 1"=100'. The preliminary plan may include any additional graphics which will explain the features of the development. It shall also be provided to the following checkpoint agencies for their review and comment:

- Design Review Board
- Director of Public Works and Safety
- Nappanee Police Department
- Nappanee Fire Department
- County Soil and Water Conservation District
- County Drainage Board

Within twenty-five (25) 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 in triplicate a "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).

Such final proposed preliminary plan shall be filed with the Zoning Administrator at least ten (10) days prior to the preliminary plan hearing.

6.6 PRELIMINARY PLAN HEARING

- A. The petition, if and as modified, shall then be heard by the Plan Commission as a petition for zoning map amendment and subject to the procedures applicable thereto. The Plan Commission may recommend approval or disapproval of the plan and may impose any reasonable condition(s) with its affirmative recommendation. If disapproval is recommended, the application shall not be certified to the Common Council of the City of Nappanee. If approval is recommended, the preliminary plan shall be stamped "Approved Preliminary Planned Development" and be signed by the President and Secretary of the Plan Commission. One copy shall be permanently retained in the office of the Plan Commission, one copy shall be returned to the petitioner, and one copy and all conditions shall be certified as described in (8) below.
- B. The approved preliminary Planned Development shall then be certified to the Common Council of the City of Nappanee for adoption as a Planned Development District pursuant to the laws governing proposals to change zoning maps. Upon adoption by the legislative body, the petitioner shall prepare the final detailed plan.

6.7 APPROVAL OF FINAL DETAILED PLAN

- A. Before any development takes place, the petitioner shall file with the Plan Commission a minimum of seven 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 and buffering, 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 of platting pursuant to the provisions of Section VIII of this 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 Development as adopted and passed by the Common Council of the City of Nappanee 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 Development.
- C. The approved final detailed plan or phase thereof shall be stamped "Approved Final Detailed Planned Development" and be signed by the President and Secretary with one copy permanently retained in the office of the Plan Commission following recordation as specified in Section 6.9.
- D. Unless extended by the Plan Commission pursuant to Section 6.12, 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 Development District by the Common Council of the City of Nappanee.
- 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 or building location, any change in type of use, or any change in access points.
- 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 City of Nappanee shall declare the bond to be in default and cause all public improvements to be installed according to the final detailed plans.

6.8 COVENANTS AND MAINTENANCE

- A. All covenants, when required by the Plan Commission, shall be set forth in detail and shall provide for a provision for the release of such restriction by execution of a document so stating and suitable for recording, signed by the Plan Commission 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 recording of covenants for any reasonable public or

semi-public purpose, including, but not limited to, the allocation of land by the petitioner for public thoroughfares, parks, schools, recreational facilities, and other public and semi-public purposes. 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 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 Planned Development.

- C. The Commission may require the recording of covenants for any other reasonable purpose, including, but not limited to, imposing standards for development of property in a Planned Development. Such development standards may include, but are not limited to, requirements concerning 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.

- 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 Development, and, in such instance legal assurances shall be provided and recorded which show that the private organization is self-perpetuating.

- E. Common facilities which 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.

6.9 RECORDING

All approved Final Detailed Planned Development Plans and Plats and modifications thereof shall be recorded in the Office of the 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 Planned Development.

Where upon completion of all development, the exact measurements, as to the location of buildings or structures erected during the development, are deemed desirable for public record by recording thereof, the developer may submit a copy of the approved Final Detailed Planned Development to the

Administrator as an amended approved Final Detailed Planned Development with the exact measurements thereon shown, and upon being satisfied that the measurements are substantially the same as indicated on the original approved Final Detailed Planned Development, shall reapprove, date and sign said amended approved Final Detailed Planned Development, which the developer shall then record.

6.10 PERMIT

An Improvement Location Permit shall be issued for a Planned Development District upon full compliance with the approved Final Detailed Planned Development.

6.11 CONSTRUCTION

- A. No construction or installation work shall be done on any public improvements until the petitioner has, at least twenty-four (24) hours in advance, notified the appropriate Governmental Inspector(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 Planned Development and any material deviations from the approved and recorded Final Detailed Planned Development shall be subject to appropriate enforcement action as provided for in this Ordinance.

6.12 EXTENSIONS, ABANDONMENT, AND EXPIRATION

- A. Extensions of the time for accomplishing any matters set forth herein may be granted by the Plan Commission at a public hearing for good cause shown.
- B. Upon the abandonment of a development uthorized under this section (abandonment shall be deemed to have occurred when no improvements have been made pursuant to the approved Final Detailed Planned Development for twenty-four [24] consecutive months), or upon the expiration of five (5) years from the approval of a Final Detailed Planned Development for a development which has not been completed, 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.

6.13 RULES OF PROCEDURE

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

6.14 LIMITATION OF REZONING

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

7.1 GENERAL PROVISIONS

This Section of the Nappanee Unified Zoning & Subdivision Control Ordinance shall be known as the "Sign Regulations" of the City of Nappanee.

7.2 DEFINITIONS

All terms used in this Section, not otherwise defined herein, shall have the definitions provided in Section II of this Ordinance.

7.3 PERMITS REQUIRED, FEES

A. Permits Required

Except as otherwise provided herein, it shall be unlawful for any person to erect, construct, enlarge, move or convert any sign, or change the permanent copy on an existing sign structure within the jurisdiction of the Nappanee Advisory Plan Commission, or cause the same to be done without first obtaining a sign permit for each sign from the Zoning Administrator.

B. Application

Application for a permit shall be made to the Zoning Administrator upon a form provided and shall be accompanied by such information as may be required to assure compliance with the laws and regulations of the City, including:

1. Name and address of the property owner of the premises on which the sign is located or is to be located.
2. Name and address of the owner of the sign.
3. Clear and legible drawings with description showing the location of the sign which is the subject of the permit, and all other signs whose construction requires permits when such signs are on the same premises.
4. Any individual or company seeking to erect, construct, alter, repair, improve, maintain, convert, or manufacture any sign adjacent to or visible from any state or federal roadway shall register in writing, a statement that they have all necessary licenses and/or approvals from the other affected governmental agencies.
5. Permission in writing from the person in possession or ownership of shopping centers and/or industrial premises shall be supplied as part of the application documentation.

C. Permit Fees

The application, including all required documentation shall be filed with the Zoning Administrator together with a permit fee as specified by the Official Fee Schedule. If any sign is hereafter erected, placed, installed, or otherwise established on any property before obtaining a permit as required herein, the fees specified shall be doubled. Payment of such double fee shall not relieve any person from compliance with other provisions of this Ordinance and penalties prescribed herein.

D. Effect of Sign Permit Issuance

No permit for a sign issued hereunder shall be deemed to constitute permission or authorization to maintain an unlawful sign nor shall a permit issued hereunder constitute a defense in an action to abate an unlawful sign.

E. Nullification

A sign permit shall become null and void if the work authorized thereunder has not been started within a period one (1) year following the date of the permit and completed within six (6) months thereafter.

F. Permit Exceptions

The following shall not be considered as creating a sign and therefore shall not be required to have sign permit unless otherwise specified.

1. Changeable Copy - The changing of advertising copy or message on an approved sign such as a theater marquee and similar approved signs which are specifically designed for use of replaceable copy.
2. Maintenance - Painting, repainting, cleaning, or other normal maintenance and repair of a sign or sign structure unless a structural change is involved, or a change in copy is involved. The changing of logo or verbiage on a sign to update or modernize an existing business's sign without changing ownership or company name is permitted.
3. Temporary or Exempt Sign - Temporary sign as listed per Section 7.8 and exempt signs per Section 7.7 of this Ordinance are exempt from permit requirements unless specified elsewhere.

G. Variances

A variance from the sign regulations of this Ordinance may be granted through the procedures established in Section 11.4 of this Ordinance.

7.4 INSPECTION, REMOVAL, SAFETY**A. Inspection**

Signs for which a permit is required may be inspected periodically by the Zoning Administrator for compliance with this Ordinance and other codes of the City.

B. Removal of Sign

The Zoning Administrator may order the removal of any sign erected or maintained in violation of this Article. He shall give thirty (30) days' written notice to the owner of a permanent sign or place a notice of such violation on the building, structure, premises, or sign in violation to remove the sign or to bring it into compliance. He shall give a three (3)-day notice for temporary or portable signs. The Zoning Administrator may remove a sign immediately and without notice if, in his opinion, the condition of the sign is such as to present an immediate threat to the safety of the public.

Any sign removed by the Zoning Administrator and/or his agent, pursuant to the provisions of this Section shall be held by the City for redemption by the owner. To redeem, the owner

shall pay all costs incurred by the City for removal. Should said sign not be redeemed within thirty (30) days of its removal, it may be disposed of in any manner deemed appropriate by the City. The cost of removal shall include any and all incidental expenses incurred by the City in connection with the sign's removal.

C. **Maintenance**

All signs and components thereof shall be kept in good repair and in safe, neat, clean, and attractive condition. Failure to comply will automatically revoke the permit after such noncompliance has been determined by the Zoning Administrator and notice has been given to the owner of the sign as reflected by the records of the Zoning Administrator.

D. **Abandoned Signs**

A sign shall be removed by the owner or lessee of the premises upon which the sign is located when the business which it advertises is no longer conducted on the premises. If the owner or lessee fails to remove it, the Zoning Administrator shall give the owner ten (10) days' written notice to remove it. Upon failure to comply with this notice, the Zoning Administrator or his duly authorized representative may remove the sign at cost to the owner. Where a successor to a defunct business agrees to maintain the sign(s) as provided in this Article, this removal requirement shall not apply. The new sign user shall forthwith notify the Zoning Administrator's office, in writing, of this change. No new sign permit is required unless the sign is altered or relocated. The Zoning Administrator shall be notified in any matters relating to sign relocations.

At the discretion of the Zoning Administrator, in cooperation with the Historic Preservation Commission or the Redevelopment Commission, a sign having historic or other significant value may be exempt from the requirements of this provision.

E. **Street Improvement Projects**

Any sign projecting over a roadway right-of-way at the time of the effective date of this Ordinance which was subject to removal or relocation at the owner's expense, pursuant to a permit or other ordinance of the City, shall be removed by the owner, or altered at the owner's expense to comply with the regulations of this Section if, as the result of or after completion of a roadway improvement project, said sign does not or would not comply with the provisions of this Ordinance.

F. **Assurance of Discontinuance**

As an additional means of enforcement, the Zoning Administrator may accept an assurance of discontinuance of any act or practice deemed in violation of any rule or regulation adopted pursuant thereto, from any owner or person engaging in such act or practice. Such assurance shall be in writing and shall specify a time limit during which said discontinuance is to be accomplished. Failure to perform the assurance shall constitute prima facie proof of a violation of this Ordinance or any rule or regulation adopted pursuant thereto, which makes the alleged act or practice unlawful for the purpose of securing any injunctive relief from a court of competent jurisdiction.

7.5 NONCONFORMING USES AND SIGNS

Signs which existed prior (nonconforming) to the time this Ordinance was passed and were in conformance with previous ordinances will be legally nonconforming (grandfathered) until such time a major change is made to the sign. Major changes include changing the name, changing the size,

adding lights, refurbishing, and/or relocation.

All signs shall be kept in good repair and safe, neat, clean, and attractive condition. In the event signs are not kept in said condition or are demolished by any force whatsoever to the extent of fifty percent (50%) or more of the fair market value of the sign structure, said signs shall then conform to this Ordinance.

Nonconforming signs which are structurally altered, relocated, or replaced shall comply immediately with all provisions of this Ordinance. Nothing in this Ordinance shall be construed to give a legal status to any sign without a sign permit.

7.6 PROHIBITED SIGNS

The following type signs are expressly prohibited in all Zone Districts:

"A" Frame Signs - "A" frame signs or sandwich board, sidewalk or curb signs are prohibited if it is deemed hazardous to pedestrian traffic by the Zoning Administrator.

Abandoned Signs - Such business signs that advertise an activity, business, product, or service no longer conducted or available.

Animated and Intensely Lighted Signs - No sign shall be permitted which is animated by means of flashing, scintillating, blinking, or traveling lights or any other device or means not providing constant illumination. Public service information signs and other electronic message centers classified as "changing signs" are permitted under special provision of this Section and by special sign permit approval of the Advisory Plan Commission.

Lights and Balloons - Search lights, "twirling signs", balloons or other gas-filled figures shall be prohibited except as set forth below. Such items shall be permitted in a commercial or industrial district for a period not to exceed fourteen (14) days per event and may not be used for more than two (2) events per calendar year and will be permitted in residential districts in conjunction with an open house or model home demonstration conducted by a real estate agent for two (2) days after and not to exceed a total period of ten (10) days.

Miscellaneous Signs and Posters - The tacking, pasting or otherwise affixing of signs of a miscellaneous character, visible from a roadway, located on the walls of buildings, barns, sheds, on trees, poles, posts, fences, or other structures are prohibited unless otherwise permitted by this Ordinance.

Moving Signs - No sign or any portion thereof shall be permitted which moves or assumes any motion or gives the illusion of moving.

Off-Premises Signs - Off-premises signs shall be prohibited except as expressly permitted in this Ordinance.

Projecting Signs - No privately owned sign shall project over or into the street cartway.

Public Areas - No sign shall be permitted which is placed on any post, pole, electrolier, hydrant, bridge, tree or other surface located on public property or over or across any street or roadway except as otherwise expressly authorized by this Ordinance.

Towers (Water, Radio, Etc.) - No sign shall be placed on any tower or tank without the approval of the Advisory Plan Commission.

Unclassified Si9D.§. - The following signs are prohibited which:

- a. Bear or contain statements, words, or pictures of an obscene or pornographic character, or which contain advertising matter which is untruthful or will offend public morals or decency; or
- b. Are painted on or attached to any fence or any wall which is not structurally a part of a building except to identify a residence or residence structure by means of posting the name of the occupant or structure and the street address; or
- c. Operate or employ any motion picture projection or media in conjunction with any advertisements, or have visible moving parts of any portion of which moves or gives the illusion of movements except as permitted in this Ordinance; or
- d. Emit audible sound, odor, or visible matter; or
- e. Signs which, by reason of their size, shape, location, movement, content, coloring, or manner of illumination, may be confused with a traffic control sign, signal or device, or the light of an emergency or road equipment vehicle or which hide from view any traffic or roadway sign, signal, or device; or
- f. Obstruct any door, fire escape, stairway, or any opening intended to provide air, egress or ingress for any building or structure; or
- g. Are not included under the types of signs permitted in this Ordinance.
- h. Small, free-standing signs shall be prohibited unless otherwise permitted in this Ordinance.

7.7 EXEMPTIONS

The following types of signs are exempted from all provisions of this Ordinance except for construction and safety regulations and the following requirements.

Business Identification Sign - An identification sign on or near (above or beside) a public entrance or service entrance to a business in a B-1, B-2, R-4, or 1-1 zone is permitted provided such signs are mounted flush against the wall, and that such signs shall not exceed ten percent (10%) of the front of the building.

Damaged Signs - A sign erected under a legally obtained permit which is damaged or destroyed fifty percent (50%) or more of the fair market value of the sign structure by wind, weather, or other accidental means beyond the control of the applicant may be replaced or restored to its original size, shape, and location (as prior to the accident) without obtaining an additional permit. Replacement of a damaged or destroyed sign with a new sign or different size or location from the original sign shall require a permit.

Integral Signs - Names of building, date of erection, monumental citations, commemorative tablets and the like when carved into stone, concrete or similar material or made of bronze, aluminum, or other permanent type construction and made an integral part of the structure.

Parking Signs - Signs for public and private parking shall be permitted. Such signs shall be subject to a three- (3) foot setback from right-of-way and shall not be used for advertising purposes. Signs shall be no higher than six (6) feet and no greater than six (6) square feet in area. Such signs shall be installed so as to not present a hazard to traffic entering or leaving the premises.

Private Traffic Direction Signs - Signs directing traffic movement onto or within a premise. Illumination of these signs shall be permitted in accordance with Section 7.9. The leading edge of such signs shall be a minimum of three (3) feet from any curb or traffic movement aisle, the sign shall be no higher than three (3) feet and no greater than six (6) square feet in area.

Public Signs - Signs of a noncommercial nature and in the public interest erected by or on the order of public officer(s) in the performance of his public duty, such as safety signs, danger signs, trespassing signs, traffic signs, memorial plaques, signs of historical interest, signs directing the traveling public and quasi-public facilities, or signs on public buildings or structures and the like.

Banners and Pennants - Banners and pennants shall be permitted only as a temporary sign as specified in Section 7.8 of this Ordinance.

Small Signs - A nameplate which shall not exceed two (2) square feet in area is permitted for each dwelling unit of a single-family or multi-family dwelling; such nameplate shall state nothing other than the name and/or address of the occupant and/or legal customary home occupation. No other sign shall be allowed. This paragraph shall not be construed to prohibit each dwelling unit from also displaying a house number plate for identification. Signs on the premises announcing rooms, apartments, or house for sale or rent shall not exceed six (6) square feet in area. Also provided that the signs are located three (3) feet from the street right-of-way.

Social or Charitable Organizations - Signs indicating the names and locations of churches, charitable organizations, and community service organizations are permitted provided that the sign area shall not exceed six (6) square feet, shall be located at least three (3) feet off the street right-of-way, and shall in no way obstruct the view of pedestrians or vehicular traffic. Such signs shall be permitted as "off-premises" signs; providing, however, such signs have a minimum spacing of five hundred (500) feet between any two (2) signs in this category, except where there is a community service central display.

Vehicle Signs - Signs on vehicles are permitted provided the sign is painted or attached directly to the body of the original motor-powered vehicle and does not project or extend beyond the original manufactured body proper of the motor-driven vehicle. Such vehicles and/or semi-trailers shall be parked a minimum distance of ten (10) feet from any street right-of-way and shall be located so as to not create an obstruction or hazard to the traveling public. Trucks and/or trailers may be used as signs for special events or sales for a maximum period of thirty (30) days.

Window Signs - Window signs are permitted provided such signs conform to the construction, illumination, and safety regulations of this Ordinance.

7.8 TEMPORARY SIGNS

The following signs shall be permitted at any location within the City of Nappanee and shall be required to have a permit unless otherwise specified:

Construction Signs - Construction signs which identify the architects, engineers, contractors and other individuals or firms involved with the construction but not including any advertisement of any product, and signs announcing the character of the building enterprise or the purpose for which the building is intended during the construction period to a maximum of thirty-two (32) square feet for each firm. The minimum setback shall be ten (10) feet from any street right-of-way. The sign shall be confined to the site of construction and shall be removed within thirty (30) days after the end of construction. No permit shall be required, and the maximum time limit shall be two (2) years, or the duration of construction, whichever is shorter.

Garage Sale Signs - Signs advertising the sale of miscellaneous household items for the purpose of

a residential "garage" or "yard" sale shall not exceed four (4) square feet in area. Such signs may be erected on the premises one week in advance of the sale and shall be removed within forty-eight (48) hours after the sale. No permit shall be required. Per I.C. 35-43-1-2, garage sale signs are prohibited from being posted on utility poles.

Political Campaign Signs - Political campaign signs announcing the candidates seeking public political office shall be confined within private property and not within the street right-of-way. They shall be permitted no more than sixty (60) days prior to the scheduled election and shall be removed within fourteen (14) days after the election for which they were made. Such signs shall be placed at least three (3) feet from any public right-of-way and shall not require a permit.

Portable Signs - Signs placed upon wheels or lightweight frames for convenient moving and with changeable letter boards for convenient changing of copy, shall be utilized only as noted below:

Portable signs shall be permitted in a commercial or industrial district, provided that such sign shall:

- a. Be located not less than five (5) feet from any public right-of-way; and
- b. Not extend more than seven (7) feet from ground level; and
- c. Not obstruct the flow or sight pattern of vehicular traffic on any established right-of-way; and
- d. Not be less than ten (10) feet from adjoining residential lots; and
- e. Have a face not exceeding thirty-two (32) square feet; and
- f. Not have blinking lights; and
- g. Be used for no more than sixty (60) days per calendar year; and
- h. Be used for no more than thirty (30) consecutive days; and
- i. Not be used for a period of at least fifteen (15) days between uses; and
- j. Be used no more than two (2) times in each of the six-month periods listed below:
 - January 1 through June 30
 - July 1 through December 31; and
- k. First obtain a permit from the Zoning Administrator.
- l. Service and charitable organizations shall be permitted the use of these portable signs six (6) times per calendar year for a maximum of fourteen (14) days each time.
- m. Businesses located in a residential district shall NOT be permitted the use of these portable signs.

Real Estate Signs - One (1) real estate sign advertising the sale, rental, or lease of the premises or part of the premises on which the sign is displayed shall not exceed six (6) square feet in R-1 and R-2 Districts; and thirty-two (32) square feet in R-3, R-4, business, or industrial districts. Such signs shall be removed within fourteen (14) days of the sale, rental, or lease. The minimum setback from street right-of-way shall be ten (10) feet. Signs shall reflect no advertising or promotional material other than to indicate the party listing the property for sale, rental, or lease. Such sign shall not be required to obtain a permit. "A" frame real estate directional signs shall be permitted for a period of forty-eight

(48) hours in a seven (7) day period.

Banners - Banners shall be permitted in a commercial or industrial district only under the following conditions:

- a. It shall be placed as a building wall sign and shall adhere to the stipulations as noted elsewhere in this Ordinance; and
- b. Be used for no more than ninety (90) days per calendar year; and
- c. Be used for no more than thirty (30) consecutive days; and
- d. Not be used for a period of at least fifteen (15) days between uses; and
- e. Be used no more than three (3) times in each of the six-month periods listed below:
 - January 1 through June 30
 - July 1 through December 31.
- f. Street banners shall be permitted in designated areas and shall be permitted for a period of thirty (30) days. The requesting organization shall provide proof of insurance and be responsible for installation and removal of banner.
- g. Banners shall be permitted in a residential district two (2) times per calendar year for a maximum of seven (7) days each time.

Subdivision or Multi-Family Sign - One (1) temporary subdivision or multiple-family project identity sign indicating only the name and/or address of the premises and/or the name of the management. Such a sign shall not exceed thirty-two (32) square feet of area and shall be located a minimum distance of ten (10) feet from any street right-of-way. Excepting, however, for each additional foot beyond ten (10) feet that the setback distance is increased, the face area of the sign may be increased by one (1) square foot up to a maximum allowable size of one hundred (100) square feet. The maximum time period will be twelve (12) months from the date the sign permit is issued. Such sign may be extended for another twelve (12) months by the Advisory Plan Commission or until the project is eight five percent (85%) completed or is occupied. Temporary project signs shall be removed within ten (10) days of the erection of any permanent or temporary project identity sign.

7.9 ILLUMINATION

All signs must meet the illumination criteria listed below:

- A. All illuminated signs must meet the standards as specified in the National Electric Code, as adopted, and amended by the State of Indiana.
- B. No sign shall have blinking, flashing, or fluttering lights, nor shall any device be utilized which has a changing light intensity, brightness, or color, or give such illusion.
- C. The full number of illuminating elements thereof shall be kept in satisfactory working condition or be immediately repaired or replaced. Signs that are only partially illuminated shall meet all electrical requirements for that portion directly illuminated. All electrical wiring shall be in conduit and not exposed to the elements of external streets in any way. All electrical signs shall have a disconnecting switch located in a readily accessible place.
- D. The direct non-reflected light from a primary light source shall not create a traffic hazard to

operators of motor vehicles on public and/or private roadways.

- E. The light from any illuminated sign shall be so shaded, shielded, or directed that the light intensity or brightness will not be objectionable to the surrounding areas. No light shall shine directly onto adjacent property.

7.10 SIGN STANDARDS BY ZONING DISTRICTS

- A. The following sign standards by districts are intended to apply to every zoning district within the jurisdiction of the City of Nappanee. The districts are as defined in Section 3.1 of this Ordinance and are shown on the Official Map. Only signs as described herein and as may be described under Sections 7.7 and 7.8 shall be permitted in each particular zone.
- B. If any zone is omitted from this Ordinance, or if a new district is created after enactment of this Ordinance, no sign shall be permitted therein until this Ordinance is amended to include the new district.

7.11 RESIDENTIAL ZONING DISTRICTS

These regulations shall apply to all districts designated as R-1, R-2, R-3, or R-4, Single-Family, Multiple-Family, Cluster Housing, Condominiums, High-Rise Apartments, Residential Office, or any combination of residential uses.

A. **Single-Family Residential (R-1)**

The following signs shall be permitted in an R-1 District:

1. One (1) nameplate not exceeding a combined area of two (2) square feet in area is permitted for single family homes. Said nameplate shall not be subject to the permit requirements of this Ordinance but shall be in conformance with the provisions of this ordinance and other City standards.
2. Signs in conjunction with home occupations, not exceeding two (2) square feet shall not be illuminated.
3. A church, school, golf course, lodge, or public building bulletin board or sign, not exceeding thirty-two (32) square feet in area, may be illuminated but shall conform to the provisions of Section 7.9 of this Ordinance. A wall sign not exceeding one hundred (100) square feet, stating only the name of the church, school, golf course, lodge, or public building may be approved by the Advisory Plan Commission not to exceed one hundred (100) square feet.
4. For commercial uses either permitted or allowed by special exception (not home occupations) in an R-1 district, an illuminated nameplate of not more than two (2) square feet and/or ground sign of not more than thirty-two (32) square feet shall be permitted.
5. Any sign as permitted under Sections 7.8 and 7.7 of this Ordinance.
6. One (1) subdivision identity sign as permitted under Section 7.8 of this Ordinance. Such sign shall not be illuminated. In the event the subdivision has entries from more than one (1) street, additional identity signs may be permitted by the Advisory

Plan Commission.

7. Permanent or temporary subdivision identity signs shall be permitted. In the event the subdivision has entries from more than one (1) street, additional signs may be permitted by the Advisory Plan Commission. Any temporary signs as provided by Section 7.7 of this Ordinance shall be removed before a permanent sign may be erected. A maximum of two (2) signs shall be permitted for the main entryway. Said signs shall not exceed six (6) feet in height and shall be located at least ten (10) feet from any street right-of-way. Maximum size shall be one hundred (100) square feet in area.

B. Two-Family and Multi-Family Residential (R-2 and R-3)

The following signs shall be permitted in an R-2 or R-3 District:

1. For each duplex and/or multiple-family building, one (1) nameplate per occupancy not to exceed two (2) square feet in area is permitted. Such nameplate shall not be subject to the permit requirements of this Ordinance. No illumination shall be permitted.
2. Home occupation signage as provided in Section 7.11 A 2 may be utilized.
3. A church, school, golf course, lodge, or public building ground sign, not exceeding thirty-two (32) square feet in area is permitted at each major entrance and may be illuminated but shall conform to Sections 7.9 and 7.10 of this Ordinance. An additional wall sign stating only the name of the church, school, golf course, lodge, or public building may be approved by the Advisory Plan Commission not to exceed one hundred (100) square feet.
4. Any sign as permitted under Sections 7.7 or 7.8 of this Ordinance is permitted. Only the multi-family project identity sign may be illuminated but shall conform to Section 7.9 of this Ordinance.
5. For commercial uses either permitted or allowed by special exception (not home occupations) in an R-2 or R-3 district, an illuminated nameplate of not more than two (2) square feet and/or ground sign of not more than thirty-two (32) square feet shall be permitted.
6. A maximum of two (2) permanent or temporary multi-family project identity signs shall be permitted for the main entryway. In the event the project has entries from more than one (1) street, additional identity signs may be permitted by the Advisory Plan Commission. Any temporary sign, as provided in Section 7.8 of this Ordinance shall be removed before a permanent sign may be erected. Project identity signs shall not exceed six (6) feet in height and shall be located at least ten (10) feet from any street right-of-way. Maximum size shall be one hundred (100) square feet in area.

C. Office Residential (R-4)

The following signs shall be permitted in an R-4 District:

1. One (1) nameplate not exceeding a combined area of two (2) square feet in area is permitted for single family homes. Said nameplate shall not be subject to the permit requirements of this Ordinance but shall be in conformance with the provisions of this ordinance and other City standards.

2. For each duplex and/or multiple-family building, one (1) nameplate per occupancy not to exceed two (2) square feet in area is permitted. Such nameplate shall not be subject to the permit requirements of this Ordinance. No illumination shall be permitted.
3. Home occupation signage as provided in Section 7.11 A 2 may be utilized.
4. A church, school, golf course, lodge, or public building ground sign, not exceeding thirty-two (32) square feet in area is permitted at each major entrance and may be illuminated but shall conform to Sections 7.9 and 7.10 of this Ordinance. An additional wall sign stating only the name of the church, school, golf course, lodge, or public building may be approved by the Advisory Plan Commission not to exceed one hundred (100) square feet.
5. For commercial uses either permitted or allowed by special exception (not home occupations) in an R-4 district, an illuminated nameplate of not more than two (2) square feet and/or ground sign of not more than thirty-two (32) square feet shall be permitted.
6. Any sign as permitted under Sections 7.8 and 7.7 of this Ordinance.

D. Location

1. A permanent or temporary identity sign for a single-family subdivision or for a multi-family project shall be placed a minimum distance of ten (10) feet from any street right-of-way. The face of any such sign shall not exceed one hundred (100) square feet in area.
2. Building-mounted signs shall be flush mounted. There shall be no projection of any sign above the roof line.
3. All signs shall be placed a minimum of ten (10) feet from any street right-of-way.
4. Permitted signs shall not be placed on utility easements or drainage easements as defined on recorded plats or site plans without the express consent of the Advisory Plan Commission and all applicable utilities or other agencies.
5. Signs shall not be placed as to interfere with the sight path of vehicular traffic.
6. Permanent or temporary identity signs for residential projects shall not exceed six (6) feet in height and may be constructed as free-standing ground signs or placed on decorative walls or fences.

7.12 BUSINESS/COMMERCIAL DISTRICTS

A General

The regulations described in this Section shall apply to all uses in B-1 and B-2 Districts.

B. Free-Standing Single Use Buildings

Permitted signs for free-standing buildings having a single occupant are as follows:

1. Ground or Pole Signs - Either one (1) ground sign or one (1) pole sign (but not both)

indicating only the name and nature of the occupancy shall be permitted for each business parcel. Such sign shall not exceed one hundred (100) square feet in area and a pole sign shall not exceed thirty-five (35) feet in height. Such sign shall be installed in accordance with location criteria as explained in Section 7.11 of this Ordinance. Such ground sign may be illuminated as provided in Section 7.9 of this Ordinance. Where the business lot frontage is one hundred (100) feet or less, only a ground sign shall be permitted. Such ground or pole signs should be adequately landscaped.

2. Wall Signs - Signage on the wall of a building shall not exceed twenty percent (20%) of the total area of the wall, up to a maximum of two hundred (200) square feet per wall. In computing wall area for the purposes of this Section, the areas covered by doors or windows shall be excluded.
3. Marquee Signs - Marquee signs are permitted on the face of marquees subject to approval of the Advisory Plan Commission. The lower edge of the marquee sign shall be no less than eight (8) feet above the sidewalk at any point. Unless otherwise approved by the Commission, no part of such sign shall project above the roof line.
4. Bench Signs - Bench signs which are located for the convenience of the public may be approved by the Plan Commission.
5. Awnings - Awning signs are permitted on awnings subject to approval of the Plan Commission. The lower edge of the awning shall be no less than eight (8) feet above the sidewalk at any point, unless approved by the Commission.

C. **Shopping Centers**

Permitted signs for shopping centers and other multi-occupant commercial/office buildings are as follows:

1. Pole Signs - Pole signs at shopping centers may be made a part of the site development plan or erected at a later date, subject to the approval of the Advisory Plan Commission and shall meet the following requirements:
 - a. One (1) pole sign shall be permitted; and
 - b. Such sign shall indicate only the name and location of such business or businesses; and
 - c. Such sign shall have a maximum surface area not exceeding two hundred (200) square feet;
 - d. Where a strip shopping center or developed parcel in an industrial zone has in excess of two hundred (200) feet of street frontage; one (1) additional free-standing pole sign may be approved by the Advisory Plan Commission; and
 - e. Where a strip shopping center or developed parcel in an industrial zone is authorized by the Advisory Plan Commission to have more than one (1) free-standing pole sign, the distance between each sign shall be not less than one hundred (100) feet; and
 - f. Such signs may be illuminated as provided in Section 7.9 of this Ordinance,

1. A permit shall be obtained prior to the erection of the sign; and
2. Such sign shall indicate only the name, location, and information about the park itself. Products or services shall not be advertised; and
3. Such sign shall have a maximum sign face area of one hundred (100) square feet, a maximum height of nine (9) feet above grade level, and a minimum setback of fifteen (15) feet from street right-of-way; and
4. Such sign shall be a minimum distance of one hundred (100) feet from any residential zoning district.
5. Such sign shall be a minimum distance of five hundred (500) feet from any other "off-premises" sign.
6. Such signs should be adequately landscaped.

7.13 INDUSTRIAL DISTRICT

Signs permitted in an industrial district are as follows:

A Ground Signs

1. Limit of One (1): One (1) ground sign indicating the name and nature of the business shall be permitted for each business parcel.
2. Height - The height of any ground sign shall be such that no part of the sign face shall exceed a maximum height of six (6) feet
3. Size and Location - A ground sign shall be placed a minimum distance of ten (10) feet from any street right-of-way. The face of any such sign shall not exceed fifty (50) square feet in area.
4. Illumination - All permitted signs in this district may be internally or externally lit but shall not shine directly or indirectly into adjacent residential areas.
5. Landscaping - All permitted ground signs should be adequately landscaped.

B. Wall Signs

One wall sign shall be permitted on each building. Maximum sign area shall be one and one-half square feet for each lineal foot of building frontage; however, in no instance shall such signage exceed two hundred (200) square feet for a single business. Wall signs shall be mounted flush against the building.

C Entrance Signs

Two (2) on-site entrance signs are permitted at each entrance to an industrial or business park. Such signs are subject to the provisions of Section 7.12 D of this Ordinance and may be internally or externally lit but shall not shine directly or indirectly into adjacent residential areas.

or as approved by the Advisory Plan Commission.

- g. Such pole signs should be adequately landscaped.
2. Wall Signs - Signage on the wall of a building shall not exceed twenty percent (20%) of the total area of the wall up to a maximum of two hundred (200) square feet per wall. In computing wall area, the areas covered by door or windows shall be excluded.
3. Marquee Signs - Marquee signs as provided in Section 7.12 B 3 of this Ordinance shall be permitted.
4. Bench Signs - Bench signs as provided in Section 7.12 B 4 of this Ordinance shall be permitted.

D. Signs for Commerce and Industrial Parks

Off-premises signs shall be permitted for directing the traveling public to commerce or industrial parks (strip shopping center or mall not included), providing the following requirements are met:

1. A permit shall be obtained prior to the erection of the sign; and
2. Such sign shall indicate only the name, location, and information about the park itself. Products or services shall not be advertised; and
3. Such sign shall have a maximum sign face area of one hundred (100) square feet, a maximum height of nine (9) feet above grade level, and a minimum setback of fifteen (15) feet from street right-of-way; and
4. Such sign shall be a minimum distance of one hundred (100) feet from any residential zoning district.
5. Such sign shall be a minimum distance of five hundred (500) feet from any other "off-premises" sign.
6. Such signs should be adequately landscaped.

7.13 INDUSTRIAL DISTRICT

Signs permitted in an industrial district are as follows:

A. Ground Signs

1. Limit of One (1): One (1) ground sign indicating the name and nature of the business shall be permitted for each business parcel.
2. Height - The height of any ground sign shall be such that no part of the sign face shall exceed a maximum height of six (6) feet.
3. Size and Location - A ground sign shall be placed a minimum distance of ten (10) feet from any street right-of-way. The face of any such sign shall not exceed fifty (50) square feet in area.

4. Illumination - All permitted signs in this district may be internally or externally lit but shall not shine directly or indirectly into adjacent residential areas.
5. Landscaping - All permitted ground signs should be adequately landscaped.

B. Wall Signs

One wall sign shall be permitted on each building. Maximum sign area shall be one and one-half square feet for each lineal foot of building frontage; however, in no instance shall such signage exceed two hundred (200) square feet for a single business. Wall signs shall be mounted flush against the building.

C. Entrance Signs

Two (2) on-site entrance signs are permitted at each entrance to an industrial or business park. Such signs are subject to the provisions of Section 7.12 D of this Ordinance and may be internally or externally lit but shall not shine directly or indirectly into adjacent residential areas.

8.1 GENERAL PROVISIONS

A. Title

This Section of the Nappanee Unified Zoning and Subdivision Control Ordinance shall be known, cited, and referred to as the "Subdivision Control Regulations for the City of Nappanee, Indiana."

B. Intent and Purposes

The purposes of these subdivision regulations are to protect and promote the public health, safety, and general welfare, and to provide for:

1. Guidance of future growth and development in accordance with the Comprehensive Plan and other applicable City policies and ordinances.
2. Protection of the character, the social, and the economic stability of all parts of the area, and to encourage the orderly and beneficial development of all parts of the jurisdiction.
3. Protection and conservation of the value of land, buildings, and other improvements upon the land, and to minimize the conflicts among the uses of land and buildings.
4. Avoidance of scattered and uncontrolled subdivisions of land that would result in the unnecessary imposition of an excessive expenditure of public funds for the supply of services that are a part of community infrastructure.
5. Establishment of reasonable standards and procedures for subdivisions and resubdivisions, in order to further the orderly layout and use of land; and to ensure proper legal descriptions and monumenting of subdivided land.
6. Prevention of the pollution of air and water; provision of drainage facilities and safeguarding of the water table; and the encouragement of wise use and management of natural resources in order to preserve the integrity, stability, natural beauty, topography, and the value of land.
7. To guide public and private policy and action to provide adequate and efficient public and private facilities, the most aesthetically pleasing and beneficial interrelationship between land use, conserve natural resources such as natural beauty, woodlands, open spaces, and energy, both during and after development.
8. To cause the cost of design and installation of improvements in new, platted subdivisions to be borne by the persons purchasing the lots rather than by any direct or indirect burden upon existing property owners beyond the limits of the subdivision who have already paid for the improvements servicing their property.

C. Jurisdiction

This ordinance, which was enacted pursuant to Indiana home rule and planning enabling legislation (Indiana Code, titles Section 36-1-3-4 and the Section 36-7-4-700 series, as amended), authorizes the Nappanee Advisory Plan Commission to review and approve or disapprove plats for subdivisions within the corporate limits of the City of Nappanee, Indiana.

D. Policy and Interpretation

1. No owner, or agent of the owner, of any parcel of land located in a proposed subdivision shall transfer or sell any such parcel before a plat of such subdivision has been approved by the Commission, in accordance with the provisions of these regulations, and filed with the County Recorder.
2. The division of any lot or any parcel of land into a subdivision, as defined in this ordinance, by the use of metes and bounds description for the purpose of sale, transfer, or lease resulting in the creation of one (1) or more new building sites shall not be permitted. All such described divisions shall be subject to all of the appropriate requirements of this ordinance.
3. Land to be subdivided shall be of such a character that it can be developed without peril to health, flood, fire, or other menace; and land shall not be subdivided until access to available existing public facilities, improvements, and proper provisions have been made for drainage, water, sewerage, other necessary new public improvements such as schools, parks, recreation facilities, and transportation facilities adequate for serving the subdivision.
4. No plat or re-plat of a subdivision of land located within the jurisdiction of the Commission shall be recorded until it has been approved by the Commission, and such approval shall have been entered in writing on the plat by the President and Secretary of the Commission.
5. No land shall be subdivided unless the intended use of the individual lot is in conformance with all provisions of this Ordinance and the Comprehensive Plan, now or hereafter adopted.
6. In all subdivisions, due regard shall be given to the preservation of historical sites and natural features such as large trees, water courses, and scenic views.
7. In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.
8. Conflict with Public and Private Provision:
 - a. Public Provisions: The regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule, regulation, statute, or other provision of law. Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations or any other ordinance, rule, regulation, or other provision of law, whichever provisions are more restrictive or impose higher standards shall control.
 - b. Private Provisions: These regulations are not intended to abrogate any easement, covenant, or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement or restriction, the requirements of these regulations shall *govern*. Where the provisions of the easement, covenant, or private agreement or restriction impose duties and obligations more restrictive, or higher standards than the requirement of these regulations, or the determinations of the Commission in providing a subdivision or in enforcing

these regulations, and such private provisions are not inconsistent with these regulations or determinations thereunder, then such private provisions shall be operative and supplemental to these regulations and determinations made thereunder. (Note: Private provisions can only be enforced privately unless a public agency has been made party to such agreements).

- 9. No Improvement Location Permit or Certificate of Occupancy shall be issued for any parcel or plat of land which was created by subdivision after the effective date of, and not in conformity with, the provisions of these subdivision regulations; and no excavation of land or construction of any public or private improvements shall take place or be commenced except in conformity with the regulations contained herein and in conformity with City construction standards.
- 10. These regulations shall not be construed as abating any action now pending under, or by virtue of, prior existing subdivision regulations.
- 11. These regulations shall not apply to the following:
 - a. An adjustment of lot lines as shown on a recorded plat which does not reduce the area, frontage, width, depth, or building setback lines of each building site below the minimum zoning requirements, and does not change the original number of lots in any block of the recorded plat
 - b. A division of land into two (2) or more tracts for an agricultural use.
 - c. The unwilling sale of land as a result of legal condemnations as allowed under the provisions of Indiana Code.
 - d. Widening of existing streets to conform to the Comprehensive Plan, Thoroughfare Plan, or Capital Improvement Plan.
 - e. The acquisition of street rights-of-way by a public agency in conformance with the Comprehensive Plan, Thoroughfare Plan, or Capital Improvement Plan.
 - f. The exchange of land for the purpose of straightening property boundary lines which does not result in the change of the present land usage.

E. Replats

For any change in a map of an approved or recorded subdivision plat, if such change affects any street layout shown on such map, area reserved thereon for public use, any lot line, or if it affects any map or plan legally recorded prior to the adoption of any regulations controlling subdivisions, such change shall be approved by the Plan Commission by the same procedure, rules, and regulations as for a subdivision.

8.2 ADMINISTRATION AND DEFINITIONS

A. Inspections and Permits

1. The developer shall notify the Zoning Administrator a minimum of one full business day (business days are Monday through Friday) prior to the planned installation of improvements with the development. The Administrator will notify the appropriate personnel who shall have the responsibility for inspecting and testing street curbs, subbases, pavement depth and quality, sewer lines, water lines, utilities, and drainage improvements to see that they conform to the specifications of this Ordinance and to City Construction Standards.
2. The City of Nappanee shall reserve the right to withhold Improvement Location Permits for the remaining ten percent (10%) of undeveloped lots in a final subdivision plat if the developer has failed to install all of the improvements shown on the Secondary Plat and Final Construction Plans, except for sidewalks. Sidewalks may be installed on each lot by individual builders upon development of individual lots.
3. All fees and costs of the City Engineer in review of plats, plans, specifications, field inspection of improvements, and any other aspects of subdivision review, shall be paid by the subdivider.
4. Disagreements shall be settled by the Commission by majority vote.
5. Fees shall be paid on a monthly billing cycle unless authorized otherwise by the Commission, in accordance with the official fee schedule.

B. Definitions

All terms used in this chapter, not otherwise defined herein, shall have the definitions provided in Section 2 of this Ordinance.

8.3 PROCEDURE

A. General

1. In the development of subdivisions, the capacity of City utilities may be used to restrict the number of developable lots in any given subdivision proposal.

B. Application for Subdivision

1. The subdivider shall consult informally with the Zoning Administrator and if applicable, the City Engineer, for advice and assistance before filing the application for a primary, secondary, or minor subdivision plat. At this meeting, the developer should submit a conceptual layout of the plat for review.
2. No application shall be accepted until all items detailed below have been completed and executed by the person proposing the subdivision, or his designee.
3. When the developer wishes to pursue the plat before the Plan Commission, he shall complete the requirements of Section 8.3 D and submit eight (8) copies of the proposed plat, and application to the Zoning Administrator along with the appropriate fees as specified in the official fee schedule. The Zoning Administrator shall have twenty-five (25) days in which to review the documents and to determine if there are

any deficiencies of the proposed plat. The deficiencies, if any, shall be submitted to the developer in writing.

4. All deficiencies shall be corrected, and four (4) copies of amended plat shall be submitted to the Zoning Administrator twenty-five (25) days prior to the next regularly scheduled meeting of the Plan Commission, or it will not be heard at that meeting.
5. Street names shall be proposed, but the final decision of the street names shall be determined by the Commission.
6. Upon placement on the agenda, and prior to the date of a public hearing, the City Engineer may review the proposal and prepare a written report to the Commission and applicant indicating a recommendation with regard to the subdivision being proposed.
7. The applicant shall pay any and all engineering fees as may be incurred in review of the application and inspection of the development of the subdivision.

C. Notice of Public Hearing

1. The Zoning Administrator, upon receipt of the proper documents, shall set a date for a public hearing before the Commission. The developer shall assist the Zoning Administrator in the preparation of a Notice of Public Hearing to be published in a local newspaper of general circulation. The legal notice shall appear in the newspaper ten (10) days prior to the date of the public hearing, and the cost of the notice shall be borne by the developer. A proof of publication shall be retained by the Zoning Administrator.
2. A Notice of Public Hearing to property owners shall be sent by the Zoning Administrator at the expense of the developer to all property owners directly adjacent to the boundaries of the property to be subdivided at least ten (10) days before the date of the public hearing on the primary plat. The property owners shall be notified by Certified Mail with Return Receipts Requested. An alternative method of notification would consist of an affidavit or proof of mailing in which the Zoning Administrator certifies that he has personally delivered the Notice of Public Hearings to Property Owners and has obtained the signatures of each property owner to be notified. This affidavit shall be properly notarized.
3. Legal notices shall include the following:
 - a. The general location of the proposed subdivision and a legal description of the land contained therein.
 - b. That the primary plat is available for examination at the office of the Nappanee Clerk-Treasurer.
 - c. That a public hearing will be held giving the date and hour of the hearing.
 - d. Written comments on the plat will be accepted prior to the public hearing and may be submitted to the Zoning Administrator for the Plan Commission.
4. Legal notices shall comply with I.C. 5-3-1, et seq.
5. Proofs of publication, receipts of mailing, or proofs of mailing shall be retained by the Zoning Administrator

6. Names and addresses of property owners adjoining the subdivision site shall be presented to the Zoning Administrator at the time the primary plat application is filed.

D. Primary Plat Procedures

1. The plat shall be drawn at a scale of one hundred (100) feet to one (1) inch. Sheets shall not exceed twenty-four (24) inches by thirty-six (36) inches in size. Other scales and/or sheet sizes are permitted if prior approval is granted by the Administrator.
2. The primary plat shall be prepared and certified by a land surveyor registered by the State of Indiana.
3. The plat shall include a vicinity map showing the following:
 - a. Location of proposed subdivision.
 - b. Existing subdivisions and parcels of land adjacent to the proposed subdivision, including the names of the property owners.
 - c. Existing schools, parks, playground, or other similar public facilities that will serve the proposed subdivision.
 - d. All public thoroughfares/rights-of-way adjacent to the site.
 - e. Location and size of all utilities adjacent to the subdivision site, including sanitary and storm sewers, gas lines, electric lines, telephone lines, water mains fire hydrants, cable television lines, etc.
 - f. Existing zoning of the tract and all contiguous tracts surrounding the proposed subdivision.
 - g. All section and municipal corporate boundaries lying within or contiguous to the tract.
 - h. The location of any streets and alleys in the proposed subdivision showing the relationship of said streets to any existing or proposed streets in contiguous subdivisions or undeveloped property to produce the most advantageous development of the entire neighborhood.
 - l. The vicinity map may be prepared by indicating the data by notation on available maps of an appropriate scale.
4. Two copies of a primary subdivision plat shall be submitted showing the following:
 - a. The proposed name of the subdivision.
 - b. Names and addresses of the owner, subdivider, consulting engineer, land surveyor, or planning firm who prepared the plat.
 - c. Legend and notes, including a graphic scale, north point, and date.
 - d. Tract boundary lines showing dimensions, bearings, angles, and references to section, township, range lines or corners, and existing benchmarks.

- e. Topographic contours at typical intervals of two (2) feet if the general slope of the tract is less than 10 percent (10%), or intervals of five (5) feet if the slope is in excess of 10 percent (10%). Said contours shall be referenced to mean sea level elevations and to U.S. Geological Survey datum plane.
- f. Layout of lots, showing dimensions and numbers.
- g. Building lines showing setback dimensions throughout the subdivision.
- h. Parcels of land proposed to be dedicated or reserved for schools, parks, playgrounds, or other public, semi-public, or community purposes.
- i. Existing and proposed streets and rights-of-way on and adjoining the site of the proposed subdivision showing the proposed names, roadway widths, types and widths of pavements, curbs, sidewalks, bikeways, jogging paths, and other recreational ways. This may be deferred to the Secondary Plat approval stage if permitted by the Zoning Administrator.
- j. Existing and proposed easements including the location, width, and purpose of each easement.
- k. Location and size of utilities existing and proposed and on the site, including storm and sanitary sewers; water mains; electrical, telephone, and cable television lines; street lights; fire hydrants; and such other utilities as may be appropriate. NOTE: All proposed utility services must be underground; and all sump-pumps (excluding sanitary pumps for basements) must be connected to the storm sewer system or as permitted by the Commission. This may be deferred to the Secondary Plat approval stage if permitted by the Zoning Administrator.
- l. Location of natural streams, regulated surface drains, legal ditches, flood plains, drain tiles, etc.
- m. A preliminary drainage plan showing the proposed storm water drainage system to an approved outlet. Data shall be included showing that said outlet is adequate to accommodate the drainage requirements of the finished development. The plan shall include surface drainage system, storm sewer systems, subsurface drainage systems, and storm water detention facilities. Arrows designating the general drainage of all streets and lots shall be included.
- n. Location of water courses, marshes, wetlands, wooded areas, isolated trees to be preserved, houses, barns, and other structures and significant features.
- o. Proposed sidewalks.
- p. Proposed decorative lighting.
- q. Type of drainage system(s) proposed to handle surface, underground, and runoff waters. The coefficient to be used for this determination shall be approved by the City Engineer.
- r. The existing excess capacity available from the Nappanee Wastewater Treatment Plant; the nearest location to the building site of a trunk or

- connecting sewer line; and the expected demand of the development or building (numbers to be acquired from the City).
- s. Preliminary architectural drawings in sufficient detail to show building size, height, materials, types of units, and location of all buildings (existing and proposed) on the development site. This requirement may be waived by the Zoning Administrator until Secondary Plat approval. In housing and large commercial developments, this information may not be available.
 - t. Proposed preliminary landscaping, signage, entrance to the development, screening, and attempts at preserving natural terrain and open space. The Plan Commission may request a landscaping/screening plan. This requirement may be waived by the Zoning Administrator until Secondary Plat approval.
 - u. Estimated traffic count increase on adjacent streets resulting from the proposed development; description of type and condition of roads to serve such development; total number of motor vehicles expected to use or be stationed in such development; and on and off-site parking to be supplied. A full traffic impact study or other detailed engineering studies need not be conducted unless requested by the Administrator at initial, informal meetings.
 - v. Photographs may be requested by the Zoning Administrator for specific areas or elements on or surrounding the site.
 - w. If the primary plat is to be divided into sections or phases of development, the boundaries and numbers of such sections shall be shown, and a conceptual plan for the entire subdivision shall be submitted as a "phasing schedule." Due to fluctuations in the economy, the Commission may give some flexibility to revisions to the phasing schedule throughout the process of development.
 - x. Soil map of the site from the Soil Conservation Service.
 - y. Proposed development schedule.
5. The primary plat and application for approval shall be accompanied by a certified check or money order in an amount specified in the official fee schedule of the City of Nappanee as maintained in the Office of the Clerk-Treasurer.

E. Primary Plat Approval

After submission of the primary plat and application, the Commission shall have twenty-one (21) days to review the information and accept the primary plat and application or return them to the subdivider with a list of additional information needs or suggested changes. No application will be considered at a meeting unless it is filed with the Commission at least twenty-five (25) days before the date of such meeting.

1. Hearing

After acceptance of the preliminary plat and application by the Commission, the Commission shall set a date for a hearing, notify the applicant in writing, and notify by general publication or otherwise, any person or governmental unit having a probable interest in the proposed plat. The cost of publication of the Notice of

Hearing shall be met by the applicant.

2. Approval

- a. If the Plan Commission determines in the public hearing that the primary plat complies with the standards set forth in this ordinance, it shall make written findings and a decision granting primary approval to the plat. This information shall be sent to the developer in a letter certified by the Zoning Administrator.
- b. Approval of a primary plat by the Commission is strictly tentative, involving merely the general acceptability of the layout submitted.
- c. The Commission may introduce such changes or revisions as are deemed necessary in the best interest and general welfare of the community, or request that additional information be provided or addressed by the applicant prior to review of the secondary plat.
- d. The primary approval of a plat by the Plan Commission shall be certified on behalf of the Plan Commission by the Zoning Administrator, who shall state the approval in a letter and affix his signature to it.

3. Disapproval

- a. If the Commission disapproves a primary plat application, the Commission shall make written findings and notify the applicant in writing, stating the specific reasons for disapproval. This written notice shall be certified by the Zoning Administrator.
- b. The applicant may submit a new application for primary plat approval but must pay all applicable fees as if it were an original application.

F. Secondary Plat Procedure

1. After approval of the primary plat by the Commission and fulfillment of the requirements of this Ordinance, eight (8) blackline or blueline reproductions of the secondary plat of the subdivision shall be submitted to the Commission along with one (1) reproducible mylar transparency. All secondary plats shall be drawn at the same scale as the primary plat and shall be drawn on a sheet twenty-four (24) inches by thirty-six (36) inches in size, unless otherwise authorized by the Commission.
2. If the Commission approves the secondary plat, it shall place a certification thereof on the reproduced copies. Upon the final approval of the plat, one (1) copy of the certified plat shall be forwarded to each of the following persons by the developer:
 - a. County Auditor and Recorder
 - b. Any corporate utility company that may be affected
 - c. Subdivider or applicant
 - d. File of Commission
 - e. County Surveyor

- f. Zoning Administrator
3. The secondary plat may include all or only a part of the primary plat which has received approval and shall be prepared and certified by a land surveyor registered by the State of Indiana. If the secondary plat does not contain all of the land approved on the primary plat, it shall be designated by a section number in a numerical order.
 4. The following information shall be shown on or submitted with the secondary plat:
 - a. Accurate boundary lines, with dimensions and angles, which provide a legal survey per state statute.
 - b. Accurate distances and directions to the nearest official monuments. Reference corners shall be accurately described on the plat.
 - c. Accurate locations of all existing and recorded streets intersecting the boundaries of the tract.
 - d. Accurate metes and bounds description of the tract boundary.
 - e. Source of title of applicant to the land as shown by the last entry in the books of the County Auditor.
 - f. Name of subdivision followed by the words "Secondary Plat."
 - g. Name and address of the owner and subdivider.
 - h. North point, graphic scale, and date.
 - i. Proposed street names.
 - j. Complete curve table for all curves included in the plat.
 - k. Street lines with accurate dimensions in feet and hundredths of feet with angles to street, alley, and lot lines. Radii, points of curvatures, tangent bearings, and lengths of all arcs of street lines shall be provided.
 - l. Lot numbers and dimensions including the square footage of each lot.
 - m. Accurate locations of easements, descriptions of their use, and any limitations on such semi-public or community use.
 - n. Accurate dimensions for any property to be dedicated or reserved for public, semi-public, or community use, including sidewalks, bikeways, and other recreational ways.
 - o. Building lines and setback dimensions throughout the subdivision.
 - p. Location, types, material, and size of all monuments and markers.
 - q. Construction plans and specifications for all improvements required by this Ordinance or the Commission.
 - r. Restrictions of all types which will run with the land and become covenants

- in the deeds for lots.
- s Certification by a registered land surveyor.
 - t. Certification by the owner(s) and lien holder(s) (if any) of dedication of streets and other public property, and an agreement executed by the owner(s) and subdivider(s) to make and install all improvements in accordance with the plans and specifications approved by the Commission and accompanying the secondary plat.
 - u. Certificate of approval by the Nappanee Plan Commission, if approved.
 - v. Certificate of approval by the Nappanee City Council, if approved.
 - w. A final landscaping/buffering plan shall be incorporated in the secondary plat design plans and a phasing schedule of landscaping/buffering improvements.
 - x. Any other information or data requested by the Commission during primary plat approval or otherwise necessary to clarify conditions and terms of secondary plat approval.

G. Secondary Plat Approval

1. Within thirty (30) days after application for approval of the secondary plat, the Commission shall approve or disapprove it. If the Commission determines that the plat complies with the standards of this Ordinance, it shall make written findings and render a decision regarding secondary approval to the plat. No notices of public hearing shall be required for secondary plat approval.
2. The secondary approval of the plat by the Plan Commission shall be certified on behalf of the Plan Commission by the President and Secretary who shall affix their signatures to the plat original and all other relevant documents which also may require such signatures.
3. If the Plan Commission disapproves the secondary plat, it shall make written findings and notify the applicant in writing, stating the specific reasons for disapproval. This written notice shall be signed by the President and Secretary of the Plan Commission.
4. Approval of the secondary plat shall be effective for a maximum period of twelve (12) months from the date of approval. Failure to obtain approval from the Commission, record the plat with the County Recorder, and commence construction of the subdivision within the twelve (12) month period, shall result in denial of building permits until an extension or re-submittal of application is made. For the purpose of this chapter, "commencing construction" means completion of the construction survey and staking.
5. A certificate of secondary plat approval shall not be signed until a performance bond or proof of surety has been submitted to the Plan Commission if required.
6. No Improvement Location Permit shall be issued by the Zoning Administrator, or his agent, for any structures on any subdivision lots prior to the recording of said subdivision by the County Recorder.

7. No Certificate of Occupancy shall be issued by the Zoning Administrator, or his agent, for any structure on any subdivision lots prior to installation and completion of all facilities, including grading, as shown on the development plans, and approved by the Commission; except that in the case of an asphalt road surface, the installation of the final surface coat may be postponed until the end of the maintenance period. The final coat of asphalt shall be installed prior to acceptance of the road for public maintenance.
8. A plat of subdivision may not be filed with the County Auditor, and the County Recorder may not record it unless it has been granted secondary approval by the Plan Commission and has been properly signed by the President and Secretary of the Commission. The filing and recording of the plat is without legal effect unless approved by the Plan Commission.
9. The subdivider shall supply one (1) copy of the recorded plat to the Zoning Administrator.

H. Construction Plans

1. It shall be the responsibility of the subdivider of every proposed subdivision to have prepared and certified by a land surveyor or engineer registered in the State of Indiana, a complete set of construction plans, including profiles, cross-sections, specifications, and other supporting data for all required public streets, utilities, and other facilities.
2. The final construction plans shall be based on preliminary plans which have been approved with the primary plat and shall be prepared and submitted in conjunction with the secondary plat. The plans shall show the following:
 - a. General construction plans shall be prepared for all required improvements. Plans shall be drawn on standard twenty-four (24) inch by thirty-six (36) inch sheets at a scale of no less than one (1) inch equaling fifty (50) feet, and map sheets shall be the same size as the secondary plat
 - b. Topographic contours at intervals of one (1) foot if the general slope of the tract is less than five percent (5%) or intervals of two (2) feet if the slope exceeds five percent (5%). Contours shall be referenced to USGS datum plane.
 - c. Profiles showing existing and proposed elevations along centerlines of all streets. Where a proposed street intersects an existing street or streets, the elevation along the centerline of the existing street or streets within one hundred (100) feet of the intersection. Radii of all curves, lengths of tangents, and central angles on all streets shall be shown.
 - d. The Plan Commission may require, where steep slopes exist, the cross-sections of all proposed streets.
 - e. Plans and profiles showing the location and typical cross-section of streets including curbs, gutters, sidewalks, rights-of-way, drainage facilities, manholes, and catch basins. Plans shall show the location, size, and invert elevations of existing and proposed sanitary sewers, stormwater drains, water lines, gas, and fire hydrants, showing connection to any existing or proposed utility systems

- f. Location, size, elevation, and other appropriate descriptions of any other existing physical and natural features or facilities including wetlands, trees, the points of connection to proposed facilities and utilities, and the approximate high- and low-water elevations of all ponds, lakes, and streams. All elevations shall be referenced to the USGS datum plane.
- g. Upon completion of the construction, the developer's engineer or land surveyor shall provide the Plan Commission with a set of "as built" construction plans showing the location, dimensions, and materials used to construct all improvements within the subdivision.

I. Minor Plats

- 1. The division of a tract of land into six (6) residential parcels or less, fronting upon an existing street and needing no new street or infrastructure, may be approved as follows:

The minor plat shall be subject to the same basic procedures as any other subdivision, provided that the Zoning Administrator may determine in advance of the filing of an application the details to be required on the plat.

- 2. The intent of this Section is to eliminate redundant requirements for minor plats which do not necessitate all of the detail of larger plats. However, the intent of this Section is not to circumvent good subdivision practices; therefore, the use of this procedure shall be limited to the creation of six (6) or fewer new parcels from any tract of land under five (5) acres in size and under single ownership at the time of adoption of this Ordinance.
- 3. For the purpose of allowing the early construction of model homes in a subdivision, the Commission in its discretion may permit a portion of a major subdivision involving no more than three (3) lots to be created in accordance with the procedures for minor subdivision, provided that said portion derives access from an existing public street, and provided that no future road or other improvement is anticipated where said lots are proposed. The subdivision plat for the "minor" portion shall be submitted to the Commission simultaneously with the primary plat for the entire major subdivision. Subsequent to the primary approval, the model home(s) may be constructed, subject to such additional requirements that the Commission may require.

8.4 SURETY

A. Performance Bonds

- 1. At the time when the Secondary Plat is approved by the Plan Commission and before the plat is signed by the officers of the Plan Commission or is recorded, the subdivider shall file a performance bond or irrevocable letter of credit with the Clerk-Treasurer and the City Council. The performance bond or letter of credit shall:
 - a. Be drawn in favor of the City of Nappanee.
 - b. Be in an amount determined by the Commission to be sufficient to complete the improvements and installations in compliance with this ordinance. The subdivider's engineer shall supply an estimate of the cost of improvements and installation on the project to aid the Commission in its determination of

- the amount of the bond. The engineer's estimate, however, shall not be binding upon the Commission.
- c. Be with surety satisfactory to the Commission and City Council.
 - d. Comply with all statutory requirements and shall be satisfactory to the Plan Commission's Attorney as to form, sufficiency, and manner of execution as set forth in these regulations.
 - e. Extend for two (2) years, or 80% complete, or as specified by the Commission in the resolution approving the secondary subdivision plat
 - f. Cover the installation costs of the streets, sanitary sewers, water lines, curbs, street signs, sidewalks, and other recreational amenities, surface swales, subsurface and storm drainage systems, seeding/erosion control, landscaping, and other public improvements.
2. The Plan Commission may, upon proof of difficulty, recommend to the City Council extension of the completion date set forth in such bond for a maximum period of one (1) additional year. The City Council may at any time during the period of such bond accept a substitution of principal or sureties on the bond upon recommendation of the Plan Commission's Attorney. The City Council shall have the authority to increase the bond amount to cover increased costs.
 3. All required improvements shall be made by the applicant, at his expense, without reimbursement by the local government or any improvement district therein.
 4. The subdivider shall be required to maintain at his expense a licensed civil engineer or engineering firm to manage the construction of the subdivision improvements. The managing engineer shall certify that the subdivision construction is in compliance with the detailed construction plans submitted to the Plan Commission during the review of the secondary plat. The developer shall submit progress reports to the Zoning Administrator as substantial steps are completed and should notify the Zoning Administrator when important work has been scheduled so that an inspection can be made. A final report shall be submitted to the Plan Commission and the City Council by the developer or his engineer.
 5. If the Zoning Administrator or his authorized representative finds upon inspection that any of the required improvements have not been constructed in accordance with the construction standards and specifications, the applicant shall be responsible for correcting any errors in construction and completing the improvements in accordance with such standards and specifications. Wherever the cost of improvements is covered by a performance bond, the applicant and the bonding company shall be severally and jointly liable for completing the improvements according to specifications.
 6. If a secondary plat is divided into sections, the Plan Commission may allow for performance bonds to be submitted to cover only the cost of improvements to be constructed in each section.

B. Release of Performance Bond

1. The City Council and Board of Works shall not accept dedication of required improvements nor release or reduce the performance bond amount until the City Engineer has submitted a final inspection report of the subdivision. The engineer

shall certify that the layout of the public improvements has been completed, properly inspected, and is ready for acceptance into the City's system.

2. The City Council and Board of Works, upon approval of the City Engineer's inspection report, shall pass a resolution accepting the improvements in the subdivision and formally releasing the performance bond.
3. In those cases where a performance bond has been posted and required improvements have not be installed within the terms of such performance bond, the City Council may thereupon declare the bond to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the bond is declared to be in default.

C. Other Forms of Surety

1. The developer shall provide the City with a maintenance bond equal to ten percent (10%) of the total construction cost of streets, sidewalks, curbs, water system installations, sanitary sewer system installations, and drainage installations. Such maintenance bond shall be for a minimum term of three (3) years from the date of acceptance of the covered installations by the City.
2. The subdivider may provide the City Council with other liquid assets in an amount equal to the required performance and maintenance bonds. Such liquid assets may include a cash escrow account, certificate of deposit, irrevocable letter of credit, money market accounts, etc., so long as the proper documents are presented by the subdivider to the City Council giving said Council proper signatory access to the funds upon default.
3. Should the subdivider be required to extend site improvements to the subdivision such as extensions of water and sewer lines owned by the City of Nappanee which may provide benefits to other properties in the vicinity of the proposed subdivision, then the subdivider and the City Council may, by contract, agree that the other property owners in the vicinity of the subdivision who wish to connect to or utilize the installation provided by the subdivider shall pay the City over a ten (10) year period a fee in an amount agreed to by the contract and that portion of said fee shall be rebated to the subdivider in annual installments. All agreements, as well as a map showing the specific lots or areas included shall be recorded at the Office of the County Recorder.

After the installation of any utility by the developer, an expiration date of fifteen (15) years shall be maintained. Thus, after fifteen (15) years from the time of completion, no monies shall be paid to the developer.

8.5 PRINCIPLES AND STANDARDS OF DESIGN

A. General

1. The subdivision layout shall be of such a character that it protects the health, safety, and general welfare of the residents in the jurisdiction of the Plan Commission.
2. Whenever a proposed subdivision borders an existing street, the Commission may require the reconstruction or widening of such street as a condition of plat approval. Additional dedication of right-of-way may also be required

3. In designing and approving subdivision streets, the following factors shall receive consideration:
 - a. Accessibility for emergency vehicles and school buses;
 - b. Safety for both vehicular and pedestrian traffic;
 - c. Efficiency of service for all users;
 - d. Livability or amenities as affected by traffic elements in the circulation system; and
 - e. Economy of both construction and use of land.

4. The designs of single-family homes and their aesthetic appearances are encouraged to conform to the following guidelines:
 - a. No two homes within two hundred fifty (250) feet of one another's property and on the same street shall be of the same or relatively the same design unless separated by two homes.
 - b. Mirroring of a design or floor plan is considered to be a duplication of design and will not be permitted.
 - c. The determination of "relatively the same design" if in question shall be determined by vote of the Commission.
 - d. In some instances, similar floor plans may be considered to not be of the same or relatively the same design if substantial aesthetic differences are incorporated. Such substantial differences may include several of the following: roof pitch, architectural style, exterior material, design elements, color, landscaping, and orientation to the site.

5. When there is a situation of unusual physical conditions or a controlled design environment in evidence, and it can be satisfactorily demonstrated to the Commission that a private street is the only feasible solution, said private streets may be authorized provided pavement construction standards shall be the same as the minimum public standards, and adequate covenant provisions are made for direct responsibility and control by the property owners involved to provide for the perpetual operation, liability, and maintenance of said private streets at no expense to the City of Nappanee.

In addition to the requirements established herein, all subdivision plats shall comply with the following rules, laws, and regulations:

- a. All applicable statutory provisions.
- b. The local zoning ordinances, building and housing codes, and all other applicable laws of the appropriate jurisdiction.
- c. The general intent of the Comprehensive Plan, Thoroughfare Plan, and Capital Improvement Plan of the City of Nappanee, including all public facilities, open space, and recreation plans, as adopted.
- d. The rules and regulations of the Indiana Department of Environmental Management, the Natural Resources Commission, Aeronautics Commission, County Drainage Board, and other appropriate state agencies.
- e. The rules, regulations, and standards of the Indiana Department of Transportation if the subdivision or lot contained therein abuts a State highway.

- f. All applicable planning and regulatory guidelines, including access control, driveway manuals, parking and traffic control ordinances, and other applicable guides published by the local governmental units.
- g. The "Indiana Manual of Uniform Traffic Control Devices" for installation of traffic control devices.

B. Street Standards

- 1. The street and alley layout shall provide adequate vehicular and pedestrian access to all lots and parcels of land within the subdivision, and where streets cross other streets. Streets shall conform to the following principles and standards.
 - a. Proposed streets shall be adjusted to the contour of the land so as to produce usable lots and streets of reasonable gradient.
 - b. Residential street systems shall be designed to minimize through traffic movement, but certain proposed streets, where appropriate, shall be extended to the boundary line of the tract to be subdivided so as to provide for normal circulation of traffic within the vicinity.
 - c. Wherever there exists a dedicated or platted portion of a street or alley adjacent to the proposed subdivision, the remainder of the street or alley to the prescribed width shall be platted within the proposed subdivision.
 - d. Residential street patterns shall provide reasonably direct access to the primary circulation system.
 - e. Streets shall be laid out so as to intersect as nearly as possible at right angles. A proposed intersection of two (2) new streets at an angle of less than seventy-five (75) degrees shall not be acceptable. A street should be approximately at right angles for at least one hundred (100) feet therefrom.
 - f. Not more than two (2) streets shall intersect at any one (1) point, unless specifically approved by the Plan Commission.
 - g. Proposed new intersections along one (1) side of an existing street shall, wherever practicable, coincide with any existing intersection on the opposite side of such street. Street jogs with centerline offsets of less than one hundred fifty (150) feet shall not be permitted except where the intersected street has separated, dual drives, without median breaks at either such intersection. Where local streets intersect with arterial or collector streets, their alignment shall be continuous.
 - h. The minimum rights-of-way for new streets shall be as follows:

<u>Type of Street</u>	<u>Right-of-Way Width</u>
Local Streets	Fifty (50) Feet
Collector Streets	Sixty (60) Feet
Arterial Streets	One Hundred (100) Feet

All cul-de-sacs shall terminate in a circular right-of-way with a minimum diameter of one hundred (100) feet and minimum roadway diameter of eighty (80) feet. Cul-de-sac streets shall not be longer than five hundred (500) feet, unless the Plan Commission shall determine after public

discussion that a greater distance better serves the interest of public health, safety, and welfare; including traffic flow considerations; such distance to be measured from the center of the turning circle to the intersection of the centerline of the cul-de-sac street and the centerline of a through street provided, however, that if the residential streets within the subdivision has only one (1) intersection with a through street, the entire subdivision shall be considered a cul-de-sac and the distance shall be measured from the point of intersection of the subdivision street and the through street.

- i. 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 a turn-around shall be provided for any such temporary dead-end street which extends two hundred (200) feet or more in length. Such easement shall be automatically vacated to abutting property owners when said dead-ended street is legally extended.
- j. At the intersection of any proposed residential street with any existing street, acceleration, and deceleration lanes, and passing or left turn lanes may need to be provided in accordance with standards established by the handbook, *A Policy of Geometric Design of Highways and Streets*, by the American Association of State Transportation and Highway Officials.
- k. All street construction shall conform to adopted City Standards.

C. Block Standards

1. Block length and width or acreage within bounding streets shall be such as to accommodate the size of lot required by the Zoning Ordinance for the district in which the subdivision is to be located, and to provide convenient access, circulation control, and safety of street traffic. Blocks that are unreasonably large or small will not be approved.
2. Residential blocks should not exceed one thousand, five hundred (1,500) feet in length. In the design of blocks longer than eight hundred (800) feet, the Commission may specify the provision of pedestrian crosswalks near the center of the block, or wherever would be most useful to facilitate pedestrian circulation to a school, park, recreation area, shopping center, or other significant neighborhood destination. Minimum length of blocks shall be three hundred (300) feet.
3. Blocks shall have sufficient width to provide for two (2) tiers of lots of appropriate length. Exceptions to this prescribed block width shall be permitted in blocks adjacent to minor transportation facilities, watercourses, and industrial and commercial areas.

D. Lot Standards

1. Lot dimensions shall comply with minimum standards as specified in Section 5.2 of this Ordinance.
2. Double frontage lots shall be prohibited except where necessary to provide separation of residential development from arterial streets or to overcome specific disadvantages of topography and orientation.
3. 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.

4. All lots shall abut on a public street except where a private street has been specially approved under Section 8.5 of this Ordinance.
5. Side lines of lots shall be at approximately right angles to straight streets and on radial lines on curved streets. Some variation from this requirement is permissible but pointed or very irregular lots should be avoided.
6. Building setback lines shall conform to the provisions of Section 5.2 of this Ordinance.
7. Lots abutting a watercourse, drainage way, channel, stream, or flood plain shall have additional minimum width or depth as required to provide an adequate building site, accommodate the full width of necessary easements, and conform to the minimum yard requirements specified in Section 5.2 of this Ordinance.
8. Vehicular access from lots to minor or major arterial streets may be prohibited. Vehicular access from lots to collector streets may be prohibited if the Design Hour Volume is determined by the Zoning Administrator or City Engineer to be excessive.

E. Easements

1. Easements to permit access for maintenance and repair of surface and subsurface drainage improvements and utility installations, shall be provided on the final copies of the Primary Plat, Secondary Plat, and Construction Plans. Location of easements shall be reviewed by the City Engineer and representatives of local utility companies.
2. Easements shall be a minimum of fifteen (15) feet in width, shall provide continuity from block to block, and shall be located along rear, side, or front lot lines, one-half (½) the width of the easement shall be taken from each lot. In the case of lots extending to the boundary of the lands platted and not adjoining another plat, the full width of the easement shall be provided on such peripheral lots.
3. Where a subdivision is traversed by a watercourse, drainage way, channel, or stream, the subdivider shall designate drainage easements on both sides of the watercourse, the width to be determined by the Plan Commission, and in the case of a legal drain, the County Drainage Board.
4. When a proposed drainage system shall carry water across private lands outside the subdivision, appropriate drainage rights must be secured by the subdivider and indicated on the plat. Appropriate legal documentation must be submitted.

F. Open Space

1. If a proposed development will include at least 40 dwelling units (in one phase or a combination of phases), the subdivider shall be required to plat a minimum of one (1) acre of open space for each forty (40) dwelling units to be constructed when the gross density of such development is 2.5 dwelling units per acre or greater. A dwelling unit shall be defined as a single-family home, condominium, or apartment/rental unit.
2. The subdivider shall permanently dedicate the open space acreage for public use. The land may be deeded by the subdivider to the City of Nappanee, the School Corporation, local service clubs, or to a duly organizes homeowners' association

within the subdivision. The Plan Commission shall have final approval as to the use of dedicated open space.

3. Easements, crosswalks, and road frontage to provide public access to the open space shall be shown on the Secondary Plat.
4. Existing natural features which add value to residential development and enhance the attractiveness of the community shall be preserved in the design of the subdivision and may be incorporated into dedicated open space.

G. Subdivision and Street Names

1. The proposed name of the subdivision shall not duplicate, or too closely approximate phonetically, the name of any other subdivision in the area covered by these regulations. The Plan Commission shall have final authority to approve the name of the subdivision which shall be determined at the time of the preliminary plat approval.
2. Street names shall not duplicate any existing name within the area covered by these regulations except where a new street is a continuation of an existing street. Street names that may be spelled different but sound the same as existing streets shall not be used.
3. The Plan Commission shall have final authority to name all streets (in case of conflicts) at the time of preliminary plat approval.

H. Mobile Home or Manufactured Housing Parks

In addition to complying with the standards and procedures of Sections 5 and 8 herein, all mobile home or manufactured home parks shall be constructed in accordance with the following minimum requirements:

1. Mobile home or manufactured home parks shall meet the requirements as set forth in the Indiana Mobile Home Parks Act of 1955, as amended, and all applicable Indiana State Board of Health Regulations.
2. Each mobile home or manufactured home lot shall be provided with municipal water and sewage and be connected to electricity.
3. The minimum area of a mobile home or manufactured home park shall be fifteen (15) acres with frontage along or having access via a private drive to a major thoroughfare, per the City's Thoroughfare Plan.
4. The minimum area of a mobile home or manufactured home lot shall be five thousand (5,000) square feet.
5. The minimum mobile home or manufactured home lot width shall be fifty (50) feet except around cul-de-sacs where the minimum frontage accepted shall be twenty-five (25) feet provided that thirty (30) feet, on a radial, from the pavement edge the lot width is fifty (50) feet.
6. Except at established entrances and exits serving the mobile home or manufactured home park, a dense green belt of evergreen trees and/or shrubs, not less than six (6) feet high after one full growing season and which, at maturity, is not less than twelve (12) feet high, or other visual buffer as may be approved by the Plan

Commission shall be located and effectively maintained at all times along the boundary of the mobile home or manufactured home park.

7. The mobile home or manufactured home park shall be adequately lighted as determined by the Zoning Administrator.
8. The minimum distance between any two (2) structures shall be ten (10) feet at any one (1) point and average at least twenty (20) feet the entire length or width of each structure. Each structure shall be at least ten (10) feet back from the edge of the pavement of a private roadway within the park and at least twenty (20) feet from the property line of the mobile home or manufactured home park.
9. Each mobile home or manufactured home shall be provided with a foundation designed to support the maximum anticipated loads during all seasons and approved by the City's designated inspector.
10. No structure shall be closer to a public right-of-way than forty (40) feet.
11. There shall be provided at least two (2) vehicle parking spaces per mobile home or manufactured home lot within the mobile home or manufactured home park with a minimum of twenty-five (25) spaces provided.
12. All roads within a mobile home or manufactured home park must have a concrete or hot or cold bituminous concrete surface of at least twenty (20) feet in width, with the entrance roads having a width of at least thirty (30) feet. Construction of all streets shall be in accordance with Section 8.6.A.9.
13. An area equaling at least two hundred fifty (250) square feet per mobile home or manufactured home lot shall be provided in one (1) or more locations on the premises for recreation purposes. The minimum of such recreation area(s) shall be twenty thousand (20,000) square feet or the above, whichever is greater.
14. Each mobile home or manufactured home park shall provide waterproof storage structures for each mobile home or manufactured home by providing one (1) on each lot or one (1) central waterproof structure with one (1) space per lot.
15. The mobile home or manufactured home park shall be designed so as not to increase the stormwater run-off to adjoining property that will result from the development. Curb and gutter shall be required in accordance with Section 8.6.C.2.
16. Concrete sidewalks, a width of four (4) feet minimum, shall be constructed and located in such a manner as to provide access from all lots to all common use areas in the park. Also, sidewalks must be provided from all entrances to mobile homes and manufactured homes to adjacent streets and/or sidewalks.
17. All mobile home and manufactured homes shall be properly secured, anchored and approved by the City's designated inspector..
18. There shall be a sufficient off-street storage area for trailers, boats, etc. located in a common use area in the park.
19. Each mobile home or manufactured home shall be enclosed with foundation siding which is weather resistant, noncombustible, or self-extinguishing materials that blend with the exterior siding of the home.

8.6 STANDARDS FOR IMPROVEMENTS AND INSTALLATIONS

A. Street Improvements

1. Streets shall be completed to grades shown on the Construction Plans drawn by the subdivider's professional engineer or land surveyor and approved by the Plan Commission.
2. Intersections shall be designed with a flat grade wherever practical. In hilly or rolling areas, at the approach to an intersection, a leveling area shall be provided having not greater than a two percent (2%) grade at a distance of sixty (60) feet, measured from the nearest right-of-way line of the intersecting street.
3. At intersections of streets or alleys, property line corners shall be rounded by arcs of at least twenty (20) feet radii or by chords of such arcs. Arterial and all streets in commercial and industrial subdivisions shall have a minimum curb radius of thirty (30) feet. Collector streets shall have a minimum curb radius of twenty-five (25) feet. Local streets shall have a minimum curb return radius of twenty (20) feet.
4. If the smaller angle of intersection of two (2) streets is less than sixty (60) degrees, the radius of the arc at the intersection of property lines shall be increased as deemed advisable by the Commission.
5. a. Horizontal visibility on curved streets and vertical visibility on all streets must be maintained along the centerline as follows:

(1)	Arterial Streets	500 feet
(2)	Collector Streets	300 feet
(3)	Local Streets	150 feet
- b. Curvature measured along the centerline shall have a minimum radius as follows:

(1)	Arterial Streets	500 feet min. (or as determined by design speed standards)
(2)	Collector Streets	300 feet
(3)	Local Streets	150 feet
- c. Between reversed curves there shall be a minimum tangent distance as follows:

(1)	Arterial Streets	100 feet
(2)	Collector Streets	40 feet
(3)	Local Streets	40 feet
6. Maximum/minimum grades for streets shall be as follows:
 - a. Arterial Streets - not greater than six percent (6%).
 - b. Collector Streets - not greater than eight percent (8%).
 - c. Local Streets - not greater than eight percent (8%).
 - d. Minimum grade for all streets is four-tenths percent (0.4%).

7. Before any performance bond covering a street installation is released, the Plan Commission, City Council, or City Engineer may request that core borings of the street be done at the subdivider's expense. Cores shall be sent to an independent testing laboratory for analysis.
8. A developer may request permission of the Plan Commission to delay the installation of the one- (1) inch surface layer of asphalt until the binder layer of asphalt has had a sufficient time period to prove its durability under the stress of heavy construction traffic. The developer shall be required to submit a separate performance bond to cover the cost of the installation of the one- (1) inch surface layer of asphalt.
9. Design Requirements of Street Pavements:
 - a. Streets shall be constructed in accordance with the following minimum specifications:

Alternative	Arterial	Collector	Local
BITUMINOUS PAVEMENT & STONE BASE			
#2 Compacted Aggr. Base	6 Inches	6 Inches	6 Inches
#53 or #73 Compacted Aggr. Base	4 Inches	4 Inches	4 Inches
220 lb/S.Y. #9 Asphalt Binder	3±Inches	3± Inches	2± Inches
110 lb/S.Y. #118 Asphalt Surface	1±Inch	1± Inch	1± Inch
FULL-DEPTH ASPHALT PAVEMENT			
Asphalt Base	550 lb/S.Y.	550 lb/S.Y.	440 lb/S.Y.
#9 Asphalt Binder	330 lb/S.Y.	330 lb/S.Y.	220 lb/S.Y.
#11B Asphalt Surface	140 lb/S.Y.	140 lb/S.Y.	140 lb/S.Y.
CONCRETE PAVEMENT			
#73 Compacted Aggr. Base	4 Inches Min.	4 Inches Min.	2 Inches Min.
Unreinforced Concrete Pavement	8 Inches	8 Inches	8 Inches

- b. The earth or stone sub-base beneath the concrete street and the stone sub-base beneath the flexible asphalt street shall be compacted to meet established City Standards.
- c. Subsurface drainage tile shall be placed under the street base where the subdivider's engineer or the City Engineer have determined that wet or unstable soil conditions exist.
- d. All materials shall be furnished and installed in accordance with Standard Specifications, Indiana Department of Transportation, latest edition.

10 Dimensional Requirements of Street Pavements

a.	Minimum Street Width <u>(Feet)</u>	Minimum Dedicated Right-of-Way <u>Width (Feet)</u>
	<u>Street Type</u>	
	Arterial	80
	Collector	80
	Local	50

b. Street width is measured from back to back of a two- (2) foot wide curb and gutter located on each side of the street unless otherwise approved.

B. Stormwater and Subsurface Drainage

1. The subdivider shall provide the subdivision with an adequate stormwater sewer system whenever curbs and gutters are installed and whenever the evidence available to the Commission indicates that natural surface drainage is inadequate. When the surface drainage is adequate, easements for such surface drainage shall be provided. Curbs and storm drains along both sides of all streets are required in all subdivisions.
2. The stormwater drainage system shall be separate and independent of any sanitary sewer system.
3. Storm drainage facilities shall be located in the street right-of-way, where feasible, or in perpetual, unobstructed easements of appropriate width, and shall be constructed in accordance with the details on the Construction Plans provided by the subdivider's engineer or as approved by the Plan Commission.
4. Storm sewer inlets shall be provided at all low points and so that surface water is not carried across or around any intersection, nor for a distance of more than three hundred (300) feet in the gutter or as may be approved by the City Engineer.
5. It is the responsibility of the subdivider to keep all major watercourses, drainage systems, etc., not under the jurisdiction of any public agency, open and free flowing.
6. Drainage facilities shall be capable of accommodating peak runoff from a ten- (10) year return period storm or greater intensity, without endangering the public safety, health, or causing significant damage to property.
7. Design Calculations: Design calculations are required as part of the drainage plan and shall specifically include:
 - a. Estimate of stormwater runoff:
 - (1) Drainage map, including indication of drainage patterns for lots and blocks of areas affecting the proposed development site.
 - (2) Weighted runoff coefficient computations
 - (3) Time of concentration computation indicating overland flow time and travel times in swales, gutters, pipes, and/or channels.
 - b. Closed conduit and open channel design computations

- (1) Size of pipe or channel cross-section.
 - (2) Pipe and channel slopes in percent.
 - (3) Roughness coefficient.
 - (4) Flow velocities in feet per second.
 - (5) Design capacity in cubic feet per second.
 - (6) Pipe and channel invert elevations.
- c. Head loss computations in manholes and junction chambers.
- d. Hydraulic gradient computations, wherever applicable.
8. On-site drainage facilities shall be designed to accommodate:
 - a. The water runoff from the parcel after development;
 - b. The present water runoff from developed areas upstream;
 - c. the present peak water runoff from undeveloped areas upstream;
9. Each applicant or other entity which makes any surface change shall be required to:
 - a. Collect on-site surface runoff and springs and dispose of it to the point of discharge into an adequate outlet approved by the City Engineer.
 - b. Pay his proportionate share of the total cost of off-site improvements to the common natural watercourse.
 - c. Provide and install at his expense, in accordance with the requirements of the Ordinance, all drainage and erosion control improvements.
10. The subdivider shall provide a subsurface drainage system, below curbs, to be placed along both sides of the subdivision streets and wherever else within the subdivision that it is determined to be necessary. The purpose of the subsurface piping system is to provide drainage for the street sub-base. The subsurface drainage system shall discharge to the storm sewer system or to the surface drainage system upon approval from the City Engineer. No subsurface drainage system connections will be permitted to the sanitary sewer system.
11. It is illegal for sump pumps, downspouts, or foundation drains to outlet directly to the street or into the right-of-way of the street, or to be connected to the sanitary sewer.
12. Plans for stormwater drainage shall include details for stormwater detention and retention. Detention facilities shall be designed using the following guidelines to limit the peak discharge from a development.
 - a. For developments with a drainage area (tributary to stormwater detention facilities) equal to or greater than ten (10) acres, peak discharge from the detention facility shall be limited to the five- (5) year pre-developed frequency storm peak discharge, with a duration equal to or slightly greater than the time of concentration for the drainage area, or the twenty-four (24)

hour duration storm, whichever provides the lesser peak discharge.

- b. For developments with drainage area (tributary to detention facilities) less than ten (10) acres, peak discharge from the detention facility shall be limited to the ten (10) year period pre-developed frequency storm peak discharge, with the same duration criteria provided in item a. above.
- c. The five (5) year/ten (10) year peak discharge shall be based on land use conditions prior to development, using corresponding runoff coefficients, time of concentration, and other basin parameters.
- d. Inflow (runoff) to all stormwater detention facilities shall be determined using a one hundred (100) year twenty-four (24) hour storm to develop an inflow hydrograph.
- e. The one hundred (100) year twenty-four (24) hour peak discharge (and inflow hydrograph) shall be based on land use conditions representing fully developed conditions, using corresponding runoff coefficients, time of concentration, and other basin parameters.
- f. A routing procedure shall be used to demonstrate that the stormwater detention facility will reduce the one hundred (100) year peak discharge, from the developed area, to a peak discharge equal to or less than five (5) year/ten (10) year peak discharge using the pre-developed conditions.
- g. The results of the routing procedure shall demonstrate that adequate storage volume has been provided. The detention facility shall not be overtopped from the one hundred (100) year twenty-four (24) hour storm event and shall have a minimum freeboard of two (2) feet between the maximum routed pool elevation and the top of the facility embankment.
- h. An emergency spillway shall be provided to discharge flow resulting from pool elevations greater than the one hundred (100) year twenty-four (24) hour pool elevation. The spillway shall have a minimum size adequate to pass the routed one hundred (100) year twenty-four (24) hour storm (assuming that the primary spillway is plugged and non-functional) without overtopping the detention facility embankment. The elevation of the emergency spillway shall not be placed lower than the routed one hundred (100) year twenty-four (24) hour pool elevation.
- i. Erosion protection shall be provided for the primary outlet and emergency spillway so that the detention facility embankment will be adequately protected. Location of the emergency spillway shall be in undisturbed material, unless otherwise approved by the City Engineer.
- j. The minimum allowable size for the primary outlet conduit, from the detention facility, shall be twelve (12) inches. If further restriction of the outlet conduit is required, the restriction shall be made at the head end of the outlet conduit
- k. In those instances where the discharge velocity from the primary outlet or emergency spillway is greater than 6fps or excessive in the opinion of the City Engineer, energy dissipation may be required.
- l. Detention facilities, which are designed to have dry bottoms, must be

designed to include underdrains, to drain the bottom of the detention facility, so that the facility can be maintained. Also, the bottom of the facility shall be designed to have longitudinal and traverse grade to the outlet, so that the facility will empty, leaving no ponded water.

- m. Methodology for developing peak discharge hydrographs and flood routing calculations shall be in accordance with acceptable engineering practice. Calculations based on the Soil Conservation Service Procedures, the Corps of Engineers' Procedures, or the Bureau of Reclamation Procedures are considered acceptable. All other procedures must be approved by the City Engineer.
- n. Peak discharge calculations shall be submitted for the five (5) year/ten (10) year pre-development and one hundred (100) year post-development conditions. The calculations shall show the drainage area, the runoff coefficients, the time of concentrations, and other basin parameters used to develop the appropriate peak discharges.
- o. Calculations shall be submitted which show stage-discharge relationships (rating curves) for the primary outlet and emergency spillway, the stage-storage relationship for the detention facility, the inflow hydrograph for the one hundred (100) year twenty-four (24) hour storm, and the routed one hundred (100) year twenty-four (24) hour discharge hydrograph.

C. Curbs and Gutters

- 1. The Commission shall require curbs and gutters to be installed on each side of new streets.
- 2. The curbs and gutters shall be constructed according to the following specifications:
 - a. The base for the curbs and gutters shall be well compacted on the existing base or grade.
 - b. The minimum grade of any street gutter shall not be less than four-tenths percent (0.4%)
 - c. The curbs and gutters shall be roll type, unless otherwise required or approved by the City Engineer.
 - d. Inlets shall be located at the low point in the street grade and at other spacing as stormwater system calculations require. The maximum spacing between any two inlets shall be 500 feet.
 - e. Inlet grates should be depressed slightly below the plane of the gutter to improve removal of runoff water. Inlet grates shall be heavy-duty type and recommended for bicycle traffic.

D. Sewers

- 1. The subdivider shall provide the subdivision with a complete sanitary sewer system which shall connect with an existing interceptor sewer linking the subdivision to the Nappanee Wastewater Treatment Plant. If said interceptor is not located adjacent to the subdivision site, it shall be the responsibility of the subdivider to extend the interceptor sewer to his property line. The subdivider may be reimbursed for part of

the cost of extending the interceptor sewer.

2. Design plans for installation of a sanitary sewer system shall be provided by the subdivider and approved by the City Council, Board of Works, the Indiana Department of Environmental Management, and other appropriate local and State agencies as required. Upon the completion of the sanitary sewer installation, the construction plans for such systems as-built shall be filed with the City Council and Board of Works.
3. Each lot in the subdivision shall be required to pay a sewer connection fee to the Nappanee Clerk-Treasurer, as indicated in the official fee schedule at the time of obtaining a Location Improvement Permit.
4. Selected Design Criteria
 - a. Alignment - All sewers shall be laid with a straight alignment between manholes.
 - b. Manhole Location - Manhole type, size, location, and design shall be completed in accordance with established City Standards.
 - c. Manholes - The difference in elevation between any incoming sewer and the manhole invert shall not exceed twenty-four (24) inches where required to match crowns. The use of drop manholes will require approval by the City Engineer. The minimum inside diameter of the manholes shall conform to those specified by the City Engineer or according to State requirements.
 - d. Sewer Locations - Sanitary sewers shall be located within street or alley rights-of-way, unless topography dictates otherwise. When located in easements on private property, access shall be provided for all manholes and oversizing may be required in these instances. Where sewer lines in private easements cross public street or alley rights-of-way, a manhole shall be provided in such rights-of-way where possible. Imposed loading shall be considered at all manhole locations. No less than six (6) feet of cover shall be provided over top of pipe in street and alley rights-of-way or five (5) feet in all other areas.
 - e. Relation of Sewers to Water Mains - A minimum horizontal distance of ten (10) feet shall be maintained between parallel water and sewer lines. A minimum vertical distance of eighteen (18) inches shall be maintained between intersecting water and sewer lines.
 - f. Mandatory Connections to Public Sewers - In accordance with Indiana Code, if a public sanitary sewer is available within 300 feet of a property, the owner thereof may be required to connect to said sewer for the purpose of disposing of waste. It shall be unlawful for any such owner or occupant to construct or rebuild upon such property an individual sewage disposal system.

E. Water Supply

1. The subdivider shall provide the subdivision with a complete water supply system, which shall be connected to the existing Nappanee water supply.
2. The plans for the installation of water main supply systems shall be provided by the

subdivider and approved by the City Council and the Indiana Department of Environmental Management. Upon completion of the water supply installation, the plans for such system as built shall be filed with the City Council.

3. Approved fire hydrants shall be provided at each street intersection and at intermediate points between intersections, as recommended by the Water Utility Superintendent and Fire Chief. Generally, hydrant spacing is five hundred (500) feet.

F. Monuments and Markers

1. Monuments and markers shall be placed under the supervision of a licensed land surveyor and according to State Land Surveyor Regulations so that the center of the pipe or marked point shall coincide exactly with the intersection of lines to be marked and shall be set so that the top of the monument or marker is level with the finished grade.
2. Monuments shall be set:
 - a. At the intersection of lines forming angles in the boundary of the subdivision, at the beginning and end of all curves and points of tangency of the perimeter of the plat.
 - b. At the intersection of right-of-way lines within the plat.
3. Markers shall be set:
 - a. At the intersection of the centerlines of all streets, the center points of all cul-de-sac turn arounds, at the beginning and end of all curves and at angle points.
 - b. At all points where lot lines intersect curves, either front or rear.
 - c. At all angles in property lines of lots.
 - d. At all lot corners not established by monuments.
4. Monuments shall be of precast concrete or cast-in-place concrete with minimum dimensions of four (4) inches by four (4) inches by thirty-six (36) inches set vertically in place. They shall be marked on top with iron or copper dowels at least three eighths (3/8) inch in diameter, or deeply scored on top with a right angle cross.

Markers shall consist of iron pipes, steel bars, or copper bars, contain magnetic qualities, have a distinctive top which will be marked with a deep point or cross at the correct location, and be thirty-six (36) inches in total length and not less than five-eighths (5/8) inch in diameter.

5. A minimum of one (1) permanent bench mark shall be established for each forty (40) acres or fraction thereof, subdivided and at a location designated by the City Engineer. The monuments shall be of concrete with a dimension of four (4) inches by four (4) inches and forty-eight (48) inches long. A brass plate inscribed with the elevation of the bench mark shall be fastened to the concrete with a minimum of one-fourth (1/4) inch high letters and numbers. Unless otherwise directed by the City Engineer, bench mark datum shall conform to USGS sea level datum of 1929 and/or USC and GS datum.

6. It shall be the responsibility of the subdivider to prevent disturbance or destruction to all existing monuments within the jurisdictional boundaries of the City of those parties under the direction of or in the employment by the subdivider. Any activities relating to the subdivider's improvements which cause disturbance or destruction of existing monuments shall be reported immediately to the City as well as to the appropriate county, state, or federal agencies. The subdivider shall be responsible for the cost of any repair or re-establishment of any existing monument disturbed or destroyed by his activities. The subdivider shall be aware of fines and penalties in existence for disturbance or destruction of existing monuments.
7. All Public Land Survey points (section corners, quarter section corners, etc.) within or on the boundaries of the land to be subdivided shall be shown on the plat and referenced by no less than three (3) measurements of angle and distance. Each measurement of angle and distance shall be made from a separate known point on the perimeter of the subdivision.
8. Lot corner markers shall be accurate at the time of sale or transfer from the subdivider to a second party. After sale or transfer is complete, the subdivider, the City, or other authorized agents shall not be liable for the accuracy of said markers.
9. All documentation necessary for the City Engineer to ascertain the location and accuracy of the required monuments of this Section shall be submitted by the subdivider to the City Engineer.
10. The plat shall indicate the type and location of all required monuments set within the property being subdivided.
11. Subdivider shall be required to establish the elevation of any bench mark set within the limit of the project to within one-hundredth (1/100) of a foot of the U.S. Geological Survey 1929 sea level datum or USC & GS datum. Evidence of the established elevation shall be certified by a registered land surveyor licensed by the State of Indiana and shall be submitted to the City Engineer.
12. Subdivider shall be required to establish the location of all horizontal monuments by means of a traverse of the third order or better. Evidence of successful completion of the required traverse shall be certified by a registered land surveyor licensed by the State of Indiana and shall be submitted to the City Engineer.

G. Sidewalks

1. Sidewalks shall be required to be located on both sides of every street within the subdivision plat, including around cul-de-sacs. Sidewalks shall be six (6) inches thick at drives and at least four (4) inches thick in all other locations. If driveways cannot be located, special permission may be obtained by the Commission to deviate from this standard. Sidewalks shall be five (5) feet wide. Sidewalks shall be Portland Cement type in accordance with the Standard Specifications of the Indiana Department of Transportation, latest edition, with expansion joints every forty-eight (48) feet and control joints every six (6) feet
2. Sidewalks and pathways located away from streets should be properly lighted to permit visual surveillance of the walk or path from the street
3. When sidewalks or pathways cross major street intersections within or adjacent to the subdivision, safety devices such as painted crosswalks, signs, or traffic signals shall be installed.

4. Easements of at least ten (10) feet in width shall be provided for sidewalks, pedestrian paths, and bicycle paths.
5. ADA-compliant ramps for wheelchairs and bicycles shall be provided on all sidewalks and pathways. Ramps are to be located at all intersections and other transition access points. Overhead obstructions shall be cleared to a height of at least eight (8) feet. Rolled curbs are not a substitute for wheelchair ramps.

H. Street Signs and Street Lighting

1. The subdivider shall be responsible for installing street signs at each intersection throughout the subdivision. All hardware and fixtures shall be approved by the Plan Commission. The City of Nappanee shall be responsible for placement of traffic control signs where deemed necessary in the development by the City Engineer.
2. When the subdivision contains private streets, the subdivider shall be required to post a sign at the entrance of the development proclaiming the name of the subdivision with the phrase "Private Streets" placed directly below in letters of two (2) inches minimum height.
3. The subdivider shall provide the subdivision with street lights to be installed at intersections throughout the subdivision or where deemed necessary by the City Engineer. Street lights shall be pole mounted and conform to the installation specifications of the Electric Utility. All electric lines are to be buried.

I. Utilities

All utility lines, including electrical power, gas, telephone, CATV, sewer, and water shall be located underground throughout the subdivision. The location of utility lines shall be shown on the Primary Plat and on the Construction Plans. Service connections to the property lines of each lot in the development shall be provided by the utility or subdivider.

8.7 DRAINAGE, EROSION, AND SEDIMENT CONTROL

A. General

1. No changes shall be made in the contour of the land, nor shall grading, excavating, removal, or destruction of the topsoil, trees, or other vegetative cover of the land be commenced until such time that a plan for minimizing erosion and sedimentation has been reviewed by the Zoning Administrator or there has been a determination by the Zoning Administrator that such plans are not necessary. (Applies only to subdivision developments)
2. Measures used to control erosion and reduce sedimentation and to provide drainage shall, as a minimum, meet the standards and specifications of the County Storm Drainage, Erosion, and Sediment Control Ordinance. The Zoning Administrator shall ensure compliance with all appropriate specifications.

B. Performance Principles

1. The following measures are effective in minimizing erosion and sedimentation and shall be included where applicable in the overall development plan.
 - a. Existing features which would add value to residential, commercial, natural,

or manmade assets such as trees, streams, vistas, historically significant items, and similarly irreplaceable assets shall be preserved through careful and harmonious design.

- b. Stripping of vegetation, regrading, or other development shall be done in such a way that will minimize erosion.
- c. Development plans shall keep cut fill operations to a minimum and ensure conformity with topography so as to create the least erosion potential and adequately handle the volume and velocity of surface water runoff.
- d. Whenever feasible, natural vegetation shall be retained, protected, and supplemented.
- e. The disturbed area and the duration of exposure shall be kept to a practical minimum.
- f. Temporary vegetation and mulching shall be used to protect exposed critical areas during development.
- g. The permanent final vegetation and structural erosion control and drainage measures shall be installed as soon as practical in the development.
- h. Provisions shall be made to effectively accommodate the increased runoff caused by changed soil and surface conditions during and after development. Where necessary, the rate of surface water runoff will be structurally retarded.
- i. Sediment in the runoff water shall be trapped until the disturbed area is stabilized by the use of debris basins, sediment basins, silt traps, or similar measures.
- j. Design and construction of the drainage facility shall be such that it will be durable and easy to maintain.

C. Grading for Drainage

In order to provide more suitable sites for building and other uses, improve surface drainage, and control erosion, the following requirements shall be met:

1. The locations, grading, and placement of subgrade (base) material of all streets, public driveway, and public parking areas shall be accomplished second, after erosion control measures have been taken.
2. All lots, tracts, or parcels shall be graded to provide proper drainage away from the buildings, dispose of it without ponding. All land within the development shall be graded to drain and dispose of surface water without ponding, except where approved by the City Engineer.
3. All drainage provisions shall be of such design to adequately handle the surface runoff and carry it to the nearest suitable outlet such as a curbed street, storm drain, or natural watercourse. Where drainage swales are used to divert surface waters away from buildings, they shall be sodded or planted, as required, and shall be of such slope, shape, and size as to conform with the requirements of the Commission.

4. Concentration of surface water runoff shall only be permitted in swales, watercourses, pipes, and detention ponds.
5. Land alteration shall be accomplished in such a way that the grades left at the time that the work is completed will be permanent and stable.
6. Excavation and Fills
 - a. Cut and fill slopes shall not be steeper than three to one (3:1), unless stabilized by a retaining wall or cribbing as approved by the City Engineer when handled under special considerations.
 - b. Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surfaces of fills, by installation of temporary or permanent drainage across or above this area.
 - c. Cuts and fills shall not endanger adjoining property.
 - d. Fills shall be placed and compacted so as to minimize sliding or erosion of the soil.
 - e. Fills shall not encroach or impede flows of natural watercourses or constructed channels.
 - f. Fills placed adjacent to natural watercourses or constructed channels shall have suitable protection against erosion during this period of construction.
 - g. Grading shall not be done in such a way so as to divert water onto the property of another land owner without the expressed consent of the land owner.
 - h. During grading operations, necessary measures for dust control shall be exercised.
 - i. Grading equipment shall not be allowed to cross live streams. Provisions shall be made for the installation of temporary or permanent culverts or bridges.

D. Responsibility for Drainage and Erosion Control

1. Whenever sedimentation is caused by stripping of vegetation, regrading, or other development activities, it shall be the responsibility of the applicant, person, corporation, or other entity causing such sedimentation to remove it from all adjoining surfaces, drainage systems, and watercourses, and to repair any damage at his expense as quickly as possible.
2. Maintenance of all driveways, parking areas, drainage facilities, and watercourses within any development plan area is the responsibility of the applicant or developer, provided that said facilities have not been dedicated to the public and accepted by the appropriate authority for public maintenance.
3. It is the responsibility of the applicant and any person, corporation, or other entity doing any action on or across a communal stream, watercourse, or swale, or upon the flood plain or floodway area of any watercourse during the period of development, to return these areas to their original or equal condition upon

- completion of said activities.
4. No applicant, person, corporation, or other entity shall block, impede the flow of, alter, construct any structure, deposit any material or thing, or commit any act which will affect normal or flood flow in any communal stream or watercourse without having obtained prior approval from the County Drainage Board and/or the Indiana Department of Natural Resources, Division of Water, whichever may be applicable.
 5. On-site drainage facilities shall be sufficient to accept:
 - a. the water runoff from the parcel after development;
 - b. the present water runoff from undeveloped areas upstream; and
 - c. the present water runoff from undeveloped areas upstream; and
 - d. that part of the water runoff attributable to future development in undeveloped areas upstream, which is not reasonably likely to be accommodated in such upstream areas.
 6. Each applicant or other entity which makes any surface changes shall be required to:
 - a. Collect on-site surface runoff and springs and dispose of it to the point of discharge into an adequate outlet approved by the City Engineer.
 - b. Handle existing and potential off-site runoff through the development by designing to adequately handle storm runoff from a fully developed area upstream.
 - c. Pay his proportionate share of the total cost of off-site improvements to the common natural watercourse, based on a fully developed drainage area.
 - d. Provide and install at his expense, all necessary drainage and erosion control improvements (temporary and permanent) or as required by the City Engineer.
 7. It is the responsibility of the applicant or owner to keep all major watercourses, not under the jurisdiction of any public agency, open and free flowing.
 8. The applicant or owner will assume the responsibility for maintaining an open and free flowing condition in all minor streams, watercourses, and drainage systems, constructed or otherwise improved in accordance with this Section, which are necessary for proper drainage.

E. Compliance with Regulations and Procedures

1. The design, installation, and maintenance of the required drainage facilities and erosion and sediment control measures shall be in accordance with the standards and specifications of the County Storm Drainage, Erosion, and Sediment Control Ordinance.
2. The approval of plans and specifications for the control of erosion and sedimentation shall be concurrent with the approval of the development and shall become a part thereof.

3. Permission for clearing and grading prior to the approval of the development plan may be obtained under temporary easements or other conditions satisfactory to the City Engineer.
4. In the event the applicant or developer proceeds to clear and grade prior to the approval of the subdivision or development plan, without satisfying conditions specified herein, the Plan Commission may revoke the approval of all plans and a suit for an injunction may be instituted to halt further construction until development plans are approved.
5. Topsoil shall not be removed from residential lots or used as spoil. No construction debris, junk, rubbish, or waste material shall be buried in any land or left deposited on any lot or street within a subdivision.

8.8 COMMERCIAL AND INDUSTRIAL SUBDIVISIONS

A. General Requirements

1. Land proposed for platting as a commercial or industrial subdivision shall be subject to all of the requirements of this Ordinance and shall conform to the zoning requirements of the district in which it is located. A Primary Plat, Secondary Plat, and Construction Plans shall be submitted to the Plan Commission for review.
2. Lots and block standards for commercial and industrial subdivisions should be flexible so that lot sizes may be expanded by the subdivider to meet the requirements of a prospective buyer or tenant. If, after recording of a Secondary Plat, the subdivider wishes to amend the lot dimensions, an amended Secondary Plat shall be presented by the subdivider to the Plan Commission for review. Substantial changes shall have to go through another public hearing process. The determination of "substantial changes" and the necessity of a public hearing shall be made by the Zoning Administrator.
3. Streets located in a commercial or industrial subdivision shall be constructed to the specifications for secondary streets as detailed in this Article. The streets shall have a width of thirty (30) feet and a right-of-way of seventy (70) feet minimum. Curb and gutter, storm drainage, and subsurface drainage may be required by the Plan Commission. Once constructed to the specifications of the City, the subdivider may dedicate the streets to the City or may, upon approval of the Plan Commission, elect to keep the streets private to be maintained by the owners and/or tenants of the subdivision.
4. Every effort shall be made to protect adjacent residential areas from potential nuisance from a proposed non-residential subdivision, including the provision of extra depth in parcels backing up on existing or potential residential development and provisions for a permanently landscaped buffer strip, when necessary.
5. Truck routes shall be established so as to prevent industrial traffic from encroaching into adjacent residential areas.
6. The builder shall provide each building or lot in the subdivision with a paved parking area with enough marked spaces to meet the requirements of this Ordinance. The parking area shall have a proper drainage system and should be adequately landscaped and lighted

7. Loading areas or loading docks shall be designed so that they do not interfere with the operation of other lots or buildings. Loading areas shall not encroach on setback lines.
8. No materials, supplies, motor vehicles, or equipment shall be stored outside of the buildings, unless the storage area is properly screened.
9. Frontage roads shall be provided where requested by the Commission to prevent numerous entrances on existing streets or highways.
10. With respect to traffic and storm drainage, commercial and industrial subdivisions shall be considered in totality, and individual parcels or lots shall not be considered separately.

9.1 MEMBERSHIP

- A. The Board of Zoning Appeals shall consist of and continue as a five- (5) member Board. Members shall be appointed pursuant to J.C. 36-7-4-902, as amended.

9.2 TERMS OF OFFICE

- A. Each Board member shall be appointed for a term of four (4) years. Each term shall expire at midnight on December 31 of the fourth year of the four (4) year term; however, members of the Board of Zoning Appeals shall serve until his successor is appointed and seated.

9.3 JURISDICTION

- A. The Board of Zoning Appeals shall have jurisdiction over lands subject to the provisions of this Ordinance as specified in Section 1.3 herein.

9.4 RULES AND PROCEDURES

- A. The Board of Zoning Appeals shall have sole authority to adopt any and all rules under Indiana Code Section 36-7-4-916 and any and all procedures concerning organization, selection of officers, forms of applications, filing requirements, procedures, notices for and conduct of meetings and public hearings.
- B. The City of Nappanee shall provide suitable facilities for the holding of Board of Zoning Appeals meetings and hearings and the storage of its records, documents, and accounts, and in its annual budget provide sufficient funds for the functioning of said Board and its staff.
- C. All applications for variances, special exceptions, and requests for appeal shall be filed by the applicant with the Board of Zoning Appeals and in the form prescribed by said Board.

9.5 DUTIES AND POWERS

- A. The Board of Zoning Appeals shall have exclusive subject matter jurisdiction for:
1. Variances from Development Standards (dimensional variances);
 2. Variances of use (use variances);
 3. Special exceptions; and
 4. Administrative appeals.

9.6 CONFLICT OF INTEREST

Pursuant to I.C. 36-7-4-909, a member of an Advisory Board of Zoning Appeals may not participate in a hearing or decision of that Board concerning a zoning matter in which he has a direct or indirect financial interest. The Board shall enter in its records the fact that its member has such a disqualification.

9.7 HEARINGS

- A. The Board shall fix a reasonable time for the hearing of administrative appeals, special exceptions, and variances.
- B. Public notice in accordance with I.C. 5-3-1-2 and I.C. 5-3-1-4 and due notice to interested parties shall be given at least ten (10) days before the date set for the hearing.
- C. The party pursuing the appeal or applying for the special exception or variance shall be required to assume costs of public notice and notice to interested parties. *
- D. The Board may, by rule, determine who are interested parties, how notice is to be given to them, and who is required to give that notice.
- E. Other persons may appear and present relevant evidence at such public hearing.
- F. 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.

*Interested parties shall include, but are not limited to, all properties adjacent to the subject site boundaries.

9.8 APPEALS

- A. Any decision of the Zoning Administrator made in the enforcement of this Ordinance may be appealed to the Board by any person claiming to be adversely affected by such decision.
- B. Every decision of the Board of Zoning Appeals shall be subject to review by a writ of certiorari as prescribed in I.C. 36-7-4-1000 series. Such appeals shall be presented to a court or jurisdiction within thirty (30) business days of the Board's decision and not thereafter.

10.1 MEMBERSHIP

- A. The Nappanee Advisory Plan Commission shall consist of membership as specified in I.C. 36-7-4-207, as amended.
- B. If the Nappanee Advisory Plan Commission exercises jurisdiction outside the incorporated area of the City of Nappanee as provided for in I.C. 36-7-4-205, additional members shall be appointed to the Commission in accordance with the provisions of I.C. 36-7-4-214, as amended.

10.2 TERMS OF OFFICE

- A. Members of the Nappanee Advisory Plan Commission shall be appointed for terms of office as specified in I.C. 36-7-4-217 .. 220, as amended.

10.3 JURISDICTION

- A. The Nappanee Advisory Plan Commission shall have territorial jurisdiction over all lands within the incorporated area of the City, or as other agreements may allow.

10.4 RULES AND PROCEDURES

- A. The Nappanee Advisory Plan Commission shall have the sole authority to adopt any and all rules for the administration of the affairs of the Commission per I.C. 36-7-4-401.

10.5 DUTIES AND POWERS

- A. The Nappanee Advisory Plan Commission shall:
 - 1. Keep complete records of all Commission proceedings.
 - 2. Record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the Commission.
 - 3. Prepare, publish, and distribute reports, ordinances, or other materials relating to authorized activities.
 - 4. Certify to all official acts.
 - 5. Supervise the fiscal affairs of the Commission and prepare, submit, and abide by an annual budget.
 - 6. Make recommendations to the legislative body per I.C. 36-7-4-405.
 - 7. Initiate proposed amendments to this Ordinance.
 - 8. Review all proposed amendments to this Ordinance initiated by the public.
 - 9. Review all "HPO" Historic Preservation Overlay Districts.

10. Review all Development Plans for proposed Planned Unit Developments.
11. Review all parking plans.

10.6 CONFLICT OF INTEREST

Pursuant to J.C. 36-7-4-233, a member of the Plan Commission may not:

- A. Participate as a member of the Plan Commission in a hearing or decision of that Commission concerning a zoning matter in which the member has a direct or indirect financial interest. The Commission, in such cases, shall enter in its records the fact that its member has such a disqualification.
- B. Directly or personally represent another person in a hearing before that Commission concerning a zoning matter.
- C. Receive any mileage or compensation under J.C. 36-7-4-222.5 for attendance at a meeting if the member is disqualified under Item A above during any part of the meeting.

10.7 MEETINGS AND MINUTES

- A. The Plan Commission shall fix the time for holding regular meetings each month or as necessary.
- B. The Commission shall keep and file minutes for each meeting as a matter of public record.
- C. Special meetings of the Plan Commission may be called and held in accordance with the provisions of I.C. 36-7-4-307.

10.8 PUBLIC HEARINGS

- A. If the Plan Commission does not submit a recommendation to the Council within sixty (60) days after the petition is referred to it, the Common Council may take final action on the petition without recommendation by the Commission, unless the petitioner requests, in writing to the Council and the Commission, additional time.
- B. If the Common Council fails to act on a report of the Plan Commission recommending approval or disapproval of a petition within sixty (60) days after such submission by the Commission, such petition shall be deemed approved or disapproved by the Council as recommended by the Commission.
- C. If the report of the Plan Commission is averse to a proposed amendment referred to it, the proposed amendment may not be passed except by an affirmative vote of at least seventy-five percent (75%) of the members of the Common Council.
- D. All proposed amendments disapproved by the Plan Commission and the Common Council may not be reconsidered by the Commission or Council until the expiration of one (1) year after the date of its original rejection by the Plan Commission.

10.9 AMENDMENTS**A. Referral by Plan Commission and Approval by City Council**

Any and all amendments to this Ordinance or to the official Zoning Map must be approved by the Common Council after referral to the Plan Commission according to the procedure established in this Title.

B. Origin of Petition

Petitions, duly signed, shall be submitted to the Zoning Administrator requesting an amendment or repeal of the Ordinance or the official Zoning Map by the Plan Commission or by the owners of at least fifty-one percent (51%) of the area involved in the petition.

C. Application Procedures

A proposed Ordinance for amendment or repeal of the Ordinance or the official Zoning Map that does not originate from petition of the Plan Commission must be referred to the Commission for consideration and report before any final action is taken by the Common Council. Before the submission of the petition or its report to the Common Council, the Plan Commission must give notice and hold a public hearing as required by the Public Law 178, Acts of 1979, State of Indiana.

D. Minimum Requirements of Petition

All amendment petitions, other than those originating from the Plan Commission, shall consist of at least the following:

1. Name, address, signature, and telephone number of the petitioner, owner, and any person(s) holding options on the purchase of the property for the intended use.
2. Legal description and common address of the property being considered.
3. Identification of the proposed amendment and identification of any intended use of property, with building square footage and height listed.
4. Current zoning of property being considered.
5. Required number of parking spaces for the identified use, and number of spaces to be provided.
6. A site plan drawn to scale or with sufficient dimensions labeled to determine size for all rezonings for other than single-family or two-family residences showing at least the following: property lines, surrounding streets and alleys, surrounding land uses, location of all existing and proposed buildings, location of parking and drive areas, building and parking setbacks, utilities, and any landscaped or buffer areas.

E. Miscellaneous

The Nappanee Advisory Plan Commission may enact, establish, or enforce any other powers, duties, or appointments as allowed under I.C. 36-7-4-200.. 499.

11.1 IMPROVEMENT LOCATION PERMIT

A. Permits Required

No building or other structure shall be erected, moved, added to, or structurally altered without an Improvement Location Permit issued by the Zoning Administrator or its staff in accordance with Commission policies and procedures. No Improvement Location Permit shall be issued by the Zoning Administrator or its staff except in conformity with the provisions of this Ordinance, unless by written order from the Board of Zoning Appeals in the form of an administrative appeal review, special exception, or variance as provided by this Ordinance.

B. Application for an Improvement Location Permit

All applications for Improvement Location Permits shall be accompanied by plans accurately drawn, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the Advisory Plan Commission or its staff to determine conformance with and provide for the enforcement of this Ordinance including: existing or proposed building or alteration; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and building setback distances from property lines. The approved plans shall be retained by the Commission.

C. Expiration of Permits

1. Initiation of Work:

If the work described in any Improvement Location Permit has not begun within ninety (90) days from the date of issuance thereof, said permit shall expire; it shall be canceled by the Commission or Zoning Administrator, and written notice thereof shall be given to the persons affected. The Zoning Administrator may give a one-time extension for up to ninety (90) days for work completion.

2. Completion of Work:

If the work described in any Improvement Location Permit has not been completed within two (2) years of the date of issuance thereof, said permit shall expire and be canceled by the Commission or Zoning Administrator and written notice thereof shall be given to the persons affected, together with notice that future work as described in the canceled permit shall not proceed unless and until a new Improvement Location Permit has been obtained.

The Zoning Administrator may give a one-time extension for up to six (6) months for work completion.

D. Construction According to Plans

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 this Ordinance.

E. Schedule of Permits

The City of Nappanee hereby requires that an Improvement Location Permit be obtained for the following:

1. All residential dwellings
2. Mini barns (without foundation)
3. Other detached residential accessory buildings (with foundation)
4. Detached and attached garages and carports
5. Signs
6. Swimming pools
7. All commercial, industrial, and institutional buildings
8. Structures other than buildings (including satellite dishes, towers, antennas)
9. Conversions of occupancy classification (as per State Building Code)
10. Manufactured or mobile homes
11. Parking lots
12. Any exterior construction that adds to or alters the existing host structure

F. Schedule of Petition

1. The City of Nappanee hereby requires that a formal petition and filing fee be submitted for the following:
 - Zoning Amendments (zoning map change)
 - Variances (dimensional or use)
 - Special Exceptions
 - Subdivision Plats
 - Administrative Appeals
 - Non-Subdivided Site Development Plans
2. Any petition submitted to the Plan Commission or the Board of Zoning Appeals shall contain, in addition to the legal description of said property, a statement of the common address or general location description, whichever is appropriate, as well as a site location map showing the precise boundary lines and dimensions thereof.

11.2 CERTIFICATE OF OCCUPANCY

- A It shall hereby be declared unlawful and in violation of the provisions of this Ordinance for any builder or property owner to allow any structure to become occupied or utilized prior to the following
1. Passing a final inspection; and
 2. Receiving a Certificate of Occupancy from the City of Nappanee.
- B. In any case involving a new or remodeled structure for which an Improvement Location Permit has been issued, or any change in use of an existing structure or property, property owners shall submit an application for a Certificate of Occupancy to the Zoning Administrator. Upon review of this application and completion of any required inspection(s), the Zoning Administrator shall issue the applicant a Certificate of Occupancy if it is determined that the property and/or structure is in conformance with the provisions of this Ordinance.
- C. In cases involving only a change in use of an existing structure or property, an inspection of the property may not be required. Such a decision is at the discretion of the Zoning Administrator.

- D. For the purpose of this paragraph, the term "builder" shall mean the person or firm who obtained the Improvement Location Permit.
- E. The penalty for such a violation shall be as provided in Section 11.6 of this Ordinance.

11.3 SPECIAL EXCEPTIONS

- A. A special exception may be permitted if an application for such use is approved by the Common Council after referred to the Board of Zoning Appeals. Only the special uses listed in the appropriate zoning district (see Table A in Section 4.6 of the Zoning Ordinance) may be considered for approval as a special exception. Approval of the special exception shall run with the property; however, approval of the special exception shall be voided if the use is discontinued or abandoned for more than one (1) year. Any change to a different special exception shall require a new petition and hearing.
- B. The granting of a special exception is unnecessary for a use that existed on the date of this ordinance, or pertinent amendments to it were passed. Any expansion or enlargement of such existing use, however, shall require that the procedures set forth herein for the granting of a special exception be followed.
- C. A use authorized by special exception may not be expanded, extended, or enlarged unless reauthorized by the Board under the procedures set forth herein for the granting of a special exception.
- D. An application for approval of a special exception must be filed with the Zoning Administrator. The application must consist of at least the following:
 - 1. Name, address, signature, and telephone number of the owner of the property, and name, address, signature, and telephone number of any person (s) holding options on the purchase of the property for the intended special use.
 - 2. Legal description and common address of the property being considered.
 - 3. Identification of the proposed special use and all accessory uses or structures, with square footage and height listed.
 - 4. Current zoning of the property.
 - 5. Required number of parking spaces and number of spaces to be provided.
 - 6. A site plan drawn to scale or with sufficient dimensions labeled to determine size, showing at least the following: property lines, surrounding streets and alleys, surrounding land uses, location of all existing and proposed buildings, location of parking and drive areas, building and parking setbacks, utilities, and any landscaped or buffer areas.
- E. The Common Council may not take action to permit or refuse to permit any special use until after the matter has been referred to the Board of Zoning Appeals and said Board has held a public hearing and reported to the Common Council in writing. The Board shall hold a hearing and report its recommendation to the Common Council within sixty (60) days after formal reference to said Board of Zoning Appeals. If no such report is forwarded to the Council within sixty (60) days, the Council shall interpret this as a favorable report.
- F. In the event the report of the Board is averse to a proposed special exception referred to

it, the permit shall not be passed except by an affirmative vote of at least seventy-five percent (75%) of the members of the Common Council.

- G. In permitting special exceptions, the Board of Zoning Appeals may recommend, and the Common Council may establish appropriate conditions and safeguards as part of such permission and the same shall be made a matter of the records in the minutes of the Common Council and the Board of Zoning Appeals.
- H. A special exception may be terminated by the Board upon filing of an application therefor by an interested person, Board member, or Zoning Administrator, and upon finding at a public hearing, with notice to the property owner, that the terms of this Ordinance, or conditions of approval or specified commitments have not been complied with.

11.4 VARIANCES

- A. A variance from the terms of this Ordinance shall not be granted by the Board of Zoning Appeals unless and until a written application for a variance is submitted to the Zoning Administrator and the Board of Zoning Appeals containing:
 - 1. Name, address, and phone number of applicants;
 - 2. Legal description of property;
 - 3. Description of nature of variance requested;
 - 4. A narrative statement demonstrating that the requested variance conforms to each of the following standards:
 - a. The strict application of the terms of the Zoning Ordinance will constitute an unusual and unnecessary hardship as applied to the property for which a variance is sought;
 - b. The need for the variance arises from such condition peculiar to the property involved and does not exist in similar property in the same zone;
 - c. The use or value of the area adjacent to the property included in the variance will not be adversely affected; and
 - d. The variance will not be injurious to the public health, safety, morals, and general welfare of the community.
- B. The Board may grant a variance from the development standards (such as height, bulk, area) of the Zoning Ordinance if, after a public hearing on the application, it makes findings of facts in writing, that:
 - 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community; and
 - 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; and
 - 3. The strict application of the terms of this Ordinance will result in a Practical Difficulty. This situation shall not be self-imposed, nor be based on a perceived reduction of or restriction on economic gain.
- C. If the Board grants the variance, it shall direct the applicant to apply for an Improvement Location

Permit. If such application complies with this Ordinance and all other applicable codes or ordinances, the Zoning Administrator shall issue the Improvement Location Permit for the use authorized by variance.

- D The Board may permit or require the owner of a parcel of property to make written commitment concerning the use or development of that parcel or may impose conditions upon that grant of variance.
- E A variance granted by a Board shall run with the parcel until such time as: (1) the use of the variance ends, or (2) the property conforms with the Ordinance as written.
- F Where an owner has failed to comply with any condition and/or commitment permitted or required by the grant of variance, a Board may authorize such action as it may deem appropriate to obtain compliance by the owner with the condition or commitment of the grant, or with the terms of this Ordinance in the same manner as if the variance had not been granted.

11.5 SCHEDULE OF FEES

- A The Plan Commission shall maintain the official schedule of fees, charges, and expenses and a collection procedure for permits, appeals, and other petitions pertaining to this ordinance. The schedule of fees shall be available to the public in the office of the Clerk-Treasurer and may be altered or amended only by resolution of the City Council.
- B Until all applicable fees, charges, and expenses have been paid in full, no final action shall be taken on any permit application, appeal, or petition.
- C Any person or persons who shall initiate construction of a structure prior to obtaining an Improvement Location Permit or any other required permit shall pay twice the amount of the current permit fee as established by the City Council.

11.6 ENFORCEMENT AND PENALTIES

- A 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 in violation of this Ordinance.
- B A use that violates this Ordinance or duly made commitment 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.
- C Any person whether owner or possessor, who shall violate, or who permits or allows a violation, of any of the provisions of this Ordinance or duly made commitment, or who fails to comply therewith or with any requirements thereunder, 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 violation, be fined not less than ten dollars (\$10.00) and not more than two thousand five hundred dollars (\$2,500.00), and each day that such violation or noncompliance exists shall constitute a separate violation.

11.7 EFFECT ON ANNEXATION OR VACATION OR ZONING

- A After the effective date of this Ordinance, areas annexed by the City of Nappanee shall be zoned

in the following manner:

1. Within sixty (60) days of the effective date of annexation, the Plan Commission shall submit to the legislative body a recommended plan for zoning the area.
 2. An Improvement Location Permit shall not be issued in an area annexed by the legislative body until a plan for zoning for the area has been adopted, provided, however, that such a permit may be issued for a single-family dwelling unit on a lot of record in a recorded subdivision, provided that all other provisions of the Ordinance are complied with.
- B. Whenever any street, alley, public way, railroad right-of-way, waterway, or other similar area is vacated by proper authority, the districts adjoining each side of the street, alley, public way, railroad right-of-way, or similar areas shall be extended automatically to the center of the vacation and all areas included in the vacation shall then and henceforth be subject to all appropriate regulations of the extended districts. In the event of a partial vacation, the adjoining district, or district nearest the portion vacated, shall be extended automatically to include all of the vacated area.

11.8 EXCLUSION

- A. Nothing in this Ordinance or in any rules, regulations or orders issued pursuant to this Ordinance shall be deemed to restrict or regulate or to authorize any unit of government, legislative body, Plan Commission or Board of Zoning Appeals now or hereafter established, to restrict or regulate the exercise of the power of eminent domain by the State of Indiana or by any state agency, or the use of property owned or occupied by the State of Indiana or any state agency. As used in this section, the term "state agency" shall mean and include all agencies, boards, commissions, departments, and institutions, including state educational institutions of the State of Indiana.

11.9 ESTABLISHMENT OF AN HISTORIC PRESERVATION OVERLAY DISTRICT

- A. If it finds that an area of land is of historic and cultural significance and is suitable for preservation, the Common Council may establish such area by ordinance as an Historic Preservation Overlay District. In the absence of provisions to the contrary in the ordinance creating any such area, all regulations of the underlying district within such area is situated shall continue to apply, however, it is recognized that in order to preserve and protect historic areas, it may be necessary to regulate such areas with provisions different from those which would normally apply in the underlying district.
- B. Amendment to this Ordinance may be initiated by a request from the Common Council to the Historic Preservation Commission, or as a petition either by the Plan Commission, Historic Preservation Commission, or by the owners of at least 51 percent or more of the area involved in the petition. Petitions shall be filed with the Historic Preservation Commission and shall contain the necessary information as prescribed by the Historic Preservation Commission.
- C. Upon receipt by the Historic Preservation Commission, such Commission shall investigate the property which is the subject of such application and shall prepare a written report for the Plan Commission. At the next regularly scheduled public hearing of the Historic Preservation Commission, following the completion of this report, such application shall be considered by said Commission, which shall recommend to the Plan Commission either 1) that such application be approved as submitted or as modified by the Historic Preservation Commission, or 2) that such application be denied.
- D. The Plan Commission shall hold a public hearing according to the same procedures as a zoning amendment. Following such hearing, the Plan Commission shall recommend to the Common

Council either 1) that such petition be approved as submitted or as modified by the Plan Commission, or 2) that such petition be denied.

- E. Thereafter, the Common Council shall proceed with consideration of such proposed ordinance in the same manner and subject to the same voting requirements as would apply to a zoning amendment, provided that the Common Council may amend such proposed ordinance prior to its adoption in any manner it may deem necessary to accomplish the purposes of this Title.
- F. In areas adopted as a Historic Preservation Overlay District, no exterior portion of any structure or site (including walls, fences, light fixtures, steps, and pavements or other appurtenant features), nor utility structure, nor any sign shall be erected, altered, restored, moved, or demolished until an application for a Certificate of Appropriateness has been submitted to and approved by the Historic Preservation Commission. This shall not apply to any building or structure which the Building Commissioner or other official has determined to be a hazard to public safety.
- G. A Certificate of Appropriateness shall be filed in one of two ways: first, an application for a Building Permit, Demolition Permit, Sign Permit, or Moving Permit is automatically an application for a Certificate of Appropriateness; second, where no other permit is required, an application is made directly to the Historic Preservation Commission on the form prescribed by the Commission. The Commission will review the application and either issue a Certificate of Appropriateness or deny the application, stating in writing the reasons for such denial. Upon such denial, the applicant may appeal to the Common Council.
- H. In making its determination, the Historic Preservation Commission shall consider three (3) factors: first, appropriateness of the proposed work to the preservation of the building and district; second, the detriment to the public welfare if the proposed work is permitted even though it is not deemed appropriate; third, the potential hardship that the denial of the Certificate of Appropriateness would cause the applicant.
- I. Where the Historic Preservation Commission deems it necessary, the Commission may petition the Common Council for a temporary delay on proposed construction, reconstruction, alteration, demolition, or moving, for the purpose of preparing a Historic Preservation Plan for the building or district. Such a request shall be for a specified period of time and in no case shall the request exceed one (1) year.
- J. The Historic Preservation Commission may petition the Building Commissioner to use the legal means available to him to cause the maintenance and/or repair of any building or structure within the Historic District in accordance with the intent of this Ordinance.

11.10 ESTABLISHMENT OF A LOCAL LANDMARK

- A. The establishment of a local landmark may be approved by the Common Council upon recommendation of the Historic Preservation Commission and the Plan Commission. A petition to establish a local landmark may be initiated by the owner of the property involved or by petition of the Historic Preservation Commission, Plan Commission, or Common Council. The local landmark described may or may not be located within an existing or proposed Historic Preservation Overlay District.

11.11 ESTABLISHMENT OF A REGIONAL CORRIDOR OVERLAY DISTRICT

- A. If it finds that an area of land adjacent to a primary transportation corridor is of regional importance to transportation or commerce, as may be so designated by the Comprehensive Plan or any amendment thereof, State of Indiana, Regional Council of Governments, or other organization representing the regional welfare of the public, the Common Council may establish

- such area by ordinance as a Regional Corridor Overlay District. In the absence of provisions to the contrary in the ordinance creating any such area, all regulations of the underlying district within such area is situated shall continue to apply, however, it is recognized that in order to preserve and protect areas for future development or expansion of critical transportation facilities, it may be necessary to regulate such areas with provisions different from those which would normally apply in the underlying district.
- B. Amendment to this Ordinance for the purpose of creating a Regional Corridor Overlay District may be initiated by a request from the Common Council to the Plan Commission, or as a petition either by the Plan Commission or by the owners of at least 51 percent (51%) or more of the area involved in the petition. Petitions shall be filed with the Zoning Administrator and shall contain the necessary information as detailed in Section 10.9 herein.
 - C. Upon receipt of a petition from landowners, the Zoning Administrator shall investigate the property which is the subject of such application and shall prepare a written report for the Plan Commission. At the next regularly scheduled meeting of the Plan Commission, following the completion of this report, such application shall be considered by the Commission.
 - D. The Plan Commission shall hold a public hearing according to the same procedures as a zoning amendment. Following such hearing, the Plan Commission shall recommend to the Common Council either 1) that such petition be approved as submitted or as modified by the Plan Commission, or 2) that such petition be denied.
 - E. Thereafter, the Common Council shall proceed with consideration of such proposed ordinance in the same manner and subject to the same voting requirements as would apply to a zoning amendment, provided that the Common Council may amend such proposed ordinance prior to its adoption in any manner it may deem necessary to accomplish the purposes of this Title.
 - F. On properties existing within a Regional Corridor Overlay District, no variances shall be granted for any proposed improvements beyond the front building line, nor shall any structure or sign be erected, altered, restored, moved, or demolished until an application for a Certificate of Appropriateness has been submitted to and approved by the Plan Commission. This shall not apply to any building or structure which the Building Commissioner or other official has determined to be a hazard to public safety.
 - G. A Certificate of Appropriateness shall be filed in one of two ways: first, an application for a Building Permit, Demolition Permit, Sign Permit, or Moving Permit is automatically an application for a Certificate of Appropriateness; second, where no other permit is required, an application is made to the Zoning Administrator on the form prescribed by the Commission. The Commission will review the application and either issue a Certificate of Appropriateness or deny the application, stating in writing the reasons for such denial. Upon such denial, the applicant may appeal to the Common Council.
 - H. In making its determination, the Plan Commission shall consider three (3) factors: first, the general conformity of the proposed work with any proposals, plans, or policies in place for the future development of the corridor and adjacent land; second, the detriment to the public welfare if the proposed work is permitted even though it is not deemed appropriate; third, the potential hardship that the denial of the Certificate of Appropriateness would cause the applicant.

12.1 ESTABLISHMENT

- A. Within a period of one (1) year after the adoption of this Ordinance, a Historic Preservation Commission shall be created according to the rules and regulations established under Public Law IC 18-7-22 of the State of Indiana, effective September 1, 1980, and all amendments thereto.

12.2 POWERS AND DUTIES OF THE COMMISSION

- A. For the purposes of this Ordinance, the Historic Preservation Commission shall have the following powers and duties:
1. Receive and review all proposed "HPD" Historic Preservation Overlay Districts according to the provisions of Section 11.9.
 2. Adopt and amend a "Book of Standards" for each overlay district when required as described in Section 12.3.
 3. Issue all Certificates of Appropriateness as described in Section 11.9.
 4. Establish local landmarks as described in Section 11.10.
 5. Inform the Zoning Administrator of all violations of Section 11.9 of this Ordinance, which the Zoning Administrator will then enforce.

12.3 ADOPTION OF BOOK OF STANDARDS

As part of its written report described in Section 11.9, Subsection C, the Historic Preservation Commission shall adopt a Book of Standards for that specific historic district. Such book shall contain all provisions different from those normally applicable in the underlying district, and all additional architectural and site development standards to be followed within the historic district. The official name of the historic neighborhood shall be stated as part of the title of the Book of Standards. Amendments to the approved Book of Standards shall be made only by the Historic Preservation Commission after notification of affected property owners and a public hearing on the proposed changes.

13.1 PURPOSE

The purpose and intent of this chapter is to provide a uniform and comprehensive set of standards for the development of telecommunication facilities and installation of antennas. The regulations contained herein are designed to protect and promote public health, safety, community welfare and the aesthetic quality of Nappanee as set forth within the goals, objectives and policies of the Nappanee Comprehensive Plan; while at the same time not unduly restricting the development of needed telecommunications facilities and important amateur radio installations and encouraging managed development of telecommunications infrastructure to insure Nappanee's role in the evolution of technology. It is also the stated intent of this Chapter to provide a public forum to ensure a balance between public concerns and private interest in establishing telecommunication and related facilities.

It is furthermore intended that, to all extent permitted by law, the City shall apply these regulations to specifically accomplish the following:

- A. Protect the visual character of the City from the potential adverse effects of telecommunication facility development and minor antenna installation;
- B. Insure against the creation of visual blight;
- C. Retain local responsibility for and control over the use of public rights-of-way to protect citizens and enhance the quality of their lives.
- D. Protect the residents of Nappanee from the possible adverse health effects associated with exposure to high levels of NIER (non-ionizing electromagnetic radiation);
- E. Protect the environmental resources of Nappanee;
- F. Ensure that a competitive and broad range of telecommunications services and high quality telecommunications infrastructure are provided to serve the business community;
- G. Create and preserve telecommunication facilities that will serve as an important and effective part of Nappanee's emergency response network;
- H. Simplify and shorten the process for obtaining necessary permits for telecommunication facilities while at the same time protecting the legitimate interests of Nappanee citizens; and,
- I. Provide for the charging of reasonable, competitively neutral, non-discriminatory fees for use of the public right-of-way by telecommunication providers.

13.2 DEFINITIONS

For the purpose of this chapter, the following words and phrases shall have the meaning respectively ascribed to them in this Section 2.2 of this Ordinance.

13.3 GENERAL REQUIREMENTS

The following requirements shall be met for all Telecommunications Facilities in any zoning district

- A. Any applicable Comprehensive Plan Goals, Objectives, Programs and Policies, Specific Plan, PUD Standards, Design Guidelines, and the permit requirements of any agencies which have jurisdiction over the project;

- B. All the requirements established by the other chapters of the Nappanee Municipal Code and Nappanee Zoning Ordinance that are not in conflict with the requirements contained in this chapter;
- C. Any applicable Airport land use compatibility criteria/policies and Federal Aviation Administration regulations;
- D. Any applicable easements or similar restrictions on the subject property, including adopted PUD standards;
- E. Facilities and minor antennas cannot be located in any required yard setback area of the zoning district in which it is located with the exception of possible encroachment of the antenna array into airspace over said setback;
- F. All setbacks shall be measured from the base of the tower or structure closest to the applicable property line or structure;
- G. All commercial telecommunication facilities and minor antenna shall comply at all times with all FCC rules, regulations, and standards;
- H. All telecommunication facilities shall maintain in place a security program, when determined necessary by and subject to the review and approval of the Police Chief that will prevent unauthorized access and vandalism; and
- I. Satellite dish and parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.
- J. All telecommunications carriers and providers engaged in the business of transmitting, supplying, or furnishing of telecommunications originating or terminating in the City of Nappanee shall register with the City pursuant to Section 13.4 of this Ordinance.

13.4 REGISTRATION OF TELECOMMUNICATIONS CARRIERS AND PROVIDERS

- A. Registration Required. All telecommunications carriers and providers that offer or provide any telecommunications services for a fee directly to the public, either within the City of Nappanee, or outside the corporate limits from telecommunications facilities within the City, shall register with the City pursuant to this Article on forms to be provided by the Zoning Administrator, which shall include the following:
 - 1. The identity and legal status of the registrant, including any affiliates.
 - 2. The name, address and telephone number of the officer, agent, or employee responsible for the accuracy of the registration statement.
 - 3. A narrative and map description of registrant's existing or proposed telecommunications facilities within the City of Nappanee.
 - 4. A description of the telecommunications services that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses, or institutions within the City.
 - 5. Information sufficient to determine that the applicant has applied for and receiving any certificate of authority required by the State of Indiana to provide telecommunications services or facilities within the City.

6. Information sufficient to determine that the applicant has applied for and received any construction permit, operating license or other approvals required by the Federal Communications Commission (FCC) to provide telecommunications services or facilities within the City.
 7. Such other information as the Plan Commission may reasonably require.
- B. Registration fee. Each application for registration as a telecommunications carrier or provider shall be accompanied by a fee as set forth in the Official Fee Schedule of Nappanee.
- C. Purpose of Registration. The purpose of registration under this Section is to:
1. Provide the City with accurate and current information concerning the telecommunications carriers and providers who offer or provide telecommunications services within the City, or that own or operate telecommunication facilities with the City;
 2. assist the City in enforcement of this Chapter;
 3. assist the City in the collection and enforcement of any license fees or charges that may be due the City; and assist the City in monitoring compliance with local, State and Federal laws.
- D. Amendment. Each registrant shall inform the City, within sixty (60) days of any change of the information set forth in Section 13.4.

13.5 AGREEMENT

No approval granted hereunder shall be effective until the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the approval to occupy and use public ways of the City will be granted.

13.6 NONEXCLUSIVE GRANT

No approval granted under this Article shall confer any exclusive right, privilege, license, or franchise to occupy or use the public ways of the City for delivery of telecommunications services or any other purposes.

13.7 RIGHTS GRANTED

No approval granted under this Article shall convey any right, title or interest in the public ways, but shall be deemed approval only to use and occupy the public ways for the limited purposes and term stated in the approval. Further, no approval shall be construed as any warranty of title.

13.8 EXEMPT FACILITIES - BASIC REQUIREMENTS

Exempt facilities defined in Section 2.2 of this Ordinance may be installed, erected, maintained and/or operated in any residential zoning district, except recognized Historic Districts, where such antennas are permitted under this title, without benefit of a building permit or other entitlement process, so long as all the following conditions are met:

- A The antenna use involved is accessory to the primary use of the property which is not a telecommunications facility;
- B. In a residential zone, no more than one (1) support structure for licensed amateur radio operator, satellite dish eight feet (8') or less in diameter, is allowed on the parcel;
- C. Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.

13.9 MINI FACILITIES - BASIC REQUIREMENTS

Mini facilities defined in Section 2.2 of this Ordinance may be installed, erected, maintained and/or operated in any residential, commercial, or industrial zoning district where such antennas are permitted under this title, upon the issuance of a building permit which has received site plan approval by the Zoning Administrator, so long as all the following conditions are met:

- A In a commercial or industrial zone, no more than three (3) antenna, satellite dish eight feet (8') or less in diameter; where adequate screening, at the discretion of the Zoning Administrator, is provided; and the telecommunication facilities are solely for the use of the project site tenants - location subject to the discretionary review and approval of the Zoning Administrator.
- B. Replacement of pre-existing telecommunication facilities, installed under a prior approval under this Chapter which is being proposed for replacement by equipment of identical or a smaller size, at the discretion of the Zoning Administrator.
- C. In a residential zone, where more than one (1) but no more than three (3) antenna or satellite dishes (3' or less in diameter) are proposed.
- D. Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.

13.10 MINOR FACILITIES - BASIC REQUIREMENTS

Minor facilities as defined in Section 2.2 of this Ordinance may be installed, erected, maintained and/or operated in any commercial or industrial zoning district where such antennas are permitted under this title, upon the issuance of a minor conditional use permit, so long as all the following conditions are met:

- A The minor antenna use involved is accessory to the primary use of the property which is not a telecommunications facility.
- B. The combined effective radiated power radiated by all the antennas present on the parcel is less than 1500 watts.
- C The combined NIER levels produced by all the antennas present on the parcel does not exceed the NIER standard established in Section 13.28 of this Chapter.
- D. The antenna is not situated between the primary building on the parcel and any public or private street adjoining the parcel, so as to create a negative visual impact
- E. The antenna is located outside all yard and street setbacks specified in the zoning district in which the antenna is to be located and no closer than twenty feet (20') to any property line.

- F. None of the guy wires employed are anchored within the area in front of the primary structure on the parcel.
- G. No portion of the antenna array extends beyond the property lines or into the area in front of the primary building on the parcel, so as to create a negative visual impact
- H. At least ten feet (10') of horizontal clearance exists between the antenna and any power lines unless more clearance is required to meet CPUC standards.
- I. All towers, masts and booms are made of a noncombustible material and all hardware such as brackets, turnbuckles, clips, and similar type equipment subject to rust or corrosion has been protected either by galvanizing or sheradizing after forming.
- J. The materials employed are not unnecessarily bright, shiny or reflective and are of a color and type that blends with the surroundings to the greatest extent possible.
- K. The installation is in compliance with the manufacturer's structural specifications and the requirements of the Nappanee Building Code.
- L. The height of the facility shall include the height of any structure upon which it is placed, unless otherwise defined within this Chapter.
- M. No more than two (2) satellite dishes are allowed on the parcel, one of which may be over three feet (3') in diameter, but no larger than eight feet (8') in diameter, with adequate screening, at the discretion of the Zoning Administrator;
- N. Any ground mounted satellite dish with a diameter greater than four feet (4') that is situated less than five (5) times its actual diameter from adjoining property lines has screening treatments located along the antenna's non-reception window axes and low-level landscape treatments along its reception window axes.
- O. Any roof mounted panel antenna with a face area greater than three and one-half (3 1/2) square feet shall be located so as to be effectively unnoticeable.
- P. Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.
- O. The facility is located more than seventy-five feet (75') from any residential dwelling unit, unless recognized as an exempt facility as set forth in Section 2.2 of this Ordinance.
- R. No trees larger than twenty inches (20") in diameter measured at four and one-half feet (4 1/2') high on the tree would have to be removed.
- S. Any new building(s), structure(s), control panel(s), etc. shall be effectively screened from view from off-site.
- T. The site has an average cross slope of 10% or less.
- U. All utility lines to the facility from public or private streets shall be undergrounded.
- V. If located within a recognized Historic District, or on a structure recognized as a Historic landmark, that adequate screening has been provided.
- W. The general criteria set forth in this Chapter are met

13.11 MINOR FACILITIES - REFERRAL

The Zoning Administrator may refer a conditional use permit for a minor telecommunications facility that meets all of the above standards if he/she determines, in his/her sole discretion, that the public interest would be furthered by having the Planning Commission review this matter. In that case and the case of any proposed facility that fails to meet one or more of the standards listed above, a use permit approved by the Planning Commission shall be required to construct the facility in question.

13.12 APPLICATION REQUIREMENTS

The following are the minimum criteria applicable to all telecommunication facilities, except exempt facilities as defined in Section 2.2 of this Ordinance. In the event that a project is subject to discretionary and/or environmental review, mitigation measures or other conditions may also be necessary. All Telecommunications Facilities shall comply with the following:

- A. The Zoning Administrator shall establish and maintain a list of information that must accompany every application for the installation of a telecommunications facility. Said information may include, but shall not be limited to, completed supplemental project information forms, a specific maximum requested gross cross-sectional area, or silhouette, of the facility; service area maps, network maps, alternative site analysis, visual impact demonstrations including mock-ups and/or photo-montages, visual impact analysis, NIER (non-ionizing electromagnetic radiation) exposure studies, title reports identifying legal access, security considerations, lists of other nearby telecommunication facilities known to the City, master plan for all related facilities within the city limits of Nappanee and within one-quarter (1/4) mile therefrom; and facility design alternatives to the proposal and deposits for peer review, if deemed necessary by the Zoning Administrator. The Zoning Administrator may release an applicant from having to provide one or more of the pieces of information on this list upon a finding that in the specific case involved said information is not necessary to process or make a decision on the application being submitted; and
- B. The Zoning Administrator is explicitly authorized at his/her discretion to employ on behalf of the City an independent technical expert to review any technical materials submitted including, but not limited to, those required under this Section and in those cases where a technical demonstration of unavoidable need or unavailability of alternatives is required. The applicant shall pay all the costs of said review, including any administrative costs incurred by the city. Any proprietary information disclosed to the City or the expert hired shall remain confidential and shall not be disclosed to any third party.

13.13 STANDARD AGREEMENTS REQUIRED

- A. A maintenance/facility removal agreement signed by the applicant shall be submitted to the Zoning Administrator prior to approval of the use permit or other entitlement for use authorizing the establishment or modification of any telecommunications facility which includes a telecommunication tower, one (1) or more new buildings/equipment enclosures larger in aggregate than three hundred (300) square feet, more than three (3) satellite dishes of any size, or a satellite dish larger than four feet (4') in diameter. Said agreement shall bind the applicant and the applicant's successors-in-interest to properly maintain the exterior appearance of and ultimately removal of the facility in compliance with the provisions of this chapter and any conditions of approval. It shall further bind them to pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the City for all costs incurred to perform any work required of the applicant by this agreement that the applicant fails to perform. It shall also specifically authorize the City and/or its agents to enter onto the property and undertake said work so long as:

1. The Zoning Administrator has first provided the applicant the following written notices:
 - a. An initial compliance request identifying the work needed to comply with the agreement and providing the applicant at least forty-five (45) calendar days to complete it; and
 - b. A follow-up notice of default specifying the applicant's failure to comply with the work within the time period specified and indicating the city's intent to commence the required working with ten (10) working days;
 2. The applicant has not filed an appeal pursuant to Section 13.32 within fourteen (14) working days of the notice required under Section 13.13 above. If an appeal is filed, the City shall be authorized to enter the property and perform the necessary work if the appeal is dismissed or final action on it taken in favor of the City;
 3. All costs incurred by the City to undertake any work required to be performed by the applicant pursuant to the agreement referred to in Section 13.13 including, but not limited to, administrative and job supervision costs, shall be borne solely by the applicant. The applicant shall deposit within ten (10) working days of written request therefor such costs as the City reasonably estimates or has actually incurred to complete such work. When estimates are employed, additional moneys shall be deposited as needed within ten (10) working days of demand to cover actual costs. The agreement shall specifically require the applicant to immediately cease operation of the telecommunication facility involved if the applicant fails to pay the moneys demanded within ten (10) working days. It shall further require that operation remain suspended until such costs are paid in full.
- B. Standard agreement required by Section 13.13 shall be accompanied by the payment of a fee, as established by Resolution of the City Council, into a trust fund established to cover expenditures for the removal, screening, enhancement, or similar activities relating to the existence of telecommunication facilities within the City.
- C. Standard agreement required by Section 13.13 shall include, but not be limited to, the following stipulations agreed to by the applicant:
1. Telecommunication facilities lessors shall be strictly liable for any and all sudden and accidental pollution and gradual pollution resulting from their use within the City of Nappanee. This liability shall include cleanup, intentional injury or damage to persons or property. Additionally, telecommunication facilities lessors shall be responsible for any sanctions, fines, or other monetary costs imposed as a result of the release of pollutants from their operations. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, include smoke, vapor, soot, fumes, acids, alkalis, chemicals, electromagnetic waves, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.
 2. The telecommunication facility provider shall defend, indemnify, and hold harmless the City or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the City, its boards, commission, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable State and/or local statutes. The City shall promptly notify the provider(s) of any such claim, action or proceeding. The City shall have the option of coordinating in the defense. Nothing contained in this stipulation shall prohibit the City from participating in a defense of any claim, action, or proceeding if the City bears its own attorney's fees

and costs, and the City defends the action in good faith.

13.14 LIFE OF PERMITS

- A. A use permit issued pursuant to this chapter or a site plan approval issued pursuant to this chapter authorizing establishment of a telecommunication facility, except exempt facilities as defined in Section 2.2 of this Ordinance shall be reviewed every ten (10) years. Costs associated with the review process shall be borne by the telecommunication facility owner/provider. Grounds for revocation of the conditional use permit shall be limited to a finding that (1) the use involved is no longer allowed in the applicable zoning district, (2) the facility fails to comply with the relevant requirements of this chapter as they exist at the time of renewal and the permittee has failed to supply assurances acceptable to the Zoning Administrator that the facility will be brought into compliance within one hundred twenty (120) days, (3) the permittee has failed to comply with the conditions-of-approval imposed, (4) the facility has not been properly maintained, or (5) the facility has not been upgraded to minimize its impact, including community aesthetics, to the greatest extent permitted by the technology that exists at the time of renewal and is consistent with the provisions of universal service at affordable rates. The grounds for appeal of issuance of a renewal shall be limited to a showing that one or more of the situations listed above do in fact exist or that the notice required under Section 13.30 was not provided.
- B. If a use permit or other entitlement for use is not renewed, it shall automatically become null and void without notice or hearing ten (10) years after it is issued or upon cessation of use for more than a year and a day, whichever comes first. Unless a new use permit or entitlement of use is issued, within one hundred twenty (120) days thereafter all improvements installed including their foundations down to three feet (3' below ground surface) shall be removed from the property and the site restored to its natural pre-construction state within one hundred eighty (180) days of non-renewal or abandonment. Any access road installed shall also be removed and the ground returned to its natural condition unless the property owner establishes to the satisfaction of the Zoning Administrator that these sections of road are necessary to serve some other allowed use of the property that is permitted or is currently present or to provide access to adjoining parcels.

13.15 STRUCTURAL REQUIREMENTS

No telecommunication facility shall be designed and/or sited such that it poses a potential hazard to nearby residences or surrounding properties or improvements. To this end, any telecommunication tower, except exempt facilities as defined in Section 2.2 of this Ordinance, located at a distance of less than 110% of its height from a habitable structure, property line, or other tower shall be designed and maintained to withstand without failure the maximum forces expected from wind and earthquakes when the tower is fully loaded with antennas, transmitters and other equipment, and camouflaging. Initial demonstration of compliance with this requirement shall be provided via submission of a report to the Zoning Administrator prepared by a structural engineer licensed by the State of Indiana describing the tower structure, specifying the number and type of antennas it is designed to accommodate, providing the basis for the calculations done, and documenting the actual calculations performed. Proof of ongoing compliance shall be provided via submission to the Zoning Administrator at least every five (5) (self-supporting and guyed towers)/ten (10) (monopoles) years of an inspection report prepared by an Indiana-licensed structural engineer indicating the number and types of antennas and related equipment actually present and indicating the structural integrity of the tower. Based on this report, the Zoning Administrator may require repair or, if a serious safety problem exists, removal of the tower.

13.16 BASIC TOWER AND BUILDING DESIGN

All telecommunication facilities, except exempt facilities as defined in Section 2.2 of this Ordinance, shall be designed to blend into the surrounding environment to the greatest extent feasible. To this end all the following measures shall be implemented:

- A. Telecommunication towers shall be constructed out of metal or other non-flammable material, unless specifically conditioned by the City to be otherwise.
- B. Telecommunication towers taller than thirty-five feet (35') shall be monopoles or guyed/lattice towers except where satisfactory evidence is submitted to the Zoning Administrator or Planning Commission, as appropriate, that a self-supporting tower is required to provide the height and/or capacity necessary for the proposed telecommunication use to minimize the need for screening from adjacent properties, or to reduce the potential for bird strikes.
- C. Satellite dishes other than microwave dishes shall be of mesh construction, except where technical evidence is acceptable to the Zoning Administrator or Planning Commission, as appropriate, is submitted showing that this is infeasible.
- D. Telecommunication support facilities (i.e., vaults, equipment rooms, utilities, and equipment enclosures) shall be constructed out of non-reflective materials (visible exterior surfaces only) and shall be placed in underground vaults to all extent possible.
- E. Telecommunication support facilities shall be no taller than one story (fifteen feet) in height and shall be treated to look like a building or facility typically found in the area.
- F. Telecommunication support facilities in areas of high visibility shall, where possible, be sited below the ridgeline or designed (i.e., placed underground, depressed, or located behind earth berms) to minimize their profile.
- G. All buildings, poles, towers, antenna supports, antennas, and other components of each telecommunications site shall be initially painted and thereafter repainted as necessary with a "flat" paint. The color selected shall be one that in the opinion of the Zoning Administrator or Planning Commission, as appropriate, will minimize their visibility to the greatest extent feasible. To this end, improvements which will be primarily viewed against soils, trees or grasslands shall be painted colors matching these landscapes while elements which rise above the horizon shall be painted a blue gray that matches the typical sky color at that location.
- H. The project description and permit shall include a specific maximum allowable gross cross-sectional area, or silhouette, of the facility. The silhouette shall be measured from the "worst case" elevation perspective.
- I. The City shall have the authority to require special design of the telecommunication facilities where findings of particular sensitivity are made (e.g., proximity to historic or aesthetically significant structures, views and/or community features).
- J. Telecommunication facilities shall insure that sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.

13.17 CRITICAL DISASTER RESPONSE FACILITIES

- A. All radio, television and voice communication facilities providing service to government or the general public shall be designed to survive a natural disaster without interruption in operation.

To this end all the following measures shall be implemented:

1. Non-flammable exterior wall and roof covering shall be used in the construction of all buildings;
 2. Openings in all buildings shall be protected against penetration by fire and windblown embers;
 3. The telecommunication tower when fully loaded with antennas, transmitters, other equipment, and camouflaging shall be designed to withstand the forces expected during the "maximum credible earthquake". All equipment mounting racks and equipment used shall be anchored in such a manner that such a quake will not tip them over, throw the equipment off its shelves, or otherwise act to damage it;
 4. All connections between various components of the facility and with necessary power and telephone lines shall be protected against damage by fire, flooding, and earthquake; and
 5. Measures shall be taken to keep the facility operation in the event of disaster.
- B. Demonstration of compliance with requirements A.1., 2., 4. and 5. (fire only) shall be evidenced by a certified signed by the City Fire Chief on the building plans submitted.
- C. Demonstration of compliance with requirements A.3. through 5. (earthquake only) shall be provided via a second certification on said plans signed by a structural engineer or other appropriate professional licensed by the State of Indiana.

13.18 LOCATION

All telecommunication facilities shall be located so as to minimize their visibility and the number of distinct facilities present. To this end all of the following measures shall be implemented for all telecommunications facilities, except exempt facilities as defined in Section 2.2 of this Ordinance:

- A. No telecommunication facility shall be installed within the safety zone of the Nappanee Municipal Airport or any helipad unless the airport owner/operator indicates that it will not adversely affect the operation of the airport or helipad;
- B. No telecommunication facility shall be installed at a location where special painting or lighting will be required by the FAA regulations unless technical evidence acceptable to the Zoning Administrator or Planning Commission, as appropriate, is submitted showing that this is the only technically feasible location for this facility;
- C. No telecommunication facility that is readily visible from off-site shall be installed closer than one-half mile from another readily visible uncamouflaged or unscreened telecommunication facility unless it is a co-located facility, situated on a multiple-user site, or blends with the surrounding existing natural and man-made environment in such a manner as to be effectively unnoticeable; or technical evidence acceptable to the Zoning Administrator or Planning Commission, as appropriate, is submitted showing a clear need for this facility and the infeasibility of co-locating it on one of these former sites;
- D. No telecommunication facility that is readily visible from off-site shall be installed on a site that is not already developed with telecommunication facilities or other public or quasi-public uses unless it blends with the surrounding existing natural and man-made environment in such a manner so as to be effectively unnoticeable or technical evidence acceptable to the Zoning

Administrator or Planning Commission, as appropriate, is submitted showing a clear need for this facility and the unfeasibility of co-locating it on one of these former sites; and

- E. Telecommunication towers shall be set back at least twenty percent (20%) of the tower height from all property lines and at least one hundred feet (100') from any public trail, park or outdoor recreation area. Guy wire anchors shall be set back at least twenty feet (20') from any property line.

13.19 HEIGHT

The height of a telecommunication tower shall be measured from the natural undisturbed ground surface below the center of the base of said tower to the top of the tower itself or, if higher, to the tip of the highest antenna or piece of equipment attached thereto. In the case of building-mounted towers the height of the tower includes the height of the portion of the building on which it is mounted. In the case of "crank-up" or other similar towers whose height can be adjusted; the height of the tower shall be the maximum height to which it is capable of being raised.

13.20 CO-LOCATED AND MULTIPLE USER FACILITIES

- A. An analysis shall be prepared by or on behalf of the applicant, subject to the approval of the decision-making body, which identifies all reasonable, technically feasible, alternative locations and/or facilities which would provide the proposed telecommunication service. The intention of the alternatives analysis is to present alternative strategies which would minimize the number, size, and adverse environmental impacts of facilities necessary to provide the needed services to the City and surrounding rural and urban areas. The analysis shall address the potential for co-location at an existing or a new site and the potential to locate facilities as close as possible to the intended service area. It shall also explain the rationale for selection of the proposed site in view of the relative merits of any of the feasible alternatives. Approval of the project is subject to the decision-making body making a finding that the proposed site results in fewer or less severe environmental impacts than any feasible alternative site. The City may require independent verification of this analysis at the applicant's expense.

Facilities which are not proposed to be co-located with another telecommunication facility shall provide a written explanation why the subject facility is not a candidate for co-location.

- B. All co-located, and multiple-user telecommunication facilities shall be designed to promote facility and site sharing. To this end telecommunication towers and necessary appurtenances, including but not limited to, parking areas, access roads, utilities and equipment buildings shall be shared by site users when in the determination of the Zoning Administrator or Planning Commission, as appropriate, this will minimize overall visual impact to the community.
- C. The facility shall make available unutilized space for co-location of other telecommunication facilities, including space for these entities providing similar, competing services. A good faith effort in achieving co-location shall be required of the host entity. Requests for utilization of facility space and responses to such requests shall be made in a timely manner and in writing and copies shall be provided to the City's permit files. Unresolved disputes may be mediated by the Planning Commission or City Council. Co-location is not required in cases where the addition of the new service or facilities would cause quality of service impairment to the existing facility or if it became necessary for the host to go off-line for a significant period of time.

- D. Approval for the establishment of facilities improved with an existing microwave band or other public service use or facility, which creates interference or interference is anticipated as a result of said establishment of additional facilities, shall include provisions for the relocation of said existing public use facilities. All costs associated with said relocation shall be borne by the applicant for the additional facilities.

13.21 LIGHTING

All telecommunication facilities shall be unlit except for the following:

- A. A manually operated or motion-detector controlled light above the equipment shed door which shall be kept off except when personnel are actually present at night; and
- B. the minimum tower lighting required under FAA regulation; and
- C. where tower lighting is required, it shall be shielded or directed to the greatest extent possible in such a manner as to minimize the amount of light that falls onto nearby properties, particularly residences.

13.22 ACCESS AND PARKING

All telecommunication facilities, except exempt facilities as defined in Section 2.2 of this Ordinance, shall be served by the minimum roads and parking areas necessary. To this end all the following measures shall be implemented:

- A. Existing roads shall be used for access, whenever possible, and be upgraded the minimum amount necessary to meet standards specified by the Fire Chief and City Engineer. Any new roads or parking areas built shall, whenever feasible, be shared with subsequent telecommunication facilities and/or other permitted uses. In addition, they shall meet the width and structural requirements of the Fire Chief and City Engineer;
- B. Existing parking areas shall, whenever possible, be used; and
- C. Any new parking areas constructed shall be no larger than three hundred fifty (350) square feet.

13.23 VEGETATION PROTECTION AND SCREENING

All telecommunications facilities shall be installed in such a manner so as to maintain and enhance existing native vegetation and to install suitable landscaping to screen the facility, where necessary. To this end all of the following measures shall be implemented for all telecommunication facilities, except exempt facilities as defined in Section 2.2 of this Ordinance:

- A. A landscape plan shall be submitted with project application submittal indicating all existing vegetation, identifying landscaping that is to be retained on the site and any additional vegetation that is needed to satisfactorily screen the facility from adjacent land uses and public view areas. The landscape plan shall be subject to review and approval of the Plan Commission. All trees, larger than four inches (4") in diameter shall be identified in the landscape plan with indication of species type, diameter at four and one-half feet (4 1/2") high, and whether it is to be retained or removed with project development;
- B. Existing trees and other screening vegetation in the vicinity of the facility and along the

access roads and power/telecommunication line routes involved shall be protected from damage, both during the construction period and thereafter. To this end, the following measures shall be implemented

1. A Tree Protection Plan shall be submitted with building permit or improvement plan. This Plan shall be prepared by a certified arborist and give specific measures to protect trees during project construction;
 2. Grading, cutting/filling, and the storage/parking of equipment/vehicles shall be prohibited in landscaped areas to be protected and the drip line of any trees required to be preserved. Such areas shall be fenced to the satisfaction of the Zoning Administrator or Commission, as appropriate. Trash, debris, or spoils shall not be placed within these fences nor shall the fences henceforth be opened or moved until the project is complete and written approval to take the fences down has been received from the Zoning Administrator; and
 3. All underground lines shall be routed such that a minimum amount of damage is done to tree root systems.
- C. All areas disturbed during project construction other than the access road and parking areas required under Section 13.22 shall be replanted with vegetation compatible with the vegetation in the surrounding area (e.g., ornamental shrubs or natural brush, depending upon the circumstances) to the satisfaction of the Zoning Administrator;
- D. Any existing trees or significant vegetation, on the facilities site or along the affected access area that die shall be replaced with native trees and vegetation of a size and species acceptable to the Zoning Administrator;
- E. No actions shall be taken subsequent to project completion with respect to the vegetation present that would increase the visibility of the facility itself or the access road and power/telecommunication lines serving it.

13.24 FIRE PREVENTION

- A. All telecommunication facilities shall be designed and operated in such a manner so as to minimize the risk of igniting a fire or intensifying one that otherwise occurs. To this end all of the following measures shall be implemented for all telecommunication facilities, when determined necessary by the Fire Chief, except exempt facilities as defined in Section 2.2 of this Ordinance:
1. At least one-hour fire resistant interior surfaces shall be used in the construction of all buildings;
 2. Monitored automatic fire extinguishing systems approved by the Fire Chief shall be installed in all equipment buildings and enclosures;
 3. Rapid entry (KNOX) systems shall be installed as required by the Fire Chief;
 4. Type and location of vegetation and other materials within ten feet (10') of the facility and all new structures, including telecommunication towers, shall have review for fire safety purposes by the Fire Chief. Requirements established by the Fire Chief shall be followed; and
 5. All tree trimmings and trash generated by construction of the facility shall be

removed from the property and properly disposed of prior to building permit finalization or commencement of operation, whichever comes first.

- B. Demonstration of compliance with requirements A.1. through A.5. shall be evidenced by a certificate signed by the Fire Chief on the building plans submitted.

13.25 ENVIRONMENTAL RESOURCE PROTECTION

All telecommunication facilities shall be sited so as to minimize the effect on environmental resources. To that end the following measures shall be implemented for all telecommunication facilities, except exempt facilities as defined in Section 2.2 of this Ordinance:

- A. No telecommunications facility or related improvements including but not limited to access roads and power lines shall be sited so as to create a significant threat to the health or survival of rare, threatened or endangered plant or animal species;
- B. No telecommunications facility or related improvements shall be sited such that their construction will damage an archaeological site or have an adverse effect on the historic character of a historic feature or site;
- C. No telecommunications facility shall be sited such that its presence threatens the health or safety of migratory birds;
- D. The facility shall comply with all applicable Floodplain, Floodway and Storm Drainage and Erosion Control regulations;
- E. Potential adverse visual impacts which might result from project related grading or road construction shall be minimized;
- F. Potential adverse impacts upon nearby public use areas such as parks or trails shall be minimized; and
- G. Drainage, erosion, and sediment controls shall be required as necessary to abide soil erosion and sedimentation of waterways Structures and roads on slopes of 10% or greater shall be avoided. Erosion control measures shall be incorporated for any proposed facility which involves grading or construction near a waterway or on lands with slopes over 10%. Natural vegetation and topography shall be retained to the extent feasible.

13.26 NOISE AND TRAFFIC

All telecommunication facilities shall be constructed and operated in such a manner as to minimize the amount of disruption caused to the residents of nearby homes and the users of nearby recreational areas such as public parks and trails. To that end all the following measures shall be implemented for all telecommunication facilities, except exempt facilities as defined in Section 2.2 of this Ordinance:

- A. Outdoor noise producing construction activities shall only take place on weekdays (Monday through Friday, non-holiday) between the hours of 7:30 a.m. and 5:30 p.m. unless allowed at other times by the Plan Commission;
- B. Backup generators shall only be operated during power outages and for testing and maintenance purposes. If the facility is located within one hundred feet (100') of a residential dwelling unit, noise attenuation measures shall be included to reduce noise levels to an

exterior noise level of at least a Ldn of 60 dB at the property line and an interior noise level of a Ldn of 45 dB. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.; and

- C. Traffic, at all times, shall be kept to an absolute minimum, but in no case more than two round trips per day on an average annualized basis once construction is complete.

13.27 VISUAL COMPATIBILITY

- A. Facility structures and equipment shall be located, designed and screened to blend with the existing natural or built surroundings so as to reduce visual impacts to the extent feasible considering the technological requirements of the proposed telecommunication service and the need to be compatible with neighboring residences and the character of the community.
- B. The facility is designed to blend with the any existing supporting structure and does not substantially alter the character of the structure or local area.
- C. Following assembly and installation of the facility, all waste and debris shall be removed and disposed of in a lawful manner; and
- D. A visual analysis, which may include photo montage, field mockup, or other techniques shall be prepared by or on behalf of the applicant which identifies the potential visual impacts, at design capacity, of the proposed facility to the satisfaction of the Zoning Administrator. Consideration shall be given to views from public areas as well as from private residences. The analysis shall assess the cumulative impacts of the proposed facility and other existing and foreseeable telecommunication facilities in the area and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed telecommunication service. All costs for the visual analysis, and applicable administrative costs, shall be borne by the applicant.

13.28 NIER EXPOSURE

- A. No telecommunication facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health. To that end no telecommunication facility or combination of facilities shall produce at any time power densities in any inhabited area as this term is defined in Section 2.2 of this Ordinance that exceed the ANSI (American National Standards Institute) C95.1-1992 standard for human exposure or any more restrictive standard subsequently adopted or promulgated by the City, County, the State of Indiana, or the federal government.
- B. Initial compliance with this requirement shall be demonstrated for any facility within four hundred feet (400') of residential uses or sensitive receptors such as schools, churches, hospitals, etc. and all broadcast radio and television facilities, regardless of adjacent land uses, through submission, at the time of application for the necessary permit or entitlement, of NIER (Nonionizing Electromagnetic Radiation calculations) specifying NIER levels in the inhabited area where the levels produced are projected to be highest. If these calculated NIER levels exceed 80% of the NIER standard established by this Section, the applicant shall hire a qualified electrical engineer licensed by the State of Indiana to measure NIER levels at said location after the facility is in operation. A report of these measurements and his/her findings with respect to compliance with the established NIER standard shall be submitted to the Zoning Administrator. Said facility shall not commence normal operations until it complies with, or has been modified, to comply with this standard. Proof of said compliance shall be a certification provided by the engineer who prepared the original report. In order to

assure the objectivity of the analysis, the City may require, at the applicant's expense, independent verification of the results of the analysis.

- C. Every telecommunication facility within four hundred feet (400') of an inhabited area and all broadcast radio and television facilities shall demonstrate continued compliance with the NIER standard established by this Section. Every five (5) years a report listing each transmitter and antenna present at the facility and the effective radiated power radiated shall be submitted to the Zoning Administrator. If either the equipment or effective radiated power has changed, calculations specifying NIER levels in the inhabited areas where said levels are projected to be highest shall be prepared. NIER calculations shall also be prepared every time the adopted NIER standard changes. If calculated levels in either of these cases exceed 80% of the standard established by this Section, the operator of the facility shall hire a qualified electrical engineer licensed by the State of Indiana to measure the actual NIER levels produced. A report of these calculations, required measurements, if any, and the author's/engineer's findings with respect to compliance with the current NIER standard shall be submitted to the Zoning Administrator within five (5) years of facility approval and every five (5) years thereafter. In the case of a change in the standard, the required report shall be submitted within ninety (90) days of the date said change becomes effective.
- D. Failure to supply the required reports or to remain in continued compliance with the NIER standard established by this Section shall be grounds for revocation of the use permit or other entitlement.

13.29 TELECOMMUNICATIONS FACILITIES - EXCEPTIONS

- A. Exceptions to the requirements specified within this Chapter may be granted through issuance of a conditional use permit by the Plan Commission. Such a permit may only be approved if the Plan Commission finds, after receipt of sufficient evidence, that failure to adhere to the standard under consideration in the specific instance will not increase the visibility of the facility or decrease public safety.
- B. An exception to the requirements of Sections 13.17 and 13.24 may only be granted upon written concurrence by the Fire Chief.
- C. Tower setback requirements may be waived under any of the following circumstances:
 - 1. The facility is proposed to be co-located onto an existing, legally established telecommunication tower; and
 - 2. Overall, the reduced setback enables further mitigation of adverse visual and other environmental impacts than would otherwise be possible.

13.30 PUBLIC NOTICE

In addition to the public notice required within this Chapter, the following special noticing shall be provided:

- A. Notice of consideration or a public hearing, as appropriate, on a minor or major use permit authorizing the establishment or modification of a telecommunication facility shall be provided to the operators of all telecommunication facilities, registered with the City of Nappanee pursuant to Section 13.4, within one mile of the subject parcel via mailing of the standard legal notice prepared, and

- B. Notice of the approval of a minor use permit by the Zoning Administrator authorizing the establishment or modification of, or the renewal of a permit for, a telecommunication facility or minor antenna needing site plan review, shall be mailed to all adjacent property owners within three hundred feet (300'). Mailing of said notice shall start a fourteen (14) calendar day appeal period.

13.31 APPEAL

Any person who disagrees with a ruling or interpretation of the Zoning Administrator regarding this Chapter may appeal the matter to the Plan Commission. Such appeal shall be made in writing and filed with the City Clerk within fourteen (14) calendar days of the ruling or interpretation. The City Clerk will then transmit the appeal to the Zoning Administrator, who will cause the matter to be placed on the agenda of the Plan Commission. If no appeal is made within that time, the ruling or interpretation shall be final. The appeal shall be addressed to the City Clerk and shall set forth in writing the grounds for the appeal and the relief sought by the appellant. The hearing shall be scheduled within two regularly scheduled meetings. The Zoning Administrator shall notify in writing all persons who have demonstrated their interest in this matter of the time and place of the meeting on the appeal at least ten (10) calendar days prior to the meeting. The Zoning Administrator shall transmit the application and all exhibits therewith to the Plan Commission for consideration. For the purposes of this section, a ruling is a discretionary action, and an interpretation refers to the determination of the intent and application of provisions of this Chapter. Application or enforcement of provisions of this Chapter shall not be considered interpretations or rulings and are not subject to appeal. Notwithstanding this section, an individual may file for an exception from the provisions of this Chapter pursuant to Section 13.29.

13.32 SEVERABILITY

If any section, subsection, sentence, clause or phrase or word of this ordinance is for any reason held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Nappanee hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional.