**ROLE OF EACH PARTICIPANT**

**Introduction**

The purpose of zoning regulations is to promote orderly growth and redevelopment in the City of Carbondale. The degree to which these regulations are effective is largely dependent upon the caliber of implementation. The best regulations are ineffective by themselves and perform their functions only through proper administration on a day-to-day basis.

The purpose of this Procedure Manual is to set forth guidelines for the proper administration of the Zoning Regulations. Included are descriptions of the general role of each participant, a discussion of the decision-making process, a recommended code of conduct, and a step-by-step outline of the most common development requests. Through the use of the Procedures Manual, the Zoning Regulations will be applied more equitably and consistently.

The power to enact zoning regulations has been granted to cities and counties by the state enabling legislation. These statutes require the participation of three separate bodies in the process of administering the regulations: The Planning Commission, the Board of Zoning Appeals, and the Governing Body.

**Carbondale Planning Commission**

By Kansas statutes, in order to implement land use regulations, the Planning Commission must adopt a city plan for the physical development of the municipality. Before adopting or amending the plan, the Planning Commission must hold a public hearing. After adoption, a copy is certified to the City Council, and City Clerk’s office, and a copy recorded in the office of the County Register of Deeds. The City Council must approve the plan.

**Board of Zoning Appeals**

**(See Article 14)**

The Board of Zoning Appeals is primarily a quasi-judicial body rather than an advisory or legislative one. Its role in zoning administration is specifically limited to two types of tasks:

1. The appeal of an administrative decision or interpretation; and

2. The granting of variances for cases of hardship.

In the first case, the responsibility of the Board of Zoning Appeals is to rule on the interpretation of the zoning regulations whenever there is an ambiguous provision or an alleged error. Variances are granted for unusual physical constraints, and the role of the Board of Zoning Appeals is to determine if a variance should be granted in a manner which is consistent with the intent of the zoning ordinance and fair to the applicant. The Board of Zoning Appeals is not involved in administering the subdivision regulations.

**The City Council**

The Governing Body has responsibility for enacting and amending the zoning regulations after consideration of the recommendations of the Planning Commission. This responsibility includes amending the zoning regulations or the zoning district map.

THE BASIS OF DECISION-MAKING

As with other "police powers", the exercise of zoning regulations is subject to certain legal limitations. One of the most important of these limitations requires that zoning regulations cannot be applied in an "arbitrary or capricious" manner. Decisions regarding zoning issues cannot be fixed or arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstances, or significance.

Zoning Issues: Before making any recommendation or decision on a zoning request, the Planning Commission must first hold a public hearing. The purpose of the hearing is to allow both sides to express their views on the issue and to discuss all relevant factors. Although the hearing is a valuable mechanism for gauging the community's attitudes toward development and for establishing the facts of each case, it is important that decisions not be based solely on the opinions of the largest or most vocal group of participants. Instead, zoning decisions must be based on the best interests of the entire community, and not just the interests of a particular property owner or neighboring property owners. In addition, the Planning Commission should try to distinguish between facts and opinions at a public hearing. Unsubstantiated assertions ("This project would reduce the value of my property by 75 percent") or generalizations ("People who live in apartments always drive fast cars and race up and down the streets") should be analyzed for their validity. Even "expert witnesses" should be pressed to give as factual a basis as possible for their judgments.

Second, zoning decisions should include consideration of long-range community goals as well as short-range needs. The recommendations of the Comprehensive Plan should be the primary source for this information. Because of its importance in the zoning process, the Comprehensive Plan is reviewed by the Carbondale Planning Commission on a regular basis and amended as necessary to ensure that it remains current.

Third, it is important to zone based on land use issues, not the issues affecting the individual applicant. An error frequently made is approval of a rezoning to accommodate an applicant's personal circumstances without consideration of land use conditions and characteristics. Such rezoning is rarely in the public interest and, if challenged, can be held to be invalid. Instead, decisions should be based on whether the land is appropriate for the proposed zoning district.

Appropriate factors for consideration of a rezoning application include:

1. The character of the neighborhood;

2. The zoning and uses of properties nearby;

3. The suitability of the subject property for the uses to which it has been restricted;

4. The extent to which removal of the restrictions (or change of zone) will detrimentally affect nearby property;

5. The length of time the property has remained vacant as zoned;

6. The relative gain to the public health, safety and welfare by not rezoning the property as compared to the hardship imposed on the property owner;

7. The recommendation of staff; and

8. Compliance with the Comprehensive Plan.

It should also be pointed out that the entire class of uses, which the zoning district permits, should be considered rather than just the use the applicant proposes, since a change in ownership or in market conditions could easily result in a change of the proposed use.

The granting of a special use permit requires a case-by-case approach. The zoning ordinance sets forth conditions, which must be met before a special use may be granted. The district regulations also may establish additional conditions. The recommendation to grant a special use permit should be made to the City Council only after the Planning Commission has found all the standards as set forth in the zoning regulations have been met.

The granting of a short-term special use is provided in the regulations for temporary uses such as trade shows, street fairs, and other specified public events. Applications for short-term permits under this section may be submitted to the City Council by the Zoning Administrator without referral to the Planning Commission under certain circumstances.

**Appeals and Variances**

**(See Article 14 & 18)**

The Board of Zoning Appeals has the important task of interpreting the Zoning Ordinance in situations where the language of the ordinance is alleged to be ambiguous, the specifics of the case are unusual enough to warrant special consideration, or an appeal is made. Thus, the decisions made by the Board of Zoning Appeals must be carefully thought out and clearly stated in order to safeguard the integrity and purpose of the Zoning Ordinance.

In deciding an appeal, the Board of Zoning Appeals must interpret sections of the Zoning Ordinance, as well as preserve the intent and consistency of the regulations. The specifics of the applicant's situation are largely irrelevant, since the ruling of the Board of Zoning Appeals will affect not only the case at hand, but will also set precedent, and so will affect each subsequent use of that section of the Zoning Ordinance.

The granting of a variance requires a very careful examination of the applicant's situation. Although the Board of Zoning Appeals should be careful to avoid setting any unintentional precedents, the variance process requires a case-by-case approach. Before a variance can be granted, facts must be presented supporting the standards set forth in the Carbondale zoning ordinance. These conditions require the existence of practical difficulties or unnecessary hardship, and that any variance granted be consistent with the intent of the regulations, the general welfare of the community, and the rights of adjacent property owners.

In each of the duties described above, it is important to point out that it is not the role of the Board of Zoning Appeals or Planning Commission to change or weaken the intent of the zoning ordinance. If the ordinance needs changing, an amendment should be passed by the Governing Body after the Planning Commission's review and recommendation.

**CODE OF CONDUCT**

In administering the zoning regulations, it is crucial that the decisions be made fairly and that they have the appearance of fairness. The credibility of the Planning Commission, the Board of Zoning Appeals, the Governing Body, and public support for zoning regulations in general, will erode quickly if there is an appearance of unfairness or impropriety in members of these public bodies. For this reason, it is important that a code of conduct be established and followed as closely as possible.

**Conflicts of Interest**

In making zoning decisions, members of the Planning Commission, Board of Zoning Appeals, and the Governing Body should be acting in the best interest of the entire community. Whenever a member of any of these bodies is acting on an issue in which he or she also has a personal interest, an important element of fairness is lost. In general, a conflict of interest is any situation in which a member is in a position to act upon or influence a development request which includes the potential for direct or indirect gain, financial or otherwise. In order to clarify this general rule, the following guidelines are recommended.

No member shall act on or influence any development request when:

1. The member has a potential for direct or indirect profit or financial gain from the development;

2. The member owns or is employed by any company, which is an applicant, sub-divider, and developer or option holder;

3. The applicant, sub-divider, developer or option holder is an established and regular client of the member or the member's place of employment;

4. One or more of a member's immediate family (parent, sibling, spouse or child) has a direct financial interest in the development or is an owner or officer of any company which is an applicant, sub-divider, developer or option holder; or

5. The member has a potential for indirect financial gain or loss because of related property or business holdings. Other situations not covered by these guidelines should be left to the judgment of the member involved. Again, the appearance of fairness and impartiality is as important as actual fairness and impartiality.

Ideally, citizens appointed to the Planning Commission and Board of Zoning Appeals should not include those who are likely to have repeated conflicts of interests. When a conflict of interest does occur, however, the following steps should be taken:

1. The member should declare, and the record should show, that a conflict of interest exists with respect to a particular issue, and that the member will not participate in any discussion or action;

2. The member should step down from his or her regular seat and should not speak with any other members during the discussion of the issue at hand; and

3. The member should not represent or speak on behalf of the applicant, but may speak on this or her own behalf as a private citizen during the hearing.

**Acknowledgement of Outside Information**

During any public hearing, it is presumed that all sides will have the opportunity to hear the opposing side's information and arguments, and to offer rebuttal. This right is lost when discussions are held or information is provided outside the public hearing. The possibility exists that a decision could be based on information that was never discussed publicly. To avoid this situation, Planning Commission and Board of Zoning Appeals members should not receive any information relating to a case or discuss a case with anyone who has an interest in the outcome. Where such a discussion or information is unavoidable, the member should declare during the hearing, and the record should show, the general nature and content of the discussion or information and the participants in the discussion or the source of the information.

These guidelines also apply to any personal knowledge, which is relevant to the issue. If a member has any personal knowledge, which will affect his or her decision, such information should be made public during the hearing and should be subject to rebuttal.

**Informed Participation**

All parties with an interest in a particular development issue have a right to a decision based on all of the available information. Any member who is not informed or aware of the available information should abstain from voting on that issue. This includes the following situations:

1. When a member has not reviewed the application or the information submitted with the application;

2. When a member has missed all or part of a public hearing and has not been able to review a transcript of the hearing; or

3. When a member has missed all or part of the discussion between members prior to the vote. As a corollary to this policy, it is the duty of each member to attend normally scheduled meetings as regularly as possible. Without regular attendance, informed decision-making and full participation in the regulatory process is unlikely. The By-Laws of the Planning Commission, set forth in The By Laws on page 19 of the manual, establish requirements and rules for attendance.

ZONING TEXT AMENDMENT PROCEDURE

(see Article 15)

A proposal for an amendment of the text of the Zoning Ordinance is initiated by either the Planning Commission or the City Council of the City of Carbondale. A citizen may also begin the amendment process by submitting the proposed change to the Office of the City Clerk, with a request for consideration by either the commission or City Council on the next regular meeting agenda.

If the change is initiated by a private citizen and taken before the Planning Commission, the individual shall be allowed to present the proposed amendment at a regular meeting. The Planning Commission, based on the information presented, shall determine whether the proposal should be considered as an amendment. If it is determined that the proposal has merit, the Planning Commission may set a date for the public hearing and authorize the publication of the necessary public notice.

If the text amendment is initiated by either the Planning Commission or the Governing Body, a public hearing may be scheduled immediately. The City Clerk shall be responsible for having an official notice of the public hearing published in a newspaper of general circulation at least 20 days prior to the hearing, and for following the administrative procedures for a text amendment as prescribed in the adopted zoning regulations. The notice shall fix the time and place of the hearing and describe in general terms the proposed change. At the public hearing, citizens and parties of interest shall have an opportunity to be heard.

The public hearing may be adjourned from time to time, and upon its conclusion the Planning Commission shall prepare and adopt its recommendation to the Governing Body. The recommendation shall be submitted along with an accurate record of the public hearing.

The Governing Body shall consider the Planning Commission's recommendation and may either approve the recommendation; override the Planning Commission's recommendation by a 2/3 majority vote of the membership of the Governing Body; or return the proposed amendment to the Planning Commission for reconsideration, as prescribed in the adopted zoning regulations. If received for reconsideration, the Planning Commission shall consider the

Governing Body's reasons for failure to approve or disapprove and may resubmit its original recommendation or a revised recommendation. Upon receipt of the recommendation, the Governing Body may approve or disapprove the proposed zoning text amendment.

If the Governing Body approves the requested change, it shall adopt an ordinance to that effect.

**ZONING DISTRICT CHANGE**

**(See Article 15)**

A proposal for a change in district classification (rezoning) may be initiated by either the City Council, the Planning Commission, or by application of the owner of property affected.

The applicant shall first obtain the proper application form from the City Clerk.

The rezoning application form shall be completely filled out and returned to the Zoning Administrator with the appropriate filing fee and required information. An application shall not be scheduled for public hearing until the application form has been fully completed, the fee paid, and all required information submitted.

The Planning Commission shall hold a public hearing at which time citizens and parties of interest shall have an opportunity to be heard. The City Clerk shall be responsible for having an official notice of the public hearing published in a newspaper of general circulation at least 20 days prior to the hearing. The Planning Commission shall be responsible for following the administrative procedures for a zoning district amendment as prescribed in the adopted zoning regulations. The notice shall fix the time and place of the hearing and shall describe generally the change requested. A written notice shall also be mailed to notify surrounding property owners of the public hearing and of their right to file protest petitions and shall explain the protest procedure.

The public hearing may be adjourned from time to time and, upon its conclusion, the Planning Commission shall prepare and adopt its recommendation to the Governing Body. This recommendation shall be submitted along with an accurate record of the public hearing. Protest petitions must be signed by all owners, including a spouse in jointly owned property, and submitted within the fourteen-day period in order to be valid.

The Governing Body shall consider the Planning Commission’s recommendation and may either approve the recommendation; override the Planning Commission’s recommendation by a 2/3 majority vote of the membership of the Governing Body; or return the proposed amendment to the Planning Commission for reconsideration. If received for reconsideration, the Planning Commission shall consider the Governing Body’s reasons for disapproval and may resubmit its original recommendation or a revised recommendation. Upon receipt of the recommendation, the Governing Body may approve or disapprove the proposed zoning district

amendment.

If the Governing Body approves the requested change, it shall adopt an ordinance to that effect. If the official zoning map has been adopted by reference, the amending ordinance shall define the change of boundary and shall order the official zoning map to be similarly amended.