

City of Carbondale

Zoning and Land Development Regulations

Diagnostic Report

An Analysis of Title 15 of the Carbondale Revised Code and Recommendations for the Ordinance Update

Prepared by

Duncan Associates

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duncan | associates

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Introduction

In October 2010, the City of Carbondale issued a Request for Qualifications from professional firms to assist the City with Zoning Ordinance updates. After a review of qualifications of several firms and interviews with a selected group, the City selected Duncan Associates to undertake the task. The City and the firm entered into a contract for services in March 2011 and held an initial series of meetings with City officials and stakeholders late that month.

The Request for Qualifications outlined the following priorities for the work:

- Restructure and consolidate the zoning districts into a more concise set of districts.
- Review the permitted and special uses in each district and reconfigure the matrix to coordinate the permitted uses, with the intended outcome of development.
- Permitted uses shall be revised to help protect areas from incompatible development.
- The existing zoning districts will be revised to reflect current and future development outcomes.
- The development standards for each district shall be evaluated and revised as necessary.
- Consider the potential for overlay districts as recommended by the Comprehensive Plan.
- Develop specific site design standards based on the location of development and the desired character of the development.
- Review and update the Site Plan regulations to achieve a more consistent product.
- Review and revise the bufferyard requirements.
- Review the City's Land Use Intensity system and replace with a modern approach to regulating density.
- Update standards relating to accessory structures.
- Review all definitions and revise accordingly.
- Ensure consistency throughout the zoning ordinance between different sections of the code.
- Eliminate contradictions and redundancy.

The Request for Qualifications also listed these tasks as work to be conducted in a Phase II of the project if the City decides to proceed with such additional work:

- Update the City's subdivision regulations and development standards.
- Incorporate regulations relative to wind turbines into the zoning ordinance.

In addition, during the interview process, City staff indicated that they believed that the budget was inadequate to accomplish everything that they believed needed to be accomplished. They therefore asked if it was possible to proceed with a cooperative effort in which staff would draft a number of technical updates and specific revisions already identified and then have us as consultants review that work and incorporate it into the revised Zoning Ordinance. We agreed to that suggestion.

Our initial stage of work on any ordinance update is to prepare a Diagnostic Report, analyzing the strengths and weaknesses of the existing ordinance and making initial recommendations for revisions. This document contains that diagnosis. For this project, however, we took a slightly different approach.

Many of the problems that we often find with older and much-amended zoning ordinances is that the organization of the document itself no longer makes sense. We also find that the routine codification process for municipal ordinances does not work well for zoning ordinances in particular. To provide a working document that both the consulting team and the staff can use in this cooperative effort, we have created a reformatted document, submitted separately to the City. That document contains no substantive changes from the current ordinance. It simply reorganizes the existing material and provides a user-friendly format for working with it. The first section of this report highlights the organizational improvements and suggests the further steps that are appropriate to make the document more workable; because those steps will involve language changes – and, in some cases, substantive changes – they have not been incorporated in this initial reformat.

The other sections of this report provide recommendations for updating both the Zoning and Subdivision Ordinances. Not all of the recommended changes are within the budgeted scope of services for this project. As to the recommendations that are not within the current budget, we anticipate that cooperative work by staff and a reasonable Phase II budget will allow the City to address all of them.

The Diagnostic Report serves two major purposes. It provides a vehicle for public discussion of our recommendations before we do significant drafting. There are three reasons for that. First, if we simply incorporate our recommendations into a revised ordinance, City officials would have to wade through the document to figure out: 1) what has changed; 2) whether it is important; and 3) why it has been changed. Using “redlining” tools in modern word processing programs, we can make it obvious WHAT has changed, but that does not answer the other two questions. Second, if we draft revisions without feedback from City officials, we may make changes that the City later asks us to undo. Thus, through discussion of this report with City officials, staff and stakeholders, we expect to develop a more detailed scope of work for exactly what we will do with the ordinance revisions. On other projects, we have found that local governments accept 80 to 90 percent of our recommendations. However, the comments on the diagnostic report sometimes add items that we had missed, delete recommendations that conflict with other local priorities and politics, and suggest modifications of our recommendations that make them fit better with the local context. For Carbondale, there is a third important reason for having the Diagnostic Report early in the process. Both consultants and staff can follow the Diagnostic Report as a work program for their cooperative efforts on this project.

We anticipate that City staff will distribute this report to public officials and stakeholders for their review. After they have had a reasonable period of time to review the recommendations, a firm representative will come to Carbondale to discuss the report with these groups and receive feedback on it. With that feedback, we can then begin incorporating the recommendations into the reformatted ordinance.

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Broad and General Issues

Practical and Fair Approach

From the Plan: Narrative

Directly associated with the implementation of this Plan is the enactment of appropriate incentives, standards, and regulations to ensure compliance with the City’s policies and overall community vision. While regulations impose certain restrictions on the use of land, in the interest of all persons and the community as a whole, they are an essential component for realizing many of the values and priorities expressed by individuals and groups during this planning process.

Regulations that are enacted must be reasonable, fair, and equally applied – and effective in achieving a specific public purpose. There must also be diligence in their enforcement so as to “maintain a level playing field” and protect the interests of all persons and not just those who are nearby or adjacent to the use.

There are a variety of methods available to enact control and, thus, manage development in a responsible manner. The approach taken is fully in the hands of the community and its leadership. While there are traditional means that are common among other communities, there are also creative variations that can be customized to address the specific issues and desired outcomes of Carbondale.

The content of this chapter establishes a firm foundation and policy framework to support whichever implementation strategy the community chooses to pursue.¹

From the Plan: Strategies and Action Steps

Conduct a thorough review of City intake procedures for development projects, business permits, and fee structures with a view toward adopting more expedited and “business friendly” permitting processes.²

Rewrite the land development regulations to allow more flexibility and increased certainty of approval.

Refine the development checklist that will serve as an easy-to-follow guide for developers and others that are looking at making investments in the community.³

¹ Carbondale Comprehensive Plan 2010, Chapter 2, Section 2.6, “Implementation: Prudent Use of Development Regulations.”

² Carbondale Comprehensive Plan 2010, Chapter 5, Focus Area 5.5, “Expand and customize the use of economic development tools and improve the business friendliness of the city,” Strategy 2.

³ Carbondale Comprehensive Plan 2010, Chapter 5, Focus Area 5.5, “Expand and customize the use of economic development tools and improve the business friendliness of the city,” Strategy 2, Actions and Initiatives b and c.

Analysis and Additional Comments

Our firm president, James Duncan, often says that the primary request of most developers is that land development regulations provide them with “SPACE:”

- Simplicity
- Predictability
- Accountability
- Consistency
- Equity.

One of our goals in improving and updating the zoning and related regulations for Carbondale will be to improve the SPACE in them.

Document Improvements

A new Zoning Ordinance should be written in plain, but defensible English and should have a logical flow. The following suggestions offer ways to make the Zoning Ordinance easier to understand and navigate.

“How to Use this Code” Section

A “How to Use this Code” section would increase the ease-of-use of the document. This set of instructions would be located just inside the front cover of the Zoning Ordinance and would provide basic information to users on the organization of the regulations. This one-page preface would set forth responses to a series of scenarios, such as:

- If you want to know what zoning rules apply to your property
- If you want to build a structure or establish a particular use
- If you want to change your zoning (rezone)
- If you want to vary from the standards that apply
- If your property is located in an overlay district
- If you want to subdivide your property

This section covers a substantial portion of the users of the Zoning Ordinance, giving them step-by-step instructions on sections of the Code to which they need to refer.

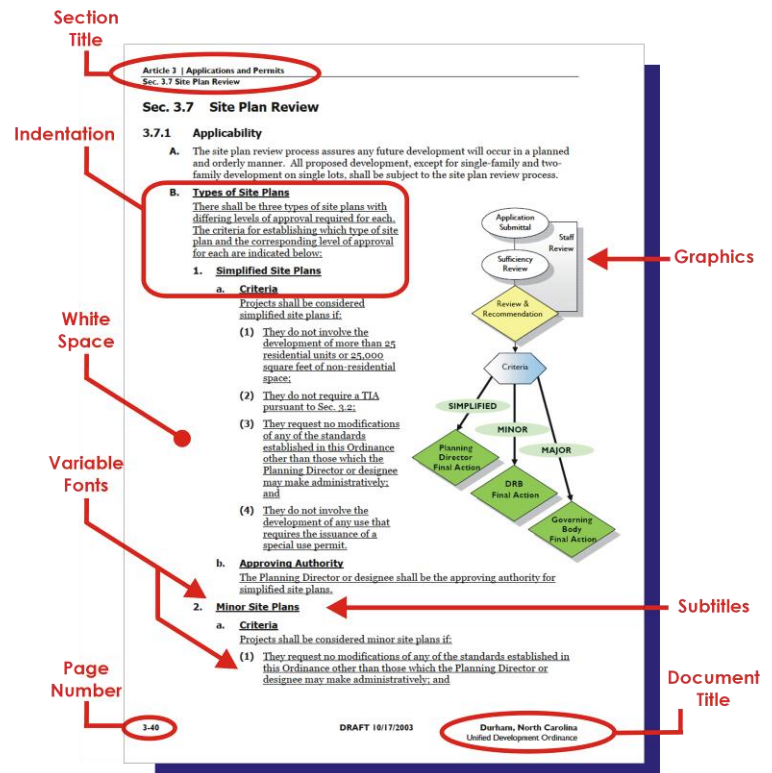
“Plain English” Regulations

To improve the ease of use of the Zoning Ordinance, it should be made less a collection of rules and more of a reference tool for all potential users: developers, staff and decision-makers. Using plain

English drafting techniques rather than “legalese” makes the document readable, but still allows it to contain the requirements necessary to make the new regulations enforceable.

Sample Page Layout

Modern word-processing software allows communities to publish “in-house” documents that look as professional as those once laboriously typeset at the printer. Simple techniques, such as the use of larger, distinctive typefaces for titles and subtitles, indented text to indicate the hierarchical level of each paragraph, generous use of white space, graphics and tables all help to improve the visual presentation of an ordinance, and ideally its ease-of-use. Running heads across the tops of pages tell a user browsing or flipping through the code exactly what section appears on that page, even if the section began on an earlier page. Many of these features can be found in the sample page graphic to the right – and in the reformatted ordinance already delivered to the City.



Typical page layout features

Table of Contents

All ordinances and regulatory documents should contain a clear table of contents with hotlinks to major sections of the Code. The reformatted zoning ordinance now has – and the final product will have – a master table of contents and sub-tables at the beginning of each separate Article within the Ordinance. See “Code Organization” below for the top level Table of Contents.

Ordinance on CD and Internet

When the new Zoning Ordinance is complete, the City should ensure that it can be distributed on CD-ROM and continue to be posted on the Internet. The final file of the new regulations will be delivered to the City and will consist of an MS-Word document, an Adobe Acrobat (PDF) file of the entire new Zoning Ordinance. The PDFs may be posted on the City’s website and are readable by most computer operating systems; the hotlinks from the original document will carry over into the PDF documents made available on the web.

Code Organization

We have submitted a reorganized and reformatted Zoning Ordinance to the City. It organizes the current provisions of the Zoning Ordinance into an outline with nine major headings:

Article 1: Introductory Provisions

This includes standard legal provisions for an ordinance

Article 2: District Regulations

This article includes all of the district-specific rules from the current ordinance. It also includes two use tables that present most of the permitted uses in a tabular format.

Article 3: Use Regulations

This Article includes use-specific regulations for principal uses, accessory uses, and temporary uses.

Article 4: Site Development Standards

This Article includes basic site-planning standards as well as standards for parking, outdoor lighting, drainage and signs.

Article 5: Decision-Making Bodies and Officials

This Article incorporates all current provision relating to the roles of the Planning Commission, Zoning Board of Appeals, Preservation Commission, and staff personnel and committees.

Article 6: Development Review

This Article brings together in one place all of the review procedures used to obtain development approvals.

Article 7: Nonconformities

This Article addresses all nonconforming situations.

Article 8: Enforcement and Penalties

This Article title is generally self-explanatory.

Article 9: Defined Terms

This Article brings all definitions from the ordinance together in one place. The current article has four separate sections that maintain the four separate sets of definitions currently in different parts of the ordinance. The definitions should be merged into one alphabetical list, resolving any inconsistencies and checking for consistency with definitions in the subdivision ordinance. Many definitions will be updated as specific sections of the ordinance are revised.

As we work on the district regulations, we will consolidate all of the special use and use-limiting rules from individual districts into one section and refer to those with cross-references from the last cell in the right-hand column on the row related to that use; where the conditions apply only in certain districts, we will insert the appropriate note in the cell(s) that represent the intersection between the use and the district.

Zoning Districts

A Hybrid Ordinance

Carbondale currently has a regulatory system that mixes traditional zoning tools (regulating use, lot size, yards and setbacks) with a Land Use Intensity System, first developed by staff at the Federal Housing Administration a half century ago.

Traditional zoning tools are important in maintaining a consistent character within a neighborhood. But traditional zoning does not always deal adequately with the form and character of development. The need for different tools is obvious in areas of Carbondale where developments controlled by the Land Use Intensity system abut areas subject to traditional zoning – the contrast between the two is stark and jarring. Traditional zoning also encourages development in squares and rectangles and can lead to the unintended destruction or modification of sensitive environmental features.

To accommodate many of the recommendations of the Comprehensive Plan and to address better the issues of neighborhood protection, we recommend a zoning system that blends three different types of regulation:

- Traditional zoning that regulates lot sizes, yards, setbacks and uses, with limits on density for multi-family units; and
- Form-based zoning, that establishes some basic standards for the form of buildings in more intensive and mixed-use areas; and
- Performance zoning, that focuses on the relationship of the pattern of development to the character of the land in areas with sensitive environmental characteristics.

General Recommendations

From the Plan

Refocus the zoning ordinance to emphasize the character and form of development in appropriate zoning districts.⁴

Revise the district purpose statements to define the intended character of the district, rather than general use types.

Recalibrate and consolidate, where possible, each of the existing districts. Revise the dimensional standards to produce the intended character. For instance, many of the districts have the same setbacks although the use types and densities are quite different. The dimensions should be changed accordingly.

⁴ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.5, “Enhanced Community Character,” Strategy 1.

Review and revise the lists of permitted and special uses in each district. Include development and performance standards that relate to the district character.

Adopt a housing palette that includes the dimensional standards for a variety of housing types. As a by-right planned development option, allow mixed housing types subject to district density restrictions and appropriate buffering.

Replace the land use intensity system with applicable performance standards in each district. The intent may be retained only with much simpler standards that achieve better quality outcomes.

For the purpose of procedural streamlining and to better focus the appropriate locations of uses, restrict the types and numbers of allowable special uses. For those uses with performance standards, make them a limited use whereby they are conditionally permitted subject to the standards.⁵

Analysis and Additional Comments

Carbondale's existing Zoning Ordinance is unbelievably complex. It has nine basic residential districts. That does not tell the entire story, however. The R-1 district actually has five separate subdistricts, which vary by minimum lot size yard requirements and minimum floor area standards per dwelling. The R-1-D district has five separate subdistricts, and those vary not only by minimum lot size and yard requirements but also by unit types, with additional variations based on whether public sewer is available. Thus, for use purposes, the City has nine separate residential districts, but for design and dimensional purposes it has 17. The City does not need that many districts. On the other hand, eliminating any district that has been applied to a particular development can lead to unintended nonconforming situations. Fortunately, some of the city's districts have been mapped little if at all. Those districts can be eliminated: based on staff analysis of the zoning map, it appears that the R-2-4, R-2-8 and MHS districts can be eliminated. The R-1-D can be eliminated by simply adding duplexes as a special use in the R-1 district; areas now mapped R-1-D can be rezoned to R-1, granting an automatic special use permit to any lawfully existing duplexes in the current R-1-D areas. Further simplification may be possible; many of the use differences among districts appear to be accidental and easily reconciled – for example, some residential districts allow utility substations, others allow them with specified setbacks or screening and others do not allow them at all.

The commercial and industrial zoning districts are almost equally complex, with eleven separate districts. Although it might be desirable to reduce the number of districts, each appears to have been created to serve specific needs. The Professional Office/Residential district looks more like a residential district than a business one; it may be possible to merge that into a residential district, granting an automatic special use permit for the existing professional office uses.

⁵ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.5, "Enhanced Community Character," Strategy 1, Actions and Initiatives, excerpts.

The City's current configuration of business districts does not completely make sense. The Secondary Business district allows almost as many uses as the Primary Business district, while the Neighborhood Business district allows very few commercial uses. One complaint we heard from developers is that it is difficult to get zoning approved for new retail and service uses because neighbors oppose rezoning to the SB district. After reviewing the list of uses allowed in the SB district, we certainly understand why there would be neighborhood opposition. It allows relatively high-impact uses such as automobile repair, sale of building supplies and materials, some types of warehousing, and crematoria. By removing a number of relatively high-impact uses from the SB, it could become a community-type commercial district that is more intensive than a neighborhood districts but far more limited than a highway-oriented commercial district or light industrial district. Those uses can more appropriately be included in the BWA district, as many of them already are. If any of the uses eliminated from the SB district are currently in the SB district, the City would need to choose whether to leave those uses as lawful nonconforming uses, grant special use permits to allow them somewhat more flexibility or rezone those limited areas to BWA.

As a tool to accomplish these recommendations, we have prepared two tables that include all of the zoning districts in Carbondale and the permitted uses. We will use these tables as separate diagnostic tools through which we will share further alternative configurations of the districts. At this point it is not entirely clear whether we will be able to reduce the number of districts significantly. A separate goal of the plan – and a strong recommendation from us as consultants – is that the City minimize the number of unintended nonconformities. To the extent that development has taken place in reliance on the provisions of existing zoning districts, it may be necessary to maintain some form of each such district in the code to avoid future nonconformities.

Protection of Environmental Features and Character

From the Plan

The Comprehensive Plan approaches this issue from two different perspectives – first, encouraging development in areas most suitable for development to reduce pressure on sensitive sites; second, using a combination of zoning and development controls to require that development on sensitive sites is, in landscape architect Ian McHarg's words, "design[ed] with nature."

Strategies and Action Steps

Direct future growth to occur in areas that are most suitable for development.⁶

Pre-zone the preferred future growth areas to be consistent with the future land use plan. Such zoning should allow flexibility as to the development type, provided the development character is compatible with the surrounding area.⁷

⁶ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.1, Managing Future Growth.

⁷ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.1, Managing Future Growth, Strategy 1, Strategy 3a.

Protect and preserve environmental resources.⁸

Modify the structure of the current zoning districts to allow increased flexibility through more development options that are each permitted by right. This approach would allow development in harmony with the environmental features of a site

Consolidate and restructure the residential districts by recalibrating the lot sizes, percentages of minimum open space, and relative densities. Within each district, density bonuses should be offered commensurate with increased provision for common open space. For instance, R-1-15, R-1-12, R-1-8, R-1-8A, and R-1-5 may be consolidated into an individual low-density residential district whereby there are increased open space requirements for the smaller lots to maintain comparable densities.

* * * *

Incorporate site capacity provisions into the development regulations to control the amount of development that may be accommodated on environmentally constrained sites.... [by] allowing development options within each district, there would be flexibility to allow development of heavily constrained sites.⁹

Community Character

From the Plan

The City's zoning ordinance includes many of the elements necessary to achieve good development outcomes. However, there are many opportunities to repurpose and recalibrate appropriate zoning districts to achieve the intended character of development without placing as much emphasis on land use. While use should remain a secondary consideration, the form and design of development may be more important if the City is to achieve enhanced character.¹⁰

Strategies and Action Steps

Refocus the zoning ordinance to emphasize the character and form of development in appropriate zoning districts.¹¹

Revise the district purpose statements to define the intended character of the district, rather than general use types.

⁸ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.2, Quality and Sustainable Development, Strategy 2.

⁹ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.2, Quality and Sustainable Development, Strategy 2, Actions and Initiatives (excerpts).

¹⁰ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.5, Enhanced Community Character.

¹¹ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.5, Enhanced Community Character, Strategy 1.

Recalibrate and consolidate, where possible, each of the existing districts. Revise the dimensional standards to produce the intended character. For instance, many of the districts have the same setbacks although the use types and densities are quite different. The dimensions should be changed accordingly.

Review and revise the lists of permitted and special uses in each district. Include development and performance standards that relate to the district character.

Adopt a housing palette that includes the dimensional standards for a variety of housing types. As a by-right planned development option, allow mixed housing types subject to district density restrictions and appropriate buffering.

Replace the land use intensity system with applicable performance standards in each district. The intent may be retained only with much simpler standards that achieve better quality outcomes.

For the purpose of procedural streamlining and to better focus the appropriate locations of uses, restrict the types and numbers of allowable special uses. For those uses with performance standards, make them a limited use whereby they are conditionally permitted subject to the standards.

Amend the current bufferyard requirements to tie them to the character of development, with variations as to their width, opacity, and means of buffering based on the density (residential) or intensity (nonresidential) of development. In this way, the buffers are commensurate with the impacts between abutting developments.¹²

Comment and Additional Recommendations

Under Focus Area 2.4, the Comprehensive Plan includes recommendations to initiate a planning process for “each of the potential historic and neighborhood preservation districts,” leading to possible later amendments to the Zoning Ordinance.

It is important to note the differences between historic and neighborhood preservation districts. Property owners sometimes view the creation of a historic preservation district as a burden on them; such districts sometimes (although not always and not necessarily) complicate the process of remodeling and updating older properties. In contrast, neighborhood preservation districts are designed to



¹² Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.5, Enhanced Community Character, Strategy 1, Actions and Initiatives.

preserve the established character of the neighborhood, typically regulating use and development patterns but having limited if any effects on maintenance and updating of individual properties. As the City implements this recommendation from the plan, it will be important to help people to understand these significant differences.

Truly historic districts should be designated only through an appropriate process of analysis, documentation and planning. It is often a mistake, however, to designate a neighborhood as “historic” when the real intent is simply to preserve its character while allowing dwellings in a variety of styles and from a variety of periods within it. The Neighborhood Conservation District provides an excellent alternative to preserve the pattern and character of stable neighborhoods without historic character without unduly restricting efforts to update and remodel individual buildings within them.

Housing Options

From the Plan

Improve subdivision design standards to include additional criteria addressing site design and create livable neighborhoods for young families.¹³ [although this strategy refers specifically to “subdivision” standards, two of the proposed actions under it actually relate to zoning criteria; we have included them here]

Adopt design standards for high-density residential development, which may include provisions for building form and scale, articulated building walls, building orientation, architectural detailing, roof types and materials, façade enhancements, and acceptable building materials.

Encourage life-cycle housing options in new subdivisions that will offer alternatives to residents. A subdivision should not only be allowed, but should also promote inclusion of more than one housing type. A combination of housing options and lot size will result in a diversity of housing choices that will be useful in attracting younger families and keeping older residents.¹⁴

Comment and Additional Recommendations

In an effort to support affordable and workforce housing choice, we recommend allowing a wider range of housing types in certain residential districts. A housing palette (such as the one below) providing lot and bulk standards for varying dwelling unit types is an important flexibility option that allows a developer to seize the optimum market opportunity at any point in time without going through the rezoning process. Adding semi-attached, zero lot line, two-family, townhouses, upper-story residential and other reduced cost housing types to existing single-family districts ensures life-cycle housing for all. While some of these housing types are not expressly prohibited in the current ordinance they should be defined and standards put in place to ensure citizens in the community are offered a choice in housing.

¹³ Carbondale Comprehensive Plan 2010, Chapter 4, Focus Area 4.4, “Designing Neighborhoods as Special Places,” Strategy 1.

¹⁴ Carbondale Comprehensive Plan 2010, Chapter 4, Focus Area 4.4, “Designing Neighborhoods as Special Places,” Strategy 1 Actions and Initiatives .

In suburban areas, perimeter buffers and increased open space standards can be used to alleviate concerns of adjacent property owners where housing types change.

One of the major complaints that we heard in an early visit to Carbondale was about dwelling units in low-density areas that turn their backs or sides toward the street. Some appear to be modular units that would not fit easily on a 50-foot or 60-foot lot; others appear to have been somewhat thoughtlessly imposed on particular sites. Adding a requirement to these districts that the “front door” of each unit face a public street would significantly change the relationship between new units and the neighborhoods in which they are located.

Lot Options

From the Plan

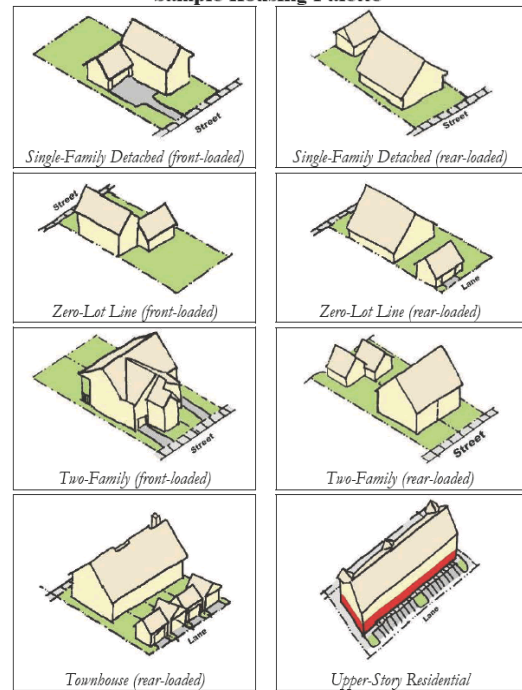
Utilize the land development regulations to encourage the development of moderate and upper income level housing in the community.¹⁵

Establish an average, rather than minimum, lot size whereby lot sizes are required to vary in width, with a certain percentage being narrower and the remaining being wider than the average. For example, the average lot size may allow a variability of 25 percent. This allows design flexibility for up to a quarter of the lots to be 25 percent smaller than the average while being balanced by 25 percent of the lots that are larger. This approach allows a variety of housing styles and also works well with constrained sites.

Allow flexible site design options that permit alternative treatment of utilities and infrastructure. There can be cost savings to development from flexible site design and cluster development techniques, which translate into reduced lot and house prices (e.g., reduced linear feet of street, pipe, sidewalk; fewer street lights, fire hydrants; reduced stormwater management needs; etc.).

* * * *

Sample Housing Palette



Use of a housing palette, along with careful thought about permitted housing types in each district, will allow future development of communities serving all lifestyles segments.

¹⁵ Carbondale Comprehensive Plan 2010, Chapter 4, Focus Area 4.3, “Ensuring affordable and sufficient housing options in the future”, Strategy 2.

Consider accessory dwelling units in the City’s zoning code. This would require specific provisions governing their use and compatibility and a strict policy of enforcement. They are common in some communities when used to accommodate elderly parents, relatives, and young adult family members wanting to live independently.¹⁶

Comments and Additional Recommendations

Lot averaging permits modest flexibility in lot sizes without requiring the more complex standards typically associated with clustering. Lot averaging is an effective technique where flexibility in lot size may help preserve site resources.

Lot averaging permits one or more lots in the subdivision to be undersized, provided that the average lot size for all lots in the development is no less than the minimum lot size for the zoning district. Lot averaging is a technique that has been frequently overlooked as communities adopt more sophisticated cluster or open space development regulations. Allowing lot sizes to be averaged over an entire site offers flexibility to adjust lot sizes and still meet resource protection goals.

We like and support many of the proposed Action steps under this strategy, although we again express reservations about the effectiveness of ambiguous incentives to encourage particular development behavior. We are not certain, however, that the proposed Actions and Initiatives actually support the strategy of encouraging moderate and upper income housing. People who invested in more expensive market-rate housing generally want neighborhood stability and predictability. The best way to encourage future development of such neighborhoods is to ensure that one or two of the current low-density zoning districts can be combined with appropriate buffering techniques.

The Comprehensive Plan included recommendations for the use of density bonuses. After discussion with staff, we have deleted those recommendations from the list that we included here. Density bonuses work best in very high-value real estate markets (think Chicago’s Loop); they can be complex to administer and may have unanticipated results if not managed carefully. Carbondale can accomplish many of the housing goals of the plan without dealing with this additional layer of regulation and management.

One of the biggest apparent disincentives to major investment in a single-family home in Carbondale is the hodge-podge of development types likely to surround it. With R-3 Districts often directly abutting single-family districts, a single-family home may face an apartment parking lot or a multi-story building

Lot #	Lot Area (sq ft)
1	5,010
2	4,800
3	5,500
4	4,900
5	4,650
6	5,005
7	4,950
8	5,220
9	4,620
10	5,550
Avg	5,020

Example: Lot breakdown for a 10-lot subdivision in the MDR district (recommended minimum lot size = 5,000 square feet, minimum lot

¹⁶ Carbondale Comprehensive Plan 2010, Chapter 4, Focus Area 4.3, “Ensuring affordable and sufficient housing options in the future”, Strategy 2, Actions and Initiatives, excerpts.

across the street. To provide additional protection to the single-family districts, there should be “feathering” requirements for adjacent districts – requiring that parking lots and driveways face away from the single-family neighborhood and that buildings over 30 or 35 feet in height be set back further from the street facing the single-family neighborhood; residents of the neighborhood should then look across the street at a continuous sidewalk and landscaped yard with their site lines of the sky no more impaired than they would be by a row of single-family homes across the street.

Downtown

From the Plan: Strategies and Action Steps

Strengthen Downtown as a viable place to conduct business.¹⁷

Review and make warranted changes to the permitted use types within the BPR, Primary Business, district. Reconsider some of the currently permitted uses such as drive through services, repair services, and automotive sales and service. Integrate height and floor area incentives into the regulations for placing non-retail businesses on the second floor or above.¹⁸

Re-establish the traditional urban character of Downtown.¹⁹

Integrate into the BPR, Primary Business, district floor area bonuses for vertical mixed use buildings, shared and/or structured parking, and LEED certified buildings. Also consider allowances and incentives for first floor retail and entertainment uses with upper floor office, institutional, and residential uses.

Include attached residential dwellings as a special use within the BPR, Primary Business, district. Additionally, consider rezoning the fringes of Downtown for more intensive urban residential uses. This may include housing for mature residents as a means for increasing the Downtown population while offering convenient access to community services and University activities.



¹⁷ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.3, “Downtown Renaissance,” Strategy 1.

¹⁸ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.3, “Downtown Renaissance,” Strategy 1, Action f.

¹⁹ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.3, “Downtown Renaissance,” Strategy 3.

In the interim, before the master plan and regulating plan are prepared, amend the BPR, Primary Business, district to require a site design study to evaluate alternative siting and configurations of parking, subject to the review and recommendation of a Downtown Advisory Board.²⁰

Work to retain and expand existing storefront businesses and maximize adaptive reuse of upper floors for office and work / live lofts.²¹

Solicit developer interest in creating affordable artist (live-work) housing downtown with ground-floor gallery space.²²

Comments and Additional Recommendations

Rezoning the fringe of downtown for more intensive uses may make sense in some areas, but a major concern that we heard (and observed) relates to the sometimes jarring conflict between single-family neighborhoods and relatively intensive use. Several viable neighborhoods are close to downtown, and it may make more sense to find appropriate transitional uses to provide use-buffers (as opposed to landscaped buffers) between those neighborhoods and downtown.

Parking for downtown is a significant issue. The best downtowns typically do not have on-site parking. People park on the streets or in shared lots – often provided by the municipality. Discussion of a downtown parking district in Carbondale could help to make this a reality. Here, again, however, the proximity of relatively stable neighborhoods to downtown poses a challenge. If downtown becomes more and more successful (which seems likely), the City may find nightlife customers parking farther and farther into residential neighborhoods. Neighborhood parking permit systems can work (there are already some in Carbondale), but they are labor-intensive to enforce (see discussion of enforcement issues in general in the section beginning on page 39). There is also a conflict of land-use strategies in addressing this issue. Ideally, most activity in a downtown area should be concentrated; that strategy suggests pushing parking to the edge of downtown. From the perspective of the neighborhoods, however, putting parking on the edge of downtown puts commercial parking lots next to them – an undesirable result. This issue will require more discussion.

²⁰ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.3, “Downtown Renaissance,” Strategy 3, Actions c, d and e.

²¹ Carbondale Comprehensive Plan 2010, Chapter 5, Focus Area 5.4, “Revitalize Downtown,” Strategy 2.

²² Carbondale Comprehensive Plan 2010, Chapter 5, Focus Area 5.4, “Revitalize Downtown,” Strategy 2., Action f.

Use Standards

Consolidated Use Table

A table containing all uses as rows, and all zoning districts as columns should be created. A sample use table from another community is provided below. See the Appendix for a use table showing City's existing permitted uses. Aspects of the use table such as "use category" and "P/L/C" are explained below.

		RESIDENTIAL							NONRESIDENTIAL							Standards
Use Category	Specific Use	AG	RE	RL	RS	TF	TH	MF	CN	C1	C2	C3	OF	BP	IN	
Key: P = Permitted by Right L = Limited Use C = Conditional Use Permit Required [blank] = Not Permitted																
(Descriptions of Use Categories and Specific Uses are provided in Section 16.03 and Section 16.04)																
Residential Uses																
Household Living	Single family, detached	P	P	P	P	P	P									
	Single family, attached		L	L	L	P	P	P								5.02.010
	Two-Family					P	P	P								
	Townhouse						P	P		P	P	P				
	Multifamily dwelling							P		P	P	P				
	Upper-story residential								L	L	L	L	L			5.02.020
	Home occupation	L	L	L	L	L	L	L	L	L	L	L	L			5.03.020
Commercial Uses																
Overnight Accommodations	Overnight accommodations, except as listed below									L	L	P		L		5.02.140
	Bed and breakfast	C	C	C	C	C	L	L	P	P	P					5.02.130

Use Categories

The Zoning Ordinance should consolidate the permitted uses into use categories. Use categories should be based on similarities in uses, characteristics of the use and common accessory uses. They allow groups of similar uses to be permitted in a set of districts while certain specific uses from the category may be “singled out” and permitted in a different set of districts. Note in the use table above that in “Overnight Accommodations,” bed and breakfasts are singled out and allowed in three specific districts, while all other uses in that category are permitted elsewhere. In a sense, the existing Zoning Ordinance takes a step toward utilizing use categories by grouping some uses under “office,” “neighborhood commercial” etc.

One of the requirements of broader use categories is a mechanism to define use. When broad use categories are employed, they commonly define characteristics of use, appropriate accessory uses, examples (names) of uses and excluded uses. The following sample table demonstrates this.

Overnight Accommodations		
Characteristics: Residential units arranged for short term stays of less than 30 days for rent or lease.		
Examples	Accessory Uses	Uses not included
Hotel, motel, inn, extended-stay facility, bed and breakfast home	Ancillary indoor storage Associated office Bar or tavern (see 5.3.4.b and 5.3.4.m) Food preparation and dining facility Laundry facility Meeting facility Off-street parking Restaurant (see 5.3.4.l) Swimming pool, other recreational facility	Campground, private, hunting/fishing camp, dude ranch, recreational vehicle (RV) park (see Outdoor Recreation) Convention center (see Indoor Recreation) Patient Transient accommodations (see Medical Facilities) Short Term rental (see Household Living) Transient lodging, shelter for the homeless (see Social Service Institutions)

Infill Development

Introduction

There is a great deal of emphasis in the Comprehensive Plan on encouraging infill development. That subject relates to several other major headings in this report, but it is worthy of separate treatment here.

From the Plan

The Plan notes the importance of protecting established neighborhoods from intrusion of incompatible development:

Most of the land within the corporate limits of Carbondale is developed, so the protection of existing neighborhoods is a critical issue for residents. This is such a critical issue that it occupied a majority of time for voicing resident opinions at the Community Symposium. Many of the housing and neighborhood issues fall into this category of addressing the already built-out areas of the city. A second major opportunity is addressing new development, the so-called “greenfield” development on the City’s edges (and just outside its edges). Zoning for new development needs to encourage quality new development and protect neighbors from incompatible land uses.²³



Strategies and Action Steps

Provide additional attention and resources to promote infill development and redevelopment and to invest in the established neighborhoods.²⁴

Determine the appropriate zoning of the infill development tracts and initiate rezoning as appropriate. Care must be taken to ensure that the neighborhood character is preserved and compatibility with existing uses is observed.

Incorporate bonuses into the zoning provisions whereby increased height and/or floor area may be achieved for meeting certain prescribed development standards. This may help to make infill development more feasible.

²³ City of Carbondale Comprehensive Plan, 2010, §2.2.

²⁴ City of Carbondale Comprehensive Plan, 2010, Focus Area 2.1, Managing Future Growth, Strategy 1.

In accordance with Chapter 4, Housing and Neighborhoods, define areas that warrant redevelopment and designate them as a redevelopment district. Subsequently, prepare a redevelopment plan to determine the type and general form of development, which may serve as a basis for design and implementation

Identify on the future land use plan the future character of the redevelopment areas. Subsequently, establish the zoning provisions necessary to achieve the intended development outcomes.

Review and amend the City's development ordinance to identify and resolve regulatory impediments to infill development and redevelopment. Incorporate standards that are unique and applicable to these sites versus greenfield development sites.

Solicit interest among the landowners to partner in establishing individual redevelopment authorities for the purpose of developing a transition plan and the means of financing and implementation.

Adopt interim zoning regulations for the redevelopment areas to ensure that development conforms to the future intent of the area.²⁵

Promote opportunities for neighborhood improvements and housing stock rehabilitation.²⁶

Encourage redevelopment in target areas through programs that rewards infill redevelopment in Carbondale neighborhoods. Such a program could target lots that have recently demolished structures so that those lots are put back onto the market and tax rolls.

Pursue alternative code enforcement methods in an endeavor to be more proactive and ensure positive outcomes. Consider use of an advocacy program to aid in code compliance rather than citing noncompliant property owners. A key element may be the cross-training of enforcement advocacy officers in conflict management/resolution.

Continue the Mandatory Rental Inspection Program, which enforces property maintenance standards. Code enforcement was widely discussed as a top issue during the Community Symposium. This program is important not only for the safety of occupants, but it also serves to maintain property values and helps to stabilize older neighborhoods. As such, the Building & Neighborhood Services Division schedules required inspections and follows up to ensure that all noted code violations and deficiencies found are properly corrected in a timely manner.

²⁵ City of Carbondale Comprehensive Plan, 2010, Focus Area 2.1, Managing Future Growth, Strategy 1, Actions and Initiatives.

²⁶ City of Carbondale Comprehensive Plan, 2010, Focus Area 4.1 – Rehabilitating Existing Housing Stock, Strategy 1.

Strictly enforce the repeat offenders of the Mandatory Rental Inspection Program so that chronic problem properties are addressed. Annual inspections, rather than every three years, may be required for properties that continue to blight the neighborhood.²⁷

Comments and Additional Recommendations

We concur with most of the recommendations from the Plan. Our most serious reservation is that we have seen limited success with incentive bonuses in communities like Carbondale. Incentives can work in big cities like Chicago where land costs are high, creating a demand for additional density, and where residents expect high-rise and mid-rise buildings. In our tours of the City and in interviews with stakeholders, it was clear that increased density in some areas has created conflicts with established, lower-density neighborhoods. Outside of downtown and other areas clearly designated for high density, we do not believe that density or height bonuses are appropriate or that they will work.

Implementation of overlay districts to eliminate nonconformities related to pre-zoning lots would facilitate infill development (see discussion in next paragraph). Implementation of the concept of neighborhood preservation districts (already allowed under the Zoning Ordinance; see recommendations in material on page 11) would help to protect the character of stable neighborhoods in which future infill occurs.

As another tool to protect established neighborhoods, builders on infill lots should be required to bring the lots up to current site design standards for driveways, sidewalks, grading and fences (see Development Quality at page 29).

We would add one recommendation, which staff has noted in a different context in its mark-up of the current zoning ordinance. To the maximum extent practicable, we should use this update process to **eliminate unintended nonconformities**. There are certainly nonconforming uses that everyone hopes will eventually go away. On the other hand, when zoning is imposed on an established community – as it was in Carbondale – there are often many unintended nonconformities. Probably the most common unintended nonconformities are setbacks, where the ordinance imposes suburban-style setbacks (25 or 30 or 35-foot front yard or setback, 10-foot side yard or setback) on a more urban development pattern (often featuring 15-foot front yards and 5- or 7-foot side yards). Sometimes the zoning district imposed simply does not fit the general pattern of lot sizes in an area. To the extent practicable, we want to work with staff to identify established neighborhoods where the general pattern of development is consistent with the City's goals and neighbors' expressed desires and reverse engineer the zoning districts to make 80 percent or more of the developed lots in the district conforming. Staff has recommended – and we concur with that recommendation – the creation of overlay districts for the subdivisions approved before 1974; those overlay districts should include setbacks that fit the actual development patterns, thus eliminating a number of nonconformities.

²⁷ City of Carbondale Comprehensive Plan, 2010, Focus Area 4.1 – Rehabilitating Existing Housing Stock, Strategy 1, Actions and Initiatives.

Unincorporated Areas

Overview

Under Illinois law, Carbondale has extraterritorial control of development within 1.5 miles of the City limits. Much of that area remains in agricultural use or other rural uses, and only part of it has urban services. There is, however, growth pressure in this outlying area.

From the Plan

Narrative

While much of the extraterritorial area is zoned AG, there has been an increase in the amount of request for low-density residential zoning, particularly in the less constrained areas to the southwest.

These outlying subdivisions are not contiguous to the City limits and other existing development, nor are they within the City's water and wastewater service areas.

In coordination with the Jackson County Health Department, the City allows subdivision development in the extraterritorial jurisdiction to include up to four, one-acre lots with any additional lots being a minimum of two and one-half acres each. However, developments may have lots below one acre in size when they provide their own community wastewater system. The City should re-evaluate this policy to curb sporadic development in areas outside of the preferred growth areas.²⁸

Strategies and Action Steps

Preserve the rural character of the City's periphery.²⁹

Amend the provisions of the AG, General Agriculture, district to narrow the list of permitted and special uses....

Coordinate with the Jackson City Health Department to re-evaluate the subdivision regulations in the extraterritorial jurisdiction.

Undertake a zoning study to establish an appropriate designation for the areas currently unzoned (see Map 2.4, Current Zoning).

Consider provisions that encourage development clustering by way of density bonuses for reduced lot sizes together with an increased percentage of common open space.

²⁸ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.1, Managing Future Growth.

²⁹ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.1, Managing Future Growth, Strategy 7.

Establish ordinance provisions requiring conservation easements for required open space within certain zoning districts.

Encourage agriculture or development of airport-related uses in the area surrounding the airport.

Discourage residential development that would interfere with the airport expansion and flight paths. While the noise contours for the existing airport operations are entirely located on airport property, there remain important considerations regarding building heights and uses in the surrounding area.³⁰

Pre-zone the preferred future growth areas to be consistent with the future land use plan. Such zoning should allow flexibility as to the development type, provided the development character is compatible with the surrounding area.³¹

³⁰ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.1, Managing Future Growth, Strategy 7, Actions and Initiatives, excerpts.

³¹ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.1, Managing Future Growth, Strategy 3, "Direct future growth to occur in areas that are most suitable for development," Action Step a.

Site Plan and Development Standards and Review

Environmental Issues

From the Plan: Strategies and Action Steps

Pursue more sustainable development outcomes through bonuses and incentives.³²

Amend the development ordinances to integrate sustainability standards into the design and planning of both commercial and residential sites. This may include incentives for infill development, better defined regulations that allow for the on-site production of energy (e.g. wind and solar power), and an emphasis on mixed use developments.

Incorporate sustainability concepts into the site development standards such as:

- *The use of bioswales and on-site water feature collection systems for stormwater management and water quality purposes.*
- *Use of green roofs as a method of stormwater mitigation, as well as reduction of the urban “heat island” effect.*
- *Reduced stormwater runoff through on-site retention, micro-storage such as water gardens and rain barrels, and pervious pavement.*

Incorporate low-impact development provisions into the development ordinances. This approach uses site design techniques to store, infiltrate, evaporate, and detain runoff, which address runoff volume, frequency, and water quality. Examples of site design elements in Figure 2.10, Low-Impact Development, include on-lot micro-storage, functional landscaping, open drainage swales, reduced imperviousness, minimal grades, and depression storage.³³

Improve subdivision design standards to include additional criteria addressing site design and create livable neighborhoods for young families.³⁴ [although this strategy refers specifically to “subdivision” standards, several of the proposed actions under it actually relate to site development standards; we have included those here]

Adopt design standards for high-density residential development, which may include provisions for building form and scale, articulated building walls, building orientation, architectural detailing, roof types and materials, façade enhancements, and acceptable building materials.

³² Carbondale Comprehensive Plan 2010, Chapter 2, Insert Five, “Incentivizing Green Building.”

³³ Carbondale Comprehensive Plan, Chapter 2, Focus Area 2.2, “Quality, Sustainable Development,” Strategy 4, “Protect and Preserve Environmental Resources,” Actions and Initiatives, excerpts.

³⁴ Carbondale Comprehensive Plan 2010, Chapter 4, Focus Area 4.4, “Designing Neighborhoods as Special Places,” Strategy 1.

Incorporate the principles of Crime Prevention Through Environmental Design (CPTED) into any proposed design/landscaping standards.

Amend the City's development regulations to provide more flexibility in the bufferyard requirements. Flexible standards ensure that the scale of the bufferyard is commensurate with the intensity and/or proximity of adjacent uses.³⁵

Refocus the zoning ordinance to emphasize the character and form of development in appropriate zoning districts.³⁶

Amend the current bufferyard requirements to tie them to the character of development, with variations as to their width, opacity, and means of buffering based on the density (residential) or intensity (nonresidential) of development. In this way, the buffers are commensurate with the impacts between abutting developments.³⁷

Protect and preserve environmental resources.³⁸

Amend the landscape requirements for the purpose of preserving site resources, meeting landscape and buffering requirements, and providing for site drainage.

Amend the zoning ordinance to include provisions to preserve and enhance the existing tree canopy, including tree protection and replacement standards, as well as preservation of large trees.

Consider increasing the distance of structures from designated streams from 50 feet to 100 feet, or more.³⁹

Comments and Additional Recommendations

We generally concur with the recommendations of the Comprehensive Plan, with the following comments and limitations.

Providing for solar energy and wind energy facilities are two very different undertakings. To encourage the use of solar energy, it is important to protect solar collectors from the impacts of development and other changes – including tree growth – on adjacent properties. Simply allowing solar collectors is an

³⁵ Carbondale Comprehensive Plan 2010, Chapter 4, Focus Area 4.4, "Designing Neighborhoods as Special Places," Strategy 1 Actions and Initiatives, excerpts.

³⁶ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.5, "Enhanced Community Character," Strategy 2.

³⁷ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.5, "Enhanced Community Character," Strategy 2, Action g.

³⁸ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.2, Quality and Sustainable Development, Strategy 3

³⁹ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.2, Quality and Sustainable Development, Strategy 32, Actions and Initiatives, excerpts.

easy change to make to the zoning ordinance; it is not entirely clear that such a change is necessary to provide for these devices.

Wind turbines exist at several scales. The large-scale production facilities generally go into – and belong in – rural areas with limited numbers of neighbors. Smaller-scale units for use at individual homes receive mixed reviews. There are enough reports of noise and vibration from such units to be cautious about allowing them in relatively dense urban or suburban neighborhoods. It is easy enough to draft provisions for safe setbacks for the units, but addressing the performance issues is more. It is possible that studies in other communities or by national organizations will provide models for standards by the time Carbondale reaches Phase II of this project.

We like low-impact development standards, using drainage swales, rain gardens, on-site detention and retention and even green roofs (although the marginal utility of a green roof in a community with the density of Carbondale is not entirely certain). These low-impact, natural systems can work well if properly maintained. Where they are placed on private property, however – particularly in single-family neighborhoods – they are not always well-maintained, which can lead to future enforcement issues. Some communities are including low-impact facilities in the public right-of-way. That makes good sense if the Public Works Department has the equipment and willingness to maintain such facilities. Before drafting low-impact development standards, even as an alternative design, it will be important to discuss with Public Works and Code Enforcement staff the practical issues involved with such systems.

We have noted elsewhere in this report that “incentives” (recommended in the Comprehensive Plan) do not always work. In contrast, low-impact development standards have a huge built-in incentive for developers – it usually costs less to construct such facilities to handle stormwater than it does to install traditional curbs, gutters and storm drains.

Site Circulation and Connectivity

From the Plan: Strategies and Action Steps

Emphasize pedestrian and bike accessibility in the funding and design of corridor planning and construction efforts.⁴⁰

Initiate a citywide bike rack installation program to create more bicycle parking options, especially in the Downtown. Such a program may rely on grants and/or private funds in addition to public investment.

Develop site design standards to better accommodate pedestrians and bicyclists in commercial developments, especially big-boxes that feature large parking lots. An existing pedestrian

⁴⁰ Carbondale Comprehensive Plan, Chapter 3, Focus Area 3.3, “Becoming a Walkable and Bikeable Community,” Strategy 2.

connection through the Kohl's' parking lot is an example of the types of internal circulation connections that should be incorporated into design standards.

Amend the zoning ordinance to include specific standards (location, type, etc.) for bike parking at multi-family complexes and commercial developments, as described in Figure 3.12, Bike Parking Standards.

Improve the propensity of public transit use through strategic investments, public improvements, targeted advertising, and direct marketing.⁴¹

Amend the development regulations to incorporate provisions regarding site design standards for improved transit access and pedestrian circulation.

Amend the parking regulations to allow flexibility in the number of spaces required for employers who enhance public transit service through programming or on-site improvements.

Comments and Additional Recommendations

Bicycle racks are a relatively nominal expense. The City could make substantial progress on this issue by including this in a list of requirement to be applied to the issuance of permits for substantial remodeling or upgrading of properties – as well as to new development.

The critical issue on site circulation is to ensure that site plans include a pedestrian and bicycle circulation element, showing connections to the public street and sidewalk system. Typical site plans simply add pedestrian (and sometimes bicycle) facilities with no consideration of where or how they connect to the larger system.

The issue of transit-friendly development in a small city is one that must be reviewed with the local transit operator. We are generally proponents of pull-out lanes for buses and of bus waiting kiosks in parking lots. We have found in some communities, however, that transit operators believe that using such facilities slows them down and that they can best meet schedules by stopping partly or wholly in traffic lanes at most intermediate stops on a route.

Corridors

From the Plan: Strategies and Action Steps

Visually enhance the aesthetic appearance of the community's primary entranceways and major roadway corridors.⁴²

Establish a direct relationship between the character of development and the design of the adjacent roadways.⁴³

⁴¹ Carbondale Comprehensive Plan 2010, Chapter 3, Focus Area 3.4, "Enhancing Public Transit Services," Strategy 1.

⁴² Carbondale Comprehensive Plan 2010, Chapter 3, Focus Area 3.2, "Enhancing the Street Environs," Strategy 1.

Amend the subdivision regulations to include street design standards that are tied to the character of development. These standards may remain generally consistent with IDOT's Bureau of Local Roads and Streets Manual although variation is warranted for the purpose of enhancing their design and appearance.

Adopt a policy for context sensitive design and, subsequently, develop applicable standards and criteria. For instance, street cross sections should be developed for each of the City's designated character types, e.g. rural, suburban, auto-urban, and urban.⁴⁴

Comments and Additional Recommendations

All of the recommendations under the first strategy in the Comprehensive Plan focus on public planning and investments. Those are essential, but many communities supplement such corridor development



programs with “overlay” site development standards along the corridors. At a minimum, such standards typically include improved signage standards, consistent site-lighting standards, mandatory front landscaping, and, in some communities, additional limitations on uses that can front on the designated corridor. The action steps under the second strategy actually

suggest the use of such an approach.

One recommendation that would support this set of actions but that should extend beyond corridors is to regulate the outdoor display of goods for sale and to require better site screening of things like dumpsters.

Lighting Standards

There is no comprehensive treatment of site lighting requirements in the Zoning Ordinance. Section 15-2F-3.F contains basic standards for parking lot lighting, including specifying a minimum lighting level. Restrictions in specific zoning districts are more general, requiring that lighting be “situated in such a manner as to protect all adjoining property from unreasonable interference.”



This is an example of good site lighting that uses "full cut-off" fixtures to minimize light spillage

⁴³ Carbondale Comprehensive Plan 2010, Chapter 3, Focus Area 3.2, “Enhancing the Street Environs,” Strategy 2.

⁴⁴ Carbondale Comprehensive Plan 2010, Chapter 3, Focus Area 3.2, “Enhancing the Street Environs,” Strategy 2, Actions and Initiatives, excerpts.

The new site planning standards will include specific site-lighting requirements. The use of “wall packs” that flood parking lots and surrounding areas with light has been common at residential projects in the City. Readily available full cut-off lights (see illustration on previous page) are a better solution for lighting parking lots and pedestrian areas without light spillover to surrounding properties.

The new standards should balance the following considerations:

- Site safety, particularly for pedestrians (this relates to Crime Prevention through Environmental Design);
- Minimization of light spillage onto other sites;
- Installation costs; and
- Operating costs and energy efficiency.

Development Quality

Carbondale’s downtown is currently a mix of historic buildings, a few well-designed modern buildings, vacant lots and modest buildings that would fit better in a warehouse district than downtown. The City has already developed and adopted Architectural Preservation Guidelines for downtown. As part of the Zoning update process, the City should consider codifying at least some parts of those standards. In addition, the new zoning ordinance should prohibit most accessory structures downtown, or allow them only as special uses; storage sheds and similar structures detract from the desired urban character of downtown.

Lot development standards for both infill and new development should be updated to make it clear that appropriate drainage design, paved driveways and other common elements of modern subdivisions are required for all new buildings – even on existing lots.

To mitigate some of the impacts of parking lots on surrounding areas, the ordinance should require a five-foot landscaped buffer adjacent to each street or sidewalk; landscaping standards for those strips should involve low-growing shrubs and/or tall trees, eliminating taller shrubs than limit visibility and increase the risks of crimes of opportunity.

Subdivision Regulations

Note

Updating the subdivision regulations is not a part of the current scope of work; it is reserved for a possible Phase II of this project. We have, nevertheless, included our recommendations for approaching this task in this initial diagnostic report.

Overview of Current Subdivision Regulations

Early subdivision regulations ensured that lots created through the subdivision process would have access to public streets and, in most urban areas, service from basic public utilities. Design standards focused on ensuring that newly constructed streets and other improvements would be compatible with the City's existing infrastructure. Carbondale's current subdivision ordinance, codified as Chapter 3 of Title 15 of the City Code, is one generation more advanced than those early subdivision regulations. It requires sidewalks and street lighting and includes basic standards for the dimensions of lots and blocks. A number of the standards in the subdivision ordinance are somewhat vague, referring to guidelines and recommendations of the Engineering Advisory Committee and using phrases like "as needed" or "as appropriate." The lack of clear standards on a number of routine matters can lead to decisions that are perceived as arbitrary – regardless of whether the decisions actually are arbitrary. Basic street profiles – including right-of-way width and the essential dimensions of streets and sidewalks – should be standard, based on the class of streets, with some flexibility for the Council to approve modifications under specific circumstances. Certainly there must be some flexibility in the system to deal with unusual topographic or human-made physical conditions, but the basic parameters for public improvements should be clearly stated for most circumstances.

The ordinance does not address many of the other issues that the Comprehensive Plan identifies as important ones. See discussion that follows.

Mobility and Connectivity

From the Plan

The majority of the City's older residential areas are on a grid system providing good connectivity within and through neighborhoods. However, newer neighborhoods in the periphery have been designed with a curvilinear street pattern, cul-de-sacs, and, often, one point of entry/exit. While this pattern is desirable by residents for reasons of safety and aesthetics, concerns are typically raised regarding connectivity. Also, as new subdivisions are developed, plans should be made for adequate connectivity within and between neighborhoods. New subdivisions and commercial centers should be developed in a manner that allows multiple transportation options. It is not sufficient to simply designate where new corridors will expand, but there is much gained or lost in the manner of their development.

A well-designed, multi-modal corridor can be a boon to a neighborhood, while a poorly designed street may only signal a lost opportunity.⁴⁵

Strategies and Action Steps

Improve continuity of the street system to provide connections within and between neighborhoods and districts.⁴⁶

Amend the subdivision regulations to include more provisions that standardize connectivity and discourage one-way in/one-way out subdivisions. Connectivity improvements may include requiring street connectivity between subdivisions and more than one point of access for subdivisions over twenty lots.

Adopt a policy requiring the extension of collectors to and through a new subdivision (similar to utilities).

Develop a neighborhood traffic calming manual with policies, guidelines as to their warrant and applicability, and specific design standards. Though not necessary in all neighborhoods, the installation of speed humps on Elm Street is indicative of one such type of traffic calming method.⁴⁷

Preserve adequate rights-of-way for future street extensions and the traffic carrying capacity of roadways, particularly in the outlying rural areas of the extraterritorial jurisdiction.⁴⁸

Amend the subdivision regulations to address roadway access.

Preserve the traffic carrying capacity of arterial and collector roadways by requiring shared driveways and cross access easements between adjacent properties with commercial frontage to minimize the number of access points to arterial streets.

Develop explicit thoroughfare planning policies to guide decisions relating to the pattern of land development and the design of subdivisions relative to the thoroughfare plan. For instance, adopt a policy restricting subdivisions from terminating an existing or planned collector street.

Alternatively, a subdivision may propose a realignment of a collector road as long as its function is preserved.

⁴⁵ Carbondale Comprehensive Plan 2010, Chapter 3, Focus Area 3.1, "Improving Mobility," Strategy 1, "Improve continuity of the street system to provide connections within and between neighborhoods and districts."

⁴⁶ Carbondale Comprehensive Plan 2010, Chapter 3, Focus Area 3.1, "Improving Mobility," Strategy 1.

⁴⁷ Carbondale Comprehensive Plan 2010, Chapter 3, Focus Area 3.1, "Improving Mobility," Strategy 1, Actions and Initiatives, excerpts.

⁴⁸ Carbondale Comprehensive Plan 2010, Chapter 3, Focus Area 3.1, "Improving Mobility," Strategy 2.

Consider adoption of a connectivity index, as conceptually illustrated in Figure 3.7 [in the Plan], Connectivity Index. This ordinance provision conditions curvilinear, discontinuous streets, dead-ends, and cul-de-sacs on the basis of their continuity and external points of access. In general, a point is required as a condition of subdivision approval.

Adopt an access management ordinance that specifies authority for limiting access on certain roadway types, and delineates standards pertaining to the number and width of access points.

Incorporate provisions requiring a traffic impact study for conditions that exceed a certain traffic generation threshold or specified development conditions. Require submission of a study prior to the official acceptance of an application for subdivision or property development.⁴⁹

Improve subdivision design standards to include additional criteria addressing site design and create livable neighborhoods for young families.⁵⁰

Require adequate connectivity and multi-modal design in new subdivisions and neighborhoods, as consistent with the recommendations of Chapter 3, Community Mobility:

Discourage design that promotes cut-through traffic and speeding.

Require sidewalks in all neighborhoods.

At the time of platting, require public access easements to provide for direct linkages between developments and to trails, parks, schools, and neighborhood convenience areas.⁵¹

Interconnect citywide destinations (e.g. neighborhoods, schools, parks, retail centers) with pedestrian linkages such as sidewalks, trails, and pathways.⁵²

Re-evaluate the current zoning and subdivision regulations with respect to neighborhood design. The standards of the subdivision regulations must relate to street and block patterns, mid-block rights-of-way or easements, provisions for the location and use of open space, and other applicable design guidelines.

⁴⁹ Carbondale Comprehensive Plan 2010, Chapter 3, Focus Area 3.1, “Improving Mobility,” Strategy 2, Actions and Initiatives, excerpts.

⁵⁰ Carbondale Comprehensive Plan 2010, Chapter 4, Focus Area 4.4, “Designing Neighborhoods as Special Places,” Strategy 1.

⁵¹ Carbondale Comprehensive Plan 2010, Chapter 4, Focus Area 4.4, “Designing Neighborhoods as Special Places,” Strategy 1, Actions and Initiatives, excerpts.

⁵² Carbondale Comprehensive Plan 2010, Chapter 3, Focus Area 3.3, “Becoming a Walkable and Bikeable Community,” Strategy 1.

*Acquire railroad right-of-way for rails-to-trails projects that will establish an opportunity for long-distance off-road biking and walking. Funds may be available through rails-to-trails grants, transportation enhancement funds, and stimulus funding.*⁵³

Emphasize pedestrian and bike accessibility in the funding and design of corridor planning and construction efforts.⁵⁴

*Adopt a complete streets policy and corresponding design standards. This policy should include specific criteria as to the improvement of street corridors to include bike and pedestrian accommodations. An example of a 'complete streets' improvement would be the expansion of narrow sidewalks to a wide, off-street pathway.*⁵⁵

Establish a direct relationship between the character of development and the design of the adjacent roadways.⁵⁶

Amend the subdivision regulations to include street design standards that are tied to the character of development. These standards may remain generally consistent with IDOT's Bureau of Local Roads and Streets Manual although variation is warranted for the purpose of enhancing their design and appearance.

Adopt a policy for context sensitive design and, subsequently, develop applicable standards and criteria. For instance, street cross sections should be developed for each of the City's designated character types, e.g. rural, suburban, auto-urban, and urban.

Specify within the street cross sections the provision for and dimensions of design elements including sidewalks, trails, bike lanes, and parkways.

Include among the street cross sections a boulevard section that includes a center median. This would provide for improved access management as an alternative to the continuous turn or 'suicide lane.' f. Consider amending the subdivision regulations to include performance standards for local streets, where the type of access, number of dwelling units served, and the units' average frontages determine the right-of-way, pavement width, parking lanes, curb width,

⁵³ Carbondale Comprehensive Plan 2010, Chapter 3, Focus Area 3.3, "Becoming a Walkable and Bikeable Community," Strategy 1. Actions c and d.

⁵⁴ Carbondale Comprehensive Plan, 2010, Chapter 3, Focus Area 3.3, "Becoming a Walkable and Bikeable Community," Strategy 2.

⁵⁵ Carbondale Comprehensive Plan, 2010, Chapter 3, Focus Area 3.3, "Becoming a Walkable and Bikeable Community," Strategy 2. Carbondale Comprehensive Plan, 2010, Chapter 3, Focus Area 3.3, "Becoming a Walkable and Bikeable Community," Strategy 2, Action p.

⁵⁶ Carbondale Comprehensive Plan 2010, Chapter 3, Focus Area 3.2, "Enhancing the Street Environs," Strategy 2.

parkways, and sidewalks. Therefore, the right-of-way and street design are directly tied to development density and traffic volumes.⁵⁷

Comments and Additional Recommendations

Historically subdivision regulations in Midwestern cities have dealt with the connectivity issue through a simple grid system. If fully built-out, a grid system does indeed provide connectivity. Many factors, however, can disrupt patterns of connectivity – one-way streets, large institutional uses (like universities and hospitals), developer or neighborhood requests to block or stop a particular street, and railroad tracks. Carbondale has examples of all of those disruptions. Although the connectivity in some parts of the City is excellent, in other areas pedestrian and/or automobile traffic “cannot get there from here” – at least not easily. The Comprehensive Plan reflects the more modern approach of focusing on actual connections of streets and sidewalks, rather than on a grid pattern of development and the (not always true) presumption that it will create all necessary connections.

In addition to the connectivity recommendations from the Plan, the revised subdivision ordinance should also include improved provisions for ensuring connectivity through collector streets. Unlike arterial streets, it is not critical that collector streets follow a precisely planned course; what is essential is that they actually connect not only to but **through** new subdivisions.

Similarly, connectivity within a subdivision could be required in the subdivision ordinance in order to facilitate pedestrian activity and to lessen automobile traffic on certain streets by allowing it to disperse throughout the street network. Internal connectivity is often defined by the ratio of links to nodes in a subdivision, as suggested in the comprehensive plan.

Note, however, that there is a potential policy conflict with these recommendations. Residents of stable neighborhoods often want to discourage traffic in their neighborhoods.⁵⁸ This conflict is not irreconcilable. If neighborhood streets are narrow, with parking lanes and even shrubbery encroaching visually on driving lanes, there will be less cut-through traffic. Nevertheless, there is often neighborhood pressure to close existing streets and/or to prevent connectivity through new developments.

Environmental Features, Open Space, and Trails

From the Plan

Focus Area 2.2, “Quality, Sustainable Development,” includes this narrative:

⁵⁷ Carbondale Comprehensive Plan 2010, Chapter 3, Focus Area 3.2, “Enhancing the Street Environs,” Strategy 2, Actions and Initiatives, excerpts.

⁵⁸ See, for example, Focus Area 4.4, “Designing Neighborhoods as Special Places,” where one of the recommended Action steps is “Discourage design that promotes cut-through traffic and speeding.”

Quality, Sustainable Development The City's current development standards have few provisions for the preservation of open space, protection of resources, and alternative development forms. Other than through application of the Land Use Intensity (LUI) system for the R-3, High Density Residential, district and planned unit developments, there are no minimum open space requirements in any of the residential districts. Also, since density is effectively determined by way of minimum lot sizes, the current ordinance leads to densely patterned development with little provision for open space. This results in maximizing the development site with minimal allowance for open space set aside to protect resource areas. To preserve environmental resources and to achieve sustainable outcomes, other regulatory options may be considered. A land use and zoning system that rewards good design and responsible development practices with density bonuses, streamlined approval, and increased certainty may help accomplish the vision expressed by residents.

Strategies and Action Steps

Continue to work with the Carbondale Park District and Green Earth on quality improvements to existing parks and expansion of the park system and natural areas through cooperative land acquisition agreements.⁵⁹

Amend the City's subdivision regulations to establish a formal parkland and nature preserve dedication program

Use the City's Development Regulations as another means to promote the gradual emergence of a city-wide trail and bikeway network.

Establish requirements for the dedication of easements or rights-of-way from new developments that adjoin or overlap the City's planned trail network.⁶⁰

Comments and Additional Recommendations

We concur with the plan recommendations. Requiring dedication of trail connections is relatively easy. Park dedication requirements remain problematic in Illinois under *Pioneer Trust and Savings Bank v. Village of Mt. Prospect*.⁶¹ Nevertheless, later decisions, including *Board of Education v. Surety Developers, Inc.*,⁶² and *Northern State Home Builders Ass'n v. City of Du Page*,⁶³ suggest some flexibility on the part of the Illinois courts, based in part on updated legislation discussed in the *Northern State* opinion. This issue should be explored carefully as part of the update to the subdivision regulations.

⁵⁹ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.2, Strategy 1.

⁶⁰ Carbondale Comprehensive Plan 2010, Chapter 2, Focus Area 2.2, Strategy 1, Actions and Initiatives.

⁶¹ 22 Ill. 2d 375, 176 N.E.2d 799 (1961).

⁶² 63 Ill. 2d 193, 347 N.E.2d 149 (1975).

⁶³ 165 Ill. 2d 25, 35, 649 N.E.2d 384, 390 (1995).

Closely related to this issue is the protection of key environmental resources through cluster zoning and other techniques, an issue discussed under the recommendations for Zoning Districts, beginning on page 7.

Trail dedication requirements seem easier to implement. With properly drafted language, the trails simply become a part of the integral (and internal) street and sidewalk system that developers have long been required to provide.

The current Carbondale Subdivision Ordinance contains detailed standards for monuments at lot corners but leaves the width of streets to an external document. Some of the detailed standards for streets and other improvements that are now included in the Subdivision Ordinance should be simplified or moved to an external document. In contrast, basic standards for street widths, pavement widths, sidewalks and sidewalk widths should be included in the ordinance so that they do not become the subject of negotiation in the approval process. As part of the subdivision update process, all of the standards should be reviewed by City staff, developers, interested residents, and consulting engineers – in a facilitated process. Some (such as the 100-foot diameter for a cul-de-sac) appear unreasonable without much discussion. Others may be inadequate. Developers complained to the consultants that subdivision improvement standards in Carbondale are much more burdensome than those in nearby communities. To the extent that such standards are necessary or appropriate to ensure the future quality of development, they are probably appropriate. To the extent that they simply add cost without significant public benefit, they should be adjusted. Where the intent is quality but the effect is to drive tax-generating development to other communities, there ought to be a thoughtful public discussion of the related costs and benefits before the new subdivision ordinance is completed.

Enforcement and Administration

From the Plan: Strategies and Action Steps

Pursue alternative code enforcement methods in an endeavor to be more proactive and ensure positive outcomes. Consider use of an advocacy program to aid in code compliance rather than citing noncompliant property owners. A key element may be the cross-training of enforcement advocacy officers in conflict management/resolution.

Continue the Mandatory Rental Inspection Program, which enforces property maintenance standards. Code enforcement was widely discussed as a top issue during the Community Symposium. This program is important not only for the safety of occupants, but it also serves to maintain property values and helps to stabilize older neighborhoods. As such, the Building & Neighborhood Services Division schedules required inspections and follows up to ensure that all noted code violations and deficiencies found are properly corrected in a timely manner.

Strictly enforce the repeat offenders of the Mandatory Rental Inspection Program so that chronic problem properties are addressed. Annual inspections, rather than every three years, may be required for properties that continue to blight the neighborhood.⁶⁴

Strengthen and clarify enforcement language in the zoning ordinance relating to issues such as pedestrian and bicycle compatibility with parking lot design.

Continue to ensure that developments are accessible to people of all disabilities.⁶⁵

Strengthen the “abandonment” provisions so that there are specific improvements necessary upon six months of abandonment. These standards should be detailed enough to allow for proper enforcement of issues related to lighting, signs, curb cuts, vacant buildings, and site conditions.⁶⁶

⁶⁴ Carbondale Comprehensive Plan 2010, Chapter 4, Focus Area 4.1, “Rehabilitating existing housing stock,” Strategy 1 “Promote opportunities for neighborhood improvements and housing stock rehabilitation,” Actions and Initiatives excerpts.

⁶⁵ Carbondale Comprehensive Plan, Chapter 2, Focus Area 2.5, “Enhanced Community Character,” Strategy 2, “Enhance the appearance of development and the compatibility between districts,” Actions and Initiatives excerpts.

⁶⁶ Carbondale Comprehensive Plan 2010, Chapter 4, Focus Area 4.3, “Ensuring Affordable and Sufficient Housing Options in the Future,” Strategy 2, “Utilize the land development regulations to encourage the development of moderate and upper income housing,” Action f.

Protect the integrity of single family neighborhoods in regards to housing and site conditions.⁶⁷

*Expand the Rental Inspection Program to include a trigger that housing units changing ownership shall be inspected and brought to code. A requirement to bring the code up to basic standards would be a long-term method for improving neighborhood conditions, especially among the most troubled properties.*⁶⁸

Comments and Additional Recommendations

Generally

Land development regulations are only as effective as their implementation. Some of the issues facing Carbondale are ones that cannot be fixed by a simple rewrite of the regulations. Some may take additional staff and others may simply require additional training and focus for staff already working for the City. We have not had the opportunity to make a thorough review of administrative and enforcement operations in the City, and conducting operational audits is not one of our areas of expertise. Nevertheless, we have made the following preliminary observations that relate to this issue:

The City has some very labor-intensive programs to enforce – noting particularly the rental housing inspection program and the numerous separate time limits on temporary signs;

The enforcement staff is relatively small;

Although the Comprehensive Plan suggests that there is a need for significant improvement in the quality of development in the City, at least some developers reported to us that infrastructure improvements in the City are far more expensive than those in nearby and competing jurisdictions;

Some developers report lengthy delays in approval of projects by staff dealing with engineering and infrastructure, the Comprehensive Plan indicates a desire for the City to be business-friendly.

We do not have a complete understanding of these issues and are relying on anecdotal evidence that is undoubtedly incomplete. Nevertheless, our physical observations in the community and conversations with representatives of a number of stakeholder groups suggest that there is at least some merit to these criticisms. As we progress with this project, we recommend that the City's enforcement and administrative staff be thoroughly involved. In many cases, deficiencies in ordinances can lead to problems like these. It is important that we understand the perspective of the staff that makes the system work – or fail to work – on a daily basis be engaged in the update process.

⁶⁷ Carbondale Comprehensive Plan, Chapter 3, Focus Area 4.2, "Defending neighborhood integrity in existing Neighborhoods," Strategy 1.

⁶⁸ Carbondale Comprehensive Plan, Chapter 3, Focus Area 4.2 – Defending neighborhood integrity in existing Neighborhoods Strategy 1, Action j.

Although we heard complaints that doing business in Carbondale can be expensive, the City may need to consider some modest fee increases to support staffing to accomplish the goals of the Comprehensive Plan. One obvious example deals with temporary signs.

“Temporary” signs are often temporary only if someone from the City checks to be sure that they are removed as scheduled; that takes person-power, and the costs of that additional person-power should be included in the cost of a temporary sign permit.

Property Maintenance Code

Carbondale currently has a rental property inspection program. Several professionals told us that there are maintenance problems with many owner-occupied dwellings and buildings as well. We found no real discussion of that issue in the Comprehensive Plan, although there are many references to community appearance and maintenance in general. The International Codes Council, which publishes the model building and other codes used by most local and state governments, also publishes a Property Maintenance Code.⁶⁹ The City should at least discuss the adoption of such a code.



Figure 1 One of many temporary signs we saw in Carbondale; this one appears to be in the right-of-way, which would make it illegal.

Violations

There should be a general “violations” section of the code that makes it clear that acting in direct violation of the code, undertaking action requiring a permit without a permit, undertaking action in violation of a permit, undertaking action in violation of a condition imposed on a permit or approval and similar actions are violations of the ordinance.

Enforcement

The new code should include a complete range of enforcement authority, consistent with Illinois law. The most effective forms of enforcement for zoning and similar violations often involve administrative tools, such as denying or revoking permits. The new code should contain clear authorization for the City to revoke permits and to stop work under permits and for all decision-making bodies in the City to deny permits based on violations on the property. Such provisions must also be supported by provisions for hearings and appeals. There should also be clear provisions allowing the City to pursue multiple and alternative remedies, such as denying permits while also seeking prosecution for an ordinance violation.

⁶⁹ See <http://www.iccsafe.org/Store/Pages/Category.aspx?cat=ICCSafe&category=2560&parentcategory=StoreProducts&parentcategory=330> .

Some Legal Issues

Signs

Issues Generally

The courts have long upheld local sign ordinances that impose limits on the size, number, lighting and design of signs. In fact one of the earliest cases upholding such restrictions arose in Chicago.⁷⁰

Where sign ordinances apply different rules to signs with different messages, they implicate the First Amendment and may be subject to “strict scrutiny,” imposing a heavy burden on the City to defend.⁷¹ Sign ordinances that, whether intentionally or inadvertently, treat commercial speech more favorably than noncommercial speech are likely to be held facially unconstitutional.⁷² Carbondale’s sign ordinance is remarkably free of the kind of content-based distinctions that we often find in sign ordinances – except for Section 15-2G-9. Although the section does not refer to “exceptions” or “exemptions,” it essentially carves out broad exceptions for certain signs, most of which are defined by their content. In a thoughtful opinion, the Eleventh Circuit explained the problems with defending an ordinance with such provisions:

[T]he sign code recites only the general purposes of aesthetics and traffic safety, offering no reason for applying its requirements to some types of signs but not others. As to traffic safety, the ordinance states that motorists’ safety “is affected by the number, size, location, lighting and movement of signs that divert the attention of drivers.” § 27-574(2). The sign code therefore permits signs that are “designed, constructed, installed and maintained in a manner which does not endanger public safety or unduly distract motorists.” § 27-575(2). The code does not, however, explain how these factors affect motorists’ safety, or why a moving or illuminated sign of the permissible variety—for example, a sign depicting a religious figure in flashing lights, which would be permissible under § 27-580(17)’s exemption for “religious displays”—would be any less distracting or hazardous to motorists than a moving or illuminated sign of the impermissible variety—for example, one depicting the President in flashing lights, which falls within no exemption and is therefore categorically barred by § 27-581(5)’s prohibition on signs containing “lights or illuminations that flash.” Likewise, a homeowner could not erect a yard sign emitting an audio message saying, “Support Our Troops,” since § 27-581(9) generally bans signs

⁷⁰ See *Thomas Cusack Co. v. City of Chicago*, 242 U.S. 526, 37 S. Ct. 190, 61 L. Ed. 472 (1917); See, also, *Louis Gunning Advertisement Co. v. City of St. Louis*, 235 Mo. 99, 137 S.W. 929 (1911), appeal dismissed, 231 U.S. 761, 34 S. Ct. 325, 58 L. Ed. 470 (1913).

⁷¹ See, for example, *Boos v. Barry*, 485 U.S. 312, 108 S. Ct. 1157, 99 L. Ed. 2d 333 (1988).

⁷² See, *Metromedia, Inc., v. City of San Diego*, 453 U.S. 490, 101 S. Ct. 2882, 69 L. Ed. 2d 800(1981); *Ladue v. Gilleo*, 512 U.S. 43, 114 S. Ct. 2038, 129 L. Ed. 2d 36 (1994). In *Ladue*, the Supreme Court, in a unanimous decision, struck down a local sign ordinance that local officials construed to prohibit a “Peace in the Gulf” sign in a residential area, although the ordinance clearly allowed a “for sale” sign of similar size in the same location.

that “emit any sound that is intended to attract attention,” but the government would be free to erect an equally distracting—and presumably unsafe—sign emitting the audio message, “Support Your City Council,” since governmental signs are completely exempt from regulation under § 27-580(4).

Regarding aesthetics, the sign code states that “uncontrolled and unlimited signs may degrade the aesthetic attractiveness of the natural and manmade attributes of the community.” § 27-574(5). This provision similarly fails to explain how the sign code’s content-based differentiation among categories of signs furthers the City’s asserted aesthetic interests. For example, we are unpersuaded that a flag bearing an individual’s logo (which is not exempt from regulation), is any less aesthetically pleasing than, say, a flag bearing the logo of a fraternal organization (which is exempt from regulation under § 27-580(3)). Nor is it clear to us that a government-authorized sign reading, “Support Your City Council” in flashing lights (which is exempt from regulation under § 27-580(4)), or a religious sign reading, “Support Your Church” (which is exempt under § 27-580(17)), degrades the City’s aesthetic attractiveness any less than a yard sign reading, “Support Our Troops” in flashing lights.

Although the sign code’s regulations may generally promote aesthetics and traffic safety, the City has simply failed to demonstrate how these interests are served by the distinction it has drawn in the treatment of exempt and nonexempt categories of signs. Simply put, the sign code’s exemptions are not narrowly tailored to accomplish either the City’s traffic safety or aesthetic goals.

* * *

The City has provided no justification, other than its general interests in aesthetics and traffic safety—which are offered only at the highest order of abstraction and applied inconsistently—for exempting certain types of signs but not others. We do not foreclose the possibility that traffic safety may in some circumstances constitute a compelling government interest, but Neptune Beach has not even begun to demonstrate that it rises to that level in this case. Accordingly, we are constrained to conclude that Neptune Beach’s sign code is not justified by a compelling government purpose.

Because its enumerated exemptions create a content-based scheme of speech regulation that is not narrowly tailored to serve a compelling government purpose, Neptune Beach’s sign code necessarily fails to survive strict scrutiny. Moreover, these exemptions are not severable from the remainder of the ordinance; we are therefore required to find the sign code unconstitutional.⁷³

⁷³ *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250 (11th Cir. Fla. 2005).

Although the cited decision from the Eleventh Circuit has been criticized by the Sixth Circuit in a 2009 decision⁷⁴, the cited logic is cogent. Even if one rejects that essentially philosophical challenge to such exceptions and exemptions, section 15-2G-9 is rife with problems that must be addressed. The most serious problems are these:

“Political” signs are limited to six square feet, while a number of other temporary signs may be much larger, although in the most restricted residential areas the ordinance is consistent with *Ladue v. Gilleo*⁷⁵ in allowing real estate and political signs to be the same size. Nevertheless, this inconsistency could easily be construed to make the ordinance unconstitutional under *Metromedia*.⁷⁶

The “political” sign provisions relate strictly to elections and thus make no provision for signs such as “Peace in the Gulf”,⁷⁷ “Greenpeace”,⁷⁸ or “Jail the Governor” or “Support the Governor.”

Time limits on political signs have consistently been held unconstitutional.⁷⁹ Despite that fact, we have continued to draft language requiring removal of such signs within a specified period AFTER an event if they refer to a specific event, provided that there are similar requirements for the removal of other temporary signs when or if they become obsolete.

To the extent that 15-2G-9.F.3.a. is construed to allow attaching such banners to light posts in the right-of-way or across a public right-of-way, it is extremely problematic because it involves the City choosing which speakers may make use of the right-of-way. The risk with this section is that a political party or other noncommercial group that does not qualify for such a sign will bring a challenge and the court will find that it, too, is entitled to stretch a banner into or across a public way. On the subject of cities picking and choosing who gets to use the right-of-way, see *City of Cincinnati v. Discovery Network*.⁸⁰

⁷⁴ *H.D.V. - Greektown, LLC v. City of Detroit*, 568 F.3d 609, 622-23 (6th Cir. Mich. 2009).

⁷⁵ 512 U.S. 43, 114 S. Ct. 2038, 129 L. Ed. 2d 36 (1994).

⁷⁶ *Metromedia, Inc., v. City of San Diego*, 453 U.S. 490, 101 S. Ct. 2882, 69 L. Ed. 2d 800(1981).

⁷⁷ See *Ladue v. Gilleo*, 512 U.S. 43, 114 S. Ct. 2038, 129 L. Ed. 2d 36 (1994).

⁷⁸ See *Dimmitt v. City of Clearwater*, 985 F.2d 1565 (11th Cir. 1993).

⁷⁹ See, for example, *Whitton v. City of Gladstone*, 832 F. Supp. 1329 (D.C. Mo. 1993); *City of Antioch v. Candidates Outdoor Graphic Service*, 557 F. Supp. 52 (N.D. Cal. 1982) (invalidating ordinance that banned political signs except for a period beginning 60 days before an election, but allowed, without restriction, other types of non-commercial signs, such as those advertising upcoming charitable or civic events); *Orazio v. Town of North Hempstead*, 426 F. Supp. 1144 (E.D. N.Y. 1977) (invalidating an ordinance that limited the posting of “political wall signs” to six weeks prior to an election).

⁸⁰ 507 U.S. 410, 113 S. Ct. 1505, 123 L. Ed. 2d 99 (1993); it involved the installation of newspaper vending machines on public sidewalks, but the principles are similar. See, also, a decision from a neighboring circuit, *Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427 (6th Cir. Ohio 2004).

There is a conceptual problem with the treatment of special event signs. Section 15-2G-9.F. appears in part to grant permission to nonprofit organizations to erect temporary special events signs. The ordinance should be recast to allow property owners to display such signs.

One sub-section of 15-2G-9 that we strongly endorse is subsection L, which requires that banners or other installations in the right-of-way for the “long term” require encroachment permits under Title 17.

Recommendations

- ✓ It is our understanding that City staff wants to update provisions of the sign regulations as part of this process. To the extent that the update involves adjusting numbers, formulas and definitions in other parts of the sign regulations, that makes perfect sense. We will, within the Phase 1 budget, try to revise 15-2G-9 in ways that make it Constitutional but that are consistent with what the City intends to accomplish. Much of the section deals with temporary signs. In general we recommend that:
 - For every district specify the number, size, type and location of temporary signs allowed;
 - In residential districts, limit the commercial messages that can be placed on them (yard sale, for sale or lease);
 - Impose no limits on noncommercial messages on temporary (or other) signs);
 - Add a “savings” clause that allows the substitution of a noncommercial message of any type on any sign permitted anywhere.
- ✓ We also recommend recasting some of the other provisions to allow “incidental” signs in general with no commercial messages, thus allowing “beware of the dog,” “premises alarmed,” “no trespassing,” “parking,” as well as “minor directional” and other messages.
- ✓ We also suggest that City staff and officials discuss sign enforcement issues. The staff is clearly limited and stretched thin. It is unclear how they enforce (or even could enforce) the time limits imposed on temporary signs with existing staff. If the City wants to impose time limits on temporary signs, City officials should consider increasing the permit fee for temporary signs in commercial districts to include an amount sufficient to pay an outside contractor or part-time City worker to verify that the signs are removed when they should be. We recommend that no permit be required for temporary signs in residential districts.
- ✓ The sign ordinance should also be updated to deal with electronic message signs.



Religious Institutions

The current zoning ordinance consistently uses the phrase “church and subordinate uses.” We recommend updating the term “church” to “house of worship” or “religious institution.”

The Religious Land Use and Institutionalized Persons Act (RLUIPA)⁸¹ to some extent restates existing principles of Constitutional law, prohibiting discrimination against religious institutions through land-use controls. One possible concern with the Carbondale ordinance relates to Section B.2(C) of RLUIPA, which requires that a local government show a “compelling government interest” to defend a “land use regulation or system of land use regulations, under which a government imposes a “substantial burden” on a religious use under “formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.” Carbondale’s current zoning allows “church and subordinate uses” as permitted uses only in the R-2.8 (Medium Density) and R-3 (High Density); in all other residential districts a religious use is allowed only with a Special Use Permit, approved (or not) by the City Council. That is a land-use control system that ‘permit’s the government to make individualized assessments of the proposed use....”

Illinois has adopted its own “Religious Freedom Restoration Act.”⁸² It provides a broad definition of what it protects:

"Exercise of religion" means an act or refusal to act that is substantially motivated by religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief.⁸³

It then provides this broad protection:

Government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest.⁸⁴

The act provides for judicial relief⁸⁵ and essentially overrides home-rule authority as it may apply to regulating religious institutions.⁸⁶ The act further provides:

If an ordinance, standard, rule, or regulation enacted under the authority of this Section or under the authority of a unit of local government's home rule powers prohibits, restricts, narrows, or burdens a person's exercise of religion or permits the prohibition, restriction, narrowing, or burdening of a person's exercise of religion, that ordinance, standard, rule, or regulation is void and unenforceable as to that person if it (i) is not in furtherance of a

⁸¹ 106 Stat. § 2689.

⁸² § 775 ILCS 35/1 et seq.

⁸³ § 775 ILCS 35/5.

⁸⁴ § 775 ILCS 35/15.

⁸⁵ § 775 ILCS 35/20.

⁸⁶ § 775 ILCS 35/25.

compelling governmental interest and (ii) is not the least restrictive means of furthering that governmental interest.⁸⁷

Because the City allows religious uses in two zoning districts by right, the requirement for special use permits in others may not be a problem. The availability of those two districts certainly saves the ordinance facially. An important facial distinction between the state act and the federal one is that the state act includes “laws of general applicability” among those that may result in a “substantial burden,” while the federal act applies the “substantial burden” test only where a religious institution is subject to a review process in which the local government can “make, individualized assessments of the proposed uses for the property involved.”⁸⁸ In other words, any local process that requires a special use permit or a variation for most or all religious institutions in the community may be particularly hard to defend. In a handful of decisions applying the “substantial burden” test, courts appear not to attach much significance to the distinction. In a challenge to a local ordinance that required a church to obtain a special use permit to add a homeless shelter to its facilities, a federal court rejected claims that the requirement imposed a “substantial burden” on the church under either RLUIPA or the state act, noting that the special use permit requirement was “facially neutral” and of general applicability:

Here the harm to Family Life's religious exercise was no more than incidental to Elgin's neutral land use ordinances. Elgin legitimately seeks to control what types of operations populate its city center. No evidence exists that it seeks to exclude religious organizations (either generally or Family Life in particular) because of their nature. Instead it simply seeks oversight of the existence and operation of homeless shelters as such.⁸⁹

Similarly, the Seventh Circuit refused to find a “substantial burden” under state or federal law where a local zoning ordinance prohibited churches in all industrial zoning districts:

The ban on churches in the industrial zone cannot in itself constitute a substantial burden on religion, because then every zoning ordinance that didn't permit churches everywhere would be a prima facie violation of RLUIPA.⁹⁰

There is also a case from the Seventh Circuit that is potentially helpful. In ruling on a challenge to a local government's prohibition of churches in its industrial zoning districts (while allowing them in residential districts), the court held in part:

⁸⁷ § 775 ILCS 35/25(d).

⁸⁸ Sect. 2 of 106 Stat. § 2689(a) see esp. §2689(a)(2)(C).

⁸⁹ *Family Life Church v. City of Elgin*, 561 F. Supp. 2d 978, 986-87 (N.D. Ill. 2008).

⁹⁰ *Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846, 850 (7th Cir. Ill. 2007). Reh. den., cert. den. 552 U.S. 1131, 128 S. Ct. 914, 169 L. Ed. 2d 786 (2008).

The ban on churches in the industrial zone cannot in itself constitute a substantial burden on religion, because then every zoning ordinance that didn't permit churches everywhere would be a prima facie violation of RLUIPA.⁹¹

But there could still be an applied challenge. See, for example, *Cottonwood Christian Center v. Cypress Redevelopment Agency*.⁹² The current Carbondale ordinance is certainly defensible. But see recommendations.

Recommendations

- ✓ We recommend that the ordinance be revised to refer to “house of worship” “religious institution” or some other term that does not suggest that the City may favor a particular religion.
- ✓ We recommend that the City consider allowing some churches or religious institutions in additional districts as a use by right. We have no doubt that the City Council has approved more than one special use permit for a religious institution in one or more residential districts. Those decisions could serve as a policy guide for which districts might be added to the “churches permitted” list.
- ✓ Not all modern religious institutions, however, are suitable for quiet residential neighborhoods. If the City is willing to consider our recommendation of adding religious institutions as permitted uses to some less intensive residential districts, we also recommend that those institutions be limited in size (perhaps seating 250 or 300 people in a “principal worship space”) and in accessory uses (permitting the typical educational facilities and a residence for a worship leader but not allowing gymnasiums, bowling alleys, retail stores, coffee shops, broadcast stations, and bus maintenance and storage). Those other accessory uses could be allowed at religious institutions in more intensive residential or possibly in some commercial zoning districts.

Satellite Dishes

As City staff has noted in a marked-up copy of the current zoning ordinance, Section 15-2C-3.15 dealing with satellite dish antennas is outdated. Under the Telecommunications Act of 1996 and related rules of the Federal Communications Commission:

Dishes less than one meter in diameter are allowed almost anywhere and cannot be prohibited or even limited by local zoning controls;⁹³

The exceptions to the previous statement deal with restrictions related to public safety (such as prohibiting the installation of such an antenna on a fire escape or just outside an egress door) and restrictions in historic districts;⁹⁴

⁹¹ *Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846, 850 (7th Cir. Ill. 2007). Reh. den., cert. den. 552 U.S. 1131, 128 S. Ct. 914, 169 L. Ed. 2d 786 (2008).

⁹² 218 F. Supp. 2d 1203 (C.D. Cal. 2002).

⁹³ 47 C.F.R. § 1.4000.

Dishes up to two meters in diameter must be allowed by right in at least some commercial and industrial districts, but the local zoning ordinance can impose restrictions on location of these devices and can require screening.⁹⁵

Note that the City's more recently adopted wireless communications facilities regulations acknowledge the modern distinctions noted above.⁹⁶

Recommendations

- ✓ This section should be kept in site-planning standards (where it is now), but it should be updated to reflect current FCC regulations.

⁹⁴ 47 C.F.R. § 1.4000.

⁹⁵ 47 C.F.R § 25.104.

⁹⁶ See §15-2L-3.C.