

CHAPTER 1

PLAN COMMISSION BASICS

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WHAT PLAN COMMISSIONS DO

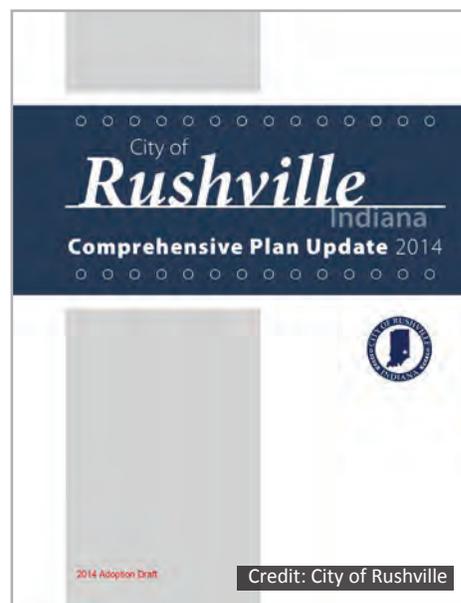
In Indiana most plan commissions devote much of their time to considering petitions which require commission recommendation or decision. This guide offers advice on how to make those recommendations and decisions without losing sight of the commission's broader purpose and how to function effectively within the law. Serving on a plan commission is a difficult job and an important responsibility. Doing the job well involves more than showing up at meetings. It means learning about planning, about your community, listening to citizens, visiting sites involved in cases before the commission, and perhaps serving on subcommittees.

The primary duty of the plan commission is to develop and recommend to the legislative body a plan for the future of the community. This plan should form the basis for the commission's decisions and recommendations (see Chapter 7, Comprehensive Plans). Unfortunately, few plan commissions succeed in making the overall plan their top priority. Constant pressures from property owners and developers command the commission's attention, and most meeting time is spent making recommendations on rezoning requests and decisions on subdivision proposals. Many commissions also find it difficult to adhere to the plan when they are confronted with a hearing room full of people advocating a position inconsistent with the plan.

Some commissions confuse the zoning ordinance with the plan, but the zoning ordinance is distinct from the plan. In Indiana, as in most other states, the law requires the community to adopt a plan *before* it adopts a zoning ordinance. This provision is sensible; the community should not adopt regulations until its citizens have decided on the goals they want to accomplish with those regulations.

Under Indiana law, plan commissions are responsible for the following:

- Preparing a comprehensive plan;
- Preparing a zoning ordinance and a subdivision control ordinance;
- Making recommendations to the legislative body on proposals to amend the text of the zoning ordinance or subdivision control ordinance;
- Making recommendations to the legislative body on proposals to amend the zoning map (rezonings);
- Approving or denying proposals to subdivide land, based upon compliance with the subdivision control ordinance;
- Approving development plans; and
- Assigning street addresses.



IC 36-7-4-508 et. seq.

In the absence of clearly defined goals, we are forced to concentrate on activity and ultimately become enslaved by it.
- Chuck Coonradt

IC 36-7-4-405 et. seq.

City, town, and county councils, county commissioners, utility boards, solid waste boards, emergency preparedness boards, drainage boards, school boards and others often ask plan commissions for advice or recommendations on other matters. The list below includes typical subjects for plan commission consideration:

- Annexations;
- Utility hook-ons and extensions;
- Economic revitalization areas and tax abatement;
- Tax policy;
- School districting;
- Extension, improvement, and abandonment (vacation) of public rights-of-way;
- Neighborhood revitalization;
- Locations for new public facilities; and
- Environmental protection.

HOW PLAN COMMISSIONS ARE ORGANIZED

Types of Plan Commissions

There are two types of plan commissions available to most communities throughout Indiana: area and advisory.

There are two other types of plan commissions in Indiana. Metropolitan plan commissions are available to only three counties in Indiana (Marion, Delaware, and Vanderburgh), and a joint district plan commission is available to only one county (Bartholomew). Basics on these plan commissions are not covered here.

Laws governing area and advisory plan commissions are different. Those using the Indiana Code should check the applicability of a particular statute to the local plan commission.

Area Plan Commissions are cooperative efforts between a county and at least one municipality within the county. In jurisdictions using the area planning law, one commission serves the county and all municipalities that choose to participate. The area plan commission is a unit of county government, staffed by an executive director and any other employees included in the annual budget. Area jurisdictions are permitted and encouraged to adopt unified plans and ordinances: a single comprehensive plan, a single zoning ordinance, and a single subdivision control ordinance can apply to the county and to all participating municipalities. In a county having an area plan commission, a city or town that does not participate in the area commission may not exercise planning authority outside the corporate limits of the municipality. Nonparticipating municipalities may, however, form advisory plan commissions with authority for planning within the city or town.

Exercise: Give reasons why your plan commission might be asked for advice on the items listed to the left. Give reasons why the commission would not be asked. Think of three other topics which the plan commission should consider in your community.

IC 36-7-4-202 &
IC 36-7-4-202.5 et. seq.

Advisory Plan Commissions serve a county, city, or town. In Indiana, municipalities are legally permitted to plan for an area up to two miles outside the corporate boundaries in what is described as an “extraterritorial planning area.” In counties with no comprehensive plan, municipal plan commissions may simply assume this extraterritorial authority from the county. In a county with a comprehensive plan, the municipal plan commission must request this authority from the county legislative body; however, if municipal services are provided to the extraterritorial area, the municipal plan commission may assume this authority from the county. The county must adopt an ordinance granting this authority to the city or town. When a municipal plan commission assumes extraterritorial jurisdiction, it must file a map and description of the territory involved with the county recorder.

Another option is available to cities and towns in counties with advisory plan commissions: the municipality may designate the county plan commission as the municipal plan commission. The city or town may then contract with the county to pay the county a proportionate share of the costs of planning services. This procedure is most often used by towns which are too small to adequately maintain a planning program. In these cases, residents of the city or town are eligible for appointment to the plan commission.

Membership

The make-up of the plan commission is specified in the Indiana Code. The number of commission members varies with the type of commission (advisory, area, metropolitan, joint district). There are two types of members: citizen members, who do not hold any elected or appointed office in municipal, county, or state government; and members who are appointed to represent certain specific interests. Examples of the second type include the municipal engineer, the county surveyor, the county extension educator, and members of the park board, city council, county commissioners, and board of public works. Citizen members are appointed "because of the member's knowledge and experience in community affairs, the member's awareness of the social, economic, agricultural, and industrial problems of the area, and the member's interest in the development and integration of the area."

There also are membership limitations based upon political affiliation. For example, if the mayor appoints five citizen members, no more than three may be of the same political party. This limitation does not preclude appointment of those who are not affiliated with a political party. For example, the mayor could appoint two Democrats, two Republicans, and one independent. In practice, nearly all those appointed do have a party affiliation, but it is not required.

Membership terms are four years, except for a new plan commission, where some initial terms are shorter to provide for staggered expiration dates, or for a member appointed to fill an unexpired term. Terms expire on the first Monday in January, except for those members appointed because of membership in another body (city council, park board, county commissioners, etc.); those members serve for four years or until the expiration of the term of office on that body. Any of these bodies may, at its first meeting in any year, appoint a different person as the representative.

IC 36-7-4-207 et. seq.
IC 36-7-4-208 et. seq.
IC 36-7-4-209 et. seq.

Quick Quiz: What type of plan commission does your community have? How many members serve on the commission? Who appoints them? Who appointed you? When does your term expire?



Each member should know the appointing authority and the expiration date of his or her term. The commission should keep careful records regarding appointments. If appointments are not made in accordance with the legal requirements, the commission's decisions could be invalidated. A court could rule that the commission is illegally constituted and vacate every decision that commission has made!

Officers

Each plan commission must elect officers annually. Indiana law requires the commission to elect a president and a vice president. This election must be held at the first regular meeting of each year. The commission also may appoint or elect a secretary. The secretary need not be a member of the commission, and in many cases, the secretary is an employee of the municipality, county, or plan commission.

Attorney

Plan commissions typically retain attorneys. They may be county or municipal attorneys serving various boards and commissions, or they may be specially hired attorneys only serving the plan commission. Plan commission attorneys generally have two areas of responsibility: 1) to attend public meetings and hearings and provide legal advice during these sessions; and 2) to provide advice to staff as legal questions arise during the administration of the zoning and subdivision control ordinances. Plan commission attorneys are not members of the plan commission. Although attorneys advise the plan commission on making legal land use recommendations and decisions, the recommendations and decisions themselves are made by the plan commission alone.

Administration

In order to carry out its functions, Indiana law requires the plan commission to do the following:

- Adopt rules for the operation of the commission;
- Keep a complete record of proceedings;
- Adopt a seal;
- Assume responsibility for maintaining files and records; and
- Certify all official acts.

Quick Quiz: Who are the officers of your commission? When were they elected?

If the commission has a staff, the staff will handle many of the administrative functions, such as reviewing petitions and plans, preparing staff reports and meeting minutes, and maintaining files. Many commissions utilize staff from other departments, such as engineering, surveyor's office, or utilities department to provide technical assistance. Sometimes these staff members meet regularly as a committee.

If there is no staff, the commission must find a reliable means of handling its day-to-day operation. There may be a municipal or county office that can keep files and records, accept petitions, prepare agendas, etc. The commission may need to appoint one or more of its own members or hire an outside consultant to perform some of these duties. All of the commission's files and minutes are public records, and they must be available to the public to review. The municipality or county is required to provide "suitable offices for the holding of meetings and for preserving the plans, maps, accounts, and other documents of the commission."

The commission may purchase a seal from an office supply company. There are standard designs to choose from, and the name of the commission will be added. It is a good idea to use the commission's full name on the seal, to make it easy to identify the commission. For example, the seal should say, "Blue County, Indiana, Advisory Plan Commission," or "Blue County, Indiana, Area Plan Commission."

The commission also needs to select someone who will certify official actions of the commission. Some commissions require only one signature, such as the secretary's; others require the president and the secretary. If the commission is concerned that each official act be verified by more than one person, two signatures should be required. For most plan commissions, duplicate verification is not needed, and one signature will suffice. One signature is simpler, especially if plans or final copies of minutes are signed at a time other than during the commission meeting.

Rules of Procedure

Every plan commission must have rules of procedure. Indiana law requires these rules, and a good set of rules will make the commission's job easier. Below is a list of subjects typically covered in the commission rules of procedure:

- Meeting times;
- Membership and terms;
- Duties of officers and staff;
- Establishment of committees;
- Order of business;
- Application procedures;
 - Filing deadlines
 - Eligible applicants
 - Filing fees
 - Amending applications
 - Withdrawing applications
 - Refiling after denial or withdrawal
- Definition of "interested parties;"

Quick Quiz: Who certifies your plan commission's actions? What does your official seal look like?

Rules are discussed in detail in Chapter 5, Rules of Procedure.

- Notice requirements;
- Hearing procedures;
 - Order of testimony
 - Form and admissibility of evidence
 - Time limits on testimony
 - Sign-in requirements
 - Administration of oaths
 - Cross examination of witnesses
 - Orderly conduct
- Continuances;
- Conflicts of interest;
- Communications outside of meetings;
- Decisions;
 - Approvals/favorable recommendations
 - Denials/unfavorable recommendations
 - No recommendation
 - Findings of fact
 - Dismissals
- Commitments and conditions;
- Amendments; and
- Suspension of rules.

Clear rules are enormously helpful to the commission, to applicants, and to the public. While it is common for commissions to adopt Robert's Rules of Order for the conduct of meetings and hearings, this usually is not a good idea. Robert's Rules are extremely complicated, establish highly formal processes which make discussions difficult, and few people know these rules well enough to use them accurately. When plan commission decisions are challenged in courts, the first line of attack is the rule book. Cases can be remanded back to the commission for reconsideration if the rules aren't followed. A trained parliamentarian is needed to properly administer Robert's Rules.

Application Procedures

The commission needs to establish policies and procedures for accepting and processing applications. If the commission has a staff, the rules can delegate some or all of this responsibility to the employees. The commission needs to decide who is eligible to file applications for subdivisions, rezonings, and other matters. At a minimum, the owner of the property should be required to sign all applications. The staff or commission should verify that those who sign an application are actually the owners as listed in the county recorder's office. Often there are multiple owners, and they do not always agree. For example, there may be a husband and wife who both own property and are involved in a divorce or separation agreement. One spouse's signature in such a case is not enough. Many times, property is to be developed by someone other than the owner. The plan commission may want signatures of the developers as well as the owners.

Plan commissions need to have sufficient information to enable a reasoned decision. The commission should decide what information is necessary and should accept only applications which include that information. Application forms with checklists are useful. Incomplete applications should not be placed on the commission's agenda for hearing or decision. Filing deadlines also should be established. These deadlines need to provide enough time for legal notices and for review.

Committees

Plan commissions are empowered to delegate some authority to an executive committee and to appoint citizen advisory committees. Committees can be extremely helpful to the plan commission. They can expedite business, and they can provide a perspective from the broader community.

Executive Committee. The executive committee, which must have at least three and no more than nine members, may act in the name of the commission. Sometimes it is difficult to achieve a quorum of the entire commission for special meetings. This committee can make decisions on time-sensitive issues, and it can handle administrative matters without involving the larger group. The law requires a two-thirds (2/3) vote of the entire plan commission to establish an executive committee and to adopt the rules governing its operation. As an added protection, the law also provides that a person voting in the minority on any executive committee action may appeal the decision to the full plan commission. The executive committee cannot decide matters requiring a public hearing and a majority vote of all of the members of the commission. Examples of matters the executive committee could handle include personnel matters, recommendations to the legislative body on annexations or right-of-way vacations, and time extensions for applications or projects.

Plat Committee. Indiana law allows the establishment of a plat committee to decide simple subdivisions. This committee is discussed in Chapter 9, Subdivision Control Ordinances.

Citizen Committees. Many plan commissions appoint committees of citizens to study specific issues and make recommendations to the commission. The range of possible topics is nearly unlimited. Common topics for study include economic development, housing, and protection of farmland. Creating a committee with diverse representation can lessen the hostility surrounding controversial topics. The committee can consider a variety of viewpoints and offer a reasoned recommendation to the commission. Many times opponents of an idea will be proponents after they are given an opportunity to participate in formulating recommendations.

Technical Review Committees. These committees can provide advice to the plan commission on issues requiring technical expertise. The most common type of technical review committee is one which evaluates subdivision proposals and development plans before they go to the plan commission. Plan commissions may want to appoint these committees for other types of advice, such as proposals for fill or construction in flood hazard areas, landscaping, drainage, waste disposal, erosion control, traffic impacts, etc. It can be extremely useful for the commission to have access to advice and information from persons who have special expertise.

A committee is a group that keeps minutes and loses hours.
- Milton Berle

IC 36-7-4-408 et. seq.

See Chapter 9, Subdivision Control Ordinances, for more information on subdivision review; and Chapter 10, Site/Development Plan Review, for more information on the development plan review process

RUNNING PUBLIC MEETINGS & HEARINGS

It is important that commissions understand the difference between a public meeting and a public hearing. With a few exceptions (see Chapter 3, Avoiding Pitfalls), all plan commission meetings are public meetings, but not every item of business requires a public hearing. A public meeting is simply a meeting which is open to the public; the public may attend and observe, but the audience does not have to be allowed to participate or make comments. A public hearing is a formal proceeding to receive public comment on a particular matter, such as a rezoning or a comprehensive plan.

The law requires public hearings for the following plan commission matters:

- Adoption of comprehensive plan or plan element;
- Amendment of comprehensive plan or plan element;
- Adoption of a zoning ordinance;
- Amendment of zoning ordinance text;
- Amendment of zoning map (rezoning, including PUDs); and
- Subdivision of land.

Some commissions allow public comment on any agenda item at any time during the meeting; others allow such comment only during formal public hearings. There are advantages and disadvantages to both practices. Allowing unrestricted public comment makes the meetings less formal and gives the audience more of an opportunity to participate in the planning process. At the same time, it can unnecessarily drag out the meeting, increase dissension, make meetings less orderly, and diminish the ability of commission members to discuss issues among themselves.

Plan commission meetings and hearings can be productive or non-productive, efficient or a waste of time, orderly or chaotic. The choice is the commission's to make. This section offers some practical advice.



Credit: Elkhart Truth

Meeting Time and Place

The meeting time should be as convenient as possible for all involved. There are many factors which enter into this decision. Most commissions hold evening meetings. However, no one time suits everyone. It is recommended that the commission choose a regular meeting time, but the commission should be flexible enough to change the time in a particular situation, or to hold more than one meeting on the same topic to give ample opportunity for all those who want to participate.

A suitable meeting room will be conveniently located, accessible to persons with disabilities, large enough, and will have good acoustics. For some issues, it can be desirable to hold meetings in more than one location or to choose a site in a particular area or neighborhood. A new comprehensive plan or zoning ordinance affects the entire community, and in a jurisdiction with a large geographical area, multiple meetings in various locations afford a better opportunity for participation. If the commission is considering a new neighborhood plan, the public meetings should be held in the affected neighborhood, if possible.

Sometimes the commission may need to change the regular meeting place to accommodate an exceptionally large crowd. The city or town hall may be big enough for routine meetings, but a hearing on a new zoning ordinance or a landfill location may need to be held at the high school auditorium. Some commissions have found a need to make a provision for overflow crowds, because the number of attendees regularly exceeds the capacity of the room. Speakers and television monitors can be used in the hallways or in other rooms, to increase the capacity.



Credit: City of Charlestown

Chairing the Meeting

It is essential that the president, who chairs the meeting, understands how to make meetings run smoothly. The chair needs to fully understand the commission's rules and needs to follow them carefully. The chair should have a gavel and should not be afraid to use it, not only to open and close meetings, but to keep order.

The agenda should be followed, and discussion should not be focused on extraneous issues. Comments on each agenda item should be limited to relevant issues. If the plan commission has no authority over the color of a building, the chair should not entertain questions from commissioners or the public about the color of the building, and any comments about the color should be ruled out of order. Members of the audience frequently want to discuss issues that are not applicable to the plan commission's role. If the chair allows this discussion, the audience is misled into believing the commission does have authority in those matters.

The chair should have a regular method for conducting the meeting. A typical routine would include the following:

- 1) Introduce commission members and staff;
- 2) Explain the role of the commission;
- 3) Explain the hearing purpose;
- 4) Explain the hearing process;
- 5) Read the agenda item;
- 6) Request the name, address, and affiliation (e.g. neighbor, attorney, chamber of commerce) of each person who speaks;
- 7) Thank the speaker for commenting; and
- 8) Call for a motion, second, discussion, and the vote.

Meeting and Hearing Conduct

Common courtesy is the key to a successful meeting. The commission should display and demand good manners. Here are some of the basic principles:

- All comments and questions addressed to the chair;
- Everyone addressed with title of respect (Mr., Ms., etc.);
- Polite, courteous, businesslike tone and manner (no yelling, no smirking, rolling of eyes, no giggling, etc.);
- No side conversations, whispering, or other distractions amongst commission members, staff, or audience;
- No personal attacks;
- No threats; and
- No applause (it's distracting and intimidating).

There are several ways to keep public hearings on track. The public hearing should be formally opened and closed, and no public comment should be taken at any time other than during the hearing. The chair should have the authority to limit the length of time that people speak and to cut off irrelevant or repetitive comments.

"I cannot give you the formula for success, but I can give you the formula for failure-which is, 'Try to please everybody.'"
- Herbert Bayard Swope

For more tips on running meetings and hearings, see Chapter 4, Communications.

Some commissions require those who wish to speak to sign in prior to the hearing. These sign-in sheets eliminate the feeding-frenzy approach to public meetings, where people become agitated by a comment made by someone else and then rise to speak. There usually is less irrelevant and poorly thought-out testimony if speakers sign in. The sign-in sheets also provide the commission with a record of participants.

The rules can limit the length of individual comments, or provide the commission authority to impose time limits when necessary. Representatives of groups, such as attorneys or other spokespersons, can be given a longer time than individuals representing themselves. A range of options is available, but the rules must provide for them, and the time limits must be uniformly enforced.

Uniformed law enforcement personnel can sometimes be necessary. If meetings regularly attract persons who behave in a disorderly manner, uniformed officers should routinely attend. The commission could request a police presence only for meetings that are potentially contentious. Disorderly or threatening behavior should not be tolerated, and the chair should have the authority to order people to be removed from the hearing room if they do not maintain appropriate behavior.

MAKING DECISIONS

Deciding the Case

After a public hearing is concluded, the plan commission must arrive at a decision or recommendation. The issues often are complicated, and decision-making is likewise difficult. These decisions will be much easier if the community has a well-crafted comprehensive plan which the commission consistently uses as a guideline. While it sounds easy to use the plan and follow its guidance, in practice many plan commissions fail to do so. This section discusses the most common reasons why commissions do not act consistently or do not arrive at the decision that best fulfills the public interest.

Peer Pressure. Commission members do not want to offend their colleagues or appear to be unconventional or uncooperative. Commission members should be appointed to represent a variety of views, however, and there is no reason why decisions should always be unanimous.

Public Pressure. It is difficult to make a decision that is unpopular among a room full of people, especially in small towns where the commission members often know the audience members personally. Commission members should remember that the audience isn't always right; those who are present do not necessarily represent the community as a whole. Many times, the audience doesn't even represent its own interests accurately; people may fear consequences that will not occur (e.g., "If you approve this, my property value will drop."). After a project is complete, those who opposed it will sometimes agree that the project benefited, rather than harmed, their neighborhood.

Proposed land use changes generate emotional rather than rational responses from many people. As previously noted, people also tend to focus on issues not within the realm of the commission, such as the proposed design or cost of new houses in a nearby subdivision. It is the plan commission's job to sort through evidence and testimony and make reasoned decisions.

Members of the public frequently circulate petitions throughout the neighborhood and bring them to the commission, overflowing with signatures of people supporting their position. These petitions usually are not useful evidence. The commission has no control over the manner in which the petition is circulated, no way to know what the signature seeker told those who signed it, and no way to verify the signatures. In addition, many people will sign anything their neighbors ask them to sign, in an effort to promote neighborhood harmony. The commission should accept such petitions when they are offered, but the members should not give them a lot of weight.

Developer & Business Pressure. Developers and business people also often represent a particular view, one aimed at reducing their costs and increasing their profits. Sometimes development which offers the highest profit is not in the best interest of the community. All statements must be carefully evaluated. Comments such as, "We must have this many lots in order to make a profit," are not necessarily true. Additionally, even if the statement is true, the community does not have to accept inappropriate development in order to provide profits for a developer. The commission needs to review proposals on their merits.

Political Pressure. Occasionally, elected officials will lobby plan commissioners for votes. Commissioners appointed by elected officials or hired by them may feel obligated to vote as these officials request. Plan commissions are intended to be independent bodies, and commission members are obligated to cast votes that in their judgment promote good planning. These are matters of personal ethics and conscience (See Chapter 6, Ethics, for more information).

Desire for Compromise. Plan commissioners have a natural desire for compromise. They want to find a middle position between developers and opponents. While such compromise might seem desirable, it often has a negative effect. Neither side gets what it wants, so everyone is unhappy. Developers quickly learn that the commission seeks compromise, so they ask for more than they want or expect, in order to end up with the project they initially desired. Compromise is not always bad, and sometimes the commission can broker a win-win solution, but regular and predictable compromise does not lead to good development.



Outside Influences (*Ex Parte* Communication). Commission members tend to be active in the community and interact with developers, business people, and neighborhood residents regularly. These interactions may involve efforts to influence the commission member's opinion or vote on a specific proposal. In most states, plan commissioners are expressly prohibited from engaging in these outside discussions, called *ex parte* communications, with applicants, proponents, or opponents of a matter pending before the commission. In Indiana, there is no statutory prohibition on *ex parte* communication for plan commissioners (There is, however, such a prohibition for BZA members).

Even in the absence of a law prohibiting *ex parte* communication, it is good practice for plan commissioners to refrain from such discussions. They interfere with due process and they are inconsistent with the goals of the open meeting law. In many communities, these communications are difficult or impossible to avoid. The best way to deal with these situations is for the commission member to explain that any information given will be shared with the entire commission at the public meeting. The commission member must then share the information as promised in order to ensure that each commission member is able to vote using the same information.

Voting

Indiana law provides that plan commission actions are official only if taken by a majority of all of the members of the commission, regardless of how many members are present at a meeting. It is important that plan commissioners attend meetings and that they vote on the matters requiring official action. Plan commissioners should consider all sides of each issue and make a decision. In some controversial cases plan commissioners may choose to abstain from voting as an easy way out. This practice is unfair to all, and the commission's rules of procedure should prohibit abstentions for any reason other than a legitimate conflict of interest.

The form of voting is up to the commission, but it should be contained in the rules. Some commissions use voice votes, some use hand votes, some use ballots. If voice votes are used, they must either be by roll call or provide for a roll call when decisions are not unanimous. The votes are a public record. Voice or hand votes are the quickest, but not necessarily the best. Some observers argue that plan commissioners are less likely to be swayed by the votes of their colleagues if they use written ballots. If ballots are used, each should bear the name of the commission member casting the vote, and the ballots should be made part of the file. It is a good idea for the secretary to report the vote of each member, not just the numerical totals, so the public knows how each member voted.

Role of Legislative Body

The legislative body of a county or municipality has a variable role in land use decision making. In the case of subdivision and development plan approvals, the legislative body plays no role as the plan commission's decision in these matters is final. In the case of rezonings, and an amendment to the zoning ordinance, the legislative body makes the final decision. The plan commission's role in this case is to hear the petition and make a recommendation to the legislative body as to its approval or denial.

IC 36-7-4-302 et. seq.

CONFLICTS OF INTEREST

Plan commissioners in Indiana may not participate as a member of the commission in a hearing or recommendation concerning a matter in which he or she has “a direct or indirect financial interest.” In many parts of the U.S., the conflict of interest standard is stricter than the one used in Indiana, and commissions may want to adopt stronger standards in the rules governing conflict of interest. It is recommended that the standard remain fairly narrow, however, to avoid problems caused by commission members refusing to vote.

Plan commission rules should include a definition of a conflict of interest and a means for determining conflict in cases of uncertainty. Each commission member needs to be responsible for declaring any potential conflicts. It is recommended that in cases of uncertainty, the commission should make the determination. The potential conflict is publicly announced, and the commission members deliberate among themselves. The public should not be permitted to participate in this determination.

The rules also should specify the conduct expected from a member with a declared conflict of interest. The law says the member cannot “participate;” this language prohibits the member with a conflict from taking part in the discussion as well as voting. At minimum, the member should leave the commission table and join the audience.

Plan commissioners may not represent another person in a hearing before the commission. Commission members may represent themselves, but they cannot appear on behalf of another applicant.

Beyond the issue of conflict of interest is the broader topic of planning ethics. In recent years, the American Planning Association has conducted a dialogue on planning ethics and has sponsored research in this area. Planning ethics are discussed in more detail in Chapter 6, Ethics.

SUGGESTED RESOURCES

Indiana Code, 36-7-4, 200 Series, 300 Series, 400 Series. <https://iga.in.gov>

APA Information for Plan Commissions and Boards: <http://planning.org/education/commissions>

C. Gregory Dale, Benjamin A. Herman, Anne F. McBride. *The Planning Commissioners Guide*, New Edition. Published by APA Planners Press, 2013

Christopher J. Duerksen, C. Gregory Dale, Donald L. Elliott, FAICP. *The Citizen’s Guide to Planning*, Fourth Edition. Published by APA Planners Press, 2009

IC 36-7-4-223 et. seq.

CHAPTER 2

BOARD OF ZONING APPEALS BASICS

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IN THIS CHAPTER . .

- What is the Board of Zoning Appeals?
- Common BZA Activities
- The Decision-Making Process
- Preparing Findings of Fact
- Taking Action
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- Enforcement
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WHAT IS THE BOARD OF ZONING APPEALS?

The board of zoning appeals (BZA) is the local government body that is empowered by State Law to consider granting relief from the requirements of the zoning ordinance. From a practical standpoint, it is almost impossible to create zoning regulations that universally make sense on all parcels of land. The board of zoning appeals allows property owners with unique conditions on their parcels to seek relief.

The BZA is considered an administrative board that is quasi-judicial in nature. A quasi-judicial entity operates more like a court than a legislative body and uses many standards and procedures like the courts. BZA decisions are required by state law to be guided by specific criteria, and made based upon the facts, not opinions. The primary role of the board of zoning appeals is to rule on the application of the existing zoning laws as opposed to passing new laws, and therefore it is considered an administrative body.

Powers and Duties

The BZA's duties fall into three categories:

- 1) Granting of variances;
 - Developmental standards variances; and
 - Variances of use (not available to boards with an area plan commission).
- 2) Granting of special exceptions/conditional uses; and
- 3) Appeals from administrative decisions.

These powers and duties are explained in more detail later in this Chapter.

Structure

There are three different structures for BZAs, depending on the type of plan commission that the local government employs. A board of zoning appeals (BZA) is either:

- 1) An advisory board of zoning appeals (under the advisory planning law);
- 2) An area board of zoning appeals (under the area planning law); or
- 3) A metropolitan board of zoning appeals (under the metropolitan development law).



Credit: WTHITV 10

The board of zoning appeals is typically composed of one (1) division. The zoning ordinance may be amended to establish an additional one (1), two (2), or three (3) divisions. A division refers to a geographic sub-area of the planning jurisdiction. The zoning ordinance must describe the limits of that division's territorial jurisdiction and specify whether that division has exclusive or concurrent jurisdiction within that territory.

A board of zoning appeals has territorial jurisdiction over all the land subject to the zoning ordinance. If the board has more than one (1) division, all divisions have concurrent jurisdiction within that territory, except that a division of an advisory or area board of zoning appeals, may have only limited territorial jurisdiction (such as a historic district). The zoning ordinance must describe the limits of that division's territorial jurisdiction and specify whether that division has exclusive or concurrent jurisdiction within that territory. Refer to the Indiana Code for more information regarding communities with Metropolitan plan commissions.

Membership

Area, advisory, and metro BZAs typically have five members. The exceptions are as follows:

- If an area BZA was established before January 1, 1984, as a seven (7)-member board, it continues with 7 members; and
- If a municipal plan commission exercises jurisdiction outside the incorporated area of the municipality, there is one additional member appointed to the advisory BZA to represent the extra-territorial jurisdiction, resulting in a six (6) member board.

Other Offices: None of the members of a board of zoning appeals may hold other elective office, which includes a federal office, state office, legislative office, school board office, or local office (such as County Commissioner, City or Town Council, County Surveyor, etc.). Political party offices (i.e., precinct committeeman) are not considered elected offices. BZA members may also not hold appointive office (such as County Highway Engineer, City Fire Chief, etc.), except as permitted by IC-36-7-4-902, in municipal, county, or state government.

Non-Resident Appointments: Before 2011, all BZA members had to be residents of the jurisdiction they served. A state law change in 2011 now allows non-resident appointments to the BZA if the individual owns property within the jurisdiction and lives within the same county where the jurisdiction is located. Section 36-7-4-905 (b) goes on to state that a majority of the members must still be members of the board's jurisdiction. This provision was designed to help small communities that experience difficulty in finding enough citizens to serve on their BZA, resulting in unfilled vacancies.

Terms: When an initial term of office expires, each new advisory or area BZA appointment is for a term of four (4) years, thereafter expiring on the first Monday of January with the exception of metro BZA divisions, which is for a term of one (1) year. Note that if there is a delay in appointments, a board of zoning appeals member serves until his/her successor is appointed and qualified. BZA members are eligible for reappointment, and there are no term limits within state law.

See IC 36-7-4-902 for appointment details

IC 36-7-4-902 (c)

IC 36-7-4-205, IC 36-7-4-208, and IC 36-7-4-903 et. seq.

IC 36-7-4-905 et. seq. IC 3-5-2-17 et. seq.

IC 36-7-4-906 (g)

Chapter 2: Board of Zoning Appeals Basics

See Board of Commissioners of Morgan County v. Wagoner, App. 1998, 699 N. E. 2d 1196

IC 36-7-4-907 (b)

IC 36-7-4-907 (a)

In the case where a BZA member has a direct or indirect financial interest, or a lack of impartiality (IC 36-7-4-909(a) was amended in 2011 to add bias, prejudice or lack of impartiality as a conflict of interest), that member may not participate in the hearing or decision of the board. Indiana code allows an alternate member to participate in the hearing or decision in place of the regular member, counting toward the required quorum. See IC 36-7-4-909 for more information. If the BZA wishes to use alternate members, it is advisable to make appointments in advance and outline the process for using alternates in the BZA's rules.

Removal: The appointing authority of a metro BZA may remove a member for any reason, without appeal. The appointing authority of an advisory or area BZA may remove a member from the board of zoning appeals only for “cause”, citing written reasons for the removal (such as poor attendance or unethical conduct). An advisory or area BZA member who is removed may appeal the removal to the county’s circuit or superior court within 30 days, but due process does not confer a right to a hearing before removal.

Additionally, if a BZA member misses three consecutive regular meetings, the appointing authority may choose to treat the absences as if the member had resigned. While there may be BZA members who desire to spend the winter in Florida or the summer at a lake house, it makes it difficult for the rest of the group to function when that “snowbird” or summer traveler is absent (i.e., even numbers may result in tie votes, etc.). A BZA member has a responsibility to notify the Planning Director and BZA Attorney in advance of the scheduled meeting if he/she will be absent. Regardless of the cause, if a vacancy occurs, the appointing authority shall appoint a member for the unexpired term of the vacating member.

Alternates: In addition, the appointing authority may appoint an alternate member to participate with the board in any hearing or decision if a regular member has a conflict of interest or is unavailable to participate in the hearing or decision. Alternate members have all of the powers and duties of a regular member while participating in the hearing or decision. In order to avoid quorum issues at BZA meetings, the best practice is to prepare by appointing an alternate member for each regular member, and to include the alternates in BZA training and encourage their attendance at BZA meetings in advance of their being called into service.

Conflicts of Interest

Indiana has state laws regarding conflicts of interest for BZA members. IC 36-7-4-909(a) states that a board of zoning appeals member may not participate in a hearing or decision of that board concerning a zoning matter in which he/she has a conflict of interest, which includes the following:

- The member is biased or prejudiced or otherwise unable to be impartial (added to Indiana Code in 2011); or
- The member has a direct or indirect financial interest in the outcome of the decision.

For more information on conflicts of interest, see Chapter 6, Ethics. Note that the intention is that the member with a conflict of interest may not participate in the hearing or decision in any way. The member should state for the record that there is a conflict and then leave his/her seat with the commission before that agenda item is opened. Because the member with the conflict is banned from participating in the hearing or decision, he/she is not allowed to testify during the public hearing portion of the meeting.

Per IC 36-7-4-920 (g), persons may not communicate with any BZA member before the hearing with intent to influence the member's action — this is often referred to as ex parte contact. See Chapter 6, Ethics, for more information on ex parte contact. Since conflict of interest is self-determined, it is possible that a BZA member could feel prejudiced after experiencing (unavoidable) ex-parte contact, and decide to recuse himself/herself from the case as a result.

Whenever a BZA member has a conflict of interest, he/she has a responsibility to notify the Planning Director and BZA Attorney in advance of the scheduled meeting that the conflict that will bar participation, so that their alternate member may be notified.

COMMON BZA ACTIVITIES

Variances

A variance, if granted, allows a change from a zoning ordinance requirement. There are two types of variances allowed in Indiana:

- 1) Variances from Developmental Standards (includes modifications of required setbacks, building heights, parking requirements, landscaping or other physical standards).
- 2) Use Variances (allows a land use that is not permitted in the district where the property is located). Note that Use Variances are not allowed for local governments that are part of an area plan commission per IC 36-7-4-918.4.

BZA members often fall into two extreme camps: those that believe that variances should never be granted because everyone should play by the same rules and those who have listened to attorneys for the petitioner tell them that it is the BZA's job to grant variances! In this case, a happy medium is the best attitude: variances should be granted, but only when warranted.

Yes, most of the BZA's caseload is devoted to variance requests, but the BZA is under no obligation to grant those variance requests. The board is under an obligation to hear the request and then make a decision based on the facts of the case and the applicable criteria.

Variations can sometimes significantly change the character of an area, and should be carefully considered. Variations are intended to "run with the land", not with ownership, so a variance may essentially last forever. Besides being almost permanent, variations can potentially derail implementation of parts of the community's comprehensive plan by allowing standards or uses that do not represent community norms!



Rule #1 — A variance is not automatically a bad thing! It is a way a community can solve problems created by applying the generalities of the zoning ordinance to specific situations — it introduces some needed flexibility to zoning regulations.

Rule #2 — Caution: Variations are meant to be a safety valve, but may become a "back-door" way of thwarting the zoning ordinance. Examples of this are asking for a variance to allow more density in a residential zoning district, instead of asking for the property to be rezoned to a district with a higher density.

See IC 36-7-4-918.4 for Use Variances and IC 36-7-4-918.5 for Variances from Development Standards. Both sections state that the BZA shall approve or deny variances and may impose reasonable conditions as a part of its approval.

These two sections also say that both variances of developmental standards and use variances may be approved only upon a determination in writing (findings of fact) that the petition meets all of the required legal criteria.

So what are the required legal criteria for approval of a variance?

Developmental Standards Variance Criteria per IC 36-7-4-918.5 are as follows:

- 1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- 2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
- 3) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.

What exactly are “practical difficulties”? Some Indiana communities have attempted to clarify the criterion. Several years ago, Monroe County, Indiana’s Board of Zoning Appeals decided to define practical difficulties with the help of their attorney. Monroe County still uses this definition, although there have been attempts to make the criterion a bit more stringent, so that it relies less on economic considerations. According to Monroe County’s BZA, practical difficulties are significant economic injury that:

- Arises from the strict application of the Zoning Ordinance to the conditions of a particular, existing parcel of property;
- Is not as significant as the injury associated with hardship, that is, it does not deprive the parcel owner of all reasonable economic use of the parcel; and
- Is clearly more significant than compliance cost.

Shelbyville, Indiana’s Unified Development Ordinance clarifies the practical difficulty criteria by stating, “The practical difficulty shall not be self-imposed, nor based on a perceived reduction of, or restriction on, economic gain.”

Use Variance Criteria per IC 36-7-4-918.4, which apply only to Advisory and Metro BZAs, are as follows:

- 1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- 2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
- 3) The need for the variance arises from some condition peculiar to the property involved;
- 4) The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
- 5) The approval does not interfere substantially with the comprehensive plan.

Rule #3 — It is the applicant’s responsibility to prove the request satisfies all the variance criteria; it is not the responsibility of the BZA to make the case for them! You should require that the applicant submit written evidence that they meet the criteria.

Exercise: Look up the variance criteria in the state law, then look at the criteria that your board uses — are they the same? Is anything missing from the state law list of criteria? If there are any missing criterion, then you have a problem that needs to be fixed! Do you have extra criteria that aren’t listed in state law?

What is an “unnecessary hardship”? Monroe County’s Board of Zoning Appeals also decided to define unnecessary hardship with the help of their attorney. According to Monroe County’s BZA, hardship or unnecessary hardship is a significant economic injury that:

- Arises from the strict application of this ordinance to the conditions of a particular, existing parcel of property;
- Effectively deprived the parcel owner of all reasonable economic use of the parcel; and
- Is clearly more significant than compliance cost or practical difficulties.

Crawfordsville’s Zoning Ordinance includes the following definition:

“HARDSHIP (as related to variance of this Ordinance). The exceptional hardship that would result from a failure to grant the requested variance. The Common Council requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one’s neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.”

Test your Knowledge of the BZA:

When may a variance be approved?

- (a) when the board determines it meets the “no harm-no foul” test
- (b) when it meets all of the variance criteria**
- (c) when no one shows up to speak against it

When may a variance be denied?

- (a) when you don’t have a quorum
- (b) if the applicant is a jerk
- (c) if all variance criteria haven’t been met**

Can a variance be conditionally approved?

- a) Yes**
- b) No
- c) I’m going to Google the answer

The board of zoning appeals may stipulate any number of conditions as part of their approval. They may also require the property owner to enter into written commitments, which are recorded in the County Recorder’s Office and are binding on future owners of the subject property. Written commitments formalize the conditions attached to a variance. See IC 36-7-4-615 and Chapter 3, Avoiding Pitfalls, for more information on using Written Commitments.

Use Variances: If there are extra criterion for use variances, you have a problem that needs to be fixed!

Variances from Developmental Standards:

If there is an extra criterion (or two) for developmental standards, it is all right! Indiana Code says that for developmental standards ... *your local ordinance may establish a stricter standard than the “practical difficulties” standard prescribed by state law.*

Examples of extra developmental standards criterion:

The variance granted is the minimum necessary, and the variance granted does not correct a hardship caused by an owner, previous or present, of the property.

Discussion: Should your community follow a stricter standard for developmental standards variances than the state’s “practical difficulties”?

Rule #4 —While there is no maximum number of conditions or commitments that can be attached to a variance approval, if there are a great number, you may want to reexamine whether the proposed variance is really justified.

Sample Variance Request Worksheet — Development Standards

(1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community (Consider whether granting the variance will hurt or potentially cause harm to the city or county — why or why not, and what harm can befall them?)

Criterion #1 met? No Yes If yes, any conditions or commitments?

(2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner (Consider whether neighboring property will suffer any major negative impacts — what impacts can the neighbors realistically expect?)

Criterion #2 met? No Yes If yes, any conditions or commitments?

(3) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property (Consider what difficulties the owner would have developing the property according to the zoning ordinance standards — remember, higher cost is not an adequate justification for a variance)

Criterion #3 met? No Yes If yes, any conditions or commitments?

(4) (Add additional criterion here)

Criterion #4 met? No Yes If yes, any conditions or commitments?

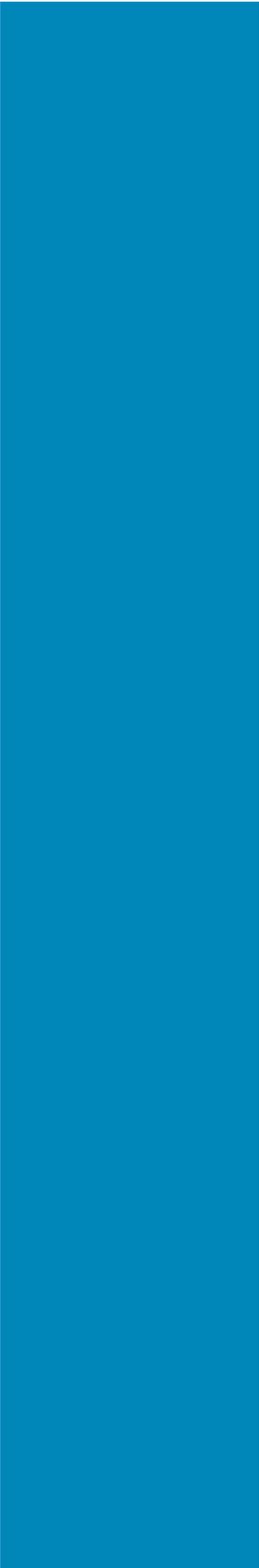
If ANY of the criteria have been checked as “no”, the developmental standards variance request may not be approved.

If ALL criteria have been checked as “yes”, then a variance from developmental standards is justified.

Proposed Motion:

Conditions:

Committments:



Sample Variance Request Worksheet — Use

(1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community (Will granting the variance potentially cause harm to the city or county — why or why not, and what harm can befall them?)

Criterion #1 met? No Yes If yes, any conditions or commitments?

(2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner (Will neighboring property suffer any major negative impacts — what impacts can realistically be expected?)

Criterion #2 met? No Yes If yes, any conditions or commitments?

(3) the need for the variance arises from some condition peculiar to the property involved (Consider whether there is some unique problem with the site that makes it unable to meet ordinance standards — what is it?)

Criterion #3 met? No Yes If yes, any conditions or commitments?

(4) the strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought (Consider what it would be like if the site were developed under the terms of the zoning ordinance — what would the difficulties be?)

Criterion #4 met? No Yes If yes, any conditions or commitments?

(5) the approval doesn't interfere substantially with the comprehensive plan
(Consider whether there are any major conflicts with the comprehensive plan — what are they?)

Criterion #5 met? No Yes If yes, any conditions or commitments?

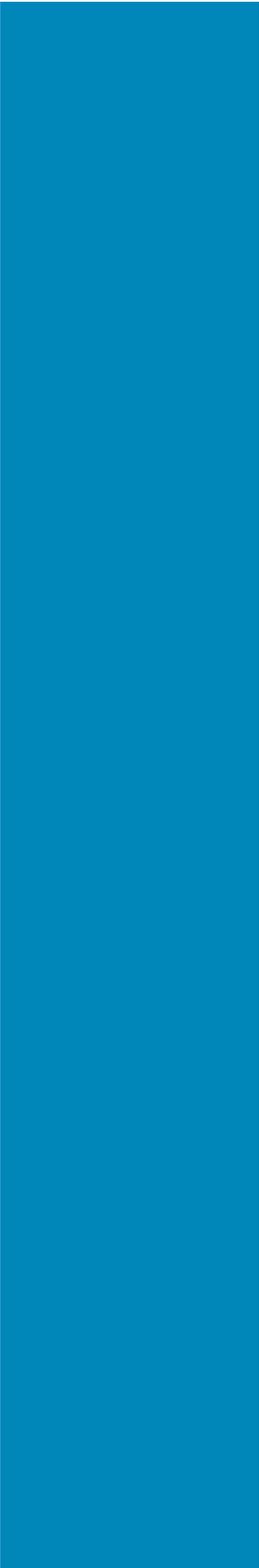
If ANY of the criteria have been checked as “no”, the use variance request may not be approved.

If ALL criteria have been checked as “yes”, then a use variance is justified.

Proposed Motion:

Conditions:

Committments:



IC 36-7-4-918.2 et. seq.

Special Exceptions

After variances, the second most common BZA application is for a special exception. Indiana Code does not define the term “special exception”, but it is generally understood that they are uses of property that may be allowed under specified conditions. Special exceptions also called special uses, contingent uses and conditional uses are intended to be considered on a site-specific basis. State statute specifies that a board of zoning appeals shall approve or deny special exceptions “from the terms of the zoning ordinance, but only in the classes of cases or in the particular situations specified in the zoning ordinance. The board may impose reasonable conditions as a part of its approval.” Note that the BZA may also require written commitments for special exceptions.

What exactly is a special exception?

Indiana Code leaves it up to local government to define what uses in what zoning districts should be special exceptions, but examples might include institutional uses (i.e., schools), drive-through businesses, etc. Indiana Code does not specify a set of criteria for use in considering special exceptions, again leaving it to the discretion of local government. Some communities use a general set of criteria for most, if not all, special exceptions, while others establish a separate set of criteria for some special exception use, such as for Wind Energy Systems or Bed and Breakfasts.



Special Exception Criteria Example:

Hendricks County, Indiana’s Zoning Ordinance requires that in order to grant a Special exception, the board of zoning appeals find adequate evidence showing that the use:

- 1) Is in fact a permitted Special Exception use as listed in each zoning district...;
- 2) Will be harmonious and consistent with the character of the zoning district and in accordance with the general objectives, or with any specific objective of the County’s Comprehensive Plan and the Zoning Ordinance;
- 3) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
- 4) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

- 5) Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
- 6) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors;
- 7) Will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares; and
- 8) Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

The Hendricks County Zoning Ordinance goes on to state, “When considering a special exception use request the board of zoning appeals may examine the following items as they relate to the proposed use:

- Topography and other natural site features;
- Zoning of the site and surrounding properties;
- Driveway locations, street access, and vehicular and pedestrian traffic circulation;
- Parking (including amount, location, and design);
- Landscaping, screening, and buffering of adjacent properties;
- Open space and other site amenities;
- Noise, loading areas, odor, and other characteristics of a business or industrial operation;
- Design and placement of any structures;
- Placement, design, intensity, height, and shielding of lights;
- Traffic generation; and
- General site layout as it relates to its surroundings.”

Exercise:

Create a Special Exception Request Worksheet using your community’s criteria.

Look up special exceptions (or special uses, conditional uses, or contingent uses) in your zoning ordinance. Are there any criteria that your board must consider in making their decision?

Discussion:

Are existing special exception criteria adequate? What changes should be made? If your community does not have criteria for special exceptions, draft a list of possible criteria for further discussion.

Appeals from Administrative Decisions

The terms appeal and variance may be used interchangeably in conversation, but are really two very different things. A variance grants dispensation from a particular requirement of the zoning ordinance on a particular property. With an appeal, someone made a zoning-related decision and another person disagrees with it.

According to IC 36-7-4-918.1, the BZA shall review appeals from any order, requirement, decision, or determination made by:

- An administrative official, hearing officer, or staff member under the zoning ordinance;
- An administrative board or other body (except a plan commission) in relation to the enforcement of the zoning ordinance; or
- An administrative board or other body (except a plan commission) in relation to the enforcement of an ordinance adopted under this chapter requiring the procurement of an improvement location or occupancy permit.

An example of an appeal from an administrative decision would be if someone disagrees with how the planning staff interprets a provision of the zoning ordinance, and appeals that interpretation to the board. BZAs do not typically hear many appeals. If the Board does get an appeal, it may be an indicator that certain language in the Zoning Ordinance is unclear. The need to clarify this “grey area” should be conveyed to the plan commission. If the BZA hears a lot of appeals, a close look should be taken to see if the community needs a new zoning ordinance or if staff needs additional training.

IC 36-7-4-919 says that if an appeal is filed with the BZA, it must specify the grounds of the appeal and must be filed within the time limit and in the format prescribed by the BZA’s rules. The body being appealed (administrative official, hearing officer, administrative board, or other body) shall transmit all documents, plans, and papers constituting the record of the action in question to the BZA.

The BZA may reverse, affirm, or modify the order, requirement, decision, or determination that is being appealed. For this purpose, Indiana Code gives the board all the powers of the official, officer, board, or body from which the appeal is taken. The BZA shall make a decision either at the meeting at which that matter is first presented or at the conclusion of the hearing, if it is continued.

THE DECISION-MAKING PROCESS

Public Hearing

All actions of the BZA (variances, special exceptions and appeals from administrative decisions) require public hearing. IC 36-7-4-920 requires the BZA to make public notice in accordance with IC 5-3-1-2 and IC 5-3-1-4 and give due notice to interested parties at least ten (10) days before the date set for a hearing. The party making the appeal may be required to assume the cost of notice.

At the hearing, each party may appear in person, by agent, or by attorney or other representative. The planning staff and any other persons may appear before the board at the hearing and present evidence in support of or in opposition to the request.

BZA Contact

The intent is that all BZA contact regarding a request occurs within the official public hearing. State law allows planning staff to give the BZA a written statement (a staff report) setting forth any facts or opinions relating to a BZA case, including a recommendation, prior to the public hearing. Per Indiana State Statute, other persons may not communicate with any BZA member before the hearing with intent to influence the member's action — this is often referred to as *ex parte* contact. To help prevent this from happening, application packets and the community's website should include a warning, citing Indiana Code. If the local government's website includes a list of BZA members, make sure there is also the same warning attached. See Citizen Planner's Guide, Part 6, Ethics for more information on *ex parte* contact.

Rules of Procedure

IC 36-7-4-916 requires the board of zoning appeals to adopt rules, which may not conflict with the zoning ordinance.

These rules shall address:

- 1) The filing of appeals;
- 2) The application for variances, special exceptions, special uses, contingent uses, and conditional uses;
- 3) The giving of notice, including what type of mail is used to deliver the notice and who the interested parties are;
- 4) The conduct of hearings (do not rely on Robert's Rules of Order, it is much too complicated for local government public hearings); and
- 5) The determination of whether a variance application is for a variance of use or for a variance from the development standards (such as height, bulk, or area).



Credit: townnews.com

IC 36-7-4-920 (g)

The BZA's rules may also address other issues, including, but not limited to:

- 1) Any divisions of the board of zoning appeals (i.e., an area plan commission that has a BZA for each participating community); and
- 2) Schedule and location of meetings (typically adopted annually).

Once the rules are adopted by the board of zoning appeals, they are to be made available to all applicants and other interested persons (and they should also be available and used by the staff and BZA).

Exercise:

Review the adopted Rules of Procedure for your BZA. Are all the items listed in IC 36-7-4-916 addressed? Does your BZA follow these rules? Mark up the rules to indicate areas of possible changes, and discuss these with fellow board members and staff.

If staff or BZA members are unable to produce a copy of the rules, it is important that a set of rules be written and adopted by the board as soon as possible!

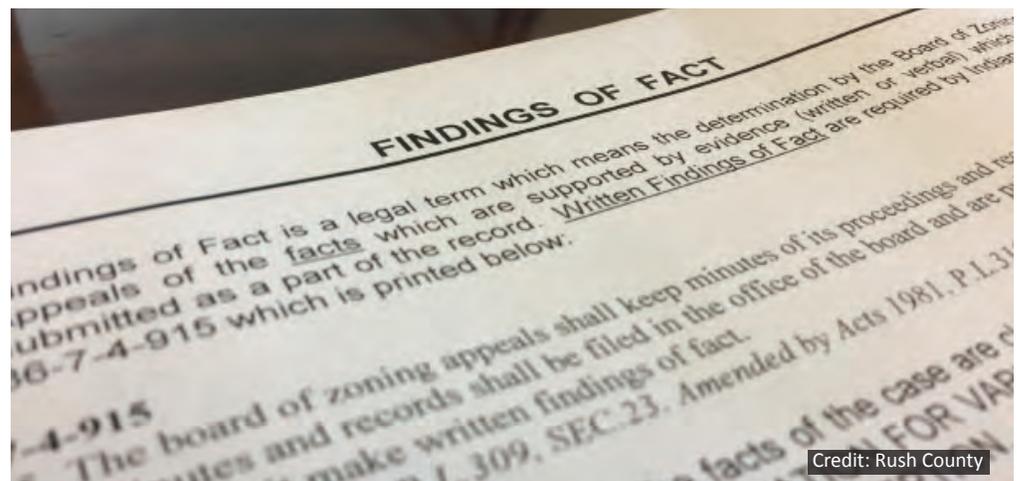
PREPARING FINDINGS OF FACT

In addition to keeping minutes of its proceedings and a record of the vote, all BZA actions require the preparation of findings of fact to support that decision. Indiana case law has established that it is not enough to make the required statutory determinations in the words of the ordinance (e.g., stating, "the approval will not be injurious to the public health, safety, morals, and general welfare of the community"), but that the BZA must make findings that support those determinations.

In effect, the board must add a "because" to each criterion, with a corresponding explanation, (e.g., "the approval will not be injurious to the public health, safety, morals, and general welfare of the community because..."). Case law has further established that trial courts are to remand appeals of BZA decisions back to the BZA to make findings of fact if the BZA has not previously done so.

Carlton v. BZA of City of Indianapolis, 1969, 245 NE2d 337, 252 Ind. 56

Habig v. Harker, App. 1 Dist.1983, 447 NE2d 1114



Indiana case law has also held that it was acceptable for the BZA to take over three months to adopt findings of fact after the hearing and decision. While this delay may have been acceptable to the court, the best action is for the board to stay current.

This can be done by either:

- Adopting findings as part of the motion on the case (either prepared by staff in advance to support the staff recommendation or proposed by a BZA member with the motion, using a self-prepared worksheet, amended staff prepared findings or petitioner’s written application to cite the findings); or
- Adopting findings at the next BZA meeting, which have been prepared by planning staff, the BZA’s legal counsel or a board member, based on the actions at the previous meeting.

Discussion:

Does your BZA adopt findings of fact for each action? If so, what process is used? How well does that process work? How could it be improved? If your BZA does not currently adopt findings, immediately put a plan in place to remedy this.

TAKING ACTION

Several things should happen for the BZA to make a defensible decision.

- 1) Adequate notice must have been given for the public hearing;
- 2) BZA members need to do their homework before the meeting (read staff report, do a “drive-by” site visit);
- 3) Members must abstain from ex-parte contact or declare it at the meeting;
- 4) BZA members must declare any conflicts and excuse themselves if there is a conflict;
- 5) The public hearing must be conducted in accordance with the board’s rules and state law;
- 6) There must be a quorum (a majority of the BZA’s membership, not a majority of those in attendance in order to authorize any action as official (IC 36-7-4-910 and IC 36-7-4-911));
- 7) The BZA should have a discussion among themselves about the criteria and may ask questions of the applicant or others before making a motion – the applicant and the audience deserve to know why members are voting as they are; and
- 8) Findings must be adopted for the case.

Additional Regulations for Some Counties

In some Indiana communities, the board of zoning appeals does not make final determinations. IC 36-7-4-918.6 requires that BZAs for municipalities in counties with populations of 400,001 – 699,999 or BZAs in a county with a population between 250,001 - 269,999, shall submit special exceptions, special uses and use variances to the legislative body for approval or disapproval, along with the BZA’s recommendation (favorable, unfavorable or none). See Indiana Code for further details on timelines and action. Note that if the legislative body approves a petition, it must make the determination in writing.

McBride v. BZA of
Evansville-Vanderburgh
Area Plan Commission,
App. 1 Dist.1991, 579
NE2d 1312

Additional Regulations for Metropolitan Development Commissions

Metropolitan development commissions have additional regulations related to the BZA. IC 36-7-4-918.8 outlines how the metropolitan development commission may act as the BZA to approve or deny developmental standards variances or special exceptions.

JUDICIAL REVIEW

Per IC 36-7-4-1615, if the court finds that a person has been prejudiced, the court may set aside a zoning decision and remand the case to the BZA for further proceedings or compel a decision that has been unreasonably delayed or unlawfully withheld by the BZA.

In 2011, Indiana law changed the way that appeals of BZA decisions are made. BZA decisions are no longer subject to review by certiorari, but are treated as zoning decisions per IC 36-7-4-1016, just like plan commission decisions. That section states that final decisions of the board of zoning appeals under both the IC 36-7-4-900 series (administrative appeals, exceptions, uses, and variances); or the IC 36-7-4-1015 series of this chapter (appeals of commitment, modifications or terminations); are considered zoning decisions for purposes of this chapter and are subject to judicial review in accordance with the IC 36-7-4-1600 series. The board must cooperate by providing the petitioner with the “board record” for the case within 30 days (or longer if allowed by the Court). The board record includes:

- 1) Any board documents expressing the decision (e.g., Minutes, Transcript, etc.);
- 2) Other documents identified by the board as having been considered before its decision and used as a basis for its decision (i.e., photo exhibits, traffic reports, etc.); and
- 3) Any other material described in law as the board record for the type of decision at issue (e.g., Findings of Fact).

It is up to the party appealing the BZA’s decision to prove their case, not the BZA per IC 36-7-4-1614(a). The court will review the BZA’s decision in accordance with the standards listed below, as applied to the decision at the time it was made. Expect the court to make findings of fact on each material issue on which the court’s decision is based. Note that the court shall grant relief under IC 36-7-4-1615 only if the court determines that the BZA’s decision is:

- 1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- 2) Contrary to constitutional right, power, privilege, or immunity;
- 3) In excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- 4) Without observance of procedure required by law; or
- 5) Unsupported by substantial evidence.

ENFORCEMENT

The 2011 state law amendments also impacted enforcement, so it is important to make sure your community is following current legal standards. State Statute allows the board of zoning appeals to bring an action to enforce the Zoning Ordinance or the BZA's decisions. The BZA may also bring an action to enforce conditions or written commitments they imposed. This same section on Indiana Code also enables plan commission and your enforcement official to engage in enforcement.

The board of zoning appeals may invoke any legal, equitable, or special remedy in these actions. An action for fines or penalty for enforcement of the Zoning Ordinance may be brought in any court located within the jurisdiction of your board of zoning appeals, and if the BZA is successful, the respondent bears the costs of the action. Note that a change of venue to another county may not be granted.

When an appeal has been filed with the board of zoning appeals, proceedings and work on the premises affected shall be stayed, unless the stay would cause imminent peril to life or property (in that case, proceedings or work may not be stayed except by a restraining order).

Your Zoning Ordinance may still provide that a structure erected, raised, or converted, or land or premises used in violation of this chapter or an ordinance or regulation made under this chapter, is a common nuisance and that the owner or possessor of the structure, land, or premises is liable for maintaining common nuisance.

ALTERNATIVES TO CONSIDER

- Do you find yourself hearing what seems like the same case over and over?
- Do you see a difference between the types of cases you get (i.e., the “no-brainers” vs. the tough calls)?
- Is there a waiting list to get on a BZA agenda?
- Do your BZA meetings last until the wee hours of the next morning?
- Are you asked to schedule special BZA meetings just to accommodate important/fast-track petitions?

If you answered “YES!” to any of the above questions, your BZA could probably benefit from one or both more of the following actions:

Amending the Zoning Ordinance for Frequently Granted Requests

If it seems you are granting the same type of variance request frequently, ask the plan commission to consider whether an amendment to the zoning ordinance is appropriate. This not only would save you time, but would also make the citizens of your community very happy.

IC 36-7-4-1014 et. seq. &
IC 36-1-6 et. seq.

IC 36-7-4-1001 (a)

IC 36-7-4-1012 et. seq.

Example: Ordinance regulations are typically written to fit new development, not older neighborhoods. When it is time to replace the old, structurally challenged garage with a nice new one, the property owner is told that they can't put it back in the same place, because the side and rear setbacks are now larger than when the first garage was built. Wouldn't a better solution be to amend the zoning ordinance to address standards for older development, instead of requiring everyone in the neighborhood to get variances?

Appointing a Hearing Officer to Hear Cases

What is a hearing officer? An appointed staff member, board member, or attorney who can conduct hearings on certain variances or conditional uses / special exceptions and approve or deny them. The hearing officer acts in place of the BZA. This works best on "routine" cases where there is little public opposition or no need to burden the petitioner or BZA with the full process.

How does the hearing officer process work?

- Petitioner files case, just like any other case for the BZA. Filing fees and public notice are still required.
- Staff prepares a case report, complete with recommendations and any appropriate conditions of approval and written commitments. Approval must meet criteria that any variance or conditional use/special exception petition would have to meet at the BZA level.
- Hearing officer conducts a formal public hearing, subject to all of the public notice rules of the BZA. Staff, petitioner, public, and hearing officer all have opportunity to comment on the case.
- Hearing officer has three options: approve petition, as submitted or with conditions; deny petition, which can be appealed to the BZA; or forward petition to the next hearing of the BZA for more public scrutiny.



Hearing Officer Benefits:

- Reduces the regular caseload of the BZA by removing minor, non-controversial cases;
- Frees up time to concentrate on more significant cases;
- Shortens the length of the full BZA hearings;
- Cases can be processed through the system more quickly than if they went to the full BZA;
- Hearing officer setting is more comfortable and user-friendly for non-experienced petitioners; and
- Option to set hearings more frequently or at more convenient times than the (typical) once monthly BZA hearings held in the evening.

Implementing the Hearing Officer Process:

- Do your homework first!
 - As a board, discuss with staff what types of cases would be appropriate for a hearing officer and whether it is optional or mandatory for those cases.
- Float the idea with the plan commission.
 - A joint meeting would be a good venue for discussion.
- If the plan commission is supportive, representatives should preview the hearing officer idea with the legislative body.
- If there is interest in the hearing officer:
 - The plan commission holds a public hearing and the legislative body adopts an amendment to the zoning ordinance which enables the hearing officer process;
 - The plan commission adopts an amendment to their rules to enable the process. Note that according to Indiana Law, the hearing officer hears cases in place of BZA, but is subject to the rules & procedures of the plan commission. It makes sense to reference the hearing officer alternate process in the BZA's rules also; and
 - Set up the hearing officer process, including appointing a hearing officer.

Adopting a Combined Procedure

In 2011, Indiana law changed to allow developments that require more than one hearing to be considered by either a committee of the plan commission or a hearing officer, meaning that the powers of the BZA may be exercised by another. This process must first be authorized by your zoning ordinance, and the plan commission may designate a hearing examiner or committee of the commission to conduct a single combined hearing for developments that require hearings by multiple bodies (BZA, Hearing Officer, Plat Committee, plan commission). If a combined hearing process is adopted as an amendment to the Zoning Ordinance, it must be an optional choice for the applicant, not mandatory, and the plan commission must also make rules governing the hearing of cases.

This combined process is most appropriate when there is a desire to expedite projects (i.e., for economic development purposes) and/or to allow larger, more complicated cases to be considered all at once, in a more coordinated “big picture” review. The St. Joseph County Area Plan Commission uses the Combined Hearing Procedures for South Bend, unincorporated St. Joseph County, New Carlisle, and Osceola. They have had enough success with the combined process that the other Area Plan Commission jurisdictions are incorporating the process in their Zoning Ordinances as they adopt revisions.

IC 36-7-4-923 &
IC 36-7-4-924 et. seq.

IC 36-7-4-403.5 et. seq.

Personal Reflection

It is tough to be a board of zoning appeals member, because you have to act on facts and legal criteria, not just empathy and sympathy. The BZA cannot legally decide their requests based on compassion, only on whether the variance criteria are met. This will be easier for you (and the applicant) to bear if the applicant understands what you must legally base your decision on. This does not mean that a BZA member should be cold, mean, or rude with an applicant; just that your compassion should not guide your decision. It is difficult not to be moved by tears and tragedy — if you are susceptible, it may be best to leave the BZA membership to someone else.

SUGGESTED RESOURCES

APA Guide for Planning Commissions and Boards. <http://planning.org/education/commissions/>

The Board of Adjustment, by Gail Easley and David Theriaque, APA Planners Press, 2005

CHAPTER 3

AVOIDING PITFALLS

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IN THIS CHAPTER. . .

What Are Planning Pitfalls?

Techniques for Avoiding Pitfalls

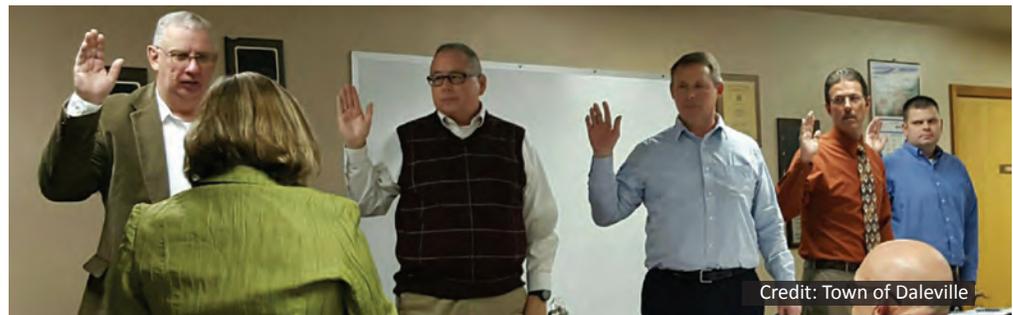
Tools for Avoiding Pitfalls

WHAT ARE PLANNING PITFALLS?

The planning and development process inherently contains potential problems. This section offers advice to help plan commissions and boards of zoning appeals avoid creating more pitfalls.

Simply put, avoiding pitfalls means being proactive about planning. Too often, plan commissions and boards of zoning appeals find themselves acting in a reactionary way. It may seem easier and more expedient at the time to stick to only addressing the cases before you, but spending more group time up front working on the "big picture" will help lay a good planning foundation. Having a good planning foundation in place can have a huge impact in improving the quality of planning in your community and reducing problems you may encounter down the road. Planning pitfalls most typically happen when things aren't well thought out and details aren't tied down.

Planning pitfalls can also happen when communities establish rules and regulations, but then don't follow them. The first piece of advice in this chapter is an obvious, but sometimes disregarded general principle: you are given a lot of freedom to craft the rules and regulations for your community, so your board or commission needs to make sure you follow them! Now, what else can you do to avoid pitfalls in your community?



TECHNIQUES FOR AVOIDING PITFALLS

Engage in Regular Communication and Coordination

COMMUNICATION, COMMUNICATION, COMMUNICATION! This practice is the number one technique for avoiding pitfalls. Too often in local communities, "the right hand doesn't know what the left hand is doing." Every department, board, commission, and elected official has its own job to do. In most cases, we'd all be much better off if we knew a little bit more about what everyone else does. Not only could this attitude improve the whole planning process by making it more user-friendly, it could also benefit by a sharing of knowledge and expertise, contributing toward a better product and making it less likely that you will be caught unaware. This sharing does not have to be only within the community, but can also be between adjacent communities.

Some basic steps that plan commissions and boards of zoning appeals can take to improve communication and coordination include:

- Consider appointing ex officio members from neighboring plan commissions (e.g., a county plan commission member becomes an ex-officio member of a city plan commission);
- Set up advisory committee(s) to review applications. This is a particularly successful way to increase communication between local government departments and to make use of "in-house" expertise that could result in a better product (e.g., a subdivision review committee or a technical advisory committee);
- Ask commission or board members who represent other bodies to give a short report on their body's activities at each meeting (e.g., park board member on the plan commission reports on park activities);
- Send planning requests that are near the jurisdictional boundary to the adjacent jurisdiction for review and comment -- this process could be formalized through the use of inter-local agreements; and
- Have an annual "Big Picture" retreat, involving a review of local planning activities during the past year, a comprehensive plan check-up and a setting of initiatives for the coming year. Include plan commission, BZA, legislative body and staff. While this will need to be advertised to comply with open door laws, it is not meant to be a public input session.

Refuse Incomplete Applications

Another big problem across the Hoosier state is the acceptance of incomplete planning applications. Once an incomplete application is accepted, the guessing game begins, setting your community up for pitfalls. Staff is unable to do appropriate review without all the required data, and even if it is submitted late, that review will be rushed or incomplete. The public won't have a clear picture of what is being requested, if plans are incomplete or changing. Worst of all, local planning bodies can't make the best decisions without complete applications. Accepting incomplete applications is a disservice to everyone involved in the planning process and often leads to unclear actions and records.

Many communities have a history of accepting incomplete applications because it is seen as business-friendly or politically popular. If you are going to change this practice, you will need to get support from your local elected officials. To get that support, you need plan commission and BZA members to be voices for change, in addition to staff and members of the public. You also need to be prepared with concrete examples from your community showing how this practice has caused issues. It will also help your case if you have examples or support of applicants who already follow the rules and submit complete applications – they will likely resent what they see as special treatment for others.

Making defensible planning decisions is like defensive driving -- don't wait until you've had an accident to start!

Click here for the City of Greenwood, Indiana's Commercial Site Plan application: www.greenwood.in.gov/egov/documents/1481300519_80073.pdf

If you are going to accept only complete planning applications, you will need to have an application packet that contains a clear, detailed checklist of exactly what is required. The Area Plan Commission of Tippecanoe County produces “How to” pamphlets for each type of case that clarifies what constitutes a complete submission, states that an incomplete submission will not be put on the agenda, and promises a one-month delay. Their pamphlets are adopted as part of the bylaws. Dearborn County, Indiana doesn't take any actions involving approval on incomplete applications. They also have a disclaimer that applicants must sign upon submittal that acknowledges they only have 90 days to complete their applications, after which Dearborn County can deny and force them to re-apply.

To make everyone's job easier, you should require that the petitioners address all required criteria in writing as part of the application, even if they need pre-filing staff assistance to understand—which will also ease the administrative burden associated with adopting findings of fact. Avon, Indiana's application forms ask the petitioner to complete or address each finding.

Another good practice to ensure complete and correct applications is to require or encourage a pre-filing meeting with staff. While this may seem like an extra step in the process, spending a bit more time preparing up front will result in a better application being filed, avoiding an incorrect or incomplete filing. For example, the City of Greenwood, Indiana requires a pre-application meeting at least one week prior to filing a commercial site development plan. Bloomington, Indiana sets deadlines annually for required pre-application meetings for plat committee, plan commission and board of zoning appeals cases.

Prepare for the Hearing

Before the Public Hearing or Public Meeting...

While it seems like common sense to prepare before a public hearing or public meeting, it never hurts to remind yourself what needs to be done. Some basic hints for making the most of your time before the public hearing are noted below.

7 Habits for Highly Effective Application Review:

- 1) Start with an open mind.
- 2) Seek pre-meeting expert review by multiple departments and organizations, preferably acting as a formal review committee. Note: direct staff to share written comments with the applicant before the public hearing or meeting.
- 3) Trust staff's expertise and recommendations as part of the written staff report.
- 4) Read the staff report at least once before the meeting (ASAP is best), and note any questions or concerns – asking staff to do more research if necessary.
- 5) Unfold and review any maps or drawings.
- 6) Visit the site if at all possible, but avoid talking with the applicant (ex-parte contact). A “drive-by” site visit allows you to observe from the public right-of-way without entering private property.
- 7) Review the request with the applicable criteria in mind.

A Word About Public Hearings...

Public hearings and public meetings are not the same thing. Not all actions require a public hearing; sometimes a public meeting is all that is mandated. The public hearing is a legal requirement and also an obligation to your citizens. However, don't fool yourself into thinking that they are the ideal forums for communication. By nature, public hearings must be more formal and structured than a public meeting. There are typically a minimum number of public hearings specified by law (i.e., the plan commission must hold one public hearing for a comprehensive plan per IC 36-7-4-507), but the reality is that they may not be enough. As with ethics, we want to do more than meet the minimum legal standards. The purpose of a public hearing is to hear testimony; the public hearing should not be a forum for a public debate. If you do it right, you can also use a public hearing for educational purposes. If you desire dialogue, discussion or negotiation, schedule a public meeting first.

Follow Due Process

One of the biggest pitfalls planning bodies face is a legal challenge. Remember, anyone can file suit, whether the case has merit or not. Even if you've had very few legal challenges, that does not mean that you shouldn't be prepared. Procedural due process is where most plan commissions have the majority of their legal problems. This is a great topic for an in-house training session! Most citizen planners don't understand due process. Get your plan commission attorney involved in this training. Indiana judges typically will initially review a planning case to see if the plan commission or BZA followed due process or "rules of fair play." To make a defensible decision, you must do the following:

Give Adequate and Timely Notice

Interested or potentially interested citizens should receive clear notice far enough in advance to study the proposal and prepare their response. Indiana law and local rules of procedure cover the specifics as legal minimums, but generally newspaper legal ads (required by law) and certified mail (often required by your plan commission and BZA Rules) are not the best way to communicate. While we must follow the statute, there is no reason that your rules can't go over and above the minimum state law requirements for providing notice. What kind of notice do you give? Many Indiana communities require "yard sign" type notices be posted on the subject property, with a telephone number or a web address listed for more information. Westfield, Indiana is an example of a community that requires Public Notice Signs for rezonings. The applicant is responsible for posting a public notice sign(s) on the property at least ten (10) days prior to the public hearing. The Westfield-Washington Economic and Community Development Department determines sign locations and makes signs available for the applicant.



Certified Mail vs. Certificate of Mailing:

Most people don't like getting certified mail, because it is associated with bad news from the government. When no one is home to sign for a certified mailing, it goes back to the post office to await pick-up, eventually to be returned to the sender. Consider using the much less expensive and more effective Certificate of Mailing for notification of surrounding property owners instead, which provides evidence that mail has been presented to the Postal Service for mailing, and does not require signature for delivery. [Click here](#) for more information from the USPS website.

Make the Decision in a Reasonable Amount of Time

Make decisions promptly. If information is missing or in conflict, it is appropriate to continue the case until a specified future meeting, so that the commission can be adequately informed when making a decision. If necessary information is still not submitted after a couple of continuances, consider denying the case without prejudice, and let the applicant refile when he/she has all the necessary information. Beware that continuances may be used by an applicant to wear down the resistance on controversial cases. Your rules of procedure should limit how often and/or how long a continuance may be granted.

Prepare Findings

Decisions themselves are central to the practice of due process. Specific factual findings in support of a final decision made by the plan commission and all decisions made by the BZA are essential. Findings should always be done for these cases and are particularly important if the case is controversial, because it is more likely to end up in court. It is fine to direct staff or your legal counsel to prepare the findings, but don't make them guess what you were thinking. State for the public record at the hearing your reasoning regarding your decision and make sure to reference all of the applicable criteria.

Keep Complete Records

Make sure that everything important stays in the case file, and that the file is available for public review. Complete meeting minutes in a timely manner. Computerization is fine, just make sure you have electronic files for everything in the file, and that they remain accessible to the public.

Make Sure Your Rules are Clear and Follow Them

Think twice before using Robert's Rules of Order as the way to conduct your meeting. The rules are very complicated and if you make an honest mistake following them, the courts can still hold it against you! Consider instead spelling out a simple order of events in your rules. If you haven't reviewed your Rules of Procedure in a while, get them out and read them. Ask about things you don't understand and update them as needed. For more information on rules of procedure, see Chapter 5, Rules of Procedure.

Act In the Public Interest -- for "The Public Good"

While the public good is a somewhat elusive concept, and we may all have slightly different interpretations of what it is, it generally means that you must do what will benefit your community and your citizens in the long run. This should not be confused with a "majority rules" attitude.

IC 36-7-4-915, IC 36-7-4-707, and IC 36-7-4-1406

Be Fair

Be fair to everyone involved in the process. Especially if you don't like an applicant, it is important to provide the opportunity for a fair hearing. It is totally inappropriate for a planning body to demonstrate its prejudice against even the worst developer. One California court found evidence that a developer was so disliked that he could not get a fair hearing in one community, and ruled that the city had made a taking of his property, even though he had never applied for a rezoning! It is okay to apply strong conditions and use extreme diligence in enforcing them, but don't call a bad developer "out" before he/she ever gets to the plate. Due process is all about being fair to everyone involved in the planning process -- developer, citizens, etc.

Be Reasonable and Keep it in Context

Plan commission and BZAs are not making life or death decisions (although decisions may have big financial or life impacts for some individuals). Don't ask for unreasonable things (i.e., an extreme example would be a traffic impact study for one new single-family home). Don't allow attorneys or applicants for either side to rush you, bully you (or people who are speaking) or otherwise drive the process. Remember that the plan commission and BZA members' jobs are to receive information about a proposal and to use their best judgement on behalf of the entire community. It is important to use not only the evidence you have received for a particular case, but also the plans and policies that have already been put in place to help you.

Be Consistent

If you have consistently made the same decision on the same type of request, don't suddenly change that decision unless you have an excellent reason for doing so, and point out what is so markedly different about this request. For example, if you always grant a side yard setback variance for new accessory buildings on small lots in the historic district, don't suddenly deny an application if one neighbor shows up in opposition. Rely on the applicable criteria and you will make the appropriate decision. Don't get lazy though -- review the criteria anew for each case.

Stay in Control of the Meeting/Hearing

This section outlines some ideas for how to maintain control when running a public meeting or hearing. For additional tips, see Chapter 4, Communications.



Credit: Northwest Indiana News Bureau

Know your Role

Everyone has a role to play at the meeting or hearing. Do you know what your role is?

The President's or Chairman's role at the meeting:

- Welcome and introduction of body;
- Explain purpose of meeting and ground rules for conduct;
- Explain what is on the agenda and how the meeting will work (time limits, etc.)—providing warnings about any potential continuances, and stating clearly that there will be no additional notice for the continued meeting;
- Deliver a "play by play" or translation for the audience, when necessary (e.g., "That ends the applicant's presentation, now he/she may only respond to questions" or "NIMBY means Not In My Back Yard") and repeat/rephrase all questions;
- Keep control of the meeting -- be firm when necessary and make sure all remarks go through you (not between opponents and proponents); and
- At the end of the meeting say, "thank you" and tell them what's next.

The role of the board or commission member at the meeting:

- Be familiar with the material -- don't open your packet for the first time at the meeting;
- Have a public discussion -- don't pass notes or whisper;
- Don't use planning jargon or buzz words;
- Explain yourself -- why are you voting this way? State your findings of fact so the public and the staff understand you correctly;
- Make sure your input is meaningful; and
- Be willing to make or second a motion.

The staff's role at the meeting:

- Make effective presentations that include a recommendation, and
- Have everything ready and organized.

The commission or board attorney's role at the meeting:

- Keep the board on track regarding rules and consideration of appropriate criteria.

The applicant's role at the meeting:

- Be responsible for proving that his/her request satisfies all of the criteria and ordinance standards.

The audience's role at the meeting:

- You actually have several different audiences, all with different motivations and roles: surrounding property owners, regular meeting attendees, the press, etc. You need to recognize their right to public testimony, their duty to behave decorously, and their perception of what is happening.

See Chapter 8, Zoning Ordinances, for more information on rezonings

Make Sure You Are Set-up and Ready

Room set-up can make a huge difference in the success of a meeting. Try these tips for a better meeting:

- Make sure the room is big enough for everyone, and that there are an adequate number of comfortable chairs;
- Make sure the acoustics are good;
- Test all audio-visual equipment before the meeting;
- Make sure the temperature is comfortable -- better too cool than too hot;
- Post the criteria on the walls or put them on handouts, so everyone knows what should be considered; and
- Provide agendas for everyone in attendance.

Base your Decision on Legal Considerations

First of all, your decision must be based on applicable criteria from state law and local ordinances. There is no room for sentiment when it comes to planning decisions. State law is briefly discussed in the following sections for rezonings, subdivision plats, plat vacations, variances, special exceptions, and administrative appeals.

Rezonings

In considering zoning ordinances or petitions for change to the zoning map, IC 36-7-4-603 requires that the “plan commission and legislative body shall pay reasonable regard to:

- The comprehensive plan;
- Current conditions and the character of current structures and uses in each district;
- The most desirable use for which the land in each district is adapted;
- The conservation of property values throughout the jurisdiction; and
- Responsible development and growth.”

The above criteria are somewhat subjective in nature and can mean different things to different people, even when viewing the same set of facts. A result of this subjectivity is wide discretion in the decision-making authority of a plan commission. For this reason, it is essential that all activities of a plan commission be conducted in an open, public forum and to make the public aware of all of the applicable procedures and options available to the board prior to the start of the hearing. For more information on zoning, see Chapter 8, Zoning Ordinances.

Subdivisions

IC 36-7-4-702 expects the review of a subdivision plat to be objective, acknowledging that the plan commission shall determine if the plat qualifies for approval based on the standards prescribed in your subdivision control ordinance. The ordinance must include standards for:

- Minimum width, depth, and area of lots in the subdivision;
- Public way widths, grades, curves, and the coordination of subdivision public ways with current and planned public ways; and
- The extension of water, sewer, and other municipal services.



The ordinance may also include standards for the allocation of areas to be used as public ways, parks, schools, public and semipublic buildings, homes, businesses, and utilities, and any other standards related to the purposes of the subdivision control chapter. For more information on subdivision control ordinances, see Chapter 9, Subdivision Control Ordinances.

Plat Vacations

Indiana planning law allows a plan commission to approve or deny a petition for vacation of land. The plan commission shall approve the petition for vacation of all or part of a plat pertaining to the land owned by the petitioner only upon a determination that:

- Conditions in the platted area have changed so as to defeat the purpose of the plat;
- It is in the public interest to vacate all or part of the plat; and
- The value of that part of the land in the plat not owned by the petitioner will not be diminished by vacation.

See Chapter 9, Subdivision Control Ordinances, for more information on subdivision review

Great news: state law allows your jurisdiction complete freedom in setting your own design and improvement standards in the Subdivision Control Ordinance -- take advantage of this gift by following those standards once you've determined what they are!

IC 36-7-4-711 and IC 36-7-3-13

Remonstrance or objections to a proposed vacation may be filed or raised by any person aggrieved by the vacation only upon one or more of the following grounds:

- The vacation would hinder the growth or orderly development of the unit or neighborhood in which it is located or to which it is contiguous;
- The vacation would make access to the lands of the aggrieved person by means of public way difficult or inconvenient;
- The vacation would hinder the public's access to a church, school, or other public building or place; or
- The vacation would hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous.

If the plan commission approves a vacation of all or part of a plat, the plan commission is required to make written findings of the decision approving the petition and furnish a copy of the decision to the county recorder for recording. If the plan commission disapproves a vacation of all or part of a plat, the plan commission is required to adopt written findings that set forth its reasons for denying the petition and provide the petitioner with a copy.

Variances

According to IC 36-7-4-918.4 and IC 36-7-4-918.5, the BZA shall approve or deny variances based on the listed criteria. As part of the review procedures stipulated by state law, the board may impose reasonable conditions as a part of its approval. Review is somewhat subjective. For more information on variances, see Chapter 2, Board of Zoning Appeals Basics.

With respect to variances, there are two major types of variance petitions that may be considered by an advisory or metro board of zoning appeals under Indiana law—variances of use and variances of development standards. Area boards of zoning appeals may only hear variances of development standards. A variance of use from the terms of the zoning ordinance may only be approved by a board upon determination that:

- The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
- The need for the variance arises from some condition peculiar to the property involved;
- The strict application of the terms of the zoning ordinance will constitute an unusual and unnecessary hardship if applied to the property for which the variance is sought; and
- The approval does not interfere substantially with the comprehensive plan.

IC 36-7-4-918.4 and IC 36-7-4-918.5

See Chapter 2, Board of Zoning Appeals Basics, for more information on approving or denying variances

A variance of development standards from the terms of the zoning ordinance may only be approved by a board upon determination that:

- The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
- The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.

Indiana Code says that your local ordinance may establish a stricter standard than the "practical difficulties" for developmental standards variances.

Special Exceptions and Conditional Uses

According to state statute, the BZA has the powers specified in the zoning ordinance to approve or deny special exceptions, special uses, contingent uses, or conditional uses. The decisions for each of these types of applications / requests must be based upon the terms and conditions set forth in the local zoning ordinance.

Administrative Appeals

For items and issues involving appeals, the BZA basically functions as the zoning administrator to determine if the terms of the zoning ordinance are being properly interpreted and applied.

In most cases, the board is also empowered to impose reasonable conditions on the grant of a petition. The ability of the board to consider and impose reasonable conditions is often a valid method of neutralizing the hostilities on both sides of an issue and establishing meaningful dialogue between opposing sides.

Make a Good, Clear Motion

This part is where things often break down. Your motion should reference applicable criteria. The president or chair should take a strong leadership role in bringing the group to a vote. Upon termination of the public hearing and any discussion between BZA or plan commission members, the president/chair should call for a motion on the matter. Even if you do not feel strongly, someone should make a motion simply for the purpose of bringing the issue to a vote. If the motion is unsuccessful, any member may then propose another motion to the contrary, again for the purpose of bringing the issue to a vote. If that motion is unsuccessful for a request that is a recommendation to the legislative body (i.e., a rezoning) the plan commission should have a final motion to forward the petition to the legislative body with no recommendation.

For BZA matters and matters where the plan commission makes the final decision (i.e., a subdivision plat), if all motions have failed to carry, the matter should be continued to the next meeting (either through motion or through provisions contained in the rules of procedure).

See Chapter 2, Board of Zoning Appeals Basics, for more information on special exceptions/conditional uses and administrative appeals

Avoid Emotions

The topic of local land use planning can be highly charged in many communities. Emotions can run high from the perspective of the petitioner, remonstrators, and decision-makers. Typically, the investment an individual, family, or business makes in real estate represents the largest single investment they will ever make. This is especially true of individual homeowners and their families. Once things become emotionally charged for one or both sides of a planning issue, involved parties—including plan commission or BZA members—can get caught up in the emotion of the situation. These represent some of the most dangerous times for plan commission and board members in which they may be swayed by the emotions of the issue rather than the facts presented. Decisions made on the basis of emotional reactions are most likely to be flawed decisions, which are more likely to be challenged in court.



Planning requests tend to be emotionally charged when the public is unaware of basic planning and zoning issues and procedures, or when there is fear associated with the unknown impacts of a proposed development. In all public hearings, and especially at public hearings in which controversial matters will be presented, plan commission or board members must remain calm and deliberate in their actions. Members should not “play to the crowd” by intentionally making comments to invoke crowd reactions.

Members have a responsibility to educate those in attendance about the proceedings. In order to avoid confusion and misunderstanding at public hearings, make sure everyone present understands what is being requested and what the BZA or commission can legally consider under Indiana law and local law in making a decision. This should be done one or more ways:

- The president/chair can provide explanation at the beginning of the meeting;
- Staff can make this information part of their presentation;
- Large signs can be posted on the wall (e.g., list of criteria for granting a variance);
- Those in attendance can be provided with hand-outs in addition to an agenda; or
- The information can be included in the legally-required notification sent to surrounding property owners.

In making determinations or final actions, plan commission and BZA members are reminded that their position is one of a public trust and, as such, it is important to stay impartial in deliberations and make decisions based upon the facts.

Beware of Takings

Takings can generally be defined as seizure of private property or substantial deprivation of the right to its free use or enjoyment as a result of government action—for which the property owner must be compensated. In some cases, actions of a plan commission or BZA that have good intentions can be taken to court and determined to be takings, causing numerous problems. For example, plan commissions or BZAs may wish to request or require exactions or “donations” of money or land from a developer as a condition of development approval. These exactions must be carried out carefully, or they may be contested and judged as takings.

The legal ability to request or require exactions varies from jurisdiction to jurisdiction. Examples of exactions include cash contributions, donation of private lands for public use, or the installation or improvement of public infrastructure. The differences in exactions are typically based upon each local jurisdiction’s adopted comprehensive plan (content), zoning ordinance, and subdivision regulations.

Basic Principles

The basic principles that must be maintained in any effort to obtain donations are:

- The request must be related to the contents of an officially adopted plan;
- The request must be equitably applied throughout the jurisdiction; and
- The request must be in appropriate relationship to the impact of the particular development on the jurisdiction.

A practical application of the above may be found in a situation where there is a request for the dedication of public right-of-way for the future development of the roadway system. In many jurisdictions, such requests are commonly made and are commonly agreed to by the developer who recognizes the dedications as a “cost of business” and realizes that improved roadways in the future will benefit the proposed development. Problems tend to arise when:

- A developer is new to the jurisdiction and attempts to rely on the written plans and ordinances in the preparation of a development proposal and then finds out the common method of doing business bears little relationship to the written plans and ordinances;
- When a developer is denied her zoning approval because she would not agree to specific dedication request; or
- When the request bears little relationship to the proposed development.

To avoid problems of this nature, a jurisdiction has two primary options. It may:

- Adopt an Impact Fee Ordinance; or,
- Require or request written commitments in connection with the review and approval of a development plan.

IC 36-7-4-1313 et. seq.

IC 36-7-4-1300 - IC-36-7-4-1342

Impact Fees

Impact fees are payments required by local jurisdictions of new development for the purpose of providing new or expanded infrastructure and services required to serve that development. In order to legally impose impact fees in Indiana, a major comprehensive and capital improvement planning effort is required.

Indiana Code establishes certain requirements for the imposition of impact fees. The items noted below are the minimum requirements for establishing impact fees:

- 1) A comprehensive plan adopted pursuant to IC 36-7-4-500 series;
- 2) An impact fee advisory committee;
- 3) An impact zone or set of impact zones for each infrastructure type covered by the proposed impact fee ordinance;
- 4) A zone improvement plan, including:
 - Description of existing infrastructure in zone;
 - Determination of current level of service;
 - Establishment of a community level of service;
 - Estimate of development in the zone over next 10 years;
 - Estimate of cost for infrastructure to support a community level of service of projected development; and
 - Description of sources of funds used to pay for infrastructure during the past 5 years.

Once the foundation outlined above is established for the adoption of an impact fee ordinance, Indiana Code then sets forth a series of procedures for the collection, use, and refunding of any fees so collected.

Commitments / Conditions

The impact fee legislation discussed above specifically does not prohibit:

“Imposing, pursuant to a written commitment or agreement and as a condition or requirement attached to a development approval or authorization (including permitting or zoning decisions), an obligation to dedicate, construct, or contribute goods, services, land or interests in land, or infrastructure to a unit or to an infrastructure agency.”

An example of the planning effort necessary to request contributions (e.g., dedication of right-of-way as described above) in connection with commitments or conditions may include:

- A comprehensive plan (that provides for the creation of public ways and the preservation of the routes necessary for the development of public ways);
- A thoroughfare plan which identifies specific roadway needs and alignment;
- A zoning ordinance which specifies the circumstances under which a written commitment may be made, modified or terminated; and
- A subdivision control ordinance, which requires the platting of the real estate.

IC 36-7-4-1313 et. seq.

Without the required planning efforts and public policy established by the legislative body through the adoption process, the request for the dedication of right-of-way may not be defensible, if challenged, by a developer. If a jurisdiction adopts an impact fee ordinance, IC 36-7-4-1313 provides that the person dedicating, contributing, or providing an improvement under this section is entitled to a credit for the improvement. The cost of complying with the conditions or requirements imposed by a jurisdiction may not exceed the impact fee that could have been imposed by the unit under IC 36-7-4-1321 for the same infrastructure.

TOOLS FOR AVOIDING PITFALLS

Create a Plan for the Planners

Just like the communities we serve, it helps if the plan commission and board of zoning appeals have their own plan to follow. Planning bodies need to be proactive in their planning efforts, which means following a set plan of work. Where do you start?

Many comprehensive plans contain an action plan in their implementation section that spells out assigned tasks, and this may be a good starting point for your community. However, even if your community has a comprehensive plan with recommended implementation tasks, it may not be detailed enough to cover what needs to be done. One way some Indiana planning bodies accomplish this is to hold at least one special meeting per year where they assess what happened the previous year and brainstorm what needs to be done in the current year, including plan updates, ordinance amendments, changes to rules, etc.

Maintain Basic Planning Documents

One of the most important ways to be proactive is to have, maintain, and utilize a current set of core planning documents. Those documents include a comprehensive plan, zoning ordinance, subdivision control ordinance (or a unified development ordinance), and rules of procedure for the plan commission and board of zoning appeals. It is not enough just to have these documents in place. If your documents are essentially the same as they were 20 years ago, then they need to be updated. There are new land uses, new technical materials and new community members that didn't exist when these documents were first developed. If your community doesn't address changes, then planning results will not only be less than they could be—but they may, in fact, be disastrous.



Sometimes things pop up before even the most diligent community can amend their ordinance or plan to address them. What should you do in this situation? First and most importantly, don't disregard your current ordinance or plan, or you could find yourselves in legal trouble. Second, you can be honest with the applicant and ask for voluntary written commitments that reflect what will be incorporated into future amendments. Many applicants will agree to do this voluntarily in order to generate good will with local officials. It is important to note that a good ordinance or plan is already prepared for this contingency, with language that allows interpretation. For example, Hendricks County, Indiana's zoning ordinance says, "Principal permitted uses or similar uses consistent with the purposes of this chapter (the zoning district) shall be as follows..."

Comprehensive Plans

A comprehensive plan is a guide to the future development of a community. It establishes a vision of what the community wants to look like in the future. The plan should provide a series of written recommendations, guidelines, policies, and/or strategies to help the community achieve its vision.

One simple way to avoid pitfalls is to utilize and maintain an up-to-date comprehensive plan that clearly outlines the goals and objectives for the community's future development. This plan, its goals, and objectives should be referred to and referenced whenever land use decisions are made. For more information on comprehensive plans, see Chapter 7, Comprehensive Plans.

Zoning Ordinances

The basic rationale for a zoning ordinance is to protect the health, safety, and general welfare of the public; to implement the goals and policies of the comprehensive plan; and to preserve and protect property values. When properly coordinated, the zoning ordinance will contain districts, use groupings, and development standards that work together to help implement the land use policies outlined in the comprehensive plan. For more information on zoning ordinances, see Chapter 8, Zoning Ordinances.

Subdivision Control Ordinances

Subdivision control ordinances are intended to protect purchasers of real estate by assuring them that the platted property has been reviewed and determined to be developable by the jurisdiction—and to protect the jurisdiction by making sure that property is developed to its standards. For more information on subdivision control ordinances, see Chapter 9, Subdivision Control Ordinances.

Rules of Procedure

Both the plan commission and the board of zoning appeals need to adopt rules of procedure, which govern how they operate—including how meetings are run. For more information on rules of procedure, see Chapter 5, Rules of Procedure.

Use Conditions and Written Commitments

The use of conditions should theoretically help make a decision better, but conditions have often backfired in the past, causing plan commissions and BZAs problems. In many instances, the only record of long-term conditions was filed in the planning office; therefore, future land owners were not always aware of the conditions associated with their property. Indiana's modern written commitment(s) law was developed to address these types of concerns. The intent of this law is to establish conditions as short-term items that must be resolved before final approval is granted (i.e., submit a revised drainage plan before the improvement location permit is issued). Written Commitments are meant to be established as long-term, permanent conditions (i.e., maintain a 6' tall opaque screen along the west property line or prohibit drive-through businesses on this parcel).

Under Indiana Planning Law, the ability of a plan commission to permit or require written commitments under both the Advisory and Area Planning Law is tied directly to the zoning ordinance. If provided for in a zoning ordinance, a plan commission and BZA may permit or require the owner of property to enter into written commitments concerning the use or development of that property.

The validity of conditions and written commitments for certain planning and zoning functions is outlined in the proceeding sections:

Rezoning

Indiana Code doesn't mention conditions for rezonings; however, the code provides an opportunity for the local legislative body to set up written commitments in the zoning ordinance and specify whether a written commitment may be used for a rezoning or planned unit development (PUD) proposal. The property owner of a development proposal is responsible for entering into written commitments, which are ultimately recorded in the County Recorder's Office and are binding on future owners of the subject property. Written commitments formalize the long-term conditions attached to zoning approvals and do not affect the validity of any covenant or easement created in accordance with the law. Written commitments may be required by the plan commission, even if the owner does not volunteer commitments. If the written commitments are needed to meet the zoning criteria, but the applicant is opposed to the written commitments, it may make more sense to deny the application.

Variations

According to IC 36-7-4-918.4 for Use Variations and IC 36-7-4-918.5 for Variations from Development Standards, the BZA may impose reasonable conditions as a part of its approval. Once granted, a variance runs with the land. Therefore, if a board decides to grant a petition subject to certain conditions, those conditions must relate to the specific elements of the use or development standards applicable to that property and are not dependent upon who the petitioner is. Written commitments may also be employed for variations.

IC 36-7-4-1015

Caution: Don't use conditions and written commitments as a way to make an invalid application acceptable -- these tools aren't meant to make a bad request palatable, but will make a good request even better.

While there is no maximum number of conditions that can be attached to an approval, if there are a great number, or if they are really significant, you may want to reexamine whether the proposed approval is really justified.

Subdivisions

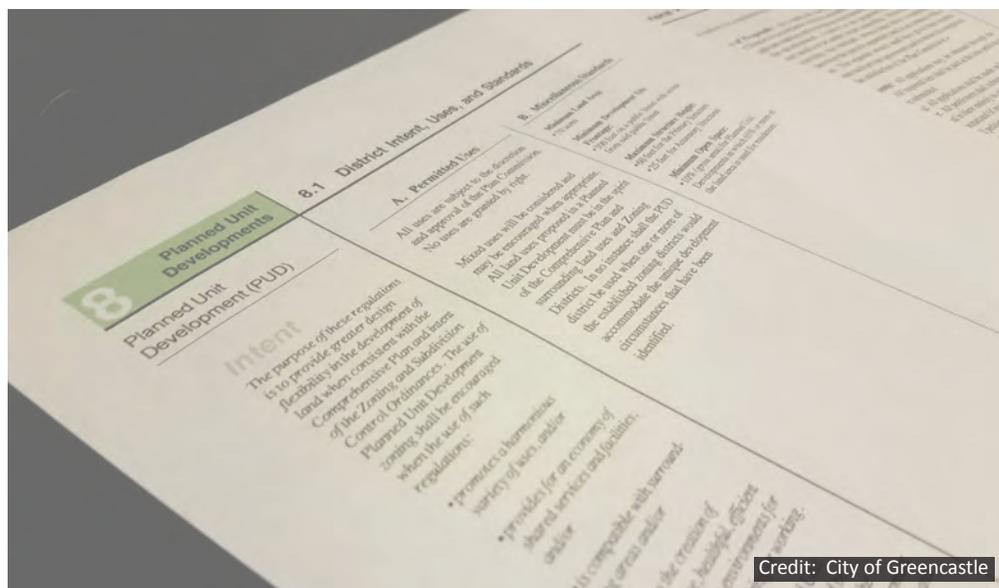
IC 36-7-4-702 lists the acceptable conditions of primary approval of a plat:

- The manner in which public ways shall be laid out, graded, and improved;
- A provision for water, sewage, and other utility services;
- A provision for lot size, number, and location;
- A provision for drainage design; and
- A provision for other services as specified in the subdivision control ordinance.

While it is possible to ask the applicant to make long-term conditions part of the deed restrictions or covenants for subdivision, written commitments are generally a better idea. Remember, the City or County is not a party to private deed restrictions or covenants, so you may not enforce them; enforcement is up to the developer/homeowner's association.

Avoid Relying on PUDs

Many Indiana communities have been reliant on the use and institution of planned unit developments (PUDs) because their zoning ordinance has not been kept up to date. Since each planned unit development is essentially a "write your own" zoning district, any community that has a lot of PUDs makes administration and enforcement much more difficult for planning staff; each PUD becomes another zoning district, complete with unique standards and uses to learn. Additionally, it is much more difficult for everyone else (realtors, citizens, etc.) to know what is going on with a particular piece of property. It is possible to have a PUD ordinance with real performance standards—but unfortunately most Indiana communities don't use PUDs that way. PUDs are a good tool when used appropriately to further goals such as allowing creative development (i.e., mixed-use development).



Beware of Variances

Variances provide a needed relief valve for zoning; however, they can be misused. Beware of “back-door rezoning” that can occur when an applicant asks the BZA to allow a use not normally allowed in a district—or proposes changes to one or more standards in a district which could otherwise be resolved with a rezoning request. If the BZA follows the required criteria, this should not happen.

Keep Good Records

A long term problem that BZAs and plan commissions face is dealing with poor or incomplete records. It is essential that each case have an associated file that contains, at minimum: proof of legal notice, application forms, all related correspondence, minutes, and findings of fact (if applicable). As development efforts are typically long-term in nature, enforcement of decisions may be necessary years in the future. Even if all these things are included in the file, it may still not be enough to make the decision clear. Certain key records deserve more discussion:

Minutes

Minutes should be completed and adopted as soon as possible after the meeting. While some planning groups in Indiana may wait months to adopt their minutes, the longer you wait, the less clear your memory is. It is not necessary to create an actual transcript of the meeting to serve as minutes. Minutes should contain a summary of requests, a record of public testimony, a summary of commission or board discussion, a record of motions, and the final outcome—including the vote.

Findings of Fact

Not all cases require findings of fact, but for those that do, the advice is similar to that given for minutes. Complete and adopt findings as soon as possible. It is fine to direct staff to prepare the findings, but don't make them guess what you were thinking. State for the public record (at the hearing) your reasoning regarding the applicable criteria.

Zoning and Thoroughfare Maps

Not only do the official zoning maps need to be updated each time there is a zone map change, it is also a good idea to annotate the maps—with references to variances, written commitments, etc. For GIS users, this might be a separate layer. This will provide a “heads up” to anyone checking on the property that there is additional important information to be researched. It is also important to keep the jurisdiction's thoroughfare map up-to-date to reflect any changes in street classification, alignment, etc.

Ordinance and Plan Amendments

There is no excuse for not keeping today's electronic documents up-to-date. Still, someone has to take responsibility for getting it done in a timely manner. Make sure that you update documents on your web site at the same time, so that you do not cause confusion or errors to the users. It is still a good idea to follow the old practice of "recodifying" the ordinances occasionally -- you may discover some "lost" amendments.

Plat Maps and Tax Rolls

While the official plat maps and tax rolls are not within the control of the plan commission or board of zoning appeals, it is important that these two things be kept up-to-date to ensure proper notification for planning cases. Forge a good relationship with the local auditor and assessor offices, and lend your support to their budget requests.

Paper Records

Traditionally case files have been kept in paper form, but more and more communities are turning to electronic records for a variety of reasons. Make sure you check with the State of Indiana's Public Access Counselor regarding the Indiana Access to Public Records Act (which governs access to records of public agencies), before you consider destroying any paper records. If you are allowed to destroy paper copies (through legal destruction orders, where applicable), remember that once something is gone, there is no getting it back—so make sure you have a copy of everything before you take that action.

Computer Software

One of the trickiest parts of planning administration is keeping track of deadlines and expiration dates (i.e., for bonds, etc.). Consider investing in computer software programs that will keep planning staff on top of these milestones.

Follow-Up and Enforcement

Even the best decisions will not be effective if they are not properly implemented. Part of every decision-making process should include follow-up, in the form of an on-site inspection to ensure that all requirements, including written commitments have been met. Ideally this would happen before issuance of a Certificate of Occupancy. Building inspectors may be trained to do site review, or planning staff may perform this function.

After implementation, if the property owner fails to maintain the site as required or if there are other violations, communities often begin a long saga of multiple enforcement letters and threats of court. These efforts are typically ineffective and costly of community resources. Consider implementing a more efficient ticketing system instead. The City of Greenwood, Indiana has used ticketing for zoning enforcement for many years, while Bloomington, Indiana uses ticketing to enforce subdivision standards (see Chapter 20.10 ENFORCEMENT AND PENALTIES of their Unified Development Ordinance).

CHAPTER 4

COMMUNICATIONS

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IN THIS CHAPTER. . .

- Importance of Communication
- Types of Meetings
- Conducting Public Meetings
- Legal Requirements for Meetings
- Types of Communication
- Suggested Resources

The term “board” is used here to refer to any citizen board or commission, such as a plan commission or Board of Zoning Appeals, unless otherwise noted.

What we have here is a failure to communicate.
—Paul Newman, Cool Hand Luke

IMPORTANCE OF COMMUNICATION

The relationship between a citizen board and a community, various public agencies, and the local legislative body (city or town council or county commissioners) is critical to the board’s success in gaining local confidence. The board must address and resolve difficult issues, often issues that are troubling the local community, and emotions can run high. A key element in establishing a strong relationship between a board and the community is the ability to make informed decisions that are consistently in the best interests of the entire community. In order to make informed decisions, the board must:

- Clearly identify the issues;
- Gather input on the issues in a fair, orderly, and predictable fashion;
- Encourage input from all sides of an issue; and
- Base the decision upon adopted policy and the facts presented in an open public setting.

In carrying out these responsibilities, the board must convey to the public its impartiality, its fairness, and the process by which decisions and recommendations are made. The plan commission also must communicate to the legislative body the reasons for its recommendations. If citizen boards fulfill their responsibilities as they should, they will sometimes make decisions that are unpopular with the audience at a public meeting. Members need to ensure that those in the audience understand the board’s role, the relevant issues, and the basis for the board’s action.

These communications take several forms, including public forums, public hearings, written and oral reports, and letters or memoranda. Some boards also use radio and television as communication media. There are skills involved in each of these types of communication. The primary focus of this module is the conduct of meetings, as meetings are the most common form of communication for citizen boards.



TYPES OF MEETINGS

A board, in its normal course of operation, may find the need to conduct a variety of types of meetings, including public meetings, public hearings, public forums, work sessions, and executive sessions. Each type of meeting is discussed in this section, with explanations of the uses for each type and primary differences among them.

Public Meetings

Although the terms often are used interchangeably, there is a difference between a public “meeting” and a public “hearing.” The Indiana open door law uses the term “meeting” to apply to all gatherings of the board, whether these are for the purpose of soliciting public comment or not. All meetings are open to the public, but the public need not be invited to speak unless there is a scheduled public hearing.

Plan commissions and boards of zoning appeals may hold two types of public meetings: regular and special. Regular meetings are usually scheduled at least monthly. Sometimes the volume of planning and zoning activity in a community requires more frequent meetings. The board must maintain a permanent record of these meetings. Normally a secretary takes minutes at these meetings, and the minutes are approved by the board at the next meeting.

Occasionally a board may determine that the public would be better served by discussing a particular issue at a special meeting. A time-sensitive or controversial issue that needs to be decided before the next regular meeting and/or will involve lengthy discussion might warrant a special meeting. These special meetings may be scheduled by the board at a regular meeting or they may be called by the president or any two members of the board. If these special meetings are properly called and noticed, the board may take official action at them.

Public Hearings

The Indiana planning and zoning enabling act requires formal public “hearings” on certain matters. The board holds public hearings for the purpose of taking public comment on matters presented for official action. Public hearings are subject to legal notice requirements under Indiana law.

These hearings provide the opportunity for citizens to participate in the decision-making process by officially voicing their opinions and providing information to the board. A recording or minute notes may be made of public hearings. If these types of records are made, they must be retained under the public records law. When the law requires a public hearing, the board cannot take official action until after the hearing.

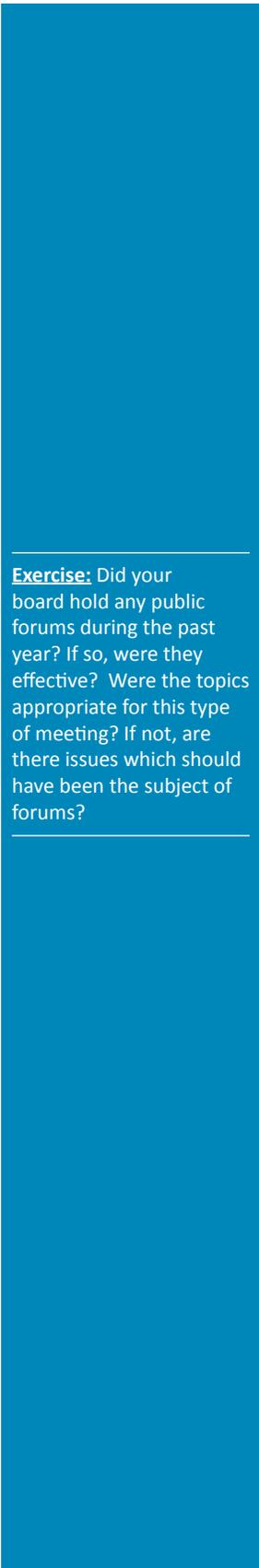
As shown in the following table, the law requires public hearings for certain matters that come before a plan commission or board of zoning appeals.

Open Door Law;
I.C. 5-14-1.5-1 et. seq.

Public meetings must be noticed in advance. Most communities publish a yearly calendar in January.

Publications Procedures;
I.C. 5-3-1 et. seq.

Exercise: Review the agendas for the past three meetings of your board. Is it clear which items require public hearings? If not, how could the agenda be changed?



Exercise: Did your board hold any public forums during the past year? If so, were they effective? Were the topics appropriate for this type of meeting? If not, are there issues which should have been the subject of forums?

Matters Requiring Public Hearings in Indiana	
Plan Commission	Board of Zoning Appeals
Adoption of Comprehensive Plan or plan element	Development standards variance
Amendment of Comprehensive Plan or plan element	Use variance
Adoption of zoning ordinance	Conditional use
Amendment of zoning ordinance text	Special exception
Amendment of zoning map (rezoning, including PUDs)	Contingent use
Subdivision of land or plat vacations	Administrative appeal

Public Forums

Public forums are held to gather information and encourage the exchange of ideas. Public forums tend to be informal, and often no permanent record is retained, although staff or board members present should take notes on the major issues discussed. No official action may be taken at a public forum. A public forum does not require the attendance of board members; however, in order to be fully informed about community issues, as many members as possible should attempt to be present. It is advisable to give media notice of the public forum in order to maximize participation. It is particularly important to do this if there is a chance that enough board members will attend a public forum to constitute a quorum.

If the board has staff, a public forum may be planned and run by the staff rather than by members of the board. The following are examples of information-gathering public forums:

- Establishing community goals and objectives for a comprehensive plan;
- Gathering input to determine if an ordinance should be revised; or
- Soliciting input on proposed zoning ordinances.

Work Sessions

Regular meeting agendas often are devoted to matters needing immediate action, and complex projects with no immediate deadline can be difficult or impossible to complete at these meetings. A board or a board committee may find it beneficial to hold work sessions to complete specific projects. In addition, some topics may require special expertise not available on the board. Examples of work session topics include:

- Training or educational opportunities;
- Developing a new sign code;
- Reviewing or drafting a thoroughfare plan; or
- Drafting new drainage regulations.

A series of work sessions involving plan commissioners and/or other board members may be useful.

As with public forums, it is not necessary for the group to maintain official minutes of work session meetings, although the members may find it beneficial to do so. These sessions are subject to the open meeting law, so the media must be notified, and the public must be allowed to attend and observe. However, those not on the committee need not be invited to speak at these meetings.

Executive Sessions

Executive sessions for public agencies such as plan commissions and boards of zoning appeals are defined in Indiana law and permitted only for limited purposes. Executive sessions can be closed to the public when discussing the following:

- Discussing strategy with respect to the initiation of litigation or litigation that is pending or threatened;
- Receiving information about and interviewing prospective employees;
- Receiving information about an employee’s alleged misconduct and discussing the employee’s status; or
- Discussing a job performance evaluation of an individual employee.

CONDUCTING PUBLIC MEETINGS

The manner in which boards conduct public meetings and hearings speaks volumes to the community about the openness and fairness of the process and of the board’s willingness to receive and consider information before making a determination or recommendation. Public hearings should be orderly and fair and allow for a thorough discussion of the issue at hand.

Board members should be aware that all their deliberations, except executive sessions (previously discussed), are a matter of public record. For boards of zoning appeals, Indiana law prohibits outside communications; for plan commissions, it is good practice to follow the same rule. All decisions must be based upon the record created by the various parties participating in the public hearing. If board members hold outside discussions, they may glean information not available to other members and may even base their votes on information not on the record. These *ex parte* communications are contrary to the concept of due process, and they deny the affected parties a fair hearing. If commission members do receive information outside of the meeting, they should disclose this information at the beginning of the hearing. The suggestions contained in this section will assist board members in conducting open, orderly, fair, and thorough public hearings and effective public meetings.



Credit: Port Townsend Leader

IC 5-14-1.5

Board members should not discuss a case with any interested party outside of the public hearing.

Exercise: Review your board’s rules of procedure. What are the provisions for *ex parte* communication? Do the rules (and your practice) comply with the law and promote fair hearings?

Exercise: Evaluate the conduct of your board meetings. Are they orderly? Do they produce the information you need to make an informed decision? Do applicants and audience members leave feeling that they were treated fairly and that their ideas and opinions were considered? What steps could be taken to improve the meetings?

Tips for Effective Public Meetings

The following tips are based upon a list originally published in the “League of California Cities Pocket Guide” and reprinted in “Planning/Northwest” and in “Scanning Planning”.

- 1) The meeting should be conducted in a professional manner, demonstrating that the board members take their jobs seriously.
- 2) Individual board members should be well prepared. This preparation includes viewing sites on the agenda and reviewing materials provided by staff in the form of staff reports or related materials prior to the meeting.
- 3) Applicants and the public should be treated fairly.
- 4) Applicants and the public should understand the decision-making procedures and that the staff’s role is to provide appropriate support and information to the board and to make recommendations on petitions.
- 5) Copies of the meeting agenda should be available at the door. The audience should be kept informed as to which items are being heard and, where practical, the approximate time scheduled for the items on the agenda.
- 6) The board chair should introduce the board and staff members present, since those in the audience may not know the participants nor their respective roles and responsibilities.
- 7) The chair should inform the public about the meeting process, appeal procedures, and any changes to the agenda such as requests for continuances or withdrawn applications.
- 8) The chair should have members of the public wishing to speak sign in with their name and address prior to the meeting to maintain good records and expedite the meeting.
- 9) The chair should keep the meeting moving by keeping board members, applicants, the public, and the staff to the subject at hand.
- 10) The board should use the staff as a resource.
- 11) To expedite routine matters (i.e., approval of minutes and regular business items) the board may use a “consent agenda” in which all items or a selected group of items may be decided in one motion.
- 12) Each meeting agenda should provide an opportunity for miscellaneous matters such as letters from citizens, inquiries from board members about special projects, and discussion of board activities. Reports may be presented by the chair or staff at the appropriate time in the agenda.

Orderly Conduct

Every citizen is entitled to voice an opinion to the board with respect to a matter scheduled for public hearing. Orderly conduct is essential to allowing all persons a reasonable opportunity to present their opinions. Disorderly conduct, such as shouting out or otherwise interfering with the proceedings, is an infringement on the right of the person speaking at the time. The board is well within its rights to require each person to wait for a turn to speak. The public should not be invited nor allowed to speak at any time other than during the hearing.

A board may, by rule, establish procedures to govern the orderly conduct of a public hearing. Typically these rules:

- Require each speaker to provide his/her name and address for the record (See point 8 in Tips for Effective Public Meetings);
- Require that only one person may speak at a time;
- Require all testimony to be provided under oath (especially for boards of zoning appeals);
- Establish a time limit, either per individual or for each side of an issue;
- Establish the order in which testimony will be provided, including initial testimony, rebuttal, and staff comments;
- Provide that the chair may limit repetitious or irrelevant testimony; and
- Provide that the chair may determine discourteous, disorderly, or contemptuous conduct to be a breach of the privileges extended by the board and allow the chair to deal with such individual as is deemed fair and proper, including removal from the public hearing.



Credit: Washington Post

It is important that board and staff members conduct themselves professionally and not make statements or ask questions that could put the board in legal jeopardy. The transcript of a hearing can be used against, as well as for, the board. The chair should maintain a professional atmosphere for the meeting. Board and staff members should not address each other, applicants, audience members, or others by their first names, nor should they engage in extraneous conversation. If the board members address the applicant on a first-name basis or give the impression of personal relationships, the audience members can be led to believe that the hearing is not fair and impartial.

The chair should formally open and close a public hearing.

Don't talk to me while I'm interrupting.
- Michael Curtiz

LEGAL REQUIREMENTS FOR MEETINGS

This section contains information on the Indiana Open Door Law, making a public record, and notice requirements for public hearings. These issues must be properly addressed for any official action of the board to be deemed legal.

Open Door Law

The Indiana open door law states that “it is the intent of this chapter that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed.” This law requires all meetings to be “open at all times for the purpose of permitting members of the public to observe and record them.” It also requires that a copy of the agenda be posted at the entrance to the meeting and that minutes be kept indicating:

- The date, time, and place of the meeting;
- Members present and absent;
- General substance of all matters proposed, discussed, or decided; and
- A record of all votes taken.

Minutes must be made available to the public for inspection and copying. Any gathering of a quorum of the board can be considered a meeting under the open door law. Special meetings of the board require notice to the members at least three days before the meeting and to the media at least 48 hours in advance. If there are matters to be discussed that require formal public hearings, the hearings must be advertised and notice given to interested parties as required by Indiana law. The board must notify the media of executive sessions and must state the purpose of the meeting.

Board members should be familiar with the following terms defined in the open door law:

Public Agency -- Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise a governing body of a public agency.

Official Action -- means to . . .

- 1) Receive information;
- 2) Deliberate;
- 3) Make recommendations;
- 4) Establish policy;
- 5) Make decisions; or
- 6) Take final action.

Deliberate -- a discussion which may reasonably be expected to result in an official action under (3), (4), (5), or (6) above.

Open Door Law;
I.C. 5-14-1.5-1 et. seq.

The media must be notified at least 48 hours in advance that the meeting is to take place.

Boards and board committees must comply with the Indiana open door law for all meetings, even if there is to be no official action taken. This compliance assures the community that the planning process is open to all citizens of the community and encourages their participation. Citizen participation is the most critical step in educating the general public about planning issues and establishing a link between the board and the public.

Making a Public Record

At any public hearing in which an official action is likely to occur, it is vitally important to the board that an accurate record be made of the proceedings. The minutes need not contain a verbatim transcript of the hearing.

Many boards also keep an electronic record of the hearings. This type of public record can be critical to defending the actions of a board should a legal challenge be raised against any official action. It should be noted that if the record is made, the open records law requires that it be retained permanently, unless destruction of the record is authorized by the county's commission of public records. However, the minutes or proceedings of executive sessions are not open records available for public review.

Notice of Public Hearings

Notice of public hearings are typically provided in some combination of the following five forms:

- Published notice;
- Posting an agenda;
- Individual notice;
- Posted notice; and
- Posting on the Internet.

The Indiana planning and zoning enabling act requires that legal notice be given of all public hearings on the comprehensive plan, new zoning ordinances, amendments to zoning ordinances, and amendments to zone maps. These notices must comply with the requirements of state law. Published notice is required to be placed in a newspaper of general circulation at least one time, at least ten days prior to a public hearing.

Local radio stations often announce upcoming meetings. Many communities now also post meeting dates, agendas, staff reports, and other relevant documents on community websites and social media.



Credit: The Atlantic



Credit: Greensburg Daily News

Access to Public Records Act, I.C. 5-14-3-1 et. seq.

Minutes should provide a recitation of the relevant issues discussed and the actions taken.

IC 36-7-4 et. seq.

Exercise: Review your rules of procedure. Do they define “interested parties”? Do they state how notice is to be given?

See Chapter 3, *Avoiding Pitfalls*, for more notice requirements for both plan commissions and BZAs.

Indiana law also provides for "due notice to interested parties at least ten days before the date set for the hearing. The commission shall, by rule, determine who are interested parties, how notice is to be given to them, and who is required to give that notice." Due notice as required by this section of the Indiana Code typically takes two forms:

- Individual notice mailed to affected property owners; and
- Posted notice placed on the subject property.

Individual notice is notice provided to "interested parties." The plan commission may, by rule, establish a notice requirement for the provision of notice to interested parties on a comprehensive plan, zoning ordinance, subdivision, or petition for zoning map change. In that the "interested parties" in each of these situations may be substantially different, the plan commission may establish notice requirements for each type of hearing. For example, the plan commission may determine, by rule, that published notice shall be sufficient for public hearings on a comprehensive plan or zoning ordinance, because the entire community is affected by such an action and published notice is the only reasonable method of communicating with the community as a whole. While not required by law, many communities display advertisements in the newspaper, in addition to the legal notice. Few people read the fine print of legal notices, and the public is more likely to see an advertisement.

In the case of a petition for zoning map change, subdivision plat, or other form of zoning petition, the plan commission may determine that individual notice should take the form of a written notice provided to owners of properties that are adjacent to the property subject of the hearing. The plan commission may, by rule, determine the distance from a subject property that the individual notice is to be provided. Additionally, boards of zoning appeals have the same authority to establish, by rule, notice requirements for interested parties on development standards variances, use variances, special exceptions, and administrative appeals.

"Posted notice" refers to the posting of a notice card, placard, or sign on real estate which is the subject of a petition for zoning map change, subdivision plat petition, or other form of zoning approval to inform neighbors that a zoning action is pending before the plan commission. Many communities find this method highly effective; others object to the public contribution to sign clutter.

Establishing local rules and procedures for providing notice can make it easier for the local community to find out about issues pending before the board and allow citizens adequate time to inform themselves about the issues and organize their presentation to the board.

TYPES OF COMMUNICATIONS

From time to time, a board will have the need to provide clear internal communications between and among members, external communications with the legislative body and various other governmental agencies, and, most importantly, communications with the general public in the form of community education. These forms of communication are discussed in this section along with suggestions to make such communications as effective as possible.

Internal Communications

For a board to communicate effectively with the community, public agencies, and the legislative body, it must first be able to communicate effectively internally in its deliberation on issues. One of the most important elements in assuring good communication among board members is an effective chair.

The chair must understand the board's rules of procedure (See Chapter 5, Rules of Procedure) and be responsible for the fair and equitable application of those rules. The chair is in a unique position to encourage productive discussion of the issues while maintaining order. The chair must be organized and must keep the discussions focused on the issues over which the board has jurisdiction.

External Communications

External communication between the board and various agencies is important to the success of planning efforts in a community. The actions of one agency may impact the operations of other agencies. For example, if a plan commission approves a major development without considering whether the school system, road system, sewer system, drinking water system, or drainage systems are adequate, many other agencies may be substantially affected.

Plan commissions in Indiana have an advisory role on most planning and zoning issues; they make recommendations to the local legislative bodies. In some communities, members of the legislative bodies also serve as members of the plan commission. It is essential for the plan commission to establish a good working relationship with the legislative body, given that it acts as the primary advisor to that body through its power to make recommendations. A good working relationship can be obtained through several methods, including the following:

- Providing written reports on pending issues;
- Conducting joint work sessions or hearings on various issues of importance to the community; and
- Attending meetings of the other body.

Citizen groups or neighborhood organizations can provide an efficient method of communication between boards and area citizens. Citizen groups may be issue-oriented, considering a topic such as sign regulations or home-based businesses, while neighborhood organizations tend to focus on issues that affect a specific geographic area, such as a drainage problem. In both instances, the board's recognition of such groups or utilization of such groups on advisory panels, when they are legitimate representatives of the group or area, can help the board understand issues more thoroughly than would otherwise be possible. Public hearings or meetings do not always afford the opportunity for obtaining complete and accurate information.

It is important to allow for each board member, and members of the general public, to express their opinions.

Plan commissions should establish liaisons with the agencies that deal with those topics and solicit comments.

Community Education

A well-educated and well-informed public can be a strong supporter of the efforts of a board, especially in controversial matters. Such education and information can be made available to the public only if the board remembers that the public includes all elements of the community (merchants, business leaders, developers, residents, etc.) The needs of all sectors of the community must be balanced for a community to have a healthy growth pattern and strong economic base. The board, through its use of public forums and its ability to establish citizen advisory groups with a balanced representation from the various sectors of the community, can work through controversial issues and develop an action plan that is endorsed by representatives of all sectors of the community.

Written materials should be prepared with the audience in mind. Reports and brochures should use clear, commonly understood language; they should not be filled with planning jargon. Board and staff members also should use other forms of communication when possible, particularly visual materials such as maps, slides, and videos. For many people, a picture really is worth a thousand words. As internet use continues to grow, communities should consider developing their own websites and online community calendars if they have not already done so.

Social Media

Communities who have social media accounts, whether Facebook, Twitter, Instagram, My Sidewalk, etc., need to be very careful in how they use these accounts. With all of the instant connection we have with one another, it is easy for the public to post comments about projects, staff, and the community. There are some common points for communities to remember when engaging in social media whether to post an agenda, notice a meeting, etc.

- **You must manage criticism** – There is always going to be some form of criticism, and likely it would be similar to what you would hear at a meeting. However, staff should be careful in the posting of information. You will also want to have a note on the site that states “XX Community reserves the right to remove vulgar, profane, or offensive comments and messages.”
- **Acknowledge posts** – If you want people to keep following the department, it is wise to acknowledge the post, even with a simple thank you. If you are using an online forum for public input then acknowledging a post lets people know that you are reading and monitoring posts. This also keeps people interested and following you.
- **Manage posts like you manage information for your packets** – You should manage your posts just as you would manage content going out from your department. Your public account should be all about what is happening in the department and nothing else.
- **Protect access to your account** – Access should be protected and not granted to everyone in your department. Maybe your community has social media staff. If so, provide them the information and comments to post. If not, then you should have one person posting for the planning department and all those posts should be approved prior to posting.

Choose a planning issue and develop a program for informing the community about the issue. What is the most effective way to get public input?

- **Not everyone has a social media account** – Posting notices on social media should not be the only way to notify the public about meetings. There are still many people who do not have social media accounts. Therefore, you still need to use conventional means of notice.
- **Consult with your attorney** – Social media is still new terrain. There are lawsuits that have moved forward questioning whether information documented on social media can be entered into a public hearing as evidence. Your attorney should be able to inform you of the latest case law and how it might impact how you use social media.

SUGGESTED RESOURCES

Elaine Cogan. *Successful Public Meetings, 2nd ed. A Practical Guide*. Published by APA Planners Press, 2000.

David Allor. *Planning Commissioners Guide; Processes for Reasoning Together*. Published by APA Planners Press, 1993.

Frederick Bair, Jr. *Zoning Board Manual*. Published by APA Planners Press, 1984.

Planners' Communications Guide 2.0; Section 3: Social Media. www.planning.org/communicationsguide/section03/

CHAPTER 5

RULES OF PROCEDURE

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IN THIS CHAPTER. . .

What are Rules of Procedure?

Are Rules of Procedure Necessary?

The Components of Rules of Procedure

Adopting and Amending Rules of Procedure

Under state law, rules of procedure for plan commissions and BZAs are mandatory.

WHAT ARE RULES OF PROCEDURE?

Rules of procedure are the documented procedures of how a plan commission or board of zoning appeals conducts business. The Indiana Code acknowledges the rules and responsibilities associated with both plan commissions (IC 36-7-4-401) and boards of zoning appeals (BZAs) (IC 36-7-4-916) - Which include membership rules, hearing protocols, meeting times, public notification, and application procedures.

A plan commission should consult IC 36-7-4-401, regarding 'Duties; Advisory Planning; Area Planning.' In general, the statute states that each plan commission shall:

- Prescribe uniform rules pertaining to investigation and hearings;
- Keep a complete record of all the departmental proceedings;
- Record and file all bonds and contracts and keep and preserve all documents of the plan commission or department;
- Prepare, publish and distribute reports, ordinances and other materials relating to its activities;
- Adopt a seal;
- Certify all official acts;
- Supervise the fiscal affairs of itself and the planning department; and
- Prepare and submit an annual budget.

Boards of zoning appeals should consult IC 36-7-4-916, 'Board of Zoning Appeals; Rules.' In general these rules state that the board of zoning appeals shall adopt rules, which may not conflict with the zoning ordinance concerning the following items:

- Provisions for the filing of applications;
- Applications for variances, special exceptions, special uses, contingent uses and conditional uses;
- Public notice requirements;
- Conduct of hearings; and
- Determination of whether a variance application is for a use variance or development standards variance.

The law also provides for other items that can be included in the rules but are not legally required, such as allocation of the docket for the BZA and how to determine dates for meetings.

For both boards, the rules that are adopted should be made accessible to all applicants and the general public.

Quick Quiz: Does your board have rules of procedure? Where are copies of the rules kept?

ARE RULES OF PROCEDURE NECESSARY?

As noted earlier, Indiana Code mandates rules and procedures for plan commissions and BZAs to conduct business whether it is for interpretations on specific processes (re-zones, special exceptions, variances), membership, or public notice.

All plan commissions and BZAs should have rules of procedure that take the relevant requirements of state law and synthesize them into an easy to use document that is easily accessible and understandable. It is not necessary to know all the appropriate actions and requirements under state law when conducting board business.

Additionally, rules should be tailored to include actions that indicate how the board is run and how decisions are generally made. These rules should be periodically updated so they continually reflect how the board conducts business in its month to month meetings.

Finally, rules should be simple, easy to understand, and easy to follow. As a general rule of thumb, do not cite or follow Robert's Rules of Order. Many boards still cite Robert's Rules, however they are very formal and can be difficult to implement. If the board does not consistently follow them, the board can open itself up to having decisions overturned due to procedural inconsistency.

The rules are a necessary step in the governance of plan commissions and BZAs, especially if there arises a situation where the board is sued. The rules guide and protect the board in procedural administration, which allows for smaller margins of error.

At times of uncertainty, plan commissions and BZAs should rely on their attorney or legal counsel for interpreting and researching state law.



THE COMPONENTS OF RULES OF PROCEDURE

From community to community and from board to board, the rules of procedure will be different. In general, the local zoning ordinance should have very basic information regarding the duties and powers of the plan commission and BZA to provide the necessary regulatory means for implementation of the community ordinances. The details of the board's composition, authority, and meeting dates and notices should be contained in the rules of procedure so that these details can be changed from time to time without going through the entire zoning ordinance amendment process.

Rules of procedure must contain the minimum requirements established by Indiana Code, and may include procedures which are more restrictive than the state law, if the local boards believe such procedures are necessary. The rules should be consistent with local ordinances.

In general, there are some common elements that should be included in a plan commission or BZA rules of procedure. A suggested outline of rules of procedure for each type of board follows. The list includes all requirements contained in Indiana Code, and some additional suggestions. Each board will want to tailor its rules to best meet its needs.

Rules of Procedure Contents

To better understand the roles and powers of the plan commission, consult Chapter 1, Plan Commission Basics, and Chapter 7, Comprehensive Plans. To better understand the roles and powers of the board of zoning appeals, consult Chapter 2, Board of Zoning Appeals Basics.

General Statement

In general, rules of procedure should begin with a statement indicating that the rules have been adopted by the board/commission and that the rules reflect the conduct of the board/commission's business.

Quick Quiz: Are your rules of procedure easy to understand? Are they consistent with the procedures in Indiana Code? Are they consistent with how business is actually conducted?



Credit: Ink Free News

Powers of Board/Commission

This section should document the duties of the board/commission as it applies to the community. There are several powers that state law grants to plan commissions including preparation, replacement, administration, and amendment of the zoning and subdivision ordinances; amendments to the zoning map; approval of subdivision plats; and site/development plan review. For BZAs, there are four powers that state law grants: variances, special exceptions, use determination, and appeal of decisions of the planning director or staff.

Meetings

In this section, the types of meetings that are held by the board of zoning appeals or plan commission should be documented within the rules of procedure for each board, which may include:

- Regular meetings;
- Special meetings;
- Executive sessions;
- Cancellation policies; and
- Recesses.

Regular meeting times, dates, and locations should be established. Authority to call a special meeting and under what circumstances a special meeting is allowed should be identified, as well as when and how meetings are cancelled and/or rescheduled.

The Indiana Open Door Law should also be cited in a board/commission's rules of procedure. Some bodies find it helpful to include a "late night meeting policy" that gives the board/commission the option of continuing meetings that are dragging into the late hours of the night (or even early hours of the morning!).

Members and Officers

This section should specifically cite the applicable Indiana Code provisions for appointing members to the board/commission. The number of members depends on a couple of factors. Who appoints members, how long each member serves, and any other requirements for members should be identified. Policies dealing with vacancies and removal of members should also be established.

This section should document who will preside over meetings, the duties of those officers, when and how they should be elected and who will serve as staff to the board/commission including the planning director and attorney. Sub-sections could include election of officers, duties of officers, board staff, established plan commission committees, contracts/agreements (to prepare documents or act on behalf of the board/commission), and performance review of the staff.

The "members and officers" section should provide guidance for the conduct of members. This section should spell out the different situations where a conflict of interest could occur and how it should be handled (notification of conflict of interest, disqualification) if a situation arises. The section should also cover *ex parte* contacts, expressions of bias, and presence to vote. Make sure to review Chapter 4, Communications, for more detailed information.

Filing Procedures, Applications, and Agendas

This section incorporates, by reference, the application procedure and discusses the general rules for how applications will be handled is a vital part of a board/commission's rules of procedure.

If the board/commission prefers the staff to provide staff reports, then a sub-section is needed that indicates what will be incorporated in the staff report, if a staff recommendation is included, and when the staff report will be made available to the body, the applicant, and the public. This portion might also include provisions for adding information to the application after the item has been added to the board/commission agenda.

Regarding agendas, the rules of procedure might include provisions for establishing the agenda or rules for when a particular petition/application is added to the meeting agenda.

Additionally, this section can also include provisions of how a board/commission will set its agenda and public notice requirements. It is especially important to be very specific in spelling out the details of public notice requirements if the local requirements vary from the minimum state requirements. Finally, the time period in which information should be submitted to the planning office should be included so that additional information can be included in the public record.

For plan commission rules of procedure in particular, they typically include rules regarding the role and composition of the technical advisory committee, plat committee, and other subcommittees.

Conduct of Meetings

The manner in which meetings are intended to be conducted should be well documented. Items that should be included in this section are a definition of quorum; how and where minutes and records will be kept; representation of applicants at the meeting; withdrawal procedures; the order of business (agenda); how public hearings will be handled including opening the hearing, comments by staff, presentation by applicant, presentation by opposition, rebuttal, closing of the hearing, board/commission comments, and questions; any waivers of rules; and the conduct by persons attending the meeting.

Under this section, also include how the board will handle voting (by show of hands, paper ballot, etc.), and when applications can be re-filed if an unfavorable decision is made.

Suspension and Amendment of the Rules of Procedure

There may be situations that occur during a meeting where the rules need to be suspended. These could include application issues, meeting time limit, etc. Rules need to be in place that allow the board to suspend its rules. Additionally, the board/commission should be able to amend its rules from time to time. The last rule needed in this section is one of severability. Like a zoning ordinance, if some part of the rules is found invalid, then it does not void all the rules.

ADOPTING AND AMENDING RULES OF PROCEDURE

As compared with the zoning ordinance, it is much less difficult to create, adopt, and amend rules of procedure. The simple procedure is below:

- 1) Write the rules. A plan commission or BZA should obtain assistance from the staff and/or attorney with the initial set of rules and with any amendments to existing rules. Rules should be amended when they no longer reflect how the board conducts business.
- 2) Add the rules of procedure to the next (or an appropriate) agenda. Members should have a copy of the proposed rules and/or changes and review them prior to the board meeting.
- 3) Review and make any additional changes. At the appropriate meeting, the board should review the rules in a public forum and make any necessary additional changes.
- 4) The rules should be adopted by resolution. To make the rules valid, there should be a motion by a board member and a vote on adoption.

CHAPTER 6

ETHICS

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IN THIS CHAPTER. . .

What are Ethics and Why Do We Need Them?

Indiana Law & Ethics

A Code of Ethics

Practical Applications & Scenarios

Closing Thoughts

Suggested Resources

WHAT ARE ETHICS AND WHY DO WE NEED THEM?

Ethics is officially a formal field of philosophical inquiry -- the philosophical study of morality. There is a difference between ethics and morality; ethics suggest what people ought to do, while morals define what people actually do. Ethics go beyond simply what is required by law. But we are citizen planners, not philosophers, so how do ethics fit in to what we do?

We know from our first-hand observations that planning issues can involve a conflict of values. We also know from that same experience that there are often huge private interests involved. When we put these two factors together, the result may be an explosive situation. Because of this, all the participants need to employ the highest standards of fairness and honesty. The best way that we can assure that we employ fairness and honesty is through regular thought and discussions on planning ethics -- this action will then influence our daily behavior (and our monthly behavior at the planning meetings).

Most of us operate according to some personal, unwritten code of ethics. But our personal ethics are not adequate when we become part of any group, including the plan commission, board of zoning appeals (BZA), or legislative body. In that case, being ethical means that everyone in the group must cooperate to follow a common standard of behavior.

Planning requires a very high degree of public trust and we must exhibit the highest ethical standards in order to not only win the public trust, but also keep it. As a plan commissioner or BZA member, you have been given public authority and you should use that authority with honor and integrity. What you do and how you act at a planning meeting can impact how the citizens of your community feel about the entire local government.

Being a plan commission or BZA member is not an easy job. The public tends to be cynical about government, and may not realize that you only want to "do the right thing." How do you know what the right thing is?



INDIANA LAW & ETHICS

What does Indiana state law say about ethics for plan commissioners and BZA members? Not much! The only ethical situations it addresses are *ex parte* contact (for BZA members only) and conflicts of interest.

Ex Parte Contact

What is *ex parte* contact?

- a) Those weird colored contact lenses that young people wear to parties;
- b) Running into your "ex" at a party; or
- c) Meeting or talking to someone outside of the official public meeting setting?

See, learning can be fun! Bad puns aside, as you may have guessed, the answer is "c"; *ex parte* contact occurs when contact is made outside of the official public venue (in this case a public hearing). What does the law actually say? IC 36-7-4-920 (g) says that a person may not communicate with any member of the BZA before the hearing with intent to influence the member's action on a matter pending before the board (note that Indiana State Law exempts staff reports and recommendations).

Did you notice that the state code is silent on *ex-parte* contact for plan commission and legislative body members (e.g., county commissioners, town or city councils)? This singling out of BZAs may be because they are a quasi-judicial body, making their function different than other planning bodies. Does that mean that only the BZA should worry about *ex-parte* contact?

The answer: no. It is also important that every community have a discussion about *ex-parte* contact standards for the plan commission. Plan commission members need to discuss this issue as a group. Indiana law dictates that some local government staff members and elected officials serve by virtue of their position (i.e., the City Engineer on the city's advisory plan commission, a County Commissioner on the county's plan commission, etc.), it may not be possible to avoid interacting with the public. Local experts like the City Engineer or County Surveyor may have information that the applicant needs or the surrounding property owners are interested in. Local elected officials may feel that their constituents have a right to contact them and talk about their concerns. One option for addressing this concern may be to exempt certain members of the plan commission from *ex-parte* contact restrictions due to their elected or appointed position.

Regardless of whether members are exempted or not from *ex-parte* contact, remember that the goal is to ensure that everyone has the same information. With this in mind, the Columbus Plan Commission's Rules of Procedure (Article III, Section 2) state that all presentation of information on a pending petition must take place in an open, public meeting. Commission members are further discouraged from initiating *ex-parte* communication. Regardless of the outcome of your discussion, your plan commission should amend its rules to clearly state what the standard is for *ex-parte* contact for plan commission members.

Rule #1 -- Make sure you don't break any laws, but remember that simply meeting the minimum legal requirements doesn't mean you are automatically acting ethically!

See Chapter 2 of the Citizen Planners Guide, Board of Zoning Appeals Basics, for more information on the BZA.

TIP: In this day and age, almost every community has a web site. Those web sites often list the community's plan commission and BZA members, sometimes even with their contact information. This inadvertently makes it easier for *ex-parte* contact to occur. If you must list members, add a warning with the membership lists letting the public know that they may not contact BZA members outside of the public meeting per Indiana State Law, IC 36-7-4-920 (g), and also add a warning for any related plan commission rules in your jurisdiction.

Chapter 6: Ethics

Rule #2 -- If you can't avoid contact with an interested party outside of the public meeting, disclose the details of that contact "on the record" at the meeting.

Rule #3 --When in doubt, declare! Publicly disclose any relationship, etc. that may be perceived as a conflict by others. Perception can easily become someone's reality, distorting his or her trust of the planning process and all local government.

If you do have contact outside of a meeting, which is sometimes unavoidable in our small Indiana communities, it is always the best policy is to disclose that contact with the rest of your group at the public meeting, even if your rules or state law don't explicitly require it. The Columbus Plan Commission Rules say that when ex parte contact occurs, commissioners should ask the party to share information at the public meeting -- if they refuse, then the member should disclose it. Note that these rules do exempt the commission's comprehensive plan and ordinance amendment work, which is a different set of circumstances that requires lots of public input and opinions.



Getting back to Indiana's law on ex parte contact for BZAs, how do you know if the person contacting you will try to "influence a decision?" What if they just want information? If the person in question asks for information about the case, it is always the best policy to refer them to planning staff for information. Planning staff will have the official case file in their offices, complete with all the detailed information. If you take a risk and talk to the questioner, it might not only lead to an "ex parte" situation, but you could also accidentally misinform him or her about the details of the case – creating a whole new ethical problem. The safest course of action for a citizen planner is to politely tell the questioner that your policy is not to discuss cases outside of the public hearing, and that he/she should contact appropriate staff for more information about the case.

Please note that IC 36-7-4-920 (g) also says that not less than five (5) days before the hearing, the staff may file with the BZA a written statement setting forth any facts or opinions relating to the matter. This essentially means planning staff may legally try to influence the BZA's decision by making a written recommendation on the case. Staff's recommendation is presumably made without any personal interests and after they have become thoroughly versed in the facts of the case, so it really is a different situation. Contact with planning staff is not considered ex parte contact.

Conflict of Interest

The next ethics subject is "conflict of interest," and there are Indiana laws for both the plan commission and BZA:

- Board of Zoning Appeals -- IC 36-7-4-909(a) says a board of zoning appeals member may not participate in a hearing or decision of that board concerning a zoning matter in which he/she has a conflict of interest, which includes the following:
 - The member is biased or prejudiced or otherwise unable to be impartial; or
 - The member has a direct or indirect financial interest in the outcome of the decision.
- Plan Commission -- IC-36-7-4-223(c) says that a plan commission member may not participate in a hearing or decision concerning a matter in which he/she has a conflict of interest, which includes the following:
 - The member is biased or prejudiced or otherwise unable to be impartial; or
 - The member has a direct or indirect financial interest in the outcome of the decision.

Conflicts of interest are intended to be self-determined. The member should state for the record that there is a conflict and then leave his/her seat with the commission. Note that the intention is that the member with a conflict of interest may not participate in the hearing or decision in any way. The member is not technically required to leave the room unless the board's or commission's rules require it, but it is better to voluntarily leave the room so that there is no appearance of trying to influence the decision. Because the member with the conflict is banned from participating in the hearing or decision, he/she is not allowed to return and testify during the public hearing portion of the meeting and is not permitted to vote on the decision.

Financial Conflict of Interest

What are some examples of direct and indirect financial interest? Ownership of property involved in a petition or employment by a party involved in the petition would be a direct financial interest. Indirect financial interest would include situations where a family member owns property involved in a petition or is employed by someone involved in the request.



Discussion: What are some other examples of personal bias that might occur for plan commission and BZA members? What should you do if you are unsure if you have a conflict of interest? What should you do if you feel another member is biased on a subject, but he/she still wants to participate?

Rule #4 -- Ethical principles may sometimes appear to be in conflict with each other; acting ethically is not always the easiest course.

Conflict of Interest Due to Lack of Impartiality

Indiana Code was amended in 2011 to add bias, prejudice, or lack of impartiality as a conflict of interest. This conflict is intended to be self-determined. An example might be that a board or commission member's religion doesn't support the use of alcohol, so he/she feels unable to vote for a project that includes a bar, even if it meets all the ordinance criteria. Another example might be that the member has a strong dislike of the applicant that will make it impossible for him/her to consider the application objectively.

What to Do if there is a Potential Conflict of Interest

Conflicts of interest are intended to be self-determined. If you think you have a conflict, do the following:

- Alert the Planning Director and the BZA or commission's attorney as soon as possible.
 - Discuss the situation with them. Indirect conflicts of interest may be tricky, so it is a good idea to get a second and third opinion about whether there is a conflict; and
 - Determine if you have a conflict of interest or not. If you do, make sure that at minimum you follow your local rules. Let the Planning Director know that you have a conflict so that he or she may call upon an alternate to take your place at the meeting. There should be a formal statement, either via an in-person declaration or written statement, on the meeting record that you are not participating due to a conflict.

If you think another member has a conflict, do the following:

- Alert the Planning Director and the BZA or commission's attorney before the meeting.
 - Tell them why you are concerned. You should not be repeating idle gossip, but should be passing along information that could harm the integrity of your group's actions or decision; and
 - It is better to let the professionals address your concerns privately than to confront another member directly. It is not appropriate for you to wait and make accusations at a public meeting.

The key with both these situations is to make sure that all members are aware of the state law and what your rules require. This should be accomplished with regular ethics training for your group. Don't wait until there is a problem to address this issue!

Substitution of Alternate Members

Board of Zoning Appeals

Note that if a BZA member recuses himself/herself due to a financial conflict of interest or a conflict of interest due to lack of impartiality, Indiana Code (IC 36-7-4-909 (b)(2)) allows an alternate member to substitute for that regular member during the application's public hearing, discussion, and voting.

Plan Commission

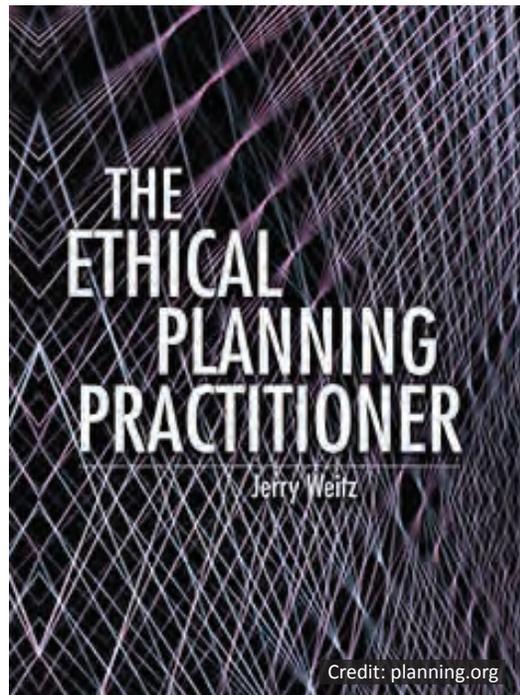
Note that if a plan commission member recuses himself/herself due to a financial conflict of interest or a conflict of interest due to lack of impartiality, Indiana Code (IC 36-7-4-223(d)(2)) allows an alternate member to substitute for that regular member during the application's public hearing, discussion, and voting.

Action: Your board or commission should consider making changes to your rules to further define the procedure regarding conflicts of interest and the use of alternates. It is important to work with planning staff and your attorney to develop these rule changes. While adopting standards regarding what a member with a conflict should do in the rules is not legally required, it may help reinforce the idea that your community takes ethics seriously. This is especially true if there are penalties involved, such as censure or a recommendation of removal. The bottom line is that everyone is subject to the prohibition on participating when there is a direct or indirect financial interest, or when the member is biased.

A CODE OF ETHICS

The American Planning Association (APA) adopted a set of "Ethical Principles in Planning" for citizen planners in 1992. These ethical principles challenge not only plan commissioners and BZA members, but also everyone else involved in the planning process to broadly define all personal interests (not just financial) and to publicly disclose those interests.

The APA's ethical principles derive from both the general values of society and from planning's special responsibility to serve the public interest. The basic values of our society may conflict or compete with each other, and that may be seen in these principles. For example, the need to disclose full public information may compete with the need to respect confidences.



Plans and programs often represent a balancing of divergent interests. Ethical judgments also may require a conscientious balancing, based on a specific situation and the entire set of ethical principles. Following are APA's Ethical Principles in Planning:

APA's Ethical Principles in Planning – For Citizens and Elected Officials

The planning process must continuously pursue and faithfully serve the public interest. Planning Process Participants should:

- 1) Recognize the rights of citizens to participate in planning decisions;
- 2) Strive to give citizens (including those who lack formal organization or influence) full, clear, and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
- 3) Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
- 4) Assist in the clarification of community goals, objectives, and policies in plan-making;
- 5) Ensure that reports, records, and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
- 6) Strive to protect the integrity of the natural environment and the heritage of the built environment; and
- 7) Pay special attention to the interrelatedness of decisions and the long-range consequences of present actions.

Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained. Planning Process Participants should:

- 1) Exercise fair, honest, and independent judgment in their roles as decision makers and advisors;
- 2) Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker;
- 3) Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member, or person living in their household might directly or indirectly obtain from a planning decision;

- 4) Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency, or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
- 5) Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;
- 6) Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;
- 7) Serve as advocates only when the client's objectives are legal and consistent with the public interest;
- 8) Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;
- 9) Not use confidential information acquired in the course of their duties to further a personal interest;
- 10) Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
- 11) Not misrepresent facts or distort information for the purpose of achieving a desired outcome;
- 12) Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service; and
- 13) Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations.

APA's Ethical Principles in Planning – For Staff

APA members who are practicing planners continuously pursue improvement in their planning competence as well as in the development of peers and aspiring planners. They recognize that enhancement of planning as a profession leads to greater public respect for the planning process and thus serves the public interest.

APA Members who are practicing planners:

- 1) Strive to achieve high standards of professionalism, including certification, integrity, knowledge, and professional development consistent with the AICP Code of Ethics;
- 2) Do not commit a deliberately wrongful act which reflects adversely on planning as a profession or seek business by stating or implying that they are prepared, willing, or able to influence decisions by improper means;
- 3) Participate in continuing professional education;
- 4) Contribute time and effort to groups lacking adequate planning resources and to voluntary professional activities;
- 5) Accurately represent their qualifications to practice planning as well as their education and affiliations;
- 6) Accurately represent the qualifications, views, and findings of colleagues;
- 7) Treat fairly and comment responsibly on the professional views of colleagues and members of other professions;
- 8) Share the results of experience and research which contribute to the body of planning knowledge;
- 9) Examine the applicability of planning theories, methods, and standards to the facts and analysis of each particular situation and do not accept the applicability of a customary solution without first establishing its appropriateness to the situation;
- 10) Contribute time and information to the development of students, interns, beginning practitioners, and other colleagues;
- 11) Strive to increase the opportunities for women and members of recognized minorities to become professional planners; and
- 12) Systematically and critically analyze ethical issues in the practice of planning.

Each and every group involved in planning your community would be well advised to adopt APA's Ethical Principles in Planning. A good time to introduce this idea would be at the beginning of a planning process, such as a comprehensive plan update. For plan commissioners and board members, these principles can actually become part of the group's rules of procedure.

American Institute of Certified Planners (AICP) Code of Ethics

While APA's Ethical Principles in Planning contain a section for staff, those principles are only the beginning. Certified planners have their own separate professional code of ethics to follow. The American Institute of Certified Planners (AICP) is the American Planning Association's professional institute, and planners that are accepted into the organization are offered codes, rulings, and procedures to help negotiate the tough ethical and moral dilemmas they face. This code can be seen at the organization's web site at www.planning.org/ethics.

Rule #5 -- The Golden Rule remains a great guideline. Ask yourself: Would you want it done to you?

PRACTICAL APPLICATIONS & SCENARIOS

Since our values may at times be in competition, some cases may present conflicting ethical issues. For example, is fair housing or protecting the environment more important? How do you work through a complicated ethical problem as a group? Try following these steps the next time your BZA or plan commission faces an ethical dilemma:

- 1) Define the problem;
- 2) Collect all the facts (make sure they are actually facts);
- 3) Review ethical principles in planning and other guidance materials;
- 4) Identify alternatives and their possible outcomes;
- 5) Select the best alternative -- one that meets all ethical standards; and
- 6) Resolve the problem.

Agreeing on a set of ethics may be easier said than done. What do you do if you find that your personal values conflict with those of the rest of your group? There are three choices to consider:

- 1) Loyalty -- show your allegiance to your community and appointing officials;
- 2) Speak out -- within the group -- go public only if very serious (legal, etc.); or
- 3) Leave -- you owe allegiance to yourself if you can't resolve.

Ethical Scenario #1 -- My Brother, the Developer

Your brother has made a small investment in a real estate development that will come before your board or commission for approval. No one knows that your brother is involved in the project. You believe it is a good proposal, and that your brother's influence has led to a good design. What should you do?

- a) Disclose the personal interest and excuse yourself from the case;
- b) Disclose the personal interest, excuse yourself from voting, and then speak in favor of it;
- c) Disclose the personal interest, but vote on the case because you do not benefit financially from it (so there is no technical conflict of interest); or
- d) Since you do not have a financial interest, go ahead and vote on the request.

Things to consider:

- If it is a good proposal, your fellow board members should recognize that, so there is no reason to risk your ethics;
- APA's Ethical Principles requires that you disclose any personal interests -- it also says potential benefits to a family member (even if not part of your household) should be considered as a personal interest;
- Even if you don't participate, your relationship might taint the opinions of others in your group or the public;
- You may not realize that your brother has influenced your opinion, since you are around him so much;
- If this happens regularly, you should resign your place in the group; and
- Would your answer be different if this were a good friend or neighbor?

Ethical Scenario #2 -- You Arrive Late!

Work and family issues have been crazy lately. You receive your packet a few days before the meeting, but are too busy to read it. You don't have time to visit the site before the meeting. On the day of the meeting, an important phone call comes just as you are about to leave your office. When you finally get to the meeting, you have missed the staff presentation and part of the public hearing. What should you do?

- a) Quickly look through your packet as the public hearing is wrapping up, and rely on your neighbor to whisper and fill you in on anything important before you vote;
- b) Wait until the public hearing is complete, and a vote has been taken before you take your place with the group, ready to hear the next case;
- c) Forget the meeting and spend time straightening out your own problems; or
- d) Other



Things to consider:

- If you don't have all the information that your colleagues do on the proposal, how can you meaningfully participate?;
- APA's Ethical Principles requires you not to participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
- If you participate, your perceived failure to take the request seriously might negatively affect the public's opinion of the entire board or commission (or even all local government officials);
- Not only is it not your colleague's responsibility to whisper all the relevant information to you, but their interpretation of what was said before you got there may not be accurate;
- If this happens regularly, you should resign your place in the group; and
- Would your answer be different if you were needed for a quorum, or if it is a controversial case?

Ethical Scenario #3 – The Bad Developer

The economy has been slow lately, so you are excited to see that there is a big project on this month's agenda. When you begin to review your packet of information, you find that the applicant is a developer who you consider to have a very bad track record in your community and you've heard rumors of problems in the surrounding area. You look through the staff report, but can't help feeling major reservations about this proposal. What should you do?

- a) Call planning staff before the meeting and warn them you will be recusing yourself at the meeting due to your dislike of the applicant (lack of impartiality);
- b) Call planning staff before the meeting and ask them about what went wrong with the previous local development effort(s) of the applicant(s), and ask them to also contact surrounding communities to see what their planners think about the applicant;
- c) Go to the meeting and decide at the close of the public hearing whether you can be objective or not, and whether you should excuse yourself from voting;
- d) Participate in the hearing and vote against the application, in order to prevent poor development in your community; or
- e) Participate in the hearing knowing that if you do decide to vote in favor of the applicant, you will attach several strong restrictions, in the form of written commitments and financial guarantees to the approval.

Things to consider:

- It is possible to be bad at something without being unethical or even a bad person;
- What kinds of standards were in place when the developer's previous project was constructed? It may not be the developer's fault if your community's previous ordinances and rules were outdated or inadequate;
- What steps were undertaken (inspections and enforcement) by staff during the developer's previous work in your community to ensure that it was implemented correctly? If your community did not take on this responsibility, there are likely many substandard and noncompliant developments;
- APA's Ethical Principles says you should exercise fair judgment – can you do that? Even more important, can you meet the expectations of Indiana Code when it comes to objectivity?; and
- We are all human. It is possible to dislike someone but still be professional. If your feelings about the developer are overwhelming and you do not think you can be reasonable about their request, it is best to recuse yourself.

CLOSING THOUGHTS

It's easy to preach to others, but harder to admit our own fault. All of us are guilty of human frailty, and sometimes stray from the straight and narrow in small ways or large. Regular exposure to planning ethics, through reading and discussion, will help keep us all on track.

SUGGESTED RESOURCES

APA Ethical Principles in Planning <http://planning.org/education/commissions/>

The Citizen's Guide to Planning, 4th Edition, by Christopher Duerksen, C. Gregory Dale, FAICP, Donald Elliott, FAICP, APA Planners Press, 2013

The Ethical Planning Practitioner, by Jerry Weitz, FAICP, APA Planners Press, 2016

Everyday Ethics for Practicing Planners, by Carol D. Barrett, FAICP, APA Planners Press, 2002.

Planning Made Easy, by Efraim Gil, Enid Lucchesi, and William Toner, APA Planners Press, 1994.

CHAPTER 7

COMPREHENSIVE PLANS

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IN THIS CHAPTER. . .

- Why Communities Plan
- What is in the Plan?
- The Planning Process
- Effective Planning Principles
- Adopting the Plan
- Now What - Post Adoption
- Suggested Resources

WHY COMMUNITIES PLAN

From the earliest settlements, communities in the United States have been laid out according to plans. Towns and villages usually were located on uplands, where there was safety from floodwaters. Buildings were arranged for efficiency in commerce and in the affairs of government. Farms were in the outlying areas, providing a buffer of green space for the town and protecting the town from the dust and odors from animals and cultivation. Settlers tried to select areas with abundant water, and to make the towns easier to defend, they also sought locations with clear views of the surrounding area.

In Indiana, Jeffersonville was originally laid out in 1802 according to a plan based upon ideas formulated by Thomas Jefferson. This plan called for a checkerboard pattern of undeveloped squares and subdivided squares. The idea was to create areas of permanent open space. Land speculators found the plan inhibiting, and in 1816, the Indiana legislature authorized the replatting of all the land. The original grid pattern is still the fundamental form of Jeffersonville. Indianapolis was designed by Alexander Ralston, a land surveyor who established the streets radiating from the circle at the city's center. Ralston had worked with Pierre L'Enfant on the plan for Washington, D.C., which also is based upon a radial street pattern.

All development is planned to some degree, but there are differences as to who does the planning and as to the goals of the plans. Costs and profits often are motives for the layout and location of new development. Early factories were built adjacent to water bodies which served as sources of electricity as well as disposal areas for industrial waste. County seats were nearly always located in the center of the county, to minimize travel costs for those conducting business there, and city halls and county courthouses were located in the center of town for the same reason. Developers convert flat farmland to building sites, because the cost of grading and site preparation is low. To avoid the cost of building new streets, property owners subdivide the frontages along existing roads for building sites. For the same reason, some landowners subdivide outlying parcels into house lots with gravel roads or driveways instead of streets for access.

Exercise: Give examples of undesirable development. These could be in your own community or elsewhere. What are the issues? Did anyone profit from the poor development? Was there benefit to the whole community? Why was it approved?





Sometimes choices which lower costs and increase benefits for one person or institution increase the costs for others. The factory on the river pollutes the water and kills the fish, costing the fisherman his livelihood. Houses on farm land remove land from production and create problems for the neighboring farmer when new residents complain of dust and odors. Buildings strung along the existing road frontages increase traffic and accidents as new driveways create points of traffic conflict. There are demands to increase public expenditures for more roads and improvements to existing ones. Emergency response may be compromised on private roads not constructed to the jurisdiction's standards.

One of the reasons communities engage in a planning process is to ensure that the needs of the whole community are considered, not just the benefits to individuals. Community planning is based upon a concept of the public interest. Some flexibility in the use of individual land is given up in exchange for creating a community in which the interests of all are considered. Plan commissioners are trustees of the future, and they have a responsibility to help prevent growth patterns which result in wasteful and inefficient use of public resources.

When communities plan, they establish and implement a public policy for the community and guidelines for decisions on development. Plans help a community achieve a character of its own - one that residents of the community recognize and support. If all communities were the same, one plan would suffice for all. But each community is different, and a plan is the opportunity to share its story. One town may wish to emphasize its historical importance while another may pride itself on being a community of the future. A plan that works for one will not work for another. Through the planning process, residents, property owners, and community leaders will determine their community identity and values, and how the plan will affect the local culture.

Exercise: Think of two Indiana communities or counties that have a distinctive character. What is that character? How do the two communities differ?

Planning offers many benefits for the community and its residents.

It guides investment . . .

- Helps local government provide services efficiently;
- Ensures that developers pay their fair share of improvements such as streets, utilities and parks;
- Directs development to areas with sufficient capacity to support it (e.g., new subdivisions in locations where there are available classrooms, industries, utilities);
- Coordinates development and future capital expenditures such as streets, sewage treatment plants, civic buildings, parks, and schools; and
- Saves paying for remedies for poorly planned development, such as purchasing right-of-way or easements to widen streets, construct sidewalks, or extend utilities.

It protects property values . . .

- Preserves and enhances community character;
- Improves quality of life;
- Keeps adjacent uses compatible; and
- Encourages resiliency.

It makes communities healthier . . .

- Provides for safe streets and sidewalks;
- Prevents unwise development, such as residences in flood hazard areas or subdivisions without proper sewage disposal; and
- Protects environmental quality.

WHAT IS IN THE PLAN?

In Indiana, comprehensive planning is permitted by the 500 Series of Title 36-7-4 of the Indiana Code (IC). This law empowers cities, towns, and counties to adopt plans. Any plan adopted in Indiana must contain at least the following three elements:

- 1) A statement of objectives for the future development of the jurisdiction;
- 2) A statement of policy for the land use development of the jurisdiction; and
- 3) A statement of policy for the development of public ways, public places, public lands, public structures, and public utilities.

Plan Elements

In addition, the law provides for a number of optional elements, including parks and recreation, flood control, transit, natural resource protection, conservation, flood control, farmland protection, education, health and wellness, character and identity, and redevelopment of blighted areas. Most comprehensive plans in Indiana have some of these optional elements.

What is required is that the community establish policies to guide growth. If they are thoughtfully and carefully drafted, these policies can point to the community's desired future.

Refer to IC 36-7-4-502

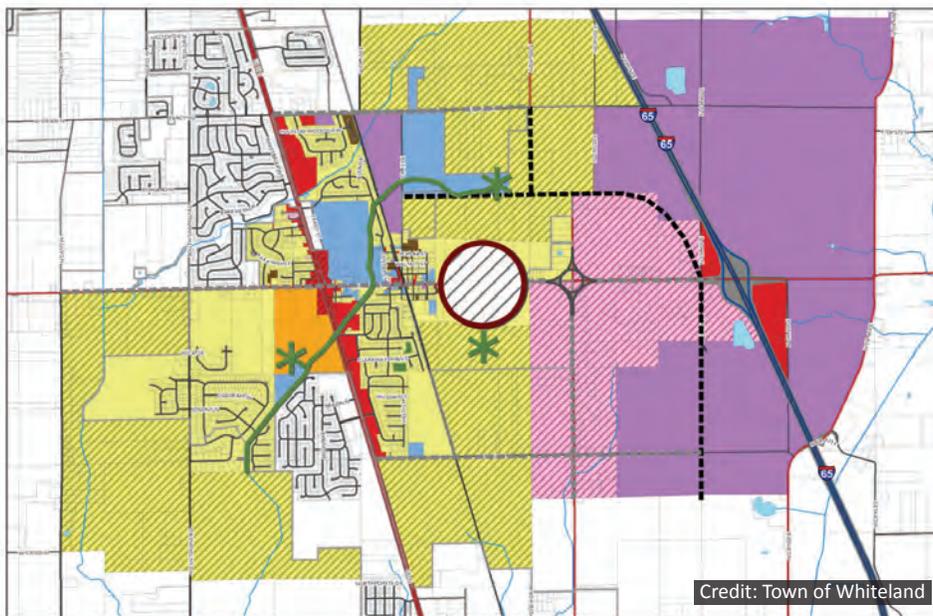
Indiana's minimum requirements for a comprehensive plan are much less complex than in some other states. The planners, lawyers, and legislators who drafted the law tried to make it flexible, so that it could be used by large cities, small towns, and counties. They recognized that many Indiana communities do not employ trained professional planners and cannot afford to hire consultants. At the same time, the law makes it clear that communities cannot regulate land use and development if they have not first engaged in a process of thinking about the future.

Maps

Maps are useful as visual representation of the community's plan. Most plans contain maps of desired future land use patterns, locations of future police and fire stations, and areas set aside for parks and open space. It is important to note, however, that these maps are not required in Indiana but are usually included.

Land uses are usually divided into categories, with different colors or patterns used to show areas for future residential, commercial, industrial, institutional, and agricultural uses. Normally, locations should not be overly specific. For purposes of the comprehensive plan, it is more important to establish the principle that a school should be located in a certain area than to designate the specific site for the school. The locations should be approximate, not exact.

Often a comprehensive plan will contain a map of thoroughfares categorized from both urban and rural major arterials to local streets. The section of the plan may also address motorized and non-motorized transportation and facility design.



See Also: Chapter 1, Plan Commission Basics

Refer to IC 36-7-4-502 et. seq.

Extraterritorial Jurisdiction

In Indiana, municipal plan commissions are authorized under certain conditions to exercise planning and zoning jurisdiction over territory outside the corporate boundaries. If the plan commission has assumed this jurisdiction, the comprehensive plan must include all of the extra-territorial jurisdictional area. With the additional territory comes responsibility for inspection and enforcement with specifics based on an inter-local agreement.

THE PLANNING PROCESS

While each planning process should be custom-designed to meet community needs, nearly all contain the same core elements:

- 1) Evaluate and analyze existing conditions, including strengths and weaknesses, community character, demographics, natural features, etc.;
- 2) Establish goals and objectives for the future;
- 3) Identify alternatives for meeting the goals and objectives;
- 4) Select the preferred alternative;
- 5) Make recommendations and specify actions to implement the plan (update zoning and subdivision control ordinances, develop capital improvements program, create design guidelines, etc.);
- 6) Evaluate the success of the plan; and
- 7) Adopt the plan.

These steps are part of an ongoing process. Plans must be evaluated, changed, and updated as the community evolves. These changes can be gradual, as through demographic trends, technological change, or slow economic growth or decline.



Sometimes change is more sudden, such as a large annexation, the location of a large new industry in a small community, the loss of a major employer, or a natural disaster (flood, earthquake, etc.).

In Indiana, it is the plan commission's responsibility to prepare and adopt a plan and to recommend it to the city or town council or county commissioners for adoption. In preparing a plan, the commission may be assisted by staff, by consultants, by volunteers, or by any combination of the three.

Public Participation

Getting a community consensus is essential to a successful planning process. A plan that does not have the support of the majority of those who will be affected by it, is doomed to failure - the proverbial “sitting on the shelf.” Plan commissioners are key players in arriving at that consensus. Not only do they share their own observations and views about the community, they can ensure that the full range of views is sought and considered.

Public engagement should be ongoing from start to adoption. Frequently, plan participants include a representative steering committee, focused groups of stakeholders, and the general public. Meetings may be face-to-face but an online presence through a project website allows for 24/7 outreach.

Elected officials are essential to the planning process. The decisions they make determine the shape of the community by votes on petitions for rezoning land, where to construct and upgrade public streets and utilities, and where to locate public facilities. Each decision should be guided by the comprehensive plan. If they don't agree with the contents of the plan or don't understand what is in it, their decisions won't further the plan's objectives. Plan commissioners are essential to this process.

EFFECTIVE PLANNING PRINCIPLES

Plans usually, but not always, consist of a combination of text, maps, and graphics. Some plans are heavily oriented toward policy, and these usually consist primarily of text. Some are oriented toward community design and the desired physical form of the community, and these may consist of numerous maps, sketches, precedent images, and drawings. It is important that the format of the plan be suited to the community, its goals, and ability to administer it. In order to make the plan understandable and meaningful to the public, it is a good idea to have a balance of text and graphics. Some people quickly grasp ideas expressed visually. Others are primarily verbal; they are more likely to absorb concepts expressed through words. Most of us learn with a balanced combination of the two.

The following features are common to most plans:

Emphasis on physical development

Communities are affected by a variety of social, environmental, and economic factors, and plans should take those into account. Many plans do contain policies concerning these issues. For example, the plan may contain strategies for combating unemployment or underemployment. It may have policies regarding daycare, education, health, wellness, and aging. Physical development of the community is interrelated with these social, environmental, and economic factors.

For example, concentrating all low-income housing in a specific geographic area often leads to social problems in that neighborhood. The location of commerce and industry affects commuting time and street patterns which, in turn, affect the cost of building and maintaining roads. The provision of sidewalks, greenways and access to groceries and medical services affects wellness.

See Also: Chapter 4, Communications, for techniques for effective citizen participation

Plan test: Before the plan is distributed to the public, give it to several people who are not familiar with planning and ask them to read it. Can they understand it? If so, it's probably clear. If not, rewrite, reformat - whatever it takes!

General Policies

The plan should address physical elements of the community, integrated with social, economic and environmental conditions. It also should be general in nature; it is a guide of policies and best practices related to development, not a tool for determining the precise location of each feature.

Realistic and practical

The planning process offers the opportunity to dream, but the plan should recognize what is possible in a given community. It is not useful to plan for a town to become a regional employment center within 15 years if the town has no interstate highway access, no airport, no sewer system, and no public water supply. Solid analysis and community input should help “right-size” the expectations. The plan should be designed to build on strengths and to lessen weaknesses, and it can be developed with step-by-step implementation mechanisms to further specific goals.

Long-range

While short-range strategic plans are useful for specific objectives, the comprehensive plan should be long-range. Plans are implemented over relatively long time periods. The plan should have a long-range horizon aimed at shaping the community for 15-20 years. The range will vary depending on the rate of growth, investment and other factors. Some states mandate an update every five years; however, Indiana does not have a requirement for updates.

Easy to understand

There are no extra points for length or weight. The plan should be as simple and as clear as possible. The text should be well written and the format should be inviting to the reader.

Accessible/Reproducible

Each jurisdiction should maintain copies of the plan for staff and plan commission members, as well as one for public accessibility in the Town or City Clerk’s Office or the County Auditor’s office. Some consulting firms produce plans filled with full-color maps and photographs or use odd-sized paper. These formats are acceptable, as long as the community has the resources to reproduce enough copies. These days it is easy enough to make the plan and maps available on the jurisdiction’s website and have CD’s with PDF copies available.

Reflects community consensus

As noted previously, a plan will not be implemented if it does not accurately reflect the community’s goals and objectives. It must be derived from an effective citizen participation process. Elected officials will not be guided by the plan’s policies unless these officials know that the plan represents the wishes of their constituents.

As the community works with the plan, and as conditions change, the plan commission will want to make changes. The commission should review the plan regularly and initiate amendments when they are needed.

ADOPTING THE PLAN

Indiana law specifies the procedure for adopting a comprehensive plan. The procedures vary somewhat, depending upon the type of plan commission the community has (advisory, area, metro). In all cases, the plan commission has primary responsibility of preparing and approving the plan and then recommending it to the legislative body for adoption (by resolution). The steps are outlined below. The law specifically provides that plans may be adopted as separate elements, such as land use, thoroughfares, parks, and community facilities. These steps apply to an entire plan or to a plan element:

- 1) Plan commission prepares the plan;
- 2) Plan commission holds a public hearing on the plan;
- 3) Plan commission approves the plan and forwards it to the legislative body for adoption by resolution. (For metropolitan plan commissions, the commission decision is final; the legislative body does not act on the plan.) In a county, the legislative body is the board of county commissioners; in a city, it is the common (city) council; in a town, it is the town council. Because area plan commissions are cooperative efforts between a county and at least one municipality in the county, area plans must be forwarded to the respective legislative body for each participating municipality for adoption;
- 4) After the plan commission recommends a plan for adoption, the legislative body has three options:
 - Adopt the plan as recommended and approved;
 - Adopt the plan with amendments; or
 - Reject the plan. If the plan is amended or rejected, the law provides for the legislative body to return the plan to the commission with written reasons for the amendment or rejection. The purpose of this procedure is to encourage communication between the legislative body and the plan commission. The commission has 60 days to consider the amendment or rejection. If the commission agrees with a legislative body amendment, the plan is adopted and the legislative body does not need to take further action. If the commission disagrees, the legislative body can amend the plan only if within 60 days it again votes in favor of the amendment. If the commission agrees with the rejection of the plan, it is rejected. Indiana law does not permit the mayor to veto a comprehensive plan.
- 5) Legislative body adopts the plan by resolution. For area plan commissions, each participating legislative body adopts the plan.

It should be noted that the plan is not an ordinance; it is adopted by resolution. A resolution is more appropriate than an ordinance, because the plan is a guideline, not a regulation.

If the planning process has involved participation by elected officials and regular communication, legislative rejection of the plan should be unlikely and any amendments should be relatively minor.

Refer to IC 36-7-4-507 for
noticing requirements

Chapter 7: Comprehensive Plans

Amendments to an adopted plan may be initiated by the plan commission or by the legislative body. If the legislative body initiates the amendment, it may direct the commission to prepare and submit it. Unless the legislative body grants an extension of time, the commission must prepare and submit the amendment within 60 days. The procedure for adopting an amendment is the same as the procedure for adopting the plan.



Credit: Dearborn County

NOW WHAT - POST ADOPTION

Once a plan is adopted, the staff, plan commission, board of zoning appeals, and legislative body members should participate in a training session led by staff or a consultant involved in the preparation of the plan. The training session could include development scenarios for the attendees to work through, as well as highlight each body's role. Other early implementation steps may include evaluating the skills and expertise of staff to ensure the organization has the capacity to persevere through implementation. Additionally, it is important to update tools relevant to plan implementation (zoning, subdivision, stormwater, historic preservation ordinances).

The plan commission should undertake a yearly review of the plan's action steps, measure the accomplishments, and determine what the priorities will be for the upcoming year.

SUGGESTED RESOURCES

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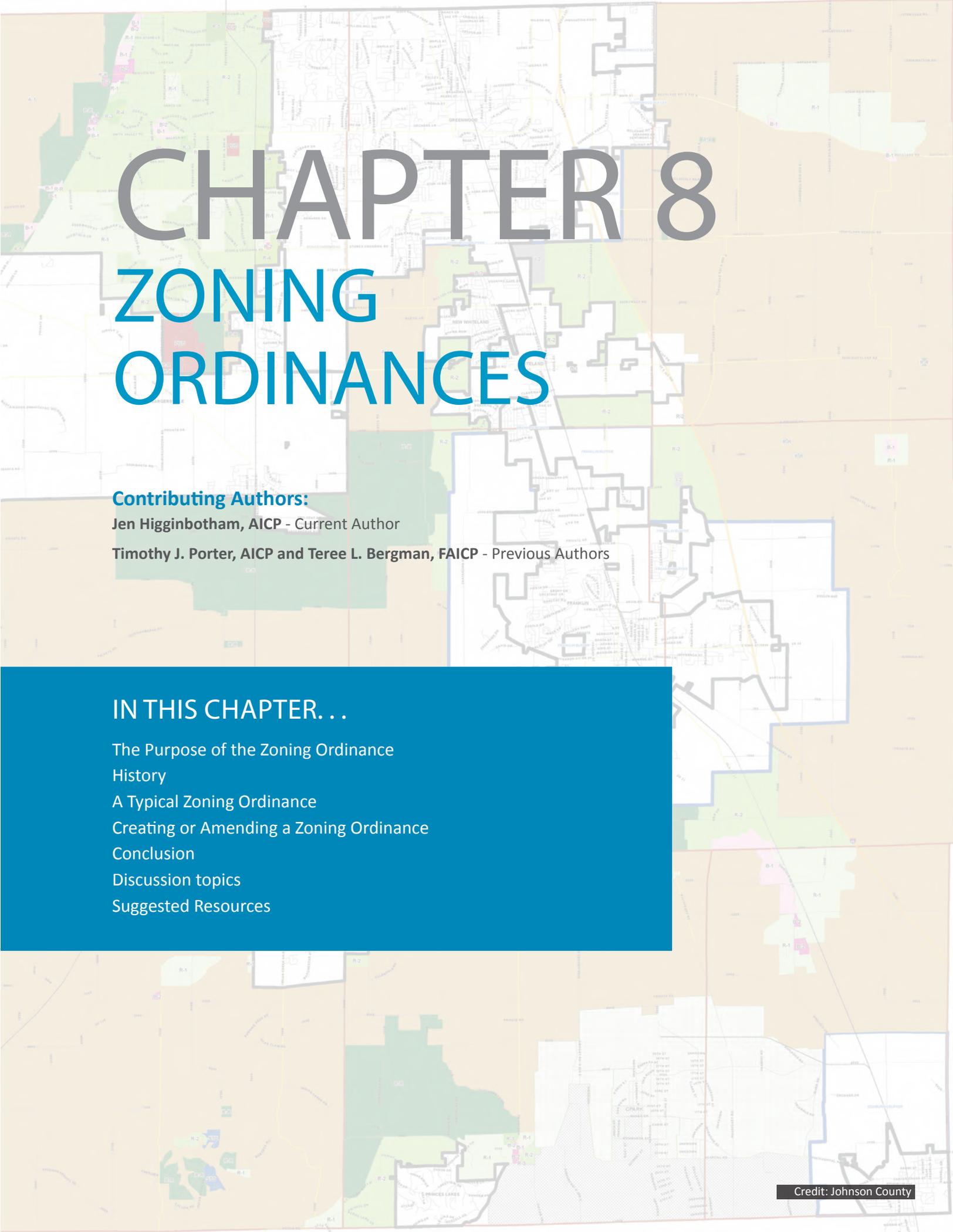
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www.Planetizen.com



CHAPTER 8

ZONING ORDINANCES

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What is the essence of America? Finding and maintaining that perfect, delicate balance between freedom “to” and freedom “from.”
- Marilyn vos Savant

Intensity - Impact on the land, level of traffic generated by a use, etc.

Density - The number of units per acre. For example, the number of houses, apartments, commercial square footage, etc. in an area.

IC 36-7-4-601 et. seq.

Setback - Distance from adjacent properties or public spaces like streets, water features, railroads, etc.

THE PURPOSE OF THE ZONING ORDINANCE

What is a Zoning Ordinance?

A zoning ordinance divides a jurisdiction of a local government into districts or zones. Within the zones, the ordinance regulates how the land is used, the *intensity* or *density* of uses, the bulk of buildings on the land, parking, building materials, and other aspects of land use and construction.

The ordinance contains both written regulations and a zoning map, which may both be amended by the local legislative body.

A zoning ordinance is one of several tools used to implement comprehensive plans (See Chapter 7, Comprehensive Plans, for more information). It has been common in Indiana to confuse the zoning ordinance with the comprehensive plan, but they are not the same, and the distinction should be clear:

- The **comprehensive plan** is the guideline for future development; it sets forth the community’s vision and its land use, transportation, and utility policies; and
- The **zoning ordinance** is a regulation designed to make the comprehensive plan a reality. Plan commission members and/or staff should be able to explain the purpose of each zoning regulation and decision in relation to its role in implementing the comprehensive plan.

How Does a Zoning Ordinance Help the Community?

The Indiana Code lists the following purposes for local zoning ordinances:

- Securing adequate light, air, and convenience of access and safety from fire, flood, and other danger;
- Lessening or avoiding congestion in public ways;
- Promoting the public health, safety, comfort, morals, convenience, and general welfare; and
- Otherwise accomplishing the purposes of Chapter 4 of the Indiana Code - Local Planning and Zoning.

Some zoning regulations are related to concepts of public health and safety, such as limitations on building in flood plains and requirements for adequate *setbacks* and driveway access, but most fall under the broader and less defined category of “general welfare.” Primary objectives of general welfare include protection of property values, lower public costs, and enhancing the livability of residential neighborhoods.



Credit: indianapublicmedia.org

What About Aesthetics?

There has been a continuing debate about the extent to which zoning ordinances may be used to accomplish aesthetic objectives. The U.S. Supreme Court upheld the right of communities to use zoning for aesthetics in a landmark 1954 decision, *Berman v. Parker*. Writing for the court, Justice William O. Douglas stated:

The concept of the public welfare is broad and inclusive...the values it represents are spiritual as well as physical. Aesthetic as well as monetary... it is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.

According to Daniel R. Mandelker in his book *Land Use Law*, “A clear majority of courts hold that aesthetics alone is a legitimate governmental purpose in land use regulation.” Most zoning ordinances contain regulations that at least in part are aimed at aesthetics. Building setback regulations, height limitation, landscaping requirements, and sign regulations all have broad purposes, but community appearance is one of them.

Above all, whatever the regulations contained within a local zoning ordinance, both the written text and decisions made by plan commissions, boards of zoning appeals (BZAs), and legislative bodies should be consistent both with the purposes stated in the Indiana Code and from one decision to the next.

HISTORY

The zoning ordinance is the most commonly used and oldest tool for implementing land use policy in the United States. New York City adopted the nation's first zoning ordinance in 1906. This ordinance was largely designed to decrease fire hazards by limiting building heights and providing more space between buildings. In 1913 at the Fifth National Conference on City Planning, held in Chicago, the Committee on Legislation report contained several model acts that would help shape land development in the coming years:

- Establishing a city planning department and giving it extra-territorial (three mile) planning jurisdiction and the authority to regulate plans of lots;
- Empowering cities to create from one to four districts and to regulate the heights of buildings constructed in each district;
- Authorizing the platting of civic centers;
- Authorizing the platting of reservations for public use without specifying the particular public use; and
- Authorizing the establishment of building lines on any street or highway.

Euclidian Zoning - A convenient nickname for traditional as-of-right or self-executing zoning in which: district regulations are explicit; residential, commercial, and industrial uses are segregated; districts are cumulative; and bulk and height controls are imposed.
--American Planning Association

Chapter 8: Zoning Ordinances

1906 – New York City adopts the nation’s first zoning ordinance

1921 – Indiana grants municipalities the right to regulate land use and building bulk

1926 – Euclid v. Amber Realty: Zoning is found to be a valid exercise of police power to protect the public welfare

1954 – Berman v. Parker: The right of communities to use zoning for aesthetics is upheld

Takings - To take, expropriate, acquire, or seize property without compensation. --Iowa State University Extension Service

IC 36-7-4-601(b)(2)

Police Power - The right of government to regulate personal conduct and the use of land in order to protect that public health, safety, and welfare. The use of police power by a unit of government must follow “due process” and be “reasonable,” but the government does not have to pay compensation for related losses. In this last respect, it differs from the government’s use of eminent domain (where just compensation is mandatory). --Iowa State University Extension Service

The right of communities to adopt zoning ordinances regulating the use of land is well established in U.S. law. The Standard State Zoning Enabling Act (SZA) and the Standard City Planning Enabling Act (SCPEA), drafted by an advisory committee of the U.S. Department of Commerce in the 1920s, gave states the right to adopt and enforce zoning ordinances. In 1921 Indiana granted cities the authority to regulate the use of land and building bulk. In 1926, in *Euclid v. Ambler Realty*, the United States Supreme Court found that zoning is a valid exercise of *police power*, which local governments use to protect the public welfare. The court wrote:

The line which...separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions.the question of whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question of whether a particular thing is a nuisance, is to be determined, not by abstract consideration of the building or of the thing considered apart, but by considering in connection with the circumstances and the reality. A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard.

Although the courts have consistently upheld the right of communities to engage in planning and to adopt regulations to implement those plans, judges have placed limits on this right. Regulations that go too far and deprive a property owner of all economic use of the land are considered unconstitutional *takings* of private property without just compensation.

A TYPICAL ZONING ORDINANCE

A zoning ordinance contains two elements: text and maps. The two parts are equally important, and both should be carefully developed.

The Map

The zoning map should be as clear as possible, so that staff and citizens can easily determine the zoning classification and regulations for a particular piece of property. Most communities establish zoning districts according to parcel lines, so that the designation of each property is easily identified. If districts are not established in this manner, it is a good idea to use clear features, such as public right-of-way or railroad tracks, as zoning boundaries. The drawback associated with this is the potential for one property to lie within multiple districts, making it a necessity to clearly state within the text which district regulations will apply.

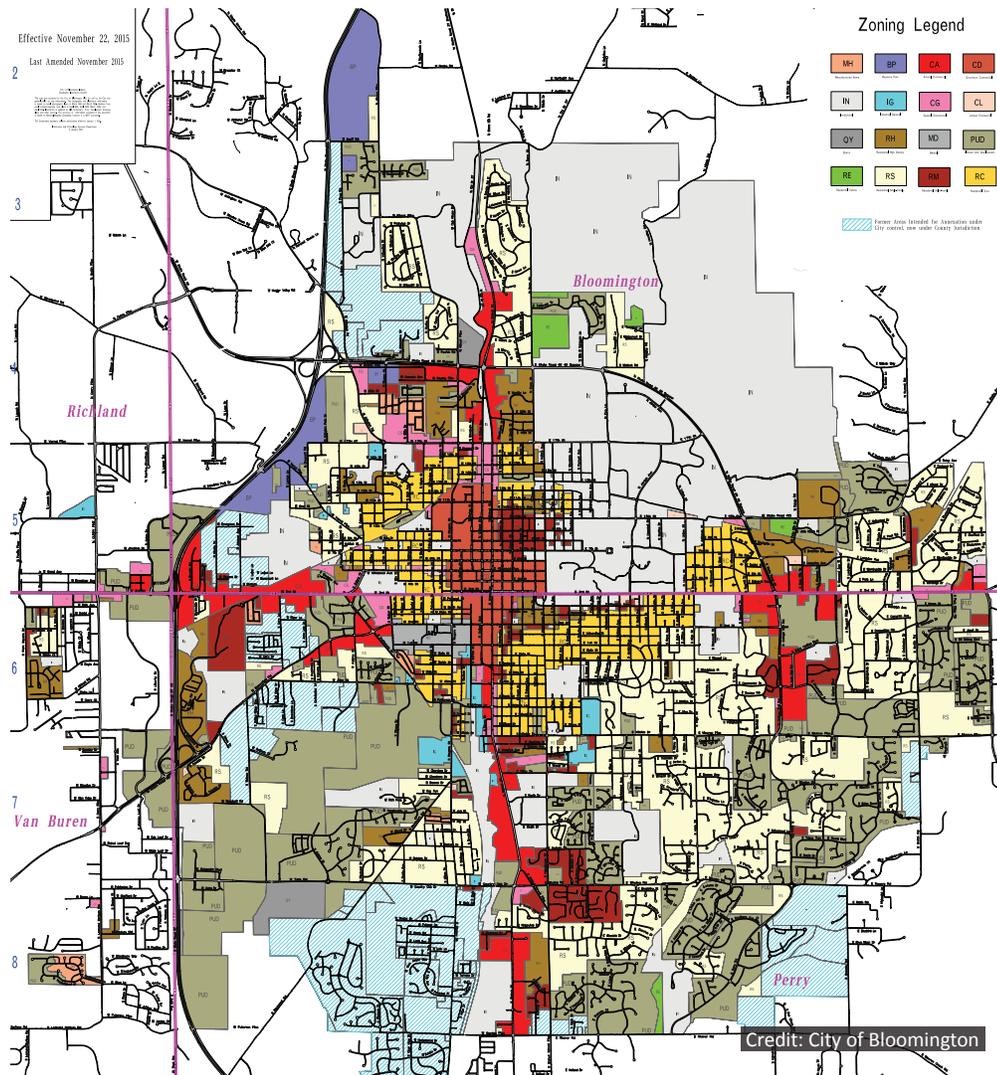
Geographic Information Systems (GIS) make preparing, maintaining, viewing, and printing zoning maps much easier. For communities that have the capability of producing such maps, electronic mapping systems are desirable. There are many companies that specialize in digitizing paper copies of plat books and zoning maps, and often can provide an internet tool that allows the public to view the community’s maps from any computer. These digital maps can be printed at various scales, making it easy to print maps of specific properties.

When using GIS systems to maintain the official map, it is usually helpful to also have a large, printed unofficial overall community map to display in a municipal office as a quick reference for the public, board members, and elected officials.

Maps generally show each district as a different color or hatched pattern. When using color, the following color scheme is preferable and widely recognized:

Residential	Yellow to Orange, with the most intense residential use (such as <i>multi-family</i>) in the darkest shade of orange
Commercial	Shades of Red, with the most intense commercial use in the darkest shade
Industrial	Shades of Purple or Gray
Municipal or Institutional	Shades of Blue
Recreational and Agricultural	Shades of Green
Transportation and Utilities	Shades of Gray

Multi-Family - More than one residential unit in the same building, like duplexes and apartments.



The Text

Each community's zoning ordinance text is different, as it should be. While communities may have similarities, no two are exactly alike. Community goals and objectives are not identical, and their plans (if prepared properly) are uniquely suited to the local context. Different communities also have different attitudes toward land use regulation. Zoning ordinances vary greatly in the amount of detail and sophistication. Tools that are important in one community may not be suitable in another.

A common complaint about zoning is that it is complicated. While simplicity is desirable, it is not possible to have an ordinance that is comprehensive and effective in implementing land use policy and is also short and simple. Land use issues are complex, and by necessity, the ordinances that regulate land use are also complex. Nevertheless, there are things communities can do to make the ordinances more user-friendly.

- Ordinance texts should be written clearly. The same rules that apply to good writing also apply to good ordinances: use active voice, keep sentences as simple as possible, and use terms that are easily understood;
- Illustrations are extremely useful in zoning ordinances. Some concepts that are difficult to grasp in words are easily understood through a graphic, such as a photo or illustration. Definitions of building height, intersection visibility triangles, and how sign area is measured all lend themselves to illustrations; and
- An annotated copy of the ordinance with explanatory material or a quick reference brochure can be helpful for the public. Equally helpful are glossaries and cross references within ordinances, to ensure comprehension and reduce repetition where unnecessary. While simplicity is desirable, it is important to note that the ordinance is a legal document, and sometimes complex language and technical terms are critical to the legal validity of the ordinance. Additionally, some ordinances are written so that each chapter serves as a complete unit, without need for cross referencing, but others separate elements like parking, landscaping, and other requirements into their own chapters. Both have advantages, and it is ultimately up to the community to determine their preference.

CREATING OR AMENDING A ZONING ORDINANCE

Developing the Ordinance

Preparing a zoning ordinance is one of the most challenging and important tasks a community will undertake. The public may not pay great attention to development of the plan (although they should), but the zoning text and maps are usually the subject of considerable interest and emotion. Drafting a good zoning ordinance is also a time-intensive proposition. Some communities adopt new plans but never adopt implementing ordinances, because the time involved is too great and the

controversy is overwhelming. In communities where the staff is fully engaged in day-to-day operations, it may be necessary to hire an outside consultant to prepare the zoning ordinance. With or without consulting help, it usually takes at least one year to develop a new zoning ordinance and about six months for a comprehensive update to an existing ordinance. If a representative committee is appointed, the members should know that the time commitment will be significant.

The time between adopting a new/updated comprehensive plan and creating/ updating a zoning ordinance should be as short as possible. Some localities prefer to begin the ordinance development even before the comprehensive plan is completed. By carrying out some of the work simultaneously, communities can achieve a better connection between the plan and regulations. This concurrent process also serves as a reality check, as citizens consider whether a policy is really important enough to translate into a regulation. Without updating and implementing ordinances, the comprehensive plan, as well as other potential community plans, are without significant effect.

Communities who hire consultants will be led through an effective and engaging process, with tasks and a timeline clearly laid out in advance of project start-up. For communities who plan to update the zoning ordinance in-house, consideration for many potential issues must be given in advance of project kick-off. For example, it will be likely that the community will want to:

- Engage a steering committee made of individuals with expertise in development-related or -affected fields;
- Solicit public participation in establishing tolerance for regulation and priorities;
- Determine the overall meeting schedule and timeline for plan updates, taking into account regularly scheduled plan commission and legislative body meetings and potential for comment and revisions; and
- Decide which approach will be most effective with the specific set of decision makers: updating an entire ordinance all at once to ensure cohesiveness and minimal inconsistencies, or updating the ordinance section by section, with adoption of each immediately after review to increase manageability and provide smaller portions for decision makers' review.

While the comprehensive plan must include significant public participation and review, the type of public engagement will be different for a zoning ordinance. The basic nature of an ordinance is to include details that can be enforced and, if necessary, can be defended in a court of law. Too much focus on detail with the general public can hinder an entire process; instead it is much more effective to engage the general public in determining overall tolerance for regulation and prioritizing which issues may need additional detail, more than a previous municipal or county ordinance may have provided. In order to maintain public representation while considering finer details, a properly constituted citizen committee should be engaged. This committee can also be an effective advocate for adoption of the ordinance after it is drafted. Whether or not consultants are used to draft a plan, make sure that the ordinance reflects local tolerance, and that the committee members understand the reasons for, and implications of, every provision to avoid potential confusion or opposition later in the process.

Even though the zoning ordinance must be tailored to a community's individual needs, there is nothing wrong with borrowing ideas from other communities. Many ideas can be generated through perusing a variety of ordinances, a task that has become easier with the proliferation of public documents on the Internet. Regulations developed for one community often can be adapted to serve another. Some sections, such as penalty provisions and severability clauses, are nearly the same in all ordinances, especially ordinances within the same state, and there is no reason to rewrite these if they fulfill local needs. It is important, however, when adapting provisions from other communities to have a legal review by competent counsel. Even within Indiana, local zoning powers differ because there are three kinds of plan commissions (area, advisory, and metro), and some have powers that others do not.

Common Elements of a Zoning Ordinance

Each community needs to determine the types of regulations it needs to meet its goals, and it needs to evaluate its ability to administer and enforce the ordinance. Common elements of a zoning ordinance are described below.

Purpose Statement

The purpose statement should reflect the state statute and the goals established in the comprehensive plan. In the event of lawsuits, judges often look at the purpose statement to determine whether the ordinance is aimed at a legitimate public purpose and whether the regulation at issue is a reasonable means of achieving that purpose.

In addition to stating an overall purpose, many ordinances contain statements of intent for specific zoning districts (i.e. agricultural, neighborhood commercial, planned business, etc.) and/or categories of regulations (i.e., signs, parking, landscaping). Including these statements of intent is good planning practice by letting the public know why the community established a certain zoning district, category, or regulation. And, as with the overall purpose statement, these are helpful in the event of a lawsuit.

Definitions

Clear and complete definitions can prevent many zoning disputes. For example, a community could prohibit the storage of junk on private property, but if "junk" is not clearly defined, or if the term is found to be clearly adverse to materials in question, a judge could rule in favor of a property owner. Consider an operating salvage yard compared to an eclectic collector or a yard covered in litter. Definitions should be compatible with other local ordinances.

Administrative Procedures

The ordinance must generally outline administrative procedures, in order to clearly communicate with the public the necessary steps that both they and zoning ordinance administrators will take for all future cases. This can reduce confusion, and need not be overly detailed. The rules of procedure adopted by the plan commission and BZA should identify the more specific details of the procedures (See Chapter 5, Rules of Procedure). Essentially, a zoning ordinance should contain:

- Procedures to amend a zoning map, consistent with Indiana law;
- Procedures to amend zoning ordinance text, consistent with Indiana law;
- Interpretation procedures (i.e. determining exact zoning district boundaries, determining which district unlisted uses may be permitted within, or enforcing a requirement that may not be clearly written);
- Procedures for identifying, confirming, noticing, and penalizing violations; and
- Appeal procedures.

Zoning Districts

Zoning ordinances regulate the use of land; they establish districts and describe the uses permitted in each district. Traditionally, each district includes permitted/prohibited land uses and lot development standards or other zoning requirements specific to the district. Make sure that your districts include enough detail to make them enforceable, or to provide a reasonable opportunity for interpretation, without becoming so complex that they become rigid and difficult to enforce.

It is common to find older ordinances that specify the proper district for a “telegraph office” or a “millinery shop” but have no mention of tanning/laundry facilities or mobile phone sales. To avoid exhaustive lists, define categories of uses -- those that are similar in physical size, parking necessity, customer traffic, and operation. For example, “neighborhood business” may be a district, further defined within the definitions or glossary as being small in size with customer foot traffic and lower parking needs compared to other commercial retail, service, and entertainment uses. This method places a higher reliance on staff interpretation, but overall this flexibility will result in better implementation of the district intents. Also, create a matrix or table of uses that will be easy to follow and quick to determine which districts may permit a specific use.

If you’re having trouble categorizing or grouping similar uses, the “*Land Based Classification System*” (LBCS) may provide assistance. Finalized in 1999, the LBCS provides a consistent model for classifying land uses based on one of five characteristics (activities, functions, building types, site development character, and ownership), each comprised of categories and subcategories.

The actual zoning districts assigned to parcels of property in a community are an important part of the text. A typical, modern list of zoning districts for a larger community may look similar to the list on the following page. Many districts have more than one abbreviation option; the first based on a numeric system and the second more descriptive of the district.

The Land Based Classification System (LBCS) is accessible at [this link](#).

Abbreviation	District Name
A-1 or AH	High Intensity Agricultural District
A-2 or AL	Low Intensity Agricultural District
R-1 or RR	Single-Family Suburban or Rural Residential District
R-2 or RL	Low Density Residential District
R-3 or RM	Medium Density Residential District
R-4 or RH	High Density Residential District
R-5 or RMHP	Mobile Home Park District
C-1 or CN	Neighborhood Commercial District
C-2 or CC	Community Commercial District
C-3 or CR	Regional Commercial District
C-4 or CB	Central Business District / Downtown
MU	Mixed Use
I-1 or IL	Light Industrial District
I-2 or IH	Heavy Industrial District
I-3 or BP	Business Park / Office District
IN	Institutional District (Municipal, Airport, Educational, etc.)
OS	Open Space District
PUD	Planned Unit Development District
OL-A	Airport Overlay District*
OL-M	Mining Overlay District*
OL-C	Corridor Overlay District*

* Overlay districts are discussed in further detail later in this chapter.

Agriculture Districts

The purpose of an agricultural district is to provide for and preserve viable agricultural land. It can also be used either within or outside of municipal boundaries as a growth management tool for land that is awaiting development, therefore requiring property rezoning and review by the legislative body prior to development. Agricultural districts could include a range of uses from intense livestock operations to low intensity crop production, natural land, or agri-tourism.

In the past many communities have struggled with what uses to permit within agricultural districts. Many land owners attempt to portion off parts of the property for family residences or residential subdivision development. In keeping with the overall intent of the district, regarding preservation and growth management, non-agricultural or maintenance structures should be kept to a minimum. This also reduces the need for potentially expensive public utility extensions to these often outlying properties. Requiring large minimum lot sizes (20+ acres) in agricultural districts can limit the potential for parcelization, but can also cause the more rapid consumption of agricultural land as large residential estates convert farmland into cultivated yards and ornamental gardens.



Credit: Dearborn County

Residential Districts

The purpose of residential districts is to accommodate various types and styles of dwelling units. The number of residential districts in a zoning code can vary depending on community size and preference. It is not uncommon for a small community to have three residential districts or for a larger community to have ten. The types of residences can range from estate housing, to suburban, to smaller traditional lot sizes, and can vary from single-family homes to multi-family in a number of density and structure styles.

Residential district regulations generally cover types of dwelling units permitted, density (dwelling units per acre), setback lines, *lot coverage* maximums, parking and driveway requirements, accessory structures, building height, etc. These regulations create the character of the neighborhood. There

are some non-residential uses that are generally compatible in residential districts. Accommodations for these uses can be made through a list of special exception uses (see Chapter 2, Board of Zoning Appeals Basics, for more on special exceptions). Also, access to public utilities, the provision of public park and open space, and proximity to services should be considered during the development and the designation of residential districts.



Credit: City of Indianapolis

Commercial Districts

The purpose of commercial districts is to accommodate providers of goods and services. Smaller communities may have as few as two commercial districts - say local business and general business. Larger communities may have up to ten different commercial districts. Some examples include neighborhood commercial, community commercial, regional commercial (these three based on customer origin, necessary parking, as well as the number and frequency of deliveries), commercial office, commercial entertainment, highway commercial, and central business district commercial (these four based more on character).

Some commercial districts can also accommodate light manufacturing and warehousing. Accommodations for these uses can be made through a list of special exception uses.

Factors that should be considered when developing commercial districts include

size and scale of the establishment, service area of establishment, intensity of use, traffic volume, character of the establishment, range of goods and services provided, access and location along streets, internal lot circulation, convenience factors, proximity to other uses, and utility service needs.



Credit: City of Wabash

Lot Coverage - The amount of structure that is covering the ground or “the footprint.” Lot coverage includes the primary building and all accessory structures on the lot.

Walkability - The degree as to how safe, convenient, and efficient it is to walk in an environment, district, neighborhood, or place.

Mixed Use Districts

Many communities are beginning to add mixed use districts to their zoning codes. These districts allow different, but compatible uses to share the same structure. Think of a historic downtown, with shops and storefronts along the street and apartments or offices above. This district is most suitable at a major crossroads within a community, a downtown area, or in new developments where *walkability*, street life, and urban form are desired.



Industrial Districts

The purpose of industrial districts is to accommodate manufacturing and warehousing uses. The number of industrial districts ranges from two to four in most communities because industrial districts generally include only two major distinctions: light industry and heavy industry. The differentiation between industrial districts is in the size, scale, associated traffic, and pollution potential of the manufacturing facility.

Also external physical characteristics, such as outdoor storage vs. enclosed storage, differentiate industrial districts. Industrial district regulations can include special buffering criteria to protect adjacent land uses from appearance, noise, light, and possibly odor associated with industry. Designation of industrial districts should take into account available land, utilities, and easy access to transportation networks.

Business Park / Office Districts

The purpose of a business park / office district is to provide opportunities for campus development of large, potentially national or international services. These uses can be included in the “commercial district” uses, but some communities choose to create a separate district, allowing for special development of utilities, including high-speed information systems, and access to major highways or executive airports.



Institutional / Municipal Districts

The purpose of an institutional / municipal district is to accommodate public and private institutions - such as schools and hospitals or large transportation facilities like airports - and municipal uses. In some communities, smaller public facilities like neighborhood schools are allowed by right or special exception within residential districts. However, many schools consolidate to form larger facilities, and therefore a district can be created for their protection. In addition, some municipal facilities, such as treatment plants or power stations, may require special buffering for surrounding uses.



Open Space & Recreational Districts

The purpose of this district is to protect, promote, and preserve a community’s public and semi-public park lands, recreational areas, woodlands, watersheds, water supplies, rivers, streams, wetlands, and other environmentally sensitive areas. These districts generally put limitations on development to protect the natural character of the environment.



A useful source in determining the appropriate number of spaces to require, even for bicycle parking, is the Planning Advisory Service Report Number 432, “Off-Street Parking Requirements.”

Development & Design Standards

Development standards are important in determining the character of a district. Will the downtown feature high-rise buildings, or will it have a lower profile? Will a residential neighborhood feature broad front lawns, or will the houses be close to the street? Will the lots be large or small? Will an industrial area have outside storage within view of the street? All these things are regulated through the development standards in the zoning ordinance. Development standards generally include yards, setbacks, bulk, density, coverage, height, accessory structure regulations, etc. Many of these terms will need to be clearly defined in a glossary or definitions chapter of the zoning ordinance.

Parking

To address parking space shortages during the automobile's rise in popularity, many communities established parking standards. These set forth a minimum space size (for example, 9'x18' with 24' aisle widths for two-way traffic) and usually a minimum number of parking spaces required based on square footage, fixed seating, or the number of customers at full capacity for their associated land use (apartment residential, boutique retail, mega big box store, etc.). These minimum numbers of parking spaces are useful in many situations, but some requirements were determined based on the largest possible customer base, which for retail uses likely only happens once or twice a year. This results in large extents of asphalted land that are not utilized during the majority of a year.

Newer techniques have been adopted in many places to better serve the community while accommodating new development such as allowing or encouraging shared parking, smaller parking spaces for compact cars, utilizing porous material or grassy lots for overflow parking to accommodate water runoff, or establishing both a minimum and a maximum for the number of parking spaces.

Landscaping & Buffering

Many ordinances require landscaping, particularly in non-residential areas. In some communities landscaping is a high priority, while others consider it less important. Then intent is often to ensure adequate vegetation to contribute to natural systems, while softening the built environment. Buffering is generally required between developments of incompatible uses. For example, uses that generate a high level of noise, light, or traffic (which could range from industry to a ballpark that hosts night games) may need to utilize tall, dense vegetation to mitigate some of these effects on neighboring properties.

The regulations can be simple or complex, ranging from requirements for a landscaped area of specified minimum width to extensive landscaping and lists of acceptable plant species. In determining these requirements, communities need to consider their goals and policies as well as the capability of staff to administer and enforce the ordinance.



Credit: South Bend Regional Chamber of Commerce

Signs

When considering sign regulation, consider the goals and policies of your community. Signs can run the gamut from large, flashy, and covered with corporate branding to subtle, contextual, and representative of a particular community. It is important to balance the potential for signs to responsibly inform the reader without the possibility of it becoming a distraction and safety hazard. Regulations for the size, placement, design, reflectivity, acceptable lighting methods, and (more currently) motion and video, will often spark debate, but a community must decide what best suits their needs.

When drafting sign ordinances, an attorney with knowledge in this subject should be consulted, as signs have been the subject of several important court decisions. The U.S. Supreme Court has viewed sign regulation as a free speech issue and has limited the ability of local governments to regulate the content of signs. As a guide, if you have to read a sign to regulate it, then you are in effect, regulating the content. It is key to remember that the sign industry is well financed and inclined toward litigation.

Home-Based Businesses

The number of people operating businesses from their homes has increased dramatically in recent years, and with the increase has come reconsideration of the regulation of such businesses. Until the 1980s the most common way of regulating home occupations was to preclude outside employees and restrict the portion of the residence in which the business is conducted. The issue is now more complicated and requires careful thought. Is a weekly housekeeper, a pool service, or a landscape service an outside employee? If not, is a bookkeeper coming to a residence-based business a half day a week more disruptive than a housekeeper? What about a lawn care business operated from one's residence? Some businesses that include no employees generate traffic and parking problems, for example, if semi-trucks deliver inventory or a network of local distributors come to pick up orders or allotments. The key again is in assessing the community's goals and its ability to administer and enforce regulations.

Non-Conforming Situations

Legal non-conforming situations are those that were legally established, including following proper procedures and acquiring proper permits, prior to the effective date of adoption of a zoning ordinance, but under the new regulations would have been prohibited or otherwise restricted. Sometimes this situation is referred to as "grandfathered." It is typical in an ordinance not to allow the enlargement or expansion of a legal non-conforming situation without bringing the entire property into compliance. Illegal non-conforming situations are violations of any provision, use, development standard, procedure, etc. of the zoning ordinance and established after the current ordinance's date of adoption. The zoning ordinance should include enforcement procedures for bringing illegal non-conforming situations into conformity.

Non-conforming structures and lots are physical issues. A non-conforming use, however, may be allowed to continue operation until such time that a lease expires or a property changes ownership. At that time the use may be prohibited from continuation, or may be required to follow specific procedures to gain status as a special exception.

Severability Clause

In the event that a judge finds an ordinance provision invalid, it is important that the ordinance has a severability clause stating that if one provision is invalid, the rest of the ordinance remains in effect.

Modern Trends and Techniques

As development styles and land uses change, so too must planning techniques evolve. For example, early zoning ordinances allowed each progressive or more intense district to build upon the permitted uses of the previous: residential uses were permitted in commercial areas, both residential and commercial uses were permitted in industrial districts, and so on. During the 1950s and 1960s, many communities shifted to a strict separation of land uses, a practice that more recently has been criticized for creating sterile, inconvenient environments.

New land use issues have been brought to the forefront by new technology, changes in business practices, and societal changes. There are several American Planning Association publications that address a range of topics that many communities may find useful. Additionally, there have been a number of innovative approaches to zoning, explained below, which have been used with varying degrees of success.

Performance Zoning

These ordinances contain requirements based upon the characteristics of a use, rather than on the category of use. A conventional zoning ordinance might list a printing plant as a permitted use in a particular district, thus treating a quick-print franchise in the same manner as a large commercial printing facility. Under performance-based zoning, the ordinance would instead regulate the size of the building, the amount of traffic it could generate, the types of vehicles making pickups and deliveries, and so forth.

Performance zoning offers several advantages:

- It bases regulation on characteristics of actual operation, rather than category of use;
- It promotes compatibility of uses; and
- It is flexible in allowing “mixed use” developments.

There are disadvantages as well:

- The standards are often difficult to quantify;
- Enforcement requires continual attention, special expertise and equipment; and
- Characteristics may vary from one time period to another.

Planned Unit Developments

Planned unit development (PUD) provisions promote flexibility in land use while offering more certainty and better protection for neighboring property owners when new developments are proposed. Planned unit developments typically are intended for large parcels where mixed-use developments are proposed. These require up-front planning and design.

In Indiana, planned unit developments are approved by ordinance. Typically the ordinance would include a description of the uses permitted and a specific plan for the development of the property. Some PUD ordinances require a high level of detail: design, colors, and materials to be used for buildings and signs; landscaping plans with the location and species of each plant; parking and circulation details and so forth. While a high level of detail is reassuring to neighbors, it can be costly and limiting for developers as well as time consuming for planning staff to administer. Communities need to determine the level of regulation that works best for the local situation. The ordinance should contain provisions for amendment or modification of approved PUDs as well as provisions for dealing with abandoned plans or projects.

Development Plan Review

Many communities include site plan review or development plan review requirements in their zoning ordinances, particularly for large-scale developments such as shopping centers or apartment complexes. Indiana law refers to these as development plans, not to be confused with a planned unit development, discussed herein.

The zoning ordinance needs to specify the situations in which development plans are required and the standards by which those plans will be evaluated. These standards need to be objective and specific; a requirement that the new development be compatible and harmonious with its surroundings will not pass legal muster and will not provide guidance for developers. Site plan reviews are largely used by planning staff members to insure that the new development will meet the requirements of the zoning ordinance.

Design Requirements

Some communities have design review requirements in their ordinances. In the early years these were most commonly of two types: requirements that all buildings be of similar design or requirements that buildings not look alike. Some communities set up design review committees to evaluate the architecture of proposed buildings and to decide whether those buildings are acceptable. In recent years, cities such as Seaside, Florida, have been developed according to zoning codes based primarily upon design standards. These ordinances often contain more drawings than words, and they are intended to achieve a certain community character. Again, the standards must be specific and clear, as must the criteria for deciding whether the designs are acceptable.

IC 36-7-4-1503

IC 36-7-4-1400 Series

Overlay Districts

An overlay district serves as an additional layer of regulations in areas that are particularly sensitive. The underlying zoning district does not change, and there are generally more requirements pertaining to the overlay.

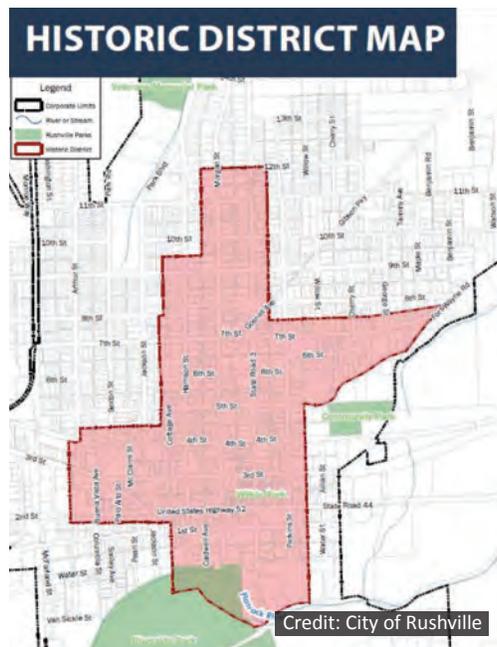
Many communities choose to create overlay districts for areas in need of special aesthetic attention. A prominent corridor, commercial area, or historic district may need special requirements to ensure a positive perception by users. For example, it may be desired to minimize corridor-adjacent parking, encourage cross-access between developments, or more heavily screen outdoor product and waste storage.

Wellhead protection districts are another common type of overlay district in many Indiana communities. The purpose is to protect the community's wellheads or water source. Developments within a wellhead protection district may be required to submit documentation to the local water utility company before development and then periodically to be sure that the community's water source is not contaminated.

An airport noise overlay district is different in that it remains in place unless the noise generated by the airport changes (adding a new runway, for instance). The airport noise overlay district restricts noise sensitive uses such as residences, nursing homes, mobile homes, outdoor auditoriums and similar uses. Some uses are not only allowed but encouraged in noise overlay zones due to their compatibility with noise, such as: manufacturing, most commercial uses, agriculture, mining, and warehousing.

Farmland Preservation

For many Indiana communities, especially counties, agricultural protection is of prime importance. There is nationwide attention now being given to protecting farmland. In Indiana, the Land Resources Council is charged with finding ways to address this issue. Farmland preservation is not just about food supply; it is about rural landscapes and lifestyle. There are several techniques available to retaining farmland and rural character.



Exclusive agricultural zones allow only farming. Houses are considered accessory to farming operations. This land cannot be subdivided or developed for any purpose other than agriculture. If enforced, these zones are effective in protecting farmland.

Many local legislative bodies, however, find it difficult to resist the pressure to rezone these areas for new housing developments and shopping centers. The opposition can be significant, as property owners perceive these exclusive agricultural zones to significantly reduce property values.

The large-lot zoning technique establishes a minimum lot size intended to discourage development. Typical sizes range from 5 to 20 acres. These lot sizes often are not large enough to promote the continuation of farming. Many experts believe the minimum size should be 40 or 80 acres; otherwise, the large area requirements simply waste land and drive up the cost of housing and of local services and infrastructure.

Large lots can create the feel of more open space, and they provide better opportunity for properly functioning septic systems and private wells in areas where those are permitted or encouraged.

Purchase of development rights (PDR) programs pay landowners for the development rights to their property. An appraisal is made of the difference between the property value as agriculture land and its value if sold for development. The landowner is paid the difference, and the land is permanently protected from development. Several states including Michigan, Massachusetts, New Jersey, and Pennsylvania have these programs. Indiana recently adopted such a program, but funding is currently limited. In Colorado, one county recently voted to increase property taxes to create a pool of funds for such purchases. One suggestion has been to pay for the development rights through a tax on new development.

Transfer of development rights (TDR) is relatively recent and not widely used. It involves establishing a base density and then allowing density credits to be taken from one area and applied to another. For example, assume the base density is one unit per acre. A community wishing to protect prime farmland could designate that farmland as “donor areas” and areas less good for farming as “receiving areas.” A developer could transfer 40 development right credits from a 40-acre farm and use them to create 80 ½ acre lots on land not designated for farming.

Form-Based Zoning

Form-based zoning is a unique form of regulation that places emphasis on the design, appearance, and desired character of an area and does not designate permitted uses. In its purest form, all uses can be made to be compatible with each other according to their design. However, a code of this sort may still regulate whether uses that typically affect their neighbors in a negative way, such as through odor, pollution, vibration, noise, or other means, are truly compatible.



According to the definition given by the United States Environmental Protection Agency, form-based zoning:

“Allows market demand to determine the mix of uses within the constraints of building type set by the community. The community establishes zones of building type and allows building owners to determine the uses. The look and layout of a street is carefully controlled to reflect neighborhood scale, parking standards, and pedestrian accessibility, but building owners and occupants are allowed maximum flexibility to determine how the buildings will be used.”

Some communities that have attempted to implement form-based zoning have resulted in hybrid codes, where a base zoning district may regulate density and land use, but all other standards are flexible according to their location with regard to the use that they apply to.

Mixed Use Developments

Similar to Form-Based Zoning, mixed-use developments emphasize and regulate form more than use. However, instead of allowing any use, only certain uses considered to be compatible in close proximity to each other are permitted. For example, a small commercial intersection in a neighborhood might be a mixed-use development that allows residential, commercial, entertainment, schools, and very light industry, such as a brewery or wood workers shop. All uses permitted within a mixed-use development would need to adhere to the same land use regulations.

3

3.5 MIXED-USE DEVELOPMENT

A. Description

This zoning type requires mixed-use developments that allow a mix of retail, office, residential, and entertainment uses in a specified code. The standards will be changed to include a wider variety of amenities, on-street parking, and permitted uses.

B. Special Requirements

1. This zoning type requires mixed-use developments that allow a mix of retail, office, residential, and entertainment uses in a specified code. The standards will be changed to include a wider variety of amenities, on-street parking, and permitted uses.
2. This zoning type requires mixed-use developments that allow a mix of retail, office, residential, and entertainment uses in a specified code. The standards will be changed to include a wider variety of amenities, on-street parking, and permitted uses.

C. Lot Standards

A	Residential	100-150'
B	Office	100-150'
C	Commercial	100-150'
D	Entertainment	100-150'
E	Food/Drink	100-150'
F	Multi-Use	100-150'
G	Public	100-150'

Credit: RATIO Architects

Adopting the Ordinance

Indiana Code specifies certain actions that local governments must take into consideration before adopting a zoning ordinance. After adopting a comprehensive plan, the process for adopting a zoning ordinance involves the following steps:

- 1) The plan commission must initiate the process and prepare the ordinance. The plan commission then schedules a public hearing and publishes notice in the newspaper at least 10 days before the hearing date. This notice must contain a summary of the contents of the ordinance and the entire text of any penalty provisions;
- 2) The commission holds the public hearing and accepts comment from interested parties;
- 3) The plan commission votes to recommend the ordinance and certifies it to the legislative body (city or town council or county commissioners) for adoption; and
- 4) The legislative body adopts, amends, or rejects the ordinance. If it so desires, the legislative body may schedule a public hearing on the ordinance before it takes action. If the legislative body rejects or amends the ordinance, it must return the proposal to the commission with reasons for the rejection or amendment. The plan commission must then consider the rejection or amendment. If the commission agrees, the legislative action stands. If the commission disagrees, the legislative body must vote a second time.

The commission must publish a notice of adoption, and any penalty provisions in the ordinance must be published in their entirety. The ordinance is not effective until 14 days after the penalty provisions are published.

While this process may seem somewhat cumbersome, it is designed to ensure that there is a dialogue between the commission and the legislative body. There are time limits on the actions to be taken after the plan commission certifies the ordinance. The staff and commission should pay careful attention to these deadlines.

The minimum steps required by statute usually are not enough for an effective and successful adoption process. It is a good idea to hold one or more public meetings before the formal public hearing. At these meetings, the ordinance can be explained and the public has an opportunity for questions and comments. It is likely that the commission or ordinance committee will want to make changes based upon these comments before advertising the ordinance for public hearing. Effective participation requires that copies of the ordinance be available for public review. In addition to having a copy available in the planning office, the staff should place copies in other places that are readily accessible to the public, such as the public library or on the community's website. Ordinances usually go through several revisions before adoption, and it is confusing to have several different versions circulating in the community. Review copies should be dated and clearly marked as drafts.

Amending the Ordinance

Even the most carefully thought-out ordinance will need to be amended from time to time. There are two types of zoning ordinance amendments: text amendments which include changing, adding, or deleting written provisions in the ordinance, and map amendments which are commonly called “rezonings” but can also include adjusting zoning boundaries. The processes for these two types of amendments are different, and it is important that each type is handled correctly.

Text Amendments

Text amendments are handled in much the same manner as the adoption of the initial ordinance. The plan commission must hold a properly advertised public hearing on the proposal. The hearing notice must state the subject matter of the amendment. As with adoption of the initial zoning ordinance, the legislative body may adopt, reject, or amend the proposed text amendment. If the council or county commissioners reject or amend the proposal, they must return it to the plan commission with the written reasons for the rejection or amendment, and the process is the same as for the initial adoption of the ordinance.

Map Amendments (Rezoning)

A typical plan commission agenda includes one or more requests to rezone property, or an amendment to the zoning map. State statute requires the plan commission and legislative body to pay reasonable regard to the following factors in considering a proposal to rezone land:

- The comprehensive plan;
- Current conditions and the character of current structures and uses in each district;
- The most desirable use for which the land in each district is adapted;
- The conservation of property values throughout the jurisdiction; and
- Responsible development and growth.



The local zoning ordinance text may contain additional criteria. The effectiveness of many comprehensive plans is determined by the care the plan commission and legislative body take in deciding rezonings. There often is considerable pressure from developers and from the public on these issues, and it is important that the decision be made based upon the adopted goals and policies for future land use.

IC 36-7-4-602

IC 36-7-4-603

Indiana law allows rezonings to carry written commitments. In some states these are called “conditional” rezonings. These commitments may be imposed by the city or county or offered by the applicant. Commitments are permitted only if the zoning ordinance provides for them. The ordinance must specify the circumstances in which commitments are required as well as the procedures for creating, amending, enforcing, and terminating commitments. The commitments must be recorded in the office of the county recorder.

While commitments can be a useful tool to ensure quality development that is compatible with its surroundings, they also can be overused and abused. Commitments should not be a substitute for a well-drafted zoning ordinance, and they should not be used to satisfy every neighborhood demand. Each commitment requires mapping, tracking, and enforcement, and they should be used only where they are really necessary or highly beneficial.

CONCLUSION

One of the most important characteristics of a zoning ordinance is its ability to bring development issues to the table at a public hearing. Any time a property owner wishes to change the current land use designation, notice is given to the public and a meeting is scheduled. Those in favor of or against the proposal have the opportunity to speak to the plan commission and legislative body prior to any decision.

The zoning ordinance gives the community a voice in the development of their community. No matter how large or small the community, the voices of the residents should help influence the decisions made or the process will be tainted.

DISCUSSION TOPICS

- Is your community’s zoning code heavy on aesthetic value? Is this a priority for your community? Should it be?
- Is your community’s zoning ordinance cumulative?
- Think about the zoning map in your community. Is it easily accessible? Is it easy to read and understand?
- Does your community’s zoning ordinance have more than one industrial district? If so, what are the major differences between them?
- Are the permitted uses listed in your zoning code outdated?
- Does your community’s zoning ordinance have any overlay districts?

SUGGESTED RESOURCES

Mandelker, Daniel R. Land Use Law, Sixth Edition. Published by LexisNexis, 2016.

CHAPTER 9

SUBDIVISION CONTROL ORDINANCES

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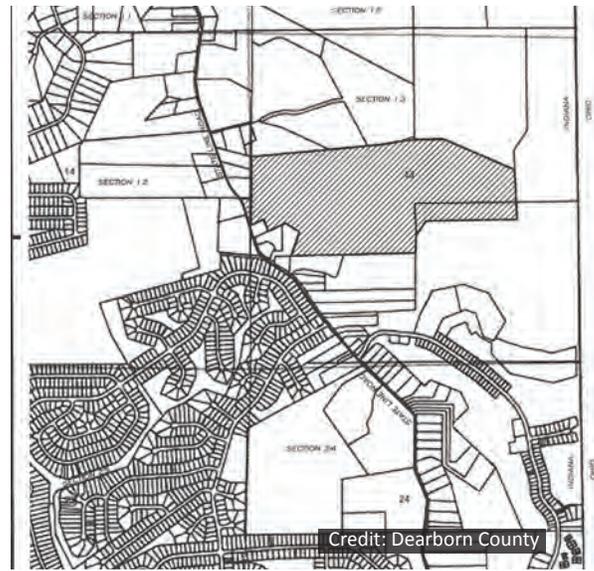
IN THIS CHAPTER. . .

History of Subdivisions
Purpose of Subdivision Regulations
Subdivisions- Definitions and Types
The Subdivision Control Ordinance
Procedures for Subdivision Approval
Additional Subdivision Information

The term “subdivision” generally means the process of dividing land into smaller pieces that are easier to sell or develop. While a subdivision is most commonly thought of as a residential neighborhood, land is also subdivided for the purpose of commercial and industrial development. This chapter will not only discuss the history behind subdivisions, but also why and how subdivisions are regulated.

HISTORY OF SUBDIVISIONS

Documented land subdivision began during the early settlement of the United States. Back then, property was originally conveyed with lengthy legal descriptions using physical features of the local geography (trees, rivers, rocks), along with directions and distances measured with tools known as links, chains, and rods. Obviously, this system and the tools used varied from place to place and there was minimal consistency. Thankfully, the United States Public Land Survey System (USPLSS) was developed in the early 1800s to establish the uniform grid system of Sections, Townships, and Ranges and forms the foundation for the legal descriptions that we utilize today.



By the 1900s, the demand for smaller pieces of property increased as areas began to urbanize. Using the USPLSS as a base, the Lot and Block survey system evolved as an efficient way to allow cities and towns to expand into the surrounding rural areas. Property owners would subdivide their large properties into smaller blocks and lots, file the resulting “plat” with the official government record keeper, and then sell these pieces of property to buyers. While this method could efficiently identify and convey land, it did not take into consideration the impact of development and expansion on the communities that these lot splits generated.

PURPOSE OF SUBDIVISION REGULATIONS

In an effort to resolve the issues generated by growth and development that eventually resulted from divisions of land, communities began adopting subdivision regulations. These regulations were implemented to ensure that there are adequate facilities such as parks, streets, utilities, drainage, utilities, and other infrastructure to handle the development of the lots created by the subdivision.

Quick Quiz: Is there an original plat in your community? What is the date on the plat?

In addition to ensuring adequate facilities exist, subdivision regulations were established to address the long-term maintenance of this infrastructure. It is common for public infrastructure to be dedicated (or given) to the local government, so this means that the local government would be responsible for maintenance. Therefore, if the local government is assuming the responsibility of long-term maintenance, the infrastructure that developers are installing needs to be constructed to certain minimum standards to ensure quality construction and longevity, thereby avoiding undue hardship on taxpayers in the future.

Unfortunately, it is easy to get caught up in making sure adequate infrastructure and utilities are provided and overlook the character of the subdivision. In addition to infrastructure, the subdivision process is one of the few opportunities for local government to influence physical design and character of a development. In Chapter 8 of *The Practice of Local Government Planning*, Richard Ducker states,

“The manner in which land is subdivided, streets are laid out and lots and homes are sold sets out the pattern of community development for years to come. Once land is divided into building sites and streets, land ownership is only rarely consolidated, land is rarely re-subdivided, and a particular site is only rarely redeveloped. Subdivision regulations often give a community its only opportunity to ensure that new neighborhoods are properly designed.”

Establishing local subdivision regulations is critical in the process of developing and/or maintaining a certain community character as well as to promote the overall public health, safety, and general welfare.

SUBDIVISIONS - DEFINITIONS AND TYPES

Before considering subdivision regulations further, it is necessary to establish a clear and concise definition of “subdivision” and become familiar with the common types of subdivisions.

Basically, a subdivision is the division of a lot, tract, or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale, development, or lease. Beyond this basic definition, there are many types of subdivisions based on intent of the subdivision and/or the intended land use. Some of the most common types include metes and bounds, residential, conservation, TND, conventional, commercial, and industrial. Additionally, subdivisions are often classified into major and minor subdivisions, which are typically defined locally.

Minor and Major Subdivisions

Many subdivision control ordinances define a “minor subdivision” and a “major subdivision.” While this definition is up to each individual community, a minor subdivision of land usually has a maximum number of lots and does not necessitate the construction or installation of new infrastructure. These can also be called “a simple subdivision of land.” For example, a minor subdivision could be defined as a subdivision that includes five or fewer lots and does not require construction of new public or private public ways or the installation of utility infrastructure. A major subdivision is usually defined as any subdivision of land that does not meet the definition of a minor subdivision.

Bartholomew County
Code, Chapter 8, Article 1,
Division III, Section 8-30

Quick Quiz: What types of subdivisions are identified in your community's subdivision control ordinance?

Developers should be discouraged from creating a series of minor subdivisions as a way of bypassing the requirements of a major subdivision. The simplest way to do this is to specify that lots created as part of a minor subdivision of land are cannot be further separated unless the procedure and requirements for a major subdivision are followed.

Metes and Bounds Subdivision

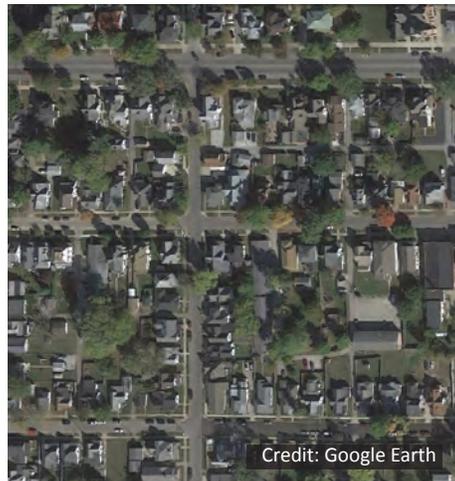
The Metes and Bounds Subdivision occurs when a property owner simply divides the property into smaller parcels that are described with direction and distance in a legal description. The resulting legal description is then recorded in the office of the county recorder to make the lot splits official. This is a common practice in agricultural areas where large tracts of land still exist. While the resulting lots are conveyable, this type of subdivision occurs without local subdivision approval and no assurance that the resulting lots can be developed. Depending on the local subdivision regulations, an unknowing buyer who wishes to develop their new metes and bounds property may discover that it doesn't meet the local development standards and therefore cannot obtain a building permit. Despite this potential stumbling block, there is nothing in Indiana law that legally prevents this practice from occurring. To circumvent this issue, some communities have utilized a couple of strategies:

- **“Rule 12” (865 IAC), the State Board of Regulation for Professional Surveyors:** Under Rule 12, it is implied that a licensed surveyor is bound to abide by the local zoning and subdivision regulations for the area in which they are performing services. Under this approach, it is felt that a surveyor who is asked to prepare a lot split should inform their client that the subdivision process through the local plan commission is warranted before the split can be recorded.
- **Inter-Departmental Agreements:** Some planning agencies have successfully worked with their local Recorder's Offices to alleviate non-conforming lot splits. In these offices, authorization of a planning official is required before lot splits can be recorded. This sign-off can be as simple as an accompanying statement noting that the resulting lots may or may not be in compliance with the local zoning and subdivision regulations and therefore may not be deemed as buildable lots. Other communities prohibit lot splits without going through the required subdivision process. Either way, the subdivider and the buyer are put on notice that additional steps may be necessary.

Residential Subdivision

A Residential Subdivision is property that has been subdivided with local approval in accordance with the applicable development standards for residential use. This type of subdivision is common in the suburbs of cities and towns and lots typically vary slightly in size to accommodate single-family and/or two-family homes. A residential subdivision usually contains its own system of streets, drainage facilities, and other infrastructure, and may or may not include open space and recreational amenities.

- **Conservation Subdivision:** A Conservation Subdivision is a type of residential subdivision that is characterized by clustering the developable lots in certain areas of the parent tract of land and preserving/conserving the remaining areas on the parent tract. These areas might be conserved because they are valuable natural habitats, beautiful woodlands, floodplain, or simply as an open space amenity to the lot owners. The key is that these undeveloped lands are actually platted as part of the subdivision, are never divided into lots, are never developed, and are maintained by an owners association or dedicated to the local government to maintain as a public park.
- **Traditional Neighborhood Development (TND):** TND subdivisions are historically found in the older parts of communities. Often, the original plat of a town/city was created before land use patterns were dominated by the automobile. As a result, traditional subdivisions tend to be characterized by mixed uses, smaller lots and setbacks, gridiron street patterns, and narrow alleys. The TND subdivision has recently been re-invented to include these same design principles. Like the older parts of cities, these subdivisions create a mix of uses including retail, office, and residential while creating a neighborhood with a pedestrian emphasis. Typically, home sites will have rear-loaded garages off of alleys. The home design emphasizes front porches and streetscape that encourages people to recreate in the front yard. These types of development tend to welcome a mixture of uses that zoning has historically separated.



- **Conventional Subdivisions:** A conventional subdivision is most typically found in suburban areas. These subdivisions were first created after World War II during the first tier of suburban development. In the 1960s, traditional gridiron street patterns gave way to curvilinear street patterns in an attempt to soften the look of neighborhoods and to cater to automobile travel. Many new subdivisions today continue to use the conventional subdivision style. However, contemporary practice also incorporates modification of existing conventional subdivisions to enforce greater connectivity and walkability standards. In the future, the lines between conventional and traditional subdivisions may be blurred, reducing the need to differentiate between the two.

Commercial Subdivision

Commercial Subdivision. A Commercial Subdivision is property that has been subdivided with local approval in accordance with the applicable development standards for commercial use. Commercial lots can vary greatly in size depending on the type of uses they are designed for. A commercial subdivision usually fronts on a major road and has driveways with direct access to these roads. Lots may be independent for one business/structure, or several lots may be connected with shared parking and signage.



Industrial Subdivision

An Industrial Subdivision is property that has been subdivided into lots or blocks (for further subdivision) with local approval in accordance with the applicable development standards for industrial use. By the nature of industrial land uses, industrial lots can vary greatly in size depending on the type of uses they are attracting. An industrial subdivision is usually in proximity to major thoroughfares and interstates in order to allow convenient access for large trucks and semis.

THE SUBDIVISION CONTROL ORDINANCE

A community's authority to adopt a local subdivision control ordinance (SCO) relating to the character and design of subdivisions is controlled by Indiana State Statute, IC 36-7-4-700 series. Furthermore, State Statute specifies what standards the SCO *must* contain and what standards the SCO *may* contain.

Required Standards

Indiana State Law outlines the standards that the SCO must contain. These standards are:

- 1) The minimum width, depth, and area of lots in the subdivision;
- 2) Public way widths, grades, curves, and the coordination of subdivision public ways with current and planned public ways; and
- 3) The extension of water, sewer, and other municipal services.

IC 36-7-4-702(b)

Optional Standards

Indiana Code also outlines the optional standards that the SCO may contain. These include standards for the allocation of areas to be used as:

- 1) Public ways;
- 2) Parks;
- 3) Schools;
- 4) Public and semi-public buildings;
- 5) Homes;
- 6) Businesses;
- 7) Utilities (size/capacity, overhead vs. underground, the need for easements, etc); and
- 8) Any other standards related to the purposes of subdivision control.



Other Standards

Other standards that communities often establish as part of their SCO address more specific construction standards as well as community character. These standards include:

- 1) Access – how and where driveways connect to public streets;
- 2) Open Space – the minimum area, water features, and amenities contained in the open spaces;
- 3) Street Lighting – the required placement and fixtures used for lighting roadways;
- 4) Erosion Control and Stormwater – managing soil erosion, water run-off, and the disturbance of protected areas during construction;
- 5) Landscaping – establish natural buffers between developments as well as internal vegetation such as street trees, entrance improvements, etc.;
- 6) Street Name and Development Name – review of street names and development names to ensure compatibility with the local Emergency 911 system;
- 7) Street Signs – establish standards for street signs to set the character of a development or community;
- 8) Owner Associations – require professional management of the public areas and collection of resident/owner assessments to ensure the longevity of shared spaces and infrastructure; and
- 9) Dedication of Public Infrastructure, Surety – the procedures for accepting roads and other infrastructure by the legislative body for public use and maintenance as well as performance and maintenance surety during construction.

IC 36-7-4-702(b)

See Rule 5, Storm Water Run-off Associated with Construction Activity, (327 IAC 15-5)

IC 36-7-4-405

Quick Quiz: Does your community's Subdivision Control Ordinance include any of the provisions Indiana Code considers discretionary?

PROCEDURES FOR SUBDIVISION APPROVAL

Per IC 36-7-4-701, the legislative body (county commissioners or town/city council) adopts the ordinance for subdivision control after the plan commission has made their recommendation to them. After adoption of the SCO, the plan commission has exclusive control over the review and approval of all subdivisions covered by the SCO.

Per statute, the subdivision review process is broken into two parts: Primary Plat and Secondary Plat.

Primary Plat

The Primary Plat is the initial plat, plans, and supporting documentation showing the proposed layout of the subdivision in conformance with the zoning ordinance and SCO. Per statute, the minimum steps for primary plat consideration include:

- 1) **Pre-Application:** Many communities utilize a “pre-application” step in the primary plat process. While not required by state statute, this step has two purposes:
 - It helps the subdivider become familiar with the local zoning and subdivision process; and
 - It provides the planning staff with necessary information about the proposed project in advance of filing the petition.
- 2) **Application:** The applicant will submit an application for Primary Plat in accordance with the local jurisdiction’s application procedures. The application may also include a request for waivers from any of the SCO standards that can’t reasonably be met (see Waivers and Conditions below).
- 3) **Internal Review:** The Staff of the plan commission will review the application and plans for technical conformity with the zoning ordinance and SCO.
- 4) **Set Public Hearing Date:** Within 30 days of receiving a completed application, Staff shall announce the date of the public hearing before the plan commission and public notice shall and notice to surrounding property owners shall be provided.
- 5) **Plan Commission Hearing:** At the public hearing, the plan commission shall determine whether or not the application and plat comply with the standards of the SCO and whether any requested waivers should be granted.
 - If the plans are found to meet the standards of the SCO, the applicant shall be notified of the approval along with any conditions of approval (see Waivers and Conditions below). The applicant may then proceed with filing the Secondary Plat.
 - If it is determined that the plans do not meet the standards of the SCO, the applicant shall be notified of the reasons for disapproval and the plans’ deficiencies.
- 6) **Appeal:** The applicant or interested party may appeal the plan commission’s approval or disapproval of the primary plat within five days of the decision.

IC 36-7-4-702 through 708

Secondary Plat

The Secondary Plat is the final plat, supporting documentation, and detailed engineering drawings of the proposed subdivision that is in conformance with the zoning ordinance, SCO, and substantially conforms to the approved primary plat. The plan commission may grant approval or they may delegate this authority to Staff or a Plat Committee. No notice or hearing is required. The typical steps for secondary plat consideration usually includes:

- 1) **Application:** The applicant will submit an application for Secondary Plat in accordance with the local jurisdiction's application procedures and filing requirements.
- 2) **Internal Review:** The staff of the plan commission will review the application and plans for technical conformity with the zoning ordinance and SCO.
- 3) **Secondary Plat Consideration:** The plan commission, plat committee, or staff shall consider whether or not the plans comply with the SCO. Plans are generally revised by the applicant until full compliance is achieved for approval.
- 4) **Record Plat:** Once approved, the applicant submits the final plat for signature by official designated in the SCO, and then records it.
- 5) **Begin Construction and/or Post Surety:** After recording the plat, the applicant may begin construction and/or post performance surety in accordance with the provisions of the SCO. Performance surety ensures that the required improvements will be satisfactorily completed.

Waivers and Conditions

Allows the plan commission to grant waivers of the development standards specified in the SCO, which provides some flexibility if the standards conflict with what the plan commission would consider to be desirable design.

In addition, Indiana State Law allows the plan commission to impose conditions as part of the approval of a primary plat. These may include:

- 1) The manner in which public ways shall be laid out, graded, and improved;
- 2) A provision for water, sewage, and other utility services;
- 3) A provision for lot size, number, and location;
- 4) A provision for drainage design; and
- 5) A provision for other services as specified in the SCO.

It is important to note that Indiana Code does not allow the plan commission to waive development standards that are contained in the zoning ordinance, only those of the SCO. To change the applicability of the development standards in the zoning ordinance, an applicant would have to first seek relief from the board of zoning appeals before proceeding with an application for primary plat.

 IC 36-7-4-709 through 710

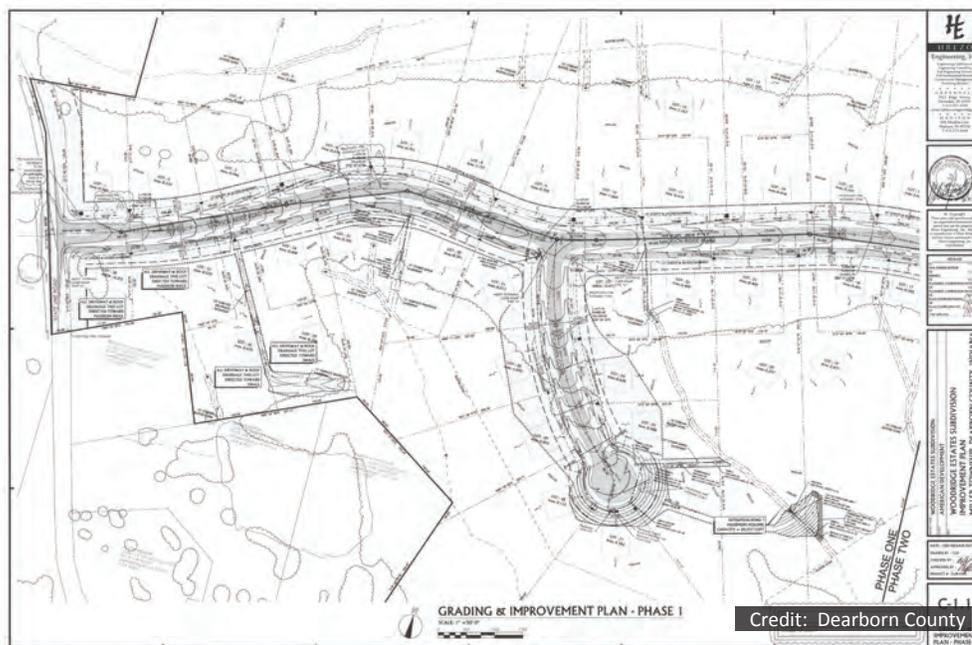
 IC 36-7-4-702(c)

 IC 36-7-4-702(d)

ADDITIONAL SUBDIVISION INFORMATION

Public vs. Private Improvements

A public improvement is any improvement, facility, or service, together with its associated site or right-of-way, necessary to provide transportation, drainage, utilities, or similar essential services and facilities and that is usually owned and operated by a governmental agency or its designee. For this reason, it is essential that infrastructure intended to be dedicated for public use is designed and constructed to a specific level of quality to ensure its longevity.



Sometimes, a developer may propose that the infrastructure for their development should be private and therefore, should not have to be developed to the required public standards. It is up to the plan commission to decide if improvements are required to be public or may be considered private. Regardless of what they decide, the long term maintenance plan of private improvements should be clearly defined to ensure that the public doesn't inherit substandard infrastructure in the future.

Covenants and Restrictions

A covenant is a type of contractual agreement between the property owners in a subdivision that limits what the individual owners of the land can do with their property. They are intended to enhance property values by controlling development. A person who purchases a lot in a subdivision with restrictive covenants must honor the restrictions as part of their purchase agreement. If a property owner violates a covenant, another property owner (neighbor) may sue the offender in order to enforce the restrictions.

The governing mechanism of the covenants is usually an established “owners association”, in which each owner of a lot is required to become a member. The local plan commission/local government is not responsible for enforcing covenants, so they typically spell out a mechanism for enforcement. The developer typically acts as the owners association (and the enforcement authority) until responsibilities are turned over to the property owners within the development (usually when a pre-determined majority of lots are sold). As part of the review process, the SCO may require that Staff review the proposed covenants for a subdivision to ensure they do not conflict with local ordinances and contain the appropriate provisions for maintenance of infrastructure, landscaping, and common land.

Plat Expiration

State statute does not stipulate any type of expiration for the approval of primary plats or unrecorded secondary plats. Because development standards may change over time, it may be reasonable for the SCO to outline a policy on how long the approval of a primary plat or an unrecorded secondary plat is valid to ensure that when development does commence, it is in compliance with the most current ordinances that are in place. Many SCOs stipulate that the approval of a primary plat expires within one year if a secondary plat has not been approved within that time. In addition, some SCOs require that a secondary plat should be recorded within two years of approval to ensure compliance with current ordinances and development standards.

Plat Amendments, Replats, and Plat Vacation

The plan commission has authority over all plat amendments, replats, and plat vacations.

Plat Amendment and Replat

A plat amendment or a replat is a change in a previously recorded subdivision plat that affects the street layout, easements, area reserved for public use, or any lot line. The only difference between a plat amendment and a replat is the degree to which the plat is amended. The process for consideration is the same as that for a primary plat and secondary plat.

Plat Vacation

A plat vacation is the process to legally void all or a portion of a recorded subdivision. A petition for plat vacation may also include a request to vacate any recorded covenants that are part of the plat. The request to vacate goes before the plan commission at a publically noticed public hearing.

The plan commission may approve the vacation of all or part of the plat only upon a determination that:

- 1) Conditions in the platted area have changed so as to defeat the original purpose of the plat;
- 2) It is in the public interest to vacate all or part of the plat; and
- 3) The value of that part of the land in the plat not owned by the petitioner will not be diminished by the vacation.

IC 36-7-4-711

IC 36-7-4-714

Additionally, the plan commission may approve the vacation of all or part of the subdivision covenants only upon a determination that:

- 1) The platted area is within an area needing redevelopment and the covenant vacation would promote a recovery of property values in the area needing redevelopment by allowing or encouraging normal development and occupancy of the platted area;
- 2) The covenant vacation is needed to secure for the public adequate light, air, convenience of access, or safety from fire, flood, or other danger; or
- 3) The covenant vacation is needed to lessen or avoid congestion in public ways.

Financing Improvements

Land Dedication

In Indiana it is most common for the developer to bear the cost for the right-of-way (which eventually becomes public or “common” land) and the cost of the infrastructure improvements developed onsite to serve the lots the developer is creating: streets, utilities, drainage, sidewalks, lift stations, hydrants, etc. A developer should be able to recoup these costs in the sale of the individual lots. The right-of-way and infrastructure is “dedicated” to the local government for public use. The local government bears the cost of perpetual maintenance of the infrastructure that becomes part of its existing systems. Should the local government require oversizing of lines/streets to accommodate future growth unrelated to the specific subdivision being approved, it should be prepared to bear the additional cost.

Off Site Improvements

Occasionally, improvements are required off the site of the subdivision. For instance, a large residential subdivision or a commercial subdivision may require the addition of a deceleration lane or a turning lane on a street outside of the actual subdivision. Generally, the developer bears the cost of these improvements which are necessitated by the new subdivision. There might be some cases where a new subdivisions necessitates the need for a facility that is common to the community. In these cases, the developer bears a proportionate share of the costs of providing common facility.

Fees in lieu of Dedication

Some SCOs call for developers to pay fees in lieu of dedicating land for a specific improvement. For example, it may be determined that a smaller subdivision does not warrant the addition of a new park, yet a park is desired. Rather than the developer setting aside land for a park, an arrangement can be made in which the developer pays to finance a portion of the new park. The SCO must be specific in how these fees are calculated and the fees must be used for the intended purpose.

Condominiums

A condominium development is real estate in which a portion is designed for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of the portions. In Indiana, condominiums were formerly referred to as “horizontal property regimes.” Indiana Code states that condominiums are exempt from local SCOs. The land stays under one ownership interest while the buildings located on that undivided ground are sold to homeowners.

The separate regulation of condominium development means local government cannot use the SCO for regulating the look of this type of development. If a local government wishes to influence and regulate the design and implementation of condominium developments, it is important that the local zoning ordinance institutes development controls for this type of land use.

Adding requirements in a unified development ordinance and requiring all land development to go through a planned development process assures that condominiums can be required to meet municipal goals such as street design and other elements typically found in the subdivision control code.

CHAPTER 10

SITE/DEVELOPMENT PLAN REVIEW

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Robert S. Cowell, Jr., AICP - Previous Author

IN THIS CHAPTER. . .

Introduction

Defining a Site Plan

Defining a Development Plan

Applicability

Who Conducts the Plan Review

Procedures for Plan Review

Suggested Resources

INTRODUCTION

Site and development plan review of public and private projects is conducted by the plan commission or its designated staff to ensure compliance with stated policies of the comprehensive and other relevant jurisdictional plans, and zoning district development and design standards.

Nearly all physical development necessitates the submission of a site/sketch plan before a permit can be issued. Examples include, but are not limited to fences, signs, pools. On the more simple end of the scale, is a residential garage. One must know the size of the garage, how it relates to other structures on the property, and its distance from property lines. More complex projects such as a new bank, multifamily residential, retail center, business park, etc., or projects in specifically designated districts, typically will require a development plan before a permit can be issued. In these cases, there are many issues that need to be addressed including access from public streets, site layout, building size, internal vehicular and pedestrian circulation, drainage, parking, landscaping, utility connections, and lighting. Design details including building materials, architectural style, roof, entrance details, and others also may be important to a community.

DEFINING A SITE PLAN

Site plans may be prepared for new construction, conditional use permits, variance requests, or special exception applications. The *Growing Smart Legislative Guidebook* prepared by the American Planning Association and available at www.Planning.org, defines a site plan as “a scaled drawing that shows the layout and arrangement of buildings and open space”.

Examples of elements shown on a site plan include:

- Legal or site description of the real estate involved;
- Location and size of buildings and structures on the lot;
- Width and length of all entrances and exits to and from said real estate;
- All adjacent and adjoining roads or highways;
- Reserved open space;
- Actual shape and dimensions of the lot to be built upon;
- Front, side, and rear setback;
- Easements;
- Locations of service, planting, and parking areas, where applicable; and
- Location of utilities.

If written into the ordinance, a site plan can be approved by plan commission staff and a public hearing is not required.

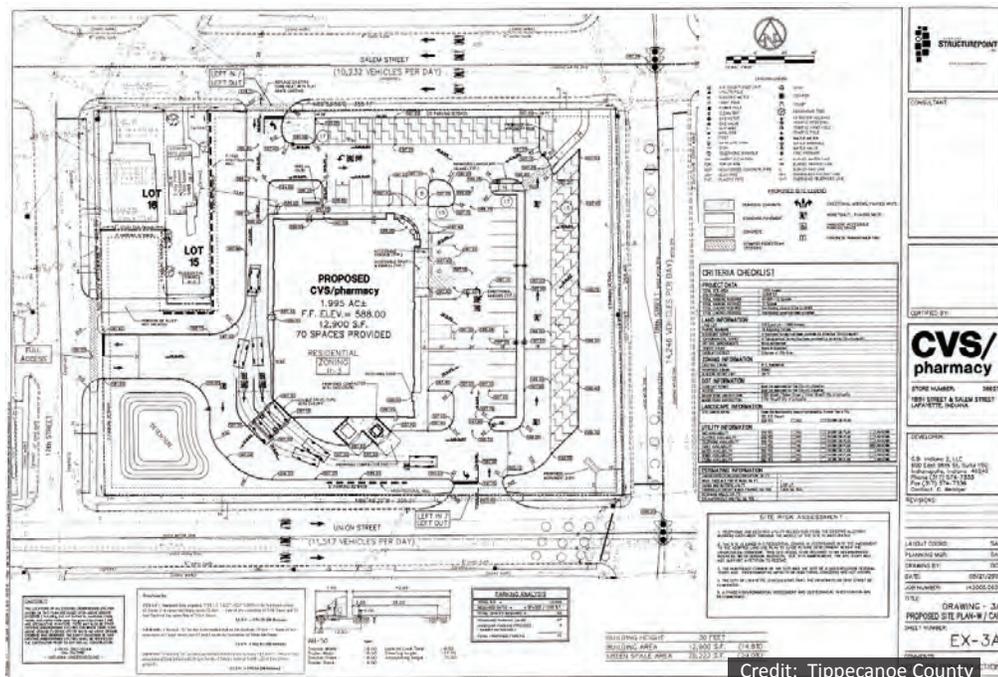
Site plan = Sketch Plan

DEFINING A DEVELOPMENT PLAN

Since 1996, Indiana Code has enabled jurisdictions to require development plans in zoning districts previously designated in a zoning or unified development ordinance*. Development plans are specific plans for the development of real property that require approval by the plan commission, satisfy the development requirements specified in the zoning ordinance, and contain the plan documentation and supporting information required by the zoning ordinance.

Indiana Code acknowledges that a community can specify regulations that development plans must meet including:

- Compatibility of the development with surrounding land uses;
- Availability and coordination of water, sanitary sewers, storm water drainage, and other utilities;
- Management of traffic;
- Building setback lines;
- Building coverage;
- Building separation;
- Vehicle and pedestrian circulation;
- Parking;
- Landscaping;
- Height, scale, materials, and style of improvements;
- Signage;
- Recreation and open space; and
- Outdoor lighting.



IC 36-7-4, 1400 Series

IC 36-7-4-1403(a)

Does the zoning code in your community specify districts in which development plan approval by the plan commission is required? Are criteria for development plan approval specified, too?

Many communities require an informal pre-application conference for an applicant to consult with plan commission staff or a staff planner to obtain guidance prior to preparing plans. If not required, this service still should be offered as a courtesy and by appointment.

APPLICABILITY

Most zoning codes require that adequate information be provided to determine the applicable submittal process. This is generally achieved through a **site/sketch plan**. This scenario would apply to a new home, a new garage, a room addition, a shed, a deck, signs, and maybe a fence, depending on the details of the zoning ordinance. These are small scale projects that typically result in a relatively quick administrative review.

Per Indiana Code, communities may specify in which zoning districts or for what type of permit a **development plan** is required. Generally, development plan approval is a prerequisite to obtaining improvement location and building permits for major projects such as multifamily, commercial retail/office, industrial, and institutional developments, whether private or public.

It may be difficult to decide when projects involving the expansion of an existing facility (structure/parking lot) will require development plan approval from the plan commission. This difficulty can be overcome by including criteria in the applicability section of the zoning code. For example, the zoning code might specify that principal use additions, parking lot expansions, projects involving one acre or more of land, or a change equal to twenty (20), thirty (30), or fifty (50) percent or more of the existing structure shall obtain development plan approval before an improvement location permit can be issued.

WHO CONDUCTS THE PLAN REVIEW?

The responsibility for conducting plan review depends on the nature and/or complexity of the project. Review and approval can be administrative or by the plan commission. For example, a site/sketch plan for a new house, garage, sign, or deck may be reviewed and approved by the jurisdiction's planner or a single plan commission staff member. Site plans prepared for a conditional use or special exception permit or variance request, are reviewed by planning staff and forwarded to the board of zoning appeals for a quasi-judicial review and decision.

Development plans for more complex projects should undergo a thorough review starting with the jurisdiction's plan staff. In many communities, the submitted development plans are routed to various departments (police, fire, utilities, traffic/street, surveyor, public works, drainage, and/or engineering) for their review. This process can be streamlined by creating a technical review committee consisting of these staff members. The technical review committee meetings can be as needed or regularly scheduled monthly depending on the volume of such projects. It is

usually helpful to have the applicant or representative in attendance to answer questions and receive comments firsthand. After this type of routing process, the site or development plan, along with the comments from the various departments, is reviewed by the plan commission for comments, conditions, and/or approval.

Indiana Code states that a plan commission may delegate development plan approval. Delegation may be granted to staff, a hearing examiner, or a committee of the plan commission. The delegation must be clearly stated in the zoning ordinance and include the duties granted to the hearing examiner, the procedures for review, and procedures for an appeal. Some communities take advantage of this streamlined procedure, thus requiring only the most complex plans to be brought before the plan commission.

If development plan review is delegated, it is important that the review procedure stated in the zoning ordinance be used by the reviewer in exactly the same manner as it would be by the plan commission. Decisions of the reviewer should be documented in exactly the same manner (written findings) they would be as if decided by the plan commission.

It is also important to note that a site plan decision made by the staff, hearing examiner, or committee can be made without a public hearing if the zoning ordinance provides for an appeal of the decision directly to the plan commission.

PROCEDURES FOR DEVELOPMENT PLAN REVIEW

A development plan for a new or redevelopment project should meet all submittal requirements, meet or exceed all development standards that are part of the zoning ordinance, and be consistent with the comprehensive plan and other applicable plans as specified in Chapter 7, Comprehensive Plans.

Submittal Requirements

The first step in the plan review process should be for the applicant to meet with plan commission staff for guidance prior to preparing the plan submittal. Many ordinances require this meeting.

When plans are submitted, staff will verify whether all required items are present to determine if an application is complete. The zoning ordinance should provide a specific list of required items. Submittal requirements should reflect the complexity of the project and may include the following:

- Application form and applicable fees;
- Name and address of the owner, developer, engineer, surveyor, etc.;
- Location of the project;
- Legal description/survey of the subject property;
- Scale and north arrow;
- Location of buildings, required setbacks, parking and loading areas;
- Location and names of public roads providing access to the site;

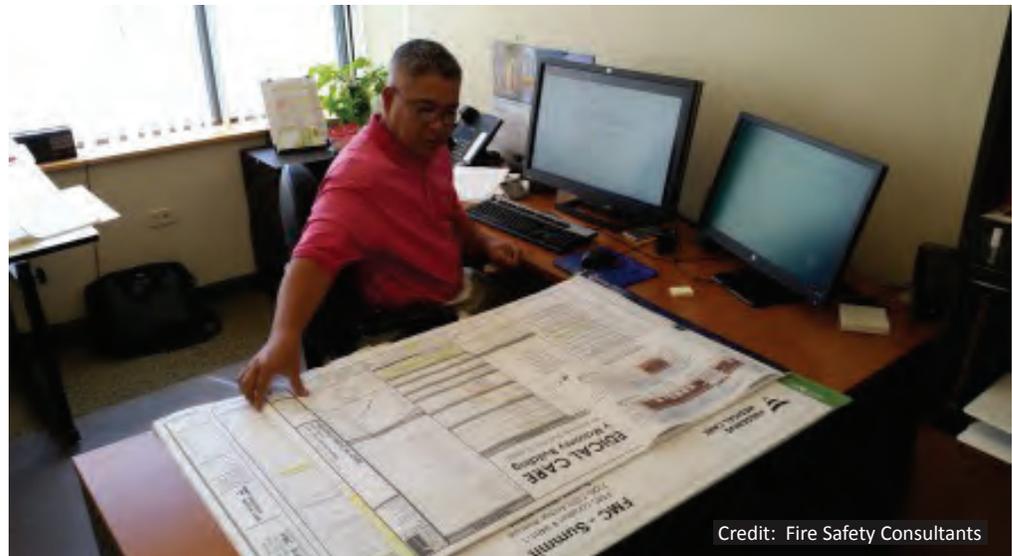
IC 36-7-4-402(d)
IC 36-7-4-1402(c)

Chapter 10: Site/Development Plan Review

- Location and ownership of all adjacent property;
- Layout and design of all proposed rights of way, easements, etc.;
- Location, dimensions, and design, of all proposed signs;
- Location, height, direction of illumination, for all proposed outdoor lights;
- Landscape plan;
- Signage;
- Contours with elevations of proposed finish grades;
- Location of any proposed outside storage areas;
- Traffic management;
- Erosion control plans;
- Copies of any other applicable permits; and
- Certification/seal of design professional.

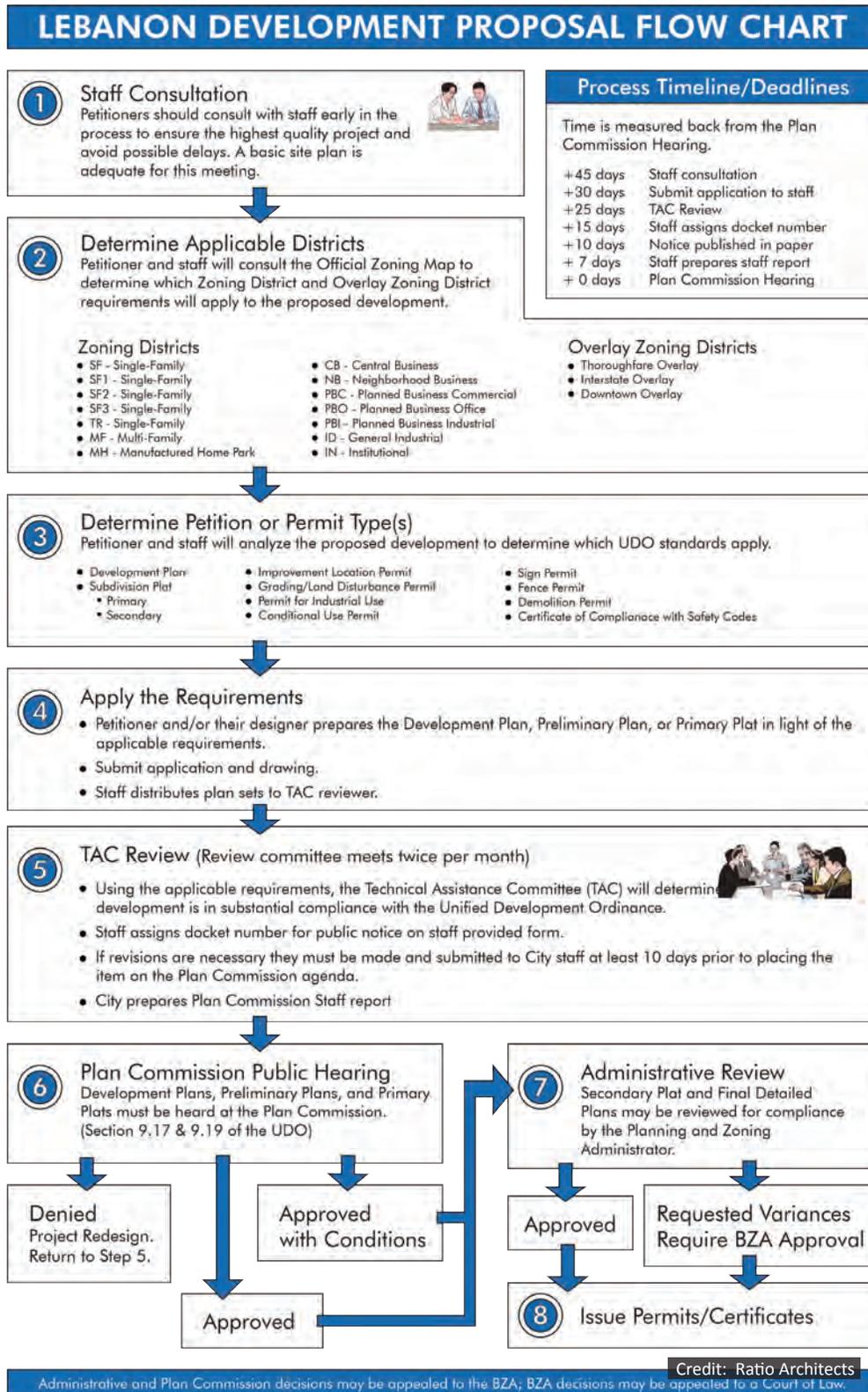
The Review Process

When the plan meets the submittal requirements contained in the zoning ordinance, a detailed review shall commence. If a plan fails to meet any of the submittal requirements, the deficiencies should be conveyed in writing to the owner/developer/engineer. There should be no further review and the project should not be scheduled for a hearing before the plan commission or specified committee (technical review, design review) or for public hearing. The jurisdiction's application filing deadlines should allow adequate time for these reviews.



Credit: Fire Safety Consultants

Example of a Local Indiana Site Development Plan Process:



Compliance With Development Standards

Indiana Code identifies a number of development standards that may be included in the review of a development plan. If design standards are used, these should be objective; a project clearly meets the requirement or it does not. These standards must be clearly identified within the zoning ordinance. Examples include parking standards, driveway standards, landscape standards, etc.

The process of review simply involves comparing what is proposed on the development plan to what is required by the standards prescribed in the zoning ordinance. It is easiest to go through the development and design standards section, checking each off after confirming the plan meets or exceeds them. Some communities develop a checklist for staff to use to assist with this task. All dimensions and calculations should be verified and may include:

- Yards and setbacks;
- Number of parking spaces, space and aisle width;
- Loading dock standards;
- Building height;
- Lot coverage;
- Size, spacing, and location of landscaping for shade, screening, etc.;
- Sign location, number, and size;
- Driveway surfaces, locations, and width;
- Utility easement locations and dimensions;
- Storm water pipes, culverts, and detention facilities;
- Sidewalk and bicycle path locations and width;
- Site lighting height and illumination level; and
- Material finishes.

If a development plan fails to meet any of the development standards, the deficiencies should be conveyed in writing to the owner/developer/engineer. Indiana Code permits owners to request a variance or waiver from one or more of the development standards under certain defined circumstances.

Compliance with the Comprehensive Plan

Indiana Code states that the plan commission shall review a development plan to determine if it is consistent with the comprehensive plan, which represents the community's vision, goals, and policies.

The Code further states that the plan commission may impose conditions on the approval of a development plan if the conditions are reasonably necessary to satisfy the development standards specified in the zoning ordinance. For example, the approval of a development plan may also be conditioned on the establishment of a bond or written assurance that guarantees the timely completion of proposed public improvements.

The plan commission should review the development plan against the comprehensive plan paying particular attention to language in the plan related to land use and community services, annexation or growth, and transportation facilities. It is important to identify proposed public investments that may impact the site plan (road expansion, park development, sewer line extensions, etc). It may also be appropriate to consider other items that may not be specified in the zoning ordinance, but are critical to obtaining development that best meets the needs of the community. These items may include, but are not limited to:

- Adequacy of buffers between incompatible uses;
- Minimizing the impact to existing natural features;
- Accommodating non-vehicular transportation;
- Ensuring connectivity between developments; and
- Intersections or road improvements.

It is also appropriate to consider other adopted community plans. These may include neighborhood plans, overlay or corridor plans, capital improvement plans, public health and wellness plans, economic development and downtown revitalization plans, park master plans, bike and pedestrian plans, etc. Often such plans will help the plan commission determine appropriate conditions of approval or other steps needed to approve the plan. Any imposed conditions must be reasonable and supported by written findings that relate to adopted ordinances and plans.

Decisions and Documentation

The results of the plan commission or staff review should be adequately documented. The type and extent of the documentation is generally dependent on the complexity of the plan that is reviewed. Site plan review for a single family home may be documented simply through the issuance of an improvement location permit or a zoning permit. If the plan is denied, a simple letter identifying the basis for denial is sufficient.

Development plan review is best documented with marked up plans, copies of correspondence, summary from technical committee review, findings, improvement location permits and/or certificates of compliance. The marked up copy of the plan should graphically explain the comments provided in the written correspondence. Being thorough and detailed helps to avoid misunderstandings and unnecessary delays in plan review. It's important to note that a development plan may have multiple reviews by the staff and various departments before it actually is reviewed by the plan commission. Each review should be documented.

The plan commission (or plan commission staff) should include within the written correspondence, findings of fact that link their comments or conditions back to specific sections of the zoning ordinance or adopted plans. These findings should be made part of the official record of each site plan review. Findings help clarify what the plan commission used as a basis for its comments or conditions and help defend against any legal challenges to its decisions.

Plan commissioners should visit sites upon completion to see if they appear and function as envisioned. Information gained in those visits will provide input into future amendments to the comprehensive plan or ordinances.

Once the plan commission is satisfied that the plan review is complete and approves the plan, written findings should be provided to the owner. Often approval is in the form of an improvement location permit or zoning permit. This permit should clearly state what has been approved, make reference to the approved site plan (with the date of the plans), and include any conditions of approval or applicant commitments. The plan commission may also disapprove a development plan. This is a final decision of the plan commission and can be appealed in a court of law under IC 36-7-4-1016.

Some communities utilize a second permit referred to as a certificate of compliance or occupancy permit. This second permit is issued upon demonstration that all conditions of development plan approval have been met and that all construction has been completed. Upon issuance of this second permit, the site plan review process may be considered complete and the file can be placed in permanent storage.

SUGGESTED RESOURCES

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Thomas H. Russ. *Site Planning and Design Handbook*. McGraw-Hill. 2002

Kevin Lynch & Gary Hack. *Site Planning*, 3rd Edition. The MIT Press. 1984

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CHAPTER 11

ECONOMIC DEVELOPMENT

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IN THIS CHAPTER. . .

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Types of Economic Development

Common Incentives for Economic Development

Role and Capacity of Economic Development Organizations

Connecting Economic Development to Planning

Suggested Resources

WHAT IS ECONOMIC DEVELOPMENT?

Economic development is most commonly thought of as activities pertaining to job creation, but the term refers to a wide range of activities related to improving and sustaining the economic health and standard of living of a community or region. The construction and/or expansion of industrial and commercial properties, educational and medical facilities, and corresponding infrastructure and utilities are all core objectives of economic development. As such, the field has a close relationship with both land use and long-range planning.

Economic developers work at many different levels on a wide variety of activities, from the federal government to local municipalities and not-for-profit organizations. They craft policies, secure grants and other financial resources, negotiate public-private partnerships, and manage real estate development projects. There are five key economic development strategies that are employed, though not all communities employ all of them simultaneously:

- 1) Business/Job Recruitment;
- 2) Business Retention and Expansion;
- 3) New Business Development/Entrepreneurship ;
- 4) Tax Base Expansion and Diversification;
- 5) Redevelopment;
- 6) Workforce Development; and
- 7) Community Economic Development.



Credit: South Bend Regional Chamber of Commerce



Credit: Dearborn County



Credit: City of Evansville

TYPES OF ECONOMIC DEVELOPMENT

Business / Job Recruitment

Business recruitment is by far the most common focus of economic development organizations. Virtually every economic development organization (EDO), small or large, has a focus on recruiting new jobs. The spotlight on the ability to create new jobs has taken on a new emphasis since the 2007-2009 recession, which saw the nation lose 8 million jobs from 2007 to 2010. Business recruitment has long been a focus in Indiana communities, many of which are dealing with changing economic trends related to the restructuring of the manufacturing industry. EDOs employ a number of strategies designed to recruit new businesses. They offer or coordinate the application of financial incentives, sometimes in conjunction with state or federal programs; they prepare “shovel-ready” land in strategic locations that makes it easier and cheaper for a new business to construct a facility; and they build infrastructure such as roads and utilities to serve prospective businesses.

Due to the prevalence of business recruitment activities, this strategy has become extraordinarily competitive, with states and communities across the country competing for the same number of finite jobs, from small scale technology start-ups to large industrial and manufacturing facilities. This has, in essence, created a “buyer’s market” in that businesses looking to locate new facilities have enormous leverage in playing communities against each other in order to receive the best financial deal possible. While there is great competition between states and between communities and economic regions in providing public incentives to businesses, it is often the case that certain businesses require specific types of production inputs and/or proximity to critical suppliers that may be far more important to the business location decision than any combination of local and/or state public incentives packages.



Credit: Huntington County Indiana Economic Development

Business Retention / Expansion

Business retention and expansion (BRE) consists of activities related to retaining and expanding local employers. The implementation of BRE activities by EDOs is far less prevalent than business recruitment, despite studies that show that the majority of job creation takes place through the expansion of existing businesses in a community rather than those attracted to a community.

As described in its name, BRE includes two related but different activities. Business retention is the act of convincing existing businesses to stay and re-invest in the community. Because of the leverage that employers have (see above), this often includes the allocation of an incentive package of sufficient benefit to convince a business to stay. Another method used to retain business is to make tangible quality of life improvements, such as downtown revitalization, commercial development, and parks and recreation-related amenities that convince business owners that they can retain talent.

Business expansion consists of incentives and partnerships related to the growth of an existing business. Sometimes this consists of a business moving to a larger facility – thus making sure there are properties available for businesses to expand into – and sometimes this includes expansions of existing facilities. Economic developers have a wide range of tools at their disposal to assist businesses in expansion if they require assistance.

New Business Development/ Entrepreneurship

Small and emerging new enterprises can create significant employment and wealth generations for communities. These businesses can also help to diversify local economies. Considering the continuing evolution of technology, coupled with high speed internet connectivity, small businesses have the freedom to operation their businesses at the local of choice. Communities that foster innovation and new businesses development will be well positioned to realize a more vibrant and dynamic community. Typical tools to support new businesses development range from providing business incubator space to offering alternative financing resources. Emerging engagements include economic gardening, where local efforts are provided to support market analysis, technology transfer and related research assistance to new and emerging businesses.

Increase / Diversification of Tax Base

The recent Great Recession put a spotlight on the importance of managing the local tax base. Declining residential and commercial property value has resulted in lower municipal revenue to cover services, payroll, and investment in economic development. Numerous communities have had difficulty keeping staff – including key personnel such as firefighters and police officers – and some states have seen a rash of municipal bankruptcies, where municipal debt in the form of short- and long-term obligations has proven to be too extensive relative to the adjustment in revenue.

Indiana communities experienced an additional hit to their tax bases when the State imposed property tax caps beginning in 2010 for residential, industrial, and commercial property, just as the gradual recovery from the Great Recession had begun. Accordingly, stabilizing and increasing revenue has emerged as an essential economic development activity as important as job creation. Increasing the local tax base typically consists of developing raw land for commercial or industrial users, or redeveloping underutilized or vacant property for similar uses. This focus on commercial and industrial users is important to note as they generate higher rates of tax contribution than it costs to serve them through utilities or infrastructure construction/maintenance. These users can also contribute revenue to multiple tax revenue sources, such as sales and hospitality taxes in addition to property taxes. Most communities have realized that residential neighborhoods, built at low levels of density, do not always support the cost of serving them through utilities, or generate enough revenue to provide efficient and effective city services. In communities that have historically relied on residential property taxes, this is a tax base diversification initiative. Carmel, Zionsville, and Fishers are good examples of communities with increasingly diverse tax bases.



Credit: Kokomo Tribune

Redevelopment

The construction or rehabilitation of property that was previously developed has become an increasingly important economic development objective. Whereas the reuse of formerly active industrial properties has long been a practice of economic developers, the growing number of vacant and abandoned commercial and residential properties - often found in the older parts of cities and towns – have become a priority for redevelopment for a number of reasons, many associated with tax base and community development.

High concentrations of vacant, distressed, or “blighted” property has resulted in a negative cycle that threatens economic and social stability within Indiana’s residential neighborhoods and downtowns. Because these properties stand vacant due to disinterest from the market (i.e. businesses, developers, and investors), this cycle has become extremely difficult to arrest, even in large urban areas. Simply put, the market may not respond to many redevelopment opportunities since developers often do not perceive them as profitable ventures, despite the numerous advantages that the reuse of a particular property or series of properties might offer to a community. There are two key components to a developer’s decision not to take on a redevelopment project: 1) unfavorable cost/benefit analysis results – where the projected revenue from a project does not overcome the estimated costs associated with redeveloping the site; and 2) perceived lack of adequate market demand to support potential development on the site. Larger cities with strong demand for housing and corresponding commercial services and destinations have been able to overcome these hurdles, but smaller communities with more limited demand and lower consumer spending power struggle with property redevelopment. In these cases, redevelopment efforts may turn to the process of incentivizing property to make sure private investors can make a deal work. This is an area where economic developers can contribute their expertise in managing many of the same funding sources and incentives used to recruit jobs.

An important sub-area of redevelopment is brownfield remediation and redevelopment. Brownfield sites are defined by the Environmental Protection Agency (EPA) as “real property, the expansion, redevelopment or re-use of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.” Brownfield sites can be extremely difficult to redevelop for new uses, as investigating and cleaning up contaminants and pollutants can be an expensive process - often too expensive for private investors to bear. Indiana’s historic concentration of industry and manufacturing means that the state is littered with thousands of brownfield properties, though the problem is hardly found only within Indiana or the Midwest. The brownfield redevelopment process is complicated by sites that are thought to potentially be contaminated. Once a new business or developer purchases land, they are legally obligated to remediate (clean up) the site. This understandably results in hesitation to engage in land speculation and investment if the status of a site’s cleanliness is unclear. Both the State and Federal Government have a number of funding sources available for brownfield cleanup, but it is becoming increasingly competitive to obtain.

Workforce Training / Development

Many occupations have become increasingly specialized, and aligning a skilled workforce with employment opportunities has become a vital component of economic development. Workforce training and development typically is split into two areas of focus: the needs of a particular employer, and the needs of people living in a particular geography. Economic development literature refers to these approaches as “sector-based” and “place-based” strategies.

In making decisions to locate operations, it suits employers to seek out geographies with a skilled workforce that aligns with what that employer needs to do business. This is the essential need behind the sector-based strategy. Technology companies prefer locations with highly educated young professionals, biomedical companies prefer proximity to hospitals and universities, manufacturing businesses require skilled line workers and managers, and so on. Strategies to grow and leverage an educated and skilled workforce can yield effective “clusters” of businesses that form a prosperous economic base.

However, workforce training is also about transitioning a local workforce to new employment opportunities. This has become a particularly important issue in communities where a loss of employers has left behind a workforce trained for specific jobs that no longer exist locally, such as automotive or steel manufacturing. Investing in technology- and trades-based courses at local educational institutions and offering training and technical assistance to train new hires are both examples of “supply-side” or “place-based” workforce development.

Community Economic Development

The fields of economic development and community development – the practice of building community through affordable housing, citizen involvement, social integration and political empowerment – have often been practiced separately. Recently, there have been efforts to more closely connect aspects of both fields due to the recognition that economic and social advancement of low income households is highly connected to their access to education and employment. Thus, the field of “Community Economic Development” has risen to address economic development needs at a more localized level, focusing on a holistic and inclusive approach to foster economic, social, and cultural well-being.



COMMON INCENTIVES FOR ECONOMIC DEVELOPMENT

The competitive nature of job creation and retention, combined with the need to stimulate the development of underutilized and/or contaminated properties, means that financing related to stimulating, incentivizing, and subsidizing investment is very much at the forefront of the economic development field. There are a wide variety of financial sources and tools used for economic development purposes across the state, but the most widely used tools are centered around raising, capturing, or reducing property, income, or sales tax. Some of these tools can be employed at any time, but others require political approval and community support to create, and thus it is important for citizens to understand what they are and how they are used.

Tax Abatement

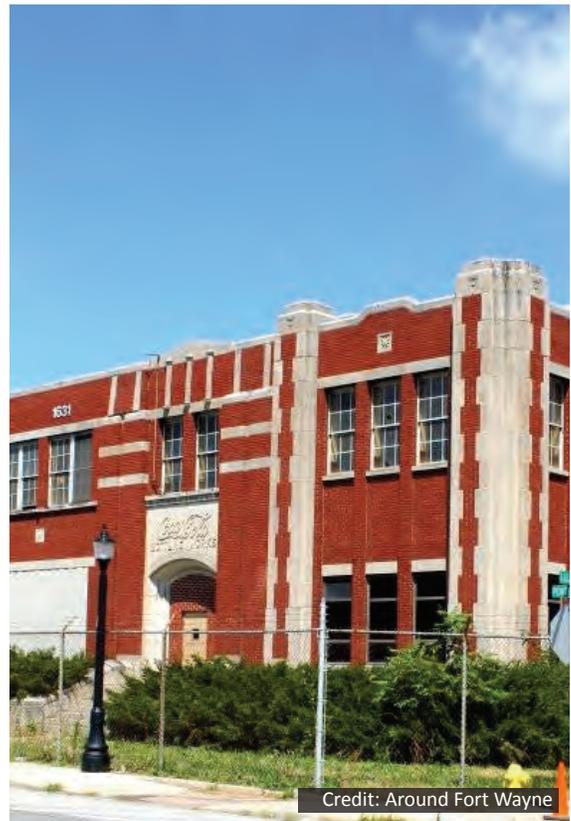
In some cases, the most expensive part of setting up new business operations is the investment in property, infrastructure, and equipment. Accordingly, businesses often look to local or state government to offset these costs. In Indiana, and in virtually all other states, local governmental taxing units can offer tax abatement on real property and equipment. Recent changes to Indiana's tax abatement provisions allow communities to customize the terms for local property abatement.

Tax abatement may be the most common economic development tool available. In many cases, it can be a huge benefit to the economic stability of a new or expanded operation. However, the increasing competitiveness of the economic development field has led to businesses demanding an abatement, whether one is needed or not.

Tax Credits

Whereas tax abatement offers relief from property taxes, tax credits offer reductions to claim on several tax responsibilities – mostly income taxes. Indiana offers a number of tax credits to reduce the corporate tax burden, including the Economic Development for a

Growing Economy (EDGE), Hoosier Business Investment, Industrial Recovery, and Headquarters Relocation credits. Additionally, the Federal Government offers several tax credit programs, many of which are administered at the state level. These include



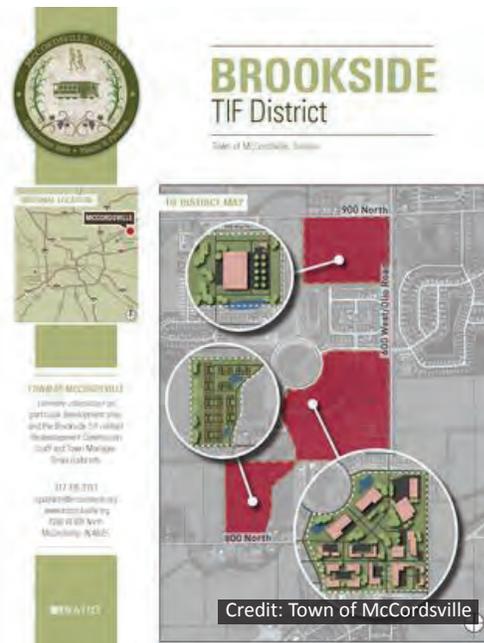
Credit: Around Fort Wayne

Investment, Historic Rehabilitation, Renewable Energy, Industrial Development, Low Income Housing, New Markets, and Qualified School Construction credits. The availability of the federal-level credits has created a secondary market in which businesses or developers can sell the credits for project equity – particularly common are Low Income Housing, New Markets, and Historic Rehabilitation credits. The ability to sell state credits can be challenging due to the limited market. Often times these credits are purchased/used primarily by the businesses making the primary investment in facilities.

Tax Increment Financing

Tax Increment Financing (TIF) is a tool that generates economic development revenue through a special district that captures additional tax revenue generated from various economic development and real estate development projects. To establish such a district, a community will designate a geography as either a redevelopment or economic development area through the local redevelopment commission. A tax “base” is then established that records the existing tax assessment of that area. Any property tax generated above this base is diverted into a special fund for economic development purposes. The creation of a TIF

district and diversion of future tax revenue away from local tax collecting bodies is justified by an analysis that determines a “but for” test. Will investment happen “but for” the district and available funds? If the answer is yes, then a TIF district may not be required. If the answer is no, the district is justified by the fact that new investment – and thus growth in the tax base – would not occur but for the improvements available to be built via the TIF district. Strategies in the use of TIF fall into two categories: 1) “project based” investment – which allocates resources on a project-by-project basis, or 2) “district-based” investment, which targets broader public infrastructure investment (roads, sidewalks, infrastructure, utilities, etc.) with the intention of attracting additional future business investment to the TIF district.



In 2010, 77 counties had adopted a local economic development income tax

Economic Development Income Tax

The Economic Development Income Tax (EDIT or CEDIT) was authorized by the Indiana General Assembly in 1987 to provide funding for local economic development projects that increase local employment opportunities and/or attract or retain businesses. It is one of the few Local Option Income Taxes (LOIT) authorized to allow Indiana counties a revenue source for local governments. Indiana is one of only a few states that allow LOITs to be approved by counties. With property tax cap provisions, many Indiana counties have increased the utilization of local income taxes.

Revenue Bonds

Economic development projects can be expensive, especially if they involve the construction of a major new industrial facility. Many available funding resources, such as TIF or LOITs, do not generate enough annual revenue to pay for a large-scale project. However, this revenue can be financed through a bond issuance to generate the necessary capital. Like all long-term financing, there needs to be a sufficient level of due diligence to ensure that the revenue is available to support principal and interest payments. There have been examples of cities that have gotten into financial trouble because revenue forecasting was done poorly. The Great Recession and unforeseen impact on property taxes has not helped. However, economic development bonds are one of the only available resources for large-scale economic development projects that can result in hundreds of new primary jobs or the large-scale redevelopment of a blighted neighborhood.

ROLE AND CAPACITY OF ECONOMIC DEVELOPMENT ORGANIZATIONS

Economic Development at the State Level

The primary economic development organization at the state level is the Indiana Economic Development Corporation (IEDC). The IEDC is responsible for promoting the overall state business climate, and offers a wide range of incentives for projects and technical assistance to local economic development projects that meet project-specific criteria within various state economic development programs. The IEDC primarily targets its resources in one of three areas for local economic development projects: job training, public infrastructure upgrades, and business tax credits.

However, the IEDC is far from the only state agency that engages in economic development activity. The Department of Workforce Development offers workforce

training and other assistance to small businesses. The Indiana Finance Authority administers financing for public investments including the State Revolving Loan Fund and Indiana Brownfields Program, which may directly or indirectly spur private economic development projects. The Indiana Housing and Community Development Agency administers a variety of housing and community development related programs, including the Community Development Block Grant (CDBG) program and the Home Investment Partnership Program (HOME). The Office of Community and Rural Affairs administers grants and incentives aimed specifically for small-scale, rural communities including the Small Cities and Towns CDBG program.

Regional Economic Development Organizations

In Indiana, economic development activities are typically performed at county and regional levels, though many larger cities have their own dedicated economic development staff. Indiana is separated into eleven economic development districts (EDDs), as defined by the U.S. Economic Development Administration (EDA), a division of the U.S. Department of Commerce. Each EDD consists of a number of counties allocated by sub-region of the state (Northwest, North-Central, etc.). The administration and organization of EDDs are often rolled into other regional organizations, such as the River Hills EDD and Regional Planning Commission, the Economic Development Coalition of Southwest Indiana, and the Michiana Area Council of Governments. Each EDD is required to complete a Comprehensive Economic Development Strategy (CEDS) on an annual basis to maintain eligibility for funding through the EDA.

Local Economic Development Organizations

Every county in Indiana has a Local Economic Development Organization (LEDO). Despite many regional approaches to economic development, LEDOs exist both to advocate for individual county needs as well as to apply local county resources, such as local option income taxes.

Differing economic development objectives found within individual counties (e.g., rural interests vs. urban interests) have resulted in many Indiana cities having their own dedicated economic development staff to focus on the above-mentioned activities within established municipal boundaries. Coordination between city economic development staff and LEDOs or regional EDOs is typical, but it is also common to see differing economic development objectives, often resulting in a division of resources.

A map of these regional planning commissions and economic development district is available at: <http://www.iarc.cc/map-of-regions.html>

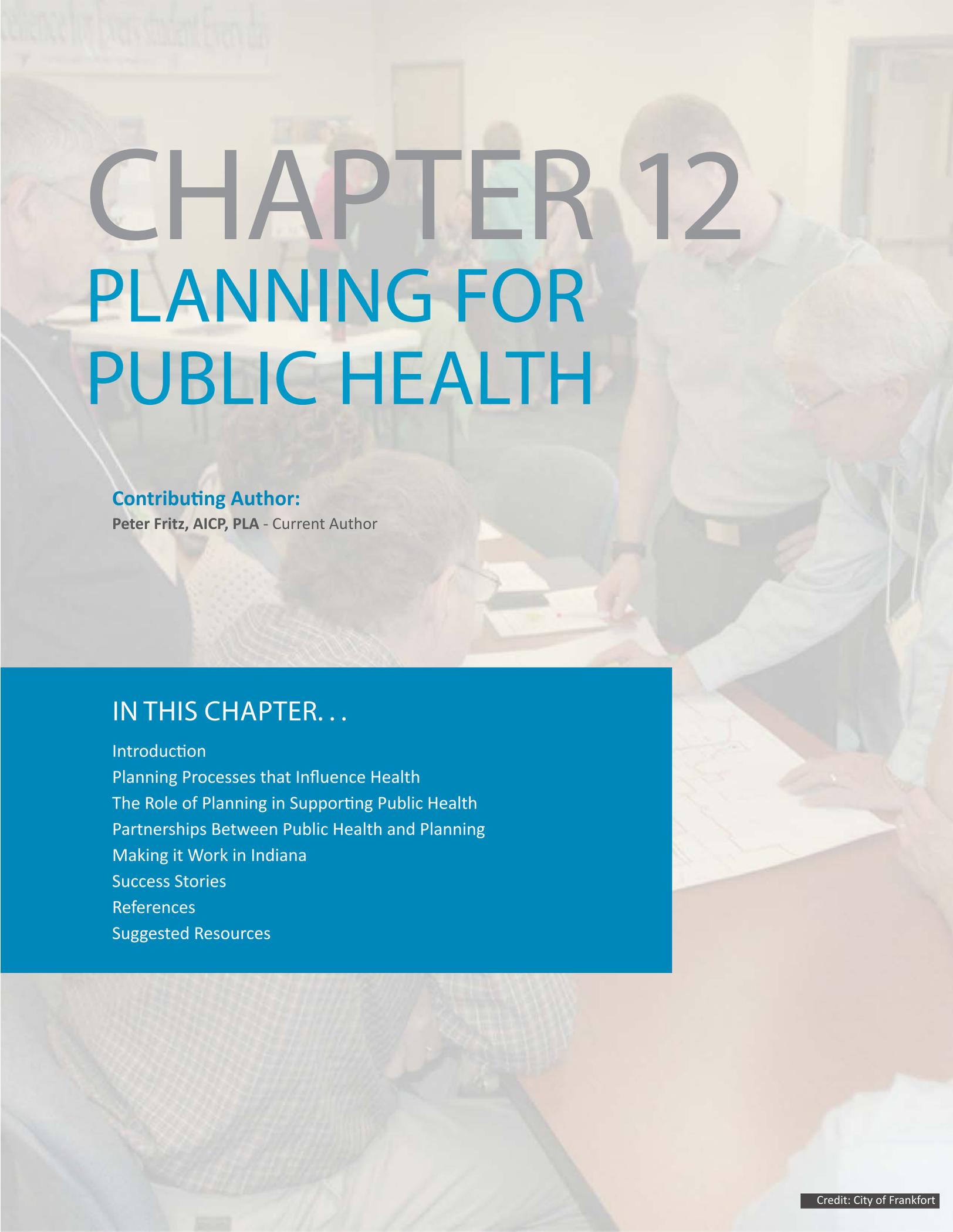
A listing of local economic development organizations is available at: <http://iedc.in.gov/business-resources/local-economic-development-organizations>

CONNECTING ECONOMIC DEVELOPMENT TO PLANNING

There are many needs and expectations placed upon economic developers. As a result, much of their focus has to be on the “now” – active recruitment of jobs and real estate development projects, with less time available to focus on the strategic planning side of economic development. Clearly it is helpful to conduct economic development activities according to a well-thought out plan that guides policy, investment and land use decisions. The planning process can help fill this strategic void, as well as serve to guide land use policies that assist in economic development efforts.

SUGGESTED RESOURCES

- Indiana Economic Development Corporation
<http://iedc.in.gov/>
- Indiana Association of Community Economic Development
<http://www.iaced.org/>
- The United States Economic Development Administration
<http://www.eda.gov/>
- International Economic Development Council
<http://www.iedconline.org/>
- Indiana Economic Development Association
<http://www.ieda.org/>

A group of people, including a man in a white polo shirt and a woman in a light blue shirt, are gathered around a table in a meeting room. They are looking at documents and a laptop. The background shows other people and a sign that says "Everyone has a part to play. Every day."

CHAPTER 12

PLANNING FOR PUBLIC HEALTH

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INTRODUCTION

Hoosiers want their communities to be healthy, thriving places. Good health is a status that many communities in Indiana strive to achieve, but few actually attain.

Citizen planners know that they can do a better job of creating healthy, high-quality communities; the challenges come in realizing the objectives and policies towards attaining this goal. This chapter will explore the roots of planning and community health and will provide ideas, models and examples of how citizen planners can create a community wide culture of health.

The Origins of Planning and Public Health

The modern planning profession began during the industrial revolution in response to the public health consequences of placing manufacturing facilities too close to urban dwellers. Rapid industrial growth led to an influx of rural residents seeking work in cities that lacked appropriate infrastructure to support them, exposing these new inhabitants to sanitation issues--alongside air and water pollutants.

In 1916, New York City used public health and safety as the basis for the first zoning law in the United States. In 1921, the State of Indiana granted its municipalities the right to regulate land use and building bulk. In 1926, The U.S. Supreme Court granted constitutional legitimacy of zoning in the landmark case of *Ambler Realty v. Village of Euclid, Ohio (1926)*, acknowledging that Euclid could promote “the health and safety of the community” through the regulations contained in its zoning ordinance. The planning and public health professions worked closely together in the early-to-mid twentieth century, creating policies that promoted the separation of land uses and better public sanitation. Gradually, the focus on health and safety in planning practice faded, and the professions of public health and planning diverged into two distinct disciplines.

By the middle of the twentieth century economic factors became one of the main focal points of urban planning. The expansion of low density suburbs fueled urban sprawl across the United States. Car-centric development became the accepted norm, bringing with it the unintended consequences of health issues that persist today. Most communities in Indiana suffer from low levels of physical activity and the resulting high levels of chronic disease and obesity that go hand-in-hand with the built environment that was created by previous generations.

The Healthy Communities Movement

Over a century after the enactment of the landmark New York City zoning ordinance, planning and public health are again working together to create healthy communities.

A new international movement has emerged looking to this partnership as a way to address many of the unintended negative consequences of past planning, design and engineering practices, along with poor decision-making by public officials. The Centers for Disease Control and Prevention (CDC) recognizes that community-wide approaches to public health and planning are valid public health interventions.

The “Healthy Communities Movement” is defined by the CDC as, “A community-based participatory process to improve community life, primarily through policies that creates positive, lasting changes to local systems and environments.” The CDC has funded many healthy community programs in Indiana, working through a combination of local, regional and statewide organizations. Projects in Indiana include community-wide active living workshops, bicycle and pedestrian master plans, safe routes to school, and food access initiatives.

Health and the Built Environment

There is a direct connection between the built environment and the rates of physical activity and chronic disease among a community’s residents (Frank, Engelke, and Schmid, 2003). Recent studies show that communities supporting active living exhibit higher levels of both leisure-and transportation-related physical activity (Dobson and Gilroy, 2009).

Citizen planners have the means to influence many health-related issues in their communities, including:

Physical Activity

Many communities do not have safe places to walk or to otherwise be active outdoors, limiting access to opportunities for residents to be physically active. According to the CDC, approximately 33% of adults living in Indiana were obese in 2016, and less than 50% of adult Indiana residents met moderate physical activity recommendations in 2015 (see sidebar definition).

Obesity and chronic diseases associated with physical inactivity have reached epidemic proportions in Indiana. Current research points to the fact that people who live in car-dependent environments walk less, weigh more, and suffer from related chronic diseases such as hypertension (high blood pressure). People who live in sprawling areas walk less for exercise and are notably less active in their daily routines.

With this in mind, planning policies can encourage physical activity in communities by making it easier and safer to walk, bicycle and utilize transit. For example, the lack of sidewalks is a barrier for many people who would like to walk more. Establishing regulations that mandate the inclusion of sidewalks as part of all new development

The CDC recommends that adults age 18-64 years old need 2 hours and 30 minutes (150 minutes) of moderate-intensity aerobic activity (i.e. brisk walking) every week.

helps create a connected network of walkways, in turn creating a more walkable community. As another example, the lack of secure bicycle parking is a barrier to many people who want to use their bikes for transportation. Requiring bike parking for all new commercial development helps make bike trips more predictable, encouraging higher levels of ridership.

Air and Water Quality

Pollutants entering our air, drinking water, and surface water systems are major public health concerns in Indiana. Land use and development regulations can address many of these issues and improve air and water quality in communities.

Requiring buildings to be set back an adequate distance from the water's edge (or the top of the defined bank) and outside of identified floodplain areas protects the natural flow of floodwaters. Sustainable development practices--such as vegetated swales, pervious pavement, and rain gardens--can filter surface water, allowing the recharge of groundwater resources while mitigating the adverse effects of flooding.

Traffic Safety

The safe movement of vehicles and goods on local roadways is a major goal of local planning and zoning activities. Indiana communities are experiencing a significant increase in the number of pedestrians and bicyclists that are utilizing road rights-of-way. Citizen planners have a responsibility to plan for the safe movement of both vehicles and non-motorized users throughout their communities.

Including safe walking and bicycling networks in comprehensive plans and thoroughfare plans is an effective way to ensure that these particular modes of transportation are well-integrated into the community. Adopting a local Complete Streets policy is also a way to ensure that all street users are considered during the planning, design and maintenance of streets.



Safe Routes to School (SRTS) Programs also promote active transportation options by improving the safety of children who walk or bicycle to school. A SRTS Program begins with parents, guardians and administrators working with community partners and public agencies to plan and build sidewalks, improve pedestrian crossings, and teach children safer bicycling and walking skills. The Indiana Safe Routes to School Guidebook (please refer to the resource section at the end of this chapter) is a good source of information on how to start and sustain a SRTS program.

Food Access

Increasing access to healthy food is a well understood strategy for creating healthier communities. Many people in Indiana live in “food deserts,” without easy access to fresh food. Citizen planners can enact policies and programs that make it easier for people to have access to nutritious food close to where they live.

For example, communities can encourage the development of farmers markets and community gardens near neighborhoods without access to fresh food. Local ordinances can make it easier for people in urban neighborhoods to practice urban agriculture, such as raising chickens, bee-keeping and using shared urban garden spaces.

Integration of Land Uses

The separation of land uses was an historical best practice for planning in the twentieth century; however, one of the primary unintended consequences associated with this approach tends to be the creation of larger tracts of land that are devoted to single uses, causing practical difficulties for people to walk or bicycle and creating a shared dependency on driving.

Residents are increasingly demanding development that encourages the utilization of transit and walking and bicycling to destinations. Citizen planners are now well-positioned to re-think this old approach to land use planning, and to create mixed-use areas that encourage active transportation.

Adopting a mixed-use zoning district or form-based codes are ways communities can encourage mixed-use development. Revising parking standards is another way to support mixed-use development and to encourage active transportation; creating maximum parking standards (instead of minimums) and requiring parking placement to be behind buildings can support a more walkable streetscape. New transportation industry standards for the number of parking spaces required for development are lower than many out-of-date local ordinances now require.

PLANNING PROCESSES THAT INFLUENCE HEALTH

Policies, Systems and Environmental Change Approach

Policy, systems and environmental (PSE) change approaches go beyond individual public health interventions and attempt to influence the larger, community-wide systems in which we live, work and play. Changing laws and shaping our physical landscapes can make healthy choices easier for our citizens. As a citizen planner, one can influence how local policies and regulations (such as comprehensive plans and zoning ordinances) support healthier communities. Using a PSE approach can help address community-wide health issues such as mental health, injury prevention, obesity, diabetes, cancer, and chronic diseases.

[Policy change](#) includes passing laws, ordinances, resolutions and rules to increase opportunities for healthy living. Examples include workplace policies that incentivize bicycle commuting, school policies that encourage walking to school, and ordinance changes that make it easier to plant community gardens in vacant lots.

[Systems change](#) involves changing an organizational structure to support healthy living. Systems change impacts all elements within an organization, re-thinking how decisions are made and modifying internal practices. One example of system change is including an analysis of health impacts for new improvement projects as a normal part of the development review process in a planning department.

[Environmental change](#) is the resulting changes made to the physical environment based on the healthy living policies and systems changes described above. These changes can be as simple as adding bicycle parking to all new development or as complex as redesigning existing street intersections to be safer for pedestrians. Additional examples of environmental change include building safe pedestrian and bicycle access to neighborhood parks based upon an audit of existing conditions, redesigning crosswalks for pedestrian safety, and narrowing roadways to reduce traffic speed and increase pedestrian visibility.

Health in All Policies Approach

Research has proven that good health is influenced by many community-wide factors, not just individual influences such as genetics, behavior or medical care. We know that the environments in which we live have the greatest impact on community health outcomes. Health in All Policies is a collaborative approach to improving health by incorporating health issues into decision-making processes across all policy areas in a community. This approach promotes ongoing collaboration between government agencies, creating opportunities to work together to improve public health. Specific projects, programs and policies target each agency's goals while creating new health practices across all tiers of government.

THE ROLE OF PLANNING IN SUPPORTING PUBLIC HEALTH

Citizen planners can advocate for the consideration of public health in the planning processes in their communities. Partnering with health stakeholders on land use and community design initiatives can leverage community-wide support for these issues. Health should be part of a system-wide approach that touches all steps of the planning process from visioning to the permitting for construction of projects to code enforcement. The sections that follow include ways to incorporate public health into planning documents and procedures, along with a local Indiana example of each approach.

Comprehensive Plans

Including a health-related element or chapter in the community's comprehensive plan is an effective way to embed healthy-living policies into the vision for land use and transportation in the community. Health stakeholders--such as County Health Department officials and local hospital representatives--should be part of the project advisory team that provides input into the comprehensive planning process. Health data should also be part of the analysis of existing conditions for the plan. Additionally, recommendations from community health needs assessments prepared by local hospitals and other community health partners should be considered during the planning process.

In 2011, the American Planning Association (APA) published the results of a nation-wide survey of communities that included public health elements in their comprehensive plans (please refer to the resource section at the end of this chapter). Six Indiana communities responded to the survey. Indianapolis, South Bend and Columbus had the most public health topics included in their local comprehensive plans, ranging from active living to environmental health and health care. None of the respondents in Indiana had stand-alone health chapters in their plans at that time

Small Area Plans

Small area and neighborhood plans, including downtown and corridor plans, can include numerous healthy community elements that support safe and active living environments. Goals and objectives that address better food access and urban agriculture can increase access to healthy food for neighborhood residents. Promoting the expansion of safe bicycle and pedestrian networks at the neighborhood level can increase connectivity and safety where people live, play and work.

Columbus, Indiana received a Plan4Health grant from the Centers for Disease Control and Prevention (in 2015), supported through the American Planning Association and the American Public Health Association. The grant addressed PSE changes at the neighborhood level supporting safer and healthier neighborhoods.

Columbus' planning effort included the creation of a coalition of community stakeholders in health and planning to guide their efforts. The end results included safety improvements for bicycling, walking access to neighborhood parks and schools, review and analysis of safe pedestrian crossings at state highway intersections and a broad public awareness campaign (called "Go Healthy Columbus") promoting active living.



Ordinances and Design Standards

Ordinances, such as the zoning and subdivision control ordinance, are local laws that implement the vision and goals outlined in a community's planning documents. Active living and Health-focused elements often include requirements for bike parking, sidewalk standards, street design and sustainable development. Landscape and tree planting standards promote more walkable communities by enhancing pedestrian comfort and safety. Overlay districts can include design elements--such as building and parking placement requirements—as well as pedestrian access standards to promote inviting pedestrian environments. Lighting standards can support safe nighttime use of sidewalks and limit glare and light pollution that can have negative health impacts.

The City of South Bend adopted a Board of Public Works Complete Streets Resolution in 2015. The policy includes design standards, performance measures, implementation requirements and reporting measures that require street planning, design and maintenance activities to support all users. The City's resolution includes language that designates a new Complete Streets interdepartmental advisory team to oversee its implementation. So far, the City's new policies have been transformative for the street network in downtown South Bend, leading to accommodations for all users, inclusion of new bike lanes, sidewalks, and traffic calming improvements.

Park Plans

In Indiana, park and recreation master plans are typically adopted by local park and recreation boards per the requirements in State law. Park plans can be great tools for supporting healthy, active communities and engaging a variety of stakeholders. Citizen planners can partner with park board members and staff to include specific language to support healthy communities.

Re-use of underutilized park lands for public gardens is one way that parks can play a role in promoting better food access. Increasing safe walking and bicycling access to park lands and greenways is also a known strategy to increase levels of physical activity in adjacent neighborhoods. Promoting walking programs in parks, such as Walk with a Doc, has been known to increase levels of walking and creates a better relationship between the public and health professionals. Park and recreation master plans are also a way to draft policies that improve equity through promoting better access for people who use walkers or wheelchairs, or who have a visual or auditory impairment.

Monroe County integrated a health component into its park and recreation planning efforts. The health integration plan highlights opportunities to improve the health of county residents through new park offerings, enhanced programming and new organizational partnerships.

Transportation Plans

Transportation plans, also commonly called thoroughfare plans in Indiana, can be part of comprehensive plans or stand-alone documents guiding the planning and development of transportation improvements. Increasing levels of walking, bicycling and transit (together known as “active transportation”) contributes to better community health outcomes. Identifying and removing environmental and policy barriers that hinder active transportation results in increased levels of physical activity and reduces chronic disease among community residents.

Transportation plans should include goals, objectives and strategies for increasing levels of safe, active transportation. Bicycle and pedestrian plans can be included as a chapter of a transportation plan or can be stand-alone documents that specifically include language for policies, projects, and programs that support active transportation. Non-traditional stakeholders--such as hospital administrators, YMCA directors, school administrators and wellness coordinators--should be an integral part of the transportation planning process.

Indianapolis and Marion County adopted their first-ever pedestrian plan in 2016 with integrated health elements. The planning effort was funded through a Plan4Health grant by the APA. The products of the plan were released by Health by Design (the project manager) and the Plan4Health project partners in early 2016. The final effort included the Indianapolis/Marion County Pedestrian Plan, a State of Walkability Report and a Prioritization Methodology for the recommendations of the plan. A pedestrian advisory group was also formed to help guide the ongoing implementation of the plan.



Food Access Planning

Access to healthy food is a major concern among public health professionals when creating healthy communities. Planning documents should include goals and objectives to make it easier for residents to access healthy food near where they live. Food access is a significant area where equity can be addressed, as many food deserts exist in neighborhoods that have experienced disinvestment and health disparities.

The creation of a local food council is one way to organize local food advocates and producers to support better food access. Citizen planners can become active participants in local food access projects including farmers markets, community gardens, school gardens and farm to school programs. Purdue Extension educators and Community Wellness Coordinators are good sources of technical assistance for these types of local programs and projects.

Bloomington, Indiana created a Food Policy Council in 2010. The Council is a group of community members committed to building local food security by assessing the current food system in Bloomington and Monroe County--advocating policy changes to improve the food system and educating the public on the steps necessary to assure that residents have access to affordable and nutritious food. The Council also promotes the development of food produced sustainably by local farmers and gardeners.

Water Resources Planning and Design

Citizen planners can also affect the quality of the drinking water and surface water where they live, directly influencing the public health of the community. Both the protection of drinking water well fields and the regulation of flood plain development have direct impacts on water quality. The inclusion of widely-accepted sustainable “best practices” in new development standards ensures that surface water runoff into area streams does not result in adverse health impacts.

PARTNERSHIPS BETWEEN PUBLIC HEALTH AND PLANNING

Cross collaboration among planning and public health professions is critical in creating healthy communities, and there are many opportunities for citizen planners to collaborate with public health professionals. Including public health representatives in the comprehensive planning process helps with the incorporation of public health issues into community land use policies. Public health professionals should be part of advisory committees for community planning efforts and should be included in technical review committees.

Citizen planners and community planning staff are valuable resources for community health coalitions and advisory committees. Planners have access to community population data that public health professionals need to analyze and to prepare community health needs assessments. Public health professionals also have community health data that planners need to analyze the existing conditions in their communities (as a basis for making better land use and transportation planning decisions)

MAKING IT WORK IN INDIANA

Partnerships between public health and planning in Indiana are emerging, creating success stories for healthier communities across the state. A few proven keys to success in implementing healthy communities in Indiana are:

- **A Sense of Urgency**

Indiana communities are experiencing public health crises on many fronts and the change necessary to create safe and healthy communities will not happen without deliberate, urgent effort. Indiana has consistently ranked in the bottom 25% of the annual US state health rankings since 1990--the year the rankings started. In 2017, Indiana ranked 38th out of 50 states in overall health according to the annual America’s Health Rankings prepared by the United Health Foundation. That same year, Indiana was ranked the tenth most obese state, with 32.5% of the adult population experiencing obesity. Unfortunately, Indiana ranked 49th out of 50 states for public health funding, providing only \$49 dollars of state public health funding per person.

Please see Chapter 4, Communications, for more detailed information on how to involve the public in planning processes.

- **Political Will**

There is overwhelming evidence that partnerships between planning and public health personnel can create healthier communities. Elected and appointed officials need to consider more than the naysayers and make evidence-based planning and policy decisions to support these efforts. There is much interest in improving public health from the grassroots level up. Bicycle and pedestrian advocates, YMCA representatives, food access supporters and similar stakeholders must be included in planning groups and subcommittees to help politicians see that the electorate supports public health.

- **Community Leaders**

Community leaders need to come together across sectors to support community-wide planning and public health problem-solving. It will be difficult to implement this work without community-wide leadership, even though these leaders and groups may be inexperienced in working together. Citizen planners are in a unique position to take responsibility and facilitate the public health discussion locally as part of their role in the planning process. Including representatives from community development corporations, neighborhood associations, or priority populations (specifically including race, ethnicity, ability, and family status) can help ensure equity in health initiatives and connect formal leaders with informal (citizen) leaders.

- **A Team of Doers**

This work also requires a group of dedicated people in the community to organize and implement policies and projects. These so-called “doers” include residents, organizations and businesses that make things happen and inspire others to get involved. The doers may be different people than the leaders. It is important that all plans contain a clear implementation chapter or action plan that can be used by these “doers” to address local health issues. Again, residents representing all segments of the community should be included in those doing the work to ensure health equity.

- **Involve the Public**

Public participation and promotion is necessary in all these efforts to provide education and create broad support from the community and an engaged citizenry. Any effort to engage the public should be viewed through an equity lens to ensure that all segments of the community are being reached—following the absolute minimum state law public notice requirements for planning is not enough. Each local planning process should have a public participation plan to guide planning efforts.

SUCCESS STORIES

Communities across the state are starting to incorporate policy, systems and environmental change approaches as they create healthy communities. Some of the Hoosier success stories demonstrating that planning and public health can partner successfully to create better health outcomes include:

Bicycle and Pedestrian Planning

Challenge

According to the CDC's Behavioral Risk Factor Surveillance System, nearly 33% of the adults living in Indiana experienced obesity in 2016 and less than 50% of adult Indiana residents met moderate physical activity recommendations in 2015. The Nationwide Personal Transportation Survey noted that nationally 48% of children walked or biked to school in 1969. However, in 2017, the National Center for Safe Routes to School found that fewer than one in six students walk or bicycle to school today. As noted earlier, physical activity can lower the risk of early death, heart disease, type 2 diabetes and some cancers; it can also help manage many chronic diseases. Despite the aforementioned evidence and concerns, communities across Indiana still struggle with the adoption of the necessary plans, rules, and policies to create positive and effective environmental changes that support physical activities such as bicycling or walking.

Solution

The Indiana State Department of Health (ISDH), Division of Nutrition and Physical Activity (DNPA) created a planning grant program from 2014-2018 to help fund the preparation and adoption of bicycle and pedestrian plans for cities and counties throughout Indiana. During that timeframe, 15 communities were selected through a competitive application process to receive planning funds. The grantees agreed to an approved scope of work for the plans along with a commitment to formally adopt the plans upon completion. The planning process typically included the creation of a local advisory committee, a public input process, and an inventory of existing bicycle and pedestrian facilities and policies--along with recommendations regarding the future development and enhancement of bicycle and pedestrian networks. Priorities for both short-term and long-term projects and programs were also included in the plans.

Please see the Suggested Resources section later in this Chapter for a link to the ISDH/DNPA web page for a listing of the bicycle and pedestrian plan grantees under this program.

Results

DNPA provided a total of \$300,000 in grant funding to the successful applicant communities to prepare the aforementioned plans. In total, the plans covered a population of over 500,000 people throughout the state and included \$500 million in planned bicycling and walking improvements. For most communities involved, this was the first time a bicycle and pedestrian plan had been adopted in their jurisdiction, creating a new vision for bicycling and walking in each area.

Madison, Indiana, an ISDH planning grant recipient, adopted its first bicycle and pedestrian master plan in 2015 that included a network of multi-use paths, connecting residents and visitors to their historic downtown and riverfront on the Ohio River. City officials leveraged the recommendations of their plan to apply for and receive over \$3 million in funding for multi-use paths and related improvements from the Indiana Department of Transportation (INDOT). The City is also considering a downtown road diet on Main Street that will include a bikeway, safe pedestrian crossings, and outdoor seating.

Complete Street Policies

Challenge

Many communities across Indiana lack an overall policy for consistently considering all users in the planning, designing and maintenance of local streets. As a result, an unintended consequence is that many streets in Indiana communities have limited access for residents to be active in their day-to-day lives. Streets often do not include basic infrastructure to accommodate walking, bicycling and access to transit. As noted earlier in this Chapter, regular physical activity can lower the risk of early death, heart disease, type 2 diabetes, and some cancers. Physical activity can also help manage many chronic diseases--yet states like Indiana struggle with educating residents and putting environmental changes (such as those supported by the Complete Streets Policies) into action to support physical activity such as biking or walking.

Please see the Suggested Resources section later in this Chapter for a link to the Health by Design web page for a complete listing of all the Complete Streets policies adopted in Indiana.



Solution

Complete Streets are designed and operated to enable safe access for all users--pedestrians, bicyclists, motorists, and public transportation users of all ages and abilities can safely move along and across a Complete Street. A statewide campaign to increase the number of Complete Streets policies in Indiana began in June 2009, with a one-and-a-half day statewide workshop co-sponsored by National Complete Streets Coalition members, AARP Indiana and Health by Design (a statewide coalition that promotes active living). Bloomington was the first Indiana community to jump onboard, adopting a Complete Streets policy that year.

In January 2010, AARP Indiana and Health by Design launched the Indiana Complete Streets Coalition, which now includes more than 75 organizations and 250 individuals. At the same time, AARP Indiana began conducting walkability assessments in various locations around the state. These assessments engaged neighborhoods and local residents, creating greater awareness around the state and ultimately helping to enlist local support for Complete Streets policies. In 2013, the Indiana State Department of Health funded seven Complete Streets workshops, held in Indiana communities that were considering enacting policies. These workshops resulted in several communities drafting and adopting local policies supporting Complete Streets.

Results

Between 2009 and 2017, 24 Indiana communities and regional planning agencies have formally adopted Complete Streets policies, covering a population of over 3.4 million people in the state. Over 52% of Hoosiers are now included in some form of adopted Complete Streets policy.

The Indiana Department of Transportation (INDOT) has also adopted an internal Complete Streets policy that applies to all state highway corridors in Indiana. INDOT conducted more than 20 Complete Streets workshops in 2016 and 2017 to train district engineering staff and local government representatives on the implementation of Complete Streets policies.

The City of Peru adopted a Complete Streets policy in 2013 after conducting a Complete Streets workshop. In 2016, INDOT re-paved State Road 19 through the city which community leaders used as an opportunity to create new bikeway connections to the regional Nickel Plate Trail on either side of the city. Peru asked INDOT to include a road diet as part of the re-paving project—with new bike lanes, pedestrian crosswalks, re-configured vehicle travel lanes and changes to on-street parking. INDOT agreed to the City's proposed changes, creating a more complete street along State Road 19 by simply re-striping the roadway as part of the re-paving project.

Please refer to the Suggested Resources section later in this Chapter for a link to the Active Living Workshop page of the Health by Design website for a listing of all the communities that hosted an Active Living Workshop in Indiana.

Active Living Workshops

Challenge

Indiana suffers from numerous health risks, as detailed in prior sections of this chapter. However, Indiana communities struggle to create active living environments to foster better health outcomes. Communities urgently need hands-on support when implementing changes that create healthy living opportunities for their citizens.

Solution

To address the need to create more active communities, the ISDH created a program to fund and facilitate a series of Active Living Workshops across Indiana (Fritz, Irwin, and Bouza, 2017). DNPA partnered for this project with Health by Design, a statewide coalition that works to ensure Indiana communities have public spaces, infrastructure for neighborhoods, and transportation that promotes physical activity and healthy living. The Purdue Extension Nutrition Education Program also provided funding and staff support.

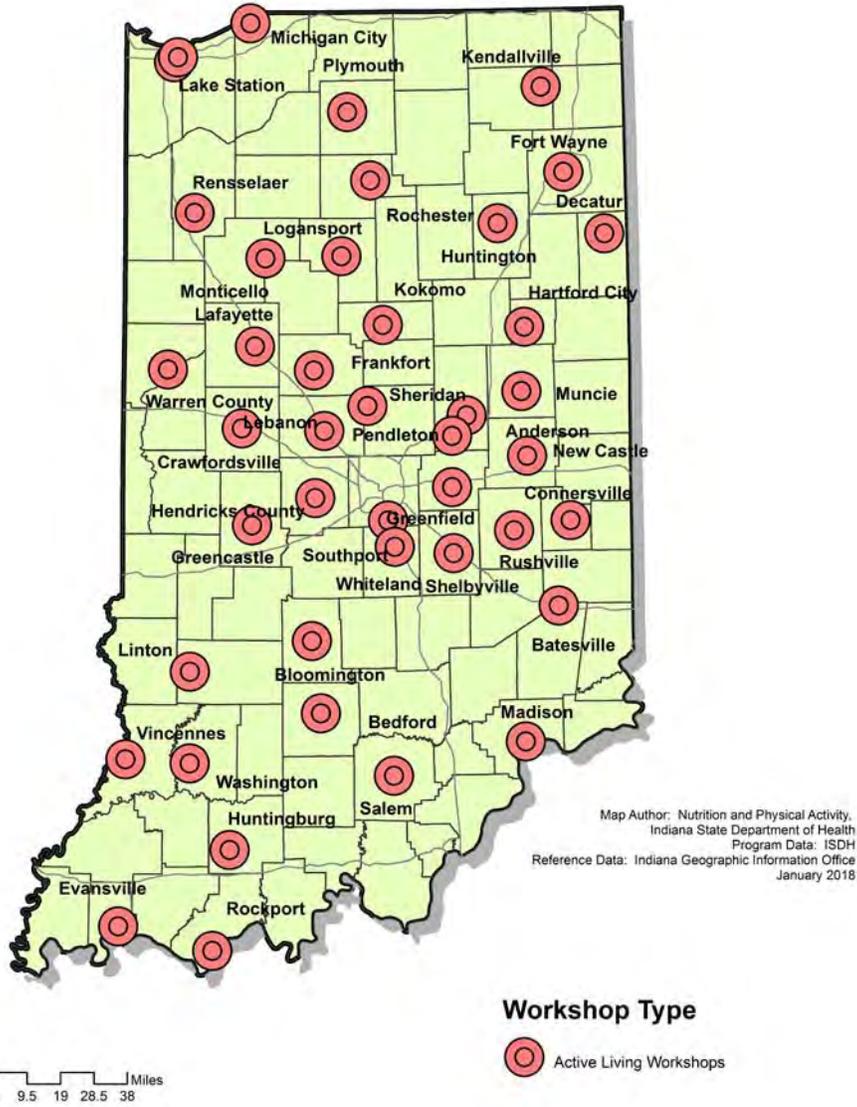
From 2014-2018, INDOT and its partners conducted 46 workshops across Indiana. More than 1,600 community stakeholders—including city planners, engineers, public health professionals, school administrators, and community leaders—attended these workshops. The participants agreed to a year-long set of follow-up activities, including drafting an action plan, providing status reports, and reporting success stories outlining each group’s achievements.

Results

DNPA and Purdue Extension provided over \$300,000 in grant funding to 46 communities to conduct the Active Living Workshops. In addition, more than \$350,000 of local funding was budgeted by communities to carry out the prioritized recommendations. The workshops were a first-time opportunity for many participants to discuss physical activity and active-living access issues. Communities identified both short-term action steps and long-term planning ideas as part of each workshop.

The City of Greenfield conducted an Active Living Workshop in 2016. The idea of a county-wide trails plan promoting active transportation in Greenfield and Hancock County was included in the action plan that was developed from the workshop. Community leaders from across the county continued to meet after the workshop, raising money for the planning effort and applying for grant funding from a regional hospital and a community foundation. The group eventually raised \$90,000 in matching funding, enabling the hiring of a consultant team to help prepare a (first-ever) county-wide trails plan.

Active Living Workshops In Indiana 2014-2017



Credit: Nutrition & Physical Activity, IN State Dept. of Health

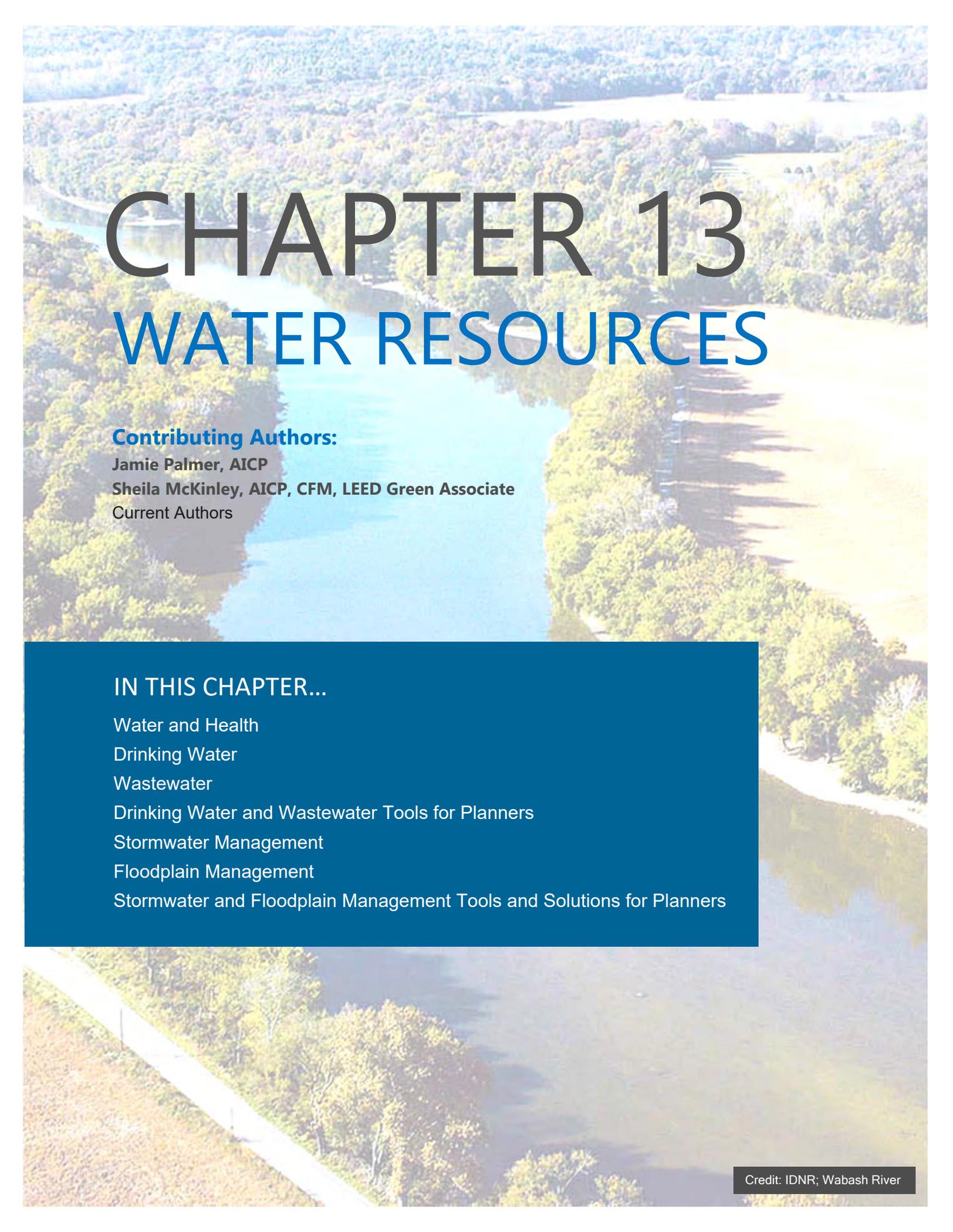
REFERENCES

- Frank L. D., Engelke P., & Schmid T. L. (2003) Health and community design: The impact of the built environment on physical activity. Washington, DC: Island Press.
- Dobson NG, Gilroy A (2009) From partnership to policy: The evolution of active living by design in Portland, Oregon. *Am J Prev Med*; 37(6S2):S436-S444.
- Fritz PJ, Irwin K, Bouza L. (2017) Using a Community Workshop Model to Initiate Policy, Systems, and Environmental Change That Support Active Living in Indiana, 2014–2015. *Prev Chronic Dis*; 14:160503. DOI: <http://dx.doi.org/10.5888/pcd14.160503>

SUGGESTED RESOURCES

- [Healthy Plan Making. Integrating Health into the Comprehensive Planning Process: An Analysis of Seven Case Studies and Recommendations for Change.](#) American Planning Association (APA)
- [Integrating Planning and Public Health: Tools and Strategies to Create Healthy Places.](#) APA, Planning Advisory Service
- [Making Healthy Places, Designing and Building for Health, well-being, and Sustainability.](#) Island Press
- [Designing Healthy Communities,](#) APHA Press
- [From Start to Finish: How to Permanently Improve Government through Health in All Policies.](#) ChangeLab Solutions
- [Centers for Disease Control and Prevention, Healthy Places web page.](#)
- [Health by Design website](#)
- [Comprehensive planning for Public Health: Results of the Planning and Community Health Research Center Survey.](#) Planning and Community Health Research Center, APA
- [Columbus, Indiana Healthy Communities Project.](#) Plan4Health Case Study, APA Web Site
- [Indy Walkways: More than a Pedestrian Plan.](#) Plan4Health Case Study, APA
- [South Bend, Indiana Complete Streets Web Page](#)
- [Bloomington, Indiana Food Policy Council Web Page](#)
- [Walk with a Doc Web Page](#)
- [America's Health Rankings Web Page,](#) United Health Foundation
- [Indiana Department of Transportation Complete Streets Program Web Page](#)
- [Indiana Safe Routes to School Guidebook.](#) Indiana State Department of Health, Division of Nutrition and Physical Activity
- [Indiana State Department of Health, Division of Nutrition and Physical Activity Web Site](#)

- [A Sustainability Guide for Health Communities](#). CDC, National Center for Chronic Disease Prevention and Health Promotion, Division of Community Health
- [Planning & Zoning for Health in the Built Environment](#). APA Planning Advisory Service, Info Packet Web Page
- [Health Impact Assessment's Role in Planning](#). APA Planning and Community Health Center, Applied Research Web Page
- [Guide for Health in the Development Review Process](#). APA Planning and Community Health Center, Applied Research Web Page
- [Planners4Health Program](#). APA Planning and Community Health Center, Applied Research Web Page



CHAPTER 13

WATER RESOURCES

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Current Authors

IN THIS CHAPTER...

Water and Health

Drinking Water

Wastewater

Drinking Water and Wastewater Tools for Planners

Stormwater Management

Floodplain Management

Stormwater and Floodplain Management Tools and Solutions for Planners

Centers for Disease Control and Prevention; Drinking Water FAQ:

<https://www.cdc.gov/healthywater/index.html>

WATER AND HEALTH

Water is essential to our existence. We depend on water for drinking, food preparation, industry, sanitation, hygiene, and recreation.

Water-borne contaminants include germs (bacteria, viruses, and parasites) and chemicals. Contaminants can be naturally occurring chemicals and minerals, such as arsenic and radon. They also can come from local land use practices, such as fertilizers, pesticides, and livestock; manufacturing processes; sewer overflows; and malfunctioning septic systems. Contact with contaminants in drinking water, untreated wastewater, and stormwater can cause *“health issues, including gastrointestinal illness, reproductive problems, and neurological disorders.*

Infants, young children, pregnant women, the elderly, and immunocompromised persons may be especially at risk for becoming ill after drinking [or coming in contact with] contaminated water.” (Source:

<https://www.cdc.gov/healthywater/index.html>)



Source: Allen County Public Health Department; Failing Septic Area, 2019

When properly managed, natural systems and water infrastructure systems help to keep us healthy and safe. Federal, state, and local regulations also exist to minimize these risks. The infrastructure policies and plans local governments adopt and planners implement directly influence the health of our residents and our water resources. This chapter provides an overview on drinking water, wastewater, stormwater, and floodplain management.

DRINKING WATER

Drinking water is provided to homes and businesses by public drinking water systems or by individual wells.

Public Drinking Water Systems

Public drinking water systems (PWS) are classified as community, non-transient noncommunity, and transient noncommunity systems. Community systems serve at least 15 service connections for year-round resident or regularly serve at least 25 year-round residents. These systems include drinking water utilities and systems that service sufficiently-sized individual residential developments. Non-transient noncommunity water systems include locations such as schools, daycare centers, and factories. Transient noncommunity water systems include locations such as churches, restaurants, grocery stores, and campgrounds.

A PWS typically includes a source of supply, water treatment, and a distribution system. In some cases, utilities own only the distribution system and buy treated water from another utility.

Drinking water comes from surface water or groundwater. Surface water systems withdraw water from a river or lake, treat it and pipe it to homes and businesses. Groundwater systems withdraw water from wells. This water often requires little or no treatment. Several types of drinking water utilities serve communities:

- **Municipal:** Utilities that are part of city and town government. Municipal utilities can provide drinking water service up to four miles outside their corporate boundaries.
- **Investor-Owned:** Utilities owned by for-profit companies.
- **Regional Water Districts:** Special district governments that typically serve small towns and unincorporated areas.
- **Conservancy Districts:** Special district governments that also typically serve small towns and unincorporated areas.
- **Not-for-Profit Water Corporations:** Utilities organized as not-for-profits.

IDEM; Are You a
Public Water
System?:
https://www.in.gov/idem/files/factsheet_owq_pws_are_you_pws.pdf

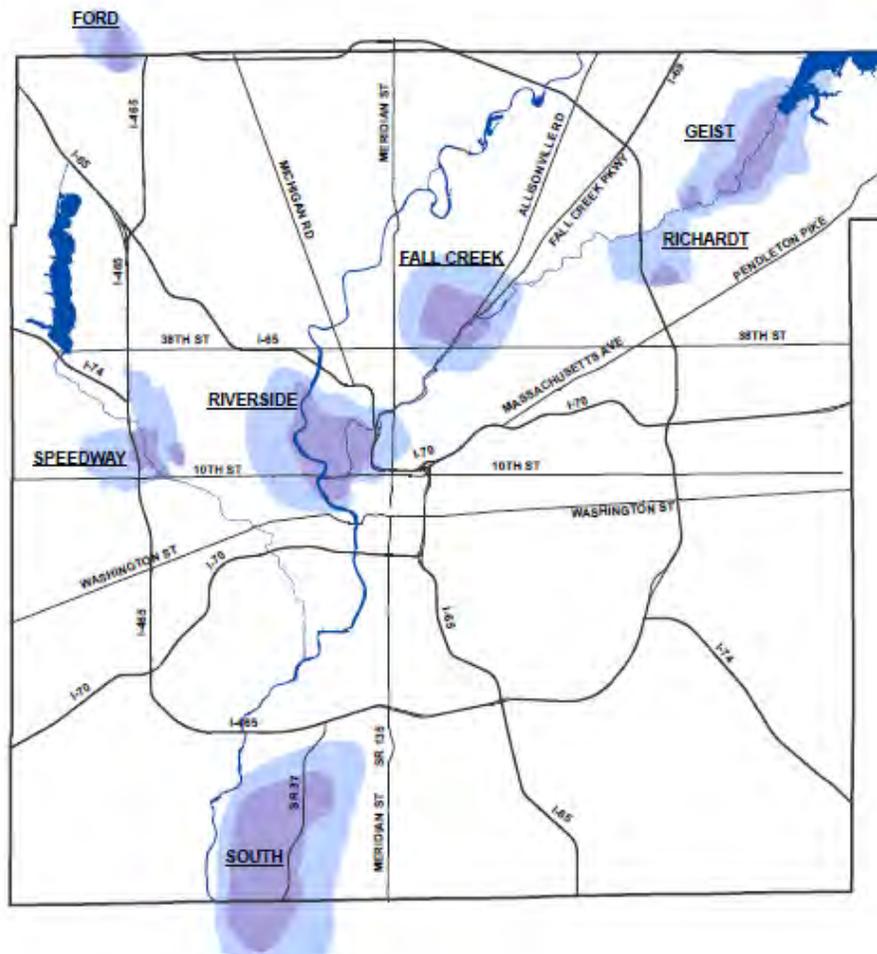
IC 36-9-2-18 establishes that municipal waterworks may serve up to four miles outside municipal boundaries.

Indiana Public Water Supply Database:
<https://myweb.in.gov/IDEM/DWW/>

Drinking water utility boundaries are mutually exclusive. The mechanism for establishing service areas varies depending on the type of utility. There is no centralized body or clearinghouse. The Indiana Utility Regulatory Commission (IURC) issues certificates of territorial authority for not-for-profit and investor-owned water utilities. Regional water district and conservancy district boundaries are set during the petition to the Indiana Department of Environmental Management (IDEM) or the circuit court, respectively. The rules for municipal utility boundaries are set in statute.

Planners can identify drinking water utilities by county using the Indiana Public Water Supply Database. Unfortunately, there is no good source of current utility service areas.

Public water supplies are regulated by the Safe Drinking Water Act. IDEM administers these regulations for the construction of wells, treatment processes, and the construction or modification of public water systems. Public water systems that rely on groundwater also are required to develop wellhead management plans to protect the area around system wells. These plans have to include initially the establishment of a local planning team, the delineation of the wellhead protection area, identification and inventory of potential contaminant sources, a management plan to address the potential contaminant sources, and the development of a contingency plan. Once the initial plan is approved, community systems must implement the plan and update them every 5 years. Reporting to IDEM must include updates to previous elements if needed, documentation of implementation activities, and documentation of local responder training.



Source: Marion County Public Health Department; Wellfield Protection Areas, 2017

Individual Wells

Individual wells draw groundwater for use by specific homes and businesses. Water quality for individual wells is not regulated. Rather, it is the responsibility of property owners to monitor and address any contamination that may occur.

All water well drillers and water well pump installers must be licensed by the Indiana Department of Natural Resources (DNR). The drilling, casing, and grouting of new wells, the plugging of old wells, and standards for pump installation are regulated (312 IAC 13).

It is important that wells be located a safe distance from nearby septic systems to avoid contamination. Currently, Indiana State Department of Health (ISDH) rules and local onsite wastewater regulations require septic systems to be installed a safe distance from nearby wells. There are no reciprocal distance requirements for well drillers.

Marion County Public Health Department – Wellfield Protection Program:
<http://marionhealth.org/water-quality-and-hazardous-materials-management/wellfield-protection-program/>

IC 25-39 et. seq. and 312 IAC 13 addresses requirements for well drillers

Private Well Complaint Response Program:
www.in.gov/idem/cleanwater/2452.htm

A current set of regional water studies can be found online at:
www.in.gov/ifa/

IDEM provides support to private well owners through the Private Well Complaint Response Program which “receives complaints, investigates, and samples at-risk private water wells which are suspected of being contaminated by man-made contaminants.”

Water Availability

Fresh water availability is critical to a number of uses including public and private drinking water, industry, mining, and agricultural purposes (irrigation and livestock). Within these categories, there are specific uses that are water intensive such as mining, paper manufacturing and recycling, food processing, and petroleum refining. Some parts of Indiana face challenges in terms of having access to a high-quality, resilient water supply. Recent studies by the Indiana Finance Authority identified challenges with respect to groundwater availability for central Indiana and for smaller communities in southeastern Indiana.

WASTEWATER

Wastewater treatment is provided to homes and businesses by public wastewater systems or by onsite wastewater systems, often septic systems or individual sewage disposal systems.



Source: Alliance for Indiana Rural Water

Public Wastewater Systems

Community wastewater systems often are made up of a collection system of pipes that transports sewage from homes and businesses to a central location for treatment. The collection system also may include sampling stations, pump stations, pressure-relief valves, vacuum breakers, manholes and shutoff valves. The treatment process involves several steps including the removal of large and floatable material, treatment of wastewater, and treatment of sludge. Some communities have collection systems that combine wastewater and stormwater. In some cases, communities own only a collection system that delivers sewage to another community or system for treatment.

Systems and system elements can be scaled to local needs and locations. At one time, “package plants,” small pre-manufactured treatment facilities, were a popular option for serving small, isolated communities and subdivisions. These facilities have gotten a bad reputation. Sometimes, these facilities do not provide sufficient treatment. Owners of these systems often struggle to keep skilled personnel and fail to provide critical routine operation and maintenance. With more sophisticated treatment plant elements, the need for skilled staffing grows.

Several utility structures exist to provide wastewater services. Fewer corporate utilities provide wastewater services than for drinking water.

- **Municipal:** Utilities that are part of city and town government. Municipal utilities can provide service up to four or ten miles outside their corporate boundaries, depending on whether they are a sanitary sewer system or a sewage works.
- **Corporate:** Utilities owned by for-profit companies.
- **Regional Sewer Districts:** Special district governments that typically serve small towns and unincorporated areas.
- **Conservancy Districts:** Special district governments that also typically serve small towns and unincorporated areas.

Wastewater utilities boundaries are mutually exclusive. The mechanisms for establishing service areas are similar to those that apply to drinking water. IDEM maintains a list of wastewater treatment plants with NPDES permits, but there is no good source for wastewater utility service boundaries.

Wastewater
Treatment: The
Technical Parts
Explained for Non-
technical People
<https://rcap.org/resource/wastewater-treatment-technical-parts-explained-non-technical-people/>

IC 36-9-2-18 allows a municipal domestic or sanitary sewer system to operate up to 4 miles outside municipal boundaries.

IC 36-9-23-36 allows municipal sewage works to operate up to 10 miles outside municipal boundaries. These utilities may not charge for stormwater services outside the municipality if the county has a stormwater district.

IC 36-9-23-30, IC 13-26-5-2, and IC 8-1-2-125 allow municipalities, regional sewer districts, and non-profit utilities to require connection to sewer lines when properties are within 300 feet. *Consult each statute for details.*

IC 36-9-23-30.1, IC 13-26-5-2.5 & 2.6, and IC 8-1-2-125 set requirements for the exemption from connection for owners who have newly installed, functioning onsite systems. *Consult each statute for details.*

Wastewater utilities are able to force onsite wastewater system owners to hook up when sewer trunk lines get within 300 ft. of the structure or property line depending on the situation. However, owners of large lots and owners who have installed onsite systems in the recent past can be exempted from connection. The latter group for up to 20 years.

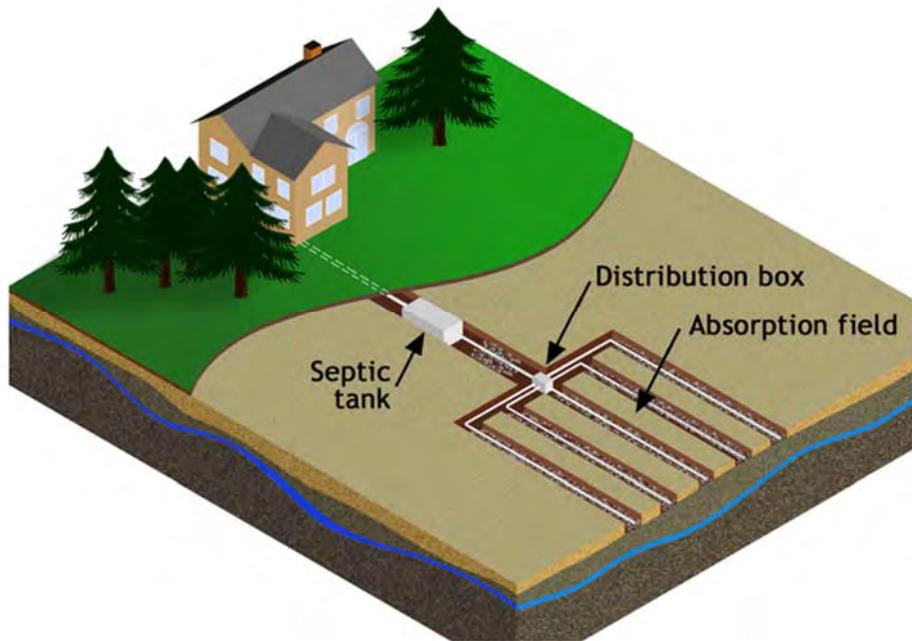
Wastewater is regulated through the Clean Water Act which requires permits for discharging pollutants from a point source into a water body. These permits contain limits on what can be discharged, requirements for monitoring and reporting, and other provision that protect environmental and human health. The IDEM administers these regulations including issuing construction permits for wastewater treatments systems and water quality compliance. Wastewater operators must be certified by the Indiana Department of Environmental Management (IDEM) and complete ongoing continuing education.

Decentralized Wastewater Systems

Rural and low-density development often is served by decentralized or onsite wastewater systems. Traditional septic systems are used most often. Other types of onsite systems also are available, including septic systems with recirculating sand filters, constructed wetlands, and mound systems. In some cases, these systems can be used to overcome the site and soil challenges described below.

Septic systems treat wastewater using system components and the surrounding soil. In a traditional system, wastewater flows from a home or business to a septic tank where solids and grease are trapped and decompose. The liquid effluent flows from the septic tank to a distribution box and into an absorption field, typically a set of trenches with perforated pipe surrounded by gravel. The effluent seeps slowly into the soil through small holes in the pipes. The soil beneath the trenches removes bacteria, nitrates, and other pollutants from the liquid. Other types of onsite systems are also available.

Many areas of Indiana are not suitable or have limited suitability for traditional septic systems. For systems to work properly a site must have: soils that are permeable and drain at the right rate to allow for adequate treatment; enough slope to move the effluent through the system but not so much that effluents runs off into surface water; loose soil and enough distance between the trenches; and the impermeable layer (clay soils, bedrock, etc.) to allow adequate treatment; and a low seasonal water table to avoid polluting groundwater.



Source: Purdue Extension, *Operating and Maintaining an Onsite Sewage System*, 2018

Onsite wastewater systems are regulated principally through a suite of Indiana Department of Health (ISDH) rules: 410 IAC 6-8.3 Residential Onsite Sewage Systems; 410 IAC 610-10.1 Commercial Onsite Wastewater Disposal, and 410-IAC 6-12 Plan Review, Construction Permits, and Fees for Services. ISDH reviews and approves plans for sewage disposal systems for public and commercial facilities. The department also provides technical assistance to county health departments. County health departments permit septic systems for one and two-family residences. *In some cases, they also permit and inspect systems for commercial facilities.*

Planning and health department officials often refer to soil surveys to identify soils and their general suitability for onsite systems. While these were once published for each county, the Web Soil Survey is now available online. This mapping and data tool allow planners to assess the soil limitations for septic systems based on ISDH rules (410 IAC 6-8.3). Soils are given a score between .01 and 1.00. As scores approach 1.00, they have more limitations for siting septic systems. This resource is a good general guide but does not replace the need to complete site evaluation when planning the installation of a specific septic system.

Web Soil Survey:
<https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>

Indiana Onsite Wastewater Professionals Association:
<http://www.iowpa.org/>

Allen County Wastewater Management:
<https://www.allencounty.us/wastewater-management>

See Chapter 7: Comprehensive Plans; Chapter 8: Zoning Ordinances; and Chapter 9: Subdivision Control Ordinances of the Citizens Planner Guide

Siting a septic system requires a site-specific soil evaluation conducted by a registered soil scientist. More than half of counties have established professional requirements for septic installation. The Indiana Onsite Wastewater Professionals Association certifies onsite wastewater inspectors and installers who complete a set of minimum education and continuing education requirements. Many counties accept this certification; some require this certification specifically.

To function effectively, septic systems require regular inspection and maintenance. Many health departments work to educate system owners about good practices. State law also allows the creation of onsite wastewater management districts. These districts can be operated by a regional sewer district or created as county management district (IC 36-11). Municipalities can opt into a county system by ordinance. The law allows districts to select from among the following activities: inventory systems, inspect systems, monitor system performance and maintenance, and establish installation and inspection standards. Only a few of these districts exist in Indiana. The most robust district is the Allen County Onsite Wastewater Management District.

DRINKING WATER AND WASTEWATER TOOLS FOR PLANNERS

A number of planning tools can be used to manage the provision of drinking water and wastewater infrastructure and growth that often accompanies it. Managing these issues often involves the implementation of multiple tools. In some cases, these regulatory powers may be held by more than one local government and require intergovernmental cooperation to achieve efficient land use and development over time.

Comprehensive Plans

Comprehensive plans compile relevant information and set the vision for development in local communities. In Indiana, existing conditions analyses typically include a soil suitability analysis for septic systems and documentation of utility service areas and plans. These are important considerations in developing the three required elements of the plan: objectives for future development, policies for land use development, and policies for the development of public ways, public places, public lands, public structures, and public utilities.

Zoning ordinances

Zoning establishes zoning districts defined by the land uses allowed there and by the development standards required, such as lot sizes, building height and bulk requirements, and setbacks between improvements and lot boundaries. Zoning districts may allow for individual drinking water wells and septic systems or require connection to a decentralized wastewater system or to public drinking water or wastewater systems. When zoning allows for individual wells and septic systems, bigger lots typically are required to accommodate the distances required between wells and septic systems and room for the installation of second septic system in unspoiled soil in the event the original system fails. When public utilities or decentralized option are available lot sizes can be smaller.

Communities also can use *service area boundaries* to manage the provision of drinking water and sewer service and the accompanying growth. This tool requires that the relevant utilities plan for capital improvements and establish the area that will be served within the planning period. This boundary can be codified within the zoning ordinance with allowances for greater density inside the boundary, limits on development outside the boundary, and/or the appropriate zoning treatments in the areas inside and outside the boundary.

Subdivision Regulations

Subdivision regulations set the rules for splitting tracts into building lots, the installation of adequate infrastructure, and who pays for the installation and maintenance of improvements. Subdivision ordinances set the design elements and infrastructure treatments—for example, sewers or septic systems—allowed under particular conditions.

In Indiana, subdivision regulations typically require developers to pay for the construction of internal infrastructure within the subdivision. Most communities also require the developer to dedicate certain infrastructure improvements to local government. In that event, the local government owns the resulting infrastructure and is responsible for maintaining it over time. When these ordinances allow the infrastructure to remain private, it typically is owned and maintained by a homeowner or other association.

Subdivision regulations may include an *adequate public facilities requirement* that a subdivision can only be approved if the existing infrastructure (roads, schools, and drinking water and wastewater transmission and treatment capacity).

A variety of arrangements exist for the extension of infrastructure systems to the subdivision. In some cases, developers must pay for the extension or a prorated share of the cost based on the proportion of the water or wastewater project that will serve the project. When capacity already exists to service the development, developers (or buyers) may have to pay a capacity and/or hookup fee to cover part of the cost of the existing system improvements.

Utility Policies

The extension of utilities, particularly sewers, drives growth and development. Conversely, the absence of utility extensions can limit the amount and nature of local development. With the exception of city and towns, utility capital planning and extension policies often are controlled by a different local government, company, or nonprofit. As such, utilities often have their own capital planning and policies regulating the timing and cost of extensions. It is important to build partnerships with utilities to allow the integration of community and utility goals.

Health Regulations

As described above, health departments have regulations regarding the construction of septic systems generally. These regulations typically suggest a minimum lot size, often because they require a second potential site that can be used in the event of a system failure. In places where conditions are challenging for siting septic systems, health departments also can establish policies regarding where septic systems are allowed. For example, a county could adopt an ordinance that limits septic systems to properties that do not have access to sewer service.

STORMWATER MANAGEMENT

Stormwater management is about handling the quality and quantity of runoff that flows over land from precipitation. In a natural setting, rainfall flows into waterbodies such as ponds, lakes, rivers, and streams or it settles into low-lying areas where it infiltrates into the ground and replenishes the aquifer. In a developed area, with impervious surfaces such as roads, rooftops, and parking, stormwater runoff is not able to infiltrate into the ground. Instead it is quickly diverted to drainage ditches, storm drains, and sewer systems and discharged in large volumes to the closest waterbody. This process not only disrupts the natural hydrological cycle, but it also adversely affects the water quality of receiving

waterbodies as the stormwater travels over impervious areas and accumulates debris, chemicals, sediment, or other pollutants.

The Problem with Impervious Surfaces

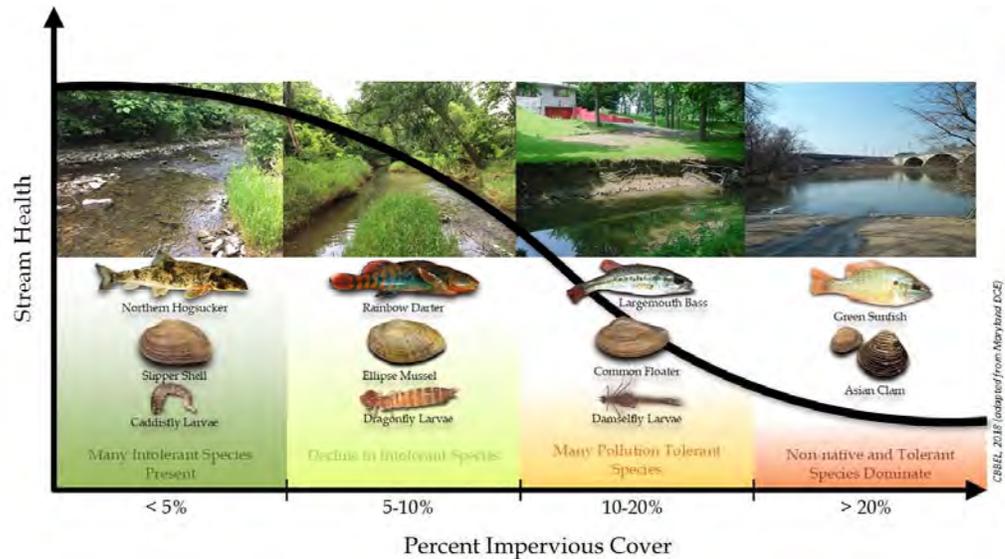
Problems associated with stormwater runoff are made worse with impervious cover. This hard-surfaced land cover—in the form of paved streets, parking lots, and building rooftops—prevents rainfall from percolating into the ground affecting the hydrological cycle. As shown in the impervious surface diagram below, in a natural setting with no impervious cover, 50% of the precipitation infiltrates into the soil and only 10% runs off and collects in low-lying areas and waterbodies. As imperviousness increases in a watershed, less water infiltrates and more runs off. In highly urbanized areas with 75-100% impervious cover, as much as 55% of the precipitation runs off and requires stormwater infrastructure, such as retention ponds or underground storage facilities, to minimize the risk of flooding. As infiltration decreases, the water table drops, reducing groundwater for wetlands, riparian vegetation, drinking water, and other uses.

EFFECTS OF IMPERVIOUSNESS ON RUNOFF AND INFILTRATION



Source: <https://www.riversmarthomes.org/isr>

Stream health is also impacted by imperviousness. Streams in watersheds with impervious cover greater than 10% will show signs of degradation. These signs may include excessive stream bank erosion, loss of riparian vegetation, more frequent overtopping, warmer stream temperatures, and overall degradation of aquatic habitat. The relationship of impervious cover and stream health is illustrated in the diagram below.



Source: CBBEL, adapted from Maryland DOE

Pollutants Carried by Stormwater

Stormwater runoff picks up and carries debris, chemicals, sediments and other pollutants as it travels over land and into the receiving waterbodies. These include: sediment, nutrients, chemicals, bacteria, oil and grease, metals, road salt, litter, organic debris, and thermal pollutants. There are two types of pollution that impact water quality:

- 1. Point Source Pollution** – Refers to contaminants that enter the water directly, usually through a pipe, such as a sewage treatment plant or an industrial source. Prior to the 1972 Federal Clean Water Act (CWA), point source pollutants were the greatest threat to our nation’s waterways. As a result, the regulations and permitting programs most point sources have greatly reduced the pollution that they discharge, and overall water quality has improved.

2. **Nonpoint Source Pollution** – Also known as "polluted runoff," is much more difficult to address than point source pollution. As stormwater travels over the land, it picks up and carries debris, chemicals, sediment, or other pollutants before discharging untreated into the receiving waterbody. The stream becomes impaired and the exact source of the pollution is unknown. Nonpoint source pollution is currently the largest water quality problem in the U.S. The 1987 and 1999 amendments to the CWA address the water quality impacts of stormwater discharges from industrial facilities and municipal separate storm sewer systems (MS4s). These amendments are known as the National Pollution Discharge Elimination System's (NPDES) Storm Water Phase I and Phase II Programs.

Stormwater Management Regulations

The following summarizes the major regulatory permit program and rules to manage stormwater in the State of Indiana.

1. **Construction/Land Disturbance Stormwater Permitting** – The Indiana Department of Environmental Management (IDEM) administers a general permit program (327 IAC 15-5 or Rule 5) that targets construction activity (clearing, grading, excavation, etc.) that results in the disturbance of one acre or more of total land area. If the land disturbing activity results in the disturbance of less than one acre of total land area but is part of a larger common plan of development or sale, the project is still subject to local stormwater permitting.
2. **Industrial Stormwater Permitting** – IDEM administers a general permit program (327 IAC 15-6 or Rule 6) for stormwater runoff associated with industrial activities. Industrial storm water permits are required for facilities where activities of the industrial operation are exposed to stormwater and runoff is discharged through a point source to waters of the state.

Construction/Land Disturbance Stormwater Permitting 327 IAC 15-5 (Rule 5):
www.in.gov/idem/stormwater/2331.htm

Industrial Stormwater Permitting 327 IAC 15-6 (Rule 6):
www.in.gov/idem/stormwater/2332.htm

Municipal Separate Storm Sewer Systems (MS4) 327 IAC 15-13 (Rule 13):
www.in.gov/idem/stormwater/2333.htm

Combined Sewer Overflow (CSO) IC 13-18-3-2.6:
www.in.gov/idem/cleanwater/2455.htm

- 3. Municipal Separate Storm Sewer System (MS4)** – IDEM administers a general permit rule (327 IAC 15-13 or Rule 13) to address the water quality impacts from designated small MS4 entities. This rule is also known as the NPDES Phase II Stormwater Program. Small MS4s are defined as mapped urbanized area with a population density greater than 500 people per square mile and a population of 10,000 or more. In Indiana, there are over 150 cities, towns, counties, universities, colleges, conservancy districts, and correctional facilities permitted under this rule. MS4 communities are required to meet six minimum control measures (MCMs) including: public education and outreach, public participation, illicit detection and elimination, construction site runoff control, post-construction site runoff control, and good housekeeping and pollution prevention. Large to medium MS4s are defined as communities serving populations of 100,000 or more and are regulated by the EPA under the NPDES Storm Water Phase I Program. Indianapolis is the only Phase I community in Indiana.
- 4. Combined Sewer Overflows (CSO)** – IDEM administers the rule for controlling CSOs through the NPDES permitting process (IC 13-18-3-2.6). A CSO discharge occurs when heavy precipitation causes a combined sewer system (a single pipe that carries both sanitary wastewater and stormwater to a wastewater treatment facility) to become overwhelmed and discharge untreated sewage to rivers and streams. Combined sewer systems are common in older parts of many cities. In Indiana, there are more than 100 CSO communities that are required to implement Long-Term Control Plans (LTCP) to reduce and/or eliminate harmful CSO discharges into waterways.
- 5. Local Stormwater Management** – A stormwater ordinance provides the regulatory authority and an accompanying technical standards manual provides the means and methods for achieving compliance with the ordinance. Key elements of the technical standards are to allow for stormwater management using conventional grey infrastructure and/or green infrastructure best management practices; prevent loss of floodplain storage through compensatory storage requirements; and minimize streambank erosion through channel protection volume requirements.

Capturing and Treating Stormwater Using Green Infrastructure

The conventional method to manage stormwater runoff is to use grey infrastructure. In this method, a network of pipes, tunnels, and concrete-lined ditches collect and convey runoff as quickly and efficiently as possible into a stormwater pond, directly into a nearby stream, or in a combined sewer network, to a wastewater treatment facility. While this method is very efficient at transporting runoff away from the source, its centralized collection and conveyance approach disrupts the natural hydrological cycle and contributes to flooding and CSO events. Grey infrastructure also contributes to the impairment of receiving streams if stormwater runoff is directly discharged without being treated.

Green infrastructure is a viable alternative to the conventional pipe to pond stormwater management approach. This method uses the natural characteristics of soil and vegetation to capture and treat stormwater runoff where it falls. It can be applied at a regional, neighborhood, and site scale to mitigate stormwater problems and restore the natural hydrology of a developed area. It's an innovative approach to stormwater management that challenges traditional thinking regarding development standards, watershed protection, and public participation.

With green infrastructure, stormwater management is not an afterthought but is something that is integrated into the planning and site development process. It includes low-impact development practices, better site design, and source-control practices to mitigate stormwater-related impacts-- reducing the effects of flooding and treating pollutants carried by runoff.



- 1. Low-Impact Development (LID)** - Sometimes referred to as conservation planning, LID is used to preserve the natural systems and hydrologic functions of a pre-development site. Components of LID include preserving the natural and beneficial function of flow paths and storage areas for stormwater (such as stream corridors, floodplains, and wetlands) and using clustered-type or open space development to minimize the area disturbed and compacted by the development process. The benefits of LID are reduced land-clearing, infrastructure, and stormwater management costs, as well as enhanced community and individual property owner aesthetics, marketability, and property values.
- 2. Better Site Design** - Rooftops, parking lots, roads, driveways, and sidewalks all contribute to the impervious cover on a site. These hard surfaces prevent infiltration and increase stormwater runoff contributing to flooding and poor stream health. These problems are made worse when areas of impervious cover are connected and there are no physical breaks to capture and treat the stormwater runoff. Better site design is used to minimize the amount of impervious or disturbed area and/or allow for stormwater disconnection to reduce future runoff from the site. Municipal land development codes unintentionally exacerbate impervious cover problems since they dictate street width, street length, right-of-way widths, cul-de-sacs, parking ratios, as well as setbacks and frontages. In some cases, these standards are excessive and can be reduced without affecting public health or safety.
- 3. Source-Control Practices** – These are engineered methods used to manage stormwater runoff at the source. These practices mimic the natural processes and characteristics of soil and vegetation to capture and treat stormwater runoff where rain falls. Depending on the practice, green infrastructure can restore infiltration into the groundwater and the soil and plants filter and trap many of the pollutants carried by stormwater runoff. Green infrastructure practices are most effective resolving nuisance drainage issues from 1 to 2 inches of runoff and are not meant to replace flood control structures that are needed for larger flood events. Many green infrastructure practices can be incorporated into either new development, or as part of a retrofit or redevelopment effort. Common source-control green infrastructure practices include: bioretention/rain gardens, permeable pavement, rainwater harvesting, tree/planter boxes, and green/blue roofs.

Stormwater Utilities as a Funding Source

The stormwater utility is a proven method of providing a reliable and dedicated funding source to pay for compliance with state and federal stormwater quality mandates as well as ongoing maintenance of and improvement to the existing drainage system. This funding source is provided through a user fee like the fees collected for public water and wastewater services. There are predominantly two types of stormwater utilities: flat fee and variable fee. Flat fee is where the fee is the same for each parcel and a variable fee varies depending on the land use, acreage, impervious, stormwater improvements, etc. for individual parcels.

Indiana law allows municipalities to collect stormwater user fees by establishing a new Department of Stormwater Management or expanding the scope of services of the existing Municipal Sewage Works. County's designated as MS4 entities can also establish a stormwater utility through Indiana Drainage Law.

The successful implementation of a stormwater utility requires a good stormwater management program with well-defined deliverables as well as public support through education and outreach.

FLOODPLAIN MANAGEMENT

Floodplain management reduces flood risks through the implementation of corrective and preventative measures. These may include zoning, subdivision, or building requirements, and special floodplain ordinances.

The floodplain is the low-lying area of land next to a river or stream. It stretches from the banks of the river to the outer edges of the valley. In regulatory terms, the floodplain consists of a floodway and floodway fringe. The floodway is adjacent to the channel and provides the primary conveyance for flood water. It is critical that the floodway remain open to allow flood waters to pass. The floodway fringe is the remaining low-lying area of the floodplain that provides important flood storage during large flood events. Together, the floodway and floodway fringe make up the Special Flood Hazard Area (SFHA), regulatory floodplain, and 100-year or 1% annual chance floodplain.

Department of Stormwater Management

IC 8-1.5-5:

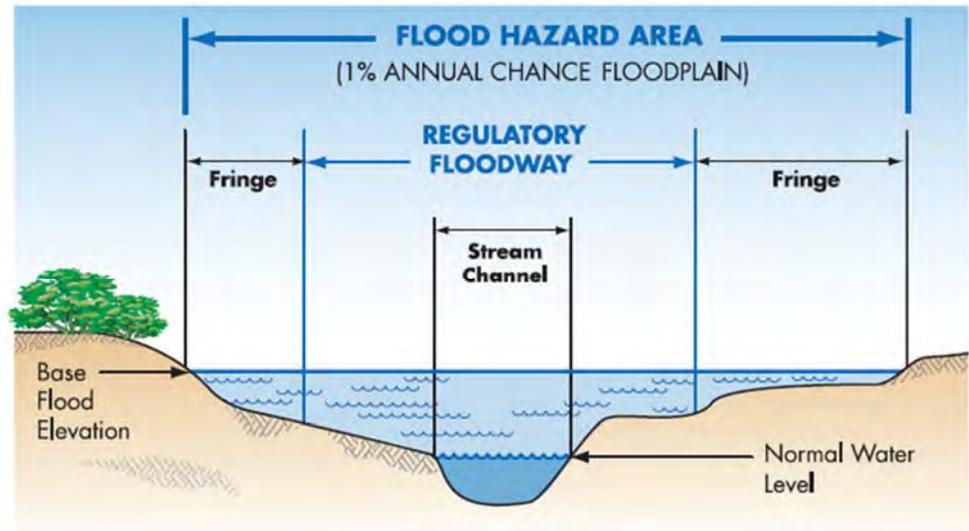
<https://law.justia.com/codes/indiana/2012/title-8/article1-5/chapter5/>

Municipal Sewer Works IC 36-9-23:

<https://law.justia.com/codes/indiana/2017/title-36/article-9/chapter-23/>

Drainage Law IC 36-9-27-114:

<https://law.justia.com/codes/indiana/2017/title-36/article-9/chapter-27/section-36-9-27-114/>



Source: IDNR https://www.in.gov/dnr/water/files/wa-FP_Management_Indiana_QuickGuide.pdf

Within the floodplain, the stream channel will, over time, meander from side to side. This movement of sediment through erosion and deposition are part of the stream’s natural process. Where the stream has enough space within the floodplain to move, stream meandering is not a problem. However, if buildings, roads, and utilities restrict the stream’s movement then erosion can cause problems. Development in the stream meander zone should be prohibited.

Natural and Beneficial Floodplain Function

In its natural, undeveloped state, the floodplain provides important economic, social, and environmental value often overlooked when local land-use decisions are made. The following lists the benefits of naturally functioning floodplains:

1. **Water Resources** – Provides natural flood and erosion control, filter harmful sediments and pollutants carried over land by stormwater runoff, and promote infiltration and groundwater recharge.
2. **Biological Resources** – Maintains biodiversity and biological productivity, high-quality wetlands, and provide critical fish and wildlife habitats.
3. **Societal Resources** – Provides open space, areas for active and passive recreation, rich alluvial soils for productive agricultural production, and floodplains often contain historic and archaeological sites from early settlements.

The best means to maintain the natural and beneficial function of floodplains is to avoid land alterations and development all together; however, where avoidance is not practical, the impact can be minimized through compensatory flood storage requirements.

Floods, Flooding and Climate Change

According to the Federal Emergency Management Agency (FEMA), floods are the most common and most-costly natural hazard, in terms of loss of life and property, then all other natural hazards combined. Ninety percent of all-natural disasters nationwide are flood-related. There are two types of floods: flash floods and riverine floods. A flash flood occurs when an intense and heavy rainfall causes a stream and/or low-lying area to become quickly inundated with water. Riverine flooding is when excessive runoff from rainfall or melting snow, over a longer duration of multiple days, causes a stream to overtop its banks and extend into the adjacent floodplain. Flash floods and riverine floods are a regular occurrence in Indiana, with both resulting in food-related losses. Floodplain management is essential to reduce loss of life and property from floods.

The most devastating flood, and the flood of record, for much of Indiana is the flood of March 1913. It devastated much of the state by leaving thousands homeless and damaging critical infrastructure. A flood that big hasn't happened since, but frequent and intense storm events have become more common as the climate changes. Researchers at the Indiana Climate Change Impact Assessment (IN CCIA) predict that, by 2050, total annual rainfall will increase eight percent statewide compared to the historical average. That rainfall is not expected to be evenly distributed throughout the year; 25 percent of the increase is expected to happen in winter and 20 percent in the spring. Unfortunately, this is when much of the state is prone to flooding because soils are frozen, snow is melting rapidly, and water bodies are already full.

Indiana Climate Change
Impact Assessment:
<https://ag.purdue.edu/indianaclimate/>

Floodplain Management Programs

FEMA has established minimum floodplain management standards for communities participating in the National Flood Insurance Program (NFIP). These include adopting higher standards and protecting the natural and beneficial function of the floodplain-- leading to safer, stronger, more resilient communities.

1. **National Flood Insurance Program (NFIP)** - The NFIP was created in 1968 as a voluntary and incentive-based FEMA program to help local governments reduce flooding problems. Participation in the NFIP requires communities to adopt and enforce floodplain regulations and incorporate all applicable state and federal requirements. There are three branches to the NFIP.
 - a) **Mapping** – A Flood Insurance Rate Map (FIRM) defines the boundary of the special flood hazard area including the floodway, 100-year, and 500-year boundary for studied streams and Zone A or approximate zones for unstudied streams. The FIRM is based on flood elevations found in the accompanying Flood Insurance Study (FIS). FIRMs are used to regulate development and rate flood insurance policies.
 - b) **Insurance** – Flood insurance is available to communities that participate and are in good standing in the NFIP. Every building in a participating community is eligible to carry flood insurance regardless of physical proximity to a floodplain; however, buildings in the floodplain, using federally-backed grants or loans, are required to have flood insurance. Flood insurance rates are in the process of changing from being subsidized by the NFIP to rates that are based on the actual risk of flooding exposure.
 - c) **Regulations** – Floodplain regulations are used to ensure that development in the floodplain is protected from flood levels shown on the FIRM—and that further development in the floodplain does not make the flood hazard worse. The Department of Natural Resources (IDNR) has developed a Model Flood Hazard Ordinance that communities can adopt to meet the state and federal requirements.

Indiana Model Flood Ordinance:

<https://www.in.gov/dnr/water/files/IndianaModelOrdinance.pdf>

The NFIP is founded on an agreement between the federal, state and participating local governments. The local government has the statutory authority to enact and enforce development regulations, including floodplain regulations, required for participation in the NFIP. The local floodplain regulations must meet those of the state as well as the NFIP. In Indiana, the state coordinating agency for the NFIP is the IDNR. The role at the state level includes ensuring that communities have the legal authorities necessary to adopt and enforce floodplain regulations and establishing minimum state regulatory requirements consistent with the NFIP. At the federal level, the NFIP program is administered through ten FEMA Regional Offices and Mitigation Divisions. Indiana falls under FEMA Region 5. The regional offices are responsible for assisting the state NFIP coordinating agencies, assisting with community compliance, and providing technical assistance.

2. **Community Rating System (CRS)** – The CRS is a voluntary, incentive program that recognizes and encourages communities to go above and beyond the minimum NFIP requirements. As a result, flood insurance premiums in the participating communities are discounted to reflect reduced flood risks. The goals of the CRS are to: reduce flood damage to insurable property; strengthen and support the insurance aspect of the NFIP; and encourage a comprehensive approach to floodplain management. There are 32 cities, towns and counties in Indiana that participate in the CRS program.
3. **Local Floodplain Administration** – Each NFIP community has a Floodplain Administrator, designated by the highest elected official, who is responsible for compliance with the NFIP (and CRS if applicable). The IDNR has prepared a Floodplain Management Quick Guide that provides information on understanding flood risk, state and federal floodplain regulations, permit procedures, and flood mitigation.

Community Rating System:

https://www.fema.gov/media-library-data/1476294162726-4795edc7fe5cde0c997bc4389d1265bd/CRS_List_of_Communities_10_01_2016.pdf

Floodplain Management Quick Guide:

https://www.in.gov/dnr/water/files/wa-FP_Management_Indiana_QuickGuide.pdf

Another resource available from the IDNR is the Indiana Floodplain Information Portal (INFIP). This online interactive mapping application provides important floodplain information to determine flood risk to minimize flood damages. The INFIP utilizes FEMA published floodplain data and other IDNR approved resources to provide the most comprehensive coverage of floodplain information in the State of Indiana.

STORMWATER AND FLOODPLAIN MANAGEMENT TOOLS AND SOLUTIONS FOR PLANNERS

Land use planners uniquely positioned to integrate health and water issues into their plans, codes, regulations and development review process. The following lists opportunities for integration:

1. Long-range Planning, Visioning and Goal Setting

- **Comprehensive Plan** - The Comprehensive Plan defines the community's vision and goals for future growth and development. This plan should have a chapter dedicated to natural resources that includes a discussion on stormwater and floodplain management. Within this chapter is an opportunity to promote the use of green infrastructure to improve water quality, reduce nuisance flooding and recharge the aquifer. If there are rivers and streams in the community, the land use map should show the flood boundary and how future development and any land alteration will be minimized to maintain the natural and beneficial function of the floodplain.
- **Parks Master Plan** - Low-lying floodplains and river corridors are ideal for flood resilient uses like parks and greenways. Parks Master Plans set long-term goals and identify implementation projects to improve the functionality of these spaces. Capturing and treating stormwater using low maintenance green infrastructure practices as well as preserving the natural and beneficial function of the floodplain should be emphasized in these plans.

- **Stormwater Master Plan** - A Stormwater Master Plan is a comprehensive planning document that provides an assessment of a community's stormwater infrastructure, waterbodies and drainage areas. This plan identifies and finds solutions to existing and anticipated water quality, drainage and flooding problems. Recommendations from the master planning process should include both structural and non-structural solutions that meet social, economic and environmental metrics.
- **Flood Mitigation Plan** - The purpose of a Flood Mitigation Plan is to identify flood hazards, determine the extent to which they affect the community and identify mitigation projects to reduce the social, physical, and economic impact of hazards.
- **Flood Resilience Plan** - A Flood Resilience Plan identifies measures that can be taken to reduce a community's vulnerability to damage from flooding and to support recovery after an extreme flood event. Critical to this plan is the preparation of a map that defines flood risk areas based on flood zones, vulnerable developed areas and open space. Within the various flood risk areas, structural and non-structural strategies are identified. These plans focus on changing mindsets and challenging local leaders, decision-makers, and stakeholders to think differently about how their community should grow and develop while at the same time become resilient to the floods that have previously devastated them.
- **Watershed Management Plan** - Watershed Management Plans are defined by drainage area. Unique to this type of plan is that drainage areas are defined by topography and not municipal boundaries. These plans create an opportunity for upstream and downstream communities to work together to identify best management practices to protect and improve water quality, drainage and flooding problems for an entire drainage area.

2. Standards, Policies and Incentives

- **Zoning Ordinance** - The Zoning Ordinance determines where land uses will occur. This ordinance is the policy vehicle to realize the community vision from the Comprehensive Plan. Communities with waterbodies should map the flood boundary and establish policies to minimize encroachment of development and preserve the floodplain as critical flood storage open space.

- **Subdivision Control Ordinance** - The Subdivision Control Ordinance determine how land uses will be developed. Specifically, it regulates lot size, setbacks, landscaping, street design, utilities and drainage. Stormwater requirements, including the use of green infrastructure to capture and treat runoff, may be integrated in the subdivision control ordinance or as a standalone stormwater ordinance.
- **Flood Hazard Ordinance (or Overlay)** - The purpose of the Flood Hazard Ordinance is to minimize flood-related losses through restricting or prohibiting uses in the regulatory floodplain. These regulations may be integrated into the zoning ordinance as an overlay zone or may be a standalone ordinance. It is necessary to preserve the natural storage within the floodplain because loss of floodplain storage on one property could lead to increases in flood depths and frequency of flooding on other properties. Floodplain storage is lost when a portion of the floodplain is filled or occupied with a structure. Where development or land alteration in the floodplain is unavoidable, regulations should be in place to require compensatory storage to account for the loss in flood storage.
- **Stormwater Ordinance and Technical Standards** - In response to the Clean Water Act NPDES Phase II Storm Water Quality Management Program (SWQMP), many counties and communities are required to develop and adopt regulatory mechanisms for prohibiting illicit discharges, requiring minimization of runoff-induced erosion and sedimentation during construction activities, and requiring installation of post-construction runoff treatment facilities.
- **Stormwater Utility Credit Manual** - A stormwater utility is a reliable and dedicated funding source to address the increasing stormwater regulatory requirements and ongoing stormwater infrastructure maintenance and improvements. Critical to the implementation and building support for this funding mechanism is a credit manual. A credit manual provides the necessary information for non-residential property owners to take advantage of fee credits in recognition of efforts that would reduce the impacts on stormwater quality and quantity.

- **Stream Corridor or Fluvial Erosion Hazard Ordinance (or Overlay)** - All streams move over time as part of their natural process. When utilities, roads or structures are located too close to the stream they become susceptible and vulnerable to flooding and erosion. The stream corridor or fluvial erosion hazard area should be defined for each waterway and development within this zone should be prohibited. This regulation may be implemented as a standalone ordinance or integrated into the zoning ordinance as an overlay zone.
- **Relocation, Buyouts or Floodproofing Structures** - Relocation and buyouts (or voluntary acquisition) physically removes vulnerable flood prone structures from the floodplain. Not only does this greatly reduce the flood risk to the building and contents but it opens more area in the floodplain for flood storage and conveyance of flood waters. Floodproofing flood prone structures allows buildings to stay in the floodplain but reduces their risk of flood related damage. Relocation, buyouts and floodproofing are all acceptable mitigation practices to minimize flood losses.

3. Funding Agencies and Technical Assistance

- **Indiana Department of Natural Resources Division of Water** - Floodplain information is available online using the Flood Portal, Model Flood Hazard Ordinance and Floodplain Management Quick Guide at: www.in.gov/dnr/water/
- **Indiana Department of Homeland Security Mitigation Division** - Funding available to prepare mitigation plans and implementation of mitigation projects. More information can be found online at: www.in.gov/dhs/mitigation.htm
- **Indiana Association of Floodplain and Stormwater Managers** - The Indiana Association for Floodplain and Stormwater Management (INAFSM) is an organization of federal, state, and local agency staff, engineers, consultants, planners, elected officials, academia, students, and floodplain residents interested in and responsible for floodplain and stormwater management in the State of Indiana. More information available at www.inafsm.net

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