
PREEMPTION AND UTILITY DECLINATION

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INDIANA PLANNING STATUTES: IC 36-7-4

LOCAL LAND USE PLANNING POLICY AND ZONING REGULATIONS

OVERVIEW:

- Plan Commission established by ordinance.
- Board of Zoning Appeals established by ordinance.
- Planning Department/Administration established.
- Land Use Policy adopted by resolution.
- Zoning Regulations adopted by ordinance.

INDIANA PLANNING STATUTES: IC 36-7-4

200 SERIES – ESTABLISHMENT AND MEMBERSHIP OF THE PLAN COMMISSION

- Generally 7-9 members.
 - More in some instances; odd number in total.
- A majority are citizen members.
 - No more than a simple majority of these from the same political party.
 - May not hold elected office or other appointed role (except BZA).
 - Must be a resident or property owner in the jurisdiction.
- Other members by virtue of:
 - Office: member of legislative body; member of fiscal body; surveyor.
 - Position: agricultural extension educator; parks board; public works board; city engineer.
- Fair/equitable representation of interests in the jurisdiction.

INDIANA PLANNING STATUTES: IC 36-7-4

200 SERIES – ESTABLISHMENT AND MEMBERSHIP OF THE PLAN COMMISSION

- Appointment terms:
 - Citizen members:
 - 4 years; staggered.
 - Other members:
 - Co-terminus with elected office or appointed Board membership. May be considered by annual appointment (not mandated).
 - Eligible for re-appointment.
- Rules: How the process gets done.

INDIANA PLANNING STATUTES: IC 36-7-4 500 SERIES – COMPREHENSIVE PLAN

Land Use Policy

- Prerequisite for land use regulations/zoning under the 600 series.

INDIANA PLANNING STATUTES: IC 36-7-4

500 SERIES – COMPREHENSIVE PLAN

[IC 36-7-4-501]

- Approved by PC resolution; certified to and approved by legislative body.
- For the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of development.
- The plan commission shall prepare the comprehensive plan.
 - May use a consultant.
 - The plan commission is integral/controlling in preparation and process toward adoption.
- Subsequent amendments/revisions follow same adoption procedure.

INDIANA PLANNING STATUTES: IC 36-7-4 600 SERIES – ZONING ORDINANCE

[IC 36-7-4-601]

- ...no zoning ordinance may be adopted until a comprehensive plan has been approved...(under the 500 Series)

“Shall” provisions:

- For the purposes of:
 - Securing adequate light, air, 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

INDIANA PLANNING STATUTES: IC 36-7-4 600 SERIES – ZONING ORDINANCE

[IC 36-7-4-601]

“May” provisions

- Establish districts
- Regulations for each district
- Development plan
- Planned Unit Development (PUD)
- Establish where subdivision of land may occur

INDIANA PLANNING STATUTES: IC 36-7-4 600 SERIES – ZONING ORDINANCE

[IC 36-7-4-605 through 609]

- Plan Commission certification to the legislative body of recommendation: favorable; unfavorable, no recommendation
- Legislative adoption by ordinance.
- The technicalities of the adoption process.
- Subsequent changes to the zoning text and map are accomplished through the same process that implemented the initial text and map.

COMMENT: Ordinance maintenance: Track problem regulations during the year; prepare annual update to address them.

INDIANA PLANNING STATUTES: IC 36-7-4

900 SERIES – BOARD OF ZONING APPEALS (A QUASI-JUDICIAL BODY)

[IC 36-7-4-901]

- Established by the legislative body.

[IC 36-7-4-902]

- Number of members (5) and appointing authority for members.
 - Advisory:
 - 3 **citizen** members appointed by the executive of the municipality/county
 - 1 must be a member of the plan commission; 2 must not
 - 1 **citizen** member appointed by the fiscal body; must not be a member of the plan commission
 - 1 member appointed by the plan commission from its membership
 - Either the county extension educator
 - Or another **citizen** member

INDIANA PLANNING STATUTES: IC 36-7-4 900 SERIES – BOARD OF ZONING APPEALS

- Membership term:
 - 4 years; staggered.
 - Eligible for re-appointment.
- Membership restrictions:
 - may not hold elected office or any other appointed office.
 - (except plan commission)
- Membership requirement, must:
 - be a resident of the jurisdiction or
 - owner of real property in the jurisdiction

INDIANA PLANNING STATUTES: IC 36-7-4 900 SERIES – BOARD OF ZONING APPEALS

[IC 36-7-4-9|8.1]

- Appeal of “order, requirement, decision or determination” by “administrative official, hearing officer, or staff member”
 - Considered on merits
 - No statutory criteria like for variance of use/development standards
 - Rules for the process!

[IC 36-7-4-9|8.2]

- Special exceptions; special uses; contingent uses; conditional uses
 - No statutory criteria like for variance of use/development standards
 - Review criteria/considerations written into the zoning ordinance
 - Reasonable conditions or commitments
 - Record them

INDIANA PLANNING STATUTES: IC 36-7-4 900 SERIES – BOARD OF ZONING APPEALS

[IC 36-7-4-9|8.3 & 9|8.4 & 9|8.5]

- Variance of Use; Variance of Development Standards
 - Written determinations (findings of fact), for both:
 - 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**;
 - Written determinations, additional for Variance of Use
 - 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 **unnecessary hardship** (define this term) if applied to the property for which the variance is sought; and
 - the approval does not **interfere substantially** with the comprehensive plan.
- Written Determinations, additional for Variance of Development Standards
 - the strict application of the terms of the zoning ordinance will result in **practical difficulties** (define this term) in the use of the property
- Reasonable Conditions, Zoning Commitments: Record them.

INDIANA PLANNING STATUTES: IC 36-7-4

REGULATORY OPTIONS

- Policy first, then regulation.
 - Does adopted land use policy exist to address the proposed land use?
- Designated base zoning district
 - A “single-use” district for (_____name the new land use_____) land uses
- Designated overlay zoning district for application to designated base zoning district(s)
- Approval of special use, special exception, contingent use, conditional use
 - Zoning ordinance should include criteria to consider when deliberating a use application
 - To the extent possible, make the criteria objective.
 - No statutory guidance regarding criteria

INDIANA PLANNING STATUTES: IC 36-7-4

REGULATORY OPTIONS

- Does employing a legislative approach (rezone/overlay) **and** a more administrative approach (special exception) make sense? Or is it overkill?
 - Rezone/overlay ordinance approves the use(s) for the designated real estate and is “at will” by the legislative body (they can approve it or not).
 - Special exception land use is anticipated to be approved IF all development standards are met.
 - How subjective are the standards? They should lean toward objective.
 - Non-traditional use standards/zoning requirements and timing for same: how to handle these within an approval action if the plan commission plays no role in approving them?
 - Recording of leases (memorandum of lease)
 - Road use agreement
 - Development agreement

INDIANA PLANNING STATUTES: IC 36-7-4

REGULATORY OPTIONS

- Public hearing required for both (typically)
 - Speakers under oath?
 - Request sources for speaker comments.
 - Should be reliable rather than notorious.
 - Helps to separate emotion from fact about the proposed use.

INDIANA PLANNING STATUTES: IC 36-7-4

REGULATORY OPTIONS

Setting permitted uses and design standards

- Research available information that includes both industry and regulatory **vett**ed sources
- **Consider** what other communities across the state are doing
 - Do NOT cut and paste...one size does not fit all
- Must have the capacity to administer/enforce the regulations

INDIANA PLANNING STATUTES: IC 36-7-4

REGULATORY OPTIONS

Establishing a use when it is not specifically permitted by ordinance

- Zoning ordinance text amendment
- Use variance
- Administrative determination (Is it similar to a listed permitted use(s)?)

INDIANA PLANNING STATUTES: IC 36-7-4

REGULATORY OPTIONS

Prohibiting land uses

- Not prohibited under IC
 - Zoning ordinance: “any use not listed or not listed as permitted is prohibited”
- Supported by underlying land use policy?
- Caution about state pre-emption for emerging land uses with potentially high community impact
 - Lead the process thoughtfully rather than respond to it under pressure
 - Compromise may be the name of the game in order to protect local interests while allowing (limited?) establishment of the use in your community.