INDIANA CITIZEN PLANNER’S GUIDE

Part 3: Avoiding Pitfalls
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INDIANA CITIZEN PLANNER’S GUIDE
PART 3: AVOIDING PITFALLS

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

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Simply put, avoiding pitfalls means being proactive about planning. Too often, plan commissions and boards of zoning appeals find themselves so caught up in their caseloads that they act 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 section 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

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, making it less likely you will be caught unaware and contributing toward a better product. 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 do to improve communication and coordination are:

- 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.

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. 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:

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

A) **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, and generally 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?

B) **Give Everyone an Opportunity to be Heard:** This is the major and most sensitive part of due process. Space, time and procedure must be adequate so local citizens feel they have had their say. Beware of limitations on how many people can speak at a meeting, of arbitrary time limits for speakers, of requiring people to sign up to speak before the meeting, and of not fitting everyone in the room. Listen to the weak voice as well as the loud.

C) **Disclose Everything (and Avoid "Ex-Parte Contact"):** Interested citizens should have an opportunity to see, hear and examine all statements and evidence considered by the plan commission (or BZA). However, that does not mean they should have unlimited access to planning officials. Generally, you should refuse to meet privately
or talk privately with anyone about a case before you. Ex-parte contact is strictly illegal in Indiana for BZA members and, although not illegal, it is generally accepted as a risk for plan commissioners. If contact can't be avoided, disclose it at the public meeting. For more information on ex-parte contact, see the INDIANA CITIZEN PLANNER’S GUIDE, Part 6: Ethics.

D) **Avoid Conflicts of Interest or their Perception:** Staff, plan commission and board members should not accept gifts, food, or travel costs from applicants, interested parties or their representatives. Even if it is innocent, it looks bad to others. You can use your rules of procedure to restrict these things. In any case, state law prohibits direct financial gain. Indiana Code 35-44-1-3 says that a public servant who knowingly or intentionally has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony. For more information on conflict of interest, see the INDIANA CITIZEN PLANNER’S GUIDE, Part 6: Ethics.

E) **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. Your rules of procedure should limit how often and/or how long a continuance may be granted. 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.

F) **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 (i.e., subdivisions) 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 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.

G) **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 it remains accessible.

H) **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 awhile, 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 the INDIANA CITIZEN PLANNER’S GUIDE, Part 5: Rules of Procedure.

I) **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 generally benefit your community and your citizens in the long run. This should not be confused with a “majority rules” attitude.

J) **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 sleaziest
developer. One California court found evidence that a developer was so unliked 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 sleazy
developer "out" before he ever gets to the plate. Due process is all about being fair to
everyone involved in the planning process -- developer, citizens, etc.

K) **Be Reasonable and Keep it in Context:** Plan commission and BZA are not
judges hearing a murder trial. Don't allow attorneys for either side to bully, interrupt or
threaten you or people who are speaking. Remember that the plan commission's job is
to receive information about a proposal and make the best judgement you can. Use not
only the evidence you have received, but also the plans and policies that have already
been put in place to help you.

L) **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. Rely on the
applicable criteria and you will make the appropriate decision. Don't get lazy though --
review the criteria anew for each case.

**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. Here are some basic hints for making the most of your time before the public hearing:

- Make sure that you only accept complete applications for docketing. Accepting incomplete
  applications is a disservice to everyone. Consider using an application packet that contains a
  checklist as a way to make it clearer what is required and what has been submitted. Establish
  a filing requirement for the petitioner to address required criteria in writing, as part of the
  application (this will ease the administrative burden associated with adopting findings of fact).
- Take advantage of review by multiple departments and organizations, preferably acting as a
  formal review committee. Get comments in writing, and share them with the applicant before
  the public hearing or public meeting, giving them time to respond.
- Visit the site on your own, but avoid talking with the applicant (ex-parte contact).
- Ask the staff to include a recommendation as part of their written staff report.
- Review the staff report prior to the public hearing/public meeting.

**7 Habits for Highly Effective Application Review:**
1. Start with an open mind.
2. Read the staff report at least once before the meeting (ASAP is best), and
   note any questions or concerns.
3. Unfold and review any maps or drawings.
4. Visit the site if at all possible.
5. Trust staff's review unless you have a good reason not to.
6. Rely on staff to do research for you.
7. Review the request with the applicable criteria in mind.
A Word about Public Hearings….
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, 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 and the hearing should not be a forum for a public debate. If you do it right, you can also use a public hearing for education and to gain support for the plan. If you desire dialogue, discussion or negotiation, schedule a public meeting first.

Stay in Control of the Hearing

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.) -- warn them about any continuances -- including 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 ("that ends the applicant's presentation, now he can only respond to questions") 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).
• 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 at the meeting
• Have a public discussion -- don't pass notes or whisper
• Don't use planning slang 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
• Be willing to make or second a motion

The staff's role at the meeting:
• Make effective presentations that include a recommendation
• 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 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.
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 that too hot!
- Post the criteria on the walls or put them on handouts, so everyone knows what the considerations are.
- 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 discussed below for rezonings, subdivision plats, plat vacations, variances, special exceptions and administrative appeals.

Rezonings -- In considering zoning ordinances or petitions for zone map change, 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 that the plan commission make the public aware of the procedures and the options available to the plan commission prior to the start of the hearing. For more information on zoning, see the INDIANA CITIZEN PLANNER’S GUIDE, Part 8: Zoning Ordinances.

Subdivisions -- IC 36-7-4-702 expects review to be objective, saying 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 the INDIANA CITIZEN PLANNER’S GUIDE, Part 9: Subdivision Control Ordinances.

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 them once you've determined what they are!
**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.

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** -- IC 36-7-4-918.4 for Use Variances and IC 36-7-4-918.5 for Variances from Development Standards say that the BZA shall approve or deny variances based on the listed criteria, and that the board may impose reasonable conditions as a part of its approval. Review is somewhat subjective. For more information on variances, see the *INDIANA CITIZEN PLANNER'S GUIDE, Part 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 grant will not be injurious to the public health, safety, morals, and general welfare of the community;
- the use or 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 grant does not interfere substantially with the comprehensive plan.

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

- the grant will not be injurious to the public health, safety, morals, and general welfare of the community;
- the use or 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** -- The BZA has the powers specified in the zoning ordinance to approve or deny special exceptions, special uses, contingent uses, or conditional uses. These decisions must be based upon the terms and conditions set forth in the zoning ordinance (IC 36-7-4-918.2).

**Appeals** -- Under appeals jurisdiction, the BZA is basically functioning as the zoning administrator to determine if the terms of the zoning ordinance are being properly interpreted and applied (IC 36-7-4-918.1).

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 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 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).

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**Are your planning activities a charade? Do your meetings have meaning?** Take this quiz about your meetings to find out if you are missing the point:

1. Are you so comfortable that you have become apathetic?  □ Yes  □ No
2. Has the hectic pace caused you to lose sight of your purpose?  □ Yes  □ No
3. Are you overwhelmed by choices and without direction?  □ Yes   □ No
4. Have you gotten too big for your britches?  □ Yes  □ No
5. Does your leadership inspire you?  □ Yes  □ No
6. Are you afraid to say something that might rock the boat?  □ Yes  □ No
7. Are you just plain tired?  □ Yes  □ No

"Yes" answers mean your planning activities, including meetings, may not be working. The public's perceptions about plan commission and BZA are based largely on their impressions of the public hearing.
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 either or both sides of a planning issue, involved parties, including plan commission or BZA, 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 may be challenged in court.

One reason for planning requests to be emotionally charged is the public’s basic misunderstanding of planning and zoning issues and procedures, and the fear associated with the unknown impacts of a proposed development. In all public hearings, but 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 in making a decision. This can be done one or more ways:

- The president/chairman can explain at the beginning of the meeting
- Staff can make this information part of their presentation
- Post large signs on the wall (e.g., list of criteria for granting a variance)
- Provide those in attendance with hand-outs, in addition to just an agenda
- Include the information in the legal notification sent to surrounding property owners

In making its determination or final action, plan commission and board members are reminded that their position is one of a public trust and, as such, you must stay impartial in your deliberations and make decisions based upon the facts.

Beware of Takings
The idea of “Takings” is a constitutional issue that pops up in the local planning process. The ability of each plan commission or board to request “donations” from a developer in terms of cash contributions, dedication of lands for public uses, or the installation or improvement of public infrastructure will vary from jurisdiction to jurisdiction. The jurisdictional difference is based upon each community’s adopted comprehensive plan content, zoning ordinance and subdivision regulations.

Basic Principals
The basic principals 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 a commonly made and commonly agreed to by the developer who recognizes the dedications as a “cost of business” and realized 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 his zoning approval because he 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.

**Impact Fees**
Impact Fees provide a jurisdiction with a mechanism to assess development projects to pay a portion of the costs associated with that development project in terms of municipal services. In order to legally impose impact fees, a major effort in terms of comprehensive and capital improvement planning is required.

Indiana Code establishes certain requirements for the imposition of impact fees. The following are minimum requirements for establishing impact fees pursuant to IC 37-7-4-1300 - 1342:
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:
   a. Description of existing infrastructure in zone;
   b. Determination of current level of service;
   c. Establishment of a community level of service;
   d. Estimate of development in the zone over next 10 years;
   e. Estimate of cost for infrastructure to support a community level of service of projected development; and,
   f. Description of sources of funds used to pay for infrastructure during past 5 years.

Once the foundation outlined above is established for the adoption of an Impact Fee ordinance, the 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." (IC 36-7-4-1313)

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

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 specified the circumstances under which a written commitment may be made, modified or terminated; and,
• subdivision control ordinance, which require the platting of the real estate.

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 owner may be entitled to a credit for any contributions against the Impact Fee, or that the cost of complying with a condition may not exceed the impact fee that could have been imposed.

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 the document was first developed. If your community doesn’t address these 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. A good example of this is cell towers -- when they first appeared, many communities were forced to make decisions about them before they had time to change their comprehensive plan and zoning ordinance. 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. Secondly, a good ordinance or plan is 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...”. Finally, you can be honest with the applicant and ask for voluntary written commitments that reflect what will be in those amendments. Many applicants will agree to do this voluntarily in order to generate good will with local officials.

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 easy way to avoid pitfalls is to utilize and maintain an up-to-date comprehensive plan that
clearly outlines the goals and objectives of the community. 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 the INDIANA CITIZEN PLANNER’S GUIDE, Part 7: Comprehensive Plans.

**Zoning Ordinances**
The basic rational 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 the INDIANA CITIZEN PLANNER’S GUIDE, Part 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 their standards. For more information on subdivision control ordinances, see the INDIANA CITIZEN PLANNER’S GUIDE, Part 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 the INDIANA CITIZEN PLANNER’S GUIDE, Part 5: Rules of Procedure.

**Use Conditions and Written Commitments**
The use of conditions should theoretically help make a decision better, but conditions often backfire, causing plan commissions and BZAs problems. Because the only record of conditions may be in the planning office, future property owners may not be aware of the conditions. There are two other major concerns associated with the use of conditions. The first is that if conditions are not clear or detailed, it can cause major frustration for staff, neighbors, and the developer, particularly as time passes and no one remembers what the original intent was. Another problem with conditions is when they are not valid.

| 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. |

The following addresses the validity of conditions and written commitments:

**Rezonings** -- Indiana Code doesn't mention conditions for rezonings, however, IC 36-7-4-615 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 PUD proposal. The property owner enters 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 approvals and do not affect the validity of any covenant or easement created in accordance with the law. While written commitments are voluntary on the part of the property owner, if the owner does not volunteer the commitments seen as necessary by the commission, they do not have to approve the application.

**Variances** -- IC 36-7-4-918.4 for Use Variances and IC 36-7-4-918.5 for Variances from Development Standards says that 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 not condition the grant on who the petitioner is. Written commitments can also be employed for variances.

**Subdivisions -- IC 36-7-4-702** lists the following as acceptable conditions of primary approval:
- 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.

It is also possible to ask the applicant to make conditions part of the deed restrictions or covenants for subdivision. Remember though, the City or County is not a party to these, so you may not enforce them; enforcement is up to the developer/homeowner’s association.

*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.*

**Avoid Relying on PUDs**

Many Indiana communities rely on 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.) who wishes to know what is going on with a particular piece of property. It is possible to have a PUD ordinance with real performance standards in it, but most Indiana communities don’t use them that way. PUDs are a good tool when used appropriately to further goals such as 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 the BZA allows a use not normally allowed in a district or changes a standard in that district, which could otherwise be resolved with a rezoning request. If the BZA follows the required criteria, this should not happen.

**Keep Good Records**

One of the biggest problems 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 a minimum proof of legal notice, application forms, all related correspondence, minutes, findings of fact (if applicable). 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 is completed. 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 the request, a record of public testimony, a summary of commission or board discussion, a record of motions and the final outcome, with the vote.

**Findings of Fact** -- No 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. This will give a "heads up" to anyone checking on the property that there is more important information to be researched. It is also important to keep the jurisdiction's thoroughfare map up-to-date to reflect any changes in 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 these local government 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 because of space limitations. Make sure you check with the State of Indiana's Public Access Counselor regarding the Indiana Access to Public Records Act (which governs records of public agencies), before you consider destroying any paper records. If you are allowed to destroy paper copies, 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 a computer software program that will keep planning staff on top of these milestones.