INDIANA
CITIZEN PLANNER’S GUIDE

Part 8: Zoning Ordinance
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Other parts of the Indiana Citizen Planner’s Guide can be downloaded at
www.indianaplaning.org/citizen.htm

This booklet is one in a series of publications of the Indiana Planning Association to be used as training materials for citizen planners: plan commission members, board of zoning appeals members, neighborhood organizations, and citizen committees. These materials are intended to supplement publications such as Planning Made Easy and The Citizen’s Guide to Planning. IPA’s materials contain information specific to Indiana. Users of these guides are strongly encouraged to read other, more general books on planning and zoning.

The information contained in this booklet is intended for informational purposes only and is not to be considered legal advice.
A zoning ordinance divides a jurisdiction of a local government into districts or zones and regulates land-use activities, the intensity or density of such uses, the bulk of buildings on the land, parking, and other aspects of land use. The ordinance consists of a text and zoning map, both of which may be amended by the local legislative body.

Historical Perspective

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.

...getting ready is the secret of success.
- Henry Ford
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 (SZEA) 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 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.

Early zoning ordinances set forth lists of permitted and prohibited uses. Usually the uses permitted were set forth in pyramid fashion; this is, a use allowed in a C-1 commercial zone is also allowed in a C-2 zone, and those allowed in a C-2 are allowed in C-3 and so forth. Many zoning ordinances were pyramidal, or cumulative, even between categories: residential uses were allowed in commercial districts, while both residential and commercial uses were allowed in industrial districts. 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. In recent years local governments have tried innovative approaches to zoning, with varying degrees of success. Some of these approaches are discussed in this Guide.

**Purposes of Zoning**

A zoning ordinance is one of several tools used to implement comprehensive plans. 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 guide for future development; it sets forth the community’s vision and its statement of land use policy.
The zoning ordinance is a regulation designed to make the plan a reality. Plan commission members and/or staff should be able to explain the purpose of each zoning regulation in relation to its role in implementing the comprehensive plan.

Indiana Code lists the following purposes for local zoning ordinances:
- 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;
- Otherwise accomplishing the purposes of this chapter [Chapter 4 of the Indiana Code, Local Planning and Zoning].

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

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.

Local zoning ordinances should be consistent with the purposes stated in Indiana code, and most important, the ordinance is an implementation tool; it is not a plan.
Zoning Ordinance Contents

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

The zoning maps should be as clear as possible, so that staff and citizens can easily determine the zoning classification for a particular piece of property. Some communities draw the official zoning map on auditor’s plat maps, so that each property is easily identified. If a base map other than a plat map is used, it is a good idea to use clear features, such as streets, clearly defined property lines, or railroad tracks, as zoning boundaries. The drawback to using plat books is that there are large numbers of maps for each community, and overall patterns of zoning are difficult to see. In these cases it is helpful to have an unofficial overall community map for display and reference, in addition to the official zoning maps in the plat books. A small map, 8.5” x 11” or 11” x 17” is useful as a quick reference for the public, board members, and elected officials.

Maps generally show each district as a different color or hatched pattern. If color is used, the following color scheme is generally used and accepted by planners. Yellow to orange should be used for residential districts. The least dense residential should be the lightest yellow, and the most dense should approach orange. Commercial districts are generally a variety of reds. The most intense commercial district should be the darkest red. Industrial districts are generally purple or grey. Recreational and agricultural districts are greens.

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. These can be printed at various scales, and maps of specific selected areas can be printed.

Each community’s zoning ordinance text is different, as it should be. While communities may have similarities, no two are exactly alike. 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.

Quick Quiz: Think about the zoning map in your community. Is it easily accessible? Is it easy to read and understand?
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.
Definitions of building height, intersection visibility triangles, and how
sign area is measured all lend themselves to illustrations.

Preparing an annotated copy of the ordinance, with explanatory material,
can be helpful for the public. Annotated versions for different districts can
also be prepared. Maybe all the information dealing with residential districts
is in one booklet, and all the information about commercial districts is in a
separate booklet. 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.

The actual zoning districts or classifications assigned to each parcel 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 like this:

<table>
<thead>
<tr>
<th>Abbrev</th>
<th>District Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-1</td>
<td>Agriculture District</td>
</tr>
<tr>
<td>R-S</td>
<td>Single-Family Residential Suburban District</td>
</tr>
<tr>
<td>R-1</td>
<td>Single-Family Residential District</td>
</tr>
<tr>
<td>R-2</td>
<td>Two-Family Residential District</td>
</tr>
<tr>
<td>R-2M</td>
<td>Medium Density Residential District</td>
</tr>
<tr>
<td>R-3</td>
<td>Multi-Family Residential District</td>
</tr>
<tr>
<td>R-3H</td>
<td>High Density Residential District</td>
</tr>
<tr>
<td>R-MHP</td>
<td>Mobile Home Park District</td>
</tr>
<tr>
<td>C-1</td>
<td>Neighborhood Commercial District</td>
</tr>
<tr>
<td>C-2</td>
<td>Community Commercial District</td>
</tr>
<tr>
<td>C-3</td>
<td>Regional Commercial District</td>
</tr>
<tr>
<td>C-4</td>
<td>Commercial Office District</td>
</tr>
<tr>
<td>C-5</td>
<td>Commercial Entertainment District</td>
</tr>
<tr>
<td>C-6</td>
<td>Highway Commercial District</td>
</tr>
<tr>
<td>C-7</td>
<td>General Commercial District</td>
</tr>
<tr>
<td>C-8</td>
<td>Central Commercial District</td>
</tr>
<tr>
<td>M-1</td>
<td>Light Industrial District</td>
</tr>
<tr>
<td>M-2</td>
<td>Heavy Industrial District</td>
</tr>
<tr>
<td>O-S</td>
<td>Open Space District</td>
</tr>
<tr>
<td>RA</td>
<td>Regional Airport District</td>
</tr>
<tr>
<td>RANO</td>
<td>Regional Airport Noise Overlay District</td>
</tr>
<tr>
<td>RAAO</td>
<td>Regional Airport Airspace Overlay District</td>
</tr>
<tr>
<td>MO</td>
<td>Mining Overlay District</td>
</tr>
<tr>
<td>PUD</td>
<td>Planned Unit Development District</td>
</tr>
</tbody>
</table>
Agriculture Districts
The purpose of an agricultural district is to provide for and preserve viable agriculture lands and operations that can include grain and livestock production, forest and tree production, stables, pasture, government set-aside reserve programs and uses related to agriculture operations. These areas are generally located outside of a city or a developed area. Agriculture districts can be used by communities for land that is awaiting development and maybe appropriate for a variety of uses.

Agricultural district regulations should have provisions for multiple structures. These districts generally permit some single-family dwellings. However, zoning administrators should be cautious of the minimum lot size for new home construction. Permitting lots under 5 acres could result in an inefficient use of land resources and a development pattern that is expensive. A very large minimum lot size (20+ acres) will discourage new homes and driveways from “popping up” everywhere. (More on agricultural zoning on page 14.)

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 varies depending on the size and make up of the community. It is not uncommon for a small community to have three residential districts. A larger community may have ten. Some examples of residential districts include single-family suburban, single-family, medium density, two-family residential, multi-family residential, mobile home community residential, high density residential, etc.

Residential district regulations generally cover types of dwelling units permitted, density (dwelling units per acre), setbacks, yards, lot coverage ratios, 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. 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.

Commercial Districts
The purpose of commercial districts is to accommodate providers of goods and services. Again, 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, commercial office, commercial entertainment, highway commercial, general commercial, and central business district commercial.
Commercial districts primarily differ in the type and size of businesses they accommodate and the clientele and service area of those businesses. For example, a large department store would be accommodated by a district that probably would not accommodate a small dentist office and vice-versa. 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, intercirculation, convenience factors, proximity to other uses, and utility service needs.

Besides regulating the type and size of use, commercial district regulations generally include intensity, setbacks and yards, coverage, pedestrian and vehicular flow, landscaping, parking, and signs. Some commercial districts can also accommodate light manufacturing and warehousing. Accommodations for these uses can be made through a list of special exception uses.

**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. There is much less variation in the uses that are classified “industrial” than there are in commercial and residential. Industrial districts generally include light industry and heavy industry. Some communities might term this “closed” industrial and “open” industrial.

The differentiation between industrial districts is in the size and scale of the manufacturing facility. Also external physical characteristics, such as outdoor storage vs. enclosed storage, differentiate industrial districts. Industrial district regulations can include buffering criteria to protect adjacent land uses from appearance and noise associated with industry. Designation of industrial districts should take into account available land, utilities, and easy access to transportation networks.

**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.

**Institutional & Office Districts**
The purpose of an institutional and/or office district is to accommodate public and private institutions - such as schools and hospitals - and other office uses. These uses can be included in the “commercial district” uses, but some communities choose to create a separate district. Institutional districts generally provide a good buffer between residential districts and more intense uses such as commercial or industrial.
Airport District
Airport districts are generally established to ensure the harmonious arrangement and development of land uses with a local airport; to encourage the types of land uses having maximum compatibility with aircraft operations; to protect the airport from the encroachment of incompatible land uses; and to protect and promote the public utility of the airport.

Basic Zoning Provisions
A well-drafted zoning ordinance should contain a purpose statement, definitions, administrative procedures, district use provisions, development standards, and a severability clause.

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 specific purpose statements for individual zones (i.e., an agriculture district, neighborhood business district, heavy industrial district) and/or categories of regulations (i.e., signs, parking, landscaping). Including these individual purpose statements is good planning practice by letting the public know why the community established a certain zoning classification, 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. Poor definitions can thwart the aims of the ordinance. Communities have lost lawsuits involving the storage of salvaged goods on private property. The owner claimed the items were not “junk” as defined in the ordinance, and the judge agreed - much to the dismay of the neighbors. A better definition would have protected the community from this nuisance.

Administrative Procedures
The ordinance should contain the framework for its administration. These need not and should not be detailed and complex, as the rules adopted by the plan commission and the board of zoning appeals will supplement the ordinance provisions and include the detail. The ordinance itself, however, should contain these administrative elements:

- Map amendment procedures, consistent with Indiana law.
- Text amendment procedures, consistent with Indiana law.
- Method of interpreting district boundaries on the zoning map (i.e., zoning line is in the middle of the street right-of-way).
- Penalties for violation.
- Method of determining permitted uses that are not listed.
District Use Provisions

Zoning ordinances regulate the use of land; they establish districts and describe the uses permitted in each district. Many older ordinances are based upon the type of ordinance that was upheld in the landmark Euclid v. Ambler Supreme Court case. These ordinances divide the community into districts and list the uses permitted and prohibited in each district. Often the lists of uses in a zoning ordinance are detailed and extensive. This approach causes ordinances to become outdated quickly, because they are not adaptable to new or changed uses. It is common to find ordinances that specify the proper district for a telegraph office or a millinery shop but have no place for sun tan parlors, self-storage units, or mobile phone sales.

One way to avoid the problems associated with detailed use lists is to define categories of uses: neighborhood business, travel- or highway-oriented businesses, big box retail, etc. In this type of ordinance, each type of use is defined and examples are given, but there are no exhaustive lists. This approach requires more staff interpretation, but it is more flexible and less likely to be quickly out of date. A zoning ordinance may also include a detailed matrix as an appendix that lists and categorizes the detailed uses.

In 1999, a study was completed that resulted in the production of the “Land Based Classification System” (LBCS). LBCS provides a consistent model for classifying land uses based on their characteristics. The model extends the notion of classifying land uses by refining traditional categories into multiple dimensions, such as activities, functions, building types, site development character, and ownership constraints. Each dimension has its own set of categories and subcategories. These multiple dimensions allow users to have precise control over land use classifications. LBCS is accessible at www.planning.org/lbcs. It includes a wealth of information including the complete categorization of nearly every use imaginable.

Development 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.

Severability Clause

In the event that the 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.
Common Zoning Provisions

In addition to the most basic elements described above, most communities regulate other aspects of land development. These provisions also vary in complexity: a sign ordinance can contain just a few limitations on the size and height of signs, or it can regulate them according to use, street type, zoning district, function, etc. 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. Some of the subjects most frequently addressed are parking, signs, landscaping, home-based businesses and non-conforming situations.

Parking

With the proliferation of automobiles came parking shortages. To combat this problem, communities began to establish minimum standards for parking. Most typical in zoning ordinances is a list of uses with the minimum number of parking spaces for each: 1.5 spaces per unit for an apartment complex, 1 space for each 3 beds for a nursing home, 1 space for each 250 square feet of floor area for offices, and so on.

The size and configuration of spaces usually are regulated also, with such requirements as minimum dimensions of 9 ft. by 18 ft. and minimum aisle widths of 24 feet. Many communities became overzealous in their parking requirements, resulting in land wasted in asphalt masses that are empty much of the time. There are several other approaches to parking regulation, such as allowing shared parking, smaller parking spaces for employee or small-car parking, and grassed or other unpaved areas for overflow parking.

Rather than include lists of uses with minimum parking requirements, some communities adopt a published source, such as the Institute of Traffic Engineers Parking Generation, by reference. Planning Advisory Service Report Number 432, Off-Street Parking Requirements compares parking requirements for different uses from a variety of communities.

Landscaping

Many ordinances require landscaping, particularly in non-residential areas. In some communities landscaping is a high priority, while others consider it less important. The regulations can be simple or complex, ranging from a requirement of a landscaped area of specified minimum width to requirements for 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.

Signs

Sign regulation is often a highly charged issue, with businesses demanding large and numerous signs and others in the community favoring severe limitations on the size, number, placement, and design of signs. Many businesses are opposed to any local regulation that will prevent them from using standard sign packages offered by their corporations. Car dealers,
fast food chains, big box retail establishments and others want all their signs and buildings in all communities to look alike. For some communities, this standardization is precisely what they want to avoid.

As with landscaping requirements, communities need to consider the local goals and policies. Signs can be an important element in determining community character. One New England community requires all signs to have black letters on a white background. Several cities require signs to be of uniform height and setback to promote ease of viewing from a moving car. A community drafting these ordinances also should consult an attorney with knowledge in this subject, 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. 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 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 as semi-trucks deliver inventory and 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**
Non-conforming situations are those that were legally established prior to the effective date of adoption of a zoning ordinance, but would be prohibited, regulated or restricted under the provisions of the adopted ordinance. Sometimes this situation is referred to as “grand fathered”. It is typical in an ordinance not to allow the enlargement or expansion of a non-conforming situation.

Lots, buildings/structures and uses are different types of non-conforming situations. If a lot, building or use is not legally established prior to the ordinance adoption, it is not considered non-conforming. In other words, if the proper permits and procedures were not followed, then the use, building or lot would not be legally established.

Non-conforming lots are those platted prior to the effective date of an ordinance, having less than the required minimum lot area or minimum lot width required by the zoning regulations.
Non-conforming buildings or structures are those that exist on the effective date of the ordinance that could not be built under the terms of the new ordinance. They may not comply with maximum gross floor area; maximum lot coverage; building height limitations; minimum front, side and rear setbacks and yards; location on the lot; bulk; or other provisions of an ordinance applicable to buildings or structures.

Non-conforming uses are those land uses that exist on the effective date of the ordinance which would not be permitted by the provisions of the ordinance. Again, there are strict requirements for the continuation of non-conforming situations and once the non-conforming status is lost, the situation must comply with the ordinance.

**Innovative Zoning Techniques**

New land use issues have been brought to the forefront by new technology, changes in business practices, and societal changes. Several of those most commonly addressed in land use ordinances include wireless communication towers, sexually oriented businesses, and excessive lighting. There are several American Planning Association publications that address these topics, and communities drafting ordinances should consult these as well as seek competent legal advice.

Additionally, there have been a number of innovative approaches to zoning which have been used with varying degrees of success. Several examples are discussed here.

**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.
- It is flexible allowing “mixed use” developments.

There are disadvantages as well:

- The standards often are difficult to quantify.
- Enforcement requires continual attention, special expertise and equipment.
- Characteristics may vary from one time to another.
Planned Unit Developments
Planned unit development 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. Communities need to determine the level or 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 insures 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.
Overlay Districts
The Overlay District serves as an additional layer of regulations in areas that are particularly sensitive. The underlying zoning district does not change, there are generally more requirements pertaining to the overlay.

A common overlay district in many Indiana communities is a wellhead protection district. The purpose is to protect the community’s wellhead 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 the 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 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 the funding is 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.

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. Many 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 the day-to-day operation of the planning office, it may be necessary to hire an outside consultant to prepare the zoning ordinance.

The time between plan adoption and ordinance adoption 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 the 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 implementing ordinances, the plan is without significant effect.

The plan commission and staff should establish a work program for developing the zoning ordinance. The plan should include several elements: budget, committee structure, public participation plan, meeting schedule, and a timeline.

The commission also needs to decide what approach will be most productive. Some communities draft ordinances one section at a time, dealing with residential districts, then commercial, then industrial, then
parking, then signage, and so on. Others draft the entire document and then review it page by page. The advantage to the first approach is that the pieces are more manageable and can be considered in depth. The disadvantage is that the overall view is lost. Important sections might even be overlooked, and there might be internal inconsistencies. The second approach allows a better view of the overall context of the ordinance, but the review task may appear overwhelming.

The most important factor in ordinance development is the relationship of the ordinance to the comprehensive plan. As noted earlier, each regulation should clearly implement some policy contained in the plan. While there is no doubt that the citizen involvement is critical to the comprehensive planning process, there are differing opinions on citizen involvement in the development of a zoning ordinance. A broad range of interests should be represented among those guiding the ordinance development, but keep in mind that the zoning ordinance is so detailed that citizen involvement that focuses on every detail can easily hinder the development of the ordinance.

More than one Indiana county has spent enormous amounts of time and money developing a new zoning ordinance only to have the ordinance defeated because of vehement opposition at the public hearing. A properly constituted citizen committee can be an effective advocate for adoption of the ordinance after it is drafted. If the community uses an outside consultant, it is important for those involved locally to understand every provision. Those who will be governed by the ordinance provisions need to understand the implications of and the reasons for the various regulations.

With or without consulting help, it usually takes at least one year to develop a zoning ordinance. If a committee is appointed, the members should know that the time commitment will be significant and will last for one year or more.

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 the 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, and some have powers that others do not.
Adopting the Ordinance

Indiana Code specifies certain actions that local governments must take into consideration before a zoning ordinance can be adopted. This process involves the following steps:

1. The plan commission schedules a public hearing and publishes notice of the hearing 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 certifies the ordinance and recommends it to the legislative body (city or town council or county commissioners) for adoption.
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, such as the public library, that are readily accessible to the public. 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 (Rezonings)
A typical plan commission agenda includes one or more requests to rezone property, or an amendment to the zoning map. The 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.

Indiana law allows rezonings to carry written commitments. In some states these are called “conditional” rezonings. The 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, 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. A meeting is scheduled. Those who are 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.

References