

Regulation of Data Centers under Indiana Zoning Law

- **Overview of Zoning in Indiana**

- Home Rule.

- “Home Rule”, which applies to zoning, was adopted by the Indiana General Assembly in 1980 in an effort to give local government more autonomy in making decisions, and to have all powers necessary for the effective operation of local affairs in government.
 - Home Rule resolves any doubt in favor of existence of such a power, even if the power is not granted by statute, or a statute granting a power was repealed.
 - Home Rule grants local governments any powers not expressly prohibited by the Indiana Constitution or by statute, or given to another governmental entity.
 - However, local government cannot impose regulations that conflict with existing state law or regulations, which preempt the local regulations.

- Zoning Statute and Types of Zoning.

- The state law that applies to planning and zoning is found in Indiana Code §36-7-4, which is called the “Enabling Act” in this article.
 - There are three, general types of planning law – Advisory, Area, and Metro.
 - A governmental unit establishes the type of planning to be used in its jurisdiction by adoption of an ordinance. Typically, this is done in the unit’s zoning ordinance or unified development ordinance.
 - Advisory planning applies within the jurisdiction of one, specific governmental unit (i.e., a county, a city, or a town).
 - A Joint District is a type of Advisory planning, which is established by one or more municipalities and one or more counties to form a single, unified planning and zoning entity.

- Area planning applies to a group of units that are identified in a zoning ordinance.
 - Typically, this includes the unincorporated area of a county and the areas of one or more cities or towns.
 - Metro planning applies only to Marion County and Indianapolis.
 - A “municipality” (which includes both an incorporated city or a town) may establish extraterritorial, or “fringe”, planning and zoning jurisdiction of contiguous land up to two miles from its municipal boundaries.
 - A municipality must be operating under Advisory planning law in order to be able to exercise “fringe” jurisdiction; a municipality subject to Area planning law may not.
- **Planning Bodies and Officials.** The organizations in a governmental unit that are involved in planning and zoning are the legislative body, the plan commission, and the board of zoning appeals (the “BZA”).
 - Legislative Body.
 - A legislative body is the board of commissioners in a county, the common council in a city, and the town council in a town.
 - A legislative body has the power to give final approval to, (i) the adoption of a comprehensive plan, the initial adoption and replacement of a zoning ordinance and a subdivision control ordinance, (ii) text amendments of a zoning ordinance and a subdivision control ordinance, (iii) a zone map change (or a “rezoning”), and (v) approval of a planned unit development, unless delegated.
 - All zoning decisions made by a legislative body must be made at a meeting open to the public.
 - Notice of a meeting of a legislative body must be given according to requirements of the Indiana Open Door Law.
 - Notice by publication also must be given of meetings at which the legislative body will consider the adoption of an initial or replacement zoning ordinance in certain instances.

- Notice to individual property owners of legislative body meetings is not required for any zoning proposal considered by the legislative body.
- Plan Commission.
 - *Recommendations.*
 - A plan commission has the duty to conduct public hearings on, and make recommendations to the legislative body for:
 - Adoption of an initial comprehensive plan and amendments to it;
 - Adoption or replacement of a zoning ordinance, a subdivision control ordinance, or a unified development code;
 - Text amendments to those ordinances; and
 - Changes of zone maps (or “rezoning”).
 - *Final Decisions.*
 - A plan commission has the power to conduct public hearings and give final approval for:
 - A subdivision plat;
 - A development plan;
 - Modification or termination of a written commitment required or allowed by the plan commission in a zoning proceeding; and
 - Secondary review of planned unit developments (or PUDs), if such authority is delegated to the plan commission by a legislative body.
 - *Procedure for Review.*
 - For a plan commission to make a recommendation or a final decision, it must hold a public hearing with notice according to

requirements established in the plan commission's rules, and also by publication in a local newspaper of general circulation at least 10 days before the hearing.

○ Board of Zoning Appeals.

- *Review Powers.* A BZA is a quasi-judicial body to which the Enabling Act gives the exclusive power to review and approve:
 - A special exception or a special use (which are essentially the same type of proceeding);
 - A conditional use;
 - A contingent use;
 - A use variance;
 - A development standard variance; and
 - Appeals of decisions by officials (like a plan commission director or zoning administrator) or another board or body, which involve enforcement of a zoning ordinance.
- A special exception or a special use is a use that is permitted under the zoning ordinance in a specific zoning district, but only if the BZA approves it. The zoning ordinance, rather than the Enabling Act, identifies the specific requirements and the standard of review for a special exception or a special use to be approved.
- A conditional use or contingent use is a use that is permitted in specified zoning districts by the zoning ordinance with the approval of the BZA, if the use satisfies the conditions or contingencies stated in the zoning ordinance (e.g., a hospital or an airport).
- A use variance allows a specific use for a given area of land, which use is not otherwise permitted under the zoning ordinance in the zoning district where the land is located.
 - Note, an Area BZA is prohibited by statute from granting a use variance.

specified zoning district, if the ordinance did not previously include such a use.

- After a zoning ordinance is adopted, in order to change a zone map for a certain tract of land, the proposal can be started, (i) by the plan commission, (ii) by the owners of at least 50% of the land involved, or (iii) by a participating legislative body in Advisory or Area planning jurisdictions.
- In recent years, a number of jurisdictions have adopted an ordinance called a Unified Development Ordinance, or a “UDO”. A UDO is an ordinance that combines a unit’s zoning ordinance and subdivision control ordinance into single book or pamphlet, or a code title, article, or chapter, and which employs a combination of maps, plats, charts, diagrams, tables, text and images.

- **Development Plans.**

- A development plan is another method to control development of land by zoning.
- By statute, the term “development plan” means a specific plan for the development of real property that:
 - Requires approval by the plan commission;
 - Includes a site plan that shows the layout of the project, locations of proposed buildings, and other development features of the project;
 - Satisfies the development requirements specified in the zoning ordinance regulating the development; and
 - Contains the plan documentation and supporting information required by the zoning ordinance.
- The Enabling Act specifies how development plans are created and regulated.
- Zoning districts that require approval of a development plan must be designated in a zoning ordinance. The plan commission is required to approve development plans.

- The zoning ordinance must designate the development requirements, plan documentation and supporting information, and procedures for submission and review of a development plan.
 - The zoning ordinance may provide a hearing procedure similar to that for subdivision plats, by review by the plan commission of a primary development plan with a public hearing, and approval of a secondary development plan without a public hearing. The primary approval of a development plan by a plan commission is reviewable only by judicial review.
 - The plan commission may impose conditions of approval that are reasonably necessary to satisfy the development requirements, require a bond or other written assurance to guarantee timely completion of a public improvement, and permit or require a written commitment.
- **Analysis of Zoning Issues Applicable to Use of Land for a Data Center.**
 - The type of zoning law (Advisory, Area, or Metro) applicable to a jurisdiction where a data center is proposed to be located must be identified in order to determine the proper procedure and the governmental bodies that will be involved in the review and approval of a proposed data center/
 - The legislative body, the plan commission, or the BZA of the jurisdiction may be involved in the data center review proceedings, depending on how the zoning ordinance treats a data center use.
 - The following also should be determined:
 - Is a data center a defined term in the zoning ordinance?
 - If it is, does the specific proposal meet the definition?
 - If there isn't a specific definition of this term, is there another use described in the zoning ordinance that might apply?
 - Is a data center identified as a permitted use in certain zoning districts?

- Typically, a moratorium is imposed by adoption of an ordinance by the legislative body of the jurisdiction to prevent or ban, on a temporary basis, provisions in a zoning ordinance that otherwise would permit or allow a particular use of real estate in a zoning district.
- A governmental unit may impose a moratorium on zoning proceedings, but only if certain requirements are met.
- Since by law, a moratorium ordinance is considered to be a zoning ordinance, it must comply with all applicable requirements and procedures for adoption of a zoning ordinance.
 - Those requirements include prior adoption of a comprehensive plan, and public hearing with notice and action by the plan commission and the legislative body in the same manner required for adoption or amendment of a zoning ordinance.
- The length of time a moratorium is imposed must be reasonable.
 - A moratorium for up to one year likely would be deemed reasonable in court proceedings.
- If these requirements are not satisfied, the moratorium ordinance is invalid and void.
- If a complete application for a land use permit is submitted before a moratorium ordinance is properly adopted, the use would not be prohibited by the moratorium, and the zoning ordinance provision in effect at the time the application was submitted would apply instead.
- In 2025 the General Assembly adopted a new statute, codified as Indiana Code §36-7-4-1109.5, which authorized a political subdivision to prohibit the siting, construction, installation, permitting, or deployment of a “project” for a period of not more than one year. This one-year period cannot be extended or renewed.

- However, this statute restricts the term “project” to entities that generate electricity.
 - Examples of facilities that would be subject to this statute are solar and wind farms.
 - Public utilities and REMCs are specifically exempt from being subject to this statute.
 - Since the purpose of a data center is not to generate electricity, this statute would not apply to a data center.
- **Issues to Consider to Regulate Data Centers by Zoning.**
 - In a jurisdiction with a zoning ordinance that does not regulate data centers, the following actions should be considered, all by means of a text amendment to the zoning ordinance:
 - A definition of the term “data center” should be included that specifically describes the use.
 - If the zoning ordinance merely uses the term “data center” without defining it, there may be confusion or uncertainty whether a particular project submitted is subject to the procedures and requirements for approval that are specified in the zoning ordinance.
 - Should a data center be a permitted use or a special exception or special exception?
 - If a data center would be a permitted use, each zoning district where that use will be allowed as a matter of right should be determined and specified.
 - If a data center would be a special exception or a special use, each zoning district where that use will be allowed if approved by the BZA should be specified.

- Categorizing a data center in a zoning ordinance as a special exception or a special use may be the preferred method of regulation by zoning of data centers, since that type of proceeding:
 - Requires a public hearing by the BZA with notice;
 - Allows the potential impact on surrounding land and uses to be considered; and
 - Allows the requirements and standards for development that address the unique characteristics and impact of a data center to be specified in the zoning ordinance.
 - If a data center would be allowed as a special exception or a special use in certain zoning districts, then the following issues and requirements should be considered for adoption:
 - Contents of, and supporting information for, a special exception or special use application;
 - Standards for approval of a special exception or special use unique to a data center;
 - Development standards (like building setbacks, height restrictions, etc.) for construction of improvements in the data center;
 - How should the plan for development of a data center be reviewed?
 - By development plan proceedings reviewed by the plan commission at a public hearing;
 - By review of a site plan by the BZA at a public hearing; or
 - By review of a site plan by some other body, like a plan commission executive committee or a technical review committee.
- In a county that is subject to Area planning law, if the county commissioners adopt a county zoning ordinance text amendment that regulates a data center use in the unincorporated areas of the county, similar text

amendments should be considered for the zoning ordinances of the municipalities (cities and towns) in the Area, so all of the zoning ordinances are consistent.

- Conditions can be imposed by the reviewing authority when a data center is approved to limit or restrict features of the data center that can potentially cause negative impact on surrounding properties or uses.
 - An example of such a condition of approval is imposition of a requirement that the data center's owner pay for all utilities services and related improvements that are necessary to supply water and electrical power to the data center.
- A data center owner also can be required to sign a written commitment in connection with zoning approval in order to achieve similar objectives, or as an enforcement tool for important conditions of approval.
 - A written commitment is a useful zoning tool because it is recorded, it is a covenant running with the land, and its terms are binding on all current and future owners of the land involved.

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