

Overview of Regulation of Data Centers under Indiana Zoning Law

- **Overview of Zoning in Indiana**

- “Home Rule” applies to zoning.
 - 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in favor of existence of such a power, even if the power is not granted by statute, or a statute granting a power was repealed.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 entity.
 - However, local government cannot impose regulations that conflict with existing state law or regulations, which preempt the local regulations.
- The state law that applies to planning and zoning is found in Ind. Code §36-7-4, which is called the Enabling Act.
- 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.
- 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, which typically includes the unincorporated areas of a county and 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 to exercise “fringe” jurisdiction.
 - A municipality subject to Area planning law may not exercise “fringe” jurisdiction.
- **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, (i) the adoption of an initial comprehensive plan and amendments to it, (ii) the initial adoption or replacement of a zoning ordinance, and a subdivision control ordinance, as well as text amendments to them, and (iii) a change of a zone map (or rezoning).

- *Final Decisions.*

- A plan commission has the power to conduct public hearings and give final approval for, (i) a subdivision plat, (ii) a development plan, (iii) modification or termination of a written commitment required or allowed by the plan commission in a zoning proceeding, and (iv) secondary review of planned unit developments, 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.

- BZA.

- *Membership.*

- An Advisory BZA and a Metro BZA each have five members, while an Area BZA has seven members. The members of a BZA must be either citizens that reside in the jurisdiction, or

citizens who reside in the county, but own real property in the jurisdiction.

- Members of the BZA are appointed by the various governmental bodies designated in the Enabling Act.
- *Establishment.* A BZA must be established by the legislative body in the zoning ordinance.
- *Review Powers.* A BZA is a quasi-judicial body to which the Enabling Act gives the exclusive power to review and approve (i) a special exception or a special use (which are essentially the same type of proceeding), (ii) a conditional use, (iii) a contingent use, (iv) a use variance, (v) a development standard variance, and (vi) 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 special use is a use that is permitted under the zoning ordinance in a specific zoning district, but only if the BZA approves it after a public hearing with notice. The zoning ordinance, rather than the Enabling Act, identifies the specific requirements and the standard of review for a special exception or special use to be approved.
 - A conditional use or contingent use, which 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 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.

(ii) by the owners of at least 50% of the land involved, or (iii) in Advisory or Area planning jurisdictions, by a participating legislative body.

- **Development Plans.**

- 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.
- The zoning ordinance may provide a hearing procedure similar to that for subdivision plats, by review 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.

- **Overlay Zoning Districts.**

- Overlay zoning is a planning technique used to regulate zoning to address specific land use issues by creation of a special zoning district that is placed over, or “overlays”, other existing, underlying zoning districts.
- Overlay zoning creates certain additional zoning regulations that then apply to the mapped area in addition to those specified in the underlying zoning districts.

- Overlay zoning can be used to address issues of use, design, density, development requirements or restrictions, and protections for a particular geographic area.
- Overlay districts (i) supplement, rather than replace, the underlying zoning districts, and (ii) address specific issues and objectives, rather than being just another layer of zoning regulations.
- Overlay districts may be created to control development of uses like a highway corridor and an airport.

- **Written Commitments.**

- The Enabling Act authorizes a written commitment to be required or allowed as a condition of approving a rezoning, primary approval of a subdivision plat or development plan, vacation of a plat, a special exception, a special use, a contingent use, a conditional use, or a use or development standard variance.
- Written commitments, which are in the nature of covenants that run with the land, must be signed by the owner of the land involved and recorded in the Recorder's Office of the county where the land is located. Recorded written commitments bind the owner of, and others who subsequently acquire an interest in, the land involved.
- A written commitment often can be used to memorialize an agreement with objecting property owners or the planning staff, which would give the zoning body involved incentive to approve the proposal with conditions that are acceptable.

- **Zoning Moratorium.**

- When government attempts to regulate the type and location of a permitted land use, it is a "quintessential" zoning act.
- A zoning moratorium is a temporary ban on development. The essence of a moratorium is to preserve the status quo.

- A governmental unit may impose a moratorium on zoning proceedings, but only if certain requirements are met.
- 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 a particular use of real estate in a given zoning district.
- Since a moratorium ordinance is considered to be a zoning ordinance, it must comply with all requirements and procedures, including 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 as specified in the Enabling Act for adoption or amendment of a zoning ordinance.
 - If these requirements are not satisfied, the moratorium ordinance is invalid and void.
- The length of time a moratorium is imposed must be reasonable.
- If a complete application is submitted for a land use permit before a moratorium ordinance is properly adopted, the applicable zoning ordinance provision in effect at the time the application was submitted would apply, and the use would not be prohibited by the moratorium.
- In 2025 the General Assembly adopted a new statute, codified as Ind. 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 limits 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 not subject to this statute.
- **Fulton County Zoning.**

- Fulton County is subject to the Area planning and zoning laws, which apply to land in unincorporated Fulton County, the City of Rochester and the Towns of Akron, Kewanna, and Fulton.
 - Under Area planning, the legislative body of each governmental unit involved must adopt its own zoning ordinance.
 - However, the Fulton County Area Plan Commission (APC) and the Fulton County Area Board of Zoning Appeals, hear all applicable zoning proceedings for land located in the jurisdictions of those units.
 - Similarly, if Fulton County amends its zoning ordinance, in order for the City of Rochester and the Towns of Akron, Kewanna, and Fulton to be subject to the same amendment, the Rochester Common Council and the Town Councils of those Towns also must amend their respective zoning ordinances in the same manner.
- **Current Status of Zoning for Data Centers in Fulton County.**
 - It appears the Fulton County Board of Commissioners previously approved a zoning ordinance amendment that makes a “data center” a permitted use in the “AG” (Agricultural) and the “IN (Industrial Park/Manufacturing) Districts; but a data center is not either a permitted use or a special exception in the “AP” (Agricultural Protection), the “IU” (Intensive Use) Districts, or any other zoning district.
 - Note, commercial solar and wind generation uses are allowed as a special exception in the IU District, with approval of the BZA.
 - Since a data center is a permitted use in the AG and IN Districts, if a proposed data center project on land in those zoning districts complies with the development standards and other requirements in the Zoning Ordinance, the use must be allowed.
 - Although the Zoning Ordinance uses the term “data center” to describe the permitted use, that term is not specifically defined in the Zoning Ordinance.

- Unless the term “data center” is defined in the Zoning Ordinance, if a particular data center-type project is proposed to be developed in Fulton County in the future, it may be unclear whether the use involved is or is not permitted.
 - Based on information available on the governmental websites, it is not clear whether the City of Rochester and the Towns involved have adopted amendments to their respective zoning ordinances to make the same changes applicable to proposed data centers in unincorporated Fulton County.
 - Data Center Moratorium.
 - Based on information available, the APC recently voted to make a recommendation to the Board of Commissioners that a one-year moratorium prohibiting zoning approval of data centers be adopted.
 - The Commissioners subsequently voted 2-1 to adopt such one-year moratorium. A copy of the actual moratorium ordinance adopted by the Commissioners has not been available for review prior to the preparation of these materials.
 - It is understood that during the moratorium period the APC will form a study committee to review and identify the procedures and requirements Fulton County should consider for data centers to be developed.
- **Issues Fulton County May Wish to Consider During Moratorium for Later Zoning Regulation of Data Centers.**
 - Specific definition in the Zoning Ordinance of the term “data center”.
 - Should a data center be a permitted use or a special exception?
 - Requiring approval by the Area BZA of a data center as a special exception may be preferred, since that proceeding requires a public hearing with notice, allows the potential impact on surrounding land

and uses to be considered, and requirements and standards for development can be specified in the zoning ordinance.

- What zoning districts (if any), should a data center be a permitted use?
- What zoning districts (if any), should a data center be a special exception?
- If a data center will be allowed as a special exception in certain zoning districts, then the following issues and requirements should be considered by the study committee, and then subsequently by the APC, the Board of Commissioners, and each Town Council involved:
 - Contents of, and supporting information for, a special exception application;
 - Standards for approval of a special exception unique to a data center;
 - Development standards (like setbacks, height restrictions, etc.) specific to a data center;
 - How should the plan for development of a data center be reviewed?
 - By development plan proceedings reviewed by the APC 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 the Technical Review Committee.
- Separate zoning ordinance text amendment proceedings should be conducted by the Towns involved to adopt, or approve by reference, any zoning ordinance amendment adopted by the Fulton County Board of Commissioners.

This publication was prepared by James A. Federoff, Esq. for Indiana Farm Bureau. The statements in this article are based on information available to the author as of March 6, 2026 in the governmental websites and local news media internet publications. The information in this article is not an all-inclusive description of the topics involved, and does not constitute a legal document or legal advice. The author and publishers assume no

liability for any action taken based on the information provided. It is a reference for general educational use only.

©2026 Indiana Farm Bureau. All rights reserved.