

# Zoning Hot Topics

---

FEBRUARY 2022

BRIANNA J. SCHROEDER

SCHROEDER@AGLAW.US



# Hot Topics in Ag Zoning

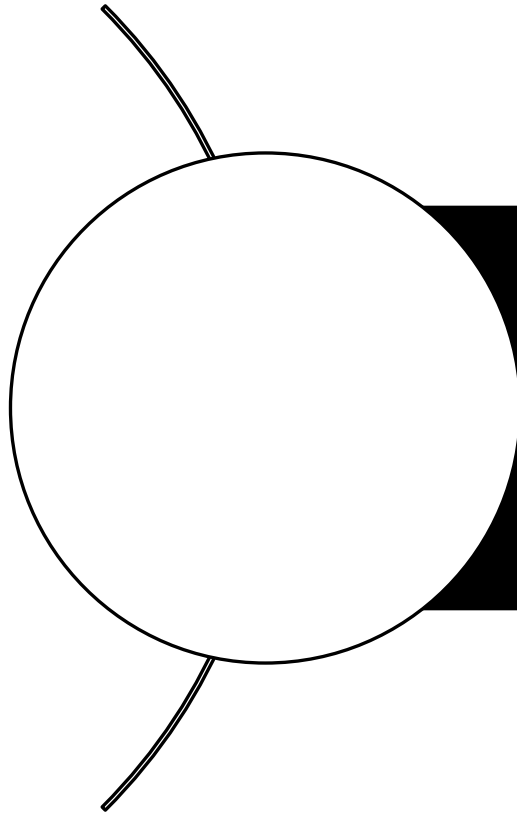
Solar

Moratoria

Spite Structures

# Solar

---



## Purpose of Solar Zoning

- Clean Energy
- Economics
- New Technology
- Organized Land Use

# Solar

---

## Home Rule

## State Proposals

- **House Bill 1381 in 2021 (state siting bill)**
- House Bill 1191 in 2021 (utility connection to energy sources)
- Senate Bill 176 in 2022 (IURC report on ag land for wind or solar)\*
- Senate Bill 313 in 2022 (community solar facility program)
- Senate Bill 403 in 2022 (IDEM study on solar panel decommissioning)
- Senate Bill 411 in 2022 (IEDC solar/wind center)\*
- House Bill 1196 in 2022 (HOA solar rules)\*
- House Bill 1250 in 2022 (community solar facility program)



# Solar

Commercial

Non-Commercial

Permitted Use

ILP



# Solar

---

Special Exception

Setbacks

Variance

Special District

Rezoning

Economic Agreements



# Solar

---



## Development Standards

- Height
- Setbacks
- Landscaping
- Ingress/Egress
- Signage
- Fences
- Color or Glare
- Electrical
- Other Equipment
- Noise



# Solar

---

## Information Required

- Operation Plan
- Maintenance Plan
- Drainage Plan
- Erosion Control
- Site Plan
- Insurance
- Removal Bond
- Decommissioning Plan





# Solar

Agrivoltaics

Pollinators

Livestock

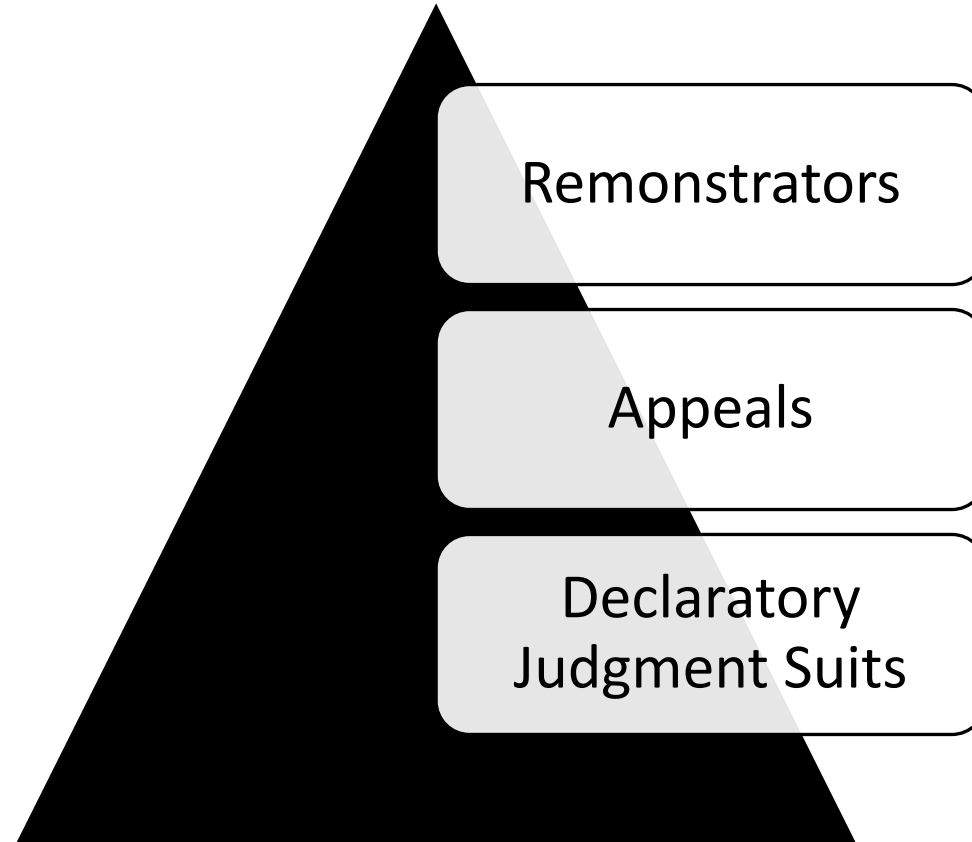
Vegetables

Modified Row Crops



# Solar

---



# Solar

---

## *Burton v. Board of Zoning Appeals of Madison County* (Ind. Ct. App. 2021)

- Remonstrator appeal of solar project approval
- BZA member residency
  - *De facto* public officer doctrine
- BZA member conflict of interest
- Special use application
  - Consistent with Comprehensive Plan
- Setback variances
  - “Practical difficulty”

# Moratoria

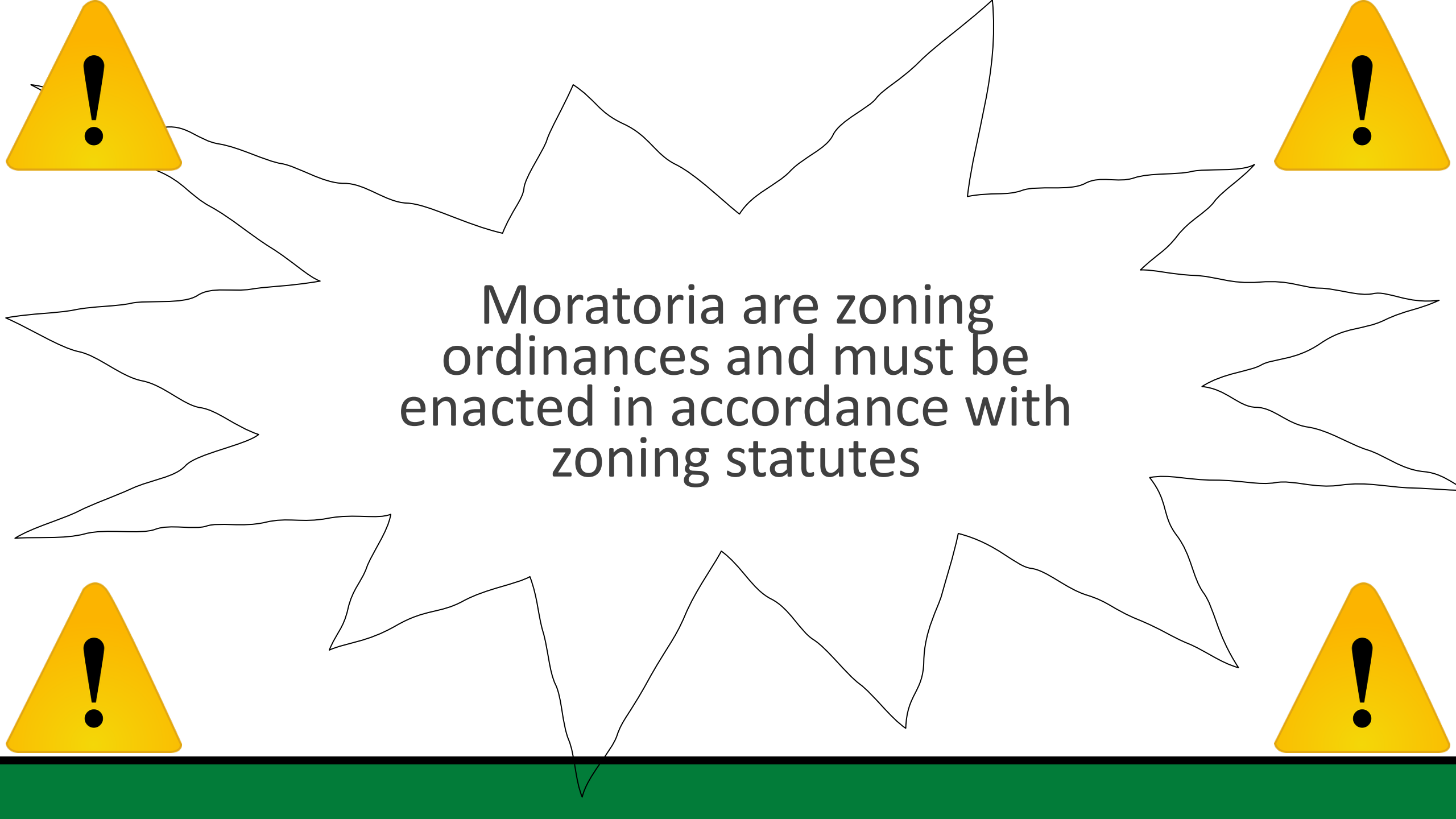
---

Ban on development

Preserving status quo in the face of a previously untested land use

Quintessential zoning





Moratoria are zoning ordinances and must be enacted in accordance with zoning statutes



# Moratoria

---

## Landfills

- *Sagamore Park v. City of Indianapolis*
- *Triple G Landfills v. Bd. of Comm. of Fountain County*
- *Pro-Eco v. Bd. of Comm. Of Jay County*

## Mining

- *City of Carmel v. Martin Marietta Materials*
- *Rogers Group v. Tippecanoe County*

## Confined feeding

- Delaware County
- Town of Argos

## Solar/Wind



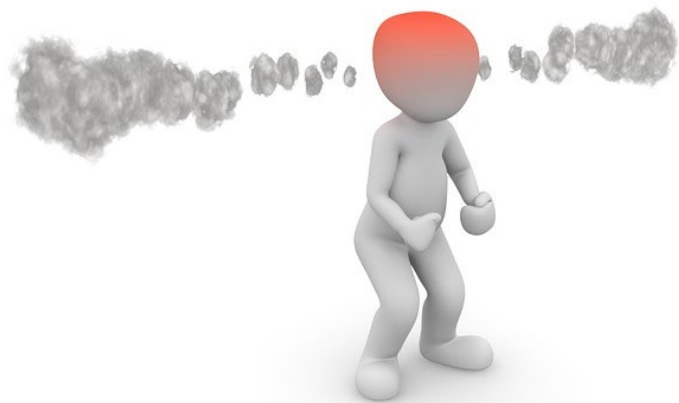
# Moratoria

---

## New zoning ordinance procedure

- Plan Commission public hearing
  - Notice by publication
  - Notice to interested parties
  - Favorable or unfavorable recommendation
  - Certify to legislative body
- Legislative body
  - Notice of meeting per Open Door Law
  - COVID-19 provisions

# Spite Structures



Setback limitations

Special exceptions

Race to the courthouse

# Spite Structures

---

## Fayette County Example

- Confined feeding operation IDEM notice (March and April)
- Confined feeding operation IDEM approval (May)
- Public shelter and picnic area special exception application (June)
- Confined feeding operation special exception application (July)

## Other Examples

- Construction of pole barn near property boundary with IDEM-approved CFO
- Building permit with new “residence” near boundary with solar land



# Spite Structures

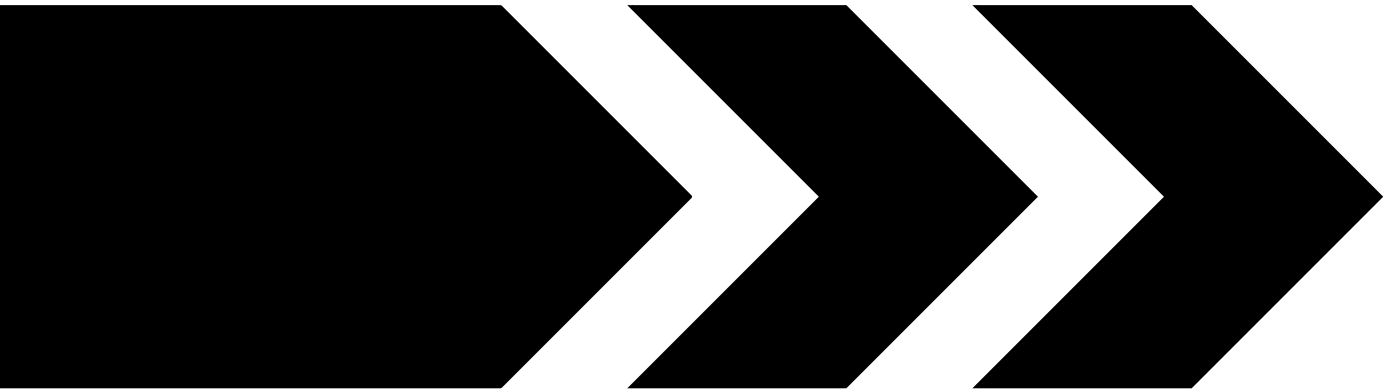
---

Purpose of Zoning

Special Conditions  
or Variance  
Elements

Comprehensive  
Plan

Case Law



*Questions?*

# Brianna J. Schroeder

---

Janzen Schroeder Agricultural Law LLC

[Schroeder@aglaw.us](mailto:Schroeder@aglaw.us)

[@SchroederIndy](#)

[www.aglaw.us](http://www.aglaw.us)

