

**Indiana Farm Bureau
Agricultural Land Use &
Zoning School
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Zoning Ordinance and Zone Map Amendments, Overlay Zoning Districts, and Extraterritorial Jurisdiction

Structure of Land Use Regulation in Indiana

Home Rule Act

- Home Rule Act was adopted by the Indiana General Assembly in 1980.
- Home Rule grants to local governments any powers not expressly prohibited by the Indiana Constitution or by statute, or given to another entity.
- Home Rule resolves any doubt as to a governmental unit's power in favor of the existence of the power, even if the power is not granted by statute.
- Home Rule abrogated Dillon's Rule, which only gave local government those powers expressly granted by statute.

Planning and Zoning Enabling Act

- Indiana Code §36-7-4 (the Enabling Act) provides a framework for planning law that applies to all governmental units in Indiana.
- But local units are given the power to create their own ordinances that address local needs and interests.
- The Enabling Act is arranged in groups of what are called “Series”. Each Series covers a particular, general topic.
- For example, the 600 Series applies to zoning ordinances, and the 900 Series applies to a board of zoning appeals.

Types of Planning Law.

- There are four types of planning law:
 - Advisory;
 - Area;
 - Metropolitan; and
 - Joint District.
- The type of planning law is established by a legislative body's adoption of an ordinance.
- Typically, this is done in a zoning ordinance.

Advisory Planning

- Advisory planning applies to one governmental unit, which can be a county, a city, or a town.
- Advisory planning is the most common type of planning jurisdiction in Indiana.
- Two different units that use Advisory planning can have a single zoning ordinance that jointly applies to both jurisdictions.

Area Planning

- Area planning applies to a group of units identified in a zoning ordinance, which typically includes unincorporated areas of a county and at least one municipality.
- An Area plan commission has jurisdiction to act for all of its designated governmental units, but each unit adopts its own zoning ordinance.
- An example of an Area planning jurisdiction is Vanderburgh County and the City of Evansville.

Metropolitan Planning

- Metro planning applies only to Marion County and Indianapolis.

Joint District Planning

- Joint district planning is a type of Advisory planning law.
- In a joint district there are one or more municipalities and one or more counties that establish a single, unified planning and zoning entity.
 - Bartholomew County, the City of Columbus, and the Town of Edinburgh established a joint district, and are jointly governed by the Bartholomew County zoning ordinance.

Land Use Planning Bodies and Officials

- The governmental organizations in a unit involved in planning and zoning are:
 - The legislative body,
 - The plan commission, and
 - The board of zoning appeals.
- In a county, the legislative body is the board of county commissioners.
- In a city, the legislative body is the common council.
- In a town, the legislative body is the town council.

Land Use Powers of Legislative Body

- A legislative body has the power to give final approval to:
 - Adoption and amendment of a comprehensive plan,
 - Initial adoption and replacement of the text of a zoning ordinance;
 - Text amendment of a zoning ordinance; and
 - Zone map change (commonly called a “rezoning”).

Plan Commission Recommendations

- A plan commission has the duty to conduct public hearings on, and to make recommendations (but not final decisions) to the legislative body for:
 - Adoption, replacement, and amendment of a comprehensive plan;
 - Initial adoption and amendments of text of a zoning ordinance; and
 - Change of a zone map or rezoning.

Types of Actions by Advisory and Area Plan Commissions

- If the proposal in an Advisory or Area planning jurisdiction is to adopt an initial or replacement zoning ordinance, the plan commission may certify the ordinance to the legislative body only if a favorable recommendation is made.
- If the proposal is to amend the text of a zoning ordinance, or to change a zone map (a rezoning), the plan commission may make a favorable recommendation, an unfavorable recommendation, or no recommendation, to the legislative body.

Types of Actions by Metro Plan Commission

- The metropolitan plan commission may certify action for adoption of an initial or replacement zoning ordinance, or to amend the text of a zoning ordinance, to the legislative body only if a favorable recommendation is made.
- A zone map change must be certified by the metropolitan plan commission to the legislative body whether the recommendation is favorable or unfavorable, or if no recommendation is made.

Zoning Ordinance

- The 600 Series of the Enabling Act governs adoption of an initial or replacement zoning ordinance, amendment of the text of a zoning ordinance, and a zone map change (i.e., a rezoning).
- A number of jurisdictions have adopted an ordinance called a Unified Development Ordinance, or a “UDO”.
- A UDO is a single ordinance that combines the features of both a zoning ordinance and a subdivision control ordinance.
- A zoning ordinance cannot be adopted until a comprehensive plan is adopted by the legislative body.

Plan Commission Rules

- Another method that governs land use regulation is found in plan commission rules.
- The Enabling Act requires the plan commission to adopt written rules that govern the procedures for how and to whom notice of public hearings must be given, and how their hearings are to be conducted.
- The plan commission also may adopt rules that identify the types of proceedings a hearing officer can act upon, and how those hearings are to be conducted, but those matters also can be identified in a zoning ordinance.

Procedure for Adoption and Amendment of Zoning Ordinance and Changes of Zone Maps

Review Procedure by Plan Commission

- In order to adopt an initial or replacement zoning ordinance, the plan commission must initiate the proposal.
- A plan commission must hold a public hearing with notice, based on requirements established by the plan commission in written rules it must adopt.
- Notice of all plan commission public hearings be published in a local newspaper of general circulation at least 10 days before the hearing.
- Notice of a public hearings also must be given to those who are designated as “interested parties” in the plan commission’s rules.

Review Procedure By Legislative Body

- All zoning decisions by a legislative body must be made at a meeting open to the public.
- Notice by publication and under the Open Door Law must be given of meetings at which the legislative body will consider the adoption of an initial or replacement zoning ordinance.
- Actual notice to property owners of legislative body meetings is not required for any zoning proposal.

Procedure to Amend Text of Zoning Ordinance

- A proposed amendment of the text of a zoning ordinance may be initiated by either the legislative body or the plan commission.
- If the legislative body in Advisory and Area planning jurisdictions initiates the text amendment, the proposal must be referred to the plan commission for consideration and recommendation before the legislative body may take action.

Initial Action by Plan Commission

- The plan commission must:
 - Hold a public hearing within 60 days of receiving or initiating the amendment proposal;
 - Vote on the proposal not more than 60 days after the public hearing to recommend action by the legislative body; and
 - Certify the plan commission's action to the legislative body not more than 10 days after the recommendation decision is made.

Legislative Body Action upon Favorable Recommendation by Plan Commission

- In an Advisory or Area jurisdiction, if a favorable recommendation on a zoning ordinance text amendment is made by the plan commission, at its first regular meeting after the proposal is certified, the legislative body may adopt, reject, or amend the proposal.
 - Notice by publication of the legislative body's intent to consider the proposal at this meeting must be given.
 - The legislative body is required to vote on the proposal within 90 days of the date the plan commission certifies the proposal.

- If the legislative body adopts the proposal as certified by the plan commission, the text amendment takes effect as of the adoption date.
- If the legislative body fails to act on the proposal within 90 days of the certification date, the text amendment takes effect as certified by the plan commission on the expiration of the 90-day period.
- If the legislative body rejects or amends the proposal, it must be returned to the plan commission with a statement of the reasons for such action.

- The plan commission then has 45 days to:
 - Report to the legislative body that it approved the text amendment, at which time it takes effect; or
 - Report to the legislative body that it disapproves the rejection or amendment of the proposal.
- If the plan commission disapproves of the rejection or amendment, the legislative body's action stands if the legislative body confirms that action by another vote within 45 days after the plan commission's certification.
- If the legislative body fails to confirm the action, the proposed text amendment takes effect as if it were adopted 90 days after the plan commission's original certification.

Legislative Body Action upon Unfavorable or No Recommendation by Plan Commission

- In an Advisory or Area jurisdiction, if the plan commission makes an unfavorable recommendation or no recommendation regarding the proposed text amendment, at its first regular meeting after the proposal is certified, the legislative body may adopt, reject, or amend the proposal.
 - Notice by publication of the legislative body's intent to consider the proposal at this meeting must be given.
 - The legislative body is required to vote on the proposal within 90 days of the date the plan commission certifies the proposal.

- If the legislative body adopts the proposal as certified by the plan commission, the text amendment takes effect as of the adoption date.
- If the legislative body fails to act on the proposal within 90 days of the certification date, the text amendment as certified by the plan commission takes effect on the expiration of the 90-day period.
- If the legislative body amends the proposal, it must be returned to the plan commission with a statement of the reasons for such action.

- The plan commission then has 45 days to:
 - Report to the legislative body that it approved the text amendment, at which time it takes effect; or
 - Report to the legislative body that it disapproves the text amendment.
- If the plan commission disapproves the original amendment by the legislative body, the text amendment is approved if confirmed by another vote of the legislative body within 45 days of the plan commission's report.
- If the legislative body fails to confirm the action, the proposed text amendment takes effect as if it were adopted 90 days after the plan commission's original certification.

Procedure to Change Zone Map (Rezoning)

- After a zoning ordinance is adopted, in order to change a zone map applicable to a certain tract of land, the proposal can be initiated by:
 - The plan commission;
 - The owners of at least 50% of the land involved; or
 - Each participating legislative body in Advisory or Area planning jurisdictions.

- If the proposed zone map change is not initiated by the plan commission, it must be referred to the plan commission for consideration and recommendation before the legislative body may take action.
- The plan commission then takes the same action as with a text amendment of the zoning ordinance.
- In an Advisory or Area jurisdiction, if a favorable recommendation to change a zone map is made by the plan commission, at its first regular meeting after the proposal is certified, the legislative body may adopt, reject, or amend the proposal.
 - Notice by publication of the legislative body's intent to consider the proposal at this meeting must be given.
 - The legislative body is required to vote on the proposal within 90 days of the date the plan commission certifies the proposal, or such other dates as may apply under the statute.

- If the legislative body adopts the proposal as certified by the plan commission, the zone map change takes effect as of the adoption date.
- If the legislative body fails to act on the proposal within 90 days of the certification date, the zone map change takes effect as certified by the plan commission on the expiration of the 90-day period.

- In an Advisory or Area jurisdiction, if the plan commission makes an unfavorable recommendation or no recommendation on a proposed zone map change, at its first regular meeting after the proposal is certified, the legislative body may adopt or reject (but not amend) the proposal.
 - Notice by publication of the legislative body's intent to consider the proposal at this meeting must be given.
- If the legislative body adopts the proposal as certified by the plan commission, the zone map change takes effect as of the adoption date.
- If the legislative body rejects the proposed zone map change is defeated.
- If the legislative body fails to act on the proposal within 90 days of the certification date, the proposal is defeated.

Voting and Decisions

- In any zoning proceeding, for a plan commission, an Advisory legislative body, or an Area legislative body to take action on a proposal, a majority of the entire body (and not just a majority of the members in attendance at a meeting) must vote either for or against the proposal.
- For a Metro legislative body, at least three-fifths of the elected members of the body must vote.
- If there is a tie vote as the result of a member being absent or abstaining from voting, the proceeding must be continued to another time to conduct another vote.
- Decisions of a plan commission and a BZA must be in writing, and findings of fact must be made to support those decisions.

Mayoral Veto of City Legislative Body Zoning Decisions

- Each city in Advisory and Area planning jurisdictions determines by general ordinance whether the mayor has the power to veto decisions made by the city's common council on proposals to adopt or amend zoning ordinances and zone map changes.
- A mayor must exercise a veto within 10 days of the date a common council acts on the zoning proposal, or within 55 days when a proposal is returned by the common council to the plan commission for consideration.
- If a zoning proposal is not timely vetoed by the mayor, the proposal takes effect without any further action by the mayor.
- If the proposal is vetoed by the mayor, the common council can override the veto by a two-thirds vote at its first regular or special meeting after receiving notice of the mayor's veto.

Open Door Law Requirements

- The Open Door Law requires that meetings of public governing bodies must be open at all times, so the public can observe and record the meetings. Secret ballots are expressly prohibited.
- “Official action” by a governmental body means it receives information, deliberates, make recommendations, establishes policy, make decisions, or takes final action.
- Agenda for a meeting must be posted at entrance of the meeting location and at governmental body’s office.
- Notice must be delivered to offices of news media that made a timely annual request, at least 48 hours before the meeting commences.

Exceptions from Open Door Law

- An “executive session”, which is a meeting authorized by federal or state statute, or a meeting discussing collective bargaining, litigation (either proposed or pending), or real property transactions by the governing body until a contract is fully executed;
- Social or chance gatherings not intended to avoid this law;
- Traveling to and attending meetings of organizations devoted to governmental betterment;
- A “caucus”, which is a gathering of members of a political party to plan political strategy and to prepare members for taking official action; and
- Orientations not resulting in official action.

Sanctions for Violation of Open Door Law

- If a governmental body's meeting violates the Open Door Law, a court action may be filed by any person to declare as void a decision made or final action taken at the meeting.
- If the court declares the decision or action void, the governmental body also may be enjoined from acting on the same subject matter until it gives "substantial reconsideration" at a meeting that complies with Open Door Law requirements.
- The court also may assess a civil penalties against an individual that is an officer of a public agency or employed in a managerial position, who specifically intends to violate the law by failing to give proper notice, taking final action outside a meeting, participating in a secret ballot, discussing ineligible matters in an executive session, or failing to prepare a required meeting memorandum.

Overlay Zoning Districts

- Overlay zoning is a planning technique that creates a special zoning district, which is placed over other existing, underlying zoning districts, to regulate and address specific land use issues.
- Overlay zoning creates certain regulations that apply to the mapped area in addition to those specified in the underlying zoning districts.
- 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 zoning can address issues of use, design, density, development requirements or restrictions, and protections for a particular geographic area.
- However, overlay zoning typically is not employed to change types of permitted uses, or to create special uses, which are otherwise permitted in underlying zoning districts.
- Restriction or change in permitted uses is more appropriately done by creating a new zoning district, or modifying the uses specified in an underlying zoning district.

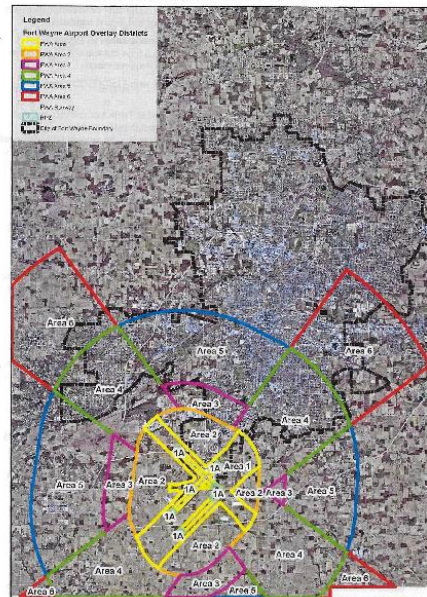
Types of Overlay Zoning Districts

- Highway commercial corridors – Driveway access management, landscape standards, compatible uses, signage, and design requirements.
- Special development overlays – Density standards, lot sizes, vegetation requirements, and design to encourage mixed-use, transit-oriented, or traditional neighborhood development.
- Historic preservation – Façade requirements, building form and character standards, and compatible uses.

- Natural resource protection – Setbacks, vegetation requirements, and conservation protections along rivers, lakes, wetlands, waterfronts, steep slopes, dunes, and other environmentally-sensitive areas.
- Airports –Height restrictions for buildings and other structures located within airport runway approaches, development restrictions and requirements, and bird mitigation requirements.

FORT WAYNE ZONING ORDINANCE

Figure 2: Fort Wayne International Airport Overlay Areas



**Example Map of Airport Overlay District-Fort Wayne
Zoning Ordinance
Fort Wayne International Airport**

Procedure to Adopt Overlay District

- Most common method is to identify the requirements, restrictions, and area of the overlay district by text in the zoning ordinance.
- If an overlay district is to be created after a zoning ordinance is adopted, it is added as a text amendment to the ordinance, instead of a zone map change (or rezoning).
- To create an overlay zone, the text of the zoning ordinance is amended to:
 - Define the purpose of the overlay district by identifying specific issues and needs to be addressed by the overlay;
 - Identify the boundaries of the overlay district area; and
 - Establish the specific supplemental regulations that will apply to the overlay district to accomplish its stated purpose.

Overlay Zoning Notice, Hearing, and Action

- Creating an overlay district by zoning ordinance text only requires notice by publication. There is no direct notice to the owners of land that will be subject to the requirements and restrictions of the proposed overlay district.
- Creation of an overlay district by zoning ordinance text (whether in initial or replacement ordinance, or by amendment) requires a public hearing by the plan commission, which then makes a recommendation to the legislative body, with final action taken by the legislative body.
- If an overlay district imposes use restrictions that otherwise are allowed in the underlying zoning district, then it can be equivalent to a change of a zone map (or “rezoning”).
- A zone map change requires actual notice to the owners of properties that would be affected by the overlay use restrictions.



**Example of Highway Corridor Overlay District
with Use Restrictions**

Extraterritorial, or “Fringe”, Planning Jurisdiction

Scope of Extraterritorial Jurisdiction

- I.C. §36-7-4-205 contains the statutory provisions that govern the ability of a municipality to have extraterritorial, or “fringe”, jurisdiction of contiguous land outside of its municipal boundaries.
- By statutory definition, an incorporated city and a town each is a “municipality”; and a “municipal plan commission” means both a city plan commission and a town plan commission.
- Extraterritorial jurisdiction under I.C. §36-7-4-205 is available to municipalities operating under Advisory planning law, but not to municipalities operating under Area or Metro planning law.

Requirements for Extraterritorial Jurisdiction

- For a municipality to have extraterritorial jurisdiction:
 - It must have adopted a comprehensive plan in accordance with the 500 Series;
 - It must have an advisory municipal plan commission; and
 - The municipality's comprehensive plan must provide for the exercise of planning and zoning authority in the contiguous, unincorporated area of the county.

Procedures to Adopt Extraterritorial Jurisdiction

- There are two different procedures that apply, depending on when the municipality adopted its comprehensive plan.
 - One procedure applies to comprehensive plans initially adopted before July 1, 2019.
 - The other procedure applies to comprehensive plans initially adopted after June 30, 2019.
 - If a comprehensive plan is amended, it appears the initial adoption date, not the amendment date, controls which procedure is used.

Comprehensive Plans Adopted by Municipality Before July 1, 2019

- If a municipality adopted a comprehensive plan before July 1, 2019 and the comprehensive plan provides for extraterritorial jurisdiction, that jurisdiction may continue to be exercised by the municipality unless and until the county commissioners act to terminate such jurisdiction.

Comprehensive Plan Adopted by Municipality After June 30, 2019 with County Comprehensive Plan

- If a municipality is located in a county with a comprehensive plan, and the municipality has a comprehensive plan adopted after June 30, 2019 that includes jurisdiction over unincorporated areas of the county, the municipal plan commission may not exercise extraterritorial jurisdiction over such area unless it is first authorized by ordinance adopted by the legislative body.
- The authorizing county ordinance may be initiated either by the county commissioners, or by a petition signed by, (i) 50 property owners in the area, (ii) the county plan commission, or (iii) the municipal plan commission.

Comprehensive Plan Adopted by Municipality After June 30, 2019 without County Comprehensive Plan

- If (i) a municipality is located in a county that has not adopted a comprehensive plan, (ii) the municipality adopted a comprehensive plan after June 30, 2019, and (iii) the municipality is providing municipal services to the contiguous unincorporated area, the municipality may exercise extraterritorial jurisdiction over a contiguous area at any time by recording a notice with a description or map of the area.

Extraterritorial Jurisdiction Area

- A municipality may extend its planning and zoning jurisdiction to any part of a contiguous area up to two miles from its municipal boundaries.
- A municipality's fringe jurisdictional area also may be extended beyond two miles if any part of the corporate boundaries, or any part of the fringe area, encompasses the public waters or shoreline of a lake.
- In that case, the fringe jurisdictional area can be extended to include all of the lake, and an area up to 2,500 feet from the shoreline of the lake; however, the lake involved must be wholly located within the State of Indiana.

Overlapping Fringe Area

- If part of a contiguous unincorporated area of a municipality also is within the contiguous area of another municipality, one of those municipalities may exercise jurisdiction over that part of the overlapping area that is proportionate to the municipality's total area, as compared to the total area of both municipalities.

- **Example:**

- *Facts:* Overlapping area is 45 acres; area of Municipality 1 is 100 acres, and area of Municipality 2 is 300 acres.
- *Formula:* $100 \text{ A.} / 300 \text{ A.} = 0.33 \times 45 \text{ A.} = 15 \text{ A.}$
- *Result:* Municipality 1 can exercise jurisdiction over 15 acres, and Municipality 2 can exercise jurisdiction over 30 acres.

- The first municipality to act may designate the extraterritorial area by describing its boundaries to enclose an area “reasonably compact and regular in shape”.

Condition of Exercising Extraterritorial Jurisdiction

- Before a municipality may exercise extraterritorial jurisdiction over a contiguous area, it must first file a notice in the county recorder's office with a description or map of the area involved.
- If the jurisdictional limits are later revised by the municipality, another notice must be recorded with the revised area designated by description or map.

Membership of a Municipal Plan Commission in Extraterritorial Area

- If a municipal plan commission has extraterritorial jurisdiction, the county commissioners are required to appoint two additional citizen members to the plan commission.
- The appointed members must reside either (i) in the fringe area, or (ii) in the county and own real property located in whole or in part in the fringe area.
- However, at least one member must reside in the fringe area.

Membership of a Town Plan Commission in Extraterritorial Area

- In addition to the two members the county commissioners must appoint for all municipal plan commissions with fringe area jurisdiction, the county commissioners also may appoint additional citizen members to a town plan commission if the commissioners believe the additional representation is “justifiable”.
- The number of additional appointments must either be:
 - Two, if the population of the fringe area is between 50% and 100% of the town’s population; or
 - Four, if the population of the fringe area is greater than the population of the town itself.

Membership of a Municipal Board of Zoning Appeals in Extraterritorial Area

- If a municipality has fringe jurisdiction over a contiguous area, the municipal board of zoning appeals (“BZA”) also has jurisdiction over that area.
- In that case, either:
 - An additional division of the BZA must be created with jurisdiction only over the fringe area, with members who are residents of, or who own real property in, that area; but at least a majority of the members must be residents of the area; or
 - The municipal plan commission must designate as its appointed member to the BZA, the plan commission member who was designated to be a member of the plan commission to represent the fringe area.

Termination of Extraterritorial Jurisdiction

- A municipality's extraterritorial jurisdiction may be terminated by the county commissioners by adoption of an ordinance.
- The decision to adopt this ordinance is discretionary with the county commissioners.
- However, the extraterritorial jurisdiction may only be terminated if the county's comprehensive plan for that area "is as comprehensive in scope and subject matter" as the municipality's comprehensive plan.

Potential Issues with I.C. §36-7-4-205

- §205(a) says a municipal plan commission shall adopt a comprehensive plan under the 500 Series. It should say legislative body instead.
- §205 does not address how restated comprehensive plans are treated; are they considered “initial” comprehensive plans for purposes of the date of the applicable procedure?
- §205(h) says a petition to approve county’s relinquishment of fringe jurisdiction can be signed by “50 property owners”; should this instead say the owners of 50 properties? Can they be 50 tax parcels, even if they are contiguous and have the same owners?
- What is meant by the term “municipal services”? Can that be any single service, like fire protection, sanitary, or potable water?

Thank You