NAVIGATING THE LOCAL PLANNING PROCESS FOR ENGINEERS

TUESDAY, MARCH 6, 2018, 4:00 PM
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WHO ARE YOU? – SHOW OF HANDS

• Engineer
  • Local or State Government Employee
  • Consultant
  • Other
• Surveyor
  • Local or State Government Employee
  • Consultant
  • Other
• Other?
  • Elected Official
  • Consultant
  • Other
GOVERNMENT FRAMEWORK

• Planning & Land Use Control – Local Zoning/Subdivision Ordinances
• Parameters Set by Enabling Act – State Law
• Planning & Zoning Enabled and Upheld -- Federal
PLANNING IN INDIANA

- Indiana’s planning laws are more minimal than most states
- Planning and Zoning is not mandatory – up to each local government (City, Town, County to choose)
- If you choose to have Zoning, Indiana Code requires that you have a Plan
- >90% of Indiana Counties have Plan Commissions, Every City?, Most Towns
- You can have Subdivision Control without zoning or a comprehensive plan
LOCAL PLANNING STRUCTURE

- Governing Body
  - County Commissioners
  - Town Council
  - City Council
- Plan Commission
- Board of Zoning Appeals

If it is confusing to us, think how confusing it is to the public!

County Council does set budget for County Planning and is represented on Plan Commission, but is not actually part of the local planning process.
LOCAL GOVERNING BODY
COUNTY COMMISSIONERS, TOWN COUNCIL OR CITY COUNCIL

• Elected
• Power to adopt comprehensive plan
  • Governing body must adopt, IC 36-7-4-509
• Power to adopt zoning ordinance
• Power to adopt subdivision ordinance
• Appoints board & commission members
• Capital investment decisions & budgets for towns & cities
BOARD OF ZONING APPEALS

• Appointed
• Quasi-Judicial
• Power to Grant Special Exceptions/Conditional Uses
• Power to Hear Appeals
• Power to Grant Variances
PLAN COMMISSION

• Appointed or serve by virtue of their office per state law (i.e., city engineer, county surveyor, county extension agent
  • Raise your Hand if you serve on the Plan Commission
• Prepares* Comp Plan & Amdts (IC 36-7-4-501)
• Prepares* Zoning Ord & Amdts (IC 36-7-4-602a)
• Prepares* Sub Regs & Amdts (IC 36-7-4-701b)
• Provides Rezoning Recs (IC 36-7-4-602b)
• Provides Comp Plan & Zoning Ord Recs
• Subdivision Plat approval & Development Plan Approval

*with help from staff, consultants, volunteers
PLAN COMMISSION’S RESPONSIBILITIES – RECOMMENDATIONS TO LEGISLATIVE BODY

- Comprehensive Plan (all elements) & Amdts
- Zoning/Subdivision Ordinances & Amdts
- Rezonings
PLAN COMMISSION’S RESPONSIBILITIES – FINAL APPROVALS

• Subdivision Plats
• Subdivision Standards Waivers/ Modifications
• PUD Detailed Development Plan
LOCAL GOVERNMENT REVIEW

• Which of those is **most powerful**?
  • Local Governing Body
  • Plan Commission
  • BZA

• What does that suggest regarding planning?
  • Communication
  • Coordination

*There are several other participants in the planning process – these are just local government participants*
1) To represent the rest of the community.
   - How does community give Plan Commission and BZA direction (2 ways)?
2) To educate yourself and others on the issue(s).
3) To support the process and recognize the roles of the other participants.
4) To make a defensible decision.
WHO DOES THE PLANNING?

- In **Indiana**, it is the **plan commission’s responsibility** to prepare and adopt a plan and to recommend it to the city or town council or county commissioners for adoption.
- The plan commission may be assisted by staff, by consultants, by volunteers, or by any combination.
COMPREHENSIVE PLAN – THE MOST IMPORTANT LOCAL PLANNING POLICY

- Guideline, not ordinance
- Long-range (20+ years)
- Covers entire jurisdiction (and maybe more)
- Traditionally addresses physical elements
TOP IMPLEMENTATION TOOLS

• Best or worst way to implement your comprehensive plan:
  • Zoning & Subdivision Ordinances
    (or Unified Development Ordinance)
WHO REVIEWS PLAN COMMISSION APPLICATIONS?

• Planning Staff – not everyone has – written recommendation!
• Technical Review Committee (Recommended, not required)
  • *Should include city engineer, county surveyor & other local technical experts – written recommendation!*
• Plan Commission Members
WHAT ARE PLANNING DECISIONS SUPPOSED TO BE BASED ON?

HINT – IT ISN’T RANDOM...
DECISION MAKERS CAN’T CONSIDER:

• Public Popularity of Application
  • NIMBYs & LULUs

• Previous Performance of Applicant

• Issues unrelated to the standards/criteria
  • The Neighbor’s Barking Dog
BOARD OF ZONING APPEALS DECISION CRITERIA BASED ON:

- State Law Criteria
  - Use Variance
  - Development Standards Variance
- Local Law Criteria
  - Special Exception, Conditional Use
VARIANCES

-USE & DEVELOPMENT STANDARDS

Variances are a way to legally say you don’t have to follow the same rules as everyone else.

• A variance is a way to solve problems created by applying the generalities of the Zoning Ordinance to specific situations -- it introduces some needed flexibility to zoning.

• But, variances are meant to be occasional, not the rule. Follow the Zoning Ordinance whenever possible!

Modifications from Subdivision Ordinance Standards are the jurisdiction of Plan Commission, not BZA!
FOR BZA: USE VARIANCE CRITERIA
(IC 36-7-4-918.4) BZA MAKES FINAL DECISION*

(1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community

(2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner

(3) the need for the variance arises from some condition peculiar to the property involved
FOR BZA: USE VARIANCE CRITERIA (IC 36-7-4-918.4)

(continued from previous slide)

(4) the strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought

(5) the approval doesn't interfere substantially with the adopted comprehensive plan
FOR BZA: DEVELOPMENT STANDARDS VARIANCE CRITERIA (IC 36-7-4-918.5) BZA MAKES FINAL DECISION*

(1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community

(2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner

(3) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property
INDIANA CODE ALLOWS EXTRA DEVELOPMENT STANDARDS VARIANCE CRITERIA

IC 36-7-4-918.5 (a) (3) says that for developmental standards variances, “... your local ordinance may establish a stricter standard than the "practical difficulties" standard prescribed by state law.”

Many cities, towns and counties in Indiana have added additional criteria in their local ordinance, primarily:
• that the variance granted is the minimum necessary
• that the variance granted does not correct a hardship caused by a former or current owner of the property.
BZA: MAKES FINAL DECISION*

CONDITIONAL/CONTINGENT/SPECIAL EXCEPTION USES

• Use may be appropriate in zoning district, depending on how it works on the proposed site
• Local governments decides whether to use
• Local government sets own criteria
  • basic set for all
  • May add more detailed or unique for certain uses
PLAN COMMISSION DECISION CRITERIA BASED ON:

• State Law Criteria
  • Rezoning

• Local Law Criteria
  • Subdivisions
  • Development Plans
REZONINGS – PLAN COMMISSION MAKES RECOMMENDATION TO LEGISLATIVE BODY, WHO MAKES FINAL DECISION

IC 36-7-4-603 REZONING CRITERIA

The plan commission and the legislative body shall pay reasonable regard to:
(1) the comprehensive plan;
(2) current conditions and the character of current structures and uses in each district;
(3) the most desirable use for which the land in each district is adapted;
(4) the conservation of property values throughout the jurisdiction; and
(5) responsible development and growth.
DEVELOPMENT PLANS – PLAN COMMISSION MAKES FINAL DECISION

DEVELOPMENT PLAN CRITERIA:

• There are no state law criteria like for zoning. Each community sets their own standards -- take advantage of this!

• Follow your standards -- **if proposed plan meets all zoning ordinance standards, then plan commission must approve it!**

• **If you don’t like your standards, change them!**
SUBDIVISION PLATS – PLAN COMMISSION MAKES FINAL DECISION OR DELEGATES TO PLAT COMMITTEE FOR FINAL DECISION

SUBDIVISION CRITERIA:

• There are no state law criteria like for zoning. Each community sets their own standards -- take advantage of this!

• Follow your standards -- if proposed plat meets all subdivision ordinance standards, then plan commission must approve it!

• *If you don’t like your standards, change them!*

• Legislative body only sees plat for ROW dedication or Bonding
SUBDIVISION MODIFICATIONS – PLAN COMMISSION MAKES FINAL DECISION

CRITERIA:

• Modifications or waivers from Subdivision Ordinance Standards are the jurisdiction of Plan Commission, not BZA!

• Must enable in your local Subdivision Ordinance

• Set up ordinance criteria for subdivision modification
MAKING GOOD DECISIONS
GOOD DECISION-MAKING

Won’t get good planning without good decisions!
EVALUATE THE PROJECT

• Staff Recommendation?
• Consider relevant citizen input
• Does it meet criteria?
MAKING A DECISION

- What are relevant issues in a hearing?
- Surrounding area and site conditions, ordinance standards, APPROVAL CRITERIA

- What isn't appropriate in a hearing?
- Cost/profit, sentiment, emotions (don't like the applicant), rehashing the past, subjectivity
MAKING GOOD DECISIONS

• Plan Commission and BZA can’t grant unless criteria/standards are met, whether from State Law (Rezonings, Variances) or local ordinances (Subdivision Plats, development plans)

• Must meet all criteria/standards for approval or have a darn good reason not to (Subdivision modification granted, etc.)

2 out of 3 is bad!
4 LOCAL DOCUMENTS TO KNOW:

- Comprehensive Plan
- Zoning Ordinance
- Subdivision Ordinance
- Rules of Procedure for BZA & Plan Commission

or a Unified Development Ordinance
ROLE OF PLAN COMMISSION & BZA MEMBERS AT THE MEETING

• Be familiar with the material -- don't open packet at the meeting
• Have a public discussion -- don't pass notes or whisper
• Explain the vote
• Make sure your input is meaningful
DECISION-MAKING CONCERNS

- After public hearing, plan commission & BZA must arrive at decision or recommendation.
- Issues often complicated, and decision-making is difficult.
DECISION-MAKING
CONCERNS

- Peer Pressure -
  - Resist it!
  - Do not want to offend colleagues or appear to be unconventional or uncooperative.
  - Represent a variety of views, so there is no reason why decisions should always be unanimous.

Your Turn to get the Plan Commission Tattoo!
DECISION-MAKING CONCERNS

Public Pressure
- Difficult to make unpopular decision, especially in small towns & Rural areas.
- Audience isn’t always right; doesn’t represent whole community.
- Proposed land use changes generate emotional responses.

ALWAYS REMEMBER
POPULARITY IS NOT AN INDICATION OF QUALITY.
DECISION-MAKING CONCERNS

- Developer & Business Pressure
  - Represents one view, aimed at reducing costs and increasing profits.
  - Plan Commission & BZA should not accept inappropriate development to provide profits.
DECISION-MAKING CONCERNS

- **Political Pressure** --
  - Occasionally elected officials lobby for certain votes.
  - Plan commissions & BZA intended to be independent bodies -- obligated to vote for good planning.

Different Perspectives!
DECISION-MAKING CONCERNS

- **Compromise** --
  - Want to find a middle position between developers and opponents.
  - Can leave everyone unhappy when neither side gets what it wants.
  - Developers quickly learn the compromise game, asking for more than they want or expect, in order to end up with the project they initially desired.
  - Compromise works if commission/BZA can broker a win-win solution, but regular compromise won't result in good development.
DECISION-MAKING CONCERNS

- **Outside influences --**
  - Members interact with people in their daily lives who wish to influence their opinion or vote
  - **Ex-Parte Contact is illegal for BZA per state law, but not Plan Commission**
  - Good practice to refrain from discussions, because interferes with due process and inconsistent with the goals of the open meeting law.
  - If contact can't be avoided, explain that it will be reported at the public meeting.
APPROVAL CAUTIONS

• **Don’t grant unless criteria are met**
• Don’t allow decision to be a popularity contest
• If you don’t like what you are getting, change your local standards and criteria!
FOR BZA, PLAN COMMISSION & LEGISLATIVE BODY: CONDITIONS & COMMITMENTS (IC 36-7-4-1015)

- Plan Commission, BZA and Legislative Body) may stipulate conditions or commitments as part of approval
- Written Commitments are meant to be long-term and permanent:
  - You can **require** the property owner to enter into written commitments
  - Record commitments in the County Recorder's Office
  - Commitments binding on future owners of the subject property
- Conditions are meant to be short-term requirements administered by planning staff
WHEN CAN YOU DENY A CASE?

Which is the correct answer?

1. when you don't have a quorum
2. if it is unpopular
3. if all criteria haven't been met
THE END – QUESTIONS?