

# LAND USE 101:

## AN INTRODUCTION TO INDIANA PLANNING AND ZONING PRACTICES

— STORIES BY GARRETT KELLY

Zoning may not be the most exciting topic, but it is an important one.

“Zoning is an issue that doesn’t seem to matter until it matters,” said Greg Slipher, Indiana Farm Bureau livestock development specialist. “It’s imperative that farmers know what to look for in zoning ordinances and that they know how the process works.”

To date, 80 of Indiana’s 92 counties have county-wide zoning. It’s important for farmers to be familiar with the zoning laws that affect them.

In recent years, zoning has become a hot topic in regards to animal livestock operations across the state. At the Statehouse, the Interim Study Committee on Agriculture & Natural Resources met three times this year to discuss the proximity to and interaction of confined feeding operations with suburban and urban areas. INFB staff attended and testified in the meetings to express the importance of wise, locally-controlled planning and zoning as a way to reduce the opportunity for conflict between uses.

**DeKalb County** – A group opposed to a proposed dairy operation caused the plan commission to consider zoning changes that would limit the opportunity to grow livestock on farms in the county. The DeKalb County Farm Bureau proposed new zoning ordinance language that provided reasonable protection for county citizens while not limiting the opportunities for livestock expansion in the county.

Jamie Palmer, senior policy analyst at the Indiana University Public Policy Institute, said sound zoning practices provide stability to a community. According to Palmer, proper zoning also works to protect property values. Above all, it allows citizens of that area to know what to expect for the future of their

community.

“In addition, it’s [zoning] also a tool where the local community can decide what’s right for it,” said Palmer. Zoning “is not a one-size-fits-all thing. It definitely can be tailored to the community.” Palmer said community involvement in zoning and planning can reduce

the risk of conflict down the road.

Throughout this insert, the INFB public policy team will help you explore zoning definitions, what to look for in zoning ordinances, approval processes and what counties without zoning should consider if they’re looking to adopt a zoning ordinance.

## ABCs of P&Z

Whether you’re familiar with planning and zoning or just starting to learn, it’s a good idea to build up your knowledge base. Zoning is a complex and important issue. The definitions below will help as you navigate through the information in this insert.

**Agricultural clause** (also referred to as a “notice of agricultural activity”): Notification to individuals who seek to build in a rural area that they may experience noise, dust and odor associated with generally accepted farming practices (Indiana Land Resources Council 2014). This could be in the form of a notice signed by the applicant when applying for a permit or it could be attached to the deed. Counties may apply an agricultural clause to all new permits or a specific use such as a new residence or platted subdivisions.

**Buffer:** Separation distance between two uses or a use and a zoning district or municipality. Used as a tool to reduce land use conflict between uses not usually deemed compatible with each other.

**BZA:** Board of Zoning Appeals.

**Development plan review:**

A process by which a plan commission reviews an applicant’s development plan to ensure the predetermined standards of the zoning ordinance have been met as allowed for in Indiana Code 36-7-4-1401.5.

**IDEM** (Indiana Department of Environmental Management): A state agency that regulates numerous activities as they relate to the environment.

**Ordinance:** A law, statute or regulation enacted by a local government entity. Zoning ordinances are the means for enforcing municipal law by defining land use within a municipality. The intention of zoning is to conserve the value of property and encourage appropriate land use throughout the locality (Legal Dictionary 2015).

**Screening:** Provides a visual barrier between a use and adjoining properties. Shelterbelts, fencing or earthen mounds are some of the methods used.

**Setback:** The distance of a building or improvements from the property line or specified right of way.

**Shelterbelt:** Trees and shrubs that must reach a cumulative minimum height of 6 feet prior to startup of operation. Used to protect livestock

and farmsteads from wind and blowing snow (Indiana State Department of Agriculture).

**Site scoring system:** A mechanism to approve a local application for a new livestock facility through achievement of a predetermined score based on a series of objective criteria (Indiana State Department of Agriculture).

**Standards:** Provisions of the zoning ordinance regulating the characteristics of the development of a particular use or zoning district.

**Site plan:** A scaled drawing that shows the layout and arrangement of buildings and open space, including parking and yard areas, the provision for access to and from the public street system and often the location of facilities such as water and sewer lines and storm drainage systems (Stuart Meck 2002).

**Variance:** An exception to a zoning ordinance, authorized by the appropriate governmental body such as a planning commission, zoning board, county commissioners or a city council ([www.dictionary.law.com](http://www.dictionary.law.com)).

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**Zoning:** A system of developing a city or county plan in which various geographic areas (zones) are restricted to certain uses and development such as industrial, commercial, agricultural, single-family residential, multi-unit residential, parks, schools and other uses. Zoning is the chief planning tool of local government to guide the future development of a community ([www.dictionary.law.com](http://www.dictionary.law.com)).

**Zoning district:** Designated

districts based on the desired predominant use of land (e.g., residential, commercial, industrial and agricultural). Each district has a set of uses that are permitted by right or by special exemption and a set of standards which determine the character of the district.

**Source:** “*County Regulation of Confined Feeding Operations in Indiana: An Overview*,” by Purdue University Extension

## With or without zoning, counties need to consider ‘what’s right for them’

Counties without zoning ordinances provide an opportunity for county Farm Bureaus to be involved in the process at the outset. If your county is considering adopting zoning, the first step is deciding what the county should look like in regards to agriculture.

“They [the counties] need to do what’s right for them. They need to think about how much regulation they want,” said Jamie Palmer, senior policy analyst at the Indiana University Public Policy Institute. “I think a few counties in southern Indiana are going with what I call ‘zoning light’ where they’re really just taking a few things they want to protect and leaving off what a lot of other communities would choose [to include].”

Palmer said there is a lot of flexibility in zoning and counties should map out ways to address the areas of concern. She said zoning can be as simple as knowing that the county wants to protect industrial or residential areas. Then, the rest of the county can remain fairly permissible throughout.

Jeff Cummins, Indiana State Department of Agriculture director of policy and regulatory affairs, echoed Palmer’s thoughts on purposefully building an identity

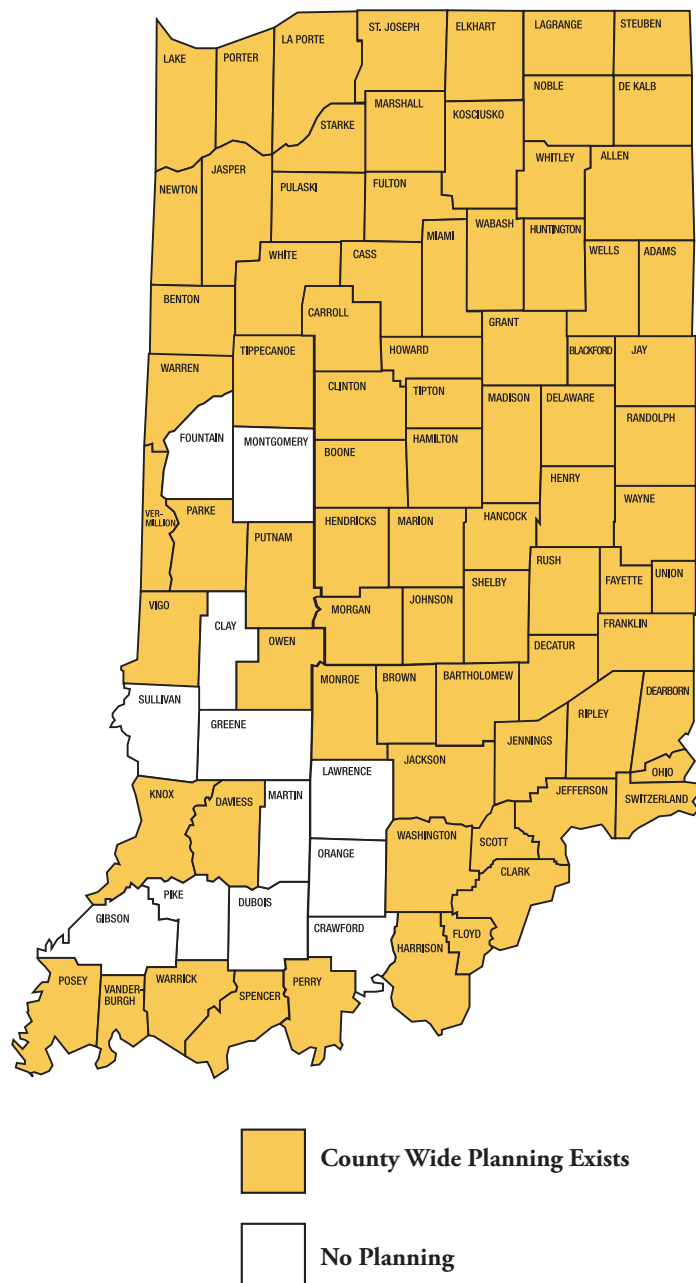
for a county. Cummins said before a county moves into zoning they need to seriously think about what they want to achieve. He added that the zoning ordinance needs to be a reflection of the county’s comprehensive plan.

“The comprehensive plan is your guidance document for the growth and development of your community,” Cummins said. “The zoning ordinance should be the mechanism you use to achieve those goals set in the comprehensive plan.”

According to the “Citizen Planner Manual” created by the Indiana Chapter of the American Planning Association, the first step for a county that wishes to move to zoning is to appoint a plan commission. Then, the plan commission prepares the comprehensive plan, which must be approved by the appropriate legislative body (usually the county commissioners). Lastly, the zoning ordinances are written and submitted for approval to the legislative body.

INFB staff is willing to meet with county Farm Bureau board members to assess comprehensive plans and potential zoning ordinances in counties making the transition.

### Status of County Planning in Indiana



**Whitley County** – The Whitley County livestock ordinance definitions were challenged by a local opposition group. INFB staff met with over 60 producers to help them organize their approach and testimony at the plan commission meeting. The original ordinance language was upheld by the plan commission due to the Farm Bureau members’ support of their plan commission.



## BZAs show some variation across the state

Greg Slipher, Indiana Farm Bureau livestock development specialist, says the job of a county board of zoning appeals (often referred to as the “BZA”) is to approve or deny contingent uses, conditional uses, special exceptions, special uses and variances of standards in regards to zoning.

“The actions of a BZA are quasi-judicial, so its proceedings are like a court,” Slipher said. “An action becomes official when a majority of the entire membership authorizes it.”

The appointment guidelines of persons to a BZA are spelled out in Indiana Code 36-7-4-902. A majority of Indiana’s counties have an area or advisory plan commission. The third option is a metropolitan plan commission, and only Marion, Vanderburgh and Delaware counties are categorized as such.

Depending on the type of plan commission in your county, city or town, the appointment process of BZA members will differ. Below is a summary of the rules for appointing the BZA members as explained in IC 36-7-4-902. The two most common types of plan commissions are:

**Advisory** – Each division of the advisory board of zoning appeals consists of five members as follows:

- Three citizen members appointed by the executive of the municipality or county (the mayor or the county commissioners), of whom one must be a member of the plan commission and two must not be members of the plan commission.
- One citizen member appointed by the fiscal body of the municipality or county (city or county council), who must not be a member of the plan commission.

- One member appointed by the plan commission from the plan commission’s membership, who must be a county agricultural agent or a citizen member of the plan commission.

**Area** – Each division of the area board of zoning appeals consists of five members as follows:

- One citizen member appointed by the area plan commission from its membership.
- One citizen member, who may not be a member of any plan commission, appointed by the mayor of the largest municipality in the county participating

in the commission.

- Two citizen members, of whom one must be a member of the area plan commission and one must not be a member of any plan commission, appointed by the county legislative body (county commissioners in all counties except Lake and St. Joseph).
- One citizen member, who may not be a member of any plan commission, appointed by the mayor of the second largest municipality in the county participating in the commission. However, if there is only one

municipality in the county participating in the commission, then the county legislative body (county commissioners in all counties except Lake and St. Joseph) will make this appointment.

These are the two most common types of plan commissions. However, a few counties use alternate structures based on various factors. To view the full code descriptions of all types of plan commissions, visit [iga.in.gov/legislative/laws/2017/ic/titles/036#36-7-4-902](http://iga.in.gov/legislative/laws/2017/ic/titles/036#36-7-4-902).

**Source: IC 36-7-4-902**

## All permit approvals are not alike, INFB specialist explains

Zoning has taken on significant importance with the increased presence of confined feeding operations (often known as CFOs) and continued proposal of new CFO sites in the state. The Interim Study Committee on Agriculture & Natural Resources met at the Statehouse three times this year to discuss the proximity to and interaction of CFOs with suburban and urban areas. INFB supports the use of wise, local zoning ordinances to reduce the potential for conflict.

“Approval processes for improvement permits in the 80 counties in Indiana with zoning are varied,” said Greg Slipher, INFB livestock development specialist. Slipher has seen many different methods used throughout the state.

According to Slipher, some of the processes for approval of CFO sites include:

**Permitted use in an agriculture zone:** This is the most straightforward type of approval.

“There is no need for additional action to be taken in this situation,” Slipher said. “It’s an approved use and the applicant meets all of the developmental standards.”

**Permitted use that goes through the special exception public hearing:** Counties may have a public review process before granting a permit in an agricultural zone. Each proposed CFO permit is subject to a public hearing.

**Permitted use in an intense agricultural zone:** This process would require a rezoning of the property into a zoning district designated for an Indiana Department of Environmental Management-permitted livestock building. “This process requires a public hearing conducted by the plan commission in order for the plan commission to make a recommendation to the county commissioners,” Slipher said. “Then, there is another public hearing before the county commissioners that

takes place before they grant or deny the rezone of the parcel.”

**Special exception:** Slipher says an applicant must go before the board of zoning appeals for a “Findings of Fact” hearing. If the majority of the entire BZA authorizes the action, the applicant can proceed.

**Variance:** When an exception to the zoning ordinance is requested, Slipher says the BZA will hold a public hearing on the matter and make a decision.

**Site scoring system:** These systems grant permits on the basis of meeting predetermined standards. Slipher says based on the points received, some applicants are given immediate approval if they meet or exceed all criteria. If they fall just short of the required points for automatic approval, applicants must go before the BZA for a public hearing. If the applicant doesn’t meet the minimum standards, the requested permit is denied.

## Land use discussions offer opportunities to county Farm Bureaus

Greg Slipher, INFB livestock development specialist, says it's not enough to simply know how zoning works.

"It's important for our members to be engaged in the zoning and planning process," Slipher said. "Getting involved and staying in the loop will help them identify potential zoning issues before they arise."

Slipher recommends that county Farm Bureau members attend meetings of the plan commission and board of zoning appeals. If members want to be more involved, Slipher said they can explore how to be appointed to the plan commission or BZA.

County Farm Bureau board members might also consider inviting the plan commission and BZA to a board meeting on an annual basis, offering to be a source of information for the plan commission and BZA, and inviting INFB staff to hold a review of the county's current zoning ordinances.

In counties that don't have county-wide zoning, Slipher said county Farm Bureaus must lead the discussion and education efforts to explore the merits of zoning.

"Agriculture interests are important to the acceptance or

rejection of zoning in a county," Slipher said. He added that those involved in agriculture should realize they may be the voting minority in the county if zoning is being advocated by non-agriculture interests.

Visit [www.infb.org/news/publications/the-hoosier-farmer](http://www.infb.org/news/publications/the-hoosier-farmer) and click on "Planning and zoning websites for Indiana counties" to find a list of links to individual county websites.

## Plan commissions create 'blueprints' for future development

According to a manual created by the Indiana Chapter of the American Planning Association, the main objective of a plan commission is to create and recommend a comprehensive plan for the legislative body in a community. The comprehensive plan is the blueprint for the future development and planning of the area.

Most of Indiana's plan commissions are either area or advisory plan commissions (see related story on page III). The other two types are metropolitan plan commissions and joint district commissions. Only three counties (Marion, Delaware and Vanderburgh) are classified as metropolitan plan commissions, and Bartholomew County houses the state's only joint district commission.

Below are summaries from the Indiana Chapter of the American Planning Association's "Citizen Planner Manual" that explain how the area and advisory plan commissions work.

**Area plan commissions** are cooperative efforts between a county and at least one municipality within the county. In jurisdictions using the area planning law, one commission serves the county and all municipalities

that choose to participate. The area plan commission is a unit of county government, staffed by an executive director and any other employees included in the annual budget. Area jurisdictions are permitted to adopt unified plans and ordinances: a single comprehensive plan, a single zoning ordinance, and a single subdivision control ordinance can apply to the county and to all participating municipalities. In a county having an area plan commission, a city or town that does not participate in the area commission may not exercise planning authority outside the corporate limits of the municipality. Nonparticipating municipalities may, however, form advisory plan commissions with authority for planning within the city or town.

**Advisory plan commissions** serve a county, city or town. In Indiana, municipalities are legally permitted to plan for an area up to 2 miles outside the corporate boundaries in what is described as an "extraterritorial planning area." In counties with no comprehensive plan, municipal plan commissions may simply assume this extraterritorial authority from the county. In a county with a comprehensive plan, the municipal plan commission must request

this authority from the county legislative body; however, if municipal services are provided to the extraterritorial area, the municipal plan commission may assume this authority from the county. The county must adopt an ordinance granting this authority to the city or town.

When a municipal plan commission assumes extraterritorial jurisdiction, it must file a map and description of the territory involved with the county recorder. Another option is available to cities and towns in counties with advisory plan commissions: the municipality may designate the county plan commission as the municipal plan commission. The city or town may then contract with the county to pay the county a proportionate share of the costs of planning services. This procedure is most often used by towns that are too small to adequately maintain a planning program. In these cases, residents of the city or town are eligible for appointment to the plan commission.

**Source: Indiana Chapter of American Planning Association's "Citizen Planner Manual"**

**Franklin County** – Proposed changes to county livestock ordinances were successfully defeated thanks in part to the members of the Franklin County Farm Bureau who participated in a training session conducted by INFB staff.