

IC 36-7-11.1

Chapter 11.1. Historic Preservation in Marion County

IC 36-7-11.1-1

Application of chapter

Sec. 1. This chapter applies to each county having a consolidated city.

As added by Acts 1982, P.L.77, SEC.6.

IC 36-7-11.1-2

Definitions

Sec. 2. As used in this chapter:

"Commission" refers to the historic preservation commission appointed under section 3 of this chapter.

"Historic area" means an area, within the county, declared by resolution of the historic preservation commission to be of historic or architectural significance and designated as a "historic area" by the historic preservation plan. This area may be of any territorial size or configuration, as delineated by the plan, without a maximum or minimum size limitation, and may consist of a single historic property, landmark, structure, or site, or any combination of them, including any adjacent properties necessarily a part of the historic area because of their effect on and relationship to the historic values and character of it.

"Historic preservation plan" means a plan designating one (1) or more historic areas, prepared and setting forth a plan for historic preservation by the historic preservation commission under this chapter, and adopted by the metropolitan development commission as a part of the county's comprehensive plan.

As added by Acts 1982, P.L.77, SEC.6.

IC 36-7-11.1-3

Historic preservation commission; appointments; terms; vacancies; salary; officers; procedural rules; quorum; absentee members voting

Sec. 3. (a) The executive and the legislative body of the consolidated city shall appoint a commission of nine (9) members to be known as the "_____ Historic Preservation Commission" (including the name of the city).

(b) The following apply to the appointment of members:

(1) The executive shall appoint five (5) members of the commission. The executive:

(A) may select two (2) members from lists of names submitted by the Historic Landmarks Foundation of Indiana and the historical society of the consolidated city's county;

(B) may select one (1) member who is a member of the metropolitan development commission; and

(C) may select one (1) member from a list of names submitted by the local chapter of the American Institute of Architects.

(2) The legislative body shall appoint four (4) members of the commission. The legislative body:

(A) shall select one (1) member who is a resident of a historic area of the consolidated city;

(B) may select one (1) member from lists of names submitted by the Historic Landmarks Foundation of Indiana and the historical society of the consolidated city's county; and

(C) may select one (1) member from a list of names submitted by the local chapter of the American Institute of Architects.

(c) Each appointment to the commission is for a term of four (4) years, commencing on January 1 following the appointment, and until a successor is appointed and is qualified. A member is eligible for reappointment.

(d) If a vacancy occurs in the commission during any term, a successor shall be appointed by the appointing authority to serve for the remainder of the vacated term. Any member of the commission may be removed for cause by the appointing authority. All members must be residents of the county.

(e) The members receive no salary, but are entitled to reimbursement for any expenses necessarily incurred in the performance of their duties.

(f) At its first scheduled meeting each year, the commission shall hold a meeting for the purpose of organization. The commission shall elect from its membership a president, vice president, secretary, and treasurer who shall perform the duties pertaining to those offices. The officers serve from the date of their election until their successors are elected and qualified. The commission may adopt bylaws and rules for the proper conduct of its proceedings, the carrying out of its duties, and the safeguarding of its funds and property. A majority of the members of the commission constitute a quorum, and the concurrence of a majority of the commission is necessary to authorize any action.

(g) A member of the commission is not disqualified from hearing and voting upon any matter coming before the commission because that member owns or occupies property within or adjacent to a historic area, unless that property is the subject property or located within two hundred (200) feet of it.

(h) A member of the commission who is absent from three (3) consecutive regular meetings of the commission shall be treated as if the member had resigned, unless the appointing authority reaffirms the member's appointment. However, the counting of such a member toward a quorum requirement or the voting by such a member does not invalidate any official action taken by the commission before the time that the minutes of the commission reflect that the member has resigned.

As added by Acts 1982, P.L.77, SEC.6. Amended by P.L.88-2009, SEC.11.

IC 36-7-11.1-3.1

Terms of certain members of commission; appointment of successor; expiration of section

Sec. 3.1. (a) A member appointed to the commission under section 3 of this chapter before July 1, 2009, shall continue to serve as a member of the commission after June 30, 2009, until:

- (1) the end of the term for which the member was appointed; or
- (2) the executive removes the member for cause.

If the executive removes the member for cause, the executive shall appoint a successor to serve for the remainder of the vacated term.

(b) This section expires July 1, 2014.

As added by P.L.88-2009, SEC.12.

IC 36-7-11.1-4

Administrator; staff; work program; information; offices and facilities; annual budget

Sec. 4. (a) After consulting with the executive of the consolidated city and the director of the department of metropolitan development, the commission may appoint or remove an administrator. The administrator shall, in accordance with the personnel policies and practices of the city, hire and discharge additional staff, following the standards and qualifications established by the commission. No consideration may be given to political affiliation in the selection and tenure of the staff. The commission shall determine the compensation of the administrator and other staff consistent with ordinances of the legislative body adopted under IC 36-3-6-3.

(b) Before December 1 each year, the commission shall adopt a work program defining the activities that are proposed to be carried out by staff during the next calendar year. At least forty-five (45) days before the commission desires to adopt a work program, it shall submit a copy of the proposed work program to the executive of the consolidated city and to the director of the department of metropolitan development. The executive and director shall, within thirty (30) days after submission, review and provide comments to the commission regarding the proposed work program. After comments have been received from the executive and the director and considered by the commission or after thirty (30) days have elapsed from the date of submission (whichever occurs first), the commission shall adopt a work program. Activities carried out during the calendar year must conform to or not substantially depart from the work program. The work program may be modified during the applicable calendar year in the same manner as the adoption of the original work program, except that the executive and the director have only ten (10) days in which to review and comment on the proposed work program modification, and the commission may then immediately adopt a work program modification.

(c) The administrator shall provide information that will allow the director of the department of metropolitan development to coordinate the activities of the department of metropolitan development with the activities of the commission and its staff. In order to achieve

consistency in administrative practices and policies between the consolidated city and the staff of the commission, the administrator shall seek the advice and guidance of the director regarding such matters as budgeting and fiscal control, personnel administration, and purchasing.

(d) The commission shall establish and maintain offices and facilities as may be necessary for the performance of its duties, the activities of its staff, and the preservation of its records, documents, and accounts. The location of the offices must be approved by the executive of the consolidated city.

(e) The commission shall prepare and submit annually to the fiscal officer of the consolidated city its estimate of the expenditures required for its operations and fiscal responsibilities for the ensuing fiscal year. The budget of the commission and its staff constitutes a part of the consolidated city budget and shall be determined in accordance with IC 36-3-6, and the county comprises the taxing district for the commission.

As added by Acts 1982, P.L.77, SEC.6.

IC 36-7-11.1-5

Powers and duties of commission

Sec. 5. (a) The commission may do the following:

- (1) Acquire by purchase, gift, grant, bequest, devise, or lease any real or personal property needed for carrying out any of the purposes of this commission. Title to or interest in any real property acquired or held by the commission must be in the name of the consolidated city for the use and benefit of the commission.
- (2) Hold, use, sell, lease, rent, or otherwise dispose of any property acquired for use in the carrying out of any of the purposes of the commission at public or private sale and on terms and conditions as the commission considers best, notwithstanding any other law.
- (3) Preserve and restore areas and structures of historic or architectural significance.
- (4) Conduct research and prepare a countywide comprehensive survey and inventory, and review and evaluate areas, structures, and sites of historic importance in the county for use by planning agencies and governmental officials.
- (5) Identify by declaratory resolution areas, structures, and sites in the county having historic or architectural significance, and prepare historic preservation plans for them. The commission may prepare proposed historic district zoning classifications, including proposals for controlling the use and development of any historic area or areas, including standards and restrictions regarding permitted uses, and development, performance, and maintenance standards for public and private structures and sites, and prepare criteria and architectural standards of historical significance.
- (6) Submit proposed historic preservation plans to the

metropolitan development commission for consideration for adoption as a segment of the comprehensive plan of the county.

(7) After adoption of a historic preservation plan, assist in the plan's administration and implementation, including the issuance of permits and licenses, together with other governmental agencies, and hear and determine applications for certificates of appropriateness as provided in this chapter.

(8) Manage and operate historic structures and areas for any purpose consistent with the applicable historic preservation plan, authorize necessary agents and employees to convey or lease any properties for any purpose or use to further the plan, and do all necessary acts and things incidental to operations, management, and leasing, including charging reasonable admission fees to any of these properties.

(9) Assist other governmental agencies regarding historic preservation, including the development of a state preservation plan as the plan relates to the county, and work with other governmental agencies in the development and carrying out of plans to preserve, restore, and rehabilitate any historic area, including the elimination of blight and deterioration, the demolition and removal of unsafe, unhealthful structures, and the repair and appropriate alteration of structures.

(10) Acquire any properties, structures, or sites for any purpose of the commission by conveyance from the redevelopment commission or from any other person or governmental agency, upon such terms and conditions, and with or without compensation, as may be agreed upon.

(11) Establish and maintain a register of historic properties in the county.

(12) Make any recommendation and reports the commission considers appropriate to the executive of the consolidated city, metropolitan development commission, or other governmental agency concerning historic preservation in the county.

(13) Prepare, publish, present, or distribute, with or without charge, any information, reports, graphic or audiovisual presentations, documents, or other materials relative to historic preservation.

(14) Conduct, attend, or participate in any conferences, presentations, seminars, or programs regarding historic preservation.

(15) Encourage and promote historic preservation, particularly preservation by private means, provide technical assistance to local preservation or historical associations, individuals, or groups, in accordance with the historic preservation plan, and recognize excellence in historic preservation efforts by awarding citations.

(16) Establish citizens advisory councils or special committees regarding historic preservation.

(17) Prescribe the duties and qualifications of its administrator and other staff in accordance with section 4 of this chapter.

(18) Contract with architects, engineers, attorneys, urban planners, or any other consultants in connection with any purpose of the commission, such as the conducting of a survey of historic properties, preparation of proposed plans, ordinances, reports, surveys, drawings, maps of historic areas, or any other project provided in this chapter.

(19) Appoint a hearing officer (who may be a commission member, a member of the staff, or any other person) to hear and determine, on behalf of the commission, applications for certificates of appropriateness.

(20) Prepare and submit an annual budget in the manner prescribed by section 4 of this chapter.

(21) Participate, in conjunction with the consolidated city, in a retirement system for commission employees.

(22) Accept or contract with the consolidated city or with other persons for the furnishing of professional staff or any other services, office facilities, equipment, and supplies to the extent and for compensation as may be agreed upon, with or without compensation, and to receive and expend any funds, grants, or gifts for carrying out any function of the commission under this chapter.

(23) Enter into and carry out contracts with federal or state agencies, subject to the approval of the city executive, regarding grants of financial or other assistance to the county, city, or commission, accept and expend grant money or other assistance, and enter into and carry out contracts with other persons or governmental agencies for any purpose of the commission.

(24) Exercise the powers of a board of zoning appeals in a historic area or historic zoning district, if authorized by a zoning ordinance adopted under IC 36-7-4.

(25) Conduct public hearings required to be held by the metropolitan development commission under the 600 series of IC 36-7-4 relative to territory included in a historic area or historic zoning district, if designated by the metropolitan development commission.

(b) The commission shall provide technical services and advice about historic preservation to the consolidated city when necessary or useful in connection with the planning, development, or redevelopment of the county.

(c) This subsection applies to the sale or disposal of real property by the commission. If the property is sold by acceptance of bids, a bid submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:

(1) beneficiary of the trust; and

(2) settlor empowered to revoke or modify the trust.

As added by Acts 1982, P.L.77, SEC.6. Amended by P.L.336-1989(ss), SEC.49; P.L.321-1995, SEC.6.

IC 36-7-11.1-6

Proposed historic preservation plans; recommendations; approval proceedings; official markers

Sec. 6. (a) The commission shall have its staff prepare proposed historic preservation plans for all appropriate areas of the county. Upon the commission's declaratory resolution of the historic or architectural significance of any area, structure, or site designated in it, the proposed historic preservation plan shall be presented to the metropolitan development commission for public hearing and adoption as a part of the comprehensive plan of the county.

(b) The proposed historic preservation plan must officially designate and delineate historic areas and identify any individual structures or sites in it of particular historic or architectural significance, which structures and sites must be listed on the county register of historic places.

(c) With the designation of a historic structure, the plan may additionally expressly identify and designate the interior, or any interior architectural or structural feature of it, having exceptional historic or architectural significance.

(d) The historic preservation plan may include any of the material listed in IC 36-7-4-503 as it relates to historic preservation. Any plan designating one (1) or more historic areas, and any historic structures and sites located in it, must include a historic and architectural or design analysis supporting the significance of the historic area, general or specific criteria for preservation, restoration, rehabilitation, or development, including architectural and design standards, and a statement of preservation objectives.

(e) In preparing a proposed historic preservation plan, the staff of the commission shall inform, consult, and cooperate with the staff of the department of metropolitan development. In carrying out its planning and redevelopment responsibilities in an area for which a historic preservation plan is being prepared or is in effect, the staff of the department of metropolitan development shall inform, consult, and cooperate with the staff of the commission. To the extent possible, commission staff and department staff shall carry out a joint planning effort relative to proposed historic areas with the resulting information and conclusions relating to historic preservation being placed in the proposed historic preservation plan.

(f) Concurrently or subsequently, the commission may prepare and recommend to the metropolitan development commission, for its initiation, approval, and recommendation to the legislative body for adoption, a historic district zoning ordinance or ordinances to implement the historic preservation plan.

(g) Each historic area or historic zoning district must be of such territorial extent and configuration as will best serve the purposes of this chapter, there being no maximum or minimum size limitations thereon whether applied to single or multiple historic properties or sites, and may include any adjacent area necessarily a part thereof because of its effect upon and relationship to the historic values and character of the area.

(h) The proposed historic preservation plan, if approved and

adopted by the metropolitan development commission, constitutes part of the comprehensive plan of the county.

(i) The proceeding for approval of this plan, including notice and hearing requirements, is governed by the same rules and requirements applicable to petitions to the metropolitan development commission for amendment of zoning ordinances and for creation of new district classifications, and by all statutory requirements relative to the metropolitan development commission; however, individual notice of the hearing shall be given each owner of property in any proposed historic area, according to the metropolitan development commission's rules and requirements or, alternatively, the owner's consent to the proposed historical area designation may be obtained and filed with the metropolitan development commission.

(j) Amendments to any historic preservation plan, or any segment of it, shall be made in the same manner as the original plan.

(k) The commission shall receive and consider any pertinent information or exhibits such as historical data, architectural plans, drawings and photographs, regarding any proposed or designated historic area, structure, or site, and any request for historic designation or for the exclusion of any property or structure from any proposed or designated historic area.

(l) The commission may adopt any operating guidelines for the evaluation and designation of historic areas, structures, and sites, so long as they are in conformity with the objectives of this chapter.

(m) Upon the adoption of the historic preservation plan, the commission may at any time identify by appropriate markers any historic areas, structures, and sites designated by the plan, or any historic area properties in the process of restoration under the plan. These markers may be erected on public right-of-ways or, with the consent of the owner, on any subject historic property. These official informational or identification markers, whether permanent or temporary, constitute an exception to any codes and ordinances establishing sign regulations, standards, and permit requirements applicable to the area.

As added by Acts 1982, P.L.77, SEC.6.

IC 36-7-11.1-7

Categories of work exempted by historic preservation plan; premature issuance of permits for work

Sec. 7. (a) The historic preservation plan may provide that certain categories of work accomplished in the historic area are exempt from the requirement imposed by section 9 of this chapter that a certificate of appropriateness be issued. Categories of work that may be exempted by a historic preservation plan include the construction, reconstruction, alteration, or demolition of a structure or feature. Various historic preservation plans may exempt different categories of work.

(b) After the commission has adopted a declaratory resolution relative to a historic area and presented the historic preservation plan to the metropolitan development commission for adoption or

rejection as a segment of the comprehensive plan of the county, no permits may be issued by the department of metropolitan development for the construction, reconstruction, or alteration of any exterior architectural structure or feature in the area or the demolition of any structure or feature in the area until the metropolitan development commission has taken official action on the proposed plan or within ninety (90) days after the date of adoption of the declaratory resolution by the commission, whichever occurs first. If such a permit has been issued before the adoption of a declaratory resolution by the commission, the agency issuing the permit may order that the work allowed by the permit, or a part of the work, be suspended until the metropolitan development commission has adopted or rejected the historic preservation plan.

As added by Acts 1982, P.L.77, SEC.6.

IC 36-7-11.1-8

Permits for work; application; certificate of appropriateness

Sec. 8. (a) After adoption of the historic preservation plan for any historic area, permits may be issued by the department of metropolitan development for the construction of any structure in the area or the reconstruction, alteration, or demolition of any structure in the area only if the application for the permit is accompanied by a certificate of appropriateness issued under section 10 of this chapter.

(b) Notwithstanding subsection (a), if the historic preservation plan for the historic area specifically exempts certain categories of work involving the construction, reconstruction, alteration, or demolition of structures in that area from the requirement that a certificate of appropriateness be issued, then a permit for the work may be obtained from the department of metropolitan development without the issuance of a certificate of appropriateness.

(c) After the adoption of the historic preservation plan for any area, all governmental agencies shall be guided by and give due consideration to the plan in any official acts affecting the area.

(d) On application by any governmental agency or interested party in accordance with section 9 of this chapter, the commission shall make a determination of the appropriateness of any proposed governmental action affecting a historic area. Any official action in conflict with the plan or determined by the commission to be inappropriate is presumed to be not in the public interest and is subject to the enforcement provisions of section 12 of this chapter.

(e) The commission's determination of appropriateness is a prerequisite to any governmental order or action to alter or demolish any designated historic site or any structure in a historic area. No rezoning or variance applicable to a historic area, or any part of it, may be approved by the metropolitan development commission or granted by a board of zoning appeals, except on the commission's prior issuance of a certificate of appropriateness.

As added by Acts 1982, P.L.77, SEC.6.

IC 36-7-11.1-9

Necessity of certificate of appropriateness; filing application; issuance procedure

Sec. 9. (a) A person may not construct any exterior architectural structure or feature in any historic area, or reconstruct, alter, or demolish any such exterior or designated interior structure or feature in the area, until the person has filed with the secretary of the commission an application for a certificate of appropriateness in such form and with such plans, specifications, and other material as the commission may from time to time prescribe and a certificate of appropriateness has been issued as provided in this section. However, this chapter does not:

- (1) prevent the ordinary maintenance or repair of any such exterior or designated interior architectural structure or feature that does not involve a change in design, color or outward appearance of it;
- (2) prevent any structural change certified by the department of metropolitan development as immediately required for the public safety because of a hazardous condition; or
- (3) require a certificate of appropriateness for work that is exempted by a historic preservation plan under section 7 of this chapter.

(b) The commission shall hold a public hearing on any application for certificate of appropriateness. At least ten (10) days before the date set for the hearing, notice shall be published in accordance with IC 5-3-1, and notice shall be given additionally to the affected parties in accordance with the commission's rules of procedure.

(c) Upon hearing the application for a certificate of appropriateness, the commission shall determine whether the proposal will be appropriate to the preservation of the area and to the furtherance and development of historic preservation.

(d) In determining appropriateness of any proposed construction, reconstruction, or alteration, the commission shall consider, in addition to any other pertinent factors, the visual compatibility, general design, arrangement, color, texture, and materials in relation to the architectural or other design standards prescribed by the plan or any applicable zoning regulation, the design and character of the historic area, and the architectural factors of other structures in it. In determining appropriateness of any proposed demolition, the commission shall consider, in addition to any other pertinent factors, the character and significance of the subject structure in relation to the historic area and any other structures or sites in it, including its relative contribution to the historic and architectural values and significance of the area.

(e) However, if the commission finds under subsection (d) any application to be inappropriate, but that its denial would result in substantial hardship or deprive the owner of all reasonable use and benefit of the subject property, or that its effect upon the historic area would be insubstantial, the commission shall issue a certificate of authorization, which constitutes a certificate of appropriateness for

purposes of this chapter.

(f) Issuance of a certificate of appropriateness is subject to review by the metropolitan development commission as to its appropriateness in relation to the comprehensive plan. This review must be in accordance with the same procedures and limitations applicable to appeals of decisions of boards of zoning appeals, as provided in IC 36-7-4, and must be initiated only upon notice of appeal by the division of planning and zoning certifying that this determination interferes with the comprehensive plan. All proceedings and work on the subject premises under the certificate of appropriateness are automatically stayed upon notice of the appeal.

As added by Acts 1982, P.L.77, SEC.6.

IC 36-7-11.1-10

Certificate of appropriateness; determination of commission

Sec. 10. (a) If the commission determines that the proposed construction, reconstruction, alteration, or demolition will be appropriate, the secretary of the commission shall forthwith issue to the applicant a certificate of appropriateness.

(b) The commission may impose any reasonable conditions, consistent with the historic preservation plan, upon the issuance of a certificate of appropriateness, including the requirement of executing and recording covenants or filing a maintenance or performance bond. If the commission determines that a certificate of appropriateness should not be issued, the commission shall forthwith place upon its records the reasons for the determination and may include recommendations respecting the proposed construction, reconstruction, alteration, or demolition. The secretary of the commission shall forthwith notify the applicant of the determination transmitting to the applicant an attested copy of the reasons and recommendations, if any, of the commission.

(c) A final determination of the commission upon an application for certificate of appropriateness is subject to judicial review in the same manner and subject to the same limitations as a final decision of a board of zoning appeals under IC 36-7-4. However, notwithstanding IC 36-7-4-1609, upon notice of the filing of the petition for judicial review, all proceedings and work on the subject premises are automatically stayed.

As added by Acts 1982, P.L.77, SEC.6. Amended by P.L.126-2011, SEC.65.

IC 36-7-11.1-11

Hearing officer; powers and duties

Sec. 11. (a) A hearing officer designated by the commission may conduct the public hearing provided for in this chapter on applications for a certificate of appropriateness. The commission may limit by rule or resolution the applications that a hearing officer may hear and determine.

(b) The hearing officer shall hold a public hearing under the same

notice and procedural requirements as are applicable to a hearing before the commission. After the hearing on an application for a certificate of appropriateness, the hearing officer shall make a determination.

(c) The hearing officer may not issue a certificate of authorization.

(d) The hearing officer shall set forth the reasons for the determination and may impose conditions in accordance with section 10 of this chapter.

(e) The commission shall provide reasonable opportunity by rules for the applicant, any commission member, the administrator, or any interested person to file exceptions to the determination of the hearing officer. If an exception is properly filed, the commission shall hold a de novo hearing and make a determination. If such an exception is not filed, the determination of the hearing officer constitutes the final decision of the commission.

As added by Acts 1982, P.L.77, SEC.6.

IC 36-7-11.1-12

Enforcement of chapter, ordinance, and covenants; notice to correct failures or violations

Sec. 12. (a) Whenever the commission finds that the owner of property in any historic area has neglected to keep the property and premises in a clean, sanitary, and tidy condition or has failed to maintain any structure in a good state of repair and in a safe condition, the commission may give the owner written notice to correct the failures or violations within thirty (30) days after receipt of notice, and if the owner fails to comply, then the commission may bring appropriate enforcement actions as provided by subsection (b).

(b) The commission, or any enforcement official of the consolidated city designated by the commission, may enforce this chapter, any ordinance adopted under it, and any covenants or conditions required or imposed by the commission by civil action in the circuit or superior court. Any legal, equitable, or special remedy may be invoked, including mandatory or prohibitory injunction or a civil fine. These enforcement actions (except those seeking a civil fine) may also be brought by any interested person or affected owner.

(c) Ordinances adopted under this chapter may provide for penalties for violations, subject to IC 36-1-3-8.

(d) No costs may be taxed against the commission or any of its members in any action.

(e) In actions brought under subsection (b), there may not be changes of venue from the county.

As added by Acts 1982, P.L.77, SEC.6. Amended by P.L.16-1995, SEC.14.

IC 36-7-11.1-13

Nonconforming uses

Sec. 13. (a) Except as provided in section 13.1 of this chapter, any building, structure, or land use in existence at the time of the

adoption of the historic preservation plan that is not in conformity to or within the zoning classification or restrictions or requirements or architectural standards of this plan, shall be considered to be a nonconforming use and may continue, but only so long as the owner or owners continuously maintain this use.

(b) Except as provided in section 13.1 of this chapter, in addition to the requirements pertaining to certificates of appropriateness, the ownership of a nonconforming use is subject to the additional restriction that a nonconforming use may not be reconstructed or structurally altered to an extent exceeding in aggregate cost fifty percent (50%) of the market value thereof unless the structure is changed to a conforming use.

As added by Acts 1982, P.L.77, SEC.6. Amended by P.L.113-1998, SEC.2.

IC 36-7-11.1-13.1

Agricultural nonconforming use

Sec. 13.1. (a) The definitions used in this section apply only to this section.

(b) As used in this section, "agricultural use" refers to land that is used for:

(1) the production of livestock or livestock products, commercial aquaculture, equine or equine products, poultry or poultry products, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, bees and apiary products, tobacco, or other agricultural crops, in the case of land that was not subject to a comprehensive plan or zoning ordinance before the most recent plan or zoning ordinance, including any amendments, was adopted; or

(2) agricultural purposes as defined in or consistent with a comprehensive plan or zoning ordinance that:

(A) the land was subject to; and

(B) was repealed before the adoption of the most recent comprehensive plan or zoning ordinance, including any amendments.

(c) As used in this section, "agricultural nonconforming use" means the agricultural use of the land is not permitted under the most recent comprehensive plan or zoning ordinance, including any amendments, for the area where the land is located.

(d) An agricultural use of land that constitutes an agricultural nonconforming use may be changed to another agricultural use of land without losing agricultural nonconforming use status.

(e) A county or municipality may not, through the county or municipality's zoning authority, do any of the following:

(1) Terminate an agricultural nonconforming use if the agricultural nonconforming use is maintained for at least any three (3) year period in a five (5) year period.

(2) Restrict an agricultural nonconforming use.

(3) Require any of the following for the agricultural nonconforming use of the land:

- (A) A variance for the land.
- (B) A special exception for the land.
- (C) A special use for the land.
- (D) A contingent use for the land.
- (E) A conditional use for the land.
- (F) A permit for work under section 8 of this chapter.
- (G) A certificate of appropriateness.

(f) Notwithstanding subsection (e), this section does not prohibit a county, a municipality, or the state from requiring an agricultural nonconforming use to be maintained and operated in compliance with all:

- (1) state environmental and state health laws and rules; and
- (2) requirements to which conforming agricultural use land is subject under the county's comprehensive plan or zoning ordinance.

As added by P.L.113-1998, SEC.3. Amended by P.L.106-1999, SEC.3.

IC 36-7-11.1-14

Effect of chapter on existing laws

Sec. 14. This chapter does not supersede IC 36-7-11.2 or IC 36-7-11.3 and is intended to supplement the following:

- (1) IC 36-7-4.
- (2) IC 36-7-11.2.
- (3) IC 36-7-11.3.

As added by Acts 1982, P.L.77, SEC.6. Amended by P.L.1-1995, SEC.82.