

IC 36-7-11.3

Chapter 11.3. Municipal Preservation

IC 36-7-11.3-1

Purpose of chapter

Sec. 1. (a) The purpose of this chapter is to preserve:

- (1) from deterioration;
- (2) from improperly conceived or implemented change; and
- (3) for the continued health, safety, enjoyment, and general welfare of the citizens of Indiana;

a historic, scenic, aesthetically pleasing, and unique part of a street lying within a city or town constituting the backbone of a unique residential area.

(b) The general assembly intends, by passage of this chapter, to:

- (1) encourage private efforts to maintain and preserve that part of the street and other similar streets and areas in Indiana;
- (2) promote orderly and proper land usage; and
- (3) preserve significant tourist attractions of historical and economic value in Indiana;

by limiting and restricting unhealthful, unsafe, unaesthetic, or other use of unique areas that would be inconsistent with their character as tourist attractions and with the general welfare of the public.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-2

"Commission" defined

Sec. 2. As used in this chapter, "commission" refers to a preservation commission created under this chapter.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-3

"Development commission" defined

Sec. 3. As used in this chapter, "development commission" means the governmental authority having primary jurisdiction over:

- (1) recommending; and
- (2) recommending alterations or changes in;

the comprehensive plan for land use applicable to the municipality in which the preservation area created under this chapter lies.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-4

"Family" defined

Sec. 4. (a) As used in this chapter, "family" means any number of individuals who:

- (1) are all related to each other by marriage, consanguinity, or legal adoption; and
- (2) live together as a single household with a single head of the household.

(b) The term includes the following:

- (1) Live-in paid domestic employees.

(2) Not more than two (2) nontransient guests of the household.
As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-5

"Interested party" defined

Sec. 5. As used in this chapter, "interested party" means the following:

- (1) The governor.
- (2) The Indiana department of transportation.
- (3) The department of natural resources.
- (4) The executive of the city or town.
- (5) The municipal plan commission.
- (6) The society.
- (7) Each owner or occupant owning or occupying primary or secondary property to a depth of two (2) ownerships of the perimeter of the property.
- (8) An owner, occupant, or other person having a legal or equitable interest in the subject property.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-6

"Notice" defined

Sec. 6. As used in this chapter, "notice" means written notice:

- (1) served personally upon the person, official, or office entitled to the notice; or
- (2) served upon the person, official, or office by placing the notice in the United States mail, first class postage prepaid, properly addressed to the person, official, or office. Notice is considered served if mailed in the manner prescribed by this subdivision properly addressed to the following:
 - (A) The governor, both to the address of the governor's official residence and to the governor's executive office in Indianapolis.
 - (B) The Indiana department of transportation, to the commissioner.
 - (C) The department of natural resources, both to the director of the department and to the director of the department's division of historic preservation and archeology.
 - (D) The municipal plan commission.
 - (E) An occupant, to:
 - (i) the person by name; or
 - (ii) if the name is unknown, the "Occupant" at the address of the primary or secondary property occupied by the person.
 - (F) An owner, to the person by the name shown to be the name of the owner, and at the person's address, as appears in the records in the bound volumes of the most recent real estate tax assessment records as the records appear in:
 - (i) the offices of the township assessors (if any); or
 - (ii) the office of the county assessor.

(G) The society, to the organization at the latest address as shown in the records of the commission.
As added by P.L.1-1995, SEC.84. Amended by P.L.219-2007, SEC.123; P.L.146-2008, SEC.720.

IC 36-7-11.3-7

"Occupant" defined

Sec. 7. As used in this chapter, "occupant" means a person:

- (1) occupying:
 - (A) under a written lease; or
 - (B) as an owner; and

(2) using for residential purposes;
a single family or double family residential dwelling located upon primary or secondary property.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-8

"Owner" defined

Sec. 8. As used in this chapter, "owner" means a person who owns a legal or an equitable interest in primary or secondary property.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-9

"Person" defined

Sec. 9. As used in this chapter, "person" means an individual, a corporation, a partnership, an association, a trust, a governmental body or an agency, or other entity, public or private, capable of entering into an enforceable contract.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-10

"Primary property" defined

Sec. 10. As used in this chapter, "primary property" means property within an area designated as a primary area by the legislative body.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-11

"Secondary property" defined

Sec. 11. As used in this chapter, "secondary property" means property within an area designated as a secondary area by the legislative body.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-12

"Single family or double family residential dwellings" defined

Sec. 12. As used in this chapter, "single family or double family residential dwellings" means residential structures that:

- (1) do not share a common wall with any other residential structures;

- (2) were designed and built for occupancy by not more than two
- (2) separate families; and
- (3) contain not more than two (2) separate living quarters.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-13

"Society" defined

Sec. 13. As used in this chapter, "society" refers to the Indiana historical society or the successor to the society.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-14

"Subject property" defined

Sec. 14. As used in this chapter, "subject property" means primary or secondary property or existing or proposed construction on the property:

- (1) that is the subject of:
 - (A) a filing made with;
 - (B) a hearing or meeting of; or
 - (C) an appeal from;the commission; or
- (2) with respect of which there is claimed to be a violation of this chapter.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-15

Designation of preservation area

Sec. 15. The legislative body of a municipality may adopt an ordinance or a resolution to designate an area in the municipality that is subject to a comprehensive plan for land use, whether adopted by the municipality or the county in which the municipality is located, as a preservation area. This chapter applies to the area.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-16

Primary and secondary areas

Sec. 16. (a) A preservation area consists of:

- (1) a primary area; and
- (2) a secondary area;

designated by the legislative body.

(b) The primary area is a primarily residential area that the legislative body finds after a public hearing to be a clearly definable area that:

- (1) should be preserved from deterioration or destruction in furtherance of the purpose of this chapter because the area:
 - (A) is; or
 - (B) contains structures that are; historically, architecturally, or ecologically significant; and
- (2) if not subject to this chapter, is in danger of deterioration or destruction.

(c) The secondary area is an area surrounding the primary area that the legislative body finds after a public hearing to be an area the control of the development or change of which is necessary or desirable to the preservation of the primary area. The legislative body may decide to not designate a secondary area if the legislative body determines that a secondary area is not needed or required to preserve the primary area from deterioration or destruction.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-17

Size of preservation area

Sec. 17. A preservation area may not be larger than the legislative body considers required to accomplish the purposes of this chapter.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-18

Creation of preservation commission

Sec. 18. (a) Upon designating a preservation area and the primary and secondary areas of the preservation area, the legislative body of the municipality shall create a commission to be known as the "_____ Preservation Commission". The legislative body shall give:

- (1) the name of the city or town in which the area to be preserved is located;
- (2) the name of the area to be preserved; or
- (3) both;

to the preservation commission.

(b) The commission has the powers and shall exercise the duties prescribed by this chapter for the area.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-19

Members of commission

Sec. 19. A preservation commission created under this chapter is composed of nine (9) members as follows:

- (1) The executive of the city or town:
 - (A) shall serve as a member of the commission; or
 - (B) may appoint an individual residing in the city or town to serve in place of the executive.
- (2) The executive of the city or the legislative body of the town shall appoint the following:
 - (A) An architect registered under IC 25-4-1 who is practicing in Indiana.
 - (B) A professional city planner employed by a planning authority:
 - (i) of the city;
 - (ii) if a city planning authority does not exist, of the county; or
 - (iii) if a county planning authority does not exist, in Indiana.

- (C) A landscape architect practicing in Indiana.
- (D) A civil engineer certified under Indiana law who is practicing:
 - (i) in the county in which the area is located; or
 - (ii) if a civil engineer is not practicing in the county, in Indiana.
- (E) Two (2) owners and occupants of residential dwellings in the primary area.
- (F) Two (2) individuals from a list of at least four (4) nominees submitted by the society.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-20

Term of office

Sec. 20. An appointed member of the commission holds office for the term that the legislative body of the municipality sets forth in the ordinance or resolution creating the commission.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-21

Adoption of rules

Sec. 21. The commission shall prepare, adopt, and promulgate the rules and regulations that are necessary, desirable, or convenient to the orderly administration of commission affairs and to the implementation of this chapter in accordance with the intent and purpose. The rules and regulations shall be made available in writing to any person requesting a copy.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-22

Material filed with commission

Sec. 22. Notices, petitions, requests, or other written materials to be filed with the commission shall be filed with the clerk or clerk-treasurer and directed to the attention of the commission. The clerk or clerk-treasurer shall:

- (1) maintain; and
- (2) make available for public inspection;

all records of the commission at the offices of the clerk or clerk-treasurer.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-23

Notice

Sec. 23. (a) Whenever notice is required to be given under this chapter with respect to a matter coming or pending before a commission created under this chapter, the notice shall be sent to the persons designated as interested parties under this chapter.

(b) A public officer or office entitled to receive notice may designate in writing filed with the commission alternate or additional persons to whom notice required to be served upon the officer or

office shall also be served. The commission shall maintain a complete list of the persons and their addresses.

(c) A person, an official, or an office who or that is not served notice in the manner prescribed by this chapter is not considered properly notified unless the person has waived notice in writing.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-24

Attorney

Sec. 24. The attorney general or a deputy attorney general selected by the attorney general is the attorney for the commission. The commission may employ other legal counsel that the commission considers necessary, convenient, or desirable.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-25

Regular meetings

Sec. 25. (a) The rules and regulations of the commission must specify a particular time on a particular day of the week in a particular week of the month for holding regular meetings to consider any matters properly coming before the commission. Except as provided in subsection (b), the commission shall regularly meet at the designated time if there is any matter requiring consideration or determination as specified in this chapter.

(b) The commission may designate in the rules and regulations July or August as a vacation month during which the commission will not hold a regular meeting despite the existence of matters requiring consideration or determination. A person desiring the commission to consider or determine any matter that is within the commission's jurisdiction under this chapter must, at least thirty (30) days before a regular meeting date of the commission upon which the person desires the commission to determine or consider the matter, file with the commission a petition that does the following:

- (1) Specifies in detail the matter the petitioner desires the commission to consider or determine.
- (2) Requests that the matter be placed upon the commission's docket for matters to be considered and determined at the meeting.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-26

Special meetings

Sec. 26. (a) The chairman of the commission:

- (1) may, in the chairman's discretion; or
- (2) shall, at the written request of at least two (2) members of the commission;

call a special meeting of the commission to consider or determine a matter for which a petition has been filed.

(b) The meeting shall be scheduled for a date:

- (1) not less than thirty (30); and

(2) not more than forty-five (45);
days after the filing of the petition.
As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-27

Continuance

Sec. 27. For good cause shown, the chairman of the commission may, at or before a regular or special meeting, continue any matter docketed for consideration or determination at the meeting until:

- (1) the next regular meeting of the commission; or
- (2) a special meeting set for a date not more than thirty (30) days following the date of the meeting for which the matter was previously docketed.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-28

Evidence filed by person with interests adverse to petitioner

Sec. 28. The commission may, before a hearing on a petition filed with the commission, require the person filing the petition or a person whose interests appear adverse to those of the petitioner to file with the commission before the hearing the following:

- (1) Maps, plot plans, structural drawings and specifications, landscaping plans, floor plans, elevations, cross-sectional plans, architectural renderings, diagrams, or any other technical or graphic materials.
- (2) Additional information concerning the petitioner's or the adverse person's intentions or interest with respect to primary or secondary property.
- (3) Any other additional information that the commission considers relevant to the matters concerning the petition.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-29

Quorum

Sec. 29. (a) A quorum of the commission consists of six (6) members. A quorum must be present for a public hearing on and the determination of a matter coming before the commission for which a public hearing is required under this chapter.

(b) Except as otherwise provided in this chapter, a majority vote of the members of the commission present and voting is required for the commission to take action.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-30

Disqualification of member

Sec. 30. (a) A member of the commission is not disqualified from hearing and voting upon a matter coming before the commission because the member:

- (1) owns or occupies primary or secondary property; or
- (2) belongs to a neighborhood association.

(b) A member of the commission may abstain from voting on a matter if the member states reasons in the record.

(c) A member of the commission is disqualified from voting if:

- (1) the member is an owner or occupant of:
 - (A) the subject property; or
 - (B) primary or secondary property of which a part lies within one hundred (100) feet of the subject property; or
- (2) the member is a person described by section 50(a)(2)(D) of this chapter.

(d) If by virtue of the abstention of a member of the commission there is not present at a hearing upon a matter at least six (6) members of the commission able to vote on the matter, the chairman shall redocket the matter for a hearing or rehearing at:

- (1) the next regular meeting of the commission; or
- (2) a special meeting set for a date not more than thirty (30) days following the date of the meeting at which the matter was or was to be heard.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-31

Private deliberations; conditions of favorable vote; private agreement on conditions

Sec. 31. (a) Upon the conclusion of the hearing on a matter and before the voting, the commission members shall, if requested by:

- (1) the petitioner;
- (2) an interested party; or
- (3) a commission member;

deliberate in private before voting.

(b) The commission shall, before voting, consider conditions proposed to the commission at the hearing by a person, including a commission member, concerning the restrictions, limitations, commitments, or undertakings that might be required by the commission as the condition of a vote favorable to the petitioner.

(c) The commission may:

- (1) on the commission's own motion; or
- (2) at the request of a person;

before voting on a matter, continue the matter for a vote to a future meeting so that the petitioner and a person appearing adverse to the petitioner might privately agree upon the restrictions, limitations, commitments, or undertakings to be proposed to the commission as a condition to a vote by the commission favorable to the petitioner.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-32

Final written orders

Sec. 32. (a) Not later than thirty (30) days after a vote by the commission finally determining a matter, the commission shall enter a written final order stating the following:

- (1) The names of the members present and voting.
- (2) Whether the vote cast by each member was negative or

affirmative.

(3) The basic facts found by the members whose vote for or against the petitioner determined the matter.

(b) If a tie vote occurs, the petition is considered to be determined adversely to the petitioner, with the members casting a vote adversely to the petitioner considered to be the majority.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-33

Temporary orders

Sec. 33. (a) If the commission determines affirmatively a matter conditioned upon:

(1) the observance by a person of a restriction or limitation; or

(2) the commitment made by or the undertaking of a person;

the commission shall, not later than ten (10) days after the vote determining the matter conditionally, enter a temporary order setting forth the restriction, limitation, commitment, or undertaking.

(b) The commission shall enter a final order approving the petition upon and after a hearing at which the petitioner must satisfy the commission that the restriction, limitation, commitment, or undertaking has been formalized so that an interested party may enforce the restriction, limitation, commitment, or undertaking in a private action.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-34

Proposed temporary or final orders

Sec. 34. (a) Not later than five (5) days after the commission has determined a matter by vote, other than a rezoning matter referred to the commission by the development commission, a party who appeared at the hearing shall, upon request of the commission, file with the commission a proposed temporary or final order.

(b) A proposed final order must state in detail the basic facts that could have been found by the commission based upon substantial evidence of probative value actually introduced into evidence before the commission at a hearing on the matter.

(c) A proposed temporary order must state the basic facts:

(1) that could have been found by the commission based upon substantial evidence of probative value actually introduced into evidence before the commission at a hearing on the matter; and

(2) upon which the commission could properly have required a restriction, a limitation, a commitment, or an undertaking as a condition to a final affirmative determination of the matter.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-35

Prohibited actions

Sec. 35. The commission may not take action on a petition, approve a proposed rezoning or zoning variance, or issue a certificate of appropriateness based upon verbal assurances or unwritten

agreements or commitments made by a person concerning any of the following:

- (1) A future use or development of the subject property.
- (2) A restriction or limitation in the character, nature, or style of a contingent, possible, or proposed use or construction:
 - (A) for which the person seeks; or
 - (B) that would be permitted by; the rezoning, zoning variance, or certificate of appropriateness.
- (3) An undertaking concerning the planning, design, or implementation of a contingent or possible use or proposed construction.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-36

Written agreement required for zoning variance or certificate of appropriateness

Sec. 36. (a) The commission may, by the vote of at least six (6) of the members or for a certificate of appropriateness by a majority of the members, as a condition of approval of a zoning variance or of issuance of a certificate of appropriateness, require:

- (1) the petitioner;
- (2) a person described by section 50(a)(2)(D) of this chapter; and
- (3) the owner of the land for which the zoning variance or certificate of appropriateness is sought;

to prepare and execute in a form acceptable by the commission and to file with the commission a written agreement notarized by each signatory party.

(b) By the agreement signed under subsection (a) each party agrees for the party and for the party's heirs, successors, and assigns, and for a party with a legal or an equitable interest in the subject property, covenants for the party and for a successor to the legal or equitable interest in the property, to be bound by the following:

- (1) The restrictions or limitations that the commission has, in furtherance of the intent and purpose of this chapter, specified concerning the future use or development of or construction upon the subject property.
- (2) The restrictions or limitations that the commission has, in furtherance of the intent and purpose of this chapter, specified concerning the character, nature, or style of a proposed, contingent, or possible use or construction:
 - (A) for which the zoning variance or certificate of appropriateness is sought; or
 - (B) that would be permitted by the zoning variance or certificate of appropriateness.
- (3) Undertakings that the commission has, in the furtherance of the intent and purpose of this chapter, required concerning the planning, design, or implementation of a proposed, contingent, or possible use or construction.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-37

Provisions in agreement

Sec. 37. An agreement signed under section 36 of this chapter must do the following:

- (1) Refer to the proceeding before the commission.
- (2) Contain a full legal description of the subject property.
- (3) Specifically provide for the following:
 - (A) That the agreement is contingent upon the grant of a variance for or issuance of a certificate of appropriateness concerning the subject property.
 - (B) That the agreement will be construed strictly against those parties from whom the agreement is required by the commission.
 - (C) That the agreement, if executed by a party with a legal or an equitable interest in the subject property, is intended to create a covenant that:
 - (i) runs with the subject property; and
 - (ii) is binding upon the successors to the fee or to an interest in the fee.
 - (D) That the agreement is intended to benefit and to be enforced by a person who, under this chapter, would be considered an interested party concerning the subject property.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-38

Filing of agreement before hearing; notice

Sec. 38. A petitioner shall do the following:

- (1) File an agreement signed under section 36 of this chapter, including a request for a public hearing, at least fourteen (14) days before the regular meeting of the commission at which the petitioner requests the hearing.
- (2) On or before the date of the filing, serve in the manner that notices must be served under this chapter a copy of the request and the agreement upon the following:
 - (A) Each neighborhood association.
 - (B) Each interested party who, not later than five (5) days after the hearing for which the commission entered a temporary order concerning the zoning variance or the certificate of appropriateness sought by the petitioner, filed with the commission a request that the agreement or request be served upon the interested party.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-39

Filing of agreement with county recorder

Sec. 39. (a) If after a public hearing the commission approves in form and substance, by the vote of:

- (1) at least six (6) members; or
- (2) for a certificate of appropriateness, a majority of the

members present;
the agreement as filed, the commission shall enter a final order expressing the commission's approval of the zoning variance or issuance of the certificate of appropriateness as sought by the petitioner.

(b) The commission shall, at the petitioner's expense, immediately file the agreement with the county recorder.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-40

Amended agreement; dismissal of petition

Sec. 40. (a) If after a public hearing the commission disapproves the agreement in form or substance, the petitioner shall, under a temporary order of the commission, make and cause to be executed an amended agreement meeting the commission's requirements as to form and substance.

(b) If the petitioner fails or refuses, for longer than sixty (60) days after entry of a temporary order requiring the petitioner to do so, to file an amended agreement meeting with commission requirements for form and substance, the commission may require the petitioner to appear at a meeting of the commission and show cause why the petition of the petitioner should not be dismissed.

(c) If the petitioner fails:

(1) to appear at the meeting; or

(2) to show good and sufficient cause why the petition should not be dismissed;

the commission shall, upon the vote of a majority of the members, dismiss the petition.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-41

Abrogation of covenant or agreement

Sec. 41. (a) A covenant or an agreement made under this chapter may be abrogated by six (6) affirmative votes of the commission upon petition and after notice to all interested parties and a public hearing if the commission determines that the covenant or agreement no longer accomplishes in a substantial manner any of the purposes of this chapter.

(b) A covenant or an agreement is considered abrogated upon dissolution of the commission under section 61 of this chapter.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-42

Minutes of meetings

Sec. 42. (a) The commission shall keep complete minutes of meetings. The minutes must reflect the following:

(1) Action taken by the commission.

(2) The reasons for the action.

(3) The factors considered by the commission in taking the action.

(b) Copies of the minutes of a meeting shall be provided to a person requesting a copy.

(c) An interested party who desires a transcript of a matter heard by the commission may, at the interested party's expense, have a transcript prepared.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-43

Fees

Sec. 43. (a) The commission shall, by rule adopted under section 21 of this chapter, set fees to be paid by a person filing a petition with the commission. If the commission has not set a fee by rule for a type of petition, the fee is twenty-five dollars (\$25).

(b) A person filing a petition with the commission shall pay the fee required for the filing to the clerk or clerk-treasurer. The clerk or clerk-treasurer shall pay the fee to the treasurer of the commission.

(c) The clerk or clerk-treasurer has no duty regarding the fees collected under this section except those imposed under subsection (b). Fees collected under this section:

- (1) do not belong to the city or town; and
- (2) are not subject to any of the following:
 - (A) IC 5-11-10.
 - (B) IC 36-2-6.
 - (C) IC 36-3.
 - (D) IC 36-4-8.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-44

Money for administration of chapter

Sec. 44. The commission may accept money from any source for use in administering this chapter.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-45

Zoning variance; approval by commission

Sec. 45. An administrative, a legislative, or other governmental body may not grant a zoning variance relating to the use of primary or secondary property without the prior approval of the commission upon the affirmative vote of at least six (6) members. The commission may approve the variance only if:

- (1) the petition establishes by substantial evidence of probative value the correctness of the conclusions stated in section 47 of this chapter; and
- (2) notices of the hearing have been given to all interested parties in the manner required by this chapter.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-46

Zoning ordinance pertaining to primary or secondary property prohibited

Sec. 46. (a) The development commission may not:

(1) approve a petition for the amendment or adoption of a zoning ordinance pertaining or applying to primary or secondary property; or

(2) adopt or amend an ordinance to the extent the ordinance pertains or applies to primary or secondary property;

until the events described in subsection (b) have occurred.

(b) The following must occur before the development commission may take action under subsection (a):

(1) Notice of the filing of the petition before the development commission has been given by the petitioner to all interested parties not later than ten (10) days after the filing.

(2) The matter has been referred to the commission, which has:

(A) considered the matter applying the standards stated in section 47 of this chapter and made a recommendation to the development commission; or

(B) failed to make a recommendation for a period of one hundred twenty (120) days following the referral of the matter to the commission for the commission's recommendations, unless the time has been extended by the development commission for good cause shown.

(3) A duly advertised public hearing on the matter has been held by the development commission.

(4) The conclusions stated in section 47 of this chapter have been established by substantial evidence of probative value.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-47

Prohibited results of zoning ordinance or amendment

Sec. 47. The conclusions required by sections 45 and 46 of this chapter are that the requested variance, the proposed new zoning ordinance, or the amendment to an existing zoning ordinance will not do any of the following:

(1) Tend to undermine or detract from the general residential character of the following:

(A) The primary area.

(B) Primary property.

(C) Secondary property lying between primary property and the property for which the new zoning ordinance, zoning ordinance amendment, or zoning variance is sought.

(2) Affect in an adverse manner the value for single family residential usage of the following:

(A) Primary property.

(B) Secondary property lying between primary property and the property for which the new zoning ordinance, zoning ordinance amendment, or zoning variance is sought.

(3) Alter or adversely affect, either in inherent nature or method of implementation, the historic or architectural character or style of the area comprised of:

(A) primary and secondary property; or

(B) the part of the area comprised of the property lying within five hundred (500) feet of the subject property.

(4) If the request is a zoning variance, violate a rule or regulation that the commission has adopted to accomplish the purposes of this chapter.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-48

Notice of filing of petition; evidence available to commission

Sec. 48. (a) Notice of:

(1) the filing of a petition with the commission for approval of a proposed use variance; and

(2) the filing of a petition with the development commission for approval of an amendment or the adoption of a zoning ordinance pertaining or applying to primary or secondary property;

is jurisdictional.

(b) Before referral of a matter to the commission, the development commission or other referring body must be satisfied of the following:

(1) That proper notice of the filing of the petition as required by this chapter has been given.

(2) That copies of:

(A) all petitions, exhibits, drawings, pictures, and other documents intended to be offered in support of the proposed new zoning ordinance or amendment to an existing zoning ordinance; and

(B) the contract described by section 50 or 51 of this chapter;

have been made available to the commission without expense to the commission.

(c) If the development commission discovers, upon hearing, substantial departure from, addition to, or modification of materials presented to the commission, the matter shall be remanded to the commission for an additional sixty (60) day period for reconsideration and further recommendation, if any. The commission may, however, take additional evidence that the commission considers necessary for the purpose of making recommendations on the proposed new zoning ordinance or amendment to an existing zoning ordinance.

(d) The development commission or other referring body:

(1) shall thoughtfully consider the recommendations of the commission; and

(2) may overrule or ignore the recommendations only if the recommendations are:

(A) unsupported by substantial evidence; or

(B) contradicted by a clear preponderance of the evidence; presented before the development commission.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-49

Procedures for consideration of zoning matters referred by development commission

Sec. 49. (a) The provisions of this chapter concerning:

- (1) meetings and hearings of the commission; and
- (2) the manner in which matters will be taken up and considered by the commission;

do not apply in the commission's consideration of rezoning matters referred to the commission by the development commission.

(b) With respect to the matters described in subsection (a), the commission may by rule determine procedures to dispose of the matters within the mandatory one hundred twenty (120) day period.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-50

Requirements for petition filed by person seeking zoning variance

Sec. 50. (a) A petition that is filed by a person seeking approval of the commission for a zoning variance of or for subject property must:

- (1) be under oath; and
- (2) state the following:
 - (A) The full name and address of the petitioner and of each attorney acting for and on behalf of the petitioner.
 - (B) The street address.
 - (C) The name of the owner of the property.
 - (D) The full name and address of and the type of business, if any, conducted by:
 - (i) a person who at the time of the filing is a party to; and
 - (ii) a person who is a disclosed or an undisclosed principal for whom the party was acting as agent in entering into; a contract of sale, lease, option to purchase or lease, agreement to build or develop, or other written agreement of any kind or nature concerning the subject property or the present or future ownership, use, occupancy, possession, or development of the subject property.
 - (E) A description of the contract of sale, lease, option to purchase or lease, agreement to build or develop, or other written agreement sufficient to disclose the full nature of the interest of the party or of the party's principal in the subject property or in the present or future ownership, use, occupancy, possession, or development of the subject property.
 - (F) The date of the regular meeting of the commission at which the petitioner requests the petition be considered and determined.
 - (G) A detailed description of the proposed use for which the zoning variance is sought.
 - (H) Other information that the commission requires by rule or regulation.

(b) A petition must be accompanied by the following:

(1) A true copy of each contract of sale, lease, option to purchase or lease, agreement to build or develop, or other written agreement described in the petition.

(2) The maps, plot plans, structural drawings and specifications, landscaping plans, floor plans, elevations, cross-sectional plans, architectural renderings, diagrams, or any other technical or graphic materials that the commission requires by rule or regulation.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-51

Requirements for petition filed by person requesting new or amended zoning ordinance affecting primary or secondary property

Sec. 51. (a) A petition that is filed by a person requesting the adoption of a new zoning ordinance or the amendment of an existing zoning ordinance directly pertaining to or affecting primary or secondary property must, in addition to all other applicable requirements concerning the petitions generally:

(1) be under oath; and

(2) state the following:

(A) The street address of the primary or secondary property to which the new zoning ordinance or amendment to an existing zoning ordinance would directly pertain or affect.

(B) The name of each owner of the property.

(C) The name and address of each person, including principals, if any, who at the time of filing is a party to a contract of sale, lease, option to purchase or lease, agreement to build or develop, or other written agreement, excluding insurance policies, mortgage deeds, fuel service contracts, and similar documents, concerning the subject property or the present or future ownership, use, occupancy, possession, or development of the subject property. The petition must also describe all businesses in which the persons, jointly or severally, are engaged.

(D) A detailed description of the proposed use for which the new zoning ordinance or amendment of an existing zoning ordinance is sought.

(E) Other information that the development commission requires by rule or regulation.

(b) The petition must be accompanied by the following:

(1) A complete copy of each contract described by subsection (a)(2)(C) or a description of the contract sufficient to disclose the full nature of the interest of the party and principals, if any, in the subject property or in the present or future ownership, use, occupancy, possession, or development of the subject property.

(2) Other documents that the development commission requires by rule or regulation.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-52

Notice requirements

Sec. 52. (a) A person who has filed a petition under section 50 or 51 of this chapter shall, not later than ten (10) days after the filing, serve notice upon all interested parties. The notice must state the following:

- (1) The full name and address of the following:
 - (A) The petitioner.
 - (B) Each attorney acting for and on behalf of the petitioner.
- (2) The street address of the primary and secondary property for which the petition was filed.
- (3) The name of the owner of the property.
- (4) The full name and address of and the type of business, if any, conducted by:
 - (A) each person who at the time of the filing is a party to; and
 - (B) each person who is a disclosed or an undisclosed principal for whom the party was acting as agent in entering into;

a contract of sale, lease, option to purchase or lease, agreement to build or develop, or other written agreement of any kind or nature concerning the subject property or the present or future ownership, use, occupancy, possession, or development of the subject property.

(5) A description of the contract of sale, lease, option to purchase or lease, agreement to build or develop, or other written agreement sufficient to disclose the full nature of the interest of the party or of the party's principal in the subject property or in the present or future ownership, use, occupancy, possession, or development of the subject property.

(6) A description of the proposed use for which the rezoning or zoning variance is sought, sufficiently detailed to appraise the notice recipient of the true character, nature, extent, and physical properties of the proposed use.

(7) The date of the filing of the petition.

(8) The date, time, and place of the next regular meeting of the commission if a petition is for approval of a zoning variance. If a petition is filed with the development commission, the notice does not have to specify the date of a hearing before the commission or the development commission. However, the person filing the petition shall give ten (10) days notice of the date, time, and place of a hearing before the commission on the petition after the referral of the petition to the commission by the development commission.

(b) For purposes of giving notice to the interested parties who are owners, the records in the bound volumes of the recent real estate tax assessment records as the records appear in:

- (1) the offices of the township assessors (if any); or
- (2) the office of the county assessor;

as of the date of filing are considered determinative of the persons

who are owners.

As added by P.L.1-1995, SEC.84. Amended by P.L.219-2007, SEC.124; P.L.146-2008, SEC.721.

IC 36-7-11.3-53

Preservation area exemptions

Sec. 53. Sections 54, 55, and 56 of this chapter do not apply to a preservation area except to the extent the legislative body adopts an ordinance or a resolution after notice and a public hearing to substitute for sections 54, 55, and 56 of this chapter the land development and use standards applicable to the primary area or primary properties that are appropriate to accomplish the purposes of this chapter.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-54

Conditions for erection of new structure on primary property

Sec. 54. A new structure may not be erected upon a parcel of primary property and an existing structure upon the property may not be altered if the structure would do any of the following:

- (1) Permit a residential usage that, in relation to the parcel upon which situated, would be of a substantially greater density than the average residential density of primary property lying within one thousand (1,000) feet of the property in question, excluding for purposes of determining the average primary property used for multiple family residential or commercial purposes.
- (2) Appear substantially smaller or larger in size and scale than the average size and scale of the single and double family residential dwellings situated upon primary property lying within one thousand (1,000) feet of the property in question.
- (3) Have a set-back from the primary area significantly less than the average set-back of structures facing upon the primary area that are situated upon primary property lying within one thousand (1,000) feet of the property in question.
- (4) Have side lots measuring less than fifteen (15) feet from the property line of the subject property to the wall of the structure erected or altered.
- (5) If primarily a residential dwelling, have a ground floor area of less than two thousand (2,000) square feet or forty percent (40%) of the total area of the parcel of land upon which the dwelling lies, whichever is less.
- (6) Including all other structures upon the parcel, have a total ground floor area greater than fifty percent (50%) of the total area of the parcel of land upon which the structure lies.
- (7) Substantially encroach upon the view and exposure of a residential structure on a neighboring property.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-55

Subdivision of primary property into lots

Sec. 55. A parcel of primary property may not be subdivided into lots having:

- (1) an area of less than fifteen thousand (15,000) square feet; or
- (2) frontage of less than one hundred (100) feet upon the primary area or upon an east-west street intersecting with the primary area.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-56

Conditions for altering structure or feature on primary property

Sec. 56. (a) A person may not construct on primary property a structure or feature or reconstruct, alter, or demolish primary property unless the following conditions have been met:

- (1) The person has previously filed with the commission an application for a certificate of appropriateness in the form and with the plans, specifications, and other materials that the commission prescribes.
- (2) A certificate of appropriateness has been issued by the commission as provided in this section.

(b) After the filing of an application for a certificate of appropriateness, the commission shall determine whether the proposed construction, reconstruction, or alteration of the structure in question:

- (1) will be appropriate to the preservation of the area comprised of primary and secondary property; and
- (2) complies with the architectural and construction standards then existing in the area.

(c) In determining appropriateness, the commission shall consider, in addition to other factors that the commission considers pertinent, the historical and architectural style, general design, arrangement, size, texture, and materials of the proposed work and the relation of the proposed work to the architectural factor of other structures in the area. The entity responsible for issuing building permits may not issue a permit for the construction, reconstruction, alteration, or demolition of a structure in the area unless the application for the permit is accompanied by a certificate of appropriateness.

(d) The issuance of or refusal to issue a permit is a final determination appealable under section 59 of this chapter. With respect to a certificate of appropriateness, the commission may, by rule or regulation, provide for:

- (1) the public hearings;
- (2) notice of the hearings; or
- (3) the filing of the application for the certificate;

that the commission considers necessary.

(e) Notwithstanding this section, the commission may, by rule or regulation:

- (1) define; and
- (2) exempt from the application of this section;

specific types and categories of construction, reconstruction, alterations, and demolition for which the commission determines

commission action and review are not necessary or desirable to effect the purposes of this chapter.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-57

Restrictions on owners and occupants of primary and secondary property

Sec. 57. (a) As used in this section, "bedroom" means a room that:

- (1) consists of not less than eighty (80) usable square feet and one (1) built-in closet; and
- (2) is located on or above the first floor of a structure.

(b) Each owner and occupant of primary or secondary property shall do the following:

- (1) Permit not more than one (1) family to inhabit a single-family dwelling.
- (2) Permit not more than two (2) families to inhabit a double family dwelling.
- (3) Permit to inhabit a dwelling unit not more than the number of individuals derived by multiplying the total number of bedrooms in the unit by three (3).
- (4) Maintain and prevent cleared areas from becoming overgrown.
- (5) Permit no trash, scrap, refuse, dead matter, or other debris of any kind to accumulate on the property so as to make:
 - (A) the property unhealthful, unsightly, or dangerous; or
 - (B) a residential structure or other structure appurtenant to a residential structure unsuitable for the residential or appurtenant purposes.
- (6) Maintain in good repair and appearance all exterior surfaces.
- (7) Maintain in good and safe repair all walls, roofs, foundations, ceilings, floors, stairways, or other structures upon the property.
- (8) Repair promptly broken windows or panes of glass in a structure upon the property.
- (9) Secure from unauthorized access an unused or unoccupied structure upon the property.
- (10) Maintain in a safe, habitable condition each residential structure upon the property.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-58

Powers of interested parties; private right of action to restrain, enjoin, or enforce orders

Sec. 58. (a) Each interested party:

- (1) has a private right of action to:
 - (A) enforce; and
 - (B) prevent violation of;this chapter; and
- (2) may, with respect to primary or secondary property:
 - (A) restrain or enjoin, temporarily or permanently, a person

- from violating; and
- (B) enforce by restraining order or injunction;
this chapter.
- (b) The powers described in subsection (a) include the following:
 - (1) To enforce written commitments, agreements, or covenants made in accordance with or under this chapter.
 - (2) To prevent and obtain full relief from a threatened or existing violation of section 54, 55, 56, or 57 of this chapter.
 - (3) To prevent:
 - (A) a person from seeking or having the benefits of; or
 - (B) a governmental body from granting;
a rezoning of or zoning variance for primary or secondary property for which the commission or development commission for rezoning has not granted prior approval in the manner required by this chapter.
 - (4) To:
 - (A) prevent construction, reconstruction, alteration, or demolition work upon; and
 - (B) obtain full relief from work previously done upon;
primary property for which a certificate of appropriateness was required but was not issued by the commission. A showing that issuance of certificates of appropriateness for the work could not properly have been denied by the commission if a proper application had been made is a complete defense to an action under this subdivision.
 - (5) To prevent further construction work upon and obtain full relief from construction work previously done upon primary property that fails in a substantial manner to comply with all the terms and conditions:
 - (A) of a certificate of appropriateness issued by the commission; or
 - (B) of the petition and documents filed with the commission upon which the commission is presumed to have based approval of the certificate.
 - (6) To prevent usage of primary or secondary property for which a rezoning or zoning variance:
 - (A) would be required; and
 - (B) has not been obtained.
 - (7) To prevent a violation of the terms and conditions of the approval by the commission of a zoning variance as petitioned for and obtained from the commission.
- (c) For purposes of obtaining relief sought under this section, it is not necessary to allege or prove irreparable harm or injury to a person or property. A person entitled to bring an action under this section is not required to post a bond unless the court, after a hearing, determines that a bond should be required in the interests of justice. A person who brings an action under this section is not, however, liable to a person for any damages resulting from the bringing or prosecuting of the action unless the action was not brought:
 - (1) in good faith; or

(2) in the reasonable belief that:

(A) this chapter; or

(B) a commitment, an agreement, or a covenant entered into under section 36 of this chapter;

had been or was about to be violated or breached.

(d) The person against whom an action is brought under subsection (a) is liable to the interested party bringing the action for reasonable attorney's fees and court costs if judgment is entered by the court against the person.

(e) An action arising under this section must be brought in the circuit or superior court of the county, and a change of venue from the county is not permitted.

(f) The remedy provided in this section is not exclusive but is cumulative to any other remedies available at law or equity.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-59

Judicial review

Sec. 59. A final determination by the commission 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 P.L.1-1995, SEC.84. Amended by P.L.126-2011, SEC.67.

IC 36-7-11.3-60

Appeals

Sec. 60. An appeal may be taken to the court of appeals from the final judgment of the court under section 59 of this chapter reversing, affirming, or modifying the determination of the commission in the same manner and upon the same terms, conditions, and limitations as appeals in other civil actions.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-61

Dissolution of commission

Sec. 61. (a) The legislative body that created a commission under this chapter may:

(1) at any time in the discretion of the legislative body; or

(2) by application of at least fifty-one percent (51%) of the owners of property in the primary area;

dissolve the commission by ordinance or resolution if the legislative body in the discretion of the legislative body determines that the commission has failed to accomplish the purpose for which the commission was created.

(b) If the legislative body dissolves the commission, the preservation area ceases to exist and this chapter does not apply.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-62**Redefining preservation area**

Sec. 62. The legislative body may at any time redefine:

(1) the preservation area; or

(2) the primary or secondary areas in the preservation area;

if the preservation area, as redefined, is an area that could properly be designated as a preservation area under this chapter for the purposes of this chapter.

As added by P.L.1-1995, SEC.84.

IC 36-7-11.3-63**Cumulative nature of chapter**

Sec. 63. This chapter is cumulative to and does not supersede, preempt, or invalidate a zoning, building, health, or other law, ordinance, or code in effect as of April 16, 1971, except to the extent the law, ordinance, or code is in irreconcilable conflict with this chapter. If an irreconcilable conflict exists, only those parts of the law, ordinance, or code that conflict with this chapter are inapplicable as the parts pertain to the subject matter of this chapter.

As added by P.L.1-1995, SEC.84.