



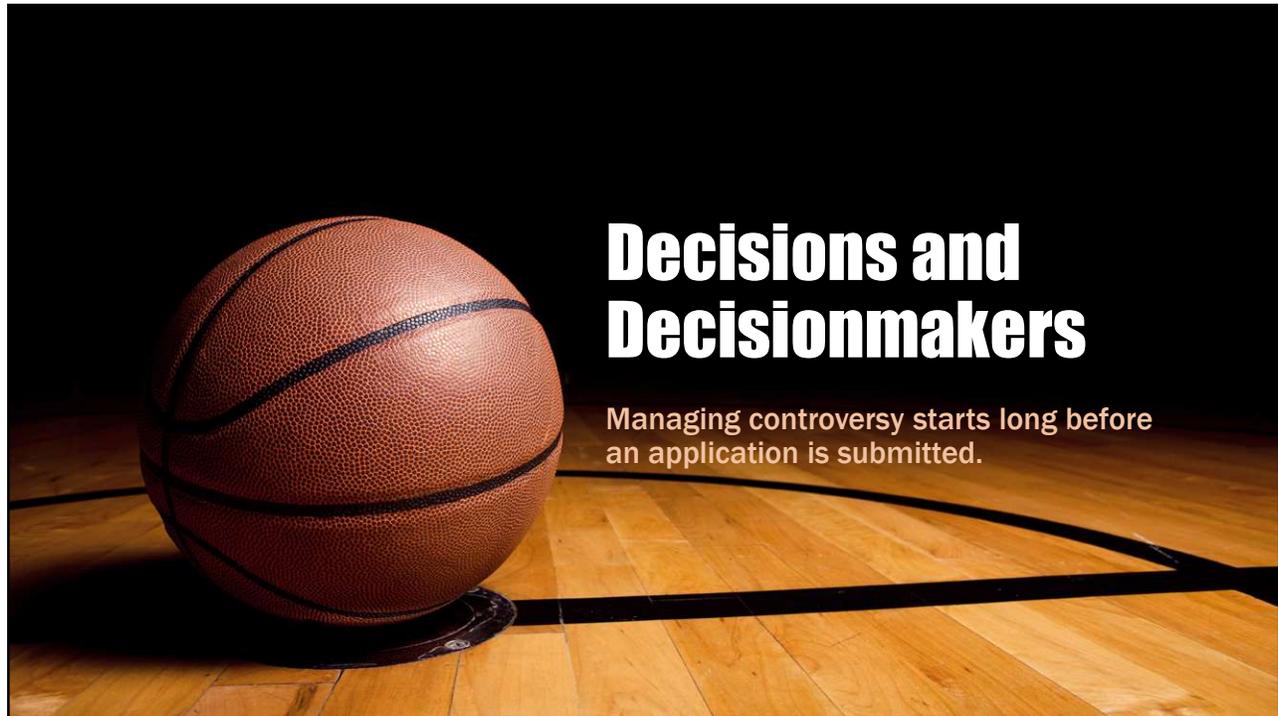
Planning and Zoning Challenges — Managing Controversial Development

Indiana Association of County Commissioners Conference
Indianapolis, IN
November 29, 2023



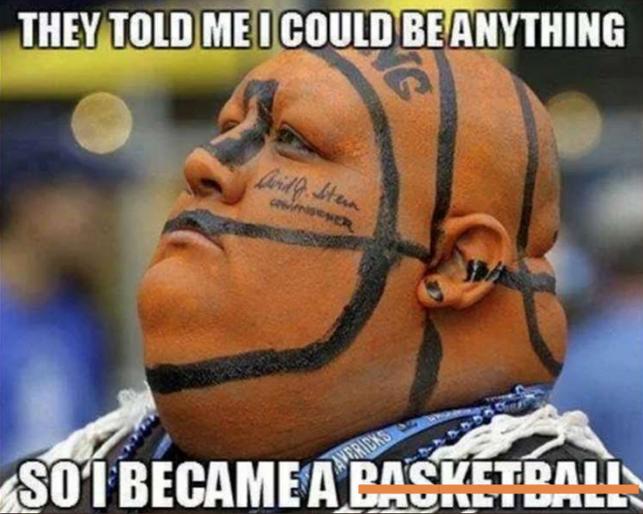
Agenda

- Local decisionmakers and decisions
- Planning and zoning tools
- Public meetings and hearings
- Criteria and findings
- Decisionmaking pressures
- Questions



Local Decisionmakers

- Plan Commission (PC)
- Board of Zoning Appeals (BZA)
- Legislative Body (LB)
- Other



Attendee Roles?

- Commissioner?
- Council member?
- Other elected official?
- Plan commissioner?
- BZA member?
- Staff?
- Other

Citizen Planner

Decisions by Decisionmaker*

- Comprehensive plan—Prepared and approved by PC, Approved by LB by resolution
- Zoning and subdivision ordinances—LB
- Rezoning—Recommendation by PC, Final decision by LB
- Primary Plat—PC
- Secondary Plat—PC (or staff if delegated)

• *State statute has a few exceptions that apply principally to Lake and St. Joseph counties.

Decisions by Decisionmaker (continued)*

- Development standards variance—BZA
- Use variance—BZA
- Special exception, conditional use—BZA
- Appeal of administrative determination—BZA

- *State statute has a few exceptions that apply principally to Lake and St. Joseph counties.



Planning & Zoning Tools

Managing controversy starts long before an application is submitted.

Planning Tools

- Comprehensive plan—sets local planning policy
- Zoning ordinance—establishes allowable land uses and development standards
- Subdivision ordinance—establishes process and requirements for dividing land into small chunks that are easier to develop/sell.
- Other



Planning Tools – Review and Update Regularly



- Review annually and update as needed
- Do periodic major updates as needed
- Address new land use types
- Address commonly approved variances
- Address court cases and changes in Indiana statute
- Reviews and updates allow public to weigh in outside the controversy of a particular proposed development

Changing and Challenging Land Uses

- New uses
 - Cell towers
 - Wind and solar facilities
 - Car charging facilities
- NIMBYs and LULUs
 - Landfills
 - Toxic waste facilities
- Institutional Uses
 - Schools
 - Churches



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Managing New Land Uses– *Practice, Practice, Practice*

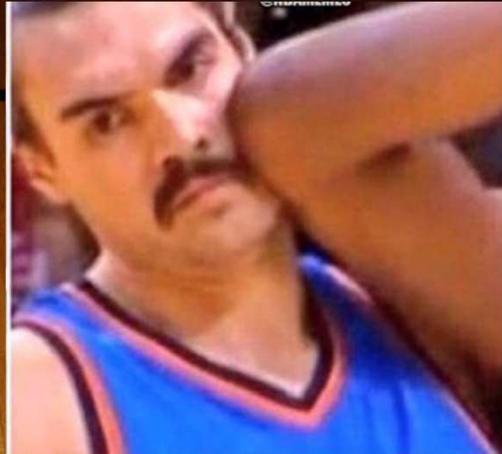
- Use
- Location
- Quantity
- Quality
- Use by right vs. special exception/special use/conditional use
- **All strategies to manage development should be based on your comprehensive plan! Plan(s) set the policy framework.**



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Special Exceptions/Special Uses/Conditional Uses

- Set up special use standards for each
- Require a Special Exception/Conditional Use from BZA
- Limit to one allowable zoning district
- Use Written Commitments (recorded permanent conditions)
- Tighten your Nonconforming standards (abandonment, expansion, % destruction, change of use, etc.)
- Enforcement!



Public Meetings & Hearings

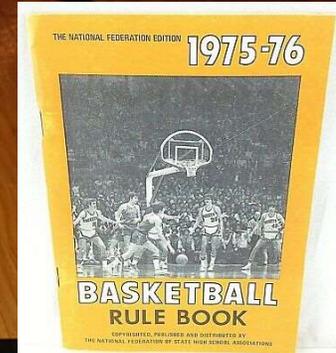
Game Day!!



Rules and Procedures

State Statute says the PC and BZA must adopt Rules and Procedures

- Conduct of Meetings
- Motions and Voting
- Members and Officers
- Calendar, Filing Procedures, Applications, and Agendas
- Contact with the public
- Conflicts of Interest
- **DO NOT FOLLOW Robert's Rules of Order**



Role of Chairman/President

- Conducts the meetings
- Opens/closes public meetings and hearings
- Keeps the agenda on tracks
- Calls for motions and votes
- Moderates public discussion
- Keeps overall control of the meeting



Keeping Public Discussion Relevant

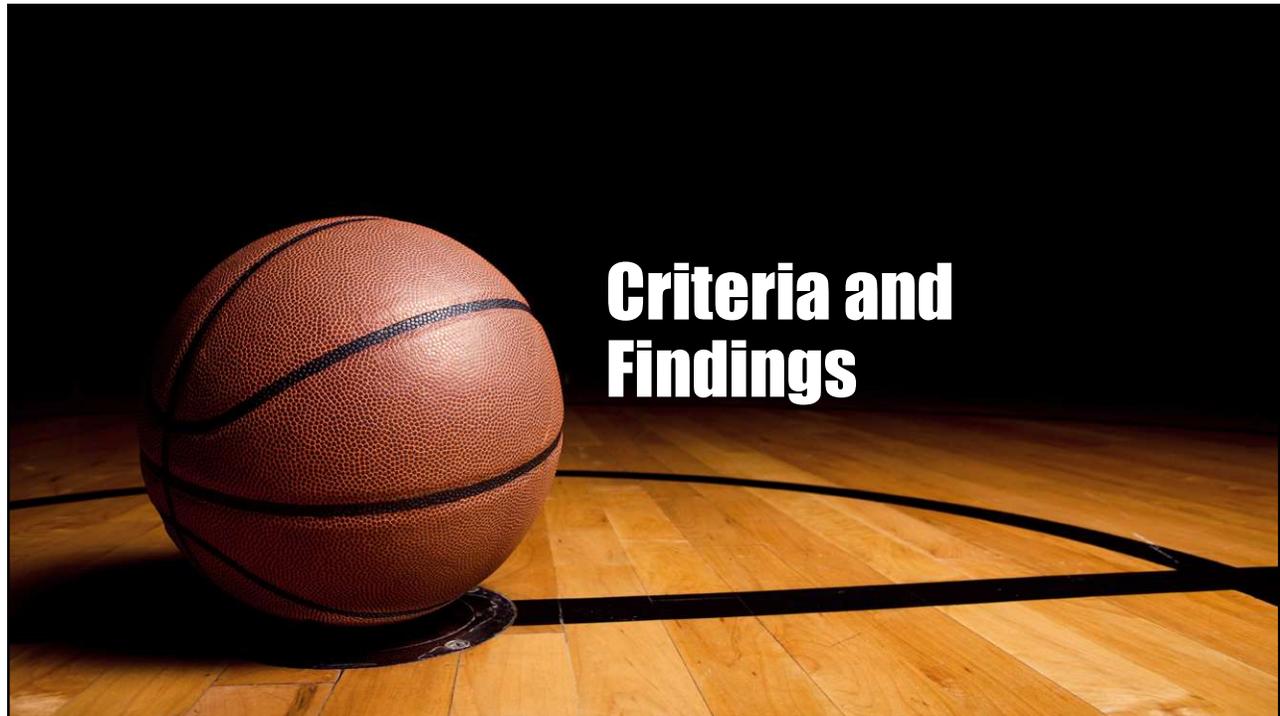
- Referee - The Chair/President plays a major role!
- Instructional - Outline the purpose and process for public comment every time
- Airball - Remind participants to keep comments relevant to petition
- Interference - Prevent heckling and other distractions
- Shot Clock – make sure there are time limits for discussion



Keeping Decisions Relevant

- PC/BZA Decisions aren't made in a vacuum
- Decisions are based on criteria and ordinance compliance
- Make sure motions are clear
- Motions can and should be discussed
- When in doubt, follow your Rules and Procedures





Rezoning – Process

- Plan Commission → Public Hearing & Recommendation
- Legislative Body → Final Decision



Rezoning Criteria - IC 36-7-4-603

The plan commission and the legislative body shall pay reasonable regard to:

- (1) the comprehensive plan;
- (2) current conditions and the character of current structures and uses in each district;
- (3) the most desirable use for which the land in each district is adapted;
- (4) the conservation of property values throughout the jurisdiction; and
- (5) responsible development and growth.

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Rezoning—Findings of Fact

- IC 36-7-4-603 requires the Plan Commission to make findings for rezonings – *based on State Law criteria*
- “A Plan Commission... is required to make findings of fact upon which its decisions are predicated.”
 - *Hills vs Area Plan Commission of Vermillion County, App. 1 Dist. 1981, 416 NE 2d 456*

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The Subdivision Process

PLAN COMMISSION FINAL DECISION

- No trip to legislative body except for right-of-way dedication
- May delegate authority to a plat committee
- Typically review and recommendation from a technical committee



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Subdivisions are NOT Subjective!

- **If a proposed subdivision plat meets all the ordinance standards, the plat must be given primary approval**
- If you don't like the subdivision, change your ordinance standards!

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Findings of Fact - Subdivisions

Meeting Minutes are not a substitute for Findings!

- IC 36-7-4-707 requires the plan commission or plat committee to make written findings for either an approval or denial of a plat. For a denial of a plat, the findings must set forth your reasons for that denial.
- *What part of the Subdivision Ordinance did it fail to meet?*



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Tool -- Written Commitments & Conditions

- BZA, Plan Commission and legislative body may stipulate conditions or commitments as part of approval for rezonings, subdivisions, development plans, special exceptions and variances.
- **Written Commitments** are meant to be long-term and permanent:
 - You can require the property owner to enter into written commitments
 - Record commitments in the County Recorder's Office
 - Commitments binding on future owners of the subject property
 - May have an expiration date
- Enable written commitments in your ordinance per **IC 36-7-4-1015**
- Conditions are different: meant to be short-term requirements administered by staff

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Special Exceptions, Conditional Uses – BZA Final Decision *

- See IC 36-7-4-918.2
- A use that may work in a zoning district, depending on the site/location – Ordinance identifies these uses for each district and then BZA decides each case
- **No state law criteria – criteria should be listed in local ordinance**
- May be general criteria for all special exceptions (i.e., circulation, etc.) or may be specific to that use (i.e., wind farm)

**Except a few counties per IC*

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Variances – BZA Final Decision*

- Variances from developmental standards
- Use variances (not available to area plan commissions)

**Except a few counties per IC*

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Developmental Standards Variance Criteria per IC 36-7-4-918.5

- (1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community
- (2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner
- (3) the strict application of the terms of the zoning ordinance will result in **practical difficulties** in the use of the property
- + locally established criteria

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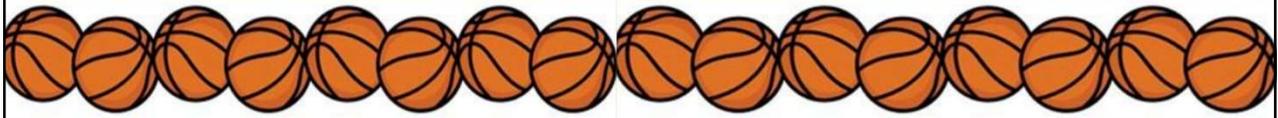
Use Variance Criteria per IC 36-7-4-918.4

- (1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community
- (2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner
- (3) the need for the variance arises from some condition peculiar to the property involved
- (4) the strict application of the terms of the zoning ordinance will constitute an **unnecessary hardship** if applied to the property for which the variance is sought
- (5) the approval doesn't interfere substantially with the adopted comprehensive plan
- + locally established criteria

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Findings of Fact - Variances

- IC 36-7-4-918.3 & IC 36-7-4-918.5 require the BZA to make findings (determination in writing) for all variances – *base on State & Local Ordinance criteria*



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Decisionmaking Pressures



Decisionmaking Pressures

- After public hearing, BZA, plan commission and/or legislative body must arrive at decision or recommendation.
- Issues often complicated, and decisionmaking is difficult.
- Pressures
 - Peer pressure
 - Public pressure
 - Developer and business pressure
 - Political pressure

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Compromise?

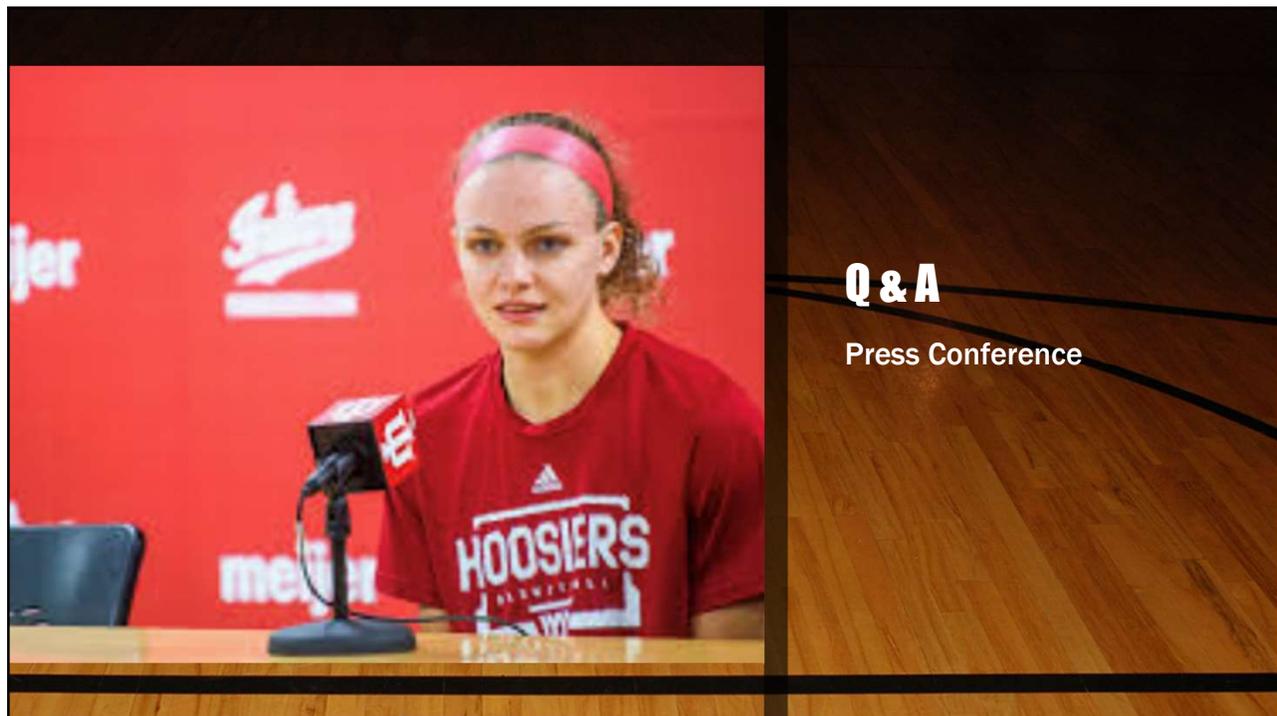
- Want to find a middle position between developers and opponents.
- *Can leave everyone unhappy when neither side gets what it wants.*
- Developers quickly learn the compromise game, asking for more than they want or expect, in order to end up with the project they initially desired.
- Compromise works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

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Managing Outside influences

- Members interact with people in their daily lives who wish to influence their opinion or vote
- Good practice to refrain from discussions, because interferes with due process and inconsistent with the goals of the open meeting law.
- If contact can't be avoided, explain that it will be reported at the public meeting.

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**Q & A**

Press Conference

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