

ARTICLE 2

ADVISORY PLAN COMMISSION

SECTION 200 – Advisory Plan Commission

In accordance with the provisions of Indiana Code Sections 36-7-4-200 et seq., the Dearborn County Plan Commission shall consist of nine (9) members who shall be appointed and serve in accordance with the above statutory authority. All citizen members shall serve four (4) year terms and all required members shall be appointed for one-year terms.

(1) Members shall be appointed as follows:

- a. One (1) member selected by the Board of County Commissioners from its membership;
- b. One (1) member selected by the County Council from its membership;
- c. The County Surveyor or the County Surveyor's designee;
- d. The County Agricultural Extension Educator;
- e. Five (5) members appointed in accordance with one (1) of the following:
 - i. Five (5) citizen members appointed by the Board of Commissioners, of whom not more than three (3) may be of the same political party. Each of the five (5) members must be:
 1. A resident of an unincorporated area of the county; or
 2. A resident of the county who is also an owner of real property in whole or part in an unincorporated area of the county. In this scenario, at least a majority of the total number of citizen members appointed to the plan commission must be residents of the unincorporated area of the county.

A citizen member of the Plan Commission may not hold:

1. An elected office (as defined in IC 3-5-2-17); or
2. Any other appointed office in municipal, county, or state government; except for membership on the Board of Zoning Appeals as required by IC 36-7-4-902.

- f. In accordance with IC 36-7-4-220, if a vacancy occurs among the plan commission members who are appointed, then the appointing authority shall appoint a member for the unexpired term of the vacating member. The appointing authority may also appoint an alternate member to participate with the commission in a hearing or decision if the regular member appointed by the appointing authority has a disqualification under IC 36-7-4-223(c) or is otherwise unavailable to participate in the hearing or decision. An alternate member has all the powers and duties of a regular member while participating in the hearing or decision.
- (2) **Duties of Plan Commission** - The Plan Commission shall establish the procedures and responsibilities for the administration and enforcement of this Ordinance in accordance with this paragraph's provisions and State legislation. For the purposes of this ordinance the Plan Commission shall have the following duties:
- a. Prepare and publish a schedule of all regular meetings of the board, including the date, time and location.
 - b. Call special meetings, if / when called by the President or by two (2) members of the PC upon request (written or electronic) to the Planning Director or designee.
 - i. Notice to PC Members. The Planning Director or designee shall send to all members, at least three (3) days before the special meeting, a notice (written or electronic) fixing the time and place of the meeting. Notice of a special meeting is not required to be provided to all PC members if:
 - a) the date, time, and place of a special meeting are fixed in a regular meeting; and
 - b) all members of the PC are present at that regular meeting.
 - c. Make recommendation to the County Commissioners concerning the adoption of or initiate amendments to the Comprehensive Plan, Zoning and Subdivision Ordinance, and Official Zoning Map.
 - d. Review and make findings on development plans for subdivisions, commercial structures, industrial structures, planned unit developments, and other similar plans for all proposed developments within the Commission's jurisdiction.
 - e. Administer the Subdivision Regulations as outlined in the Subdivision Ordinance.
 - f. Establish a schedule of fees, charges and expenses, and approve annual department budget proposal to County Council.
 - g. Review recommendation of Planning Director for new uses or uses not specifically identified in this Ordinance to determine which existing zoning district the use is permitted in based on similar uses permitted within the district and the intent of the zoning district. The determination of the Plan Commission shall not constitute a text amendment as described in Article 5 of this Ordinance.
 - h. Delegate any tasks as specified in this order relative to its administration and the operation of the Planning Department including hiring, termination of employment, supervision, performance review, and establishing compensation of the Planning Director.

- i. Perform any task and follow any procedure, including those pertaining to committees of the Plan Commission.
- (3) **Rules of Procedure** - The Plan Commission shall adopt rules for the administration of the affairs of the Plan Commission and for the conducting of public hearings, recording of minutes, and for the retaining and administration of public records. The following include minimum procedures:
- a. At the first meeting of each year the Commission shall elect a President and a Vice-President from its members.
 - b. Appoint a Secretary, who is not required to be a member of the Commission, and establish the Secretary's duties.
 - c. All meetings shall be open to the public, except those that are executive sessions (which require a minimum 48-hour notice). All meetings, as set forth in IC 5-14-1.5-2, will comply with Indiana Open Door Law as required.
 - d. The Commission shall keep minutes of its proceedings showing the vote of each member for each question, or if absent, or failing to vote indicating such.
 - e. All minutes of the proceedings, findings of fact, recordings of the hearings, plans, maps and all other exhibits submitted by the petitioners, remonstrators, and staff shall be public records and shall be filed in the Planning Director's or designee's office. These materials shall become a part of the case and all such materials shall be held by the Planning Director or designee for a period of at least one year. At the end of the one-year time period, all materials held by the PC may be placed in a 'back filing' system for preservation of records, all in accordance with the Indiana Access to Public Records Act.
 - f. The Plan Commission may elect to not begin a hearing on any matter after 10:00pm, local time. If a hearing on a petition or application has not been called for by the President or other presiding officer prior to 10:00pm, local time, such petition or application may be continued until the next regularly scheduled or special meeting of the Plan Commission. Any hearing that has been called for by the President or other presiding officer prior to 10:00pm, local time, may be completed.

(4) **Meetings and Hearings, Conduct and Procedures** –

- a. Orderly Conduct
 - i. Every person appearing before the PC shall abide by the order and direction of the President. Discourteous, disorderly, or contemptuous conduct shall be regarded as a breach of the privileges and the President (or presiding member) may remove any person from the meeting who disrupts the meeting, displays discourtesies, or displays disorderly or contemptuous conduct towards the members or any other person in attendance.
 - ii. The President (or presiding member) may terminate any repetitious or irrelevant presentation. Every person appearing before the PC shall abide by the order and directions of the President.
- b. Contacting Members
 - i. No person (including applicants, remonstrators, and others) may communicate with any citizen member of the PC (who is not an elected official) before a hearing with the intent to influence the member's action on a matter pending before the PC. All communication about a petition must go through the Planning Director or designee so that it can be made a part of the public record and be distributed to the membership.
- c. Time Periods
 - i. **The PC, by majority vote at any meeting, shall have the authority to extend or waive the time periods specified later in this Section, for good cause shown.**
- d. Agendas and Meeting Information
 - i. The Planning Director or designee shall prepare an agenda for each meeting and may limit petitions to a reasonable number based on anticipated attendance and / or time constraints.
 - ii. The Planning Director or designee shall provide (mail or electronically transmitted) the agenda, and all supporting materials, to all PC members at least five (5) days prior to the meeting.
- e. Site Visit
 - i. Members shall have the right to inspect land involved in any petition to be heard by the PC either individually or jointly. No more than three (3) members shall inspect the subject land at any one (1) time.
- f. Applicant Attendance
 - i. If the petitioner(s) or applicant(s) are unable to make the meeting, as scheduled and notified, then the PC will table the application to the next regularly-scheduled meeting, unless the petitioner or applicant has requested in advance to be moved to another specific scheduled meeting date.

- g. Meeting Presentations and Rules of Procedure
- i. The order of presentations on any petition or application heard by the PC shall be as follows:
 - a) Presentation of staff report, if any, by Planning Director;
 - b) Presentation by petitioner / applicant, limited to fifteen (15) minutes;
 - c) Questions, if any, by PC members;
 - d) All questions and comments from the public, including those by Interested Parties or others who are not Interested Parties as defined herein, shall be directed to the Plan Commission—not the Applicant / Petitioner, the Applicant’s / Petitioner’s representatives, or any other person.
 - e) Presentation by Interested Parties, limited to **three (3) minutes per ‘Interested Party’**. **For the purposes of this Ordinance, ‘Interested Parties’ shall include all abutting properties. If the subject property involves a Zone Map Amendment request, ‘Interested Parties’ are at minimum, all properties within 500 feet of the site being requested for a rezone—or if the site abuts a county roadway along a County line, the petitioner must notify two (2) properties in depth or one-eighth (1/8) of a mile (whichever is less), in the adjoining county in addition to the abutting property owners in Dearborn County, per State code, as Interested Parties. ‘Interested Parties’ may pool or combine their allotted time to allow one representative to speak for a group of Interested Parties; however, each ‘Interested Party’ and its property ownership is limited to a total of three (3) minutes of presentation / discussion—not three (3) minutes for each representative of a property. A “pooled” speaker, who is acknowledged by other Interested Parties to speak on their behalf, may not speak for more than fifteen (15) minutes.**
 - f) Questions, if any, by PC members;
 - g) **Presentation by others**— are not considered to be Interested Party(ies) / Person(s), as defined in this Ordinance—at discretion of President, **limited to one (1) minute per person at the discretion of the President**. Other speakers, who are not Interested Parties, cannot pool or combine their allotted time. Each speaker who is not an Interested Party and who does not have “standing” as defined by the Indiana Code (IC § 36-7-4-1603), is limited to a total of one (1) minute of presentation / discussion—not one (1) minute for each representative of a property.
 - h) Additional questions, if any, by PC members of all speakers; and
 - i) Official action by PC on petition.

- ii. Any person or party speaking shall state his/her name and address prior to making a presentation.
- iii. Any party may appear in person or by representative (person, agent, attorney, etc.) at PC meetings. A representative may testify to the facts that he has particular knowledge of that relate to the issues of the petition. In so testifying, the representative shall be subject to cross-examination and questions by the PC.
- iv. Written comments submitted to the PC prior to a meeting or hearing shall be read or outlined to the PC by the Planning Director prior to official action.
- v. No rebuttal time shall be allotted to the Applicant / Petitioner, Interested Party(ies) / Person(s), and said person(s) cannot reserve any unused presentation time for rebuttal.
- vi. At the conclusion of remarks by the Applicant / Petitioner, Interested Party(ies) / Person(s), and said person(s) who are not considered to be Interested Party(ies) / Person(s), as defined in this Ordinance, the Plan Commission shall have the right to ask questions pertaining to the evidence, statements, and arguments presented. Time involved in responding to questions by the Plan Commission by either the Staff, Applicant / Petitioner, Interested Party(ies) / Person(s), and said person(s) shall not be considered for the purposes of calculating equal time for presentation.

(5) **Notice for Meetings** –

- a. In the event that either the Plan Commission or Board of Commissioners proposes to repeal and replace or amend either the Dearborn Zoning Map or the Dearborn County Zoning Ordinance or the Dearborn County Subdivision Control Ordinance, the Plan Commission shall, at minimum, publish notice of the proposal in the local newspaper at least ten (10) days prior to the public hearing. *The notice shall state the information contained in subsection g. of this Section of the Ordinance.*
- b. Interested Parties (as defined in this Section of the Ordinance) for a zone map amendment shall follow the procedures set forth in Article 5, Section 530 of the Dearborn County Zoning Ordinance.

- c. Interested Parties (as defined in this Section of the Ordinance) for a petition or application for modification of written commitments, major changes to a zone map amendment, primary plat review, major changes to primary plat review, waivers, and / or administrative requests shall include:
 - i. All owners of property within the area included in the petition or application who are not the petitioner / applicant; and
 - ii. All owners of adjoining parcels to a depth of one ownership surrounding the perimeter of the area included in the petition or application.

In the case of property which has been submitted in accordance with the Horizontal Property Law (IC 36-1-6), notice shall be given only to the association of co-owners.

For the purpose of notice requirements contained in this subsection, where any immediately adjoining parcel is owned by the petitioner / applicant, the subject property of the petition / application shall be deemed to include the immediately adjoining parcel owned by the petitioner / applicant.

For the purpose of notice requirements contained in this subsection, where any immediately adjoining parcel is a dedicated right-of-way, railroad right-of-way or private alley or street, the subject property of the petition / application shall be deemed to include the portion of the right-of-way or private street that is contiguous and adjacent to the parcel owned by the petitioner / applicant (as if the right-of-way or private street does not exist).

- d. Interested parties for a petition or application for the vacation of land in a plat shall include all owners **within said plat**;
- e. For all other meetings involving the plan commission, including executive sessions, a notice shall be posted at the Dearborn County Government Center that acknowledges the time and location of the meeting. The notice shall be posted at least forty-eight (48) hours before the meeting occurs. **The plan commission staff shall also contact the local media (newspapers and radio) to provide additional legal notice.**
- f. The Dearborn County Assessor's Office may be relied upon to determine the identity for all interested parties, for property located within Dearborn County. In adjoining counties, the Assessor's, Auditor's, or other such office that is appropriate to identify all other interested parties shall be consulted to obtain the necessary contact information.

- g. Notice of the hearing shall be given by the Plan Commission Staff (postmarked and mailed) at least ten (10) days in advance of the hearing by certified mail or other mailing service deemed acceptable in accordance with the Indiana Code. The applicant(s) or petitioner(s) shall bear the costs associated with newspaper legal notices and with the notices to interested parties, as defined herein—in accordance with the current Plan Commission Fee Schedule.

Such notice shall state:

- i. The name of the applicant(s).
 - ii. The location of the subject property.
 - iii. A summary of the subject matter contained within the proposal.
 - iv. The date, time, and place that the application or petition has been set for a hearing.
 - v. The interested or notified parties may voice an opinion and / or file written comments with the Plan Commission.
 - vi. An acknowledgement that the application and file materials are available for review at the Plan Commission's office, the Department of Planning & Zoning.
- h. If proper notice has not been given, an application or petition may be continued until a later date to allow time for un-notified interested parties to prepare for the public hearing. Appearance at any hearing on an application or petition, in person or by representative, shall waive any defect in notice unless the alleged defect is raised at the beginning of the hearing.
 - i. Proof of notice shall be included in the Plan Commission staff's case file.
 - j. The Plan Commission staff shall cause a legal notice to be published in the local newspaper at least ten (10) days prior to the public hearing.

- (5) **Disqualifications and Conflicts of Interest** - A member of the plan commission is disqualified and may not participate in a hearing of the board concerning a zoning decision, as described in IC 36-7-4-1016, if:
- a. The member is biased or prejudiced or otherwise unable to be impartial; or
 - b. The member has a direct or indirect financial interest in the outcome of the zoning decision.

In the event of a disqualification, the appointing authority may select or designate an alternate member to participate with the board in a hearing or decision. An alternate member has the same powers and duties of a regular member while participating in a zoning decision or hearing.

The plan commission shall enter in its records:

- a. The fact that a regular member has a disqualification that qualifies under IC 36-7-4-223; and
- b. The name of the alternate member, if any, who participates in the hearing in place of the regular plan commission member.

A member of the plan commission or legislative body may not directly or personally represent another person in a hearing before that commission or body concerning a zoning decision or a legislative act.

A member of the plan commission may not receive any mileage or compensation for attendance at a meeting if the member is disqualified under this section from participating in the entire meeting.

- (6) **Findings and Decisions** - All decisions of the Board on all matters within their jurisdiction and authority shall be in writing, supported by specific findings of fact on each material element pertaining to the matter under consideration.
- (7) **Quorum** - A majority of members of the Plan Commission shall constitute a quorum, which shall mean a minimum of five (5) members. The action of the Plan Commission is not official unless it is authorized by a majority of the entire membership, which shall mean a minimum of five (5) votes from the members present at the properly called meeting.

SECTION 210 – Duties of Planning Director

The provision of this ordinance shall be administered and enforced by the Planning Director. The Director may designate other Staff within the Department to assist. The Director shall have authority on all matters of administration and enforcement subject to the guidance of the Plan Commission and Board of Zoning Appeals (BZA). An appeal of the decisions of the Director or designated staff can be made to the BZA. For the purpose of this order, the Director shall have the following duties:

1. Perform the administrative duties of the department, including hiring, termination of employment, and supervision of all department staff and contractual employees, reviewing performance, establishing compensation, and preparing and administering the department budget;
2. Upon finding that any of the provisions of this order are being violated, the Planning Director shall notify, in writing, the person responsible for such violation(s), ordering the action(s) necessary to correct such violation;
3. Determine the classification of a use of land, buildings or structures as a permitted, accessory, or conditional use in a specific zoning district, as well as determine the applicability and substance of development performance standards, based on interpretation of the stated and implied requirements of the zoning regulations. Make recommendations to the Plan Commission for new uses, or uses not specifically identified in this Ordinance, to determine in which existing zoning district the use is permitted based on similar uses permitted within the district and the intent of the zoning district;
4. Take any other action authorized by this order or ordinance to ensure compliance with or to prevent violation(s) of these regulations;
5. Provide an interpretation of the Zoning Ordinance and Zoning Maps, Comprehensive Plan, Subdivision Ordinance or any other properly enacted ordinance or plan;
6. Review all development applications per Ordinance and all applications for public hearings for the Board of Zoning Appeals and Plan Commission per Ordinance;
7. Delegate any portion or portions of his duties to Staff of the Planning and Zoning Department. Duties may include, but are not limited to: site inspections regarding complaints of violations of this order; site inspections of developments for compliance with plans approved under this order; issuance of “Notice of Violations” citations; review of development plans for compliance with the rules, regulations and standards of this order.

SECTION 215 – Committees

Technical Review Committee.

- a. Pursuant to IC 36-7-4-701 et. seq., the PC shall establish a minor plat committee—which shall be hereafter be called the Technical Review Committee—and will be composed of at least five (5) voting members including: the Planning Director (as the Plan Commission Secretary), the County Surveyor, the County Engineer, a County Environmental Health Specialist, and the County Stormwater Coordinator, or their designees. The Technical Review Committee shall review and decide on petitions for primary plat approval of minor subdivisions and shall follow the procedures set forth in Article 2 of the Dearborn County Subdivision Control Ordinance. A majority vote of the Technical Review Committee may take actions on minor divisions of land and any decisions of the Technical Review Committee may be appealed to the PC.

- b. Executive Committee. Pursuant to IC 36-7-4-408, the PC may establish an Executive Committee, if desired, that is composed of three (3) members of the PC. Membership of the Executive Committee must be confirmed by a two-thirds (2/3) vote of the entire membership of the PC. A majority vote of the Executive Committee may act in the name of the PC and any decisions of the Executive Committee may be appealed to the PC.