INDIANA
CITIZEN PLANNER’S GUIDE

Part 9: Subdivision Control Ordinance
by Jonathon Isaacs, AICP &
Amy Schweitzer, AICP

a publication of
The Indiana Planning Association,
a chapter of
The American Planning Association

Other parts of the Indiana Citizen Planner’s Guide can be downloaded at
www.indianaplanning.org/citizen.htm

This booklet is one in a series of publications of the Indiana Planning Association to be used as training materials for citizen planners: plan commission members, board of zoning appeals members, neighborhood organizations, and citizen committees. These materials are intended to supplement publications such as Planning Made Easy and The Citizen’s Guide to Planning. IPA’s materials contain information specific to Indiana. Users of these guides are strongly encouraged to read other, more general books on planning and zoning.

The information contained in this booklet is intended for informational purposes only and is not to be considered legal advice.
Subdivisions Defined

A subdivision is a division of a lot, tract, or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale, development, or lease. Subdivisions can include splitting one 80-acre tract of land into two 40-acre parcels without any infrastructure. It includes splitting one 80-acre tract into ten 8-acre lots for a business development with a street and drainage infrastructure; or it can mean splitting one 80-acre tract into 180 residential lots complete with roads, sidewalks, street lighting, and utilities.

The review of a subdivision of land is an additional process - aside from zoning - that allows a local government to influence the character of land development. One primary and often overlooked connection between zoning and subdivisions in Indiana Code is that within a zoning ordinance, a plan commission can determine in which zoning districts subdivisions of land are permitted. The more obvious connection between zoning and the subdivision of land is that the standards for development in the subdivision control ordinance should be consistent with (or reference) the standards for development contained in the zoning ordinance.
History

Governments began requiring subdivisions of land to ensure that proper land records were maintained. Also, a subdivision of land that has been recorded in the office of the local county recorder eliminates the need for a lengthy metes and bounds legal description of the property. After a subdivision of land is officially recorded, the lot is commonly referred to as a specific “Lot Number” in the “Name of the Subdivision.” For example, “Billy owns Lot #182 in the Walnut Hills Addition to the Town of Monroe,” or “the new store will be constructed on Lot #3 in the Westside Commercial Park Addition to the Town of Monroe.”

Eventually, the requirement of recording and platting of land records and titles evolved into development controls. The initial development issues were lot width and area, block length, and access. This grew into reviewing actual construction standards for streets, alleys, sewers, and other infrastructure that ends up being accepted by the local government.

Purpose

While subdivisions of land still help create adequate land records and simpler legal descriptions, subdivisions of land also ensure that there are adequate public facilities and infrastructure to handle the development of the lots created by the subdivision. This includes accessibility through streets, street capacity, pedestrian ways, and/or alleys. It can also include water service, sewer service, treatment capacity, electricity, natural gas, drainage, and other utilities.

An official subdivision of land also includes a plan for long-term maintenance of infrastructure. It is common for the local government to take over the maintenance of the infrastructure - like streets and utilities. Sometimes the subdivision process includes the creation of a homeowners’ association with annual dues to maintain other infrastructure like drainage swales, detention ponds, and/or common areas. The subdivision process generally serves as assurance to a potential lot purchaser that infrastructure is provided and perpetual maintenance is accounted for.

The subdivision of land process is one of the few opportunity for officials to influence internal design of a development. Unfortunately, it is easy to get caught up in making sure adequate utilities are provided and overlook the character of the subdivision. In Chapter 8 of The Practice of Local Government Planning, Richard Ducker states, “The manner in which land is subdivided, streets are laid out and lots and homes are sold sets out the pattern of community development for years to come. Once land is divided into building sites and streets, land ownership is only rarely consolidated, land is rarely resubdivided, and a particular site is only rarely redeveloped.

Quick Quiz:
Is there an original plat in your community? What is the date on the plat?

It is no use saying, “we are doing our best.” You have got to succeed in doing what is necessary.
- Winston Churchill
Subdivision regulations often give a community its only opportunity to ensure that new neighborhoods are properly designed." The review of a new subdivision is critical in the process of developing and/or maintaining a certain community character.

The Subdivision Control Ordinance

Most communities in Indiana have stand alone subdivision control ordinances. This means the subdivision ordinance is a separate document from the zoning ordinance and building ordinance. Recently, some communities have began implementing a “Unified Development Ordinance” that includes all of a community’s development ordinances in one document: zoning, subdivision, building, and even unsafe building ordinances. If the subdivision control ordinance is a stand alone document, it should include some general provisions: purpose, intent, jurisdiction, violations, penalties, and definitions.

Indiana code calls for a plan commission to recommend an ordinance containing “provisions for subdivision control.” The subdivision control ordinance must specify the standards by which the commission determines whether a plat qualifies for primary approval. Indiana Code requires a subdivision control ordinance to include standards for minimum lot width, depth, and area; public way width, grade, curves and coordination with existing and planned public ways; and the extension of water, sewer, and other services.

Indiana Code goes further to state that a plan commission may also include provisions for the allocation of area to be used as public ways; parks; schools; public/semi-public buildings; utilities; and “anything else related to the purpose” of the subdivision of land.

The general regulations included in most subdivision control ordinances include:
• Lot area, width, and length to depth ratio
• Block length
• Street width, alley width, cul-de-sacs length, turning radii
• Provisions to include utilities and appropriate easements for utilities
• Provisions for pedestrian access
• Monumentation and markers
• Subdivision name
• Street names
• Lot addresses

Today, many communities are taking subdivision control even further to include “real community character issues.” These regulations can include
requiring various sized lots in the same subdivision, including regulations for the provision of amenities such as parks and other recreational facilities, requiring conservation of naturally-sensitive lands, aesthetic regulations, and landscaping.

With all of the regulations usually included in a subdivision control ordinance, it’s important to make sure that actual construction standards are not confused with design regulations. Construction standards are used during the actual construction of the subdivision’s infrastructure. For example, thickness of asphalt and base materials for a local street are construction standards. This type of information best serves the community and the developer if it is contained within a construction manual (not the subdivision control ordinance) approved by the public works board.

Types of Subdivision
A Subdivision Control Ordinance often identifies different types of subdivisions. The most common are minor subdivisions and major subdivisions. Indiana Code does not spell out definitions for different subdivisions; it does, however, make provisions for a simpler procedure for subdivisions that do not involve the opening of a public way.

Minor and Major Subdivisions
Ordinances commonly define a “minor subdivision” and a “major subdivision.” While this definition is up to each individual community, a minor subdivision of land usually has a maximum number of lots and does not necessitate the construction or installation of new infrastructure. These can also be called “a simple subdivision of land.” For example, a minor subdivision could be defined as a subdivision that includes five or fewer lots and does not require construction of new public or private public ways or the installation of utility infrastructure. A major subdivision is usually defined as any subdivision of land that does not meet the definition of a minor subdivision.

Developers should be discouraged from creating a series of minor subdivisions as a way of bypassing the requirements of a major subdivision. The simplest way to do this is to specify that lots created as part of a minor subdivision of land are incapable of further separation unless the procedure and requirements for a major subdivision are followed.

There are many different types of major subdivision. The Subdivision Control Ordinance can establish minimum or maximum standards for certain types of subdivisions and also establish criteria about how they can be developed. Some local governments also establish additional types of subdivisions. This section looks a the most common types of subdivisions found in Indiana: Conventional, Traditional, and Open Space/Conservation.

Traditional / Neo-Traditional
Traditional subdivisions are historically found in the older parts of communities. Often, the “Original Plat to the Town/City” was created
before land use patterns were dominated by the automobile. As a result, traditional subdivisions are characterized by mixed use, smaller lots and setbacks, gridiron street patterns and narrow alleys.

The traditional subdivision has recently been re-invented to include these same design principles. A traditional subdivision developed today may be called a “Neo-Traditional Development.” Like the older parts of cities, these subdivisions create a mixed-use development of retail, office and residential and incorporates them together while creating a neighborhood with a pedestrian emphasis. Typically, home sites will have rear-loaded garages off of alleys. The home design emphasizes front porches and street-scape that encourages people to recreate in the front yard. These types of development welcome a mixture of uses that traditional zoning has separated.

**Conventional Subdivisions**

A conventional subdivision is most typically found in suburban areas. These subdivisions were first created after World War II during the first tier of suburban development. In the 1960s, traditional gridiron street patterns gave way to curvilinear street patterns in an attempt to soften the look of neighborhoods. Most subdivisions today continue to use the conventional subdivision style first developed in the 1960s.

**Open Space / Conservation**

An Open Space or Conservation Subdivision is characterized by clustering the developable lots in certain areas of the parent tract of land and preserving/conserving the remaining areas on the parent tract. These areas might be conserved because they are valuable natural habitats, beautiful woodlands, floodplain, or simply as an open space amenity to the lot owners. The key is that these undeveloped lands are actually platted as part of the subdivision, are never divided into lots, are never developed, and are maintained by a homeowners’ association.

**A Side Note On Condominiums**

A condominium development is real estate in which a portion is designed for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of the portions. In Indiana, Condominiums were formerly referred to as Horizontal Property Regimes. Section 32-25 of Indiana Code states that condominiums are exempt from local subdivision control ordinances. The total land stays under one ownership interest while the buildings located on that undivided ground is sold to homeowners.

The result of this Indiana-wide legislation is that local governments lack any influence in the design and implementation of condominium developments unless the local zoning ordinance requires condominium developments to obtain development plan approval per the authority granted in Indiana Code 37-7-4-1400.
Procedure

The subdivision control ordinance should spell out the procedure for obtaining subdivision plat approval. While this Citizen Planner’s Guide details the minimum requirements contained in Indiana Code, this procedure likely differs from community to community.

Some communities suggest or require a “pre-application conference” even though such a meeting is not mentioned in Indiana Code. A pre-application conference is a meeting between the developer (applicant) and the plan commission staff. City engineers, utility supervisors, and other public works planners can and should be involved in a pre-application conference. The conference includes quick review of the plat and filing requirements and general discussion.

The subdivision control ordinance should include a list of filing requirements. This is all the documentation that must be included in the filing of the subdivision plat application for the filing to be considered complete. It obviously includes drawings - streets, lots, utilities, drainage, etc. It may also include items like an affidavit from the property owner if the owner is not the developer, information on the proposed homeowners/lot owner’s association, and other restrictions that will be part of the development.

Indiana Code requires a “primary plat application for approval” to be filed per the instructions in the subdivision control ordinance. The code goes further to allow communities to charge a fee for such filing. Indiana Code gives plan commission staff 30 days to review the submittal for completeness. If the submittal is found to be complete, the staff shall announce a date for a public hearing before the plan commission or before a plat committee that is an established committee of the plan commission. (Indiana Code 36-7-4-701(e) establishes the procedure for developing a plat committee.)

The staff shall notify the applicant/developer in writing of the hearing date. Although Indiana Code requires the staff to give notice of the hearing to the public and to notify interested parties at least 10 days prior to the hearing, many local ordinances actually require the applicant/developer to bear the costs associated with this notice and sometimes bear the responsibility of doing it. Indiana Code allows the community to define who interested parties are and what constitutes appropriate notice.

Like any public hearing, the applicant/developer should be allowed to explain the plat and answer any questions the plan commission (or plat committee) might have. The public should be given the opportunity to speak in favor of or against the proposed plat. Unlike some other decisions a plan commission makes, if the proposed plat complies with all of the standards in the subdivision control ordinance, the plat shall receive “primary approval” from the plan commission. (This is why it is so critical to have a thorough subdivision control ordinance with well-written and well-tested standards. Indiana Code does require the plan commission to make written findings and a written, signed decision upon granting primary plat approval. The
findings might include items like: the application filing was complete; notice was given of the public hearing as required; and/or the proposed subdivision plat complies with all the standards included in the subdivision control ordinance.

Similarly, if a subdivision plat does not comply with all of the standards in the subdivision control ordinance, written findings and denial of the subdivision plat must be signed. The plan commission official responsible for signing the findings and the denial/approval shall be identified in the subdivision control ordinance.

At this point, the applicant/developer may choose one of two avenues.

One: the developer may begin installing all of the infrastructure per the approved primary plat and adhering to the community’s specifications. Once the infrastructure is installed, tested, and approved by local officials, the developer offers the infrastructure to the local government. The local government, in turn, accepts the infrastructure (assuming it was built to the local government’s standards and has passed all tests). For example, the right-of-way containing the streets built by the developer would be owned by the local government and the streets would be maintained by the local street department. Then, secondary plat (sometimes called final plat) approval is granted by the plan commission or plat committee. Indiana Code does not require notice or a hearing for secondary plat approval.

Two: secondary plat approval may be granted where improvements have not been made if the applicant/developer provides a bond in an amount determined by the plan commission to be sufficient to complete improvements. Again, the approval must come from the plan commission or plat committee and does not require notice or a hearing.

Indiana code requires the plat to be signed by the plan commission official designated in the subdivision control ordinance before it is filed with the county auditor and county recorder.

Design Elements

One of the best opportunities to influence the character of a community is during the subdivision review process - particularly before primary plat approval. Since primary plat approval is approved simply by complying with standards in the subdivision control ordinance, it is paramount that standards reflect the community’s physical and economic needs and desires.

The following design elements are a basic list that should be reflected in a subdivision control ordinance.
Natural Amenities
Should a community desire to protect natural amenities from development or influence the development around these amenities, the subdivision control ordinance must include provisions outlining guidelines for the development of or near natural amenities. Natural amenities may include streams, rivers, floodplains, wetlands, woodlots, prairie lands, and/or natural topography.

Accessibility and Circulation
The subdivision control ordinance should reference right-of-way widths contained in a community’s thoroughfare plan (usually part of the comprehensive plan). When considering accessibility and circulation, a plan commission must consider street design: curbs or no curbs; straight or curvy; wide or narrow; the speed of vehicles on the street; onstreet parking or not; cul-de-sac length. How does one get into the subdivision from existing roads? Will undeveloped land around the subdivision eventually be developed? Should stub streets be required in certain areas? Are intersections safe? How about turning radii? Will school buses, garbage trucks, and emergency response personal be eager to travel down these streets or not?

Certainly, pedestrian accessibility and circulation should also be a consideration. Will sidewalks be required? Are there existing paths or trails that are accessible from the proposed subdivision?

Lots and Blocks
Lots should obviously meet the minimum zoning criteria (size, width, frontage, and width-to-depth ratios) and be buildable (include building setback lines). The subdivision control ordinance might address “flag lots” or “panhandle lots” which are those with enough frontage only for access. Do these lots create the type of character and development the community desires?

Block length should also be addressed in the subdivision control ordinance.

Street Names & Address
It is easy to overlook something as simple as the name of a street. However, it is critical that names of street extensions be consistent with the existing street. For example, if Hickory Avenue is extended, it should be called Hickory Avenue, not Hickory Street. New streets should have names that are not similar to existing streets - like Beach Street and Beech Street. Differentiated street names make the job of responding to emergencies quicker and more efficient. Also, be careful interchanging forms of directionals. Western Avenue is much easier to confuse with West Oak Street than a name that does not include any form of west.

Also, it is critical that addresses be consistent with the community’s existing address scheme. While the plan commission does have the authority to change addresses, it is generally not well-received by the community. It is
so much easier to have the addresses on each lot on the plat.

**Utilities and Drainage**
Inadequate review of utility and drainage infrastructure can be a costly mistake for local governments. Utilities should be adequately sized for maximum build out of the subdivision and any future expansion of the lines to land that might develop in the future. Easements should also be adequately sized to handle all of the various utilities that will be necessary. The form certain utilities exist in can impact the character of the community; for example, underground versus overhead lines. Street lights are another example of how utilities can help create or detract from a certain character.

Drainage infrastructure is sometimes not accepted and maintained by the local government after the development is complete. The plan commission needs to make sure that arrangements are in place for perpetual maintenance of the swales and/or ponds.

**Landscaping and Aesthetics**
A subdivision control ordinance can address internal and external landscaping and aesthetic features. Items like street trees, buffering, entrances, and boulevards certainly impact the character of the community.

**General Information**
The plat should include a metes and bounds legal description of the entire subdivision as well as the contact information of the developer, land surveyor, and engineer. Often, a subdivision control ordinance requires specific language about approval on the plat. Also, a signatory line for appropriate plan commission officials should be included.

**Plat Covenants and Restrictions**
Covenants and restrictions (deed restrictions) are requirements that the developer may create to provide further protection for future homeowners. The covenants should spell out a mechanism for enforcement because the local plan commission/local government is generally not responsible for enforcing covenants. The mechanism normally created is a homeowner’s association. Each owner of a lot is usually required to be part of and pay dues to the homeowner’s association.

**Financing Improvements**

**Land Dedication**
In Indiana, it is most common for the developer to bear the cost for the right-of-way (which eventually becomes public or “common” land) and the cost of the infrastructure improvements developed onsite to serve the lots the developer is creating: streets, utilities, drainage, sidewalks, lift stations,
hydrants, etc. A developer should be able to recoup these costs in the sale of the individual lots. The right-of-way and infrastructure is “dedicated” to the local government for public use.

The local government bears the cost of perpetual maintenance of the infrastructure that becomes part of its existing systems. Should the local government request or require oversizing of lines/streets to accommodate future growth, the local government should be prepared to bear the cost of increased size.

**Off Site Improvements**
Occasionally, improvements are required off the site of the subdivision. For instance, a large residential subdivision or a commercial subdivision may require the addition of a deceleration lane or a turning lane on a street outside of the actual subdivision. Generally, the developer bears the cost of these improvements which are necessitated by the new subdivision. There might be some cases where a new subdivisions necessitates the need for a facility that is common to the community. In these cases, the developer bears a proportionate share of the costs of providing common facility.

**Fees in lieu of dedication**
Some community subdivision control ordinances call for developers to give fees in lieu of dedicating land for a specific improvement. For example, a subdivision of 50 lots might not require a complete new park. Rather than the developer setting aside a certain amount of land for a park, the developer will give money to finance a portion of the park. The key is that the subdivision control ordinance must be specific in how these fees are calculated and the fees must be used for the intended purpose.