CHAPTER 5
RULES OF PROCEDURE

Contributing Authors:
Cynthia A. Bowen, AICP - Current and Previous Author

IN THIS CHAPTER...

What are Rules of Procedure?
Are Rules of Procedure Necessary?
The Components of Rules of Procedure
Adopting and Amending Rules of Procedure
WHAT ARE RULES OF PROCEDURE?

Rules of procedure are the documented procedures of how a plan commission or board of zoning appeals conducts business. The Indiana Code acknowledges the rules and responsibilities associated with both plan commissions (IC 36-7-4-401) and boards of zoning appeals (BZAs) (IC 36-7-4-916) - Which include membership rules, hearing protocols, meeting times, public notification, and application procedures.

A plan commission should consult IC 36-7-4-401, regarding ‘Duties; Advisory Planning; Area Planning.’ In general, the statute states that each plan commission shall:

- Prescribe uniform rules pertaining to investigation and hearings;
- Keep a complete record of all the departmental proceedings;
- Record and file all bonds and contracts and keep and preserve all documents of the plan commission or department;
- Prepare, publish and distribute reports, ordinances and other materials relating to its activities;
- Adopt a seal;
- Certify all official acts;
- Supervise the fiscal affairs of itself and the planning department; and
- Prepare and submit an annual budget.

Boards of zoning appeals should consult IC 36-7-4-916, ‘Board of Zoning Appeals; Rules.’ In general these rules state that the board of zoning appeals shall adopt rules, which may not conflict with the zoning ordinance concerning the following items:

- Provisions for the filing of applications;
- Applications for variances, special exceptions, special uses, contingent uses and conditional uses;
- Public notice requirements;
- Conduct of hearings; and
- Determination of whether a variance application is for a use variance or development standards variance.

The law also provides for other items that can be included in the rules but are not legally required, such as allocation of the docket for the BZA and how to determine dates for meetings.

For both boards, the rules that are adopted should be made accessible to all applicants and the general public.
ARE RULES OF PROCEDURE NECESSARY?

As noted earlier, Indiana Code mandates rules and procedures for plan commissions and BZAs to conduct business whether it is for interpretations on specific processes (re-zones, special exceptions, variances), membership, or public notice.

All plan commissions and BZAs should have rules of procedure that take the relevant requirements of state law and synthesize them into an easy to use document that is easily accessible and understandable. It is not necessary to know all the appropriate actions and requirements under state law when conducting board business.

Additionally, rules should be tailored to include actions that indicate how the board is run and how decisions are generally made. These rules should be periodically updated so they continually reflect how the board conducts business in its month to month meetings.

Finally, rules should be simple, easy to understand, and easy to follow. As a general rule of thumb, do not cite or follow Robert’s Rules of Order. Many boards still cite Robert’s Rules, however they are very formal and can be difficult to implement. If the board does not consistently follow them, the board can open itself up to having decisions overturned due to procedural inconsistency.

The rules are a necessary step in the governance of plan commissions and BZAs, especially if there arises a situation where the board is sued. The rules guide and protect the board in procedural administration, which allows for smaller margins of error.
THE COMPONENTS OF RULES OF PROCEDURE

From community to community and from board to board, the rules of procedure will be different. In general, the local zoning ordinance should have very basic information regarding the duties and powers of the plan commission and BZA to provide the necessary regulatory means for implementation of the community ordinances. The details of the board’s composition, authority, and meeting dates and notices should be contained in the rules of procedure so that these details can be changed from time to time without going through the entire zoning ordinance amendment process.

Rules of procedure must contain the minimum requirements established by Indiana Code, and may include procedures which are more restrictive than the state law, if the local boards believe such procedures are necessary. The rules should be consistent with local ordinances.

In general, there are some common elements that should be included in a plan commission or BZA rules of procedure. A suggested outline of rules of procedure for each type of board follows. The list includes all requirements contained in Indiana Code, and some additional suggestions. Each board will want to tailor its rules to best meet its needs.

Rules of Procedure Contents

To better understand the roles and powers of the plan commission, consult Chapter 1, Plan Commission Basics, and Chapter 7, Comprehensive Plans. To better understand the roles and powers of the board of zoning appeals, consult Chapter 2, Board of Zoning Appeals Basics.

General Statement

In general, rules of procedure should begin with a statement indicating that the rules have been adopted by the board/commission and that the rules reflect the conduct of the board/commission’s business.
Powers of Board/Commission

This section should document the duties of the board/commission as it applies to the community. There are several powers that state law grants to plan commissions including preparation, replacement, administration, and amendment of the zoning and subdivision ordinances; amendments to the zoning map; approval of subdivision plats; and site/development plan review. For BZAs, there are four powers that state law grants: variances, special exceptions, use determination, and appeal of decisions of the planning director or staff.

Meetings

In this section, the types of meetings that are held by the board of zoning appeals or plan commission should be documented within the rules of procedure for each board, which may include:

- Regular meetings;
- Special meetings;
- Executive sessions;
- Cancellation policies; and
- Recesses.

Regular meeting times, dates, and locations should be established. Authority to call a special meeting and under what circumstances a special meeting is allowed should be identified, as well as when and how meetings are cancelled and/or rescheduled.

The Indiana Open Door Law should also be cited in a board/commission’s rules of procedure. Some bodies find it helpful to include a “late night meeting policy” that gives the board/commission the option of continuing meetings that are dragging into the late hours of the night (or even early hours of the morning!).

Members and Officers

This section should specifically cite the applicable Indiana Code provisions for appointing members to the board/commission. The number of members depends on a couple of factors. Who appoints members, how long each member serves, and any other requirements for members should be identified. Policies dealing with vacancies and removal of members should also be established.

This section should document who will preside over meetings, the duties of those officers, when and how they should be elected and who will serve as staff to the board/commission including the planning director and attorney. Sub-sections could include election of officers, duties of officers, board staff, established plan commission committees, contracts/agreements (to prepare documents or act on behalf of the board/commission), and performance review of the staff.

The “members and officers” section should provide guidance for the conduct of members. This section should spell out the different situations where a conflict of interest could occur and how it should be handled (notification of conflict of interest, disqualification) if a situation arises. The section should also cover ex parte contacts, expressions of bias, and presence to vote. Make sure to review Chapter 4, Communications, for more detailed information.
Filing Procedures, Applications, and Agendas

This section incorporates, by reference, the application procedure and discusses the general rules for how applications will be handled is a vital part of a board/commission’s rules of procedure.

If the board/commission prefers the staff to provide staff reports, then a sub-section is needed that indicates what will be incorporated in the staff report, if a staff recommendation is included, and when the staff report will be made available to the body, the applicant, and the public. This portion might also include provisions for adding information to the application after the item has been added to the board/commission agenda.

Regarding agendas, the rules of procedure might include provisions for establishing the agenda or rules for when a particular petition/application is added to the meeting agenda.

Additionally, this section can also include provisions of how a board/commission will set its agenda and public notice requirements. It is especially important to be very specific in spelling out the details of public notice requirements if the local requirements vary from the minimum state requirements. Finally, the time period in which information should be submitted to the planning office should be included so that additional information can be included in the public record.

For plan commission rules of procedure in particular, they typically include rules regarding the role and composition of the technical advisory committee, plat committee, and other subcommittees.

Conduct of Meetings

The manner in which meetings are intended to be conducted should be well documented. Items that should be included in this section are a definition of quorum; how and where minutes and records will be kept; representation of applicants at the meeting; withdrawal procedures; the order of business (agenda); how public hearings will be handled including opening the hearing, comments by staff, presentation by applicant, presentation by opposition, rebuttal, closing of the hearing, board/commission comments, and questions; any waivers of rules; and the conduct by persons attending the meeting.

Under this section, also include how the board will handle voting (by show of hands, paper ballot, etc.), and when applications can be re-filed if an unfavorable decision is made.

Suspension and Amendment of the Rules of Procedure

There may be situations that occur during a meeting where the rules need to be suspended. These could include application issues, meeting time limit, etc. Rules need to be in place that allow the board to suspend its rules. Additionally, the board/commission should be able to amend its rules from time to time. The last rule needed in this section is one of severability. Like a zoning ordinance, if some part of the rules is found invalid, then it does not void all the rules.
ADOPTING AND AMENDING RULES OF PROCEDURE

As compared with the zoning ordinance, it is much less difficult to create, adopt, and amend rules of procedure. The simple procedure is below:

1) Write the rules. A plan commission or BZA should obtain assistance from the staff and/or attorney with the initial set of rules and with any amendments to existing rules. Rules should be amended when they no longer reflect how the board conducts business.

2) Add the rules of procedure to the next (or an appropriate) agenda. Members should have a copy of the proposed rules and/or changes and review them prior to the board meeting.

3) Review and make any additional changes. At the appropriate meeting, the board should review the rules in a public forum and make any necessary additional changes.

4) The rules should be adopted by resolution. To make the rules valid, there should be a motion by a board member and a vote on adoption.