

**CHAPTER 15
ADMINISTRATION**

Section 15.01 Town Council.

In order to effectuate the purpose of this Ordinance regarding the implementation of the *Comprehensive Plan* and this Ordinance, the *Town Council* shall, to the fullest extent permitted by applicable law, including without limitation IC 36-7-4 *et. seq.* have the powers and duties to:

- (A) Approve, reject or amend a *comprehensive plan*, or segment thereof, certified to it by the *Area Plan Commission*.
- (B) Initiate amendments to the text of this Ordinance.
- (C) Adopt, reject or amend proposals to amend or partially repeal the text of this Ordinance.
- (D) Initiate amendments to the text of the Town Subdivision Control Ordinance.
- (E) Adopt, reject or amend proposals to amend or partially repeal the text of the Town Subdivision Control Ordinance.
- (F) Adopt or reject proposals to amend zone maps.
- (G) Adopt, reject or modify a *PUD* District Ordinance.
- (H) Approve or disapprove all petitions *for special exception uses* after receiving such petitions from the *Board of Zoning Appeals* with a favorable recommendation, unfavorable recommendation, or no recommendation.
- (I) Such additional powers and duties as may be set forth for the *Town Council* elsewhere in this Ordinance or Indiana state law.

Section 15.02 Area Plan Commission.

- (A) Establishment. The area planning law is hereby re-adopted and the *Area Plan Commission* is hereby re-established as the plan commission for the Town of Osceola, Indiana, in accordance with Indiana Code 36-7-4-200 *et seq.*
- (B) Membership, Qualifications and Terms. The membership of the *Area Plan Commission*, the qualification of its members and the terms of membership shall be in accordance with Indiana Code 36-7-4-200 *et seq.*

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- (C) Duties and Powers. The *Area Plan Commission* is hereby vested with the duties and powers imposed upon and granted to an *Area Plan Commission* under the area planning law, including, without limitation, the powers and duties listed below. To effectuate the purposes of this Ordinance, the *Area Plan Commission* may, to the fullest extent permitted by applicable laws:
- (1) Supervise and make rules for the administration of the affairs of the planning department;
 - (2) Prescribe uniform rules pertaining to investigations and hearings, and other matters authorized by Indiana planning and zoning laws;
 - (3) Keep a complete record of all departmental proceedings;
 - (4) Record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the planning department;
 - (5) Prepare, publish and distribute reports, ordinances and other material related to the *Area Plan Commission* activities authorized by Indiana state law or this Ordinance;
 - (6) Adopt a seal;
 - (7) Certify to all official acts;
 - (8) Supervise the fiscal affairs of the planning department;
 - (9) Prepare and submit an annual budget and be limited in all expenditures to the provisions made for expenditures by the legislative bodies of participating municipalities or the Board of Commissioners of St. Joseph County;
 - (10) Prescribe the qualifications of, with the consent of the *Executive Director*, fix the compensation of the employees of the planning department, which compensation shall conform to salaries and compensations fixed before that time by the Board of Commissioners of St. Joseph County;
 - (11) Delegate authority to its employees to perform ministerial acts in all cases except where final action of the *Area Plan Commission* is necessary;
 - (12) Designate a hearing examiner or a committee of the commission to conduct any public hearing required to be held by the *Area Plan Commission*;

- (13) Appoint a plat committee to hold hearings on and approve plats and replats on behalf of the *Area Plan Commission*;
- (14) Make recommendations to the *Council* concerning:
 - (a) The adoption of the *Comprehensive Plan* and amendments to the *Comprehensive Plan*;
 - (b) The adoption of this Ordinance, a text amendment to this Ordinance, a replacement zoning ordinance, or the Town of Osceola Subdivision Control Ordinance;
 - (c) The adoption or amendment of a *PUD* District Ordinance; and,
 - (d) Zone Map Changes;
- (15) Render decisions concerning and approve plats or replats of subdivisions;
- (16) Assign street numbers to *lots* and *structures* or renumber *lots* and *structures* on streets or highways within the *Area Plan Commission's* jurisdiction to conform with the numbers of *structures* on streets within cities within St. Joseph County, Indiana. The *Area Plan Commission* hereby delegates the assignment of street numbers to the *Town Clerk-Treasurer*;
- (17) The naming or renaming of streets when performed in connection with a plat or replat (the naming or renaming of streets within the corporate limits of the *Town*, when not performed in connection with a plat or replat, shall be within the jurisdiction of the *Council*);
- (18) Render decisions concerning development plans and amendments to development plans;
- (19) Establish advisory committees of citizens interested in problems of planning and zoning which shall report to the *Area Plan Commission* and shall make inquiries and reports only on the subject and problems specified in the resolution establishing the advisory committee of citizens by the *Area Plan Commission*;
- (20) Establish an executive committee which may act in the name of the *Area Plan Commission* as set forth in IC 36-7-4-408;
- (21) Negotiate for grants-in-aid and agree to terms and conditions attached to such grants-in-aid;

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- (22) Establish a schedule of reasonable fees to defray the administrative costs connected with:
 - (a) Processing and hearing administrative appeals and petitions for zone map change, *special exception uses*, *variances*, *planned unit developments*, and *development plan* approvals;
 - (b) Issuing *improvement location permits*; and,
 - (c) Other official actions taken under this Ordinance;
 - (23) Invoke any legal, equitable, or special remedy available under this Ordinance or applicable law for the enforcement of the provisions of this Ordinance or actions taken hereunder;
 - (24) Exercise all powers conferred on it by state law, local ordinance, or rule in the manner so prescribed. This Section shall not be construed as a limitation on those powers.
- (D) Commitments.
- (1) Requirement of Commitments by the *Area Plan Commission*.
 - (a) The *Area Plan Commission* may, when in the discretion of the *Area Plan Commission* it is deemed necessary either to assure the compatibility of a proposed development with surrounding properties, or to minimize the potential for the occurrence of detrimental effects from any attributes of a proposed development on surrounding properties, require or allow the owner of a parcel of property to make written commitments concerning the use or development of the subject property in connection with:
 - 1. A *development plan* approval as provided for in this Ordinance;
 - 2. A recommendation to the *Council* regarding a zone map change to any district classification contained in this Ordinance;
 - 3. A recommendation to the *Council* regarding a *PUD* District Ordinance;
 - 4. A secondary approval of a *PUD*; or,
 - 5. A modification of permitted uses or development requirements of a *PUD*.

- (b) The *commitments* shall be reduced to writing in recordable form and signed by the owner(s) of the real estate. The *commitments* shall be in effect for:
 - 1. As long as the zone map applicable to the parcel remains unchanged;
 - 2. The parcel is designed as a *PUD* under Chapter 7 Planned Unit Development District of this Ordinance; or,
 - 3. Modified or terminated as provided below.
 - (c) *Commitments* required or allowed in connection with a zone map change or the adoption of a *PUD* District Ordinance shall be voted upon by the *Council* as certified by the *Area Plan Commission*.
 - (d) The *commitments* shall authorize their recording by *staff* in the office of the Recorder of St. Joseph County upon the final approval of the applicable petition. The *staff* shall be reimbursed by the petitioner for any and all fees associated with the recording of said *commitments*.
 - (e) Following the recording of the *commitments*, *staff* shall return the original recorded *commitments* to petitioner and shall retain a copy of the recorded *commitments* in its file.
 - (f) The *Area Plan Commission*, Town Attorney, *Zoning Administrator*, appropriate enforcement official, owners of all parcels of ground located within three-hundred (300) feet of the real estate and all owners of real estate within the area included in the petition who were not petitioners for approval, and other specially affected persons designated in such *commitments* shall be entitled to enforce such commitments pursuant to Indiana Code 36-7-4-1015 or as otherwise provided by applicable law.
 - (g) The *commitments* required or allowed by the *Area Plan Commission* shall be in substantially the form set forth by resolution of the *Area Plan Commission*.
- (2) Modification or Termination of *Commitments* by the *Area Plan Commission*.
- (a) *Commitments* required or allowed by the *Area Plan Commission* may be modified or terminated by a decision of the *Area Plan Commission*.
 - (b) Any modification or termination of the *commitments* shall not be effective until:
 - 1. Reduced to writing;

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2. Approved by the *Area Plan Commission*;
 3. Executed and notarized by the present owner(s) of the real estate; and,
 4. Recorded in the office of the Recorder of St. Joseph County.
- (c) The modification or termination of *commitments* shall be in substantially the form set forth by resolution of the *Area Plan Commission*.
- (d) Procedures to be followed regarding form of filing, public hearing and notice, and reasons for modification or termination shall be those set forth in sub-Section 16.07 Modification or Termination of Commitments.

Section 15.03 Board of Zoning Appeals.

- (A) Establishment and Jurisdiction. The *Board of Zoning Appeals* for St. Joseph County is hereby re-established in accordance with Indiana Code 36-7-4-900 *et seq.* The *Board of Zoning Appeals* of St. Joseph County shall have exclusive authority over all matters set forth under Indiana Code 36-7-4-900 *et seq.*, within the corporate limits of the *Town*.
- (B) Membership, Qualifications and Terms. The membership of the *Board of Zoning Appeals*, the qualification of its members and the terms of membership shall be in accordance with Indiana Code 36-7-4-900 *et seq.*
- (C) Duties and Powers. The *Board of Zoning Appeals* shall have the duty and power to:
- (1) Hear and determine appeals from and review any order, requirement, decision, or determination made by *staff*, hearing officer or administrative official under this Ordinance;
 - (2) Hear and determine appeals from and review any order, requirement, decision, or determination made by an administrative board or other body except the *Area Plan Commission* in relation to the enforcement of this Ordinance;
 - (3) Hear and determine appeals from and review any order, requirement, decision, or determination made by an administrative board or other body except the *Area Plan Commission* in relation to the enforcement of those provisions of this Ordinance requiring the procurement of an *improvement location permit* or a *certificate of occupancy*;
 - (4) Hear, and make a favorable recommendation, unfavorable recommendation or no recommendation to the *Council* on all *special exception uses* in accordance with the provisions of sub-Section 15.03 (I) Special Exceptions, below;

- (5) Hear and determine all variances from *development standards* of this ordinance; and
 - (6) Hear and determine all *conditional uses*.
- (D) Conditions.
- (1) The *Board of Zoning Appeals*, in connection with its making of a favorable recommendation, unfavorable recommendation or no recommendation to the *Council* regarding the approval of a *special exception use*, may recommend that the *Council* impose certain reasonable conditions as a part of the *Council's* approval of any *special exception use*.
 - (2) Such conditions may include any reasonable site, development, operational standards, performance standards, requirements, and restrictions (including duration of approval) deemed necessary to ensure compliance with the findings of fact determinations.
- (E) Amendments. The *Board of Zoning Appeals*, in connection with making a determination on a variance of *development standards*, may accept amendments to a petition which, in the sole discretion of the *Board of Zoning Appeals*, are necessary for the *Board of Zoning Appeals* to make the determination and findings of fact required by sub-Section 15.03 (H) Variance of Development Standards, below.
- (F) Commitments.
- (1) The *Board of Zoning Appeals* may recommend or the *Council* may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel in the case of a petition for a *special exception use*.
 - (2) The *Board of Zoning Appeals* may permit or require the owner of a parcel of property to make a written commitment concerning the development of that parcel in the case of a petition for a *variance of development standards*.
 - (3) Such *commitments* may include any reasonable site, development, operational standards, performance standards, requirements, and restrictions (including duration of approval) deemed necessary to ensure compliance with the findings of fact determinations.
 - (4) All such *commitments* shall be in recordable form and shall be recorded in the office of the St. Joseph County Recorder and shall take effect upon the granting of the *special exception use* or *variance*. A recorded *commitment* shall be binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel.

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- (5) The *commitments* shall be in substantially the form set forth in Exhibit "C" of this Ordinance.
 - (6) A recorded *commitment* may be modified or terminated only by a decision of the *Board of Zoning Appeals*.
 - (7) The modification or termination of *commitments* shall be in substantially the form set forth in Exhibit "D" of this Ordinance.
 - (8) Procedures to be followed regarding form of filing, public hearing and notice, and reasons for modification or termination shall be those set forth in Section 16.07 Modification or Termination of Commitments.
 - (9) By recommending, permitting or requiring commitments, the *Board of Zoning Appeals* does not obligate itself to make a favorable recommendation nor does the *Council* obligate itself to approve or deny any request.
 - (10) This Section does not affect the validity of any covenant, easement, equitable servitude, or other land use restriction created in accordance with law.
- (G) Rules.
- (1) The *Board of Zoning Appeals* shall adopt rules concerning: the filing of appeals; applications for special exception uses and variances; the giving of notice; the determination of interested parties to receive notice; the conduct of hearings; the creation, form, recording, modification, enforcement and termination of *commitments*; and, the designation of which specially affected persons and classes of specially affected persons are entitled to enforce *commitments*.
 - (2) Rules adopted by the *Board of Zoning Appeals* shall be printed and made available to all applicants and other interested persons.
- (H) Variance of Development Standards. A *variance* from any of the development standards of this Ordinance may only be approved upon the *Board of Zoning Appeals* making a written determination and adopting appropriate Findings of Fact, based upon the evidence presented at a public hearing, that:
- (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; and,

- (3) The strict application of the terms of this Ordinance would result in practical difficulties in the use of the property.
- (I) Special Exception Uses.
- (1) Statement of Purpose. Certain land uses, while they may be generally appropriate in certain districts and under certain circumstances, may have characteristics and locational impacts which, if inappropriately located, may have a detrimental effect upon other land uses within the district and the *Town*. It is therefore recognized that such land uses should be regulated in order to preserve property values, as well as promote the public health, safety, comfort, community moral standards, convenience and general welfare of the *Town*.
 - (2) Uses Permitted by *Special Exception Use*. Only those uses identified in each individual *district* as uses permitted by *special exception use* shall be permitted by *special exception use* in each *district*.
 - (3) Grant of a Special Exception Use.
 - (a) The *Board of Zoning Appeals* is hereby authorized to hear and make a favorable recommendation, unfavorable recommendation or no recommendation to the *Council* on a petition for a *special exception use*.
 - (b) The *Council* shall, within sixty (60) days of a recommendation by the *Board of Zoning Appeals*, vote on the petition for a *special exception use*.
 - (c) All petitions for a *special exception use* shall comply with the following requirements:
 1. Petition for Special Exception Use. A petition for *special exception use* shall be initially filed with the *Board of Zoning Appeals* in accordance with the requirements for the filing of a *variance*, except as such requirements may be modified in this Section. Such petition shall include proposed detailed findings of fact pursuant to sub-Section 15.03 (I)(4) Findings of Fact for a Special Exception Use, below, in support of the determinations required to be made.
 2. Waiver of Development Standards. A petition for special exception may contain a request to waive *development standards* of the *district* determined to be inappropriate for the individual *special exception use*. The waiver may only be approved if such waiver is specifically requested in said petition and specifically approved at the public hearing. Any *development standards* which are waived in this manner shall require additional findings as specified in Section 15.03 (H) – Variance of

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Development Standards, above, for the grant of a variance of *development standards*.

3. Basis of Review of a Special Exception Use.
 - a. In reviewing a *special exception use* petition with regard to compliance with the required findings of fact, the *Board of Zoning Appeals* and *Council* shall give consideration to the particular needs and circumstances of each *special exception use* application and shall examine the following items as they relate to the proposed *use*:
 - i. Topography and other natural site features;
 - ii. Zoning of the site and surrounding properties;
 - iii. Driveway locations and street access;
 - iv. On-site and off-site accommodations for vehicular and pedestrian circulation patterns;
 - v. Amount, location and design of parking areas and loading areas;
 - vi. Building character, including height, intensity, materials and architecture;
 - vii. Landscaping, screening and buffering of adjacent properties;
 - viii. Compatibility of the proposed use, site design and architecture with the district in which the *use* is proposed to be located;
 - ix. Extent to which the proposed use, site design and architecture comply with the regulations and development standards that would be applicable if the site were zoned to an Office Buffer District, Commercial District or Industrial District of this Ordinance which would permit the proposed use as a *primary use*;
 - x. Open space and other site amenities; and,
 - xi. Availability and adequacy of streets, sanitary facilities, potable water, storm water management system and other utilities.

- b. The *Board of Zoning Appeals* and the *Council* shall find that the above items are dealt with appropriately by the petition for *special exception use* such that Sections 15.03 (I)(4) Findings of Fact for a Special Exception Use, below, and 15.03 (I)(5) Requirements for the Grant of a Special Exception Use, below, are complied with.
 - c. In addition to the requirements of this Section 15.03 (I)(3), *special exception uses* shall be subject to any additional *development standards* as determined by the *Council*.
- (4) Findings of Fact for a Special Exception Use. A *special exception use* may only be granted upon making a written determination and adopting appropriate findings of fact, based upon the evidence presented at a public hearing, that:
 - (a) The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;
 - (b) The proposed use will not injure or adversely affect the use of the adjacent area or property values therein;
 - (c) The proposed use will be consistent with the character of the district in which it is located and the land uses authorized therein; and,
 - (d) The proposed use is compatible with the recommendations of the *Town Comprehensive Plan*.
- (5) Requirements for the Grant of a Special Exception Use. The grant of a *special exception use* shall comply with the following requirements:
 - (a) The proposed *use* shall conform to all *development standards* of the applicable zoning district (unless a waiver of such *development standards* is requested as part of the *special exception use* petition and approved as set forth above).
 - (b) The proposed *use* shall conform to all conditions or commitments attached to the grant of the *special exception use*.
- (J) Other Powers. The *Board of Zoning Appeals* shall exercise all powers conferred on it by State law, local ordinance, or rule in the manner so prescribed. This Section shall not be construed as a limitation on such powers.

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Section 15.04 Staff Agencies.

- (A) Establishment. The Office of the *Area Plan Commission* of St. Joseph County is hereby re-established as the planning department for the *Town*.
- (B) Administration of Planning and Zoning Authority. The Office of the *Area Plan Commission* is hereby delegated the authority to perform all ministerial acts of the *Area Plan Commission* not required by law to be performed by the *Area Plan Commission* or the *Board of Zoning Appeals* within the *Town*.
- (C) Duties and Powers of the Executive Director.

It shall be the duty of the Executive Director:

- (1) To supervise the general administration of the Planning Department;
- (2) To receive and review all applications required by this Ordinance for zone map changes, development plan approvals and *planned unit developments*;
- (3) When requested by the *Area Plan Commission* or *Board of Zoning Appeals*, or when the interests of the *Town* so require, make investigations in connection with matters referred to in this Ordinance and render written reports on the same;
- (4) To keep the records of the Planning Department, including, without limitation, records of applications and reports rendered. The *Executive Director* shall maintain records of all final determinations, decisions and recommendations of the *Area Plan Commission*;
- (5) To transmit to the *Area Plan Commission* the recommendation of the Planning Department on all applications, petitions, or matters requiring official action by the *Area Plan Commission*;
- (6) To transmit to the *Board of Zoning Appeals* the recommendation of the planning department on applications, petitions, or matters requiring official action by the *Board of Zoning Appeals*;
- (7) To maintain the Official Zone Maps and designate on the Official Zone Maps all map amendments granted under the terms of this Ordinance;
- (8) To provide and maintain information for the public relative to all matters arising out of this Ordinance;

- (9) To designate staff to assist in the daily administration of the duties and responsibilities set forth in this Ordinance;
 - (10) To perform such other duties as the *Area Plan Commission* may direct in accordance with the provisions of this Ordinance.
- (D) Duties and Powers of the Zoning Administrator. The *Zoning Administrator* is hereby charged with the administration of this Ordinance and, in particular, shall have the jurisdiction, authority and duties described below:
- (1) To conduct preliminary consultations with potential applicants regarding development proposals regulated by this Ordinance;
 - (2) To receive and review all applications required by this Ordinance for determination by the *Board of Zoning Appeals*;
 - (3) To review all *improvement location permit* applications for compliance with the provisions of this Ordinance; and
 - (4) To issue *improvement location permits* upon a determination that such permit application is in full compliance with all terms and provisions of this Ordinance, the *Town Subdivision Control Ordinance*, and all other duly adopted applicable ordinances, rules or regulations of the *Town*.
- (E) Duties and Powers of the Town Clerk-Treasurer. The Town Clerk-Treasurer shall maintain records including, without limitation, records of all permits issued, certificates issued, and notice or orders issued.
- (F) Duties and Powers of the St. Joseph County/South Bend Building Department. The St. Joseph County/South Bend Building Department shall have the jurisdiction, authority and duties described below:
- (1) To maintain records including, without limitation, records of all applications before the *Board of Zoning Appeals*, and final determinations, decisions and recommendations of the *Board of Zoning Appeals*; and
 - (2) To transmit to the *Board of Zoning Appeals* technical advice on all applications, petitions, or matters requiring official action by the *Board of Zoning Appeals*.