AUGUST/01/2022

I MAX GREENE RESIGN FROM THE WASHINGTON COUNTY B.Z.A. IN PROTEST AGINST BOARD APPOINTMENTS AND MEMBERS THAT DO NOT MEET STATE REQUIREMENTS.

36-7-4-209 PALTY AFFICATION
36-7-4-216 JURISDICTION OF BOARD RESIDANCY OR OWNERSHIP

Max Greene

The following information is from the Indiana Planning and Zoning Laws Annotated, 2017 edition. The Indiana State website was also used - http://iga.in.gov/legislative/laws/2022/ic/titles/036/#36-7 – to clip the legal statements pertaining to each code that I site.

My following conclusions are based on the following information. I am not a lawyer and do not pretend to have a background in law. So these are my opinions as a regular citizen and I would encourage you to read and research to reach your own conclusions.

PART ONE

Chapter 1
Plan Commissions in Indiana

§ 1.1 Primary Types of Plan Commissions
§ 1.2 Advisory Plan Commissions
§ 1.3 Area Plan Commissions
§ 1.4 Metropolitan Development Commissions (Metro)
§ 1.5 Other Plan Commission Types

§ 1.1 Primary Types of Plan Commissions

The plan commission is the primary body in a community responsible for creating, maintaining, and administrating planning and zoning efforts in Indiana. There are three primary types of plan commissions recognized by state statutes in Indiana (IC 36-7-4): Advisory, Area, and Metro. These plan commissions are described in more detail below.

As of November 6, 2017, 85 counties have plan commissions in Indiana (see Figure 1 on the following page). The plan commissions by type are as follows:

- Advisory plan commissions-50 counties (including one county with a metropolitan plan commission)
- Area Plan Commissions-34 counties
- Metropolitan Development Commission-1 county

As of November 6, 2017, seven counties in Indiana do not currently have plan commissions, including Clay, Crawford, Dubois, Lawrence, Orange, Pike and Sullivan counties. Since the 2011 printing of this book, Pike County abolished its plan commission. Dubois County exercises limited subdivision control under IC 36-7-3-2.

Note that even if a county does not have planning or a plan commission established, municipalities within that county may still have established a plan commission exclusively for their jurisdiction.

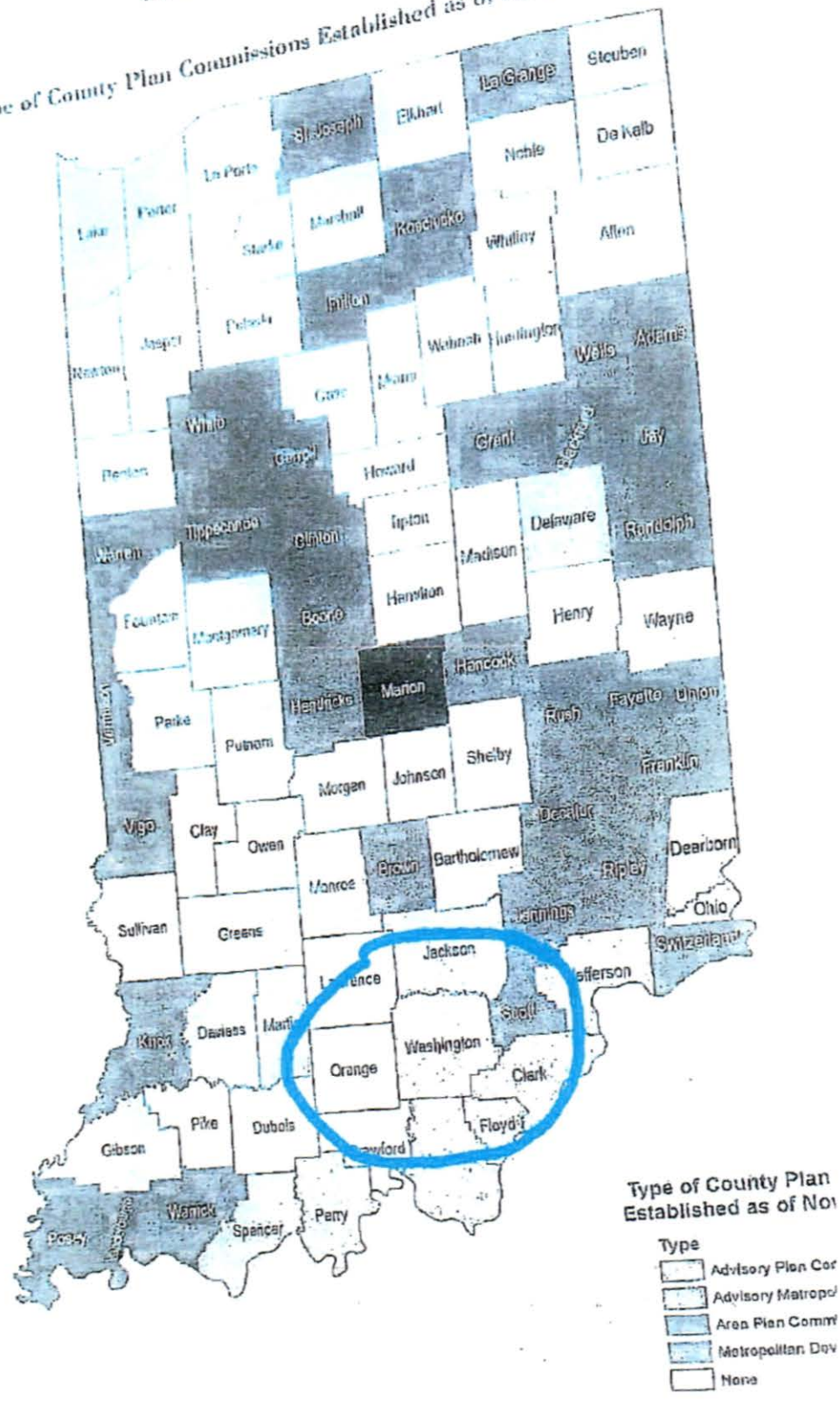
Throughout IC 36-7-4, a reader will note the preceding terms ADVISORY, AREA, and METRO followed by statutory language which applies to that type of plan commission. In cases where there is no heading, the section applies to all plan commission types.

§ 1.2 Advisory Plan Commissions

Advisory Plan Commissions can serve cities, towns, and counties. Municipal Advisory Plan Commissions serve the area within their corporate limits and in some cases are allowed planning jurisdiction over contiguous unincorporated territory up to two miles outside the corporate limits. County Advisory Plan Commissions serve the unincorporated territory within the county excluding any extraterritorial jurisdiction claimed by municipalities.

Under advisory planning law, municipalities may designate their county's Advisory Plan Commission as their municipal plan commission (IC 36-7-4-410). At least twelve counties have entered into such arrangements with one or more municipalities.

ure 1: Type of County Plan Commissions Established as of November 1, 2017



IC 36-7-4-601 Zoning ordinance; powers and duties of legislative body

Sec. 601. (a) The legislative body having jurisdiction over the geographic area described in the zoning ordinance has exclusive authority to adopt a zoning ordinance under the 600 series. However, no zoning ordinance may be adopted until a comprehensive plan has been approved for the jurisdiction under the 500 series of this chapter.

The city of Salem has exclusive jurisdiction authority over the 2 mile fringe. See attached resolution information.

IC 36-7-1-2 "Advisory plan commission"

Sec. 2. "Advisory plan commission" means a municipal plan commission, a county plan commission, or a metropolitan plan commission.

[Pre-Local Government Recodification Citations: 18-7-3-8 part; 18-7-4-111 part; 18-7-5-3 part.]

As added by Acts 1981, P.L.309, SEC.2.

Washington County Land Use Planning is clearly an advisory plan commission.

IC 36-7-1-14 "Plan commission"

Sec. 14. "Plan commission", unless preceded by a qualifying adjective, means an advisory plan commission, an area plan commission, or a metropolitan development commission. The term does not include a regional planning commission established under IC 36-7-7.

[Pre-Local Government Recodification Citations: 18-7-4-112; 18-7-4-2 part.]

As added by Acts 1981, P.L.309, SEC.14.

"Unless preceded by a qualifying adjective" be careful of Metropolitan and Area. See video excerpt of July 11, 2022

IC 36-7-4-101 "Advisory planning law" defined

Sec. 101. The "advisory planning law" consists of those parts of this chapter that are applicable to advisory planning. Sections and subsections of this chapter with headings that include "ADVISORY" apply to advisory planning. In addition, sections and subsections of this chapter without headings apply to advisory planning as well as area planning and metropolitan development.

[Pre-Local Government Recodification Citation: 18-7-4-101.]

As added by Acts 1981, P.L.309, SEC.23.

If the words are not italicized, then it applies to all 3 types - Advisory, Area, and Metropolitan.

IC 36-7-4-211 Membership of commission; changes

Sec. 211. (a) AREA. Notwithstanding any other provision of the area planning law, the representation on any area plan commission may be changed by a similar ordinance adopted by the legislative body of each unit that is a participant in a planning department or by the legislative body of each unit that proposes to form a planning department.

(b) AREA. Each ordinance adopted under this section must provide for at least one (1) representative from each unit that is a participant in the planning department.

[Pre-Local Government Recodification Citations: 18-7-4-211; 18-7-4-8.5; 18-7-4-11.5.]

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.9.

Note the italicized word "Area" meaning it only applies to the Area Plan Commissions.

IC 36-7-4-208 Membership of commission; county and metropolitan members

Sec. 208. (a) ADVISORY. The county plan commission consists of nine (9) members, as follows:

(1) One (1) member appointed by the county executive from its membership.

(2) One (1) member appointed by the county fiscal body from its membership.

(3) The county surveyor or the county surveyor's designee. However, the county surveyor's designee must be a resident of the county to be eligible to serve on the county plan commission.

(4) The county agricultural extension educator. However, the county agricultural extension educator must be a resident of the county to serve under this subdivision. If:

(A) the county does not have a county agricultural extension educator; or

(B) the county agricultural extension educator is not a resident of the county;

the county extension board shall select a resident of the county who is a property owner with agricultural interest to serve on the commission under this subdivision for a period not to exceed one (1) year. In addition to the county resident selected by the county extension board to serve as a member of the commission, the county agricultural extension educator who is not a resident of the county shall serve the commission in a nonvoting advisory capacity.

(5) Five (5) members appointed in accordance with one (1) of the following:

(A) Four (4) citizen members, of whom no more than two (2) may be of the same political party. Each of the four (4) members must be:

(i) a resident of an unincorporated area of the county; or

(ii) a resident of the county who is also an owner of real property located in whole or in part in an unincorporated area of the county;

appointed by the county executive. However, at least two (2) of the citizen members must be residents of the unincorporated area of the county. Also one (1) township trustee, who must be a resident of an unincorporated area of the county appointed by the county executive upon the recommendation of the township trustees whose townships are within the jurisdiction of the county plan commission.

(B) Five (5) citizen members, of whom not more than three (3) may be of the same political party. Each of the five (5) members must be:

(i) a resident of an unincorporated area of the county; or

(ii) a resident of the county who is also an owner of real property located in whole or in part in an unincorporated area of the county;

appointed by the county executive. However at least three (3) members must be residents of the unincorporated area of the county.

If a county executive changes the plan commission from having members described in clause (B) to having members described in clause (A), the county executive shall appoint a township trustee to replace the first citizen member whose term expires and who belongs to the same political party as the township trustee. Each member appointed to the commission is entitled to receive compensation for mileage at the same rate and the same compensation for services as a member of a county executive, a member of a county fiscal body, a county surveyor, or an appointee of a county surveyor receives for serving on the commission, as set forth in section 222.5 of this chapter.

(b) ADVISORY. The metropolitan plan commission consists of nine (9) members, as follows:

(1) One (1) member appointed by the county legislative body from its membership.

(2) One (1) member appointed by the second class city legislative body from its membership.

(3) Three (3) citizen members who:

(A) reside in an unincorporated area of the county; or

(B) reside in the county and also own real property located in whole or in part in an unincorporated area of the county;

of whom no more than two (2) may be of the same political party, appointed by the county legislative body. One (1) of these members must be actively engaged in farming.

(B) reside in the county and also own real property located in whole or in part in an unincorporated area of the county;

of whom no more than two (2) may be of the same political party, appointed by the county legislative body. One (1) of these members must be actively engaged in farming.

(4) Four (4) citizen members, of whom no more than two (2) may be of the same political party, appointed by the second class city executive. One (1) of these members must be from the metropolitan school authority or community school corporation and a resident of that school district, and the other three (3) members must be residents of the second class city.

(c) AREA. When there are six (6) county representatives, they are as follows:

(1) One (1) member appointed by the county executive from its membership.

(2) One (1) member appointed by the county fiscal body from its membership.

(3) A representative appointed by the school corporation superintendents within the jurisdiction of the area plan commission.

(4) One (1) of the following appointed by the county executive:

(A) The county agricultural extension educator. However, the county agricultural extension educator must be a resident of the county to be eligible to serve on the area plan commission. If:

(i) the county does not have a county agricultural extension educator; or

(ii) the county agricultural extension educator is not a resident of the county;

the county executive shall select a resident of the county who is a property owner with agricultural interest to serve on the area plan commission under this clause for a period not to exceed one (1) year. In addition to the county resident selected by the county executive to serve as a member of the commission, the county agricultural extension educator who is not a resident of the county shall serve the commission in a nonvoting advisory capacity.

(B) The county surveyor or the county surveyor's designee. However, the county surveyor's designee must be a resident of the county to be eligible to serve on the area plan commission.

(5) One (1) citizen member who is:

(A) a resident of the unincorporated area of the county; or

(B) a resident of the county who is also an owner of real property located in whole or in part in the unincorporated area of the

(5) One (1) citizen member who is:

(A) a resident of the unincorporated area of the county; or

(B) a resident of the county who is also an owner of real property located in whole or in part in the unincorporated area of the county;

appointed by the county executive.

(6) One (1) citizen member who is:

(A) a resident of the unincorporated area of the county; or

(B) a resident of the county who is also an owner of real property located in whole or in part in the unincorporated area of the county;

appointed by the county fiscal body.

(d) AREA. When there are five (5) county representatives, they are the representatives listed or appointed under subsection (c)(3), (c)(4), (c)(5), and (c)(6) and:

(1) the county surveyor or the county surveyor's designee if the county executive appoints the county agricultural extension educator or resident of the county who is a property owner with agricultural interest, as applicable, under subsection (c)(4); or

(2) the county agricultural extension educator or resident of the county who is a property owner with agricultural interest, as applicable, if the county executive appoints the county surveyor under subsection (c)(4).

(e) ADVISORY. Notwithstanding subsection (a)(4), a county agricultural extension educator who is a member of the county plan commission on July 1, 2020, and is not a resident of the county may continue to serve as a member of the commission until:

(1) October 1, 2020; or

(2) the date set forth in an ordinance adopted by the county legislative body that is after October 1, 2020, and not later than October 1, 2021.

This subsection expires January 1, 2022.

(f) AREA. Notwithstanding subsection (c)(4), a county agricultural extension educator who is a member of the area plan commission on July 1, 2020, and is not a resident of the county may continue to serve as a member of the commission until:

(1) October 1, 2020; or

This subsection expires January 1, 2022.

(f) AREA. Notwithstanding subsection (c)(4), a county agricultural extension educator who is a member of the area plan commission on July 1, 2020, and is not a resident of the county may continue to serve as a member of the commission until:

(1) October 1, 2020; or

(2) the date set forth in an ordinance adopted by the county legislative body that is after October 1, 2020, and not later than October 1, 2021.

This subsection expires January 1, 2022.

[Pre-Local Government Recodification Citations: 18-7-3-3; 18-7-4-208; 18-7-4-9; 18-7-4-10; 18-7-5-11.]

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.7; P.L.354-1983, SEC.1; P.L.40-1993, SEC.67; P.L.226-1997, SEC.1; P.L.216-1999, SEC.2; P.L.103-2000, SEC.1; P.L.276-2001, SEC.10; P.L.173-2003, SEC.30; P.L.32-2004, SEC.2; P.L.126-2011, SEC.7; P.L.233-2015, SEC.339; P.L.53-2020, SEC.1.

No more than 3 of the same political party.

Jurisdictional Areas – none nothing is italicized, so it means all 3.

The following all applies.

IC 36-7-4-216 Membership of commission; qualifications of citizen members

Sec. 216. (a) Each citizen member shall be appointed because of the member's knowledge and experience in community affairs, the member's awareness of the social, economic, agricultural, and industrial problems of the area, and the member's interest in the development and integration of the area.

(b) A citizen member may not hold:

(1) an elected office (as defined in [illegible]); or

(2) any other appointed office in municipal, county, or state government;

except for membership on the board of zoning appeals as required by section 902 of this chapter and, in the case of an area plan commission, membership on the body from which the member must be appointed under this series.

(c) Subject to subsection (d), a citizen member must meet one (1) of the following requirements:

(1) The member must be a resident of the jurisdictional area of the plan commission. The member may also be required by statute to reside within an unincorporated area of the jurisdictional area of the plan commission.

(2) The member must be a resident of the county and also an owner of real property located in whole or in part in the jurisdictional area of the plan commission. The member may also be required by statute to own real property within an unincorporated area of the jurisdictional area of the plan commission.

(d) At least a majority of the total number of citizen members appointed to a plan commission must be residents of the jurisdictional area of the plan commission. The commission shall determine whether a citizen member meets all applicable residency requirements for appointment in accordance with uniform rules prescribed by the commission.

[Pre-Local Government Recodification Citations: 18-4-8-5 part; 18-7-2-7; 18-7-4-216; 18-7-4-13; 18-7-5-9; 18-7-5-13.]

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.10; P.L.2-1989, SEC.25; P.L.126-2011, SEC.10.

IC 36-7-4-217 Membership of commission; term of certain appointees

Sec. 217. ADVISORY—AREA. The term of office of a member (who is appointed from the membership of a legislative body, a park board, or the advisory council on town affairs) is coextensive with the member's term of office on that body, board, or council, unless that body, board, or council appoints, at its first regular meeting in any year, another to serve as its representative.

[Pre-Local Government Recodification Citations: 18-7-4-217, 18-7-4-12; 18-7-5-7 part; 18-7-5-12 part.]

As added by Acts 1981, P.L.309, SEC.23.

IC 36-7-4-218 Membership of commission; terms and removal of citizen members

Sec. 218. (a) When an initial term of office of a citizen member expires, each new appointment of a citizen member is:

(1) for a term of four (4) years (in the case of a municipal, county, or area plan commission);

(2) for a term of three (3) years (in the case of a metropolitan plan commission); or

(3) for a term of one (1), two (2), or three (3) years, as designated by the appointing authority (in the case of the metropolitan development commission).

A member serves until the member's successor is appointed and qualified. A member is eligible for reappointment.

(b) ADVISORY. Upon the establishment of a nine (9) member municipal plan commission, the citizen members shall initially be appointed for the following terms of office:

(1) One (1) for a term of two (2) years.

(2) Two (2) for a term of three (3) years.

(3) Two (2) for a term of four (4) years.

Upon the establishment of a seven (7) member municipal plan commission, two (2) citizen members shall initially be appointed for a term of three (3) years and two (2) shall initially be appointed for a term of four (4) years. Each member's term expires on the first Monday of January of the second, third, or fourth year, respectively, after the year of the member's appointment.

(c) ADVISORY. Upon the establishment of a county plan commission, the citizen members shall initially be appointed for the following terms of office:

(1) One (1) for a term of one (1) year.

(2) One (1) for a term of two (2) years.

(3) One (1) for a term of three (3) years.

(4) Two (2) for a term of four (4) years.

(3) One (1) for a term of three (3) years.

(4) Two (2) for a term of four (4) years.

Each member's term expires on the first Monday of January of the first, second, third, or fourth year, respectively, after the year of the member's appointment.

(d) ADVISORY. Upon the establishment of a metropolitan plan commission, the citizen members shall initially be appointed for the following terms of office:

(1) Three (3) for a term of one (1) year, one (1) appointed by the county legislative body and two (2) by the city executive.

(2) Two (2) for a term of two (2) years, one (1) by each appointing authority.

(3) Two (2) for a term of three (3) years, one (1) by each appointing authority.

(e) AREA. If there is one (1) citizen member on the area plan commission, the member's initial term of office is one (1) year. If there are two (2) citizen members, one (1) shall be appointed for a term of one (1) year and one (1) for a term of two (2) years. If there are three (3) or more citizen members, one (1) shall be appointed for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, and any remainder for a term of four (4) years. Each member's term expires on the first Monday of January of the first, second, third, or fourth year, respectively, after the year of the member's appointment.

(f) ADVISORY—AREA. The appointing authority may remove a member from the plan commission for cause. The appointing authority must mail notice of the removal, along with written reasons for the removal, to the member at the member's residence address. A member who is removed may, within thirty (30) days after receiving notice of the removal, appeal the removal to the circuit or superior court of the county. The court may, pending the outcome of the appeal, order the removal or stay the removal of the member.

(g) METRO. The appointing authority may remove a citizen member from the metropolitan development commission. The appointing authority must mail notice of the removal, along with written reasons, if any, for the removal, to the member at the member's residence address. A member who is removed may not appeal the removal to a court or otherwise.

[Pre-Local Government Recodification Citations: 18-4-6-8 part; 18-7-2-6; 18-7-2-8 part; 18-7-3-4 part; 18-7-4-218; 18-7-4-14; 18-7-5-10; 18-7-5-14.]

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.11; P.L.192-1984, SEC.5; P.L.127-2017, SEC.171.

IC 36-7-4-220 Membership of commission; vacancies; appointment of alternate members

Sec. 220. (a) 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 who meets the same requirements as the vacating member, including residency, not later than ninety (90) days after the vacancy occurs. The appointing authority may also appoint an alternate member who meets the same requirements as the disqualified member, including residency, to participate with the commission in a hearing or decision if the regular member appointed by the appointing authority has a disqualification under section 223(c) of this chapter. An alternate member has all the powers and duties of a regular member while participating in the hearing or decision.

(b) If a vacancy occurs in the office of the county surveyor while the county surveyor is serving on the plan commission, then the county engineer shall participate with the plan commission during the time the office of the county surveyor is vacant. The county engineer has all the powers and duties of a regular member while participating under this subsection.

(c) An appointed member who misses three (3) consecutive regular meetings of the plan commission may be treated as if the member had resigned, at the discretion of the appointing authority.

[Pre-Local Government Recodification Citations: 18-7-2-8 part; 18-7-3-9; 18-7-4-220; 18-7-4-15; 18-7-5-15.]

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.12; P.L.23-1991, SEC.39; P.L.126-2011, SEC.11; P.L.193-2017, SEC.5; P.L.53-2020, SEC.2.

IC 36-7-4-222 Membership of commission; expenses

Sec. 222. If a plan commission determines that it is necessary or desirable for members or employees to join a professional organization or to attend a conference or interview dealing with planning or related problems, the commission may pay the applicable membership fees and all actual expenses of the members or employees, if that amount has been appropriated by the fiscal body of the unit.

[Pre-Local Government Recodification Citations: 18-7-2-15; 18-7-4-222; 18-7-4-20; 18-7-5-21 part.]

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.13; P.L.192-1984, SEC.6.

IC 36-7-4-222.5 Plan commission members belonging to county executive or fiscal bodies: mileage and compensation

Sec. 222.5. Notwithstanding IC [illegible], a member of a county executive, a member of a county fiscal body, a county surveyor, or an appointee of a county surveyor who is also a member of a plan commission is entitled to receive the following:

(1) A sum for mileage for each mile necessarily traveled while performing the duties of a plan commission member in an amount determined by the county fiscal body.

(2) A sum for compensation for services as a member of the plan commission in an amount that the county fiscal body may determine for attendance at meetings of the plan commission.

As added by P.L.356-1989(ss), SEC.1. Amended by P.L.154-1993, SEC.3; P.L.10-1997, SEC.34.

IC 36-7-4-223 **Membership of commission; conflict of interest; disqualification**

Sec. 223. (a) This section does not apply to the preparation or adoption of a comprehensive plan under the 500 series of this chapter.

(b) A member of a plan commission or a legislative body is disqualified and may not participate as a member of the plan commission or legislative body in a hearing or recommendation of that commission or body concerning a legislative act as described in section 1016 of this chapter in which the member has a direct or indirect financial interest. The commission or body shall enter in its records the fact that its member has such a disqualification.

(c) A member of a plan commission is disqualified and may not participate in a hearing of that commission concerning a zoning decision as described in section 1016 of this chapter if:

(1) the member is biased or prejudiced or otherwise unable to be impartial; or

(2) the member has a direct or indirect financial interest in the outcome of the zoning decision.

(d) The plan commission shall enter in the plan commission's records:

(1) the fact that a regular member has a disqualification under subsection (c); and

(2) the name of the alternate member, if any, who participates in the hearing in place of the regular member.

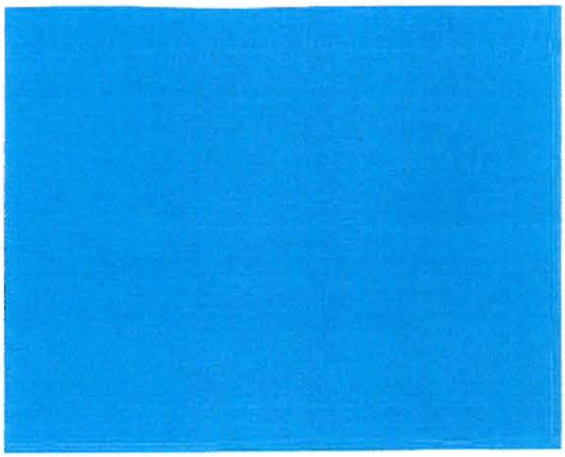
(e) A member of a plan commission or a legislative body may not directly or personally represent another person in a hearing before that commission or body concerning a zoning decision or a legislative act.

(f) A member of a plan commission may not receive any mileage or compensation under section 222.5 of this chapter for attendance at a meeting if the member is disqualified under this section from participating in the entire meeting.

[Pre-Local Government Recodification Citations: 18-7-4-223; 18-7-5-1 part.]

As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.14; P.L.154-1993, SEC.4; P.L.126-2011, SEC.12.

Voting Record



BAIT, ANDREW P	ACTIVE	N	YES	PRI	13	14	15	16	17	18	19	20	21	22
				GEN		X		R		R		X		R
				SPE				X		X				
MILLER, DEIRDRE J	ACTIVE	F	YES	PRI	13	14	15	16	17	18	19	20	21	22
				GEN		D		D		D		P		R
				SPE		X		X		X		X		
BAIRD, KEVIN L	ACTIVE	M	YES	PRI	13	14	15	16	17	18	19	20	21	22
				GEN		AR		R		R		AR		R
				SPE		X		X		X		AX		
HARTMAN, MARK O	ACTIVE	M	NO	PRI	13	14	15	16	17	18	19	20	21	22
				GEN				AR		R		AX		R
				SPE				AX		X				
DAY, THOMAS B	ACTIVE	M	YES	PRI	12	13	14	15	16	17	18	19	20	21
				GEN	D		D		D		AD		AD	
				SPE	X		AX		X		X		AX	