

Presentation to the Westside AARP group, Tuesday, April 5, 2011
By Fred Padget, President, Westside Improvement Association, Inc.

SHORT BIO:

Born and raised on a farm in Canton Michigan. Lived and worked in 11 different states and 15 different towns/cities including Evansville from the mid 70's to the mid 80's. Moved back to Evansville after retiring from Arch Mineral Corporation in 1995. Five children, ten grandchildren, three of whom have served our country in the military and two great-grandchildren. Earned a BBA from the University of Pittsburgh and an MBA from the University of Evansville. Worked in various management positions with most of my career being in financial management positions for various manufacturing and coal companies although I did spend 2 years as a local union president with the United Steelworkers of America. Served in the U.S. Army Nike Guided Missile Battalion. Leadership Evansville class of 1978-79. Member Greenway Advisory Board, United Neighborhoods of Evansville and the Evansville-area Trails Coalition. Currently President of the WIA.

COMPREHENSIVE PLAN:

I've been involved in land use issues in Evansville and Vanderburgh County as it involves the WIA for 11 or 12 years. A comment I hear very often is "why do we allow a business like that there, why do we allow that specific land use to happen, why don't we have a plan"?

Well, we do and it's a very good one. Its 251 pages long with many additional pages of tables and exhibits. It's called the Evansville/Vanderburgh County Comprehensive Plan and covers most every area of land use planning. It's available on the Area Plan Commission web site and is available at most libraries.

It all starts with state laws and zoning regulations. The Indiana Code does not require that a county or city have a zoning code but they may chose to do so if they desire (IC 36-7-4-202). And, if a jurisdiction has decided to have a zoning code, which we have, they *must* have a Comprehensive Plan (IC 36-7-4-501) and it must be adopted by the appropriate legislative body. In our case, the current Comp Plan was developed in 2004 and was adopted by resolution by Evansville, Vanderburgh County and the Town of Darmstadt.

Sounds good so far, but then Indiana Code (IC 36-7-4-603) says "the plan commission, our Area Planning Commission, and the legislative body, for us either city or county, shall pay *reasonable* regard to the comprehensive plan". With an emphasis on "pay reasonable regard to" the result is that neither the APC nor the legislative bodies are required to follow the Comprehensive Plan. That boggles my mind. But, the Comprehensive Plan is an important document and provides guidance for good land use planning if, as a community, we have the will and desire to use it.

To begin with, the Area Plan Commission staff was the lead group in putting this document together but gathered input from most city and county departments, the school system and universities, neighborhood organizations and citizens of the area as well as many others. Public participation is very important to this process and I was pleased to be a member of the citizens group helping put the current plan together.

In fact the plan is currently in the process of being updated and at least two public meetings have been held and one or two more are planned. If you can make it to any of them it's interesting, worthwhile and necessary for creating a good plan.

In development of the current plan, one of the first orders of business involved establishing a Citizen's Vision Committee to develop a Vision Statement for Evansville and Vanderburgh County. After several meetings, and more discussion and debate than I know how to quantify, the group finally agreed that "We envision Evansville and Vanderburgh County as a prominent regional center that offers prosperity, growth, and a quality place to live, learn, work, invest and visit" as a vision that represents this area.

As contained in the Executive Summary, "The Comprehensive Plan for Evansville and Vanderburgh County is the guide for land use decisions and the framework for the ongoing land use planning process. The intent is to guide growth in a manner that supports and reinforces the community qualities important to City and County residents. These qualities include employment and housing opportunities, safety and security, quality schools, neighborhoods with a strong sense of community, and a healthy environment. All these amenities create and enrich our quality of life."

State code requires that a comprehensive plan contain:

- A statement of objectives for the future development of the area,
- A statement of policy for the land use development of the area, and,
- A statement of policy for the development of public ways, public places, public land, public structures, and public utilities.

Additionally, our Comp Plan includes studies of current conditions and future growth along with several other subjects including:

- History, population, and physical site conditions,
- Blighted areas,
- Air and water pollution,
- Flood control,
- Public utilities and other services,
- Transportation, including rail, bus, air and water,
- Parks and recreation,
- Education, including location of schools and universities,
- Land utilization, including agriculture, forests, and other uses,
- Conservation of resources, and
- Other physical, economic, and social factors.

Based on these and other studies, goals and objectives are determined for many strategic areas of planned growth along with policies to help accomplish those goals and objectives. The goals and objectives established include:

- Land use,
- Economic development,
- Quality of life,
- Environmental quality,
- Parks and recreation,
- Hazard mitigation,
- Transportation,
- Utilities, and
- A plan for implementation.

As I said earlier, this is a very comprehensive plan of 251 pages with many additional pages of tables and exhibits. We'll not cover it all today. I'm sure by now you are thinking "thank God for that".

One of the major objectives in the plan is that growth should grow outwardly from the central business district and other major activity centers into areas with lower density development. Growth first should occur as infill development which might mean using vacant lots, existing buildings or replacing deteriorated buildings. As you all know, we have plenty of existing vacant buildings and it would be good to see them put back in use. Growth may also include changing a properties use from a low intensity use such as a parking lot to a higher intensity use such as offices or stores before expanding outwardly. Where these type properties are not existent or possible to do, the growth should be contiguous to existing built up areas and not leapfrog into rural or sparsely developed areas. This is commonly referred to as spot zoning if it occurs.

Additionally, the transportation network, traffic congestion, alternative transportation modes, storm water runoff, available utilities and other supporting infrastructure should be carefully considered to prevent unnecessary public or private expense. If new development occurs, the new development should incur the full cost or participate in the cost of the public infrastructure (e.g. roads, water and sewer) needed to serve these developments. One item of particular interest included in the plan regarding these items is that impact analyses should be used to determine the effect of new developments on the environment, road network, educational system, community services, and utilities.

A good example is the development of large housing developments. When these are built, they require more roads, drainage, sewage, water, electric lines and can have major impact on schools. The impact analysis would help to determine these costs and prevent surprises later on.

Another sound objective of the general land use plan emphasizes development characteristics that enhance Evansville's vision through urban design and historic preservation. In regard to historic preservation, the plan promotes preservation and rehabilitation of historic sites for public and private use (think of the old post office or the old Greyhound station); defining elements of historic buildings should be preserved, existing focal points should be strengthened, new focal points should be created to connect elements of historic and natural importance creating interest and variety in the community landscape.

The Comp Plan talks at length about economic development. And, although some may not want change and disruption of the status quo and especially not next door to me, most would agree that good, sound economic development is not only desirable but critical to the future of the area. The primary focus of efforts for good economic development is to encourage existing businesses to expand and new business development. Without economic growth an area tends to deteriorate over time.

From my personal experience living in many different areas of the county, I can tell you of many small towns based on one or two businesses, primarily coal mines, that suffered very difficult times when the mine depleted its' coal reserves. The example may be kind of a microcosm, but unless an area diversifies and grows its' economy, it not only will have bad

times, it will deteriorate and may become non-existent. Good economic development helps to provide professional and technical jobs, hopefully keep more of our college graduates here and help to expand the tax base as well as providing many other benefits. Good land use policies help control how and where this necessary economic development takes place.

Zoning and Rezoning:

So we've decided we want growth, economic development and overall betterment of the community. And the Comp Plan provides the overall guidance to make that happen in a sound logical way. But wait now, the state code says that we don't need to follow the Comp Plan but only pay *reasonable* regard to it. Now what?

Well, that's the reason for local zoning codes which must be followed, mostly. And the city and county each have their own zoning codes which are pretty much the same but not exactly. We'll talk about both those comments a little later.

Obviously when you talk about zoning regulations (laws), as is true for most government regulation, two sides rapidly emerge. One, we need regulation to control various actions which may be detrimental to the public good, benefit society in general, protect individual rights regarding privacy and not being disturbed by outside influences. On the other hand, we need less regulation, less interference and control over individual rights and freedom of choice to do those things we wish. I don't have a "one size fits all" answer for that conundrum but I believe all aspects of any proposed regulation should be considered in regard to both personal rights and the public good.

One classic example regarding land use is that I own some property and I should be allowed to do whatever I want to with it or sell it for the best price and whatever purpose the buyer might conceive. On the other hand, I own some property, have made significant investment and improvement to it and don't want that destroyed or devalued by something completely obnoxious next door. Obviously, land use control gets even more complicated when we start to consider transportation, environmental concerns, public safety, population, and a whole range of related issues as well as good, sound economic growth.

The Area Plan Commission is a joint city/county organization with the Area Plan Commission Board making recommendations for approval or denial of zoning requests to the City Council or County Commissioners who have final approval of those requests. Interestingly the APC Board has final approval of subdivisions.

There are 20 zoning classifications including those we are familiar with such as various Residential, Commercial, Agriculture and Manufacturing (Industrial) Districts but the classifications also include Floodway, Airport, Conservancy, Waterfront Industrial and Waterfront Recreational/Residential Districts.

In addition to the zoning classifications, there are sub-classifications called Use Groups consisting of one or more uses generally somewhat related to each other. There are 20 Use Groups.

Each zoning district specifies which Use Group(s) are allowed within that zoning district. For example, Residential, R-1, is for single family dwellings which is a Use Group 1 but it also allows Use Group 2 which includes 15 types of home occupations if certain other

requirements are met. A Residential, R-5, is still residential but would allow 5 different Use Groups including supervised group homes, sororities and fraternities. All of these are classed as residential.

Another example is Commercial, C-1, which allows 5 Use Groups and includes about 59 different types of businesses while Commercial, C-4, allows 7 Use Groups including about 183 types of business, at least by my latest count.

The point of all this is that the Zoning Code defines the overall use while the Use Groups get more specific defining exactly what use is allowed.

To further limit what type use can take place, a Use and Development Commitment can be written indicating what uses are specifically allowed or what uses are specifically eliminated within the uses allowed for that zoning classification. For example, I may file for a Commercial, C-1 which allows 59 types of business but don't plan to use it for apartment dwelling units, multiple dwellings, a group home, sorority or fraternity. In the U&DC, I'd simply commit to that but would be allowed all other of the 59 possible uses. Although the U&DC generally limits its' scope to land use, they are occasionally used to address lighting concerns, hours of operation and other factors relating to the business and they may be used for any zoning classification.

But most who ask for a rezoning are reluctant to present a U&DC because they generally don't want additional limitations in case they might change their mind or want to sell the property in the future. On the other hand, the APC could require limitations or concerned neighbors could remonstrate at the public meeting and attempt to get restrictions added to the rezoning.

I'd mentioned earlier that the city and county zoning code were basically the same except. The major exception is that the APC has final approval for subdivisions, no matter how large, if the proposal meets specific requirements. This comes about, in part, because Agricultural zoned land where most subdivisions occur does not need to be rezoned as Residential for residential development to take place. The County Commissioners have no authority over the approval of subdivisions, only the APC who must approve it if the subdivision requirements are met. No elected body is involved in this process. This doesn't happen in the city because when the city annexes property, anything zoned Agriculture automatically becomes Residential which allows subdivisions.

And I mentioned earlier local zoning codes must be followed, mostly. Our zoning codes include many requirements such as the square footage for housing lots, height of buildings, amount of parking for commercial, set back distances for buildings from streets and adjoining lots along with many other requirements. Although I somewhat overstated my thoughts saying the zoning code must be followed mostly, the Board of Zoning Appeals has the authority to eliminate or adjust most all requirements in the zoning code. However, they cannot change a zoning classification. They can reduce required parking, reduce set-back requirements and change most of the requirements within a specific zoning class.

With all that authority, interestingly the Board of Zoning Appeals is not an elected body but is a quasi-judicial appointed body established by State Legislature and has jurisdiction over two types of petitions, zoning variances which we just talked about and Special Use. Special Uses

are secondary classifications and don't fit well into any of the standard zoning classifications.

In making their decisions, the APC Board is to consider 7 criteria in making their decision. I won't go into each but a couple important ones include:

- ***That the Rezoning Petition conforms to the comprehensive plan;***
- Current conditions and the character of current structures and uses in each district;
- The most desirable use for which the land in each district is adapted;
- ***That surrounding property values are not materially affected adversely;***
- ***That the project is responsible development and growth;***
- The zoning classification of the property is improper and the amendment will correct the improper classification;
- Major physical, economic, or social changes have substantially altered the area in a manner not anticipated in the comprehensive plan, and the amendment will assist the development of the area consistent with the changes.

The BZA in making decisions is to consider 4 criteria, again a couple of the important ones being:

- ***That the approval will not be injurious to the public health, safety, morals, and general welfare of the community;***
- ***That the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;***
- The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property;
- The variance is not a variance of the use of the property.

I'd like to say a little about the APC authority to enforce the zoning code. They can. Basically, anyone who fails to comply with the zoning ordinance by conduct or activity, or erection, construction, enlargement, conversion, moving or maintenance of a building or structure is in violation. The APC can take actions including injunctions, abatements, fines or any other action to prevent, enjoin, abate or remove the violation. They do have authority to control zoning regulations.

They also have an excellent web site with much land use information including the zoning codes and Comp Plan. The site is very user friendly and can be accessed at www.evansvilleapc.com.

I appreciate your invitation and thank you for allowing me to speak with you today.