

# **Rules of Procedure**

## ***Fulton County Area Plan Commission***

**Adopted this date:  
January 28<sup>th</sup>, 2008**

**Amended this date:  
January 22, 2018**

## **ARTICLE I Authority and Duties**

- 101 The Fulton County Area Plan Commission (hereinafter called “Commission”) exists as an area plan commission under the authority of IC (Indiana Code) 36-7-4-202 and Ordinance of Fulton County, Indiana, Rochester City, Town of Akron, Town of Kewanna, and Town of Fulton and any amendments thereto. These rules are adopted in accordance with the requirements of IC 36-7-4-401.
- 102 The duties of the Commission shall be those set forth in the IC 36-7-4-400 SERIES (Commission Duties and Powers), and such other responsibilities as may be required by state statute or ordinances adopted by Fulton County, Rochester City, Town of Akron, Town of Kewanna, and Town of Fulton.

## **ARTICLE II Officers, Members, & Employees**

- 201 The Commission shall consist of thirteen (13) voting members consisting of: one (1) member appointed by the county executive from its membership, one (1) member appointed by the county fiscal body from its membership, one (1) member appointed by the city legislative body from its membership, the county surveyor, the county agricultural extension educator, and eight (8) citizen members, of whom: two must be residents of unincorporated areas of the county, one of which is appointed by the county executive and one of which is appointed by the county fiscal body; two must be residents within the corporate limits of the City of Rochester, both of which are appointed by the Rochester City Council; two must be residents within the corporate limits of the Town of Akron and are appointed by the Akron Town Council; one must be a resident within the corporate limits of the Town of Kewanna and is appointed by the Kewanna Town Council; and one must be a resident within the corporate limits of the Town of Fulton and is appointed by the Fulton Town Council.
- 202 At the first regularly scheduled meeting in each calendar year, the Commission shall elect from its voting membership a president, vice president, and executive secretary. Each shall serve during the period of their membership on the Commission for the balance of the calendar year.
- 203 The vice president shall have the authority to act as president during the absence or disability of the president.
- 204 In the event of the absence or disability of both the president and vice president, the executive secretary shall have the authority to act as president during the absence or disability of the president and vice president.
- 205 In the event of the absence or disability of the president, vice president, and the executive secretary, the presiding officer shall be a voting member of the Commission elected by the members present. Said officer shall serve as presiding officer for this meeting only.
- 206 The Commission may appoint and prescribe the duties and fix the compensation of an administrative secretary, who is not required to be a voting member of the Commission. The

administrative secretary shall be charged with such duties as required under state statutes, Fulton County ordinances, and these rules. The Commission may appoint and prescribe the duties and fix the compensation of any other such employees as are necessary, for the discharge of the duties and responsibilities of the Commission, and may make contracts for special or temporary services and any professional counsel, subject, however, to its budget allotment.

- 207 If a vacancy occurs among the voting members of the Commission, the appointing authority shall appoint a member for the unexpired term of the vacating member. The appointing authority shall be notified in writing by the administrative secretary when a member has been absent for three (3) consecutive meeting of the Commission. Such absences may constitute cause for removal from the Commission by the appointing authority.
- 208 The Office of Executive Director shall be appointed by the Commission and shall be under the direction and supervision of the Commission. The Executive Director shall be responsible for such duties and responsibilities that may be assigned from time to time by the Commission. The Executive Director shall be designated the head of the Commission's staff, and the Executive Director shall act as technical advisor to the Commission. The Executive Director shall be delegated the authority to perform ministerial acts in all cases except where final action by the Commission is required. The Executive Director shall be responsible for the administration of the Commission's office, the supervision of staff, and the Commission's budget. The signature of the Executive Director, or in his/her absence or disability the signature of a Commission officer, shall be required to authorize any expenditure from the Commission's budget. The Commission may not give any consideration to political affiliation in the appointment of the Executive Director.

### **ARTICLE III Seal**

- 301 The Commission shall adopt a seal with the caption "Fulton County Area Plan Commission". The seal shall be employed to certify all official acts of the Commission.

### **ARTICLE IV Meetings**

- 401 The Commission shall hold such public meetings as are required by state statute and Fulton County ordinances. The Commission may hold additional meetings at such times and places upon such notice as it considers necessary and complies with IC 5-14-1.5.
- 402 The regular meeting of the Commission shall be the second (2<sup>nd</sup>) Monday of every month at 7:00 P.M. E.S.T., unless that Monday falls on a County observed Holiday, then the meeting will be held on the second (2<sup>nd</sup>) Tuesday at 7:00 P.M. E.S.T. in the Commissioners/Council Room of the Fulton County Office Building located in Rochester, Indiana. If it is not possible to conduct the next regular meeting at that time or place, the president may set an alternate date, time, or place for the next regular meeting, or may cancel the meeting with the consent of the majority of the members of the Commission, provided that the notice requirements of IC 5-14-1.5 are met. Whenever it is ascertained that there is no business for the Commission's consideration, or that a quorum will not be available, the president may cancel a regular meeting by giving written or oral notice to all members, unless objected to by five (5) members of the Commission.

403 Special meetings may be called by the president or two voting members of the Commission upon written request to the administrative secretary. The administrative secretary shall contact all Commission members, at least three (3) days before the special meeting by mail, personal delivery, or telephone with the date, time, and place of the meeting. Proper notification to the public is necessary for all Commission meetings. The general purpose of special meetings is to address emergency issues or to expedite special community needs.

Written notice is not required if:

- a. the date, time and place of the special meeting are fixed in a regular meeting;
- b. all members of the Commission are present at that regular meeting; and
- c. the administrative secretary complies with IC 5-14-1.5.

404 All regular and special meetings shall be opened to the public as required by IC 5-14-1.5, except as provided by law in relation to executive sessions, IC 5-14-1.5.

#### **ARTICLE V Official Action**

501 A majority, seven (7), of the members of the Commission shall constitute a quorum. Action of the Commission shall not be official unless it is authorized at a regular or properly called special meeting by a majority of the entire membership of the Commission.

502 All voting members present shall vote on every question unless they are permitted to abstain, or, in the case of a zoning matter, have disqualified themselves because of a conflict of interest caused by a direct or indirect financial interest as defined under section 503 of this article. Disqualifications or abstentions will be with approval of the Commission. All votes shall be by roll call or show of hands.

503 No member of the Commission shall participate in a hearing, discussion or decision of the Commission upon any zoning matter in which the member has a direct or indirect financial interest. A "zoning matter" does not include the preparation or adoption of a comprehensive plan. A member shall declare his or her direct or indirect financial interest. The Commission shall enter into its records the fact that the member has such a disqualification.

504 In the event a majority vote of the Commission cannot be achieved due to absences, permitted abstentions, or disqualifications, the matter shall be rescheduled for the next regular meeting at the request of any Commission member, a petitioner or a remonstrator.

505 Any Commission member who voted with the majority may call for a reconsideration of any vote at the same meeting of the Commission at which it passed, and, if sustained by a unanimous vote of the members present, the reconsideration shall be ordered.

#### **ARTICLE VI Minutes & Records**

601 The administrative secretary of the Commission shall prepare and maintain minutes of its meetings. The minutes shall include the vote of each member on each question presented or indicate that the member is abstaining with permission or not voting because of disqualification. The administrative secretary shall tape record, if possible, all public meetings and the record shall be preserved for period of at least six (6) months. If an appeal is filed within that period relating to matters on the record, the record shall not be destroyed until such time as it is no longer of use to the reviewing body or Court. The records are public records, as defined by IC 5-14-3.

602 The minutes of Commission meetings and all records shall be filed in the Plan Commission Office of Fulton County.

603 The minutes shall be presented to the Commission for approval at the next succeeding regular meeting. When approved, the minutes shall be signed by any two (2) officers.

## **ARTICLE VII Public Hearings**

- 701 The Commission shall hold such public hearings as are required by state statute and Fulton County ordinances. The Commission may hold additional hearings at such times and places upon such notice as it considers necessary and complies with IC 5-14-1.5.
- 702 A petitioner who seeks to amend the Comprehensive Plan, Zoning Ordinance, Subdivision Ordinance, seeks the approval of a Plat or Replat, seeks the vacation of a Plat or any other matter under the jurisdiction of the Commission shall file a petition with the Commission on forms prescribed by the Commission and shall include the exhibits, material, and information required by and specified on said forms
- 703 All petitions not initiated by the Commission itself shall be accompanied by a non-refundable filing fee in an amount established in the Official Fulton County Fee Schedule.
- 704 The Commission may require additional information, data, statistics or plats beyond those established by statute or ordinance which are deemed necessary for intelligent determination by the Commission.
- 705 If the Plan Commission Office finds that the petition is in good order with sufficient information, it shall set a time for a public hearing on the matter and shall provide public notice in accordance with IC 5-14-1.5 and IC 5-3-1.
- 706 The Plan Commission Office shall prepare the legal advertisement of the public hearing and the petitioner shall bear the expense of the advertising costs. In addition, the Commission shall require the petitioner to notify by certified return receipt requested mail all persons deemed by state statute and the Commission to be interested parties at least twenty five (25) days before the date of the public hearing.

## **ARTICLE VIII Notice Requirements**

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- 801 A notice of a public hearing required by state statute, Fulton County ordinance or these rules shall contain as a minimum the following information:
- a. Docket number, if applicable, and substance of the matter to be heard.
  - b. Date, time and place of the hearing.
  - c. That the order of business will be according to the rules of the Commission and that the public will be heard.
  - d. That any interested party as defined by these rules or their agent may offer verbal comments at the hearing or may file written comments prior to or at the hearing.
  - e. That any matters or hearing may be continued from time to time as found necessary.
  - f. General location by address or other identifiable geographic characteristics of the property.
  - g. Name of the person, agency or entity initiating the matter to be heard.
  - h. Statement that the petition may be examined at the Plan Commission's office.
  - i. Any other information which may be required by law or at the discretion of the Commission to be contained in such notice.

- 802 Where the proposed zoning ordinance is an initial zoning ordinance or a replacement zoning ordinance after repealing the entire zoning ordinance or a subdivision control ordinance, all citizens of Fulton County Indiana shall be considered interested parties. The Commission is required to provide for the publication of notice pursuant to IC 36-7-4-604. This notice shall be bound by the requirements of Section 801 of these rules and published at least ten (10) days prior to the public meeting in the Rochester Sentinel, any other paper required by law, and any other place designated by the Commission and at the cost of the Commission.
- 803 For the purposes of an amendment to the text of the zoning ordinance, interested parties shall be determined to be the residents and property owners of Fulton County Indiana. The Commission is required to provide for the publication of notice pursuant to IC 36-7-4-604. This notice shall be bound by the requirements of Section 801 of these rules and published at least ten (10) days prior to the public meeting in the Rochester Sentinel, any other paper required by law, and any other place designated by the Commission and at the cost of the Commission.
- 804 For the purposes of an amendment to the zoning map concerning all Districts, except the IN District and the IU District, interested parties shall include, but are not limited to, all properties adjacent within fifteen hundred (1500) feet or four (4) property depths, whichever is less, of the subject site boundaries within the county's jurisdiction. If the subject matter of the proposal abuts or includes a county line, or a county line street or road, or a county line body of water, then all owners of real property to a depth of two (2) ownerships or one-eighth (1/8) of a mile (660 feet) into the adjacent county, whichever is less, are interested parties who must receive notice pursuant to IC 36-7-4-604 (c). If the subject property is on a lakefront, the Commission may require property owners across the lake to be notified as well. Such persons are to receive a Notice of Public Hearing either by certified return receipt requested mail or by hand delivery with a signature verification of receipt. At its discretion, the Commission may expand the area that contains interested parties. In this event, the Commission shall bear all expenses for the added areas beyond the 1500 feet or four property areas. The Commission will determine the method used to contact the interested parties in the expanded area.
- 805 For the purposes of an amendment to the zoning map concerning an IN District, interested parties shall include, but are not limited to, all properties adjacent within sixteen hundred (1600) feet of the subject site boundaries within the county's jurisdiction. If the subject matter of the proposal abuts or includes a county line, or a county line street or road, or a county line body of water, then all owners of real property to a depth of two (2) ownerships or one-eighth (1/8) of a mile (660 feet) into the adjacent county, whichever is less, are interested parties who must receive notice pursuant to IC 36-7-4-604 (c). If the subject property is on a lakefront, the Commission may require property owners across the lake to be notified as well. Such persons are to receive a Notice of Public Hearing either by certified return receipt requested mail or by hand delivery with a signature verification of receipt. At its discretion, the Commission may expand the area that contains interested parties. In this event, the Commission shall bear all expenses for the added areas beyond the 1600 feet. The Commission will determine the method used to contact the interested parties in the expanded area.
- 806 For the purposes of an amendment to the zoning map concerning an IU District, interested parties shall include, but are not limited to, all properties adjacent within a one (1) mile

radius of the subject site boundaries within the county's jurisdiction and only directly adjacent properties outside the county's jurisdiction. If the subject property is on a lakefront, the Commission may require property owners across the lake to be notified as well. Such persons are to receive a Notice of Public Hearing either by certified return receipt requested mail or by hand delivery with a signature verification of receipt. At its discretion, the Commission may expand the area that contains interested parties. In this event, the Commission shall bear all expenses for the added areas beyond the one (1) mile radius. The Commission will determine the method used to contact the interested parties in the expanded area.

- 807 For the purposes of approving or vacating a plat, interested parties shall include, but are not limited to, each owner of land in the plat, as well as, all properties adjacent within fifteen hundred (1500) feet or four (4) property depths whichever is less of the subject site boundaries within the county's jurisdiction and only directly adjacent properties outside the county's jurisdiction. If the subject property is on a lakefront, the Commission may require property owners across the lake to be notified as well. Such persons are to receive a Notice of Public Hearing either by certified return receipt requested mail or by hand delivery with a signature verification of receipt.. At its discretion, the Commission may expand the area that contains interested parties. In this event, the Commission shall bear all expenses for the added areas beyond the 1500 feet or four properties area. The Commission will determine the method used to contact the interested parties in the expanded area. Notification of Interested Parties will be in accordance with I.C. 36-7-3-11.
- 808 If the subject matter of the proposal abuts or includes a county line, or a county line street or road, or a county line body of water, then all owners of real property to a depth of two (2) ownerships or one eighth (1/8) of a mile (660 feet) into the adjacent county, whichever is less, are interested parties who must receive notice pursuant to IC 36-7-4-604 (c).
- 809 The names of property owners to be notified are to be ascertained from the Fulton County (or neighboring County) Auditor's or Assessor's office.
- 810 Certified return receipt requested mail receipts or signatures of all interested parties on a form supplied by the Commission shall be considered evidence that notice has been given. Personal appearance at the hearing also shall constitute evidence of notice

#### ARTICLE IX Conduct of Public Meetings and Hearings

- 901 The order of business at regular meetings shall be:
- a. Call to order
  - b. Consideration of minutes of previous meeting
  - c. Public Comments (Comments Not To Pertain To Agenda Items To Be Held At This Time)
  - d. Old business
  - e. New business
  - f. Plan Director Report
  - g. Public Comments
  - h. Member Comments
  - i. Adjournment
- 902 The order of business at public hearings shall be:
- a. Presentation of petition

- b. Staff reports
- c. Committee reports & correspondence
- d. Presentations in favor of the petition
- e. Presentations opposed to the petition
- f. Rebuttal by those in favor (to contain new matters only)
- g. Commission member comments
- h. Close public hearing
- i. Motions
- j. Vote

903 The president of the Commission shall preside over meetings, decide questions of order, subject to appeal by Commission members, and preserve decorum in the meeting room. The president shall pronounce the decisions of the Commission for the purposes of recording in the minutes.

904 The public hearings shall be conducted by the president of the Commission, who may establish the rules for presentation of evidence including establishing time limits for speakers. It shall be the duty of the Commission to accept evidence which is non-repetitive in nature, without regard to the formal rules of evidence controlling trial courts in the State of Indiana.

905 In the presentation of a case, the burden shall be upon the petitioner to supply all information, including charts, diagrams, and other exhibits necessary for a clear understanding of the problem. The Commission may continue the hearing when in its judgment the petitioner has not provided sufficient evidence on which to make a determination.

**ARTICLE X Final Disposition of Zone Map Amendment Cases**

1001 The final disposition of any case shall be in the form of a recommendation setting forth the findings and determinations of the Commission, together with any modification, specification or limitation which it makes.

1002 The Commission may dismiss a case for lack of prosecution or lack of jurisdiction. When a petitioner has failed to appear at two (2) consecutive meetings, the case may be dismissed for lack of prosecution.

1003 Following the publication of notice for any public hearing, until the conclusion of the hearing, a petitioner may not withdraw the matter to come before the public hearing without the permission of the Commission.

1004 A case that has been withdrawn by the petitioner shall not be placed on the docket for consideration within a period of six (6) months after the date of withdrawal. The Commission, at its discretion, may suspend this rule on a case by case basis with a 2/3 majority vote.

1005 When considering an amendment to the zoning map, the Plan Commission may require or allow the petitioner to submit written commitments, as specified in IC 36-7-4-615, that restrict the use(s) of the proposed zoning district.

1. Initial Rezoning - Written commitments may be initiated by the Plan Commission, the petitioner, or by the County Commissioners.
  - a. In approving written commitments for developmental standards, the Commissioners may stipulate that the Plan Commission without the Commissioner's consent may not modify such commitments. In making the stipulation, the Commissioners shall be deemed to be modifying the written commitments.
  - b. If the Commissioners wish to initiate or modify the written commitments recommended by the Plan Commission, the Commissioners shall refer the new commitments or modifications to the Plan Commission for consideration. The Commissioners or commission may require notice and a public hearing if either body regards such notice and hearing to be needed to afford adequate opportunity for public input.
  - c. After considering the new or modified conditions, the Plan Commission must agree or disagree with the Commissioner's action.
  - d. If the Plan Commission agrees with the new or modified commitments, they take effect immediately.
  - e. If the Plan Commission disagrees with the new or modified commitments, the commission shall forward them to the Commissioners with the reasons for disagreement. The commitments shall take effect only if the Commissioners again vote to require said modified commitments.
  
- 1006 Modifications or termination of commitments after initial zoning - The Plan Commission may modify or terminate written commitments relating to the development standards after notice is provided in accordance with the commissions rules of procedure. The modification may be initiated by the owner of the property, by the commission, or by the Commissioners. The commitments to be modified are subject to the Commissioners stipulation included in Section 1005(1)(a). In such a case such modification must be certified to the County Commissioners for review and approval. The Plan Commission per year can approve only one modification to the written commitments.
  
- 1007 Modifications or termination of commitments involving permitted uses may be allowed only through the same procedure as the initial rezoning. In approving, modifying, or terminating commitments, the Commission shall consider the factors listed in Section 12.2(F) of the Fulton County Zoning Ordinance.
  
- 1008 The written commitments shall be recorded in accordance with the I.C. 36-7-4-615. Recorded commitments are binding on the owner of the parcel, a subsequent owner of a parcel, and any person who acquires an interest in the parcel. An ordinance amending the zoning map, which includes written commitments, shall not be effective until the commitments are recorded. After the ordinance is adopted and the commitments are recorded, the zoning map shall be amended to indicate the new district designation with the letter "C" appended to indicate that commitments accompany the district designation. The commitments must be recorded within 90 days after the Commissioners adopt the amendment, unless the Plan Commission grants an extension. In the event the commitments

are not recorded within the specified time, the ordinance shall not take effect and shall be considered null and void.

- 1009 A zoning compliance certificate shall not be issued for any property subject to written commitments unless the use and/or development on the property comply with the recorded written commitments.
- 1010 Any violations associated with written commitments are subject to the standards of Section 12.2 of the Fulton County Zoning Ordinance.
- 1011 A case that has been decided adversely to the petitioner shall not be placed on the docket for consideration within a period of twelve (12) months after the date of the decision previously rendered
- 1012 Because the Commission's recommendation is only advisory, the petitioner may request that the adverse recommendation be brought before the Fulton County Commissioner's for their consideration. The Commission's recommendation, either favorable or adverse, may be overturned by the Fulton County Commissioner's under IC 36-7-4-609.

#### **ARTICLE XI Reconsideration**

- 1101 The Commission may not further consider for one (1) year a petition to amend the zoning map which has been rejected by the Fulton County Commissioners, or upon which the Fulton County Commissioner's failed to act. This one year moratorium for reconsideration of a petition to amend the zoning map commences on the day the initial petition is filed with the Plan Commission Office and is effective for any petitions filed after July 14, 1999.

#### **ARTICLE XII Final Disposition of Primary Plat Approval Cases**

- 1201 The final disposition of any case shall be in the form of an approval, approval with conditions, continuance, or denial.
- 1202 The Commission may dismiss a case for lack of prosecution or lack of jurisdiction. When a petitioner has failed to appear at two (2) consecutive meetings, the case may be dismissed for lack of prosecution.
- 1203 Following the publication of notice for any public hearing, until the conclusion of the hearing, a petitioner may not withdraw the matter to come before the public hearing without the permission of the Commission.
- 1204 A case that has been withdrawn by the petitioner shall not be placed on the docket for consideration within a period of six (6) months after the date of withdrawal. The Commission, at its discretion, may suspend this rule on a case by case basis with a 2/3 majority vote.
- 1205 A case that has been decided adversely to the petitioner shall not be placed on the docket for consideration within a period of twelve (12) months after the date of the decision previously rendered.

#### **ARTICLE XIII Secondary Plat Approval**

1301 The Zoning Administrator shall determine if all improvements and installations have been constructed and completed as required by the Subdivision Control Ordinance and shall report to the Commission before it grants secondary approval to any plat.

**ARTICLE XIV Vacation of Plats**

1401 The Plan Commission (or plat committee acting on its behalf), proceeding in accordance with IC 36-7-3, has exclusive control over the vacation of plats or parts of plats. [IC 36-7-4-711]

**ARTICLE XV Committees**

1501 The president, with the approval of the Commission, may establish such committees as deemed necessary and desirable. The purposes and terms of such committees shall be specified at the time of their establishment.

1502 Members of the committees shall be appointed by the president.

**ARTICLE XVI Amendments**

1601 Amendments to these rules of procedure of any rule may be made by the Commission at any regular or special meeting upon the affirmative vote of a quorum, seven (7), of the members of the Commission. The suspension of any rule may be made by the Commission at any regular or special meeting upon the affirmative vote of eight (8) members of the Commission.

**ARTICLE XVII Repeal**

1701 All previous rules and regulations heretofore adopted by the Fulton County Area Plan Commission are hereby expressly repealed, as of the approved and adopted date of these rules.

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Rules of Procedure of the Fulton County Area Plan Commission of Fulton County, Indiana, approved and adopted by the affirmative vote of the majority of the members of said Commission on the 28<sup>th</sup> day of Janaury, 2008.

Amendments to the Rules of Procedure of the Fulton County Area Plan Commission of Fulton County, Indiana, approved and adopted by the affirmative vote of the majority of the members of said Commission on the 24<sup>th</sup> day of February, 2014.

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Chairperson

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Executive Secretary

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Attest: Heather Redinger, Administrative Secretary

Date: \_\_\_\_\_