

TOWN OF THORNTOWN PLANNING ADVISORY COMMISSION

Monday, August 29, 2022 at 06:00 PM

101 W. Main St., Thorntown, IN 46071

STAFF REPORT

ITEM NO:	1		
APPLICATION NO:	2022-TEXT-01		
HEARING DATE:	August 29, 2022	NEXT HEARING DATE:	September 12, 2022
NEWSPAPER NOTICE PUBLISHED ON:	August 18, 2022	NOTICES MAILED ON:	N/A
SUBJECT:	Zoning Text Amendment		
LOCATION:	All Town of Thorntown		
PETITIONER(S):	Plan Commission		
SUMMARY:	Commission to consider a Text Amendment to the Thorntown Code of Ordinance application to amend and add some zoning regulations.		
WAIVERS REQUESTED:	N/A		
RECOMMENDATION:	Recommend Approval to the Council		
PREPARED BY	Oksana Polhuy, Planner, planner@thorntown.in.gov		
EXHIBITS	<ol style="list-style-type: none">1. Current Chapter 1522. Proposed amendments to Chapter 152 Planning and Development; Zoning3. Proposed amendments to Chapter 150 Building Regulations4. Proposed amendments to Chapter 10.25 Schedule of Fines and Fees		

PROCEDURE

The request to amend the ordinance came from the discussions among the Staff, Plan Commission and Council on August 1 and August 8, 2022. The public hearing of the proposed text amendments was scheduled for the August 29, 2022 Plan Commission meeting.

The Plan Commission hears the evidence presented by Staff, petitioner, and any individuals in the audience wishing to speak for or against the proposed text amendment or to just ask questions. The Plan Commission then makes a recommendation to the Town Council to either approve proposed text amendments, deny them, or amend them. The Plan Commission has the authority to modify the proposal.

The Town Council then hears the proposed text amendments, including the Plan Commission's recommendation at the first Council meeting. At the final Council meeting, the proposal is presented in an Ordinance format to be either adopted, denied, or modified by the Council. Prior to the public hearing before the Plan Commission, a published legal notice is advertised in the newspapers per the IC 36-7-4-604 and IC 5-3-1 requirements.

USEFUL TERMS AND DEFINITIONS

ZONING. A police power measure, enacted by the governing body of local governments, in which the community is divided into districts or zones within which permitted and special uses are established as regulations governing lot size, building bulk, placement, and other development standards.

ZONING DISTRICT. A specific district within the jurisdiction which has uniform regulations governing the use, height, area, size, and intensity of use of buildings and land, and open spaces.

ZONING DISTRICT, OVERLAY. That zoning district that is superimposed on a base zoning district, which adds additional regulations regarding the use of and development standards for the property.

ZONING MAP. The Official Town of Thorntown Zoning Map.

ZONING ORDINANCE. Those chapters of Thorntown Code of Ordinance, now or hereafter adopted, that include the Official Zoning Map, regulations, requirements and procedures for the establishment of land use controls.

USE. The specific purpose for which land or a building is designated, arranged, intended, or for which it is or may be occupied or maintained.

USE, LEGAL-NONCONFORMING. Any continuous, lawful use of structures, land, or structures and land in combination, established prior to the effective date of the Code of Ordinance or its subsequent amendments that is no longer a permitted use in the zoning district where it is located.

USE, NONCONFORMING. A use which does not conform to the use regulations of the zoning district in which it is located.

USE, PROHIBITED. A use indicated as prohibited for a certain zoning district.

NON-CONFORMING LOT, USE OR STRUCTURE. Any lot, use, or structure legally existing as of the effective date of this ordinance, that is not in compliance with this ordinance or any subsequent amendments.

THOROUGHFARE PLAN. The part of the comprehensive plan, now or hereafter adopted, which includes a major street and highway plan and sets forth the location, alignment, dimensions, identification, and classification of existing and proposed streets, highways, and other thoroughfares.

SUBDIVISION. The division of any parcel of land shown as a unit on the last preceding transfer of ownership thereof into two or more lots, tracts, or parcels.

REZONING. An amendment to a zoning map and/or text of a zoning ordinance.

REZONING, MAP AMENDMENT. An amendment to a zoning map that creates a new zoning district or changes the boundaries of an existing zoning district.

REZONING, TEXT AMENDMENT. An amendment to the Ordinance that creates a new zoning districts, adds to and/or changes the requirements of an existing zoning district, or changes general ordinance standards.

PLANNED UNIT DEVELOPMENT (PUD). A large and integrated development consisting of a parcel or parcels of land to be developed as a single entity according to the adopted preliminary development plans and approved detailed plans, with different use and development standards than the standards that would normally apply in a non-PUD zoning district.

PLANNED UNIT DEVELOPMENT DISTRICT. A zoning district for which a PUD district ordinance must be adopted under the regulations of this Zoning Ordinance.

ABOUT PROJECT

The proposed text amendments to Thorntown Code of Ordinance, Chapter XV. Land Usage are meant to update the portions of this chapter to a) make the Ordinance more up-to-date with regard to the planning government agencies and references to the more recent codes and standards; b) to reorganize the sections so that all zoning-related language is located within one subchapter §152 and all building code related language is under the subchapter §150; c) to add some zoning regulations to meet the minimum zoning ordinance standards required by the Indiana statute; d) to add regulations of the application process for various planning cases; and e) to add fees for the review of the planning applications.

Location

The text zoning amendment is going to be applicable to all properties located within the planning jurisdiction of Town of Thorntown.

ANALYSIS

The proposed amendments and reasons for their introduction into Thorntown Code of Ordinance are listed below.

Chapter to amend: §150 Building Regulations

Repeal the following sections: §150.085, §150.087, §150.088, §150.089, § 150.105, §150.106, and §150.107.

Add the following subchapter: §150.072 Addresses Display Requirements (Exhibit 3).

Reason for Amendment

Certain regulations located within the chapter 150 should be located within the zoning regulations because they are zoning standards. Specifically, the development standards such as setbacks (§150.085), lot area (§150.087) and lot width (§150.088) should typically be mentioned within the development regulations of a specific zoning district and/or within the “Development Standards” section of the Zoning Ordinance. These standards are moved to the Residential and Business District development standards under the proposed amended Chapter 152 (Exhibit 1. Proposed amendments in Chapter 152. Subchapters §152.22 and §152.23).

Also, the legal description of the Business and Residential zoning districts (§150.105 and 150.106) as well as permitted and prohibited uses within these districts (§150.107) should also be part of the zoning regulations and are proposed to be moved to the proposed amended Chapter 152 (Exhibit 1. Proposed amendments in Chapter 152. Subchapters §152.20, 152.21, 152.22, 152.23).

Chapter 152 currently contains regulations of address display on the buildings. This section fits in the Building Code better, so the proposal is to move it into chapter 150 under §150.087 (Exhibit 3).

Chapter to amend: §152 Planning and Development; Zoning

Amend existing sections and add new ones (Exhibit 2). Specifically:

- Repeal subchapters: §152.01, 152.02, 152.03, 152.15, 152.16.
- Amend subchapters: §152.30-36 and §152.50-57.
- Add new subchapters: §152.01-29, §152.40-49, §152.60-69, §152.70-89.

Terminology

The current §152 (Exhibit 1) contains some general provisions, administrative provisions, Official Thoroughfare Plan, and Subdivision Control ordinance (Exhibit 1). The entirety of this chapter is referred to as “this Ordinance” or “Zoning Ordinance” in the remainder of the staff report.

Historical Context

Thorntown’s current Zoning Ordinance has not been significantly updated since the adoption of a Comprehensive Plan in 2010. Typically, such update to the zoning ordinance happens right after the adoption of the Comprehensive Plan so that the zoning ordinance can serve as an effective instrument of the implementation of the goals set in the Comprehensive Plan. The last version of the zoning regulations is from an old code dated 1995 and it references a lot of other codes that are even older than 1995. Some of those referenced codes don’t exist anymore or have gone through several amendments in the past 27 years. Thus, there is a dire need for a zoning ordinance update in Thorntown.

Statutory Requirements for Developing Zoning Ordinances

The state statute requires the following elements in the UDO per IC 36-7-4-601.b:

“When it adopts a zoning ordinance, the legislative body shall:

(1) designate the geographic area over which the plan commission shall exercise jurisdiction; and

(2) incorporate by reference into the ordinance zone maps, as prepared by the plan commission under subsection (e)."

These elements required by the state statute are missing from the current UDO.

Reasons for Amendment

The information above shows that the current Thorntown's UDO is outdated. It also is missing basic statutory requirements for the Zoning Ordinances. So, at the very minimum, the UDO needs to be amended to meet state's requirements and to update various sections to be more up-to-date.

In addition to the minimum changes stated above, Thorntown's zoning ordinance would need to include some additional standards that would be sufficient in their ability to regulate land use development. As a quick example, the current Thorntown's Zoning Ordinance is about 20 (twenty) pages long. The UDO of small towns (population over 2,000 people) is typically about 200 (two hundred) pages long and Zoning Ordinances of towns and cities with population over 10,000 people reaches anywhere between 300-500 pages. There are some basic components that have to be present in the ordinance to effectively manage land use development and reach the intent of land use development required by the state statute and Thorntown's Comprehensive Plan. The staff recommends adding some of them in this text amendment.

§152.01-09 General Provisions

Subchapters §152.01-09 include general provisions that are typical of all zoning ordinances: title, authority, purpose, intent of the ordinance, its applicability, compliance, severability, inclusion of the Comprehensive Plan, establishment of the Official Zoning Map, regulations of the non-conforming lots, uses and structures, and definitions. Staff would like to call out important sections below.

Jurisdiction

The current ordinance doesn't mention the geographic area that the plan commission shall exercise its jurisdiction over. The proposed ordinance adds the language that designates the extent of the geographic area over which the PC shall exercise jurisdiction to be the town corporate limits (§152.03.A Applicability. Jurisdiction.)

Official Zoning Map

The current zoning ordinance doesn't reference a zoning map. Such map doesn't exist as of the current research conducted by staff. However, the current ordinance has a legal description of the Business Zoning District and states that the rest of the area within the town limits that is not within the Business Zoning District is considered to be Residential Zoning District.

Staff proposes to keep this way of defining zoning districts until the Plan Commission can recommend an update of the Official Zoning Map to the Town Council per the recommendations contained within the Comprehensive Plan.

The proposed amendments (Exhibit 2) include subchapter *152.07 Official Zoning Map* that states the following:

“The legal descriptions of the zoning districts stated in this UDO serve as the Official Zoning Map of the Town.”

Then, under Residential and Business District subchapters 152.22 and 152.23, there is a section called “Applicability” that includes the legal description of the zoning districts. The staff maintained the same legal description as mentioned in the current UDO.

Additional State Statue Requirement

The state statue states the following in IC 36-7-4-601.c:

“When it adopts a zoning ordinance, the legislative body shall act for the purposes of:

- (1) securing adequate light, air, convenience of access, and safety from fire, flood, and other danger;*
- (2) lessening or avoiding congestion in public ways;*
- (3) promoting the public health, safety, comfort, morals, convenience, and general welfare; and*
- (4) otherwise accomplishing the purposes of this chapter.”*

This state language is copied into subchapter *§152.02 Purpose and Intent* of the proposed Ordinance. In addition to this language, the staff recommends the addition of several objectives (152.02 A through I) of the Zoning Ordinance that are mentioned throughout the Comprehensive Plan. It is important to include them so that no matter what development comes to Thorntown, the Council and Commission can refer the applicant to this section as a reference of what Thorntown community wants to see developed and how such development should happen.

Non-conforming Lots, Uses and Structures

When new regulations are added, inadvertently some present development might become non-conforming to these new regulations. To protect their existence and to govern their further development, the regulations of the non-conforming lots, uses and structures are proposed under subchapter *§152.08. Regulations of Nonconforming Lots, Uses, and Structures*.

Definitions

All Ordinance need to have definitions of the terms used throughout the Ordinance. Staff proposes a series of amended and added definitions in subchapter §152.09. *Definitions*.

§152.10-19 Application Procedures for Planning Cases

Staff proposes to use subchapters 152.10-152.19 to prescribe procedures for planning applications. The structure of this subchapter is the following:

1. Subchapter 152.10 describes general application procedures relevant to all applications. For example, all applicants would need to submit filled out applications, required documents, and pay fees. A lot of planning cases require public hearings and publishing and sending of the public hearing notices. Such elements of the application process that are similar among the applications are laid out in this subchapter.
2. Subchapters 152.11 – 152.17 describe procedures specific to each type of a planning application (rezone, text amendment, PUD review, etc.).
3. Subchapter 152.18 Exempt Entities lays out a procedure of how the applications for development submitted by the Exempt Entities like governments or schools may be reviewed differently from normal applications.
4. Subchapter 152.19 Planning Administration Agencies prescribes the planning duties of various government bodies within the Town of Thorntown.

§152.20-29 Zoning Districts

Chapter 152.20-29 Zoning Districts and Permitted Uses in the proposed UDO describes the extent of the zoning districts, lays out permitted uses in them and the development standards specific to each district.

The proposed Zoning Ordinance keeps the same geographic extent of the Residential and Business Districts. It also keeps the same development standards in the Residential zoning district that were previously in subchapters 150.085-150.089 (setbacks, lot area, width, lot coverage). The current subchapter *152.02 New Single-Family Residential Units* has regulations of the minimum square footage of the newly built houses. Staff included these standards under the Residential Zoning District Development Standards. Finally, staff added some additional development standards that are typical of the residential developments.

Since the current Zoning Ordinance doesn't list any development standards in the Business Zoning District, the staff doesn't include any proposed standards either.

New Zoning Districts

Staff proposes to include the following zoning districts: Overlay Districts (PUD being one of them).

PUD – Planned Unit Development

This type of an overlay district allows to develop a big portion of land under its own set of regulations. Staff includes development standards relevant to PUD in subchapter 152.27.A. Application procedure for PUDs is outlined in the proposed subchapter 152.13. Additional site design and development regulations of PUDs are proposed in subchapter 152.70-89.

§152.30-39 Thoroughfare Plan

Typically, municipalities make a separate thoroughfare study and create a Thoroughfare Plan that is adopted as part of the Comprehensive Plan. Thorntown currently has a section in the zoning ordinance named *§152.30-36 Official Thoroughfare Plan*. Staff proposes to keep this section with the same citation, but amend some of its portions to make it more up-to-date. For example, subchapter 152.30 cites a 1976 Boone County Thoroughfare Cross-Section as the official thoroughfare plan of the Town of Thorntown. It's old and might not even exist anymore. Staff proposes to update this section to include new Thoroughfare Plan components. Staff also proposes to amend the section on thoroughfare designation and uses the most up-to-date Boone County's Thoroughfare Plan for reference. Subchapters 152.32-36 are kept as they are in the current Zoning Ordinance.

§152.40-49 Floodplain Control Regulations

This subchapter is proposed to be added and reserved for the future use. There are quite a few floodplain areas around the current corporate limits of the town, which means that any future development outside of the corporate limits could be proposed in the floodplain. To protect the developer and the community from the risks of locating structures in the floodplain, it is advised to add floodplain regulations that control construction in floodplain.

Also, Thorntown's Comprehensive Plan shows floodplain areas as a "Conservation Area" meaning that there is an intent to protect these areas. Thus, there is a need to add regulations that actually enforce the protection of the floodways and floodplains and possibly a zoning overlay designation of a "conservation area".

§152.50-59 Subdivision Control Regulations

This subchapter exists in the current zoning ordinance of Thorntown Code of Ordinance (Exhibit 1). Most of this subchapter was kept intact, but it was 1) updated with the more up-to-date codes wherever it references an external code; and 2) it was split among a few subchapters to fit the logic of the proposed amended Zoning Ordinance.

Up-to-date Codes

This subchapter cites several codes that regulate drainage, soil erosion, stormwater management, and street construction – standards related to designing and constructing a new subdivision. This subchapter still cites county Area Plan Commission and Town’s Council as the government agency that are given the power to review and approve subdivision applications. However, per state statute IC 36-7-4-701.b:

“After the subdivision control ordinance has been adopted and a certified copy of the ordinance has been filed with the county recorder, the plan commission has exclusive control over the approval of all plats and replats involving land covered by the subdivision control ordinance, subject to subsection (c) and subsection (f).”

Thorntown established an Advisory Plan Commission and there is already a subdivision control ordinance in its current Code of Ordinance. Thus, the subdivision control ordinance needs to be updated to meet the requirement of the state statute that the Plan Commission shall have exclusive control over the approval of all plats and replats. The proposed Chapter 152 updates the subdivision control ordinance to codify such Plan Commission’s authority.

Split among other Subchapters

The current Subdivision Control Ordinance contains several parts to it: general regulations, application procedure, design standards, improvements and installation standards, inspections, variances or waivers language. The proposed Subdivision Control Ordinance (Exhibit 2. Subchapters §152.50-59) keeps and expands on the general regulations, keeps inspection language, and keeps and expands on the waiver language. The proposed chapter references the application procedure listed under the proposed subchapter §152.10-19 and references design and improvement standards listed under the proposed subchapter §150.70-89.

§152.60-69 Development Standards

This subchapter is introduced with proposed sections and is reserved for the future use. It is HIGHLY recommended to include development standards into it in the future.

§152.70-89 Site Design and Improvement Standards

This subchapter includes the site design and improvement standards formerly located in the current Thorntown’s zoning ordinance (§152.53-152.55). The old language is updated where the citations reference old codes and standards. This subchapter also has additional general standards, amended transportation system section that expands on the regulations of sidewalks, anti-monotony regulations, street landscaping and lighting, preservation of natural landscape and historic features.

§152.90-99 Penalty

This section was copied from the existing zoning ordinance. It is advised to expand on it in the future.

Other Necessary Amendments to Consider in the Near Future

The proposed Chapter 152 (Exhibit 1) does not contain all regulations that should typically be present in the zoning ordinance. Another set of amendments will need to take place to complete the update of the zoning ordinance. The following regulations need to be added:

- Establishment of a Technical Advisory Committee (TAC).
- Development Plan application Review and Standards.
- A more detailed breakdown of uses permitted within the zoning districts.
- Definitions of these uses.
- Development standards within the Business Zoning District.
- Development standards: landscaping, parking, signage, etc.
- Floodplain regulations.
- Amend Penalty section to add more specific local enforcement procedures.

Should the Plan Commission decide to propose new zoning districts based on the proposed land use map in the Comprehensive Plan, it should update the Official Zoning Map according to the provisions in the state statute.

Subchapter to amend: §10.25 Schedule of Fees and Fines**Reason for Amendment**

Within Thorntown Code of Ordinance, there are currently no fees for review of the planning cases like zoning ordinance amendments, subdivisions of land, development plan reviews, variances, etc. Per IC 36-7-4-411,

“The Plan Commission may establish a schedule of reasonable fees to defray the administrative cost connected with: 1) reviewing and hearing administrative appeals and petitions for rezoning, special exceptions, special uses, and variances; 2) issuing permits; and 3) other official actions taken under this chapter.”

The state statute that governs Subdivision Control Ordinance creation also states the following about the fees (IC 36-7-4-704):

“The plan commission shall establish a uniform schedule of fees proportioned to the cost of checking and verifying the proposed plats. An applicant shall pay the specified fee upon the filing of an application for approval.”

The proposed amendment to the existing Thorntown’s Schedule of Fees and Fines is to add the fees for reviewing planning cases. The table with proposed fees is in Exhibit 4. These fees are meant to cover the administrative costs connected with the review of the planning applications.

Consistency with Plans

Consistency with Comprehensive Plan

The first proposed chapter has a section on Purpose and Intent of the Zoning Ordinance. The specific purposes were taken from the land use policies listed in the Comprehensive Plan.

The Comprehensive Plan gives examples of densities of residential developments. These densities are included into PUD development standards (§152.27.A.8.a).

CORRESPONDENCE

As of this writing, staff has not received written or verbal opinion from residents.

RECOMMENDATIONS

Staff recommends approval of application 2022-TEXT-01 because:

1. It makes the zoning ordinance more up-to-date.
2. It makes it meet the state statute requirements for zoning ordinances.
3. It adds application procedures and development standards that make it possible for good land use development in the Town of Thorntown.
4. It adds fees for the zoning applications that would allow the Town of Thorntown to defray the cost of reviewing such applications.

MOTION OPTIONS

1. Motion to forward a *favorable* recommendation to the Council for the Text Amendment application 2022-TEXT-01 (with amendments/conditions indicated, if desired).

2. Motion to deny the requested application No. 2022-TEXT-01 for a Text Amendment and forward an *unfavorable* recommendation (*Do Not Adopt*) to the Council. **(List reasons)**

3. Motion to continue application 2022-TEXT-01 until _____(date).

Next Plan Commission meeting date(s): September 12, 2022.