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Abstract

Primary county zoning authority is vested in the “county board” or “board of county commissioners;” however, corporate county authorities must appoint, confirm, and provide for a “zoning commission” to exercise powers delegated under general zoning enabling authority. Such commissions (a) provide public notice, (b) conduct public hearings, (c) prepare tentative reports, and (d) draft and revise proposed ordinances. County authorities may appoint a “board of appeals” pursuant to county population standards to hear all appropriate actions as specified by ordinance. Alternatively, county authorities may appoint a “hearing officer” to conduct any public hearing, except where such hearing is to be overseen by a zoning commission, and review and decide any proceeding otherwise delegated to a board of appeals. Additionally, pursuant to 55 ILL. COMP. STAT. 5/5-14001 (2004), county authorities may also create “planning commissions” to draft comprehensive plans.. See 55 ILL. COMP. STAT. 5/5-12007 and 5-12009 to 5-12019 (2004).

Resource

55 ILL. COMP. STAT. 5/5-12007, 5-12009, 5-12010 to 5-12019 (2004)

Sec. 5-12007. Zoning commission; proposed ordinance.

The county board in counties which desire to exercise the powers conferred by this Division shall provide for a zoning commission of not less than 3 nor more than 9 members whose duty it shall be to recommend the boundaries of districts and appropriate regulations to be enforced therein, such commission to be appointed by the chairman or president of the county board, subject to confirmation by the county board. The members of the zoning commission shall be compensated on a per diem basis with a mileage allowance for travel, the amounts to be determined by the county board. Such commission shall prepare a tentative report and a proposed zoning ordinance or resolution for the entire county outside the limits of cities, villages and incorporated towns which have in

effect municipal zoning ordinances. After the preparation of such tentative report and ordinance or resolution, the commission shall hold hearings thereon and shall afford persons interested an opportunity to be heard. A hearing shall be held in each township or road district affected by the terms of such proposed ordinance or resolution. Notice of each hearing shall be published at least 15 days in advance thereof in a newspaper of general circulation published in the township or road district in which such property is located. If no newspaper is published in such township or road district, then such notice shall be published in a newspaper of general circulation published in the county and having circulation where such property is located. Such notice shall state the time and place of the hearing and the place where copies of the proposed ordinance or resolution will be accessible for examination by interested parties. Such hearings may be adjourned from time to time. If any municipality having a zoning ordinance wishes to protest the proposed county zoning provisions for the area within one and one-half miles of its corporate limits, it shall appear at a hearing and submit in writing specific proposals to the commission for zoning such territory. If the Board of Trustees of any township located in a county with a population of less than 1,000,000 wishes to protest the proposed zoning of property in the unincorporated area of the township, it shall appear at a hearing and submit in writing specific proposals to the commission for zoning such territory. If the commission approves of such proposals they shall be incorporated within the report of the commission and its proposed ordinance.

Within 30 days after the final adjournment of such hearings the commission shall make a final report and submit a proposed ordinance or resolution to the county board. The county board may enact the ordinance or resolution with or without change, or may refer it back to the commission for further consideration. If a township located within a county with a population of less than 600,000 has a plan commission and the plan commission objects to the proposed zoning of property in the unincorporated areas of the township, the township board of trustees may submit its written objections to the county board within 30 days after the submission of a proposed zoning ordinance or resolution by the County Zoning Commission to the county board. In such case, the county board shall not adopt zoning provisions which affect the unincorporated areas of the township, except by the favorable vote of 3/4 of all the members of the county board. If the proposals made by a municipality as provided above in this Section are not incorporated in their entirety into the ordinance proposed to be enacted by the county board, the county board shall not enact the proposed zoning of such area within one and one-half miles of such municipality except by a three-fourths vote of all members. The zoning commission shall cease to exist, upon the adoption of a zoning ordinance or resolution for such county.

In the preparation of its report and proposed zoning ordinance or resolution the commission may incur such expenditures as shall be authorized by the county board. The provisions of the amendatory Act of 1963 (Laws 1963, p. 297) shall apply only to the initial and original proposed county zoning ordinance and shall not apply to any subsequent amendments or revisions of such county zoning ordinance once adopted or to the supplanting of such county zoning ordinance with an entirely new zoning ordinance; provided, that any zoning ordinance or resolution heretofore enacted which excludes municipalities subject to regulation shall be amended or modified, in the manner

hereinabove prescribed for original enactment, to make provision to include any such municipality.

Appeals from final zoning decisions of the County Board must be filed within one year unless a shorter filing period is required by another law.

(Source: P.A. 89-272, eff. 8-10-95.)

Sec. 5-12009. Variation by board of appeals.

The regulations by this Division authorized may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any of such regulations relating to the use, construction or alteration of buildings or structures or the use of land; or the regulations by this Division authorized may provide that the county board may, by ordinance or resolution determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any such regulations relating to the use, construction or alteration of buildings or structures or the use of land; however, no such variation shall be made by such county board without a hearing before the board of appeals unless the variation sought is a variation of ten percent or less of the regulations by this Division authorized as to location of structures or as to bulk requirements under such regulations, in which case no public hearing is required and such variation may be granted by the administrative official charged with the enforcement of any ordinance or resolution adopted pursuant to this Division. Provided, however, that before such variation may be granted, a notice of the intent to grant such variation shall be sent by certified mail to all adjoining landowners. If any adjoining landowner files a written objection with the administrative official within 15 days of receipt of such notice, the variation shall only be considered by the board of appeals in the manner provided in this Section. All other variations sought shall be made only by ordinance, resolution or otherwise in a specific case and after a public hearing before a board of appeals of which there shall be at least 15 days notice of the date, time and place of such hearing published in a newspaper of general circulation published in the township or road district in which such property is located. If no newspaper is published in such township or road district, then such notice shall be published in a newspaper of general circulation published in the county and having circulation where such property is located. The notice shall contain: (1) the particular location of the real estate for which the variation is requested by legal description and street address, and if no street address then by locating such real estate with reference to any well-known landmark, highway, road, thoroughfare or intersection; (2) whether or not the petitioner or applicant is acting for himself or in the capacity of agent, alter ego, or representative of a principal, and stating the name and address of the actual and true principal; (3) whether petitioner or applicant is a corporation, and if a corporation, the correct names and addresses of all officers and directors, and of all stockholders or shareholders owning any interest in excess of 20% of all outstanding stock of such

corporation; (4) whether the petitioner or applicant, or his principal if other than applicant, is a business or entity doing business under an assumed name, and if so, the name and residence of all true and actual owners of such business or entity; (5) whether the petitioner or applicant is a partnership, joint venture, syndicate or an unincorporated voluntary association, and if so, the names and addresses of all partners, joint venturers, syndicate members or members of the unincorporated voluntary association; and (6) a brief statement of what the proposed variation consists.

The costs or charges of the publication notice by this Section required shall be paid by the petitioner or applicant.

Where a variation is to be made by ordinance or resolution, upon the report of the board of appeals such county board may by ordinance or resolution without further public hearing adopt any proposed variation or may refer it back to the board of appeals for further consideration and any proposed variation which fails to receive the approval of the board of appeals shall not be passed except by the favorable vote of 3/4 of all the members of the county board, but in counties in which the county board consists of 3 members only a 2/3 vote is required. Every such variation, whether made by the board of appeals directly or by ordinance or resolution after a hearing before a board of appeals shall be accompanied by a finding of fact specifying the reason for making such variation.

If a township located within a county with a population of less than 600,000 or more than 3,000,000 has a plan commission, and the plan commission objects to a zoning variation which affects unincorporated areas of the township, the township board of trustees within 15 days after the public hearing before the board of appeals on such zoning variation, may submit its written objections to the county board of the county where the unincorporated areas of the township are located. In such case, the county board shall not approve the zoning variation, except by the favorable vote of 3/4 of all members of the county board.

Appeals from final zoning decisions of the County Board must be filed within one year unless a shorter filing period is required by another law.

(Source: P.A. 91-738, eff. 1-1-01.)

Sec. 5-12010. Board of Appeals.

The presiding officer of the county board with the advice and consent of the county board shall appoint a board of appeals consisting of 5 members and may appoint 2 alternate members, the 5 members to serve respectively for the following terms: one for one year, one for 2 years, one for 3 years, one for 4 years and one for 5 years; and the alternate members to serve respectively for 4 years and 5 years. The successor to each member so appointed shall serve for a term of 5 years. Alternate members, if appointed, shall serve as members of the board only in the absence of regular members, with the alternate member who has the greatest amount of time remaining in his or her term to have priority over the other alternate member in determining which alternate member

shall serve in the absence of a regular member. In counties of less than 1,000,000 population the presiding officer of the county board with the advice and consent of the county board may appoint an additional 2 members to serve for a term of 5 years. At the end of the term of the 2 additional members, the county board may provide for the appointment of successors in the same manner or may allow the board of appeals to revert to a membership of 5. One of the members so appointed shall be named as chairman at the time of his appointment, and in case of vacancy the appointing power shall designate a chairman. All members of a board of appeals shall be residents of separate townships at the time of their appointments, except that in counties containing fewer than 5 townships, or fewer than 7 townships if the county board has provided for the appointment of 2 additional members, that limitation shall not be applicable. The appointing authority shall have the power to remove any member of the board for cause, after public hearing. Vacancies shall be filled by the appointing authority for the unexpired term of any member whose place has become vacant. The members of the board of appeals shall be compensated on a per diem basis with a mileage allowance for travel, the amounts to be determined by the county board. All meetings of the board of appeals shall be held at the call of the chairman and at such times and places within the county as the board may determine. The chairman, or in his absence the acting chairman may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board shall immediately be filed in the office of the board and shall be a public record. In the performance of its duties the board of appeals may incur such expenditures as are authorized by the county board.

(Source: P.A. 89-217, eff. 1-1-96.)

Sec. 5-12011. Hearing and decision of board of appeals.

The board of appeals shall also hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance or resolution adopted pursuant to this Division.

It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance or resolution or under the terms of this Division. Where a public hearing before a board of appeals is required by this Division or by any ordinance or resolution under the terms of this Division, notice of each hearing shall be published at least 15 days in advance thereof in a newspaper of general circulation published in the township or road district in which such property is located. If no newspaper is published in such township or road district, then such notice shall be published in a newspaper of general circulation published in the county and having circulation where such property is located. The concurring vote of 3 members of a board consisting of 5 members or the concurring vote of 4 members of a board consisting of 7 members is necessary to reverse any order, requirement, decision or determination of any such administrative official or to

decide in favor of the applicant any matter upon which it is required to pass under any such ordinance or resolution, or to effect any variation in such ordinance or resolution, or to recommend any variation or modification in such ordinance or resolution to the county board. An appeal may be taken by any person aggrieved or by any officer, department, board or bureau of the county. An appeal shall be taken within such time as is prescribed by the board of appeals by general rule by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal has been filed with him that by reasons of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court on application, on notice to the officer from whom the appeal is taken and on due cause shown.

(Source: P.A. 92-128, eff. 1-1-02.)

Sec. 5-12012. Hearing of appeal; review under Administrative Review Law.

The board of appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent, or by attorney. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken.

All final administrative decisions of the board of appeals hereunder shall be subject to judicial review pursuant to the provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure. (Source: P.A. 86-962.)

Sec. 5-12013. Compensation of the board of appeals.

Members of the board of appeals shall receive compensation in an amount to be established by each county board. The compensation shall be paid out of the county treasury. (Source: P.A. 86-962.)

Sec. 5-12014. Amendment of regulations and districts.

(a) For purposes of this Section, the term "text amendment" means an amendment to the text of a zoning ordinance, which affects the whole county, and the term "map

amendment" means an amendment to the map of a zoning ordinance, which affects an individual parcel or parcels of land.

(b) The regulations imposed and the districts created under the authority of this Division may be amended from time to time by ordinance or resolution, after the ordinance or resolution establishing same has gone into effect, but no such amendments shall be made without a hearing before the board of appeals. At least 15 days notice of the time and place of such hearing shall be published in a newspaper of general circulation published in such county. Hearings on text amendments shall be held in the court house of the county or other county building with more adequate facilities for such hearings. Hearings on map amendments shall be held in the township or road district affected by the terms of such proposed amendment or in the court house, or other county building with more adequate facilities for such hearings, of the county in which the affected township or road district is located. Provided, that if the owner of any property affected by such proposed map amendment so requests in writing, such hearing shall be held in the township or road district affected by the terms of such proposed amendment. Except as provided in subsection (c), text amendments may be passed at a county board meeting by a simple majority of the elected county board members, unless written protests against the proposed text amendment are signed by 5% of the land owners of the county, in which case such amendment shall not be passed except by the favorable vote of 3/4 of all the members of the county board. Except as provided in subsection (c), map amendments may be passed at a county board meeting by a simple majority of the elected county board members, except that in case of written protest against any proposed map amendment that is either: (A) signed by the owner or owners of at least 20% of the land to be rezoned, or (B) signed by the owner or owners of land immediately touching, or immediately across a street, alley, or public right-of-way from, at least 20% of the perimeter of the land to be rezoned, or in cases where the land affected lies within 1 1/2 miles of the limits of a zoned municipality, or in the case of a proposed text amendment to the Zoning Ordinance, by resolution of the corporate authorities of the zoned municipality with limits nearest adjacent, filed with the county clerk, such amendment shall not be passed except by the favorable vote of 3/4 of all the members of the county board, but in counties in which the county board consists of 3 members only a 2/3 vote is required. In such cases, a copy of the written protest shall be served by the protestor or protestors on the applicant for the proposed amendment and a copy upon the applicant's attorney, if any, by certified mail at the address of such applicant and attorney shown in the application for the proposed amendment. Notwithstanding any other provision of this Section, if a map amendment is proposed solely to correct an error made by the county as a result of a comprehensive rezoning by the county, the map amendments may be passed at a county board meeting by a simple majority of the elected board.

(c) If a township located within a county with a population of less than 600,000 has a plan commission and the plan commission objects to a text amendment or a map amendment affecting an unincorporated area of the township, then the township board of trustees may submit its written objections to the county board within 30 days after the hearing before the board of appeals, in which case the county board may not adopt the text amendment or the map amendment affecting an unincorporated area of the township

except by the favorable vote of at least three-fourths of all the members of the county board.

(Source: P.A. 89-272, eff. 8-10-95.)

Sec. 5-12015. Hearing officer; duties.; (from Ch. 34, par. 5-12015)

Notwithstanding anything to the contrary provided for in this Division:

(A) The county board of each county may by resolution or ordinance establish the position of hearing officer and delegate to a hearing officer the authority to conduct any public hearing otherwise required to be heard in accordance with this Division by the board of appeals. When a hearing officer is designated by the county board to conduct any such hearing: (i) notice of hearing shall be given in the same time and manner and the hearing shall be conducted in the same location provided by this Division for the giving of such notice and for the location of such hearing when any such hearing is conducted by the board of appeals; (ii) the hearing officer in acting upon any matter otherwise within the jurisdiction of the board of appeals shall be governed by the same standards and shall exercise and perform all of the powers and duties of the board of appeals in the same manner and to the same effect as provided in this Division with respect to the board of appeals provided that:

1. When the hearing officer is acting upon an application or petition to amend the regulations imposed or the districts created under the authority of this Division and such amendment is to be made by ordinance or resolution, the hearing officer shall render a written recommendation to the county board within such time and in such manner and form as the county board shall require;

2. When the hearing officer is acting upon an application or petition for a variation and the regulations by this Division authorized provide that the county board by ordinance or resolution may determine and vary the application of such regulations as set forth in this Division, then upon report of the hearing officer the county board may by ordinance or resolution without further public hearing adopt any proposed variation or may refer it back to the hearing officer for further consideration, and any proposed variation which fails to receive the approval of the hearing officer shall not be passed except by the favorable vote of 3/4 of all members of the county board, but in counties in which the county board consists of 3 members only a 2/3 vote is required;

3. When the hearing officer is acting upon an application or petition for a variation and the regulations by this Division authorized do not provide that the county board by ordinance or resolution may determine and vary the application of such regulations as set forth in this Division, or when the hearing officer is acting upon any matter otherwise within the jurisdiction of the board of appeals under Sections 5-12011 and 5-12012 other than a matter referred to in paragraphs 1 and 2 above of this subsection (A), the determination made by the hearing officer with respect to any such variation or matter shall constitute a final administrative decision which is subject to judicial review pursuant to the provisions of the "Administrative Review Law", as now or hereafter amended.

(B) The county board may provide general or specific regulations implementing but not inconsistent with the provisions of this Section, including regulations relative to the time and manner in which hearing officers are designated to conduct public hearings and regulations governing the manner in which such hearings are conducted and matters heard therein passed upon and determined.

(C) Hearing officers shall be appointed on the basis of training and experience which qualifies them to conduct hearings, make recommendations or findings of fact and conclusions on the matters heard and otherwise exercise and perform the powers, duties and functions delegated in accordance with this Section. Hearing officers shall receive such compensation as the county board shall provide, and the county board may establish a schedule of fees to defray the costs of providing a hearing officer.

(D) This Section is intended to furnish an alternative or supplemental procedure which a county board in its discretion may provide for hearing, determining, reviewing and deciding matters which arise under any ordinance, resolution or regulation adopted pursuant to this Division, but nothing in this Section shall be deemed to limit or prevent the use of any existing procedure available pursuant to this Division for hearing, approving or denying applications or petitions for a variation, amendment or other revision of any such ordinance, resolution or regulation, or for hearing and deciding appeals from and reviewing any order, requirement, decision or determination made by an administrative official charged with the enforcement of any such ordinance, resolution or regulation. (Source: P.A. 86-962.)

Sec. 5-12016. Cooperation with other counties and municipal corporations.

In the exercise of powers conferred by this Division the county board of any county shall have authority to cooperate with other counties, with cities, villages or other municipal corporations either within or without such county, and with municipal or state authorities, and to appoint such committee or committees as it may think proper to effect such cooperation.

(Source: P.A. 86-962.)

Sec. 5-12017. Violations.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this Division or of any ordinance, resolution or other regulation made under authority conferred thereby, the proper authorities of the county or of the township in which the building, structure, or land is located, or any person the value or use of whose property is or may be affected by such violation, in addition to other remedies, may institute any appropriate action or proceedings in the circuit court to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business, or use in or about such premises.

Any person who violates the terms of any ordinance adopted under the authority of this Division shall be guilty of a petty offense punishable by a fine not to exceed \$500, with each week the violation remains uncorrected constituting a separate offense.

(Source: P.A. 92-347, eff. 8-15-01.)

Sec. 5-12018. Testimony at hearings.

All testimony by witnesses in any hearing provided for in this Division shall be given under oath.

(Source: P.A. 86-962.)

Sec. 5-12019. Appearance and presentation of evidence by school district.

In any hearing before a zoning commission or board of appeals, any school district within which the property in issue, or any part thereof, is located shall have the right to appear and present evidence.

(Source: P.A. 86-962.)