

## CHAPTER 4

# MAKING THE CASE





If Washington County made it 196 years without formal planning, why start it now?

And even if planning is legal, why would local elected officials tell property owners what they can or cannot do? Are the benefits of formal planning worth the restrictions it may place on residents?

This chapter tackles these questions while recognizing that some residents hold such deep beliefs about the sacrosanct rights of landowners that they are unlikely to change their minds. In fact, no amount of discussion will get them to see any benefit to formal planning.

**But it's unknown what percentage of the local population opposes all planning efforts. Or, what percentage is open to dialogue about some planning.** In land planning - as in many public policy debates - opponents are often the most vocal but not necessarily the majority.

In the interest of public dialogue, this piece makes the case for land use planning, starting with broad points about individual rights and finishing with specific issues about Washington County. The outline of this case is:

- Collective vs. Individual Rights
- Planning in Indiana
- Washington County Growth Patterns
- Protection of Natural Resources
- Economic Development
- An Example

### Collective vs. Individual Rights

Let's start with a summary of facts that most people can agree with:

1. Natural resources such as land are not limitless.
2. Mankind has organized itself into societies.

3. Those societies require natural resources such as land.
4. Human societies continue to increase both in population and in their use of natural resources.
5. Opinions differ on the best use of limited natural resources.

The potential for conflict is easy to spot in these statements. Different countries, during different periods, have responded to these conflicts in various ways. The response to this tension in the United States can be traced back to this line of the Declaration of Independence:

*“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.”*

In other words, our democracy allows for elected officials to make into law the more-or-less common opinion of the people. If those elected officials fail in reflecting the opinion of most people, they can be voted out of office and the law changed.

The Declaration of Independence's next line is, “That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it ...”

While acknowledging that some property owners may be angry enough to consider toppling the government

over private property issues, history has shown that the large majority of Americans do not believe that land use planning has reached the point of “absolute Despotism” required by the declaration to throw off the government.

The exact boundaries of government’s power to regulate land use is still being decided by new regulations and by legal challenges to those regulations, but the right of elected officials to institute land use planning is well established in this country and state.

Granting a solid legal foundation to planning, the questions remain: Why would locally elected officials tell property owners what they can or cannot do? What are the benefits?

One summary of the reasons for land use planning in rural communities was captured in a paper entitled “Land Evaluation” by David Rossiter, of Cornell University’s College of Agriculture & Life Sciences. It stated: “...To prevent or solve conflicts between individuals or with needs and values of society as a whole.” Rossiter goes on to say: **“It is not practical to allow landowners to do whatever they want with their land, for several reasons:”**

1. Possible direct effects on other land owners or resource users; the classic example is discharge of waters into a stream that is then used by others.
2. Possible indirect and/or delayed effects on other land owners or resource users; a good example is aquifer depletion following excessive water use.
3. Possible direct effects on the resource base, e.g. water pollution.
4. Possible indirect and/or delayed effects on the resource base.
5. Society may have a collective interest (valid or not) in discouraging certain land uses and promoting others.

6. Different land uses have different infrastructure requirements (roads, schools) which the state may or may not be prepared to meet, e.g., an industrial park will certainly require the government to build new roads.

**Community planning is based upon a concept of the public interest. Some flexibility in the use of individual land is given up in exchange for creating a community in which the interests of all are considered.**

Readers who cannot accept that concept have probably come to the end of what they will agree with in this comprehensive plan. On the other hand, readers who believe that the concept is useful in discussing land use planning in Washington County will find additional information on why it is necessary and how it might benefit their community.

## Planning in Indiana

Washington County does not have planning and zoning but community leaders are using the comprehensive planning process to explore the possibility of implementing it.

In Indiana, comprehensive planning is permitted for towns, cities and counties by the 500 Series of Title 36-7-4 of the Indiana Code.

The state requires communities to have a comprehensive plan in place before instituting zoning. The comprehensive plan provides general guidance about land use, but it does not have the same level of detail – or the same legal weight – as zoning regulations.

As shown in the map on the next page, in Indiana the overwhelming majority of counties have planning.

We are not making the claim that Washington County should institute planning just because most other Indiana counties have it. However, it would also be hard to argue that Washington County is absolutely unique, and free from the challenges and issues that led other counties to institute planning.



Indiana Counties with Planning

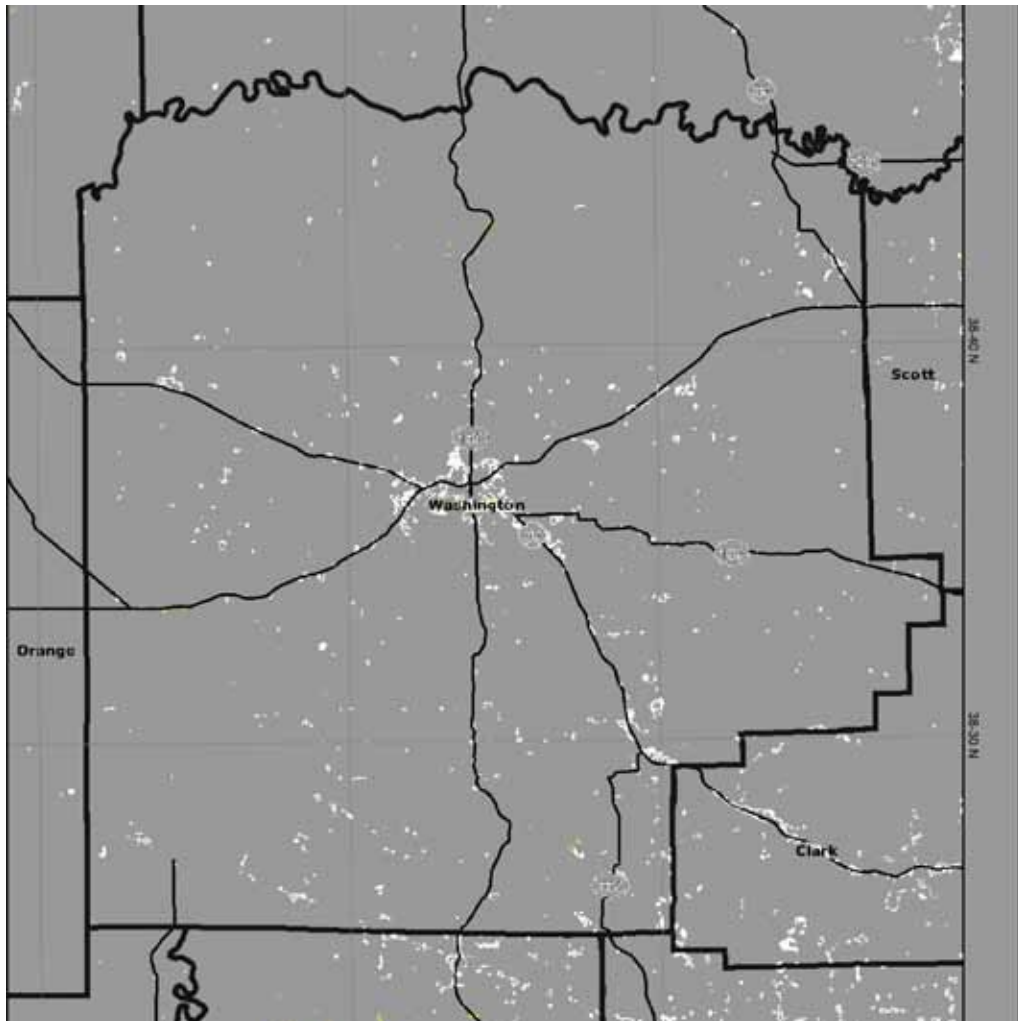
## Washington County Growth Patterns

In 1814 when Washington County was incorporated, the pace of life was dramatically different. The county's physical setting – its land – changed at a slower pace, which allowed for slower, adoptive changes to land use.

In modern times, change can happen much faster, without much time for trial and error. And if no one is formally assigned to keep an eye on planning, land use changes can occur without notice. Some of those changes may not be what's best for the community as a whole.

For example, the local steering committee that worked on this comprehensive plan was surprised to see how land has developed in Washington County.

The map below shows – with a small white dot - every piece of farmland, grassland or forest that was developed from 1992-2003. **The first thing you notice about the pattern of development is that there is no pattern – it looks splattered.** With the exception of the Salem area, land has gone from grassland to urban seemingly randomly around the county.



*Washington County farmland, grassland or forest that was developed from 1992-2003*

As one steering committee member said, “Allowing the ‘splatter’ will get expensive. Just because development is happening rapidly in very rural areas does not mean that it is feasible to bring utilities and other development to that area.”

Members also raised issues of fairness about scattered, unregulated development. For example, suppose a company buys land that is inexpensive because it is rural; far from good roads and water and sewer. The developer puts in new roads, but there are no construction standards for those roads. As frequently happens with subdivisions, the local government is eventually asked to take ownership of those roads. When they do, they are immediately saddled with roads in need of repair; at a cost to taxpayers who did not profit from or live in the subdivision.

At the same time, much of Washington County’s soil is not suitable for long-term septic systems; they will fail eventually. Failing septic systems – and the damage they can do to natural water systems and the rest of the environment – pose a risk for the entire community.

### Protection of Natural Resources

Washington County residents are proud of their home’s rural heritage and beauty. It was the No. 1 asset mentioned during the interviews conducted during this process.

But how is the community protecting that asset, or planning for its enhancement or growth? For example, Lake John Hay and Lake Salinda serve as drinking water sources for the county. Note the two photographs, each taken within a few minutes of each other, from a helicopter in spring 2010. The first shows Lake John Hay. Even from that height, the water appears fairly blue and clear. Note that heavy woods surround most of the shoreline.



*Lake John Hay*

Now look at the muddy waters of Lake Salinda. Note that the buffer of trees is much smaller and the surrounding agricultural land uses.



*Lake Salinda*

The goal here is not to point fingers at individual landowners, but to show the effect of generations of land use on a natural system. Erosion upstream is slowly causing Lake Salinda to fill with silt. Estimates indicate that as many as 40 acres of the original surface area of the lake (approximately 30 percent) have been lost to siltation.

Watershed protection regulations would have helped avoid what has now become a costly problem.

## Economic Development

If rural beauty was the No. 1 asset listed for Washington County, then the No. 1 challenge was economic development.

For example, the county's per capita income of \$28,496 in 2008 was more than \$6,000 a year less than the Indiana average.

Put simply, county leaders want to attract companies that pay good wages, and those types of companies generally prefer a community with some sort of plan for its land. Without planning, a manufacturer runs the risk of building a new plant but later developing problems with neighbors when a new subdivision is constructed next door.

In order to protect their investment, many industrial businesses request buffering around their operation. It is in the best interest of economic development to direct industrial uses to specific areas of the county, residential uses to specific areas, etc. Washington County currently does not make those distinctions in its land uses.

## An Example

What sort of goals come from comprehensive plans? How do communities achieve those goals?

Let's look at how Morgan County aligned their recently completed comprehensive plan to their community's values. Their plan looks at many subjects – infrastructure, transportation, etc. – but this example focuses on agriculture and the county's rural heritage.

It starts with their vision statement, which includes this line: "The irreplaceable natural beauty of Morgan County is a haven from big city life. As honorable stewards of the land, we will balance residential and commercial development with agricultural uses, and provide quality of life amenities and opportunities for all Morgan County residents."

Next the plan contains the county's development policies, which are intended to guide decisions makers as they interpret the comprehensive plan. The development policy for agricultural protection reads: "We believe in the use of planning and zoning to direct growth away from prime agricultural land while at the same allowing for flexibility in decision making."

The Morgan County plan then lists nine goals, with the first one being "Maintain the community's rural way of life."

The plan also includes data on why this goal is important, including statistics on loss of farmland and development pressure in traditionally rural areas.

Having established its principles and goals, the plan then gives community leaders options on how to achieve those goals. In this case, it listed five possible strategies:

- Using GIS, annually track data on the rate of urbanization and the conversion of agricultural land.
- Use zoning to discourage residential development on prime agricultural land.
- Require the incorporation of open space in new large-scale development and appropriate redevelopment sites.
- Use subdivision controls to encourage cluster development.
- Protect the county's natural hillsides by enacting steep slope ordinances.

Note that the options range from monitoring the loss of agricultural land for possible action in the future to creating ordinances to preserve land now. The plan also included further explanation and examples of planning tools such as cluster development.

What happens next? That depends upon the community. Once the comprehensive plan is completed a county can take many actions – or none at all. Elected officials may opt to pursue new regulations, or a group of residents may champion an implementation strategy.

But whatever the final results, the entire community now has a document that lists important issues and then provides background information - including statistics, maps, and examples– for deciding what to do next.

## Conclusion

The comprehensive land use plan is Washington County’s guide to the future. It answers fundamental questions such as: What do we want to change? What do we want to protect?

It also addresses another question that may arise during the process: Why does the county need this plan? That question is best answered in reverse: What happens without a plan?

Make no mistake, the planning process is not about telling a farmer what type of corn he can grow or what color his barn must be. It is about determining the community’s priorities and mapping a route toward its goals.

Perhaps a litmus test could be this question: Is Washington County more likely to achieve its goals and its residents to prosper with or without a plan for the future?