Zoning for Home Based Business

Presenter: Bradley Johnson, AICP and John Molitor, Attorney at Law

The Big Questions

- What is a home based business?
- What are the issues related to home based businesses?
- Do statutes and/or covenants apply?
- How should they be regulated?
- How can regulations be enforced?

Additionally What You’ll Learn

- Whether licensing is a good idea
- Whether there are constitutional issues
- Importance of home based businesses
- Economic development strategies
Before We Start

Presenter Info
- Former home business operator
- Former Chamber of Commerce Director
- Principal Planner/President; Ground Rules, Inc.
- Over 15 years of writing zoning regulations
- Experience in many types of communities
- Consultant, educator, researcher, and advocate

Bradley Johnson, AICP

Presenter Info
- Homeowner and residential landlord
- Real estate attorney and lobbyist
- Former economic development professional
- Former legislative staffer
- Drafted Home Rule, zoning laws
- Counsel to plan commissions and zoning boards

John Molitor, Attorney at Law
Why are Home Businesses so Popular?

Quest for Money

Quest for Flexibility
Ease of Start-up

Propaganda

Other Reasons

- Websites promoting women and minority owned businesses
- Dip in the economy
- High unemployment rate
- Outsourcing practices
- Television shows
What is a Home Business?

Common Definitions
- A home business is a small business that operates from the business owner's home office. (Wikipedia)
- A business whose primary office is in the owner's home. The business can be any size or type as long as the office itself is located in a home. (Entrepreneur Magazine)

Sample Zoning Definition
- An occupation which provides a service as an accessory use within a single-family dwelling performed by one or more of its residents. Such occupations may include services performed by an accountant, architect, appraiser, dentist, medical practitioner, engineer, insurance agent, land surveyor, lawyer, planner, realtor, or hairdresser. (The Zoning Dictionary)
Problem with Definitions?

A. “Business”
   - What if they don’t have a tax ID number?
B. “Occupation”
   - What if it’s not their primary income?
C. “Home”
   - What if an accessory building is used?
   - What about multiple-family dwellings?

What about...

- Telecommuters
- No tax ID number
- Trade haircut for firewood
- Limited Liability Company; DBA
- Host of Arbonne, Mary Kay, or Tupperware Party
- Swimming lessons
- Author
- Inventor
- Bee keeper

~Preferred Definition

Home Based Business: The utilization of a single-family residential dwelling, accessory building, and/or property, or a multiple-family residential dwelling unit to provide a service, produce a product, sell merchandise, or otherwise engage in an activity for the pursuit of remuneration; excluding the sale of the property and its improvements, garage sales, and infrequent sale of personal merchandise consistent with use of the property solely as a residence.
Key Points
- Don’t try to define specific uses
- Broad verses narrow
- Include multiple-family units
- Pursuit of remuneration
- Exemption for common, non-“Business” transactions

What does a Home Business Look Like?

Which of these Homes has a Home Business?
Noticeable Home Businesses

What are the Issues?

Benefits of Home Businesses
- Incubators of great businesses
- Initial competitive advantage
- Additional cash flow
- Based on our history/roots
- Local economic vitality
- Desired lifestyle
- American dream
Potential Impacts
- Depreciation of Property Values
- Longer Times on Market
- Reduced Enjoyment of Property
- Decisions to not Invest Further
- Aesthetic Deterioration
- Noise Disturbance
- Additional Vehicular Traffic
- Loss of Safety or Sense of Safety
- Angry Neighbors

Greatest Threats/Challenges
- Escalation
- Unwillingness to move to commercial or industrial districts
- Enforcement
- Traffic generation not appropriate for residential or rural areas
- Structural alteration

Case Law Snippets
- "After complaints regarding traffic increase…"
- "Home owner started to remove and sell top soil from his residence…"
- "A number of adjacent property owners objected to the proposal and submitted a jointly signed letter in opposition."
- Car restoration business was granted variance; neighboring property owners sued.
- Hand painted clothing business ordered to stop using non-resident employees.
Case Law Snippets

- Home owner operates excavation business for 20 years, storing construction equipment on property…raises concern of new neighbors.
- Amish family seeks to use portable sawmills on property to supplement their income and support their 13 children.

Case Law Snippets

- Archery repair business also displayed and sold merchandise. The town tried to close the operation. The court decided that the town had previously interpreted home business to include sale of Mary Kay products and musical instruments.

Specific Issues

- Signs in residential or rural areas
Specific Issues

- Work vehicles parked in driveways
- Environment and public health
- Site Clutter

When it gets Ugly
When it gets Really Ugly

What Laws and Regulations Apply

Constitutions

- U.S. - ‘Takings’ Clause
- Indiana
  - ‘Due Course of Law’
  - ‘Takings’ Clause
  - Police Power
State Statutes/Regulations

- Home Rule
- State licensing and related regulations
- State preemption
- Limitation on ordinances
- Caps and fines ($2,500 - $7,500)

Licensing

- Specific businesses (barber, fireworks, massage)
- Fictitious name

Covenants

- Platted neighborhoods primarily
  - Case-by-case
  - Restrict accessory structures
  - Restrict signs
  - Etc.
- Typically not rural areas
- Typically not historical or older neighborhoods
- BZA has no authority
Comprehensive Plan
- Not regulatory
- Give guidance
- Note economic development strategies

Local Zoning Ordinance
- Maximum number of employees
- Alteration to exterior of home
- Limits on upsizing utilities
- Use of accessory structures
- Limit of space used for business
- Signs
- Limits on visitors
- Limits on types of uses

Ordinance Processes
- Differs significantly from community to community
- By-right (i.e. permitted use)
- Administrative approval
- Special exception (BZA hearing)
- Rezoning (i.e. plan com. hearing and legislative act)
Enforcement

- Enforcement as a common nuisance
- Local request to remedy
- Bring action to local court to:
  - invoke a legal, equitable or special remedy
  - enforce a condition, covenant or commitment
  - request a prohibitory or permanent injunction to restrain
  - request a mandatory injunction to remove a structure
  - invoke a fine for violations
- Impose a fine for violations (local)
- Any remedy or actions set forth in Indiana Code, common law, or other applicable State regulations

Inspection

- Unpopular to inspect inside of a home
- Sense of invasion of privacy
- Even harder in areas with strong property rights values
Using the BZA

- Appeal to BZA
- Conditions on Special Exception
  - Limits on permit
  - Annual report

Advice to Communities

Licensing Advice

- Don’t require a local business license for all home-based businesses
- It’s a futile pursuit
- Criminalizes good people
- If requiring a local business license for home businesses, it should only apply to home businesses that have specific impacts (e.g. signs, employees)
Zoning Advice

- Focus on regulating impacts, not uses
- Create categories of home businesses
- Regulate each category unique to their potential impacts
  - Type 1: Define those that are benign and permit by right
  - Type 2: Require special exceptions or conditional use permits
  - Type 3: Require renewable permit or rezoning
- Agricultural districts should not be default industrial zones

Economic Development Advice

- Encourage home based businesses that have no impact
- Have a economic development strategy to support evolution to business or industrial districts
- Agricultural districts should not be default industrial zones

A Few War Stories
From the Trenches

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