

Agricultural Zoning

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*Prepared by David Krufft, Legal Research Assistant
The Agricultural Law Resource and Reference Center
The Dickinson School of Law of The Pennsylvania State University**

A. Introduction

Zoning is a system that regulates the type and intensity of land use development that occurs within a community. To create a zoning system, a local government divides the municipality into districts and regulates the construction and use of buildings within these districts. Regulations may differ among the districts, but within each individual district, the regulations must be uniform.¹

A zoning system enables the community to conform its future growth to a set of goals and policies that reflect the community's vision for itself. For example, a municipality that sets a goal to strengthen the central business district would likely create a zone in its downtown into which only such intensive commercial uses would be allowed. Similarly, a community that chooses to remain rural might create a zone that allows minimal development, and then place a significant proportion of its land within this zone.

Agricultural zoning is a specialized form of zoning used by communities that seek to preserve their agricultural base. It reflects a community-wide policy that farmland is a valuable resource that should be preserved to ensure the continued production of agricultural commodities.

The basic building block of an agricultural zoning scheme is an agricultural zone with regulations that strictly limit the construction of all buildings and structures unrelated to agricultural land uses and activities. Most often, an agricultural zone is part of the community's overall zoning scheme.

B. Purpose

The purpose of agricultural zoning is to protect farmland from incompatible uses that would adversely affect the long-term economic viability of the area within the region. Zoning accomplishes this purpose in several ways.

First, zoning protects agricultural land by minimizing land use conflicts and precluding land use controversies. As municipalities grow, the influx of non-agricultural land uses to

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previously agricultural areas often creates conflict between the farming activities, such as spreading manure, and non-farming activities. These conflicts sometimes lead adjoining landowners to a lengthy and costly "nuisance suits," which allege that the agricultural operation is interfering with the adjoining landowners right to use and enjoy his/her property. Agricultural zoning avoids these controversies by segregating agricultural lands from non-agricultural land uses and keeping agricultural activities at a distance from non-farming activities. The segregation of land uses minimizes the number of non-farming landowners impacted by farming activities and reduces the conflicts that arise between farming and non-farming neighbors.

Second, agricultural zoning maintains the vitality of the agricultural sector by retaining a critical mass of agricultural land. Scattered development of non-agricultural buildings often interferes with an agricultural operation's ability to maintain an effective operation, not only by creating a physical obstacle to performing activities efficiently, but also because it diminishes the strength of the overall agricultural community. Non-farm development interferes with the efficient administration of farm duties and diminishes the overall strength of the agricultural community.

Third, effective agricultural zoning ordinances protect prime agricultural soils. Obviously, a dynamic agricultural sector requires soils amenable to food production for human and animal consumption. Not all communities contain such valuable soils, however, and many communities contain them in a limited supply. By preserving for agricultural use those soils that are most suitable for agriculture and directing other development to non- suitable soils, zoning maintains in continued use perhaps the most vital ingredient of a healthy agricultural community.

C. Statutory authority to zone for agriculture

In Pennsylvania, the authority to zone for agriculture is found in the Municipalities Planning Code of 1968, as amended (MPC).² Recent amendments to the MPC require municipalities to zone to preserve "prime agriculture and farmland."³

However, long before the MPC mandated agricultural zoning, municipalities were zoning to protect farmland by developing and adopting ordinances that contained agricultural zones. The authority for municipalities to create agricultural zones derives from its overall authority to create general-purpose zoning ordinances, which was also granted to municipalities through the MPC.⁴

As early as 1926, the U.S. Supreme Court had endorsed zoning as a constitutional exercise of a municipality's police power to regulate for the health, safety, morals, and welfare of the general population.⁵ When the Pennsylvania Assembly initially passed the MPC in 1968, it granted municipalities the authority to create zoning ordinances based on this police power. Many municipalities used this authority to create zoning ordinances that protected farmland.

D. Types of agricultural zoning

When zoning to protect agriculture, municipalities may choose one of two types of zoning: exclusive agricultural zoning or non-exclusive agricultural zoning. Non-exclusive agricultural zoning is by far the more common of the two.

1. Exclusive agricultural zoning

Exclusive zoning prohibits all non-farm residences and most non-agricultural activities from an agriculture zone. Exceptions to this requirement may be granted for parcels of land that are not suitable for farming.

This type of agricultural zoning is rarely used. It is more vulnerable to legal challenge than non-exclusive agricultural zoning, and, when challenged, more likely to be struck down.

2. Non-exclusive agricultural zoning

Non-exclusive agricultural zoning allows non-farm (residential) dwellings, but strictly limits the number of such dwellings. In addition, non-exclusive zoning often allows the construction of conditional uses if these uses are located on land of low quality for farming.

For example, the agriculture zone for Peach Bottom Township (York County) allows four principal uses: farm, forest and wildlife preserve, greenhouse/nursery, and single family dwellings. The zone also allows a number of uses by special exception, including house of worship, cemetery, school, kennel, animal hospital, and trailer camp. These conditional uses may be constructed only when authorized by the Zoning Hearing Board.

Non-exclusive agricultural zoning is composed of two specific methods: large minimum lot size zoning and area-based allocation.

Large minimum lot-size zoning

Large minimum lot-size zoning limits the number of dwelling units that can be constructed in an agriculture zone by requiring a very large minimum lot size. No parcel may be subdivided from an existing farm unless it is larger than the required minimum lot size.

Proponents of this method claim that large lot sizes discourage residential development by pricing the costs of such development outside a range affordable to most consumers. In addition, even if a farm is subdivided, the large lot requirement maintains the viability of each subdivided parcel as a working farm.

Opponents criticize large lot size zoning as inadequate because, though larger than the average subdivided parcel, the lots are not sized to support the needs of a modern farm, particularly in its use of machinery. In addition, the subdivided lots often cut across various classes of soils in order to meet standardized land development requirements.

Area-based allocation

Area-based allocation zoning determines the number of non-farm dwelling units that may be subdivided from an agricultural parcel by basing that number on the size of the original parcel. Area-based zoning establishes a formula that calculates the permitted number of non-farm dwellings. In general, a larger agricultural parcel will yield more permitted non-farm dwelling units.

Area-based allocation zoning requires that the non-farm dwelling units be built on small lots (e.g. two acres or less). By requiring small lots for the non-farm dwelling units, large areas are left intact for agricultural uses.

Supporters of area-based allocation zoning claim that it provides greater flexibility in where to site the non-farm dwellings. This flexibility allows landowners to preserve large pockets of valuable soils. In addition, the agricultural parcel from which the non-farm dwellings are subdivided retains more land than with minimum lot-size zoning.

Municipalities generally use one of two types of area-based formulas: a fixed-system formula or a sliding scale formula. A fixed-system formula allows one dwelling for a specified number of acres. For example, a municipality may allow one non-farm dwelling unit for every 25 acres of an agricultural parcel. A 25-acre parcel would yield one non-farm dwelling; a 100-acre parcel would yield four non-farm dwellings.

A sliding scale formula varies the number of allowed dwelling units based on the acreage of the parcel from which the units will be subdivided. As the size of the agricultural parcel changes, the number of severable parcels changes accordingly.

Sliding scale formulas are rarely linear. In general, larger agricultural parcels may subdivide proportionally fewer non-farm dwelling units than smaller agricultural parcels. A non-linear sliding scale formula is based on the premise that smaller agricultural parcels are less viable than larger parcels. Allowing increased non-farm development on these parcels satisfies the demand for residential dwellings and shifts this demand away from valuable agricultural parcels towards less valuable agricultural parcels.

E. Legal challenges to agricultural zoning

There are several legal challenges that can be mounted against zoning ordinance provisions (including provisions designed to protect agriculture). The first challenge is a "takings" challenge. The second challenge is a "substantive due process" challenge. Both of these are constitutional challenges. The third legal challenge, unique to Pennsylvania, is the curative amendment process.

1. Takings challenge

A takings challenge occurs when a landowner claims that his property has been taken by the government without just compensation, in violation of the Fifth Amendment of the U.S. Constitution.⁶ Property can be taken by the government through direct action, such as eminent domain, or through regulation, such as a zoning ordinance or environmental regulations.

The U.S. Supreme Court has developed a two-tier test to determine when a citizen's property has been taken by government action. The Court has determined that an act by the government that denies a property owner of all economic beneficial or productive use of his land is a categorical taking, and is thus unconstitutional.⁷ A governmental act that does not meet the Lucas test is nonetheless a taking if it interferes with a property owner's "reasonable, investment-backed expectations."⁸

In reviewing government action under a non-categorical takings claim, the Pennsylvania Supreme Court has supplemented the Penn Central test by taking into account three considerations:

- The interest of the general public, rather than a particular class of persons, must require governmental action;
- The means must be necessary to effectuate that purpose;
- The means must not be unduly oppressive upon the property holder, considering the economic impact of the regulation, and the extent to which the government physically intrudes on the property.⁹

Because zoning generally – and agricultural zoning in particular – is often considered to further the general welfare, and because most agriculture zones allow some minimal development of the site, it is difficult to bring a successful takings suit against a government entity that engages in agricultural zoning.

2. Substantive due process

A second challenge to government action is brought under the legal theory of substantive due process. When reviewing a substantive due process claim, a court determines whether the government's act, such as the passing of legislation, is so fundamentally unfair that it cannot be remedied, even by procedural due process (e.g. even by an opportunity to be heard or a fair administrative hearing). A government act that does not violate substantive due process is one that:

- Addresses a public purpose;
- Is reasonably related to that public purpose; and
- Does not unfairly impact the property owner.

In 1985, the Pennsylvania Supreme Court used a substantive due process analysis to uphold the validity of agricultural zoning.¹⁰ In Boundary Drive, a landowner challenged a sliding-scale zoning ordinance that limited the number of parcels he could subdivide from his prime agricultural land. The court found that the township's sliding scale formula did not violate the landowner's substantive due process rights. The formula, the court stated, was substantially related to the goal of preserving farmland and was not too restrictive. However, the court suggested that there may be instances when a zoning ordinance is invalid. A zoning ordinance that is arbitrary, unreasonable, or unrelated to the public, health, safety, morals and welfare could violate due process.

3. Curative amendments

A zoning scheme can also be frustrated through the actions of a landowner or developer. In Pennsylvania, landowners and developers may petition for a curative amendment to a municipal zoning ordinance by alleging that a municipality has unconstitutionally failed to provide for its "fair share" of a particular land use.¹¹ If the petition is successful, the challenging party may have the zoning changed to conform to the development scheme.

F. Advantages and disadvantages of agricultural zoning

Like the other farmland protection tools, agricultural zoning has both advantages and disadvantages. One advantage of agricultural zoning is that it can be used effectively to protect large tracts of land. Other protection tools such as agricultural security areas, Clean and Green, and conservation easements protect farmland on a parcel-by-parcel basis. Agricultural zoning can be used to protect dozens of acres of farmland within a township, simply by placing these acres within an effectively-drafted agricultural zone that discourages non-farm development.

Another advantage to zoning is that it protects these large tracts of land at a relatively low cost. The largest cost associated with zoning is fees paid to a consulting firm. Other costs may include municipal staff time to manage the firm and to hold public meetings for review. There are very few other costs associated with this protection tool. Unlike conservation easements, which require significant public funds to purchase the development rights for each acre, costs to implement zoning are relatively modest.

A disadvantage to zoning is that it can be easily "un-done." Even the most effective agricultural zoning system is merely a policy statement of the current township board of supervisors. A change in the political climate of the municipality or even of the point of view of one of the supervisors can lead to that zoning system being repealed and replaced by a significantly weaker system. Supervisors need not repeal the entire ordinance to weaken the zoning scheme in a particular township. Simply by changing the zoning on a particular parcel, township supervisors can weaken the integrity of an agricultural zoning system. Compared to conservation easements, which protect farmland in perpetuity, agricultural zoning can be weakened significantly.

¹¹For additional information on zoning, see Planning Series #4: Zoning, Governor's Center for Local Government Services, Pennsylvania Department of Community and Economic Development, 1999.

²A recent decision from the Pennsylvania Supreme Court indicates that the MPC grants municipalities the power to create but not to suspend a zoning ordinance. The power to suspend a zoning ordinance (i.e. impose a moratorium), the court noted, is distinct from and not incidental to the power to enact an ordinance. See *Naylor et al v. Township of Hellam*, 773 A2d 770 (2001).

³53 P.S. 10604 (3). The statute defines "prime agricultural land" as land used for agricultural purposes that contains soils of the first, second or third class as defined by the United States Department of Agriculture Natural Resource and Conservation Services County Soil Survey (53 P.S. 10107(a)).

⁴53 P.S. 10603(a): "Zoning ordinances should reflect the policy goals of the statement of community development objectives required in section 606, and give consideration to the character of the municipality, the needs of the citizens and the suitabilities and special nature of particular parts of the municipality."

⁵Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).

⁶"...[N]or shall private property be taken for public use, without just compensation." U.S. Constitution.

⁷Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992)

⁸Penn Central Transportation Company v. New York City, 438 U.S. 104 (1978)

⁹United Artists' Theater Circuit v. City of Philadelphia, 535 Pa. 370 (1993)

¹⁰Boundary Drive Associates v. Shrewsbury Township Board of Supervisors, 507 Pa. 481 (1985).

¹¹In determining whether a zoning ordinance excludes a particular use, Pennsylvania courts ask three questions: one, is the municipality a logical place for development; two, how highly developed is the municipality; and three does the ordinance effect an exclusionary result?