

Zoning Benefits for the Pennsylvania Farmer

by Phyllis Marquitz, Legal Research Assistant (2004)¹

Introduction

Allowing the government to regulate the use of property rather than letting the landowner do whatever he or she wishes, all for the “good of the whole”—is this communism? No, it is zoning. Although the concept of zoning does not always appear to be an attractive option for regulation of land use, zoning can actually be beneficial for the agriculture community. In fact, there are some that believe good zoning will keep agriculture from being sued or over-developed out of existence.

History of Zoning and the U.S. Constitution

In 1926, the Supreme Court of the United States held that governments have the right to use zoning solutions to ensure the health, safety, morals, and general welfare of their communities.² It determined that legitimate restrictions advancing these causes are constitutional, and that they do not violate the Fourteenth Amendment.³ After the decision, some states and municipalities created zoning laws that were later challenged in court. States delegated powers to counties, municipalities, and zoning commissions who in turn promulgated rules for hearing challenges and enforcement.

The Fifth Amendment guarantees landowners “just compensation” for any taking of private land for public use.⁴ It has been argued zoning regulations that cause a decrease in property value, for example, regulations which prohibit commercial development of residential property, are compensable takings under the meaning of the “takings clause.” This argument has failed. In *Hawaii Housing Authority v. Midkiff*,⁵ the Supreme Court held that a “public use” may embrace the sale of private property to reduce concentration of land ownership.⁶ Although property values are

¹ Produced for the Penn State Dickinson Agricultural Law Resource and Reference Center. The Center does not provide legal advice. If such advice is needed please seek legal counsel.

² *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926).

³ The Fourteenth Amendment guarantees that an individual’s liberty and property can not be denied without due process. U.S. CONST. amend. XIV, § 1.

⁴ U.S. CONST. amend V.

⁵ *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229 (1984).

⁶ *Id.* at 242-43.

often decreased by zoning regulations, courts have found the same regulations also protect property values. Zoning regulations protect residential areas from loud and noisy businesses. Such limitations on property *use* often increase the desirability of residential areas to homeowners and thus increase property value.

These cases have broadly defined the powers of government to regulate zoning in communities and the meaning of “public use.” However, this power is not without limit. State and local governments may not freely take or dictate the use of private property. Courts have protected private property rights from excessive zoning where the regulation violates a First Amendment right, and where the application or modification of zoning rules violates an individual’s due process rights. Regulations must be in the *public interest* and *legitimately* promote the health, safety, morals, and general welfare of the community. It is illegal for governments to prohibit legal use of land through zoning.

Zoning Regulation in Pennsylvania

Although there have been recent efforts toward creating regional or county zoning plans, zoning authority in Pennsylvania remains at the municipal level. The Pennsylvania Municipal Planning Code⁷ outlines the powers that are given to municipalities and those that are reserved to the State. A majority of municipalities utilize these powers, but not all municipalities have implemented zoning regulations. Some have little to no restrictions on development of land for any legal purpose. This can create or increase conflict between private property owners who use neighboring property for different purposes.

Pennsylvania has several statewide initiatives that protect farmland from municipal and private pressures such as the Agriculture Security Area Law, the Right to Farm Act, and property tax reduction for agricultural lands in the Clean and Green Program. These programs supersede municipality regulation in some areas, but do not provide a full exemption from compliance. By participating in the municipal process, farmers can insure their communities do not create plans that will negatively impact their livelihood.

Zoning Benefits for Agriculture in Pennsylvania

There are many practical benefits for agricultural operations in areas with friendly zoning regulations. Zoning for agriculture use can protect the farmer from unwanted neighboring

⁷ 53 P.S. § 10101 (1968).

development or nuisance that might affect production. It can ensure farmers that future agriculture related use or development on their land is possible. Participation in creation of zoning plans can help farmers have an important hand in guiding the future use of land in their community and across the state.

Expansion and development are major contributors to loss of Pennsylvania farmland. Effective zoning regulations can create buffer zones between conflicting uses in order to prevent clashes that arise with residential and commercial expansion into rural areas. For example, regulations which buffer animal operations with forest, cropland, or industrial zones can reduce nuisance suits and complaints of noise or odor.

Regional planning incentives are also becoming popular for municipalities, encouraging communities to come together and plan for broader areas. Pennsylvania courts have upheld recent efforts to concentrate cooperative planning. In a recent Bucks County case,⁸ the court suggested that municipalities reduce “pockets” of industrial use and dense housing scattered throughout regions when the community might be better served by concentrating like-uses in specific areas.

The newest and perhaps most hopeful development for agriculture land preservation is the transfer of development rights between areas. This will most likely require participation by municipalities with county or regional authorities. Agriculture operations will be able to transfer their right to develop property to more densely populated areas with more lenient zoning regulations allowing operations to build more than they would normally be able to without purchasing these rights. This, like easement programs, allows the farmer to sell off rights that would make the agricultural land attractive for development down the road, attain those profits sooner, and protect the area from sprawl or over-development that would change the character of the community.⁹

Conclusion

In order to keep abreast of zoning regulation changes affecting personal property it is important for farmers to communicate with their local government. If there is no zoning in a particular municipality there may be talk of implementing some forms of zoning restrictions with the new push toward regional planning. Many of the newer agriculture preservation programs will require municipal participation. Zoning is a mechanism by which active citizens, who understand

⁸ In re Petition of Dolington Land Group, 839 A.2d 1021 (Pa. 2003).

⁹ More information about Pennsylvania Agriculture Programs, Regional Planning and Transfer of Development Rights can be found at <http://www.dsl.psu.edu/centers/agpubs.cfm>.

the process, can influence the character and future of the communities in which they live. Farms are a vital part of Pennsylvania's economic structure and cultural heritage and zoning is a tool that farmers can use to protect and advance their cause.