

# Zoning for Controversial Uses

## Urban Research and Development Corporation

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*Note – This presentation is not intended to provide legal advice. Please consult with your municipal Solicitor or other knowledgeable attorney.*



# General Rule – Regulate It, Don't Prohibit It

If you completely prohibit a use, it is much easier for someone to win a legal challenge.

The area provided for a use must be physically possible, but does not have to be available for sale.

The percent of land that allows the use is considered in a challenge. The area cannot be “token in size.”

A municipality with significant developable land has more obligation to provide for a wider range of uses than other municipalities.



*my heart is zoned  
exclusively for you*



Many land uses are  
needed, but  
unpopular. No one

If municipalities carry out a Multi-Municipal Comp. Plan, they can share their legal obligation to provide for certain uses, such as one township allows quarries and another township allows a landfill.



# Environmental Justice

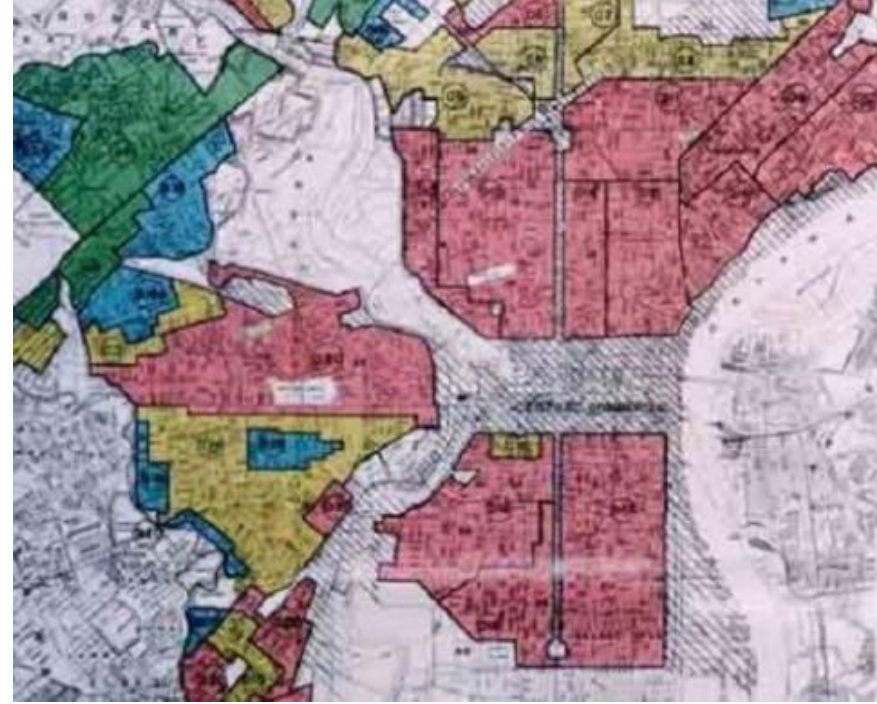
1937 redline map of Phila. is on the right.

Beware of locating many less desirable uses in low income and minority neighborhoods.

This is often done because there are expectations of less organized opposition.

Ideally, there would be a general industrial area with very few residents where many obligations can be met to allow for less desirable uses.

Also, don't be a jerk and allow all of your undesirable uses on the municipal border. If a larger setback is required from homes, make sure that setback also applies for homes in the neighboring municipality.





# Concentrated Animal Feeding Operations (CAFO)



Beware of State preemptions, particularly regarding nutrient management and manure storage setbacks.

Most common types of livestock and poultry uses should be allowed in every district that has farmland, to comply with Right to Farm Law. The more intensive ones should need special exception approval.

An adjacent landowner should be able to waive additional setback requirements as they affect their lot.

# CAFOs Cont.



It is best to use the state definitions of CAFOs and

Concentrated Animal Operations (CAO) for facilities that need larger setbacks from residential districts. The ZHB can be given authority to reduce the setbacks for expansions of existing facilities where there are not alternatives.

There should be larger setbacks from residential districts than from homes within a district that is intended to emphasize agriculture.

In location decisions, ask applicant to consider prevailing winds vs. locations of homes.



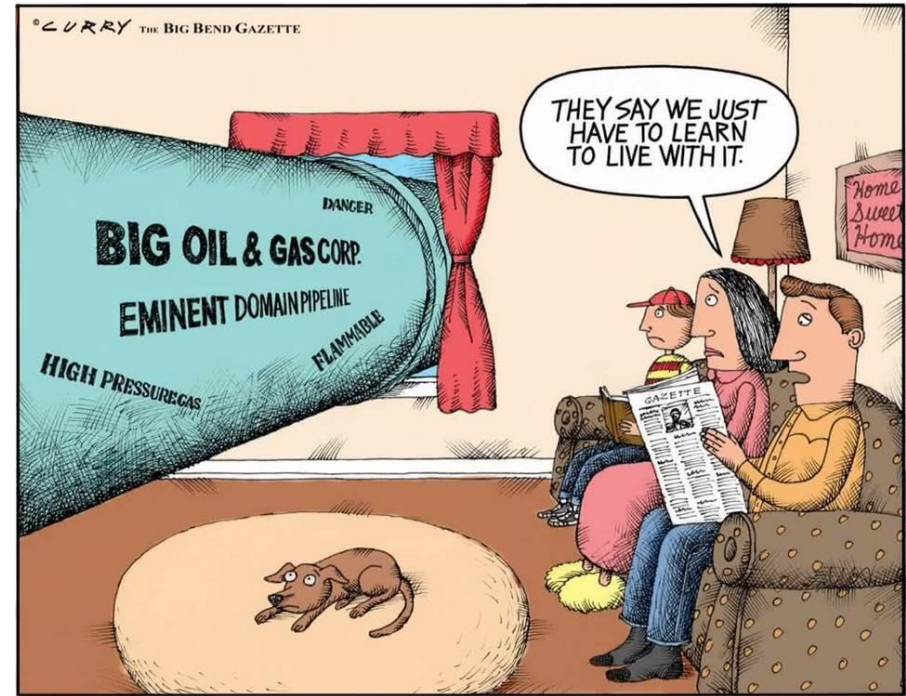
# Gas Wells & Compressor Stations

Municipalities can limit oil and gas wells to certain districts, within reason, and can require special exception approval.

Municipalities can require larger setbacks from dwellings and residential districts for gas and oil wells and compressor stations than are provided in state law.

Municipalities can require noise reducing measures around a gas or oil well or compressor station. It is best to set a maximum daytime and nighttime noise level at a residential lot line and let the applicant show how they will comply.

Municipalities cannot regulate operational matters that are controlled by DEP.





# Pipelines and Compressor Stations

Compressor stations can generally be restricted to certain districts, unless the station was specifically part of a pipeline application that received federal approval.

Municipalities cannot regulate pipelines through zoning.

The blast from a pipeline explosion can reach several hundred feet, depending upon the capacity and pressure. Some ROW includes multiple pipelines of varying ages and level of corrosion.

Major new pipelines need a setback from existing homes, but federal regulations do not require new buildings to be setback from existing pipelines.

Municipalities should require that new homes be setback from major pipelines. Facilities serving people who cannot self-evacuate (such as day care, prisons and nursing homes) should have a larger setback from major pipelines.





# Mineral Extraction

Many operational aspects of mining are preempted by the State, including berms, blasting, and reclamation.

Municipalities can control the allowed locations, provided they provide “reasonable opportunities” for mining in their community. The municipality is not obligated to allow mining in a location simply because it has high quality materials.



# Mining (Cont.)



Municipalities can have some control through zoning over creek setbacks

and alterations to woodlands and steep slopes.

Within reason, zoning can include a larger setback from residential districts than the 300 feet required by DEP.

Ability of nearby roads to safely handle heavy truck traffic needs to be a major factor in location decisions, esp. considering long stopping distance of loaded trucks.

The market prefers to include concrete and asphalt plants with a quarry. That can reduce total truck traffic, compared to if each use was developed in a different location.

# Landfills, Waste to Energy Plants and Trash Transfer Stations

These uses typically require special exception or conditional use approval and large setbacks.



The emphasis in recent decades has been upon expanding existing landfills instead of developing new ones. However, municipalities with large open land areas still need to allow them. Landfills typically are allowed in an industrial district that has road access onto a major highway without adversely affecting residential areas.

Waste to Energy Plants also are less common, but need to be allowed in a location that can handle the truck traffic.

Trash transfer stations are required by DEP to have their unloading within a building. They should be allowed in an industrial area that is not near housing.



# Wind Farms

While one accessory turbine should be allowed in most locations with setbacks, multiple taller turbines need to be carefully located.

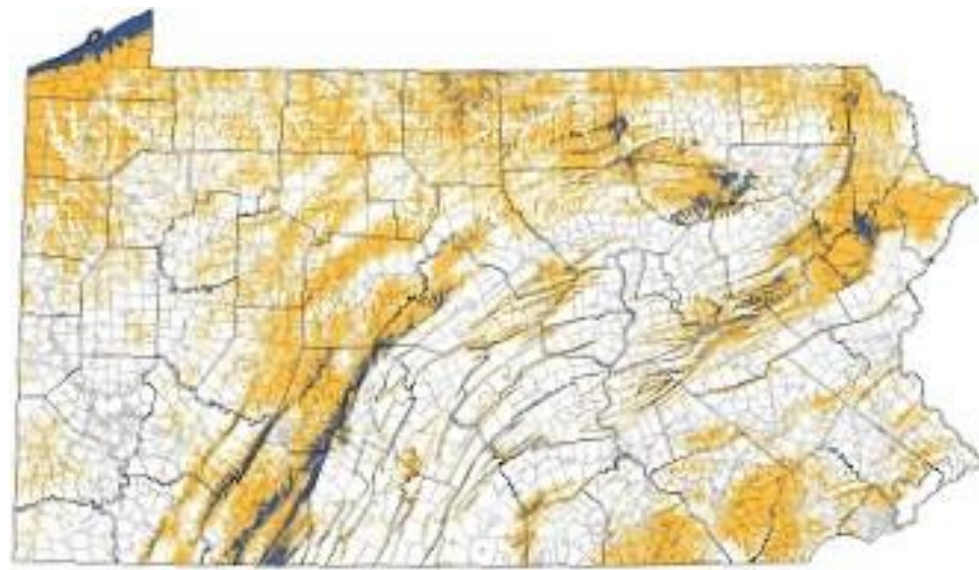
Requested heights are increasing up to 750 feet, but a lower height can be required within reason (such as 400 feet).

Want to be on the tops of ridges in PA, but should not be allowed along major bird migratory routes, such as the Kittatinny Ridge.



## Wind Farms (Cont.)

Impacts are greatly reduced with distance. Setbacks to homes should be at least 4 times total extended height.



Also need to consider large setbacks from potential homes, especially in residential districts or approved unbuilt lots.

In most cases, smaller setbacks from State recreation lands, water authority lands and roads can be appropriate. Adjacent property owner should be able to waive large setbacks.

Shadow flicker for homes can be limited to x hours per yr.

# **Large Groundwater Withdrawals (over 100k per day for off-site non-public use)**

Many aspects are preempted by a State water resources law & by regional water basin regs in eastern PA.

Requiring special exception approval can provide an opportunity for placing conditions on the use, particularly in regards to the locations of loading and trucking activities.

Should be study requirements to show that roads can handle the heavy truck traffic, esp. for rural roads.





# **Adult Uses** (mainly strip clubs and illegitimate massage parlors)

Strip clubs and adult stores are protected under Federal Court

decisions. The PA. Supreme Ct. also ruled that fully nude dancing must be allowed.

Limit to one industrial district by special exception, with large setbacks from parks, day care, places of worship, trails, etc.

Make sure there are buildable locations.

See State law (Title 68, Chapter 55). Municipalities can require proof of compliance.



# Adult Uses (Cont.)

PA. licenses Massage

Therapists. If a place is providing massages in private

rooms to persons and everyone is not licensed, it can be treated the same as an Adult Use, with special exception approval, large setbacks and limited to one district.

Prohibit private rooms for customers in a strip club?

Regulations must be based upon avoiding secondary impacts, and should take note of studies on the matter.

Limit late night hours of operation.



# Heavy Industrial Uses and Intensive Commercial Uses



Most municipalities should have a Neighborhood Commercial and a General Commercial District, so the most intensive commercial uses can be separated from most residential neighborhoods. Intensive commercial uses include 24 hours uses, restaurants with late night drive-through service, nightclubs, gas stations, vehicle repair and truck stops.

Most municipalities should have a Light Industrial and a General Industrial District, so that the heavier industrial uses can be limited to an area with few nearby homes. Heavier industrial uses include chemical plants, truck terminals, asphalt plants, concrete plants and quarries.



# Large Distribution Centers



Carefully examine where large distribution centers and warehouses can be built. The suitable sites with direct access to expressways have been consumed, and the uses are now being proposed on 2 lane roads many miles from major highways.

Require that parking be provided for truck drivers who are awaiting entry or who are required to take a rest. Otherwise, trucks will be parked in many unintended areas. The drivers should have access to restrooms.

# Billboards (Off-Premises Signs)



Billboards are legitimate land uses that must be allowed in all municipalities. However, there is no requirement to allow 674 sq. ft. billboards. Many municipalities limit billboards to 300 sq. ft., with a maximum of 2 signs attached to each (which are designed to be approximately back to back).

Limit nighttime lighting of signs to 0.3 footcandles above the ambient light level.

PennDOT allows signs to change once every 5 seconds.

Municipalities should consider a longer interval for large digital signs (such as 10 seconds for a sign of more than 100 sq. ft).

# Billboards (Cont.)



PennDOT allows billboards to be 500 feet apart along an expressway, 300 feet apart in other locations in a twp., and 100 feet apart in a borough or city. Municipalities should consider larger distances.

Try to make all signs as content neutral as possible.



# Manufactured Home Parks

Manufactured home parks can be a valuable addition to a community with the



proper standards, and can provide affordable housing.

Require similar improvement standards to regular single family developments, such as street trees. They often have private streets, with parking pads near each unit.

Do not require lot sizes for each dwelling. Instead, allow an average density of 4 or 5 homes per acre, with separation distances between units, and a vegetated perimeter setback.

# Drug Rehab Uses



These are critically needed uses that often cause local opposition. These uses have been the subject of many complex federal court decisions, which makes a summary difficult.

Persons with a drug addiction but that are not currently using illegal drugs are protected under the Americans With Disabilities Act. However, one case said that they only receive that protection under zoning if they need supportive facilities to function in society.

Supervised halfway houses that function similar to a common household should be allowed in most areas, while larger facilities can be treated similar to a nursing home. The biggest controversies have involve “sober houses” with 12 residents in a residential area without professional supervision.

# Reasonable Accommodations Under the ADA

Zoning ordinances should include a provision allowing the Zoning Hearing Board to approve special exceptions for an accommodation if the applicant proves that a “reasonable accommodation” is required to comply with the Americans With Disabilities Act or the Federal Fair Housing Act Amendments. That type of provision also helps to avoid expensive federal court challenges and attempts to intimidate zoning officers.

## *Halfway House Rules*

- ☐ FIND EMPLOYMENT
- ☐ STAY CLEAN AND SOBER
- ☐ DO DAILY CHORES
- ☐ FOLLOW HOUSE CURFEW
- ☐ ATTEND RECOVERY MEETINGS





**Thank You. Questions? Comments?**

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