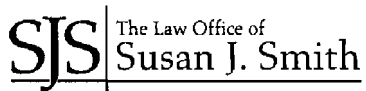


PENNSYLVANIA ENABLING AUTHORITY FOR REGULATION OF ALTERNATIVE FORMS OF ENERGY

**Alternative Energy and Regulation in PA
PPA Central Section
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ENABLING AUTHORITY

Municipalities, as “creatures of the state,” possess only such powers as given to them by the state.

✚ Pennsylvania Municipalities Planning Code (53 P.S. §§ 10101 *et seq.*)

✓ Purpose of Act

Section 105 “to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources”, defined to include geothermal, wind, solar, etc.

✓ Comprehensive Plan (Article III)

Section 301.1 Energy Conservation Plan Element

✓ Subdivision and Land Development Ordinance (Article V)

Section 503 Contents, sub-section 6) Provisions for encouraging the use of renewable energy systems . . . design.

✓ Zoning Ordinance (Article VI)

Section 604 Zoning Purposes, sub-section (1) “To promote access to incident solar energy”

Note: Specific authority to provide standards for height and setback relating to renewable energy systems and design found exclusively in Section 705 Planned Residential Development

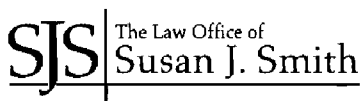
RELATED AUTHORITIES

✚ Pennsylvania Constitution (Art. 1 § 27)

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

✚ County, Township, Borough Enabling Acts (Title 53) – general powers and particularly powers with respect to matters of the “public, health, safety and welfare”

Careful: Ordinances that “walk and talk” like an MPC ordinance must be enacted in conformance with MPC procedural requirements.



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ZONING – REGULATING THE USE (MPC ARTICLE IV)

✦ Scope of Regulatory Authority

A zoning ordinance may “permit, prohibit, regulate, restrict and determine, to the extent not superseded or preempted by certain state acts”:

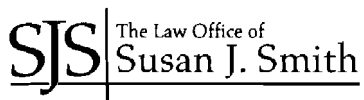
- uses of land, watercourses, and other bodies of water
- size, height, bulk, location, erection, construction, repair, maintenance, alteration, razing, removal and use of structures
- areas and dimensions of land and bodies of water to be occupied by uses and structures and open spaces
- density
- intensity of use
- protection and preservation of natural resources and agricultural land and activities

✦ Preemptions and Exemptions

- **public utilities** (MPC, Section 619) – applicable to a “building . . . used or to be used by a public utility corporation if . . . the Pennsylvania Public Utility Commission decides that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public”; construed by the courts to further exempt public utility *facilities and structures*;
 - ✓ Alternative Energy Portfolio Standards Act, amending the Public Utility Code, requires PUC certificated public utilities to include alternative energy sources in their source portfolios

Note: mineral extraction (including natural gas) (MPC, Section 603(b)) -- “shall provide for the reasonable development of minerals in each municipality”

- ✓ *recent Court decisions distinguishing between “quintessential” zoning matters (providing for use in certain districts, classification of use, setbacks(?)) and technical aspects of oil and well operations, the latter preempted from local regulation by the Oil & Gas Act*



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✚ Identifying the Use

- Discrete use? – included in another use classification? merely a more intensive form of a provided-for use?
- Subject to constitutional challenge as exclusionary zoning; “savings clauses” provide for unspecified or emerging uses

✚ Siting the Use

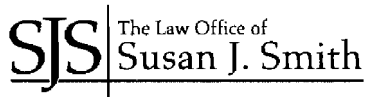
- Inherent part of process of siting beneficial and compatible uses by district

✚ Classifying the Use: Permitted by Right, Special Exception or Conditional Use, or Prohibited

- Classification as special exception or conditional use reflects a legislative decision that the use is a permissible use of property within a given zoning district and not adverse to the public interest *per se*, but deserving of closer examination and protections than may be afforded under a standard zoning permit. Upon demonstrating compliance with the objective requirements of the zoning ordinance, the applicant is entitled to approval because the use is presumed to be consistent with the public health, safety and welfare. An opponent to the grant of the permit must show by particularized and non-speculative evidence that the proposed use would generate adverse impacts beyond those normally attendant to such a use.

✚ Standards

- Establish affirmative standards for the use, either generally applicable or specific to the use or both (*careful: savings clause that simply provides that it is a special exception/conditional use may result in no applicable standards*)
- Standards must be clear, rational, not excessive
- Standards “pulled out of thin air” are ripe for challenge
- Standards that effectively zone an otherwise permitted use out of a municipality also are ripe for challenge



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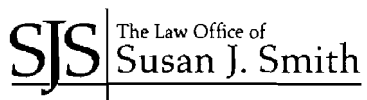
SUBDIVISION AND LAND DEVELOPMENT – REGULATING THE IMPROVEMENT OF LAND **(MPC ARTICLE V)**

✦ Scope of regulatory Authority

- regulates the improvement of land contemporaneously with other law and regulations -- federal (ex. NPDES permit), state (ex. Highway Occupancy Permit) and municipal (ex. County Sedimentation and Erosion Control Plan approval; local stormwater management ordinance; etc.)

✦ “Land development” – or not?

- MPC defines “land development” as:
 - (1) The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:
 - (i) a group of two or more residential or nonresidential buildings... ; or
 - (ii) the division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features.
 - (2) A subdivision of land
 - (3) Development in accordance with Section 503(1.1) [providing for exclusions]
- recent court decisions held that structures and buildings not occupied for residential or commercial use and not involving streets, utilities, roads, etc. or other “traditional” features do not fall within the definition of “land development”
 - ✓ telecommunications towers
 - ✓ billboards
 - ✓ solar farm?
 - ✓ wind turbine or wind farm?



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