

PURPOSE OF MUNICIPAL ZONING

The Pennsylvania Municipalities Planning Code (PaMPC) defines the purposes of zoning ordinances within the State of Pennsylvania. Section 604 of the PaMPC provides the framework by which zoning ordinances can be created, which includes protection of public health, safety, and general welfare.

This section of the MPC goes on to provide specific purposes for zoning ordinances, as follows:

1. To promote, protect and facilitate any or all of the following: the public health, safety, morals, and the general welfare; coordinated and practical community development and proper density of population; emergency management preparedness and operations, airports, and national defense facilities, the provisions of adequate light and air, access to incident solar energy, police protection, vehicle parking and loading space, transportation, water, sewerage, schools, recreational facilities, public grounds, the provision of a safe, reliable and adequate water supply for domestic, commercial, agricultural or industrial use, and other public requirements; as well as preservation of the natural, scenic and historic values in the environment and preservation of forests, wetlands, aquifers and floodplains.
2. To prevent one or more of the following: overcrowding of land, blight, danger and congestion in travel and transportation, loss of health, life or property from fire, flood, panic or other dangers.
3. To preserve prime agriculture and farmland considering topography, soil type and classification, and present use.
4. To provide for the use of land within the municipality for residential housing of various dwelling types encompassing all basic forms of housing, including single-family and two-family dwellings, and a reasonable range of multifamily dwellings in various arrangements, mobile homes and mobile home parks, provided, however, that no zoning ordinance shall be deemed invalid for the failure to provide for any other specific dwelling type.
5. To accommodate reasonable overall community growth, including population and employment growth, and opportunities for development of a variety of residential dwelling types and nonresidential uses

LAND USES IN MUNICIPAL ZONING ORDINANCES

Municipalities are required by the PaMPC to provide for all land uses within their corporate boundaries. This includes all housing, commercial, and industrial uses. Municipalities cannot exclude particular land uses from their community. All land uses must be accommodated somewhere in a municipality (e.g., industrial, landfills, cell phone towers, adult uses, and penal institutions).

Not providing for a particular land use can result in a zoning validity challenge, such as a claim that the **zoning ordinance is exclusionary**.

EXCLUSIONARY ZONING

Exclusionary zoning is the utilization of zoning ordinances to exclude certain uses, whether entirely or in part. Exclusionary zoning challenges typically result from the exclusion of specific types of housing but can also include the exclusion of non-residential uses as well.

Two types of exclusions exist.

1. De jure or total exclusion is where a zoning ordinance prohibits or fails to make provisions for a particular use. In this circumstance, a land use is not permitted by a municipality, which is an example of unlawful exclusion.
2. De facto or partial exclusion is when an ordinance permits a specific use but fails to provide sufficient land or negates the practical development of that use. This type of exclusion typically relies upon the “fair share” doctrine. If a municipality provides too little land to accommodate a land use for which demand is forecast, the zoning ordinance could be considered exclusionary. If a municipality permits a land use but through its regulations prohibits the practical development of that use, it could also be considered exclusionary.

FAIR SHARE

Not only are municipalities required to provide for all land uses within their corporate boundaries, but they must also provide for their “**fair share**” of a use. Fair share implies that municipalities provide enough land to accommodate their portion of the demand in a given area. This doesn’t imply vacant land, but rather land that can support growth. Fair share challenges are typically in regard to residential uses, but non-residential uses can also be the subject of a fair share challenge.

In the case of *Surrick v. Upper Providence Township* (1974), in what is now recognized as a landmark decision for determining whether a zoning ordinance disproportionately and unconstitutionally precludes multi-family dwellings, the Pennsylvania Supreme Court set forth a three-step multi-factor test as well as the scope of judicial review for claims alleging this defect.

That three-step multi-factor test is as follows:

1. A review is made to determine if the community is a logical area for development and population growth, including a consideration of the community’s proximity to a large urban area and the region’s population growth.
2. After establishing that the community is in the path of growth, the present level of development within the community is examined.
3. In deciding whether a community has met its “fair share” obligations, the court is to review a number of factors, including:
 - a. Current population growth and pressures within the community and region;
 - b. The percentage of land available under the zoning ordinance for the use in question;
 - c. The amount and percentage of undeveloped land in the particular community; and
 - d. The extent of such use that can be accommodated under the existing zoning ordinance

SPOT ZONING

Spot zoning was defined by the Pennsylvania Department of Community and Economic Development as “a singling out of one lot or small area for different treatment from that accorded to similar surrounding land from which it is indistinguishable in character for the economic benefit (or detriment) of the property owners.” Another key element of spot zoning is that it is usually at odds

with a community's comprehensive plan. Spot zoning may be ruled invalid as an "arbitrary, capricious and unreasonable treatment" of a limited parcel of land by a local zoning ordinance.

PRESUMPTION OF VALIDITY

In Pennsylvania, the courts treat zoning as a legislative act and accord land use regulations with them a presumption of validity. A zoning ordinance is presumed valid once enacted and the burden lies with the challenger, who must provide prima facie evidence that the ordinance is exclusionary, unreasonable or not substantially related to the police power interest the ordinance is meant to serve. If a challenger is successful in meeting this burden, the burden of proof then shifts to the municipality to show that the validity of the zoning or rezoning is fairly debatable. "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control.

WHAT IS A ZONING VALIDITY CHALLENGE?

In 1926, the United States Supreme Court ruled in the landmark case of the City of Euclid, Ohio v. Amber Realty Co. that zoning ordinances, regulations and laws are a legitimate use of a community's police powers so long as the regulations provide a benefit to public welfare. While zoning was ruled by the Supreme Court to be an appropriate use a community's policing power, the validity of any zoning ordinances can be subjected to legal challenges. Common validity challenges, which include spot zoning, fair share, exclusionary, substantive due process, irrationality, and equal protection.

EQUAL PROTECTION

The 14th amendment of the United States Constitution provides, in part, that "no State shall...deny to any person within its jurisdiction the equal protection of the laws." Equal protection does not imply that everyone is treated the same but means that any law should treat similarly situated persons similarly. There are numerous examples of cases in Pennsylvania where the courts found that zoning violated the equal protection clause.

In Hopewell Township Board of Supervisors v. Golla (1982), the Pennsylvania Supreme Court found that the Township's agricultural zoning ordinance violated the equal protection clause since it treated owners of large lots less favorably than owners of small lots.

DUE PROCESS

Amendment V of the U.S. Constitution provides, in part, that "no person shall be . . . deprived of life, liberty, or property, without due process of law." This mandate applies to the State and local governments through the Fourteenth Amendment, which provides in part: "... nor shall any state deprive any person of life, liberty, or property without due process of law." This clause of the Constitution has come to protect individuals from arbitrary governmental action, no matter what level of government is acting.

There are two types of due process afforded by the constitution, procedural and substantive.

1. Procedural due process in regard to land use regulations requires a fair and open process.

2. Procedural due process ensures that decisions are reached in a fundamentally fair manner.

The PaMPC specifies the actions that municipalities must take in order to adopt or amend land use regulations, including public notices and hearings. Following these steps helps to ensure that procedural due process was provided to property owners in a municipality.

In addition to meeting the minimum requirements of the PaMPC, providing opportunities for public comment, presenting of evidence, barring ex-parte contact, keeping a written record, and other common practices helps ensure that procedural due process is provided. In regard to zoning, the courts have interpreted substantive due process to mean that land use controls must advance legitimate governmental interests that serve the public health, safety, morals, and general welfare.

Substantive due process requires that:

1. There is a valid public purpose for the regulation;
2. The means adopted to achieve that purpose is substantially related to it; and,
3. The impact of the regulation upon the individual not be unduly harsh.

Determining whether the regulation serves the general welfare of the community is the primary issue to consider in regard to substantive due process.

IMPACT OF A SUCCESSFUL CHALLENGE

A successful zoning validity challenge invalidates restrictive, exclusionary, or unreasonable land-use regulations, often forcing municipalities to amend ordinances to comply with state laws or constitutional due process. It allows developers to proceed with projects. Municipalities, its taxpayers and elected officials may face significant fines, penalties, and remedial costs. While the challenge itself is a civil, legal action, failing to comply with zoning regulations can lead to cumulative penalties.