

Comparing Zoning and Subdivision and Land Development (SALDO) Ordinances

Silver Lake Township
Ad Hoc Committee for Land Use Planning

Work Session
January 14, 2009 7:30pm

Background

- This committee has experienced occasional frustrations in obtaining answers to fundamental questions regarding land use planning
- Attempt to educate ourselves and the community as a whole on the various issues of concern to the committee
 - Locate valid sources of information
 - Where appropriate, cite location and section of code or references

Current Questions to Answer

- Three questions posed within the committee:
 - What is the difference between a subdivision ordinance and a zoning ordinance?
 - Can a subdivision ordinance include the requisite clauses to effect zoning?
 - Can land use regulation be enacted through many different ordinances rather than with one unified zoning ordinance?

Sources

- Municipal Planning Code (53 P.S. § 10101-11201)
- Ryan, Robert S., Esq., Pennsylvania Zoning Law and Practice, 2009 edition, George T. Bisel Inc., Philadelphia, 2009.
 - Widely recognized and highly recommended reference

Observations

- The terms ‘zoning’ and ‘land use regulation’ are functionally equivalent.
 - “If it looks like a duck, walks like a duck, and talks like a duck, (quack!) then it’s probably a duck.”
- “...Land use regulations have spread over the years so that it is rare to find a Pennsylvania municipality of any size which does not now have both [subdivision and zoning ordinances].” (Ryan § 11.1.1)

What does the SALDO cover?

- SALDO: Subdivision And Land Development Ordinance
- “.. is usually concerned with the creation of new property lines and the provision of improvements designed to serve the development of land.” (Ryan § 11.1.1)

SALDO Definitions

- Subdivision: “the creation of a new lot line (or a change in the existing line) dividing a lot or tract into two or more parcels for the present or future purpose of a development, leasing, or transfer of ownership.” (Ryan § 11.1.2; 53 P.S. § 10107(a))

SALDO Definitions

- Land Development: “any ‘improvement’ of land involving two or more residential buildings or any one nonresidential building.”
(Ryan § 11.1.2; 53 P.S. § 10107(a))

Subdivision vs. Zoning

- Can be significant overlap between the two as a result of the definition of “land development” in the current incarnation of the MPC (Municipalities Planning Code)
- The MPC “continue[s] the Pennsylvania tradition of centering land-use controls in the zoning ordinance.” (Ryan § 11.1.7)

Subdivision vs. Zoning

- “Pennsylvania traditionally has treated subdivision and zoning as separate subjects, and this separation is confirmed in Articles V and VI of the [Municipalities Planning] Code.” (53 P.S. § 10501 et. seq; 53 P.S. § 10601 et. seq., Ryan § 11.1.3)
- “..most importantly, the Code makes a clear dichotomy between the content of a subdivision ordinance and the content of a zoning ordinance.” This has been affirmed by the courts on numerous occasions (Ryan § 11.1.3)

Subdivision vs. Zoning

- Courts have affirmed limitations on subdivision ordinances to subjects set forth in Article V of the MPC:
 - “Division of land, provision of streets, easements, common lands, and improvements needed to support development.” (Ryan § 11.1.3)
- “Municipalities without zoning may only add to the list...uniform minimum setbacks and lot sizes throughout the municipality ‘based upon the availability of water and sewage.’” (Ryan § 11.1.7)

Zoning Definitions

- “Zoning power extends to regulations involving land use, size, location, and construction of structures, lot areas and yard and open spaces, and density and intensity of use.” (53 P.S. § 10603, Ryan § 11.1.7)

Zoning Caveats

- “Placing zoning regulations in zoning ordinances – rather than in other ordinances – helps the landowner to locate the increasingly complex rules governing the use of land.” (Ryan § 11.1.3)
- “A number of cases have held that ordinances regulating land development or land use and covering subjects that have been traditional objects of zoning...must be enacted as zoning ordinances.” (53 P.S. § 10601-10621; Ryan § 2.2)

Zoning Caveats

- “Where a municipality has explicit authority to regulate a particular business or activity, an ordinance that is tailored toward that objective is not invalid simply because it may involve certain limitations traditionally found in zoning.” (Ryan § 2.2)

However, “..an ordinance designed, at least in part, to “preserve the residential character of neighborhoods,” which regulated “bottle” clubs and limited hours of operation if they were located within 500 feet of a residence or church” was held by the court to be an improperly enacted zoning ordinance. (Ryan § 2.2)

The Law: SALDO vs. Zoning

(53 P.S. § 10501 et. seq. and 53 P.S. §10601 et. seq.)

- SALDO covers:
 - Division of land
 - Provision of streets
 - Easements
 - Common lands
 - Improvements needed to support development
- May also cover:
 - Uniform setbacks
 - Uniform minimum lot sizes
- Zoning covers:
 - Land use
 - Size, location, and construction of structures
 - Lot areas
 - Yard areas and open spaces
 - Density and intensity of land use

The Law: Role of SALDO and Zoning

- Subdivision and zoning are two separate municipal functions under the law.
- The means by which each type of ordinance is enacted, as well as how each type of ordinance is enforced, differs significantly under the law.

The Law: Enacting Zoning

- Attempting to ‘fragment’ land use regulations traditionally found under the province of zoning into many small ordinances has been an approach previously rejected by the courts except where specific statutory authority otherwise exists permitting a municipality to regulate an activity or land use (e.g. a ‘junkyard’ ordinance.)

Answers to Current Questions

- Three questions posed within the committee:
 - What is the difference between a subdivision ordinance and a zoning ordinance?
 - A) Subdivision enables development; Zoning regulates the size, use, and intensity of use
 - Can a subdivision ordinance include the requisite clauses to effect zoning?
 - A) No; each ordinance has a specific function under the law.
 - Can land use regulation be enacted through many different ordinances rather than with one unified zoning ordinance?
 - A) Land use regulation must be enacted under a zoning ordinance except in few limited and specific instances.

Questions/Comments

- Committee Work Session Questions or Comments
- Public Comment may be addressed to the Committee via mail or courier, or via e-mail at:
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