

Brian Temple Comments
Zoning Ordinance 144

106. PURPOSE AND COMMUNITY DEVELOPMENT OBJECTIVES

The purpose of this Zoning Ordinance shall be designed:

A. To promote, protect and facilitate one or more of the following: The public health, safety, morals, general welfare, coordinated and practical community development, proper density and population, civil defense, disaster evacuation, airports, and national defense facilities, provisions of adequate light and air, police protection, vehicle parking and loading space, transportation, water and sewerage, schools, public grounds and parks and other public requirements as well as:

B. 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. This Zoning Ordinance has been made in accordance with an overall guiding Plan which has given consideration to the character of the municipality, its various parts, the suitability of the various districts for particular uses and structures and the various legal decisions respecting the types of housing required.

Comments: How can anyone with a straight face say allowing Multi-family dwellings in the CR district with no density requirements, no review of the traffic impact of total buildout be practical community development. What Plan was this Zoning Ordinance made in accordance with?

301. GENERAL CLASSIFICATION

For the purpose of this Ordinance, the Borough of Indian Lake is hereby divided into classes of Districts which are designated as follows:

Residence Districts: R-1 Single Family Detached Dwelling

R-2 Mobile Homes, Condominium, Multiple Family or Row Dwellings

Business Districts: C-R Commercial Recreational

Comments: The CR district should at a minimum be labeled "Mixed Use Districts".

304. MINIMUM LIVING AREA FOR DWELLING UNITS

In R-1 Districts the minimum living area of private dwellings shall be Twelve Hundred (1200) square feet on the first floor exclusive of porches, basements and garages. In R-2 Districts the minimum area of dwelling unit whether a single family, two family or row dwelling shall be Nine Hundred (900) square feet of living area exclusive of porches, basements and garages. In any "A" Frame type structure the loft area may not be included in calculating the square feet of living area. Mobile Homes in a designated Mobile Home District must have a minimum of Six Hundred Fifty (650) square feet of living area exclusive of porches, basements and garages.

Comments: There is no minimum living area in the CR district listed in this section, yet they include living areas for all other residential districts.

ARTICLE FIVE. PROVISION GOVERNING RESIDENTIAL DISTRICTS

"R-1" – Single Family Detached Dwellings, D. Lot Area.

The minimum lot area for any building hereafter erected or altered shall be as follows:

1. The same size with the same dimensions as shown on the plot plan of the original developer;
or

2. where any lot is subdivided from an existing larger tract within the Borough as permitted by Article Twelve of this ordinance, the lot must be a minimum of three-fourth (.75) acre in size with a minimum road frontage which meets or exceeds the Somerset County Zoning Ordinance requirements. For lake lots, the lake frontage must be at least one hundred (100) feet.

"R-2" Mobile Homes, Condominium, Multiple Family or Row Dwellings, C. Lot Area.

The minimum land area for a Multi-Family or Row Dwelling in an R-2 District shall be not less than twenty five thousand (25,000) square feet per unit. The minimum land area for a

Condominium Dwelling shall be not less than fifteen thousand (15,000) square feet per unit. For Row and Condominium Dwellings, this area is to be determined by dividing the total land area owned in common by residents of the Row or Condominium Dwelling by the number of units that participate in the joint holding of the land.

Comments: There is lot area (density) given for each residential district.

ARTICLE EIGHT. PROVISIONS GOVERNING RECREATIONAL DISTRICTS

C-R Commercial Recreational

801. USE

The Commercial Recreational Districts are intended to govern the three major recreational land areas within Indian Lake Borough; i.e., the Peninsula Golf Course Area, the Public Golf Course Area and the Indian Lake Lodge Area. For these Areas, any uses not conforming to this Ordinance but which are presently existing, or uses which conformed to the Borough Zoning Ordinance in effect when the permit for construction was issued, are considered non-conforming uses that are accepted as prior existing uses under this Ordinance. Additionally, uses subject to prior contractual commitments by the Borough are considered conforming for purposes of this Ordinance.

Comments: Contract and Spot zoning to the property owners who have contractual commitments from the Borough.

C. Lot and Yard Areas. 2. Condominium and Multi-Family Dwellings.

Comments: No lot area (density) is stated in the ordinance.

907. CHANGES, AMENDMENTS, AND SPECIAL EXCEPTIONS

Whenever it shall be deemed desirable in order to meet the public needs, promote the general convenience and welfare, conform with good zoning practices, correct errors, and in furtherance of the intent and purpose of this Ordinance, and adhere to the guiding plans and principles and the community objectives, the Borough of Indian Lake may by Ordinance after report thereon by the Planning Commission and subject to the procedures outlined herein amend, supplement or change the regulations, district boundaries or classifications of properties now or hereafter established by this Ordinance; and the Zoning Board may grant special exceptions as provided for in Article Ten. Changes, amendments or special exceptions may be initiated in the following manners:

A. The Planning Commission may initiate action or changes or amendments by filing a report to the Borough Council of the Borough of Indian Lake.

B. The owner or owners of fifty one percent (51%) or more of the frontage of the properties and fifty one percent (51%) of the number of properties between two intersecting streets, proposed to be changed or amended, may submit a petition, acknowledged in due form before a Notary Public, to the Borough Council of the Borough of Indian Lake.

C. The owner of a tract of land may submit a petition, acknowledged in due form before a Notary Public, for consideration of a special exception as provided for in Article Ten. Such petition shall be made to the Zoning Hearing Board. The procedure upon such petition shall be as set forth in Article Eleven.

Comments: This is the same language as in Ordinance 99, so how does a "Zoning Committee" make recommendations to change ordinance? MPC does not require that changes be prepared by the Planning Commission but that they must have 30 days for an opportunity to submit recommendations.

909. ACTION BY THE INDIAN LAKE BOROUGH COUNCIL ON PETITION FOR MAP CHANGE OR AMENDMENT

A. Referral to the County Planning Commission. At least thirty (30) days prior to the public hearing on a Petition for Map Change or Amendment, the Borough Secretary shall submit the

proposed Petition for Map Change or Amendment to the Somerset County Planning Commission for recommendations. The recommendations of the County Planning Commission shall be advisory only, and non-binding.

Comments: This is the same language as in Ordinance 99, the section was titled “ACTION BY THE INDIAN LAKE BOROUGH COUNCIL”. Was the amendment sent to the County P.C. for review? Because the title has now changed what is the procedure for an amendment that is done in-house (planning commission) and not by a petition?

911. FINAL REPORT OF THE PLANNING COMMISSION

A. Within thirty (30) days following the public hearing for changes to the Official Zoning Map, the Planning Commission shall review all material, data, testimony, and facts submitted for consideration in the petition for change and submit a final report to the Borough Council setting forth its recommendation for or against the change based on whether the change is consistent with the intended use of the land and purpose of this Ordinance as expressed in Article One, Section 106.

B. If the Planning Commission fails to file such a report within the specified time in the specified manner, it shall be presumed that the Planning Commission has no comment on the proposed Petition for Map Change. In any case, the recommendation of the Planning Commission shall be regarded as advisory in nature and shall not be binding on the Borough Council.

Comments: Where does this requirement come from, the MPC requires in Section 609(g) “Within 30 days after enactment, a copy of the amendment to the zoning ordinance shall be forwarded to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.” This is not included in this section anywhere and I am not sure if it was done.

Furthermore this “final report” was not done in the adoption of this ordinance and the language in Ordinance 99 required the same action although it read, “The Commission shall make a final report on each bill setting forth in detail wherein public necessity, convenience and the general welfare of the municipality do or do not justify the proposed change and determining that the change is or is not in accordance with the general objectives of the then existing Comprehensive Plan and good zoning practices.” How can they comment on the Comp. Plan when one does not exist and it what good zoning practice did this occur.

ARTICLE TWELVE. PLANNED RESIDENTIAL COMMUNITIES

1203. GOVERNING REGULATIONS

The following regulations and requirements shall govern Planned Residential Communities. The minimum subdivided parcel or tract size to be developed shall be more than two (2) acres in area. Additionally, the permitted uses and types of buildings shall be limited to the following:

A. Single Family detached dwellings on individual lots are permitted on platted lots zoned as R-1, which must conform to the requirements set forth in Article Three and Five of this Ordinance.

B. Multi-Family and Row Dwellings, which conform to the provisions of Sections Three and Five of this Ordinance are permitted on platted lots zoned as R-2; however, the jointly held property may not be built upon except as permitted by Section 502 of this Ordinance. Where the jointly held property abuts the natural shoreline of Indian Lake, boat docks are permitted only by Special Exception as detailed in Section 1002 of this Ordinance.

Comments: There is no provision in this entire section that would permit PRC within the CR district.

Pennsylvania Municipalities Planning Code

Article V Subdivision and Land Development. Section 503 Content of Subdivision and Land Development. Subsection (4.1) states: “Provisions which apply uniformly throughout the municipality regulating minimum setback lines and minimum lot sizes which are based upon the availability of water and sewage, in the event the municipality has not enacted a zoning ordinance.”

Comment: Because Indian Lake Borough has a Zoning Ordinance any lot sizes (density) shall be included in it and not in the County SALDO. See below for section that would apply to municipalities with Somerset County without a Zoning Ordinance.

The Somerset County Subdivision and Land Development Ordinance

ARTICLE V, DESIGN STANDARDS

SECTION 504 LOTS

B. Lot Sizes:

(NOTE: LOT SIZE SHOULD BE CHECKED WITH THE MUNICIPALITY OR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION PRIOR TO LOT DESIGN)

1. In subdivisions and land developments not served by sanitary sewers nor public water facilities, and not required by the Commission to be constructed, each lot shall have a minimum lot area of twenty thousand (20,000) square feet for each unit, and a minimum frontage of sixty (60') feet except that lots which front on the turn-around of permanent dead-end streets shall front on such turn-around for a minimum distance of forty (40') feet.

2. In subdivisions and land developments that have sanitary sewers or public water facilities, or either of the facilities will be constructed or guaranteed to be constructed to serve the subdivision or land development, each lot shall have a minimum lot area of twelve thousand (12,000) square feet for each unit, and a minimum frontage of sixty (60') feet except that lots which front on the turn-around of permanent dead-end streets shall front on such turn-around for a minimum distance of forty (40') feet;

3. In subdivisions and land developments served by sanitary sewers and public water facilities, or the facilities will be constructed or guaranteed to be constructed to serve the subdivision or land development, each lot shall have a minimum lot area of seventy-five hundred (7,500) square feet for each unit, and a minimum frontage of sixty (60') feet except that lots which front on the turn-around of permanent dead-end streets shall front on such turn-around for a minimum distance of forty (40') feet.

Pennsylvania Municipalities Planning Code

Article VI - Zoning

Section 603. Ordinance Provisions.

(b)...may permit, prohibit, regulate, restrict and determine:

(1) Uses of land, watercourses and other bodies of water.

(3) Areas and dimensions of land and bodies of water to be occupied by uses and structures, as well as areas, courts, yards, and other open spaces and distances to be left unoccupied by uses and structures.

(4) Density of population and intensity of use.

(d) Zoning ordinances may include provisions regulating the siting, density and design of residential, commercial, industrial and other developments in order to assure the availability of reliable, safe and adequate water supplies to support the intended land uses within the capacity of available water resources.

Section 604. Zoning Purposes. The provisions of zoning ordinances shall be designed:

(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;

(2) To prevent one or more of the following: overcrowding of land, blight, danger and congestion in travel and transportation,

Section 605. Classifications. In any municipality, other than a county, which enacts a zoning ordinance, no part of such municipality shall be left unzoned. The provisions of all zoning ordinances may be classified so that different provisions may be applied to different classes of situations, uses and structures and to such various districts of the municipality as shall be described by a map made part of the zoning ordinance. Where zoning districts are created, all provisions shall be uniform for each class of uses or structures, within each district, except that additional classifications may be made within any district:

Section 609. Enactment of Zoning Ordinance Amendments.

(a) For the preparation of amendments to zoning ordinances, the procedure set forth in section 607 for the preparation of a proposed zoning ordinance shall be optional.

(b)(1) Before voting on the enactment of an amendment, the governing body shall hold a public hearing thereon, pursuant to public notice. In addition, if the proposed amendment involves a zoning map change, notice of said public hearing shall be conspicuously posted by the municipality at points deemed sufficient by the municipality along the tract to notify potentially interested citizens. The affected tract or area shall be posted at least one week prior to the date of the hearing.

(2)(i) In addition to the requirement that notice be posted under clause (1), where the proposed amendment involves a zoning map change, notice of the public hearing shall be mailed by the municipality at least thirty days prior to the date of the hearing by first class mail to the addresses to which real estate tax bills are sent for all real property located within the area being rezoned, as evidenced by tax records within the possession of the municipality. The notice shall include the location, date and time of the public hearing. A good faith effort and substantial compliance shall satisfy the requirements of this subsection.

(ii) This clause shall not apply when the rezoning constitutes a comprehensive rezoning.

(c) In the case of an amendment other than that prepared by the planning agency, the governing body shall submit each such amendment to the planning agency at least 30 days prior to the hearing on such proposed amendment to provide the planning agency an opportunity to submit recommendations.

(d) If, after any public hearing held upon an amendment, the proposed amendment is changed substantially, or is revised, to include land previously not affected by it, the governing body shall hold another public hearing, pursuant to public notice, before proceeding to vote on the amendment.

(e) If a county planning agency shall have been created for the county in which the municipality proposing the amendment is located, then at least 30 days prior to the public hearing on the amendment by the local governing body, the municipality shall submit the proposed amendment to the county planning agency for recommendations.

(f) The municipality may offer a mediation option as an aid in completing proceedings authorized by this section. In exercising such an option, the municipality and mediating parties shall meet the stipulations and follow the procedures set forth in Article IX.

(g) Within 30 days after enactment, a copy of the amendment to the zoning ordinance shall be forwarded to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.

Section 610. Publication, Advertisement and Availability of Ordinances.

(a) Proposed zoning ordinances and amendments shall not be enacted unless notice of proposed enactment is given in the manner set forth in this section, and shall include the time and place of the meeting at which passage will be considered, a reference to a place within the municipality where copies of the proposed ordinance or amendment may be examined without charge or obtained for a charge not greater than the cost thereof. The governing body shall publish the proposed ordinance or amendment once in one newspaper of general circulation in the municipality not more than 60 days nor less than 7 days prior to passage. Publication of the proposed ordinance or amendment shall include either the full text thereof or the title and a brief summary, prepared by the municipal solicitor and setting forth all the provisions in reasonable detail. If the full text is not included:

(1) A copy thereof shall be supplied to a newspaper of general circulation in the municipality at the time the public notice is published.

(2) An attested copy of the proposed ordinance shall be filed in the county law library or other county office designated by the county commissioners, who may impose a fee no greater than that necessary to cover the actual costs of storing said ordinances.

(b) In the event substantial amendments are made in the proposed ordinance or amendment, before voting upon enactment, the governing body shall, at least ten days prior to enactment, readvertise, in one newspaper of general circulation in the municipality, a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.

(c) Zoning ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein.

Section 916.1. Validity of Ordinance; Substantive Questions.

b) Persons aggrieved by a use or development permitted on the land of another by an ordinance or map, or any provision thereof, who desires to challenge its validity on substantive grounds shall first submit their challenge to the zoning hearing board for a decision thereon under section 909.1(a)(1).

(c) The submissions referred to in subsections (a) and (b) shall be governed by the following:

(5) Based upon the testimony presented at the hearing or hearings, the governing body or the zoning board, as the case may be, shall determine whether the challenged ordinance or map is defective, as alleged by the landowner. If a challenge heard by a governing body is found to have merit, the governing body shall proceed as provide in section 609.1. If a challenge heard by a zoning hearing board is found to have merit, the decision of the zoning hearing board shall include recommended amendments to the challenged ordinance which will cure the defects found. In reaching its decision, the zoning hearing board shall consider the amendments, plans and explanatory material submitted by the landowner and shall also consider:

(i) the impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;

(ii) if the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the ordinance or map;

(iii) the suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, flood plains, aquifers, natural resources and other natural features;

(iv) the impact of the proposed use on the site's soils, slopes, woodlands, wetlands, flood plains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and

(v) the impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.

GENERAL IDEAS and COMMENTS

What Constitutes Spot Zoning. Spot zoning is arbitrary and unreasonable zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan. It is for private gain designed to benefit a particular individual or group and not the welfare of the community as a whole, and is unlawful. ‘Spot zoning,’ as properly known and understood, and ‘spot zoning’ ordinances, as properly identified, are invalid on the general ground that they do not bear a substantial relationship to the public health, safety, morals and general welfare and are out of harmony and in conflict with the comprehensive zoning ordinance of the particular municipality. It is zoning provisions adopted to control the use of a specified area of land without regard to the relationship of those land use controls to the overall plan and the general welfare of the community.

What Constitutes Contract Zoning. A practice that allows a property owner to enter into a written agreement with the local government to rezone certain areas of land, on the condition that the limitations or restrictions set by the town for those parcels are accepted by the owner. The conditions would not necessarily be applied to other similarly zoned parcels. In essence it is an agreement between a property owner and a zoning authority, which binds the property owner to special restrictions on the use of the property and, in turn, binds the local zoning authority to grant the rezoning.

A contract made by a zoning authority to zone or rezone or not to zone is illegal and the ordinance is void because a municipality may not surrender its governmental powers and functions or thus inhibit the exercise of its police or legislative powers. *State ex rel. Zupancic v. Schimenz*, 46 Wis.2d 22, 174 N.W.2d 533 (1970).

The Reserved Powers Doctrine. A municipality may not “contract away its police power” or exercise power that is “reserved” for future legislatures (*i.e.*, the power to change the law). How then can a municipality agree not to change presently applicable zoning or other land use laws governing the development process? In many jurisdictions, (Connecticut, New Jersey, New Hampshire, and Pennsylvania, for example) courts have found that such agreements constitute “contract zoning” and are invalid *per se*. Finding a variance conditioned on certain use restrictions to be invalid, a New Jersey court stated: “Zoning is an exercise of the police power to serve the common good and general welfare. It is elementary that legislative function may not be surrendered or curtailed by bargain or its exercise controlled by the considerations which enter into the law of contracts.” *V. F. Zahodiakin Eng’g Corp. v. Zoning Bd. of Adjustment*, 86 A.2d 127, 131 (N.J. 1952).