

**NORTHERN TIER COALITION
RESPONSE TO COMMENTS SUBMITTED BY
BOB WERT
ON THE PROPOSED ZONING ORDINANCE**

I. Observation Regarding the Hearing Notice

The www.ntc-susq.org includes a link to www.communityplanning.biz.

II. Observations and Suggestions Regarding the Hearing & Approval Process

The zoning ordinance development process was initiated in 2005 and the NTC has conducted regular monthly meetings and work sessions open to the public since then.

A *Cooperative Zoning Fact Sheet* was issued in May 2005.

Prior to the current round of hearings, public meetings were conducted on January 23, 2007, January 30, 2007 and April 30, 2007.

NTC will conduct additional public meetings, but will not provide individual notice to all property owners.

III. General Comments Regarding the “Guide to using this Zoning Ordinance”

Posting the ordinance, maps and fees on the Internet is a good idea.

IV. Observations Regarding . . . Wind Energy Facilities

Wind energy facilities are allowed in the RA District which includes most of the NTC area. The standards in §858 are consistent with the standards adopted by other municipalities and are based on several model ordinances including the one provided by PA DEP.

NTC can certainly reevaluate the standards in terms of setbacks, height and other criteria which may be too restrictive.

It is not clear which provisions specifically restrict new technology.

The definition of *wind energy facility* excludes accessory wind turbines sized for individual structures.

Will add *accessory wind turbine generator* as an accessory use in all districts and the following definition: *Wind Turbine Generator, Accessory: A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower, and pad transformer, if any, and which is sized and intended to be used to generate electricity for the principal structure to which it is accessory.*

Proposed new section:

859 Wind Turbine Generators, Accessory

An accessory wind turbine generator is a wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower, and pad transformer, if any, and which is sized and intended to be used to generate electricity for the principal structure to which it is accessory. Accessory wind turbine generators are permitted in all districts only in compliance with the following:

A. Setback

1. No part of the wind turbine generator structure shall be located closer to any property line or road-right-of-way than the two-thirds (2/3) of the height of the structure as measured from the highest point of the rotor

plane.

2. Guy wire anchors shall not extend closer than ten (10) feet to any property line or road-right-of-way.

- B. Noise - Noise from the accessory wind turbine generator shall comply with §701.6. The level, however, may be exceeded during short-term events such as utility outages and/or severe wind storms.
- C. Uniform Construction Code - Applications for accessory wind turbine generators shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings documenting compliance with the Uniform Construction Code. The generator and support structure shall be installed in accord with all Uniform Construction Code and manufacturer requirements.
- D. Compliance with FAA Regulations - Accessory wind turbine generators shall comply with applicable FAA regulations.

V. Observations Concerning Article I

Zoning ordinances do, in fact, *permit, prohibit, regulate, restrict and determine* as noted in §101.1, and to imply otherwise would be misleading. Zoning must *permit, prohibit, regulate, restrict and determine* to achieve the purposes in §102 which mirror §604 of the Pennsylvania Municipalities Planning Code (MPC).

§104 - Proposed change:

In interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, morals, and the general welfare of the Township and its citizens, and is not intended to interfere with or abrogate or annul any pre-existing or vested property rights. It is not intended to interfere with or abrogate or annul other rules, regulations, or ordinances of the Borough/Township except that where this Ordinance imposes a greater restriction upon the use of buildings or premises or upon the height of a building, or requires larger open spaces than are imposed by such other rules, regulations, or ordinances, the provisions of this Ordinance shall control.

§201 - Proposed change:

This statement of the Community Development Objectives is included under the authority of §606 of the Pennsylvania Municipalities Planning Code. The Community Development Objectives include, ~~but are not limited to the following:~~

§202 - The NTC Comprehensive Plan was adopted following a concerted public participation effort including residents surveys and public meetings.

VI. Observation Regarding the Proposed Adoption . . .

The operative word is *typically*. The NTC discussed the SALDO vs Zoning sequence and decided to proceed with zoning first given that the County SALDO is applied in the NTC municipalities.

MPC §303,c states: *Notwithstanding any other provision of this act, no action by the governing body of a municipality shall be invalid nor shall the same be subject to challenge or appeal on the basis that such action is inconsistent with, or fails to comply with, the provision of a comprehensive plan.*

VII. Article III - Definitions

The zoning ordinance includes an extensive definitions section, but absent a specific reference . The Latest Illustrated Book of Development Definitions is a generally accepted source, but other sources would be appreciated.

Agricultural Use - This definition is from the MPC and includes all crops.

Agricultural Products Processing - Mineral processing is a separate use.

Bed and Breakfast - See also definition of *recreation facilities, commercial*.

Crop Production - The definition is inclusive. See also definition of *forestry enterprises*.

Driveway - No change proposed. Do not want to conflict with new roads.

Home Occupation - The definition is intentionally restrictive because home occupations are allowed in all districts. In addition, the RA district allows a wide range of commercial uses and covers most of the NTC area.

Junk - Used tires as part of a constructive use would not be considered junk.

On-Site Sewage Storage (Disposal) Facility - The definitions of sewage disposal types are included as a determining factor for the size of new lots. Local municipal and DEP standards govern the construction of on-site sewage treatment facilities.

Public Notice - This definition is from the MPC. §1208.2,B,6 requires mailed notice to contiguous property owners for special exceptions and conditional uses.

Paintball Range - Outdoor - This would be included in *recreation facilities, commercial* and is allowed RA, VC and CI Districts. For clarity, paintball ranges should be added to the definition of *recreation facilities, commercial*.

Distribution facilities and *truck terminals* are allowed in the CI District.

VIII. District Regulations

§901.1 clearly states that nonconforming uses and structures lawfully existing at the time of ordinance adoption have a vested right to continue. Commonwealth case law supports such nonconformity rights.

Zoning, by its very nature, eliminates the potential for certain uses in certain districts.

Any existing buildings on lake shores would be considered nonconforming with the vested right to continue.

The term *generally* in this context means *universally*, but *generally* will be deleted.

The CI District was conceived as an area for more intensive commercial and manufacturing uses where road access and potential for central water supply and central sewage disposal are realistic as compared to the RA District. All uses in the VC District are allowed in the CI District.

IX. Section 504.6 D - Parking Spaces Required

It is not clear which towns in the NTC provide public parking. Most existing businesses in the NTC have off-street parking and on-street parking is normally prohibited on municipal roads, particularly in the townships. Montrose Borough does have parking meters but is not participating in the NTC zoning.

X. Article VI - Residential Standards

§607 - Mobile Home Parks - The RA District is the *certain district*.

§607.2 - Mobile Home Parks - As noted earlier, §901.1 clearly states that nonconforming uses and structures lawfully existing at the time of ordinance adoption have a vested right to continue. Commonwealth case law supports such nonconformity rights.

§610 - Bed and Breakfast Establishments

As noted earlier, §901.1 clearly states that nonconforming uses and structures lawfully existing at the time of ordinance adoption have a vested right to continue. Commonwealth case law supports such nonconformity rights.

B&B's are principal permitted uses in the RA, VC and CI Districts. B&B's in the R District and if within 300 feet of adjoining residential property in the RA District are considered conditional uses to address impacts which may affect adjoining property owners. Specific standards are applied to B&B's to ensure that the size of the B&B is appropriate to the R District. If the specific facility exceeds the B&B standards it can be conducted as a hotel or motel in the RA, VC or CI Districts.

§611 - Hotels, Motels and Lodging Facilities - All of the commercial performance standards in §701 apply.

XI. Article VII - Performance Standards and Environmental Protection

As noted earlier, §901.1 clearly states that nonconforming uses and structures lawfully existing at the time of ordinance adoption have a vested right to continue. Commonwealth case law supports such nonconformity rights.

The standards in Article are reasonable for protection of the rights of property owners adjoining proposed commercial uses and the general public health, safety and welfare.

The NTC determined to be proactive in developing the zoning ordinance instead of waiting until it is critical. Many businesses are happy to have a set of performance criteria that set and standardize the parameters for development. See also Item VI above.

XII. Article VIII - Standards for Specific Uses

§801 - Adult Businesses - Adult businesses are allowed only in the CI District and case law dictates that zoning cannot totally prohibit legal uses.

§809 - Commercial Communication Devices - The following change will be made:

The following regulations shall apply to commercial communication devices (CCD) including but not limited to, cellular phone antennae, antennae for communication service regulated by the PA Public Utility Commission and/or the Federal Communications Commission, and other commercial antennae and associated facilities. Such CCD and support structure and associated facilities shall be permitted only in the districts as provided in this §809 and the Schedule of Uses.

The NTC view this section from the perspective of a neighbor of a proposed communications tower and the general public. The standards are reasonable in terms of requiring collocation and maintaining setbacks.

In cases where the PUC and FCC regulate specific activities, the applicant simply provides confirmation.

§813 - Detention Facilities

The performance standards in Article VII also apply.

Section addition:

813.5 State and Federal Regulations

The Applicant shall provide documentation of compliance with all applicable state and federal regulations governing the proposed detention facility.

§820.3,C Screening

The section specifically requires screening but allows a number of methods to effect it.

The last sentence of the section requires the maintenance of the screening.

§825 - Mineral Extraction - Oil and gas wells will be allowed as conditional uses in all zoning districts except in Silver Lake Township where they will be allowed only in the RA District. No change in other mineral extraction activities.

XIII. Article IX - Nonconformities

§901.1 clearly states that nonconforming properties lawfully existing at the time of ordinance adoption have a vested right to continue. Commonwealth case law supports such nonconformity rights. The term *generally* in this context means *universally*, but *generally* can be deleted.

NTC has attempted to allow a wide range of uses in most of the NTC area and believes the number of nonconforming uses has been minimized. Based on the recent hearings, the number and size of Residential Districts have been scaled back, thereby further reducing the number of potential nonconforming uses. Nevertheless, some nonconforming uses will inevitably be created. Some difficulties with the sale, lease or transfer of commercial nonconforming uses may be experienced, but the NTC believes this has been minimized based on the above.

§901.3 - Registration - Establishing a nonconformity is the responsibility of the landowner and registration is the most direct means of doing so.

§901.4 - Continuation and Change - The section does not *prohibit* expansion, alteration or change of nonconforming uses as stated in the comment. Article IX recognizes the right of nonconformities, but does include reasonable standards to govern changes, expansions, reconstruction, etc., as permitted by case law.

XIV. Administration

§1216.2 Complaints - The following change will be made:

Whenever a violation of this Ordinance occurs, any person may file a complaint in regard thereto. All such complaints must be in writing, including the full name, address and telephone number of the complainant, and shall be filed with the Zoning Officer, who shall record receipt of the said complaint and investigate and report thereon.

§1217 - Penalties and Remedies - This section is what is authorized by §617 of the MPC.

§1218 - Liability - agree.