

Preparing for and Dealing with Potentially Obnoxious Land Uses (POLU)

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What are Potentially Obnoxious Uses (POLU)?

- ❖ Landfills
- ❖ Quarries
- ❖ Medical Waste Facilities
- ❖ Adult Entertainment Establishments
- ❖ Signs

Three Key Tools for Dealing with POLU's

- ❖ Zoning
- ❖ Special Use Permits
- ❖ Waste Management Plans

Zoning district restriction may be used to identify permitted locations of POLU and excluded areas.

The key is identifying zoning districts where POLU's are permitted and also requiring special use permits.

Moratorium on Land Use Application

- May adopt moratorium without complying with the Zoning Procedures Law requirement.

City of Roswell v. Outdoor Systems, Inc., 274 Ga. 130, 549 S.E.2d 90 (2001)

- Moratoriums are used to avoid acquiring vested rights.

Zoning Definition Problems

- Common language: uses which may cause injurious or obnoxious noise, vibration, smoke, gas, fumes, odors, dust, or other conditions objectionable to adjacent or nearby areas.

Lithonia Asphalt Company v. Hall County Planning Commission, 258 Ga. 8, 364 S.E.2d 860 (1988)

- Above language may be used as a performance standard but not basis for permitted uses.

Stanfield v. Glenn County, 280 Ga. 785, 631 S.E.2d 374 (2006)

Special Use Permits

The terms “special use permit” and “conditional use permit” mean essentially the same thing. Both involve a special use authorized by the zoning ordinance, but the ordinance provides that such uses are allowed only upon condition that it’s approved by the appropriate local government subject to meeting certain standards or conditions.

City of Atlanta v. Wansley Moving & Storage Company, 245 Ga. 794, 267 S.E.2d 234 (1980)

Special use permits must be either approved or denied based upon specific standards.

Without standards a special use permit ordinance is unconstitutional.

City of Atlanta v. Wansley Moving & Storage Company, 245 Ga. 794, 267 S.E.2d 234 (1980)

Standards for Special Use Permits may be Objective or Discretionary

- Special Use Permit must be granted if the applicant meets objective standards.

Fulton County v. Bartenfeld, 257 Ga. 766, 363 S.E.2d 555 (1988)

- Discretionary standards give the local governing body discretion when deciding whether to grant a permit.

Examples of Discretionary Standards

- The board may give a particular emphasis to the evaluation of the characteristics of the proposed use in relation to the immediate neighborhood and compatibility of proposed use with the neighborhood.

Gwinnett County v. Ehler Enterprises, 270 Ga. 570, 512 S.E.2d 239 (1999)

“The benefits of and need for the proposed [land use] are greater than any possible depreciating effects and damages to the neighboring properties.”

**Suddeth v. Forsyth County, 258 Ga. 773,
373 S.E.2d 746 (1988)**

Specific Special Use Permit Standards to Consider

- ❖ Area of property
- ❖ Distance from residential use
- ❖ Access to major arterial roadways
- ❖ Buffer requirement

Landfills and Georgia Solid Waste Management Act

- A local government must develop a comprehensive solid waste management plan.

O.C.G.A. § 12-8-31.1

- For qualify for permit from EPD, a landfill must be consistent with the local zoning ordinance and consistent with the local solid waste management plan.

O.C.G.A. § 12-8-24(g)

Local governments are authorized to consider factors other than environmental and land use factors in its solid waste management plan.

Factors in a solid waste plan must relate to the public health, safety and welfare.

For example, a local government may consider impacts of current solid-waste management facilities, impacts on collection and disposal capability and environmental impacts on a municipal solid-waste landfill.