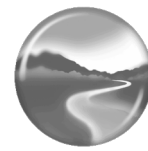


Agricultural Protection Zoning



PENNSYLVANIA
LAND TRUST
ASSOCIATION

Agricultural Protection Zoning (APZ) preserves the availability of agricultural lands for farming and thus the agricultural base of the community by constraining non-agricultural development and land uses in designated areas.

Prefatory Sections 1

Introduction 2

Characteristics of Good APZ Candidates 2

Purposes of APZ Districts 3

Advantages and Disadvantages 3

Implementation of APZ 4

Updating the Comprehensive Plan and Zoning Ordinance 4

Basic Approaches to APZ 4

Specifics to Address in APZ Districts 6

Integrating APZ into the Zoning Ordinance and Map 7

Supporting Data for APZ 7

Case Study: Lower Heidelberg Township 8

Municipalities Planning Code References to

Agricultural Protection 9

MPC on Comprehensive Plans 9

MPC on Zoning 9

APZ and Land Values 9

Record of Success 10

APZ Adopted by Many Municipalities in Past Four Decades 10

Validity Upheld by the Courts 11

Other Agricultural Preservation Tools to Consider in Conjunction with APZ 11

Tools Described at ConservationTools.org 11

Other Tools 12

Related Resources at ConservationTools.org 13

Prefatory Sections

Typical End Users

Local government

Municipalities and counties can incorporate APZ into their zoning ordinances. Agricultural Protection Zoning is typically used by municipalities that contain and want to protect substantial areas of contiguous farmland and activities supporting local farming.

Track Record

Some municipalities in Pennsylvania have had effective agricultural zoning in place for nearly four decades.

APZ was first used in Pennsylvania in Lower Heidelberg Township, Berks County, in 1973. By 1993, 93 municipalities had adopted APZ, covering 725,000 acres, or 10% of land in farms in Pennsylvania. APZ continues to be adopted by municipalities, particularly in Berks, Lancaster, Chester, and York Counties, where the county planning commissions have supported adoption of such zoning through technical assistance, distribution of model ordinances and financial assistance. Today, in Berks and Lancaster County alone, 65 municipalities have adopted APZ Districts protecting over 482,000 acres. In those counties, even though there has been some attrition of individual farms to development because of rezoning or zoning relief via the zoning hearing board, the general trend is toward more municipalities adopting such zoning and an increase in the total number of acres protected.

Conservation Impact

- APZ can protect cropland and pastureland including prime and statewide important soils from development for considerable periods of time. Some municipalities in Pennsylvania have had agricultural zoning in place for nearly four decades.
- However, because zoning can be changed, and since undoing protections is far easier than establishing them, APZ protections are less secure than those provided by [conservation easements](#).

What You'll Need

- A recently adopted municipal, multi-municipal, or county comprehensive plan that includes

Agricultural Protection Zoning

strong goals and policies in support of continued agriculture.

- A governing body with the will to enact APZ.
- The support of and buy-in of farmers in the municipality from early on in the process is desirable. Where some farmers are vocally opposed to such zoning, it is important that other farmers, conservationists, and other segments of the community show up in strong support of preserving local agriculture so elected officials can gain the confidence they need to vote favorably on the ordinance.
- Data to support the case for APZ designations (land use, land ownership, soils, geologic features, natural features, and preserved lands).

Obstacles and Challenges

- APZ proposals may be met with complaints from landowners that limiting the development potential of their property will diminish the value of their property: “This farm is my 401K” can be a very persuasive argument before a Board of Supervisors and has derailed more than one agricultural zoning initiative.
- Landowners may threaten to challenge APZ in court, which may sway a Board of Supervisors contemplating agricultural zoning. Agricultural zoning has, however, been upheld in court, when the zoning provisions are drafted properly and sufficient data can be presented in support of the zoning.

Introduction

Agricultural Protection Zoning (APZ) is used by municipalities to preserve the availability of agricultural lands for farming and provide stability to the farming economy. The local government designates areas where agriculture is intended to be the principal use. Regulations are established for these agricultural zoning districts to constrain non-agricultural development and uses. APZ regulations can help to:

- reduce conflicts between farm and non-farm uses;
- maintain a critical mass of farmland that keeps businesses and organizations that support farms, such as farm suppliers and granges, viable;
- protect prime agricultural soils, which, if developed, are irretrievable;
- keep land affordable for farmers;
- promote more efficient agricultural operations; and
- protect the character of the community.

Characteristics of Good APZ Candidates

Areas that typically make good candidates for APZ have the following characteristics:

- The municipality has adopted a comprehensive plan in which the protection of the agricultural industry in the community is a stated goal. The plan should support this goal with designation of agricultural areas on the future land use map and recommend consideration of APZ as an implementation technique. Background maps should contain the data listed under this guide’s heading “Supporting Data for APZ”.
- There are active farm areas that can remain viable in the long run, given land use trends, land values, and policies on sewer and water facility extensions in the municipality.
- There are contiguous farming areas of substantial size. These farmed areas should contain a high percentage of productive agricultural soils and have a demonstrated record of productivity. Contiguous areas of farming will have fewer opportunities for conflicts with non-farm uses and fewer obstacles to performing farm activities efficiently.
- Support businesses, such as suppliers and processors, exist in close proximity. Support from local county and state agencies, such as the Cooperative Extension Service and Agricultural Preservation Boards, is also important.

- Farmers in the municipality should generally be in support of the APZ and be optimistic about the future of farming in the community.
- The governing body has to have the will to enact APZ when some people in the community voice opposition to the APZ.

Purposes of APZ Districts

Local governments must state the intent of the APZ district in their zoning ordinance. The intent might include many of the following potential purposes or variations:

- Protect and promote the continuation of agriculture in areas with primary agricultural lands, such as preserved farmland; farmland in Agricultural Security Areas; farmland enrolled in Act 319 of 1974, as Amended (Clean and Green) or Act 515 of 1996, as Amended, and Land Capability Classes I, II, III and IV and other soils of statewide importance as defined by the Natural Resources Conservation Service.
- Strengthen and preserve strong agricultural activity where farming is a viable component of the local economy.
- Promote agricultural land uses and activities and other uses and activities, which act in direct support of agriculture.
- Protect and stabilize the essential characteristics of agricultural areas, to minimize conflicting land uses detrimental to agriculture enterprises, and to limit development which requires highways and other public facilities in excess of those required by agricultural uses. (i.e., curb sprawl)
- Improve food security and product diversity.
- Provide for fresh local farm products for the community.
- Maintain, protect and stabilize agriculture as an on-going economic activity by permitting only those land uses and activities which are either agricultural in nature or act in direct support of agriculture.

- Maintain the land resource base, consisting of farms or land that could be farmed, in large contiguous blocks that will permit efficient, profitable agricultural operations.
- Keep separate agricultural land use and activities from incompatible residential, commercial and industrial development, and public facilities.
- Lessen the likelihood of non-agricultural uses interfering with the effective operation of agricultural operations.
- Increase the viability of agricultural service industries, such as farm suppliers.
- Retain rural character.
- Foster infrastructure for the food industry and value-added agricultural enterprises.

Advantages and Disadvantages

There are advantages and disadvantages to APZ.

Advantages include that APZ:

- Can be used to protect many large tracts of land for agriculture all at once
- Protects large tracts of land at a relatively low cost
- Reduces the conflicts between farmers and non-farming neighbors by limiting non-farm uses in the zoning district
- Can be implemented relatively easily
- Can be readily combined with other conservation tools such as Transferable Development Rights and conservation easements.
- Is easily understood by the public
- Is flexible and easy to modify

Disadvantages include that APZ:

- Can easily be undone by a change in the zoning ordinance. (A simple amendment to the zoning can irreversibly undo years or decades of zoning-based protection.)

- Depending on the situation, APZ can potentially reduce land values. However, APZ can also increase values. See the discussion under the heading “APZ and Land Values”.

Implementation of APZ

Updating the Comprehensive Plan and Zoning Ordinance

Often, implementation of APZ begins with a community’s update or establishment of a new comprehensive plan. During the comprehensive planning process, a desire to retain agriculture in the community is identified. This desire is then reflected in the vision, goals and objectives of the community set forth in the comprehensive plan.

Also during the planning process, data to support the creation of an agricultural zoning district is collected, such as mapping of present land use, parcel ownership, soils, farmland preservation activities and natural features. Using this information, areas proposed for agricultural use into the future are mapped on the comprehensive plan’s “Future Land Use Plan”.

The planning process can foster public support for establishment of the APZ district through the public participation opportunities built into the process including a resident survey, information meetings, interviews, workshops, focus group meetings, and official public meetings and public hearings held prior to adoption of the plan.

After the comprehensive plan is adopted, the municipal zoning ordinance should be updated to be consistent with the comprehensive plan. The mapping of the agricultural district should be based on the future land use plan and the public participation process during the zoning ordinance preparation process. This participation typically includes zoning committee meetings, public workshops, and focus group meetings with the agricultural community. The agricultural district’s specific restrictions will result from the process of reviewing the comprehensive plan, discussing the

alternative approaches to agricultural zoning, and involving the public in crafting of the district. The public, particularly the farm community, should be made aware of the zoning effort and the advantages and disadvantages of various agricultural zoning approaches, and given an opportunity to participate in the zoning process. Workshops, newsletters and websites can be used as a tool to inform and educate the community.

Writing, adoption, and enactment of the ordinance provisions typically occur with the assistance of a land use planner and/or municipal solicitor, and are directly guided by the municipality’s elected and appointed officials, and any appropriate staff and/or other municipal consultants (e.g., municipal planner, engineer, solicitor).

The proposed zoning mapping and district regulations must be sent to the county planning commission for review. The municipal planning commission holds a public meeting. Ideally, this meeting is held after receipt of county comments, but the municipal planning commission does not have to wait for county comments. The municipal planning commission reviews any comments received from the public, makes revisions as appropriate, and then recommends the zoning ordinance to the governing body. The governing body holds a public hearing on the zoning prior to finalization and adoption of the zoning ordinance. No action can be taken by the governing body until the county comments are received or 45 days pass after submission to the county.

Basic Approaches to APZ

Historically, municipalities have taken several different approaches to crafting the permitted uses and restrictions for lands within an Agricultural Preservation Zoning District.

Exclusive Agricultural Zoning

Exclusive agricultural zones basically allow only agricultural and agricultural support operations. They are not typically used because of the concern for being challenged as exclusionary with the

resultant possibility of being struck down by the courts.

Large Lot Zoning

With large lot zoning the minimum lot size is specified as something in the order of 25, 40 or 50 acres to severely restrict residential development. Such a lot size may or may not be large enough to support the needs of a working farm. Also, subdivisions producing new lots of 25 acres that become residential estates can remove a significant amount of prime farmland soil from production.

Area Based Allocation

Area based allocation takes several forms. The general idea is to allow for residential development to avoid the exclusionary challenge. One dwelling might be allowed per a specified number of farm acres, such as 25. In another approach, a percentage (such as 10%) of a parcel is permitted to be developed for residential purposes. Cluster development of homes can be allowed on the land to be developed. The Lehigh Valley Planning Commission's model agricultural land protection zoning ordinance uses a 90/10 ratio of protected farmland to land suitable for residential subdivision.

Sliding-Scale Zoning

Sliding-scale zoning is now the most commonly used version of area based allocation. The number of residential lots permitted is based on the size of the farm. As the size of a parcel increases, the number of dwellings allowed in relation to the total farm area decreases (e.g., a 40-acre parcel might be allowed three dwelling units, while a 200-acre farm might be allowed eight dwelling units and a 300 acre farm allowed ten dwelling units). In this approach, a maximum residential lot size such as two acres is specified in order to maximize the area available for agricultural production and minimize the area devoted to residential purposes. Many ordinances require residential units to be located on the least productive soils and located to minimize interference with agricultural production.

Combination of Approaches

In 2010, Lower Mount Bethel Township in Northampton County adopted a new agricultural protection district for roughly 70% of their township that allows tracts or parcels to be subdivided by the Lehigh Valley Planning Commission's suggested 90/10 ratio – i.e., 10 percent of the total tract area subdivided into single-family residential lots (as small as ½ acre, or as on-lot sewer and water will allow] provided the other 90 percent is permanently retained in agriculture; or, subdivide all or some of the entire tract into 10-acre or larger “estate” lots; or, using a sliding scale method, subdivide smaller lots from the larger tract based on a permitted number of lots per original tract size [again, with new lots as small as ½ acre, or as on-lot sewer and water will allow). The Brandywine Conservancy's Environmental Management Center helped the Township and its solicitor draft this ordinance.

Supplemental Item: Required Note

Future subdivision plans may be required by the agricultural protection zoning to contain a note such as the following from the Agricultural District in the Southwestern Berks County Zoning Ordinance.

All lands within the Agricultural Preservation District are located in an area where land is used for commercial agricultural production. Owners, residents and other users of this property or neighboring property owners may be subjected to occasional inconvenience, discomfort and the possibility of injury to property and health arising from normal and accepted local agricultural practices and operations, including but not limited to noise, odors, dust, the operation of machinery of any kind, including aircraft, the storage and disposal of manure, the application of fertilizer, soils amendments, herbicides and pesticides. Owners, occupants and users of this property should be prepared to accept such conditions and inconveniences, discomfort and possibility of injury from normal agricultural operations, and are hereby put on official notice that the state Right to Farm Law (Act 133 of 1982) may bar them from obtaining a legal judgment against such normal agricultural operations.

Agricultural Protection Zoning

The requirement for the note would be established within the zoning ordinance initially. The subdivision and land development ordinance could then contain a requirement that such a provision be shown on the subdivision plan when required by the zoning ordinance.

Specifics to Address in APZ Districts

The following items need to be addressed in the zoning ordinance:

Intent of the District.

See the "Purposes of APZ" heading above.

Definitions.

Key definitions include Agricultural Operations, Agriculture, General Agriculture and Intensive Agriculture; Animal Unit if that approach is used to differentiate General and Intensive Agriculture; Farm, Farm Building, Farm-Related Business, and Prime Agricultural Land.

Permitted Uses.

Uses permitted by right are included, such as the growing of crops, animal husbandry up to a certain intensity, greenhouses up to a certain size, sale of farm products, dwellings for farm owner and/or manager, accessory processing of farm products, and farm-related businesses. Uses permitted by special exception or as a conditional use might include intensive agricultural uses, such as animal husbandry above a certain intensity (i.e., CAFOs), greenhouses above a certain size or impervious coverage limitation, mushroom production and composting, permissible residential subdivision, aquaculture, and animal hospitals and veterinary facilities.

- Uses by right require application for a zoning permit from the Zoning Officer.
- In the case of a special exception, approval must first be received from the Zoning Hearing Board.
- In the case of a conditional use, approval must first be received from the governing body.

It is quicker, easier and cheaper for the farmer if the use is permitted by right, and generally, APZ districts attempt to maximize the uses permitted by right. Most traditional agricultural activities are usually allowed by right. Some uses, which are more intensive in nature and have more potential for adverse impacts (such as odors and pests) on surrounding uses, are typically allowed by special exception or conditional use. This allows the Zoning Hearing Board or governing body to review proposed activities and impose additional reasonable conditions on a use to mitigate the potential for adverse impacts. CAFOS and mushroom operations are typically most likely to require the additional review.

Subdivision

If the right to subdivide for residential purposes will be provided to the farmer, the ordinance needs to address which approach discussed above (e.g., area based allocation or sliding scale) will be utilized as well as provide specific standards governing subdivision. Such standards would address number of lots or percentage of tract to be developed, lot size minimum and maximum, location of lots and minimization of disturbance to agricultural operations and prime agricultural soils.

The ability to subdivide for agricultural purposes should also be permitted, whether to establish a new farm parcel, or to convey land to another farmer, to be combined with those holdings.

Area, Yard, Coverage and Height Restrictions

Area, yard, coverage and height restrictions are specified for permitted non-residential and residential uses, including minimum lot size; minimum front, side and rear yards; maximum building and impervious coverage; and maximum building height.

Other Issues

The agricultural district regulations, and other districts in the ordinance as necessary, should:

- Address housing for farm labor if it is an issue in the municipality. If seasonal labor is

employed in a region (e.g., in the fruit industry), and sufficient housing is not generally found in the community, it may be necessary to allow for housing for farm workers on farms.

- Allow businesses that support and are related to agriculture, and accessory farm-related uses. Such uses would be suppliers to farmers and processors of farm goods. Farmers should be allowed to conduct such accessory uses necessary to their operations or which generate additional income, such as blacksmithing, processing and sales of farm products, butcher shops, and woodcrafts.
- Require sufficient setbacks of non-agricultural uses from agriculture to lessen the potential for complaints against farmers.
- Provide for direct marketing of farm products, such as u-pick it, farmers' markets, farm stands, direct sales to outlets such as schools and restaurants, produce auctions, etc., in order to increase farm income.
- Address farm-based alternative energies, and use of prime farmland for commercial power generation purposes, such as large solar farms. If ethanol production and similar activities are to be allowed, this should be specified in the ordinance.
- Provide for agri-tourism. The ordinance should specifically allow for uses considered acceptable in the community and which can generate additional income for farmers, such as corn mazes and hayrides.
- Strictly limit uses that do not relate to farming, such as residential and institutional uses, in order to minimize loss of farmland and conflicts between farmers and other uses.
- Support value-added activities, which will improve the customer base for a commodity or product and allow the producer of the commodity or product to keep a greater portion of the revenue derived from value-added activities (such as processing milk into cheese).

Such activities should be specified as a permitted use.

- Allow for forestry, as required by the MPC.

Integrating APZ into the Zoning Ordinance and Map

The agricultural zoning district is mapped on the zoning map, using factors mentioned above, such as existing agricultural use being the primary land use, agricultural conservation easements, agricultural security areas, productive soils and potential for farming to continue and be viable.

A separate agricultural zoning district is included in the ordinance text, rather than in an overlay provision. Some zoning ordinances may include more than one agricultural district, usually to differentiate areas where certain intensive agricultural uses or certain processing activities or other agricultural-related industry may be allowed in addition to cropland and less intensive agricultural uses.

Supporting Data for APZ

The following information should be collected in support of APZ:

- Existing land use mapping: Where are agricultural uses, farm support businesses, and non-farm uses? What are the sizes and types of farms?
- Property maps, with ownership.
- Mapping of lands included within Agricultural Security Areas.
- Mapping of farms that have been preserved through conservation easements.
- Soils mapping, including prime agricultural soils and soils of statewide importance.
- Clean and Green areas mapping.
- Natural features mapping, such as wetlands, hydric soils, steep slopes, floodplains, and forest land.

- Mapping of geology and groundwater resources.
- The conduct of either an exclusionary zoning analysis, and/or “fair share” analysis, in order to insure that the municipality has sufficient vacant land zoned for all types and densities of residential uses as required by the MPC, and in certain cases, can provide for its “fair share” of regional growth, after the new agricultural district is adopted. Municipalities that cannot meet these two “requirements” run the risk of successful curative challenges and court-ordered development approvals in the middle of their productive agricultural lands.

Case Study: Lower Heidelberg Township

In 1971, Lower Heidelberg Township in Berks County was still a rural, and predominantly agricultural, township on the urban fringe of the Reading urban area. Much of the soils in the Township are fertile Carbonate soils. Township officials saw that adjoining townships once rural had become suburban with much farmland lost to development.

From 1971 to 1973 the Township worked on a Comprehensive Plan, which resulted in a land use plan designating much of the township’s agricultural preservation goals. Subsequent to adoption of the plan, the Township began work on updating its zoning ordinance. The Township had in place an ordinance with an agricultural district; however the ordinance specified a one-acre minimum lot size and allowed for residential development throughout the district.

The Zoning Ordinance of 1973 was updated to incorporate an Agricultural Preservation district to implement the land use plan. The Township took the large-lot zoning approach, requiring a 40-acre minimum lot size in the district. The Township solicitor was concerned about this provision being challenged as exclusionary, so a provision was inserted into the district provisions that if public

sewer and water were available, a tract could be developed for one-acre lots by special exception. Limited public sewer capacity was available, and the sewer service area was limited, so this did not present a concern to the Township.

The zoning was very effective in preserving farmland until it failed. In the early 2000’s, when sewer capacity became available, the service area was expanded. Plans for development of several farms totaling approximately 340 acres were submitted under the special exception procedure.

In 2000, Lower Heidelberg Township adopted a new joint comprehensive plan with neighboring South Heidelberg Township and Wernersville Borough. Much of Lower Heidelberg remained designated Agricultural Preservation on the new land use plan.

To implement the joint comprehensive plan, the three municipalities decided to prepare a joint zoning ordinance. In 2004 the Southwestern Berks County Zoning Ordinance was adopted. The Ordinance contains an Agricultural Preservation District, which includes much of Lower Heidelberg. In addition, an Agribusiness and Agriculture District in South Heidelberg Township is designed to accommodate agriculture-related industry.

The agricultural preservation zoning in the new ordinance uses the sliding-scale approach. Agriculture and agriculture-related uses remain the predominant uses, but limited residential development is permitted. The number of residential lots permitted varies with the size of the farm. On a parcel of 40 acres, 3 dwellings could be located. After that, one additional dwelling is permitted for each 40 acres of the farm. Lots are to be located to minimize interference with agricultural production and clustered to minimize loss of prime agricultural land. The maximum lot size for a residential lot is 2 acres in order to minimize land taken out of production. The ability to develop a tract when public sewer and water are available has been removed. It is expected that once again the conversion of farmland for development will be controlled in the Township. 7,000 acres in Lower

Heidelberg, out of a total of 9,500, are zoned Agricultural Preservation. (Agricultural easements protect about 5% of the area zoned Agricultural Preservation.)

Municipalities Planning Code References to Agricultural Protection

MPC on Comprehensive Plans

The Pennsylvania Municipalities Planning Code (MPC) states that a comprehensive plan shall include:

A plan for the protection of natural and historic resources to the extent not preempted by federal or state law. This clause includes, but is not limited to, wetlands and aquifer recharge zones, woodlands, steep slopes, *prime agricultural land* [emphasis added], floodplains, unique natural areas and historic sites.

For a county comprehensive plan, the MPC states that the plan shall:

Identify a plan for the preservation and enhancement of prime agricultural land and encourage the compatibility of land use regulation with existing agricultural operations.

The MPC defines agricultural operation as an enterprise that is actively engaged in the commercial production and preparation for market of crops, livestock and livestock products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities. The term includes an enterprise that implements changes in production practices and procedures or types of crops, livestock, livestock products or commodities produced consistent with practices and procedures that are normally engaged by farmers or are consistent with technological development within the agricultural industry.

MPC on Zoning

Section 603 of the MPC states that: "Zoning ordinances may contain... provisions to promote

and preserve prime agricultural land." ... may permit, prohibit, regulate, restrict, and determine... protection and preservation of... prime agricultural land and activities." The MPC goes on to state that: "zoning ordinances shall protect prime agricultural land and may promote the establishment of agricultural security areas"; that they "shall encourage the continuity, development and viability of agricultural operations"; and that they "may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present, unless the agricultural operation will have a direct adverse effect on the public health and safety."

Section 604 of the MPC states that the zoning ordinance shall be designed to, among other things, "preserve prime agriculture and farmland considering topography, soil type and classification, and present use."

APZ and Land Values

In suburban municipalities where farmland had been zoned for suburban residential development (i.e., one or two-acre zoning) and land values reflect residential development more so than agricultural uses, a change in zoning to an agricultural protection district will likely have an adverse impact on land values. In such cases, other tools, such as Transferable Development Rights, can be included as an option within the new agricultural district, where farmers and other landowners can sever and sell TDRs as a way to recapture their potentially lost land value.

In more rural areas, or in areas where open space is viewed as a value-added, however, the rezoning of land to an agricultural protection district may not significantly harm land value, particularly in the long-term. For example, before Highland Township (Chester County adopted their one per 25-acre agricultural preservation district, the Brandywine Conservancy, as township planner, commissioned a market analysis. The analysis looked at township land values through hypothetical "before and after" rezoning scenarios. The analysis also compared

Agricultural Protection Zoning

Highland Township land sales with adjoining West Marlborough Township land sales based on a long-standing agricultural protection district in place in that municipality. There was little difference between land values in the two municipalities, even though Highland's current zoning allowed for greater residential development potential. Like its neighboring township, West Marlborough, Highland Township's fertile fields were also valued for the raising, keeping, and daily exercise of horses. The proposed change in zoning from a two and one-half acre minimum lot size to a one house or lot for every twenty-five acre density was expected to have an insignificant effect on local property values. That has proven true to date.

Sometimes the impact of APZ on land values will be mixed. In Lower Mount Bethel Township (Northampton County), for example, a market analysis commissioned by the Township showed that the value of large farms (80 to 100 acres plus) would probably be adversely affected by a proposed downzoning, simply because such farms were not being bought by farmers to continue farming. However, the analysis also found that other agricultural parcels of 25 to 60 acres would not likely be adversely impacted by the proposed downzoning, given their conservation buyer value, or their attractiveness to farmers for leasing purposes.

What do broader studies have to say about the impact of APZ on land values? A 2003 study conducted in Maryland on behalf of the Maryland Center for Agro-Ecology, Inc. showed that downzoning had little effect or resulted in higher land values in the four studied counties. A 2004 study conducted on behalf of the New Jersey Farm Bureau showed that downzoning harms land values in six municipalities. A subsequent analysis of these two studies, "[Downzoning and Rural Land Markets: A review of two recent studies in Maryland and New Jersey](#)," found these two studies to be deeply flawed in their methodologies. The analysis also made this observation:

Economic theory does not give a clear answer on whether downzoning should decrease or

increase property values. First, downzoning can negatively impact property values because it puts a constraint on development opportunities. This negative impact could be large for properties with great development potential. However, downzoning could also have several positive impacts that offset the loss of development opportunities. The positive effects could include the enhanced environmental and landscape amenities valued by buyers, protecting a critical mass of farms in the local agricultural community, and the viability of non-development land uses, reduced burdens on local government services such as schools and roads, and reduced uncertainty about future land use. Which of these offsetting effects dominates is an empirical question, and the magnitude of the effects will vary between markets and individual properties within the same market.

Record of Success

APZ Adopted by Many Municipalities in Past Four Decades

Pre-1973, Pennsylvania municipalities adopted zoning districts which were called "Agriculture," but which typically specified a minimum lot size of one to ten acres and allowed a variety of non-agricultural uses as well. In 1973, based on models used in the Midwest, Lower Heidelberg Township in Berks County adopted an effective agricultural zone, which specified a 40-acre minimum lot size and severely restricted non-agricultural uses. This was the first use of APZ in Pennsylvania. After the sliding-scale agriculture zoning approach subsequently used in York County was validated in the Courts, the sliding-scale approach became favored because it was less likely to be challenged as exclusionary than the large minimum lot size approach.

By 1993, 93 municipalities had adopted APZ, covering 725,000 acres, or 10% of land in farms in Pennsylvania. APZ continues to be adopted by municipalities in Pennsylvania, particularly in Berks, Lancaster, Chester, and York Counties, where the

County Planning Commissions have supported adoption of such zoning through technical assistance, distribution of model ordinances and financial assistance. By 2010, in Berks and Lancaster County alone, 65 municipalities had adopted APZ Districts protecting over 482,000 acres. In those counties, even though there has been some attrition of individual farms to development because of rezoning or zoning relief via the zoning hearing board, the general trend is to more municipalities adopting such zoning and an increase in the total number of acres protected.

Some municipalities in Pennsylvania have now had effective agricultural zoning in place for over 35 years.

Given the limited resources available to help protect agricultural land through conservation easements, APZ has been a successful and an important tool to assure large agricultural areas are kept relatively free of non-farm development; provide a supply of agricultural land for rental by farmers; protect the public investment in the purchase of agricultural easements by preventing loss of adjacent and nearby farmland; delay development of some farm land until easements can be purchased; keep farmland affordable for farmers, and protect the extent of farm areas necessary to provide a continuing market for agricultural support services.

Validity Upheld by the Courts

The validity of APZ has been upheld in Pennsylvania Courts, though how the zoning ordinance is drafted (and adopted) is important to its validity. Key cases upholding agricultural zoning ordinances include:

- *Boundary Drive Associates v. Shrewsbury Township* (1985) where the Supreme Court upheld a sliding scale ordinance in York County; *Codorus Township v. Rodgers* (1985) where the Commonwealth Court upheld a York County ordinance with a 50-acre minimum lot area for farms; and *McGonigle v. Lower Heidelberg Township Zoning Hearing Board*

(2004), where a 40-acre requirement was upheld by the Commonwealth Court.

- *C & M Developers, Inc. v. Bedminster Township Zoning Hearing Board* (2002) where the Commonwealth Court found this Bucks County's agricultural zoning ordinance on firm ground when requiring at least half of a tract or parcel of 10 acres or greater to be retained in agricultural or open space uses when subdivided. However, this same Court found Bedminster's ordinance overly restrictive when also requiring a net one-acre minimum lot size for new lots established on the remaining one-half of a tract or parcel.
- *Ethan-Michael, Inc v. Union Township* (2007) where the Commonwealth Court upheld a Berks County agricultural preservation district using the sliding-scale approach to residential dwelling unit or lot determinations.

Other Agricultural Preservation Tools to Consider in Conjunction with APZ

Tools Described at ConservationTools.org

Agricultural protection zoning can be used with other tools, such as:

[Agricultural Security Areas](#). Landowners may petition local governments to establish an Agricultural Security Area (ASA). In an ASA, farmers are entitled to special protection from condemnation and laws and ordinances that would unreasonably restrict farming operations. Designation as an ASA does not require farmland owners to preserve their farm for agricultural use; designation does not constrain development.

[Agricultural Conservation Easement Purchase Program](#). The Agricultural Conservation Easement Purchase Program enables state, county and local governments to pay farmers for agreeing to limit the use of their land to agricultural production, commercial equine activities and certain other uses.

Agricultural Protection Zoning

The program has very specific requirements and criteria for ranking applicants. The program is in high demand by farmers and county waiting lists are long. (One prerequisite is that the parcel(s) have to be located within an established Agricultural Security Area.)

Transfer of Development Rights. Transfer of Development Rights is a zoning technique used to permanently protect farmland and other natural and cultural resources by redirecting development that would otherwise occur on these resource lands to areas planned to accommodate growth and development. The TDR tool, when combined with APZ, provides farmers and other landowners with another option that, through the severance and sale of TDRs, enables them to capture financial value.

Growing Greener: Conservation By Design. This tool helps municipalities and developers build new housing and businesses while protecting important natural and cultural resources including farmland. With straightforward changes to municipal ordinances, new subdivisions can set aside half or more of buildable land for active farming and other open space uses. Whether it can be combined with APZ in a productive way that is acceptable to Pennsylvania's courts is unknown at this time.

Clean and Green. In many counties Clean and Green provides for lower property tax assessments of land capable of producing wood products, agricultural land, and open space land open to the public. Clean and Green encourages farmers to keep farming on their land(s) by providing a tax incentive for not developing the land, but does not prevent the sale of farmland for residential, commercial and/or industrial land developments/subdivisions. This is a voluntary program, and 10 acres is the minimum amount of contiguous acres needed to receive the benefits of this program.

Other Tools

The following is a menu of administrative and supplemental zoning policies designed to encourage and protect agriculture:

- Support measures to relieve property tax burden for farmers.
- Support measures (such as Act 153 referenda) that utilize modest tax increases to raise local tax revenues that can be devoted to the purchase of agricultural (conservation) easements. Referenda on earned income tax increases are less impacting on farmers and other large landowners compared with property tax measures.
- Limit extension of public sewer and water facilities to agricultural areas.
- Permit businesses which support agricultural operations, such as farm equipment sales and service, farm supply stores, and businesses which market or process farm products.
- Allow farmers to supplement incomes through home businesses, home occupations and farm related businesses.
- Permit appropriate recreational activities, such as hayrides, corn mazes, and festivals.
- Limit non-farm uses, which could cause conflicts with agricultural practices and/or require buffers for non-farm uses around the perimeter of farms. Direct any non-farm development to parcels least suited to farming.
- Allow and give incentives to compact development and higher densities where public sewer and water are available in areas designated for development, and give disincentives to inefficient development techniques.
- Support establishment and continuation of farm-related programs and organizations.
- Discourage construction of roads through agricultural areas.
- Work to improve relationships between farmers and non-farm neighbors.
- Make information available on the Pennsylvania agricultural loan program, which permits farmers to borrow funds for land, buildings,

machinery, or equipment bought, built or renovated for the benefit of the business.

- Encourage farmers to utilize the Pennsylvania Farm Link program created by the Center for Rural Pennsylvania. This program is designed to help match farmers planning for retirement, and other interested landowners, with farmers hoping to work into farm ownership on long-term leasing.
- In the zoning ordinance, put people on notice: “Agricultural activities permitted to be conducted within the municipality by this Ordinance may be conducted even though those activities may create an annoyance or inconvenience to neighboring residential uses due to sights, sounds, smells or other conditions resulting from the agricultural activities, provided that the agricultural activities are conducted in accordance with any and all regulations of the municipality, this Ordinance, and the State and are not conducted in a manner which creates a definite danger to the health or safety of neighboring uses.” While many people in a municipality do not read their zoning ordinance, the municipal engineer who reviews subdivision plans can ask for such a notification to be placed on subdivision plans for development near agricultural areas, to increase the possibility of new residents in the community being informed of the rights of farmers to conduct agricultural activities.
- Allow alternatives to “traditional agriculture”: Often agriculture has been equated with “traditional” methods such as dairy farming, raising of steers, and cultivating such crops as corn, hay, wheat, alfalfa, soybeans, barley, and oats. Increasingly, there are alternatives that can be practiced to supplement farm income or utilize smaller parcels of land, including:
 - Nursery/greenhouse
 - Horse farm
 - Equestrian center

- Wildflower/flower farm
- Winery
- Christmas tree farm
- Pick-your-own operation
- Contracting organic farm
- Herb farm
- Orchard
- “Agritainment” (using crafts, corn mazes, petting zoos, entertainers, hay tunnels, and hayrides to generate income and attract purchase of produce)
- Goat products
- Hydroponics
- Ornamental crops

Related Resources at ConservationTools.org

Featured Library Items

[Guidebook For PA Municipalities on how to protect valuable agricultural lands](#)

[Act 67 and 68 Update for Zoning for Farming](#)

[Planning For Agriculture, Second Edition](#)

[Pennsylvania Municipalities Planning Code \(19th edition\)](#)

[Berks County Agricultural Zoning Incentive Program](#)

[Agricultural Zoning Guidelines for Lancaster County, Pennsylvania](#)

[Downzoning and Rural Land Markets: A review of two recent studies in Maryland and New Jersey](#)

[Southwestern Berks County Zoning Ordinance.](#)

Related Guides

[Agricultural Security Areas](#)

[Transfer of Development Rights](#)

Experts

[Glenn Neuhs](#)

Spotts, Stevens & McCoy
610-621-2000

glenn.neuhs@ssmgroup.com

Glenn worked with Lower Heidelberg Township in the preparation of the first APZ in Pennsylvania in 1973. Since then, he has worked on the drafting of a number of APZ ordinances in Pennsylvania.

[John Snook](#)

Environmental Management Center, Brandywine Conservancy
(610) 388-8387

jsnook@brandywine.org

John has over 30 years of land use and environmental planning experience in southeast Pennsylvania, and is a frequent lecturer on topics of transferable development rights, historic preservation, and open space design.

[Olev Tamarea](#)

Lehigh Valley Planning Commission
(610) 264-4544 or 1 (888) 627-8808

olt@lvpc.org

Olev serves as Chief Planner for the Lehigh Valley Planning Commission. Crafted 90/10 APZ language for two Lehigh County municipalities.

[John Theilacker](#)

Brandywine Conservancy
(610) 388-8389

jtheilacker@brandywine.org

John directs the Brandywine Conservancy's Municipal Assistance Program. A Certified Planner, John has over 28 years of experience in land use and environmental planning.

[Peter Nelson](#)

Grim, Biehn & Thatcher
215-257-6811

pnelson@grimlaw.com

I have written and defended numerous Ag. Protection Zoning Ordinance provisions.

Disclaimer

Nothing contained in this or any other document available at ConservationTools.org is intended to be relied upon as legal advice. The authors disclaim any attorney-client relationship with anyone to whom this document is furnished. Nothing contained in this document is intended to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to any person any transaction or matter addressed in this document.

Submit Comments and Suggestions

The Pennsylvania Land Trust Association would like to know your thoughts about this guide: Do any subjects need clarification or expansion? Other concerns? Please contact Andy Loza at 717-230-8560 or aloza@conserveland.org with your thoughts. Thank you.

Acknowledgements

Initial draft prepared by Spotts Stevens McCoy with contributions by Andy Loza and John Theilacker. Edited by Andy Loza.

The Pennsylvania Land Trust Association published this guide with support from the William Penn Foundation and the Growing Greener Program of the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation and Conservation.



© 2011 Pennsylvania Land Trust Association

Text may be excerpted and reproduced with acknowledgement of ConservationTools.org and the Pennsylvania Land Trust Association.