

Performance Zoning

Packet Synopsis

Performance zoning is a land use planning concept that has its roots in building codes that established performance standards as opposed to specification standards. An example of a performance standard would be “that walls, floor and ceiling be so constructed as to contain an interior fire for one hour”. A specification standard example would be “that walls, floor and ceiling be constructed of 4 inch thick masonry or stone”. This concept transmuted into a system of industrial zoning by permitting defined industrial activities and locations based on measurable *adverse externalities* and their effects on adjoining properties. An *adverse externality* is an economist’s term that is defined as a harmful effect of one economic agent’s actions on another. Examples are pollution from factories (a production externality) and smoke from cigarettes (a consumption externality). Industrial performance zoning permitted the location of specific businesses and activities theoretically anywhere in a community based upon their measurable pollution impacts relative to their surroundings, human and natural, as opposed to being permitted only in established specific areas on the community’s official land use map.

Performance zoning for managing land use grew out of fairly successful application to industrial zoning. Land use planners were increasingly frustrated with the limitations of conventional Euclidian zoning with its division of land uses and minimum requirements without accommodating for inherent physical or social site limitations. This is still a weakness in this type of zoning, namely it does not consider the carrying capacity of the land and land economics nor that communities are organic associations of people that change over time.

From the enclosed selected literature you will see that **performance zoning** has not been “the idea whose time has come” in land use planning. But if **performance zoning** has not been the concept that is replacing traditional/Euclidian zoning (named after the city whose Supreme Court case established the legality of cities to zone and control for land uses), its ideas and principles are being adopted into the more traditional land use codes.

“IV. The Alternative of Performance Zoning”, *Planning and Markets*, John R. Ottensmann, Indiana University. A brief essay on how **performance zoning** can work and some of its advantages. It develops the analogy that **performance zoning** is not unlike private land covenants and with definite advantages over the latter.

“Performance Zoning: A Reassessment”, *Land Use Law*, March 1993. A brief but comprehensive article reviewing the history and evolution of **performance zoning** and its application to residential and commercial land use. It cites some of the communities that are using the concept as the basis for their land use controls, critically examines **performance zoning** both for controlling industrial development and residential development and closes with comments on legal issues regarding regulatory takings, due process and equal protection.

“Flexible Zoning: A Status Report on Performance Zoning Standards”, *Zoning News*, January 1998. A critical review of **performance zoning**, looking at a 20 plus year body of experience of nine cities that have had Performance-based zoning codes. Its conclusion states, “that the once heralded promise of **performance zoning** is being fulfilled more through specific applications than dramatic changes in zoning approaches.” In essence **performance zoning** ideas are being co-opted into the Euclidian approach.

“Use of Performance Standards in Planned Unit Developments”, *Illinois Planning Views*, Summer 1997. This paper makes the point that **performance zoning** definitely lends itself to application in a Planned Unit Development ordinance because of inherent design flexibilities established in these ordinances. By extension, not noted in this paper, **performance zoning** can be incorporated into a community’s subdivision ordinance because a PDU is essentially a form of subdivision.

“Performance Zoning for Sensitive Land in Queen Anne’s County, Maryland”, *Urban Land*, August 1988. This is an account of **performance zoning** where there are significant sensitive land constraints. In this case, **performance zoning** permitted greater flexibility and higher densities than adoption of the state’s more Euclidian approach permitted, while still attaining the state’s environmental goals.

Scott County Zoning Ordinance No. 3, Chapter 12: Performance Standards .This is a homegrown Minnesota zoning ordinance incorporating performance standards, presented here as a model or example.

Performance Zoning Model Ordinance, Bucks County. This model ordinance is not included in this packet because of its relative length. The entire ordinance may be downloaded from the U.S. Department of Energy’s Center of Excellence for Sustainable Development website <http://www.sustainable.doe.gov> and clicking on its Land Use Planning bar and then its Codes/Ordinance bar and then scrolling down.

Land Use Reform Through Performance Zoning, William Eggers. This is a policy study sponsored by the Reason Foundation, a national “think tank”. Because of its length, it is not included in this packet, but this working paper can be down loaded from the Foundation website <http://www.reason.org/index.html>. It gives a comprehensive description and analysis of the Ft. Collins, Colorado **performance zoning** ordinance, which is very good, recognizing that the Foundation has its own agenda.

INTERLIBRARY LOANS MATERIALS

The following on **performance zoning** can be borrowed via MnLINK.

Performance Zoning, Lane Kendig with Susan Connor, Cranston Berg and Judy Heyman, Planners Press, American Planning Association, Washington, DC 1980. This is an in depth review and analysis of the Bucks County ordinance.

LEGAL NOTES

Minnesota Statutes and its courts grant great leeway to local government units (LGU) in how they construct their zoning ordinances. Thus LGUs can base a zoning ordinance entirely on **performance** criteria or incorporate them into more conventional ordinance structures.