

OVERLAY ZONES

LEGAL AUTHORITY AND LIMITATIONS

FRANK BANGS AND KERI SILVYN
LAZARUS, SILVYN & BANGS, P.C.

OVERLAY DISTRICT SEMINAR

METROPOLITAN PIMA ALLIANCE – URBAN LAND
INSTITUTE

AUGUST 23, 2012



LAW OFFICES OF

Lazarus, Silvyn & Bangs, P.C.

A PROFESSIONAL CORPORATION

WHAT IS AN OVERLAY ZONE?

- “A zoning district that encompasses one or more underlying zones and that encompasses additional requirements beyond those required for the underlying zone.”

[Moskowitz and Lindbloom, The Illustrated Book of Development Definitions (Center for Urban Policy Research, Rutgers, 2004)]

- “The Urban Overlay District (UOD) allows the creation of zoning districts that encourage transit and pedestrian-oriented development within new infill areas like the Downtown Links Study area...The goal was to create a second zoning option allowing both current zoning and optional zoning and design standards that encourage transit and pedestrian oriented development. This proposed overlay will provide a clear indication on the City’s zoning map showing an infill overlay option with existing underlying zoning.”

[City of Tucson, Mayor and Council Communication, August, 4, 2010]



WHAT IS AN OVERLAY ZONE?

- “...a pernicious tool to destroy residential neighborhoods.”
“...results in crime, decay of neighborhoods through skyrocketing land values, flipping to speculators, and creation of renter-dominated, student ghettos”
[speaker comments at August 7, 2012 Mayor and Council hearing on Main Gate UOD]
- “What we have here is a failure to communicate.”
[“Cool Hand Luke,” 1967]



WHAT IS AN OVERLAY ZONE?

- Traditional, “bread and butter” zoning: Division of community into mapped districts in which specific land uses are permitted.
- Purpose: To protect less intense uses from the nuisance-like impacts of more intense uses by separation.



WHAT IS AN OVERLAY ZONE?

Overlay Zones—an evolution of basic zoning. The technique recognizes diversity and allows flexibility.

- Recognizes specific, spatially defined natural and man-made hazards:
 - Flood plains
 - Steep slopes, unstable soils
 - Airports
- Protects of cultural and natural resources:
 - Historic districts
 - Endangered plant and animal habitat
 - Dark skies for astronomical observatories
- Gives incentives for redevelopment, infill:
 - Transit-oriented districts
 - Mixed-use, higher density
 - Economic Development



HOW DOES AN OVERLAY DISTRICT WORK?

Property simultaneously subject to different sets of regulations.

- Traditional land use controls
- Additional, overlying regulations
 - Typically more restrictive (airport, historic)
 - Sometimes less restrictive (mixed uses, greater density)



HOW DOES AN OVERLAY DISTRICT WORK?

Functional types.

- Overlay zones which are mapped when the corresponding regulations are adopted
- Overlay zones that are floating, authorized in text of zoning ordinance, but only mapped upon application and approval
- Sinking zone. A hybrid with two sets of regulations.
 - The existing regulations.
 - New, alternative regulations.
 - The overlay zone mapped when adopted
 - If the owner elects to use the alternative regulations, the original controls are superseded, “sinking” out of existence.



WHAT IS THE LEGAL AUTHORITY FOR OVERLAY ZONES?

Municipalities:

- Specific overlay districts:
 - Flood plains, A.R.S. §9-462.01 (A)(8)
 - Natural or manmade hazards, A.R.S. §9-462.01 (A)(9)
 - Historic districts, A.R.S. §9-462.01 (A)(10)
 - Age specific (seniors only), A.R.S. §9-462.01 (A)(11)
- General authority, A.R.S. §9-462.01 (D)
- New twists to incentivize infill and renewable energy:
 - Infill, A.R.S. §9-499.10
 - Renewable energy, A.R.S. §9-499.10



WHAT IS THE LEGAL AUTHORITY FOR OVERLAY ZONES?

Counties:

- General authority, A.R.S. §11-811(B)
- New twists to incentivize infill and renewable energy:
 - Infill, A.R.S. §11-254.06
 - Renewable energy, A.R.S. §11-254.07



WHAT ARE THE LEGAL CONSTRAINTS ON OVERLAY ZONES?

Spot zoning

- “Floating” aspect of overlay zones may violate statutory requirement that zoning be “in accordance with” the general plan
- Addressed by foreshadowing goals of overlay districts in general plan and drafting of the district regulations



WHAT ARE THE LEGAL CONSTRAINTS IN OVERLAY DISTRICTS?

Uniformity clause violation

- Arizona cities: “All zoning regulations shall be uniform for each class or kind of building or use of land throughout each zone...” A.R.S. §9-462.01(C)
- Dead letter? Not after Jacimek v. City of Phoenix, 169 Ariz. 317, 819 P. 2d 487 (1991).
 - Inebriate zone for downtown Phoenix to discourage transients
 - Required special use permit for: blood donor centers, pawn shops and bars
 - Plaintiff's pawn shop was a permitted use in the same zone outside overlay zone
 - Supreme Court struck down the zone as violation of the uniformity clause.
- Result: Quick amendment to City and County enabling law to generally authorize overlay districts



WHAT ARE THE LEGAL CONSTRAINTS ON OVERLAY DISTRICTS?

Prop. 207 – The Private Property Rights Protection Act.

- Creates a legal claim for diminished property values caused by a new “land use law.” A.R.S. §12-1134.
- What if the overlay district imposes more restrictive regulations?
 - Riparian habitat protection?
 - New historic district?



WHAT ARE THE LEGAL CONSTRAINTS ON OVERLAY DISTRICTS?

City of Tucson “Urban Overlay District” adopted in part as reaction to Prop. 207

- Substitutes carrots for sticks
- Property owner has option of developing under existing zoning or alternative standards
- Neighboring property owner claims? May depend on whether that property is “directly” regulated by the overlay district. A.R.S. §12-1134(B)(6)



QUESTIONS?

