

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

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AN OVERVIEW OF POLLUTING INDUSTRY ORDINANCES THE WILKES COUNTY MODEL

The Wilkes County ordinance regulates High Impact Land Uses to promote the health, safety and general welfare of its citizens. The ordinance cites both the police power and the zoning power granted to it under North Carolina law.

A proper ordinance describes the general purpose of the regulation and lists specific uses to which it applies including, for example, incinerators, asphalt plants, cement mixing facilities, chemical storage facilities, etc. The list is exclusive in that these uses and no others are affected by the requirements of the ordinance. This means that other industrial facilities, even those which may emit objectionable odors and smoke, cannot be controlled by this ordinance unless and until the ordinance were to be modified. So, a county may spare Christmas tree farms, coal-fired power plants and other facilities, allowing people who operate those services to support or at least to not oppose the High Impact Land Use law.

To further clarify the intent of an ordinance, a list of definitions is included for technical terms, high impact industries and protected facilities. For example, the Wilkes ordinance describes “screening buffer,” “asphalt plant” and “dwelling unit.”

The regulations and standards section of the ordinance specifies the precise measures which must be followed to safeguard public health and safety and to comply with the law: for example, building height limits for fire safety, buffer areas to prevent building on property lines, and spacing requirements or set backs between high impact land uses and protected facilities. The Wilkes County ordinance requires quarter-mile setbacks (1320 feet), but we recommend that a practical standard for set backs should be 2000 feet at a minimum in order to shield vulnerable children and elderly people from toxic air pollutants. A good case can be made for 3000 feet as we have reports of noxious odors and negative property value impacts at that distance. A 2000 foot radius around an industrial site covers about 290 acres, a reasonably sized parcel of property which would not prohibit an industry from finding a site with suitable set backs within a given county.

To control the placement, construction or alteration of high impact facilities, the owner-operator must apply for a permit before taking action. The county procedures outline the permit process making it predictable for the owner-operator and transparent to the general public. Fees may be included to cover the costs incurred by the county. The public notice requirements for permits must be clear and should allow for public comments and public hearings before any decision is made by the county. Also, a procedure for provision of documents to the public should allow anyone to gain access to permit applications, draft

permits and other relevant documents well in advance of public comment periods and public hearings.

A well-crafted high impact land use ordinance includes recommendations for consultation by the planning department or other decision-making body. Consultation with local, state and federal agencies, such as the Blue Ridge Parkway supervisor or soil and water boards, provides expert opinion at no charge to the county and ensures a more comprehensive and impartial assessment of impacts on vital natural and economic resources.

To deal with the question of existing facilities which do not comply with the newly enacted ordinance, a “grandfather” clause is typically included to allow them to come within the law. The provisions of the new ordinance take effect if and when the facility is modified or expanded.

Variations are minor adjustments to the rules and regulations of an ordinance. A variance may not allow a permit to be granted which nullifies the intent of the ordinance or which has a negative impact on the affected community. Variance procedures must be open and transparent. The Wilkes County ordinance states that financial or economic factors may not be the sole basis for the granting of a variance, a protective measure which helps to prevent the abuse of the variance process.

Enforcement of the ordinance is delegated to a specific county agency and penalties are specified for non-compliance.

Louis Zeller

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