

GROWERTALKS

Features

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When Using Your Land Doesn't Go As Planned

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Oftentimes, real property owners are unaware of the specific rules and regulations that clarify the uses of their land, which may or may not be permitted on certain real property. (As a note, “real property” is otherwise known as real estate and generally includes a parcel or parcels of land and everything permanently attached to the same).

From large commercial nursery operations to small personal greenhouses, many real property owners would likely be surprised to find that they may not be able to begin or expand their operations in the manner they wish.

The rules and regulations that designate permitted uses on real property are often codified through local land use ordinances. Local land use ordinances generally adopt, amend or repeal a county’s comprehensive plan, which is essentially the guiding document that a county uses to project future actions within its communities. Oftentimes, a county uses a comprehensive plan to make projections up to 20 years in the future and then enacts land use ordinances in order to effectuate the plan. This is often done through a group of officials who are nominated or elected at the local level.

Unless they’re actively involved in local government or kept up to date on land use issues, many individuals and businesses are unaware of their rights or restrictions as it relates to real property. This is especially true for those in the agricultural and nursery industries, since operations can go years without undergoing significant land use changes. However, land use issues can quickly arise and become complicated as time passes by. This is because land use plans are ever-changing, especially as urban and suburban development increases.

In addition, the issues become even more complicated when an operation moves or expands into a different county. This is because every county has different methods in how it approaches its land use planning, which results in each county having different land use ordinances and different permitted activities.

A land use plan and problem

Take for example this hypothetical: Grower John used to work for and manage a commercial nursery in Green County, but one day he decided he wanted to start his own commercial operation. He purchased five 1-acre lots close to a town in neighboring White County and planned to operate a commercial nursery there. This property had been used as a small local nursery for the past 30 years and was once considered a rural operation. However, the

neighboring town had been expanding and subdivisions were starting to be developed nearby.

When John purchased the property, there were three existing greenhouses, each with an area of about 10,000 sq. ft. However, John wanted to expand and improve the operation in order to meet increasing demand for nursery stock in the area. With this in mind, he decided to expand the three existing greenhouses and build two additional greenhouses on the property. John planned that each greenhouse would be built or expanded to about 20,000 sq. ft. and he would use the remainder of the land for growing outdoor nursery stock in a style similar to that of the commercial operation he managed in Green County.

After making this plan, John called Builder Bob and wanted to hire him to build and expand the greenhouses. Bob came out to John's property so that John could show him the plans and discuss the cost to build. After seeing the plans for the greenhouses and the layout of the property, Bob asked John if he'd reviewed the planning and zoning ordinances for White County. John said that he hadn't, but that he was familiar with nursery operations in Green County and his general plan was based on the nursery he'd managed there.

After his meeting with Builder Bob, John began researching the local planning and zoning ordinances for White County and found that there were a number of planning and zoning issues with his proposed operation. First, John found that the property he'd purchased had recently been re-zoned to accommodate and promote residential purposes, which limited his ability to expand the commercial nursery operation. Specifically, the zone encouraged residential use and allowed greenhouses smaller than 10,000 sq. ft. for personal use.

Second, John found that certain agricultural operations weren't permitted on two of the parcels. In reading through the planning and zoning laws, John found that he could continue to commercially operate the three current greenhouses on the property because their use was existing at the time the land was rezoned. However, if John wanted to continue with his plan to own and operate a larger commercial nursery and build additional greenhouses, he needed to determine if there were any exceptions or opportunity to amend the local laws.

Grower John's solution

In many counties within the United States, local officials understand that a "one-size-fits-all" plan doesn't necessarily work for all real property and that strict compliance with planning and zoning ordinances can often create unnecessary burdens for landowners. As a result, there are often opportunities within local ordinances for landowners to make an application to utilize their property in a nonconforming way. Oftentimes, counties will allow a landowner to apply for a "conditional-use" or "special-use" permit, which if approved, would allow the landowner to use the property in a way that would otherwise be disallowed.

Broadly speaking, the granting of a conditional and/or special-use permit creates an exception to the planning and zoning rules for the specific parcel(s) at issue. In John's situation, he would likely be able to make an application to the White County planning and zoning board for a conditional-use permit. In his application he can request that expanded commercial nursery operations be allowed and that he be allowed to grow nursery stock on all five parcels. In making his application, John would likely need to identify his proposed uses and how they're consistent with the local comprehensive plan, provide rationales as to why the permit should be granted, identify why the uses are appropriate for the specific parcel(s) at issue, and show that the proposed uses won't adversely affect other uses in the area. While the requirements for a conditional-use permit vary from county to county, these are a few examples of the information that could be required for the application.

After John makes an application, the local planning and zoning officials would likely provide notice to John's neighbors, hold public hearings, and ultimately, make a determination if a conditional-use permit would be appropriate under the circumstances, at which point John's application would be approved or denied.

Many, if not all, counties in the United States have a comprehensive plan, and planning and zoning ordinances that designate certain permitted and un-permitted activities. Many of these also create avenues wherein a local landowner can work with the planning and zoning board to effectuate their intended uses. In Grower John's situation, applying for a conditional-use permit may be one of several possible solutions to his land-use planning problem.

With that being said, each county is different and if individuals like John have any specific questions as it relates to their local land use ordinances and/or the permitted uses on their real property, they should consult with an attorney licensed to practice law in that jurisdiction and who has experience in local land use issues. **GT**

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