

# Land Use Treats: Judicial Treatment of Pennsylvania Landfills and Illinois Strip Clubs

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It's the summer, and it's hot. It's been 90-plus all week in Raleigh and my phone tells me there is no chance of a cooling today or tonight. I thought we'd take this chance to dip into something a little different, something off the path from the latest of the North Carolina Court of Appeals or the North Carolina General Assembly.

So, how about something from the Pennsylvania courts involving a landfill?! Or nuns versus strip clubs in Illinois! That'd be fun!

## One Man's Garbage Is Another Municipality's "Structure"

Let's start with the landfill. In [Tri County Landfill, Inc. v. Pine Township Zoning Board Hearing, No. 176 C.D. 2013 \(November 2013\)](#) the Commonwealth Court of Pennsylvania, an appellate court, recently addressed a relatively simple question: is a landfill a structure, such that it is subject to certain zoning laws.

Really, this is an interesting case. We'll spare most of it because the part we find interesting is only a portion of the case and the decision. What's interesting is that we at the Land Use Litigator think it very cleanly and effectively illustrates what "land use law" can encompass as well as the value of a good land use lawyer.

Let's start with the zoning ordinance at issue. "Section 402.2 of the zoning ordinance sets forth the maximum height requirements for the R-1 district, and it states that 'principal structures shall not exceed 40 feet in height.'" This is important for the landfill because the maximization of air space, or height, [is critical to a landfill](#). 40 feet is, as far as we can tell, simply not enough height for a landfill to operate in an economically prudent manner.

"The zoning ordinance defines a 'structure' as: 'A combination of materials forming a construction for occupancy and/or use including among other[s], a building, stadium, gospel tent, circus tent, reviewing stand, platform, staging, observation tower, radio tower, water tank, trestle, pier, wharf, open shed, coal bin, shelter, fence, wall and a sign.'" The municipal planning code more broadly defines "structure" as "any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land."

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Thus, if a landfill is a "structure" as defined by the zoning laws, it cannot exceed 40 feet in height.

Let's move to the arguments. On the one hand, from the landfill operator who does not wish to define its landfill as a "structure": the zoning ordinance contains a non-exhaustive list of examples of structures, which does not specifically include landfills, and is thus ambiguous and therefore to be "liberally construed to allow the broadest possible use of land" such that the landfill is not subject to the 40-foot height requirement. Moreover, "the enumerated examples [of structures in the zoning ordinance] all have an ascertainable stationary location, on a limited construction site, and a structural element that is affixed to the ground or man-made materials designed to provide engineering support .... and each enumerated item could be razed and removed from the site on which it is constructed, leaving the ground behind generally as it existed before the structure was built", while a landfill is not such a "structure". In other words, "I mean, the zoning law identifies kinds of 'structures', to say nothing of a landfill, and, as we all know in our guts, a 'structure' is a building or a bridge or a Ferris wheel but it's not a hole in the ground in which to pile refuse."

On the other, from the municipality: "[A] modern landfill such as that proposed here, is not simply a dump or a pile of dirt, slag, gravel or anything similar. Rather, a modern landfill is a highly sophisticated, highly engineered structure consisting of, among other things: (1) a smooth soil bed; (2) a non-woven geotextile fabric liner; (3) a thick, high density polyethylene (HDPE) liner; (4) a secondary liner; (5) two layers of drainage net between the two liners; (6) another layer of non-woven geotextile fabric; and, (7) 18 inches of stone. Incorporated within the liner system is a leachate collection system, including at the lowest level, a sump pump, which pumps the leachate into a storage tank. In addition to all these systems, there is a landfill gas extraction system constructed within the landfill." In other words, to paraphrase, "C'mon. It's a structure. Not a naturally-occurring hole in the ground filled with refuse."

The appellate court affirmed the lower court, concluding that a landfill is a "structure" as defined by the zoning ordinance and, therefore, cannot exceed 40 feet in height.

Seems a benign, targeted ordinance text amendment would have made a little more sense, on the front end, rather than a lawsuit. At 40 feet, we assume the landfill can, physically, but simply will not, economically, locate.

## **The Order of Perpetual Twerking**

How about the [Sisters of Saint Charles Borromeo \(and non-clergy neighbors\) versus Get It Entertainment, LLC d/b/a "Club Allure"](#)?

The lawsuit was filed last Friday, June 13, 2014, in Cook County, Illinois, seeking the court to void a Village of Stone Park, Illinois rezoning of the property allowing the "strip tease club" to locate as a violation of State due process strictures, to declare that the "strip tease club" runs afoul of the State law "mandat[ing] a 1,000 foot buffer zone between such an adult entertainment facility and places of worship or schools", and to enjoin the "strip tease club" from operating as a nuisance.

The suit was filed by the Thomas More Society in the behalf of the Sisters of Saint Charles, whose convent houses 20 women and three places of worship.

The Village and the "strip tease club" have not yet responded to the suit. But that doesn't mean the sides have not been vocal. Let's litigate in the media!

"Strip tease club" attorney: The suit is more about moral views than about light or noise.

The Village attorney: The state law regarding 1,000 foot buffers is unconstitutional, in violation of First Amendment principles, because it is overly broad and would eliminate any site in the tiny Village from hosting a strip club.

The nuns' attorney: "I think most people would find that offensive, to put a strip club next to a home for sisters."

The story is getting all kinds of press, some viewable [here](#) and [here](#).

See, land use law involves all kinds of businesses -- from landfills to, um, cabarets -- and even implicates morality. Fancy!

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