

Private Property Rights Overview

What About Property Rights?

- **Property Rights** are the rights to use your property within the limits established by ordinances and resolutions– provided that the rules do not violate Colorado or federal law or the Colorado or U.S. Constitutions . Zoning is allowed if it substantially advances legitimate governmental interests and does not deny an owner economically viable use of his or her land. See *Agin v. Tiburon*, 447 U.S. 255 (1980).
- Almost all land uses have historically been subject to some limits designed to protect their neighborhoods from unacceptable impacts
- What is “unacceptable” is defined by local elected officials within the limits of the U.S. and Colorado Constitutions and laws
- We have a historically higher tolerance for “acceptable impact” in Delta County.

In Delta County you currently have the “right” to do four things:

1. Agriculture (except CAFOS)
2. Residential
3. Home Business
4. Cottage Industry (larger home business)

But you still have to follow some basic regulations!!!

1. Septic System
2. Water Provider/State Engineer
3. Road Access
4. State Electric & Plumbing
5. Definition of Home/Cottage Industry

Limitations to Regulations:

Due Process:

- The 14th Amendment provides that the government may not “deprive any person of life, liberty, or property, without due process of law.”
 - Due process is about fundamental fairness.
 - Where a person’s life, liberty, or property is at stake, due process requires notice, a meaningful opportunity to be heard, and an impartial decision-maker.
- Different procedures are allowed in different circumstances.
 - Legislative matters (e.g., adopting a new zoning code) are not about individual decisions in individual cases, and therefore less process is due.
 - Quasi-judicial matters (e.g., a specific development approval) put individual rights directly at stake, and therefore require notice and a fair hearing on the record evidence. This may involve cross-examination and an appeal to a court.
 - Administrative matters (e.g., a septic permit) also put individual rights directly at stake, but do not require a hearing. Instead, due process requires that staff judgments be constrained by clear and meaningful standards.
- Under Colorado law, Counties cannot apply zoning requirements that they have not adopted beforehand as general rules or standards – i.e. you cannot “make it up as you go along”

Limitations to Regulations:

Takings:

- “The purpose of the Takings Clause . . . is to prevent the government from ‘forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.’” *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001).
- So, “while property may be regulated to a certain extent, if a regulation goes too far it will be recognized as a taking.” *Penn. Coal Co. v. Mahon*, 260 U.S. 393 (1922).
- **When does a regulation go “too far”?**
 - Regulations must allow for a reasonable economic use of property.
 - Regulatory takings are measured by what uses and developments of property remain available to its owner – not by the uses that zoning does not allow.
 - “Without in any way derogating acceptance of the profit motive, there is simply no constitutionally protected right under the federal or state constitutions to gain the maximum profit from the use of property.” *Nopro Co. v. Cherry Hills Village*, 180 Colo. 217 (1972).

MY RIGHT TO FARM!

- Colorado Revised Statutes address what is commonly referred to as “Right to Farm”. C.R.S § 35-3.5-102. Agricultural operation deemed not nuisance
- Right to Farm is not about land use but is about the rights of farmers to operate without threat of nuisance lawsuits
 - Putting **traditional zoning** in place in Delta County **WILL NOT IMPACT A FARMER’S RIGHT TO FARM.**
 - Putting **traditional zoning** in place will **not PREVENT a NEIGHBOR from filing a nuisance lawsuit against a farmer.** C.R.S § 35-3.5-102 might limit the success of any such lawsuit if the farmer employs practices that are common and reasonable.
 - Delta County’s zoning would have no bearing on a nuisance lawsuit. This is a private matter handled through the court system.
- **HOWEVER!!!** C.R.S § 35-3.5-102 **LIMITS** Delta County’s ability to “make any agricultural operation a nuisance”.

My Right to Complain about my Neighbor's Farm!

C.R.S § 35-3.5-102. Agricultural operation deemed not nuisance:

An agricultural operation that employs methods or practices that are commonly or reasonably associated with agricultural production **shall not be found to be a public or private nuisance** as a result of any of the following activities or conditions

- (I) Change in ownership;
- (II) Nonpermanent cessation or interruption of farming;
- (III) Participation in any government sponsored agricultural program;
- (IV) Employment of new technology; or
- (V) Change in the type of agricultural product produced.