

ZONING

300 Attachment 1

Town of Tusten

APPENDIX A: FINDINGS OF FACT FOR ARTICLE XIV — EXPLICITLY PROHIBITED USES

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APPENDIX A

Text of Findings of Fact.

The Town Board of the Town of TUSTEN has found, determined, and declared that:

1. TUSTEN is a community in the Upper Delaware River Region that takes great pride in its rural residential character, scenic and other natural resources, and small-town atmosphere.
2. Preservation of the Town's irreplaceable historic, recreation, and tourism sites, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the tourists who visit here.
3. The Town's rich natural and visual environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They deeply affect the way people feel about a place – whether or not businesses will want to locate or people will want to live in and visit a place.
4. The explicitly prohibited uses defined in Article XIV of this Zoning Law are in conflict with the **TOWN OF TUSTEN COMPREHENSIVE PLAN**, and would impair the existing character of the Town, because by their very nature such uses have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities in which they are located. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, decreased recreational opportunities, and damage to the tourism industry.
5. If one or more of the explicitly prohibited uses defined in Article XIV of this Law are conducted within the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Roads are a critical public resource and constitute a major investment of the public's money. Accidents involving heavy trucks have greater potential for death than those involving smaller vehicles. Increased truck traffic increases air pollution and noise levels, and decreases the quality of life and property values for those living nearby.
6. Allowing one or more of the explicitly prohibited uses defined in Article XIV of this Law to be conducted within the Town could negatively impact the tourism industry within the Town, and could impair the Town's ability to attract additional tourism-related businesses.
7. If one or more of the explicitly prohibited uses defined in Article XIV of this Law are conducted

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within the Town, the air pollution, dust and odors generated thereby (whether onsite or by truck traffic to and from the proposed site) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the public health.

8. Allowing one or more of the explicitly prohibited uses defined in Article XIV of this Law to be conducted within the Town could negatively impact the quality of water resources within the Town. Water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive and may not restore the water resource to a quality acceptable for domestic use.
9. If one or more of the explicitly prohibited uses defined in Article XIV of this Law are conducted within the Town, noise, vibrations, and light caused by the proposed operation could be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, and vibrations can have negative effects on human health and wildlife.
10. The creation, generation, keeping, storage or disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.
11. The high costs associated with the disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes have in other localities resulted, and could in our Town result, in persons seeking to avoid such costs by depositing such material along roadways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety, and welfare of the inhabitants of the Town.
12. The explicit proscription of the Explicitly Prohibited Uses set forth in Article XIV of this Law is a legitimate goal of land use laws. There is no question that exclusion of specified industrial uses is a legitimate goal of land use laws:

As the United States Supreme Court stated in ***Village of Belle Terre v. Borass***, 416 U.S. 1 (1974):

the concept of public welfare is broad and inclusive.... The values that it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the [local] legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. 416 U.S. at 6.

[...]

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one [....] The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people. 416 U.S. at 9.

And see also *Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y. 2d 668 (1996), where the Court of Appeals, New York State's highest court, evaluated a claim that a Town's prohibition of mining throughout the Town was in effect unconstitutional 'exclusionary zoning,' and held as follows:

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We have never held, however, that the ... ['exclusionary zoning'] test, which is intended to prevent a municipality from improperly using the zoning power to keep people out, also applies to prevent the exclusion of industrial uses. A municipality is not obliged to permit the exploitation of any and all natural resources within the Town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage to the rights of others and to promote the interests of the community as a whole. 87 N.Y. 2d at 683, 684. (emphasis added.)

_____ End of Findings.