General Meeting Information
College Township offers both in-person and virtual meeting attendance for all public meetings. To attend in-person, meetings will be held at 1481 E. College Avenue, State College PA, 16801, 2nd floor meeting room. To attend virtually, please see the information below.

To Attend the LIVE Meeting Via Zoom on Computer or Smart Phone:
   - Click here to REGISTER for the meeting via Zoom. Once registered, you will receive a confirmation email containing information about joining the meeting.

To Attend the LIVE Meeting Via Phone:
   - Dial: 1 (646) 558-8656  ● Meeting ID: 841 8285 5915  ● Passcode: 057732

*Click Here for detailed instructions on how to participate via zoom.

VIRTUAL PUBLIC COMMENTS: Please use the raised hand feature to participate. The moderator will recognize those with their hands raised (either by name or phone number).

WRITTEN PUBLIC COMMENTS: For specific Planning Commission agenda items and for items not on the agenda, written public comments may be submitted in advance by emailing smeyers@collegetownship.org by noon the day of the meeting.

CALL TO ORDER:

ZOOM MEETING PROTOCOL:

OPEN DISCUSSION (items NOT on the agenda):

CONSENT AGENDA:   CA-1  November 21, 2023 Meeting Minutes (Approval)

PLANS:

OLD BUSINESS:     OB-1  Dale Summit Area Planning (Reintroduction)

NEW BUSINESS:     NB-1  2023 DRAFT Annual Report (Discussion/Revisions)

REPORTS:         R-1  DPZ CoDesign Update
                  R-2  Council Report
STAFF INFORMATIVES:

SI-1 Affordable Housing Crisis Article
SI-2 Zoning Bulletin
SI-3 December EZP Update

OTHER MATTERS:

ANNOUNCEMENTS: Next regular meeting will be Tuesday, January 2, 2024 at 7:00pm; Reorganization

ADJOURNMENT:
CALL TO ORDER: Mr. Forziat called the meeting to order at 7:00 p.m.

ZOOM MEETING PROTOCOL: Mr. Forziat verified there were people present via Zoom Ms. Schoch briefly reviewed the Zoom protocol.

ROLL CALL: Mr. Forziat verified Ms. Ekdahl and Mr. Sharp were excused from the meeting.

OPEN DISCUSSION: None presented.

CONSENT AGENDA:

CA-1 Minutes, Approval of
September 19, 2023, Regular Planning Commission Meeting

CA-2 Action Item, Approval of
2024 Planning Commission Meeting Dates

Mr. Darrah questioned when people with term renewals will be notified of whether terms are to be extended by Council. It was determined Council will make the appointments at their reorganizational meeting on January 2, 2024 at noon.
Mr. Darrah moved to approve the November 21, 2023 Consent Agenda.
Mr. Fenton seconded. Motion carried unanimously.

PLANS:
P-1 Umberger & Rockenbeck /ClearWater Conservancy Subdivision Plan
Mr. Brian Anderson from Herbert, Rowland & Grubic, Inc. introduced himself and the two lot subdivision plan. Mr. Anderson reviewed the waivers being requested and summarized the subdivision plan. Mr. Forziat clarified the septic waiver being requested. Mr. Anderson verified, should the septic fail it would be up to the individual property owner to pay and resolve the issue. Mr. Fenton asked about the potential of trails and referenced the sketch plan previously presented. Mr. Franson stated there could possibly be a Master Plan developed in the future by ClearWater Conservancy. However, the plan being presented is for the subdivision of a property not currently owned by the Conservancy.

There was a discussion with regards to sidewalks. Whether to waive or defer development of sidewalks for two years and whether sidewalks on both Houserville Road and Old Houserville Road should be part of a deferral or waiver. Mr. Forziat suggested an alternative to concrete sidewalk construction could be paths. Mr. Darrah stated there is an engineering issue which could create a hardship for the developer and they should discuss this with the engineering department. Mr. Franson added a cost estimate could be submitted and the new owner could potentially pay a fee-in-lieu.

Mr. Darrah moved to recommend that Council approve the Juliet A. Umberger and Margaret E. Rockenbeck Final Subdivision Plan dated October 20, 2023 and last revised November 8, 2023 subject to the following conditions:

1. Within ninety (90) days from the date of approval by Council, all conditions must be satisfied, final signatures must be obtained and the plan must be recorded with the Centre County Recorder of Deeds Office. Failure to meet the ninety (90) day recordation time requirement will render the plan null and void.
2. Pay all outstanding review fees.
3. Address, to the satisfaction of the Township Engineer, any outstanding plan review comments from staff.
4. Fully comply with College Township Code Section 180-12.
5. Approve requested waiver of 180-16.B(2) for additional 8.5’ right-of-way along the length of Old Houserville Road due to an existing dwelling and garage which fall within the portion of additional right-of-way.
6. Approval of a sidewalk waiver for Lot 1RR and Lot 2 along Old Houserville Road.
7. Approval of a deferral of construction of sidewalks for a two year period along Houserville Road for Lot 2.
8. Approve the waiver of 180-19.B for Lot 2 as this lot is intended for conservancy purposes, is within the flood plain, and no further septic requirements are anticipated. Should the lot require future sanitary service, the lot owner shall be responsible for satisfying the sanitary needs at no expense to College Township, including but not limited to, on-lot installation or sanitary sewage system extension.
9. Approve the waiver of 180-19.B for Lot 1RR as this lot is presently served with on-lot septic. Should this lot experience septic failure, the lot owner shall be responsible for satisfying the sanitary needs at no expense to College Township, including but not limited to, on-lot installation or sanitary sewage system expansion.
10. All conditions must be accepted in writing within seven (7) days from the date of the conditional approval letter from the Township Engineer.

Mr. Fenton seconded.
Motion passed with a vote of 4 – 1 with Mr. Forziat voting nay.
**P-2 Jersey Mike’s Land Development Plan**

Mr. Mark Torretti for Penn Terra Engineering, Inc. introduced himself and the land development plan. Mr. Torretti explained the pick-up lane proposed in the plan, how it is to be used by customers, and that it is not intended as a drive-thru lane for ordering. He stated that even though a trip generation study didn’t trigger a traffic impact study (TIS), they did perform a TIS and submitted it to PennDOT for comments. Mr. Torretti added that the plan also shows an underground stormwater management facility which is in compliance with the Township’s wellhead protection area.

There was a discussion and clarification of existing easements. Also discussed was experiences and issues with pick-up windows and customers not reading signage leading to the pick-up. There was also an extensive discussion of traffic and the traffic study. Mr. Franson discussed comments submitted by PennDOT and that the Township’s traffic consultant agreed with those comments.

Mr. Hoffman questioned the material to be used between the retaining wall and curb and asked that it be added to the detail sheet of the plan. He also asked if the building would be sprinkled for fire protection. Mr. Torretti confirmed the building is not to be sprinkled.

Mr. Darrah questioned a comment made by staff, to the project manager in regards to the new ordinance passed in the PRBD. Ms. Schoch stated the comment was simply a suggestion to consider the parking and building arrangement on the parcel.

Mr. Darrah moved to recommend that Council approve the Jersey Mike’s Preliminary/Final Land Development Plan dated October 23, 2023 and last revised November 13, 2023 subject to the following conditions:

1. Within ninety (90) days from the date of approval by Council, all conditions must be satisfied, final signatures must be obtained and the plan must be recorded with the Centre County Recorder of Deeds Office. Failure to meet the ninety (90) day recordation time requirement will render the plan null and void.
2. Pay all outstanding review fees.
3. Address, to the satisfaction of the Township Engineer, any outstanding plan review comments from staff.
4. Fully comply with College Township Code Section 180-12.
5. Post surety as approved by the Township Engineer prior to recordation.
6. Provide proof of NPDES approval.
7. Provide proof of Traffic Impact Study (TIS) approval.
8. Provide approved PennDOT Highway Occupancy Permit prior to occupancy.
9. Record approved DSAME.
10. All conditions must be accepted in writing within seven (7) days from the date of the conditional approval letter from the Township Engineer.

Mr. Hoffman seconded.
Motion carried unanimously.

**OLD BUSINESS:** None presented.

**NEW BUSINESS:**

**NB-1 Workforce Housing Remand from Council**

Ms. Schoch introduced the topic and added, when presented to Council the suggestion was made to include the Township’s Mission and Vision Statements within the intent and purpose of the ordinance. Ms. Schoch continued describing the Continuum of Housing and how this ordinance will target the missing middle. She added that tonight the remand from Council is being discussed and any questions on the remand are to be assembled by the Planning Commission’s liaison and presented to Council for clarification, per the most recent joint meeting with Council and PC. Mr. Forziat agreed and reiterated that this meeting to ensure the Planning Commission understands the remand from Council.
During the discussion of the remand the purpose and intent were read and discussed. Mr. Forziat added that the Commissioner’s should become familiar with the current workforce housing ordinance and PC will follow the recommended process laid out in the remand. The remand states that PC is being asked to make a recommendation to Council by the end of the first quarter of 2024.

There was a lengthy discussion of the remand from Council. Throughout that discussion the following questions transpired and will be presented to Council via the Planning Commission liason report on December 6th:

1. How does the Township plan to offer realistic incentives to developers and bankers to construct single family workforce housing?
2. Regarding Owner-Occupied Units, how do we maintain the 60-120% AMI in resale?
3. Clarify Bulletin #1 to recognize social-economic diversity of neighborhoods. What does this mean in more detail?
4. How do we prepare for changes in the AMI?
5. Does College Township have any percentage in mind for amount of workforce housing in the Township? What is your goal in the next few years?

REPORTS:

- R-1 DPZ CoDesign Update
- R-2 Council Meeting Update

No further discussion presented for the above reports/updates provided.

STAFF INFORMATIVES:

- SI-1(a-f) Council Meeting Minutes
- SI-2 Zoning Bulletin
- SI-3 November EZP Update

No further discussion presented for the above staff informatives provided. Mr. Forziat offered if any questions related to any of the reports or informatives to email himself and Ms. Schoch before the next meeting.

OTHER MATTERS: None presented.

ANNOUNCEMENTS:

Mr. Forziat announced that all are invited to attend a training, Duties of the Planning Commission, sponsored by the Pennsylvania State Association of Township Supervisors (PSATS) being held at College Township Municipal Building on Tuesday, November 28, 2023 at 6:00pm.

Mr. Forziat announced the next meeting will be Tuesday, December 5, 2023 at 7:00 p.m.

ADJOURNMENT:

Mr. Hoffman moved to adjourn. Mr. Fenton seconded. Motion carried.

Meeting adjourned at 9:06 p.m.

**Draft**

Sharon E. Meyers
Senior Support Specialist – Engineering/Planning
To: College Township Council and Planning Commission  
Thru: Adam Brumbaugh, Township Manager  
From: Lindsay K. Schoch, AICP | Principal Planner  
Date: December 13, 2023  

RE: Dale Summit Area Plan & Form Based Code Review Process

Beginning in early 2024, College Township Council, Planning Commission and Staff will embark on the major undertaking of review, refinement and implementation of some variety of Form Based Code (FBC), in the Dale Summit. Implementation of a FBC is one of the primary objectives set forth in Dale Summit Area Plan.

In order to launch this effort, Staff is proposing the following Joint Meetings of Council and Planning Commission, which will each feature specific Focus Areas and Meeting Objectives:

<table>
<thead>
<tr>
<th>Month</th>
<th>Event</th>
<th>Focus Area(s)</th>
<th>Meeting Objectives</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>Joint Meeting #1</td>
<td>Dale Summit Area Plan</td>
<td>1) Revisit past actions on the Dale Summit Area Plan.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2) Review updates to the Plan as provided by DPZ CoDesign.</td>
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<tr>
<td></td>
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<td></td>
<td>3) Confirm that the Vision Statement and Implementation Strategies remain consistent with expectations and previous Plan endorsement.</td>
</tr>
<tr>
<td>February/ March</td>
<td>Joint Meeting #2 with DPZ CoDesign</td>
<td>1) Site Analysis &amp; Supporting Diagrams (Plan Pages 80-89)</td>
<td>1) Overview of Site Analysis and Supporting Diagrams, specifically the proposed Regulating Plan and associated overlays.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2) DRAFT Dale Summit Form Based Code</td>
<td>2) Overview of DRAFT FBC.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3) Establish a preferred order of review for FBC elements/sections.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4) Remand DRAFT Regulating Plan and FBC to Planning Commission.</td>
</tr>
</tbody>
</table>

The Joint Meetings are intended to provide an opportunity for Council and Planning Commission to collectively review the Dale Summit Area Plan and the DRAFT FBC in order to establish a foundational understanding of each of the documents and to set expectations for the overall review process.
**Action Requested:**

1. Council and Planning Commission are asked to review the proposed Focus Areas and Meeting Objectives for both Joint Meetings and offer any recommendations on potential revisions.

2. Council is asked to authorize staff to schedule and advertise the proposed Joint Meetings.

**Next Steps:**

Once authorized to schedule the meetings, Staff will transmit the materials for Joint Meeting #1 to Council and Planning Commission for review. This transmittal will include a detailed memo providing background, additional context and some direction for the review of the updated Dale Summit Area Plan.
COLLEGE TOWNSHIP
PLANNING COMMISSION

2023 Annual Report
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   b. Purpose/Objectives
   c. Duties
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   e. Members

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    b. National Historical Significance

III. Plans
     a. Inventory
     b. Process

IV. Meeting Highlights

V. DPZ CoDesign Charrette
   a. Introduction
   b. Schedule of Events
   c. Highlights
I. PLANNING COMMISSION

INTRODUCTION

The College Township Planning Commission is made up of seven members and two alternates. Members are College Township residents who volunteer for the position, are appointed for a four year term by College Township Council, and represent College Township as a whole. Planning Commissioners do not represent any particular person, business, or group within their municipality. The Planning Commission strives to provide input and guidance that will positively affect the entire municipality and excuse themselves from any actions where a conflict of interest could be perceived.

The Planning Commission typically meets on the first and third Tuesdays of each month at 7:00pm in the Council Room at the College Township Municipal Building. Currently these are considered “hybrid” meetings, meaning members and public are able to take part in the meeting from the comfort of their own home via Zoom.

PURPOSE/OBJECTIVES

The Planning Commission’s purpose is to protect and promote safety, health and welfare through coordinated development, managed growth and guidance in the uses of land and structures. Members promote the conservation of resources and energy through the use of appropriate planning practices and assist the municipality to minimize such problems that may presently exist, or which may be foreseen. Their mission is accomplished through a review of subdivision and land development plans and by the creation of amendments for zoning and land development regulations.

A Planning Commission is a body of citizens that serve within local government, acting as an advisory group to the College Township Council on issues and policies related to planning, land use regulation, and community development. Planning Commissioners act as citizen planners and work to develop plans and implementation policies that affect how their community manages changes in growth and development.

DUTIES

The Planning Commission plays a crucial role in shaping the future of the community. Considering the future of the community and developing plans to guide growth and development is both complex and time consuming. The Planning Commission plays a key role in College Township by reviewing and evaluating land use and development issues in both the short-term and long-term.

Municipal Planning Code empowers the Planning Commission to:

1. Make recommendations to the College Township Council concerning the adoption or amendment of an official map.
2. Prepare and present to the Council a zoning ordinance and make recommendations to the governing body on proposed amendments to the ordinance.
3. Prepare, recommend, and administer subdivision and land development and planned residential development regulations.
4. Prepare and present a building code and a housing code and make recommendations concerning proposed amendments thereto.
5. Promote public interest in, and understanding of, the comprehensive plan and planning.
6. Review the zoning ordinance, subdivision and land development ordinance, official map, provisions for planned residential development, and other ordinances and regulations governing the development of land. Among other things.
7. Section 207 of the Municipal Planning Code sets forth the requirement for an annual report and file record of business, which shall be made annually by March first to the governing body.

COLLEGE TOWNSHIP PLANNING COMMISSION WORK PROGRAM

Key:  IP = In Progress;  C = Complete;  OG = On Going
      R = Required;  O = Optional

<table>
<thead>
<tr>
<th>Routine Activities</th>
<th>Progress</th>
<th>Priority</th>
<th>When to Transpire</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>1st Qtr</td>
<td>2nd Qtr</td>
</tr>
<tr>
<td>Subdivision/Land Development Plan Reviews</td>
<td>OG</td>
<td>R</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Items Remanded by Council</td>
<td>OG</td>
<td>R</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Attendance &amp; Interaction with CRPC</td>
<td>OG</td>
<td>R</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Post PC Meeting Reports to Council</td>
<td>OG</td>
<td>R</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Annual Joint Meeting with Council</td>
<td>C</td>
<td>O</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Annual Report to Council</td>
<td>C</td>
<td>R</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>
MEMBERS

Ray Forziat, Chair

Term Ends: December 2026

Ray graduated from the Pennsylvania State University with a B.S. in Industrial Engineering. His professional career included forty-two years in Facility and District management positions in Business & Operations Management. During his employment, Ray was employed by two Fortune 500 Companies. He has since retired and currently independently assists and consults for businesses in Business Operations, Revenue Generation, as well as Employee and Staff Development. In addition to his involvement with College Township Planning Commission (since January 2006), Ray is also involved in College Township Industrial Development Authority (since March 2015), Centre Region Planning Commission, and Centre County Office of Aging Advocacy Council.

Ed Darrah, Vice-Chair

Term Ends: December 2023

Ed has a BS in Education and Master's Degree in Business from Bloomsburg University. He worked in the Banking and Financial Industry for forty-three years. Ed was a commercial lender and team leader for seventeen years, then worked as a Commercial Credit Officer both in Commercial Real Estate (Mid Atlantic & Midwest Regions) and in Corporate Finance for the last twenty years. Ed has lived in State College since 1984 and was a member of the allocation committee for the United Way as well as a member of the Chamber of Commerce. He has been a member of the College Township Planning Commission for the last three years, using his experience from lending and providing credit to real estate developers throughout the Eastern and Midwest Regions of the United States.

Peggy Ekdahl, Secretary

Term Ends: December 2025

Peggy was raised in College Township and grew up with local government in the family. Her dad was one of the three original College Township Supervisors with Elwood Williams and Roy Clouser. She graduated from State College Area High School and worked for The Pennsylvania State University and Raytheon (formerly HRB) until retirement. She was a Configuration Management Specialist which enabled her to learn the engineering components of large computer systems and to assist with world-wide site installations. She has a son who resides in Colorado and a daughter who lives locally. She has long been a fan of local sports (especially Penn State wrestling) and enjoys planting and gardening. Her environmental concern has always been, and will continue to be, our water resource and its needs for continued longevity.
**Matt Fenton**

Term Ends: December 2023

Born in Philipsburg, PA and a Philipsburg Osceola graduate. Matt is a 1981 graduate of the Philadelphia College of Pharmacy and Science, and was a pharmacist at CVS/pharmacy in the Nittany Mall for 25 years until his retirement. He is an active volunteer in the State College Little League for the last 30 years as a parent, coach, vice-president and a 20-year umpire. A youth basketball coach and proud supporter of State College School District athletics. Go State! Matt is also a member of The Centre County Office of Aging Committee.

**Bob Hoffman**

Term Ends: December 2024

Bob and his wife Ann were both raised in College Township and graduated from SCAHS. They have four wonderful children and nine grandchildren. Robert has a bachelor’s of architecture degree from Penn State and a master’s degree in architecture/planning from the University of Minnesota. In April, he retired after owning his own architectural practice in Boalsburg for 50 years. Bob and Ann presently live in the house his father built in 1947 at Klinger Heights overlooking State College Borough and Penn State campus.

**Noreen Khoury**

Term Ends: December 2025

Noreen has lived in the Centre Region since 1967. She currently lives in Lemont where she is challenged in her quest for a “Winterthur” type landscape by the deer and the Black Walnut trees. She and her husband, George, raised their two children here. The whole family graduated from Penn State, with Noreen earning additional degrees, MS and PhD in Horticulture. Noreen spends her time walking (sometimes with her dog), quilting, and rearranging her yard.
Bill Sharp

Term Ends: December 2023

Bill and Priscilla Sharp moved to College Township in 2004 and have found it a great place to live. Bill spent a career as a planner and project manager with experience in government, business, higher education (college professor and academic administrator), and nonprofits (several startups). His main focus has been community and economic development, specifically strategic human resource development. He is a writer, speaker, and workshop leader. He is a United States Air Force veteran. Co-founder and Director of Transition Centre/Rural Resilient Hub (www.transitioncentre.org), a Pennsylvania Nonprofit Corporation. Formally a member of the College Township Council and the Centre Regional Council of Governments General Forum, Parks and Recreation Committee, College Township Industrial Authority and currently serves on the Spring Creek Watershed Commission and College Township Planning Commission. He finds it a delight and a privilege to serve our community and work with staff and Council. Bill has a B.Sc. in Public Management (summa cum laude), with a two-year pre-engineering program and a minor in History. M.A. in sociology with a focus on community leadership development and additional graduate work in community development and business management.

Ash Toumayants (Alternate)

Term Ends: December 2025

Ash graduated from Penn State in 2004 with a Bachelor's Degree in Industrial Engineering and currently lives in State College with his lovely wife, Noelle, and their four adorable children. Over the past decade, he has helped hard working people across Central Pennsylvania prepare for retirement as founder and president of Strong Tower Associates.
II. BACKGROUND

DEMOGRAPHICS

Founded in 1875, College Township is a composite of zoned areas that allows for a mixture of agricultural, commercial, industrial, residential, residential-office, and university, which is blended into an area of approximately eighteen and one half square miles. According to the 2020 US census, College Township population was 10,780. This was a 13.2% increase from 2010. The age distribution is fairly even, with each group having different needs and preferences.

<table>
<thead>
<tr>
<th>Ages:</th>
<th>&lt;18</th>
<th>18-24</th>
<th>25-44</th>
<th>45-86</th>
<th>65+</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>21.1%</td>
<td>16.7%</td>
<td>26.0%</td>
<td>21.3%</td>
<td>14.9%</td>
</tr>
</tbody>
</table>

NATIONAL HISTORICAL SIGNIFICANCE

Properties wanting to be included in the National Register of Historic Sites & Places (NRHSP) complete a Historic Resource Survey Form which is reviewed and determined Eligible by the PA Bureau for Historic Preservation. Once determined Eligible the property owner can formally nominate the property for Listing in the NRHSP. Completed nomination forms are sent to the State Review Board who reviews the nomination and sends the nomination for approval by the National Park Service and are then Listed National Register Properties.

<table>
<thead>
<tr>
<th>NATIONAL REGISTER LISTED PROPERTIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROPERTY NAME</td>
</tr>
<tr>
<td>General John Thompson House</td>
</tr>
<tr>
<td>Tudek Site (36CE0238)</td>
</tr>
<tr>
<td>Felix Dale Stone House</td>
</tr>
<tr>
<td>Houserville Site (36CE0065)</td>
</tr>
</tbody>
</table>
### NATIONAL REGISTER HISTORIC DISTRICTS

<table>
<thead>
<tr>
<th>PROPERTY NAME</th>
<th>ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lemont Historic District</td>
<td>Off PA 26</td>
</tr>
<tr>
<td>Oak Hall Historic District</td>
<td>State Route 871</td>
</tr>
</tbody>
</table>

### NATIONAL REGISTER ELIGIBLE PROPERTIES

<table>
<thead>
<tr>
<th>PROPERTY NAME</th>
<th>ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shiloh Church</td>
<td>Shiloh Road &amp; Benner Pike</td>
</tr>
<tr>
<td>P. Hoy Farmstead</td>
<td>490 Shiloh Road</td>
</tr>
<tr>
<td>Gordon Farmstead</td>
<td>1301 Trout Road</td>
</tr>
<tr>
<td>Old Houserville Historic District</td>
<td>Houserville</td>
</tr>
<tr>
<td>J. Marvin Lee Tenant House</td>
<td>1657 Old Houserville Road</td>
</tr>
<tr>
<td>Starlight Drive-In Theatre</td>
<td>1100 Benner Pike</td>
</tr>
</tbody>
</table>
Since 1946, the Pennsylvania Historical and Museum Commission has administered a program of historical markers to capture the memory of people, places, and events that have affected the lives of Pennsylvanians over the centuries since William Penn founded his Commonwealth.

<table>
<thead>
<tr>
<th>Marker</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>John I. Thompson Grain Elevator and Coal Sheds</td>
<td>137 Mt. Nittany Road, Lemont</td>
</tr>
<tr>
<td>Centre Furnace</td>
<td>Porter Road, 150 ft. North of PA 26</td>
</tr>
</tbody>
</table>
III. PLANS

INVENTORY

Below is a list of plans which were presented to the College Township Planning Commission throughout 2023.

<table>
<thead>
<tr>
<th>Date</th>
<th>Plan Name</th>
<th>PC Review/ Action</th>
<th>CTC Review/ Action</th>
<th>Waiver Requests</th>
<th>Current Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/17</td>
<td>Arize Federal Credit Union LDP</td>
<td>Recommended Approval</td>
<td>Approved</td>
<td>Sidewalk Deferral</td>
<td>RECORDED</td>
</tr>
<tr>
<td>1/17</td>
<td>MNMC Sketch Plan</td>
<td>Suggested a Parking Study</td>
<td>Recommended improvement of pedestrian flow</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2/7</td>
<td>State College Food Bank Sketch Plan</td>
<td>Suggested relocation of ADA parking</td>
<td>Recommended public trans. access</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3/21</td>
<td>MNMC Bed Tower LDP</td>
<td>Recommended Approval</td>
<td>Approved</td>
<td>Fee-in-Lieu of Pedestrian Facilities</td>
<td>RECORDED</td>
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<tr>
<td>3/21</td>
<td>State College Food Bank LDP</td>
<td>Recommended Approval</td>
<td>Approved</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4/18</td>
<td>PSU Environmental Management Facility LDP</td>
<td>Recommended Approval</td>
<td>Approved</td>
<td></td>
<td>RECORDED</td>
</tr>
<tr>
<td>5/2</td>
<td>Summit Park Sketch Plan</td>
<td>Suggested consideration of sidewalk timeline</td>
<td>Connection to Stewart Drive</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6/27</td>
<td>UAJA Biosolids Upgrade Project LDP</td>
<td>Recommended Approval</td>
<td>Approved</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8/15</td>
<td>Medlar Field – Hitting Tunnels</td>
<td>Recommended Approval</td>
<td>Approved</td>
<td></td>
<td>RECORDED</td>
</tr>
<tr>
<td>8/15</td>
<td>Summit Park Subdivision</td>
<td>Recommended Approval</td>
<td>Approved</td>
<td>Sidewalk and Tree Deferral</td>
<td></td>
</tr>
<tr>
<td>9/5</td>
<td>ClearWater Subdivision Sketch Plan</td>
<td>Suggested submitting a narrative</td>
<td>Recommended Narrative</td>
<td></td>
<td></td>
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<tr>
<td>9/19</td>
<td>Maxwell Subdivision Sketch Plan</td>
<td>Suggested considering a CATA stop</td>
<td>Appreciated a Narrative</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11/21</td>
<td>Umberger &amp; Rockenbeck Subdivision</td>
<td>Recommended Approval</td>
<td>Sidewalk Deferral &amp; Waiver, ROW Waiver</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11/21</td>
<td>Jersey Mike’s LDP</td>
<td>Recommended Approval</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>
PROCESS

Effective use of site plan approval allows for a detailed evaluation and mitigation of development project impacts. This review increases College Township’s ability to define the character and layout of new developments and to work with the applicant to balance local needs with project needs. Site plan review typically focuses on drainage, traffic, parking, roadway construction, signage, utilities, screening, lighting, density, and other project specific elements to arrive at the best possible design for the site.

Tiered review process allows College Township to provide different levels of review based on thresholds of scale or project impact. Specific criteria are identified and applications are reviewed based on established criteria. Projects meeting specified criteria can be expedited through the review process. A tiered review process provides predictability in the review process and staff resources are concentrated on projects with greater community impact or which do not conform to community expectations.

Delegation of minor decisions to staff allows staff to make decisions based on criteria and/or approval thresholds determined by College Township Council. Delegation of minor decisions expedites the review process and allows staff, the Planning Commission, and Council to focus on larger or more complex projects.

Uniform timelines and notifications create an efficient review process without compromising the interests of the community. Applicants are provided a “road map” for the order of approvals, expected timeframes, and points of coordination in a consistent and transparent manner. All subdivision, land development, and minor plan documents are readily available to prospective applicants on the College Township website and at the municipal offices. Reference documents for ordinances, regulations, rules and process procedures are also available.
IV. MEETING HIGHLIGHTS

January 3, 2023 – Planning Commission reorganization meeting took place. Commissioners then reviewed and approved the 2022 Annual Report for presentation to Council. They also discussed the scope and contract of DPZ CoDesign to be presented to Council in the near future.

January 17, 2023 – Arize Federal Credit Union LDP was presented and a motion was made to recommend Council approve the plan. MNMC and HRG presented a sketch plan consisting of a new bed tower, parking garage, and a central energy/utility plant. The commissioners also reviewed the Development of Regional Impact Report for the Maxwell property. The Planning Commission made a motion to recommend Council approve the request to rezone a three acre portion of the Forest District to Industrial.

February 7, 2023 – A sketch plan for the State College Area Food Bank was presented. Planning Commission recommended the developer encourage large truck traffic to turn left when exiting the property so as to not create a traffic jam. The Official Map was remanded from Council and the commissioners were give a large hard copy of the current Official Map to mark as they saw fit and discuss at the following meeting.
February 21, 2023 – The Planning Commission used this meeting as a work session for the Official Map. There were many suggestions made to add roads, shared-use paths, and greenways, and make connections throughout the Township.

March 7, 2023 – The Official Map discussion continued. An interactive application was introduced and commissioners were asked to use the application in order for the Township GIS Technician to be able to update the map more frequently during the process. A rezoning request was also presented, which included options to add uses to an existing district or to rezone the entire district all together.
March 21, 2023 – Two plans were presented, the Mount Nittany Medical Center Bed Tower Project and the State College Are Food Bank. The Planning Commission made motions to recommend Council approve both plans. The Official Map was also discussed and a motion made to table the topic until the following meeting. An update on the rezoning request was also given as the developer is working on a sketch plan with the Township consulting firm, DPZ CoDesign.

April 4, 2023 – The Official Map continued to be discussed and commissioners determined that the Pedestrian Facilities Master Plan needs to be applied to the Official Map. The rezoning request was discussed and a motion was made to table the conversation until Planning Commission consults with the Township consulting firm.

April 18, 2023 – The Pennsylvania State University Environmental Management Facility plan was presented and discussed. Planning Commission made a motion to recommend Council approve the plan. A representative of DPZ CoDesign was present via zoom to discuss the rezoning request/zoning amendment consideration. After one motion failed due to lack of a second, a motion was made to deny the recommendation by staff and wait twelve months for a Master Plan of the area. The Official Map and Ordinance was also discussed and a motion made to recommend Council review the draft and set a public hearing.
May 2, 2023 – A sketch plan of Summit Park was presented. Planning Commission discussed the impact of development on College Avenue and sidewalk installation throughout the proposed development. An announcement was made that a Charrette has been scheduled and a request to change the second meeting in June to one week after originally scheduled due to the Charrette schedule.

May 17, 2023 – Meeting cancelled.

May 30, 2023 – Joint meeting with Council was held. Topics of discussion included the reconsideration of the intent of the Residential Rental Ordinance, the Draft Official Map and corresponding Ordinance, and the Dale Summit Redevelopment Plan/Zoning Amendment Consideration.

June 6, 2023 – Residential Rental Ordinance was presented and commissioners were asked to review the new intent provided by Council and make sure the ordinance language meets the intent. A motion was made to make a minor change within a definition of the ordinance. An update and report was given for DPZ CoDesign and Pre-Charrette powerpoint presentation was provided.

June 27, 2023 – A representative from Rettew presented a plan for the University Area Joint Authority Biosolids Upgrade Project. A motion was made to recommend Council approve the plan. The revised Residential Rental Ordinance was presented to the commissioners as an informative to ensure the changes requested were accurate and could be carried forward to Council. Shiloh Road Rezoning remand from Council was reviewed. The commissioners present decided to wait to discuss the topic until all commissioners were present. There was also an update given by staff of the success of the Charrette held the prior week.

July 18, 2023 – Shiloh Road Rezoning was discussed. Commissioners questioned certain definitions and asked staff to better define some words and phrases. There was a discussion about whether changes made to the Planned Residential Development (PRD) Ordinance would be pertain to all proposed PRD’s in the Township. It was determined that it would not affect PRD’s throughout the Township, only those proposed within the Planned Research and Business Park District.
August 1, 2023 – The Shiloh Road Rezoning topic was discussed. It was determined the Planning Commission was in consensus to allow certain R-3 uses within the PRBD by right and not by conditional use. Staff was tasked with incorporating the PRD changes into the PRBD Ordinance so as to make it easier for developers, residents, and staff when proposing residential development within the PRBD, as opposed to flipping back and forth between ordinances.

August 15, 2023 – The Planning Commission reviewed two plans, one land development plan at Penn State, and the other a preliminary subdivision at Summit Park. The Commissioners recommended Council approve both plans with some conditions. Shiloh Road Rezoning was also discussed and a motion made to recommend Council amend Chapter 200, Zoning, specifically the section pertaining to PRBD to allow duplexes, townhouses, and multi-family residences as a use-by-right in the district with specific requirements.

September 5, 2023 – Umberger Rockenbeck/ClearWater Conservancy Sketch Plan was discussed, it was determined a plan narrative is very important. The Planning Commission reviewed Centre Region Planning Commissions electric vehicle readiness guide and model ordinance and discussed the future of the region and how College Township may need to start working on a similar ordinance.

September 19, 2023 – Maxwell Subdivision Sketch Plan was discussed, as well as a potential land development sketch plan for one of the lots to be subdivided. There was a brief update of the completed Oak Ridge Avenue and Shamrock Avenue speed hump construction project
October 3, 2023 – Regular meeting canceled. Planning Commission held a special work session.

October 17, 2023 – Regular meeting canceled due to lack of agenda items.

November 8, 2023 – Regular meeting canceled. Planning Commission held a joint work session with Council. Topics discussed included the review of College Township’s Vision and Mission Statement, a review of Planning Commission’s work session held on October 3rd, as well as possible points of concern.

November 21, 2023 – Two plans were reviewed and discussed by Planning Commission. First was a Subdivision Plan for Umberger and Rockenbeck/ Clearwater Conservancy Subdivision Plan, and second was a Land Development Plan for Jersey Mike’s. The Planning Commission recommended Council approve both plans with conditions. Also presented at the meeting was a remand from Council to make recommendations on the Work Force Housing Ordinance.

November 28, 2023 – College Township hosted a special training, *Duties of a Planning Commission*, sponsored by the Pennsylvania State Association of Township Supervisors (PSATS).

December 5, 2023 – Regular meeting canceled.

December 19, 2023 –
V. DPZ CoDesign Charrette

INTRODUCTION

During the week of June 18th, the Township, in collaboration with the Planning and Design Consultant, DPZ CoDesign, held the Dale Summit Redevelopment Plan Charrette. As part of the overall Redevelopment Plan, significant zoning changes are anticipated in Dale Summit. To combat the issues set forth by Euclidian Code, College Township is investigating implementation of a hybrid type of form-based zoning. This hybrid will shift the focus from segregating land uses to shaping the physical form and character of neighborhoods.

What is a Charrette? A charrette, or design charrette, is a planning technique for consulting with stakeholders and other interested parties, harnessing their talents and energies, and involving them in the physical design and planning of the community. It is an intense collaborative effort used to create a detailed feasible design or plan for a specific issue or geographic location. While there is flexibility as to how to conduct a charrette, it is generally an involved process where the main activity takes place over several days, and the entire charrette planning process can be months in duration. A charrette might be used to develop a specific area or to reach a consensus on a design for the area. Another use could be to reach an agreement on a theme or façade for an area.

SCHEDULE OF EVENTS

Day 1 (June 19th) – Open Studio; Opening Presentation

Day 2 (June 20th) – Open Studio; Marketability; Transportation & Infrastructure; Park, Trails & Schools; Open Studio; Work-In-Progress Open House

Day 3 (June 21st) – Open Studio; Land Use & Zoning; Open Studio

Day 4 (June 22nd) – Closing Presentation
HIGHLIGHTS

Community Engagement

Potential Town Square at Intersection of College Avenue and Benner Pike
Potential along College Avenue
## Briefing Paper – DPZ CoDesign Form-Based Code in Dale Summit
Prepared by: Lindsay K. Schoch, AICP | Principal Planner

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Status</th>
<th>Next Steps</th>
<th>Staff/Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Week ending December 1, 2023</td>
<td>Interim Zoning Changes in Dale Summit</td>
<td>Ordinance enacted</td>
<td>Sent to local developers and engineers.</td>
<td>Lindsay / Mark / Don / Adam /</td>
</tr>
<tr>
<td></td>
<td>Plan Preparation</td>
<td>DPZ submitted updated Dale Summit Area Plan. Under staff review.</td>
<td>Review Plan with Staff. Prepare for Kick-off meeting.</td>
<td>Lindsay / Mike</td>
</tr>
<tr>
<td></td>
<td>Code Preparation</td>
<td>Township staff received the 2nd draft of the Code. Meeting scheduled to review at staff level.</td>
<td>Schedule a joint kick-off meeting between Council and the Planning Commission. DPZ attending to present and discuss the Draft Plan and Code.</td>
<td>Lindsay / Mark / Don / Adam / Mike</td>
</tr>
</tbody>
</table>
Briefing Paper – DPZ CoDesign Form-Based Code in Dale Summit
Prepared by: Lindsay K. Schoch, AICP | Principal Planner

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<th>Status</th>
<th>Next Steps</th>
<th>Staff/Others</th>
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</thead>
<tbody>
<tr>
<td>Week ending December 8, 2023</td>
<td>Interim Zoning Changes in Dale Summit</td>
<td>Ordinance enacted. No current development proposals.</td>
<td>Work with any potential developer/property owner to understand and interpret the new section of the zoning code.</td>
<td>Staff</td>
</tr>
<tr>
<td>Plan Preparation</td>
<td>Vision Statement and revised (by DPZ) Dale Summit Area Plan submitted and reviewed by staff.</td>
<td>Review Plan with Staff. Prepare for Kick-off meeting (PC and Council)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Code Preparation</td>
<td>Staff discussion of 2nd draft of FBC.</td>
<td>Discussion of the Dale Summit Area Plan and Vision, then begin review of the Code.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DPZ Discussions</td>
<td>On-going / DPZ provided a listing of areas that were retrofitted via a new form based code. (Outlined below)</td>
<td>Per the request of the PC, staff will provide the listing to them as a staff informative.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

From an email from Marina Khoury, DPZ.

As we have researched examples of successful retrofits in the US (not only by DPZ) we have grouped them generally into 2 broad categories. Plans and Codes. Both are necessary and Dale Summit has both. While none of the below examples are over a 2 square mile area (1,280 acres), the ideas below are certainly adaptable to that area, which we all recognize will take decades to develop, but the development bones need to be right, and you will recognize from the below, ideas proposed for Dale Summit too. Moreover, many plots within the 2 sq mile area will remain untouched as rather stable development exists there already (i.e: the single family or multi-family residential areas). They all proposed the following strategies in one way or another.

- Re-stitch a street-block grid, or create a new interconnected and walkable street network
- Decrease reliance on automobile dependency, or leverage TODs
- Increase social equity and public health
- Increase job-housing balance and providing a greater diversity of work places
- Increase access to nature, parks and trees
- Support an aging population

What makes Dale Summit unique is its size, not its mix of uses or “bones” as the below represents a wide range of sprawling places that have been successfully retrofitted. I know there are more examples than the below, but these are the ones that have immediately come to mind.
A. SUCCESSFUL RETROFITS

1. Retrofits of existing sprawling areas that have spurned new and walkable urbanism

- Legacy Town Center, Plano, TX - approximately 180 acres for the development of a town center which was highly successful and spurred /influenced new development around it in the past 2 decades of easily another 200 acres from what we can see on Google Earth.
- Pike and Rose and White Flint Mall redevelopment, Rockville, MD - approximately 430 acres, converting a commercially sprawling area on a drivable arterial. It is retrofitted around leveraging a metro station and made more walkable, mixed-use and vibrant,
- Downtown Kendall, FL - approximately 350 acres, organized around a successful mall and retrofitting a sprawling area around a train station.
- Downtown Doral, Doral, FL - approximately 480 acres, densifying and developing a lackluster downtown around a sprawling golf course. It has also spurred better development around its edges.
- Downtown Kirkwood, MO - approximately 275 acres, the small scale and large scale interventions proposed to leverage economic opportunities in downtown and infill many vacant parcels.

2. FB Codes for sprawling areas to adopt

- Orange County, FL - arguably one of the most sprawling counties in the country, has rewritten their comp plan and code to enable and incentivize walkable, mixed-use and complete communities for the vast majority of the county.
- Reinvent Phoenix, AZ - another sprawling city, made infinitely more walkable and vibrant with a new FBC. All new development (in the past 10 years) is made to “behave” vis-a-vis the public realm and made more pedestrian-friendly.
- Downtown Albuquerque, NM - hundreds of acres, with proposals to densify, intensify and make more walkable the 10-min walks around all their transit stations.
The United States Housing Affordability Crisis: No Easy Solutions

The many dimensions of the crisis, the impact of the pandemic, and what will (and won’t) really make a difference.

By Alan Mallach | Dec 01, 2023 | PM MAGAZINE - ARTICLE

As the United States has grown and the quality of the nation’s housing has improved, it has also become more expensive and less affordable to much of the nation’s population. Millions of Americans today find themselves spending so much for housing that they have difficulty meeting other necessities of life, while many others are thwarted in their dreams of homeownership.

Since the onset of the COVID-19 pandemic, the crisis in housing affordability has been a recurrent theme in the media, while solutions have been put forward by organizations and people across the political spectrum. But much of what is written about the problem is often misleading, while the solutions being most widely promoted would have little or no effect on the families most severely affected. In this article, I will describe the elements that make up the affordability crisis, and why they have just recently become so much more severe. Then I discuss the current efforts to address the problem and suggest what may be needed if it is ever to be truly resolved.

1. Breaking Down America’s Affordability Problems

There is no one affordability problem. There are many affordability problems, depending on one’s income, where one lives, and whether one is an owner or tenant. The most important, though, in terms of the suffering it causes and its significance for housing policy, is rental affordability or cost burden. It affects people of different incomes differently and varies greatly across the United States. A second problem is homebuyer affordability, or the extent to which high housing costs prevent households from becoming homeowners, but which mostly affects families of higher incomes than those whose lives are most deeply blighted by high rental costs. Most of this article will focus on rental affordability.

Households spending more than 30% of their gross income for rental costs, including utilities, are considered cost burdened. Those spending more than 50% of their gross income for rental costs are considered severely cost burdened. In 2021, 21.6 million renter households, almost half of all American renter households or one in six American households, were cost burdened. More than half of those, or 11.6 million renters, were severely cost burdened. The great majority of these households were very low-income households. While the percentage of cost burdened renters dropped slightly between 2014 and 2019, it has risen sharply since then. Two distinct and separate affordability problems, however, are nested in this total. I call them systemic cost burden and strong-market cost burden. They are very different.
Systemic Cost Burden

Very low-income families face the most severe rental affordability problems. They must contend with a systemic imbalance in the nation’s economy between what low-level jobs pay and what it costs a private landlord to provide a modest but decent rental dwelling unit. For example, the 25th percentile hourly wage (25% earn less and 75% earn more) in the United States for retail workers in 2021 was $12.43/hour. A worker in such a job, working 35 hours/week for 50 weeks (if she’s lucky) will earn a total of $21,131 for the year. If she is the sole support of her family, she can afford to pay no more than $528/month for rent without being cost burdened.

Most rental properties in most American communities are either single family homes or a small multifamily buildings. When you add up the operating costs, including maintenance, reserves, property management, taxes, insurance, water and sewer fees, and allowances for vacancies and collections, they typically run between $400 and $600 per year. Assuming the landlord’s cost to acquire and upgrade the property is a modest $100,000 and she aims for a 6% annual return on her investment, or has to pay a mortgage at that interest rate, the lowest rent they can charge and still come out ahead is $900 to $1100 per month, almost double what the 25th percentile retail worker and her family can afford.

Severe cost burden is concentrated among America’s poorest families. Of these families, 87% of renter households earning under $10,000/year and 87% of those earning $10,000 to $15,999 spend 30% or more of their gross income for housing. The poorest 20% or renters account for 60% of all households with severe cost burden. These families live in chronic instability. They struggle to pay for food, transportation, and other essentials, while their ability to pay their rent can easily be derailed by unexpected medical expenses or a car breakdown. Cost-burdened households, particularly single mothers with children, are at greatest risk of eviction. They move more frequently than other families and often experience episodes of homelessness, undermining their family life, their children’s future, and their neighborhood’s stability.

Strong Market Cost Burden

Systemic affordability problems exist everywhere in the United States. But in high-demand housing market areas like coastal California, New York City, or Washington, DC, the pressure created by strong demand and limited supply leads affordability problems to migrate upward; that is, families at progressively higher income levels experience affordability problems. Renters earning between $30,000 and $74,999 (roughly 40 to 100% of the national median) are much more likely to be cost burdened in Los Angeles than, say, in Philadelphia or Cincinnati. These renters are hurting, but the amount of money a family earning $75,000 and paying 40% of their income for rent has left over for other necessities is far greater than that available to the family earning $20,000.

Strong-market affordability flows from two intersecting problems: the cost of housing has been bid up by demand from more affluent households and is made worse by the difficulty and high cost of building in these areas. Housing production in areas like Los Angeles or San Francisco is severely constrained not only by restrictive regulations but
by many other factors, including natural and environmental constraints. Those constraints, along with extremely high land costs, the high cost of labor and materials, and the effects of rigorous building and safety codes, have led the cost of building to skyrocket. A 2022 report pegged average construction costs in San Francisco at $439 per square foot. Using this construction cost, adding modest land and soft costs, a small new two-bedroom apartment would cost over $750,000, and would have to rent for over $4,000/month to break even. While building enough of those apartments might lead older buildings to filter down in price to where some middle-income families could afford them, tight land supply means that building enough to make a major difference might be well beyond what is realistically possible in San Francisco and many other supply-constrained strong market areas.

**Affordability and the Ability to Buy a Home**

Most American families aspire to homeownership. While for many years house prices and household incomes tended to move in parallel, starting around 2000 (except for a dip during the Great Recession) house prices have been rising faster than incomes. In addition to the price of the home, though, a family’s ability to afford a home depends on the interest rate on the mortgage, as well as the size of the down payment and the annual cost of property taxes, insurance, and other fees, which vary widely from one part of the United States to another. To measure this, the National Association of Home Builders and Wells Fargo have created a Housing Opportunity Index (HOI), which combines incomes, prices, and interest rates to estimate what percentage of the houses in any given housing market area are affordable to a family earning the median income for that area. The lower the HOI, the fewer homes that are affordable to such a family. See Figure 1.

**Figure 1: Housing Opportunity Index, 1992 to 2023**

![Housing Opportunity Index Chart](image)

*Source: NAHB-Wells Fargo Housing Opportunity Index
Note: The Y-axis shows the percentage of homes a household earning the local median income can afford.*

The HOI goes up and down. Affordability dropped during the 2000–2007 housing bubble, rose sharply during the Great Recession, and stayed fairly stable between 2013 and
2020. Although house prices were rising during these years, their effect was mostly offset by dropping mortgage interest rates, which bottomed out in 2020. The steep drop in affordability since 2020 comes partly from rising prices and partly from rising interest rates. As with rental affordability, the affordability of homes for sale also varies widely across the country. There are areas where almost all homes are affordable to a median-income household (like Cumberland, Maryland or Elmira, New York) and those where hardly any are affordable (like Orange County, California). The 11 least affordable housing market areas are all in California, while of the 40 areas (out of 234) where a median-income family can afford 75% or more of the homes, 39 are in the Northeast or Midwest.

The ability of middle-class families to buy a home fluctuates widely over time and geography. Within 15 years, the HOI has yo-yoed from 40% to 80% and back to 40%. But there are still many places in the United States—although not necessarily those where most people want to buy homes—where homes are highly affordable. As we turn to the way the perception of affordability as a metastasizing crisis has grown seemingly overnight, it is important to maintain that perspective.

2. COVID and the Unexpected Crisis

While housing affordability has long been seen as a problem, it took on new urgency during the COVID-19 pandemic. Soon after the onset of the pandemic in early 2020, rentals and sales prices both began to rise much faster than ever before, even more than during the height of the bubble years. From the second quarter of 2020 to the fourth quarter of 2022, the median sales price for homes in the United States rose from $322,600 to $479,500, or nearly 50%. Although prices then began to tail off, the recent decline has been more than offset by rising mortgage interest rates. Rents also increased, by 13.5% in 2021 alone. While sales prices and rental growth are slowing down, they will likely never return to pre-pandemic levels. What can account for this increase, which was largely unanticipated by either researchers or industry professionals?

**Figure 2: Change in Median House Sale Price, 2013 to 2023**

Many different factors came together in 2020 to create the conditions for sharp price and rent increases, as shown in Figure 3. New housing production has lagged behind demand since the onset of the Great Recession, creating a cumulative shortfall in supply,
while new household formation, the main driver of housing demand, which was sluggish for many years, increased significantly during the late 2010s. At the same time, mortgage interest rates, which had been gradually declining since the 1980s, bottomed out at 2.68% in December 2020.

Figure 3: Factors Leading to House Price and Rent Increases During COVID-19 Pandemic

On top of this, the pandemic triggered both even greater demand and even less available supply. Many affluent renters realized that low mortgage interest rates made homeownership more attractive than continuing to rent. With people working from home rather than commuting to an office, many began to look for larger quarters, while others chose to relocate to communities farther from their workplace. Cities two or three hours from Manhattan—like Kingston, New York, or Bethlehem, Pennsylvania; or with strong natural amenities like Provo, Utah, or Sarasota, Florida—experienced sharp demand surges. The increase in demand was strongest among high-wage, upper-income households, disproportionately pushing prices upward.

At the same time, the number of homeowners putting their houses on the market dropped sharply. Many reasons have been suggested for this, including older owners' reluctance to move or have strangers in their homes during the pandemic. As the market further tightened and mortgage interest rates began to rise, owners holding cheap mortgages realized that moving could mean much higher housing costs. Whatever the reasons,
available housing inventory, which is highly seasonal, failed to rise as usual during the spring and summer of 2020, and then dropped precipitously during the second half of the year, just as demand was rising. By mid-2023, although the pandemic is no longer driving people’s behavior, inventory levels have remained far below pre-pandemic levels.

The increase in house prices and rents, however, has inserted the issue of affordability squarely into the American political mainstream. But what does that really mean for the millions of people impacted by high housing costs?

**Figure 4: Available Housing Inventory for Sale in the United States, 2016 through 2023**

![Graph showing available housing inventory](Image)

*Source: FRED, Federal Reserve Bank of St. Louis/Realtors.com*

### 3. Can We Solve the Affordability Problem?

Housing costs have been on the national agenda for a long time. In 1978, the federal government created a Task Force on Housing Costs, whose final report opens by noting, “The high cost of housing is now a major problem for millions of Americans.” In 1990, President George H. W. Bush convened an Advisory Commission on Removing Barriers to Affordable Housing, while in 2004, president George W. Bush announced the America’s Affordable Communities Initiative to “bring homes within reach of hard-working families through regulatory reform.”

In some ways, nothing is new. But what people are talking about today is different in important ways. For one thing, the focus is overwhelmingly on a single issue: underproduction of new housing. While an undersupply of new housing, particularly in high-demand areas like coastal California, certainly contributes to the affordability problem, it is far from the only contributor to the problem. The focus, moreover, is on one specific obstacle to building more housing: land use regulation. That is, reforming the
zoning laws local governments use to regulate the use, density, height, and other features of development.

This focus has brought together an unusually broad coalition, including homebuilders, as well as so-called YIMBY ("Yes in My Back Yard") pro-development voices from left to right, libertarian tech bros, and left-wing housing advocates. However, the voices of those who argue that other strategies are needed, particularly organizations serving very low-income families, are barely heard.

The strength of the coalition pushing for zoning reform has already led to major changes in many municipal zoning ordinances and in the laws of a number of state governments. The latter is most important, since under the American system of government, state law defines how towns and cities regulate land use. Any change to a state's zoning laws, therefore, changes the ground rules for hundreds of separate municipal zoning ordinances.

The first notable state zoning change was in Oregon in 2019, when it amended the state zoning law to abolish exclusive single-family zoning in cities over 10,000 in population. All such cities must now allow two dwelling units where only one could be built before, while cities over 25,000 must allow at least four. Reforms have since been enacted in California, Connecticut, Maine, Massachusetts, Montana, New Hampshire, Rhode Island, Utah, Vermont, and Washington. Eight states now require municipalities to allow accessory dwelling units (ADUs)—second dwelling units on the same single family lot, either within the existing house or as a smaller separate structure—in single family zoning districts.

Ending the historic practice of exclusive single-family zoning, meaning zones where only single-family detached houses are allowed, has been a major goal of the zoning reform movement. That restriction governs the great majority of residentially zoned land in the United States, including almost all suburban land and large parts of central cities, including 70% of the residentially zoned land in Minneapolis and 81% in Seattle. Indeed, many people point to the moment in 2019, when Minneapolis amended its zoning laws to eliminate single-family zoning districts and to permit up to three housing units to be built on each individual building lot as the first major victory of the zoning reform movement.

This turnaround on zoning, although still embryonic, must be recognized as a major achievement on an issue that until recently was seen as all but politically untouchable. Yet is it the “solution” to the affordable housing crisis, or even, as has been argued, to homelessness? While some of the reforms will help, usually in small ways, the answer is an unequivocal no. Although the much-heralded Minneapolis reform affects 70% of the city’s land area, after two and a half years it had resulted in only 100 new housing units; put differently, it increased housing production in the city over that time by only 1%.

Part of the problem is that, as I have written elsewhere, there are compelling economic reasons why increasing density in already-built-up single-family districts—which describes almost all urban single-family districts—not only fails to lead to large-scale housing production, but all but dictates that any new housing will be significantly more
expensive than the homes it replaces. Indeed, it is hard to escape the conclusion that—leaving aside ADUs, which are truly helpful—rezoning of built single-family areas is more about symbolism than about substance.

Although rezoning of urban commercial or industrial areas for higher-density residential use may be somewhat more productive, zoning reform in heavily developed central cities like Minneapolis or San Francisco is likely to have only a limited effect on housing supply, if only because of the inordinate cost and difficulty of site assembly and the disproportionately high cost of construction, as discussed earlier. If enough new housing gets built, it may have some effect on reducing existing rents through the filtering process, but in most cases the effect is likely to be quite modest.

Increasing housing production in the suburbs is easier and likely to have far more impact. Vacant or underutilized sites, such as low-density strip commercial areas along arterial roads, are widely available and considerably less expensive to develop than urban sites. Rezoning those areas, along with rezoning underutilized office parks to allow multifamily housing, while changing the zoning of as-yet undeveloped land currently zoned for single family homes, could actually lead to significant increases in housing production.

But the shortfall in housing production is not just a matter of zoning. Many other factors stand in the way of significantly increasing housing production, including non-zoning regulations, the difficulty and cost of site assembly in largely built-up cities, shortages of skilled construction workers and qualified subcontractors, and high barriers to entry for start-up land developers. None of these issues have yet been seriously tackled, and some have hardly been discussed. It is important to remember, moreover, that many regulations, like limits on building in floodplains or wetlands, are there for good reason.

All of this, however, fails to address the most urgent question. At best, a program of extensive zoning reform, coupled with other measures to increase housing production, may help ameliorate the problems of some struggling middle-class households squeezed by high costs and limited supply in high-demand markets such as coastal California and New York City. Even those effects are likely to be limited because of the inordinately high cost of the new housing that will be built. It will not begin to meet the needs of low-income families, whose lives are far more devastated by housing cost burdens, because the systemic gap between housing costs and incomes makes it impossible, however many units we build, for costs to filter down to where those families can afford housing in the private market. Even less will it help meet the needs of homeless people, who (more or less by definition) have very low incomes and who are often further burdened by social, mental, or physical disabilities.

It is widely held that where the cost of an essential public good exceeds the ability of people who need that good to pay for it, the public sector should help bridge the gap. Thus we provide minimum levels of health care and food through Medicaid and SNAP as entitlements for people whose incomes are too low to pay for those goods. But that is not true for housing. Instead of being an entitlement, housing assistance is a lottery. The most widely cited estimate is that only 24% of eligible households in need are able to obtain housing assistance, in most cases through a housing choice voucher, which pays
the difference between the full market rent and what a low-income family can afford, while paying 30% of their income for rent. Almost all the other 76% are cost-burdened.

The single most important thing we can do to solve the affordability crisis among low-income families is to provide a housing allowance—whether through the current voucher program or a redesigned and improved program—for every household whose income is too low for them to afford modest but decent housing in the private market.

In many communities, where supply is adequate and prices relatively low, a well-designed entitlement housing allowance program might in itself largely address the affordability problem. In higher-priced strong market areas, it would have to be combined with a program to subsidize construction of affordable or mixed-income housing to provide an adequate supply of moderately priced dwellings where people could use their allowance, including supportive housing for homeless people. This would be expensive, but well within the means of the federal government. It would be a small part of what we currently spend on Medicaid and might well reduce Medicaid costs by improving family health in the bargain. Even then, however, it would have to be a regional, not a local program. Given the cost and scarcity of building sites and the exorbitant construction costs, it is hard to see how some cities like San Francisco could ever create enough housing to meet the needs of their lower-income residents.

This is not an either-or proposition. Zoning reform is long overdue, and recent reforms are a good step forward. But they address only one small piece of what is a complex systemic problem. Treating it as the solution is not only dangerously misleading, but ignores the urgent needs of millions of low-income families for whom zoning reform by itself is little more than a cruel hoax.

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Conditional Use Permits

Granting of CUP so landowners could operate campground at center of controversy

Citation: Lee v. Warren County City-County Board of Adjustments, 2023 WL 5986673 (Ky. Ct. App. 2023)

Jeryn Lee and James Copsy appealed from a court’s decision to uphold the Warren County City-County, Kentucky Board of Adjustments’ (BOA) decision to approve the conditional use permit (CUP) application of Courtney and Jett Miller (the Millers) that the Bowling Green City-County Planning Commission of Warren County, Kentucky had approved.

A CLOSER LOOK

This lawsuit involved property in a rural (agriculturally zoned) area of Warren County. The Millers had purchased the property in 2014 and used it for their personal residence.

Then, in 2021, the Millers applied for a CUP to operate a campground on 36.63 acres of the property. The Millers proposed to erect up to five small cabins, each under 400 square feet, to accommodate up to four guests each (which would be limited to two adults and two children per cabin). Each cabin would have two parking spaces, and there would also be an equipment building and picnic shelter in the enclosure.

The Millers proposed that the entrance to the campground would be from Barren River Road (a state highway), with a private driveway on the north side of the property to provide access (for kayaking, canoeing, and fishing) to Barren River. According to the aerial photos attached to the application, the property included a dense tree population which would serve to obscure the campground from public view.

Several area residents opposed the CUP application. A public hearing ensued, and despite opponents’ voiced concerns over traffic, noise, trash, decreased water pressure, and incompatibility with the rural area, the board voted unanimously to approve the CUP. After a court affirmed the board’s decision, the opponents appealed.

DECISION: Affirmed.

The board did not act in an arbitrary or capricious manner in granting the CUP.

The court’s review of the board’s administrative decision was limited to “whether the action of the agency was arbitrary.” The court explained there were three grounds for finding that an agency’s decision was arbitrary:
able conditional uses that the board of adjustment may authorize in particular zones . . . [and] [t]he applicant [wa]s then able to choose from the list and apply for a conditional use permit, which the board of adjustment [could] approve, modify, or deny” provided the board adhered “to fundamental due process requirements.”

The court added that the CUP consisted of two components:

- “a factual determination justifying the issuance of a permit”; and
- “a statement of conditions which the applicant [had to] meet for the use to be permitted.”

“This latter part [had to] be recorded in the board of adjustment’s meeting minutes ‘and on the [CUP]’ [and] . . . [o]nce approved, the local administrative official issue[d] the [CUP].”

Keeping all of this in mind, the court explained that the opponents’ claim that the Millers’ proposal was a commercial venture that would adversely affect the tranquility and seclusion of the rural area and decrease their property values wasn’t accurate.

The lower court reasoned the board had “believed that the generalized concerns of the opponents were addressed by the specific testimony of [the] Zoning Administrator . . . and applicant Miller.” The board “obviously concluded and found, among other things, that the use was authorized on properly zoned AG [agricultural], and that adequate public roads, the restrictions of a 50-foot setback, a buffer strip, off street parking limitations, hand-surfaced roads and parking, limited signage, a maximum of 5 cabins holding not more than 2 adults and 2 children for no more than 7 days, quiet times, and tree preservation adequately addressed the opponents’ concerns. The decision cannot be called arbitrary because the evidence presented by the applicants was substantial and largely unrefuted in any substantive way.”

The bottom line: The lower court’s focus had been put in the proper place: “on the propriety of the board’s decision given applicable ordinances and the substantial evidence presented before it.”

Fair Housing Discrimination

Operator of sober-living facility claims city discriminated against it by enforcing zoning-code provisions

Citation: *Hansen Foundation, Inc. v. City of Atlantic City, 2023 WL 5994378 (D.N.J. 2023)*

The Hansen Foundation Inc. (Hansen), which operated a group home for women recovering from drug and alcohol addiction, filed suit against the City of Atlantic City, New Jersey and others alleging its enforcement of various zoning provisions against it violated its rights.
A federal district court was asked to decide if one of the defendants, the New Jersey Department of Community Affairs (DCA) commissioner, whose office was tasked with overseeing the city under the Municipal Stabilization and Recovery Act (MSRA), was entitled to judgment without a trial given a settlement had been reached prior to trial.

**DECISION: Request for judgment granted.**

The settlement agreement controlled.

**MORE ON THE FACTS**

Hansen had filed suit against the DCA previously over the licensing and regulation of its cooperative sober living residences (CSLRs). DCA contended Hansen’s CSLRs were rooming/boarding houses subject to the regulations of the Rooming and Boarding House Act (RBHA) of 1979, and the DCA’s regulations for a “Class F” license for CSLRs, which limited the number of residents of a CSLR to 10.

Hansen filed suit in state court against DCA to restrain it from enforcing provisions of the RBHA. Then, in a federal lawsuit, Hansen claimed DCA had failed to grant it a reasonable accommodation excepting them from the requirements of the Act under the Federal Fair Housing Act (FHA) and other related civil rights legislation and failed to stay enforcement of fines/penalties against its properties.

In 2021, the parties tried to settle their dispute. Hansen’s attorney sent a letter concerning its land use application with respect to Atlantic City. The letter stated the basis for Hansen’s claim that DCA should become more involved in the litigation against the City of Atlantic City because it had a dual interest in Hansen’s application as both the sole regulatory agency of CSLRs and as the agency tasked with city oversight under the MSRA, which stated the DCA’s Local Finance Board had the right to “control . . . litigation and the municipality’s legal affairs.”

According to Hansen, DCA had determined that residents of a CSLR constituted a “single housekeeping unit.” Thereafter, DCA and Hansen entered into a settlement agreement. This agreement stated that Hansen, would “irrevocably and unconditionally release and discharge DCA and its past or present employees and/or agents, from any and all actions, claims, demands, damages, judgments, executions, liabilities, legal, monetary, equitable or otherwise including appeals, obligations, attorneys’ fees, and causes of action from the beginning of time to the date of this Settlement Agreement relating to the licensing of Hansen’s CSLRs” and included claims “Hansen is not aware and those not mentioned in this Release.”

The settlement agreement also referenced the legal proceedings Hansen had already filed seeking to enjoin DCA from taking regulatory action against its sober living homes under the RBHA but stated there weren’t any other “pending or related claims.”

**THE PRESENT LAWSUIT**

After settling the case, Hansen filed suit against Atlantic City, claiming its zoning ordinances discriminated against disabled individuals in recovery. It also contended the city had refused to grant it a reasonable accommodation under the FHA. Then, Hansen amended its complaint to add the DCA commissioner in her capacity as acting chief.

**BACK TO THE COURT’S RULING**

The settlement agreement “irrevocably and unconditionally release[d] and discharge[d] DCA and its past or present employees and/or agents, from any and all actions, claims, demands, damages, judgments, executions, liabilities, legal, monetary, equitable or otherwise” concerning “the licensing of Hansen’s CSLRs,” which were or could have been brought in court. This released “all claims, including those of which Hansen [wa]s not aware and those not mentioned in the [e] Release.”

The pre-settlement lawsuits and accompany attorneys’ correspondence made it “clear that Hansen sought to have DCA/[its acting commissioner] oversee and direct the [city’s] decisions through the oversight power vested” under the MSRA. This was “exactly what” Hansen again attempted to accomplish in the present lawsuit.

**CASE NOTE**

Hansen filed this new lawsuit just about four months after reaching settlement. The court stated its “current characterization of the [a]greement as merely pertaining to the issue of fines and permission for [it] to continue operating its CSLRs, [wa]s being by the record. The parties’ past legal and factual positions as articulated in the pleadings and other filings [we]re a matter of public record, ascertainable and immutable.”

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**Notice**

**Case raises issue of whether resident had actual or constructive notice of proceedings surrounding building permit**

Citation: Glover v. Zoning Board of Appeals of Town of Fairfield, 2023 WL 5928132 (Conn. Super. Ct. 2023)

Carol Sorel filed suit against the Zoning Board of Appeals of the Town of Fairfield, Connecticut (ZBA) challenging its decision dismissing Sorel’s petition to the board as untimely.

In 2019, Monroe RE LLC, Monroe Operations LLC, and CT YA Services LLC (collectively Monroe) asked the court to intervene in the lawsuit as the owner of the subject property and as the permit applicant.

**DECISION: Request to intervene granted; Sorel’s appeal dismissed.**

The ZBA had not acted in an illegal or arbitrary manner or otherwise abuse its powers dismissing Sorel’s appeal as untimely.
MORE ON THE FACTS

Monroe wanted to construct a residential group home. In March 2019, Fairfield’s planning director, endorsed its building permit application.

Following that endorsement, Fairfield’s building department issued a building permit on April 22, 2019.

In July 2019, Sorel filed a request to appeal the planning director’s decision.

In September 2019, the ZBA held a public hearing on Sorel’s request. The ZBA then dismissed Sorel’s request as untimely under state law.

Sorel appealed to the court, claiming the ZBA’s decision was illegal, arbitrary, and constituted an abuse of the powers because the record didn’t contain substantial evidence to support its finding that Sorel’s request had not been timely.

BACK TO THE COURT’S RULING

There was substantial evidence to support the ZBA’s finding that Sorel’s request was untimely.

A provision of state law (General Statutes section 8-8 (b)) governed appeals of ZBA decisions. That section stated that “any person aggrieved by any decision of a board . . . may take an appeal to the superior court for the judicial district in which the municipality is located. . . . The appeal shall be commenced by service of process in accordance with [additional sections of the law] within [15] days from the date that notice of the decision was published as required by the general statutes.”

Here, Sorel, who alleged her property abutted or was located within 100 feet of Monroe’s property, sufficiently pleaded and proved aggrievement, according to the court. Also, she had properly launched her appeal within the time proscribed under state law. Specifically:

- The ZBA dismissed Sorel’s request concerning the planning director’s decision during a hearing on September 18, 2019;
- the board’s notice of the decision had been published on September 27, 2019; and
- the return of service revealed that service was made on the ZBA on October 11, 2019.

Since October 11 fell within 15 days following the date of publication of the board’s notice of decision, Sorel had properly commenced this action, the court explained.

But the central question was whether the ZBA had abused its discretion in dismissing Sorel’s request—and this required the court to delve into the issue of actual vs. constructive notice.

“Connecticut courts [ha[d] held that the [30]-day appeal period commence[d] not upon the zoning official’s decision in question, but rather upon the aggrieved person’s notice, actual or constructive, of the zoning official’s decision,” the court noted.

Thus, “[t]he timeliness of the petition [wa]s controlled by actual or constructive notice because, [w]ithout notice that a decision [ha[d] been reached, the right to appeal from that decision [wa]s meaningless.’”

Actual notice—This meant “the express information of fact and [wa]s the same as actual knowledge of the fact in question, stemming from personal information and knowledge.”

Constructive notice—This was “premised on the policy determination that under certain circumstances a person should be treated as if he had actual knowledge so that one should not be permitted to deny knowledge when he is acting so as to keep himself ignorant.”

Whether Sorel had received actual or constructive notice depended on the unique facts of this particular situation. She argued that the fact that she had testified before the ZBA on September 18, 2019, showed “uncontroverted evidence that she did not know of the proposed residential treatment facility at the subject property or of [planning director’s] decision until a June 10, 2019 meeting at” a local church. She contended she had been asked “and the first time you had any knowledge of any kind of the proposed facility for the property. . . . was when?” Sorel responded, “[t]he [church] meeting” on June 10. “As a follow-up, Sorel was asked ‘[a]nd at that time, you became aware of also the building permit and the . . . endorsement?’ Sorel responded in the affirmative.”

Conversely, the ZBA contended the evidence showed that Sorel knew or should have known of its decision ahead of June 10, which would make her appeal to the board untimely. For instance, the ZBA noted that:

- At a public hearing on September 19, 2019, the ZBA saw evidence of a flyer issued to “Congress Street Neighbor[s]” dated May 18, 2018, which stated “‘You may, or may not, be aware that the property that was for sale . . . has been sold to [Monroe] as a live-in mental/drug rehabilitation facility for 18-19 year olds’ ” before instructing the reader of the flyer to “contact . . . local town representatives and let your voice be known” before the June 10 meeting;
- Sorel’s husband testified about this flyer, stating that he had found out about the church meeting;
- other neighbors testified they got the flyer before the June 10 meeting at the church; and
- there was social media buzz about the proposed change in use at the subject property.

A CLOSER LOOK

The ZBA “acted within its discretion to weigh the credibility of witnesses and make factual determinations,” the court wrote. It wasn’t the court’s role to re-weigh “the facts and make its own factual determination about whether Sorel had actual or constructive notice.” In addition, the court’s role wasn’t “to evaluate the record to determine whether it agree[d] or disagree[d] with the board’s decision.” Rather, the court’s review of the ZBA’s decision was “limited and governed by whether a substantial basis exist[ed] in the record to support the board’s decision.”
Ultimately, "[w]hen the record [wa]s viewed in its entirety, the evidence sufficiently support[ed] the board's determination that Sorel's appeal to the board was untimely." That evidence showed that "Sorel had enough information about the subject property to attend the [church] meeting on June 10, 2019. This knowledge and the other evidence of record, in turn, support[ed] the inference that Sorel was likely aware of the facts surrounding the purpose of the meeting, which concerned the change in use approved by a town official."

Practically Speaking:

One could only take advantage of a "‘statutory right to appeal’ " by strictly complying with the statutory provisions under which that right had been created. This included "‘the time periods prescribed in which to appeal.’ "

**RLUIPA**

Religious organization seeks preliminary injunction after township orders it to remove Stations of the Cross from trail

Citation: Catholic Healthcare International, Inc. v. Genoa Charter Township, Michigan, 2023 WL 5838792 (6th Cir. 2023)

Fillmore County Park in Genoa Charter Township, Michigan, included a 15-station "Leopold the Lion Reading Trail"—with a series of large signs that told the story of Leopold. A few miles away, Catholic Healthcare Inc. (CHI) created a prayer trail with 14 "Stations of the Cross," which depicted the story of Jesus Christ’s last day.

The township treated CHI’s trail as the zoning equivalent of a church building, which meant CHI had to apply for a "special land use" permit.

The process proved to be costly, with CHI submitting two applications, which the township denied. The township also forced CHI to remove all the Stations of the Cross, along with a stone altar and mural, from its prayer trail.

CHI sought a preliminary injunction allowing it to restore the Stations of the Cross, altar, and mural to its prayer trail. The lower court in this case had twice denied its request previously, finding CHI’s free-exercise and statutory claims under the Religious Land Use and Institutionalized Persons Act (RLUIPA) were not ripe for review. CHI appealed.

**DECISION: Reversed; CHI’s request for an injunction granted.**

The court found that:

- CHI’s RLUIPA claims were ripe;
- it was likely to succeed on the merits of its argument that the township’s decision to treat its prayer trail as equivalent of a church building for zoning purposes imposed a substantial burden on religious exercise, which would be required to support its claim the township had violated RLUIPA; and
- thus, the grant of a preliminary injunction to allow CHI to place the religious displays on prayer trail was warranted.

**MORE ON THE FACTS**

CHI was a religious organization whose mission was to further the work of Saint Padre Pio—the patron saint of healing.

In 2020, the Roman Catholic Diocese of Lansing agreed to convey to CHI 40 acres of undeveloped, wooded property in a rural area of the township. CHI emailed the township to inform it about its plans to create a prayer trail with the Stations of the Cross and stone mural.

The township’s community development director responded that the township would treat the prayer trail as a church—which "would require special land use and site plan approval pursuant to the Genoa Township Zoning Ordinance." To seek that approval, the director wrote that CHI would need to submit completed special land use and site plan review applications, along with $2,875, an environmental impact assessment, and more.

CHI expressed its concern over the complexity of the application review and approval process, and stated that while "[t]he churches, temples and places of worship [we]re obviously buildings," CHI wasn’t "by [any] means talking about a ‘place of worship’ at this time."

CHI indicated that its plans didn’t involve developing the property or building or paving, but the director stood by her initial determination.

CHI proceeded to create its prayer trail, which included the Stations of the Cross, the mural, and a stone altar. None of the religious displays were visible from outside CHI’s 40-acre parcel.

Then, the township demanded that CHI remove the religious displays from the prayer trail, but CHI didn’t comply. Instead—given the township’s insistence on treating the prayer trail as a church—CHI decided to expedite its longer-term plan to seek approval for an actual church building.

In 2020, CHI submitted a special land-use application for permission to build a 6,000-square-foot chapel, a driveway, and a parking lot, along with the prayer trail. After a public hearing, the township’s planning commission recommended approval of the application, stating that CHI had gone “above and beyond and addressed all of the concerns of the Planning Commission and the consultants.”

However, in 2021, the township board denied the application, stating that the “proposed use involving a 95 seat, 6,090 square foot church with associated parking lot, site lighting, building lighting, and outdoor accessory structures” was “not consistent” with the township’s master plan. So, days later the township again demanded that CHI remove the religious displays from the property.
CHI then filed suit alleging its rights under RLUIPA had been violated. Then, local officials issued CHI a permit allowing it to construct a “field driveway” that could not be used for “organized gatherings.” This posed an issue for CHI, though, since it planned to celebrate the Feast of St. Pio, so it filed a state proceeding alleging the township violated the applicable zoning ordinance.

The state court issued a temporary restraining order requiring CHI to remove the displays and barring any “organized gatherings” on its property.

Around this time, CHI asked for a preliminary injunction in federal court seeking relief to allow it to retain and restore, as necessary, the religious displays on the trail. Subsequently, CHI submitted a second land-use application, which did not seek permission to build a chapel. Rather, CHI sought to restore the religious displays to the prayer trail and to improve the driveway and a parking area.

The planning commission concluded the revised application did not present any “new grounds” or “changed conditions” that would affect the “reasons” for the township board’s denial of the earlier application, which had referenced the “proposed use involving a 95 seat, 6,090 square foot church with associated parking lot.” At that point, the township refused to consider CHI’s new application, so it appealed to the township’s Zoning Board of Appeals, which also denied relief.

Then, in December 2022, the federal court dismissed as unripe CHI’s “claims arising from the prohibition and removal of [its] religiously symbolic structures from the property.” It, however, granted in part its request for a preliminary injunction. More specifically, the court ordered:

- CHI could hold organized gatherings on its property; and
- it could not restore its religious displays.

Both parties cross appealed.

**BACK TO THE APPEALS COURT’S RULING**

Was CHI likely to succeed on the merits of its RLUIPA claim? That was the question that was key for the appeals court to address. Under RLUIPA, the government was barred from “Impose[ing] or implement[ing] a land use regulation in a manner that impose[d] a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrate[d] that imposition of the burden on that person, assembly, or institution— . . . [wa]s in furtherance of a compelling governmental interest; and . . . [wa]s the least restrictive means of furthering that compelling governmental interest.”

More specifically, the court explained, the central question in this case was “whether the [township’s] decision to treat the prayer trail as the equivalent of a church building—thereby requiring [CHI] to apply for a special land-use permit—imposed a substantial burden on [its] ‘religious exercise.’”

“For a burden to be considered ‘substantial,’ it must have ‘some degree of severity’ and be ‘more than an inconvenience,’” the court explained. From a practical standpoint, this meant whether the religious institution would “suffer substantial delay, uncertainty, and expense due to the imposition of the regulation.”

CHI met that threshold, the court found. It had “undisputedly” shown it had suffered “all those things: after two years of administrative proceedings and considerable expense, [it] remain[ed] unable to place the religious displays on the[] prayer trail.”

The township contented CHI hadn’t met this burden because it had imposed the burden upon itself. That is, it argued that CHI had “good reason to know in advance that its proposed usage w[ou]ld be subject to an onerous review process.”

However, the court found, the township’s zoning ordinance gave CHI “little reason to expect the treatment [it] . . . received.” For instance, “[t]he ordinance define[d] a ‘church or temple’ as any ‘structure wherein persons regularly assemble[d] for religious activity.’” Further, the ordinance defined a structure as “[a]nything constructed or erected, the use of which requires location on the ground or attachment to something on the ground”—such as “buildings, radio, television and cellular phone towers, decks, fences, privacy screens, walls, antennas, swimming pools, signs, gas or liquid storage facility, mobile homes, street direction or street name sign[s] and billboards.”

The court wrote, “By this definition, the religious displays [wa]re ‘structures’: the Stations of the Cross [wa]re structurally akin to large birdhouses, and the altar and mural were indeed set on the ground. But a church [wa]s a structure ‘wherein’ people gather[ed] to worship. And no person—much less ‘persons’—could gather to worship inside any of these structures. The ordinance’s definition of ‘church’ comport[ed] with the term’s ordinary meaning. The ordinance therefore gave [CHI] no reason to think the [t]ownship would treat th[e] trail cum religious displays as a church.”

Further, CHI had reason to believe its prayer trail would be treated the same as “[p]rivate non-commercial parks, nature preserves and recreational areas”—none of which require[d] a special land-use permit in the type of zoning district [where its] parcel [wa]s located.”

The court added that “parks routinely ha[d] stations with structures attached to the ground—like workout stations or Leopold the Lion’s trail. The [t]ownship’s demand that [CHI] obtain a special land-use permit for the religious displays on th[e] trail—with all the burdens described in . . . email, and all the uncertainty inherent in discretionary land-use decisions—came as a shock to [CHI] precisely because nothing in the [t]ownship’s ordinance would have prepared [it] for it.”

Therefore, CHI could likely prove the township had “substantially burdened [its] religious exercise when it required [it] to obtain a special land-use permit to retain the religious displays on th[e] prayer trail.”

Also, the township had to show that “its insistence on such a permit [wa]s narrowly tailored to advance a com-
pelling interest,” which it did not attempt to do, so CHI was likely to succeed on the merits of the RLUIPA claim as to the specific injunction sought.

A CLOSER LOOK

The township also appealed. “For two years, the [t]ownship enforced a condition on a now-expired driveway permit to bar [CHI] from hosting organized gatherings on its property,” the appeals court explained. The township hadn’t identified to the lower or appeals court “any authority other than the expired driveway permit for a ban on organized gatherings on [CHI’s] property. More to the point, the ban on its face substantially impair[ed] [CHI’s] ability to use the property to further its religious mission. The [t]ownship’s only argument to the contrary [w]as that [CHI] could host organized gatherings at another church in Brighton, Michigan instead.” However, that church didn’t have “a secluded prayer trail on a wooded, 40-acre parcel of land. On this record, therefore, [CHI] could likely show that a ban on organized gatherings on [its] property would (and ha[d]) substantially burdened [its] religious exercise.”

Such a ban was subject to strict scrutiny, the court added. The bottom line: The township hadn’t meaningfully argued on “how a ban on organized gatherings would be ‘narrowly tailored’ for purposes of strict scrutiny. Hence [CHI] was likely to succeed on [the] RLUIPA claim with regard to this injunctive relief as well,” and the lower court didn’t “abuse its discretion by enjoining the [t]ownship from enforcing its ban on organized gatherings on [its] property.”

KEY TAKEAWAYS

The court noted that CHI successfully asserted that:

- “the forced removal of [its] religious displays inflicts[ed] an ongoing harm to [its] religious exercise”;
- “the restoration of those displays would impose negligible harm on others”; and
- “[t]he public interest favor[ed] indications of rights protected under RLUIPA.”

The court noted that the township didn’t argue otherwise on this point, so CHI was entitled to a preliminary injunction allowing it to restore the Stations of the Cross, altar, and mural to the prayer trail.

Practically Speaking:

This case dealt with a religious organization’s rights under RLUIPA, and more specifically, its right to conduct organized gatherings on its property. The appeals court concluded that CHI was likely to succeed on merits of its claim that the township’s prohibition of organized gatherings on its property violated RLUIPA, which supported the decision to grant a preliminary injunction to preclude the township from enforcing such a prohibition.

Zoning News Around The Nation

California

San Francisco holds planning webinar on housing issues

In September 2023, San Francisco’s planning department held a webinar to discuss an adopted Housing Element, which required the city to plan “for 36,000 new housing units in the state-designated ‘Housing Opportunity Areas’ in the western and northern portions of the city,” a press release stated.

The webinar provided an overview of:
- the Housing Element zoning program;
- existing zoning and land use rules; and
- how stakeholders can work together to meet the city’s housing needs and boost housing affordability for low-to-middle-income households.

The planning department also made outreach to the public by inviting them to take a future-of-housing survey for a chance to win a $50 Visa gift card. The survey was open August 17 to October 1, 2023. To view the survey, visit surveymonkey.com/y/housingchoice.

Source: sfrichmondreview.com

Delaware

Dewey Beach denies property owner’s request inquiry into zoning amendment that would increase housing density

The commissioners for Dewey Beach, Delaware, recently denied a request by Summer Pearl LLC (Summer Pearl), which owns Fifer’s Farm Kitchen (Fifer’s), to ask the planning and zoning commission about a change to the local zoning code that could cause a housing-density increase, the Cape Gazette reported recently.

Summer Pearl seeks an amendment that would address minimum lot area per dwelling, the news outlet reported.

In 2022, the Board of Adjustment voted to deny a variance for three apartments to be situated above Fifer’s.

Source: capegazette.com

Massachusetts

ULI report discusses DPW campus redevelopment in Worcester—New England’s second largest city

The Urban Land Institute’s Boston/New England District Council (ULI) recently published a report that provides details guidance for the redevelopment of the existing Worcester, Massachusetts’ Department of Public Works (DPW) Campus. “Located along Albany Street and East Worcester Street, the campus is comprised of administrative offices, garage space, surface lots, and storage yards for sand and salt used during weather emergencies. The campus totals approximately 10 acres and 180,000 square feet of building space in a mixed-use neighborhood that is primarily industrial uses with some residential units.

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East Worcester and Albany Streets run adjacent to Shrewsbury Street, a thriving retail/restaurant corridor that also serves as a thoroughfare to access Interstate 290 (I-290),” the report explained.

ULI asked panelists from a number of local stakeholders questions to elicit feedback on:

- land use/zoning;
- transportation/infrastructure; and
- market feasibility.

The study includes recommendations on a series of “redevelopment scenarios that would increase housing and commercial activity in the district while strengthening the Shrewsbury Street retail/restaurant corridor.”

To read the report, Repositioning the DPW Campus, visit ulidigitalmarketing.blob.core.windows.net/ulidcn/sites/41/2023/04/Worcester-TAP-Report-Final.pdf.

Source: boston.uli.org

Lawsuit filed after Baystate town pushes back against state law mandating more multi-family dwellings

The Town of Holden, Massachusetts is being sued for not complying with a state mandate requiring municipalities that have MBTA (mass transit) access to permit zoning for multi-family dwellings. The Central Mass Housing Alliance alleges the town is asking a court to rule that compliance with the state’s Opportunity Zone initiative is mandatory, Spectrum News 1 reported.

Source: spectrumnews1.com

New York

NYC mayor’s ‘City for Yes for Housing Opportunity’ proposal mulls conversion of offices

New York’s “City of Yes” proposal focuses on building a “more equitable and sustainable city.” In September 2023, the city recently held a video conference to educate the public on plans to modernize zoning rules to support small business and thriving retail streets.

The city’s planning department director spoke about efforts to remove outdated limitations on businesses and promote an equitable, resilient economy, and following the presentation, there was Q&A. American Sign Language, Cantonese, Mandarin, and Spanish interpreters were also available.

More on this can be found at nyc.gov/site/planning/plans/city-of-yes/city-of-yes-overview.page.

Also in September, Mayor Eric Adams’ office announced “an Office Conversion Accelerator to expedite complex office-to-housing conversion projects,” a press release from his office stated. This initiative seeks to accelerate “the process of creating new housing while putting millions of square feet of empty offices to better use for New Yorkers.” More on that can be found at nyc.gov/site/officeconversions/index.page.

Finally, the Adams administration announced a new “Midtown South Neighborhood Plan,” which seeks to “update zoning rules that currently allow only manufacturing and office space to foster a vibrant, 24/7 live-work community with new homes and good job opportunities.” Visit nyc.gov/site/planning/plans/midtown-south-mixed-use/midtown-south-mixed-use-overview.page for more information.

Source: nyc.gov

Texas

Lubbock releases UDC, updated zoning map

The city of Lubbock, Texas has released a new tool to “map searching and navigating” its Unified Development Code (UDC) “as easy and efficient as possible.” The city also recently updated its zoning map.

To view the tool, visit online.encodeplus.com/regs/lubbock-tx/index.aspx; for the updated zoning map, visit cityolubbock.maps.arcgis.com/apps/webappviewer/index.html?id=d774db4242094f0a7ba8c64eb382a8; and in way of background, download the proposed draft amendments to the UDC at cj.lubbock.tx.us/storage/images/0BNPrI2u0vHEirnTOY2xmPtx1urB9p0UpfCJWUH9.pdf.

Source: cj.lubbock.tx.us
Secondary Business Zone

Landowner seeks review of city’s denial of conditional use permit to construct 85-room hotel

Citation: Whitefish 57 Commercial, LLC v. City of Whitefish, 2023 MT 176, 2023 WL 6134935 (Mont. 2023)

A landowner and developer asked the Supreme Court of Montana to review the City of Whitefish, Montana’s denial of a conditional use permit (CUP) to build an 85-room hotel in a secondary business zone after a lower court granted the city judgment without a trial.

DECISION: Affirmed.

The Whitefish City Council (WCC) acted within its discretion in denying the permit based on 1) the hotel’s nonconformance with the city’s growth policy and 2) traffic concerns.

The case involved Whitefish 57 Commercial LLC and Rimrock Companies LLC (the plaintiffs), which respectively owned and sought to develop a property at 21 Hedman Lane in Whitefish. The plaintiffs applied for a subdivision application, proposing to divide the subject property into five separate lots and build an 85-room hotel on one of the lots, which were zoned Secondary Business or WB-2, which made hotels a conditional use.

As part of the application process, the plaintiffs hired a traffic engineer to study the anticipated effect on traffic. The engineer’s report stated there would be minimal impact on traffic on Highway 93 South, and the Montana Department of Transportation (MDT) concluded the subdivision did not warrant a Traffic Impact Study (TIS). Accordingly, the WCC approved the subdivision on September 16, 2019.

In August 2021, the plaintiffs applied for a CUP to develop a hotel on Lot 4 of the subdivision. In response to the permit application, the City Planning Board prepared a staff report that analyzed the adherence to the Whitefish Zoning Regulations and recommended approval of the permit.

In October 2021, the WCC held a public hearing and council members expressed concerns over the project’s traffic impact before the WCC denied the permit request.

THE COURT’S REASONING

"[D]enial of [the] CUP was not so lacking in fact it was clearly unreasonable," the court ruled.

Growth policy—The WCC had “used its discretionary powers to determine that, per the language of the Growth Policy, the proposed hotel did not fit the...
[city’s vision for that area. Backed by community input and the Growth Policy, we conclude its denial of the application was so lacking in fact and foundation that it was clearly unreasonable.” Thus, the WCC didn’t abuse its discretion in that regard.

Traffic concerns—The WCC based its denial in part on increased traffic expected to result from the hotel. It wasn’t bound by the MDT report and had discretion as to whether to grant the CUP. Its members also weren’t “bound by expert testimony if it conflicted with their own personal experience[es].”

The bottom line: The WCC “used its own observations to conclude that a hotel in this area could exacerbate traffic. For example, [it] noted there was no stoplight at the intersection of Hedman Lane and Highway 93 South. [It also] looked at the engineer’s traffic report and concluded that the [hotel] would contribute to excessive traffic, especially because the highway turn[ed] into a two-lane road as traffic head[ed] north, and because there was heavy traffic in the summer when tourism was high.”

Additionally, the WCC “pointed out that vehicles entering and leaving the hotel would have to cross two lanes of traffic which would be dangerous given the already high volume of traffic.” Ultimately, the “[WCC’s] denial was not so lacking in fact and foundation that it was clearly unreasonable.” Thus, it didn’t abuse its discretion in denying the CUP.

Takings

Property owner alleges Takings and Equal Protection Clause violations

Citation: Billeris v. incorporated Village of Bayville, New York, 2023 WL 6214108 (E.D. N.Y. 2023)

Holly Billeris filed suit against the Incorporated Village of Bayville, New York, and its officials (the defendants) alleging violations of the Fifth Amendment’s Takings Clause and the Fourteenth Amendment’s Equal Protection Clause.

A lower court stayed the case in deference to state court litigation between the parties, which Billeris had commenced several years earlier.

Before a federal court in New York was Billeris’ request to end the stay as well as the defendants’ request for dismissal.

DECISION: Stay terminated.

The court dismissed Billeris’ claims because the statute of limitations had run and some of the claims also failed on the merits.

A CLOSER LOOK

Billeris’ property was located in an area with a “private path” known as Shore Road. Prior to 2008, one end of Shore Road was connected to a public street in Bayville, but the other end was not.

That year, Bayville began a process of making improvements to a public road on the other end of Shore Road, which connected it to public roads on both ends.

Billeris, claiming this converted her previously “private path” into a “public thoroughfare,” filed two applications in 2013 to Bayville’s building inspector to erect fences blocking the portion of Shore Road that was situated on her property. She alleged that similarly situated property owners had done this.

The proposed fences would have included “crash gates,” which she insisted would have permitted emergency vehicles to travel on Shore Road if necessary. The building inspector denied both applications, explaining that obstructing passage on Shore Road would create “a substantial interference with the health and safety of residents south of the barricade.”

The building inspector cited a prior decision by the Nas-
sau County Supreme Court that had declared a barrier erected by one of Billeris’ neighbors on Shore Road to be a “public nuisance” for that same reason.

Billeris appealed the denials to Bayville’s Zoning Board of Appeals (ZBA). She alleged that the ZBA initially scheduled a hearing on her appeal but later cancelled that hearing and denied the appeal. She also claimed that “during this time, and continuing to date, barricades of varying types have been erected and maintained across nearly all privately owned streets in the Village,” and that “[t]he Village has taken no action to remove these barriers, some of which have been constructed without permits, nor have they objected to their construction and maintenance.”

In sum, Billeris claimed that:

- Owners of eight other properties in the Village that included private roads had built barriers obstructing those roads;
- the defendants’ act of connecting Shore Road to public streets on both ends, coupled with Bayville’s later denial of her applications to build a fence across her portion of Shore Road, amounted to an uncompensated taking of her property in violation of the Fifth Amendment because members of the public now used her private road as a through street; and
- the denial of her applications to build a fence amounted to an equal protection violation.

BACK TO THE COURT’S RULING

Termination of stay—In weighing appropriate factors, the court concluded that terminating the stay was the appropriate course of action. “Although the preclusive effect of a state court judgment on [the] takings claim risk[ed] creating significant inefficiencies, [Billeris’] assertion of federal causes of action, coupled with the Supreme Court’s and Second Circuit’s strong admonishments against abstention, tip[ped] the balance in favor of allowing [her] to proceed with her claims” in this federal court.

The court explained that under the established abstention analysis, the court had to “‘make a threshold determination’ that this lawsuit and [Billeris’] state court lawsuit against the Village ‘[we]re parallel.’”

Parallel suits meant “‘when substantially the same parties [we]re contemporaneously litigating substantially the same issue in another forum.’” If this was the case, the court would address whether:

- “the controversy involve[d] [an issue that] one of the courts ha[d] assumed jurisdiction” over;
- “the federal forum [wa]s less inconvenient than the other for the parties’);
- “staying or dismissing the federal action w[oul]d avoid piecemeal litigation”;
- the proceedings had advanced more in one forum than in the other;
- federal law provided the rule of decision; and
- the state procedures “[we]re adequate to protect [her] federal rights.”

Equal protection—The court found the statute of limitations barred this claim because Billeris hadn’t asserted it within three years of when the ZBA denied her application to build a fence across Shore Road. The claim also failed on the merits because she hadn’t “adequately alleged that other property owners in the Village, who have built barriers across their private roads, are sufficiently similar to her and that the Village, therefore, had no rational basis for treating her property differently.”

Takings—This claim also failed because the clock had run out. The court explained that Billeris’ takings claim accrued when the village had “allegedly deprived her of her property, not when the Supreme Court authorized her to bring her takings claim in federal court.”

The bottom line: Billeris’ takings claim accrued in 2013 “at the latest” when the ZBA denied her permission to construct a fence that would have maintained her purported right to exclude members of the public from accessing Shore Road.

This wasn’t a case where tolling applied, either, since that only occurred in “rare and exceptional circumstances.”

Case Note:

Among the named defendants were members of Bayville’s Board of Trustees and ZBA, which were respectively responsible for enacting local ordinances on behalf of the village and hearing appeals of administrative decisions related to various land use issues. Billeris also named the building inspector and two former mayors in the lawsuit.

Conditional Use Permits

Plaintiffs challenge city’s decision to grant CUP to kennel owner

Citation: Ivanovich v. City of Union, Missouri, 2023 WL 5672171 (E.D. Mo. 2023)

Plaintiffs filed suit against the city of Union, Missouri, its mayor, and individual Board of Aldermen members, alleging they violated their due-process rights by depriving them of notice and an opportunity to contest a decision to amend the zoning code. Specifically, a property owner wanted to operate a kennel near their homes, and the defendants approved their application for a conditional use permit (CUP).

The defendants asked the court to dismiss the lawsuit, arguing the plaintiffs failed to state a claim under Section 1983 of the U.S. Code.

DECISION: Request for dismissal granted.

The plaintiffs couldn’t establish that their due-process rights had been violated.

MORE ON THE FACTS

Prior to July 12, 2021, kennels for boarding or breeding
dogs were not permitted in the city’s non-urban zoning district, either expressly or by conditional use. On July 12, 2021, Linda Linneymeyer who, at that time was not a resident of the city, requested that the Board of Aldermen amend the Zoning Code to allow kennels in the non-urban zoning district as a conditional use—a request which the Board approved.

Thereafter, in October 2021, Linneymeyer asked the Board of Aldermen to annex her property and to amend the city’s zoning code to allow her to operate Linny’s Kennel, a dog breeding and boarding business, on her property. Linneymeyer also applied for a CUP to expand her kennel operations.

The Planning and Zoning Commission recommended approval of Linneymeyer’s CUP, but the plaintiffs, whose properties abutted Linny’s Kennel filed a protest petition with the city.

At a public hearing, concerns arose, with opponents taking the position that:
- the requested CUP would not preserve and promote the public health, safety, and general welfare;
- it would “substantially and permanently injure the appropriate use of neighboring property”; and
- it would cause a nuisance due to barking dogs, dangers from increased traffic, and decreased property values by situating a commercial business in a single-family residential subdivision.

Plaintiffs filed a request protesting Linneymeyer’s application, and the application was denied after a public hearing. Eight months later, Linneymeyer reapplied, and the plaintiffs filed a second request protesting that application for a CUP.

Following a non-public meeting, the Board of Alderman approved the second CUP application.

The plaintiffs alleged various irregularities and deficiencies in the procedures used when making a decision about the CUP application. They claimed that when the zoning code was amended in July 2021 to allow kennels in a non-urban district, the Board held its regular meeting but failed to post notice of a public hearing on the property in a conspicuous manner despite being aware that the amendment was specifically intended for Linny’s Kennel. They also alleged that the Board had improperly considered Linneymeyer’s subsequently filed Petition for Voluntary Annexation without notice to them and improperly annexed Linny’s Kennel into the City with a zoning classification of non-urban. And they claimed that when the Board approved Linneymeyer’s application for a CUP to expand her kennel operations in August 2022, it did so after a closed (non-public) meeting in contravention of the city’s zoning code and regulations.

Thus, dismissal was appropriate “because even if plaintiffs had a constitutionally protected property interest, the complaint fail[ed] to meet the exacting pleading standards for a substantive due process claim.”

A CLOSER LOOK

“To sustain a claim for substantive due process, a plaintiff must prove that the government action in question is ‘something more than . . . arbitrary, capricious, or in violation of state law.’” Further, even if the plaintiffs had alleged bad-faith enforcement of an invalid zoning ordinance, without more, that wouldn’t rise to the level of constituting a substantive due-process claim. Thus, substantive due process claims were limited “to ‘truly irrational’ governmental actions” such as “attempting to apply a zoning ordinance only to persons whose names begin with a letter in the first half of the alphabet.”

Here, the allegations merely amounted to “a typical appeal by a disappointed landowner from an adverse ruling by a local planning board.” The plaintiffs characterized the Board’s decision to deny Linneymeyer’s first application for a CUP as “[t]he standard for rational decision making.” But when the Board met again several months later over the plaintiffs’ formal written protest, it acted in a “truly irrational” manner, the plaintiffs asserted.

While there may have been some merit to the plaintiffs’ contention since the Board’s reversal of course may have seemed irrational given nothing had changed between Linneymeyer’s first and second applications. But, even if the court inferred from the complaint that the Board had “acted in bad faith in reversing its prior decision, that would not be sufficient to state a substantive due process claim.”

Practically Speaking:
To establish a substantive due process claim, the plaintiffs would have needed to show that they had a property interest to which the Fourteenth Amendment’s due process protection applies, and they were deprived of that right or interest as a result of “truly irrational governmental actions.”

Standing

Neighbors in flood-hazard zone claim granting permits for another property owner to build addition would damage their property

Citation: Blomquist v. City of Quincy Zoning Board of Appeals, 2023 WL 6058650 (Mass. Land Ct. 2023)

The neighborhood along Quincy Shore Drive in Quincy, Massachusetts was low lying and situated along Quincy Bay. Just a low seawall and Quincy Shore Drive protected the neighborhood from the Atlantic Ocean; so much of the area was in a FEMA flood hazard zone.
Mohammed Al Zubaidi owned a home on a lot at the corner of Quincy Shore Drive and Webster Street. Karen Blomquist and Martin Hickey owned a house on the next street, one lot in from Quincy Shore Drive, and Al Zubaidi’s property shared a short common boundary line with the rear 30 feet of the Blomquist/Hickey side boundary at the rear of their backyard.

Al Zubaidi sought and received zoning relief authorizing two additions to the house on his property. Blomquist and Hickey, who claimed density- and privacy-related aggravement and flooding concerns, appealed.

At issue was whether the court should dismiss the claim.

**DECISION: Request for dismissal granted.**

Al Zubaidi had rebutted the presumption of aggravement; Blomquist and Hickey had failed to prove by credible evidence that they would suffer any cognizable injury as a result of the construction and use of the proposed additions on the Al Zubaidi property as authorized by the relief granted by the Quincy Zoning Board of Appeals (ZBA).

**A CLOSER LOOK**

The neighborhood where the parties lived was zoned “Residence A” per the city of Quincy’s zoning ordinance. The zone had basic dimensional requirements:

- 7,650 square feet minimum lot area;
- maximum height of 2.5 stories;
- minimum frontage of 85 feet;
- minimum front yard setback of 25 feet;
- minimum side yard setback of 13 feet; and
- minimum rear yard setback of 20 feet.

Due to where the parties’ properties were situated, they were also in a Floodplain Overlay District.

Al Zubaidi wanted to construct two separate additions and to expand the entry way to the house, which faced Quincy Shore Drive. The first addition would be a two-story addition on the western side of the property closest to an abutter who was not a party to this case at 85 Webster Street. This addition would be built over part of the current driveway and would consist of two-story addition with a two-car garage on the ground level and two bedrooms on the second floor as part of a reconfigured second floor of the house.

This addition would be located within 10 feet of the side lot line of the 85 Webster Street property boundary. The 10-foot setback area, currently paved as part of the driveway, would be converted to lawn.

At its closest point, the addition would be located 26 feet away from the boundary of the Blomquist/Hickey property and would be more than 100 feet from their home.

The second proposed addition was a two-story addition to the southern side of the house, which would replace an existing partially roofed second-story deck on that side of the house. This addition would contain a 4-foot deep, 8-by-12 foot therapeutic pool for Al Zubaidi’s special needs daughter and additional living area on the reconfigured second floor of the house. It would measure 24-by-16 feet, which was the same length but 6 feet wider than the existing second-story deck it would replace. This proposed addition would be located 24 feet from the eastern boundary at the very rear of the Blomquist/Hickey property.

Al Zubaidi also proposed an increase in the size of the entrance to the house facing Quincy Shore Drive.

Al Zubaidi asserted that the proposed additions were designed with flood vents built into the foundations to allow flood water from a flooding event from the Atlantic Ocean to pass through the foundations of the two additions.

The Conservation Commission approved the drainage plans, and Al Zubaidi applied to the Board for zoning relief. The proposed work required dimensional variances for front yard and side yard setbacks. That’s because:

- the front of the proposed garage addition would be located closer to Webster Street than the required 25-foot setback;
- the expanded entrance would encroach on the front yard setback from Quincy Shore Drive; and
- the side of the garage addition, proposed to be set back 10 feet from the boundary with 85 Webster Street, required a variance from the 13-foot side yard setback requirement.

Ultimately, the ZBA approved Al Zubaidi’s application. It found that the proposed changes wouldn’t be substantially more detrimental to the neighborhood and granted a special permit.

**STANDING**

Under state law, the court had to address whether Blomquist and Hickey were aggrieved persons. “Abutters who are entitled to notice of a zoning board’s hearings ‘enjoy[ed] a rebuttable presumption’ that they [we]re aggrieved persons.”

And while an abutter had a presumption of aggravement, for a plaintiff to attain aggrieved person status they bore the “burden of proving aggravement necessary to confer standing.”

To rebut the presumption, Al Zubaidi had to offer evidence “‘warranting a finding contrary to the presumed fact.’” For instance, he could show that Blomquist and Hickey’s claims of aggravement weren’t interests the zoning act was intended to protect. Another way to rebut was to show on their lack of evidence to support the presumption.

If Al Zubaidi did either, the burden shifted back to Blomquist and Hickey to provide “‘direct facts and not speculative evidence, that they would suffer a particularized injury that [w]as ‘special and different from the concerns of the rest of the community.’”

The issue for Blomquist and Hickey was that “[a]ggrievement require[d] a showing of more than minimal or slightly appreciable harm.”

Practically speaking: The adverse effect on them had to
“be substantial enough to constitute actual aggrievement such that there could be no question that the[y] should be afforded the opportunity to seek a remedy.”

Blomquist and Hickey had to bring forth evidence to show they would be injured or harmed by proposed changes to their abutting property. The question wasn’t whether they simply would be “‘impacted’ by such changes,” and they failed to meet this burden.

That’s because:

- while their engineer, who reviewed Al Zubaidi’s plans for the additions, testified that he believed the new additional would have an impact on flooding on their property, he couldn’t articulate how or why that would be the case;
- the engineer also said he “couldn’t tell” if the loss of only 384 cubic feet of flood storage would exacerbate flooding on their property if Quincy Bay flooded; and
- he wasn’t aware of the topography of their property, “so it [was] doubtful that he could have offered an informed opinion on the impact of the proposed additions on [their] property had he tried to do so.”

Thus, the court did not credit the testimony of this expert. Without more, Blomquist and Hickey had failed to offer any credible evidence that the proposed additions on the Al Zubaidi property would cause any additional runoff or flooding danger on their property, so they “failed to present any credible evidence to substantiate their claimed harms with respect to any interest protected by the Ordinance” and were not aggrieved persons within the meaning of state law.

THE BOTTOM LINE

The court didn’t have subject matter jurisdiction, so it didn’t have to address the merits of Blomquist and Hickey’s claim that the ZBA had exceeded its authority in granting zoning relief.

Case Note:

Once the presumption of aggrievement has been rebutted, abutting property owners do not have “standing to challenge a dimensional zoning requirement without establishing particularized injury,” the court wrote.

Zoning News Around The Nation

California

Woodlands’ comprehensive zoning code update page goes live

The City of Woodlands, California’s webpage entitled Comprehensive Zoning Code Update allows users to sign up for updates about upcoming meetings and project-related updates concerning its efforts to update its zoning ordinance.

The webpage explains in lay terms what a zoning code does and why the city seeks to update it. It also includes links to the city’s general plan and an interim zoning ordinance that was amended in 2020 while explaining the process for current zoning code updates and giving the public ways to get involved.

“The [c]ity will utilize a variety of resources to guide and obtain feedback on desired changes including results from use of the Interim Zoning Ordinance, stakeholder and community input, as well as legislative requirements,” the webpage states.

To learn more, visit cityofwoodland.org/1165/Comprehensive-Zoning-Update.

Source: cityofwoodland.org

New report focuses on housing underproduction across the state

In other news out of California, 3.5 million housing units must be built by 2025 to address its housing shortage. That’s according to a newly released report that California YIMBY Education Fund commissioned.

The study, which MapCraft conducted, estimated a “conversion rate” for each city and county that compares historical rates of housing permitting to potential market-feasible housing development opportunities, assuming no limitations due to zoning.” “For example, a jurisdiction might have permitted 1,000 housing units last year while having an estimated 100,000 zoning-free market-feasible housing development opportunities on sites that were not environmentally encumbered, which would amount to a 1% conversion rate,” an overview about the report states.

Key findings indicate that “roughly 30% of the approximately eight million addressable parcels in California could, in the absence of regulatory barriers to new housing, accommodate additional market-feasible units.” However, due to several factors including zoning regulations, as well as “labor availability, material supply chains, [and] willing sellers . . . California jurisdictions permitted less than 140,000 units per year between 2018 and 2021, an annual conversion rate of less than 1% of statewide market-feasible opportunities.”

To download this study, which also includes discussion of areas that are “converting market-feasible development opportunities into housing development permits at relatively high rates,” which includes parts of the Central Valley and Inland Empire and cities such as Bakersfield, Merced, Stockton, and Visalia in the counties of Kern, Merced, and Place, visit cayimby.org/wp-content/uploads/2023/09/2023-Housing_Underproduction-compressed.pdf.

Source: cayimby.org

Massachusetts

Report studies Boston’s zoning code, calls it ‘bloated’ and ‘outdated’

A recently released report indicates that Boston’s exist-
ing zoning code may be “bloated, outdated, inconsistent, and inequitable” and that a significant reason for this “is the dominance of neighborhood-specific, rather than citywide, planning.” Further, the study sets out framework for two forms of reform (complete overhaul and incremental changes), including recommendations for:

- code reforms, including how to reverse neighborhood-specific zoning;
- establishing drafting benchmarks;
- adopting form-based zoning; and
- advancing planning goals.

To read Reforming the Boston Zoning Code, visit bostonplans.org/getattachment/a4c0dc15-bad1-4e6c-83b1-59f216a86b48.

AAG decides whether local ZBA violated state’s open meeting law by not announcing session was being recorded

Massachusetts Assistant Attorney General for the Division of Open Government recently issued a letter stating that the Middleborough Zoning Board of Appeals (ZBA) had violated the state’s Open Meeting Law (OML) by failing to announce that a meeting held on April 27 was being recorded.

The AAG, which stated the office had resolved the matter by informal action, concluded that the ZBA had violated the OML as alleged.

Under the OML, “[a]fter notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting.” The law goes on to state, “At the beginning of the meeting, the chair shall inform other attendees of any recordings.” “This requirement that the chair inform attendees of any recording includes any recording made by members of the public body itself, including those made for public broadcasting or administrative purposes, such as assisting in the drafting of meeting minutes.”

Here, the ZBA held the April 27 meeting, which was recorded and broadcast by Middleborough Cable Community Access Media. The ZBA asserted that while the chair didn’t announce the recording, no attendees beyond Board members were present at the start of the meeting, so there wasn’t any obligation to make such a statement.

The AAG’s letter indicates that the office disagreed. “We find here though that there were other attendees at the April 27 meeting such that the chair was required to make an announcement that the meeting was being recorded. . . . After reviewing a video recording of the April 27 meeting, we note that all five Board members were seated at a table in the designated meeting location and that two additional individuals were also seated with the Board at that table. While we recognize that these two individuals were either employed by the Board or a member of another public body in Middleborough, they are technically not Board members and thus would be considered ‘other attendees’ for purposes of the [OML],” so the chair had a duty to inform them that the meeting was being recorded.

The AAG, however, determined that under the circumstances, this was a de minimis OML violation. The letter ordered the ZBA to ensure “immediate and future compliance with the law’s requirements,” and cautioned it “that similar future violations could be considered evidence of intent to violate the law.”


Michigan

‘Amicus curiae’ brief to be filed in case challenging airport ZBA’s decision to deny wind-turbine company variances

In September 2023, the Supreme Court of Michigan granted a request by the Michigan Association of Planning (MAP) to participate as a friend of the court in a case where Pegasus Wind Inc. filed suit against Tuscola County and the Tuscola Area Airport Zoning Board of Appeals (TCAZBA).

Pegasus, which is constructing a commercial wind-energy system in the county, planned on putting some of its wind turbines within the airport’s zoning area. But the TCAZBA found variance applications Pegasus filed for the construction of eight wind turbines would violate the height limitations and the minimum descent requirements set forth in the Tuscola Area Airport Zoning Ordinance.

The case is before the state’s highest court for review of whether an appeals court erred in finding that the requirement of showing unique circumstances inherent in the property was only an element of unnecessary hardship, and not an element of practical difficulty. Also, the court will address whether 1) the self-created hardship rule only applied when an applicant has partitioned, subdivided, or physically altered a property and 2) the TCAZBA’s decision was not supported by competent, material, and substantial evidence.

MAP had until September 27, 2023 to submit its brief with the court, when another brief by friend-of-the-court Michigan Municipal League was due, too.

The case cited is Pegasus Wind, LLC v. Tuscola County, 994 N.W.2d 513 (Mich. 2023).

Source: courts.michigan.gov

New York

NYC mayor launches effort to build ‘a little more housing’ in neighborhoods

New York City Mayor Eric Adams recently launched what his office called “an urgent, groundbreaking effort to tackle the city’s persistent and severe housing shortage and enduring affordability crisis by enabling the creation of ‘a little more housing in every neighborhood.’” The idea behind this initiative is to transform the city so that “working people can once again afford to live in it.”

With a lack of inventory, rents have been driven up to
the point where more people have entered the shelter system, Adams' office explained.

The “City of Yes for Housing Opportunity” proposal would aid New Yorkers by creating an additional 100,000 homes to support more than 250,000 residents over 15 years. “The steps Mayor Adams is proposing today would be the most significant pro-housing reforms ever to the city’s zoning code and a critical step towards Mayor Adams' ‘moonshot’ goal of delivering 500,000 new homes to New Yorkers over the next decade.”

Further, the initiative “represents the third of three citywide zoning changes that will be presented to all five borough presidents, all 59 community boards, and the New York City Council as part of Mayor Adams’ vision for New York City as an inclusive, equitable ‘City of Yes.’”

“Today, we are proposing the most pro-housing changes in the history of New York City’s modern zoning code—changes that will remove longstanding barriers to opportunity, finally end exclusionary zoning, cut red tape, and transform our city from the ground up,” said Mayor Adams.

Specifically, the proposal addresses:

- **ending parking mandates for new housing:**
- **universal affordability preferences** to bring permanently affordable housing to neighborhoods across the city;
- **shared living with common facilities, such as kitchens and bathrooms, to lower housing costs:**
- **town center “main street” zoning, which would allow** between two and four stories of residential development over ground-floor commercial space to encourage mixed-use communities and foster affordable housing;
- **transit-oriented development** to address the fact that current zoning rules forbid “even modest apartment buildings” in many parts of the city;
- **accessory dwelling units to allow backyard cottages, garage conversions, and basement units of up to 800 square feet on one- and two-family properties across the five boroughs;**
- **empty office space conversions into housing by updating the year of construction to 1990 for flexible conversion regulations;** and
- **campus maximization**, so that approvals for new buildings on campuses reflect the context of the surrounding buildings, which the mayor’s office said will allow properties ranging from multi-building housing developments to religious institutions to create new housing and support the revitalization of their communities.

Further, the proposal “includes additional measures to improve and modernize New York City’s zoning, including allowing greater flexibility for homeowners to add extra space or bring existing properties into compliance with zoning to facilitate renovations; ending the 'Sliver Law,' which limits development based on the size of a property for height-limited developments; and more easily allowing landmarked sites to sell transferable development rights, allowing them to better raise revenue for maintenance of the landmarked building.”

As of print time, a draft scope of work for the City of Yes for Housing Opportunity was pending release. The city was also slated to hold a virtual public information session about the proposal.

The mayor’s office added that the formal review process on the proposed text amendment would begin in spring 2024. “Following consideration and recommendations by all five borough presidents, all five borough boards, and all 59 community boards, the initiative will be voted upon by the City Planning Commission and the City Council in fall 2024.”

To view the proposal, visit storymaps.arcgis.com/stories/f266a53e9cda42d5b763b57dce08f49. You can also watch a video on the future of housing in the city, visit you tu.be/Hhmew6K16SE.

Source: nyc.gov
# DECEMBER 2023

## LAND DEVELOPMENT PLAN COUNCIL ACTION DEADLINES

<table>
<thead>
<tr>
<th>Title</th>
<th>Submitted</th>
<th>Action Deadline</th>
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<tbody>
<tr>
<td>Umberger/Rockenbeck Subd</td>
<td>10/23/2023</td>
<td>1/21/2024</td>
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<tr>
<td>Jersey Mike’s</td>
<td>10/23/2023</td>
<td>1/21/2024</td>
</tr>
<tr>
<td>Winfield Heights Phase 2</td>
<td>11/20/2023</td>
<td>2/18/2024</td>
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</tbody>
</table>

## LAND DEVELOPMENT PLAN ACTIVITY

<table>
<thead>
<tr>
<th>Title</th>
<th>Recording Deadline</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>UAJA Biosolids Upgrade</td>
<td>January 16, 2023</td>
<td>5/22 submitted, comment request sent 5/22; Comments due 6/2; revision due 6/12 (unable to make the revision deadline, extended to 6/19); revision received 6/16; to PC 6/27; to CTC 7/20; conditional approval letter sent 7/21, accepted 7/27; extension request to CTC 10/5; ext. approval sent 10/6</td>
</tr>
<tr>
<td>Summit Park Subdivision</td>
<td>March 5, 2024</td>
<td>7/17 submitted, comment request sent 7/18; comments due 7/28; revision due 8/7; comments due 8/11; to PC 8/14; to CTC 9/7; Determined a preliminary does not get recorded</td>
</tr>
<tr>
<td>Umberger/Rockenbeck Subd</td>
<td>January 21, 2024</td>
<td>10/23 submitted, comment request sent 10/23; comments due 11/3; 11/13 revision due; comments due 11/17; to PC 11/21; to CTC 12/6</td>
</tr>
<tr>
<td>Jersey Mike’s</td>
<td>January 21, 2024</td>
<td>10/23 submitted, comment request sent 10/24; comments due 11/3; 11/13 revision due; comments due 11/17; to PC 11/21; to CTC 12/6</td>
</tr>
<tr>
<td>Winfield Heights – Phase 2</td>
<td>February 18, 2024</td>
<td>11/17 submitted (accepted 11/20), comment request sent 11/20; comments due 12/1; revision due 12/11; comments due 12/15; to CTC 12/21</td>
</tr>
</tbody>
</table>
MINOR PLANS

Ohashi Minor

Submitted 11/13/2023

sent to Schnure, Kauffman, May; comments due

Expires 1/12/2024

11/22; revision due 12/4

OTHER

Dale Summit Area Plan

PC made recommendation to Council January 18, 2022; Joint Council/PC meeting held March 28; RFQ is on the website: Pre-submission meeting to be 7/14 (5 firms have signed up for pre-submission meeting); Deadline to submit proposals 8/1; to be reviewed by committee (2 Council members, 2 PC members; 1 CRPA; staff); committee established 8/4; submissions sent to committee members 8/9; member meeting 8/29 1-3pm Library; interviews October 25th; DPZ is chosen firm; Contract to be reviewed by CTC 12/15; 1/11/2023 DPZ okayed contract and scope; to CTC 1/19 for approval; DPZ will be present 2/27-3/1, with a tour on 2/27; 5/3 Stakeholders identified, pre-charrette May 24; Charrette to take place 6/19-6/23, supplies being collected, possible dry run 6/16; Charrette successfully took place 6/19-6/22; Market analysis under staff review, sent to PC 8/3; Draft Ordinance being reviewed by staff; 9/13 DPZ review with staff; 2nd draft ordinance to come; draft plan submitted 10/23 being reviewed by staff

Pike Street Phase 3

Surveying to begin in January; letter sent to residents, surveying started 1/11; 1/18 traffic calming maps removed from Council room; before pictures are complete (may take after pictures of traffic calming phase); dedication of traffic calming 4/21; ongoing

Traffic Signal Technologies Grant (TSTG) Frank is working with help of District 2 PennDOT; Application due September 30; resolution to be passed; Application submitted; 12/14 approved for $127,700; need RFP for traffic engineering services; 3/28 RFP submission deadline; 5/3 consultant chosen; PO for Adam to sign and return to Nick; meeting 8/9; Q4 status report done; to coincide with GLG

ENGINEERING BOND/LOC SURETY EXPIRING SOON

Christ Community Church (renewal request sent)

Stuckey Automotive (renewal request sent)
<table>
<thead>
<tr>
<th>Location</th>
<th>Owner</th>
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<tbody>
<tr>
<td>Canterbury Crossing</td>
<td>Rearden</td>
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<tr>
<td>Evergreen Heights</td>
<td>Arize FCU/ Stocker</td>
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<tr>
<td>Jake’s Fireworks</td>
<td>Mount Nittany Medical Center</td>
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<tr>
<td>Steve Shannon</td>
<td>Moerschbacher Minor</td>
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<tr>
<td>Winfield Heights</td>
<td>State College Area Food Bank</td>
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<tr>
<td>C3 Phases 1 &amp; 4</td>
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