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: 869 0772 1878  ● Passcode: 970948

*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.

College Township is committed to making meetings accessible to everyone. If you require an accommodation or service to fully participate, please contact Jennifer Snyder at jsnyder@collegetownship.org or 814-231-3021.

CALL TO ORDER:

ZOOM MEETING PROTOCOL:

OPEN DISCUSSION (items NOT on the agenda):

CONSENT AGENDA:  CA-1  March 5, 2024 Meeting Minutes
(Adoption)

PLANS:
- P-1  PSU-Indoor Practice Air Supported Structure Preliminary/Final LDP
  (Recommendation)
- P-2  Centre Hill Country Club Final Land Development Plan
  (Recommendation)

OLD BUSINESS:  OB-1  Workforce Housing
  (Discussion/Recommendation)

NEW BUSINESS:  None

REPORTS:  R-1  Council Report
STAFF INFORMATIVES:  SI-1  Council Approved Minutes  
SI-2  March EZP Update  
SI-3  Zoning Bulletins

OTHER MATTERS:

ANNOUNCEMENTS:  Next regular meeting will be Tuesday, March 5, 2024 at 7:00pm  
Next joint meeting with Council will be Tuesday, March 26, 2024 at **6:00pm**  
*Food and Refreshments in the Library starting at 5:00pm*
Statement of Financial Interests – complete and return to Sharon Meyers ASAP

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 reviewed Zoom protocol.

ROLL CALL: Mr. Forziat verified Mr. Toumayants was excused from the meeting.

OPEN DISCUSSION: None presented.

CONSENT AGENDA:

CA-1 February 20, 2024 PC Meeting Minutes

Mr. Darrah moved to approve the February 20, 2024 meeting minutes as written. Mr. Fenton seconded. Motion carried unanimously.

PLANS: None presented.

OLD BUSINESS:

OB-1 Workforce Housing

Ms. Schoch gave a brief introduction to the workforce housing ordinance and added the blue bold in the attached draft ordinance represents additions, the red strike out shows deletions, and black signifies existing language and no change is proposed. She also presented renderings of different lot sizes and setbacks in order to show the total buildable area on different lots. These renderings included the minimum lot size in the R-1 district with setbacks, the allowable lot size and setbacks for patio homes in the R-1 district, the current incentive of a 5,000 square foot lot with setbacks in workforce housing. As the Planning Commission worked through the draft ordinance the following was proposed:
§200-38.4B(2)(d) add “residential housing including workforce housing developments” to the language

- Mr. Hoffman suggested not providing off-street parking is not a good idea
- §200-38.4C(1)(e)[1] should be one for one and “similar” should be changed to “same”
- §200-38.4C(1)(f) tax forms should not be used, instead use “gross rental income” with proof of receipts
- §200-38.4C(1)(g) consider a waiver of 50% of all review fees or 100% of all in-house review fees
- §200-38.4C(2)(c) and §200-38.4C(3)(c) consider a formula; such a percent of workforce housing units provided will allow ten additional feet to the height of the building, such a percent of workforce housing units will allow twenty additional feet to the height of the building, and so on up to a maximum height of sixty-five feet from average grade to ceiling height of highest livable space
- §200-38.4D(1) through §200-38.4D(2)(c) is recommended to be deleted
- §200-38.4D(5) recommended striking the entire credits for existing workforce housing section; if the section is to remain some points to be addressed include:
  - Can credits be transferred or sold
  - Credits should stay with the original developer within College Township
  - There should be a time limit to use credits
- §200-38.4E(1) recommend striking (a) and (b), and changing language to read “Workforce housing units may not differ from the market-rate units in a development with regard to interior amenities and gross floor area.”
- §200-38.4E(2) staff to check with Centre Region Code
- §200-38.4E(4)(a) tax forms should not be used, consider certification of buyers

Mr. Gabrovsek asked the Planning Commission to keep in mind the charm associated with College Township. Mr. Darrah stated the Township should also consider not forcing development of office and retail spaces in order to get higher density developments, as retail and office spaces are becoming antiquated.

The Planning Commission asked staff to update the draft ordinance with the revisions discussed and present a new draft at the March 19th meeting. At which time the Planning Commission will complete their review of the draft ordinance and potentially make a recommendation to Council.

**NEW BUSINESS:** None presented.

**REPORTS:**

- R-1 DPZ CoDesign Update
  - No further discussion.

**STAFF INFORMATIVES:** None presented.

**OTHER MATTERS:**

- Mr. Schulte introduced himself and thanked the Planning Commission for recommending the incentive for parkland and open space be removed from the workforce housing ordinance.

**ANNOUNCEMENTS:**

- Mr. Forziat announced the next meeting will be held on Tuesday, March 19, 2024 at 7:00 p.m., the next joint meeting with Council will be held on Tuesday, March 26, 2024 at 6:00pm with food and refreshments served at 5:30pm in the library, and the Statement of Financial Interests are to be completed and returned to Sharon Meyers as soon as possible.
**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
1481 E. College Avenue
State College, PA 16801

FROM: Michael Vaow
Stahl Sheafer Engineering
800 Leonard Street
Clearfield, PA 16830

DATE: February 20, 2024

RE: Indoor Practice Air Supported Structure Project Narrative

This project adds a non-permanent air supported structure to the south of the future Jeffrey Field Soccer operations center. Ancillary improvements to the removable air supported structure include a new permanent turf field and concrete sidewalk. Stormwater management to manage the increased runoff from increased impervious area will be located underground.

Please contact me at (814) 857-6324 or by email at mvaow@stahlsheaffer.com should you have any questions or require additional information.

Sincerely,

[Signature]

Michael R. Vaow
Project Manager
Stahl Sheafer Engineering
### SCENE SCHEDULE

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**NOTES:**
- Scene 1: Light fixture #1 is set to 50% intensity.
- Scene 2: Light fixture #2 is turned off.
- Scene 3: Light fixture #3 is set to 100% intensity.
- Scene 4: Light fixture #4 is dimmed to 75%.
- Scene 5: Light fixture #5 is the only fixture on.
- Scene 6: All fixtures are turned off.
TO: Sharon Meyers, Sr. Support Specialist – Engineering/Planning
College Township
1481 E College Avenue
State College, PA 16801

FROM: Michael Vaow
Stahl Sheaffer Engineering
800 Leonard Street
Clearfield, PA 16830

DATE: March 11, 2024

RE: Response to Comment Letter dated March 1, 2024
PSU: Indoor Practice Air Supported Structure Preliminary/Final Land Development Plan

Ms. Meyers,

This memo is in response to the Township’s review of the Preliminary/Final Land Development Plan submission completed by Stahl Sheaffer Engineering (SSE). The comments and responses are listed below.

**Indoor Practice Air Supported Structure**

**COMMENT 1:** Please note/label all fire hydrants and emergency access.

**SSE RESPONSE:** No existing fire hydrants are located within the surveyed project limits. A callout for the emergency vehicle access for the Indoor Air Supported Structure (IPASS) has been added to sheet C103 with a revision 4 revcloud.

**COMMENT 2:** Ensure all pages are referenced in the Drawing Index on the Cover Page

**SSE RESPONSE:** Sheet C100 (Cover Sheet) has been updated to include landscaping and electrical/lighting plans. A revision revcloud has been added to highlight this update.

**COMMENT 3:** Please complete the attached lighting checklist.

**SSE RESPONSE:** The lighting checklist for the exterior site lighting is enclosed (titled “MI_2023036_College Township Lighting Checklist 1_030824”). This exterior lighting illuminates the walkways and vehicular access around the outside of the inflatable structure footprint for wayfinding and safety. Also, for informational purposes, a second lighting checklist for the sports field lighting is enclosed (titled “MI_2023036_College Township Lighting Checklist 2_030824”). This sports field lighting is only used intermittently and illuminates the turf field for practices/events when the inflatable structure has been removed. Please note that these lighting calculations...
and explanations correspond to the attached revised drawings E001, E101, E102, E301, E702 and new drawings E102P and E602.

COMMENT 4: Sheet LS 101:
   a. College Township does not require guying or staking of trees.
   b. Please correct the reference to section 179-5 of College Township ordinance.

SSE RESPONSE:
   a. Removed from details.
   b. Updated section on notes to 200-36 of college township ordinance.

COMMENT 5: Sheet LS 100:
   a. Township as well as Landscape Architect shall approve substitutions to plant material.
   b. Will existing trees not highlighted in red be removed? If so, please note trees to be removed.
   c. Please complete quantity of plants and verify quantities are correct in the plant schedule provided.
   d. Please provide a north arrow.

SSE RESPONSE:
   a. Updated note 6 on general planting notes.
   b. Updated plan to show existing trees to remain.
   c. Completed quantity of plants.
   d. North arrow provided from title block. Bottom right under legend.

COMMENT 6: Cover Sheet: Stormwater Facilities Acknowledgement: Please provide written confirmation of concurrence with these plans from the Penn State Stormwater Engineer to ensure long-term maintenance and inspection.

SSE RESPONSE: The Stormwater Facilities Acknowledgement will be provided once received from PSU.

COMMENT 7: Cover Sheet: Subdistrict Development Table: This notation indicates base figures are taken from Commuter Drive. This is unacceptable as several projects occurred since. Obtain current values from PSU (Neil Sullivan) and provide reference date for the value accuracy.

SSE RESPONSE: The Subdistrict Development Data Table will be provided once the most current is received from PSU.

COMMENT 8: Cover Sheet: Subdistrict Development Date Table: Given the 18,550,711 square foot value, the ratios and math are inaccurate.

SSE RESPONSE: See SSE Comment 7 response above.

COMMENT 9: Cover Sheet: Subdistrict Development Date Table: Given the 18,550,711 square foot value, the ratios and math are inaccurate.

SSE RESPONSE: See SSE Comment 7 response above.

COMMENT 10: Sheet C101: A storm manhole behind the south goal is labeled “Full of Stone.” Verify that maintenance has occurred to address this issue.
SSE RESPONSE: Pennsylvania State University OPP personnel have verified that this manhole is filled with stone and have verified its operation. The manhole is outside of the project limits and is upstream of the project’s discharge points.

COMMENT 11: Sheet C103: At the northwest corner of the building, a retaining wall of approximately 5.7 feet is shown with a bottom elevation of 1152.0 above an HDPE storm line. Clarify that the wall footer will not impact the storm line.

SSE RESPONSE: No footing is proposed for the retaining wall, and if a footing is proposed, it will be a footing not to exceed the width of the proposed wall. The proposed retaining wall is to be designed by others and is not included within the plans.

COMMENT 12: Sheet 103: Notations indicate “fence design by others.” Note that fence posts drilled vertically should not extend into the 60” Concrete pipe below. Preliminary design to verify fencepost depths is encouraged.

SSE RESPONSE: 3.5’ of elevation exists between the top of the existing 60” concrete pipe and the proposed ground surface. The fence is to be designed by others, and if more depth is needed for fence installation, then the fence shall be relocated to a location outside of the limits of the 60” concrete pipe, but still within the limit of disturbance.

COMMENT 13: Sheet C103: A singular ADA ramp is proposed but no ADA spots are designated. Clarify whether ADA parking is necessary, where ADA may be located, and whether storm inlets can be relocated to allow for ADA parking without impediment.

SSE RESPONSE: Existing parking spaces adjacent to the north edge of the IPASS will not be updated to meet ADA standards at this time. ADA parking will be provided in a future project adjacent to the western edge of the IPASS.

COMMENT 14: Sheet C103: At the northwest corner of the building a retaining wall of approximately 5.7 feet height is shown with a bottom wall elevation of 1152.0 above an HDPE storm line. Clarify that the pipe design is capable of withstanding a structural force applied by the wall and a sloughing of the wall, due to deflection of the pipe, will not occur.

SSE RESPONSE: The proposed retaining wall is to be designed by others and is not included within the plans. The depth of the proposed wall shall extend below the invert of the existing HDPE storm line so overburden pressure from the wall does not impact the storm line.

COMMENT 15: Areas west of the project are noted “Maintain Vegetation for Vegetated Filter Strip Use.” Clarify that no credits are taken for the Filter Strip as Sheet LS-100 shows future elimination of vegetation and pavement in this area.

SSE RESPONSE: No vegetative filter strip credits were used for post construction stormwater management design as a non-structural best management practice. The intent of the vegetative filter strip called out on the plans was to preserve an existing site feature throughout the erosion and sediment control phase of the construction.

COMMENT 16: Sheet LS-100: Are there southerly tree plantings beyond the Limit of Disturbance?

SSE RESPONSE: LOD will be adjusted.
COMMENT 17: Sheet E-102, others: Clarify the lights (Key Note 1) outside of the bubble. Clarify when/how this may be an outdoor field utilizing this lighting vs the indoor intent.

SSE RESPONSE: The keynote #1 on the revised drawing E102 has been modified for clarity.

COMMENT 18: A revised stormwater design was received February 27th. As this package was received after the submission deadline, a full analysis was not completed. Staff will continue review of this document and provide comment under separate cover.

SSE RESPONSE: Noted.

Please contact me at (814) 857-6324 or by email at mvaw@stahlsheaffer.com should you have any questions or require additional information.

Sincerely,

Michael R. Vaow
Project Manager
Stahl Sheaffer Engineering

Enclosed:

6 full size copies of the Plan Set
9 half-size copies of the Plan Set
The Centre Hills Country Club is proposing the development of a new pool & court facility at Tax Parcel 36-29-01 in the Borough of State College. The project site is approximately 11 acres of the Centre Hills Country Club’s 65 acres consisting mostly of the former Neff property. The property is in the Borough of State College with an existing private access drive R-O-W off Scenery Drive in College Township. The private driveway R-O-W was part of the Canterbury Crossing PRD and the driveway was added for the initial “Clark 9” golf course for the Centre Hills Country Club.

The proposed project will include the development of a new private 3,504 SF Swimming Pool with a 5,736 SF Pool House facility that includes separate changing areas/restrooms, golf simulator area, casual dining area and associated pool deck area. The site will also include two tennis courts, four pickleball courts, and associated infrastructure. All the proposed facilities will be located in the Borough of State College. The existing Clark 9 golf course and driving range will remain.

The site area has vehicular access via the existing 24-foot-wide private driveway directly off Scenery Drive in College Township within the 50-foot private R-O-W. Existing 10-foot Sidewalk and Utility Easements are located on both sides of the existing R-O-W. A trip generation analysis prepared by Wooster & Associates is included in the submittal to confirm that the development does not meet the warrant for a traffic impact study.

The proposed development in College Township includes a five-foot sidewalk along the east side of the entrance drive within the existing driveway R-O-W. New gas and sanitary sewer force main will also be installed within the right-of-way and proposed internet service from Scenery Drive will be installed within the existing 10-foot Sidewalk and Utility Easement on the east side of the driveway. One of the adjacent owners existing trees at the corner of Scenery Drive and the private driveway within the Sidewalk and Utility Easement will be removed and replaced with a new understory tree.

SANITARY SEWER
Due to a 20 foot+/- elevation drop into the site from Scenery Drive, where the nearest public sanitary sewer main is located, a private pressure sewer lateral and pump station will be required. An existing 1 1/2” force main line that serves the existing facility will be replaced with a new 4” sanitary sewer force main that will be installed outside the west side of the entrance drive withing the private entrance drive R-O-W and connect to the existing 6” sewer lateral stub. All sanitary sewer service shall be conveyed to the University Area Joint Authority’s, (UAJA’s) collection system.
TELECOM
To provide internet service to the site (2) 3" conduits will be run from the nearest Comcast connection point along Scenery Drive and along the east side of the entrance within the existing 10-foot Sidewalk and Utility Easement. Any sidewalk or driveway crossing will be directionally bored.

NATURAL GAS
Natural gas service will be provided by Columbia Gas which currently provides service along Scenery Drive. A lateral extension will be run into the site along the existing entrance drive R-O-W to the Pool House.
CENTRE HILLS COUNTRY CLUB

FINAL LAND DEVELOPMENT PLAN

STATE COLLEGE BOROUGH / COLLEGE TOWNSHIP * CENTRE COUNTY * PENNSYLVANIA

FEBRUARY 20, 2024

LAST REVISED: MARCH 11, 2024
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March 4, 2024

Lindsay K. Schoch, AICP, Principal Planner
College Township
1481 E. College Ave
State College, PA 16801

RE: Centre Hills Country Club Preliminary/Final Land Development Plan

Dear Lindsay,

In regards to comments received on the above reference project; we offer the following responses:

1. 180.16.3.B Entrance Lights. All points of ingress and egress of a proposed development plan shall be illuminated wherever a proposed driveway or private street intersects with an existing public street. Such light(s) shall be located and installed in the same manner as streetlights above (See 180.16.3A(1-5)
   
   A light has been added at the intersection.

2. Work with College Township and Centre County 911 to establish a road name for the Private Drive in order to have proper addressing in place at time of occupancy.
   
   This process has begun and names will be submitted to Centre County 911 when provided by the Owner.

3. What types of special events are anticipated?
   
   Club related events only.

4. Is the area to the west of the proposed parking lot to be considered overflow parking?
   
   No overflow parking is proposed.

5. Why does the sidewalk change in width at the entrance to the parking area? Consider keeping the width 6’ the entire length.
   
   The standard is 5’, and the architect wanted 6’ adjacent to the parking lot by the building.

6. Clarify whether signage is proposed along Scenery Drive specific to the proposed facility.
   
   No signage is proposed along Scenery Drive.

7. College Township recommends removal of the downturn 45-degree angle exposed above grade at the College/Borough border east of the Private Drive. College Township recommends replacement with an inlet/M top.
   
   It is our understanding that this is the responsibility of the adjacent HOA per the recorded easement agreement. This easement is recorded in Book 483, Page 1160.
8. A College Township Right-of-Way permit will be required with this project.
   *Noted. See Note 15 on Record Plan*

9. Sheet 10 features two details, Painted Stop Bar and Crosswalk. Clarify whether these will be utilized at Scenery Park.
   *Yes, these have been added to Sheet 5.*

10. Sheet 10, Typical Handicap Parking detail, appears to invert the van stall and landing zone. Consider revision.
    *This has been revised.*

11. Sheet 10, Cement Concrete sidewalk, clarify that the 2A stone shall be compacted.
    *This has been revised.*

12. Sheet 6, ADA walkway, provide 2-3 cross-sections identifying the degree of cut that may be required in the side hill of 442 Scenery.
    *The grading is as shown with typical slope tie-offs within the existing easement areas.*

13. Clarify location of power to street lights along Scenery.
    *This has been clarified on plan sheet 7.2*

14. Sheet 7, Note 15, Plan View: Clarify why the Telecom is not remaining or the rear (north) of the sidewalk. Provide a detail regarding vertical separation of gas, telecom and street lighting. Note the additional presence of a sanitary lateral in this area (not shown).
    *Not applicable now. It was discovered that Comcast had a service line along the existing driveway that could be connected to.*

15. Sheet 7.1: East of the entrance near the municipal boundary, gas, telecom, electric, water, and storm conflict within a 10’ area. Detail this crossing.
    *A crossing chart for the gravity services will be added later for contractor clarification.*

16. Sheet PC2: For components integral to the system but lying on the municipal boundary, consider adding an additional sentence, “All rights conferred above to State College Borough are also extended to College Township” or similar.
    *This has been added.*

17. Sheet 6.2: Install additional ADA DWS at west side of Private Drive to complete the ADA crossing.
    *This has been added.*

18. Sheets 6, 8: Verify the proposed landscaping will not be planted in a manner to choke the Rain Garden spillway.
    *Trees and shrubs located near the spillway have been moved.*

19. Sheet PC3, Plan Notes and E&S Narrative, Note 2, please be sure to include College Township representatives among the list of municipal officials to be represented at the meeting.
    *This has been updated to include College Township.*
20. E&S Narrative, note 35, consider revision to a more generic “municipality.”
   *This has been updated.*

   *This has been removed.*

22. PCSM Narrative page 19, Pond Report, verify spillway length (12 feet vs 25 feet).
   *The spillway length was revised to 12 feet in the Pond Report.*

23. PCSM Narrative, page 60, Pond Report, verify Weir [A] crest length (12 feet vs 12 inches) at elevation 1134.50.
   *This detail was revised to match the pond report. There is only a top of grate acting as a weir.*

Enclosed please find the following:
Six (6) Full size Plan Sets
Nine (9) 11x17 Plan Sets
One (1) Adjoiner Property Contact Proof Packet

If you have any questions, please contact me at 814-231-8285.

Sincerely,

Mark Torretti
Project Manager

Enclosures
Cc: 23033
   Greg Garthe, State College Borough
To: College Township Planning Commission  
Thru: Adam Brumbaugh, Township Manager  
From: Lindsay K. Schoch, AICP | Principal Planner  
Date: March 14, 2024  

RE: Workforce Housing Ordinance

Introduction:

Included the Planning Commission’s (PC) March 19, 2024 packet is a fully revised Draft Workforce Housing Ordinance. Over the course of February and March the PC offered comments to staff, and, through the on-going guidance of the PC, staff incorporated suggestions into the ordinance.

In an effort to carefully address unintended consequences and future development scenarios, staff included ordinance language regarding Phasing. To assist in the easy identification of changes, any additions since March 5th are highlighted in bold purple font.

What to Expect:

During the March 19 meeting the PC should anticipate reviewing the remainder of the Ordinance, including the changes PC requested in late February and early March in addition to the information mentioned above regarding Phasing. If the Planning Commission is so inclined, a recommendation can be made, which will move the ordinance forward for Council’s consideration at their upcoming April 4th meeting, and eventually through the Public Hearing process to enactment of the newly revised section in the Township Zoning Code.

The Remand:

The Remand outlines Objectives, the Intent Statement, and a Recommended Process. We are now coming to end of the first Quarter of 2024, and per the Remand “Council requests the PC and staff begin working on the Objectives…with the goal to provide recommendations on the Workforce Housing Ordinance prior to the end of the first quarter 2024”.

Among other elements of the Remand, PC kept Equity in mind through this ordinance update and staff feels the PC did an excellent job regarding the Workforce Housing Ordinance update. Thank you.

Recommended Motion:

Move to recommend the March 19th Draft of the Workforce Housing Ordinance, with corrections as may be noted, to College Township Council for consideration and adoption.
COLLEGE TOWNSHIP
CENTRE COUNTY, PENNSYLVANIA

ORDINANCE NO. O-24-___
AMENDMENT TO CHAPTER 200 – ZONING

AN ORDINANCE OF THE TOWNSHIP OF COLLEGE, CENTRE COUNTY, PENNSYLVANIA,
AMENDING CHAPTER 200 ARTICLE II §200-7 (DEFINITIONS) TO INCLUDE TERMS SPECIFIC TO
WORKFORCE HOUSING
AND
REPEALING AND REPLACING CHAPTER 200 ARTICLE VIII §200-38.4 (WORKFORCE HOUSING)
AND
AMENDING CHAPTER 180.16.1 (SIDEWALKS) REMOVING SECTION B(3), A REFERENCE TO
CHAPTER 200.38.4 WHICH HAS BEEN REMOVED.

GENERAL REFERENCES
Planned Residential Development – See Chapter 145
Subdivision and Land Development – See Chapter 180

Additions
Additions since March 5 PC Meeting
+Deletions

PART 1
Chapter 200 Article II §200-7 Definitions (the following definitions will be added and incorporated in
alphabetical order)

Affordable Housing
In general, housing for which the occupants are paying no more than 30 percent of their income
for gross housing costs, including utilities.

Area Median Income
The midpoint of a specific area’s income distribution, calculated on an annual basis by the
Department of Housing and Urban Development (HUD).

Building Coverage
The percentage of the lot area that is covered by building area, which includes the total horizontal
area when viewed in plan.

Certification of Buyers
Regarding workforce housing, prior to the executing a purchase contract for any workforce unit,
the prospective buyer shall be certified as meeting income requirements for the specified unit.
Process involves ensuring the understanding of any deed restrictions, restrictive covenants, and/or
liens that are placed on the workforce housing unit to ensure long-term affordability.
Certification of Renters
Prior to renting a workforce housing unit, renters shall be certified as meeting income requirements. Some restrictions apply, such as the rental unit must be used as the principal place of residence, students enrolled in post-secondary program, college, or university are eligible if the student does not meeting the IRS definition of a dependent, and the student can be classified as an independent student.

Certificate of Occupancy
A document issued by a local government or building department that certifies a building’s compliance with applicable building codes and regulations and declares it suitable for occupancy. This certificate is typically required before a building or part of a building can be used or inhabited.

Consumer Price Index
Measures the average change overtime in the prices paid by urban consumers for a basket of goods and services. The CPI provides a way to track inflation by examining the price changes of a representative set of goods and services commonly purchased by households.

Cost Off-sets
Mechanisms or strategies used to balance financial burdens imposed by zoning requirements on property owners or developers. Used as zoning incentives, including increased density, reduced setbacks, height allowances, in exchange for features like affordable housing, public open space, or other community benefits.

Density
Measures the number of housing units per acre.

Density Calculation
Pertaining to workforce housing, to determine residential density: Density of a development containing residential dwelling units shall be equal to the number of proposed dwelling units divided by the gross site area inclusive of proposed rights-of-way or any other portion of the site to be dedicated to the Township or homeowners association; only those residences which meet the definition of applicable residential dwellings shall be used to calculate the total number of dwelling units in a development; and the residential density within a planned residential development shall not include areas devoted to nonresidential uses noted in Chapter 145 (Planned Residential Developments).

Fee-in-lieu
In the context of land use, typically refers to a financial arrangement where a developer or landowner pays a fee to a local government or relevant authority in lieu of providing certain required amenities or facilities on-site as part of a development project. Typically associated with land development regulations and zoning requirements.

Inclusionary Housing
Refers to strategies that mandate or incentivize the inclusion of affordable housing units within market-rate residential developments. The goal is to create mixed-income communities and prevent the segregation of socioeconomic groups.
Incentive
Something that encourages or motivates an individual to take a particular course of action or to behave in a certain way.

Mandatory
Regarding workforce housing, developments where the residential density is five or more dwelling units per acre, the provisions of workforce housing is required.

Market-rate Unit
A dwelling unit other than mobile homes as defined, which sells on the market at a price which is affordable to those households which make above 100% of the area median income.

Mean
Average obtained by summing values and dividing by the number of values.

Median
Middle value in an ordered dataset or the average of the two middle values in an even dataset.

Mode
Value(s) that occur most frequently in a dataset.

Nonresidential Use
Offices; medical and dental offices and clinics, excluding animal hospitals and veterinary offices; places of assembly; libraries, museums, art galleries and reading rooms; retail establishments for the sale and service of goods; eating and drinking establishments, excluding fast-food establishments; research, engineering or testing offices and laboratories; health clubs and athletic and recreational facilities; child and adult day-care centers.

Regulatory Relief
Refers to the easing or relaxing of certain zoning regulations or restrictions imposed by local governments on property use and development. To address housing shortages or promote affordable housing, municipalities may grant relief from certain zoning requirements for developers building affordable housing developments.

Occupancy (limit)
The number of individuals that can reside in a particular unit.

US Department of Housing and Urban Development (HUD)
Established in 1965, HUD’s mission is to increase homeownership, support community development, and increase access to affordable housing free from discrimination. To fulfill this mission, HUD will embrace high standards of ethics, management and accountability and forge new partnerships – particularly with faith based and community organizations that leverage resources and improve HUD’s ability to be effective on the community level.

Workforce Housing Dwelling Unit
A dwelling unit which is affordable to those making up to 100% of the area median income (AMI).
PART 2

Chapter 200 Article VIII §200-38.4 Workforce Housing (the following is intended to replace the repealed ordinance §200-38.4 Workforce Housing in its entirety)


A. Intent. The intent of the workforce housing section of the zoning ordinance, as established by Township Council is:

(1) To recognize the importance of socioeconomic diversity in nurturing more inclusive and dynamic neighborhoods; and

(2) To facilitate the provision of affordable and attainable rental and owner-occupied workforce housing options within College Township; and

(3) To place a strong emphasis on crafting sustainable, enduring solutions to housing challenges, including the implementation of long-term affordability requirements; and

(4) To foster collaborative efforts with neighboring municipalities to establish regional consistency in workforce housing ordinances; and

(5) To promote private sector investments in affordable housing through partnerships between local government and private developers aimed at constructing affordable housing units; and

(6) To implement incentives to promote the creation and maintenance of workforce housing; and

(7) To safeguard rental and owner-occupied workforce housing options within the community, enabling individuals and families with moderate to middle incomes to reside proximate to their work places; and

(8) To continuously monitor the Housing and Urban Development (HUD) Area Median Income (AMI), adjusting the AMI thresholds in the ordinance to accommodate annual increases or decreases.

B. Applicability. The regulations contained herein shall apply upon the designation of dwelling units as workforce housing and shall be applicable as follows:

(1) General. A developer of residential dwelling units shall receive regulatory relief from zoning of land regulations as an incentive for providing workforce housing dwelling units. Such relief shall be based upon the type and amount of dwelling units designated as workforce housing in accordance with the regulations contained in this section:

(2) Mandatory Requirement.

(a) For those development where the residential density is five or more dwellings units per acre, the provision of workforce housing is required. A development which exceeds this density threshold
shall designated a percentage of its total dwelling units as workforce housing units in accordance with the minimum levels listed in the table below.

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*Reflects a percentage of total number of dwelling units within a development that are to be designated as workforce housing. In case of a fraction, the required number of units shall be rounded to the next highest whole unit.

(b) Developers can exceed the minimum levels of mandatory workforce housing listed above and shall receive any additional incentives in accordance with the regulations below.

(c) Any residential development which proposed 10 or less dwelling units shall be exempt from this mandatory requirement.

- **All workforce housing units within the residential development including workforce housing developments, will have safe, reasonable access via sidewalks, shared-use paths, or bike paths to parkland or open space located within or near the subject residential development.**

(3) Calculation of Density. To determine the residential density, the following shall apply:

(a) Density of a development containing residential dwelling units shall be equal to the number of the proposed dwelling units divided by the gross site area inclusive of proposed rights-of-way or any Township of Homeowners Association.

(b) For the purposes of this section, only those residences which meet the definition of applicable residential dwellings in Subsection C. below, shall be used to calculate the total number of dwelling units within a development.

(c) The residential density within a planned residential development shall not include areas devoted to nonresidential uses as noted in 145-17B.

C. **Incentives:** The incentives provided to a residential developer are on a per-dwelling unit basis unless otherwise noted within the regulations. The incentives offered below will differ depending on the type of dwelling that is being designated as workforce housing.

(1) Single-Family house and duplex. All single-family houses, duplexes and/or any structure containing two or less dwelling units in which are at least one is designated as workforce housing shall be permitted to the following regulatory reductions:
(a) Minimum lot size and density: 5,000 square feet per dwelling unit or that permitted under existing zoning, whichever is less with one exception: In the Single-Family Residential Zoning District (R-1), only those lots two (2) acres or greater in size can be developed within multiple duplexes not to exceed a density of seven (7) dwelling units per acres. This calculation shall be inclusive of all land proposed for development including all proposed rights-of-way, parkland/open space areas, stormwater management facilities, and the like. [Amended 9-15-2016 by Ord. No. O-16-05]

(b) Minimum lot width: 40 feet per unit

(c) Maximum impervious coverage: 55%

(d) Side setback. The side yard setback for a lot containing workforce housing dwelling unit(s) may be reduced to seven (7) feet. Side yard setbacks may also be reduced to seven (7) feet for market-rate housing units for those side yards that directly abut lots containing workforce housing dwelling units.

Parkland and open space requirements. The parkland and open space requirements of § 180-26B may be waived for dwelling units designated as workforce housing. Those subdivisions or land developments which thereby reduce the parkland and open space requirements by more than 50% shall only be permitted to do so under the following conditions:

No workforce housing unit shall be more than 1/4 mile from parkland or open space in or near the subject development as measured between the two closest points of property lines of the workforce housing unit and park or open space perimeter.

For the purposes of this Subsection B(1)(e) of § 200-38.4, parkland and open space shall be considered as that designated as "existing parks" or "recreation land owned by others" and available for public use. In addition, land owned by the State College Area School District may also be considered as parkland and open space if such land contains recreation facilities that can be used by the public.

Sidewalk. The amount of sidewalks required pursuant to § 180-16.1 may be reduced in an amount equal to the total street frontage of all lots containing dwelling units defined as workforce housing units pursuant to the following:

NOTE: See also §§ 180-16, Streets, and 180-16.1, Sidewalks.

The reduction may take place anywhere within the subdivision or land development containing workforce housing units.

Any collector or arterial streets within the residential development should have a sidewalk on both sides of the street. All other streets (public or private) shall have a sidewalk on at least one side of the street.

Sidewalks shall provide access to any parkland, open space or school within or adjacent to the development.

In instances where a development of single-family houses and/or duplexes developed with multiple dwellings on a single lot in which the development contains workforce housing units, the reduction in sidewalks shall be calculated as follows:

The reduction in required sidewalk may be in an equal proportion to the percentage of the total proposed dwelling units which are designated as workforce housing.

Regardless of the amount of sidewalk permitted to be reduced as calculated above, a sidewalk shall be provided along an adjacent public street as noted above in § 200-38.4B(1)(f)[2] and [3].

The sidewalk reduction is not guaranteed upon the provision of workforce housing. Approval of such reduction by Council will be based upon ability to meet the conditions set forth § 200-38.4B(1)(f)[2] and [3].

NOTE: See §§ 180-16, Streets, and 180-16.1, Sidewalks.
(e) Additional Bonus. The reduced lot requirements noted in 200-38.4C(1)(a) through (d) may also be applied to market-rate housing units in addition to that of the designated workforce housing units based on the following rations or fractions thereof rounded to the nearest whole number:

[1] For every two workforce housing units which are affordable to those households with incomes between 80% and 120% of AMI, one market-rate housing unit shall be permitted to have the same similar lot requirements noted above in §200-38.4C(1) through (d).

For every one workforce housing unit which is affordable to those households making less than or equal to 80% of AMI, one market-rate housing unit shall be permitted to have similar requirements noted above in ________

(f) Accessory Dwelling Units: Single-family houses designated as workforce housing may be permitted to contain accessory dwelling units pursuant to 200.11.A.1. If the accessory dwelling unit is to be rented, then the anticipated income from renting the accessory dwelling unit shall be included in calculating a household’s total income when certifying income of potential buyers of a workforce housing unit. When an Accessory Dwelling Unit is rented, either on a long-term basis or a short-term basis, the proper permitting is required through College Township and Centre Region Code. To ensure compliance and proof of Accessory Dwelling Unit gross rental income with proof of receipts is required.

(g) Waiver of Application Fee or Review Fees: Review Fees developed by in-house staff reviews for Subdivision and Land Development fees may be waived by College Township Council for development proposals containing workforce housing units. The request must contain information detailing how real costs will be reduced and how the savings will be passed on to the workforce housing units. The Township shall review the request and provide an answer to the developer within 30 days of receipt of the request.

(3) Cost offsets. The Township may discount or defer municipal fees associated with the approval process of a subdivision/land development.

(2) Townhouse and multi-family units. All townhouses, multi-family units, and/or any other structure containing three or more dwelling units in which some or all are designated as workforce housing units shall be permitted to the following regulatory reductions:

(a) Maximum Impervious Coverage. The maximum impervious coverage for a development containing workforce housing units may be increased above that permitted in the zoning district by an amount equal to the total gross floor area of those units designated as workforce housing units. However, in no instance shall the impervious coverage exceed 55%, regardless of the number of workforce housing units.

(b) Occupancy Limit. The occupancy of unrelated individuals as established in 200.11Z may be increased from three to five individuals as follows:

[1] For each unit designated as workforce housing, one unit in the development may be permitted to have up to five unrelated individuals residing within it.
[2] The unit which is permitted to have the increased occupancy, as noted above, does not have to be
designated as workforce housing and can be located anywhere within the residential development
containing the workforce housing.

(c) Permitted Height. The permitted height of a building may be increased by 10 feet above that
permitted in the zoning district regulations, if the building contains either two dwelling units or 10%
of the total dwelling units, whichever is greater, are designated as workforce housing. The
permitted height of a building may be increased beyond what is permitted in the underlying
zoning district based upon the following:

a. When 5% - 7% workforce units are required pursuant to 200.38.4(B)(2)(a), the height
   may be increased 10’

b. 8% - 10% workforce units required pursuant to 200.38.4(B)(2)(a), the height may be
   increased 20’

(3) Planned Residential Developments. The workforce housing regulations herein are also applicable to
planned residential developments as permitted in Chapter 145, Planned Residential Developments, with
the following incentives:

(a) Maximum building coverage. The total ground floor area of all buildings and structures shall be
permitted to exceed 30% of the total land area of the planned residential development in a manner
equal to an increase of coverage by 1% for every 1% of total number of dwelling units which are
designated as workforce housing. However, regardless of the number of dwellings designated as
workforce housing, the total building coverage shall not exceed 40% of the total land area of a
planned residential development.

(b) Maximum total impervious coverage. The maximum impervious surfaces shall be permitted to
exceed 50% of the total area of the planned residential development in a manner equal to an increase
of impervious coverage by 1% for every 1% of the total number of dwelling units which are
designated as workforce housing. However, regardless of the number of dwellings designated as
workforce housing, the total impervious coverage shall not exceed 60% of the total planned
residential development.

(c) Permitted Height. The permitted height of a building may be increased by 10 feet above that
permitted in the zoning district regulations, if the building contains either two dwelling units or 10%
of the total dwelling units, whichever is greater, are designated as workforce housing. The
permitted height of a building may be increased beyond what is permitted in the underlying
zoning district based upon the following formula:

a. When 5% - 7% workforce units are proposed, the height may be increased up to a
   maximum of 40’

b. 8% - 10% workforce units proposed, the height may be increased up to a maximum of
   60’
Open space. The minimum amount of open space required in § 145-18A may be decreased below 30% of the total area of the planned residential development in a manner equal to a decrease of 1% for every 1% of the total number of dwelling units which are designated as workforce housing. However, regardless of the number of dwellings designated as workforce housing, the total open space required may not be decreased beyond 20% of the total area of the planned residential development.

(d) Additional bonus. The maximum amount of land devoted to nonresidential uses within a planned residential development shall be permitted to exceed 20% in a manner equal to an increase in nonresidential land by 1% for every 1% of the total number of dwelling units which are designated as workforce housing for households earning less than 80% of the area median income. However, regardless of the number of dwellings designated as such, the maximum area of land devoted to nonresidential uses shall not exceed 30%.

D. Provision of workforce housing. All workforce housing units proposed in a land development and/or subdivision are required to be built on site covered by such plan unless one of the following options enumerated below is utilized. In such instances, the developer shall continue to retain the incentives applied to on-site development for the number of workforce housing units being provided for under the options listed below:

1. Fee in lieu. An applicant may pay a fee in lieu of constructing some or all of the workforce housing units which it is receiving incentives for given the following regulations:

   (a) College Township Council shall establish by resolution the amount of the fee in lieu payment per unit, which shall be based on actual construction costs and inclusion of land purchase costs.

   (b) To determine the total fee in lieu payment, the per unit amount established by the Township shall be multiplied by the number of workforce housing units otherwise required to be constructed or as desired by the developer to be eligible for the incentives.

   (c) The Township shall be required to establish and administer a workforce housing fund into which all fee in lieu payments shall be deposited. The Township shall then be required to use such funds to further its mission of providing workforce housing as defined herein.

2. Land donation. Land within College Township may be donated to the Township or its designee in place of workforce housing dwelling units being built within a proposed development pursuant to the following:

   (a) The value of the land must be equal to or greater than the value of the fee in lieu payment noted above in Subsection D(1) to be calculated as follows:

      [1] The value of the land will be determined by an appraisal completed by a certified appraiser. Each party (developer and the Township) shall submit an appraisal.

      [2] If the lower appraised value is 90% or greater of the other appraisal, the two appraised values shall be averaged.

      [3] If the lower appraisal value is less than 90% of the other appraisal, then each appraiser shall, within 15 days of notice from the Township, agree on a third appraiser, the cost of which is to be shared equally by the Township and the
developer. Within 30 days of notice of his appointment, the third appraiser shall submit an appraisal. The middle of the three appraised values shall be used to determine the value of the land to be donated.

(4) If both the Township and the developer agree, the requirement for the appraisal process above in whole or in part may be waived upon mutual agreement between the Township and the developer.

(b) The land to be donated must meet all applicable zoning, land development and subdivision requirements to construct the desired type and amount of units.

(c) The land donation must occur prior to the completion of the market-rate units. The certificate of occupancy will be withheld pursuant to the requirements of Subsection E(1) below until the land donation occurs.

(3) Off-site development (new dwellings). Workforce housing units otherwise required to be constructed or as desired by the developer to be eligible for the incentives listed above may be constructed off site given the following regulations:

(a) Location. The dwelling units to be utilized to satisfy the workforce provisions shall be located within College Township.

(b) Number of. The total number of units provided off site shall be equal to those which would have been provided on site.

(c) Approval. The applicant must obtain off-site development plan approval from the Township at the same time the applicant obtains plan approval for the proposed market-rate units within the covered development. The off-site development plan must include, among other land development plan requirements, documentation of site control, necessary financing in place to complete the off-site development, architectural designs and elevations, and any other documentation deemed necessary by the Township to ensure compliance with the regulations contained herein.

(d) Each of the off-site dwellings designated as workforce housing shall meet all of the supplemental regulations stipulated in § 200-38.4E.

(4) Existing dwellings. A developer may designate dwelling units which have already been constructed as workforce housing units to meet his obligation (whether voluntary or mandatory) to obtain the incentives listed in § 200-38.4C for a particular development. Such off-site, existing dwelling units shall meet the regulations listed above in § 200-38.4D(3) and the following additional regulations:

(a) The units must be inspected and rehabilitated to meet current building codes.

(b) The proposed dwellings to be designated as workforce housing units shall be considered market-rate units. Utilizing this provision shall result in the conversion of market-rate dwellings to income-restricted workforce housing dwelling units.
(5) Credits for existing workforce housing. A developer of a new development may be given credit for previously built dwelling units which could be defined as workforce housing given the following regulations:

(a) The existing dwelling units in which a developer is seeking credit shall not have previously been created or in any way developed utilizing the regulatory relief provided herein.

(b) The developer shall only receive credit in whole or in part to relieve him of the mandatory obligation of providing workforce housing units as stipulated in § 200-38.4B(2). If the number of dwelling units being credited toward a developer's mandatory obligation is less than that required under § 200-38.4B(2), then the developer shall be required to provide workforce housing units equal to the difference of the credit and the mandatory requirement.

(c) In order for a previously built dwelling unit(s) to be credited towards a development’s workforce housing obligation, each credited unit must:

1. Have received its certificate of occupancy no more than five years prior to the date of the developer’s submission of the new subdivision or land development plan; and

2. Be designated as workforce housing upon land development and/or subdivision approval of the development seeking said credits and therefore meet all workforce housing unit regulations stipulated in § 200-38.4D.

(6) Phasing. College Township recognizes the importance of phased implementation to facilitate the development of workforce housing units, while managing costs and feasibility for developers over time.

(a) The density calculation to establish workforce housing found in the table in section 200.38.4(B)(2)(a) also establishes phasing of workforce units. If the density of the proposed development is 10 or more, a minimum of 10% of the units are required workforce units. If Phase I includes 100 units, a minimum of 10% shall be workforce units; Phase II proposes 60 units, a minimum of 6 of those units are to be workforce units, Phase III proposes 20 units, a minimum of 2 units shall be workforce, and so on. If a phase proposes only commercial development, workforce housing requirements do not apply.

(b) Developer shall submit a Phased Implementation Plan detailing how the requirements will be met in accordance with the code. The Implementation Plan is subject to review by the College Township Planning Commission, who then shall make a recommendation to College Township Council for their consideration.

(c) The phased implementation plan may include provisions for flexibility in meeting the workforce housing requirements, subject to Planning Commission recommendation and Council approval.
E. **Supplemental workforce housing regulations.** In addition to the regulations above, all workforce housing units shall have the following requirements:

1. **Amenities.** Workforce housing units may not differ from the market-rate units in a development with regard to interior amenities and gross floor area, provided that:
   
   (a) The differences, excluding differences related to building size differentials, are not apparent in the general exterior appearance of the development;
   
   (b) The gross floor area of the habitable space within workforce housing dwelling units is not less than the following minimum requirements:

   - [1] One bedroom: 750 square feet.
   - [2] Two bedrooms: 1,000 square feet.
   - [4] Four bedrooms: 1,400 square feet.
   - [5] Five or more bedrooms: add an additional 150 square feet per additional bedroom.

2. **Timing of construction.** Workforce housing units shall be made available for occupancy at approximately the same rate as the market units, except that certificates of occupancy for the last 15% of the market-rate units shall be withheld until certificates of occupancy have been issued for all of the workforce units.

3. **Cost offsets.** The Township may discount or defer municipal fees associated with the approval process of a subdivision/land development. Any developer of workforce units may submit a request for a discount or deferment of fees. The request must also contain information detailing how real costs will be reduced and how the savings will be passed on to the workforce housing units. The Township Council's decision on a discount or deferment of municipal fees will be based upon Council determining that such savings will be appropriate and directly proportionate to the reduction in unit sales or rental costs. The Township shall review the request and provide an answer to the developer within 30 days of receipt of the request.

4. **Certification of buyers.** Prior to executing a purchase contract for any workforce unit, the prospective workforce unit buyer shall be certified as meeting income requirements for the specified unit by the Township or its designee. Developers and workforce housing unit buyers may execute only purchase agreements that are approved as to form by the Township or its designee. The purchase agreement shall include language attached as an addendum provided by the Township or its designee which shall require that an appropriate disclosure form be provided to and explained to the workforce housing unit buyer prior to execution of the contract. The disclosure form shall explain any deed restrictions, restrictive covenants, and/or liens that are placed on the workforce housing unit to ensure long-term affordability.

   (a) In addition to the foregoing, if the workforce housing unit contains an Accessory Dwelling Unit, gross rental income with proof of receipts is required to certify buyers.
(5) Certification of renters. Prior to renting a workforce unit, the prospective renter shall be certified as meeting income requirements by the Township or its designee. The following limitations shall apply to the certification of renters:

(a) The rental unit must be used as the principal place of residence.

(b) Students enrolled in a post-secondary program, college or university are eligible only if they can meet the following two conditions:

[1] The student does not meet the Internal Revenue Service's definition of a "dependent," and

[2] The student can be classified as an "independent student" as defined by § 480(d) of the Higher Education Act of 1965.

(6) Ensuring affordability. To ensure that any unit created under this section of the Zoning Ordinance (rented or owner-occupied) remains affordable over time, the owner of said unit(s) shall be required to maintain affordability based upon a legally binding agreement with either the Township or its designee, to be recorded at the Centre County Recorder of Deeds. Said agreement shall include:

(a) The period for which the units shall remain affordable, which at a minimum should shall be at least 30 years from the date of initial occupancy of a workforce housing unit;

(b) The process for certifying subsequent buyers of workforce housing dwelling units for the duration of the specified period of affordability;

(c) The level of affordability, including the amount of equity able to be recouped by the homeowner or owner of a rental property containing workforce housing units upon sale of the property; and

(d) A provision allowing the Township or its designee to first be offered the right to purchase a workforce housing unit prior to selling said unit without income restrictions if such sale is to occur after the affordability period noted above in § 200-38.4E(6)(a) with the following stipulations:

[1] The resale price which the Township or its designee shall pay the owner of the workforce housing unit(s) shall be no less than that calculated in § 200-38.4E(10) below;

[2] The Township or its designee shall be given a period of 90 days to execute a purchase agreement for said unit(s).

[3] Upon reaching the end of the ninety-day resale period or upon notice by the municipality or its designee that there is no interest in the workforce housing unit, the owner will be free to sell the unit.

(7) Calculation of rental prices. Workforce housing units which are to be rented shall have a rental price which is affordable to households which earn 65% or less of the area median income, with the exception of those housing units which have a rent-to-own option pursuant to § 200-38.4E(12). Affordability shall be determined as monthly housing expenses being no greater than
30% of the household gross monthly income based upon household size assumptions noted in § 200-38.4E(11). Monthly housing expenses shall be calculated as the sum total of the monthly rent, plus the current utility allowance per the Housing Authority of Centre County.

(8) Rental price increases. Annual rent increases shall be limited to the percentage increase in the median household income within the State College Metropolitan Statistical Area. Centre County pursuant to the Department of Housing and Urban Development (HUD) Income Limits.

(9) Calculation of sales prices. Workforce housing units which are to be sold shall have a sale price which is affordable to households which earn 100%-120% or less of the area median income. Affordability shall be determined as monthly housing expenses being no greater than 30% of the household gross monthly income based upon household size assumptions. Monthly housing expenses shall be calculated as the sum total of the principal and interest of the mortgage plus all property taxes, homeowners' insurance, homeowners' association fees, and any other fees approved for inclusion by the Township.

(10) Resale value of workforce housing units. The resale value of a workforce housing unit(s) during the affordability period stipulated in § 200-38.4E(6)(a) shall be limited to the lowest of:

   (a) The purchase price plus an increase based on the percentage increase in the Consumer Price Index for the State College Metropolitan Statistical Area (MSA) for all urban consumers since the date of previous purchase; or

   (b) The purchase price plus an increase, based on the percentage increase in the area median income since the date of purchase; or

   (c) The purchase price plus an increase, based upon the compound average growth rate of Centre Region average house sale prices since the date of purchase; or

   (d) The fair market value.

(11) Household size assumption. In calculating rent or sales price of a workforce housing unit, the following maximum relationship between unit size and assumed household size to determine income affordability shall apply:

   (a) Efficiency units: one-person household.

   (b) All other units: one plus number of bedrooms equal number of persons per household.

(12) Rent to own. Workforce housing units which are part of a rent-to-own program may be rented to households who earn more than 65%, but less than 100%-120%, of the AMI subject to the following:

   (a) The minimum duration of the initial term of a lease for renting the workforce housing unit shall be for no less than an initial 18 months followed by the ability to be annually renewed. In addition the duration of the lease may be shortened upon the tenant entering into an option to purchase the workforce housing unit.

   (b) The owner of the workforce housing unit(s) must also enter into an agreement with the tenant of the rent-to-own unit which will specify the terms of the program.
(c) The rent-to-own agreement between the owner and the renter of the workforce housing unit shall include provisions for a percentage of the rent to be set aside and utilized towards the purchase of the unit by the renter.

(d) The rent-to-own agreement shall be provided to the Township for review to determine if the rent-to-own terms will lead to an acceptable number of renters succeeding in obtaining ownership of the workforce housing unit.

E. **Administration.** College Township and/or its designee shall ensure compliance with all regulations contained herein and/or Chapter 180, Subdivision of Land, and Chapter 200, Zoning. The developer shall draft and submit for approval a legally binding agreement which states the responsibilities of all entities involved with the ongoing administration, and marketing of, and compliance with these regulations upon approval of a development containing workforce housing units. College Township shall reserve the right to designate another legal entity for the purpose of administrative needs of this section of who should be a party in all legally binding agreements required in this section.
MEMORANDUM

To: College Township Planning Commission
From: Dustin Best, Council Chair
Re: Council Remand: Workforce Housing Ordinance
Date: November 16, 2023

OBJECTIVES:
As a practice, Township Staff provides Council with periodic reviews of both the interpretation and application of pertinent ordinances. This exercise is done to ensure these ordinances meet their desired intent and continue to be appropriate for current community development needs. The most recent ordinance to undergo such a review is Chapter 200 Zoning, Section 38.4, Workforce Housing Ordinance.

Ensuring that our workforce has access to affordable housing is a key policy of this Council. This ordinance’s application is intended to do so in a way that provides a meaningful impact on the community and economic development needs of both College Township and the Centre Region.

Council is appreciative of Planning Commission’s experience and expertise. As such, we are remanding the Workforce Housing Ordinance with the intent that Planning Commission will take their time and offer careful consideration on both the “why” and “how” behind the ordinance’s eventual application. Council is providing the following Objectives that are to be addressed during the development of any recommendations pertaining to the ordinance:

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<th>Objectives</th>
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<td>1) Ensure that current ordinance and any recommended revisions thereof are both consistent and upholding of the new Purpose and Intent Statements.</td>
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<td>2) The current ordinance addresses development of both rental and owner-occupied workforce housing, but does not provide a clear distinction in terms of ordinance implementation between those two specific housing types. Evaluate and, where appropriate, provide recommendations on how to better provide for separate, but parallel, paths for development of rental and owner-occupied workforce housing units under the ordinance.</td>
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<td>3) The Area Median Income (AMI) in the region has increased over the past two years, which has a direct impact on the development of units for the targeted demographic and overall implementation of the ordinance. Review the current AMI data and application of ranges within the Workforce Housing Ordinance to ensure that it is appropriately allowing for development of units for the targeted demographic in both the rental and owner-occupied paths.</td>
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<td>4) When originally adopted, the ordinance was crafted to offer incentives in terms of reductions in open space requirements and necessary infrastructure to encourage development of workforce housing units. However, when the ordinance was amended to become inclusionary, the incentives remained without any revisions. Review the incentives outlined in the current ordinance and offer recommendations on whether those incentives should be altered given the ordinance’s inclusionary nature and goal to ensure that neighborhoods remain equitable in terms of basic amenities.</td>
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The balance of this remand letter will serve to provide Planning Commission additional context on the newly developed Purpose and Intent Statements and provide a recommended process to aid in completion of the Objectives.
PURPOSE & INTENT STATEMENTS:
While the intent was implied during the original passage of the Workforce Housing Ordinance in 2009 and its subsequent amendment, it is nevertheless notable that the current ordinance is lacking both a Purpose and Intent Statement.

As with the revisions to the Residential Rental Ordinance, College Township Council recently established the new Purpose and Intent Statements below for the Workforce Housing Ordinance:

**Purpose Statement:**
Consistent with College Township’s adopted Vision, Mission, and Goals Statements, the purpose of the Workforce Housing segment (Section 200.38.4) of the Zoning Ordinance is to establish and maintain housing affordability within College Township.

**Intent Statement:**
The Intent of the Workforce Housing segment (Section 200.38.4) of the Zoning Ordinance is to:

1) Recognize the importance of socioeconomic diversity in nurturing more inclusive and dynamic neighborhoods.
2) Facilitate the provision of affordable and attainable rental and owner-occupied workforce housing options within College Township.
3) Place a strong emphasis on crafting sustainable, enduring solutions to housing challenges, including the implementation of long-term affordability requirements.
4) Foster collaborative efforts with neighboring municipalities to establish regional consistency in workforce housing ordinances.
5) Promote private sector investments in affordable housing through partnerships between local government and private developers aimed at constructing affordable housing units.
6) Implement incentives to promote the creation and maintenance of workforce housing.
7) Safeguard rental and owner-occupied workforce housing options within the community, enabling individuals and families with moderate to middle incomes* to reside proximate to their workplaces. *Specific targeted ranges to be determined for both rental and owner-occupied options, but will likely fall somewhere between 65-120% AMI.
8) Continuously monitor the Housing and Urban Development (HUD) Area Median Income (AMI), adjusting the AMI thresholds in the ordinance to accommodate annual increases or decreases.

RECOMMENDED PROCESS:
Recognizing the complexity of both the topic of this ordinance and the work being requested through this remand letter, Council suggests the following review tasks be undertaken prior to commencing work on the Objectives:

**Suggested tasks to be completed prior to ordinance evaluation:**

1) Review the Purpose and Intent Statements as developed by Council and seek clarification from Council as needed.
2) Review the specific terms and definitions applicable within the current ordinance and consider new definitions that should be incorporated.
3) Conduct a detailed review the “continuum of affordable housing” to fully understand the distinctions between attainable, affordable and workforce housing.
4) Review the various applications of Area Median Income (AMI) as it pertains to the respective segments of the continuum of housing. Please note that Council is targeting this ordinance toward development of units for the workforce or “missing middle” demographic.
5) Review the definition of “inclusionary” and how it applies to College Township’s Workforce Housing Ordinance.

**SCHEDULE:**
Upon completion of the recommended review tasks outlined above, Council requests that Planning Commission and staff begin working on the Objectives, as outlined on Page 1 of this letter, with the goal to provide recommendations on the Workforce Housing Ordinance prior to end of the first quarter of 2024.
Presentation: Centre County Adult Services, Caitlin Gabriel, Housing Program Specialist
This outreach was offered to all 67 municipalities in CC, only 3 (CT did) have responded. Homelessness, shelters and the HUD 888 Rental Assistance Program were topics.

New Business
CT Finance Report Robert Long
CT had a good year finance wise. A line item review was conducted. Special note that CT’s tax Delinquencies averaged .50% the last 2 years. An awesome number.

Memorandum of Understanding University Drive Pedestrian Signal
PSU reached out to CT regarding a safety issue occurring as pedestrians are crossing Mid-block in the area of the Pegula Arena. This is a PENNDOT road located in CT and special Requirements are needed for a mid-block crossing. The construction costs and electricity are The responsibility of PSU. CT is responsible for the side and overhead beacon lights.
The CT Engineer noted that if agreed, this is a perpetual agreement. Council agreed with PSU Engineer Rich Manning and approved the plan.

Allowable Uses- General Zoning District
Currently a boxing gym and a church are in violation in the WHVL Building located on 2820 E College Ave.
Council was asked to consider two options:
1. Remand the Request to include Places of Assembly and Indoor Recreational Facilities to the list of uses permitted in the General Industrial Zoning District to the PLANNING COMMISSION for their input and ultimate recommendation.
2. Instruct the Zoning Officer to prepare and issue enforcement notes to the property owner in violation of the Ordinance while working with the Township Solicitor in offering to the property owner the option of a continuance on Scheduling a Zoning Hearing.

***Option 2 was selected. A Council member made the comment that CT can be “Helping People out who made a mistake.”
ATTENDED BY –
COUNCIL:
Dustin Best, Chair
L. Eric Bernier, Vice Chair
D. Richard Francke
Susan Trainor
Tracey Mariner

STAFF:
Adam T. Brumbaugh, Township Manager/Secretary
Mike Bloom, Assistant Township Manager
Don Franson, P.E., P.L.S., Township Engineer
Amy Kerner, P.E., Public Works Director
Lindsay Schoch, Principal Planner
Jennifer Snyder, CGA, Assistant Township Secretary

CALL TO ORDER: Mr. Dustin Best, Council Chair, called to order the February 15, 2024, regular meeting of the College Township (CT) Council at 7:09 PM and led in the Pledge of Allegiance.

ANNOUNCEMENT: Chair Best announced that Council met in an Executive Session to discuss a real estate matter and personnel.

PUBLIC OPEN DISCUSSION:
Students from the State College Delta program in the Advocacy and Action class, Lydia, Evan, London, Quinn and Shannon, addressed Council and thanked them for continued support of the Schlow Library.

Mr. Jeff Stover, Attorney, representing Channel Communications, offered that his client was notified that two of their tenants, a church and a boxing studio, are not permitted uses in the Industrial Zone. Both tenants have signed a two-year lease. Mr. Stover offered that as the Township is in the process of rezoning the Dale Summit, where Channel Communications is located, he asked that Council consider a deferral of enforcement until the rezoning takes place.

Council offered that the industrial zone does not have the infrastructure to support other uses. There are typically no sidewalks, streetlights, etc. in the Industrial Zone. After a brief discussion, Council asked Staff to add this request to a future agenda for discussion.

Michel Lee Garrett, College Township, offered her thanks to Council for supporting the Schlow Library. She currently serves on the Centre LGBT+ Board and looks forward to partnering with College Township in the near future.

NEW AGENDA ITEMS: No New Agenda Items were added to the agenda.
SPECIAL PRESENTATIONS: SP-1 PA Emergency Management Agency

Mr. Jonathan Risley, Centre Region Council of Government (CRCOG) Regional Fire Protection and Emergency Management Coordinator, offered information regarding Emergency Management (EM) and the role of CRCOG, PSU, and Council. According to the Federal Emergency Management Agency (FEMA), EM is the managerial function charged with creating the framework within which communities reduce vulnerability to threats/hazards and cope with disasters. In the PA Code Title 35, it states Emergency Management is the judicious planning, assignment and coordination of all available resources in an integrated program of prevention, mitigation, preparedness, response and recovery for emergencies of any kind, whether from attack, man-made or natural sources.

The PA Code Title 35 states that each political subdivision of the Commonwealth is directed and authorized to establish a local emergency management organization in accordance with the PA Emergency Management Agency (PEMA). Mr. Risley shared several resources for Council to review: the Department of Community and Economic Development Township Supervisors Handbook, and the PEMA Emergency Management for Municipal Officials Handbook.

Mr. Risley offered that the CRCOG Articles of Agreement and the CRCOG/PSU Joint Plan provide for Emergency Services for the Centre Region, PSU and Centre County.

Elected Officials are required to take the IS-100 and the IS-700 courses through the National Incident Management System (NIMS). Other courses are available should Council want to pursue advance certifications. The Township should track who has taken the required courses so that the Township would be eligible for emergency funding.

REPORTS:

a. Manager’s Update

In his written report, Mr. Adam Brumbaugh, Township Manager, offered that Council and the Planning Commission will meet in a Special Meeting to kick off the draft Form Based Code on March 26, 2024, at 6:00 PM. Further discussion on the Solar Power Purchasing Agreement will take place in the Old Business section of this meeting. Finally, the solicitor sent a letter to Aspen Heights Partners concerning non-payment invoices totaling $273,731.66.

b. COG Regional, County, Liaisons Reports

COG Facilities Committee: Mr. Bernier reported the COG Facilities Committee met on February 6, 2024, and discussed the Solar Power Purchase Agreement, the Long Range Facilities Plan, the Facilities Administrator position and the future activities of the Committee.

COG Human Resource Committee: Ms. Mariner reported the COG Human Resources Committee met on February 7, 2024, and discussed the 2024 Draft Salary Schedule, discussed the Facilities Administrators job description and heard an update on the Firefighter/Fire Inspector job description.

COG Finance Committee: Mr. Francke reported the COG Finance Committee met on February 8, 2024, and discussed the Solar Power Purchase Agreement, the 2025 Capital Improvement Plan Kickoff, and the 2025 Annual Budget Timeline.

COG Public Safety Committee: Ms. Trainer offered the Public Safety Committee was delayed due to a storm.
COG Executive Director Search Committee: Mr. Best offered the Search Committee will be meeting weekly to move forward with the search for a CRCOG Executive Director.

COG Climate Action Sustainability Committee (CAS): Mr. Best reported the COG CAS Committee met on February 12, 2024, and discussed the Solar Power Purchase Agreement, the DEP shared energy manager program, and the residential refuse request for proposals questions and responses. Mr. Best offered that the Township’s Sustainable Communities certification through Sustainable Pennsylvania has expired.

c. Staff/Planning Commission/Other Committees

In a written report, Mr. Fenton, Planning Commission (PC) Liaison to Council, offered the PC met on February 6, 2024, and received a Sketch Plan for the Mt. Nittany Elementary School, and discussed the Workforce Housing Ordinance. The PC had no significant comments regarding the sketch plan.

d. Diversity, Equity, Inclusion & Belonging (DEI) Reports (Public Invited to Report)

Mr. Mike Bloom, Assistant Township Manager, offered that February 10 is Lunar New Year.

Proclamation P-24-01: Chair Best read into the record Proclamation P-24-01, recognizing February as Black History Month. Dr. Takina Walker and Mr. Gary Abdulah addressed Council with remarks related to Black History Month and the 2024 theme “African Americans and the Arts.”

Mr. Francke made a motion to accept Proclamation P-24-01, recognizing February as Black History Month. Mr. Bernier seconded the motion. Motion carried unanimously.

CONSENT AGENDA:

CA-1 Minutes, Approval of
a. February 1, 2024, Regular Meeting

CA-2 Correspondence, Receipt/Approval of
a. Letter from Penn Terra Engineering, dated February 1, 2024, regarding Time Extension request for Jersey Mike’s to June 3, 2024
b. Email from CATA, dated February 7, 2024, regarding support letter for seeking federal funding
c. Letter from First Night State College, dated February 5, 2024, regarding appreciation for sponsorship of a First Night State College ice sculpture
d. Letter from Centre County Interfaith Coalition for Gun Safety, dated February 7, 2024, regarding panel discussion on gun violence

Ms. Mariner made a motion to approve the February 15, 2024, Consent Agenda. Ms. Trainor seconded the motion. Motion carried unanimously.

OLD BUSINESS:

OB-1 Capital Improvement Plan
Mr. Mike Bloom, Assistant Township Manager, offered at the January 18, 2024, CT Council meeting, Council reviewed their policy direction for the 2025-2029 Capital Improvement Program (CIP). As part of that review, Council suggested an expansion to the Mission Statement, and offered revisions to various elements of the Strategic Summary. Mr. Bloom provided Council with an updated version of the Vision-Mission-Values & Goals Statement and the 2025-2034 Strategic Summary.

Council reviewed the documents presented by Mr. Bloom and had no further comments or additions.

Mr. Bernier made a motion to endorse both the revised College Township Vision/Mission/Value/Goal Statement and the 2025-2034 Strategic Summary.
Ms. Mariner seconded the motion.
Motion carried unanimously.

OB-2 Solar Power Purchasing Agreement

Mr. Mike Bloom, Assistant Township Manager, offered that in 2018, discussions regarding the potential for a joint power-purchasing program, focusing primarily on procurement of solar energy, began locally. In the years that followed, the Working Group, Project Management Team (PMT) and their Consultant, GreenSky Development Group, have worked through the procurement process for a new Power Purchase Agreement (PPA). The team has reached the final phase of that process and are ready to share the five contracts that comprise the PPA, along with additional resources to aid in decision-making.

Ms. Pam Adams, Centre Region Sustainability Planner, and PMT Member, presented a broad overview of the proposed PPA. She offered that there are 12 entities involved in the 22 MegaWatt (MW) solar array PPA with College Township’s portion at 1.1% and College Township Water Authority’s at 1.3% of the total PPA. The State College Area School District is the largest participant at 54%.

To enter a PPA, there are five contracts that will need to be signed:
1. Retail Commodity Master Agreement (CMA) with Direct Energy;
2. Transaction Confirmation (TC) with Direct Energy;
3. PPA Servicing Agreement with Direct Energy;
4. InSchedule Agreement with Direct Energy and Prospect 14; and
5. PPA Master with Prospect 14.

Ms. Adams shared the PPA structure. The contract with the Solar Developer, Prospect 14, is a 15-year contract. Entities receive a percentage of electricity from solar generation at a fixed price. There is a 1.5% escalator and a settlement cost of +/- 5% annually. The PPA rate starts at a fixed price of $0.0459/kWh for 15 years. The contract with the retailer, Direct Energy, is a 5-year contract. Direct Energy manages the solar distribution and provides energy usage not covered by solar at either a fixed price or left at market price. The energy services contract with Green Sky is a 5-year contract. Green Sky monitors the PPA, submits monthly approvals, conducts periodic review of charges and generation, and advises on non-solar electricity and RECs.

Key Points of the PPA:
1. Extensive effort has gone into making the contracts the best for the group and making sure all organizations are protected.
2. The solar electricity generated by this project will add renewable energy to the PA grid.
3. The PPA will cover 82% of the 12 entities electricity demand.
4. The solar installation will be built in Walker Township in Centre County. The start date for solar generation is October 31, 2026, at the latest.
5. Total costs to explore this project are expected to be $234,725. If the project proceeds, Prospect 14 has offered to reimburse the members who sign contracts by a certain milestone $60,000, making the total project cost $174,725.

6. A working group formed from participating organizations will bid out retail service provider at the end of Direct Energy contract.

7. Under the PPA, each organization will sign their own contracts. Each organization will receive a new monthly bill from Direct Energy in addition to their regular West Penn Power bill. The WWP invoice will be for the normal costs for electricity distribution and the Direct Energy invoice will be for the total electricity usage/generation.

Ms. Adams offered the SPPA Working Group will meet on February 28 to review and forward final contracts to boards/councils for approval. Boards and Council will approve in March/April and PPA contracts can be awarded in April/May.

Council discussed the following:
- Timing/current energy contracts;
- Price stability for budgeting;
- Local source of energy for local users;
- Navigating the divide the solar array is causing in Walker Township; and,
- Legal reviews of the PPA

Overall, Council supports College Township’s participation in the PPA.

NEW BUSINESS: No New Business Items on the agenda.

STAFF INFORMATIVES: No Staff Informatives brought forward for discussion.

OTHER MATTERS: Council and Staff wished Mr. Brumbaugh a Happy Birthday.

ADJOURNMENT:

Chair Best called for a motion to adjourn the meeting.

Mr. Francke moved to adjourn the February 15, 2024, Regular College Township Council Meeting.
Chair seconded the motion.

The February 15, 2024, Regular College Township Council Meeting was adjourned at 9:04 PM.

Respectfully Submitted By,

Adam T. Brumbaugh
Township Secretary
## LAND DEVELOPMENT PLAN COUNCIL ACTION DEADLINES

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<tr>
<th>Title</th>
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<th>Action Deadline</th>
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<td>2/20/2024</td>
<td>5/20/2024</td>
</tr>
</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>April 15, 2024</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; 12/18 sent email for extension request (due 12/26 w/ $375 fee); 1/2 ext. approved; 2/5 demo permit received</td>
</tr>
<tr>
<td>Summit Park Subdivision</td>
<td>June 3, 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; JRA note is good</td>
</tr>
<tr>
<td>Jersey Mike’s</td>
<td>June 3, 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; 12/7 conditional approval sent; 12/7 conditions accepted; 1/23/24 received revised TIS; 1/30 received TIS review from Trans; ext requested 2/1; ext request to CTC 2/15, granted</td>
</tr>
<tr>
<td>Winfield Heights – Phase 2</td>
<td>April 1, 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 1/2; 1/24 received conditional approval; 1/4 conditions accepted; 2/27 received plan and</td>
</tr>
</tbody>
</table>
### MINOR PLANS

<table>
<thead>
<tr>
<th>Plan Name</th>
<th>Date Submitted</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Myers Minor</td>
<td>Submitted 2/7/2024</td>
<td>sent to Schnure, Kauffman, Tylka; comments due 2/16; revision due 2/26; 2/28 reached out to Mr. Stover, owners working with architect</td>
</tr>
</tbody>
</table>

### OTHER

<table>
<thead>
<tr>
<th>Plan Name</th>
<th>Date Submitted</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dale Summit Area Plan</td>
<td></td>
<td>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; 9/7 follow up with interview candidates to request sealed quotes; 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</td>
</tr>
</tbody>
</table>
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; 12/22 Draft sent to CTC and PC; Joint meeting CTC/PC 1/24/2024; 1/29 FBC distributed; 3/26 CTC/PC joint meeting

Pike Street Phase 3
Surveying to begin in January; letter sent to residents; surveying started 1/11/2023; 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; PennDOT approved, waiting on conservation district; 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; ongoing

Green Light Go (GLG) to coincide with TSTG; $190,880 awarded, 20% match; exp. 6/30/25; Frank submitted application for Park Ave. signal; ongoing

ARLE Awarded $146,320; Rt 322/College Ave signal improvements; 2/5 signed; waiting for grant agreement; ongoing

ENGINEERING BOND/LOC SURETY EXPIRING SOON
State College Food Bank (5/11)
Arize FCU (5/31)

LDP’s UNDER CONSTRUCTION
Canterbury Crossing
Evergreen Heights
Mount Nittany Medical Center
Steve Shannon
Winfield Heights
Arize FCU/ Stocker
State College Area Food Bank

Steve Shannon
Variances

Plaintiffs claim ZBA's denial of dimensional zoning variance made in error

Citation: Dimercurio v. City of Royal Oak, 2023 WL 6939223 (Mich. Ct. App. 2023)

Salvatore Dimercurio, Clarence Kennedy, and Mohammad Salami (the plaintiffs) appealed a lower court’s order affirming the Royal Oak, Michigan Zoning Board of Appeals’ (ROZBA) denial of a variance.

DECISION: Affirmed.
The denial of the variance request wasn’t an abuse of discretion.

WHAT HAPPENED

The case involved a request for a dimensional zoning variance related to property located at 1214 McLean Avenue in Royal Oak.

In March 2016, Stonecraft Investments LLC, offered to purchase the property from Kennedy, who owned it. The property, which contained a single-family home and a detached garage, was comprised of two lots, numbers 63 and 64, and was part of the Clifford Heights Subdivision.

Each lot was 40-feet wide and 110-feet deep, so the property was 80-feet wide and 110-feet deep with a total area of 8,800 square feet.

After Stonecraft Investments completed the purchase, the plan was to separate the property back into two 40-feet wide by 116-feet deep lots, demolish the structures, and build two new single-family homes.

DiMercurio applied to Royal Oak’s Planning Division (PD) to divide the lot. The PD replied that the property was zoned one-family residential, and under relevant provisions of the Royal Oak Code, the land could not be split because the resulting lots would be too narrow and lack sufficient area and would not be the same size or larger than the majority of the surrounding lots, as required by the code.

The code stated that “[n]o lot shall be less than 6,000 square feet in area” and “[n]o interior lot shall be less than 50 feet in width” unless an exception applied. Under the exception, a single lot of two or more contiguous lots under the same ownership could be further divided for the purpose of erecting a single-family dwelling if “[t]he Zoning Administrator . . . determine[d] that the proposed lot(s) [w]ere the same size or larger than the majority (50% or more) of the developed lots in the area.”

DiMercurio applied for a variance with the ROZBA in March 2021 to split the property. He argued that splitting the lot would result in lots harmonious with the smaller lots in the neighborhood, and that a variance could be permitted when strict compliance with a zoning ordinance would cause practical difficulties.
The ROZBA denied the request, finding that:

- strict compliance with the zoning ordinance wouldn’t prevent use and enjoyment of the property for its permitted purpose;
- granting the variance would be detrimental to nearby property owners;
- there wasn’t a unique circumstance present that would require the granting of the variance; and
- the proposed lots wouldn’t be consistent with the size and character of the other lots—they wouldn’t provide adequate buildable area for new construction in character with the neighborhood.

The plaintiffs appealed the decision to the court. They claimed the variance denial should be reversed as the ROZBA had failed to make factual findings; its decision was not based on competent, material, and substantial evidence; and its finding constituted an abuse of discretion.

APPEALS COURT’S RULING

When an aggrieved party appealed a zoning decision, the court would review the record to ensure that the decision:

- complied with the “constitution and laws of the state”;
- was based upon proper procedure;
- was supported by competent, material, and substantial evidence; and
- represented “the reasonable exercise of discretion granted by law to the zoning board of appeals.”

“[S]ubstantial evidence” was “evidence that a reasonable person would accept as sufficient to support a conclusion,” the court wrote. “While this require[d] more than a scintilla of evidence, it may be substantially less than a preponderance.” Also, under “the substantial-evidence test, the . . . court’s review [wa]s not de novo and the court [wa]s not permitted to draw its own conclusions from the evidence presented to the administrative body.” In other words, the court had to give deference to the ROZBA’s factual findings.

If there was substantial evidence, the court couldn’t substitute its discretion for that of the administrative tribunal even if it “might have reached a different result.”

Here, there wasn’t any dispute that splitting the subject property would require a dimensional zoning variance under the Royal Oak Code. The code provided that to be entitled to a variance, the plaintiffs had the burden of proving that strict compliance with the zoning ordinance would cause practical difficulties and five specific things before a variance could be granted.

“The record show[ed] the subject property had been, and was being used as, a single-family residence with a detached garage for many years. There was no evidence that the property, as it stood, could no longer be used as such,” the court wrote. “And, certainly, there was no evidence it was the restrictions of the zoning ordinance in anyway affecting the use of the property as a single-family residence, the use for which it was zoned. On the basis of that evidence, the ROZBA found ‘that strict compliance with the Zoning Ordinance provisions will not unreasonably prevent the petitioner from use and enjoyment of the property for a permitted purpose, a residential use . . . ’ This finding seemingly related back to a comment from one ROZBA member during the initial hearing held by the ROZBA, when he stated: ‘Does this prevent them from using the permitted use? No, they can use it right now as a single-family house on an 80-foot lot or they can build a new one.’ ”

The plaintiffs didn’t present any “evidence of what the cost of a home would be if they were to demolish[d] the current buildings on the property and rebuild[1].” They also didn’t submit “any studies regarding the average homebuyers moving into defendant city and their budgets.” Thus, the record didn’t have “any factual foundation to support the claim . . . that building a house on the subject property in its current condition would be too expensive to be marketable.”

Also, “the ability to resell property ha[d] little to do with its use,” the court explained. Here:

- the property had been zoned as one-family residential;
- it had been used as such; and
- there wasn’t any indication that the use “was being interfered with by application of the zoning ordinance.”
Practically speaking: The plaintiffs failed to meet their burden “of proving the relevant provisions of the zoning ordinance ‘unreasonably prevent[ed] [them] from using the property for a permitted purpose.’” Therefore, the ROZBA’s finding on this issue had been “determinative.”

**Due Process**

Denial of CUP and expansion of liquor license premises application at center of controversy

Citation: *Sojenhomr LLC v. Village of Egg Harbor Board of Trustees*, 2023 WL 6880604 (E.D. Wis. 2023)

Sojenhomr LLC, 7783 STH 42 LLC, and Conch Co. Inc. (collectively, the plaintiffs) filed suit against the Village of Egg Harbor, Wisconsin’s Board of Trustees (board), its Planning Commission (PC), and individual members of both the board and PC (collectively, the defendants) seeking compensatory and punitive damages for the denial of a conditional use permit (CUP) application and of an expansion of liquor license premises application.

The plaintiffs asserted that the defendants were liable under section 1983 of the U.S. Code for violating the equal protection rights as a class of one, substantive due process rights, and procedural due process rights.

The plaintiffs also alleged the defendants had engaged in a conspiracy to stop their building expansion project in violation of their constitutional rights to equal protection of the law, substantive due process, and procedural due process.

Before the court was the defendants’ request for dismissal.

**DECISION: Request granted.**

The plaintiffs couldn’t show their procedural or substantive due process rights had been violated, that they were denied equal protection, or that they had been conspired against.

**A CLOSER LOOK**

The plaintiffs owned and operated Shipwrecked Brewpub, a restaurant at the intersection of State Highway 42 and County Highway G in Egg Harbor, Wisconsin.

The plaintiffs acquired an adjacent property as part of a building expansion project to increase the number of seats in their restaurant. Under local ordinances, the project required a zoning CUP and an expansion of the plaintiffs’ existing liquor license for the sale of alcohol in the new premises.

Wisconsin state law and the Village Zoning Ordinance granted the PC the authority to hear and decide CUP applications.

In March 2021, the plaintiffs applied for a CUP with the PC. Two of the PC members recused themselves because they had donated to a GoFundMe campaign that opposed expansion projects before the PC denied the CUP application.

The plaintiffs appealed to the court, asking it to examine the PC’s denial of the CUP. The court ruled the PC had acted with bias and reversed its decision, so the plaintiffs’ request for the CUP was granted.

Following that ruling, the plaintiffs applied for the expansion of their liquor license to accommodate the new premises that would result from the building expansion. Before deciding the application, the board requested a map showing the area of the proposed liquor license expansion but denied the request for the expansion after reviewing the submitted map of the premises. The board reasoned the request should be denied because the PC had denied the CUP application.

**Equal protection**—The plaintiffs alleged the defendants had intentionally treated them differently from other CUP applicants, other liquor license holders, and other restaurants located in Egg Harbor, without identifying any particular entity. “Other than their conclusory allegations that ‘the [PC] and its members intentionally treated [their application] different than [applications of] other restaurants and taverns in Egg Harbor,’ however, [the plaintiffs] hadn’t alleged [any] facts that would even suggest that the ‘similarly situated’ element of their class-of-one equal protection claims could be met.”

The bottom line: The PC had cited various reasons for the CUP’s denial, including “safety concerns due to congestion, proximity to residential areas, and the location of the premises’ busy corner,” and the plaintiffs failed to allege facts “suggesting that other establishments in similar locations were treated more favorably.” This was fatal to their claim.

Also, the plaintiffs didn’t allege that the defendants had “lacked a rational basis for the difference in treatment.” And the complaint showed “a rational basis for the defendants’ actions.” For instance, the PC had “received reasoned arguments in favor of denying the CUP application based on scale, mitigation of congestion, and safety” and its “decision reasoned that granting the CUP would raise safety concerns based on traffic congestion in the area, high levels of pedestrian traffic, and insufficient parking.”

**Procedural due process**—The court explained that “the determination of [the plaintiffs’ applications was discretionary.” “Wisconsin courts have repeatedly characterized liquor licenses as ‘privileges,’ to be doled out at the discretion of local governments,” it added. And “Wisconsin statutes and the Village Zoning Ordinance grant[ed] the [PC] discretionary authority to decide CUP applications.” Therefore, the plaintiffs didn’t allege facts showing a constitutionally protected property interest.

And even if they had sufficiently alleged a property interest, the complaint failed to allege facts that would show that the defendants had “deprived them of that interest without due process.”

The bottom line: The plaintiffs’ CUP application here was “more in the nature of a legislative decision, since it involve[d] granting an application for a use that [was] subject to closer regulation than a permissive use under the applicable zoning laws.” The PC members’ strong views about downtown development and zoning issues, such as using CUPs to expand bars and restaurants, didn’t “disqualify individuals from serving in either elected or appointed positions on boards charged with implementing policy over such matters. Thus, the fact that some members may have thought [the plaintiffs’ application for a CUP should be denied and nevertheless participated in the hearing and decision [was] not a violation of due process.”
Substantive due process—“To state a substantive due process claim, a plaintiff must allege facts suggesting that ‘[a] government entity must have exercised its power without reasonable justification in a manner that shocks the conscience.’” Here, the plaintiffs didn’t allege facts suggesting the conduct by any defendant “shock[ed] the conscience.”

The PC “had a rational basis to deny the CUP. Likewise, the . . . [b]oard had a rational basis for its liquor license decision, relying on many of the same reasons the [PC] had given to justify its determination.” While some PC members opposed the bar and restaurant expansion before their appointment, that was not enough to support a procedural due process claim or a claim for a substantive due process violation.

Conspiracy—The plaintiffs alleged the defendants had conspired to stop the building expansion of Shipwrecked Brewpub restaurant, in violation of their constitutional rights. To state a valid claim, the plaintiffs had to allege “a conspiracy . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . . and . . . an act in furtherance of the conspiracy . . . whereby a person [wa]s either injured in his person or property or deprived of any right or privilege of a citizen of the United States.”

Therefore, to maintain a valid claim, the plaintiffs had to allege a plausible, underlying civil rights claim because “‘conspiracy [wa]s not an independent basis of liability.’” Here, the plaintiffs hadn’t alleged the “underlying claims alleging deprivation of their equal protection, substantive due process, and procedural due process rights,” so they failed to state a valid conspiracy claim.

The court explained that procedures “due” in a zoning case were “minimal” and that municipalities could “‘elect to make zoning decisions through the political process.’” Also, “determinations about liquor license applications need not mirror a judicial proceeding because they deal with privileges granted or denied at the discretion of a governing body.” Here, the plaintiffs had been afforded notice and the opportunity to present in several hearings concerning the CUP application, and the board had enumerated reasons for its denial.

Malicious Prosecution

Resident alleges town unlawfully issued zoning code violation

Citation: Norton v. Town of Islip, 2023 WL 7130486 (2d Cir. 2023)

The Second U.S. Circuit has jurisdiction over Connecticut, New York, and Vermont.

The Town of Islip, New York issued a zoning code violation to Howard Norton in 1997. As a result, he filed suit in federal court alleging the town had violated the Due Process Clause by terminating his property’s legal nonconforming use without sufficient notice.

Norton won his claim, and a criminal case against him was dismissed. Thereafter, Norton brought claims against the town and its officials for malicious prosecution.

The lower court granted judgment without a trial to the town investigator and assistant town attorney who were named in the lawsuit. Norton appealed.

DECISION: Affirmed.

The town had probable cause to issue the citation against Norton, so his malicious prosecution claim failed.

To state a claim for malicious prosecution, Norton had to show:

- "the commencement or continuation of a criminal proceeding against [him],";
- "the termination of the proceeding in [his] favor";
- "the absence of probable cause"; and
- "that the proceeding was instituted with malice."

The bottom line: Probable cause defeated such a claim.

The court explained that an official had "probable cause when [they] has[d] ‘knowledge of, or reasonably trustworthy information as to, facts and circumstances that [we]re sufficient to warrant a person of reasonable caution in the belief that an offense ha[d] been or [wa]s being committed.'"

Further, "[p]robable cause [could] be based on reasonable mistakes of fact or law, so long as those mistakes [we]re ‘objectively reasonable.’” And it was a “mixed question of law and fact.”

“Here, the undisputed facts are sufficient to conclude that the individual defendants had probable cause to prosecute Norton in 1997. In 2010, it was undisputed that: [T]he individual defendants were confronted with two items of information at the time they chose to prosecute [him]. First, the individual defendants had the Department Copy Certificate—the unsigned and undated certificate of occupancy marked ‘DEPT. COPY’—that contained notations explaining that the house’s legal nonconforming use had been ‘lost.’ Second, a Town investigator had visited the house to confirm that it was being used as a two-family dwelling.”

It was “undisputed that the individual defendants relied on an unsigned and undated copy of Norton’s certificate of occupancy in prosecuting him (the unofficial C/O).” And it was undisputed that the unsigned and undated copy contained language about “Norton’s legal nonconforming use having been ‘lost.’"

“It was a reasonable mistake of law to think that Norton’s nonconforming use had terminated by operation of law under [the] Islip Town Code.” Also, the town code’s “plain text provide[d] that ‘discontinuance’ terminate[d] a nonconforming use exemption, with no mention of action by town officials.”

Practically Speaking:

"[T]o the extent that the individual defendants mistakenly relied on the unofficial C/O to conclude that Norton’s legal nonconforming use had terminated by operation of law, they would nevertheless have had probable cause to conclude that Norton had violated the [town c]ode."
RLUIPA

Church claims city's enforcement of parking regulations unduly burdened it in violation of federal law

Citation: *Immanuel Baptist Church v. City of Chicago*, 2023 WL 7130408 (N.D. Ill. 2023)

Immanuel Baptist Church (IBC) filed suit against the City of Chicago alleging its parking regulations violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). A bench trial ensued.

**DECISION:** Judgment in Immanuel Baptist’s favor.

A RLUIPA violation occurred; IBC entitled to $14,590 in damages.

**THE FACTS**

In August 2019, IBC claimed the city’s parking requirements were more demanding on religious assembly uses than on non-religious assembly uses. It claimed it couldn’t satisfy the parking requirements and as a result it lost revenue, potential new members, and the opportunity to own the two properties where it was located.

**SUBSTANTIAL BURDEN UNDER RLUIPA**

RLUIPA barred a governmental entity from imposing a land-use regulation in a way that imposed a substantial burden on religious exercise (such as religious assembly or institution), unless the government demonstrated that the “imposition of the burden on that person, assembly, or institution” was “in furtherance of a compelling governmental interest” and “[w]as the least restrictive means of furthering that compelling governmental interest.”

IBC had to prove it had been substantially burdened by a preponderance of the evidence. This meant the fact finder had to “believe that it [was] more likely than not that the evidence established[d] the proposition in question.”

Here, the city burdened IBC’s ability to effectively use and convert a building and to develop and grow its ministry by preventing it from purchasing two properties. “For two years the [c]hurch was not able to own any of the property, and then later it purchased one of the two buildings, but not the entirety of the property, it attempted to purchase in 2016. The [c]hurch also spent significant resources and money attempting to comply with the parking regulations,” the court explained.

At trial, evidence showed IBC “was a small church and had limited resources.” While the city argued those facts didn’t excuse religious uses from the expense of complying with zoning regulations, there was evidence IBC had “experienced uncertainty over a number of years caused by inconsistent messages from the [c]ity about the parking requirements and how they might apply to the [c]hurch.”

There was evidence IBC’s pastor had “spent significant resources trying to find a parking solution, and he felt distracted from his leadership of the ministry.” Additionally, the church “lost additional ministry opportunities that the additional building would have afforded,” and there was credible evidence that the process “was disruptive both practically and emotionally to the [c]hurch over an extended period of time.”

There was also evidence that for years the city hadn’t taken “any enforcement or punitive measure against the [c]hurch or landlord with regard to parking. The parking requirement only became an issue when [IBC], in response to its lender’s request, sought a letter from the [c]ity in 2016.”

The bottom line: Trial testimony indicated that the municipal code’s parking rules allowed for “substantial” not “strict” compliance and that “planned developments allowed for a lot of flexibility based on the circumstances.”

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**Case Note:**

IBC claimed the city violated RLUIPA’s equal terms and substantial burden provisions and violated the Fourteenth Amendment’s equal protection clause. In 2017, the court granted the city judgment without a trial on the equal protection claim and the facial challenge under RLUIPA, and only IBC’s RLUIPA substantial burden claim remained and was the subject of the court’s ruling in this case.

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**Conditional Use Permits**

Dispute over town’s denial of CUP related to apartment development project heads to court

Citation: *Middlecap Associates, LLC v. Town of Middletown*, 2023 WL 6848999 (Del. Super. Ct. 2023)

The Town of Middletown, Delaware’s town council (MTC) denied an application for a conditional use permit (CUP) to construct apartment buildings on land Middlecap Associates LLC (Middlecap) owned in the town.

Middlecap challenged the MTC’s decision and requested declaratory judgment and injunctive relief.

The Court of Chancery dismissed Middlecap’s request, finding it lacked subject matter jurisdiction. The court wouldn’t allow the dispute to be transferred to the superior court, so Middlecap filed a transfer request with that court asking for it to review the matter.

Before the court was a request to dismiss Middlecap’s “certiorari” complaint MTC contended that Middlecap’s claim was time-barred and because it hadn’t exhausted its administrative remedies, and because the individual defendants named in the lawsuit were immune.

**DECISION:** Granted in part; denied in part.

The dismissal request as to the complaint was denied, but the individual defendants were dismissed on immunity grounds.

**A CLOSER LOOK**

Middlecap owned approximately 15 acres of land along State Route 299, within Middletown’s limits. It wanted to build an apartment complex on its land, consisting of 8 apart-
ment buildings with a total of 192 units, which required a CUP.

Here’s the rationale the court gave for partial dismissal:

**Immunity**—The complaint named the town’s mayor and MTC members in their individual capacities. “It is quite clear that Middlecap would like the Court to overturn the decision of the Council and feels that one or more members denied its application out of some sense of ill will or public pressure or both,” the court wrote. “But extending liability to individual [MTC] members in their ‘individual capacity’ requires that the Complaint identify what actions the individual defendants took that was not in their official capacity representing their constituents and the Town of Middletown,” it added.

But the complaint was “all but silent” in this respect. While the complaint made some references to the mayor and individual MTC members “making up their minds without considering all the evidence,” that was “hardly” a unique complaint.

The bottom line: There weren’t any alleged facts that the individuals made any decision other than in their official capacities or that “any decision was made other than through procedures established by applicable state and local law.”

Further, Delaware’s County and Municipal Tort Claims Act “immunized county and municipal employees from claims for damages for any act, legislative, judicial or quasi-judicial.” And there weren’t any allegations to “take the individual defendants outside the broad immunity from individual liability provided by” that law.

**Timing of complaint**—Middlecap’s claim for review wasn’t time barred because unlike statute of limitations, “the timing of a complaint for certiorari [was] subject to considerations beyond the dates on a calendar.” Here, MTC denied the CUP on February 7, 2022. Middlecap then filed its Chancery request seeking an injunction and declaratory judgment 33 days later, on March 11, 2022. “Had this been a direct appeal from, say, a Zoning Board of Adjustment, we may well call the appeal 3 days late, But it was not a direct appeal from a zoning board,” the court stated.

Further, Middlecap didn’t seek certiorari—a legal remedy available in Superior Court—in the Chancery court. “In March . . . 2022 when it filed its Verified Petition, Chancery was the undisputed forum for [CUP] disputes that were headed for resolution by the courts. In Chancery, the [t]own did not argue that Middlecap’s petition for declaratory judgment and injunction was untimely. But now that Chancery has agreed with the Town that review must come by way of certiorari in Superior Court, the Town would have us go back and examine the filing date in Chancery and deny Middlecap any review at all because Middlecap did not foresee Chancery’s ruling on jurisdiction.” “The Court disagrees,” it found.

**Exhaustion of administrative remedies**—The town argued that Middlecap’s failure to appeal the CUP denial to the town’s board of adjustment before seeking court review. In its view, this failure was fatal to Middlecap’s claim.

But “[t]his argument proceeds from the premise in the [t]own’s brief that ‘[a] party aggrieved by a decision on a [CUP] can appeal the decision to the Town of Middletown Board of Adjustment.’” “Notably, however, the Board of Adjustment’s powers include only the power to authorize variances from the zoning code or ‘special exceptions’ to the Code. The Board of Adjustment’s powers do not even mention [CUPs].” Thus, the court rejected the town’s argument that Middlecap was required to obtain review of the MTC’s CUP decision by the Board of Adjustment.

**Case Note:**

Middlecap’s brief suggested that it wanted the flesh out through discovery its suspicion that individual officials had acted with malice or ill motive. “But a certiorari proceeding is limited to a review of the record below; there is no provision for pretrial discovery,” the court noted. Since the complaint’s allegations didn’t “make out a case for individual liability . . . Middlecap was procedurally barred from taking discovery to bolster its claim.”

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**Zoning News Around The Nation**

**New Hampshire**

High court rules on whether proposed project met criteria for a wetland CUP per city’s ordinance

Iron Horse LLC (Iron Horse), which owned land in Portsmouth, New Hampshire, sought a site-review permit, lot line revision permit, conditional use permit (CUP) for shared parking, and a wetland CUP.

Portsmouth’s Planning Board (PB) granted Iron Horse’s requests. But the city’s Zoning Board of Adjustment (ZBA) reversed some of those approvals, so it effectively reversed the PB’s site plan and CUP approval.

Iron Horse appealed, and the Housing Appeals Board (HAB) reversed the ZBA, so several abutters and concerned citizens who opposed its plans sought court review.

Recently, the Supreme Court of New Hampshire affirmed, finding Iron Horse’s proposed project met criteria for a wetland CUP per the city’s ordinance.

The proposed development area had unique site conditions, which included close proximity to the North Mill Pond. Also, there were yard setback and sewer easement issues created unique conditions that constrained Iron Horse’s ability to locate buildings within the developable upland area.

On appeal, the abutters contended that Iron Horse didn’t meet two of the criteria for being granted a wetlands CUP, but the court disagreed. It found the planning board had enough evidence to find that they satisfied those criteria, so the HAB didn’t err in finding that the PB didn’t act illegally or unreasonably in granting the wetland CUP. Let’s take a closer look at what those criteria required and why the court found the HAB didn’t err in finding that Iron Horse met those, which dealt with an alternative location outside of a wetland buffer and an alternative with the least adverse impact to the wetland buffer.

*The case cited is Appeal of Beal, 2023 WL 6628088 (N.H. 2023).*
Ohio

South Fairmont considers changes for Lick Run Greenway

The South Fairmount Community Council has been looking into how to make changes to the area surrounding the Lick Run Greenway in Cincinnati. “The community’s vision calls for a more walkable, pedestrian-paned environment, whereas the current zoning is for a more auto-oriented environment,” a city website states.

Following that study, a $103 million investment in a stormwater management project at the Greenway site got underway. The project “doubles as a park providing both recreational and education opportunities for community members. It is the first daylighted stream in the nation to control sewer overflows.”

Since then, the city’s planning and engagement department has conducted a zoning analysis with input from the Metropolitan Sewer District, Department of Community and Economic Development, and the Department of Transportation and Engineering, which reviewed and analyzed:

- past plans;
- community workshop outcomes;
- existing zoning and potential zoning districts for responding to community goals.

The Council’s zoning boundary study suggested phasing for the Metropolitan Sewer District and existing and proposed zoning changes in the Lick Run area (which includes discussion of commercial community-mixed to commercial community-mixed pedestrian; commercial community-auto to commercial community-mixed; and manufacturing general to urban mix).

As of print time, an equitable growth and housing committee was expected to discuss amending the official zoning map of the City of Cincinnati to rezone properties in and around the Lick Run Greenway Corridor.

Proposed zoning map changes and a PowerPoint presentation on this can be found at cincinnati-oh.gov/sites/planning/assets/Lick%20Run/Proposed%20Locations%20Map%2027.23.pdf and cincinnati-oh.gov/sites/planning/assets/Lick%20Run/Item%20204%20-%20South%20Fairmount%20Lick%20Run%20Zone%20Changes%20-%20PCC%2017_23.pdf, respectively. To download the staff report, visit cincinnati-oh.gov/sites/planning/assets/Lick%20Run/Item%20204.pdf.

Source: cincinnati-oh.gov

Washington, D.C.

New White House guidebook addresses conversion of commercial spaces to residential housing

In October 2023, the White House released a new guidebook discussing municipalities like the District of Columbia, New York, and San Francisco are taking to revitalize downtowns through commercial-to-residential conversions. The guidebook, available at whitehouse.gov/wp-content/uploads/2023/10/Commercial-to-Residential-Conversions-Guidebook.pdf, includes an overview on federal programs, grants, guarantees, loans, and tax incentives, for such conversions.

“For example, resources from the Department of Transportation (DOT) can provide new low-cost financing op-portunities for conversions and affordable housing that increase housing supply near transportation, and new climate-focused financial resources from the Inflation Reduction Act (IRA) can make commercial to residential conversions more financially viable and bring these buildings to zero emissions,” the guidebook states. “Some of these programs have been used in conversion projects already; case studies in this guide illustrate how funding from the Department of Housing and Urban Development (HUD) is being combined with Rehabilitation (Historic Preservation) Credits as well as state and local funding to convert and rehabilitate commercial buildings from downtown Detroit to Springfield, Massachusetts.”

For example, the Neighborhood Access and Equity Grant program “provide[d] funding to support changes in land use through transportation planning and infrastructure.” “Transportation infrastructure can be retrofitted to more appropriately accommodate and access housing, including by facilitating local and shorter residential trips. DOT intends to evaluate community policies that encourage an increase in housing supply via zoning reform to reduce regional displacement pressures.”

Source: whitehouse.gov

Washington

State’s commerce department recognizes land-use planning and development excellence

Since 2006, the Governor’s Smart Communities Awards have recognized creativity, collaboration, and overall excellence in land-use planning and development. And, in November 2023, the Washington State Department of Commerce (DOC) announced the 2023 winners of this award, which recognizes “local governments and their partners for exceptional land-use planning and development.”

“The awards showcase effective implementation of the state’s Growth Management Act (GMA),” the DOC added.

The winners’ programs and projects serve as examples on how to address land-use planning issues, the DOC explained.

Smart awards cover:

- vision for local comprehensive plans, subarea plans, and specific planning policies;
- partnerships;
- housing and climate strategies; and
- projects implementing comprehensive plans, and more.

Visit commerce.wa.gov/serving-communities/growth-management/smart-communities/ to learn about award recipients’ projects, including:

- the City of Vancouver’s Heights District Master Plan;
- the Port of Kennewick’s Clover Island Restoration and Revitalization plan;
- the City of Olympia’s Armory Creative Campus-Community Visioning and Concept Plan Development;
- the City of Waitsburg’s “Sewer System Improvement” project;
- the City of Spokane’s “Building Opportunity and Choices for All” program;
- the City of Tacoma’s Green Economic Development Strategy and its McKinley Hill Neighborhood Plan;
- the City of Marysville’s Cascade Industrial Center (CIC);
- the City of Renton’s South Lake Washington Revitalization project and its Family First Community Center (FFCC);
- the City of Leavenworth’s Bavarian Village (Project LIFE); and
- the City of Issaquah’s Energy Smart Eastside Heat Pump Program.

For more on the 2023 Smart Communities Award recipients, visit commerce.wa.gov/serving-communities/growth-management/smart-communities/.

Source: commerce.wa.gov

Seattle mayor signs legislative action designed to transform downtown into ‘top destination’

Seattle Mayor Bruce Harrell recently signed new legislation supporting the city’s Downtown Activation Plan. “The legislation includes zoning enhancements allowing increased residential development along Third Avenue and improved flexibility for hotels in Belltown, promoting street use activations by waiving fees and permit costs, and strengthening public-private partnerships with Downtown businesses and organizations, including efforts to increase activation in downtown parks and support arts education programs serving youth and communities of color,” the mayor’s office stated.

“Responding to issues facing downtowns across the nation, we are advancing a bold new vision for Downtown: Capturing the spirit of innovation, inclusivity, and forward-thinking that has defined Seattle for decades to build a safe, welcoming, thriving Downtown for everyone,” said Harrell. “This legislation will support immediate and future efforts that deliver on our One Seattle vision for this integral part of our city, adding more housing, creating new opportunities for small businesses and workers, and building community with fun and exciting activities for residents and visitors of all ages,” he added.

To view the city’s Downtown Activation Plan, visit downtownisyou.com.

Source: harrell.seattle.gov
Rezoning Applications

Developer claims rezoning application was denied due to township trustee's personal bias against the project

Citation: EC New Vision Ohio, LLC v. Genoa Township, Ohio, 2023 WL 8004717 (S.D. Ohio 2023)

EC New Vision Ohio LLC (the plaintiff) was under contract to buy from a trust a 62-acre parcel of land in Genoa Township, Ohio. The plaintiff intended to develop the property into a residential community.

A dispute arose when the Genoa Township Trustees (Township Trustees) denied the application to re-zone the property from Rural Residential (RR) to Planned Residential District (PRD).

The plaintiff claimed that while the RR designation meant that land was predominantly maintained as farmland, the property at issue was currently surrounded by residential subdivisions. Thus, in the plaintiff’s view, the RR classification imposed safety concerns, environmental dangers, and economic burdens, whereas the PRD classification would alleviate those issues.

A CLOSER LOOK

The plaintiff contended that under RR zoning, each home built on the property would need a separate driveway to access the highway because of its shape, and orientation permits only restricted access to Big Walnut Road and State Route 3. Constructing and maintaining numerous individual driveways along a busy thoroughfare would create significant traffic congestion and traffic safety issues. PRD zoning would minimize traffic and safety concerns, the plaintiff contended.

As to the environmental issue, the plaintiff asserted that development of the property, which included .47 acres of wetlands and a 1.25-acre pond, under the current zoning would require installing nitrate-leaching septic systems near the property’s wetlands, leaving those wetlands unprotected—and the wetlands would present flooding issues that would persist with development under the RR zone, whereas a PRD zoning classification would allow for the preservation and maintenance of the wetlands.

On the issue of economics, the plaintiff asserted that RR zoning made development economically infeasible because it required a larger lot area than PRD—so rezoning the property would allow more homes to be built.

The township had the authority to rezone land under state law. Under its adopted zoning resolution and comprehensive plan, many Genoa Township properties that had been originally zoned as RR had been rezoned as PRDs, which was more favorable to residential land development.

A landowner that wanted to re-zone their property from RR to PRD had to first undergo a pre-application process, which consisted of a pre-application discussion
where the applicant was introduced to the township’s policies, regulations, and procedures and discussed the proposed development with the township’s administrative staff. No approval was necessary at this stage.

After the pre-application phase, the applicant could file a rezoning application with the zoning inspector. The application had to include a zoning map amendment application and a preliminary development plan.

Then, a regional (county) planning commission would hold a public hearing before recommending approval, denial, or modification to the Genoa Township Zoning Commission. Then, the zoning commission would make its own recommendation to the township trustees, after receiving public input before approving, approving with modification, or denying the rezoning application.

Here, the plaintiff had planned and designed a residential development on the property and met with county and local officials. On March 7, 2022, the plaintiff submitted their application to rezone the property to PRD classification, with the regional planning commission recommending approval.

The zoning commission also recommended approval, but the Township Trustees ultimately voted to deny the rezoning application. The plaintiff alleged that one of the trustees, who lived two doors down from the property, held personal bias against the rezoning application. Accordingly, the plaintiff claimed that official was barred under state law from voting.

The official did not recuse herself, though, and voted against the rezoning application. The plaintiff alleged she also improperly influenced the other trustees’ deliberations.

The plaintiff filed suit challenging the trustees’ denial of the rezoning application. The defendants asked the court to dismiss the case for lack of standing.

DECISION: Request for dismissal denied in part.

The plaintiff could proceed with a claim that they had been treated differently than similarly situated rezoning applicants based on the trustees’ alleged bias.

The court refused to dismiss a claim that the trustee who lived close to the proposed development held the plaintiff to a “higher, particularized standard” than others who were “similarly situated.”

The plaintiff asserted that road safety would improve with PRD zoning. “And as to density, [they] point[ed] to several developments with even greater density than [theirs], and whose rezoning applications were nevertheless approved.” In the end, the plaintiff claimed “that both trustees voted against the Rezoning Application based on [the one trustee] ‘own personal motives,’ and the township hadn’t ‘otherwise provided any likely non-discriminatory reasons for the purported disparate treatment.’

CASE NOTE

The applicable Ohio law “grant[ed] township trustees authority to regulate zoning matters, and discretion to approve or deny applications as they [saw] fit.” Even if proposed development conformed with the township’s comprehensive plan, the trustees had discretion to approve it or not.

The comprehensive plan stated that it “‘provide[d] guidance for continued development of Genoa Township.’” It went on to state that it “‘may be utilized as a guide in the administration of [the] Zoning Resolution,’ “If the two conflict[ed], the Zoning Resolution control[led],” the court explained. Also, the plan’s “plain text . . . allow[ed] the Township Trustee’s discretionary decision-making authority. The permissive term ‘may’ in the Plan underlines any argument that the Comprehensive Plan vested in Plaintiffs an entitlement to rezoning as a PRD once minimum requirements were fulfilled,” the court found.

The bottom line: The plaintiff hadn’t “plausibly allege[d] a protected property or liberty interest in the Rezoning Application’s success,” so portions of their case were dismissed.
Discrimination

Groups claim parish's land-use plan violated civil liberties, property rights, and religious rights

Citation: Inclusive Louisiana v. St. James Parish, 2023 WL 7920808 (E.D. La. 2023)

St. James Parish, the St. James Parish Council, and the St. James Parish Planning Commission (collectively, the defendants) requested dismissal of a lawsuit alleging the parish’s land-use plan had codified an existing practice of discriminatory behavior toward certain neighborhoods.

The plaintiffs in this case—Inclusive Louisiana, a non-profit community advocacy organization that sought to protect the parish against environmental harm, Mount Triumph Baptist Church, a local congregation whose members claimed they descended from formerly enslaved people, and RISE St. James, a faith-based grassroots organization advocating for the end of petrochemical industries in the parish—claimed the land use plan (both before and after its adoption) violated individuals’ civil liberties, property rights, and religious rights.

The plaintiffs asserted that the 2014 land use plan was used to protect parts of the parish from industrial development where a majority of white residents lived. Other districts, which were home to a majority of non-white people, were steered toward industrial zoning. For instance, the plaintiffs claimed the plan’s designation of large tracts of property in the parish’s 4th and 5th districts as “future industrial” evinced an intent to industrialize those districts and erase the residential communities that existed there. In addition, they claimed the plan created industrial buffer zones for white-majority churches.

The plaintiffs filed suit alleging constitutional and Religious Land Use and Institutionalized Persons Act (RLUIPA) violations. They asserted that the defendants had maintained a discriminatory, unequal, and injurious system that deprives members of their rights via zoning and land use decisions and sought declaratory and injunctive relief for the alleged violations.

The plaintiffs then amended their complaint to allege the defendants violated the Thirteenth Amendment because the existing land use system operated “as a badge or incident of slavery.” They further claimed the defendants had violated the Fourteenth Amendment’s Equal Protection guarantee because discriminatory intent was at the root of the adoption and maintenance of the parish’s land use system and resulted in unequal treatment toward certain residents on the basis of their race. They also claimed the land use plan resulted in RLUIPA violations because it placed a substantial burden on members’ ability to practice their religion and had enabled religious discrimination against Black Baptist churches in the parish.

The defendants asked the court to dismiss the complaint. DEcision: Request for dismissal granted in part.

The RLUIPA claim was time barred. The plaintiffs failed to meet their burden of establishing unequal treatment, but they did meet their burden of satisfying the causation require-ment for bringing a claim based on injuries to their property values and their health.

Unequal treatment—The plaintiffs argued they were injured by the parish’s unequal treatment based on race and religion and that “unequal treatment... has been long recognized as a judicially cognizable injury.” “However, the judicially recognized test for an injury for standing purposes is ‘an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.’”

The bottom line: It was the plaintiffs’ burden to establish “injury,” and “alleging broadly unequal treatment as a basis for numerous claims does not suffice to meet that burden,” the court found.

Property injuries—The plaintiffs alleged the parish’s discriminatory land use system caused a diminution in their property values and that it limited some of Inclusive Louisiana’s members from selling, holding, and conveying their property, compared to residents’ ability to do so in parts of the parish where majority white populations reside.

Practically speaking: The court found that the plaintiffs had alleged that:

- “a significant connection between their decreased property values and defendants’ alleged conduct”; and
- “the land use system place[d] limitations on the ability of some members of plaintiff Inclusive Louisiana to sell, hold, and convey their property.”

Therefore, Inclusive Louisiana had “satisfied the causation requirement (for representational standing) by alleging a connection between [the defendants'] conduct and its members’ injuries.” Also, the court noted it had “the power to provide the requested relief,” finding “that a judgment in favor of Inclusive Louisiana including one or more of the requested remedies would, in substantial likelihood, redress the injuries to their property value.”

Health injuries—The defendants contended that the alleged health impacts weren’t caused by the parish and couldn’t be redressed by the court. But, the court noted, the plaintiffs had alleged the defendants “continue[d] to implement a discriminatory land use system resulting in increased risk of cancer and other illnesses for their members.” This was a continuing and threatened future injury, so the court found “that the broad injunctive relief sought would prevent the recurrence of the same injury in the future.”

The RLUIPA claims were time barred. “The applicable limitations period for RLUIPA claims is four years,” the court wrote. The claims here “accrued when the Parish Council adopted the 2014 Land Use Plan.” And the “continuing violation doctrine” didn’t apply.

CASE NOTE

The court rejected the defendants’ claim they were entitled to attorneys’ fees in this case. The plaintiffs’ claims were “neither frivolous nor in bad faith, and [the defendants] mischaracterize[d] both the length and contents of the complaint.”

The bottom line: While the plaintiffs’ claims were “procedurally deficient,” the court couldn’t “say that their claims lack[ed] a basis in fact or rely on a meritless legal theory.”

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Site Plan Review

Plaintiffs claim city unlawfully required site-plan review, business license concerning mixed-use zoning district property

Citation: Lathfield Investments, LLC v. City of Lathrup Village, 2023 WL 7418216 (E.D. Mich. 2023)

In 2021, Lathfield Partners LLC, Lathfield Holdings LLC, and Lathfield Investments LLC (collectively, the plaintiffs, or Lathfield) filed lawsuits against defendants City of Lathrup Village, Michigan, its Downtown Development Authority (DDA), and Jim Wright and McKenna & Associates (collectively, McKenna). The lawsuits were transferred to federal court and consolidated.

WHAT LED TO THE CONTROVERSY

In January 2020, Lathfield purchased property on Lathrup Village’s Southfield Road, which was located in the Mixed-Use Zoning District. According to the plaintiffs, for at least a decade the city had licensed uses at the property that were permitted under that zoning designation. The plaintiffs also asserted they didn’t have plans to change the property’s use. Thus, in their view, the city’s zoning code requiring “site plan review” did not apply since that code provision only applied to development or a proposed change of use.

Lathfield alleged that the city had erroneously required it to submit a site plan for approval. It also contended the city “demanded that an inspection of the Property be permitted” and that Lathfield was “unaware of Lathrup’s zoning code at the time and fearful of Lathrup’s threats of government action, was compelled against its will to permit an inspection of the property.”

The plaintiffs stated the defendants inspected the property in July 2020, and Jim Wright then issued a report stating that Lathfield had to make certain repairs to the property. They further alleged they tried to appeal the report’s conclusions but were told the report wasn’t appealable because no violations had been issued.

According to the plaintiffs, the city issued a site plan review to Lathfield stating the property “was likely approved as an office building.” The city also acknowledged that Lathfield “intend[d] to maintain the mixture of uses operating in the building, and that no additional space [was] proposed to be added.” The plaintiffs alleged this site plan review confirmed that there hadn’t been any change in use at the property, so there was “no mechanism” by which the city could compel Lathfield to comply with the site plan review.

The plaintiffs then asserted that the city had “realized that [it had] no enforcement mechanism under its zoning code,” so it instead “threaten[ed] Lathfield with prosecution for not having obtained a business license.” But, they claimed, Lathfield didn’t have to get a business license. Nonetheless, Lathfield requested one, but the city denied the request.

Further, Lathfield contended that the city had threatened to punish it for refusing to disclose confidential business information of its licensees.

The bottom line: The plaintiffs asserted that the defendants had engaged in “a concerted effort . . . to coerce and intimidate [Lathfield] to perform upgrades and improvements to the Property that the City [could not] otherwise lawfully compel.” They sought declaratory judgment against the defendants.

The defendants sought judgment without a trial.

DECISION: Request granted.

The issue of declaratory judgment was moot because Lathfield had “already gone through the site plan review and [had] not identified any current or pending request for it to go through any additional review.”

The plaintiffs weren’t seeking a declaration that the property will never have to go through [site plan review and compliance].” Since there wasn’t a “pending or anticipated request for site plan approval, the claim is moot,” the court concluded.

The court rejected the plaintiffs’ argument that they didn’t have to obtain a business license, too. The city asserted, and the plaintiffs didn’t dispute, that they owned income-producing property in the city and took money from occupants, paid property taxes, and advertised for the occupancy of the commercial space. The applicable ordinance section stated that anyone conducting business “of a type capable of being lawfully regulated by a city licensing ordinance shall apply for and obtain . . . a general business license.” The phrase “conducting business” was further described as “performing a trade, which means all other kinds of vocations, occupations, enterprises, establishments and kinds of activity not included in the definition of the term ‘merchant’ or ‘business.’”

“While not every income-producing or profit-making endeavor constitutes a trade or business, the Court is hard pressed to understand how offering commercial property to potential occupants would not constitute ‘conducting business’ in this instance,” the court wrote. “The location of the office of plaintiffs’ property management company is immaterial. Plaintiffs are indisputably offering their property and services in the City,” so judgment in the defendants’ favor was proper.

Flexible Zoning

Real estate developer alleges constitutional violations stemming from ‘flexible zoning’ issue

Citation: Donato v. Town of Scituate, 2023 WL 7699305 (D.R.I. 2023)

A real estate development, which MD Capital LLC owned, was located off Nipmuc Road in Scituate, Rhode Island. David Annese of Annese Construction Inc., initially proposed the subdivision plan, known as Nipmuc III, through the Town of Scituate’s approval process until MD Capital acquired the property in December 2016.

The town allowed for “flexible zoning.” This voluntary option, which was outlined in the town’s comprehensive plan and codified in its zoning ordinances, allowed a developer to deviate from certain zoning requirements. In exchange, the
town would receive land set aside for public use. Also, the town’s planning commission reserved discretion to require a fee payment in lieu of land dedication.

Here, Annese chose flexible zoning at the preapplication stage. The plan was approved at the master plan stage and included 46 acres of open space to be deeded to the town.

The application proceeded through the preliminary plan stage and the final plan stage during which the Planning Commission determined that the developer (the plaintiff in this case) had to both dedicate land to the town and pay the fee-in-lieu of land dedication.

Then, the Planning Commission approved the plaintiff’s final plan on August 15, 2017, and the plaintiff paid the fee-in-lieu of land dedication on April 20, 2018.

In July 2021, the plaintiff received a cease-and-desist notice from the town’s planning administrative officer, asserting that they hadn’t deeded to the town land as a requirement of the flexible zoning regulations or the “buffer area and easements,” which were a condition of approval.

The plaintiff filed suit in Rhode Island Superior Court, alleging Constitutional violations involving due process, the Takings Clause (of both the U.S. Constitution and the Rhode Island Constitution), as well as state and local violations pursuant to the Rhode Island Comprehensive Planning and Land Use Regulation Act and the Town of Scituate’s Code of Ordinances and Comprehensive Plan.

The town had the case transferred to a federal court and requested judgment without a trial.

DECISION: Request for judgment granted on federal claims.

The takings claim was “at best, a claim for violation of state or local law and not one that implicate[d] the federal Constitution”; the plaintiff didn’t meet the “‘rigorous’ standard needed to invoke the doctrine of substantive due process in this land use dispute”; and the plaintiff had the opportunity to be heard, so procedural due process had been provided.

ALLEGED Takings Clause VIOLATION

The plaintiff contended the town’s requirement of the open space dedication was an unconstitutional taking in violation of the Takings Clause of the Fifth Amendment to the U.S. Constitution. “As noted, the open space dedication is a requirement of the flexible zoning option provided in the Comprehensive Plan and codified in the Town’s Zoning Ordinances... The plaintiffs do not challenge the constitutionality of the ordinance but instead argue that the Town’s Planning Commission did not properly make findings of fact ‘that the land is being dedicated for the specific purposes included in the Scituate Ordinances’ and otherwise ‘failed to implement the ordinance as intended.’” However, a “municipality’s violation of state law, without more, [was] insufficient to pass as a violation of the federal Constitution.” Therefore, the request for judgment was warranted.

SUBSTANTIVE DUE PROCESS CLAIM

The plaintiff contended that the town and its officials violated their right to substantive due process by requiring the open-space dedication because the Planning Commission had “failed to implement the ordinance as intended.” The plaintiff also argued there wasn’t a way the Planning Commission could have imposed the land dedication requirement in accordance with the town’s subdivision regulations and its zoning ordinance.

“This, again, is an allegation of a violation of local law that does not give rise to a constitutional claim,” the court wrote. “The same can be said for the... claim regarding the fee-in-lieu requirement or the purported inclusion of ‘comments’ as conditions in the plan approval: the defendants failed to properly apply local law.”

PROCEDURAL DUE PROCESS CLAIM

To establish a procedural due process claim, a plaintiff had to show that “a property interest as defined by state law and... that the defendants deprived [it] of this property interest without constitutionally adequate process.” The plaintiff claimed the town had denied their right to procedural due process because the Planning Commission failed to timely record its decisions on the various plan stages within the 20 days required by state law.

“Indeed, throughout the process, the Planning Commission did not record its decisions for months or even years after each ruling,” the court noted. But the court rejected the plaintiff’s contention that this deprived them of their right to appeal any of the Planning Commission’s decisions because it rendered them unable to determine when the time to appeal began to toll. This was “unpersuasive to establish a procedural due process violation because the plaintiff[] did not lose their right to appeal once the decisions were recorded and the plaintiff[] hadn’t identified any other way that they were aggrieved by this failure to timely record.”

Further, the plaintiff had the chance to be heard on the issues of buffer area, easements, and land dedication and “did not, from the Town’s view, comply with the Planning Commission’s decisions. To the extent that the Town was incorrect about what it decided, state law provide[d] the plaintiff[] with adequate post-deprivation procedure to appeal,” so the procedural due process claim in federal court failed.

STATE LAW CLAIMS

The court refused to extend supplemental jurisdiction to the state and local claims, so those claims were sent back to the Rhode Island Superior Court for review.

Practically speaking: “Land use disputes such as this one, inherently local in nature, are best resolved by state and local tribunals,” the court wrote.

A Closer Look:

At the core of flexible zoning was an intent to “advance the [t]own’s interest in preserving its rural character and protecting its natural environment.”
Dimensional Variances

Court ruled on whether plaintiff abutter had standing to challenge local ZBA’s decision to grant variances to developer

Citation: Musker v. Zoning Board of Appeals of Billerica, 220 N.E.3d 1274 (Mass. Ct. App. 2023)

A plaintiff challenged the decision of the Zoning Board of Appeals of Billerica, Massachusetts (ZBA) granting dimensional variances to JR Development LLC (JR).

A lower court ordered judgment in favor of the named defendants—the ZBA and JR—finding the plaintiff lacked standing under state law to proceed with the case.

The plaintiff appealed, claiming standing existed because the proposed project would harm them by:

- increasing water runoff to their property and population density; and
- lowering the value of their property.

DECISION: Affirmed.

The plaintiff didn’t substantiate the claimed injuries with credible evidence.

A CLOSER LOOK

The subject property, which abutted the plaintiff’s land at the rear boundary, was located in Billerica’s rural residential district. JR, which wanted to develop a duplex and a single-family home, sought variances to divide the subject property into two buildable lots.

In the spring of 2019, pursuant to a building permit, JR demolished an existing residential structure on the subject property and cleared several trees and bushes and other vegetation.

Later that year, JR applied for a stormwater management permit from the Board of Health of Billerica (BoH). The BoH’s peer review engineer, BETA Group Inc. (BETA), reviewed JR’s application.

Then, at a public hearing, a BETA engineer said he had concluded that JR’s proposed stormwater mitigation measures would not result in an increased in the “peak rate of [water] runoff or volume of runoff.” He explained that while the proposed mitigation measures would not solve the water drainage issues the neighborhood already experienced, JR had “made sure that [it] . . . used [best management practices] so that [the neighborhood] will not have an increase in runoff . . . [T]he water problems will not get any worse.”

Based on BETA’s report, the BoH voted unanimously to grant JR a stormwater-management permit with conditions, which included that all construction had to be completed in accordance with the approved plans. The BoH found that JR’s proposal included “adequate measures to protect the public health and environment and comply[ed] with the intent of [BoH] Rules and Regulations.” It further found that “approval of [JR’s] request will not be detrimental to the public health and environment.”

The ZBA then held a public hearing on JR’s variance applications. The BoH submitted written comments stating that BETA had reviewed the proposed stormwater mitigation measures to determine compliance with applicable stormwater management regulations. After noting JR had proposed more-than-adequate measures to protect the public health, the ZBA voted unanimously to grant JR’s request.

THE COURT’S RULING

Only an “aggrieved” person could appeal a ZBA decision. Abutters were entitled to a rebuttable presumption that they were aggrieved. To rebut the presumption, the ZBA and JR had to provide “evidence ‘warranting a finding contrary to the presumed fact.’”

For example, to meet this burden, the ZBA and JR could:

- use “affidavits of experts establishing that an abutter’s allegations of harm [we]re unfounded or de minimis”;
- or
- by showing that the plaintiff didn’t have any “reasonable expectation of proving a legally cognizable injury.”

Once the ZBA and JR met that burden to rebut the presumption, the plaintiff had the opportunity to provide “credible evidence to substantiate the allegations’ of harm.” Credible evidence meant that which:

- provided “specific factual support for each of the claims of particularized injury”;
- and
- was “of a type on which a reasonable person could rely to conclude that the claimed injury likely [would] flow from the board’s action.”

Here, the plaintiff’s claim of standing failed because she didn’t meet these requirements concerning the issues of water runoff, population density, and decreased property value. Let’s take a closer look at those issues below:

Water runoff—The plaintiff claimed the proposed project would increase water runoff to their property, raising the risk of flooding and drainage issues. They claimed JR had failed to offer sufficient evidence to rebut this claim and so the standing must be presumed unless disproven at trial. Further, the plaintiff claimed that even without the benefit of the presumption, they had offered credible evidence to substantiate the claim.

“Neither argument persuades us,” the court wrote. “The materials relied on by [JR] were adequate to rebut the presumption of standing.” For instance, JR submitted the affidavit of a civil engineer and land surveyor who worked on the proposed project that described the steps JR had taken to obtain a stormwater management permit from the BoH. The engineer explained that “to obtain the permit, [JR had to] submit a watershed analysis that ‘allow[ed] for a full understanding of the amount of stormwater flow that enters the property and how best to treat, mitigate and allow for the continued stormwater flow with no impact to the downstream watershed.’”

BETA then reviewed the application to ensure that the proposed site design met the stormwater management regulations’ performance standards.

The bottom line: The engineer’s affidavit was not disputed. It was sufficient to show that the plaintiff’s claimed injury was unfounded or de minimis.”
In the end, JR had rebutted the presumption of standing, and the plaintiff hadn’t substantiated their claim with credible evidence. All they provided was their “own declaration, declarations from . . . neighbors, and photographs of [their] property, all to show that the water runoff to [their] property increased after the developer demolished the existing structure on the subject property in 2019.” But these materials didn’t “bear on whether the claimed injury likely would flow from the [ZBA’s] action,” that is, the ZBA’s decision to grant the variances.”

Population density—This claim also failed. The plaintiff argued harm would occur because the proposed project would increase population density and, therefore the risk of fire. “Even assuming that fire safety is an interest protected by the zoning bylaw, we agree with the judge that the plaintiff’s concerns are speculative and do not confer standing,” the court wrote.

The closest part of the proposed buildings to the plaintiff’s property line was nearly 200 feet. The distance to their home was 310 feet, “well within the setback requirements of the zoning bylaw,” which was sufficient to rebut the presumption of standing.

The court rejected the plaintiff’s assertion that the fire risk would increase exponentially because the new buildings would be larger and closer to their property line than the original structure. “This assertion constitutes ‘speculative personal opinion,’ which is not credible evidence substantiating the claimed injury,” the court added.

Diminution in property value—Finally, “the plaintiff failed to substantiate her claim that the proposed buildings, as opposed to the demolition of the prior building, would increase water runoff to her property.” Therefore, the plaintiff failed to show aggrievement based on diminution in the value of their property.

CASE NOTE

In granting the variances, the ZBA cited the BOH’s comments and found that “the construction of a retention area as approved by the [BOH] would help control water” and that “the storm water management plan is a factor that will allow for the requested relief to be granted.” The ZBA also found that “the existing lot is over [three] acres[,] which allows for two lots each well over the required 50,000 square foot minimum required for the zone[,] therefore not substantially derogating from the intent or purpose of this Zoning By-Law.”

The comprehensive updates to the zoning code approved by the City Council provide for greater housing density, accessibility, and affordability incentives while nurturing a diverse and sustainable community,” a press release stated.

“This is an exciting development and a big step toward achieving the goals outlined in our 2040 Comprehensive Plan,” said Mayor Carter. “With these changes, we are investing in the housing supply and expanding affordable housing and wealth-building opportunities for all of our residents,” Carter said.

The changes are the result of research from the city’s planning and economic development (PED) department: 1-4 Unit Housing Study (available at stpaul.gov/departments/planning-and-economic-development/planning/current-activities/1-4-unit-housing-study).

“Throughout the significant engagement process, the community’s desire for a greater variety of housing types was a predominant theme. The new zoning amendments will now allow neighborhood-scale housing, such as duplexes, triplexes, fourplexes, accessory dwelling units (ADUs), townhomes, and cluster developments, to be built in every part of the city,” the press release added.

The revised zoning regulations contemplate greater inclusivity and equity, noted Nicolle Goodman, the director of Saint Paul PED.

The zoning changes will:

- create updated zoning district design standards, updated lot-split options, and new H1 and H2 residential zoning districts, which will replace existing “single-family-only R1, R2, R3, R4 districts, other low-density RT1-RT2 districts, and some lower-density Planned Development (PD) districts.”
- update accessory dwelling unit (ADU) regulations “to increase the allowable size and number allowed per lot (up to two ADUs per single family home)”;
- add density bonus options “for ownership housing affordable to households earning 80% of area median income (AMI) or rental housing at 60% AMI; or for retaining an existing home; or for family-sized (three or more bedroom) units”; and
- update the city’s “cluster development” ordinance.

To view the city’s 2040 Comprehensive Plan, which provides a “blueprint” for how Saint Paul will be further developed over the next two decades, visit stpaul.gov/departments/planning-and-economic-development/planning/citywide-plans/2040-comprehensive-plan.

Source: stpaul.gov

New Hampshire

STRs ‘grandfathered’ into town ordinance in Meredith

The Town of Meredith, New Hampshire’s Zoning Board of Adjustment recently denied a resident’s administrative appeal claiming the town shouldn’t have settled with short-term rental (STR) operators in the area.

The town settled the controversy on the grounds that the STR owners had given enough information for it to conclude their property had been “grandfathered” into the zoning regulation, NH Business Review reported. The board reasoned that renting the property out on a short-term basis was secondary to the owners’ personal use of the property.
Sources: nhbr.com; meredithtownnh.ign2.com

New York

Court rules on whether to annul ZBA’s decision that short-term rental was not a permitted use under local town ordinance

The Town of Dunkirk, New York’s Zoning Board of Appeals (ZBA) found that a property owner had violated the local zoning ordinance by operating her residence as a short-term rental (STR). A court dismissed the property owner’s lawsuit against the town, and she appealed.

Recently, an appeals court reversed that judgment. The ZBA had found that a STR wasn’t a permitted use in the zoning district where the subject property was located “inasmuch as ‘single family dwelling[s]’ are the only permissible use in that district, and, according to the ZBA, a group of tenants that is transient or temporary does not meet the code’s definition of a family.”

But “[c]ontrary to the ZBA’s determination and the interpretation proposed by [the town], under the Zoning Ordinance, the transient or temporary nature of a group [wa]s but one factor that ‘may’ be considered to determine whether four or more persons who [we]re not related by blood, marriage, or adoption [we]re the ‘functional equivalent’ of a ‘traditional family.’”

If the plaintiff “rented her property to three or fewer persons, or to four or more persons . . . related by blood, marriage, or adoption, those groups would meet the Zoning Ordinance’s definition of a ‘[f]amily’ without regard to whether their tenancy was transient or temporary in nature,” the court explained. Therefore, “[t]he ZBA’s determination to the contrary lacked a rational basis, and the court erred in sustaining the determination.”