COLLEGE TOWNSHIP PLANNING COMMISSION
REGULAR MEETING AGENDA
Tuesday, May 2, 2023
7:00 PM
Hybrid Meeting (In-Person or via Zoom)

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: 815 7038 9848 ● Passcode: 330873

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

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

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

CALL TO ORDER:

ZOOM MEETING PROTOCOL:

OPEN DISCUSSION (items NOT on the agenda):

CONSENT AGENDA: CA-1 April 18, 2023 Meeting Minutes (Approval)
PLANS: P-1 Summit Park Subdivision Sketch Plan

OLD BUSINESS:

NEW BUSINESS:

REPORTS: R-1 DPZ CoDesign Update
R-2 Council Update

STAFF INFORMATIVES: SI-1 Zoning Bulletin

OTHER MATTERS: OM-1 Potential change of date for the second meeting in June

ANNOUNCEMENTS: Next meeting will be WEDNESDAY, MAY 17, 2023 at 7:00pm
CTC/PC joint meeting tentatively scheduled for Tuesday May 30, 2023 at 7:00pm

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 and Ms. Schoch reviewed Zoom protocol.

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

OPEN DISCUSSION: None presented

CONSENT AGENDA:
Mr. Hoffman moved to approve the April 4, 2023 meeting minutes as written. Mr. Fenton seconded. Motion carried unanimously.
PLANS:

P-1 The Pennsylvania State University Environmental Management Facility

Ms. Schoch introduced the plan with a brief powerpoint presentation. Mr. Genoese gave a presentation of the plan. He stated that the proposed facility is intended to improve the campus environmental health and safety, as well as combine and replace three existing facilities. These facilities are the Chemical Processing and Storage Building located on Big Hollow Road, the Radiation Processing and Storage located in the Academic Projects Building, and the Universal Waste from the Bar Pit on Fox Hollow Road. Mr. Genoese also explained the proposed parking reduction in the area of the building. Mr. Gabrovsek stated that as the Zoning Officer he would recommend noting there is additional parking available in the area of the dairy barns instead of requesting a parking reduction. Ms. Schoch stated that the parking regulations for the University Planned District can be found if the College Township Code §188-8.

The Planning Commission discussed emergency services access to the facility as well as containment in the instance of a hazardous waste spill. Mr. Crandle and Mr. Genoese explained the entrances to be used for the facility and which is the primary and which is the secondary. They also described the precautionary measures the facility is taking for containment in the instance of a hazardous waste spill.

There was also some questions about where the waste is coming from. Mr. Crandle stated that this facility is not a point of generation, it is a management facility that waste will be transported to from other areas of campus. Mr. Crandle expounded that there are separate areas for different types of waste which are to be segregated per DEP.

Mr. Darrah moved to recommend that Council approve The Pennsylvania State University Environmental Management Facility Preliminary/Final Land Development Plan dated March 16, 2023 and last revised April 6, 2023 subject to the following conditions:

1. Within ninety (90) days from the date of approval by Council, all conditions must be satisfied, final signatures must be obtained and the plan must be recorded with the Centre County Recorder of Deeds Office. Failure to meet the ninety (90) day recordation time requirement will render the plan null and void.
2. Pay all outstanding review fees.
3. Address to the satisfaction of the Township Engineer, any outstanding plan review comments from staff.
4. Fully comply with College Township Code Section 180-12.
5. Establish formal addressing for building with Centre County 911.
6. Provide proof of NPDES approval.
7. All conditions must be accepted in writing within seven (7) days from the date of the conditional approval letter from the Township Engineer.

Mr. Hoffman seconded. Motion carried unanimously.

OLD BUSINESS:

OB-1 Zoning Amendment Consideration

Ms. Schoch gave a brief introduction to the topic and presented the following questions to be discussed with the DPZ CoDesign representative, Marina Khoury. (Ms. Khoury’s responses are italicized)

1. The zoning amendment being requested is to add R-3 as an allowable use within PRBD. Does DPZ believe this is an appropriate interim step toward future implementation of some variety of form-based code in the Dale Summit?
   Yes. This is a good plan for the interim and DPZ believes these are compatible uses that the market will bear.

2. If the proposed zoning amendment is approved, one concern is the potential consumption of the PRBD by high density housing (ex. Student housing). Does DPZ have suggests that can be
incorporated into any zoning amendment that would provide protections from that concern becoming a reality?

Some recommendations could be to exclude dormitories all together, or allow student housing or dormitories with certain criteria for example, within a specific range of campus or other dormitories. Consider buildings and residential densities to be allowed within that zoning district.

3. Does DPZ see any unintended consequences associated with this potential zoning amendment that would hinder the vision for the future of Dale Summit as you understand it at this time?

No. Generally form-based code or a hybrid of is more permissive of uses and is more gaged towards pedestrian friendly facilities and building façade.

The Planning Commission discussed the requirement of a minimum of thirty acres to be developed and asked if that minimum acreage should be changed. Ms. Khoury stated that thirty acres is approximately the amount of seven blocks and suggested if the minimum is to be reduced maybe only reduce it to twenty acre minimum to be developed but also lower the open space percentage requirement.

A majority of the Commissioners agreed that they would like to see a master plan and ordinance revisions/hybrid for the entire Dale Summit Area before making a decision on this particular request. There was also a discussion amongst the Planning Commission about residential density of the entire area. It was determined that if a developer can wait until a master plan is developed for the Dale Summit area, there could potentially be a higher residential density allowed than what has been requested at this point.

Mr. Darrah moved to recommend that Council approve the recommendation by staff to allow R-3 as a use in a PRBD zoning district in College Township.

Motion failed due to lack of a second.

Mr. Hoffman moved to recommend Council deny the recommendation by staff to allow R-3 and wait twelve months for a Master Plan of Dale Summit.

Ms. Khoury seconded. Motion passed with a vote of five to one with Mr. Darrah opposed.

Mr. Darrah stated that he objects to the motion that passed because of the timeline stated within the motion. Mr. Forziat ended the discussion by stating Council is the approving body and they may agree or disagree with the Planning Commission’s recommendation.

At 8:50 pm Mr. Forziat granted a five minute break.

At 8:56 pm the Planning Commission meeting reconvened.

**OB-2 Official Map & Ordinance Language**

Mr. Forziat stated that he would like the Planning Commission to come to a position on this topic tonight. Mr. Bloom introduced the Official Map and Ordinance Language and stated the following as the tasks asked of the Planning Commission for this meeting:

- Provide feedback and/or revision of ordinance language
- Incorporate any additional elements on the Draft Official Map to be presented to Council
- Provide a recommendation of facilities on the Draft Official Map

Mr. Forziat asked for comments and/or revision on the ordinance language for the Draft Official Map. It was determined there were two minor revisions to be modified by staff.
Planning Commission moved on to the Draft Official Map. They reviewed the documents provided and began the process of determining facilities which they believe should be retained, removed, or revised. It was determined that the Puddintown to Porter proposed bicycle/pedestrian path was questionable due to geography. The proposed rail conversation greenway and the land reservation for stream access should be removed. Staff should investigate the Meyer Dairy Land proposed as a land reservation. Finally, the sidewalk along Hospital Drive shall extend the rest of the way to Park Avenue.

Mr. Darrah moved to recommend Council undertake a detailed review of the Draft Official Map, set a public hearing, and authorize staff to commence the required 45-day public review period of the Draft Official Map. All owners of the land reservations notated on the Draft Official Map should be notified directly and be given the opportunity to have “land reservation” removed from their property if they so choose. The material viewed at the April 18, 2023 PC meeting with minor revisions should be forwarded to Council with supplementary materials as well.

Mr. Fenton seconded. Motion carried unanimously.

NEW BUSINESS: None presented

REPORTS:

R-1 DPZ CoDesign Update
Planning Commission was happy with the report provided within the packet by Ms. Schoch.

R-2 Council Update
Mr. Hoffman gave a brief report of the happenings at the last Council meeting. The two plans that Planning Commission had recently made recommendations to Council were presented and conditional approval was granted to both. Extending the Spin E-bike service area into College Township was discussed. College Township Community Night at the Spikes is scheduled for August 19, 2023. Finally, there is a joint meeting of Council and Planning Commission coming up at the end of May.

STAFF INFORMATIVES:

SI-1 Zoning Bulletin
No further discussion.

SI-2 EZP Update
No further discussion.

OTHER MATTERS: None presented.

ANNOUNCEMENTS:
Mr. Forzait announced the next meeting will be Tuesday, May 2, 2023 at 7:00 p.m.

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

Meeting adjourned at 9:48 p.m.

**Draft**

Sharon E. Meyers
Senior Support Specialist – Engineering/Planning
Summit Park Subdivision
Project Narrative

Dale Summit Acquisitions, L.P. are currently the owner of Tax Parcel Number 19-002-029c and are proposing a subdivision consisting of 12 lots within the Summit Park Industrial Revitalization Area (IRA).

Road Network: The development will dedicate the right-of-ways for Summit Industrial Drive and Stewart Drive that are located within Tax Parcel Number 19-002-029C. Within the development, the roads will be constructed to be 24' wide with concrete curbing on both sides of road. The right-of-ways for Stewart Drive & Shiloh Road on the Stewart Property, west of this proposal, were dedicated to College Township on August 11, 1997 (RB. 950, PG. 762). The Township accepted the dedicated right-of-ways without having the roads being constructed, which is not a common practice. Typically townships do not accept dedications until the roads have been constructed and accepted by the township. Dale Summit Acquisitions, L.P. are proposing to improve the missing portion of Stewart Drive within the previously dedicated right-of-way to provide a connection from the existing Stewart Drive that terminates at the access driveway to Cleveland Brothers Equipment to Summit Industrial Drive within the proposed development. Within the existing unimproved right-of-way the developer proposes to construct a 24' paved cartway to “match” the existing portion which is 22'-23' in width. The township will have the ability to required additional improvements to this section of Stewart Drive when the adjacent lots are developed in the future.

Sidewalks: Sidewalks are being proposed on both sides of Summit Industrial Drive and Stewart Drive within Tax Parcel 19-002-029C. The sidewalks will be constructed as each lot is being developed to avoid damage and to allow for connection to utilities. Sidewalks are not being proposed within the unimproved previously dedicated right-of-way for Stewart Drive within the Stewart property west of this proposal since the existing portion of Stewart Drive currently does not have sidewalks. The northern side of the existing Stewart Drive is unlikely to have sidewalks constructed since these parcels have already been developed. The township will be able to require the future lot owners of the undeveloped parcel to construct the sidewalks once all the utilities have been installed.

Utilities: Sanitary sewer service will be provided to all the lots within the development by University Area Joint Authority (UAJA). Water service will be provided by College Township Water Authority for all the newly created lots while Lot 1, the former Corning Building has an existing connection to the Bellefonte Borough system that is located along Transfer Road. Natural gas, electric, telecom services will be extended throughout the proposed development.
Week Ending April 21, 2023

Met with Jennifer Hurley of Hurley Franks, and Associates (part of DPZ team) to discuss community engagement efforts.

Since Kick-Off meeting:

- Lindsay shared list of potential people for Steering Committee with Planning Commission
  - There’s definite interest from at least 2 new people, and previous Steering Committee members are interested in staying involved
- Charrette announcement – info was distributed in bi-annual newsletter that was mailed to residents 2 weeks ago
- Lindsay has started on a stakeholder outreach contact list

To Do

Jennifer:

- Talk to Marina re:
  - Are we set on the topics and the schedule for topic meetings?
  - Can we schedule a Steering Committee Virtual Meeting to give a pre-charrette presentation to that group (last 2 weeks of May?)
  - Do we want to do one-on-one interviews before charrette?
- Develop flyer for hand delivery for announcing charrette
- Schedule Zoom to talk to Lindsay again on 5/3. [DONE]

**Lindsay:**
- Send Jennifer copy of charrette announcement language that went out in the newsletter
- Identify specific stakeholder contacts to invite to each topic meeting
  - Invite specific stakeholders wanted at each meeting now
- Start pushing charrette announcement out on social media
- Put info on P&Z web page
- Give Update to Township Council (June 1st) and Planning Commission (June 6th)
- Hand-deliver flyer 7-10 days before charrette to nearby residents
- Hand-deliver flyers to businesses that might post the flyer, including the mega-church, the Mall
- Get info put in Village of Lemont newsletter
- CNET: Cable access channel:
  - Put charrette flyer up
  - Record Steering Committee presentation and put on cable access (not the discussion part – just Marina’s presentation)?
  - Record charrette opening presentation and put up
<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Status</th>
<th>Next Steps</th>
<th>Staff/Others</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Week of April 24</td>
<td>Planned Residential Development Ordinance</td>
<td>In Progress. DPZ made recommendations to the PRD Ordinance. Reviewed with staff and made some modifications. Provided Mark G. the PRD Ordinance recommendations</td>
<td>Consider providing the recommendations to PTE for review and to see how it would fit into a potential demonstration project. Discussed mapping of Dale Summit and potential to have visuals for upcoming discussions.</td>
<td>Lindsay – Marina – Mark G.</td>
<td>N/A</td>
</tr>
<tr>
<td>Amending Zoning in Dale Summit to Permit Residential developments</td>
<td>Per their request, PC heard from DPZ. PC recommended denial (5:1) of staff’s recommendation to include R3 uses in the PRBD</td>
<td>Prepare memo to Council outlining next steps/future actions. May 18 CTC Meeting</td>
<td></td>
<td>Adam - Mike - Lindsay</td>
<td>Township Offices</td>
</tr>
<tr>
<td>Community Engagement</td>
<td>Reached out to Stakeholders</td>
<td>As of 4/27, six confirmed stakeholders.</td>
<td>Work with DPZ and Hurley Davis Associates to engage the community. Looking for a diverse committee to ensure an opportunity for all to be heard.</td>
<td>Lindsay – Jennifer Hurley</td>
<td></td>
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COLLEGE TOWNSHIP COUNCIL MEETING  
April 20, 2023  
Meeting Overview and Report: This is a brief overview aimed for information to the Planning Commission

Public Open Discussion: Maxwell Property re-zoning request.  
Numerous citizens discussed their support for the re-zoning request and support for Mr. Maxwell’s good standing in the area.

Reports  
New highway funding around $60m. 
Pike Street formal opening April 21st. 
Thompson Reserve meeting successful. 
Planning Commission update presented.

Plans  None

Old Business:  
OB-1 Ordinance O-23-02 Amending Zoning Map  
Discussion centered around saving Forest Land  
Building development limited due to sewer.  
Drainage issues along Struble Road.  
Amendment to revise zoning map approved by Council.

OB-2 Regional Rental Ordinance Review:  
85 units presently in compliance with Township ordinance  
Need to reinforce “Intent”  
Do not tie fee to number of units  
Separate long term and short term  
Refer to Planning Commission for review.

New Business None

Other Matters: Council awarded $5,000.00 to Centre Kitchen as a contribution to their efforts of encouraging and processing local grown food products. New food hub to be located in Pine Grove Mills.

Desktop/College Township/Council meeting minutes.
Special Permit

Owner of vacant land challenges permit extension denial even though no development was done in five years permit was valid

Citation: Wesfair Partner LLC v. City of Waterbury Plan Commission, 2023 WL 1257990 (Conn. Super. Ct. 2023)

Wesfair Partners LLC (Wesfair), which owned about five acres of vacant land at 282 Oakville Avenue in Waterbury, Connecticut, appealed a final decision by the Waterbury Plan Commission (PC) through which it approved the issuance of a special permit and a site plan for a group dwelling development on the parcel.

Under express terms (and by statute), the special permit was set to expire five years after issuance. In advance of the expiration of the special permit, Wesfair applied to the PC for an extension of the special permit.

The PC held a hearing to consider the application for extension. At the hearing, Wesfair stated that it hadn’t completed, or even started, any of the work authorized by the special permit due to a downturn in the housing market in Waterbury.

After considering the matter—and absent any indication from Wesfair as to when it expected to start or complete the work—the PC unanimously voted to deny the requested extension.

Wesfair then appealed that decision.

**DECISION: Appeal denied.**

Wesfair failed to show that the PC’s final decision was arbitrary, capricious or an abuse of discretion; instead, the court found the PC’s decision was supported by substantial evidence and valid reasoning, which was consistent with the applicable statute.

The zoning code conformed to a requirement set forth under state law requiring a special permit to expire at five years unless an extension had been granted. The applicable state law noted, “The certificate of approval of such site plan shall state the date on which such five-year period expires. Failure to complete all work within such five-year period shall result in automatic expiration of the approval of such site plan, except in the case of any site plan approved on or after October 1, 1989, the zoning commission or other municipal agency or official approving such site plan may grant one or more extensions of the time to complete all or part of the work in connection with the site plan provided the total extension or extensions shall not exceed ten years from the date such site plan is approved. ‘Work’ for purposes of this subsection means all physical improvements required by the approved plan.”

THOMSON REUTERS®
Here, the site plan involved had been approved after October 1, 1989, so the special permit “statutorily automatically expire[d] in five years.” While one or more extensions could be granted with the commission’s approval, the decision to deny Wesfair’s request for one in this case wasn’t arbitrary, capricious and an abuse of discretion.

The bottom line: While the PC had the authority to grant an extension, it also had discretion to deny it. “The undisputed facts that [Wesfair] had failed to even start any site work during the pendency of the five-year permit period and had no concrete plan to do so, [so its own lack of action constituted] substantial evidence supporting the [PC’s] decision,” the court found.

Not only did Wesfair fail to timely perform the work; it requested an extension without any “concrete plan to start or complete the work” and since it hadn’t started the work, it also hadn’t “invested its capital in the work and did not have the foregoing reliance interest,” so the denial of its request for an extension was supported by its “own inaction, lack of plan and presentation.”

A CLOSER LOOK

The court had authority to review the record to determine whether a planning or zoning board had “acted fairly, with proper motives and upon valid reasons.” Its role, however, was not to “substitute [its] judgment for that of the board unless the board’s decision [was] unreasonable in view of the applicable law and the substantial evidence in the record.” And it was Wesfair’s burden to show that the board had acted improperly in view of the applicable law and the substantial evidence in the record.

PRACTICALLY SPEAKING

“When a zoning board state[d] its reasons for action, the question for the court [wa]s whether the reasons [we]re reasonably supported by the record and whether they [we]re pertinent to the appropriate considerations which the board [wa]s required to apply under the zoning regulations. . . . If the board [di]d not state the reasons for their action, the court [wa]s to review the record to discover whether a sufficient reason to support the board’s decision exist[ed],” the court explained.

Case Snapshot:

Wesfair alleged it had been aggrieved by the PC’s final decision because as the owner of the property in question, it was unable to develop the property as it had proposed with the expiration of the special permit that had been granted about five years earlier.

Zoning Bylaws

ZBA claims access way couldn’t be used to reach specific lot because bylaws prohibited ‘common driveways’

Citation: Audet v. Boardman, 2023 WL 1433641 (Mass. Land Ct. 2023)

The Town of Granville, Massachusetts’ Planning Board endorsed an “ANR Plan” in July 2020. That plan showed a 65-acre tract of land that Austin Audet’s (Austin) parents owned in 2020. The tract was within an Agricultural-Residential district under the town’s bylaws and was situated between two roads, Hartland Hollow Road and Crest Lane.

The west side of the tract bordered Hartland Hollow Road by approximately 1,065 feet, and the east side of it bordered Crest Lane in two places. The larger bordering area is 208.85 feet along Crest Lane, and the other border-
ing area was only 20-feet wide, a “rattail” extending from the tract’s northeast corner.

The ANR plan showed the tract divided into five lots, numbered 1 through 5. Hartland Hollow Road bounded the west side of all five lots.

Section 3.10 of Granville’s bylaws required a minimum frontage of 200 feet for single-family lots, and it was undisputed that Hartland Hollow Road provided frontage for each of the lots on the ANR Plan.

But the plan showed a waterway, Pond Brook, running along the western edge of each of the lots, near and parallel to Hartland Hollow Road. Austin’s parents—likely anticipating they might not get permission to build one or more bridges across the Brook to gain useful access to the ANR plan’s lots—showed on the plan internal ways that linked the eastern portions of its Lots 1, 2, 3 and 5 to the plan’s Lot 4.

The plan showed those ways merging within Lot 4 into a single “Proposed 18 ‘Wide Access Way With 3’ Gravel Shoulders” (the access way). The access way headed east within Lot 4 from the merger point until it reached Crest Lane. The plan placed within Lot 4 the 208.85 feet section of the tract that bordered Crest Lane. The plan made the rattail part of Lot 2, but it didn’t show a driveway within the rattail.

Once the ANR plan was approved, the parents imposed on the plan’s lots various restrictive covenants. A declaration that accompanied those covenants granted to the owners of those lots’ easements over the plan’s internal ways, in return for the owners’ agreement to contribute to maintenance of the ways.

Then, the parents conveyed to their children each of the lots on the plan. Austin received Lot 2, which contained approximately 18 acres and included the rattail. This lot bounded Hartland Hollow Road by 200 feet and bounded the north side of Lot 4 by 330.59 feet. One of the ANR plan’s ways started at Lot 1 (which was on the northwest side of Lot 2) and cuts across Lot 2 to reach Lot 4. That way then linked up with the access way.

In early 2021, Austin wanted to build a home on Lot 2. He learned from the town’s building inspector, though, that in the inspector’s opinion, he hadn’t proved he had lawful, suitable access to Lot 2 for construction of a dwelling.

Once the inspector put that opinion in writing, Austin appealed to the Zoning Board of Appeals (ZBA), which upheld the inspector’s findings. It found Austin:

- hadn’t had the approvals for construction of an access road to Lot 2 from Hartland Hollow Road and across Pond Brook
- couldn’t use the rattail to access Lot 2 lawfully from Crest Lane because the bylaws imposed a 15-foot “driveway setback-side yard” for properties in the Agricultural-Residential District and it would be impossible for anyone to build a driveway having 15-foot setbacks within the 20-foot-wide rattail without a variance, which he didn’t possess; and
- couldn’t use the access way to reach Lot 2 because the bylaws prohibited “common driveways.”

The ZBA didn’t explain the last conclusion—it only noted that the building inspector had said he hadn’t approved any such driveways during his 20-year tenure.

Austin headed to court, challenging the ZBA’s third conclusion—that the bylaws prohibited common driveways.

The ZBA and the town contended the decision correctly construed the bylaws and that the board had independent grounds under the bylaws for rejecting Austin’s proposed access. Both defended the decision’s conclusion that the bylaws prohibited common driveways this way: “Lot 2 may use the Access Way or other common driveways on Lot 4 only if such uses are lawful ‘accessory uses’ of Lot 4. Section § 1.2 of the Bylaws defines ‘accessory use’ as ‘one clearly subordinate to, and customarily incidental to, and located on the same premises with the main use . . . to which it is accessory.’ ”

They also contended that Lots 2 and 4 weren’t the “same premises” under the bylaws, so a common driveway on Lot 4 that served a use on Lot 2 would not be a lawful “accessory” use of Lot 4. Therefore, in their view, Lot 2’s use of the access way would be unlawful.

On his request for judgment without a trial, Austin argued the ZBA and the town’s decision to uphold the inspector’s findings was erroneous.

**DECISION: Austin’s request for judgment granted.**

The ZBA had interpreted the applicable bylaw incorrectly.

The bylaws didn’t define “Driveway setback-sideyard” as it appeared in a specific section of the zoning code. Another section, however, defined the term “Yard, Side” as “[a] yard adjacent to the side lot line and extending from the front yard to the rear yard.” Section 1.2 expressly defines the terms “side lot line,” “front yard,” and “rear yard.” A “Lot Line, Side” was “[t]he line or lines bounding a lot which extend from the street toward the rear in a direction approximately perpendicular to the street. In the case of corner lots, or through lots, all lines extending from the streets shall be considered side lot lines.”

The court noted that both Austin’s Lot 2 and the access way’s Lot 4 were “through lots” under the bylaws and that “[a] lot other than a corner lot which extend[ed] all the way between and abut[ted] two or more streets.” This “cause[d] both Lots to have an interesting ‘side lot lines,’ . . . A ‘Yard, Front’ was [a] yard extending between lot side lines across the front of a lot adjacent to each street the lot adjoin[ed].”

Further, the definition of “Lot Line, Front” required the owner of a through lot to “designate one street line as the front lot line.” And “Yard, Rear” was “[a] yard adjacent to the rear lot line and extending between side lot lines.”

“Taking these definitions together, th[is] [c]ourt agrees
with Austin that ‘side yards’ under the [by]laws don’t include areas that are parts of ‘front yards’ or ‘rear yards.’” With one section of the zoning code defining side yards as extending “from the front yard to the rear yard, . . . [h]ad Granville’s Town Meeting wanted to include within side yards portions of front and rear yards that [rested] adjacent to a side lot line, . . . [the] definition of side yards would have had such yards extending from the ‘front lot line’ to the ‘rear lot line.’”

The bottom line: Section 2.1 of the bylaws didn’t define an operative term—side yard—found in section 3.10; “given that, the [c]ourt [t]ook section 1.2’s express definition of ‘side yard’ over whatever” the ZBA and town claimed a specific diagram showed.

CASE NOTE

The news wasn’t all bad for the town. On another of Austin’s requests for judgment on the grounds that the bylaws were vague, the court denied the request. It found the bylaws weren’t vague, so the town was entitled to judgment on that issue.

Notice

Resident near defunct golf course claims improper notice of rescheduled hearing enough to halt development approval

Citation: Save Calusa, Inc. v. Miami-Dade County, 2023 WL 1430979 (Fla. 3d DCA 2023)

In 1967, North Kendall Investment Ltd. obtained a zoning resolution authorizing the development of the golf course. The resolution contained a 99-year restrictive covenant preventing any other use of the property absent the approval of 75% of affected property owners and the county commission.

Years later, a successor developer sought to rezone the golf course to facilitate the construction of additional homes. Community residents and the county consistently resisted further development efforts, and litigation ensued.

The District Court of Appeal of Florida (the court) reaffirmed the viability of the restrictive covenant in 2016, and Kendall Associates I LLLP (Kendall Associates), an affiliate of GL Homes, acquired the property.

More than 75% of affected property owners subsequently agreed to eliminate the restrictive covenant, and the commission released the land from the restriction. Kendall Associates then filed an application to rezone the property to allow for the development of 550 single-family units on the land.

Notice of a public hearing went out and on the eve of the hearing, the commission expressed concerns regarding the ability to satisfy a quorum. The hearing was canceled and reset.

Notice of the rescheduled hearing was mailed to residents within one-half mile of the subject property, posted at the hearing site and property, and electronically transmitted to self-subscribed users of the electronic notification service.

Close to two weeks before the public hearing was due to convene, attorneys for resident Amanda Prieto objected and alerted the county to the fact that the notice reflected the wrong applicant and had yet to be published in a newspaper of general circulation, as required by section 33-310 of the Miami-Dade County Code. Despite this objection, the hearing proceeded.

At the hearing, Prieto, who lived a few 100 feet from the site of the now defunct golf course, argued that the school her children currently attended—Calusa Elementary—was at capacity and that the addition of hundreds of homes would displace students and necessitate busing to neighboring schools. She also testified she had submitted extensive documentation as to adverse environmental impacts, including potential effects on fish and wildlife.

The commission adopted the resolution, and Prieto asked a court to review the decision. The circuit court denied relief, finding Prieto lacked standing because she had raised only generalized concerns regarding increased traffic and diminished property values, and, alternatively, since the county had satisfied the regulatory notice requirements for the originally scheduled hearing, it was not required to publish any further notice.

At that point, Prieto asked the court to examine the issue.

DECISION: Petition granted.

The circuit court had departed from essential requirements of law by not applying the correct regulatory framework and established law.

This was a “second-tier certiorari proceedings” concerning a quasi-judicial decision of a local governmental entity. In such a case, the court’s review was limited to “whether the circuit court afforded procedural due process and whether the circuit court applied the correct law, or, as otherwise stated, departed from the essential requirements of law.”

“Clearly established law can be derived not only from case law dealing with the same issue of law, but also from ‘an interpretation or application of a statute, a procedural rule, or a constitution[al] provision,’ ” the court explained.

Here, “[t]he decision to grant or withhold relief by way of second-tier certiorari largely depend[d] on [the court’s] ‘assessment of the gravity of the error and the adequacy of other relief,’ ” and “if the legal error [wa]s left uncorrected, it [w]ould remain unknown the extent of the impact resulting from the error in notice, including whether Prieto would have presented a more developed objection.”

The bottom line: “Allowing the decision to stand threaten[ed] to compromise the due process the regulatory framework strives to afford,” so the court granted
the petition for certiorari and quashed the order under review.

A CLOSER LOOK

Regarding public notice, Section 33-310 of the Miami-Dade County Code indicated that no action could be taken on any application “until a public hearing ha[d] been held upon notice of the time, place, and purpose of such hearing.”

Additionally, there were distinct forms of notice:

- publication in a newspaper of general circulation in Miami-Dade County;
- notice had to be mailed to homeowners within a specified radius and posted on the affected property; and
- a courtesy copy of the notice had to be furnished to the president of certain specified homeowners’ associations.

“Failure to publish, post, or mail notice to affected homeowners ‘render[ed] voidable any hearing held on the application.’” But failure to provide courtesy notices did not render a hearing voidable.

Practically Speaking:

“The plain language of the Code made it clear that published notice was mandatory and not discretionary.” Here the county knew that the notice was defective as it related to Prieto and others. “The notice reflected the wrong applicant, and the county failed to publish notice as required. Nonetheless, it proceeded forward with the hearing.”

Rezoning

Residents seek to block Utilities Board from granting generating certificate for solar power provider to proceed

Citation: In re: Coggon Solar LLC, 2023 WL 143211 (Iowa U.B. 2023)

On March 3, 2021, Coggon Solar LLC (Coggon) filed an application with the Utilities Board (UB) for a certificate of public convenience, use and necessity pursuant to Iowa Code chapter 476A and a request for waivers (Application) for a proposed 100 MW solar generation facility to be located approximately 2.75 miles west of Coggon, Linn County, Iowa.

In the application, Coggon requested the UB waive a number of requirements, including a hearing, pursuant to the state’s code and administrative procedure rule.

In June 2021, several individuals filed a petition to interview, which was granted.

But, the UB granted Coggon’s request to waive the portions of the code and rules regarding a hearing and full procedural schedule. I also noted that, according to a specific section of state law, it had to approve Coggon’s application and grant it a generating certificate if several elements had been established.

The UB analyzed the necessary elements and found Coggon had met every element, so it approved the issuance of the generating certificate. But, the UB also decided to withhold the issuance of the generation certificate until the Linn County Board of Supervisors (BOS) issued a final, unappealable decision in response to Coggon’s request under the county’s utility-scale solar installation ordinance.

In November 2021, the residents filed an application for reconsideration, contending the UB had erred in granting Coggon’s waiver requests, failed to consider the effects of the project, and violated their constitutional rights.

The UB denied the residents’ application for reconsideration, and in February 2022, Coggon filed a letter stating that the BOS approved Coggon’s rezoning request to permit construction of the proposed project.

The issue for the Utilities Board now was whether to grant the residents an immediate stay.

DECISION: Request for stay denied.

Based on the arguments the residents presented as part of their reconsideration request, the UB wasn’t convinced they would likely prevail if a timely request for judicial review had been filed with the UB’s most recent order in November 2022.

The bottom line: In determining whether to grant a stay, the UB was directed to consider the following factors:

- the likelihood that the applicants were likely to prevail on judicial review;
- the irreparable harm they would suffer if a stay wasn’t granted;
- the harm that could be suffered by the other parties if the stay was granted; and
- the public interest.

Here, the residents had “failed to address, or even mention, any of these factors in their stay request,” which served as a distinct basis for denying the request.

A CLOSER LOOK

The elements that had to be established for Coggon to be awarded a generating certificate were as follows:

- “The services and operations resulting from the construction of the facility were consistent with legislative intent as expressed in [the code] and the economic development policy of the state as expressed in [another part of the state law], and would not be detrimental to the provision of adequate and reliable electric service”;
- “[t]he applicant was willing to construct, main-
taining, and operate the facility pursuant to the provisions of the certificate and [the applicable subsection]; and

- “[t]he construction, maintenance, and operation of the facility [would] be consistent with reasonable land use and environmental policies and consonant with reasonable utilization of air, land, and water resources, considering available technology and the economics of available alternatives.”

**CASE NOTE**

In February 2023, the residents’ efforts to block Coggon from proceedings with its solar-farm construction in Linn County suffered another blow. It was reported at that time that work on the 640-acre parcel is likely to begin soon now that the BOS has voted 2-1 to rezone the area where the development will be located from agricultural. With the approval, approximately 750 acres are being rezoned to agriculture with a renewable energy overlay (which will expire in 35 years), *The Gazette* reported.

Source: *thegazette.com*

**RLUIPA**

Church claims requiring it to obtain special use permit violated rights under RLUIPA

Citation: *Alive Church of the Nazarene, Inc. v. Prince William County, Virginia, 2023 WL 1116961 (4th Cir. 2023)*

*The Fourth U.S. Circuit has jurisdiction over Maryland, North Carolina, South Carolina, Virginia, and West Virginia.*

In November 2018, Alive Church of the Nazarene Inc. (ACN) purchased 17 acres of land, which had been primarily zoned for agricultural use. It sought to conduct religious assemblies on the property, but Prince William County, Virginia (the county) denied its request to worship on its property before ACN complied with the zoning requirements, so it initiated a lawsuit in August 2021 in the Eastern District of Virginia.

ACN alleged that the county’s actions violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). A lower court dismissed its claims, finding it hadn’t stated a claim on which relief could be granted. ACN appealed.

**DECISION: Affirmed.**

The county didn’t violate RLUIPA’s equal terms provision by requiring ACN to obtain a special-use permit, and the requirement that it had to obtain such a permit to conduct religious services in an agricultural district didn’t violate RLUIPA’s non-discrimination provision.

RLUIPA protected the free exercise of religion by addressing land use ordinances and the religious rights of institutionalized persons. “The portion of RLUIPA pertaining to land use is further subdivided into the substantial burden, non-discrimination, and equal terms provisions,” and here, ACN claimed the county’s actions violated all three of those provisions.

**Equal terms claim**—ACN claimed the Agricultural Zoning Ordinance treated religious assemblies and institutions worse than non-religious assemblies and institutions. “Under RLUIPA’s equal terms provision, ‘[n]o government shall impose or implement a land use ordinance in a manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly or institution.’ ”

To state an equal terms claim, ACN had to allege that:

- it was a religious assembly or institution;
- it was subject to a land use ordinance; and
- the land use ordinance treated it on less than equal terms with a non-religious assembly or institution.

Here, the “undisputed that [ACN] was a religious assembly subject to a land use ordinance,” so the analysis focused on whether it had “sufficiently alleged that it ha[d] been treated on less than equal terms with a non-religious assembly or institution.”

The court explained a land-use ordinance violated RLUIPA if it excluded religious assemblies while allowing non-religious assemblies that undermined the ordinance’s goal in the same way.

The bottom line: ACN’s agricultural activity “‘d[id] not change the fact that religious institutions [w]ere not agricultural by definition and must therefore get permission to operate in the [Agricultural] District.” A farm winery or limited-license brewery would be allowed in the agricultural district by right because they were by definition “agricultural” in nature. Thus, ACN failed to state an equal terms claim. And since ACN couldn’t point to a similarly situated comparator, it couldn’t show it had been treated unequally, which was required for its RLUIPA claim to proceed.

**Discriminatory intent claim**—ACN also alleged the county’s ordinance was designed to discriminate against religious institutions. To proceed with this claim, it had to show that “the challenged government decision was ‘motivated at least in part by discriminatory intent’ ” against a religious entity.

Here, ACN claimed the county had contravened the non-discrimination provision of RLUIPA by differentiating between religious institutions and agricultural operations and requiring it to obtain a license to hold religious gatherings on its land.

The bottom line: ACN hadn’t alleged that the county either had “passed the Agricultural Zoning Ordinance with discriminatory intent or enforced it in a discriminatory manner. Nor ha[d] the Church asserted facts sufficient to establish a prima facie claim of religious animus by the [c]ounty,” the court found.
All ACN did was point out that it had been subject to the SUP requirement, but there wasn’t any evidence that “any of the decisionmakers or community members expressed any animosity toward the [church in particular or religious institutions in general.”

OTHER KEY TAKEAWAYS

The federal appeals court also found that enforcing the agricultural zoning ordinance didn’t violate RLEIPA’s substantial burden provision. Also, the ordinance didn’t create an “absolute impediment to religious land use,” nor did the special-use permit requirement violate the Constitution’s Free Exercise Clause.

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**Case Note:**

ACN claimed requiring it to obtain a liquor license to conduct special events in the agriculture district was out of legal bounds. Not so said the court, ruling that wasn’t a violation of its free exercise rights or its First Amendment right to peaceably assemble. Finally, that liquor-license requirement didn’t violate ACN’s equal-protection rights.

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**Zoning News Around The Nation**

**California**

San Francisco’s new housing plans gets the green light

Gov. Gavin Newsom recently announced that California has certified San Francisco’s Housing Element plan, which will lead to the development of 82,000 new housing units in the next eight years.

This will more than triple the city’s previous 10-year, annual housing production average with more than half the development earmarked for low-to moderate-income housing, a press release noted.

San Francisco’s planning department staff worked with the state’s Department of Housing and Community Development on the plan, “providing substantial technical assistance to ensure that San Francisco’s housing element is in compliance with state law,” the press release added.

Gov. Newsom said the announcement shows the state’s commitment to addressing the housing crisis. “Through stringent state mandates with real consequences for failing to meet their obligation, San Francisco is showing what is possible when you stop kicking the can down the road and start to face the difficult decisions it takes to tackle the housing needs of Californians,” he stated.

“San Francisco is moving forward aggressively with not only getting our Housing Element approved, but doing the critical work to reform our laws and processes to get rid of barriers to housing and deliver the homes our city badly needs,” added the city’s mayor, London Breed.

Source: [gov.ca.gov](http://gov.ca.gov)

Palo Alto’s planning and transportation commission considers changes to local zoning laws to comply with state housing laws

As of print time, Palo Alto, California’s Planning and Transportation Commission was slated to discuss local zoning law changes to comply with recent housing law amendments at the state level, such as Senate Bill 9, which is designed to support a multi-year effort to curb the state’s housing crisis (more on Senate Bill 9 can be found at [focus.senate.ca.gov/sb9](http://focus.senate.ca.gov/sb9)). To access the city’s agenda, visit [cityofpaloalta.primegov.com/Portal/Meeting?meetingTemplateId=8746](http://cityofpaloalta.primegov.com/Portal/Meeting?meetingTemplateId=8746).


**Georgia**

Lawsuits raise issue of zoning ordinance enforcement in two counties

Recently, No2Rivian group, which seeks to preserve agriculture and rural land, filed lawsuits against Morgan County and the State of Georgia seeking the enforcement of local zoning ordinances so that land-disturbance activities are halted concerning a $5 billion Rivian Electric Vehicle manufacturing plant.

According to the [Morgan County Citizen](http://morgancountycitizen.com), an attorney for the group told The Atlanta Journal-Constitution that his clients want to make sure the state isn’t trampling on residents’ rights by allowing development that’s not for public use or purpose.


Source: [morgancountycitizen.com](http://morgancountycitizen.com)

**DeKalb County’s text amendments to zoning ordinance for managing small-box discount retail store growth passes**

DeKalb County, Georgia’s Board of Commissioners unanimously passed text amendments to the DeKalb Zoning Ordinance to set distance requirements for small-box discount retail stores (SBDRS). The move is intended “to diminish crime and mitigate negative outcomes linked to . . . SBDRS . . . within DeKalb communities,” a press release explained.

“The legislation was authored and introduced by Commissioner Lorraine Cochran-Johnson in February 2019 out of concern for concentrated growth of SBDRS within targeted census tracts in DeKalb County. Later that December, a moratorium was enacted that halted the issuance of new business licenses to small box discount retail stores,” the county added.

“My research combined with watching the rapid growth of small box stores in our communities caused
me to explore best practices to ensure they will not be a detriment to our neighborhood,” said Commissioner Cochran-Johnson. “My research showed heavy concentrations of SBDRS in South and Unincorporated DeKalb, with two stores located in District 1; three stores in District 2; 25 stores in District 3; 21 stores in District 4; and 13 stores in District 5. The data showed 67 percent of all boxed stores in DeKalb County were in my district—Super District 7. Additionally, there was a direct correlation between small box retail stores, food deserts, health disparities, and crime,” Cochran-Johnson added.

The text amendments’ passage came after the county collected statistical data from federal and local agencies, including the U.S. Census Bureau, DeKalb County Police Department, and the DeKalb County Tax Assessor, which indicated that:

- SBDRS were generally located “in or near food deserts when compared to pharmacies, such was not the case”;
- SBDRS “negatively impact[ed] median home values within a census block, while grocery stores often show a positive effect”;
- they were “less likely to have safety or security features, unappealing exterior aesthetics, interior disorderliness and lean staffing, and agency-provided data evidenced increased crime within 100 feet of SBDRS”; and
- the “number of SBDRS in a given census tract was significantly correlated with the number of violent crimes, property crimes, public order crimes, and total crimes,” with data showing “the negative impacts of SBDRS, particularly on crime, [being] similar to those of convenience stores.”

“Of the retailers considered, SBDRS and convenience stores exhibit the greatest impact on crime outcomes in a census tract,” the county added.

To view the text amendments, visit files.constantcontact.com/260752e3501/8b75a81e-a41d-4637-b4f7-65c82f5f073e.pdf.

Source: dekalbcountyga.gov

Maryland

Multi-month moratorium on warehouse developments proposed

Legislation has been introduced that would provide for a six-month moratorium on permits and approvals for warehouse developments in Harford County, according to information posted on Dagger News Service. Harford County Executive Bob Cassidy reportedly said more time is needed to help the county evaluate the impacts mega-warehouses and distributions centers may have on the local communities, economy, and habitats. He added that currently, zoning and development regulations don’t account for such types of structures.

Now the proposal heads to the Harford County Council for consideration, the news outlet reported.

Source: daggerpress.com

North Carolina

Sanford obtains community development block grant funds for neighborhood revitalization

The City of Sanford, North Carolina, has received close to $6 million in community development block grant funds from the state’s Department of Commerce’s Rural Economic Development Division to support neighborhood revitalization efforts.

Most of the funds ($4.95 million) will be used for infrastructure improvements to expand a Jackson Heights area subdivision and the $950,000 remainder will go to public utilities, curbs, gutters, and sidewalks—more specifically for connecting a new subdivision deemed necessary to address affordable housing needs with public infrastructure.

Source: sanfordnc.net

Wisconsin

Yard signs at center of residents’ legal battle against City of Neenah

Residents in Neenah, Wisconsin have filed suit alleging the city violated their First Amendment rights by barring their right to express their opinions through yard signs, the Wisconsin Institute for Law & Liberty (WILL), which filed suit on their behalf, reported.

In its federal lawsuit complaint, WILL alleges that the city’s demand for residents to remove signs opposing local zoning efforts or face consequences is a constitutional violation. The lawsuit came after WILL sent the city a demand letter to stop the alleged infringement but it failed to comply.

“The right to free speech is a fundamental right afforded to every citizen of the United States. WILL is proud of its record defending the First Amendment and proudly stands with [the] two individuals who are entitled to have their voices heard,” said WILL Associate Counsel Cara Tolliver.

Tim Florek, one of the clients WILL represents in this case, added, “The city’s sign ordinance is unconstitutional, and we as a community have every right to express our ideas—even through a simple yard sign. If we are not permitted to speak on a matter of public concern, then we simply lose the privilege of a government accountable to the people they are elected to serve.”

WILL is seeking a temporary restraining order and preliminary injunction to bar the city from enforcing its sign ordinance. “[T]he city cannot suppress or threaten its citizens’ First Amendment rights, and [WILL] asks the court to award attorneys’ fees,” it explained on its website.

To download the complaint in this case, visit will-law.org/wp-content/uploads/2023/01/Florek-Complaint.pdf.

Source: will-law.org

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