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: 829 7648 4792  ● Passcode: 164095

*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  September 5, 2023 Meeting Minutes (Approval)

PLANS:                  SP-1  Maxwell Subdivision SKETCH PLAN (Discussion)

OLD BUSINESS:

NEW BUSINESS:

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

STAFF INFORMATIVES:     SI-1  Council Meeting Minutes
                         SI-2  Zoning Bulletins
                         SI-3  EZP Update

OTHER MATTERS:

ANNOUNCEMENTS:         Next regular meeting will be Tuesday, October 3, 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, Ms. Schoch reviewed Zoom protocol.

ROLL CALL: Mr. Forziat verified Ms. Khoury was absent and Mr. Toumayants would be late.

OPEN DISCUSSION: None presented.

CONSENT AGENDA:
Mr. Fenton moved to approve the August 15, 2023 meeting minutes as written. Mr. Darrah seconded. Motion carried unanimously.
PLANS:
P-1 Clearwater Conservancy Sketch Plan
Ms. Schoch introduced the sketch plan and mentioned Ms. Nardone, Mr. Hamilton, and Mr. Gass are sitting in the audience to present the plan. She gave a brief PowerPoint presentation of the sketch plan and supplemental documents provided by ClearWater Conservancy and opened the floor for questions. Mr. Darrah asked for clarification of the plan which Mr. Hamilton and Mr. Gass explained.

Mr. Hamilton further explained ClearWater Conservancy’s proposed and properties they have purchased. He added that more recently ClearWater Conservancy has identified the area of the proposed subdivision as a potential conservation area. The area could be opened for the public to enjoy and would increase connectivity and flow throughout the conservancy properties. Mr. Gass added they plan to submit a sidewalk waiver as connectivity will be achieved using trails throughout the property, there is no new development proposed, and topography will make it problematic for sidewalk construction.

Overall the Planning Commission would like to see a Master Plan with phasing in order to visualize the overall project and possibly have a general timeline for projects. Anticipating the request for a sidewalk waiver, ClearWater provided two additional maps along with the proposed subdivision plan, which staff introduced in the brief PowerPoint presentation. A sidewalk waiver request is not required with the Sketch Plan submission, however, it will be considered and submitted along with the Preliminary/Final Subdivision Plan.

Ms. Nardone stated a long term vision may be brought before the Planning Commission when a formal submission is made. She added that the existing property that borders Spring Creek will remain undeveloped with walking trails throughout. The Conservancy also plans to fully restore the farmhouse and barn. The farmhouse is planned to be a community conservation center and the barn will house staff in the upper floor and storage for projects and community events in the lower floor.

After an abundance of discussion between the Planning Commission, ClearWater Conservancy, HRG, and staff it was determined that the Conservancy and HRG have the Planning Commissions comments and the commissioners look forward to seeing the subdivision plan.

OLD BUSINESS: None presented.

NEW BUSINESS: None presented

REPORTS:
R-1 DPZ CoDesign Update
Ms. Schoch stated that a meeting has been scheduled between DPZ and staff to discuss the proposed form based code provided by DPZ. Staff is currently reviewing the code and working towards more of a hybrid version. Mr. Forziat asked if DPZ will meet with the Planning Commission at the beginning of the process. Mr. Sharp stated that staff should review and refine the proposed changes prior to being presented to the Planning Commission as this is going to be a long and tedious process.

R-2 Council Meeting Update
The prior report led to the Council Update. Mr. Darrah opined that the Planning Commission’s recommendation for the Shiloh Road Rezoning topic was not properly represented. Ms. Schoch stated that Council had a special meeting on August 29th and was provided the same worksheet that Planning Commission completed at their last meeting with the Planning Commission and staff’s recommendations and rationale included. Council was able to review the staff recommendations and Planning Commission recommendations. However, Council ultimately decided they prefer the deliberative process conditional use will provide and determined use by right is not the direction they will follow. Mr. Darrah stated that duplexes can be front end loaded and continues to maintain that affordable housing will not be achieved through rear loading residences. He opined that the Township is being way too restrictive and there will be no affordable housing in that area due to that restriction.
Mr. Darrah asked why staff is stuck on all parking in the rear of buildings. Staff replied that they took the advice of the consultant. Mr. Darrah offered that the consultant is not familiar with the area and deals primarily with more urban environments and different economics than State College. Mr. Forziat stated that there has been a push by staff to Council suggesting that conditional use is the way to go. He added that the current Council has determined they would like flexibility in the ordinances to be able to negotiate and do what they want. However, the Planning Commission is considering the future of the Township and a time when there will be different Council members with different agendas and there needs to be controls. Mr. Darrah added that Planning Commission’s recommendation for plans and ordinances can be turned down if Council doesn’t like the recommendation. Ms. Schoch stated that the Planning Commission’s recommendation and staff’s recommendation were presented to Council. Staff continues to agree with the consultant which was hired by a committee of various members of Council and Planning Commission, as well as Centre Region representatives. Planning Commission determined that their recommendation was not voiced strongly at the Council Special Meeting. Mr. Forziat stated that the Planning Commission understands what transpired in the special meeting given the dialogue and needs to let Council complete the process as they wish and Planning Commission’s recommendations don’t matter.

**STAFF INFORMATIVES:**

**SI-1 Council Meeting Minutes**

No further discussion.

**SI-2 Zoning Bulletin**

No further discussion.

**OTHER MATTERS:**

**OM-1 Centre Region Planning Commission August 3rd Report & Handouts**

Mr. Forziat introduced the topic and discussed the summary report and supporting documents provided. There was a final draft of the sewer service area and regional growth boundary provided. It was determined that the regional growth boundary and sewer service area share the same boundary and if a developer requests a shift in one line, they could both shift.

There was an EV Readiness Guide and model ordinance developed and presented to the CRPC by an intern. Mr. Forziat stated this document is interesting and something the Planning Commission should become familiar. He added that there was also census results provided and the Planning Commission should be familiar with the demographics as plans and other documents are presented to the commission.

**ANNOUNCEMENTS:**

Mr. Forziat announced the next meeting will be Tuesday, September 19, 2023 at 7:00 p.m. and continues to encourage dialogue and communication at the meetings.

**ADJOURNMENT: Mr. Sharp moved to adjourn. Mr. Fenton seconded. Motion carried.**

Meeting adjourned at 8:29 p.m.

**Draft**

Sharon E. Meyers
Senior Support Specialist – Engineering/Planning
SKETCH PLAN NARRATIVE

Maxwell Commercial Subdivision and Hotel Land Development Plan

September 15, 2023

Ed Maxwell currently owns Tax Parcel 19-2B-64, 19-2B-65A and 19-2B-65B in College Township. The properties are on west side of Shiloh Road north of the Trout Road / Shiloh Road intersection. The properties are both zoned General Commercial and are partially located within the well head protections zone. The total size of the combined tracts is 19.3 acres +/- and is located with the Center Region Sewer Service Area.

The sketch plan proposes the re-subdivision of these properties in 7 commercial lots varying in size from 1 acre to 5.4 acres. Trout Road will be extended across Shiloh Road to create a 4-way intersection and extend up to the northern area between proposed lots 3 and 7. The public R-O-W will continue to the northern property line of the subdivision for a possible future connection from the adjacent Clair property. Sidewalks are shown on both sides of the proposed E. Trout Road.

A private 50’ shared access easement with a 26’ shared access drive is proposed to provide access to Lots 1-3 as well as Tax Parcel 19-2B-64. Pedestrian access is also provided to those lots with a sidewalk on the west side of the shared drive. A sidewalk is also proposed along the Shiloh Road frontage.

Public water service will be provided to the lots with a connection to the existing CTWA main along Shiloh Road. Public sanitary sewer service will be extended for the existing UAJA main near their public station along Shiloh Road. Stormwater management for the E. Trout Road extension will be provided on parts of Lots 3 and 5 in accordance with the township’s well head protection ordinance. Stormwater management for the development of the lots will be address on each lot.

A traffic impact study based upon PennDOT and College Township’s input will be submitted with the proposed subdivision based upon anticipated use.
Lot 3 of the subdivision will be developed for a 115-room hotel. Access will be provided from the shared access drive noted above and at the terminus of the E. Trout Road extension. The hotel has a Porte Cochere at the west end of the building serving as the drop-off and main entrance. Secondary access will be from Trout Road. Vehicle circulation is provided around the entire building.

Pedestrian access is provided around the hotel perimeter and out to Trout Road and the shared access drive. ADA parking is distributed throughout the site at various building entrances.

Water and sanitary sewer connections will be made to public main extension proposed for the commercial subdivision. Stormwater management will be provided by an underground system located primarily in the parking area.

An enclosure for refuse and recycling is located in the northeast corner of the parking lot. Lighting and landscaping will be proposed in accordance with the College Township ordinances.
## Briefing Paper – DPZ CoDesign Form-Based Code in Dale Summit
Prepared by: Lindsay K. Schoch, AICP | Principal Planner

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| Week Ending September 1, 2023 | Interim Zoning Changes in Dale Summit | Council reviewed and considered PC recommendation to permit some R3 uses By Right in the PRBD. Ultimately and after consideration, Council decided to permit these uses as Conditional Uses | Public Hearing set for October 19, 2023.  
CRPA/CRPC Review October 5.  
Public Notice / Public Participation Process | CTC / PC / Lindsay / Mark / Don / Adam / Sharon |
|            | Plan & Code Preparation | DPZ submitted proposed changes to the Subdivision and Land Development Code | Meet with DPZ to discuss code changes. Determine if this will take place in Maryland or in Pennsylvania | Lindsay / Mark / Don / CRPA / Adam |
|            | Charrette Follow-Up | DPZ submitted Charrette Expense | Provided to Finance Dept. for payment. | Lindsay / Finance Dept. |

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# Interim Zoning Changes in Dale Summit

Council reviewed and considered PC recommendation to permit some R3 uses By Right in the PRBD. Ultimately and after consideration, Council decided to permit these uses as Conditional Uses.

CRPA/CRPC Review October 5.
Public Notice / Public Participation Process

# Plan & Code Preparation

DPZ submitted proposed changes to the Subdivision and Land Development Code

Meet with DPZ to discuss code changes. Determine if this will take place in Maryland or in Pennsylvania

# Charrette Follow-Up

DPZ submitted Charrette Expense

Provided to Finance Dept. for payment.
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<tr>
<td>Week Ending September 15, 2023</td>
<td>Interim Zoning Changes in Dale Summit</td>
<td>Pending Ordinance permitting some R3 uses by Conditional Use in the PRBD via PRD. Public Notice / Public Participation Process</td>
<td>Public Hearing set for October 19, 2023. CRPA/CRPC Review October 11.</td>
<td>Lindsay / Mark / Don / Adam / Mike</td>
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<td>Plan &amp; Code Preparation</td>
<td>Staff’s technical review of the first draft Staff met in-person with DPZ to discuss first draft.</td>
<td>DPZ to submit second draft to staff. Joint meeting of CTC and PC to be held (tentatively) in late November to review the Draft Code</td>
<td>Lindsay / Mark / Don / Adam / Mike</td>
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ATTRADED BY –
COUNCIL: Dustin Best, Chair
L. Eric Bernier
Susan Trainor
Anthony Fragola

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

ABSENT: D. Richard Francke, Vice Chair

CALL TO ORDER: Mr. Dustin Best, Council Chair, called to order the August 17, 2023, Regular Meeting of the College Township (CT) Council at 7:00 PM, and lead in the Pledge of Allegiance.

ANNOUNCEMENT: Chair Best announced that NB-1, a new business item related to Workforce Housing, would be postponed to a future meeting for discussion.

PUBLIC OPEN DISCUSSION: Nothing brought forward.

NEW AGENDA ITEMS: Nothing to add to the agenda.

SPECIAL REPORTS: State College Area Connector Project Update

Ms. Lori Cole, AICP, Johnson, Mirmiran & Thompson, Inc., on behalf of the Pennsylvania Department of Transportation, offered an update on the State College Area Connector Study Planning and Environmental Linkage (PEL) Report. In attendance with Ms. Cole was Mr. Eric Murnyack, Penn DOT Project Manager, and Mr. Kevin James, Michael Baker International. Ms. Cole offered the Draft PEL and Supportive Technical Documents were released to the public on February 16, 2023, with a Comment Period ending on March 19, 2023. At the end of the comment period, they received 46 comment letters/emails.

Ms. Cole reviewed the three (3) build alternatives advancing to the National Environmental Policy Act (NEPA) Study area. Those alternative routes are labeled US 322-10EX, US 322-1S, and US 322-5. Ms. Cole review the NEPA process and the next steps. At the end of this process, a preferred alternative route will be determined. This preferred route will be circulated and a public hearing held. From this, a Final Environmental Impact Study (FEIS), combined with a Record of Decision (ROD), which is the Federal
Highway Administration’s reasons for the project decision, will become public and available for public review and comment. Ms. Cole shared the timetable for this process. They anticipate a preferred alternative will be selected in late 2024, early 2025. The entire environmental phase of the project to be completed by mid-2026.

Council offered appreciation to Penn DOT for the public involvement in the process and thanked Ms. Cole for her presentation.

REPORTS:

a. Manager’s Update

Mr. Don Franson, Township Engineer, offered the Traffic Calming project on Shamrock and Oak Ridge Avenue was completed today. Everything is ready to go for the first day of school.

b. COG Regional, County, Liaisons Reports

COG Public Safety Committee: Ms. Trainor reported the Public Safety Committee met on August 8, 2023, and discussed a formal job description for Volunteer Firefighters and heard an update on the procurement problems with the CRCA fleet. She reported that Shawn Kaufman was appointed to Fire Director.

College Township Industrial Development Authority (CTIDA): Ms. Trainor reported the CTIDA met on August 16, 2023, and approved the annual audit report, authorized the CTIDA solicitor to begin crafting an Agreement for Management Services to hire an CTIDA Executive Director, extended a new loan and authorized the solicitor to file necessary documents to recoup outstanding line of credit balance that is in default.

COG Climate Action and Sustainability (CAS) Committee: Mr. Fragola offered the CAS Committee met on Tuesday, August 15, 2023, and heard an update on Centre Sustains by Ms. Pam Adams, and reviewed the Refuse and Recycling contracts. He asked the Centre Sustains website be linked to the College Township website.

c. Staff/Planning Commission/Other Committees

Planning Commission (PC): Mr. Hoffman, PC Liaison to Council, offered that the PC met on August 15, 2023, and approved the Medlar Field Land Development Plan and the Summit Park Subdivision Plan. They also discussed the proposed rezoning on Shiloh Road. He reserved his comments for the discussion later in the meeting.

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

Nothing to report.

CONSENT AGENDA:

CA-1 Minutes, Approval of

a. August 3, 2023, Regular Meeting

CA-2 Correspondence, Receipt/Approval of
old business:

ob-1  centre soccer/celtic soccer

mr. brumbaugh, township manager, offered that at the may 18, 2023, ct council meeting, council received correspondence from mr. dave fonash, representing celtic soccer, requesting clarification on the availability of fogelman fields. specifically, the issue of “priority use” of the fields by the centre soccer association (csa). in his opinion, mr. fonash offered that the current priority use of the fields by csa effectively excludes the ability of celtic soccer, and, by extension, others, to use the fields.

mr. brumbaugh clarified that csa was a contributor in building the field, along with college township, state college area school district (scasd), and the pa state department of conservation and national resources (dcnr). a letter dated june 7, 2003, to then csa president, martin bradley, from the township manager, acknowledged csa’s $150,000 contribution toward the development of the park and granted authority of csa to erect signage, recognizing donors to the project. additionally, the letter states that in recognition of csa’s financial contribution to the project that csa be granted priority consideration in the scheduling and use of the houserville park fields. centre region parks and recreation (crpr) shall administer this scheduling and use in accordance with all relative agreements involving the scasd.

mr. brumbaugh had a conversation with both csa and celtic representatives, along with jeff hall, crpr, to see if there were any areas of compromise. it was apparent after this meeting there was little compromise so the discussion is before council for consideration. mr. brumbaugh offered in 2003, when the field was developed, csa was the only active soccer association so they had full and free use of scheduling and utilization of the fields.

mr. brumbaugh offered two recommendations for council’s consideration to begin the discussion:

- crpr should limit the scheduling of csa activities to four (4) days per week in season allowing for the scheduling of other groups two (2) days per week.
- in order to address the equipment issue, crpr should purchase all existing equipment stored onsite by csa.
Mr. Brumbaugh offered some recommendations to use as starting points in the conversation. He opined there is no apparent solution to this issue. Additionally, the Township Solicitor has opined that the letter from 2003 does not represent an actual “contract” between CSA and CT and is not enforceable as such.

Mr. Jeff Hall, CPRP, offered Fogelman field is the only full-sized soccer field in the region until the Whitehall Road Regional Park is completed. There will be two full-sized at this park.

Chair Best offered CSA and Celtic Soccer each fifteen minutes to state their case.

Mr. Matt Viddick, CSA, addressed the priority use of Fogelman Field. He organized every document that represented communication with CT and CSA regarding Fogelman Field. This field development project was a collaborative venture, a public-private partnership, with CT, SCASD and CSA. CT leases the field from the SCASD. CSA has over 1000 players in their program. They have youth and adults ages 5 to 75 participating in their program.

Mr. Viddick offered the priority consideration establishes CSA’s standing and use of the fields during primetime over other sports/athletes in the area. Mr. Viddick offered that taking the hours the park is open; dawn to dusk, year-round, CSA is only taking 11% of the available hours. Their program runs April to October for 20 hours a week. However, CSA has put in 30% of the money for improvements to the park. CSA needs field use after school and work hours.

Mr. Viddick continued CRPR is the mechanism to manage the priority scheduling. CSA has no intention of giving up their priority use. A few years ago, CSA contributed to the upgrade of the sprinkler system with no contracts involved so they continue to add value to the park. He would suggest a formal contract be drafted to outline the relationship moving forward.

Mr. Jeff Garrigan, CSA Board Member, is tasked with the scheduling and coordinating the fields. Fogelman is their anchor field. He opined it is the best field in the area. CSA runs three seasons: spring, summer and fall. They occupy the fields six of the seven days and rest the field for one day. They have 18 goals at Fogelman Fields. They are locked after use. CRPR has combinations for those locks to move when mowing. He calculates 1000 touches on Fogelman field during the week during the season. Consistent field space is needed to run a successful program.

Mr. Brumbaugh offered that no formal contract was drafted in 2003 because of the funding from DCNR; state grant money would have prohibited any contract or agreement. CT and CSA provided initial funding for the match. According to the records provided by CSA, the grant application showed a total project cost of $495,974.51 with a local match of $175,975 from College Township and $100,000 from CSA, with $220,000 requested from DCNR.

Mr. Dan Meehan, Celtic Soccer Board Member, Coach and Parent, and Director of Facilities addressed Council. He offered that he was part of CSA for a very long time as a coach, parent and founder of their adult league. He appreciates their efforts to promote soccer in the area and the work done to Fogelman Field. He offered that as Fogelman Field is a public facility and as a non-profit organization, Celtic Soccer is seeking equitable access and use of the field. They are willing to contribute money if that is necessary for equal access.

He agreed that yes, Fogelman is open and available during the day but during the school day, kids are not available. CSA is fully booked on the fields during the evenings; and, weekends, the field is booked for tournaments and games.

Fogelman Field is the only full-sized field in the region. Celtic Soccer has five teams that play full-field soccer and they use the high school turf fields and schedule around their events. CSA also uses Circleville Park, Homestead Park and the municipal building field.
Celtic Soccer has roughly the same amount of participants in their program as CSA. They focus more on competitive soccer. Mr. Meehan opined he supports the idea of the municipality or CRPR buying the goals and equipment so that fields can be shared. They do not want to push anyone off fields; they want equitable use of the larger field.

Ms. Christy Owens, Director CRPR, has not had the opportunity to meet with both groups. In order to make their programs run successfully, CRPR needs to have good relationship with key stakeholders like CSA, who invest in their facilities. Like at WRRP, they try to provide a mix of athletic facilities so they are equitable to all sports. They try to uphold priority agreements that are in place. CRPR does not own any soccer goals for any of their facilities. WRRP will not be operational until next fall. Currently, CRPR has a priority use agreement with Happy Valley Adventure Bureau for WRRP and at some point those agreements will have to be renegotiated. Ms. Owens added there must be a reinvestment into those facilities.

Ms. Owens offered that CRPR does not typically invest in capital costs for parks such as Fogelman Field. They are looking at investing in goals for WRRP so that more groups can use the facility. They are hoping for the most amicable resolution to this issue.

Mr. Jeff Hall, CRPR, offered that at each field, there is the potential for multiple field use. CRPR does not ask CSA for their schedule, they block out the time for CSA and they schedule their own practices/games.

Council offered that priority does not equal exclusivity. Priority consideration needs to be defined. Council supports the CRPR having a business plan moving forward. CRPR are the professional in this relationship and know more about scheduling. The reason why they were charged with the task of scheduling and determining priority use.

Council Member Bernier applauded the public-private partnership created years ago. He supports the priority use schedule for CSA as administered by CRPR. He suggests the end date correspond with the end of the lease agreement (March 31, 2027) or when a major investment is needed in the facility.

Ms. Owens offered there is no criteria to determine and define priority use and when CRPR does not own the equipment at the park, this becomes a major tipping point in who gets field use.

Mr. Hall, CRPR, offered since 2002, he was given the agreement and was told to follow this for 25 years and offer priority scheduling to CSA, which is what he has done. He explained that there are several other associations, i.e. rugby and lacrosse, that if parties were sitting down for discussions, these other associations would want to be included.

Mr. Brumbaugh reiterated that because there was public funds used from DCNR as well as from the Township, a formal agreement for priority use was not drafted in 2003. Additionally at that time, CSA was the only soccer association in the region. He added that, however, this project would not have moved forward without the financial support of CSA, but this does not override the fact that public money was used; therefore, there cannot be exclusive usage of the park.

Council asked if Celtic Soccer had petitioned to CRPR about equitable use before coming to Council. Mr. Meehan offered that they have made requests for field use in the past with no success so they thought it to be a non-starter because they do not have goals at the fields. Mr. Meehan opined that it appears if a team has goals at a field; it becomes their field for use.

Mr. Hall offered the CSA submits a request to him annually for field use. (Typically 8 AM to 5 PM – Monday through Thursday, 8 AM to 6 PM – Saturday, 11 AM to 6 PM – Sunday) If groups submit a request for the field that conflicts with this time, Mr. Hall reports that it is not available. Mr. Hall offered all other times are available.
Ms. Owens added that currently, scheduling comes down to who owns the equipment. She added that CRPR is in need of more fields. Ms. Owens offered that CRPR would put their head together develop policies that will assist in their efforts to be as equitable as possible and be respectable to their partners in their scheduling efforts.

Chair Best would like Council to offer support to CRPR to determine the definition of priority consideration in an effort to get more equitable-use in the scheduling.

In conclusion, Council supports the intent of the memo for CRPR to administer priority consideration for scheduling of Fogelman Field; and added, CRPR should continue to schedule the same way through the end of this season.

Again, Council reaffirmed, it is their charge to make sure there is equal public access to public facilities. Mr. Bernier offered that if you want equal access, then do not accept private money. Once you accept private money, you have unequal access.

Council ask Staff to begin working with the SCASD to codify a new lease when the old lease has expired.

(Chair Best called for a recess at 9:03 PM. The meeting was reopened at 9:12 PM)

**OB-2  Shiloh Road Rezoning**

Ms. Schoch, AICP, Principal Planner, offered that the Planning Commission (PC) met on August 15, 2023, and had an intensive discussion regarding the proposed zoning changes in the Planned Research Business Park District (PRBD) in the Dale Summit. At this meeting, the PC agreed upon a recommendation to bring forward to Council.

The PC’s recommendation is to allow duplexes, townhomes, and multi-family Uses by Right with conditions in the PRBD. Council is tasked with determining if they agree with the recommendation from PC to allow R3 uses By Right or if they would like to see a more deliberate process of a Conditional Use to allow R3 uses in the PRBD.

Mr. Hoffman, PC Liaison to Council, offered their discussion at the meeting was very interactive and productive. They appreciated the organization provided by Staff. The worksheet was helpful. They agreed with Staff some of the time in regards to the “mays” and “shall” but where they did not, an explanation was given. Their goal for the “Use by Right” is to make the document easier for the developer to understand. The PC opined that “Use by Right” with supplemental conditions gives the developer a clean diagram of what they can and cannot do in that particular zoning district. Mr. Hoffman opined there continues to be flexibility in what the PC is proposing along with some clear guidelines.

Council discussed allowed use vs. conditional use. Council opined the Conditional Use process allows the flexibility Council was seeking and allows for more public input. Additionally, Allowed Use may make it easier for the developer but limits the spirit of Form Based Code.

Council determined it necessary to look into the recommendation in more depth and opted to meet in a Special Meeting for further discussion. Staff to determine a date and time in the next two weeks to advertise and hold a Special Meeting.

**NEW BUSINESS**

**NB-1  Workforce Housing Ordinance** (Discussion postponed to a future agenda)
College Township Council Regular Meeting Minutes
August 17, 2023
Page 7 of 8

**NB-2  College Township Compensation Study**

Mr. Brumbaugh, Township Manager, offered that in 2022, CT reached an agreement to participate with the Centre Region of Governments (COG) in their contract for a wage and compensation study conducted by GovHR. The CT agreement with GovHR was to perform a wage range analysis of, then current, CT wage ranges assigned by position to compare like-positions from like-communities within Pennsylvania. The Township Manager and Assistant Manager worked with GovHR to identify a group of 25 similar municipalities within PA with the intent to survey their wage ranges by position and create comparisons to CT to be used to verify or modify existing CT wage ranges. The overriding objective of this work was to ensure that current wage ranges – and thus employee pay – are competitively positioned to adequately provide for both recruitment and retention of CT employees.

GovHR issued a final report to CT in February of 2023. Staff reviewed the report, including pay plan recommendations and wage ranges, and is now in a position to make certain recommendations to Council.

A new position was not included in the study, the position of an Economic Development Coordinator. This position is being created to function primarily as the Executive Director of the Industrial Development Authority but it will incorporate other tasks for CT as needed. The recommended pay range for this position is $78,500 to $94,200.

Chair Best offered that Council discussed specifics of this study in an Executive Session. No further comments or questions were brought forward and the following motions were made.

- Mr. Bernier made a motion to approve study-based Manager recommended Wage Ranges as shown in Exhibit 1 and authorize Staff to implement appropriate adjustments beginning with the first pay period of the 4th Quarter in 2023.
  - Ms. Trainor seconded the motion.
  - Motion carried unanimously.

- Ms. Trainor moved to create the position of Economic Development Coordinator with the salary range of $78,500 to $94,200.
  - Mr. Bernier seconded the motion.
  - Motion carried unanimously.

**NB-3  Fireworks Ordinance Update**

Mr. Gabrovsek, CT Zoning Officer, offered following the most recent July 4th holiday, Staff received a higher than normal number of complaints pertaining to the use of fireworks. Staff did some research of the PA State Fireworks Law (Agriculture Code, Title 3 Chapter 11), that was last amended on July 11, 2022. This legislation sets forth rules for sale/display/use of both consumer fireworks and display fireworks. Any person over the age of 18 may purchase consumer fireworks. Display fireworks may only be purchased and used by specially licensed parties.

Title 3 also limits a municipality in how they may regulate fireworks. The current College Township Ordinance (Chapter 109) does not comply with the State Law in regards to consumer fireworks. Staff is proposing Ordinance O-23-08 to amend Chapter 109 – Fireworks of the Township Code to comply with Title 3. The proposed changes includes the most restrictive controls authorized by the Title 3 legislation.

After a brief discussion, Council made the following motion.

- Mr. Bernier made a motion to authorize Staff to advertise and set a public hearing at the next CT Council meeting to adopt Ordinance
O-23-08 an ordinance to amend Chapter 109 – Fireworks in the Township Code.
Ms. Trainor seconded the motion.
Motion carried unanimously.

STAFF INFORMATIVES:

No Staff Informatives were pulled for discussion.

OTHER MATTERS:

Mr. Brumbaugh, Township Manager, reminded Council about the College Township Community Night at the Spikes to be held on Saturday, August 19, 2023. Resident of College Township can receive discounted tickets to the game. Gates open at 5:35 PM with the first pitch at 6:35 PM.

Mr. Kathryn Denka, Puddintown Road, asked Council to conduct a speed study on Puddintown Road from Houserville Road to the entrance of Spring Creek Park going in both directions. Mr. Franson, Township Engineer, offered the Township would put up speed signs to get some preliminary numbers.

ADJOURNMENT:

Chair Francke called for a motion to adjourn the meeting.

Ms. Trainor moved to adjourn the August 3, 2023, Regular College Township Council Meeting.
Chair seconded the motion.

The August 3, 2023, Regular College Township Council Meeting was adjourned at 8:59 PM.

Respectfully Submitted By,

Adam T. Brumbaugh
Township Secretary
CALL TO ORDER: Mr. Dustin Best, Council Chair, called to order the August 29, 2023, Special Meeting of the College Township (CT) Council at 6:05 PM, and lead in the Pledge of Allegiance.

ANNOUNCEMENT: Chair Best announced Council met in an Executive Session prior to the start of the meeting to discuss personnel and real estate matters.

PUBLIC OPEN DISCUSSION: Nothing brought forward.

NEW AGENDA ITEMS: Nothing to add to the agenda.

OLD BUSINESS: OB-1 Shiloh Road Rezoning

Ms. Lindsay Schoch, AICP, Principal Planner, offered that at the August 17, 2023, CT Council Meeting, Council reviewed the recommendation from the Planning Commission (PC), for the proposed rezoning allowing R3 uses (duplexes, townhouses and multi-family residential) to the Planned Research and Business District (PRBD) in the Dale Summit. After the discussion, Council agreed to discuss further at an advertised Special Meeting.

Ms. Schoch offered thanks to the PC for their thoughtful consideration of this matter. Staff opined the main reason for the PC recommendation of Use by Right is that the ordinance would be more straightforward and easier for a developer to understand.

A Special Meeting Worksheet was presented to assist in formulating Council’s stance on the zoning amendment and supporting conditions. The PC also discussed and reviewed a similar Special Meeting Worksheet and their recommendations and rationale were provided to Council, on their worksheet, along with the initial recommendation and rationale provided by Staff to the PC.

Council discussed Use by Right vs. Conditional Use. A consensus of Council favored of allowing R3 uses in the PRBD by Conditional Use. Council then proceeded to review each section of the Special Meeting
Worksheet and offered direction to Staff to move forward with an ordinance allowing R3 Uses in the PRBD by Conditional Use.

Mr. Bernier made a motion to advertise and set a public hearing for October 19 for an ordinance (O-23-05) to allow R3 uses in the Planned Research and Business District by Conditional Use. Ms. Trainor seconded the motion. Motion carried unanimously.

OTHER MATTERS:

Mr. Fragola offered that a new store opened in the Walmart business plaza, Trek Bikes.

ADJOURNMENT:

Chair Best called for a motion to adjourn the meeting.

Mr. Bernier moved to adjourn the August 29, 2023, Special College Township Council Meeting. Chair seconded the motion.

The August 29, 2023, Special College Township Council Meeting was adjourned at 7:48 PM.

Respectfully Submitted By,

Adam T. Brumbaugh
Township Secretary
Cell Towers

Telecommunications provider challenges variance denial, says federal Telecommunications Act trumps zoning board's authority

Citation: Celco Partnership v. White Deer Township Zoning Hearing Board, 2023 WL 4537717 (3d Cir. 2023)

The Third U.S. Circuit has jurisdiction over Delaware, New Jersey, Pennsylvania, and the Virgin Islands.

Telecommunications provider Verizon Wireless (Verizon) wanted to erect a cell tower in White Deer Township, Pennsylvania. The proposed structure didn't conform with the local zoning ordinances, so Verizon requested several variances.

The White Deer Township Zoning Hearing Board (ZHB) denied the requests, and Verizon sued the township under the Telecommunications Act (TCA).

The lower court granted judgment without a trial to Verizon because the ZHB's decision had "the effect of prohibiting the provision of personal wireless services." The ZHB appealed.

DECISION: Affirmed.

The township had effectively barred personal wireless services in denying Verizon's variance application.

In deciding this case, the Third U.S. Circuit Court of Appeals explained it had previously adopted a two-part test in APT Pittsburgh Ltd Partnership v. Penn Township Butler County of Pennsylvania for deciding whether local government action had the effect of barring the provision of personal wireless services. Under the test, a provider had to show:

1) there was "a significant gap in wireless service"; and
2) it was "filling that gap in the least intrusive manner."

The Third Circuit explained that the Federal Communications Commission (FCC) had criticized that test and other similar tests, though, finding they were too narrowly focused on coverage gaps and reflected "an outdated view of the marketplace."

"Instead, [the FCC had] interpreted the statute to prohibit government action that 'materially limit[ed] or inhibit[ed] the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment,' " the Third Circuit added. But "[u]nder either standard, the [ZHB's] variance application denial had the effect of prohibiting the provision of personal wireless services, so it was unlawful," it ruled.

A CLOSER LOOK

The court explained a telecommunications provider didn't have to "disprove every possible alternative, and Verizon provided sufficient: evidence to show that it made a good-faith effort to fill the coverage gap in the least intrusive manner." "So under
APT Pittsburgh, the . . . variance denial violated the TCA because it had the effect of prohibiting the provision of personal wireless services;” it added.

And in analyzing this case using the FCC standard, the ZHB had “materially inhibited the ability of Verizon to compete in a fair and balanced legal and regulatory market because, considering the totality of the circumstances, its application denial prevented Verizon from providing wireless services without incurring unreasonable costs.”

For instance, “Verizon was constrained by the Pennsylvania moratorium, service demands, and property sizes to select its chosen parcel and monopole design. When the [ZHB] denied [its] variance application, it claimed not to be effectively prohibiting personal wireless services because Verizon had not pursued legal remedies against Pennsylvania.”

The bottom line: The ZHB “would be imposing a ’substantial increase in costs’ on Verizon by demanding that it com-

mence legal action against Pennsylvania before seeking a variance.”

CASE NOTE

The ZHB argued on appeal for the preservation of its local zoning authority. For instance, it cited Pennsylvania, as well as Third Circuit and Supreme Court precedent for “preserving the authority of local governments to control land use through zoning, even in the face of challenges under the TCA.” And it asserted that Verizon had failed to meet variance requirements under Pennsylvania law, so the denial of the application was supported by substantial evidence.

But the TCA only “preserved local zoning authority . . . up to a point.” Specifically, “[a] local government’s power over zoning decisions [wa]s preempted by federal statute when its actions ’prohibit[ed] or ha[d] the effect of prohibiting the provision of personal wireless services.’”

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cisions [wa]s preempted by federal statute when its actions ’prohibit[ed] or ha[d] the effect of prohibiting the provision of personal wireless services.’”

Here, the question wasn’t “whether the zoning board [had] properly applied Pennsylvania law, but whether the [ZHB’s] decision had the ‘effect of prohibiting the provision of personal wireless services,’” the court stated. “It did,” it added.

The bottom line: A local zoning board, like White Deer’s ZHB was barred “from preventing providers from meeting broader interests” proscribed under the TCA.

A CLOSER LOOK

In White Deer Township, a four-mile gap in Verizon’s wireless coverage overlaid Interstate 80. This mean that Verizon customers traveling along this stretch of highway were likely to experience dropped calls, garbled audio, and ineffective attempts to make calls. “This could be problematic for stranded drivers trying to reach emergency services. Verizon set out to fill the gap,” the court added.

Case Snapshot:
Verizon wanted to erect a 195-foot monopole with a four-foot antenna on a 1.9-acre parcel of private property, but White Deer Township denied its request for a variance, and a lawsuit ensued, alleging the township’s denial violated the TCA.


Special Use Permits

Town revokes grant of special use permit and lawsuit against it, its building inspector and code enforcement officer follows

Citation: Arizona Hudson Valley LLC v. Allen, 2023 WL 3936640 (N.D. N.Y. 2023)

Arizona Hudson Valley LLC, Arizona Investissements US LLC and their principal (collectively, the plaintiffs) operated as a property-development group. In 2018, they bought a defunct resort property in the Hurley, New York.

The plaintiffs intended to redevelop and expand the site, and they received site-plan approval and a special use permit (SUP) from the town’s planning board. But several residents filed suit in state court challenging the board’s decisions. The court directed the board to reconsider the issues, and it reaffirmed the site-plan approval. Another legal challenge followed, and during the time when that proceeding was ongoing, the local political landscape shifted.

Then, the town’s acting building inspector and code enforcement officer issued a letter revoking the SUP. The plaintiffs appealed the revocation, and their case languished before the town’s zoning board of appeals (ZBA) for months.

At the end of 2022, the plaintiffs filed suit against the town, its building inspector and code enforcement officer (collectively, the defendants) claiming they had violated their procedural and substantive due process rights by improperly revoking the SUP.

A CLOSER LOOK AT THE SUP

In issuing the SUP, the town specified that it was being issued subject to a set of conditions, which included the need to obtain certain New York Department of Environmental Conservation (DEC) approvals and an “annual renewal” that involved an inspection by the code enforcement officer.

When the code enforcement officer revoked the plaintiffs’ SUP, he cited a specific section of the town code, which revoked, as a matter of law, any SUP that hadn’t been exercised within one year of issuance.

The bottom line: The code enforcement officer concluded the plaintiffs hadn’t secured necessary DEC approvals within the one-year period, which amounted to a failure to exercise the SUP under the applicable code section.

LAWSUIT DISMISSAL REQUEST

The defendants filed a request for dismissal for failure to state a plausible claim for relief.

DECISION: Request for dismissal granted.

The SUP had been subject to specified conditions, which included the need to get certain DEC approvals and an annual renewal involving an inspection by the town’s code enforcement officer.

The court first addressed the issue of “ripeness.” It explained that a land-use case plaintiff could be “‘excused from obtaining a final decision if pursuing an appeal to a zoning board of appeals or seeking a variance would be futile,’ such as when an agency ‘ha[d] dug in its heels and made clear that all such applications w[ould] be denied.’ ”

Here, the plaintiffs claimed certain individuals close to or affiliated with town government grew hostile toward them over the redevelopment plans. But the plaintiffs also acknowledged “that at least some of the conditions on which the [SUP] was conditioned—including the need for DEC approvals—had not been satisfied as of the date on which the [SUP] was revoked.”

The plaintiffs also acknowledged “that at least some of the conditions on which the [SUP] was conditioned—including the need for DEC approvals—had not been satisfied as of the date on which the [SUP] was revoked.”

The court also addressed whether the town violated the plaintiffs’ procedural and substantive due process rights. “Even assuming [that their] due process claims were ripe, they would still fail on the merits,” it concluded.

To assert a procedural due process claim, the plaintiffs had to “first identify a property right, second show that the state has deprived him of that right, and third show that the deprivation was effected without due process.” “‘Notice and an opportunity to be heard are the hallmarks of due process,’ ” the court added.

But even assuming that the prior issuance of the SUP qualified as protected property interest, the plaintiffs hadn’t “plausibly alleged a violation of their procedural due process rights.” They didn’t allege that a specific type of proceeding under New York State law (known as an Article 78 proceeding) “would be an inadequate way to remedy the improper [SUP] revocation.” Therefore, their procedural due process claim was subject to dismissal.

The plaintiffs’ substantive due process claim didn’t fare any better. Such as claim arose when conduct was “‘so outrageously arbitrary as to constitute a gross abuse of governmental authority.’ ”

The plaintiffs asserted the code enforcement officer’s letter revoking the SUP met this standard. “But even assuming that his determination was wrongful or perhaps without a legal basis under the zoning law, [t]he mere violation of state zoning laws [w]as not sufficient to demonstrate conduct so outrageous as to violate the substantive component of the due process clause.” Therefore, their substantive due process claim was also dismissed on the merits.

Variances

Hotel neighbor challenges ZBA’s decision to grant area variances for construction of two new hotels on the property

Citation: Nunnally v. Zoning Board of Appeals of Town of New Windsor, 217 A.D.3d 950, 2023 WL 4219046 (2d Dep’t 2023)

David Nunnally owned property in New Windsor, New York on Liner Road. Across from Nunnally’s property—on
Union Avenue—Windsor Hospitality LLC (WH) owned property. WH’s parcel consisted of nearly seven acres and contained an existing two-story, 97-room hotel.

Both Nunnally’s and WH’s properties were located in New Windsor’s Highway Commercial zoning district (HCZD), which existed to “encourage a full range of commercial activity along major highways.” The two properties were surrounded by other commercial properties, including a Sonic fast-food restaurant, a Walmart Supercenter, and a self-storage facility.

In 2015, WH applied to the Zoning Board of Appeals of the Town of New Windsor (ZBA) for area variances to construct two new hotels on its property. The ZBA granted the application for area variances.

But then the court annulled the ZBA’s determination and sent the case back to the ZBA for review pursuant to the State Environmental Quality Review Act (SEQRA). WH then completed the environmental impact statement and the SEQRA process, ultimately obtaining a statement of findings from the Town of New Windsor Planning Board in October 2019 approving the proposed project.

WH then reapplied to the ZBA for area variances for the two proposed hotels:

- Hotel A was a five-story, 102-room hotel located approximately 250 feet from Nunnally’s property line, and WH sought one area variance for its maximum building height; and
- Hotel B was a four-story, 88-room hotel located approximately 1,050 feet from WH’s property line—with WH seeking three area variances for Hotel B: a variance for the maximum building height, a variance for the minimum side-yard setback requirement, and a variance for the minimum total side-yard setback requirement.

The ZBA held a hearing at which Nunnally voiced his objections to the variance requests. But the ZBA granted WH’s application for the area variances, and Nunnally appealed to the court through a New York Civil Practice Laws & Rules (Article 78) proceeding—which authorized lawsuits against a body or officer.

The court denied Nunnally’s request, and he appealed the dismissal.

**DECISION: Affirmed.**

The lower court properly denied Nunnally’s request to review the matter because he lacked standing to challenge the ZBA’s determination regarding Hotel B are variance.

“Generally, a petitioner must establish standing by showing that it will suffer an injury-in-fact and that the alleged injury falls within the zone of interests sought to be protected by the statute,” the appeals court wrote. “In land use matters, a petitioner must establish standing by showing ‘that it would suffer direct harm, injury that is in some way different from that of the public at large,’ ” it added.

And when zoning and variances were at issue, “an inference of direct harm may arise from the petitioners’ proximity to the property that is the subject of the administrative action: the closer the petitioner, the stronger the inference.”

Here, “Hotel B would be approximately 1,050 feet from the . . . property line, which [wa]s too far a distance to allow a presumption of an injury-in-fact,” the court concluded. Further, Nunnally hadn’t “otherwise established standing to challenge the Hotel B area variances by showing, beyond merely conclusory statements, a cognizable injury that [f]ell within the zone of interests and [wa]s different from that of the public at large.”

**CASE NOTE**

The court also noted that the ZBA’s determination as to the Hotel A area variance was not arbitrary and capricious. Under the applicable town law, the ZBA had to consider:

- “whether an undesirable change [would] be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance”;
- “whether the benefit sought by the applicant [could] be achieved by some method, feasible for the applicant to pursue, other than an area variance”;
- “whether the requested area variance [wa]s substantial”;
- “whether the proposed variance [wa]s substantial”;
- “whether the proposed variance [wa]s substantial”;
- “whether the alleged difficulty was self-created”—this, alone, though, was not a determinative factor.

A local zoning board had “broad discretion” when considering variance applications, meaning that court review was limited to determining whether its action was “illegal, arbitrary and capricious, or an abuse of discretion.”

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The bottom line: The record showed that the ZBA had “engaged in the required balancing test and considered the relevant statutory factors in granting the area variance relating to Hotel A.” Also, the “evidence before the ZBA supported its conclusion that the variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, specifically because of the subject properties’ location within a highly commercial HC zoning district.”

Further, the ZBA had “considered at least three alternatives, ultimately determining that the instant project was the one that minimized community and environmental effects with the lowest variances possible. The record also substantially support[ed] the ZBA’s conclusion that the variance was
Numerically minimal and overall insubstantial in its effect on the surrounding area."

**Conditional Use Permits**

Historic preservation association challenges ZBA's approval of CUP, setback variance, and more

Citation: *Hamilton Southside Historic Preservation Association v. Zoning Board of Adjustment of City of Hamilton, 2023 MT 119, 531 P.3d 584 (Mont. 2023)*

Hamilton Southside Historic Preservation Association (HSHPA) appealed a court ruling denying its request for review. HSSPA's request challenged four Hamilton (Montana) Zoning Board of Adjustment (ZBA) decisions to:

- grant a conditional use permit to the Roman Catholic Bishop of Helena (Bishop) to construct and use a new church structure after demolition of the current St. Francis Catholic Church;
- grant the Bishop a variance allowing a rear-yard setback variance;
- grant the Bishop a variance to allow a steeple height variance; and
- affirm the ZBA's approval of a zoning administrator's decision concerning a joint use parking agreement (JUPA) for the new structure.

**DECISION: Affirmed.**

The ZBA acted within the scope of its authority in reaching its conclusions, so the lower court didn't err in upholding its findings.

The Supreme Court of Montana reasoned that HSHPA sought a "reweight[ing] [of] ... the evidentiary record to give greater credence to the information and analysis advanced by those contesting approval of the subject CUP, variances, and JUPA." "We decline to do so," the court added.

**A CLOSER LOOK**

CUP—HSHPA asserted that the ZBA failed to properly analyze and reconcile the objective of Hamilton's Growth Policy in light of objecting neighbors' exhibits and public comments. "Over the course of [a] public hearing, the ZBA received public comment both for and against the proposed CUP as well as written materials from various neighbors and the larger public. Each ZBA member attested that in determining whether to and under what conditions to approve the subject CUP, s/he considered all written materials and public comment made at hearing or submitted," the court explained.

Also a staff report, which the ZBA ultimately adopted, had "assisted ZBA members in contextualizing and evaluating this evidence to determine if any of the concerns or issues raised through the hearing process overcame the [report's] findings and analysis. Upon completing the serial hearing process ... additional concerns and issues raised did not alter the ZBA's approval of the subject CUP." Based on the review of the record, "the information upon which the [ZBA] based its decision was not so lacking in fact and foundation that it was clearly unreasonable," so the ZBA hadn't abused its discretion.

**Rear-yard setback variance**—The ZBA approved a rear-yard setback of two instead of 20 feet required by local law after relying on an "appropriate" review process that included analysis by Hamilton's public works department. "Zoning setbacks are established to provide adequate light and air; to secure safety from fire, panic and other dangers; and to maintain neighborhood aesthetics and character. Setbacks in building code are also in place to protect life, health, and safety. In this particular case, approving a variance for a two (2) foot rear yard setback will not be detrimental to any of these concerns," the court noted.

**Steeple height variance**—"The proposed steeple would be five feet lower than the steeple on the current structure and consistent with similar uses in similar neighborhoods as there are three other churches in residential zoning districts in the city that have steeples exceeding the 45-foot height limit," the court explained. It added that "denial of this variance would cause a hardship to the Bishop's property as it would be denied privileges enjoyed by other similar properties in similar zoning areas and the variance w[ould] not detrimentally affect 'the health, safety, comfort and general welfare of persons residing or working within the community' " under the applicable local ordinance.

**JUPA**—The "ZBA had discretion to accept [a] parking review and traffic study and to accept and adopt the analysis and rationale of [public w]orks staff and the [z]oning [a]dministrator as more credible than other information it received related to the parking issues," the court noted.

**Case Note:**

The court recognized that this controversy was "of great interest to [Hamilton's] residents who see[ed] strongly in their divergent views and, regardless of the outcome, some w[ould] be highly disappointed." But that didn't mean the information on which the ZBA had rested its decision had been "so lacking in fact and foundation that it was clearly unreasonable."

**Preliminary Injunctions**

Drug and alcohol treatment center challenges township's denial of zoning permit and use variance requests

Citation: *Quantum Behavioral Health, LLC v. Township of Berkeley, 2023 WL 4103932 (D.N.J. 2023)*

Quantum Behavioral Health LLC (Quantum), a licensed substance abuse disorder treatment center operating in California, Florida, and New Jersey, owned property in the Township of Berkeley, New Jersey. It proposed to run a facility in Berkeley and stated its patients and residents would be recovering alcoholics or addicts with disabilities in need of high-quality treatment and housing during their transition from substance use disorders to rehabilitation to integrated community living.

Quantum challenged the township's denial of its request for a zoning permit, use variance, and site-plan approval. This effectively meant that Quantum couldn't operate a facility on its property.
Quantum then filed suit, alleging that, by its actions, the
township had unlawfully denied necessary drug and alcohol
treatment and detoxification services. It sought a preliminary
injunction, asking the court to order the township to issue all
zoning approvals necessary for the construction and operation
of a proposed residential drug and alcohol treatment facility at
the property.

**DECISION: Request denied.**

Quantum failed to show it would suffer irreparable harm if
its request was not granted.

"Irreparable injury mean[t] harm 'such that legal remedies
are rendered inadequate.' " The court explained, "Demon-
strating irreparable harm [wa]s perhaps the single most
important prerequisite for issuing a preliminary injunction," it
added.

To demonstrate irreparable harm, Quantum had to make
"a clear showing of immediate irreparable injury." That is,
it had to show that an injunction was "the only way of
protecting [it] from [the] harm" in question."

Here, Quantum alleged:

- its goal of providing housing to a protected group would
be thwarted with each passing day;
- this would create a housing shortage for the protected
group and force individuals in that group to look else-
where rather than wait to move into the Quantum facil-
ity; and
- damages wouldnt adequately compensate it.

"Unfortunately, [Quantum made] no showing in support of
[the] bald assertions." The court wrote. Quantum didn't
identify "how many would-be patients would be denied hous-
ing nor what the impact a housing shortage would have.
"Also, notably absent from [its] submission [wa]s any informa-
tion as to the availability of treatment at competing facili-
ties," so the court was compelled to find that it hadn't made a
clear showing of immediate irreparable injury.

**Case Snapshot:**

*Quantum alleged the township engaged in "discriminatory
conduct designed to thwart the construction and operation" of
a substance abuse disorder treatment facility. It asked the court
to issue a preliminary injunction so that it could proceed with its building
plans despite the township's previous denial of its request for a zon-
ing permit, use variance, and site-plan approval.*

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**Discrimination**

Affordable housing developers contend city
discriminated, retaliated against them in
violation of FHA

Citation: *Woda Cooper Development, Inc. v. City of Warner
Robins, 2023 WL 3985153 (M.D. Ga. 2023)*

Woda Cooper Development Inc., Parallel Housing Inc.,
Perkins Field Limited Partnership, and Parallel Perkins Field
Development LLC (collectively, the plaintiffs), which all
developed affordable housing, filed suit against the City of
Warner Robins, Georgia, alleging that it reneged on agree-
ments that would have allowed them to build an affordable
housing development in downtown Warner Robins on a site
known as Perkins Field. They asserted the city's actions
violated the Federal Fair Housing Act (FHA) and Georgia Fair
Housing Act (GFHA).

The city asked the court to grant it judgment without a trial
on the plaintiffs' disparate treatment and retaliation claims.

**DECISION: Granted in part.**

The plaintiffs didn't create a triable issue of fact concern-
ing then city's alleged discriminatory intent, so its request for
judgment on the discriminatory treatment claim was granted.

The "plaintiffs have failed to create a triable issue of fact as
to whether the [city] intentionally discriminated on the basis
of race when it rescinded [the] [c]ommitment [r]esolution" at
issue in this case. According to the plaintiffs, statements had
been made to support their contention that the city had acted
with discriminatory intent.

But, those statements and the circumstances under which
they were made were "ambiguous." "While the [c]ourt is
required to draw all reasonable inferences in the plaintiffs' favor, 'an inference is not reasonable if it is only a guess or a
possibility, for such an inference is not based on the evidence
but is pure conjecture and speculation,' " the court explained.

In sum, the plaintiffs failed to raise "specific facts demon-
strating that race influenced the . . . decision to rescind the
[c]ommitment[r]esolution." "There [wa]s no evidence, circumstantial or direct, that the [city] acted to ratify the alleged
racial motivations of the community and, as a result, [there was no] evidence of discriminatory intent."

The court, however, denied the city's request for judgment
on the retaliation claim.

There was evidence the city had made threats of a criminal
investigation and revocation of a low-income housing tax
credit (LIHTC) award. Tais all came about during the pend-
ing litigation. For instance, there was an email stating a
demand for the Georgia Department of Community Affairs to
"withdraw the 9% LIHTC award . . . in November of 2018.
If DCA refuses, we intend to file a mandamus action against
the State of Georgia/DCA to force the termination or with-
drawal of said 9% award due to intentional misrepresentations/
fraud and due to [the plaintiffs'] complete failure to satisfy
the threshold site control requirement," the correspondence stated.

"In sum, the email outlines a plan to initiate criminal
proceedings and seek revocation of the LIHTC award—
coupled with terminating further settlement negotiations. In
another follow-up email . . . defense counsel stated that the
plaintiffs 'perpetrated a fraud on the' DCA and that he planned
to 'expose and report the same.' "

The bottom line: The plaintiffs had pointed to "implausibili-
ties, inconsistencies, and incoherencies for a jury to decide
whether the[re] [wa]s pretext for retaliation," in this case.

**Zoning News Around The Nation**

*California*

Social housing bill advances past Senate Governance and
Finance committee

On July 12, 2023, AB 309, known as the Social Housing
Act, passed the California Senate and Finance committee. "In 2018, California ranked 49th among the United States in housing units per resident, and it's estimated that an additional 180,000 new units of housing would need to be built each year to meet demand," the office of State Assemblymember Alex Lee, the bill's sponsor, explained.

"Due to the high cost of living, California has been losing lower and middle-income residents who have been priced out as more than two in five households spent over 30% of their income on housing, and more than one in five households spent over half of their income on housing. Families who pay more than 30% of their income for housing are considered rent burdened by the Department of Housing and Urban Development, and can have difficulty affording necessities such as food, clothing, transportation, and medical care," the office added.

Lee's office explained that more than 97% of counties and cities across the state haven't been able to produce enough affordable housing. "Publicly developed, maintained, and owned housing for Californians of all socioeconomic levels is the key to solving our housing crisis—the state is already getting in the business of housing, but we lack a focused state public developer to do it at scale," Lee stated. Lee added that other jurisdictions like Hawaii, Maryland, Massachusetts, and Rhode Island, as well as Seattle, have made strides to enact social housing legislation.

Social housing, Lee's office, stated, is described as "publicly backed, self-sustaining housing that accommodates a mix of household income ranges."

To learn more about AB 309, visit leginfo.legislature.ca.gov/yfaces/billVotesClient.xhtml?bill_id=202320240AB309. And for more on social housing in California generally, visit californiasocialhousing.org.

Source: a24.asmdc.org

Michigan
State's highest court rejects application to hear zoning case

The Supreme Court of Michigan has denied a request to hear a zoning case. A Michigan appeals court had previously ruled that neither the Tuscola Area Airport Zoning Board of Appeals nor the Tuscola Airport Authority weren't aggrieved parties with standing to appeal the Michigan Aeronautics Commission's issuance of tall-structure permits for the construction of wind turbines.


New Jersey
Millburn concludes open space, recreation plan element survey

On July 31, 2023, Millburn Township, New Jersey concluded its Open Space & Recreation Plan Element Survey, which sought the public's input to help guide long-term planning for its new parks and open space plan as part of its master plan updates. In announcing the survey, the township explained that the survey's purpose was to "collect information on how . . . residents and stakeholders use their parks and recreational facilities, and what they would like to see added or improved."

The survey asked respondents about their age and gender, the neighborhood in which they reside, how long they've lived there, and the age ranges for those in their households, as well as where they heard about the survey (for example, flyer, community event or meeting, email, print or television media, word of mouth, the township's website, social media, etc). Then, respondents were given the opportunity to give input on "their and their families' interactions with open space and recreation in the [t]ownship and comment on those areas and programs in need of improvement."

When rolling out the survey, the township also announced that it was holding public information sessions about its plans. It also explained that it was working with planning consultant Topology (topology.is) on a "robust public outreach campaign, offering multiple online and in-person paths for residents and stakeholders within the community to share their priorities for open space and recreation within the [t]ownship."

Source: twp.millburn.nj.us

Washington, D.C.
Utah's Sen. Mike Lee introduces federal drone integration and zoning legislation

Sen. Mike Lee (R-Utah) has introduced the Drone Integration and Zoning Act (DIZA), which would "establish a regulatory framework for drones based on the principles of local governance and cooperative federalism," his office explained.

Sen. Lee added that the Federal Aviation Administration (FAA) doesn't have a way to efficiently or feasibly oversee the millions of drones in operations across localities nationwide. He noted the FAA's "current legal position claiming regulatory authority over every cubic inch of air in the United States—including air just inches above Americans' private property—is both unsustainable and unlawful."

"In our constitutional system, the states have sovereign police powers to govern over inherently local issues, including the protection of property, land use, privacy, trespass, and law enforcement," Lee said. "The best way to ensure public safety, protect property rights, and unleash drone innovation is to empower the people closest to the ground to make local decisions in real time, which is exactly what the Drone Integration and Zoning Act does," he added.

The senator's office explained that DIZA seeks to:

- "balance the competing airspace authorities between the federal government and the states" by more clearly defining the boundaries of the FAA's authority over the air as well as the proper scope of regulatory authority that federal and state governments exercise over drones operating in the United States;
- "protect[] the authority of the states to issue time, place, and manner restrictions, while not unreasonably prohibiting access to the federal 'Navigable Airspace'";
- and
- preserve "the local zoning authority of state, local, or tribal governments to designate commercial drone take-off and landing zones, while still allowing for interstate commerce."

To read the proposed text of DIZA, visit lee.senate.gov/services/files/D398E2B7-E68F-4AAD-90E6-F148F5E7D5A4.

Source: lee.senate.gov

Wisconsin
Federal court grants preliminary judgment on claim it violated landowners' due process and equal protection rights

Jon and Kay Erickson, landowners in Yorkville, Wisconsin,
wanted to develop their property. In 2015, they received a zoning violation notice for not complying with conditions of a previously approved conditional use permit (CUP). They tried to modify their existing CUP, but the town clerk refused to accept their application.

Then, the local fire department conducted an unannounced inspection of their property, which included a landscaping business and the Ericksons’ residence. They then sought to correct outstanding violations by having that portion of their property rezoned. The Racine County Economic Development and Land Use Planning Committee (RCDS) denied their application following a public hearing. And given Racine County’s denial, Yorkville didn’t have the authority to unilaterally grant the application.

Ultimately, years later, the Ericksons claimed a local official said they wouldn’t approve any CUP they applied for and that the town had had “enough” of them. That official, the court noted in reciting the facts of the case, did not have any authority to consider land-use requests nor did he have any voting authority.

The fact was that any land-use requests, zoning permits, and conditional use applications for properties located in Yorkville “had to be submitted to RCDS, with the Racine County Public Works and Development Services director having principal zoning review and decision-making authority on land-use requests.” “Although the Village could make requests and suggestions, the director had the final authority to make decisions as to how services were rendered,” the court noted.

Rather than applying for a CUP to move forward, the Ericksons filed suit against the village and several town officials (collectively, the defendants), claiming they violated their rights under the Takings, Due Process, and Equal Protection clauses of the U.S. Constitution by denying them full and fair use of their property through a failure to even consider a CUP. They also claimed one town official had acted maliciously, which entitled them to punitive damages.

Recently, a federal court in Wisconsin granted the defendants request for judgment without a trial. The court found that because the Ericksons hadn’t yet sought a CUP to implement their development plans or that applying for it would be futile, their claims were premature.

## SEPTEMBER 2023

### LAND DEVELOPMENT PLAN COUNCIL ACTION DEADLINES

<table>
<thead>
<tr>
<th>Title</th>
<th>Submitted</th>
<th>Action Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summit Park Subdivision</td>
<td>7/17/2023</td>
<td>October 15, 2023</td>
</tr>
<tr>
<td>Medlar Field LDP</td>
<td>7/17/2023</td>
<td>October 15, 2023</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>Rhodes Lane Condos</td>
<td>October 31, 2023</td>
<td>10/17 submitted; 10/18 completeness review; 10/18 sent for full review (comments due 10/28); plan revisions came 11/7, accepted 11/14; P&amp;R 11/14; PC 11/15; 12/1 plan tabled per PTE request, PTE granted review time extension; 12/29 revised plan submitted, comments due 1/13; to P&amp;R 1/9; revision 4 received 1/19, comments due 1/27; revision due 2/6; P&amp;R 2/13 as staff informative; 2/20 tabled by PTE; to PC 2/21 tabled; review period extended by PTE; 4/17 revision submitted, comments due 4/21; to CTC 5/4; conditional approval sent 5/5; 5/18 received and approved surety estimate; 6/30 received ext. request, to CTC 7/20, approval letter sent 7/21</td>
</tr>
<tr>
<td>MNMC – Bed Tower</td>
<td>October 3, 2023</td>
<td>2/21 submitted, letter sent 2/22; comments due and sent 3/3; revision due 3/13; to PC 3/21; to CTC 4/6; conditionally approved; 4/7 sent conditional approval letter; 6/9 90-day ext requested; 6/15 extension approved, 6/16 approval sent to Kirsch and Saville; grubbing permit may be issued prior to recording and surety; surety estimate being discussed</td>
</tr>
<tr>
<td>PSU – Environmental Health &amp; Safety Chemical &amp; Radiation Waste Accumulation Facility</td>
<td>October 31, 2023</td>
<td>3/20 submitted, comment request sent 3/21; comments due 3/31; revision due 4/10; to PC 4/18; comments due 4/14; to CTC 5/4; conditional approval sent 5/5; 6/30 sent email for ext. request, spoke w/ Erminio; 7/6 received ext. request, to CTC 7/20, approval letter sent 7/21; addressing meeting 8/8, decided building</td>
</tr>
</tbody>
</table>
UAJA Biosolids Upgrade Project October 18, 2023
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

Summit Park Subdivision October 15, 2023
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

Medlar Field LDP October 15, 2023
7/17 submitted, comments request sent 7/18; comments due 7/28; revision due 8/7; comments due 8/11; to PC 8/14; to CTC 9/7

MINOR PLANS

Bonfire BBQ Submitted 7/27/2023
Expires 9/25/2023
sent to Schnure, Kauffman, Boeckel; comments due 8/4; revision due 8/14; 8/21 no revision, surveyor has been in contact with Zoning Officer; 8/29 revision received, comments due 9/8

Moerschbacher Submitted 8/22/2023
Expires 10/21/2023
sent to Schnure, Kauffman, Boeckel; comments due 9/1; revision due 9/11

Stocker Body Shop Minor Submitted 8/28/2023
Expires 10/27/2023
sent to Schnure, Kauffman, Boeckel; comments due 9/8; revision due 9/18

OTHER

Dale Summit Area Plan PC made recommendation to Council January 18, 2022; Joint Council/PC meeting held March 28; RFQ is on the website: Pre-submission meeting to be 7/14 (5 firms have signed up for pre-submission meeting); Deadline to submit proposals 8/1; to be reviewed by committee (2 Council members, 2 PC members; 1 CRPA; staff); committee established 8/4; submissions sent to committee members 8/9; member meeting 8/29 1-3pm Library; 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 8/3; Draft Ordinance being reviewed by staff

Pike Street Phase 3
Surveying to begin in January; letter sent to residents, surveying started 1/11; 1/18 traffic calming maps removed from Council room; before pictures are complete (may take after pictures of traffic calming phase); dedication of traffic calming 4/21; ongoing

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

Official Map
Council remanded to PC 2/2; 2/7 PC received maps for homework; 2/21 PC discussion; 3/7 PC request time extension and paper copies of map; 3/21 PC tabled until 4/4 meeting; P&R to submit explanations to staff for PC by 3/29 (4/13); PC should wrap up at 4/18 meeting; PC recommendations and DRAFT to CTC 5/4; CTC reviewing in detail; CTC to set public hearing after revisions made (update OMap & include Ped Plan info); to CTC 7/20, public hearing set; as of 8/9 public process is underway; to CRPC 9/7; ongoing

Zoning Amendment Consideration
Council remanded to PC 2/16; 3/7 PC introduced to rezoning consensus is to wait for DPZ; to PC 4/18, recommends waiting for Dale Summit Master Plan (12 months); to CTC 5/18, Council considered PC recommendation and staff recommendation; PRBD to allow R-3; two draft ordinances to be presented to CTC 6/15 (R-3 as limited use/R-3 as conditional use); to PC 6/27, consensus to wait for all PC members to be present to discuss; to PC 7/18, 8/1, 8/15; to CTC 8/3 8/17; 8/29 CTC Exec Session; property to be posted by 10/9

**ENGINEERING BOND/LOC SURETY EXPIRING SOON**

Aspen Heights (October 8th)
Gaslight Circle (Barnbridge Subdivision) (October 31st)
Sears/Steve Shannon (November 18th)
Christ Community Church (November 19th)
LDP’s UNDER CONSTRUCTION

Canterbury Crossing
Evergreen Heights
Jake’s Fireworks
Steve Shannon
Winfield Heights
C3 Phases 1 & 4
State College Area Food Bank
Rearden
Arize FCU