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: 895 8495 0248  ● Passcode: 084277

*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 19, 2023 Meeting Minutes  
      (Approval)
CA-2  2024 Planning Commission Meeting Schedule  
      (Approval)

PLANS:

P-1  Umberger & Rockenbeck /Clearwater Conservancy Subdivision  
     (Recommendation)
P-2  Jersey Mike’s Land Development Plan  
     (Recommendation)

OLD BUSINESS:

NEW BUSINESS:  

NB-1  Work Force Housing Remand  
      (Introduction & Discussion)

REPORTS:

R-1  DPZ CoDesign Updates
R-2  Council Meeting Reports
STAFF INFORMATIVES:  SI-1(a-e) Council Meeting Minutes  
SI-2  Zoning Bulletins  
SI-3  November EZP Update  

OTHER MATTERS:  

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

   Next regular meeting will be Tuesday, December 5, 2023 at 7:00pm  

ADJOURNMENT:
COLLEGE TOWNSHIP
PLANNING COMMISSION
REGULAR MEETING MINUTES
In Person and Via Zoom

September 19, 2023 7:00 p.m.
1481 East College Avenue, State College, PA 16801
www.collegetownship.org

PRESENT:
Ray Forziat, Chair
Ed Darrah, Vice Chair
Peggy Ekdahl, Secretary
Matthew Fenton
Robert Hoffman
Bill Sharp
Ash Toumayants, Alternate (late arrival)

STAFF PRESENT:
Don Franson, P.E., P.L.S., Township Engineer
Lindsay Schoch, AICP, Principal Planner
Mark Gabrovsek, Zoning Officer
Sharon Meyers, Senior Support Specialist – Engineering/Planning

GUESTS:
Mark Torretti, Penn Terra Engineering
Ed Maxwell, resident

ABSENT:
Noreen Khoury

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

ZOOM MEETING PROTOCOL: Mr. Forziat verified there were no people present via Zoom and decided not to have Zoom protocol reviewed.

OPEN DISCUSSION: None presented.

CONSENT AGENDA:
Ms. Ekdahl moved to approve the September 5, 2023 meeting minutes as written. Mr. Darrah seconded. Motion carried unanimously.

PLANS:
SP-1 Maxwell Subdivision Sketch Plan
Ms. Schoch gave a brief presentation and reviewed the extensive narrative provided by Penn Terra Engineering. She added that the sketch plan is an optional process and this is Planning Commission’s opportunity to comment. The developer can then determine what Sketch Plan comments make it to the Preliminary/Final Plan.
Mr. Torretti from Penn Terra Engineering noted the Township Official Map and a proposed future connection to the Clair property to the north of the Maxwell property. He added that there has been interest in various lots, mostly the ones fronting Shiloh Road. He also included a concept for the development of a 3 acre lot to accommodate a 115 guest room hotel. Mr. Torretti continued that stormwater management is also being considered as a bulk of the property to be subdivided is within a wellhead protection area. There are also connections being considered to Premier Theatre and Christ Community Church, feasibility in these connections is also being determined. Mr. Torretti added that another consideration for this project is the intersection at Trout Road and Shiloh Road, and noted PennDOT is reviewing the project scope for the traffic impact study.

Mr. Fenton asked if there will be a CATA stop in the area since he isn’t aware of a stop there now. Mr. Torretti stated that they will look into it. Mr. Fenton also asked for clarification on what the wellhead protection area is and how it impacts the plan. Mr. Torretti stated the impervious area allowed is impacted as well as stormwater management. There are strict regulations set forth by DEP and the plan is to design stormwater management at the roadway then each lot will have its own on lot stormwater.

Mr. Hoffman is interested to see the fire marshall comments. He is also looking forward to the construction of a sidewalk along Shiloh Road, but caution should be used due to the steep grade.

Mr. Forziat asked why the shared access drive is not showing a connection to the Clair property. Mr. Maxwell stated there is a gas line and a grading issue in that area. Mr. Forziat also asked if there has been any proposals for development of the proposed lots 5, 6 and 7. Mr. Maxwell and Mr. Torretti stated there have been no offers at this point, but there has been interest in the lots along Shiloh Road. Mr. Torretti continued, there is a traffic study under way that will determine timing of plan submissions and development. Mr. Torretti anticipates a submission by the end of the year.

There was a brief discussion about the proposed lot 4, which currently contains a home and horse barn. Mr. Maxwell stated that he would like to keep the people in the home and horse in the barn as long as possible, but eventually these structures will go away. Dedication of roads was also briefly discussed.

OLD BUSINESS: None presented.

NEW BUSINESS: None presented

REPORTS:
R-1 DPZ CoDesign Update
Ms. Schoch gave a brief update of the recent visit from the consulting firm. Staff and DPZ had reviewed the draft code developed for the Dale Summit Area. It was determined that DPZ should present the final draft, when ready, to Council and the Planning Commission at a joint meeting or work session. Mr. Forziat requested a more detailed explanation of what transpired during the meeting with DPZ. Staff specified definitions will reflect nomenclature currently used throughout the Township ordinances, the word “urban” will be defined, and road standards will be changed in the new ordinance to reflect the established/existing Township standards. Planning Commission requested a copy of the original ordinance and all proposed changes in real time, so as to not be blindsided when the proposed joint meeting and presentation are to occur. Mr. Gabrovsek stated the changes will be supplied in one big package prior to the meeting.

Mr. Darrah continues to maintain the opinion that DPZ is designing for a more urbanized area and not to the rural area of State College. He added that the record should state his disdain for the planned block standards being proposed and potential issue with developers.

R-2 Council Meeting Update
Mr. Hoffman offered no additional comments about the prior Council meeting. However, he asked for the Planning Commission to consider a new representative be appointed to Council liaison. Mr. Darrah, who also attended the meeting, stated that Council members took note of the omission of a
narrative with the ClearWater Conservancy Sketch Plan presented. He gave a brief summary of the rest of the meeting including an update presented to Council on the Dreibelbis Hotel.

**STAFF INFORMATIVES:**

SI-1 Council Meeting Minutes
No further discussion.

SI-2 Zoning Bulletin
Mr. Darrah stated that the cell tower article was interesting and fairly close to College Township. There was a discussion about the educational value of the zoning bulletins.

SI-3 EZP Update
Mr. Hoffman asked about the speed humps recently constructed on Oak Ridge Avenue and Shamrock Avenue, as he noticed continued traffic in the area. Mr. Franson stated that the number of vehicles is down overall and speed has been reduced to less than 25 mph. He added official counts are anticipated to be collected in August 2024, about one year after construction when Penn State is back in session. Minor plans were discussed.

**OTHER MATTERS:**

Mr. Toumayants asked about the special meeting of Council and requested the worksheet Council completed be provided to the Planning Commission so they may understand the rationale behind Council dismissing the Planning Commission’s recommendation and ultimate decision. Mr. Forziat opined that the Planning Commission hoped their recommendations would be better articulated to Council. He added that ordinances are living documents and Planning Commission maintains the recent recommended ordinance changes should be use-by-right and not conditional use because Council members will change in the future.

**ANNOUNCEMENTS:**

Mr. Forziat announced the next meeting will be Tuesday, October 3, 2023 at 7:00 p.m.

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

Meeting adjourned at 8:04 p.m.

**Draft**

Sharon E. Meyers
Senior Support Specialist – Engineering/Planning
College Township Planning Commission customarily conducts its meetings on the first and third Tuesdays of each month beginning at 7:00pm at the College Township Municipal Building. Planning Commission must approve the meeting schedule prior to the start of the new year in order to allow for required, advanced legal advertising.

College Township has offered both in-person and virtual meeting attendance for all public meetings since August 2021. Does Planning Commission wish to continue, in 2024, offering both in-person and virtual meeting attendance via the zoom platform?

Staff recommends the following motion be made:

“I move to approve the meeting dates as listed and establish a 7:00pm start time for Planning Commission’s 2024 regular meetings and continue offering both in-person and virtual meeting attendance via the zoom platform.”

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<td>January 2 (Reorganization)</td>
<td>July 17 (Wednesday)</td>
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<td>June 18</td>
<td>January 7, 2025 (Reorganization)</td>
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PROJECT NARRATIVE

THE PURPOSE OF THIS PROJECT IS TO SUBDIVIDE (TAX PARCEL ID: 19-003-003A) THAT CONTAINS 2.682 ACRES OF LAND. THIS PROPERTY CURRENTLY HAS AN EXISTING HOUSE AND DETACHED GARAGE. JULIET A. UMBERGER AND MARGARET E. ROCKENBECK ARE PROPOSING TO SUBDIVIDE PARCEL 19-003-003A INTO 2 LOTS: A 0.954 ACRE LOT 1RR THAT CONTAINS THE EXISTING DWELLING AND A GARAGE, AND A 1.728 ACRE LOT 2 THAT CONTAINS NO STRUCTURES OR IMPROVEMENTS. THE INTENT IS FOR JULIET A. UMBERGER AND MARGARET E. ROCKENBECK TO MAINTAIN OWNERSHIP OF LOT 1RR AND CLEARWATER CONSERVANCY TO PURCHASE LOT 2 FOR THE PURPOSE OF LAND CONSERVATION.

Sincerely,

Herbert, Rowland & Grubic, Inc.

BRIAN ANDERSON
P.L.S.
To: Brian Anderson & Garrett Gass  
Herbert, Rowland & Grubic, Inc.  
2568 Park Center Boulevard  
State College, PA 16801

From: Sharon Meyers, Sr. Support Specialist – Engineering/Planning

Re: Umberger & Rockenbeck/Clearwater Conservancy Final Subdivision Plan

Date: November 3, 2023

Attached are comments from staff and county regarding the above-referenced final subdivision plan. The revision of this plan, with comments addressed is due no later than **Monday, November 13, 2023 by noon**. I will need six (6) full size paper sets, and a digital copy of the revised plan. Please also include nine (9) half-size (11x17) paper sets of the revised plan for College Township Planning Commission meeting packet. Please email to smeyers@collegetownship.org.

The scheduled review before Planning Commission is **Tuesday, November 21, 2023 at 7:00 p.m.**

The tentative review before College Township Council is **Wednesday December 6, 2023 at 7:00 p.m.**

Should you have any questions, please do not hesitate to reach out.

Thank you.
COLLEGE TOWNSHIP

MEMORANDUM

To: Brian Anderson & Garrett Gass
    Herbert, Rowland & Grubic, Inc.
    2568 Park Center Boulevard
    State College, PA 16801

From: Donald M. Franson, P.E., P.L.S., Township Engineer | Jere Northridge, P.E., Assistant Township Engineer | Lindsay K. Schoch, AICP, Principal Planner | Mark Gabrovsek, Zoning Officer

Re: Umberber & Rockenbeck/ Clearwater Conservancy Final Subdivision Plan

Date: November 3, 2023

As a result of your submission of the above referenced plan dated October 20, 2023 please find comments below from College Township staff:

1. Utility Information
   a. Complete telephone number for UAJA  **REVISED**
   b. Correct area code for storm sewer  **REVISED**

2. Site Notes:
   a. Further clarify the waiver request of 8.5’ within note 2. Consider: A waiver of 180-16.B(2) for the additional width of 8.5’. **REVISED**
   b. Include a letter to Council requesting the waivers. Waivers will need to be recommended by Planning Commission and approved by College Township Council. **INCLUDING A LETTER**
   c. Consider clarification of note 12 as Clearwater Conservancy is not a legal party or signatory to this plan. Consider changing “Clearwater Conservancy” to “The Owner and/or future assigns”. **REVISED**

3. Please provide revised deeds for staff review. Be sure to record revised deeds with approved subdivision plan.

legal descriptions prepared for review

4. Per §180-9B(4) graphic information and plan content shall include the names of abutting property owners, their mailing addresses, tax parcel numbers, and deed book and page number. **REVISED**

5. Survey Notes 1 ends with a colon. Clarify whether additional information was to be inserted here. **REVISED**

General Note:

6. Should development of proposed Lot 2 occur the Township would require sewer/septic designation and location at time of plan submission of such future development. Include a note on the plan indicating such. **ADEDED NOTE #15**
7. Consider adding Note 13 to address sewage needs for Lot 2. 180-19.B would traditionally require a primary and secondary septic area to be designated or an exemption to be accepted by Council. Consider: **ADDED NOTE #13**

Lot 2 is intended for conservation use and no future septic requirements are anticipated for this lot dominated by the presence of FEMA designated floodplain. Should this lot require future sanitary service, the Lot Owner shall be responsible for satisfying the sanitary needs at no expense to College Township, including, but not limited to, on-lot installation or sanitary sewage system extension. A waiver of 180-19.B is requested for Lot 2 with approval of this plan.

8. Consider adding Note 14 to address sewage needs for Lot 1RR. 180-19.B would traditionally require a secondary septic area to be designated or an exemption to be accepted by Council. Consider (a) identification of this site on Lot 1RR, (b) identification of this site within a defined easement on Lot 2, or (c) an exemption request similar to the following: **ADDED NOTE #14**

Lot 1RR is presently served by On-Lot septic but lies within the sewer service area. Should this lot experience a septic failure, the Lot Owner shall be responsible for satisfying the sanitary needs at no expense to College Township, including, but not limited to, on-lot installation or sanitary sewage system extension. A waiver of 180-19.B is requested for Lot 2 with approval of this plan.

The Township notes Kathleen Hillard, to the north, is connected to the UAJA system via a line under Spring Creek within the easement limits of the former Old Mill Road. **ADDED APPROXIMATE LOCATION TO PLAN**

9. When requesting waivers from the Subdivision and Land Development Ordinance, please ensure the waiver is in written form.

Due to the nature of these comments presented herein, the Township reserves the right to make additional comments on future submissions.
November 10, 2023

College Township Planning Commission  
1481 East College Avenue  
State College, PA 16801  

Re: Waiver Requests for Umberger & Rockenbeck / Clearwater Conservancy Final Subdivision Plan

Dear College Township Planning Commission:

The Margaret Rockenbeck and Juliet Umberger / Clearwater Conservancy Final Subdivision Plan is proposing to create two lots from Tax Parcel # 19-003-,003A,0000-. Lot 1RR will exist with the present dwelling and garage, while proposed Lot 2 will have no proposed improvements and is intended for conservation use.

As you recall, during the public comment and sketch plan presentation there was discussion about challenges with building sidewalks and the dedication of road right of way along Old Houserville Road (T-375). The site has unique challenges to creating sidewalks like steep slopes, close proximity to Spring Creek, and future land development plans of adjoining parcels owned by the subdivider. Dedicating road right of way to the width of 25’ from the centerline of Old Houserville Road will cause portions of the existing dwelling and garage to be in the newly dedicated road right of way. Currently, these buildings are very close to the existing 33’ total width right of way. Presently there is on-lot septic service for the existing dwelling that sits on Lot 1RR. There are no future septic requirements anticipated for the proposed Lot 2.

On be half of Clearwater Conservancy, I am requesting the following waivers of College Township Subdivision and Land Development Ordinances be recommended to the College Township Council with the approval of this plan:

- A waiver of 180-16.B(2) for the additional width of 8.5’ of right-of-way along the length of Old Houserville Road (T-375) is being requested because an existing dwelling and garage will fall in the portion of additional right-of-way. Also, Old Houserville Road is a dead end street that only serves three dwellings and a Penn State University Farm.

- In accordance with the ordinance within the subdivision and land development Article V section 180-16.1-E Sidewalks. The owner and / or assigns would like to defer the construction of sidewalks until such time they can create a land development plan for the site. Which shall be no more than 2 years from the recording date of this plan.

- Lot 2 is intended for conservation use and no future septic requirements are anticipated for this lot dominated by the presence of FEMA designated floodplain. Should this lot require future sanitary
service, the lot owner shall be responsible for satisfying the sanitary needs at no expense to College Township, including, but not limited to, on-lot installation or sanitary sewage system extension. A waiver of 180-19.B is requested for Lot 2 with approval of this plan.

- Lot 1RR is presently served by on-lot septic but lies within the sewer service area, should this lot experience a septic failure, the lot owner shall be responsible for satisfying the sanitary needs at no expense to College Township, including, but not limited to, on-lot installation or sanitary sewage system extension. A waiver of 180-19.B is requested for Lot 1RR with approval of this plan.

I request your action on this item in conjunction with the Final Subdivision Plan approval for the Umberger & Rockenbeck / Clearwater Conservancy Subdivision. If you have any questions or need additional information, please contact me at (814) 238-7117

Sincerely,

Herbert, Rowland & Grubic, Inc.

Brian Anderson, PLS
Survey Crew Chief

Enclosures

c: HRG Subdivision Plan Package
Jersey Mike’s Land Development Plan  
October 23, 2023  
Revised 11-13-23

Our client, Cedar Cliff Properties, LLC, proposes the construction of a 1500 sq ft Jersey Mike’s restaurant with a pick-up lane and all related infrastructure. This proposed project will be located on Tax Parcel 19-002B-067, a 0.703-acre lot at 430 Shiloh Road, College Township, Centre County, PA owned by Curtis Kunes.

EXISTING CONDITIONS:
The property is zoned C-1, General Commercial, and is located in the wellhead protection zone.

The building setbacks for the site are:
Front: 50 feet, (Shiloh Road)
Side: 15 feet
Rear: 50 feet

Parking Setbacks are:
Front: 30 feet
Side: 10 feet
Rear 10 feet

The site is currently vacant. An existing office building on property also owned by Curtis Kunes is to south of the property and a private business/residence is adjacent to the north. An existing driveway access through the property provides access to Tax Parcel 19-2B-66 with rights granted through DB 277, PG 217. This property is also owned by Curtis Kunes.

PROPOSED:
STRUCTURE AND PARKING:
A one -story 1,500 S.F. building and a 112 S.F. cooler for a Jersey Mike’s restaurant is proposed on the site. The customer entrance is located at the southwestern corner of the building. A pick-up lane for previously placed on-line orders is at the north side of the building and queues around the rear of the building to provide stacking for 7 vehicles.

A total of 21 parking stalls are proposed including 2 ADA accessible parking spaces. Deliveries will be during non-business hours at the location shown on the plan.

A screened dumpster is located at the rear of the site, sized large enough for a dumpster, cardboard container bin and recycling containers.

The proposed building coverage is 5.26%; the maximum allowed is 30%. The proposed impervious coverage is 59.70%; the maximum allowed is 60%.
TRAFFIC / SITE ACCESS:
Full vehicular access to the site will be off Shiloh Road. A traffic impact study is being submitted with this land development which shows no off-site required improvements or entrance restriction being required. Once, the Traffic Impact Study is approved, a PennDOT Highway Occupancy Permit for the access will be applied for. Also, a driveway encroachment easement will be executed and recorded between the owner of Tax Parcel 19-2B-005 and the site owner to allow encroachment of the driveway within the 5’ setback area.

PEDESTRIAN ACCESS:
Sidewalk access is proposed along Shiloh Road and into the site to the parking area and building entrance. A sidewalk is also proposed from the building to the dumpster enclosure and loading area.

UTILITIES:
Water: College Township Water Authority has an 8-inch public main adjacent to the west side of Shiloh Road. A directional bore for a 2” service under Shiloh Road and a 1” meter pit and connection to the building is proposed.

Sanitary Sewer: An existing UAJA public sanitary sewer main and easement is immediately adjacent to the north side of the property line. A new 6-inch lateral connection is proposed from that main, to the site and the north side of the building.

STORMWATER MANAGEMENT:
As noted previously, the site is in the wellhead protection zone which prohibits infiltration into the subgrade. Therefore, an underground closed detention system is proposed at the front of the site with filtration measures being proposed for BMPs prior to some of the site’s stormwater entering the underground system. The stormwater system will connect to the existing 18” conveyance piping along Shiloh Road. A PennDOT HOP will be required for this connection.

LANDSCAPING & LIGHTING
Landscaping:
Parking lot screening is proposed at all parking bays facing outward from the site. Trees are proposed at 1 per every 35 LF and shrubs at 15 per every 35 LF. Canopy trees are also proposed in parking islands. Groupings of evergreen screenings are also proposed at the north property line and around the dumpster.

Lighting:
The Jersey Mike’s development is designed with a combination of light fixtures, all being LED. Exterior pole-based fixtures of 25-foot heights are proposed around the perimeter of the parking areas and near the entrances. Building mounted lights are also proposed to complement the pole mounted lights to provide the required levels of illumination in the parking areas, sidewalks and at the building entrances. Due to the proximity of the driveway to the adjacent southern property line, there is an encroachment of illumination exceeding the levels per the ordinance. A reciprocal lighting agreement between both property owners will be executed and recorded to allow the trespass of illumination from both properties on to the other.
JERSEY MIKE'S
PRELIMINARY/FINAL LAND DEVELOPMENT PLAN

COLLEGE TOWNSHIP * CENTRE COUNTY * PENNSYLVANIA
OCTOBER 23, 2023
LAST REVISED: NOVEMBER 13, 2023
Lindsay Schoch, AICP, Principal Planner  
College Township  
1481 East College Avenue  
State College, PA 16801  

RE: Jersey Mike’s Land Development Plan  

Dear Lindsay,  
In regards to comments received for the above-referenced project; we offer the following responses:  

TOWNSHIP COMMENTS-  

1. Sheet 8 — Consider root barrier for plantings sidewalk and parking lot adjacent. Consider adding root barrier to tree planting details.  
   a. What is the depth of the combined utility conduit? Will tree planting directly over obstruct conduit?  
      Tree locations and the utility service layouts have been adjusted to not be directly over/under each other. Elec/telecom services are in PVC conduits.  

2. The Township’s consulting traffic engineer is currently reviewing the impacts of traffic. Those comments will be provided under separate cover at a later date.  
   Noted.  

3. Will the current placement of lighting fixtures adequately illuminate the dumpster area?  
   Yes.  

4. The Centre Regional Planning Agency submitted comments regarding this plan submission. Please respond accordingly to CRPA’s comments.  
   Please find our responses to CRPA’s comments below.  

5. The Centre Regional Planning Agency, on behalf of the Centre Area Transportation Authority (CATA) prepared a letter with comments regarding the proposed plan. Staff would like to acknowledge CATA’s comments and although the Township cannot require off-site improvements, we concur with the recommendation found within the CATA letter and a recommendation within A Walkable College Township — A Pedestrian Facilities Master Plan, to continue a sidewalk along Shiloh Road to Premier Drive.  
   Please find our responses to CATA comments below.
6. In an effort to better conform to the newly enacted zoning regulations across Shiloh Road in Dale Summit, please consider reconfiguring the building to Shiloh Road and allow for parking in the rear of the building, rather than the parking up against the street. 
_The site is designed based upon the zoning ordinance governing the site._

7. Establish a consistency of acreage between all plan sheets and narrative. 
_The narrative has been updated to match the plan sheets._

8. Please provide surety estimate to be approved by Township Engineer. 
_A surety estimate will be submitted to the Township Engineer for approval._

9. Please provide an Intent to Serve Letter from University Area Joint Authority and any corresponding sewage planning documentation necessary for approval. 
_An Intent to Serve Letter from UAJA and the signed DEP Postcard exemption is enclosed._

10. Please provide an Intent to Serve Letter from College Township Water Authority and any corresponding documentation necessary for approval. 
_An Intent to Serve Letter from CTWA is enclosed._

11. Please provide a draft DSAME for review and approval. 
_A copy of the DSAME draft is enclosed. Once approved by the staff, the Client will sign the agreement._

12. Will the proposed building contain a sprinkler system? Please make a note on the plan. 
_No. See Note 15 on Sheet 3._

13. Although not required, consider screening the cooler and utilities. 
_Acknowledged._

TOWNSHIP ENGINEER COMMENTS-

14. Cover Sheet, Sheet 3: PA One Call Utilities List: Consider revision or clarification to duplicate listings for College Township such that one of two reflects "College Township Water Authority" for potable and sprinkler water purposes. 
_Please recent One-Call training, the listing received from the One-Call is what is supposed to shown on the plan. Our plan reflects what we received from the One-Call request._

15. Please provide evidence of PennDOT approval consistent with this plan set for driveways and permanent fixtures within PennDOT rights-of-way. (Chapter 177). 
_Upon approval of the traffic impact study, PennDOT Highway Occupancy Permit Plans will be submitted for approval for the entrance and any utility work with the PennDOT right-of-way._

16. Please provide evidence of PennDOT approval for waterline installation and occupancy within PennDOT rights-of-way. (Chapter 177).
Upon approval of the service by CTWA, PennDOT Highway Occupancy Permit Plans will be submitted for approval for the entrance and any utility work with the PennDOT right-of-way.

17. Sheet 3, Project Notes: Complete 6b prior to recording.
   Acknowledged.

18. Sheet 3, Project Notes: Complete note 11 prior to recording.
   Acknowledged.

19. Sheet 3, Project Notes: Please add the DSAME reference as 6c.
   Added.

20. Sheet 3, Others, Engineer’s Seal: Edit xref as appropriate.
    Xref info edited.

    Revised.

22. Sheet 6, Grading Notes, correct numbering (10 = 14).
    Numbering adjusted.

23. Sheet 7, Utility Plan: Review water supply requirements with CTWA.
    a. No valve shall be placed within the crosswalk area.
       Water layout adjusted to relocate valve outside of crosswalk area.
    b. A meter pit is likely required. The meter pit shall not be set within the crosswalk area.
       A meter pit has been added for 1” service and is proposed outside of the crosswalk area.

24. Detail Sheets 10/11: Consider addition of a detail for parking lot directional areas. Consider thermoplastic or equivalent for area of two-way traffic approaching drive-thru.
    A painted directional arrow detail has been added to the plans. See Sheet 11.

25. Sheet 11: Retaining Wall: The Township defers retaining wall reviews to Centre Region Codes. Please obtain a permit specific to this wall or a written waiver that no permit is required.
    Any required retaining wall permitting will be determined during the building permit review process. The retaining walls are only 30” high which typically is below the required height for a permit.

26. The site contains Nolin soils, known to promote infiltration of stormwater. All phases of construction and post construction maintenance should be cognizant of the high infiltration potential in combination with pollution risks to the nearby public water supply well.
    Acknowledged. Project has been designed to meet the requirements of the College Township Well-Head Protection Stormwater Ordinance.

27. PCSM Narrative, p. 1; Erosion and Sedimentation Narrative, p. 1, General Description: This project intends to maintain total earth disturbance at 0.90 acres, less than 1.0 acre, and therefore does not
require an NPDES permit. Contractor/Owner shall exercise caution to limit staging and disturbance to avoid exceedance of 1.0-acre. Any exceedance of 1.0-acre requires an NPDES permit approval prior to exceedance of the 1.0-acre threshold.

Acknowledged.

28. Sheet ES2, Standard Notes; Erosion and Sedimentation Narrative, p. 4, Note 14: This standard note for PSU related projects may not be applicable to Jersey Mike’s. Consider clarification.

Note 14 has been removed.

COG COMMENTS-

1. Where more than one means of egress are required by Section 1006.2 or 1006.3 from any accessible space, each accessible portion of the space shall be served by not less than two accessible means of egress.

Acknowledged. Will be reviewed during the building permit review process.

2. Each required accessible means of egress (see previous comment) shall be continuous to a public way and shall consist of one or more of the following components:
   a. Accessible routes complying with Section 1 104.
   b. Interior exit stairways complying with Sections 1009.3 and 1023.
   c. Exit access stairways complying with Sections 1009.3 and 1019.3 or 1019.4.
   d. Exterior exit stairways complying with Sections 1009.3 and 1027 and serving levels other than the level of exit discharge.
   e. Elevators complying with Section 1009.4.
   f. Platform lifts complying with Section 1009.5.
   g. Horizontal exits complying with Section 1026.
   h. Ramps complying with Section 1012.
   i. Areas of refuge complying with Section 1009.6.
   j. Exterior areas for assisted rescue complying with Section 1009.7 serving exits at the level of exit discharge.

Acknowledged. Will be reviewed during the building permit review process.

CATA COMMENTS-

1. We appreciate the placement of pedestrian amenities throughout the site, as these will tie together the proposed restaurant with parking areas, as well as provide inlakes to adjacent developments along Shiloh Road.

Acknowledged.

2. CATA remains interested in seeing eventual completion of a sidewalk facility along Shiloh Road to Premiere Drive — as adjacent properties are developed or redeveloped — in accordance not only with community pedestrian needs, but also with Shiloh Road's identification as a "priority corridor" in "Walkable/e College Township — A Pedestrian Facilities Master Plan (2022)".

Acknowledged.
3. To facilitate safe and convenient public transportation access to the site, we request that a concrete bus stop pad area be constructed along Shiloh Road —just northwest of the proposed access road into the site. This pad area should have:

a. A firm, stable surface (ADA Standard for Transportation Facilities 810.21) of concrete or asphalt and be 45 feet in length and 8 feet in width to accommodate standard 40-foot and articulating 60-foot buses, as well as ADA requirements and possible future shelter placements;

b. A running slope of walking surfaces not steeper than 1:20, and a cross slope of walking surfaces not steeper than 1:48 (ADA Standard for Transportation Facilities 403.3);

c. Full interconnectivity to the proposed sidewalk as shown on the current version of the plans provided, as well as to the curb along Shiloh Road (ADA Standard for Transportation Facilities 810.2.3); and

d. Practical and adequate lighting provided to illuminate the pad area. Available light shed of new or existing street lighting is acceptable, or a dedicated source should be provided.

Once this pad area is constructed, we anticipate that it will replace an existing unimproved bus stop along Shiloh Road near Premiere Drive, as the portion of Shiloh Road between Dreibeibis Street and Trout Road is critical to the path of CATA's "College Avenue Connector" Route.

We do not believe the requested bus pad location is better than the current location that it is supposed to replace and have requested reconsideration from CATA on the requirement of the bus pad.

CRPA COMMENTS:

1. It appears that there is an access easement through the Jersey Mike's parking lot to a residential lot that is land locked. Are residential driveways allowed through commercial parking lots?
Yes, as long as the easement is there or is created for it.

2. Consider moving the driveway curb cut off the property line so that it forms a straight "tee" with Shiloh Road rather than intersecting Shiloh Road at an angle.
Due to the configuration of the lot and the required site infrastructure, the entrance needs to remain as shown.

3. The drive-thru appears wholly inadequate given the popularity of drive-thru restaurants. Please request that the traffic study specifically address potential back up onto Shiloh Road.
The drive-thru is for pick-up of online orders only which will not generate the queuing of regular fast-food drive-through and also provides the queuing required by College Township.
4. Address how deliver trucks could be accommodated on the property during business hours. 
   Delivery trucks will serve the site prior to the restaurant’s 10:00AM opening. Sufficient area 
   is provided for trucks to turn around or go through the pick-up lane which will be empty at 
   that time.

5. Address the impact of casino, and casino-related traffic impacts on the property during all 
   hours of operation. For example, how will maneuvering of vehicles occur in a dead-end 
   parking lot? 
   Vehicles will maneuver in the parking lot like any other parking lot, independent of if they are 
   from the future casino or not.

6. Consider requiring a connection to the Maxwell property to provide access to a future traffic 
   signal. 
   A connection to the Maxwell property is not feasible as it would require going through 
   property owned by others.

7. It appears that no consideration of the surround context is taken into account by the 
   consultant. There appear to be many ways for vehicles to become trapped during high 
   traffic periods particularly with anticipated future nearby development. 
   Consideration was made to develop the site in the context of the College Township Zoning 
   regulations including the preparation of a traffic impact study which is currently under 
   review.

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

Enclosed please find the following:
Six full-size plan sets
Nine 11x17 plan sets
Three copies of revised E&S Report
One Intent to Serve Letter from UAJA
One signed DEP Exemption Postcard
One Intent to Serve Letter from CTWA
One Draft copy of DSAME
One Revised Narrative

A digital copy will be provided upon submission.

Sincerely,

Mark Torretti
Project Manager

Enclosures
Cc: 23017
MEMORANDUM

To: College Township Planning Commission

From: Lindsay K. Schoch, AICP | Principal Planner

Re: Workforce Housing – Chapter 200.38.4

Date: November 17, 2023

Introduction:

In 2022, College Township Council approved the Aspen Heights Land Development Plan, enabling the enforcement of workforce housing regulations outlined in the Zoning Ordinance. The workforce housing section of the zoning ordinance is inclusionary, meaning these regulations are mandatory and come into play when a development reaches a certain density threshold. This section has been in effect since May 2009, with amendments made in 2013.

Over the coming months, the Planning Commission will undertake the review and revise the workforce-housing ordinance. Specifically, discussions will focus on the newly crafted Intent and Purpose statement, improving provisions for both rental and owner-occupied workforce housing units, establishing the Area Median Income (AMI), and exploring incentive mechanisms.

The initial task on Tuesday, November 21, will involve examining the Remand Letter issued by Council to ensure a clear understanding by the Planning Commission. Following the completion of this task, the Commission will proceed to discuss definitions and Area Median Income (AMI) as time allows.

Attachments:

- Council Remand dated November 17, 2023
- Chapter 200.38.4 Workforce Housing Ordinance

Next Steps:

Council wishes this task be completed by the end of the first quarter of 2024. Further review over the next months will include all items outlined in the Remand Letter attached with this memo.
MEMORANDUM

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

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

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

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

<table>
<thead>
<tr>
<th>Objectives</th>
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<tbody>
<tr>
<td>1) <strong>Ensure that current ordinance and any recommended revisions thereof are both consistent and upholding of the new Purpose and Intent Statements.</strong></td>
</tr>
</tbody>
</table>
| 2) The current ordinance addresses development of both rental and owner-occupied workforce housing, but does not provide a clear distinction in terms of ordinance implementation between those two specific housing types.  
  
  **Evaluate and, where appropriate, provide recommendations on how to better provide for separate, but parallel, paths for development of rental and owner-occupied workforce housing units under the ordinance.** |
| 3) The Area Median Income (AMI) in the region has increased over the past two years, which has a direct impact on the development of units for the targeted demographic and overall implementation of the ordinance.  
  
  **Review the current AMI data and application of ranges within the Workforce Housing Ordinance to ensure that it is appropriately allowing for development of units for the targeted demographic in both the rental and owner-occupied paths.** |
| 4) When originally adopted, the ordinance was crafted to offer incentives in terms of reductions in open space requirements and necessary infrastructure to encourage development of workforce housing units. However, when the ordinance was amended to become inclusionary, the incentives remained without any revisions.  
  
  **Review the incentives outlined in the current ordinance and offer recommendations on whether those incentives should be altered given the ordinance’s inclusionary nature and goal to ensure that neighborhoods remain equitable in terms of basic amenities.** |

The balance of this remand letter will serve to provide Planning Commission additional context on the newly developed Purpose and Intent Statements and provide a recommended process to aid in completion of the Objectives.
PURPOSE & INTENT STATEMENTS:
While the intent was implied during the original passage of the Workforce Housing Ordinance in 2009 and its subsequent amendment, it is nevertheless notable that the current ordinance is lacking both a Purpose and Intent Statement.

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

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

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

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

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

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

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

**SCHEDULE:**
Upon completion of the recommended review tasks outlined above, Council requests that Planning Commission and staff begin working on the Objectives, as outlined on Page 1 of this letter, with the goal to provide recommendations on the Workforce Housing Ordinance prior to end of the first quarter of 2024.
§ 200-38.4 Workforce housing.


Zoning requirements for applicable residential developments may be reduced, as follows, upon the provision of workforce housing within a development:

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

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

(2) Mandatory requirement.

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

<table>
<thead>
<tr>
<th>Density of Proposed Development (dwellings per acre)</th>
<th>Percentage of Required Workforce Housing Units*</th>
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<tbody>
<tr>
<td>5 to 5.99</td>
<td>5%</td>
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<tr>
<td>6 to 6.99</td>
<td>6%</td>
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<tr>
<td>7 to 7.99</td>
<td>7%</td>
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<tr>
<td>8 to 8.99</td>
<td>8%</td>
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<tr>
<td>9 to 9.99</td>
<td>9%</td>
</tr>
<tr>
<td>10 or more</td>
<td>10%</td>
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</tbody>
</table>

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

(b) Developers can exceed the minimum levels of mandatory workforce housing listed above and shall receive any additional incentives in accordance with the regulations below.
(c) Any residential development which proposes 10 or less dwelling units shall be exempt from this mandatory requirement.

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

(a) Density of a development containing residential dwelling units shall be equal to the number of the proposed dwelling units divided by the gross site area inclusive of proposed rights-of-way or any other portion of the site to be dedicated to the Township or homeowners’ association.

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

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

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

(1) Single-family house and duplex. All single-family houses, duplexes and/or any other structure containing two or less dwelling units in which at least one is designated as workforce housing shall be permitted to the following regulatory reductions:

(a) Minimum lot size and density: 5,000 square feet per dwelling unit or that permitted under existing zoning, whichever is less with one exception: In the Single-Family Residential Zoning District (R-1), only those lots two acres or greater in size can be developed with multiple duplexes not to exceed a density of seven dwelling units per acre. This calculation shall be inclusive of all land proposed for development including all proposed rights-of-way, parkland/open space areas, stormwater management facilities, and the like. [Amended 9-15-2016 by Ord. No. O-16-05]

(b) Minimum lot width: 40 feet per unit.

(c) Maximum impervious coverage: 55%.

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

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

[1] All workforce housing units within the residential development will have safe, reasonable access via sidewalks, paths or bike paths to parkland or open space located within or near the subject residential development.

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

[3] For the purposes of this Subsection B(1)(e) of § 200-38.4, parkland and open space shall be considered as that designated as "existing parks" or "recreation land owned by others" and available for public use. In addition, land owned by the State College Area School District may also be considered as parkland.
 Sidewalk. The amount of sidewalks required pursuant to § 180-16.1 may be reduced in an amount equal to the total street frontage of all lots containing dwelling units defined as workforce housing units pursuant to the following:

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

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

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

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

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

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

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

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

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

(g) Additional bonus. The reduced lot requirements noted in § 200-38.4B(1)(a) through (e) above may also be applied to market-rate housing units in addition to that of the designated workforce housing units based on the following ratios or fractions thereof rounded to the nearest whole number:

[1] For every two workforce housing units which are affordable to those households with incomes between 80% to 100% of AMI, one market-rate housing unit shall be permitted to have similar lot requirements noted above in § 200-38.4B(1)(a) through (e).

[2] For every one workforce housing unit which is affordable to those households making less than or equal to 80% of AMI, one market-rate housing unit shall be permitted to have similar requirements noted above in § 200-38.4B(1)(a) through (e).

(h) Accessory dwellings. Single-family houses designated as workforce housing may be permitted to contain accessory dwellings pursuant to § 200-11A(1). If the accessory dwelling unit is to be rented, than the anticipated income from renting the accessory dwelling unit shall be included in calculating a household's total income when certifying income of potential buyers of a workforce housing unit.

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

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

(b) Parkland and open space requirement. The parkland and open space requirements of § 180-26B shall be waived for all townhouse and multifamily dwelling units designated as workforce housing. Those subdivisions or land developments which thereby could reduce the parkland and open space requirements by more than 50% shall only be permitted to do so in the same manner as that allowed for single-family houses and duplexes as noted in § 200-38.4B(1)(e).

(c) Occupancy limit. The occupancy of unrelated individuals as established in § 200-11Z may be increased from three to five individuals as follows:

[1] For each unit designated as workforce housing, one unit in the development may be permitted to have up to five unrelated individuals residing within it.

[2] The unit which is permitted to have the increased occupancy, as noted above, does not have to be designated as workforce housing and can be located anywhere within the residential development containing the workforce housing.

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

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

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

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

(c) Open space. The minimum amount of open space required in § 145-18A may be decreased below 30% of the total area of the planned residential development in a manner equal to a decrease of 1% for every 1% of the total number of dwelling units which are designated as workforce housing. However, regardless of the number of dwellings designated as workforce housing, the total open space required may not be decreased beyond 20% of the total area of the planned residential development.

(d) Additional bonus. The maximum amount of land devoted to nonresidential uses within a planned residential development shall be permitted to exceed 20% in a manner equal to an increase in nonresidential land by 1% for every 1% of the total number of dwelling units which are designated as workforce housing for households earning less than 80% of the area median income. However, regardless of the number of dwellings designated as such, the maximum area of land devoted to nonresidential uses shall not exceed 30%.
C. Provision of workforce housing. All workforce housing units proposed in a land development and/or subdivision are required to be built on site covered by such plan unless one of the following options enumerated below is utilized. In such instances, the developer shall continue to retain the incentives applied to on-site development for the number of workforce housing units being provided for under the options listed below:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Location. The dwelling units to be utilized to satisfy the workforce provisions shall be located within College Township.
(b) Number of. The total number of units provided off site shall be equal to those which would have been provided on site.

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

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

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

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

(b) The proposed dwellings to be designated as workforce housing units shall be considered market-rate units. Utilizing this provision shall result in the conversion of market-rate dwellings to income-restricted workforce housing dwelling units.

(5) Credits for existing workforce housing. A developer of a new development may be given credit for previously built dwelling units which could be defined as workforce housing given the following regulations:

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

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

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

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

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

D. Supplemental workforce housing regulations. In addition to the regulations above, all workforce housing units shall have the following requirements:

(1) Amenities. Workforce housing units may differ from the market-rate units in a development with regard to interior amenities and gross floor area, provided that:

(a) The differences, excluding differences related to building size differentials, are not apparent in the general exterior appearance of the development;
The gross floor area of the habitable space within workforce housing dwelling units is not less than the following minimum requirements:

1. One bedroom: 750 square feet.
2. Two bedrooms: 1,000 square feet.
3. Three bedrooms: 1,200 square feet.
4. Four bedrooms: 1,400 square feet.
5. Five or more bedrooms: add an additional 150 square feet per additional bedroom.

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

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

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

Certification of renters. Prior to renting a workforce unit, the prospective renter shall be certified as meeting income requirements by the Township or its designee. The following limitations shall apply to the certification of renters:

(a) The rental unit must be used as the principal place of residence.
(b) Students enrolled in a post-secondary program, college or university are eligible only if they can meet the following two conditions:

1. The student does not meet the Internal Revenue Service's definition of a "dependent," and
2. The student can be classified as an "independent student" as defined by § 480(d) of the Higher Education Act.

Ensuring affordability. To ensure that any unit created under this section of the Zoning Ordinance (rented or owner-occupied) remains affordable over time, the owner of said unit(s) shall be required to maintain affordability based upon a legally binding agreement with either the Township or its designee, to be recorded at the Centre County Recorder of Deeds. Said agreement shall include:
(a) The period for which the units shall remain affordable, which at a minimum should be at least 30 years from the date of initial occupancy of a workforce housing unit;

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

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

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

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

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

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

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

(8) Rental price increases. Annual rent increases shall be limited to the percentage increase in the median household income within the State College metropolitan statistical area.

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

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

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

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

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

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

(a) Efficiency units: one-person household.

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

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

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

(b) The owner of the workforce housing unit(s) must also enter into an agreement with the tenant of the rent-to-own unit which will specify the terms of the program.

(c) The rent-to-own agreement between the owner and the renter of the workforce housing unit shall include provisions for a percentage of the rent to be set aside and utilized towards the purchase of the unit by the renter.

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

Administration. College Township and/or its designee shall ensure compliance with all regulations contained herein and/or Chapter 180, Subdivision of Land, and Chapter 200, Zoning. The developer shall draft and submit for approval a legally binding agreement which states the responsibilities of all entities involved with the ongoing administration, and marketing of, and compliance with these regulations upon approval of a development containing workforce housing units. College Township shall reserve the right to designate another legal entity for the purpose of administrative needs of this section of who should be a party in all legally binding agreements required in this section.
<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Status</th>
<th>Next Steps</th>
<th>Staff/Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Week Ending September 22, 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 continues up to Public Hearing.</td>
<td>Public Hearing set for October 19, 2023. CRPA/CRPC Review October 11 at 12:15.</td>
<td>Lindsay / Mark / Don / Adam / Mike</td>
</tr>
<tr>
<td>Plan &amp; Code Preparation</td>
<td>Continuation of review of draft code.</td>
<td>Staff to review 2nd draft (anticipate receiving draft in next 30-45 days). Schedule a joint meeting between Council and the Planning Commission. DPZ attending to present and discuss the Draft.</td>
<td>Lindsay / Mark / Don / Adam / Mike</td>
<td></td>
</tr>
<tr>
<td>Date</td>
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<td>Staff/Others</td>
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<tr>
<td>--------------------</td>
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<td>-----------------------------------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Week Ending</td>
<td>Interim Zoning Changes in Dale Summit</td>
<td>Staff performed an in-depth technical review of the ordinance. Identified areas in the text that could benefit from interpretation and technical correction.</td>
<td>Present the identified areas to Council at the upcoming October 5, 2023 CTC Meeting.</td>
<td>Lindsay / Mark / Don / Adam /</td>
</tr>
<tr>
<td>September 29, 2023</td>
<td>Plan &amp; Code Preparation</td>
<td>Continuation of review of draft code.</td>
<td>Staff to review 2nd draft (anticipate receiving draft in next 30-45 days). Schedule a joint meeting between Council and the Planning Commission. DPZ attending to present and discuss the Draft.</td>
<td>Lindsay / Mark / Don / Adam / Mike</td>
</tr>
<tr>
<td>Date</td>
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<td>------</td>
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</tr>
<tr>
<td><strong>Week ending October 27, 2023</strong></td>
<td>Interim Zoning Changes in Dale Summit</td>
<td>Council approved the request to permit some R3 uses in the PRBD.</td>
<td>Work with developers who may be interested in developing under the new regulations under the PRBD.</td>
<td>Lindsay / Mark / Don / Adam /</td>
</tr>
<tr>
<td></td>
<td>Plan Preparation</td>
<td>DPZ submitted updated Dale Summit Area Plan. Under staff review.</td>
<td>Ensure the Draft Zoning Code is consistent with the goals and objectives within the updated DSAP.</td>
<td>Lindsay / Mike</td>
</tr>
<tr>
<td></td>
<td>Code Preparation</td>
<td>Anticipating receiving 2nd Draft by the end of the month.</td>
<td>Staff to review 2nd draft (anticipate receiving draft in next 30-45 days). Schedule a joint meeting between Council and the Planning Commission. DPZ attending to present and discuss the Draft.</td>
<td>Lindsay / Mark / Don / Adam / Mike</td>
</tr>
</tbody>
</table>
CALL TO ORDER:

Mr. Dustin Best, Chair, called to order the September 7, 2023, Public Hearing of the College Township (CT) Council for Ordinance O-23-06 Residential Rentals at 6:58 PM.

PUBLIC OPEN DISCUSSION:

This Public Hearing was held for comments related to DRAFT Ordinance O-23-06, Residential Rentals, which was appropriately advertised and open for public inspection. Amendments include updates to the intent statement, as well as one definition modified to ensure clarity and understanding of the ordinance.

No Public Open Discussion comments were offered.

ADJOURNMENT:

Hearing no public discussion, Chair Best called for a motion to adjourn the September 7, 2023, Public Hearing.

Ms. Trainor made a motion to adjourn.  
Chair seconded the motion.

The Public Hearing was adjourned at 7:01 PM.

Respectfully Submitted By,

Adam T. Brumbaugh  
Adam T. Brumbaugh  
Township Secretary/Manager
CALL TO ORDER: Mr. Dustin Best, Council Chair, called to order the September 7, 2023, Regular Meeting of the College Township (CT) Council at 7:01 PM, which followed a Public Hearing regarding Ordinance O-23-06 Residential Rentals.

PUBLIC OPEN DISCUSSION: Nothing brought forward.

NEW AGENDA ITEMS: Nothing to add to the agenda.

SPECIAL REPORTS:

SP-1 University Area Joint Authority Annual Update

Mr. David Lapinski, College Township representative on the University Area Joint Authority (UAJA) Board, presented an annual update on the UAJA plant that included the Scott Road Pump Station replacement; Ozone disinfection; anaerobic digester and sludge dryer; Meeks Lane Act 537 Plan Special Study; and the Puddintown Road Interceptor Act 537 Plan Special Study.

Mr. Lapinski briefly discussed the rate dispute with the State College Borough. He offered that matters are in the court system. Continuing, Mr. Lapinski reported that there was a 4% increase in rates in 2023. He added that another rate increase is likely in 2024. Mr. Lapinski offered the UAJA, in an effort to keep rates low, have formed a subcommittee to study rates and look at the feasibility of a third party to set rates.

Lastly, Mr. Lapinski announced that today, Mr. Walter Ebaugh, an additional CT representative on the UAJA Board, sent in his resignation. Council thanked Mr. Ebaugh for his service.

Mr. Corey Miller, UAJA Executive Director, offered technical information to Council regarding the Puddintown Road Interceptor Special Study and the Calder Way Special Study and the timeline for
completion. Mr. Miller shared that the year was not without problems but they were able to work through them with little interruptions and no smells.

**SP-2 Fire and Life Safety Inspectors/Fire Fighters Presentation**

Before beginning the discussion of SP-2, Dr. Walter Schneider, Centre Region Code Agency Director (CRCA), offered an update on the proposed hotel on Driebibis Road near Sam’s Club. The owners picked up their revised permit on June 28, 2023; however, there has not been any efforts to move forward. The building wrap/membrane has been exposed to the elements for an extended period, debris around the building itself, and the identification of the premise for emergencies are all part of the enforcement notice that was recently sent to the owners. They have 14-days to take action on two of the identified violations and 7-days to clean up the debris before additional enforcement is warranted.

Dr. Walter Schneider offered information regarding the proposed joint venture between the CRCA and the Regional Fire Protection program to address needs in both agencies. They are proposing four (4) new positions, Fire and Life Safety Inspectors/Fire Fighters (FLSI/FF), who would split their time doing fire code inspections and fighting fires. These positions would report directly to the CRCA and have rotating schedules so there is always a certified firefighter 1 with driving experience on duty. Dr. Schneider offered that the CRCA would sell half of the time of a FLSI/FF, to the Regional Fire Protection program.

Mr. Shawn Kauffman, Centre Region Fire Director, offered that his predecessor has inserted over the years that the Centre Region would need to start thinking about hiring career firefighters. As the new director, he approached the CRCA with the idea of combining the two positions, Fire and Life Safety Inspectors and Certified Fire Fighters. He offered an example of their proposed schedule rotation.

Mr. Kauffman offered that the Centre Region has tremendous volunteer support but they do not always have driving experience. He added that in 2022 they have 89 volunteers who provided over 60,000 hours of service, averaging 12/week per person. Even with this tremendous support from volunteers, they have identified gaps in coverage and their proposal adds a dedicated person, including a driver, on duty at all times. These positions will supplement the volunteers, not take over their responsibilities.

Dr. Schneider and Mr. Kauffman are asking Council for their support of the creation of these new positions. They recognize there will be a financial impact to Townships but they opined it is time to smooth the gap in volunteers and provide a more consistent response to fire calls. They feel this plan would accomplish this balance.

Council offered that public safety is their number one priority and they support the initiative.

Mr. Kauffman offered that his first volunteer Fire Chief as a junior fire fighter, Mr. Robert Hoffman, was in the room and he offered his public thanks to him for his support early in his career.

**PLANS:**

**SK-1 Clearwater Conservancy Subdivision Sketch Plan**

Mr. Franson, P.E., P.L.S., Township Engineer, offered an introduction to the proposed subdivision by ClearWater Conservancy. The plan proposes a two-lot subdivision on Tax Parcel 19-003-003A, 110 Old Houserville Road, subdividing the 2.6-acre lot into one .95-acre lot and one 1.7-acre lot.

Ms. Deb Nardone, ClearWater Conservancy, Executive Director, and Mr. Ryan Hamilton, Lands Conservancy Manager, ClearWater Conservancy, discussed with Council their hopes for the Umberger and Rockenbeck property located at 1601 Houserville Road. Ms. Nardone offered ClearWater acquired
the property in August of 2022. She offered they have been discussing ways to make this property accessible to large demographics of people. They would like to showcase many different conservation efforts on this property.

Mr. Hamilton offered they are looking for feedback on the simple subdivision. The proposed lot 1, which is .95 acres and contains a house and garage would stay with the family and lot 2, a 1.7-acre lot, ClearWater would acquire and add to their conservation portfolio. Mr. Hamilton discussed the sidewalk requirements that come with a subdivision plan. They are seeking direction from Council regarding the sidewalks. No buildings are planned for this lot; it is almost entirely in the floodplain.

Mr. Franson offered that the Sidewalk Rating using the Project Prioritization Matrix for this proposal on Old Houserville Road is a six and a fourteen on Houserville Road. A rating of eight or less qualifies for a waiver.

Council offered that a Plan Narrative would have been helpful. Council supports the initiative and the vision of ClearWater. More information is needed for Council to offer any additional feedback on the subdivision.

P-1 Medlar Field Preliminary/Final Land Development Plan

Mr. Mike Vaow, Project Manager, Stahl Sheaffer Engineering, offered the Medlar Field Land Development Plan (LDP) proposes the construction of a hitting tunnel addition, expansion of the existing paved parking lot, concrete walkways and stormwater drainage.

The PC reviewed this plan at their August 15, 2023, PC meeting, and offered no comments and recommended approval of the plan. Staff had no additional comments regarding the final plan.

After a short discussion, Council made the following motion.

Mr. Francke made a motion to approve the Medlar Field – Weight Room and Hitting Tunnels Preliminary/Final Land Development Plan dated June 23, 2023, and last revised July 29, 2023, subject to the following conditions:
1. Within ninety-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-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. Provide proof of NPDES approval.
6. All conditions must be accepted in writing within seven (7) days from the date of the conditional approval letter from the Township Engineer.
Mr. Bernier seconded the motion.
Motion carried unanimously.

P-2 Summit Park Preliminary Subdivision Plan
Mr. Franson, P.E., P.L.S., Township Engineer offered that Council reviewed this plan as a sketch plan. The PC reviewed the plan on August 15, 2023, and made a motion to recommend to Council for approval. Mr. Franson offered a meeting with the developer and the Public Utility Commission is to take place to discuss permits related to the railway and the transition from a private to a public crossing. If the PUC is to take this crossing over, they are making sure that everything is up-to-date.

Mr. Bob Myers, Project Manager, Hawbaker Engineering, on behalf of the applicant Dale Summit Acquisitions LP, offered the proposed subdivision plan of Tax Parcel 19-002-029c, 3500 East College Avenue, consists of twelve various sized lots within the Summit Park Industrial Revitalization Area (IRA). Recently, ownership of lots 2, 3 and 4 has changed and these three (3) lots will go back to Lot 1 until a later date.

Mr. Franson explained that the roads currently owned by the developer will have sidewalks on each side and the roadways built to Township standards. There is a portion of Stewart Drive that the Township currently owns but was never updated to the current standards. The developer is willing to improve the missing portion of Stewart Drive within the previously dedicated right-of-way to provide a connection from the existing Steward Drive that terminates at the access driveway to Cleveland Brothers Equipment to Summit Industrial Drive within the proposed development.

Mr. Myers offered the developer is requesting a deferral for the construction of sidewalks and street tree planting during the initial construction of the proposed subdivision. They are proposing the sidewalks and street trees be constructed and planted by individual lot owners as each lot is developed, with a caveat that all sidewalks and street trees shall be completed upon 80% development or within five-years of subdivision approval regardless of individual lot development.

The University Area Joint Authority will provide sanitary sewer services to all the lots within the development. College Township Water Authority will provide water services to all newly created lots, while Lot 1, the former Corning building, has an existing connection to the Bellefonte Borough system located along Transfer Road.

Council discussed the Sidewalk Rating using the Project Prioritization Matrix. The project rated a total score of 16. Council discussed the sidewalk deferral. Mr. Franson offered that it makes sense to wait for sidewalks until each of the lots are developed.

Council offered that it was helpful to see the sketch plan beforehand. Mr. Franson offered the only difference between the sketch plan and the final plan is the consolidation of Lots 1, 2, 3 and 4.

Ms. Trainor made a motion to approve the Summit Park Preliminary Subdivision Plan dated July 14, 2023, and last revised August 7, 2023, subject to the following conditions:
1. Within ninety-days from the date of approval by Council, all conditions must be satisfied and final signatures must be obtained.
2. Pay all outstanding review fees.
3. Address, to the satisfaction of the Township Engineer, any outstanding plan review comments from staff.
4. Post surety as approved by the Township Engineer.
5. Approve the sidewalk construction and tree planting deferral request.
6. Provide proof of NPDES approval.
7. Add a note to the plan that the public right-of-way for Summit Industrial Drive must extend to SR 26, College Avenue, by agreement between Township, Railway, Developer, and PennDOT as
approved by PUC and must be obtained prior to Final Plan approval.
8. All conditions must be accepted in writing within seven (7) days from the date of the conditional approval letter from the Township Engineer.
Mr. Fragola seconded the motion.

Mr. Francke moved to amend the current motion to add:
9. Lots 2, 3, and 4 will remain as part of Lot 1 for this preliminary plan.
Ms. Trainor seconded the amended motion.
Motion to amend carried unanimously.

Chair called for a vote on the amended motion.
Motion carried unanimously.

REPORTS:

a. Manager’s Update

In a written report, Mr. Adam Brumbaugh, Township Manager, offered that Staff to meet after Labor Day for technical review of the Draft Form-Based Code from DPZ; Solar Power Purchase Agreement contracts for review anticipated in the next 30-days; the PC forwarded a recommendation to Council on adding R3 uses within the PRBD; and Council met in a Special Meeting to discuss the PC recommendation. Council made a modification to proposed ordinance and set a public hearing for October 19, 2023.

b. COG Regional, County, Liaisons Reports

COG Land Use Community Infrastructure Committee (LUCI): Mr. Bernier reported the LUCI Committee met on September 7, 2023, and discussed the Draft Task Activity Report (TAR) for the Puddintown Road Sewer Interceptor to the PA DEP and received a presentation about the PSU Applied Research Lab Master Plan.

COG Parks and Recreation Governance Committee: Mr. Francke offered the Parks and Recreation Governance Committee met on Wednesday, August 23, 2023, and discussed the mission/purpose of the Authority; governing documents; and the future of the Parks Capital Committee.

COG Executive Committee and General Forum: Mr. Best offered the Executive Committee met on August 22, 2023, and discussed the Classification and Compensation Study.

Solar Power Purchasing Agreement (SPPA) Working Group: Mr. Bloom, Assistant Township Manager, offered the SPPA Working Group met on August 30, 2023. He offered the schedule to finalize the agreement continues to shift; nearing when College Township’s current contracts expire. The Agreement is under legal review.

c. Staff/Planning Commission/Other Committees

Planning Commission (PC): Mr. Hoffman, PC Liaison to Council, offered that the PC met on September 5, 2023, and heard a presentation on a Sketch Plan for the Umberger Rockenbeck – ClearWater Conservancy Subdivision and discussed the CT Council Special Meeting regarding the Shiloh Road Rezoning.
Mr. Hoffman suggested that a joint meeting with the PC and the CT Council be scheduled as morale is low and the PC needs a platform to vent frustrations.

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

Mr. Bloom, Assistant Township Manager, offered that September is Suicide Prevention Month. At the last CT Council meeting, Council passed Resolution R-23-22 in support of the initiative. Additionally, he announced that Hispanic Heritage month kicks off on September 15, 2023.

CONSENT AGENDA:

CA-1 Minutes, Approval of
   a. August 17, 2023, Regular Meeting
   b. August 28, 2023, Special Meeting
   c. August 29, 2023, Special Meeting

CA-2 Correspondence, Receipt/Approval of
   a. Email from Tom Songer, dated July 26, 2023, regarding R1 Zoning at Mt. Nittany Manor
   b. Email from Daniel Materna, dated August 18, 2023, regarding Casino
   c. Letter from Spring Creek Watershed Commission, dated August 9, 2023, regarding 2024 Annual Budget
   d. Email from Carla Stilson, dated August 31, 2023, regarding No-Parking Signs Spring Creek Park
   e. Email CCATO, dated August 31, 2023, regarding Scholarship Awards and Resolution Form
   f. Letter from ClearWater Conservancy, dated August 18, 2023, regarding Annual Easement Monitoring for Thompson Woods Preserve

CA-3 Action Item, Approval of

Council asked to pull the following items from the Consent Agenda for further discussion: CA-1.a., CA-2.d., and CA-3.a.

   Mr. Francke made a motion to accept the September 7, 2023, Consent Agenda minus CA-1.a., CA-2.d., and CA-3.a.
   Mr. Bernier seconded the motion
   Motion carried unanimously.

CA-1.a.: Mr. Francke offered a minor correction to the minutes on page 8 where he was inadvertently listed as chair of the meeting.

CA-2.d.: Council would like to add the parking signs at Spring Creek Park as a discussion item to an upcoming agenda.

CA-3.a.: Chair Francke questioned Staff about the project being so far over budget. Mr. Franson, Township Engineer, offered that the bid entered into the budget, was outdated and Staff knew it was likely to be much lower than the bids received. The project was bid once before with no bids received. Staff offered the project would be completed this winter. General Fund reserves will cover the additional unbudgeted amount.

   Mr. Francke made a motion to accept CA-1.a. as amended, CA-2.d., and CA-3.a.
Ms. Trainor seconded the motion.
Motion carried unanimously.

OLD BUSINESS:

OB-1  Residential Rentals Ordinance O-23-06

Ms. Lindsay Schoch, AICP, Principal Planner, offered that a Public Hearing was held prior to the start of this regular CT Council meeting to discuss Ordinance O-23-06 – Residential Rentals. This ordinance, which was appropriately advertised and open for public inspection, includes updates to the intent statement, as well as one definition modified to ensure clarity and understanding of the ordinance

Council had no further questions or comments.

Mr. Bernier made a motion to approve Ordinance O-23-06 – changes to Chapter 160 – Residential Rentals, including Section 160.2 Purpose and Intent and Section 160.4 Definitions.
Mr. Francke seconded the motion.
Motion carried unanimously.

NEW BUSINESS

NB-1  Workforce Housing Ordinance

Ms. Lindsay Schoch, AICP, Principal Planner, offered an update on Chapter 200 Zoning 38.4 Workforce Housing Ordinance. Ms. Schoch met with Dr. Missy Schoonover, the Director of the Centre County Housing and Land Trust, who has been involved with our ordinance since its establishment in 2009 (revised in 2013). Currently, the Workforce Housing Ordinance is being utilized with the recent development of Aspen Heights, which has 28 total workforce-housing units. Of those 28 units, 18 have been successfully allocated.

Ms. Schoch and Dr. Schoonover discussed successful aspects of the ordinance, areas where improvement is needed, opportunities to make the ordinance more equitable, and comparison with other Townships in the region. Currently, density triggers workforce housing, whereas if a development proposed contains five or more dwelling units per acre, the mandatory requirements in the workforce housing ordinance apply. Residential developments that propose 10 or less dwelling units are exempt from the requirements of the ordinance.

Staff opined that typically ordinances begin with an intent section. The Workforce Housing Ordinance does not have an intent section. Staff suggests this should be a next step to craft an intent statement. Additionally, the ordinance considers those making between 65% and 100% of the Area Median Income (AMI). Staff suggests that consideration be given to expand these ranges, opening the benefits of the ordinance to a wider range of people at different income levels.

In regards to improved equity, the current ordinance allows for reductions or outright waivers for some open space and parkland requirements. Staff suggests investigating whether this is an equity issue directly impacting workforce housing residents.

Regionally, other municipalities are taking steps to target the “missing middle” by working to provide a diverse range of housing types that can accommodate different household sizes, income levels, and
lifestyles. Staff requests that Council address whether they feel regional consistency is an important factor as it relates to workforce housing.

Council agreed that it is a good idea to begin the process to review the ordinance. They offered that an update to the intent section should be the first step in the review. Once an intent statement is approved, a remand letter will be sent to the PC for their comments and review of the ordinance.

Council would like to see a matrix or something similar to evaluate the success of the ordinance.

**STAFF INFORMATIVES:**

No *Staff Informatives* were pulled for discussion.

**OTHER MATTERS:**

No *Other Matters* brought forward for discussion.

**ADJOURNMENT:**

Chair Best called for a motion to adjourn the meeting.

Mr. Francke moved to adjourn the September 7, 2023, Regular College Township Council Meeting. Chair seconded the motion.

The September 7, 2023, Regular College Township Council Meeting was adjourned at 9:29 PM.

Respectfully Submitted By,

*Adam T. Brumbaugh*

Adam T. Brumbaugh
Township Secretary
CALL TO ORDER:

Mr. Dustin Best, Chair, called to order the September 21, 2023, Public Hearing of the College Township (CT) Council for Ordinance O-23-03 – Official Map at 7:00 PM, and lead in the Pledge of Allegiance.

PUBLIC OPEN DISCUSSION:

Mr. Mike Bloom, Assistant Township Manager, offered a brief overview of Ordinance O-23-03, an ordinance adopting a revised Official Map for the College Township. Revisions proposed to the Final Draft consist of the inclusion of elements from Walkable College Township – A Pedestrian Facilities Master Plan, a path to connect the sidewalk at Hospital Drive to the existing Orchard Road bike lanes, a path connecting Houserville Road to Puddintown Road through Spring Creek Park, and the existing quarry property as a land reservation.

Mr. Bloom offered that the Squirrel Drive connection to Puddintown Road and the shared use path proposed along Old Boalsburg Road was deleted from the proposed map.

The Official Map Public Hearing was duly advertised and open for public inspection for the 45-day requirement.

No Public Open Discussion comments were offered.

ADJOURNMENT:

Hearing no public discussion, Chair Best called for a motion to adjourn the September 21, 2023, Public Hearing.
Mr. Francke made a motion to adjourn the Public Hearing. Chair seconded the motion.

The Public Hearing was adjourned at 7:04 PM.

Respectfully Submitted By,

Adam T. Brumbaugh

Adam T. Brumbaugh
Township Secretary/Manager
CALL TO ORDER:

Mr. Dustin Best, Chair, called to order the September 21, 2023, Public Hearing of the College Township (CT) Council for Ordinance O-23-08 – Fireworks at 7:04 PM, which took place after the Public Hearing for Ordinance O-23-03 – Official Map.

PUBLIC OPEN DISCUSSION:

Mr. Mark Gabrovsek, Zoning Officer, offered a brief overview of Ordinance O-23-08 – Fireworks, which amends Chapter 109 of the Township Code. Mr. Gabrovsek offered changes include an update to the definition section adding a definition for Consumer Fireworks, repealed section 109.2 and replaced with language from Title 3, Chapter 11 of the PA State Law, and repealed Section 109.5 to be consistent with the exiting Ordinance already in place.

No Public Open Discussion comments were offered.

ADJOURNMENT:

Hearing no public discussion, Chair Best called for a motion to adjourn the September 21, 2023, Public Hearing.

Mr. Fragola made a motion to adjourn the Public Hearing.
Chair seconded the motion.
The Public Hearing was adjourned at 7:05 PM.

Respectfully Submitted By,

Adam T. Brumbaugh

Adam T. Brumbaugh
Township Secretary/Manager
ATTENDED BY –

COUNCIL: Dustin Best, Chair
D. Richard Francke, Vice Chair
L. Eric Bernier
Susan Trainor
Anthony Fragola

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

CALL TO ORDER: Mr. Dustin Best, Council Chair, called to order the September 21, 2023, Regular Meeting of the College Township (CT) Council at 7:05 PM, which followed a Public Hearing regarding Ordinance O-23-03 Official Maps and a Public Hearing regarding Ordinance O-23-8 Fireworks.

ANNOUNCEMENT: Chair Best announced that Council met before the start of the meetings in an Executive Session to discuss Real Estate and a personnel matter.

PUBLIC OPEN DISCUSSION:

Ms. Ruthann Pressler, Lemont, opined that she has been seeing many tractor-trailers going through Pike Street in Lemont. She does not believe they are making local deliveries and are using Pike Street as a cut-through to Giant. She discussed other traffic issues in Lemont to include narrow streets, site distance when turning onto Pike Street, and cars/trucks running the red light.

Ms. Sue Smith, representing the Lemont Village Association, offered thanks to the Township Public Works Department for their help to remove vegetation so that the contractor can begin work on the rehabilitation of one-side of the grain elevator. She added the contractor would be starting his work next week.

NEW AGENDA ITEMS: Nothing to add to the agenda.

PLANS:

SK-1 Maxwell Subdivision Sketch Plan

Ms. Lindsay Schoch, AICP, Principal Planner, offered an overview of the Maxwell Subdivision Sketch Plan. She reported Mr. Maxwell owns three (3) tax parcels on the west side of Shiloh Road north of the
Trout Road/Shiloh Road intersection. The properties are zoned General Commercial and are partially located within the wellhead protection zone. The total size of the combined tracts is 19.3 acres.

Mr. Mark Toretti, Penn Terra Engineering, added additional details about the sketch plan. The sketch plan proposes the re-subdivision of these properties into seven (7) commercial lots of varying sizes from one to 5.4 acres. They are proposing an extension of Trout Road, labeled for now as E. Trout Road, across Shiloh Road to create a 4-way intersection and extend to between lots 3 and 7. This public right-of-way would connect to the northern property line adjacent the Clair property. Sidewalks are shown on both sides of this 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 with a sidewalk on the west side of the shared drive. A sidewalk is also proposed along the Shiloh Road frontage.

Mr. Adam Brumbaugh, Township Manager, offered that the College Township Water Authority has met with Mr. Maxwell to formulate a proposed blasting plan/excavation plan in regards to the wellhead. This plan is under review by a hydrologist.

Council discussed the proposed sidewalks and asked Staff to review notes on any previous plan related to sidewalks. Council appreciated the opportunity to review the sketch plan and the narrative provided was helpful. Council discussed the proposed public right-of-way and interconnectivity to the area.

REPORTS:

a. Manager’s Update

Mr. Adam Brumbaugh, Township Manager, offered that Staff reviewed the first draft of the Form-Based Code provided by DPZ. Staff met with DPZ to review comments. The second draft to be provided by DPZ within the next 45-days. He offered that Staff is meeting with the developer regarding proposed sketch plan for the rezoning request on Shiloh Road in the coming week.

Mr. Brumbaugh reminded Council that included in the Manager’s Update is the annual report of activity performed by the Centre Housing and Land Trust (CCHLT), which report is required to be provided in the Memorandum of Understanding (MOU) between College Township and CCHLT. He is pleased to announce that of the 28 workforce housing units at Aspen Heights, 21 of those have been rented to date. He expressed his thanks to the 2008 CT Council for their forward thinking.

b. COG Regional, County, Liaisons Reports

COG Climate Action and Sustainability (CAS) Committee: Mr. Fragola reported the CAS Committee met on September 11, 2023, and discussed the draft specifications in the refuse and recycling contracts. They discussed automated cart collection, with three different sizes, to be available. In addition, discussion on how to handle bulk waste collection took place.

Centre County Metropolitan Planning Organization (CCMPO) Coordinating Committee: Mr. Bernier reported the CCMPO Coordinating Committee met on September 20, 2023, and 1) received an update on the State College Area Connector Project; 2) approved three revisions to the 2023-2026 Centre County Transportation Improvement Program; 3) approved the review process and formation of a Transportation Alternatives Review Committee for the TA Set-Aside Program; and 4) received a presentation regarding the CCMPO’s 2024 CY Budget.
**COG Executive Committee:** Mr. Best offered the Executive Committee met on September 19, 2023, and approved item to move forward to the upcoming General Forum meeting.

**College Township Industrial Development Authority (CTIDA):** Ms. Trainor reported the CTIDA met on September 20, 2023, and offered there are two (2) vacancies on the nine (9) member Authority. They discussed committee assignments and the time spent serving as volunteers. The Marketing Committee presented a Rack Card designed by Authority member Ray Liddick for approval.

**Spring Creek Watershed Commission (SCWC):** In his written report, Mr. Best reported the SCWC met on September 20, 2023; however, a quorum was not met. Although not an official meeting, they heard a presentation on efforts and collaborative opportunities from the Middle Susquehanna Riverkeeper; discussed the request from Milesburg Borough to be exit the Commission; and, information regarding the Atlas committee to coordinate Educational Outreach in the form of “Bathtub Tours”. He offered that CT should expect an invoice by November 2023 for the 2024 municipal contributions.

**COG Finance Committee:** Mr. Francke offered the schedule has been set for the Finance Committee to review the draft COG budget. The budget should be available to review in the next week.

c. **Staff/Planning Commission/Other Committees**

**Planning Commission (PC):** Mr. Hoffman, PC Liaison to Council, offered that the PC met on September 19, 2023, and discussed the Maxwell Commercial Subdivision Plan. The PC had no major objections to the plan. The PC discussed the need for a joint meeting with Council and the PC to review proposed form based codes. PC asked for more information regarding the Special Council meeting.

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

Mr. Mike Bloom, Assistant Township Manager, offered a reminder of the DEIB calendar on the Township’s website. He added that Yom Kippur begins at sunset on September 24, 2023.

**CONSENT AGENDA:**

CA-1 **Minutes, Approval of**

a. September 7, 2023, Public Hearing Ordinance O-23-06 Residential Rentals
b. September 7, 2023, Regular Meeting

CA-2 **Correspondence, Receipt/Approval of**

a. Email from Walter Ebaugh, dated September 7, 2023, regarding resignation from appointment on UAJA Board
b. Email from Daniel Materna, dated September 8, 2023, regarding casino

Mr. Fragola made a motion to accept the September 21, 2023, Consent Agenda.  
Mr. Franck seconded the motion.  
Motion carried unanimously.

**OLD BUSINESS:**

OB-1  **Ordinance O-23-03 Official Map**

Mr. Mike Bloom, Assistant Township Manager, offered that Ordinance O-23-03 Official Map has been through an extensive external and internal review process. An advertised public hearing was held prior to
the start of this regular CT Council Meeting. No public comments were presented for consideration. Mr. Bloom offered that the draft ordinance proposes the inclusion of elements from *Walkable College Township – A Pedestrian Facilities Master Plan* to include: State Investment Corridors, Primary Investment Corridors, Secondary Investment Corridors, and Greenways. Other additions include a path to connect the sidewalk at Hospital Drive to the existing Orchard Road bike lanes; a path connection Houserville Road to Puddintown Road through Spring Creek Park; and the existing quarry property as a land reservation.

Deletions from the draft Official Map include the Squirrel Drive connection to Puddintown Road and the shared use path proposed along Old Boalsburg Road.

Mr. Bloom offered that Staff appreciates all of the comments and recommendations received during the process. Staff is compiling the recommendations that were not fully vetted but for future Official Map reviews. With the work in the Dale Summit area, Mr. Bloom anticipates that the Township would review the Official Map in more frequent intervals.

Council discussed the comments from the Centre Regional Planning Agency, Centre County Planning & Community Development Office and other public input.

Mr. Hoffman, PC Liaison, asked that the PC be given any of the comments that were related to the Official Map.

**Mr. Francke made a motion to approve Ordinance O-23-03 updating the Official Map.**
**Ms. Trainor seconded the motion.**
**Motion carried unanimously.**

**OB-2  Ordinance O-23-08 Firework**

Mr. Gabrovsek offered that an advertised public hearing was held prior to the start of the meeting. No public comments were offered. Council offered no additional comments before making the following motion.

**Ms. Trainor made a motion to approve Ordinance O-23-08, an amendment to Chapter 109 – Fireworks**
**Mr. Francke seconded the motion.**
**Motion carried unanimously.**

**NEW BUSINESS**

**NB-1  CTIDA Economic Development Coordinator Agreement**

Mr. Brumbaugh, Township Manager, offered that before Council is the College Township/College Township Industrial Development Authority (CTIDA) *Management Services Agreement*. Since May of 2022, Mr. Brumbaugh has been serving as the interim Executive Director for the CTIDA. The CTIDA is now in a position and have decided to hire a fulltime Executive Director to assist them in carrying out the mission of the organization.

To aid in the decision to hire an Executive Director, the *Management Services Agreement* was crafted. Mr. Brumbaugh offered that the Township has a similar agreement with the CT Water Authority and this agreement will work in the same manner. A fulltime hire will be made by College Township as the
Economic Development Coordinator for CT with their primary responsibility being the Executive Director for the CTIDA. The Township Manager will be the immediate supervisor and conduct employee review/evaluations.

The agreement lays out the terms and conditions of this arrangement. Either party, with 90-day notice, can terminate the agreement. It will renew every year.

Schedule A, attached to the agreement, identifies all of the services that are provided by CT to the CTIDA with the reimbursement rates. The Economic Development Coordinator is listed on this schedule.

Mr. Fragola, CT Liaison to the CTIDA, CTIDA Board member, offered that the CTIDA did approve the agreement at their September 19, 2023, meeting. He added his thanks to the services the Township provides to the CTIDA, which lends to the structure to the organization.

Mr. Brumbaugh was pleased to announce that the position has been offered and accepted by Ms. Keri Miller. Ms. Miller is a former Gregg Township Supervisor and currently serves as the Executive Assistant to the State College Borough Chief of Police. Her start date, if the agreement is approved by Council, will be September 25, 2023.

The existing interim agreement currently in place for the Township Manager to serve as the Executive Director would be brought forward to Council at the next meeting to be terminated.

Mr. Bernier made a motion to approve the agreement and authorize the Chair to execute the Management Services Agreement with the College Township Industrial Development Authority.
Mr. Fragola seconded the motion.
Motion carried unanimously.

**NB-2 Property Lease Agreement; 2600 Carolean Industrial Drive**

Mr. Mike Bloom, Assistant Township Manager, offered that as highlighted in the 2024-2028 Capital Improvement Program, CT has a need to accommodate the growing space requirements for the joint operations of the Public Works Department and the Water Authority. The two entities have exceeded the capacity of the existing Reese Road facility. In late July, an approximately 6,000 square foot commercial building located at 2600 Carolean Industrial Drive, adjacent to the Reese Road facility, became available for lease. Staff views this property as a reasonable, cost effective opportunity to address the ongoing space needs for both entities at this time.

Mr. Bloom offered the proposed lease agreement includes a three-year term with a renewal option for up to an additional three (3) years. The monthly lease is $4,000 per month or $48,000 per year for the first year with a 2% rent increase annually thereafter. If approved by Council, CT can obtain possession on October 1, 2023.

Council offered their appreciation to Staff for their actions to secure this lease agreement.

Ms. Trainor made a motion to authorize the Township Manager to execute the Lease Agreement for the 2600 Carolean Industrial Drive property, pending a final inspection by the Township’s insurance carrier.
Mr. Fragola seconded the motion.
Motion carried unanimously.
NB-3  PA Municipal League Resolutions and Policy Statements

Mr. Brumbaugh offered that the Pennsylvania Municipal League conference would be held on October 6 - 8, 2023, in Bethlehem PA. Mr. Francke will be attending and serve as the voting delegate. A consensus of Council supported the proposed resolutions and policy statement.

STAFF INFORMATIVES:

Mr. Fragola offered that a Town & Gown article for January of 2024 would feature what Municipalities are doing to encourage entrepreneurs and businesses to come into the area. Mr. Fragola was interviewed as he is involved with the CTIDA and is a small business owner. He discussed the Small Area Plan and the efforts in the Dale Summit. He also discussed the Industrial Revitalization Area and the things happening at the former Corning facility. He added the CTIDA could assist small businesses, entrepreneurs and existing business with financing needs.

OTHER MATTERS:

No Other Matters brought forward for discussion.

ADJOURNMENT:

Chair Best called for a motion to adjourn the meeting.

Mr. Franck moved to adjourn the September 21, 2023, Regular College Township Council Meeting,
Chair seconded the motion.

The September 21, 2023, Regular College Township Council Meeting was adjourned at 8:48 PM.

Respectfully Submitted By,

Adam T. Brumbaugh

Adam T. Brumbaugh
Township Secretary
ATTENDED BY –
COUNCIL: Dustin Best, Chair
D. Richard Francke, Vice Chair
L. Eric Bernier
Susan Trainor
Anthony Fragola

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

CALL TO ORDER: Mr. Dustin Best, Council Chair, called to order the October 5, 2023, regular meeting of the College Township (CT) Council at 7:00 PM, and led in the pledge of allegiance.

PUBLIC OPEN DISCUSSION: No Public Open Discussion brought forward.

NEW AGENDA ITEMS: No items were added to the agenda.

SPECIAL PRESENTATIONS: SP-1 Thompson Woods Preserve – Governance Committee

Mr. William Keough, Thompson Woods Preserve (TWP) Governance Committee Chair, offered a presentation and update to Council regarding this newly formed Thompson Woods Preserve Governance and Advisory Committees. The TWP consists of two forested parcels of land, 43.34 acres, separated by a utility right-of-way. The primary appeal of the public preserve is its natural setting and the unique features that it contains in an area within walking distance of downtown State College and the Pennsylvania State University. As a preserve, it is restricted to passive outdoor recreation use, which implies that activities would minimize disturbance of sensitive, natural plant and wildlife communities.

Mr. Keough offered a brief historical timeline of the Thompson Woods Preserve. ClearWater Conservancy, College Township and the State College Borough acquired the property in 1999-2000 from the Smith Partnership. In 2003, responsibility for decisions related to maintenance of the property was assigned to the Centre Region Parks and Recreation Authority. In September of 2022, College Township and the State College Borough executed an Intermunicipal Cooperation Agreement to form a new governance structure. The agreement calls for a Governance Committee and an Advisory Committee.

The Governance Committee is responsible for providing purpose-focused oversight of all TWP matters; making requests for maintenance and repairs to the appropriate party(s); coordinating the work and
initiatives recommended by the Advisory Committee; providing a forum for the public on matters related to the TWP; and referring issues and/or projects to the Advisory Committee.

The Advisory Committee is responsible for identifying issues or potential projects within the Preserve for consideration by the Governance Committee; providing insights and/or technical recommendations to the Governance Committee on matters related to the stewardship of TWP consistent with the prevailing management plan and property covenants; and respond to requests made by Governance Committee.

Mr. Keough offered the identified priorities of the Governance Committee are as follows: Branding/Education; Maintenance; Vegetation/Forest Management; and Enforcement.

He asked that Council consider the following. What does Council consider is the larger vision for the future of TWP? How would CT budget for and fund the vision? Finally, who would complete the work that implements the vision?

In conclusion, Mr. Keough offered that immediate work of the Governance Committee includes establishing a web presence for TWP and entry point signage upgrades.

**SP-2 Local Traffic Advisory Committee (LTAC)**

Mr. Don Hartzell, LTAC Chair, offered a brief update on the LTAC. The purpose of LTAC is to review neighborhood traffic conditions to look for cost effective traffic calming devices when warranted. LTAC consists of four (4) appointed members and five (5) ex-officio members. The LTAC follows the *College Township Traffic Calming Study and Approval Process* booklet and the *PennDOT Traffic Calming Handbook*, both available to view on the Township’s website.

The latest traffic-calming project the LTAC tackled was the Centre Hills Village Traffic-Calming project. Mr. Hartzell opined it was a textbook example of the process. A Neighborhood Traffic-Calming Committee (NTCC) was formed. After working through the process, a solution was approved by the neighborhood and Council. Seven watt-style speed humps were approved for both Oak Ridge and Shamrock Avenue in the Centre Hills neighborhood. The cost to complete the project was just over $100,000.

Mr. Hartzell offered the speed humps were installed this summer. Mr. Franson, Township Engineer, offered that early predictions indicate an 18% decrease in cut-through traffic and a decrease in speed at the humps by 8 miles per hour. Another review and monitoring would take place in August/September of 2024.

Council discussed the experience of the emergency vehicles that responded to a recent fire on Oak Ridge Avenue. Staff reached out and there was no negative feedback from Emergency Services related to the speed humps. Mr. Franson offered that the speed humps are well-marked.

**REPORTS:**

**a. Manager’s Update**

Mr. Mike Bloom, Assistant Township Manager, offered an update on the Solar Power Purchase Agreement. He reported the SPPA Working Group met on September 27, 2023, and given the uncertainty of participants, the SPPA Management Team asked those that may withdraw to express that intent soon. The Centre County Refuse and Recycling has already withdrawn. State College Borough Water Authority would make a determination on October 19.
b. COG Regional, County, Liaisons Reports

CBICC Luncheon: Mr. Fragola reported that he attended a CBICC luncheon focusing on the State of the County. He offered the County presented some points of interest including: 1) the redevelopment of the old Centre Crest facility; 2) the success of the Ironman race; and, 3) the hotel tax and how this money goes back into the community.

PSATS Regional Fall Forum: Ms. Trainor offered that she attended the PSATS Regional Fall Forum along with Mr. Bernier and Ms. Snyder. She participated in several interesting workshops that were helpful to her as a new Council member.

COG Facilities Committee: Mr. Francke reported the COG Facilities Committee met on October 3, 2023, and offered that the majority of the meeting was an Executive Session to discuss the potential acquisition of land adjoining the current COG property towards West College Avenue. The Facilities Committee recommended that the Executive Committee seek to acquire the property.

COG Budget Review Session #1: Mr. Francke reported the COG Facilities Committee is conducting the COG 2024 budget review over the next few weeks. He asked Council to offer guidance on the CCMPO request for additional funding. Mr. Brumbaugh opined that the 2024 CT budget would be a challenge but supported the additional funding to the CCMPO. Council offered comments and ultimately offered support of the CCMPO request for additional funding in the COG 2024 budget.

COG Parks and Recreation Governance Committee: Mr. Francke reported the COG Parks and Recreation Governance Committee met on September 27, 2023, and reviewed a matrix worksheet guided by a facilitator.

c. Staff/Planning Commission/Other Committees

Planning Commission (PC): Mr. Hoffman, PC Liaison to Council, offered that the PC meeting scheduled for October 3, 2023, was cancelled. The PC met in an advertised Work Session to discuss an upcoming joint meeting with Council and the PC.

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

Mr. Mike Bloom, Assistant Township Manager, offered October is Community Planning Month and October 18, 2023, is Global Dignity Day. Both of these items are memorialized by resolutions on the Consent Agenda.

CONSENT AGENDA:

CA-1 Minutes, Approval of
a. September 21, 2023, Public Hearing Ordinance O-23-03 Official Map
b. September 21, 2023, Public Hearing Ordinance O-23-08 Fireworks
c. September 21, 2023, Regular Meeting

CA-2 Correspondence, Receipt/Approval of
a. Email from Deb Nardone, dated September 21, 2023, regarding resignation as Executive Director of ClearWater Conservancy
b. Letter from Rettew, dated September 26, 2023, regarding time extension request for UAJA Biosolids Upgrade Project to January 16, 2024
c. First Night State College 2024 request for sponsorship of Ice Sculpture
d. Email from Steve Allison, dated September 29, 2023, regarding resignation from CTIDA
e. Letter from CT Water Authority, dated September 25, 2023, regarding CTWA Notice of Application – Spring Creek Park Well 1  
f. Email from Frank Mellot, dated September 29, 2023, regarding Fireworks  
g. Email from Don & Renee Marks, dated October 1, 2023, regarding Fireworks  
h. Email/Letter from Mike Bloom, dated October 2, 2023, regarding Fireworks

CA-3 Action Item, Approval of
a. Termination of CTIDA/CT Agreement for Township Manager as Interim Executive Director of the College Township Industrial Development Authority  
b. Resolution R-23-23 October as Community Planning Month  
c. Resolution R-23-24 October 18th Global Dignity Day 2023

Council asked to pull CA-2.h., CA-2.c., and CA-3.a. from the Consent Agenda.

Mr. Fragola made a motion to accept the September 21, 2023, Consent Agenda minus CA-2.c., CA-2.h., and CA-3.a.  
Mr. Francke seconded the motion.  
Motion carried unanimously.

CA-2.h.: Ms. Trainor offered her thanks to Staff for handling the concerns from residents in the Fieldstone Development regarding fireworks. Mr. Bloom, Assistant Township Manager, and Mr. Gabrovsek, Zoning Officer, were thanked for their efforts in addressing the concern and providing an educational piece for clarity.

CA-2.c.: Mr. Brumbaugh offered that every year, the Township sponsors an ice sculpture for the First Night State College. Council would like to continue this sponsorship as they have in the past.

CA-3.a.: Mr. Brumbaugh clarified that if Council approved this consent item, the contract between the CTIDA and College Township for interim Executive Director Services would be terminated. No other actions or signatures needed to terminate the contract.

Ms. Trainor made a motion to accept CA-2.h., CA-2.c., and CA-3.a.  
Mr. Fragola seconded the motion.  
Motion carried unanimously.

OLD BUSINESS:

OB-1 Workforce Housing Ordinance; Intent Statement

Ms. Lindsay Schoch, AICP, Principal Planner, offered that at the August 17, 2023, CT Council Meeting, Council discussed and identified that the Workforce Housing Ordinance lacked an intent and purpose statement to support the ordinance. As a result, Staff prepared a Statement of Intent for Council to review, prior to remanding the ordinance to the Planning Commission (PC).

Council discussed the word “guarantee” in the purpose statement and the use of an alternate word with equal meaning. Council discussed some similarities in the proposed intent statements. They asked Staff to consolidate the list and draft a remand letter to the PC for Council to consider.

Council discussed the necessity for the remand letter to be clear and concise. Key things to include in a remand letter: key principles and tasks; includes what Council intends to keep in an ordinance and what areas they are looking for recommendations from the PC.
OB-2  SPIN E-Bike Update

Mr. Mike Bloom, Assistant Township Manager, offered an update to Council regarding the SPIN E-Bike program that Council discussed in April of 2023. To date, Staff’s follow up inquiries to Penn State University Transportation Services pertaining to the Master Agreement have gone unanswered. Staff’s inquiries to SPIN regarding the potential service expansion into College Township have also gone unanswered.

Mr. Bloom opined that at this point, the interest in a partnership to expand SPIN’s services in College Township is limited and Staff has discontinued inquiries. Council is disappointed with the outcome especially on the part of Penn State University. Council agrees that this discussion related to agreements with SPIN E-bikes in CT has reached an end.

OB-3  Ordinance O-23-05 Shiloh Road PRBD Rezoning; De Minimis Changes

Ms. Lindsay Schoch, AICP, Principal Planner, offered that in advance to the Public Hearing for Ordinance O-23-05, scheduled for October 19, 2023, Staff completed another detailed review of the pending ordinance. Staff identified three De Minimis technical corrections to the pending ordinance that may present some uncertainty in interpretation by the Township, developers and their respective agents.

Staff walked Council through each of the corrections and provided some context for interpretation based upon precedent set in interpretation of the zoning ordinance elsewhere in the Township.

After review of all three proposed technical corrections, Council concurred that the proposed corrections remain consistent with Council’s intent and purpose for the pending ordinance. Council identified one additional correction to line 320 [§87.46.14.D.(5)] to clarify “width” of sidewalk.

Mr. Bernier made a motion to authorize Staff to incorporate the proposed technical corrections to lines 292 [87.46.13.A.], 309 [87.46.13.D.(1)], and 319 [87.46.13.D.(4)], and include the technical correction to line 320 [§87.46.13.D.(5)] on the Draft Ordinance to clarify “width” of the sidewalk.

Ms. Trainor seconded the motion.

Motion carried unanimously.

NEW BUSINESS

NB-1  No New Business Items on the agenda.

STAFF INFORMATIVES: No Staff Informatives were included in the meeting packet for discussion.

OTHER MATTERS: No Other Matters brought forward for discussion.
ADJOURNMENT:

Chair Best called for a motion to adjourn the meeting.

Mr. Bernier moved to adjourn the October 5, 2023, Regular College Township Council Meeting.
Ms. Trainor seconded the motion.

The October 5, 2023, Regular College Township Council Meeting was adjourned at 9:29 PM.

Respectfully Submitted By,

Adam T. Brumbaugh
Adam T. Brumbaugh
Township Secretary
CALL TO ORDER:

Mr. Dustin Best, Chair, called to order the October 19, 2023, Public Hearing of the College Township (CT) Council for Ordinance O-23-05 – Shiloh Road Rezoning at 7:06 PM and led in the Pledge of Allegiance.

ANNOUNCEMENT: Chair Best announced that Council met in Executive Session prior to the start of this Public Hearing and Regular CT Council meeting to discuss a real estate matter.

BUSINESS:

Ms. Lindsay Schoch offered an overview of process leading up to this Public Hearing and potential adoption of Ordinance O-23-05 Shiloh Road Rezoning. Ordinance O-23-05 adds a new section (Section XV) to Chapter 87 – Conditional Uses, permitting duplexes, townhouses, and multi-family residences in the Planned Research and Business Park District (PRBD) by Conditional Use. The ordinance also amends Chapter 200 – Zoning to include duplexes, townhouses, and multi-family residential uses in the PRBD and incorporates elements of Chapter 45 – Planned Residential Developments (PRD) and Chapter 200.38.4 Workforce Housing into the Conditional Use process set forth in Chapter 87 Section XV.

PUBLIC OPEN DISCUSSION:

No Public Open Discussion comments were offered.
ADJOURNMENT:

Hearing no public discussion, Chair Best called for a motion to adjourn the October 19, 2023, Public Hearing.

Mr. Francke made a motion to adjourn the Public Hearing. Chair seconded the motion.

The Public Hearing was adjourned at 7:12 PM.

Respectfully Submitted By,

Adam T. Brumbaugh

Adam T. Brumbaugh
Township Secretary/Manager
CALL TO ORDER: Mr. Dustin Best, Council Chair, called to order the October 19, 2023, regular meeting of the College Township (CT) Council at 7:12 PM, which followed the Public Hearing for Ordinance O-23-05 Shiloh Road Rezoning, and led in the pledge of allegiance.

PUBLIC OPEN DISCUSSION: No Public Open Discussion brought forward.

NEW AGENDA ITEMS: No items were added to the agenda.

SPECIAL PRESENTATIONS: SP-1 State College Police Department

Chief John Gardner, State College Borough Police, reviewed with Council the State College Police Department 2024 Budget Report, which offers an overview of the State College Police Department’s (SCPD) Mission, Vision, Core Values, and Goals/Objectives.

Chief Gardner offered notable events, responses and investigations in 2023 in College Township include abuse of a corpse – charges against two local residents, catalytic thefts – suspect identified and arrested for over 30 counts of theft, fatal bicycle crash – accident Reconstructionist determined the bicyclist pulled into oncoming traffic, and assault investigations at Centre Crest – charges currently pending.

Chief Gardner offered the Police Social Worker Program started in June of 2022, resulted in 731 referrals to date. The PSW joined several mental health related committees in the community and established a partnership with a psychiatric provider that sees individuals within 2 weeks of referral. Additionally the PSW collaborated with several community agencies to provide team approach/support to individuals struggling in the community, as well as, assisted individuals with obtaining medications, housing applications, and connecting resources.
Chief Gardner reviewed the Part 1 and Part 2 crimes for 2022 and year-to-date in 2023 for College Township. Mr. Fragola asked what constituents Part 2 crime listed as weapons. This number increased significantly in the year-to-date report. Chief Gardner will report to Council with this information.

Chief Gardner reported the following Crash Date for College Township from 9/1/2022 – 8/31/2023:

- Total Crashes: 392 (increase of 32 from last reporting period)
- Reportable Crashes: 122 (increase of 12 from last reporting period)
- Injury Crashes: 55 (decrease of 21 from last reporting period)
- DUI Related Crashes: 10 (increase of 2 from last reporting period)
- Total Fatalities: 2 Fatal Bicycle Crashes: 1
- Aggressive driving violations, following too closely, safe speeds and red light violations continue to be the top crash contributors.

In accordance with the provisions of the Police services contract between the Borough of State College and College Township, a proposed 2024 Police Department Budget has been prepared. Chief Gardner recommends 265 hours per week in 2024 for police services, remaining at the same level provided in 2023. The level of service recommended is as follows:

- Scheduled Patrol – 156 hours;
- Traffic Enforcement – 15 hours;
- Complaint Response and Specific Assignments – 60 hours; and
- Detective & Community Relations/Crime Prevention services – 34 hours.

The hourly cost to College Township for police services in 2024 will be $121.02 for regular contracted hours of service and $145.23 for all hours in excess of the regularly contracted hours.

Council discussed the Community Oversight Board (COB) and offered that College Township residents are eligible to participate on the Board. An email from Borough Manager Tom Fountaine, offered the SC Borough is actively seeking members to serve on the COB.

Mr. Francke made a motion to authorize the manager to accept the police service hours of 265 hours per week at the proposed rate of $121.02 for regular contracted hours of service and $145.23 for all hours in excess of the regularly contracted hours. Ms. Trainor seconded the motion.
Motion carried unanimously.

REPORTS:

a. Manager’s Update

In a written report, Mr. Brumbaugh, Township Manager, offered that Staff is anticipating Draft #2 of the Form Based Code from DPZ in the upcoming week. Continuing, he offered the Solar Power Purchasing Agreement would be on the agenda in November for discussion.

Mr. Franson, Township Engineer, offered that a yield to people in the crosswalk sign has been added to the middle of the crosswalk on Pike Street. It has been successful at slowing people down and letting people safely cross the street. Additionally, the counts on Oakridge Avenue continue to show that the traffic-calming project was a success.
b. COG Regional, County, Liaisons Reports

**COG Land Use Community Infrastructure (LUCI) Committee:** In a written report, Mr. Bernier reported the LUCl Committee met on October 11, 2023, in a joint meeting with the Centre Region Planning Commission (CRPC). They reviewed CT amendments to the Planned Research and Business Districts by Conditional Use, reviewed the status of the CRPC and draft 2024 budget, and reviewed the Centre County Metropolitan Planning Organization (CCMPO) operations based strategic plan and draft 2024 budget.

**COG Climate Action and Sustainability (CAS) Committee:** Mr. Fragola reported the CAS committee met on October 9, 2023, and discussed the RFP for the Regional Refuse and Recycling Contracts. The CAS Committee decided to delay action for bulk services. The RFP will be coming to the General Forum for discussion.

**CT Industrial Development Authority (CTIDA):** Ms. Trainor reported the CTIDA met on October 18, 2023, and welcomed Ms. Keri Miller as the new Executive Director. A loan was approved for a new client, a LinkedIn profile was approved and most importantly, the CTIDA is in need of three (3) more Board members.

**COG Public Safety Committee:** Ms. Trainor reported the COG Safety Committee met on October 5, 2023, and heard a presentation from Shawn Kauffman regarding the Centre Region Emergency Alerting and Notification system and discussed the Verisk ISO rating.

**COG Executive Committee:** Chair Best reported the Executive Committee met on October 19, 2023, and had an Executive Session to discuss a real estate matter. They referred the 2024 COG Summary Budget to the General Forum.

**COG Budget Review Session:** Mr. Francke reported the COG Finance Committee met to finalize the COG 2024 Annual Budget. He offered highlights of the proposed budget of which they cut 5% off the original budget. College Township’s increase is over $180,000 from the 2023 budget.

c. Staff/Planning Commission/Other Committees

**Planning Commission (PC):** Mr. Hoffman, PC Liaison to Council, offered the PC did not meet so there is no update.

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

Please see the website for a full listing of DEIB activities this month.

CONSENT AGENDA:

**CA-1 Minutes, Approval of**

a. October 5, 2023, Regular Meeting

**CA-2 Correspondence, Receipt/Approval of**

a. Email from Earl Moore, dated October 2, 2023, regarding Gateway Commercial Residential Density

b. Letter from DCNR, dated October 5, 2023, regarding CCRP Grant Award to CT

e. Letter from Penn Terra, dated October 6, 2023, regarding time extension for Rhodes Lane Condominiums to January 29, 2024 (withdrawn)

d. Letter from Verisk, dated October 5, 2023, regarding Building Code Effectiveness Grading Schedule Program
e.  Letter from Centre County, dated October 12, 2023, regarding refund of Air Service Incentive Contribution

CA-3 Action Item, Approval of
a.  College Township Council Meeting Dates 2024
b.  R-23-25 – Deed of Dedication – Brandywine Drive
c.  R-23-26 – Speed Limits Established – Brandywine Drive
d.  R-23-27 – Parking Prohibited – Brandywine Drive
e.  Project #23-14 Squirrel Drive Paving Project to HRI, Inc., in the amount of $63,945.00

Council asked to pull CA-3.b., and CA-2.c. from the Consent Agenda.

Mr. Francke made a motion to accept and approve the October 19, 2023, Consent Agenda minus CA-2.c., and CA-3.b.
Ms. Trainor seconded the motion.
Motion carried unanimously.

CA-3.b.: Mr. Franson, Township Engineer, offered that the project at Brandywine has taken 11 years to complete. As part of the original plan, there were plastic speed humps to be installed. Standards have changed and these types of humps are not to be used on roads that are plowed. The developer installed one speed hump and the Township asked them to remove it during the winter. Speed sentry data will be collected during the winter and this will be addressed later.

CA-2.c.: This consent agenda item was withdrawn. Ms. Schoch offered a new plan is being brought forward for Rhoades Lane so the time extension is not necessary.

Ms. Trainor made a motion to approve and accept CA-3.b. as part of the Consent Agenda.
Mr. Fragola seconded the motion.
Motion carried unanimously.

OLD BUSINESS:

OB-1  Ordinance O-23-05 Shiloh Road Rezoning

Ms. Schoch, Principal Planner, offered that a Public Hearing for Ordinance O-23-05 Shiloh Road Rezoning, which allows R3 uses in the Planned Residential and Business District was held prior to the start of this meeting. There was no public comments brought forward.

Ms. Trainor made a motion to approve Ordinance O-23-05, adding Section XV to Chapter 87 (Conditional Uses), permitting duplexes, townhouses, and multi-family residences in the Planned Research and Business Park District (PRBD) by Conditional Use. In addition, amend Chapter 200 – Zoning to include R3 uses in the PRBD and incorporate elements of Chapter 145 – Planned Residential Development and Chapter 200.38.4 – Workforce Housing into the Conditional Use process set forth in Chapter 87, Section XV.
Mr. Fragola seconded the motion.
Motion carried unanimously.
OB-2 Spring Creek Park Signage

Ms. Kerner, Public Works Director, offered that on July 20, 2023, Council took action to establish “No Parking” zones along Spring Creek Lane and along the east side of Puddintown Road from the bridge over Spring Creek to a point north of Spring Creek Lane. Recently, correspondence was received from Ms. Carla Stilson, College Township resident, regarding these new signs. Council requested Staff review her comments and provide feedback.

1. Create a fire lane on Spring Creek Lane. The Fire Chief noted that creating a fire lane on Spring Creek Lane would be reasonable. Pavement markings accompanied with posted signage due to snow/ice is typical, although parking is not a problem in the winter months. Council agreed with this recommendation.

2. Removal of No Parking Signs on Puddintown Road. The No Parking on the east side of Puddintown Road was established by the sight distance triangle needed for motorists existing from Spring Creek Lane. There is an extra 100’ of signage beyond the required distance to the bridge over Spring Creek that could be removed. On the west side of Puddintown, the no parking signs were placed to keep motorists from blocking access in the intersection of the PSU access drive. These signs are not required and could be removed as the PA Vehicle Code prohibits any motorist from parking through an intersection. Mr. Bernier offered if you remove signs, people will park in those areas. A majority of Council supported removing the additional signs.

3. Improvements to the parking lot on Balmoral Way and install a bridge over Spring Creek. Staff offered that neither of these two suggestions are currently in the Capital Improvement Plan (CIP) and will take several years to implement. Staff has started implementation of recommendations from the Spring Creek Master Plan. Staff will seek additional grant funding opportunities. Council agreed that these two projects be included in the CIP.

4. Removal of No Parking Signs at 111 Spring Creek Lane. Staff offered that the current placement of the signs along Spring Creek Lane are adequate to achieve the goal and placement of the sign was purposefully placed near the common property line so as not to overly impede either property owner. Council supports keeping the purposefully placed signs that do not impede either property owner.

NEW BUSINESS

NB-1 Library Articles of Agreement Amendment

Mr. Adam Brumbaugh, Township Manager, offered that in a letter, Mr. Eric Norenberg, Centre Region Council of Government (COG) Executive Director, requests Council review the Library Articles of Agreement amendment regarding Board membership prior to the next meeting of the Library Board Governance Committee. An amendment is necessary because, effective December 31, 2023, Halfmoon Township will no longer be a part of the Joint Articles of Agreement for the Schlow Library Board of Trustees. As a result, they will no longer have a representative on the board. One of the remaining participating municipalities will fill the vacancy.

The Governance Committee of the Library Board of Trustees offered several options for Council to review. After discussion of the three options presented by the Governance Committee, Council unanimously supports the open seat being assigned to College Township as the usage of physical library materials in College Township has increased and currently College Township has only one representative on the Board. Council also noted that the Library Board composition/criteria be reviewed for possible modification.
NB-2 Brush Stockpile Lease

Ms. Kerner, Public Works Director, offered that as a result in a change of operations at the University Area Joint Authority, Staff has been actively investigating options for the storage and processing of brush beginning in 2024. After evaluating a number of options, Staff concludes that a land lease of Parcel No. 2, 2900 Block of Stewart Drive represents the most efficient and cost effective solution at this time.

The approximately 1.11 acre parcel is located within close proximity to the Public Works Buildings in the Carolean Industrial Park. The site will provide adequate space for brush operations, while also accommodating a laydown area for additional materials and/or equipment. This laydown area will allow Public Works to transfer operations entirely from the shale pit location on Mount Nittany, thus allowing that space to be fully converted to the trailhead parking.

Ms. Trainor made a motion to authorize the Township Manager to execute the Lease Agreement for the Parcel No. 2, 2900 Block of Stewart Drive. Mr. Fragola seconded the motion. Motion carried unanimously.

STAFF INFORMATIVES: Mr. Francke pointed out in the University Area Joint Authority minutes, due to the unpaid amount from the State College Borough; an increase in rates for all users is likely in 2024.

OTHER MATTERS: With sympathy, Mr. Brumbaugh offered that a former College Township Council member Mr. Forrest Remmick recently passed away.

Ms. Snyder added the Centre County Association of Township Officials annual fall convention will held on October 30, 2023, at the Wyndham Garden State College. Mr. Eric Bernier will be recognized for 25 years of service.

ADJOURNMENT:

Chair Best called for a motion to adjourn the meeting.

Mr. Bernier moved to adjourn the October 19, 2023, Regular College Township Council Meeting. Chair seconded the motion.

The October 19, 2023, Regular College Township Council Meeting was adjourned at 8:46 PM.

Respectfully Submitted By,

Adam T. Brumbaugh
Township Secretary
CALL TO ORDER: Mr. Rich Francke, Council Vice Chair, called to order the November 2, 2023, regular meeting of the College Township (CT) Council at 7:00 PM, and led in the pledge of allegiance.

PUBLIC OPEN DISCUSSION:

Ms. Sue Smith, Lemont, offered her thanks to the Township Public Works Department. They assisted the Lemont Village Association with their cleanup at the grain elevator.

NEW AGENDA ITEMS: No items were added to the agenda.

REPORTS:

a. Manager’s Update

Mr. Brumbaugh, Township Manager, offered a correction to his written report. He offered that Staff has received the final version of the Dale Summit Area plan and are reviewing it. Draft #2 of the Form Based Code from DPZ is still being developed but Staff expects to receive it soon. After receiving and reviewing the second draft, the next step is to schedule a presentation from DPZ for both Council and the Planning Commission (PC). After consultation with Pam Adam of the Solar Power Purchasing Agreement Management Team, CT and CTWA extended energy contracts with Constellation for 18 months at a rate of less than $0.07 per KWH.

Mr. Brumbaugh reported he attended a meeting with the Airport Authority on October 31, 2023.

b. COG Regional, County, Liaisons Reports

COG Land Use Community Infrastructure (LUCI) Committee: Mr. Bernier reported the LUCI Committee met on November 2, 2023. No actions were taken at the meeting. They heard an update on the Centre County Active Transportation Plan.
COG Parks and Recreation Governance Committee: Mr. Francke reported the Parks and Rec Governance Committee met on October 25, 2023, and reviewed the matrix and mission and purpose of the authority.

COG Human Resources Committee: In a written report, Mr. Best offered the COG Human Resources Committee met on the November 1, 2023, and conducted a first review of the 2024 work tasks. They reviewed many tasks broken into three categories; Routine and Ongoing tasks, carry over from 2023, and Special Projects/Risks Management.

c. Staff/Planning Commission/Other Committees

Planning Commission (PC): Mr. Hoffman, PC Liaison to Council, offered the PC did not meet so there is no update.

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

Staff offered that November 2nd is celebrated as the Day of the Dead. Veterans Day is observed on Friday, November 11, and the Township Office will be closed.

CONSENT AGENDA:

CA-1 Minutes, Approval of
   a. October 19, 2023, Public Hearing
   b. October 19, 2023, Regular Meeting

       Mr. Bernier made a motion to accept and approve the November 2, 2023, Consent.  
       Ms. Trainor seconded the motion.  
       Motion carried unanimously.

OLD BUSINESS: No Old Business Items on the agenda.

NEW BUSINESS

NB-1 COG 2024 Budget

In the 2024 COG Summary Budget report, for the 2024 fiscal year, support from municipalities or municipal shares is to increase from $8,491,988 (Budgeted in 2023) to $9,398,808 (Budgeted in 2024), a change of $906,820 or an average of 10.68%. College Township percentage of the COG Budget in 2024 is 16.93%. Mr. Brumbaugh offered in 2024, CT COG share is $1,651,920 or 3.564 mils. In 2023, real estate millage in CT was 6.10.

Overall, Council supported the COG budget as presented. Council thanked the COG Finance Committee, for which Mr. Francke serves as Chair, for the time and effort to review and bring forward this Summary Budget. Council values the regional services provided by the COG.

Council discussed the many formulas used to calculate the COG Budget. Council would like to reduce the number of formulas used. Council offered comments related to the COG Cost of Living Adjustment (COLA). Council would like the COG to implement changes to the COG policy to allow for utilization of the federal Bureau of Labor Statistics formula for the calculation of annual COLA. Mr. Eric Norenberg,
COG Executive Director, is aware of CT Council’s comments regarding COLA and added that he would like to phase in a change to COLA formula in a better year.

Council discussed the COG Parks Operating Funds, specifically the Parks Maintenance expenditure. Council agreed that no COG participating municipality should be subsidizing other municipal parks maintenance obligations through the COTG Parks and Recreation Budget.

Mr. James Saylor, COG Principal Transportation Planner, offered information regarding the Centre County Metropolitan Planning Organization (CCMPO) numbers to increase personnel and consulting costs associated with maximizing potential return of federal dollars for transportation projects that were not reflected in the Summary Budget. Council offered their support of an additional $34,911.00 from CT for the increase in personnel and consulting costs for the CCMPO.

Mr. Bernier made a motion to support the request for additional funds from the Centre County Metropolitan Planning Organization in the amount of $34,911.00. Ms. Trainor seconded the motion. Motion carried unanimously.

Mr. Norenberg introduced Ms. Kimberlee MacMullen, newly hired COG Finance Director. She thanked Council for their support while she worked through her first COG Budget.

The COG Summary Budget will be presented to the General Forum at the November 27, 2023, meeting.

STAFF INFORMATIVES: No Staff Informatives in the agenda packet.

OTHER MATTERS:

Council recognized those on Council who are veterans and offered their thanks. Chair Francke offered thanks to Ms. Snyder for her role in the Centre County Association of Township Officials (CCATO). CCATO held their annual Fall Convention this past week and Council Member Bernier was recognized for 25 years of service.

ADJOURNMENT:

Chair Francke called for a motion to adjourn the meeting.

Mr. Bernier moved to adjourn the November 2, 2023, Regular College Township Council Meeting. Chair seconded the motion.

The November 2, 2023, Regular College Township Council Meeting was adjourned at 8:26 PM.

Respectfully Submitted By,

Adam T. Brumbaugh

Adam T. Brumbaugh
Township Secretary
ATTENDED BY –
COUNCIL: Dustin Best, Chair
D. Richard Francke, Vice Chair
L Eric Bernier
Susan Trainor
Anthony Fragola

PLANNING COMMISSION: Ray Forziat, Chair
Ed Darrah, Vice Chair
Peggy Ekdahl, Secretary
Noreen Khoury
Matthew Fenton
Ash Toumayants

STAFF: Adam T. Brumbaugh, Township Manager/Secretary

ABSENT: Robert Hoffman, Planning Commission
Bill Sharp, Planning Commission

CALL TO ORDER:

Mr. Dustin Best, Council Chair, called to order the November 8, 2023, Special Joint Meeting of the College Township (CT) Council and Planning Commission (PC) at 7:00 PM.

BUSINESS:

After attendee introductions, Chair Best and PC Chair Forziat guided discussion about communication between Council and PC. PC participants offered suggestions for clearer communications coming from Council and from Township Staff. Likewise, PC needs to utilize their liaison to Council to seek clarification on topics as necessary.

Consensus of the group was to strive for more frequent joint meetings going forward.

ADJOURNMENT:

Chair Best adjourned the November 8, 2023, Special Joint Meeting at 9:13 PM.

Respectfully Submitted By,

Adam T. Brumbaugh
Adam T. Brumbaugh
Township Secretary/Manager
Estoppel

Landowner claims ‘right by estoppel’ in dispute over fox farm

Citation: Brown v. Chaffee County Board of County Commissioners, 2023 WL 4379366 (10th Cir. 2023)

The Tenth U.S. Circuit has jurisdiction over Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming.

Alison Brown, who had an interest in fox hunting, bought a land in Chaffee County, Colorado. She wanted to use the land to host foxhounds, horses, a barn, and a horse arena. She intended to launch hunting parties from the land, too, even though her parties didn’t hunt foxes.

Instead, party goers would pursue on horseback predators like coyotes that threatened livestock and other beneficial animals. In pursuit of her recreational goals, Brown submitted a building plan to Chaffee County, proposing to build a structure that would house a caretaker.

The county approved the building plan for the house, which Brown took to mean it also had approved her other current and future uses, like housing foxhounds and building an arena.

The county, however, didn’t share in that interpretation and notified Brown that her foxhunting business was operating outside the Chaffee County Land Use Code and needed to submit to a rigorous form of land use review.

A lawsuit ensued over the scope of Brown’s property rights. In federal court, Brown alleged she had a vested right to use on her property the functional equivalent of a “kennel” and “outfitting facility” without submitting to the special land use review process Chaffee County typically afforded those uses. She cited Colorado common law, stating that she had detrimentally relied on the county’s affirmative representations that she could use her land accordingly.

The court disagreed with Brown and granted the county judgment. Brown appealed to the Tenth U.S. Circuit Court of Appeals.

DECISION: Affirmed.

Brown didn’t reach the “high bar” of asserting a “right by estoppel” under Colorado common law.

The court explained that under Colorado property law, the county “had to clearly and unambiguously communicate the content of . . . Brown’s claimed rights. Otherwise, [she] could not reasonably rely on those representations.”

Here, the county’s communications didn’t meet that standard, so Brown couldn’t establish vested rights to develop the kennel and outfitting facility.
A CLOSER LOOK

“A reasonable jury could not help but find that, viewed in the light most favorable to . . . Brown, the interactions between the parties were rife with obvious misunderstandings and poor communication,” the court found. And the undisputed facts confirmed that Brown couldn’t “reasonably rely on such representations in a way that gave rise to vested property rights under Colorado law.”

So what communications were at issue? For starters, Brown claimed a county official told her that her structure would constitute a multi-family dwelling but she could change her floorplans to avoid this designation. They also discussed Brown’s current and planned uses, which concerned activities that implicated the kennel and outfitting ordinances.

As a result, Brown understood the official to have communicated that making changes to the structure would allay any concerns Chaffee County had with her other present and intended future uses. If Brown moved the structure’s stairs to the interior and scrapped the second kitchen, Chaffee County would designate her principal land use as a permitted single-family home that would not require heightened review.

“If this were the end of the story, it would be a closer call,” the court wrote. “To be sure, we would have questions about whether . . . Brown could reasonably think that the suggested structural modifications had anything to do with, for example, the propriety of later building a horse arena.” “But on the other hand, each parcel can only take on one principal use, and [a] mixing of multiple accessory compatible uses may be permitted taking into consideration the intent statement and objectives of the zone or overlay in which the uses are proposed, and as long as a principal use is defined.’”

While it wasn’t “implausible for . . . Brown to imagine that [the official] was offering a sweetheart deal: change your structure, and the County will sweep the requirements for the other intended uses under the rug by labeling the principal use a ‘single-family dwelling,’ ” that wasn’t the end of the story. Specifically, a few days later, the official “again expressed concerns that . . . Brown’s proposed land use would constitute an ‘outfitting facility’ requiring Limited Impact Review. . . . And—generously construed—[he] again reassured her that she just needed to make his recommended changes to comply with the Code. . . . But still, he wanted more information, and . . . Brown supplied it, describing her intention to house foxhounds in dog kennels, launch recreational hunting parties, and build a horse arena.”

For over a month, Brown didn’t hear anything. And then the official emailed her “explicitly claiming that ‘the aggregate use of your property does fall under the Land Use Code [LUC] as an outfitting facility. As such, the LUC does require a Limited Impact Review for the use. This would encompass the kennels, stables and the office/guest quarters instead of the Limited Impact Review that is required for either a minor motel or resort.’”

The bottom line: The facts, when construed in a light most favorable to Brown, were “stitched with confusion.” “In one breath, the County suggested that physical alterations to a guest house would free [her] from Limited Impact Review for a kennel. In the next, the County changed course—and then changed course again, and then fell silent. And when [she] finally obtained her permit and certificate, they contained no mention of the current and intended uses now at issue.” Under established case law, “Colorado law demand[ed] representations marked by certainty before finding a vested property right. The communications between the parties here were marred with uncertainty such that no rational jury could find that reasonable reliance arose from the circumstances.”
Non-conforming Use

Homeowner claims four-family dwelling permitted under zoning ordinance, village says it can only operate as a two-family

Citation: Mimassi v. Zoning Board of Appeals of Village of New York Mills, 2023 WL 4836920 (N.Y. App. Div. 4th Dep't 2023)

Michael Mimassi bought a house in an R-1 district of the Village of New York Mills (the village). Members of Mimassi’s family previously owned the property, which was used as a multi-family dwelling since 1944 despite the fact that the applicable zoning ordinance (enacted in 1973) only allowed single-family dwellings in the R-1 district.

The ordinance also indicated that the lawful use of any land or building as of the time the zoning ordinance was adopted in 1973 may be continued as a nonconforming use, so long as the nonconforming use was not discontinued for a period of one year.

After purchasing the property, the village’s code enforcement officer (CEO) issued building permits to Mimassi for the construction of two decks and renovation of the property’s interior.

But, upon inspection of the property, the CEO issued an “order to remedy violation” and denied Mimassi’s application for a certificate of occupancy for the renovated four-family dwelling on the ground that the nonconforming use of the building had been discontinued.

Mimassi appealed the denial of the certificate of occupancy to the Zoning Board of Appeals of Village of New York Mills (ZBA). After a hearing, the ZBA denied the appeal, finding that the property was a two-family dwelling at the time the zoning ordinance was adopted and had not maintained that nonconforming use status.

Mimassi then sought a declaration that the village’s zoning ordinance was invalid and to annul the ZBA’s determination that the property was not a four-family dwelling nonconforming use. In response, the ZBA indicated that it would “allow the property to continue to be used as a two-family dwelling nonconforming use.”

The court dismissed, and the case went up for appeal.

DECISION: Affirmed.

Mimassi’s substantive challenge to the zoning ordinance was time barred. “The statute of limitations commenced in 1973 when the zoning ordinance was enacted . . . and not, as [he] . . . ‟, when he applied to rezone the property,” the court found.

Concerning Mimassi’s challenge to the ZBA’s conclusion that the property was not a four-family dwelling nonconforming use, “the evidence before the ZBA showed that the property was a two-family dwelling prior to [the] renovations, and [he] did not submit any evidence before the ZBA for it to conclude otherwise,” the court added.

The bottom line: The court didn’t err “in failing to conduct a hearing on whether there was a nonconforming use as a four-family dwelling.” “A determination of a zon-

Case Note:
The court rejected Mimassi’s contention that the ZBA was “estopped from enforcing the zoning ordinance.”

Variance

Abutter appeals ZBA’s decision to grant developer variances, special permits to convert from two- to three-family

Citation: Ivas v. Zoning Board of Appeals of Gloucester, 2023 WL 4751187 (Mass. Ct. App. 2023)

Patricia Ivas appealed a court ruling that affirmed the Zoning Board of Appeals of Gloucester, Massachusetts (ZBA) to grant variances and special permits to FUD LLC (FUD) to transform a two-family property into a three-family dwelling by converting the attic into a one-bedroom apartment.

DECISION: Affirmed.

Ivas lacked standing to pursue her claims despite being an abutter.

MORE ON THE FACTS

FUD owned a two-family property on Western Avenue in Gloucester. The premises was a preexisting nonconforming structure in a high-density residential zoning district, with two residential units, and FUD wanted to convert an unused attic in the premises into a one-bedroom apartment.

So, FUD applied to the ZBA for special permits and variances. On December 12, 2019, the ZBA held a hearing on FUD’s application. Ivas, an abutter, spoke in opposition to the application; she read a letter to the board expressing her concerns about how her privacy and quality of life would be negatively impacted if the application was approved.

Specifically, Ivas said the area was already too congested, and due to the proximity of her home to the premises, she could hear conversations and tea kettles boiling in the premises. She also said that she kept her blinds closed at all times because neighbors could see into her home.

In January 2020, the ZBA unanimously approved the special permits with certain conditions and approved the variances.

Then, Ivas filed suit asking the court to review the ZBA’s decision. She contended that it had:

- denied her the right to speak at the hearing on the matter;
- failed to apply the proper standards for filing requirements; and
- exceeded its authority in granting FUD’s application.
FUD requested dismissal, and then asked the court for judgment without a trial. It contended Ivas lacked standing to contest the ZBA’s decision and that she did not offer evidence that the decision was legally untenable.

Following a hearing, the judge concluded Ivas hadn’t produced evidence that the ZBA’s decision was based on a legally untenable ground and granted FUD judgment without a trial. That’s when Ivas appealed.

BACK TO THE COURT’S RULING

Did Ivas have standing to challenge the ZBA’s decision? That was the initial question to ask because “[o]nly a person aggrieved [c]ould challenge a decision of a zoning board of appeals.”

As a direct abutter to FUD’s premises, “Ivas [wa]s entitled to presumptive standing.” FUD could “rebut the presumption of standing by coming forward with credible affirmative evidence that refute[d] the presumption . . . establishing that [Ivas’] allegations of harm [we]re unfounded or de minimis.’ “

The court explained that one way for FUD to rebut the presumption was to show that Ivas’ claims of aggrievement didn’t fall “within the interests protected by the applicable zoning scheme.”

Here, “FUD demonstrated, and the board agreed, that the project would not exacerbate any existing privacy issues, the project was ‘in harmony’ with the neighborhood, there would be little impact on traffic or utilities, and there was ‘sufficient off-street parking.’ “

With the presumption rebutted, Ivas had to assert quantitatively and qualitatively “creditable evidence to substantiate [her] allegations.” She alleged she would be harmed by:

- density/overcrowding as demonstrated through privacy concerns, lack of an easement, and diminution in property values; and
- the ZBA’s lack of authority to grant the relief requested.

The court explained she had to “prove these contentions by ‘direct facts and not by speculative personal opinion—that [her] injury [wa]s special and different from the concerns of the rest of the community.’ “

The bottom line: Judgment in FUD’s favor was proper because Ivas couldn’t show “a material issue of fact that would have supported a legally cognizable injury.” Her “alleged harm was not appreciable, palpable, and significant.” She claimed the ZBA board lacked authority to grant FUD a special permit for one off-site parking spot, but she failed to show how the permit would harm her personally.

In the end, “Ivas also failed to provide quantitative or qualitative support for her claims that the addition of the unit would impact the density of the neighborhood in a harmful way.” She contended the project would exacerbate harms she already experiences—and specifically noise—but she did not present any evidence, beyond her own opinion, supporting those claims.”

PRACTICALLY SPEAKING

To establish standing, a plaintiff had to “do more than allege a zoning violation, and where, as here, Ivas presented no evidence of harm beyond her own opinion, the evidence was insufficient to establish standing.” That’s despite the fact that she was an abutter.

“There are [11] properties that abut the subject property, five of which are multi-family homes, and an immediate abutter is a five-family home. It therefore follows that Ivas failed to show that the noise she experiences living in a densely populated area is a particularized harm,” the court wrote.

Further, Ivas didn’t demonstrate “that the project would change the status quo in the crowded downtown neighborhood.” “In a crowded neighborhood, it is particularly relevant that FUD is not seeking to add an additional structure to its property. Rather, FUD seeks to convert a preexisting attic into a residential unit, and therefore Ivas’ property is not being physically crowded by the addition of new construction.”

Also, while Ivas contended her privacy rights would be impacted by the addition of more tenants on the property, “she failed to show the actual harm that would flow from the conversion of an attic to an apartment, particularly where the project [w]ould not further crowd Ivas’ property.”

Special Exceptions

Court reviews whether city’s decision to grant special exception to develop ‘semi-public recreational’ R-1A area proper

Citation: *Keenum v. City of Moss Point*, 2023 WL 4722055 (Miss. Ct. App. 2023)

A court affirmed the City of Moss Point, Mississippi’s decision to approve a special exception request to the city’s zoning ordinances to allow Frankie Brown to develop a “semi-public recreational area” in an R-1A (primarily residential) zone. Paul Keenum, an adjoining landowner, appealed.

DECISION: Reversed; case sent back for further proceedings.

Moss Point’s interpretation and application of its zoning ordinance “rendered other portions of the ordinance meaningless.”

A CLOSER LOOK AT THE FACTS

On June 5, 2020, Brown submitted an application to the Board of Adjustment (BOA) to develop the recreational area which was situated in a single-family residential development. Brown’s expert stated the proposed project would include:

- additional public parking for approximately 30 trucks and trailers adjacent to the existing Jackson County McInnis Bayou Boat Launch;
- a recreational area with amenities, including a pier, docking slips, kayak rentals, picnic tables, and outdoor family games;
• an on-river fueling station for boats; and
• a bait shop, a place to purchase snacks and beverages, and a restaurant on the river and similar retail.

In submitting the application, Brown sought to have Moss Point grant him a special exception to the zoning ordinance and determine that his proposed development qualified as a “semi-public recreational area” as provided by the ordinance.

In July 2020, the BOA considered Brown’s application and recommended that the Board of Aldermen approve it. Two individuals, including Keenum, opposed the application. He said he was concerned about traffic that the development would cause as well as the environmental impact of the fueling station on the water. He also contended that because the proposed development would serve alcohol, the business would interfere with his right to peacefully enjoy his home.

The other resident claimed she “owned the public street and/or the areas surrounding the public street” and was concerned with the traffic that the proposed development would bring to the area. She added that her family had previously operated a restaurant on the same street, and they planned to reopen the restaurant in the future.

The Board of Aldermen in a 6-1 vote approved the BOA’s recommendation to grant Brown’s application for the special exception designation. Keenum and the other resident appealed to the court. They argued that Moss Point’s approval of this special exception “violated the R-1A zoning where the property [wa]s located leading to placing what amounts to a commercial business in [a] residential area zoned R-1A.”

The court affirmed the Aldermen’s decision. It found that Moss Point’s decision to grant the special exception “was not arbitrary or capricious and was supported by substantial evidence.”

BACK TO THE COURT’S RULING

Interpreting a zoning ordinance was a question of law, and the court reviewed under the “de novo” standard. “We must not adopt an interpretation of an ordinance that renders other parts of the same ordinance meaningless,” it added.

Here, the zoning ordinance that covered the proposed site indicated that “[t]he purpose of this district w[a]s to permit the development and continued maintenance of low residential densities in an urban setting consisting primarily of single family residential development, by relatively low overall density with lots of at least 12,000 square feet per dwelling unit.”

The ordinance outlined permitted uses as “[s]ingle family residential dwellings and accessory uses and structures and permitted and exempted signs as listed within this district.”

Special exceptions could be granted, however, for “[h]ome occupations,” semi-public recreational areas and country clubs, churches, and private and parochial schools.

Moss Point concluded the application fell under “Uses Permitted as Special Exceptions” since the proposed development was a “semi-public recreational area.”

But, the question for the court was “whether Moss Point erred in its interpretation and application of its ordinance by granting the special exception for Brown’s project.” In finding that it had erred, the court cited Mississippi case law precedent indicating that it had to “consider the common and accepted usage of the words in the ordinance and the general structure of the ordinance as a whole.”

According to Brown, a special exception was defined under the ordinance as “[a] use that would not be appropriate generally or without restriction throughout a zoning district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote public health, safety, convenience, or general welfare. Such uses may be permitted in a zoning district in accordance with the provisions of this chapter as special exceptions if specific provisions are made in the district regulations for such use.”

“As noted above, a ‘semi-public recreational area’ is a use permitted by special exception in a R-1A zone; however, the term ‘semi-public recreational area’ is not defined in the Zoning Ordinance,” the court noted. And the parties hadn’t cited—and the court hadn’t found in case law where the phrase “semi-public recreational area” had been defined.

While Brown contended—and Moss Point agreed—that the nature of his proposed development qualified as a “semi-public recreational area,” another interpretation could be reached. “From a different perspective, while a ‘semi-public recreational area’ may be a permitted use by special exception in a R-1A zone, commercial uses are prohibited in a R-1A zone by Section 402.4,” the court explained. Further, “commercial uses” weren’t defined in the ordinance.

But, another case decided in 2002 was instructive as to how the court should proceed with its analysis. Specifically, when evaluating whether a property was used for commercial activity, it would assess whether the activities would be carried out for profit.

The bottom line: “While there may be some question as to an exact definition of a ‘semi-public recreational area,’ there is no question that Brown’s project, with kayak rentals, fuel sales, bait sales, snack and beverage sales, a restaurant, and other retail, was intended to be a ‘business activity carried on for a profit.’ ” Therefore, the court had to decide whether a special exception designation could be given to a prohibited use.

Ultimately, the court ruled there was no evidence Moss Point had “considered that Brown’s commercial for-profit venture he proposed was a prohibited use under the Zoning Ordinance. Instead, Moss Point’s interpretation of ‘semi-public recreational area’ in this instance would render meaningless the clear prohibition of commercial uses in R-1A zones.”

The case cited is Hinds County Board of Supervisors v. Leggette, 833 So. 2d 586 (Miss. Ct. App. 2002).
Civil Conspiracy

Developer claims new city zoning ordinance interfered with right to construct manufactured homes

Citation: Legacy Housing Corporation v. City of Horseshoe Bay, Texas, 2023 WL 4707143 (W.D. Tex. 2023)

Legacy Housing Corp. (Legacy) wanted to develop 297 lots in the city of Horseshoe Bay, Texas that it bought in 2019.

Legacy claimed a city zoning ordinance (2021-12) imposed new registration requirements for contractors, limited the number of permits for speculative builds, and changed the requirements for driveways for manufactured homes. In its view, the new regulations interfered with its investment-backed expectations for the development lots and constituted a regulatory taking.

Legacy further claimed the city misled it about its chances of securing zoning variances needed to proceed with the project. And it asserted that the city had impermissibly delegated its interest in exercising its permitting and development powers by instructing Legacy to “first seek approval from [another entity] before going to the City for construction permits.”

The controversy concerned close to 100 acres of land located outside of the city but within its extraterritorial jurisdiction that bordered a section called the “Greenbelt.” The Greenbelt was bordered by Legacy’s “ETJ” property to the south and its development lots to the north.

According to Legacy, the property owners’ association (POA) had accepted money from the city in exchange for denying Legacy access to the Greenbelt and agreeing to bring charges against anyone who crosses the Greenbelt. Legacy also contended that the city had notified it of its plans to “deny any permit applications to construct a driveway on Legacy’s residential lots separated by the POA’s [Greenbelt].” Legacy also stated the POA diverted a percentage of its capital funds to private entities and that the city, POA, and another entity were conspiring with respect to the POA’s capital budget and the city’s contributions.

Legacy filed other several claims against the city, the POA, and several resort entities operating in Horseshoe Bay, including ones for civil conspiracy and interference. The city asked the court to dismiss all but the regulatory takings claim. It claimed the civil conspiracy claim was barred by governmental immunity and that Legacy didn’t state a viable claim for a deprivation of a constitutional right because it had no vested right to build a road across the POA property as it wanted and had not pleaded any facts that show the city denied permits to which it was entitled.

DECISION: Dismissed in part.

The city was shielded from liability from the civil conspiracy claim.

Civil conspiracy—Legacy claimed the city conspired with other entities to seek approval from one of those other entities before it would consider whether to grant Legacy a construction permit. Legacy stated that the city had also conspired “with the POA to deny access to the POA [Greenbelt]...all to stifle development of manufactured housing.”

Under Texas law, sovereign immunity would generally defeat a court’s subject matter jurisdiction unless limited waiver applied for a covered “tort” claim under “narrowly defined circumstances,” due to the Texas Tort Claims Act (TTCA). The TTCA didn’t waive immunity for intentional torts such as civil conspiracy. But “[i]n the absence of such a waiver, the city was shielded by governmental immunity.”

The court explained that a municipality could engage in governmental functions, that is those related to the “performance of purely governmental matters solely for the public benefit.” It could also conduct “proprietary functions,” which were performed in the city’s discretion “primarily for the benefit of those within the corporate limits of the municipality” and “not as an arm of the government.’” Since proprietary functions weren’t “done as a branch of the state,” they “did not implicate the state’s immunity for the simple reason that they were not performed under the authority, or for the benefit, of the sovereign.”

Also, the TTCA listed a “non-exhaustive” list of governmental functions, such as zoning, planning, and plat approval and enforcement of land-use restrictions. It also listed proprietary functions as “the operation and maintenance of a public utility” and “amusements owned and operated by the municipality.”

At issue here was the conduct of the city—by which it had instructed Legacy to seek approval from another entity before it would consider issuing a construction permit. The requirement that construction comply with POA architectural guidelines fell within the “zoning, planning” and “enforcement of land use restrictions” categories in the TTCA enumerated list of governmental activities. Thus, the city was shielded from a civil-conspiracy claim arising from the conduct.

The bottom line: The city was entitled to dismissal on this claim.

Zoning News Around The Nation

Connecticut

StoryMap shows how Town of Avon reviewing, updating, and reformating zoning regulations

Avon, Connecticut is conducting a comprehensive review of its zoning regulations. It is expected to update and reform the regulations, and it’s using StoryMap to show how it is conducting the process.

For the StoryMap detailing how the process is being conducted, visit storymaps.arcgis.com/stories/0e1777d44a694ad5ad3a46a5adec71e. There you’ll find background about the project, which SLR Consulting is involved with. The review is being undertaken to ensure the alignment
with "the Town’s Plan of Conservation & Development (POCD) and current Town situations, initiatives, and directives." A press release explained that “[t]his is typically done by reflecting on current trends in zoning and planning practices and how they may apply to the Town. The updated Zoning Regulations will be user-friendly, use modern language, incorporate new practices and standards for development, explore opportunities to better environmental resiliency and management, and support and inspire sound economic growth."

The StoryMap also includes project goals, outline of the process, and provides a list of existing resources and upcoming and completed studies with links.

Source: avonct.gov

Florida

Gainesville’s mandatory inclusionary zoning ordinance close to being finalized

The City of Gainesville, Florida is close to calling its planning and discussion of an inclusionary zoning ordinance final, Planetizen reported. If the proposal goes into effect, 10% of affordable units will be required for all developments of 10 or more units.

The news outlet reported that this development came months after the city’s commission reversed ordinances overturning changes in the zoning code that would have barred single-family zoning.


Source: planetizen.com

New York

Proposed development of Glenwood Hill Manor in Yonkers halted

Yonkers, New York-based neighborhood associations and community groups, including the North Yonkers Preservation, voiced concern over a proposed apartment tower called Glenwood Hill Manor, and now its developers have withdrawn applications seeking close to a dozen variances across 15 parcels of land, Yonkers Times reported recently.

To read a letter detailing reasons why people were opposed to the project, visit docs.google.com/document/d/1u3sZlieqBvnU377PFZFR9TD85vzBX6OGj/edit?pli=1.

Source: yonkerstimes.com

Some Westchester County communities ‘highly segregated’ newly released report concludes

A new report by The Century Foundation (TCF) concludes that some counties within Westchester County, New York are “highly segregate, in significant measure as a result of exclusionary zoning policies.” “For example, in 2021, five of Westchester’s forty-six school districts had student populations in which 90-100 percent of students were students of color,” TCF noted.

The report also states that in Port Chester and Scarsdale, New York, which are situated close together, “exclusionary zoning policies enacted over the years have led to vast differences between these two neighborhoods, and between their school systems.”

The bottom line according to the report: “The residential and educational segregation on display in Westchester County is in part a direct result of local control of housing policy, allowing some communities to enact exclusionary zoning policies that bar entry to all but the wealthiest of families.”

For more information, visit The Century Foundation website at tcf.org/content/report/how-zoning-drives-educational-inequality-the-case-of-westchester-county/.

Source: tcf.org

Pennsylvania

Proposed amendments made to New Hope Borough’s zoning ordinance

The New Hope Borough (Pennsylvania) Council is considering proposed amendments to its zoning ordinance to define “building footprint” and replace the current “Residential District” designation with RB-1 and RB-2 residential district designations.

To download the text and summary of the amendment, visit newhopeborough.org/DocumentCenter/View/656.

Source: newhopeborough.org

Washington

Phase II of equitable development zoning launched in Seattle

Two councilmembers in Seattle have launched “Phase II of Equitable Development Zoning.”

Councilmember Tammy Morales, along with community stakeholders and the Office of Planning and Community Development are working to “align land use policy more closely with equitable development goals,” the city’s website stated.

For more information about equitable development zoning in Seattle, visit seattle.gov/opdc/ongoing-initiatives/equitable-development-zoning. There you’ll find background, project documents and a summary of the “what” and “why” the city’s work on this issue.

And, you can learn more about the OPCD’s EDZ Phase I legislation, which “removes regulatory barriers to small institution uses,” visit seattlelegistar.com/LegislationDetail.aspx?ID=6214970&GUID=19136AFC-B1E5-476B-8979-D4D52F2D4D60&FullText=1.

The city’s website explains that “Equitable Development Zoning Phase II, known as the Connected Communities Development Pilot, presents a 5-point strategy to equitably increase density [and] set a new precedent for onsite affordable housing construction.” Specifically, the plan is to:

- “[c]reate a way for small community or culturally based organizations seeking the opportunity to develop housing and/or commercial space to partner with larger non-profit, private, or public developers to include Equitable Development Initiative projects and onsite affordable housing in projects currently infeasible”;
- “[r]equire a minimum of 30% of units in new market-rate developments for affordable rental and homeownership opportunities”;
“HUD recognizes that communities have unique housing challenges and that’s why the resources announced today are not one size fits all. HUD is proud to highlight the efforts of communities who are committed to housing-forward policies and practices and through PRO Housing we hope to support them with funding as well,” said Secretary Marcia Fudge. “[W]e are acting to increase the supply of affordable housing, which is crucial to lowering housing costs,” Fudge added.

HUD explained that PRO Housing will do several things:

- help “communities further develop, evaluate, and implement housing policy plans; address restrictive zoning, land use, or regulatory policies”;
- “improve housing strategies”;
- “facilitate affordable housing production and preservation. Grants to local governments, states, metropolitan planning organizations (MPOs), and multijurisdictional entities will range from $1 million to $10 million.”

Additionally, HUD reported that it will allow public housing authorities and multifamily housing owners to participate in the Rental Assistance Demonstration (RAD) with new tools to repair and build affordable housing. To read HUD’s supplemental RAD notice, visit hud.gov/sites/dfiles/Housing/documents/RADSupplementalNotice4B%20FINAL.pdf.


And to learn more about PRO Housing, visit hud.gov/program_offices/comm_plan/pro_housing.

Source: hud.gov
Change of Use

Retail establishment claims First and Fourteenth Amendment violations occurred with denial of change-of-use application

Citation: Romantix-Fargo, Inc. v. City of Fargo, 2023 WL 5000345 (D.N.D. 2023)

Romantix-Fargo Inc. (Romantix) sought to open a retail store in downtown Fargo, North Dakota that would sell products, such as “bachelor and bachelorette novelties, balloons with humorous messages and in humorous shapes, board games and card games.” It claimed it didn’t intend to sell “any books, magazines, or periodicals.”

In June 2022, Romantix entered into a lease agreement to relocate its store to 74 North Broadway Drive in Fargo, which was zoned “Downtown Mixed Use” (DMU).

Per the Land Use Development Code (LUD), an “adult entertainment center” use included “an adult bookstore, adult cinema or adult entertainment facility” uses in a DMU—and these weren’t allowed unless expressly allowed by other provisions of the LUD Code.

An “adult bookstore” was defined as a building “having a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.” On the other hand, “retail sales and service” use was permitted by right in a DMU zone.

In August 2022, the landlord of the 74 North Broadway Drive location submitted a change-of-use application to the city seeking to change the classification of the property to allow “retail sales and service” use.

The city denied the application, deciding that the “adult bookstore” definition applied to Romantix’s proposed use at the property. And since this use was barred in a DMU zone, the city denied Romantix’s proposed use at the 74 North Broadway location.

Standing by its assertion that it had no intent to sell any books, magazines, periodicals, DVDs, or services, Romantix then appealed the decision through the appropriate administrative channels in compliance with the LUD Code.

After its appeal proved fruitless, Romantix filed suit against the city. It asserted several claims, including:

- a First Amendment challenge to “adult bookstore”;
- a constitutional vagueness claim as to “adult bookstore” and “adult entertainment center”;

Mat #42986487
• a procedural due process claim as to the change of use application process; and
• a prior restraint/zone out claim as to the change of use application process.

Romantix also asked the court to grant a preliminary injunction, which the court denied. While the preliminary injunction request was pending, the city requested dismissal of the lawsuit.

**DECISION: Request for dismissal granted in part.**

Romantix’s constitutional vagueness claim could proceed.

**First Amendment**—Romantix argued the definition of “adult bookstore” was a content-based restriction on First Amendment activity and was presumptively unconstitutional. It also asserted the government didn’t have a compelling interest to support that definition.

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POSTMASTER: Send address changes to Zoning Bulletin, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.

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The court looked to precedent established in an Eighth U.S. Circuit Court of Appeals case—Adam and Eve Jonesboro LLC v. Perrin—where the court ruled that a store that intended to sell “lingerie, adult toys, costumes, novelties, games, massage oils, and personal lubricants” had stipulated it wouldn’t “sell pornographic DVDs, books, and magazines.” “Given that stipulation, the Eighth Circuit concluded that ‘Adam and Eve . . . jettisoned any claim to expressive conduct.’” Further, “after disavowing any expressive conduct,” the court ruled Adam and Eve couldn’t state a claim under the First Amendment.

The facts were similar: here because Romantix stated it didn’t “‘intend to maintain or offer for sale upon the property any books, magazines, or periodicals’ or ‘DVDs, Arcades, or Theaters’ or ‘services.’” “Just as in Adam and Eve, Romantix disavow[ed] any expressive conduct in its complaint, which mean[t] there [wa]s no speech to protect,” so it couldn’t state a claim under the First Amendment on which relief could be granted and the city was entitled to dismissal on this claim.

**Constitutional vagueness**—Romantix claimed the definitions of “adult bookstore” and “adult entertainment center” were vague and ambiguous and violated the First and Fourteenth Amendments.

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“There [wa]s an alleged discriminatory enforcement and interpretation as to the definitions and as applied by the City.

While this Court may be skeptical of the merits of this claim, that is not the appropriate inquiry for the purposes of assessing this motion.”

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In a plain reading of “adult bookstore” and “adult entertainment,” “a person of ordinary intelligence [would] have [fair] notice of what [wa]s prohibited and what [wa]s considered an adult bookstore by that definition,” the court noted. “But as applied, it is alleged that the definitions encourage discriminatory enforcement and has resulted in discriminatory application, and it is alleged that the definitions do not provide explicit standards for the City officials that apply them.” “So, when accepting the factual allegations as true, there [wa]s an alleged discriminatory enforcement and interpretation as to the definitions and as applied by the City. While this Court may be skeptical of the merits of this claim, that is not the appropriate inquiry for the purposes of assessing this motion. When accepting the factual allegations as true, Romantix has plausibly alleged its vagueness claim,” the court ruled, denying the city’s request for dismissal on this claim.

**Procedural due process**—To prove a due process violation in a local land use decision, a plaintiff had to “‘identify a protected property interest to which the Fourteenth Amendment’s due process protection applic[es], and then demonstrate that the government action complained of [wa]s truly irrational, that [wa]s something more than . . . arbitrary, capricious, or in violation of state law.’”
In the zoning context, “...assuming a landowner had a protectible property interest, procedural due process [was] afforded when the landowner had notice of the proposed government action and an opportunity to be heard,” the court explained.

Here, Romantix alleged the city’s change-of-use application process was:

- ad hoc;
- not defined in the LUD Code; and
- failed to provide sufficient process.

The complaint—on its face—told a different story, though. “Taking the allegations in the complaint as true, there was much back and forth between Romantix and the City, including several meetings and discussions, before the City made a decision on the change of use application.” When the city reached a decision Romantix disagreed with, it appealed properly under the LUD Code.

Given the complaint in this case, it was evident that:

- Romantix had notice and an opportunity to be heard;
- the city’s procedure wasn’t irrational; and
- therefore, Romantix couldn’t “plausibly allege a procedural due process claim under the Fourteenth Amendment,” the city’s request for dismissal was granted on this claim.

Prior restraint—Romantix alleged the change of use application process was an unconstitutional prior restraint and “zone out” in violation of the First and Fourteenth Amendment. “The term prior restraint is used ‘to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur,’” the court explained.

But the law required there to be “‘a close enough nexus to expression, or to conduct commonly associated with expression, to pose a real and substantial threat of the identified censorship risks.’”

Here, the city’s change-of-use application process didn’t “forbid ‘certain communications’ and [did] not have a ‘close enough nexus to expression ... to pose a real and substantial threat’ of censorship.”

In the end, Romantix’s factual allegations weren’t sufficient to state a plausible prior restraint/“zone out” claim—“particularly when, as alleged, the change of use application process [did] not forbid certain communications and does not have a close enough nexus to expression.” Thus, the city’s request for dismissal on this claim was granted.

The case cited is Adam and Eve Jonesboro, LLC v. Perrin, 933 F.3d 951 (8th Cir. 2019).

Special Use Permits

Court reviews whether ZBA unlawfully denied request to build large-scale solar energy system

Citation: Sunpin Energy Services, LLC v. O’Neil, 2023 WL 5094112 (Mass. Land Ct. 2023)

Sunpin Energy Services, LLC and Ralph Lapinkas Jr. (collectively, the plaintiffs) applied for a special permit from the Town of Petersham, Massachusetts to construct a large-scale, ground-mounted solar energy system on property located at New Athol Road.

The Massachusetts Land Court had to determine if the plaintiffs’ request for judgment without a trial should be granted or whether the Petersham Zoning Board of Appeals’ (ZBA) cross-request for judgment should be granted.

DECISION: ZBA’s cross-request for judgment granted; complaint dismissed with prejudice.

The plaintiffs’ arguments for overturning the ZBA’s decision to deny the special permit didn’t pass muster.

A CLOSER LOOK AT THE FACTS

Petersham was zoned “Residential-Agricultural” and had a Solar Electric Overlay District, which allowed ground-mounted solar electric installations “greater than 10kW (kilowatts) rated nameplate capacity” as of right. Large-scale ground-mounted solar energy systems were only permitted by special permit outside the Solar Electric Overlay District.

The subject property was located outside of this overlay district, and the plaintiffs sought to erect a 4.3-megawatt photovoltaic generation and 2.0-megawatt energy storage system, which would then be sold to National Grid.

In the application for a special permit, the plaintiffs described the property as “a vacant lot primarily occupied by woods and wetland area.” They stated the “proposed fenced area of the solar PV array occupie[d] approximately 14.3 acres and consists of approximately 12,090 solar PV modules,” and that existing shade trees would be removed. In addition, the project would be enclosed behind a seven-foot high chain link fence and locking gate.

Following a public hearing, the request for a special permit failed by one vote. Board member Maryanne Reynolds, the naysayer, expressed that the vote to deny it was “consistent with both the [ZBA’s] responsibility under the Zoning By-laws and the state’s guidance on its diversified energy policy, which guidance ‘strongly discourage[d]’ citing ... such projects in the forest.”

In support of her dissent, Reynolds cited the project’s:

- adverse impact on natural and working lands, which she contended were important to the town in a variety of ways;
- placement in a residential area; and
- negative impact on property values.

From a broad perspective, she also challenged the siting of the project on property that would require cutting a significant number of trees, because “maintaining trees assists the [state’s] energy policy goals because of the important water management, cooling and climate benefits trees provide, and their removal would adversely affect ‘habitat for wildlife, recreational opportunities and sense of place for people.’”

Ultimately, the court found, the plaintiffs hadn’t “acknowledge[d] the greater flexibility granted to municipali-
ties with respect to solar energy facilities, as opposed to agricultural and childcare uses.” “Ignoring the standards and criteria . . ., the [plaintiffs] wrongly contend[ed] that [the objector hadn’t] employ[ed] the standards contained in the [zoning bylaw].”

The court also rejected the plaintiffs’ argument that needing a three-member board to vote unanimously to approve a special permit frustrated the purpose of the applicable statute. “This last argument ignores the plain language” of state law (Massachusetts General Law Chapter 40A Section 9), which stated “‘A special permit issued by a special permit granting authority shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five member board, and a unanimous vote of a three member board,’ (with three exceptions [that were] not relevant here).”

ZONING BYLAW’S PURPOSE

The purpose of the bylaw was to “promote the health, safety and general welfare of the inhabitants of Petersham; to lessen the danger from fire; to maintain the beauty of the Town; to secure the proper growth of the Town by encouraging the most appropriate use of land and buildings; and to stabilize the value of property; all as authorized by Chapter 40A of the General Laws (the Zoning Act), as from time to time amended, and other applicable provisions of law.”

Residents fight development of defunct resort property after request for SUP filed

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

Arizona Hudson Valley LLC (Arizona) and Arizona Investissements US LLC (collectively, Arizona), a property development group, bought a defunct resort property in the Town of Hurley, New York, with the intention of redeveloping and expanding the site. Arizona received a site plan approval and a special use permit (SUP) from the town’s planning board, but a group of disgruntled residents challenged it in state court. As a result, the issue was sent back to the planning board for clarification about which “use” category should apply to the proposed development under the local zoning law.

The town reaffirmed its approval of the site plan and a renewed legal challenge followed. Then there was a shift in the local political landscape, and shortly after that the acting building inspector (ABI) and code enforcement officer (CEO) issued a letter revoking the SUP.

Arizona appealed the revocation, but the case languished before the town’s zoning board of appeals for months. Arizona believed its appeal was stuck in limbo, so it filed suit against the town and its ABI and CEO (collectively, the defendants), claiming they violated procedural and substantive due process rights by improperly revoking the SUP.

The defendants asked the court to dismiss the complaint for failure to state a plausible claim for relief.

DECISION: Request for dismissal granted; case dismissed without prejudice.

Arizona’s Section 1983 claims weren’t ripe for court review.

“Ripeness is a doctrine rooted in both Article III’s case or controversy requirement and prudential limitations on the exercise of judicial authority,” the court wrote. It was “‘especially important in land use and zoning disputes which [we’re] quintessential local issues that . . . [we’re] properly left in the first instance to local bodies that [we’re] better equipped than federal courts to address and resolve such issues.’”

Here, the town hadn’t “reached a final decision regarding the application of the regulations to the property at issue.” Arizona never got a “final decision” as to the SUP. It merely complained the zoning appeal was being delayed.

Here, the town hadn’t “reached a final decision regarding the application of the regulations to the property at issue.”

Thus, it sought to “invoke [a] futility exception,” and had to show that:

- “the inevitability of refusal of [its] application, taking into consideration factors such as the defendants’ hostility, delay and obstruction’’”;
- “it had ‘filed at least one meaningful application.’”

Arizona did not do this, the court found. It alleged “that certain individuals close to, or affiliated with, the [town’s] government ha[d] become hostile to the redevelopment plans [it had] pursued for the past several years. . . . But ‘[t]he futility does not exist merely because public officials are hostile to the proposal at issue.’” the court noted. “To the contrary, [Arizona] acknowledge[d] that at least some of the conditions on which the [SUP] was conditioned—including the need for [state department of conservation (DEC)] approvals—had not been satisfied as of the date on which the [SUP] was revoked.”

The bottom line: Under these circumstances, the court found it difficult to “conclude that an ongoing appeal through ordinary government channels [wa] sufficiently ‘futile’ to trigger this exception to the finality requirement. That is especially so where, as here, a relatively short time has passed, and ‘state-law remedies exist[ed] for applicants to compel municipalities to act.’”

A CLOSER LOOK

The SUP had been granted with a series of conditions, which included a need to obtain DEC approvals and an annual renewal involving an inspection by the CEO.

In revoking the SUP, the CEO noted “as a matter of law—any special use permit that [wa]s not ‘exercised’ within one year of its issuance” was subject to revocation. That letter also stated the town had “concluded that [the] failure to secure certain necessary DEC approvals within this one-year period amounted to a failure to ‘exercise’ the [SUP] under . . . the Town Code.”

CASE NOTE

Even if that conclusion was “incorrect as a matter of state
law . . . the question of whether [the] failure to secure the DEC approvals identified in the [SUP] within this one-year period qualified as a failure to ‘exercise’ the permit seems to present the kind of state-law zoning question that federal courts are supposed to resist the urge to constitutionalize,” the court wrote.

Sign Ordinances

Billboard company claims Michigan-based city violated First Amendment in denying permit application and variance request

Citation: International Outdoor, Inc. v. City of Troy, Michigan, 77 F.4th 432 (6th Cir. 2023)

The Sixth U.S. Circuit has jurisdiction over Kentucky, Michigan, Ohio, and Tennessee.

International Outdoor Inc. (International Outdoor) sought permission to erect billboards in the City of Troy, Michigan. The city denied its permit application and variance request, so International Outdoor filed suit, alleging the city’s sign ordinance violated the First Amendment.

The lower court granted the city’s request for judgment without a trial on International Outdoor’s prior-restraint claim. It, however, reversed the lower court’s dismissal of the content-based restriction claim and sent the case back for the court to consider whether the ordinances—permit exceptions—survived strict scrutiny.

On further review, the lower court ruled the permit exceptions were severable, so the ordinance’s height, size, and setback requirements could remain in effect. International Outdoor appealed.

DECISION: Affirmed.

International Outdoor’s proposed billboards did not satisfy the valid, content-neutral standards, so the lower court’s decision stood.

A CLOSER LOOK AT THE ORDINANCE AND INTERNATIONAL OUTDOOR’S PROPOSED SIGNAGE

International Outdoor was an outdoor-advertising company that erected billboards in southeastern Michigan. The city regulated signs within its limits, including billboards.

The applicable ordinance required a permit and the payment of a fee, for any sign—unless the sign fell within one of six exceptions. Street signs, small ground signs, flags, and “temporary signs” were exempt from the permit requirement. The latter category included real-estate signs, signs advertising garage, estate, or yard sales, political signs, and holiday signs, among others.

The ordinance also contained specific size, height, and location requirements for “ground signs,” including billboards. In certain districts, each property was allowed one ground sign not to exceed 100 square feet in area and 12 feet in height, if set back at least 10 feet from the street.

An additional ground sign would be permitted if it was:

- set back at least 200 feet;

- located at least 1,000 feet from any sign exceeding 100 square feet in area;
- did not exceed 300 square feet in area; and
- did not exceed 25 feet in height.

For signs that did not meet these requirements, the ordinance permitted—but did not require—the Zoning Board of Appeals (ZBA) to grant a variance if:

- The variance would not be contrary to the public interest;
- the variance did not adversely affect properties in the immediate vicinity of the proposed sign; and
- the petitioner had a hardship or practical difficulty resulting from the unusual characteristics of the property that precluded the reasonable use of the property.

In 2015, International Outdoor sought to erect a two-sided billboard at two locations in the city. The billboards were to be 14 by 48 feet in area—this equated to 672 square feet per side (1,344 square feet total). In addition, the billboards would be 70 feet high and located less than 200 feet from a right of way and less than 1,000 feet from other signs over 100 square feet.

The city determined International Outdoor’s proposed billboards didn’t meet the ordinance’s height, size, and setback requirements, so the company sought a variance, which the city also denied, citing International Outdoor’s failure to meet the variance conditions.

CONTENT-BASED SPEECH AT ISSUE

The court applied Michigan law and found content-based exceptions to the permit requirement were severable. The city had “plainly indicated its intent to sever unconstitutional provisions of the [o]rdinance by including a severability clause, stating: ‘[s]uch any word, phrase, sentence, paragraph, or section of this [o]rdinance be held invalid or unconstitutional, the remaining provision[s] of [it] shall remain in full force and effect.’”

The court applied Michigan law and found content-based exceptions to the permit requirement were severable.

Here, the challenged exceptions pertained to flags and temporary signs. The severability clause’s plain language controls. Ultimately, the court found “the content-based exceptions to the permit requirement were not so entangled with the rest of the [o]rdinance, such that the remainder would be inoperable without them.”

“To illustrate, even if the entire permit-requirement section were severed, the [o]rdinance would still bar International Outdoor’s proposed billboards under its unchallenged height, size, and setback requirements. This is because an earlier section of the [o]rdinance . . . grant[ed] enforcement authority to the Zoning Administrator, who could enforce the substantive sign standards and punish violations even without a permitting scheme.”
CASE NOTE

In 2018, days after International Outdoor originally requested judgment without a trial in this case, the city amended the ordinance to “redefine the exceptions for ‘temporary signs’ and flags in valid, content-neutral terms.” “The amendment ensured that Troy citizens would not need to obtain a permit before erecting garage-sale or other small yard signs, for example. It also demonstrated the utility of a severability clause, which allowed the [c]ity to continue to enforce the substantive remainder while it reworked the discrete, unconstitutional provisions.”

Case Snapshot:

International Outdoor argued the ordinance’s variance procedure imposed “an invalid prior restraint and that its permit exceptions were content-based restrictions on free speech.”

Standing

Maine’s high court reviews whether nonprofit had standing to challenge city’s decision to grant zoning, other permits

Citation: Upstream Watch v. City of Belfast, 2023 ME 43, 2023 WL 4939323 (Me. 2023)

Upstream Watch, a not-for-profit corporation registered to transact business in Maine, was dedicated to the restoration of Maine mid-coast rivers and streams, including the Little River in Belfast, Maine, to their natural habitats. Nordic, a Delaware corporation, proposed a land-based salmon aquaculture project in Belfast at a site where U.S. Route 1 crossed the Little River.

In 2019, Nordic submitted applications to the Belfast Planning Board (BPB) for:

- a site plan permit;
- a zoning use permit;
- a shoreland zoning permit;
- a significant groundwater wells permit; and
- a significant water intake and significant water discharge/oufall pipes permit.

After Nordic filed its applications, the BPB issued a procedural order requiring anyone who wanted to be included as a “party of interest” to file a written statement demonstrating how they would directly or indirectly affected by the project and their particular injury.

Upstream filed a statement and listed its members whose property abutted the project. It described a conservation easement over the intertidal land that other Upstream members owned, which it claimed the project would directly affect.

The BPB granted Upstream party-in-interest status, and between June 2019 and December 2020, it held dozens of public hearings before granting Nordic’s permit applications.

Upstream appealed the BPB decision to the Zoning Board of Appeals (ZBA), which determined that Upstream didn’t show a particularized injury sufficient to establish standing.

After the ZBA dismissed Upstream’s appeal, it filed suit. The lower court dismissed Upstream’s complaint, finding that the ZBA hadn’t erred in determining that it had failed to demonstrate administrative standing—and therefore, had not exhausted its administrative remedies since it hadn’t filed a cognizable appeal with the ZBA.

Upstream appealed.

DECISION: Vacated; case sent back for further proceedings.

Upstream had associational standing to appeal to the ZBA; and the ZBA erred in confining its review of Upstream’s standing to information contained in its application-to-appeal form.

Here, the parties agreed that to have standing Upstream had to show that “it was an aggrieved person under the [o]rdinance.” “In determining that Upstream did not have standing, the ZBA applied both the aggrieved person standard contained in the Ordinance and a particularized injury standard,” the court explained.

The court first looked to the ordinance’s plain language, which didn’t mention standing generally. But it “generally . . . d[id] not explicitly require that a party show a particularized injury to qualify as an aggrieved party.”

At least one of Upstream’s members was an aggrieved person, so Upstream had standing to appeal to the ZBA and the ZBA erred in dismissing its appeal for lack for standing.

While “particularized injury” was required “for judicial standing, . . . a municipality [c]ould set its own more liberal rules for administrative standing.” Ultimately, the court found that “[i]t would make no sense for us to impose a particularized injury requirement for administrative standing when an ordinance itself does not include such a requirement, because nothing in any statute requires it.”

PRACTICALLY SPEAKING

In reviewing the administrative record, as a matter of law, Upstream satisfied the definition of “aggrieved party” under the ordinance because:

- “at least one of Upstream’s members was an aggrieved person, either as an abutter or as a possessor of land directly affected by the project”;
- several Upstream members “owned property next to or near enough to the project to qualify as abutters, making them aggrieved parties under the [o]rdinance”; and
- “Upstream presented a number of concerns at
[BPB] hearings sufficient to demonstrate that at least one of its members was an aggrieved person due to owning land that would be directly affected by the project, such as the potential impact that the project’s drawing large amounts of water from a local aquifer could have on members’ wells that draw water from that aquifer” and could potentially “impact [the] members’ actual enjoyment of the local environment.”

Thus, at least one of Upstream’s members was an aggrieved person, so Upstream had standing to appeal to the ZBA and the ZBA erred in dismissing its appeal for lack for standing.

The Bottom Line:

“[T]he administrative record sufficiently demonstrate[d] that Upstream had standing to appeal to the ZBA.” As a result, the court vacated the ZBA’s decision and sent the case back with instructions for the ZBA to consider the merits of Upstream’s appeal from the BPB decision.

Zoning News Around The Nation

California

Article highlights importance of National Zoning Atlas in zoning policy reforms

In a recently published article, Peter Lawrence, Novogradac Consulting LLP’s director of public policy and government relations, discussed the role a National Zoning Atlas may play in zoning law reform and policy analysis.

The Atlas project seeks to create an online tool where users can analyze local zoning regulations through a user-friendly map. The goal is to ensure that local housing laws are more readily available for review, Lawrence explained.

Lawrence’s article highlighted states where zoning atlas projects are already underway, the atlases’ impact on change, the benefits of addressing zoning challenges, and more through real-life examples involving many states across the nation.

To read this article by Novogradac, a professional services organization headquartered in San Francisco, visit novoco.com/notes-from-novogradac/national-zoning-atlas-could-contribute-zoning-law-reform-policy-analysis.

Source: novoco.com

Hawaii

Devastating wildfires in Maui a reminder to use land use planning tools designed to reduce health and safety risks

August 2023 wildfires in Lahaina, Hawaii had a devastating effect on those living on the island of Maui. According to the U.S. Department of Agriculture Forest Service Wildfire Risk to Communities website, “Land use planning can reduce wildfire risk by helping communities grow and develop with wildfire in mind.” “Land use planning tools such as zoning, plans, regulations, and building codes can influence the design, layout, and placement of homes built in wildfire-prone areas,” the website added.

Visit wildfirerisk.org/reduce-risk/land-use-planning/ for links to valuable resources, such as:

- Firetopia Land Use Planning Toolkit—Get “sample code language, community case studies, and best practices for creating wildfire-resilient land use planning practices” from the Community Planning Assistance for Wildfire along with information about “community plans, land development regulations, building and fire codes, and funding.”

- American Planning Association: Planning the Wildland-Urban Interface—This free guide provides “an in-depth introduction to . . . wildfire basics, covering challenges, trends, and historical context along with the latest wildfire science” for land-use planners as well as discussion on potential solutions “how to address . . . wildfire challenges in plans, policies, and regulations.”

- Fire Adapted Communities (FAC) Learning Network—This community network provides users with a way “to exchange information, collaborate to enhance the practice of fire adaptation, and work together and at multiple scales to help communities live safely with fire.” You can also use the FAC Self-Assessment Tool to assess your locality’s fire-adaptation level and track the “capacity to live safely with fire over time” at fireadaptednetwork.org/resources/face-assessment-tool/.

Links to other resources, such as the Hispanic Access Foundation Wildfire Toolkit, Government Alliance on Race & Equity, and an Equitable Development and Environmental Justice Toolkit, can also be accessed at wildfirerisk.org, along with research papers on land use planning to reduce wildfire risks and more.

Source: wildfirerisk.org

New York

NYC’s Meatpacking District touted as zoning revamp success

A recent article by Off Plan Property Exchange explains how New York City’s Meatpacking District turned a once industrial, warehouse-filled area of the city into a bustling neighborhood where zoning amendments gave developers a flexible way to spark organic building opportunities.

The article goes on to discuss zoning failures and successes in other places like Detroit, Montgomery County, Maryland, and Boulder, Colorado. To read the article, visit offplanpropertyexchange.com/news/case-studies-in-zonin-g-ordinances-lessons-learned-from-real-estate-successes-a nd-failures/42073/.

Source: offplanpropertyexchange.com

Oregon

Nonprofit celebrates court ruling blocking B&B from operating near Cooper Spur

Thrive Hood River (Thrive), which seeks to protect Hood River, Oregon’s farmland and wild places, recently issued a press release lauding a state land use court deci-
sion, which blocked the approval of a bed-and-breakfast (B&B) application. The B&B was to be located near Cooper Spur on forest lands owned and operated by Meadows North LLC.

“Had Meadows prevailed at Oregon’s Land Use Board of Appeals (LUBA), it would have set the stage for real estate investment firms to buy homes on rural lands and turn them into tourist lodgings staffed by employees with no connection to the property, the neighbors, or this place we call home,” Thrive stated in a press release.

“Meadows was using the home in question as an illegal short term rental and wedding event site for years. After Hood River County moved to enforce the land use laws protecting forest land in 2021, Meadows sought to transform their illegal use into a legal one by applying for a permit to turn the home into a B&B,” it added.

According to Hood River’s zoning code, there were strict parameters for using a home for business. And to establish a B&B, “the business had to be operated by a permanent resident of the home and the primary use must be as the resident’s personal home, with the B&B a secondary, subordinate and incidental use.”

Thrive reported that Meadows sought to bypass this requirement by creating a commercial lease that would have required an employee to rent and live in the home while operating the B&B and serving up to 15 guests per night for Meadow’s financial benefit.

Calling this a LUBA loophole, Thrive objected. About the court’s ruling, Tara Mills, Thrive’s co-executive director said the organization “applaud[s] [it] as upholding the codes meant to protect our community.” “Hood River has a housing crisis with some of the most expensive homes of any rural community in the country. If Meadows had been allowed to exploit this loophole, more of our limited housing stock would be in danger of being snapped up by real estate investors to use as mini-hotels instead of much needed homes for full-time residents,” Mills added.

Source: thrivebyriver.org

Virginia

LandMARC online portal goes live in Loudoun County

Loudoun County has launched LandMARC, its online land-management system. Through the electronic portal, customers can:

- submit applications concerning land use and development and plans or other required documentation;
- track application and land-development project status;
- request pre-application and pre-submission meetings;
- request inspections;
- pay application fees; and
- access public records related to plans and permits.

To review LandMARC, visit loudouncountyvaeg.tylerhost.net/prod/self/service#/home. Links to training materials on how to use the portal can be found at loudoun.gov/5823/LandMARC-Land-Management-Applications-Reg.

Source: loudoun.gov

Washington

Recent podcast covers Seattle’s industrial zones

A recent Urbanist Podcast discussed proposed policy changes for Seattle’s industrial zones and how rezone proposals for these areas may contribute to positive change within the city.

To listen, visit theurbanist.org/2023/05/06/the-urbanist-podcast-a-new-approach-for-seattles-industrial-zones/.

Source: theurbanist.org
Site Plans

Residents ask court to annul planning board’s decision to grant request for subdivision and site-plan approval

Citation: Boise v. City of Plattsburgh, 2023 WL 5279461 (N.Y. App. Div. 3d Dept 2023)

In 2017, the City of Plattsburgh, New York received a $10 million grant to fund improvement projects in its downtown area, which included the proposed redevelopment of about 3.5 acres on two adjacent properties the city owned between Durkee Street and the Saranac River.

The project site included a brownfield, which had been created by decades of industrial and commercial use at the site. The brownfield and a former gas station that had undergone oil spill cleaning were remediated to the satisfaction of the state’s Department of Environmental Conservation (DEC).

The project site also contained the Durkee Street municipal parking lot, the Plattsburgh Farmers’ and Crafters’ Market Building, a boardwalk running along the Saranac River and a public green space.

In 2018, the city issued a request for proposals seeking a developer to construct, own, or operate a mixed-use development at the project site. The city accepted the proposal that Prime Plattsburg (Prime) submitted to “develop, finance, construct and manage” a development on the project site. The city was to sell the lots to Prime, and they signed a development agreement, which took effect in April 2019.

The development agreement covered the replacement of the municipal parking lot with a mixed-use development that would include apartments, commercial space, and underground parking, as well as a surface parking lot. The project was also to include rehabilitation of the farmers’ market building and the creation of a public area with an open-air pavilion that connected to a new pedestrian walkway along the Saranac River.

In June 2019, the City of Plattsburgh Common Council (CPCC) was designated the lead agency for purposes of conducting a combined environmental review of the project and the other proposed downtown improvement initiatives as a “type I action” pursuant to the State Environmental Quality Review Act (SEQRA). Following an extensive review, a draft general environmental impact statement (draft GEIS) discussing the potential environmental impacts of the project and other development initiatives was accepted and offered for public review and comment.

Then, a final general environmental impact statement (final GEIS) was prepared that incorporated the draft GEIS and addressed the feedback offered on the project and other initiatives.

After accepting the final GEIS in January 2020, the CPCC issued a SEQRA findings statement. It acknowledged that the common loon—an aquatic bird of a species of special concern—was known to be in or near the project site given the site’s proximity to Lake Champlain.
But the CPCC didn’t find this would have an adverse impact on the loons since the project wasn’t going to disturb the bed or banks of Lake Champlain and wasn’t expected to increase in-water recreational activities. It also found that no mitigation was required to address the impacts construction at the project site might have upon contaminated soil.

The CPCC based its finding on the fact that DEC had already certified that remediation of the brownfield at the project site was complete and that, under the terms of that certification, the city and any subsequent owner of the project site would have to implement a site management plan (SMP) using specified environmental and institutional controls to develop the area. The CPCC also noted that a site-specific health and safety plan (HASP) had to be implemented during construction and recognized that future owners were “required to comply with the terms and conditions of the SMP.”

Around this time, Prime submitted several applications to the Zoning Board of Appeals (ZBA), including requests for special permits. In addition, Prime sought subdivision approvals and an amendment of a preexisting planned unit development from the planning board, which were needed for the project to move forward.

In September 2020, the CPCC amended its SEQRA findings statement to reflect alterations to the project made in the course of the proceedings before the ZBA and the planning board. The ZBA and the planning board then adopted SEQRA findings statements with respect to the environmental impacts of those applications that, in relevant part, incorporated the findings and amended findings of the CPCC and determined that the project avoided or minimized adverse environmental impacts to the maximum extent practicable. The ZBA and the planning board proceeded to grant the requested approvals over the course of December 2020 and January 2021.

Then, a group of petitioners—through an Article 78 proceeding—requested that the court annul the planning board’s decision to grant Prime’s request for subdivision and site-plan approval. The court granted their request, and an appeal followed.

**DECISION: Affirmed.**

The lower court properly granted the portion of the petitioners’ complaint seeking to annul the SEQRA findings statements the ZBA and planning board had adopted.

“[T]he project requires material changes to the status quo, in particular excavation of the asphalt parking lot which serves as a cap and the attendant disposal of 86,000 tons of soil, neither of which were nor could be properly analyzed at the time that DEC was involved with remediation of the site,” the appeals court explained.

“Publicly identifying these new site-specific tangible environmental impacts and proposing mitigation is the cornerstone of SEQRA review, which is distinct from brownfield remediation,” it added.

The bottom line: The court didn’t believe this had been done, so it ruled the lower court acted properly.

**A CLOSER LOOK**

The court’s review was “limited to whether the [pertinent] agency identified the relevant areas of environmental concern, took a hard look at them, and made a reasoned elaboration of the basis for its determination.” And the finding would “‘only be annulled ‘if it was arbitrary, capricious or unsupported by the evidence.’”

Here, the lower court had “determined that, in relying upon the SEQRA findings of the [CPCC], the ZBA and the [planning] board failed to take the requisite hard look at the environmental impacts of the project with regard to the common loon and the disturbance of contaminated soil at the project site.” The record showed that “there were known occurrences of the bird in nearby Lake Champlain and that the bird could be present in the vicinity of the project site, which the draft GEIS acknowledged. It went on, however, to cite information from DEC reflecting that the common loon inhabited lakes and had a preference for larger, undisturbed ones, and that human activities in a lake and
development on its shoreline [we]re known to have various negative impacts on the birds."

Also, concerning potential dangers posed by the disturbance of contaminated soil at the project site, "SEQRA require[d] the preparation of an [environmental impact statement (EIS)] on any action which may have significant effect on the environment."

"The EIS must include, among other things, a description of the proposed action, its environmental impact and mitigation measures proposed to minimize the environmental impact," the court explained.

And, giving the public the opportunity to participate and engage over the issue was "an essential and mandatory part of the SEQRA process."

Here, the CPCC had "placed heavy reliance on a statement made by DEC during the remediation process that there was no exposure risk at the project site. However, this statement could not be read in a vacuum." When the full documents including the appendix were read, it became clear that GEIS "revealed that the current use, which at the time of DEC's statement was a paved parking lot, not change, exposure risk was minimal." These documents did not speak to the risk of exposure upon a breach of the surface of the parking lot, which was exactly what the project contemplated; therefore, these documents in and of themselves did not speak to the contamination risks posed by the project.

Also, the HASP wasn't included in the draft GEIS or final GEIS, which meant the public couldn't comment on whether it was appropriate. The failure "to include this plan demonstrates noncompliance with the mandates of SEQRA," the court stated.

Practically Speaking:

The court explained that while "the brownfield remediation was successful at the time," that didn't "discharge the involved agency's duty to take a hard look relative to the project. . . . Indeed, the citizens who may be impacted have the right to insist that the construction be done in an environmentally safe manner in accordance with SEQRA."

Equal Protection

Resident claims local town and its planning and zoning commission mishandled land-use applications

Citation: Taylor v. Planning and Zoning Commission for Town of Westport, 2023 WL 5507842 (D. Conn. 2023)

William Taylor filed suit against Westport, Connecticut and its Planning and Zoning Commission (collectively, the town) alleging they violated his federal and state constitutional rights in how they handled his land use applications. After getting the case transferred to federal court, the town sought judgment without a trial.

DECISION: Request for judgment granted on federal claims; supplemental jurisdiction over Taylor’s state-law claims sent back to state court for further proceedings.

Taylor brought a “class of one” equal protection claim, which meant he had to show "an extremely high degree of similarity between themselves and the persons to which they compare[d] themselves."

To succeed, he had to show:

- "no rational person could regard the circumstances of [his] to differ from those of a comparator to a degree that would justify the differential treatment on the basis of a legitimate government policy"; and
- "the similarity in circumstances and difference in treatment [we]re sufficient to exclude the possibility that the defendants acted upon the basis of a mistake."

While a fact-specific inquiry might be appropriate to make a determination, a court could grant judgment without a trial based on a "lack of similarity of situation . . . where no reasonable jury could find that the persons to whom the plaintiff compare[d] [themselves] [we]re similarly situated."

In support of his claim, Taylor asserted that another project had been approved for the same variances he sought without having to pay fees, but the town claimed that applicant wasn’t similarly situated based on Taylor’s own submissions that the other project was distinct from his. For instance, it was situated on a 2.07-acre lot that contained an existing building, and the developer proposed constructing a new 2-story, 4,344 square foot building containing a bank with drive-in (1st floor) and office use (2nd floor). In addition, that applicant wanted to construct a new 2-story, 3,746 square-foot retail building and constructing four, residential buildings consisting of a total of 12 residential dwelling units, with a combination of one- and two-bedroom units including townhouses and flats and 67 parking spaces.

Taylor’s project was different because:

- It was situated on a larger, corner lot, which was an unimproved vacant lot; and
- the purpose of Taylor’s project and its scale was largely different (a small 4,220 square-foot office building with 22 parking spaces).

The bottom line: Taylor didn’t show how the other project reasonably (and closely) resembled his project, "other than the fact that both projects were subject to municipal zoning procedures. The undisputed portion of the record reflect[ed] substantially different projects, meaning [Taylor] lacks a factual basis to establish an equal protection claim either as a ‘class of one’ or under ‘selective treatment theory,’" the court wrote.

A CLOSER LOOK

Taylor owned vacant land at 715 Post Road East in Westport where he wanted to develop an office building on the site, but the planning and zoning director told his attorney that under the zoning regulations, the Planning and Zoning Commission had determined that a peer review from a traffic engineer was needed. The Commission
requested being reimbursed for a traffic consultant peer review for the project.

The director went on to state that she was including a proposal from Beta-Inc. for a peer review of the site plan totaling $5,030. Pursuant to the regulation, the town requested that the attorney submit a bank check for 150% of the amount—$7,545.

Taylor paid the fee, and in April 2019, he applied for a combined site-plan and excavation fill permit to build a 4,220 square-foot office building with 22 parking spaces.

In June 2019, planning and zoning staff told Taylor his application was incomplete and recommended an extension before he was to appear before the Planning and Zoning Commission at a hearing scheduled for June 20, 2019.

A day before the scheduled hearing, Taylor submitted supplemental and revised materials. But, at the hearing, the Planning and Zoning Commission chairman refused to hear from Taylor’s attorney, on the issue of whether the application was complete, stating “I don’t want to hear this right now.” A committee member maintained that the application was incomplete, and the committee voted to close the issue.

On July 11, 2019, commission members discussed the refusal to hear from Taylor’s attorney, and a couple of weeks later, the members unanimously voted to deny his application without prejudice, finding his application to be incomplete.

Taylor appealed the denial to the court and added claims for unjust enrichment and equal protection violations under the Fourteenth Amendment based on the town’s collection of the traffic study fee and allegations that he had been denied a fair hearing.

The plaintiffs didn’t meet standing requirements to bring their claims in federal court.

MORE ON THE FACTS

The ICPCT owned the cathedral, which was located on Pine Street in Burlington. The plaintiffs alleged the cathedral was designed by prominent World War II-era architects and was “the premier example of modern architecture in the [city]” with its landscape architecture being “acclaimed by both national publications and noted contemporary architects.”

The Burlington Development Review Board (DRB) has acknowledged that the cathedral “[w]as a significant property within the city’s downtown,” and in 2012, the city recommended that it be listed in the National Register of Historic Places. And in 2013, the Vermont Division for Historic Preservation, the Vermont Agency of Transportation, and the Federal Transit Administration found the Cathedral to be eligible for the State and National Registers of Historic Places.

The plaintiffs asserted that the cathedral satisfied the National Register’s requirements for buildings less than 50 years old because it had “exceptional importance.” But the DRB found it was not a “historic building” under its zoning regulations.

After being used for worship from 1976 to 2018, the Diocese announced the cathedral’s sale. At the time, the Vermont Diocese didn’t plan on demolishing the building, and a church official noted that it could be converted for commercial or residential use (or both).

The real estate listing for the cathedral advertised “the opportunity to continue to utilize the existing building or develop a project that suits the Burlington market and landscape.” And after announcing the sale, the Diocese spent around $600,000 repairing or replacing its steps.

After a final mass was held at the cathedral in December 2018, it was decommissioned as a place of worship, and its altar, tabernacle lamp, and part of the confessional were removed. It was a building was fenced off and remained vacant for the four years preceding the filing of the plaintiffs’ lawsuit.

According to the plaintiffs, at least four other former Catholic churches in the Diocese had been converted for secular use, including a community-based arts and wellness center, a recovery center, and a martial arts workshop and residence.

The ICPCT applied for a zoning permit to demolish the cathedral and informed the DRB that it didn’t have a planned use for the property after the demolition. It also alerted the DRB that it intended to sell the property to CityPlace Partners, which intended to use it as a staging area for an adjacent property.

Burlington’s Department of Permitting and Inspections issued an internal memorandum stating that state law prevented the zoning request from being reviewed under Article 14 of the Burlington Comprehensive Development Ordinance (CDO)—Article 14 allegedly required projects in downtown Burlington to comply with the city’s municipal plan but allowed the DRB to grant alternative modes of compliance when conformity wasn’t possible or desirable.

Religious Exemptions

Did local property owners have standing to challenge state-law religious exemption to local zoning rules?

Citation: Burlington v. Cathedral of the Immaculate Conception Parish Charitable Trust, 2023 WL 5387506 (D. Vt. 2023)

Several property owners (the plaintiffs) filed suit in federal court alleging that a Vermont law violated the Establishment Clause of the First Amendment by exempting Cathedral of the Immaculate Conception Parish Charitable Trust (ICPCT), a religious facility, from local (City of Burlington, Vermont) zoning requirements with which the plaintiffs had to comply.

The plaintiffs asked the court for declaratory judgment that the religious exemption provision of the law was unconstitutional under the First Amendment and an order enjoining the ICPCT from demolishing the former Cathedral of a local church—the Immaculate Conception—until certain conditions were met.

The defendants—the ICPCT and the city—asked the court to dismiss the case.

DECISION: Request for dismissal granted.
Ultimately, the DRB granted the ICPCT’s demolition permit request. Its decision stated that the CDO’s standards for reviewing changes to historic buildings did not apply to the cathedral as it was less than 50 years old. And it found that even if the state law had applied (24 V.S.A. Section 4413), under provision 5.4.8 in that law the cathedral didn’t qualify as a historic building under Article 5 because it wasn’t yet 50 years old.

The DRB also concluded the plaintiffs’ request for an injunction would prevent the ICPCT from demolishing the cathedral and its landscape “unless and until the Burlington DRB issued[d] a demolition permit following a determination that the demolition complies with Article 14[.]”

BACK TO THE COURT’S RULING

“Standing is a federal jurisdictional question ‘determining the power of the court to entertain the suit.’ And ‘one element of the case-or-controversy requirement is that plaintiffs must establish that they have standing to sue,’ ” the court explained. To establish they met the threshold for standing, the plaintiffs had to show that they:

- suffered an injury in fact;
- that injury was “fairly traceable to the challenged action of the defendant[s]”; and
- a decision in the plaintiffs’ favor was likely to suffice as redress.

In addition to establishing these “core constitutional requirements,” the plaintiffs also had to satisfy “prudential standing”—that is, by showing they were taxpayers subject to direct harm and denied benefits.

Here, the plaintiffs alleged they suffered direct “procedural” injury due to the city’s refusal to apply zoning requirements that would have applied to them as property owners. They also asserted an “aesthetic injury” would occur if the cathedral—an architecturally significant building—was demolished. “While these allegations may suffice for a claim brought under environmental laws, they do not provide standing for an Establishment Clause claim,” the court ruled.

In the end, the court found the plaintiffs “failed to allege that the city’s zoning review practice causes them more than an ‘indefinite’ injury indistinguishable from that suffered by the public at large.”

They also didn’t assert taxpayer or denial of benefits standing. “Their allegations would fare no better under either of those theories,” “Plaintiffs allege that they are Burlington residents, but not that they are municipal taxpayers. They do not allege any ‘measurable appropriation or loss of revenue attributable’ to the city’s challenged zoning practices. Accordingly, they have not plausibly alleged taxpayer standing,” the court concluded.

And under a denial-of-benefits theory, the defendants were entitled to dismissal because the plaintiffs didn’t “allege they have personally incurred any costs or have[d] been denied any benefits on account of their religion.”

Since the plaintiffs failed “to plausibly allege the prudential standing requirements necessary to bring an Establishment Clause claim in federal court, the court lack[ed] subject matter jurisdiction over their claim even if [p]laintiffs could establish constitutional standing.”

Preliminary Injunctions

Cell-tower builder seeks injunction to prevent township from blocking final details of construction

Citation: TowerCo 2013, LLC v. Berlin Township, 2023 WL 5334633 (S.D. Ohio 2023)

TowerCo 2013 LLC (TowerCo), which built and deployed wireless towers that it leased to telecommunications service providers, sought a preliminary injunction against Berlin (Ohio) Township and Berlin Township Board of Trustees (collectively, Berlin) to require Berlin to complete construction and deployment of a telecommunications tower located in the township. At the time of litigation, a telecommunications tower was being built on behalf of Verizon Wireless (Verizon) and was nearly complete, with only work on the utility extension and antenna left prior to deployment.

Before the U.S. District Court for the Southern District of Ohio was a matter of first impression on how the Brownfield immunity doctrine—“a creature of Ohio state law”—affected the framework of the Telecommunications Act of 1996 (TCA) for the preservation of local zoning authority over the placement, construction, and modification of personal wireless service facilities.

DECISION: TowerCo’s request for an injunction granted.

TowerCo showed a substantial likelihood of success on its TCA claims.

MORE ON THE FACTS

In late 2019, Verizon, which used a wireless communications system that relied on a network of overlapping and interconnected individual antenna sites that transmitted and received wireless communication signals between cell phones, identified a gap in its wireless coverage of Delaware County.

Verizon asked TowerCo to build the Berlin Station tower, and TowerCo looked into whether it would need to comply with any local regulations or requirements for the cell tower construction, which would occur in a “farm residential” zoning district within the township.

Berlin’s Zoning Resolution (ZR) required that all telecommunications towers proposed for residential districts comply with Ohio law (Section 519.211), which set limits on the zoning power of townships vis-à-vis telecommunications towers.

Section 519.211 stated that “the party requesting permission to build a telecommunications tower must provide written notice of the project to each owner of property that is ‘contiguous or directly across a street or roadway from
the property on which the tower is proposed to be constructed." If there are no timely objections, the tower is considered exempt and construction may proceed; but if any neighbor objects, the party must obtain a conditional use permit from the local zoning authority."

The ZR also outlined two substantive requirements related to telecommunications infrastructure, including:

- a maximum height of 145 feet; and
- a minimum distance from any lot line of the tower height plus 25%.

The proposal for Berlin Station called for a 195-foot tower, topped by a four-foot lightning arrestor, located 45 feet away (i.e., less than the tower height) from the northern lot line, and the height of the tower was determined by Verizon’s coverage requirements.

In accordance with Section 519.211, TowerCo mailed the abutting property owners. And in October 2021, Berlin held a special meeting that gave neighbors and trustees the opportunity to discuss the proposed and potential adverse health effects of radio frequency (RF) emissions emanating from the tower.

Given neighbors’ concerns and objections, Berlin told TowerCo that it would require it to apply for a conditional use permit (CUP) before moving forward with construction. TowerCo claimed the state immunity doctrine applied, so it didn’t have to comply with the local zoning regulation, including the CUP application process.

Berlin didn’t respond, so TowerCo proceeded with building the tower after receiving a building permit from the Delaware County Building Department. In support of that application, TowerCo wrote that Berlin’s lack of response "serve[d] to indicate [its] assent to the project."

Then the county prosecutor sent TowerCo a letter stating that it didn’t have the authority to proceed and the building department issued a stop-work order for non-compliance with local zoning regulations.

Berlin filed suit against TowerCo in state court, which granted it a temporary restraining order enjoining TowerCo from further construction of the Berlin Station cell tower.

BACK TO THE COURT’S RULING

"TowerCo has shown a substantial likelihood of success" on the merits of its claim and "has established it will suffer irreparable injuries in the absence of a preliminary injunction," the court wrote.

The court explained that a preliminary injunction was "an extraordinary remedy, intended ‘to maintain the status quo pending determination of an action on its merits.’” Therefore, TowerCo had the burden of showing it was likely that:

- it would succeed on the merits;
- it would suffer irreparable harm if the relief wasn’t granted;
- the “balance of equities” tipped in its favor; and
- the injunction was in the public interest.

Success on the merits—TowerCo “show[ed] that the cell tower would densify Verizon’s network and that Verizon conducted a meaningful search for alternatives prior to selecting the site,” so the court found it “demonstrated a substantial likelihood of success.”

Irreparable harm—The court found that while TowerCo wouldn’t “directly suffer[] irreparable harms in the form of lost goodwill from Verizon’s customers or lost business due to a delayed entry into the market,” “such harms to Verizon [would] rebound on TowerCo: if TowerCo’s inability to complete the cell tower for Verizon cause[d] Verizon to lose customer goodwill, then TowerCo [would] in turn lose goodwill from its longtime customer, Verizon.” While TowerCo hadn’t “yet experienced a slowdown in business with Verizon or other cell service providers, such harms [we]re impending in the absence of an injunction.”

Balance of equities—TowerCo suggested the injunction would improve wireless coverage without any harm to third parties because the tower was up to code and would be located entirely on the Berlin School District’s property. “Any stated concerns about RF emissions, as asserted by Berlin in its state court filings, [we]re insufficient for finding that the balance of the equities tips against granting a preliminary injunction, because the regulation of cell towers based on such concerns [wa]s impermissible,” the court noted.

Public interest—TowerCo argued the injunction would serve the public interest because the tower’s completion would benefit Berlin’s residents, and this was something Berlin conceded.

A CLOSER LOOK

Each individual antenna site had a limited range resulting in a limited coverage area. To maintain consistent coverage, Verizon and other carriers would place the antenna sites close enough to each other so there weren’t any gaps. But they tried to not put them too close together so they weren’t duplicative. And having an antenna site didn’t mean inconsistent coverage would altogether be eradicated. For example, if wireless service in a given area grew beyond the antenna site’s capacity, calls wouldn’t go through. If that happened, a carrier generally would build more channels or cell sites, split the coverage area into smaller segments serviced by an individual antenna site, or redirect calls to a different frequency band.

In this case TowerCo had already expended about $425,000 on building the tower, which was fully assembled and generally only needed electric and fiber wiring to be installed to be completed.

Zoning News Around The Nation

California

Long Beach holds open house to discuss rezoning proposal for downtown and a waterfront entertainment area

During a September 2023 open house, officials from
Long Beach, California heard from residents on a rezoning proposal for downtown and a waterfront entertainment area, Long Beach Post reported recently.

The downtown area was last rezoned in 2012. But, in the past 11 years, the city has exceeded the maximum of 5,000 housing units for which it had planned, the article noted. And the COVID-19 pandemic altered the need for retail and office space.

The waterfront area has not received a planning update since the 1970s. And the city hoped residents, business owners, and other stakeholders could shed light at the September meeting on what they envision in terms of development for the area.

As of print time, additional meetings on the matter had not yet been scheduled.

For more on the city’s planning initiatives, including “General Plan 2024 Vision,” visit longbeach.gov/lbds/planning/initiatives—programs/long-beach-2040-general-plan. To access the Downtown Shoreline Vision Plan, visit longbeach.gov/lbds/planning/advance/downtown-shoreline. And for more on the Downtown Plan Update, including a list of upcoming community events, visit longbeach.gov/lbds/planning/advance/downtown-plan.

Source: lbpost.com

Colorado

Federal court rules on whether state’s billboard and signage act violates First Amendment

A recently decided case involving billboard signs shed light on whether a provision of Colorado’s billboard and signage act requiring signage owners to obtain a permit to display a paid message but not an unpaid one (that is, one where the billboard owner wasn’t paid by someone else to display a message) violated the First Amendment.

The case arose after Street Media Group LLC and Turnpike Media—both of which were in the sign business as owners of billboards and advertising signs—contended that the Colorado law violated the First Amendment because it treated billboards (so-called “advertising devices”) differently depending on whether the message was paid for or not.

A lower court dismissed their case, and on appeal, the Tenth U.S. Circuit Court of Appeals found that “Colorado’s sign act [wa]s a constitutionally permissible policy choice—it further[ed] [the state’s] objectives of promoting roadside safety and aesthetics.”

The case cited is StreetMediaGroup, LLC v. Stockinger, 2023 WL 5355119 (10th Cir. 2023).

The Tenth U.S. Circuit has jurisdiction over Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming.

City, county of Denver study how underutilized office buildings could be converted for residential use

In other news from Colorado, the City and County of Denver recently released a study that evaluates the compatibility of underutilized office buildings for potential conversion to residential uses. “This kind of conversion, also known as adaptive reuse, allows for an existing building to be modified for a new use or purpose,” a press release stated.

The American Rescue Plan Act-funded study identified close to 24 downtown buildings that were “Good Candidates for Conversion.” “Some of the factors used to determine whether conversion is feasible included walkability, proximity to transit, natural light, the shape of the building, existing window to wall ratio and ease of window replacement.”

The city of Denver also launched an Adaptive Reuse Pilot Program in Upper Downtown, which will support commercial office space conversions into multi-use residential spaces.

“Denver has a long history of successful adaptive reuse, and as the study indicates, there is a lot of potential downtown to provide additional housing to help transition from a Central Business District to a Central Neighborhood District,” said Laura Aldrete, executive director of Denver’s Department of Community Planning and Development. “The study is an early first step as the city continues to build partnerships and look for more ways to support adaptive reuse projects that can help us meet our sustainability and housing goals,” Aldrete added.


Source: denvergov.org

Missouri

UoM study indicates municipal commissions, boards aren’t as diverse as the state’s general population

Researchers at the University of Missouri—St. Louis have concluded that municipal commissions and boards in the state of Missouri aren’t as diverse as they could be.

For instance, while women make up more than half of the state’s population, only 36.9% of municipal commission and board seats are filled by women.

To download the report, Gender Parity on Civic Boards & Commissions in Missouri, which research collaborator United WE published, visit https://rb.gy/h9y28.

Source: blogs.umsl.edu

New York

NYC Atlantic Avenue rezoning report released

In a recently released report, New York City Council Member Crystal Hudson, who represents District 35 (Crown Heights), explained that the city is in the midst of a housing crisis, which requires “coordinated city and regional action” to “build more housing, especially deeply affordable housing.”

To advance this goal, Hudson noted that “firm commitments for the infrastructure and programmatic investments” will be needed “to support equitable and sustainable growth.” One way to address this, she added, is to “solidify [a] community-driven neighborhood plan to transform the dangerous corridor of Atlantic Avenue into a place where residents can live and work at high-quality, good-paying jobs—building on the nearly decade of work by Brooklyn Community Board 8.”
The report, *The Atlantic Avenue Mixed-Use Plan: Community Vision and Priorities*, covers community recommendations and priorities and next steps. Among the priorities are to:

- Create “new, permanent, deeply affordable housing on private and public sites through increased density along Atlantic Avenue and surrounding streets” while preserving “existing affordable housing in the larger community through programs and investment”;
- use “zoning tools that foster mixed-use development to encourage a full range of services and local job opportunities for new and existing residents within walking distance”;
- plan, fund, and launch a redesign of Atlantic Avenue “to improve safety, increase amenities for all users, and improve environmental conditions” on “an expeditious timeline”;
- create “new public green spaces and opportunities for active recreation and improve existing community parks”;
- make investments in “job training and business development to expand career pathways that are accessible to existing residents”; and
- create “new community amenities that support [an] existing men’s shelter as well as the broader community” which represents “underutilized space in the Bedford-Atlantic Armory.”


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

**Wyoming**

**Legislative task force to review zoning issues**

The state legislature has tasked the newly launched Regulatory Reduction Task Force with examining zoning laws’ impact on affordable housing supply in Wyoming. The task force is expected to dive into issues like:

- pushing density maximums;
- how to make it less difficult for property owners to go forward with accessory dwelling units;
- allowing for multi-family dwellings in some commercial zones; and
- setting state caps on local zoning regulations, the *Casper Star Tribune* reported.

For more on this and other legislative committee, visit [wyoleg.gov/Committees/2023](http://wyoleg.gov/Committees/2023).

Source: [trib.com](http://trib.com)
## NOVEMBER 2023

### LAND DEVELOPMENT PLAN COUNCIL ACTION DEADLINES

<table>
<thead>
<tr>
<th>Title</th>
<th>Submitted</th>
<th>Action Deadline</th>
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<tbody>
<tr>
<td>Umberger/Rockenbeck Subd</td>
<td>10/23/2023</td>
<td>1/21/2024</td>
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<tr>
<td>Jersey Mike’s</td>
<td>10/23/2023</td>
<td>1/21/2024</td>
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### LAND DEVELOPMENT PLAN ACTIVITY

<table>
<thead>
<tr>
<th>Title</th>
<th>Recording Deadline</th>
<th>Comments</th>
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<tbody>
<tr>
<td>UAJA Biosolids Upgrade</td>
<td>January 16, 2023</td>
<td>5/22 submitted, comment request sent 5/22; Comments due 6/2; revision due 6/12 (unable to make the revision deadline, extended to 6/19); revision received 6/16; to PC 6/27; to CTC 7/20; conditional approval letter sent 7/21, accepted 7/27; extension request to CTC 10/5; ext. approval sent 10/6</td>
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<tr>
<td>Medlar Field LDP</td>
<td>December 6, 2023</td>
<td>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; 9/20 plan signed and ready for pick up; 9/27 picked up plan</td>
</tr>
<tr>
<td>Umberger/Rockenbeck Subd</td>
<td>January 21, 2024</td>
<td>10/23 submitted, comment request sent 10/23; comments due 11/3; 11/13 revision due; to PC 11/21</td>
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<tr>
<td>Jersey Mike’s</td>
<td>January 21, 2024</td>
<td>10/23 submitted, comment request sent 10/24; comments due 11/3; 11/13 revision due; to PC 11/21</td>
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<tr>
<td>Summit Park Subdivision</td>
<td>December 6, 2023</td>
<td>7/17 submitted, comment request sent 7/18; comments due 7/28; revision due 8/7; comments due 8/11; to PC 8/14; to CTC 9/7; Determined a preliminary does not get recorded; 1 condition is currently unattainable</td>
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MINOR PLANS

Rogers Minor  Submitted 10/23/2023 sent to Schnure, Kauffman, Boeckel; comments Expires 12/22/2023 due 11/3; revision due 11/13

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; 9/13 DPZ review with staff; 2nd draft ordinance to come; draft plan submitted 10/23 being reviewed by staff

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

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

ENGINEERING BOND/LOC SURETY EXPIRING SOON

Christ Community Church (November 19th)
LDP’s UNDER CONSTRUCTION

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