

WESTTOWN TOWNSHIP PLANNING COMMISSION MEETING MINUTES

VIRTUAL MEETING (via Zoom Platform)
Wednesday, September 23, 2020 – 7:30PM

Present

Commissioners – Planning Commission (PC) members Kevin Flynn, Tom Sennett and Steve Rodia were absent, all others were present. Also, present was Finance Director JoAnne Grube, Township Planner Mila Robinson, and Township consultant John Snook.

Call to Order and Pledge of Allegiance

Mr. Hatton called the meeting to order at 7:36 PM. Mr. Embick led those present in the Pledge of Allegiance.

Adoption of Agenda (JE/JL) 4-0

No changes were made.

Approval of Minutes

7/8/20 meeting minutes were approved. **(JE/JL) 3-0-1**

9/9/20 meeting minutes were approved with the following changes:

- Jack Embick was absent during 9/9/20 meeting
- Elaine Adler requested to correct last sentence on page two, paragraph five. **(JE/JL) 3-0-1**

Announcements

- Mila Robinson reminded that BOS Crebilly/Toll Bros. CU Hearing #5 was scheduled on 10/22/20 at 7pm via ZOOM.

Public Comment – Non Agenda Items

None

New Business

1. Environmental Impact Assessment (EIA) Process

Jack Embick suggested that the PC consider formalizing an environmental impact assessment (EIA) process into the Township ordinances. He referenced Article I, Section 27 of the Pennsylvania Constitution that provides the right of clean air, pure water, and a number of other scenic, historic, natural, and environmental values to all Pennsylvanians. Mr. Embick stated that an EIA requirement would assist the Township in carrying out its responsibilities under Art.1, Sec. 27. Mr. Embick briefly summarized the history of Art.1, Sec. 27 since its enactment in 1971, and described several important court cases, which interpreted its scope and application:

- The case of Payne vs. Kassab, (312 A.2d 86 (Pa. Commw. 1973) involving the construction of a highway through a park, which led to the development of a test (the Payne Test) that governmental agencies used to evaluate whether the rights that were afforded by Article I, Section 27 were being maintained and conserved. Mr. Embick pointed out that the goal of the Payne Test was to balance the harms versus the benefits of a particular proposal. The Pa Supreme Court has disregarded the Payne Test because it found that the balancing test was not protective of the stated values in Art.1, Sec. 27
- The Pennsylvania Environmental Defense Foundation case (161 A.3d 911 (Pa

2017)), which involved an attempt by the state legislature to take funds away from the oil and gas lease fund for purposes not related to conservation, recreation, flood control, etc., but instead placing the money in the general fund. The Pennsylvania Supreme Court said you could not do that, because it violated the public trust provisions of Article I, Section 27 of the Pennsylvania Constitution. Mr. Embick clarified that in that decision, the Pennsylvania Supreme Court explained at length what in their opinion that Article I Section 27 meant and how it should be implemented by the Commonwealth government, and making it applicable to all levels of government, including townships, boroughs, other municipalities in Pennsylvania.

Mr. Embick stated that, in his view, municipalities have to create or consider mechanisms, which allow them to identify potential impacts on environmental values that municipalities have some role in either approving or governing. He noted that a number of communities, including ones in Chester County, have implemented several of those ordinances. Mr. Embick expressed that an effective way to determine whether those constitutional rights were going to be affected is through an EIA, which could be done by qualified professionals who could evaluate current, cumulative, and long-range effects of particular activity. He thought that using that information, the municipality could make better decisions about whether the development should go forward or be modified, so that the protected values were maintained and preserved. He strongly emphasized that, in his opinion, every municipality was obligated by the PA Constitution to do that. Mr. Embick also acknowledged that adding another layer of analysis and scrutiny to a proposed activity could be time-consuming and costly in some cases, but he believed that the PA Constitution required that kind of analysis.

Mr. Lees asked if something of that nature was added to the Zoning Ordinance, could developers be required to supply that assessment at their expense. Mr. Embick believed that if municipalities adopt an ordinance like that, the applicant would have to perform an EIA at his own cost while the Township would review it, similar to the reports that were done now by applicants' experts, such as traffic, stormwater, etc. He acknowledged that some of the things to be considered in an EIA are already required in the Township ordinance; however, he stressed that the gist of an EIA is to identify any adverse impact the proposed activity has on the protected values, and to require an applicant to mitigate that.

Mr. Snook expressed his opinion that Title 25 PA. Code § 271.127 was already set up for the assessment process concerning a state permit application. He referenced two samples of environmental assessment process that he provided to the PC. Mr. Snook stressed the importance of having specific measurements for long-term impacts. Mr. Embick agreed that creating some performance standards for an EIA review might be helpful and there was no need to apply that process to every project. However, he suggested to setting a baseline for when activities that affect less than a certain number of housing units would not require an EIA.

Elaine Adler asked whether an EIA would have a bigger impact on a new development or redevelopment. Mr. Lees thought that it should apply to both, but pointed out that the Township was running out of places to be developed. The PC had a brief discussion on whether it was more applicable to be included in SALDO.

2. Update on Township Management

JoAnne Grube informed the PC that Rob Pingar is no longer the Township Manager. She stated that the BOS is actively pursuing a qualified replacement. The job posting is available on the Township website and had been placed on several professional websites, including Pennsylvania Municipal League. Ms. Grube also noted that she is Interim

Township Manager; Mila Robinson is Interim Zoning Officer and John Snook is Assistant Zoning Officer.

Mr. Hatton asked whether the office is open to the public. JoAnne confirmed that it is, with the limit of number of attendees for the Stokes Hall of 18.

Old Business

1. Dog Ordinance

Mr. Snook presented several samples of dog ordinances from other municipalities. He noted that amendments could be added separately or to Chapter 49. He raised various issues to consider, such as the number of animals, pasturage requirements, noise, and enforcement procedures. He suggested that the appropriate language in the Zoning Ordinance would allow for the issuance of violation with 30-day window for correction. He acknowledged that it might be a very slow process, especially if there was a dog-barking problem; therefore, he proposed directing that to the police department to enforce. In addition, Mr. Snook suggested refining the West Goshen Township sample to place in Chapter 49, making other improvements to the existing Keeping of Animals section and cross-referencing. He recommended the Township solicitor to weigh in on the enforcement question.

PC members questioned to which animals the ordinance would apply, including exotic animals. Mr. Snook suggested updating the existing Keeping of Animals to fine-tune the numerical aspects. Mr. Hatton made it clear that the focus of the ordinance was to make it applicable to dogs, not other animals. He also agreed that the numerical values in the existing ordinance needed refining.

Mr. Snook was in favor of utilizing the West Goshen sample, which he believed was applicable to the nuisance issues associated with dogs in the Township, and thought the enforcement mechanism that would allow the issuance of a summary citation and litigation before district magistrate sounded as a good way to go.

Ms. Grube questioned enforcement of dog owners picking up after their pets. Mr. Embick suggested that Pat McKenna, Township solicitor, provide some recommendations. Mr. McKenna thought that complaints would probably include evidence, such as photograph, which could be utilized in the enforcement procedure. Ms. Grube asked if there was a state law providing guidance in that respect. Mr. Snook responded that the state law was more about animals at large and not applicable in situations when the dog owners did not pick up after their dogs. He acknowledged that there had to be a proof of some sort, which might be challenging.

Mr. Snook also pointed out that the more important aspects of dog ordinance was to address the continuous barking and dogs not being confined. He provided an example from East Bradford Township where the police issued the citation after they witnessed the dog barking at a house for an extended period. He suggested including those into the ordinance.

After the discussion, the PC agreed for John Snook to use the West Goshen's ordinance as a template for Westtown to address dog barking, dog waste, and dogs running off leash. Mr. Lees reminded him that a new ordinance would have to be cross-referenced in some other areas. Mr. Snook made a note of that.

Public Comment

None

Reports

Board of Supervisors Meeting 9/21/20 – Jim Lees/Steve Rodia

Adjournment (JE/EA) 4-0

Meeting was adjourned at 9:04 PM.

Respectfully submitted,
Mila Robinson,
Planner II/Interim Zoning Officer

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