

§ 271.127. Environmental assessment.

(a) *Impacts.* Each environmental assessment in a permit application shall include at a minimum a detailed analysis of the potential impact of the proposed facility on the environment, public health and public safety, including traffic, aesthetics, air quality, water quality, stream flow, fish and wildlife, plants, aquatic habitat, threatened or endangered species, water uses, land use and municipal waste plans. The applicant shall consider features such as scenic rivers, recreational river corridors, local parks, State and Federal forests and parks, the Appalachian Trail, historic and archaeological sites, National wildlife refuges, State natural areas, National landmarks, farmland, wetland, special protection watersheds designated under Chapter 93 (relating to water quality standards), airports, public water supplies and other features deemed appropriate by the Department or the applicant. The permit application shall also include all correspondence received by the applicant from any State or Federal agency contacted as part of the environmental assessment.

(b) *Harms.* The environmental assessment shall describe the known and potential environmental harms of the proposed project. The applicant shall provide the Department with a written mitigation plan which explains how the applicant plans to mitigate each known or potential environmental harm identified and which describes any known and potential environmental harms not mitigated. The Department will review the assessment and mitigation plans to determine whether there are additional harms and whether all known and potential environmental harms will be mitigated. In conducting its review, the Department will evaluate each mitigation measure and will collectively review mitigation measures to ensure that individually and collectively they adequately protect the environment and the public health, safety and welfare.

(c) *Municipal waste landfills, construction/demolition waste landfills and resource recovery facilities.* If the application is for the proposed operation of a municipal waste landfill, construction/demolition waste landfill or resource recovery facility, the applicant shall demonstrate that the benefits of the project to the public clearly outweigh the known and potential environmental harms. In making this demonstration, the applicant shall consider harms and mitigation measures described in subsection (b). The applicant shall describe in detail the benefits relied upon. The benefits of the project shall consist of social and economic benefits that remain after taking into consideration the known and potential social and economic harms of the project and shall also consist of the environmental benefits of the project, if any.

(d) *Other facilities.* If the application is for the proposed operation of another type of facility and the applicant or the Department upon review determines that known or potential environmental harm remains despite the mitigation measures described in subsection (b), the applicant shall demonstrate that the benefits of the project to the public clearly outweigh the known and potential environmental harms. In making this demonstration, the applicant shall consider harms and mitigation measures described in subsection (b). The applicant shall describe in detail the benefits relied upon. The benefits of the project shall consist of social and economic benefits that remain after taking into consideration the known and potential social and economic harms of the project and shall also consist of the environmental benefits of the project, if any.

(e) *Identification of harms and benefits.* Known and potential harms and benefits of a proposed project may also be identified by the Department or any other person or municipality.

(f) *Need.* The description required by subsections (c) and (d) may include an explanation of the need for the facility, if any. Simply adding new capacity does not establish need for a facility.

(g) *Evaluation.* After consultation with other appropriate agencies and potentially affected persons, the Department will evaluate the environmental assessment in Phase I of permit review or otherwise prior to technical review.

(h) *Revision.* The Department may require submission of a revised environmental assessment if additional harms or potential harms are discovered during any phase of permit application review.

The provisions of this § 271.127 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5105; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (225996) and (248213) to (248214).

Notes of Decisions

Constitutionality

The Environmental Quality Board's regulations adopting a Harm/Benefits Test as part of the permitting process for waste disposal facilities does not exceed the Commonwealth's police power; a determination of a project's inherent harms and benefits is reasonably necessary in order to determine whether a potentially dangerous project should be granted a permit in a heavily regulated industry. *Eagle Environmental II, L. P. v. Department of Environmental Protection*, 884 A.2d 867, 883 (Pa. 2005).

The inclusion of implementation of PA. CONST. ART I, Sec. 27 as an express purpose of the Storm Water Management Act (33 P. S. § § 6018.101—6018.1003) indicates that the Legislature intended to authorize the balancing of environmental harms against social and economic benefits. Therefore, the harms/benefits test of the regulations comport with the Constitution. *Tri-County Industries, Inc. v. Department of Environmental Protection*, 818 A.2d 574 (Pa. Cmwlth. 2003).

Delegation

The General Assembly made the "basic policy choice" and its will was merely carried out by the substantive rulemaking process. Therefore, the creation of the harms/benefits test of the regulations is a valid exercise of the rulemaking powers. *Tri-County Industries, Inc. v. Department of Environmental Protection*, 818 A.2d 574 (Pa. Cmwlth. 2003).

Department Requirement

The Department erred by issuing a permit to a landfill operator without requiring the operator to include the potential harm of bird hazard in its environmental assessment. *Leatherwood, Inc. v. Department of Environmental Protection*, 819 A.2d 604 (Pa. Cmwlth. 2003).

Economic Benefits

Where the Department determined that the faster payment of fees would economically benefit the local municipalities, that determination is entitled to great deference; therefore, it was an error of law for the Environmental Hearing Board to determine that the increase in host fees did not represent an economic benefit. *Browning-Ferris Industries v. Department of Environmental Protection*, 819 A.2d 148 (Pa. Cmwlth. 2003); appeal granted in part 893 A.2d 67 (Pa. 2006).

Harms/Benefits; Standards

Department of Environmental Protection's failure to complete the "harms/benefits" part of its analysis before turning to the technical review of application seeking modification of solid waste permit had no material effect on its grant of permit application; purpose of regulation providing the environmental assessment be conducted prior to technical review was to save time and resources, and consideration of technical aspects of landfill was necessary to fully evaluate harms and benefits. *Berks County v. Department of Environmental Protection*, 894 A.2d 183, 193 (Pa. Cmwlth. 2006).

There is no rule or mandatory requirement in the Department of Environmental Protection's (DEP) regulation which precluded it from offering permittee an opportunity to submit additional information to address an issue raised during the review process; DEP did not view it as fair or proper to deny the entire application based on concerns identified after it began drafting its "harms/benefits" analysis as fairness required expending an opportunity to permittee to respond. *Berks County v. Department of Environmental Protection*, 894 A.2d 183, 194 (Pa. Cmwlth. 2006).

Issue of whether certain benefits were sufficiently related to landfill expansion project to warrant consideration in the Department of Environment Protection's harms/benefits analysis was waived for appeal

where County had opportunity to raise issue before the Environmental Hearing Board but failed to do so. *Berks County v. Department of Environmental Protection*, 894 A.2d 183, 205 (Pa. Cmwlth. 2006).

In determining whether to issue permit to expand solid waste landfill, the Department of Environmental Protection properly considered permittee's clean-up of nearby stream and uncontrolled dumps as a benefit in conducting the harms/benefits analysis. *Berks County v. Department of Environmental Protection*, 894 A.2d 183, 205 (Pa. Cmwlth. 2006).

County's claim that clean-up and waste services offered by applicant for landfill expansion permit to municipalities surrounding the landfill were improperly considered by the Department of Environmental Protection and the Environmental Hearing Board because the benefit was neither quantified in a dollar amount nor enforceable by contract; there was no requirement that all of the benefits or harms of the project be quantified in a dollar amount and provision of the services was enforceable by the Department through the permit. *Berks County v. Department of Environmental Protection*, 894 A.2d 183, 204 (Pa. Cmwlth. 2006).

Since there is no enunciated standard by which benefits must clearly outweigh the harms, the standard may be met where the benefits outweigh the harms by a mere scintilla, so long as proof is provided with the high degree of certainty. *Browning-Ferris Industries v. Department of Environmental Protection*, 819 A.2d 148 (Pa. Cmwlth. 2003); appeal denied 541 A.2d 1139 (Pa. 1988).

Validity

The statutes reflect the General Assembly's clear intent to regulate every aspect of waste disposal, and the language of the relevant acts clearly conferred broad supervisory power to the Environmental Quality Board. This power is broad enough to encompass the harms/benefits test contained in duly promulgated regulations. *Tri-County Industries, Inc. v. Department of Environmental Protection*, 818 A.2d 574 (Pa. Cmwlth. 2003); appeal granted 835 A.2d 706 (Pa. 2003); aff. 884 A.2d 867 (Pa. 2005).

Cross References

This section cited in 25 Pa. Code § 271.201 (relating to criteria for permit issuance or denial); 25 Pa. Code § 273.140 (relating to daily volume); 25 Pa. Code § 277.139 (relating to daily volume); 25 Pa. Code § 279.111 (relating to daily volume); 25 Pa. Code § 281.123 (relating to daily volume); and 25 Pa. Code § 283.114 (relating to daily volume).

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Lower Mount Bethel Sample SALDO Text

Section 406 Environmental Impact Assessment

- A. Applicability. An Environmental Impact Assessment (EIA) shall be submitted to the Township as part of a Preliminary Plan and Final Plan for any major subdivision or land development application, except for residential subdivisions involving less than ten (10) lots and agricultural subdivisions subject to the CAPZO provisions of the Township Zoning Ordinance.
- B. Purpose. To ensure that adequate analysis of site features result in designs that preserve and incorporate open space, historic, visual, environmental, biological and natural and other community resources in development plans.
- C. Identification of Site Features. The applicant shall identify, inventory and map the site features of the tract proposed for development, including those required in an ERSAP, prepared in accordance with Section 400 hereof. These plan(s) shall be provided at the same scale as development plans submitted for Preliminary and Final Plan applications, as applicable.

[Note: the ERSAP is the “Existing Resources & Site Analysis Plan” and same comprehensive list of issues required for submission at each plan stage. It is called in here by reference rather than restating the list of issues to assess.]

- D. Narrative. In addition to the plan and resource inventory, the applicant shall submit a narrative description of the following:
 - 1. The general character of the site features identified in accordance with this Ordinance, including environmental quality, conservation value and scenic significance, as applicable. Relevant information provided in any submitted Historic Resource Impact Study or Community Impact Assessment may be cited by reference.
 - 2. An analysis of all impacts, both positive and negative, to environmental, natural, and scenic resources caused by or directly related to the development/improvement projects submitted to the Township for review and approval, including impacts to the property and any impacts to surrounding properties.
 - 3. A description, and identification on plan map(s), as applicable, of proposed means and/or rationale demonstrating how development as proposed will minimize or mitigate the identified negative impacts, including a detailed description of the proposed measures that will be taken to mitigate any impacts to the identified resources on the property and any other affected property as a result of the planned development.
- E. Qualifications of Preparer.

1. The EIA must be prepared by a certified planner(s) and/or environmental professional(s) with appropriate education, training and experience to perform such an analysis. A report presenting the results of the EIA and the qualifications of the EIA preparer must be submitted with the development plan.
2. Each EIA report must include a certification statement from the individual or company that prepared the report as follows: I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

Chapter 115. Zoning

Article XII. Supplemental Land Use Regulations

§ 115-51. Environmental impact assessment.

[Amended 11-8-2005 by Ord. No. 9-2005]

- A. Purpose. It is the intent of this section to ensure that, where required, adequate analysis of site features results in design that to the greatest degree feasible preserves and incorporates open space, historic, visual, environmental, biological and natural and other community resources within development plans.
- B. Applicability. An environmental impact assessment (EIA) shall be submitted by the applicant under the following circumstances:
- (1) As a supplement to preliminary and final plans submitted in accordance with the provisions of the Subdivision and Development Chapter of the Code.^[1] EIA must also be completed for any proposed development or improvement to existing properties that cover an area three acres or more in total tract size. Applicants with tracts covering a smaller area/acreage must also prepare and submit an EIA if the area/acreage is located in an area designated as an environmentally sensitive area or of historic or cultural importance as determined by the Township Engineer in accordance with the environmental and historical standards established by other ordinances of the Township, including, but not limited to, the Township Historic Resources Map and Township Environmental Inventory Map.
[1] Editor's Note: See Ch. 95, Subdivision and Land Development.
 - (2) As a supplement to any application for conditional use or special exception.
 - (3) When any disturbance is proposed in the Riparian Buffer Area (RBA) Conservation District.
[Added 9-9-2008 by Ord. No. 2-2008]
- C. Identification of site features. The applicant shall identify, inventory and map the site features of the tract proposed for development in accordance with §§ 95-13 and 95-14 of the East Bradford Township Subdivision and Land Development Ordinance and § 115-51C(7) below. The EIA must include an inventory of natural and environmental resources on the property proposed for development. The inventory should include a complete description of the resources on the property, including but not limited to:
- (1) Water.
 - (a) The watersheds within which the planned development will occur.
 - (b) Headwaters, streams, creeks and rivers.
 - (c) Floodplains.
 - (d) Riparian zones and buffers.
 - (e) Lakes and ponds.
 - (f) Wetlands and marshes.
 - (g) Groundwater classification/aquifer designation.
 - (h) Principal groundwater recharge zones.

- (i) Individual groundwater withdrawals greater than 10,000 gallons per day.
 - (j) Existing residential wells.
 - (k) Groundwater elevations, if available.
 - (l) Stream and/or stormwater runoff from the site shall be tested for all pollutants listed in the Township's municipal separate storm sewer system NPDES II permit and/or total maximum daily load requirements.
- (2) Soils and land.
- (a) Agricultural areas.
 - (b) Soil types and designations.
 - (c) Steep slopes.
 - (d) Open space and greenways.
 - (e) Parks and trails.
 - (f) Equestrian farms and lands.
- (3) Woodlands and forests.
- (a) Woodlands and tree masses as defined by the Code of the Township of East Bradford, Pennsylvania.
 - (b) Species and sizes of trees over 12 inches in diameter at dbh.
[Amended 9-9-2008 by Ord. No. 2-2008]
 - (c) Vistas/visually significant areas and locations.
- (4) Biota.
- (a) A description of the types and diversity of biota present on the property.
 - (b) Rare, threatened and/or endangered species, including both plants and animals.
 - (c) Habitats, including habitats that are, or may be, identified as unique to the Township or in need of special protection or consideration.
- (5) Areas of known environmental impact (e.g., failed septic, leaking UST, polluted stream flow and/or stormwater runoff, eroded stream embankments, etc.) via laboratory analysis and photographic evidence.
- (6) Protected areas as delineated on the Township Environmental Inventory Map.
- (7) In conjunction with the preliminary development plan requirements of § **95-13**, Subdivision and Land Development, the EIA shall include a plan view drawn at the same scale as that required for the preliminary plans that shows the locations of the natural and environmental resources identified/catalogued for the property. The map shall also include topographic contours measured at two-foot contour intervals as required in § **95-13**.
- (8) Environmental compliance. In addition to the identification of site features otherwise required by § **115-51** herein, the applicant shall further identify, inventory and map appropriate site features to indicate compliance with §§ **115-45**, **115-45.1**, 115-45.2 and **115-45.3** of the Code. All such aspects of an approved EIA plan, including but not limited to the required aspects of the plan indicating compliance with terms of the East Bradford Township Code, shall be financially secured, guaranteed and maintained by a maintenance agreement required by the Township and in a recordable form acceptable to the Township Solicitor. The guarantee shall provide for timely removal or remedying of all instances of noncompliance with the approved plan, including but not limited to replacement or remediation of improperly disturbed areas or habitats. The guarantee shall be further applicable to existing and installed features of the approved plan. The applicant shall pay for the services of a consultant selected by the Township to monitor and report on compliance with these requirements to the Township.

- D. In addition to the plan and resource inventory, the applicant shall submit to the Township a narrative description of the following:
- (1) The general character of the site features identified in accordance with § **95-13** of the East Bradford Township Subdivision and Land Development Ordinance, including environmental quality, conservation value and historical significance, as applicable.
 - (2) The EIA must include an analysis of how the development plan is consistent with the Township goals for protection of environmental and natural resources, including:
 - (a) No net gain or increased discharge to surface water bodies from stormwater management for the planned development/improvement.
 - (b) Ensuring protection of the watershed within which the development is located and no negative impacts on any downstream receptors or properties.
 - (c) Promoting groundwater recharge.
 - (d) Preservation of woodlands, hedgerows, trees and tree masses while minimizing vegetative removal.
 - (e) Coordinating the planned development with the aesthetics of the surrounding environmental and natural resources and protecting open space.
 - (f) Protection and preservation of habitats.
 - (3) A visual analysis including the following:
 - (a) The scope and character of views into the tract from outside the tract, from public roads and from private properties in relationship to identified site features.
 - (b) The scope and character of views within the tract in relationship to identified site features.
 - (c) The scope and character of external views from within the tract.
 - (d) The impact of the planned development on the existing internal and external views, particularly with regard to the changed vistas associated with any clearing for development and the proposed approach for minimizing the visual impacts associated with the planned development.
 - (4) A description and identification on plan map(s), as applicable, of all existing or proposed public or community services and facilities that might reasonably be expected to serve the development as proposed, including but not limited to roads, schools, libraries, park and recreation facilities, transportation facilities, sewer and water facilities, utilities and emergency services.
 - (5) A description and qualitative assessment of the following:
 - (a) Positive and negative impacts upon identified site features, public and private views and public or community services and facilities that might be anticipated due to development as proposed.
 - (b) An analysis of any and all impacts to environmental and natural resources caused by or directly related to the development/improvement projects submitted to the Township for review and approval, including impacts to the property and any impacts to surrounding properties, regardless of distance of affected properties from the proposed development parcel.
 - (c) Where use of the open space development option is proposed, a comparative analysis of the impacts identified with those that might reasonably be expected should development according to base zoning requirements be applied to the same tract.
[Amended 9-9-2008 by Ord. No. 2-2008]
 - (6) A description and identification on plan map(s), as applicable, of proposed means and/or rationale demonstrating how development as proposed will minimize or mitigate identified negative impacts, including a detailed description of the proposed measures that will be taken by the applicant to mitigate any impacts to the identified resources present on the property and any other affected property as a result of the planned development.

- (7) Wetlands report. The applicant shall submit a wetlands report in accordance with the United States Army Corp. of Engineers' criteria.
- (8) The narrative shall include a table to document the environmental impact. The table shall be formatted as follows:
[Added 9-9-2008 by Ord. No. 2-2008]

Example:

Impact Identification	Description of Environmental Impact	Proposed Remedy
Remove x trees	Reduces wildlife habitat, reduces oxygen production, reduces shade over stream areas	Relandscape and replace trees in accordance with Township Code

E. Certification.

- (1) The EIA must be prepared by a certified planner(s) and/or environmental professional(s) with appropriate levels of education, training and experience to perform such an analysis. A report presenting the results of the EIA must be submitted to the Township with the development plan. For the purposes of this section, appropriate levels of education, training, and/or experience will consist of one of the following:
- (a) BS degree from an accredited college or university with a major in one or more of the following disciplines: soil science, ecology, geology, environmental science, environmental engineering, biology, botany, forestry or other environmental or ecological field of study.
 - (b) Professional registration with the Commonwealth of Pennsylvania or other entities with licensing authority and reciprocal requirements (PE, PG, AICP, certified land planner).
- (2) Each EIA report must include a certification statement from the individual or company that prepared the report as follows:

I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

F. Review and approval. Each EIA submitted to the Township shall be subject to review and comment by the Environmental Advisory Council (EAC) and/or an independent third-party reviewer retained by the Township to assist in reviewing the EIA. Comments presented by the EAC must be addressed in writing.

G. After completing construction and all land development but prior to expiration of the maintenance bond for public improvements, a detailed site inspection shall be performed by the Township at the expense of the applicant and/or developer to establish and document the actual impact of development. At that time, the applicant shall correct any impacts to resources in accordance with, but not limited to, the following:

- (1) Trees removed by construction demarked on the plans and/or in the field to be preserved shall be replaced in accordance with the replacement ratios specified within the Township landscaping ordinances.
- (2) Erosion rills, channels, ditches or eroded stream embankments, including those caused by development on immediate downstream public and/or private property, shall be adequately stabilized by methods proposed by the developer/applicant and approved by the Township Engineer. Any governing agency permits required for these activities must be obtained by the applicant and/or developer.
- (3) Stream and/or stormwater runoff from the site shall be tested for all pollutants listed in the Township's municipal separate storm sewer system NPDES II permit and/or total maximum daily load requirements for the Christina River Basin. Any pollutant increases from initial testing must be mitigated to return the site runoff to the original pollutant levels or below. Mitigation measures shall be proposed by the developer and approved by the Township Engineer.
- (4) All stormwater management facilities and piping systems must be cleared of sediments and debris. Underground facilities clogged with sediments shall be replaced if deemed necessary by the Township

Engineer.

- (5) Any damage to stormwater basin berms, spillways and piping shall be repaired, including those damaged as a result of construction on the immediate downstream public or private property. Repairs shall be proposed by the applicant/developer and approved by the Township Engineer.
- (6) All temporary erosion control facilities left in place for construction, particularly filter fabric fencing and temporary stormwater basin outlet structures, shall be removed and replaced with permanent facilities where applicable. Any areas disturbed during the removal process must be stabilized.
- (7) Invasive plant species and algae must be removed from stormwater basin areas and any other areas where invasive plants have conflicted with the provisions of the landscaping plan.
- (8) All landscaping materials required as part of the land development plan destroyed by humans or animals must be replaced. Plantings destroyed by humans must be relocated to lessen the chance of further damage. Plantings destroyed by animals, particularly deer, must be replaced with species less desirable to the animal or must be treated with environmentally sensitive repellants.
- (9) Any riparian buffer areas, wetlands or open space areas infringed upon by mowing, fencing, clearing, structures, etc., must be abandoned and returned to their natural state. All structures must be removed and returned to the property owner or demolished and removed from the site.
- (10) All construction debris must be removed from the site.
- (11) The applicant/developer shall furnish the Township with any records of failing single lot septic systems or community sewage system failures or repairs.

Chapter 170. Zoning

Article XV. General Regulations

§ 170-1516. Keeping of animals.

[Amended 3-3-2003 by Ord. No. 2003-2]

A. In conjunction with agriculture.

- (1) Except as stipulated in Subsection **A(2)**, below, livestock and other animals utilized as part of an agricultural operation may be kept, so long as the property on which they are kept is not less than three acres in size and all applicable requirements of Subsection **C** below are complied with.
- (2) The operation of any feed lot or pig farm, or the keeping of pigs or swine, shall be permitted so long as the property is not less than 10 acres. In addition, no such activities shall be conducted closer than 200 feet from any property line, and the area devoted to such uses shall be completely enclosed by fencing.
- (3) If a use involves an average of more than three animal equivalent units of livestock or poultry per acre of contiguous lot area, then a minimum lot area of 20 acres and special exception approval shall be required. Animal equivalent units shall be calculated using average animal weights as provided in State Nutrient Management Regulations. The raising of minks shall be prohibited. This § **170-1516A(3)** shall not apply to the keeping of horses or ponies under § **170-1516B**.

B. Within any residential district, a horse barn, as defined by this chapter, shall be permitted on any property where the lot area is three acres or greater. A minimum of three acres is required to keep one horse or pony. For each acre of lot area greater than three acres, one additional horse, pony or similar animal may be kept. Such animals may be owned by the occupant of the dwelling or boarded for other persons, and may be rented out for horseback riding.

C. General standards applicable to all properties on which animals are kept.

- (1) No animals of any kind shall be kept in any structure or elsewhere on the premises in a manner likely to cause excessive noise, unhealthy or unsanitary conditions, pollution of groundwater or surface water, or pollution of stormwater runoff leaving the property.
- (2) Permanent shelter for animals shall be provided in agricultural areas, as appropriate. Permanent shelter shall be provided for all animals in residential areas. Such shelter shall be of sufficient size for good sanitation practices and shall be equipped with adequate facilities for food, water, and manure removal and handling for the number and type(s) of animals kept. The location of shelter for small domestic animals shall conform to setback standards otherwise applicable to accessory structures. Shelter for all other animals shall be located not less than 100 feet from any lot line.
- (3) A fenced or otherwise enclosed outside area shall be provided which is capable of containing the animals kept and which is of sufficient size and properly located for

good sanitation practices. Materials used for fencing shall be of sufficient sturdiness and properly designed, installed, and maintained so as to prevent straying.

- (4) Any keeping of eight or more dogs age three months or older shall require a minimum lot area of 10 acres, and any pens used for such dogs shall be set back a minimum of 250 feet from any lot line, except in connection with permitted veterinary services or a pet store.

[Amended 5-2-2005 by Ord. No. 2005-4]

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Memorandum

To: Westtown Township Planning Commission

From: John D. Snook

Re: Keeping of Animals/Dogs

September 17, 2020

I am aware that issues of dogs running loose, defecating on other private property and excessive barking are issues in residential areas and have led to review of Westtown's "keeping of animals" provisions in comparison to sample text from other townships. In order to facilitate your further discussion, I offer the following observations.

Westtown's current "keeping of animals" provisions (included below) are found in Section 170-1516 in the Zoning Ordinance; key provisions include the following:

- The provisions deal generally with shelter, sanitation, and enclosure.
- There are no specific provisions nor numerical limitations for pets or other small domestic animals, except that shelter setbacks shall be the same as for other accessory structures, while large animal shelters shall be set back from property lines a minimum of 100 feet.
- Horses or ponies may be kept on properties of three acres or greater with one animal for the first three acres and one more for each additional acre.
- The only specific provisions for dogs is that the keeping of eight or more dogs age three months or older shall require a lot of at least ten acres and associated pens be set back a minimum of 250 feet from property lines in most cases.
- Animals in conjunction with agriculture may be kept on properties of at least three acres, except that a feed lot or the keeping of pigs or swine requires a minimum of ten acres.
- The only numerical limitation for agricultural animals is that more than three "animal equivalent units of livestock or poultry" per acre of lot area shall require a minimum lot of 20 acres. An "animal equivalent unit" is based on average animal weight and is set at 1,000 pounds per unit. A Jersey cow, for example, would be one "animal equivalent unit," but it could take 150 or more chickens to equate to one "animal equivalent unit." So, while impractical, one could keep nine Jersey cows or perhaps 1,500 chickens on a three-acre "farm," and be regulated by the state as a "concentrated animal operation" (CAO) before Westtown's 20-acre minimum lot size applied.

- There are no restrictions on keeping of wild or exotic animals although raising of minks is prohibited.

West Goshen Township has a short chapter within the Township Code, separate from the Zoning Ordinance, dealing specifically with dogs (included below). This chapter specifically provides for control of dogs, prohibition of “running at large” and prohibition of defecation on public property or rights-of-way without immediate clean-up. It also forbids incessant barking. These provisions are separate from the Zoning Ordinance to enable quicker and easier enforcement (essentially police action) rather than the cumbersome and lengthy notice process under the Zoning Ordinance.

I would suggest consideration of the following:

- Review and refine the West Goshen sample “Dogs” text to suit Westtown’s needs, for adoption into Chapter 49 of the Westtown Township Code. Chapter 49, entitled “Animals,” is currently “reserved for future animals legislation.” I would defer to Pat McKenna as to how far you should go in specifying the enforcement process as West Goshen did, rather than let procedures under the Second Class Township Code suffice. Section 170-1516 would remain separate.
- Consider revising the “animal equivalent unit” provisions in Section 170-1516 to reduce the amount of livestock or fowl that could be kept on small properties; you may wish to convert to specific numbers of individual animals per acre rather than “animal equivalent units.”
- In this vein, I suggest consideration of a numerical chart something like the East Bradford sample (included below), which can be revised to include what you want and exclude what you do not. I have the impression that you are not too keen on regulating the number of pets or small domestic animals.
- Consider adding a provision to Section 170-1516 dealing with wild animals, similar to the Lower Mount Bethel sample (included below).
- Consider adding a purpose statement as a preface to Section 170-1516 similar to that found as a sample in the East Bradford text (included below).
- You may wish to consider adding to Section 170-1516 a few more detailed and specific standards for keeping of animals, including provisions for storage of feed and manure, maintenance of pasturage, etc., upon further review of the several samples you have received.

Sample Numerical Chart

Type of Animal	Minimum Acreage Required	Ratio (Animal Unit: Acre)	Maximum Number of Animals
Fowl	1 Acre	1 animal: 1/6 fenced acre	30
Small livestock, such as goat and sheep	2 Acres	1 animal: 1/2 fenced acre	N/A
Large livestock, such as horses, cows and pigs	5 Acres	1 animal: 1 fenced acre	N/A
Pet animals	N/A	N/A	5

Sample Wild Animals Provision

Wild, dangerous, or poisonous animals, including, but not limited to: deer, skunks, raccoons, wolves, “wolf-dog hybrids”, constricting or venomous snakes, alligators, crocodiles, bears, bobcats, tigers, lions, or coyotes, shall not be kept within the Township for any purpose except when adequately confined in a facility operated by a licensed veterinarian for the purposes of treatment.

Sample Purpose Statement

Purpose. The intent of this section is to establish reasonable regulations governing the keeping of animals in order to protect human and animal health, prevent unsightly and erosion-prone land use conditions, prevent the contamination of groundwater and surface water and reduce the safety hazards of straying animals. Nothing in this section shall be construed or enforced in such a way as to conflict with Pennsylvania's Right to Farm Act (RTFA), 3 P.S. § 951 et seq., the Agricultural Area Security Law (AASL), 3 P. S. § 901 et seq., the Agriculture Communities and Rural Environment (ACRE) Law, 3 P.S. § 311 et seq., or other state law or statute which prohibits inconsistent regulation by a local municipality.

Westtown Existing Zoning Text

§ 170-1516. Keeping of animals.

A. In conjunction with agriculture.

- (1) Except as stipulated in Subsection A(2), below, livestock and other animals utilized as part of an agricultural operation may be kept, so long as the property on which they are kept is not less than three acres in size and all applicable requirements of Subsection C below are complied with.
 - (2) The operation of any feed lot or pig farm, or the keeping of pigs or swine, shall be permitted so long as the property is not less than 10 acres. In addition, no such activities shall be conducted closer than 200 feet from any property line, and the area devoted to such uses shall be completely enclosed by fencing.
 - (3) If a use involves an average of more than three animal equivalent units of livestock or poultry per acre of contiguous lot area, then a minimum lot area of 20 acres and special exception approval shall be required. Animal equivalent units shall be calculated using average animal weights as provided in State Nutrient Management Regulations. The raising of minks shall be prohibited. This § 170-1516A(3) shall not apply to the keeping of horses or ponies under § 170-1516B.
- B. Within any residential district, a horse barn, as defined by this chapter, shall be permitted on any property where the lot area is three acres or greater. A minimum of three acres is required to keep one horse or pony. For each acre of lot area greater than three acres, one additional horse, pony or similar animal may be kept. Such animals may be owned by the occupant of the dwelling or boarded for other persons, and may be rented out for horseback riding.
- C. General standards applicable to all properties on which animals are kept.
- (1) No animals of any kind shall be kept in any structure or elsewhere on the premises in a manner likely to cause excessive noise, unhealthy or unsanitary conditions, pollution of groundwater or surface water, or pollution of stormwater runoff leaving the property.
 - (2) Permanent shelter for animals shall be provided in agricultural areas, as appropriate. Permanent shelter shall be provided for all animals in residential areas. Such shelter shall be of sufficient size for good sanitation practices and shall be equipped with adequate facilities for food, water, and manure removal and handling for the number and type(s) of animals kept. The location of shelter for small domestic animals shall conform to setback standards otherwise applicable to accessory structures. Shelter for all other animals shall be located not less than 100 feet from any lot line.
 - (3) A fenced or otherwise enclosed outside area shall be provided which is capable of containing the animals kept and which is of sufficient size and

properly located for good sanitation practices. Materials used for fencing shall be of sufficient sturdiness and properly designed, installed, and maintained so as to prevent straying.

- (4) Any keeping of eight or more dogs age three months or older shall require a minimum lot area of 10 acres, and any pens used for such dogs shall be set back a minimum of 250 feet from any lot line, except in connection with permitted veterinary services or a pet store.

West Goshen Township - Chapter 36 Dogs

§ 36-1 Definitions.

OWNER - Includes every person having a right of proprietorship or ownership in a dog and every person who keeps or harbors a dog or has it in his care and any person who permits a dog to remain on or about any premises occupied by him.

§ 36-2 Restrictions of Dogs.

- A. The owners of every dog within the Township of West Goshen shall at all times keep such dog either:
 - (1) Confined within an enclosure from which it cannot escape;
 - (2) Firmly secured by means of a collar and chain; or
 - (3) Under the reasonable control of some person.
- B. No person shall permit a dog which is under his or her custody or control, either by leash, restraint, verbal command or otherwise, to deposit feces upon any public property, including but not limited to sidewalks, pathways, streets, parking lots, parks, waters or other public property of any kind. All persons exercising custody or control of dogs shall be required to immediately cleanup and properly dispose of any animal feces resulting from the dog's presence on any such public property.

§ 36-3 Running at Large.

- A. It shall be unlawful for the owner or keeper of any dog to permit such dog to run at large in West Goshen Township. Any such dog found to be running at large, whether licensed or unlicensed, shall be subject to seizure, detention and disposition by the West Goshen Township Police Department or agency employed by the Township to carry out such seizure, detention or disposition in accordance with the provisions of the Pennsylvania Dog Law, as amended from time to time.

- B. "Running at large" shall be defined as being upon any public highway, street, alley, park or other public land, and not being on a leash and accompanied by or under the control of the owner or any other person having custody of said dog.

§ 36-4 Continuous Barking Prohibited.

No person shall own, possess, harbor or control any dog which howls or barks continuously and/or incessantly for a period of 10 minutes or makes such noise intermittently for 1/2 hour or more to the disturbance of any person at any time of the day or night, regardless of whether the dog is situated in or upon private property; provided, however, that at the time the dog is making such noise, no person is trespassing or threatening to trespass upon private property in or upon which the dog is situated or for any other cause which teased or provoked the dog.

§ 36-5 Issuance of Warnings.

Upon notification that a person is violating § 36-4, the Township Police, Code Enforcement Officer or Zoning Officer may issue a warning to the owner of the dog. The warning shall be hand-delivered or sent by certified mail, return receipt requested, and shall include a copy of § 36-4 and a notice that a fine will be imposed for the second and all subsequent violations in accordance with § 36-6C.

§ 36-6 Violation and Enforcement Provision.

- A. Any person who violates or permits the violation of any provision of this chapter, except § 36-4, shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Township before a District Justice, pay a fine for each such violation in an amount not less than \$50 and not more than \$200, plus all court costs, including reasonable attorney fees, incurred by the Township. No judgment shall be imposed until the date of the determination of a violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure.
- B. Any person who is found liable for any second or subsequent offense for a violation of any provision of this chapter, except § 36-4, shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Township before a District Justice, pay a fine for each such violation in an amount not less than \$200 and not more than \$600, plus all court costs, including reasonable attorney fees, incurred by the Township. No judgment shall be imposed until the date of the determination of a violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure.

C. Violation of § **36-4**.

- (1) Any person who violates or permits the violation of § **36-4** of this chapter shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Township before a District Justice, pay a fine in the following amounts, plus all court costs, including reasonable attorneys fees, incurred by the Township:
 - (a) First violation: Warning issued.
 - (b) Second violation in any calender year: fine of \$25.
 - (c) Third violation in any calendar year: fine of \$50.
 - (d) Fourth and subsequent violations in any calendar year: fine of no less than \$100 and no more than \$600.
- (2) No judgment shall be imposed until the date of the determination of a violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure.

Stormwater, Zoning, & SALDO Proposed Changes w/Status Updates

Created: January 29, 2019

No. (origination year - month)	Ordinance Name	Description of Changes/Status	Source ⁱ	Priority	Approved date (PC)	Approved date (BOS)
2013-10	Bi-Directional Antennas	Twp Solicitor is waiting for Bldg Code update instructions from Bldg Inspector Andy Kirk.	WEGO PD	1		
2020-08	Signs Ordinance Amendment	Add language that was missed when original ordinance was adopted	BOS/PC	1	9/9/2020	247 review authorized 9/8/2020
2020-08	Dogs Amendment	To address dog feces and strengthen language regarding leashing and control of animals	BOS	1		
2017-08.7	170-1605. G. (2). n Major home occupations	Correct reference from 170-1700D to 170-1708.A	PC (EA)	1		
2018-08.8	170-602.D R-1 Residential Area and Bulk Regulations	Residential Cluster per 170-602, which has been deleted (replaced by Flexible Development.) Remove 170-602.D and renumber as necessary.	PC (EA)	1		
2017-09.1	149-910 Street Construction	This section could be revised to remove the reference to "PennDOT Seldom Used Specifications 1983" and more appropriately Reference PennDOT Publication 46.	MT (KM)	1		
2017-09.2	149-910.D Paving - Bituminous Surface Course ID-2A	This section could be revised to remove the reference to Bituminous Surface Course ID-2A. This section should be completely re-written to include a modern specification of the Superior Asphalt Paving System (Superpave).	MT (KM)	1		
2017-09.3	149-803 Stormwater Management in the Land Development Ordinance	This section could be completely removed since the Township Stormwater regulations were installed as a "stand alone - §144" section in 2013.	MT (KM)	1		
2017-09.4	144-301T General Requirements	A typo appears in the code. The ordinance should correctly read "seventy-five" (75), not fifty, which was the original language from the Chester County Model ordinance.	MT (KM)	1		
2017-09.7	Lighting waivers	Remove lighting requirements in residential from the code): 149-602.C.(4).(h)	MT (KM)	1		

2017-08.6	170-1502.B & G, Projections into setbacks and setback exceptions	Safety issue for access for emergency equipment, also swimming pool decks and patios (or other materials) should be required to remain outside of the 25' setback	PC (EA)	1		
2017-08.4	170-1509 Storage	Reword this section to apply to residential situations	PC (EA)	1		
2020-02	Update to Alarms Ordinance	Update language and move fees to fee schedule	WE / JG	2		Feb 2020
2017-09.8	Stormwater	§144-311.B.2 HDPE Pipes to be used in areas not supporting traffic loads. This request has been made on several applications and been granted by the BOS frequently enough to warrant amending the code.	CE (BU); MT (KM)	2		
2017-09.14	Definitions "lot area" and "tract area"	The definition of "Lot Area" and "Tract Area" are treated differently in Zoning	MT (KM); PC (EA)	2		
2017-09.15	Lot Area	The acreage contained within the property lines of a lot, as defined in the deed or as shown on an approved subdivision plan. Such acreage shall be exclusive of the following: A. Any area used for gas, oil, natural gas, electric, or communications transmission facilities, whether below or aboveground, that do not serve the lot or lots traversed. B. Any area within a street or other transportation right-of-way, existing or proposed. C. Any area within a permanent drainage easement. D. Every lot created by subdivision shall have a contiguous and uninterrupted area equal to 75% of the minimum lot area required by the applicable zoning district, which is unencumbered by wetlands, one-hundred-year floodplains, steep slopes and/or stormwater management basins/facilities.	MT (KM)	2		
2017-05	Open Space	When the Flexible Development option was added to the Ordinance, it included an extensive Open Space description - 170-907. It was decided to refer the Open Space requirements in all other districts to this section in order to avoid repetition. While there are requirements for some portion of the Open Space be useable for active recreation, storm water management often occupies a significant area. Revising the open space definition and regulations has been suggested. Establishment of an Open Space fund, clarification of in lieu of fees	PC (EA)	3		

	Revise Floodplain Ordinance	Based on comments received during review in 2017, PC members indicated a desire to make some changes with Beth Uhler' assistance		3		
2001-08.1	Buffers & Screening - MU and R-3 Districts	Present regulations generally require buffers between districts rather than between uses. (Except for commercial vs residential). Possibility for problems in MU and R-3 districts where residential and non-residential uses are permitted. The MU District is presently developed as residential except for one tract (5 acres?) currently industrial, which could be redeveloped for any use permitted in the C1 District.	PC (EA)	3		
2017-08.3	170-900 Flexible Development	170-904.C There are no lot size limits in Flex. For single-family dwellings, the only control of lot size is the requirement that there can be only 4 lots per acre in the area used for single-family dwellings (smallest lots could be just under 11,000 square feet). 170-904. E. (3). (10) Setbacks - The only setback regulations for dwellings in Flex are 30 feet behind the curb line and 30-foot separation between structures. This applies to decks, sheds, and even dwellings. (Not to swimming pools, however.)	PC (EA)	3		
2017-08.5	170-1513.B Interior circulation and streets minimum widths	Consider reducing the minimum paved width of streets on low traffic volume streets.	PC (EA)	3		
2001-08.2	149-915 Driveways	PC has suggested on several occasions that the Board adopt a freestanding driveway ordinance.	MT (KM)	3		
2017-09.9	Proposed Additions to the Code (1)	§170-1600 – Consider adding Drive Thru Regulations Recall Dunkin' Donuts	MT (KM)	3		
2017-09.10	Proposed Additions to the Code (2)	§170-1600 – Consider adding MS4 Assist Regulations Recall the Maneri Property 1126 Kolbe Lane, Rustin and Crebilly CU	MT (KM)	3		
2017-09.11	Proposed Additions to the Code (3)	§149-1514 – Consider adding a Belgian Block Section of Code with detail.	MT (KM)	3		
2017-09.12	Proposed Additions to the Code (4)	§170-1600 – Parking has become popular for compact cars, oversized vehicle, electric vehicle, seniors citizen and new or expecting parents, multi-family, and residential uses. (rideshare parking)	MT (KM)	3		

2017-09.13	Proposed Additions to the Code (5)	§170-1600 – Truck Turning Templates are not required by ordinance and should be added to the preliminary/ final plan set requires. All vehicles for emergency response, delivery, trash, and recycling should be provided to major applications.	MT (KM)	3		
2019-03	Parking Regulations Update	Times, circumstances, streets, locations, rideshare parking locations	Twp (WE)	4		
2015-07	Residential Chicken Ord.	Tabled indefinitely		4		
2018-05	High tunnels or “hoop houses”	No adoption deadline	House Bill No. 1486	4		
2017-06	Conditional Use Posting Requirements	Brought before BOS in summer 2017 (WIP), not scheduled before the PC or BOS		4		
2017-09.5	Administrative Preliminary or Final Waivers	Modern applications contain so much information that the boundary between preliminary and final has become almost negligible as far as engineering detail. Rarely have I seen a request for a waiver from preliminary to prelim/final denied.	MT (KM)	?		
2017-09.6	Landscaping Waivers	<ul style="list-style-type: none"> Westtown Woods: §149-925-I.5 – Street Trees within 5 feet of property and within 10 feet of side lot lines §149-924.D which would require a separate tree protection plan. Fairshare Builders: §149-924.D(12)(b) – Regarding the request to waive the full amount of compensatory trees, the site was formerly a tree nursery. Rustin Residential: §149-925-I.5 – Street Trees within 10 feet of side lot lines. <p><i>-Considering that these requests are handled on a case-by-case basis, I see no reason to make changes to the Code. -KM</i></p>	MT (KM)	?		
	Medical Services (curative amendment)	Adopted by BOS 7/16/2018. PC and BOS noted at the time that Medical Services may be appropriate in more zoning districts than just POC. (R-3, C-1, C-2). Consider amending by-right uses in these zoning districts to allow Medical Services, and to make existing medical services conforming to code.	(Twp) WE	?		
2019-01	Sidewalks	(discussed)	PC	?		
2019-02	Riparian Buffers	Needs contemporary definition	PC	?		
2019-04	Commencement of Development	Add times and days of the week, 149-404?	PC	?		
2019-05	Gross Habitable Area	Add definition: “All usable space within a dwelling unit without	PC	?		

		netting out any space unless it is not capable of being lived in.” (Examples of spaces to exclude: hvac closets, unfinished basements, unfinished attics)				
2019-06	Business or Trade School	Add definition:	WE	?		
2019-07	Accessory Dwelling Units	Gross habitable area definition, proximity to principal dwelling, require water & sewer connection, maximum number of parking spaces, including garages in size restrictions	KF	?		
2019	Definitions	Add definition for “Boardinghome(s)”	PC	1		
2020-03	Sign Ordinance	BOS Authorized Act 247 review at 1/21/2020 mtg	PC (EA)	COMPLETED	4/3/19	1/21/2020
2017-08.1	New Accessory Structure Setbacks	PC refers back to Twp Mgr for resolution of including word “uninhabitable” in language	PC (EA)	COMPLETED	4/17/19	6/3/2019
2017-08.2	Convert Accessory Dwelling Units into Rental Dwelling Units by Special Exception	PC recommends language to BOS for consideration	PC (EA)	COMPLETED	4/17/19	5/6/2019

¹ Source Initials Key:

Board of Supervisors (BOS) and initials
 Planning Commission (PC) and initials
 Township Staff (Twp) and initials
 Cedarville Engineering (CE) and initials
 McCormick Taylor (MT) and initials
 Al Federico (AF)
 Brandywine Conservancy (BC) and initials
 William Ethridge (WE)
 JoAnne Grubbe (JG)