

**FREEDOM TOWNSHIP PLANNING COMMISSION
REGULAR MEETING
April 24, 2019
7:00 P.M.**

PLANNING COMMISSIONERS

Paul Sharrer, Vice-Chairperson
Kim Beckett, Secretary
John Sica
Edward Buchheit, Jr.

TOWNSHIP OFFICIALS PRESENT

Zachary Gulden, Township Manager
Harlan Lawson, Adams County Planning Dept.
Robert Thaeler, Adams County Planning Dept.

MEMBERS OF THE PUBLIC PRESENT

Ronald Hagarman, Joe Bowden, Mary Buchheit, Susanne Malkin, Scott Snyder, Brenda Snyder, Darlene Stone, Lionel Wells, Dee Wells, Roger Johnson, Tom Dick, David Salisbury, Jane English, Debra English, & Scott English.

CALL TO ORDER

Vice-Chair Sharrer called the Planning Commission's Meeting to order at 7:00 P.M.

PUBLIC COMMENT

None

APPROVAL OF MINUTES

Mr. Sica made a **MOTION** to approve the Minutes of the March 27, 2019 meeting. The **MOTION** was **SECONDED** by Secretary Beckett. The motion carried unanimously (4-0).

OLD BUSINESS

A. Zoning Ordinance Update Discussion

Mr. Thaeler explained that the Pennsylvania Municipal Planning Code (MPC) establishes the basic rules which a municipality must follow to enact, amend, administer, and enforce a zoning ordinance, as well as the authorized purposes and regulatory content of the zoning ordinance. Municipalities also are required to follow the body of law established by the decisions of the courts when administering matters under the MPC. In Pennsylvania, the MPC is the uniform planning and land use enabling law for all municipalities and counties.

Section 604 of the MPC requires that a zoning ordinance be designed to achieve the following objectives:

1. Promote, protect, and facilitate any or all of the following: public health, safety, and

general welfare; coordinated and practical community development and proper density of populations; emergency management preparedness and operations; airports, and national defense facilities; the provisions of adequate light and air; access to incident solar energy; police protection vehicle parking and loading space; transportation; sewerage; schools; recreational facilities; public grounds; the provision of a safe; reliable and adequate water supply for domestic, commercial, agricultural, or industrial use, and other public requirements; preservation of the natural, scenic, and historic values in the environment; and preservation of forests, wetlands, aquifers, and floodplains.

2. Prevent one or more of the following: overcrowding of land; blight; danger and congestion in travel and transportation; loss of health, life, or property from fire, flood, panic, or other dangers.
3. Preserve prime agriculture and farmland considering topography, soil type, and classification and present use.
4. Provide for the use of land within the municipality for residential housing of various dwelling types encompassing all basic forms of housing, including single-family and two-family dwellings, and a reasonable range of multi-family dwellings in various arrangements, manufactured homes and manufactured home parks, provided, however that no zoning ordinance shall be deemed invalid for the failure to provide for all other specific dwelling type.
5. Accommodate reasonable overall community growth, including population and employment growth and opportunities for development of a variety of residential dwelling types and non-residential uses.

Secretary Beckett left the meeting at 7:34 P.M.

Section 606 of the MPC also requires that a zoning ordinance reflect the land use policies of the municipality set forth in a statement of community development objectives. This statement can be supplied by reference to the comprehensive plan, or it may be provided in a statement of legislative findings of the governing body which may be and often is included as a preamble in the zoning ordinance. The community development objectives are an important part of the zoning ordinance and a foundation for analysis of a legal challenge to the requirements of the zoning ordinance.

A fundamental requirement of the MPC, found in Section 605, is that, except for counties, no part of any municipality enacting a zoning ordinance may be left unzoned. Different districts may be created, and different rules may apply within these zoning districts, but the zoning ordinance must apply to all areas of the municipality. The zoning districts created must be delineated on a map. The zoning map is an integral part of the zoning ordinance.

Within a given zoning district, uses are classified as permitted by right, by special exception or by

conditional use, or prohibited. The zoning officer administers the provisions of the zoning ordinance to uses permitted by right (which must meet the requirements for such use stated in the zoning ordinances) and prohibited uses. The zoning hearing board is vested with exclusive authority to grant a use by special exceptions; the governing body is vested with exclusive authority to grant approval for a conditional use.

Another fundamental requirement of the MPC is that requirements for each class of use or structure within any one zoning district must be uniform throughout that district. However, Section 605 of the MPC authorizes classifications within a single district for:

- Making transitions at zoning district boundaries;
- Regulating nonconforming uses and structures; and
- Regulating, restricting, or prohibiting uses and structures at, along, or near:
 - Major thoroughfares, their intersections and interchanges, transportation arteries, and rail or transit terminals;
 - Natural or artificial bodies of water, boat docks, and related facilities;
 - Places of relatively steep slope or grade or other areas of hazardous geological or topographical features;
 - Public buildings and public grounds;
 - Aircraft, helicopter, rocket, and spacecraft facilities;
 - Places having unique historical, architectural, or patriotic interest or value; and
 - Floodplain areas, agricultural areas, sanitary landfills, and other places having a special character or use affecting and affected by their surroundings.

These latter provisions of the MPC invite the option of establishing an overlay zone superimposed upon the established zoning district. If, for example, a floodplain lies within a zoning district, the MPC permits the municipality to enforce a different set of regulations within the flood-prone area of the zoning district than those that are enforced within the remaining portion of the zoning district. Therefore, the provisions pertaining to the floodplain supplement – or overlay – the zoning district provisions.

State Mandates and Preemptions Affecting Local Zoning

Although the MPC is fundamentally an enabling statute – providing authority for municipal land use regulation – the MPC contains use and standard provisions that are mandatory and also provisions that limit or even prohibit municipal regulation of certain uses.

A municipality may only exercise such powers and authorities as are granted to it by Pennsylvania's legislature. Statewide statutory limitation on regulation by a municipality is referred to as preemption.

The MPC authorizes and requires a municipal zoning ordinance to address and/or accommodate the following:

- Promote and preserve prime agricultural land, promote the establishment of agricultural security areas, and encourage the continuity, development, and viability of agricultural

operations. “Zoning ordinances may not restrict agricultural operations or changes to the expansion of agricultural operations in areas where agriculture has traditionally been present, unless the agricultural operation will have a direct adverse effect on public health and safety.” *Sections 603(c)(7), (g)(1) and (h) of the MPC.*

The Agriculture, Communities and Rural Environment Act (ACRE), Act 38 of 2005, 3 Pa.C.S. §§ 311-318, restricts local regulation of “normal agricultural operations” as defined in Section 2 of the Act of June 10, 1982 “An Act Protecting Agricultural Operations from Nuisance Suits and Ordinances Under Certain Circumstances.” ACRE authorizes the commonwealth’s Attorney General to make a determination that a local ordinance, including a zoning ordinance, may be an “unauthorized local ordinance” if in violation of the proscriptions set forth in ACRE and to bring an action against the municipality to invalidate the unauthorized local ordinance.

- Ensure forestry activities, including timber harvesting, as permitted use by right in all zoning districts in every municipality to encourage the maintenance and management of forested or wooded open space and promote the conduct of forestry as a sound and economically viable use of forested land. *Section 603(f) of the MPC.*
- Provide for the reasonable development of minerals. *Section 603(i) of the MPC.*
- Promote and preserve environmentally sensitive areas and areas of historic significance and protect natural and historical features. *Sections 603(c)(7) and (g)(2) of the MPC.*

Municipalities also exercise their duties as trustees pursuant to the Environmental Rights Amendment of the Pennsylvania Constitution, Pa. Const. Art. 1 § 27., which provides: The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the commonwealth shall conserve and maintain them for the benefit of all people.

- Provide for no-impact home-based business in all residential zones as a use permitted by right, except as restricted by deed restriction or covenant in common interest ownership communities. The requirements and standards are found in the definition of “no-impact home-based business.” *Section 107(a) of the MPC.*
- Except from zoning regulation any building used or to be used by a public utility corporation upon decision by the Pennsylvania Public Utility Commission that such building is “reasonably necessary for the convenience or welfare of the public.” *Section 619 of the MPC.*

The courts have interpreted Section 619 to not only exempt from zoning regulation the building, but also structures and facilities.

Exclusionary Zoning and the Fair Share Doctrine

According to Pennsylvania court doctrine dating back to the 1960s, a municipal zoning ordinance must provide for – and may not exclude from the municipality – all lawful uses of land. Failure to provide for a lawful use is exclusionary and grounds for a legal challenge for which relief is to permit the use as and where proposed. However, it is near impossible for a zoning ordinance to

provide for all possible legitimate uses, including emerging uses. Municipalities can protect against exclusionary challenges by including a “savings clause” in the zoning ordinance. In general terms, a savings clause provides for any use not otherwise provided for in the zoning ordinance.

NEW BUSINESS

None

OTHER BUSINESS

None

PUBLIC COMMENT

Mr. Bowden asked if the Planning Commission would rather amend the current ordinance or start from scratch. Mr. Sica said it is too early in the process to tell.

Mr. Hagerman said he would like the Planning Commission to amend the current ordinance and not start from scratch.

Ms. Snyder said she agrees with Mr. Hagerman.

ADJOURNMENT

There being no further business Mr. Sica made a **MOTION** to adjourn. The Motion was **SECONDED** by Mr. Buchheit. Vice-Chair Sharrer adjourned the meeting at 8:46 P.M.