

**Liberty Township, Adams County  
39 Topper Road, Fairfield, PA 17320  
Planning Commission Monthly Meeting**

**November 19, 2019**

The Planning Commission of Liberty Township, Adams County, met on Tuesday, Nov. 19, 2019, at 7:30 p.m. in the Liberty Township Municipal Building, 39 Topper Road, Fairfield, for the regular monthly meeting.

**Present:** Judie Hogan, Chair; Vince Gee, Vice Chair; Barb Ruppert, Secretary; Geoff Grant, Rich Luquette; Dominic Picarelli, Township Engineer; Darrin Catts, Liberty Township Zoning Officer

**Not Present:** Nancy Wenschhof, Alternate

Chair Judie Hogan called the meeting to order at 7:30 p.m.

**Minutes:** There were two minor corrections to the minutes. Geoff Grant motioned to approve the minutes as corrected, and Rich Luquette seconded the motion. The Oct. 15 meeting minutes were unanimously approved as corrected.

**Public Comment:**

Rich Luquette noted he was officially assigned at the Board of Supervisors meeting today to the township bike/pedestrian path committee for a path from Emmitsburg to Gettysburg, in cooperation with Healthy Adams Bicycle Pedestrian Inc. He is taking over for John Bostek, whose term as supervisor is ending.

**Chair Comments**

Judie Hogan reported that at the Nov. 6 Board of Supervisors meeting, the supervisors also held a public hearing on the Campground Ordinance revision (Ordinance No. 2019-03), which was accepted even though the county and Planning Commission had comments that had not been included. This is because there are zoning questions coming up and the township needed something in place. The supervisors will ask the PC to review the ordinance later so that it can be updated as part of the codification process; they felt the comments are good and should be included.

Zoning Officer Darrin Catts noted that the county office frequently offers great comments, and he values their input. However, he had an increase in interest from people buying ½-acre parcels, many of which are hard to utilize, and the BOS knew he needed something right away. People want to park RVs on these parcels, and there was nothing in the ordinance to prevent or regulate this. He needed a definition change adopted so he could deal with these questions. He went from 1–2 calls in the spring to 4–5 calls a week, so something has changed in how these parcels are being marketed. The ordinance needs to say RVs are not suitable, or we would be turning the township into an RV park; plus, there would be the time and expense of the zoning officer having to check if all were dumping wastewater correctly. Darrin said he can now apply 100' setbacks, etc., that will not allow these parcels to be used in this way. There are two large parcels already in use, both with agreements: for one, a company drains his tank, and for the other, the owner takes his tank home to dump.

Judie said we have learned through this campground issue that PC members aren't professional planners: we spent a year on the new ordinance, and the county says it won't hold up in court. We should use the county planning office earlier in the process from now on.

Barb Ruppert said next time we have a problem to address, we should note the problem and what we need, and then go to the county planner right away to have them draft an ordinance.

Darrin said the PC can change the campground ordinance, but just leave the new definition alone—that is what he really needs to address these requests.

**Old Business:**

None

**New Business:**

**Review of Hogan SubDivision/Lot Addition Plans – \_Hogan 25C18-0028A--000 845 FRIENDS CREEK RD**

Judie Hogan passed this issue to Vince Gee, as she is involved in it.

Ken Scott with Beyond All Boundaries surveyors has prepared a subdivision plan for the Thomas Hogan property along Friends Creek Road, an 18-acre parcel they wish to subdivide into an 11-acre parcel with house and a 7-acre lot addition that will add to the Hogan family property of 82 acres, also along Friends Creek. No new driveways or buildings are being proposed.

Ken said all that is in question is in Liberty Township. Vince Gee noted it seemed like a simple lot addition. Township Engineer Dominic Picarelli said yes, there are just minor points from KPI in their memo dated 11-19-19 and from Adams County in their memo dated 10-29-19. He recommends Carroll Valley Borough and Maryland get copies as a courtesy, although no permissions are required since nothing in those municipalities is changing. Vince said he sees no point in notifying Maryland, just Carroll Valley. Township resident Bart Hogan explained that there's only about 20 feet of the parcel in Maryland, and it's due to Maryland resurveying and moving the Mason Dixon Line. Rich Luquette asked if a new deed had to go to Maryland, and Ken said no. This is not a big issue due to the small size of the parcel. Nothing in the current deed states the property goes to the Mason Dixon Line. Ken reached out to the director of Frederick County Planning, and has not heard back from him.

Vince Gee made a motion that the PC recommend conditional approval based on owners' acknowledgement of those giving and receiving property and on sending a courtesy copy to Carroll Valley for review. Geoff Grant seconded the motion. Judie Hogan abstained. All others were in favor, and the motion passed.

**Review of Request for Planning Waiver & NonBuilding Declaration -Hogan 25C18-0028A--000 845 FRIENDS CREEK RD**

Dominic Picarelli said it's technically already approved, since DEP approved it, but as a formality, the PC must recommend whether to approve or not.

Vince Gee made a motion that the PC recommend approval of the request for a planning waiver and nonbuilding declaration. Barb Ruppert seconded the motion. Judie Hogan abstained. All others were in favor, and the motion passed.

**Electronic Signs**

Robert Thaeler from the Adams County Office of Planning and Development was in attendance to give input on sign ordinances.

Regarding the "Sign Ordinance, Liberty Township, 11-4-19" Word document that Township Solicitor John Lisko sent: Judie Hogan explained that Mr. Lisko said we must have signs allowed in every district, but then he said the Supreme Court hasn't decided on this, so she asked Robert Thaeler about it.

Robert said his understanding of exclusionary doctrine is that within a Zoning Ordinance, a municipality is obligated under the MPC and a variety of court cases to provide opportunity for all legal uses of land within its boundaries. "Exclusionary" means you are excluding a use from a township—if you don't list, say, townhouses in the ZO, someone could challenge the ordinance and say it's exclusionary because you are

not accommodating this use. Or a township with a minimum lot size of 5 acres could be said it's excluding lower income people who can't afford that kind of property, and thus not accommodating a use. From Mr. Lisko's email of Nov. 5, 2019, he appears to be extending the doctrine not only to uses, but to types of signs, saying that prohibiting rotating, balloon, etc., types could be deemed exclusionary. But just about every sign section in every other ordinance he's seen lists a range of types of signs a township won't accept. A similar question was raised in another municipality, and they asked what other ordinances had similar language to the one the solicitor was concerned about—and he found it in 29 ordinances in our county alone.

Judie reminded the PC how we got here: someone built a lighted sign at Blue Ridge Sportsman's Club, and the BOS conditionally approved it, but requested an ordinance dealing with electronic signs.

Darrin Catts said the BOS conditionally approved it because the solicitor advised they couldn't refuse it. So he made the club turn it off until it received required inspections and was deemed safe, etc.

Dominic Picarelli recalled that he, former supervisor Peter Foscatto and Robert Thaeler drafted an ordinance on electronic signs back then, and he recalled them saying, let people challenge us for not having one. Former Township Solicitor Walton Davis did not say anything about this being exclusionary. As Thaeler noted, other townships exclude types of signs.

Robert said that two things are being done with this amendment that Mr. Lisko has drafted: removing language that deals with prohibiting certain types of signs (rotating, inflatable, etc.). Those are placed later under conditional uses. The other thing is the degree to which the township could or should regulate electronic message centers, like at Blue Ridge, where they are programmed to change. There's lots of good regulation out there that deals with this.

Robert asked: Is the township obligated to provide for all types under current law? Mr. Lisko says yes. Robert's understanding is that most townships allow them with conditions and in certain areas. There's a U.S. Circuit case out of New Hampshire that says a jurisdiction can exclude a certain sign type from being used (2008, Nassar Jules vs City of Concord). They found it was not a content issue, and it was a public safety issue because people were looking at the sign instead of the road, so it was ok to exclude. We might want to explore this.

Geoff Grant asked if, since we've approved one electronic message sign, and we have some billboards, can we continue to treat those as exceptions and then not permit others, or now as a matter of precedent, do we have to allow these? Thaeler said billboards are the exception to case review saying excluding some signs is ok—all over, court cases resulted in exclusion findings for municipalities that try to exclude billboards. The township needs to be sure it's dealing with billboards properly.

The PC asked what "electronic message center" meant, and Robert said it's some of these types of signs listed under Mr. Lisko's 313.9 section (flashing, intermittent, etc.). The PC also asked, wouldn't this note about "except time and temperature" (313.9c) be considered a content regulation and thus illegal?

Robert said regarding content, Reed vs Town of Gilbert in Arizona made it to the U.S. Supreme Court, and the decision was that you cannot develop sign regulations based on content. If you have to read the sign in order to understand how it should be regulated, it's not in keeping with this review. The time and temperature language came up with bank signs—and sometimes with gas price signs. There are several items in the township's current ordinance, like the definition of a contractor sign, that are not good—because you have to read the content to understand the ordinance. That's a content-based definition, and courts have said it's problematic to establish different regulations (size, height, etc.) based on the content of the sign, like a contractor vs real estate sign. Lots of townships are updating their sign sections to minimize the degree to which it deals with content regulation, and many are taking out these types of signs and just calling them "temporary signs." One justice said you can still regulate business signs, just not based on their content. Adult businesses can be regulated under not being able to show human forms.

Judie asked if we should revise the whole sign section. Robert said, yes, revise anything with a content-based approach to regulation. It's a complex issue; Berwick Township spent a long time on it. Many townships are revising to remove this approach.

The PC asked why we couldn't just use another township's ordinance, since it's already worked through. Darrin said each municipality has different needs—for instance, Berwick has much more commercial area than we do. So we would use this as a base and adapt.

Judie asked where Mr. Lisko got 128' for billboard square footage (Section 466 a ii), and Robert said it's smaller than most companies would be asking for; most request 300'.

Vince Gee asked if we could really require a sign without advertising to be removed. Robert said you don't require a house to be taken down if no one lives in it for a year. Vince said this should instead be a requirement about disrepair. Robert said sometimes you see language about a nonconforming sign without use having to be taken down. This hinges on the idea of purposeful abandonment.

The PA Chapter of the American Planning Council references the Montgomery County, PA, Ordinance as a good one. Robert said the township could suggest that Mr. Lisko review his references to this on drafting an ordinance.

Rich Luquette made a motion that the PC recommend the township request assistance from the county to develop a new sign ordinance. Vince Gee seconded the motion. All were in favor, and the motion passed.

Dominic Picarelli asked if the township had any current electronic sign requests. Darrin said this isn't on the radar at the moment. Dominic said that if the PC asks the county to help them with this sign section, a comparable process in another township took four separate 2-hour meetings with county over four months.

PC members noted they would rather be restrictive, write the ordinance, and then change it if someone does challenge it.

Judie had previously asked if we needed supervisor approval of the county drafting a campground ordinance, and the BOS said no. But she'll check in the office tomorrow. Robert will check if we need some formal written request from the township for assistance. Sherri Clayton Williams is the director of planning.

### **Solar Farms**

It was noted that the language comes out of Franklin County and it has similar language to what has come out of other jurisdictions. The PC will take this up at its next meeting.

At 9:16 p.m., Judie Hogan moved to adjourn the meeting. Rich Luquette seconded the motion. All voted yes, and the motion passed. The next meeting is scheduled for Dec. 17, 2019, at 7:30 p.m.

Respectfully submitted,



Barb Ruppert  
Planning Commission Secretary