

T O W N S H I P O F W E S T D E E R

SUPERVISORS PUBLIC HEARING

WEDNESDAY, JANUARY 17, 2024, 6:00 P.M.

- - -

HELD AT: WEST DEER TOWNSHIP
 MUNICIPAL BUILDING
 109 East Union Road
 Cheswick, PA 15024

- - -

ORDINANCE NO. 454

ZONING ORDINANCE AND ZONING MAP

- - -

WEST DEER TOWNSHIP BOARD OF SUPERVISORS

BEVERLY S. JORDAN, CHAIRPERSON

VERNON FREY, VICE CHAIRWOMAN

JOHN HOLLIBAUGH, SUPERVISOR

JAMES SMULLIN, SUPERVISOR

JOSH WIEGAND, SUPERVISOR

ALSO PRESENT:

TUCKER ARENSBERG
Gavin Robb, Esq., Solicitor

Daniel J. Mator, Jr., Township Manager
Joseph Shook, Assistant Township Manager

Reported by:
Veronica R. Trettel, RMR, CRR
Official Court Reporter

P-R-O-C-E-E-D-I-N-G-S

Wednesday Evening, January 17, 2024

- - -

MR. ROBB: All right. Now is the time and place for the public hearing on the possible enactment of a comprehensive amendment to the West Deer Township Zoning Ordinance and Zoning Map.

Residents and taxpayers of the Township in attendance will be permitted to comment on the draft ordinance.

I do want to make an announcement. On the agenda tonight for the regular meeting, there is listed a vote for the adoption of this ordinance. That vote is going to be delayed at least a month, to February. The Board wants to have an opportunity to consider the commentary that's heard tonight.

As I think we discussed on multiple occasions, if there are substantive changes to the ordinance between now and when it is adopted, we have to start that process over again, but the Board does have that option. So there will be no vote during the regular meeting tonight.

Also, this is a public hearing. So this is an opportunity for members of the public to speak up to five minutes on the draft zoning ordinance only,

and this is not a back and forth. It's not a question and answer. This is just the time to give your opinion and your input on the draft ordinance and the draft zoning map that's out there.

I will keep time for that five minutes. When it's one minute left, I'll try to get your attention and give a wave that you have one minute left. I do apologize. We treat everyone fairly. And because we have a lot of people here tonight, we do have to maintain a strict adherence to that five minutes. So be cognizant of that.

Also, if someone else has already testified or provided the same comment that you are about to give, it's perfectly fine to say, "I agree with Mr. Smith or Mrs. Jones, I think that X, Y, Z should be changed" or "I think it's the best zoning ordinance I've ever seen." I expect many of those comments tonight.

So with that said, when you do come up, please state your name, spell your last name. You'll notice we do have a court reporter tonight. It's not required to have a court reporter for this type of hearing, but the Board has decided to retain a court reporter for this evening.

So, again, as folks who have been involved

in our public hearings before, just remember to speak slowly, clearly to make sure we get a nice clean transcript and make our court reporter's life a little bit easier tonight.

So with that said, Mr. Rearick.

JACK REARICK: Do we need to ask for party status for the legal record or is that necessary?

MR. ROBB: You do not. As a matter of fact, there are no parties in this particular proceeding. As residents and taxpayers, you all sort of have the same status, and because this is a discretionary act of the Board, this is not a -- the reason why parties don't matter is this is not something that would be subject to appeal if the Board decides to do one thing or the other. Not that the ordinance couldn't potentially be challenged, but that has nothing to do with this sort of public input hearing. It's not a matter of establishing a record and then basing an appeal on that record. It's simply if the ordinance is valid, it's valid.

Nothing that anyone says here tonight is going to necessarily impact the validity of the ordinance. However, obviously to the extent you raise any kind of relevant points that the Board wants to consider and the Board wants me to consider, certainly

that could go into the equation.

Okay. Mrs. Kalivoda?

MARYKAY KALIVODA: How about having any exhibits marked or not?

MR. ROBB: This is not that type of a hearing. This is just simply there's a draft ordinance and draft map on the website, and it's been available for review.

All we're looking is for the public's opinion, position, thoughts, input on this draft legislation.

So with that said, there's no particular order. Just come up one at a time. Please state your name, address, spell your last name, or if you have a funny sounding first name, spell that, too, and then we'll go from there.

All right. No comments, we'll go ahead shut down --

JACK REARICK: Okay, I'll go. Nobody else is going to step up.

Can I hand out a photograph as a piece of information --

MR. ROBB: Sure.

JACK REARICK: -- to you guys. I don't know if there's enough copies. I'll reference that later

You'll know what it is. I already asked about party status, so I'm good with that.

MR. ROBB: Remember you're stating your name and spelling your last name to get it on the record.

JACK REARICK: My name is Jack Rearick, R-E-A-R-I-C-K. Address is 37 Corbriwood Lane Gibsonia, PA, 15044.

First of all, I want to say thank you for you time tonight and everyone being here. I want to say that I did notice that the zoning ordinance is largely well written and protective of the residents of West Deer Township. However, there are several areas of the new ordinance that we are asking you to work with us to change due to the significant concerns they present to our Township regarding our health, welfare, safety, property values, tax base and potential double standards that they create.

To start with, the first issue -- and I'll give you a hard copy of this -- is with the waiver clause that is on page 158, Article 25 -- and I'm not going to go through all of the subsections and I'm not going to read it, but I'll give you the context.

The first part of that statement is that the waiver can be obtained from adjoining landowners to waive back the 1000 foot setback on an oil and gas

well to 500 feet.

The second part of that states that as part of that waiver, the Township will be held harmless and that there will be something signed to that affect.

My concern is, and the reason I feel that provision should be stricken from the ordinance is because, first of all, the waiver preempts the jurisdiction of the Zoning Board and allows a single property owned to subjugate the health, welfare, safety and the property values of others in the area without a public hearing.

Second of all, the mentioned term "waiver" only appears in the oil and gas section. The ability to waive a setback is not allowed for any other person, business, industry or use in the zoning ordinance. This creates a double standard that is preference of one industry over the others. It is a direct violation of PA case law based on the 2016 ruling in the Robinson case on the PA Supreme Court where they said no industry is supposed to get special treatment according to state constitution.

In addition, Section 605 of the MPC states that zoning districts must have uniform use and reciprocity of advantage in which all property owners are placed under the same restriction. This allows a

single property owner to waive that for everyone in their district.

The waiver clause also has a statement about holding township supervisors, etc, harmless.

My question is doesn't that imply an admission of harm caused by having a setback less than 1000 feet.

Also, it is assumed that a setback distance is established to protect the residents. Having a waiver implies an unsafe distance is allowed. Is that your intent?

Sorry, the pages are sticking together. Give me an extra five seconds.

Since the waiver is not signed by neighbors or adjoining property owners, it leaves the Township at supervisors open to lawsuits by residents who perceive harm and did not sign a waiver, and we assume it also allows other businesses and industries who want the same waiver, and they can sue the Township.

We assume it is not your intent to use more of our tax dollars to litigate lawsuits and ordinances that we know are problematic, illegal and unconstitutional.

Finally, it also opens the door for many difficult questions that aren't able to be answered in

the ordinance, such as: One owner signs, two others don't. What does that do? I'm closer now. It harms me, but, you know, I'm not part of the waiver process.

So there's a lot of questions. So that's the waiver clause.

The other thing I wanted to mention very quickly is that on page 158, subsection 18.a.2, there's a big concern about the shallow gas well only being 300 feet away from a primary residence, and the concern I have with that is a shallow well -- I won't read the whole thing. It talks about a pierced hole, and all of that, but it says it also includes injecting gas, oil, petroleum or other liquid related to oil and gas production or storage, including brine disposal.

The picture I gave you is the brine disposal facility in Plum Borough. First of all, it's allowed in 9 of the -- shallow wells are allowed in 9 of the 11 zoning districts, including residential.

At 300 feet, would you want that in your backyard? It's way too close. It's highly industrial, and it's a double standard, in direct opposition to Section 605 of the MPC.

So the suggestion we have is if you remove the injection well statement from the shallow well

definition, it would solve the problem because injection wells are defined separately. So it's an easy fix. Remove that from shallow wells, and now you have something that might reasonably be within 300 feet.

And then, of course, the shallow wells and injection wells should be limited to their zoning districts.

The other thing I wanted to mention is that in a conditional use application, the term "shall," and I think Gavin can verify this -- is the same as "must."

So if I use "shall," it means they must do it. It's Section 210-162, which is the oil and gas ordinance, and I would suggest you look for this in other places, but there are a number of places where it says things like: The well owner and operator shall establish and perform a minimum once a day a routine cleaning of the road.

However, there's no enforcement clause. It doesn't say anything about how it will be enforced. This leaves open the idea that enforcement is arbitrary which could be challenged when the Township needs to take enforcement action.

MR. ROBB: Mr. Rearick, your time is up. We

did give you a little extra.

JACK REARICK: Can I just say my concluding thank you?

MR. ROBB: Please.

JACK REARICK: In summary, all special uses for gas production that are not in appropriate zoning districts, and are not allowed and are double-standards, illegal, and unconstitutional.

As our elected officials and representatives, all of you swore an oath to abide by the MPC, the laws of Pennsylvania, and to protect the citizens of the Township.

We are just asking that you honor your personal and legal commitments and request that you make the changes necessary to ensure our zoning ordinance, because it's for all of us, is legal, constitutional, enforceable, and protects us, our families, and our property values.

Thank you very much for your time.

MR. ROBB: Thanks, Mr. Rearick.

Next.

- - -

KATHRYN WESTMAN: Can someone lower this for me?

JACK REARICK: I can do that.

MR. SHOOK: Just tilt it. There we go.

KATHRYN WESTMAN: My name is Kathryn Westman, W-E-S-T-M-A-N. I live at 104 Steeplechase Circle, Gibsonia, PA 15044, K-A-T-H-R-Y-N.

I come as a registered nurse to support the plan of a setback of 1000 feet for the protection of health and safety of the Township residents.

Actually, I would like a greater distance, but this is a step in the right direction. Definitely there should be no waivers to a setback. That is vital.

I live in Steeplechase and when the threat of the Dionysus well pad was in my backyard, I tried unsuccessfully to speak to the health issues needing to be addressed. It wasn't the right time. Now is the correct time as you are looking at these setback distances and reviewing them.

Over ten years ago, fracking came into Pennsylvania with almost no restrictions. The oil and gas industry had cart blanche. Dollar signs were all that anyone saw or talked about.

The lucrative jackpot quickly passed, and today it is questionable how beneficial the industry was in actuality.

As payments have dried up, costs have risen

and are passed back to the landowner. Townships have roads to repair with little costs covered by the industry.

Most important to me is the ongoing negative health -- negative affects the industry has had on the health and the environment.

I can quote study after study reporting an investigating adverse health effects. My first awareness was through the Southwest PA Environmental Health Project in Washington County where you know there's great fracking 11 years ago.

The people were complaining of mental stress from the noise and truck traffic, and now they with the children and themselves were having symptoms such as skin sores, nose bleeds unexplained bruises, extreme fatigue and lethargy.

At that time, EPA wasn't even recording and tracking any health complaints from the people living by fracking, but today there is a system we have learned. Now we know better.

There was the opportunity for a fracking tour for any citizen or politician to tour Washington County area and speak firsthand to those affected.

I did take that tour. I was deeply moved by many people I met and whose lives and health had been

affected. Selling their house was not an option for most of them.

One mother of a seven-year-old, whom I'm so happy to say had been successfully treated for leukemia, told me of six other cases in her child's elementary school. It's unprecedented. Still no one would listen to the concerns.

In 2020, I hope you all know that the PA Attorney General Shapiro held a Grand Jury to allow citizens from over 70 households to share their copious health complaints. You can read about their suffering on pages 21 to 33 of that report.

The jury recommended, including -- the recommendations included calling for setbacks of 2,500 feet for homes and 5,000 feet for schools and hospitals.

Our Pennsylvania legislature has been slow to move on this recommendation. If I tell you there's more than one oil and gas lobbyist for every legislator in Harrisburg and that we have 2 thousand -- not quite -- 203 representatives and 50 senators, you may understand the delay.

A national study released in January 2002 looked at data of over 6 million Medicare recipients -- so this is national, these studies are

local and national -- and found those living within one-half mile of fracking had a two year shorter life span.

As in our backyard, the Pitt study released this past August was looking at disease in children living near fracking in Southwest PA. There was a five to seven percent increase in lymphoma. It's quite high, and an adverse affect on those of all ages having severe asthma attacks and lower birth weights were noted. We're talking about a dangerous industry.

From known and unknown chemicals used in the process to the contaminated waste which returns and has no safe disposal -- most of it is radioactive from the radium --

MR. ROBB: Ms. Westman, that's your time.

KATHERYN WESTMAN: Okay. One more sentence -- it threatens our air and water and, most significantly, the health of our children and adults.

I ask, as it is your duty as elected officials, to protect the residents, and that 1000 feet setback be approved with no waivers.

Thank you very much for listening to my comments.

MR. ROBB: Anyone else?

KATHERYN WESTMAN: All those papers I passed

out, they're not the specific studies. I didn't have time to look them all up, but they were articles that referred to studies and you can check them.

- - -

MS. AUSTIN: Victoria Austin. Can you hear me? Hemlock Street.

First, I commend the Township on increasing the setback for deep well sites to 1000 feet. I'm grateful for this increase in protection.

However, the provision permitting a favor to reduce setback to 500 feet is problematic. I searched the entire ordinance document for the word "waiver" and found that it only appears in the gas and oil portion of the 206 page document.

Page 159 a.1. is where the 500 foot waiver is described and reads: The waiver shall state that the Township and agents shall be held harmless against all claims made by the owner, operator, or third parties, which seems to imply knowledge of potential harm connected to acceptance of the waiver and the reduced setback.

This waiver clause only for the gas and oil industry appears to be preferential and possibly unconstitutional treatment, setting up West Deer for a legal challenge; the ability to waive setbacks is not

allowable for any other business, industry or use in the new ordinance.

The waiver pre-empts jurisdiction of the Zoning Board; no other business or industry in the ordinance is permitted to bypass the Zoning Board. Do you want this legal risk? An adult store, marijuana vendor, or other businesses or industries could file lawsuits requesting the same waiver privilege.

The double standard or preferential treatment is demonstrated again in the chart on pages 40 through 44, Section 210-12 "Authorized Land Uses By District, Nonresidential Uses."

11 zoning districts are indexed. Page 42 lists the gas and oil production is a conditional use in 10 of the 11 zoning districts. This is the only for-profit operation that the new ordinance allowed in 10 of 11 zones. Again, ripe for challenge, this creates a special treatment according to the state constitution.

Based on Act 13, Section 3304 (b) (2) (3), you cannot treat gas and oil industries differently from other uses. Please consider removing the preferential and possibly unconstitutional waiver clause. We don't want taxpayer funds used to litigate against ordinances that are clearly problematic.

I also want to point out a glaring inconsistency. On page 42, Authorized Land Uses by district, Section 210-12, nonresidential, see the column under "Deep Well Site." It is listed as an accepted conditional use in R, RE, R-1, R-2, R-3 and I. Yet, page 158, 18.1.1 states: A deep well site may be permitted as a conditional use in R, R-1, R-2, R-3 and I zoning districts.

RE or residential estate district is listed in the chart, but it's not in the text as acceptable for a deep well site.

In conclusion, I'd like to refresh everyone's memory on the findings of the three-year study presented in July by University of Pittsburgh Graduate School of Public Health, with a research staff, including 13 doctorate public health professionals and medical doctors, stating that proximity to fracking results in childhood cancer, poor birth outcomes, and asthma in adults and children.

Our yearly West Deer Christmas toy gift collection is an amazing generous project and brings such joy to area families. But the very children that you are gifting are also receiving a macabre gift from you. Thanks to your actions and decisions they have

an increase chance of suffering cancer, asthma and other horrible health afflictions.

In your position you have the power to make a positive and incredible difference for years to come. Please, do that. Thank you.

MR. ROBB: Thank you, Ms. Austin.

Next.

- - -

RICH HOLLIBAUGH: Rich Hollibaugh, 5036 Bakerstown-Culmerville Road. Gavin, I apologize. I got here a few minutes late. Can you walk through the process? I know this isn't a question-and-answer time, but from what I understand this is going to be tabled this evening.

MR. ROBB: That's correct. It will be voted on next month.

RICH HOLLIBAUGH: If it even passes next month, let's say whether it does or not, because this was already issued to the state, changes cannot be made. This meeting then tonight, this hearing tonight, how do we make amendments to that? Like what is the process?

MR. ROBB: There's a couple ways. Either the Board could decide to postpone adoption and resubmit a revised ordinance to the County and to go

through that process and back to the Planning Commission as well. Or alternatively, the Board vote to adopt this ordinance and immediately consider changes they felt were appropriate as part of the next amendment.

RICH HOLLIBAUGH: Do those amendments have to go through the County as well?

MR. ROBB: Yes.

RICH HOLLIBAUGH: So you should bundle them together rather than bothering them every month with different --

MR. ROBB: That's the more efficient way to do it, yes.

RICH HOLLIBAUGH: Okay. The new -- the Planning Commission had a 750-foot setback for some of the well pads, and that was decreased in the new zoning ordinance that was issued to the County to 650 foot; am I correct?

MR. ROBB: Well, there's a little bit of confusion, I'll be honest on that, and when Ms. Austin raised, you know, sort of voiced her approval for the 1000-foot setback, that's what triggered my visit to Mr. Shook to say I did not recall that being the setback. I thought it was reduced to 650 and there's a little -- the way that the draft ordinance currently

reads, it says that it's 650 -- or 1000 feet from an existing residence or business --

JACK REARICK: Primary residence.

MR. ROBB: Primary residence, and 650 from a principal structure, I believe is the way it is listed.

Now, principal structures are existing residents -- I'm sorry. Existing residents could be principal structures.

So I think it's something that we're going to have to talk about after this hearing as to whether or not there's further clarification that's required.

But, yes, the intent, as I understood it, was to reduce the setback to 650 for residents, businesses and principal structures on residential and commercial properties.

JACK REARICK: To reduce to 650?

MR. ROBB: That's correct. We're going to hear --

JACK REARICK: You have a big problem.

MR. ROBB: We're going to hear everyone out and we're going to figure it out.

MR. REARICK: (Mumbling to himself.)

MR. ROBB: Mr. Rearick, you had your opportunity to speak.

MR. REARICK: I'm sorry, I'm talking to myself.

RICH HOLLIBAUGH: If the -- because the Planning Commission recommended for 750 feet, the current ordinance is 650, if it got raised to 750 or 1000 -- I know this isn't question and answer, but this is regarding the zoning ordinance -- would the pads that were already approved --

MR. ROBB: This is not a question and answer. You have to just give your comments.

RICH HOLLIBAUGH: All right. Let's talk about the Planning Commission. There's a piece of property on Michael's Road that is C-1, Neighborhood Commercial, something like that. Nova Flooring Company is in there right now.

We had proposed to extend that zone -- it looks like it's spot zoning right now because there's a little white dot in the middle of an R-2 zone. I know for a fact that the Nova Flooring Company is getting ready to expand, raises our commercial tax base, and we want to make that as easy as possible.

That got set back to an R-2 district. We actually wanted to increase that C Neighborhood Commercial or C-1, whatever it is, to extend all the way up to the end of the intersection. There is a

landscaper up there. It's just going to make things a lot easier for those guys to expand without going through a Zoning Hearing Board for a variance. So if we could take a look at that property.

And then the three-acre parcels, we talked about three acres versus one-and-a-half acres with utilities. There was a whole -- up in the northern section of the Township versus whether or not they had utilities or didn't have utilities. They could reduce the lot size.

It looks as though that three acre minimum parcel district has been retained, whether it has utilities or not. Is that correct? Can I ask that question tonight?

MR. ROBB: There's no questions.

RICH HOLLIBAUGH: None at all. Okay.
That's about it then.

MR. ROBB: All right. Thank you,
Mr. Hollibaugh.

RICH HOLLIBAUGH: Thank you.

- - -

MR. ROBB: Would anyone else like to provide comment on the draft?

Ms. Kalivoda.

MARY KALIVODA: Hi. Can you hear me? I'm

Mary Kalivoda. I live in Crystal Spring Court in Gibsonia.

I wasn't prepared to talk about this, but if there is a question as to whether or not the setback is 1000 feet from an existing residence or business or it is 650 feet for a primary structure, I think it should be clarified to say that it is 1000 feet from a primary residence -- residence being given deference.

And I do stand in opposition to the waiver provision in the ordinance. I don't know if you are familiar with the Pennsylvania Constitution, but Section 27 is called The Environmental Rights Amendment, and I think the waiver smacks in the face of the citizens' rights as stated in Section 27.

There was a case that Jack alluded to, and it is called Robinson Township versus the Commonwealth, and the Pennsylvania Supreme Court made the Commonwealth and local governments -- which is West Deer Township -- a trustee of the rights under Section 27.

A local government and the state cannot degrade, diminish or deplete the resources, which -- whether they do it, the state does it directly or they do it because of the state's failure to restrain the actions of private parties.

This is, I think, what they were talking about, actions of private parties who would execute a waiver.

Act 13 purpose -- what happened is the Supreme Court looked at this statute that the state had passed, and they looked beyond the charade of passing environmental legislation, and they said that the purpose of the statute was to provide a maximally favorable environment for industry operators to exploit Pennsylvania's oil and gas resources, including those in the Marcellus Shale formation.

They said it would have a lasting impact on the quality of Pennsylvania's environment, and that's exactly what is happening here.

After setting an appropriate standard, for example, 1000 feet, that's an environmental safety standard, then the code permits an arbitrary waiver by a private citizen. Again, a double standard. And this does apply to West Deer Township as well as the state.

So, and I know Kathy had talked about some of the studies. But when you take this standard and you permit a waiver dumbing down the rights or the standard in the ordinance to 500 feet, there's no objective definitive standard on which a resident or

business can determine the actual distance a deep well site can be placed from their property.

Waivers, someone mentioned, come under the jurisdiction in West Deer Township of the Zoning Hearing Board. Not the jurisdiction of a private landowner. And in no event should the rights of a resident be determined by the whims of a neighbor.

By permitting such a waiver, the ordinance establishes a special rule for oil and gas production to the exclusion of other businesses, and this is a double standard for the benefit of oil and gas in the Township.

It's the right of a homeowner -- if you say it's 1000 feet, to keep it away from the landowner's home by 1000 feet, and public policy requires that no individual neighbor should be able to waive the landowner's rights.

If this Township fails to restrain the action of private parties prohibited under the Robinson Township case, then this could be something able to be litigated.

The other thing I wanted to point out is under the test, a deep well site may be permitted as a conditional use in the R, R-1, R-2, R-3, and I zoning districts.

The supervisors are permitting a deep well site in all residential districts but residential estate. Not in that district. Does that mean that the owners of larger parcels who may be affluent owners are afforded protection that no other residential neighbors are afforded, and is this setting up a special rule for those residential areas?

According to the chart on page 42, the supervisors are permitting oil and gas development in 10 of 11 township districts.

Robinson Township stands for the proposition that "drill everywhere" rules are unconstitutional. If the Township is establishing a "special set of rules or allowances" for oil and gas production, this could be unconstitutional under the Robinson Township case. The last thing you want to do is set up the Township for expensive litigation.

So I am asking you to remove the waiver provision. And I also have something for you that you can review.

MRS. JORDAN: Folks in the back, there are some seats up here if you want to come and sit down. There are some seats up here.

MARY KALIVODA: Thank you for your attention. I appreciate it.

- - -

MR. ROBB: Would anyone else like to speak?

MR. WIEGAND: Gavin, are we allowed to ask questions?

MR. ROBB: This is really just to hear from the public. The normal practice would be to hear everything from the public, close the public hearing, and then when the time is to discuss the actual adoption of the ordinance, that's when the discussion amongst the Board would occur.

MR. WIEGAND: So we'll do that during the regular meeting?

MR. ROBB: Yes. I think you were here when I announced that we are not going to be voting on it tonight.

MR. WIEGAND: Right.

MR. ROBB: It is on the agenda. If it's something you want to discuss at that time, you can discuss some of the comments that we received if you'd like, but, again, we're not going to be voting tonight, and we may need to look at some clarifications based on some things that were raised.

Yes.

- - -

DAVID KALIVODA: David Kalivoda,

K-A-L-I-V-O-D-A, 702 Crystal Spring Court, Gibsonia, 15044.

I'm speaking against the zoning ordinance as it is not yet ready to be adopted.

According to the chart on page 42, as Mary Kay just brought up, the draft ordinance allows gas and oil production in 10 of 11 districts.

Does the Township intend that this draft ordinance establish a "special set of rules/allowances" for oil and gas production?

This was ruled unconstitutional by the PA Supreme Court in the Robinson Township case. And is the Township playing favorites?

In the chart, gas and oil production is permitted in 10 of 11 districts. The following activities are allowed as follows:

Apartments, just 4 districts. Medical offices, 10 districts. Day-care centers, 4. Libraries, 3 districts. Post offices, 3 districts. Places of worship, 9 districts. Heavy manufacturing only in 1 district. Light manufacturing in 2 districts.

The Township is permitting gas and oil production in more places than it would permit a place of worship. The Township is permitting gas and oil

production in 9 more districts than heavy manufacturing, and manufacturing would have far less traffic and less environmental risks and could employ more local residents over a longer period than gas and oil.

Deep well sites are permitted in more residential districts than apartments and duplexes, day-care homes, and group care centers, all of which present less traffic and environmental risks than gas and oil.

The Township is limiting some of the for-profit operations to just a few zoning districts in comparison to for-profit oil and gas production, which the Township allows in all but one zoning district. This is a double standard.

Parking areas are permitted in only 5 non-residential districts. Parking is permitted in residential areas for oil and gas operations only. It's on page 43.

In so many ways, the Township is playing favorites on behalf of oil and gas production, which it favors over other allowed uses in the district.

On page 175, surface and groundwater section, requires a well operator at its expense to test the effluent of all water wells and the water

sources used by any residents or business within 1000 feet of any oil and gas well site.

This is inconsistent with the proposed conditional use application requirement in Section (e) on page 163, which requires the well operator at well operator's expense to test the effluent of all water wells, developed springs and surface waters used by any residents or business within 3,000 feet of any oil and gas well site. Also, the stated criteria are different from the application section.

So I don't think this is ready to be released. I think you need to listen to more comments. I think you need to take them into consideration. Thank you.

- - -

MR. ROBB: Anyone else?

PAUL MITSCH: Hello. My name is Paul Mitsch, M-I-T-S-C-H. I live at 1248 Nicklaus Way.

In reviewing the zoning ordinance draft, Article 2, paragraph 210-4, the purpose and objectives, the Board of Supervisors of West Deer Township do ordain that such regulations shall be made in accordance with comprehensive plan and design to lessen congestion on roads and highways, to secure safety from panic and other danger, to promote health

and general welfare, to avoid undo congestion of population. And I'm going to paraphrase rather than read all of it.

Then there's a section of that, No. 3 there: Overall development, create a healthy, economically and socially sound and attractive environment for the residents of West Deer Township.

Okay. So I'm going to try to skip over the parts that people have already talked to, but on -- in Article 5, paragraph 210-7, the meaning of words, which begins on page 5, the definitions under Deep Well, which is on page 12, and Shallow Well, which is on page 32, includes the brine disposal being stored on site, and I can't believe that with all of the abandoned mines we have, that we would be storing any kind of chemicals that would mix with that water and be detrimental to the health of the residents.

Also, on page 20, Injection Well, there's a statement that I'm not quite sure I understand how anyone from the Township can say it. Injection wells are used to safely dispose of waste generated from those production operations.

I mean, I could -- you can probably find 50 different -- or probably more -- experts to say that that's not a true statement, and I'm not sure so sure

that opinions belong in the zoning ordinance.

The other question is: Is the storage of brine and any other liquids consistent with the purpose and objectives that I just read?

On page 15, essential services -- service infrastructure and central service facilities should be defined that it does not include the oil and gas exploration or distribution.

On page 26, oil and gas development or development -- and I'm just going to paraphrase from it -- the well site preparation, construction, drilling, redrilling, hydraulic fracturing, non-hydraulic fracturing, and in parentheses, (including stimulation by explosives.)

Who thought that was a good idea with all of the abandoned mines we have here? That's just -- it's just unbelievable that we are even considering using explosives, and if by chance it does pass, how is that going to be controlled? How is it going to be permitted? It doesn't address those concerns.

We have already covered the how the fracking is allowed in some of the zoning.

In paragraph 210-13, starting on page 45, Dimensional Requirements. The proposed requirements clearly define the residential dimensional table, but

not the nonresidential dimensional table, even though nonresidential uses are conditionally permitted in many of the residential authorized land uses.

Please remember the purpose and objectives discussed at the outside of my comments create a healthy, economically, and socially sound and attractive environment for the residents of West Deer Township. Thank you.

MR. ROBB: Thanks. Anyone else?

- - -

MARCIA BRISSETT: Thank you very much for your time this evening. I appreciate this effort.

My name is Marcia Brissett. I'm at 37 Corbriwood Lane, Gibsonia, 15044.

So I have to say that I very much support the statements that have been made by my fellow citizens before me. I want to just reiterate somewhat the notion of the fact that oil and gas development and production is an industrial activity and should only be allowed in rural, commercial or industrial areas, not in residential.

Not only that, but in three of the residential areas, we have conditional use for oil and gas. So we make it even more available to doing oil and gas in residential areas.

The central services are allowed in most districts, and it is expected that oil and gas is the only for-profit nonessential industrial activity allowed in most zoning districts.

So we have allowed oil and gas to become a for-profit operating in residential areas. It's very contradictory to the definition we have for residential areas.

It' incompatible use and illegal under the MPC and PA law. No other industrial activity or heavy manufacturing is allowed in those areas. Not evening a microbrewery which, of course, people are very attracted to, or a professional office is allowed.

It's another inconsistent, unconstitutional use of the zoning district and indirect conflict with Section 605 of the MPC.

Another small agenda item is that parking, which is fairly regulated around this Township, but it is required for workers at well pads, but it's not permitted for other use in other R, residential districts. So there's a contradiction there as well.

I also would request one rather esoteric I think out of discussions today that in the definition of a processing plant, I would like to add a dew point facility to be included in that definition for the

processing plant and restricted to industrial zones.

I would also ask that you consider changing the conditional use for residential areas. Thank you very much.

MR. ROBB: Thanks.

- - -

ROTH STUMP: Roth Stump, 7011 Middle Road.

So based on the new information that came out a few minutes ago, I'm concerned that I spent hours reading a 206-page document and making comments on that is not the same document that's out there apparently. So I don't know if there's potential --

MR. ROBB: It's the same document that's out there. Go ahead and proceed.

ROTH STUMP: But the numbers weren't the same.

MR. ROBB: Sir, it's the same document that's out there. That's the one everyone is commenting on and that's the one we're ruling on.

ROTH STUMP: So I forget the exact timeline. But I believe this set of ordinances has been worked on for several years in preparation for tonight's public comment meeting.

I've read all 206 pages of this document and spent roughly -- spotted roughly 60 places where

issues of concern exist, such as inconsistencies, redundancies, grammar problems, oversights, and other items, which have the potential to lead to creating problems this document intends to eliminate.

Unfortunately, I only have four or five minutes to speak. So I'm going to try prioritize some major issues.

Page 29, Public Noticing. We are having a big problem by coming up short on notifying the public of important Township matters. Please include the public notices -- that public notices will also be sent out via the official social media accounts for the Township as social media is where a growing majority of people find out about current events, important information, et cetera.

Page 87, Section 5, last paragraph: Each apartment gets 1.5 spaces at the unit and a half space within a hundred feet. If two people rent an apartment, they can't park at their own unit. If 100 couples rent 100 units, there's 100 people fighting for 50 spots within 100 feet.

In addition to that, where would visitors park at that point? Does this trigger a catalyst for on street parking that the fire department and public works is explicitly trying to avoid?

Page 97, Section 31, Flex Space. One parking space per 1000 feet. Is that really enough?

Page 158, Section 18, A, Conditional Uses in the text section does not match with pages 42's chart. You have 100 percent directly conflicting information in this document.

Page 159, first paragraph, Waiver and then the Township declares itself harmless for allowing the concept of said waiver. Nope. No single property owner should be given the power to throw away the entirety community's protections granted within this document. It's a double standard and quite possibly unconstitutional.

Page 159, Section 5B, designed to release Zero emissions. That needs to include wording to verify that level of protection is actually achieved. Otherwise, you're not protecting the residents if a zero emissions design no longer performed as designed.

Page 163, Section M, if no document has been submitted to the DEP, you are allowing a good faith via self-proclaimed "narrative" describing environmental impacts to allow forward movement of the process. Please don't allow the circumvention of the DEP and the detailed records I assume they would require of the applicant.

Page 163, Section Q, This water quality testing needs to be done to the same level requirements that local residents would be doing to have a legal case if problems were to arise.

Page 164, Section T, 10 year master plan needs no include any interconnect and/or transportation of gas. Processing plants should be defined to include dehydration so it's covered here.

Page 165, top paragraph, How townships roads are damaged from gas development and repair. Only during and after construction is mentioned. It's not safe to assume after construction is synonymous to production. So production needs to be added as it's the most impactful to the roads.

Page 168, Section 3D, Exemptions from standards for setback requirements. Nope. Should we also extend exemptions to people for speed limits, drunk drivers, et cetera? Why bother having laws, especially ones that can potentially impact local residents the most, if a simple exemption can give some industries the ability to make their own set of rules within an existing sets of rules.

Could the Township be opening themselves up to legal actions by other businesses that have greater restrictions placed on them because waivers and

exemptions are not -- are afforded to oil and gas and not others.

Section 169 -- or page 169, Section C, Is 12 foot wide large enough for fire trucks to gain access during an emergency?

Page 171, Section F, last paragraph, Exemptions from the standards established may be granted by the Township. Nope.

MR. ROBB: Mr. Stump, that is your time.

ROTH STUMP: I have --

MR. ROBB: Go ahead, finish up.

ROTH STUMP: Allowing these exemptions negates the entire concept of protecting the local residents.

Two sections. 175 -- page 175, Section M2, Water supply complaints need to be handled much quicker. Imagine you go to take a shower, cook dinner, et cetera, your water is gone, smells like gas, oil, et cetera, for the next 10 days before someone addresses it. This should be within 24, a maximum 48 hours. Normally life stops when you don't have access to clean water. Page 175 --

MR. ROBB: Mr. Stump, you said you were going to read one more sentence. You just keep going through paragraphs. Your five minutes is up.

Anyone else?

- - -

SARA SMITH: Hi. Sara Smith, 1203 Nicklaus Way. I did not read the entire ordinance, but I skimmed over it and heard all of these comments, and my concern is that I moved here a few years ago because I liked the area, I liked the woodsiness of the neighborhoods, they're quiet. I live at the Links. I don't golf. The golf course is right there.

This draft says that we could have oil and gas production in 10 out of the 11 zoning areas, and that is very scary for me, and I know people that were talking about moving into the area, heard about this, and changed their mind, and they're moving to other areas now.

I just feel that with all of the concerns that are brought up, the waivers, the unconstitutional, the double standards, that the draft was written in the favor of the oil and gas and not the favor of the Township residents, and that's my biggest concern, that we re-look at this ordinance and think about the people that are living here and not about the oil and gas company. Thank you very much.

MR. ROBB: Thank you.

- - -

TARA BRADLEY STICK: Hi. My name is Tara Bradley Stick. I live at 1 Tara Lane, Gibsonia, Sun & Cricket Farm.

I'm kind of concerned about how you're going to enforce all of this. The "shall," "must" equals "must" I think concerns me that where -- it's hard enough to enforce the rules we already have, who is going to enforce things like the well operator shall take the necessary safeguards to ensure the Township roads remain free of dirt? Shall ensure such roads are promptly swept or clean of dirt? Egress -- ingress and egress points shall be located by with codes, this and that. Shall meet transition grades. Operator shall take all necessary precautions to ensure the safety of persons for road crossing. Shall not clear brush or trees by way of burning. Where is the enforcement come in here? Who is doing it?

What happens about noise? I'm within a stone's throw of this proposed site, Tyche site? What happens if the sound barriers fail to remedy the noise complaints? I don't even know how you are going to put up a sound barrier, frankly, from this site to the areas around it, if you have one side you have the Links, the other side you have some wooded property and then our farm, and the other side you have other

homes toward Bairdford. How are they going to put sound barriers up, and if they don't remedy the noise complaints, what actions does the Township take to protect these impacted landowners?

I don't see any -- I guess I don't see any language in this ordinance that talks about enforcement and what happens if any of these codes are violated.

It doesn't -- oh, so that's one point, enforcement.

My second point here is impoundments. They talked about fresh water. What is fresh water? I think it should be changed to potable water.

As the industry incorrectly uses the term "fresh" to mean "fresh to that site," it's very misleading, and it needs to be clarified. Water that's identified use in the industry's term "fresh" could, in fact, be produced water that has fracking pollutants.

What is the legal definition of "impaired water"? Who determines that definition, and who will test the water and any and all impoundments included on the well pad locations to ensure there are no fracking pollutants, radioactive materials, or other harmful risks?

And if, again, pollutants or other contamination is found, what is the Township's plan for requiring a safe remedy? Again, enforcement.

Will any fines be imposed? Will stop work orders be issued if violations occur?

So that's my comments. Thanks.

MR. ROBB: Thank you. Anyone else?

- - -

CAROLINE HOLLIBAUGH: Hello, Caroline Hollibaugh, 5036 Bakerstown-Culmerville Road.

It's more of a procedural question. What happens if this gets tabled? Will this be -- will we do this again? Will we have more of a -- I think it sounds like we really need to have a question-answer period just to make sure that the supervisors can answer all of these types of questions. Therefore, they understand what it is they've read and what they are going to vote on?

MR. ROBB: This isn't a question-and-answer period, but I have been trying to address procedural questions.

I think I already said that if it's tabled and there are changes made, there needs to be a new public hearing.

CAROLINE HOLLIBAUGH: Public hearing, is

that a question and answer or is it we just --

MR. ROBB: You elected these folks to enact the laws based on their best judgment, relying upon public input that they are getting now, relying upon legal advice.

It's not, you know, sort of a town hall situation where we just try to figure out what with those in the room want to do.

CAROLINE HOLLIBAUGH: Can't it be or is it just they are choosing not to or the law states it can't be?

MR. ROBB: There's no -- it's not illegal to do it, but I will tell -- not that I've been doing this forever, but in the 17 or 18 years I've been doing this, I have never seen it done like that in any of our municipalities we represent, which is 20 to 25 now in Allegheny County. So this is the way it is done.

CAROLINE HOLLIBAUGH: Well, it's just been such a long time since these zoning rules have changed that it would be more inclusive for all of us since so much has come about in these past years as far as all of the things that are coming into our Township, whether it's gas wells, whether it's whatever, that we all have -- not just to stand up here and listen to

ourselves talk and then you all get to make the decision, but to feel that we're involved in how we get to live our lives in this Township.

MR. ROBB: If the folks have been going to the Planning Commission meetings, the Planning Commission has had this as a topic for three or four years with every single meeting an opportunity for folks to provide input to the Planning Commission. Every time this Board meets, there's an opportunity to provide input to this board.

CAROLINE HOLLIBAUGH: But at that point, when did the supervisors talk to the Planning Commission and not just change things based upon what sounded good or didn't sound good versus actually understanding what's written in these codes, because they did spend many hours, as I know, and they put a lot of work into changing some things or thinking about them, and they are all engineers and experts in their field, so --

MR. ROBB: The vast majority of those changes are in this ordinance.

CAROLINE HOLLIBAUGH: Sure.

MR. ROBB: The vast majority. Probably 95 percent.

CAROLINE HOLLIBAUGH: But working with the

Planning Commission maybe to try to come up with something that would be more balanced.

All right. Thank you.

MR. ROBB: Thank you.

Anyone else before we shut it down?

Okay, there's no need to do a motion to close it. We'll go ahead and close the public hearing.

I think we are going to recess for a brief executive session. Understanding that the meeting is scheduled to start in about two minutes, we'll make it as quick as possible, and then we'll be back out.

- - -

(The hearing concluded at 7:00 p.m.)

- - -

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY)

CERTIFICATE OF REPORTER

I, Veronica R. Trettel, a Registered Merit Reporter and Certified Realtime Reporter, do hereby certify that the evidence and proceedings are contained fully and accurately in the machine shorthand notes taken by me at the hearing of the within cause, and that the same were transcribed under my supervision and direction, and that this is a correct transcript of the same.

Veronica R. Trettel, RMR, CRR
Official Court Reporter