

## **West Whiteland Township's Procedures for a Curative Amendment Zoning Challenge**

A Curative Amendment Zoning Challenge is a process that is generally unfamiliar to the residents of West Whiteland Township and to the Township itself. In an effort to help all concerned, we will briefly explain the process, how it works and most importantly, the responsibilities and legal requirements of the Township and the Board of Supervisors.

A Curative Amendment Challenge to the ordinance is a claim by a landowner (including one having a contract to buy land) that the Township's zoning ordinance is illegal, i.e., defective. The illegality or defect in this case, relates to what Glenloch Two Associates, the owner of the Glenloch development, claims is exclusion of manufactured home parks, based on their claim that the manufactured home parks provision currently in the Township's zoning ordinance is not feasible or is too small an area. In addition, they make a claim of illegality based on a doctrine known as "Fair Share Doctrine". They must show that the Township is in an area where development is logical, that the housing is needed, that the area or site is appropriate for development, and other factors may also be included. If the landowner meets these criteria, then additional considerations will also be taken into account.

A landowner who desires to challenge, on substantive grounds, the validity of a zoning ordinance or map or any provision thereof, which prohibits or restricts the use of development of land in which he has an interest may submit a curative amendment to the governing body with a written request that his challenge and proposed amendment be heard and decided as provided in section 916.1 of the Pennsylvania Municipalities Planning Code (MPC).

The MPC regulates the procedures and rules for a Curative Amendment process. The applicant, the Township and the Board of Supervisors must all follow these procedures and rules, which have been set and adopted by the Commonwealth of Pennsylvania.

The Board of Supervisors has a very different role than is typical for it in this process. In the curative amendment process, the Board will be more of a quasi-judicial body; that is, its powers are to some extent judicial in nature. The Board schedules hearings on the application, takes evidence and issues written decisions with findings of fact and conclusions of law. It must limit its scope of activities to those permitted by the MPC.

It may be helpful to use a court proceeding as an illustration for the process and the Board of Supervisors' responsibilities. Think of the Board of Supervisors as the "Judge". The Applicant is the "Plaintiff" and the Township is the "Defendant". The Plaintiff presents their case. The Defendant presents their defense. The Supervisors hear the testimony and consider the evidence. Just as is the case in a court of law, the "Judge" must be impartial. A judge may not hold a conversation with one side (defendant or plaintiff) without the other side being present. In addition, the judge may not discuss the case outside of the courtroom without both parties having the opportunity to be present at the discussion. Any outside discussion could lead to a mistrial on the basis of procedural error. The Board of Supervisors must follow these procedures.

The Township, separate from the Board of Supervisors, will present a defense of the Zoning Ordinance. The Township's defense team will consist of the Township Manager Michael Cotter, Planning and Zoning Director John Weller, special counsel Fronefield Crawford, Township Engineer Spotts Stevens & McCoy, planning expert Tom Comitta of Comitta Associates, and traffic expert Kevin Johnson of Traffic Planning and Design.

The governing body (the Board of Supervisors) shall consider the curative amendments, plans and explanatory material submitted by the landowner and shall also consider:

- (1) the impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;
- (2) if the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the ordinance or map;
- (3) the suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, flood plains, aquifers, natural resources and other natural features
- (4) the impact of the proposed use on the site's soils, slopes, woodlands, wetlands, flood plains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and
- (5) the impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.

Requirements are set in the MPC for how the board shall conduct hearings and make decisions. Those requirements include, but are not limited to:

- The board shall not communicate, directly or indirectly, with any party or his Representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.

As you can see, this is a very different, and challenging, role for the West Whiteland Township Board of Supervisors.

The Pennsylvania Municipalities Planning Code is available for review at the Township Building for anyone who would like more information on the procedures outlined in the code. You may also view the document on the State's web site at [www.newpa.com](http://www.newpa.com). Click on the Department of Community of Economic Development; click on Publications under the Local Government Services section; click on the Pennsylvania Municipalities Planning Code under the Planning Series publications. Please feel free to direct any questions or comments to Township Manager Michael A. Cotter. You may call him at 610-363-9525, or email him at [townshipmanager@westwhiteland.org](mailto:townshipmanager@westwhiteland.org).