

BOROUGH OF AKRON PUBLIC HEARING - OCTOBER 10, 2016

Council Members present- John Williamson, President; Justin Gehman, Vice-President; Perry Lorah, Earl Shirk, Tammy Ruth, Nathan Imhoff, Thomas Murray

Others present- John McBeth, Mayor; Kenelm L. Shirk III, Solicitor; Chief Thomas Zell, Robin Seidel, Kyle Robinson, Brian Boyer, Tom Bender, Barb McMinn, Jeff Shirk, Scott Ruth, Haithey Imhoff, Hope Stayer, Thomas Murray Jr., Jim Summers, Nancy Slink, Sean Molchany, K. McElhenny, Glen Beiler, Bruce Rhine, Dick Wanner.

Public Hearing

John Williamson - Planning commission has held a number of meetings over the past months to prepare both ordinances. A number of additions to definitions as well as significant changes to zoning for the C1 district (Commercial), the CM district (Commercial Mixed), animals, and signs.

Ken Shirk – Discussion actual goes back to 2011. A couple of large changes. Biggest is the Commercial district along 272. There are very few permitted uses. All uses were by special exception. There was a change in philosophy and therefore a substantial change in the ordinance to establish quite a few commercial uses as permitted uses based on the recommendation of our Borough Manager. Also a number of new uses that were added to that district as special exception uses. Another biggie was that transitional housing is now a special exception in all zoning districts. Group homes are permitted in all zoning districts. Changes on temporary quarters. The sign thing is a big deal. The United States Supreme Court decided signs have certain constitutional protections. And that included commercial signs. The decision emasculated your ability to regulate signs. So we attempted to bring the Borough with a temporary sign ordinance and amendments to the zoning ordinance so it only applied to permanent signs, for one thing, to bring it into compliance with that case. Whether we succeeded or not I have no idea. But as I said we attempted to. There have been a number of subsequent cases by the circuits and districts that would imply that you really can't regulate speech and that signs are speech. Whether they are political or commercial. And you all know now that corporations are now humans for constitutional purposes. So signage is now speech. Even for corporations. So those were the biggest changes. And there is some other stuff in there. Lots of other stuff in there. Definitions changed to try to clarify some of these uses that were added to this zoning district. And there were also uses added, special exception and permitted uses, to the central zoning district which is basically Main Street from Seventh to Ninth. And a little bit past Ninth. So that is the summary.

John Williamson – Ok.

Ken Shirk – I would like to note, if we can get it in the minutes, Mr. Secretary, that the Zoning Ordinance was advertised on 21 and 28 day of September. We have proof of publication from the Ephrata Review. The Sign Ordinance was advertised on 28th day of September. The sign ordinance is a general ordinance and requires one advertisement. The MPC (Pennsylvania Municipalities Planning Code) requires two. There you go.

John Williamson – Since this is a public hearing I guess we want to open up to any comments from the Public.

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Sean Molchany – Do you want me to go first? I spent three hours reviewing this. I will tell you right now I have about 15 pages of comments. Is there a court stenographer here to catch all my words? Or not?

Ken Shirk – Nope. You don't need a court stenographer for a MPC hearing on a zoning ordinance. Not for a zoning ordinance. No. You do not.

Sean Molchany – I hope my comments are reflected. First comment. One thing you are not changing in the Zoning Ordinance – it is still referencing the 1995 edition of Webster's. Why not amend that at the same time to say current edition so as these editions update you do not have to refer back to the 1995 edition?

Ken Shirk – Should I answer that. It is real simple. The Solicitor and the Borough own those ordinances.

Sean Molchany – But there is a common fault. So, can I go out and get one? So if I want ...

Ken Shirk – No you cannot go out get one. But if you name a new dictionary you change the meaning of the ordinance inadvertently in my opinion. And you would need to look at each of those definitions which would be an insurmountable burden.

Sean Molchany – To your comment on the signs and speech issue. Do you know if that has been challenged in Pennsylvania?

Ken Shirk – It has not reached I think there was a DNC ... local common pleas court where there was issue about it. But no, all the cases are Federal. But the Borough's Association, the Second Class Township Association and all the other municipal associations have made this a priority of their memberships.

Sean Molchany – But, don't they identify an issue sign differently than they do other temporary signs?

Ken Shirk – A what sign?

Sean Molchany – Issue.

Ken Shirk – Yes and no. I mean, that is an interesting question.

Sean Molchany – They do. In essence what you are doing is taking the temporary signs out of the Zoning Ordinance and putting enforcement on the Police Department. Now you are tasking your Police Department for enforcement of these signs.

John Williamson – Wait a minute. Say it again.

Chief Zell – Well, we have been doing that all along.

John Williamson – Temporary signs have always been outside of the Zoning Ordinance.

Sean Molchany – No. It was not outside the Zoning Ordinance. It was inside the Zoning Ordinance until this thing gets it done.

Ken Shirk – No. There were three ordinances.

Tom Zell – On Chapter 19 of our ordinance.

Sean Molchany – There are also zoning ordinance provisions currently that you are taking out.

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Ken Shirk – That is true.

Sean Molchany – Correct?

Ken Shirk – Correct.

Sean Molchany - Therefore the enforcement of the Zoning Ordinance as it pertains to the size on property is subject to the Zoning Ordinance currently.

Ken Shirk – Yes. And so permanent signs will continue to be subject to the Zoning Ordinance.

Sean Molchany – I understand. I am talking temporary only.

Ken Shirk – Right. So they will be subject to an Ordinance that has been existence but is now being amended.

Sean Molchany – Do you have a form for – cause anything in the public right of way requires approval by council – Do you have a form for someone to fill out to identify the sign, what it looks like, where it is going, that it does not impede clear sight triangle (which it doesn't address), sight distance (which it doesn't address), I mean those things should be a major consideration when you adopt the Chapter 19 because if I put on an intersection and it blocks my view I am causing a safety issue.

Ken Shirk – I have recommended such forms for decades but I don't believe they exist.

Sean Molchany – It doesn't exist in Section 19. It does exist in the zoning ordinance currently.

Ken Shirk – That is correct.

Sean Molchany – Also you are increasing the size of the temporary signs from anywhere from 2 square feet to 8 square feet.

Ken Shirk – That is correct.

Sean Molchany – Is there a reason why?

Ken Shirk – That was the decision of the Planning Commission. It was discussed at great length.

Sean Molchany –No. Well if I read your preamble it says upon recommendation of staff. Now I would say staff was probably your former manager who was having an issue interpreting the ordinance and called me all the time. I probably know your ordinance better than anybody. So it was staff's recommendation.

Ken Shirk – Which ordinance are you on?

Sean Molchany – I am on the zoning ordinance.

Ken Shirk – Well, no, it says the Borough Council reviewed proposals relating to zoning amendments envisioned and prepared by the Borough's Planning Commission.

Sean Molchany – There is an A – Upon recommendation of staff the following review recommends. Is that what it says?

Ken Shirk – Yes, that is what it says.

Sean Molchany – Ok. So, can I ask staff my questions?

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Ken Shirk – It would be a little difficult to do.

Sean Molchany – Because staff isn't here, or no longer here.

John Williamson – Right.

Sean Molchany – So is this – I am trying to make it easier for your new manager who is also your zoning officer until maybe hire somebody else, but if she has no input in it she is going to have a very difficult time interpreting this ordinance. My guess is she had very little or no input.

John Williamson – She attended the Planning Commission meetings.

Sean Molchany – But, I understand that. But this goes back to a manager that I can tell you why a lot of things are special exceptions. They are special exceptions because it forced that person to do their job. That is why a lot of these terms are in there. I wrote your ordinance. So, I did it for nothing as a Planning Commission member. I know the background. It still wasn't enforced. I know there wasn't special exception hearings. There is a building right down here that had the first aid thing that has three uses in it. How many times did that go in front of the zoning hearing board? Zero. The purpose of it was it forced the hand of the person interpreting it. Now, if you have a competent person to interpret it I have no problem. But, things have gone on around here for twenty years knowingly. You put them in there for a reason and we have been having problems. Hopefully things turn better. I will get off my soap box and go back to my specific questions before the board. You define domestic animal, but not animals. Ok?

Ken Shirk – Well, the dictionary defines an animal.

Sean Molchany – When you give examples. So, if it is not specifically listed as something not permitted. Is it something I can have? Example – giraffe and zebra.

Ken Shirk – No, I think there is a catch all in there. I will have to look for it.

Sean Molchany – I would hope that we don't think, I hope we know. Because it is going to put somebody, the taxpayers, in a bad position. Maybe better off defining what a domestic animal is. Period. You may also want to remove animal non-domesticated from the definition because you are listing specific species. Whatever you miss – guess what – I am telling you that I can have it. If I have enough money I can go to court and it will cost you a lot of money.

Ken Shirk – Actually, actually, there is ...

Sean Molchany – Make it easy for your zoning officer.

Ken Shirk – There is a generality at the end Sean. If you read it. It says specifically in addition to the listed items, any animal including bird, fowl, reptile, or insect not normally or ordinarily domesticated or normally or ordinarily raised in Lancaster County as livestock or for work or breeding purposes – which I would submit are giraffes - and not being capable of being kept as a household pet and – and that is an and - not being capable of being a household pet under normal circumstances. So that pretty much covers it.

Sean Molchany – Alright, if that is your opinion that is fine. You have the term auto used throughout. Why not – I think it is an auto ...

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Ken Shirk – There is auto body, auto service stations, - Yes, that is correct.

Sean Molchany – Why not use the term motor vehicle which is more accepted in the craft?

Ken Shirk – I have no idea. Those definitions were created by the zoning officer and ...

Sean Molchany – Who is no longer here?

Ken Shirk – Who is no longer here. And they seemed serviceable at the time. That is the honest answer.

Sean Molchany – I am going by my notes. But I have to go back to Body Art Establishment. Why are we singling this out as a use? We know it's a use. Its defined. So, maybe it is a term that should come out. Again, I am a zoning geek.

Ken Shirk – It is defined specifically as a use because it is specifically regulated.

Sean Molchany – You also may want to look at the current definition you have in here and bring it into date with the current regulations that are being accepted throughout Pennsylvania if not the country. Should conditional use be defined?

Ken Shirk – No. Conditional use is as provided in the MPC.

Sean Molchany – You have it defined here.

Ken Shirk – Yes.

Sean Molchany – Should It even be defined in here when it is more or less a process in the zoning ordinance?

Ken Shirk – I don't see the harm in defining it.

Sean Molchany – Ok.

Ken Shirk – Sometimes some of the language in here was on the recommendation that it be put in so it was clear to the public and the last sentence of conditional use definition is a good example of that. It says "Conditional Uses are heard by the Borough Council after recommendations by the Planning Commission." That was put in there not because it needs to be in the definition but to provide an understanding to the public who might be reading and trying to figure out what this was.

Sean Molchany – Why don't you then say in accordance with the MPC?

Ken Shirk – Everything is in accordance with the MPC as per the ordinance.

Sean Molchany – But you're saying the common folk. The common folk don't know that.

Ken Shirk – The common folk would never find the MPC or know what it says.

Sean Molchany – Yeah they would. Google search. Convenience store definition. You have a convenience store and/or mini-market. Some places you refer to mini-market. The common term now is convenience store.

Ken Shirk – Yeah. Mini-market is not defined so that is why they were combined.

Sean Molchany – What is a mini-market? By this now it is a convenience store.

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Ken Shirk – That is correct.

Sean Molchany – Why 12,500 square feet? Most convenience stores are less than 10,000. That is the industry average.

Ken Shirk – That was something the manager suggested.

Sean Molchany – Who is no longer here.

Ken Shirk – Who is no longer here.

Sean Molchany – Funeral Home definition. Why not mortuary or crematorium?

Ken Shirk – That was specifically discussed and decided that they did not want crematoriums in the Borough of Akron.

Sean Molchany – Ok. Golf course definition. You have a 5,000 yard 18 –Well I think it is ... by definition. Let me find it. You have 2,500 for an 18 hole golf course.

Ken Shirk – I think that was ... I have no idea where that definition came from. It was submitted by the manager and that is what we put.

Sean Molchany – Most golf courses 18 hole are 5,000 – er 9 hole.

Ken Shirk – Well, that is odd because the manager is the most golfing persons I have met in my life.

Sean Molchany – My point. You are acting on an ordinance for a person that is no longer here.

Perry Lorah – It says a minimum of 2,500.

Ken Shirk – Yeah, well, that is true. We are not acting on ...

Sean Molchany – Your saying a pitch and putt is now a golf course. Which it is not. Typical golf courses are measured at a minimum of 5,000 square feet.

Ken Shirk – In this case the only golf course we have in Akron Borough or will ever have in Akron Borough is 2,500 I suspect.

Sean Molchany – 9 hole is 2,500. 18 hole is 5,000. Nightclub. Definition of a nightclub. Why not just call it a restaurant?

Ken Shirk – The manager considered it a different use.

Sean Molchany – Who is no longer here.

Ken Shirk – There is a definition for restaurant. It does not include the issue of entertainment and alcoholic beverages.

Sean Molchany – So if you are a restaurant in Akron Borough you can't have beverages?

Ken Shirk – No. But if you are a restaurant in Akron Borough you may need to qualify also as a nightclub if you are going to have music after 9 PM and sell alcoholic beverages primarily for onsite consumption.

Sean Molchany – Do we have any nightclubs in Akron Borough?

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Ken Shirk – Not yet.

Sean Molchany – So if I have a particular nightclub down the street that sells alcoholic beverages that are consumed primarily inside and there is amplified music after 9 o'clock is it a restaurant?

Ken Shirk – Well, It depends on what you eat.

Sean Molchany – Explain that to me.

Ken Shirk – Well, nightclubs aren't necessarily restaurants.

Sean Molchany – But they can certainly serve food.

Ken Shirk – They certainly can. But than that makes them a restaurant too.

Perry Lorah – But less than 20% of their total sales is food they are a nightclub.

Sean Molchany – That is my point. 20% goes back to the LCB law. LCB laws at one time you had to sell so many for Sunday sales. That is gone.

Ken Shirk – Well, it went a month ago Sean. It was changed a month ago by the LCB. I am sorry we did not update the ordinance with it.

Sean Molchany – That?

Ken Shirk – Yeah, that was changed.

Sean Molchany - Sunday sales?

Ken Shirk – It was definitely changed.

Sean Molchany – Yes. Cause I have a restaurant that was effected by it.

Ken Shirk – You own a restaurant that was effected by it?

Sean Molchany – Yes, I certainly do.

Ken Shirk – You do?

Sean Molchany – No. Where I work.

Ken Shirk – Oh. The Township has a restaurant that was effected. Ok. Just asking.

Sean Molchany – Absolutely. That was about 2 ½ - 3 years ago. Wasn't a month ago. Under side yard, front yard setback.

Ken Shirk – You are aware however I am sure since the Township owns its own restaurant and you're in charge of the zoning for the Township that the municipality is entitled to impose restrictions on restaurants, on bars ...

Sean Molchany – I am not here to talk about my municipality.

Ken Shirk – You just did.

Sean Molchany – Come to my public meeting and I will be more than happy to talk about it.

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Ken Shirk – You just raised your municipality. You brought it up. I own a restaurant. Ok. Well, the answer is ...

Sean Molchany – What is your question?

Ken Shirk – Do you realize a municipality has the right to regulate bars and restaurants in addition to the regulations provided by the Pennsylvania department of whatever?

Sean Molchany – Yes.

Ken Shirk – Ok. Thank you. So we don't have to change our ordinance to bring into compliance with the Pennsylvania Liquor Control Board.

Sean Molchany – I know. You are talking on behalf of the board. The first page. Staff. You are their legal counsel. I get it. This is coming from somebody who is no longer here. This is my reoccurring point. I think you are a little premature on this. I am not saying it doesn't need changed. If you are going to do it, do it right.

John Williamson – I also want to say Sue Davidson was involved. She read through all of this.

Sean Molchany – I had a conversation with Sue. That is all I am saying. I am not going to put her in a bad position. Sue is a great person for this municipality.

John Williamson – I agree.

Sean Molchany – Set back front yard. It says the required minimum yard area contained between the street right of way line, private street, or common open space. Tell me what common open space means. It is not defined. So.

Ken Shirk – The common open space, I think, the manager's intent there was – it was the area between the sidewalk and the curb.

Sean Molchany – I would hate to think that is what the manager was thinking when he is no longer here and can't enforce stuff.

Ken Shirk – I can't answer it. If I was asked to interpret that that would be my interpretation.

Sean Molchany – Sight distance, clear sight triangle. They are two different things. So you combined two definitions that mean two separate things putting yourself in a bad position. They should be separately defined. They are two different things. They are recognized by the Pennsylvania transportation people, national transportation people as being two different things. You should not combine those definitions.

John Williamson – Question I had though when I saw that ... that is usually a sub-division land development ordinance issue not a zoning issue.

Sean Molchany – Well, when it comes to signs it becomes a zoning issue.

John Williamson – Ok. You are right.

Sean Molchany – And if you don't address it in temporary signs putting up a 2x8 square foot in the corner of an intersection. That there is nothing that would prevent someone from doing that.

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Brian Boyer – Excuse me John, if I may interrupt. Is anybody taking notes on all this stuff?

John Williamson – It is all being recorded.

Brian Boyer – Ok. Just so they get it.

Sean Molchany – Supermarket you have defined. I don't see it ... the use permitted anywhere. So why define it.

Ken Shirk – That is an interesting question.

Sean Molchany - I think your definition of tavern needs to be re-looked at. It references restaurants in there. I just think it is very confusing for the interpreter. Transitional Housing. Is that similar to what typically people call Group Homes?

Ken Shirk – Yes.

Sean Molchany – So that is the common term today why not just call it Group Homes?

Perry Lorah – I'm saying when I read it I took it as Group Homes.

Ken Shirk – Well, it is also a term, transitional housing, in the social part of the regulations. DPW and things like that. So I don't think it is ill defined. Ill named.

Sean Molchany – I just think that ... Tavern I have a major concern over the definition. Now we come to dwellings. We have in the current ordinance I believe there are two definitions of multi-family. I think you are proposing the substitution – you should define which one you are substituting for them both. You define a double frontage lot. Fine. You have triple frontage lots in Akron Borough. Corner lot with an alley running behind it. You should clarify your definitions of what that means. You do not define, I believe, an apartment dwelling. Although you reference apartment dwellings in quadrangles.

Ken Shirk – Yeah, well, apartment dwellings is a nature of ownership which is not regulated by the Pennsylvania Municipalities Planning Code.

Sean Molchany – Be careful where the definition was stolen from. Because there are certain words and certain definitions of another municipality zoning ordinances that certain words are put in there on purpose. Without the definition of apartments you're leaving it open for interpretation.

Ken Shirk – No. There is actually case law right on point.

Sean Molchany – I don't want to argue at all. Case law. Case Law. I am trying to make it easy. I am trying to make it easy. My purpose is trying to make it easy for your new person who is coming in or the consultant you are using to interpret these messes. They should not be calling up your legal person and costing the borough money every time they don't understand something. It should be terms that the general person could understand and someone could explain. That is where I am going with it. Your retail sales includes grocery stores – you mean supermarkets?

Ken Shirk – Retail sales is retail sales. It would be grocery stores or supermarkets.

Sean Molchany – Then why define it?

Ken Shirk – Why define what?

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Sean Molchany – Why do you even list it. Grocery stores. Retail sales of good and services.

Ken Shirk – Because of the size limitation. And the mini-markets are only permitted on this district here.

Sean Molchany – Supermarket which you would want also here is not defined.

Ken Shirk – No. Supermarket is meant to include the one in the square. Which is in another zoning district.

Sean Molchany – In the CM district. You want a new supermarket to go in the CM district or would you rather it went in the C1 district? I would rather it went in the C1 district.

Ken Shirk – Unlike other places in the County there is not a lot of land to grow on here.

Sean Molchany – I understand that. But land could be acquired.

Ken Shirk – Well, if somebody wants to buy 20 dwellings on West Main Street and put up a supermarket be my guest.

Sean Molchany – That is your opinion. I want their opinion. They are the elected body not you.

Ken Shirk – Well, they were at the meetings.

Sean Molchany – You all went to the Planning Commission meetings?

John Williamson – I did.

Sean Molchany – No. Were you all at the meetings?

Tom Murray Sr – No.

Sean Molchany – So they had representation at the Planning Commission meetings? I am surprised that some of them didn't bring up half of these concerns at the Planning Commission meetings. Again. You've got to educate your board. And coming from the legal perspective is not the best interest of the Borough. Period. Your perspective – what you want - is the best interest of the Borough not his. I have nothing against him. We spent a lot of money to have him put this together. For somebody that is no longer here. Can someone on the board tell me what a bakery is? Without looking. Don't look at it. By definition it is not where I go in and buy something. Like cupcakes or something.

Perry Lorah – No. It is like where something is manufactured with bread and yeast and stuff like that. It is not a retail store. It is manufacturing.

Sean Molchany – But its. The definition is confusing is my point. It references bakeries but I don't know if it defines bakeries.

Perry Lorah – I didn't look at it. But that is how I would have defined it. Manufacturing ... Bakery.

Sean Molchany – Hotels / Motels. Why not promote them? I know there is limited space. But why not? We have one here.

Ken Shirk – I'm sorry. What was that question please? Because it is a permitted use in the C1. Special exception.

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Sean Molchany – I am talking by right. It makes sense for a lot of these uses to be moved to be permitted by right. It saves the Zoning Hearing Board a lot of time. I agree they have to be enforced. Nothing at this time was being enforced. Therefore, that is why we went this route. For years of discussion on this and obviously 20 years later, 15 years later, 17 years later now it is a concern. Should have been a concern 15 years ago. In 27-10-03 – why not have municipal use as a permitted use in all districts.

Ken Shirk – There is something in here about that Sean or in the rest of the ordinance.

Sean Molchany – I'm sorry I am wrong. I'm sorry I am wrong. I am wrong. CM district.

John Williamson – CM district.

Sean Molchany – Why not have a municipal use as a permitted use – 11-02. I would also separate the municipal use from a fire house use, from a public utility use. Because they are separate uses.

Ken Shirk – Yeah, there is something in the old ordinance which wasn't amended which allowed non-building municipal uses as permitted uses in all districts. But that doesn't cover all that you said. I agree.

Sean Molchany – At this time a fire house is not a municipal use. It may be in the future. But it is not today. Public utility. Not the same as a municipal use. The one thing all together why not pull municipal use out and have it as a permitted use in all zoning districts? Why make it hard on yourself?

Ken Shirk – It would take me a while to find it, but there is something in there that allows that.

Sean Molchany – If it takes you a while to find it can you imagine how long is it going to take the zoning officer to find it?

Ken Shirk – Well, that is there job.

Sean Molchany – I agree. It was the old ones too. That is no longer here. Under. Bear with me. I sat down for three hours and went through this. I am sure I went through it longer than anybody else has gone through it other than the Planning Commission. I am skipping over some things since I have other things. Section 27-12-26

John Williamson – what page?

Sean Molchany – That is page 12 – Abandoned vehicle ... Here is what I wrote up. Before you rule out any abandoned vehicles outside. Now we are allowing one.

Ken Shirk – That is correct. That was discussed at great length.

Sean Molchany – So now, are we going to require these people to register these vehicles?

Ken Shirk – No.

Sean Molchany – Ok. So how are we going to know?

Ken Shirk – Just like the police always do.

Sean Molchany – This isn't a police issue. This is a zoning issue.

Ken Shirk – Just like the police do the zoning officer is going to have to keep track of it.

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Sean Molchany – So for each property one vehicle not bearing a current registration or current inspection sticker shall be allowed a maximum one year outside storage. Ok. As long as the appearance of the vehicle shows it is not dilapidated – define that – or unusable otherwise lawfully operable on the public highway – well if it doesn't have an inspection sticker I can visually look at the appearance of the vehicle and say ...

John Williamson – Sean, do you want to know the reason why we did that?

Sean Molchany – Yeah.

John Williamson – Because there was going to be an enforcement done on a vehicle on which the person serving in Afghanistan.

Sean Molchany – Ok.

John Williamson – And he couldn't take care of his car while he was away.

Sean Molchany – So you are going to change the ordinance to allow everybody to do it?

John Williamson – We could have, but this ...

Jeff Shirk – I got to question that. Why would you change an ordinance for one vehicle? I understand. That used to be a neighbor of mine. And I understand why the vehicle is there. Why would you change an ordinance so now – I agree with Sean on this – every property in this Borough could park a vehicle outside that is not licensed, not inspected, can't go on the highway and the owner's opinion is a collectible. I have three of them at my house. And my truck sits outside so I keep them all in the garage. So if somebody wants to have one put it in a garage. If you don't have a garage - Guess what – you rent one.

Sean Molchany – Vehicles that are on the street that are – again – they appear to be dilapidated, and they are registered and they are running. It is in the eye of the beholder. Unfortunately, but now, I'm calling, Hey, there is a vehicle outside that looks dilapidated. I am not walking on their property. I'm calling. I don't like my neighbor. I know how this works. I can do it all the time. I don't. I can tell anybody how to get rid of something. I have been doing it for twenty-five years. I can make your life miserable. I am sure people do – have. But to change it for one person – now that I know the reason – I think it is foolish.

John Williamson – Ok.

Ken Shirk – That was a reason that was discussed Sean, the actual language was recommended by our absent brother. It was on his agenda.

Sean Molchany – Absent brother? You mean the former manager who is no longer here.

Brian Boyer – Excuse me Sean. What are you covering on that under tarps? It was brought up before.

Sean Molchany – It doesn't matter. It is there and unregistered for a year. It has to go based on this definition. It has nothing to do with covering up a car.

Brian Boyer – The reason before was they couldn't do anything with it. There are some around under tarps that have been there five years. Never moved.

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Earl Shirk – I think Brian the discussion on that was if it is under a tarp you don't know if it is registered or inspected. You really don't have a right to go and look.

Sean Molchany – You have the right to send out a letter and make them prove it. Take a picture and send it to you. It is easy. Send me a picture that it is registered.

Tom Murray Sr – Sean, hold while I put in a new tape. Ok. Thank you.

Sean Molchany – Under penalties – let me get my section. 12-33. We say that ...

John Williamson – While you are looking I just want to mention on that ... under ... 12-33 there is a typo in 1A1 – prohibited. Last line – right before it says six it should be feet from instead of feet for. Do you see that?

Ken Shirk – Mine says feet from. You must have a different edition.

John Williamson – Ok.

Ken Shirk – The very last line. Yeah, mine says feet from.

John Williamson – Ok.

Sean Molchany – The one that is advertised and the one located in the window says feet for.

John Williamson – So we are going to amend that.

Sean Molchany – You require certain things to be six feet from the property line here. But other places you require it to be either more or less. Why not just make it consistent?

Ken Shirk – There was extensive discussion about that by the Planning Commission members.

Sean Molchany – And there rationale was?

Ken Shirk – They wanted different distances.

Sean Molchany – But there was a lot of discussion. If there was a lot of discussion What did ... give me a ...

Ken Shirk – Chickens especially.

Sean Molchany – An overview of their minutes and what it says in there.

Ken Shirk – There are no minutes that say the specifics of that.

Sean Molchany - So, therefore, I gotta assume that you are correct. Define one acre of grassland in number two. What is grassland?

Ken Shirk – I don't know. It is a common definition and I am sure it is in the dictionary.

Sean Molchany – Would you pull your dictionary and verify that for me, please.

Ken Shirk – No. Sue's door is locked and I can't get in there and get it.

Sean Molchany – You have one and didn't think to bring it to this meeting knowing it was going to be discussed tonight?

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Ken Shirk – I didn't think it would be discussed to quite this level of detail.

Sean Molchany – Again, call me a zoning geek. But, you are putting yourself in a really bad position ...

Ken Shirk – Really? I mean you could define every word. We could have ten thousand more - no exaggeration - definitions in here. We could define every word in here – fowl, coup, pen

Sean Molchany – I don't disagree.

Ken Shirk – dry, airy, well lighted, not overcrowded, food, excrement, I mean on and on we go.

Sean Molchany – Why didn't you just say one acre of land? Minimum lot size one acre.

Ken Shirk – Because one acre could easily have significantly less or maybe even zero grassland for a horse.

Perry Lorah – An acre of land could be an acre of parking lot. I would consider it as grassland ...

Sean Molchany – Now, are you allowed to have a flood plain. If the grassland is in the floodplain are you allowing these animals to graze in the floodplain?

Ken Shirk – It depends on what the floodplain regulations say. It also depends on what the storm water management regulations say. Which, of course, is the zoning officer is going to have to combine the two and interpret the two together.

Sean Molchany – I am not there yet. Well , that is when you come back and update the storm water and County plan. You are going to have problems with that too.

Ken Shirk – Actually they didn't adopt the County plan, but that is all right.

Sean Molchany – I know. That is what I am saying. You're allowing – why not instead of allowing one acre or having one acre ... So say it is like any type of pen for horses must be a certain distance off property lines? Specifically fences. Any horses that are kept in a corral, building, something must be so far from the adjacent residential house. You do say that. Say that is one hundred feet, or make it two hundred feet.

Ken Shirk – It was discussed.

Sean Molchany – And what was the outcome of the discussion.

Ken Shirk – It is in the ordinance.

Earl Shirk – Sean, it is a hypothetical question – you could say three hundred or four hundred feet.

Sean Molchany – I mean, when you get to the smells component here.

Earl Shirk – That could be half a mile.

Perry Lorah - That could be half a mile.

Nathan Imhoff - Depends on which way the wind is blowing.

Sean Molchany – No one else can smell it. That is the way it is written in the ordinance. Realistically, that is not realistic. I mean, there is going to be - you are going to allow it – there is going to be a smell.

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Period. But when you say you can't have any smell that it has to be fly tight ... I can't even keep my house fly tight or rat tight or whatever term you are using. Then you go down to six – accessory buildings - you are allowing that ten feet off the property line. You are allowing other things to be six. So just make it the same.

Ken Shirk – Actually six varies from ... depending on which property line.

Sean Molchany – Also so does 10, which is what I am talking about.

Ken Shirk – Mine doesn't say 10. Are we having that problem again?

Sean Molchany – On number 6.

Earl Shirk – It does say 10.

Ken Shirk – Not closer than the greater of twenty feet from the side property line, six feet from the back property line, or fifty feet from the nearest dwelling other than the dwelling of the occupant.

Sean Molchany – And you're considering an ordinance that has not been advertised that I don't have. Am I correct?

Earl Shirk – No. The one we have says ten feet.

John Williamson – How did this happen?

Ken Shirk – I don't know. I gave the Borough ... Well, I don't know what Sue gave you but this is what's advertised.

Sean Molchany – That is my concern. You advertised this is what – I picked up a copy here – I paid for and there is also a copy on your web site.

Ken Shirk – Well, if that is true ...

John Williamson – That is the second difference.

Perry Lorah – You said yours has twenty feet.

Ken Shirk – Well, it is twenty feet from the side property line ...

Earl Shirk – my says ten

John Williamson – What do you have?

Ken Shirk – Do you have the rest of it. The ten feet ... greater of twenty feet from the side property line, six feet from the back property line, or fifty feet from the nearest dwelling.

John Williamson – I think that is the correct form. Twenty feet from the side property?

Ken Shirk – Yeah.

John Williamson – Ok. Six from the back?

Ken Shirk – Yeah.

John Williamson – And it is still fifty feet from the nearest dwelling?

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Ken Shirk – Yup.

John Williamson – Ok. Thanks.

Sean Molchany – We don't know what else is different.

John Williamson – I didn't catch that. I may be the only who did go through ...

Sean Molchany – Is there anything that addresses manure pits?

Ken Shirk – No. Though I would submit in Akron Borough under the Pennsylvania regulations you couldn't put a manure pit here although you would know better than me on that one.

John Williamson – There are state regulations on manure pits.

Sean Molchany – When you get to page 15. And I will skip over some of this stuff. You have caged birds then we have all these listings of animals. What is that referencing?

John Williamson – Is that domestic pets?

Sean Molchany – I believe domestic pets is defined elsewhere. I believe.

Ken Shirk – No. It is under ten.

Sean Molchany – These are a listing of domestic pets. This should match up with the definition.

John Williamson – No. There actually ... if you look at the definitions it is not ... they refer to that.

Ken Shirk – Yeah, it is the following domestic pets. It is not domestic pets. It's the following ...

Sean Molchany – I am reading this and it is very confusing.

Ken Shirk – I don't agree. Obviously, if somebody is confused ...

John Williamson – If you look at page 3 – it says animals and domestic pets and it refers to section 12-33-10. Look at page 3. Animals / Domestic pets.

Sean Molchany – Ok. Eleven I will just make a general ... all A, B and & C is unenforceable.

Ken Shirk – You can't enforce preventing an animal from running at large?

Sean Molchany – Well, ...

Ken Shirk – I would submit every ordinance in the country has something in it like that.

Sean Molchany – A keeper of every such animal shall confine the same in an enclosure sufficient to prevent such animal from running at large. Define what size that is?

Ken Shirk – Well, it doesn't matter. Once the animal is out he is running at large so he wasn't adequately confined.

Sean Molchany – That is not what it says.

Ken Shirk – That is what it means.

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Sean Molchany – It says it should be confined in an enclosure. I will just make that general statement because I can pick on every single one of the sentences. On temporary quarters – there is no time frame on the page.

Ken Shirk – No, there isn't.

Sean Molchany – Therefore, If I create a temporary quarter ... and I create it for a family member and that family member dies, granted, yes, I should convert it back to a ...

Ken Shirk – Single Family Dwelling.

Sean Molchany - Now by your definition – single family dwelling – what constitutes that?

Ken Shirk – It is related to the use of the property.

Sean Molchany – So this is a use by special exception. From the Zoning Hearing Board. Do you have a permit that you send out to the residents every year that says ... is this still an active?

Ken Shirk – We do not. It is possible that they may do that someday. But they have not.

Sean Molchany – Why wouldn't you? It is an easy conversion to an apartment.

Ken Shirk – Yup. And that was discussed at some length. This is what they decided. That is an inherent danger with all temporary quarters other than perhaps mobile homes which are kind of obvious.

Sean Molchany – The conversion is going to happen without a permit. I can tell you that.

Ken Shirk – Well, then they are illegally operating without a permit. Lots of things can happen without permits illegally.

Sean Molchany – There are a lot of things you can do legally and get away without a permit too.

Ken Shirk – That's true too.

Sean Molchany – It happens. I'll just go back through and say I don't agree with removing all the temporary signs out of the zoning ordinance. I think it becomes very taxing for the police department to enforce temporary signs. There is no good reason in my opinion to increase the size from two square foot to eight square foot. I also think that ... this is all coming from Borough Council via the preamble in your zoning ordinance. You need to look out for the best interest of the Borough citizens. Allowing it to be placed ... granted ... but permanent in the right of way but outside of the right of way to put the intersections and the safety of the motorists in harm or residents in harm or people walking the sidewalks in harm. Not a good idea. My recommendation would be to table these until you come up with input from your current zoning officer. Make sure she fully understands. If not her, whoever is going to be appointed to the zoning officer. They should understand and input into this. Granted, you are saying somebody had input I am not so sure that happened. In the position of a finance director or secretary of the Planning Commission I sat on that board for seventeen years. Seventeen. I never had any input given to me my by the secretary during a meeting. Ever. So I suggest you hold off on this. You're setting yourself up for some major issues. I am not saying you shouldn't change this. If you are going to do it, do it right. Do what you want. That is all I have.

John Williamson – Ok. Thank you. Yes, Jeff.

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Jeff Shirk – I have one here. Page seven. Under item three. Or Roman number three. Bed and Breakfast Inns. I am a little concerned about the second paragraph. Owner occupied single family detached dwelling in which a bed and breakfast inns are provided compensation on a nightly basis meals may be offered to only registered overnight guests. State of Pennsylvania clearly defines that breakfast only. Any other meals you have to apply for a restaurant license.

John Williamson – Ok. Your saying meals should be changed to breakfasts?

Ken Shirk – Well, you couldn't do it quite that simple. You would have to say meals are prohibited other than breakfasts which will be offered only to registered guests.

John Williamson – Anyone else have any comments? Say it again.

Ken Shirk – Meals are prohibited except for breakfasts.

Earl Shirk – Jeff, since I am not familiar with that rule – state rules say they are not allowed to serve anything other than breakfast?

Jeff Shirk – Anything other than breakfast. Now, I think where you are going might create an issue too. Because if we had a wedding reception and it was catered that's allowed because it was a caterer coming in. So if you are saying no other meals can be provided except for ... than you are eliminating that. I don't think you want to do that.

John Williamson – I agree.

Jeff Shirk – Breakfast is allowed by being a B&B. Everything else has to be a caterer.

John Williamson – So we should go back to your suggestion removing meals and replacing with breakfast.

Jeff Shirk – I would just say breakfasts.

John Williamson - Yeah. Any other comments or questions? Yes.

Tom Zell – My understanding is that we are getting rid of chapter 19 altogether. Is that true?

John Williamson – And replacing it with the temporary signs.

Tom Zell – Ok. Which is a zoning ordinance?

John Williamson – No, it is not. This would be replacing chapter 19.

Tom Zell – So this one you gave me earlier today would be replacing chapter 19 and the biggest difference that I see between the old one and the new one – the old had an additional temporary sign described as temporary directional signs, and that has been eliminated from the new one.

John Williamson – I know.

Tom Zell – I would like to know why it is being eliminated.

Ken Shirk – I am not sure it has been.

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Tom Zell – Temporary directional signs may include the open house signs, they include the auction sale signs, and ... that is what they include – those two - open house – they are allowed, and also the ...

Perry Lorah –public auction

Tom Zell – for public auction - those signs can go up three days before and have to be taken down the day after. The signs that are posted all over – now this goes back to 1991 or early 90s when George Wolf was the Mayor or on Council - I don't want to speak for George but if I am correct in thinking this he didn't want to have all these signs advertising houses for sale all over the Borough especially in the right of way. And it gave the police the power to remove those signs and according to this new ordinance we can't do that anymore.

John Williamson – Well ...

Tom Zell – You have to have a permit which I don't know how you are going to regulate that. Sue is going to have the burden of issuing permits for signs for houses for sale. I think that should be put back in the new ordinance with temporary directional signs.

Ken Shirk – The Supreme Court specifically spoke on that subject. They said you cannot discriminate among directional signs and other signs. I will be glad to provide the case to you.

Tom Zell – No, I don't need to see it. As far as I am concerned if I think it is a safety issue we are taking it down. I don't care. We are taking it down. Cause it is a safety issue. I can't see to pull out and that is my discretion. We are taking them down. I don't care what the content of the sign is. We will take all signs down. That's ridiculous. To say the Supreme Court this or that. This is common sense. If you have a sign in a line of sight in a Borough right of way. We are taking them down.

Ken Shirk – Yeah, but, this is ...

John Williamson – The new ordinance says the same thing.

Ken Shirk – Yeah. It does. I don't know what you are arguing about.

John Williamson – We don't include temporary signs.

Ken Shirk – We just don't distinguish between temporary signs. They are considered temporary signs, we just don't distinguish between them and other temporary signs.

John Williamson – If you read the 102 in here and the 102 in the old one there the same. It is the exact same wording. The only thing that is changed is the temporary signs ... temporary directional signs

Tom Zell – I understand the 102 is the same, but 105 isn't in the new one but it is in the old one.

John Williamson – Yeah, 105 is out. But it means ... you can't put ...

Ken Shirk – We are not discriminating ...

Tom Zell – We are also allowing them if it's not in the right of way. They are allowed to put these signs up if they are not in the right of way. Correct?

John Williamson – If they the property owner gives consent.

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Tom Zell – So you are still going to have ... possibly ... these signs all over the Borough.

John Williamson – With the consent of the property owner.

Tom Zell – Ok.

Ken Shirk – The construction and location, Tom, if you look at paragraph B, of section 103 ...

Tom Zell – The new one?

Ken Shirk – Yeah, the new one. Says the construction and location provisions in the zoning ordinance ... that's what chapter 27 is ...

Tom Zell – I am sorry, Ken, where are you at?

Ken Shirk – In the new one, section 103, B, second page– It says the construction and location provisions of chapter 27 section 1237 ... that is the zoning ordinance. Those standards about clear sight triangle, not, you know, not blocking intersections, and things like that there adopted by reference in this ordinance. So they are still there it just

John Williamson – You are still enforcing ...

Tom Zell – Then why did even need 105 in the old one? Why does that even have to be spelled out in the old one?

Ken Shirk – I think it got there by accumulation.

John Williamson – Ok.

Tom Zell – Alright. The bottom line is no signs in the right of way.

John Williamson – Same as before.

Tom Zell – Ok. Thank you. It is clearer now.

John Williamson – You are still enforcing it.

Ken Shirk – Without permission.

Sean Molchany – Even out of the right of way the police are enforcing it.

John Williamson – Yup.

Ken Shirk – Temporary signs, yes.

Ken Shirk – Yes

Sean Molchany – One other question, I am sorry, why now are you allowing it for 60 days prior to the onetime event versus the 72 hour?

Ken Shirk – It was talked about for weeks and weeks, months and months.

Sean Molchany – Ok. So, what was the rationale?

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Ken Shirk – Public sales being the primary discussion point, open houses being another primary discussion point ...

Sean Molchany – 60 days prior to an open house?

Ken Shirk – Well, problem is you see you can't discriminate upon content.

Sean Molchany – I really don't believe you're interpreting this correctly.

Ken Shirk – Well, then read it yourself Sean. Get you own zoning opinion.

Sean Molchany – I will do that. What was the case you said?

Ken Shirk - Um?

Tom Murray Sr – He wants to know what the case was.

John McBeth – I got a question too.

Ken Shirk – Let me give Sean the case first. I will email you the citation Sean. It is in the other file.

John Williamson – Ok. So that will be taken care of after the meeting. John.

John McBeth – like open house signs – It got to the point a number of years ago ... that is why this in the zoning ordinance ... it got the point it appeared as if real estate dealers were leaving the signs up as long as they could ... Even after a house was sold because that was good advertisement for them. Their name was out there in front of the public and the longer they left it up the better.

Ken Shirk – It is even worse than that now, John. Cause now the auctioneers are not even taking their signs down after the auctions. I just had an auction three weeks ago on Franklin Street in Ephrata and now they put up the sign recently sold by auctioneer's name yours can be sold too.

John McBeth – Ok. Um. How does this relate to off premise signs?

Ken Shirk – Off premises signs

John Williamson – Three days.

John McBeth – Three days?

Ken Shirk – Yes.

John Williamson – Yes.

John McBeth – After three days?

John Williamson – Temporary signs will be removed within three days following the date of the sale, open house or events.

John McBeth – Following the date. How long before hand?

John Williamson – That is sixty days.

John McBeth – Sixty days. And so you can go to ... You must get permission from the owner of the property?

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Ken Shirk – Yes.

John Williamson – Yes.

John McBeth – But then you can four or five of them around town for the same house and they can stay up for sixty days?

Ken Shirk – In theory.

Tom Zell – Can somebody explain to ... because I don't know ... the definition of the Borough right of way.

John Williamson – the right of way?

Tom Zell – Explain to me how many feet that is. From the curb line to or whatever ... What is the Borough right of way?

Ken Shirk – It varies from street to street. It is a lot easier in ... For instance – I will give you an example - The PennDot right of way out here ... it varies from out here from fifty to one hundred feet. Ok? So what is PennDot's right of way? Unless you know you don't know.

Tom Zell – Then how are we supposed to know?

Ken Shirk – The nice thing in a Borough is it is mostly between the curbs. Even though that is also the cart way in a Borough.

Tom Zell – Between the curbs?

John Williamson – No. No. Between the sidewalks or the cleanout of the sewers.

Tom Zell – The Sidewalks.

Many voices – No. No. Can't be that. No. No.

Ken Shirk – The Borough right of way is ... it is what was dedicated to the Borough, but the problem with that is Boroughs are so old that most of the streets were never really formally dedicated to the Borough. So there isn't any recorded documentation I am sure for Ninth Street, well there is for Ninth Street because that was a State highway.

Tom Zell – So we will use our discretion to determine if that sign is creating a hazard.

John Williamson – Right. That will be good.

Tom Zell – Thank you.

John Williamson – Ok. We are still in a public hearing. In order to make a decision we have to be out of the public hearing?

Ken Shirk – Yeah, Yeah. You're in a public hearing.

John Williamson – Ok. So.

Justin Gehman - I make a motion to adjourn the public hearing.

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John Williamson – Ok. Is there a second?

Earl Shirk – Second.

John Williamson – Ok. It has been seconded to adjourn from the public hearing. All those in favor of adjourning the public hearing say Aye. Opposed – nay. Motion carried.

Respectfully submitted,

Thomas Murray

Councilman