

LOWER FREDERICK TOWNSHIP – Ad Hoc Ordinance Committee

Meeting Minutes of March 10, 2022

Meeting called to order at 7:00 pm.

Present for Roll Call:

Members:

Dyanne Jurin

Warren Jacobs

Ranier Keown

Associated Township Staff:

Mark Hudson, Township Manager

Notes:

The meeting was held in person at the Lower Frederick Township Building and on Zoom.

1. Public Comment

No public comment was offered.

2. Approval of the Minutes from the January 18, 2022 meeting

Motion: Warren Jacobs

Second: Dyanne Jurin

The motion passed unanimously.

3. Definition of “Woodlands”

Dyanne Jurin referred to the proposed definitions she emailed to the committee that include the term “plant community” (attached as Appendix A).

Warren Jacobs mentioned definitions from Kennett and Milford whose definition includes 3 classifications and a map. Classifying the woodlands would allow us to better define the sensitive areas mentioned in the ordinance.

Dyanne Jurin reminded the group that we don’t want scrubland confused with woodlands. Warren Jacobs said these reverted farm fields would be a lower class since they’re not sensitive and would therefore allow more clearing.

Ranier Keown interjected that almost all current woodlands in L.F. were once cleared and farmed. Warren Jacobs explained that they were cut, but not tilled and therefore they still have the virgin soils that have the intact biological ecosystems that they always had.

Dyanne Jurin questioned what level of canopy and tree size constitutes a woodland in the current definition. Warren Jacobs explained that 6” is not mature woodland, and perhaps this should be larger in the definition. Some other ordinances use 10”. An aerial view doesn’t necessarily show whether the woodlands are mature or near mature. The canopy forms early but doesn’t mean it’s a mature woodland. Rather than rely on the canopy, we should define what a mature tree is.

Dyanne Jurin asked the group for feedback on how we should approach the definition.

Ranier Keown reiterated that he feels the current definition is not far off for this purpose. He is open to increasing tree size and discussing classifications related to diabase. However, it will be difficult to determine what was tilled and what wasn't many years ago. There are diabase areas where the rocks have been moved into rows indicating that the land was farmed and not just grazed by livestock. Adding debatable factors in the definition may be making it more difficult for people to understand, and for the township to enforce. If it is simply based on tree size and area, it's more clear and easier to understand and enforce.

Warren Jacobs agreed we must make it as clear as possible and any classifications must be defined very clearly.

Ranier Keown stated that we are trying to anticipate and prevent what happened at Arcadia, and we don't need to split hairs in the definition to prevent that from happening again.

Dyanne Jurin agreed that we don't want to make this more complex, but we have an opportunity to make the requirements clearer and not harder to understand.

Terry Sacks stated that the PVMS West property was all farmed. All those fields that are grown up into scrub, were once farmed prior to the school buying the property.

Warren Jacobs said that the lower area of the Meng Preserve was once farmed. There is a second growth canopy there now, but this isn't as valuable as up the hill that wasn't farmed.

Ernie Schmitt asked if we ever did a survey of the areas that could possibly be developed to see how much is wooded? He reminded the group about the many dead trees we have along roads and on properties.

Warren Jacobs described that the Lower Milford definition includes the part about the previous 3 years. It is nice to include this in the definition. They also have a map. Lancaster County and Lehigh County both have model ordinances, and the Lancaster County version includes the geology of the area.

Dyanne Jurin questioned whether information can be sent out to others in the committee between meetings. Mark Hudson explained that information can be sent out, but it can't be discussed. There can't be any back-and-forth conversation outside the meeting.

Warren Jacobs will propose potential woodland classifications to differentiate higher quality woodlands from recently reverted farm fields. He will provide more info for the next meeting.

Ruth Heil (204 Swamp Creek Road) offered that the ISA guide to developing tree ordinances has an example from Maryland using a 2" or greater tree diameter at 4.5' above the ground.

Warren Jacobs suspects that the 2" requirement from Maryland is just designed to be ridiculously restrictive to development.

4. Percentages of Permissible Tree Disturbance

Dyanne Jurin introduced the topic and stated that 50% of the property can be cleared under the current ordinance. If you need to clear more, you can go to the zoning hearing board for relief.

Ranier Keown clarified that his understanding is that 30% would need to be replaced so the current ordinance only allows 20% to be cleared without replacement. We need to be clear on this point.

There is still lack of common understanding of the replacement requirement. The replacement is acre for acre. If you remove an acre over the 20%, you must replace an acre.

Mark Hudson understands the requirement differently. He understands it to be a quantity of trees based on the area removed, but not an area of trees that must be replaced.

Warren Jacobs explained that the Lehigh Valley model ordinance (attached as Appendix B) describes limits of offsite improvement requirements. It describes that offsite improvements may not be legal in this situation. This should be clarified by the solicitor. Also, does our new "Fee in Lieu of" ordinance apply to this? How would we define and agree on the cost of the replacement trees?

Ranier Keown expressed that developers won't mind paying for replacement trees on some other property, but this approach is more difficult for the local property owner. This offsite option gives the developer an easy way out. If we want to maintain a certain percentage of trees on a property, we should define what makes sense and not allow developers to pay money to avoid the requirement.

Chuck Yeiser clarified that "Fee in Lieu of" is a tool that the township can use but it must be done through mutual agreement.

Warren Jacobs explained that a housing development can typically replant on their designated open space, but it's a problem for a smaller property that has no where to go with the trees.

Dyanne Jurin reiterated past communication with the solicitor regarding the SALDO requirement to reforest on lots that are 5 acres or larger. Does this mean that only developers that have large tracts of designated open space must reforest? This would focus the reforestation/afforestation requirements on neighborhood lotted developments only.

Mark Hudson and Warren Jacobs reiterated that lots need cleared spaces for stormwater provisions, septic systems, a yard, a driveway, etc.

Dyanne Jurin said the zoning officers she spoke with said they didn't have any problems with the restrictions and people would just go to the zoning hearing board if they needed relief.

Ranier Keown presented his proposal that is attached as Appendix B. He explained the goals of the ordinance with respect to large developers, and individual property owners who are not engaged in SALDO. He described some existing requirements in the Neighborhood Lotting section of the SALDO that describe property size (10 acres), vegetation inventory and preservation, and percentage of estate lots that must remain in their natural state (50%).

With this background, he proposed the following:

1. The woodlands zoning ordinance should only apply to properties that are 10 acres or larger.
2. No more than 50% of woodlands on these properties should be cleared.
3. Current and future lots that are less than 10 acres should not be governed by the woodlands ordinance.

Warren Jacobs said he doesn't have much of a problem with that proposal but questioned if it is legal to exempt smaller properties. He agreed that neighborhood lotting is the whole issue here. We never had a problem before neighborhood lotting.

Ranier Keown explained that this would alleviate the concerns of most residents who spoke out against the ordinance and would still address the core of the problem. It is simple, it addresses the primary concerns, and it has minimal impact on most property owners.

Warren Jacobs reiterated that he is in agreement, but the key thing is whether it is legal to exempt smaller properties.

Dyanne Jurin asked for clarification on point #3 of the proposal.

Ranier Keown explained that his proposal exempts any property now or in the future that is smaller than 10 acres because it is no longer subject to neighborhood lotting or other large scale development.

Warren Jacobs stated that the proposal certainly achieves the goal of alleviating people's concerns about their property rights being taken away which is what we're here to do. However, there are people who are not going to like this because we are weakening it.

Dyanne Jurin is open to the concept but would like to think more about it before the next meeting. She explained that we can't account for every situation, but the proposal has some promise.

Bill McGovern (107 Memorial Drive) expressed that zoning should not be confusing. It should be clear. The goal would be to minimize the need for Zoning Hearing Board. We shouldn't create requirements knowing that some property owners will need relief from the Zoning Hearing Board just to do something that isn't out of the ordinary. He also clarified that zoning requirements cannot be waived by the Supervisors.

Chuck Yeiser (Supervisor) commented on the concern about someone subdividing their 50 acre property just to get around the ordinance. He expressed that there is significant cost for someone to subdivide their 50 acre property just to allow them to remove some trees. There are significant monetary consequences to prevent someone from doing that.

Dyanne Jurin read comments from Garry Bonner (Fulmer Road). He described a possible disincentive to prevent developers from clearcutting before putting in an application. Whatever amount of ground they clearcut, they would have to pay for the replacement trees but also pay for the cost of a conservation easement on the area of land that was cleared.

Warren Jacobs said it can be considered if it is legal.

Ranier Keown expressed that we should focus the requirements on the large developer and less on the property owner. If Gary Bonner's suggestion is a way of doing that, then we should consider it.

Terry Sacks (Supervisor) cited an example where someone cut woodlands for farming, and they had to add stormwater provisions for the cleared land. They were allowed to clear the land, but they had to address the stormwater.

5. Replacement tree diameter, quantity and density, and alternatives

Dianne Jurin explained that this agenda item is not about disincentive replanting but replanting when they concur with the ordinance. What size do we want them to replant? The current requirement is 3.5" caliper.

Warren Jacobs agreed that 2 to 2.5" trees are more practical. You would only want something bigger in areas where there is high traffic area. For pure reforestation, smaller caliper trees are more suitable and will become established faster.

The group agreed that 2" to 2.5" replacement trees would be acceptable in that circumstance.

Dyanne Jurin cited another ordinance that allows 2 shrubs to be substituted for a tree.

Warren Jacobs cautioned that the design has to make sense. You need a plan if you are landscaping rather than just reforesting.

Warren Jacobs explained that planting many smaller trees mimics normal forest succession. There isn't a right or wrong when it comes to fewer larger or more smaller trees. It depends on the situation, and both could work well.

Dyanne Jurin questioned whether 200 trees per acre is correct.

Warren Jacobs described that reforestation in the Acadia subdivision boulevard would be best served by fewer larger trees with grass underneath. However, reforestation in a dedicated open space area that will not be maintained is better served by more smaller trees.

Ranier Keown questioned whether an overall tree mass or volume is another way to quantify the amount of trees rather than just quantity. He also expressed some concern about allowing shrubs instead of trees. If you mow around the shrubs you will never have a canopy. If you want a canopy, then reforesting with trees is better.

The group agreed we could allow some flexibility or several options so the most appropriate option can be chosen for the situation. If we do this, we need to define the options and flexibility in a clear way. This can be a focus for next months meeting.

6. General Discussion

Mark Hudson will address the following questions with the solicitor prior to the next meeting.

1. Is the offsite reforestation requirement legal in reference to the language in the Lehigh County sample ordinance?
2. Is the Fee in Lieu of provision legal in this situation.
3. Is it ok to exempt properties under 10 acres as described in the proposal from Ranier Keown.

7. Public Comment

Terry Sacks (Supervisor) expressed that the smaller trees are easier to get and that was a factor in considering smaller trees.

Bill McGovern (107 Memorial Drive) questioned whether the 3.5" requirement remains in the SALDO requirement for reforestation that acts as a disincentive. The group confirmed that we are not proposing a change to that portion of the ordinance.

8. Next meeting - April 14, 2022 at 7:00 pm.

Appendix A:

Woodlands Definition and Comments Provided by Dyanne Jurin for discussion

Warren,

ATTACHED IS THE CURRENT WOODLANDS DEFINITION. BELOW ARE TWO TWEAKED VERSIONS ADDING PLANT COMMUNITY TO EACH. BUT YOU MAY WANT TO IDENTIFY THAT PLANT COMMUNITY MORE SPECIFICALLY.

THE FIRST DEFINITION LEAVES OUT A REQUIRED DBH FOR THE TREES. THE SECOND INCLUDES A REQUIRED DBH. PLEASE MODIFY THEM AS YOU SEE FIT. I HOPE WE CAN DISCUSS AND AGREE ON THURSDAY ON A DEFINITION TO RECOMMEND TO THE BOS.

Woodland: Land containing areas, groves and stands of trees and the plant community that form a complete or nearly complete aerial canopy covering one-quarter acre or more as measured from the drip line of the outer trees; woodlands are also a grove or stand of trees consisting of 10 or more trees measuring 12 inches diameter at breast height, forming a continuous canopy.

Woodland: Land containing areas, groves and stands of trees where the largest trees measure at least six (6) inches in diameter at breast height, and the plant community, that form a complete or nearly complete aerial canopy covering one-quarter acre or more as measured from the drip line of the outer trees; woodlands are also a grove or stand of trees consisting of ten (10) or more trees measuring twelve (12) inches diameter at breast height, forming a continuous canopy.

We can talk about the definitions when you call.

Dyanne

WOODLANDS

Land containing areas, groves, or stands of mature or largely mature trees (trees with a caliper of six (6) inches or greater) that form a continuous canopy covering an area of 1/4 of an acre or more, as measured from the drip line of the outer trees; or groves or stands of mature trees (trees with a caliper of twelve (12) inches or greater) consisting of ten (10) or more individual specimens forming a continuous canopy.

Appendix B:

Limits on Offsite Tree Replacement from the Lehigh County Model Ordinance Provided by Warren Jacobs for discussion

Lehigh County Model Ordinance

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Woodlands

Section 503(2) (v). "A subdivision and land development ordinance may include provisions for ensuring that land, which is subject to flooding, subsidence, or underground fires, either shall be safe for the proposed use or that these areas shall be set aside for uses that do not endanger life or property."

Section 603(c) (7). "Zoning ordinances may contain provisions to promote and preserve prime agricultural land, environmentally sensitive areas, and areas of historic significance."

Section 605(2) (ii), (iii), and (vii). "Where zoning districts are created, all provisions shall be uniform for each class of uses or structures, within each district, except that additional classifications may be made within any district for the regulation, restriction, or prohibition of uses or structures at, along, or near natural or artificial bodies of water, places of relatively steep slope or grade, or other areas of hazardous geological or topographical features, floodplain areas, agricultural areas, sanitary landfills, and other places having a special character or use affecting or affected by their surroundings."

Section 606. "The zoning ordinance shall include or reference a statement of community development objectives relating to the need for protecting natural resources."

Section 609.1(c) (3) and (4) and Section 916.1(c) (5) (iii) and (iv). "In evaluating a substantive challenge to the validity of a zoning ordinance by a landowner, the governing body or the zoning hearing board shall determine the suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, floodplains, aquifers, natural resources, and other features. It shall also evaluate the impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, 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."

LOCAL REGULATION

Local municipalities have increasingly regulated tree removal through their zoning ordinances, since enactment of the first generation of zoning ordinances during the 1960s. Today, the majority of Lehigh Valley municipalities have regulations pertaining to tree protection. Local municipalities typically include a goal of tree protection in a comprehensive plan and specifically address tree protection by regulation through the zoning ordinance, subdivision ordinance or a stand alone ordinance. Regulations generally require a percentage of trees on a site to be preserved, or require replacement of trees that were removed.

→ There are limits, however. Municipalities should be careful in not requiring offsite tree replacement. In *John Trojnacki v. Solebury Township Board of Supervisors*, No. 1389 C.D. 2003 (Pa Cmwlth 2003), the Commonwealth Court held that the offsite tree replacement provision of the Solebury Township Tree Replacement Ordinance was invalid under the MPC. The provision that was challenged stated "where development takes place in fully wooded lots, the Township may designate offsite areas where replacement trees shall be planted." The Court explained that "public capital improvements" stated within the definition of "offsite improvements" is not defined in the MPC, however, the plain meaning of the term would include planting trees "in order to maintain the arboreal status quo of a township." Section 503-A allows municipalities to condition subdivision approval on onsite improvements, or even fees in lieu thereof, but the statute disallows such practices with regard to offsite improvements. *Peter*

TREE BASICS

All of the various parts and functions of a tree are interdependent, and understanding these parts and functions is important to prevent damage. The trunk, crown and roots function together in a healthy tree. (Figure 1) Any damage to the above or below ground tree parts will reduce overall tree health.

Appendix C:

Proposal for the Revised Woodlands Ordinance including some Background
Provided by Ranier Keown for discussion

Goals of the Woodlands Zoning Ordinance

1. To prevent a situation like which occurred at the Arcadia subdivision where woodlands were removed from the eventual open space areas of the development. Specifically, the ordinance should restrict random and widespread deforestation done by developers before and during neighborhood lotted development.
2. To minimize the impact of the ordinance on individual property owners not engaged in SALDO.
3. To be simple, concise, understandable, and enforceable.

Existing SALDO Requirements for Neighborhood Lotting

1. Property must be 10 acres or more.
2. Vegetation of the site must be inventoried, defining location and boundaries of woodland areas and vegetation in terms of species and size.
3. Disturbance to woodlands, hedgerows, mature trees, or other significant vegetation shall be minimized.
4. Cutting of healthy trees is prohibited in open land areas.
5. 50% of estate lots must remain in the natural state.
6. Neighborhood lotting is a conditional use that must be approved by the supervisors.

Proposal to Achieve the Goals Outlined Above

1. The woodlands zoning ordinance should apply to properties that are 10 acres or larger.
2. No more than 50% of woodlands on these properties can be cleared.
3. Current and future lots that are less than 10 acres should not be governed by the woodlands ordinance.