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BEFORE THE BOARD OF SUPERVISORS
EAST GOSHEN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

- - - - -



IN RE: Public Hearing to Consider)
an Ordinance Amending Section 240-6)
and Section 240-32.A(1) of the East)
Goshen Township Zoning Ordinance)

- - - - -

East Goshen Municipal Building
1580 Paoli Pike
West Chester, Pennsylvania

Tuesday, August 11, 2015
7:10 PM

BEFORE THE BOARD

- E. MARTIN SHANE, Chairman
- SENYA D. ISAYEFF, Vice-Chairman
- CARMEN BATTAVIO, Member
- CHARLES W. PROCTOR, III, Member
- JANET L. EMANUEL, Member

APPEARANCES:

BUCKLEY, BRION, McGUIRE & MORRIS
By: KRISTIN S. CAMP, ESQUIRE
on behalf of the Board of Supervisors

ALSO PRESENT: LOUIS F. SMITH, Township Manager

Colleen M. Pimer
Official Court Reporter

ORIGINAL

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EXHIBITS

MARKED

B-1 (Proof of Publication)	premarked
B-2 (Correspondence to Law Library)	premarked
B-3 (Correspondence to Daily Local News)	premarked
B-4 (CC Planning Comm Review Letter)	premarked
B-5 (EG Planning Comm Review Letter)	premarked

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PROCEEDINGS

MS. CAMP: Let me just introduce exhibits on behalf of the Board of Supervisors. This is a proposed amendment to the East Goshen Zoning Ordinance. There are several different procedures that have to occur based on state law which is called the Pennsylvania Municipalities Planning Code. Purpose of these exhibits is to demonstrate that we have complied with those procedural requirements.

First one is the proof of publication of tonight's hearing. This hearing was published in the Daily Local News on July 27th, August 3rd, 2015.

Second exhibit is a letter that I sent to the Law Library on July 31, 2015 enclosing a copy of the ordinance for public inspection.

Third exhibit is a letter that I sent to Daily Local News on July 31, 2015 again enclosing a copy of the ordinance for public inspection.

Fourth exhibit is a letter from Chester County Planning Commission. Chester County Planning Commission has to review every proposed amendment to zoning. They send remarks to the Township. That was done in a letter August 3, 2015.

Last and final exhibit for the Board is B-5 which is a letter from Mark Gordon as Zoning Officer indicating that on August 5th, East Goshen Planning Commission voted five to

1 one to recommend that the Board adopt the amendment to the
2 ordinance that's proposed.

3 This started as a municipal cure which is a specific
4 process that the Pennsylvania Municipalities Planning Code
5 allows Boards of Supervisors or municipalities to basically
6 put a halt on anybody challenging a particular provision of
7 an ordinance. It gives the Board of Supervisors 180 days to
8 determine whether or not the provisions within the ordinance
9 they have declared -- potentially declared to be invalid,
10 whether they want to make amendments to that provision. That
11 was started with a Declaration on February 17, 2015. It then
12 followed with a Resolution being adopted on March 17, 2015.

13 As Mr. Shane's explained, the ordinance already has
14 regulations on the number of dogs that were permitted as an
15 accessory use to a residential dwelling, but there isn't
16 anything currently in the Zoning Ordinance to articulate what
17 the purpose of that restriction is.

18 Looking at, you know, relevant case law it was
19 determined that if somebody were to challenge it, it would
20 make it -- would make the ordinance a more sustainable
21 ordinance in the event of a challenge if the purpose of the
22 Board of Supervisors in imposing the restriction was
23 particularly stated in the ordinance. That's really what the
24 ordinance does.

25 It also identifies in terms of type of dwelling,

1 whether or not -- number of dogs specifically that can be
2 kept on a property. So the ordinance is fairly straight-
3 forward. There is several recital clauses or background
4 clauses that explain the purpose of the provisions. There is
5 a definition of a dog.

6 Then the one particular section that we are talking
7 about is Section 240-32.A(1). Section 240-32 of the East
8 Goshen Zoning Ordinance addresses accessory uses. There is
9 many different sections of that ordinance that deal with all
10 types of accessory uses. That particular section talks about
11 keeping household pets. There is still regulations in the
12 first sentence that states household pets, which is a defined
13 term, may be kept as an accessory use to a residential
14 dwelling provided their keeping is clearly incidental and
15 subordinate to the principal use of the residential dwelling.

16 So even though -- and I know this is one of the
17 comments from County Planning Commission, they questioned
18 whether or not there was going to be any regulations on
19 animals other than dogs, my response is that yes, the
20 definition of household pets does include animals other than
21 dogs. There is no specific number of restriction on other
22 types of household pets but there is the restriction that it
23 must be accessory to a residential dwelling. So at some
24 number of household pets other than dogs it would be that,
25 you know, there be some number, it's no longer accessory to a

1 residential dwelling. There is a general restriction in a
2 general regulation on other household pets. That has not
3 been eliminated from the ordinance.

4 There is a much more specific restriction specific
5 to dogs and that is based on a chart that's on page three
6 of the ordinance. That is if you have an apartment,
7 townhouse, semi-detached or single family detached dwelling
8 you're allowed a maximum number of dogs which are three
9 months or older of four. For a single family detached
10 dwelling on three or more acres you're allowed four, plus one
11 additional dog for each acre of lot area in excess of two
12 acres. So that's what the proposed amendment is.

13 Again this all started back in February, has
14 culminated in the proposed ordinance for the Board's
15 consideration.

16 THE CHAIRMAN: One thing that should be commented on
17 before we have somebody make a motion is the fact that in
18 Pennsylvania what we learned is that you cannot discriminate
19 against a particular breed of dog. All dogs are, at least in
20 Pennsylvania, you can have any type of dog that you want, and
21 if you do try to discriminate it will be thrown out if
22 someone challenges it, which they would do. So that's one of
23 the reasons back in '83 the number was plugged into the
24 ordinance.

25 We will just move forward tonight, ask anybody want

1 to make a motion to get this thing going?

2 MR. BATTAVIO: Mr. Chairman, I would like to make a
3 motion that we amend Section 240-36 to add a definition for
4 dogs and Section 240-32.A(1) concerning keeping of animals
5 and household pets as an accessory use.

6 MS. EMANUEL: Second.

7 THE CHAIRMAN: Okay. Anybody have comments up here?

8 MR. ISAYEFF: Miss Camp, could you review again for
9 us the rationale behind the number four? How did we arrive
10 at, what was the rationale for selecting a number of four
11 dogs to be restricted to properties?

12 MS. CAMP: I think four was a policy decision by the
13 Board. I think that we looked at various cases where there
14 were ordinances of other municipalities in the Commonwealth.
15 Some allowed twelve, some allowed five, some allowed six.
16 Your current ordinance from 1983 has allowed four. So I was
17 asked to give an opinion if I thought that four was a legally
18 defensible number. I gave my opinion I thought it was.

19 I did not make the determination that four was the
20 correct number. It may be different.

21 MR. ISAYEFF: I would like to direct that question to
22 Mr. Smith. Mr. Smith, what was the rationale behind the
23 number of four?

24 MR. SMITH: The 1965 ordinance and predated in the
25 1983 ordinance basically did not list any accessory uses. It

1 just said normal, customary. I will give you the exact
2 words. Accessory uses were customary agricultural and
3 residential accessory uses. So we did not regulate dogs,
4 cats, horses -- well, I think horses, but goats, those type
5 things. It was all normal and customary.

6 In '83 when we adopted the new ordinance we put a
7 revision in essentially said if you have more than four dogs
8 it would constitute a kennel.

9 I went back through the minutes of Planning
10 Commission where this was discussed over a period of about
11 three years on this process. Janet was here. I don't want
12 to date her but both I and Janet were here. And I did not
13 see anybody raise any sort of objection to the number of dogs
14 in that provision in all my research.

15 MR. ISAYEFF: That's history. Where is the rationale
16 today with respect to the number of four? Seems arbitrary.
17 And as Miss Camp stated that we tonight have to state the
18 purpose of the restriction so that if challenged down the
19 road by any parties that it would withstand that discussion
20 and that challenge. It seems to me that there is no
21 rationale other than what could lead to public nuisance.
22 That's number four in the ordinance that's being proposed
23 today.

24 More importantly, when we go to the dwelling types
25 in Section two and discussion as household pets in Section

1 2(1) we state that we may keep four -- a number of dogs
2 depending on dwelling type on page three. There are two
3 dwelling types that are identified. One is apartment,
4 townhouses, semi-detached or single family detached.
5 They are allowed a maximum number of four dogs three months
6 or older. Also in that table there are single family
7 detached on three or more acres as other types of properties
8 which are also entitled to four dogs plus one additional dog
9 for each acre of lot area in excess of two acres.

10 Now I happen to live on three acres. I'm happy to
11 see I can have five dogs. But I don't understand again the
12 purpose of the restriction because there is nothing that
13 attaches the number of dogs to the potential nuisance that
14 they could lead to. And it seems to me that in our book for
15 Township Supervisors there is a section, Section 1529 that
16 discusses nuisances. Does not identify animals. It talks
17 about the Board making ordinances to prohibit nuisances,
18 including but not limited to storage of abandoned or junked
19 automobiles on private property and public property and
20 carrying on of any offensive manufacturer or business.

21 I would say to you if any animals were dropping
22 metal muffins, that could be considered manufacturer of
23 mulch, but we are not going to get into that tonight.

24 Instead I would like to direct your attention to
25 Section 1530, regulations of dogs. The Board of Supervisors

1 may by ordinance prohibit and regulate the running at large
2 of dogs. Is that why we are here today, to prohibit and
3 control the running at large of dogs?

4 MR. SMITH: That's the second ordinance. First
5 ordinance is a Zoning Ordinance amendment. It's not a
6 nuisance ordinance.

7 MR. ISAYEFF: Where does the Zoning Ordinance fall
8 under? Is it a nuisance matter?

9 MR. SMITH: It's not nuisance or it's not regulating
10 running of dogs.

11 MR. ISAYEFF: I remain confused about the rationale
12 or purpose of the restrictions because there is nothing in
13 this ordinance as I read it that would indicate any sense of
14 comfort we should have that dogs should be limited to the
15 number of four. Why not three, why not eleven, why not six?

16 MR. SMITH: As I think Marty noted, the ordinance was
17 adopted in '83. After the dog incident in Brookmont we
18 discovered that hey, we should put in justification for the
19 number.

20 MR. ISAYEFF: I understand that.

21 MR. SMITH: Our Board has the task of providing
22 justification for the number of four.

23 MR. ISAYEFF: I understand the need for
24 justification. I don't understand how we can justify four as
25 opposed to any other number.

1 MR. SMITH: If the Board would like to consider a
2 different number I'm sure that we can come up with
3 justification for it.

4 MR. ISAYEFF: Why do we need to justify any number?

5 MR. SMITH: That's a policy decision made by the
6 Board. And again the previous Board in 1983 made a policy
7 decision of four. This Board made a policy decision in '87
8 when we updated the new ordinance. It was four there. We
9 adopted the Township Code I want to say in 2001. We again
10 made -- Board again made a policy decision of four. Number
11 four has been in front of the Board for three ordinances now
12 and now we have provided justification for that ordinance.

13 MR. ISAYEFF: I understand the historical
14 significance of this. But today happens to mark the 13th
15 anniversary of my first military commander Colonel Marcel F.
16 Lamar who taught all of us something that you have all heard
17 before. That is you don't have to be sick to get better.

18 Maybe three times was the charm. Maybe we realized
19 today three times we may have made a mistake in selecting an
20 arbitrary number in the absence of justification. So perhaps
21 tonight our mission should be to correct that mistake and
22 instead consider the nuisance factor under the stand alone
23 ordinance.

24 THE CHAIRMAN: Let me make a couple comments with
25 respect to that. Number one, I think it has to be recognized

1 that for whatever reason back in 1983 -- Janet might have
2 some recollection of that, which she was on Planning
3 Commission -- there was a number picked of four. It's been
4 that way ever since. To my knowledge that I've been here for
5 a long time, there hasn't been anybody ever come in here, ask
6 us to change that or I don't know if we had anybody -- we had
7 to enforce the situation over the course of the years, I'm
8 not aware of it, which in some sense makes it seem like it's
9 a rational decision made in 1984.

10 In addition to that, for those that like to do these
11 things, if you look at seven and eight of the ordinance under
12 the whereas it talks about type of dwellings that we have.
13 Now if you work those numbers through just so happens about
14 twenty-five or seventy-five percent of the dwellings in East
15 Goshen are one acre or less and from a rationale standpoint,
16 if you get vast majority of your residential properties one
17 acre or less, seems reasonable that you're going to do --
18 you're certainly going to put some kind of restriction on the
19 number of dogs that can be had. I believe there is some
20 reference to other small animals in the ordinance with
21 respect to the numbers.

22 Now we also know there are some of -- more town-
23 house, apartment types. They have a limited number through
24 their own regulations that are less than four. It's like
25 two. That's reasonable for an apartment or stuff like that.

1 From my perspective you got to look at the history
2 to find out, you know, if you've had problems. It's still
3 rational based on circumstances that we have here. There is
4 not a mathematical calculation that you're going to be able
5 to make that says there should be four as opposed to three as
6 opposed to six. It's judgmental. Although there is
7 rationale here that says that we believe that four is
8 reasonable when you look at the rationale.

9 Now I would like to ask Kristin this question.
10 There is -- we have in a section of our ordinance that's
11 called accessory uses as Kristin has explained which is
12 different from the nuisance section of the ordinance which
13 has to have -- deal with noise, odors, things like that that
14 are nuisances from particular parts of a property that could
15 happen to neighbors, so forth, neighborhoods.

16 Is there -- is it better to have this in the section
17 as an accessory use as opposed to in the nuisance section,
18 which I believe the other ordinance will fall under when we
19 get around to talking about that? Is there any benefit or
20 doesn't it make any difference which two sections it is?

21 MS. CAMP: I think it does make a difference because
22 where it is an accessory use, there I think definitely there
23 is a judgment call, policy decision on what the number is.
24 But the purpose of putting it in the accessory use is
25 recognizing that that's why some of the rationale statements

1 talk about types of dwellings and number of residential
2 dwellings, lot size they are in, that at some number,
3 whatever that number is, in this ordinance it's four, keeping
4 of dogs is no longer accessory to the primary use of the
5 property, which is a residence. It becomes a kennel or it
6 becomes a boarding facility for dogs and animals.

7 I'm not saying four has to be the number. That's
8 not my decision. I'm saying at some point in time it no
9 longer is accessory to a dwelling. That's why it's kept in
10 accessory use.

11 The other point is that there are case law on
12 defining nuisance as public nuisance. Cases indicate that
13 you can't just declare something as being a nuisance. You
14 can't say we think keeping a junk vehicle on your lot is a
15 nuisance. It's public nuisance, therefore, it's a violation
16 of your ordinance, we are going to fine you. In those
17 instances, in those cases that say the municipality would
18 have to demonstrate in that particular fact scenario that a
19 particular junked vehicle does, in fact, create a nuisance to
20 surrounding neighbors.

21 I didn't want to put it in the nuisance section
22 of the zoning. I wanted it to be, again going back to the
23 purpose of that, primary use of your residential district is
24 for primarily residential uses. At some number of animals,
25 dogs, if you have more than in this instance four, again it's

1 a judgment call, that's no longer accessory to a dwelling.
2 That's something that's a separate use separate and apart
3 from a dwelling use. That's the rationale. That's where it
4 is now. But that's where I think it's appropriate to keep
5 it.

6 THE CHAIRMAN: Do you have -- is the justification
7 upon challenge, is there a difference in whether you justify
8 it under the Zoning Ordinance as an accessory use as opposed
9 to the nuisance section of the Ordinance?

10 MS. CAMP: No. I think we are -- I think you have --
11 Second Class Township Code gives the Board of Supervisors its
12 powers. Authority that you have to enact regulations comes
13 from what is listed in the Second Class Township Code. I
14 listed here anything within the Second Class Township Code I
15 think gives you authorization to enact these regulations. I
16 do think it's more appropriate to put it in the accessory use
17 section.

18 I did cite a section of the Second Class Township
19 Code that talks about prohibiting nuisances. There is many
20 justifications, reasons why you would want to impose a
21 restriction on the total number of animals you're allowed to
22 have on a residential lot.

23 MR. ISAYEFF: We already have a restriction on
24 kennels. We have kennel as a use. It's a facility for
25 keeping of a total of more than ten dogs and/or cats over

1 three months in age on a lot or as may be otherwise defined
2 as kennel under 240-32.

3 This is not about kennels. This is about something
4 that we referred to as pets. Dogs fall under pets keeping in
5 our Code. It says the keeping of domestic animals that are
6 normally considered to be kept in conjunction with a dwelling
7 for pleasure of the resident family. This shall include --
8 shall include dogs, cats, small birds, gerbils, rabbits or
9 other animals commonly sold in retail pet shop.

10 I would like to take this further for you, go to
11 Wikipedia. It talks about dogs. It says dogs perform many
12 roles for people such as hunting, herding, protecting,
13 assisting police military, companionship and more recently
14 aiding handicapped individuals. This impact on human society
15 has given them the nickname man's best friend.

16 There isn't a single other animal in this world that
17 we refer to as man's best friend. So tonight we are going to
18 treat them as an accessory. We are going to demean their
19 value to family and society at large. We are going to
20 restrict them with no rationale or restriction or purpose for
21 the restriction other than we have the ability to make
22 ordinances. Seems contrary to everything that is of value in
23 this community.

24 MS. EMANUEL: Can I get a chance? My turn? Senya
25 says history isn't important but I think it is. In 1983 I

1 was Chairman of the Planning Commission that recommended this
2 ordinance with four. We were going from an ordinance back in
3 1965 which was this thick compared to our current ordinance
4 which is that thick that had no restrictions, partly because
5 East Goshen was mostly farmland. We could envision as it was
6 beginning to get residential development on small acre lots,
7 half acre mostly, that there had to be a restriction to the
8 number of animals. We spent considerable time looking at
9 horses, pigs, gerbils, rabbits, trying to decide what an
10 appropriate size lot would be to manage that number of
11 animals.

12 It was not arbitrary. We had consultants come in.
13 We spoke to them. We came up with the idea that since a lot
14 of our houses were on half acre lots, that it was appropriate
15 to limit the number of. We came up with four. Not
16 arbitrary. We spent a lot of time coming up with four.

17 Four has been managed without any problems since
18 1983. I don't know that there's ever been a contest to that.
19 I think it's still valid now.

20 MR. ISAYEFF: Miss Emanuel, thank you. I did not say
21 history isn't important. I said that's history. There is a
22 big significant difference between those two terms. This
23 isn't about the history of how we got here. Tonight we are
24 here to discuss the need to be able to justify that number of
25 four that was discussed back in 1983 with consultants. World

1 has changed. Whereas I may agree that the number of dogs --
2 any number of dogs might be too many in an apartment, I think
3 the rationale that we have in this table where we have the
4 same number of dogs for an apartment or single family
5 detached house that may be on two acres or two and a half
6 acres, certainly under three, it's incongruous in this
7 discussion we should have them linked together. Four in an
8 apartment or townhouse or four in a property, semi-detached
9 house of less than three acres.

10 Setting arbitrary numbers without justification
11 makes no sense. It will be challenged at some point.
12 We will lose because tonight we are not going to be able to
13 justify it other than saying that's the way we used to do it.
14 It worked then, it should work today. That's not good
15 business.

16 MR. PROCTOR: Tonight's the first time I heard about
17 these consultants in '83 or prior that supposedly advised. I
18 don't doubt they did, Janet. But where are those reports?
19 Are they -- is there anything in the minutes to support why
20 they came up with this number? Because so far I have not
21 heard a reason, I have not heard a rationale. I've heard
22 because it's history we are doing this, not because X
23 number of dogs creates this problem or that problem or what
24 have you.

25 And I still say that this whole thing stems from an

1 incident -- single incident we had last November and not
2 because of some concern other than that. I think that we
3 need to look at this very carefully. If Rick has to go back
4 in the records, archived files, look for that -- these
5 consultant's reports or what they had to say, I would like to
6 hear it.

7 MR. ISAYEFF: As would I.

8 MR. BATTAVIO: Let's remember that we have a
9 Solicitor to the right of me that advised us that to the best
10 of her knowledge this would be defensible if challenged. So
11 we are taking the same rationale of four that we had back in
12 the eighties. It's not broken. We are legitimizing so we
13 have a leg to stand on if it is challenged. So I don't see
14 the reason for backtracking at this point. We certainly have
15 done our due diligence on this. I feel to go any further
16 backwards, I just don't see the justification for it.

17 It's defensible according to our Solicitor. She's
18 the professional. That's who we -- that's who we listen to
19 in the case. So as far as I'm concerned, do it, be done with
20 it, legitimize it, give us the teeth that we need to stand up
21 in court and move on.

22 THE CHAIRMAN: I think number one, man's best friend
23 happens to be in the singular, so it's not men's best friend.
24 It's man's best friend. However, I also said in the
25 beginning that there are -- you cannot discriminate against

1 any breed of dogs. We got little dogs, big dogs. Some are
2 very passive, some are very not so passive. So you got to
3 kind of balance this thing out. And to me, when you look
4 at -- it's one thing to have a very small dog. It's another
5 thing to have a very big dog, particularly one is aggressive.

6 Now having said that, this gets kind of down into
7 the weeds, but there is a case that was mentioned in terms of
8 this junk vehicle on a property that was sitting there.
9 Courts determined that wasn't an acceptable reason to ban
10 junked vehicles. You had to have some other reason that
11 created a nuisance thing. So happens, whether it was
12 artificially planned or whatever, it was documented I guess
13 through pictures and so forth there was kids that played on
14 the junked vehicle. At the same time kids were playing on
15 the vehicle, they also saw rats. As a consequence of that,
16 Courts then deemed it to be a junked vehicle.

17 Now, having said that, somebody brought it up, I
18 know there is, myself, there is at least four other people
19 that are from the Brookmont section of the Township are here
20 tonight. Back in October it was -- there was a very serious
21 dog mauling where two people were greatly hurt -- seriously
22 hurt. And I would dare say if there were more of the same
23 type of dogs that were involved in this particular situation
24 that may well have happened one or both of the people would
25 have been killed. So when I looked at this -- I also have to

1 say thanks to Candice. We also got awful lot of publicity.

2 Because of some of the places I travel, I happen to
3 have a lot of people come up to me and say, you know, what
4 is it with you people over there in this dog situation. I
5 would say it's about twenty to twenty-five people had stopped
6 me at different times after that article was written. None
7 of them could understand why there wasn't a limitation, some
8 limitation on dogs as opposed to no limitation whatsoever.
9 Now that is not a statistically valid sample in any way,
10 shape or form. There wasn't one person in that group that
11 ever said anything about having a limited number of dogs.

12 So when I look at all these things, I particularly
13 look at the dog mauling situation with three dogs that, which
14 the breed, you know, in itself unfortunately has a certain
15 reputation, and I can assure you that if there was more than
16 four dogs, well, four of the dogs or three of the dogs out of
17 four were this particular breed, I would have to say if you
18 happen to have more of them, same situation which was an
19 accident, probably only time in East Goshen history we had
20 this, but to me this accident or this situation there could
21 be used if we wanted to in preparation of our defense of this
22 ordinance in the same way that the children playing on a
23 junked car with rats would be used in the case of the junked
24 car situation if we chose to do that.

25 So most of the things that we present, most of the

1 regulations that we have, are to prevent something that's
2 possible but most improbable from happening but you have to
3 do it to be rational about the whole thing.

4 So when I grind this all up, it seems to me that
5 four is reasonable. Certainly something we should do. I
6 think the housing stock here justifies what we are doing.
7 The fact that it's been in place for thirty years or more now
8 and we haven't had any anybody challenge this in any way,
9 shape or form, I don't believe we ever had an enforcement
10 issue, certainly seems reasonable.

11 When we started out on this venture six months ago
12 it was really to justify or define reasons that would support
13 in our Solicitor's opinion defense of this particular
14 ordinance in the courts if it was challenged. On a number of
15 occasions Kristin said, has indicated that she thought it
16 could be safely challenged.

17 So with that, I don't know if anybody else up here
18 has any questions, do you have any comments?

19 MR. ISAYEFF: Mr. Smith, how many of the fifty-nine
20 percent of the single family detached dwellings in East
21 Goshen have three or more acres, what percentage?

22 THE CHAIRMAN: About twenty-five percent. Weren't
23 that many.

24 MR. SMITH: How many lots have more than three acres?
25 I think about a hundred lots with more than three acres.

1 MR. ISAYEFF: So we have 8500 properties in East
2 Goshen Township, of which only a hundred can have more than
3 four dogs.

4 MR. SMITH: Yes. But the 8500 includes about a
5 hundred commercial. Yes.

6 MR. ISAYEFF: Maybe even less.

7 MR. SMITH: There is a hundred residential properties
8 by last count qualify for more than four.

9 MR. ISAYEFF: So everybody else can have four,
10 including those people living in an apartment. I fail to see
11 the rationale or justification to use housing stock as a
12 means for this decision.

13 THE CHAIRMAN: Any other comments? If not, we will
14 open it to up to the floor.

15 MR. PROCTOR: I think the main issue is a stand alone
16 ordinance that talks about noise control of the animal and
17 animal waste. That is what the issue is, not the numbers.
18 Those are the things, controlling the dogs. Whether you have
19 one dog or fourteen dogs, it's controlling the dog. Whether
20 you have one dog or fourteen dog it's how much noise they
21 make. Whether you have one dog or fourteen dogs it's how
22 much waste they leave in public areas. That is the issue.
23 Or even in private areas for that matter. That's the issue.
24 Those three things. Not the numbers.

25 As I said at previous meetings you can have fourteen

1 little Chihuahua or you can have fourteen Labrador
2 Retrievers. I don't know much about dog breeds but size of
3 dog is, as you said earlier yourself, is a major factor. So
4 having four large St. Bernards, Labrador retrievers versus
5 four Chihuahua is a big difference -- huge difference. So by
6 restricting numbers we are taking our eyes off what the real
7 issue is, which is to control the nuisance that might be
8 created through noise, waste, lack of control.

9 THE CHAIRMAN: Just to point out, the use of a number
10 is pre having dogs. It's an antecedent -- like that big
11 word? It happens before the fact. Second ordinance, which
12 is what Chuck is referring to, deals with the nuisance aspect
13 of this, has to be after the fact what happens.

14 Now in the case what happened up in Brookmont, it
15 wasn't a lack of controlling dogs. It was an accidental
16 leaving a crack in a door when they were moving furniture
17 around. That was certainly not anticipated. These kind of
18 things can happen. So it's not things where it was
19 conscious. I don't think we have had a conscious problem in
20 East Goshen going all the way back to when the ordinance was
21 put in place. So it's really -- it's not worrying about
22 people taking care of their dogs, because most people do.
23 There is some cases they may not. Ordinance we are talking
24 about after this one will clearly demonstrate that. We will
25 talk about dogs that run loose, talking about dogs people

1 don't clean up after, that kind of thing.

2 This is a whole different situation. It occurs
3 before the fact of having a dog, not after the fact of having
4 a dog. It's a different kind of flavor. I assume not every
5 township puts a limitation on the number. I'm sure there are
6 lots of townships do put a limitation on the number.

7 Our only issue here tonight is does in the eyes of
8 our Solicitor and ourselves, of course, do we think it's
9 enforceable. Kristin has said several times tonight and
10 before that she believes it is defensible in court.

11 MR. ISAYEFF: Do I, Mr. Shane, understand correctly
12 when you said that what happened at Brookmont Drive was not a
13 matter of lack of control that the dogs were let out?

14 THE CHAIRMAN: By accident.

15 MR. ISAYEFF: But that is lack of control. That's
16 exactly what we are talking about tonight. Our ordinance is
17 very clear, that dogs have to be secured whether by fence,
18 leash or held up in the house. We even have a rule you can't
19 put a dog in a refrigerator or barrel whether the
20 refrigerator is on or off.

21 MR. SMITH: That's state law.

22 MR. ISAYEFF: State law. Total lack of control.
23 What Mr. Proctor just talked about is the real issue here
24 tonight. You can have one dog, it can cause as much damage
25 as five dogs. Issue is control.

1 MR. BATTAVIO: Which is coming after this.

2 THE CHAIRMAN: Well, I think without belaboring the
3 point, if you got five certain type of breed of a dog or six
4 or seven or eight versus another breed of a dog I can
5 guarantee you're going to have a bigger problem with certain
6 breeds than you're going to have with other breeds. One of
7 those breeds was very significant in the case we were talking
8 about. As a consequence you can't regulate the type of breed
9 of dog you permit in your ordinance, you got to go another
10 direction, say okay, what is a rational basis in most of our
11 neighborhoods that are one acre or less, townhouses or
12 apartments, one acre or two acres lots, which is seventy-five
13 percent of our housing stock. You are talking about most
14 of the housing stock in East Goshen.

15 I think at the end of the day we all have to make
16 our own judgment whether four, three, two, one or none is the
17 appropriate number, we go from there. So it's a question of
18 what the number of votes are going to be for the ordinance we
19 have on the table. If it's three or more it passes. If it's
20 not three or more, doesn't pass. It's that simple.

21 I do think we ought to hear from the audience.

22 MR. ISAYEFF: It's clear our vote tonight is being
23 driven by events that took place -- unfortunate events that
24 took place at Brookmont Drive, the concern that it may happen
25 again here in this Township and to prevent that from

1 happening again since we can't control breeds of dogs, we are
2 going to limit the number of dogs so in the event somebody
3 else moves into the Township, has four of that breed of dogs
4 and by accident leaves their door open, we don't have another
5 mauling; is that correct?

6 MS. EMANUEL: Perhaps that might be part of Marty's
7 concern. It is not my reason -- it is not the reason for my
8 vote. I've never -- have not mentioned that incident. I
9 don't know how you can assume that that's why I believed what
10 I did when I believed it back in 1983.

11 MR. ISAYEFF: Miss Emanuel, no one questions your
12 intent in 1983 or tonight.

13 MR. SMITH: Senya, what I was saying, the incident in
14 Brookmont caused us to look at the dog rules. In looking at
15 the dog rules we found a court case that said hey, if you
16 have to -- want to have a number you have to have
17 justification. That's what I brought to the Board's
18 attention back in February.

19 MR. ISAYEFF: I understand that. We have been
20 talking for a long time tonight, leading up to tonight. I
21 still do not see justification other than the historic
22 perspective that has been shared by members of this Board, to
23 include consultants whose work that we have not had the
24 benefit of seeing.

25 We set up a committee, Miss Emanuel and Mr. Proctor.

1 That committee met with you. Today we don't have work
2 product of that committee other than setting a policy based
3 on housing stock that makes no sense to me because if an
4 apartment dweller can have four dogs of any size, and I can
5 have four dogs on my property of three acres, I don't think
6 that that's rational at all.

7 MR. SMITH: I won't question whether it's rational or
8 not, but I did bring that option back for your review, you
9 had a limited number of dogs based on dwelling units, to the
10 Board back earlier this year. That didn't go anywhere.

11 MR. ISAYEFF: If it's not rational we failed the test
12 despite what our Solicitor has advised, this would stand up
13 to a challenge. If we can't agree that it fails the
14 rationale, that it meets the rationale, what do we think the
15 general public will do next time they decide to have five
16 dogs, come in to challenge this ruling. If they have money
17 and resources they will come here and you know what, I for
18 one will not be able to find anything wrong against them
19 doing it.

20 This does not have the purpose of the restriction.
21 It does not state it. It fails the rationale test. And
22 Mr. Proctor, a practicing attorney, if he feels that way
23 too -- it's good in America you can have two lawyers who
24 disagree with one another. Imagine that.

25 THE CHAIRMAN: I can't imagine it. With that having

1 been said, anybody in the audience wants to say anything
2 certainly welcome to come up. Come on up, Joe.

3 MR. BUONANNO: Joe Buonanno, resident of East Goshen.

4 THE CHAIRMAN: Address?

5 MR. BUONANNO: I balk at that.

6 THE CHAIRMAN: Address?

7 MR. BUONANNO: 1606.

8 THE CHAIRMAN: Street?

9 MR. BUONANNO: Herron Lane, H-E-R-R-O-N, West
10 Chester.

11 Now if you're doing counts for dogs, how about
12 counts for cats, how about counts for pigs, how about counts
13 for birds, how about counts for anything else you got going,
14 because if you're going to count dogs, dogs -- only because I
15 know of one person in our development that has four dogs,
16 reason why they have them is labs, they use them for service
17 dogs. They have puppies.

18 Way that thing is read, over three months if you
19 still have more than four dogs, what happens? Are they
20 turned over to SPCA? Worst SPCA in America is in
21 Chester County. Okay. That's a matter of record. So what
22 happens? Does police come in with a warrant, take the dogs
23 out?

24 MR. SMITH: It's a zoning violation. Under standard
25 practice we would send first the property owner an advisory

1 letter.

2 MR. BUONANNO: I don't care about that. I was --

3 MR. SMITH: We would send the property owner an
4 advisory letter of the ordinance, you're in violation, ask
5 for cooperation, give them a reasonable amount of time.

6 If they don't, the law mandates we send them an
7 enforcement notice which specifically says they have thirty
8 days to bring the property into compliance. They also have
9 the right to appeal the issuance of that notice. We go
10 through there. There is a process. Police do not --

11 MR. BUONANNO: Is a warrant served of it?

12 MR. SMITH: It's not criminal.

13 MR. BUONANNO: Fine, penalty, misdemeanor?

14 MR. SMITH: It is a civil penalty. Civil penalty can
15 be imposed by the district justice. It's not a criminal
16 matter.

17 MR. BUONANNO: What would the penalty be?

18 MR. SMITH: Up to the district justice.

19 MR. BUONANNO: Okay. Well, as I said, I revert back,
20 you know, pigs are more aggressive than pit bulls. There is
21 two on our street that have pot belly pigs. They are
22 aggressive, but they are really cute. Okay. We have another
23 person that has three little white dogs. I don't know what
24 it is. German shepherd, pot belly pig, two cats, what
25 happens. What happens. He can have another dog or he has to

1 get rid of a cat or okay to have six cats. It's okay to have
2 seven cats. You want to put seven cats in an apartment
3 house. Is that okay. I mean there is no rhyme or reason to
4 this whatsoever.

5 I understand what you're trying to do. There is
6 better ways to do it.

7 Now I have happen to have a pit bull. Pit bull is
8 not aggressive. They can be. If I had four pit bulls I
9 would make sure that they were under control.

10 As far as the junker yard thing, I think that's an
11 assumption of risk. Somebody playing on somebody's, you
12 know, car in their yard, that's not only a trespass violation
13 but it's assumption of risk. It's a nuisance. So, you know,
14 there is all kinds of ways you can go.

15 Where did this four come from? Now what is the
16 ratio? Can this person have four dogs, pig, and two cats?
17 How are we going to go about that? He takes care of his
18 property. We can throw dog poop in the trash. It's legal.
19 We can pick it up on our lot, put it in a trash and Blosinski
20 picks it up. That's part of the waste control.

21 So how did this four number come up?

22 THE CHAIRMAN: Janet explained that.

23 MR. BUONANNO: She explained it. I still don't
24 understand it. I think there is others who don't understand
25 it either. I think if it was challenged it would be drop

1 kicked from here to Baltimore.

2 THE CHAIRMAN: Do you have a suggestion, Joe?

3 MR. BUONANNO: Yes, I have a suggestion. You can
4 limit all the control you want. Have to be leashed. You
5 can't have odor coming out of your house. Make a thousand of
6 them. Make it safe and secure. But to arbitrarily put a
7 number on a dog, you know, eleven chihuahua, two pit bulls
8 are real different. I don't care what Hershey Mills, I don't
9 care what any apartment house rules are, because East
10 Goshen's rule is four dogs. So if I have my own little
11 apartment somewhere and I have a nine hundred square foot
12 apartment I can have four dogs.

13 THE CHAIRMAN: That's true.

14 MR. BUONANNO: That's right. So, you know, what are
15 you saying? You're saying that you can have four dogs in a
16 nine hundred square foot apartment. They are not as
17 dangerous as having four dogs on an acre and a half. There
18 is no rhyme or reason to it. There is absolutely none.

19 THE CHAIRMAN: Appreciate your comments. Thank you.

20 Anybody else?

21 MS. RELICK: Terry Relick, 12 Tremont Drive.

22 R-E-L-I-C-K.

23 I don't understand the in-fighting when four's
24 always been on the books. It's really not enforced. So if
25 you want four dogs, three pigs, two cats, no one is going to

1 bother you. I mean it's been left alone for now. Only
2 reason they are doing this is if somebody's got four nasty
3 dogs, they want to get a fifth one, there is neighbors that
4 object, you have a leg to stand on by saying no, really,
5 guys, four is the number, where it's always been the number.

6 So what is the big deal now for the Vice-chairman to
7 say all right, we are going to keep the four but now we are
8 going to be able to enforce this if we have to? It's been
9 fifty years you haven't had to. So I don't understand the
10 big deal.

11 MR. ISAYEFF: Because we don't enforce laws when we
12 feel like it. We don't enforce laws on Brookmont Drive
13 differently than we would on Strasburg Lane. That's why.

14 MS. RELICK: I get that.

15 MR. ISAYEFF: When you have rules it applies to all.
16 Unfortunate event tonight is if you have a law that's enacted
17 because of one unfortunate event, then it affects everybody
18 else, all eighteen thousand.

19 MS. RELICK: Law is there, nobody had a problem.

20 MR. ISAYEFF: Today's discussion is to see whether it
21 can be justified. Unfortunately the example that you use,
22 we want to keep somebody from having a fifth dog because it
23 may pose a greater danger, is not enough justification. Some
24 of us don't agree.

25 MS. RELICK: You know what, you're fortunate that you

1 can live on three acres. If your neighbor has five dogs,
2 you're lucky. But if you're on ours where there is four,
3 five dogs living next to you, or six was the case or seven,
4 it's a problem. You know, we were being neighborly, not
5 calling the police on these people. You know, we dealt with
6 it, until four dogs got out, practically killed two people.
7 Now that's a problem.

8 So, you know, you're lucky you live on three acres
9 is all I can say.

10 MR. ISAYEFF: We have rules to keep dogs secured.
11 They were violated. It wasn't the number of dogs. It was
12 the rule of control that was violated.

13 MS. RELICK: More than four dogs constitutes a pack.
14 You can bring in any dog expert in here, they will tell you
15 you get more than two or more than three dogs in a
16 neighborhood or a house, now it's a pack. You have four or
17 five aggressive dogs, that's why these dogs attacked. You
18 can ask any animal control person, they will tell you that.
19 If you have more than three or four dogs, it's now a pack and
20 they take on a pack mentality. So there you go. There is
21 your rationale.

22 MR. ISAYEFF: If they are not under control.

23 MS. RELICK: Yes, you can. How do you control four,
24 five dogs? Tell me that. How do you control four, five
25 dogs, both people work everyday?

1 MR. ISAYEFF: By keeping them in the house instead of
2 leaving the door open as it occurred on that unfortunate day.
3 That was the issue. Issue tonight is control of dogs, not
4 the number. How do you control dogs, one or ten.

5 MS. RELICK: That's not the issue. Issue isn't how
6 you control them. Issue is how many can you allow. That's
7 always been four. No one challenged it so -- never mind. I
8 don't understand.

9 THE CHAIRMAN: I think the important thing, obviously
10 we are certainly free to have our own opinions up here, there
11 is nothing wrong with different people having different
12 opinions. That's kind of the way it works. I would say this
13 just before we take a vote. That if Kristin Camp, our
14 Solicitor, didn't believe that what we are doing is
15 enforceable if, in fact, it became necessary to defend this
16 ordinance, she would not have proposed this particular
17 ordinance for us to consider. And I have enough confidence
18 in Kristin to believe that in her heart she believes she can
19 take this to court, she would be able to defend this.

20 All the other stuff is important to me. Whatever
21 other explanations of the other people, it's important to
22 them. At the end of the day we all have to make our own
23 choice whether four is the right number, none is the right
24 number or whatever it is.

25 We have an ordinance to consider. We are going to

1 call to question on this ordinance.

2 MR. ISAYEFF: Mr. Chairman, I would like to ask our
3 Solicitor here if she believes it can be defended.

4 Miss Camp, you have heard the discussion tonight
5 about the concerns about the rationale and purpose of the
6 restriction. Do you believe that this ordinance can be
7 defended successfully by this Township if challenged given
8 the rationale being history and the sixty-one percent of the
9 dwellings in East Goshen Township being apartments, town-
10 houses, fifty-nine percent being single family -- which by
11 the way does not compute. Sixty-one and fifty-nine is one
12 ten.

13 THE CHAIRMAN: Percentage of stock.

14 MR. ISAYEFF: What is your position on this being
15 defended because --

16 MS. CAMP: Yes, it can be defended.

17 MR. ISAYEFF: Successfully?

18 MS. CAMP: Yes. I can't guarantee anything. As you
19 said, two lawyers can have different opinions. Two judges
20 can have different opinions.

21 Myself, my associates have done a considerable
22 amount of research on ordinances regulating dogs in
23 Pennsylvania. We would not put this before the Board if we
24 did not think it was defensible.

25 MR. ISAYEFF: Thank you.

1 MR. PROCTOR: Mr. Vice-Chairman, as the second lawyer
2 up here, and respectfully to Miss Camp, my research indicates
3 that there could be a significant challenge to this
4 ordinance. I have looked at the same cases Miss Camp has. I
5 have looked at others, looked at other research as well.

6 THE CHAIRMAN: Anybody in the audience have anymore
7 comments to make?

8 I will call to question up here, exhausted
9 conversation, all those in favor of the motion that's on the
10 floor to accept the ordinance as presented?

11 MR. BATTAVIO: Aye.

12 MS. EMANUEL: Aye.

13 THE CHAIRMAN: Aye. Who's the ayes? Carmen, Janet,
14 myself.

15 Opposed?

16 MR. ISAYEFF: Nay.

17 MR. PROCTOR: Nay.

18 THE CHAIRMAN: Two nays, Chuck and Senya.

19 Thank you very much.

20 MS. CAMP: That hearing is closed. We can start the
21 next one.

22 (Hearing concluded at 8:05 PM)

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C E R T I F I C A T E

I, Colleen M. Pimer, hereby certify that these proceedings are contained fully and accurately in the notes taken by me upon the hearing of the above matter and that this is a true and correct transcript of the same.



Colleen M. Pimer