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COUNCIL OF THE BOROUGH OF THROOP

IN RE: PUBLIC HEARING

NOVEMBER 26, 2018

6:00 P.M.

THROOP MUNICIPAL BUILDING

436 SANDERSON AVENUE

THROOP, PENNSYLVANIA

B O A R D M E M B E R S :

- RICH KUCHARSKI, PRESIDENT
- BOB MAGLIOCCHI, VICE-PRESIDENT
- ANTHONY GANGEMI
- CHARLENE TOMASOVITCH
- WAYNE WILLIAMS
- VINCE TANANA
- JOE TROPIAK, MAYOR
- LOUIS CIMINI, ESQUIRE, SOLICITOR
- ROBERT LOKUTA, CODE ENFORCEMENT OFFICER

Mark Wozniak  
Official Court Reporter

Original

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(The Pledge of Allegiance was recited.)

MR. KUCHARSKI: Roll call.

MS. GALLI: Kucharski?

MR. KUCHARSKI: Here.

MS. GALLI: Tomasovitch?

MS. TOMASOVITCH: Here.

MS. GALLI: Williams?

MR. WILLIAMS: Here.

MS. GALLI: Tanana?

MR. TANANA: Present.

MS. GALLI: Magliocchi?

MR. MAGLIOCCHI: Present.

MR. GALLI: Gangemi?

MR. GANGEMI: Present.

MS. GALLI: Mayor Tropiak?

MAYOR TROPIAK: Present.

MR. KUCHARSKI: This is the date and time scheduled for a public hearing to consider amendments to the Throop zoning ordinance. It is November 26th at 6:07 p.m.

The amendments are the addition of a warehouse and distribution facility or facilities as principal permitted uses in the I-1 and I-2 zoned districts;

1                   And the second is to amend the  
2 zoning ordinance to include as conditional  
3 use in an I-1 district halfway house,  
4 methadone treatment facility, substance  
5 abuse treatment facility, substance abuse  
6 treatment facility outpatient, and to amend  
7 the R-2 zone to include as a special  
8 exception use rooming house, group home and  
9 personal care home.

10                   Notice of the hearing was published  
11 twice in the Scranton Times. The first time  
12 on November 15, 2018, and the second time on  
13 November 19, 2018.

14                   The way we'll conduct the hearing is  
15 we have present with us tonight Bob Lokuta,  
16 Throop Borough zoning officer, and Jack  
17 Varaly, Throop Borough's planning  
18 consultant. I believe Mr. Varaly prepared  
19 the descriptions and definitions for both  
20 amendments, so we'll have Mr. Varaly address  
21 counsel first, then Mr. Lokuta. Council  
22 could then ask any questions, and then any  
23 audience members who have any questions.  
24 Mr. Varaly?

25                   MR. VARALY: I'm here to present the

1 two amendments that are proposed for  
2 consideration by council. We'll do them  
3 individually.

4 The first one is to include the term  
5 warehousing and distribution facilities as  
6 permitted uses in both the I-1 and the I-2  
7 district. Right now, the way ordinance is  
8 written it talks about warehousing but it  
9 doesn't include warehousing and  
10 distribution. I think it's almost evident  
11 that if you're doing warehousing  
12 distribution becomes a function of it, but  
13 to avoid any concerns that the borough might  
14 have or developers that are interested in  
15 locating in Throop we're doing that  
16 amendment. It's fairly minor.

17 There's been a proliferation of  
18 distribution facilities throughout the  
19 country basically due to the fact that a  
20 great deal of commercial business now is  
21 done on the internet. These facilities are  
22 basically storage facilities for  
23 distributing merchandise that people  
24 purchase online.

25 So I think it's fairly simple and

1 straightforward in terms of just adding that  
2 additional term to note that it's a function  
3 that's probably already taking place at some  
4 of the facilities that are warehousing, but  
5 to ensure you don't lose any development  
6 opportunities that may fall under that  
7 broader category I would suggest that you  
8 consider including that amendment to the  
9 terms.

10 ATTY. CIMINI: Anyone on council  
11 have any questions for Mr. Varaly?

12 MR. KUCHARSKI: What are the current  
13 I-1 and I-2 zones, Bob?

14 MR. LOKUTA: Where are they? You're  
15 mainly looking at the industrial park, the  
16 landfilled area, and the other I-1 is  
17 Scranton Craftsman down on South Valley  
18 Avenue. They're your I zones.

19 ATTY. CIMINI: Mr. Lokuta, do you  
20 have anything to add?

21 MR. LOKUTA: Yes. I brought this  
22 idea up to council maybe a year and a half,  
23 two years ago to add warehousing and  
24 distribution facilities to the I zones. I  
25 do get calls from different businesses and

1 so forth, developers looking to do this type  
2 of business up in the industrial park, and  
3 when I tell them they're not permitted uses  
4 it kind of turns them off and they go.  
5 That's one of the reasons that prompted  
6 this. It's been a while since I've been  
7 having this idea and I approached council a  
8 year and a half or two years ago.

9 ATTY. CIMINI: Thank you. Does  
10 anyone in the audience have any concerns,  
11 comments, questions regarding this? Okay.  
12 In addition, the Lackawanna County Planning  
13 Commission submitted or forwarded that they  
14 have no concerns or objections to this  
15 proposed amendment.

16 The second one?

17 MR. KUCHARSKI: So do we vote on  
18 this now?

19 ATTY. CIMINI: Well, when we're done  
20 with the presentation. The agenda has both  
21 motions.

22 MR. VARALY: The second one deals  
23 with a more complicated topic than the first  
24 one. To give you a little bit of background  
25 information, I was contacted by Bob a few

1 months ago, and he had somebody who had  
2 called up and they inquired about the  
3 possibility of opening up a sober house  
4 somewhere within the borough. I don't think  
5 anything further materialized with that  
6 particular call, but as a result Bob and I  
7 had some extensive discussions on it, and  
8 I've been doing a lot of work over the past  
9 few years with communities and developers  
10 regarding substance abuse, treatment  
11 facilities, halfway houses, group homes.  
12 Any type of communal living arrangement.

13 So when I took a look at the  
14 borough's ordinance I suggested to Bob that  
15 we look at the three topics that are listed  
16 within -- it's actually seven topics that  
17 are listed within the context of the  
18 ordinance. I have rooming homes, group  
19 homes and personal care homes as a use that  
20 would be permitted in the R district subject  
21 to special exception approval, meaning it  
22 would have to go before the zoning hearing  
23 board for ultimate decision as to whether or  
24 not the use would be approved.

25 Now, with regard to rooming house

1 and the term sober house, a little bit  
2 further I'm going to talk about how all  
3 these other regulations or uses within this  
4 ordinance are regulated by state agencies.  
5 There's a regulation concerning methadone  
6 houses, halfway houses, substance abuse  
7 treatment facilities. They all, in order to  
8 operate, besides having local zoning  
9 approval, need to secure a license from the  
10 state in terms of meeting the standards that  
11 are applicable to it.

12 With a sober house there is no  
13 standards. I mean, a lot of times you'll  
14 see there might be somebody putting an ad in  
15 the paper that we're operating a sober house  
16 and they can take guests in, and they may be  
17 people that have completed substance abuse  
18 treatment programs of some sort. But the  
19 difference between that facility and some of  
20 the other ones is, number one, it's not  
21 licensed by the state, a sober house.

22 Number two, there are no governing  
23 standards. You could have somebody that  
24 runs a very good one and has compassion and  
25 compelling reasons to operate that facility,

1 but there's no norm, if you would, in terms  
2 that everyone has to meet.

3 So when I reviewed this and found  
4 out that there's no state licensing required  
5 or need for a sober house I came to the  
6 conclusion, and talked to other planners,  
7 too, that a sober house is nothing more than  
8 a boarding house or a rooming house. So if  
9 somebody came in and they wanted to open up  
10 a sober house within the borough there is no  
11 such thing, but they could apply for a  
12 rooming house.

13 With regard to group homes, they're  
14 currently in your ordinance but I wanted to  
15 add a degree of clarity. A group home is a  
16 number of individuals that are licensed  
17 by -- it's operated in a residential  
18 setting. It's licensed by some state  
19 agency, and they usually include up to about  
20 four people. They can either have a  
21 physical or mental disability to reside  
22 there. So if you let up to four people that  
23 classify as such, they move into a home,  
24 they're living under that type of  
25 arrangement, they meet the definition of

1 family under your ordinance and there would  
2 be no special requirements they would have  
3 to meet.

4 A group home, in terms of the same  
5 type of operation, that goes over four and  
6 requires five would be a special exception  
7 and would require approval from the zoning  
8 hearing board.

9 And the third one, personal care  
10 home, that is licensed by the state under  
11 the special exception provisions, and a  
12 personal care home is similar to a boarding  
13 house in a sense, but what it is, it's  
14 licensed to be able to provide individuals  
15 that have some type of disability but not --  
16 don't require skills or intermediate nursing  
17 care facility to still live in a residential  
18 setting, and they may need assistance with  
19 activities like dressing, medications, being  
20 taken to appointments, and it is licensed.  
21 That one was not include so I included that  
22 within your ordinance in terms of a special  
23 exception use in the R-2 district.

24 Now, the other four that are listed  
25 halfway down, methadone treatment facility,

1 substance abuse treatment facility, and  
2 substance abuse treatment facility as an  
3 outpatient, are a bit more complex. Again,  
4 they are all licensed by state agencies. If  
5 you're going to run a halfway house,  
6 depending upon who the clientele is, you'd  
7 probably have to go through the department  
8 of public welfare or human services. If  
9 you're doing a methadone treatment or any of  
10 the other two you would have to be licensed  
11 through the Pennsylvania Department of Drug  
12 and Alcohol Treatment.

13 I put those in the ordinance, and  
14 the ones that I dealt with over the past few  
15 years they're more than intensive uses  
16 because they're residential in nature in  
17 terms of people live there on a temporary  
18 basis. But by the same token, they're  
19 different in the sense that they are usually  
20 larger facilities. They're not going to be  
21 the same number of people residing in a  
22 boarding house or a group home. There are a  
23 lot more people involved. Some of the  
24 facilities that I've seen go up to, like, 25  
25 to 45 people. For example, in an outpatient

1 substance treatment facility.

2 The difference between the different  
3 type of substance treatment facilities is  
4 there's two types. One can be a facility  
5 where you come in and you receive detox  
6 medication or you're in there because you're  
7 coming in and you're on drugs and you're  
8 trying to get off the addiction part of it.

9 The other one, which is becoming  
10 more pronounced and possibly could be seen  
11 in Throop Borough or requested in the future  
12 is what's called a step down unit. That's  
13 usually for individuals that have  
14 successfully completed a detox program but  
15 are not ready to go back into society. They  
16 usually reside in one of these facilities  
17 for 60 to 90 days, are a tremendous profit  
18 maker. There's a cash cow now. That and  
19 medical marijuana are the two items that are  
20 out there that generate a lot of money  
21 under -- that goes into the field of zoning.  
22 With that -- these are usually pretty big  
23 facilities, 25 to 45 people.

24 So I put these uses listed in the  
25 industrial park for one reason. Number one,

1 when you look at Throop Borough, most of  
2 Throop Borough is zoned residential, R-1 or  
3 R-2. Primarily R-2. And if somebody was  
4 coming in and they wanted to put a facility  
5 in that would have been a residential  
6 facility, an apartment building or a rooming  
7 house, with 45 people you probably wouldn't  
8 permit it within that particular setting.  
9 So I wanted to make sure that in the  
10 meantime we had a location within the  
11 borough where these uses would be permitted  
12 in some fashion -- in this case as a  
13 conditional use. It would come back to  
14 council for their ultimate decision -- and  
15 not being in a position to try to react to  
16 it when something happens as opposed to  
17 being prepared in advance.

18 I looked at these carefully. We can  
19 talk about the letter that came in from  
20 Lackawanna County, from a planner there. He  
21 talked about being worried about making sure  
22 the ordinance complies with the American  
23 Disabilities Act and Fair Housing Act, and  
24 talked about court cases where in some cases  
25 municipalities were found in violation of

1 those. In fact, promoting discriminatory  
2 practices.

3 Number one, the ordinance I drafted  
4 does not fall within that classification.

5 Number two, when I talked to the  
6 planner and asked her if she could provide  
7 me with some of those numerous court cases  
8 that she was citing, both commonwealth and  
9 federal, she said I don't have any. So I  
10 think most of the stuff that she took was  
11 out of a journal or a magazine that she  
12 probably read and put it in there. But  
13 there is nothing that was in the county  
14 comment letter that would adversely affect  
15 council proceeding with this proposed  
16 amendment if you so desire.

17 When I asked her -- because there  
18 was a negative tone to the letter. I said  
19 are you recommending they not approve it?  
20 She said no, I just wanted to point out  
21 that -- which I already knew -- that people  
22 who are being treated for substance abuse,  
23 they are covered under the Americans with  
24 Disabilities Act and Fair Housing Act.

25 So any regulations on the surface

1 are not discriminatory in nature. It's how  
2 they're applied. If you pass these  
3 regulations and apply them differently to  
4 one set of individuals based upon their  
5 social conditions that would be  
6 discriminatory, but the regulations that  
7 I've provided, I never would have sent them  
8 to the borough in response to going to what  
9 you have in your ordinance if I thought in  
10 any way, shape or form they were  
11 discriminatory or create a problem.

12 Now, a lot of people sometimes raise  
13 their eyebrows when we talk about people  
14 with substance abuse facilities being  
15 classified as disabled individuals. Whether  
16 you agree or don't agree with it, it's  
17 passed and it's part of federal law where  
18 the U.S. government has defined a class of  
19 individuals who are disabled and those  
20 people are put into that classification.

21 It gets discriminatory if you're  
22 dealing with a case -- and I'm involved with  
23 one now -- where a person is applying to  
24 change an older building -- and that's why  
25 these larger buildings in the industrial

1 park may be appropriate for these uses --  
2 from one non-conforming use to another. And  
3 I don't know if it's going to be approved or  
4 not, but some of the people that came in to  
5 complain to the zoning hearing board and  
6 some of the undertones from the people on  
7 the zoning hearing board is we don't want to  
8 have those type of people in our  
9 neighborhoods. That would be discriminatory  
10 in terms of turning it down on the basis of  
11 who the individuals would be that would  
12 reside in that facility.

13 And the reason why so much caution  
14 and emphasis is placed on that is if any  
15 municipality is found guilty of violating  
16 the federal Fair Housing Act or the American  
17 Disabilities Act it's a civil rights  
18 violation. And there's real serious  
19 repercussions for that regarding if you're  
20 found guilty of that you're not only liable  
21 for punitive damages, but you're also liable  
22 to pick up the tab for what the plaintiff's  
23 legal costs were. So we want to stay out of  
24 there.

25 I believe the regulations that I

1 provided -- as I said, on the surface  
2 regulations are neutral. If you apply them  
3 differently to different individuals, that's  
4 where you get into the issue of  
5 discriminatory practices.

6 I would recommend that both the  
7 amendment for the warehousing and  
8 distribution facilities and with my  
9 explanation of the other ones dealing  
10 primarily with communal living arrangements  
11 both meet the needs of the borough and fills  
12 the gap, so if somebody comes in with one of  
13 these issues you don't have to say wait a  
14 minute, we don't have anything to deal with  
15 this. Let's see where we can address it and  
16 do it. If somebody came in with one of  
17 those uses and it was in a residential  
18 district you would have to give them a  
19 hearing before the zoning hearing board for  
20 a use variance, probably, and if there was  
21 no other place in the borough where that use  
22 was allowed it's conceivable that it could  
23 be approved.

24 By doing it in the fashion that I  
25 just devised, if somebody came in and they

1 wanted to locate one of these facilities in  
2 the residential district they would need an  
3 application for a use variance and the  
4 record would show that there is the  
5 availability to do that type of use within  
6 Throop Borough, but not at the particular  
7 location they're requesting.

8 ATTY. CIMINI: Jack, thank you. So  
9 it's my understanding that Lackawanna County  
10 was of the opinion that a group home must be  
11 treated the same as a single-family  
12 residential dwelling, and since the borough  
13 allows that as a principal permitted use in  
14 E-1, R-1, R-2 zone that a group home must  
15 also be allowed as a principal permitted use  
16 in an E-1, R-1, R-2 zone.

17 MR. VARALY: Don't agree with that  
18 based upon the size and factors we have  
19 built into it. If you're four individuals  
20 and you're operating as a group home you  
21 don't need any special approval. You don't  
22 need zoning approval. You're treated as  
23 family. If you go over the four number,  
24 that's when the special exception would come  
25 in, and you had to put some type of standard

1 on it. Probably back in the -- probably in  
2 the early '90s, when group homes started  
3 becoming more prevalent, I was dealing with  
4 a case in Wilkes-Barre where it was being  
5 challenged, the regulations were being  
6 challenged by a provider of group homes. We  
7 talked and we settled it.

8 I found out that the reason why four  
9 is included in there, four is the magic  
10 number in terms of what they don't litigate  
11 for. They don't try to put a lot of people  
12 into a given facility because the whole  
13 thing with a group home is they're trying to  
14 emulate a family atmosphere. So if you have  
15 a group home with seven or eight, nine  
16 people in it it's not conducive to what  
17 they're trying to achieve.

18 But I don't agree with her in terms  
19 that you have to -- I guess she said you  
20 have to treat halfway houses in the same  
21 fashion. All those uses, if you define them  
22 differently and they're defined differently  
23 at both the local level and the state level,  
24 the obvious conclusion is they're different  
25 types of uses that have different types of

1 impacts.

2 So by doing that and having  
3 different definitions both at the state and  
4 local level you can't unilaterally put  
5 everything in that category, and when I  
6 asked her for backup information she  
7 couldn't give it to me. I said are you  
8 recommending that the borough don't pass  
9 this ordinance? She said well, no, I'm just  
10 pointing out the American Disabilities Act  
11 and the Fair Housing Act, which I was  
12 already familiar with. Probably for three  
13 or four days she was avoiding my phone  
14 calls.

15 So finally I talked to Steve  
16 Petoniak. I said tell her I want to talk to  
17 her. I just want some backup information  
18 before I go back to Throop Borough to  
19 respond to what looked like on the surface  
20 not necessarily a recommendation not to  
21 approve it. Certainly get some negative  
22 undertones of what to be aware of.

23 ATTY. CIMINI: Does council have  
24 any questions of Mr. Varaly?

25 MR. KUCHARSKI: Anyone in the

1 audience have any questions? Thank you,  
2 Jack. Very, very thorough.

3 MR. VARALY: I'm proceeding with  
4 the comprehensive plan. That will probably  
5 be completed in the spring, and then the  
6 balance of the zoning and subdivision work  
7 will be done. Thanks.

8 ATTY. CIMINI: Thank you. So at  
9 this point council president can read the  
10 motions. There are two motions.

11 MR. KUCHARSKI: Motion number one  
12 would be to amend Throop Borough zoning  
13 ordinance number 11 of 2000 to include  
14 warehousing and distribution facilities as  
15 principal permitted uses in the I-1 and I-2  
16 zoned district, along with all relevant  
17 definitions.

18 MR. TANANA: I'll make the motion.

19 MR. KUCHARSKI: Motion by Vince.

20 MR. WILLIAMS: Second.

21 MR. KUCHARSKI: Second by Wayne. On  
22 the question? I'm sorry, I didn't ask for  
23 any audience comment. Any audience comments  
24 on this agenda tonight? Okay. Thank you.  
25 There being none. So we had a motion by

1 Vince, second by Wayne. On the question?  
2 Roll call.

3 MS. GALLI: Gangemi?

4 MR. GANGEMI: For.

5 MS. GALLI: Tomasovitch?

6 MS. TOMASOVITCH: For.

7 MS. GALLI: Williams?

8 MR. WILLIAMS: For.

9 MS. GALLI: Tanana?

10 MR. TANANA: For.

11 MS. GALLI: Magliocchi?

12 MR. MAGLIOCCHI: For.

13 MS. GALLI: Kucharski?

14 MR. KUCHARSKI: For.

15 MS. GALLI: All in favor. Motion  
16 carries.

17 MR. KUCHARSKI: Motion number two is  
18 to amend Throop Borough zoning ordinance  
19 number 11 of 2000 to include a recovery  
20 house, group home and personal care home as  
21 a special exception use in the R-2 zoned  
22 district and to include a halfway house,  
23 methadone treatment facility, substance  
24 abuse treatment facility, and substance  
25 abuse treatment facility outpatient as a

1 conditional use in the I-1 zoned district  
2 along with all relevant definitions.

3 MS. TOMASOVITCH: I'll make the  
4 motion.

5 MR. TANANA: I'll second it.

6 ATTY. CIMINI: The only change is  
7 where we had -- I think you said -- this may  
8 say recovery house. The definition in the  
9 ordinance is for a rooming house. The first  
10 line says to include a recovery house. That  
11 should be rooming house.

12 MR. KUCHARSKI: Any problem with the  
13 change? We have a motion and a second. On  
14 the question? Roll call?

15 MS. GALLI: Gangemi?

16 MR. GANGEMI: Yes.

17 MS. GALLI: Tomasovitch?

18 MR. TOMASOVITCH: For.

19 MS. GALLI: Williams?

20 MR. WILLIAMS: For.

21 MS. GALLI: Tanana?

22 MR. TANANA: For.

23 MS. GALLI: Magliocchi?

24 MR. MAGLIOCCHI: For.

25 MS. GALLI: Kucharski?

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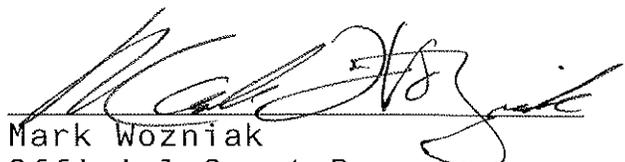
MR. KUCHARSKI: For. Thank you very  
much.

ATTY. CIMINI: The meeting is  
adjourned.

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C E R T I F I C A T E

I hereby certify that I attended the foregoing proceeding, took stenographic notes of the same, that the foregoing, consisting of 24 pages, is a true and correct copy, done to the best of my ability, of same and the whole thereof.

  
Mark Wozniak  
Official Court Reporter