

COPY

WEST PENN TOWNSHIP
COUNTY OF SCHUYLKILL AND THE COMMONWEALTH OF PENNSYLVANIA
ORDINANCE NO.: 5

AN ORDINANCE OF THE TOWNSHIP OF WEST PENN AMENDING THE WEST
PENN TOWNSHIP ZONING ORDINANCE REGARDING THE REQUIREMENTS FOR
WATER EXTRACTION AND FORESTRY

WHEREAS, the Board of Supervisors of the Township of West Penn has duly adopted and does maintain a Zoning Ordinance within the said Township of West Penn; and

WHEREAS, Section 609 of the Pennsylvania Municipalities Planning Code authorizes municipalities to amend their zoning ordinances; and

WHEREAS, after consideration of comments from the Planning Commission and after a public hearing duly conducted thereon, pursuant to the terms and provisions of the Pennsylvania Municipalities Planning Code, as amended, and the Township of West Penn Zoning Ordinance;

NOW BE IT ORDAINED, that the Board of Supervisors of the Township of West Penn does hereby adopt the following:

Section 1: Water Extraction Regulation. Water extraction shall be a use permitted by Special Exception in the Conservation and Agricultural Zoning Districts. The following provisions shall be added to Section 315 to provide the following requirements for water extraction uses:

- (1) Water extraction involving removal of an average over any thirty (30) day period of more than one hundred (100) gallons per day from a lot for off-site human consumption is required to be regulated under the provisions of this Section. Water extraction involving removal of an average over any thirty (30) day period of more than one thousand (1,000) gallons per day from a lot for any non-human, off-site commercial purpose is required to be regulated under the provisions of this Section.
- (2) A copy of any permits and approvals issued by the Commonwealth of Pennsylvania Department of Environmental Protection (DEP), Commonwealth of Pennsylvania Department of Agriculture (DA) and the Delaware River Basin Commission (DRBC) for water extraction shall be submitted to the Township prior to granting of a Special Exception by the Zoning Hearing Board. It shall be accompanied by all supporting papers submitted to DEP and, if applicable, the DRBC and/or DA.
- (3) The application for Special Exception shall include a drawing to-scale showing the boundaries of the lease or property on which the water extraction facilities are to be located, the proposed location of the water extraction facilities, the location of any roads within or abutting the lease or property, the location of occupied

structures on the property and adjacent properties, and septic systems and wells within five hundred (500) feet of the subject property boundary.

- (4) The application for Special Exception shall be accompanied by the name of the owner of the surface of the area of operations, the owner of the water rights, the name listed on any DEP, DA or DRBC permits, the proposed operator, and the names of all the proposed haulers.
- (5) The application for Special Exception shall include a detailed map clearly identifying and delineating the local and state roadways which will be utilized by any trucks, tankers, or similar vehicles to haul or ship the extracted water to the corporate limits of West Penn Township. This map shall clearly indicate the name and route number of each affected roadway. The applicant shall provide a written report by a professional traffic engineer. Such study shall analyze the suitability of the area street system to accommodate the truck traffic that will be generated. The application shall only be approved if the applicant proves to the satisfaction of the Zoning Hearing Board that the area street system is suitable in terms of structure, geometry, safety and capacity to accommodate the additional truck traffic and insure the quality of life of the residents of the Township. To the extent the damage on Township roadways utilized is in excess of that caused by normal traffic, applicant shall be required to furnish a bond to guarantee the repair of such potential damages, as determined by the Township Engineer and in accordance with the Township road bonding ordinance.
- (6) All regulations of the Pennsylvania Department of Environmental Protection, Department of Agriculture, the Delaware River Basin Commission and any other regulatory agency or body with jurisdiction over water extraction shall be complied with.
- (7) The applicant shall provide a written report by a professional geologist describing in technical detail and in a narrative understandable by a layperson how the proposal would affect wells, agricultural activities and surface water levels in the surrounding region. The report shall include all monitoring well data, including any data obtained from adjacent property wells. The application shall only be approved if the applicant proves to the satisfaction of the Zoning Hearing Board, under the guidance of the Township appointed geologist, that the proposed application will not adversely affect wells of neighboring properties, considering drought conditions, nor aquatic habitats of surface waters, nor agricultural yields.
- (8) Any areas used for loading and unloading of tractor-trailer trucks shall be set back a minimum of five hundred (500) feet from any adjacent residential lot.
- (9) Minimum Lot Area: One Hundred (100) acres.

- (10) All water extraction wells and principal or accessory structures used in water extraction shall be at least five hundred (500) feet from all property boundary lines.
- (11) The applicant shall provide a landscape buffer and adequate screening around any truck loading site to buffer the use from neighboring properties.
- (12) In addition to the costs set forth in the Township's fee schedule for a Special Exception Hearing, the applicant shall be responsible for any review fees incurred by the Township to review the application, traffic study, and hydro geologic reports. Said fees shall be paid prior to the issuance of any zoning permit.
- (13) In the event a Special Exception is granted under these provisions, the applicant shall provide the Township with copies of the well monitoring data and water volume sent to DEP, and the Township shall have the right to obtain independent verification of well monitoring figures to confirm the volumes of extraction, including having the Zoning Officer verify the water meter readings at the property. The applicant shall also provide the Township with copies of any (1) notification of noncompliance from any regulatory agency (including DEP, DA and DRBC) and (2) notification of resolution of noncompliance from any regulatory agency received by the applicant regarding the water extraction use.

Section 2: Commercial Forestry. In accordance with state law, Forestry and Commercial Forestry is permitted by right in every zoning district of the Township. The current requirements listed in Section 314 regarding Additional Requirements for Commercial Forestry are hereby repealed and replaced with the following:

- (1) Definitions. As used in this Section on Commercial Forestry, the following terms shall have the meanings given them as follows:
 - a. "Felling" means the act of cutting a standing tree so that it falls to the ground.
 - b. "Forestry" means the management of forests and timberlands when practiced in accordance with accepted silvicultural principles, through developing, cultivating, harvesting, transporting and selling trees for commercial purposes, which does not involve any land development.
 - c. "Landing" means a place where logs, pulpwood, or firewood are assembled for transportation to processing facilities.
 - d. "Litter" means discarded items not naturally occurring on the site such as tires, oil cans, equipment parts, and other rubbish.
 - e. "Lop" means to cut tops and slash into smaller pieces to allow the material to settle close to the ground.

- f. "Operator" means an individual, partnership, company, firm, association, or corporation engaged in timber harvesting, including the agents, subcontractors, and employees thereof.
- g. "Landowner" means an individual, partnership, company, firm, association, or corporation that is in actual control of forest land, whether such control is based on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner, and any agents thereof acting on their behalf, such as forestry consultants, who set up and administer timber harvesting.
- h. "Pre-commercial timber stand improvement" means a forest practice, such as thinning or pruning, which results in better growth, structure, species composition, or health for the residual stand but which does not yield a net income to the landowner, usually because any trees cut are of poor quality, too small or otherwise of limited marketability or value.
- i. "Skidding" means dragging trees on the ground from the stump to the landing by any means.
- j. "Slash" means woody debris left in the woods after logging, including logs, chunks, bark, branches, uprooted stumps, and broken or uprooted trees or shrubs.
- k. "Stand" means any area of forest vegetation whose site conditions, past history, and current species composition are sufficiently uniform to be managed as a unit.
- l. "Stream" means any natural or artificial channel of conveyance for surface water with an annual or intermittent flow within a defined bed and banks.
- m. "Timber harvesting," "tree harvesting," or "logging" means that part of forestry involving cutting down trees and removing logs from the forest for the primary purpose of sale or commercial processing into wood products.
- n. "Top" means the upper portion of a felled tree that is unmerchantable because of small size, taper, or defect.
- o. "Wetland" means areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions including swamps, marshes, bogs, and similar areas. Wetland shall include any soils determined by a hydrologist to be hydrolic soils.

(2) Notification; preparation of a logging plan.

- a. Notification of commencement or completion. For all timber harvesting operations that are expected to exceed ten (10) acres, the landowner shall notify the township zoning officer at least five (5) business days before the operation commences and within three (3) business days before the operation is complete. No timber harvesting shall occur until the notice has been provided. Notification shall be in writing and shall specify the land

on which harvesting will occur, the expected size of the harvest area, and, as applicable, the anticipated starting or completion date of the operation.

- b. **Logging plan.** Every landowner on whose land timber harvesting is to occur shall prepare a written logging plan in the form specified in Section (3) herein. No timber harvesting shall occur until the plan has been prepared. The provisions of the plan shall be followed throughout the operation. The plan shall be available at the harvest site at all times during the operation and shall be provided to the township zoning officer upon request.
- c. **Responsibility for compliance.** The landowner and the operator shall be jointly and severally responsible for complying with the terms of the logging plan.

(3) **Logging Plan Requirements.** Every landowner on whose land timber harvesting is to occur shall obtain a zoning permit. The applicant shall prepare and submit a written logging plan in the form specified below. No timber harvesting shall occur until a zoning permit has been issued.

- a. **Minimum Requirements.** At a minimum, the logging plan shall include the following:
 - i. Design, construction, maintenance, and retirement of the access system, including haul roads, skid roads, skid trails, and landings;
 - ii. Design, construction and maintenance of water control measures and structures, such as culverts, broad-based dips, filter strips and water bars;
 - iii. Design, construction and maintenance of stream and wetland crossings; and
 - iv. The general location of the proposed operation in relation to municipal and state roads, including any accesses to those roads.
- b. **Map.** Each logging plan shall include a sketch map or drawing containing the following information:
 - i. Site location and boundaries, including both the boundaries of the property on which the timber harvest will take place, and the boundaries of the proposed harvest area within the property;
 - ii. Significant topographic features related to potential environmental problems;
 - iii. Location of all earth disturbance activities, such as roads, landings and water control measures and structures;

- iv. Location of all crossings of water of the Commonwealth; and
 - v. The general location of the proposed operation to municipal and state roads, including any accesses to those roads.
 - c. Compliance with State Law. The logging plan shall show how it will comply with the requirements of all applicable state regulations, including, but not limited to, the following:
 - i. Erosion and sedimentation control regulations contained in Title 25, Pennsylvania Code, Chapter 102, promulgated pursuant to the Clean Streams Law; and
 - ii. Stream crossing and wetlands protection regulations contained in Title 25, Pennsylvania Code, Chapter 105, promulgated pursuant to the Dam Safety and Encroachments Act.
 - d. Relationship of State Laws, Regulations and Permits to the Logging Plan. Any and all permits required by state laws and regulations shall be attached to, and become part of, the logging plan. An erosion and sedimentation pollution control plan that satisfies the requirements of Title 25, Pennsylvania Code, Chapter 102, shall also satisfy requirements for the logging plan and associated map specified in Subsections 2.a. and 2.b. above, provided that all information required by these sections is included or attached.
- (4) Required Forest Practices. The following requirements shall apply to all timber harvesting operations:
- a. Felling or skidding on, or across, any public road is prohibited without the express written consent of the Township, or the Pennsylvania Department of Transportation, whichever is responsible for maintenance of the thoroughfare;
 - b. No tree tops or slash shall be left within twenty-five (25) feet of any public road, or private roadway providing access to adjoining residential property;
 - c. All tree tops or slash shall be between twenty-five (25) feet and fifty (50) feet from a public roadway, or private roadway providing access to adjoining residential property, or within fifty (50) feet of adjoining residential property, shall be lopped to a maximum height of four (4) feet above the ground;
 - d. No tree tops or slash shall be left on or across the boundary of any property adjoining the operation without the consent of the owner thereof; and
 - e. Litter resulting from a timber harvesting operation shall be removed from the site before it is vacated by the operator.

(5) Responsibility for Road Maintenance and repair; Road Bonding. Pursuant to Title 75 of the Pennsylvania Consolidated Statutes, Chapter 49; and Title 67, Pennsylvania Code, Chapter 189; the landowner and the operator shall be responsible for repairing any damage to municipal roads caused by traffic associated with the timber harvesting operation, to the extent the damage is in excess of that caused by normal traffic, and shall be required to furnish a bond to guarantee the repair of such potential damages, as determined by the Township Engineer and in accordance with the Township road bonding ordinance

(6) Sawmill Properties. A sawmill owned or rented by the property owner for his conduction of forestry practices on lands owned by said property owner is an accessory use to forestry as defined in this Ordinance.

(7) Enforcement.

- a. Township Zoning Officer. The Zoning Officer shall be the enforcement officer for this Section regarding Commercial Forestry.
- b. Inspections. The Zoning Officer may go upon the site of any timber harvesting operation before, during, or after active logging to (1) review the logging plan or any other required documents for compliance with this Section, inspect the operation for compliance with the logging plan and other on-site requirements of these regulations.
- c. Violation notices; suspensions. Upon finding that a timber harvesting operation is in violation of any provision of this Section or the logging plan, Zoning Officer shall issue the operator and the landowner a written notice of violation describing each violation and specifying a date by which corrective action must be taken. Zoning Officer may order the immediate suspension of any operation upon finding that (1) corrective action has not been taken by the date specified in a notice of violation; (2) the operation is proceeding without a logging plan; or (3) the operation is causing immediate harm to the environment. Suspension orders shall be in writing, shall be issued to the operator and the landowner, and shall remain in effect until, as determined by Zoning Officer, the operation is brought into compliance with this Section or other applicable statutes or regulations. The landowner or the operator may appeal an order or decision of an enforcement officer within thirty days of issuance to the Zoning Hearing Board of the Township. The provisions of this Section (7)(c) are in addition to all enforcement remedies available under the Township Zoning Ordinance, and the penalties for violations herein shall be as set forth in Section 810 of the Zoning Ordinance.

Section 3: Repealer. All Ordinances or Resolutions, or parts of Ordinances or Resolutions, insofar as they are inconsistent herewith, shall be in the same or hereby repealed.


Section 4: Validity. If any Section or part of a Section of this Ordinance shall be declared invalid, such invalidity shall not affect the remaining parts or Sections of this Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been enacted as if such invalid Section or portion thereof had not been included therein.

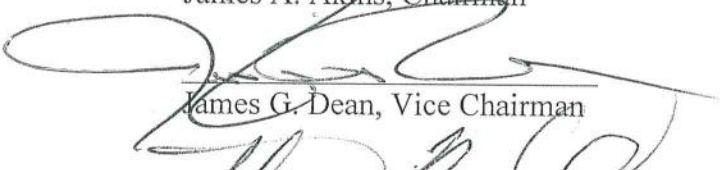
Section 5: Effective Date. This Ordinance shall become effective five (5) days after adoption.

ORDAINED AND ENACTED this 8th day of December, 2015, by a vote of 3 Yes
/ No / Abstained / Absent.


BOARD OF SUPERVISORS
OF WEST PENN TOWNSHIP

ATTEST:


James A. Akins, Chairman


James G. Dean, Vice Chairman


Ted Bogosh, Supervisor


Bobbijean Muffley, Secretary