

**SOLEBURY TOWNSHIP ENVIRONMENTAL ADVISORY COUNCIL  
MINUTES OF APRIL 9<sup>th</sup>, 2019**

**PRESENT:** Eric Allen (Chair), Tamara Lesh (Vice Chair), Christy Cheever, Deirdre Alderfer, Barry Fetterolf, Kevin Morrissey (Liaison), Jordan B. Yeager (Township Solicitor) and Christine Terranova (Administrator).

**ABSENT:** Hope Blaythorne and David Benner

**AUDIENCE:** Wendy Margolis (Doylestown Borough Council), Nick Borys (Resident), Larissa Borys (New Hope-Solebury High School Student), Laurie McHugh (New Hope Borough Council), Robert McEwan (Solebury Township Supervisor), Tovah Karl (Plumstead Township EAC), Kalle Weeks (Bucks County Audubon), Eliot Liucci (New Hope-Solebury Junior Council), Thomas Lurz (Plumstead Township EAC) and Andy Thomas (Plumstead Township EAC)

**I. OPENING OF MEETING**

Chair Allen called the meeting to order at 7:05 p.m.

**II. APPROVAL OF MINUTES – March 27<sup>th</sup>, 2019**

**Upon a Motion by Deirdre Alderfer, seconded by Barry Fetterolf, the meeting minutes for March 27<sup>th</sup>, 2019 were unanimously approved.**

**III. ANNOUNCEMENTS**

It was noted that the Doylestown Township Environmental Advisory Council will be holding an EAC Summit on either June 12<sup>th</sup> or June 19<sup>th</sup>.

It was announced that State Senator Steve Santarsiero and Representative Wendy Thomas will be speaking at the Station Tap House on April 25<sup>th</sup> at 6:00 p.m.

**IV. NEW BUSINESS**

Township Solicitor Jordan Yeager gave a presentation (documentation attached) entitled, "Municipal Authority, Environmental Protection, and Plastics" that covered the following topics:

- General contours of non-home rule municipal authority
- Municipal obligations under Pennsylvania Constitution Environmental Rights Amendment
- Uncertain state of law regarding single use plastics
- General Municipal Law Principles
- Determining Authority as a Non Home-Rule, Second Class Township
- Constitutional Rights – Limits on Governmental Authority
- Constitutional Environmental Rights
- Scope of Municipal Authority Under Environmental Rights Amendment
- Intersection of Municipal Authority and Environmental Rights Amendment
- Absence of Litigation over Local Plastics Regulations (Relying on Environmental Rights Amendment)

New Hope Borough is drafting an ordinance with a one year voluntary policy and then move into a full ordinance in 2020. WaWa, McDonalds, CVS, Dunkin Donuts and Starbucks already have something in place at other locations. New Hope Borough felt the charge of a fee may be very cumbersome. Changing the attitude and focus on the environment. New Hope Borough Zoning Officer and Police will enforce the ordinance.

What to ban and target?

- Plastic bags, straw & cups
- How to implement?
- How to enforce?
- Restaurant food containers
- Consistency is important throughout municipalities

Doylestown EAC will do a survey with local businesses and possibly residents for an opinion. They would prefer the fee aspect for bags. The thought to ban bags completely then people will have to buy the heavier bag that most likely would be friendlier to the environment.

The City of Philadelphia is currently working on a plastic ordinance.

To address the enforcement, the first offense would be a written warning from the Zoning Official and the second offense would be some type of violation.

**Upon a Motion by Tamara Lesh, seconded by Deirdre Alderfer, the Environmental Advisory Council unanimously recommends the Board of Supervisors regulate the distribution of single-use plastic carry-out bags, plastic straws, polystyrene cups and food containers with the following exceptions:**

- **Produce bags**
- **Laundry/dry cleaner bags**
- **Newspaper bags**
- **Frozen food, meat or fish bags**
- **Plastic bags without handles that are used to separate certain items from others (damage/contamination) when placed in carry-out grocery bags**
- **Bags provided by commercial establishments operated by the State or distributed by federal, state or local government (State Liquor Store).**

## **V. DISCUSSION ITEMS**

### **Deer Management** (Eric Allen)

It was noted that a meeting will be held on Monday, April 22, 2019.

### **Recycling and Recycle Forum** (Christy Cheever, Tamara Lesh and Deirdre Alderfer)

It was announced that the Recycling Forum will be held on June 11<sup>th</sup> at the New Hope Solebury High School auditorium. Patty Barthel, with Waste Management (large hauler), will give a brief presentation. Jason Leck, a smaller waste management company, will give a brief presentation. Patty Lynn, with Bucks County Planning Commission, will attend to speak about trash reduction.

### **Adopt A Highway**

Ms. Cheever is currently working on the map of available roads or sections of roads for the Council to choose from to work with.

### **Cleanup Day Program**

Mr. Morrissey noted that he is looking for an alkaline battery collection box to be placed at the Township building.

**It was noted to remove this topic off next month's agenda.**

### **Wild Area Stewardship** (Hope Blaythorne)

Ms. Blaythorne was absent from the meeting.

## **VI. Public Comment**

Ms. Kalle Weeks, Bucks County Audubon Society, announced that the Audubon will be celebrating Earth Day on Saturday, April 13<sup>th</sup>, from 10 a.m. until 4 p.m. with lots of activities, have a panel on solar energy and will provide a tour on solar energy homes.

## **VII. Adjournment**

**Chair Allen adjourned the meeting at 8:58 p.m.**

Respectfully submitted,  
Christine Terranova  
EAC Administrator



*Solebury Township Environmental Advisory Council*

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**MUNICIPAL AUTHORITY,  
ENVIRONMENTAL PROTECTION, AND  
PLASTICS**

**APRIL 9, 2019**

Jordan B. Yeager, Curtin & Heefner LLP

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## Overview

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- General contours of non-home rule municipal authority.
- Municipal obligations under Pa. Constitution Environmental Rights Amendment.
- Uncertain state of law re single use plastics.

## General Municipal Law Principles

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- Munis are creations of state law.
- Powers limited to authority expressly granted or implicitly necessary to carry out that authority.
  - Examples: General police power to protect public health, safety and welfare, Second Class Township Code, Municipalities Planning Code.
- General Assembly can preempt (block) munis from acting in certain spheres.

## General Municipal Law Principles

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- Exception: Home Rule municipalities
  - “A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter ***or by the General Assembly at any time.***” Pa. Const. art. IX, § 2.
- Limitations still apply:
  - “A municipality which adopts a home rule charter shall not determine duties, responsibilities or requirements placed upon businesses, occupations and employers....” 53 Pa.C.S. §2962(f)

## General Municipal Law Principles

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### ■ City of Pittsburgh cases

- Challenges to Pittsburgh ordinances that sought to protect public health, safety, and welfare (paid sick leave, safe buildings in emergencies; nondiscrimination in housing)
- Claims: violation of General Assembly's limits on home rule munis; no other statutory authority to support.
- Defense: Police power to protect public health, safety and welfare
- Adverse rulings from trial court and Commonwealth Court – Pa. Supreme Court review pending.

## **Determining Authority as a Non Home-Rule, Second Class Township**

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- Whether constitutional or statutory authority exists for a desired Twp. action.
- Whether caselaw provides guidance.
- BOS must assess risk of challenge and whether Twp. willing to bear litigation costs.

## Determining Authority as a Non Home-Rule, Second Class Township

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- Plastic bag regulation.
  - Whether any state preemption.
  - Whether any express statutory authority for a ban on plastic bags or single use plastics.
  - Evolving state of the law interpreting the Environmental Rights Amendment and general scope of municipal authority.

## Constitutional Rights

### -- Limits on Governmental Authority --

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- Pa. Constitution Declaration of Rights (Article I)
  - fundamental rights
- *Limitations* on governmental authority
  - Rights reserved to the people.
  - Whatever authority Township has, cannot step beyond bounds of Pa. Constitution.

Robinson II, 83 A.3d at 946-949; Pa. Env'tl. Def. Found. v. Com. ("PEDF"), 161 A.3d 911, 930-31 (Pa. 2017)

## Constitutional Environmental Rights

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- “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”

– Pa. Const. Art. I, §27

## Constitutional Environmental Rights

- Limits gov't ability to infringe on each person's right to a healthy environment.
- Limits gov't ability to permit degradation, whether via direct Twp. action or approval of third-party projects.
- "The protection of environmental and esthetic interests is an essential aspect of Pennsylvanians' quality of life and ***a key part of local government's role.***"
  - Robinson II, 83 A.3d at 919–20.

## Intersection of Municipal Authority and Environmental Rights Amendment

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- Commonwealth Court hostile to expansive reading of Environmental Rights Amendment.
- DRN v. Middlesex Twp. ZHB – substantive validity challenge began in 2014; decided by CW Court in 2017; Pa. Supreme Ct granted allocatur petition in 2018 and remanded to CW Ct.; CW Ct. oral argument scheduled in June 2019.

## Absence of Litigation over Local Plastics Regulations

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- Relying on Environmental Rights Amendment as source of authority to enact plastic bag regulation is currently untested in the courts.
- Scope of other statutory authority – such as Second Class Township Code’s police powers provisions -- likewise untested.

Jordan B. Yeager

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