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October 2, 2020

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VIA ELECTRONIC and FIRST-CLASS MAIL

Susan S. Elks, AICP
The County of Chester
Planning Commission
601 Westtown Road
P.O. Box 2747
West Chester, PA 19380-0990

**RE: *Contract # 18178 Between Easttown Township, Chester County
and Glackin Thomas Panzak***

Dear Ms. Elks:

Introduction

I am writing to you as a citizen and taxpayer in Chester County and as an attorney for a group of over 150 residents of Easttown Township who have been actively involved in the land planning process undertaken pursuant to the above referenced contract (the "Contract") between Chester County, Easttown Township, and the Glackin Thomas Panzak firm (the "Consultant").

We wish to bring to your attention what we consider to be serious and ongoing breaches of the Contract by the Consultant and the resulting waste of tax dollars. We believe the facts set forth below warrant inquiry from the County and possible action.

It also appears that the Consultant's breaches of the Contract are at least condoned, if not supported, by certain elected and appointed individuals at Easttown Township. We are writing separately to the Township to request that it direct these individuals to cease such conduct, and to protect the taxpayers of Easttown.

Before addressing the specific breaches of the Contract, I want to provide you some background on our group of residents and on the process that has unfolded in Easttown since January, 2019.

The Easttown Residents

This law firm has represented a group of Easttown Township residents which now numbers over 150 people who have actively participated in the “Easttown Township Devon Visioning” project since its inception in January 2019.

Our group of residents has attended every meeting of both the “Task Force” and Planning Commission which addressed the Devon Project. We attended and participated in the one “public workshop” on March 28, 2019. We have provided written reports of two well-known and experienced Chester County land planning experts, Tom Comitta and Edward Theurkauf, to the Task Force and Planning Commission, along with photographs, reports of neighbors, news articles and detailed analyzes of the 2018 Easttown Comprehensive Plan. In addition to the individuals I represent, we presented a petition signed by over 300 township residents expressing opposition to high density residential development being proposed by the Consultant.

We are not malcontents or naysayers. In the materials we have submitted, including the reports from Messrs. Comitta and Theurkauf, we have presented our positive “vision” for the Devon area, rooted in the Township’s 2018 Comprehensive Plan. Many of us participated in the Comprehensive Plan process, submitting a report from Mr. Theurkauf at that time. We were pleased with the conclusions of the Comprehensive Plan as they were consistent with our input and recommendations.

A few years earlier, in 2016, many of us participated in the approval process for the “Devon Yard” development. We opposed the original proposal from Mr. Eli Kahn and Kahn Development for a 135 unit apartment building and 240 car parking garage which required extensive zoning amendments. We are pleased when, after our opposition, the developer withdrew those portions of his proposal, and we fully supported the retail development which was completed.

The “Devon Center” Project

As this process has unfolded, it has become apparent to us and to the public at large, that the “Consultant” Lisa Thomas of Glackin Thomas Panzak, with the support of the two township officials on the task force and the township zoning officer who is now “interim township manager”, is attempting to gain passage of certain key provisions in a proposed ordinance to facilitate the particular type of development proposed by Mr. Kahn in 2016 and to the Task Force. This type of development requires significant, if not drastic changes to the township’s zoning ordinance. The changes would alter the character of Devon, are, in our view, contrary to the Comprehensive Plan and the “vision statement” developed by the Task Force and are overwhelmingly opposed by the community at large. The most drastic of these proposals which the Consultant is pressing, -- to repeal the longstanding limitation of 8-units per acre on multi-family buildings in Easttown and replace it with no specific limitation, thereby allowing 50 unit

per acre projects – was never presented to the Devon Task Force. It was never vetted, discussed, or considered by the Task Force and certainly never recommended by it. The proposal was never set forth in any draft ordinance presented to the Task Force or to the public. It was not until the fourth meeting of the Planning Commission on Devon Center in November 2019 that any language in a draft ordinance relating to this repeal was made public.

We are writing to you to bring to the County’s attention what we believe is a clear breach of the Contract #18718 by Glackin Thomas Panzak and the township officials advocating her proposals. We believe the County should not spend tax dollars reimbursing the township for the Glackin firm’s work which is in violation of the Contract. Indeed, the township should seek the return of at least the portion of the funds it has paid Glackin in the period since the public input process was completed May 15, 2019.

The Relevant Contract Terms:

As you know, the Contract contains several specific provisions insuring that the public input process is the driving force in the formulation of any zoning ordinance amendments. The public input is not only to be respected, it must be the source of any proposed amendments.

Page 9 of the Contract in Appendix B provides that “[t]he community visioning event will engage stakeholders and residents in the shaping of the future character of the Devon Center area The conclusions from this public event will inform the next steps in the preparation of the Devon Center Zoning District language.”

The Contract continues, under heading “Task Four”, “Glackin Thomas Panzak will propose areas of land use allocation and planning areas based on the community feedback for consideration by the . . . Task Force.” The draft ordinance was to be provided prior to the fifth meeting of the Task Force, “with an overall goal of consensus at the conclusion of the public meeting.”

The Contract requires “multiple opportunities for public participation [which] will allow for a transparent and engaging process. The input will insure that the end result of an adopted zoning amendment will be well vetted and accepted by the community.” Contract, p.10.

The Contract provisions regarding public input, participation “and acceptance by the community” of any zoning amendments flow from the 2018 Comprehensive Plan, which was developed with assistance from the CCPC. Page 50 of the Plan states that the Devon “visioning” process should include a “strong public engagement process” with “multiple opportunities for input through a series of public workshops”.

Glackin Thomas Panzak Has Breached the Contract.

The Consultant (and certain township officials) have breached both the letter and the spirit of the above Contract terms in several material respects.

Concealing the Plan to Repeal the Residential Unit Density Provision from Consideration by the Task Force and the Public

The first, and perhaps most glaring breach, has been the Consultant's inclusion in a draft ordinance unveiled in November 2019 of a provision which would repeal the longstanding control on residential unit density in Devon of 8-units per acre. This provision is found in the "Supplemental Regulations" section of the Easttown Zoning Ordinance and applies to all multi-family developments in the Township, other than the Village of Berwyn which was exempted in 2013.

Although this change would be the single most drastic amendment being proposed, and would fundamentally alter the character of Devon, it was never presented to the Task Force by the Consultant. While there were sketchy drafts of limited sections of a possible ordinance presented to the Task Force, none contained this provision or made any reference to it. Nor was the general concept of such a change – which would allow projects to go from 8 to 40 or 50 units per acre – presented to or discussed by the Task Force. Agendas and power point presentations were prepared by Ms. Thomas and there is no mention in any of them of this specific provision or of the concept of a dramatic increase in residential density.

Pursuant to the Contract, the Task Force published an on-line survey, and held a "workshop" of March 28, 2019. The workshop contained a number of "stations" with poster boards where residents could register their "likes and dislikes." The public input from the survey and workshop was tabulated and presented by Glackin at the May 15, 2019 meeting and is available on the Easttown website. With respect to the issue of high-density apartment development, the results of the input process could not be more clear. In the on-line survey, "apartments" were the least desirable type of residential development. (Question 13). "Hotel" was the least popular use in response to another question. (Question 12). The summary of residents' "vision" for Devon from the workshop states among "do not want", "high density apartments or buildings." The "Summary of Conclusions" includes: "limit residential development" and "adhere to Devon's character."

In the period from May 15, 2019 through the end of the Task Force's work in August 2019, Ms. Thomas never presented to the Task Force her proposal to repeal the unit limitation, which runs completely counter to the public input. The issue of whether to change the unit limit was not part of the workshop. There was no poster giving choices of "keeping the 8-unit limit," "raising it to 12 or 16", or to "40 or 50". We believe that this issue was not openly or squarely presented by the Consultant because she knew the public opposition to it would be overwhelming, and the Task Force would have rejected any such proposal.

Ms. Thomas's plan to include this fundamental and drastic change in the township's zoning was not revealed unit late in the evening of the final Task Force meeting in August 2019 when a member of the public made the comment that the township should not change the 8-unit limitation, as had been done several years earlier in Berwyn and recently come to public attention because of a new proposal for a 120-unit building in Berwyn. Ms. Thomas replied to the question that "yes, it would be repealed, and the density would be controlled by building height, impervious cover, and other factors".

This statement took the public and several members of the Task Force by complete surprise. Several Task Force members stated they did not agree to any such thing. As noted above, Ms. Thomas's under the radar "plan" was contrary to the public input, never presented to or vetted by the Task Force, and certainly never recommended by the Task Force. It was never included in any draft ordinance provided to the Task Force and the public.

The Task Force concluded its work in August, and the first Planning Commission meeting to consider "Devon" was held September 3, 2019. The meeting began with a presentation by Ms. Thomas. In that opening presentation, she said nothing about her intention to press for repeal of the 8-unit limitation. Members of the public asked if she intended to pursue that concept, and only then did she acknowledge that was her goal.

The first time a specific provision relating to the 8-unit repeal appears in a draft ordinance was at the November 13, 2019 Planning Commission meeting, its fourth meeting on the Devon issues. The provision is buried on page 9 of the draft, with a vague cross reference to repeal of the existing supplemental regulation.

Proposed Rezoning of Residential Lots to Benefit Mr. Kahn's Proposed Apartment and Garage Complex

In addition to the unit density repeal, Ms. Thomas has also advocated rezoning two small lots in Devon from residential to commercial uses. One of the lots is the site of Mr. Kahn's proposed garage, needed to provide the parking for his proposed apartments and hotel. The second lot is part of the "Devon Yard" overlay district adopted in 2016 upon which Mr. Kahn initially proposed a 135-unit apartment building. By rezoning that lot and repealing the 8-unit limitation he would be able to accomplish now what he could not in 2016 in the face of widespread community opposition.

The rezoning of these small residential lots is also contrary to the public input received by the Task Force, and to the Comprehensive Plan, which states that existing zoning districts should remain intact. In the public input, parking garages were at the bottom of the list of desired uses, and there is no public support to rezone residential land for commercial development. Moreover, the Task Force concluded that the lot which would contain the parking garage should not be rezoned. That lot was specifically excluded from the area of a new, Devon district by the Task Force, but Ms. Thomas has continued to advocate and include it in her current draft as commercially zoned. The only one to benefit from these changes is Mr. Kahn, the former client of the Glackin firm.

The Glackin Firm's Potential Conflict of Interest.

An important fact to consider in this process is that property in the "Devon Center" is owned by developer Eli Kahn and his business entities. Mr. Kahn was the developer of "Devon Yard" which, as noted above, initially included a high-density apartment which required the very same repeal of the unit density now proposed by the Consultant. Mr. Kahn presented a plan to the Task Force in January, 2019 for a 100 plus unit apartment building, hotel and three-story free-standing parking garage. All of these buildings required extensive zoning changes.

It is against this backdrop that Ms. Thomas was making her efforts to rezone Devon.

At a meeting in June 2019, of the Task Force, Ms. Thomas was asked by a member of the public if she had worked for Mr. Kahn including on his large project in Malvern known as “Eastside Flats”. She responded “no”. Thereafter, a Task Force member brought to the attention of the Supervisor on the Task Force a newspaper article which, contrary to Ms. Thomas’s statement, identified the Glackin firm as having worked on Mr. Kahn’s Malvern project.

At the next Task Force meeting, the Chair announced that the township had “conducted an investigation” of Ms. Thomas’s potential conflict (i.e., proposing zoning amendments for the benefit of her past client while representing the township), and concluded that while the Glackin firm had worked for Mr. Kahn, Ms. Thomas had not personally done so, and there was no conflict of interest. Citizens have made Right-to-Know requests for the documents relating to the so-called “investigation”. In response, the township has provided approximately 50 pages of documents which are entirely redacted.

Under these facts, the public is left with the unpleasant conclusion that the taxpayers are funding Ms. Thomas’s efforts to obtain zoning changes opposed by the public at large for the sole benefit of one of her former clients. We believe the County as part of its review of the Contract should request unredacted copies of the township’s “investigation” into Ms. Thomas’s potential conflict from her firm’s employment by Mr. Kahn.

Other Breaches of the Contract

In addition to ignoring and violating the public input with respect to the unit density issue and rezoning of residential lots, Glackin Thomas Panzak breached the Contract by failing to present a complete draft ordinance prior to the fifth Task Force meeting as required on page 9 of the Contract.

Indeed, Glackin never provided a full draft to the Task Force. We believe that is because the Consultant realized that the changes she desired would not have been recommended by the Task Force. No draft was provided the Planning Commission until its fourth meeting on November 13, 2019. That draft is woefully incomplete. No map of the area effected is provided. The Appendix B of bulk and area requirements in blank. Most of the “design” features language is simply copied word for word from the 2016 “Devon Yard” overlay, which applied to the one development of Mr. Kahn’s.

The taxpayers have been billed close to \$50,000 and there is nothing to show except a rough, incomplete first draft, which in its most important provisions is contrary to the community’s input and wishes.

Recent requests by the public to post any updated draft being considered on the township website have been ignored by the township’s manager.

October 2, 2020

Conclusion

The Consultant has failed to conduct the process called for by the Contract. She has ignored public input, failed to vet key provisions, failed to conduct a transparent process, insisted on important changes rejected by the Task Force and failed to garner community support and consensus. Indeed, she is steadfastly opposed to the overwhelming input from the public and insisting on amendments for the sole benefit of her former client.

We respectfully request the County to review and investigate this matter and consider these issues before any expenditure of tax dollars by Chester County. We are simultaneously requesting the Township to do the same.

Very truly yours,



Joseph C. Kohn

JCK/kw

cc: Easttown Township Board of Supervisors
Ms. Lisa Thomas
Kohn, Swift & Graf, P.C. "Devon Center" Clients