

**HILLTOWN TOWNSHIP PLANNING COMMISSION
WORK SESSION MEETING
MONDAY, MAY 3, 2021**

The work session meeting of the Hilltown Township Planning Commission was called to order by Chairman David Christ at 6:55 PM and opened with the Pledge of Allegiance. Also present were Planning Commission members Brooke Rush, Jon Apple, Eric Nogami, Frank Henofer, and Township Engineer, Timothy Fulmer.

1. APPROVAL OF MINUTES – Action on the minutes of the April 19, 2021 meeting – Motion was made by Mr. Henofer, seconded by Mr. Nogami, and carried unanimously to approve the April 19, 2021 meeting minutes as written. There was no public comment.

2. PUBLIC COMMENT ON AGENDA ITEMS ONLY: None.

3. CONFIRMED APPOINTMENTS: None.

4. PLANNING: Linke Agricultural Security Application – Chairman Dave Christ stated Mr. Thomas Linke has applied for the inclusion into the Hilltown Township Agricultural Security Area for parcel numbers 15-028-129 and 15-028-127 for a combined total of 26.488 acres. Township Engineer, Timothy Fulmer, discussed the criteria to qualify for inclusion in the Ag Security Area and provided a map outlining the parcels, the 2021 aerial view of the properties, a soils delineation map based upon Bucks County Soil Maps that show the locations of prime agricultural and soils of statewide importance, a zoning map that shows the zoning of the properties (VC and RR), a land use map prepared by Bucks County Planning Commission, and information from the Ag Security Act that contains pertinent points of what needs to be looked at. He continued to state Agricultural Security Act requirements pertaining to acreage, soil quality, consistency with the comprehensive plan, zoning, viable agricultural land, extent and nature of farm improvements, trends in agricultural economics, trends in agricultural technology, and any other factors that the local government may seem fit. Mr. Fulmer explained several items such as:

- Farming goes beyond tilling the ground as it could be raising trees and not just row crops or livestock.
- In the RR District, every agricultural use that is listed in the zoning ordinance is either permitted by right or, in one case, kennel is permitted as a special exception. In the VC District, which is comprised of mostly the village area, there are no permitted agricultural uses except for forestry, such as timber harvesting. All of the other agricultural uses are not permitted in the VC District by right. The parcel that is nearest to Hilltown Pike (15-028-127) is in the VC District completely. The front quarter of 15-028-129 is in the VC District and the remainder is in the RR District.

Mr. Thomas Linke, 2118 Hilltown Pike, noted the following:

- He purchased the property in 1987 as retail nursery/topsoil/mulch and then went wholesale.
- In the beginning of 2020, the neighbors did not want him doing what he is doing there.

- He has run the business for 34 years and now it is a problem. He has to take advantage of the weather being dry and he does work until 7:00 or 8:00 at night.
- He believes topsoil is agricultural and is a secondary business to the nursery.
- He has had the police called on him 5 or 6 times and every time, they do not hear the noise.
- He believes two of the Supervisors went back to check the noise level.
- He has unhooked the backup beepers on equipment he uses on the property.
- He had the property surveyed and put monuments up on the Ziegler property line. He noted Mrs. Ziegler stated the business does not bother her except, when the wind blows, the dust can be bad. DEP, EPA, and the Soil Conservation District have come out. He then put-up silt sock around the property line.
- He has been accused of contaminating the wells, bringing in toxic fill, and water runoff. He walked with one of the Board of Supervisors last week to show how the water runs and to see the silt sock, tire cleaners, water trucks, and all of the preventions that Soil Conservation asked him to do.
- He had offered to put up a berm in the back with trees to a neighbor, but that offer was declined.

Planning Commission/Mr. Fulmer/Mr. Linke Comments and Questions:

- Mr. Apple: Questioned the percentage of nursery/topsoil/asphalt. Mr. Linke stated nursery is 10%, topsoil is 40%, and asphalt is 50% in dollars.
- Ben Linke, 1935 Hilltown Pike: The paving business is not conducted on the property. The items that are being done on site is the agricultural items, digging and transplanting of the mature trees, the screening of the topsoil, and the sorting of the fill dirt. They have been doing business with some of the neighbors for the last 20 years before Covid hit. Once Covid hit, and the neighbors were home listening to the business, that is when the complaints started. The Linke's have been disparaged on social media. The paving business is 50%, the trees are 10%, and the dirt is 40%. No holes are being dug in the ground; there is no quarry. They just screen and sift.
- Mr. Henofer: People has said there was not anything that was enforced. He obtained information from the Township's zoning files and indicated that there was a report from October 30, 2019 from the DEP for E&S controls and sediment on the road. There was one on October 29, 2020 by Hilltown Township, for operating equipment beyond 6:00 PM, and one recently on March 23, 2021 for earth disturbance of one acre and E&S controls that stated a NPDES permit was needed. There was not any contamination, or they would have shut him down. Mr. Linke stated the last person was from Environmental Protection, EPA, stating he needed a letter from the Fire Company stating they can get back to the brush pile. EPA said he was there to make sure Mr. Linke was complying, not trying to shut him down, and he needed to fill out paperwork from the complaints that were received. Mr. Linke stated he is trying to address the problems, but no matter what he does, it is not good enough, and the neighbors just want to see him go. Mr. Henofer stated 15-028-129 is the 20-acre parcel and 15-028-127 is in the VC district, and, asked if any of the 15-028-129 parcel goes into VC. Mr. Fulmer stated the front is VC and the back is RR, and in

terms of permitted uses, the balance of the RR would meet the zoning requirement. Mr. Henofer stated that it does meet the zoning requirement, it does have the proper soils, and the acreage.

- Mr. Fulmer: Reviewed the conditions stating non-contiguous farm parcels must be at least 10 acres in size, the property should be viable agricultural land (prop land, pasture, woodland, can all be included), at least 50% of the land should be in soil capability classes I-IV as defined by the County Soils Survey, and the property must be zoned to permit agricultural uses. The zoning does not permit agricultural farming uses in the VC. Mr. Fulmer continued to state, he believes that the Right to Farm Act allows that if there is an agricultural use that exists in a district that does not necessarily permit agricultural uses and it has been there for many years, it potentially could be protected by the Act from a municipality trying to shut it down. He continued to state if the main nursery stock is located in the front quarter of the property, it is in the VC. Mr. Linke stated the whole property was nursery stock at one point and they have been taking it out as they go. There is probably 5 acres up in the VC right now and probably 2 acres in the back. Mr. Fulmer discussed the aerial map, dated 2021 on the County website, that shows there are trees on the front of the property, a section that goes back into the long area, and the very rear looks like open fields. Mr. Linke stated there are locust trees and Norway spruce trees back there that are dug up and sold every year.
- Mr. Henofer: Wooded areas will never be farmed. Mr. Fulmer stated crop land, pasture, and woodland can be included in Agricultural Security Areas. Mr. Henofer noted the neighbors at 2 Highpoint Road, 9 Highpoint Road, 2301 Hilltown Pike, and 2315 Hilltown Pike are all in the Ag Security Area.
- Mr. Rush: The Toll Brothers development, Regency at Hilltown, is in the Ag Security Area. Mr. Fulmer stated once a property gets put in Ag Security, the property must maintain the status for seven years after initial application and after the seven years, they may have the Ag Security designation removed after submitting written request to the local government for a formal hearing process. The ASA designation will stay with the property even when it is sold or subdivided.
- Mr. Linke stated he was at the property before zoning was done so he is grandfathered. Mr. Rush stated, per the violation from the Township, Mr. Linke was operating construction tools and equipment on weekends and between the hours of 6:00 PM and 8:00 AM on weekdays and was to cease the use of future operation of equipment and tools on weekends and between the hours of 6:00 PM and 8:00 AM. Mr. Linke stated Dave Taylor gave him that because he was tired of being bugged. He continued to state he saw the Supervisors and said he has been doing this since 1987.
- Mr. Christ: Just because it has been done this way for so long, does not make it legal or right. He needs to conform with what the rules are and not operate between 6:00 PM and 8:00 AM.
- Mr. Linke: He came to a meeting with three Supervisors, talked with the attorney, who basically said, because he was agricultural, those rules did not apply to him. Mr. Rush

asked if that was at a public meeting and if there were minutes. Mr. Linke did not know and would have to ask them. He did not know if it was an executive session.

- Adam Linke, 2118 Hilltown Pike: Recently moved to Telford, depending on weather, they do not have the luxury of being able to work in the 8:00 – 6:00 window. When they operate it is because they absolutely have to. They do not do it because they are bored and are looking for something to do. They understand that there are neighbors, and they think about that constantly. During Covid, for a long period of time, they had their machines going in certain directions to keep the noise level down for the neighbors.
- Mr. Linke: There were numerous complaints and Chris Engelhart had multiple officers go out multiple times and did not hear any of the noise violations.
- Mr. Christ: ASA is not a gold ticket; there are still rules and regulations. Mr. Linke stated he runs to get product but, sometimes, they have to run until 7:00 or 8:00 PM. He would like to continue to do what he has been doing for 34 years.
- Mr. Rush: Asked if Mr. Linke always had topsoil. Mr. Linke stated he bought another business out four years ago but has always done topsoil. Mr. Rush stated his usage has changed and it has gotten larger and more aggressive over the years. He continued to state his concern is Mr. Linke is using the nursery as an anchor for other things. Mr. Linke stated he would use ASA for the nursery business or the topsoil business. Every piece of equipment, other than the paver and roller, they use in the nursery or topsoil business. Mr. Linke clarified a permit was received for the new building. Mr. Rush stated his concern is that it appears than Mr. Linke thinks the violation does not apply. Mr. Linke stated he thought it was rescinded. Mr. Rush stated, assuming the violation was not rescinded, zoning has to be in compliance and does not give it a blanket to do whatever he wants. Mr. Rush stated there is a zoning issue that he would like to see, from Hilltown's point of view, be resolved before they would make a motion on the approval.
- Mr. Fulmer: The clock for the Planning Commission to consider agricultural security applications is 45 days from when the application is received by the Planning Commission. The Board of Supervisors have 180 days in which to act on the application by law because they are waiting for recommendations from the Township Planning Commission, the Bucks County Planning Commission, and the Ag Security Board. Mr. Fulmer stated if the Planning Commission does not make a recommendation, it is deemed to recommend approval of the application to the Board of Supervisors.
- Mr. Linke: He is not aware of any other zoning violation.
- Mr. Nogami: Questioned the topsoil processing. Mr. Linke stated they bring material in, take a dozer and windrow it, let it dry, and then put it through a screen that takes all of the rocks and sticks out of it. Mr. Nogami asked about the large piles of dirt. Mr. Linke stated the large piles are unscreened and they screen it as they use it. Mr. Nogami asked if there are materials stored in regard to the excavating and paving. Mr. Linke stated grinding/millings are stored and used for subbases for driveways. Mr. Nogami clarified the nursery is 10%, the topsoil is 40%, and the L&M Paving is 50%. He continued to state the only agricultural permitted in VC is timber harvesting. L&M Paving would not qualify

for that. Mr. Nogami stated topsoil is not timber harvesting, so it is problematic for him to give ASA protections in the VC District for a non-agricultural activity.

- Ben Linke: It is grandfathered.
- Mr. Fulmer: The Right to Farm Act, if it predates zoning, could be grandfathered but it has to be looked into further along with the ordinance.
- Mr. Nogami: They are not trying to shut them down based on the existing conditions. The issue is whether the non-conforming activity deserves ASA protection and the lawyers have to look into it. Also, does L&M deserve ASA protection when it is not agricultural. Ben Linke stated they are not looking for ASA protection for L&M because it does not operate on the property. They want protection for the nursery and soils which take up the 50% that is needed to qualify.
- Mr. Fulmer: In the zoning ordinance for light industrial, it states contracting use, G5, would include excavating, building, cement, masonry, painting, roofing, siding, landscaping, paving, HVAC, or uses of similar nature. G5 is allowed in the LI District and not in VC or RR Districts.
- Mr. Linke: There used to be a fuel oil business at this location.
- Mr. Rush: Just because it was a fuel oil business before, once the usage is changed, they are required to get a zoning permit.
- Mr. Nogami: Questioned since the business is growing, are they looking to relocating the paving/excavating business outside of the VC District.
- Ben Linke: Because of the area that they are in and the contacts they have made over the last 25-30 years of being in business, it would tremendously hurt the business to try and relocate. His dad has worked his whole life to pay the property off to be able to give his sons the opportunity to be able to do well with it. They never imagined leaving Hilltown Pike. At some point, they talked about subdividing it and building a townhome community. They would like to be there for life.

Public Comments:

- Chuck Smith, 3 Highpoint Road: Noise is unbearable, the officers have videos but did not bring decibel meters, the Police were out for numerous things and has seen it in action, the neighbors do not get a report, the Zoning Officer does not get a report, the Supervisors do not get a report, the Township's excuse is that they are waiting to see what happens in the ASA, Mr. Smith clarified it was Caleb Torrice who make that statement, nobody wants to put themselves in a position until they see what is going on with the ASA, the Zoning Officer stated it was definitely loud but will not bring meters out, Caleb was out this morning, heard it, and agreed that it was loud, they have videos of Police Officers taking pictures off hours with the sound of the dump trucks banging the tailgates, it has gotten bad since last January/February, he asked Mr. Linke to clean things up, Mr. Linke offered a berm, the one pile is at least 30' high and 20' from his property line, dust blows on his property, does not want to put him out of business, he tried to be nice, it is ruining the Highpoint development.

- Susan Bonino, 2102 Hilltown Pike: Lived there 20+ years, unbearable, horrible, has a small dog grooming shop and has to keep windows closed, Police said it was 76 decibels, went to 8:00 PM last Sunday, dust every day, put her house up for sale, sounds like a quarry all day, it is not a small business, it is industrial and that is what it sounds like, does not want to move but she can't stand it and cannot live like this.
- Joe Monzo, 4 Highpoint Road: Moved in 12 years ago, bought a few Christmas trees there, it is not the same place, he is at his wits end, residents should not have to move, never saw a nursery with piles of dirt 20' to 30' high, the audible and visual is terrible.
- Donna Smith, 3 Highpoint Road: Moved in 25 years ago, first 23 years were great, asking the ASA be denied, it has nothing to do with Covid, he told them the business was going to grow and the piles were going to become monstrous, the dump truck noise is intolerable, the dust/dirt is not healthy, they do not want to see them move or shut down, want to see it modified with buffers, trees and landscaped, it is similar to a quarry, hours of operation are almost never between 8:00 and 6:00, sometimes trucks go till 9:30 PM, they should be able to enjoy their home, the neighbors should be protected.
- Emma Brumbaugh, 1907 Hilltown Pike: It is an exaggeration to hear community members comparing it to a quarry, the Linke family is the nicest people she ever met, it is a smear campaign against the family, lies on social media, defamation has been going on, they are great community members, always reached out to help people, it is not fair to shut them down.
- Pat Linke, 2106 Hilltown Pike: It is blown out of proportion, he never sees dust as trees hold the dust, his animals never have a problem, watched Mrs. Smith rile the horses up and then video tape them while the equipment is running, it is defamation and the spreading of rumors to make it look worse, they try to follow every rule that they can.
- Susan Bonino, 2102 Hilltown Pike: The neighbors are not exaggerating, it has been only the last year and a half, whatever he added on, needs to not be in a neighborhood, she started to call the Township a year and a half ago.
- Francis Christoph, 5 Highpoint Road: Lives 2000 ft from the Linke business, the noise is obnoxious, cannot go outside for the last year and a half with the noise, grinder is constant, loud dump trucks, they are trying to make noise as much as they can, he knows nursery business inside out; this is not a nursery business, it was a suitable situation 2 years ago, it is not being run the same way, Mr. Linke needs to go back and do what he was doing 2 years ago, he is not maintaining the VC atmosphere.
- Caleb Torrice, 1104 Upper Stump Road: The application is not on the County Planning Commission agenda for May but they will see it in June, there are no notes on the zoning violation because the discussion was in Executive Session, the Board of Supervisors have nothing to do with Police enforcement, they are waiting to hear the Planning Commission's thoughts before he makes a personal decision, he is neutral right now, there are farmers and one Supervisor (Jack Mellhinney) on the Ag Security Board.
- Wayne Krout, 2118 Hilltown Pike: The business was never like this beforehand, the topsoil pile is just as big if not bigger than 2006/2007, when the market tanked the piles dwindled

down, there were just as many trucks back then and never a problem, they will try to do something with the complaints.

- Tom Linke: Most of the trailers have lumber in them, some have baskets, burlap, and pipe fittings, they store office trailers that are used for developers for a fee, there is one that should be demolished but it may be used to raise chickens or pigs, he knows a lot of people are not happy, but a gentleman from one of the agencies said he looked back on the record, and there was never any complaints up till this date, he knows where all this is coming from, the dust does not leave his property, he has two water trucks, he will do whatever DEP and EPA says, he tells the drivers not to slam the tailgates, he is trying to address all of the problems.
- Penny Jaxheimer, 6 Highpoint Road: She never had a problem with Tom in 32 years except for the last 2 years, all of this is new, they can hear it all the time, they do not want to stop him from making a living but to go back to the way it was.
- Donna Smith, 3 Highpoint Road: Trucks come to the top of the fill pile and topsoil pile on a daily basis, she has pictures from 2006 and there was only one small pile of dirt and not the clean fill dirt... it did not exist.
- Francis Christoph, 5 Highpoint Road: There may have been small piles of dirt there up until 2 years ago, in the last two years the big change has been noise, the major change in the last 2 years has been the noise from the machines.

Planning Commission Comments:

- Frank Henofer: There is noise, dust, and height of the piles. Under 160.36.Noise, it talks about noise for five seconds, or more than two incidents within a twenty-four-hour period of 110 decibels. Under Village Center, between 7:00 AM to 10:00 PM, 70 decibels are allowed. In Rural Residential, it is 60 decibels. After hours, 50 decibels are acceptable for Rural Residential and 60 decibels in Village Center. Mr. Fulmer stated it would be under the enforcement of the Zoning Officer to look at the decibels and he cannot speak for Zoning Department.
- Brooke Rush: They are here to make a recommendation on the Ag Security Application and not zoning or call for zoning to be enforced or implied. Mr. Fulmer stated, if Mr. Linke is in the district or out of the district, there still could be enforcement based on zoning requirements. The concern is, if the Ag Security application is accepted, then there are certain protections put in place by that law, that gives the owner of the property that is protected, some latitude.
- Frank Henofer: They have the people's point of view. There are no monitors and they do not know if there is a violation there or not. Zoning needs to get out there to see what is going on, if there is something going on. There is also Section 160-38 of the Zoning Ordinance in regard to dust. Somebody has to be right, and somebody has to be wrong, per the zoning. Is there anything in the Township zoning that says piles cannot be over 30' or is there no limit on how high he can make his dirt?

Public Comment:

- Donna Smith: The piles can be 30, 40, 50, 60 feet high, but with everything she has seen the Planning Commission do at their meetings, should there be borders, buffers, and trees for protection. It was noted that some of this is part of Zoning and they are not the Zoning Hearing Board.
- Tom Linke: He did tell Mrs. Smith he would not go any higher with the piles until he had soil conservation out, and until she got behind one of his guys on the sweeper and was almost running him down trying to take pictures. She had DEP Air out 2 times and DEP Water out 3 times complaining that the water runoff on her property, from his property, is affecting her immensely, when her water runs on to his property down to his other property. He had one of the Board of Supervisors out and showed him that none of the water on any of his properties even touched her property line. He did speak to her, before her husband refused the buffer and told him to clean up his property, and that was when the guy from EPA told him that there were no restrictions to height.

Planning Commission Comments:

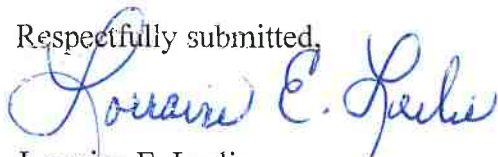
- Brooke Rush: There is currently a zoning issue that, to his understanding, and it clearly says, that when an area is to be added to the Agricultural Security Area, it is to be in compliance with zoning. His concern is, in allowing this ASA to go forward with their recommendation tonight with what he believes to be a current zoning issue. He would feel uncomfortable with that, and cannot see how they can allow it, in good conscience, without having an understanding. If it was retracted, that they do not have to comply with the citation, then there should be a paper stating that. Zoning is a legal proceeding. There are laws about that. He does not see how they can include this in the ASA or make a recommendation until he has an understanding of the current zoning that appears to be in non-compliance for hours of operation.

Motion was made by Mr. Rush, based on the information that they have before them, to deny the Agricultural Security Area Application for Tom Linke because of the current open zoning citation for hours of operation, and that it has not been complied with per the applicant, and that they are bound by the rules of the ASA to not include something that is in non-compliance of zoning. Mr. Nogami seconded the motion. Mr. Apple stated he agrees with the motion. He continued to state the ASA was designed to preserve the rural character of the Township and this is not a use that preserves the rural character of the Township. Mr. Henofer stated this is a complicated property to begin with. There is a portion in VC and another portion of 20 acres that meet the requirements of ASA. He continued to state, based on that, he feels it should pass to be included in the ASA. Mr. Christ stated he agrees with Mr. Rush's motion. He continued to state there is so many unknown's such as the nursery aspect, the topsoil aspect, and the blacktop aspect to the property and he cannot support the decision for recommendation to the ASA. It was clarified for Mr. Linke that items discussed in Executive Session cannot be commented on. Motion passed 4-1, with Mr. Henofer having the opposing vote, to deny the recommendation for the Linke application to be

added to the Agricultural Security Area, based on the current open zoning citation for hours of operation. There was no public comment. Mr. Christ noted the Planning Commission is an advisory committee to the Township and nothing is set in stone. The Board of Supervisors have the sole authority to approve or deny the application.

5. ORDINANCES/RESOLUTIONS: None.
6. OLD BUSINESS: None.
7. NEW BUSINESS: None.
8. PLANS TO ACCEPT FOR REVIEW ONLY: None.
9. PUBLIC COMMENT: None.
10. PLANNING COMMISSION COMMENTS: Discussion ensued in regard to changing the next Planning Commission meeting to Wednesday, May 19th in order to prep the room for Primary Election. Mr. Rush commended everyone with their comments and the thoughts on the ASA situation and thanked Mr. Henofer for the information he contributed. Mr. Henofer suggested looking into the zoning ordinance and make recommendations for changes. Mr. Fulmer stated the Planning Commission can make recommendations but will need guidance and legal advice on the limitations that they would have to implement certain provisions in the Zoning Ordinance. The MPC outlines the ability of the Township to enact zoning but there are limitations on what they can regulate. Some things are regulated through the state rather than local government.
11. PRESS CONFERENCE: None.
12. ADJOURNMENT: Upon motion by Mr. Rush, seconded by Mr. Nogami, and carried unanimously, the May 3, 2021 Hilltown Township Planning Commission meeting was adjourned at 9:07 PM.

Respectfully submitted,



Lorraine E. Leslie
Township Manager/Treasurer

(*NOTE: These minutes were transcribed from notes and recordings and should not be considered official until approved by the Planning Commission at a public meeting).