

HILLTOWN TOWNSHIP PLANNING COMMISSION
REGULAR SCHEDULED MEETING
MONDAY, AUGUST 21, 2023

The regularly scheduled meeting of the Hilltown Township Planning Commission was called to order by Chairman Dave Christ at 7:00 PM and opened with the Pledge of Allegiance. Also present were Planning Commission members Eric Nogami, Jon Apple, Frank Henofer, Robert Sichelstiel, Township Engineer Timothy Fulmer, and Theresa Spehar.

1. APPROVAL OF MINUTES – action on the minutes of the July 17, 2023, meeting – Motion was made by Mr. Apple, and seconded by Mr. Nogami, to approve the July 17, 2023, meeting minutes as written. Motion passed 4-0-1 with Mr. Henofer abstaining from the vote. There was no public comment.

2. PUBLIC COMMENT ON AGENDA ITEMS ONLY: None.

3. CONFIRMED APPOINTMENTS:

a) Waste Management of Pennsylvania Conditional Use: Nick Berner, Diversified Engineering, Inc., was in attendance along with Max Dickman and Jon Boughter, Waste Management of Pennsylvania, Inc., to discuss a Conditional Use Hearing for Waste Management of Pennsylvania, 300 Progress Drive and 4622 Bethlehem Pike, for an H9 use. Mr. Berner stated a variance was previously granted by the Zoning Hearing Board for a buffer yard. A review from the Zoning Officer was received stating that the storage of trash hauling vehicles and containers is an outdoor/wholesale storage (H9) use which is criteria for consideration by the Township when reviewing conditional use applications. Mr. Fulmer stated there was a sketch plan that went before the Planning Commission about two years ago that was for the expansion for a parking facility for the waste hauling vehicles and the bins that are used by the property owner in the business. It was deemed to be an H9 use under the ordinance, for outdoor storage and display, which is permitted by Conditional Use in this Zoning District. Upon reviewing the Conditional Use application plan, it also has become apparent that the owner would also like to install a Compressed Natural Gas facility for the trucks. That raised a question as to whether or not that use would be synonymous with the H9 use, be a different use, or potentially require a different type of approval to get. Mr. Berner stated he is in the process of getting that determination made with the Zoning Officer. Mr. Fulmer stated, from the original application for the sketch plan, there was a determination at that time from the Zoning Officer, Mark Sarson, who is the predecessor of Ms. Mest from the same firm, and he just looked at the truck parking itself and based it off of the historic use of the property. Mr. Fulmer continued to state the two parcels are going to be merged into one. One of the parcels is already used by Waste Management for their truck repair/truck parking facility and outdoor storage. The other parcel that is being merged into that parcel used to have a house on it that has since been raised and they would like to expand their parking facilities. When that review was done a few years ago, he does not believe, at that time, it was clear to the Zoning Officer that there was going to be any type of fueling facility there, so that is why, when he made his determination, he agreed it was an H9. Had he potentially known, or it was being contemplated thereafter, that the fueling was going to be added to the project, he may or may not have thought differently. Mr. Fulmer stated at this stage, because it has now been raised on the plan, the Zoning Officer has to re-look at it. Mr. Dickman stated, for this meeting, it is his understanding and for the matter up front, it is still the same action that they are requesting regardless of the use classification. Mr. Fulmer stated clearly the parking facility, the H9 use, is a Conditional Use application. If Ms.

Mest would agree that the fueling part of it was part of the H9 use, then the Conditional Use application is correct and then they go forward with the hearing with the Board of Supervisors. If there is another determination made by the Zoning Officer where maybe the fueling use is a different use or requires a different type of approval to get from the Township, then that would have to be done, but it still would not change the fact that a Conditional Use is still needed for the parking. Mr. Dickman stated whenever they are redesigning new truck parking facilities, they are redesigning with the ability to put in Compressed Natural Gas. It may be a year from now, but the design and the spacing has to accommodate it. Mr. Fulmer stated since they do not have any definitive idea how the Compressed Natural Gas facility would be permissible by the Township, in terms whether it is part of the H9 use or a different use, the Planning Commission could render a recommendation on the parking and make it exclusive of the fueling part of it. The applications were trying to give the complete picture of everything they could possibly do there with their project. Mr. Dickman reviewed the Wynn Associates, Inc. engineering review letter dated August 9, 2023, and discussed the following:

- A Traffic Analysis Report has been completed for the property. The traffic flow leaving the property shows the fleet vehicles will be able to exit onto Bethlehem Pike through the parcel itself, which has better site distance onto Bethlehem Pike as opposed to Keystone Drive. There are no additional vehicles being added to the traffic count, but they are being shifted around on how they would exit from the facility.
- A variance was received from the Zoning Hearing Board, on the south side of the property, for the width of the buffer, the planting requirements are still being met for the type of buffer within the area on the south, and all other buffers are being met and maintained along the north and east side for the screening of the property.
- The photo metrics plan was provided for the Zoning Hearing Board for review and will also be included in the final preliminary review for the drawings review as well but will be updated if they are going to include the CNG fueling area.

Mr. Dickman stated the parcels will be combined into one parcel mainly for the coverage requirements and for the stormwater management. Additional comments: all vehicles will be maintained on the east side of the maintenance facility, employee parking will stay the same, eventually the trailer offices will be taken down to build an office space, trucks are fueled with a wet hose, PennDot will review the traffic plan to see if the access design is adequate, they will comply with the conditions that the Zoning Hearing Board imposed as part of the approval, and, if the Conditional Use approval is granted, a complete land development application will be submitted to the Township.

Motion was made by Mr. Apple, seconded by Mr. Henofer, and carried unanimously to recommend the Waste Management of Pennsylvania Conditional Use to the Board of Supervisors limited to the parking for the H9 use, not recommending the fueling use, and contingent upon the items contained in the Wynn Associates Inc letter dated August 9, 2023. There was no public comment.

b) County Central Mini Storage Land Development: Jason Smeland, P.E., Lenape Engineering, was in attendance along with applicant Nate Clemmer, to present the preliminary plan proposing to develop a mini storage along the northeast side of County Line Road on the 4.41-acre tract within the PC-1 Zoning District. Mr. Smeland stated the applicant appeared before

the Zoning Hearing Board in February 2023 and received relief to permit stormwater management facilities within the required Type 1 buffer yards, to permit installation of plantings for a Type 4 buffer yard in lieu of a Type 1 buffer yard, to permit the rear walls of the proposed building to be used as part of the required fencing surrounding the mini-storage facility, and to permit disturbance of woodlands in excess of the 60% limitation. Mr. Smeland discussed the proposed 6,000 SF storage buildings, one 2,000 SF storage building, one 3,750 SF storage building, and associated access driveway/parking area. Mr. Smeland reviewed Wynn Associates Inc. review letter dated July 10, 2023, and discussed the following:

Requested Waivers:

- SLDO Sections 140-28.P, 140-29.D, 140-35, & 140-36 which require drainage improvements, cartway reconstruction/overlay, cartway widening, curb, and sidewalk to be installed along County Line Road within the frontage of the site. The fee-in-lieu of with be submitted if the improvements are waived.
- SLDO Section 140-17.D which requires existing features within 100 feet of the site to be shown on the plan. More information regarding drainage will be provided.
- SLDO Section 140-37.G which requires replacement trees to be planted on the site based on the number of trees proposed to be removed as part of the project.
- SLDO Section 140-45.E(1) which requires the perimeter of the parking lot to be curbed.
- SLDO Section 140-38.C.(2)(d) which requires that storm sewer pipes have a minimum diameter of 18 inches.
- SLDO Section 140-37.D which requires that at least 50% of the impervious area associated with parking facilities be shaded by installation of canopy trees.
- SLDO Section 140-45.G(4) which requires parking areas to be setback at least 20 feet from the sides of buildings.
- SMO Sections 134-19.C & D which contain design requirements for detention basins.

The Planning Commission did not have any issues with the waivers and Mr. Smeland continued: A PennDot permit will be needed, the paving, outdoor storage, and no trash service for the general public will be clarified on the plan, there are firewall requirements, contracts/insurance are required for the units, the units will be managed remotely, a management company will take care of snow removal, etc., Telford Borough Authority will handle water/sewer if needed, the lighting are low key and just on the buildings, lights will be on 24/7 due to security purposes but will need to be approved by the Board of Supervisors, Hilltown PD will be able to access the site/cameras in case there is a theft issue, engineering/drafting issues will be taken care of, the parking in the front area will remain open, vehicles will pull up to the unit to load/unload, and the existing driveway at the north side of the tri-plex will remain open.

Motion was made by Mr. Nogami, seconded by Mr. Sichelstiel, and carried unanimously to recommend Preliminary plan approval for the County Central Mini Storage Land Development contingent upon the items contained in Wynn Associates, Inc. engineering review letter dated July 10, 2023. There was no public comment.

c) Burger King (Wawa Lot 2) Land Development: Stephanie Albright P.E., APD Engineering and Architecture, PLLC, was in attendance to present the Land Development plan for the proposed 3,074 SF Burger King, with drive thru, and a 43-space parking lot on the 1.45 acres

parcel (Lot 2 of the Wawa Subdivision) located along the southwest side of Route 313 within the PC-2 Zoning District. This parcel was Phase 2 of the Wawa Subdivision that received approval from the Township in 2018. Ms. Albright stated a few minor tweaks were made to make it specific to the Burger King project. The curb cut on Route 313 is maintained along with the shared access drive over to Wawa. A minor modification is being proposed to the curb cut in the site between Burger King and Wawa at the South end, the building is being reduced from 4,400 SF down to 3,100 SF, they would like to land bank 14 parking spaces along the south side of the site from construction at this time, the dumpster is being relocated behind the Burger King building, and minor drive thru modifications were made. Ms. Albright stated, as a result of the changes, they have reduced the impervious area by approximately 3,000 SF. The general stormwater layout has been maintained, they added one inlet, and the underground detention will stay the same from what was originally designed and approved. Ms. Albright reviewed the Wynn Associates Inc. engineering review letter dated August 14, 2023, and stated the letter contained many of the items from the original approval. Ms. Albright discussed replacing the four trees that seem to be in poor health. The hours will be Sunday thru Thursday, 6:00 AM till midnight and staying open till 1:00 AM on Friday and Saturday, initially, and questioned if 24-hour operation may be approved in case Burger King wanted to open up 24 hours in the future. Mr. Fulmer stated, if the proposal were to have Burger King open 24/7 and would need lighting on all night, that would be subject to the Board of Supervisors' approval. It was noted that the Wawa is open 24/7. Ms. Albright stated she met with the Bucks County Conservation District to confirm the process and revised plans will be submitted to them. Plans have also been submitted to the Hilltown Township Water & Sewer Authority. There are minor stormwater calculation changes to be made and she will get An Opinion of Cost together. Mr. Fulmer stated this plan is a final plan because the preliminary plan was approved in 2018, and what was not proposed then that is being proposed now is the reservation of the parking spaces. Under the Zoning Ordinance, it does give the ability to agree to allow a reduction of required parking spaces. Within one year, following the issuance of the occupancy permit for the use, the Township could determine if there is a need to build those spaces, otherwise, they do not have to build them.

Motion was made by Mr. Henofer, seconded by Mr. Nogami, and carried unanimously to recommend final plan approval for the Burger King (Wawa Lot 2) Land Development contingent upon the items contained in Wynn Associates, Inc. engineering review letter dated August 14, 2023. There was no public comment.

5. PLANNING: None.

6. ORDINANCES/RESOLUTIONS:

a) Draft Zoning Ordinance Amendment – Non-Conforming Uses: Solicitor Jack Wuerstle discussed his correspondence dated August 7, 2023, and the changes to the Non-Conforming Use Ordinance. Mr. Wuerstle stated this revision is designed to address old uses; essentially uses that pre-date any zoning in the Township. What happens with non-conforming uses, is overtime, particularly with real old ones, they max out the expansion criteria or they have a problem expanding due to documenting the baseline for the expansion. To provide a mechanism for the really old uses to stay in the Township, but to also send them through a review process, because the mechanism is now, instead of going to the Zoning Hearing Board for a Special Exception for the expansion, they go before the Board of Supervisors. The Conditional Use

process is the same standard of proof, but it comes before the elected officials in terms of crafting conditions and dealing with the broader issues that confront non-conforming uses that should be in the hands of the Board of Supervisors. Mr. Wuerstle continued to state it is limited to Institutional and Industrial uses, it will keep manufacturing, and affect churches and schools. Mr. Christ asked for an example of where this was needed recently in the Township. Mr. Wuerstle stated where this is anticipated may be needed, potentially in the future, is Carson Helicopters. Mr. Apple questioned this whole change is for potentially in the future. Solicitor Wuerstle stated it will happen in the future, eventually. Either those uses will disappear, go out of business, or go elsewhere. If a use grows over time, it will eventually butt up against 50% expansion criteria. If a use became non-conforming with the last Zoning change, it can be expanded up to 50% of the building or floor area for the life of the use, or go to the Zoning Hearing Board and get a variance but, sometimes, it can be challenging because, presumably, the underlying rationale for seeking that expansion would not be something that may be an economical hardship and that does not qualify for unnecessary hardship.

Mr. Apple stated there are a lot of things that need to be done more than this. Mr. Nogami stated this seems somewhat strange and the Zoning Hearing Board is the natural process where issues get resolved in a public forum and out in the open. He continued to state it seems like it would be a get out of jail card if it just goes before the Board of Supervisors and the public does not have as much of a say. Solicitor Wuerstle stated the public has a say because it is a public hearing. Mr. Nogami stated it is a public hearing, but it is not a legal proceeding where they have party status appeals. Solicitor Wuerstle stated they absolutely do as they have all of the same rights. Conditional Uses are nothing but Special Exception hearings held before the Board of Supervisors. It is the same burden of proof, it is the same party status criteria, and it is the same appeal process. Mr. Nogami asked, now why change it. Solicitor Wuerstle stated the last Conditional Use hearing that came before the Board was the storage unit and it had 23 conditions of approval. It is going to go back a while to find a Zoning Hearing decision that will go into that depth of placing conditions upon the operation. The thinking was, if they have it in front of the elected officials who have to sit up there and listen to the public talk about the effects of the proposed expansion, they would get a better product in the end. If it would be done before the Zoning Hearing Board, it would be a Special Exception; it would be exactly the same burden of proof and exactly the same hearing process. It would be a 908 Hearing under the MPC. Mr. Christ stated, to summarize, this change is going to take the non-conforming issue away from the Zoning Hearing Board and it is going to throw it over to the Supervisors as a Conditional Use. Solicitor Wuerstle stated only for the ancient uses; uses that predate any zoning in the Township. Mr. Fulmer walked through an example of a school as where it might apply versus where it would not apply. Mr. Christ asked, regarding Tabora Farms, that was in existence before Zoning and is non-conforming, but the business has changed recently and was expanded, so how does that get handled. Mr. Fulmer stated Tabora Farms is not an Industrial Use so it does not apply as it is a retail/agricultural use. Solicitor Wuerstle stated, under the MPC, the Board of Supervisors, in a Conditional Use hearing, can attach conditions that are not part of the criteria of the ordinance. With the Conditional Use process, they can better restrict and mitigate negative impacts that could potentially come about because of the use. Mr. Fulmer summarized stating it is about a use that is either Institutional, which are both schools and churches, and Industrial uses, which there is a very specific list in the Zoning Ordinance under the H uses, which are Industrial. He continued to state he is not talking about retail, commercial, residential, or agricultural uses. And there is the added requirement that it must pre-date zoning and it has to be proved. Mr. Nogami stated it would be helpful to have a list as

there is a potential for unintended consequences not knowing who falls under this. Mr. Fulmer stated there are also some uses that they could recognize that may be not being as desirable to the Township to allow expansion. And those are listed in the ordinance amendment as being excluded in this specifically, even though they are H uses or C uses. Mr. Sichelstiel commented that the ordinance allows parcels to be added that were not there in 1959. Mr. Fulmer stated they were there in 1959 but not maybe part of this. Mr. Wuerstle stated when there are 75-year-old uses, it is easy to hit at 50% expansion. They are looking for some sort of clear line of demarcation. It made sense to pick the date that zoning came into existence and anything before that, it would qualify, if it can be proved. Mr. Wuerstle stated this ordinance is not coming before the Supervisors till September so there is some time. Mr. Fulmer stated the Planning Commission can make recommendations on it, say "yay/nay", or say what they do not like with it and provide comment. The Township is just looking for input at this time and it will also be sent to the Bucks County Planning Commission. Mr. Wuerstle revised his statement and said the earliest it is coming before the Board of Supervisors is the late meeting in September and the Planning Commission will meet again before that. Mr. Christ stated the Planning Commission can table it and express their opinion in September. Mr. Nogami stated it would be helpful for Mr. Wuerstle to identify what businesses are being impacted. Mr. Fulmer stated the businesses that are being impacted are Institutional uses which are the "C" uses in the Zoning Ordinance which include: place of worship, school, commercial school, library, recreational facility, does not include rifle range, private recreational facility, golf course, private club, community center, day nursery, hospitals, nursing homes, cemetery, funeral home, and does not include a correctional facility and group institution. In the "H" uses for the Industrial, it includes manufacturing, a planing mill, and a lumber yard and does not include quarries, resource recovery facilities, auto salvage, junk yard, composting facilities, and outdoor storage. Mr. Christ questioned the project that was at last month's meeting on Blooming Glen Road and Mr. Fulmer stated that is a medical office/residential, it would not qualify, and she bought the facility in the 2000's. Mr. Fulmer stated Carson has been there since 1957/1958 and predates zoning. Carson was always a manufacturing use for helicopters and that is his business, and he has been there ever since doing that use. If he wanted to expand at this point, because over the years he has done expansions, he would be maxed out under the zoning and would not be able to get the special exception anymore because he has gone beyond that at this point. He could go get a variance but there is no guarantee he would get it. Mr. Nogami stated there should be no guarantee anyone gets anything. Mr. Fulmer stated there is a legal burden of proof for a hardship that is self-created, or that it is a financial hardship, that could be a negative. Mr. Nogami stated what if someone purchased a home next to Carson, understanding the limitations that Carson had at that time, and all of a sudden, the rules change. Mr. Fulmer stated, under Mr. Nogami's scenario, Carson could file for a variance and go in front of the Zoning Hearing Board, the neighbor would get notice and come to the meeting and argue that they thought Carson could go no further. That same scenario could happen in front of the Board of Supervisors. Mr. Nogami stated he trusts the Zoning process as a legal process more than the political Supervisors review. Mr. Christ stated he agrees with Mr. Nogami. Mr. Sichelstiel questioned if it is a use variance or a dimensional variance and Mr. Fulmer stated it is a use variance. Mr. Wuerstle stated whatever the predispositions are, it is the same standard of proof, and it is the same process. Mr. Apple questioned if this started with Mr. Wuerstle's recommendation. Mr. Wuerstle stated it did and he was always troubled with the idea that they have this artificial means by which to deal with non-conforming uses. The Planning Commission does not see this as often just because of their geography and Mr. Apple stated he respects Mr. Wuerstle's opinion. Mr. Wuerstle

stated when you get in more urban settings, you bump up against this more often. The true issue is, if they are going to let this non-conforming use expand, this use that is inconsistent with the zoning plan and the vision for the municipality, should not be about a percentage. It should be about what is the impact on the person next door or the person in the back or what is the impact to the conforming uses in that community. There is no real reason behind it. It is hard to develop alternative criteria for expansion. Mr. Sichelstiel stated a person can add parcels to the property and then qualify to expand it. Mr. Wuerstle stated that is how businesses expand. If businesses are around long enough, they add a facility, more ground, add another site, and more employees. If it is a Borough, where there is tight construction, even a 5% increase in the size of a use can have a tremendous impact on a next-door neighbor. But with 100 acres, there is no impact at all. Mr. Apple stated it is more guidance than it is a mandate. Mr. Wuerstle stated, the problem is, when it is still under Special Exception before the Zoning Hearing Board, that is fine because the burden of proof is sort of reasonable. Special Exceptions are permitted uses, they demonstrate through the application that they can mitigate any negative impacts, and they will comply with the criteria of the land development ordinance. Even if there are protesters there, the Zoning Hearing Board is charged with, if the use qualifies, the approval of the Special Exception, and then try to mitigate, through conditions, any negative impacts. That is what is being proposed the Board of Supervisors do, but, in this view, the Board of Supervisors have a few more tools in the tool shed because they are not in any way constrained by what is in the Zoning Ordinance; they can impose conditions as long as they are reasonable whether they are found in the Zoning Ordinance or not. That is one of the reasons why they see Conditional Use decisions with sometimes 20/30/40 conditions because they sort of have a free hand; they are not going to get overturned on that unless it is something egregious. That is part of the reason why the construct is the way it is.

Motion was made by Mr. Nogami to not move ahead with this Zoning Ordinance modification. There was no second. Mr. Apple stated to table it because he would like to think about it a little longer. Mr. Wuerstle stated he will work on trying to put together some sort of a list. Mr. Nogami stated he does not know if there is a list of companies that predate 1958 as it would be helpful to know which ones. Mr. Wuerstle stated if he does have businesses in mind, he can find out. Mr. Christ stated it seems like the Township is trying to fix something that does not seem to be broken. Mr. Wuerstle stated they are trying to correct things that are in the ordinance, and this just happened to be something that came up and got discussed early. He continued to state they anticipate, into the new year, they will see a lot more. Mr. Nogami stated his understanding is that the Supervisors and the zoning were supposed to be independent and questioned if the Zoning Hearing Board gets an opinion on this. Mr. Wuerstle stated if the Planning Commission recommends it should go in front of the Zoning Hearing Board, with the same criteria, it would be for a Special Exception instead of a Conditional Use. The only change there is, is the body who is hearing it; it would be the same mechanism. Mr. Christ questioned if the Linke property be covered in this thing and Mr. Wuerstle stated it would not because he bought that property as a nursery in 1988 and a nursery would not be one of the uses anyway. Mr. Christ stated he feels sorry for the poor people who live next door to that mess because the hill is an absolute albatross.

7. OLD BUSINESS: None.

8. NEW BUSINESS:

a) Sapp Sewage Facilities Planning Module Component 4A: Mr. Fulmer stated the Sapp Sewage Facilities Planning Module is a property that has 3 ¼ acres with a house on it and the applicant would like to convert a detached accessory structure into a residential accessory unit. Because it is two units on the same property, he has to go through sewer planning, and it requires a Component 4A for an on-lot sewage disposal facility. Mr. Christ executed the Sapp Sewage Facilities Planning Module Component 4A on behalf of the Planning Commission.

9. PLANS TO ACCEPT FOR REVIEW ONLY: None.

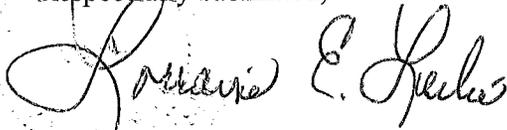
10. PUBLIC COMMENT: None.

11. PLANNING COMMISSION COMMENTS: None.

12. PRESS CONFERENCE: None.

13. ADJOURNMENT: Upon motion by Mr. Henofer, seconded by Mr. Apple, and carried unanimously, the August 21, 2023, Hilltown Township Planning Commission meeting was adjourned at 9:00 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).