

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA
CIVIL DIVISION

PSIP JVI KRUMSVILLE ROAD LLC

Appellant

v.

BOARD OF SUPERVISORS OF
GREENWICH TOWNSHIP

Appellee

NO.:

Land Use Appeal

NOTICE OF APPEAL

Appellant, PSIP JVI Krumsville Road LLC, by and through its attorneys, Fitzpatrick Lentz & Bubba, P.C., hereby appeals the decision of the Board of Supervisors of Greenwich Township referenced by this Appeal, and in support thereof, states the following:

BACKGROUND

1. Appellant, PSIP JVI Krumsville Road LLC, is a Delaware limited liability company, registered to do business in Pennsylvania, having offices at 1265 Miller Road, Wind Gap, PA 18091.
2. Appellee, Greenwich Township, acting by its elected Board of Supervisors ("BOS"), is a municipal corporation and township of the second class, lawfully existing pursuant to the Second Class Township Code, 53 P.S. § 65101, *et seq.*
3. Appellant is the fee owner of approximately 44 acres of land located off Krumsville Road (SR 737) in Greenwich Township and being Berks County Tax Parcel Number 45544603019058 ("Property").

① 4. Appellant filed a "Preliminary Land Development Plan" with Appellee on October 11, 2016 seeking to construct a warehouse/distribution facility on the Property within the I (Industrial) Zoning District (the "Plan").

5. Appellee referred the Plan to both the Greenwich Township Planning Commission ("Township PC") and the Berks County Planning Commission ("BCPC") as required by the Pennsylvania Municipalities Planning Code.

6. The Plan is entitled "Preliminary Land Development Plan for Crossroad X-Proposed Warehouse Distribution Facility" prepared by LANDCORE Engineering Consultants, P.C. ("Landcore") dated September 30, 2016 consisting of 52 plan sheets.

7. By letter dated November 22, 2016, the BCPC issued a letter stating that the proposal for an industrial warehouse/distribution facility of associated parking and stormwater controls is consistent with the County Comprehensive Plan and that the site was located within a "Future Growth Area". A true and correct copy of the BCPC's November 22, 2016 letter is attached hereto as Exhibit "A" and incorporated herein by reference.

② 8. By motion adopted at its September 18, 2017 meeting, the Township PC recommended that Appellee grant the requested waivers and approve the Plan. A copy of the minutes of the Township PC's September 18, 2017 meeting have been requested, but have not yet been provided and will be filed as part of the record.

9. Appellee held public meetings to review the Plan on October 1, 2017, November 6, 2017 and December 4, 2017 (the "Meetings").

③ 10. Prior to the Meetings, Appellant had submitted and discussed its sketch plan with Appellee showing the proposed warehouse/distribution facility and were never advised of any issues with the proposal.

4 11. Prior to the Meetings, Appellee discussed the Plan at various times at monthly meetings at the request of neighbors and/or at the request of a Supervisor even though the Plan was not before them for review or a vote.

12. At the Meetings, Appellant presented testimony of consultants including Brian Meyers of Landcore and John Wichner of McMahon & Associates, Appellant's traffic engineer. Testimony of the consultants included, but was not limited, to the following:

a. A discussion and confirmation that the Plan complied with the Township Engineer's September 14, 2017 review letter, which letter formed the basis of the PC's favorable Plan recommendation, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference.

5 b. The physical location of the Property, being adjacent to the I-78 Krumsville interchange.

c. The fact that the Property had been rezoned to Industrial, which zone is the only zone where warehouses are permitted.

d. The status of review of the Highway Occupancy Permit by PennDOT.

e. The receipt of the NPDES Permit to develop the Property as per the Plan.

f. Explanations concerning the design of the retaining walls and the fact that off-site easements for the walls were not being requested or pursued as there was no need for same.

g. Confirmation that PennDOT had verbally approved the emergency access drive into the Property including its proximity to the proposed access drive.

h. Confirmation that the necessary agreements and/or easements with Kenneth and Jude Thompson ("Thompson") would be provided to the Township Solicitor for review and approval.

i. Confirmation that existing vegetation within the stopping sight distance on the Thompson property had been removed.

⑥ 13. It was not until Appellee was threatened by public opposition and even an objector running as a write-in Supervisor candidate, did Appellee start to raise issues with the Plan.

14. Right-to-Know requests will be submitted to Appellee seeking records relating to communications between and with neighbors, the BOS, PC and their members, and Township consultants.

15. At the November 6, 2017 BOS meeting, the Appellee granted the requested waivers from the Subdivision and Land Development Ordinance.

16. At the conclusion of the December 4, 2017 public meeting, Appellee voted to deny the Plan.

17. Appellee, through its Solicitor, issued its written decision on December 15, 2017 ("Decision") denying Appellant's Plan. A true and correct copy of the Decision is attached hereto as Exhibit "C" and incorporated herein by reference.

**APPELLEE'S DENIAL OF THE PLAN CONSTITUTES AN ERRONEOUS,
ARBITRARY AND CAPRICIOUS ABUSE OF DISCRETION AND AN ERROR OF
LAW**

18. Appellant incorporates by reference Paragraphs 1 through 17 as if set forth at length herein.

19. Appellee failed to properly consider the testimony and evidence presented by the Appellant prior to issuing the Decision.

20. Appellant was unduly influenced by neighbor complaints.

21. On multiple occasions during the Meetings, Appellee challenged the appropriateness and relevance of Appellant's traffic and road improvement testimony and evidence relating to the proposed use of the Property, despite the Township Engineer agreeing with this testimony and evidence.

22. Appellee denied the Plan based on alleged defects so as to preclude the use within the Township, which results in a de facto exclusion.

23. Appellee denied the Plan on the basis of an alleged zoning defect despite the Zoning Officer not having provided a written determination of any possible defect and despite the fact that the DEP had issued a Waiver of Permit Requirements letter for the proposed drainage culvert.

24. The zoning section alleged to require relief and/or clarification has never been applied to any property within the Township similarly situated, and it is being unfairly applied and not uniformly interpreted as there are several properties within the Township with the same or similar features that did not require Zoning Hearing Board approval or review.

25. Appellee's requirement that documentation be provided regarding cuts and fills is not required as part of a preliminary plan submission pursuant to Township ordinances.

26. Appellee is improperly requiring a separation distance between the access drive and the emergency access based on International Fire Code requirements never adopted by the Township and without any evidence to support a claimed deficiency.

10 27. Despite the neighbors attempt to have a secret meeting with PennDOT regarding the Plan, PennDOT advised Appellant of the meeting in advance and Appellant attended, only to arrive and see that at least two Supervisors were in attendance, one of which is an adjoining property owner.

28. At the PennDOT meeting, the Supervisor owning land adjoining the Property stated that out of the neighbors, he was most impacted by the Plan and had issues with the proposal, yet he participated in the Decision.

11 29. Despite review letters from PennDOT stating the proposed access and emergency access met PennDOT requirements and PennDOT advising Appellant that these drives would need to comply with PennDOT's clear sight distance requirements, Appellee denied Plan approval.

30. Minor technical defects and the submission of agreements for Township review are standard conditions of preliminary plan approval and not a basis for denial of the Plan.

12 31. Appellee violated Appellant's rights by asking the Township's Building Codes Official to review the Plan and interpret the Zoning and Subdivision and Land Development Ordinances when Appellee was not satisfied with the Zoning Officer and Township Engineer's interpretation and determinations regarding same.

32. Appellee violated Appellant's rights by bringing up new issues after the October 1, 2017 meeting in violation of the agreement between Appellant and Appellee that the extension of the review period was granted but limited to four (4) enumerated items. A copy of the extension is attached hereto as Exhibit "D" and incorporated herein by reference.

33. Appellee purposefully violated Appellant's rights by providing review letters and comments to Appellant at the 11th hour including, but not limited to, a review letter issued by the

Township Building Code Official given to the Appellant a couple hours before a BOS meeting and the Zoning Officer going out to the Property the day of the December 4th meeting at the request of a Supervisor and then raising a zoning concern at that meeting even though the Zoning Officer had issued a clean zoning letter dated November 3, 2017. A copy of this November 3, 2017 review letter is attached hereto as Exhibit "E" and incorporated herein by reference.

13 34. BOS members and the Solicitor had numerous private conversations with objectors and neighbors pertaining to the Plan and even charged Appellant for many of these conversations as well as the review of Facebook entries of the objectors.

14 35. Appellee's concerns and fears regarding potential safety issues were based on speculation as none were enumerated in the Township Engineer's review letters and none were substantiated by expert testimony.

36. Appellee's denial of the Plan disregarded the recommendation of the Township PC and the BCPC's commentary that the use sought by the Plan is consistent with the County Comprehensive Plan.

37. The Decision makes no findings or conclusions regarding the testimony and evidence presented by Appellant.

38. Appellee's decision to deny the Plan constitutes an erroneous, arbitrary and capricious abuse of discretion.

39. Appellee's decision to deny the Plan constitutes an error of law.

40. This Notice of Appeal is filed within thirty (30) days after issuance of the Decision as required by the Pennsylvania Municipalities Planning Code.

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WHEREFORE, Appellant respectfully requests that this Court reverse Appellee's denial of the Plan and grant any or all other relief this Court deems just and proper.

Respectfully submitted,

FITZPATRICK LENTZ & BUBBA, P.C.

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