

BEFORE THE ZONING HEARING BOARD
OF THE TOWNSHIP OF MOUNT JOY

IN RE:

Application PDC Northeast LPIV, LLC

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No. 230001

MEMORANDUM OF LAW OF MOUNT JOY TOWNSHIP

Applicant is PDC Northeast LPIV, LLC (“Applicant”), 2442 Dupont Drive, Irvine, California 92601. The Property which is the subject of this application is 2843 Mount Pleasant Road, Lancaster County Tax Account No. 461-89922-0-0000 (the “Property”). Franklin B. Greiner, Jr. (“Landowner”) is the record owner of the Property. Applicant is the equitable owner of the Property.

The Property is located in the LI- Light Industrial District. The Pennsylvania Municipalities Planning Code (“MPC”) and decisions of the Pennsylvania Supreme and Commonwealth Courts require that the Township allow all reasonable land uses somewhere. Commonwealth Court reaffirmed this principle stating, “In general, a municipality is required to authorize all legitimate non-residential land uses somewhere within its boundaries”. *Bloomsburg Town Center, LLC v. Town of Bloomsburg*, 241 A.3d 687 (Pa. Cmwlt. 2020). The Zoning Ordinance has been drafted to comply with this requirement.

The Township appeared at the hearings through the Township Solicitor. The Township’s position at the hearing was neither to support nor oppose the application. The Township trusts that the Zoning Hearing Board will carefully evaluate the evidence presented by all of the parties. The Township’s position at the hearing was that if the Zoning Hearing Board determined that the Applicant met its burden and Objectors did not meet their burden, the Zoning Hearing Board should impose the proposed conditions presented to the Zoning Hearing Board as Exhibit A-10. The Township believes, based on the testimony presented, that if the Zoning Hearing Board grants the application the Zoning Hearing Board should impose additional conditions addressed below.

Within the Light Industrial District, industrial uses involving warehousing, storage, and distribution are permitted as of right, not to exceed 50,000 square feet. Zoning Ordinance §135-

162.E. Industrial uses involving warehousing, storage, and distribution in excess of 50,000 square feet are permitted by special exception for numerous listed uses by Zoning Ordinance Section 135-163.B. The Zoning Ordinance further authorizes “industrial uses involving warehousing, manufacturing, processing, packaging, production, wholesaling, storage, distribution or repair of items not specifically referenced by §135-162.E.” See Zoning Ordinance §135-163.C. Applicant has not specified the precise items which will be warehoused, stored, and/or distributed, so Applicant requires a special exception pursuant to Zoning Ordinance §135-163.C.

It is always beneficial to consider the legal principles relating to special exceptions, which Commonwealth Court summarized last year:

A special exception is a use that is expressly permitted in a zoning district so long as the conditions detailed in the ordinance are met. In that regard, the landowner bears the burden of presenting evidence and persuading the zoning hearing board that the proposed use satisfies the objective requirements in the zoning ordinance for a special exception. It is presumed that a use satisfies local concerns for the general health, safety and welfare and that such use comports with the intent of the zoning ordinance. The zoning board’s function is to determine that such specific facts, circumstances and conditions exist which comply with the standards of the ordinance and merit the granting of the exception.

Czachowski v. Zoning Board of Adjustment of the City of Pittsburgh, 271 A.3d 973, 979-980 (Pa. Cmwlth. 2022) (citations and internal quotes omitted). Where there are objectors to a special exception, the objectors “must demonstrate more than unsubstantiated concerns or vague generalities, and mere speculation as to possible harm is insufficient. . . . It was Objector’s burden to show that Landowner’s proposal would have a greater impact than would be expected normally from that type of use.” *Czachowski*, supra, at 982 (citations and internal quotes omitted).

If a zoning hearing board determines that an applicant meets the requirements of a zoning ordinance for approval of a special exception, the zoning hearing board has the power to impose reasonable conditions. MPC §912.1¹. Commonwealth Court has specifically held that an applicant before a zoning hearing board can be made subject to conditions requiring that it operate a proposed use in accordance with its testimony. *Good v. Zoning Hearing Board of Heidelberg Township*, 967 A.2d 421 (Pa. Cmwlth. 2009). In addition, the standard for imposing a condition

¹ Commonwealth Court has stated, in an opinion affirming a prior decision of this Zoning Hearing Board that the “proper function of conditions is to reduce the adverse impact of a use allowed under a special exception, not to enable the applicant to meet his burden of showing that the use which he seeks is one allowed by the special exception.” *Elizabethtown/Mt. Joy Associates, L.P. v. Mount Joy Township Zoning Hearing Board*, 934 A.2d 759, 768 (Pa. Cmwlth. 2007).

is whether it is reasonable and not an abuse of discretion. *Leckey v. Lower Southampton Township Zoning Hearing Board*, 864 A.2d 593 (Pa. Cmwlth. 2004). Requiring that Applicant act in accordance with its testimony is manifestly reasonable.

“An attorney’s admission during the course of a trial is treated as a judicial admission. A party’s statements in its brief or oral argument to the trial court are treated as a judicial admission.... [J]udicial admissions are conclusive.” *Basinger v. Adamson and Morgan Township*, ___ A.3d ___, 2023 WL 3767809, at *5 (Pa. Cmwlth. 2023) (citation and internal quote omitted). Applicant’s counsel agreed on the record that “the current roadways are not up to standards for the trucks”. N.T. 325. This should be considered a judicial admission. See e.g. *Piper Aircraft Corporation v. W.C.A.B. (Bibey)*, 485 A.2d 906 (Pa. Cmwlth. 1985) (statement by counsel during hearing before referee). As such it supports the imposition of conditions to address the impact on the roadways.

Attached as Appendix A to this Memorandum of Law are proposed conditions based upon the testimony presented. The Findings of Fact which the Township is also filing contains support in the record for each of the proposed conditions attached as Appendix A.

If the Zoning Hearing Board determines that the Applicant has met its burden of proof, the Township requests that in addition to all of the conditions in Exhibit A-10, the Zoning Hearing Board also include all of the conditions in Appendix A attached hereto and incorporated herein.

Respectfully submitted,

MORGAN, HALLGREN, CROSSWELL
& KANE, PC

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APPENDIX A

PROPOSED CONDITIONS FOR SPECIAL EXCEPTION APPLICATION

1. Applicant shall conduct a post-occupancy traffic study as pledged in its testimony. The post-occupancy traffic study shall be conducted not less than six months nor more than 18 months after commencement of occupancy of the Warehouse, and the post-occupancy traffic study shall not be conducted until at least 90% of the Warehouse is occupied. If 90% of the warehouse is not occupied within 18 months after issuance of a certificate of occupancy, Applicant shall conduct a post-occupancy traffic study 18 months after the issuance of a certificate of occupancy for the Warehouse and shall conduct a second post-occupancy traffic study after the Warehouse is 90% occupied. The post-occupancy traffic study shall be conducted when school is in session, and the Township shall approve the dates of the traffic counts. The post-occupancy traffic study shall meet all of the requirements of Section 119-32.C of the Code of Ordinances and shall include at a minimum the intersections of Mount Pleasant Road and Steel Way Drive, Mount Pleasant Road and Cloverleaf Road, Steel Way Drive and Cloverleaf Road, and Cloverleaf Road and the Route 283 on and off ramps. Applicant shall provide a copy of the post-occupancy traffic study to the Township within 60 days of the date the traffic counts are performed. The post-occupancy traffic study shall compare the level of service of each intersection before the occupancy of the Warehouse and after 90% occupancy and identify all declines in level of service. If there is a decrease in level of service the post-occupancy traffic study shall identify the improvements required to bring the level of service of any studied intersection back to the level existing prior to occupancy of the Warehouse. If the post-occupancy traffic study recommends improvements to studied roads or intersections, Applicant shall provide a written proposal to the Township containing the schedule within which Applicant will complete the improvements at its sole cost and expense. Such schedule shall provide for the completion of the improvements no later than 18 months after the proposal is submitted to the Township unless the Board of Supervisors agrees to an extension of time for good cause shown.

2. If the post-occupancy traffic study demonstrates that the Warehouse generates more than 147 p.m. peak hour trips, Applicant shall pay additional impact fees for all peak hour trips in excess of the number paid at the time of issuance of a building permit within 30 days of the date of an invoice for such additional impact fees.

3. The Warehouse shall not be used as an internet fulfillment center or e-commerce warehouse

as that term is defined by the Institute of Traffic Engineers.

4. Applicant shall include all of the following items in every lease for any portion of the Warehouse:

A. No truck shall be permitted to idle for more than 15 minutes.

B. The signs installed at the access drives identifying prohibited turning movements shall be maintained. If a sign is damaged, it shall be replaced within 24 hours.

C. The tenant shall post information on its website and provide notice to all drivers of the restrictions on turning movements in this Decision.

5. Applicant will provide a copy of each lease for the Warehouse to the Township within 30 days of execution. Financial information and similar terms may be redacted from the copies of the lease.

6. No outdoor storage shall be permitted on the Property.

7. Applicant and Landowner shall enter into a conservation easement with the Township meeting all requirements of Zoning Ordinance Section 135-307.E in a form acceptable to the Township Solicitor which shall be recorded prior to the release of a land development plan for recording.

8. Applicant shall conduct measurements of lighting installed on the Property with all pole mounted light fixtures and all wall pack fixtures illuminated prior to the issuance of a certificate of occupancy. Applicant shall coordinate such measurements with the Township. If the measurements demonstrate that at any place on the Property the lighting exceeds the results indicated in the lighting plan submitted as Exhibit A-5, Applicant shall remove fixtures or take other action necessary to decrease the amount of light to the level indicated on Exhibit A-5 within 30 days. Applicant shall preform new measurements in coordination with the Township after taking such action.

9. Applicant shall provide full design drawings and geotechnical reports to support each proposed retaining wall and shall reimburse the costs which the Township incurs in reviewing such design and reports. All retaining walls shall meet all Uniform Construction Code requirements.

10. Applicant shall consult with Lancaster Farmland Trust, the Pennsylvania State University Extension Office or other entity acceptable to the Township to obtain recommendations for actions which Applicant can take to decrease potential interference with or impacts on the surrounding farms including, but not limited to, buffers, berms or plantings along the property lines adjoining farms; limitations of the use of pesticides or other products in the maintenance of landscaping and plantings on the Property; and mitigation of pests on the Property during the land development process.

Applicant shall provide the Township with copies of such recommendations and what steps Applicant shall take to implement recommendation to mitigate the impacts of the development of the Property on neighboring farms.

11. Applicant or any other entity which takes title to the Property shall not apply for or request the Township, Donegal School District or Lancaster County authorize real estate tax abatement under applicable statutes including, but not limited to, the Local Economic Revitalization Tax Assistance Act.