

Before Zoning Hearing Board of Mount Joy Township
ZHB Case Number 230001

June 14, 2023

Mount Joy Township
Zoning Hearing Board
c/o John Henry, Esquire
8853 Elizabethtown Road
Elizabethtown, PA 17022

In Re: Application for Special Exception
PDC Northeast LPIV, LLC a Delaware Limited Liability Company

Joelle Myers, through her undersigned counsel, submits the following proposed Findings of Fact and Conclusions of Law in opposition to the Application for Special Exception.

I. Introduction

Applicant's application for special exception for a proposed 1 million square foot warehouse must be denied. Applicant failed to establish the legal basis for its standing to request special exception. Applicant failed to satisfy with substantial evidence the objective criteria applicable to the special exception including failure to provide a traffic impact study and failure to demonstrate how the property will be served by public sewer and public water. Promises of future compliance, such as the Applicant will provide public sewer and public water, do not satisfy compliance with specific criteria. Conditions of approval requiring future compliance are also not sufficient to satisfy the objective criteria for special exception approval. The citizen parties objecting to the special exception met their burden of providing substantial evidence of the adverse effect of the proposed warehouse on public health, safety and general welfare, including noise pollution, air pollution and light pollution. The citizen party objectors

demonstrated the proposed warehouse is incompatible with the character of the residential and agricultural area.

II. Proposed Findings of Fact

A. The Parties

1. On December 7, 2022, the Law Firm of McNees Wallace and Nurick submitted to the Mount Joy Township Zoning Hearing Board a cover letter and Application requesting special exception approval for an approximately 106.5 acre tract of land located at 2843 Mount Pleasant Road to authorize the proposed use as an approximately 1 million square foot warehouse or distribution center for electrical equipment. See Applicant Exhibit 1.
2. The December 7, 2022 cover letter identifies the applicants as PDC Northeast LPIV, LLC and Panattoni Development Corporation. See Applicant Exhibit 1.
3. The December 7, 2022 cover letter contends the “applicants” are the equitable owner of the property at 2843 Mount Pleasant Road which has Property Id. No. 4618992200000. See Applicant Exhibit 1.
4. The Zoning Hearing Board Application (“Application”) identifies the only applicant as PDC Northeast LPIV, LLC, a Delaware limited liability company with an address of 2442 Dupont Drive, Irvine, CA 92612. See Applicant Exhibit 1.
5. The Application was not certified by the Applicant. Instead, it was certified by the Applicant’s lawyer. See Applicant Exhibit 1.

6. The Application identified the landowner as Franklin B. Greiner, Jr. who certified the Application as landowner. See Applicant Exhibit 1.
7. The Applicant did not provide any documentary evidence establishing the basis of its asserted equitable interest in the subject property.
8. The Zoning Hearing Board held five hearings on the Application. The first hearing was held on January 17, 2023. The other hearings were held February 15, 2023, March 9, 2023, April 18, 2023 and April 27, 2023.
9. Michelle Kennedy, 2635 Stauffer Road was admitted as a party. Her property is adjoining the subject property and its use is agriculture. See Transcript at page 10, 15.
10. Bobbi Thompson, 8226 Elizabethtown Road was admitted as a party. She and her sister have a farm adjoining the proposed warehouse. See Transcript at page 11, 15.
11. Randy Stevens, 2541 Mount Pleasant Road was admitted as a party. See Transcript at 11-12, 15.
12. Sarah Haines, 1489 Grandview Road was admitted as a party. See Transcript at 12, 15. Ms. Haines owns Grandview Vineyards at the same address. Her home, vineyard and winery are at the same address.
13. Donna Bucher, 680 Cloverleaf Road was admitted as a party. See Transcript at 12, 15.
14. Joelle Myers, 2706 Mount Pleasant Road was admitted as a party. See Transcript at 14, 15. Her home is directly across the street from the proposed warehouse.

15. Allen Sollenberger, 1437 Grandview Road was admitted as a party. See Transcript at 14, 15.
16. Mount Joy Township was made a party. See Transcript at 15.
17. Additional persons were admitted as parties at the second hearing.
18. Diane Edmond, 2622 Mount Pleasant Road, was granted party status. See Transcript at page 149-150.
19. Andrew Goodman, 2337 Mount Pleasant Road, was admitted as a party. See Transcript at page 150-151.
20. Ryan Spahr, 2588 Mount Pleasant Road, was admitted as a party. See Transcript at page 151.

B. The Mount Joy Township Zoning Ordinance

21. The subject property seeking special exception approval is located in the LI-Light Industrial Zoning District.
22. The purpose of the Light Industrial District is “provide for a wide range of light industrial and office development within the designated growth area, while avoiding heavy industrial uses that are mostly likely to cause nuisances and hazards; to also provide for commercial uses compatible with neighboring residential areas; to encourage a coordinated interior road system; and to control noise and annoyances.” See Zoning Ordinance Section 135-161.
23. Permitted uses in the Light Industrial Zoning District include “Industrial uses involving warehousing, manufacturing, processing, packaging, production, wholesaling, storage, distribution, ... not to exceed 50,000 square feet.” See Zoning Ordinance Section 135-162E.

24. “Industrial uses involving warehousing, manufacturing, processing, packaging, production, wholesaling, storage, distribution, ... building area exceeding 50,000 square feet” are “permitted when special exceptions are granted by written approval of the Zoning Hearing Board. In granting any special exception, the Board may attach certain conditions to its approval which it feels are necessary requirements in order to preserve and protect the character of the district in which the proposed use would locate. The burden shall be upon the applicant to prove that the approval of the application will not be detrimental to the health, safety and general welfare of the community.” See Zoning Ordinance Section 135-163B.

25. Special exception also applies to “Industrial uses involving warehousing, manufacturing, processing, packaging, production, wholesaling, storage, distribution, or repair of items not specifically referenced by § 135-162E.” See Zoning Ordinance Section 135-163C.

26. The Zoning Hearing Board may grant approval of a special exception, provided that the applicant complies with the following standards for special exceptions and that the proposed special exception shall not be detrimental to the health, safety or welfare of the neighborhood. The burden of proof shall rest with the applicant.

(1) Compliance with this chapter. The applicant shall establish by credible evidence compliance with all conditions on the special exception enumerated in the section which gives the applicant the right to seek the special exception.

The applicant shall provide the Board with sufficient plans, studies or other data to demonstrate compliance with all applicable regulations.

(2) Traffic and public services. The applicant shall establish by credible evidence that the proposed special exception shall be properly serviced by all existing public service systems. The peak traffic generated by the subject of the application shall be accommodated in a safe and efficient manner or improvements made in order to effect the same. Similar responsibilities shall be assumed with respect to other public service systems, including but not limited to police protection, fire protection, utilities, parks and recreation.

(3) Site planning. The applicant shall establish by credible evidence that the proposed special exception shall be in and of itself properly designed with regard to internal circulation, parking, buffering and all other elements of proper design as specified in this chapter and any other governing law or regulation.

(4) Neighborhood. The proposed special exception shall not substantially injure or detract from the use of neighboring property or from the character of the neighborhood, and the use of property adjacent to the area included in the special exception application shall be adequately safeguarded.

(5) Safety. The applicant shall establish by credible evidence that the proposed use will not create a significant hazard to the public health and safety, such as fire, toxic or explosive hazards.

See Zoning Ordinance Section 135-383B.

27. Section 135-167 of the Zoning Ordinance requires compliance with the following supplemental use regulations:

A. All uses shall comply with Article XXIII, General Regulations.

B. All uses shall comply with Article XXIV, Sign Regulations.

C. All uses shall comply with Article XXV, Parking Regulations.

28. One of the Article XXIII General Regulations governs traffic impact studies and provides: “When a use is required to submit a traffic study under this chapter, the traffic study shall comply with Chapter 119, Subdivision and Land Development. If additional provisions for traffic studies are required for a particular use, compliance with such additional provisions shall be demonstrated at the time of submitting a zoning hearing application, or if a zoning hearing application is not required for the particular use, then it shall be demonstrated that compliance with the additional provisions can be achieved at the time of submittal of a subdivision and land development plan.”

See Zoning Ordinance Section 135-310.

C The Application and Applicable Zoning Ordinance Criteria

29. The property is an approximately 106.5-acre tract of land located at 2843 Mount Pleasant Road and identified as Property ID. No. 4618992200000 (“Property”). See Applicant Exhibit 1. The Property abuts Mount Pleasant Road and is located along the northern side of Route 283.

30. According to the Narrative in the Application¹, the Property is improved with a one-story modular home, a two-story farmhouse, a barn, and a shed. See

¹ References to the Narrative in the Application will be referred to as the Narrative.

Applicant Exhibit 1. This is not accurate. Compare Transcript at page 23- testimony of Applicant's expert witness.

Q. How is the property currently used?

A. As of today the property is primarily Ag-use but there is also a pad up there for storage. The last time I was out there there was a trailer stored on it.

31. The Applicant claims it has identified a potential tenant that would like to consolidate its two Southcentral PA locations into one and store various electrical equipment and parts ("Proposed Storage"). See Applicant Exhibit 1. Applicant has not identified the potential tenant.
32. Applicant intends to construct an approximately 1,006,880 square feet (620' x 1,624') warehouse ("Facility"), along with associated access drives, loading/docking areas, parking, and related improvements ("Project"). See Applicant Exhibit 1.
33. A concept plan depicting the Property and the Project is enclosed with this Application ("Concept Plan")². As shown on the Concept Plan, the Project will include two access drives from Mount Pleasant Road, 440 employee parking spaces, 212 trailer parking spaces, and approximately 154 dock positions. See Applicant Exhibit 1 at page 22. Another concept plan was introduced at the hearing and marked as Applicant's Exhibit A-4. They appear to be the same concept plan. The Exhibit 4 concept plan was prepared by Applicant's expert witness, an engineer in training. See Transcript at page 23-24. Neither concept plan is sealed by a professional engineer.

² References to the Concept Plan in the Narrative in the Application will be referred to as the Concept Plan. References to the concept plan identified as Applicant's Exhibit A-4 will use lower case, concept plan.

34. All proposed uses in the LI- Light Industrial District must comply with specific requirements in the Zoning Ordinance pertaining to Area and Bulk Requirements, Landscaping and Screening Requirements, and certain Supplemental Regulations.
35. The Area and Bulk Requirements are set forth at Section 135-165 and include building height, minimum lot area, minimum lot width, minimum lot depth, yard requirements, and maximum lot coverage.
36. The Landscaping and Screening Requirements are set forth at Section 135-166 and include residential buffer strip and minimum 15 foot wide landscape strip.
37. The Supplemental Regulations are set forth at Section 135-167 and require all uses to comply with Article XXIII, General Regulations, Article XXIV, Sign Regulations, and Article XXV, Parking Regulations. The Applicant has not proposed any signs for the warehouse. The Applicant supplemented the Application Narrative regarding General Regulations 135-304 through 135-307 with correspondence from its expert witness. See Applicant Exhibit A-4.
38. The minimum building height must be 20 feet. See Section 135-165.A. The Narrative asserts the proposed height of the warehouse will be between 35 and 40 feet. See Applicant Exhibit 1. However, Applicant's expert witness on site design testified the proposed height will be between 40 and 50 feet. See Transcript at page 25, 51. Interestingly, Land Development Plans for the proposed warehouse pending before the Township indicate the proposed building height will be 50 feet. <https://www.mtjoytwp.org/wp-content/uploads/2023/01/Pages-01-14.pdf>

39. The minimum lot area must be 15,000 square feet if the warehouse will be served by both public sanitary sewer and public water facilities. See Section 135-165.B)(1)(c). The Narrative contends the warehouse will be served by both public sewer and water. See Applicant Exhibit 1. The Property does not presently have public sewer or public water. Applicant provided no evidence from the providers of public sewer and public water documenting compliance with this requirement. Compare Transcript at page 25-26.

Q. And from where will the sewer and water be extended?

A. The water main will be extended from the 283 interchange, currently on the south side of the interchange, and then the sewer will be extended from Steel Way, where there is currently a pumping system near Greiner Industries.

40. Section 135-298 addresses lighting of properties and uses. It is the intent of the Board of Supervisors in adopting these regulations to:

(1) Promote indirect lighting standards that will enhance the safety and enjoyment of pedestrians, bicyclists, and motorists.

(2) Prevent the creation of nuisances caused by unnecessary intensity and glare of outdoor lighting onto neighboring properties, roadways, and into the night sky.

(3) Promote lighting practices and systems to conserve energy without decreasing safety.

(4) Protect and retain the rural character of the Township.

See Section 135-298.B.

41. At the hearing, Applicant relied upon Exhibits A-5 and A-6 to determine compliance with Section 135-298.C. The lighting plan was prepared by Applicant's expert witness, an engineer in training. See Applicant's Exhibits A-5 and A-6. See Transcript at page 32-33. The landscape and lighting plans are not sealed by a professional engineer.
42. Any applicant for any approval shall submit an exterior lighting plan with the initial application. If the proposed use is authorized by special exception, the applicant shall present the exterior lighting plan as part of the application for a special exception. See Section 135-298.D.
43. An exterior lighting plan shall include, but not be limited to, a detailed grid of illumination levels, a calculation as to the average illumination levels, the number of lighting fixtures, the height and location of the mounting fixtures, including the underside of any canopies, details as to how lighting will be recessed, and required details of how lighting will be shielded and the angle of the shielding when required, and details of any building- or canopy-mounted lighting to show that the outline and roofline provisions have been met. See Section 135-298.D(2).
44. In the Narrative, Applicant contended "although an exterior lighting plan is not required until land development, at the hearing, Applicant shall provide a lighting plan as described by Section 135-298.D of the Zoning Ordinance." See Applicant's Exhibits A-5 and A-6.
45. Landscaping and screening requirements are set forth in Section 135-299. Any part of a commercial, industrial, institutional or multifamily dwelling lot

that is not used for structures, loading areas, parking areas, driveways, access drives, storage areas and walkways shall be planted or landscaped in accordance with an overall landscaping plan to be approved by the Township. See Section 135-299.A.

46. In the Narrative, Applicant contends “as depicted on the Concept Plan, space has been provided to provide landscaping and buffers in accordance with Section 135-299 of the Zoning Ordinance. In addition, at the hearing, Applicant shall provide a landscaping plan that complies with the requirements of Section 135-299.” The Landscaping Plan is Applicant’s Exhibit A-5. The Landscaping Plan is not sealed by a professional engineer.
47. When a use is required to submit a traffic study under this chapter, the traffic study shall comply with Chapter **119**, Subdivision and Land Development. If additional provisions for traffic studies are required for a particular use, compliance with such additional provisions shall be demonstrated at the time of submitting a zoning hearing application, or if a zoning hearing application is not required for the particular use, then it shall be demonstrated that compliance with the additional provisions can be achieved at the time of submittal of a subdivision and land development plan. See Section 135-310.
48. The Narrative contends “although a traffic study is not required for the Industrial Use or the requested special exceptions, Applicant will provide a traffic report at the hearing.” A traffic report was admitted as Applicant’s Exhibit A-12 and A-13. To the contrary, Objector Myers’ expert witness

issued an expert witness report opining that a traffic impact study is required.
See Myers Exhibit 3.

49. Performance and design standards are set forth in Section 135-326.
50. Parking areas shall be suitably illuminated for night use if night operations shall be proposed. All lighting shall be reflected away from lots in a residential zoning district or any existing residential development. See Section 135-326.C. According to the Narrative, Applicant shall comply with the illumination requirements set forth in Section 135-326.C of the Zoning Ordinance. At the hearing, Applicant shall provide a lighting plan to establish compliance with the requirement of Section 135-326.C. See Applicant's Exhibit A-5 and A-6.
51. No shipping or receiving shall be permitted within 600 feet of a residential zoning district or existing residential development between the hours of 9:00 p.m. and 8:00 a.m. See Section 135-326.D. According to the Narrative, the Facility's proposed loading/docking positions on the Property are not located within 600 feet of a residential zoning district or existing residential development, as determined by the Township's Zoning Officer. To the contrary, Objectors Kennedy, Thompson and Myers own property adjacent to the Property where they reside. See Transcript at pages 10, 11, 352.
52. All industrial uses shall be provided with public wastewater disposal. The applicant shall provide information to the Zoning Hearing Board concerning the manner in which such public sewer service shall be provided. See Section 135-326.N. According to the Narrative, the Project will utilize public water

and sewer disposal. Applicant did not present any evidence concerning the manner in which public sewer service will be provided.

53. The Board may grant approval of a special exception, provided that the applicant complies with the following standards for special exceptions and that the proposed special exception shall not be detrimental to the health, safety or welfare of the neighborhood. The burden of proof shall rest with the applicant. See Section 135-383.B.

54. Traffic and public services. The applicant shall establish by credible evidence that the proposed special exception shall be properly serviced by all existing public service systems. The peak traffic generated by the subject of the application shall be accommodated in a safe and efficient manner or improvements made in order to effect the same. Similar responsibilities shall be assumed with respect to other public service systems, including but not limited to police protection, fire protection, utilities, parks and recreation. See Section 135-383.B(2).

55. The Application states “as established by, or as will be established by, this Narrative, the Concept Plan, and reports and testimony to be provided at the hearing, Applicant complies with all conditions of the requested special exception for the Industrial Use.”

56. Objector Myers’ expert witness wrote in his expert report and testified whether the peak traffic can be accommodated in a safe and efficient manner or improvements made in order to effect the same can not be determined

absent a traffic impact study. See Myers Exhibit 3. Compare Applicant's Exhibit A-22.

57. Neighborhood. The proposed special exception shall not substantially injure or detract from the use of neighboring property or from the character of the neighborhood, and the use of property adjacent to the area included in the special exception application shall be adequately safeguarded. See Section 135-383.B(4).

58. According to the Narrative, the proposed special exception will not substantially injure or detract from the use of the neighboring property or from the character of the neighborhood, and the use of property adjacent to the area. Conversely, the proposed special exception will allow Applicant to construct the Facility which is compatible with the surrounding industrial uses. Notably, the Property is located across from a 450,000 square-foot warehouse facility, which is the largest job-shop structural steel fabrication operation in Southcentral Pennsylvania. Further, the Property is located near the interchange of Route 283 (a high-volume, multiple-lane limited access principal arterial highway). Route 283 is planned or designed to accommodate larger volumes of traffic, including trucks that typically are associated with warehouse/distribution centers. Moreover, the Industrial Use will include the screening, buffering, and setbacks required for industrial uses that adjoin residential districts and residential uses.

59. To the contrary, Objectors presented substantial evidence how the proposed 1 million square foot warehouse will substantially injure or detract from the use

of the neighboring property or from the character of the neighborhood, including adjacent property owners Kennedy and Thompson, and use of property adjacent to the area by property owner Myers, local business owner Haines and area residents Bucher and Stevens.

60. Safety. The applicant shall establish by credible evidence that the proposed use will not create a significant hazard to the public health and safety, such as fire, toxic or explosive hazards. See Section 135-383.B(5). According to the Narrative, the proposed Industrial Use is not a use that is normally associated with creating significant hazards to public health or safety. Little to no police or fire protection is anticipated to be necessary in connection with the proposed Industrial Use, which will have a sprinkler system. Additional evidence further establishing compliance with this requirement will be provided at the hearing.
61. Applicant did not provide evidence further establishing compliance with the above safety requirements.

D. The Initial Hearing

62. The members of the Zoning Hearing Board at the initial hearing were
THOMAS A. CAMPBELL, CHAIRMAN
GREGORY HITZ, SR., BOARD MEMBER
ROBERT R. NEWTON, JR., BOARD MEMBER
63. The Objectors, Kennedy, Thompson, Stevens, Haines, Bucher, Myers, and Sollenberger were accepted as official parties (hereinafter will be referred to singularly or as a group as “Objectors.” See Transcript at page 15.
64. The Applicant presented the testimony of Jeramy Bittinger and Jarred Neal along with 13 exhibits.

65. Jeramy Bittinger, E.I.T. is a Project Manager at Landworks Civil Design, LLC. See Applicant's Exhibit A-2. He is an engineer in training.

66. Mr. Bittinger was accepted as an expert in site design and zoning compliance. See Transcript at page 20.

67. The applicant shall establish by credible evidence compliance with all conditions on the special exception enumerated in the section which gives the applicant the right to seek the special exception. See Section 135-383.B.

68. Mr. Bittinger provided only conclusory opinions without credible evidence.

For example:

Q. In your opinion, does the application including the supplemental documents, your testimony, and the proposed conditions comply with all conditions for the special exception pursuant to Section 135-383.B(1)?

A. Yes.

See Transcript at page 41.

69. Another example of Mr. Bittinger's conclusory opinions without credible evidence:

Q. Will this be properly serviced by all existing public service systems, including but not limited to, police protection, fire protection, and utilities pursuant to Section 135-383.B(2)?

A. Yes.

See Transcript at page 41.

70. With regard to site planning requirements set forth in Section 135-383.B(3), the Application states "as depicted on the Concept Plan, the Application complies with this requirement." Mr. Bittinger provided the following expert testimony:

Q. Is the proposed use and site properly designed in regard to circulation, parking, buffering, landscaping, lighting, and other applicable and required design standards testified in the zoning ordinance and other governing law as provided by Section 135-383.B(3)?
A. Yes.

See Transcript at page 42.

71. With respect to whether a 1 million square foot warehouse adjacent to agricultural zoned properties including residences and small business will substantially injure or detract from use of neighboring properties or the character of the neighborhood, Mr. Bittinger provided the following opinion:

Q. Will the proposed use substantially injure, in your opinion, or detract from the use of the neighboring properties or from the character of the neighborhood as provided by Section 135-383.B(4)?

A. No.

Q. Why is that, in your opinion?

A. Because the area is already an industrial area.

See Transcript at page 42.

72. Objector Stevens attempted to cross examine Jeramy Bittinger, Applicant's expert witness on site design and zoning compliance, on certain performance standards set forth in Section 135-326 of the Zoning Ordinance. See Transcript at pages 62-70.

73. For example, the Narrative asserted Applicant will show evidence establishing compliance with the requirements at the hearing. At the hearing, counsel for Applicant stated that was included in the report, claiming the report was Applicant Exhibit A-7.

74. Applicant Exhibit A-7 is a letter drafted by Jeramy Bittinger dated January 4, 2023 supplementing the Application with respect to Sections 135-304 through

135-307 of the Zoning Ordinance. The January 4, 2023 letter does not address performance standards in Section 135-326.

75. Incredibly, Mr. Bittinger testified that the January 4, 2023 letter covered Section 135-326:

ATTORNEY McCOMBIE: Let ask you this way: Jeramy, does that report, dated January 4th, cover all of criteria listed in Section 135-326, which I believe, are several letters, from my recollection?

THE WITNESS: Yes.

See Transcript at page 64.

76. The expert witness and counsel continued to provide erroneous information about the January 4, 2023 letter:

BY MR. STEVENS:

Q. How about 135-326.I, no fly ash, dust, fumes, vapors, gas or other forms of air pollution emissions which can cause any excessive soiling upon another property shall be permitted. So you've shown compliance to that? That's apparently -- you are going to submit evidence in regard to that?

A. Yes.

Q. How is that going to be done?

ATTORNEY McCOMBIE: It's in the report that was submitted.

See Transcript at page 64.

77. Applicant called Jerrod L. Neal, P.E. who is senior project manager with Traffic Planning and Design and qualified him as an expert in traffic planning and design for warehouses and distribution centers and similar uses. See Transcript at page 80.

78. Mr. Neal testified that a traffic impact study was not required until the land development phase. See Transcript at page 81.

79. Mr. Neal prepared a report addressing trip generation of the proposed warehouse. See Applicant Exhibit A-12.

80. According to the report, the purpose of this evaluation is to calculate trip generation for the proposed development using typical trip generation methodologies and address pertinent traffic requirements within the zoning application. See Applicant Exhibit A-12.

81. The report concludes: Based on the results of this evaluation, TPD offers the following:

» The proposed warehouse is expected to generate 144 new weekday A.M. peak hour trips and 147 new weekday P.M. peak hour trips.

» An extension of Steel Way is being provided to connect Cloverleaf Road (SR 4025) to Mt Pleasant Road (SR 4010). This improvement will reduce truck traffic at the intersection of Cloverleaf Road (SR 4025) to Mt Pleasant Road (SR 4010) which in existing conditions requires tight turning movements for trucks and occasionally forces trucks to extend into the oncoming lane to make the necessary turning movements. This improvement is being provided to reduce truck traffic at the Cloverleaf Road/Mt Pleasant Road intersection and provide for a safe and efficient route for existing and proposed truck traffic.

» The existing intersection of Steel Way and Cloverleaf Road (SR 4025) is being widened and improved to accommodate larger truck traffic associated with this development as well as existing truck traffic currently using the roadway.

» The driveways and internal circulation of the site will be designed to accommodate the necessary fire apparatus and/or largest public service vehicle.

An emergency services truck turning template exhibit has been provided for reference.

In TPD's professional opinion, and for the purposes of this application, the proposed development can be served by the existing street network and associated roadway improvements and will not adversely impact the adjacent road system. See Applicant Exhibit A-12.

E The Second Hearing

82. The Zoning Hearing Board members at the second hearing on February 15, 2023 were

THOMAS A. CAMPBELL, CHAIRMAN
GREGORY HITZ, SR., BOARD MEMBER
ROBERT R. NEWTON, JR., BOARD MEMBER

83. Diane Edmond, 2622 Mount Pleasant Road, was granted party status. See Transcript at page 149-150.

84. Andrew Goodman, 2337 Mount Pleasant Road, was admitted as a party. See Transcript at page 150-151.

85. Ryan Spahr, 2588 Mount Pleasant Road, was admitted as a party. See Transcript at page 151.

86. Applicant called Joe Peters, development manager with Panattoni Development Company who testified that the Applicant will comply with the performance standards in Section 326. See Transcript at pages 156-158.

87. However, when Objector Myers' counsel attempted to question Mr. Peters about the Applicant's legal interest in the Property and the content of the Application and narrative, the Zoning Hearing Board's solicitor sustained the Applicant's counsel's objections.

For example:

BY ATTORNEY CLUCK:

Q. PDC is equitable owner of the Greiner property, the ones being proposed for the development?

A. Yes.

Q. Did you complete the application?

ATTORNEY McCOMBIE: I'm not sure where these questions are going. They are outside of the scope.

See Transcript at page 159.

The solicitor did not allow cross examination regarding the legal basis of the Applicant to request special exception and the content of the Narrative, which include Section 135-326, the subject of the direct examination.

SOLICITOR HENRY: We should move toward the testimony that Mr. Peters had given.

See Transcript at page 159.

SOLICITOR HENRY: That was testified to on night one, so let's proceed with your next line of questioning.

See Transcript at page 160.

88. In response to questioning by Objector Bucher, Mr. Peters denied the proposed use would be a distribution center. See Transcript at page 168. That response is contrary to the content of the Application which stated the purpose is “to authorize the proposed use as an approximately 1 million square foot warehouse or distribution center for electrical equipment.” See Applicant Exhibit 1. Also, Applicant’s traffic expert was admitted as an expert “in traffic planning and design for warehouses and distribution centers and similar uses. “ See Transcript at page 80.

89. The Applicant rested its case in chief. Transcript at page 239.

90. The Township determined not to present any witnesses or introduce any exhibits. See Transcript at page 239.
91. The exhibits introduced by Applicant were not marked by the Court Reporter as exhibits. The 37 page packet was posted on the Township web page, but copies were not provided to the parties. See Transcript at pages 239-243.
92. The parties opposing the special exception began their case in chief with testimony from Diane Edmonds, 2622 Mount Pleasant Road. See Transcript at page 243.
93. Ms. Edmonds lives near the proposed 1 million square foot warehouse. See Myers Exhibit 6.
94. Ms. Edmonds testified about and utilized photographs and videotape of existing traffic conditions on Mount Peasant Road. See Transcript at page 244-253.
95. Ms. Edmonds' property is surrounded by residences and farms. See Transcript at page 258-259. See Myers Exhibit 6.
96. She testified the industrial use will interfere in the use and enjoyment of her property where the warehouse will operate 24 hours per day/seven days per week. See Transcript at 260-261.

F. The Third Hearing

97. The Zoning Hearing Board members at the third hearing on March 9, 2023 were

THOMAS A. CAMPBELL, CHAIRMAN
JAMES E. HERSHEY, BOARD MEMBER
GREGORY HITZ, SR., BOARD MEMBER

ROBERT R. NEWTON, JR., BOARD MEMBER

98. John Nawn, P.E. was called to testify as an expert witness. See Transcript at page 290-291. See also Myers Exhibit 2.

99. Mr. Nawn was admitted as an expert in transportation engineering. See Transcript at page 294.

100. With regard to Section 135-383.B, Mr. Nawn was asked how one determines the peak traffic generated by the subject of the application. Transcript at page 295.

101. The Applicant's traffic expert relied upon the Land Use Code 150 to determine the peak traffic generated by the proposed 1 million square foot warehouse.

102. Mr. Nawn reiterated the trip generation statistics utilizing Land Use Code 150:

I believe the average daily is 1,629 vehicles on an average weekday. I'm referring to my report on Page 6 here. The applicant generates 1,629 average weekday trips, 144 trips in the morning peak hour, and 147 trips in the evening peak hour.

See Transcript at page 296. See also Myers Exhibit 3.

103. Trip generation rates are published by the Institute for Transportation Engineering (ITE). Applicant's traffic expert explained the use of the ITE Trip Generation Manual:

It is based off of data, a bunch of data collection or sites, that were studied and developed certain particular land-use codes for those uses. And then we use that to give a general sense of what this type of development is projected to generate.

See Transcript at page 81.

104. Applicant's traffic expert defended the use of Land Use Code 150:

Land Use 150, which is the classification for warehouse, is generally used, and, again, the national standard for speculative warehouse -- speculative use such as the one before us. Other members of our team had indicated at this time, this is speculative. So the way it's done through the reviews, the study will be submitted to the Township. Information will be submitted as it moves forward. Generally, when the use is speculative, 150 is used. It's a standard for PennDOT and Townships.

See Transcript at page 219.

105. Mr. Nawn provided the definition of "warehouse" from the ITE Trip

Generation Manual:

A: A warehouse is primarily devoted to the storage of materials, but it may also include office and maintenance areas. High-cube transload and short-term storage warehouse, which is Land Use 154, and high-cube fulfillment center warehouse, which is Land Use 155, high-cube parcel hub warehouse, which is Land Use 156, and high-cube cold storage warehouse, which is Land Use 157, are listed as related uses.

See Transcript at page 297. See Also Myers Exhibit 3.

106. Mr. Nawn discussed the basis for how Land Use Code 150 determined the number of trips generated by the proposed use:

Q. On Page 2 of your report, you discuss the -- how Land Use 150 determines the number of trips for that category. How many studies were relied upon by ITE Land Use 150?

A. According to the ITE Trip Generation Manual, in order to determine the number of trips resulted from Land Use 150, they looked at 31 different studies.

Q. And what would be the average size of the warehouses in those studies?

A. Sure. The average size of all 31 of those

studies was only 292,000 square feet, which is roughly 29 percent of the size of this proposed warehouse. The largest warehouse that comprised that set of 31 points was only 560,000 square feet, which is 56 percent of the size of this warehouse.

See Transcript at page 297. See also Myers Exhibit 3.

107. In Mr. Nawn's professional opinion, the use of Land Use Code 150 was in error. See Transcript at page 297.

108. Mr. Nawn, in his testimony and expert report provided three professional opinions:

Number 1, the applicant's traffic evaluation does not provide sufficient information to determine whether the proposed use will be detrimental to the health, safety, or welfare of the neighborhood in accordance with Section 135-383 of the Mount Joy Township Code.

The second opinion: The applicant's traffic evaluation does not provide sufficient information to determine whether the peak traffic generated by the subject of the application can be accommodated in a safe and efficient manner in accordance with Section 135-383 of the Mount Joy Township Code.

And finally, a full traffic study prepared in accordance with 119-32 of the Mount Joy Township Code would be required to evaluate whether this application complies with the special exception requirements of Mount Joy Township and determine whether the proposed use will be detrimental to the health, safety, or welfare of the neighborhood. And whether the peak traffic generated by the subject of the application can be accommodated in a safe and efficient manner.

See Transcript at page 307-308.

109. Mr. Nawn explained why Land Use Code 150 was not appropriate:

Q. What's a cross-dock facility?

A. A cross-dock facility is where you essentially bring in product from one mode of transportation, in this case a truck, you break it down and you amend it and do things to it and then you move it across the dock

and put it into another truck. So you are moving product from one truck across the dock to another truck.

Q. And did you review the testimony from the second night of the hearing?

A. I did.

Q. And was there testimony that this particular warehouse will be a cross-dock facility?

A. There were multiple times where this was discussed as a cross-dock facility, yes.

See Transcript at page 299.

110. Mr. Nawn continued with his testimony explaining why Land Use Code 150 was in error:

A high-cube warehouse typically means it is not a warehouse that is bigger than 200,000 square feet. And then there are various other parameters that go along with that such as the arrangement of the doors and the number of bays and things like that. When you look at the totality of what is proposed here on the plans, it's evident that this warehouse is more appropriately a high-cube warehouse whether it is 154 or 156 that remains to be seen based on the testimony and the submitted material. But it is definitely not just a generic warehouse. It certainly meets more of the criteria of a high-cube type of warehouse.

See Transcript at page 299-300.

111. After summarizing the amount of peak traffic generated by the proposed 1 million square foot warehouse using different land use codes, Mr. Nawn explained why he could not recommend which land use code to rely upon:

Q. Are you able as a traffic engineering expert to render an opinion about which land use code should be utilized to determine the peak traffic generated as the subject of this application?

A. Let me answer that question in two ways. Number

1, based on the information provided, I would have to say no. There is not enough information provided about the land use; however, there was a lot of testimony in the last hearing that this building was speculative and was being built on spec. There was no guarantee as to what it was going to be. We are just speculating, and we are building a building and will need a tenant in there. If you are going to build a speculative building, then you should make sure you generate the traffic that represents what could be the maximum use of that building, unless you are providing data and showing that it's not going to be that particular use.

Q. What information would you like to have to make that determination as a transportation professional?

A. Well, a lot of times it's nice to have who the tenant is going to be, because it can help you ultimately with that decision of what type of warehouse it might be. The ITE suggests that we give what is called the NAISC Code, the North American Industrial Classification System Code, for the proposed tenants. Additional information, if it is not going to be a specific tenant, or at least what type of tenant and what they will be and what they are going to be doing in the building.

Again, it all comes down to the use, which is what we are here talking about is the use. It is not just a big empty box, but what is the use going to happen in the box. That is going to determine what the number of trips are going to generate here.

See Transcript at page 303-304.

112. Mr. Nawn explained why in his professional opinion a traffic impact study was necessary to determine compliance with Section 135-383:

Q. The Zoning Ordinance 135-383 also says, the peak traffic generated by the subject of the application shall be accommodated in a safe and efficient manner or improvements made in order to affect the same. In your professional opinion, is it possible to determine compliance for this provision of the zoning ordinance without a traffic impact study?

A. It is not.

Q. And why not?

A. Well, because we are just looking at numbers. Whether we agree with the numbers or not, it is just the number of trips. What we need to do now is apply those trips to the road network and see what the level of service will be at the various intersections and what the level of service will be on the roadway centers and what the traffic signals will look like and what the backups will be. All of that is part and parcel of a traffic impact study. You just can't determine from a trip generation analysis. I know that the applicant has proposed improvements but there's no way to even believe or suggest those improvements will work without a benefit of a full traffic impact study.

See Transcript at page 304-305. See also Myers Exhibit 3 and Exhibit 4.

113. Mr. Nawn concluded his testimony with his professional opinion that a traffic impact study is required to comply with Section 135-383.

A. Yes, I do. There's no way to answer the questions under 383 without having a traffic study to be able to evaluate whether we meet and are not detrimental to the health, safety and welfare, and whether the approval for those peak hour trips are not going to be detrimental and will be able to handle the local highways.

See Transcript at page 307.

114. Dr. Allen Peterson was called to testify. Dr. Peterson is the Emeritus Director of Environment and Community Medicine at Lancaster General Health. Prior to being an Emeritus Director, he was a director of Environmental and Community Health for 23 years.

See Transcript at page 327.

115. Dr. Peterson was admitted as an expert in environmental and community health and testified on noise pollution, air pollution and light Pollution.

See Transcript at page 327.

116. Dr. Peterson discussed the impact of noise pollution on community health and the character of the neighborhood.

Q. In your professional opinion, does noise pollution have an adverse impact on community health and the character of the neighborhood?

A. Yes.

See Transcript at page 328.

117. Dr. Peterson provided the basis for his professional opinion how noise pollution causes adverse impact on community health:

A. Other than noise induced hearing loss, there's many effects of noise pollution that may not be well known to the public.

First, cardiovascular disease that is heart and blood vessel disease. Noise pollution can lead to chronic stress that can increase blood pressure and the risk of cardiovascular disease. Starting as low as 50 decibels, each 10 decibel increase in noise pollution causes the risk of cardiovascular disease to increase by eight percent.

These high noise levels are usually associated with road traffic. Noise pollution activates the sympathetic nervous system causing an increased release of stress hormones that in turn promote oxidative stress and inflammatory processes which lead to vascular and epithelial dysfunction.

Secondly, diabetes. Diabetes is the second possible effect of noise pollution. For every five-decibel increase, the risk of diabetes increases by

six percent. The increase stress from noise pollution increases stress hormones that can lead to insulin resistance and issues with metabolism after long-term exposers.

Third, pregnancy and childbirth. Noise pollution can affect birthrate and fetal growth. Long-term exposers can make the fetus too small for their pregnancy stage and decrease their birthrate. This occurs because noise pollution can disrupt sleep and once again, increase stress. An increase in stress hormones can delay fetal growth as well as the lack of adequate sleep.

See Transcript at page 329-330.

118. Dr. Peterson provided a lengthy tutorial on air pollution associated with warehouse operations, truck traffic and conditions in the Lancaster region:

Q. Dr. Peterson, air pollution associated with warehouse operations, including increased truck traffic may have an adverse impact on the environment, community health, and the character of the neighborhood, is that your professional opinion?

A. Absolutely.

Q. What is the basis for that opinion?

A. The Environmental Protection Agency, EPA, and years of science research has found that air pollution causes serious health problems, including asthma attacks, heart attacks, lung cancer, and premature death that disproportionately effects vulnerable populations. Those populations include children, older adults and those with heart problems, high blood pressure, and lung conditions, as well as low income and minority communities.

....

Truck vehicles are a major pollution contributor producing significant amounts of nitrogen oxides, carbon monoxides, and other pollution.

Let's talk for a moment about particulate

matter known as PM. In the U.S. particulate matter is known as soot and ground level ozone, O₃, is smog. They are the two most prevalent forms of pollution impacting lung health. Particulate matter, PM, consists of tiny liquid and solid particles in the air we breathe. PM comes in wide range of sources, which include transportation and industrial sources. Most were produced by fossil fuels. PM exists in various sizes. PM 2.5, for instance, refers to particulates that are 2.5 micrometers in size. That is about 30 times smaller than the thickness of a human hair. The smaller the particle the deeper it can travel into the lungs effecting lung function and increasing the potential for health impacts. Short-term exposure can be deadly.

Let's talk about another issue and that is ground level ozone or O₃, as it's known. It's a primary component of smog. O₃ is formed when sunlight reacts with nitrogen oxides as well as organic compounds, VOCs, from vehicle and industry omission. Ozone inflames and damages airways and makes the lung more susceptible to infection. Ozone gas is a powerful lung irritant. When it is inhaled into the lung, it reacts with the delicate lining of the airways causing inflammation and other damage that can impact multiple body systems. Ozone exposure can also shorten lives. Ozone has a serious effect on the respiratory system both in the short-term and over the years of exposure. When ozone levels are high, many people experience breathing problems such as chest tightness, coughing and shortness of breath often within hours of exposure.

See Transcript at page 330-337.

119. Dr. Peterson also provided his professional opinion on light pollution.

Q. ... Is it your professional opinion that light pollution, especially in a rural area, may have an adverse impact on community health and the character of the neighborhood?

A. Yes.

Q. Could you define what is light pollution and the basis of your opinion?

A. Artificial light at nighttime has been linked to increased sleep disorders, obesity, depression and metabolic disorders like diabetes and even breast cancer and cardiovascular disease, again, heart and blood vessel problems, truck headlights into homes at night, lights on warehouse buildings and truck drives can cause health problems based on this.

Artificial light can wreak havoc on natural body rhythms in both humans and animals. Nocturnal light interrupts sleep and confuses the circadian rhythm at the interval of the 24-hour clock that guides day and night activities and affects psychological prothesis in almost all living organisms.

See Transcript at page 338-339.

120. Dr. Peterson provided suggested conditions to mitigate the adverse effect of noise pollution, air pollution, and light pollution. See Transcript at page 339-341.

121. Joelle Myers, 2706 Mount Pleasant Road testified about the effect of the proposed 1 million square foot warehouse will have on her property across the street. See Transcript at page 346.

122. She utilized a powerpoint presentation to visualize the residential and agricultural properties around her property. Myers Exhibit 7. She lives with her husband and three little boys who are 10, 7, and 2.

123. She discussed her observations of life in her neighborhood.

Here's a photo from my front porch. This was taken just yesterday, March 8th, in the morning. We live here because this is a beautiful, quiet, and rural community. I did not just move here five years ago; I have lived here my whole life. And let me tell you what I've seen: I see horses every day from some of my neighbors. I see many neighbors walking in front of my house not needing sidewalks because it is a rural area. I see farmers taking care of their land throughout their

Day. I see neighbors going to and from their houses.
And I see a community of families that would be
dramatically impacted by this.

See Transcript at page 348.

124. She discussed the character of her neighborhood and the impact of the proposed 1 million square foot warehouse.

I want to discuss how this one million square foot warehouse will impact the character of the neighborhood and how it will affect the quality of life for the residents. Specifically, I will address what it notes in Section 135.163 for special exception uses. It clearly states that the burden shall be upon the applicant to prove that the approval of the application will not be detrimental to the health, safety, and general welfare of the community. The applicant has not proven these things and in this presentation, I will walk through all three categories on how a one million square foot warehouse will impact not just my family, not just my neighbors, not just the people that use Mount Pleasant Road or Mount Joy Township, but the entire community around us that uses the 283 Cloverleaf on and off-ramps.

See Transcript at page.348-349.

125. Ms. Myers presented information on health, safety and welfare:

Health: I will address the health concerns first. More specifically, I would like to talk about pollution. Air pollution is the largest health concern and is well documented with a simple search on the internet. But above and beyond air pollution, I will briefly discuss light pollution and noise pollution as well.

Air pollution: I will briefly share quotes from two articles. The first one is an article from Engineer Filtration Systems. Quote, the most pressing concerns are the emission from particulates and carbon dioxide. Particles from diesel trucks and carbon dioxide emissions has been linked to numerous issues. The article goes on to state besides lung cancer, warehouse air pollution has been linked to asthma and chronic bronchitis and coronary heart disorder.

See Transcript at page 349.

126. Ms. Myers discussed light pollution:

Light pollution: The light needed for a million square foot warehouse, 24/7 operation, will without a doubt create a glow for the entire neighborhood to see leaving no ability to see the stars in the sky. Light pollution will come from every outdoor light both on the building as well as the light from the trucks and from every associate coming to and from.

See Transcript at page 349-350.

127. Ms. Myers discussed noise pollution:

Noise pollution: There would be significant noise pollution from the building. Noise from the transportation of trucks and noise from the people that would be in and out of the facility. The applicant has proposed 440 parking spots to support the warehouse for just one shift. Another 212 trailer parking spots and 154 dock positions. Have the applicants addressed how all of the noise that will be 24/7 will not affect the character of the neighborhood?

See Transcript at page 351.

128. No shipping or receiving shall be permitted within 600 feet of a residential zoning district or existing residential development between the hours of 9:00 p.m. and 8:00 a.m. See Section 135-326.D. Ms. Myers testified her home directly across the street from the proposed 1 million square foot warehouse is within 600 feet and that the homes on her side of Mount Pleasant Road are an existing residential development.

Noise 24/7 obviously means that it will be continually between the hours of 9 p.m. and 8 a.m. as well. Within the zoning application packet the applicant states that, quote, the facility's proposed

loading dock positions on the property are not located within 600 feet of a residential zoning district or existing residential development as determined by the Township Zoning Office.

....

Since it clearly states 600 feet, let's discuss that. The proposed one million square foot warehouse, again, 20 times bigger than the maximum allowed with the zoning without special exception is, in fact, within 600 feet of my property and multiple of my neighbor's properties. Is my house not classified as residential? I would argue that by definition my property and my neighbor's properties that are located next to the parcel are indeed residential development, based on the definition of development, nonresidential and dwelling on the right sides of the screen. Our homes are a development since they are, quote, any manmade change to improve our unimproved real estate.

See Transcript at page 351-352.

129. Ms. Myers rested her case.

130. Allen Sollenberger presented his testimony. He expressed his concerns with stormwater management and traffic.

G. The Fourth Hearing

131. The Zoning Hearing Board members at the fourth hearing on April 18, 2023 were:

THOMAS A. CAMPBELL, CHAIRMAN
GREGORY HITZ, SR., BOARD MEMBER
JAMES E. HERSHEY, BOARD MEMBER
Alternate Member Present: Robert F. Newton, Jr.

132. Donna Bucher, 680 Cloverleaf Road, presented her concerns with the proposed warehouse and relied upon a powerpoint presentation. See Bucher exhibit 2.

133. The property has a barn with a mural on it. See Transcript at page 424.

134. She described the character of the neighborhood:

We educate, provide and nurture. We give back to our community. We are a community of teachers, farmers, churches, small businesses, health caregivers and professionals.

See Transcript at page 425.

135. Michelle Kennedy owns the property and resides at 2635 Stauffer Road.

She also owns, with her sister, the 44-acre farm at 2619 Stauffer Road. See Transcript at page 465.

136. Her properties are adjacent to the proposed warehouse. She is particularly concerned about the increase in truck traffic, as well as air pollution and noise:

This facility will operate 24-hours a day, 7-days a week with an estimated access of 1,700 daily vehicle trips generated by the operation of the facility. This will increase the constant dangerous flow of trucks and vehicles. This large amount of traffic on our rural road will cause backups and increase the risk of vehicles, pedestrians, and Amish buggy accidents.

See Transcript at page 465.

137. Bobbi Thompson and her sister own the farm at 2619 Stauffer Road. The farm with residence is adjacent to the proposed warehouse. Ms. Thompson raised a number of concerns with the impact of the warehouse on her farm and community.

138. Ryan Spahr, 2588 Mount Pleasant Road, testified about the character of the neighborhood and the potential impact on his home and quality of life.

I'm deeply concerned about

the potential construction of the one million square foot warehouse across from my home. The peace and tranquility that I have enjoyed will be destroyed. The quality of life for myself and my family will be significantly impacted.

We moved here to raise my family and have a dog and run around the residential and agricultural environment. I was drawn there because of the rural character and the peaceful views of the landscape so much so that we have friends and family camp out on my property.

We have a stream that runs by my house, and we play frisbee and walk, bike, ride scooter, plant trees and gardens, et cetera.

See Transcript at page 489-490.

139. Randy Stevens, 2541 Mount Pleasant Road, presented Roni Clark as a witness. Mr. Clark communicated with Lancaster County Planning Commission regarding the proposed warehouse.

See Transcript at page 498.

140. In an email from staff of the commission regarding the proposed warehouse in the context of the County Comprehensive Plan.:

In the case of the warehouse development project, in its review of the plan, the County Planning Commission stated that according to County Comprehensive Plan, places2040, in growth area edge analysis identified the project site not as suitable for non-residential development because it is outside/inside a sewer service area, outside of a water service area, outside of the growth area, and not along a major road.

See Transcript at page 499, Stevens Exhibit 2.

H. The Fifth Hearing

141. The fifth hearing was held April 27, 2023. Chairman Thomas Campbell resigned from the Board, as he moved out of Mount Joy Township. The members of the Zoning Hearing Board present were:

GREGORY HITZ, SR., BOARD MEMBER
JAMES E. HERSHEY, BOARD MEMBER
Alternate Member Present: Robert R. Newton, Jr.

142. Sarah Haines, 1489 Grandview Road, lives with her husband and four children. They own the property and conduct their business, Grandview Vineyards at the same location.

See Transcript at page 563.

143. She questioned how the Applicant can meet its burden to demonstrate the application will not be detrimental to the health, safety and general welfare of the community without knowing the specific use of the building and the size of the vehicles.

See Transcript at page 564.

144. She presented the history of the property and her business. The winery includes a vineyard, tasting room and venue for weddings.

See Transcript at page 565-566.

145. The 1 million square foot, up to 50 feet in height warehouse will detract from the character of the neighborhood and interfere in the use and enjoyment of her business and property.

Whether people gather for a birthday celebration, a wedding or just to laugh with your friends, it's the environment and the experience, the

serenity, the beauty, and the grand view that sets us apart. This warehouse threatens the legacy of my family and the very heart of what makes our business thrive.

See Transcript at page 566.

III. **Proposed Conclusions of Law**

- A. The applicant(s) has not provided evidence of its purported equitable interest in the subject property and therefore does not have standing to request special exception.
- B. The proposed 1 million square foot warehouse seeking special exception approval is significantly larger than the permitted use authorizing warehouses up to 50,000 square feet in the Light Industrial Zoning District. The size of the proposed warehouse is inconsistent with the purposes of the Light Industrial Zoning District.
- C. The purposes of the Light Industrial District are to “provide for a wide range of light industrial and office development within the designated growth area, while avoiding heavy industrial uses that are mostly likely to cause nuisances and hazards; to also provide for commercial uses compatible with neighboring residential areas; to encourage a coordinated interior road system; and to control noise and annoyances.” See Zoning Ordinance Section 135-161.
- D. The proposed special exception is not located within the designated growth area.
- E. The proposed 1 million square foot warehouse is a heavy industrial use likely to cause nuisances and hazards.
- F. The proposed special exception is incompatible with neighboring residential and agricultural areas.
- G. The proposed 1 million square foot warehouse will likely create noise and annoyances disrupting the character of the neighborhood.

- H. "Generally speaking, '[a] special exception is not an exception to a zoning ordinance, but rather a use which is expressly permitted, absent a showing of a detrimental effect on the community.'" [Tower Access Grp., LLC v. S. Union Twp. Zoning Hearing Bd., 192 A.3d 291, 300 \(Pa. Cmwlth. 2018\)](#) (quoting [Manor Healthcare Corp. v. Lower Moreland Twp. Zoning Hearing Bd., 139 Pa. Commw. 206, 590 A.2d 65, 70 \(Pa. Cmwlth. 1991\)](#)).
- I. "The important characteristic of a special exception is that it is a conditionally permitted use, legislatively allowed if the standards are met." [Bray v. Zoning Bd. of Adjustment, 48 Pa. Commw. 523, 410 A.2d 909, 911 \(Pa. Cmwlth. 1980\)](#).
- J. "The applicant has both the initial evidence presentation duty and the persuasion burden to show that the proposed use complies with the specific requirements in the zoning ordinance which govern the grant of a special exception. [Bray, 410 A.2d at 912-913](#).
- K. To satisfy its burden for a special exception, an applicant must establish that the proposed use meets "the specific objective criteria of the [z]oning [o]rdinance." [JoJo Oil Co., Inc. v. Dingman Twp. Zoning Hearing Bd., 77 A.3d 679, 687 \(Pa. Cmwlth. 2013\)](#).
- L. The burden shall be upon the applicant to prove that the approval of the application will not be detrimental to the health, safety and general welfare of the community." See Zoning Ordinance Section 135-163B.
- M. Applicant failed to meet its burden to demonstrate by substantial evidence approval of the special exception application will not be detrimental to the health, safety and general welfare of the community.
- N. The Applicant failed to satisfy the objective criteria set forth in the Zoning Ordinance, specifically Section 135-383.

- O. The objector parties demonstrated to a high degree of probability that the proposed special exception will be detrimental to the health, safety or welfare of the community greater than a warehouse authorized as a permitted use.
- P. The Applicant failed to meet the standards in 135-383.B pertaining to traffic, utilities, standards for special exceptions and that the proposed special exception shall not be detrimental to the health, safety or welfare of the neighborhood.
- Q. Applicant's traffic report (Applicant Exhibit A-12) did not comply with the requirements in 135-383.B(2). The peak traffic generated by the subject of the application shall be accommodated in a safe and efficient manner or improvements made in order to effect the same.
- R. John Nawn, traffic expert witness, testified the land use code relied upon by Applicant's traffic expert was in error. Mr. Nawn opined that a traffic impact study was required in order to determine whether the peak traffic generated would be accommodated in a safe and efficient manner.
- S. John Nawn was credible.
- T. Applicant's traffic expert, Jarred Neal was not credible.
- U. Establishing the availability of adequate services and utilities are generally regarded as specific, objective requirements. See, e.g., [Greth Dev. Grp., Inc. v. Zoning Hearing Bd. of Lower Heidelberg Twp., 918 A.2d 181, 187-88 \(Pa. Cmwlth. 2007\)](#) (stating applicant had to meet standard to establish that there were adequate services and utilities, in particular, public sewage capacity, for permitted use).
- V. This is especially so where, as here, the knowledge of the specific details related to the use requirements are within the realm of the applicant. See [Berner v. Montour Twp.](#)

Zoning Hearing Bd., 176 A.3d 1058, 1072-73 (Pa. Cmwlth. 2018), *rev'd on other grounds*, Berner II (finding required submissions to be specific requirement where, in addition to other reasons, items would be in primary control of applicant). As such, the burden for this element was on Applicant. See Bray, 410 A.2d at 911.

W. Typically, an application for a special exception need not address the issues of adequate sewage capacity, storm water management or water supply requirements. Schatz v. New Britain Twp. Zoning Hearing Bd. of Adjustment, 141 Pa. Commw. 525, 596 A.2d 294 (Pa. Cmwlth. 1991).

X. However, where a zoning ordinance provision requires that the adequacy of such items be addressed, a special exception can be denied if the applicant fails to establish that it can meet the requirements. See Greth, 918 A.2d at 186 (holding, "where the provision of sewage capacity is specifically required by the zoning ordinance, a special exception can be denied if the applicant fails to establish that it can meet the sewage treatment requirements"); E. Manchester Twp. Zoning Hearing Bd. v. Dallmeyer, 147 Pa. Commw. 671, 609 A.2d 604, 608 (1992) (holding that zoning ordinance requirement "that all mobile homes be supplied with a 'continuing supply of safe and potable water as approved by the [Department of Environmental Protection]' is permissible insofar as the [z]oning [b]oard only considers whether the applicant can supply sufficient potable water to the proposed development").

Y. The Applicant failed to provide information to the Zoning Hearing Board concerning the manner in which such public sewer service shall be provided. See Section 135-326.N.

Z. The Property does not presently have public sewer or public water. Applicant provided no evidence from the providers of public sewer and public water documenting compliance with this requirement. See Section 135-165.B)(1)(c).

AA. A board is permitted to impose reasonable conditions on the use of a property to mitigate any potential adverse impacts from the proposed use. [Edgmont Township v. Springton Lake Montessori School, 154 Pa. Commw. 76, 622 A.2d 418 \(Pa. Cmwlth. 1993\)](#).

BB. In *Edgmont Township*, we addressed the failure of an applicant for a special exception to meet at least 4 specific requirements of the local zoning ordinance. In that case, we held that neither a promise of future compliance by an applicant nor the attachment of a condition by the zoning hearing board was sufficient to meet these requirements. Specifically, we stated as follows:

To be entitled to receive a special exception it was incumbent on the School to come forward with evidence detailing how it was going to be in compliance with the requirements necessary to obtain a special exception to operate a preschool in a R-1 zoning district. Evidence is not a "promise" that the applicant will comply because that is a legal conclusion the Board makes once it hears what the applicant intends to do and then determines whether it matches the requirements set forth in the ordinance. In [Appeal of Baird, 113 Pa.Commonwealth Ct. 637, 641, 537 A.2d 976, 978 \(1988\)](#), a zoning hearing board denied an applicant a special exception to operate a dog kennel on 11.86 acres of land because the applicant failed to show compliance with ordinance requirements applicable to buildings in the zone in question. Overturning the Board, the trial court held that because the lot was in excess of 11 acres, it was self-evident that the parcel was large enough to provide for any building configuration necessary [*12] to meet the zoning ordinance requirements. Reversing, we held that the Board properly denied the special exception because an applicant is required to show at the time of the hearing that it met the requirements of the ordinance.

The failure of the promise to establish sufficient evidence of compliance is not cured by a condition contained in the Board's decision that the School meet the requirements of the ordinance prior to occupying the property. In [Lafayette College v. Zoning Hearing Board of the City of Easton, 138 Pa.Commonwealth Ct. 579, 587, 588 A.2d 1323, \[1327\] \(1991\)](#), we overturned the grant of a special

exception where the plan submitted to the Board did not comply with the on-site parking requirement necessary to obtain a special exception even though the grant of the special exception was conditioned on the applicant obtaining off-site parking. Rejecting that the off-site parking condition cured its failure to meet the specific requirement of on-site parking, we held that the proper function of a condition imposed upon a special exception is to reduce the adverse impact of that permitted use, and not to enable the applicant to meet its burden of showing that it met the [*13] requirements necessary to obtain a special exception. Id. at 586, 588 A.2d at 1326. The standard to be observed by the Board is whether the plan as submitted complies with specific ordinance requirements at the time the plan comes before it.

Edgmont Township, 622 A.2d at 419-20.

- CC. Applicant's lighting plan was not sealed by a professional engineer.
- DD. Dr. Allen Peterson. Dr. Peterson provided his professional opinions regarding noise pollution, air pollution and light pollution.
- EE. Dr. Peterson's testimony was credible.
- FF. Objectors met their burden to demonstrate by substantial evidence the 1 million square foot warehouse will substantially affect the health, safety and welfare of the community to a greater extent than would be expected normally from that type of use.

IV. Conclusion

The application for special exception is denied.

/s William J Cluck
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