

**LOWER PROVIDENCE TOWNSHIP
BOARD OF SUPERVISORS BUSINESS MEETING
November 17, 2022**

Call to Order: Chairman Neights called the hybrid live/virtual meeting to order at 7:10 p.m.

Pledge of Allegiance

Protocol for Hybrid Meetings: Chairman Neights provided an overview of the protocols for public participation for members of the public attending the meeting virtually over Zoom.

Roll Call:

- a. The following Board members were in attendance: Chairman Neights, Vice Chair Coless, Supervisors Darby, MacFarland and Sorgini.
- b. Also in attendance were: E.J. Mentry, Township Manager; Michael Clarke, Township Solicitor; Tim Woodrow, Township Engineer, Mike Mrozinski, Community Development Director; Joe Chillano, Public Works Director; Police Chief Michael Jackson, and Student Representative Kaitlyn Phan.

Chairman's Comments

Chairman Neights announced that an executive session was held prior to the meeting on November 17, 2022, to discuss personnel and legal matters.

1) Presentations

- i) Municipal building project – Boyle Construction Management: Karen Duerholz, Vice President of Marketing and Customer Relations, and Tony Ganguzza, Project Executive
- ii) Ms. Duerholz and Mr. Ganguzza presented an overview of the services the company could provide during a potential municipal building expansion/replacement project. From preconstruction through the completion of the project, they would supplement the Township staff, serve as project and construction manager, and manage the prime contractors, architects and engineers.

B) Student representative report – Kaitlyn Phan

2) Consent Agenda

- A) **MOTION:** Vice Chair Coless made a motion to approve the consent agenda, moving the minutes of the Board of Supervisors business meeting of November 3, 2022 into the record, and approving the payment of bills in the amount of \$1,190,125.28, escrow release No. 16 for the Courts at Brynwood Phase I and escrow release No. 7 for the Courts at Brynwood Phase II. Supervisor Sorgini seconded the motion.
 - i) Supervisor MacFarland noted that the 2022 budgeted amount for legal services had been exceeded as of August and asked Mr. Mentry to complete research to provide an explanation.
 - ii) There was no public comment.
 - iii) The motion *passed* 5-0.

3) Old Business

- A) Consideration of Resolution 2022-32 granting request for waiver of land development, Arrowhead Elementary School, 232 Level Road

- i) Mr. Mentry noted that the waiver was requested to put a shed on the property which is the site of an on-going project that is still within an NPDES permit.
- ii) **MOTION:** Supervisor MacFarland made a motion to grant the request for waiver of land development, Vice Chair Coless seconded the motion.
- iii) There was no public comment.
- iv) The motion *passed* 5-0.

B) Consideration of Ordinance No. 674 creating a Human Relations Commission

- i) Solicitor Clarke explained that the Board would be voting to amend the Township code to provide the creation of a Township Human Relations Commission to prohibit discrimination in housing, commercial property, employment and public accommodations.
- ii) Supervisor Sorgini said he is opposed to discrimination but said that there are state and federal agencies that already exist to address such concerns. He said he would favor an anti-discrimination ordinance but not the creation of a commission.
- iii) Supervisor MacFarland stated he agreed with Supervisor Sorgini and said he would prefer to see a more proactive rather than a reactive method. He said he is concerned that language in the ordinance goes beyond the PA Human Rights Act.
- iv) Supervisor Darby said the ordinance would provide resources and protect members of the community.
- v) Vice Chair Coless said she preferred not to use the state as the Township's barometer. She believes the ordinance is a great start and would like the commission to be proactive.
- vi) Chairman Neights noted that the Board had been discussing the creation of a commission for some time. He noted that the commission will provide an outlet for someone who feels aggrieved and also provide training and facilitation.
- vii) **MOTION:** Supervisor Darby made a motion to adopt Ordinance No. 674 creating a Human Relations Commission. Supervisor Coless seconded the motion.
- viii) There was no public comment.
- ix) The motion *passed* 3-2, with Supervisors MacFarland and Sorgini opposing.

4) New Business

A) Consideration of request for waiver of fence standards from Moppert Brothers Auto Collision

- i) Mr. Moppert had received a permit for only a portion of chain link fencing that he has installed.
- ii) It was explained that the property Mr. Moppert owns is split-zoned; in the R-2 portion chain link style and solid style are not permitted.
- iii) **MOTION:** Supervisor MacFarland made a motion to deny the request for waiver of fence standards as presented and noting that the Board may entertain alternatives at a future meeting. Chairman Neights seconded the motion.
- iv) There was no public comment.
- v) The motion *passed* 5-0.

B) Consideration of lot line change, 1045 Hildebidle Road

- i) Mr. Mrozinski explained that property owner owns two adjoining lots. He would like to expand his existing home on the one property. The lot line change will result in two compliant lots.
- ii) **MOTION:** Supervisor MacFarland made a motion to approve the lot line change, seconded by Supervisor Sorgini.
- iii) There was no public comment.
- iv) The motion *passed* 5-0.

- C) Approval of 2023 Equipment Rental Contract
 - i) Mr. Mentry said this is an annual RFP and that multiple contractors had been contacted. One proposal had been received from James R. Kenney Excavating and Paving Inc., who holds the current contract. The proposal included no price increases from 2022.
 - ii) Mr. Chillano said Mr. Kenney, a Township resident, has always been reliable and the contract allows the Township to have set prices when the need for extra equipment arises.
 - iii) **MOTION:** Chairman Neights made a motion to award the 2023 equipment rental contract to James R. Kenny Excavating and Paving Inc. Supervisor Sorgini seconded the motion.
 - iv) There was no public comment.
 - v) The motion *passed* 5-0.
- D) Authorization to advertise the appointment of BBD as the Township auditor for the year 2022 at the 2023 Reorganization Meeting.
 - i) Mr. Mentry explained that this a required formality. He explained that the Board has the option to appoint a professional CPA firm to conduct the audit rather than the elected auditors. He said that given the complexity and needed expertise, most municipalities, including Lower Providence, choose that option.
 - ii) **MOTION:** Vice Chair Coless made a motion to advertise the appointment of BBD as the Township auditor for the year 2022 at the 2023 Reorganization Meeting. Supervisor Darby seconded the motion.
 - iii) There was no public comment.
 - iv) The motion *passed* 5-0.
- E) Consideration of Resolution 2022-33 appointing liaison between the Township and Berkheimer, the duly appointed collector of local taxes
 - i) Mr. Mentry said that resolution would list the new position of Finance Director as a liaison to the EIT and Local Services tax collector, allowing communications with Berkheimer.
 - ii) **MOTION:** Supervisors Sorgini made a motion to approve Resolution 2022-33 appointing a liaison between the Township and Berkheimer. Supervisor MacFarland seconded the motion.
 - iii) There was no public comment.
 - iv) The motion *passed* 5-0
- F) Discussion – EAC ordinance update
 - i) It was noted that the EAC voted as a body to request two additional members and three associate members. As the EAC was created by ordinance, the change would have to be done by amending the ordinance.
 - ii) There was consensus on expanding the council to 7 members and changing the process to appoint the chair.

5) **Announcements/Meetings**

- A) The Board of Supervisors are looking for qualified residents interested in serving on the Township’s various boards and commissions. Details and instructions on submitting a letter of interest and resume can be found on the township website, lowerprovidence.org
- B) Nominations are being accepted for the annual Community Awards, recognizing a Citizen, Volunteer and Business of the Year. Details are posted on the township website.
- C) Environmental Advisory Council – Nov. 21 at 7:00 p.m.
- D) Library Board – Nov. 21 at 7:00 p.m.
- E) Zoning Hearing Board – Nov. 23 at 7:00 p.m.

- F) Planning Commission – The meeting scheduled for Nov. 23 has been moved to Nov. 30 at 7:00 p.m.
- G) Dec. 2 – Annual Tree Lighting and Winter Wonderland

6) Comments and other Business

- A) Vice Chair Coless said the Comprehensive Plan Steering Committee held their last meeting following two years of work. She said the draft plan will probably be available in January. Additionally, she asked that the Township provide a letter from the Board to FEMA regarding the buyouts.
- B) Mr. Mentry said that the Township is serving as a sponsor for a resident’s Natural Resources Conservation Services (NRCS) grant for drainage improvements. He said a bid opening for the work was held with the lowest bid well above the allotted DEP and NRCS grant amount. Additional funding will need to be secured before any award can be made.
- C) Chairman Neights reminded everyone of Small Business Saturday, observed 11/26/22.

7) Courtesy of the Floor

- A) Jason Powers, Township resident – Mr. Powers expressed his frustration with the noise from the Lower Providence Rod and Gun Club.
- B) The manager, solicitor and code enforcement officials will research possible options.

8) Adjournment

- A) **MOTION:** Supervisor Sorgini made a motion to adjourn. Supervisors Darby seconded the motion. The motion *passed* 5-0. The meeting adjourned at 9:15 p.m.

Next Business Meeting: December 1, 2022 @ 7:00 p.m.
December 15, 2022 @ 7:00 p.m.



Fiscal Planning 2023 & Beyond

*Lower Providence Township
Board of Supervisors*

Introduction

- Projected 2022 ending General Fund Balance = \$5.6M
 - Total of unassigned Township reserves (i.e. savings)
- How'd we get here?
 - History of conservative budgeting and fiscal restraint
 - Minimum staffing levels over last 10+ years
 - Consecutive years of higher than anticipated revenues and lower than anticipated expenditures
- 2022: Strategic Planning and Budget Workshop discussions developing plan for meaningful allocation of these funds



\$5.6M Fund Balance

- What do we do with these funds?
 - Reserve \$450K to balance 2023 budget
 - Maintain **\$3.25M** in General Fund Unassigned Fund Balance (aka “Rainy Day Funds”)
 - Equivalent to 25% of budget, or 3 months worth of expenditures



- ***What about remaining \$1.9M?***



Municipal Complex Fund

- New fund to be established for campus improvements, including:
 - Municipal Campus Master Plan
 - New/renovated Township building
 - New/renovated Police Station
 - Parking improvements
 - Emphasis on resiliency, sustainability, efficiency, security
- Assign **\$1M** of fund balance into this dedicated fund



Remaining \$900K Fund Balance

- Grow reserves in existing underfunded capital funds
 - **\$600K to Capital Projects Fund**
 - Reduce reliance on General Fund
 - Maintain fund balance for capital projects, equipment, and unanticipated emergencies (ex. Hurricane Ida)
 - **\$300K to Stormwater Fund**
 - MS4 Obligations (water quality improvements)
 - Stormwater infrastructure improvements (storm sewers, basins, etc.)





- Approximately \$2.8M from Federal Government
 - Must be obligated by end of 2024, spent by end of 2026
 - Approx. **\$1.3M** obligated through 2023 budget
- Preliminary plans for remaining \$1.5M
 - \$500K reserved for grant matching funds
 - \$500K for near-term stormwater/drainage improvement projects
 - \$500K for Special Community Project
- Plans to be developed/finalized throughout 2023

2023 ARPA Fund Allocations (in Proposed 2023 Budget)	
Public Works Equipment/Vehicles	\$616,980
Emergency Management Equipment	\$42,000
Parks & Recreation Equipment/Improvements	\$91,922
Stormwater Management	\$350,000
Library Equipment	\$20,000
Ordinance Updates	\$75,000
Information Technology Upgrades	\$50,000
Misc. Township Complex Improvements	\$71,000
TOTAL	\$1,316,902



**LOWER PROVIDENCE TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA
RESOLUTION NO. 2022-34**

WHEREAS, Lower Providence Township has appropriated the revenues and expenditures for the fiscal year 2023 for specific purposes set forth in the 2023 Budget, and;

WHEREAS, an estimate of the particular items making up the amounts appropriated to the respective departments is on file in the Finance Department of the Township of Lower Providence, and;

WHEREAS, that any resolution or part thereof, conflicting with this resolution be repealed insofar as the same affects this Resolution; and

NOW, THEREFORE, BE IT RESOLVED, by the Lower Providence Township Board of Supervisors, that the 2023 Budget is approved and attached.

ADOPTED and RESOLVED this 1st day of December 2022.

**LOWER PROVIDENCE TOWNSHIP
BOARD OF SUPERVISORS**

Gary Neights, Chairman

ATTEST:

E.J. Mentry, Manager/Secretary



LOWER PROVIDENCE TOWNSHIP

100 Parklane Drive • Eagleville, PA 19403 • www.lowerprovidence.org

Administration: 610 539-8020 • Fax: 610 539-6347

Police: 610-539-5901 • Fax: 610-630-2219



MEMO

TO: Board of Supervisors

FROM: E.J. Mentry, Township Manager

DATE: November 23, 2022

RE: 2023 Budget Summary

The Board has approved a preliminary budget which has been advertised for a minimum of 20 days as required by the Second Class Township Code. While the budget is in deficit as in prior years, it meets the operational needs of the Township in a fiscally acceptable way.

Key highlights of the 2023 budget include:

- Maintains the current level of services, with increases in several operational areas
- Adds personnel to Administration, Finance, Emergency Management and Police
- Increases funding to LPFD for operations and staffing
- Increases funding for EMS and the Lower Providence Community Library
- Increases funding for stormwater management projects
- Allocates significant portion of American Rescue Plan funding for capital improvements
- Increases millage to fund staffing and eliminate more than half of the structural deficit

Although the structural deficit is not being eliminated, the Township has positioned itself to effectively deal with it going forward, especially since we are projecting to finish 2022 with a surplus. Long term financial planning is critical in achieving an ongoing stable budget.

The budget as advertised will increase the General Fund mill rate by 0.3118 and combines the Fire and EMS Funds into one Fire/Emergency Services Fund with an additional mill rate increase of 0.06, resulting in a net mill rate increase of 0.3718. Using an average property assessment of \$168,899, a taxpayer will see an average tax increase of \$62.80 or about \$5.23 per month.

Option C: Increase Fire/EMS Tax to maximum and General Fund tax to cover new staff (\$504K)			
	General Fund	Fire/EMS Fund	Total
Mill Rate Increase	0.3118	0.06	0.3718
Amount Increase	\$503,977	\$96,496	\$600,473
Average Annual Tax Increase	\$52.66	\$10.13	\$62.80
Remaining Deficit	-\$455,652	\$0	-\$455,652
Percent Increase	24.26%	13.64%	14.37%

**LOWER PROVIDENCE TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA
RESOLUTION NO. 2022-35**

NOW, THEREFORE, BE IT RESOLVED AND ENACTED by the Lower Providence Township Board of Supervisors, that a tax be and the same is hereby levied on all real property within the Township subject to taxation for the fiscal year 2023, as follows:

Tax Rate for General Purposes	
on each dollar of assessed valuation the sum of.....	1.5973 mills
on each one hundred dollars of assessed valuation the sum of.....	.15973 cents
Tax Rate for Lower Providence Emergency Services Purposes	
on each dollar of assessed valuation the sum of.....	.500 mills
on each one hundred dollars of assessed valuation the sum of.....	.0500 cents
Tax Rate for Lower Providence Community Library Purposes	
on each dollar of assessed valuation the sum of.....	.345 mills
on each one hundred dollars of assessed valuation the sum of.....	.0345 cents
Tax Rate for Debt Services Purposes	
on each dollar of assessed valuation the sum of.....	.276 mills
on each one hundred dollars of assessed valuation the sum of.....	.0276 cents
Tax Rate for Parks & Recreation Operating Purposes	
on each dollar of assessed valuation the sum of.....	.241 mills
on each one hundred dollars of assessed valuation the sum of.....	.0241 cents

The same being summarized in tabular form as follows:

	Mills on each Dollar of Assessed Valuation	Cents on Each One Hundred Dollars of Assessed Valuation
Tax Rate for General Purposes	1.5973 mills	.15973 cents
Tax Rate for Emergency Services	.500 mills	.0500 cents
Tax Rate for Library Purposes	.345 mills	.0345 cents
Tax Rate for Debt Service	.276 mills	.0276 cents
Tax Rate for Parks & Recreation	.241 mills	.0241 cents
TOTAL	2.9593 mills	.29593 cents

WHEREAS, that any resolution or part thereof, conflicting with this resolution be repealed insofar as the same affects this Resolution; and

ADOPTED and RESOLVED this 1st day of December 2022.

**LOWER PROVIDENCE TOWNSHIP
BOARD OF SUPERVISORS**

Gary Neights, Chairman

ATTEST:

E.J. Mentry, Manager/Secretary

LOWER PROVIDENCE TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA

RESOLUTION NO. 2022 – 36

WHEREAS, HTC Associates, LLC (hereinafter referred to as “Applicant”) has submitted a request for conditional use approval related to property located at 3150 Ridge Pike, Norristown, Lower Providence Township, further identified as Tax Map Parcel Number 43-00-03216-01-7 (the “Property”); and

WHEREAS, the Property is located in the RPBD – Ridge Pike Business District; and

WHEREAS, the Lower Providence Zoning Ordinance (“Ordinance”) permits various uses by conditional use; and

WHEREAS, Applicant has submitted a request for conditional use approval to use the Property as a one-story building having an 8,800 SF footprint to be used for an office and a contractor shop for indoor storage of tools, materials, and small equipment on the property, pursuant to §143-260.V of the Ordinance, which allows uses “of the same general character” as permitted or specifically identified conditional uses to be approved by conditional use approval;

WHEREAS, Township staff and the Township Engineer have reviewed the Application; and

WHEREAS, the Board of Supervisors of Lower Providence Township (hereinafter referred to as “Board”) is prepared to GRANT approval of Applicant’s request for conditional use approval, for the reasons set forth herein; and

WHEREAS, the Board is prepared to authorize the Board Chair and the Township Manager to execute the written decision of the Township, pursuant to Section 913.2(b)(1) of the Pennsylvania Municipalities Planning Code which is set forth as Exhibit “A” hereto.

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the Board of Supervisors of Lower Providence Township this 1st day of December, 2022, that said request for conditional use approval is GRANTED, for the reasons set forth in the Findings of Fact and Conclusions of law, attached hereto as Exhibit “A and incorporated herein.

RESOLVED and **APPROVED** this 1st day of December, 2022.

BOARD OF SUPERVISORS OF LOWER
PROVIDENCE TOWNSHIP

ATTEST:

E.J. Mentry, Secretary

By: _____
Gary Neights, Chairman

Exhibit

“A”

DRAFT

Findings of Fact

1. Applicant is HTC Associates, LLC (“Applicant”), equitable owner of certain real property located at 3150 Ridge Pike, Norristown, Lower Providence Township, Montgomery County, further identified as Montgomery County Tax Parcel Number 43-00-03216-01-7 (“Property”).
2. The Property is approximately 34,689 square feet, and is within the RPBD – Ridge Pike Business Zoning District (“RPBD”).
3. Permitted uses in the RPBD are as set forth at §143-259 of the Lower Providence Code of Ordinances (“Code”).
4. Under §143-259.V, any one use of the same general character as those listed in §143-259.A-U are permitted, when approved by the Township Board of Supervisors as a conditional use.
5. Conditional uses are subject to conditions set forth at §143-80 of the Code.
6. Applicant is seeking conditional use approval to permit a one-story building having an 8,800 SF footprint to be used for an office and a contractor shop for indoor storage of tools, materials, and small equipment on the property pursuant to §143-259.V of the Code.
7. On or about September 12, 2022, the Township received an application for Conditional Use approval requesting the following relief:
 - A. §143-259.V – to permit a one-story building having an 8,800 SF footprint to be used for an office and a contractor shop for indoor storage of tools, materials, and small equipment on the property, which Applicant contends is a use of the same general character as those permitted by right in the RPBD.
8. A public hearing was scheduled for October 20, 2022. Notice of the hearing was advertised consistent with the Municipalities Planning Code. The Property was posted with notice of the October 20, 2022 hearing consistent with the Municipalities Planning Code and notice of the hearing was mailed to neighboring property owners as required by the Code.
9. The following exhibits were admitted at the October 20, 2022 hearing:
 - T-1 – Application
 - T-2 – Proof of Advertising
 - T-3 – Neighbor Notification
 - T-4 – Proof of Posting

T-5 – Elevation Plan Dated 9/12/22

T-6 – Site Plan Dated 8/16/22

10. No individuals requested party status at the hearing.
11. Susanne Creveling, a registered engineer with HT Engineering, the design engineer of record for the project, testified for the Applicant as follows:
 - A. The property is located at the intersection of Eagle Stream Drive and Ridge Pike, and has been a field of green since it was previously approved in 2010. N.T., at 6.
 - B. The property was originally approved for a residential use over commercial use in a 5,000 SF capacity two-story building. However there was difficulty in generating interest in the property with this proposed use. N.T., at 6.
 - C. The Applicant proposes to add architectural enhancements to the proposed property, as set forth in the Application. The Applicant will add stone facing and features that would have the building match the design elements of the neighborhood. The Applicant also plans to place the business operation, such as garage doors, on the southern end of the property, where it would not be highly visible. N.T., at 7.
 - D. There is currently a landscape buffer between the property and the residential neighborhood next door. The buffer, along with stormwater and curbing improvements, are already installed pursuant to previous land development approvals. Additionally, the building will be centered and the utilities are already run into the site. The property will also be served by public water and public sewer. N.T., at 7-8.
 - E. Parking for the proposal includes one extra parking space, as a byproduct of using the already installed curb. N.T., at 9.
 - F. Hours of operation will be compliant with what is stipulated within Township rules and regulations. N.T., at 9.
 - G. The building is being constructed for a future occupant, whose identity is yet to be known. N.T., at 10.
 - H. The property has a communal cross-easement that was previously established in perpetuity with a nearby shopping center. Traffic will be directed by utilizing this easement. N.T., at 10-11.
 - I. The Applicant is looking to find an occupant who will use the property as a contractor shop. Rather than a large warehouse, the property would be used by a fencing company or roofing company, who would keep all materials inside the

property to avoid detracting from property aesthetics. N.T., at 13-14.

- J. Compared to the 2010 plan that was originally approved, there is no change in excess of allowable impervious coverage. The new plan replaces parking lot paving impervious coverage from the prior plan with roof panel impervious coverage in the new plan, but the total impervious coverage is below 70 percent at 69 percent. N.T., at 24.
- K. The building, the Eagle Stream egress, and the relation of the location to the intersection are in the same location as it was proposed in the 2010 plan. The current buffer was also included in the 2010 landscape plan. N.T., at 25-26.
- L. Ms. Creveling opined that:
 - i. The proposed use is appropriate to the tract in question and will not adversely affect the character of the surrounding land uses and general neighborhood. N.T., at 17.
 - ii. The proposed use provides for adequate access to public roads without creating hazardous conditions at intersections or areas of poor alignment and without creating undue congestion. N.T., at 17.
 - iii. The proposed use conforms to all applicable requirements of the Code. N.T., at 18.
 - iv. The proposed use's water supply and sanitation systems are adequate and able to prevent disease, contamination and unsanitary conditions. N.T., at 18.
 - v. The proposed use will result in an appropriate use of land, conservation of the value of buildings, safety from fire, panic and other dangers, adequacy of light and air, the prevention of overcrowding of land and congestion of population and the adequacy of public and community services. N.T., at 18.

12. The following public comments were made:

- A. Barry Salter spoke against the proposal. He was concerned that there was already a similar business in the area called Maintain-It-All. N.T., at 30-31.

13. The Board of Supervisors found the testimony and statements on behalf of the Applicant to be credible and persuasive.

CONCLUSIONS OF LAW

1. Applicant seeks the following conditional use approval:

- A. §143-259.V – to permit a one-story building having an 8,800 SF footprint to be used for an office and a contractor shop for indoor storage of tools, materials, and small equipment on the property, which Applicant contends is a use of the same general character as those permitted by right in the RPBD.

2. Legal Authority

"A conditional use is nothing more than a special exception which falls within the jurisdiction of the municipal governing body rather than the zoning hearing board." Williams Holding Group, LLC v. Bd. of Supervisors of W. Hanover Twp., 101 A.3d 1202 (Pa.Cmwlth 2014).

Pennsylvania law is well settled with respect to the burden of proof that the Board of Supervisors must apply when addressing conditional use applications. Northampton Area School District v. E. Allen Township Bd. Of Supervisors, 824 A.2d 372 (Pa. Cmwlth. 2003). The initial burdens of production and persuasion are placed upon the applicant to demonstrate that he or she meets all of the specific objective requirements for the conditional use as set forth in the zoning ordinance. In re Land Use Appeal of Gresko, 2009 Pa. Dist. & Cnty. Dec. LEXIS 419 (citing Appeal of George Baker, Jr., 19 Pa. Commw. 163, 339 A.2d 131 (Pa. Cmwlth. 1975)). The Commonwealth Court has explained that "[a]n applicant who satisfies this prima facie burden is entitled to approval..." Williams Holding Group, LLC v. Bd. of Supervisors of W. Hanover Twp., 101 A.3d 1202 (Pa.Cmwlth. 2014). However, failure to sustain this burden of proof constitutes substantial evidence to reject or deny an application for conditional use approval. In re AMA/American Marketing Ass'n, Inc., 2016 WL 3258103 (Pa.Cmwlth. 2016).

In considering a conditional use application, a local governing body is free to reject even uncontradicted testimony if it finds it lacking in credibility, including testimony offered by an expert witness. Taliaferro v. Darby Twp. Zoning Hearing Bd., 873 A.2d 807 (Pa.Cmwlth.2005).

An applicant for special exception or conditional use must demonstrate that his proposed use meets the applicable requirements of the zoning ordinance when the application is submitted. "An applicant is entitled to a conditional use as a matter of right, unless the governing body determines that the use does not satisfy the specific, objective criteria in the zoning ordinance for that conditional use. The applicant bears the initial burden of showing that the proposed conditional use satisfies the objective standards set forth in the zoning ordinance, and a proposed use that does so is presumptively deemed to be consistent with the health, safety and welfare of the community. Once the applicant satisfies these specific standards, the burden shifts to the objectors to prove that the impact of the proposed use is such that it would violate the other general requirements for land use that are set forth in the zoning ordinance, i.e., that the proposed

use would be injurious to the public health, safety and welfare.” EQT Production Company v. Borough of Jefferson Hills, 652 Pa. 508 (2019).

Further, a promise to comply or conditions compelling future compliance cannot cure an otherwise noncompliant application. The Commonwealth Court has rejected arguments that assurances of future compliance should be sufficient, stating “[i]f we were to adopt a rule that to obtain a special exception all that would be required is for an applicant to promise to come into compliance at some future date, it would make the approval process meaningless because once an applicant promises it would be entitled to receive the special exception.” In re Thompson, 896 A.2d 659, 680 (Pa.Cmwlt.2006) (emphasis supplied) (citations omitted).

3. Objective Ordinance Criteria.

The objective criteria for conditional use approval are set forth at §143-80.E(2)(b), as follows:

[1] That the propose use is appropriate to the tract in question and will not adversely effect the character of the surrounding land uses and general neighborhood.

[2] That the proposed use provides for adequate access to public roads without creating hazardous conditions at intersections or areas of poor road alignment and without creating undue congestion. All applications shall be accompanied by a traffic impact analysis which meets the requirements of the Township's Subdivision and Land Development Ordinance, as last amended.

[3] That the proposed use conforms to all applicable requirements of this article.

[4] That the proposed use's water supply and sanitation systems are adequate and able to prevent disease, contamination and unsanitary conditions. Where applicable, a certificate of adequacy of sewage and water facilities shall be provided.

[5] That the proposed use will result in an appropriate use of land, the conservation of the value of buildings, safety from fire, panic and other dangers, adequacy of light and air, the prevention of overcrowding of land and congestion of population and the adequacy of public and community services.”

4. Applicant’s Request for Relief

A. §143-259 – *Office and Contractor Shop for Indoor Storage*

Applicant’s request for conditional use approval seeks to permit a one-story building having an 8,800 SF footprint to be used for an office and a contractor shop for indoor storage of tools, materials, and small equipment on the property, which Applicant contends is a use of the same general character as those permitted by right in the RPBD. Various uses are permitted by right in the RPBD, but the enumerated permitted uses do not include Applicant’s proposed use. See Code, at §143-259. As discussed above, uses “of the same general character” as those permitted by right or by conditional use approval are permitted by conditional use approval, subject to the standards set forth in §143-80.

A business or professional office is a permitted use. Code, at §143-259.F. A building materials supply center, garden supply center, nursery or lumberyard is also a permitted use. Code, at §143-259.S. Here, Applicant proposes that part of the building would be used as an office space and the remainder of the building for property would be used by a fencing company or roofing company, who would keep all materials inside, or a similar company. The Board found, therefore, that the proposed use is of the same general character as both of these uses, as such use is permitted in the RPBD.

After reviewing the various permitted uses, along with Applicant's proffered evidence, the Board concluded that the proposed use was "of the same general character" as the aforementioned permitted uses. Applicant's proposed use is, therefore, entitled to conditional use approval.

The Board also found credible Applicant's evidence that the objective criteria of the Ordinance are satisfied.

5. Conditions of Approval

The Applicant agreed to, and the Board imposes, the following conditions of approval:

- A. The architectural enhancements described in the application and at the October 20, 2022 hearing shall be implemented as part of the final design of the structure, to the extent permitted by the Township's Subdivision and Land Development Ordinance. Specifically, the garage doors of the building will be situated such that they are not facing the streets and are, to the extent possible, not visible from the street. Applicant will plant the trees indicated on the plan and application and as further required by the Code.
- B. The Applicant shall obtain final Subdivision and Land Development approval from the Township prior to any construction and/or site work.
- C. The Applicant and/or its tenant will comply with all hours of operation requirements set forth in the Code to ensure as minimal an impact as possible on the surrounding neighborhood. No back-up beepers or dumpster emptying will occur outside of the normal hours of operation.
- D. The site shall be kept clean and free from debris.
- E. Outside storage shall not be permitted.

6. Conclusion

As noted above, the initial burdens of production and persuasion are placed upon the applicant to demonstrate that he or she meets all of the specific objective requirements for the conditional use as set forth in the zoning ordinance. In re Land Use Appeal of Gresko, 2009 Pa. Dist. & Cnty. Dec. LEXIS 419 (citing Appeal of George Baker, Jr., 19 Pa. Commw. 163, 339 A.2d 131 (Pa. Cmwlth. 1975)). With respect to Applicant's request for relief, the Board of Supervisors found that Applicant sustained its burden of proof.

The Board of Supervisors therefore voted to grant the conditional use application in its entirety, subject to the following conditions:

- A. The architectural enhancements described in the application and at the October 20, 2022 hearing shall be implemented as part of the final design of the structure, to the extent permitted by the Township's Subdivision and Land Development Ordinance. Specifically, the garage doors of the building will be situated such that they are not facing the streets and are, to the extent possible, not visible from the street. Applicant will plant the trees indicated on the plan and application and as further required by the Code.
- B. The Applicant shall obtain final Subdivision and Land Development approval from the Township prior to any construction and/or site work.
- C. The Applicant and/or its tenant will comply with all hours of operation requirements set forth in the Code to ensure as minimal an impact as possible on the surrounding neighborhood. No back-up beepers or dumpster emptying will occur outside of the normal hours of operation.
- D. The site shall be kept clean and free from debris.
- E. Outside storage shall not be permitted.

TOWNSHIP OF LOWER PROVIDENCE

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF LOWER PROVIDENCE, CHAPTER 123 [SUBDIVISION AND LAND DEVELOPMENT], TO REMOVE PROVISION FOR DE MINIMIS IMPROVEMENT REVIEW AND TO CREATE A PROCESS FOR A WAIVER OF LAND DEVELOPMENT

CERTIFICATION

I, E.J. MENTRY, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT I AM THE TOWNSHIP MANAGER IN LOWER PROVIDENCE TOWNSHIP, MONTGOMERY COUNTY, PA AND THAT ATTACHED HERETO IS A TRUE AND COMPLETE CORRECT COPY OF ORDINANCE NO. _____.

E.J. Mentry, Township Manager
_____, 2022

ENACTED: _____

TOWNSHIP OF LOWER PROVIDENCE

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF LOWER PROVIDENCE, CHAPTER 123 [SUBDIVISION AND LAND DEVELOPMENT], TO AMEND ARTICLE III, SECTION 123-8.1 BY REPEALING AND REPLACING THE EXISTING PROVISIONS IN THEIR ENTIRETY TO CREATE A PROCESS FOR EXEMPTIONS FROM LAND DEVELOPMENT

WHEREAS, the Board of Supervisors of LOWER PROVIDENCE Township is duly empowered by the Second Class Township Code, *et seq.*, to enact certain regulations relating to the public health, safety welfare of the residents of LOWER PROVIDENCE Township;

WHEREAS, the Board of Supervisors of LOWER PROVIDENCE Township has adopted a subdivision and land development ordinance, known as the Subdivision and Land Development Regulations of the Township of LOWER PROVIDENCE, as amended, in accordance with the provisions of Article V of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10101, *et seq.*, which is intended to provide for the orderly development and redevelopment of LOWER PROVIDENCE Township;

WHEREAS, the Second Class Township Code and Pennsylvania Municipalities Planning Code, *supra*, authorize the Board of Supervisors to make, amend and adopt amendments to the Subdivision and Land Development Regulations of the Township of LOWER PROVIDENCE, as amended, that are consistent with the Constitution and laws of the Commonwealth that it deems necessary for the proper management and control of the Township and the best interests of its residents;

WHEREAS, the Board of Supervisors of LOWER PROVIDENCE Township have determined that certain amendments to the Subdivision and Land Development Regulations of the Township of LOWER PROVIDENCE, as amended, are required for the orderly administration of the laws of LOWER PROVIDENCE Township;

WHEREAS, the Board of Supervisors of LOWER PROVIDENCE Township have determined that certain amendments to the Subdivision and Land Development Regulations of the Township of LOWER PROVIDENCE, as amended, are required to provide for clarity in the administration of the laws of LOWER PROVIDENCE Township;

WHEREAS, the Board of Supervisors of LOWER PROVIDENCE Township have determined that certain amendments to the Subdivision and Land Development Regulations of the Township of LOWER PROVIDENCE, as amended, are required to provide for safe and proper design and regulation of land development within LOWER PROVIDENCE Township.

NOW, THEREFORE, IT IS HEREBY ENACTED AND ORDAINED by the LOWER PROVIDENCE Township Board of Supervisors that the Township's Code is amended as follows:

SECTION 1. Amendment to Chapter 123 [Subdivision and Land Development], to create exemptions to the land development process.

The Code of the Township of LOWER PROVIDENCE, [General Legislation], Chapter 123 [Subdivision and Land Development], Article III [Plan Application Procedures], Section 123-8.1 is repealed in its entirety and replaced with the following:

§ 8.1 - Exemptions from land development and boundary line adjustments.

A. A land development plan shall not be required for approval by the township when the application is for a non-residential use and all of the following conditions are met:

1) The application is for:

i. a minor building addition or an accessory building that is not more than the lesser of 20% of the existing principal building or 10,000 square feet in size; or

ii. construction of a new building to replace an existing building and/or construction of an addition to an existing building which involves the demolition of another structure or part of a structure, provided that:

a) the net increase of total gross square footage does not exceed the lesser of 20% of the existing principal building or 10,000 square feet; and

b) the construction of the new building and/or the addition to an existing building occurs within two (2) years of the issuance of the demolition permit. If the construction of the new building or proposed addition occurs more than two (2) years after the issuance of

the associated demolition permit, Applicant shall comply with all then-in-place provisions of this Chapter 123.

- 2) Any proposed building or addition shall be only accessory to or an expansion of the current use of the property and not for a separate leasehold or use not related to the current business upon the premises, and shall not introduce a new use to the property, unless the proposed building or addition is part of an overall plan of development for the property that involves the abandonment of a prior use for purposes of introducing a new exclusive use of the premises, such a plan will qualify for exemption from the land development process.
 - 3) The proposal shall not require or propose the extension, alteration or relocation of roads, utilities, or stormwater systems.
 - 4) The provisions of this chapter shall not apply to any property where a single-family use is proposed.
 - 5) The specific property involved has received exemptions from the land development process no more than two (2) times previous to the current proposal.
 - 6) Upon recommendation of Township staff, the Board of Supervisors may require preliminary plan submission as required by §123.9.D where, in the discretion of the Board of Supervisors, the plan requires additional review consistent with the overall objectives and standards of this section.
- B. Boundary Line Adjustments. An application shall be exempt from the land development process in the case of a boundary or lot line adjustment between adjoining property owners where no new lots are involved, provided that no new zoning or subdivision and land development non-conformities are created and no existing zoning or subdivision and land development non-conformities are expanded or increased.

SECTION 2. Repeal and Ratification.

All ordinances or parts of ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed. Any other terms and provisions of the Township's Code unaffected by this Ordinance are hereby reaffirmed and ratified.

SECTION 3. Severability.

Should any section, paragraph, sentence, clause, or phrase in this Ordinance be declared unconstitutional or invalid for any reason, the remainder of the Ordinance shall not be affected thereby and shall remain in full force and affect, and for this reason the provisions of this Ordinance shall be severable.

SECTION 4. Effective Date.

This Ordinance shall become effective 5 days after enactment.

ORDAINED AND ENACTED this _____ day of _____ 2023, by the Board of Supervisors of the Township of LOWER PROVIDENCE.

PROVIDENCE

TOWNSHIP OF LOWER

BOARD OF SUPERVISORS

Gary Neights
Chairperson

[Seal]

Attested by:

E.J. Mentry
Township Manager & Secretary

TOWNSHIP OF LOWER PROVIDENCE

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF LOWER PROVIDENCE, CHAPTER 11A [ENVIRONMENTAL ADVISORY COUNCIL], TO INCREASE MEMBERSHIP TO SEVEN MEMBERS AND TO CHANGE THE PROCESS BY WHICH THE CHAIRPERSON OF THE COUNCIL IS APPOINTED

CERTIFICATION

I, E.J. MENTRY, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT I AM THE TOWNSHIP MANAGER IN LOWER PROVIDENCE TOWNSHIP, MONTGOMERY COUNTY, PA AND THAT ATTACHED HERETO IS A TRUE AND COMPLETE CORRECT COPY OF ORDINANCE NO. _____.

E.J. Mentry, Township Manager
_____, 2022

ENACTED: _____

TOWNSHIP OF LOWER PROVIDENCE

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF LOWER PROVIDENCE, CHAPTER 11A [ENVIRONMENTAL ADVISORY COUNCIL], TO INCREASE MEMBERSHIP TO SEVEN MEMBERS AND TO CHANGE THE PROCESS BY WHICH THE CHAIRPERSON OF THE COUNCIL IS APPOINTED

WHEREAS, the Board of Supervisors of LOWER PROVIDENCE Township is duly empowered by the Second Class Township Code, *et seq.*, to enact certain regulations relating to the public health, safety welfare of the residents of LOWER PROVIDENCE Township; and

WHEREAS, the Board of Supervisors of LOWER PROVIDENCE Township desires to create a healthy and sustainable environment in which the community has access to well-conceived outdoor spaces; and

WHEREAS, the Board of Supervisors of LOWER PROVIDENCE Township has adopted an ordinance establishing the Environmental Advisory Council in accordance with the provisions of 53 Pa.C.S.A. §§2321-2329 relating to Environmental Advisory Councils as set forth herein; and

WHEREAS, the Board of Supervisors of LOWER PROVIDENCE Township have determined that certain amendments to the Environmental Advisory Council ordinance are required for the further advancement of environmental and sustainability goals of LOWER PROVIDENCE Township.

NOW, THEREFORE, IT IS HEREBY ENACTED AND ORDAINED by the LOWER PROVIDENCE Township Board of Supervisors that the Township's Code is amended as follows:

SECTION 1. Amendment to Chapter 11A [Environmental Advisory Council], to increase membership and to change the process by which the Chairperson of the council is appointed.

The Code of the Township of LOWER PROVIDENCE, [Administrative Legislation], Chapter 11A [Environmental Advisory Council], is amended with the following, with the stricken text indicating the deleted portions of the code and the underlined text indicating the added portions of the code:

§ 11A-2 – Membership and terms

The Environmental Advisory Council shall be composed of ~~five~~ seven residents of Lower Providence Township. Council members shall be appointed according to the following procedures:

...

- C. Council members shall serve a term of three years, except that ~~initial~~ appointments shall be staggered so that ~~two members serve three year terms, two members serve two year terms, and one member serves a one year term~~ no more than three members' terms expire each year.

...

§ 11A-5 – Officers

The Environmental Advisory Council will have a Chairperson who shall be ~~appointed by the Board of Supervisors of Lower Providence Township~~ elected by Council membership annually during the first meeting of each calendar year. All other officers shall likewise be elected by Council membership.

SECTION 2. Repeal and Ratification.

All ordinances or parts of ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed. Any other terms and provisions of the Township's Code unaffected by this Ordinance are hereby reaffirmed and ratified.

SECTION 3. Severability.

Should any section, paragraph, sentence, clause, or phrase in this Ordinance be declared unconstitutional or invalid for any reason, the remainder of the Ordinance shall not be affected thereby and shall remain in full force and affect, and for this reason the provisions of this Ordinance shall be severable.

SECTION 4. Effective Date.

This Ordinance shall become effective 5 days after enactment.

ORDAINED AND ENACTED this _____ day of _____ 2022, by the Board of Supervisors of the Township of LOWER PROVIDENCE.

PROVIDENCE

**TOWNSHIP OF LOWER
BOARD OF SUPERVISORS**

Gary Neights
Chairperson

[Seal]

Attested by:

E.J. Mentry
Township Manager & Secretary

Audubon Land Development Corp.
2620 Egypt Road
Norristown, PA 19403
Phone: (610) 631-1900
Fax: (610) 650-8788

November 17, 2022

Mr. E. J. Mentry
Township Manager
Lower Providence Township
100 Parklane Drive
Eagleville, PA 19403

Re: Annual Update
Shannondell Phasing Plan

Dear E. J.,

As you are aware, Audubon Land Development Corp. received preliminary approval for Shannondell, a five-phase land development program, on December 2, 1999. We received final approval for Phase One on November 22, 2000, Phase Two on September 2, 2004, Phase Five on December 4, 2003, Phase 5.2 on August 21, 2014, and Phase Three on September 1, 2022.

In accordance with the Municipalities Planning Code Article V, Section 508 (4) (v), I am hereby providing our annual update to the Township regarding our anticipated schedule for the submission of final plans or construction for the subsequent phases, as follows:

- Phase Four on or before December 31, 2035

If you have any questions, please feel free to contact me at (610) 324-1900.

Very truly yours,



John T. Neilson
President
Audubon Land Development Corp.