

# LEHIGH TOWNSHIP PLANNING COMMISSION

Minutes of February 12, 2024

Present: David Shulman, Chairman (via phone)  
Todd Rousenberger, Vice Chairman  
Bill Jones, Secretary  
Cynthia Miller  
Liz Amato, Zoning Officer  
Michael Corriere, Solicitor  
Lori Lambert, Planning & Zoning Secretary  
Mike Muffley, Township Engineer

Absent:

## CALL TO ORDER

## RE-ORGANIZATION

Todd Rousenberger ran nominations for Chairperson, Vice Chairperson and Secretary.

Todd Rousenberger opened the nominations for Chairman. Bill Jones made a motion to nominate David Shulman as Chairman. Cindy Miller seconded the motion. There were no other nominations; the nominations were closed. All voted aye. Motion carried.

Todd Rousenberger opened the nominations for Vice Chairman. Dave Shulman made a motion to nominate Todd Rousenberger as Vice Chairman. Cindy Miller seconded the motion. There were no other nominations; the nominations were closed. All voted aye. Motion carried.

Todd Rousenberger opened the nominations for Secretary. Dave Shulman made a motion to nominate Bill Jones as Secretary. Cindy Miller seconded the motion. There were no nominations; the nominations were closed. All voted aye. Motion carried.

## READING OF THE MINUTES

Bill Jones made a motion to approve the minutes and waiver the reading of the minutes from the December 11, 2023, Planning Commission meeting. Cindy Miller seconded the motion. All voted aye. Motion carried.

## TIME EXTENSION

A time extension request has been received for the Zachary Bittner, Preliminary/Final Minor Subdivision Plan until August 31, 2024. Dave Lear from Lehigh Engineering stated that he is not the project manager; however, can provide an update. They have received LVPC drainage approval, stormwater items have been discussed with Mike Muffley of Hanover Engineering, and an easement agreement is being worked on with PPL for the driveway.

Todd Rousenberger questioned if Mr. Bittner was present. Dave Lear stated that he is not. Todd Rousenberger stated that the last time this plan was tabled the Board requested that Mr. Bittner be present to discuss what he is doing to get a better understanding of the project. Dave Lear stated that Mr. Bittner and his Attorney were speaking with David Backenstoe to resolve some of the comments. Cindy Miller stated that we haven't received any answers from Mr. Bittner; the neighbors are complaining and we understand that there are things that are on the property that shouldn't be and aren't getting addressed. Cindy Miller will be making a motion to deny the plan. Dave Lear stated that they are trying to address the Engineering comments, the legal issues are out of his hands.

Cindy Miller made a motion to deny the time extension request for the Zachary Bittner plan. Bill Jones seconded the motion. Dave Shulman questioned Michael Corriere if we have to give this plan an extension because of the settlement agreement between the Township and Mr. Bittner. Michael Corriere doesn't believe that the settlement agreement stipulated that we had to approve the plan. Bill Jones questioned if we can extend it for a month; Dave Shulman stated that he would extend it for a month. This would give Mr. Bittner time to get the plan in front of us so that the Board could impose restrictions and provide Mr. Bittner the opportunity to move forward with the plan. Cindy Miller stated that he has to come before the BOS for approval of the time extension, we are only a recommending Board. Bill Jones stated that he would recommend a one month extension. The motion did not carry.

Cindy Miller made a motion to recommend to the BOS to deny the time extension request for the Zachary Bittner Plan; the plan is not complete pursuant the Subdivision and Land Development Ordinance. Dave Shulman seconded the motion. Cindy Miller voted aye, Todd Rousenberger voted aye, Dave Shulman voted aye. Bill Jones voted nay. Motion carried.

## ADVISORY TO ZONING HEARING BOARD

***Justin & Deidra Heisler, owner of 1080 Del Drive, Walnutport, PA, 18088, requesting special exception approval to operate a salon as a home occupation in an existing single-family dwelling.***

Justin and Deidra Heisler were present to represent this request. Deidra Heisler stated that they have been in operation; when they built their house in Grace Estates, the salon was built into the house because they were given the wrong information by the previous Zoning Officer, Laura Harrier. Before they started building, they consulted via phone with Laura Harrier in 2013. The only permit that would've been required was a sign permit if they chose to have one for outside the house. They were told that the fee would be 20% of what it cost for the salon to be constructed in the home; for an average salon cost of \$25,000, the fee would be \$5,000. They did not apply for a sign and the name was only put on the window of the salon. A special exception for an in-home occupation was never mentioned by Laura Harrier. Janice Buskirk, Township SEO at the time knew they were constructing the in-home salon. In order to be compliant, they purchased a larger septic system. The salon opened in 2015, Deidra Heisler is licensed through the State of Pennsylvania and the State Board of inspectors comes regularly every 1-2 years. This is a one chair salon with one assistant and is open approximately 3 days a week.

A review letter dated January 22, 2024, has been received for the Township Sewage Enforcement Officer, Chris Noll of Keystone Consulting Engineers.

Liz Amato was never aware that this existed, you cannot tell from the outside of the house. This issue was brought up at a previous ZHB meeting, the property file was checked and we have nothing stating that this was going in when the home was built. There was no written correspondence between Laura Harrier and the Heisler's, the construction drawings state that the area is an office. A 4 square foot sign is permitted for a home occupation and does not cost \$5,000.00. The septic issues will need to be worked out with Chris Noll. Justin Heisler provided Chris Noll with information on the salon; the drain field can be added to, Chris Noll will be sending a revised letter to the ZHB.

Todd Rousenberger questioned how many chairs there are and how much parking is available. Deidra Heisler stated that there is one chair and provided a drawing of the driveway showing that 6 cars can adequately fit in the driveway. There are 1-2 clients at one time and the assistant, who currently is a neighbor, usually walks to the salon. Dave Shulman stated that a title search should be submitted to the ZHB to make sure that there

are no deed restrictions. Liz Amato stated that the Township cannot enforce deed restrictions, only the neighbors can. Dave Shulman stated that we shouldn't grant approval for a use that violates a clear deed restriction. Justin Heisler stated that Wagner Enterprises (the company which built Grace Estates) has closed. There is wording in the deed restrictions that if the original owner and or company goes out of business, the deed restrictions are null and void. Deidra Heisler stated that as part of the negotiations for the purchase of their property; knowing they were constructing the salon, they negotiated to not have the property subject to a lot of the deed restrictions. Dave Shulman noted that the approval should comply with the SEO requirements and that there be no more than one chair.

Bill Jones made a motion to send a recommendation to the ZHB; the salon shall be limited to no more than one chair, the comments in the Sewage Enforcement Officer's letter dated January 22, 2024, shall be complied with and update the drain field accordingly, the deed restriction exemptions shall be provided, it shall be limited to no more than one employee. Cindy Miller seconded the motion. All voted aye. Motion carried.

#### GENERAL BOARD DISCUSSION

##### ***Recreational Marijuana Ordinance***

Michael Corriere stated that Pennsylvania is currently looking at Senate Bill 473; regulations with the State, licensing and permitting. The key section is Section F and how they would be regulated by the municipality. Recreational Marijuana has three uses which fall under the definition of Cannabis Business Establishment (adult cultivation center, micro-cultivation center and dispensary). In the proposed ordinance, the uses were kept separate in order to provide regulations for both. The use is not legal in Pennsylvania; the proposed ordinance would be considered a trigger ordinance, once the State approves the use, our ordinance would kick in. It seems that the Act is written in a manner that there will be separate processing centers and cultivations centers for medical vs. recreational.

Michael Corriere provided the Board with a memo, Katherine Mack's questions with answers dated January 11, 2024, a red copy version and a clean copy version of the proposed ordinance. Liz Amato provided changes to Michael Corriere and will make the changes as part of his next draft. Pg. 4, 1.r., the ordinance incorporates any and all definitions set forth in the Pennsylvania Recreation Marijuana law. Pg. 5, D. (1), proposed as Cannabis Business Establishment (Adult Use Cultivation

Center and Cultivation Center) (cultivation, processing and transportation uses). Pg. 5. D. (1) (a), keep five-acre minimum. Pg. 6, D. (1) (d), change to 20,000 square feet. Pg. 6, D. (1) (j), one parking space per each 300 square feet or one per employee, whichever is greater. Pg. 7, D. (3), Cannabis Business Establishment (Adult Use Dispensary). Pg. 7, D. (3) (a), change to a two-acre minimum. Pg. 9. D. (3) (o), one per 150 square feet plus one for each employee. Medical Marijuana and Recreational Marijuana should get added to Zoning Section 180-37. Liz Amato's changes: there is no definition for grower/processor which is incorporated into the Cannabis Business Establishment, Page 5 of the Act. Entrances and driveways should be changed to access drives. The word "must" should be changed to "shall". Pg. 8, (1), medical marijuana facility is referenced, this should remain based upon the assumption that there will be separate facilities for recreational and medical.

Katherine Mack stated that in the Medical Marijuana Ordinance it allows 20,000 square feet for the grower/processor. The Board may want to consider keeping the two ordinances consistent and changing the Recreational Marijuana Ordinance to 20,000 square feet instead of 3,000 square feet. Michael Corriere stated from a legal perspective, it makes sense to keep them consistent, this change will be made.

Cindy Miller found some additional changes; she will email them to Michael Corriere. Michael Corriere will make all the changes and provide to the Board for the next meeting.

***Solicitor Correspondence: Bittner – 3421 Teel Road,  
Preliminary/Final Minor Subdivision***

Michael Corriere provided the Board with a memo dated January 15, 2024, and a letter from David Backenstoe dated January 4, 2024. The Applicant was cited, an appeal was filed and an order was entered in County Court. In the order, they had 120 days from September to come back to Court; which has since been extended by Attorney Backenstoe. Mr. Bittner and his Attorney feel that the subdivision plan will resolve all of the issues. The proposed subdivision plan is for construction of a pole building that has to meet the Zoning and SALDO requirements.

Neighboring property owners raised the following concerns: a 500-gallon fuel tank, salt for snow plowing and a lawn care business being operated on the property. The proposed plant/nursery would need strict conditions. Michael Corriere stated that while we are going through the planning process, we can ask the Applicant if he would incorporate the citizens concerns as things he cannot do into the plan. The Board could also make a list and provide it to David Backenstoe so that way when he talks

to Mr. Bittner and his Attorney and the final settlement agreement is Amended, it can say: you can't have the fuel tanks, the salt, and you can't operate a lawn care business. A court order is easier to enforce than SALDO requirements. Liz Amato stated that there is nothing in our Zoning that says you can't have gas tanks; the problem is, is that he has the business there. All of the violations fall under the issue that he is running an illegal business there and to rectify that situation he is now calling this a nursery. The Board needs to decide if he falls under a landscape business or a nursery. If we approve the plan as a nursery use, it will not solve the issue of the illegal business being run from the property. The problem is with Zoning not SALDO. Mike Muffley stated that we need to work out very specific conditions for David Backenstoe to take to Court.

Janet Small, 3436 Teel Road, stated that in June it will be 3 years since this entire process has started. Bob Small stated that listing what is not possible gives at least a course for punitive action and damages; without that he will keep rolling and rolling. In regards to the Recreational Marijuana, he recommended that the Board look into the LCB Beer Laws; the State will most likely model recreational marijuana after them.

Karen Talotta, 3417 Teel Road, stated that there are two 500-gallon fuel tanks behind the pole barn. Mr. Bittner open burns on the property in close proximity to the fuel tanks. Mr. Bittner has now gated his property which makes it very difficult for first responders.

#### PUBLIC COMMENT

There was no public comment at this time.

#### ADJOURN

Cindy Miller made a motion to adjourn. Bill Jones seconded the motion. All voted aye. Motion carried.