

**PALMER TOWNSHIP BOARD OF SUPERVISORS**  
**August 30, 2022**  
**7:00 PM**  
**GENERAL BUSINESS MEETING**

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The Palmer Township Board of Supervisors held a general business meeting on Tuesday, August 30, 2022, at 7:00 p.m. in the Municipal Building meeting room. The following were in attendance: Chairman Jeffrey Young, Supervisors K. Michael Mitchell and Ann-Marie Panella. Vice-Chairman Michael Brett and Supervisor Joseph Armato were absent. Also in attendance were the Township Manager, Police Chief, Public Services Director, Fire Commissioner, Township Solicitor, and the Assistant Township Manager.

**1. PLEDGE TO THE FLAG**

**2. CONSENT CALENDAR**

- A. Approval of Minutes - August 23, 2022

INFORMATION

The Board needs to approve/disapprove the minutes of August 23, 2022.

Motion: Approve, Moved by Supervisor Kendall Mitchell, Seconded by Supervisor Ann-Marie Panella. Passed. 3-0.

Supervisors voting Ayes: Mitchell, Panella, Young

Supervisors Absent: Armato, Brett

**3. OLD BUSINESS**

- A. Public Hearing - Exchange 12 - Conditional Use Application - Distribution Buildings in PI/C District

INFORMATION

1492 Van Buren Road - K8-10A1

PI/C District

Request by Exchange 12 LLC

This is a continuation of the conditional use hearings from April 26 and June 28, 2022.

The Palmer Township Planning Commission reviewed the above-referenced item at their regular meeting of April 12, 2022.

The applicant, Exchange 12 LLC, is requesting conditional use approval for construction of two distribution buildings, one at 128,876 square feet and one at 138,743 square feet on a 36.63 acre lot. The property is located on the west side of Van Buren Road, south and east of Route 33, within the Planned Industrial/Commercial (PI/C) zoning district.

The property to the north is zoned PI/C and is undeveloped. The property to the south is

zoned PI/C and is developed with a single-residential use. The property to the east across Van Buren Road is zoned PO/IP and is undeveloped. The Comprehensive Plan designates this area for non-residential use.

The applicant is seeking conditional use approval under the following provisions of the Zoning Ordinance:

- §190-125.G - Distribution center in the PI/C district; meeting the conditions of §190-210.B(23) as it refers to §190-210.B(33) - Additional requirements for a Trucking company terminal

The requested use requires conditional use approval in the Planned Industrial/Commercial (PIC) zoning district, subject to the performance criteria listed in the zoning ordinance.

By decision letter dated January 25, 2018, the previous applicant was granted special exception approval from the Palmer Township Zoning Hearing Board pursuant to Section 190-154.K of the Zoning Ordinance, to allow for construction of a driveway within the 100 year floodplain (Schoeneck Creek). As part of the Special Exception approval, the applicant is required to have all local, state, and federal governmental agencies having jurisdiction review and approve project impacts on the adjacent floodplain. The Zoning Hearing Board at their meeting of April 5, 2022 confirmed that the previous approval was still valid.

The Planning Commission previously considered an identical conditional use application by another developer. At their meeting of June 11, 2019, the Commission by a vote of 1-5 voted against a motion to recommend approval of the conditional use.

Recommendation: At their meeting of April 12, the Planning Commission unanimously recommended denial of the conditional use request by the Board of Supervisors on the basis that nothing had changed since their previous consideration of this request.

Deadline: The conditional use application was first submitted to the Township on March 31, 2021. The applicant has granted the Board of Supervisors an extension of time until August 31, 2022 to continue the conditional use hearing.

## DISCUSSION

Young announced, Supervisors Mike Brett and Joseph Armato are absent this evening.

Attorney Julie VonSpreckelsen from Eastburn and Gray, George Hartman from Bohler Engineering, and the Applicant Abraham Atiyeh were in attendance.

Bruno said, as you may recall, when the Applicant was last here we had to have the hearing continued to a later date. It was originally scheduled for August 8, 2022, and then had to be rescheduled to this evening. Bruno entered additional exhibits to the record:

T20 – Attorney VanLuvanee's letter dated June 30, 2022, granting an extension of time through August 31, 2022, to hold the third hearing. At that time it was confirming the August 8, 2022 hearing date.

T18 – First newspaper public notice for hearing of August 8, 2022

T19 - Second newspaper public notice for hearing of August 8, 2022

T21 – First newspaper public notice for rescheduled hearing of August 30, 2022

T22 - Second newspaper public notice for reschedule hearing of August 30, 2022

Bruno said, we left off at our last hearing that the Applicant's Attorney was going to have a rebuttal witness at our next hearing. Mr. VanLuvanee was unable to attend this hearing, but has subsequent Counsel here tonight. Attorney Julie VonSpreckelsen is here from Eastburn and Gray.

VonSpreckelsen said, their rebuttal witness is George Hartman. He testified at the first hearing and he is the project Civil Engineer from Bohler Engineering. He was previously sworn-in. Hartman confirmed that he read the June 28, 2022, transcript where Tim Fisher, Wayne Conrad, Gerry Genrich, and David Blackstone testified. Hartman said he reviewed the exhibits presented by those witnesses: O1-O33, with the exception of exhibits O18, O19, O27 and O30. Hartman confirmed that exhibits O7 and O8, FEMA maps are relevant to this application and he went on to confirm that Zone AE is the 100-year floodplain and Zone X shows areas outside the 500-year floodplain. Hartman went on to discuss the riparian overlay and the proposed bikeway. Bruno asked what he is rebutting on the floodplain issue? VonSpreckelsen said, we are trying to establish that. Hartman said, exhibit O3 appears to be fairly accurate, but a portion of the building and the parking area are not approaching the floodplain on the east side. Hartman added exhibit O24 accurately reflects the floodplain and shows the building and parking area is above the floodplain. He continued that exhibit O25 appears to be accurate, but the redline of the fill area doesn't include the areas actually in the fill position. Harman added, exhibit O26 generally appears to be accurate. Hartman said, their plans do not alter the natural drainage patterns. The discharges to the creek will be the same in the proposed positions. Hartman said, the property is currently cultivated fields with no natural vegetation. It has minimal trees and they will not be removed except where the creek crossing will occur. Hartman said, in my opinion there is no significant natural vegetation or trees and the trees will remain except at the creek crossing. Hartman then explained there will be grading on both sides of the creek creating a three to one slope, which will be maintained and walkable. They are in no way creating a "canyon-like" ditch as stated in exhibit O2. He added, exhibit O24 refutes a canyon-like ditch is being created. Hartman confirmed he prepared the flood study that was revised in December 2017, and again in August 2018, and it was prepared for a different applicant. The design is still the same and is still relevant since nothing has changed on the property since that time. Hartman summarized the preparation of the study and explained the software used to compute the water service profiles and elevations. Hartman said, he reviewed the water at the beginning of the property and at the end of the property and stated there is no impact upstream or downstream. Hartman said, this was also reviewed by the Township Engineer. Hartman said he reviewed exhibit A14, a memorandum from Brian Dillman to Cyndie Carman Kramer, reviewing the flood study and revisions have been made to address any Township Engineer review comments. Hartman added, he anticipates DEP approval and the unnamed tributary is a non-regulated water course. Hartman said, they did have a pre-application meeting in February 2017, when it was discussed, and DEP said they would not take jurisdiction of the unnamed tributary. Hartman said, all eight review comments are acceptable to Exchange 12. Hartman confirmed the flood study was reviewed by the Township Zoning Hearing Board and he reviewed their decision letter. He stated the Township Geotechnical Engineer is

CMT Services Group and that he reviewed their December 10, 2018, review letter. Hartman said the letter states it reviewed the flood study and there were no objections. Hartman then reviewed outside entities that will need to provide approvals: the Army Corps of Engineers, DEP, CLOMR, FEMA and a NPDES permit from the PA DEP. Hartman added, there will be no additional downstream flooding and base flooding will not increase from the base flood elevation. Hartman went on to summarize how they will handle storm water runoff using two above ground basins that will enter a drip irrigation system. He said the project will maintain pre-development conditions or better and that the additional separate culvert will assist with the existing drainage. He also confirmed that there is no drastic change that would be detrimental to the public health, safety and morals of township residents. There is no alteration of the existing flood patterns. Hartman added there are no wetlands or endangered specials and the project is suitable for this location as it is consistent with the zoning and surrounding developments. Hartman closed stating that all outside agencies and the township will review the project to make sure it complies with all required regulations.

Young said, you used the word "generally." Is there a use around this property that is a conflict? Hartman said, that is a subjective question. Young asked if there wasn't a residential use immediately adjacent to this project. Young said, south of this property is an approved residential structure. VonSpreckelsen objected. Bruno said, he has a right to ask the question and it is an appropriate question. Bruno said, let me refresh the question. Do you know if that property is residential? Young said, if I tell you it's residential, does it change your answer? Hartman said, to my knowledge, it is zoned industrial. Planning Director, Cyndie Kramer said, it is zoned PIC. Young said, how do you testify that you know the surrounding properties, but you don't know what the property is to your south. VonSpreckelsen said, his testimony stated it is zoned industrial. Bruno asked if he knew the current use? Hartman said, he knows there is a building on the property and it is zoned industrial.

Young said, you testified that this won't increase water surface elevations. VonSpreckelsen said, that question referred to exhibit O3 referencing section 191-154 of the zoning ordinance. Hartman said, the base flood elevation will not be increased. Young said, your comment regarding exhibit O25 where you stated it is generally accurate, that bothers me. I'd like you to re-address that. VonSpreckelsen said that was referring to exhibits O25 and O26 and I asked if they accurately depict the extent of the fill in that area. Hartman said, exhibit O25, I used the word generally because it is pretty close. Young asked, are you saying it's not the same as your plan. Hartman said, we are trying to show the area that will have fill on the property. It's mostly correct, but not entirely. Young asked, does the stream bed move at all? Hartman said, no. Young asked him to define the tree comments. Hartman said, where the road crosses the stream, some disturbance will occur. Everywhere else will not be disturbed. Young asked for some type of reference. Hartman said, 40-feet plus or minus.

Mitchell asked if they did a study on the roadway showing it can take the truck traffic. Hartman said, that was done previously through a thorough analysis of a previous application. Mitchell said, the plan proposes improvements to Van Buren Road that will be made by the Applicant. Young said, exhibit O2 that refers to a canyon-like ditch, you said it will have a three to one slope. What is the slope really? Hartman said, in his

opinion a steep rocky cliff would be a canyon, not a three to one slope. Young asked, what becomes a problem in your mind, what would be too deep? Hartman said, he didn't know the magic number, something three, four or five times that.

Panella said, she is concerned when I see data that is from four years ago. I'm not the same person I was four years ago, are you? That area has grown a lot since 2018. I'm concerned with quoting information from 2018 and approvals made in 2018. That was four years ago. Have you looked it over again, or are you just depending on 2018 data? Hartman said, the property hasn't changed. It is still not developed and the stream is still the stream. There have been no changes to the property since that analysis. Panella asked, did you drive up the road? Hartman said, yes. Panella said, it bothers me that you are referencing four year old data. There were no further questions from the Board.

Bruno asked if Mr. Fisher had any questions for the witness.

Tim Fisher, representing the Highlands of Glenmoor Homeowners Association said the last time we were here you talked about the map you made, dated August 8, 2019, exhibit 016, the site plan of the property. Hartman confirmed he prepared it and it shows different flood lines. Fisher questioned the floodplain lines. Hartman said, the floodplain boundary will get adjusted, but it doesn't change the flood elevation. Fisher asked if he made application to FEMA for the remapping based on your changed lines? Hartman said, there has been no application to FEMA yet. Fisher said, so the township doesn't have the benefit of what FEMA may say. Hartman said, the township will have that information during the land development process. Fisher said, but they don't have it to make a determination on this conditional use. Hartman said, we don't need to have FEMA review it at this time. Fisher said, in December 2017 you had a preliminary meeting with DEP. Were you one of the people that attended? Hartman said, yes. That was for the F-Greek application. Fisher asked if he told the township what was said at that meeting? Hartman said, he didn't recall. Fisher said, you understand that the conditional use is a preliminary thing. Hartman said, yes, and land development will follow. Fisher asked, what do you believe the Board should have if they don't have facts from other agencies? Hartman said, it is not up to me to decide that. Fisher asked if he looked at the Zoning Hearing Board decision dated January 25, 2018. Hartman said, yes. Fisher said, paragraph three asks for other government agency approvals. Hartman said, yes, and the key word is final. Fisher asked if they have made application for any of these approvals to date? Hartman said, no applications to outside agencies yet.

VonSprecklesen asked if an application will be submitted to FEMA for remapping. Hartman said, yes, but it is not a requirement for conditional use approval. Fisher objected and said that is a legal conclusion. Bruno said, Mr. Fisher, you opened the door and questioned the witness about those requirements, so I will allow it. Hartman said, it is not specific criteria of the zoning ordinance. Hartman said, zoning regulations are for the use and the land development approval is by the subdivision and land development ordinance regarding specifics of the development. Hartman then read the first statement in the Zoning Hearing Board decision letter which stated it is a requirement of the land development plan not the conditional use review.

Bruno said, Mr. Fisher represents the Highland's community, but there may be other

residents her tonight that may have questions for this witness and he opened it up to them.

Harry Graack, 1380 Van Buren Road, distributed a graphic to the Board. It was noted as exhibit Graack1. VonSpreckelsen asked if he is a party of these proceedings? Bruno said, he is a neighboring land owner and has already been participating. Graack said, the graphic is from FEMA and is the most recent study dated 2014. It shows an aerial view of the area of his property, which is south of the applicants. It also shows the properties to the north and the red question marks were added by me. Graack said, his questions are related to his development and this applicant's development as it relates to the floodplain and the contribution of that development to the overall Schoeneck Creek corridor. Graack said, he questions if the floodplain is impacted in a way and asked how much detention or retention do you actually have in terms of volume, versus impervious areas. Graack said, he asked this several years ago and never got an answer. Hartman said, he didn't think it could be answered during the conditional use hearing, but it will be discussed in the land development stage. It is not part of this application. Graack said, if the numbers don't jive in some way, my property is impacted. VonSpreckelsen objected. Graack asked, do you think my property would be impacted? I need to know the answer to proceed any further. VonSpreckelsen said, I understand your concerns and it will be addressed later on in the process. Bruno said, they don't have the answer at this time, but will at the appropriate time. Graack asked, do you know how the land below your project is being used? Graack said, it is residential. Hartman said, he was not aware before just now. Graack said, if the applicant figures they don't need FEMA and PennDOT permits, how sure are you about your flood plan. VonSpreckelsen said the Applicant stated they will be applied for later in the process. Graack asked if they would be required to substantiate the plan when available. Hartman asked, what be required? Graack said, all the permits. Hartman said, all applicable permits will apply. Graack asked, will they substantiate your storm water flood plan? Hartman said, I would guess there may be comments that we will receive from agencies, which is typical, and we will work those out with the agencies. Graack asked, have you presented enough to this Board to make a decision? Hartman said, that information is not a subject for conditional use approval. Graack said, you said there will be zero input and zero output to the creek. Graack said, there are question marks on this graphic because I don't get answers. Graack said, do you really know since the original plan was made four years ago, that things have not changed? The flooding is worse. We need to make sure your data presented is accurate. Do you believe that the data presented tonight related to storm water is still accurate in 2022? Hartman said, yes.

There were no further questions. VonSpreckelsen asked to move their three exhibits to the record and Bruno confirmed. There was no further testimony. Bruno confirmed all testimony has been presented. Bruno said, since we are here with just three Board members tonight, missing Supervisors Armato and Brett, the other two members were present for all proceedings except tonight. Bruno said, previously, Supervisor Panella was absent at one hearing and it was agreed she could review that meeting transcript and participate tonight. I believe the same should be available to our two Board members absent tonight. I would recommend we continue the hearing to when a vote can be made on the application by all five members of the Board. Bruno said, at that time it would be appropriate for your argument, or you could present your argument tonight, as well as Mr. Fisher could present his argument tonight. Bruno stated, we do

have a quorum tonight, however an affirmative vote of the entire Board of Supervisors is required at a public hearing in accordance with Section 603 of the Second Class Township Code. Any motion would require a 3-0 vote to pass. Bruno said, in my opinion, the law supports my recommendation and in an abundance of caution, a motion tonight would require a 3-0 vote. Bruno referenced the Supreme Court of Pennsylvania's case Scheipe v. Orlando, which further supports my opinion of what is necessary for a motion to pass. Bruno said, I'm not saying it is impossible, but I believe both sides may want five members voting on this application. Transcripts can be provided to the other two Board members not here tonight. The Applicant asked for a five minute recess to discuss.

Once back on the record, VonSpreckelsen thanked the Board for the time and stated she explained this to her client he understands the consequences, but he would like to have a decision tonight. Bruno said the decision that has to be made is one of the Board, not the Applicant. He stated the Board has a right to continue the hearing and it will remain open unless the Board decides otherwise. My recommendation would be to keep it open.

VonSpreckelsen thanked the Board for the time and attention throughout these hearings. I know this Board understands the laws of conditional use hearings, and as such, you know it is a use permitted and one an Applicant is entitled to provided they comply with specific criteria of the zoning ordinance. Once compliance is demonstrated a legislative presumption arises. It is consistent to the safety, health and welfare, then shifts to objectors to prove to a high degree of probability, that the proposed conditional use will substantially impact health, safety and welfare. This is a conditional use for distribution centers. Through exhibits the applicant's witnesses have demonstrated compliance with the specific criteria in the township ordinance. In addition, through unrefuted and unrebutted testimony, the Applicant demonstrated compliance with all general standards. Many are objective standards and the Applicant still provided compliance with standards in Section 190-208D. The burden shifted to the objectors who did not present any expert witnesses, and what were presented were based on personal opinion and speculations.

VonSpreckelsen said that she wanted to briefly touch on two issues arisen during the hearings. The first was assertion that the Applicant identify an end user tenant. That is not a requirement of a conditional use, unless the zoning ordinance requires it. We are not required to provide that information. VonSpreckelsen said that they provided a Memorandum of Law, which stated this is not a requirement. Your zoning ordinance lists distribution centers with requirements, and the end user is not a requirement in the zoning ordinance. It does not have to identify an Amazon, Target, UPS, etc. It is not a requirement. I'd like to make one other point. I just obtained a land development approval in Bristol Township and they still don't know who the end user will be, because it is not a requirement. Given that it is not required by law or in your ordinance, the Applicant still agreed that the end user will be required to supply information to the township to confirm conformance of all conditions of approval. VonSpreckelsen said, the second issue discussed was regarding the zoning special exception approval, condition #3, where the objectors say it requires all local, state, and federal governmental agencies with jurisdiction over the site relating to analyzing and approving the projected impact, review and provide approval before any final development approval. The objectors are arguing it is for conditional use approval,

but it doesn't say conditional use approval in the ordinance. If the conditional use is approved tonight, he still has to go through the entire land development approval process. VonSpreckelsen said, as George confirmed, it specifically states for the land development approval they must have local, state, and federal approvals. The Applicant has provided all required compliance and it doesn't present any safety, health, and welfare issues and for those reasons, it must be approved for conditional use approval tonight.

Mr. Fisher said, we are talking about a property that has the Schoeneck Creek on it and it is a pristine piece of property. They want two distribution centers, one on each side of the creek. We had good testimony the last time from a retired architect about the physical impact on the Schoeneck Creek floodplain and around it. As Mr. Hartman said, it was generally accurate. You have to study those things. We called it a canyon-like ditch, he called it a three to one slope. It will have a substantial impact on the creek. The ordinance said they were supposed to put a trail along the creek. They indicated they will put a 10-foot path along the Van Buren side of the creek. They are not complying with the ordinance. Fisher said, we had a special exception hearing by the Zoning Hearing Board and they granted them the right to put a culvert and bridge across the Schoeneck. We are talking about the feasibility and the impact to the Schoeneck creek. You need to go to agencies that have jurisdiction of the floodplain, like FEMA, the Department of Preservation, the Army Corps of Engineers. You people need to know what the impact is going to be and you learn through your Township Engineer and outside agencies. I'm talking about going to the people that are specialized in floodplain determinations. They say it will be done at the preliminary plan stage. If you look at those agencies it tells you the feasibility of this project. They indicated in December 2017 they had a preliminary assessment from an agency and we didn't hear about it. I've been here over and over again. The engineer that handled it then is no longer with the department, so I couldn't find out what happened. The Developer should be telling you what is happening. Why are we opposed, for various reasons. The impact to our neighborhood and to our community. The sections of the zoning ordinance about conditional use standards. I gave a Memorandum of Law addressing those points and I gave you two cases related to conditional use approvals for the same piece of property in Orange Township. The first was because the developer didn't get the required permit for sewage. That is why they denied it. The other, they were able to show the Orange County Board of Supervisors they couldn't give the developer what he wanted because of the impact that took place by neighbors and the property itself, because it was in a floodplain. Look at those two cases and look at the opposing counsel's argument. I believe we have proven our burden of impact. They have to show to you people that they comply with the zoning ordinance, and I don't think they have.

Bruno said, it is his recommendation to keep the hearing open to allow for continuation to another evening for deliberations once you and the other Board members have been able to review all information presented, as well as the Memorandums of Law by the Applicant and Protestants. We will need to allow at least two weeks for Stenographer Rewak to prepare the transcripts for the other two Board members.

Bruno confirmed it was agreed to continue the hearing on September 27, at 7:00 p.m. in this room. At that time, no further testimony or evidence will be presented.



#### **4. NEW BUSINESS**

##### **A. PEMA Grant Resolution**

###### **INFORMATION**

PEMA is requiring a resolution be approved by the Board of Supervisors authorizing Fire Commissioner, Stephen Gallagher, as the Agent of Palmer Township for the purposes of the Hazard Mitigation Grant we have been awarded for the Scope and Planning to mitigate flooding issues on and around Meadow Avenue through Seip Avenue.

The Township has been awarded a share grant of up to \$350,000 with Township responsibility being \$87,500 for this project.

###### **DISCUSSION**

Gallagher said, this is for the Hazard Mitigation Grant and will authorize me to make the financial decisions for the grant process. Young said, we appreciate you looking into this grant for us.

Williams said, it allows for up to \$350,000 for flooding that took place in 2020. This is for the planning stage to mitigate some flooding concerns in the township.

Motion: Approve, Moved by Supervisor Ann-Marie Panella, Seconded by Supervisor Kendall Mitchell. Passed. 3-0.

Supervisors voting Ayes: Mitchell, Panella, Young

Supervisors Absent: Armato, Brett

#### **5. PUBLIC COMMENT**

There were no public comments.

#### **6. REPORTS**

##### **Supervisors**

Panella said she would like to announce some good news tonight. Tomorrow one of my neighbors, Mrs. Naomi Smith, will be 107 years old.

#### **7. ADJOURNMENT**

The meeting was adjourned at 8:35 p.m.

Motion: Approve, Moved by Supervisor Kendall Mitchell, Seconded by Supervisor Ann-Marie Panella. Passed. 3-0.

Supervisors voting Ayes: Mitchell, Panella, Young

Supervisors Absent: Armato, Brett

Respectfully submitted,

Brenda DeGerolamo  
Assistant Township Manager