

FEB 16 2017

WEST PENNSBORO TWR



**WEST PENNSBORO TOWNSHIP ZONING HEARING BOARD**  
**CUMBERLAND COUNTY, PA**  
**APPLICATION FOR SUBSTANTIVE CHALLENGE TO THE VALIDITY**  
**OF THE ZONING ORDINANCE AND/OR MAP NO. 2016-02 & 2016-04**  
 (Section 604.1)

**GENERAL INFORMATION**

Name of Applicant(s) Karl M. Smith, Mark & Betty Butler

Address 1554 Newville Road, Carlisle, PA; 1701 Newville Road, Carlisle, PA;

Telephone No. 717-303-8638 Application Date 02/16/2017

Name of Landowner of Record Alan Shover; William P and Valerie A. Bock

Subject Property Address 1525 Newville Road, Carlisle, PA; 1617 Newville Road, Carlisle, PA

Subject Property Zone Industrial (was High Density Residential – R-2)

Nature of Request (Section Nos. 604.1, 604.8 ) See the attached written submission in support of the challenge

Name, address and telephone of representative or consultant Nathan C. Wolf, Esquire

10 West High Street, Carlisle PA 17013 717-241-4436; 717-241-4437 (Fax)

**ADDITIONAL REQUIREMENTS** (Include 5 copies of each of the following).

- N/A 1. A written report specifically describing the alleged defects including any supporting legal citations, comparative data, site plans, graphics, aerial photographs, etc.;
- X 2. For proposed Zoning Map changes, a written legal description and survey map of any property in question; (Attached legal description and sketch plan)
- X 3. A proposed Ordinance that cures the alleged defects;
- N/A 4. If applicable, a site plan of sufficient detail and accuracy to demonstrate compliance with the proposed Ordinance and all other applicable provisions of the Zoning Ordinance; and
- N/A 5. A report describing the proposed use's consistency with each of the findings listed in Section 604.1.1. of the Zoning Ordinance.

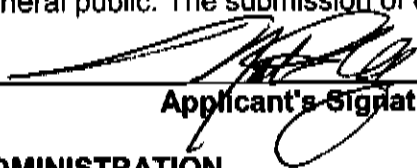
OVER

**FEES**

1. The hearing fee is \$ 500.00 pursuant to Section 603.1.2. of the Zoning Ordinance.
2. The applicant shall be required to pay all public notice and advertising costs as specified in Section 603.1.2. of the Zoning Ordinance.
3. The applicant shall pay for one-half (1/2) of the stenographer's appearance fee as specified in Section 603.7 of the Zoning Ordinance.

**SIGNATURE**

I hereby certify that the information submitted in accordance with this application is correct, and I further agree to pay for those costs outlined above. In order to ensure that the review processes and administration of this Zoning Ordinance are accomplished in a manner that is readily accessible to all citizens of the Township, any information and/or plans submitted associated with any application, permit, petition, appeal or any other request shall be provided in a form that is reproducible, without restriction, by any and all interested parties and/or the general public. The submission of copyrighted materials will not be accepted.

  
\_\_\_\_\_  
**Applicant's Signature**

2/16/2017  
\_\_\_\_\_  
**Date**

**ADMINISTRATION**

Date Application Accepted \_\_\_\_\_ Total Costs \_\_\_\_\_

Dates Advertised (two successive weeks no more than 30 and no less than 7 days before hearing)

\_\_\_\_\_

Property Posting (at least one week before hearing) \_\_\_\_\_

Date of Initial Hearing (within 60 days of application) \_\_\_\_\_

Date of Decision (within 45 days of last hearing) \_\_\_\_\_

Decision \_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_  
**Chairman**                      **Vice Chairman**                      **Secretary**

**KARL SMITH, BETTY BUTLER,  
and MARK BUTLER,**

**Appellants**

**v.**

**BOARD OF SUPERVISORS OF  
WEST PENNSBORO TOWNSHIP,  
CUMBERLAND COUNTY,  
PENNSYLVANIA**

**Appellee**

**BEFORE THE ZONING HEARING  
BOARD OF WEST PENNSBORO  
TOWNSHIP, CUMBERLAND  
COUNTY, PENNSYLVANIA**

**DOCKET NO.**

**SUBSTANTIVE VALIDITY CHALLENGE**

NOW come the above-captioned appellants by and through their attorneys, Wolf & Wolf, Attorneys at Law, and file this APPLICATION FOR SUBSTANTIVE CHALLENGE TO THE VALIDITY OF THE ZONING ORDINANCE AND/OR MAP NOS. 2016-02 and 2016-04, averring as follows:

**I. BACKGROUND AND IDENTIFICATION OF PARTIES**

1. The instant substantive validity appeal arises out of formal actions taken on July 25, 2016 and November 21, 2016 by the Board of Supervisors of West Pennsboro Township, Cumberland County, Pennsylvania to modify the Official Zoning Map of West Pennsboro Township.
2. Appellant Karl Smith is an adult individual who is a resident of West Pennsboro Township, residing at 1554 Newville Road, Carlisle, Cumberland County, Pennsylvania, 17015, and has standing to bring this appeal pursuant to the Pennsylvania Municipalities Planning Code.
3. Appellant Mark Butler is an adult individual who is a resident of West Pennsboro Township, residing at 1701 Newville Road, Carlisle, Cumberland County, Pennsylvania, 17015, and has standing to bring this appeal pursuant to the Pennsylvania Municipalities Planning Code.
4. Appellant Betty Butler is an adult individual who is a resident of West Pennsboro Township, residing at 1701 Newville Road, Carlisle, Cumberland County, Pennsylvania, 17015, and has standing to bring this appeal pursuant to the Pennsylvania Municipalities Planning Code.

5. Appellee is the Board of Supervisors of West Pennsboro Township, a duly incorporated Township under the Pennsylvania Municipalities Planning Code (the "MPC"), 53 P.S. § 10101 *et. seq.* (hereinafter the "Board"), is the governing body of West Pennsboro Township (hereinafter the "Township") and is empowered by the Pennsylvania Municipalities Planning Code, 53 P.S. § 10601, 53 P.S. §10608 and 53 P.S. §10609(a) to enact, adopt and amend a Zoning Ordinance governing land uses within West Pennsboro Township.
6. This action arises out of the Board's approvals of a change to the Zoning Map in an area of the Township previously within the Residential 2 (R-2) zoning district re-designating it to an Industrial zoning district. These changes were enacted at the request of Allen Distribution (hereinafter "Applicant").
7. The Subject Property comprises approximately 133 acres, the majority of which is located in West Pennsboro Township (approximately 125 acres), with a portion located in North Middleton Township, Cumberland County. (A true and correct copy of the Applicant's sketch plan is attached hereto as Exhibit "A").
8. The Subject Properties at issue are known as 1525 Newville Road, and 1617 Newville Road, owned by Alan Shover and William and Valerie Bock, respectively.
9. Each property is used agriculturally and each property has erected thereon a residential use.
10. The Board adopted the requested changes to the Official Zoning Map of West Pennsboro Township as to Ordinance 2016-02 at its meeting held on or about July 25, 2016 and as to Ordinance 2016-04 at its meeting held on or about November 21, 2016. (A true and correct copy of the text of the amendments to the Zoning Map is attached hereto as Exhibit "B" and Exhibit "C", respectively).
11. Review of this appeal is now ripe following the issuance of preliminary opinion issued by the Zoning Officer as to the validity of the zoning map which was public advertised on January 10 and January 17, 2017. (A true and correct copy of the Zoning Officer's determination letter is attached hereto as Exhibit "D").

## II. BASIS FOR RELIEF REQUESTED

12. Appeals from preliminary opinions of the Zoning Officer are within the jurisdiction of the Zoning Hearing Board under the Township Zoning Ordinance and the Municipalities Planning Code.
13. During the proceedings before the Board, some or all of the above-captioned Appellants appeared and were recognized by the Board during each of the public meetings where these requests were discussed by the Board.
14. During all of the public comment received, every township resident or other member of the public was in opposition to the rezoning request.
15. Appellants allege that the Board abused its discretion, and that its decision to approve the requested change to the Zoning Map violated provisions of the Second Class Township Code, the Pennsylvania Municipalities Planning Code (hereinafter the MPC), and acted contrary to the purpose and intent of the West Pennsboro Township Zoning Ordinance and the Cumberland County Township Comprehensive Plan, that its decision is contrary to Pennsylvania law and that the decision ignored the Township's obligations arising under the Pennsylvania Constitution, specifically Article I, §27, the environmental rights amendment.
16. Appellants believe and therefore aver that the Board has acted arbitrarily and capriciously and that its decisions represent a manifest abuse of discretion resulting from substantive errors of law such that the impact of its decisions will cause the Appellants to suffer irreparable harm as set forth in detail herein.
17. Appellants believe and therefore aver that the decision of the Board to amend the zoning map constitutes unlawful spot zoning.
18. Appellants submit that the Board has changed the zoning map of West Pennsboro Township at the request of one property owner and has singled out the effected parcels for treatment that is different from the parcels adjacent thereto.
19. The Applicant characterized the area of its proposed use as an industrial and convinced the Board that its request was consistent with the uses in the area, namely other industrial uses.

20. Critically, within West Pennsboro Township, the properties immediately adjacent to the subject tracts are all within the R-2 zone.
21. The properties within West Pennsboro Township located immediately across Newville Road from the subject tracts are also all within the R-2 zone.
22. The properties within North Middleton Township located adjacent to the subject tracts and including a portion of the subject tracts are all within that Township's Neighborhood/Commercial (NC) Zone.
23. The subject tract is surrounded by approximately 50 separate residential uses, the majority of which are located in West Pennsboro Township.
24. The subject tract is also bordered by a twenty-one (21) acre residential property to the north, and a separate twenty-one (21) acre residential property to the west.
25. There is one business property located across from the subject tract on Newville Road where used cars are sold.
26. The remainder of the property is bordered by Interstate 76 to the North and Meadowbrook Road to the East in North Middleton Township and on the opposite side of Interstate 76, the land within West Pennsboro Township is agriculturally zoned.
27. Appellants aver that North Middleton Township had changed the zoning classification of the properties fronting on Meadowbrook Road to its NC District designation to provide a stepped down level of intensity between the industrial warehouse uses on the opposite side of Meadowbrook Road and the existing residential development throughout the rest of immediate area.
28. Appellants aver that this zoning scheme was designed to buffer sensitive residential uses from the intensity associated with industrial uses, particularly warehouse and distribution centers that heavily on tractor-trailer traffic.
29. Appellants aver that by virtue of the rezoning amendments adopted on July 25, 2016 and November 21, 2016, the Township specifically singled out the rezoned property and treated

the same differently to the benefit of one proposed landowner and to the detriment of the abutting landowners and those located in close proximity.

30. Furthermore, Appellants aver that the uses permitted by the Industrial district, and particularly the use proposed by Applicant would be incompatible with the existing, non-intensive uses (agricultural and residential) adjacent to the rezoned land that are located both inside and outside of the Township.
31. Spot zoning occurs when the municipality singles out a parcel or parcels for the benefit of one user and treats that land differently from adjoining lands. *See, Mulac Appeal*, 210 A.2d 275 (Pa, 1965)
32. Spot zoning may occur when the governing body abandons an established plan for future land use and growth within the municipality and instead makes changes to the overall zoning scheme at the request of an individual property owner.
33. "The key point is that when a municipal governing body puts on blinders and confines its vision to just one isolated piece or problem within the community, disregarding a community-wide perspective, that body is not engaged in lawful zoning, which necessarily requires that the picture of the whole community be kept in mind while dividing it into compatibly related zones by ordinance enactments. In other words, legislation as to a spot is the antithesis of zoning, which necessarily functions within a community-wide framework. Zoning, to be valid, must be in accordance with a rational and well considered approach to promoting safety, health and morals and a coordinated development of the whole municipality." *Twp of Plymouth v. Cnty. of Montgomery*, 531 A.2d 49, 57 (Pa.Cmwlt. 1987)
34. Appellants submit that *inter alia*, the amendment to the zoning map represents spot zoning because (1) the adjacent uses are not similarly zoned; (2) the Township was just completed a comprehensive zoning review process that had concluded in early 2016 and the neither the Board, nor the Township Planning Commission recommended any changes to the Zoning Map, let alone to this property specifically; (3) the amendments to the map are inconsistent with the County Comprehensive Plan; (4) the result of the amendments is the elimination of an area designed to buffer less intensive uses from the more intensive, but non-adjacent uses in a neighboring municipality; (5) township zoning currently provides sufficient industrial

uses; and (6) the need for additional industrial zoning was not established in the application or hearings.

35. Further support for this conclusion is based within other items that were included in the public comment offered to the Board prior to their decision.
36. Though the Board was not required to consider the uses outside the borders of West Pennsboro Township, the Applicant repeatedly characterized the area as industrial, urging the Board to make the change to the zoning map because of the presence of other industrial uses at the intersection of Allen Road and Newville Road, and because of the existence of industrial uses, especially distribution centers along the Allen Road corridor leading to the Exit 44 interchange.
37. Appellants presented the report and comment of April Showers of Johnson Merriman and Thompson, a highly experienced, certified municipal planner who addressed several significant omissions and problems with the proposed map amendment.
38. Ms. Showers offered comment concerning the impacts of light, pollution, traffic, and noise as examples of how the intensity of the proposed use would have adverse impacts on the existing adjacent land uses.
39. Ms. Showers' examples established the incompatibility of industrial uses and residential uses.<sup>1</sup>
40. Ms. Showers suggested to the Board that it could require the Applicant to provide environmental studies prior to rezoning the property as the Applicant acknowledged that it had not done any environmental studies at the time of the public hearing on the impacts that could result from developing the subject properties consistent with the sketch plan submitted by the Applicant.

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<sup>1</sup> Interestingly, the Cumberland County Planning Commission recently reviewed an application to change the zoning of the Bear Farm located along Barnstable Road (about ¼ mile from this site) from Agricultural Zoning to Residential (R-1) Zoning and in recommending denial of the application, observed that residential zoning is incompatible with Industrial Zoning and particularly warehousing and distribution centers which was, in that case, located adjacent to the land to be rezoned. Despite the Planning Staff's identical comment concerning incompatibility in this case, when the Commission met and there had been no public notice of the rezoning application given, the Commission recommended approval of this request without any objectors present.



41. Ms. Showers explained to the Board that there are significant concerns resulting from the over-development of this particular industry in the immediate area and that the Board would be wise to prevent the exacerbation of those cumulative impacts by preventing the rezoning application from moving forward.
42. Ms. Showers also underscored the importance of the fact that this site was isolated from other industrial zoning and reiterated the concern that permitting the rezoning may constitute spot zoning.
43. Appellants submit that the Board's consideration is also faulty because it clearly disregarded the fact that while the Applicant represented that it desired to have all truck traffic access the site through North Middleton Township via Meadowbrook Road and Distribution Drive, if the Applicant was denied the ability to access the property as it desires by North Middleton Township, then the Board could not prevent Applicant from having access along Newville Road.
44. Appellants believe that the Township engaged in unlawful spot zoning by focusing on a particular proposed use rather than the zoning district and all of the potential uses permitted in that district.
45. This avcrment is significant due to the significant access issues related to the proposed development.
46. Applicant's proposal to the Township is to construct approximately 1.5 million square feet of warehousing and distribution space on the land in the Township but that its access driveways for tractor trailers visiting the site would cross land in North Middleton Township and have public road access across Meadowbrook Road through the Logistics Center, with truck traffic exiting the Logistics Center onto Allen Road.
47. Recently, the Applicant requested a preliminary opinion from the Zoning Officer of North Middleton Township as to the effect a subdivision plan would have on its ability to have access through the N/C Zone.
48. That decision has not been publicly noticed as of the submission of this challenge.

49. The portion of the property at issue in North Middleton Township is in the Neighborhood Commercial (NC) zoning district which lists Warehousing and Distribution Centers as a prohibited use within that zone.
50. The Applicant submitted a sketch plan which would result in a subdivision of the properties along Meadowbrook Road to create a private road or access point in order to circumvent the prohibition in the zoning ordinance which arguably would not apply to a private road on Applicant's property.
51. There has been no subdivision plan submitted to North Middleton Township as of the date of this filing.
52. The Applicant did not provide any argument to the Board of Supervisors to establish that there was insufficient land zoned for industrial uses in the Township.
53. The Applicant did not provide any argument to the Board of Supervisors to establish that all available facilities in the area were even occupied.
54. The Applicant did not provide any argument or evidence to the Board of Supervisors as to the environmental impacts that the proposed use would have on air, ground water, light, or the natural esthetic.
55. The Applicant did not provide any assurance to the Board of any mitigation strategies that would be implemented to shield the adjacent residential uses from the construction and operation of two large scale distribution centers.
56. The Applicant provided little information on the type and quality of employment opportunities but offered generic information concerning jobs in the industry it expected to be created by the proposed use and but specifically failed to provide any information on the availability of a workforce to fill any employment positions from within the local economy.
57. The Applicant did suggest that the property could not be developed in conformity with the Ordinance.
58. Among the reasons cited by the Applicant in support of the rezoning to permit the construction of warehousing was its suggestion that Allen Road was designed to

accommodate heavy truck traffic from industrial facilities built along the Allen Road corridor.

59. The Township participated in an inter-municipal study of the Allen Road Corridor to develop a coordinated plan for development along that artery prior to the upgrades to that roadway made within the last five years.
60. South Middleton Township, West Pcnnsboro Township, Carlisle Borough, North Middleton Township and Cumberland County all financially contributed to the development of the study, first known as the Exit 12 Study.
61. The study later became known as the "Exit 44 study" following the renumbering of exit numbers along the interstate highways within the Commonwealth.
62. The Exit 44 study made certain assumptions about land use and traffic volumes upon which later road improvements that were funded by the Pcnnsylvania Department of Transportation had been based.
63. *Inter alia*, the Exit 44 study assumed that heavy truck traffic along the corridor would serve a maximum capacity of 10.7 million square feet of warehousing and distribution centers.
64. The area that is the subject of the instant rezoning request, was located outside of the area contemplated in the recommended growth projections, which area is now fully developed.
65. The Study cautioned that areas within Phase 2 should not be rezoned to permit additional industrial uses, particularly the use proposed in the instant action, until all areas within the Phase 1 area were completely built out.
66. Rather the Study recommended rezoning areas in such a way that additional industrial uses could not be expanded beyond the areas delineated in the study.
67. The Applicant's own traffic engineer testified that the corridor was currently serving over 19 million square feet of warchousing and distribution centers, exclusive of this proposal.

68. The Cumberland County Planning staff and the Appellants hereto, raised these inconsistencies with the Board prior to the Board's action on July 25, 2016 and November 21, 2016.
69. Nonetheless, the Board wholly disregarded said considerations, despite the fact that said study was funded, in part, by Township funds.
70. Such disregard is additional evidence of the arbitrary and capricious nature in which the Board rendered its decision, and coupled with the other reasons set forth herein, support the conclusion that the action of the Board constituted an abuse of its discretion.
71. The Board undertook to review a draft comprehensive zoning ordinance change after the adoption of the 2011 Zoning Ordinance which included many modifications to requirements within the Ordinance in other districts.
72. The Board's consideration and ultimate approval of the instant requests by the Applicant represent a departure from the established procedures specifically designed by the Board to address the future zoning and planning needs of the Township.
73. The Applicant and its representatives provided information to the Board concerning the tax benefits to the Township, the School District and the neighboring municipalities.
74. To the extent that the Board placed such significant weight on the tax revenues generated to other governmental entities was an abuse of discretion and reflects a complete departure of accepted zoning and planning considerations.
75. Furthermore, the Board's second stated justification concerned the creation of jobs within the Township.
76. However, the Board received sufficient information from the public to easily undermine the claimed justification for additional job creation in the township within this industry.
77. Rather, the Board heard evidence of the oversaturation of jobs in this sector and completely disregarded the data provided.

78. Township resident William Barker, also a professor of taxation at the Pennsylvania State University Dickinson School of Law, provided comment to the Board on jobs in the distribution industry presenting an analysis of the realities of employment based on statistics compiled by the Federal Reserve Board of St. Louis and the United States Bureau of Labor Statistics and the results of a study conducted in Illinois focusing on employees in the distribution industry.
79. That analysis demonstrated that the Board's information concerning employment within the industry was inaccurate and the conclusions reached about job creation were faulty.
80. Furthermore, public comment offered to the Board reflected the current condition of the market, namely the postings at temporary employment agencies and at existing warehouse facilities for available positions.
81. Moreover, public comment was offered which was not disputed by the Applicant, that some other facilities on the Allen Road corridor are bussing in employees from other areas to fill existing positions already.
82. Members of the public who spoke in opposition to the map amendment likewise cited concerns over the possibility of suffering damage to the foundations of their homes as a result of the blasting that would be necessary to develop the property for industrial uses.
83. Members of the public who spoke in opposition to the map amendment cited concerns over the environmental impacts to the Alexander Spring Creek and the surrounding wetlands which bi-sect the property and which would run underneath the main access driveway for the property, shown on Applicant's sketch plan.
84. Members of the public who spoke in opposition to the map amendment cited concerns over diminution in property values if site is developed as shown on the sketch plan.
85. Members of the public who spoke in opposition to the map amendment cited concerns over irreparable changes to resident's ability to observe natural features of the area if site is developed as shown on the sketch plan.

86. Members of the public who spoke in opposition to the map amendment cited concerns over the loss of agriculturally used land, though it was acknowledged that the property could be developed residentially under the then current zoning designation.
87. The Applicant cited the ability and capacity to extend public utilities to the site from North Middleton Township's sewer system and from Carlisle Borough water system, despite the fact that public sewer capacity exists within the West Pennsboro Township Municipal Authority.
88. Nonetheless, the Board ignored the lack of justification provided by the Applicant in support of the requested map amendment.
89. The Board's action represented an abuse of its discretion because it ignored the overwhelming information offered and disregarded the sound planning principles that led to the Township's existing zoning map in favor of an act designed to serve the interests of only one ultimately property owner.
90. Of note, any other planning or governmental entities who have recommended approval for this request, did so at meetings which occurred prior to the issuance of public notice and therefore no opponents were aware of said meetings and we effectively denied the ability to appear and offer any information in opposition to the Applicant's presentation.<sup>2</sup>
91. The Board's departure from its established planning principles and established zoning scheme, its rejection of any information offered in conflict with its preconceived notions and the unreasonable weight given to only economic factors demonstrate that the Board failed in their duties as Supervisor in executing their legislative, executive and administrative powers to secure the health, safety and welfare of the citizens of the township [53 P.S. §65607 (Second Class Township Code)]
92. The Pennsylvania Supreme Court issued its opinion in the case of *Robinson Township, Washington County v. Commonwealth of Pennsylvania*, 83 A.3d 901 (Pa. 2013) wherein the Justices held that the Pennsylvania Constitution's Environmental Rights Amendment, imposes an

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<sup>2</sup> Of note, the West Pennsboro Planning Commission did not make any recommendation on this request, but that none of the opponents had received public notice and therefore did not appear in opposition.

obligation upon all agencies of the Commonwealth, including municipal governments, to act as trustees of Pennsylvania's natural resources.

93. In so holding, the Court outlined the duty of municipal governments to protect the rights of Pennsylvanians in general to *inter alia* clean air, clean water, the natural esthetic.
94. The Court specifically held that a legislative act by any branch of the government must consider, in advance of proceeding, the environmental impact of any proposed action on the constitutionally protected natural features, to include clean air and clean water.
95. Where, as here, the Board was presented with uncontested information by professionals relying on accepted medical and environmental studies and conclusions along with the public comment raising substantial environmental concerns, its action violated the Constitutional rights conferred to the Appellants under Article I, §27 of the Pennsylvania Constitution.
96. Such action by the legislative branch is subject to review because the violation of these constitution rights impairs the rights of the Appellants to the continued enjoyment of natural resources.
97. The failure of the Board to collect additional environmental information in the context of both the zoning map amendment and the zoning text amendment represents a violation of the substantive standards under Pennsylvania law which must occur as a precondition to the enactment of laws that will have a direct impact on the rights of the public to these protected natural resources.
98. The Board's failure to abide these principles occurred when it ignored, rejected and challenged the testimony offered by licensed physicians who provided, at a minimum, sufficient *prima facie* evidence, to require the Board to investigate the environmental impacts of its proposed action.
99. Rather the Board simply did nothing to gather additional information and instead rejected the concerns of the Appellants, which were supported by a representative of the American Lung Association who appeared before the Board in the October 2016 hearing.

100. The Board received comment from Kevin Stewart from the American Lung Association, concerning the adverse health effects which are likely occur due to diesel emissions generated by diesel trucks visiting the warehousing and distribution centers that the Applicant seeks to construct on the subject tracts.
101. During his comments, Mr. Stewart described significant adverse health effects caused by exposure to elevated levels of diesel exhaust and its component parts. This environmental hazard had been the subject of substantial medical and scientific study.
102. Mr. Stewart went on to explain that diesel emissions contain microscopic particulates measuring 2.5 microns in size (referred herein as PM 2.5).
103. He further explained that such particulates are especially harmful to human beings because their chemical composition attracts and carries 30 known carcinogens into the deepest areas of the human lung where those carcinogenic substances are disbursed throughout the human body.
104. He told the Board that the Environmental Protection Agency has identified the Carlisle area as being out of attainment for Federal Air Quality Standards for 24 hour exposures to PM 2.5.
105. He also explained that his organization has identified the Carlisle area as having some of the worst air quality on the entire eastern seaboard of the United States.
106. Mr. Stewart testified that there is no safe threshold for exposure to diesel PM 2.5, and that the regulatory scheme still recognizes that the higher the concentration of diesel PM 2.5, the greater the risk of adverse health effects, particularly in sensitive populations such as children, the elderly and those suffering from respiratory conditions.
107. Mr. Stewart told the Board that empirical studies had been conducted measuring the health effects from exposure to diesel PM 2.5 and that standards have been developed to establish adequate separations from diesel PM 2.5 concentrations and sensitive uses, such as residential dwellings.



108. Mr. Stewart referred the Board to the recommendations of the California Air Resources Board (CARB) concerning separations from sources of diesel emissions to substantiate the need for greater separations between industrial uses that constitute point sources of diesel emissions and sensitive uses like the adjacent residential uses within the zone of exposure.
109. Mr. Stewart urged the Board that, due to the concentration of warehousing and distribution centers already along the Allen Road Corridor and the resultant concentrations of diesel PM 2.5 already in existence, the Board should not approve the rezoning as the proposed use for the property would contribute to an already unacceptable situation.
110. Mr. Stewart opined that if the proposed use was constructed following approval of the rezoning, that sensitive populations would suffer and residents would be within a zone that would face significant adverse health effects.
111. Ultimately, the Board's actions in adopting the map amendments without gathering any information on the environmental impacts of the change in zoning classification violates the requirements set forth by the Supreme Court of Pennsylvania in the *Robinson Township* case discussed, *supra*.
112. Rather, the Board demonstrated that its consideration of economic factors was the sole basis upon which it departed from acceptable planning methods, disregarded the health impacts to its residents, violated its duty as trustee of the Environmental Rights delineated in Article I, §27 of the Pennsylvania Constitution and abused its discretion by engaging in unlawful spot zoning to benefit one proposed owner to the detriment of all nearby property owners.
113. The Board's decision, particularly in light of the disregard of the public opposition to the Applicant's requests, reflect that the Supervisors had reached their conclusions prior to the conduct of the public hearing and not as a result of the deliberative process set forth in the MPC.
114. This is especially true where there was no public deliberation on the issue and, in fact, one member of the Board offered absolutely no justification for his affirmative vote.

115. As such, Appellants seek relief from the Board from a decision which represents a clear error of law, a manifest abuse of discretion and a result which is contrary to law for the citizens of West Pennsboro Township, and specifically the Appellants.
116. Each of the foregoing reasons demonstrates that the actions of the Board constitute an abuse of discretion evidenced by their arbitrarily and capriciously made decision.
117. Such abuses are within the scope of review by this Zoning Hearing Board and the decisions of the Board are subject to reversal if such abuses and errors are proven.
118. Appellants seek relief in the form of a reversal of the decision of the Board as to the amendment of the Township Zoning Map and adoption of the attached proposed Ordinance returning the zoning classification of the subject tract to High Density Residential.

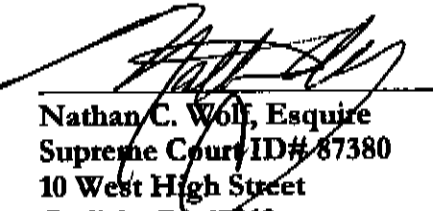
**WHEREFORE**, Appellants request that this Honorable Board declare invalid the decisions of the Board of Supervisors of West Pennsboro Township on July 25, 2016 and November 21, 2016 amending the zoning map of West Pennsboro Township changing the designation from High Density Residential (R-2) to Industrial (I) at the request of Allen Distribution along with such other relief deemed appropriate and just.

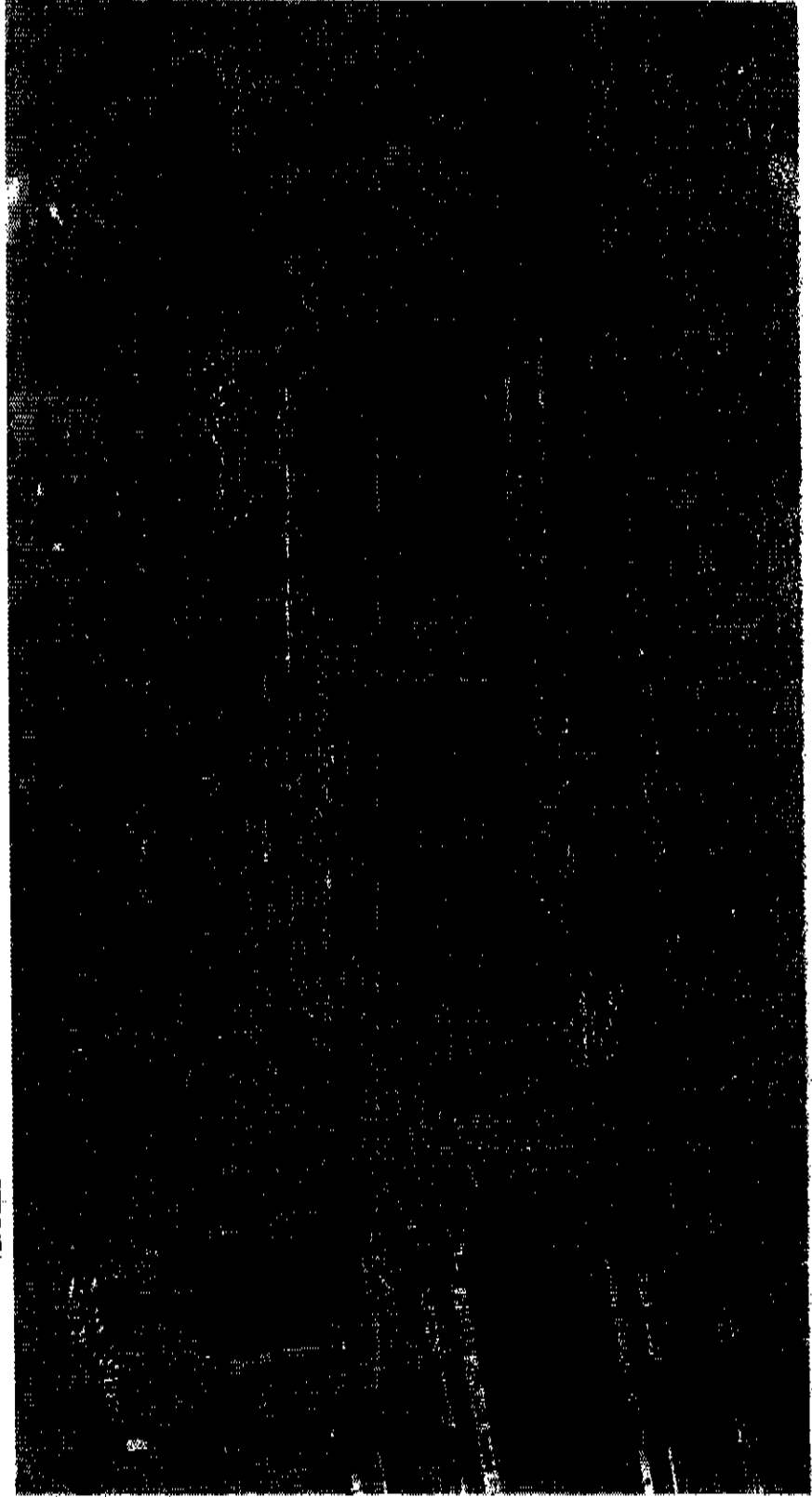
**Respectfully Submitted,  
WOLF & WOLF, Attorneys at Law**

Date:

2/16/2017

BY:

  
Nathan C. Wolf, Esquire  
Supreme Court ID# 87380  
10 West High Street  
Carlisle, PA 17013  
717-241-4436  
Counsel for Appellants



**SITE PLAN**

- Submittal to be made to the Planning Commission for review and approval.
- Site area: 1.00 acres
- Proposed use: Warehouse / Distribution Center
- Proposed site plan shall be prepared in accordance with the Township of Clark's Department of Planning and Zoning Ordinance, specifically Sections 100.01 through 100.07, and 100.10 through 100.15.
- The applicant shall provide a detailed site plan for the proposed development.
- The applicant shall provide a site plan for the proposed development.
- The applicant shall provide a site plan for the proposed development.
- The applicant shall provide a site plan for the proposed development.
- The applicant shall provide a site plan for the proposed development.

**Snyder Secary & Associates, LLC**  
2000 E. 10th St., Suite 100, Erie, PA 16510  
Phone: 814.833.1000 Fax: 814.833.1001  
Website: www.snydersecary.com

SITE CONCEPT PLAN  
FOR  
**BOCK & SHOVER PROPERTIES**  
ALLEN AND EDWARDS  
700 E. 10th St., Suite 100  
Erie, PA 16510  
Phone: 814.833.1000 Fax: 814.833.1001

NO.	DATE	REVISION

Exhibit A

# WEST PENNSBORO TOWNSHIP

2150 Newville Road, Carlisle, PA 17015-7746 • Phone: (717) 243-8220 • Fax: (717) 243-1592



## ORDINANCE #2016-02

AN ORDINANCE OF THE WEST PENNSBORO TOWNSHIP BOARD OF SUPERVISORS, CUMBERLAND COUNTY, PENNSYLVANIA, AMENDING, MODIFYING AND CHANGING THE BOUNDARIES OF THE ZONING MAP BY DELETING A PORTION OF THE EXISTING HIGH DENSITY RESIDENTIAL (R-2) DISTRICT AND INCREASING THE INDUSTRIAL (I) DISTRICT.

WHEREAS, West Pennsboro Township has adopted a Zoning Ordinance and Zoning Map on September 26, 2011, as amended, pursuant to the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et seq., and

WHEREAS, The West Pennsboro Township Board of Supervisors believes that it is in the best interests of its citizens to amend the Zoning Map to add additional lands to the Industrial (I) Zoning District.

NOW THEREFORE, BE IT ENACTED ORDAINED it is hereby adopted by the West Pennsboro Township Board of Supervisors as follows:

SECTION 1: The Zoning Map of West Pennsboro Township is hereby amended as follows:

A. The High Density Residential (R-2) District as shown on the Zoning Map is hereby decreased by deleting therefrom all that certain land more fully described in Exhibit A below, said land hereby being hereafter designated, reclassified and rezoned to be included in and added to the Industrial (I) District as more fully set forth below.

B. The Industrial (I) District is hereby increased by adding thereto and including therein all that certain land more fully set forth below.

C. The following land situated in West Pennsboro Township, Cumberland County, Pennsylvania is hereby rezoned and reclassified from Agriculture (A) to Industrial (I), to wit:

SECTION 2: The Township Zoning Officer is directed to revise the Zoning Map in accordance with this Ordinance.

SECTION 3: Except as amended by this Ordinance, the Zoning Map shall remain in all other respects in full force and effect.

SECTION 4: This Ordinance shall become effective five (5) days after enactment.

Exhibit B

DULY ENACTED AND ORDAINED this 25<sup>th</sup> day of July, 2016, by  
the Board of Supervisors of West Pennsboro Township.

ATTEST:

BOARD OF SUPERVISORS  
WEST PENNSBORO TOWNSHIP

Evelyn M. Swartz  
Evelyn M. Swartz, Secretary

Gerald A. Barrick  
Gerald A. Barrick, Chairman

Richard E. Adler  
Richard E. Adler, Vice Chairman

Daniel L. Martin  
Daniel L. Martin, Supervisor

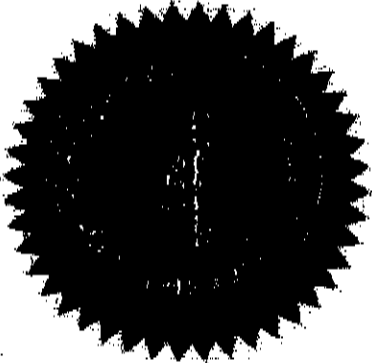
**CERTIFICATE**

I, the undersigned Secretary of the Township of West Pennsboro, Cumberland County, Pennsylvania (the "Township"), certify that the foregoing is a true and correct copy of an Ordinance of the Board of Supervisors of the Township which was duly enacted by affirmative vote of a majority of the members of the Board of Supervisors of the Township at a meeting duly held on June 27, 2016, and that said Ordinance has been duly recorded in the Ordinance Book of the Township; that said Ordinance was duly published on \_\_\_\_\_, as required by law in a newspaper of general circulation in the Township; and that said Ordinance remains in effect, unaltered and unamended, as of the date of this Certificate.

I further certify that the meeting at which the Board of Supervisors of the Township adopted said Ordinance was a public meeting duly held after giving public notice of the date, time and place of such meeting by posting, publishing and mailing such notice at the time and in the manner required by Act No. 84 of the General Assembly of the Commonwealth of Pennsylvania, approved July 3, 1986.

IN WITNESS WHEREOF, I set my hand and affix the official seal of the Township, this day of *25<sup>th</sup>* 2016, *July*

Secretary *Colleen M. Swaff*



## REZONING

### WILLIAM P. & VALERIE A. BOCK (TAX PARCEL #46-07-0473-017) & ALAN D. SHOVER (TAX PARCEL #46-07-0473-018)

All that certain portion of the subject two parcels situated in West Pennsboro Township, Cumberland County, Pennsylvania, being more fully bounded and described as follows:

BEGINNING AT A POINT in the centerline of Newville Road (Pa. Route 641) at the corner of lands now or formerly of Kimberly S. Fleming (Tax Parcel #46-07-0473-017A) and lands now or formerly of William P. & Valerie A. Bock (Tax Parcel #46-07-0473-017). Thence containing along the dividing line of said property owners the following four (4) courses. 1) North 11 degrees 50 minutes 37 seconds West a distance of 470.72 feet to a point. 2) North 67 degrees 49 minutes 12 seconds East a distance of 407.56 feet to a point. 3) North 21 degrees 09 minutes 39 seconds West a distance 255.93 feet to a point. 4) North 21 degrees 47 minutes 00 seconds West a distance 696.38 feet to a point. Thence along the dividing line of lands now or formerly of Jonathan C. Jumper (Tax Parcel # 46-07-0473-015) and lands now or formerly of William P. & Valerie A. Bock (Tax Parcel #46-07-0473-017) North 85 degrees 28 minutes 02 seconds East a distance of 954.68 feet to a point. Thence along the dividing line of lands now or formerly of Jonathan C. Jumper (Tax Parcel #46-07-0473-015) and lands now or formerly of Alan D. Shover (Tax Parcel #46-07-0473-018) North 08 degrees 50 minutes 14 seconds West and distance of 100.28 feet to the southern right-of-way line of the Pennsylvania Turnpike Commission. Thence along said right-of-way line by a curve to the left having a radius of 382,972.00 feet, a curve length of 2,461.33 feet, and a chord bearing of North 84 degrees 31 minutes 43 seconds East a distance of 2,461.33 feet to a point on the approximate boundary line for North Middleton Township and West Pennsboro Township. Thence along said township line South 05 degrees 26 minutes 30 seconds East a distance of 1,730.64 feet to a point. Thence along the rear of properties fronting Newville Road (PA Route 641) North 84 degrees 50 minutes 14 seconds West a distance of 390.94 feet to a point. Thence along the dividing line of lands now or formerly of Alan D. Shover (Tax Parcel #46-07-0473-018) and lands now or formerly of Beverly D. Rupp (Tax Parcel #46-19-1653-007) South 32 degrees 35 minutes 14 seconds East a distance of 196.00 feet to a point in the centerline of Newville Road (Pa. Route 641). Thence continuing along said centerline the following two courses. 1) South 89 degrees 24 minutes 46 seconds West a distance of 225.00 feet to a point. 2) North 89 degrees 21 minutes 04 seconds West a distance of 130.62 feet to a point. Thence along lands now or formerly of Gregory J. McDannell (Tax Parcel #46-09-1653-006) and lands now or formerly of Alan D. Shover (Tax Parcel #46-07-0473-018) North 01 degrees 35 minutes 14 seconds West a distance of 225.00 feet to a point. Thence along the rear of several properties fronting Newville Road (PA Route 641) the following three (3) courses. 1) South 88 degrees 09 minutes 46 seconds West a distance of 640.27 feet to a point. 2) South 12 degrees 21

minutes 28 seconds East a distance of 22.56 feet to a point. 3) South 89 degrees 26 minutes 42 seconds West a distance of 288.53 feet to a point. Thence along the dividing line of lands now or formerly of Brock E. & Becka R. Parson (Tax Parcel #46-07-0473-020) and lands now or formerly of William P. & Valerie A. Bock (Tax Parcel #46-07-0473-017) South 00 degrees 33 minutes 18 seconds East a distance of 216.50 feet to a point in the centerline of Newville Road (Pa. Route 641). Thence along the centerline of Newville Road (Pa. Route 641) South 89 degrees 26 minutes 42 seconds West a distance of 1,913.43 feet to a point, said point being the POINT AND PLACE OF BEGINNING. CONTAINING 125.417 acres, more or less. The subject legal description is for the purpose of describing the area proposed for rezoning based upon the compilation of deed descriptions and is not based on a field survey.

The above description is combined description of two parcels of real estate as follows:

- A. Property of William P. and Valerie A. Bock acquired by deed dated October 28, 1977, and recorded October 31, 1977, as recorded in the Cumberland County Recorder of Deeds Office in Deed Book "M", Volume 27, Page 613.
- B. Property of Alan D. Shover acquired by deed dated February 20, 2003, and recorded February 24, 2003, as recorded in the Cumberland County Recorder of Deeds Office in Deed Book 255, Page 4257.



# WEST PENNSBORO TOWNSHIP

2150 Newville Road, Carlisle, PA 17015-7746 • Phone: (717) 243-8220 • Fax: (717) 243-1592



## ORDINANCE #2016-04

AN ORDINANCE OF THE WEST PENNSBORO TOWNSHIP BOARD OF SUPERVISORS, CUMBERLAND COUNTY, PENNSYLVANIA, AMENDING, MODIFYING AND CHANGING THE BOUNDARIES OF THE ZONING MAP BY DELETING A PORTION OF THE EXISTING HIGH DENSITY RESIDENTIAL (R-2) DISTRICT AND INCREASING THE INDUSTRIAL (I) DISTRICT.

**WHEREAS**, West Pennsboro Township has adopted a Zoning Ordinance and Zoning Map on September 26, 2011, as amended, pursuant to the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et seq.; and

**WHEREAS**, The West Pennsboro Township Board of Supervisors believes that it is in the best interests of its citizens to amend the Zoning Map to add additional lands to the Industrial (I) Zoning District.

**NOW THEREFORE, BE IT ENACTED ORDAINED** it is hereby adopted by the West Pennsboro Township Board of Supervisors as follows:

**SECTION 1:** The Zoning Map of West Pennsboro Township is hereby amended as follows:

A. The High Density Residential (R-2) District as shown on the Zoning Map is hereby decreased by deleting therefrom all that certain land more fully described in Exhibit A below, said land hereby being hereafter designated, reclassified and rezoned to be included in and added to the Industrial (I) District as more fully set forth below.

B. The Industrial (I) District is hereby increased by adding thereto and including therein all that certain land more fully set forth below.

C. The land more fully set forth below situated in West Pennsboro Township, Cumberland County, Pennsylvania is hereby rezoned and reclassified from Agriculture (A) to Industrial (I).

**SECTION 2:** The Township Zoning Officer is directed to revise the Zoning Map in accordance with this Ordinance.

**SECTION 3:** Except as amended by this Ordinance, the Zoning Map shall remain in all other respects in full force and effect.

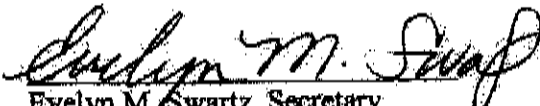
Exhibit C

SECTION 4: This Ordinance shall become effective five (5) days after enactment.

DULY ENACTED AND ORDAINED this 21 day of November, 2016, by the Board of Supervisors of West Pennsboro Township.

ATTEST:

BOARD OF SUPERVISORS  
WEST PENNSBORO TOWNSHIP

  
Evelyn M. Swartz, Secretary

  
Gerald A. Barrick, Chairman

  
Richard E. Adler, Vice Chairman

  
Daniel L. Martin, Supervisor

**CERTIFICATE**

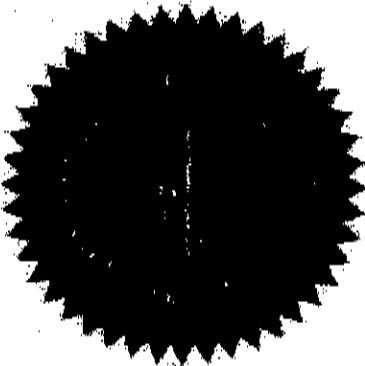
I, the undersigned Secretary of the Township of West Pennsboro, Cumberland County, Pennsylvania (the "Township"), certify that the foregoing is a true and correct copy of an Ordinance of the Board of Supervisors of the Township which was duly enacted by affirmative vote of a majority of the members of the Board of Supervisors of the Township at a meeting duly held on June 27, 2016, and that said Ordinance has been duly recorded in the Ordinance Book of the Township; that said Ordinance was duly published on \_\_\_\_\_, as required by law in a newspaper of general circulation in the Township; and that said Ordinance remains in effect, unaltered and unamended, as of the date of this Certificate.

I further certify that the meeting at which the Board of Supervisors of the Township adopted said Ordinance was a public meeting duly held after giving public notice of the date, time and place of such meeting by posting, publishing and mailing such notice at the time and in the manner required by Act No. 84 of the General Assembly of the Commonwealth of Pennsylvania, approved July 3, 1986.

IN WITNESS WHEREOF, I set my hand and affix the official seal of the Township, this day of 11/21, 2016.

Secretary

*Dwight M. Swaf*



# WEST PENNSBORO TOWNSHIP

2150 Newville Road, Carlisle, PA 17015-7746 • Phone: (717) 243-8220 • Fax: (717) 243-1592



January 3, 2017

Allen Distribution/Preliminary Opinion

Dear Mr. Gilroy,

The Real Estate referenced in your December 27, 2016 request for a Preliminary Opinion pursuant to Section 916.2 of the MPC is zoned "Industrial", and the proposed warehouse use complies with the West Pennsboro Township Zoning Ordinance and Zoning Map. Any proposed development of the Real Estate will require a Conditional Use Permit and the applicable Subdivision and Land Development Ordinance permits and approvals.

Very truly yours,

A handwritten signature in black ink, appearing to read "Wayne E. Myers".

Wayne E. Myers  
Zoning Officer/Codes Enforcement Officer  
West Pennsboro Township

CC: Steve J. Fitzman Esquire  
Permit Manager

Exhibit D

Ordinance 2017-\_\_\_\_\_

AN ORDINANCE OF THE WEST PENNSBORO TOWNSHIP BOARD OF SUPERVISORS, CUMBERLAND COUNTY, PENNSYLVANIA, AMENDING, MODIFYING AND CHANGING THE BOUNDARIES OF THE ZONING MAP BY DELETING A PORTION OF THE EXISTING INDUSTRIAL (I) AND INCREASING THE HIGH DENSITY RESIDENTIAL (R2) DISTRICT.

**WHEREAS**, West Pennsboro Township has adopted a Zoning Ordinance and Zoning Map on September 26, 2011, as amended, pursuant to the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et seq.; and

**WHEREAS**, The West Pennsboro Township Board of Supervisors believes that it is in the best interests of its citizens to amend the Zoning Map to add additional lands to the Industrial (I) Zoning District.

NOW THEREFORE, BE IT ENACTED ORDAINED it is hereby adopted by the West Pennsboro Township Board of Supervisors as follows:

SECTION 1: The Zoning Map of West Pennsboro Township is hereby amended as follows:

A. The Industrial (I) District as shown on the Zoning Map is hereby decreased by deleting therefrom all that certain land more fully described in Exhibit A below, said land hereby being hereafter designated, reclassified and rezoned to be included in and added to the High Density Residential (R-2) District as more fully set forth below.

B. The High Density Residential (R-2) District is hereby increased by adding thereto and including therein all that certain land more fully set forth below.

C. The following land situated in West Pennsboro Township, Cumberland County, Pennsylvania is hereby rezoned and reclassified from Industrial (I) to Agriculture (A) to wit:

SECTION 2: The effect of the adoption of this Ordinance is to return the Zoning Map to its status prior to the adoption of Ordinance 2016-02 and/or Ordinance 2016-04.

SECTION 3: The effect of the adoption of this Ordinance is equivalent to a repeal of Ordinance 2016-02 and/or 2016-04.

SECTION 4: The Township Zoning Officer is directed to revise the Zoning Map in accordance with this Ordinance.

SECTION 5: Except as amended by this Ordinance, the Zoning Map shall remain in all other respects in full force and effect.

SECTION 6: This Ordinance shall become effective five (5) days after enactment.

**DULY ENACTED AND ORDAINED** this \_\_\_\_ day of \_\_\_\_\_, 2017, by the Board of Supervisors of West Pennsboro Township.

ATTEST:

**BOARD OF SUPERVISORS  
WEST PENNSBORO TOWNSHIP**

\_\_\_\_\_  
Evelyn M. Swartz, Secretary

\_\_\_\_\_  
Gerald A. Barrick, Chairman

\_\_\_\_\_  
Richard E. Adler, Vice Chairman

\_\_\_\_\_  
Daniel L. Martin, Supervisor