IN THE MATTER OF THE APPLICATION OF CRAIG, HOWARD and JANET DETRAGLIA	: : : :	BEFORE THE FAIRVIEW TOWNSHIP ZONING HEARING BOARD YORK COUNTY, PENNSYLVANIA DOCKET NO. 2020-01

DECISION DENYING APPEAL FROM INTERPRETATION AND DENYING SPECIAL EXCEPTION

The Applicants have requested an interpretation of the Fairview Township Zoning Ordinance that landscaping includes excavation and utility line installation or in the alternative are requesting a special exception pursuant to Section 300-4 of the Zoning Ordinance to allow the excavating portion of their business to operate.

Findings of Fact

1. The Applicants are Craig, Howard and Janet DeTraglia of 454 Brenneman Drive, Mechanicsburg, Fairview Township, York County, PA 17055.

2. The Application filed with the Township on January 20, 2020 listed the property owners as Craig, Howard and Janet DeTraglia. However, during testimony it was stated that the property is actually owned by Howard and Janice DeTraglia.

3. The actual ownership of the property according to Deed dated October 25, 2019 is Howard B. DeTraglia and Janice M. DeTraglia. The Deed was recorded in the Office for the Recorder of Deeds in and for York County, Pennsylvania on November 6, 2019.

4. The property is located at 454 Brenneman Drive, Fairview Township, York County, Pennsylvania.

5. The tax parcel number for the subject property is 27-000-QE-0016-00-00000.

6. The subject property is located in the Rural Living Zoning District.

7. The property is bisected by Brenneman Drive, with the single-family dwelling house located north of Brenneman Drive and the building in question located on the south side of Brenneman Drive.

8. The property consists of approximately 105 acres and is not served by public water nor public sewer.

9. The subject building, which was constructed prior to filing the Application in this matter, is 80 feet by 200 feet, for a total of 16,000 square feet, with a 15 feet wide by 200 feet long lean-to along the one side.

10. The first communication Applicants had with the Codes Administration Director was in January of 2019 when a consultant for Applicants was asking preliminary questions regarding a home office and construction of a single family home and the possibility of a future pole building.

11. On January 28, 2019 the Codes Administration Director responded by email to the consultant stating that the proposed home office could be permitted through the application and approval process and a decision would be based upon the information provided in the Application. His email also stated that a pole building being used for agricultural purposes is permitted by right, but the proposed storage of equipment is questionable. The Codes Administration Director stated that if the equipment being stored is associated and used primarily with the earthwork business it would not be permitted but would need some type of relief by the Zoning Hearing Board.

12. Thereafter an application for a building permit for the home was submitted and a permit for the home was issued, but there was no permit requested for a pole building.

13. After receiving complaints about earthwork taking place on the south side of the property for which no permit had been issued, Township personnel inspected the site and found that stripping of topsoil was taking place apparently for construction of a building on the south side of Brenneman Drive in an area for which no permit was issued. At that time, which was in early to mid-June 2019, Applicants were told that if a building is going to be constructed on the south side of Brenneman Drive a permit would be necessary.

14. During the first week of July of 2019 Township personnel were advised that there appeared to be construction taking place at the site on the south side of Brenneman Drive and upon inspection by Township personnel it was confirmed that construction was taking place and a foundation was being installed.

15. The Codes Administration Director informed the Applicants that a permit would be required, but if the building were in fact an agricultural building as stated by Applicants it would be exempt from building code requirements.

16. Within the first week of July 2019, after the foregoing discussions, an Application for a Zoning Permit was delivered to the Township office on which it was indicated that an agricultural building was proposed and there was an affidavit attached to it stating that the building would be an agricultural building.

17. The permit for the proposed agricultural building could not be issued because the NPDES Permit had not been issued by DEP and York County Conservation District.

18. Although the NPDES Permit was not issued and therefore the Building Permit was not issued, construction continued on the building.

19. Because of the ongoing construction without a permit and repeated complaints from neighboring property owners about the continued construction, a meeting was held among Township officials and the Applicants and their professionals.

20. During that meeting, for the first time it was represented by Applicants and/or their professionals that landscaping had now become part of the business operation and they felt that the landscaping work and activities with earthwork were close to or similar to the permitted use of landscaping service.

21. The Codes Administration Director disagreed with that interpretation and stated that the proposed use would not be permitted by right and that relief would be required from the Zoning Hearing Board for the construction business to be located on the property.

22. Applicants business of excavation, earthwork or utility line construction would be permitted as of right as a light industrial use, where other contractor businesses, plumbers, HVAC contractors, etc. are located. The Codes Administration Director testified that the light industrial use including contractor businesses is permitted in the Limited Industrial Zoning District, the Commercial Business Zoning District, the Village Business Zoning District and the Airport Business Zoning District.

23. After receipt of the Application on January 20, 2020, notice of the hearing was published in the newspaper on February 6, 2020 and February 13, 2020 for an anticipated March 19, 2020 hearing.

24. The property was posted two subsequent times, the first on February 13, 2020 and then a revised notice for an anticipated virtual hearing was posted on June 4, 2020.

25. Notice of the hearing were sent to the surrounding property owners on January 30, 2020 and then a second notice was sent on May 18, 2020 for the virtual hearing.

26. At the first hearing in this matter held on July 16, 2020, after Applicants' counsel's opening remarks, counsel for Barbara Sadler inquired as to whether the documents requested in a subpoena which was issued to the Applicants by the Zoning Hearing Board have been provided. The Codes Administration Director stated that the signed subpoena was forwarded to Applicants' attorney but no documents had been received.

27. Applicants' counsel who was covering the hearing stated that he was not aware of any other documents but after a recess to discuss the matter with his clients, stated that they could supplement with the contracts themselves and that he intended to produce pictures which would represent the inventory of the equipment.

28. However, no copy of any contract in the categories of contracts listed in the subpoena were produced by Applicants.

29. Mr. Howard DeTraglia stated that all of the equipment that he has at the property is used for excavating, landscaping and for agricultural uses.

30. Mr. DeTraglia stated that he is engaged in the raising of livestock and testified that he has 19 head of herefords which he keeps in a fenced in pasture area on the south side of Brenneman Drive near the subject building. His other farm animals including horses, a goat, chickens, and a jackass are kept in a building behind his house on the north side of Brenneman Drive.

31. Mr. DeTraglia went through a series of pictures identifying the equipment that he has on the property including:

- Skid steer loader and John Deere Gator both of which are used on the farm for landscaping and for excavation
- Hay wagon and small Farmall tractor used on the farm
- A grapple bucket to gather up brush

- A fertilizer spreader used on the farm and on landscaping work
- A mower deck for one of his John Deere tractors
- Rototiller for one of his John Deere tractors
- York rake which he uses to clean up around the fields
- A John Deere tractor with a spraying rig used on the farm and landscaping
- A mulcher for erosion and sedimentation control when excavating and also used on the farm
- Three pieces of haying equipment used on the farm
- A backhoe used on the farm, for landscaping and excavating
- Hay baler and hay wagons used on the farm
- Hydroseeder
- A farm wagon, wheel loader and a track hoe used on the farm everyday as well as for excavation and landscaping, two silos which they are preparing to erect to store feeds and stuff like that for cattle and horses
- Elevator used to put hay in the barn
- Another farm tractor
- A track hoe used on the farm quite a bit for clearing and grubbing and used in landscaping and excavating
- A haybind to cut hay
- Gooseneck trailer, corn planter, disk, tedder
- In addition to the pictures he produced, he said he had other equipment that he could not take pictures of because they were on the job that day including pickup trucks, and three dump trucks. He said he uses the dump trucks to haul grain and also to haul top soil for landscaping and hauling other kinds of materials as well.

32. Mr. DeTraglia testified that his excavating activities take place off-site pursuant to contracts and other arrangements. But the equipment is kept on the property at 454 Brenneman Drive when it is not on the job site.

33. Mr. DeTraglia testified as to the building dimensions of 80 by 200 consisting of 16,000 square feet as well as the 15 foot lean-to along the one long side.

34. He testified that approximately 1/3 of the barn is used for straw storage, 1/3 used for storage of equipment and 1/3 is in the process of being developed for a farm-to-table business, but nothing has been constructed for that.

35. Mr. DeTraglia stated that the maintenance of his equipment is performed inside the building by his employed mechanic.

36. Mr. DeTraglia when asked to describe similar farm maintenance activities that he performs for third parties identified one job nearby in which they dug out under a guy's deck, built a retaining wall and poured concrete. However, upon cross examination he refused to identify the customer.

37. Mr. DeTraglia stated that he has been in business since 1996 and recently changed the name to DeTraglia Excavating and Landscaping, LLC.

38. Upon questioning, Mr. DeTraglia added to his list of equipment a trailer that he uses to transport the excavator.

39. Mr. DeTraglia testified that he keeps a small supply of inventory for his utility work of installing piping, water piping, sewer piping and things of that nature. The small inventory he keeps is also used for emergency repair services.

40. After some confusion, Mr. DeTraglia clarified that he has seven total employees, three of whom are not family members.

41. The office for the business operations is in the house, not in the subject building on the south side of Brenneman Drive.

42. Applicants purchased the property in June of 2018 but continued their excavation business on Middlesex Road until moving all of the business operations to the subject property in 2019.

43. Applicants did not apply for a Zoning Permit or inquire as to the requirements to move their excavation business to 454 Brenneman Drive prior to doing so.

44. A list of bidding jobs from PennBid was shown to Mr. DeTraglia and he said that the list of the bid jobs from 2020 was not all of the jobs he bid because there were some landscaping jobs. However, he would not provide information as to the names of the customers for whom he did landscaping jobs.

45. The list included municipal sewer system rehabilitation jobs, water main connections, sewer extensions and other municipal work.

46. Mr. DeTraglia admitted to applying in Monroe Township to operate an excavation business in an agricultural zone but abandoned that idea before the supervisors ruled on his application for a conditional use for the stated reason that the supervisors wanted a new entrance constructed and Applicants were not willing to do that.

47. Mr. DeTraglia admitted to having six different inspections and being cited for violations by DEP or York County Conservation for earth disturbance without installing silk socks, stabilization and other erosion and sedimentation controls.

48. Mr. DeTraglia admitted to receiving a cease and desist letter because he did not have an NPDES permit, but continued work anyway.

49. Mr. DeTraglia said he was not able to provide any sort of percentage breakdown of his business between excavation/utility contractor work versus landscaping work.

50. Mr. DeTraglia stated that the business employees show up at 454 Brenneman Drive to get equipment, tools and materials, go to the job site and then return to 454 Brenneman Drive at the end of the work day.

51. The business leases some equipment and Mr. DeTraglia stated that two pieces of his construction equipment are currently leased.

52. The business stores equipment, machinery, trucks used in the excavation business outside on the property south of Brenneman Drive.

53. When questioned whether the proposed use of the subject building for a farm-to-table business including butchering would be 300 feet from the property line, Mr. DeTraglia was unable to answer.

54. Although Mr. DeTraglia testified that he keeps small inventory of supplies and materials onsite for emergency repairs, he said that in the last three years they have made no emergency repairs during off hours.

55. The Fairview Township Sewage Enforcement Officer identified a punch list dated August 28, 2019 of six items to be complied with by the dates listed following the on-lot septic system inspection. The punch list also contained a cease and desist order relating to all earth disturbance and construction activities on the property south of Brenneman Drive until the NPDES Permit is issued and stormwater management plan is approved.

56. Mr. Rodrigo then identified a September 3, 2019 notice of revocation of septic permit because the punch list items had not been completed in a timely manner.

57. Mr. Rodrigo testified that an approved septic system is on the northern side of Brenneman Drive for the residential home containing 5 bedrooms, but no information was

provided with respect to the number of employees using the toilet facilities in that home therefore he is unable to determine if the septic system is adequate for the number of users.

58. Although there is a mechanic onsite at the subject building during the day, there are no restroom facilities in the building. Mr. DeTraglia responded to that question stating that they sometimes rent a porta potty.

59. Ms. Barbara Sadler of 1251 Highland Drive is an adjoining property owner and was the person who sold the farm at 454 Brenneman Drive to Applicants in June of 2018.

60. Ms. Sadler testified that Mr. Howard DeTraglia told her they intended to use the farm to hunt, raise cows and pigs and ride 4-wheelers and maybe put a little shop in somewhere.

61. Ms. Sadler also testified that Mr. Howard DeTraglia told her it is always better to ask for forgiveness than permission.

62. A petition in opposition to Applicants' request was submitted and is part of the record.

63. Ms. Sadler and other witnesses testified that they hear backup beepers and dump truck gates slamming and diesel engines going up and down the road to the subject building on a regular basis since around September of 2019.

64. Ms. Sadler also submitted pictures of the subject property showing a trailer and pipes being stored on the property, trucks traveling on the road under the power lines to the subject building, pictures showing the dust coming from the vehicles traveling on the driveway near the power line.

65. Ms. Sadler stated that the photographs she submitted are representative of the equipment that she regularly sees on the property owned by Applicants.

66. Ms. Sadler stated her primary objection is the construction vehicles including the big diesel trucks going up and down the road to the subject building causing her to be unable to sleep with her windows open and is concerned that the situation will worsen if the Zoning Hearing Board permits Applicants to continue with their business operation on the property.

67. Ms. Sadler testified she personally has seen the trucks going up the driveway in back of her house as early as 4:30 in the morning and as late as 11:00 at night.

68. Mrs. Kimberly Souder was present and identified her written statement as being the one attached to the petition.

69. Mr. Theodore Prescott of 491 Brenneman Drive testified as a party that his property is surrounded on three sides by the Applicants' property and the field across Brenneman Drive from his house is also owned by the Applicant.

70. Mr. Prescott testified that the subject barn is approximately 600 feet from his house.

71. He testified that the neighborhood has changed with the noise from the trucks including the reverse alarms beeping, tailgates slamming sometimes from 6:30 am and sometimes after 5:00 pm.

72. He noted that recently it has become less noisy.

73. He identified outdoor storage of a trailer and tubes or pipes on Applicants' property near the southwest corner of his property and showed a photograph of that storage.

74. Mr. Prescott authenticated approximately seven photographs depicting his home and barn, the Applicants' property, the access drive near the power lines from Brenneman Drive to the subject barn, the dump trucks, front end loader and other equipment which he characterized as construction equipment on Applicants' property near the subject barn.

75. Mr. Prescott also testified that Applicants stated they were going to use the property for farming, hunting and ATV riding at the time they purchased it. However, the character of the use has changed to a business establishment.

76. Additional members of the public owning properties in the general vicinity of the subject barn offered public comment. Of those people, only one was in favor of Applicants' request to operate the excavation business on the property. She testified that the DeTraglia business can coexist in the neighborhood.

77. Others testified that the neighborhood was changed by the noise from the large trucks and equipment, the frequent beeping of the backup alarms and one commented that the Applicants seemed to "sneak" a business operation into the rural area.

78. Others testified that the noise and construction activities on the property are not consistent with the rural area, but they were fine with the property being used for farming.

79. Public comment was made that a Google search of the DeTraglia's business resulted in nothing about agricultural support, but solely information regarding its construction activities.

80. Other concerns raised by the public were increased traffic safety concerns due to the large construction vehicles traveling on narrow township roads not designed for commercial use and concerns regarding safety of pedestrians and bicyclists who use Brenneman Drive.

81. The public comments also noted that Applicants did not establish that they operated a "landscaping business" and did not provide any landscaping contracts to establish that they were in fact in the landscaping business. It was also noted that the Applicants did not identify by name any clients for whom landscaping work was performed.

82. Other public comments were that the Applicants' business DeTraglia Excavating, Inc. did excavation contracting at its prior location and its business ads are about excavation, not landscaping or agricultural support.

83. A member of the public also stated that tri-axle dump trucks are not used in farming and landscaping, but rather in construction and excavating and any landscaping activities performed by Applicants' business are incidental to its excavation business.

84. Another concern raised by members of the public was the dust resulting from the construction equipment traveling from Brenneman Drive to the subject barn.

Conclusions

1. The Zoning Ordinance defines landscaping service as follows:

> "An establishment engaged in providing off-site landscape care and maintenance services and/or installing trees, shrubs, plants, lawns or gardens along with the design of landscape plans and/or the construction (i.e., installation) of walkways, retaining walls, decks, fences, ponds, and similar structures and may involve seasonal snow plowing, including the buildings, structures, offices, and equipment and material storage customarily incidental and accessory to the principal use."

2. Applicants provided no evidence nor testimony that they are engaged in providing off-site landscape care and maintenance services nor installing trees, shrubs, plants, lawns or gardens.

3. The only activities listed in the definition of landscaping service on which Applicants submitted evidence was installation of a retaining wall and patio. However, there was no evidence that the installation of the retaining wall and patio were done along with the service of landscape care and maintenance or installation of trees, shrubs, plants, lawns or gardens.

4. Accordingly, Applicants did not establish that they are engaged in a landscaping service.

5. A subpoena was issued to Applicants to produce "a list of and copies of all contracts for which the DeTraglia's (either individually or through their business DeTraglia Excavating and Landscaping, Inc.) have provided any services over the past year (including agricultural services, excavating services, landscaping services, plumbing/septic/sewer work services, and any other service offered).

6. Applicants produced no contract nor list of contracts.

7. Prior to the second hearing, Applicants submitted a list purporting to be a summary of contracts but it did not identify the entity or person for whom the work was performed nor the location of the work.

8. Furthermore, the list submitted by Applicant did not include all of the construction contracts performed by Applicants and/or their business. The PennBid documents which Applicants agreed were accurate listed a 2020 sewer extension project in Littlestown, Adams County which was awarded to DeTraglia Excavating and Landscaping, Inc., but the list submitted by Applicants did not mention any sewer extension project in 2020.

9. The list submitted by Applicants prior to second hearing did not identify any contracts for landscape care and maintenance services, nor installation of trees, shrubs, plants, lawns or gardens.

10. The list submitted by Applicants prior to the second hearing did not identify or allocate that portion of the work which they claim was landscaping versus the part which was excavation and/or utility line installation.

11. Although some equipment and machinery can be used for the Applicants' excavation contractor business and for landscaping and other purposes, the core of Applicants' business is installation of water, sewer and stormwater pipes with incidental surface restoration.

12. Landscaping service does not include installation of water, sewer and stormwater pipes.

13. Although Mr. DeTraglia testified that putting drain tile in a farmer's wet field or installing irrigation for a farmer is the same as work they perform on their own farm, he did not identify any irrigation or drainage system they actually installed on a farm.

14. Applicants' excavation business including installation of utility lines is permitted in several zoning districts within the Growth Area Zoning Districts.

15. The Codes Administration Director specifically identified zoning districts within which Applicants' contractor business could be lawfully conducted.

16. The Codes Administration Director had discussions with Applicants and/or their representatives regarding permitted zoning districts where contractor activities could be conducted, but Applicants never applied for a permit to conduct its excavation business.

17. Section 300-4.B. of the Zoning Ordinance, which makes provisions for permitting a use by special exception, is applicable only for a use which clearly is not permitted by right, by special exception use nor by conditional use within any zoning district.

18. Applicants' excavation contractor business including installation of utility lines is permitted in several zoning districts, therefore, Section 300-4.B. is inapplicable.

19. In the alternative, even if Section 300-4.B. were applicable, Applicants failed to establish compliance with the requirements of Section 300-4.B.(1) through (7) and the requirements of Section 300-99.E.(3).

20. Section 300-4.B.(7)(b) requires that an Applicant submit a detailed description of how the proposed use and development complies with Subsection B.(1) through (6).

21. Subsection B.(1) through (6) provides as follows:

(1) The proposed use is in general conformity with the most recent version of the Fairview Township Comprehensive Plan, and/or other applicable plans adopted by Fairview Township, and in harmony with the zoning district, neighborhood, and area in which it is proposed.

(2) The proposed use is:

(a) Similar to and compatible with the permitted uses in the zoning district in which the subject property is located;

(b) Not permitted in any other zoning district under the terms of this chapter; and

(c) In no way conflicting with the general purposes and intent of this chapter or the zoning district in which the subject property is located.

(3) The external impacts associated with the proposed use would be equal to or less intensive than external impacts associated with other uses that are permitted in the zoning district in which the subject property is located.

(4) The location of the proposed use would not endanger the public health and safety, and the use will not deteriorate the environment or generate nuisance conditions such as traffic congestion, noise, dust, smoke, glare or vibration.

(5) The proposed use shall comply with Township building, health, housing, rental, safety, property and other applicable local, county, state, and federal code and licensing requirements. All such licenses, certificates, and permits shall have been obtained and presented to the Township, or shall be a condition of approval.

(6) The proposed use would meet the standards that apply under Article XII of this chapter relating to special exceptions.

22. Applicants did not demonstrate compliance with the foregoing requirements, but testimony presented by others and the evidence received at the hearing established that Applicants' contractor business is not in harmony with the zoning district, neighborhood and

area in which it is located; may endanger the public safety; and does generate nuisance conditions such as noise, vibration and dust.

23. The testimony and evidence presented at the hearing established that the excavation contractor business is not compatible with the permitted uses in the zoning district and that it is permitted other zoning districts within the Township.

24. The testimony and evidence presented to the Zoning Hearing Board established that use of the subject building for Applicants' excavation contractor business does not comply with Township and state licensing and permit requirements.

25. Applicants did not demonstrate compliance with the requirements for special exceptions as set forth in Section 300-99.E.(3) of the Zoning Ordinance in that Applicants did not establish that the excavation contractor business does not detract from the use and enjoyment of adjacent or nearby properties, nor did Applicants establish that the use will not substantially change the character of the neighborhood, nor that adequate public facilities are available to serve the use.

26. To the contrary, the testimony and evidence presented to the Zoning Hearing Board showed that the Applicants' excavation contractor use is not consistent with the purpose and intent of the Zoning Ordinance, does detract from the use and enjoyment of adjacent or nearby properties and does substantially change the character of the subject property's neighborhood.

27. Even if Applicants' excavation contractor business were a permitted use or permitted by special exception, Section 300-44.B. of the Zoning Ordinance prohibits lots in the Rural Living Zoning District to be used for more than one principal use.

28. Applicants identified multiple uses including: a farm with a single-family dwelling; excavation contractor business including installation of utilities lines; landscaping; and agricultural support business.

29. Although asked to state what portion of their overall business operation involved landscaping, agricultural support business and excavation contractor business, Applicants were unable to respond. In addition, in that Applicant did not provide the contracts as listed in the subpoena, the contracts were not able to be reviewed to estimate what portion of Applicants' business operations involved landscaping, agricultural support business or the excavation contractor business.

30. The Zoning Ordinance defines principal use as: "the main, primary, or predominant use of any lot, tract, parcel of land or structure."

31. The Zoning Ordinance defines accessory use as: "a use customarily incidental and subordinate to the principal use or the principal structure and located on the same lot with such principal use or principal structure."

32. Applicants did not identify any of their non-residential uses as being an accessory use. Accordingly, all of the uses are deemed principal uses.

33. Accordingly, Section 300-44.B. of the Zoning Ordinance prohibits Applicants' non-residential uses of the property.

Decision

In view of the foregoing findings and conclusions and in view of the evidence and testimony presented to the Zoning Hearing Board, it is the decision of the Board that Applicants' requests be denied for the following reasons:

1. As more fully set forth in the conclusions, Applicants failed to establish that they are engaged in landscaping service.

2. Even if Applicants were involved in some landscaping service, their excavation contractor business of installation of water, sewer and stormwater pipes with incidental service restoration are not landscaping and the request to interpret landscaping as including installation of water, sewer and storm water pipes is denied. The possibility of using Applicants' excavation contractor equipment in landscaping does not convert its excavation contractor business into a landscaping service.

3. For the reasons more fully set forth above under conclusions, Applicants' request for a special exception to permit its excavation contractor business is denied because the excavation contractor business is permitted in other Districts within the Township and because Applicants failed to establish the criteria for special exceptions under Section 300-4.B. (1) through (7) and Section 300-99.E.(3).

4. Even if Applicants' excavation contractor business were a permitted use or permitted by special exception, Section 300-44.B. of the Zoning Ordinance prohibits lots in the Rural Living Zoning District to be used for more than one principal use. In addition to the farm and residence use, Applicants identified three non-residential uses and Applicants were unable to quantify how much of its total business operation is attributed to each of the three non-residential uses. In that none of the uses were identified as accessory uses, all three of the non-residential

uses are principal uses by definition and all three non-residential uses are prohibited by Section 300-44.B.

The application was denied upon the motion made by Mr. Perry and seconded by Mr. McElhenie, and adopted 3-0 by the Board members present and voting.

FAIRVIEW TOWNSHIP ZONING
HEARING BOARD

DATE: September 14, 2020

Keith Bashore, Acting Chairman

2020-01

Established 1803
FAIRVIEW TOWNSHIP

ZONING HEARING BOARD APPLICATION

YORK COUNTY, PENNSYLVANIA

RECEIVED
JAN 2 0 2020
FAIRVIEW TOWNSHIP

❖ ***Part 1:***

APPLICANT(S)/EQUITABLE OWNER
Name: Craig, Howard & Janet DeTraglia
Address: 454 Brenneman Drive
Mechanicsburg, PA 17055
Phone: 717-554-1419

EXISTING OWNER OF PROPERTY:
Name: Craig, Howard & Janet DeTraglia
Address: 454 Brenneman Drive
Mechanicsburg, PA 17055

PROPERTY LOCATION:
Address: 454 Brenneman Drive
Mechanicsburg, PA 17055
Lot Size: 104.9 acres
Date Purchased: June 7, 2018
Location:

PRESENT USE OF PROPERTY:
Agricultural operation, Landscaping Service
Agricultural Support Service

EXISTING ZONE: RL

❖ ***Part 2:***

ZONING REQUEST (Identification of the applicable request(s)):

( ) SUBSTANTIVE CHALLENGE

(X) SPECIAL EXCEPTION - ORDINANCE INTERPRETATION

( ) VARIANCE

( ) APPEAL OF THE ZONING OFFICERS DECISION

SECTION(S) OF ZONING ORDINANCE WHICH APPLY TO THIS REQUEST - Please identify the specific section(s) of the Zoning Ordinance involved in the request):
300-15, 300-16, 300-4

❖ ***Part 3:***

DESCRIPTION OF REQUEST:
See attached.

The Applicants own a 100 acre farm located at 454 Brenneman Drive. The Applicants are actively engaged in farming activities and the raising of livestock.

The Applicants have erected an approximately 16,000 square foot metal barn. The barn will be used to store hay and provide pens for pigs and livestock in addition to butchering livestock. In addition, approximately 8,000 square feet will be used for the storage and repair of equipment. The equipment consists of dump trucks, seeding machines, pickup trucks, steel loaders and bulldozers. All of this equipment is used in developing the Applicants' farm and will be used to develop other farms. Services offered to farms include, but are not limited to, digging ponds, drainage lines, manure pits, piping for irrigation, seeding and snow plowing. The Applicants use this equipment in their business which trades under the name DeTraglia Excavating and Landscaping, LLC. All services except those that are rendered in connection with the operation of equipment on the Applicants' farm are rendered off site.

Landscaping service is defined in the Ordinance as "an establishment engaged in providing off-site landscape care and maintenance services and/or installing trees, shrubs, plants, lawns or gardens along with the design of landscape plans and the construction (i.e. installation) of walkways, retaining walls, decks, fences, ponds and other similar structures and may involve seasonal snow plowing including the buildings, structures, offices and equipment and material storage customarily incidental to an accessory to the principal use." It should be noted that testing or repairing of motorized equipment used as part of the landscape service is allowed provided that the testing and repairing of equipment is conducted within a completely enclosed building.

Agriculture support business is defined under the Ordinance as "an establishment directed at meeting the needs of those engaged in farming, agricultural operations and agribusiness. Such activities shall be directed at providing goods, materials and services needed to farm and for agricultural operations and agribusinesses rather than distribution of goods produced on the farm and agriculture operations and agribusinesses."

The Ordinance provides that "agricultural support businesses may involve a limited range or commercial uses such as:

a. Farming and agricultural equipment and other similar large or heavy duty motor vehicle rental sales, repair/service, washing and/or fuel/gas sales;"

As a part of the Applicants' normal operations, the Applicants do install and replace utility lines all of which require the installation and restoration of the landscape. This is an integral part of the operation and is essentially the same as installing irrigation systems, which agricultural support services. It should be noted that the Applicants' activities do not include quarrying, etc.

The equipment used by the Applicants is the same equipment used in all of the Applicants' activities. They all involve moving dirt.

Excavating service is not a use that is specifically provided for under the Ordinance. Since the equipment used in excavating services is the same as the equipment used in the providing of landscaping services and agricultural support services, the Applicant is requesting that the Zoning Hearing Board interpret the Ordinance that the Applicant's excavating services come within the permitted uses of landscaping services or agricultural support services. Otherwise the Zoning Officer would be placed in the uncomfortable and probably impossible position of having to determine how each piece of equipment was used prior to being placed on the property for repair or storage. Was it used to dig a pond on a farm or was it used to dig a sewer line? Was it used to

grade and seed a lawn on a corporate headquarter or was it used to grade and seed a lawn over a sewer line installation?

In the alternative, the Applicants request a special exception pursuant to Section 300-4 to allow the "excavating" portion of his business to operate.

The proposed use of excavating service is certainly in conformity with the most recent version of the comprehensive plan. The proposed use is no different than the other portions of the Applicants' business in that the equipment used is the very same equipment in the landscaping and agricultural support business and is certainly compatible with these other uses. It is not specifically permitted in any other zoning district and does not conflict with purpose and attempt of the RL zoning district. The external impacts associated with the proposed use would be no different than the impacts under the landscaping or agricultural support services. The location of the proposed use would not endanger the public health and safety. The use would not deteriorate the environment or general nuisance conditions such as traffic congestion, noise, dust, smoke, glare or vibration.

The proposed use occupies a miniscule portion of a 100 acre property. There is only one mechanic on site. The mechanic's normal hours are 7:00 a.m. to 4:00 p.m. The Applicant's other two employees report directly to the job site.

:1121355

454 Brenneman Drive
Barn

❖ ***Part 4*** York Co.

LIST ALL INDIVIDUAL PROPERTY OWNERS WITHIN 200 FEET OF THE PERIMETER OF THE ENTIRE PROPERTY.

NAME	ADDRESS	USE TYPE
Theodore L. + Catherine P. Prescott	491 Brenneman Dr	R- 2 story home
Maple Ridge Farm Family L.P.	1047 Trimmer Dr.	F- crops + general farming
David D. + Lori A. Ulsh	475 Brenneman Dr.	R-2 story Home
Geoffrey J. Brent	501 Brenneman Dr.	F - Rural Res w/ acreage
Samuel W., III + Yvonne D. Morgan	110 James Ln	R- one story house
Sherrie D. Shatzer	112 James Ln.	R-two story house
Edmond C. Skonecki + Ruth V. Tobermory	114 James Ln	R- two story house
Richard C. Moore	Highland Dr.	F-vacant Agricultural
Harold E. Dearloff Jr.	1201 Highland Dr	R-single wide Mobile home
Nannie, Bobbie R. + Donnie J. Quesenberry	Highland Dr.	R-residential vacant
" "	1205 Highland Dr	R-one story house
Sandra D. Van Etten	1220 Highland Dr.	R-two story house
Richard D. + Linda L. Neslbit	550 Highland Dr.	R-two story house
Barbara A. Sadler	1251 Highland Dr.	F-rural res. w/acreage
Rosemarie Y. Chernesky Holland	1100 Andersontown Rd.	R-one story house
Susan E. Eveland	108 James Ln	R-two story house

York

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York County Assessment Office

454 brenneman

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❖ ***Part 4*** Cumberland Co.

LIST ALL INDIVIDUAL PROPERTY OWNERS WITHIN 200 FEET OF THE PERIMETER OF THE ENTIRE PROPERTY.

NAME	ADDRESS	USE TYPE
Jay A. + Kelly R. Blackwell	1512 McCormick Dr.	R- residential
"	McCormick Dr.	RD - residential outbuildings only
Paul J. + Nina J. Wislocky	1516 McCormick Dr.	R
"	1520 McCormick Dr.	R
Douglas L. Biden	1524 McCormick Dr.	R
Joseph S. + Diane M. Sabadish	1528 McCormick Dr.	R
Robert B + Denise A. Kelly - Living Trust Trs	1532 McCormick Dr.	R
Stephen R. Johansen	1540 McCormick Dr.	R
Joanne H. Hunt + David B. Keeny	1544 McCormick Dr	R
Russell S Rhoades	1548 McCormick Dr.	R
Frank J. + Linda G. Leber	1600 Liz Burns Pl.	R
Corey L. + Nancy A. Lake	1604 Liz Burns Pl.	R
Donald M. + Debra S. Ritchey	1608 Liz Burns Pl.	R
Craig R. Waite	1504 McCormick Dr.	R

Cumberland

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