

**TOWNSHIP OF FORKS**  
**ZONING HEARING BOARD**

APPLICATION FOR

REFERENCE NO. 2006 005

- VARIANCE
- SPECIAL EXCEPTION
- APPEAL
- SUBSTANTIVE CHALLENGE

Bucks-Lehigh Land Company, LLC  
KMRD, L.P.  
Nic Zawarski and Sons Developers, Inc.  
Nic Zawarski and Sons Development Corp.

- 1) Name of appellant \_\_\_\_\_
- 2) Address of appellant See attached sheet.
- 3) Attorney (not mandatory) John A. VanLuvanee, Esquire  
Eastburn and Gray, PC  
PO Box 1389, Doylestown, PA 18901
- 4) Appellant telephone 610-867-3900
- 5) Tax parcel number J9-4-6; J9-4-7; J9-16-3; J9-16-4; J9-17-6; J9-17-7;  
J9-17-9 and J9-22-1 (See attached s
- 6) Property Address to be considered All of the properties identified  
in paragraph 5 above are to be  
considered in this Application.

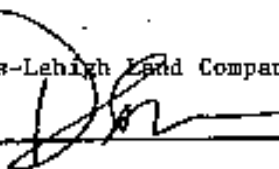
7) Reason for application (see instructions) See attached sheet.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8) Type of structure (i.e. addition, shed, garage, etc.) N/A

9) Signs (if applicable) size of sign N/A

Type of sign \_\_\_\_\_ Proposed \_\_\_\_\_  
location \_\_\_\_\_

Signature of appellant By:  Bucks-Lehigh Land Company, LLC Date 6/5/06



Application to Forks Township Zoning Hearing Board  
Bucks-Lehigh Land Co., LLC;  
Nic Zawarski and Sons Developers, Inc.;  
Nic Zawarski and Sons Development Corp.; and  
KMRD, L.P.

- 2) Bucks-Lehigh Land Co., LLC  
KMRD, L.P.  
2005 City Line Road  
Suite 106  
Bethlehem, PA 18017-2177

Nic Zawarski and Sons Developers, Inc.  
Nic Zawarski and Sons Development Corp.  
1441 Linden Street  
Bethlehem, PA 18018

- 5) With respect to the properties identified, Appellants have the following interests in the identified tax parcels:

Tax Map Parcels J9-4-6; J9-16-4; J9-17-9; J9-17-9 and J9-22-1: Bucks-Lehigh Land Co., LLC, Nic Zawarski and Sons Developers, Inc. and Nic Zawarski and Sons Development Corp. are equitable owners of these four parcels, collectively known as the "Padula Tract." The Padula Tract contains approximately 283 acres.

Tax Map Parcels J9-16-3 and J9-17-6: Nic Zawarski and Sons Developers, Inc. is equitable owner of these two tax parcels collectively known as the "Molnar Tract." The Molnar Tract contains approximately 76.92 acres.

Tax Map Parcels J9-4-7: Bucks-Lehigh Land Co., LLC is the legal owner of this tax parcel known as the "Reeder Tract." The Reeder Tract contains approximately 112 acres.

Tax Map Parcel J9-17-7: KMRD, L.P. is the equitable owner of this property which contains approximately 74.53 acres.

- 7) **Reasons for Application.** Appellants challenge the validity of the Forks Township Zoning Ordinance and Zoning Map on substantive grounds. This challenge is filed pursuant to the provisions of Section 916.1.(a)(1) of the Pennsylvania Municipalities Planning Code ("MPC"), 53 P.S. §10916.1.(a)(1) and Section 916.1.(c) of the MPC, 53 P.S. §10916.1.(c).

The reasons for the challenge are the following:

- I. Challenge to FP Farmland Protection district regulations. Appellants contend that the regulations governing the development of single-family detached dwellings in the FP Farmland Preservation district are arbitrary, unreasonable and unconstitutional because the cumulative effect of the regulations that govern the development of Use B-1 Single-Family Detached Dwelling and Use B-11 Single-Family Detached Cluster unreasonably and unnecessarily restrict and discourage a landowner from developing single-family detached dwellings. The arbitrary and unreasonable nature of those regulations is evidenced by the following factors, among others:
  - A. The Statement of Purpose of the FP District as set forth in Section 200-12 indicates that one of the purposes of the district is to conserve agricultural land within the Township. However, allowing the entirety of a tract of land to be developed with 3-acre lots as is permitted under Section 200-13.B. will preserve no agricultural lands and will create no open space.
  - B. The Zoning Ordinance does not require the preservation or protection of any Prime Agricultural Soils (as that term is defined at Section 200-7 of the Zoning Ordinance).
  - C. The requirement for a minimum lot area of 1 acre in a Use B-11 Single-Family Detached Cluster is arbitrary, capricious and unreasonable. No justification for this minimum lot area is found in the Zoning Ordinance or in the Comprehensive Community Plan for Forks Township. Where the Zoning Ordinance requires that a minimum of 50 percent of the land on which a Use B-11 Single-Family Detached Cluster is to be developed be set aside as open space, the 1-acre minimum lot size requirement is clearly excessive. See C&M Developers, Inc. v. Bedminster Township Zoning Hearing Board, 820 A.2d 143 (Pa. 2002).
  - D. The requirement for a 3-acre minimum lot size for a Use B-1 Single-Family Detached Dwelling is arbitrary, capricious, unreasonable and unconstitutional where the requirement does not further any of the purposes set forth in Section 200-12 for the FP District. See C&M Developers, Inc. v. Bedminster Township Zoning Hearing Board, 820 A.2d 143 (Pa. 2002).
- II. Challenge to the Zoning Ordinance Re: Mobile Home Parks.
  - A. The Forks Township Zoning Ordinance and Zoning Map are exclusionary and unconstitutional with respect to its provisions for mobile home parks for the following reasons:

1. The Parks Township Zoning Ordinance and Zoning Map do not zone a "fair share" of lands within the Township to zoning district classifications in which mobile home parks may be developed. Under the Zoning Ordinance, the use defined in the Zoning Ordinance as "B-12 Mobile (Manufactured) Home Park" is permitted only in the SR-1 Suburban Residential/Mobile Home district and the EC-1 Employment Center-1 zoning districts. Even if all of the land within the SR-1 and EC-1 zoning districts were available to be developed for mobile home parks, the total acreage would not constitute a "fair share" of the land within the Township.
2. As a practical matter, all land within the SR-1 and EC-1 zoning districts has been developed or is in the process of being developed. Most of the land was already committed to development before it was zoned to the zoning district classifications permitting mobile home park development.
3. The definition of "B-12 Mobile (Manufactured) Home Park" is set forth at Section 200-28.B.12. of the Zoning Ordinance and permits the developer of that use to include single-family detached sectional or modular dwelling units in a mobile home park rather than restricting Mobile Home Park to mobile homes. The definition of a "Mobile/Manufactured Home" is set forth at Section 107 of the MPC. However, the definition of "Sectional or Modular Home" at Section 200-7 includes single-family detached dwellings, single-family semi-detached dwellings, townhouses and low-rise apartments that are *substantially, but not wholly, produced in two or more sections off the site and then assembled and completed on the site*. Allowing such units to be included within a mobile home park is, in fact, inconsistent with the definition of "Mobile/Manufactured Home Park" as found at Section 200-7 of the Zoning Ordinance; is inconsistent with the definition of "Mobilehome Park" at Section 107 of the MPC; and, in fact, permits a development with no "mobile/manufactured homes" in a Mobile/Manufactured Home Park.
4. The area and dimensional requirements governing the development of Use B-12 Mobile (Manufactured) Home Park, when compared to the regulations governing development of other residential uses permitted within the SR-1 and EC-1 zoning districts, render the opportunity that the Zoning Ordinance allegedly provides for the development of a mobile home park illusory. (See Stahl v. Upper Southampton Township Zoning Hearing Board, 146 Pa.Cmwh. 659, 606 A.2d 960 (1992).
  - a. Section 200-28.B.12.(b) requires that a Mobile (Manufactured) Home Park have a planted buffer in accordance with Section

200-38 of the Zoning Ordinance. There is no similar requirement for any other residential use in the SR-1 zoning district. In fact, the buffer yard requirement set forth at Section 200-38 – with the exception of their application to the mobile home park use – apply to commercial and industrial uses – not to residential uses.

- b. Section 200-28.B.12.(f) requires 2.25 parking spaces per dwelling unit in a Mobile Home Park. This requirement is excessive. In fact, other permitted residential uses as defined in Section 200-28.B. have no minimum number of parking spaces required.
- c. The Zoning Ordinance establishes a maximum site area for a Mobile Home Park of 35 acres in both the SR-1 and EC-1 zoning districts. (See Section 200-17.B. and 200-20-B.) This requirement is arbitrary and capricious and unreasonably limits the size of a mobile home park. In comparison, there is *no maximum site area established by the Zoning Ordinance* for other permitted uses in the SR-1 or EC-1 zoning districts.
- d. In both the SR-1 and EC-1 zoning districts, the Zoning Ordinance requires a minimum of 30 feet distance between buildings in a mobile home park. This requirement is arbitrary, capricious, unreasonable and excessive. Other residential uses permitted in the SR-1 zoning district require minimum distances between buildings ranging from 12 feet to 20 feet.
- e. The maximum impervious surface ratio permitted for a Mobile Home Park in the SR-1 district is .40 (40 percent). This limitation is arbitrary, unreasonable and capricious and, in fact, is less than is permitted in a Use B13 Performance Subdivision in the SR-1 district. In a Use B13 Performance Subdivision, the maximum impervious surface ratio is .50 (50 percent).

III. Challenge to the Provisions of the Zoning Ordinance with Respect to Multi-Family Housing. The provisions of the Forks Township Zoning Ordinance and Zoning Map as they relate to providing opportunities for the development of multi-family housing, including apartments and townhouses, are exclusionary, unconstitutional, unreasonable and arbitrary for the following reasons:

- A. The Forks Township Zoning Ordinance and Zoning Map do not provide for a "fair share" of land within the Township to zoning district classifications in which Townhomes (Use B8) and Apartments (Use B10) are permitted.

- B. Townhomes (Use B8) and Apartments (Use B10) are permitted only in the Use B13 Performance Subdivision and the SR and SR-1 zoning districts.
- C. The Township has failed to zone a "fair share" of the land in the Township to the SR and SR-1 zoning district classifications. Even if the land zoned to the SR and SR-1 zoning district classifications were available for development, the percentage of lands owned to those two district classifications is unreasonably small when compared to the total land area of the Township and to the total land area of undeveloped lands in the Township.
- D. As a practical matter, all of the land in the SR and SR-1 zoning districts has been developed and no land is currently available for development of a Use B13 Performance Subdivision in which Townhomes and Apartments could be developed.
- E. The regulations governing the development of a Use B8 Townhomes and Use B10 Apartments are unduly restrictive and, when coupled with the requirement that such uses be developed only in a Use B13 Performance Subdivision, render the opportunity to develop Use B8 Townhomes and Use B10 Apartments illusory. [See Stahl v. Upper Southampton Township Zoning Hearing Board, 146 Pa.Cmwlth. 659, 606 A.2d 960 (1992)]
- F. As stated by the Lehigh Valley Planning Commission in its September 29, 2000 review of what became Forks Township Zoning Ordinance No. 264, the Planning Commission made the following review comments which were incorporated by reference in the January 27, 2006 review letter commenting on the Ordinance that was adopted on February 10, 2006 that is the subject of this challenge:

Our greatest concerns regarding the proposed ordinance relate its limitations on housing opportunities. Although the statement of purpose includes the phrase "so that all the people may have access to decent, sound, and sanitary housing", the ordinance provisions make it difficult to construct housing other than single family detached homes on large lots. Very limited housing opportunities are foreseeable to those who wish to occupy other housing types or who cannot afford the homes on large lots. Changes should be made in the following areas.

Uses such as twins, townhouses, condominiums and apartments are excluded from the township except as part of a performance subdivision. This development type requires a 10 acre minimum tract size, involves an elaborate review process, and involves extensive design requirements, such as rules relating to the mix of different housing types. While the use of

the performance subdivision process is not inappropriate, it should not be the only means by which these housing types can be built in the Township.

The construction of twins, townhouses, condominiums and apartments is also stymied by unnecessary requirements that serve to make development more difficult. For instance, minimum 100 foot buffers are required for performance subdivisions "to safeguard the adjacent properties". The ordinance is unclear as to the nature of the threat that these uses pose to adjacent properties. The Township should review its requirements and eliminate those that lack a basis in the protection of public health, safety and welfare.

The permitted housing densities are lower than the range of densities recommended by the LVPC Comprehensive Plan for all residential districts other than the SR and SR1 districts. As we pointed out in our November 1, 1996 review of the draft Comprehensive Plan, "when public water and sanitary sewerage are available, low densities unnecessarily raise housing costs." Decreasing the maximum lot size requirements in the OR and OR districts is particularly important because the vast majority of the vacant, developable residentially zoned land is in one of these two districts. Little developable land remains in the SR and SR1 districts.

- G. The Zoning Ordinance unreasonably fails to provide for multi-family housing as a "stand-alone" use, thereby unreasonably and unconstitutionally limiting the opportunity for the development of basic forms of housing, including apartments and townhouses, in violation of the requirements of Section 604(4) of the MPC.

Submitted with this Substantive Challenge are plans and materials depicting a mobile home park development, townhouse development and apartment development on the properties identified in paragraph 5 of this Application, with the exception of Tax Map Parcel J9-17-7. Those plans and materials depict a mobile home park development on Tax Map Parcels J9-17-9, J9-22-1 and J9-16-4; a townhouse development on Tax Map Parcel s J9-17-6 and J9-16-3; and an apartment development on Tax Map Parcel s J9-4-6 and J9-4-7. Appellants contend that amendments to the Forks Township Zoning Ordinance that would permit the developments described in the attached plans and materials would cure the substantive defects, render the Forks Township Zoning Ordinance unconstitutional and invalid.

The plans and materials submitted with this Substantive Challenge are illustrative only. Appellants reserve the right to develop each of the properties that are identified in paragraph 5 of this Application for any use with respect to which the provisions of the Forks Township Zoning Ordinance are found to be exclusionary and/or unduly restrictive.