

LOWER NAZARETH TOWNSHIP

Board of Supervisors

RE: Lowe's Home Center, Preliminary/Final Subdivision and Land Development

WHEREAS, the Lower Nazareth Township Board of Supervisors is in receipt of a Preliminary/Final Land Development plan entitled "Final Land Development Plans, Lowe's of Lower Nazareth", and a "Minor Subdivision – Final for Lowe's Home Centers, Inc.", both prepared by KZA Engineering, P.A. of Malvern, Pennsylvania, consisting of (17) sheets, dated December 17, 2009 and last revised February 22, 2010; and

WHEREAS, the intent of the Minor Subdivision and Final Land Development Plan is the subdivision of Tax Parcel #K8-9A-2A, a 27.45-acre parcel in the vicinity of Corriere Road, to be subdivided to create a 21.61-acre lot for development of a Lowe's Home Improvement store, and a remaining 5.84-acre lot; and

WHEREAS, the Lower Nazareth Board of Supervisors granted Conditional Use approval for this project at their January 27, 2010 meeting (Exhibit A);

WHEREAS, the Lower Nazareth Township Planning Commission recommended approval of the plan at its February 22, 2010 meeting; and

WHEREAS, the Lower Nazareth Township Zoning Hearing Board granted variances related to this site as outlined in Zoning Appeal #ZA2009-07 Order and Opinion (Exhibit B);

WHEREAS, the Township Engineer has reviewed the Preliminary/Final Land Development Plan and Minor Subdivision against the provisions of the 2005 Lower Nazareth Township Subdivision and Land Development Ordinance and has offered comments in his letter dated March 19, 2010; and

WHEREAS, the Township Zoning Administrator has reviewed the Preliminary/Final Land Development Plan and Minor Subdivision against the provisions of the 2001 Lower Nazareth Township Zoning Ordinance, amended March 23, 2005; and

WHEREAS, the Lower Nazareth Township Board of Supervisors desire to take final action on these plans.

NOW THEREFORE, BE IT RESOLVED that the Lower Nazareth Township Board of Supervisors approve the Preliminary/Final Land Development Plan and Minor Subdivision as referenced above, subject to the following conditions:

1. The comments in the Township Engineer's letter dated March 19, 2010 shall be adequately addressed. Any reports or documentation requested by the Township Engineer must be provided to both the Township and Township Engineer prior to plan recording.
2. The Applicant must satisfy the requirements of the Conditional Use Opinion and Order as executed by the Board of Supervisors Chairman and Secretary, and any subsequent actions of the Board relative to said Order and Opinion.

3. The Applicant understands that any changes to the proposed uses and/or the land development in general are subject to Township review and may require additional review and approval by the Board of Supervisors and/or outside agencies. Under no circumstances, shall any site work nor construction occur that is not depicted on the approved plan nor approved by Lower Nazareth Township and outside agencies.
4. The applicant is responsible for executing a Land Development Agreement and submitting an acceptable form of security for the public improvements. The applicant acknowledges that the Final Plan will not be signed, nor will the Land Development Improvements Agreement be approved and executed by the Board of Supervisors until the security has been received and deemed acceptable. The applicant understands that no construction can commence, nor will any permit applications be accepted until such time as all conditions of approval are met and the Final Plans have been recorded.
5. The Applicant is required and agrees to enter into the existing multi-party Traffic Signalization Maintenance Agreement for the Route 248/33 corridor.
6. On January 7, 2010, the Zoning Hearing Board granted certain variances to Applicant from the provisions of the Lower Nazareth Township Zoning Ordinance. The grant of the variance was subject to a condition contained in Paragraph f that provides "that if at any time the proposed use of the property intensifies, expands, and/or is altered in any way, including but not limited to the introduction of an additional use, the issue of parking must be submitted to Lower Nazareth Township for reevaluation and reconsideration with regards to the adequacy of the parking spaces for the changed, expanded or altered use, and further a future representation shall not be made that the approved parking configuration is an existing nonconforming use". For the purposes of enforcement of this condition and to more precisely define and clarify what would trigger the reevaluation and reconsideration of the adequacy of parking, applicant agrees that a resubmission of required parking shall be required if any of the following events shall occur:
 - a. A change in ownership of the property to an entity unrelated to Lowe's, its affiliates, assigns or bonafide purchaser;
 - b. A change in the use of the property from the current proposed use of home improvement retail store;
 - c. An expansion of the building or garden center exclusive of the usage of the areas shown on the approved plans for the project that depict outside storage and display;
 - d. Demonstrated need for additional parking, e.g. ninety-five (95%) percent of the parking spaces are in use on three (3) consecutive Saturdays.

Acknowledging these conditions, Applicant shall withdraw that portion of its Zoning Appeal seeking clarification of Paragraph j of the Zoning Hearing Board Order.

7. Applicant agrees to voluntarily contribute \$125,000.00 additional monies to the Traffic Impact Fund in lieu of post-development traffic analysis for the purpose of funding any traffic mitigation programs that may be necessary as a result of this development. The Township agrees to only use these funds for transportation improvements that may arise

within the study area contained in the original Easton Hospital Traffic Analysis. These funds will not be used for general maintenance purposes.

- 8. Recording of the plan will be completed by Lower Nazareth Township. The applicant shall supply the following documents for recording:

- Minor Subdivision Plan (Page 1 of 1) - (2) Mylar reproducible prints and (6) paper prints;
Land Development Plan (Sheet 4 of 17) - (2) Mylar reproducible prints and (2) paper prints;
Land Development Plan (Full Sets) - (4) full sets of paper prints.

All documents shall contain original signatures and notarization where required. The applicant is responsible for placement of property addresses on the above plans, in accordance with the Northampton County Uniform Parcel Identifier Ordinance. Upon satisfaction of all conditions of approval and placement of signatures on the Plans, the Township shall record, within ninety (90) days of said satisfaction, the approved Plan at the Northampton County Recorder of Deeds Office as required by Section 513(a) of the Pennsylvania Municipalities Planning Code, 53 P.S. Section 10513(a), as amended and Section 520 of the Lower Nazareth Township Subdivision and Land Development Ordinance.

- 9. Pursuant to Section 111.I. of the Lower Nazareth Township Zoning Ordinance, the Applicant understands that necessary permit(s) must be issued within (9) months of the date of this resolution and construction started within (12) months of issuance of said permit(s). Should the Applicant fail to obtain the necessary permit(s) and/or begin construction within the prescribed time period, it shall be conclusively presumed the Applicant has waived, withdrawn or abandoned the appeals, and all provisions, variances and permits granted by Zoning Hearing Board and Township Staff shall be deemed automatically rescinded.
10. The applicant is prohibited from commencing any construction activities on this project until a pre-construction conference is scheduled and conducted in compliance with Section 536 of the Subdivision and Subdivision Ordinance, and a formal Notice to Proceed is issued by the Township. Said pre-construction conference shall not occur until Items 1-9 above have been satisfied to the Township's satisfaction.
11. The applicant shall accept these conditions in writing, within five days of receipt of the finalized Board of Supervisors resolution, otherwise the application is denied for failure to comply with the express conditions that are contained in this Resolution.

ADOPTED AND APPROVED this 14th day of April 2010, at a regular public meeting. Motion made by Robert Kucson and seconded by Martin Becker. The motion carried unanimously.

ATTEST:

BOARD OF SUPERVISORS

[Signature]
Timm A. Tenges, Manager, Secretary/Treasurer

[Signature]
Eric E. Nagle, Chairman