

TOWNSHIP OF LOWER NAZARETH  
NORTHAMPTON COUNTY, PENNSYLVANIA

ORDINANCE NO. 161

AN ORDINANCE

AMENDING THE CODE OF ORDINANCES OF LOWER NAZARETH TOWNSHIP, ESTABLISHING AND IMPOSING AN IMPACT FEE UPON NEW DEVELOPMENT, SUBDIVISION AND CONSTRUCTION WITHIN DESIGNATED TRANSPORTATION SERVICE AREA FOR OFFSITE PUBLIC TRANSPORTATION CAPITAL IMPROVEMENTS; IDENTIFYING THE TRANSPORTATION SERVICE AREA; ESTABLISHING A MEANS AND PROCEDURES FOR CALCULATION OF SAID FEE; IDENTIFYING EXEMPTIONS; WHICH MAY BE APPLICABLE; PROVIDING THE TIME, METHOD AND PROCEDURE FOR PAYMENT OF SAID FEES; PROVIDING FOR THE ADMINISTRATION, COLLECTION AND DISBURSEMENT AND ACCOUNTING OF SAID FEES; AND ESTABLISHING PROCEDURES FOR CREDITS AND REFUNDS AND APPEALS.

WHEREAS, Lower Nazareth Township (hereinafter the "Township") has experienced considerable sustained growth in the form of residential, commercial and industrial development in recent years; and,

WHEREAS, the Township continues to experience significant demands in the nature of subdivision and land development plan submissions and review requests and it is therefore, anticipated that such development will continue; and,

WHEREAS, the level of such future development will create traffic congestion and a substantial and sustained adverse impact upon the transportation facilities, roadway intersection and traffic control devices within certain areas of the Township.

WHEREAS, the Board of Supervisors is charged with the responsibility and obligation to keep roads open, in repair and usable for the safe and convenient travel by the public; and

WHEREAS, successful adherence to this charge by the Board of Supervisors will entail a substantial cost directly attributable to the impact of new development; and,

WHEREAS, the Township's general funds cannot support all of the necessary transportation improvements; and,

WHEREAS, the Commonwealth of Pennsylvania has empowered the Board of Supervisors to impose all or a portion of any cost for transportation facilities improvement upon new development and has delegated such authority unto the Township pursuant to the Act of December 19, 1990, P.L. \_\_\_\_\_, No. 209, Section 1, 53 P.S. 10501-A, et seq.; and,

WHEREAS, the amount of the Fee (hereinafter "impact fee") to be imposed has been determined by establishing the cost of additional transportation intersection improvements necessary to meet the minimum safety and capacity standards, which public facilities have been identified in the Lower Nazareth Township capital improvement plan, taking into consideration the anticipated and projected growth and development in the Lower Nazareth Township transportation service areas; and,

WHEREAS, the Township hereby finds and declares that an "impact fee" shall be established and imposed upon residential and non-residential subdivision and land development and construction to provide for or assist in financing specified transportation capacity capital improvements within the designated transportation service area, the demand for which is uniquely attributable to and created by such

development, and is in the best interest of the Township, its residents, and property owners is equitable, and does not impose an unfair burden on such development.

BE IT AND IT IS HEREBY ORDAINED by the Board of Supervisors in Lower Nazareth Township, Northampton County, Pennsylvania, pursuant to the authority of the Act of December 19, 1990, P.L. \_\_\_\_\_, No. 209, Section 1, 53 P.S. 10501-A, et seq. and the Pennsylvania Municipalities Planning Code of July 31, 1968, P.L. 805, Article VI, Section 601 et seq., as amended (53 P.S. 10601 et seq.), as follows:

ARTICLE I.

TITLE, PURPOSES, DEFINITIONS AND SUPPORTING STUDIES

Section 1. – Title

This ordinance shall be known as the “Lower Nazareth Township Impact Fee Ordinance.”

Section 2. – Purpose

The purpose of this Ordinance is to establish an Impact Fee Program, including a Transportation Capital Improvements Plan to ensure that the transportation system situate within the Township and servicing its residents and the general public is and continues to be available and adequate to support new growth and development. To advance this objective, there is hereby created an impact fee as hereinafter calculated which shall be payable to the Township at the time of and as a condition precedent to building permit issuance.

Section 3. – General Findings and Conditions

The Board of Supervisors hereby finds and declares that:

- A. The conditions and standards for the determination and imposition of the impact fee set forth herein are consistent with and comply with those set forth in the Act of December 19, 1990, P.L. \_\_\_\_, No. 209, Section 1, 53 P.S. 10501-A, et seq. And any and all amendments thereto (hereinafter the “Act”), and consist of:
  1. The recitals set forth above;
  2. The analysis, advice and recommendations of the Lower Nazareth Township Capital Improvements Advisory Committee;
  3. The Lower Nazareth Township Land Use Assumptions as adopted in a Resolution by the Board of Supervisors;
  4. The Lower Nazareth Township Roadway Sufficiency Report as adopted in a resolution by the Board of Supervisors;

5. The Transportation Capital Improvements Plan, as adopted in a Resolution by the Board of Supervisors;  
and,
  6. Such other conditions and standards as the Board of Supervisors may by resolution or otherwise identify from time to time as being relevant and material to the imposition of an impact fee and consistent with the provisions of the Act and any amendments thereto.
- B. The collection, disbursement and accounting of impact fees shall be administered by the office of the Township Manager, subject to supervision, review, oversight and control by the Board of Supervisors.
- C. The time, method and procedure for payment of impact fees shall be consistent with the Act and any amendments thereto and are set forth in Article II, Section 10 and Article III, Section 16 of this Ordinance.
- D. The procedure for credits against or refunds of impact fees shall be consistent with the Act and any amendments thereto and are set forth in Article III, Sections 17 and 18, of this Ordinance.
- E. Exemptions, if any, shall be at the discretion of the Board of Supervisors and such exemptions as the Board shall choose to enact shall be consistent with the Act and any amendments thereto and are set forth in Article II, Section 11 of this Ordinance.

#### Section 4. - Definitions

The terms and definitions set forth in 53 P.S. 10502-A of the Act are hereby adopted and incorporated, as though more fully set forth in this Ordinance by reference.

#### Section 5. - Imposition

There is hereby enacted an impact fee to be imposed upon any subdivision, land development or construction for the purpose of offsite transportation capital improvements as may be authorized by the Act and as described in the Transportation Capital Improvements Plan adopted by the Board of Supervisors. Said impact fee shall apply to all subdivisions, developments and construction within the transportation service area identified herein and

shall be a condition precedent to final approval of a land development plan, a subdivision plan or issuance of a building permit or use and occupancy permit as may be necessary.

#### Section 6. – Uses

Impact fees collected pursuant to this Ordinance shall be expended for such costs, fees and expenses as may be incurred for improvements attributable to subdivision, land development and construction within the Transportation Service Area and designated in the Transportation Capital Improvements Plan adopted by the Board of Supervisors in a Resolution. Additionally, such fees may be used for the acquisition of land and rights-of-way, engineering, legal and planning costs, and all other costs, including debt service related to road improvements within the designated service area, and including such proportionate amount of the Roadway Sufficiency Analysis as is allowed under the provisions of the Act.

#### Section 7. – Documents Adopted by the Board of Supervisors

The following documents, previously adopted by the Board of Supervisors, are hereby incorporated by reference in this Ordinance:

- A. Land Use Assumptions as adopted by the Township in a Resolution, as may be amended from time to time.
- B. Roadway Sufficiency Analysis as adopted by the Township in a Resolution, as may be amended from time to time.
- C. The Transportation Capital Improvements Plan as adopted by the Township in a Resolution, as may be amended from time to time.
- D. The Impact Fee Schedule as established by Township Resolution.
- E. Designation of transportation district as set forth in the Transportation Service Area Map identified as Transportation Service Areas and incorporated as though more fully depicted herein by reference.

#### Section 8. – Special Traffic Studies

Where necessary and intended to assist in determining the appropriate amount of traffic impact fees, the Township at the discretion of the Board of Supervisors may require the preparation of special transportation studies to determine the traffic generation or circulation patterns in non-residential developments only that will generate 500 or more P.M. Peak Hour Trips;

provided, however, that studies may be waived as part of the planning procedure where the proposed development will not require deviation from the land use assumptions approved by the Township as the basis of the program.

Any such studies required by the Township shall be submitted prior to the imposition of the impact fee and shall be considered in the determination of the fee.

#### Section 9. – Applicability of Impact Fee

This Ordinance shall, except to the extent provided herein, be uniformly applicable to all subdivision, development and construction that occurs within the designated Transportation Service Area.

### ARTICLE II.

#### IMPOSITION OF FEE. CALCULATION OF FEE, EXEMPTIONS

#### Section 10. – Imposition of Impact Fee

No building permit or use and occupancy permit shall be issued for a development or construction in a designated transportation service area, as herein defined, unless the applicant therefor has paid the “impact fee” imposed by and calculated pursuant to this Ordinance.

#### Section 11. – Exemptions, Waivers

Exemptions or waivers, if any, shall be determined at the sole discretion of the Board of Supervisors consistent with the terms of the Act and this Ordinance.

This Impact Fee Ordinance is intended to apply to all growth and development within the Lower Nazareth Township Transportation Service Area after the effective date of this Ordinance. In the event that there is an unanticipated hardship not of the Developer's/Applicant's own making as a result of the enactment of this Ordinance, which results in a manifest injustice, the affected party may request a waiver in writing which requests shall accompany the plan review at all stages. The Planning Commission shall have the opportunity to review such request for waiver and make recommendations to the Board of Commissioners.

#### Section 12. – Calculation of Impact Fees

- A. The impact fee for transportation capital improvements shall be based upon the total costs of the road improvements included in the adopted Transportation Capital Improvements Plan with the

transportation service area attributable to and necessitated by a subdivision development or construction within the service area as defined, divided by the number of anticipated P.M. peak-hour trips generated by the subdivision development or construction consistent with the adopted Land Use Assumptions and calculated in accordance with the Trip Generation Manual published by the Institute of Transportation Engineers, 6<sup>th</sup> or subsequent editions, which is hereby adopted as though more fully set forth herein at length by the Township, to equal a per-trip cost for transportation improvements within the service area. The transportation impact fee based upon the Land Use Assumption Report, Roadway Sufficiency Report, and Transportation Capital Improvements Plan as approved by the Board of Supervisors is hereby imposed at the rate of \$684.00 per P.M. Peak Hour Trip.

- B. The specific impact fee for a subdivision, development or construction within the service area for road improvements shall be determined as of the date of preliminary land development, subdivision or construction plan approval by multiplying the per-trip cost established for the service area by the estimated number of trips to be generated by the subdivision, development or construction using generally accepted traffic engineering standards.
- C. The Board of Supervisors may at their discretion, authorize or require the preparation of a transportation study to determine traffic generation or circulation for a non-residential development or construction to assist in the determination of the amount of the fee of such subdivision, development or construction.

### Section 13. – Establishment of Transportation Service Areas

The transportation service areas are established as shown on the "Transportation Service Area Map" (attached hereto as Exhibit "A" and incorporated herein by reference).

Additional transportation service areas or designation of transportation service areas may be designated by the Board of Supervisors from time to time consistent with the procedure set forth in the Act and this Ordinance and in consideration of the following factors:

- A. The Comprehensive Plan;
- B. Any standards for adequate public facilities incorporated in the Program;



- C. The projected build-out and timing of subdivision, development and construction within the transportation service area;
- D. The need for the cost of unprogrammed transportation improvement as may be determined necessary by special traffic studies or changed physical condition which support projected subdivision, development and construction; and,
- E. Such other factors as the Board of Supervisors may deem relevant. Fees collected from development in the transportation service area will be used exclusively to fund transportation improvement projects scheduled within this area.

Section 14. – Non-Binding Impact Fee Estimate

Prior to making an application for a building permit or use and occupancy permit, an applicant may request a non-binding impact fee estimate from the Township, which will be based upon the maximum development potential of the site pursuant to existing zoning regulations, unless the application specifies and documents a lesser use or development within said zoning regulations.

ARTICLE III.

ADMINISTRATION, METHOD OF PAYMENT, CREDITS AND REFUNDS

Section 15. – Administration of Impact Fee

- A. Impact fees due pursuant to this Ordinance shall be collected by the Township in the manner or manners prescribed herein or as modified by action of the Board of Supervisors prior to and as a precondition for the issuance of the building permit or use and occupancy permit, whichever first occurs.
- B. Upon receipt of impact fees, the Township Manager or his/her designee shall be responsible for the separate and proper accounting of such fees. All such fees shall be deposited in an interest bearing account in a bank authorized to receive deposits of the Township funds. Interest earned by such account shall be credited to the account and shall be used solely for the purpose specified for funds of such account.
- C. The Township Manager or his/her designee shall establish appropriate fund accounts and shall maintain records whereby impact fees collected can be segregated for each transportation service area.

- D. The Township Manager or his/her designee shall maintain and keep adequate financial records for such accounts as will show the source and disbursement of all revenues, which shall account for all monies received, and which shall ensure that the disbursement of the funds from each account shall be used solely and exclusively for the provision of projects specified in the Intersection Improvement Program.

#### Section 16. – Method of Payment

Payment of the transportation capital improvements impact fee shall be made by the traffic generator prior to and as a precondition for the issuance of a building permit or use and occupancy permit by the Township for development or construction on the applicable site.

#### Section 17. – Credit

Any applicant who shall perform, at applicants own expense and with the consent and agreement of the Board of Supervisors which shall be within the sole discretion of the Board, off-site traffic improvements, as herein defined, shall be eligible for a credit from the impact fee otherwise due in the amount of the actual cost of such off-site traffic improvements as approved by the Township Engineer. Such credit shall not exceed the amount of the impact fee.

- A. If the applicant makes such improvements, he must enter into a prior written agreement with the Board of Supervisors in advance of the issuance of any building permit or use and occupancy permit. The agreement must establish the estimated cost of the improvement, the schedule of initiation and completion of the improvement, the financial security for the said improvement, a requirement that the improvement be completed to Township and Pennsylvania Department of Transportation standards and design criteria and such other terms and conditions as deemed necessary by the Board of Supervisors. The Board of Supervisors must review the improvement plan, verify costs and time schedules, determine if the improvement is an eligible improvement and determine the amount of the applicable credit for such improvement to be applied to the otherwise applicable impact fee prior to issuance of any building permit or use and occupancy permit. In no event shall the Board of Supervisors provide a credit which is greater than the applicable impact fee.

Provided: any such applicant shall be required to supply financial security, in the form of a Letter of Credit or cash, sufficient in the

discretion of the Township, to cover the cost of any such improvement to be installed by the applicant for which credit is sought.

- B. Any applicant shall be entitled to credit against impact fees an amount equal to the agreed upon fair market value of land dedicated by the applicant and accepted by the Township in its discretion for future off-site right-of-way, realignment or widening of existing roadways within intersections that were studied as part of the capital improvements plan.
- C. An applicant shall be entitled to credit against impact fees an amount equal to the value of any road improvement construction which is contained in the Transportation Capital Improvements Plan and which was performed at the applicant's expense and with the consent and approval of the Board of Supervisors.

#### Section 18. – Refunds

Impact fees collected pursuant to this Ordinance shall be refunded, together with interest earned thereon, to the payor of the fees under the following circumstances:

- A. In the event the Township completes or terminates the capital improvements plan without adoption of a new or amended capital improvement plan and there remain undisbursed funds, the respective payors shall be entitled to a share of the fund balance in the same portion as the payor's impact fee payment plus interest earned bears to the total impact fees collected plus interest.
- B. In the event any road improvement project within the transportation service area not the subject of additional improvement plans is completed at a cost to the Township less than ninety-five percent (95%) of the budgeted cost of the road project, the Township shall refund an amount equal to the excess budgeted cost over actual cost to the payors, pro rata, plus accumulated interest at the same pro rata value.
- C. In the event that the Township fails to commence construction within three (3) years of the scheduled construction date of the project as set forth in the Transportation Capital Improvements Plan, without revision of said plan and construction date, the Township shall refund the portion of the fee paid by any payor making written request therefor, with accumulated interest, provided no refund shall be paid with respect to any project actually begun prior to the receipt

of such refund request even if said initiation date shall be more than three (3) years beyond the scheduled construction date.

With respect to refunds arising out of the subparagraphs A. or B. hereof, any funds unclaimed within one (1) year after notice as required by law shall be transferred to the general fund account of the Township, and the payor's entitlement to said refund shall lapse. It is the responsibility of the payor to provide the Township with payor's current address at all times.

#### ARTICLE IV.

#### EFFECT OF ZONING AND SUBDIVISION REGULATIONS, CONSTRUCTION, REPEALER, EFFECTIVE DATE

##### Section 19. – Effect of Impact Fee on Zoning and Subdivision Regulations

This Ordinance shall not affect, in any manner, the permissible use of property, density of development, previously adopted design and improvement standards and requirements or any other aspect of the development of land or provision of public improvements which remain subject to applicable zoning, and subdivision regulations of the Township, which shall continue to be operative and remain in full force and effect without limitation with respect to all such development.

##### Section 20. – Impact Fee as Additional and Supplemental Requirement

The impact fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the Township on the development of land or the issuance of building permits or use and occupancy permits. Nothing herein contained shall be deemed to alter or affect the Township's existing Ordinances and regulations regarding on-site improvements. In no event shall a property owner be obligated to pay for transportation capital improvements in an amount in excess of the amount calculated pursuant to this Ordinance, provided, however, that a property owner may be required to pay, pursuant to the Township Ordinances, regulations or policies for other public facilities, fees or charges in addition to the impact fee as provided.

##### Section 21. – Liberal Construction

The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety and welfare and convenience.

##### Section 22. – Repealer

All Ordinances, code sections or parts thereof applicable to off-site traffic

improvements in conflict herewith shall be repealed but only to the extent of such conflict.

Section 23. – Severability

Should any sentence, section, clause, part or provision of this Ordinance be declared by a Court of competent jurisdiction to be invalid, the same shall not affect the validity of this Ordinance as a whole or any part thereof, other than the part declared to be invalid.

Section 24. – Effective Date

This Ordinance shall take effect immediately upon its adoption.

Section 25. – Retroactive Application

- A. Notwithstanding anything herein to the contrary, impact fees imposed on those projects involving subdivisions, developments and construction for which an application was filed following the first publication of notice of the Township's intent to adopt this Ordinance shall be subject to retroactive application of this Ordinance for a term not to exceed eighteen (18) months prior to adoption of the Resolution that created the Advisory Committee in connection herewith.


DULY ADOPTED this 9<sup>th</sup> day of April, 2003, at a regular public meeting.

LOWER NAZARETH TOWNSHIP  
BOARD OF SUPERVISORS

BY:

  
DR. ALAN DILSAVER, Chairman

Attest:

  
LORI SEESE, Secretary