



# LOWER NAZARETH TOWNSHIP

## ZONING HEARING BOARD

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### Zoning Hearing Board

Manouel Changalis, Chairman  
Steven Nordahl, Vice Chairman  
Michael Gaul, Board Member  
Brian Fenstermaker, Alternate

April Cordts, Esq., Solicitor

## Zoning Hearing Board Minutes January 25, 2022

Acting Chairman Manny Changalis called the meeting to order at 6:31 p.m. Board Members Mike Gaul and Steven Nordahl; Alternate, Brian Fenstermaker; Zoning Hearing Board Solicitor, April Cordts; and Lori Seese, Planning & Zoning Administrator were all in attendance.

Approval of the Agenda: The motion to approve the agenda as presented was moved by Michael Gaul and seconded by Steve Nordahl. The motion carried unanimously.

### REORGANIZATION

The motion to appoint Manny Changalis as Chairman was moved by Michael Gaul and seconded by Brian Fenstermaker. The motion carried unanimously.

The motion to appoint Steven Nordahl as Vice Chairman was moved by Michael Gaul and seconded by Brian Fenstermaker. The motion carried unanimously.

The motion to appoint April Cordts, Esq. as Solicitor to the Zoning Hearing Board was moved by Manny Changalis and seconded by Michael Gaul. The motion carried unanimously.

### MINUTES

Approval of the December 16, 2021 minutes with correction that hours of operation will be Monday thru "Saturday", not "Sunday" was moved by Steven Nordahl and seconded by Brian Fenstermaker. The motion carried unanimously.

Approval of the December 21, 2021 minutes was moved by Brian Fenstermaker and seconded by Steven Nordahl. The motion carried unanimously. Mike Gaul abstained.

### HEARINGS

#### ZA2021-01 – Peoples Property, LLC

Present for the Applicant: Attorney Joseph Piperato and Applicant, Adam Pooler.

On behalf of the Township: Attorney James Preston, Lori Stauffer, Township Manager, and Christopher Noll, Township Sewage Enforcement Officer. Mark Bahnick, P.E., Witness.

Attorney James Preston entered certified copy of the Ridgeview Estates East record plan, Exhibit #T-12.

Mark Bahnick, P.E. provided testimony.

Attorney Preston provided larger copies of Exhibit #T-12 for ease of review. This plan was recorded October 15, 1973. The plan includes 234 lots, includes Lot 99, the same lot which was conveyed to Peoples Property by Mr. Erney. The deed also conveyed Lots 95, 96, 97, and 98.

Mr. Preston presented Exhibit #T-13 – deed grantor is Andrew Yastishok and Mary Yastishok; Grantee is KBK association 8/23/1977.

Mr. Preston presented Exhibit T-14 – deed between grantor, KBK Associates and grantee William Schnerline and Kenneth A Erney. Deed is dated March 22, 1988 with a date of record of March 23, 1988. The deed includes lots 94, 95, 96, 97, 98, and 99.

Exhibit #T-15, a certified copy of the Ridgeview Estates East Part II plan, recorded February 12,, 1987 was submitted. This plan was recorded during the time when KBK owned Lots 94-99. The plan contains a recording block containing a signature by KBK Associates. As a recorded plan it is publicly available.

Notes on the plan were read aloud, particularly Notes #1 and #2:

#1: The subdivision plan of Ridge View Estates East approved by the Board of Supervisors for Lower Nazareth Township on August 8, 1973 is recorded in the Office of the Recorder of Deeds for Northampton County in Plan Book 31, Page 2.

#2: This plan has been prepared to meet the directions set forth by the Lower Nazareth Township Board of Supervisors resolution adopted the 27<sup>th</sup> day of January 1982.

Exhibit #T-16 was submitted which was relative to a resolution passed by Lower Nazareth Township Board of Supervisors. SR-1-82 and SR-2-82.

Mark testified regarding the contents of the resolution. Lots 91 thru 99 are included in this resolution. The resolution revokes the prior approval given to the Ridgeview Estates East plan and applies conditions to the new plan. Mark further testified regarding the contents of Exhibit T-15. There is a note to the side with an asterisk symbol:

This land to be merged with adjoining lot or dedicated or sold to Lower Nazareth Township or Northampton County or the Lehigh Valley Conservancy or some other similar organization.

The asterisk pertained to the area identified as Lots 97, 98 and 99.

Exhibit #T-17 was submitted. It was a deed for a home built upon Lot 95 conveyed from Tri-Bros, LLC to John and Julia Arena for \$400,000. Recorded July 9, 2021.

Exhibit #T-18, deed for lot 96 recorded December 13, 2021 was submitted. The grantor is Kaleb Michael, LLC and grantee is Dominic and Samantha Baker for \$475,000.

Attorney Preston that a number of dwelling units can be constructed on the collection of lots and those lots were constructed on Lot 95 and Lot 96.

Exhibit A-8 was presented by Attorney Piperato, a Subdivision Improvement Agreement dated July 12, 1978. Last page signature by Krawitz and Brill. This document is related to the subdivision plan Exhibit #T-12. Page 8.

Attorney Preston redirected to Mark Bahnick regarding the requirements for off-site improvements as may be required by the record plan. Mark testified that the preparation of a record plan is a voluntary action by a developer and they agree to make the representations made on the plan. This plan was prepared pursuant to Township Resolution dated January 27, 1982. The resolution was connected to Ordinance #63 which was adopted by the Township in 1977.

Mr. Preston confirmed with Mark that the plan includes 97 thru 99 and the lots were declared to be non-building lots.



Attorney Mr. Piperato argued that the lots are not specifically spelled out by number. Mark stated it is clear the plan includes Lots 97, 98, and 99.

The hearing paused for a recess. Lori Seese provided testimony.

Lori Seese testified that she is an employee of Lower Nazareth Township, 23 years this coming May. Lori is the Floodplain Ordinance Administrator as set forth in the Floodplain Ordinance.

Lori provided a history of the properties in question beginning with Kenneth Erney. Lori had to contact Mr. Erney frequently for weed complaints and occasional dumping.

Attorney Piperato requested a brief recess to speak with Attorneys Cordts and Preston.

Lori related a conversation with Mr. Erney where he contacted the Township. Exhibit #T-19, an appointment request form was submitted for the record. This was submitted by Mr. Erney on November 9, 2016. He wanted to speak about the lots, particularly zoning, the floodplain, and the size of the lots. When Lori spoke to Mr. Erney, he also stated he wanted to get rid of the lots. He also spoke her about possibly perc testing the lots to see if he could sell them. The information was shared with the Township Manager at the time, who related it to the Board of Supervisors. The Board was not interested in obtaining the lots. Lori did not have any other communication with Mr. Erney except when she had to reach out to him regarding weed violations.

Lori testified about a conversation with Adam Pooler in 2017. Mr. Pooler was interested in purchasing the lots and called to get information. Lori related the zoning of the property, the fact that the lots were in the floodplain and perc testing concern as it was related to her. Lori stated it was decided that Mr. Pooler would submit permit applications for the five lots and Lori would prepare a formal response. In the event Mr. Pooler decided to move forward, he would need a formal response for appeal purposes. Lori did not hear anything from Mr. Pooler after the letter was issued.

Lori related that the Township was undergoing an update to the MS4 permit and were discussing possibilities for mediation. The intersection of Georgetown and Ash was discussed as well as the previous conversation with Mr. Erney. Lori provided testimony about a meeting with Mr. Erney and his son Robert in the Fall of 2019, and the subsequent decision to obtain appraisals of the properties. Testimony was provided about conversations with the Appraiser and subsequent conversation with Kenneth Erney.

Exhibit #T-20, Chronology of the Erney/Pooler Lots was submitted for the record.

Lori spoke about meetings held with Adam Pooler in January & February 2020. The meetings were both requested by Adam Pooler. It was at the second meeting where he told the Township he was under contract to purchase the lots. The appraisals for the land were discussed at the February 2020 meeting. Adam Pooler purchased the lots February 28, 2020.

Lori provided testimony about house permits submitted for Lots 95 and 96, and then about the applications received for Lots 99 and 97. The first submission was received for a septic system. The second submission was for a single family dwelling and the septic system. A few weeks later an application was received for Lot 97 and it was denied.

Lori Seese provided Exhibits demonstrating flooding at the property, Exhibits #21 and #22 after Hurricane Isias, August 4, 2020. Exhibit #23, a diagram showing the locations where the photographs were taken was submitted. The photographs demonstrate the depth of the water on that date.

Attorney Piperato cross-examined Lori Seese regarding her previous testimony. Mr. Piperato also asked about the purpose of taking the photographs. Lori explained that during training it was encouraged to document these types of flood events to get water lines, a picture of how much it had flooded.

A recess was taken. It was agreed that Mr. Preston would have one more witness and then the hearing would reconvene on February 24, 2022. Attorney Piperato will have rebuttal evidence.

Christopher Noll provided testimony. Chris has been a Sewage Enforcement Officer (SEO) since 1981. Chris is employed by Keystone Consulting Engineers. Chris has been the SEO for Lower Nazareth Township since 1987. Chris also represents 10-12 other municipalities in the Lehigh Valley.

Chris talked about his review of the septic applications for the lots in question. Chris stated during his review and research he discovered that no sewage planning has been provided for these lots as required by the Sewage Facilities Act. No planning module came in within these applications. Chris noted that he received phone calls from Bob Corby and T Restu from DEP. He said they questioned him about why he didn't issue the permit. Chris stated that there is no planning.

Chris testified about comments in his review letters. Applicant satisfied all deficiencies with the exception of sewage planning and the outstanding approvals relative to the floodplain ordinance.

Attorney Piperato cross-examined Chris regarding his letters and the approval process.

Attorney Piperato stated he may have an additional witness and brief rebuttal. Attorney Piperato stated he has addressed the first two appeals, for the septic and dwelling. Attorney Preston agreed. At the February 24, 2022 meeting he would like conclude the hearings for appeals #ZA2021-01 and #ZA2021-04 and we will decide where to go with the 3<sup>rd</sup> hearing. It was agreed by all that there have been three open hearings and all three hearings are being continued to February 24, 2022 at 6:30 p.m.

The meeting adjourned at 9:32 p.m.

Respectfully submitted,



Lori B. Seese

Planning & Zoning Administrator

/lbs

***\* Note: These minutes are only a brief summation of the actual hearing. All Zoning Hearing Board hearings are officially transcribed by a professional stenographer. Should any parties wish to view these transcripts, please contact the Zoning Officer. If an official copy has not been requested, the requestor must pay for the transcript.***