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Springfield Township, Bucks County

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September 2, 2020

Board of Supervisors
Springfield Township
2320 Township Road
Quakertown, PA 18951

Re: H&K Group, Inc.'s Conditional Use Application for G-7 Quarry Use

Dear Board of Supervisors:

Please allow this correspondence to serve as a summation of the Springfield Township Planning Commission's recommendations to the Board of Supervisors with regard to H&K Group, Inc.'s Conditional Use Application for a proposed G-7 Quarry Use.

I. Background:

On March 13, 2020, H&K Group, Inc. (hereinafter "H&K") submitted a Conditional Use Application for a proposed G-7 Quarry Use within Springfield Township's (hereinafter "Township's") Planned Industrial District. The proposed project is located at Tax Parcel Numbers 42-004-075, 42-004-076, 42-004-106, and 42-004-107. The total project site consists of 196.204 acres of predominantly undeveloped woodlands. The project is bound to the north by Springfield Street, to the east by numerous private properties, to the south by Mine Road, and to the west by a railroad bed/Upper Bucks Rail Trail and PA S.R. 309. All affected parcels are owned by Liberty Home Development Corporation, Ltd. of Coopersburg, PA. However, H&K asserts an equitable interest as tenants of the property pursuant to a Lease Agreement executed on December 21, 2018.

The proposed project consists of non-coal surface mining of diabase, an igneous subvolcanic rock, from two separate extraction areas that H&K has referred to as the North Extraction Area and South Extraction Area. While the Planning Commission has not received a copy of the underlying Lease Agreement for review,

it has been advised in writing by H&K that the Lease Agreement includes provisions that allow for mining of the South Extraction Area for a period of twenty (20) years, after which mining of the North Extraction Area may begin. The anticipated length of the proposed project is not less than forty (40) years.

Effective on or about January 5, 2014, Section 609(A)(2)(p) of the Springfield Township Zoning Ordinance allowed for G-7 Quarries as a conditional use.

II. Planning Commission's Role in Conditional Use Process:

The Municipalities Planning Code and Section 801 of the Township's Zoning Ordinance tasks the Planning Commission with reviewing Conditional Use Applications to determine whether the application meets the standards set forth by the Township's Zoning Ordinance. The Planning Commission then makes recommendations to the Board based on its review.

The Board of Supervisors is vested with the authority to approve or deny Conditional Use Applications following public notice, in accordance with the requirements of the Pennsylvania Municipalities Planning Code, and after receiving recommendations from the Township Planning Commission pursuant to the standards set forth in Section 802 of the Zoning Ordinance. The Board is required to make findings either approving or denying the Conditional Use Application. Should approval of the Conditional Use Application be deemed appropriate, the Board may attach reasonable conditions and safeguards, in addition to those expressed in the Zoning Ordinance, as it deems necessary to implement the express purpose of the Zoning Ordinance.

III. Meetings Held and Evidence Gathered:

In light of the COVID-19 pandemic, all Planning Commission meetings held subsequent to March 4, 2020 have proceeded via Zoom, allowing residents and interested parties to participate in review of H&K's Conditional Use Application via video-conference or by phone. Recordings of meetings have been taken, and minutes have been produced. Any questions or comments posed by participants in the Zoom Planning Commission meetings via the Chat function have likewise been recorded and kept as part of the official meeting minutes.

In reviewing the proposed project, the Planning Commission had access to, and considered, the following:

- H&K's Conditional Use Application;
- June 9, 2020 Township Engineer Review Letter;
- H&K's June 30, 2020 Response to Township Engineer Review Letter;
- June 30, 2020 Traffic Impact Study with Appendices;
- July 31, 2020 Letter from Congressman Brian Fitzpatrick Re: Rockhill Quarry;

- Congressman Brian Fitzpatrick's August 5, 2020 Comment Letter on H&K's Application;
- August 25, 2020 Springfield Township Environmental Advisory Council Comment Letter;
- July 10, 2020 Appalachian Mountain Club Comment Letter;
- Comment Letter of Ms. Patricia Hess of Salem Road;
- July 20, 2020 Comment Letter from Tim and Kathy Litzenberger of Povenski Road;
- July 27, 2020 Comment Letter from Ms. Kathleen Litzenberger of Povenski Road;
- July 16, 2020 Comment Letter from Mr. Frank Hollenbach;
- August 3, 2020 Letter from Ms. Jennifer Ritter of Rocky Valley Road; and
- Springfield Township's Request for Proposal for Hydrogeological Consultant.

In addition, the application was discussed with H&K and its consultants during the following Planning Commission Meetings: June 18, 2020, July 1, 2020, July 16, 2020, August 20, 2020 and August 26, 2020. Public comment was taken at all meetings with the exception of the August 26, 2020 work session. The aforementioned submissions and meeting minutes are enclosed herewith and submitted in conjunction with the Planning Commission's recommendations as evidence for the Board of Supervisor's consideration.

IV. H&K's Position on Township's Conditional Use Standards and G-7 Quarry Regulations:

During the aforementioned meetings, the Planning Commission spent a considerable amount of time with H&K addressing what it identified as deficiencies within the application, including but not limited to H&K's failure to submit a final Environmental Impact Assessment providing site-specific data and a Traffic Impact Study providing actual traffic counts from the project site. H&K has argued (1) that the standards not met in its application are items prepared only in conjunction with its subsequent application for a Large Non-Coal Surface Mining Permit with the PA DEP Pottsville Mining District Office, and (2) that to the extent the Township's Zoning Ordinance attempts to regulate operational aspects of the proposed quarry, the Township's local regulations are preempted by the Pennsylvania Non-Coal Surface Mining Conservation and Reclamation Act (hereinafter "the Mining Act"). We will address each argument in turn.

a. The Large Non-Coal Surface Mining Permit Application:

First, Section 404 (G)(7)(a)(4) of the Township's Zoning Ordinance states that "no permit for any extraction operation shall issue until the applicant shall have first demonstrated to the Board of Supervisors that it has obtained all other permits and approvals required from any other regulatory agencies to conduct the extraction operation." H&K has asserted that the Township's regulations regarding

environmental studies, disturbance of steep slopes, groundwater modeling, surface water modeling, re-vegetation, reclamation, blasting, change to water quality designation of the Tohickon Creek (the proposed discharge site), E&S and storm water controls are all addressed as part of its Large Non-Coal Surface Mining Permit Application process.

While the Township's Zoning Ordinance requires that H&K obtain PA DEP's approval prior to obtaining a Township permit approving extraction, H&K asserts that the PA DEP Pottsville District Mining Office requires documentation of zoning approval as a condition of acceptance for a Large Non-Coal Surface Mining Permit Application. H&K has therefore framed the issue as a conflict of competing approval processes between the state and local government. In essence, H&K does not desire to undertake the time or expense required to meet the elements of the Large Non-Coal Surface Mining Permit Application process if Conditional Use approval is not forthcoming.

H&K has acknowledged that while the Township would receive a copy of its Large Non-Coal Surface Mining Permit Application once submitted to the State, the Pottsville Mining District Office is not required to consult with the Township regarding approval of the Permit Application should Conditional Use approval be granted. Once Conditional Use approval is obtained, the State largely assumes control of permitting and oversight, and shifts the focus to regulating the operation of an approved use. Therefore, there is no reasonable basis upon which to believe that the State would apply the Township's use standards and regulations, or even view them as persuasive in nature, in subsequent permitting processes should H&K be granted Conditional Use approval based on the current submissions.

Consequently, H&K's failure to submit a complete application raises certain fundamental concerns. The purpose of the Township's Conditional Use review is to determine whether the proposed use is appropriate for the site in question, and if so, whether conditions should be imposed. The standards outlined in Section 802 of Zoning Ordinance were intended to provide the Board with the tools necessary to make informed decisions aimed at protecting the health, safety and welfare of Township residents, businesses and visitors. Under the facts of the proposed application, potential impacts include but are not limited to the quantity and quality of drinking/ground water and surface water, property values, noise, dust, blasting, increased traffic, operational impacts to the regional Upper Bucks Rail Trail and consideration of the natural gas pipeline that runs adjacent to the proposed Southern Extraction Area.

While the Planning Commission recognizes that the Township's Zoning Ordinance requires that H&K address standards and regulations also required at the State's review level, the Planning Commission notes that such standards are required under the Township's Zoning Ordinance for a separate purpose. It is specifically, and exclusively, within the Township's province to ensure that the proposed use is appropriate for the proposed site, and that conditions are imposed

where appropriate to limit the impact of that use on the safety, character and stability of surrounding properties, businesses and visitors to the Township.

Finally, to the extent that H&K has posited that it need not address the issue of whether the proposed use will be suitable for the site because the subject property is the only site within the Planned Industrial District suitable for quarry use, the assertion is unsupported by any evidence, and is therefore rejected as unpersuasive. It is not clear if H&K believes this site to be the only viable quarry site based on the lack of diabase on other sites in the PI District, the size of other parcels within the PI District or the lack of economic feasibility raised by placing the quarry at another site within the PI District. H&K was forthright in its admission that site-specific lithologic data had not been collected at the project site, or any other site in the PI District. Further clarification on why this might be the only appropriate site for quarry use in the PI District could not be elicited from H&K when the question was raised during a Planning Commission meeting. Therefore, barring submission of additional evidence, the assertion is rejected as conjecture.

Like any site, the project site and its surrounding properties have undergone changes since the Township's adoption of its original Zoning Ordinance in 1971. A once active rail bed on the project site is now being converted to serve as part of the regional Upper Bucks Rail Trail. The trail is expected to serve pedestrians and bicyclists travelling from Hellertown to Quakertown, and is part of multi-county plan to revitalize our Townships and Boroughs by encouraging increased walkability and patronage of our business districts. Bucks County has supported this vision by providing a sizeable grant to the Township that will allow for the construction of an 800 foot boardwalk over an ecologically sensitive portion of the rail trail that crosses existing wetlands near the proposed Northern Extraction area. Construction of this portion of the rail trail project constitutes the realization of one of the four goals outlined in Springfield Township Parks and Recreation's Master Plan, which was adopted by the Board of Supervisors in May 2018. Notably, while County funding will assist with the cost of boardwalk construction, maintenance of the boardwalk will be the Township's responsibility.

H&K has proposed that it will have employees stand at either end of the rail trail on the project site to ensure that all pedestrian and bicycle traffic is stopped prior to blasting. It is anticipated that blasting will occur one to two times per week, and result in closure of the rail trail for 15 minute intervals. However, H&K has not provided specifics as to how the rail trail will be protected from dust, fly rock, or damage due to ground vibration on the project site. It is also unclear what type of chilling effect the quarry may have on use of the trail, or how H&K intends to protect the wetland beneath the boardwalk from degradation, contamination or drainage.

Additionally, the proposed Southern Extraction Area also sits within several hundred feet of existing gas pipelines, structures that likewise were not present in the Township when the Zoning Ordinance was initially adopted. The pipelines also run in very close proximity to several residences along the eastern and southern

bounds of the proposed project. H&K has indicated that they have worked in close proximity to gas lines in the past, and advised generally that pipelines have their own set of standards for operation to which H&K must adhere. However, specifics have not been provided beyond the details listed here. Both the rail trail and pipeline are existing structures unique to the four parcels that comprise the proposed project site. Both raise their own unique set of considerations and safety concerns, requiring that the Township carefully assess whether the proposed site is an appropriate location for a quarry.

Finally, H&K has indicated that it will adhere to the Township's berm requirements to the extent reasonable and feasible without disturbing existing wetlands. However, the application indicates that existing woodlands on the eastern end of the project site will serve as a berm/buffer to the eastern edge of the extraction areas. H&K has not performed a tree inventory, so the health and viability of the woodlands as a buffer in that area of the project site is unknown.

b. Pennsylvania Non-Coal Surface Mining Conservation and Reclamation Act:

Second, H&K asserts to the extent the Township's Zoning Ordinance attempts to regulate the operational aspects of quarries, the Pennsylvania Non-Coal Surface Mining Conservation and Reclamation Act (hereinafter "Mining Act") preempts such provisions. The Mining Act provides:

Except with respect to ordinances adopted pursuant to the act of July 31, 1968 (P.L. 805, No. 247), known as the Pennsylvania Municipalities Planning Code, all local ordinances and enactments purporting to regulate surface mining are hereby superseded. The Commonwealth, by this enactment, hereby preempts the regulation of surface mining as herein defined.

52 P.S. §3316. As a result, if a Township has enacted an ordinance pursuant to the MPC prior to the effective date of the Mining Act (December 19, 1984), the Mining Act does not expressly supersede or preempt the ordinance. The Township's Zoning Ordinance was first adopted in 1971, but was silent as to quarries. An overhaul of the Zoning Ordinance was undertaken in 1990 and again in 2014. It appears G-7 quarries were created as a conditional use as part of Ordinance 176, adopted on January 5, 2014. Therefore, any aspects of the G-7 use regulations that are operational in nature are pre-empted by the Mining Act. Furthermore, any elements of the Township's Zoning Ordinance that are in direct conflict with the Mining Act are preempted.

Townships are, however, permitted to regulate the locational aspect of a quarry. See, East Rockhill Township v. Pierson Materials Corp., 364 F.Supp.3d 436 (E.D. Pa. 2019). Courts have therefore held that the designation of uses permitted by special

exception or conditional use approval are traditional land use regulations and are not preempted. Likewise, setback requirements are not preempted. See id.; see also, Pennsy Supply, Inc. v. Zoning Hearing Board of Dorrance Township, 987 A.2d 1243 (Pa. Cmwlth. 2009)(holding setbacks of 200 feet from any building or road, or 100 feet from any public or semi-public use are not preempted); Hoffman Mining Company v. Zoning Hearing Board of Adams Township, 32 A.3d 587 (Pa. 2011)(holding that an ordinance requiring all mining, excavating, and blasting activities maintain a 1,000-foot setback from residential structures was not preempted).

In its response to the Township Engineer's Review Letter, H&K took the position that it need not comply with Section 509 of the Township's Zoning Ordinance, which relates to Environmental Protection Standards, application for a Special Exception to cross the Tohickon waterway, or Floodplain Permit for encroaching in the 100 year floodplain, based on its belief that such matters have been preempted by the Mining Act. No case law was cited in support of this assertion.

H&K has nevertheless indicated an intention to apply for a Special Exception for the proposed bridge(s) that would need to be constructed on site to access the Southern Extraction area. Failure to obtain the necessary zoning approval would necessitate that H&K utilize Mine Road to access the Southern Extraction Area, something it currently seeks to avoid. H&K has also maintained that blasting and the storage, handling, and use of explosives is preempted by the Mining Act.

H&K has submitted a Preliminary Groundwater Report based on existing publicly available data not specific to the proposed project site. It acknowledges that it has gathered little to no data from the four parcels that are the subject of this application. H&K does not anticipate completing a Final Groundwater Report until such time as it obtains Conditional Use Approval and submits its Large Non-Coal Surface Mining Application Permit to the Pottsville Mining Office. As such, the impacts to ground, as well as surface water, as a result of the proposed project are unknown. Consequently, the Township does not know what impact the proposed project will have on the well water and surface waters of those residents and businesses located in the anticipated 1,000 foot Zone of Impact.

Section 404 (G)(7)(a)(3) vests the Board of Supervisors with an affirmative duty of specifically finding that the proposed use **will not** adversely impact ground water and surface water supply outside the subject property, as well as finding that the use will not result in adverse impacts to the surrounding environs due to ground vibrations, noise and dust dissemination. These potential impacts, while admittedly considered part of state-level permitting processes, are so implicit in the nature of quarrying that the drafters of the Township's Zoning Ordinance felt it appropriate that the Board be required to make specific findings regarding these potentially deleterious impacts as part of the Conditional Use Hearing process. Such findings ultimately go to the whether or not the proposed use is appropriate for the site in question, and are especially important in light of the recent discovery of asbestos in

diabase being mined from the Rockhill Quarry. However, the record is currently devoid of any site-specific information that would permit the Board to make such findings, rendering the application inherently deficient.

While the Township has issued an RFP seeking a hydrogeologist to perform an Environmental Impact Assessment, the Planning Commission recommends that the proposed scope of work include not only an evaluation of H&K's Preliminary Groundwater Report, but also gathering of site-specific data aimed at determining the actual impact to ground and surface water based on conditions on and in the ground at the project site. Consistent with the Township's Zoning Ordinance, consultation should also be sought regarding anticipated ground vibration, noise and dust dissemination to allow for specific findings on these impacts as well. **Special emphasis should also be given to investigating the potential for asbestos within the diabase.**

The project site is also home to protected resources, including numerous wetlands and the headwaters of the Tohickon Creek. The protection of natural features/resources such as floodplains, woodlands, steep slopes, wetlands, sensitive geologic formations and bodies of water from the negative environmental impacts of development and growth is a specific objective outlined in Springfield Township's Comprehensive Plan, a plan developed by and on behalf of the residents of the Township, thereby requiring due consideration.

While the Township may take it upon itself to bear the cost of such studies in the interest of efficiency or objectivity, the Township's Zoning Ordinance places the onus of completing these studies on the applicant. Therefore, the Board would be within its rights to deny the Conditional Use Application until such time as H&K submits a complete application.

V. Analysis and Recommendations:

In summary, the Planning Commission has concluded that H&K's application as submitted is deficient and has failed to meet the standards set forth in the Township's Zoning Ordinance. Consequently, the Planning Commission recommends the following:

- That the Conditional Use Application be denied until such time as the following requirements are met:
 - Either H&K or the Township through use of a third-party consultant(s) completes a Final Environmental Impact Assessment that studies, using site-specific data, anticipated impacts on existing ground water and surface water within not less than a 1,000 foot radius from the proposed project site, as well as anticipated impacts on ground vibration, noise and dust dissemination. The absence of asbestos from diabase on the

project site must also be confirmed. The Conditional Use Application should not be granted unless the Board can make specific findings that the proposed use **will not** adversely impact existing ground and surface water, ground vibration, noise and dust at the proposed location. This condition seeks to assess the potential impact of the proposed use on currently existing features within the Township before operations commence in order to determine if the site is suitable for a quarry. What are the existing conditions on and in the ground? As an example, the identification of asbestos within the diabase of the site, while an environmental consideration, would be an existing and immutable environmental feature that would render the proposed location inappropriate. Likewise, a poor or inadequate supply of existing ground and surface water within the 1,000 foot Zone of Influence may also render the project inappropriate for the proposed site. The Planning Commission specifically notes that this condition is not aimed at regulating mining activity once operations have begun. The Township is admittedly preempted from imposition of such regulations. However, the Planning Commission asserts that because this condition seeks to assess the anticipated impact of the proposed project based on currently existing natural features on and around the proposed location, and not future operations, it is appropriate and is not preempted by the Mining Act.

- Similarly, H&K must provide a substantive response addressing its ability to comply with Sections 509 and 510 of the Zoning Ordinance relating to Environmental Protection Standards and Natural Resource Mapping and Site Capacity Calculations. While the Planning Commission is cognizant that certain operational aspects contemplated in Sections 509 and 510 are likely preempted by the Mining Act, as noted above, that does not preclude the Township from performing a locational analysis of the appropriateness of the proposed use under Sections 509 and 510, otherwise consistent with its Zoning Ordinance and Comprehensive Plan.
- That H&K submit a Traffic Impact Study using actual traffic counts (rather than PennDot data) from the project area including bus counts and traffic projections.
- That H&K submit a detailed proposal, including an engineering detail, on how it intends to protect the public, rail trail and boardwalk from blasting, traffic, dust and debris. This should include a showing of how a 300 foot setback for a linear public park might affect the projects Northern Extraction Area and proposed access road.
- That H&K provide a detailed plan showing how it intends to comply with State and local berm requirements, to the extent applicable, such that the Board can determine whether the

proposed quarry location is capable of meeting berm requirements. Again, the Planning Commission does not recommend that the Board attempt to regulate operational aspects of the quarry, but rather, determine whether the proposed location is capable of accommodating required berms. If not, the location may be inappropriate.

- The Planning Commission recommends that H&K be required to obtain a Special Exception from the Springfield Township Zoning Hearing Board allowing crossing(s) of the waterway by the proposed access road before Conditional Use Approval is granted. Absent the granting of a Special Exception, project traffic will be forced to exclusively utilize Mine Road, a residential neighborhood, for access to the Southern Extraction area. H&K anticipates mining from the Southern Extraction area for a period of not less than twenty (20) years, which would bring considerable change to the nature and character of this small neighborhood. As such, this condition seeks to assess the potential impact of the proposed use before operations commence, and is aimed at determining the suitability of the project in relation to the site, not to regulate the operation of the mining activity itself. Consequently, the Planning Commission asserts that this condition is appropriate and is not preempted by the Mining Act.
 - H&K should provide written clarification of the radius of properties required to be included in H&K's pre-blast survey.
 - H&K should enter into a written Well Loss Protection or Well Loss Depletion Agreement with the Township that shall remain effective and enforceable for the life of the project.
 - Liberty Home Development Corporation should execute a Deed of Consolidation for the four tax map parcels into a single lot and record it with the Bucks County Recorder of Deeds Office for purposes of achieving the site capacity calculation and area/dimensional criteria contained in the Conditional Use Application.
 - Liberty Home Development Corporation must obtain land development approval for the principal use of truck storage or truck terminal activity in the Northern Extraction Area. Liberty must obtain land development approval prior to the issuance of quarry permits. See Lehigh Asphalt Paving v. BOS of East Penn Twp., 830 A.2d 1063 (Pa. Commw. Ct. 2003) (holding that a proposed expansion of a quarry on a lot already containing a residential use constituted land development due to the allocation of space between the residential use and the quarry use).
- Assuming H&K meets the above requirements, the Planning Commission recommends that the Board of Supervisors place the following conditions on the approval of the Conditional Use Application:

*Claims
preempted
by
surface
coal
mining
act*

- All quarry related traffic should be restricted to that portion of Springfield Street west of the quarry entrance and PA S.R. 309.
- A condition that all site lighting be positioned to direct illumination to the interior of the project site and be equipped with shielding to direct light downward, to meet the requirements of Zoning Ordinance Section 502(3)(C).
- H&K should be responsible for maintenance of Springfield Street, inclusive of the bridge between the project site and 309, in a percentage that is proportional to the H&K's use of Springfield Street. This figure will be informed, both as part of the initial application and as part of subsequent annual renewal permits, by H&K's collection of actual traffic counts at the project site. H&K shall post a bond with the Township no less than once every three years that is adequate to cover its share of the road and bridge maintenance costs.
- No municipal bio-solids or Hatgro shall be utilized on the project site.
- All trucks carrying aggregate onto a public road shall be covered to prevent spillage of rock onto the road.
- H&K will be financially responsible for any intersectional upgrades required at Springfield Street and 309.
- H&K shall be required to obtain an annual renewal permit in accordance with Section 404(G)(7) of the Zoning Ordinance. The following will be forwarded to the Township and considered as part of annual renewals:
 - All pre-blast surveys and blasting complaints, whether formally submitted to DEP or informally reported to H&K. These records shall be kept on file with the Township. Electronic submission is acceptable.
 - Likewise, all dust, noise and groundwater/surface water test results and dust, noise and groundwater/surface water complaints, whether formally submitted to DEP or informally reported to H&K. These records shall be maintained on file with the Township. Electronic submission is acceptable.
 - Records of each blast shall be digitally provided to the Township as soon as available to H&K, along with seismographic readings taken at the time of each blast.
 - Updated traffic projections will be submitted no less than once every three years.
- To the extent possible, the Township should require that the abandoned pits, if they are to be filled, be filled only with clean earth, stone and cement.

- H&K shall post a Surety Bond with the Township prior to issuance of the Large Non-Coal Surface Mining Permit aimed at covering the cost of reclamation activities.
- Finally, permanent placement of a seismometer in the owned location nearest to the existing pipelines on the southern end of the project site, regardless of whether the pipeline constitutes the closest non-owned structure.

We thank you for your time and consideration of these recommendations.

Respectfully,

/s/ Dawn M. Nicholson
Dawn M. Nicholson
Chairwoman,
Springfield Township
Planning Commission