
MEMORANDUM

TO: LOWER SAUCON TOWNSHIP COUNCIL AND PLANNING COMMISSION
FROM: B. LINCOLN TREADWELL, JR., ESQ. AND JUDY STERN GOLDSTEIN, ASLA, R.L.A.
SUBJECT: ZONING MAP AMENDMENT – FACTORS FOR CONSIDERATION
DATE: 6/27/12

In reference to the Applebutter Road potential Zoning Map change currently being considered by the Township, some questions have been raised regarding the factors that may be considered by the Planning Commission and Council in arriving at a decision. We have attempted to answer some of these questions below in order to provide guidance to all those involved in the process. This summary does not support nor oppose the Zoning Map change. Instead, it is an attempt to clarify some of the issues involved, and provide some guidelines to be used in the decision making process.

CONTRACT ZONING

The Pennsylvania Courts have determined that Contract Zoning is not permissible in the Commonwealth. The possibility of a Contract Zoning issue being raised occurs when a property owner or developer promises something, which they are otherwise not required to do, in return for the Township changing the Zoning Map classification of the property involved. For example, if a shopping center developer promises to build a park for the Township in return for the Township re-zoning his land to allow for the shopping center, that scenario could give rise to Contract Zoning allegations. On the other hand, just because both the developer and Township are aware that the shopping center will generate more tax revenue than the current use of the property, that does not give rise to a Contract Zoning challenge because the underlying obligation (payment of property taxes) is already a requirement.

In the case of the Applebutter Road map amendment, any promise made by a property owner or entity to do something that they are not already obligated to do in order to induce the Township to change the Zoning Map could result in a Contract Zoning challenge. These types of promises could include; limiting or restricting the type of use that would be requested, limiting or restricting the size or physical characteristics of such a use, or agreeing to make financial contributions to the Township that are not already an obligation. For example, an industrial user promising to restrict the height of some portion of the project if the Zoning Map is changed could be the subject of a Contract Zoning challenge. As discussed before, and reiterated below, any Zoning Map Amendment must be based on an initial determination that the change is consistent with sound land use and planning principles, and not on promises made by a landowner or developer.

ECONOMIC FACTORS

Any change in a Zoning Map classification must be based, first and foremost, on sound land use and planning principles. These include, among other things, general consistency with the Comprehensive Plan, compatibility with surrounding land uses or zoning districts, and the availability of infrastructure to support the uses that are allowed in that zoning district. After those factors have been analyzed, it is permissible for Township officials to consider the potential economic factors involved in making such a change during the decision making process. The MPC states that the provisions of Zoning Ordinances shall be designed ... “To accommodate reasonable overall community growth, including population and employment growth, and opportunities for development of a variety of residential dwelling types and nonresidential uses.” Section 604(5)

The consideration of economic factors is thus not contrary to zoning purposes, provided the map change being considered makes planning and zoning sense. For example, it would not make sense to put a small island of industrially zoned land in the middle of a group of residential subdivisions (spot zoning) merely because it would

increase tax revenue. However, if the proposed area is compatible for industrial uses and consistent with the principles described above, the consideration of the potential economic impacts involved is a permissible and often necessary exercise. In the absence of the consideration of economic impacts, most municipalities would not choose to allow any industrial or otherwise possible objectionable uses within their boundaries.

In summary, the Planning Commission's recommendation and the Council's decision to amend the Zoning Map must be based, first and foremost, on sound land use and planning principles. If the determination is made that the Map change is consistent with those principles, it is then permissible to consider the economic factors involved in such a change in arriving at a final decision.