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January 20, 2023

VIA ELECTRONIC AND REGULAR MAIL

David J. Brooman, Esq.
High Swartz
40 East Airy Street
Norristown, PA 19401
dbrooman@highswartz.com

Re: CRG Services Management, LLC v. Board of Supervisors of Lowhill Township
Civil No. 2022-C-2536

Dear Attorney Brooman:

Enclosed please find Appellant's Motion for Leave of Court to Conduct Discovery, Proposed Order, and Brief in Support of Appellant's Motion, all of which were filed electronically, today's date with the court.

Please feel free to contact me with any questions regarding this matter.

Very truly yours,

STEVENS & LEE



Blake C. Marles

BCM:lak
Enclosures

Allentown • Bergen County • Bala Cynwyd • Cleveland • Fort Lauderdale • Harrisburg • Lancaster • New York
Philadelphia • Princeton • Reading • Rochester • Scranton • Valley Forge • Wilkes-Barre • Wilmington
A PROFESSIONAL CORPORATION

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CRG SERVICES MANAGEMENT, LLC,

Appellant,

v.

BOARD OF SUPERVISORS OF
LOWHILL TOWNSHIP,

Appellee

CIVIL ACTION

NO. 2022-C-2536

**MOTION OF PLAINTIFF, CRG SERVICES MANAGEMENT, LLC, FOR LEAVE OF
COURT TO CONDUCT DISCOVERY**

AND NOW, comes the Plaintiff, CRG Services Management, LLC, by and through its attorneys, Stevens & Lee, and presents this Motion for Leave to Conduct Discovery, and in support thereof, represents as follows:

1. On November 3, 2022, Appellant, CRG Services Management, LLC (hereinafter "CRG Services") filed a land use appeal with this Court pursuant to Article X-A of the Pennsylvania Municipalities Planning Code, 53 P.S. § 11001-A, *et. seq.* (the "MPC") from a decision
2. This Appeal stems from the denial on October 7, 2022, by the Board of Supervisors of Lowhill Township (the "Township") of a proposed Land Development Plan (hereinafter the "Plan") submitted by Appellant, CRG Services as to a certain 51-acre tract of land located at 2951 Betz Court, Orefield, Lowhill Township.
3. The proposed Plan submitted by CRG Services proposed the construction of a 299,880 foot warehouse/distribution facility and the removal of all current industrial activities on the land except for an existing bottled gas distribution facility which would remain.

4. Only about 26% of the 51-acre tract of land, which includes the existing bottled gas distribution facility, was proposed to be developed; the remainder would be retained as woods, steep slopes, and open space.

5. Previously, Appellant had submitted and obtained a dimensional variance from the Lowhill Zoning Hearing Board as to the height of the building and also obtained a determination that the steep slopes in Lowhill Township's Environmental Protection Overlay District would not be adversely impacted by the proposed Development. Appellant's Plan conformed with the Zoning Hearing Board's decision.

6. The Lowhill Township Planning Commission first reviewed the plan at its meeting on April 25, 2022 and again at a meeting on June 27, 2022.

7. At the request of Lowhill Township, action on Appellant's Plan was delayed until the Planning Commission's September 2022 meeting.

8. CRG Services provided an extension of time for Lowhill Township to review its Plan until October 9, 2022.

9. At the September 26, 2022 meeting of the Township Planning Commission, the Planning Commission precluded Appellant and its counsel from addressing the Commission and then verbally recommended denial of the land development plan for two reasons: first, that the Planning Commission wanted to review a letter from the Township Engineer, notwithstanding that the Planning Commission had already received that letter prior to the meeting, and second, that no land development plans should be approved until the Township's Act 537 Plan dealing with public sewage plans was updated.

10. Currently and at the time of the Planning Commission's September meeting, no updates to the Township Act 537 Plan are or were pending before the Township Board of

Supervisors and the Supervisors did not have or currently have any plans for updating the Township's Act 537 Plan in the foreseeable future, all of which was known to the Planning Commission members at their September 26 meeting. In other words, the Planning Commission's justifications for its recommendation to deny Appellant's Plan were a complete charade and transparently false.

11. Neither reason cited by the Planning Commission is recognized as a valid reason for denying a land development plan under the Lowhill Subdivision and Land Development Ordinance or the Pennsylvania Municipalities Planning Code, particularly where, as here, no update to the Township's Act 537 Plan is pending or even contemplated by the Board of Supervisors.

12. At their meeting on October 6, 2022, the Township Supervisors voted to deny Appellant's Plan without identifying any specific defects, without describing any requirements that were not met by the Plan, and without citing any provisions of applicable statutes or ordinances relied upon. Instead, the Board of Supervisors' denial merely referenced the invalid recommendations of the Planning Commission without reciting them and without attaching the Planning Commission's written recommendations to the Supervisors' Decision.

13. By failing to cite any specific defects in Appellant's Plan, the Board of Supervisors made it impossible for Appellant to address or cure any such defects.

14. To date, CRG Services has never received nor seen any written recommendations from the Planning Commission, and such written recommendations are not part of the record in this matter.

15. The actions of the members of the Planning Commission and the Board of Supervisors were made in bad faith and were the product of bias, and in its Notice of Appeal,

Appellant, CRG Services, alleged that the Chairman of the Board of Supervisors improperly communicated with other members of the Board of Supervisors and with members of the Planning Commission, as well as with objectors to Appellant's Plan, for the purpose of scheming to deny Appellant's Plan without a valid and lawful basis. All such communications were made outside the record of the Township's consideration of Appellant's Plan.

16. Appellant, CRG Services, also alleged in its Notice of Appeal that the actions of members of the Board of Supervisors and the Planning Commission violated CRG Services' equal protection rights under the Fourteenth Amendment to the United States Constitution and under the Pennsylvania Constitution in that the Board of Supervisors, at about the same time it disapprove Appellant's Plan, conditionally approved the Preliminary Plan for a 312,000 square foot warehouse/distribution building known as the 2766 PA Route 100 Industrial Project, a warehouse project substantially similar to the one proposed in Appellant's Plan.

17. Appellant, CRG Services, seeks leave of court to serve Requests for Production of Documents as to communications and other documents between or among the Supervisors of Lowhill Township concerning the subject matter of Appellant's appeal, communications and documents between the Supervisors and other persons or entities, including members of the Planning Commission concerning the subject matter of the appeal, and any documents or communications pertaining to the Subject Property, Appellant's Land Development Plan for said Property, the Zoning Decision, the Planning Commission's recommendations and the Board of Supervisors' Decision, the Engineer's Report concerning the Subject Property since January 1, 2020, as well as any documents or communications concerning other warehouse land development proposals submitted to the Township from January 1, 2019 to the present, including the project known as the 2766 PA Route 100 Industrial Project. *See Highway Materials, Inc. v.*

Board of Supervisors of Whitemarsh Tp., 974 A.2d 539 (Pa. Cmwlth. 2009) (holding that trial court could take additional evidence as to how other developers' applications had been processed).

18. CRG Services served Requests for Production of Documents upon Lowhill Township in this matter, but the Township has objected to such discovery requests asserting that Appellant must first seek approval of discovery from this Court. A true and correct copy of CRG Services' Request for Production with the Board of Supervisors' objections thereto is attached hereto and marked **Exhibit A**.

19. CRG Services seeks permission to conduct limited discovery in this matter in the form of written Requests for Production as set forth in Exhibit A and in the form of depositions of certain Lowhill Township Supervisors, members of the Planning Commission and objectors.

20. Although this is a statutory appeal and the Pennsylvania Rules of Civil Procedure do not apply, this Honorable Court possesses the right to enact rules and publish them to cover practice in statutory appeals, and where, as here, this Honorable Court has not created and published such local rules, "then each trial court has been vested with the full authority of the court to make rules of practice for the proper disposition of cases before them" unless such rules violate the Constitution or laws of the Commonwealth or United States or Pennsylvania state-wide rules. *Appeal of Borough of Churchill*, 525 Pa. 80, 575 A.2d 550, 554 (Pa. 1990). In the absence of a state-wide rule or a local rule of court, this Honorable Court has the inherent power in its sound discretion to permit or to refuse discovery in such appeals. *Tanglwood Lakes Community Association v. Pike County Board of Assessment and Revision of Taxes*, 164 Pa. Cmwlth. 170, 642 A.2d 581, 583 (Pa. Cmwlth. 1994).

21. The discovery sought by Appellant is necessary to support Appellant's claims of bad faith on the part of the Board of Supervisors and the Planning Commission and to establish Appellant's equal protection claims.

22. Appellant requests oral argument on this Motion and Lowhill Township's opposition thereto.

WHEREFORE, Appellant, CRG Services, respectfully requests that this Honorable Court grant Appellant leave to conduct discovery in this case by means of submitting requests for production of documents and deposing members of the Board of Supervisors of Lowhill Township, members of the Lowhill Township Planning Commission, and certain objectors to Appellant's Land Development Plan pertaining to the reasons for the denial of Appellant's land development application as to the Subject Property.

Respectfully Submitted,

STEVENS & LEE

By: /s/ Blake C. Marles

Blake C. Marles, Esq., No. 28537
Julie Wagner Burkart, Esq., No. 88046
Ambrose W. Heinz, Esq., No. 91021
840 West Hamilton Street, Suite 521
Allentown, PA 18101
610-997-5060

Attorneys for Appellant,
CRG SERVICES MANAGEMENT, LLC

Dated: January 20, 2023

CERTIFICATION OF COUNSEL

I hereby certify that after receiving the Township's Objections to Appellant's Requests for Production of Documents, I conferred with counsel for Lowhill Township concerning those objections, and counsel confirmed that Lowhill Township is unwilling to engage in any discovery whatsoever in this appeal.

Blake C. Marles, Esquire

Date: January 20, 2023

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

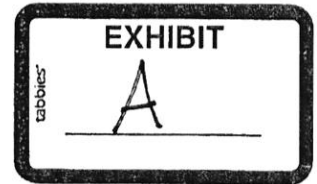
STEVENS & LEE

By: /s/ Blake C. Marles

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Attorneys for Appellant,
CRG SERVICES MANAGEMENT, LLC

Dated: January 20, 2023



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Attorneys for Appellant,
CRG SERVICES MANAGEMENT, LLC

CRG SERVICES MANAGEMENT, LLC,

Appellant,

v.

BOARD OF SUPERVISORS OF
LOWHILL TOWNSHIP,

Appellee

IN THE COURT OF COMMON PLEAS OF
LEHIGH COUNTY, PENNSYLVANIA

DOCKET NO. 2022-C-2536

**APPELLANT'S FIRST SET OF REQUESTS FOR THE
PRODUCTION OF DOCUMENTS ADDRESSED TO APPELLEE**

TO: Board of Supervisors
Lowhill Township
7000 Herber Road
New Tripoli, PA 18066

Pursuant to Pa. R.C.P. No. 4009, Appellant, CRG Services Management, LLC ("Appellant"), by and through its attorneys, hereby requests that within thirty (30) days of the service of this Request, Appellee, Board of Supervisors of Lowhill Township ("Appellee") answer each document request as required by Pa. R.C.P. No. 4009.12 and produce the documents, materials, and things listed below, in accordance with the Definitions, Instructions, and Rules of Construction set forth below.

This Request includes any and/or all of the following documents (including electronically stored information and/or data compilations stored in any medium from which information can be obtained ("ESI")) in the form provided in the Instructions below.

I. DEFINITIONS

The following definitions are applicable to and incorporated by reference into each request:

1. The terms "and" and "or," as used herein, shall be construed conjunctively or disjunctively as required to include within the scope of each request any information which might be excluded by the opposite construction.

2. The term "Appeal," as used herein, means the land use appeal filed by Appellant in the above-captioned action, as well as any future amended land use appeal that may be filed by Appellant in this action.

3. The term "Appellant," as used herein, refers to Appellant, CRG Services Management, LLC, its members, managers, agents, employees, representatives, and all other persons or entities acting on behalf of one or more of these persons or entities.

4. The terms "Appellee," "the Board," "you," and "your," as used herein, refer to Appellee, the Board of Supervisors of Lowhill Township, its individual supervisors, agents, representatives, contractors, experts, vendors, and all persons or entities acting on behalf of one or more of these persons or entities.

5. The term "Board of Supervisors" shall mean the governing body of Lowhill Township, and members thereof, individually and collectively.

6. The terms "communicate" or "communications," as used herein, means the transmittal of information in the form of facts, ideas, inquiries or otherwise, and shall include all statements, admissions, denials, inquiries, discussions, conversations, negotiations, agreements, contracts, understandings, meetings, telephone conversations, letters, electronic mail, correspondence, notes, telegrams, telexes, advertisements, or any other form of written or verbal intercourse.

7. The term "date," as used herein, shall mean the exact date, month and year, if ascertainable, or if not, the best approximation of the date.

8. The term "the Decision" means the written decision of Township dated October 7, 2022, as identified in Paragraph 4 and Exhibit "1" of the Appeal.

9. The terms "document" and "documents" shall mean, without limitation, Communications (as defined above), ESI (as defined below), books, papers, writings, drawings, graphs, charts photographs, sound recordings, images, electronic documents, electronic mail, and other data or data compilations from which information can be obtained, either directly or indirectly, or, if necessary, after conversion by the responding party into a reasonably usable form.

10. The term "Engineer's Letter" means the review letter from the Township's Engineer dated September 23, 2022, identified as Exhibit "5" of the Appeal.

11. The term "ESI" means electronically stored information, and includes, but is not limited to, computer program files, emails and attachments, word processing documents, image files such as PDFs or TIFFs, spreadsheets, presentation files such as PowerPoint, database files, network files, files contained on external hard drives or portable devices, text messages, or messages from any messaging application such as WhatsApp. Sources of ESI may include but are not limited to: (i) email accounts used by a Party; (ii) electronic devices used by a Party (e.g., desktop or laptop computers, cellular phones, tablets); (iii) any other electronic storage device used by a Party (e.g., external hard drives, memory cards, USB or flash drives, CDs/DVDs); (iv) any social media used by a Party (e.g., Facebook, Instagram, LinkedIn, Twitter, or other online collaboration tools such as Google+ or Yahoo! Groups); (v) any website where a Party made online postings; and (vi) any cloud storage used by a Party.

12. The terms "explain" or "state" mean to set forth every fact relevant to the answer to the request and to set forth each such fact fully and unambiguously.

13. The terms "identify" or "identity"

- a. When used in reference to any individual or natural person, means to give, to the extent known, the person's full name; all known aliases; the present or the last known business and home addresses, electronic mail addresses, telephone numbers, present position or business affiliation, and position or business affiliation at all times during the time period covered by the Appeal;
- b. When used in reference to any other "person" as defined herein, means to give the person's official, legal and formal name or the name under which the person acts or conducts business; the address of the person's place of business, profession, commerce or home, electronic mail addresses, telephone numbers; and the identity of the person's principal or chief executive officer or person who occupies the position most closely analogous to a chief executive
- c. When used in reference to any document, means to describe specifically the "document," its date, its author (and, if different, the signer or signers), type of document (e.g., "letter") each addressee and known recipient, its present or last known location and custodian, the manner and date of its disposition if any such "document" was, but is no longer, in your possession or subject to your control, and all other means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a demand for its production pursuant to a subpoena *duces tecum*.
- d. When used in reference to any communication, means to identify the pertinent "document" or "documents" if the communication is written, or to identify the participants and set forth the date, manner, place and substance of the communication if it is non-written.

14. The term “LD Application” means the application for approval of the Plan submitted by Appellant to the Planning Commission on March 14, 2022, and all revisions and modifications thereto.

15. The term “person,” as used herein, means any natural person, partnership, corporation, or other business entity and all present and former officers, directors, agents, employees, attorneys and others acting or purporting to act on behalf of such natural person, partnership, corporation or other business entity.

16. The term “the Planning Commission” means the Lowhill Township Planning Commission, its members, individually and cumulatively agents, representatives, employees, contractors, experts, and all other persons or entities acting on behalf of one or more of these persons or entities.

17. The terms “relate(s) to” or “relating to” as used herein, mean and include constitute(s), refer(s) to, reflect(s), concern(s), pertain(s) to or in any way logically or factually connect(s) with the matter described in the request.

18. The term “the Township” means the Lowhill Township, as governed by the Board, its agents, representatives, employees and all other persons or entities acting on behalf of one or more of these persons or entities.

19. The terms “the Plan” or “Development” means the proposed land development plan submitted by Appellant for the Property entitled “Preliminary Plan for 2951 Betz Court for CRG,” as identified in Paragraph 7 of the Appeal.

20. The term “Planning Commission Recommendation” means the determination of the Planning Commission to recommend a denial of the Plan at its September 26, 2022 regular meeting, whether or not the Planning Commission recommendation was reduced to writing.

21. The term “the Property” means the ±51-acre tract of land located at 2951 Betz Court, Orefield (Lowhill Township), Pennsylvania, as identified in Paragraph 5 of the Appeal.

22. The term “September 26th Meeting” means the Planning Commission’s meeting held on September 26, 2022, as identified in Paragraph 13(h) of the Appeal.

23. The term “the Township Engineer” means Keystone Consulting Engineers, Inc., its employees, agents, or anyone acting on its behalf.

24. The term “Trammel Crow Planning Commission Recommendation” means the determination by the Planning Commission to recommend approval of the Trammel Crow Project, whether or not the Planning Commission Recommendation was reduced to writing.

25. The term “Trammel Crow Project” means the approved land development application and preliminary plan for a 312,120 square foot warehouse/distribution building entitled “266 Pa Route Industrial Project, revised Preliminary Plan Development Plan dated 5/9/22,” memorialized in the meeting minutes of the Board dated June 16, 2022, and identified as Exhibit “6” of the Appeal.

26. The term “Zoning Decision” means the written decision by the Zoning Hearing Board dated January 24, 2022, identified as Exhibit “3” of the Appeal.

27. The term “the Zoning Hearing Board” means the Lowhill Township Zoning Hearing Board, its members, individually and cumulatively agents, representatives, employees, contractors, experts, and all other persons or entities acting on behalf of one or more of these persons or entities.

II. INSTRUCTIONS

In construing these requests:

1. To the extent any information called for by this request is unknown to you, so state, and set forth such remaining information as is known. If any estimate can reasonably be made in place of unknown information, also set forth your best estimate, clearly designated as such, in place of unknown information, and describe the basis upon which the estimate is made.

2. To the extent you object to any request, set forth all reasons for your objection. If you claim privilege as a ground for not answering any request in whole or in part, describe the factual basis for your claim of privilege in sufficient detail to permit the court to adjudicate the validity of the claim. If you object in part to any request, answer the remainder completely.

3. The singular shall include the plural and the plural shall include the singular. A masculine, feminine or neuter pronoun shall not exclude the others.

4. In responding to this request, all requested documents in Appellee’s possession, custody or control are to be produced. This includes documents within the actual possession, custody or control of any of the individuals or entities described, as well as documents which are not in the actual possession, custody or control of such individuals or entities, but which any of those individuals or entities have a right to obtain copies of.

5. Each request for documents contemplates production of the documents in their entirety, without abbreviation or expurgation.

6. If a document called for by this request has been destroyed or deleted, the document must be identified by providing the following: addressor; addressee; indicated or blinded copies; date; subject matter; length; attachments and appendices; all persons to whom it was distributed, shown or explained; date and means of destruction; reason for destruction; and person(s) who authorized the destruction and actually destroyed the document.

7. Documents should be bates numbered for ease of reference, and produced in a manner which identifies to which request(s) each document is responsive.

8. These requests shall be deemed continuing and require additional responses if further information is obtained between the time the responses are served and the time of trial. Such additional responses shall be served from time to time, and immediately upon obtaining such information if it is first discovered thereafter.

III. REQUESTS FOR THE PRODUCTION OF DOCUMENTS

1. Identify and produce all documents and communications which support, tend to support, refute, tend to refute or otherwise relate to any of the allegations in the Appeal.

RESPONSE:

2. Identify and produce all documents and communications which describe, evidence, pertain to or relate to any communications between any member of the Board of Supervisors and any other person or entity, including but not limited to Appellant, Richard Hughes, Curtis Dietrich, or anyone acting on their behalf, relating to the subject matter of this action and/or the allegations made in the Appeal.

RESPONSE:

3. Identify and produce all written communications between Richard Hughes or anyone acting on his behalf, and the Planning Commission, the Zoning Hearing Board, or any objectors to the Plan, from January 1, 2020 to the present, relating to the LD Application, the Plan, the Zoning Decision, or the Appeal, prior to or after the Decision.

RESPONSE:

4. Identify and produce all written communications between Curtis Dietrich or anyone acting on his behalf, and the Planning Commission, the Zoning Hearing Board, or any objectors

to the Plan, from January 1, 2020 to the present, relating the LD Application, the Plan, the Zoning Decision, or the Appeal, prior to or after the Decision.

RESPONSE:

5. Identify and produce all written communications between Richard Hughes and Curtis Dietrich between January 1, 2021 and the present, relating to the LD Application, the Plan, the Zoning Decision, the Planning Commission Recommendation, or the Appeal, prior to or after the Decision.

RESPONSE:

6. Identify and produce all documents and communications which describe, evidence, pertain to or relate to the Property, since January 1, 2020.

RESPONSE:

7. Identify and produce all documents and communications which describe, evidence, pertain to or relate to the Plan, since January 1, 2020.

RESPONSE:

8. Identify and produce all documents and communications which describe, evidence, pertain to or relate to the Decision since January 1, 2020.

RESPONSE:

9. Identify and produce all documents and communications which describe, evidence, pertain to or relate to the Zoning Decision, since January 1, 2020.

RESPONSE:

10. Identify and produce all documents and communications which describe, evidence, pertain to or relate to the LD Application, since January 1, 2020.

RESPONSE:

11. Identify and produce all documents and communications which describe, evidence, pertain to or relate to the September 26th Planning Committee Meeting, or recommendations made at that meeting.

RESPONSE:

12. Identify and produce all documents and communications which describe, evidence, pertain to or relate to the Engineer's Letter, or any other Engineer's letter that relates to the Plan or any revisions or modifications thereto, since January 1, 2020.

RESPONSE:

13. Identify and produce all documents and communications which describe, evidence, pertain to or relate to the Trammel Crow Project, since January 1, 2019.

RESPONSE:

14. Identify and produce all documents and communications related to the reasons for the Planning Commission's September 26th, 2022 denial recommendation.

RESPONSE:

15. Identify and produce all documents and communications related to the Decision.

RESPONSE:

16. Identify and produce all documents and communications that relate to any other land development proposals, named or unnamed herein, submitted in the Township or to the Board seeking to construct warehouses or structures similar to that proposed in the Plan from January 1, 2019 to the present.

RESPONSE:

Dated: December 12, 2022

STEVENS & LEE, P.C.

By: /s/ Blake C. Marles
Blake C. Marles, Esq., No. 28537
Julie Wagner Burkart, Esq., No. 88046
Ambrose W. Heinz, Esq., No. 91021
Stevens & Lee, P.C.
840 West Hamilton Street, Suite 521
Allentown, PA 18101
(610) 997-5060
Attorneys for Appellant,
CRG SERVICES MANAGEMENT, LLC

CRG SERVICES MANAGEMENT, LLC,

Appellant,

v.

BOARD OF SUPERVISORS OF
LOWHILL TOWNSHIP,

Appellee

IN THE COURT OF COMMON PLEAS OF
LEHIGH COUNTY, PENNSYLVANIA

DOCKET NO. 2022-C-2536

CERTIFICATE OF SERVICE

I, Blake C. Marles, Esquire, certify that on this date, I served a true and correct copy of the foregoing Appellant CRG Services Management, LLC's First Set of Requests for the Production of Documents Addressed to Appellee upon the Township, by First Class Mail, as follows:

David J. Brooman, Esquire
High Swartz
40 East Airy Street
Norristown, PA 19401

Dated: December 12, 2022

/s/ Blake C. Marles

Blake C. Marles, Esq.

CRG SERVICES MANAGEMENT, LLC,

Appellant,

v.

BOARD OF SUPERVISORS OF
LOWHILL TOWNSHIP,

Appellee

IN THE COURT OF COMMON PLEAS OF
LEHIGH COUNTY, PENNSYLVANIA

DOCKET NO. 2022-C-2536

CERTIFICATE OF SERVICE

I, Blake C. Marles, Esquire, certify that on this date, I served a true and correct copy of the foregoing Appellant CRG Services Management, LLC's First Set of Requests for the Production of Documents Addressed to Appellee upon the Township, by First Class Mail, as follows:

David J. Brooman, Esquire
High Swartz
40 East Airy Street
Norristown, PA 19401

Dated: December 12, 2022

/s/ Blake C. Marles

Blake C. Marles, Esq.

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CRG SERVICES MANAGEMENT, LLC,	:	
	:	CIVIL ACTION
Appellant,	:	
	:	NO. 2022-C-2536
v.	:	
	:	
BOARD OF SUPERVISORS OF	:	
LOWHILL TOWNSHIP,	:	
	:	
Appellee	:	

CERTIFICATE OF SERVICE

I, Blake C. Marles, Esquire, certify that on this date, I served a true and correct copy of the foregoing Motion for Leave of Court to Conduct Discovery upon the Board of Supervisors of Lowhill Township, by electronic mail and by First Class Mail, at the following address:

David J. Brooman, Esquire
High Swartz LLP
40 East Airy Street
Norristown, PA 19401
dbrooman@highswartz.com

Date: January 20, 2023

By: /s/Blake C. Marles

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CRG SERVICES MANAGEMENT, LLC,	:	
	:	
Appellant,	:	CIVIL ACTION
	:	
v.	:	NO. 2022-C-2536
	:	
BOARD OF SUPERVISORS OF	:	
LOWHILL TOWNSHIP,	:	
	:	
Appellee	:	
	:	

ORDER

AND NOW, this day of , 2023, upon consideration of Appellant's Motion for Leave to Conduct Discovery and Appellee's response thereto, IT IS HEREBY ORDERED that Appellant's Motion is GRANTED and that Appellant shall be entitled to serve new set of Requests for Production of Documents attached as Exhibit A to Appellant's Motion and to conduct depositions of members of the Lowhill Township Board of Supervisors and Planning Commission and of objectors to Appellant's land development plan with such discovery limited to the issues of bad faith and equal protection alleged in Appellant's Notice of Appeal.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CRG SERVICES MANAGEMENT, LLC,
Appellant,

v.

BOARD OF SUPERVISORS OF
LOWHILL TOWNSHIP,

Appellee

CIVIL ACTION

NO. 2022-C-2536

**BRIEF OF PLAINTIFF, CRG SERVICES MANAGEMENT, LLC,
IN SUPPORT OF ITS MOTION FOR LEAVE TO CONDUCT DISCOVERY**

I. INTRODUCTION

Appellant, CRG Services Management, LLC (hereinafter “CRG Services”), filed a Notice of Appeal under the Municipalities Planning Code from the Lowhill Township Board of Supervisors’ denial of CRG Services’ Land Development Plan for the construction of a warehouse/distribution center. Included in CRG Services’ Notice of Appeal are allegations that members of the Board of Supervisors engaged in bad faith in colluding with each other, with objectors to the Land Development Plan, and with members of the Planning Commission to delay and deny approval of said Plan. CRG Services also alleged in its Appeal that at about the same time the Board of Supervisors denied CRG Services’ Land Development Plan, the Township granted a Preliminary Plan as to a similar warehouse/distribution center within the Township in violation of CRG Services’ rights of equal protection.

Because these allegations of bad faith and denial of equal protection involve facts outside the record submitted by Lowhill Township in this matter, CRG Services needs to undertake discovery as to those issues and needs to supplement the factual record before this Honorable Court. This Brief is in support of Appellant’s Motion for Leave to Conduct Discovery in this matter.

II. HISTORY OF THE CASE/STATEMENT OF PERTINENT FACTS

On March 14, 2022, Appellant, CRG Services Management, LLC (hereinafter “CRG Services”) filed a land use appeal pursuant to Article X-A of the Pennsylvania Municipalities Planning Code, 53 P.S. § 11001-A, *et. seq.* (the “MPC”). This appeal arose out of a proposed Land Development Plan (hereinafter the “Plan”) submitted by CRG Services as to a 51-acre tract of land located at 2951 Betz Court, Orefield, Lowhill Township. The Plan proposed the construction of a 299,880 foot warehouse/distribution facility and the removal of all current industrial activities on the land except for an existing bottled gas distribution facility which would remain. Approximately 26% of the 51-acre tract was proposed to be developed; the remainder would be retained as woods, steep slopes, and open space.

Prior to the submission of the Plan, CRG Services had submitted and obtained a dimensional variance from the Lowhill Township Hearing Board as to the height of the proposed building and obtained a determination that the steep slopes in Lowhill Township’s Environmental Protection Overlay District would not be adversely impacted by the proposed development. CRG Services’ proposed Plan conformed with the Zoning Hearing Board’s decision.

At the request of Lowhill Township, action on the land development plan was delayed until the Planning Commission could review the plan at its September 2022 meeting. To accommodate the Township’s request, CRG Services granted an extension of time for Lowhill Township to review Appellant’s Plan until October 9, 2022.

At the September 26, 2022 meeting of the Lowhill Township Planning Commission, the Planning Commission precluded CRG Services or its counsel from addressing the Commission and then recommended that Appellant’s Plan be denied for two reasons: that the Planning

Commission wanted to further review a letter from the Township Engineer, which letter had previously been supplied to members of the Planning Commission prior to the September 26 meeting, and that no development plan should be approved until the Township's Act 537 Plan dealing with public sewage facilities was updated. At the time of the Planning Commission's September 26 meeting, the Board of Supervisors had no proposed updated Act 537 Plan before it for consideration and the Board of Supervisors had no pending plans for updating the Township's Act 537 Plan, all of which was known to the members of the Planning Commission at their September 26 meeting. Thus, the Planning Commission's justifications for recommending that CRG Services' land development plan be denied were transparently false and improper: on the date of their September 26 meeting, the members of the Planning Commission already had in their possession the Engineer's letter they asserted that they wanted to review and they were fully aware that the Township's Board of Supervisors had no plans for updating the Township's Act 537 Plan.

At its meeting on October 7, 2022, the Lowhill Township Board of Supervisors voted to deny CRG Services' land development plan without delineating any specific defects, without describing any requirements that were not met by the plan, and without citing any provision of applicable statutes or Township ordinances relied upon. Instead, the Board of Supervisors merely referenced a nonspecific oral recommendation of the Planning Commission without identifying that recommendation and without identifying any defects in Appellant's Plan. Indeed, the Engineer's letter referenced in the Planning Commission's recommendation did not, in fact, recommend denial of CRG Services Plan. Furthermore, the Board of Supervisors' action did not attach any written recommendation of the Planning Commission or of the Township Engineer, as required by the statute regulating the Township's land use development rights, the

Pennsylvania Municipalities Planning Code, such that CRG Services was left to speculate as to the reasons for the Board's denial of the Plan and thereby precluding attempts by CRG Services to cure any possible defects to its Plan.

In its land use appeal to this Court, CRG Services included allegations that the Board of Supervisors acted in bad faith by failing to conditionally approve the Plan or by failing to afford CRG Services an opportunity to address the technical comments in the Engineer's report. CRG Services also alleged that the Chairman of the Board of Supervisors improperly communicated with objectors to the Plan and improperly urged members of the Planning Commission and the Board of Supervisors to delay and to deny approval of the Plan. CRG Services further alleged that its equal protection rights were violated by the Township's approval of another similar project with virtually the same outstanding engineering issues in August of 2022.

CRG Services propounded written discovery requests upon Lowhill Township in the nature of requests for production of documents, particularly as to communications sent between and among members of the Board of Supervisors and members of the Planning Commission, as well as communications between members of the Board of Supervisors and/or the Planning Commission and objectors to the land development plan. The Township objected to all such discovery on the basis that the Pennsylvania Rules of Civil Procedure do not apply to Appellant's statutory appeal and that Appellant must secure court approval by motion. The Township has produced no documents whatsoever in response to CRG Services' Requests for Production.

Concomitant with the filing of this Brief, Appellant, CRG Services, filed a Motion for Leave to Conduct Discovery in this matter. This Brief is submitted in support of said Motion.

III. STATEMENT OF THE QUESTION INVOLVED

Where Appellant's Notice of Appeal from the Lowhill Township's denial of its Land Development Plan included allegations of bad faith by the Chair of the Board of Supervisors in communicating off the record with other Supervisors and members of the Planning Commission, as well as with objectors to the Plan, and his urging them to delay and deny the Plan and where said Notice included allegations that the Township violated Appellant's equal protection rights by approving a similar land development plan at about the same time it denied the Plan of Appellant, is Appellant entitled to discovery as to those claims in order to supplement the record in this appeal?

Suggested Answer: Yes. Discovery should be allowed as to Appellant's bad faith and equal protection claims.

IV. ARGUMENT

A. Where Appellant has alleged that the Chair of the Township Board of Supervisors improperly communicated with objectors to Appellant's Land Development Plan and improperly communicated with other Supervisors and members of the Planning Commission urging them to delay and deny Appellant's Land Development Plan, and where Appellant has alleged equal protection claims arising from the Township's contemporaneous approval of a similar warehouse project with virtually the same issues, Appellant is entitled to discovery in order to supplement the record in this matter.

In its appeal from the decision of the Lowhill Township Board of Supervisors denying CRG Services' Land Development Plan, CRG Services included allegations of bad faith on the part of the Board of Supervisors and the Planning Commission in that the Chair of the Board of Supervisors contacted and communicated outside the record with objectors to CRG Services' Plan and with members of the Planning Commission and other Supervisors urging them to delay and deny the Plan. *See* Notice of Appeal at ¶ 18. CRG Services further alleged in its Notice of Appeal that its equal protection rights were violated in that a similar warehouse project, identified as the Trammel Crow project, filed at about the same time as that of CRG Services was granted notwithstanding that it involved a similar use with similar open issues as those of CRG Services' project. *Id.* at ¶ 19.

These allegations of improprieties that occurred outside the record in this case support the need for discovery as to communications between the Chair of the Board of Supervisors and other members of the Board, as well as with members of the Planning Commission and with objectors to CRG Services' Land Development Plan. Where, as here, the Board's decision relies upon the vague and nonspecific recommendations of the Planning Commission, (but the Board neither specified those recommendations nor attached them to its Decision), and upon the Township Engineer's recommendation that does not, in fact, exist, legitimate questions about the Board's motivations and reasons for denying CRG Services' Plan are raised and need to be addressed.

Inasmuch as CRG Services' appeal is based upon the Municipalities' Planning Code, there is no dispute that the appeal in this case is not governed by the Pennsylvania Rules of Civil Procedure in the absence of any local rule of civil procedure providing otherwise. *See In re Appeal of Churchill*, 535 Pa. 80, 575 A.2d 550, 554 (Pa. 1990). However, in the absence of a local rule governing the discovery in such appeals, trial courts have the inherent power "to regulate their own practice, without control, on the ground of expediency." *Id.*

Where, as here, the Lehigh County Rules of Civil Procedure contain no rules governing discovery in appeals under the Municipalities Planning Code, this Court has the inherent authority under the *Churchill* decision to permit discovery.

In *Highway Materials, Inc. v. Board of Supervisors*, 974 A.2d 539 (Pa. Commw. Ct. 2009), the Commonwealth Court held that a municipality has a "legal obligation to proceed in good faith in reviewing and processing land development plans." *Id.*, 974 A.2d at 544. This duty includes discussing matters involving technical requirements or interpretations of ordinances with an applicant and providing an applicant with a reasonable opportunity to respond to

objections or to modify plans where a misunderstanding or difference of opinions exists. *Id.* A failure to proceed in good faith in advising an applicant how to correct defects in its plan or a failure to afford an applicant to cure the deficiencies constitutes an abuse of discretion where the municipality denies the plan for those reasons. *Id.*, 975 A.2d at 545.

In its Notice of Appeal, Appellant has averred bad faith on the part of the Board of Supervisors in adopting the Planning Commission's recommendation without specifying any deficiencies in Appellant's Plan and without identifying what statutes or ordinances were violated. Indeed, the Board did not even attach a copy of the Planning Commission's decision, and, to date, Appellant has never received or even seen any such written decision. Moreover, the Engineer's letter referenced by the Planning Commission in its verbal decision does not recommend denial of Appellant's Plan and instead recites some technical defects which could be readily corrected. Appellant alleges that as a result of the Board's failure to cite any specific defects to Appellant's plan, Appellant was afforded no opportunity, reasonable or otherwise, to address or remedy any such defects. *See also Honey Brook Estates, LLC v. Board of Supervisors of Honey Brook Township*, 132 A.2d 611 (Pa. Cmwlth. 2016) (reversing trial court and holding that township acted in bad faith in processing developer's preliminary plan, where township rejected plan without giving developer opportunity to confer with Township and after developer responded to township's objections, township found new reasons to determine plan was incomplete and sent plan to planning commission without informing developer or giving developer an opportunity to present supplemental information to commission, and township then developed new additional reasons why developer's plan should be denied).

Appellant has also alleged in its Notice of Appeal that its equal protection rights were violated in that another warehouse land development plan with virtually the same open issues

was granted preliminary plan approval by the Township at about the same time as Appellant's Plan was denied. In *Kaplin v. Lower Merion Township*, 19 A.3d 1209 (Pa. Cmwlth. 2011), a developer petitioned for review of decisions of the Office of Open Records Act with regard to two of the developer's requests under the Right to Know Law seeking disclosure of written communications between the Lower Merion Township Board of Commissioners and Township officials concerning the developers' applications for conditional use to construct apartment buildings. In support of his appeal under the Right to Know Act, the developer alleged due process violations. In dismissing the developer's petition for review, the Court agreed with the Township that due process violations could not be raised under the Right to Know Law, stating that "Requester's remedy for due process violations in its land use hearing or violations of the MPC would be *to appeal the Board's adverse decision and seek discovery.*" *Id.*, 19 A.3d at 1215 (emphasis supplied). This is precisely the path – filing an appeal from the Township's decision denying Appellant's Plan and then seeking discovery – followed by Appellant as to its bad faith and equal protection claims asserted in this appeal.

Accordingly, Appellant, CRG Services, should be entitled to obtain discovery concerning communications between members of the Township Board of Supervisors and members of the Planning Commission and objectors to Appellant's Land Development Plan that pertain to the bad faith and equal protection claims asserted by CRG Services in its Notice of Appeal in this matter.

V. CONCLUSION

For the reasons set forth above, Appellant, CRG Services, request that its Motion to Conduct Discovery in support of its bad faith and equal protection claims be granted in

conjunction with its Notice of Appeal under the Municipalities Planning Code as to Lowhill Township's denial of its Land Development Plan.

Respectfully Submitted,

STEVENS & LEE

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Dated: January 20, 2023

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

STEVENS & LEE

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Dated: January 20, 2023

CERTIFICATE OF SERVICE

I, Blake C. Marles, Esquire, certify that on this date, I served a true and correct copy of the foregoing Brief in Support of Motion for Leave of Court to Conduct Discovery upon the Board of Supervisors of Lowhill Township, by electronic mail and by First Class Mail, at the following address:

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By: /s/Blake C. Marles