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IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CRG SERVICES MANAGEMENT, LLC	:	No. 2022-C-2536
Appellant	:	
	:	CIVIL ACTION – LAW
v.	:	
	:	LAND USE APPEAL
BOARD OF SUPERVISORS OF	:	
LOWHILL TOWNSHIP	:	Assigned to:
Appellee	:	Judge Thomas M. Caffrey

APPELLEE LOWHILL TOWNSHIP’S ANSWER IN OPPOSITION TO CRG SERVICES MANAGEMENT, INC.’S MOTION FOR LEAVE OF COURT TO CONDUCT DISCOVERY

Appellee, Board of Supervisors of Lowhill Township (“Township”), through its Solicitor, High Swartz, LLP, files this Answer in Opposition to CRG Services Management, LLC’s (“CRG” or “Appellant”) Motion for Leave of Court to Conduct Discovery, and in support thereof states:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied as stated. The complete CRG land development application and plans

(“LD Application”) are included in the Administrative Record filed with the Court, are writings and speak for themselves.

5. Denied as stated. The Decision of the Lowhill Township Zoning Hearing Board is in the Administrative Record filed with the Court, is a writing and speaks for itself.

6. Admitted.

7. Denied as stated. The Township requested an extension of time to October 9, 2022, from CRG to act of CRG's LD Application to provide ample time to CRG to evaluate sewer alternatives and to respond to outstanding Township Engineer review comments.

8. Paragraph 7 is incorporated herein by reference as if set forth in full.

9. Denied. The Lowhill Township Planning Commission considered CRG's LD Application at its regular monthly meeting held September 26, 2022. The Appellant and any member of the public was free to provide additional information and/or public comment in advance of or at the Planning Commission meeting. The minutes of the September 26, 2022, Planning Commission meeting, including its written recommendation to the Lowhill Township Board of Supervisors, is in the Administrative Record filed with the Court, is a writing and speaks for itself.

10. Denied. The Township is without information to speculate over what was and what was not "known to the Planning Commission members at the time of the September 26, 2022, meeting." Further, the Planning Commission's September 26, 2022, recommendation was neither a charade nor transparently false.

11. Denied. Paragraph 11 is a conclusion of law to which no response is required. By way of further answer, the Board of Supervisors is the legal entity charged under the Municipalities Planning Code to act on land development applications, not the Planning Commission.

12. Denied. The Administrative Record filed with the Court, and Lowhill Township's Brief in Opposition to CRG's Land Use Appeal, detail with specificity the reasons the Township Supervisors voted on October 6, 2022, to deny CRG's LD Application.

13. Denied. CRG was provided ample time, including two (2) extensions of time, to revise its land development plans to comply with the review comments of the Township Engineer, but chose not to and pressed for a decision.

14. Denied. The Planning Commission recommendation is contained in the minutes of its September 26, 2022, meeting, which minutes are part of the Administrative Record filed with the Court and speak for themselves.

15. Denied. The actions of the Planning Commission and the Township Board of Supervisors were made in good faith and without bias. At no time did Appellant bring its allegations of "bad faith" and "bias" to the Board of Supervisors, requesting one or more of the Supervisors to recuse himself and refrain from voting on the CRG LD Application. Further, to the extent the Chairman of the Board of Supervisors spoke with members of the Planning Commission and members of the public about the CRG LD Application, that is good government not bad faith or bias.

16. Denied as a conclusion of law to which no response is required.

17. Denied. The underlying action is a Land Use Record Appeal governed by the Municipalities Planning Code, 53 P.S. § 10101, *et seq.* The Pennsylvania Rules of Civil Procedure on Discovery, including but not limited to Pa.R.C.P. 4009, do not apply. *See, e.g., Ott v. Nemith*, 2005 Pa. Dist. & Cnty. Dec. LEXIS 597, *5 (Lehigh C.C.P. May 10, 2005) ("The Rules of Civil Procedure do not apply to statutory proceedings such as a land use appeal.") As set forth in 53 P.S. §11005-A and Lehigh County Local Rule 270, additional evidence in this

appeal can only be requested by motion, indicating the reasons therefor, to the Court. CRG has not produced any evidence to supplement the administrative record and has not requested leave to introduce evidence. Rather, CRG wishes to conduct broad scale discovery over an issue, equal protection, which is tangential to the Land Use Appeal. The issue in the Land Use Appeal is whether there was a “deemed approval” under the MPC. By way of further response, every real property is unique, and how the Township Supervisors voted on one previous warehouse proposal is irrelevant to this warehouse proposal.

18. Denied. The Requests for Production of Documents and the Township’s response are writings and speak for itself.

19. Denied. The Requests for Production of Documents is a writing and speaks for itself. The Township admits that Appellant CRG seeks both written discovery and between 12 to 20 depositions, including the elected officials (3), the Planning Commission members (5), and “objectors” (number not identified, but there are many).

20. Denied. Lehigh County Court of Common Pleas Local Rule 270, implementing section 1005-A of the MPC, 53 P.S. § 11005-A, states in relevant part:

(b) Additional Testimony. In the event that a party desires to present additional evidence, a motion indicating the reasons therefor shall be presented to the court within twenty (20) days after filing of the appeal. (Emphasis added).

This is not a motion to submit additional evidence. *McGrath Construction, Inc. v. Upper Saucon Township Board of Supervisors*, 952 A. 2d 718 (Pa. Commw. Ct. 2008). It is a motion for leave to conduct broadscale discovery in a land use appeal for which there is no statutory provision or rule allowing discovery.

21. Paragraph 17 is incorporated herein by reference as if set forth in full.

22. Oral argument on the Motion for Leave of Court to Conduct Discovery was held February 1, 2023, before the Honorable Thomas M. Caffrey.

WHEREFORE, Appellee Lowhill Township respectfully requests that this Honorable Court deny CRG's Motion for Leave of Court to Conduct Discovery in this Land Use Appeal.

Respectfully submitted,

HIGH SWARTZ LLP



By: _____
David J. Brooman, Esquire
Mark R. Fischer, Jr., Esquire
Michael A. Luongo, Esquire
Solicitors to Lowhill Township

Date: February 9, 2023

CERTIFICATE OF COMPLIANCE

I, David J. Brooman, Esquire, hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

HIGH SWARTZ LLP

By:  _____

David J. Brooman, Esquire
Mark R. Fischer, Jr., Esquire
Michael A. Luongo, Esquire
Attorneys for Appellee
Lowhill Township

Dated: February 9, 2023

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CRG SERVICES MANAGEMENT, LLC	:	No. 2022-C-2536
Plaintiff	:	
	:	CIVIL ACTION - LAW
v.	:	LAND USE APPEAL
	:	
BOARD OF SUPERVISORS OF	:	Assigned to:
LOWHILL TOWNSHIP	Defendant :	Honorable Thomas M. Caffrey

ORDER

AND NOW, this day of February, 2023, upon consideration of Appellant CRG Services Management, LLC's Motion for Leave of Court to Conduct Discovery and Appellee Lowhill Township's response thereto, it is hereby ordered that Appellant's Motion is DENIED.

BY THE COURT:

_____ J.

HIGH SWARTZ LLP

By: David J. Brooman, Esquire (I.D. No. 36571)
Mark R. Fischer, Jr., Esquire (ID No. 94043)
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IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CRG SERVICES MANAGEMENT, LLC	:	No. 2022-C-2536
Appellant	:	
	:	CIVIL ACTION – LAW
v.	:	
	:	LAND USE APPEAL
BOARD OF SUPERVISORS OF	:	
LOWHILL TOWNSHIP	:	Assigned to:
Appellee	:	Judge Thomas M. Caffrey

**APPELLEE LOWHILL TOWNSHIP’S BRIEF IN OPPOSITION OF CRG SERVICES
MANAGEMENT, LLC’S MOTION FOR LEAVE OF COURT TO CONDUCT
DISCOVERY**

Appellee, Board of Supervisors of Lowhill Township (“Township”), through its Solicitor, High Swartz, LLP, files this Brief in Opposition to CRG Services Management, LLC’s (“CRG” or “Appellant”) Motion for Leave of Court to Conduct Discovery.

I. MATTER BEFORE THE COURT

Before this Honorable Court is CRG’s Motion for Leave of Court to Conduct Discovery.

II. STATEMENT OF QUESTION PRESENTED

A. Whether CRG has presented sufficient information to the Court in its Motion for Leave of Court to Conduct Discovery to establish that the administrative record in this Land Use Appeal is incomplete and/or presented evidence to the Court that was excluded from the administrative record?

Suggested Answer: NO.

III. HISTORY OF THE CASE AND STATEMENT OF PERTINENT FACTS

CRG is the equitable owner of a certain tract of land located at 2951 Betz Court, Orefield, Lowhill Township, Pennsylvania (the “Property”). CRG submitted a preliminary land development application to the Township on March 14, 2022, seeking permission to construct a 299,880 square foot warehouse on the Property (the “LD Application”). After multiple reviews of the LD Application by the Township Planning Commission and the Township Engineer, and written review letters by the Township Engineer, CRG requested additional time to respond to outstanding review comments and to provide the Township an extension of time until October 9, 2022, for the Township to act on the LD Application. No additional extensions of time were requested or offered by CRG.¹

Due to the various deficiencies contained within the LD Application, at its October 6, 2022, meeting, the Township Board of Supervisors voted to deny the LD Application. The Township Board of Supervisors issued a denial letter to CRG dated October 7, 2022, confirming the denial of the LD Application (the “Decision”). (AR1111).

The Planning Commission had identified various deficiencies in the LD Application, including but not limited to: an incomplete submission for water and sewer management; and, the lack of operations and management agreement with Lowhill Township addressing all proposed privately-owned storm water management facilities. (AR1109)

The Township’s engineer, Keystone Consulting Engineers (“KCE” or “Engineer”), in its September 23, 2022, review letter (the “Letter”) (AR1098-AR1102), continued to comment on

¹ An index of the complete Administrative Record filed in the Land Use Appeal is attached as Exhibit A. The index evidences the Township’s careful and complete review of CRG’s LD Application. Appellant CRG has identified no deficiencies in the Administrative Record and specifically no plan, report, letter or memorandum submitted by CRG that was omitted from the Administrative Record by the Township.

outstanding issues with the LD Application that the Appellant continued to ignore.² In addition to the general comments requiring additional submissions, the Letter identified specific sections of the Lowhill Township Subdivision and Land Development Ordinance (“SALDO”) (AR1604-AR1655) and Stormwater Management Ordinance (“Storm”) which continued to be deficient. (See Exhibit “B”) These outstanding Township Engineer comments included but were not limited to: stormwater calculations and assumptions in the stormwater design; infiltration testing; riparian buffer restoration; and, separation between the on-lot sewage system and the storm sewer. (AR1099-AR1101).

In addition to the Township Engineer’s outstanding technical review comments, the Planning Commission and Board determined there were additional deficiencies with the LD Application, including:

1. Use definitions and misapplication of Township Ordinances.
2. Act 537 Plan deficiencies.
3. Unresolved issues with public water.
4. Incomplete submissions.
5. Traffic design concerns.

(AR1080-AR1093)

Each of these material issues had been identified to CRG in numerous review letters after the initial plan submission in March 2021. CRG’s revised plans remained deficient and the Township Engineer’s review comments remained outstanding. (Exhibit B) On October 7, 2022, CRG’s LD Application was denied. At no time during the seven-month review period did CRG allege bad faith or conspiracy, asking one or more Supervisors to recuse themselves from voting on CRG’s LD Application. At no time during the seven-month review period did CRG allege a denial of due process or violation of the equal protection clause. Finally, at no time from March

² Appellant continued to ignore most of the same issues identified by the Township Engineer in its June 23, 2022 (AR1032-AR1038) and August 14, 2022 (AR1077) letters which requested the Appellant address deficiencies.

2021 to the present did CRG seek to submit documentation to the Township that was excluded from consideration or excluded from the Administrative Record.

On November 3, 2022, CRG filed this Land Use Appeal from the Decision pursuant to the Municipalities Planning Code, Lehigh County Court of Common Pleas docket number 2022-C-2536. CRG's Appeal admits that the Township timely communicated the Decision to CRG, but contends that a deemed approval occurred because the Decision failed to comply with the requirements Section 508(2) of the Municipalities Planning Code ("MPC"), 53 P.S. § 10508(2).

IV. ARGUMENT

A. There is Nothing in Appellant CRG's Motion to Suggest the Administrative Record in this Land Use Appeal is Incomplete, or that Evidence was Excluded from the Administrative Record, or that Appellant CRG has Additional Evidence it would like to Submit to the Court to aid in its Consideration of this Land Use Appeal.

Both the Municipalities Planning Code, 53 P.S. §§10101, et. seq. and Local Rule 270 address the circumstances pursuant to which a reviewing court in a land use appeal may reopen the record to admit extrinsic evidence. Section 1005-A of the MPC provides:

Hearing and Argument of Land Use Appeal

If upon motion, it is shown that proper consideration of the land use appeal requires the presentation of additional evidence, a judge of the court may hold a hearing to receive additional evidence, may remand the case to the body, agency or officer whose decision or order has been brought up for review, or may refer the case to a referee to receive additional evidence, provided that appeal brought before the court pursuant to section 916.1 shall not be remanded for further hearings before any body, agency or officer of the municipality.

Implementing the MPC, Local Rule 270 provides:

Lehigh County Rule 270 – Appeals from Zoning Hearing Boards

(b) Additional Testimony. In the event that a party desires to present additional evidence, a motion indicating the reasons therefor shall be presented to the court within twenty (20) days after filing of the appeal.

CRG did not file a motion to introduce additional evidence. CRG filed a motion to engage in widespread discovery of elected officials (Supervisors), appointed officials (Planning Commission members), and concerned citizens. On this Administrative Record, and the limited grounds for appeal, a deemed approval, the Motion for Leave of Court to Conduct Discovery should be denied.³

A court reviewing a land use administrative decision is obligated to take additional evidence only when that party was denied an opportunity to be fully heard, or when the Supervisors excluded relevant testimony that was offered. *Wimer Realty, LLC v. Township of Wilmington*, 206 A.3d 627 (Pa. Commw. Ct. 2019); *Piper Group, Inc. v. Bedminster Tp. Bd. Of Sup'rs*, 992 A.2d 224 (Pa. Commw. Ct. 2010), *aff'd*, 612 Pa. 282, 30 A.3d 1083 (2011); *Larock v. Board of Supervisors*, 961 A.2d 916 (Pa. Commw. Ct. 2008); *McGrath Const., Inc. v. Upper Saucon Tp. Bd. Of Supervisors*, 952 A.2d 718 (Pa. Commw. Ct. 2008); *In re: Schieber*, 927 A.2d 737 (Pa. Commw. Ct. 2007). At no time from March 2021 to the present did CRG seek to submit documentation to the Township that was excluded from consideration or excluded from the Administrative Record. At no time from March 2021, to the present did CRG seek an opportunity to be heard, and was denied.

Appellant relies on *Highway Materials, Inc. v Board of Supervisors of Whitemarsh Township*, 974 A. 2d 539 (Commw. Ct. 2009) in support of its Motion. *Highway Materials* is both distinguishable and helpful to the Township's position in this matter. In *Highway Materials*, Whitemarsh Township was attempting to pass a new zoning ordinance to prohibit a planned development by Highway Materials. Before advertising the new zoning ordinance,

³ Also, the motion was filed more than 75 days after filing the land use appeal, and after the Briefs on the merits were filed with the Court. For this reason alone, the Motion for Leave of Court to Conduct Discovery should be denied.

Highway Materials filed with the Township a preliminary land development application. The Township refused to consider or review the land development application. Highway Materials counsel, Jim Garrity, and engineer, Tim Woodrow, wrote on at least 6 occasions to meet with Township representatives to review the application. The Township refused to meet. Highway Materials asked for an extension of time to fix perceived deficiencies in its application. The Township refused to grant an extension of time. At one point, counsel for Highway Materials spoke to the Township Solicitor asking for guidance, and the response was: “This is a controversial application. . . Don’t ask me questions . . . The Township is not going to work with you on and help you on a controversial development for such a large piece of property. Do what you have to do.” *Highway Materials*, 979 A.2d 539, 544.

Highway Materials is distinguishable because: (1) Lowhill Township has not proposed to rezone the land which is the subject of the CRG LD Application, and (2) Lowhill Township did process CRG’s LD Application like it would any other application. CRG did not write multiple letters to the Township requesting review comments from the Township Engineer. CRG did not write to the Township or its consultants requesting to meet. In short, the facts of *Highway Materials* evidence bad faith from the time the preliminary land development application was filed to the time it was denied. The Administrative Record in this Land Use Appeal tells an opposite story. The Township faithfully and carefully reviewed the LD Application, providing no less than three (3) Township Engineer review letters.⁴

⁴*Honey Brook Estates, LLC v. Bd. Of Supervisors of Honey Brook Twp.*, 132 A.3d 611 is similarly distinguishable. In *Honey Brook*, the Township Manager preemptively denied the preliminary land development plan with no Township Engineer review. 132 A.2d 614 A second preliminary land development plan was submitted and summarily denied by the Board of Supervisors. With both applications, the Developer was given no opportunity to communicate with the Township Engineer and respond. 132 A.2d at 622. The Administrative Record here shows CRG was provided ample opportunity to correct the deficiencies.

It is telling that at no time during the seven-month review period did CRG allege bad faith or conspiracy, asking one or more Supervisors to recuse themselves from voting on CRG's LD application. At no time during the seven-month review period did CRG allege a denial of due process or violation of the equal protection clause. Finally, at no time from March 2021 to the present did CRG seek to submit documentation to the Township that was excluded from consideration or excluded from the Administrative Record. Rather, Appellant presented extensive documentation that was accepted by the Township Board of Supervisors, became part of the Administrative Record and was considered in its October 6, 2022 Decision.⁵

V. **CONCLUSION**

For all of the foregoing reasons, Lowhill Township respectfully requests that this Honorable Court deny CRG's Motion for Leave of Court to Conduct Discovery.

Respectfully submitted,

HIGH SWARTZ LLP



By: _____
David J. Brooman, Esquire
Mark R. Fischer, Jr., Esquire
Michael A. Luongo, Esquire
Solicitor for Lowhill Township

Date: February 9, 2023

⁵ *Kaplin v. Lower Merion Twp.*, 19 A.3d 1209, is simply inapplicable to this Land Use Appeal. *Kaplin* is a Right to Know Appeal.

EXHIBIT A

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Lowhill Township Board
of Supervisors

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

CRG SERVICES MANAGEMENT LLC	:	
Appellant	:	Docket No. 2022-C-2536
	:	
Vs.	:	
	:	Assigned to
LOWHILL TOWNSHIP BOARD OF	:	Judge Melissa T. Pavlack
SUPERVISORS	:	
Appellee	:	

LOWHILL TOWNSHIP REPRODUCED RECORD

Undated Aerial View of Property

11/12/2021 Zoning Officer Letter

11/23/2021 Application of CRG Acquisition for Zoning Hearing Board Hearing with Exhibits

12/01/2021 Zoning Solicitor letter re: proof of publication

12/02/2021 Zoning Officer letter re: public hearing notice to owners within 200 feet

12/21/2021 Public Notice for 12/21/2021 Hearing re: Appeal No. 21-6

12/23/2021 Zoning Solicitor letter re: Official Notice of ZHB Decision

01/18/2022 Zoning Solicitor letter re: Review of CRG Decision to be issued

01/24/2022 Zoning Hearing Board Decision, Hearing date: 12/21/2021

03/11/2022 Preliminary/Final Land Development Plans dated 03/11/2022

03/14/2022 Letter from Snyder, Secary & Associates re: submission of Land Development application

03/14/2022 Application for Subdivision or Land Development, CRG Services

03/14/2022 Letter from Snyder, Secary & Associates re: transmittal letter submission of Traffic Impact Study

04/12/2022 Municipal Notification of Planned Land Development for Chapter 102 Permits

04/13/2022 Certified letter from Snyder, Secary & Associates

04/21/2022 Zoning Officer letter dated 04/21/2022

04/21/2022 Keystone Consulting Engineers ("KCE") Review letter re: review of LD Plans

04/25/2022 Lowhill Township Planning Commission Minutes dated 04/25/2022

04/27/2022 Email between Brian Carl and Beck Bradley (LVPC) re: RTK response

05/23/2022 Township Engineer's Review Letter re: Land Development Plan

06/09/2022 Traffic Impact Study prepared by Traffic Planning and Design, Inc.

06/13/2022 Snyder Secary & Associates letter

06/16/2022 Lowhill Township Board of Supervisors Meeting Minutes

06/23/2022 Keystone Consulting Engineers ("KCE") letter re: Preliminary comments review letter, Zoning Officer comments

06/27/2022 CRG Extension of time request

07/11/2022 Snyder Secary & Associates letter re: KCE review letter of 06/23/2022

07/12/2022 Lehigh County Authority letter re: water main line extension plans comments.

07/15/2022 Stevens & Lee letter to Lowhill Township Planning Commission re Conditional pre-plan approval

07/26/2022 CRG Extension of time request

09/02/2022 Snyder, Secary & Associates response letter

09/12/2022 Letter from Snyder, Secary & Associates re: response to KCE

09/13/2022 Keystone Consulting Engineers (“KCE”) letter re: Sewage Planning Module

09/14/2022 Keystone Consulting Engineers (“KCE”) review letter re: Sewage Facilities Planning Module

09/22/2022 Lehigh County Authority letter re: water service “Will Serve” letter

09/23/2022 Residents Hand out #1 – Reasons Why the Warehouse Proposals Should be Denied

09/23/2022 Residents Hand out #2 – Reasons for Denial of 2951 Betz Court, Preliminary Plan

09/23/2022 Keystone Consulting Engineers (“KCE”) letter re: response to 06/23/22 review letter

09/26/2022 Lowhill Township Planning Commission Minutes dated 09/26/2022 with attachments

10/07/2022 Lowhill Township 10/07/2022 Board of Supervisors Decision

Undated CRG Extension of time request to 10/09/2022

EXHIBIT B



CIVIL ENGINEERS & SURVEYORS

2870 Emrick Boulevard, Bethlehem, PA 18020 | 610-865-4555 | www.KCEinc.com
Bethlehem | Allentown | Kresgeville

LOW-22-007

September 23, 2022

Lowhill Township Planning Commission
2175 Seipstown Road
Fogelsville, PA 18051

RE: 2951 Betz Court Industrial/Warehouse Land Development – Preliminary Plan. (Addressing comments of our June 23, 2022, review letter)

LOCATION: 2951 Betz Court

ZONING: RV – Rural Village District

PROPOSED: Commercial Warehouse/Distribution Center.

SUBMISSION:

- Plan sheets 1 of 20 to 20 of 20 dated March 14, 2022, as prepared by Snyder, Secary & Associates, LLC., latest revision date of September 12, 2022.
- Post Construction Stormwater Management Report dated March 14, 2022, latest revision date of September 12, 2022, as prepared by Snyder, Secary & Associates, LLC.
- Truck Turning Exhibit dated June 13, 2022, as prepared by Snyder, Secary & Associates, LLC.

COMMENTS:

The plan proposes a 299,880 square foot commercial warehouse/distribution center building on 51.3 acres, with associated parking, trailer storage spaces, and storm water management.

1. A certification of on lot sewerage system shall be provided. SALDO 3.301.f. Remove the Lowhill SEO signature block from the cover sheet.
2. All outside agency reviews and approvals are required: Lehigh Valley Planning Commission, PennDOT (HOP), Lehigh County Conservation District, Lehigh County Authority (water service).
3. A review by the Fire Chief shall be provided. The fire suppression system report/calculations shall be submitted for review.
4. Recreation fees in lieu of land dedication shall be paid per the Township Fee Schedule G.

Stormwater:

1. Regarding Township requirements for Recharge Volume (Storm 304.J) and Water Quality Volume (WQv, Storm 304.B):
 - a. Provide a copy of Worksheet 4 or other calculations of the 2-year/24-hour volume difference. While we have not reviewed the Volume Management Spreadsheets provided, as we have different standards for calculations of Water Quality management, it is noted that the predevelopment, post development, and undetained areas in the Spreadsheets do not appear to correlate to those shown on the Drainage Area Exhibits.
 - b. Simplify the Recharge Volume Discussion to identify if Basin 1 satisfies the site's requirements; the DEP worksheets are not completely consistent with Township requirements.
 - c. Unless the entire WQv is treated by infiltration, which is encouraged (Storm 301.J), it must be treated by two BMPs in sequence designed in accordance with applicable standards (Section 304.O). If the Riparian Buffer Restoration and Dry Extended Detention Basin are designed per BMP manual standards, with applicable details, maintenance provisions, and supporting calculations provided, they may be used as the two permitted BMPs. Also address the following:
 - Confirm adequate soil exists or will be provided for the Riparian Buffer Restoration.
 - Eliminate "of "Facility #1 (Infiltration Basin)" from SWM/BMP Facility Cross-Section Note 3 on Sheet 20.
 - Show that Basin 2 drains to the height of the lowest orifice at least 24 hours and no more than 72 hours after the end of the 2-year, 24-hour storm.
2. Regarding infiltration testing (Storm 304 and 403.C.3):
 - a. Confirm the approximately 11' cut at the eastern end of Basin 2 will not drain perched groundwater.
 - b. Confirm required separation from bedrock at the southern end of BMP 1 (Section 304.O)
 - c. Verify compliance with horizontal setback requirements for Infiltration Basin 1 (Storm 304.I); remove "residential" from General Note 20 on Sheet 4 if accurate.
3. Regarding times of concentration (Storm 307.N):
 - a. Verify that alternative Time of Concentration drainage paths were considered for Predevelopment Watershed Areas 1 and 2, and show the unchosen alternatives with a different linetype on the Drainage Area Map; at a minimum, consider travel paths starting at the northern corner of the intersection and southern extent for Watershed Area 1 and the northeastern extent for Watershed Area 2..

- b. Confirm that predevelopment POI #3 (and permitted release rates) include the peak reduction and delay effect of the existing basin, that the same time of concentration is used for all subareas, and orifice resistance is considered if a grate top exists in the existing basin outlet control structure. /
 - c. Show travel paths for Post-Development Drainage areas. Use the same time of concentration for all post development hydrographs to be joined.
4. We offer the following comments on the calculations and assumptions used in the stormwater design (Storm 403.C.2):
- a. Confirm that the forebay wall is not considered in the basin volume tabulation and calculations.
 - b. Verify drainage areas south of Betz Court. Label and provide sufficient additional contours to show the divide in the drainage boundary. From the contours provided, it appears that more area west of 2908 Betz Court may be tributary.
 - c. Please provide or clarify the location of the loading ratio justification noted to be included in Appendix E.
5. We offer the following comments on the details for the construction of the stormwater management (Storm 403.C.4):
- a. Identify the lowpoint in the curb northeast of the warehouse to clearly demonstrate that overland flows are directed to Basin 2.
 - b. Confirm with the Township Sewage Enforcement officer whether adequate horizontal setback is provided between the possible on-lot drainfield and the storm sewer connecting MH 1-1D to Inlet 1-1.
 - c. Provide documentation on capture capacity of the inlet filters. Confirm acceptance by the Township for the proposed inlet filter in Inlet EX-1 along Betz Court.
 - d. Verify consistency between rip rap design in analysis and on plan details.
 - e. Verify if any permanent stabilization is appropriate for the existing culvert east of the Extended Detention Facility #2.
6. The Applicant shall enter into an operations and maintenance agreement with the Township addressing all proposed privately-owned stormwater management facilities. Agreement language shall be subject to review and approval by the Township Solicitor. The agreement, operations and maintenance plan, and easements shall be recorded in the Lehigh County Recorder of Deeds Office. (Storm 704, 705 706, and Appendix E). Clarify plan notes that pertain to maintenance by the owner which reference the Applicant.
7. Verify consistency of Anti-Seep Collar design between plan, details, and analysis. Confirm design and location for Basin 1 anti-seep collars considers the proposed pipe angle.
8. Address 100-year conveyance of water in swales. Confirm that Channel 1 design considers the impact of the proposed landscaping.

9. Verify that ponding depth for Inlet 2-6 is acceptable for use of the parking lot and sidewalks. We estimate, but do not verify, that the sidewalk will not be impacted during any storm if the inlets remain unclogged, and that the parking lot around Inlet 2-5 and 2-6 will be flooded during the 100-year storm (1.5 feet deep storage if the other inlets did not provide relief).
10. Consider providing a slope greater than 0.5% between Inletx EX-2 and 3-3.

Traffic Study:

1. We reviewed the traffic study for the project and the trip generation estimates are acceptable. A summary of the estimated numbers of new trips:

<u>Weekday</u>	<u>AM Peak Hour</u>	<u>PM Peak Hour</u>
512	60 (46 in / 14 out)	62 (17 in / 45 out)

Of the 512 new daily trips, 170 are expected to be truck trips.

2. A 200'-long left-turn lane is proposed on eastbound Kernsville Road at the Betz Court intersection.
3. We note that this traffic report also included consideration of the trips that are to be generated by two other nearby warehouse projects, Lehigh Industrial Park and 2766 PA Route 100 Industrial Project. The total estimated trip generations by these three developments are 979 weekday trips, 159 AM peak hour trips, and 166 PM peak hour trips.
4. With signal timing adjustments, the average per-vehicle delays at the Route 100/Kernsville Road intersection under the 2027 with-development conditions are generally close to those estimated for the existing timings and traffic volumes (the one exception being the westbound Kernsville Road left turn lane group in the AM peak hour where delays are noticeably longer even with the additional green time). It should be noted however, these proposed timing adjustments add green time to the eastbound/westbound Kernsville Road signal phase by taking it from the northbound/southbound Route 100 phase (four seconds in the morning peak hour and one second in the evening peak hour).

If PennDOT approves the proposed signal timing changes, proof of this acceptance and the updated signal timing plan should be submitted to the Township. In the event that PennDOT or the Township does not want the Route 100 green times reduced, analyses of the intersection with the existing timings and the 2027 Build traffic volumes should be provided.

ZONING

1. An onsite parking/staging area should be provided in order to allow trucks to pull off to the side prior to entering the site and after leaving the site. Most facilities do not allow trucks to arrive early or stay after pickup. This will prevent trucks from parking along Betz Court and interrupting neighboring businesses. (ZO931)
2. In order to minimize the impact on neighboring properties, the exterior colors of the

building should be natural earth tones.

3. The public water service line extension design must be completed. The Township shall review hydrant locations.
4. Traffic improvements shall be shown on a plan. The following items should be reviewed:
 - a. Turn lane extensions Kernsville/Route 100 and addition of an advance turn arrows on the Kernsville and Claussville sides.
 - b. Truck restriction signage on Orchard Road and Pony Road.
 - c. Additional truck restriction signage on Claussville Road.
 - d. Guidance signage saying "To I-78/PA Turnpike" at Betz Court/Kernsville Road and Kernsville Road/Route 100.
 - e. Directional signage should be provided on Kernsville Road to ensure that trucks do not drive past Betz Court as there are limited options to turn around and come back.
5. A rec fee of \$21,494.00 is due prior to recording of plan for 299,880 square foot building (Resolution 22-1).
6. Actual on-lot septic system design and location shall be shown.
7. Letter shall be received from onsite propane facility operator regarding setback distances of proposed operation confirming that there are no safety concerns with the proposed development.

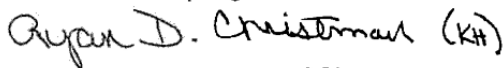
Due to the amount and magnitude of these comments, we reserve the right to make additional comments as revised plans, supporting documents, reports and studies not submitted to date, are submitted for review.

If there are any questions, please feel free to contact the undersigned.

Sincerely,

KEYSTONE CONSULTING ENGINEERS, INC.

Lowhill Township Engineers

 (KH)

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Township Engineer Representative

cc: Brian Carl, Township Administrator
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Board of Supervisors of
Lowhill Township

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

CRG SERVICES MANAGEMENT LLC :
Appellant : Docket No. 2022-C-2536
:
Vs. :
:
BOARD OF SUPERVISORS OF : Assigned to
LOWHILL TOWNSHIP : Judge Thomas M. Caffrey
Appellee :

CERTIFICATE OF SERVICE

I, David J. Brooman, Esquire, attorney for Appellee, Board of Supervisors of Lowhill Township, hereby certifies that on February 9, 2023, I caused a true and correct copy of Lowhill Township's Answer and Brief in Opposition to CRG Services Management, Inc.'s Motion for Leave of Court to Conduct Discovery, to be served upon the following individuals via the Lehigh County ECF File and Serve System, Email and U.S. First Class Mail:

Blake C. Marles, Esquire
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FILED 2/9/2023 4:03 PM, Clerk of Judicial Records, Civil Division, Lehigh County, PA
2022-C-2536 /s/TM

HIGH SWARTZ LLP

By: 

David J. Brooman, Esquire
Attorney for Appellee
Board of Supervisors of Lowhill Township

Date: February 9, 2023