

**BEFORE THE BOARD OF SUPERVISORS OF
EAST FALLOWFIELD TOWNSHIP,
CHESTER COUNTY, PENNSYLVANIA**

In Re:

Application of Chester County Public Safety Training : No. C - 2 - 07
Center Foundation for Conditional Use Approval :

DECISION AND ORDER

AND NOW, this ___ day of _____, 2008, the Board of Supervisors of East Fallowfield Township hereby grants, subject to the conditions specified herein below, the Application of Chester County Public Safety Training Center Foundation for conditional use approval pursuant to Sections 1102.4, 1202.4.E., 1402.3.B.1.b., 1902, 1903 and 1904 of the East Fallowfield Township Zoning Ordinance of 2002 (the "Zoning Ordinance") to allow for the development of a public safety training facility (the "Development"), a portion of the entrance road for the Development to be located within the O-I Office Industrial District and disturbance of approximately 1.9% of very steep slopes on the property located at Doe Run Road (PA Route 82) and Newlinville Road, and enters the following factual findings, conclusions and discussions of reasoning in support of the grant of the Application.

I. Background of the Application

By application received February 8, 2008 ("Application"), the Chester County Public Safety Training Center Foundation (the "Applicant") requested approval by the Board of Supervisors of East Fallowfield Township ("Board" and the "Township" respectively) for

Solicitor's Draft October 28, 2008

conditional use approval to allow the development of a public safety facility, a portion of the entrance road to the public training safety facility to be located within the O-I Office Industrial District, and disturbance of very steep slopes on Applicant's property located at Doe Run Road (PA Route 82) and Newlinville Road. The property lies within East Fallowfield Township and South Coatesville Borough, and consists of approximately 71.12 acres. The portion of the property within East Fallowfield Township consists of approximately 44.851 acres and is located within the MU Multi-Use District (referred to hereinafter as the "Property"). The Property is a portion of UPI (tax parcel) no. 47-8-84. The Development is depicted in a plan prepared by Gilmore & Associates, Inc., designated as Conditional Use Plan of Chester County Public Safety Training Facility, East Fallowfield Township, Chester County, PA, Job No. 06-12035K dated 12-7-07, last revised 2-8-08, and consisting of twenty-two (22) plan sheets (referred to hereinafter as the "Plan").

The public hearing was originally opened pursuant to public notice on March 8, 2008. The hearing was then continued for further testimony on April 3, 2008, May 1, 2008, July 10, 2008 and August 6, 2008. At the conclusion of the hearing on August 6, 2008, the record was closed. The Board subsequently held two special meetings pursuant to public notice on September 17, 2008 and October 13, 2008 with the Applicant in attendance to discuss and deliberate proposed conditions of approval. The Applicant's case in support of the Application was presented to the Board through the testimony of Gary Smith, CEO and President of Chester County Economic Council; Edward J. Atkins, Director of Emergency Services for Chester County; Christopher D. Burkett of Gilmore and Associates, Inc., civil engineer and landscape architect; Michael Grigalonis of Chester County Economic Development Council; Dan Holland

Solicitor's Draft October 28, 2008

of A114 Inc., air quality studies and air quality permitting; Felicia Doggett of Metropolitan Acoustics, acoustical consultant; together with the presentation of certain documentary exhibits. Theresa R. Lemley, Esquire of Riley, Riper, Hollin, and Colagreco, represented the Applicant; its Solicitor, Vincent M. Pompo, Esquire of Lamb McErlane PC, represented the Board.

The record in this matter consists of the transcribed notes of testimony taken at the public hearings, together with the documentary exhibits marked for identification and admitted into the record by the Board. This Decision and Order is promulgated pursuant to Zoning Ordinance Section 1902 and the enabling provisions of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, as amended, 53 P.S. §10101 et seq. (the "MPC").

II. Findings of Fact

1. The Applicant is Chester County Public Safety Training Foundation.

2. The Applicant is the equitable owner of the Property consisting of approximately 71.12 acres of gross area located generally on the southerly side of Doe Run Lane (Route 82) and west of Newlinville Road in the MU District of the Township.

3. The Applicant is the equitable owner of the Property pursuant to an Agreement of Sale between the legal or fee simple owner, PECO, and the Applicant.

Solicitor's Draft October 28, 2008

4. The Applicant is seeking conditional use approval for the development of a public training facility, and to construct a portion of the entrance road for the Development within the O-I Office Industrial District, and for the disturbance of very steep slopes on the property.

5. During the hearings, the following exhibits were presented into the record:

B-1 - Public Notice;

B-2 - Proof of Publication;

B-3 - Letter of February 9, 2008 from Vincent M. Pompo, Esq.;

B-4 - Affidavit of Posting by Township Secretary;

B-5 - Township Zoning Ordinance by reference;

B-6 - Township Ordinance Number 2007-06, adopted October 30, 2007;

B-7 - Letter of January 25, 2008 from Theresa Lemley, Esq.;

B-8 - Township Engineer's review letter of January 11, 2008;

B-9 - Township Engineer's review letter of February 29, 2008;

B-10- Record of the public hearing for Applicant's Zoning Application;

B-11- Second Public Notice;

B-12- Proof of Publication of Second Public Notice;

B-13- Letter of March 10, 2008 from Vincent M. Pompo, Esq.;

B-14- Affidavit of Posting Second Public Notice by Township Secretary;

B-16 Theresa Lemley, Esquire's letter dated June 11, 2008, agreeing to the continuation of the hearing;

B-17 Theresa Lemley, Esquire's letter dated April 23, 2007 requesting zoning amendment;

B-18 Memorandum from Traffic Planning and Design, Inc., dated May 1, 2008;

Solicitor's Draft October 28, 2008

- B-19 Traffic Planning and Design, Inc.'s meeting minutes of the June 18, 2008 meeting;
- B-20 Photograph;
- B-21 Photograph;
- B-22 John Otten of PennDOT e-mail to East Fallowfield Township, dated July 2, 2008;
- B-23 Chester County GIS Aerial map;
- B-24 Letter from Lou Colagreco, Esquire dated July 29, 2008;
- A-1 - Conditional Use Application dated February 8, 2008;
- A-2 - Agreement of Sale between PECO and Applicant;
- A-3 - The Site Plan for Chester County Safety Training Facility;
- A-4 - Christopher D. Burkett, P.E., CV;
- A-5 - Environmental Impact Assessment and Tree Conservation Plan and Report prepared by Gilmore & Associates, Inc., dated December 11, 2007, and last revised February 8, 2008;
- A-6 - Natural Resource Plan prepared by Gilmore & Associates, Inc.;
- A-7 - Wetland Evaluation Report, prepared by Seth Bacon or Soil & Wet; and Consulting, dated April 145, 2007;
- A-8 - Visual Analysis Exhibit prepared by Gilmore & Associates, Inc., dated March 6, 2008;
- A-9 – 1964 DVRPC Aerial Photograph;
- A-10- Stormwater Management Report prepared by Gilmore & Associates, Inc., dated December 11, 2007;
- A-11- Traffic Impact Study prepared by Gilmore & Associates, Inc., dated December 11, 2007 and last revised February 8, 2008;
- A-12- Letter of February 6, 2008 by Francis J. Hanney, Traffic Services Manager, PenDOT;
- A-13- E-Mail of March 5, 2008, 9:18 PM, by Jim Reagan, Township Fire Marshall to Michael Grigalonis;
- A-14- Landscape & Lighting Plan prepared by Gilmore & Associates, Inc.' dated December 7, 2007;

Solicitor's Draft October 28, 2008

A-15- Dan Holland, CV;

A-16- Analysis of Air Emissions prepared by A114, Inc., dated February 8, 2008;

A-18- Table 3, Summary of Modeled Concentrations for NAAQS Pollutants and Table 4, Summary of Modeled Concentrations for Air Toxic Pollutants, prepared by A114, Inc.;

A-19- Felicia Doggett, CV;

A-20- Acoustical Analysis prepared by Metropolitan Acoustics, dated December 11, 2007;

A-21- Table 3, Predicted SPL's at Property Lines, prepared by Metropolitan Acoustics;

A-24(a)- Memorandum of April 2, 2008 by Christopher D. Burkett, P.E., R.L.A.;

A-24(b)- Exhibit #1 Natural Resource Plan prepared by Gilmore & Associates, Inc.' dated April 2, 2008;

A-25- Amended Application dated April 3, 2008.

6. The Applicant proposes the development of a public training safety facility on the Property consisting of the following:

a) a proposed 70,000 square foot, two story academic/administration building for training purposes consisting of classrooms, administrative offices for the center's staff, storage not involving the storage of flammable or hazardous materials, and for a Chester County Back Up 9-1-1 Operations Center and a Back Up Emergency Operations Center;

b) a proposed two story 30,000 square foot building with a completely indoor shooting range consisting of a six lane, fifty (50) meter lighted, fully ventilated range and a six lane, one-hundred (100) meter lighted, fully ventilated range located on the bottom floor, and administrative office and classroom space on the upper floor;

Solicitor's Draft October 28, 2008

c) a proposed two and one-half story, 5,200 square foot burn building consisting of interior walls lined with fire-resistant material;

d) a proposed five-story, 50 foot high 6,400 square foot drill tower consisting of various facades on each of the exterior walls;

e) a proposed 2,300 square foot single story smoke building equipped with portable smoke machines;

f) a proposed 1,500 square foot two story ballistic shoot house consisting of ballistically protected walls to allow the firing of live ammunition rounds;

g) two proposed one story 1,725 square foot outdoor training pavilions consisting of outdoor sheltered areas for instruction, restrooms and storage areas;

h) an asphalt emergency vehicle driver training course consisting of a large paved area capable of numerous driving training scenarios and devoid of any structures or other uses;

i) a liquid fire simulator training area for simulation of leaking piping and tanks training with liquid fuels, oil and propane fires;

Solicitor's Draft October 28, 2008

7. The Applicant requested an amendment to the Application in order to obtain conditional use approval for the unauthorized alteration of approximately 3.4% of Zone 1 riparian buffer and approximately 20.1% of Zone 2 riparian buffer. The Applicant has already made these alterations to the riparian buffer. The alterations are the result of Applicant's placement of test wells in connection with an unsuccessful investigation of the site for an adequate supply of groundwater.

8. Conditional use approval for disturbance of the riparian buffer is not provided for under the Zoning Ordinance.

9. The indoor firing range will be limited to the use of firearms no larger than 45 caliber pistols, 30 caliber rifles, and 12 gauge shotguns.

10. The Applicant is not seeking approval for the communication tower as shown on the Plan as part of this application.

11. The Applicant testified that the hours of operations for the facility would be limited to 0800 to 2100 or 2200 on weekdays and 0800 to 1700 or 1800 on weekends, and with no training operations on official holidays.

12. The Applicant testified that all nighttime activities shall be limited to indoor activities, and no outdoor training programs will operate at night.

Solicitor's Draft October 28, 2008

13. There is no proposal for the storage of firearms or ammunition on the Property, except for temporary storage of ammunition by the trainees during their use of the firing range.

14. The Applicant confirmed that there shall be no outside shooting range or any other outdoor firing of firearms or ammunition including blanks on the Property.

15. The portion of the Property located in South Coatesville Borough is not proposed to be developed or disturbed.

16. The Development is proposed to utilize one proposed access road to Doe Run Road (Route 82), a state road.

17. Construction of the access road to the Development requires disturbance of very steep slopes.

18. The Applicant conducted a speed study and sight distance analysis for the proposed access point, and concluded that the proposed access with the clearing of existing plant overgrowth to the right of proposed access and to the front of the proposed access would satisfy PennDOT's acceptable sight distance to the right of the proposed access and to the front of the proposed access.

19. Applicant testified that the grade of Doe Run Road in the vicinity of the proposed access is approximately 7% upslope and 4% downslope.

Solicitor's Draft October 28, 2008

20. Doe Run Road is heavily travelled by large trucks. The ability of these large, heavy vehicles (loaded or not) to stop in the vicinity of the proposed access on a section of roadway with a 7% grade coupled with several horizontal curves will be difficult in dry or wet conditions. Access for the proposed location depicted on the Plans must include a separate southbound left turn lane and a separate northbound right turn lane on Doe Run Road for safety reasons.

21. The data provided to PennDOT by Applicant is insufficient for PennDOT to make a final determination of the necessary improvements needed along Doe Run Road for placement of the access driveway.

22. The proposed access on Doe Run Road shown on the Plan is insufficient to address the Township's safety concerns. The Applicant and the Township agreed to initiate discussions with PennDOT to address safety matters with the proposed access on Doe Run Road.

23. The Applicant testified that it would provide a second, emergency access to the Property from Doe Run Road as a shared unpaved, unimproved access at the existing driveway to the PECO electric transmission substation adjacent to the Property.

24. Applicant proposes an on-lot sewage system for the Development, and agreed to enter into a sewage monitoring agreement with the Township. The Applicant testified that it has conducted some soil test pits in an area identified on the east side of the site adjacent to the

Solicitor's Draft October 28, 2008

electric transmission towers along the property boundary, and found the soil conditions to be conducive for an on-lot sewage system.

25. The Applicant testified that it was unable to locate sufficient groundwater sources on the Property. Therefore, the Applicant proposes to use public water for the Development and is in preliminary discussion with Pennsylvania American Water Company ("PAWC") to determine the requirements to obtain service. The Applicant testified that the availability of public water would be subject to the Applicant agreeing to the costs of a water main extension.

26. All training areas, structures and buildings shall be secured by an eight (8') foot fence and gate.

27. The Applicant testified to complying with PennDOT's and the Township's traffic consultant's comment requiring a note on the Plan stating the largest vehicle type that may utilize the driveway.

28. Applicant agreed to comply with the Fire Marshall's review letter, Exhibit A-13, by placing appropriate signage along Doe Run Road and providing fire access around the perimeter of the academic building.

29. The Applicant testified that the proposed development area on the Property is twelve acres, leaving over seventy percent of the Property, including the most sensitive natural

Solicitor's Draft October 28, 2008

resources, undisturbed. Applicant agreed to permanently restrict the remaining area of the Property that is not developed as open space by a restrictive covenant or conservation easement.

30. Applicant agreed to place over the Property a restriction to the use of the Property by the National Guard or Pennsylvania Guard.

31. Applicant calculates under Section 629 of the Subdivision and Land Development Ordinance that the development of the Property will result in woodland disturbance requiring the need to install 261 three-inch caliper trees and 522 shrubs on the Property.

32. The Applicant testified that the sound associated with drill tower flash bangs on the Property would violate the Township's Noise Ordinance, without implementing any attenuation measures.

33. The Applicant testified that sound associated with firearm discharge within the indoor firing range will violate the Township's Noise Ordinance, even assuming the proposed building location, configuration, the use of at least 8-inch CMU walls and roof, properly sealed doors, and very few acoustical leaks in the building facade . The construction of the indoor firing range partially below grade will partially mitigate the violation.

34. The Applicant testified that sound associated with activities at the liquid fire simulator station would violate the Township's Noise Ordinance, without implementing any attenuation measures.

Solicitor's Draft October 28, 2008

35. The Applicant testified that the addition of earth berms between various sources to the northeast, southeast and southwest property lines would be beneficial from an acoustic point of view and should be considered.

36. The Applicant testified that the use of absorptive surfaces at the indoor firing range, such as acoustical metal deck, fiberglass above the ceiling, absorptive panels protected from ricochets, acoustical man and overhead doors, and sound absorptive barrier walls around the northeast, southeast, and southwest sides of the building, would be very beneficial in minimizing the sound from the range.

37. The Applicant testified that flash bangs are rarely used due to their high cost, and accordingly flash bang acoustic events occur very infrequently.

38. The Applicant testified that the use of an acoustic barrier or earth berm at the liquid fire simulator station to break the line-of-sight would be beneficial.

39. The Applicant testified that a portion of the parking lot or the emergency vehicle driving training course will be used approximately four to six times per year to land helicopters for the purpose of training personnel to practice loading and unloading patients. The helicopter will land, the training will take place on the ground, and the helicopter will depart at the end of the day.

Solicitor's Draft October 28, 2008

40. Training exercises for preparing and loading a patient for helicopter transportation can be accomplished offsite.

41. The Applicant testified that, with the exception of use for landing of helicopters, the emergency vehicle driving training course will be limited to driving only, and will not include the use of emergency sirens. The use of emergency vehicles' sirens, horns, loudspeakers or public announcement systems or emergency lighting systems are not required for training purposes. The only sound emanating from this area will be normal sounds associated with typical large vehicle activity on public streets.

42. No evidence of sound associated with the academic/administration building, ballistic shoot house, burn building, smoke building, outdoor training pavilions, or any other use on the Property other than the indoor firing range, drill tower, liquid fire simulator station, helicopter landings and the emergency vehicle driving training course, was presented.

43. The Applicant testified that during training activities, there will be air emissions associated with the burning of fuels used to generate fire. The fuels that will be used consist of propane, uncontaminated wood pallets and straw.

44. The Applicant testified that the burning would be limited to the open burning of wood pallets and straw in the burn building, and the open burning of propane in the smoke building and the liquid fire simulator station. No other burning is proposed on the Property.

Solicitor's Draft October 28, 2008

45. The Applicant testified that while open burning is banned in East Fallowfield Township under state air basin regulations, open burning is nonetheless allowed for the purpose of instructing personnel in fire fighting.

46. The unregulated open air burning activities pose a threat to the Township's air quality.

47. So long as the conditions and approvals set forth herein are complied with by the Applicant, the proposed use will not substantially injure or detract from the use of the neighboring properties or from the character of the neighborhood, and the use of the properties adjacent to the area included in the proposed plan are adequately safeguarded.

48. So long as the conditions of this Decision are complied with by the Applicant, the proposed development will not have any negative effect on the logical, efficient and economical use of public services and facilities such as public water, sewer, police and fire protection, public schools and the neighboring road system.

III. Conclusions of Law

1. The Board has jurisdiction of this Application for conditional use approval.
2. The Applicant has standing.

Solicitor's Draft October 28, 2008

3. The Property meets the minimum requirements for development under MU District, as required by Sections 1203, 1903 and 1904 of the Zoning Ordinance, so long as the conditions of approval set forth herein are complied with.

4. The Applicant's unauthorized disturbance of Zone 1 and Zone 2 riparian buffer areas to search for groundwater sources, constitutes a violation of the Zoning Ordinance.

5. The Applicant's request for conditional use approval for alteration of Zone 1 and Zone 2 of the riparian buffer is denied. The Zoning Ordinance provides no authority to the Board of Supervisors to grant such conditional use approval.

6. The Applicant has not met its burden to provide evidence of the feasibility of the proposed on-lot sewage disposal system pursuant to Section 1903.A.17 of the Zoning Ordinance, unless additional measures are satisfied.

7. The Applicant has not met its burden to demonstrate adequate water supply pursuant to Sections 1903.A.18 and A.19 of the Zoning Ordinance by showing that the Property can be served by public water, as the provision of an adequate supply of public water is critical considering the incendiary uses proposed on the Property.

8. The Applicant has not met its burden to show that the use will comply with the Township's noise ordinances pursuant to Sections 1903.A.3, A.4 and A.13 of the Zoning Ordinance, absent the incorporation of substantial sound attenuation measures.

9. Since open burning is banned within the Township, reliance by the Applicant on a regulatory exemption for open burning for fire fighting training does not satisfy its burden to show that air emissions from open burning will not adversely affect the public health and safety pursuant to Sections 1903.A.3, A.4 and A.13 of the Zoning Ordinance, unless additional measures are satisfied.

10. The Applicant has not met its burden to demonstrate that the proposed use will provide safe and adequate access to Doe Run Road pursuant to Section 1903.A.8 of the Zoning Ordinance, unless additional design recommendations are implemented.

11. Approval of the Plan, as conditioned hereinbelow, is consistent with the evidence of record, and complies with, or can comply with, the criteria and standards specified in Sections 1202.4.E, 1903 and 1904 of the Zoning Ordinance.

IV. Discussion

This Board has had the opportunity to review the standards applicable to reviewing an application for conditional use approval in many instances in the past. Generally, a conditional use is a form of permitted use. Pennridge Development Enterprises, Inc. v. Volovnik, 624 A.2d 674 (Pa. Cmwlth. 1993). The fact that a use is permitted as a conditional use evidences a legislative decision that the particular type of use is not adverse to the public interest *per se*.

Solicitor's Draft October 28, 2008

Vision Quest National Ltd. v. Board of Supervisors of Honeybrook Township, 524 Pa. 107, 169 A.2d 915 (1990).

An application for conditional use is analogous to a special exception, and the burden of proof standards of Bray v. Zoning Board of Adjustment, 410 A.2d 909 (Pa. Cmwlth. 1980), apply to conditional use proceedings. White Advertising Metro., Inc. v. Zoning Hearing Board of Susquehanna Township, 453 A.2d 29 (Pa. Cmwlth. 1982). Initially, both the burden and the duty fall upon the applicant to affirmatively prove the “specific requirements” of the ordinance. Thereafter, the protestants, if any, have both the duty and the burden of proving “general policy concerns” and that the project will be detrimental to the public health, safety and welfare. Id. In other words, once the applicant has brought itself within the standards of the ordinance, the application must be granted unless the protestants present sufficient evidence that the use will present a substantial risk to the community. Id.; Susquehanna Township Board of Commissioners v. Hardee's Food Systems, Inc., 430 A.2d 367 (Pa. Cmwlth. 1981). The adverse impact upon the public interest must exceed that which might be expected in normal circumstances. Brentwood Borough v. Cooper, 431 A.2d 1177 (Pa. Cmwlth. 1981); Greensburg City Planning Commission v. Threshold, Inc., 315 A.2d 311 (Pa. Cmwlth. 1974).

Under §603(c)(2) of the MPC, 53 P.S. §10603(c)(2), it is clear that the Board of Supervisors, as the governing body of the Township, has the authority to grant conditional uses pursuant to the express standards and criteria set forth in the Zoning Ordinance enacted by the Board to regulate land use pursuant to the police power. It is equally clear that the Board has the authority, pursuant to §603(c)(2) of the MPC to attach such reasonable conditions and

Solicitor's Draft October 28, 2008

safeguards, in allowing a conditional use, in addition to those expressed in the Zoning Ordinance, as it may deem necessary to implement the purposes of the MPC and the Zoning Ordinance. Clinton County Solid Waste Authority v. Wayne Township, 643 A.2d 1162 (Pa. Cmwlth. 1994). Any conditions which the Board imposes must be upheld if the conditions are reasonably related to the health, safety or welfare of the public. Id.

As detailed above, it is the conclusion of the Board that the Applicant has meet its burden with respect to showing compliance of the Plan, with the objective criteria of the Zoning Ordinance. The Board finds that the Application complies with or can comply with, said minimum criteria and standards, and indeed can exceed said conditions and standards, as conditioned below.

V. Order

Therefore, the Board finds and concludes that the Applicant will have met and exceeded the requirements of the Zoning Ordinance if, and only if, the Application is amended and supplemented in accordance with the conditions specified hereinbelow. In granting the Application, the Board has relied upon the testimony, plans and exhibits presented by the Applicant in this proceeding and said testimony, plans, exhibits and documentary evidence are hereby incorporated as additional conditions of approval, the Applicant being strictly bound by all the representations made in the testimony, plans, and exhibits and documentary evidence.

Solicitor's Draft October 28, 2008

The additional conditions described below are imposed and attached subject to the following general principles. Unless a different mechanism is expressly required, compliance with these conditions shall ordinarily be established in the context of the subsequent submissions for preliminary and final subdivision and land development plan approvals. Any aspect of the said plan submissions or any revision thereto materially inconsistent with these conditions will require reapplication to and rehearing by the Board prior to preliminary subdivision and land development approval. Any violation of the conditions during or following construction will be treated as a violation of the financial security or the Zoning Ordinance, as the case shall be, subject to the enforcement mechanisms specified in MPC §§511 and 616-617, 53 P.S. §§10511 and 10616-10617. Improvements, whether public, quasi-public, or common private, required by these conditions shall be depicted in the said plan submissions and their construction secured as required by MPC §509, 53 P.S. §10509.

Most fundamentally, this Decision and Order grant only zoning, conditional use approval in accordance with their express terms. Nothing contained in this Decision and Order shall be construed to abrogate or limit the obligation of the Applicant to submit and to seek approval of suitable preliminary and final plans of subdivision and land development in accordance with the Township's Subdivision and Land Development Ordinance, or strict compliance with all applicable ordinances including without limitation woodland protection standards and the provision of replacement trees for any protected woodlands disturbed (such replacement trees to be in addition to required street trees and foundation plantings used as an amenity on each lot). Except as expressly augmented and clarified by these conditions, review of the said submission for preliminary and final subdivision and land development plan approval shall be in accordance

Solicitor's Draft October 28, 2008

with all of the otherwise applicable standards, specifications, and regulations of the Township and of all other agencies with jurisdiction over the Property, the Development, or any aspect thereof.

The following conditions are imposed and attached pursuant to §603 (c)(2) of the MPC and Section 1902.E. of the Zoning Ordinance. For the purpose of this Decision and Order, and specifically the following conditions, the term "Applicant" shall include the Applicant's successors and assigns in interest with respect to the Property, the Development and the Application:

1. The Applicant agrees to consolidate all of the parcels acquired from PECO into a single parcel for the Development, and to deed restrict the parcel from further subdivision. The Applicant agrees to permanently restrict the remaining area of the Property that is not developed for the training center as open space by a restrictive covenant or conservation easement acceptable to the Township.

2. The Applicant shall provide a minimum of 3,000 square feet within the proposed training center administration/academic building for the occupation and use by the police department serving the residents of East Fallowfield Township. The area shall be finished to office specifications as reasonably approved by the Township. The area shall be subject to a lease agreement with a minimum of 99 years, at no cost or expense to East Fallowfield Township, including the provision of all utility services and the provision of adequate nearby parking for the department. The location, layout and design of the leasehold area shall be to the satisfaction of

Solicitor's Draft October 28, 2008

the Board of Supervisors. The leasehold area shall be available for occupancy by the police department at the time of the initial occupancy of the building, or within 24 months of the approval by the Township of the final land development plans. In the event the administration/academic building is not available within said time period, the Applicant may provide the same finished space in a different or free standing building, subject to the reasonable approval of the Township.

3. No outdoor shooting or firing range shall be permitted within East Fallowfield Township. No outdoor discharge of any firearm except the firing of blanks for the purpose of training canines shall be permitted on the Property, provided that the training of canines with blanks shall be limited to weekdays between 11:00 am and 3:00 pm.

4. The CEO of the Public Safety Training Foundation shall be the liaison between the County and East Fallowfield Township for any issues arising from the construction of the training center and the Chester County Director of Emergency Services shall be the liaison between the County and East Fallowfield Township for any issues arising from the operation of the training facility.

5. The Property may be used for helicopter landings for no more than six (6) days per calendar year only between the hours of 9:00 am and 5:00 pm.

6. With the exception of the administration/academic building, all developed areas shall be secured with appropriate fencing material.

Solicitor's Draft October 28, 2008

7. The indoor firing range shall be located such that the north wall and the east wall of the structure is below grade and designed and constructed with sufficient sound absorbing material so as to comply with the standards for noise set forth in the East Fallowfield Township Zoning Ordinance at all times. At a minimum, the Applicant shall implement all sound attenuation measures for the indoor firing range, the drill tower, the liquid fire simulator station, and the ballistic shoothouse including the incorporation of earth berms, as testified to by the Applicant, to the satisfaction of the Township.

8. No sirens, horns (with the exception of air horns used as a warning device to those training in the burn building, smoke house and drill tower), loudspeakers or public announcement systems or emergency lighting systems shall be allowed to be used by vehicles on the Property, except in the case of any actual emergency situation.

9. No outdoor activities shall be permitted on the Property between the hours of 9:00 pm and 9:00 am daily.

10. No training activities that generate noise exceeding the standards for noise set forth in the East Fallowfield Township Zoning Ordinance applicable to weekend periods shall be permitted on the Property on federally recognized holidays.

11. The use of flash bangs on the Property shall be permitted once a week on a weekday only between the hours of 11:00 am and 3:00 pm.

Solicitor's Draft October 28, 2008

12. In order to secure a permanent buffer to the south of the Property, the Applicant shall provide non-monetary assistance to encourage Chester County through the County's Open Space Preservation Program and/or Agricultural Lands Preservation Program, to permanently preserve the farm located adjacent to the south side of the Property as open space and/or farm land.

13. The Applicant's tree replacement obligations shall be satisfied by a monetary contribution to the Township or replacement plantings in accordance with Township ordinances. The specific amount of the contribution based upon a detailed review of the trees to be removed satisfactory to the Township shall be confirmed by the Township Engineer during the land development process. The review shall include the trees removed during unauthorized earthmoving activities resulting from the Applicant's placement of test wells either by the replacement of disturbed trees in accordance with Township ordinances, or satisfied by a monetary contribution to the Township.

14. At the end of daily operations or the use of the indoor firing range and the ballistic shoothouse, all ammunition shall be removed from the Property, with the exception of ammunition stored within the onsite "ammo magazine" being a separate, secured building dedicated to ammunition storage as depicted on Exhibit A-3, and the Township Police Department. The only ammunition that will be stored in the ammo magazine is ammunition that

Solicitor's Draft October 28, 2008

is compatible with the modern environmental (green) standard established for the indoor firing range and the ballistic shoothouse.

15. The Applicant shall design and implement a noise mitigation plan for the indoor firing range, the liquid fire simulation station, ballistic shoothouse, and all other indoor or outdoor activities on the Property, in order to demonstrate compliance with the applicable noise ordinances as determined by the Board of Supervisors.

16. The Property shall be served by public water of sufficient quantity and pressure to the satisfaction of the Township Fire Marshall in accordance with the International Fire Code. Public water shall be available for use on the Property prior to the first training activities.

17. The feasibility of the proposed on-site sewage system shall be demonstrated during the preliminary land development process. The Applicant shall execute and provide to the Township a recordable, on-site sewage monitoring agreement with the Township, to the satisfaction of the Board of Supervisors.

18. The Applicant shall revise the Plan to include a note stating the largest vehicle type that shall utilize the Property's driveway.

19. The Applicant shall revise the Plan to allow fire access around the perimeter of the academic building, to the satisfaction of the Fire Marshall.

Solicitor's Draft October 28, 2008

20. The Applicant shall provide a secondary emergency access to the Property from Doe Run Road (Route 82) at the existing PECO substation access driveway. The Applicant shall initiate discussions with PennDOT and the Township Engineer to address the Township's safety concerns with the proposed main drive access and secondary emergency access on Doe Run Road (Route 82). At a minimum, the Applicant shall (1) remove vegetation to the south and on the western side of Doe Run Road, and establish a sight line easement from the property owner; (2) include a separate, southbound left turn lane on Doe Run Road; and (3) include a separate northbound right turn lane on Doe Run Road. If the Applicant cannot provide for safe and adequate access to Doe Run Road at its proposed location, alternative access scenarios shall be investigated including (1) providing access to Newlinville Road and (2) shared access with PECO at PECO's proposed driveway location on Doe Run Road. It is understood that the improvements to Doe Run Road are subject to PennDOT approval and that PennDOT may require or permit road improvements different from those set forth herein.

29. When the training center is operational, the Applicant shall provide such traffic management services as may be reasonably requested by the Township in order to mitigate any traffic conditions adversely impacting Doe Run Road as a result of traffic to or from the training center.

30. Air emissions from the Property shall be limited to the burning of propane, uncontaminated wood pallets and straw, as testified by the Applicant. No other burning shall be permitted. The Applicant shall prepare an air quality monitoring and sampling plan addressing all potential air emissions resulting from activities on the Property. The plan will establish baseline

Solicitor's Draft October 28, 2008

readings for all measurements based on pre-construction conditions. The plan shall provide for ambient air monitoring either on a fixed schedule or continuous basis, during a minimum period of the first full year of operation of each and every activity causing air emissions in order to confirm compliance with the Township's ordinances. The plan shall be acceptable to a qualified air quality consultant chosen by the Township. The Applicant shall provide to the Township quarterly air quality test results for review by Township's consultant during the period of air quality monitoring. If determined by the Township's consultant that the air emissions resulting from open air burning activities on the Property fail to fully comply with the Township's ordinances, the Applicant will cease and desist all open burning activities until the Applicant initiates an approved mitigation plan, to the satisfaction of the Township's consultant.

31. The Applicant shall prepare and implement an emergency preparedness and response plan that addresses an accident or other activity or incident on the Property including but not limited to spills from vehicles operating on the Property, that may result in a toxic substance or another substance creating a danger of pollution, damage to property or injury to a person.

32. Nothing contained in this Decision and Order shall be construed to abrogate or limit the obligation of the Applicant to seek and obtain sewage planning module approval under Act 537, building permits or any other necessary permits or approvals for construction on the Property.

Solicitor's Draft October 28, 2008

33. Within thirty (30) days of the date of receipt of invoices from the Township, the Applicant shall reimburse all of the Township's reasonable expenses for the review of this application, including but not limited to legal and professional consultant fees, and thereafter, the Applicant shall reimburse all of the Township's expenses for the implementation of these conditions of approval, within thirty (30) days of invoicing.

34. The Applicant shall execute and provide to the Township a recordable, notarized copy of a memorandum containing a metes and bounds description of the property in question and stipulating the terms and conditions of this approval and shall consent to the recording by the Township in the office of the Recorder of Deeds of Chester County following expiration of the appeal period, within thirty (30) days after the Applicant becomes the record owner of the property.

35. This approval shall be deemed null and void twenty-four (24) months from the date hereof unless construction has heretofore been commenced or unless, prior to the expiration of the twenty-four-month period, the Board of Supervisors shall grant an extension for cause shown by the Applicant.

36. The Applicant shall express to the Board in writing within fourteen (14) days of the date of this Decision and Order, its agreement to the above conditions or the Application is denied; the Board expressly finding and concluding that the Application in the absence of compliance with the said conditions is inconsistent with the objective criteria set forth in the applicable provisions of the Zoning Ordinance.

Solicitor's Draft October 28, 2008

ADOPTED and ORDERED this ____ day of _____, **2008**.

**BOARD OF SUPERVISORS
EAST FALLOWFIELD TOWNSHIP**

George Broadbent, Chairman

Chris Makely, Vice Chairman

Garth Monaghan, Member

ATTEST:

Denise Miller, Secretary