

CITY OF BETHLEHEM

Department of Community and Economic Development Interoffice Memo

TO: J. William Reynolds, City Council President
FROM: Darlene L. Heller, Director of Planning and Zoning
RE: Saucon Square Land Development Time Extension Request

Wagner Enterprises, LTD is requesting an extension of time for construction of the Land Development approval of the Saucon Square Land Development project on Fire Lane. This project, consisting of 28 multi-family dwelling units, was originally approved by the Planning Commission on July 25, 2005. At that time, the project was located in the RG (Medium Density Residential) Zoning District. The property was subsequently rezoned to RR (Rural Residential) which does not permit multi-family dwelling units. The development received a time extension in April of 2010 to construct the project. The PA legislature subsequently approved Act 46 of 2010 and Act 87 of 2012 which automatically extended municipal approvals until July 2, 2016. Therefore, the approval to construct the 28 units now expires on July 2, 2016.

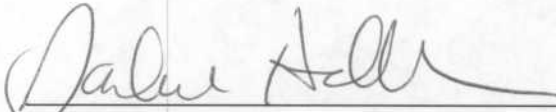
Attached for your review and information are the June 3, 2016 memo from the Planning Bureau recommending the time extension request for the Saucon Square development be extended to December 31, 2016, the June 2, 2016 request from Wagner Enterprises, Ltd for an extension of the Land Development approval time to develop the project, and the May 31, 2016 Memorandum in Support of Extension of Approvals for Saucon Square.

At their June 9, 2016 meeting, the Planning Commission members voted 4 – 0 to forward a recommendation to City Council to approve the extension request.

Please place this on your June 21, 2016 City Council agenda for final consideration. Let us know if you have any questions or would like to discuss any of the attached information.

CC: City Council members
Mayor Donchez
W. Leeson
A. Karner
T. Samuelson
Julie Wagner Burkart, Esq.

DATE: June 14, 2016



Darlene L. Heller,
Director of Planning and Zoning

RESOLUTION NO. _____

Approval of Extension Period Protecting
Developer From Changes in Zoning Ordinance

BE IT RESOLVED by the Council of the City of Bethlehem as follows:

1. In plans dated May 9, 2003, Wagner Enterprises, Ltd. proposed a residential land development under which 28 multifamily dwellings would be erected and used along Fire Lane within the City of Bethlehem.

2. During the administrative review process for such plan, City Council, by Ordinance 4276 enacted on October 5, 2004, curtailed the right to initiate multifamily dwelling uses in various portions of the City, including the property comprising the above-referenced plan.

3. Under the Pennsylvania Municipalities Planning Code, zoning ordinance amendments may not be applied to adversely affect a previously-filed land development plan for a period of five (5) years from the date of plan approval in the event such plan is approved. 53 P.S. § 10508(4)(i)-(ii).

4. By letter dated August 22, 2005, the City Planning Commission approved the Preliminary/Final Plan of Saucon Square to install 28 multifamily dwellings along Fire Lane within the City of Bethlehem.

5. The five (5) year protection period against ordinance changes was extended by the Pennsylvania Development Permit Extension Act through July 2, 2016. 53 P.S. § 11703.1 et seq.

6. By letter dated June 2, 2016, Wagner Enterprises, Ltd., developer of the Saucon Square project, seeks an extension of the protection period through December 31, 2016 pursuant to 53 P.S. § 10508(4)(iv) from the governing body which passed the ordinance change.¹

¹ In the opinion of the solicitor, the delegation by City Council of land development and subdivision approval to the Planning Commission in section 1341.04 is considered narrow and does not include the power to suspend effective dates of new zoning ordinances relative to approved projects.

7. Upon the June 9, 2016 recommendation of the City Planning Commission, City Council does hereby approve the request of Wagner Enterprises, Ltd., developer of the Saucon Square project, for an extension of time through December 31, 2016 in which to apply for, and thereafter obtain, the requisite approvals to construct and initiate its multi-family dwelling uses in the subject zoning district.

8. The Mayor, Planning Commission, and Director of Planning and Zoning, and/or such other City officials as deemed appropriate by the City Solicitor, are hereby authorized to execute such document(s) as are deemed by the City Solicitor to implement this Resolution.

Sponsored by _____

ADOPTED by Council this _____ day of _____, 20__.

President of Council

ATTEST:

City Clerk

CITY OF BETHLEHEM

Department of Community and Economic Development Interoffice Memo

To: Planning Commission

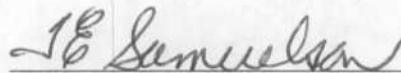
From: Tracy E. Samuelson, Planning and Zoning Bureau

Re: 04-010(LD) Saucon Square Land Development Plan Time Extension Request
Fire Lane

Date: June 3, 2016

Wagner Enterprises is requesting a time extension to begin construction of the 28 unit multi-family development through December 31, 2016. They have already constructed a sanitary sewer line across Saucon Creek. A storm sewer line in conjunction with the Three Party Agreement between Mountain Park Condominiums, Parkview Commons, and Saucon Square has also been installed along Fire Lane. Approximately 15% of all improvements have been completed.

This project approval expires July 2, 2016, but since this project has commenced and the expected completion date is by the end of this year, the Planning Bureau recommends that the extension of time be approved.



Tracy E. Samuelson
Assistant Director of Planning and Zoning

WAGNER ENTERPRISES, LTD

484-866-8969
j.a.wagner@wagnerfarms.com

P.O. Box 3154
Easton, Pennsylvania
18043-3154

June 2, 2016

Mrs. Darlene Heller, Director
City of Bethlehem
Planning Department
10 East Church Street
Bethlehem, Pennsylvania 18018

Dear Darlene,

As per my recent correspondences to your attention, Wagner Enterprises, Ltd. is prepared to request an extension of the Land Development approval it has to develop the Saucon Square Land Development project, Fire Lane, Bethlehem, PA. We would like to receive the Planning Commission's recommendation regarding this matter in advance of submitted to City Counsel for action.

Please see a summary of the relevant events in a Memorandum in Support of the Approval Extension Request attached hereto for your reference. I am willing to provide any and all additional information pertaining to the project or in support of the need for this extension.

As I stated in earlier correspondences, we wish to only receive an extension through this calendar year, expiring on December 31, 2016. We have already begun certain site improvement installations, but will need to finalizing financing for the balance of the improvements to commence.

I greatly appreciate your time and consideration and hope to speak with you further about this matter. Feel free to call me at (610) 972-8624 or by email j.a.wagner@wagnerfarms.com, if you wish to speak with me.

Sincerely yours,

Julie Wagner Burkart

General Counsel

cc: City Solicitor, Edmund J. Healy

Date: May 31, 2016

To: City of Bethlehem Solicitor's Office
Department of Planning

From: Julie Wagner Burkart
General Counsel
Wagner Enterprises, Ltd.

Re: Saucon Square Revised Preliminary/Final Land Development Plan
West Side of Fire Lane
Plans dated May 9, 2003; Last Revised May 1, 2014

MEMORANDUM IN SUPPORT OF EXTENSION OF APPROVALS FOR SAUCON SQUARE

LAW GOVERNING MUNICIPAL APPROVALS

By letter dated August 22, 2005, the Planning Commission issued a written decision approving the Preliminary/Final Land Development Plan for Saucon Square, City of Bethlehem, Northampton County, PA.

Pennsylvania municipal law provides that the plan is protected from the application of any change in applicable ordinances for a period of five (5) years from that date. Section 508(4)(ii) of the Municipalities Planning Code obligates a developer to "substantially complete" the required improvements depicted on the final plan within that five (5) years or any extension thereof as may be granted by the governing body. Thus, the MPC anticipates that extensions to the period may be granted by a municipality.

The Pennsylvania legislature signed into law Act 46 of 2010 which provided an automatic extension for municipal approvals until July 2, 2013, in response to the negative impacts of that economy on real estate development. That extension period was further extended to July 2, 2016 by Act 87 of 2012 (SB 1263).

To clarify the effect of the automatic permit extension statutes, Governor Wolf put forth Act 31 of 2015, which "suspended" the approval period provided in the MPC through the extension period provided by the extension statutes of July 2, 2016. Therefore, the Saucon Square approval period would expire on August 22, 2016, without further action by the governing body.

PLAN HISTORY

NPDES Permit

After municipal approval was obtained in 2005, the original NPDES Permit was issued by the Northeast Regional Office of the Pennsylvania Department of Environmental Protection on February 5, 2007, PAI024804042. This permit was not subject to the automatic extensions afforded by the Permit Extension statutes. Therefore, we were required to apply for a new NPDES Permit in 2012 to keep the project viable. We diligently pursued the new NPDES Permit to keep the project ready for development, despite that the extension period was far from expiration.

The new permit application process exposed the project to more stringent requirements pertaining to the riparian buffer and the Land Development Plan needed to be revised accordingly. The process of revision and review took two years, resulting in a Revised Land Development Plan dated May 1, 2014. The City of Bethlehem reviewed the Revised Land Development Plan and documented its approval of the revisions by letter dated June 16, 2014.

A new NPDES Permit was finally approved by the Pennsylvania Department of Environmental Protection on August 11, 2015, PAI024814014. New improvement cost estimates were submitted by the project engineer, Base Engineering, Inc. The Development Agreements by and between the developer and the City of Bethlehem were revised to reflect the revised improvements and the cost estimates for those improvements.

Act 105 Stream Crossing Permit

A sanitary sewer line was required to be installed across Saucon Creek which required a permit through the Department of Environmental Protection. This permit was obtained and the work completed. Permit E48-364.

Improvements shared with Mountain Park Condominiums

We entered into that certain Three-Party Agreement dated July 26, 2007 and recorded October 1, 2007, with the City of Bethlehem and Fretz Simmonds, the developers of the Mountain Park Condominium project. The agreement called for certain shared improvements between the neighboring developments. The improvements associated therewith have all been completed.

Miscellaneous

The property was cleared and buildings demolished to maintain a safe, buildable property. All debris was removed.

ARGUMENT IN FAVOR OF EXTENDING

Wagner Enterprises, Ltd. is willing to build the project as designed and depicted on the May 2014 plans. Significant dollars and effort went into updating the DEP approvals for this plan and new cost estimates were required in order to shop for financing for the project. The developer did not simply vanish for the past several years. The developer was in regular contact with the City Planning Department during the course of the revisions and updates to the plan.

The Developer is not seeking an open-ended extension. The Developer is merely seeking an extension until the end of this calendar year to enable it time to finalize the financing and resume installation of the site improvements. Again, a portion of the site improvements have already been installed. Lastly, the Developer is willing to post security for the site improvements as well.