ORDINANCE NO. 138

AN ORDINANCE OF THE TOWNSHIP OF LOWER MILFORD AMENDING THE ZONING ORDINANCE BY REPEALING AND REPLACING ORDINANCE NO. 134 WITH AMENDMENTS THAT CLARIFY THE DELETION OF THE TERM NON-NUISANCE INDUSTRY, CLARIFY THE INTENT OF THE EXPANDED DEVELOPMENT OVERLAY DISTRICT, AMEND THE APPLICABILITY OF NATURAL RESOURCE PROTECTION STANDARDS TO LOT LINE ADJUSTMENTS THAT DO NOT PROPOSE ANY DEVELOPMENT, CORRECT USE A.9 *COMMON DOMESTIC FARM ANIMALS AS PETS*, AND REVISE CERTAIN REQUIREMENTS FOR THE MEDICAL MARIJUANA GROWER/PROCESSOR USE AND THE MEDICAL MARIJUANA DISPENSARY USE; BY AMENDING THE TOWNSHIP ZONING MAP TO APPLY THE EXPANDED DEVELOPMENT OVERLAY DISTRICT OVER CERTAIN TRACTS OF GROUND LOCATED ON PROPERTY IN THE TOWNSHIP IN ADDITION TO THEIR EXISTING ZONING CLASSIFICATIONS; AND BY AMENDING CERTAIN OTHER PROVISIONS TO REQUIRE SUBMISSION OF AN EROSION AND SEDIMENTATION CONTROL PLAN TO THE TOWNSHIP FOR TIMBER HARVESTING OPERATIONS, TO REMOVE THE REQUIREMENT FOR A LETTER OF ADEQUACY FROM THE LEHIGH COUNTY CONSERVATION DISTRICT FOR TIMBER HARVESTING OPERATIONS, AND TO ALLOW FOR WINERIES ON PARCELS UNDER 5 ACRES THAT DEMONSTRATE YEARLY GROSS INCOME OF AT LEAST $10,000.

WHEREAS, The Township of Lower Milford, hereafter Township, enacted a Zoning Ordinance, Ordinance No. 114, on July 20, 2009; and

WHEREAS, The Board of Supervisors amended Zoning Ordinance No. 114 on April 20, 2016 by Ordinance No. 127; and

WHEREAS, the Township amended Zoning Ordinance No. 114 again on September 19, 2019 by Ordinance No. 134 to, inter alia, create an Expanded Development Overlay District with use regulations, and to add a Medical Marijuana Grower/Processor Use and a Medical Marijuana Distributor Use to certain zoning districts within the Township, along with associated definitions and use requirements; and

WHEREAS, The Township now desires to further amend the Zoning Ordinance by repealing and replacing Ordinance No. 134 to correct typographical errors, to revise the intent language for the Expanded Development Overlay District to ensure that it is clear that this overlay district is only intended to allow lawful uses that must be permitted by the Pennsylvania Municipalities Planning Code but which are not otherwise permitted by the Township ordinances or the Southwestern Lehigh County Comprehensive Plan, to modify certain requirements applicable to the Medical Marijuana Grower/Processor Use and the Medical Marijuana Distributor Use to better align with the requirements of the Pennsylvania Medical Marijuana Act, 35 P.S. § 10231.101 et seq,; and

WHEREAS, the Township also desires to amend the Township Zoning Map by applying the Expanded Development Overlay District to certain tracts of ground located on property in the Township in addition to their existing zoning classifications; and

WHEREAS, the Township also desires to amend certain other zoning provisions by amending the applicability of natural resource protection standards to lot line adjustments that do not propose any development, to require the submission of an erosion and sedimentation control plan to the township for timber harvesting operations, to remove the requirement for a letter of adequacy from the lehigh county conservation district for timber harvesting operations, and to allow for wineries on parcels under 5 acres in size that demonstrate yearly gross income of at least $10,000, in accordance with the section 952 of the Agricultural Area Security Law, 3 P.S. § 952.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED that the Zoning Ordinance of Lower Milford Township and the Zoning Map attached thereto are to be amended as follows.

SECTION 1. Ordinance No. 134, adopted by the Board of Supervisors on September 19, 2019 and which became effective five (5) days thereafter, is hereby **REPEALED** and **REPLACED** with the following:

ARTICLE II

Section 201 *Definition of Terms* is amended by deleting the following definition:

INDUSTRY, NON-NUISANCE – Any industry which is not detrimental to the environment of which it is located by reason of emission or smoke, noise, odor, dust, vibration or excessive light, beyond the limits of its lot, or by reason of generating excessive traffic with attendant hazards. Non-nuisance industry may include contracting uses such as offices and supply shops for uses related to building supplies, cement, electric, heating, plumbing, masonry, painting, roofing and similar trades.

Section 201 *Definition of Terms* is amended by adding the following new terms and definitions:

MEDICAL MARIJUANA – Marijuana for certified medical use as legally permitted by the Commonwealth of Pennsylvania pursuant to the Medical Marijuana Act.

MEDICAL MARIJUANA ACT – Act 16 of 2016, 35 P.S. §§ 10231.101--10231.2110, as amended.

MEDICAL MARIJUANA DISPENSARY – A person, including a natural person, corporation, partnership, association, trust, or other entity, or any combination thereof, which is registered by the Department of Health under the Medical Marijuana Act to dispense medical marijuana. The term does not include a Health Care Medical Marijuana Organization under Chapter 19 of the Medical Marijuana Act.

MEDICAL MARIJUANA GROWER/PROCESSOR – A person, including a natural person, corporation, partnership, association, trust, or other entity, or any combination thereof, which is registered by the Department of Health under the Medical Marijuana Act to grow and process medical marijuana. The term does not include a Health Care Medical Marijuana Organization under Chapter 19 of the Medical Marijuana Act.

ARTICLE III *AC - AGRICULTURAL CONSERVATION DISTRICT*

Section 301 *Use Regulations*, subsection (A) Uses permitted by right, is hereby amended by deleting the following subsection:

1.k. Home related business, or rural occupation.

Section 301 *Use Regulations*, subsection (B) *Uses permitted by special exception*, is hereby amended by deleting the following subsection:

9. Non-nuisance industry or secondary farm family business.

Section 301 *Use Regulations*, subsection (B) *Uses permitted by special exception*, is hereby amended by inserting the following subsection:

13. Home related business, or rural occupation.

ARTICLE IV *RC - RESOURCE CONSERVATION DISTRICT*

Section 401 *Use Regulations*, subsection (A) *Uses permitted by right*, is hereby amended by deleting the following subsection:

1.g. Home related business, or rural occupation.

Section 401 *Use Regulations,* subsection (B) *Uses permitted by special exception*, is hereby amended by deleting the following subsection:

9. Non-nuisance industry.

Section 401 *Use Regulations*, subsection (B) *Uses permitted by special exception*, is hereby amended by inserting the following subsection:

15. Home related business, or rural occupation.

ARTICLE V *RR – 1 – RURAL RESIDENTIAL-1 DISTRICT*

Section 501 *Use Regulations*, subsection (A) *Uses permitted by right*, is hereby amended by deleting the following subsection:

7. Home related business.

Section 501 *Use Regulations*, subsection (B) *Uses permitted by special exception*, is hereby amended by deleting the following subsection:

4. Non-nuisance industry.

Section 501 *Use Regulations*, subsection (B) *Uses permitted by special exception*, is hereby amended by adding the following subsection:

8. Home related business.

Section 501 *Use Regulations*, subsection (C) *Uses permitted as conditional use*, is hereby amended by adding the following subsection immediately following subsection (5):

6. Medical marijuana grower/processor, as detailed in § 1200(A)(16).

ARTICLE VI ***RR – 2 – RURAL RESIDENTIAL-2 DISTRICT***

Section 601 *Use Regulations*, subsection (A) *Uses permitted by right*, is hereby amended by deleting the following subsection:

7. Home related business.

Section 601 *Use Regulations*, subsection (B) *Uses permitted by special exception*, is hereby amended by deleting the following subsection:

4. Non-nuisance industry.

Section 601 *Use Regulations*, subsection (B) *Uses permitted by special exception*, is hereby amended by adding the following subsection:

8. Home related business.

Section 601 *Use Regulations*, subsection (C) *Uses permitted as conditional use*, is hereby amended by adding the following subsection immediately following subsection (7):

8. Medical marijuana grower/processor, as detailed in § 1200(A)(16).

ARTICLE VII ***VILLAGE CENTER DISTRICT***

Section 701 *Use Regulations*, subsection (A) *Uses permitted by right*, is hereby amended by deleting the following subsection:

19. Home related business.

Section 701 *Use Regulations*, subsection (B) *Uses permitted by special exception*, is hereby amended by adding the following subsection:

11. Home related business.

Section 701 *Use Regulations*, subsection (C) *Uses permitted as conditional use*, is hereby amended by adding the following subsection immediately following subsection (15):

16. Medical marijuana dispensary, as detailed in § 1200(A)(17).

ARTICLE VII-A ***EXPANDED DEVELOPMENT OVERLAY DISTRICT*** is hereby added immediately following Article VII

Section 700-A *Intent*

This Section is intended to provide land for any lawful use that is required to be permitted by Pennsylvania Municipalities Planning Code ("MPC"), 53 P.S. § 10101 *et seq.*, but which is not otherwise permitted in another district of the Township or in the Southwestern Lehigh County Comprehensive Plan which is a regional plan for Lower Milford Township and five (5) additional municipalities. Lower Milford Township has entered into an Intergovernmental Cooperation Agreement for implementing the Southwestern Lehigh County Comprehensive Plan, which provides for the sharing of those land uses identified in the Plan among the participating municipalities. The existence of this overlay district is not intended to alter the agreed upon allocation of uses between these municipalities, and is only intended to provide for a use not specifically provided for or enumerated in the Township ordinances or in the Southwestern Lehigh County Comprehensive Plan.

Section 701-A *Use Regulations*

All lawful uses not otherwise permitted within any district of the Township or in the Southwestern Lehigh County Comprehensive Plan shall be permitted by conditional use in this district, and shall comply with the requirements of Article XV *Conditional Uses* and be subject to the following additional regulations:

1. The use must comply with the front, rear and side yards, minimum lot area, maximum building height and impervious surface area requirements of the underlying zoning district. All Natural Resource Protection Standards, Historic Resource Preservation and General Regulations and Design Standards contained in the Zoning Ordinance also apply.

2. The applicant must demonstrate that the use proposed will comply with all permit requirements of the Pennsylvania Department of Environmental Protection or any other Commonwealth or Federal Governmental Agency that regulates such use.

3. A buffer area shall be established in accordance with the conditions imposed upon the granting of conditional use approval that is sufficient to adequately screen the lawful permitted use from other uses in the vicinity. The buffer area shall be of sufficient width to protect the surrounding area from any objectionable effects of the proposed use including, but not limited to, noise, dust, vibration, odor, illumination, visual effects and the like.

ARTICLE XII *SUPPLEMENTARY REGULATIONS*

Section 1200 *Regulations Applying to Certain Uses and Districts* subsection A.9 *Common Domestic Farm Animals as Pets*, subsection a, is repealed and replaced with the following:

a. Small Common domestic farm animals such as poultry, rabbits or other small non-nuisance animals (excluding mink and garbage fed pigs) may be kept as domestic pets on residential properties in all districts. Roosters are permitted in all districts except residential properties under three (3) acres in the RR-2 or VC Districts. Unless the parcel is over 3 acres, the number of small animals shall not exceed twelve (12) aggregate. Coops

or shelters must be located in rear yards and meet a minimum of twenty-five (25) foot setback from both side and rear property lines.

Section 1200 *Regulations Applying to Certain Uses and Districts*, is hereby amended by adding the following subsection immediately following subsection (15):

16. <u>Medical Marijuana Grower/Processor</u>

a. A medical marijuana grower/processor shall provide proof of registration with the Department of Health or proof that registration has been sought and is pending approval; and shall at all times maintain a valid, accurate, and up-to-date registration with the Department of Health. Should registration be denied or revoked at any time, any approval or permit issued by the Township shall immediately become void.

b. A medical marijuana grower/processor shall at all times operate in compliance with all Department of Health regulations pertaining to such facilities.

c. A medical marijuana grower/processor shall comply with the area, bulk, and development regulations as set forth in § 502(C) and § 602(C) respectively depending upon the district in which the facility is to be located.

d. The maximum floor area of a medical marijuana grower/processor shall be limited to 3,000 square feet, of which sufficient space must be set aside for secure storage of marijuana seeds, related finished product, and marijuana related materials used in production or for required laboratory testing.

e. A building or structure used as part of a medical marijuana grower/processor operation shall not be located within 400 feet (measured by a straight line in all directions without regard to intervening structures or objects) from the nearest point on the property line of a parcel containing a public, private, or parochial school, day-care center, place of worship, public park, or community center. A minimum setback of 50 feet shall be required for all such buildings or structures. A medical marijuana grower/processor shall not be located closer than 500 feet (measured by a straight line in all directions without regard to intervening structures or objects) from the nearest point on the property line of a parcel containing another medical marijuana grower/processor or medical marijuana dispensary.

f. A medical marijuana grower/processor must operate entirely within an indoor, enclosed, and secure facility that includes electronic locking systems, electronic surveillance and other features required by the Department of Health. The facility shall not be located in a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle or other motor vehicle.

g. A medical marijuana grower/processor may not operate on the same site as a medical marijuana dispensary.

h. All external lighting serving a medical marijuana grower/processor must be shielded in such a manner to not allow light to be emitted skyward or onto adjoining properties, in addition to other applicable Zoning and Code requirements.

i. There shall be no emission of dust, fumes, vapors or odors that can be seen, smelled, or otherwise perceived from beyond the lot line of the property where the medical marijuana grower/processor is operating.

j. No one under the age of eighteen (18) shall be permitted in a medical marijuana grower/processor facility.

k. A medical marijuana grower/processor shall provide only wholesale products to other medical marijuana facilities. Retail sales and dispensing of medical marijuana and related products are prohibited at medical marijuana grower/processor facilities.

l. No use of medical marijuana shall be permitted on the premises of a medical marijuana grower/processor.

m. A medical marijuana grower/processor shall provide one (1) off-street parking space per 500 square feet of gross floor area or per employee on the largest shift, whichever is larger.

n. A landscaped buffer shall be placed and maintained along all side or rear property lines that abut a residential or institutional district or a residential or institutional use. The buffer shall consist of a thirty-five (35) foot wide planting area, containing hedges, evergreens, shrubbery, or suitable vegetation of sufficient planted density to produce a total visual screening consistent with the topography. Wherever possible, existing natural screening such as vegetation and topography shall be retained.

1) All evergreen vegetation to be installed shall not be less than six (6) feet in height at the time of planting and shall be of such species that the expected height at maturity shall not be less than fifteen (15) feet.

2) All deciduous material to be installed shall not be less than eight (8) feet in height or two-inch caliper.

o. Entrances and driveways to a medical marijuana grower/processor must be designed to accommodate the anticipated vehicles used to service the facility.

p. Loading and off-loading areas inside of the facility are preferred. If an external loading dock arrangement is designed, it must be within a secure area.

q. Marijuana remnants and byproducts shall be secured and properly disposed of in accordance with the Department of Health's regulations and shall not be placed within any unsecure exterior refuse containers.

r. A medical marijuana grower/processor shall submit a site plan for approval by the Township Engineer and a floor plan for approval by the Township Zoning or Building Code Official with regard to their respective compliance with applicable Township ordinances. The floor plan shall identify internal security measures.

17. <u>Medical Marijuana Dispensary</u>

a. A medical marijuana dispensary shall provide proof of registration with the Department of Health or proof that registration has been sought and is pending approval; and shall at all times maintain a valid, accurate, and up-to-date registration with the Department of Health. Should registration be denied or revoked at any time, any approval or permit immediately shall become void.

b. A medical marijuana dispensary shall at all times operate in compliance with all Department of Health regulations pertaining to such facilities.

c. A medical marijuana dispensary shall comply with the area, bulk and development regulations as set forth in § 702.

d. A medical marijuana dispensary shall not be operated or maintained on a parcel within 1,000 feet (measured by a straight line in all directions without regard to intervening structures or objects) from the nearest point on the property line of a public, private, or parochial school or day-care center. Nor shall a medical marijuana dispensary be located closer than 500 feet from another medical marijuana grower/processor or medical marijuana dispensary.

e. A medical marijuana dispensary must operate entirely within an indoor, enclosed, and secure facility that includes electronic locking systems, electronic surveillance, and other features required by the Department of Health. The facility shall not be located in a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle or other motor vehicle.

f. A medical marijuana dispensary may not operate on the same site as a medical marijuana grower/processor.

g. All external lighting serving a medical marijuana dispensary must be shielded in such a manner to not allow light to be emitted skyward or onto adjoining properties, in addition to other applicable Zoning and Building Code requirements.

h. There shall be no emission of dust, fumes, vapors or odors that can be seen, smelled, or otherwise perceived from beyond the lot line of the property on which the medical marijuana dispensary is operating.

i. No one under the age of eighteen (18) shall be permitted in a medical marijuana dispensary, unless accompanied by a caregiver as required by section 506 of the Medical Marijuana Act.

j. Medical marijuana dispensaries shall have a single secure public entrance and shall implement appropriate security measures to deter and prevent the theft of marijuana and unauthorized entrance into areas containing medical marijuana

k. A medical marijuana dispensary shall satisfy the parking requirements set forth in section 1301(D)(3) of the Zoning Ordinance for a "Retail store, service, or shop not covered elsewhere."

l. Marijuana remnants and byproducts shall be secured and properly disposed of in accordance with the Department of Health's regulations and shall not be placed within any unsecure exterior refuse containers.

m. A medical marijuana dispensary shall submit a site plan for approval by the Township Engineer and a floor plan for approval by the Township Zoning Officer or Building Code Official with regard to their respective compliance with applicable Township ordinances. The floor plan shall identify internal security measures.

Section 1200 *Regulations Applying to Certain Uses and Districts*, is hereby amended as follows:

26. **Rural Occupations**

c. *"The maximum building coverage for the lot shall not be exceeded."* is hereby deleted, and replaced with:

"Access to property must be on a through street; no access from a cul-de-sac or dead-end street is permitted."

SECTION 2. The Lower Milford Township Zoning Map is hereby AMENDED by making the properties described below subject to the Expanded Development Overlay District in addition to their existing zoning classification, and as shown on the plan entitled "Official Zoning Map," prepared by Brandywine Conservancy, dated July 20, 2009, last revised by Cowan Associates, Inc. November 21, 2019, attached as Exhibit "A." The area of the zoning map changed by this Ordinance shall be as follows:

Exhibit "A." The area of the zoning map changed by this Ordinance shall include all or portions of the following:

Tax ID Number	Property Address
549149373946-2	7632 Kings Highway, Zionsville, PA 18092
549147749932-1	5141 Palm Road, Zionsville, PA 18092
549137875383-1	* Palm Road, Zionsville, PA 18092
549128947291-1	5353 Palm Road, Zionsville, PA 18092
549138352810-1	* Palm Road, Zionsville, PA 18092
549138486140-1	* Palm Road, Zionsville, PA 18092
549128223965-1	* Palm Road, Zionsville, PA 18092
549117668579-1	* Palm Road, Zionsville, PA 18092
549126643126-1	* Palm Road, Zionsville, PA 18092
549126925139-1	* Palm Road, Zionsville, PA 18092
549230372453-1	* Kings Highway South, Zionsville, PA 18092
549231298703-1	* Kings Highway South, Zionsville, PA 18092
549124146983-1	5700 Schultz Bridge Road, Zionsville, PA 18092

SECTION 3. The Lower Milford Township Zoning Ordinance, Article X *Natural Resource Protection Standards*, Section 1009 *Specific Applicability of Natural Resource Protection Standards*, subsection C *Application for Preliminary Subdivision Plan or Land Development*, is **REPEALED** and **REPLACED** with the following:

C. Application for Subdivision Plan or Land Development.

1. As part of a Sketch Plan submittal prior to the formal submittal of a Preliminary Subdivision Plan or Land Development, the applicant shall be required to submit an Existing Features Plan with the Sketch Plan that together demonstrate the development's compliance with the natural resource protection standards. The Existing Features Plan shall be prepared and submitted as specified in Section 300 of the Lower Milford Township Subdivision and Land Development Ordinance. For Sketch Plan purposes only, the most current GIS mapped information available from the Lehigh Valley Planning Commission, Lehigh County, Lehigh County Conservation District, Lower Milford Township, PA Spatial Data Access (PASDA) or USGS maps, may be substituted for field-survey information.

2. As part of a Preliminary Subdivision Plan or Land Development application, the applicant shall be required to submit an Existing Features Plan and Preliminary Plan that together demonstrate the development's compliance with the natural resource protection standards. The Existing Features Plan shall be prepared and submitted as specified in Section 300 of the Lower Milford Township Subdivision and Land Development Ordinance.

SECTION 4. The Lower Milford Township Zoning Ordinance, Article XII *Supplemental Regulations*, Section 1200 *Regulations Applying to Certain Uses and Districts*, subsection 31 *Timber Harvesting Operations*, subsection d is hereby REPEALED and REPLACED with the following:

d. Any permits required by any other agency under any applicable regulation shall be the responsibility of the landowner or timber harvesting operator as applicable. Copy of all required permits and an erosion and sedimentation control plan shall be submitted to Lower Milford Township at least forty-five (45) days prior to commencement of the timber harvesting operation.

SECTION 5. The Lower Milford Township Zoning Ordinance, Article XII *Supplemental Regulations*, Section 1200 *Regulations Applying to Certain Uses and Districts*, subsection 32 *Winery*, subsection d is hereby REPEALED and REPLACED with the following:

d. The minimum lot area for establishment of a winery is five (5) acres unless, in accordance with the definition of "normal agricultural operation" in section 952 of the Agricultural Area Security Law, 3 P.S. § 952, an applicant establishes that the winery will have an anticipated yearly gross income of at least $10,000, in which case no minimum lot area requirement shall apply.

SECTION 6. Repealer

All Ordinances or parts of Ordinances that are inconsistent herewith are hereby repealed. Specifically, all inconsistent parts of Ordinance No. 134, adopted on September 19, 2019, are hereby repealed.

SECTION 7. Severability.

If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Board of Supervisors of Lower Milford Township, that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

SECTION 8. Effective Date.

This Ordinance shall become effective five (5) days after adoption.

ENACTED as an Ordinance of the Township of Lower Milford this_____day of _____, 2021.

ATTEST:

LOWER MILFORD TOWNSHIP
BOARD OF SUPERVISORS

_____
Township Secretary

_____
Donna L. Wright, Chair

_____
Ellen L. Koplin, Vice-Chair

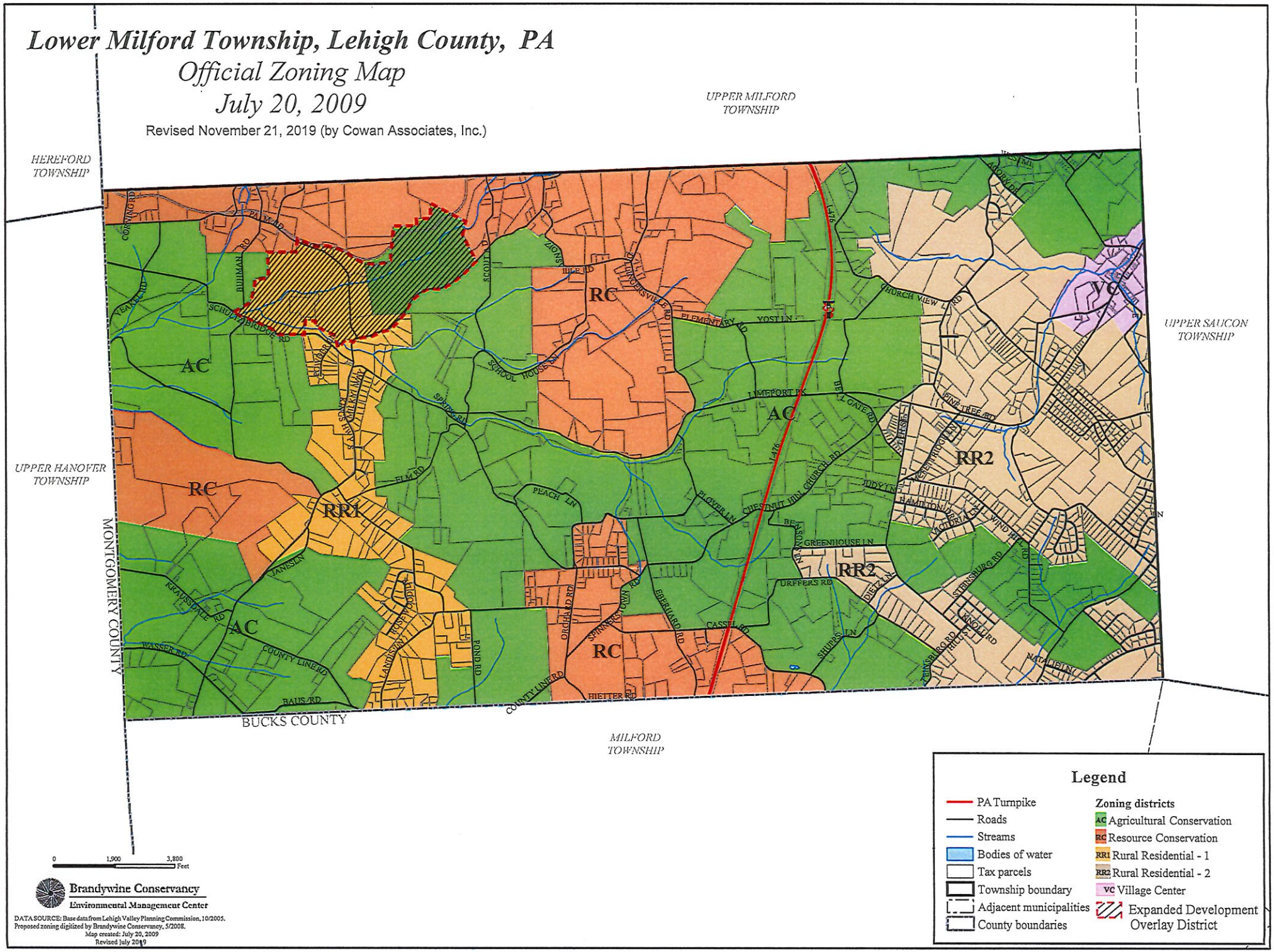
_____
John C. Quigley, Supervisor

EXHIBIT A:

"Official Zoning Map," prepared by Brandywine Conservancy, dated July 20, 2009, last revised by Cowan Associates, Inc. on November 21, 2019

Lower Milford Township, Lehigh County, PA

Official Zoning Map

July 20, 2009

Revised November 21, 2019 (by Cowan Associates, Inc.)