

ORDINANCE NO. 2-11

**AN ORDINANCE OF THE TOWNSHIP OF PERRY, BERKS COUNTY,
PENNSYLVANIA, AMENDING ORDINANCE NO. 2-05 IMPOSING AN
IMPACT FEE UPON NEW DEVELOPMENT WITHIN TRANSPORTATION
SERVICE AREAS WITHIN PERRY TOWNSHIP AND ESTABLISHING
PROCEDURES AND STANDARDS ANCILLARY THERETO**

WHEREAS, the Township of Perry, Berks County, Pennsylvania (the "Township") continues to receive numerous inquiries that will lead to considerable growth in the form of residential, commercial and industrial development in the coming years; and

WHEREAS, the Township has determined it is necessary to update and amend Ordinance No. 2-05 adopted July 12, 2005; and

WHEREAS, it is anticipated that such development will continue and will grow at a substantial rate; and

WHEREAS, it is anticipated that such future development will create a substantial impact upon the transportation facilities within certain districts of the Township; and

WHEREAS, the Board of Supervisors of Perry Township (the "Board of Supervisors") is required to keep all roads open, in repair and usable for the safe and convenient travel by the public; and

WHEREAS, the Board of Supervisors is empowered by law to impose all or a portion of said cost for road construction and repair upon new development; and

WHEREAS, the amount of an "Impact Fee" to be imposed shall be determined by the cost of the additional transportation improvements needed to meet such minimum safety and capacity standards, which public facilities shall be identified in a Capital Improvements Program, considering the projected growth and development in each transportation district subarea; and

WHEREAS, the Township hereby finds and declares that an amended "Impact

Fee" is to be imposed upon residential and non-residential development in order to assist in the financing of specified major transportation capacity improvements in designated transportation district subareas, the demand for which is uniquely created by such development, is in the best interest of the Township and its residents, is equitable and does not impose an unfair burden on such development.

NOW, THEREFORE, in consideration of the foregoing, be it hereby ENACTED AND ORDAINED, by the Board of Supervisors of the Township as follows:

SECTION 1. **Title.** This Ordinance shall be known as the "Amended Perry Township Transportation Impact Fee Ordinance."

SECTION 2. **Purpose.** The purpose of this Ordinance is to amend Ordinance No. 2-05 and to restate the Impact Fee Program thereby ensuring that the transportation system is available and adequate to support new growth and development. To advance this objective, there is hereby created an amended Impact Fee payable to the Township at the time of building permit issuance.

SECTION 3. **General Findings and Conditions.** The Board of Supervisors hereby finds and declares that:

(a) The conditions and standards for the determination and imposition of the Impact Fee set forth herein are those set forth in Act 209 of 1990, and any and all amendments thereto (hereinafter the "Act"), and consist of:

- (1) The recitals set forth above;
- (2) The analysis, advice and recommendations of the Impact Fee Advisory Committee;
- (3) The provisions of Ordinance No. 2-05 adopted July 12, 2005;
- (4) The Land Use Assumptions Report as adopted by the Board of Supervisors by Resolution 4-2-10, on April 13, 2010 (the "Land

Use Assumption Report");

(5) The Roadway Sufficiency Analysis as adopted by the Board of Supervisors by Resolution 5-1-11 on May 10, 2011 (the "Roadway Sufficiency Analysis");

(6) The Transportation Capital Improvements Plan, as adopted by the Board of Supervisors; by Resolution 5-1-11 on May 10, 2011 (the "Transportation Capital Improvements Plan"); and

(7) Such other conditions and standards as the Board of Supervisors may by resolution identify from time to time as being relevant and material to the imposition of an amended Impact Fee and consistent with the provisions of the Act and any amendments thereto.

(b) The collection, disbursement and accounting of Impact Fees shall be administered by the office of the Township Secretary, subject to review, oversight and control by the Board of Supervisors.

(c) The time, method and procedure for payment of Impact Fees shall be as set forth in Sections 15 and 16 of this Ordinance.

(d) The procedure for credits against or refunds of Impact Fees shall be as set forth in Sections 17 and 18 of this Ordinance.

(e) Such exemptions as the Board of Supervisors may from time to time enact shall be set forth in Section 11 of this Ordinance.

SECTION 4. **Definitions.** The terms and definitions set forth in Section 502-A of the Act are hereby adopted and incorporated in this Ordinance by reference.

SECTION 5. **Imposition.** There is hereby enacted an amended Impact Fee to be imposed upon new development for the purpose of off-site public transportation capital improvements authorized by the Act and as described in the Transportation Capital Improvements Plan adopted by the Board of Supervisors. Said Impact Fee shall apply to all new

development or subdivisions within the transportation service area (the "Transportation Service Area") identified herein and shall be a condition precedent to final approval of a development or a subdivision plan or issuance of a building permit.

SECTION 6. **Uses.** Impact Fees collected pursuant to this Ordinance shall be expended for costs incurred for improvements attributable to new development and designated in the Transportation Capital Improvements Plan for improvements within the Transportation Service Area in which the new development is located. Additionally, such fees may be used for the acquisition of land and rights-of-way, engineering fees, legal fees and planning costs, and all other costs, including debt service related to road improvements within the designated area, and including such proportionate amount of the Roadway Sufficiency Analysis as is allowed under the provisions of the Act.

SECTION 7. **Documents Adopted by the Board of Supervisors.** The following documents, previously adopted by the Board of Supervisors, are hereby incorporated by reference in this ordinance;

(a) Recommendations of the Traffic Impact Fee Advisory Committee to the Board of Supervisors recommending the adoption of the reports set forth in subsections (b), (c), and (d) of this Section 7.

(b) Land Use Assumptions Report, the terms and provisions of which Report are incorporated herein by reference.

(c) Roadway Sufficiency Analysis, the terms and provisions of which analysis are incorporated herein by reference.

(d) The Transportation Capital Improvements Plan, the terms and provisions of which plan are incorporated herein by reference.

(e) An Impact Fee Schedule set forth in the Transportation Capital Improvements Plan as established by Township Resolution No. 5-1-11 of May 10, 2011, the terms and provisions of which schedule, together with such

amendments thereto as may from time to time be adopted by the Board of Supervisors are incorporated herein by reference.

(f) The description of The Transportation Service Area is an area of the Township consisting of less than seven (7) square miles which lies within the Route 61 Corridor bounded on the north by the Township boundary line, bounded on the south by the intersection of Route 61 and Route 662, within the north and south boundaries described above a maximum of 4,000 lineal feet in each direction to the east and west of existing Route 61.

SECTION 8. **Special Traffic Studies.** Where intended to assist in determining the appropriate amount of Traffic Impact Fees, the Township may require the preparation of special transportation studies to determine the traffic generation or circulation patterns in new non-residential developments only; provided however, that no studies may be required where the proposed development will not require a deviation from the Land Use Assumptions used to create the Transportation Capital Improvements Plan.

Any such studies required by the Township shall be submitted prior to the imposition of the Impact Fee and shall be considered in the determination of the fee.

SECTION 9. **Applicability of Impact Fee.** This Ordinance shall be uniformly applicable to all development that occurs within the Transportation Service Area, identified herein.

SECTION 10. **Imposition of Impact Fee.** No building permit shall be issued for construction or occupancy in the Transportation Service Area, identified herein, unless the applicant therefore has paid the Impact Fee imposed by and calculated pursuant to this Ordinance.

SECTION 11. **Exemptions.** The Board of Supervisors, pursuant to resolution, may from time to time, pursuant to specific criteria, exempt an application from the payment of

Traffic Impact Fees pursuant to the following two conditions only, as set forth in the Act:

- (a) Overriding Public Interest;
- (b) De Minimis applications, with de minimis defined as when the entire proposed development will generate less than 2 P.M. peak hour trips.

SECTION 12. Calculation of Impact Fees.

A. The amended Impact Fee in the amount of One Thousand Seven Hundred Forty-five Dollars (\$1,745.00) per trip for transportation capital improvements shall be based upon the total costs of the road improvements included in the adopted Transportation Capital Improvements Plan within the Transportation Service Area, identified herein and attributable to and necessitated by new development within the Transportation Service Area, divided by the number of anticipated peak-hour trips (exclusive of pass by trips) generated by all new development consistent with the adopted Land Use Assumptions Report and calculated in accordance with the Trip Generation Manual published by the Institute of Transportation Engineers, 6th or subsequent editions, which is hereby adopted by the Township, to equal a per-trip cost for transportation improvements within the Transportation Service Area.

B. The specific Impact Fee for a specific new development or subdivision within the service area for transportation capital improvements shall be determined as of the date of preliminary land development or subdivision approval by multiplying the per-trip cost established for the service area as determined in this Section 12 hereof by the estimated number of trips to be generated by the new development or subdivision based upon Trip Generation Manual, 6th or subsequent editions. If the Township Engineer determines that the proposed use is not adequately covered by Trip Generation Manual, the estimated number of trips may be documented by the Township Engineer.

C. The Board of Supervisors may authorize or require the preparation of a special transportation study in order to determine traffic generation or circulation for a new development to assist in the determination of the amount of the transportation fee for such

development or subdivision.

SECTION 13. **Establishment of Transportation Service Areas.** A

Transportation Service Area is established as shown on the "Township Map" contained as an Exhibit to the Land Use Assumption Report which is incorporated herein by reference.

Additional transportation district subareas or combinations of transportation district subareas may be designated by the Board of Supervisors from time to time consistent with the procedure set forth in this Ordinance and in consideration of the following factors:

- (a) The Township Comprehensive Plan;
- (b) Any standards for adequate public facilities incorporated in the Impact Fee Program;
- (c) The projected build-out and timing of development areas;
- (d) The need for and cost of unprogrammed transportation improvements necessary to support projected development; and
- (e) Such other factors as the Board of Supervisors may deem relevant.

Fees collected from development in each of the transportation district subareas will be used exclusively to fund transportation improvement projects scheduled for that area.

SECTION 14. **Non-Binding Fee Estimate.** Prior to making an application for a building permit, an applicant may request a non-binding Impact Fee estimate from the Township, which shall be based upon the maximum development potential of the site pursuant to existing zoning regulations, unless the applicant specifies a lesser use of development.

SECTION 15. **Administration of Impact Fees.**

A. **Collection of Impact Fee.** Impact Fees due pursuant to this Ordinance shall be collected by the Township in the manner or manners prescribed herein prior to the issuance of any building permit.

B. **Establishment of Fund.** Upon receipt of Impact Fees, the Township

Secretary shall be responsible for the separate and proper accounting of such fees. All such fees shall be deposited in interest bearing accounts in a bank authorized to receive deposits of the Township funds. Interest earned by each account shall be credited to that account and shall be used solely for the purpose specified for funds of such account.

C. Establishment and Maintenance of Accounts. The Township Secretary shall establish appropriate trust fund accounts and shall maintain records whereby Impact Fees collected can be segregated for each Transportation Service Area.

D. Maintenance of Records. The Township Secretary shall maintain and keep adequate financial records for each such account which shall show the source and disbursement of all revenues, which shall account for all monies received, and which shall ensure that the disbursement of fund from each account shall be used solely and exclusively for the provision of projects specified in the Impact Fee Program for the particular Transportation Service Area.

SECTION 16. Method of Payment. Payment of the Impact Fee shall be made prior to the issuance, by the Township, of a building permit to the applicant for development on the applicable site.

SECTION 17. Credit. Any applicant who shall perform, at his own expense and with the prior consent and agreement of the Board of Supervisors, offsite improvements, contained in the Transportation Capital Improvements Plan, shall be eligible for a credit from the Impact Fee otherwise due in the amount of the actual cost of such off-site improvements as approved by the Township Engineer. Such credit shall not exceed the amount of the Impact Fee.

(a) If the applicant makes such improvements, he must enter into an agreement with the Board of Supervisors prior to the issuance of any building permit. The agreement must establish the estimated cost of the improvement, the schedule for initiation and completion of the improvement, a requirement that the

improvement be completed to Township and Pennsylvania Department of Transportation standards and design criteria and such other terms and conditions as deemed necessary by the Board of Supervisors. The Board of Supervisors must review the improvement plan, verify costs and time schedules, determine if the improvement is an eligible improvement, and determine the amount of the applicable credit for such improvement to be applied to the otherwise applicable Impact Fee prior to issuance of any building permit. In no event shall the Board of Supervisors provide a credit which is greater than the applicable Impact Fee. If, however, the amount of the credit is calculated to be greater than the amount of the Impact Fee due, the applicant may use such excess credit toward the Impact Fees imposed on other building permits for development on the same site and in the same ownership. Any such applicant shall be required to supply financial security sufficient (in the form of a cash escrow or an irrevocable letter or credit), in the sole discretion of the Township, to cover the cost of any such improvement installed by the applicant for which credit is sought.

(b) An applicant shall be entitled as a credit against Impact Fees an amount equal to the fair market value of land dedicated by the applicant and accepted by the Township for future right-of-way, realignment or widening of existing roadways as contained in the Transportation Capital Improvements Plan.

(c) An applicant shall be entitled as a credit against Impact Fees an amount equal to the value of any road improvement construction which is contained in the Transportation Capital Improvements Plan and which was performed at the applicant's expense. There shall be no credit given for the dedication of land for roads, easements, rights of way, recreation or other purposes required by Perry Township Subdivision and Land Development Ordinance.

SECTION 18. **Refunds.** Impact Fees collected pursuant to this Ordinance shall be refunded, together with interest earned thereon, to the payor of the fees under the following circumstances:

(a) In the event the Township completes or terminates the Transportation Capital Improvements Plan and there remain undisbursed funds, the respective payors shall be entitled to a share of the fund balance in the same proportion as the payor's Impact Fee payment plus interest earned bears to the total Impact Fees collected plus interest;

(b) In the event any specific Transportation Capital Improvement Plan project is completed at a cost to the Township of less than 95 percent of the budgeted cost of the road project, the Township shall refund an amount equal to the excess budgeted cost over actual cost to the payors, pro rata, plus accumulated interest.

(c) In the event the Township fails to commence construction within three years of the scheduled construction date of any project as set forth in the Transportation Capital Improvements Plan, the Township shall refund the portion of the fee paid by any payor making written request therefore which is attributable to said project, with accumulated interest, provided no refund shall be paid with respect to any project actually begun prior to the receipt of such refund request.

(d) In the event the development for which Impact Fees were paid has not commenced prior to the expiration of the building permit issued therefore, the Impact Fees paid, with accumulated interest, shall be refunded to the payor. Further, if a building permit after issuance is altered in such a way as to reduce the indicated Impact Fee, the difference between the amount indicated and the amount actually paid shall be refunded. The payor, at his option, may roll over

the Impact Fees attributable to an expired building permit to cover fees incurred by a renewal of said expired permit.

With respect to refunds arising out of subparagraphs (a) or (b) hereof, any funds unclaimed within one year after notice as required by law shall be transferred to the general account of the Township, and the payor's entitlement to said refund shall lapse. It is the responsibility of the payor to provide the Township with the current address of his place of business.

SECTION 19. **Effect of Impact Fee on Zoning and Subdivision**

Regulations. This Ordinance shall not affect, in any manner, the permissible use of property, density of development, previously adopted design and improvement standards and requirements or any other aspect of the development of land or provision of public improvements which remain subject to applicable zoning and subdivision regulations of the Township, which shall be operative and remain in full force and effect without limitation with respect to all such development.

SECTION 20. **Impact Fee as Additional and Supplemental Requirement.**

The Impact Fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the Township on the development of land or the issuance of building permits. Nothing herein contained shall be deemed to alter or affect the Township's existing Ordinances and regulations regarding on-site improvements. In no event shall a property owner be obligated to pay for transportation capital improvements in an amount in excess of the amount calculated pursuant to this Ordinance; provided, however, that a property owner may be required to pay, pursuant to Township ordinances, regulations or policies, for other public facilities in addition to the Impact Fee for transportation improvements as set forth herein.

SECTION 21. **Liberal Construction.** The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare and convenience.

SECTION 22. **Repeal.** All ordinances, code sections or parts thereof in conflict herewith shall be repealed to the extent of such conflict.

SECTION 23. **Severability.** Should any sentence, section, clause, part or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part declared to be invalid.

SECTION 24. **Retroactive Application.**

In retroactive applications, the per-trip fee shall not exceed One Thousand (\$1,000.00) Dollars or the actual calculated fee, whichever is less.


SECTION 25. **Effective Date.** This Ordinance shall take effect at the earliest date allowed by law.

ENACTED AND ORDAINED this 10th day of May, 2011, by the Board of Supervisors of Perry Township.

BOARD OF SUPERVISORS OF
PERRY TOWNSHIP


Chairman


Member


Member

ATTEST:


Secretary