

ORDINANCE NO. 2009-02

AN ORDINANCE OF BETHEL TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, IMPOSING A TRAFFIC IMPACT FEE UPON NEW DEVELOPMENT WITHIN THE BETHEL TOWNSHIP TRANSPORTATION SERVICE AREAS AND ESTABLISHING STANDARDS FOR THE ADMINISTRATION AND ENFORCEMENT THEREOF

WHEREAS, Bethel Township, Berks County, Pennsylvania (The Township) is a municipality through which a major transportation corridor, (Interstate 78) bisects the Township; and

WHEREAS, the Township has experienced an increase in development and anticipates that this development will continue; and

WHEREAS, the impact of this growth and development on Township roads and infrastructure will be significant; and

WHEREAS, substantial cost will be directly attributable to the impact of new development; and

WHEREAS, the Pennsylvania legislature pursuant to the Act of December 19, 1990, P.L. 1343 Number 209 (53 P.S. §10501-A to 10508-A, hereinafter "The Act") authorized the imposition of an Impact Fee; and

WHEREAS, as part of the planning by the Supervisors for the future of the Township, the Township did on December 27, 2007 adopt resolution 2007-28 declaring an intention to undertake appropriate studies and actions for the proper enactment of an Traffic Impact Fee Ordinance; and

WHEREAS, on January 22, 2008, by Resolution 2008-14 the Township created and appointed members to a Traffic Impact Advisory Committee; and

WHEREAS, on October 20, 2008, by Resolution 2008-27 the Township adopted a Land Use Assumption Report; and

WHEREAS on February 24, 2009, by Resolution 2009-16, the Township approved and adopted a Roadway Sufficiency Analysis; and

WHEREAS on March 24, 2009, by Resolution 2009-17, the Township adopted a Transportation Capital Improvement Plan.

NOW THEREFORE, in consideration of the above recitals, which are hereby incorporated by reference and made part hereof, the Board of Supervisors of Bethel Township, Berks County, Pennsylvania, hereby ENACTS and ORDAINS as follows:

Section 1. Title.

This Ordinance shall be known and may be cited as the “Bethel Township Impact Fee Ordinance.”

Section 2. Imposition of Impact Fee.

An Impact Fee is hereby enacted and imposed on new land development, and subdivisions for the purpose of offsite public Transportation Capital Improvements authorized by The Act, as amended, and as more fully described in the Bethel Township Transportation Capital Improvement Plan adopted by the Township pursuant to Resolution 2009-16, all of which are expressly incorporated herein by reference. Payment of this Impact Fee shall be a condition precedent to final approval of any land development and/or subdivision plan and/or the issuance of any building permit.

Section 3. Definitions.

The words and phrases used in this Ordinance shall have the meanings given to them in The Act, as amended, unless the context clearly indicates otherwise.

Section 4. Uses.

Impact Fees collected pursuant to this Ordinance shall be used for costs incurred for improvements designated in the Transportation Capital Improvement Plan attributable to New Development including the acquisition of land and rights-of-way; engineering, legal and planning costs; and all other costs, including debt service related to road improvements, and other offsite improvements within the Transportation Service Area in which the New Development is located. Impact Fees may also be used for any other purpose or use as otherwise provided in The Act.

Section 5. Transportation Service Areas.

Bethel Township is divided into two Transportation Service Areas. The East Service Area and the West Service Area. The boundaries for each Transportation Service Area are shown and designated on the Transportation Service Area map shown as Figure 3 of the Bethel Township Roadway Sufficiency Analysis and Transportation Capital Improvement Plan adopted March 16, 2009 by Resolution 2009-17, which map is hereby incorporated by reference and made part of this Ordinance. The Township may in the future alter, amend or create additional Transportation Service Areas or combinations thereof consistent with the Bethel Township Comprehensive Plan, Bethel Township Zoning Ordinance, changes in development and/or the increase or decrease in the same, etc. and other factors as required by law.

Section 6. Incorporation by Reference.

The following documents and/or Resolutions are hereby incorporated by reference and made part of this Ordinance:

- a. Resolution 2007-28 dated December 27, 2007;

- b. Resolution 2008-14 adopted January 22, 2008;
- c. Land Use Assumption Report prepared by Larson Design Group for Bethel Township, Berks County, Pennsylvania, and adopted by Resolution 2008-27 on October 20, 2008;
- d. Roadway Sufficiency Analysis prepared by McMahan Transportation Engineers and Planners and adopted by Resolution 2009-16 on February 24, 2009; and
- e. The Bethel Township Capital Improvement Plan prepared by McMahan Transportation Engineers and Planners and adopted by Resolution 2009-17 on March 24, 2009.

Nothing in this Ordinance shall prevent any of the above-referenced reports or the basis for the preparation and enactment of this Ordinance from being reviewed and/amended and/or modified from time to time as circumstances may otherwise require.

Section 7. Special Traffic Studies for New Land Developments and Subdivisions.

In order to assist in determining the appropriate amount of Impact Fees for New land developments and/or subdivisions, the Township may require and/or authorize the preparation of a special transportation study to determine the traffic generation or circulation patterns in New land developments and/or subdivisions. The Township may require this special transportation study at any time when the subdivision or land development deviates in any way from the land use assumptions upon which the then current Impact Fee is based. The special study shall be prepared by a qualified traffic and/or transportation engineer and at the expense of the Applicant, using procedures and

methods as determined by the Township but based upon accepted transportation planning and engineering standards then in effect. Any such special studies required by the Township shall be submitted prior to the imposition of the Impact Fee. A developer may voluntarily prepare and submit a traffic study for a proposed development after the Development is completed to establish actual trips generated by the development.

Section 8. Uniform Application of Impact Fee.

The Impact Fee and other provisions of this Ordinance shall be uniformly applied to all land developments and subdivisions that occur within each Transportation Service Area.

Section 9. Payment of Impact Fee as Conditioned Precedent.

a. No building permit shall be issued for any land development and/or subdivision within a Transportation Service Area unless the Transportation Impact Fee imposed by and calculated pursuant to this Ordinance has been paid for the applicable property and/or tract. This Section shall not be construed as a limitation or modification on the obligation of all Applicants and Developers to pay Impact Fees as a condition precedent to final land development and/or subdivision approval.

b. Prior to making an application for building permit or final land development plan approval, an Applicant may request a nonbinding Impact Fee estimate from the Township, which shall be based upon the maximum development potential of the site unless the Applicant specifies a lower density of use with regard to the proposed development.

Section 10. Calculation of Impact Fee.

a. The Impact Fee is based upon the total costs of road improvements included in the Transportation Capital Improvement Plan within each Transportation Service Area attributable to and necessitated by new land development and/or subdivision within the Transportation Service Area divided by the number of anticipated peak hour trips generated by all New land development and subdivisions consistent with the land use assumptions and calculated in accordance with the Trip Generation Manual as published by the Institute of Transportation Engineers, Eighth Edition and any and all subsequent editions which edition and all subsequent editions are hereby adopted by the Township. The Impact Fee for each Transportation Service Area, as so calculated, shall be set forth in the Transportation Impact Fee Schedule promulgated from time to time by the Township.

b. The specific Impact Fee for a New land development and/or subdivision within each Transportation Service Area shall be determined as of the date of preliminary land development and/or subdivision approval by multiplying the per trip cost, as set forth in the Impact Fee Schedule per the applicable Transportation Service Area by the estimated number of peak-hour trips to be generated by the New Land Development and/or subdivision using generally accepted traffic engineering standards.

c. As set forth in Section 7 of this Ordinance, the Township may require the preparation of a special transportation study in order to determine traffic generation and/or circulation for the land development and/or subdivision.

d. Appendix A of this Ordinance sets forth the per trip cost for each Transportation Service Area based on the present Transportation Capital Improvement

Plan. Per trip cost may be amended from time to time in accordance with and in full compliance with all statutory requirements.

Section 11. Administration of Impact Fees.

a. Collection. Impact Fees due pursuant to this Ordinance shall be collected by and paid to the Township prior to the issuance of any building permit and/or final land development or subdivision plan approval.

b. Impact Fee Fund. Upon receipt of an Impact Fee, the Township Secretary and/or Treasurer shall administer the collection, disbursement and accounting of Impact Fees. All such Impact Fees shall be deposited into an interest bearing account in a Bank authorized to receive and deposit Township funds. Interest earned by each account shall be credited to that account and shall be used solely for the purpose specified for funds in such account. Funds collected for improvements within one Transportation Service Area shall be accounted for and expended within the Transportation Service Area. However, notwithstanding the preceding sentence, a municipality may expend Impact Fees paid by an Applicant on projects not contained within the adopted Transportation Capital Improvement Plan or provide credit against Impact Fees for the value of construction of projects not contained within the Transportation Capital Improvement Plan which are performed at the Applicant's expense if all of the following criteria are met: 1) The applicant provides written consent to the use of its collected Impact Fees for this purpose; 2) The alternative transportation projects have as their purpose the reduction of traffic congestion or the removal of vehicle trips from the roadway network; and 3) The Township amends its Transportation Capital Improvement Plan to provide replacement of the collected Impact Fees so transferred and allocated

within three years of the completion of the alternative projects. In the event of any such redirection of Impact Fees, the Township will provide an annual accounting of any fund account containing Impact Fee proceeds and interest earned.

c. Maintenance of Accounts. The Township Secretary/Treasurer shall establish appropriate trust fund accounts and shall maintain records of such accounts where Impact Fees collected can be segregated for each Transportation Service Area. The Township shall keep and maintain adequate financial records showing the source and the disbursement of all receipts which shall account for all monies received and which shall insure that disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the respective Transportation Service Area.

Section 12. Payment Method.

The Impact Fee shall be paid to the Township in cash, certified check, electronic fund transfer, or other form approved by the Township in writing.

Section 13. Credit Against the Impact Fee Fund.

a. Subject to the conditions set forth herein, any Applicant who shall perform at his/its own expense and with the prior written consent and approval of the Board of Supervisors, any offsite improvements, which are contained within the Transportation Capital Improvement Plan shall be entitled to a credit against the Impact Fee otherwise due and payable for a specific land development and/or subdivision under and subject to all of the following conditions:

i. The amount of the actual cost of such offsite improvements shall be approved in advance by the Township Engineer;

ii. The amount of the credit for which such offsite improvements shall be allotted in the Transportation Capital Improvement Plan including contingency factors for such work; and

iii. The Applicant shall supply in advance financial security sufficient in the discretion and judgment of the Township to cover the cost of any such offsite improvements installed by the Applicant for which such credit is sought.

b. In addition, an Applicant shall be entitled to a credit against Impact Fees in an amount equal to the fair market value of any land dedicated by the Applicant to the Township for future right of way, realignment or widening of any existing roadways or for the value of any construction of road improvements contained in the Transportation Capital Improvement Plan, which is performed at the Applicant's expense. The amount of such credit shall be the amount allocated in the Transportation Capital Improvement Plan including contingency factors for such work. The fair market value of any land dedicated shall be determined as of the date of the submission of the land development or subdivision application to the Township.

Section 14. Refunds.

Impact Fees collected pursuant to this Ordinance shall be refunded together with interest thereon to the payer of the Impact Fee under and as provided in the following circumstances:

a. In the event the Township completes or terminates the Transportation Capital Improvement Plan and their remains at the end of completion and/or termination thereof undisbursed funds in the accounts established for the completion of the Transportation Capital Improvement Plan, payer shall be entitled to a

share of the fund balance in the same proportion as the payer's Impact Fee plus interest earned to the total Impact Fees collected plus interest. The allocation of the refund shall be determined by general accounting principles. The Township shall provide written notice to payers of Impact Fees that the last address of the payer bearing on the Township records notifying payers of the Township's intention to refund portions of the fee collected. Notice shall be by certified mail, return receipt requested by shall be considered received when placed in the United States mail postage prepaid regardless of whether receipt is acknowledged by the payer. Any funds remaining unclaimed following one year after notice by the Township shall become the property of the Township without any further notice and/or any further obligation to refund the same.

b. In the event the Township fails to commence construction of any road improvements in any Transportation Service Area within three years of the scheduled construction date for such road improvements as set forth in the Transportation Capital Improvement Plan, any person who paid any Impact Fee pursuant to this Ordinance shall, upon written request to the Township, receive a refund of that portion of the fee attributable to the contribution for the uncommenced road improvement plus interest accumulated thereon from the date of payment. Notwithstanding the foregoing, however, no refund shall be payable or paid with respect to any such road improvement actually commenced prior to the receipt by the Township of any such written refund request. In addition, the failure of the payer to make any such written request prior to the date of actual commencement of such road improvements shall be deemed a waiver of any right to any such refund.

c. In the event any specific road improvement project is completed at a cost to the Township of less than 95% of the budgeted cost of the road project, the Township shall refund an amount equal to the excess budgeted over the actual cost to payer's, prorata plus accumulated interest.

d. In the event that the proposed development for which Impact Fees were paid has not commenced prior to the expiration of any building permit issued pursuant thereto, the Impact Fees with accumulated interest shall, upon request of the Applicant be refunded to the payer of the Impact Fee. The payer at his/its option may rollover the Impact Fee attributable to the expired building permit to cover fees incurred by any renewal and/or reissuance of a building permit.

e. In the event that development is altered, which alteration results in a decrease in the amount of Impact Fee otherwise due and payable, the difference between the amount of the Impact Fee paid and the decreased amount of Transportation Impact Fees promptly refunded to the payer with accumulated interest.

f. With regard to all refunds set forth above, any funds which remain unclaimed for more than one year after written notice to the payor shall be transferred to the general account of the Township and the payor's entitlement to any such refund shall lapse. The address shall be the payor's address on the Plan, the permit application, or the last address change provided to the Township in writing specifically noting that the writing is a change of address notice. It is the responsibility of the payor to provide the Township with current address and/or changes of address. Notice shall be provided by the Township by certified mail, return receipt requested which shall be deemed to be received when delivered by the Township, postage prepaid through the

United States Postal Service, whether or not a return receipt is signed for. Thus it is important for all payors to keep the Township apprised of all addresses and changes of addresses..

Section 15. Intensive Development Fees.

There is hereby imposed an additional Impact Fee upon new developments which generate 1,000 or more new peak-hour trips net of pass-by trips as defined by the current edition of the Institute of Transportation Engineers Trip Generation Manual during the peak hour period designated in the Ordinance. For any such development proposing to or which actually does generate 1,000 or more peak hour trips, the Applicants/Developer shall perform comprehensive traffic analysis of development traffic impact on Township highways, roads, or streets outside the Transportation Service Area in which the development is located but within the boundaries of the Township. Any such highway, road or street, or part thereof, outside any Transportation Service Area which will accommodate ten percent (10%) or more of the development traffic and one hundred (100) or more new peak-hour trips shall be studied and the Applicant shall be required to mitigate traffic impacts of such development on such highways, roads and streets to maintain predevelopment conditions after the completion of the Development.

Section 16. Other Ordinances.

This Ordinance shall not affect in any manner the permissible use of property, density of development, previously adopted design and improvement standards or any other requirement or aspect of land development, subdivision, or provision for public improvements. The Impact Fee imposed pursuant to this Ordinance is in addition and supplemental to and not in substitution of any other requirement imposed by the

Township on land development and/or subdivision and/or the issuance of permits. Nothing contained in this Ordinance shall be deemed to alter or affect the Township's existing Ordinances and regulations regarding any improvements.

Section 17. Liberal Construction.

The provisions of this Ordinance shall be liberally construed to carry out its purposes, which are further found and declared to be in furtherance of the public health, safety, welfare and convenience.

Section 18. Retroactive Application.

Notwithstanding the effective date of this Ordinance, Impact Fees shall be imposed when all land developments, subdivisions and requests for building permits filed at any time on or after December 27, 2007, the date of first publication of the Township's intention to adopt this Ordinance; provided, nevertheless, to the limitation that the period of retroactivity shall not exceed eighteen (18) months prior to the date of enactment of this Ordinance; and provided further that prior to the effective date of this Ordinance the Transportation Impact Fee shall not exceed One Thousand Dollars (\$1,000.00).

Section 19. Severability.

The provisions of this Ordinance are severable. Should any section, paragraph, sentence, clause or provision, or part thereof be declared by any Court of competent jurisdiction to be invalid or unenforceable, the same shall not effect the validity of the balance of this Ordinance which shall otherwise remain valid and in force and effect.

Section 20. Effective Date.

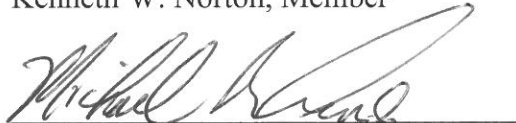
This Ordinance shall take effect immediately upon enactment by the Township Board of Supervisors.

ORDAINED AND ENACTED by the Board of Supervisors of Bethel Township, Berks County, Pennsylvania, this 26 day of May, 2009.

BETHEL TOWNSHIP BOARD OF SUPERVISORS


Randall G. Haag, Chairman


Kenneth W. Norton, Member


Michael R. Orendo, Member

ATTEST:


Jayne K. Seifrit, Secretary

APPENDIX A

East Transportation Service Area	\$1,358.00
West Transportation Service Area	\$1,353.00