

# Lower Paxton Township

## Zoning Hearing Board

July 27, 2023

### Members Present:

David Dowling

Jeff Staub

Greg Sirb

Mark Emery

Joe Murphy

Ron Reeder

Also, In Attendance: Tucker Hull, Amanda Zerbe, Kristi Focht

### SE 23-01

Applicant: Weis Markets, Inc.

Address: 1000 South 2<sup>nd</sup> Street

Sunbury, PA 17801

Property Owner: Weis Markets

Property: 4300 Linglestown Road

Applicant: Seeking a Special Exception as required in Section 306.B.2, to allow gas pumps as an accessory use to retail grocery stores in the CN, Commercial Neighborhood Zoning District.

Fees Paid: June 30, 2023

Property Posted: July 10, 2023

Advertised: July 6, 2023, and July 17, 2023 in the Hummelstown Sun

The Hearing Began at 6:04 p.m.

Mr. Dowling swore in applicants Joe Gurney of First Capital Engineering, Alex Ororbia of Weis Markets, Jack O'Hara of Weis Markets.

Mr. Dowling swore in Amanda Zerbe.

Mr. Dowling questioned if the appropriate fees had been paid and if they were properly advertised.

Ms. Zerbe answered that it was paid on June 30, 2023. It was advertised in the Hummelstown Sun on July 6, 2023, and July 17, 2023, and was posted on July 10, 2023. And on July 6, 2023, 115 mailings went out to neighboring residents.

Mr. Dowling questioned the issue that is before the Board.

Ms. Zerbe answered a Special Exception as required in Section 306.B.2, to allow gas pumps as an accessory use to retail grocery stores in the CN, Commercial Neighborhood Zoning District.

Mr. Dowling requested the applicant to review the history of the case prior to beginning testimony. He requested to start with the last full hearing that was before this Board. Mr. Dowling noted that the applicant's attorney was present at the last hearing before the Board and requested the date of that hearing.

Mr. Preston answered he did not know the date of the hearing.

Mr. Dowling questioned if Mr. Preston, the attorney, was present at that hearing.

Mr. Preston answered yes.

Mr. Dowling noted that testimony was presented.

Mr. Preston answered yes.

Mr. Dowling noted at that hearing that there was a decision made by the Board.

Mr. answered that is correct.

Mr. Dowling noted the date of that decision was February 21, 2023, and questioned the attorney if that is correct.

Mr. Preston answered if that is what it says.

Mr. Dowling questioned the attorney that at the time there was not an appeal to the decision.

Mr. Preston answered that is correct.

Mr. Dowling explained that from what he can tell there is a letter written by Weis on May 3, 2023, to members of the Board of Supervisors.

Mr. Preston questioned the relevance of this and noted they are here for a special exception.

Mr. Dowling noted he would like to establish the history of why they are here this evening.

Mr. Preston questioned how it is relevant to the special exception.

Mr. Dowling answered they need it for the record.

Mr. Preston noted that he would like his objection noted for the record.

Mr. Dowling stated that Mr. Preston's objection is noted.

Mr. Dowling continued with the letter to the Board of Supervisors that was dated May 3, 2023 by Weis and asked the Board to grant a text amendment to the ordinance at issue and enclosed a copy of the draft proposal to the zoning ordinance with the auto fueling station. Mr. Dowling noted he would mark the letter as exhibit one. Mr. Dowling read the last part of the letter that mentioned a meeting. Mr. Dowling questioned the applicant if they had a meeting.

Mr. Preston answered that they can neither confirm nor deny a meeting.

Mr. Dowling questioned Ms. Zerbe.

Ms. Zerbe questioned Mr. Dowling if he was referring to a meeting.

Mr. Dowling questioned if there was a meeting after the letter of May 3, 2023.

Ms. Zerbe answered that without having a calendar in front of her she could not answer. Staff had meetings with Weis, but she was not sure if there were before or after May 3<sup>rd</sup>.

Mr. Dowling questioned Ms. Zerbe if they were public meetings.

Ms. Zerbe answered they have had staff meetings with developers and engineers, she noted she does not believe they had a meeting about the text amendment but had met several times about the plans.

Mr. Dowling continued to the next item he would like to enter will be exhibit 2, the application of Weis.

Mr. Preston noted his objection.

Mr. Dowling continued with the next item he would like to enter as an exhibit, exhibit 3. Exhibit 3 will be the transcript of June 2023 when the Board of Supervisors adopted the text amendment into the ordinance. Mr. Dowling questioned Mr. Preston if this is correct.

Mr. Preston answered if that is what it says.

Mr. Dowling noted that at the public meeting there was nothing noted about the Zoning Hearing Boards decision in February.

Mr. Preston questioned why there would be.

Mr. Dowling answered that an appeal should have been made for the Zoning Hearing Boards decision and that there was no such appeal. Mr. Dowling read from the decision that stated: "gas stations are not necessary uses to grocery stores." He questioned if members of the public that were there knew about that decision. Mr. Dowling stated that a review was performed by Dauphin County Planning Commission, and he noted this review as, as an exhibit, the letter had no mention in their decision that this was reviewed by the Zoning Hearing Board.

Mr. Preston stated the matter that is here was never reviewed by the Zoning Hearing Board. He explained that what was before the Zoning Hearing Board was a request of an interpretation of a different ordinance and not the ordinance that is before the Board this evening. He continued that the Zoning Hearing Board is not a

legislative body, and the Board of Supervisors is the legislative body and since amended the ordinance and is not the ordinance you interpreted back then, the two ordinances have nothing to do with each other.

Mr. Dowling noted that he will let the applicant begin their case, but he does have other questions.

Mr. Preston noted that they came here tonight before the Board to have a fair and open hearing based on the ordinance.

Mr. Sirb interrupted Mr. Preston and noted that this is a new hearing based on the new ordinance that has been drafted.

Mr. Preston answered correct.

Mr. Sirb requested the applicant to begin testimony.

Mr. Preston explained the applicant is here for a special exception which is a use that is permitted use. He called his first witness, Mr. Gurney.

Mr. Dowling questioned Ms. Zerbe on how it was advertised.

Ms. Zerbe answered that it was posted, advertised and 115 mailings were sent out.

Mr. Sirb questioned if it was posted as an appeal.

Ms. Zerbe answered as a special exception. She explained that it is not a dispute but a permitted use with the new ordinance to all gas pumps. Ms. Zerbe noted the requirements for special exceptions that are located within the packet.

Mr. Preston requested Mr. Gurney to identify himself and questioned how long he has been in his position.

Mr. Gurney answered that his name is Joe Gurney with First Capital Engineering and has been in land development for thirty-six years.

Mr. Preston questioned Mr. Gurney if he has worked on any other Weis stores.

Mr. Gurney answered yes.

Mr. Preston questioned Mr. Gurney that if they are approved this evening then they will meet with land development.

Mr. Gurney answered correct.

Mr. Preston questioned Mr. Gurney if he had prepared the application and site plan.

Mr. Gurney answered yes.

Mr. Preston noted the plan is displayed on the screen during this meeting.

Mr. Preston questioned if the zoning application is part of the record.

Mr. Hull noted for clarity to add the site plans as exhibit five and the rest of the application as exhibit six.

Mr. Preston questioned Mr. Gurney if the narrative in the application is true and correct.

Mr. Gurney answered yes.

Mr. Preston requested Mr. Gurney to describe the site plan that is on the display screen.

Mr. Gurney explained the site plan and noted the location of the Weis store, access roads and the proposed gas and go location which has six fueling stations and air station.

Mr. Preston questioned Mr. Gurney that the plan that is displayed is an existing site that contains an existing Weis Markets.

Mr. Gurney answered yes.

Mr. Preston questioned the size of the existing Weis Market.

Mr. Gurney answered 45,125 square feet.

Mr. Preston questioned that what is being proposed is renovation/expansion of the Weis facility. He questioned what is being modified as the retail store.

Mr. Gurney answered that there is a proposed 11,575 expansion to the facility to the west.

Mr. Preston questioned the size of the retail store after the completion.

Mr. Gurney answered 37,327 square feet and the total will be 56,700 square feet.

Mr. Preston questioned the hope of this evening is to be granted a special exception to install an auto fueling station and the Board of Supervisors amended their ordinance to auto fueling station as a special exception use.

Mr. Gurney answered correct.

Mr. Preston requested Mr. Gurney to discuss the proposed fueling station.

Mr. Gurney noted the screen with the site plan and described that the proposed gas and go will be in the southeastern part of the lot and to access internal access within the lot.

Mr. Preston noted the Board of Supervisors amended the Zoning Ordinance, Section 403 the auto fueling section. Mr. Preston noted they will review the criteria that are itemized.

Mr. Dowling noted that he has studied this ordinance and feels that Weis drafted this ordinance. He questioned if that is correct.

Mr. Preston responded it is not relevant.

Mr. Dowling questioned if this was correct or not correct.

Mr. Preston responded it is not relevant.

Mr. Dowling questioned Ms. Zerbe if she could answer the question.

Ms. Zerbe answered she was not sure and that would be typical and customary for the applicant to draft the ordinance. She explained that it was not an ordinance created by the Township so the applicant would draft an ordinance and provide it to the Township.

Mr. Dowling noted the letter that was drafted.

Ms. Zerbe explained they created it into their standard.

Mr. Dowling noted to Ms. Zerbe his issue with the ordinance and read the ordinance aloud. He noted the problem with this ordinance is that the ordinance makes the assumption that a gas station is an accessory use by the way it written, and this Board said it is not.

Mr. Preston questioned Mr. Dowling if there is any point in the applicant continuing or has your decision already been made.

Mr. Dowling noted that he will continue to listen and hear the argument as you proceed through the criteria of a special exception.

Mr. Preston questioned why.

Mr. Dowling answered because you have to present them to present your case.

Mr. Preston questioned Mr. Dowling that if they present these successfully then the applicant will be entitled to the special exception in your opinion.

Mr. Dowling answered he has to listen to the testimony and the arguments.

Mr. Preston stated that is not what it sounds like, it sounds like your mind is made up.

Mr. Dowling noted he has concerns with the way the ordinance is written.

Mr. Preston responded the applicant is not here to test the ordinance.

Mr. Dowling noted he understands that.

Mr. Preston noted this is not a legislative body. He explained he understands Mr. Dowling may not be happy that they turned down an interpretation that was then replaced by an ordinance amendment and that does not change the fact that the ordinance was amended that includes a special exception and who wrote it is not relevant to the Zoning Hearing Board.

Mr. Dowling commented to Mr. Preston it may not be relevant to him.

Mr. Preston noted that under the eyes of the law it is irrelevant. Mr. Preston noted that there is enough on this record to indicate this is anything but a fair hearing.

Mr. Dowling questioned what Mr. Preston said.

Mr. Preston noted that there is probably enough on the record to indicate this is anything but a fair hearing or a hearing for the purpose for which it was intended.

Mr. Sirb guaranteed that this would be a fair hearing. He noted that Mr. Dowling has made a solid point but agrees that this hearing should continue on its merits and then do decide on that.

Mr. Preston questioned if he could proceed uninterrupted.

Mr. Preston continued with Mr. Gurney. He questioned Mr. Gurney if the auto fueling station was on the same lot as the retail store.

Mr. Gurney noted that if they are successful tonight this proposed plan will move forward to subdivision and land development and the gas and go will be on the lot as the Weis Market.

Mr. Preston read item B; a retail lot must be over 30,000 square feet.

Mr. Gurney noted that he previously stated that the retail area will be 37,327 within the existing and proposed store expansion.

Mr. Preston read item C and questioned the branding to be a part of the retail store.

Mr. Gurney answered yes.

Mr. Preston read D and questioned the access to the public street.

Mr. Gurney referred to the site plan on the screen, the location of the proposed gas and go and noted that the gas and go does not have an access point to the public street but only access from the internal lot.

Mr. Sirb questioned that there will be no additional access to the Weis Market and everything will stay the same.

Mr. Gurney answered yes.

Mr. Preston read E and questioned the gas pump distance to the right of way.

Mr. Gurney answered that the gas pumps to the right of way are fifty-six feet.

Mr. Preston read F and questioned the traffic to the access of the gas stations.

Mr. Gurney answered that the traffic will access the gas and go from the parking lot and will not access from Linglestown Road or Colonial Road.

Mr. Preston questioned Mr. Gurney if the gas and go will impact traffic.

Mr. Gurney answered it will not.

Mr. Preston read G and questioned air towers and water outlet minimum setback of ten feet.

Mr. Gurney noted the plan and showed that the air tower noting thirty-eight feet from the property/right of way but could not testify to a water outlet.

Mr. Preston questioned if the water outlet is on the kiosk.

Mr. Gurney answered it would be greater than ten feet.

Mr. Preston read H and questioned automotive supplies and merchandise.

Mr. Gurney read directly from what he had written relating to supplies and merchandise.

Mr. Preston noted that they have reviewed all of Section 403.D.O and reviewed a, b, c, d, e, f, g, and h and questioned Mr. Gurney that the applicant has complied with them all.

Mr. Gurney answered yes.

Mr. Preston noted he has does not have any more testimony.

Mr. Dowling questioned if any members of the Board wished to be heard.

Mr. Emery questioned Mr. Gurney that these auto fuel stations would not increase any traffic.

Mr. Gurney responded that based on his testimony it will not increase congestion of Linglestown Road or Colonial Road.

Mr. Emery questioned Mr. Gurney how he quantified that.

Mr. Gurney answered through experience of previous projects and information. He noted traffic will be addressed with land development.

Mr. Emery questioned Mr. Gurney's experience and what does he relies on to satisfy this Board.

Mr. Gurney answered studies that were provided to him and explained the trips to gas and go are primarily trips already being made to Weis.

Mr. Emery questioned if Weis knows if someone is using points to pay for gas.

Mr. Gurney noted he cannot answer that.

Mr. Emery questioned if Weis Markets tracks to know the percentage of sales through the use of Weis points.

Mr. O'Hara answered Weis does track the sale of points.

Mr. Emery questioned the percentage of customers using Weis points.

Mr. O'Hara answered he does not have that information at this time.

Mr. Emery requested information to show that this would already be traffic coming to the store rather than additional traffic for the gas pumps.

Mr. Preston noted that Mr. O'Hara said he does not know.

Mr. Preston questioned Mr. O'Hara if there is anything different from this site compared to other existing gas and go sites.

Mr. O'Hara answered no, it will operate like the other gas and go sites.

Mr. Sirb noted that he lives near the area and the parking lot is never fifty percent full and feels that people will attend the gas and go to redeem their points as Weis shoppers.

Mr. O'Hara answered correct.

Mr. Dowling questioned anyone may purchase gas at the gas and go, you do not need to be a member.

Mr. O'Hara answered correct.

Mr. Staub questioned the applicant if there was a percentage of customers that use the gas and go.

Mr. O'Hara answered it varies by store. Mr. O'Hara noted their goal is to increase traffic to the store but they cannot answer how much traffic will be increased and believes the site is more than adequate to hold the traffic.

Mr. Staub noted his concern, by giving the example of the Costco parking lot and gas pumps and the difficulty of moving through the lot at various times.

Mr. Zerbe noted that with the traffic count and reviewing the lot of Weis, Weis lot was designed for the capacity is far different than Costco.



Mr. Sirb noted to Mr. Staub that the Board knows it will increase traffic, the question Mr. Staub is asking is will it change the character of the neighborhood. Mr. Sirb questioned the applicant if it will change the character of the neighborhood.

Mr. O'Hara answered no.

Mr. Emery questioned the hours of the gas and go.

Mr. O'Hara answered they are the same as the store, 7 a.m. – 10 p.m. or 7 a.m. to 11 p.m.

Mr. Staub questioned the applicant if there are any changes from the site plan from what was proposed before to what is currently proposed.

Mr. Gurney reviewed the changes on the screen for the board to see. He shared the expansion will be on the left side, no drive around the back of the store and the gas and go has been pulled closer to the bank side.

Mr. Dowling noted the Dauphin County Planning Commission reviewed this plan and read aloud what the Planning Commission commented on the plan. Mr. Dowling questioned how the gas pumps are compatible with nearby homes.

Mr. O'Hara noted the Sheetz across the street and other retail stores next to Weis.

Mr. Dowling questioned if the Board had any additional questions for the witness.

No response was heard.

Mr. Preston stated he does not have any additional witnesses.

Mr. Sirb requested Mr. Gurney to review the three changes on the proposed plan.

Mr. Preston questioned if Mr. Sirb questioned the prior proposed plan and this new proposed plan.

Mr. Sirb answered correct.

Mr. Gurney reviewed the changes on the screen for the Board to see. He explained the expansion location of the store, the gas and go has moved and no access drive around back for tractor trailers.

Mr. Sirb questioned the buffer.

Mr. Gurney answered the buffer will be taken care of the land development.

Mr. Dowling questioned if any member of the audience wished to be heard.

Mr. Dowling swore in Dori Hoover.

Mr. Dowling questioned Ms. Hoover that she has testified on this matter before.

Ms. Hoover answered yes.

Mr. Preston noted he objected and stated it is not possible.

Mr. Dowling questioned what is not possible.

Mr. Preston explained the hearing had just opened this evening.

Mr. Dowling noted that they had heard the witness before.

Mr. Preston noted this is where Mr. Dowling is confused as he is trying to tie everything together. He noted that the hearing began at six o'clock this evening and he hoped Ms. Hoover had not already discussed the matter with Mr. Dowling.

Mr. Dowling noted he did not like the inference of that and Ms. Hoover will testify and noted she has commented before.

Mr. Preston stated that Mr. Dowling will not shout him down.

Mr. Preston noted that this woman has not testified in this matter.

Mr. Dowling requested Ms. Hoover to begin.

Ms. Hoover noted that the access road is about a twenty-foot grade from her property and the lights of vehicles are shining into her home. She noted that recently she testified at a Board of Supervisor meeting of a peeping tom that was caught on the access road urinating outside of his vehicle in front of children. She noted her concern of the canopy lights that will shine into her home and noted to neighbors whose children have special needs and lights severely bother them. Ms. Hoover thanked the applicant for moving the expansion, noting that it just makes sense. Ms. Hoover noted her second concern is the neighborhood being on well water and the gas station.

Mr. Preston questioned Ms. Hoover that the lights are currently happening now not from the gas and go.

Ms. Hoover explained that is happening now without the gas and go and a buffer needs to be in place, and she noted she wants to make sure it is implemented correctly.

Mr. Preston noted the headlights and people on the access, noting that is happening now, not due to the fueling station. He questioned Ms. Hoover if she knew that during land development that is when a buffer will be discussed.

Ms. Hoover responded that she would like to know the type of buffer because that is not even proposed, and she is fighting for her and her neighbor's property. She explained that she is here because their neighborhood is on well water and having the underground gas tanks is a safety concern.

Mr. Sirb noted to the buffer in the Northeast corner, and being a good neighbor, that if the special exception is granted a memo about a buffer is added that adequately addresses the lighting.

Mr. Preston noted they are not seeking a variance.

Mr. Sirb noted that the applicant is here because they need approval and to get his approval, a point maybe to address the buffer.

Mr. Preston answered the buffer will be taken care of in the land development process.

Mr. Dowling questioned if there was anyone else in the audience that would like to address the Board.

No response was heard.

Mr. Hull requested for the record Ms. Hoover's address.

Ms. Hoover answered 4427 Venus Ave.

At 7:10 p.m. Mr. Dowling noted that the Board will move to executive session.

At 7:21 the Board returned from executive session.

Mr. Dowling questioned if a member of the Board wished to take action on Special Exception 23-01.

Mr. Sirb motioned to accept the special exception 23-01 and for the record the Northeast corner should be adequately buffer, noting that is part of being good neighbors in Lower Paxton Township.

Mr. Emery seconded the motion.

Mr. Dowling requested Mr. Hull for a roll call vote. Mr. Murphy, yes; Mr. Sirb, aye; Mr. Emery, aye; Mr. Staub, aye; Mr. Dowling, no.

Mr. Dowling noted that the motion passes.

This hearing ended at 7:22 p.m.

Respectfully Submitted,

*Kristi Focht*

Kristi Focht, Recording Secretary