

**LOWER MACUNGIE TOWNSHIP**  
**Lehigh County, Pennsylvania**

**ORDINANCE #2009-15**  
**(Duly Adopted December 17, 2009)**

AN ORDINANCE IMPOSING AN IMPACT FEE UPON NEW DEVELOPMENT CONSTRUCTED INSIDE TRANSPORTATION SERVICE AREAS CREATED WITHIN LOWER MACUNGIE TOWNSHIP AND ESTABLISHING PROCEDURES AND STANDARDS ANCILLARY THERETO.

**WHEREAS**, Lower Macungie Township (“Township”) has experienced tremendous growth in the form of residential, commercial, and industrial development over the last decade; and

**WHEREAS**, the Township anticipates that such development will continue; and

**WHEREAS**, the Township anticipates that such future development will impose substantial impacts upon the transportation facilities of and within the Township; and

**WHEREAS**, the Township desires to keep all roads open, in good repair, and usable for the safe and convenient travel by the public; and

**WHEREAS**, future development will impose substantial costs upon the Township regarding the construction, care, repair, maintenance, and usability of all roads within the Township; and

**WHEREAS**, the Township is empowered by Article V-A of the Pennsylvania Municipalities Planning Code to impose an impact fee upon future development to cover all or a portion of the above-described costs; and

**WHEREAS**, the amount of the impact fees have been determined by the cost of the additional transportation improvements needed to meet such minimum safety and capacity standards within each Transportation Service Area and described by the Transportation Capital Improvements Plan approved by the Board of Commissioners; and

**WHEREAS**, the Township hereby finds and declares that the impact fees imposed below are in the best interest of the Township and its residents, are equitable, and do not impose an unfair burden upon future development.

**NOW, THEREFORE**, in consideration of the foregoing, the Board of Commissioners of Lower Macungie Township hereby enacts and ordains the following:

## CHAPTER 162

### TRANSPORTATION IMPACT FEE ORDINANCE

#### §162-1 Title.

This Chapter shall be known as the “Lower Macungie Township Transportation Impact Fee Ordinance”.

#### §162-2. Purpose.

The purpose of this Chapter is to establish an transportation impact fee program to ensure that the Township’s transportation system is available and adequate to support new growth and development. To advance this objective, there is hereby created a transportation impact fee payable to the Township at the time of building permit issuance.

#### §162-3 General Findings and Conditions.

The Board of Commissioners hereby finds and declares that:

A. The conditions and standards for the determination and imposition of the transportation impact fee set forth herein are those set forth in Article V-A of the Pennsylvania Municipalities Planning Code, 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 Lower Macungie Township Transportation Impact Fee Advisory Committee;
3. The Land Use Assumptions as adopted by the Board of Commissioners;
4. The Roadway Sufficiency Analysis as adopted by the Board of Commissioners;
5. The Transportation Capital Improvements Plan as adopted by the Board of Commissioners; and
6. Such other conditions and standards as the Board may, by resolution, identify from time to time as being relevant and material to the imposition of a transportation impact fee and consistent with the provisions of the Act.

B. The collection, disbursement, and accounting of transportation impact fees shall be administered by the Township Staff, subject to review, oversight, and control of the Township Board of Commissioners.

C. The amount of the per peak-hour trip transportation impact fees shall be as set forth in Section 12 of this Chapter.

D. The time, method, and procedure for payment of transportation impact fees shall be as set forth in Section 19 of this Chapter.

E. The procedure for credits against transportation impact fees shall be as set forth in Section 20 of this Chapter.

F. The procedure for refunds of transportation impact fees shall be as set forth in Section 21 of this Chapter.

#### **§162-4 Definitions.**

The terms and definitions set forth in Section 502-A of the Act (53 P.S. §10502-A) are hereby adopted and incorporated in this Chapter by reference.

#### **§162-5 Enactment and Imposition of Transportation Impact Fees.**

There is hereby enacted a transportation impact fee to be imposed upon new development for the purpose of off-site public transportation capital improvements as authorized by the Act and as described in the Transportation Capital Improvements Plan adopted by the Board of Commissioners. Said transportation impact fees shall apply to all new developments or subdivisions within each of the Transportation Service Areas identified herein and shall be a condition precedent to final approval of a development or a subdivision plan and/or issuance of a building permit.

#### **§162-6. Use of Impact Fees.**

Transportation impact fees collected pursuant to this Chapter shall be expended for costs incurred for improvements attributable to new development and designated in the Transportation Capital Improvements Plan adopted by the Board of Commissioners in Resolution No. 2009-40 for improvements within each of the Transportation Service Areas in which the new development will be located. Additionally, such fees may be used for the acquisition of land and rights-of-way, engineering, legal and planning costs, and all other costs, including debt service related to road improvements within the designated service area, and including such proportionate amount of the cost of preparing the Roadway Sufficiency Analysis as is allowed under the provisions of the Act.

**§162-7. Documents Adopted by Board of Commissioners.**

The following documents, previously adopted by the Board of Commissioners, are hereby incorporated by reference into this Chapter:

- A. Recommendations of the Lower Macungie Township Transportation Impact Fee Advisory Committee, including those set forth in the documents identified below.
- B. Land Use Assumptions as adopted by Township Resolution No. 2009-32.
- C. Roadway Sufficiency Analysis as adopted by Township Resolution No. 2009-36.
- D. Transportation Capital Improvements Plan as adopted by Township Resolution No. 2009-40.
- E. The Impact Fee Schedule as established by Township resolution.
- F. Designation of Transportation Service Areas as set forth on the Transportation Service Area Map as established by Township Resolution 2009-16. (This Map is attached hereto as Exhibit "A" and incorporated herein by reference).

**§162-8. Special Traffic Studies.**

- A. Where a new nonresidential development is proposed which deviates from the land use assumptions resulting in increased density, intensity, or trip generation, the developer may be required to prepare a special transportation study in order to assist the Township in determining traffic generation or circulation patterns and to serve as the basis for the determination of the appropriate amount of transportation impact fees for such development or subdivision. Such transportation studies shall conform to the requirements of the Lower Macungie Township Subdivision and Land Development Ordinance. No studies, however, 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.
- B. Any such studies required by the Township shall be submitted prior to the imposition of the transportation impact fee and shall be considered in the determination of the fee.

**§162-9. Applicability of Impact Fee.**

This Chapter shall be uniformly applicable to all new development that occurs within a designated Transportation Service Area.

**§162-10. Payment of Impact Fee Prerequisite to Building Permit Issuance.**

No building permit shall be issued for in conjunction with any new development in a designated Transportation Service Area, as herein defined, unless the applicant therefore has paid the impact fee imposed by and calculated pursuant to this Chapter.

**§162-11. Exemptions.**

(Reserved)

**§162-12. Methods of Calculation of Impact Fees.**

A. The impact fee for transportation capital improvements shall be based upon the total costs of the road improvements included in the adopted Transportation Capital Improvements Plan within a given Transportation Service Area attributable to and necessitated by new development within the service area as defined, divided by the number of anticipated peak-hour trips generated by all new development consistent with the adopted Land Use Assumptions 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 service area.

B. The specific transportation impact fee for a specific new development or subdivision within a Transportation Service Area for road improvements shall be determined as of the date of preliminary land development or subdivision approval by multiplying the per-trip cost established for the Transportation Service Area by the estimated number of PM peak-hour trips to be generated by the new development or subdivision using the Trip Generation Manual published by the Institute of Transportation Engineers, 6th or subsequent editions as amended.

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

**§162-13. Establishment of Transportation Service Areas.**

A. The East and West Transportation Service Areas are established as shown on the "Transportation Service Area Map" prepared by McMahan Associates, Inc. (See Exhibit "A").

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

1. The Township Comprehensive Plan;

2. Any standards for adequate public facilities incorporated in the program;
3. The projected build-out and timing of development areas;
4. The need for and cost of unprogrammed transportation improvements necessary to support projected developments; and
5. Such other factors as the Board of Commissioners may deem relevant.

C. Fees collected from development in each of the Transportation Service Areas and/or transportation district subareas, as the case maybe, will be used exclusively to fund transportation improvement projects scheduled for that Area or subarea.

#### **§162-14 Calculation of Per Peak Hour Trip Fee for the Transportation Service Area.**

The amount of per peak hour trip fee for the East Transportation Service Area is \$1,894 and the amount of per peak hour trip fee for the West Transportation Service Area is \$1,839, unless either is revised or amended in accordance with the provisions hereof and the Act. These costs were calculated in accordance with §503-A(e)(1)(iv)(C) and §505-A(a)(1) of the Act as follows:

A. East Transportation Service Area. The total costs of road improvements in the East Transportation Service Area included in the adopted Transportation Capital Improvements Plan attributable to and necessitated by new development within the Transportation Service Area, including 50% of the estimated costs of improvements to highways, roads, and streets qualifying as a state highway or portion of the rural highway system as provided in §102 of the State Highway Law, is \$4,515,833. The per peak hour trip transportation impact fee also includes the prorated share of costs incurred for the completion of the Roadway Sufficiency Analysis Report that is attributable to development, which is \$8,130.

B. West Transportation Service Area. The total costs of road improvements in the West Transportation Service Area included in the adopted Transportation Capital Improvements Plan attributable to and necessitated by new development within the Transportation Service Area, including 50% of the estimated costs of improvements to highways, roads and streets qualifying as a state highway or portion of the rural highway system as provided in §102 of the State Highway Law, is \$2,536,771. The per peak hour trip transportation impact fee also includes the prorated share of costs incurred for the completion of the Roadway Sufficiency Analysis Report that is attributable to development, which is \$12,198.

#### **§162-15. Large Subdivision and Land Developments.**

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 Trip Generation Manual published by the Institute of Transportation Engineers, 6<sup>th</sup> or subsequent

editions, during the peak-hour period designated in this Chapter. The applicant for such a development shall perform traffic analysis of development traffic impact on highways, roads, or streets outside the Transportation Service Area in which the development site is located but within the boundaries of Lower Macungie Township. Any such highways, roads or streets or parts thereof outside the Transportation Service Area which will accommodate 10% or more of development traffic and 100 or more new peak hour trips shall be studied, and the applicant shall mitigate the traffic impacts of the development on such highways, roads, and streets to maintain the predevelopment conditions after completion of the development.

**§162-16. Projects not Contained in the Transportation Capital Improvements Plan.**

Any other provisions of this Chapter to the contrary notwithstanding, in accordance with the provisions of Act, Lower Macungie Township may expend transportation impact fees paid by an applicant on projects not contained in the Transportation Capital Improvement Plan or may provide credit against the transportation impact fees for the value of any constructions projects not contained in the Transportation Capital Improvement Plan or may provide credit against transportation impact fees for the value of any construction projects not contained in the Transportation Capital Improvement Plan which are performed at the applicant's expense if all of the following criteria are met:

- A. The applicant has provided written consent to use of its transportation impact fees or the provision of such credit against the applicant's transportation impact fees for the specific transportation projects which are not included in the Transportation Capital Improvement Plan.
- B. The alternative transportation projects, whether highway or multimodal, have as their purpose the reduction of traffic congestion or the removal of vehicle trips from the roadway work.
- C. Lower Macungie Township amends its Transportation Capital Improvement Plan components required by Section 504-A(e)(1)(vi) of the Act to provide replacement of the collected transportation impact fees transferred to transportation projects outside the Transportation Capital Improvement Plan from sources other than transportation impact fees or developer contributions within three years of completion of the alternative projects to which the transferred fees were applied or for which credit was provided. All interest earned on such funds shall become funds of that account. Lower Macungie Township shall make an accounting annually for any fund account containing impact fee proceeds and earned interest. Such accounting shall include, but not be limited to, the total funds collected, the source of the funds collected, the total amount of interest accruing on such funds and the amount of funds expended on specific transportation improvements. Notice of the availability of the results of the account shall be included and published as part of the annual audit required by Lower Macungie Township. A copy of the report shall also be provided to the Transportation Impact Fee Advisory Committee.

**§162-17. Nonbinding Impact Fee Estimate.**

Prior to making an application for a building permit, an applicant may request a nonbinding 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 specified a different type of development upon the site.

**§162-18. Administration of Impact Fee.**

A. Collection of impact fee. Transportation impact fees due pursuant to this Chapter shall be collected by the Township in the manner or manners prescribed herein prior to the issuance of a building permit.

B. Establishment of fund. Upon receipt of transportation impact fees, the Township Staff 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 Staff shall establish appropriate trust fund accounts and shall maintain records whereby transportation impact fees collected can be segregated for each Transportation Service Area.

D. Maintenance of records. The Township Staff 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 funds from each account shall be used solely and exclusively for the provision of projects specified in the program for the particular Transportation Service Area.

**§162-19. Time, Method and Procedure for Payment**

Payment of the transportation impact fee shall be made by the applicant prior to the issuance of a building permit by the Township in conjunction with new development. The transportation impact fee shall be paid to the Township in cash, bank cashier's check, certified check, or electronic fund transfer approved by the Board of Commissioners and shall be administered by the Township in accordance with the provisions of this Chapter.

**§162-20. Credits.**

Any applicant who performs, at his own expense and with the consent and agreement of the Board of Commissioners, off-site improvements, as herein defined, shall be eligible for a credit from the transportation 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 transportation impact fee.

A. An applicant shall be entitled, as a credit against transportation impact fees, to 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.

B. If the applicant makes such improvements, he must enter into an agreement with the Board of Commissioners, 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 Commissioners. The Board of Commissioners 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. The amount of such credit for any capital improvement constructed shall be the amount allocated in the Transportation Capital Improvement Plan, including contingency factors, for such improvement. In no event shall the Board of Commissioners 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 transportation impact fee due, the applicant may use such excess credit toward the transportation impact fees imposed on other building permits for development on the same site and in the same ownership. Provided any such applicant shall be required to supply financial security sufficient, in the judgment of the Township, to cover the cost of any such improvement installed by the applicant for which credit is sought.

C. An applicant shall be entitled, as a credit against transportation impact fees, to 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. The fair market value of any land dedicated to and accepted by the Township shall be determined as of the date of the submission of the subdivision or land development application to the Township.

#### **§162-21. Refunds.**

Impact fees collected pursuant to this Chapter 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 transportation impact fee payment (plus interest earned) bears to the total transportation impact fees collected (plus interest earned). The Township shall provide written notice by certified mail to each person who previously paid the fees and remain undisbursed that such person's proportionate share of the fund balance is available for refund to such person. Such notice shall be provided to the last known address provided by the payor of the transportation impact fees to the Township. In the

event that any of the funds remain unclaimed following one year after the notice, the Township shall be authorized to transfer any funds so remaining to any other fund of the Township without any further obligation to refund said funds. It shall be the responsibility of the payor to provide the Township, at all times, with a current address for such notice.

B. In the event any specific road improvement project is completed at a cost to the Township that is less than 95% 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 of a project within three years of the scheduled construction date of the project as set forth in the Transportation Capital Improvements Plan, the Township shall refund the portion of the transportation impact 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. Failure of a payor to make such written request prior to the commencement of such project shall be deemed a waiver of any right to such refund. Commencement being defined herein as the start of any type of work on the project, including, but not limited to, earthwork; issuance of notifications; filing of applications; issuance of permits; surveying, engineering and design work; initiating condemnation actions; and/or land acquisition.

D. In the event the new development for which transportation impact fees were paid has not commenced prior to the expiration of the building permit issued therefore, the transportation 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 transportation 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 transportation impact fees attributable to an expired building permit to cover fees incurred by a renewal of said expired permit.

#### **§162-22. Effect of Transportation Impact Fee on Zoning, PRD, and Subdivision Regulations.**

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

#### **§162-23. Transportation Impact Fee as Additional and Supplemental Requirement.**

The transportation 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 Chapter; 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 transportation impact fee for transportation improvements as provided herein.

#### **§162-24 Construction of Provisions.**

The provisions of this Chapter 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.

#### **§162-25. Appeals**

A. Any person required to pay a transportation impact fee shall have the right to contest the land use assumptions, the development and implementation of the Transportation Capital Improvement Plan, the imposition of transportation impact fees, the periodic updating of the Transportation Capital Improvement Plan, the refund of transportation impact fees, and all other matters relating to transportation impact fees, including the constitutionality or validity of the transportation impact fee ordinance by filing an appeal with the Lehigh County Court of Common Pleas.

B. A master may be appointed by the Court to hear testimony on the issues and return the record and a transcript of the testimony, together with a report and recommendations, or the Court may appoint a master to hold a nonrecord hearing and to make recommendations and return the same to the Court, in which case either party may demand a hearing de novo before the Court.

C. Any cost incurred by parties in such an appeal shall be the separate responsibility of the parties.

#### **§162-26. Retroactive Application.**

A. Notwithstanding the effective date of this Chapter, transportation impact fees may be imposed on those projects involving development, subdivision, and PRDs for which an application has been filed on or after the first publication of notice of the Township's intent to adopt this Chapter; provided, however, that such retroactivity does not exceed 18 months after the adoption of the resolution that created the Township's Transportation Impact Fee Advisory Committee.

B. In retroactive applications, the per-trip fee may not exceed \$1,000 or the actual calculated fee, whichever is less.

**§162-27 Repealer.**

All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed.

**§162-28 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 intend of the Board of Commissioners of Lower Macungie Township that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included therein.

**§162-29 Effective Date.**

This Ordinance shall become effective one (1) day after enactment or upon recordation of this Ordinance within the Township's official Ordinance Book, whichever comes later.

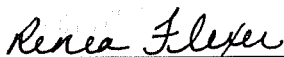
**ENACTED and ORDAINED** this 17<sup>th</sup> day of December, A.D., 2009.

**LOWER MACUNGIE TOWNSHIP  
BOARD OF COMMISSIONERS**

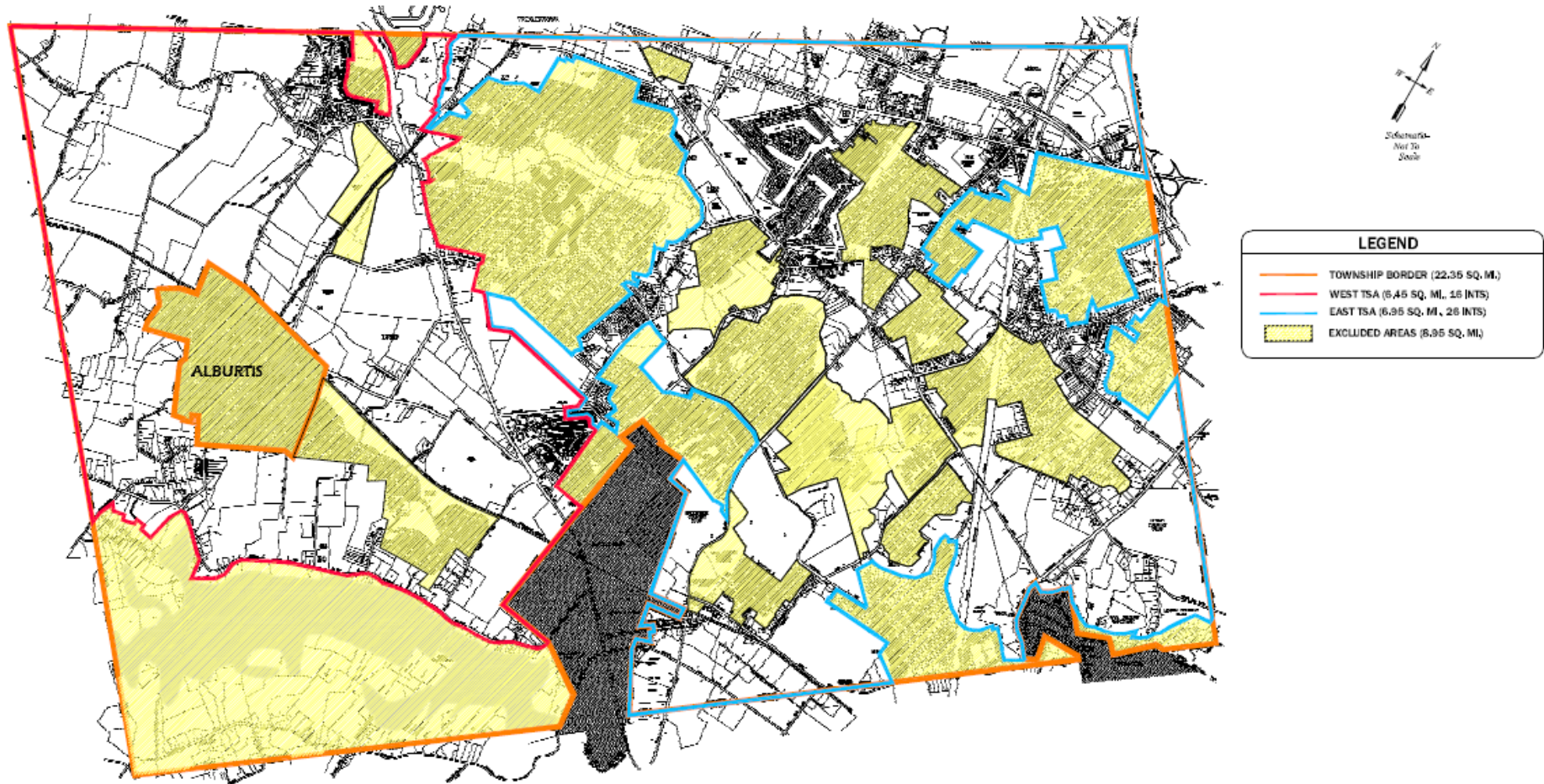


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E. Keller Kline, III, President

**ATTEST:**



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Renea Flexer, Secretary



**FIGURE 1**  
 Transportation Service Areas  
**LOWER MACUNGIE TOWNSHIP ACT 209**  
 LOWER MACUNGIE TOWNSHIP, LEHIGH COUNTY, PA



# EXHIBIT A