

**TOWNSHIP OF BURLINGTON**

**ORDINANCE**

**2024-OR-012**

**ORDINANCE OF THE TOWNSHIP OF BURLINGTON  
AUTHORIZING THE PRIVATE SALE OF SUBDIVIDED  
PARCEL A FROM BLOCK 95, LOT 8.01 TO A3  
INDUSTRIAL, LLC SUBJECT TO CERTAIN CONDITIONS**

**WHEREAS**, the Municipal Land Use Law (“MLUL”), N.J.S.A. 40:55D-1 et seq., which enables a governing body to regulate land use through the adoption of development regulations, became effective on August 1, 1976; and

**WHEREAS**, in compliance with the provisions of the MLUL the Township Council adopted the Land Development Ordinance of the Township of Burlington, New Jersey (“Land Development Ordinance”); and

**WHEREAS**, to facilitate the review of land use applications Land Development Ordinance § 330-128 provides for the Joint Staff Committee on Land Use Applications (“Screening Committee”) consisting of the professional staffs of the Planning Board and Zoning Board of Adjustment, the Administrative Officer(s), and the Mayor and Chairpersons of each board to serve as ex officio officers, for the purpose of “review[ing] informally all applications for development ... submitted to it by the Administrative Officer and to offer its advice and opinions concerning the procedural and substantive merits of the proposal” [Land Development Ordinance § 330-128 C.]; and

**WHEREAS**, the Screening Committee met virtually on November 25, 2020, to discuss the development of Block 95, Lot 8, also known as 1800 Beverly Road, with the contract purchaser, A3 Industrial, LLC (“A3”), and its representatives, at which meeting the Township Engineer advised that the adjacent property, Block 95, Lot 8.01 was owned by the Township and that the developer would have to establish that it had made an effort to acquire Block 95, Lot 8.01, to either mitigate or eliminate the need for any potential variances; and

**WHEREAS**, as a warehouse is a permitted use on Block 95, Lot 8, pursuant to N.J.S.A. 40:55D-10.5 the application was subject to the provisions of the Township's existing development regulations, which permit the development of a warehouse; and

**WHEREAS**, counsel for A3, by letter dated December 1, 2020, sent to the then Township Administrator, inquired whether the Township was "interested in selling [Block 95, Lot 8.01] to my client, [who] would be willing to merge Lot 8.01, into Lot 8, and other than needed for purposes of developing the property in a fashion reflected on the Concept Plans ..., and which hopefully would become part of a formal site plan application, would have no interest in further developing same;" and

**WHEREAS**, the deed dated June 15, 1983, whereby Tenneco Polymers, Inc. conveyed Block 95, Lot 8.01 to the Township, contained a restrictive covenant "that the use of the aforescribed real property shall be used only as open space and for outdoor recreational purposes ... [to] expire 20 years from the date of this Deed ("Restrictive Covenant");" and

**WHEREAS**, with a portion of the Block 95, Lot 8.01 being consolidated with Block 95, Lot 8, the impact of the warehouse within the adjoining neighborhood would be ameliorated by its being reduced in size, and the parking and loading areas being relocated to the opposite side of the adjoining residential neighborhood, with the warehouse serving as an additional buffer; and

**WHEREAS**, throughout the 2021 Covid year, Township and A3's representatives continued to discuss the layout of the proposed development with the inclusion of a portion of Block 95, Lot 8, to reduce the impact of the warehouse on the affected Beverly Road neighborhood; and

**WHEREAS, N.J.S.A. 40A:12-13.2** provides that "whenever a municipality intends to sell real property which is less than the minimum size required for development under the municipal zoning ordinance and is without any capital improvement thereon, it shall accord the owner or owners of any real property contiguous to such real property the right to prior refusal to purchase such land;" and

**WHEREAS**, pursuant to the aforementioned statute the Township Council adopted Resolution 2022-R-136 on June 14, 2022, authorizing the Mayor and Township Clerk to sign an agreement of sale with A3, who was designated as the contract purchaser of the contiguous parcel, Block 95, Lot 8, for the purchase of a portion of Block 95, Lot 8.01, based upon the following findings as set forth in the preamble clauses the Resolution:

**WHEREAS**, Block 95, Lot 8.01, has never been developed by the Township for any use, nor is it located in an area where it would serve a recreational purpose; and

**WHEREAS**, the Township has received a request from A3 Industrial, LLC, which proposes to develop a warehouse on the adjacent property known as Block 95, Lot 8, a 3.1-acre portion of Block 95, Lot 8.01 (sic) "Parcel"), to be used for buffering, open space and for stormwater and similar improvements; and

**WHEREAS**, the Township Engineer has advised that the Parcel will improve the proposed warehouse development by ameliorating the impact of the proposed warehouse development on neighboring residential properties by increasing the buffer area; and

**WHEREAS**, the Director of Recreation has advised that due to its location the Parcel is not needed for any municipal recreational purpose and the Director of Public Works has advised that it serves no public works purpose; and

**WHEREAS**, the Tax Assessor has recommended that the Parcel be sold at private sale to an adjoining property owner for \$362,700.00 based upon the value of industrial properties sold within the Township; and

**WHEREAS**, the governing body, based upon the guidance of the administration has determined that the Parcel serves no public purpose as it is not viable for open space due to its relatively small size and location, and the fiscal benefit to the Township resulting from its sale, combined with the resulting improvements to the warehouse development on Block 95, Lot 8, by the inclusion of the Parcel in the development, which will benefit the neighbors, outweigh any benefit resulting from the Parcel remaining municipal property; and

**WHEREAS**, the Purchase and Sale Agreement ("Agreement") was executed on June 28, 2022, authorizing the sale of a 3.12-acre subdivided portion of Block 95, Lot 8.01 , designated as "Subdivided Parcel A," to A3 Industrial, LLC, designated as "Purchaser," with the 1.89-acre remainder parcel, "Subdivided Parcel B," being retained by the Township; and

**WHEREAS**, the Agreement required the Township to offer Subdivided Parcel A to all adjoining property owners pursuant to N.J.S.A. 40A:12-13.2, and if the Purchaser was the successful responder it would seek subdivision approval, as more particularly set forth in Section 1 of the Agreement as follows:

E. Within ten (10) days of the Contract Date, Seller will, through the Township Administrator, send letters to all continuous property owners, including Purchaser, offering the opportunity to purchase Subdivided Parcel A at a price of Three Hundred Sixty-Two Thousand Seven Hundred Dollars (\$362,700.00). Each owner of a contiguous property, being Purchaser and New Jersey Transit Company, shall have thirty (30) days from receipt of such letters to respond in writing of the owner's interest in purchasing Subdivided Parcel A for the consideration listed therein.

F. If Purchaser is the successful bidder to purchase Subdivided Parcel A, the Township Council shall enact the necessary Ordinance to sell Subdivided Parcel A to Purchaser, and that it will introduce said Ordinance within thirty days of the adoption of the resolution memorializing approval of the subdivision by the Burlington Township Planning Board, and schedule for adoption; and

**WHEREAS**, the Agreement in Section 4.A. granted the successful bidder the opportunity to inspect Subdivided Parcel A within the ninety (90) day period following the adoption of the resolution declaring it to be the successful bidder, and in Section 7.G. the Township warranted that it was "not aware of any environmental conditions" affecting Block 95, Lot 8.01; and

**WHEREAS**, the Agreement provides that Subdivided Parcel A was to be conveyed with the following deed restrictions:

1. No building or structure may be constructed on the Property.
2. The Property may only be used as open space, a buffer area, and for stormwater improvements, and the like, associated with the proposed warehouse; and

**WHEREAS**, as A3 was the only contiguous property owner to submit an offer to purchase Subdivided Parcel A for \$362,700.00, the Township Council on September 13, 2022, adopted Resolution 2022-R-199 declaring A3 as the successful bidder, finding that "Subdivided Parcel A will improve the warehouse to be developed on Block 95, Lot 8 and the only improvements which may be constructed on Subdivided Parcel A are for storm water and similar improvements," and noted that A3 Industrial, LLC had ninety days in which to perform its due diligence; and

**WHEREAS**, on September 14, 2023, the Burlington Township Planning Board conducted a hearing on the application of 1800 Beverly Road Industrial, LLC for the following approvals as described in Resolution No. 2023-08

“RESOLUTION OF THE PLANNING BOARD FOR THE TOWNSHIP OF BURLINGTON GRANTING THE APPLICATION OF 1800 BEVERLY ROAD INDUSTRIAL, LLC FOR MINOR SUBDIVISION APPROVAL AS WELL AS PRELIMINARY SITE PLAN APPROVAL WITH VARIOUS VARIANCES, DESIGN EXCEPTIONS AND WAIVERS” (“Planning Board Resolution”), which was adopted on October 12, 2023:

WHEREAS, 1800 Beverly Road, LLC (the “Applicant”) applied to the Burlington Township Planning Board (the “Board”) to obtain both Minor Subdivision as well as Preliminary and Final Site Plan Approval; the minor subdivision application proposes to subdivide an existing lot measuring 5.01 acres ... owned by the Township ..., currently designated as Block 95, Lot 8.01, by dividing it into two lots: a 1.89 acre lot to be retained by the Township, and a 3.12 acre portion that is proposed to be transferred to the Applicant which will then be consolidated with an existing 13.30 acre lot owned by the Applicant, currently identified as Block 95, Lot 8, to create a lot measuring 16.42 acres to be identified as Lot 8.03 (the “Property”); the site plan application seeks approval to develop the Property with a 198,996 square foot warehouse, that will include 19,900 square feet of office space, together with related site improvements; all property at issue in the applications is located in the Heavy Industrial (I-2) Zoning District; and

**WHEREAS**, at the September 14, 2023, hearing the professional planner for 1800 Beverly Road Industrial, LLC explained the benefits that would result from the sale of Subdivided Parcel A particularly when contrasted to the permitted warehouse development that could occur on Block 95, Lot 8, without the addition of Subdivided Parcel A, as set forth in the Planning Board Resolution (pp. 9-10) as follows:

... without the addition of the 3.12 acre portion of existing Lot 8.01 ... the applicant could build a similarly sized warehouse, with all necessary site improvements and without any variances; however, this development alternative would provide for the loading dock area to be on the West side of the building, where it would face existing residential properties; in addition, the driveway would be constructed in such a fashion that there would be direct view of the tractor trailer parking area and loading dock area from Beverly Road; this would provide undesirable views to the residential properties on Beverly Road, and would also enable sound to travel unimpeded in the direction of ... Beverly Road and the residential properties located on and beyond it; as such, developing the property in accordance with the existing zoning requirements could cause substantial impacts on adjacent residential properties, even though constructed in a manner that is permitted; on the other hand, the Applicant’s proposed site plan, while encroaching on the required setback and buffers, will allow the property to [be] developed with the loading dock on the East side of the building, where it will be adjacent to land that is zoned, and currently used, for industrial purposes; in addition the construction of the

building itself will act as a buffer of the noise and views of the loading dock side of the building from the residentially zoned and used properties in the vicinity ...; and

**WHEREAS,** the Planning Board made the following findings in determining the benefits resulting from the addition of Subdivided Parcel A to Block 95, Lot 8:

... the subdivision of Lot 8.01 and conveyance of a 3.12 acre portion of it to the Applicant will enable the proposed development to have greater buffers and less impact on nearby residential properties than if the Applicant were to develop existing Lot 8 in accordance with the existing zoning requirements; as demonstrated by Exhibit 5, the Applicant could build a similarly sized warehouse solely on Lot 8 that complies in all respects with the existing zoning, but which will put the loading dock side of the building so that it is facing the direction of residential properties, and the design of the driveway would allow direct views, and transmission of sound, towards Beverly Road and residential properties on and beyond it; by subdividing Lot 8.01 and transferring a 3.12 acre portion of it to the Applicant, the Property can be developed with the loading dock side of the building facing other industrially developed properties, with the building itself serving to help attenuate light and noise that would otherwise be directed towards the existing residential properties, and the design of the driveway ... will provide a buffer of the view and sounds of the loading dock area to Beverly Road and the residential properties on and beyond it .... (Planning Board Resolution pp. 15-16); and

**WHEREAS,** upon the recommendation of the Planning Board Engineer the Planning Board waived soils testing for lead, arsenic and pesticides as the proposed use was not residential and there was no evidence of prior agricultural use of the Township Property which would require soils testing (Planning Board Resolution pp. 11 and 21); and

**WHEREAS,** the Planning Board Resolution reflects that much public comment was received related to the feared negative effect of a warehouse on the Beverly Road neighborhood, resulting from an increase in traffic and environmental concerns based upon prior industrial users in the vicinity of Block 95, Lot 8.01; and

**WHEREAS,** in accordance with the terms of the Agreement the Township Council was presented with a draft ordinance at its October 24, 2023 meeting for introduction entitled "ORDINANCE NO. 2023 - OF THE TOWNSHIP OF BURLINGTON AUTHORIZING THE PRIVATE SALE OF A 3.1 ACRE PORTION OF BLOCK 95, LOT 8.01 TO A3, INDUSTRIAL, LLC TO BE

CONSOLIDATED WITH BLOCK 95, LOT 8 WITH CONDITIONS LIMITING THE USE OF THE 3.1 ACRE PARCEL AS OPEN SPACE, A BUFFER AREA AND FOR STORMWATER IMPROVEMENTS (“Proposed Ordinance”); and

**WHEREAS**, the public members in attendance at the October 24, 2023 Council meeting were given the opportunity to present their concerns to the members of the governing body, which concerns focused on the desire not to have a warehouse in the Beverly Road neighborhood, traffic, preservation of open space, and the waiver by the Planning Board of soils testing; and

**WHEREAS**, the Township Engineer explained the benefits that would accrue to the neighborhood from the sale of Subdivided Parcel A, and why the Planning Board had waived soils testing; and

**WHEREAS**, the Township Attorney explained to the public that the Planning Board lacked authority to deny an application for a permitted use; that the Planning Board had exclusive authority to conduct the site plan hearing, and that it was within its purview of the Planning Board to waive soils testing; that the Township Council has no authority to review decisions of the Planning Board, and that the Planning Board could not deny an application because the use would result in an increase in traffic; and

**WHEREAS**, the Township Attorney further explained that the Township Council could not modify development regulations once an application had been filed, and that a municipality had an obligation to act fairly and honor its contractual obligations; and

**WHEREAS**, based upon the concerns expressed by the public the members of the Township Council voted not to introduce the Proposed Ordinance as there was concern regarding the decision of the Planning Board to waive soils testing; and

**WHEREAS**, on January 5, 2024, 1800 Beverly Road Industrial, LLC and A3 (“Plaintiffs”) filed a complaint the Superior Court of New Jersey, Chancery Division, bearing Docket No. BUR-C-000002-24 (“Complaint”), naming the Township of Burlington and Township Council as defendants; and

**WHEREAS**, the Complaint alleges that the original design was for a

208,000 square foot warehouse with office space on Block 95, Lot 8, however, as a result of discussions with the Township's professional staff the size was reduced to 198,996 square feet, and the development was "reconfigured ... in a westerly direction [with the] proposed loading docks and tractor trailer parking" [being] "[flipped'] from the west side to the east side of the property; and relocated some of the passenger vehicle parking to the west side" for the "purpose of ... improv[ing] the layout of the development for the benefit of the neighborhood, by moving the loading docks and heavy truck activity and parking to a location farther away from any residential properties, and allowing the building itself to serve as a sound mitigation device..." [Complaint paras. 13 -14] and

**WHEREAS,** the Complaint alleges that by failing to introduce the Proposed Ordinance authorizing the sale of Subdivided Parcel A the Township Council was in breach of its contractual obligations under the Agreement, as well as the covenant of good faith and fair dealing imposed upon municipal corporations; thereby the Township Council was equitably estopped from refusing to sell Subdivided Parcel A, and the Plaintiffs were entitled to specific performance and attorney's fees and costs; and

**WHEREAS,** the Township Council has listened to the complaints voiced by the interested residents who have expressed their concerns, however, upon the advice of the Township Attorney the members of the governing body accept that they are without legal authority to prohibit the permitted warehouse use, and that the recommendations made by the professional staff, which have been accepted by 1800 Beverly Road Industrial, LLC, have resulted in ameliorating the impact of the proposed development on the Beverly Road neighborhood; and

**WHEREAS,** no evidence has been presented that there currently are any environmental issues affecting either Block 95, Lot 8, or Block 95, Lot 8.01; and

**WHEREAS,** subsequent to the October 24, 2023 Council meeting the Township Council has been informed that Block 95, Lot 8, was part of a larger

property that had been subject to a New Jersey Department of Environmental Protection ("NJDEP") Industrial Site Recovery Act ("ISRA") investigation for Tenneco Polymers/EPEC Polymers (ISRA Case #E86305), and that the Licensed Site Remediation Professional, as agent for the NJDEP, as a result of soils testing, has issued an Unrestricted Use Entire Site Response Action Outcome; and

**WHEREAS,** the Township Council recognizes that members of the public have expressed concerns regarding the soils located on Block 95, Lot 8.01, and to find a means to address these concerns the Township Engineer has consulted with the Township's Licensed Site Remediation Professional, EnviroTrac Ltd., to determine what further soils testing should be conducted; and

**WHEREAS,** the Township Council has been advised that the Township Code contains no standard which would require the Plaintiffs to provide further soils information; however, to address the concerns expressed by members of the public, the Plaintiffs have agreed to perform one HAP test on Block 95, Lot 8, for the presence of lead, arsenic and pesticides, and to pay for EnviroTrac Ltd., the Township's Licensed Site Remediation Professional, to collect from Block 95, Lot 8.01, and test TCL+30/TAL soil samples from four locations situated near the rail line on the north side of Lot 8.01; in the open land on the west side of Lot 8.01; near Beverly Road on the south side of Lot 8.01, and adjacent to Lot 8 on the east side of Lot 8.01. The TCL+30/TAL samples are to be tested for volatiles, base neutrals, tentatively identified compounds (VO and BN), pesticides, metals and cyanide. The testing will be for the purpose of establishing that there are no exceedances of the "Soil Remediation Standards for Nonresidential" as set forth at N.J.A.C. 7:26D, more specifically, the "Ingestion-Dermal Exposure Pathway," "Inhalation Exposure Pathway" or "Migration to Ground Water Exposure Pathway" standards; and

**WHEREAS,** in addition to the soils testing the deed conveying Subdivided Parcel A shall include restrictions to limit its use as open space, a buffer area, and for stormwater improvements; 1800 Beverly Road Industrial,

LLC shall perfect its minor subdivision approval by recording a plat in the office of the Burlington County Clerk, and the final site plan shall contain a note setting forth the restriction; and

**WHEREAS**, the purpose of this Ordinance is to resolve the Complaint while endeavoring to respond to the environmental concerns expressed by members of the public to offer comfort.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Burlington as follows:

1. Subdivided Parcel A, being a portion of Block 95, Lot 8.01, as shown in Attachment A, and as described in Attachment B, is to be sold to A3 Industrial, LLC pursuant to N.J.S.A. 40A:12-13.2 for \$362,700.00 in accordance with the terms of the June 28, 2022 Purchase and Sale Agreement, and the Mayor, Township Clerk and Township Attorney, as well as other Township officials, are hereby authorized to take all actions necessary to convey Subdivided Parcel A.
2. Prior to any sale 1800 Beverly Road Industrial, LLC and A3 Industrial, LLC shall cause a HAP soils test to be performed in accordance with the Township Code on Block 95, Lot 8, and pay for the Township's Licensed Site Remedial Professional to perform the following soils tests on Block 95, Lot 8.01: to collect from Block 95, Lot 8.01, and test TCL+30/TAL samples from four locations situated near the rail line on the north side of Lot 8.01; in the open land on the west side of Lot 8.01; near Beverly Road on the south side of Lot 8.01, and adjacent to Lot 8 on the east side of Lot 8.01. The TCL+30/TAL samples are to be tested for volatiles, base neutrals, tentatively identified compounds (VO and BN), pesticides, metals and cyanide. The testing will be for the purpose of establishing that there are no exceedances of the "Soil Remediation Standards for Nonresidential" as set forth at N.J.A.C. 7:26D, more specifically, the "Ingestion-Dermal Exposure Pathway," "Inhalation Exposure Pathway" or

“Migration to Ground Water Exposure Pathway” standards.

3. The deed conveying Subdivided Parcel A shall contain the restriction running with the land in perpetuity that Subdivided Parcel A may only be used for open space, a buffer area, and for stormwater improvements, and the like, associated with the warehouse improvement on Block 95, Lot 8, into which Subdivided Parcel A shall be consolidated. The deed of consolidation shall contain the same restriction.
4. The minor subdivision plat shall be recorded in the Office of the Burlington County Clerk.
5. The final site plan shall highlight Subdivided Parcel A and contain a note setting forth the restriction.

This Ordinance was introduced at a meeting of the Township Council in the Township of Burlington held on February 27, 2024, and will be considered for final passage after a public hearing held at a Regular Meeting of the Township Council to be held on March 12, 2024, at the Township Municipal Building, Burlington Township, New Jersey at 7:00 p.m.

This will certify that the foregoing Ordinance was passed by a majority of the Burlington Township Council on March 12, 2024.

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Mary E. Field  
Municipal Clerk

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Carl M. Schoenborn  
President of Council