

**BEFORE THE UPPER MAKEFIELD BOARD OF SUPERVISORS
APPLICATION OF SUNOCO PIPELINE, LP
OAKDALE AVENUE & RIVER ROAD
CONDITIONAL USE**

ADJUDICATION

On or about March 2, 2022, Sunoco Pipeline, LP (“Applicant”) filed a conditional use application to the Upper Makefield Township Board of Supervisors (“Board”). The Applicant is Sunoco Pipeline, LP and the legal owners of the parcels of subject properties (“Subject Properties”) are:

1. Jamie & Richard Kelly, 106 Oakdale Avenue, Washington Crossing, PA 18977, TMP #47-024-007;
2. Upper Makefield Township, 1076 Eagle Road, Newtown, PA 18940, TMP #47-024-023;
3. Thomas Oliver, 122 Oakdale Avenue, Washington Crossing, PA 18977, TMP #47-024-001.

TMP No. 47-024-007, 47-024-023, and 47-24-001 shall collectively be referred to as the Property. The Applicant proposes to install a new section of pipeline under the Delaware River, after which an existing portion of the pipeline that currently runs below the Delaware River will be grouted and abandoned immediately following the proposed pipeline installation. The Applicant requests conditional use approval pursuant to Section 903.B.13.e(4)(d) of the Newtown Area Joint Municipal Zoning Ordinance (“JMZO”) to permit a proposed pipeline replacement within Zone 2 of the Riparian Buffer Overlay Zone (“Riparian Zone”).

Pursuant to the Pennsylvania Municipalities Planning Code, Act 247 of 1968, as amended, the Board scheduled a hearing for April 19, 2022 at 7:30 P.M., at the Upper Makefield Township Building, located at 1076 Eagle Road, Newtown, Bucks County, Pennsylvania for the purpose of hearing testimony and receiving evidence on the application. The Township advertised notice of the hearing in the Bucks County Courier Times on April 4, 2022 and April 11, 2022 and notified neighboring property owners in accordance with law. Proofs of publication of said application and notice are on file at the Township Building.

Board Chair Thomas Cino, Board Vice Chair Ed Ford, Board Treasurer Tim Thomas, and Board Members Yvette E. Taylor and Ben Weldon were present and took part in the Board’s deliberation. In addition, Judy Caporiccio, the Assistant Township Manager, Mary C. Eberle, the Board Solicitor, Larry P. Young, P.E., the Township Engineer, and the Board stenographer were also in attendance. The Applicant was present and represented by counsel, Allen Toadvine. No one requested party status in this matter.

Based on the evidence presented at the hearing, the Board, after discussion and due deliberation, makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Applicant is Sunoco Pipeline, LP. The Property owners are Jamie & Richard Kelly, 106 Oakdale Avenue, Washington Crossing, PA 18977, TMP #47-024-007; Upper Makefield Township, 1076 Eagle Road, Newtown, PA 18940, TMP #47-024-023; Thomas Oliver, 122 Oakdale Avenue, Washington Crossing, PA 18977, TMP #47-024-001.
2. The Property is located in the CM – Conservation Management Zoning District and within the floodway zone AE and floodplain zone AE.
3. The Property is located in the CM – Conservation Management Zoning District and the present use of the Property is residential.
4. The following exhibits were entered into the record during the course of the hearing:

Township:

- Exhibit T-1 Conditional Use Application dated March 1, 2022 and received by Upper Makefield Township on March 2, 2022, and the exhibits attached to that application
 - Exhibit T-2 Legal Notice published in the Bucks County Courier Times
 - Exhibit T-3 Notices to Applicant and neighboring property owners
 - Exhibit T-4 Confirmation of posting of the property
 - Exhibit T-5 Proof of publication of Legal Notice
 - Exhibit T-6 Tri-State Engineering Review Letter dated January 14, 2022
 - Exhibit T-7 Correspondence from Township Water and Sewer Engineer dated March 28, 2022
5. The Applicant proposes to replace a section of an existing pipeline under the Delaware River, which includes a small section of pipe in Upper Makefield Township. The replacement will be accomplished by using a horizontal direction drill pipeline installation under the Delaware River, with a small section of pipe in Upper Makefield to be installed by trench. The new section of the pipeline will connect with the existing 14-inch pipeline in Oakdale Avenue.
 6. A portion of newly installed pipeline will cross Zone Two of Riparian Zone. Section 903.B.13.e(4)(d) of the JMZO requires conditional use approval for any roads, centralized sewer and/or water lines, or public utility transmission lines crossing into the Riparian Zone at Zone Two.

7. A few weeks prior to the hearing, the Upper Makefield Township Planning Commission reviewed the Conditional Use Application and recommended its approval.
8. The Applicant testified that the pipe will be assembled on the Subject Properties and pulled through the Delaware River from the New Jersey side of the river. The Subject Properties will then be restored to the preconstruction condition and Oakdale Avenue will be repaved.
9. The construction activity will take approximately three months, with an additional month for restoration of the Subject Properties.
10. The construction activity will generate noise in at levels of 80 to 85 decibels. The Upper Makefield Code of Ordinances at Chapter 10 §104.A (1) prohibits the generation of noise, measured at the property line, excess of 60 decibels (DBA) from 7:00 a.m. to 7:00 p.m. and 50 decibels from 7:00 p.m. to 7:00 a.m. The Applicant proposes to work on the Subject Properties from 7:00 a.m. to 5:00 p.m. Mondays through Fridays, and will provide advance notice to the Township Engineer if there will be construction activity on a Saturday.
11. The Applicant's representative, Mark Struss, P.E. testified that the Applicant will install sound walls to protect the neighboring residents from the sound.
12. Mr. Struss testified that the water used for the drilling process will be brought to the Subject Properties by truck, and no new water line created as part of the construction process.
13. Oakdale Avenue will experience single-lane closures, and River Road will remain open to traffic during construction.
14. Six trees will be removed during construction, and replacement trees will be planted when the Subject Properties are restored.
15. Mr. Struss testified no chemicals would be used as part of the drilling process; drilling will be accomplished with a mud mixture.
16. The day when the new section of pipe is pulled through will require nonstop construction for a period of approximately 24 hours.
17. As a result of the replacement of the section of the pipeline across Delaware River, it is not possible to place the pipeline outside of the Riparian Zone.

DISCUSSION

This case comes before the Upper Makefield Township Board of Supervisors upon the Applicants' request for Conditional Use Approval to allow the replacement of a section of pipeline in Zone two of the Riparian Zone on the Subject Properties. A conditional use is a form of a permitted use. The Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Municipalities Planning Code and the Zoning Ordinance. 53 P.S. §10913.2. Zoning ordinances may contain provisions for conditional uses to be allowed or denied by the governing body. 53 P.S. §10603. The burden of proof is on the Applicant to show compliance with specific requirements of the Ordinance.

Section 903.B.13.e(4)(d) and 5 of the Newtown Area Joint Municipal Zoning Ordinance provides, in relevant part, as follows:

(d). Any of the following uses shall be permitted in Zone Two as a conditional use when authorized by the governing body of the municipality in which the use will be located, subject to requirements for conditional uses as set forth in this JMZO, as well as the "Use Regulations," Article VIII, of the JMZO

- 1. Dams, culverts, bridges, roads, and the facilities of all utilities, including sanitary and storm sewers and electric and cable transmission lines, provided that they cross the stream corridor as directly as practical, comply with all applicable federal, state, county and local laws or regulations, and any disturbances offset by riparian corridor improvements approved by the Township; and*
- 2. Detention or retention basins and related outfall facilities*

(5) The above conditional uses and special exception uses are permitted on the condition that the landowner shows that there is insufficient room outside the riparian buffer to accommodate the particular use or accessory use, and provided that there is no other reasonable alternative to establishment of the use in the riparian buffer.

The obligation of the Applicant was to demonstrate that it will comply with township ordinances, and that there is no other location outside the Riparian Zone where this pipeline could be installed. The Board of Supervisors determined that it is necessary to impose conditions on the grant of relief to ensure compliance with ordinance requirements and to further ensure that the construction and restoration is done in accordance with the testimony presented at the hearing

The Board finds that the testimony presented by the Applicant, with the conditions proposed below demonstrates compliance with the requirements of the JMZO and other township ordinances. The burden of proof then shifts to any protestants to present testimony to prove that the use is adverse to the public health, safety, and welfare. There were no protestants to the proposed conditional uses.

The evidence presented convinces the Board that the public health, safety, and welfare would best be served by granting the conditional use with the imposition of certain conditions.

CONCLUSIONS OF LAW

1. The Pennsylvania Municipalities Planning Code, 53 P.S. §10913.2 establishes standards for conditional use approvals and allows the imposition of conditions by the governing body in approving such uses.
2. Section 903.B.13.e(4)(d)(1) of the JMZO allows for corridor crossings into Zone Two of the Riparian Zone for roads, facilities of all utilities including sanitary and storm sewers, and electric and cable transmission lines.
3. Section 903.B.13(e)(4)(d)(2) of the JMZO allows for corridor crossings into Zone Two of the Riparian Buffer Overlay Zone the utilities so long as they comply with all applicable federal, state, county, and local laws or regulations.
4. With the imposition of the conditions listed below to ensure consistency between the Applicant's testimony and the construction and restoration, Applicants have demonstrated compliance with Section 903.B.13.e(4)(d) and 5 of the JMZO.

ORDER

AND NOW, this 7th day of June, 2022, after due deliberation, and after a public meeting, the Upper Makefield Township Board of Supervisors hereby grants a conditional use to install a section of replacement pipeline in Zone Two of the Riparian Zone, subject to the following conditions:


1. The Applicant shall comply with the comments and recommendations of the Township Engineer as set forth in the letter from Tri-State Engineering dated 12/29/21. Compliance shall be to the satisfaction of the township engineer.
2. The pipe replacement shall occur substantially as described in the testimony presented at the hearing.
3. The Applicant shall keep the work site clean and free of debris. The public streets providing access to the Property shall be kept free of mud and dirt.
4. The Applicant shall take all measures necessary to ensure that noise, measured at the Property lines, does not exceed the maximum limits in the Zoning Ordinance. Noise attenuating measures shall include, but not be limited to, the construction of sound walls described in the testimony. The sound walls shall be of sufficient height and shall be located where necessary to prevent noise in excess of the Zoning Ordinance limitations. The noise limits in the Zoning Ordinance may be found at Township of Upper Makefield, PA Noise Regulations (ecode360.com).
5. River Road shall remain open during the construction period, and at least one lane of Oakdale Avenue shall remain open during construction.
6. Water necessary for the replacement operation shall be brought in on trucks, and no water line shall be extended to the Property. Trucks shall utilize collector and arterial streets and avoid local feeder streets. Water trucks shall run only during the hours of operation set forth below.
7. The hours of operation at the Property shall be 8:00 am to 6:00 pm, except for the final phase of construction in which the pipe will be inserted into place. The insertion process will occur during a continuous period of approximately twenty-four (24) hours.
8. The Applicant shall work diligently and continuously toward completion of this project and completion, including restoration, shall occur no later than eight months following start construction.
9. At the conclusion of construction, the Property shall be restored to the condition of the Property prior to construction. Trees removed shall be replaced in accordance with the tree replacement requirements of the Township Code Section 22-324 (SALDO). If construction concludes during months when replanting grass and trees is not advisable, the Applicant shall post financial security in an amount acceptable to the township engineer, to guarantee the proper installation of improvements. The restoration shall be completed as soon as weather conditions permit planting. Applicant shall be responsible

for the care, maintenance, and where appropriate, replacement of landscaping for a period to include 18 months from the completion of the restoration.

10. As soon as possible after the completion of construction, the Applicant shall do a full width overlay of that portion of Oakdale Avenue and any other public street damaged by the construction activities. The Applicant shall provide financial security in an amount satisfactory to the Township Engineer to guarantee the restoration of the property and the overlay of the roads.
11. The Applicant shall perform an inventory of all private wells within 1000 feet of the Property both before and after construction. If there is an adverse impact to these wells, the Applicant shall remediate or redrill the well to the satisfaction of the Township Engineer.
12. The Applicant shall provide the Township with an emergency contact who will be available by telephone 24 hours a day during construction.
13. The Applicant shall demonstrate to the satisfaction of the Township that it has the easements necessary, not only for the placement of the pipe, but to do all work necessary for this project.

ATTEST:

**UPPER MAKEFIELD TOWNSHIP
BOARD OF SUPERVISORS**



David R. Nyman, Manager



Thomas Cino, Chair