

**BEFORE THE BOARD OF SUPERVISORS
OF THE TOWNSHIP OF WEST DEER,
ALLEGHENY COUNTY, PENNSYLVANIA**

IN THE MATTER OF:)
)
Olympus Energy, LLC)
Application for Conditional Use Approval)
Tyche Well Pad and Associated Pipeline)

FINDINGS, CONCLUSIONS AND DECISION

WHEREAS, on or about July 14, 2023, the Applicant, Olympus Energy, LLC, (“Applicant”) filed a Conditional Use Application and supporting documents seeking approval from the Township of West Deer (“Township”) for the development and operation of an unconventional natural gas well pad (the “Tyche Well Pad”) and associated pipeline (collectively, the “Tyche Well Pad Project”) on property located at 201 Bairdford Road, Gibsonia, PA, on property owned by Donald J. Podczerwinski (the “Property”); and

WHEREAS, the Property is located in the Township’s Rural-Residential District (“R-1 District”); and

WHEREAS, the associated pipeline commences at the Tyche Well Pad and terminates at the Leto Compressor Station and is located in the R-1 District and I Industrial District (“I District”); and

WHEREAS, Section 210-6 of the Zoning Ordinance includes unconventional wells in the definition of a “Deep Well Site”; and

WHEREAS, a Deep Well Site is authorized as a conditional use in the R-1 Zoning District of the Township subject to the requirements of the Zoning Ordinance of West Deer Township, including Sections 210-120.A(21)(a)[1] and 210-120.A(21)(c)[1] of the Township Zoning Ordinance ("Zoning Ordinance"), and the Code of the Township of West Deer ("Code"); and

WHEREAS, a timely and duly advertised conditional use hearing was commenced before the Township Board of Supervisors ("the Board") on November 9, 2023, which hearing was subsequently continued to November 14, 2023, for a total of two (2) nights of hearings which included hours of testimony presented by the Applicant and party-objectors, as well as public comment.

NOW THEREFORE, after careful review of the testimony and evidence presented at the above-referenced public hearings, the West Deer Township Board of Supervisors hereby makes the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

1. The foregoing recitals are incorporated herein by reference.

Background / Introduction

2. On July 14, 2023, Applicant submitted a conditional use application and supporting plans, studies, and other documents (collectively hereafter, the “Application”) to the Township seeking approval to construct an unconventional natural gas well pad to be known as the Tyche Well Pad for operation of a Deep Well Site pursuant to Section 210-120(A)(21) of the Code and an associated pipeline. Applicant’s Ex. A.

3. The Township Planning Commission reviewed the Application at multiple meetings on September 28, 2023, October 26, 2023, and November 8, 2023, and at the November 8, 2023 meeting, the Planning Commission voted 4-1 to approve a motion recommending that the Township deny the conditional use and land development applications, but if the Board votes to approve those applications, it should impose 33 conditions proposed by the Planning Commission.

4. The Tyche Well Pad and the proposed pipeline will be located on Property owned by Donald J. Podczerwinski. Tr. 11/9/23, at 23.

5. Specifically, the Tyche Well Pad will be located at 201 Bairdford Road, Gibsonia, PA, and the pipeline will be located on property at 301 Bairdford Road and 201 Bairdford Road in the Township. Tr. 11/9/23, at 23, 26.

6. The Tyche Well Pad will be located in the Township’s R-1 Zoning District. Tr. 11/9/23, at 23; Applicant Ex. A.

7. The associated pipeline commences at the Tyche Well Pad and terminates at the Leto Compressor Station and is located in the R-1 District and I Zoning District. Tr. 11/9/23, at 23; Applicant Ex. A.

Overview of the Proposed Deep Well Site

8. The Tyche Well Pad will be accessed via a 24-foot wide, 950-foot-long access drive that runs off Bairdford Road, with the first 50 feet from Bairdford Road being paved in accordance with Allegheny County highway occupancy permit requirements. An additional 12-foot wide pull-off area for trucks will also be provided. Tr. 11/14/23, at 137-138; Applicant Exhibit D.

9. The Tyche Well Pad is proposed to be 260 feet by 690 feet with a two-foot high perimeter berm around the entire well pad. Tr. 11/14/23, at 138; Applicant Exhibit D.

10. Three stormwater facilities are proposed to be located on the Tyche Well Pad site. Tr. 11/14/23, at 138-139; Applicant Exhibit D.

11. Six-foot-high chain link fencing will be installed around the full perimeter of the Tyche Well Pad site and a lockable gate into the facility will be provided. Tr. 11/14/23, at 139; Applicant Exhibit D.

12. Applicant applied for and obtained an Erosion and Sedimentation Control General Permit ("ESCGP-3") DEP for the Tyche Well Pad. The permit was issued by DEP on October 31, 2023. Tr. 11/14/23, at 141, 159.

Township Zoning Ordinance Requirements for a Deep Well Site

13. On August 29, 2012, the Township Board of Supervisors adopted Ordinance No. 394, now codified as amended at Chapter 210 of the West Deer Township Code of Ordinances, Zoning ("Zoning Ordinance").

14. The Zoning Ordinance regulates oil and gas development, including unconventional gas wells, within the Township, and sets forth specific requirements and restrictions. Zoning Ordinance, Section 210-120.A(21).

15. More specifically, Section 210-120.A(21) of the Zoning Ordinance provides by way of introduction:

A deep well site which would be placed more than 650 feet from any preexisting building located off the property where the deep well site is sited may be permitted as a conditional use in the R, R-1, R-2, R-3 and I Zoning Districts, provided such property upon which the oil and gas well site would be placed is 1/2 acre or more in size. Otherwise, such siting and/or use shall be prohibited in the residential and commercial zones not otherwise permitted above. Zoning Ordinance, Section 210-120.A(21).

16. A "Deep Well Site" is defined by Section 210-6 of the Zoning Ordinance as:

The areas occupied by the facilities, structures, materials and equipment, whether temporary or permanent, necessary for or incidental to the preparation, construction, drilling, fracturing, production or operation of a deep well. This definition also includes any exploratory wells. If multiple areas are used, then the total combined areas shall be considered the deep well site area. Zoning Ordinance, Section 210-6.

17. "Oil and Gas Development or Development," is defined to include "the site preparation, construction, installation, maintenance and repair of oil and gas pipelines and associated equipment and other equipment associated with the exploration for, production and

transportation of oil and gas,” and is authorized as a conditional use pursuant to Zoning Ordinance. Zoning Ordinance, Sections 210-6, 210-120.A(21)(c)[1].

18. The Zoning Ordinance at Section 210-117 also sets forth general “health and safety” criteria applicable to all conditional uses, including this Application. Zoning Ordinance, Section 210-117.

19. Section 210-117 of the Zoning Ordinance provides, in pertinent part:

A conditional use shall be granted approval, predicated upon the submission of a written application demonstrating that the development:

- (1) Will not endanger the public health, safety, morals and general welfare if located where proposed, and that the use will not deteriorate the environment and will meet all performance standards of § 210-110.
- (2) Meets all other requirements of this Chapter in the zoning district where the use is proposed.
- (3) Is in general conformity with the Township's Comprehensive Plan.
- (4) Is an appropriate use on the proposed site. Zoning Ordinance, Section 210-117.

The Public Hearings on the Application

20. A duly advertised public hearing on the Application was held before the Board of Supervisors commencing on November 9, 2023, which hearing was subsequently continued to November 14, 2023, before concluding on that day.

21. At the commencement of the public hearing on November 9, 2023, and on several occasions thereafter, a number of Township residents sought Individual Party Objector status. Tr. 11/9/23, at 11-22.

22. The Board granted Individual Party Objector status to those individuals residing within three-quarters of a mile (0.75 miles) of the proposed Tyche Well Pad and to individuals who own property across which the pipeline is proposed because the Board determined that those individuals were aggrieved parties and met the requirements to establish standing.¹ Tr. 11/9/23, at 10. A list of those individuals granted party status (“Individual Objectors”) is attached as **Appendix A**.

23. At the public hearing on November 9, 2023, Tim Resciniti testified that he represented an unincorporated community organization known as Concerned Residents of West Deer (“CROWD”). Tr. 11/9/23, at 11. The Board granted party status to CROWD.

24. The following witnesses testified on November 9, 2023:

- i. For Applicant, Ryan Dailey; and
- ii. For Applicant, Anthony Miller; and
- iii. For Applicant, Tage Rosendahl; and
- iv. For Applicant, Joe Guley; and

25. The following witnesses testified on November 14, 2023:

- i. For Township, Robert Goetz;
- ii. For Applicant, Brian Dillemath; and

¹ Applicant did not object to the standing of those individuals who testified that they resided within three-quarters of a mile of the Tyche Well Pad. Tr. 11/9/23, at 12.

- iii. For CROWD, Tim Resciniti; and
- iv. Individual Objector, Victoria Austin; and
- v. Individual Objector, Dennis DeValeria; and
- vi. Individual Objector, Jeanne DeValeria; and
- vii. Individual Objector, Sarah Smith; and
- viii. Individual Objector, Amelia Martine; and
- ix. Individual Objector, Nancy Stoehr; and
- x. Individual Objector, Paul Mitsch; and
- xi. Individual Objector, Julie Cousley.

26. On November 14, 2023, other non-party Township residents/taxpayers made public comments. Tr. 11/14/23, at 182-196.

27. During the course of the hearings, the Township, Applicant, CROWD, Individual Objectors, and members of the public introduced, or attempted to introduce, into the record various exhibits. A list of these exhibits is attached as **Appendix B**.

Applicant's Witnesses and Evidence In Support Of The Application

Witness—Ryan Dailey

28. Applicant's first witness was Ryan Dailey, a project manager with Civil & Environmental Consultants ("CEC"). CEC was responsible for the civil site design, environmental permitting, and surveying of the property. Tr. 11/9/23, at 25.

29. Mr. Dailey provided general testimony as to the site and the proposed location of the well pad. Tr. 11/9/23, at 26.

30. Mr. Dailey testified that the proposed location for a well pad is proposed to be located in the R-1 District, contains approximately 52 acres, and is owned by Donald J. Podczerwinski. Tr. 11/9/23, at 26.

31. Mr. Dailey testified that access to the well pad will be via Baird Road, which is an Allegheny County-owned road. Tr. 11/9/23, at 26; Applicant Exhibit D.

32. He testified that the Zoning Ordinance requires a 650-foot setback from a well pad to any existing buildings. Tr. 11/9/23, at 26.

33. Mr. Dailey testified that the nearest existing building to the east of the proposed Tyche Well Pad is approximately 1,310 feet away from the pad. Tr. 11/9/23, at 26-28; Applicant Exhibit D.

34. He explained that to the southeast, houses along Kaufman Road are over 2,100 feet from the proposed well pad. Tr. 11/9/23, at 26-28; Applicant Exhibit D.

35. To the southwest, the nearest property is approximately 930 feet away from the proposed well pad. Tr. 11/9/23, at 26-28; Applicant Exhibit D.

36. Mr. Dailey testified that directly to the west, the nearest house along Baird Road is owned by the surface owner, Donald Podczerwinski, and is approximately 840 feet from the proposed well pad. Tr. 11/9/23, at 26-28; Applicant Exhibit D.

37. He explained that other houses located along the west side of Bairdford Road are between 1,000 and 1,100 feet from the proposed well pad. Tr. 11/9/23, at 26-28; Applicant Exhibit D.

38. Heading to the northwest, the nearest residence along Bairdford Road is approximately 1,140 feet from the proposed well pad. Tr. 11/9/23, at 26-28; Applicant Exhibit D.

39. To the north, houses within The Links development are over 2,970 feet away from the proposed well pad, and to the northeast, houses within The Links development are over 1,790 feet away from the proposed well pad. Tr. 11/9/23, at 26-28; Applicant Exhibit D.

40. The Board finds Mr. Dailey to be a credible witness.

Witness—Anthony Miller

41. Applicant's second witness was Anthony Miller, the Drilling and Completions Manager for Olympus who has served in that capacity for approximately seven years. Tr. 11/9/23, at 29.

42. Mr. Miller testified that pad construction for the initial seven proposed wells is projected to begin in November of 2024, with drilling anticipated to begin in the fall of 2025. Tr. 11/9/23, at 30.

43. Completions are expected to commence in April of 2026, and the Tyche Well Pad is anticipated to go into production in August of 2026. Tr. 11/9/23, at 30.

44. Mr. Miller testified that seven additional wells are planned, with drilling anticipated to begin in June of 2030 and with the wells anticipated to go into production in April of 2031. Tr. 11/9/23, at 30.

45. Mr. Miller explained that Olympus has letters of intent with the Oakmont Water Authority and the Hampton/Shaler Water Authority to provide water to the Tyche Well Pad. Tr. 11/9/23, at 31.

46. Mr. Miller indicated that Olympus is also in active discussions with the Richland Township Water Authority to supply fresh water. Tr. 11/9/23, at 31.

47. The Board finds Mr. Miller to be a credible witness.

Witness—Tage Rosendahl

48. Applicant's third witness was Tage Rosendahl, a regional manager for Acoustical Control, covering operations in the Northeast United States and Canada. Tr. 11/9/23, at 35.

49. In his capacity as regional manager, Mr. Rosendahl oversees mitigation operations and consulting services in the Appalachian Basin. Tr. 11/9/23, at 35.

50. Mr. Rosendahl testified that he was involved in the creation of the sound impact assessment ("SIA") for the Tyche Well Pad and has been involved in the preparation of hundreds of SIAs during his career. Tr. 11/9/23, at 36, 39; Applicant Exhibit F.

51. A SIA is a computer-generated impact model that predicts sound levels at receiver points in order to assess the impact on the neighboring community. Tr. 11/9/23, at 36; Applicant Exhibit F.

52. He explained that an SIA is created by taking data from the noise producers that would be operating on a particular site and then loading that information into the software. The inputted data for an operation similar to the Tyche Well Pad would include sound from drill rigs, pumps, generators, and frack trucks. Tr. 11/9/23, at 39; Applicant Exhibit F.

53. Mr. Rosendahl reviewed the noise level propagation maps that were prepared as part of the Tyche Well Pad SIA. Tr. 11/9/23, at 41.

54. He explained that a total of 28 receptors were modeled using the assumption that the well pad would have a 40-foot tall, STC 34 sound wall constructed on all sides of the well pad. Tr. 11/9/23, at 41; Applicant Exhibit F.

55. Mr. Rosendahl testified that projected decibel ("dBA") levels at these receptor locations during vertical and horizontal drilling range from the 40s to the low 50s and during hydraulic fracturing projected levels range from the upper 50s and low 60s. Tr. 11/9/23, at 41-42; Applicant Exhibit F.

56. He testified by way of comparison, a quiet home is in the range of 40 dBA, a quiet street is approximately 50 dBA, and a normal conversation is approximately 60 dBA. Tr. 11/9/23, at 42; Applicant Exhibit F.

57. He explained that ambient sound measurements were taken at the Tyche Well Pad site in August of 2023, and the results indicated that over a 72-hour period the ambient sound average was 57 dBA. Tr. 11/9/23, at 52; Applicant Exhibit F.

58. Mr. Rosendahl testified that since the construction of the Tyche Well Pad is not in the immediate future, there is a significant chance that improved noise mitigation technologies will be in existence that could be used at the well pad site. If additional mitigation efforts are needed, barriers and enclosures could be installed closer to pieces of equipment to address specific noise issues on the Tyche Well Pad. Tr. 11/9/23, at 52.

59. Mr. Rosendahl testified that in his professional opinion, Olympus's proposed operations at the Tyche Well Pad will meet the Zoning Ordinance level requirement establishing a maximum noise level of 65 dBA. Tr. 11/9/23, at 42, 51.

60. The Board qualified Mr. Rosendahl as an expert in the preparation of SIAs. Tr. 11/9/23, at 39.

61. The Board finds Mr. Rosendahl to be a credible witness.

Witness – Joe Guley, P.E.

62. Applicant's fourth witness was Joe Guley, P.E., a project manager with Stahl Sheaffer Engineering. In this capacity, he performs work related to highway design and road improvement projects. Tr. 3/1/23, at 57.

63. Mr. Guley also testified that he oversaw the creation of the traffic impact study ("TIS") for the Tyche Well Pad. Tr. 3/1/23, at 57.

64. Mr. Guley testified that he has been involved in approximately 50 to 60 traffic impact studies in his career. Tr. 3/1/23, at 86-87.

65. He explained that a TIS provides an analysis of a roadway network infrastructure to determine the impacts that traffic from a proposed development will have on a specific road network. Tr. 11/9/23, at 57.

66. During his testimony, Mr. Guley reviewed the proposed haul route map for the Tyche Well Pad. Tr. 11/9/23, at 57-58, 100; Applicant Exhibit H.

67. Specifically, he explained that Stahl Sheaffer and Applicant reviewed three potential haul routes before selecting the proposed haul route that utilizes Route 910 to Oak

Road to Bairdford Road, as that route contains fewer geometrical issues than the other alternative routes that were considered. Tr. 11/9/23, at 57-58, 100; Applicant Exhibit H.

68. Mr. Guley also testified that any necessary improvements for the haul route to accept the traffic volume to the well pad site can be made. Tr. 11/9/23, at 57-58, 100; Applicant Exhibit H.

69. He explained that one alternate route was located to the north, that utilized Bakerstown Road to Oak Road to Bairdford Road to enter the Tyche Well Pad site. However, this route was problematic due to the tight turning radius at the intersection of Bakerstown Road and Bairdford Road that would have required Applicant to acquire property not within the Pennsylvania Department of Transportation ("PennDOT") right-of-way to widen the intersection to accommodate water trucks traveling to the well pad site and an existing pole to the north of the intersection containing numerous utilities would need to be relocated. Tr. 11/9/23, at 58-59, 101.

70. He also explained that a second alternate route was located to the south utilizing Route 910 to Saxonburg Boulevard to Bairdford Road to enter the Tyche Well Pad site. However, this route was also problematic due to the number of horizontal curve issues that would have required widening, along with a number of design upgrades and improvements. Tr. 11/9/23, at 59

71. Mr. Guley also testified that one additional route, Route 910 to Middle Road Extension, was initially reviewed but quickly eliminated based on the public feedback received during the Dionysus Well Pad hearings. Tr. 11/9/23, at 58.

72. Mr. Guley provided an overview of what a traffic “level of service” is. Tr. 11/9/23, at 60.

73. He explained that the level of service provides a letter grade from A through F to an intersection to categorize delays associated with that intersection. An “A” grade represents the best condition with a minimal amount of delays, while an “F” represents the worst condition with the longest amount of delay. Tr. 11/9/23, at 60; Applicant Exhibit H.

74. Mr. Guley testified that the TIS evaluated eight intersections with respect to the Tyche Well Pad: Route 8 and Route 910, Route 910 and Lori Road, Route 910 and McIntyre and Turner Roads, Route 910 and Middle Road, Route 910 and Middle Road Extension, Route 910 and Oak Road, Oak Road, Bryson Road, and Bairdford Road, and Bairdford Road and the proposed Tyche Well Pad driveway. Tr. 11/9/23, at 60; Applicant Exhibit H.

75. Additionally, the TIS evaluated traffic levels of service at these intersections during weekday a.m. and p.m. peak hour traffic based on (1) the existing 2023 levels of service, (2) the projected 2026 levels without any traffic from the Tyche Well Pad development (the “2026 no-build scenario”), and (3) the projected 2026 levels with traffic from the Tyche Well Pad development during the approximately 60-day long hydraulic fracturing period (the “2026 build scenario”). Tr. 11/9/23, at 59-61, 64-66; Applicant Exhibit H.

76. He explained that the 2026 build scenario conservatively assumes that all freshwater needed during hydraulic fracturing will be trucked to the site. The projected traffic levels during the other phases of Tyche Well Pad development—pad construction, drilling and

permanent production are only a fraction of the levels occurring during hydraulic fracturing. Tr. 11/9/23, at 59-61, 64-66; Applicant Exhibit H.

77. Mr. Guley testified that at the Oak Road and Bairdford Road intersection, the closest intersection to the Tyche Well Pad, in the 2023 existing traffic scenario with no Tyche Well Pad traffic, the overall intersection in the a.m. and p.m. peak hours operates at a level of service A and the approaches for the a.m. and p.m. peak hours operate at a level of service A. Tr. 11/9/23, at 60; Applicant Exhibit H.

78. Additionally, at the Oak Road and Bairdford Road intersection, using the 2026 build scenario that includes the Tyche Well Pad traffic, the overall intersection and approaches will still operate during a.m. and p.m. peak hours at a level of service A. Tr. 11/9/23, at 61; Applicant Exhibit H.

79. He explained that due to the geometry of the Oak Road and Bairdford Road intersection, Applicant is proposing to provide, if approved by the PennDOT and Allegheny County, who are the owners of Oak Road and Bairdford Road, respectively, either a temporary traffic signal or flaggers to safely facilitate traffic movements through the intersection during the water truck hauling period. Tr. 11/9/23, at 61.

80. He explained that Applicant is also willing to explore the possibility of having a crosswalk installed at the Oak Road and Bairdford Road intersection, if approved by PennDOT and Allegheny County, based on discussions by the Planning Commission that residents often walk to the post office and cross at this intersection. Tr. 11/9/23, at 61.

81. Additionally, Applicant is willing to explore the possibility of installing a four-way stop sign at the Oak Road and Bairdford Road intersection with PennDOT and Allegheny County. Tr. 11/9/23, at 61-62.

82. He noted that the Township Planning Commission expressed a desire that a permanent traffic signal be installed at the Oak Road and Bairdford Road intersection, so as part of the TIS, Stahl Sheaffer ran traffic signal warrants, which is a measure that PennDOT uses to determine if a traffic signal is justified. Tr. 11/9/23, at 62.

83. Mr. Guley testified that the Oak Road and Bairdford Road intersection does not meet the PennDOT warrants to construct a permanent traffic signal. Tr. 11/9/23, at 62.

84. He explained that had the traffic signal warrants met PennDOT's requirements, and a permanent traffic signal was approved for the Oak Road and Bairdford Road intersection, the Township would have been required by PennDOT to be the applicant and would have been responsible for the ongoing operation and maintenance of the signal once installed. Tr. 11/9/23, at 62.

85. He indicated that the Township's Planning Commission also discussed proposed mitigation that would add a permanent turning lane at Route 910 and Lori Road, so as part of the TIS, Stahl Sheaffer conducted left and right turn lane warrants throughout the study area and the intersection of Route 910 and Lori Road, with both warrants showing the need for a left turn lane during the Tyche Well Pad 2026 build scenario. Tr. 11/9/23, at 62-63.

86. However, Mr. Guley testified that with regard to the turning lanes, PennDOT would consider the warrants to be a temporary, not permanent condition because, in his

professional opinion, it would be very difficult for PennDOT to approve the installation of any left-turn lanes due to the temporary nature of the traffic. Tr. 11/9/23, at 63.

87. He also noted that the Township Planning Commission discussed having a permanent traffic signal installed at the Route 910 and Middle Road intersection. Tr. 11/9/23, at 63.

88. Mr. Guley testified that the traffic studies conducted by Stahl Sheaffer for the Dionysus Well Pad and Leto Well Pad were completed over two years ago during the COVID pandemic. At that time, the existing conditions for the Route 910 and Middle Road intersection met the warrants for a traffic signal without any of the proposed Dionysus or Leto Well Pad traffic being factored in. Tr. 11/9/23, at 63-64.

89. As part of the current TIS, Stahl Sheaffer conducted new traffic counts for the Route 910 and Middle Road intersection. The study was completed on a weekday after the start of the school year, specifically on a Thursday between 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. As of September of this year, the intersection no longer triggers any traffic signal warrants for any of the existing, 2026 no-build, or 2026 build scenarios. Tr. 11/9/23, at 63-64.

90. He explained that had the traffic signal warrants met PennDOT's requirements, and a traffic signal was approved for the Route 910 and Middle Road intersection, the Township would have been required by PennDOT to be the applicant and would have been responsible for the ongoing operation and maintenance of the signal once installed. Tr. 11/9/23, at 65.

91. Mr. Guley stated that in his experience, PennDOT does not approve permanent signals where the traffic data does not meet the necessary warrants. Tr. 11/9/23, at 66.

92. He noted that the Township Planning Commission discussed having a permanent traffic signal installed at the Route 910 and Oak Road intersection, so as part of the TIS, Stahl Sheaffer ran traffic signal warrants to determine if a traffic signal would be warranted at the intersection based on PennDOT's criteria. Tr. 11/9/23, at 66.

93. Mr. Guley indicated that after running the traffic signal warrants, it was determined that the Route 910 and Oak Road intersection met the PennDOT signal warrants during the Tyche Well Pad 2026 build scenario, specifically during p.m. peak hour. Tr. 11/9/23, at 66.

94. Mr. Guley testified that it is his professional opinion that PennDOT would not approve the installation of a permanent traffic signal at the Route 910 and Oak Road intersection because the traffic projected during the Tyche Well Pad 2026 build scenario is temporary in nature and not permanent, as once the completions or hydraulic fracturing stage has been completed, the traffic associated with that phase goes away and the warrant would no longer be met at the intersection. PennDOT references the Manual for Uniform Traffic Control Devices to satisfy the peak hour warrant, which is a very unusual condition used for high-turnover facilities in a short period of time. This would include uses such as schools, manufacturing plants, and other facilities that have a large number of vehicles entering and exiting within a short period of time. In Mr. Guley's opinion, the traffic associated with the Tyche Well Pad would not fall under that unique scenario. Tr. 11/9/23, at 66-68.

95. He explained that had the traffic signal warrants met PennDOT's requirements, and a traffic signal was approved for the Route 910 and Oak Road intersection, the Township

would have been required by PennDOT to be the applicant and would have been responsible for the ongoing operation and maintenance of the signal once installed. Tr. 11/9/23, at 66-67.

96. Mr. Guley confirmed that Applicant will work with Allegheny County to widen curves at spot locations along Bairdford Road to accommodate large truck movements. Tr. 11/9/23, at 73, 86.

97. Mr. Guley also confirmed that any existing deficiencies on any of the identified roadways do not occur on the Tyche Well Pad site itself. Any potential issue, whether it exists or not is an off-site issue. Tr. 11/9/23, at 86-87.

98. Based on his background and experience, along with his specific involvement with the Tyche Well Pad site and selection of the proposed haul route, the Board qualified Mr. Guley as an expert in the preparation of a TIS. Tr. 11/9/23, at 59.

99. The Board finds Mr. Guley to be a credible witness.

Witness— Brian Dillemath

100. Mr. Dillemath is a regulatory advisor with Olympus, having served in that capacity for approximately seven years. Tr. 11/14/23, at 136.

101. Mr. Dillemath testified that as a regulatory advisor, he functions as a project manager overseeing all permitting for Olympus. Tr. 11/14/23, at 136.

102. Mr. Dillemath is familiar with the development of the site layouts for Olympus's well pads and other facilities. Tr. 11/14/23, at 136.

103. Mr. Dillemath testified that he reviewed the proposed pipeline route which runs south from the proposed Tyche Well Pad to the Leto Well Pad, and explained that the route

traverses across the two Podczerwinski properties, the Williams property, and the Gizienski property where the Leto Well Pad and Leto Compressor Station will be located. Tr. 11/14/23, at 136-137; Applicant Exhibit E.

104. He explained that the Tyche Well Pad will be accessed via a 24-foot wide, 950-foot-long access drive that runs off Bairdford Road, with the first 50 feet from Bairdford Road being paved in accordance with Allegheny County highway occupancy permit requirements. An additional 12-foot wide pull-off area for trucks will also be provided. Tr. 11/14/23, at 137-138; Applicant Exhibit D.

105. Mr. Dillemoth testified that based on the topography and the civil layout, the Tyche Well Pad dimensions are different than typical Olympus well pads. The proposed well pad will be 260 feet by 690 feet with a two-foot high perimeter berm around the entire well pad. Tr. 11/14/23, at 138; Applicant Exhibit D.

106. He explained that three stormwater facilities will be located on the Tyche Well Pad site: a rain garden will be located at the bottom of the site near the access road that will control water from the high point of the access road to the rain garden; and two managed-release concept facilities will handle stormwater from the upper part of the access road and all water from the well pad. Tr. 11/14/23, at 138-139; Applicant Exhibit D.

107. He further testified that six-foot high chain link fencing will be installed around the full perimeter of the Tyche Well Pad site and a lockable gate into the facility will be provided. Tr. 11/14/23, at 139; Applicant Exhibit D.

108. During active operations, temporary light plants, generally 20 feet tall, will be utilized. These light plants will be angled inward and downward and will be lower than the proposed sound wall. In addition, one small light plant will be located at the guard shack along the access road and will be pointed away from any neighboring properties. Tr. 11/14/23, at 139.

109. He explained that on the drill rig, a halo lighting system will be utilized for safety during operations and no lighting will be utilized during the permanent production stage except in the event of maintenance activities or an emergency. Tr. 11/14/23, at 140.

110. Mr. Dillemoth confirmed that all of Applicant permanent facilities will be lower than the 35-foot maximum height allowed for in the Zoning Ordinance. While the drilling rig will exceed the 35-foot maximum height limit, the Zoning Ordinance allows for it to exceed this height limitation. Tr. 11/14/23, at 140-141.

111. Mr. Dillemoth also reviewed the location of the proposed sound wall which will follow the perimeter of the Tyche Well Pad. The sound wall will have an opening at the access road and will also have the appropriate emergency exits. Tr. 11/14/23, at 141; Applicant Exhibit D.

112. He explained that the sound wall is temporary in nature and will be taken down once active operations are completed. Tr. 11/14/23, at 153.

113. Mr. Dillemoth testified that Applicant applied for and obtained an Erosion and Sedimentation Control General Permit ("ESCGP-3") from DEP for the Tyche Well Pad, and the permit was issued by DEP on October 31, 2023. Tr. 11/14/23, at 141, 159.

114. He explained that a separate ESCGP-3 permit application was submitted to DEP for the pipeline that runs south to the Leto compressor station and the permit was issued by DEP on September 26, 2023, and Olympus submitted a minor modification request to DEP on October 26, 2023. Tr. 11/14/23, at 141, 159.

115. The geotechnical reports that were submitted as part of the Tyche Well Pad application were part of the ESCGP-3 permit application submitted to DEP. Prior to its issuance of the ESCGP-3 permits for the well pad and pipeline, DEP reviewed the geotechnical reports as part of its review and approval process. Tr. 11/14/23, at 159.

116. Mr. Dillemath testified that he is familiar with the PennDOT requirements for the width of minimum-use access drives for oil and gas development at the point where they intersect with a public road. He is also familiar with Allegheny County's requirements as it relates to an intersection of access roads with public roads. Tr. 11/14/23, at 145-146.

117. He also testified that it has been his experience that in many instances, counties follow the PennDOT requirements for those highway occupancy permits. Tr. 11/14/23, at 145-146.

118. The Board finds Mr. Dillemath to be a credible witness.

Township Traffic Engineer

Witness—Robert Goetz

119. Mr. Goetz is a principal at Trans Associates Engineering Consultants ("Trans Associates"). Tr. 11/14/23, at 108.

120. Trans Associates serves as the Township's traffic engineer. Tr. 11/14/23, at 108.

121. During his testimony, Mr. Goetz recommended that a temporary traffic signal be installed at the intersection of Route 910 and Oak Road during the hydraulic fracturing phase. Tr. 11/14/23, at 114.

122. Mr. Goetz testified that he does not recommend that a permanent traffic signal be installed at the intersection of Route 910 and Oak Road because once the water traffic during completions ceases, the intersection falls below the warrant requirements for the installation of a permanent traffic signal. Tr. 11/14/23, at 114-115.

123. He explained that installation of a permanent or temporary traffic signal would require the approval of PennDOT. Tr. 11/14/23, at 115.

124. Mr. Goetz testified that the approach volumes at the Bairdford Road and Oak Road intersection no longer meet the warrants for the installation of a temporary traffic signal. He indicated that the use of flaggers at the intersection may, at this point, be one of the best mitigation options. Tr. 11/14/23, at 115.

125. He explained that any traffic controls at the Bairdford Road and Oak Road intersection would require approval from Allegheny County and PennDOT and the use of temporary flaggers on a PennDOT road requires notification to PennDOT. Tr. 11/14/23, at 116.

126. The Board finds Mr. Goetz to be a credible witness.

Party Objectors' Testimony And Evidence In Opposition Of The Proposed Tyche Well Pad Project.

CROWD

Witness— Tim Resciniti

127. On behalf of CROWD, Tim Resciniti expressed concerns regarding the proposed haul route and general traffic issues. Tr. 11/14/23, at 169-170.

Cases of Individual Objectors

Witness—Victoria Austin

128. Ms. Austin is a party objector who resides at 19 Hemlock Street. Ms. Austin expressed concerns about individuals walking from her neighborhood on Hemlock and Center Streets to the Bairdford Post Office and Bairdford Park and the current and future traffic conditions at the Bairdford Road, Oak Road, and Bryson Road intersection. She also expressed her concern regarding potential traffic congestion at the Route 910 and Oak Road intersection and its proximity to the location of Volunteer Fire Department No. 3. Tr. 11/14/23, at 171-173; Austin Exhibit 1.

Witness—Dennis DeValeria

129. Mr. DeValeria is a party objector who resides at 1209 Nicklaus Way. Mr. DeValeria expressed concerns about sound levels associated with the Tyche Well Pad and its potential impacts on the community. Tr. 11/14/23, at 173-174.

Witness—Jeanne DeValeria

130. Mrs. DeValeria is a party objector who resides at 1209 Nicklaus Way. Mrs. DeValeria expressed concerns about older residents within The Links housing development and the impact of any emergency or evacuation on them. Tr. 11/14/23, at 174.

Witness— Sarah Smith

131. Ms. Smith is a party objector who resides at 1203 Nicklaus Way. Ms. Smith expressed concerns related to health, the environment, and mine subsidence. 11/14/23, at 174-175.

Witness—Amelia Martine

132. Ms. Martine is a party objector who resides at 1520 Palmer Way. Ms. Martine expressed concerns about the health and welfare of the community. Tr. 11/14/23, at 175.

Witness—Nancy Stoehr

133. Ms. Stoehr is a party objector who resides at 1219 Nicklaus Way. Ms. Stoehr expressed concerns about oil and gas companies not employing local people, Olympus wanting to frack in county parks, the “critical turn” at Bairdford Road and Oak Road at night, and the impact of traffic on high school students going to football and basketball games on the safety of

those coming to the area to play the games. She also wanted to know if Olympus would be providing information on the chemicals it uses and the trade secret status if there ever would be an explosion or other disaster so healthcare providers and first responders could act accordingly. Ms. Stoehr also expressed her opinion that the Pine-Richland and North Allegheny school districts should be notified as they are on the Route 910 haul route. Tr. 11/14/23, at 175-177.

Witness— Paul Mitsch

134. Mr. Mitsch is a party objector who resides at 1248 Nicklaus Way. Mr. Mitsch expressed concerns the proposed haul route and also about the cost of mine subsidence insurance and the risk of mine subsidence. Tr. 11/14/23, at 177-178; Mitsch Exhibits 1-3.

Witness— Julie Cousley

135. Ms. Cousley is a party objector who resides at 61 Lick Road. She expressed concerns about her well water and well water testing costs. Tr. 11/14/23, at 178-180.

Public Commenters

136. At the November 14, 2023 public hearing, Township residents were permitted to provide public comment.

137. During the public comment period, six residents indicated that they were opposed to the Application, while one resident was in favor of the Application.

CONCLUSIONS OF LAW

1. The proposed location of the Tyche Well Pad is located on Property in the R-1 Zoning District in the Township. FOF, ¶¶ 7, 37.

2. The proposed associated pipeline commences at the Tyche Well Pad and terminates at the Leto Compressor Station and is located in the R-1 and I Zoning Districts in the Township. FOF, ¶ 8.

3. A Deep Well Site is authorized as a conditional use in the R-1 Zoning District of the Township subject to the requirements of the Zoning Ordinance of West Deer Township, including Sections 210-120.A(21)(a)[1] and 210-120.A(21)(c)[1] of the Zoning Ordinance. FOF, ¶¶ 3, 13.

4. A conditional use is a permitted use to which an applicant is entitled if the applicant demonstrates compliance with the specific, objective requirements contained in the zoning ordinance. *McGinty v. Zoning Bd. Of Adj. of the City of Pittsburgh*, 717 A.2d 34 (Pa. Commw. Ct. 1998).

5. The respective burdens of an applicant and any potential objector to a conditional use application were delineated by the Pennsylvania Commonwealth Court in *Bray v. Zoning Board of Adjustment*. *Bray* articulated three types of standards applicable to a conditional use case. Those standards, and the applicable burdens are as follows:

- c. Specific requirements, 'e.g., categorical definition of the [conditional use] as a use type or other matter, and objective standards governing such matter as a special exception and generally: The applicant

has both the duty [of presenting evidence] and the burden [of proof].’

- b. General detrimental effect, ‘e.g., to the health, safety and welfare of the neighborhood: Objectors have both the duty and burden.’
- c. General policy concern, ‘e.g., as to harmony with the spirit, intent or purpose of the ordinance: Objectors have both the duty and the burden.’ 410 A.2d 909, 913 (Pa. Commw. Ct. 1980).

6. Initially, the applicant for a conditional use has both the persuasion burden and the initial evidence presentation duty to show that the proposal complies with the “terms of the ordinance” which expressly govern such a grant. *Bray*, 410 A.2d at 910.

7. Once the applicant for a conditional use meets its burden of persuading a governing body that its proposed use satisfies the ordinance’s specific requirements, it is presumed that the local legislature has already considered that such use satisfies local concerns for the general health, safety and welfare and that such use comports with the intent of the zoning ordinance. *Szewczyk v. Zoning Bd. Of Adjustment*, 654 A.2d 218, 221-22 (Pa. Commw. Ct. 1995).

8. The burden then shifts to the objectors to rebut the presumption and persuade the governing body that the proposed use will have a generally detrimental effect. *Broussard v. Zoning Bd. Of Adjustment*, 831 A.2d 764, 772 (Pa. Commw. Ct. 2003).

9. It is the duty of the Board in the exercise of its discretionary power to determine whether a party has met its burden of proof. *Pennsy. Supply, Inc. v. Zoning Hearing Bd.*, 987 A.2d 1243, 1250-1251 (Pa. Commw. Ct. 2009).

10. Determinations as to the credibility of witnesses and the weight to be given to the evidence are matters left solely to the Board in the performance of its fact-finding role. *Id.*

11. A local governing body is entitled to considerable deference in interpreting its zoning ordinance. *Aldridge v. Jackson Twp.*, 983 A.2d 247 (Pa. Commw. Ct. 2009).

12. The proposed Tyche Well Pad is a “Deep Well Site” which constitutes “oil and gas development” within the meaning of the Zoning Ordinance. *See* Zoning Ordinance § 210-6.

13. The proposed associated pipeline falls within the definition of “oil and gas development” within the meaning of the Zoning Ordinance. *See* Zoning Ordinance § 210-6.

14. A Deep Well Site and Oil and Gas Development is permitted as a conditional use in the R-1 and I Zoning Districts in the Township provided that the applicant complies with all of the Deep Well Site-specific criteria of Section 210-120.A(21).

15. The Board of Supervisors finds that the substantial evidence presented at the public hearing, including the documents, plans, studies, testimony, and other evidence presented, demonstrates that the proposed Tyche Well Pad complies with all of the applicable criteria for a “Deep Well Site” in the Zoning Ordinance.

16. Accordingly, it is the decision of this Board of Supervisors to approve Applicant’s application for the Tyche Well Pad subject to the conditions set forth herein.

Access Driveway Width

17. The proposed access road for the Tyche Well Pad intersects with Bairdford Road.

18. In previous proceedings, CROWD has asserted that the width of Applicant's proposed access road at the point where it intersects with a public road violates Section 210-110(H) of the Zoning Ordinance, which provides that "[t]he width of any entranceway leading from a public right-of-way shall not exceed 30 feet at the point of intersection with the public right-of-way."

19. Just as the Board has recognized previously, the proposed access driveway width does not violate Section 210-110(H).

20. There is no requirement in Township Zoning Ordinance Section 210-120(21)(g)(1) that specifically addresses the design and installation requirements for access drives to oil and gas well sites and this provision takes precedence over the provisions applicable to all uses contained in Section 210-110(H).

21. Specifically, Section 1933 of the Pennsylvania Statutory Construction Act states that if a general statutory (or ordinance) provision is in conflict with a special provision, the special provision prevails. 1 Pa. C.S. § 1933.

22. Moreover, where such a conflict exists, the provisions adopted later in time prevail. 1 Pa. C.S. § 1934; *Heck v. Zoning Hearing Bd.*, 397 A.2d 15 (Pa. Commw. Ct. 1979).

23. The specific oil and gas provisions of Section 210-120(21)(g)(1) were incorporated into the current Zoning Ordinance when it was adopted in 2012 while the provision cited by CROWD was contained in Section 21.4.8 of the previous version of the Zoning Ordinance, adopted 25 years earlier in 1997, at which time the concept of unconventional natural gas drilling did not even exist. Applicant's Ex. U and V.

24. Even if the 30-foot maximum width requirement of Section 210-110(H) were found to be applicable, it is inconsistent with and preempted by the regulations and requirements of PennDOT² for a minimum use driveway, and widening of the access drive “throat” is necessary to facilitate the smooth and safe turning radius for larger vehicles entering or exiting the access drive.

25. Widening of the access drive “throat” is necessary to facilitate a safe turning radius for larger vehicles entering or exiting the access drive.

Noise

26. Prior to 2012, the Township Zoning Ordinance was silent with regard to the authorization and regulation of oil and gas wells in the Township.

27. When the Township’s current Zoning Ordinance was adopted in 2012, it contained extensive provisions authorizing and regulating a variety of oil and gas operations, including deep well sites in obvious recognition of the advent of unconventional oil and gas development in Western Pennsylvania region.

28. Among the many Zoning Ordinance requirements for oil and gas operations are extensive limitations on noise set forth in Section 210-120.A.(21)(g)[6]:

- a. The applicant shall take the following steps to minimize, to the extent possible, noise resulting from the oil or gas well development.
- b. Prior to drilling of an oil or gas well or the operation of a natural gas compressor station or a natural gas processing plant, the applicant shall establish by generally accepted testing procedures, the continuous

² Although Baird Road is an Allegheny County road, Mr. Dilleuth testified that based on his experience counties will follow PennDOT’s requirements. As a condition of approval of Tyche Well Pad Project, the Board will require Olympus to apply for and obtain a permit from Allegheny County for the access drive-Baird Road intersection.

seventy-two-hour ambient noise level at the nearest property line of a residence or public building, school, medical, emergency or other public facility, or 100 feet from the nearest residence or public building, medical, emergency or other public facilities, whichever point is closer to the affected residence or public building, school medical, emergency or other public facility. In lieu of the establishment of the ambient noise level established by the continuous seventy-two-hour test the applicant may assume and use, for the purpose of compliance with this Chapter, a default ambient noise level of 65 dBA. The sound level meter used in conducting any evaluation shall meet the American National Standards Institute's standard for sound meters or an instrument and the associated recording and analyzing equipment, which will provide equivalent data.

- c. The applicant shall provide the Township documentation of the established ambient noise level prior to starting oil or gas drilling and/or production operations.
- d. The noise generated during the oil and gas operations or the natural gas compressor station or the natural gas processing plant shall not exceed the average ambient noise level established in Subsection A(21)(g)[6][b] by more than:
 - i. Five decibels during drilling activities.
 - ii. Ten decibels during hydraulic fracturing operations.
 - iii. Five decibels for a natural gas compressor station or a natural gas processing plant.
 - iv. Allowable increase in Subsection A(21)(g)[6][d] shall not exceed the average ambient noise level for more than 10 minutes within any one-hour period.
- e. Effective sound mitigation devices shall be installed to permanent facilities to address sound levels that would otherwise exceed the noise level standards when located near a residence, public building, school, medical, emergency or other public facilities.
- f. Exemption from the standards established in this subsection may be granted by the Township during the drilling stage or at the oil or gas well site, or the gas compressor station, or at the natural gas processing plant for good cause shown and upon written agreement between the applicant and the Township.

29. In summary, the key provisions of these subsections provide that:

- a. An operator can take a 72-hour average ambient measurement at a point 100 feet from the nearest protected structure or at the protected structure property line, whichever is closer to the protected structure; or the operator can assume a default ambient level of 65 dBA;
- b. An operator is required to provide the ambient noise level prior to starting drilling or production operations;
- c. During drilling, noise may not exceed the average ambient level by more than 5 dBA, and during hydraulic fracturing by more than 10 dBA; and
- d. The Township can grant an exemption from the above standards for good cause shown.

30. The requirements of Section 210-120.A.(21)(g)[6], are performance standards, meaning that there is no requirement that compliance be proven as part of a conditional use hearing, only that Applicant ultimately comply with those standards.

31. Subsection [6][c] only requires that the ambient level be established prior to drilling, and even then does not require the submission of any sound impact assessment modeling projected sound levels.

32. Although not required to do so, Applicant submitted an SIA with its original application. FOF, ¶ 57; Applicant Exhibit F.

33. Applicant's witness, Tage Rosendahl, who oversaw the preparation of the SIA, testified in detail about its conclusions, and the Board found both the SIA and his testimony to be credible. FOF, ¶¶ 57, 68.

34. The SIA concluded that with the proposed 40-foot sound wall Applicant will meet the 65 dBA ambient default level during vertical drilling, horizontal drilling and hydraulic fracturing. FOF, ¶¶ 62-64; Applicant Exhibit F.

35. All of the projected sound levels are below the 65 dBA ambient default level, without taking into account the higher levels allowed during drilling and hydraulic fracturing. FOF, ¶¶ 62-64.

36. Applicant has committed, and the Board will include as a condition of approval, that Applicant install a 40-foot high sound wall around the well pad.

37. While the Board acknowledges that CROWD criticized certain aspects of the methodology utilized by Mr. Rosendahl in the SIA, CROWD did not provide expert testimony regarding the same, nor did it submit its own SIA to be considered by the Board.

38. Accordingly, the Board concludes that the SIA and testimony of Mr. Rosendahl establish that Applicant will comply with the maximum noise levels required by Section 210-120.A.(21)(g)[6].

39. Additionally, the Board intends to monitor Applicant's compliance with the Township Zoning Ordinance requirements while it is developing the Tyche Well Pad.

40. During the public hearings CROWD also raised an objection to the SIA submitted by the applicant, on the basis that the applicable sound level limits are those set forth in Township Ordinance No. 434, adopted by the Board on June 17, 2020, and not those set forth in Section 210-120.A.(21)(g)[6] of the Zoning Ordinance.

41. However, the Board finds that CROWD's objection was misplaced, as Section 114-6.N of Ordinance No. 434 expressly exempts from its application "any use or action where the noises and sounds generated by that use or action are specifically regulated by the Township Zoning Ordinance."

Internal Site Design Impact on Public Roads

42. During the public hearings CROWD also suggested that Applicant's application does not comply with Subsection 210-120.A(21)(e)[1][e] of the Township's Zoning Ordinance.

43. Subsection 210-120.A(21)(e)[1][e] of the Township's Zoning Ordinance states:

A location map of the oil or gas well site showing the location of derricks, drilling rigs, equipment and structures and all permanent improvements to the site and any post construction surface disturbance in relation to natural and other surroundings. Included in this map shall be an area within the development site for the location and parking of vehicles and equipment used in the transportation of personnel and/or development and use of the site. Such location shall be configured to allow the normal flow of traffic on public streets shall be undisturbed.

44. CROWD asserts that because Olympus will employ flaggers and convoys to bring in heavy equipment and water trucks, the last sentence of Subsection 210-120.A(21)(e)[1][e], providing that "[s]uch location shall be configured to allow the normal flow of traffic on public streets shall be undisturbed," will not be met.

45. However, this Subsection as a whole requires Applicant to provide a map "showing the location of derricks, drilling rigs, equipment and structures and all permanent improvements to the site" and indicates that "[i]ncluded in this map shall be an area within the development site for the location and parking of vehicles and equipment used in the transportation of personnel and/or development and use to the site." Thus, the "such location" mentioned in the last sentence is referring to how parking and access are to be configured on the site and requires that that this design not impact the flow of traffic on public streets.

46. The Board finds that Applicant meets this requirement, as the length of the access road between Bairdford Road and the pad itself is 950 feet, there is a pull-off area for trucks along the access drive, and vehicles will park within the pad. Applicant Exhibit D. FOF, ¶¶ 8, 111.

47. Although language of Subsection 210-120.A(21)(e)[1][e] is clear, to the extent there is any ambiguity, Section 603.1 of the MPC requires that it be construed in favor of Applicant and against any implied extension of the restriction. 53 P.S. § 10603.1.

48. Additionally, pursuant to CROWD's interpretation of Subsection 210-120.A(21)(e)[1][e], it would be impossible to develop a deep well site anywhere in the Township, as escorted movements of overweight vehicles bringing in drilling rigs and other heavy equipment will always be required regardless of well site location and truck route.

49. This Board is constrained to interpret the Zoning Ordinance in a fashion that avoids an interpretation likely to render it exclusionary and unconstitutional. *Upper Salford Twp. v. Collins*, 669 A.2d 335, 336 (Pa. 1995) ("Uncertainties in the interpretation of an ordinance are to be resolved in favor of a construction which renders the ordinance constitutional."); *Ficco v. Bd. of Sup'rs of Hempfield Twp.*, 677 A.2d 897, 900–01 (Pa. Commw. Ct. 1996) ("Where an ordinance is reasonably susceptible of two conflicting constructions, a court should adopt that interpretation which would uphold the validity of the ordinance.").

50. Additionally, neither CROWD nor any of the Individual Objectors presented any evidence that there would be any backup, queuing or disturbance of truck traffic from the well pad onto Bairdford Road.

Road Condition Inventory/Videoing

51. CROWD also suggests that Applicant has not complied with Subsection 210-120.A(21)(f)[1] of the Township Zoning Ordinance because it has not inventoried the condition of the roads and provided video and photo documentation to the Township regarding Oak Road and Route 910.

52. Subsection 210-120.A(21)(f)[1] provides:

The well operator shall comply with any generally applicable bonding and permitting requirements for Township roads that are to be used by overweight vehicles and equipment for development activities. For state and county roads located within the Township, the well operator shall provide a copy of the highway occupancy permit for overweight vehicles to the Township. The well operator shall provide a transportation route map which depicts the roads to be utilized in the Township. The well operator shall inventory the condition of the roads and provide video and photo documentation to the Township. The well operator shall also submit at the time of application a road restoration plan that indicates how the well operator plans to address damage to Township roads during construction and after construction is complete. Within 30 days following the approval of a conditional use application for oil and gas development by the Township, and in any event, prior to the commencement of any activity at the approved oil and gas well site, the applicant shall enter into a Township roadway maintenance and repair agreement (the "repair agreement") with the Township, in a form acceptable to the Township, regarding maintenance, repair and bonding of Township roads that are to be used by vehicles for oil and gas development activities. Without limiting the generality of the foregoing, the repair agreement shall address the bonding requirements to be imposed against the applicant, in the Township's sole reasonable discretion, and shall identify the responsibilities of the applicant to prepare, maintain, and repair Township roads, before, during, and immediately after drilling operations associated with oil and gas development. Corrective action shall be taken by the well operator as and when directed by the Township. (Emphasis added).

53. However, this Subsection is not applicable because the roads in question, Route 910 and Oak Road, are state roads and Bairdford Road is a County road; they are not Township roads.

54. As evidenced by the emphasized language above, the requirements of Subsection 210-120.A(21)(f)[1] exclusively refers to “Township” roads. COL, ¶ 52.

55. The Applicant’s proposed truck route does not utilize any Township-owned roads.

56. Additionally, even if Township roads were involved, Subsection 210-120.A(21)(f)[1] does not require that any inventory/videoing of a road be submitted with the application.

57. Significantly, the sentence cited by CROWD is silent as to when the inventory/videoing is to take place.

58. Moreover, it is not practical for Applicant to submit this information with its conditional use application, as the purpose of providing this information is to establish a benchmark of what road conditions are immediately before an operator commences use of the subject road. Doing so more than a year in advance of when operations are currently projected to commence (November 2024) would defeat the purpose of the required inventory/videoing.

Lighting

59. CROWD also appears to suggest that Applicant does not comply with Subsection 210-120.A(21)(g)[5][a] of the Township Zoning Ordinance because it has not submitted a lighting plan.

60. Subsection 210-120.A(21)(g)[5][a] provides as follows:

Lighting at the oil or gas well site, or other facilities associated with oil and gas drilling development, either temporary or permanent, shall be directed downward and inward toward the activity, to the extent practicable, so as to minimize the glare on public roads and nearby buildings within 100 feet of the oil or gas well development.

61. Subsection 210-120.A(21)(g)[5][a] does not require the submission of a lighting plan as part of the conditional use application or hearing process, as the Subsection is a “performance standard,” which Applicant stated that it is committed to meeting by utilizing downcast inward-facing lighting to minimize glare on nearby public roads.

62. During the public hearing, several Individual Objectors appeared to raise a question as to whether the proposed 40-foot high sound wall exceeds the height limitations set forth in the Zoning Ordinance.

63. Section 210-120.A(21)(g)[2][a] of the Zoning Ordinance provides that permanent structures associated with an oil and gas site shall comply with the height regulations for the zoning district in which the oil or gas well site is located.

64. The maximum “**building** height” for a “single-family” land use in R-1 District in which the Property is located is 35 feet. Zoning Ordinance, Attachment 2.

65. However, the sound walls are not permanent, nor do they qualify as a “building,” which the Zoning Ordinance defines as “[a] structure that is enclosed, and portions of which are protected from the weather and are usually climate controlled (heated and/or air conditioned), and that is usable for habitation or a working environment.” Zoning Ordinance, Section 210-6.

66. In any event, Section 210-120.A(21)(g)[2][c] of the Zoning Ordinance provides that “[t]here shall be an exemption to the height restriction in this section for the temporary

placement of drilling rigs, drying tanks, and other accessory uses necessary for the actual drilling or an oil and gas well.” Olympus confirmed that the sound walls are temporary in nature and will be taken down once active operations are completed. FOF, ¶ 119.

CROWD/Party Objectors’ Burden

67. CROWD and the Individual Party Objectors had the presentation burden with regard to all general policy concerns and general detrimental effects.

68. Once the Applicant satisfies the first two inquiries outlined above, objectors seeking to defeat the conditional use must show that the impact of the proposed use will be greater than would normally be expected [for that use] and would pose a substantial threat to the health, safety and welfare of the community.

69. Objectors must provide ““evidence that there is more than a mere speculation of harm.”” *Szewczyk v. Zoning Bd. of Adjustment*, 654 A.2d 218, 224 (Pa. Commw. Ct. 1995), *citing Abbey v. Zoning Hearing Bd.*, 559 A.2d 107, 110 (Pa. Commw. Ct. 1989) (emphasis in original).

70. In fact, they must come forward with evidence establishing with a high degree of probability that the use in question will have an impact on the community beyond that normally associated with that use. *In re Cutler Grp., Inc.*, 880 A.2d 39, 43 (Pa. Commw. Ct. 2005) (*quoting* Robert S. Ryan, 1 Pennsylvania Zoning Law and Practice §5.2.6 (2003)) (“Moreover, the degree of harm required to justify denial of the conditional use must be greater than that which normally flows from the proposed use.”)

71. The requirement that objectors bear the burden of evidence presentation as to general ordinance criteria is true regardless of any contrary terms contained in a zoning ordinance.

72. A conditional use applicant never has the initial presentation burden with regard to the general, subjective criteria. *Williams Holding Grp., LLC v. Bd. of Supervisors of W. Hanover Twp.*, 101 A.3d 1202, 1212-13 (Pa. Commw. Ct. 2014).

73. The Board has, pursuant to its legislative authority, designated oil and gas development as a permitted conditional use in the R-1 and I Zoning Districts.

74. It is well-established Pennsylvania law that a zoning ordinance's designation of a use as a conditional use creates a legislative presumption that the particular use is appropriate in the zoning district in question and consistent with the public health, safety and welfare. See e.g., *MarkWest Liberty Midstream and Resources, LLC v. Cecil Township Zoning Hearing Bd.*, 184 A.3d 1048 (Pa. Commw. Ct. 2018).

75. Because the Board, by ordinance, has authorized oil and gas development as a conditional use in R-1 and I Zoning Districts, the Township has already decided that oil and gas development at the proposed Tyche Well Pad Project is consistent with the general public health, welfare, and safety.

76. Furthermore, because Applicant has satisfied its burdens of presentation and proof with respect to the specific objective criteria of the Zoning Ordinance as outlined in Section 210-120.A(21), the presumption that the use is consistent with the health, safety, and welfare of the community applies and Applicant was not required to present evidence with respect to the

same. See *MarkWest*, 184 A.3d at 1059; *Allegheny Tower Assoc. v. City of Scranton Zoning Hearing Bd.*, 152 A.3d 1118, 1123-24 (Pa. Commw. Ct. 2017); *Greaton Properties v. Lower Merion Twp.*, 796 A.2d 1038, 1045-46 (Pa. Commw. Ct. 2002).

77. The Board does not believe that CROWD and the Individual Objectors have met their burden, as it was not enough for CROWD and the Individual Objectors to express vague “concerns” about alleged impacts of Applicant’s proposed development, nor was it enough for them to present evidence of alleged adverse impacts from oil and gas development generally.

78. Instead, they were required to present specific evidence that Applicant’s proposed development of the Tyche Well Pad Project would create adverse impacts beyond those normally associated with oil and gas development.

79. Virtually all of the general health and safety issues CROWD and the Individual Objectors raised were aimed at alleged impacts of the oil and gas industry generally, not specific to any unusual or abnormal impacts at the Tyche Well Pad Project, or involved broader environmental or operational impacts within the jurisdiction of DEP and other regulatory agencies.

80. While the Board acknowledges that environmental issues are certainly important, they are not within the jurisdiction of the Township and this Board.

81. While the Board is sympathetic to the understandable concerns residents have about oil and gas development, CROWD and the Individual Objectors failed to meet their burden.

82. Under Sections 603(c)(2) and 913.2(a) of the Municipalities Planning Code, the governing body has the statutory authority to attach “reasonable conditions and safeguards . . .

as it may deem necessary to implement the purposes of [the Municipalities Planning Code] and the zoning ordinance” See 53 P.S. §§ 10603(c)(2); 10913.

83. Accordingly, it is the decision of the Board to grant approval of Applicant’s Conditional Use Application subject to reasonable conditions.

DECISION

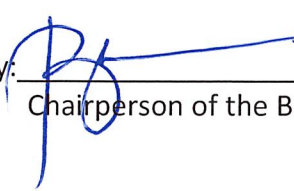
For the reasons set forth above, the Olympus Energy's Conditional Use Application seeking approval for the Tyche Well Pad and Associated Pipeline is hereby GRANTED subject to the conditions set forth in Appendix C.

ATTEST:

Township of West Deer



Daniel Mator, Township Manager

By: 

Chairperson of the Board of Supervisors

I, Daniel J. Mator, Jr., as Township Manager for the Township of West Deer, County of Allegheny, Commonwealth of Pennsylvania, certify that this document constitutes an official communication by the Township of West Deer and accurately reflects its decision in this matter.



Daniel J. Mator, Jr.
Township Manager

Appendix A
Individual Objectors

1. Concerned Residents of West Deer (CROWD) represented by Timothy Resciniti
2. Nancy Stoehr
3. Victoria Austin
4. Jim Shuey
5. Julie Cousley
6. Dennis DeValeria
7. Jeanne DeValeria
8. Mary Ann Barbour
9. Joann Miller
10. Robert Miller
11. Amelia Martine
12. Sarah Smith
13. Kathy Crooks
14. Maria Stojkov
15. Paul Mitsch
16. John Bradley-Steck

Appendix B
List of Exhibits

1. Applicant Exhibit A-Conditional Use Application for Tyche Well Pad and Proposed Pipeline
2. Applicant Exhibit B- Tyche Well Pad Project Conditional Use Updated Project Narrative
3. Applicant Exhibit C- Tyche Well Pad Site Location Overview
4. Applicant Exhibit D- Revised Land Development Drawings
5. Applicant Exhibit E- Pipeline Overview Map
6. Applicant Exhibit F- Sound Impact Assessment
7. Applicant Exhibit G- Traffic Impact Study Executive Summary
8. Applicant Exhibit H- Tyche Well Pad Haul Map
9. CROWD Exhibit 1- Official List of Members for the Concerned Residents of West Deer (CROWD)
10. CROWD Exhibit 2- West Deer Township Ordinance No. 434
11. CROWD Exhibit 3- Section of Applicant's Traffic Impact Study
12. Austin Exhibit 1- Statement in Opposition to Tyche Well Pad Project
13. Cousley Exhibit 1- Trib Live Article re: Olympus well in Upper Burrell Township
14. Cousley Exhibit 2- Well Water Testing Information
15. Mitsch Exhibit 1- June 28, 2023 Letter to Brian Dillemath from CEC
16. Mitsch Exhibit 2- Section of Tyche Well Pad Geotechnical Report
17. Mitsch Exhibit 3- Notes regarding Mine Subsidence
18. Township Exhibit 1- Official Notice/Advertisement for public hearing
19. Township Exhibit 2- Photos of Notice of public hearing posted
20. Township Exhibit 3- West Deer Township Planning Commission Meeting Recommendation Report from November 8, 2023
21. Township Exhibit 4- Trans Associates Review of Traffic Impact Study

Appendix C
Conditions of Approval

1. Applicant shall have obtained from the appropriate Commonwealth, and if applicable, Federal regulatory agencies or authorities all permits required to be issued in accordance with applicable laws and regulations for the proposed activity at the Applicant's site and copies of said permits shall be provided to the Township prior to any activity taking place authorized by those permits.
2. Applicant shall at all times comply with all applicable laws and regulations of the Commonwealth of Pennsylvania and the United States Federal Government as they relate to activities conducted by the Applicant within West Deer Township ("Township"). If the Applicant receives notice of any notice of violation from any State or Federal agency of any such law or regulation causing a public safety or serious environmental hazard in the Township, it shall give the Township notice as soon as practical, but in no event later than 24-hours of the Applicant receiving notice.
3. Applicant shall comply with Chapter 210-Section 120.A(21) — Gas and Oil Production contained in the Township Code of Ordinances.
4. Said application submitted by the Applicant is for the construction of one well pad to consist of an initial seven wells. Applicant may construct an additional wells on the site without having to seek conditional use approval provided (a) the Applicant obtains and provides to the Township a copy of the well permit and any other applicable permits issued by the Pennsylvania Department of Environmental Protection ("DEP"), and (b) the Applicant notifies the Township at least 15 days before commencing any drilling activity for any such well, and complies with the conditions of approval contained herein for any additional well on the site.
5. The Applicant shall provide to the Township and first responders its Preparedness, Prevention and Contingency Plan, Master Emergency Response Plan and Site Specific Emergency Response Plan and any updates thereto (collectively, the "Plans").
6. Prior to any construction activity, the Applicant shall provide the Plans to the Township and meet with the emergency management individuals designated by the Township.
7. The Applicant shall provide proof of the required blanket bond, or other financial security, provided to or being held by DEP to ensure proper plugging when the well is classified as inactive by the DEP.
8. Applicant shall comply with the idling limitations contained in the Pennsylvania Diesel-Powered Motor Vehicle Idling Act, Act 124 of 2008.

9. There shall be no activities associated with the proposed use that will result in malodorous gas or matter discernible at any point on or beyond the property lines of the site.
10. Applicant will provide adequate and obvious truck route signage, including no well traffic on unpermitted roads signage, where necessary, to ensure the approved truck routes are utilized. Additionally, Applicant shall notify all contractors, subcontractors, suppliers and vendors of the approved truck route.
11. Applicant shall continue to review the efficiency and safety of all traffic plans and routes and will meet with the Township representatives to address issues regarding said plan or route, including traffic flow and safety.
12. Applicant agrees to restrict the operation of vehicles exceeding a gross weight of 20,000 pounds on Oak Road and Bairdford Road during those periods of time in which the Deer Lakes School District schedules morning and afternoon school bus drop-off and pickup on those roads. Applicant also shall provide a contact to each school's transportation office.
13. Applicant shall provide traffic control, including flag persons, traffic control devices and escorts, when reasonable, in order to maintain the safe flow of traffic. Said escorting shall be comprised of groups no larger than six trucks per grouping.
14. Oak Road shall be improved and maintained as required by the Pennsylvania Department of Transportation ("PennDOT"). Bairdford Road shall be improved and maintained as required by Allegheny County.
15. If approved by PennDOT, Olympus, at its cost, shall provide flaggers and temporary signals at the Oak Road-Route 910 intersection during hydraulic fracturing operations. Olympus shall be also responsible for all costs related to the permitting of a temporary signal by PennDOT.
16. If approved by PennDOT and Allegheny County, Olympus, at its cost, shall provide flaggers and temporary signals at the Oak Road-Bairdford Road intersection.
17. Applicant shall inform its contractors and subcontractors that jake brake or engine brake usage on trucks is to be restricted.
18. Applicant shall post "Gas Well Truck Traffic 25 MPH" signs on Oak Road and Bairdford Road prior to construction starting, if permitted by PennDOT and Allegheny County, respectively.
19. Applicant shall undertake reasonable efforts to prevent water, sediment, or debris from being carried onto any public street. Additionally, the access road shall be

installed per DEP and Allegheny County permit approvals. If upon Township inspection of public roads it is determined that mud is causing a public safety issue the roadway shall be cleared, cleaned and/or swept immediately. If through time, originally installed surfacing and/or implemented measures result in water, sediment or debris being carried onto any public street, said surfacing and measures shall be reevaluated and reconstructed to achieve the aforementioned results.

20. Applicant shall provide a schedule to the Township identifying anticipated dates for site preparation, anticipated drilling activity, anticipated completion, and anticipated stimulation or fracturing work to begin. The Township recognizes that said dates may be dependent upon variables such as weather, availability of equipment, leasing, permitting, production and the like. However, such scheduling shall be updated and provided to the Township on a periodic basis (no less than monthly) as requested by the Township.
21. Applicant, during drilling operations and completion operations, shall provide twenty-four (24) hour security, seven days a week at the access road. All other times the Applicant shall secure the site, as necessary.
22. There shall be no activities associated with the proposed use that will emit electrical disturbances adversely affecting the operation of radio or other equipment not located at the subject property.
23. All earth moving activities and stormwater management on the subject property shall be subject to the terms and conditions of a DEP approved erosion and sedimentation control plan and all related applicable permits. A copy of said plan and permit are to be provided to the Township prior to such work is to begin and shall be on file at the construction site.
24. Applicant shall provide the Township with contact information which will allow representatives of the Applicant to be contacted 24 hours a day, seven days a week to address an emergency as well as other issues and complaints. Said contact information shall also be clearly posted at the entrance to the site.
25. If a reasonable complaint is registered with the Township, the Applicant will respond to said complaint within 24 hours of notification and take whatever reasonable means necessary to alleviate and cure said complaint, should it be found to be with merit.
26. Applicant shall comply with all State and Federal regulations regarding the handling of any radioactive materials.
27. Applicant shall maintain a current list and Safety Data Sheet (SDS) for all chemicals used in the drilling and fracturing operation at the property. The Applicant shall also provide SDS sheets to first responders upon request.
28. Applicant agrees to hold the Township harmless from any and all liability arising out of actions or non-actions committed by the Applicant, its representatives, contractors or subcontractors in connection with the construction or operation of wells at the proposed

site, excluding any such liability arising out of the negligence or intentional acts of the Township, its employees, officials, contractors or agents.

29. Applicant shall comply with all Township ordinances related to construction activity, and activity for construction of the proposed well pad or access road. Hours of operation for construction shall be limited to sunrise to sunset. However, 24-hour drilling and hydraulic fracturing shall be permitted.
30. Applicant shall notify contractors and subcontractors that they will be responsible for and shall remedy any damages they may cause to public or private properties within the Township. In the event the Township notifies the Applicant of a damage claim, Applicant will cooperate with the Township in identifying the potentially responsible contractor or subcontractor.
31. Applicant acknowledges that if it fails to meet and maintain any condition of this approval, the Township may enforce the same in accordance with applicable provisions of the Pennsylvania Municipalities Planning Code.
32. Prior to the commencement of hydraulic fracturing, the Applicant shall make an impact fee payment to the Township based on the final calculation of peak hour trips, as approved by the Township traffic engineer, times the applicable impact fee rate set forth in the Township's traffic impact fee ordinance.