

RUSH TOWNSHIP, SCHUYLKILL COUNTY
COMMONWEALTH OF PENNSYLVANIA

ORDINANCE NO. 211

THE MUNICIPALITIES OF RUSH TOWNSHIP, WALKER TOWNSHIP, SCHUYLKILL TOWNSHIP AND THE BOROUGH OF TAMAQUA, SCHUYLKILL COUNTY, COMMONWEALTH OF PENNSYLVANIA, JOINTLY COMPRISING THE EASTERN SCHUYLKILL REGIONAL PLANNING (ESRP) GROUP, EACH AND INDIVIDUALLY HEREBY ENACT THIS ORDINANCE (AMENDING THE EASTERN SCHUYLKILL REGIONAL PLANNING ZONING ORDINANCE (2019 EDITION)) BY AMENDING THE FOLLOWING SECTIONS OR PARTS THEREOF: 201 (AS RELATES TO THE DEFINITIONS OF "AGRICULTURE, INTENSIVE", "ANIMAL HUSBANDRY", "ACCESSORY USE" AND "ADJOINING LOT"); 452; 453; 455; 555; 702; 703; 752; 753; 954; 1004; 1507H; 1507K; 1615C; 1615D; 1615S; 1615T; 1616; 1617; AND 1694.

WHEREAS, zoning in this Municipality is regulated by a Joint Municipal Zoning Ordinance, specifically the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition), effective July 1, 2019, which covers the municipalities of Rush Township, Tamaqua Borough, Schuylkill Township and Walker Township, all in Schuylkill County, Commonwealth of Pennsylvania;

WHEREAS, one of the municipal members of the joint zoning group received a letter from Robert A. Willig, Senior Deputy Attorney General of the Commonwealth of Pennsylvania, dated August 7, 2018 which alleged defects in certain provisions of the then current Eastern Schuylkill Regional Planning Zoning Ordinance, which alleged defects were re-iterated as to the current 2019 Edition of the Eastern Schuylkill Regional Planning Zoning Ordinance via an email from Attorney General Willig dated October 30, 2020, the alleged defects concerning violations of the ACRE law (Act 38 of 2005) by certain provisions of the Eastern Schuylkill Regional Planning Zoning Ordinance;

WHEREAS, this Municipality, along with the other members of the Joint Municipal Zoning group, desires to undertake an amendment to the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition), which does not constitute a comprehensive re-zoning, but rather makes a few minor amendments, including the amendments requested by the Attorney General; and

WHEREAS, all requirements of the Commonwealth of Pennsylvania's Municipalities Planning Code, the Commonwealth of Pennsylvania's Second Class Township and Borough Codes, and the Eastern Schuylkill Regional Planning Zoning Ordinance relating to amendments to a zoning ordinance have been complied with;

NOW, THEREFORE, be it ORDAINED:

Section 1. The definition of "Agriculture, Intensive" as stated in Section 201 of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended to read as follows:

Throughout this Ordinance the terms "Agriculture, Intensive" or "Intensive Agriculture" shall be synonymous with and shall refer to either a Concentrated Animal Operation (CAO) (See 25 Pa.Code Section 83.201 and 262) which is an agricultural operation with eight or more animal equivalent units (AEU's) where the animal density exceeds two AEU's per acre on an annualized basis, or a Concentrated Animal Feeding Operation (CAFO) (See 25 Pa.Code Section 92a.2.) which is a CAO with greater than 300 AEU's, any agricultural operation with greater than 1,000 AEU's, or any agricultural operation defined as a large CAFO under 40 CFR Section 122.23.

Section 2. Section 1615C of the Eastern Schuylkill Regional Planning Commission Zoning Ordinance (2019 Edition) is hereby amended to read as follows:

Any and all Intensive Agriculture activities shall be conducted on lands that are located in the EAP or AP Zoning Districts. Standard animal weights, which must be used to calculate animal units, are found within Section 1617 of this Ordinance.

Section 3. Section 1615D of the Eastern Schuylkill Regional Planning Commission Zoning Ordinance (2019 Edition) is hereby amended to read as follows:

Any Intensive Agriculture use shall require a Special Exception approved by the Zoning Hearing Board.

Section 4. Section 1615S of the Eastern Schuylkill Regional Planning Commission Zoning Ordinance (2019 Edition) is hereby amended to remove and delete the requirement that all Intensive Agricultural uses and activities be reviewed and/or permitted by the Schuylkill County Cooperative Extension and the Schuylkill County Conservation District.

Section 5. Section 1615T of the Eastern Schuylkill Regional Planning Commission Zoning Ordinance (2019 Edition) is hereby amended to be deleted in its entirety.

Section 6. Section 1617 of the Eastern Schuylkill Regional Planning Commission Zoning Ordinance (2019 Edition) is hereby amended to read as follows:

Prior to October 1, 2019, the standard animal weights listed in the Penn State Extension's 2010 *Agronomy Facts* 54 must be used to calculate animal equivalent units (AEU's). From October 1, 2019 onward, the standard animal weights listed in the Penn State Extension's 2017 *Agronomy Facts* 54 must be used to calculate AEU's for newly identified forms of Intensive Agriculture. The newly approved standard animal weights will become effective for existing forms of Intensive Agriculture and voluntary animal operations whenever those existing Nutrient Management Plans are due to be amended during the triannual review.

Section 7. Section 555 of the Eastern Schuylkill Regional Planning Commission Zoning Ordinance (2019 Edition), which regulates area, yard, and height regulations for the R-1 District, is hereby amended to change the minimum side yard (one side) setback requirement from the current 50 feet to 25 feet, and the minimum side yard (Total) setback requirement from the current 100 feet to 50 feet.

Section 8. The definition of "Animal Husbandry" as stated in Section 201 of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended by deleting the final clause of the definition which reads "but shall be considered as intensive agriculture."

Section 9. Section 452 of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended by deleting sub-part B, Intensive Agriculture, subject to Section 1615, as a permitted use in the EAP District.

Section 10. Section 453 of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended by adding a sub-part L, Intensive Agriculture, subject to Section 1615, as a special exception use in the EAP District.

Section 11. Section 1616 of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended as follows: the 2nd sentence of sub-section A2, which begins "Those Intensive Agricultural Activities allowed...", is deleted; the phrase in parenthesis in sub-section A6 shall be changed from "excluding mink which is an Intensive Agricultural Activity" to "except those that are Intensive Agriculture"; the phrase in parenthesis in sub-section A7 shall be changed from "except swine over one thousand (1,000) pounds/acre which is an Intensive Agricultural Activity" to "except those that are Intensive Agriculture"; the paragraph following the asterisk in sub-section A8 which begins "Any concentration of animal units..." is deleted; sub-section A10 is deleted; sub-section A14 is deleted; the phrase in parenthesis in sub-section B6 shall be changed from "excluding mink farms which are an Intensive Agricultural Activity" to "except those that are Intensive Agriculture"; the phrase in parenthesis in sub-section B7 shall be changed from "except swine over one thousand (1,000) pounds/acre which is an Intensive Agricultural Activity" to "except those that are Intensive Agriculture"; sub-section B10 is deleted; and Section C is deleted.

Section 12. Section 455 of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended as follows: in the box containing the categories "EAP Agricultural Lot" and "Single Family Dwelling Lots ("SFD Lots")", under "MINIMUM REQUIREMENTS", under "Lot Size*", in the category "Single Family Dwelling Lots ("SFD Lots")", the reference to "1 1/2 Acres" is amended to "1 Acre", under "Lot Width* At Street Line", in both the categories "EAP Agricultural Lot" and "Single Family Dwelling Lots ("SFD Lots")", the reference to "200 Feet" is amended to "100 Feet", and under "Side Yard* Total and One Side", in the category "EAP

Agricultural Lot”, the Total “200 Feet” is amended to “40 Feet”, and the One Side “100 Feet” is amended to “20 Feet”.

Section 13. Section 702 of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended to add a new Uses Permitted by Right as follows:

“Z. Roof/Structure Mounted Solar Energy Systems, subject to Section 1694D.1. a. through f.”

Section 14. Section 703 of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended to modify a Use Permitted by Special Exception as follows:

“S. Ground Mounted Solar Energy Systems, subject to Section 1694.D.1. a. through e., and g.”

Section 15. Section 752 of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended to add a new Uses Permitted by Right as follows:

“TT. Roof/Structure Mounted Solar Energy Systems, subject to Section 1694D.1. a. through f.”

Section 16. Section 753 of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended to modify a Uses Permitted by Special Exception as follows:

“O. Ground Mounted Solar Energy Systems, subject to Section 1694.D.1. a. through e., and g.”

Section 17. Section 1694 of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended as follows: Section D. is amended to read “Permitted by Right, Special Exception or as an Accessory Use”; Section D.1. is amended to read “The installation of Roof/Structure Mounted Solar Energy Systems shall be permitted by Right within the R-4 and R-5 Zoning Districts, the installation of Ground Mounted Solar Energy Systems shall be permitted by Special Exception within the R-4 and R-5 Zoning Districts, and the installation of both Roof/Structure Mounted Solar Energy Systems and Ground Mounted Solar Energy Systems shall be permitted by Right in all other non-commercial Zoning Districts in the ESRP Region (WP, EAP, A-P, R-1, R-2 & R-3) subject to the following regulations.”

Section 18. The definition of “Accessory Use” as stated in Section 201 of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended to read as follows:

“A use customarily incidental and subordinate to the principal use or principal structure and located on the same lot as the principal use or principal structure is located or on an adjoining lot”.

Section 19. A definition of "Adjoining Lot" is added to the Definitions stated in Section 201 of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) to read as follows: "A lot which is next to the principal lot, and which shares a common border, however small, with the principal lot. This definition includes a lot which would share a common border, however small, with a principal lot but for the lots being separated by a public right-of-way."

Section 20. Section 1004 of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended to remove and redact sub-part "S. Motorsport Facility, subject to Section 1663" as a Special Exception Use in the GI-2 Zoning District.

Section 21. Section 954 of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended to add a new Special Exception Use in the GI-1 Zoning District to read as follows:

"V. Motorsport Facility, or Motor Sports Facility, subject to Section 1663".

Section 22. Section 1507H of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended to apply also apply to the G-C Zoning District, and to have the opening line or heading read as follows:

"Signs Permitted in the H-C, L-I, GI-1, GI-2 and G-C Zoning Districts".

Section 23. Section 1507K of the Eastern Schuylkill Regional Planning Zoning Ordinance (2019 Edition) is hereby amended to remove and redact sub-parts 2 through 6.

Section 24. The remainder of the Eastern Schuylkill Regional Planning Commission Zoning Ordinance (2019 Edition) not amended by this Ordinance shall remain in full force and effect.

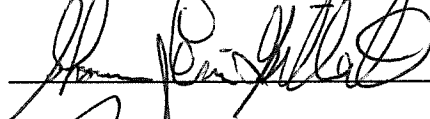
Section 25. This Ordinance shall be effective 5 days after enactment by the last participating municipality (Rush Township, Walker Township, Schuylkill Township and Tamaqua Borough) to enact it.

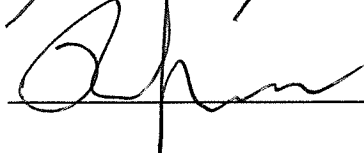
ORDAINED and enacted this 18th day of August, 2022.

ATTEST



RUSH TOWNSHIP BOARD OF SUPERVISORS





I, Deborah DeFranco Secretary of Rush Township, Schuylkill County,
Commonwealth of Pennsylvania, do hereby attest that the preceding 5-page ESRP Zoning
Ordinance Amendment is a true and correct copy of an Ordinance under consideration for
adoption by the Rush Township Board of Supervisors.

Date: 7/19/22

