

MARRAZZO & PLATT, P.C.

Attorneys at Law

Joseph A. Marrazzo, Jr.
Stuart A. Platt*
*Member of NJ and NY bar

TELECOPIER COVER LETTER

PLEASE DELIVER THE FOLLOWING PAGES TO:

DATE: 7-13-07

Name: Edward Ferruggia

From: Stuart A. Platt, Esquire

Firm: _____

Marrazzo & Platt, PC

Your Ref: Wawa Settlement

Our Ref: 7658

Your Fax No.: 215-523-9370

Our Fax No.: (856) 784-8050

Total Number of Pages - Including Cover Sheet: 11

ORIGINAL TO FOLLOW BY MAIL: YES _____ NO X

Message: As per your request, copy of Consent order + proposed Conditional settlement agreement for July 25 public hearing.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US AT (856) 784-1555.

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SINKO AND EISNER
 76 Euclid Avenue
 Haddonfield, New Jersey 08033
 (856) 354-1213
 Attorney for the Plaintiff – Wawa, Inc.

Wawa, Inc. a New Jersey Corporation :	Superior Court of New Jersey
:	:
Plaintiff(s), :	Law Division
:	Camden County
vs. :	Docket No. L-7697-06
:	:
Township of Voorhees Planning Board & Township of Voorhees :	
:	
Defendant(s) :	Civil Action
:	
:	Consent Order
:	

This matter having been opened to the Court by Steven M. Eisner, Esquire, attorney for the Plaintiff, Wawa, Inc., and in the presence of Stuart Platt, Esquire, attorney for the Defendant, Voorhees Township Planning Board, and John Wade, Esquire, attorney for the Defendant, the Township of Voorhees; and

It appearing that Plaintiff and Defendant are in the process of settling the dispute relating to this matter in accordance with the terms of a proposed Conditional Settlement (“The Settlement Agreement”), a copy of which is attached hereto and made a part hereof as Exhibit “A”, all of the terms, covenants and conditions of the Settlement Agreement being incorporated in this Consent Order as if set forth at length herein.

Now, Therefore, it is on this day of , 2007, ORDERED that:

- I. This matter is hereby remanded to the Township of Voorhees Planning Board which shall schedule a public hearing to consider the terms of the Settlement Agreement as it

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pertains to the Subject Property within forty-five (45) days of the date of this Order, provided, however, that Plaintiff shall provide notice to the public and to adjacent property owners for both the Subject Property and the Route 73 Site, said notice to be provided in accordance with the provisions of the Municipal Land Use Law.

2. If the Board Approves the terms of the Settlement Agreement, as it pertains to the Subject Property, then counsel for Plaintiff will send written notice of the approval to the Court, and the matter pending will then be dismissed by the Court, without prejudice and without costs.

3. In the event that preliminary and final site plan approval, related to the Route 73 site, is not granted by the Defendant Planning Board within ninety (90) days of the date of the Settlement Agreement, then, upon written notification from counsel to Plaintiff, this matter shall be reinstated and shall be restored to the active list and shall proceed to trial. The preliminary and final site plan approval referred to in this paragraph is conditioned upon either Plaintiff, or Plaintiff's designee, filing a complete site plan application in accordance with the official Voorhees Township Planning Board preliminary and final major site plan checklist within thirty (30) days of the date of this Order.

4. Counsel hereto represent to the Court that the terms of the Settlement Agreement and this Order have been reviewed by their respective clients and that counsel have been authorized to enter into this Order by their respective clients.

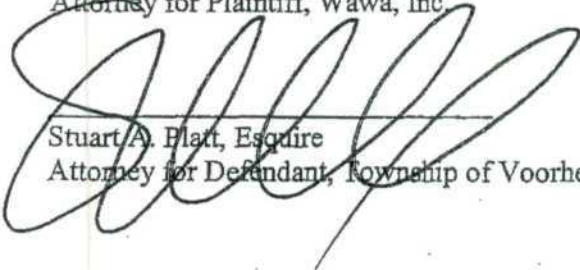
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5. In the event that Preliminary and Final Site approval to the Route 73 site is granted, then the matter pending will be dismissed by the Court with prejudice.

Honorable Francis J. Orlando, A.J.S.C.

We hereby consent to the
form and entry and the within
Consent Order

Steven M. Eisner, Esquire
Attorney for Plaintiff, Wawa, Inc.



Stuart A. Platt, Esquire
Attorney for Defendant, Township of Voorhees Planning Board

John D. Wade, Esquire
Attorney for Defendant, Township of Voorhees

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PROPOSED CONDITIONAL SETTLEMENT AGREEMENT

This Settlement Agreement is made this ___ day of _____ 2007, by and among Wawa, Inc., a New Jersey Corporation, 260 W. Baltimore Pike, Wawa, PA 19063 ("Wawa"), the Township of Voorhees, a Municipal Corporation of the State of New Jersey, 620 Berlin Road, Voorhees, NJ 08043 (the "Township"), and the Voorhees Township Planning Board, 620 Berlin Road, Voorhees, NJ 08043 (the "Planning Board").

Whereas, in or about November, 2005, Wawa filed an application for preliminary and final site plan approval relating to certain lands and premises owned by Wawa and situate, lying and being in the Township of Voorhees, County of Camden and State of New Jersey, located at White Horse Road and Burnt Mill Road, and designated on the official tax map of the Township of Voorhees as Block 178, Lots 1, 2, 6, 7, 8, 9 and 10 (collectively the "Subject Property"); and

Whereas, the site plan application was denied by the Planning Board on or about August 2, 2006; and

Whereas, on or about November 16, 2006, Wawa instituted a Complaint in Lieu of Prerogative Writ in the Superior Court of New Jersey, Law Division, Camden County (the "Court"), under Docket Number L-7697-06 (the "Pending Appeal"), appealing the denial of the site plan application; and

Whereas, Wawa, the Planning Board, and the Township do hereby propose to settle the Pending Appeal upon the terms and conditions set forth in this Agreement; and

Whereas, this Agreement relates to the Subject Property as well as certain lands and premises situate, lying, and being in the Township of Voorhees, State of New Jersey, located at New Jersey State Highway Route 73, Lakeside Avenue, and Dutchtown Road, and designated on

the official tax map of the Township of Voorhees as Block 227.01, Lots 41,44 & 45 (collectively the "Route 73 Site"), Wawa being the contract lessee of the Route 73 Site; and

Whereas, the settlement of the Pending Appeal is made expressly contingent and conditioned upon the fulfillment by Plaintiff, the Board, and the Township of all of the conditions set forth in this Agreement.

Now, therefore, the parties, intending to be legally bound, do hereby covenant and agree as follows:

1. Within forty-five (45) days of the date of the Consent Order, the Planning Board shall consider the terms and conditions of the Proposed Settlement set forth hereinafter at a public hearing of the Planning Board, Plaintiff agreeing to provide notice to the public and to adjacent property owners in accordance with the terms of the Municipal Land Use Law for both the Subject Property and the Route 73 Site². At the option of Voorhees Township, the Subject Property shall be permanently restricted against gasoline or fuel station use by ordinance or pursuant to a deed restriction which said deed restriction shall be prepared by counsel for the Plaintiff and reviewed by counsel for the Defendants, the cost of preparation and recording to be borne by the Plaintiffs.

2. All of the other uses of the Subject Property, now permitted by the Township's Zoning Ordinance, will continue to be permitted uses at the Subject Property, for a period of five (5) years, or until the Township's Master Plan is changed, whichever event occurs later (the "Protection Period"). Any of those permitted uses may operate on a 24 hour a day, 7 day a week, 365 day per year schedule.

3. The Burnt Mill building and parking side - yard setback, related to the Subject

Property, is now fifteen (15) feet and would remain as it is during the Protection Period, regardless of any variances, rezoning, construction or any other modifications of the following properties, located on Burnt Mill Road;

Block	Lot
179	1
179	5.01
183	5

4. During the Protection Period, the front – yard building setback and parking setback of the Subject Property, abutting White Horse Road, shall be ten (10) feet.

5. The setback established in the current B-Business Zone Ordinance, relating to the side – yard setback of the Subject Property, adjacent to Second Street, is now 50 feet for both building and parking, for a property adjacent to a residentially zoned property, and will remain the same during the Protection Period.

6. The setback established in the current B- Business Zone Ordinance, relating to the rear-parking setback of the Subject Property is now fifty (50) feet for a property adjacent to a residentially zoned property, and the building setback is now one hundred (100) feet for a property adjacent to a residentially zoned property, and both setbacks will remain the same during the Protection Period.

7. If that portion of the Settlement related to the Route 73 Site is not approved by the Planning Board, then upon letter request by counsel to Wawa the Court will reinstate the Pending Appeal and the Pending Appeal will then proceed to trial. If that portion of the settlement relating to the Route 73 site is approved by the Planning Board, then the parties consent to dismissing of the pending Appeal with prejudice and without costs.

8. The Settlement referred to in this Agreement, related to the Pending Appeal, is made expressly conditioned and contingent upon the grant by the Board of the following approvals related to the Route 73 Site in accordance with the time parameters outlined in this Agreement and in the Consent Order. Attached hereto and made a part hereof collectively as Exhibit "A" are a Site Plan, Use Signage Plan, Wawa Building Elevations Plan, and a Rite Aid Building Elevations Plan, all of which were prepared by Speitel & Speitel, Inc., and signed and sealed by Edmund C. Speitel, P.E. The Site Plan is dated January 16, 2006, and was last revised on April 3, 2006; the Use Signage Plan is dated March 26, 2007, the Wawa Building Elevations Plan is dated March 29, 2007, and the Rite Aid Building Elevations Plan is dated March 29, 2007.:

- a. The approval by the Planning Board of a Wawa convenience store and fuel dispensing facility at the Route 73 Site, including, but not limited to, the grant of a sign variance for an internally illuminated double – faced freestanding sign, with one hundred five (105) square feet of sign area on each side, including LED gasoline pricing. The sign will be approximately thirty-five (35) feet high. A rendering of the sign in question is illustrated on the Use Signage Plan attached hereto and made a part hereof as Exhibit "A".
- b. Approval of Wawa's customary sign package for its gasoline pumps and canopy, as illustrated on the renderings shown on the Use Signage Plan attached hereto and made a part hereof as Exhibit "A".
- c. Preliminary and final site plan approval for the operation of a Wawa convenience store, of approximately five thousand eight hundred (5,800) square feet, and a fuel dispensing facility, with six (6) multiple product dispensers and twelve (12) fueling positions, as shown on the Site Plan attached hereto and made a part hereof as Exhibit "A".
- d. The right of Wawa, and any successor, to operate a convenience store and motor vehicle fuel dispensing facility at the Route 73 Site 365 days a year, 7 days a week, and 24 hours a day.
- e. Any traffic review completed on behalf of the Planning Board, of the Route 73 Site, will be undertaken by an engineer other than the traffic engineer who reviewed the application for the Subject Property, and the reviewing engineer may not be affiliated with that traffic engineer's firm.
- f. Nothing in the Consent Order nor in this Agreement obligates the Planning Board to grant approval with regard to the Route 73 Site, and Plaintiff must meet all proofs and requirements regarding the Route 73 Site.

9. In addition, the Settlement is made expressly conditioned and contingent upon the receipt of all approvals deemed necessary by Wawa from any and all Municipal, County, State or Federal governmental bodies, including, but not limited to, approvals from the New Jersey Department of Transportation, the New Jersey Department of Environmental Protection, the Camden County Planning Board, and the Camden County Municipal Utilities Authority.

10. In the event that the Settlement is not approved by either Voorhees Township and/or the Voorhees Township Planning Board, and/or Plaintiff does not receive approvals satisfactory to Plaintiff related to the Route 73 Site, the failure to approve the Settlement and/or the failure to approve the Route 73 Site may not be utilized by Plaintiff in connection with the litigation pending.

11. The parties acknowledge that the terms of this Agreement have been completed read, are fully understood, and are voluntarily accepted. The parties further acknowledge that each of them has been represented by counsel of their choosing in connection with the negotiation and preparation of this Agreement, and that they enter into this Agreement freely and voluntarily without coercion or undue influence.

12. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors, and assigns.

13. Any headings preceding the text of the various sections hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement nor shall they in any way affect its meaning, construction or interpretation.

14. The invalidity or enforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

15. This Agreement may not be modified, altered, amended or changed except by an instrument in writing duly and validly executed by the parties hereto.

16. The singular number shall include the plural and the plural the singular as the context may require.

17. The recitations contained in this agreement are incorporated by reference as if set forth at length herein.

18. Any corporation signing this Agreement represents and warrants that the execution and delivery and performance of this Agreement by such corporation has been duly authorized by all necessary corporate action.

19. Notwithstanding anything to the contrary contained herein, no provision of this Agreement is intended to benefit any parties other than the Parties hereto and their successors and assigns and shall not be enforceable by any other party.

20. Submission of this Agreement for review and execution shall neither confer any rights nor impose any obligations upon any of the parties to this Agreement, unless and until all parties to this Agreement have executed this Agreement in its final form.

21. This Agreement contains the whole agreement between the parties hereto, and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise, of any kind whatsoever. All prior promises, undertakings, representations, agreements, understandings and arrangements between the parties hereto into this Agreement.

22. This Agreement may be signed in one or more counterparts, each of which will constitute an original and all of which shall comprise the entire Agreement.

23. Failure to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of such term, covenant or condition,

nor shall any waiver or relinquishment of any right or power under this Agreement, at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereby have executed this Mutual Release and Settlement Agreement as of the day and year set forth above.

Wawa, Inc.:

Attest

Township of Voorhees:

Witness

Voorhees Township Planning Board

Witness