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RECEIVED

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MOUNT JOY TOWNSHIP

OF COUNSEL:
RONALD M. AGULNICK

JOEL S. TODD
ELLIOTT GOLDBERG*
NICHOLAS DALLER**
*Also admitted in Florida
**Also admitted in New Jersey

November 14, 2024

Justin S. Evans, AICP, Zoning Officer
Mount Joy Township
8853 Elizabethtown Road
Elizabethtown, PA 17022

Sent Via UPS

RE: Substantive Validity Challenge and Curative Amendment of Elizabethtown Mount Joy Associates, LP.; 2205 Main Street; Lancaster County Tax Account numbers 461-41455-0-0000 and 461-95417-0-0000

Dear Mr. Evans:

As you know, I represent Elizabethtown Mount Joy Associates, L.P. and Pennmark Properties (collectively herein "Pennmark"), the owner of the approximately 32.7-acre (+/-) tract of land located at the northeast quadrant of the intersection of Cloverleaf Road and State Route 230 ("Property"). The Property is more particularly identified as Lancaster County Tax Account numbers 461-41455-0-0000 and 461-95417-0-0000. Pennmark hereby challenges on substantive grounds the validity of the Mount Joy Township Zoning Map which unlawfully prohibits and restricts the use and development of the Property ("Substantive Validity Challenge"). As prescribed by Section 609.1 of the Municipalities Planning Code, the enclosed Substantive Validity Challenge includes a proposed curative amendment rezoning the Property from Agricultural to Mixed Use.

I have enclosed an original and five (5) copies of the Substantive Validity Challenge and noted exhibits. I am also enclosing a check in the amount of \$750.00 representing the required fee for any matter requiring a hearing. As required by Section 609.1 of the MPC, please refer this matter to the Township's Planning Commission and thereafter schedule a hearing before the Board of Supervisors.

Thank you for your attention to this matter. If you have any questions or require anything further, please contact me at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nicholas G. Daller", written over a horizontal line.

Nicholas G. Daller, Esq
Tupitza & Associates, P.C.
Direct Line – 484-672-1734
Email – Ndaller@tupitza.law

**BEFORE THE BOARD OF SUPERVISORS OF
MOUNT JOY TOWNSHIP, LANCASTER COUNTY, PENNSYLVANIA**

**CHALLENGE TO THE SUBSTANTIVE VALIDITY OF THE MOUNT JOY TOWNSHIP
ZONING ORDINANCE AND REQUEST FOR CURATIVE AMENDMENT PURSUANT
TO SECTIONS 609.1 AND 916.1 OF THE MUNICIPALITIES PLANNING CODE**

Elizabethtown Mount Joy Associates, L.P. (hereinafter referred to as “Landowner”), by and through their attorneys, Tupitza & Associates, P.C., hereby challenge the substantive validity of the Mount Joy Township Zoning Ordinance (“Zoning Ordinance”) and request the adoption of a curative amendment pursuant to Sections 609.1 and 916.1 of the Pennsylvania Municipalities Planning Code, and in support thereof aver as follows:

The Property

1. Landowner is the legal owner of the property located at the northeast quadrant of the intersection of Cloverleaf Road and State Route 230, Elizabethtown, Mt. Joy Township, Lancaster County, PA (“Property”).

2. The Property is identified as Lancaster County Tax Account numbers 461-41455-0-0000 and 461-95417-0-0000. The Property is an irregularly shaped approximately 32.7 -acre (+/-) tract of undeveloped land located at the northeast quadrant of the intersection of Cloverleaf Road and State Route 230 in Mt. Joy Township, Lancaster County, PA. A legal description of the Property is attached hereto as Exhibit A.

3. The Property has substantial grade change sloping downward from the Northeast corner to the southwest corner.

4. In accordance with the Mt. Joy Township Zoning Code (“Code”) and Mt. Joy Substantive Validity Challenge and Curative Amendment REVISED 02/21/24 Township Zoning Map, the Property is located in the Agricultural Zoning District (“Agricultural-District”).

The Surrounding Properties

5. The Property is an island of undeveloped land amidst commercial, institutional and industrial properties.

6. To the south (across State Route 230) the properties are zoned C-2 Commercial and are developed with a mixture of commercial uses including a bowling alley, an animal hospital, strip retail including a restaurant, and a convenience store with fueling facilities.

7. To the west, the properties are also zoned C-2 commercial and are likewise developed with a mix of commercial uses including a convenience store with fueling facilities, dry goods retail and fast food restaurants.

8. To the north, the adjoining property is zoned mixed-use and is developed with a medical campus.

9. As set forth in the following Counts of this Challenge, Landowner believes that the Agricultural zoning of the Property constitutes impermissible spot zoning, is confiscatory, arbitrary and irrational, prevents the reasonable use of the Property, and results in waste and is therefore substantively invalid.

10. In order to cure the invalidity of the zoning of the Property, Landowner seeks a curative amendment rezoning the Property to Mixed Use so that it can be developed rather than sit unused.

11. As depicted on the Challenge Plan, access to the Proposed Development will include a signalized intersection with state route 230, one Right-in/Right-out only access to Cloverleaf Road (identified as Access Drive "D"), one right-in only access point along Cloverleaf Road, and one right in only access along state route 230.

12. As depicted on the Challenge Plan, the Proposed Development Complies with all of the applicable area and bulk requirements of the Mixed Use District, e.g. minimum lot size,

maximum impervious coverage, building coverage, building setbacks, building height, and required off-street parking facilities.

COUNT I

SPOT ZONING

13. Paragraphs 1 through 13 above are hereby incorporated by reference as though fully set forth herein.

14. The Property is an "island" of agricultural zoned land that is totally surrounded by parcels of land which are zoned and/or used for purposes which are not permitted in the Mixed Use zoning district.

15. There is no legitimate police power justification to single out the Property for different treatment from the abutting properties, in that:

- a. The Property is similar to the abutting properties in terms of topography, proximity to highways, and proximity to commercial uses and access to public sewerage and water utilities.
- b. The agricultural zoning of the Property results in waste as it is not being used for agricultural purposes, abuts a major road and will not be used for agriculture in the future. This runs directly counter to the purpose of Agricultural zoning “to encourage the preservation of **productive** farmland...” (section 135-81(A) emphasis added) The Property is in fact located within the designated Substantive Validity Challenge and Curative Amendment REVISED 022124 growth area and is presumed by the Township Transportation Capital Improvements Plan to be developed for nearly 400,000 s.f. of commercial uses; development not currently permitted by the Agricultural regulations. This

property is required to be utilized for mixed use to meet the Township Transportation Capital Improvements Plan.

- c. The agricultural zoning designation of the Property constitutes unlawful spot zoning.

COUNT II

ARBITRARY AND IRRATIONAL ZONING

16. Paragraphs 1 through 17 above are hereby incorporated by reference as though fully set forth herein.

17. Pursuant to Section 135-142 of the Zoning Ordinance, a property in the mixed use district can be used for a myriad of individual commercial and residential uses. However, Section 135-81 of the Zoning Ordinance prevents most commercial or residential development.

18. Given the location of the Property and its more than 32-acre size, the Property is not suitable for development in accordance with the Agricultural District regulations.

19. The agricultural zoning of the Property bears no relationship to rational planning or zoning purposes considering the adjoining zoning and land uses.

20. The restrictions on the use of the Property are greater than necessary for the protection of the public health, safety and welfare, are unduly restrictive, and prevent the reasonable use and development of the Property.

21. The singling out of the Property for different treatment than surrounding properties is unnecessary, arbitrary and irrational.

EXHIBIT "A"

Deed

79753 AUG 17 1977

No. 33-P - For Single Bond - Typewritten - Corporation
Tax & Eminent Co. Philadelphia

This Indenture made the 10th day of August in the year of our Lord one thousand nine hundred and seventy-seven (1977) Between ELIZABETHTOWN ASSOCIATES, INC., a Pennsylvania corporation

(hereinafter called the Grantor), of the one part, and ELIZABETHTOWN ASSOCIATES, a Pennsylvania partnership

(hereinafter called the Grantee), of the other part:

Witnesseth, That the said Grantor for and in consideration of the sum of One Dollar (\$1.00) money of the United States of America, unto it well and truly paid by the said Grantee at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed, released and confirmed, and by these presents does grant, bargain, sell, alien, convey, release and confirm unto the said Grantee its Successors and Assigns, its son, as partnership property, for the uses and purposes of the partnership.

Premises "A"

ALL THAT CERTAIN piece, parcel, or tract of Land SITUATE on the east side of Pa. Log. Rte. 36004 north of Pa. Log. Rte. 129, in Mount Joy Township, Lancaster County, Pennsylvania, as shown on a plan prepared by Muth Engineers, Inc., dated January 2, 1973, Drawing No. LA-950, and being more fully bounded and described as follows:

BEGINNING at a point on the east right of way line of Pa. Log. Rte. 36004, said point being located a distance of 171.96 feet north of the intersection of the north line of Pa. Log. Rte. 129 and the east line of Pa. Log. Rte. 36004; thence along the west line of Pa. Log. Rte. 36004, the following three (3) courses and distances: (1) in a line curving to the left, having the radius of 194.43 feet and an arc distance of 72.45 feet, the chord of said arc being North 8 degrees 14 minutes 33 seconds East, a distance of 72.42 feet to a point; (2) North 12 degrees 30 minutes 29 seconds West, a distance of 263.07 feet to a point; and (3) North 5 degrees 09 minutes 40 seconds West, a distance of 121.49 feet to a point; a corner of lands belonging to Northwest Lancaster County Medical Association; thence along the same, and crossing a 16.5 foot right of way for the American Telephone and Telegraph Co., North 06 degrees 49 minutes 10 seconds East, a distance of 1,313.32 feet to an iron pin, a corner of other land belonging to, now or late, John K. Garbur; thence along the same, and recrossing said 16.5 foot wide right of way, for the American Telephone and Telegraph Co., South 10 degrees 50 minutes 05 seconds West, a distance of 371.76 feet to an iron pin, a corner of land belonging to, now or late, Eilan K. Garbur; thence along the same, North 67 degrees 12 minutes 50 seconds West, a distance of 1,020.73 feet to a point on the east right of way line of Pa. Log. Rte. 36004, the place of BEGINNING.

CONTAINING 10.150 acres.

U 71 21

BEING, as to Premises "A" the same premises which John K. Garber and Katharine H. Garber, his wife, by Deed dated August 1, 1974 and recorded in Lancaster County, Pennsylvania on August 1, 1974 in Record Book O Volume 61 Page 733 granted and conveyed unto Elizabethtown Associates, Inc.

Premises "B"

ALSO ALL THAT CERTAIN piece, parcel, or tract of land SITUATE at the northeast corner of Pa. Leg. Rts. 36004, and Pa. Leg. Rts. 129, in Mount Joy Township, Lancaster County, Pennsylvania, as shown on a plan prepared by Ruth Engineers, Inc. dated January 2, 1973, Drawing No. RA-960, and being more fully bounded and described as follows:

BEGINNING at a point at the intersection of the east right of way line of Pa. Leg. Rts. 36004, and the north right of way line of Pa. Leg. Rts. 129; thence along the east right of way line of Pa. Leg. Rts. 36004, the following two (2) courses and distances: (1) North 23 degrees 46 minutes 20 seconds East, a distance of 82.81 feet to a point; and (2) in a line curving to the left, having a radius of 494.43 feet and an arc distance of 89.15 feet, the chord of said arc being North 17 degrees 36 minutes 23 seconds EAST, a distance of 89.03 feet to a point, a corner of land belonging to, now or late, John K. Garber; thence along the same, the following two (2) courses and distances: (1) South 87 degrees 12 minutes 50 seconds East, a distance of 1,020.73 feet to an iron pin; and (2) crossing an iron pin, a distance of 170.0 feet south of the last described corner, South 22 degrees 47 minutes 10 seconds West, a distance of 170.55 feet to a point on the north right of way line of Pa. Leg. Rts. 129; thence along the same, North 67 degrees 16 minutes West, a distance of 1,022.68 feet to a point, the place of BEGINNING.

CONTAINING 3.981 acres.

BEING, as to Premises "B", the same premises which Ellen K. Garber, Singlewoman by Deed Dated February 6, 1975 and recorded in Lancaster County on July 10, 1975 in Record Book F Volume 56 Page 1091 granted and conveyed unto Elizabethtown Associates, Inc.

UNDEA AND SUBJECT to easements, restrictions, and agreements of record.

UNDER AND SUBJECT, nevertheless to a certain mortgage debt in the original principal sum of Fifty Seven Thousand Dollars (\$57,000.00) given by Elizabethtown Associates, Inc. to Ellen K. Garber.

Together with all and singular the buildings improvements, ways, streets, alleys, passages, waters, wharf-courts, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claims and demand whatsoever of the said Grantor, in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof.

To have and to hold the said lots or pieces of ground above described with the buildings and improvements thereon erected hereditaments and premises hereby granted, or mentioned and intended as to be, with the appurtenances, unto the said Grantee, its Successors and Assigns, to and for the only proper use and behoof of the said Grantee, its Successors and Assigns forever, as partnership property, for the use and purposes of the partnership, UNDER AND SUBJECT as aforesaid.

And the said Grantor, for itself, and its Successors

do as by these presents covenant, grant and agree to and with the said Grantee, its Successors and Assigns, that it the said Grantor and its Successors

and singular the hereditaments and premises herein described and granted, or mentioned and intended as to be, with the appurtenances, unto the said Grantee, its Successors and Assigns, against it the said Grantor and its

Successors, and against all and every other Person and Persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from or under it, them, or any of them, Shall and Will Subject as aforesaid,

WARRANT and forever **DEFEND**.

In Witness Whereof, the said Parties to these Presents have hereunto interchangeably set their hands and seals. Dated the day and year first above written.

Witness and Seal of the said Grantee

ELIZABETHTOWN ASSOCIATES, INC. a Pennsylvania corporation

By: *[Signature]*
Vice President

[Signature]
Attorney

U. 71 23



COMMONWEALTH OF PENNSYLVANIA } ss
COUNTY OF PHILADELPHIA

On this, the 10th day of August 1977, before me, a Notary Public
the undersigned officer,
personally appeared SCARLETT V. FEINBERG
who acknowledged herself to be the Vice President of ELIZABETHTOWN ASSOCIATES, INC.,
a corporation, and that the cop such Vice-Feinberg being
authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the
name of the corporation by herself as Vice-Feinberg.

IN WITNESS WHEREOF, I have set my hand and official seal

[Signature]
Notary Public
Philadelphia, Pa.

RECORDED

ELIZABETHTOWN ASSOCIATES, INC., a
Pennsylvania corporation

ELIZABETHTOWN ASSOCIATES, A
Pennsylvania partnership

Premises:
East Side of Pa. Leg. Bldg. 36004
Mount Joy Township
Lancaster County, Pennsylvania

PHILADELPHIA

AUG 17 1977

RECORDED OR FILED

AUG 17 PM 3:45

RECORDER OF DEEDS
LANCASTER, PA.

Arranged in the office for Recording of Deeds, etc., in and
in Lancaster Co., Pennsylvania, in Record
Book No. 73 Page 24
Witness my hand and seal of Office this 17th
day of August A. D. 1977

The residence of the undersigned is
c/o Ronald S. Baker, Esquire
12 S. 2nd St., Philadelphia, PA 19107

[Signature]
Ronald S. Baker

LEGAL DESCRIPTION

of

Lot Area from Tyson Foods Inc to Elizabethtown Mount Joy Associates, L.P.

at

**Tyson Foods Inc.
455 Ridge Run Road**

in

**Mount Joy Township
Lancaster County, Pennsylvania**

ALL THAT CERTAIN tract of land lying on the west side of Ridge Run Road, in Mount Joy Township, County of Lancaster, Commonwealth of Pennsylvania, being more particularly described as follows:

From a **POINT OF BEGINNING** at the southerly property line of N/F Tyson Foods Inc. at the PP&L Right of Way and a distance of 34.86 feet west from the ¾" found rebar; (1) thence along the southerly property line of N/F Tyson Foods Inc to the west, North 67 degrees 58 minutes 21 seconds West, a distance of 1,058.34 feet to a ¾" rebar found at corner of lands of N/F Elizabethtown Associates; (2) thence along lands of N/F Elizabethtown Associates, North 18 degrees 07 minutes 50 seconds East, a distance of 428.37 feet to a concrete monument found at the corner of the lands of N/F Norlanco Real Estate Partnership and N/F Suzann and Janine R. Eshelman; (3) thence along the southerly property line of N/F Suzann and Janine R. Eshelman, North 76 degrees 22 minutes 44 seconds East, a distance of 521.56 feet to a point; (4) thence along N/F Tyson Foods Inc, South 20 degrees 11 minutes 36 seconds East, a distance of 987.57 feet to the **POINT OF BEGINNING**.

ABOVE DESCRIBED LAND CONTAINING an area of 11.065 acres, or 482,002.25 square feet and subject to an existing AT&T Right of Way, J-177-131, Deed Book K, Volume 38, Page 511 and an existing PP&L Right of Way, J-177-131

ALL THOSE TWO CERTAIN tracts of land situate along the Northeast side of Pennsylvania Route No. 230 in the Township of Mount Joy, County of Lancaster and Commonwealth of Pennsylvania bounded and described in accordance with survey made by Paul F. Diehm, Registered Surveyor dated October 26, 1964 as follows:

TRACT NO. 1

BEGINNING at a point in the center line of Pennsylvania Route No. 230 said point being the Southwestern corner of the herein described tract; thence leaving said Route 230 North forty-seven degrees thirty-six minutes East one hundred ninety-five and forty-four hundredths feet and North no degrees fifty-four minutes West twenty-nine and twenty-eight hundredths feet to an iron pin a corner of lands now or late of Monroe Garber; thence along lands of the said Monroe Garber the two following courses and distances: South sixty-one degrees forty-three minutes ten hundred sixty-eight and twenty hundredths feet to a stake South twenty-eight degrees seventeen minutes West two hundred ten feet to a point in the center line of Pennsylvania Routed No. 230; thence in the center line of said Route 230 North sixty-one degrees forty-three minutes West eleven hundred eighteen and fifty-seven hundredths feet to the place of beginning.

EXCEPTING THEREOUT AND THEREFROM:

ALL THAT CERTAIN lot or piece of land conveyed to Elizabethtown Associates, Inc., a Pennsylvania Corporation by deed dated February 6, 1975 and recorded in the Recorder of Deeds Office on July 10, 1975 in Record Book P, Volume 66, Page 1091.

ALL THAT CERTAIN lot or piece of land conveyed to the Commonwealth of Pennsylvania for condemnation dated August 31, 1970 and recorded in the Recorder of Deeds Office in and for Lancaster County of December 7, 1970 in Record Book N, Volume 60 Page 815.

(Cont'd.)

TRACT NO. 2

BEGINNING at a point in the center line of Pennsylvania Route No. 230 said point being sixty feet Southeast of a corner of Tract No. 1 and also a corner of lands now or late of Monroe Garber; thence by lands now or late of Monroe Garber running parallel sixty feet with Tract No. 1 North twenty-eight degrees seventeen minutes East two hundred ten feet to a stake; thence by lands now or late of Monroe Garber South sixty-one degrees forty-three minutes East twelve hundred forty-five and forty-two hundredths feet to a stake; thence by lands now or late of Monroe Garber and John Kreider, respectively, South four degrees twenty-nine minutes West two hundred twenty-nine and fifty-one hundredths feet to a point said point being seven and thirty-six hundredths feet North of the center line of Pennsylvania Route No. 2380; thence in Pennsylvania Route No. 230 North sixty one degrees forty-three minutes West thirteen hundred thirty-eight and four hundredths feet to the place of beginning.

BEING Tax Parcel No. (461) 9D8-1-2

EXHIBIT B
ZONING MAP AMENDMENT

TOWNSHIP OF MOUNT JOY
Lancaster County, Pennsylvania

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWNSHIP OF MOUNT JOY, LANCASTER COUNTY, PENNSYLVANIA, PURSUANT TO ARTICLE VI OF THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE AMENDING THE OFFICIAL ZONING MAP FOR THE TOWNSHIP OF MOUNT JOY TO REZONE THE PARCELS KNOWN AS LANCASTER COUNTY TAX ACCOUNT NUMBERS 461-41455-0-0000 and 461-95417-0-0000 FROM THE AGRICULTURAL ZONING DISTRICT TO THE MIXED USE

BE IT HEREBY ORDAINED AND ENACTED by the Board of Supervisors of THE Township of Mount Joy, Lancaster Count, Pennsylvania as follows:

Section 1. ZONING MAP AMENDMENT. The Official Zoning Map of the Township of Mount Joy is hereby amended to rezone the area noted on the Map attached hereto as Exhibit “A”, being Lancaster County Tax Account Numbers 461-41455-0-0000 and 461-95417-0-0000 from their current zoning district of Agricultural Zoning District to Mixed Use.

Section 2. The rezoning of the above Tax Parcels shall not affect any other property located in the Township.

Section 3. AUTHORIZATION. The Township Engineer is hereby authorized and directed to amend the Official Zoning Map to carry out the intent and purpose of this Ordinance amendment.

Section 4. APPLICABILITY. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of any inconsistency.

Section 5. EFFECTIVE DATE. This Ordinance shall become effective five (5) days after adoption.

ENACTED and ORDAINED this _____ day of _____, 2024.

TOWNSHIP OF MOUNT JOY
Lancaster County, Pennsylvania

ATTEST

By: _____