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November 16, 2026

John P. Henry, Esquire

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Re: Greiner Special Exception Hearings – Response to November 11, 2026 Correspondence Regarding Evidentiary Standards

Dear Attorney Henry:

I write in response to J. Dwight Yoder, Esquire's November 11, 2026 letter regarding the admissibility and weight of neighbor testimony and exhibits. While Applicant's counsel correctly notes that formal rules of evidence do not strictly govern zoning hearing board proceedings under Section 908(6) of the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. § 10908(6), his letter conflates the **admissibility** of evidence with its **evidentiary weight**, and prematurely attempts to chill the participation of neighboring residents and parties before a single word of their testimony has been heard.

To ensure a fair, orderly, and legally sound record, please consider the following points in response to Applicant's submission:

1. The letter is advocacy, not guidance to the Board

The letter is a one-sided summary prepared by the Applicant's counsel. It is not a ruling and not a statement of Board procedure, and it is aimed in large part at the unrepresented neighbors. Under Section 908(5) of the MPC, every party may present evidence and argument and cross-examine adverse witnesses on all relevant issues. Distributing a list of reasons testimony may be excluded, before any testimony is offered, risks discouraging people from speaking.

The Board's solicitor, not either side's counsel, should advise it on what the hearing rules allow. I ask that you give the Board and all parties a short neutral instruction at the start of the next session.

2. First-Hand Lay Testimony Regarding Observed Conditions Is Competent, Substantive Evidence

Applicant's reliance on cases dismissing "speculation" and "bald assertions" overlooks well-settled Pennsylvania precedent holding that lay neighbors are competent to testify as fact witnesses regarding personal observations of existing conditions—such as current traffic volumes, road geometry, sight-line hazards, drainage patterns, noise levels, and neighborhood character.

- Under Pennsylvania law, lay testimony based on personal observation is direct, competent evidence, not speculation. *See, e.g., Visionquest Nat'l, Ltd. v. Bd. of Supervisors of Honey Brook Twp.*, 524 Pa. 107, 569 A.2d 915 (1990) (holding that testimony of neighboring residents based on actual, first-hand observations and experiences constitutes substantial evidence).

- The Commonwealth Court upheld denial of a special exception where the ordinance required compatibility with the character of the neighborhood and zoning district. The court treated neighborhood-character compatibility as an enforceable zoning standard, not an impermissibly subjective concept. *See Cogan Properties, LLC v. East Union Township ZHB*, 318 A.3d 981 (Pa. Cmwlth 2024)

- Furthermore, while lay witnesses do not offer formal engineering opinions, their factual observations of existing conditions serve as critical predicate facts upon which expert testimony and Board evaluations properly rely, and directly test the credibility and real-world assumptions of Applicant's own witnesses.

- The decision Mr. Yoder calls recent, *BNE Real Estate Group v. City of Easton Zoning Hearing Board*, No. 443 C.D. 2025 (Pa. Cmwlth. July 13, 2026), is a memorandum opinion marked "Opinion Not Reported," which may be cited only for its persuasive value. It is also different on its facts. The objectors' expert there accepted the applicant's trip estimates and offered only generalized testimony about the existing intersection that he did not tie to the proposed use. **The court did not hold that lay testimony may not be heard**. It considered the lay testimony and found it insufficient on that record.

Objectors also reserve the argument that where, as here, no end user is identified, the baseline of what is "normally expected" from the use is the applicant's burden to establish and cannot be assumed.

3. Burden of Proof on Specific Ordinance Criteria Rests with the Applicant

Applicant's letter repeatedly emphasizes the "heavy burden" placed on objectors regarding general health, safety, and welfare. However, before any burden shifts to objectors on general detriment, **the Applicant bears the initial and continuous burden of proving strict compliance with every objective, specific requirement of the Zoning Ordinance** for a special exception. *See Bray v. Zoning Bd. of Adjustment*, 48 Pa. Cmwlth. 523, 410 A.2d 909 (1980).

- Testimony and exhibits offered by neighbors and parties that demonstrate Applicant's failure to satisfy specific dimensional, operational, environmental, or procedural criteria in the Ordinance are directly relevant to Applicant's threshold burden, regardless of whether they establish "extraordinary" general harm.

4. Proper Treatment of Hearsay and Public Records Under MPC § 908(6)

Under Section 908(6) of the MPC, 53 P.S. § 10908(6), formal rules of evidence do not apply, and the Board has broad discretion to admit relevant evidence that may be helpful in understanding the issues.

- **Self-Authenticating & Public Records:** Official municipal records, recorded deeds, public maps, PennDOT data, and prior Township filings or transcripts are admissible public records or fall within recognized exceptions to the hearsay rule—they are not incompetent "internet rumors."
- **The *Walker* Rule Addresses Sufficiency, Not Exclusion:** Under *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366 (Pa. Cmwlth. 1976), hearsay is not automatically barred from the hearing room; rather, uncorroborated hearsay cannot form the *sole* basis for a finding of fact. Excluding lay testimony or exhibits preemptively—or interrupting *pro se* residents with constant technical objections—creates unnecessary appellate risk regarding due process and a full opportunity to be heard under MPC § 908(5).
- **The internet and AI point is overbroad.** The letter calls anything a witness got from "the internet or artificial intelligence" classic hearsay. What matters is what the item is and what it is offered to show. A zoning ordinance, a PennDOT publication, an aerial photograph or a published standard is not hearsay because someone found it online. We agree that a lay witness should not read software-generated text into the record as proof of a fact; the Board should rule on each such item when it is offered.

5. Preemptive Briefing and Distribution to the Board

Applicant's stated intention to distribute an advocacy letter outlining selective case law to the Zoning Hearing Board members at the start of the hearing functions as an unsolicited *ex parte*-style legal memorandum designed to prejudice the Board against neighboring residents before they testify. The Board is advised by its own independent Solicitor, who is fully capable

of ruling on evidentiary objections as they arise in context, rather than through blanket, pre-hearing gatekeeping.

Accordingly, we respectfully request that the Board and its Solicitor allow neighboring parties and residents to present their first-hand factual testimony and relevant public documents without preemptive restriction, ruling on specific evidentiary objections on a question-by-question basis as required by the MPC.

Please provide this response to the Board and all parties, and, if either letter is marked, mark both as argument and not evidence.

Very truly yours,

William J. Cluck

Counsel for Joelle Myers, Bobbi Thompson and Michelle Kennedy

cc: J. Dwight Yoder, Esquire

Josele Cleary, Esquire

Justin Evans to post on Township web page for unrepresented parties