

**KYLE AND ALEXIA GERBER,
ANDREW AND RACHAEL DYMSKI,
ROBERT AND VIOLA BYERLY, JODY
AND STANLEY SHIVELL, AND
EARLE AND BONNIE MORTON,**

Appellants

v.

**BOARD OF SUPERVISORS OF
MIDDLESEX TOWNSHIP,
CUMBERLAND COUNTY,
PENNSYLVANIA**

Appellee

IN THE COURT OF COMMON PLEAS
OF CUMBERLAND COUNTY,
PENNSYLVANIA

No: _____ Civil Term

Land Use Appeal

CIVIL ACTION – LAW

NOTICE OF LAND USE APPEAL

NOW come the above-captioned Appellants by and through their attorneys, Wolf & Wolf, Attorneys at Law, and file this Notice of Land Use Appeal of the Approval of the Final Major Subdivision Plan for Pennsylvania Digital 1 (PAX-1), the Approval of the Final Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 1-A, and the Approval of the Preliminary Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 1-B, averring as follows:

I. IDENTIFICATION OF PARTIES

1. The instant land use appeal arises out of formal actions taken on May 30, 2025 and September 3, 2025 by the Board of Supervisors of Middlesex Township, Cumberland County, Pennsylvania to modify the Official Zoning Map of Middlesex Township.

2. Appellants Kyle and Alexia Gerber are adult individuals who are residents of Middlesex Township, residing at 585 Bernheisel Bridge Road, Carlisle, Cumberland County, Pennsylvania, 17015, and have standing to bring this appeal pursuant to the Pennsylvania Municipalities Planning Code.

3. Appellants Andrew and Rachael Dymski are adult individuals who are residents of Middlesex Township, residing at 430 Bernheisel Bridge Road, Carlisle, Cumberland County, Pennsylvania, 17015, and have standing to bring this appeal pursuant to the Pennsylvania Municipalities Planning Code.

4. Appellants Robert and Viola Byerly are adult individuals who are residents of Middlesex Township, residing at 263 Country Club Road, Carlisle, Cumberland County, Pennsylvania, 17015, and have standing to bring this appeal pursuant to the Pennsylvania Municipalities Planning Code.

5. Appellants Jody and Stanley Shivell are adult individuals who are residents of Middlesex Township, residing at 8 Teaberry Drive, Carlisle, Cumberland County, Pennsylvania, 17015, and have standing to bring this appeal pursuant to the Pennsylvania Municipalities Planning Code.

6. Appellants Earle and Bonnie Morton are adult individuals who are residents of Middlesex Township, residing at 120 Locust Way, Carlisle, Cumberland County, Pennsylvania, 17015, and have standing to bring this appeal pursuant to the Pennsylvania Municipalities Planning Code.

7. Appellee is the Board of Supervisors of Middlesex Township, a duly incorporated Township under the Pennsylvania Municipalities Planning Code (the “MPC”), 53 P.S. § 10101 *et. seq.* (hereinafter the “Board ”), is the governing body of Middlesex Township (hereinafter the “Township”) and is empowered by the Pennsylvania Municipalities Planning Code, 53 P.S. § 10501, to grant approvals governing subdivisions and land developments within Middlesex Township.

8. The Property owner is Carlisle Development Partners, LLC, a registered Pennsylvania Limited Liability Company (hereinafter “Applicant”) which is also the developer of the properties for which it sought subdivision and land development approval and which approvals are the subject of the instant appeal.

9. The Property comprises approximately 694 acres on four tax parcels, located in Middlesex Township, Cumberland County.

10. The property at issue was historically known and numbered as 246, 248, 250 and 256 Country Club Road, and identified by the following Tax Parcel Numbers, respectively: 21-06-0015-001, 21-06-0015-013, 21-06-0015-014, and 21-06-0015-015 and are all collectively owned by the Applicant.

11. For the purposes of the instant appeal, unless referred to by the Phasing Designation used by the Applicant and Township, the property will collectively be referred to as the “Subject Property.”

12. The current zoning designation for the Subject Property is known as MU-1 (Mixed Used – Neighborhood) under the Middlesex Township Zoning Ordinance enacted September 3, 2025.

13. Further, all of the Subject Property and only the Subject Property is also the entirety of the area of Middlesex Township known as the Data Center Overlay District (DCO), in which development and operation of data centers constitutes a use permitted by right.

14. The DCO was established initially as an amendment to the now replaced Middlesex Township Zoning Ordinance (Ordinance 3 of 1989, as amended) as a text amendment and a zoning map amendment known and numbered Ordinance 3-2025 on May 30, 2025 at the request of the Applicant to the Board.

II. Jurisdiction and Venue

15. Jurisdiction and venue is proper pursuant to 42 Pa.C.S.A. §933(a) and 53 P.S. §§ 10107(b), 11001-A and 11002-A where the instant appeal originates from a grant of approval voted upon on May 6, 2026 by the Board of Supervisors rendered under the MPC to develop a parcel of land located in Middlesex Township, Cumberland County¹, Pennsylvania.

III. Project Background

16. In late 2024, the Applicant initiated discussions with the Township to possibly utilize the Subject Property for the construction and operation of a hyper-scale data center campus on the properties along Country Club Road in which Applicant is believed to have had an equitable interest with then owner KMWW Partnership.

17. Subsequently, Applicant through KMWW, submitted an application to the Township seeking to amend the zoning ordinance and map to define the proposed “data center” use and to establish the

¹ Counsel for Appellants, and at least one of the individual Appellants requested copies of the written approvals contemplated by 53 P.S. 10508 which provides “The decision of the governing body.... shall be in writing and shall be communicated to the applicant personally or mailed to him at his last known address not later than 15 days following the decision.” As of the filing of this appeal, the undersigned has not been provided with a copy of the appealed approvals. And this filing is being submitted at this time to ensure that a timely appeal is filed with the Court within 30 days of the vote to approve the applications, in the event there is no written decision. Appellants request that they be granted leave to amend this action to provide additional bases for relief in a reasonable time following their receipt of the written approvals.

DCO to permit said use within the Residential-Farm (RF) zoning district, but only on those lands in which Applicant held an equitable interest.

18. Following the adoption of Ordinance 03-2025, Applicant acquired title to the Subject Property and proceeded, over the ensuing months, to submit the Subdivision and Land Development Plans which are the subject of the instant appeal

19. On or around August 18, 2025, Applicant submitted its preliminary subdivision plan for the entirety of the Subject Property to the Township for what was then referred to as “Project Bolt” but was subsequently named Pennsylvania Digital 1 or PAX-1 Data Center.

20. At the same time, the Applicant submitted preliminary land development plans for Phase 1-A calling for the construction of an electrical substation which would be used to supply power to the proposed Data Center campus.

21. On or around November 26, 2025, the Applicant submitted preliminary land development plans for Phase 1-B calling for the construction of the first phase of the data center campus, which included five data center buildings and attendant accessory structures, including sound walls, interior drives, utility infrastructure, etc.

22. For orientation, Phase 1-A is generally on the southeast corner of the project site, located along Country Club Road and in closest proximity to Appellants Byerlys’ property.

23. Phase 1-B is on the northeastern corner of the project site, bounded by the Conodoguinet Creek and on the opposite side of the watercourse from the Country Manor Mobile Home Park and the Meadows subdivision, in which Appellants Shivells’ property is located.

24. On or about January 5, 2026 the Board granted preliminary subdivision approval for the PAX-1 Data Center plan providing for five lots, including Phase 1A (Substation), Phase 1B (Campus), Phase 2 (Campus 2), Phase 3 (Campus 3), Phase 1C – no plans for development at that time, and including areas for internal roads.

25. On or about March 4, 2026, the Board considered and granted preliminary land development approval for Phase 1-A of the PAX-1 data center project providing for an electrical substation and

related improvements including lighting, screening and buffering and related accessory structures with conditions of such approval being attached thereto.

26. Thereafter, the Board received the final subdivision plan application on or about January 14, 2026.

27. The date upon which the Board received the Final Land Development plan application for Phase 1-A on or about February 19, 2026 (before preliminary land development approval was granted).

28. Final Subdivision approval was granted by the Board on May 6, 2026, despite the public concerns raised over preliminary actions of the Applicant in terms of their adherence to the assurances provided to the Board throughout the process in terms of the actions it would take to keep neighboring property owners informed.

29. Final Land Development approval was granted by the Board on May 6, 2026 for Phase 1-A despite concerns voiced to the Board by residents related to impacts caused by the significant blasting that was occurring on the site to the welfare of neighboring property owners and their homes and land.

30. Preliminary Land Development approval was granted by the Board on May 6, 2026 for Phase 1-B of the Data Center site despite the concerns raised by residents as to the adherence of the Applicant with requirements for outside agency approval which the applicant claimed would not apply to its use (described in detail below).

IV. Grounds for Appeal

31. The action of the Board of Supervisors in approving the Final Subdivision Plan, the Final Land Development Plan for Phase 1-A and the Preliminary Land Development Plan for Phase 1-B were arbitrary, capricious, an abuse of discretion and contrary to law.

32. One or more of the Appellants appeared at each of the meetings of the Board wherein approvals were granted at the request of the Applicant.

33. Appellants were present and voiced concerns that the subdivision and land development plans were being furthered based upon an Environmental Impact Assessment Report (EIA) required under Section 718 of the Subdivision and Land Development Ordinance of Middlesex Township (SALDO).

34. Appellants noted that under Section 718(C) of the SALDO, the EIA Report was to be “prepared by a qualified consultant who shall be **mutually agreed upon by the developer and the Township.**” (emphasis added).

35. Appellants observed and identified to the Board, prior to its vote to approve any of the plans at issue that the EIA prepared for the instant project was prepared by Livic Engineering.

36. The principal of Livic Engineering is an individual by the name of Justin Ross.

37. The PAX-1 project is being developed on behalf of the Applicant/Property Owner by an entity named Pennsylvania Data Center Partners.

38. The Chief Operating Officer of Pennsylvania Data Center Partners is also Justin Ross.

39. At a minimum, the Appellants urged the Board not to take action based on an analysis completed by an individual whose engineering firm has a direct pecuniary interest in the rapid development of the site.

40. Further, Appellants noted that there are well-documented environmental resources, including the Conodoguinet Creek which borders much of the property and represents sensitive wildlife habitat for native species and is a sensitive ecological area which requires significant caution be exercised before allowing massive development to proceed.

41. The specific language of the SALDO requires an agreement between the Township and the Applicant as to who will prepare the EIA.

42. Neither the Board nor the Applicant offered any evidence that the EIA was prepared as a result of the mutual agreement between the two parties.

43. Importantly, one of the most significant natural features located in the region, specifically Cumberland County and bisecting Middlesex Township less than one half mile from the project site is the Appalachian National Scenic Trail corridor.

44. During the meeting on May 6, 2026, a representative of the Appalachian Trail Conservancy addressed the Board and advised that the Conservancy had issued a public statement earlier that day in opposition to the approval of the PAX-1 Data Center, based in part on the previously voiced concerns that the organization had shared with both the Township and the Applicant as to impacts on the trail viewshed, wildlife habitat, impacts from noise and adverse impacts on local ecology.

45. Each of these areas of concern should have been properly analyzed and considered in an Environmental Impact Assessment as contemplated by the SALDO.

46. Section 718(D)(7) regulating contents of the EIA, provides that areas like the Appalachian Trail should be identified and under Section (8) visual resources are to be identified as part of the report.

47. The impacts to be assessed by a competently prepared report would have identified major impacts that will be forced upon this critical cultural and natural resource and have not been adequately addressed before approval was granted.

48. Additionally, Data Centers are defined as Employment Uses under the Middlesex Township Zoning Ordinance adopted September 3, 2025.²

49. Under Article 3, Zoning Uses, Section G, Employment Uses, Subsection 2, Data Centers, various provisions and requirements exist regulating any such proposed use.

50. Under Subsection e of the above section requires an Applicant who seeks approval for a data center to provide a water feasibility study which *inter alia*, requires as follows:

(9) The applicant **shall** provide proof of review and approval from the Susquehanna River Basin Commission (SRBC) for projects that have:

² It is noted that the SALDO, which governs approvals of subdivision and land development applications is replete with references incorporating compliance with all applicable provisions of the Township Zoning Ordinance such that preliminary and final subdivision and land development plans must demonstrate compliance with Zoning as a prerequisite to a valid approval being issued.

(a) Water withdrawals of 100,000 gallons per day (gpd) or more over a 30-day average from any source or combination of sources within the Susquehanna River Basin.

(b) Any consumptive water use of 20,000 gpd or more over a 30 day average from **any** water source.

ZO Section 3.04(G)(2)(e)(9)(emphasis added)

51. Applicant maintained, despite the strict language of the Ordinance, that it was exempt from the SRBC review and approval because while its was authorized to withdraw up to 400,000 of water from the Middlesex Township Municipal Authority (MTMA), its withdrawals fell under the withdrawal permit issued to MTMA.

52. Appellants identified the clear language of the ordinance to the Board and their concerns were ignored based on the reassurance of the Applicant alone.

53. Appellants submit and therefore aver that the SRBC requirements are not waivable and are mandatory and that failure alone is sufficient to have denied approval to each of the appealed applications.

54. Finally, Appellants aver that they have filed a substantive validity challenge with the Zoning Hearing Board of Middlesex Township which is scheduled to hear such challenge as to the validity of the Data Center Overlay District and the governing regulations which govern the Data Center use itself.

55. Appellants aver that they will be able to demonstrate that the underlying zoning amendment granted to the Applicant represented unlawful spot zoning in violation of established binding appellate authority on the issue.

56. Appellants maintain that their instant appeal is designed to permit them to exercise their rights to due process and to have that challenge heard without the Applicant continuing to engage in site preparation under the authority of the within challenged approvals.

57. To deny the Appellants the opportunity afforded to them under the MPC to challenge the validity of the zoning scheme that was designed to fulfill the needs of a single landowner that the significant harm that will be inflicted upon adjoining and nearby property owners would be to deny all possible due process protections that exist to ensure proper oversight can occur before irreparable harm is suffered.

58. In the instant action, daily blasting and earthmoving activities have been ongoing prior to the issuance of land development approvals without regard to the impacts to Appellants and others similarly situated.

59. Appellants seek leave to be provided an opportunity to supplement the instant appeal following their receipt of the written approvals issued to Applicant by the Township under Section 10508 if the MPC.

60. Ultimately Appellants ask this Honorable Court to issue an Order vacating the approvals that are the subject of the instant appeal as having been erroneously granted by the Board as an abuse of their discretion or as a product of their arbitrary and capricious action in violation of their own governing ordinances.

V. Conclusion

WHEREFORE, Appellants request that this Honorable Court grant their appeal, reverse the decision of the Board of Supervisors and remand this matter to the Board of Supervisors for denial of the Final Subdivision Plan, Final Land Development Plan for Phase 1-A and the Preliminary Land Development Plan for Phase 1-B, along with any additional relief that the Court deems appropriate and just.

Respectfully submitted,
WOLF & WOLF



Dated: June 5, 2026

BY:

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Attorneys for Appellants

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted By:


Nathan C. Wolf, Esquire
Attorney for Appellants
Attorney ID: 87380

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Writ of Certiorari

To: Board of Supervisors of Middlesex Township, Cumberland County:

You are hereby directed, within 20 days, to certify to the court a true and complete copy of your entire record in the matter referenced in the attached land use appeal which was filed by the Appellants on June 3, 2026.

Prothonotary

Date: _____, 2026