

KYLE AND ALEXIA GERBER,	:	IN THE COURT OF COMMON PLEAS
ANDREW AND RACHAEL DYMSKI,	:	OF CUMBERLAND COUNTY,
ROBERT AND VIOLA BYERLY,	:	PENNSYLVANIA
JODY AND STANLEY SHIVELL, AND	:	
EARLE AND BONNIE MORTON,	:	
Appellants	:	No: 2026-_____ Civil Term
v.	:	
	:	Land Use Appeal
ZONING HEARING BOARD OF	:	
MIDDLESEX TOWNSHIP,	:	CIVIL ACTION – LAW
CUMBERLAND COUNTY,	:	
PENNSYLVANIA	:	
Appellee	:	

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 from the Deemed Denial of the Substantive Validity Challenge Filed with the Middlesex Township Zoning Hearing Board of the Adoption of Ordinance 03-2025 and portions of Ordinance 07-2025 of the Middlesex Township Zoning Ordinance, averring as follows:

I. IDENTIFICATION OF PARTIES

1. The instant land use appeal arises from the deemed denial by the Middlesex Township Zoning Hearing Board (“ZHB”) of Appellants’ Substantive Validity Challenge, filed May 13, 2026 pursuant to 53 P.S. §10916.1 and docketed as ZHB Case No. 2026-03, which Challenge contests formal actions taken on May 30, 2025 and September 3, 2025 by the Board of Supervisors of Middlesex Township, Cumberland County, Pennsylvania to amend the text of the Middlesex Township Zoning Ordinance and the Official Zoning Map. The ZHB never advertised, scheduled, commenced, or conducted any hearing on the Challenge.

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 Zoning Hearing Board of Middlesex Township (“ZHB”), with a mailing address of 350 N. Middlesex Road, Carlisle, PA 17013.

8. The Property owner is Carlisle Development Partners, LLC, a registered Delaware Limited Liability Company (hereinafter “CDP”) registered to do business in the Commonwealth of Pennsylvania, which is also the developer of the properties that are located within the challenged zoning district, upon which Applicant is proposing a hyper-scale data center campus; the challenged zoning amendments govern the development and operation of such use.

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, 21-06-0015-015, 21-06-0015-014, and 21-06-0015-013 and are all collectively owned by CDP.

11. For the purposes of the instant appeal, unless referred to by the Phasing Designation used by CDP 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-Use Neighborhood District) 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 03-2025 on May 30, 2025 at the request of the predecessor to CDP, KMWW Partnership, having first been presented to the Board conceptually in late 2024.

15. On or about May 6, 2026, the Township issued final subdivision and final land development (for Phase 1-A – Electrical substation) approvals to CDP, including the preliminary land development plan for Phase 1-B of CDP's plan to develop a hyper-scale data center campus, the last of which specifically relied upon the DCO district and use restrictions and provisions included in the above referenced zoning amendments.

16. By contrast, the subdivision plan and the proposed electrical substation use located in Phase 1-A were permitted in the underlying zoning district and did not specifically rely upon the adoption of the DCO or the regulations governing data centers for approval.

17. On or about May 13, 2026, the Appellants filed a Substantive Validity Challenge pursuant to 53 P.S. §10916.1 (the "Challenge") with the Middlesex Zoning Officer, who accepts such filings on behalf of the Middlesex Township Zoning Hearing Board. The Township docketed the challenge as ZHB Case No. 2026-03. A true and correct copy of the filed challenge is attached hereto and incorporated herein as Exhibit A.

18. In addition to the submission of the application for hearing, Appellants tendered to Middlesex Township a filing fee of \$800.00 on May 13, 2026 by check written on the IOLTA account of the undersigned's law firm, which check was cashed at some time later date by Middlesex Township.

19. At no time has the Township or the ZHB returned the filing fee, rejected the filing, or asserted any defect in the Challenge as filed.

20. Mark Carpenter, who serves as the Middlesex Township Zoning Officer, hereinafter “Carpenter”, asked Appellants’ counsel whether Appellants would consent to having the first hearing on the Challenge occur on July 8, 2026, rather than the ZHB’s next scheduled meeting date, which was June 10, 2026, in part to ensure the Township has sufficient time to publish notice of the hearing.

21. Carpenter asked that counsel for Appellants provide written confirmation of such consent in order to ensure compliance with any applicable time restrictions under the Municipalities Planning Code (hereinafter “MPC”).

22. On May 14, 2026, at or around 9:45 a.m., Carpenter transmitted an email to the members of the ZHB and the ZHB Solicitor, Jennifer Bogar-Hipp, Esquire (hereinafter “Hipp”), to which he attached the application for hearing on a substantive validity challenge of the data center overlay district, and he further advised the recipients that counsel for the appellants would be authoring a letter requesting an extension of time until July 8, 2026 for a Zoning Hearing on the application. He further advised the recipients that he would provide a notice of hearing at a later date. A true and correct copy of said email correspondence is attached hereto as Exhibit B.

23. On May 14, 2026, at 11:33 a.m., the undersigned transmitted correspondence by email to Carpenter consenting to the commencement of the first hearing on the Challenge on July 8, 2026, a date within sixty (60) days of the filing of the Challenge. A true and correct copy of said correspondence is attached hereto as Exhibit C.

24. At or around 12:53 p.m. on May 14, 2026, Hipp instructed Carpenter to hold off on advertising notice of the hearing on said challenge. Notably, Counsel for Appellants was NOT copied on said email, however the ZHB Chairman, Jason Kelso, was copied. A true and correct copy of said email correspondence is attached hereto as Exhibit D.

25. On May 14, 2026, at 3:09 p.m. Carpenter replied to Hipp, and copied Chairman Kelso but did not copy counsel for the Appellants, thanking the solicitor for letting him know [not to proceed with advertising]. A true and correct copy of said email correspondence is attached hereto as Exhibit E.

26. At 3:22 p.m., Carpenter acknowledged receipt of said correspondence on May 14, 2026 by email to the undersigned and advised that Hipp, who was copied on said email, was being made aware of the same. A true and correct copy of said email correspondence is attached hereto as Exhibit F.

27. On May 14, 2026, at 9:38 p.m., ZHB Member Ed Murphy replied to Carpenter's initial transmittal email (Exhibit B), and advised of his availability of the July 8 meeting date. A true and correct copy of said email correspondence is attached hereto as Exhibit G.

28. Upon information and belief, at no public meeting did the ZHB consider, vote upon, or take any official action concerning the scheduling, continuance, or cancellation of a hearing on the Challenge; the direction to "hold off on advertising" was given solely by the ZHB Solicitor by private email, to which counsel for Appellants was not a party.

29. On or about June 3, 2026, and due to concerns related to a possible conflict of interest identified by the Board of Supervisor's (hereinafter "Board") solicitor Keith Brennehan, Esquire and ZHB Solicitor Hipp, the Board formally voted to retain special counsel to represent the Board in the pending appeal before the ZHB from the law firm of Stevens & Lee¹.

30. According to the Township's minutes of the same June 3, 2026 meeting, the Township Solicitor advised that due to a conflict of interest arising from his role as County Solicitor, and the involvement of the ZHB Solicitor as Assistant County Solicitor, he was unable to represent the Township with respect to the Challenge.

31. On or about June 4, 2026, Gregg I. Adelman, Esquire, serving as counsel for CDP submitted to the Township a party-status letter on behalf of the property owner in the action pending before the ZHB, copied to Hipp and Counsel for Appellants. A true and correct copy of said email correspondence is attached hereto as Exhibit H.

32. The consent set forth in Exhibit C was expressly limited to the commencement of the first hearing on the Challenge on July 8, 2026, in lieu of June 10, 2026; was expressly conditioned upon

¹ Attorney Charles M. Suhr from the firm of Stevens & Lee has entered his appearance on behalf of the township in all other pending land use appeals related to the PAX-1 approvals.

counsel for Appellants being advised immediately, before any notice was published, of any scheduling issue; and did not consent to any continuance, waiver, or extension of time beyond July 8, 2026.

33. At no time after May 14, 2026 did the ZHB, its Solicitor, or anyone acting on the ZHB's behalf request from Appellants any further extension of time, advise Appellants of any scheduling issue, or communicate with Appellants concerning the hearing in any manner whatsoever, and no further waiver or extension was ever given.

34. On or about June 29, 2026, the undersigned spoke with Hipp concerning logistics and ZHB preferences for the upcoming hearing and counsel was advised by Hipp that the advertising had not occurred and that a hearing would not occur on July 8, 2026.

35. Thereafter on June 30, 2026, the undersigned sent correspondence by email to Hipp and copied to Attorneys Adelman and Suhr, requesting written confirmation Hipp had advised counsel that [appellants] should consider the appeal to be a deemed denial and cited 53 P.S. §10916.1(f), and the 60 day deadline set forth under subsection (d), that the ZHB had not published notice and that a hearing would not be taking place on July 8, 2026. A true and correct copy of said correspondence is attached hereto and incorporated herein as Exhibit I.

36. On July 1, 2026, Attorney Adelman emailed Hipp and requested Hipp to provide confirmation of the substance of the undersigned's June 30, 2026 letter and to confirm "that the challenge has been deemed denied." A true and correct copy of said correspondence is attached hereto and incorporated herein as Exhibit J.

37. On July 2, 2026, Appellants' counsel authored another email to Hipp requesting that she respond to the June 30, 2026 letter and Attorney Adelman's email. A true and correct copy of said correspondence is attached hereto and incorporated herein as Exhibit K.

38. On July 3, 2026, Hipp sent an email reply to appellants' counsel's email of July 2, in which she merely confirmed receipt of both emails. A true and correct copy of said correspondence is attached hereto and incorporated herein as Exhibit L.

39. No hearing was ever advertised or conducted by the ZHB and more than 60 days have elapsed from the date of the filing of the challenge.

40. Section 916.1(d) of the MPC, 53 P.S. §10916.1(d), required the ZHB to “commence its hearings within 60 days after the request [was] filed unless the landowner requests or consents to an extension of time.” Appellants’ only consent was to a first hearing on July 8, 2026, which was within the sixty-day period.

41. Section 916.1(f)(1) of the MPC, 53 P.S. §10916.1(f)(1), provides that “[t]he challenge shall be deemed denied when ... the zoning hearing board ... fails to commence the hearing within the time limits set forth in subsection (d).”

42. Accordingly, the Challenge was deemed denied no earlier than July 8, 2026 (the consented first-hearing date, on which no hearing was commenced) and no later than on or about July 13, 2026 (upon expiration of sixty days from filing, computed pursuant to 1 Pa.C.S. §1908).

43. Neither the ZHB nor any other person has given notice of any deemed decision on the Challenge. The instant appeal has been filed within thirty (30) days of the deemed denial of the Challenge however computed, and is timely pursuant to Section 1002-A of the MPC, 53 P.S. §11002-A.

44. The matter is now ripe for appeal to the Court of Common Pleas for the reasons set forth below.

II. JURISDICTION AND VENUE

45. Jurisdiction and venue are proper pursuant to 42 Pa.C.S. §933(a)(2) and Article X-A of the MPC, 53 P.S. §§11001-A and 11002-A, in that the instant appeal arises from the deemed denial of a substantive validity challenge filed pursuant to 53 P.S. §10916.1 with the Zoning Hearing Board of Middlesex Township, Cumberland County, Pennsylvania, the municipality whose Board of Supervisors enacted the challenged zoning provisions, and the land at issue is located within said county. *See*, 53 P.S. §11001-A (Article X-A is “the exclusive mode for securing review of any decision rendered pursuant to Article IX or deemed to have been made under this act”).

46. Appellants have standing for the reasons set forth in Exhibit A (*see*, paragraph 17 hereof), and jurisdiction with this Court is proper under 53 P.S. §10916.1(b) (as “Persons aggrieved by a use or development permitted **on the land of another** by an ordinance or map... who desire[] to challenge

its validity on substantive grounds shall first submit their challenge to the zoning hearing board for a decision thereon under section 909.1(a)(1)”), and the subsequent deemed denial by the ZHB.

47. Jurisdiction is proper accordingly under 53 P.S. §10909.1(a)(1), which was the basis under which Appellants filed the Challenge with the ZHB.

III. BASIS FOR APPEAL

48. On or about May 30, 2025, the Township adopted Ordinance 03-2025 which created the Data Center Overlay District (DCO) and adopted text amendments which provided for the development and operation of the “Data Center” use as a “use permitted by right” in the DCO.

49. Previously, in late 2024 upon information and belief, CDP (either through its own representatives or through its predecessors in title, KMWW Partnership (as to parcels ending in -001, -014, and -015), and Club Road Properties, L.P., which held title to parcel ending in -013), initiated discussions with the Township to explore development of the Subject Property as a hyper-scale data center campus on the properties along Country Club Road. It is believed that at the time discussions began, CDP had an equitable interest with then-owners, KMWW Partnership and Club Road Properties, L.P.

50. Subsequently CDP, through KMWW and/or Club Road Properties, L.P., upon information and belief 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 DCO to permit said use within the Residential-Farm (RF) zoning district, but only on those lands in which CDP held an equitable interest.

51. Following the adoption of Ordinance 03-2025, in July 2025, CDP acquired title to the Subject Property and proceeded to submit the Subdivision and Land Development Plans which are the subject of the appeal docketed at 2026-06465 and the appeal docketed at 2026-08652. The instant appeal only concerns the deemed denial of the substantive validity challenge.

52. On or around August 18, 2025, CDP 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.

53. 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.

54. On or around September 3, 2025, the Township adopted a new zoning Ordinance, Ordinance 07-2025, which replaced all prior zoning ordinances and amendments previously adopted by the Township, and put in place a new zoning map.

55. Ordinance 07-2025 incorporated the DCO and the text provisions related to data centers that had been included in Ordinance 03-2025, and expanded some of the provisions, none of which imposed any meaningful restrictions on the development of data centers in the DCO over the provisions of 03-2025.

56. Appellants herein incorporate previously identified Exhibit A (see, paragraph 17 hereof) by reference as if set forth fully herein.

57. Appellants submit as a result of the ZHB’s failure to conduct a hearing on their substantive validity challenge, that their only appeal lies before this Honorable Court so that they are afforded due process in the prosecution of said appeal.

58. Significantly, in the action docketed at 2026-06465, CDP sought quashal of the Appellants’ appeal pending before this Honorable Court, in part on the argument that “Pennsylvania law does not permit landowners to raise substantive validity challenges directly in the Court of Common Pleas” and that section 916.1 of the MPC directs that such challenges “shall” be submitted to the zoning hearing board — the very administrative process that the ZHB has now withheld from Appellants.

59. The ZHB’s wholesale failure to advertise, schedule, or conduct any hearing on the Challenge denied Appellants the hearing to which the MPC entitles them and denied them due process of law, warranting this Court’s plenary consideration of the Challenge.

60. Appellants have no explanation for the failure of the ZHB to fulfill its statutory obligation to conduct a hearing as contemplated by the MPC.

61. Appellants believe that their pleading submitted to the ZHB and incorporated herein establishes that substantial evidence exists that the adoption of Ordinance 03-2025 and subsequently Ordinance 07-2025, as the latter pertains to the DCO and data centers in general, represents an exercise of unlawful spot zoning by the Township and was therefore invalid.

62. Appellants believe and therefore aver that incorporated Exhibit A fully sets forth the factual and legal bases to conclude that unlawful spot zoning occurred and that the actions of the Board of Supervisors correspondingly violated Article I, Section 27 of the Pennsylvania Constitution, known as the Environmental Rights Amendment.

63. Appellants further aver that CDP is attempting to move, with the assistance of the Township, as quickly as possible to secure land development approvals for the various phases of its project to attempt to prejudice the instant appeal on the basis that it has vested rights.

64. It is believed and therefore averred that a substantial amount of work was performed on this project using approvals for prior development plans on the subject properties in order to avoid public scrutiny of the data center project for fear of public opposition and for fear residents of the township would initiate challenges, like the instant zoning challenge.

65. Appellants submit that the ZHB's failure to advertise or conduct hearings on the Challenge, without notice to any party of its intention not to proceed, has further prejudiced Appellants by compelling them to perfect the instant appeal.

66. Since the filing of the Challenge, the Township, CDP, and reviewing agencies have continued to advance approvals for and construction of the project, including, upon information and belief, the issuance on or about May 18, 2026 of Amendment A-4 to NPDES Permit No. PAC210079 covering Phase 1-A and Phase 1-B of the project, such that each month of delay occasioned by the ZHB's failure to act compounds the prejudice to Appellants.

67. Because the ZHB never conducted a hearing, there are no findings and no record below. Section 1005-A of the MPC, 53 P.S. §11005-A, authorizes this Court to receive additional evidence,

"provided that appeals brought before the court pursuant to section 916.1 shall not be remanded for further hearings before any body, agency or officer of the municipality."

68. Appellants accordingly request that this Honorable Court receive evidence and adjudicate the Challenge on the merits, making its own findings of fact and conclusions of law.

69. Ultimately Appellants ask this Honorable Court to issue an Order finding the adoption of Ordinance 03-2025 and the portions of 07-2025 that concern the Data Center Overlay District and the regulations related to the data center use to be the product of unlawful spot zoning and declaring said ordinances invalid.

IV. CONCLUSION

WHEREFORE, Appellants respectfully request that this Honorable Court: (a) sustain the instant appeal from the deemed denial of the Challenge; (b) schedule and conduct evidentiary hearings on the Challenge pursuant to 53 P.S. §11005-A, on an expedited basis; (c) declare Ordinance 03-2025, and the Data Center Overlay District and data center provisions of Ordinance 07-2025, invalid as unlawful spot zoning, as violative of Article I, Section 27 of the Pennsylvania Constitution, and as an abuse of discretion; and (d) grant such other and further relief as the Court deems appropriate and just.

Dated: August 6, 2026

BY:

Respectfully submitted,
WOLF & WOLF



Nathan C. Wolf, Esquire
10 West High Street
Carlisle, PA 17013
Supreme Court I.D. No. 87380
(717) 241-4436
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

EXHIBIT A

Substantive Validity Challenge filed with the Middlesex Township
Zoning Hearing Board, May 13, 2026 (ZHB Case No. 2026-03)
Bearing the Township's RECEIVED stamp dated 05-13-2026

MIDDLESEX TOWNSHIP, CUMBERLAND COUNTY, PENNSYLVANIA
APPLICATION FOR HEARING BEFORE THE
ZONING HEARING BOARD

I. IDENTIFICATION

	Name	Mailing address – number, street, city, state, zip code	Telephone No.
1. Applicant	Kyle and Alexia Gerber (et al) (See Attached)	585 Bernheisel Bridge Rd Carlisle PA 17015	717-241-4436 (Counsel)
2. Owner of Land	Carlisle Development Partners	1660 International Dr. St 500 McLean VA 22102	804-351-7432

I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his authorized agent.

Signature of Applicant (Counsel for Applicant)

Application Date:
5/13/2026

II. TYPE OF REQUEST

- ☐ 1. SPECIAL EXCEPTION
☐ 2. VARIANCE
☐ 3. APPEAL FROM ACTION OF ZONING OFFICER
☒ 4. OTHER – SUBSTANTIVE VALIDITY CHALLENGE

RECEIVED
05-13-2026
MIDDLESEX TOWNSHIP
Mark Carpenter

III. BRIEF DESCRIPTION OF REQUEST

SEE ATTACHED NARRATIVE DETAILING BASIS OF SUBSTANTIVE VALIDITY CHALLENGE OF ORDINANCE 3-2025 AND SUCH SECTIONS OF ORDINANCE 7-2025 WHICH PERMITS, PROVIDES FOR AND REGULATES OPERATION OF DATA CENTERS AND ESTABLISHMENT OF THE DATA CENTER OVERLAY DISTRICT.

IV. PROPERTY INFORMATION

Property Location including County Tax PIN: 246,248,250 AND 256 Country Club Road
PIN(S) 21-06-0015-001, 21-06-0015-013, 21-06-0015-014, and 21-06-0015-015
Zoning District: MU-1 and DCO

Date purchased: 7/15/2025	Lot area (sq.ft.): Total of 694 Acres
Present use: Undeveloped, but approved for residential	Lot width: n/a
Proposed use: Hyperscale Data Center Campus and electrical substation	Lot depth: n/a

Note: Attach survey or legal description of property, if necessary.

V. CERTIFICATION BY APPLICANT

I hereby certify that all of the above statements and the statements contained in any papers or plans submitted herewith are true to the best of my knowledge and belief.

Signature

Dated: May 13

2026

VI. REQUEST FOR SPECIAL EXCEPTION

THE PROPOSED USE IS CLAIMED BY THE APPLICANT:

1. To be in harmony with the various elements and objectives of the Comprehensive Plan (cite sections of the Plan):
2. Not to be detrimental to the character of the neighborhood for the following reasons:
3. To be consistent with such other standards as required by the Zoning Ordinance in Section(s) _____ .
(Attach additional sheets, if necessary)

<u>Standard</u>	<u>Provision for compliance</u>

Note: See section 17.07 of the Zoning Ordinance for the standards for issuance of a special exception

VII. REQUEST FOR VARIANCE

1. The applicant believes that the variance should be granted because:

He is unable to make reasonable use of his property for the following reason(s):
2. The proposed variance will not alter the essential character of the neighborhood for the following reason(s):
3. The proposed variance is in accord with the purposes and intent of the Zoning Ordinances for the following reason(s):

VIII. SITE OR PLOT PLAN

Each application for a Special Exception use shall be accompanied by a proposed plan showing the size and location of the lot, the location of all buildings and proposed facilities including access drives, parking areas, and all streets within 200 feet of the lot. The plan shall indicate the use of each building located within 200 feet of the lot. (Attach additional sheets if needed)

See attached Zoning Map amendment attached as Exhibit A to the Attached Appeal Narrative representing the challenged Data Center Overlay District.

NOTE: An actual plan for the proposed site may be required.

OFFICIAL USE ONLY

Case No. _____ of 20 _____

Application Filed with Zoning Officer:....., 20____

Application Notice Mailed to Applicant....., 20____

Hearing Notice Mailed to Municipal Secretary....., 20____

Public Notice Filed:....., 20____

Tract Posted:....., 20____

Hearing Held:....., 20____

Decision Made:....., 20____

Notification of Decision Made:....., 20____

Fee Paid:....., 20____

Action Taken:

Comments:

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

BEFORE THE ZONING HEARING
BOARD OF MIDDLESEX TOWNSHIP,
CUMBERLAND COUNTY,
PENNSYLVANIA

DOCKET NO.

SUBSTANTIVE VALIDITY
CHALLENGE

NOW come the above-captioned Appellants by and through their attorneys, Wolf & Wolf, Attorneys at Law, and file this APPLICATION FOR SUBSTANTIVE CHALLENGE TO THE VALIDITY OF THE ZONING ORDINANCE AND/OR MAP NOS. 3-2025 and such relevant sections as to 7-2025, averring as follows:

I. BACKGROUND AND IDENTIFICATION OF PARTIES

1. The instant substantive validity 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 Shivel 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. § 10601, 53 P.S. §10608 and 53 P.S. §10609(a) to enact, adopt and amend a Zoning Ordinance governing land uses within Middlesex Township.
8. This action arises out of the Board’s approvals of amendments to the Zoning Ordinance of Middlesex Township known and numbered as Ordinance 3-89, adopted June 30, 1989 (and subsequently amended) providing definitions and regulations for “Data Centers”, establishing an overlay district (DCO) for the siting of such uses, resulting in a change to the Zoning Map in an area of the Township previously within the Residential Farm (R-F) zoning district in May 2025, and subsequently, in September 2025, said provisions and regulations were revised as part of the comprehensive rezoning amendment for Middlesex Township which likewise modified the zoning designation for the subject area to Mixed Use 1 (MU-1), and modified the table of uses to permit Data Centers in the MU-1 district (within the DCO). These changes were enacted at the request of the predecessor in title to Carlisle Development Partners, LLC (hereinafter “Applicant”).¹

¹ Applicant acquired title to the property following the adoption of 3-2025 on May 30, 2025.

9. The Subject Properties comprise approximately 694 acres on four tax parcels, located in Middlesex Township, Cumberland County. (A true and correct copy of the zoning map adopted as part of Ordinance 3-2025 is attached hereto as Exhibit "A").
10. The Subject Properties at issue are known as 246, 248, 250 and 256 Country Club Road, and are owned by Carlisle Development Partners.
11. Each property was historically used for agricultural purposes and was enrolled in the Clean and Green Program until the property was purchased by Applicant.
12. In late 2024, when the challenged rezoning was first presented to the Board and the Middlesex Planning Commission, the subject properties were owned by KMWW Partnership which subsequently conveyed the property Applicant following the adoption of the rezoning.
13. In late 2024, KMWW through its counsel, Charles M. Courtney, Esquire, along with other representatives, made presentations to the Board of Supervisors and presented their request to the Board of Supervisors for amendments to the zoning ordinance that would define data centers as a land use category with regulations for said use and to establish an overlay zoning district within the Township wherein Data Centers could be developed within the Township.
14. On April 23, 2025, a proposed zoning ordinance map and text amendment was submitted to the Township, to create a data center overlay district and specific regulations for the overlay district.
15. At their April 25, 2025 meeting, the Supervisors voted to advertise a public hearing to receive public comment and take possible action on the proposed amendment at their May 30, 2025 workshop meeting, which sessions always occur on Friday mornings at 7:30 a.m.
16. On May 30, 2025, the Board of Supervisors voted to adopt the requested changes to the Official Zoning Map of Middlesex Township to establish the Data Center Overlay (DCO) and to establish regulations for said district as Ordinance 3-2025. (A true and correct copy of the text of the amendments to the Zoning Ordinance is attached hereto as Exhibit "B").

17. Thereafter, on September 3, 2025, the Board of Supervisors conducted as public hearing on Ordinance 7-2025, which was a comprehensive zoning amendment to the prior zoning ordinance and adoption of a new official zoning map for the Township.
18. Between May 30, 2025 and September 3, 2025, several aspects of the zoning provisions pertaining to data centers, the table of uses located with the zoning ordinances and the underlying zoning district within which the DCO was located had been modified.
19. Review of this appeal is now ripe following the request for final subdivision approval for the entirety of the PAX-1 Data Center project, the final land development approval for Phase 1-A of the project (consisting of a Pennsylvania Power and Light, "PPL" substation), and preliminary land development approval for Phase 1-B of the Proposed Data Center, consisting of six (6) data center buildings and various other site improvements attendant to the proposed use. Said applications were approved by the Board on May 6, 2026.

II. BASIS FOR RELIEF REQUESTED

20. Appeals from adopted zoning amendments are within the jurisdiction of the Zoning Hearing Board under the Township Zoning Ordinance and the Municipalities Planning Code.
21. During the majority of the proceedings before the Board, some or all of the above-captioned Appellants appeared and were recognized by the Board during the public meetings where these requests were discussed by the Board.
22. Appellants allege that the Board abused its discretion, and that its decision to approve the requested change to the Zoning Map violated provisions of the Second Class Township Code, the Pennsylvania Municipalities Planning Code (hereinafter the MPC), and acted contrary to the purpose and intent of the Middlesex Township Zoning Ordinance, the Middlesex Township Comprehensive Plan and the Cumberland County Township Comprehensive Plan, that its decision is contrary to Pennsylvania law and that the decision ignored the Township's obligations arising under the Pennsylvania Constitution, specifically Article I, §27, the environmental rights amendment.
23. Appellants believe and therefore aver that the Board has acted arbitrarily and capriciously and that its decisions represent a manifest abuse of discretion resulting from substantive

errors of law such that the impact of its decisions will cause the Appellants to suffer irreparable harm as set forth in detail herein.

24. Appellants believe and therefore aver that the decision of the Board to amend the zoning map and the text of the zoning ordinance constitutes unlawful spot zoning.
25. Appellants submit that the Board has changed the zoning map of Middlesex Township at the request of one property owner and has singled out the effected parcels for treatment that is different from the parcels adjacent thereto.
26. The Board modified the underlying zoning classification of land where the DCO is located from Residential-Farm (R-F) to Mixed Use-1 (MU-1).
27. In May 2025, when the DCO was adopted, Data Centers were identified as a used permitted by right only within the DCO and nowhere else in the Township.
28. In September 2025, when the comprehensive ordinance was adopted, Data Centers were identified as a permitted use by right in the DCO and in the industrial zoning district.
29. The subject tract is surrounded by approximately 65 separate residential uses (including 16 undeveloped residential lots), and including 19 separate residential lots within the Country Manor Mobile Home Park. ²
30. Additionally, there are six (6) agricultural uses that are adjacent to the rezoned property.
31. The majority of the property (3 of 4 of the parcels) had previously been approved for two separate residential developments.
32. The “PennTerra” project was approved for approximately 1,000 residential units sometime in 2004 though development had never begun on those properties.

² It is acknowledged that the individual lots within the Country Manor property are all contained within one tax parcel for mapping purposes.

33. The “Cumberland Knoll” project was approved by the Township for development of 390 residential units in approximately 2007, and construction had commenced on public improvements like roadways and curbs and continued even after the rezoning amendment being adopted in May 2025.
34. In October 2022, the Township undertook a Comprehensive Rezoning process to update its ordinance that had been in place since 1989, with numerous amendments thereto having been adopted over the subsequent 32 year period following its initial adoption.
35. The Township formed a Zoning Ordinance Task Force to guide the project consisting of Township Staff, three members of the Planning Commission, a representative from the Cumberland County Planning Department, a technical advisor and a professional consultant from the firm of Michael Baker International.
36. Between October 2022 and September 2025, the committee met and provided updates to the Planning Commission on a regular basis.
37. Based on information and belief, updates were also provided to the Board on the progress of the comprehensive re-write of the ordinance.
38. On October 25, 2024, the Applicant presented general information to the Township Board of Supervisors about its desire to develop the subject properties as a data center.
39. Thereafter on November 25, 2024 the Applicant presented the same type of information to the Township Planning Commission about its desire to develop the properties as a data center.
40. Between November 25, 2024 and April 23, 2025 when the zoning text and map amendment (identified as TPF 25-7) was submitted to the Township officially, there was no discussion of a proposed overlay district to accommodate data centers or a proposed zoning text amendment in any of the Township’s official meeting minutes.
41. There are no published minutes of the Zoning Ordinance Task Force on the Township website.

42. Upon information obtained through requests submitted under the Right-To-Know Law, on or about December 4, 2024, Counsel for Applicant transmitted to the Township's Zoning Officer and the Township's planning consultant a pre-drafted Data Center Overlay ordinance, together with a depiction of the boundary of the overlay district encompassing the Subject Properties, for incorporation into the Township's draft comprehensive Zoning Ordinance.
43. By January 7, 2025, the Township's planning consultant confirmed in writing to the Applicant's counsel that the developer-drafted Data Center Overlay language had been incorporated into the draft comprehensive Zoning Ordinance.
44. Based on information and belief, these exchanges occurred entirely outside of the Township's Zoning Ordinance Task Force, the Planning Commission minutes, and the Board of Supervisors minutes; and no notice of any of these communications was given to the public or to abutting landowners.
45. Thus, by relying solely upon the language provided by the Applicant, the inclusion of the language in the draft comprehensive Zoning Ordinance created the impression that such language had been sanctioned by more than the Zoning Officer and the Township's planning consultant.
46. Appellants aver that by virtue of the rezoning amendments adopted on May 30, 2025 and September 3, 2025, the Township specifically singled out the rezoned property and treated the same differently to the benefit of one proposed landowner and to the detriment of the abutting landowners and those located in close proximity.
47. Furthermore, Appellants aver that the uses permitted by the DCO, and particularly the use proposed by Applicant would be incompatible with the existing, non-intensive uses (agricultural and residential) adjacent to the rezoned land inside the Township.
48. Critically, the data center text and map amendment proposed by the Applicant on April 23, 2025 was identical to the language of Ordinance 3-2025, adopted on May 30, 2025, except for the changing the numbering of provisions to conform to other ordinance article and section numbers.

49. In other words, the Applicant got exactly what it asked for without exception.
50. The passage of Ordinance 3-2025 then led to those provisions being incorporated into the comprehensive rezoning as part of Ordinance 7-2025 on September 3 without any additional meaningful restrictions being put in place on data centers.
51. Spot zoning occurs when the municipality singles out a parcel or parcels for the benefit of one user and treats that land differently from adjoining lands. *See, Mulac Appeal*, 210 A.2d 275 (Pa, 1965); *Allen Distribution v. West Pennsboro Township Zoning Hearing Board*, 231 A.3d 90 (Pa.Cmwlth, 2020).
52. Spot zoning may occur when the governing body abandons an established plan for future land use and growth within the municipality and instead makes changes to the overall zoning scheme at the request of an individual property owner.
53. “The key point is that when a municipal governing body puts on blinders and confines its vision to just one isolated piece or problem within the community, disregarding a community-wide perspective, that body is not engaged in lawful zoning, which necessarily requires that the picture of the whole community be kept in mind while dividing it into compatibly related zones by ordinance enactments. In other words, legislation as to a spot is the antithesis of zoning, which necessarily functions within a community-wide framework. Zoning, to be valid, must be in accordance with a rational and well considered approach to promoting safety, health and morals and a coordinated development of the whole municipality.” *Twp of Plymouth v. Cnty. of Montgomery*, 531 A.2d 49, 57 (Pa.Cmwlth. 1987)
54. Appellants submit that *inter alia*, the amendment to the zoning map represents spot zoning because (1) the adjacent uses are not similarly zoned; (2) the Township was urged to revise its comprehensive plan prior to adopting piecemeal amendments to its ordinance and map; (3) the amendments to the map are inconsistent with the County Comprehensive Plan; (4) the Township comprehensive plan has not been updated since 2003, despite the legal requirement to update once every ten years; (5) the result of the amendments is the lack of buffer between far less intensive uses from the more intensive use proposed; (6) township zoning currently provides sufficient industrial land for uses of the type sought by the

Applicant; and (7) the need for zoning of this sort outside of the industrial zone was not established in the application or hearings.

55. Public comment raised concerns over impacts of light, pollution, traffic, and noise as examples of how the intensity of the proposed use would have adverse impacts on the existing adjacent land uses.
56. The permitted building height alone represents a significant deviation from other uses permitted in the zone outside of the overlay district.
57. Even the timing of the proposed use regulations and district overlay adoption was designed to serve the needs of the Applicant at the expense of public scrutiny and meaningful input.
58. Members of the public suggested to the Board that it could require the Applicant to provide environmental studies prior to rezoning the property which would have been consistent with the Board's obligations under Article I, §27 of the Pennsylvania Constitution.
59. While an environmental impact analysis (EIA) was undertaken, the author of the study, who is purportedly a qualified expert to opine as to anticipated impacts, is also the chief of engineering and Chief Operating Officer of the development entity who is the Applicant in this proceeding.
60. The EIA was not prepared and submitted to the Board until nearly three months after the May 30, 2025 vote to adopt the DCO and the data center regulations. In fact, the EIA was prepared and dated only weeks prior to the vote to adopt the rezoning of the site on September 3, 2025.
61. Township consultants had not issued a review of the EIA until October 2025.
62. Among the areas of concern identified by members of the public who spoke at the hearing in May 2025 was noise generation, and the Township was not provided with any information about that topic in advance of their vote by the Applicant.
63. The entirety of the adoption of the ordinance and the siting of the proposed use in an overlay district superimposed upon underlying zoning designated as Residential Farm (RF) occurred entirely at the behest of a single entity, for their own economic purposes and

without regard to the normal process of consideration of zoning amendments, especially those involving development of new districts and new regulations for uses not previously developed within the municipality or the region.

64. Appellants believe that the Township engaged in unlawful spot zoning by focusing on a particular proposed use rather than the zoning district and crafting the regulations to specifically suit one user's demands and its timeline to secure approvals.
65. This averment is significant due to the significant change in the character of the neighborhood that the proposed development will have on adjacent and nearby uses.
66. The Applicant did not provide any argument or evidence to the Board of Supervisors as to the environmental impacts that the proposed use would have on air, ground water, light, or the natural esthetic prior to the adoption of the rezoning. On May 30, 2025, the only hearing conducted by the Board of Supervisors on the proposed ordinance consisted of a basic presentation by the Applicant's counsel without the benefit of any individual with experience in the operation or development of centers of the type proposed in this matter and public comment.
67. Rather, the Applicant's plan proposes a data center campus larger than any other site currently in operation within the Commonwealth of Pennsylvania, and ranks among the largest in the United States of America and among the largest known data center sites operating throughout the world.
68. The Ordinance was written without the Board having any significant background in the impacts of the Applicant's proposed use, because there are no active uses of the scale and scope proposed by the Applicant in the southcentral region of the Commonwealth of Pennsylvania.
69. The Applicant did not provide any assurance to the Board of any mitigation strategies that would be implemented to shield the adjacent residential uses from the construction and operation of a hyper-scale data center operation beyond some façade provisions in the ordinance.

70. The Applicant provided little information on the type and quality of employment opportunities but offered generic information concerning jobs in the industry it expected to be created by the proposed use and specifically failed to provide any information on the availability of a workforce to fill any permanent employment positions from within the local economy.
71. The Applicant did not suggest that the property could not be developed in conformity with the Ordinance, thus there was no justification for expanding the possibility of siting a use this intense outside of the Industrial Zoning District.
72. Rather the only justifications presented for the location of the proposed overlay district was that the Applicant had already secured an interest in a large area of land that it claimed was sufficient to allow for significant buffering from nearby, existing residential uses and the existence of electrical transmission lines already crossing the property.
73. Of course if the proposed use was, in fact, compatible with residential uses as contemplated by the zoning district's stated purpose, there would not be the need for significant buffering and screening.
74. The Cumberland County Planning staff and the Appellants hereto, raised concerns with the Board prior to the Board's actions.
75. Further the Cumberland County Planning Staff and Planning Commission recommended that action on the proposed ordinance and map amendment be delayed until the adoption of the comprehensive ordinance updates that were initiated in 2022.
76. The Applicant, however, was insistent that expedited zoning approval was absolutely critical to ensure it could reserve electrical capacity from PPL that was sufficient to support its proposed use, and that it was essentially competing with other proposed data centers to secure approvals sufficient to justify such reservation of electrical capacity.
77. In fact, as part of its zoning amendment request, the Applicant stated:

“The proposed amendment is being submitted at this time due to delay in the enactment of the Township's new Zoning Ordinance. Data center projects are being proposed across the Commonwealth at an increasing rate. Although PPL and other electric utilities are able to

readily upgrade transmission facilities, upgrades to power generation facilities are not readily made. As a result, each electric utility (PPL in this case) has only so much power generation that it can allocate for data centers, and this power is allocated on a first available basis. Securing the zoning for a data center project is the critical step for securing an allocation of power generation. Given the growth in planned data center projects in the Commonwealth, it is imperative that the zoning for this data center project be put in place as soon as possible (or else the availability of power is jeopardized and with it, the viability of the data center project).

TPF 25-7 Amendment Application submitted April 23, 2025, p. 1.

78. Even those claims in April 2025 were inconsistent with statements made by a PPL spokesperson published on PennLive in a December 9, 2024 article to the effect that the construction of a substation outside of Carlisle and rebuilding of approximately 13 miles of existing 500 kilovolt transmission lines in the area would accommodate the needs in Middlesex Township including a customer facility in the Carlisle area, though the spokesperson declined to identify that specific customer.
79. Significantly, the Applicant sought to circumvent the thoughtful process of zoning, undertaken on a community-wide scale for the purpose of coordinating growth and development throughout the Township so that its approval could take place to satisfy its claim of necessity to ensure the viability of its development project.
80. On or about April 16, 2025, prior to the submission of the formal rezoning amendment application on April 23, 2025, Counsel for the Applicant wrote an email to the Township Zoning Officer that:
- “[W]e are hopeful that the new Zoning Ordinance will be enacted on May 7. But Powerhouse is getting some significant pressure to advance the project. Other data center projects are arising throughout the state, and that ultimately puts pressure on projects to move forward for fear of delay in power generation. For belt and suspenders, we are going to submit a request for an amendment to the current zoning ordinance. The amendment will be substantively identical to the data center provisions in the new Zoning Ordinance.”
- Email Charles M. Courtney, Esquire to Mark Carpenter (4/16/2025 at 8:05 a.m.)
81. On April 16, 2025, at 5:41 p.m., Attorney Courtney sent another email to Zoning Officer Carpenter stating, “Mark – Powerhise (sic) has decided NOT to do a separate amendment. So please disregard. Charlie”

82. On April 22, 2025, after the Cumberland County Planning Commission published its recommendation that the Board not approve the Ordinance as proposed, Attorney Courtney advised Mark Carpenter that: "Giving (sic) the CCPC's recommendation, Powerhouse revisited its desire to pursue a standalone amendment. Can we get it on the agenda for Friday?"
83. In response, the Township Zoning Officer advised Attorney Courtney, "Charlie, We have not received an application for Zoning Ordinance Amendment for this matter. This item can be placed on the agenda, although we do not even have enough information to know how to list the agenda item. We would need any agenda item to be submitted before 12 noon tomorrow, 04-23-2025."
84. On the morning of April 23, 2025 at 08:24 a.m., Zoning Officer Carpenter wrote to Applicant's Counsel, "Charlie, Please provide the description of the application as soon as possible, before 12 noon so we can prepare the agenda for the Friday 04-25-2025 Board of Supervisors meeting prior to 12 noon. Thanks. Mark Carpenter"
85. This timeline of communications between Counsel for one property owner and staff and the subsequent actions taken supports the conclusion that the timeline for consideration and approval of this request was expedited to meet the needs of a single property owner without consideration of the impacts the request would have on the community as a whole.
86. Interestingly, counsel for the Applicant in this case had presented a different proposal to the Township for an overlay district not related to data centers prior to September 12, 2022.
87. The Redevelopment Opportunity Overlay (ROO) district was the subject of Planning Commission and County Planning review before being considered at a public hearing on February 24, 2023, nearly four months after its initial submission.
88. The Board, in contrast to its action on the challenged requests that are the subject of this appeal, denied to amend the ordinance, the zoning map or the comprehensive plan and to instead, consider incorporating some of the requested changes into the comprehensive rezoning amendments that were being conducted.

89. Ultimately, while a version of the ROO was incorporated into Ordinance 7-2025, it was dramatically different than what had been proposed by that applicant and those changes did not occur for two years from the time the original version of the overlay amendment was formally requested.
90. Conversely, in the instant challenge the Board wholly disregarded said considerations and any concerns that had been raised in the public hearings.
91. Rather, it appears that either the Board lacked any meaningful understanding of how data centers operated, what impacts they might have on nearby uses, the scope and scale of what the applicant was seeking to develop in contrast to the immediate area surrounding the overlay district, and the massive inconsistency between hyper-scale data centers and sensitive uses like farms and residences that surround the DCO.
92. Ironically, only following the adoption of 3-2025, a different applicant sought to have the zoning map amended to have the DCO include other property which was in the commercial district.
93. That request was submitted in January 2026 following informal discussions which began at the Planning Commission meeting on July 26, 2025.
94. Ultimately on February 26, 2026 the Board voted not to proceed on any zoning amendments until such time as the Township could update its comprehensive plan which had not been updated since 2003, despite the legal requirement that the Township update its plan once every ten (10) years.
95. Again, once the Applicant who obtained expedited relief and its map and zoning amendment to suit its purposes had accomplished that goal, the Township decided the Comprehensive Plan update had to occur before any other changes could occur.
96. Such disregard is additional evidence of the arbitrary and capricious nature in which the Board rendered its decision, and coupled with the other reasons set forth herein, support the conclusion that the action of the Board constituted an abuse of its discretion.

97. Ultimately, the Board permitted this hastened review in stark contrast to the procedures for all other major zoning changes that were taking place while it prepared its comprehensive zoning ordinance for adoption and did so for the sole benefit of one property owner and in doing so, treated that owner in substantially different manner than any other property owner in the entire Township.

98. None of the minutes of the Planning Commission or the Board of Supervisors pertaining to the adoption of Ordinance 3-2025 and Ordinance 7-2025 include any discussion as to the decision to allow Data Centers as use permitted by right outside of the industrial zoning district rather than requiring such centers only by conditional use.

99. In fact, a key element that supports the conclusion that the DCO and the text amendments in Ordinance 3-2025 represent illegal spot zoning is that the only place data centers were proposed to be located was within the DCO rather than the industrial zoning district.

100. It was only upon the adoption of 7-2025 that data centers were listed in the table of uses as being a use permitted by right in the industrial zoning district.

101. Moreover, while other uses that were contemplated for use in the MU-1 district (underlying the DCO overlay) are all of a scope and scale typically associated with mixed uses and consistent with the stated purpose of the MU-1 zone, Data Centers are the only uses that are wholly inconsistent with those purposes, specifically:

The Mixed-Use Neighborhood District (MU-1) is a **neighborhood character** area zone intended to encourage **low-impact**, Mixed-Use development **compatible with adjacent medium density residential** areas in close proximity to Collector or Arterial Roads. The district permits a mix of **residential uses supported by neighborhood-scaled commercial uses** having **limited impacts** on surrounding residential areas. Mixed-Use Development is intended to be **pedestrian-oriented** and **compatible with the scale and characteristics of adjacent residentially zoned areas or low-rise** commercial areas.

Middlesex Township Zoning Ordinance 7-2025, Section 2.11 Mixed-Use Neighborhood District, Subsection (A) Purpose. (Emphasis added).

102. Even if Data Centers were appropriately scaled for the MU-1 zoning district and consistent with the stated purpose thereof, allowing such a grand scale development as a permitted use without the benefit of a conditional use review defies any concept of

controlled, coordinated development and is wholly contrary to the devotion of significant public resources to the development of the Township's comprehensive rezoning efforts that had taken place over the prior three years.

103. Data Centers, particularly hyper-scale centers, are significantly larger, more intense uses than other uses permitted in the MU-1 and therefore any application should be held to more stringent review standards that would give the Objectors the right to appear, present expert testimony and to cross-examine witnesses presented by the Township.
104. By contrast, classifying the use as permitted by right, denies the opportunity for public hearings on the substantive elements of the application and the supporting studies necessary to gauge the impact of the use on nearby properties.
105. Furthermore, conditional use approval requirements permits the Township Board of Supervisors to attach conditions of approval necessary to protect the Township, that are not available under the use by right provisions of the enacted ordinances.
106. The Board's consideration and ultimate approval of the instant requests by the Applicant represent a departure from the established procedures specifically designed by the Board to address the future zoning and planning needs of the Township.
107. The Applicant and its representatives provided information to the Board concerning the tax benefits to the Township, the School District and the neighboring municipalities.
108. To the extent that the Board placed such significant weight on the tax revenues generated to other governmental entities was an abuse of discretion and reflects a complete departure of accepted zoning and planning considerations.
109. The entirety of the Applicants own stated benefits to the township and the community is providing some sort of funding by way of taxes, offsite improvements to township roads and economic benefits typically associated with any development over the prior agricultural use.
110. In fact, members of the Cumberland Valley School Board have publicly expressed support for the project as the Cumberland Valley School District's financial distress has been

a matter of great public attention and the proposed property tax revenues have been informally described as a means by which the District could be bailed out of debt.

111. Members of the public who spoke in opposition to the map amendment likewise cited concerns over the possibility of suffering damage to the foundations of their homes as a result of the blasting that would be necessary to develop the property for hyper-scale data center campuses containing a total of nearly five million square feet of buildings.
112. Members of the public who spoke in opposition to the map amendment cited concerns over diminution in property values if the site were developed as shown on the sketch plan.
113. Members of the public who spoke in opposition to the map amendment cited concerns over irreparable changes to resident's ability to observe natural features of the area if the site were developed as shown on the sketch plan.
114. The overlay district that was authorized by Ordinance 3-2025 did not work in conjunction with §10605 of the MPC, but rather required massive modifications from the other permitted uses in either the R-F zone or the MU-1 zone.
115. Nonetheless, the Board ignored the lack of justification provided by the Applicant in support of the requested map amendment.
116. The Board's action represented an abuse of its discretion because it ignored the overwhelming information offered and disregarded the sound planning principles that led to the Township's existing zoning map in favor of an act designed to serve the interests of ultimately only one property owner.
117. Of note, the Cumberland County Planning Commission meeting occurred only two days following the publication of notice of the pending ordinance amendment on May 13, 2025.
118. There were no members of the public present who offered public comment on any of the four agenda items before the township planning commission meeting on May 27, 2025.

119. It is submitted that the expedited review, while perhaps technically compliant with notice provisions, denied the public a meaningful opportunity to participate and offer comment before the request was voted upon by the Board.
120. The Board's departure from its established planning principles and established zoning scheme, its rejection of any information offered in conflict with its preconceived notions and the unreasonable weight given to only economic factors demonstrate that the Board failed in their duties as Supervisor in executing their legislative, executive and administrative powers to secure the health, safety and welfare of the citizens of the township [53 P.S. §65607 (Second Class Township Code)]
121. Importantly, the perception that the Board of Supervisors supported the proposed concept of development from the time of the first presentation in October 2024 likely impacted the Township Planning Commission's acceptance of the proposal without being given sufficient time or information to raise important questions as to the accuracy of claims being made by the Applicant.
122. When the Planning Commission considered the proposed Ordinance change at their May 12, 2025 meeting, the Township Zoning Officer reported to the Planning Commission "that the Board was in favor of the proposed Zoning Ordinance and Map amendments so that this project can go forward."
123. The prejudgment of the matter before the Planning Commission by the Board of Supervisors, combined with the accelerated schedule of review left the Planning Commission with little time to consider the implications of the adoption of the text and map amendment.
124. The Pennsylvania Supreme Court issued its opinion in the case of *Robinson Township, Washington County v. Commonwealth of Pennsylvania*, 83 A.3d 901 (Pa. 2013) wherein the Justices held that the Pennsylvania Constitution's Environmental Rights Amendment, imposes an obligation upon all agencies of the Commonwealth, including municipal governments, to act as trustees of Pennsylvania's natural resources.
125. In so holding, the Court outlined the duty of municipal governments to protect the rights of Pennsylvanians in general to *inter alia* clean air, clean water, the natural esthetic.

126. The Court specifically held that a legislative act by any branch of the government must consider, in advance of proceeding, the environmental impact of any proposed action on the constitutionally protected nature features, to include clean air and clean water.
127. Where, as here, the Board was not presented with substantive information by the Applicant in the face public comment raising substantial environmental concerns, its action violated the Constitutional rights conferred to the Appellants under Article I, §27 of the Pennsylvania Constitution.
128. Such action by the legislative branch is subject to review because the violation of these constitutional rights impairs the rights of the Appellants to the continued enjoyment of natural resources.
129. The failure of the Board to collect additional environmental information in the context of both the zoning map amendment and the zoning text amendment represents a violation of the substantive standards under Pennsylvania law which must occur as a precondition to the enactment of laws that will have a direct impact on the rights of the public to these protected natural resources.
130. Important to this consideration is the location of the Appalachian Trail which is certainly in an area where the viewshed and natural esthetic will be significantly impacted with such intense, large scale development.
131. The Board's failure to abide these principles occurred when it ignored or rejected the public comment which at a minimum was sufficient *prima facie* evidence to require the Board to investigate the environmental impacts of its proposed action.
132. Rather the Board simply did nothing to gather additional information and flatly rejected the many concerns raised, choosing instead to merely exercise its authority in a way that furthered only the interests of the Applicant.
133. Ultimately, the Board's actions in adopting the map amendments without gathering any information on the environmental impacts of the change in zoning classification violates the requirements set forth by the Supreme Court of Pennsylvania in the *Robinson Township* case discussed, *supra*.

134. Rather, the Board demonstrated that its consideration of economic factors was the sole basis upon which it departed from acceptable planning methods, disregarded potential health impacts to its residents, violated its duty as trustee of the Environmental Rights delineated in Article I, §27 of the Pennsylvania Constitution and abused its discretion by engaging in unlawful spot zoning to benefit one proposed owner to the detriment of all nearby property owners.

135. The Board's decision, particularly in light of the disregard of the public opposition to the Applicant's requests, reflect that the Supervisors had reached their conclusions prior to the conduct of the public hearing and not as a result of the deliberative process set forth in the MPC.

136. This is especially true where there was no public deliberation on the changes and modifications as originally proposed by the Township Comprehensive Zoning Task Force and the Township's consultant to what was included in the final version of the Ordinance.

137. As such, Appellants seek relief from the Board from a decision which represents a clear error of law, a manifest abuse of discretion and a result which is contrary to law for the citizens of Middlesex Township, and specifically the Appellants.

138. Each of the foregoing reasons demonstrates that the actions of the Board constitute an abuse of discretion evidenced by their arbitrarily and capriciously made decision.

139. Such abuses are within the scope of review by this Zoning Hearing Board and the decisions of the Board are subject to reversal if such abuses and errors are proven.

140. Appellants seek relief in the form of a reversal of the decision of the Board as to the amendment of the Township Zoning Map and adoption of the attached proposed Ordinance returning the zoning classification of the subject tract to Mixed-Use Village without being subject to the Data Center Overlay District and remove from the table of uses any reference to Data Centers as a permitted use anywhere other than the Industrial Zone.

WHEREFORE, Appellants request that this Honorable Board declare invalid the decisions of the Board of Supervisors of Middlesex Township on May 30, 2025 and September 3, 2025 amending the zoning ordinance of Middlesex Township to the extent that Data Centers are permitted to be developed outside of the industrial zoning district and the official zoning map to the extent that it created the Data Center Overlay District within any mixed use or residential zoning district along with any other relief deemed appropriate and just.

Respectfully Submitted,
WOLF & WOLF, Attorneys at Law

Date: May 13, 2026

BY:

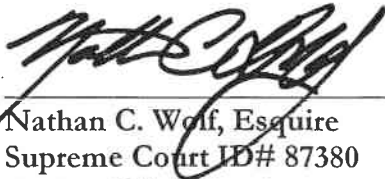
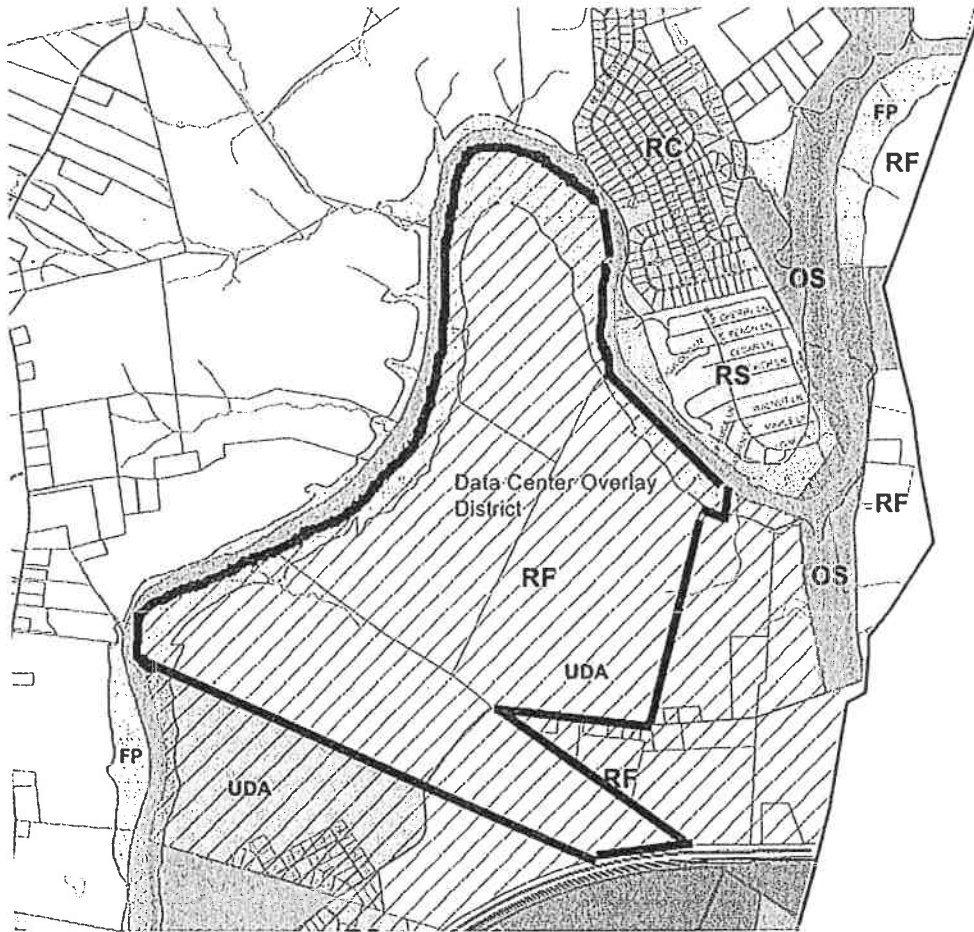

Nathan C. Wolf, Esquire
Supreme Court ID# 87380
10 West High Street
Carlisle, PA 17013
717-241-4436
Counsel for Appellants

EXHIBIT A



**TOWNSHIP OF MIDDLESEX
CUMBERLAND COUNTY, PENNSYLVANIA**

ORDINANCE NO. 3-2025

**AN ORDINANCE OF THE TOWNSHIP OF MIDDLESEX,
CUMBERLAND COUNTY, PENNSYLVANIA, AMENDING
ORDINANCE NO. 3-89 ENACTED JUNE 30, 1989 KNOWN
AS THE "MIDDLESEX TOWNSHIP ZONING
ORDINANCE", AS SUBSEQUENTLY AMENDED, BY
REVISING THE: (A) MIDDLESEX TOWNSHIP ZONING
MAP BY APPLYING THE DATA CENTER OVERLAY
DISTRICT TO ALL PARCELS OUTLINED IN RED ON
EXHIBIT A; AND (B) TEXT BY CREATING A DATA
CENTER OVERLAY DISTRICT.**

WHEREAS, the Board of Township Supervisors in and for the Township of Middlesex, Cumberland County, Pennsylvania ("Board of Supervisors"), under the powers vested in it by the "Second Class Township Code" of Pennsylvania, as enacted and amended, and the authority and procedures of the "Pennsylvania Municipalities Planning Code," as enacted and amended, ("MPC") as well as other laws of the Commonwealth of Pennsylvania, has enacted Ordinance No. 3-89 enacted June 30, 1989 known as the "Middlesex Township Zoning Ordinance", as subsequently amended ("Zoning Ordinance"), which includes the "Middlesex Township Zoning Map" ("Zoning Map"), to implement comprehensive plans and accomplish any of the purposes of the MPC; and

WHEREAS, the Zoning Ordinance does not specifically regulate data centers, and the Board of Supervisors believes that it is in the best interest of the Township to specifically provide for data centers and to impose standards for data centers that protect and promote the public health, safety and general welfare; and

WHEREAS, the Board of Supervisors desires to amend the Zoning Ordinance and Zoning Map to create a Data Center Overlay District and to impose standards for the development and use of data centers.

BE IT HEREBY ENACTED AND ORDAINED and it is hereby enacted and ordained by the Board of Township Supervisors in and for the Township of Middlesex, Cumberland County, Pennsylvania, as follows:

1. Ordinance No. 3-89 enacted June 30, 1989 known as the "Middlesex Township Zoning Ordinance", as subsequently amended, is hereby amended as follows: Article III (Entitled "Establishment of Zoning Districts and Map"), specifically Section 3.02 (Entitled "Zoning Map") and the "Middlesex Township Zoning Map" is hereby amended by adding and applying the limits of the Data Center Overlay District to include certain lands that are known and identified as Cumberland County Parcel Id. Nos. 21-06-0015-001, 21-06-0015-013, 21-06-0015-014, and 21-06-0015-015 and shown as the area outlined in red on Exhibit A.

EXHIBIT B

2. Ordinance No. 3-89 enacted June 30, 1989 known as the "Middlesex Township Zoning Ordinance", as subsequently amended, is hereby amended as follows: Article II (Entitled "Definitions"), Section 2.03 (Entitled "Terms Defined") is hereby amended by adding and including and incorporating the following new definition in italics:

Data Center: A facility containing one or more large-scale computer systems used for data storage and processing for off-site users. Typical supporting equipment includes back-up batteries and power generators, cooling units, fire suppression systems, water storage and enhanced security features.

3. Ordinance No. 3-89 enacted June 30, 1989 known as the "Middlesex Township Zoning Ordinance", as subsequently amended, is hereby amended as follows: Article III (Entitled "Establishment of Zoning Districts and Map") is hereby amended by adding and including and incorporating the following language in italics as new Section 3.13 (Entitled "Establishment of Data Center Overlay District"):

SECTION 3.13 ESTABLISHMENT OF DATA CENTER OVERLAY DISTRICT.

- A. *Purpose.* The purpose of the Data Center Overlay District (DCO District) is to accommodate data centers and complementary supporting uses in proximity to existing electric transmission lines and infrastructure, subject to and in exchange for complying with certain design criteria.
- B. *Boundaries of District.* The boundaries of the DCO District shall be as delineated on the Zoning Map specified in Section 3.02 of this Ordinance.
- C. *Applicability.* The DCO District shall be an optional overlay district for certain land as depicted on the Zoning Map. With the exception of the standards of Article XIII (FP – Floodplain Conservation Districts), which shall prevail and apply over the standards of Article XXIV, the standards of Section 3.13 and Article XXIV shall supersede all general use and bulk and area standards set forth in the underlying zoning district. In the event of a conflict between the provisions and standards of Article XXIV and any other provision or standard of the Zoning Ordinance, the standards of Article XXIV shall prevail and apply.

4. Ordinance No. 3-89 enacted June 30, 1989 known as the "Middlesex Township Zoning Ordinance", as subsequently amended, is hereby amended by adding and including and incorporating the following language in italics as new Article XXIV (Entitled "Data Center Overlay District"):

ARTICLE XXIV

DATA CENTER OVERLAY DISTRICT

SECTION 24.01

REQUIRED UTILITIES.

Public water and public sewer shall be required.

SECTION 24.02 USE STANDARDS.

The following use standards shall apply:

- A. *Multiple Uses and Structures, and Mixed Uses. Multiple Uses and Structures Permitted. More than one (1) principal use or structure or accessory use or structure that are permitted in the DCO and listed in Section 24.02.B (Permitted Uses) shall be permitted to occupy the same building or lot, provided the applicable standards of Article XXIV (Data Center Overlay District) and the Zoning Ordinance are met.*
- B. *Permitted Uses. The following uses shall be permitted by right in the DCO. Notwithstanding the introductory sentence in Article XIV (Supplementary Regulations) to the contrary, the following permitted uses are subject to additional specific standards in Article XIV (Supplementary Regulations) only when specifically listed below:*
 - 1. *Residential Uses: None*
 - 2. *Nonresidential Uses:*
 - a. *Data centers.*
 - b. *Offices.*
 - c. *Essential services.*
 - 3. *Accessory Uses. Any accessory building, structure or use that is secondary and incidental to a principal building or use on a lot shall be permitted by right on such lot, specifically including, but not limited to:*
 - a. *Water cooling and/or storage systems for data centers.*
 - b. *Mineral and resource extraction activities associated with a land development project.*
 - c. *Other accessory uses customarily incidental to a permitted principal use.*

SECTION 24.03**AREA AND DIMENSIONAL STANDARDS.**

Permitted Uses	Bulk and Area Regulations							
	Min. Lot Area	Min. Lot Width	Max. Lot Coverage	Max. Impervious Coverage	Min. Yard Requirements			Max. Building Height
					Front	Side	Rear	
PUBLIC WATER AND PUBLIC SEWER								
All Permitted Uses	25 acres	200 ft.	70%	70%	35 ft.	35 ft.	75 ft.	

SECTION 24.04**DESIGN CRITERIA.****A. Façade Standards.**

1. Principal Façades. The principal Façade requirements apply to all Building Façades that are oriented and face toward an abutting: (i) public Street; (ii) lot with an existing residential use within 1,000 feet of the Building Façade; or (iii) lot within a Residential District within 1,000 feet of the Building Façade.

a. Requirements.

- (1) Differentiated Surfaces. Principal Façades of a Building must incorporate the following standards at horizontal linear intervals that may vary in frequency but must be no less frequent than every one hundred fifty (150) horizontal linear feet or no less frequent than three (3) times (x) the average height of the Building:

- a. Fenestration or Fenestration and (Optional) Green-Wall; and
- b. A change in one of the following design elements:
 - i. Building material;
 - ii. Pattern;
 - iii. Texture;
 - iv. Color; or
 - v. Accent materials.

- (2) *Consistent Design.* When a Building has more than one (1) principal Façade, the principal Façades of such Building must be consistent in terms of design, materials, details, and treatment.
- (3) *Fenestration.* Each principal Façade of a Building must include Fenestration as follows:
 - a. *Fenestration Surface Coverage of the Façade.* Fenestration must comprise at least thirty (30) percent of the total surface coverage area of the principal Façade.
 - (1) *Distributed Fenestration Coverage.* Fenestration provided to meet the:
 - (a) Required thirty (30) percent total surface coverage area of the principal Façade must be located in separated, individual placements or clustered bays; and
 - (b) Each placement or bay may count towards no more than seven and one-half (7.5) percent of such total surface coverage area.
 - b. *Fenestration Coverage Pattern.* The placement pattern of individual or clustered bays of Fenestration must be distributed horizontally and vertically across the principal Façade.
 - c. *Fenestration Consistent Design with Principal Façade.* The Fenestration must be compatible with the other design, materials, details, and treatment used on the same principal Façade.
 - d. *Green-Wall Treatment.*
 - (1) A Green-Wall treatment may be provided in lieu of up to half of the Fenestration surface coverage of the Façade requirement of Section 24.04.A.1.a.(3).a of this Ordinance.
 - (2) When provided, Green-Wall treatments must provide the following:

- (a) *Maintenance.* The owner, or the owner's agent, is responsible for the repair, replacement, and maintenance of the Green-Wall for the duration of the use.
 - (b) *Distributed Green-Wall Surface Coverage.* Green-Wall areas must be provided to meet up to half of the required thirty (30) percent total surface coverage area of the principal Façade of a Building.
 - (c) *Green-Wall Coverage Pattern.* The Green-Wall areas must be distributed horizontally and vertically across the principal Façade.
- 2. *Mechanical Equipment Façade Standards.* Where two (2) principal Façades are required on opposing sides of a Building pursuant to Section 24.04.A of this Ordinance up to one (1) mechanical equipment Façade pursuant to Section 24.04.A.2.a may be provided in lieu of one (1) such required principal Façade if such principal Façade is oriented and faces toward an abutting public Street.
 - a. *Requirements.*
 - (1) *Mechanical Equipment Façade.* Optional mechanical equipment Façades must provide the following:
 - (a) *Partial or Full Visual Screening of Mechanical Equipment.* Mechanical equipment attached to or mounted on the Building Façade must be partially or fully visually screened from view at the ground level from the nearest abutting public Street using mesh, lattice, cladding, or grillwork or a combination of these methods, or similar methods so as to ensure that the mechanical equipment is partially or fully screened to the maximum extent that permits necessary ventilation for any equipment; and
 - (b) *Differentiated Surfaces.* The mechanical equipment Façade, including any provided screening methods, must incorporate a change in at least one (1) of the following design

elements at horizontal linear intervals that may vary in frequency but must be no less frequent than every one hundred fifty (150) horizontal linear feet or no less frequent than three (3) times (x) the average height of the Building:

- i. Building material;
- ii. Pattern;
- iii. Texture;
- iv. Color; or
- v. Accent materials.

3. *Main Entrance Feature Standards. Each Building must include at least one (1) main entrance feature that meets the requirements of Section 24.04.A.3.a of this Ordinance.*

a. *Requirements.*

(1) *Main Entrance Feature. Main entrance features must meet the following requirements:*

- (a) *Entrance Feature Design. Main entrance features must either project or recess from the main Building plane, and/or be differentiated from the remainder of the Building Façade by a change in Building material.*
- (b) *Foundation Plantings or Enhanced Landscaping. Main entrance features must incorporate foundation plantings consisting of a mix of evergreen and deciduous shrubs, grasses, sedges, or rushes, and/or herbaceous perennials, ferns, or vines for a minimum of fifty (50) percent of the length of the Façade. These foundation plantings are in addition to any required plantings and landscape treatments.*

B. *Site Design Standards.*

- 1. *Loading Space Location.* Loading spaces are permitted to be located on only one (1) Façade.
- 2. *Mechanical Equipment.*

- a. Location and Screening of Mechanical Equipment. All ground level and roof top mechanical equipment must meet the following standards:
 - (1) Mechanical equipment must be fully screened on all sides. Such visually solid screen must be constructed with a design, materials, details, and treatment compatible with those used on the nearest principal Façade of the Building;
 - (a) Perforation for Ventilated Screening. Screening for mechanical equipment may incorporate perforated surfaces on screening walls as necessary to permit ventilation of mechanical equipment.
 - (b) Separation from Residential. Ground mounted mechanical equipment must be separated from an abutting lot: (i) with an existing residential use; or (ii) within a Residential District, by a principal Building, or fully screened from view from abutting residential lot(s).
 - (c) Ground Mounted Prohibited in Front Yards. Ground mounted mechanical equipment must not be located in any required front yard setback.
3. Setbacks and Building Massing Adjacent to Residential. Unless specified herein, the following requirements apply when a Building is to be located on a lot abutting a lot: (i) with an existing residential use; or (ii) within a Residential District, or separated by a Public Local, Collector Minor Arterial Street from a lot: (i) with an existing residential use; or (ii) within a Residential District (i.e., common lot line):
 - a. Minimum Parking Setback. Parking must be setback at least fifty (50) feet from such common lot or abutting right-of-way line.
 - b. Minimum Setback for Structures. Structures must be setback at least one hundred (100) feet from such common lot line abutting right-of-way.
4. Soundproofing. Mechanical equipment, whether on a roof top, on the ground level, or elsewhere on the exterior of the lot abutting a lot (i) with an existing residential use or (ii) within a Residential District, must be screened on all four (4) sides by an acoustical barrier. For

purposes of this section, acoustical barrier is defined as an exterior solid or louvred wall containing sound-proofing materials designed to absorb noise and protect neighboring properties from noise pollution.

SECTION 24.05 ACCESS.

Vehicle access shall be provided pursuant to the requirements specified in the Middlesex Township Subdivision and Land Development Ordinance.

SECTION 24.06 TRAFFIC IMPACT STUDY.

A traffic impact study prepared by a Registered Design Professional pursuant to the requirements specified under the Middlesex Township Subdivision and Land Development Ordinance shall be reviewed and approved by the Township Engineer.

SECTION 24.07 WATER FEASIBILITY STUDY.

A water feasibility study prepared by a qualified professional shall be provided with the zoning permit application. The purpose of the study will be to determine if there is an adequate supply of water for the proposed data center and to estimate the impact of the data center on existing public system and/or wells in the vicinity. No data center shall be approved without sufficient water and/or for a use that poses adverse impact on existing wells in the vicinity. If the source is from a municipal system, the applicant shall include documentation that the public authority will supply the water needed. A water feasibility study shall include the following minimum information:

- A. Calculations of the projected water needs.*
- B. A geologic map of the area with a radius of at least one mile from the site.*
- C. The location of all existing and proposed wells within 1,000 feet of the site, with a notation of the capacity of all high-yield wells.*
- D. The location of all streams within 1,000 feet of the site and all known point sources of pollution.*
- E. Based on the geologic formation(s) underlying the site, the long-term safe yield shall be determined.*
- F. A determination of the effects of the proposed water supply system on the quantity and quality of water in nearby wells, streams, and the groundwater table.*
- G. Identification of how water will be recycled or released into surrounding water bodies*

- H. *A statement of the qualifications and the signature(s) of the person(s) preparing the study*
- I. *The applicant shall provide proof of review and approval from the Susquehanna River Basin Commission (SRBC) for projects that have:*
 - 1. *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.*
 - 2. *Any consumptive water use of 20,000 gpd or more over a 30-day average from any water source.*

SECTION 24.08 ELECTRIC.

The applicant should provide an interconnection agreement from the electric service provider indicating that capacity is available, and the data center will be served. Known impacts on electric rates or availability for others uses directly attributable to the data center project should be noted.

SECTION 24.09 NOISE.

A noise study shall be performed and included in the application. The noise study shall be performed by an independent noise study expert and paid for by the Applicant. Noise from a Data Center shall not exceed 70 dBA, as measured at the property line. This requirement does not apply during a time of power outage.

SECTION 24.10 MODIFICATION OF STANDARDS.

Consistent with Sections 603(c)(5) and 605(3) of the Pennsylvania Municipalities Planning Code, the Board of Township Supervisors may, by conditional use approval, authorize a modification of the DCO District standards of Article XXIV of this Ordinance, or other area, dimensional and design related standards of this Ordinance, which impact the layout and design of development within the DCO District, in order to encourage the use of innovative design. Any conditional use application requesting a modification of a DCO District standard or other applicable zoning standard shall be subject to the following standards:

- A. *The modification is generally consistent with the applicable elements of the:*
 - 1. *Intended purpose of DCO District as specified under Section 3.13 of this Ordinance;*
 - 2. *Statement of Purposes (Section 1.02) of this Ordinance; and*
 - 3. *Township Comprehensive Plan.*

- B. *The modification will not result in any danger to the public health and safety, nor adversely impact adjoining properties or future inhabitants of the DCO District.*
- C. *The modification will allow for equal or better results and represents the minimum amount of relief necessary to ensure compliance with the applicable standard.*

5. The Zoning Officer of the Township of Middlesex Township, or assigned designee, is directed to revise the "Middlesex Township Zoning Map" to delineate the rezoned area and boundary line changes as adopted hereby.

6. Except only as amended, modified and changed herein, Ordinance No. 3-89 enacted June 30, 1989 known as the "Middlesex Township Zoning Ordinance", as subsequently amended, shall remain in all other respects in full force and effect.

7. If any section, sub-section, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance is declared by any reason to be illegal, unconstitutional, or invalid by any court of competent jurisdiction, such decision shall not effect or impair the validity of this Ordinance or Ordinance No. 3-89 enacted June 30, 1989 known as the "Middlesex Township Zoning Ordinance", as subsequently amended, as a whole, or any other section, sub-section, provision, regulation, limitation, restriction, sentence, clause, phrase, word or remaining portion of this Ordinance or Ordinance No. 3-89 enacted June 30, 1989 known as the "Middlesex Township Zoning Ordinance", as subsequently amended.

8. In the event any provision added by this Ordinance or Ordinance No. 3-89 enacted June 30, 1989 known as the "Middlesex Township Zoning Ordinance", as subsequently amended, has been numbered, lettered or otherwise designated out of sequence, the same shall be corrected and/or correctly numbered, lettered or designated upon discovery of same.

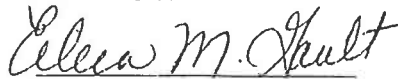
9.. This Ordinance shall become effective in accordance with applicable law.

ENACTED AND ORDAINED this 30th day of May, 2025.

TOWNSHIP OF MIDDLESEX

By: 
Chairman, Board of Township Supervisors

ATTEST:


Township Secretary

(Township Seal)

EXHIBIT B

E-mail, Mark Carpenter (Zoning Officer) to the members of the Zoning Hearing Board and Solicitor Jennifer B. Hipp, Esquire — May 14, 2026, 9:45 a.m.

From: Mark Carpenter <mcarpenter@middlesextwp.com>
Sent: Thursday, May 14, 2026 9:45 AM
To: Anthony DeLuca [REDACTED] ; Bill Shover [REDACTED] ; Dwayne D Kohr [REDACTED] ; Edward P Murphy-ZHB Member [REDACTED] ; Jason E Kelso - Reading Anth Co [REDACTED] ; Jason Kelso - Kelso Law <jkelso@kelso-law.com>; Middlesex Twp ZHB Solicitor - Jennifer Hipp <jhipp@bogarlaw.com>; Troy Wilkinson-ZHB MEMBER [REDACTED] ; [REDACTED]
Subject: Zoning Hearing Board Application - Substantive Validity Challenge of Data Center Overlay District
Attachments: ZHB 2026-3 APPLIC_RCVD 05-13-2026.pdf (the filed Challenge, reproduced at Exhibit A)

See attached copy of application for hearing before the Zoning Hearing Board on a Substantive Validity Challenge of the Data Center Overlay District.

This was filed on Wednesday, May 13, 2026 by Nathan C. Wolf, Esquire.

Mr. Wolf said he will submit a letter requesting an extension until July 8, 2026 for a Zoning Hearing on the application.

I will be providing a Notice of Hearing at a later date.

Mark Carpenter

Zoning Officer

Middlesex Township

EXHIBIT C

E-mail, Nathan C. Wolf, Esquire to Mark Carpenter — May 14, 2026, 11:33
a.m.,
with attached extension/waiver letter of May 14, 2026

From: Nathan C. Wolf <nwolf@wolfandwolf.net>
Sent: Thursday, May 14, 2026 11:33 AM
To: Mark Carpenter <mcarpenter@middlesextwp.com>
Cc: [REDACTED] ; Andrew Dymski [REDACTED]
Subject: Re: Appeal to ZHB form, please
Attachments: ltr to Carpenter 05142026.pdf

Dear Mark

Attached please find the extension/waiver letter for Appeal 2026-2 concerning the scheduling of the ZHB hearing for July 8 and in it I noted that the other copies of the appeal packet will be dropped off to the Township by close of business on Monday.

Please confirm receipt and let me know if you need anything else from us.

Very truly yours,
Wolf & Wolf, Attorneys at Law

By:
Nathan C. Wolf, Esquire
10 West High Street
Carlisle, PA 17013-2922
717-241-4436
717-241-4437 (Fax)

The contents of this e-mail are confidential, and intended only for the use of the individual(s) and /or entity(ies) named above. If the reader of this e-mail is not the intended recipient, you are hereby notified that the law strictly prohibits any dissemination, disclosure, copying, or distribution of the contents of this e-mail message. If you have received this e-mail in error, please immediately notify the sender. Thank you.

On 2026-05-13 14:39, Mark Carpenter wrote:

Nathan: See attached.

Mark Carpenter

Zoning Officer

Middlesex Township

717-249-4409

From: Nathan C. Wolf <nwolf@wolfandwolf.net>
Sent: Wednesday, May 13, 2026 2:32 PM
To: Mark Carpenter <mcarpenter@middlesextwp.com>
Subject: Appeal to ZHB form, please

--

Very truly yours,
Wolf & Wolf, Attorneys at Law

By:

Nathan C. Wolf, Esquire

10 West High Street

Carlisle, PA 17013-2922

717-241-4436

717-241-4437 (Fax)

The contents of this e-mail are confidential, and intended only for the use of the individual(s) and /or entity(ies) named above. If the reader of this e-mail is not the intended recipient, you are hereby notified that the law strictly prohibits any dissemination, disclosure, copying, or distribution of the contents of this e-mail message. If you have received this e-mail in error, please immediately notify the sender. Thank you.

WOLF & WOLF

NATHAN C. WOLF

PHONE
717-241-4436

ATTORNEYS AT LAW
10 WEST HIGH STREET
CARLISLE, PENNSYLVANIA 17013
wolfandwolf@embarqmail.com

STACY B. WOLF

FACSIMILE
717-241-4437

May 14, 2026

VIA EMAIL ONLY TO: mcarpenter@middlesextwp.com

Mark Carpenter, Zoning Officer
Middlesex Township
350 N. Middlesex Road
Carlisle, PA 17013

Re: ZHB Application (2026-2) filed May 13, 2026

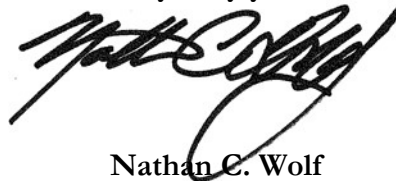
Dear Mr. Carpenter:

Please allow this letter to confirm the conversation we had yesterday when you received the Zoning Hearing Board Application from me for filing. At that time, you had asked me whether my clients, the Appellants in the above matter, were waiving any deemed decision deadlines that would require a hearing on this Appeal to be scheduled on June 10, 2026, or whether we could schedule this matter for a hearing on July 8, 2026 before the ZHB. While the July date falls within the 60 days provided by the Middlesex Township Zoning Ordinance Section 1.14 (E), this letter will confirm that we agree to the scheduling of the first ZHB hearing on July 8, 2026 and to the extent any waiver or extension would be necessary under the Ordinance or under the Pennsylvania Municipalities Planning Code, the Appellants hereby offer that extension.

If there is any issue with that scheduling, please advise me immediately before any notice is published so that we can resolve any scheduling conflicts that could impact my availability or that of my clients or witnesses we would present to the Board.

An additional six (6) copies of the appeal packet will be dropped off at the Township Office for you to distribute to the ZHB no later than the close of business, Monday May 18, 2026.

Very truly yours,



Nathan C. Wolf

EXHIBIT D

E-mail, Solicitor Jennifer B. Hipp, Esquire to Mark Carpenter,
copy to Jason Kelso — May 14, 2026, 12:53 p.m.

From: Jennifer Hipp <jhipp@bogarlaw.com>
Sent: Thursday, May 14, 2026 12:53 PM
To: Mark Carpenter <mcarpenter@middlesextwp.com>
Cc: Jason Kelso <jkelso@kelso-law.com>
Subject: July ZHB hearing

Mark:

Please hold off on advertising for the July hearing.

Thx.

Jen

Get Outlook for iOS <<https://aka.ms/o0ukef>>

EXHIBIT E

E-mail, Mark Carpenter to Solicitor Jennifer B. Hipp, Esquire,
copy to Jason Kelso — May 14, 2026, 3:09 p.m.

From: Mark Carpenter <mcarpenter@middlesextwp.com>
Sent: Thursday, May 14, 2026 3:09 PM
To: Jennifer Hipp <jhipp@bogarlaw.com>
Cc: Jason Kelso <jkelso@kelso-law.com>
Subject: RE: July ZHB hearing

Ok, thanks for letting me know.

From: Jennifer Hipp <jhipp@bogarlaw.com>
Sent: Thursday, May 14, 2026 12:54 PM
To: Mark Carpenter <mcarpenter@middlesextwp.com>
Cc: Jason Kelso <jkelso@kelso-law.com>
Subject: July ZHB hearing

Mark:

Please hold off on advertising for the July hearing.

Thx.

Jen

Get Outlook for iOS <<https://aka.ms/o0ukef>>

EXHIBIT F

E-mail, Mark Carpenter to Nathan C. Wolf, Esquire — May 14, 2026, 3:22 p.m.

From: Mark Carpenter <mcarpenter@middlesextwp.com>
Sent: Thursday, May 14, 2026 3:22 PM
To: Nathan C. Wolf <nwolf@wolfandwolf.net>
Cc: [REDACTED] ; Andrew Dymski [REDACTED] ; Jennifer Hipp <jhipp@bogarlaw.com>
Subject: Zoning Hearing Board Case 2026-03, the application of Gerber (et al)

Nathan:

Thanks for providing this letter.

I understand you are available for a first hearing on Zoning Hearing Board Case 2026-03, the application of Gerber (et al), on Wednesday, July 8, 2026 at 7:00 pm.

I will provide this letter to the Zoning Hearing Board Solicitor, Jennifer Hipp.

Mark Carpenter

Zoning Officer

Middlesex Township

717-249-4409

From: Nathan C. Wolf <nwolf@wolfandwolf.net>

Sent: Thursday, May 14, 2026 11:33 AM

To: Mark Carpenter <mcarpenter@middlesextwp.com>

Cc: [REDACTED] ; Andrew Dymski [REDACTED]

Subject: Re: Appeal to ZHB form, please

Dear Mark

Attached please find the extension/waiver letter for Appeal 2026-2 concerning the scheduling of the ZHB hearing for July 8 and in it I noted that the other copies of the appeal packet will be dropped off to the Township by close of business on Monday.

Please confirm receipt and let me know if you need anything else from us.

Very truly yours,

Wolf & Wolf, Attorneys at Law

By:

Nathan C. Wolf, Esquire

10 West High Street

Carlisle, PA 17013-2922

717-241-4436

717-241-4437 (Fax)

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have received this e-mail in error, please immediately notify the sender. Thank you.

On 2026-05-13 14:39, Mark Carpenter wrote:

Nathan: See attached.

Mark Carpenter

Zoning Officer

Middlesex Township

717-249-4409

From: Nathan C. Wolf <nwolf@wolfandwolf.net <mailto:nwolf@wolfandwolf.net> >

Sent: Wednesday, May 13, 2026 2:32 PM

To: Mark Carpenter <mcarpenter@middlesextwp.com <mailto:mcarpenter@middlesextwp.com> >

Subject: Appeal to ZHB form, please

--

Very truly yours,

Wolf & Wolf, Attorneys at Law

By:

Nathan C. Wolf, Esquire

10 West High Street

Carlisle, PA 17013-2922

717-241-4436

717-241-4437 (Fax)

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EXHIBIT G

E-mail, Zoning Hearing Board member Edward P. Murphy to Mark Carpenter
and the Zoning Hearing Board — May 14, 2026, 9:38 p.m.

From: Edward P. Murphy [REDACTED]
Sent: Thursday, May 14, 2026 9:38 PM
To: Anthony DeLuca [REDACTED] ; Bill Shover [REDACTED] ; Dwayne D Kohr [REDACTED] ; Edward P Murphy-ZHB Member [REDACTED] ; Jason E Kelso - Reading Anth Co [REDACTED] ; Jason Kelso - Kelso Law <jkelso@kelso-law.com>; Middlesex Twp ZHB Solicitor - Jennifer Hipp <jhipp@bogarlaw.com>; Troy Wilkinson-ZHB MEMBER [REDACTED] ; [REDACTED]
Subject: RE: Zoning Hearing Board Application - Substantive Validity Challenge of Data Center Overlay District

I can attend this meeting on July 8th.

Ed

From: Mark Carpenter <mcarpenter@middlesextwp.com>
Sent: Thursday, May 14, 2026 9:46 AM
To: Anthony DeLuca [REDACTED] ; Bill Shover [REDACTED] ; Dwayne D Kohr [REDACTED] ; Edward P Murphy-ZHB Member [REDACTED] ; Jason E Kelso - Reading Anth Co [REDACTED] ; Jason Kelso - Kelso Law (jkelso@kelso-law.com) <jkelso@kelso-law.com>; Middlesex Twp ZHB Solicitor - Jennifer Hipp <jhipp@bogarlaw.com>; Troy Wilkinson-ZHB MEMBER [REDACTED] ; [REDACTED]
Subject: Zoning Hearing Board Application - Substantive Validity Challenge of Data Center Overlay District

See attached copy of application for hearing before the Zoning Hearing Board on a Substantive Validity Challenge of the Data Center Overlay District.

This was filed on Wednesday, May 13, 2026 by Nathan C. Wolf, Esquire.

Mr. Wolf said he will submit a letter requesting an extension until July 8, 2026 for a Zoning Hearing on the application.

I will be providing a Notice of Hearing at a later date.

Mark Carpenter

Zoning Officer

Middlesex Township

EXHIBIT H

E-mail, Kristen D. Shepherd (Kaplin Stewart) to Mark Carpenter — June 4,
2026,
11:41 a.m., with attached party-status letter of Gregg I. Adelman, Esquire

From: Kristen D. Shepherd <kshepherd@kaplaw.com>
Sent: Thursday, June 4, 2026 11:41 AM
To: MCARPENTER@MIDDLESEXTWP.COM
Cc: contact@wolfandwolf.net; jhipp@bogarlaw.com; Gregg I. Adelman <gadelman@kaplaw.com>
Subject: Gerber et al. Substantive Validity Challenge [IMAN-IMAN_BB.FID1140449]
Attachments: Letter to Middlesex Twp ZHB requesting Party Status of Carlisle Development.pdf

Good morning Mr. Carpenter,

Please see the attached letter from attorney Gregg I. Adelman regarding the above-referenced matter. If you could forward the letter to the Zoning Hearing Board members, that would be greatly appreciated. Please let me know if you have any questions. Thank you.

Kristen Shepherd, CRP, Pa.C.P.

Paralegal

Kaplin | Stewart

Union Meeting Corporate Center

910 Harvest Drive

P.O. Box 3037

Blue Bell, PA 19422-0765

Direct Dial: 610-941-2515

Direct Fax: 610-684-2142

kshepherd@kaplaw.com <mailto:kshepherd@kaplaw.com>

www.kaplaw.com <https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.kaplaw.com&c=E,1,B_LoeQEHh7tXXKWk6fsMg-AjqfO-ThiyUhvga0p6C7shRG5x9px2klcfNM0SXj64U51MTB8F8E_kwbPmBodxbftXfnTvlZFZe n1ja0fti4V91BMoAss,&typo=1>

P Please consider the environment before printing this e-mail

Gregg I. Adelman, Esquire
Direct Dial: (610) 941-2552
Direct Fax: (610) 684-2001
gadelman@kaplaw.com
www.kaplaw.com

June 4, 2026

VIA FIRST CLASS MAIL & EMAIL [MCARPENTER@MIDDLESEXTWP.COM]

Zoning Hearing Board
Middlesex Township
c/o Mark D. Carpenter
Zoning Officer
350 N Middlesex Road
Carlisle, PA 17013

RE: Gerber et al. Substantive Validity Challenge

Dear Zoning Hearing Board:

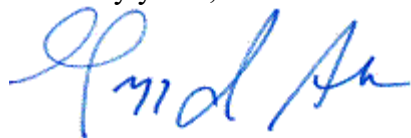
I represent Carlisle Development Partners, LLC, the owner and developer of the properties located at 246, 248, 250 and 256 Country Club Road (TMP Nos. 21-6-15-1, 21-6-15-13, 21-6-15-14, 21-6-15-15), which are directly impacted by the May 13, 2026 Substantive Validity Challenge (“**Challenge**”) filed by Kyle and Alexia Gerber, et al.

On behalf of Carlisle Development Partners, LLC, I request party status to the Challenge. Please provide me with copies of all correspondence, materials, applications, plans and any other documentation applicable to the Challenge as soon as they become available.

Please also provide me with any/all notifications related to the Challenge, including when the zoning hearing will be scheduled.

Please feel free to contact me if you have any questions. Thank you.

Sincerely yours,



Gregg I. Adelman, Esquire

cc: Nathan C. Wolf, Esquire, Appellant’s Counsel (contact@wolfandwolf.net)
Jennifer B. Hipp, Esquire, ZHB Solicitor (jhipp@bogarlaw.com)

EXHIBIT I

E-mail, Nathan C. Wolf, Esquire to Solicitor Jennifer B. Hipp, Esquire —
June 30, 2026, 4:47 p.m., with attached letter of June 30, 2026

From: Nathan C. Wolf <nwolf@wolfandwolf.net>
Sent: Tuesday, June 30, 2026 4:47 PM
To: Jhipp <jhipp@bogarlaw.com>
Cc: Gregg I. Adelman <gadelman@kaplaw.com>; charles.suhr@stevenslee.com; Billcluck <billcluck@billcluck.com>
Subject: Gerber et al v. Middlesex Township, ZHB Appeal
Attachments: ltr to Solicitor Hipp 06302026.pdf

Dear Attorney Hipp:

Kindly review the attached letter and please send a reply to this email as all counsel are copied.

Thank you.

--

Very truly yours,
Wolf & Wolf, Attorneys at Law

By:
Nathan C. Wolf, Esquire
10 West High Street
Carlisle, PA 17013-2922
717-241-4436
717-241-4437 (Fax)

WOLF & WOLF

NATHAN C. WOLF

PHONE
717-241-4436

ATTORNEYS AT LAW
10 WEST HIGH STREET
CARLISLE, PENNSYLVANIA 17013
wolfandwolf@embarqmail.com

STACY B. WOLF

FACSIMILE
717-241-4437

June 30, 2026

VIA EMAIL ONLY TO: jhipp@bogarlaw.com

Jennifer B. Hipp, Esquire
BOGAR & HIPPIE LAW OFFICES, LLC
One West Main Street
Shiremanstown, PA 17011

Re: ZHB Case (2026-3) filed May 13, 2026

Dear Solicitor Hipp:

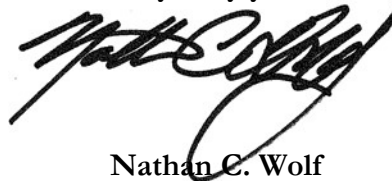
Please allow this letter to confirm our conversation yesterday about the above-referenced substantive validity challenge filed with the Middlesex Township Zoning Hearing Board. I contacted you with a few logistical questions concerning the hearing that we believed was to be convened on July 8, 2026 at the Middlesex Township Building at 7:00 p.m.

You advised me that the Board will not to convene a hearing on our appeal, despite the Zoning Officer's email of May 14 scheduling the hearing for July 8 at 7:00 p.m., on which you were copied. You further stated we should consider the appeal to be a deemed denial and cited 53 P.S. §10916.1(f), and the 60 day deadline set forth under subsection (d).

Kindly reply to the email to which this letter is attached as I will be out of the office tomorrow and Thursday and do not want to miss your reply. To that end, I have copied special counsel for the Township, Attorney Suhr, and counsel for the property owner, Attorney Adelman on this so that they are aware of this development if they were not already notified thereof.

I look forward to hearing from you.

Very truly yours,



Nathan C. Wolf

cc: Gregory Adelman, Esquire (via email only)
Charles M. Suhr, Esquire (via email only)
William J. Cluck, Esquire (via email only)

EXHIBIT J

E-mail, Gregg I. Adelman, Esquire to Nathan C. Wolf, Esquire and
Solicitor Jennifer B. Hipp, Esquire — July 1, 2026, 11:36 a.m.

From: "Gregg I. Adelman" <gadelman@kaplaw.com>

Date: July 1, 2026 at 11:36:52AM EDT

To: "Nathan C. Wolf" <nwolf@wolfandwolf.net>, Jhipp <jhipp@bogarlaw.com>

Cc: charles.suhr@stevenslee.com, Billcluck <billcluck@billcluck.com>

Subject: RE: Gerber et al v. Middlesex Township, ZHB Appeal [IMAN-IMAN_BB.FID1141490]

Jennifer:

Please confirm the substance of Nate's letter and that the challenge has been deemed denied.

Thanks.

Regards,



Gregg I. Adelman, Esquire

Kaplin | Stewart
Attorneys at Law

EXHIBIT K

E-mail, Nathan C. Wolf, Esquire to Gregg I. Adelman, Esquire, copy to
Solicitor Jennifer B. Hipp, Esquire — July 2, 2026, 4:04 p.m.

From: Nathan C. Wolf <nwolf@wolfandwolf.net>
Sent: Thursday, July 2, 2026 4:04 PM
To: Gregg I. Adelman <gadelman@kaplaw.com>
Cc: Jhipp <jhipp@bogarlaw.com>; charles.suhr@stevenslee.com; Billcluck <billcluck@billcluck.com>
Subject: Re: Gerber et al v. Middlesex Township, ZHB Appeal [IMAN-IMAN_BB.FID1141490]

Jen, can you please respond to my letter and Gregg's follow up email?

Very truly yours,
WOLF & WOLF

By:
Nathan C. Wolf
Attorney at Law
10 West High Street
Carlisle, PA 17013
717-241-4436
717-241-4437 (Fax)

Sent from my iPhone

On Jul 1, 2026, at 11:36 AM, Gregg I. Adelman <gadelman@kaplaw.com> wrote:

Jennifer:

Please confirm the substance of Nate's letter and that the challenge has been deemed denied.

Thanks.

Regards,

Gregg I. Adelman, Esquire

EXHIBIT L

E-mail, Solicitor Jennifer B. Hipp, Esquire to Nathan C. Wolf, Esquire and
Gregg I. Adelman, Esquire — July 3, 2026, 10:31 a.m.

Subject: Re: Gerber et al v. Middlesex Township, ZHB Appeal [IMAN-IMAN_BB.FID1141490]
Date: 2026-07-03 10:31
From: Jennifer Hipp <jhipp@bogarlaw.com>
To: "Nathan C. Wolf" <nwolf@wolfandwolf.net>, "Gregg I. Adelman" <gadelman@kaplaw.com>
Cc: "Charles.suhr@stevenslee.com" <charles.suhr@stevenslee.com>, Billcluck <billcluck@billcluck.com>

Good morning:

I am writing to confirm receipt of both emails.

Thank you,
Jen Hipp

Jennifer B. Hipp, Esquire
BOGAR & HIPPIE LAW OFFICES, LLC
One West Main Street
Shiremanstown, PA 17011
Phone: (717) 737-8761
Fax: (717) 737-2086
jhipp@bogarlaw.com
www.bogarandhipplaw.com

**** If you receive an email containing WIRE TRANSFER INSTRUCTIONS and/or requesting personal information, call our office immediately to verify the request with us prior to sending funds or providing personal information.****

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