

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.	:	
	:	
BOARD OF SUPERVISORS OF	:	CIVIL ACTION - LAW
MIDDLESEX TOWNSHIP,	:	
CUMBERLAND COUNTY,	:	LAND USE APPEAL
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 of the Approval of the Final Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 1-B and the Approval of the Preliminary Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 3, each voted upon by the Board of Supervisors of Middlesex Township at its meeting of September 2, 2026, substantively and in consideration of the manner in which the Board conducted what was to have been a public meeting where official action¹ was taken, averring as follows:²

¹Pursuant to the Pennsylvania Sunshine Act, 65 Pa.C.S. § 701 et seq., the Appellee hereto is an agency within the definitions of the Act, the meeting convened on September 2, 2026 was a "meeting" within the definition of the Act, and all matters voted upon by the Appellee constituted "official agency action" within the Act. For the reasons set forth herein, the Appellants have included allegations of violations of the Act which serve as additional bases which are offered to the Court as evidence of the abuses of discretion and errors of law committed in the process of exercising their authority over land use approvals pursuant to the Municipalities Planning Code, 53 P.S. § 11001-A et seq.

²Protective-filing note. (i) By letter dated September 11, 2026 responding to Appellants' Right-to-Know request of September 3, 2026, the Township Right to Know Officer produced the draft written motions for the Phase 3 Plan, the sewage facilities planning module and the Phase 1-B Final Plan with the statement that "these documents are drafts for official action, please reference the September 2, 2026, Board of Supervisor meeting minutes once approved," as set forth in Paragraph 44 below; on September 24, 2026 the Township produced its file copies of the same draft motion sheets, together with the review letters they incorporate, as "the written motions" and "the referenced HRG letters and supporting information," as set forth in Paragraph 45 below; the

I. JURISDICTION AND STATUTORY BASIS

1. This is a land use appeal brought pursuant to Article X-A of the Pennsylvania Municipalities Planning Code ("MPC"), Act of July 31, 1968, P.L. 805, as amended, 53 P.S. § 11001-A *et seq.*, including Sections 1001-A, 1002-A, 1003-A, 1005-A and 1006-A thereof. The relief requested herein is the relief that Section 1006-A(a) of the MPC, 53 P.S. § 11006-A(a), empowers the Court to grant in a land use appeal: to "set aside or modify any action, decision or order of the governing body, agency or officer of the municipality brought up on appeal."

2. Jurisdiction and venue are proper pursuant to 42 Pa.C.S. § 933(a)(2) and 53 P.S. § 10107(b), the instant appeal originates from approvals granted September 2, 2026 by the Board of Supervisors of Middlesex Township (the "Township"), Cumberland County, Pennsylvania, upon the applications of Carlisle Development Partners, LLC ("CDP"), concerning land located in the Township.

3. This appeal is taken from the following actions of the Board of Supervisors of Middlesex Township (the "Board"), each voted upon at the Board's public meeting of September 2, 2026, as shown by the transcript (hereinafter 9/2/2026 Transcript) (Exhibit 37), generated from Appellants' video recording made during that meeting which was published on their public YouTube channel:³

(a) the conditional approval of the Final Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 1-B, plan dated May 15, 2026 and last revised July 24, 2026 (the "Phase 1-B Final

minutes of the September 2, 2026 meeting have not been approved. (ii) As of the date of this filing, no written decision under Section 508 of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10508, has been received by Appellants. (iii) This Notice is accordingly pled in material part on information and belief from the Township's Right-to-Know productions, the copies of agreements posted to the Township's website and Appellants' video recording of the meeting. Appellants nonetheless plead each ground fully and specifically herein.

³Citations to the "Transcript" refer to the unofficial transcript generated from a video recording of the September 2, 2026 meeting made by Appellant Kyle Gerber, who records the Board's public meetings and publishes the recordings for public availability at the following internet address, <https://www.youtube.com/watch?v=ddySDVNjt60>. The Township does not record or live-stream its meetings and the only official record it generates are the meeting minutes which have been shown to omit critical information on numerous occasions. This transcript is provided to ensure the Court has as complete of a picture as possible as to what occurred on September 2, 2026. Every effort has been made to ensure the accuracy of the transcript in the brief period between the meeting and the deadline for filing this appeal.

Plan"), subject to nine (9) conditions (the "Phase 1-B Final Approval") (Exhibit 1, Motion #3; Transcript at 131–134);

(b) the conditional approval of the Preliminary Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 3, plan dated December 1, 2025 and last revised June 25, 2026 (the "Phase 3 Plan"), subject to four (4) conditions (the "Phase 3 Approval") (Exhibit 2, Motion #2; Transcript at 136–137).

4. The actions set forth in Paragraph 3 above are referred to collectively as the "Approvals."⁴

5. No appeal is taken herein from the Board's approval, at the same meeting, of the four (4) agreements identified in footnote 4. Those Agreements are pleaded herein as the content of Conditions 7, 8 and 9 of the Phase 1-B Final Approval and as record facts bearing upon the Board's exercise of its discretion in the Phase 1-B Final Approval and the Phase 3 Approval; the Module Resolution and the module it adopts are pleaded as record facts bearing upon sections below.

6. This Notice is filed within thirty (30) days of September 2, 2026, in compliance with Section 1002-A of the MPC.

II. IDENTIFICATION OF PARTIES AND SUBJECT PROPERTY

7. 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. While the Gerbers are located a greater distance from the Subject Property than the other Appellants; they critically rely upon a private well for their water supply for their historical and established agricultural uses of the property and are already exposed to noise emanating from the

⁴The Board took action to approve the following agreements related to the PAX-1 project, but which do not fall squarely within the jurisdiction of the Court over Land Use Appeals as defined by the MPC except that said agreements are the content of various conditions of the Phase 1-B approvals, and are matters being challenged in a separate action concerning violations of the Sunshine Act that occurred at the public meeting on September 2, 2026, namely (a) the Developer's Agreement between the Township and CDP (the "Master Developer's Agreement") (Exhibit 10), (b) the First Amendment to Developer's Agreement for Phase 1-B (the "First Amendment") (Exhibit 11), (c) the Community Benefits Agreement (the "CBA") (Exhibit 13) and (d) the "Side Letter of Agreement for Well Testing, Noise Monitoring and Other Protections" (the "Letter Agreement") (Exhibit 12). (Exhibit 4 at 1–2; Transcript at 127–128.)

Subject Property. The Gerbers reside on their family farm property which has been owned for generations and used agriculturally, and their immediate family includes two children under five, including a child whose birth is anticipated in the coming months.

8. 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. The Dymskis' property is located in proximity to the reach of the Conodoguinet Creek and its floodplain to which the approved stormwater design will "discharge laterally," and they rely critically upon a private well for their domestic and on-going agricultural uses. The Dymskis are already impacted by noise emanating from the Subject Property. Their immediate family includes four children under the age of ten.

9. 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. The Byerlys reside on and front directly upon Country Club Road, the roadway upon which the Subject Property's primary access point is located. They are already impacted by: excessive noise generated on site including that caused by blasting, significant vibration, loss of viewshed, exposure to dust generated by site work and blasting, impacts from heavy equipment traffic, exposure to security lighting on site and have experienced a change in the character of the neighborhood and their quiet enjoyment of their property, including the use of their swimming pool throughout the summer of 2026.

10. 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. The Shivells reside at 8 Teaberry Drive, opposite the Phase 1-B campus and its generator installations. They are already impacted by: excessive noise generated on site including that caused by blasting, significant vibration, loss of viewshed, exposure to dust generated by site work and blasting, impacts from heavy equipment traffic, exposure to security lighting on site and have experienced a change in the character of the neighborhood and their quiet enjoyment of their property, including the use of their swimming pool throughout the summer of 2026.

11. 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. The Mortons reside at 120 Locust Way, in immediate proximity to the Subject Property. They are already impacted by: excessive noise generated on site including that caused by blasting, significant vibration, loss of viewshed, exposure to dust generated by site work and blasting, impacts from heavy equipment traffic, and have experienced a change in the character of the neighborhood and their quiet enjoyment of their property, including the use of their swimming pool throughout the summer of 2026.

12. Each Appellant is a "person aggrieved" within the meaning of Article X-A of the MPC: each owns and resides at property in immediate proximity to the Subject Property and to the specific improvements approved by the Phase 1-B Final Approval and the Phase 3 Approval, and each will suffer harm, including for some but not all, from construction and operational traffic on Country Club Road, noise, impacts to private water supply, downstream stormwater impacts, viewshed impacts and loss of use and enjoyment, that is direct, immediate and substantial, and distinguishable from that of the general public.

13. As to the Approvals and related Agreements, Appellants are aggrieved because the Board substituted privately negotiated commitments, enforceable by the Township alone, for the findings of ordinance compliance that the MPC requires of a land development approval, and because the Board relied upon those commitments to resolve the noise, well-water and financial-security issues that bear directly upon Appellants' homes, as set forth in Section VII below. Appellants do not disclaim the protections the Agreements afford adjoining residents. Appellants aver that a commitment the Board did not adopt as a finding, and Appellants cannot enforce, is not a substitute for compliance with the Zoning Ordinance and the SALDO.

14. Appellee, the Board of Supervisors of Middlesex Township, Cumberland County, Pennsylvania, is the governing body of the Township and is empowered pursuant to the MPC, 53 P.S. § 10501 *et seq.*, to review and act upon subdivision and land development applications within the Township. On September 2, 2026, the Board consisted of two (2) members, Donald S. Geistwhite, Jr., Chairman, and Phil Neiderer, Vice-Chairman, the third seat having become vacant upon the Board's acceptance, on August 28, 2026, of the resignation of Supervisor William H. Goodhart.

15. The owner and developer of the property described below is CDP, a foreign limited liability company having a registered office at 1660 International Drive, Suite 500, McLean, Virginia 22012.

16. The project is developed and marketed under as "Pennsylvania Digital 1" or "PAX-1."

17. CDP is the project entity of a joint venture between Pennsylvania Data Center Partners and American Real Estate Partners, doing business as PowerHouse Data Centers.

18. Mr. Ross identified himself to the Board on September 2, 2026 as "a principal co-founder of Livic Civil and also part of the PA Data Center Partner team," and signed, over the title "Principal," the May 15, 2026 request letter for the Phase 1-B Final Plan. (Transcript at 14; Exhibit 15 at 4.)⁵

19. The Subject Property consists of approximately six hundred ninety-three (693) acres comprising four (4) tax parcels on Country Club Road, Middlesex Township, Cumberland County, Pennsylvania, bearing Parcel Identification Numbers 21-06-0015-001, 21-06-0015-013, 21-06-0015-014 and 21-06-0015-015 (the "Subject Property"). (Exhibit 10 at 1.) The Subject Property has been preliminarily subdivided into five (5) proposed lots, designated Lots 1A, 1B, 1C, 2 and 3. (Exhibit 10 at 2.)

20. The Phase 1-B Final Approval concerns proposed Lot 1B, and the Phase 3 Approval concerns proposed Lot 3, containing approximately 141.30 acres. (Exhibit 17 at 2; Exhibit 18 at 2.)

21. The Subject Property is located within the Township's MU-1 zoning district and is subject to the Data Center Overlay (the "DCO") created by Ordinance No. 3-2025, adopted May 30, 2025, and incorporated into the Middlesex Township Zoning Ordinance, No. 7-2025, enacted September 3, 2025 (the "Zoning Ordinance"), which permits data centers by right within the DCO.⁶

III. STANDARD OF REVIEW

22. The action of the Board of Supervisors in approving the Final Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 1-B and the Preliminary Land Development Plan for

⁵ The relationship is pled because LIVIC prepared the Environmental Impact Assessment reviewed with both plans, as set forth in Ground I of Section VII and Ground G of Section VIII below.

⁶ On May 13, 2026, Appellants filed a substantive validity challenge to the DCO with the Middlesex Township Zoning Hearing Board pursuant to Section 916.1 of the MPC.

Pennsylvania Digital 1 (PAX-1) Phase 3 was arbitrary, capricious, an abuse of discretion and contrary to law, both in substance and in the manner in which the approvals were made.

23. Under Section 1005-A of the MPC, 53 P.S. § 11005-A, the findings of the Board stand only "if supported by substantial evidence," and where "the record does not include findings of fact" the Court "shall make its own findings of fact based on the record below." The Decisions, as read into the record, contain no findings of fact. (Exhibit 2; Exhibit 1.)

24. A court reviewing a conditional approval "may consider whether the conditions are appropriate to effectuate compliance with relevant statutes and ordinances and, if so, whether the objected-to conditions are reasonable in order to make the plan be in compliance," and "may strike conditions that are not legal." *Koller v. Weisenberg Township*, 871 A.2d 286, 292 (Pa. Cmwlth. 2005). "[I]f a legally imposed condition would address the alleged failure of the Preliminary Plan, then such alleged failure cannot provide a basis for challenging the Board's conditional approval. On the other hand, if after consideration of the legally imposed conditions, [the objector] is able to establish that an alleged failure of the Preliminary Plan still remains, then the Board's conditional approval should be reversed on the merits and the plan denied." *Id.* Each ground below that concerns a condition states why the condition does not address the failure pleaded.

25. The Phase 1-B preliminary approval of May 6, 2026 granted relief from thirteen (13) enumerated provisions of the SALDO and the Stormwater Ordinance "subject to providing written request and justification for each relief sought and listing the relief sought on the cover sheet of the plan set," and approved the preliminary plan subject to six (6) conditions, including satisfaction of HRG's review letter #3 of April 9 and 10, 2026 and of HRG's "written sound study review letter #1" dated April 23, 2026, a no-wells covenant, a fee in lieu of dedication, and a developer's agreement with financial security "in an amount acceptable to the Township Engineer." (Exhibit 5 at 14–15.) The minutes record that "[t]he applicant noted agreement with the conditions of approval." (Exhibit 5 at 15.)⁷

26. On May 15, 2026, CDP transmitted the Phase 1-B Final Plan to the Township, accompanied by a letter of LIVIC of the same date captioned "Pennsylvania Digital 1 (PAX-1) Phase 1B – Final

⁷ The Middlesex Township Stormwater Management Ordinance was not contained in the certified record filed at docket 2026-06465, it is hoped that this Ordinance will be included in any certified record filed at this docket as it is incorporated by reference into the SALDO, as is the Zoning Ordinance, such that Applicants for LD approval must demonstrate compliance with relevant provisions of both in order to obtain approvals.

Waiver/Modification/Deferral Requests" and signed by Justin Ross, P.E., Principal (the "Phase 1-B Waiver Letter"), and by an "Environmental Impact Assessment (Electronic)" listed as dated "4/24/26." (Exhibit 14; Exhibit 15 at 1, 4.) The Phase 1-B Waiver Letter opens "Per Section 1502 of Middlesex Township's Subdivision and Land Development Ordinance" and describes itself as outlining "the preliminary waivers and modifications requested for the PAX-1 Phase 1B Final Land Development Plan Submission." (Exhibit 15 at 1.)

27. HRG issued Review Letter #1 on the Phase 1-B Final Plan, dated June 8, 2026 (the "Phase 1-B Final Review Letter #1"), reviewing a plan set of one hundred thirteen (113) sheets last revised May 15, 2026, a stormwater report last revised May 14, 2026, building elevations last revised May 5, 2026, and an Environmental Impact Assessment ("EIA") dated April 2026. (Exhibit 17 at 1.) HRG issued Review Letter #2 dated July 2, 2026 and Review Letter #3 dated August 14, 2026 on the same plan. (Exhibit 27 at 8, 36.) On July 31, 2026, LIVIC hand delivered to the Township, "For Approval," a resubmission consisting of the plan set dated July 29, 2026, a stormwater report, a waiver request letter dated July 28, 2026, a comment response letter dated July 30, 2026, three (3) sets of exterior elevations and a "SWM Design Addendum Memo"; the transmittal lists no EIA, no noise study, no sewage facilities planning module and no water or sewer documentation. (Exhibit 27 at 35.) HRG's review letter #3.5 of August 27, 2026 describes the plan set it reviewed as one hundred sixty-seven (167) sheets last revised July 24, 2026, and MTMA's engineer describes the set reviewed for the Authority as "230 plan sheets" of the same dates. (Exhibit 27 at 8, 13.) The Phase 1-B Final Plan was last revised July 24, 2026. (Exhibit 1, Motion #3.)

28. The Phase 1-B Final Approval incorporates by reference HRG's "written review letter #3.5 dated 08/27/2026," HRG's "written sound study review letter #1 dated 07/08/2026," a "written review letter dated 08/19/2026 by Max E. Stoner, P.E. of JHA" on behalf of the Middlesex Township Municipal Authority ("MTMA"), and a County Planning Department "written report dated 06/08/2025 for Plan Number P26-369"; the Phase 3 Approval incorporates HRG's "written review letter # 3.5" dated "08/28/2026." (Exhibit 1, Motion #3, Conditions 1–4; Exhibit 2, Motion #2, Condition 1.) None of the five (5) documents was read into the record on September 2, 2026 or made available to the public before or at the meeting, and none was produced to Appellants until September 24, 2026, twenty-two (22) days after the vote, as set forth in Paragraphs 41, 44 and 45 below. (Exhibit 3 at 1–2; Exhibit 29 at 1–2.) The County report incorporated in Condition 4 bears

the dates "Date Received: 5/20/2026" and "Date Reviewed: 6/8/2026"; no report dated June 8, 2025 exists for a plan first submitted on May 15, 2026. (Exhibit 27 at 28.)

29. On June 22, 2026, the Township Planning Commission voted "to approve the Component 4-A Municipal Planning Agency Review forms for Pennsylvania Digital (PAX-1) Phase 2 with each item marked 'Yes' except items 5, 6, 10, 15, and 16." (Exhibit 9 at 3.)

30. The Component 4-A form as executed by the Planning Commission's Vice-Chair, Tracy Gleim, on June 22, 2026, for the project "PENNSYLVANIA DIGITAL (PAX-1)" under DEP Code No. A3-21915-257-3, differs from the motion so recorded. It answers "No" to item 2, "Is this proposal consistent with the comprehensive plan for land use?," with the written explanation "Project area shown as Low-Density Residential in 2/3/2025 Comp Plan." (Exhibit 24 at 1.)

31. The executed form further answers "Yes" to item 5 (wetlands), with the entry "Impacts to wetlands will be remediated & approved by DEP"; answers "Yes" to item 6, "Will any known historical or archaeological resources be impacted by this project?," with the entry "Impacts to Appalachian Trail viewshed to be minimized"; answers "Yes" to item 7 (endangered or threatened species), with the entries "Multiple plant & animal species identified at project area on PNDI search" and "Impacts to threatened species to be minimized & remediated"; and answers "No" to items 10, 15 and 16. (Exhibit 24 at 1–2.) The executed form, so completed, is part of the module package on file with DEP, as set forth in Paragraph 131 below. (Exhibit 26 at 9–10.)

32. On August 5, 2026, the Board convened with the Phase 3 Plan, the sewage facilities planning module and the Phase 1-B Final Plan on its agenda, each listed with a "BOS action deadline August 5, 2026"; with the meeting room at capacity, the Board recessed and announced that the meeting would reconvene on August 19, 2026, the minutes recording that "[i]t was clarified that the 90-day review period ends August 23, 2026." (Exhibit 6 at 4.)

33. On August 19, 2026, the Board heard CDP's presentation of the Phase 3 Plan, the Phase 1-B Final Plan, the requested waivers and modifications, the Master Developer's Agreement, the First Amendment, "a signed letter agreement, and community benefits." (Exhibit 7 at 4–6.) The minutes record that CDP's representative "outlined 12 requested waivers or modifications" for the Phase 3 Plan and that "[t]he developer and engineers explained the reasons for each request." (Exhibit 7 at 4–5.)

34. At 8:50 p.m. on August 19, 2026 the Board recessed "due to a health-related matter with the Township Solicitor," and upon reconvening at 9:07 p.m. Vice-Chairman Neiderer stated "that due to the health-related situation the developer has agreed to extend the meeting to September 2, 2026, at 6 p.m."; "[n]o action on the following items was taken." (Exhibit 7 at 6.) The agenda for September 2, 2026 states, as to both plans, "(BOS action deadline was extended by developer to Sept. 2, 2026)." (Exhibit 4 at 1–2.)

35. On August 28, 2026, the Board accepted the resignation of Supervisor Goodhart, leaving two (2) sitting members. (Exhibit 8 at 2.)

36. On or about September 1, 2026, the Township posted on its website copies of the four (4) Agreements. As posted:

(a) the Master Developer's Agreement is dated "this 2nd day of September, 2026," recites and incorporates five (5) exhibits, "Exhibit A" through "Exhibit E," including an "Engineer's Estimate of Probable Cost" dated February 6, 2026 and the Township Engineer's and Township Traffic Engineer's approving memoranda, none of which is attached, and its signature and notary blocks are blank (Exhibit 10 at 1–3, 13–14);

(b) the First Amendment is dated "this 19th day of August, 2026," recites a "Developer's Agreement executed by the Parties dated August 19, 2026," leaves the Phase 1-B Final Plan's dates blank ("dated _____, last revised _____"), and incorporates as "Exhibit B" an "Engineer's Estimate of Probable Cost approved by the Township's Engineer by Memoranda dated July 9, 2026," which is not attached; the memorandum so recited, HRG's financial security recommendation of July 9, 2026 in the amount of \$21,751,790.00, was produced to Appellants on September 24, 2026 (Exhibit 11 at 1–2; Exhibit 33 at 1);

(c) the Letter Agreement is dated September 2, 2026 and recites that "[t]he Township and Carlisle executed a Developer's Agreement on the 2nd day of September, 2026" (Exhibit 12 at 1); and

(d) the CBA is dated "this ____ day of August, 2026" (Exhibit 13 at 1).

37. The Board met on September 2, 2026 at the Cumberland Valley High School Performing Arts Center, with Vice-Chairman Neiderer presiding and Chairman Geistwhite the only other

member present. The posted agenda listed a "Possible motion" on each of the seven (7) PAX-1 matters and limited public comment to residents and taxpayers, "1 time at 3 minutes." (Exhibit 4 at 1–2.)

38. At the outset of the meeting, Vice-Chairman Neiderer stated that copies of the Agreements were available to those attending and were "also posted on the township website," and Mr. Giorgione stated that paper copies had been placed at the rear of the auditorium. The copies of the Agreements attached hereto as Exhibits 10 through 13 are the copies posted on the Township's website, and are identical to the paper copies distributed at the meeting.

39. Vice-Chairman Neiderer opened the meeting with a statement made, in his words, "not on behalf of the Board of Supervisors," in which he stated that "a preliminary land development plan has already been approved" and that, "[u]nder Article V, Section 508 of the Pennsylvania Municipalities Planning Code, final approval is to be considered in accordance with the approved preliminary plan, including the conditions attached to that approval, such as financial security for PA Data Center Drive, provided that the applicant satisfies the applicable requirements."

40. Before public comment opened, Mr. Ross stated that "following the last meeting, we had a follow-up internal engineering meeting with the township staff. There were a couple waiver requests and modifications that were reduced in nature. So we've consolidated," and then read aloud, "for the record," the consolidated list of relief to be requested for each plan. (Transcript at 14–17.) No written list of the relief to be granted, and no written request or justification for it was distributed to the public or displayed at the meeting, and no copy of either plan set was available for public inspection at the meeting. The written requests upon which the Township Engineer reviewed the consolidated relief are two (2) letters of LIVIC dated August 26, 2026, seven (7) days before the meeting, which the Township produced on September 24, 2026, as set forth in Paragraphs 59 and 163 below. (Exhibit 27 at 4–8; Exhibit 28 at 3–9.)

41. During public comment and before the Board acted, counsel for Appellants stated on the record that the Master Developer's Agreement "refers to multiple exhibits, documents that are incorporated by reference, included in the content and substance of that agreement, but they were not provided"; that "[b]ecause they were not provided, and they are part of the board packet under the Right to Know Law and the Sunshine Act," as to "those documents that are before you for action tonight, anything you do without them having been made public is void *ab initio*"; that "[t]he

public is denied the meaningful opportunity to comment on something that it doesn't have"; that "here we are on September 2nd and we still don't have the engineering review letters"; (Transcript at 114–115.) Appellants aver that the objection so made was an objection to a perceived violation of the Sunshine Act within the meaning of 65 P.S. § 67.708 (b)(10).

42. After reading the nine (9) conditions and before calling the vote on the Phase 1-B Approval Motion, Vice-Chairman Neiderer asked, "Is this acceptable to the developer? Is this acceptable to the applicant?"; a representative of CDP answered with a nod of assent. Before calling the vote on the Phase 3 Approval Motion, he asked, "Are these conditions acceptable to the developer?" and a representative of CDP answered, "Yes." (Transcript at 137.) The motions as read match the Township's draft sheets in substance. (Exhibit 2; Exhibit 1; Transcript at 128–137.)

43. On September 3, 2026, Appellant Andrew Dymski asked via a Right to Know request submitted to the Township for "the written versions of all motions and approvals acted on at the September 2, 2026 Board of Supervisors meeting," including "the written motion as read into the record for each item, all conditions and waivers attached to each action, copies of all cited review letters, the fully executed version of each agreement with all signature and notary pages, and any approval, decision, or action letter prepared for these items." (Exhibit 3 at 1.)

44. On September 11, 2026, the Township's Right-to-Know Officer responded by letter and produced the two (2) draft motion sheets stating: "As stated, these documents are drafts for official action, please reference the September 2, 2026, Board of Supervisor meeting minutes once approved. There were no prepared written motions for the four agreements. At the time of this request, the four separate agreements are not fully executed with signatures and notary pages, and the final decision letters have not been prepared." (Exhibit 3 at 1.) The response did not produce, without explanation, the review letters incorporated into the Decisions. (Exhibit 3 at 1–2.)

45. On September 11, 2026, Appellant Andrew Dymski responded thereto asking, "Could you include the HRG letters, please?" On September 24, 2026, twenty-two (22) days after the vote, the Right-to-Know Officer provided the following response, stating: "I am following up on the RTK from Sept 3 for the written motions. See attached that include the referenced HRG letters and supporting information," re-sending the two (2) documents previously disclosed but now attaching: the applicant's written requests for relief dated August 26, 2026, the review letters and reports

incorporated in Conditions 1, 3 and 4 of the Phase 1-B Final Approval and Condition 1 of the Phase 3 Approval, and certain of the applicant's submissions. (Exhibit 27 at 1–53; Exhibit 28 at 1–21.)

46. A sound study review letter incorporated in Condition 2 of the Phase 1-B Final Approval was not included in either Written Motion Package (though it was produced the same day in the Township's separate response to Appellant Andrew Dymski's RTK dated August 10, 2026 (the "September 24 Production"), together with the documents attached hereto as Exhibits 30 through 36), as will be established by affidavit. (Exhibit 30 at 1.)

47. Despite as written decisions under Section 508(1) of the MPC. (Exhibit 29 at 1.)

48. As of the date of this filing, no written decision under Section 508 of the MPC, 53 P.S. § 10508, has been received by Appellants; the executed Agreements have not been produced; and the minutes of the September 2, 2026 meeting have not been approved or published. The averments herein concerning the content of the Decisions are made on information and belief from the Township's Right-to-Know productions of September 11 and September 24, 2026, the Township's posted copies of the Agreements and the Recording.⁸

IV. GROUNDS FOR APPEAL AS TO THE PHASE 1-B FINAL APPROVAL

A. The Approved Preliminary Plan and the Scope of Final Plan Review

49. Section 508(4)(i) of the MPC, 53 P.S. § 10508(4)(i), provides that "when a preliminary application has been duly approved, the applicant shall be entitled to final approval in accordance with the terms of the approved preliminary application as hereinafter provided." "Thus, final approval of a subdivision plan is automatic unless the final plan is different from the preliminary plan. Significantly though, § 508(4) does permit the governing body to place conditions upon the approval of either the preliminary or final plan with the applicant's acceptance." *Graham v. Zoning Hearing Board of Upper Allen Township*, 520 Pa. 526, 532, 555 A.2d 79, 81–82 (1989). "The preliminary plan is essentially conditional in nature in that after its approval, the developer must still fulfill all the requirements to obtain final approval." *CACO Three, Inc. v. Board of Supervisors of Huntington Township*, 845 A.2d 991, 993–94 (Pa. Cmwlth. 2004). Section 601 of the SALDO provides that "Final Plans

⁸ As of this filing, Appellants can only assume that documents were executed on September 2, 2026 or that approvals issued were issued on the date of the vote, and therefore this filing is being submitted to protect the earliest possible filing deadline that could apply.

shall meet all requirements of Article V of 'This Ordinance' and that "[a]ll dimensions and locations of but not limited to lots, buildings and site improvements shall be finalized (approximations are prohibited)," and Section 602 provides that "[a]ll preliminary supporting documentation required by Article V shall be finalized and submitted with the Final Plan." (SALDO §§ 601, 602.)⁹

50. The Phase 1-B preliminary approval of May 6, 2026 and its six (6) conditions are set forth in Paragraph 25 above. As noted, below Appellants filed a timely appeal of said approval which is before this Court.

51. The Phase 1-B Final Approval approved the Phase 1-B Final Plan subject to nine (9) conditions, of which Condition 8 (recording of the Final Major Subdivision Plan and the Phase 1-A final plan, and a developer's agreement and financial security for PA Data Drive) and Condition 9 (compliance with the Letter Agreement) have no counterpart in the preliminary approval. (Exhibit 5 at 15; Exhibit 1, Motion #3.)¹⁰

52. The grounds that follow are directed to: (a) the relief the Board granted anew on September 2, 2026; (b) requirements the SALDO places at the final plan stage, including Sections 301.F.1, 602.B, 602.I, 712.C.2, 718.B and 1301; (c) the conditions of the Phase 1-B Final Approval, including Conditions 8 and 9; and (d) whether the Phase 1-B Final Plan "complies with the approved preliminary plan, the conditions of that approval, and the relevant provisions of the township zoning ordinance and subdivision and land development ordinance." (Transcript at 5–8.) Where a ground concerns a matter that is also raised, or is proposed by amendment to be raised, in the First Appeal, it is so identified and is pled here because the validity of the Phase 1-B Final Approval rests upon that approval being upheld on appeal.

⁹Citations in the form "CR _____" are to the pages of the certified record filed by the Board in the Land Use Appeal of the Preliminary Land Development Plan Approval for Phase 1-B, Docketed to No. 2026-06465, where the Zoning Ordinance and the SALDO appear; the same ordinances govern the Decisions.

¹⁰ It is noted that the preliminary plan approval for Phase 1-B on May 6, 2026 is the subject of the land use appeal filed by Appellants at Docket 2026-06465. Inasmuch as CDP sought and obtained final land development approval before the Court could even address the motion to quash CDP filed at that docket, it is respectfully submitted that grounds for appeal arising out of the preliminary plan that were not pled at that docket, are appropriately raised in this Notice as these land use appeals concern exactly the same request for land development approval, but at different stages.

B. The Eight (8) Modifications Granted at the Final Plan Stage (Section 512.1 of the MPC; Article XV of the SALDO)

53. The Phase 1-B Relief Motion granted "relief from the following sections" of the SALDO and the Stormwater Ordinance "subject to providing written request and justification for each relief sought and listing the relief sought on the cover sheet of the plan set" (Exhibit 1, Motion #2; Transcript at 129–131):

(1) SALDO § 501.A.2 (plan scale); (2) SALDO § 501.A.6 (location map scale); (3) SALDO §§ 703.A.10 and 707.A.1 (deferral of curbing and sidewalk along PA Data Drive, "with required note on plan"); (4) SALDO § 703.I.4 (depressed curb at driveway openings); (5) SALDO §§ 718.D.3.a and 718.D.4 (scale of maps and exhibits within the EIA); (6) Stormwater Ordinance § 303.J.3 (detention basin side and bottom slopes); (7) Stormwater Ordinance §§ 303.H.17 and 303.H.18 (forty-eight (48) hour infiltration); and (8) Stormwater Ordinance § 303.B.2 (infiltration as the primary stormwater mechanism).

54. Section 512.1(a) of the MPC permits the governing body to grant a modification of the requirements of its subdivision and land development ordinance only "if the literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that such modification will not be contrary to the public interest and that the purpose and intent of the ordinance is observed."

55. Section 512.1(b) of the MPC provides: "All requests for a modification shall be in writing and shall accompany and be a part of the application for development. The request shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, the provision or provisions of the ordinance involved and the minimum modification necessary."

56. Section 512.1(d) provides that the governing body "shall keep a written record of all action on all requests for modifications."

57. Article XV of the SALDO carries the same requirements into the Township's ordinance. Section 1501 permits a modification "[w]here the literal enforcement of the provisions of these regulations will exact undue hardship because of peculiar conditions pertaining to the land in question," and only "provided that such modification will not be contrary to the public interest and that the purpose and intent of This Ordinance is observed"; Section 1502 provides that "[a]ll

requests for a modification shall be in writing and shall accompany and be part of the Application for Development."

58. Section 1503.C of the SALDO requires that "[a]t any meeting or hearing, the Applicant, or the Applicant's representative, shall present evidence in support of the request," and Section 1503.E provides that, "[i]n modifying any requirements, the Board of Township Supervisors shall record its action and the grounds for the modification of a requirement to the Applicant for the modification."

59. The Board granted the eight (8) modifications anew at the final plan stage upon a written request of LIVIC dated August 26, 2026¹¹, captioned "Pennsylvania Digital 1 (PAX-1) Phase 1B – Final Waiver/Modification/Deferral Requests" and signed by Nick Long, Sr. Project Manager (the "Phase 1-B August 26 Letter"), which describes its own contents as "the preliminary waivers and modifications requested for the PAX-1 Phase 1B Final Land Development Plan Submission." (Exhibit 27 at 4, 7; Exhibit 1, Motion #2.) The relief granted on May 6, 2026 purported to be "subject to providing written request and justification for each relief sought." (Exhibit 5 at 14.) Despite that statement, Appellants have not been able to locate a document dated prior to August 26, 2026 that set forth the request and basis for relief.

60. It is averred that detailed allegations of deficiencies set forth by Appellants at Docket 2026-08652 included the lack of written request or justification for relief being presented before the Board granted waivers on those applications. These allegations were of record as of July 31, 2026, and it is believed and therefore averred that CDP's letter of August 26 was an attempt to fix the deficiency in the Phase 1-B preliminary plan approval by including this letter before the Board undertook a third effort to grant final approval on September 2, 2026.

61. Consequently, at no public meeting where the plan sheets were available for public review (Aug 5 and Aug 19) was a written request for waiver with justification provided, including September 2, because no plan sheets or other documents other than the agreements specified

¹¹ Of importance is the sequence of attempted votes on the challenged approvals and the fact that revisions that occurred after the interrupted public meetings. On August 5, the Board attempted to begin discussion of these plan approvals and discontinued its meeting on PAX-1 items because the meeting room could not accommodate the members of the public who sought to participate in that meeting. On August 19, the discussion was interrupted by Board Solicitor suffering a medical emergency. Thus any document authored after August 19, was not available to any member of the public prior to the Board's vote on September 2.

elsewhere herein, were made available for public review and comment prior to the Board action thereon.

62. Further evidence of this sequence of submissions is found on the Phase 1-B Final Review Letter #1 dated June 8, 2026 which states, under the heading "WAIVER NOTE": "No waivers or modifications were submitted with the subject plan. The applicant should clarify if the same requests from the preliminary plan also apply to the final plan and provide a waiver/modification request letter." (Exhibit 17 at 1.)

63. Three (3) successive request letters precede the Phase 1-B Relief Motion. The Phase 1-B Waiver Letter of May 15, 2026, which accompanied the application, requests relief from ten (10) provisions: Sections 501.A.2, 501.A.6, 703.A.10 ("Curb & Sidewalk Country Club Road and PA Data Dr"), 703.I.4, 707 ("Sidewalk"), 718.D.3.A and 718.D.4.A through D, 718.D.3.B (marked "NOT NEEDED"), 303.J.3, 303.H.17 and 303.B.2. (Exhibit 15 at 1–4.) A second letter dated July 28, 2026, signed by Mr. Ross and transmitted with the July 31, 2026 resubmission, requests relief from nine (9) provisions, recasting the Country Club Road curb and sidewalk waiver as a deferral along PA Data Drive, separately requesting a deferral of Section 707.A.1 along interior roadways and street frontage, and adding Section 303.H.18. (Exhibit 27 at 35, 49–53.) The Phase 1-B August 26 Letter requests relief from the eight (8) provisions enumerated in the Phase 1-B Relief Motion, item for item, combining Sections 703.A.10 and 707.A.1 into a single deferral of "Curb & Sidewalk (PA Data Dr)" and omitting the interior-roadway sidewalk deferral. (Exhibit 27 at 4–7; Exhibit 1, Motion #2.)

64. The "Facts of Hardship" recited in the Phase 1-B August 26 Letter were not sufficient to justify relief from the applicable ordinances.

65. Rather some of the relief requested, e.g. elimination of sidewalks and depressed curbs, on the basis that property is a secure campus without any pedestrian traffic that would justify installation of sidewalks and depressed curbs to accommodate individuals with disabilities, support the Appellants' contention that this is not a use consistent with the Mixed Use Neighborhood Zoning District and adjacent residential uses but instead belongs in a purely industrial use district.

66. Appellants submit that the recitals quoted in Paragraph 64 above for items (1), (2) and (5) state a preference of presentation and of campus design, and not an "undue hardship because of

peculiar conditions pertaining to the land in question" within the meaning of Section 512.1(a) of the MPC and Section 1501 of the SALDO. The Township's own SALDO permits a modification only upon the findings stated in Section 1501 and requires the Board to "record its action and the grounds for the modification," and, as set forth in Paragraph 68 below, the Board stated no basis of any kind under either standard at the time of their vote. (SALDO §§ 1501, 1503.E)

67. The Phase 1-B Relief Motion recites no finding of undue hardship because of peculiar conditions pertaining to the land, no finding that the modifications are not contrary to the public interest, and no finding that the purpose and intent of the SALDO or the Stormwater Ordinance is observed; it records no "grounds for the modification" of any requirement, as Section 1503.E of the SALDO requires.

68. Notably, the Township Engineer's incorporated report likewise records, for each of the three (3) Stormwater Ordinance items, only that "[a] modification has been requested for this section," each comment being marked as "not addressed from previous review letters." (Exhibit 27 at 9, 11.) "Without providing the basis for the waivers, we are unable to determine whether the Township erred or abused its discretion in granting the waivers at the preliminary plan stage." *Miravich v. Township of Exeter*, 54 A.3d 106, 114 (Pa. Cmwlth. 2012) ("*Miravich II*").

69. Items (6), (7) and (8) modify the Stormwater Ordinance. Section 110 of that ordinance, captioned "Waiver Procedure," provides that its provisions "are intended as minimum standards for the protection of the public health, safety and welfare," and that the Board "may waive any mandatory provisions of these regulations to the benefit of the applicant provided the waiver:

A. Is consistent with the purpose of this Ordinance as described in Section 103;

B. Will remove or reduce an unreasonable standard or undue hardship as it applies to the particular property, which is grossly disproportionate to any benefit derived from the standard, or when an alternative standard provides equal or better results; and

C. Is consistent with Section 301 F. with respect to water quality requirements. It shall be the burden of the applicant to demonstrate compliance with the above requirements." (Stormwater Ordinance § 110, Exhibit 20 at 12.)

70. Section 301.F of the Stormwater Ordinance provides that, "[a]fter consultation with DEP, Middlesex Township may approve measures for meeting the water quality requirements of the State of Pennsylvania other than those in this Ordinance, provided that they meet the minimum requirements of, and do not conflict with, Pennsylvania law." (Stormwater Ordinance § 301.F, Exhibit 20 at 24.)

71. CDP's own request for item (8) recites that the site "has nearly no permeability" and asks relief "subject to an approved PA DEP Stormwater BMP per Section 301.E" of the Stormwater Ordinance, a subsection which directs applicants to the Pennsylvania Stormwater Best Management Practices Manual "for guidance" and states that "[o]bjectives for design are to reduce the volume of stormwater generated, infiltrate runoff at its source to the maximum extent possible, achieve water quality improvement at the source or during conveyance, and provide for peak flow attenuation." (Exhibit 27 at 7; Exhibit 15 at 4; Stormwater Ordinance § 301.E, Exhibit 20 at 23.) The County Planning Department's report incorporated in Condition 4 states of the same request that "a majority of the stormwater produced will discharge laterally to the adjacent floodplain of the creek," asks "[w]ill the post-construction runoff mimic the rate, volume and concentration of the existing stormwater runoff?," states that "[t]he township should require methods to limit erosion prior to approval of the waiver," and states that "[i]t appears that the requested waiver will create impacts beyond the project disturbed area" and that "[t]he applicant should address impacts to threatened and rare populations in the floodplain prior to approval of the waiver." (Exhibit 27 at 29.)

72. The Phase 1-B Relief Motion recites no determination under Section 110 that any of items (6), (7) and (8) is consistent with the purpose of the Stormwater Ordinance, removes an unreasonable standard or undue hardship grossly disproportionate to any benefit, or provides equal or better results by an alternative standard, and no consultation with DEP under Section 301.F. (Exhibit 1, Motion #2; Transcript at 129–131.) The two (2) matters the County Planning Department stated should be resolved "prior to approval of the waiver" were, by Condition 4, deferred until after the waiver was granted. (Exhibit 1, Motion #3, Condition 4; Exhibit 27 at 29.) Appellants aver that the three (3) items were granted without the determinations Section 110 requires and without the applicant having carried the burden that section places upon it.

73. Appellants submit and therefore aver that the grant of relief from each of the eight (8) enumerated provisions at the final plan stage, without the findings that Section 512.1(a) of the MPC

and Section 1501 of the SALDO require, without the record of grounds that Section 1503.E of the SALDO requires and, as to items (6), (7) and (8), without the determinations Section 110 of the Stormwater Ordinance requires, and for the further reasons set forth in Paragraphs 59 through 72 above, was contrary to law, and that failure alone is sufficient to have denied approval to the Phase 1-B Final Land Development Plan application.

C. The Seven (7) Day Filing Rule of Section 301.F.1 of the SALDO

74. Section 301.F.1 of the SALDO provides: "No plan, either preliminary or final, will be considered by the Board of Township Supervisors for approval or disapproval unless all the following have been filed with the Township Secretary not less than seven (7) calendar days before any official meeting to be held to consider approval or disapproval of the plan: a. Township Planning Commission report, b. County Planning Commission report, c. Township Engineer's report, and d. Middlesex Township Municipal Authority report, if applicable." (SALDO §301.F.1.)

75. Condition 1 of the Phase 1-B Final Approval requires satisfaction of the Township Engineer's "written review letter #3.5 dated 08/27/2026," six (6) days before the September 2, 2026 meeting at which the Board considered and approved the Phase 1-B Final Plan. (Exhibit 1, Motion #3, Condition 1.) The letter is dated August 27, 2026, is signed by Randy T. Watts, PE, Senior Project Engineer, for J. Michael Hess, PE, Team Leader, and is "submitted as an amendment to our Plan Review Letter #3 dated 8/14/2026." (Exhibit 27 at 8, 12.) Upon information and belief, the letter was filed with the Township Secretary no earlier than its date.

76. The Township Engineer's report so filed is the substantive content of Condition 1 and, as set forth in Ground F below, of the compliance determination the Board deferred to it; the portion of the report that the amendment of August 27, 2026 changed, the "Waivers" and "Waiver Notes" section, is the portion upon which the Board granted the eight (8) items of relief by the Phase 1-B Relief Motion. (Exhibit 1, Motion #3, Condition 1; Exhibit 27 at 8–9.) Appellants acknowledge that the Township Engineer's Review Letter #3 of August 14, 2026, whose other comments the amendment carried forward unchanged, was dated nineteen (19) days before the meeting, and that the MTMA report is dated August 19, 2026 and the County Planning Department report was reviewed June 8, 2026, each more than seven (7) days before the meeting. (Exhibit 27 at 8, 13, 28.)

77. In anticipation of the argument that §301.F.1 is directory rather than mandatory, it should be noted that the section is phrased as a prohibition upon the Board's consideration of the plan, that its purpose is to place the reviewing reports before the Board and the public before the meeting at which the plan is considered, and that the Board's decision rests its approval upon the late-filed report by name and date. Where a subdivision ordinance provided "that no plan shall be reviewed or considered by the Township authorities until all procedures, plan information, and requirements specified in the ordinance have been complied with," and a required review had not occurred, the Commonwealth Court held that "the plan was not legally ripe for approval by the Township Supervisors" and reversed. *In re Appeal of Newtown Racquetball Associates*, 76 Pa. Cmwlth. 238, 247–48, 464 A.2d 576, 581 (1983). "The word 'shall' by definition is mandatory, and it is generally applied as such." *Chanceford Aviation Properties, L.L.P. v. Chanceford Township Board of Supervisors*, 923 A.2d 1099, 1104 (Pa. 2007).

78. Appellants submit and therefore aver that the Board considered and granted the Phase 1-B waivers, and considered and approved the Phase 1-B Final Plan based on those waivers, at a meeting held less than seven (7) calendar days after the Township Engineer's report that establishes the basis for the relief, and which Condition 1 incorporates by date, in violation of the SALDO.

79. The foregoing deficiencies are sufficient for this Court to grant relief and set aside the approval given by the Board as to the Phase 1-B waivers and, the Phase 1-B Final Plan approval itself.

D. Compliance With the Noise Provisions of the Zoning Ordinance

80. Section 3.04(G)(2)(g) of the Zoning Ordinance provides: "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." (Zoning Ordinance § 3.04(G)(2)(g).)

81. Section 4.19(F)(1) of the Zoning Ordinance separately provides that, "[i]n all zones, the sound-pressure level for all uses and activities shall not exceed the decibel limits in the octave bands designated in the following table," and subsection (1)(a) provides that "[a]t no point at or beyond the property line shall the measured sound level exceed the maximum permitted sound levels designated

in the Table 4.19.2." Table 4.19.2 sets octave-band limits in a "Residence Districts" column and a "Nonresidential Districts" column, each limit in the latter column being six (6) decibels higher than the corresponding limit in the former. (Zoning Ordinance § 4.19(F)(1), (1)(a), Table 4.19.2.) Section 4.19(F) contains no exception for a power outage; its exemptions, listed in subsection (3), do not mention data centers or generators, and the nearest, subsection (3)(h), exempts "the emission of sound in the performance of emergency work." (Zoning Ordinance § 4.19(F)(3).)

82. Compliance with the Zoning Ordinance is a proper subject of review in an appeal from a land development approval. *Residents Against Matrix v. Lower Makefield Township*, 845 A.2d 908, 911 (Pa. Cmwlth. 2004) ("Any zoning problems must be considered at the planning stage for the purpose of approving or disapproving the plan.") (quoting *Graham v. Zoning Hearing Board of Upper Allen Township*, 520 Pa. 526, 532, 555 A.2d 79, 81–82 (1989)); *Borough of Jenkintown v. Board of Commissioners of Abington Township*, 858 A.2d 136, 141 (Pa. Cmwlth. 2004) ("if a trial court determines that a governing body improperly interpreted the zoning ordinance, it may reverse the governing body's decision, as containing a fundamental defect, or it may reverse and remand").

83. More specifically in the instant matter, compliance with the applicable zoning ordinance provisions is required by the incorporation provision in the SALDO §107, §702.D, and the EIA under §718.D.14 and D.18. It is noted that CDP attempted to comply with the required showing implicated by the zoning ordinance.¹²

84. The noise study reviewed by the Township Engineer at the final plan stage is a Kimley-Horn memorandum captioned "PAX-1 – Acoustical Design Evaluation" dated June 17, 2026 (the "Noise Memo"), which the Township produced in the September 24 Production. (Exhibit 31 at 1; Exhibit 30 at 1.) The Noise Memo is "based on the site plans and drawing files provided to Kimley-Horn on March 27, 2026," states that "[t]he site layout includes sixteen data center buildings and the noise walls required to reach compliance with the local ordinances," and states that "[t]he material being used will be confirmed during final design but will have a minimum STC value of 25." (Exhibit 31 at 3.) It states that "the limit of 70 dB(A) is to take precedence at this site for normal operations and testing operations, but during the time of a power outage, the octave band limits regulation will be

¹² In the argument on cross-motions at docket 2026-06465, Counsel for CDP argued that zoning compliance is not required at the land development approval stage but deferred until zoning permits are issued. Appellants take issue with that characterization and note the Applicant has attempted to comply, albeit unsatisfactorily, with the standards set forth in the zoning ordinance.

the nuisance standard," and that "[d]ue to the site being used for nonresidential use and the measurement being taken at the site boundary, the nonresidential district octave band limits will apply to this site." (Exhibit 31 at 6.) It concludes: "Based on modeling results included in this report, we are in compliance with all jurisdictional noise limits in Middlesex Township." (Exhibit 31 at 14.)

85. The Noise Memo's premise that Table 4.19.2 applies to the data center only "during the time of a power outage" is CDP's construction of the Zoning Ordinance; Section 4.19(F)(1) applies by its terms "[i]n all zones" to "all uses and activities." The Noise Memo's comparison of its predicted levels to Table 4.19.2 is made against the "Nonresidential Districts" column only. (Zoning Ordinance § 4.19(F)(1), Exhibit 31 at 4–6, 12–14.)

86. The Noise Memo states, under the heading "Equipment and Design Basis," that "[t]he equipment sound levels used for this analysis were based on information provided by the end user regarding the quantity and sound levels of the Direct Air-Handling Units (DAHUs), data hall exhaust louvers, generators, and exhaust fans, or based on experience with the other types of equipment typical at data center facilities," and that "[a]ny sound mitigation measures will be confirmed during the Tenant Improvement phase on the project." (Exhibit 31 at 8–9.) CDP's engineer wrote to the Township on June 19, 2026 that "[w]hile equipment selections have not yet been finalized, the modeled sound power levels were developed using data from commercially available equipment and are intended to be conservative. Final equipment selections will be determined during the tenant improvement phase of the project." (Exhibit 32 at 4.) The Phase 1-B Final Review Letter #1 of June 8, 2026, under the heading "NOISE," had directed CDP to "[c]larify whether the modeled equipment reflects actual specified units to be installed at the proposed facility," stated that "additional documentation is needed to demonstrate that the as-built condition will be consistent with the assumptions used in the noise model," and found that "[t]here are significant issues with the field collection techniques," including snow and rain during the ambient measurements, "thus not accurately representing the ambient acoustic environment." (Exhibit 17 at 3.)

87. Said another way, the assertions made by CDP's consultant are nothing more than a guess, until specific equipment is identified by the as yet undisclosed end user/tenant of the site and only then can that equipment be evaluated for its specific noise output against the applicable ordinance standards on the site itself with its unique topographical conditions.

88. The Township Engineer's "Sound Study Review Letter #1" dated July 8, 2026, the letter incorporated by Condition 2 (the "Sound Review Letter"), reviews the Noise Memo and finds, under Comment 2, that "[t]he following information remains missing and therefore does not adequately address the comment above," listing "equipment manufacturers, model numbers, procurement specifications, source test reports, louver insertion-loss documentation, acoustical cut sheets, commissioning plan, post-construction testing commitment, as-built verification procedure"; under Comment 1, that "NRC," "[f]inal material specification" and "[l]ocation and specs of parapet walls on rooftops" remain **missing**; and under Comments 3 and 4, that the ambient-data comments were **"not addressed"** in the most recent technical memorandum submission." (Exhibit 30 at 1–2.) (emphasis added) Under Comment 5 it concludes: "This leads to the conclusion that the specific equipment to be utilized has not yet been finalized. As a result, the equipment specifications used in the modeling, as well as the projected performance of the proposed mitigation measures, appear to be based on assumptions rather than on verified acoustic testing data for the actual equipment that will be installed. The report also states noise **wall lengths and heights** will be set in final design. As this is a Final Land Development plan, provide a final design noise report that documents the specific equipment, its acoustic performance, and the mitigation measures." (Exhibit 30 at 3.) No final design noise report appears in the record: CDP's comment response letter of July 30, 2026 states, under "NOISE," "Response: Acknowledged. **Noise review memo will be responded separate from this response letter,**" and the July 31, 2026 transmittal lists no noise document. (Exhibit 27 at 35, 39.) The Township Engineer's review letter #3.5 of August 27, 2026, incorporated by Condition 1, contains under the heading "NOISE" a single sentence: "A separate noise review memo was provided on July 8, 2026." (Exhibit 27 at 10.)

89. Upon information and belief, the deficiencies in the noise report were not directly addressed in any writing prior to the vote by the Board on September 2, 2026.

90. At the Board's August 19, 2026 meeting, "HRG raised an unresolved concern regarding the noise study because the final equipment specifications had not been provided"; "[t]wo options were discussed: providing the equipment information for review or conducting post-construction noise monitoring"; and "the consultants indicated that the noise issue remained unresolved because neither approach had yet been finalized in an executed agreement." (Exhibit 7 at 5.)

91. Condition 2 of the Phase 1-B Final Approval requires "[t]hat the applicant satisfies all comments and conditions of the Township Engineer, Bud Grove, P.E. in written sound study review letter #1 dated 07/08/2026, by J. Michael Hess, P.E. of Herbert, Rowland & Grubic Inc. in a manner acceptable to the Township Engineer, subject to his final review." (Exhibit 1, Motion #3, Condition 2.)

92. The County Planning Department's report incorporated in Condition 4 states that "[t]he township should verify that the following reports have been submitted and approved prior to final plan approval," including "d. Noise study," and that "[t]he generator yards should face building C to avoid noise impacts. The township should determine whether an acoustic barrier is required for a generator yard that faces a residential use or zoning district." (Exhibit 27 at 28.)

93. Condition 9 requires "[t]hat the applicant comply with all the requirements of the Letter Agreement between the Township and Developer," whose Paragraph 4.B provides for post-construction noise monitoring for twenty-four (24) months against a benchmark of "70dBA on average, measured over a 5-minute interval," as quoted in Paragraph 104 below. (Exhibit 1, Motion #3, Condition 9; Exhibit 12 at 2.)

94. Appellants aver that the Board made no finding on September 2, 2026 that the Phase 1-B Final Plan complies with Section 3.04(G)(2)(g) of the Zoning Ordinance. (Transcript at 131–134.)

95. Section 601 of the SALDO provides that at the final plan stage "approximations are prohibited." (SALDO § 601.)

96. Appellants aver that an agreement to monitor noise after construction is not a noise study "included in the application" within the meaning of Section 3.04(G)(2)(g), is not evidence that the facility as designed will comply with that section, and is not a finding of compliance; it is a remedy for non-compliance to be applied after the buildings are built and the equipment installed.

97. Conditions 2 and 9 defer the resolution to a review letter that is not subject to any form of public scrutiny as to the methodology employed and defers review only to staff outside any opportunity for public objection.

98. Appellants take issue with any interpretation of the ordinance that suggests the only level of compliance required is 70 dBA measured at the property line and the non-residential performance standards.

99. Rather Appellants must demonstrate compliance with the residential district standards within the noise ordinance provisions and table at §4.19.2.

100. It is submitted that any reliance on the non-residential standard was wholly misplaced because the overlay is located within a residential district and therefore any use outside of the DCO is residential by nature, including the properties of several Appellants hereto and should therefore be regulated as such.

101. The "noise receiving" districts are residential. The Township Engineer's Phase 3 Review Letter #1 states the Township Engineer's understanding that "the property is bound by public streets, residential uses and/or residential districts," and the Township Planning Commission recorded on the executed Component 4-A form that the "Project area [is] shown as Low-Density Residential in 2/3/2025 Comp Plan," as set forth in Paragraph 30 above. (Exhibit 18 at 2; Exhibit 24 at 1.) Whether an industrial use of that scale is compatible with the residential districts and residential uses that adjoin the DCO is the subject of the Validity Appeal described in Section X below and is not pleaded here as a ground. Rather, it is pleaded here as the setting in which the "Nonresidential Districts" column was applied to the study and the Board approved the Final Plan without a finding of compliance.

102. Appellants submit and therefore aver that the Board approved the Phase 1-B Final Plan without a finding, supported by substantial evidence, that the data center will comply with Section 3.04(G)(2)(g) of the Zoning Ordinance, and that failure alone is sufficient to have denied approval to the Phase 1-B Final Land Development Plan application.

E. Condition 9 and the Letter Agreement

103. The Letter Agreement, the contents of which were not disclosed prior to September 1, 2026 was approved by a one-sentence oral motion, for which there was no prepared written motion, and Condition 9 of the Phase 1-B Final Approval incorporates compliance with the Side Letter Agreement.

104. The Letter Agreement provides that "the following may be imposed as a condition of any future final land development plan approval," and, as posted, contains the following terms:

(a) well testing for "each willing property owner having water supply wells located within 1,500 feet of all of Carlisle's blasting activities," under "separate agreements" yet to be made. (Paragraph 4.A);¹³

(b) noise monitoring "[f]or the period of 24 months following Completion of Construction," at "locations previously approved by the Township Engineer and the Township's consultant for purposes of the pre-construction monitoring," against a benchmark of "70dBA on average, measured over a 5-minute interval" (Paragraph 4.B), "Completion of Construction" being defined in the Master Developer's Agreement as the later of "the last certificate of occupancy for the last building being constructed on any Future Land Development Plan" and "the release of all improvement security for the Required Improvements" (Exhibit 10 at 3);¹⁴

(c) decommissioning security of \$5,000,000.00, posted only after a "Notice of Intent" or twelve (12) months of ceased operation (Paragraph 4.D);¹⁵

(d) tenant identification, in that Carlisle "may need to identify the prospective tenant for Phase 1B after final land development plan approval for Phase 1B" (Paragraph 4.E); and¹⁶

(e) assignment, in that "Carlisle may assign this Letter Agreement to its successors and assigns without the consent of Township" (Paragraph 5), while Paragraph 14 of the Master Developer's Agreement forbids assignment "without the express written approval of the Township" (Exhibit 10 at 11–12).

¹³ Blasting commenced on or about March 1, 2026 and has continued through sometime in August 2026, when it temporarily ceased and it is averred that any baseline testing should have occurred prior to the commencement of blasting. Further, it is noted the residents who have submitted claims for damage to their homes from blasting advised the Board on or before the votes taken on September 2, 2026 that all such claims had been denied by the contractor.

¹⁴ Members of the public questioned the commencement date for this provision, given the approximate five year window of construction activities described by the developer, and noted that noise generation from Phase 1-B would not be subject to this agreement until potentially years after that campus would go online.

¹⁵ None of the methodology employed to come up with the \$5,000,000.00 figure for decommissioning was disclosed prior to the vote to accept the letter, therefore denying the public the opportunity to offer meaningful public comment thereon. It was as if the public was being notified that this is what we are doing without an explanation as to why.

¹⁶ For reasons pled above, including the lack of specificity of equipment to be used by the "tenant," is unlawful because in doing so the Board allowed CDP to evade the required showing of compliance with objective ordinance standards prior to approval and while subject to public comment.

F. Conditions 1 Through 4

105. Condition 1 of the Phase 1-B Final Approval provides "[t]hat the applicant satisfies all comments and conditions of the Township Engineer, Bud Grove, P.E. in written review letter #3.5 dated 08/27/2026, by J. Michael Hess, PE of Herbert, Rowland & Grubic Inc., in a manner acceptable to the Township Engineer, subject to his final review." Condition 2 does the same for the "written sound study review letter #1 dated 07/08/2026"; Condition 3 for the MTMA engineer's letter "dated 08/19/2026"; and Condition 4 requires "[t]hat the applicant satisfies all comments of the Cumberland County Planning Department, in written report dated 06/08/2025 [sic] for Plan Number P26-369." (Exhibit 1, Motion #3, Conditions 1–4; Exhibit 27 at 2.) The County report so incorporated is dated "Date Reviewed: 6/8/2026," as set forth in Paragraph 28 above. (Exhibit 27 at 28.)

106. None of the four (4) review letters were read into the record on September 2, 2026 or made available to the public before or at the meeting, and none were provided Appellants until September 24, 2026, each is now before this Court as having been incorporated into the plan approvals.

107. A governing body may rely upon "an engineer's report, or other documentation provided to the developer and available to the municipal authority in its decision-making process," but "[i]f a municipal authority indeed intends for an external document to serve as the substantive explanation of the basis for its decision, it should make that point explicitly in the decision letter." *Kassouf v. Township of Scott*, 883 A.2d 463, 472–73 (Pa. 2005). These documents were specifically incorporated and are part of the approval.

108. Two (2) of the four (4) incorporated documents state, by their terms, that the matters they address were to be resolved before final approval, not after it. MTMA's engineer's letter of August 19, 2026 states, under "GENERAL REVIEW," that "[a]ll applicable comments shall be addressed and incorporated into the plans prior to final plan approval. – These comments below need to be addressed.¹⁷" (Exhibit 27 at 14.) The County Planning Department's report states that "[t]he township should verify that the architectural renderings of the building exterior have been

¹⁷ The MTMA review letter was not dated (receipt date by Township is unknown) but had the August 19, 2026 meeting concluded with a vote, action on August 19 would have violated SALDO §301(F)(1)(d). In fact the letter was not authored until after the planning commission review had been completed in July 2026.

submitted and reviewed prior to final plan approval," that "[t]he township should verify that the following reports have been submitted and approved prior to final plan approval," listing a traffic impact study, a water feasibility study, an electric interconnection agreement, a noise study, a parking analysis report, "[a] hydro-geologic study and water testing report (SLDO 503.A.6)" and an "[e]nvironmental impact assessment (SLDO 718)," and that two (2) stormwater matters be addressed "prior to approval of the waiver." (Exhibit 27 at 28–29.)

109. Importantly the County referenced mandatory provisions of the SALDO, not standards using permissive language.

110. CDP answered the County on June 30, 2026 that "[a]ll of the above reports have been provided to Middlesex Township as part of the land development submission process," not that any had been approved. (Exhibit 36 at 2.)

111. Conditional approval is the remedy for "defects in the plan notations and labels" that "are correctable by fairly simple amendments to the documents," as distinguished from "the kind of objective defects in the subdivision itself that will justify outright denial rather than approval conditioned upon making the corrections." *Shelbourne Square Associates, L.P. v. Board of Supervisors of Township of Exeter*, 794 A.2d 946, 950 (Pa. Cmwlth. 2002). The lawfulness of conditional final approval recognized in *Morris v. South Coventry Township Board of Supervisors*, 898 A.2d 1213, 1220 (Pa. Cmwlth. 2006), rests on the premise that "the conditions of its Subdivision Ordinance have been complied with" and that the governing body "has exercised all the discretion over all matters over which it had discretion."

112. Appellants acknowledge that in *Shelbourne* the "failure to submit a letter documenting adequate capacity from the water utility" was among the defects held correctable by condition. 794 A.2d at 950.

113. The Board made no determination on the record that the Phase 1-B Final Plan complies with the approved preliminary plan, the conditions of that approval, or the Zoning Ordinance and the SALDO. (Transcript at 131–134.)

114. More importantly, the Final Plan approval failed to include a condition tied to the success of the Appellants' land use appeal of that approval.

115. Appellants submit that, to the extent Conditions 1 through 4 defer to the incorporated documents the resolution of the ordinance-compliance items pled herein, the Phase 1-B Final Approval rests on no substantial evidence of compliance, and the conditions do not address the failures identified herein; and that the conditions of approval are not "appropriate to effectuate compliance with relevant statutes and ordinances." *Koller*, 871 A.2d at 292; *Morris*, 898 A.2d at 1220.

G. Water Supply (SALDO § 602.B; Zoning Ordinance § 3.04(G)(2)(e))

116. Section 602.B of the SALDO provides that, "[i]f water is to be supplied by means other than on-site wells, maintained and operated by individual lot owners, a copy of a Certificate of Public Convenience from the Pennsylvania Public Utility Commission or an application for such, a cooperative agreement or commitment must accompany the Plan as evidence that the proposed development will be supplied with an adequate, reliable and safe water supply." (SALDO § 602.B.) Section 712.C.2 provides that "[p]roof that the supplier is capable of providing the proposed development with an adequate supply of safe drinking water is required as part of supporting documentation for the Final Plan." (SALDO § 712.C.2)

117. Despite arguments made by CDP's counsel in related land use appeal oral argument, compliance with water supply requirements set forth in the zoning ordinance are not the subject of zoning permits but rather are incorporated into essential showing necessary for land development approvals by the Board of Supervisors for data centers.¹⁸

118. Section 3.04(G)(2)(e) of the Zoning Ordinance provides that "[n]o data center shall be approved without sufficient water and/or for a use that poses adverse impact on existing wells in the vicinity," and that "[i]f the source is from a municipal system, the applicant shall include documentation that the public authority will supply the water needed." (Zoning Ordinance § 3.04(G)(2)(e), Subsection (e)(9) provides: "The applicant shall provide proof of review and approval from the Susquehanna River Basin Commission (SRBC) for projects that have: (a) Water withdrawals of 100,000 gallons per day (gpd) or more over a 30-day average from any source or combination of sources within the Susquehanna River Basin. (b) Any consumptive water use of

¹⁸ To conclude that a data center would only have to demonstrate compliance to a Zoning Officer (as to zoning permits) for an issue such as the adequacy of water supply for a use of regional significance, especially as to water consumption, rather than having to demonstrate compliance to the Board of Supervisors in a public forum is utterly absurd. Such a read of the ordinances ignores the incorporation provisions of the SALDO identified elsewhere herein and would relegate any review to an appointed official whose decisions are not published and are capable of evading review and are not subject to public comment or scrutiny.

20,000 gpd or more over a 30-day average from any water source." (Zoning Ordinance § 3.04(G)(2)(e)(9)) The Susquehanna River Basin Commission is referred to herein as "SRBC."

119. Condition 5 of the Phase 1-B Final Approval requires a restrictive covenant "stating that no water wells will be drilled on the property and that all existing water wells on the property will be properly abandoned and sealed," so that the Phase 1-B data center is to be supplied by MTMA's municipal system. (Exhibit 1, Motion #3, Condition 5.)

120. No cooperative agreement or commitment of MTMA to supply the Phase 1-B data center, no proof that MTMA "is capable of providing the proposed development with an adequate supply of safe drinking water," no "documentation that the public authority will supply the water needed," and no "proof of review and approval" from SRBC accompanied the Phase 1-B Final Plan or its resubmission of July 31, 2026.

121. In a writing on file with DEP in the sewage facilities planning module package described in Paragraph 131 below, CDP's engineer states: "The project has an approved and contracted water allocation of 400,000 GPD"; "Specific peak and average cooling-water demand values cannot be disclosed, as they are based on proprietary tenant information"; and "any tenant-specific consumptive use approvals required by SRBC will be obtained by the tenant." (Exhibit 26 at 30–31.) In other words, no document available to Appellants states the water the Phase 1-B data center will need.

122. And for the purposes of granting approval, final approval has been granted without being able to assess the consumptive water use that will result from said approval, in complete disregard of the provisions of the controlling ordinances that demand demonstration of compliance prior to the grant of approval.

123. Paragraph 8 of the First Amendment, approved September 2, 2026, provides: "The Developer agrees that it or its successors will not request more than 400,000 gpd water capacity from Middlesex Township Municipal Authority based on Middlesex Township Municipal Authority's current capacity." (Exhibit 11 at 4.) MTMA's "current capacity" is the subject of MTMA's pending application to SRBC (SRBC Pending No. 2025-174) for a groundwater withdrawal from its Well 2 of 0.914 million gallons per day, which had not been acted upon by SRBC as of the

date of this filing, as will be established by affidavit. (Exhibit 23 at 1.) No approval of SRBC for the PAX-1 project, and no application by CDP to SRBC, appears in any record available to Appellants.

124. Appellants acknowledge that the Planning Commission's minutes of June 22, 2026 record, in connection with the Phase 2 plan, discussion of "allocated water usage of approximately 400,000 gallons per day," and that in *Shelbourne* the absence of a water utility's capacity letter was held correctable by condition, as set forth in Paragraph 112 above. (Exhibit 9 at 3.) The assertion in this matter is different.

125. Appellants submit that a tapping fee agreement reserving capacity "subject to" payment, which was not before the Board, and a covenant of the developer capping its requests "based on" the supplier's "current capacity," are not "documentation that the public authority will supply the water needed" within the meaning of Section 3.04(G)(2)(e) when the water needed has not been disclosed by the applicant or determined by the supplier; that neither is the "proof that the supplier is capable" that Section 712.C.2 of the SALDO as required the Final Plan.

126. Appellants further argue that the statement in MTMA's engineer's review letter of August 19, 2026, incorporated by Condition 3, that "there is sufficient capacity and pressure for the proposed data center buildings within this phase" is a comment in a review of the applicant's designs, and not the commitment that "must accompany the Plan" under Section 602.B.

127. Appellants likewise that no proof of SRBC review and approval exists; and that the Phase 1-B Final Approval fails to require such a showing in contravention of the provision of the ordinance.

128. Appellants submit and therefore aver that the Board approved the Phase 1-B Final Plan without the commitment of the public water supplier that Section 602.B of the SALDO requires to accompany the Final Plan, without the proof of the supplier's capability that Section 712.C.2 of the SALDO requires with the Final Plan, and without any condition on the review and approval of the Susquehanna River Basin Commission that Section 3.04(G)(2)(e)(9) of the Zoning Ordinance requires, and those failures alone are sufficient to justify a denial of the Phase 1-B Final Land Development Plan application.

H. Sewage Facilities Planning and the Municipal Authority Approval (SALDO §§ 503.A.3, 503.A.9, 602.I)

129. Section 503.A.3 of the SALDO requires, among the supporting documents of a land development plan, "[a] completed 'Sewage Facilities Planning Module for Land Development' or other equivalent documentation submitted to the Township and ready for submission to the Pennsylvania Department of Environmental Protection (PA DEP) in compliance with the requirements of the Pennsylvania Sewage Facilities Act and Title 25, Chapter 71 of the Pennsylvania Code (also reference Article III §310 of This Ordinance)." (SALDO § 503.A.3)

130. Section 503.A.9 requires, "[i]n the event that the plan proposes the extension of water and/or sewer service into the project from existing sewerage facilities owned and maintained by the Middlesex Township Municipal Authority," a report from MTMA "indicating that the proposed design which has been reviewed and is sufficient to meet the technical requirements of the Middlesex Township Municipal Authority" and that MTMA has "the capacity and ability to serve the project in accordance with their rules and regulations." (SALDO § 503.A.9) Section 602.I places "[f]inal approval of Final Sewer and Water designs by the Middlesex Township Municipal Authority" among the documents to be submitted with the Final Plan. (SALDO § 602.I)

131. The Phase 1-B Final Review Letter #1 directs: "Provide a completed PADEP Sewage Planning Module [503.A.3]." (Exhibit 17 at 3.) The Township Engineer's review letter #3.5 of August 27, 2026, incorporated by Condition 1, repeats the direction, marked with the asterisk that "[i]ndicates comments not addressed from previous review letters": "*Provide a completed PADEP Sewage Planning Module [503.A.3]." (Exhibit 27 at 9–10.) MTMA's engineer wrote on June 3, 2026 that "[a] sewage facilities planning module for the proposed development has not been submitted to Middlesex Township or PADEP for review" and that "[a]pproval of the planning module, either for the entire development or on a phased basis, will be required prior to final plan approval." (Exhibit 22 at 2.) CDP's comment response letter of July 30, 2026 answers: "The PADEP Sewage Facilities Planning Module is currently being finalized and will be submitted to PADEP for review and approval promptly. We respectfully request that receipt of the approved Sewage Planning Module be made as a condition of Final Phase 1B Plan approval," and states that "[t]he current planning module is intended to update and include Industrial Wastewater flows requirements for the Phase 1B, Phase 2, and Phase 3 improvements." (Exhibit 27 at 39.) CDP had made the same request on

June 19, 2026. (Exhibit 32 at 5.) The same response states that "an approved Sewage Planning Module was previously obtained for domestic sewage flows associated with the full campus development when PAX-1 acquired the property from the previous developer." (Exhibit 27 at 39.) No approval by DEP of a module providing for the two hundred forty-one thousand (241,000) gallons per day of industrial wastewater reported on the Component 3 form appears in the record. (Exhibit 25 at 7.) The Phase 1-B Final Approval contains no such condition. (Exhibit 1, Motion #3.)

132. Appellants submit that as a matter of procedure, any approval of a sewage module should have occurred prior to the approval of the Plan approval, however, regardless of what order such approvals took place, there was insufficient information available for the Board to engage in a meaningful review.

133. Appellants submit that in order to comply with the requirements for the sewage module even as a condition of final approval, it would not be permitted to defer analysis until such time as it identified the tenant (whose consumptive use is characterized as proprietary).

134. Appellants submit that the inability to state the actual discharge amounts or to identify the contents possible pollutants that would be part of the industrial wastewater discharge denies any agency, including the township and the DEP an opportunity to perform a meaningful review that is necessary to protect the public who are served by the MTMA and those served by the Carlisle Wastewater Treatment facility, that will receive the industrial wastewater discharge.

135. Further, because CDP cannot state with certainty the consumptive requirements of the project, let alone this singular phase, it cannot adequately predict the discharge needs that will place a strain on the public systems upon which it will rely.

136. Failure to provide this information served only the privacy interests of CDP's potential tenants at the expense of opportunity for public scrutiny and comment and should be evaluated as a purposeful so that CDP could secure land development approvals and claim vested rights in the approved plan as quickly as possible so as to avoid any delays caused by public scrutiny as details of its plan came to light.

137. In support of this contention, Appellants submit the written response to the comment letter from the MTMA Engineer authored by LIVIC and stating that "[t]he specific

characteristics of industrial wastewater cannot be fully defined at this time, as they will depend on the operations of future tenants." (Exhibit 26.)

138. Many comments provided by the comment letters were not adequately addressed.

139. Appellants submit that a letter of MTMA's engineer stating comments to be "addressed and incorporated into the plans prior to final plan approval," including that the gravity mains and laterals "appear undersized," that the limits of public and private ownership be identified and that hydraulic calculations be provided, is not the "[f]inal approval of Final Sewer and Water designs" that Section 602.I of the SALDO requires with the Final Plan, and is not a report that the design "has been reviewed and is sufficient to meet the technical requirements" of MTMA within the meaning of Section 503.A.9; that a capacity certification "based on" a pump station and force main the developer has yet to construct is not a report that MTMA has "the capacity and ability to serve the project"; and that the absence of a completed module "submitted to the Township and ready for submission" to DEP under Section 503.A.3 is a defect the applicant itself asked the Township to address by condition and the Board did not.

140. Appellants submit and therefore aver that the Board approved the Phase 1-B Final Plan without the final approval of the sewer and water designs by MTMA that Section 602.I of the SALDO requires to be submitted with the Final Plan, and without the report of MTMA that Section 503.A.9 of the SALDO requires, and that failure alone is sufficient to have denied approval to the Phase 1-B Final Land Development Plan application.

I. The Environmental Impact Assessment (SALDO § 718.B)

141. Section 718.B of the SALDO provides that the EIA "shall be submitted with the Preliminary Plan" and that "[a]n updated EIA report shall accompany and form a part of the Final Plan for any of the above," and Section 718.C provides that "[t]he study shall be prepared by a qualified consultant **who shall be mutually agreed upon by the developer and the Township.**" (Emphasis added).

142. It is averred that the intent of this provision was to ensure that an independent qualified individual could provide objective observations of existing site conditions before earth disturbance had occurred, and then provide objective recommendations to minimize any possible environmental impacts or to advise that mitigation is not feasible if improvements are constructed.

143. On May 6, 2026, prior to the Board's vote, Appellants identified to the Board that Justin Ross, principal of LIVIC Civil and the signatory author of the EIA submitted on the PAX-1 project, was also the Chief Operating Officer of Pennsylvania Data Center Partners, one of the entities developing the project.

144. In other words, Justin Ross holds pecuniary interests in company that authored a study was designed to provide the Board with information about the impacts the proposed use would have on the environment on and around the project site while also holding a pecuniary interest in the company that stands to profit substantially from the development of that project site.

145. The language of the SALDO is clear, namely that a mutual agreement is required of the Township and the developer in selecting the consultant to perform the EIA.

146. What occurred in the instant matter is that the applicant prepared the EIA and submitted the same to the Township, long before any such information was available for public review or scrutiny.

147. Even a member of the Board acknowledged the fact that the dual roles Mr. Ross played created a bad look for the township and acknowledged that it was a valid concern, which could justify a delay to consider the request to obtain an independent analysis.

148. The SALDO does not include language that suggests the Township may consent to having the EIA performed by the site engineer, or by the developer itself.

149. The EIA was prepared by LIVIC, of which Mr. Ross is a principal and co-founder while also, in Mr. Giorgione's words, "a part of" Pennsylvania Data Center Partners, the developer's joint venturer, as set forth above; the record contains no evidence of a mutual agreement between the Township and the developer upon the preparer, as pled at Docket 2026-06465 and at Docket 2026-08652.

150. Appellants aver that no EIA updated to the Final Plan accompanied and formed a part of the Phase 1-B Final Plan as Section 718.B of the SALDO requires, the Township Engineer having reviewed none at the final plan stage, and that the Board approved the Final Plan upon an

EIA submitted before the preliminary approval and prepared by a firm whose principal is a member of the developer's joint venture.

J. The Design Criteria of Section 2.18(G) of the Zoning Ordinance

151. Section 3.04(G)(2)(a) of the Zoning Ordinance provides that "Data Centers shall be subject to the bulk and area regulations set forth in Section 2.18(F) and the design criteria set forth in Section 2.18(G)," which include principal façade standards for building façades facing a "lot with an existing residential use within 1,000 feet of the Building Façade," foundation plantings at main entrances, and the requirement that "[m]echanical equipment must be fully screened on all sides." (Zoning Ordinance §§ 3.04(G)(2)(a), 2.18(G))

152. The Township Engineer's reviews of the Phase 1-B preliminary plan listed the architectural plans documenting façade compliance, the foundation plantings and the screening of the generator yards among the "ITEMS TO BE ADDRESSED IN THE FINAL LAND DEVELOPMENT PLAN," as shown by the certified record at Docket 2026-06465. Building elevations last revised May 5, 2026 accompanied the Phase 1-B Final Plan, and the Phase 1-B Final Review Letter #1 reviewed them, directing CDP to "[p]rovide calculations showing the fenestration requirements are satisfied," to correct the foundation plantings, and to "[p]rovide a screening wall detail" for the generator yard, and stating that "[t]he zoning officer should determine which standard applies" to the differentiated-surface requirement. (Exhibit 17 at 1–2.)

153. The elevations transmitted with the July 31, 2026 resubmission and reviewed by the Township Engineer's letter #3.5 are sheets captioned "Concept Design Overall Elevations" and "Concept Design Elevations," dated July 24, 2026, each bearing the legend "CONFIDENTIAL / NOT FOR DISTRIBUTION." (Exhibit 27 at 8, 35, 44–47.)

154. The notion that documents submitted for consideration for final land development approval were marked as confidential and were not made available for public review such that public comment could meaningfully occur undermines the due process considerations throughout the MPC and the Ordinance.

155. Appellants acknowledge that elevations were submitted and reviewed by staff at the final plan stage, that CDP's comment response letter of July 30, 2026 asserts that the fenestration of the elevations was revised to meet the 7.5% standard, and that the Township Engineer's letter #3.5

carries no comment under Section 2.18(G)(1); its zoning comments concern lot width, accessible-parking grades and impervious cover under Section 2.18(F). (Exhibit 27 at 9–10, 37–38.) But Appellants aver that the staff reviews without public disclosure does not satisfy the conditions precedent to a valid approval.

156. Further Section 601 of the SALDO provides that at the final plan stage "approximations are prohibited"; and that the County Planning Department's comments on the renderings, the building entrances and the generator yards, including its direction that "[t]he township should determine whether an acoustic barrier is required," were carried into Condition 4 without a determination. (Exhibit 27 at 28, 44–47; SALDO § 601.)

157. Neither the Phase 1-B Relief Motion nor the Phase 1-B Approval Motion contains any provision making the approval of the Phase 1-B Final Plan subject to, or conditional upon, the disposition of the First Appeal, or providing that the approval shall be of no effect should the preliminary approval of May 6, 2026 be reversed or set aside; the nine (9) conditions imposed contain no such term. (Exhibit 1, Motions #2 and #3; Transcript at 129–134.) Condition 8 instead requires, before the Phase 1-B Final Plan is released for recording, the recording of two (2) other approvals of May 6, 2026 that were themselves then under appeal in the First Appeal, as set forth in Paragraph 51 above. (Exhibit 1, Motion #3, Condition 8.) The Board, which by Paragraph 4 of the CBA protected the Township's own receipt of \$14,000,000.00 against the pendency of the Legal Challenges, imposed no corresponding term protecting the public, or this Court's review of the preliminary approval, against the same contingency. (Exhibit 13 at 4.)

158. Section 508(4)(i) of the MPC entitles an applicant to final approval "in accordance with the terms of the approved preliminary application," 53 P.S. § 10508(4)(i), and so presupposes a preliminary approval that stands; Section 508(4) "does permit the governing body to place conditions upon the approval of either the preliminary or final plan with the applicant's acceptance." *Graham*, 520 Pa. at 532. Section 1003-A(d) of the MPC provides that "[t]he filing of an appeal in court under this section shall not stay the action appealed from, but the appellants may petition the court having jurisdiction of land use appeals for a stay." 53 P.S. § 11003-A(d). Appellants acknowledge that Section 1003-A(d) did not of itself bar the Board from acting upon the Phase 1-B Final Plan while the First Appeal was pending, and that no appellate decision known to Appellants requires a governing body to condition a final approval upon the disposition of an appeal from the

preliminary approval on which it rests; the ground is pleaded as an abuse of the discretion that Section 508(4) confers, upon this record.

159. Appellants submit that a governing body that measures a final plan against a preliminary approval it knows to be under review by this Court, states that measure as the limit of its responsibility, and approves the plan without any term preserving the effect of that review, abuses the discretion Section 508(4) of the MPC confers and acts contrary to law. Should the First Appeal succeed, the Phase 1-B Final Plan will have been signed, released, recorded and built upon in reliance on a preliminary approval that no longer exists, and the relief this Court may grant in the First Appeal will have been defeated by the Board's own act of September 2, 2026; the Board's approval of the Final Plan was, in that respect, an approval of a plan whose entitlement under Section 508(4)(i) was itself *sub judice*.

160. Appellants submit and therefore aver that the Board's approval of the Phase 1-B Final Plan in accordance with a preliminary approval then under review by this Court in the First Appeal, without any provision making the approval conditional upon the affirmance of that preliminary approval, was an abuse of discretion and contrary to law. Appellants submit and therefore aver that, for each of the reasons set forth in Grounds B through J of this Section, the action of the Board in approving the Final Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 1-B, together with the relief granted therewith, was arbitrary, capricious, an abuse of discretion and contrary to law.

V. GROUNDS FOR APPEAL AS TO THE PHASE 3 APPROVAL

A. The Ten (10) Modifications and Deferrals (Section 512.1 of the MPC; Article XV of the SALDO)

161. The Phase 3 Relief Motion granted "relief from the following sections" of the SALDO and the Stormwater Ordinance "subject to providing written request and justification for each relief sought and listing the relief sought on the cover sheet of the plan set" (Exhibit 2, Motion #1; Transcript at 134–136):

(1) SALDO § 501.A.2 (plan scale); (2) SALDO § 501.A.6 (location map scale); (3) SALDO § 501.C.19 and Stormwater Ordinance §§ 303.J.12 and 303.K.12 ("[d]eferral until final plan of requirements for metes and bounds descriptions of easements"); (4) SALDO §§ 703.A.10 and

707.A.1 ("[d]eferral of requirements for curbing and sidewalk along Country Club Road and PA Data Drive"); (5) SALDO § 703.I.4 (depressed curb); (6) SALDO §§ 718.D.3.a and 718.D.4 (EIA map scale); (7) SALDO § 718.D.3.b ("[d]eferral until final plan of requirements for plans and elevations depicting the proposed size, square footage, height, number of rooms of buildings and/or other structures"); (8) Stormwater Ordinance § 303.B.2 (infiltration as the primary mechanism); (9) Stormwater Ordinance §§ 303.H.17 and 303.H.18 (forty-eight (48) hour infiltration); and (10) Stormwater Ordinance § 303.J.3 (basin slopes).

162. Section 512.1 of the MPC and Article XV of the SALDO, quoted in Paragraphs 54 through 58 above, govern each of the ten (10) items.

163. The written request upon which the Board acted is a letter of LIVIC dated August 26, 2026, captioned "Project PAX-1 Phase 3 – Preliminary Waiver/ Modification/Deferral Requests" and signed by Nick Long, Sr. Project Manager (the "Phase 3 August 26 Letter"), produced to Appellants on September 24, 2026 in the Township's Written Motion Package for the Phase 3 Plan. (Exhibit 28 at 3–8.) It is dated two hundred sixty-eight (268) days after the application and seven (7) days before the vote, and it describes itself in these terms: "This document is being presented at the outset to identify ordinance provisions that may not be fully applicable to this project"; "[t]he preliminary list below is intended for discussion with Township staff and engineers"; and "[a]s the project progresses, this summary will be refined to include only those waivers and modifications that are supported by the Township and carried forward for final approval. The final list of waivers and modifications will then be added to the final plan set prior to approval and recording." (Exhibit 28 at 3.) Its items are numbered "1, 2, 3, 1, 4, 5, 6, 7, 8, 9." (Exhibit 28 at 3–8.) The Township Engineer listed it as a "[n]ew item submitted after the 8/14/2026 review" and on August 28, 2026 issued "Review Letter #3.5 (Waiver Clarification)" as "an amendment to our Plan Review Letter #3 dated 8/21/2026," modifying only the "Waivers" and "Waiver Notes" section and stating that "[a]ll other materials reviewed and all other comments remain as they were in Review Letter #3 issued 8/21/2026." (Exhibit 28 at 9.)

164. The Phase 3 Waiver Letter of November 26, 2025, which accompanied the application, requested relief from nine (9) provisions and contained no request corresponding to item (3) (SALDO § 501.C.19 and Stormwater Ordinance §§ 303.J.12 and 303.K.12) or item (7) (SALDO § 718.D.3.b), and, as to items (4) and (9), requested relief from one of the two (2) sections

cited (Sections 707.A.1 and 303.H.18) and not the other (Sections 703.A.10 and 303.H.17); the Phase 3 Review Letter #1 lists the same nine (9) requests as "the following requests for relief" submitted by the applicant. (Exhibit 16 at 1–6; Exhibit 18 at 1–2; Exhibit 2, Motion #1.) Items (3) and (7) first appear in later request letters and in the Phase 3 August 26 Letter, which states as the "Facts of Hardship" for item (3) that "[p]roviding metes and bounds for easement descriptions prior to final approval and design of the subject utilities would unnecessarily burden Township staff with additional review," and for item (7) that "[b]uildings contain proprietary, security-sensitive, and confidential information and are currently under development." (Exhibit 28 at 4, 6.) On the deferral of building elevations, the Township Engineer had written on July 9, 2026: "We recommend that this item not be waived entirely, but at most be processed as a deferral to final plan. Elevations are required to confirm adherence to Zoning ordinance requirements related to the building façade." (Exhibit 35 at 3.)

165. At the Board's August 19, 2026 meeting CDP's representative "outlined 12 requested waivers or modifications" for the Phase 3 Plan, and on September 2, 2026 Mr. Ross told the Board that the Phase 3 items had been "consolidated" following "a follow-up internal engineering meeting with the township staff," that "a couple have been removed," and that Section 718.D.3.b "is for a deferral for plans and elevations related to the building structure until final. That remains unchanged." (Exhibit 7 at 4–5; Transcript at 14–16.)

166. Appellants submit that the recitals for items (1), (2) and (6) state a preference of presentation, that the recital for item (3) states the convenience of Township staff, and that the recital for item (7) states the applicant's wish for confidentiality, and that none states an "undue hardship because of peculiar conditions pertaining to the land in question" within the meaning of Section 512.1(a) of the MPC and Section 1501 of the SALDO. The acknowledgment made in Paragraph 65 above as to the standard stated in *Whitehall Manor* and *Monroe Meadows* applies equally here.

167. The Phase 3 Relief Motion recites no finding of undue hardship because of peculiar conditions pertaining to the land, no finding that the modifications are not contrary to the public interest, and no finding that the purpose and intent of either ordinance is observed, and records no "grounds for the modification" of any requirement, as Section 1503.E of the SALDO requires.

168. Items (8), (9) and (10) modify the Stormwater Ordinance, whose Section 110 permits a waiver only upon the determinations, and subject to the applicant's burden, quoted in Paragraph 69 above. (Stormwater Ordinance § 110, Exhibit 20 at 12.) CDP's own request for item (8) asks relief "subject to an approved PA DEP Stormwater BMP per Section 301.E" of that ordinance, and the Phase 3 Review Letter #1 states that the stormwater design "has been reviewed for concept purposes only." (Exhibit 28 at 7; Exhibit 16 at 5; Exhibit 18 at 8.) The Township Engineer's incorporated letter of August 28, 2026 lists under "STORMWATER MANAGEMENT," beside the three (3) requested modifications, the direction "Demonstrate that an NPDES permit has been secured for the proposed site disturbance" and nine (9) further comments, three (3) of which state that the item "was not addressed in the latest submission" and the rest of which identify omissions, errors or inconsistencies in the plans or the stormwater report, including that "[t]he Sequence of Construction on sheet ES3 306 provides a sequence for Phase 2 of the project rather than Phase 3." (Exhibit 28 at 13–14.)

169. The County Planning Department's report incorporated by Condition 2 states, of item (8), that "[t]he township should require methods to limit erosion prior to approval of the waiver" and that "[t]he applicant should address impacts to threatened and rare populations in the floodplain prior to approval of the waiver." (Exhibit 19 at 2.) The Phase 3 Relief Motion recites none of the determinations Section 110 requires and no consultation with DEP under Section 301.F. (Exhibit 2, Motion #1; Transcript at 134–136.) Appellants aver that the three (3) items were granted without the determinations Section 110 requires and without the applicant having carried the burden that section places upon it.

170. Appellants submit and therefore aver that the grant of relief from each of the ten (10) enumerated provisions, without the findings that Section 512.1(a) of the MPC and Section 1501 of the SALDO require, without the record of grounds that Section 1503.E of the SALDO requires and, as to items (8), (9) and (10), without the determinations Section 110 of the Stormwater Ordinance requires, and for the further reasons set forth in Paragraphs 163 through 167 above, was contrary to law, and that failure alone is sufficient to have denied approval to the Phase 3 Preliminary Land Development Plan application.

B. The Seven (7) Day Filing Rule of Section 301.F.1 of the SALDO

171. The averments above concerning the applicability of Section 301.F.1 of the SALDO, quoted as to Phase 1-B approval above, are hereby incorporated by reference as to the Preliminary approval of Phase 3.

172. Condition 1 of the Phase 3 Approval requires satisfaction of the Township Engineer's "written review letter # 3.5" dated "08/28/2026," five (5) days before the September 2, 2026 meeting at which the Board considered and approved the Phase 3 Plan. (Exhibit 2, Motion #2, Condition 1.) The letter is dated August 28, 2026 and is "submitted as an amendment to our Plan Review Letter #3 dated 8/21/2026." (Exhibit 28 at 9.)

173. The above evidence is *prima facie* proof that no vote should have occurred on September 2, 2026 on Phase 3.

C. The Deferral of Building Elevations and the Façade Standards of Section 2.18(G) of the Zoning Ordinance

174. Data centers are subject to "the design criteria set forth in Section 2.18(G)" of the Zoning Ordinance, as set forth in Paragraph 151 above. (Zoning Ordinance §§ 3.04(G)(2)(a), 2.18(G), Section 718.D.3.b of the SALDO requires the EIA to identify "the nature of the proposals" through "[p]lans and elevations depicting the proposed size, square footage, height, number of rooms (where applicable) of building and/or other structures." (SALDO § 718.D.3.b.)

175. The Phase 3 Review Letter #1, under the heading "ZONING," directs CDP to "[u]pdate the 1,000 foot building façade setback (sheets 5, 10-11, 20-26) [2.18(G)1.a]," stating that "our understanding is the façade should follow the entire property as the property is bound by public streets, residential uses and/or residential districts"; to "[s]ubmit Architectural Plans documenting compliance with the building façade requirements [2.18(G)1]"; to "[p]rovide the required foundation plantings at the main entrances for each building and each applicable building facade"; and to screen the generator yards, which "are deemed as mechanical equipment." (Exhibit 18 at 2.)

176. Item (7) of the Phase 3 Relief Motion deferred to the final plan stage the "plans and elevations depicting the proposed size, square footage, height, number of rooms of buildings and/or other structures." (Exhibit 2, Motion #1.) The written request for that deferral states as its hardship

that "[b]uildings contain proprietary, security-sensitive, and confidential information and are currently under development," and as the minimum modification necessary "[d]eferring of this requirement to forthcoming building permit applications and final plan application," which "would protect the proprietary and security-sensitive natura [sic] of the building design details." (Exhibit 28 at 6.)

177. The Township Engineer's letter of August 28, 2026, incorporated by Condition 1, nonetheless retains as its first zoning comment, marked as not addressed from previous review letters: "*Submit Architectural Plans documenting compliance with the building facade requirements [2.18(G)1]. The applicant has requested a deferral of building plans and elevations until the final plan." (Exhibit 28 at 10.) The County Planning Department's report incorporated by Condition 2 states that "[t]he submission should be accompanied by architectural renderings of the building exterior (zoning 2.18.G.1)." (Exhibit 19 at 1.)

178. The Board made no finding on September 2, 2026 that the Phase 3 buildings comply with Section 2.18(G), and no finding of hardship. (Exhibit 2; Transcript at 134–137.)

179. Appellants submit and therefore aver that the deferral of the plans and elevations of the Phase 3 buildings to the final plan stage, upon a stated hardship of confidentiality that is not a condition of the land, with no finding of hardship and no finding of compliance with Section 2.18(G) of the Zoning Ordinance, and in conflict with the Township Engineer's incorporated direction to submit the architectural plans, was contrary to law, and that failure alone is sufficient to have denied approval to the Phase 3 Preliminary Land Development Plan application.

D. Noise, Water Consumption and EIA compliance

180. The foregoing averments related to the deficiencies of the Noise Memo and assessment, the inadequacy of Water supply documentation and the issues of the adequacy and lack of independence in the Environmental Impact Assessment set forth above and in the previously docketed land use appeals of other preliminary land development approvals at Dockets 2026-06465 and 2026-08652 are hereby incorporated by reference as applied to Phase 3.

F. The Country Club Road Improvements (SALDO § 501.C.14; Condition 4)

181. Section 501.C.14 of the SALDO requires a preliminary land development plan to show, as to "[a]butting existing streets or roads," the "[s]treet cartway width and lane configurations

(existing and proposed) with dimensioned widths," the "[t]ypical existing street cross section with proposed improvements, if applicable and/or required," and "[s]treet cross sections" that "shall include the entire right-of-way width and depict all relevant design information including, but not limited to, existing and proposed pavement section, shoulders, curbing, sidewalks, base drain, cross slopes, roadside drainage gutters and/or channels, and related information required for construction." (SALDO § 501.C.14.c, f, g.)

182. The Phase 3 Review Letter #1, under the heading "COUNTRY CLUB ROADWAY IMPROVEMENTS," directs CDP to "[p]rovide design drawings for the proposed improvements to Country Club Road along the frontage of Phase 3" and to "[c]larify if these improvements are to be attached to the Phase 3 plan, or if all Country Club Roadway improvements are to be attached to the Phase 1A plan." (Exhibit 18 at 12.) The Township Engineer's letter of August 28, 2026, incorporated by Condition 1, repeats the direction and adds: "The applicant has responded that Country Club Roadway improvements in the vicinity of Phase 3 will be completed in association with the Phase 1C plan, which will occur prior to this plan. This approach could result in a situation where construction traffic for Phase 3 damages recently completed improvements from Phase 1C. This comment will remain until a mutually agreeable phasing plan and security for Country Club Roadway improvements is prepared and incorporated into the developer's agreement." (Exhibit 28 at 14.) The same letter lists among the "ITEMS TO BE INCLUDED IN THE DEVELOPER'S AGREEMENT": "Provide a phasing plan describing the design, construction, and financial security for improvements to Country Club Road in the vicinity of Phases 1C, 2, and 3." (Exhibit 28 at 15.)

183. Condition 4 of the Phase 3 Approval requires "[t]hat the applicant submits a detailed Road Improvements Plan for Country Club Road, prior to approval of Final Land Development Plan for Phase 3, in a form acceptable to the Township Engineer, subject to his final review." (Exhibit 2, Motion #2, Condition 4.) Country Club Road improvements are not among the ten (10) items of relief granted by the Phase 3 Relief Motion, and no written request for a modification or deferral of Section 501.C.14 appears in the record. (Exhibit 2, Motion #1; Exhibit 16.)

184. The Master Developer's Agreement, approved the same night, provides that the center section of Country Club Road "shall be rebuilt to match the existing roadway the alignment, grades, cross section and other features described by each approved Future Land Development Plan." (Exhibit 10 at 7.)

185. No copy of the Phase 3 Plan as last revised June 25, 2026 was available for public inspection at the September 2, 2026 meeting, as will be established by affidavit and testimony, and Appellants' Right-to-Know request of August 10, 2026 for the engineering review letters on the Phase 3 Plan had been extended and not answered as of that meeting. (Transcript at 114–115.) The Township Engineer's incorporated letter establishes that, as of August 28, 2026, the design drawings for the Country Club Road improvements along the Phase 3 frontage had not been provided, that the applicant proposed to attach them to another plan, and that no phasing plan or security for those improvements had been "prepared and incorporated into the developer's agreement." (Exhibit 28 at 14–15.) The Master Developer's Agreement approved the same night contains no phasing plan or security for Country Club Road improvements in the vicinity of Phase 3. (Exhibit 10 at 5–11.) Appellants therefore aver, upon information and belief from the Township Engineer's incorporated letter, which records that the design drawings had not been provided, that the Phase 3 Plan as approved does not show the existing and proposed cross sections of Country Club Road along the Phase 3 frontage that Section 501.C.14 requires.

186. Appellants submit and therefore aver that the Board approved the Phase 3 Plan without the Country Club Road cross sections and improvement design that Section 501.C.14 of the SALDO requires at the preliminary plan stage, without a modification of that section, and deferred that design by Condition 4 to the final plan stage, and that failure alone is sufficient to have denied approval to the Phase 3 Preliminary Land Development Plan application.

G. The Environmental Impact Assessment – As to impacts on the Appalachian Trail

187. Sections 718.B and 718.C of the SALDO, quoted in Paragraph 141 above, require an EIA "with the Preliminary Plan" prepared by "a qualified consultant who shall be mutually agreed upon by the developer and the Township," and Section 718.D.8 requires "[a]n identification of the visual resources associated with the tract, such as areas which have a particular amenity value and areas which offer interest in viewing the tract," with "a narrative description" and a map. (SALDO §§ 718.B, 718.C, 718.D.8)

188. The Phase 3 Review Letter #1 states: "Technical review associated with the Environmental Site Assessment is included with the Phase 1A plan review. We request that the applicant confirm their intent to address the EIA requirements of the overall development (Phase 1A, 1B, 2, and 3) in association with the Phase 1A plan." (Exhibit 18 at 7.) The County Planning

Department's Comment 30 states: "An environmental impact assessment report should accompany the submission (SLDO 718)." (Exhibit 19 at 3.) The Township Engineer's letter of August 28, 2026, incorporated by Condition 1, lists no EIA among the documents reviewed and lists, among the "ITEMS TO BE ADDRESSED IN THE FINAL LAND DEVELOPMENT PLAN," "an updated Environmental Impact Assessment, including any changes to the plan associated with the final design." (Exhibit 28 at 9, 15.)

189. The County Planning Department's report on the Phase 3 Plan, Comment 36, states that "[t]he applicant should coordinate a visual impact analysis with the Appalachian Trail Conservancy and the National Park Service," and records the Conservancy's statement that "[t]he proposed development will fundamentally change the character of the landscape everywhere they are visible. The proposed structures will be visible for approximately 800 feet of the Appalachian Trail." (Exhibit 19 at 4–5.)

190. The Conservancy's initial statement, made in its letter to the Township of January 9, 2026, addresses "the proposed data center campus on approximately 700 acres off Country Club Road" as a whole, and the County carried it into its reports on each phase; Lot 3 is the campus farthest from the Trail. (Exhibit 21 at 1–2; Exhibit 19 at 4–5.) The comment was carried into Condition 2 of the Phase 3 Approval and was open at approval, and the Township Planning Commission recorded on the executed Component 4-A form that "[i]mpacts to Appalachian Trail viewshed [are] to be minimized," as set forth in Paragraph 31 above. (Exhibit 2, Motion #2, Condition 2; Exhibit 24 at 1.)

191. Appellants aver that the Board approved the Phase 3 Plan upon an EIA prepared by the developer's own engineer and reviewed by the Township Engineer only "in association with the Phase 1A plan," and that, as to the Appalachian Trail, CDP's answer of June 30, 2026 to the County Planning Department's comment on the Phase 1-B Final Plan carrying the same statement of the Conservancy was that "[c]oordination with the Appalachian Trail is ongoing." (Exhibit 18 at 7; Exhibit 36 at 5; Exhibit 19 at 4–5.) This ground is pleaded as additional and cumulative as to the Phase 3 Preliminary Land Development Plan application.

192. On September 2, 2026, representatives of the ATC addressed the Board as they did on May 6 and submitted a written position statement at each meeting, attached hereto and incorporated herein as Exhibits 38 and 39, respectively.

193. It is submitted to this Court that the ATC's initial assessment of visual impacts in January has, as of this submission, still been adequately addressed and CDP's efforts to possibly mitigate impacts have been deemed insufficient.

H. Incompleteness of the Preliminary Application

194. The Phase 3 Review Letter #1 directs: "Provide a completed PADEP Sewage Planning Module [503.A.3]." (Exhibit 18 at 4.) The Township Engineer's letter of August 28, 2026, incorporated by Condition 1, repeats the direction as its first comment under "SUBDIVISION AND LAND DEVELOPMENT." (Exhibit 28 at 12.) CDP's comment response letter of June 25, 2026 answers that the module "is currently being finalized and will be submitted to PADEP for review and approval promptly" and states: "We respectfully request that receipt of the approved Sewage Planning Module be made as a condition of Final Phase 3 Plan approval." (Exhibit 34 at 5.) Sections 503.A.3 and 503.A.9 of the SALDO are quoted in Paragraphs 129 and 130 above. The module adopted by the Module Resolution describes the project as "divided into five lots/phases," including "Phase 3: Five data center buildings," and had not been approved by DEP when the Board approved the Phase 3 Plan; no signed resolution or signed transmittal has been produced, as set forth in Paragraphs 131 and 137 above. (Exhibit 26 at 23; Exhibit 3 at 1.)

195. The Township Engineer's letter of August 28, 2026 further states: "On Sheet C03 301, the proposed secondary access road appears to disturb wetlands. Provide any PADEP permitting needed for this disturbance," and, under "STORMWATER MANAGEMENT," "Demonstrate that an NPDES permit has been secured for the proposed site disturbance [109]. Provide a copy of the E&S plan and any other submitted documents for reference [103.J & 301.Q]." (Exhibit 28 at 13.) The County Planning Department's report incorporated by Condition 2 states that "[t]he driveway and road crossing of the stream / wetland (see sheet C03 301) should be reviewed and approved by the Pennsylvania DEP (SLDO 503.A.8)," and that "[t]he general notes should include a description of wetlands impacted by phase 3 along with a description of the wetland mitigation proposed," with "a reference to all appropriate approvals including the Pennsylvania DEP and the US Army Corps of Engineers (SLDO 503.A.8)." (Exhibit 19 at 3.) CDP answered the Township Engineer on June 25, 2026 that "PADEP permitting is forthcoming and will be provided when available. We respectfully request that this is a condition of Preliminary Land Development approval," and, as to the NPDES permit, "We request that the Approved NPDES

permit be a condition of approval." (Exhibit 34 at 8, 10.) The Phase 3 Approval contains no separate condition on either permit; the comments are carried only by Condition 1's incorporation of the August 28, 2026 letter. (Exhibit 2, Motion #2.)

196. Appellants aver that the Phase 3 application lacked, at approval, the completed sewage facilities planning module, the MTMA report, the DEP approvals for the stream and wetland crossing and the NPDES permit coverage that Sections 503.A.3, 503.A.8 and 503.A.9 of the SALDO and Sections 103.J, 109 and 301.Q of the Stormwater Ordinance require of a preliminary land development plan; that the applicant itself asked that three (3) of them be made conditions of approval, the module as a condition of final Phase 3 approval and the permits as conditions of the preliminary approval, and the Phase 3 Approval imposes no separate condition on any of them; and that those omissions are not notations and labels "correctable by fairly simple amendments." *Shelbourne*, 794 A.2d at 950. This ground is pleaded as additional and cumulative, in support of Ground I of this Section, as to the Phase 3 Preliminary Land Development Plan application.

VI. VIOLATIONS OF THE SUNSHINE ACT, 65 Pa.C.S. §§ 701–716, AS ADDITIONAL BASES FOR THE RELIEF REQUESTED

A. The Nature of These Grounds, Their Timeliness, and the Statutes to Be Read Together

197. The grounds set forth in this Section are pleaded as additional bases for the relief requested under Section 1006-A(a) of the MPC, 53 P.S. § 11006-A(a), and are offered to the Court as evidence of the abuses of discretion and errors of law committed by the Board in the exercise of its authority over the Phase 1-B Final Plan and the Phase 3 Plan under the MPC, as set forth in footnote 1. The Board is an "agency," the September 2, 2026 meeting was a "meeting," and each vote the Board took was "official action," within the meaning of 65 Pa.C.S. § 703. The Board's approval of the Agreements at the same meeting, and the violations of the Sunshine Act attending it, are the subject of the separate action for declaratory relief described in footnote 4; in this appeal Appellants seek no declaratory judgment, no injunction and no award of counsel fees under the Sunshine Act, and the facts pleaded in this Section are pleaded as the record of the manner in which the Decisions were made.¹⁹

¹⁹The Sunshine Act's own vehicle for a declaratory judgment or an injunction is an action under 65 Pa.C.S. § 715, which the Act places within the original jurisdiction of the courts of common pleas.

198. Section 713 of the Sunshine Act provides that, "[s]hould the court determine that the meeting did not meet the requirements of this chapter, it may in its discretion find that any or all official action taken at the meeting shall be invalid." 65 Pa.C.S. § 713. The discretion so conferred is "discretionary, not obligatory," *Baribault v. Zoning Hearing Board of Haverford Township*, 236 A.3d 112, 120 (Pa. Cmwlth. 2020), and, in a land use appeal, is exercised through the power that Section 1006-A(a) of the MPC confers to set aside or modify the action brought up on appeal. The Commonwealth Court has decided Sunshine Act questions raised as grounds within land use appeals brought under Article X-A of the MPC, *Sunset Development, Inc. v. Board of Supervisors*, 600 A.2d 641, 647 (Pa. Cmwlth. 1991); *Baribault*, 236 A.3d at 120, and the Supreme Court has reviewed a Sunshine Act claim raised within a statutory appeal, disposing of it only upon its timeliness. *Day v. Civil Service Commission of Carlisle*, 931 A.2d 646, 650–53 (Pa. 2007). Appellants plead the official actions of September 2, 2026 as "invalid" and voidable in the Court's discretion, and do not adopt as their legal position the characterization "void *ab initio*" made by counsel at the meeting and quoted in Paragraph 41 above.

199. Section 713 further provides that "[a] legal challenge under this chapter shall be filed within 30 days from the date of a meeting which is open." 65 Pa.C.S. §713. This Notice is filed within thirty (30) days of the September 2, 2026 meeting at which each of the Decisions was made, so that the grounds set forth in this Section are timely under Section 713 as well as under Section 1002-A of the MPC; September 2, 2026 being excluded from the computation, the thirtieth (30th) day is October 2, 2026.

200. A writ of summons filed by Appellants on October 2, 2026 against the Board protects this deadline while the substance of which is appears herein.

201. Section 704 of the Sunshine Act provides that "[o]fficial action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public." 65 Pa.C.S. § 704. Section 710.1(a) provides, in pertinent part, that "the board or council of a political subdivision ... shall provide a reasonable opportunity at each advertised regular meeting and advertised special meeting for residents of the political subdivision ... or for taxpayers of the political subdivision ... to

Appellants bring such an action separately as to the Board's approval of the Agreements, and plead the deficiencies of the September 2, 2026 meeting here, as to the Decisions, as additional bases for relief under Section 1006-A(a) of the MPC. *See* footnotes 1 and 4.

comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action," and that "[t]he board or council has the option to accept all public comment at the beginning of the meeting." 65 Pa.C.S. § 710.1(a). Section 702(a) declares that "the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decisionmaking of agencies is vital to the enhancement and proper functioning of the democratic process." 65 Pa.C.S. § 702(a).

202. Section 710.1(c) provides that "[a]ny person has the right to raise an objection at any time to a perceived violation of this chapter at any meeting of a board or council of a political subdivision or an authority created by a political subdivision." 65 Pa.C.S. § 710.1(c). Appellants, through counsel, raised an objection on the record on September 2, 2026 before the Board acted.

203. Section 708(b)(10)(ii) of the Right-to-Know Law provides that the exemption for internal, predecisional deliberations "shall apply to agencies subject to 65 Pa.C.S. Ch. 7 (relating to open meetings) in a manner consistent with 65 Pa.C.S. Ch. 7," and that "[a] record which is not otherwise exempt from access under this act and which is presented to a quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7 shall be a public record." 65 P.S. § 67.708(b)(10)(ii).

204. The Right-to-Know Law and the Sunshine Act "relate to the same class of things, information about actions by public agencies," are "in pari materia," and "shall be construed together, if possible, as one statute." *Office of General Counsel v. Bumsted*, 247 A.3d 71 (Pa. Cmwlth. 2021) (quoting *Silver v. Borough of Wilkinsburg*, 58 A.3d 125, 128 (Pa. Cmwlth. 2012), and *Schenck v. Township of Center*, 893 A.2d 849, 853 (Pa. Cmwlth. 2006)); 1 Pa.C.S. § 1932. The MPC defines a "public meeting" as "a forum held pursuant to notice under 65 Pa. C.S. Ch. 7," 53 P.S. § 10107(a), and the decision of a governing body on a land development application is made when it votes at that meeting. *In re Appeal of Arnold*, 984 A.2d 1, 7 (Pa. Cmwlth. 2009).

B. The Facts

205. Paragraphs 37 through 47 above are incorporated by reference. The following additional facts are pleaded as to the manner in which the Decisions were made.

206. The September 2, 2026 meeting was advertised by public notice and posted on the Township's website, and was an advertised meeting within the meaning of 65 Pa.C.S. § 710.1(a); the

posted agenda stated that public comment was "[f]or all comments ON or NOT ON the agenda" and listed a "Possible motion" on each of the seven (7) PAX-1 matters. (Exhibit 4 at 1–2.)

207. At the August 19, 2026 meeting the Township's consultants "indicated that the noise issue remained unresolved because neither approach had yet been finalized in an executed agreement." (Exhibit 7 at 5.) At that meeting, as set forth in Paragraph 34 above, the applicant agreed to extend the Board's deadline to September 2, 2026. (Exhibit 7 at 6.)

208. No physical copy of either plan set was available at the September 2, 2026 meeting for public inspection; no written list of the relief to be granted, no written request or justification for it, and no written motion or conditions of approval were distributed to the public or displayed; and the only paper made available to the public at the meeting was the set of four (4) Agreements placed in the hall by the applicant, as will be established by affidavit and testimony. (Transcript at 8–9.) Counsel for Appellants stated on the record before the Board acted: "And tonight we're getting modifications that you feverishly scribbled down of what waivers are being requested and what are being combined." (Transcript at 114–115.) Each motion granting relief was made "subject to providing written request and justification for each relief sought and listing the relief sought on the cover sheet of the plan set." (Exhibit 1, Motion #2; Exhibit 2, Motion #1; Transcript at 129–131, 134–136.) The written requests for the relief so granted are two (2) letters of the applicant's engineer dated August 26, 2026, which the Township produced on September 24, 2026, and the Township Engineer's review letters of August 27 and August 28, 2026 each direct the applicant to "[u]pdate the plan cover sheet to match the waiver requests indicated in the August 26, 2026 request letter." (Exhibit 27 at 4–7, 9; Exhibit 28 at 3–8, 10.)

209. None of the four (4) engineering review letters incorporated in the conditions of approval, described in Paragraph 28 above, had been made available to the public before or at the meeting.

210. During public comment, in answer to a question from Appellant Alexia Gerber, which Vice-Chairman Neiderer framed as "the question you're asking is that Mr. Grove brought up about the financial security for PA Data Center Drive," he stated that "the PA Data Center Drive financial security has been added and will be a condition of final land development approval. So that issue has been resolved." (Transcript at 84–85.)

211. The last public comment was that of Robert Eppley, Jr., whose closing remarks begin at page 126 of the Transcript; no further comment was taken. At page 127 of the Transcript Vice-Chairman Neiderer stated, "All right, it's time for us to act on the motions that are on the agenda tonight." (Transcript at 125–127.) The Board did not respond to counsel's objection or request, or to the requests of residents that the votes be tabled or the deadlines extended. (Transcript at 92, 110–111, 127.)

212. The text of the nine (9) conditions of the Phase 1-B Final Approval and the four (4) conditions of the Phase 3 Approval were read for the first time in the reading of the motions, after public comment had ended, and no further opportunity to comment was afforded. (Transcript at 131–133, 136–137.) The conditions so read include Condition 9 of the Phase 1-B Final Approval, "[t]hat the applicant comply with all the requirements of the Letter Agreement between the Township and Developer"; Condition 8, requiring the recording of two (2) plans whose approvals were then under appeal before this Court at No. 2026-06465 before the Phase 1-B Final Plan is released; Conditions 1 through 3, incorporating three (3) letters not then produced to the public "in a manner acceptable to the Township Engineer" or the Municipal Authority engineer, "subject to his final review"; and Condition 4 of the Phase 3 Approval, deferring a "detailed Road Improvements Plan for Country Club Road" to final approval. (Exhibit 1, Motion #3; Exhibit 2, Motion #2.)

213. After the conditions of each plan approval were read, the only person afforded an opportunity to respond to them was the applicant's representative, as set forth in Paragraph 42 above; no member of the public was asked or permitted to comment on them. (Transcript at 133–134, 137.)

214. As of the date of this filing the minutes of the September 2, 2026 meeting have not been approved or published, and are listed for approval at the Board's meeting of October 7, 2026.

C. The Decisions Were Made Without the Opportunity for Comment That Section 710.1(a) Requires

215. The official action taken on September 2, 2026 consisted of the grant of eighteen (18) enumerated modifications, each "subject to providing written request and justification for each relief sought," and the approval of the two (2) plans subject to thirteen (13) enumerated conditions, including the incorporation of four (4) engineering review letters that had not been produced to the

public, the incorporation as a condition of a Letter Agreement not fully executed when the condition was imposed, and the recording of plans under appeal. (Exhibit 1, Motions #2–#3; Exhibit 2, Motions #1–#2.)

216. Appellants acknowledge that the Sunshine Act's agenda provision, 65 Pa.C.S. § 709(c.1), does not itself require an agency to distribute the documents on which it will act, *O'Neill v. Pennsylvania Fish and Boat Commission*, 347 A.3d 118 (Pa. Cmwlth. 2025); that Section 710.1(a) permits a board to take all public comment at the beginning of a meeting; and that Section 710.1(b) provides that, where subsection (a) has been complied with, "the judicial relief under section 713 ... shall not be available on a specific action solely on the basis of lack of comment on that action." 65 Pa.C.S. § 710.1(b). Appellants further acknowledge that the eighteen (18) modifications were read aloud before comment opened, that the operative terms of the Letter Agreement were read aloud before comment opened and residents commented upon them, that the PA Data Drive security condition was announced during comment, and that Conditions 5, 6 and 7 of the Phase 1-B Final Approval and Condition 3 of the Phase 3 Approval repeat, in substance, conditions of the preliminary approval of the Phase 1-B plan of May 6, 2026. (Transcript at 9–17, 56, 85, 97; Exhibit 5 at 15; Exhibit 1, Motion #3; Exhibit 2, Motion #2.) Conditions 1 through 4 of the Phase 1-B Final Approval and Conditions 1 and 2 of the Phase 3 Approval follow the form of that preliminary approval but incorporate review letters dated July 8, August 19, August 27 and August 28, 2026, none of which was before the public on September 2, 2026. (Exhibit 5 at 15; Exhibit 1, Motion #3; Exhibit 2, Motion #2.) Appellants do not plead the absence of the documents as a violation of Section 709(c.1).

217. Appellants plead that subsection (a) was not complied with as to the official actions taken, in that: (a) four (4) of the conditions incorporate, as the substantive content of the approvals, engineering review letters that the Township had not produced to the public, a Right-to-Know Law extension having been invoked, two (2) of which are dated after the August 19, 2026 meeting, and which the Township produced only on September 24, 2026; (b) the text of the thirteen (13) conditions, including Condition 8's requirement that two (2) plans under appeal before this Court be recorded first, was read for the first time after comment had ended, no further opportunity to comment was afforded, and the applicant alone was asked whether the conditions were acceptable; and (c) each grant of relief was made "subject to providing written request and justification for each relief sought," and the written requests, being the applicant's letters of August 26, 2026, and the

plans themselves were not before the public when it commented. (Exhibit 1, Motions #2–#3; Exhibit 2, Motions #1–#2; Exhibit 27 at 4–7; Exhibit 28 at 3–8; Exhibit 29 at 1; Transcript at 114–115, 126–137.)

218. Appellants submit that an opportunity to comment on a plan approval given before the documents that constitute the substance of that approval exist or are disclosed is not the "reasonable opportunity" to comment on "official action ... which [is] or may be before the board" that Section 710.1(a) requires, and that Section 710.1 is "a clear legislative prescription for public comment before boards and councils." *Alekseev v. City Council of Philadelphia*, 8 A.3d 311 (Pa. 2010). In anticipation of the argument that Section 710.1(b) forecloses relief on this ground, it should be noted that subsection (b) limits judicial relief where a board has provided the opportunity that subsection (a) requires and a specific action nonetheless drew no comment; it does not address an action whose terms the public first heard after the comment period had ended. Appellants do not plead a lack of comment. Appellants plead that comment on the conditions of approval was not possible when comment was taken, because the conditions had not been disclosed.²⁰ Appellants acknowledge that the Supreme Court has described Section 710.1(b) as making "invalidation unavailable as a remedy where the meeting's only violation is a failure to provide a reasonable opportunity for comment by residents and taxpayers," *Kennedy v. Upper Milford Township Zoning Hearing Board*, 834 A.2d 1104, 1124 (Pa. 2003), and plead this ground as a basis upon which the Court should set aside the Decisions under Section 1006-A(a) of the MPC, the invalidity of the official action under Section 713 being a matter for the Court's discretion upon the whole record.

219. Appellants raised an objection on the record before the Board acted, as set forth in Paragraph 41 above, and asked the Board to obtain the applicant's agreement to an extension so that the documents could be made public before any vote; the Board did not respond and proceeded to vote. (Transcript at 114–115, 127.) Moreover, CDP had agreed to an extension of the Board's deadlines two (2) weeks earlier. (Exhibit 7 at 6.)

²⁰The point was reached on a video record in *Mid-Mon Valley Publishing Co. v. City of Monessen*, No. 581 of 2020 (C.P. Westmoreland Dec. 11, 2020) (Smail, J.), in which the court held that comment taken at the start of a meeting did not satisfy Section 710.1(a) as to motions whose content the public had no opportunity to address, and found "facially apparent violations of Section 710.1(a)." The opinion is that of a court of common pleas and is cited as persuasive only.

220. Appellants submit and therefore aver that the Board did not provide a reasonable opportunity for residents and taxpayers to comment on the official actions it took on September 2, 2026 prior to taking them, contrary to 65 Pa.C.S. § 710.1(a); that the Phase 1-B Final Approval and the Phase 3 Approval, having been made without the opportunity for comment that the Act requires, were made in abuse of the Board's discretion and contrary to law; and that each should be set aside under Section 1006-A(a) of the MPC, the Court being further empowered in its discretion under 65 Pa.C.S. § 713 to find the official action so taken invalid, and the applications remanded to the Board for action upon a lawful record. This ground is pleaded as additional to the grounds set forth in Sections VII and VIII above, and as independently sufficient to set aside each Decision.

D. Read Together, the Right-to-Know Law and the Sunshine Act Do Not Permit a Governing Body to Deliberate and Act in Public Upon Records It Withholds From the Public

221. By force of Section 708(b)(10)(ii) of the Right-to-Know Law, each of the four (4) review letters and each written request became a public record no later than the moment it was presented to the Board, a two (2) member quorum, 53 P.S. § 65603, for deliberation at the September 2, 2026 meeting. *Philadelphia Public School Notebook v. School District of Philadelphia*, 49 A.3d 445 (Pa. Cmwlth. 2012) (records placed before the body "for public consideration and comment" at its public meeting are "no longer 'drafts'" and "no longer 'internal'"); *Mollick v. Township of Worcester*, 32 A.3d 859 (Pa. Cmwlth. 2011) (Section 708(b)(10)(ii) read with the Sunshine Act's definitions of "deliberation" and quorum). The Township's own Right-to-Know Officer described the motion sheets, nine (9) days after the vote, as "drafts for official action." (Exhibit 3 at 1.)

222. Construed together as one statute, the Right-to-Know Law and the Sunshine Act secure to the public the right to witness the deliberation and the decision (65 Pa.C.S. § 702(a)), to have the deliberation and the vote occur in the open (65 Pa.C.S. § 704), to comment on the action before it is taken (65 Pa.C.S. § 710.1(a)), and to have the records on which the quorum deliberates be public records (65 P.S. § 67.708(b)(10)(ii)). A board that takes official action upon records it has declined to produce, over a pending request and an objection on the record, has afforded the public the form of each right and the substance of none. Appellants submit and therefore aver that the Board's approval of the Phase 1-B Final Plan and the Phase 3 Plan upon review letters and written requests it had not made public, with conditions first disclosed after comment closed, and its refusal

to seek the extension that would have cured the defect, was contrary to law and an abuse of the discretion conferred by Section 508 of the MPC and Article V of the SALDO, independently of Section 713, and is a further basis upon which each Decision should be set aside under Section 1006-A(a) of the MPC.

223. Appellants submit that this constituted an error of law and abuse of discretion reviewable under Section 1005-A of the MPC and remediable under Section 1006-A(a), and, insofar as it rests upon the Sunshine Act, as a ground raised within thirty (30) days of the September 2, 2026 meeting as Section 713 requires. Appellants acknowledge that the Right-to-Know Law provides its own remedies for the withholding of records, which Appellants are pursuing before the Office of Open Records, and that no appellate decision has yet applied Section 708(b)(10)(ii) to the opportunity for comment under Section 710.1(a).

VII. RELIEF

224. Section 1006-A(a) of the MPC provides that "[i]n a land use appeal, the court shall have power to declare any ordinance or map invalid and set aside or modify any action, decision or order of the governing body, agency or officer of the municipality brought up on appeal." 53 P.S. § 11006-A(a). The relief requested in this Section is requested under that power, upon each of the grounds set forth in Sections VII through IX above.

225. The Phase 1-B Final Approval and the Phase 3 Approval were each erroneously made by the Board as an abuse of its discretion and as a product of its arbitrary and capricious action in violation of its own governing ordinances and of the Pennsylvania Municipalities Planning Code, for the reasons set forth in Sections VII and VIII above, and each should be set aside and the application remanded to the Board for denial.

226. Appellants request no relief in this appeal directed to the Agreements or to the Module Resolution, from which no appeal is taken herein, as set forth in Paragraph 5 above and footnote 4. Condition 9 of the Phase 1-B Final Approval, which incorporates the Letter Agreement, and Conditions 7 and 8, which the Master Developer's Agreement and the First Amendment implement, form part of that Decision and fall with it; the Agreements afford adjoining residents protections Appellants do not disclaim, and nothing herein asks that those protections be vacated.

227. In the alternative, and without waiver of the foregoing, this Court "may strike conditions that are not legal," *Koller*, 871 A.2d at 292, including the modifications and deferrals granted by the Phase 1-B Relief Motion and the Phase 3 Relief Motion and Condition 4 of the Phase 3 Approval, or remand for the statement of the basis for the modifications that the record lacks. *Miravich II*, 54 A.3d at 114. Appellants do not request that Condition 5 or Condition 9 of the Phase 1-B Final Approval be stricken while the approval stands.

228. For the reasons set forth above, the Phase 1-B Final Approval and the Phase 3 Approval were made without the opportunity for comment that Section 710.1(a) of the Sunshine Act requires, upon records the Board had withheld from the public and, as to the Phase 1-B Final Approval, upon a vote not publicly cast as Section 705 requires, and each should be set aside under Section 1006-A(a) of the MPC on those grounds also, and found invalid in the Court's discretion under 65 Pa.C.S. § 713, with the applications remanded to the Board for action upon a lawful record; or, in the alternative, modified as set forth in Paragraph 229 below. Appellants seek no declaration, injunction or award of counsel fees under the Sunshine Act in this appeal.

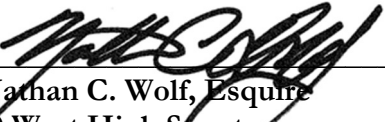
229. For the reasons set forth above, and in the alternative to the setting aside of the Phase 1-B Final Approval, that Decision should be modified under Section 1006-A(a) of the MPC to provide that the approval of the Phase 1-B Final Plan is conditional upon the final disposition of the First Appeal in favor of the preliminary approval of May 6, 2026, shall be of no effect should that approval be reversed or set aside, and that the Phase 1-B Final Plan shall not be signed by the Township or released for recording until that disposition.

WHEREFORE, Appellants request that this Honorable Court, pursuant to Section 1006-A(a) of the Pennsylvania Municipalities Planning Code, 53 P.S. § 11006-A(a): (a) grant their appeal; (b) set aside the decisions of the Board of Supervisors granting conditional final approval to the Final Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 1-B and conditional preliminary approval to the Preliminary Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 3, together with the modifications, deferrals and conditions granted and imposed therewith, upon the grounds set forth in Sections VII and VIII above, and remand those matters to the Board of Supervisors for denial of the appealed applications; (c) set aside the same decisions upon the additional bases set forth in Section IX above, finding in the Court's discretion under 65 Pa.C.S. § 713 that the official actions taken at the September 2, 2026 meeting with respect to those

applications are invalid, and remand those matters to the Board of Supervisors for action upon a lawful record; (d) in the alternative to (b) and (c), modify those decisions by striking the unlawful modifications, deferrals and conditions; by suspending their effect, and the signature and release for recording of the plans they approve, until the Board has re-presented the conditions of approval and the records they incorporate in compliance with the Sunshine Act; and, as to the Final Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 1-B, by making its approval conditional upon the final disposition of the First Appeal in favor of the preliminary approval of May 6, 2026 and staying its signature and release for recording until that disposition, as set forth in Paragraph 229 above; and (e) grant such other and further relief as the Court deems appropriate and just.

Respectfully submitted,
WOLF & WOLF

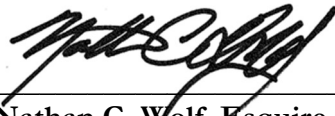
Dated: October 2, 2026

BY: 
Nathan C. Wolf, Esquire
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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

INDEX OF EXHIBITS

- Exhibit 1. Township "Draft Motions for September 2, 2026 Board of Supervisors Meeting," Final Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 1-B (Motions #1, #2 and #3, including Resolution No. 2026-12), as produced in the Township's September 11, 2026 Right-to-Know response (3 pages)
- Exhibit 2. Township "Draft Motions for September 2, 2026 Board of Supervisors Meeting," Preliminary Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 3 (Motions #1 and #2), as produced in the Township's September 11, 2026 Right-to-Know response (3 pages)
- Exhibit 3. Middlesex Township Right-to-Know response letter of Zachary Zook, Right to Know Officer, to Andrew Dymski, dated September 11, 2026 (2 pages)
- Exhibit 4. Middlesex Township Board of Supervisors meeting agenda, September 2, 2026 (2 pages)
- Exhibit 5. Middlesex Township Board of Supervisors Meeting Minutes, May 6, 2026 (excerpt: pp. 1, 14–15 of 20)
- Exhibit 6. Middlesex Township Board of Supervisors Meeting Minutes, August 5, 2026 (4 pages)
- Exhibit 7. Middlesex Township Board of Supervisors Meeting Minutes, August 19, 2026 (excerpt: pp. 1, 4–6 of 25)
- Exhibit 8. Middlesex Township Board of Supervisors Meeting Minutes, August 28, 2026 (excerpt: pp. 1–2 of 11)
- Exhibit 9. Middlesex Township Planning Commission Meeting Minutes, June 22, 2026 (excerpt: pp. 1, 3 of 5)
- Exhibit 10. Developer's Agreement between Middlesex Township and Carlisle Development Partners, LLC, dated September 2, 2026, as posted by the Township (14 pages)
- Exhibit 11. First Amendment to Developer's Agreement (Phase 1-B), dated August 19, 2026, as posted by the Township (6 pages)
- Exhibit 12. Letter Agreement (well testing, noise monitoring and other protections) dated September 2, 2026, as posted by the Township (5 pages)
- Exhibit 13. Community Benefits Agreement, dated "this ____ day of August, 2026," as posted by the Township (5 pages)
- Exhibit 14. LIVIC Civil Letter of Transmittal, PAX-1 Phase 1-B Final Land Development Plan, dated May 15, 2026 (1 page)
- Exhibit 15. LIVIC Civil "Pennsylvania Digital 1 (PAX-1) Phase 1B – Final Waiver/Modification/Deferral Requests" letter, dated May 15, 2026 (4 pages)
- Exhibit 16. LIVIC Civil "Project PAX-1 Phase 3 – Preliminary Waiver/Modification Requests" letter, dated November 26, 2025 (6 pages)
- Exhibit 17. Herbert, Rowland & Grubic, Inc. Phase 1-B Final Land Development Plan Review Letter #1, dated June 8, 2026 (excerpt: pp. 1–3 of 6)

Exhibit 18. Herbert, Rowland & Grubic, Inc. Phase 3 Preliminary Land Development Plan Review Letter #1, dated February 6, 2026 (excerpt: pp. 1–2, 4, 7–8, 12 of 13)

Exhibit 19. Cumberland County Planning Department Subdivision and Land Development Review Report, Plan Number P25-1177 (PAX-1 Phase 3), dated January 12, 2026 (report only; plan sheets omitted) (5 pages)

Exhibit 20. Middlesex Township Ordinance No. 6-2011, Stormwater Management Ordinance (excerpt: pp. 1, 12, 23–24 of 73)

Exhibit 21. Letter of the Appalachian Trail Conservancy to Zachary Zook, Township Manager, dated January 9, 2026 (4 pages)

Exhibit 22. Hazen and Sawyer letter to the Middlesex Township Municipal Authority, "Industrial Force Main & Water Line Review No. 1," responding to the comment letter of JHA Companies dated June 3, 2026, dated June 16, 2026 (excerpt: pp. 1–2 of 11)

Exhibit 23. Susquehanna River Basin Commission Groundwater Withdrawal Application Summary, Middlesex Township Municipal Authority Well 2, SRBC Pending No. 2025-174 (3 pages)

Exhibit 24. DEP Sewage Facilities Planning Module Component 4A, Municipal Planning Agency Review, Pennsylvania Digital (PAX-1), DEP Code No. A3-21915-257-3, executed by the Middlesex Township Planning Commission on June 22, 2026 (2 pages)

Exhibit 25. DEP Sewage Facilities Planning Module Component 3 (in part), with the Chapter 94 consistency determinations signed by the Middlesex Township Municipal Authority (June 19, 2026) and the Carlisle Borough Sanitary Sewer System Authority (July 21, 2026), as produced by the Authority (excerpt: pp. 1, 7 of 12)

Exhibit 26. Pennsylvania Department of Environmental Protection, Bureau of Clean Water, file for DEP Code No. A3-21915-257-3 (Pennsylvania Digital 1 (PAX-1) Component 3 Sewage Facilities Planning Module), as obtained from DEP (excerpts: pages 1 through 10, 63 through 76 and 132 through 142 of 195; the complete file will be produced upon request) (excerpt: pp. 1, 9–10, 23, 30–31 of 35)

Exhibit 27. Township "Written Motion Phase 1B final," produced by the Township under the Right-to-Know Law on September 24, 2026: the Township's file copy of the "Draft Motions for September 2, 2026 Board of Supervisors Meeting" for the Final Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 1-B, with highlighting and a handwritten alteration of the resolution number (pages 1–2); DEP form "Resolution for Plan Revision for New Land Development," unsigned (page 3); LIVIC letter dated August 26, 2026, "Phase 1B – Final Waiver/Modification/Deferral Requests" (pages 4–7); Herbert, Rowland & Grubic, Inc., "Phase 1B Final Land Development Plan Review Letter #3.5 (Waiver Clarification)," August 27, 2026 (pages 8–12); JHA, for the Middlesex Township Municipal Authority, "Water and Sewer Review No. 2," August 19, 2026 (pages 13–27); Cumberland County Planning Department Subdivision and Land Development Review Report, Plan Number P26-369, reviewed June 8, 2026 (pages 28–32); JHA letter to LIVIC Civil dated June 24, 2026 (pages 33–34); LIVIC Letter of Transmittal dated July 31, 2026 (page 35); LIVIC comment response letter dated July 30, 2026 (pages 36–42); LIVIC "Notification of Final Phase 1B Stormwater Design Addendum" dated July 31, 2026 (page 43); Penney Design Group concept design elevations dated July 24, 2026 (pages 44–48); and LIVIC letter

dated July 28, 2026, "Phase 1B – Final Waiver/Modification/Deferral Requests" (pages 49–53) (53 pages)

Exhibit 28. Township "Written Motion Phase 3," produced by the Township under the Right-to-Know Law on September 24, 2026: the Township's file copy of the "Draft Motions for September 2, 2026 Board of Supervisors Meeting" for the Preliminary Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 3 (pages 1–2); LIVIC letter dated August 26, 2026, "Project PAX-1 Phase 3 – Preliminary Waiver/ Modification/Deferral Requests" (pages 3–8); Herbert, Rowland & Grubic, Inc., "Phase 3 Preliminary Land Development Plan Review Letter #3.5 (Waiver Clarification)," August 28, 2026 (pages 9–16); and Cumberland County Planning Department Subdivision and Land Development Review Report, Plan Number P25-1177, reviewed January 12, 2026 (pages 17–21; also Exhibit 19) (21 pages)

Exhibit 29. E-mail correspondence between Zachary Zook, Middlesex Township Manager and Right to Know Officer, and Andrew Dymski, "RTK Response for September 3, 2026 request," September 11, 2026 (3:52 p.m. and 4:27 p.m.) and September 24, 2026 (11:11 a.m.), as rendered from Appellant Andrew Dymski's mailbox, with the attachment names (2 pages)

Exhibit 30. Herbert, Rowland & Grubic, Inc., "Phase 1B Final Land Development Plan Sound Study Review Letter #1," July 8, 2026, as produced by the Township under the Right-to-Know Law on September 24, 2026 (3 pages)

Exhibit 31. Kimley-Horn, "PAX-1 – Acoustical Design Evaluation, Site Application Process Report," June 17, 2026, as produced by the Township under the Right-to-Know Law on September 24, 2026 (excerpt: pp. 1, 3–6, 8–9, 12–14 of 14)

Exhibit 32. LIVIC Civil comment response letter to Middlesex Township, PAX-1 Phase 1B Final Land Development Plan, June 19, 2026, as produced by the Township under the Right-to-Know Law on September 24, 2026 (excerpt: pp. 1, 4–5 of 9)

Exhibit 33. Herbert, Rowland & Grubic, Inc., financial security recommendation letter, Final Land Development Plan for Pennsylvania Digital 1 (PAX-1) Phase 1-B, July 9, 2026, with tabulation, as produced by the Township under the Right-to-Know Law on September 24, 2026 (3 pages)

Exhibit 34. LIVIC Civil comment response letter to Middlesex Township, PAX-1 Phase 3 Preliminary Land Development Plan, June 25, 2026, as produced by the Township under the Right-to-Know Law on September 24, 2026 (excerpt: pp. 1, 5, 8, 10 of 17)

Exhibit 35. Herbert, Rowland & Grubic, Inc., "Phase 3 Preliminary Land Development Plan Review Letter #2," July 9, 2026, as produced by the Township under the Right-to-Know Law on September 24, 2026 (excerpt: pp. 1, 3 of 11)

Exhibit 36. LIVIC Civil response to the Cumberland County Planning Department review report, Plan Number P26-369, Phase 1B Final Land Development Plan, June 30, 2026, as produced by the Township under the Right-to-Know Law on September 24, 2026 (excerpt: pp. 1–2, 5 of 6)

Exhibit 37. Unofficial transcript of the September 2, 2026 public meeting of the Middlesex Township Board of Supervisors, prepared from the video recording made by Appellant Kyle Gerber, in court-reporter format, not certified (the "9/2/2026 Transcript") (excerpt: pp. 1, 5–17, 56, 84–85, 92, 97, 110–111, 114–115, 125–137 of 141)

Exhibit 38. Appalachian Trail Conservancy, "Comments on the PAX-1 Data Center, Middlesex Township BOS Meeting, 09.02.26," written statement of Michele Miller submitted to the Board at the September 2, 2026 meeting (1 page)

Exhibit 39. Appalachian Trail Conservancy, "Appalachian Trail Conservancy Opposes PAX-1 Data Center in Middlesex Township, Pennsylvania," public statement dated May 6, 2026, as published at appalachiantrail.org (3 pages)