

6. Mr. Hoefert and his then spouse purchased his property from the Petitioner.
7. The F-O Tract was an integral component of the Petitioner and its related companies' proposed 1988 development [the "Proposed Development"]. [Twp Ex. 6].
8. The Proposed Development included a hotel and conference center, certain commercial uses including food, beverage, and miniature golf uses, condominiums, single-family dwelling units, on various adjoining and related parcels of property; and an 18-hole golf course on the F-O Tract.
9. The golf course on the F-O tract was the centerpiece of the Proposed Development and designed to enhance the value of the other Proposed Development construction, including, *inter alia*, the residential housing units.
10. The adjoining residential units were sold as part of this Proposed Development and, particularly, as benefiting from their proximity to the golf-course and hotel, conference, food and beverage facilities.
11. Increased proximity to those facilities resulted in significantly higher purchase prices being paid to the Petitioner and its related entities by Mr. Hoefert and other proximate property owners, as well as by subsequent purchasers and sellers, such premiums often exceeding \$50,000.00 per lot as compared to other otherwise similar parcels of land.
12. Adjacent and proximate dwelling units, such as Mr. Hoefert's, are developed at a density of up to three units per acre, with many dwellings on lots greater than one acre.
13. The F-O zoning permits residential development at a density of up to one single-family dwelling per acre.
14. The F-O maximum permitted zoning density serves to and does protect the value of the adjacent homes from significant depreciation in value resulting from the development of higher density housing development.
15. The current request by the Petitioner as well as the numerous prior attempts by the Petitioner to change the zoning of the F-O Tract is causing and has caused significant harm to the adjoining and proximate property owners and residents in that they have seen not only the value of their properties adversely affected relative to other otherwise similar properties, but they have also experienced a heightened level of uncertainty among prospective purchasers relative to otherwise similar properties such that sales of houses proximate to the F-O Tract have been very significantly adversely affected by Petitioner's numerous attempts to rezone the F-O Tract.
16. Changing the F-O zoning to that requested by the Petitioner would result in development of the F-O Tract at densities and, consequently, with housing that would be inconsistent with the current development of the adjoining and proximate properties and would thereby cause serious and irreparable harm to such owners and residents.

17. Petitioner is aware of these adverse effects on adjoining and proximate property owners and residents and has repeated its lack of concern for and intention to pursue its course of action notwithstanding, often expressing its intention to pursue development in such a manner as to maximize adverse effects to such owners and residents, and thereby displaying bad faith, lack of concern for, and a willingness to injure its neighbors. To this point, adjoining and proximate residents indicated that they would not have purchased properties had they anticipated the Petitioner's request to change zoning for the F-O Tract from that which the Petitioner requested in 1987, namely its request to then rezone the tract to F-O zoning.

18. Adjacent and proximate property owners and residents have relied on and planned their lives and living arrangements based on the F-O zoning of the F-O Tract for well over 20 years, all with the rational expectation that such zoning would continue.

19. Changing the zoning of the F-O Tract would cause irreparable harm to adjacent and proximate property owners and residents.

20. In addition, the Proposed Development included a Storm Water Management Plan. Water drainage to, from, and between the F-O Tract and adjacent properties is integrated such that water flows towards the F-O Tract, specifically the golf course, and, at certain locations, from the golf course to adjacent properties. [Twp Ex. 7].

21. Mr. Hoefert has experience with the Storm Water Management Plan as a result of past drainage problems related to his and adjacent properties, including the golf course, on the F-O Tract.

22. Petitioner's proposed zoning change and proposed plan do not address current storm water management plans and would substantially alter storm water management plans and facilities that have been in place and functioning for over twenty years.

23. The F-O Tract contains significant portions, i.e. over one-third of the area of the F-O Tract, of environmentally sensitive lands including steep slopes, forests, wildlife habitat, wetlands, streams, and 100-year and 500-year floodplains.

24. The F-O Tract is, largely, the valley to which adjoining parcels drain and flow.

25. Consequently, the F-O Tract was the best location for F-O zoning, golf course development, and storm water management and, as such, was very appropriately and rationally zoned in 1988.

26. The F-O Tract continues to be very appropriately and rationally zoned today, and should continue to be so in the foreseeable and distant future.

27. The F-O Tract and the zoning of adjoining and proximate parcels of land did in 1988 and continue today to provide a rational, sensible, and balanced mix of use and zoning within the relevant municipal area.

28. Moreover, public services such as utilities, fire and police service, traffic management, and school services are not prepared for and able to support the demands they would be required to support if Petitioner's zoning change is accepted and developed according to the Petitioner's requested zoning change.

29. Petitioner's plan is inconsistent with all aspects of the Comprehensive Plan through 2025.

II. CONCLUSIONS OF LAW

1. The past and current treatment and F-O zoning of the F-O Tract falls within and is consistent with the municipality's power to zone property to promote the public health, safety, morality and general welfare. *Berman v. Parker*, 348 U.S. 26 (US.Sup.Ct, 1954)

2. The F-O zoning of the F-O Tract was in 1988 and is today *not* arbitrary, irrational, unreasonable or capricious, but rather, and on the contrary, eminently rational and highly appropriate with respect to the topography, development history and zoning history of that tract and of adjoining tracts of land; and is therefore consistent with the municipality's power to zone property.

3. The F-O zoning of the F-O Tract was in 1988 and is today *not* spot zoning and is therefore consistent with the municipality's power to zone property.

4. The Board of Commissioners of York Township did not abuse its power to zone property in 1988 when it zoned as F-O the F-O Tract and, in particular, did so at the request of the Petitioner and its related entities.

5. Petitioner has not discharged its burden of proving that the F-O tract was and is not (i) zoned within the municipality's power to zone property, (ii) arbitrary, irrational, unreasonable or capricious, or (iii) spot zoning, and therefore not within the municipality's power to zone property.

6. To accept Petitioner's request to invalidate the F-O zoning of the F-O Tract would itself amount to arbitrary, irrational, unreasonable and capricious zoning of the F-O Tract given the topography, development history, and zoning history of that tract and of adjoining tracts of land, and would therefore be inconsistent with the municipality's power to zone property.

III. DISCUSSION

Spot zoning and, by implication, arbitrary, irrational, unreasonable or capricious zoning is “a singling out of one lot or a small area for different treatment from that accorded to similar surrounding land indistinguishable from it in character, for the economic benefit of the owner of that lot or to his economic detriment” and generally, an arbitrary exercise of police powers that is prohibited by our Constitution.” *United Artists’ Theater Circuit Inc. v. City of Philadelphia*, 535 Pa. 370, 635 336 A.2d 612,620 (1993). The “most important factor in an analysis of a spot zoning question is whether the rezoned land is being treated unjustifiably different(ly) from similar surrounding land.” *Schubach v. Silver*, 461 Pa. 366, 336 A. 2d 328, 336 (1975).

And, “an ordinance will be found to be unreasonable and not substantially related to a police power purpose if it is shown to be unduly restrictive or exclusionary ... (such that) it results in disparate treatment of similar landowners without a reasonable basis for such disparate treatment“ *C&M Developers Inc. v. Bedminster Township Zoning Hearing Board*, 573 Pa 2, 820 A.2d, 143, 150.

None of the findings of fact and conclusions of law support a conclusion that the F-O Tract was in 1988 or at any time since or is today being treated in an arbitrary, irrational, unreasonable or capricious manner or is being singled out for different and unjustifiable treatment from that accorded to similar surrounding land, or that the Board of Commissioners of York Township acted in an unduly restrictive or exclusionary manner to the detriment of the Petitioner and its related entities with respect to the F-O Tract.

On the contrary, the Board of Commissioners of York Township acted rationally, reasonably, justifiably, and within its powers to zone property.

Furthermore, to accept Petitioner’s request to invalidate the F-O zoning of the F-O Tract would itself amount to arbitrary, irrational, unreasonable and capricious zoning of the F-O Tract given the topography, development history, and zoning history of that tract and of adjoining tracts of land, and would therefore be inconsistent with the municipality’s power to zone property

As such Mr. Hoefert requests that the Board deny Petitioner’s request and affirm the current F-O zoning of the F-O Tract of land.

Respectfully submitted,

Dated: April 10, 2010

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