

YORK TOWNSHIP BOARD OF COMMISSIONERS  
YORK COUNTY, PENNSYLVANIA

In Re: : Substantive Validity Challenge  
: and Curative Amendment  
:  
HERITAGE HILLS ASSOCIATES :

**FREDERICK HOEFERT’S RESPONSE TO HERITAGE HILLS ASSOCIATES’  
MEMORANDUM, PROPOSED FINDINGS AND CONCLUSIONS**

Frederick Hoefert files the following in response to Heritage Hills Associates’ (“Applicant”) submission “Memorandum of Law, Proposed Findings of Fact and Conclusions of Law.” References herein to his submission refer to his submission “Proposed Findings of Fact, Conclusions of Law, and Discussion” dated April 10, 2010.

**I. FINDINGS OF FACT**

1. Mr. Hoefert acknowledges Applicant’s paragraphs 1 through 4.
2. Mr. Hoefert ignores Applicant’s paragraph 5.
3. Mr. Hoefert denies Applicant’s paragraph 6 and ignores Applicant’s paragraph 7 and avers that the F-O zoning designation was and is designed to preserve so-called open space in York Township and, specifically, to promote and preserve undeveloped or minimally developed land for agricultural and recreational uses, and wildlife and environmental preservation.
4. Mr. Hoefert acknowledges, in part, Applicant’s paragraph 7 (see paragraph 3, *supra*).
5. Mr. Hoefert ignores Applicant’s paragraphs 8 through 10.
6. Mr. Hoefert acknowledges Applicant’s paragraphs 11 and 12.
7. Mr. Hoefert ignores as drafted Applicant’s paragraph 13.
8. Mr. Hoefert denies Applicant’s paragraph 14 and further avers that, on the contrary, significant lot premiums were paid by landowners and purchasers of property adjacent and proximate to the F-O Tract as a result of such properties being adjacent or proximate to the integrated development which included the golf course, hotel, conference center, and food and beverage and entertainment facilities (much of it located on the F-O Tract) and, further, that the Applicant and its related entities profited directly from their development of the entire integrated

development. Mr. Hoefert is one of those property owners and evidence regarding the lot premiums and amenities was submitted at length by various parties to this action. Applicant's denial of this fact is disingenuous and evasive and denies one of the central issues of its application and of the other parties' opposition thereto. Simply stated, Applicant significantly benefited from its previous zoning and development actions by according an advantage to adjacent and proximate property owners in exchange for significantly higher monetary consideration and is now trying to undo the benefit then accorded to such other property owners by the F-O zoning and Applicant's integrated development, all to the considerable expense and detriment of the owners of those properties from which Applicant benefited.

9. Mr. Hoefert denies Applicant's paragraph 15.

10. Mr. Hoefert ignores Applicant's paragraphs 16 and 17 and refers to paragraphs 20 through 25 of the Findings of Fact of his submission which refer to and describe an integrated storm water management plan for the F-O Tract and the majority of adjacent and proximate lands.

11. Mr. Hoefert acknowledges Applicant's paragraphs 18 and 19.

12. Mr. Hoefert ignores Applicant's paragraphs 20 through 25 and denies that adequate and conclusive evidence regarding assertions therein was adduced by Applicant.

13. Mr. Hoefert ignores as drafted Applicant's paragraphs 26 through 31.

14. Mr. Hoefert ignores Applicant's paragraphs 32 through 35 and denies that adequate and conclusive evidence regarding assertions therein was adduced by Applicant.

15. Mr. Hoefert ignores Applicant's paragraphs 36 through 40.

16. Mr. Hoefert ignores as drafted Applicant's paragraph 41.

17. Mr. Hoefert ignores Applicant's paragraphs 42 through 44.

18. Mr. Hoefert denies Applicant's paragraph 45.

19. Mr. Hoefert denies Applicant's paragraph 46 and further avers that, on the contrary, evidence showed that school district facilities and resources are currently inadequate and not capable of accommodating current residential needs and that no evidence advanced allows any inference that future facilities and resources will be available to accommodate any residential growth and expansion, let alone the increased demands required by Applicant's proposed development that would be permitted under the requested zoning change.

20. Mr. Hoefert denies Applicant's paragraph 47.

21. Mr. Hoefert ignores Applicant's paragraphs 48 and 49 and further avers that no sufficient and conclusive evidence to support these assertions was adduced. In addition, Mr. Hoefert is aware

of and would have testified to the effect that applicant, its related entities and/or its contractors and sub-contractors removed significant quantities of agricultural soil from the F-O Tract and other adjoining and proximate properties at various sages of the integrated development.

23. Mr. Hoefert acknowledges Applicant's paragraph 50.

24. Mr. Hoefert denies as drafted Applicant's paragraph 51, refers to paragraphs 23 through 25 of the Findings of Fact of his submission, and further avers that a significant portion (approximately one-third) of the F-O Tract contains wetlands, streams, ponds, steep slopes, forests, wildlife habitat, and otherwise environmentally constrained land, all of which affirms why the F-O Tract was developed by the Applicant and its related entities as a golf course and an integrated part of the storm water management plan, all of which is still appropriate today and in the foreseeable future.

25. Mr. Hoefert acknowledges Applicant's paragraphs 52 and 53 and refers to paragraph 24, *supra*.

26. Mr. Hoefert ignores as drafted Applicant's paragraph 54.

27. Mr. Hoefert ignores Applicant's paragraph 55 and refers to paragraph 24, *supra*.

28. Mr. Hoefert denies Applicant's paragraph 56, refers to paragraphs 23 through 26 of the Findings of Fact of his submission, and further avers that, on the contrary, the F-O Tract is substantially different by topography, use, environment, and development and zoning history from the adjacent and proximate, i.e., surrounding, properties and was principally for that reason part of an integrated development and storm water management plan, all of which affirms that the F-O zoning of the F-O Tract was appropriate in 1988 and continues to be so today and in the foreseeable future.

29. Mr. Hoefert denies Applicant's paragraph 57, refers generally to his submission and specifically to paragraphs 25 through 27 of the Findings of Fact of his submission, and further avers that the F-O Tract was and continues to be now and in the foreseeable future appropriately zoned F-O and, therefore, within the power of the Board of Commissioners to zone property.

30. Mr. Hoefert acknowledges Applicant's paragraph 58 and further avers that the current zoning of the F-O Tract is and continues to be appropriately zoned and, therefore, within the power of the Board of Commissioners to zone property.

31. Mr. Hoefert ignores Applicant's paragraphs 59 through 68.

32. Mr. Hoefert ignores Applicant's paragraph 69 and further avers that a significant portion of the adjoining and proximate properties are undeveloped or developed at densities significantly lower than the Applicant's desired zoning designation of RM-5.

33. Mr. Hoefert ignores Applicant's paragraph 70 and further avers that sufficient and conclusive evidence to support the conclusions therein (sprawl) was not adduced, and further denies the relevance of the submission therein to the validity of the Applicant's application.

34. Mr. Hoefert ignores Applicant's paragraph 71.

## **II. CONCLUSIONS OF LAW**

Mr. Hoefert denies Applicant's Conclusions of Law and, on the contrary, refers to the Conclusions of Law in his submission.

## **III. DISCUSSION**

Mr. Hoefert disagrees with Applicant's Discussion, refers to the Discussion in his submission, and further adds:

Applicant 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.

Contrary to Applicant's submission, none of the Applicant's 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, exclusionary or abusive manner to the detriment of the Applicant and its related entities with respect to the F-O Tract, all as required by law for the Applicant to succeed with its application.

Rather, and contrary to Applicant's submission, the evidence adduced clearly supports and shows that the F-O zoning of the F-O Tract was *not* spot zoning in 1988 and is *not* spot zoning today and is therefore consistent with the municipality's power to zone property

The evidence clearly supports and shows that the Board of Commissioners acted rationally, reasonably, justifiably, fairly, and highly appropriately with respect to the zoning in 1988 of the F-O Tract of land, particularly considering (i) the request of the Applicant and its related entities for such zoning and their subsequent integrated development of that tract and adjoining and proximate lands, as well as (ii) the topography, uses, environment, and development history and zoning history of that tract and of adjoining and proximate tracts of land, and, as such, clearly supports and shows that the F-O Tract was in 1988, is today, and continues to be rationally and appropriately zoned.

Consequently, the Board of Commissioners acted within its powers to zone the 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, uses, environment, and development and zoning history of that tract and adjoining and proximate lands, and would therefore be inconsistent with the municipality's power to zone property.

#### **IV. CONCLUSION**

Mr. Hoefert denies Applicant's Conclusion for all of the reasons stated hereinabove and in his submission, and reaffirms his request that the Board of Commissioners deny Applicant's request and affirm the current F-O zoning of the F-O Tract of land.

Respectfully submitted,

Dated: April 16, 2010

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