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June 7, 2017

Planning Commission
Freedom Township
2184 Pumping Station Road
Fairfield, PA 17320

RE: PROPOSED ZONING ORDINANCE TEXT AMENDMENT

Dear Commissioners,

On behalf of my clients, residents of Freedom Township, I offer the following comments on the LeVan proposed amendment to the Zoning Ordinance (submitted May 8, 2017).

As background for the comments, we observe that the Township is a rural, low density community of fewer than 850 residents and which has experienced minimal growth over a period of nearly 40 years. The proposed text amendment seeks to inject into the Township a regional use (identified in the amendment as a “licensed category 1 horse racing and gaming facility”), which would generate commensurate land use impacts. The footprint of the proposed use would occupy an area nearly equivalent to the total area designated in the Township for commercial uses.

1. A municipality must provide for reasonable uses, not every use nor business model.

The Township has received several communications that suggest that the Township is required to provide for the “licensed category 1 horse racing and gaming facility” use because it is a lawful use. However, that is an incomplete and inaccurate statement of the law and should not be perceived as a mandate for the exercise of the Board of Supervisors’ legislative powers in the manner proposed. Fully stated, the applicable legal principal is that a municipality must provide for all reasonable uses and a use may be omitted from a municipality where such exclusion bears a substantial relationship to the public health, safety, morality or welfare. The following illustrates

the intent and application of the fully stated legal principal: While an airport is recognized as a lawful use, there is no legal mandate that every municipality in Adams County – 34 townships and boroughs – must individually provide for an airport.

Further, the proposed text amendment identifies the use in a highly particularized manner and proposes an aggressive business model in terms of size (500 acres) and constituent uses (racetrack, gaming facility, restaurants, hotels, and more). However, Pennsylvania law does not require a municipality to provide through zoning for every business model nor a “use” particularized, as here, by the self-interested developer seeking heightened financial gain.

2. The proposed text amendment conflicts with the Township’s adopted land use policies and zoning.

As noted by the County Planning Department and others, the proposed amendment is inconsistent with the land use policies of the Township as articulated in its Comprehensive Plan and is a misfit with the arrangement of zoning districts and distribution of uses established by its Zoning Ordinance. The proposal injects a large, regional, non-residential use into the zoning scheme without consideration of whether it advances the Township’s land use policies, meets the community’s needs, or fits within the community as a whole. Where proposed for the Mixed Use District, it is of community-wide consequence that the proposed use is wholly incompatible with the purpose of the Mixed Use District, which is to provide for the development of integrated, village-style residential communities.

3. The proposed text amendment provides incomplete and/or conflicting standards and requirements.

The proposed standards and requirements for the proposed use both (i) remain incomplete as drafted and/or (ii) introduce standards and requirements incompatible or conflicting with those which burden the non-residential uses of property permitted in the Commercial Corridor District. This comment relates to the inadequacy (as drafted) or omission of appropriate setback, open space, viewshed, screening, landscaping, lighting, signage and hours of operation standards and requirements. Particularly glaring, the proposed height standard far exceeds the maximum height of building and structures permitted for any other use in any other zoning district in the Township or existing in the Township (other than farm and utility structures).

We also note the failure to require water supply and traffic impact studies as part of the conditional use application.

In consideration of the applicable law; inconsistencies and conflicts with the Comprehensive Plan and Zoning Ordinance; and deficiencies and omissions in the proposed standards and requirements, the proposed text amendment does not warrant further consideration by the Township.

Regards,

Susan J. Smith /s/

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