

YORK TOWNSHIP BOARD OF COMMISSIONERS
YORK COUNTY, PENNSYLVANIA

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

**YORK TOWNSHIP'S REPLY BRIEF IN OPPOSITION TO
HERITAGE HILLS ASSOCIATES' SUBSTANTIVE VALIDITY CHALLENGE**

York Township, through its special counsel, Blakey, Yost, Bupp & Rausch, LLP, files this Reply Brief in Heritage Hills Associates' main brief.

The Township maintains that the case cited by Petitioner Schneider v. Calabrese, 291 A.2d 326 (1972) (page 17 of Petitioner's brief) supports the Township's position that the F-O Tract is not spot zoned and that the proposed RM5 zoning would be inappropriate. In Schneider, the city of Erie rezoned an 82' x 155.77' lot from R-1, low density residential to R-3, high density residential so the petitioner could build a six-family unit townhouse on the lot. The court found that: (1) the surrounding properties were zoned R-1 and consisted of single-family dwellings; (2) the lot in question constituted but a small part of the zoned area; (3) that the change to R-3, high density residential, would result in a detriment to the neighborhood as now constituted; (4) there was nothing to distinguish the lot from other property in the area; (5) there was no evidence of a need for multiple family dwellings in the area; and (6) the record disclosed that the property has been and can in the future be used for a one-family residence.

In this case, the Petitioner did not present any evidence that there was a need for multiple family dwellings that the RM5 district would allow, nor did the Petitioner present any evidence

that F-O tract could not be used to build single-family dwelling units. In addition, the F-O Tract constitutes a large part of the surrounding area, and is surrounded by single-family dwellings. Rezoning the F-O Tract to RM5 would allow for multiple family dwellings at 5 units per acre that would result in a detriment to the neighborhood as now constituted.

The Township disagrees that Schmaltz v. Buckingham Township Zoning Board of Adj., 389 Pa. 295, 132 A.2d 233 (1976) (page 19 of Petitioner's brief) stands for the proposition that what went before and how the F-O Tract arrived at its current position is not relevant. Schmaltz involved a zoning ordinance that established a 50-foot setback in wholly agricultural and rural district. The issue was whether the setback regulation had a substantial bearing on the health safety, or morals of the public. The Pennsylvania Supreme Court overturned the lower courts who had upheld the validity of the setback in part on the grounds that in the future this area may become nonagricultural in character and a suburban area. The Supreme Court stated that it must determine the reasonableness of the regulation as it applies to conditions now existent. The Supreme Court held that while a 50-foot setback may be justified in a populous area, it does not justify imposing the setback in sparsely populated or agricultural areas. Petitioner's appeal does not involve the imposition of setbacks, and the holding in Schmaltz is not relevant to this appeal.

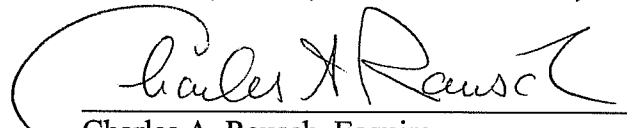
Finally, Petitioner cites to French v. Zoning Bd. Of Adj., 408 Pa. 479, 184 A.2d 791 (1962) (page 21 of Petitioner's brief) for the apparent proposition that the creation of a nonconforming use is not a sufficient reason to deny the requested RM5 rezoning. In French, the City of Philadelphia zoned a ten block area as residential, except for six lots that were zoned commercial and were being used commercially. In other words, these commercial uses were already in existence at the time that the rest of the area was zoned residential. Further, in French one of the lots was a garage and the proposed change in use was to a grocery store. The

neighbors argued that the six lots should have been zoned residential and the existing commercial uses then would have been nonconforming so that when the garage use was terminated the lot would now be considered residential property. In this appeal, the Petitioner's snow tubing operation was not in existence when the F-O Tract was rezoned to F-O in 1988. By rezoning to RM5, the Board would be creating a nonconforming commercial use in a residential district. Further, reclassifying the snow tubing operation as a nonconforming use would negate the special exception and conditions imposed by the zoning hearing board, and give that use all the protection and rights of a nonconforming use, e.g. the snow tubing operation would have the right of natural expansion on the balance of the F-O Tract.

Based on the testimony and evidence presented, the Board should deny the Petitioner's substantive validity challenge.

Dated: 16 April 10

Respectfully submitted,
BLAKEY, YOST, BUPP & RAUSCH, LLP

A handwritten signature in cursive script that reads "Charles A. Rausch". The signature is written in black ink and is positioned above a horizontal line.

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