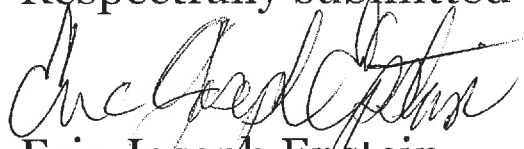


Before the Swatara Township Board of Commissioners
Re: Mushroom Hill, LLC
Conditional Use Application,
Case No. 2019-004 BOC

Rose Brown Findings of Fact and Conclusions of Law

Submitted by Eric Joseph Epstein
on Behalf of Rose Brown,
5600 Plainview Road,
Harrisburg, Pennsylvania, 17111

Respectfully submitted by,



Eric Joseph Epstein
EFMR Monitoring, Inc.
4100 Hillsdale Road
Harrisburg, PA 17112
717-635-8615
epstein@efrm.org

Dated: February 3, 2020

MUSHROOM HILL L.L.C.
POSSIBLE PARTIES TO CONDITIONAL USE HEARING

GEORGE NEIKENS,
6650 CHAMBERS HILL ROAD,
HBG, PA 17111

REPRESENTED BY ERIK EPSTEIN,
4100 HILLSDALE DRIVE
HARRISBURG, PA. 17112

RENEE NEIKENS
6590 CHAMBERS HILL ROAD
HARRISBURG, PA 17111

(REPRESENTED BY ERIK EPSTEIN)

ROSE BROWN
5600 PLAINVIEW DRIVE
HARRISBURG, PA 17111

(REPRESENTED BY ERIK EPSTEIN)

ZOE LOFTUS
5631 PLAINVIEW DRIVE
HARRISBURG, PA 17111

DEBRA NOLES
6030 HOCKER DRIVE
HARRISBURG, PA 17111

BRIAN FALESHOCK
966 LARK DRIVE
HARRISBURG, PA 17111 (CENTRAL DAUPHIN SCHOOL BOARD)

DENNIS AND TERRI MATIO
5991 HOCKER DRIVE
HARRISBURG, PA 17111

ROBERT HELM
5621 PLAINVIEW ROAD
HARRISBURG, PA 17111

MEGHAN O'NEILL
5870 BELL ROAD
HARRISBURG, PA 17111

TERRY BARBER
6010 HOCKER DRIVE
HARRISBURG, PA 17111

KIM HARTENSTEIN
6011 HOCKER DRIVE
HARRISBURG, PA 17111

THOMAS AND LISA GARLIC
6050 HOCKER DRIVE
HARRISBURG, PA 17111

MIKE SUNDERLAND
6145 FRIAR ROAD
HARRISBURG, PA 17111

LISA NEITER
6140 HOCKER DRIVE
HARRISBURG, PA 17111

MICHAEL TUCKEY
5875 GENSEMER LANE
HARRISBURG, PA 17111

MARLENA SEGUIN
6-31 HOCKER DRIVE
HARRISBURG PA 17111

KELLY JONES
6170 HOCKER DRIVE
HARRISBURG, PA 17111

MARY ANN JONES
6170 HOCKER DRIVE
HARRISBURG, PA 17111

BOB GOUCHER
6051 HOCKER DRIVE
HARRISBURG, PA 17111

WILLIAM HERB
451 RUPP HILL ROAD
HARRISBURG, PA 17111

JEFFREY A. WILLIAMS
5630 PLAIN VIEW ROAD
HARRISBURG, PA 17111

CHAD MARTIN
6120 PARSON DRIVE
HARRISBURG, PA 17111

ATTORNEY ANDY RALSTON (REPRESENTING FEESER FOODS.)

GINA FLEISHER

PAUL NELSON

BRIAN COONS
6000 BELL ROAD

ROBERT A. HOPSTETTER
6111 CHAMBERS HILL ROAD

BILL BROGONIER

SUSAN WAGNER

LISA NEILL

THURSTON COLGATE

GILBERT THORP

LEE BARKUS

MIKE EBENSTON

PROPOSED FINDINGS OF FACT (BROWN)
MUSHROOM HILL, LLC CONDITIONAL USE APPLICATION
CASE NO. 2019-004-BOC

February 3, 2020

1. The proposed tract of land is owned by Smith Land and Improvement Corporation, 1810 Market Street, Camp Hill, PA 17011.
2. The Applicant is Mushroom Hill, LLC, (“Mushroom Hill”) c/o Clayco, Inc., 2199 Interbelt Business Center Drive, St. Louis, Missouri, 63114.
3. Mushroom Hill, LLC, is a limited liability company based in Delaware.
4. CRG Integrated Real Estate Solutions (“CRG”) are based in Conshohocken, Pennsylvania.
5. CRG is a subsidiary of Clayco, a real estate development and investment company based in St. Louis, Missouri.
6. A conditional use application was submitted to Swatara Township on September 6, 2019, and amended on November 13, 2019, seeking conditional use approval to develop a warehousing complex containing 1,196,000 square feet of space in four buildings on 165 acres of land on tax parcels 63-027- 024, 63-035-039, and 63-035-001 currently owned by Smith Land and Improvement Corporation.
7. A portion of the project is permitted in the Commercial General (“G-C”) zoning district, and warehouse or storage is permitted in the G-C zoning district with conditional use approval by the Board of Commissioners. The zoning ordinance contains additional requirements for this use that must be met as part of the conditional use approval process; and
8. The initial public hearing was held on October 9, 2019 at the Swatara Township Building. CRG presented testimony from Frank Petkunis, Fred Ferraro and Jarred Neal.
9. CRG filed Testimony and 16 Exhibits.
10. Cross examination was conducted by Attorney McCullough, Mr. George, Mr. Moyer, Ms. Neiter, Ms. Newfield, and Mr. Martin mostly about traffic concerns. (Hearing, October 9, 2019, Transcript, pp. 75 -93)

11. At the second public hearing at the Swatara Township Building on November 13, 2019, CRG's Testimony was amended to include Exhibit 17.
12. Cross examination of CRG's witnesses Frank Petkunis, Fred Ferraro and Jarred Neal was conducted by residents with standing who were sworn in by the Solicitor, Kurt Williams.
13. The residents included Zoe Loftus, Brian Faleshock (Central Dauphin School Board Member), Debra Noles, Chad Martin (Swatara Township Planning Commission Member), Meghan O'Neil, Tom Garlic, Lisa Neither, and Robert Helm.
14. The residents questioned CRG about lack of factual evidence, environmental damages, and traffic problems. (Hearing, November 13, 2019, Transcript, pp. 108-145.)
15. Eric J. Epstein ("Epstein" and "Mr. Epstein"), is the Coordinator of EFMR Monitoring Group, Inc. ("EFMR"), and has been retained by Rose Brown ("Brown" or "Ms. Brown"), 5600 Plainview Road, Harrisburg, Pennsylvania, 17111 to advocate on her behalf in the above captioned proposal.
16. Mr. Epstein submitted Testimony on behalf of Rose Brown, and Cross Examined CRG's witnesses. (Hearing, November 13, 2019, Transcript, pp. 145-153)
17. Mr. Epstein pointed out to Mr. Neal, CRG's traffic engineer, that none of the traffic related exhibits were coordinated with Harrisburg Area Transportation Study ("HATS") or Tri County Planning Regional Commission ("TCPRC"). (Hearing, November 13, 2019, Transcript, p. 148)
18. Based on concerns about the incomplete traffic study conducted by CRG, area residents petitioned the CentralDauphin School District Board of Directors for relief on December 2, 2019.
19. Central Dauphin is a school district existing under the laws of the Commonwealth of Pennsylvania.

20. On the evening of December 6, 2019, the Central Dauphin School Board unanimously endorsed a resolution related to buffers and traffic control near Chambers Hill Elementary School.
21. The Resolution was submitted as Faleshock – 1. (Hearing, December 18, 2019, Transcript, p. 214)
22. At the third public hearing on December 18, 2019, Mr. Epstein submitted Amended Testimony which included 22 pages and five exhibits.
23. Mr. Epstein also entered into the record his formal cross examination without objection from CRG. (Hearing, December 18, 2019, Transcript, pp. 181-183).
24. The cross-examination included 39 data requests, which were initially submitted to CRG on December 9, 2019 and copied to Swatara Township's Solicitor at 8:25 a.m. of the same day. (Hearing, December 18, 2019, Transcript, Brown Exhibit -2, p. 183)
25. ATTORNEY SHUR: "Yes. I was provided a copy of Brown Exhibit 2, we did receive a copy of that. Any support of those, there is no discovery process during a Land Development Conditional Use Hearing on here. We did get these, we've decided it would be relevant to the Applicant. So, I'll stipulate on the stipulations in that we received these, and cared not to respond." (Hearing, December 18, 2019, Transcript, pp. 182-183)
26. There are significant clusters of residential housing proximate to the proposed project which CRG's witnesses acknowledged during their testimony on October 9, 2019, Transcript, pp. 32-35 and p. 40. The data requests were seeking information to inform conditions to deal with air quality, flooding, geology, idling, light pollution, noise pollution, storm water, and traffic.
27. CRG refused to respond to the data requests at the hearing, despite prior pledges to answer the requests. (Correspondence from Charles Suhr to Eric Epstein, December 19, 2019)
28. CRG "cared not to respond" to data requests and the site geological overview despite prior pledges. (Hearing, December 18, 2019, Transcript, pp. 182-183)

29. At this hearing, cross examination of CRG's witnesses Frank Petkunis and Jarred Neal as well as testimony was conducted by residents with standing who were sworn in by the Solicitor.

30. The residents included Robert Helm, Lisa Neil, Robert Trautlein, Meghan O'Neil, Debra Noles, Zoe Loftus, Debra Noles, Brian Faleshock (Central Dauphin School Board Member), Marlina Sequin, Tom Garlic, Anna McDonald, Bob Gaucher, Lisa Neiter, Terry Barber, Chad Martin (Swatara Township Planning Commission Member), Michael Tuckey, and Kim Hartenstein. (Hearing, December 18, 2019, Transcript, pp. 176-236)

31. No member of the public or resident with standing supported CRG's Application. (Hearing, December 18, 2019, Transcript, pp. 176-236)

32. The residents consistently questioned CRG about lack of factual evidence, environmental harm, and traffic problems. (Hearing, December 18, 2019, Transcript, pp. 176-236)

33. The residents' testimony was entered into the record with no objections from CRG's Counsel on January 15, 2020, with the exception of a relevancy objection relating to a windshield survey conducted by Dr. Robert Trautlein. (Hearing, December 18, 2019, Transcript, pp. 198-199.)

34. Ms. Brown's testimony offered by Mr. Epstein was not disputed by the applicant.

35. CRG declined to cross-examine Epstein.

36. B1: The Nature of Operations. CRG provided no details since no tenant has been identified.

37. Section 3-I-B of CRG's responses to Swatara Township's Conditional Use Application, "Narrative Attachment," was evasive, general, and vague.

38. CRG answered the application's request for a "detailed description" of the proposed use of the warehouses by stating that no tenant had been identified at the time of the application. They further state only that they "anticipate" the tenant will be in the consumer retail area

39. B2: The Scale of Operations. CRG provided no details since no tenant has been identified.

40. Section 3-I-B of CRG's responses to specific points in the township's Conditional Use Application ("Narrative Attachment," pp. 1-2), was a deficient response to Swatara Township's application's request for a "detailed description" of the proposed use of the warehouses.

41. CRG's Vice-President, Frank Petkunis, told WHTM-27 on December 18, 2019, that the warehouses would store "consumer retail" products.

42. "Consumer retail" is a broad term which may include ammunition, fertilizer, paints, pesticides and solvents. These commodities could be stored 35' from a residential neighborhood even though the Ordinance requires a 70' setback.

43. Since CRG admits to having no knowledge of the warehouse tenants, the community is concerned CRG could lease space to anyone willing and able to pay the lease, regardless of what that tenant intends to store.

44. B3: Environmental Impacts. CRG stated: "No adverse environmental impacts are anticipated. Restricting the truck traffic away from residents to the south will reduce any noise impact." (Conditional Use Application, "Narrative Attachment," #3)

45. CRG supplied no data, evidence, facts or technical experts to support this claim. (Conditional Use Application, "Narrative Attachment," #3, #6, and #7)

46. On November 13, 2019, CRG acknowledged they had not conducted a GS [geological survey] or soil survey, "but there is existing data(Hearing, November 13, Transcript, 150)

47. CRG claimed the seller conducted a study, but no supporting data was provided in Exhibits 4, 5 and 6 to give this site a clean bill of health.

48. Mr. Petkunis said he knew the chain of custody for the property, but could not "recall" who the previous owners were. (Hearing, November 13, 2019, Transcript, p. 151)

49. There were no supporting documents or manifests included in the exhibits or testimony, and CRG refused to answer Mr. Epstein's Data Requests which directly asked for this data. (Brown, Exhibit, #2)

50. This is a legacy site formerly owned by the Reading Railroad Company. Deed 49 CRG Exhibit, #4) also includes ownership in the chain of custody by Helm Motors.

51. CRG has not conducted independent due diligence to determine if there has been dumping, fill or soil disturbance, or if past use included the dumping of PCBs, TCEs, or VOCs by the Reading Railroad.

52. B5: Layout. CRG said the layout meets the Subdivision and Land Development Ordinance ("SALDO"). Swatara Township provides the opportunity for the applicant to "voluntarily choose to submit a subdivision or land development plan for review at the same time as a conditional use application."

53. CRG declined to submit a plan or respond to residents' questions relating to land development through the entire hearing process.

54. CRG's design does not consider karsting, limestone or shale geological formations north of Route 322. (Please refer to public comment from retired geologist, Bill Bragonier.) (Hearing, January 15, 2020, Transcript, pp. 268-272)

55. B5: Neighborhood. CRG's answer on their application was non responsive, and alluded to truck traffic.

56. CRG's Testimony regarding the integrity of the neighborhood on October 29, 2019 followed the same minimal and evasive pattern. (Hearing, October 9, 2019, Transcript, p. 32)

57. Attorney Suhr asked: "Okay, let's go to No. 5, Neighborhood. "The proposed use shall not substantially change the character of any surrounding residential neighborhood, after considering any proposed conditions upon approval, such as limits upon hours of operation, safety." (Hearing, October 9, Transcript, p. 32)

58. Attorney Suhr continued: "Now, how would you address that? We obviously have residents to the south, a substantial residential community. How would you address that with this Application?" (Hearing, October 9, 2019, Transcript, p. 32)

59. Frank Petkunis , CRG Senior Vice President, stated “Well, you know we kept the buildings as far from the property line as we could, we’ve also kept the spine road, as we’ve mentioned a couple of times, along 322, so as to mitigate the effect of that traffic occurring. And, again, there is some buffering here that we will talk about on the next plan.” (Hearing, October 9, 2019, Transcript, p. 32).

60. The Ordinance clearly requires a 70’ setback. CRG’s plans have limited buffers from 35’ – 50’ in violation of 803d:

If a principal business use will include areas used for manufacturing or will have a loading dock that will be routinely serviced by tractor-trailer trucks or refrigerated trucks, then the minimum buffer yard width along such manufacturing area and/or loading dock shall be increased to 70 feet, and the minimum initial height of plantings shall be increased to 8 feet.

61. Swatara Township guidelines explicitly state that the Applicant’s Conditional Use proposal, “...if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare...” (295-1, Zoning Hearing Board, (3) Variance, [4].

62. CRG’s abbreviated testimony coupled with their limited exhibits do not adequately detail how a 1.2 million square foot warehouse project built on 165 acres and hosting a minimum of 161 additional trucks during peak hours will not impact the contiguous neighborhoods.

63. B6: Significant hazards. CRG weakly responded in its Narrative that the buildings” will have sprinkling systems, and that hazardous material is not anticipated to be stored or processed on site.” CRG stated “...toxic or hazardous materials are not anticipated to be stored or processed in any great quantity.”

64. This statement undermines the very question CRG sought to satisfy by acknowledging they preserve the right to store and transport “toxic or hazardous” materials.

65. Furthermore, this statement is predicated on “junk science” since the quantity of hazardous material is not directly correlated to its “toxic” or “hazardous” impact. For example, metallic chemical elements with high densities can be poisonous or toxic at low concentrations, e.g., cadmium, chromium, lead, thallium or zinc.

66. B7: Consider the disturbances including steep slopes, mature woodlands, wetlands, flood plains, springs and other important natural features.

CRG stated in its application: “The buildings will not unnecessarily disturb any steep slopes or mature woodlands. Any and all wetlands will be delineated and either preserved or relocated by Federal law.”

67. During Testimony, CRG added, “So, a preliminary analysis yielded no encroachment on wetlands, or any critical wildlife, or anything of that nature. So, the way the buildings are situated, we’ve kept them away from any critical features, and away, as far away as possible.” (Hearing, October 9, 2019, Transcript, p. 34)

68. These responsive are evasive, general, and vague. Furthermore, when given the opportunity to respond, CRG offered references of data in its possession, but never provided the data to Mr. Epstein.

69. In addition, the Eurasian collared dove is protected and mourning dove are protected under the Migratory Bird Treaty (1993).

70. These studies are necessary to inform the remediation measures that would be required in the event of structural problems underneath the proposed buildings and proximate properties. These studies would also analyze the potential impact of foundational, groundwater or septic challenges.

71. CRG “cared not to respond” to data requests and the site geological overview. (Hearing, December 18, Transcript, pp. 182-183)

72. B8: Hours of Operation. CRG provided no details and relied on general information since no tenant has been identified. However, during testimony CRG stated, “I expect 24-hour operations in these buildings...” (Hearing, October 9, 2019, Transcript p. 34)

73. The Swatara Township Zoning Ordinance speaks to the issue of Hours of Operation:

The Zoning Hearing Board, as a condition of special exception use approval, may reasonably limit the hours of operation of the use and of related trucking and blasting operations to protect the character of adjacent residential areas. (4-14: 10)

74. C. Traffic Study. The draft Traffic Study is out of order, premature, and has not been reviewed by Penn DOT, HATS or the Tri County Planning Regional Commission. (Please refer to Brown, Exhibit, #4)

75. This Study is Step 2 of Penn DOT protocol, and should have been preceded by Step 1 Scoping Meeting. (Pennsylvania Department of Transportation, Bureau of Management and Operation, Step 1: Prepare and Attend TIS Scoping Meeting, July 2017, pp. 6-7)

76. The purpose of the Scoping Meeting is for the applicant to receive direction from the Department and municipality regarding the elements that should be included in the Transportation Impact Study, and guidance for the applicant's engineer to perform the analysis and complete the study. The study area shall be identified, including all intersections and roadways to be evaluated. (Penn DOT, Step 1, p.5)

77. On January 13, 2020, at 4:06 p.m., Michael C. Keiser P.E., District Executive, PA Department of Transportation Engineering District 8-o, confirmed, "I've verified again with our Permit Manager and we have yet to receive the initial Traffic Impact Study (TIS) for the CRG warehouse facility, located between Penhar and Mushroom Hill. It's possible the discussions at HATS were related to land use approvals/submittals, which are managed by the local municipality."

78. Furthermore, the premature study is not aligned with the HATs Congestion Management Process, the 2040 Transportation Plan or the Tri County Planning Regional Commission's Transportation Improvement Program.

79. CRG has declined to make commitments regarding traffic and transportation until the Land Development Phase. However, Under Swatara Township zoning code, Section 116 c3 states:

Traffic. The applicant shall establish that the traffic from the proposed use will be accommodated in a safe and efficient manner that will minimize hazards and congestion, after considering any improvements proposed to be made by the applicant as a condition on approval.

80. CRG's Exhibits A-13, A-14, A-15 and A-16 constitute Phase 2 of Penn DOT protocol, and should have been preceded by a Scoping Study.

81. The study is premature and has not been reviewed by Penn DOT, HATS or the Tri County Planning Regional Commission.

82. Furthermore, the Study is not aligned with the HATs Congestion Management Process, the 2040 Transportation Plan, or Tri County Planning Regional Commission's Transportation Improvement Programs.

83. Roadway Improvement Plan (Revised). CRG's data is out of sequence, and the data needs to be refreshed. (Brown, Exhibit, #4)

84. This Study is Phase 2 of Penn DOT protocol, and should have been preceded by a Scoping Study.

85. The Plan is premature and has not been reviewed by Penn DOT, HATS or the Tri County Planning Regional Commission, nor is it aligned with the HATs Congestion Management Process, the 2040 Transportation Plan or Tri County Planning Regional Commission's Transportation Improvement Programs.

86. Furthermore, the Plan does not consider comments made by Swatara Township's Manager, Jim Fosselman, on January 15, 2020. Mr. Fosselman announced the Township was working on an ordinance to prevent trucks on 80th Street and Chambers Hill Road. (Hearing, January 15, 2020, Transcript, pp. 245-246)

87. The sum total of CRG's 17 exhibits include: One promotional brochure; a purchase agreement; three biographies; three deed searches without due diligence; three site plans that lack details; four traffic, and transportation surveys approved by nobody, based on outdated information, and at odds with approved planning documents from Dauphin County, HATS, and Tri County Planning Regional Commission.

88. During the three hearings, every resident or participant with standing testified in opposition to the application.

89. On January 15, 2020, Kim Herb, 451 Rupp Hill Road, Chambers Hill submitted a petition with 1,186 signatures opposing the conditional use application. (Hearing, January 15, 2020, Transcript, p. 267)

90. The Applicant has failed to present competent, material, and substantive evidence.

91. CRG has failed to meet its burden of proof to provide and substantiate specific criteria as stated in the Ordinance.

PROPOSED CONCLUSIONS OF LAW (BROWN)
MUSHROOM HILL, LLC CONDITIONAL USE APPLICATION
CASE NO. 2019-004-BOC

February 3, 2020

1. When an Applicant applies for a special exception, and provides sufficient evidence establishing that the application complies with an ordinance's general requirements, an objector opposing the application has the burden to establish, to a high degree of probability, that the proposed use would be detrimental to the public health, safety, or welfare. [Tower Access Grp., LLC v. S. Union Twp. Zoning Hearing Bd., 192 A.3d 291, (Pa. Commw. Ct. 2018), appeal denied 2019 Pa. LEXIS 1392, July 30, 2018.]
2. EQT v. Borough of Jefferson Hills created a precedent that allows community testimony to be factored into Swatara Township Commissioners' decision making.
3. In EQT v. Borough of Jefferson Hills, the applicant sought conditional use approval for a natural gas well site. During the public hearing before borough council, objectors testified about the alleged negative effects on health and quality of life that they experienced from a similar well in a neighboring township that was operated by the conditional use applicant. (EQT Production Company and ET Blue Grass Clearing, LLC, Appellees v. Borough of Jefferson Hills, Appellant. 208 A.3d 1010.)
4. The testimony was wide-ranging and covered topics including foul stench, intense vibrations, loud and penetrating sounds, increased traffic and air and light pollution all resulting from the well site in the neighboring township.
5. Jefferson Hills denied the conditional use application, and cited only the standard in the Zoning Ordinance requiring that the applicant "shall demonstrate" that "[t]he use shall not endanger the public health, safety or welfare nor deteriorate the environment, as a result of being located on the property where it is proposed."

6. Swatara Township also has provisions to protect the character of the existing neighborhood. The Application explicitly states, “The proposal should not substantially change the character of any surrounding residential neighborhood after considering any proposed conditions upon approval, such as limits upon hours of operation; safety.” (Conditional Use Application, 5. Neighborhood)

7. The Pennsylvania Supreme Court found the objectors’ testimony to be “highly relevant.” (EQT Production Company and ET Blue Grass Clearing, LLC, Appellees v. Borough of Jefferson Hills, Appellant. 208 A.3d 1010 (201 Decided: May 31, 2019.)

8. The Majority asserted that “[t]he un rebutted evidence provided through the testimony of the Union Township objectors...considered in its entirety, established that EQT's Trax Farm site was of similar nature to the proposed Bickerton site.” (Majority Op., at 1027.10)

9. These issues are parallel to the concerns raised by Chambers Hill neighbors and local residents. Also similar to this Application, CRG has been silent on the data, facts, and issues raised by the community and required by the Application.

10. Conditional use applicants must do more than the bare minimum in preparing their applications and presenting speculative evidence.

11. Swatara Township Commissioners presided over four public hearings on October 9, 2019, November 13, 2019, December, 18, 2019, and January 15, 2020.

12. The Swatara Township Commissioners supplanted the role of the Zoning Hearing Board. (§295-5 Permits and Certificates. C (3) Conditional use.)

“A permit under this chapter for a use requiring conditional use approval shall only be issued after the Board of Commissioners grants conditional use approval.”

13. Formal rules of evidence do not apply in zoning hearing board hearings. Evidence is relevant if “it logically tends to establish a material fact, makes a fact at issue more or less probable, or supports a reasonable inference or presumption regarding the existence of a material fact,” as in *Joseph v. N. Whitehall Township Board of Supervisors*, 16 A.3d 1209, 1218-19. (Pa. Commw. Ct. 2011)

14. Zoning hearing boards are not bound by strict rules of evidence. The law is well-established that in zoning hearing board hearings “hearsay evidence, properly objected to, is not competent evidence to support a finding of the [board],” see *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366, 370 (Pa. Commw. Ct. 1976); see also *In re Appeal of Little Britain Township*, 651 A.2d 606, 615 (Pa. Commw. Ct. 1994).

15. Hearsay evidence, if corroborated, may be considered competent evidence upon which a zoning hearing board may fully rely, see also *Lake Adventure Community Association v. Dingman Township Zoning Hearing Board*, 79 A.3d 708, 714 n.4 (Pa. Commw. Ct. 2013).

16. CRG did not object to the testimony submitted by witnesses with standing or concerns, evidence and issues raised by area residents over four hearings with the exception of a “relevancy” concern raised in relation to a traffic study. (Hearing. December 18, 2019, Transcript, pp. 198-199)

17. The Testimony of Eric Joseph Epstein on behalf of Rose Brown and Brown exhibits entered into the record as Brown 1, (254/255), Brown 2, 183/255), Brown, 3 (254/255), Brown, 4 (254/255), Brown 5, (254/255), - as well as Noles 1, (234/255), Faleshock, 1, (214/255) , and Garlic 1, (254/275) , (Hearing, January 15, 2019) clearly establish a public record that CRG’s application fails to meet the letter and spirit of the Swatara Township’s Conditional Use Application criteria pursuant to 295-5, 295-14A(3), 295-18c 295-19, and 295.94.1.

18. The following residents with standing questioned CRG about lack of factual evidence, environmental harm, and traffic problems: Zoe Loftus, Brian Faleshock (Central Dauphin School Board Member), Debra Noles, Chad Martin (Swatara Township Planning Commission Member), Meghan O’Neil, Tom Garlic, Lisa Neither, and Robert Helm. (Transcript, pp. 108-14)

19. The following local residents testified about the Application's lack of factual evidence, environmental harm, and traffic problems: Robert Helm, Lisa Neil, Robert Trautlein, Meghan O'Neil, Debra Noles, Zoe Loftus, Brian Faleshock (Central Dauphin School Board Member), Marlena Seguin, Tom Garlic, Anna McDonald, Bob Gaucher, Lisa Neiter, Terry Barber, Chad Martin (Swatara Township Planning Commission Member), Michael Tuckey, and Kim Hartenstein. (Transcript, pp. 176-236)

20. On January 15, 2019, the following witnesses testified against the Application, and lack of factual evidence, environmental harm, and traffic problems: Robert Helm, Eric Epstein, Lisa Neil, Robert Trautlein, Meghan O'Neil, Debra Noles, Brian Faleshock, Marlena Seguin, Tom Garlic, Anna McDonald, Bob Gaucher, Lisa Neiter, Terry Barber, Chad Martin, Michael Tuckey, Kim Hartenstein, Attorney Andy Ralston, Kim Herb, Bill Bragonier, Susan Wagoner, Gina Fleisher, Deb Barber, Brian Coons, Paul Nelson, Bob Hopstetter, Theresa Colgate, Michael J. Gilberthorp, Lee Barkus, and Mike Ebenston. (Witness list, p. 239)

21. Objectors have submitted overwhelming and unrebutted evidence and testimony regarding CRG's fatally flawed Application.

22. "A conditional use application that does not satisfy objective standards of the Zoning Ordinance must be denied since opponents have presented sufficient evidence that the [project] will generate adverse impacts not normally generated by this type of use and that these impacts will pose a substantial threat to the health and safety of the community." *Greaton Propos., Inc. v. Lower Merion Twp.*, 796 A.2d 1038, 1045 (Pa Commw. 2002); *In re: Cutler Group Inc.*, 880 A.2d 39, 43 (PA Commw. 2003).

23. Objectors have clearly demonstrated that there is a high degree of probability that the conditional use will cause substantial harm that is not normally associated with the proposed use. *Rudy v. Lower Southampton Twp. Zoning Board*, 669A2d 1051, 1057 (Pa Commw. 1995).

24. The Township's zoning ordinance required the Applicant to demonstrate that the use would not adversely impact the public health, safety, or welfare; the Applicant made no such demonstration and provided no corroborating evidence. (Attorney Ralston. Hearing, January 15, 2020, Transcript, pp. 260 - 262) (Conditional Use Application, "Narrative Attachment," 3, 4, 5, 6, 7, and 8) 4

25. The Objectors' testimony was uncontradicted, and served as the only basis for determining whether the use adversely impacts the public health, safety, or welfare.

26. CRG has not completed the minimum criteria requested by Swatara Township. The Narrative submitted by the Applicant is deficient on its face. (Hearing, December 18, 2019, Transcript, pp. 189-193, and Brown Amended Testimony, pp. 7-19)

27. The applicant also has the burden to demonstrate compliance with all other applicable objective requirements (i.e., district requirements, parking standards. (Gibbel, et al. v. Warwick Twp. Zoning Hearing Bd., et al., Unreported Opinion (Pa. Commw. Ct. 2009).

28. Critical warehouse data was omitted (Hearing, January 15, 2020, Ralston Testimony, Transcript, pp. 260-262), erosion and flood controls are absent (CRG, Narriaive Attachment, Responses 2 and 3), hours of operation (CRG Narrative Response, p. 3, #8), and the proposed buffers are in violation of code, (Brown, Finding of Fact, 55, 56 and 57) Swatara Township Zoning Ordinance, 803.D)

29. The physical design of the development plan and the manner in which CRG presented the Application jeopardizes air quality, creates the potential for environmental damage. (CRG Narrative, p. 2, Responses #3, #5, #6 and #7, and Findings of Fact, 52, 53, 54, 55, and 58), and the application remains silent on the storage of "toxic and hazardous materials..." (Hearing, December 18, 2019, Transcript, p, 192, Lines: 23-35 and p. 193, Lines: 2-11, and CRG, Narrative, Response 6.)

30. C. Traffic Study. The draft Traffic Study is out of order, premature and has not been reviewed by Penn DOT, HATS or the Tri County Planning Regional Commission. (Please refer to Brown, Exhibit, #4, Finding of Fact, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, and 83.)

31. This Study is Step 2 of Penn DOT protocol, and should have been preceded by Step 1 Scoping Meeting. (Pennsylvania Department of Transportation, Bureau of Management and Operation, Step 1: Prepare and Attend TIS Scoping Meeting, July 2017, pp. 6-7.).

32. Objectors' testimony demonstrates that CRG did not meet the requirements under: "Submittal. A site plan shall be submitted, which shall contain the information listed in §295-5D." (Brown Amended Testimony, pp. 7-19, Hearing, December 18, 2019, Transcript, pp. 189-193, and Brown Amended Testimony, pp. 7-19.)

33. Attorney Ralston stated: "In Section 295-94.1, the concept of warehouses, as a Conditional Use, in the C-G, and C-H Districts are discussed in that Ordinance section. It says that 'The Applicant shall, 'shall,' not 'may,' shall meet the following conditions. And the Applicant shall, not may, shall provide a detailed description of the proposed use in each of the following topics.'" (Hearing, January 15, 2020, Transcript, p. 261)

34. Attorney Ralston added: "They [CRG] also have a requirement to provide detail description of the duration period of storage and materials, and methods of disposal of any surplus, or damaged materials, the general scale of their operation...These are all things that we have heard nothing about from this Applicant. And it's my client's position, that a matter of laws for, it must, not shall, not may, but must project this Application. Because under your own Zoning Ordinance the concept of a spec warehouse is not a permitted conditional use." (Hearing, January 15, 2020, Transcript, p. 262.)

35. Swatara Township Commissioners are bound by 117.C Consideration of Conditional Use Application. "The Board of Commissioners shall determine whether the proposed conditional use would meet the applicable requirements of this Ordinance. The same standards shall apply to a conditional use as are listed in Section 116.C. for a special exception use."

36. Objectors' testimony and witnesses' presentations as referenced in publiclyhearings convened on October 9, November 13, 2019, December 18, 2019, and January 15, 2020 demonstrate that CRG's Application also violates the letter and spirit of §295-4 Purpose; community development: (C) (1), (2), (3), (4), (5), (6), (9), (12), (13), (14), and (16).

37. In these respects, CRG's development plan is not consistent with the comprehensive plan for the development of the municipality:

- (1) To make sure that development carefully relates to natural features, and to avoid overly intense development of environmentally sensitive land;
- (2) To minimize disturbance of creek valleys and steep woodlands;
- (3) To avoid overextending groundwater supplies, and to encourage groundwater recharge;
- (4) To protect the quality of groundwater and surface waters;
- (5) To promote traditional styles of development;
- (6) To promote compatibility between land uses;
- (9) To promote development that retains the natural features of the Township;
- (12) To coordinate development with future central water and sewage service areas;
- (13) To direct industrial development to locations that will minimize conflicts with homes;
- (14) To direct commercial businesses to existing commercial areas, while avoiding new strip commercial areas that would cause traffic congestion and safety problems and conflicts with homes; and,
- (16) To promote public health, safety and general welfare.

38. CRG has failed to present competent, material, and substantial evidence to establish a prima facie case.

39. Because the Objectors provided relevant and probative evidence regarding the proposed use's adverse impact on the public health, safety, and welfare, and the Applicant failed to prove that there would be no adverse impacts, the Commissioners should properly consider their un rebutted testimony.

40 As required, the Applicant has not met its burden of proof to provide and substantiate specific criteria as stated in the Ordinance.

41. The Applicant's request of Conditional Use is not a permitted use in this Township, and the Board should reject the Application for all of the above stated deficiencies.