

September 2, 2014

Robinson Township, Washington County
Zoning Hearing Board
8400 Noblestown Road
McDonald, Pa. 15057

Re: *Challenge to the Substantive Validity of the Amendments to the Zoning Ordinance of Robinson Township, enacted August 7, 2014*

To the Zoning Hearing Board of Robinson Township:

Enclosed, please find an original and one copy of the above referenced Substantive Validity Challenge and this firm's check in the amount of Six Hundred (\$600.00) Dollars to cover the "application" fee. Will you kindly clock-stamp the copy and return it to me for my files.

Please schedule this challenge for a hearing at your October 15, 2014 Zoning Hearing Board meeting.

Respectfully Submitted

Cafardi Ferguson Wyrick Weis + Stanger


By: Dwight D. Ferguson

Enclosures

bcc:

Mr. Brian Coppola

Cathy and Christopher Lodge, 257 Meinrad Drive, Bulger, PA 15019

Brenda and Nolan Vance, 6109 Maple Grove Road, Bulger PA 15019

Irene and Richard Barrie, 5215 Maple Grove Road, Bulger PA 15019

Adam Kron, Esquire

Patton Dycus, Esquire

Lisa Graves Marcucci, Esquire

Environmental Integrity Project

1000 Vermont Avenue NW, Suite 1100

Washington, D.C. 20005



TOWNSHIP OF ROBINSON
WASHINGTON COUNTY

Application to the Zoning Hearing Board
CHALLENGE

Name of Owner: SEE EXHIBIT "A", No. 1 Phone: SEE EXHIBIT "A" No. 1

Address of Owner: SEE EXHIBIT "A", No. 1

Name of Applicant: SEE EXHIBIT "A", No. 2 Phone: _____

Address of Applicant: SEE EXHIBIT "A", No. 2

Applicant petitions the Zoning Hearing Board for:

- _____ a variance
- _____ a special exception
- X a validity challenge
- _____ an appeal from Township action

Address of Property: SEE EXHIBIT "A", No. 3

Zoning District: _____ County Tax Ident.# _____

Present Use: _____

Proposed use or alterations: _____

Reference the section(s) of the ordinance upon which this application is based: 53 P.S. § 10916.1 (a) & (b);
and, see Exhibit "A", No. 4.

Justification for ^{challenge}request (include ground for appeal, and if physical hardship is claimed as basis for variance, state hardship): See Exhibit "A", No. 5

Has a previous application been filed with the Board for this property? If so, when? No

INSTRUCTIONS TO APPLICANT

Applications for variance, validity challenge, and special exceptions must be submitted to the Zoning Administrator no less than twenty-one (21) working days prior to the Zoning Hearing Board meeting. The application must be accompanied by the following supplemental materials:

- (a) Five (5) copies of the Site Plan. — N/A
- (b) A map showing and identifying all adjacent lots and lots within two hundred(200) feet of the lot for which the special exception is requested as well as list of the names and addresses of the owners. — N/A
- (c) Application fee.

APPEAL

The appeal of a decision of the Zoning Administrator must be made within thirty (30) days from the date that a notice of violation is delivered to an aggrieved party by the Zoning Administrator. When duly filed, this application shall constitute the required notice of appeal. This application shall be accompanied by a fee in the amount of \$ 600.00 made payable to the Township of Robinson.

[Signature]
Owner Signature

N/A
Applicant Signature

OFFICIAL USE ONLY

Application Date: _____

Application Fee: _____

Hearing Date: _____

Date: _____ Ck #: _____

Zoning Administrator

Date

EXHIBIT "A"

To Township of Robinson, Washington County
Substantive Validity Challenge to the Zoning Hearing Board

From the August 7, 2014 enactment of

**AN ORDINANCE OF THE TOWNSHIP OF ROBINSON,
WASHINGTON COUNTY, PENNSYLVANIA, AMENDING
CHAPTER 27 OF THE ROBINSON TOWNSHIP CODE BY
AMENDING THE ZONING ORDINANCE OF ROBINSON
TOWNSHIP AND TO PROVIDE FOR A REZONING OF CERTAIN
PARCELS IN THE TOWNSHIP, INCLUDING A ZONING MAP
CHANGE**

1. Names and Addresses of Owners/ Challengers:
 - a. Cathy and Christopher Lodge, 257 Meinrad Drive, Bulger, PA 15019
 - b. Brenda and Nolan Vance, 6109 Maple Grove Road, Bulger PA 15019
 - c. Irene and Richard Barrie, 5215 Maple Grove Road, Bulger PA 15019
2. Name and Address of Applicant: N/A
3. Name and Address of Properties: N/A
4. Reference to Authorities: The August 7, 2014 enactment of "An Ordinance of the Township of Robinson, Washington County, Pennsylvania, Amending Chapter 27 of The Robinson Township Code by Amending the Zoning Ordinance of Robinson Township and to Provide for a Rezoning of Certain Parcels in the Township, Including a Zoning Map Change" ("8.7.14 Amendment"). Other authorities include (but are not limited to): Article I, Sections 1 and 27 of the Pennsylvania Constitution; the Fifth and Fourteenth Amendments to the U.S. Constitution; *Robinson Twp. v. Commonwealth*, 83 A.3d 901 (Pa. 2013); and *Shaw v. Twp. of Upper St. Clair Zoning Hearing Bd.*, 71 A.3d 1103 (Pa. Cmwlth. 2013). Some additional authorities are discussed below.
5. Justifications for Challenge:
 - a. The 8.7.14 Amendment violates Article I, Section 27 of Pennsylvania's Constitution (the "Environmental Rights Amendment"), which provides the people of Pennsylvania with the "right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment." The Environmental Rights Amendment further requires the Commonwealth and local governments, as trustees of

Pennsylvania's public resources, to "conserve and maintain them for the benefit of all the people." In contravention of the Environmental Rights Amendment, the 8.7.14 Amendment fails to conserve and maintain the constitutionally-protected aspects of the public environment and of a certain quality of life for all the people. Specifically, among other reasons, the 8.7.14 Amendment violates the Environmental Rights Amendment by adding:

- i. Oil and Gas Subsurface Facilities and Activity as a permitted use in all zoning districts in Robinson Township;
- ii. Oil and Gas-Well Site Development as a conditional use to the Special Conservation, Commercial and Business Interchange Development Districts;
- iii. Oil and Gas-Well Site Development as a permitted use in the Agricultural, Rural Residential, and Interchange Business Development Districts;
- iv. Natural Gas Compressor Stations as a permitted use in the Interchange Business Development District and a conditional use in the Agricultural, Rural Residential, and Commercial Districts;
- v. Oil and Gas Impoundments as a conditional use in the Agricultural, Rural Residential, and Interchange Business Development districts;
- vi. Water Recycling/Hydro Recovery Facilities as a conditional use in the Commercial and Interchange Business Development Districts;
- vii. Natural Gas Processing Plants as a conditional use in the Interchange Business Development District; and
- viii. Temporary Housing for well site workers as a permitted accessory use in the Special Conservation, Agricultural, and Rural Residential Districts.

Through these additions and changes, the 8.7.14 Amendment completely changed the comprehensive zoning scheme and disregarded the current Comprehensive Plan by converting the expressly-intended purposes of the affected zoning districts to radically different purposes. Thus the 8.7.14 Amendment changed the Township's zoning map by creating entirely new zoning districts — not just changing the boundaries of existing districts.

- b. Contrary to the requirements for the exercise of police power and zoning as articulated by Article I, Section 1 of the Pennsylvania Constitution, the Fifth and Fourteenth Amendments to the U.S. Constitution, and case law such as *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), and *In re Realen Valley Forge Greenes*

Associates, 576 Pa. 115, 838 A.2d 718 (Pa. 2003), the 8.7.14 Amendment – without due process of law – deprives the citizens of Robinson Township of their right to enjoyment of their private property. Among other things, the 8.7.14 Amendment was devoid of planning principles and was intended only as an accommodation to a particular industry to the detriment of the Township, its citizens and its natural resources. More specifically, the 8.7.14 Amendment violates the constitutional requirements of zoning and fails the substantive due process inquiry for the following reasons, among others:

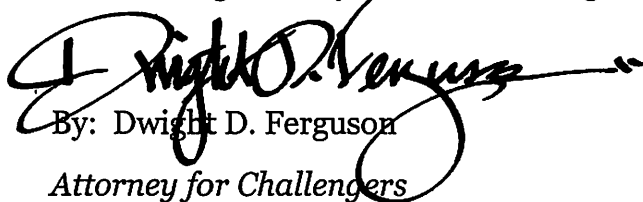
- i. The enactment of a zoning ordinance is only constitutional when it seeks to promote a public health, safety, morality, or welfare interest, and when it is substantially related to the protection and preservation of one or all of those interests. See *In re Realen Valley Forge Greenes Associates*, 576 Pa. at 131-34, 838 A.2d at 727-29.
 - ii. The mere promotion of oil and gas development is only a private interest which is separate from the proper, constitutional, public interests underlying zoning. See *Huntley & Huntley, Inc. v. Borough Council of the Borough of Oakmont*, 600 Pa. 207, 225, 964 A.2d 855, 865 (Pa. 2009).
 - iii. The 8.7.14 Amendment seeks, as its sole objective, maximizing oil and gas development without considering or prioritizing the public interests of the Township and its community as a whole. This is unconstitutional, tantamount to spot and contract zoning, and devoid of the public policies which the Pennsylvania appellate courts have found to justify zoning.
 - iv. The 8.7.14 Amendment is devoid of justification in some aspect of the police power asserted for the public welfare and thus violates the principles articulated by the United States Supreme Court in *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).
- c. The provision for “Oil and Gas-Subsurface Facilities and Activity in the all zoning districts is a nullity because:
- i. The Township does not have the power to regulate subsurface activities through zoning; and
 - ii. Such regulations are preempted by Act 13 and the Oil and Gas Act.; and,
- d. In the alternative, even if the Township could regulate subsurface activities through zoning, the 8.7.14 Amendment necessarily permits surface activities by expressly permitting oil and gas *subsurface activities*. This is because, under common law, the

owner of the subsurface property will have the right to access the surface and occupy as much of the land as is necessary to extract the oil and gas to which it has title. The owner of the subsurface property obtains this right upon purchasing the subsurface property, regardless of whether it is expressly stated in a contract of sale or lease. For those zoning districts in which subsurface activities are permitted but surface activities are not—i.e., the R-1B Single Family Residential District and the R-2 General Residential District, the 8.7.14 Amendment impermissibly makes no provision for such surface activities and thus leaves them permitted and unregulated.

- e. To the extent Oil and Gas-Well Site Development and related uses are permitted in the Commercial, Business Interchange Development and Industrial Districts as of right, no provision is made to protect mixed uses, including residential and other incompatible uses, in the same district or adjacent districts. As a result, landowners affected by Oil and Gas Well Site Development and related uses now have no due process, notice and no forum in which the impact on incompatible uses can be considered.

Respectfully Submitted,

Cafardi Ferguson Wyrick Weis + Stanger llc



By: Dwight D. Ferguson
Attorney for Challengers

2605 Nicholson Road
Building II, Suite 101
Wexford, PA 15143

412.515.8900
DFerguson@cfwws.com