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November 11, 2026

Via Email
John P. Henry, Esquire
Blakinger Thomas
28 Penn Square
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Lancaster, PA 17608

Re: Greiner Special Exception Hearings

Dear John:

As the neighbors begin to present their cases, I anticipate based on past experience that some of the neighbors may attempt to present testimony and exhibits that are inadmissible or not appropriate. This is particularly relevant for the unrepresented parties who may not understand what may or may not be admissible or relevant. Therefore, I have summarized below the well-established evidentiary rules and standards related to the admissibility and relevance of testimony and evidence offered by parties opposing a special exception application before a zoning hearing board.

1. Hearsay Testimony and Evidence Is Inadmissible

"Although 'the formal rules of evidence do not apply in local zoning board [hearings]," *Zitelli v. Zoning Hearing Bd. of Borough of Munhall*, 850 A.2d 769, 771 n.2 (Pa. Cmwlth. 2004), the law is well-established that '[h]earsay evidence, *properly objected to*, is not competent evidence to support a finding of the [zoning hearing board]." Spring City Grp., LLC v. Zoning Hearing Bd. of W. Bradford Twp., 1295 C.D. 2018, 2019 WL 2619941, at *4 (Pa.Cmwlth. June 27, 2019)(internal citation omitted). As explained by the Commonwealth Court:

> a zoning hearing board's decision to limit the introduction of hearsay evidence is necessary to protect [an Applicant's] "right inherent under the Pennsylvania Municipalities Planning Code (MPC) 'to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues." Section 908(5) of the MPC, 53 P.S. § 10908(5); *Walker v. Unemployment Compensation Board of Review*, 27 Pa.Cmwlth. 522, 367 A.2d 366, 370 (1976) (The law is well established that "[h]earsay evidence, properly objected to, is not competent evidence to support a finding of the [zoning hearing board].") The law does not require that the [Applicant's] right to a fair proceeding be usurped by [an objector's] desire to discount basic rules of evidence and present incompetent evidence due to her *pro se* litigant status.

Riccio v. Newtown Twp. Zoning Hearing Bd., 308 A.3d 928, 939 (Pa.Cmwlth. 2024)

Accordingly, testimony and exhibits provided by non-experts must be limited to facts about which the witnesses has first-hand knowledge. Testimony and evidence based on information the witness obtained from third parties or from other sources (such as the internet or through artificial intelligence) is classic hearsay and should be excluded as inadmissible. This is because an Applicant is denied its right to cross-examine and question the actual source of the hearsay testimony or evidence. In fact, "even where hearsay is introduced into evidence without objection, the hearsay statement must be sufficiently corroborated by other evidence in order to be considered competent evidence." Oakcliffe Cmty. Org. v. Zoning Bd. of Adjustment of City of Pittsburgh, 813 C.D. 2017, 2018 WL 1277209, at *5 (Pa.Cmwlth. Mar. 13, 2018).

2. Speculation, Bald Assertions and Personal Opinions Are Not Competent Evidence

The Pennsylvania Supreme Court has held that objectors must present substantive and competent evidence in support of their objections and cannot simply provide speculative testimony, make bald assertions or offer personal opinions. As the Court stated in rejecting neighbors' objections to a zoning application involving a pre-release facility for state prisoners, "The testimony of the neighborhood's residents, however, was not substantiated by facts but was no more than their bald assertions, personal opinions, and perceptions of the pre-release center and the area." Com. of Pa., Bureau of Corr. v. City of Pittsburgh, Pittsburgh City Council, 516 Pa. 75, 80, 532 A.2d 12, 14 (1987).

Indeed, because "the burden placed on the objectors is a heavy one", objectors "must demonstrate more than unsubstantiated concerns or vague generalities, and [m]ere speculation as to possible harm is insufficient." Siya Real Estate LLC v. Allentown City Zoning Hearing Bd., 210 A.3d 1152, 1160 (Pa.Cmwlth. 2019) (internal citations omitted)(holding objectors' testimony was "speculative, at best, and, therefore would not constitute competent evidence that would be sufficient to carry Objectors' heavy burden"). In Marr Dev. Mifflinville, LLC v. Mifflin Twp. Zoning Hearing Bd the Pennsylvania Commonwealth Court held that "the fears that objectors expressed about stormwater management, flooding, and increased traffic were speculative, at best, and inadequate to constitute substantial evidence."166 A.3d 479, 484 (Pa.Cmwlth. 2017).

Pennsylvania Courts consistently have rejected objectors' personal opinions and general speculation about alleged harms they believe could be caused by a proposed use as not credible and not adequate to establish to a high degree of probability that the impact from the proposed use will substantially affect the health, safety and welfare of the community to an extent greater than what would be expected normally from that type of use. Tower Access Grp., LLC v. S. Union Twp. Zoning Hearing Bd., 192 A.3d 291, 304 (Pa.Cmwlth. 2018)(reversing zoning hearing board's denial of special exception application based on speculative testimony of neighbors).

In Dunbar v. Zoning Hearing Board of City of Bethlehem, the Court noted that the objectors offered no expert testimony but only presented speculative testimony about their concerns. 144 A.3d 219, 226 (Pa.Cmwlth. 2016). According to the Court, an objector "must demonstrate more than unsubstantiated concerns or vague generalities, and '[m]ere speculation as to possible harm is insufficient.'" *Id.; see also* Manor Healthcare Corp. v. Lower Moreland Twp. Zoning Hearing Bd., 139 Pa.Cmwlth. 206, 218, 590 A.2d 65, 71 (1991) (holding that neighbors' speculative testimony about traffic problems that could result from the proposed use was not competent evidence and was insufficient to establish a "high degree of probability" of specific detrimental consequences to the public welfare); Allegheny Tower Associates, LLC v.

City of Scranton Zoning Hearing Bd., 152 A.3d 1118, 1120 (Pa.Cmwlth. 2017)(holding that a potential decline in property values and general aesthetic concerns, without more, did not constitute sufficient bases for the zoning hearing board's denial of a special exception application).

Recently, the Pennsylvania Commonwealth Court reversed a zoning decision denying a special exception application finding that "the record contains no evidence beyond pure speculation" regarding whether the proposed use will cause harms beyond what would normally be expected for this type of use. BNE Real Estate Grp. v. City of Easton Zoning Hearing Bd., 443 C.D. 2025, 2026 WL 2018484, at *12 (Pa.Cmwlth. July 13, 2026). "The Objectors and the nonparty neighbors therefore did not meet their heavy burden of proving to a high degree of probability that the proposed use will substantially affect the health, safety, and welfare of the community, and the ZHB committed an error of law in finding the Objectors' speculative evidence sufficient to have met this high standard." *Id.*

Accordingly, testimony by objectors involving bald assertions, speculation, personal opinions or unsubstantiated claims is not competent evidence that can be relied upon by a zoning hearing board.

I have provided this summary of the evidentiary standards regarding testimony by objectors in anticipation of several unrepresented neighbors testifying at the upcoming hearing. This will provide an easy reference for any objections that I may need to make in response to testimony or evidence offered by a party that is based on hearsay or involves speculation, bald assertions or personal opinions, none of which is competent evidence that a zoning hearing board can rely upon. The Greiners certainly appreciate that the neighbors have the right to present testimony and evidence in support of their position. I just want to be sure, however, it is done in accordance with these well-established evidentiary standards.

I plan to bring copies of this correspondence to the hearing tomorrow evening for the zoning hearing board members and for the parties.

Very truly yours,



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cc: William J. Cluck, Esquire (via email)
Josele Cleary, Esquire (via email)