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BEFORE THE SWATARA TOWNSHIP BOARD OF COMMISSIONERS

IN RE: MUSHROOM HILL, LLC’S REQUEST :  
FOR CONDITIONAL USE APPROVAL TO : ZONING CASE No. 2019-004-BOC  
DEVELOP A WAREHOUSING COMPLEX :  
CONTAINING 1,196,000 SQ. FT. OF SPACE :  
IN FOUR BUILDINGS ON 165 ACRES OF :  
LAND :

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW RAISED BY  
INTERESTED PARTY FEESERS, INC.**

Feeser’s, Inc. is the owner and operator of Feeser’s Food Distributors, with a principal place of business located at 5561 Grayson Rd, Harrisburg, PA 17111 (“Feeser’s”). Feeser’s is located directly across Route 322, and downhill, from the proposed warehousing complex (“Warehouse Development Project”) at issue in this conditional use application (“Subject Property”). The ground water that discharges from the Subject Property flows through culverts located underneath Route 322, and enters upon Feeser’s property.

Feeser’s appeared at each of the hearings (collectively “Hearings”) that took place before the Swatara Township (“Township”) Board of Commissioners (“Board of Commissioners”) concerning the instant conditional use application (“CU Application”) of Mushroom Hill, LLC (“Applicant” or “Mushroom Hill”) relevant to the Subject Property. Feeser’s was recognized as an interested party related to this CU Application. At the last hearing on Mushroom Hill’s CU Application, Feeser’s appeared, through counsel, and raised legal challenges to CU Application.

Feeser’s now files of record its Proposed Findings of Fact and Conclusions of Law in opposition to Mushroom Hill’s CU Application.

**I. PROPOSED FINDINGS OF FACT**

1. Applicant asks the Board of Commissioners to grant to it a CU Application for its Development Project on the Subject Property.

2. The Development Project is surrounded by single-family residential neighborhoods, an elementary school, mature woodlands and meadows that grow on a slope, and a highway under which stormwater from the entire Development Project site drains, through culverts, on to the property of businesses located on the opposite side of the highway.

3. The majority of the Development Project is located within the Township's Commercial General (G-C) zoning district.

4. Warehouse and Storage is permitted in the G-C zoning district only with conditional use approval from the Board of Commissioners.

5. Proposed Warehouse and Storage uses in the G-C zoning district must comply with Section 295-94, et. seq., of the Swatara Township Zoning Ordinance ("Zoning Ordinance").

6. Section 295-94.1 of the Zoning Ordinance provides:

Warehouse or storage as principal conditional use in the C-G and C-H Districts **shall** meet the following conditions:

A. Minimum lot area: 15 acres.

B. The applicant **shall** provide a detailed description of the proposed use in each of the following topics:

(1) The nature of the on-site activities and operations, the types of materials stored, the frequency of distribution and restocking, the duration period of storage of materials, and the methods for disposal of any surplus or damaged materials. In addition, the applicant shall furnish evidence that the disposal of materials will be accomplished in a manner that complies with state and federal regulations.

(2) The general scale of the operation, in terms of: its market area, specific floor space requirements for each activity, and the total number of employees on each shift.

- (3) Any environmental impacts that are likely to be generated (e.g. odor, noise, smoke, dust, litter, glare, vibration, electrical disturbance, wastewater, stormwater, solid waste, etc.) and specific measures employed to mitigate or eliminate any negative impacts.
- (4) Site Planning. The application shall include proper site layout, internal circulation, parking, buffering, and all other elements of proper design as specified by this chapter.
- (5) Neighborhood. The proposed use shall not substantially change the character of any surrounding neighborhood after considering any proposed conditions upon approval, such as limits upon hours of operation, safety.
- (6) The proposed use shall be suitable for the site, considering the disturbance of steep slopes, mature woodland, wetlands, floodplains, springs, and other important natural features.
- (7) The proposed use shall not create a significant hazard to the public health and safety, such as fire, toxic or explosive hazards.
- (8) Hours of operation.

(emphasis added).

7. Mushroom Hill proposes to build its Warehouse Development Project on speculation (“spec”).

8. Neither Mushroom Hill’s CU Application, nor any of the testimonial or documentary evidence that it presented at the Hearings which were held upon that application, provided any information about, let alone “a detailed description of”, “[t]he nature of the on-site activities and operations” that would be engaged in by the unknown users of its proposed Warehouses.

9. The Board of Commissioners cannot know what the nature of the on-site activities and operations at the proposed Warehouses will be -- and, whether or not those activities and operations warrant the grant of a conditional use application -- when Mushroom Hill does not even know who will be using its proposed Warehouses.

10. Neither Mushroom Hill's CU Application, nor any of the testimonial or documentary evidence that it presented at the Hearings which were held upon that application, provided any information about, let alone "a detailed description of", "the types of materials [to be] stored" in its proposed Warehouses by the unknown users thereof.

11. The Board of Commissioners cannot know what types of materials will be stored at the proposed Warehouses -- and, whether or not those stored materials warrant the grant of a conditional use application -- when Mushroom Hill does not even know who will be using its proposed Warehouses.

12. Neither Mushroom Hill's CU Application, nor any of the testimonial or documentary evidence that it presented at the Hearings which were held upon that application, provided any information about, let alone "a detailed description of", "the frequency of distribution and restocking" that would occur at its proposed Warehouses by the unknown users thereof.

13. The Board of Commissioners cannot know what the frequency of distribution and restocking of materials will be at the proposed Warehouses -- and, whether or not that frequency warrants the grant of a conditional use application -- when Mushroom Hill does not even know who will be using its proposed Warehouses.

14. Neither Mushroom Hill's CU Application, nor any of the testimonial or documentary evidence that it presented at the Hearings which were held upon that application, provided any information about, let alone "a detailed description of", "the duration period of storage of materials" that would occur at its proposed Warehouses by the unknown users thereof.

15. The Board of Commissioners cannot know what the duration period for storage of materials at the proposed Warehouses will be -- and, whether or not that duration period warrants

the grant of a conditional use application -- when Mushroom Hill does not even know who will be using its proposed Warehouses.

16. Neither Mushroom Hill's CU Application, nor any of the testimonial or documentary evidence that it presented at the Hearings which were held upon that application, provided any information about, let alone "a detailed description of", "the methods for disposal of any surplus or damaged materials" that would occur at its proposed Warehouses by the unknown users thereof.

17. The Board of Commissioners cannot know what methods for the disposal of any surplus or damages materials will be employed at the proposed Warehouses -- and, whether or not those methods warrant the grant of a conditional use application -- when Mushroom Hill does not even know who will be using its proposed Warehouses.

18. Neither Mushroom Hill's CU Application, nor any of the testimonial or documentary evidence that it presented at the Hearings which were held upon that application, provided any information about, let alone "a detailed description of", "[t]he general scale of the operation, in terms of its market area" of the unknown users of its proposed Warehouses.

19. The Board of Commissioners cannot know what the market area of the proposed Warehouses will be -- and, whether or not that market area warrants the grant of a conditional use application -- when Mushroom Hill does not even know who will be using its proposed Warehouses.

20. Neither Mushroom Hill's CU Application, nor any of the testimonial or documentary evidence that it presented at the Hearings which were held upon that application, provided any information about, let alone "a detailed description of", the "specific floor space

requirements for each activity” that the unknown users of its proposed Warehouses would engage in.

21. The Board of Commissioners cannot know what the specific floor space requirements for each activity at the proposed Warehouses will be -- and, whether or not those requirements warrant the grant of a conditional use application -- when Mushroom Hill does not even know who will be using its proposed Warehouses.

22. Neither Mushroom Hill’s CU Application, nor any of the testimonial or documentary evidence that it presented at the Hearings which were held upon that application, provided any information about, let alone “a detailed description of”, the “total number of employees on each shift” to be employed by the unknown users of its proposed Warehouses.

23. The Board of Commissioners cannot know what the total number of employees per shift will be at the proposed Warehouses -- and, whether or not that total warrants the grant of a conditional use application -- when Mushroom Hill does not even know who will be using its proposed Warehouses.

24. Neither Mushroom Hill’s CU Application, nor any of the testimonial or documentary evidence that it presented at the Hearings which were held upon that application, provided any information about, let alone “a detailed description of”, any environmental impacts that are likely to be generated at the proposed Warehouses by the unknown users of the proposed Warehouses.

25. The Board of Commissioners cannot know what types of environmental impacts the proposed Warehouses are likely to generate -- and, whether or not those likely environmental impacts warrant the grant of a conditional use application -- when Mushroom Hill does not even know who will be using its proposed Warehouses, or for what purposes.

26. Neither Mushroom Hill's CU Application, nor any of the testimonial or documentary evidence that it presented at the Hearings which were held upon that application, provided any information about, let alone "a detailed description of", the unknown uses that the unknown users of the proposed Warehouses will make of the Warehouses, or whether those unknown uses will substantially change the character of the surrounding neighborhoods.

27. The Board of Commissioners cannot know what substantial changes to the surrounding neighborhoods will be caused by the proposed Warehouses -- and, whether or not those changes warrant the grant of a conditional use application -- when Mushroom Hill does not even know who will be using its proposed Warehouses, or for what purposes.

28. Neither Mushroom Hill's CU Application, nor any of the testimonial or documentary evidence that it presented at the Hearings which were held upon that application, provided any information about, let alone "a detailed description of", how the unknown proposed uses of the proposed Warehouses are suitable for the site, considering all of its natural features.

29. The Board of Commissioners cannot know the environmental site-suitability of the proposed Warehouses -- and, whether or not that suitability warrants the grant of a conditional use application -- when Mushroom Hill does not even know who will be using its proposed Warehouses, or for what purposes.

30. Neither Mushroom Hill's CU Application, nor any of the testimonial or documentary evidence that it presented at the Hearings which were held upon that application, provided any information about, let alone "a detailed description of", how the unknown proposed uses of the proposed Warehouses will not create a significant hazard to the public health and safety, such as fire, toxic, or explosive hazards.



31. The Board of Commissioners cannot know whether the unknown proposed uses of the proposed Warehouses pose significant safety hazard(s) -- and, whether or not the risk of those hazards warrants the grant of a conditional use application -- when Mushroom Hill does not even know who will be using its proposed Warehouses, or for what purposes.

32. The Board of Commissioners must take into consideration that, based upon the lack of information that Mushroom Hill has presented with regard to the proposed end-users and the proposed end-uses of the proposed Warehouses, the Board of Commissioners simply cannot know what the nature and/or quantity of odors, noises, smoke, dust, or other discharges, waste, light glare, vibration, erosion, soil subsidence, electrical disturbance, etc. – including those of a nature and/or quantity that distinct segments of the population may have a particular sensitivity to – will be associated with the unknown end-users' unknown end-uses' of the Warehouses.

32. Neither Mushroom Hill's CU Application, nor any of the testimonial or documentary evidence that it presented at the Hearings which were held upon that application, provided any information about, let alone "a detailed description of", the proposed hours of operation of the proposed Warehouses.

33. The Board of Commissioners cannot know what the proposed hours of operation of the proposed Warehouses will be -- and, whether or not those proposed hours of operation warrant the grant of a conditional use application -- when Mushroom Hill does not even know who will be using its proposed Warehouses, or for what purposes.

34. Further, based upon the lack of information that Mushroom Hill has presented with regard to the proposed end-users and the proposed end-uses of the proposed Warehouses, the Board of Commissioners simply cannot know what effect the existence of the proposed Warehouses will have upon property values, and the visual character of, and the auditory

character of, and the olfactory character of, the neighborhoods surrounding the Development Site – both for residents who possess ordinary sensitivities, and for residents (both adults and children) with sensory disorders.

35. Further, based upon the lack of information that Mushroom Hill has presented with regard to the proposed end-users and the proposed end-uses of the proposed Warehouses, the Board of Commissioners simply cannot know the quantity and/or quality of the workforce, and/or the visitors (both truck drivers and otherwise), and/or persons looking to engage in criminal activity because of the unknown uses to which the proposed Warehouse will be put (for instance, if a Warehouse is used to store medical marijuana, other prescription drugs, or high value consumer goods) that will now come into the neighborhoods surrounding the Development Site as a result of the Warehouses.

## **II. PROPOSED CONCLUSIONS OF LAW**

36. The requirements of Section 295-94.1 of the Zoning Ordinance are mandatory.

37. The Board of Commissioners has no authority to grant a conditional use application when that applicant has failed to meet the requirements of the Zoning Ordinance that apply to that application.

38. If a conditional use applicant seeking to build Warehouses in the C-E zoning district does not meet the requirements of Section 295-94.1 of the Zoning Ordinance, then that applicant's conditional use application must be denied.

39. Mushroom Hill has failed to meet the requirements of Section 295-94.1 of the Zoning Ordinance, for all of those reasons set forth in more specific detail above.

40. Without Mushroom Hill's identification of the end-users and end-uses of the proposed Warehouses, it is not possible for Mushroom Hill to meet the requirements of Section 295-94.1 of the Zoning Ordinance.

41. Section 295-94.1 of the Zoning Ordinance does not permit the Board of Commissioners to grant a condition use application to a developer who, in the G-C zoning district, proposes to build warehouses on spec.

42. The Board of Commissioners hereby determines as a matter of law that, in order for a conditional use application for the construction of Warehouses in the Township to be granted, the developer must identify the end-users, and end-uses, of the Warehouse.

43. Because Mushroom Hill has failed to meet the requirements of Section 295.94.1 of the Zoning Ordinance, the Board of Commissioners has no discretion when considering whether or not to grant or deny Mushroom Hill's CU Application.

44. Because Mushroom Hill's CU Application fails to meet the requirements Section 295-94.1 of the Zoning Ordinance, the Board of Commissioners is required to deny Mushroom Hill's CU Application.

WHEREFORE, interested party Feeser's, Inc. respectfully requests that the Board of Commissioners deny Mushroom Hill's Conditional Use application.

Respectfully Submitted,

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*Attorneys for Feeser's, Inc.*