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July 13, 2020

VIA E-MAIL & UPS

Planning Commission
Conewago Township
541 Oxford Avenue
Hanover, PA 17331

**RE: Klunk Farm Rezoning
Our File No. 34679-0001**

Dear Planning Commission Members:

We represent Racehorse Road LLC ("Racehorse"), which is the owner of an approximately 85-acre tract of land located along the southern side of Hanover Road (SR 0116) in Conewago Township (the "Township") identified as Adams County Tax Parcel No. 08K15-0004—000 (the "Property"). The Property sometimes is referred to as the Klunk Farm based on prior ownership. The Property is in the Township's Suburban Residential - R-1 zoning district (the "R-1 District"). The new Board of Supervisors regime now seeks to adopt special legislation to rezone the Property to the Agricultural - A zoning district (the "A District") less than one year after the Property was zoned into the R-1 District. The purpose of this letter is to express Racehorse's opposition to this proposed special legislation.

By way of background, Racehorse intends to develop the Property into a residential community. The Property was rezoned into the R-1 District in August 2019 (the "2019 Rezoning"). Racehorse made a significant investment in acquiring the Property in December 2019 in reliance on the 2019 Rezoning. In addition to the investment required to purchase the Property, Racehorse has invested in environmental studies and engineering efforts in preparation for developing the Property. Racehorse presented a sketch plan for the development of the Property to the Board of Supervisors in November 2019. On June 24, 2020, Racehorse submitted a preliminary subdivision plan for the development of the Property in accordance with the R-1 District zoning designation and standards.

The current R-1 District zoning classification was the result of a thorough, contemplative, and deliberate rezoning process completed by the Township in 2019. The 2019 Rezoning was recommended for approval by the Township's Planning Commission on two separate occasions in February 2019 and August 2019. The 2019 Rezoning also was recommended by the Adams County Planning Commission (together with a suggestion that the Township's Comprehensive Plan be updated at the same time). The Adams County Planning Commission recognized that

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the 2019 Rezoning was consistent with the Adams County Comprehensive Plan. More importantly, the Adams County Planning Commission recognized that the 2019 Rezoning would be sound community planning because the tracts to be rezoned – including the Property – are located between existing development and are surrounded by the Suburban Residential designation in the Township's Comprehensive Plan.

The R-1 District zoning classification was adopted by the Township in August 2019. Now, less than a year later, after the general election and legal proceedings to resolve the composition of the new Board of Supervisors regime, there is an effort to reverse the 2019 Rezoning. This is despite the fact that all of the reasons outlined above by the Adams County Planning Commission in their support of the 2019 Rezoning remain unchanged today.

The effort to reverse the 2019 Rezoning is led by newly seated Supervisor Thomas Weaver. Supervisor Weaver has demonstrated a clear bias against the development of the Property and all forms of residential development in the Township. Supervisor Weaver – as a member of the public - spoke in opposition to the 2019 Rezoning. During the November 18, 2019 Board of Supervisors meeting, Supervisor Weaver (not yet a member of the Board of Supervisors at that time) went so far as to inquire as to his rights to appeal the 2019 Rezoning.

Mr. Weaver's efforts to prohibit the development of the Property and oppose residential growth in the Township have continued in 2020 since being seated as a member of the Board of Supervisors. On March 16, 2020, Supervisor Weaver made a motion to have the Township's solicitor draft an ordinance establishing a 10-year moratorium on residential development on tracts over five acres in the Township. Had this effort been pursued the Township likely would have ended up embroiled in lawsuits as moratoriums on development are illegal in Pennsylvania. Having been advised that moratoriums on development are illegal in Pennsylvania, Supervisor Weaver scaled back his ambitions⁵ but remain focused on the Property and other tracts in the Township that were rezoned to the R-1 District in the last ten years.

At the April 20, 2020 Board of Supervisors meeting, Supervisor Weaver made a motion to have the solicitor draft an ordinance rezoning the Property and other tracts to the A District to prevent residential growth in the Township. The April 20 meeting was held virtually on the Township's Facebook page. Supervisor Weaver's motion was not among the topics listed on the agenda for the meeting. Moreover, Racehorse's public comments made to the motion went unanswered during the meeting.

At the May 18, 2020 Board of Supervisors meeting, Supervisor Weaver made a motion again to have the solicitor draft an ordinance rezoning the Property along with other tracts along Rt. 116 and a tract next to the Township building – all in an effort to stop residential development. That motion died for lack of a second. Supervisor Weaver did not relent and made a second motion, this time to have the solicitor draft an ordinance rezoning just the Property and other tracts along Rt. 116 that were included in the 2019 Rezoning. At all times since the 2019 Rezoning, the

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zoning classification and development of the Property have been in Supervisor Weaver's crosshairs.

The Township now has advertised an ordinance to be considered at a public hearing on July 23, 2020 to essentially reverse the 2019 Rezoning less than one year after it was adopted. The Township also has retained the professional services of a community planner to testify at the public hearing at a cost of \$4,700. This cost is in addition to whatever legal fees have been incurred so far in 2020 as Supervisor Weaver explored efforts to impose an illegal moratorium and now to sponsor this illegal special legislation.

Racehorse acknowledges that any Township decision to zone property is a legislative decision to which the Board of Supervisors are entitled some discretion. That being said, the legislative discretion exercised by a governing body when zoning property is not absolute discretion. Decisions regarding the zoning classification of property cannot be arbitrary, capricious, or discriminatory. Moreover, zoning classifications cannot be used as special legislation to strip away the property rights of landowners in an effort to prevent specific projects.

Supervisor Weaver opposed the 2019 Rezoning, considered appealing it, and now has engaged in a relentless effort to prevent residential development in the Township – or at the very least to prevent the development of the Property. Supervisor Weaver is leading the Township down a path that could result in costly litigation. This personal crusade to prevent the development of the Property goes beyond any reasonable or legitimate effort at community planning.

The Planning Commission should stand behind the recommendations it made twice in 2019 for the Property to be zoned in the R-1 District and should choose not to participate in Supervisor Weaver's crusade.

Sincerely,

McNEES WALLACE & NURICK LLC



By

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