

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

FRIENDS OF ABOLITION HALL

vs.

BOARD OF SUPERVISORS OF WHITEMARSH TOWNSHIP

NO. 2018-27551

**CIVIL COVER SHEET**

State Rule 205.5 requires this form be attached to any document commencing an action in the Montgomery County Court of Common Pleas. The information provided herein is used solely as an aid in tracking cases in the court system. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Name of Plaintiff/Appellant's Attorney: MICHAEL D FIORENTINO, Esq., ID: 73576

Self-Represented (Pro Se) Litigant

Class Action Suit  Yes  No

MDJ Appeal  Yes  No

Money Damages Requested

Commencement of Action:

Amount in Controversy:

Notice of Appeal \_\_\_\_\_

**Case Type and Code**

Civil Appeals: \_\_\_\_\_

Other \_\_\_\_\_

Other: BD OF SUPERVISORS CONDITIONAL USE DECISION

Case# 2018-27551-0 Docketed at Montgomery County Prothonotary on 11/21/2018 2:18 PM, Fee = \$294.25. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

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# Supreme Court of Pennsylvania

Court of Common Pleas

Civil Cover Sheet

MONTEGOMERY

County



|                                   |  |
|-----------------------------------|--|
| <i>For Prothonotary Use Only:</i> |  |
| Docket No:                        |  |

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

|  |   |
|--|---|
| <b>Commencement of Action:</b>   |   |
| <input type="checkbox"/> Complaint   | <input type="checkbox"/> Writ of Summons  |
| <input type="checkbox"/> Transfer from Another Jurisdiction  | <input type="checkbox"/> Petition   |
|  | <input type="checkbox"/> Declaration of Taking  |
| Lead Plaintiff's Name:<br>Friends of Abolition Hall  | Lead Defendant's Name:<br>Board of Supervisors of Whitemarsh Township   |
| Are money damages requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No         | Dollar Amount Requested: <input type="checkbox"/> within arbitration limits<br><input type="checkbox"/> outside arbitration limits<br>(check one) |
| Is this a <i>Class Action Suit</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Is this an <i>MDJ Appeal</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |
| Name of Plaintiff/Appellant's Attorney: MICHAEL D. FIORENTINO  |   |
| <input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)   |   |

SECTION B

**Nature of the Case:** Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

**TORT** (do not include Mass Tort)

Intentional

Malicious Prosecution

Motor Vehicle

Nuisance

Premises Liability

Product Liability (does not include mass tort)

Slander/Libel/ Defamation

Other:

\_\_\_\_\_

**CONTRACT** (do not include Judgments)

Buyer Plaintiff

Debt Collection: Credit Card

Debt Collection: Other

\_\_\_\_\_

Employment Dispute: Discrimination

Employment Dispute: Other

\_\_\_\_\_

Other:

\_\_\_\_\_

**CIVIL APPEALS**

Administrative Agencies

Board of Assessment

Board of Elections

Dept. of Transportation

Statutory Appeal: Other

\_\_\_\_\_

Zoning Board

Other:  
Board of Supervisors  
Conditional Use Decision

\_\_\_\_\_

**MASS TORT**

Asbestos

Tobacco

Toxic Tort - DES

Toxic Tort - Implant

Toxic Waste

Other:

\_\_\_\_\_

**REAL PROPERTY**

Ejectment

Eminent Domain/Condemnation

Ground Rent

Landlord/Tenant Dispute

Mortgage Foreclosure: Residential

Mortgage Foreclosure: Commercial

Partition

Quiet Title

Other:

\_\_\_\_\_

**MISCELLANEOUS**

Common Law/Statutory Arbitration

Declaratory Judgment

Mandamus

Non-Domestic Relations Restraining Order

Quo Warranto

Replevin

Other:

\_\_\_\_\_

**PROFESSIONAL LIABILITY**

Dental

Legal

Medical

Other Professional:

\_\_\_\_\_

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Attorney for Appellants

IN RE: APPEAL OF FRIENDS OF ) IN THE COURT OF COMMON PLEAS OF  
ABOLITION HALL, ANITA ) MONTGOMERY COUNTY, PENNSYLVANIA  
THALLMAYER, AND MARY CELINE )  
CHILDS FROM THE DECISION AND )  
ORDER DATED OCTOBER 25, 2018 ) CIVIL ACTION No.: 18-\_\_\_\_\_  
OF THE BOARD OF SUPERVISORS )  
OF WHITEMARSH TOWNSHIP IN )  
THE MATTER OF CONDITIONAL ) Land Use Appeal  
USE APPLICATION #06-17 )  
)

**NOTICE OF LAND USE APPEAL**

The Appellants, Friends of Abolition Hall, Anita Thallmayer, and Mary Celine Childs, by and through Counsel, hereby appeal the Decision and Order of the Board of Supervisors of Whitemarsh Township upon Application for Conditional Use #06-17, the Application of K. Hovnanian Pennsylvania Acquisitions, LLC, which Decision was issued on October 25, 2018 and mailed to the parties on October 26, 2018. The Application sought conditional use under the Whitemarsh Township Zoning Ordinance, and the Decision of the Board granted the Application subject to conditions set forth in the Order. In support of this Appeal, the Appellants hereby state the following:

**I. PARTIES**

1. Friends of Abolition Hall is an unincorporated association with a principal address of 644 Harts Ridge Road, Conshohocken, PA. Friends of Abolition Hall formed in order to protect Abolition

Hall and other buildings and land of historic and cultural significance situated on the Corson Estate in the Plymouth Meeting National Historic Register District / Plymouth Meeting Local Historic District from development or to mitigate the harm which may befall these structures and fields as a result of development. Friends of Abolition Hall has numerous members who reside within Whitemarsh Township, some of whom are within 500 feet of the property which is the subject of this appeal, and some of whom own adjacent property. Friends of Abolition Hall was granted party status by the Board in the Conditional Use hearings which it held upon Application #06-17.

2. Anita Thallmayer is an adult individual residing at 16 Marple Lane, Plymouth Meeting, PA, a property which she owns. Ms. Thallmayer's land shares two borders with the Corson Estate, a parcel slated for development under the Application and upon which the historic buildings are situated. Ms. Thallmayer was granted party status by the Board in the Conditional Use hearings which it held upon Application #06-17.

3. Mary Celine Childs is an adult individual residing at 53 E. Germantown Pike, Plymouth Meeting, PA, a property she owns and which is situated within 500 feet of the Corson Estate property sought to be developed by K Hovnanian. Ms. Childs was granted party status by the Board in the Conditional Use hearings which it held upon Application #06-17.

4. The Board of Supervisors of Whitemarsh Township ("Board") is the governing body of the Township, with a principal place of business of 616 Germantown Pike, Lafayette Hill, PA 19444, Montgomery County. Pursuant to §116-37 of the Township Zoning Ordinance and §909.1(b)(3) (53 P.S. 10909.1(b)(3)) of the Municipalities Planning Code of Pennsylvania, the Board is charged with hearing and adjudicating applications for conditional use under the Township Zoning Ordinance.

5. K. Hovnanian Pennsylvania Acquisitions, LLC, (“Hovnanian”) is a Pennsylvania limited liability company with a principal place of business at 110 Fieldcrest Avenue, Edison, NJ 08837. Hovnanian is the equitable owner of the Corson Estate and the Haub Tract, two adjoining parcels upon which it seeks to develop townhomes, for which it filed the above-referenced Application for Conditional Use with Whitemarsh Township.

## **II. SUMMARY FACTUAL BACKGROUND**

6. The subject properties of the Board Decision and Order are two adjoining properties at 4006 Butler Pike and 4046 Butler Pike, Plymouth Meeting which together contain approximately 13.7 acres and comprise what is known as the Corson Estate and the Haub Tract, respectively. Both properties are situated in the Village Commercial 2 (“VC-2”) Zoning District of Whitemarsh Township.

7. Approximately 10.7 Acres of the total form the Corson Estate, upon which is situated Abolition Hall, the Stone Barn, and the Hovenden House, an expanse of fields and forests, wetlands, and another residence.

8. The three named buildings date to the late 18<sup>th</sup> Century and pre-Civil War period, and are closely associated with the Abolition Movement and the Underground Railroad. Following the War, they became the home and studio of an internationally acclaimed artist who married into the Corson family. The previous owner of this land, Nancy Corson, nominated the buildings and the fields sitting alongside them to the National Register of Historic Places in 1971, and the buildings’ nomination was approved by the Department of the Interior. In addition, the buildings are featured as part of the Plymouth Meeting National Historic Register District, a significant series of buildings

which were also nominated and approved for placement on the National Register. The land and buildings are also included in the Local Historic District.

9. The heirs to the Corson Estate, Ann Wilson, Margaret Stevens, and Thomas Hopkins, reached an Agreement of Sale with Hovnanian in May 2015, a redacted version of which is one of the Applicant-Appellee's Exhibits to the Conditional Use Proceeding. Hovnanian thereby became equitable owner of the property.

10. In November 2017, Hovnanian submitted the Application for Conditional Use, which was docketed by the Township as Conditional Use Application #06-17, and along with the Application and Addendum, also submitted a Site Plan, and several other attachments.

11. A revised Site Plan was submitted on January 29, 2018, as part of its Conditional Use Application which features 67 townhomes and indicates the intention to subdivide the current Corson and Haub properties into 3 new parcels.

12. The Board opened a public hearing on the Application on March 22, 2018, and held further hearings on the matter on April 26, May 24, June 14, July 19, August 16, and September 13, 2018.

13. Proposed Lot #1 has frontage on Germantown Pike and Butler Pike, will include all three historic structures and comprises approximately 1.1 net acres. Proposed Lot #2 has frontage on Butler Pike, is to host 67 townhomes, roadways, parking areas, and five stormwater detention basins, and comprises approximately 11.257 net acres. Proposed Lot #3 has frontage on Marple Lane, will host an existing residence and garage, and comprises approximately 0.347 net acres.

14. There are presently no stormwater management facilities on the Corson Estate or Haub Tract, although an area of wetlands exists on the Corson Estate in close proximity to Appellant Thallmayer's property.

15. In the proposed development, the stormwater detention basin in the lowest elevation area of the site is situated in the northeastern edge of the site, in proximity to the Jehovah's Witness property, 4050 Butler Pike, Plymouth Meeting.

16. There are presently no areas of impervious surface on the land of the Corson Estate and Haub Tract which are designated to be Lot #2 on the Applicant's site plan, with exception of a single dwelling and driveway on the Haub tract.

17. Under the Applicant's proposed use, 40% of the land area of the site will be impervious surface and impervious surface creates more stormwater than a permeable surface would, resulting in an increase in the total amount of stormwater to be dealt with on the property.

18. The Decision of the Board states that Applicant witnesses testified credibly that the Development would not unduly burden stormwater management and therefore complies with zoning ordinance Conditional Use Procedures §116-37F(8). (Dec'n, p. 14)

19. Applicant does not provide any information or data regarding stormwater quantities or flow rates from its development upon which it could be determined that its proposed use does not unduly burden the Township's or other entities' stormwater management pursuant to §116-37 F.(8).

20. The Board sustained relevance objections and prohibited Objector-Appellants' from presenting the expert testimony of Dr. James A. Schmid, an ecologist and wetlands scientist, on the flow of stormwater collected on the site, the destination of the stormwater to be discharged from the site, and the adverse impact the stormwater from the site could have upon Municipal Separate Storm Sewer Systems (MS4) and water quality in receiving streams.

21. The Decision of the Board states that an Applicant witness testified credibly that the Development complies with all applicable regulations of the VC-2 District and therefore complies with zoning ordinance Conditional Use Procedures §116-37F(7).

22. Whitemarsh Township Code Chapter 55, Tree Protection, is an ordinance applicable to this Development.

23. Applicant does not provide any testimony which addresses the Development's impact on the existing tree cover on the Site, nor information or data of any kind from which it could be determined that the Development would comply with applicable provisions of Chapter 55 and thus comply with Conditional Use Procedures §116-37F(7).

24. The Board sustained relevance objections and prohibited Objector-Appellants' from presenting the expert testimony of Dr. James A. Schmid, an ecologist and wetlands scientist, on the deforestation which will result from the Development as shown on the Applicant's Revised Site Plan.

25. Applicant does not provide any testimony or data concerning the extent of the wetlands present on the Site from which it could be determined that the Development will comply with Article XXXV of the zoning ordinance, the Riparian Corridor Conservation Overlay District, and thus comply with Conditional Use Procedures §116-37F(7).

26. The Board sustained relevance objections and prohibited Objector-Appellants from cross-examining Applicant witnesses concerning the wetlands on the Site and their delineation/depiction on the Applicant's Revised Site Plan.

27. The Board sustained relevance objections and prohibited Objector-Appellants' from presenting the expert testimony of Dr. James A. Schmid, an ecologist and wetlands scientist, on the probable extent of the wetlands on the Site, the anticipated impact of the Development upon the wetlands, and the applicability of the Whitemarsh Township Riparian Corridor Conservation Overlay District (Article XXXV of Chapter 116, Zoning (§116-257 *et seq.*))



28. The Decision of the Board states that an Applicant witness testified credibly that the Development complies with the Whitemarsh Township Open Space Plan, and therefore complies with Zoning Ordinance Conditional Use Procedures §116-37F(4),

29. On March 14, 2013, the Board of Supervisors of Whitemarsh Township amended the 2006 Township Open Space Plan to include the Abolition Hall property / Corson Estate in the “priority open space category.”

30. The Development will place 58 townhomes and attendant roads, parking areas, and stormwater retention basins on the open space of the Corson Estate.

31. Applicant’s land planner testified that the townhomes in Applicant’s plan will be approximately 35 feet in height.

32. Applicant’s land planner did not measure the heights of historic buildings on the Corson Estate Lot #1, nor other historic buildings in the District.

33. Appellants’ expert Architect testified that the historic buildings on the Corson Estate, Lot #1, are approximately 24 to 25 feet in height.

34. The Decision of the Board indicates that the Applicant’s expert architect testified that the Development’s townhomes will look appropriate on the site in relation to buildings on nearby properties, and therefore complies with zoning ordinance §116-291 B(3)(b) (all principal buildings shall relate in scale, massing and style to the surrounding buildings.

35. The Corson Estate features an area of wetlands and significant areas of forest land and meadow. Various species of wildlife have been observed on the Corson Estate.

36. Stormwater will be conveyed from detention basin to detention basin and then be discharged off the site by pipe to probable drainage areas to the Northeast of the site.

37. Because of the historical connections with significant events in American History, such as the Abolition Movement, the Underground Railroad, and 19<sup>th</sup> Century art, the National Register of Historic Places-listed property is a strong candidate for National Historic Landmark status.

38. Failure to provide an adequate amount of land to Proposed Lot #1 where the historic structures are located such that would allow for their re-purposing may result in demolition by neglect and / or de-listing of some of the property from the Historic District.

39. The Board sustained relevance objections and significantly limited the expert testimony of Objectors' witnesses Mary DeNadai, AIA, an historic preservation architect, and William Bolger, a retired National Park Service historic designation manager on matters relevant to public health, safety and welfare.

40. The Board sustained relevance objections and prohibited organizational witness and primary fact witness for Objector-Appellant Friends of Abolition Hall, Sydelle Zove, from testifying as to information she has as to the Site, information concerning the process undertaken by the Applicant in the nature of impeachment testimony, harms anticipated to result from the Development, and other relevant topics.

41. The Board sustained relevance objections and prohibited Objector-Appellant Anita Thallmayer from testifying as to information she has regarding her knowledge of agricultural use of Corson Estate land on which the Development will occur, the types of wildlife she has photographed and observed on the Site as they are commonly described by laypersons, harms anticipated to result from the Development, her use and enjoyment of her back yard which is adjacent to the Corson Estate, and other relevant topics.

42. The Board sustained relevance objections and prohibited Objector William Telegadis from testifying as to harms anticipated to result from the Development, his use and enjoyment of his home and his back yard which is adjacent to the Corson Estate, and other relevant topics.

43. The Board's Decision and Order of October 25, 2018 is attached hereto as Exhibit "A".

### **III. SPECIFIC GROUNDS FOR THE APPEAL**

44. The Board committed an error of law and / or abused its discretion by repeatedly denying Objector - Appellants the right to introduce evidence demonstrating that Applicant failed to satisfy the specific criteria of the zoning ordinance for which it has the burden of proof, including but not limited to: the §116-37F(7) conditional use requirement to comply with regulations for the VC-2 district and with the zoning ordinance generally which includes the RCCD Riparian Corridor Conservation Overlay District (§116-257 *et seq.* of the Code) and other applicable ordinances which includes the Tree Protection Ordinance (Chapter 55 of the Code); and the §116-37F(8) conditional use requirement to not unduly burden stormwater management provided by the Township or other entities.

45. The Board committed an error of law and / or abused its discretion by repeatedly prohibiting the Objectors from introducing evidence to demonstrate their burden of proof that the proposed Conditional Use would be likely by a high degree of probability to cause harm to the public health, safety and welfare.

46. The Board committed an error of law and / or abused its discretion by repeatedly prohibiting the Objectors from introducing evidence to demonstrate that the proposed Conditional Use will violate Article 1, Section 27, the Environmental Rights Amendment to the Pennsylvania Constitution.

47. The Board committed an Error of Law by concluding that it had no obligation to the Objectors and to the general public to conduct a pre-action analysis showing that its Decision to approve the Conditional Use would not violate Article 1, Section 27, the Environmental Rights Amendment to the Pennsylvania Constitution.

48. The Board abused its discretion by failing to conduct an independent pre-action analysis of the Development's anticipated impacts upon the rights of the Objectors and the general public under Article 1, Section 27, the Environmental Rights Amendment to the Pennsylvania Constitution.

49. The Board abused its discretion by concluding that the Applicant's Development would not unduly burden stormwater management and therefore complies with zoning ordinance Conditional Use Procedures §116-37F(8) in the absence of substantial evidence to support the same.

50. The Board committed an error of law and / or abused its discretion by Determining the Applicant's Development satisfied *Whitemarsh Township Zoning Ordinance §116-37 F.(4)*, that the 67 townhomes and attendant roadways, parking and basins are consistent with the policies of the Township Open Space Plan when that Open Space Plan, as Amended, categorizes the Corson Estate land (the Site) as priority open space, and where the Applicant was thus unable to meet its burden to demonstrate compliance with the specific criteria of this portion of the conditional use procedures section of the zoning ordinance.

51. The Board abused its discretion by concluding that the Applicant's Development would not be out of character with the scale of surrounding buildings and therefore complies with specific criteria of the zoning ordinance at section §116-291B(3) in the absence of substantial evidence to support the same.

52. The Board committed an error of law and / or abused its discretion by prohibiting portions of the expert testimony of Objectors' witnesses Mary DeNadai, AIA, an historic preservation architect,


and William Bolger, a retired National Park Service historic designation manager on matters relevant to public health, safety and welfare.

53. The Board committed an error of law and / or abused its discretion by prohibiting the Objectors from providing testimony in support of their standing and with regards to harm to public health safety and welfare from the Development.

**WHEREFORE**, the Appellants request that this Honorable Court enter an Order reversing and remanding the Decision of the Board of Supervisors of Whitemarsh Township with instruction that the Board DENY the Conditional Use or, in the alternative, that the Board reopen the hearing and broadly admit the testimony of Objector – Appellant witnesses on matters pertaining to compliance with specific criteria of the ordinance, harms to the public health, safety and welfare, and impacts of the Development upon the environment, and further direct the Board to conduct an investigation and analysis of impacts of the Development pursuant to Article 1 Section 27 of the Pennsylvania Constitution, and provide any other relief deemed just and proper.

Respectfully submitted,

Date: 11/21/18

By:   
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