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February 7, 2022

Via electronic mail; mpeters@eastburngray.com

Michael E. Peters, Esquire
Eastburn and Gray, PC
60 East Court Street
PO Box 1389
Doylestown, PA 18901-0137

Re: 2 Harry Street, Conshohocken, PA

Dear Mr. Peters:

I represent the owners, Joseph and Barbara Collins, and the tenants, Craig Mosmen and Michael Cassano regarding the property at 2 Harry Street, Conshohocken. My representation is in strong opposition to the proposed condemnation.

My clients do not object to Conshohocken's proposed use of eminent domain for any of the limited, authorized public purposes. Here, the February 2, 2022 Borough Council meeting revealed the purposed of the condemnation would be for a public space and "nothing was tied down" as to what that public space would be. Potential uses were identified as: a historical society, a historical museum, public amenity, public space, or open space.

The tenant of the property, The Couch Tomato Café, has signed an 18 year lease of the property by which it will be used only as a restaurant. The tenant's planned use and love of the building is expressed in the attached prior news story. The attached January 13, 2022 Building Permit approved the work of electrical, plumbing, and mechanical work for a new café, The Couch Tomato, consistent with historic preservation. The owners and tenants are working together to preserve and protect the historical building as a public restaurant, an amenity, just off the Schuylkill River Trail. The property is the historic Outbound Station, and that great history would be preserved if Conshohocken does not condemn.

Ironically, while the asserted Borough purpose included historical purposes, the Borough explicitly does not have the legal authority to condemn for any historical purposes. Pennsylvania eminent domain law authorizes Boroughs to exercise the awesome power of eminent domain for a few limited, specified purposes. 8 Pa. C.S.A. 1501(1)-(6). Furthermore, those limited authorizations are subject to strict construction. 1 Pa. C.S. 1928(b)(4) and (6). Thus, a power which is not authorized may not be used. The Borough indicated multiple possible purposes on February 2nd, none of which include any of the specified purposes

authorized for Borough eminent domain use. Accordingly, historical preservation would be fully protected by The Couch Tomato and may not be furthered by Conshohocken's use of eminent domain.

I also note that the proposed ordinance for this use of eminent domain for this small, 4,979 square foot (.11 acre) property failed to list "the purpose" as required by 26 Pa. C.S.A. 302(b)(4). Instead of listing an identified, researched, and needed public purpose, the proposed ordinance only listed multiple possible, future public purposes as: "...for public purpose only, including, but not necessarily limited to, public open spaces, parks, recreation, and public parking." Such a vague assertion of potential public purposes fails to adequately state the purpose as required 26 Pa. C.S.A.(b)(4); Pennsylvania Dep't. of Transportation v Montgomery Township, 655 A.2d 1086 (Pa. Commw. Ct. 1995), appeal denied, 666 A.2d 1059 (Pa. 1995); In re Condemnation of Powell, 261 A.3d 298 (Pa. Commw. Ct. 2021).

I recognize the eminent domain powers of a Borough include condemnation for parks, playgrounds and recreational places. However, here a single, small property with an historical train station building on .11 acres, surrounded by private property, could not plausibly be asserted to be needed for an isolated park of that tiny size. Furthermore, the Pennsylvania eminent domain law looks to actual purposes rather than asserted purposes. Reading Area Water Auth. V. Schuylkill River Greenway Ass'n, 50 A.3d 255 (Pa. Commw. Ct. 2012).

Now that Conshohocken has indicated multiple, possible unauthorized eminent domain purposes, it could not soon credibly assert one of the authorized taking purposes. The true intent, as revealed in the recorded Borough meeting and the ordinance, provide the true intent, which is a future, unspecified use. That is not an authorized eminent domain purpose under Pennsylvania Law. 8 Pa. C.S. 1501; Powell, id.

Conshohocken is approximately one square mile and contains eight public parks. If Conshohocken identified a valid need for another park, or similar facility, it might well be a suitable large vacant property. If the Borough has not conducted "...a suitable investigation leading to an intelligent, informed judgment by the condemnor, the condemnation is invalid." In re Condemnation of School Dist., 244 A.2d 42, 46 (Pa. 1968).

Next, I note additional protection of private property rights when eminent domain is used and the purpose is abandoned. The property may be required to be offered back to the condemnee at the price previously paid to the Condemnee. 26 Pa. C.S.A. 310.

Lastly, I believe that an effort to proceed with eminent domain on this property would be defeated as in Powell, id. In that scenario the Borough would not obtain the property. Also, it would be responsible for its legal fees, along with all of the reasonable fees and costs of the condemnee owners and tenants. 26 Pa. C.S.A. 306(g). Also, if an eminent domain effort somehow succeeded, the owners and tenants would be rigorously protected in just compensation rights and relocation benefits which could be more costly than just compensation.

On behalf of my clients, I respectfully request that the ill-conceived and unauthorized effort to condemn 2 Harry Street be ended. Please save the historic Outbound Station by ending the attempted eminent domain abuse.

I am available for discussion. Please advise.

Very truly yours,



Michael F. Faherty

MFF/rrb

Enc. As stated

cc: Joseph Collins, w/enc., *via electronic mail only*
Craig Mosmen, w/enc., *via electronic mail only*

The Couch Tomato Café, known for its organic and locally sourced pizzas, salads, sandwiches, and soups, is getting a new outpost in **Conshohocken**. Owners **Craig Mosmen** and **Michael Cassano** hope to open the brand's third location sometime this spring or summer in the former Pennsylvania Railroad train station building, at **2 Harry St.**, the right off the Schuylkill River Trail.

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"We just loved this building. It's the original train station from the 1800s. It's in the heart of everything in a very recognizable spot. When it fell into our laps, it just seemed like it was meant to be. It was an easy sell once it became available to us," Mosmen told What Now Philadelphia.

Conshohocken's Couch Tomato Café, formerly inhabited by the now-closed Cafe at Riverbend, will be a BYOB location and offer counter service in a 2,200 sq. ft. space with indoor and outdoor seating for about 40 guests. The eatery will serve signature and build-your-own gourmet salads, sandwiches, and pizzas with gluten-free, vegetarian, and vegan options and focus heavily on takeout, delivery, and catering. The Couch Tomato has been using thoughtfully sourced organic and local ingredients prepared at peak

freshness since before it was cool. Mosmen says it's been the key to the brand's success.

"We keep it simple. But put a twist on classic menu items, which seems to be ageless when you use high-quality ingredients. I think the number one reason we stayed so relevant is because of our food quality. It's important for people to know we try to go that extra mile to put better quality ingredients in our food," Mosmen said. "If you read our reviews online, it's always about people loving our quality. We tweak the menu every six months to keep it exciting and new, and that's worked. My partner and I stay passionate and involved. We care a ton, and it shows."

Mosmen and Cassano were college friends at the University of Delaware, where they also spent time working in the restaurant industry. The first Couch Tomato Café opened in Manayunk two years after their graduation in 2003. That location later expanded to include The Tomato Bistro, a full-service dining restaurant in the upper level of their café. They opened a second Couch Tomato Café in West Chester in 2015. Mosmen says he and his partner plan to expand in the future and are eyeing Havertown and Kennett Square for turnkey locations.

**Borough of Conshohocken**

400 Fayette St. Suite 200

Conshohocken, PA 19428

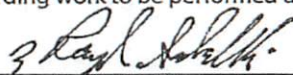
Phone: 610-828-1092 Fax: 610-828-0920

BUILDING PERMIT

Permit Number: 21-01042		Permit Issue Date: 01/13/22	Invoice #: I2102407
Application Id: 9437		Application Date: 10/13/21	
Owner/Property Details			
Parcel Id: 05-00-04876.006 Location: 2 HARRY ST Zoning Code: SP1 Owner Name: COLLINS JOSEPH P & BARBARA A Address: 200 FORREST ST CONSHOHOCKEN, PA 19428		Conditions: I Must call for all Inspections!	
Contractor: Trimar Contractors Address: 4125 Presidential Drive Lafayette Hill, PA 19444 Phone #: (610)960-6040 License #:			
is hereby granted permission to perform the following work:			
BUILDING PERMIT ELECTRIC PERMIT PLUMBING PERMIT MECHANICAL PERM			
Description of Work			
Tenant Fit-out or pre-existing Cafe to a new Cafe' The Couch Tomato		FILE COPY	

ALL PERMITS MUST BE PLACED IN WINDOW
CONSTRUCTION WORK HRS: MON-FRI 7:00AM - 5:30PM
SAT: 8:30AM - 5:00PM. NO WORK HRS ON SUNDAY

I hereby certify by my signature below that the information provided is true and correct to the best of my knowledge and that the stated value of construction includes all materials, equipment, labor and profit. I further agree to adhere to all City, State and Federal laws regarding work to be performed under this permit.


Building Code Official Signature

1-14-2022
Date


Building Inspector Signature

1-14-2022
Date