



SENT VIA ELECTRONIC MAIL:
June 25, 2026

Zoning Hearing Board
Plymouth Township
700 Belvoir Road
Plymouth Meeting, PA 19462

RE: Application for Special Exception - Data Center by 900 Conshohocken Road LLC

This comment is submitted to the Plymouth Township Zoning Hearing Board (“Board”) regarding the application for 900 Conshohocken Road, identified as tax parcel 49-00-02742-30-5, to receive a special exception permit for a data center development, (the “Application”). It is the position of the Delaware Riverkeeper Network (DRN) and Green Amendments For The Generations (GAFTG) that the Application does not meet the criteria for a special exception under the Plymouth Township Code (the “Code”), and approval of the Application would violate the rights and duties found in Article 1 Section 27 of the Pennsylvania state constitution. The Application should be rejected by the Board.

We believe that Applicant’s materials present a false equivalency between data centers and research, development, and testing of new products facilities; laboratories; warehouses; and manufacturing, and does not qualify for a special exception. Further, Section 1503N of Plymouth’s Zoning ordinance directly prohibits the siting of a facility like a data center in the proposed location because data centers have deleterious effects on public health and safety, and potential negative impacts to adjacent properties. Further, Article I, Section 27 of the Pennsylvania Constitution requires the Zoning Hearing Board to deny the application for special exception due to the lack of pre-decision environmental review and the harm to the environmental rights of the residents of Plymouth Township that would result from the Application’s development.

- I. Applicant’s proposed use is not consistent with or of the same general character as permitted uses in the Heavy Industrial District, is contrary to the public interest and, does not qualify for a special exception under Plymouth Township Zoning Ordinance Section 1502.J.**

A special exception has been defined as a permitted use in which the applicant establishes that the proposed use satisfies the requirements of the zoning ordinance.¹ An application for a special exception initially

¹ *Lukens v. Ridley Township Zoning Board of Adjustment*, 367 Pa. 608 (1951).

involves a determination as to whether or not the application meets the criteria of the ordinance's special exception provision.² The applicant for a special exception has both the duty of presenting evidence and the burden of persuading the Zoning Hearing Board that the proposed use satisfies the objective requirements of the ordinance for grant of special exception.³ Generally, once the applicant has established that the proposed use complies with the terms of the ordinance, which expressly governs such a grant, the burden would then shift to the objectors to establish that the proposed use would adversely affect the public health, safety, or welfare.⁴ Here, however, Plymouth Township's Zoning Ordinance has expressly established that "[a]n applicant for a special exception shall have the burden of establishing both: (a) That his application falls within the provisions of the Ordinance which accords to the applicant the right to seek a special exception; and (b) That allowance of the special exception *will not be contrary to the public interest.*"⁵

Plymouth Township's Zoning Ordinance provides that any of the following uses shall be permitted when authorized as a special exception by the Zoning Hearing Board:

- A. Administrative offices of commercial and industrial partnerships, companies or corporations . . .
- B. Meat and fish processing and packing.
- C. Bulk dry cleaning and dyeing facilities.
- D. Bulk laundry processing.
- E. Truck Terminal.
- F. Mining, quarrying or removal of natural materials. . . .
- G. Landfills limited to the disposal of construction and demolition wastes, flyash or slag, provided that such use shall be subject to the restrictions and conditions imposed by Section 3302.A. and Section 3302.B. of this Ordinance; . . .
- H. Day care or nursery facilities.
- I. Physical fitness centers.
- J. Any use of the same general character as any permitted use.⁶

Data centers do not fall under any of the enumerated uses that "shall be permitted" as a special exception. Because of this, the Applicant asserts that the proposed data center is a permitted special exception "by-right" because Plymouth Township's Heavy Industrial Zoning District (the "HI District") permits a broad spectrum of heavy industrial uses. Under the Applicant's view, because laboratories and warehouses are permitted uses in the HI District, and, in Applicant's opinion, data centers are consistent with and have the same general characteristics as laboratories, research, development and testing of new products facilities, warehouses, and manufacturing, the Zoning Hearing Board must approve this application for special exception. These assertions are inaccurate and misleading.

² Plymouth Township Zoning Code § 2101(D)(1)(a); *see also Bray v. Zoning Board of Adjustment*, 48 Pa.Cmwlth. 523 (1980)

³ *Appeal of R.C. Maxwell Company*, 120 Pa.Cmwlth. 251, 548 (1988); *Keystone Chemical Company Inc. v. Zoning Hearing Board of Butler Township*, 90 Pa.Cmwlth. 213, 494.

⁴ *Dotterer v. Zoning Board of Upper Pottsgrove Township*, 138 Pa.Cmwlth. 615 (1991).

⁵ Plymouth Township Zoning Ordinance Section 2101.D.1 (emphasis added).

⁶ Plymouth Township Zoning Code § 1502.

A. Data centers are not of the same general character as laboratories, research, development and testing of new products facilities and the Applicant has failed to establish that they are.

The Applicant asserts that data centers and laboratories, research, development and testing of new products facilities share similar characteristics, and that because these uses are permitted in the Heavy Industrial District under Section 1502.J of the Code, the Application should also be allowed.

The first claim under Section A of the Application refers to the internal processes of both facilities, such as needing to “maintain specific environmental conditions, like temperature, humidity, and air quality, which are critical for their sensitive equipment”.⁷ In reality, the environmental controls required for the internal processes of a laboratory, research, development and testing of new products facilities versus a data center vary greatly. The internal temperature control of a data center serves a sole purpose: to keep the servers cool and working. This demands a significantly larger amount of power than a laboratory, research, development and testing of new products facilities with a variety of rooms that vary on their need for temperature controls, such as rooms housing biological material, computer rooms, break rooms, testing rooms, offices, equipment rooms, etc. Given the intense need for data centers for a constant standard temperature, humidity control, and air quality control, the power needs and systems surrounding the Application would be far greater than a laboratory, research, development and testing of new products facility. Further, there would be little to no flexibility in this large power demand, as the data center would run continuously and its entire systems could fail if these strict environmental controls are not met.

The developer asserts a similarity in “redundant power systems” and the need for “uninterruptible power supplies (UPS) and backup generators” for laboratories, research, development and testing of new products facilities and data centers.⁸ However, the need for power in a lab or a research and development facility is different from the need for power in a data center. If a lab or a research, development and testing of new products facility loses power, backup power supplies are used to properly maintain key specimens or products, whereas other items requiring power may not be essential and therefore not need ongoing power. A data center needs constant power to keep the computers running programs for their operator and to constantly keep the entire facility cool to prevent servers and chips from overheating and being destroyed or damaged. Labs, research, development and testing of new products facilities provide more flexibility with power usage than a data center.

Much of the information in the application to the Zoning Hearing Board centers around the assertion that the internal processes and core responsibilities of a data center are similar to a laboratory, research, development and testing of new products facility. But this application lacks clarity on how the attributes of these facilities and data centers compare when it comes to their effect on the character of the community, exposing nearby homes and athletic fields to emissions, lighting and noise; their effect on power needs and pricing; and their impact on water quality and quantity. All of these impacts are among those that should be

⁷ Application to Plymouth Township regarding 900 Conshohocken Road, at PDF pg. 4

⁸ *Id.*

assessed with detailed information provided to, and considered by, the Zoning Hearing Board before a determination is made whether a data center and a laboratory, research, development and testing of new products facility are similar in operation and character and similarly acceptable under Section 1502.J.

In addition, there are many outstanding questions in need of consideration and answer, including when it comes to the power needs of the proposed data center. Has the developer presented a contingency plan if they cannot keep up with the power demand of the center? Will the Application's power needs have an effect on local power needs during the hotter days of the year? While the developer is currently claiming that this data center will be self-powered by the proposed natural gas turbines, without a full plan and details, how can the Zoning Hearing Board be assured that the Application will fully provide for its own power and that there will be no need to pull from the grid? It is essential the Zoning Hearing Board have full details on the present and future plan to power the proposed data center before it renders any decisions regarding this Application.

B. Data centers are not consistent with nor do they share the same general character as warehouses, and the Applicant has failed to establish that they are.

The Application also claims that data centers are similar to warehouses and, as a result, should be permitted in the Heavy Industrial District. The Application suggests the proposed data center is simply a "specialized warehouse, designed to store, maintain, process and distribute digital and electronic data."⁹ However, the Application does not discuss the potential water usage of the data center—a volume not generally associated with a warehouse. For example, some data centers are estimated to use up to 5 million gallons of water a day.¹⁰ In addition, do these two distinctly different uses share the same energy needs and would a warehouse require the same kind of high-level power needs and generation as the proposed data center? As discussed above, a data center has one purpose—to house computers and servers to run programs or software which require a consistently cool temperature throughout the facility. A warehouse can be a more diverse building, housing computers but also storage rooms with cold or room temperature storage, break rooms, offices, production needs, etc. Warehouses provide more flexibility with power usage than a data center.

This section of the Application, again, leaves out key details about the Application's impact on the community as compared to the impact of a warehouse. In fact, the Application would have a meaningfully different kind and quality of impact. The Application has not discussed how the noise from a data center would be of a different quality than that of a warehouse—e.g. that the noise emanating from a data center is constant, un-ending, 24 hours a day everyday—and as such could have a meaningfully different impact on the community. It has been determined that continuous noise in excess of 30 decibels disturbs people's sleep.¹¹ Noise during sleep has been shown to increase heart rate and pulse, raise blood pressure, and cause

⁹ *Id* at 5.

¹⁰ Eric Olson, Anne Grau, & Taylor Tipton, *Data Centers Draining Water Stressed Communities*, The University of Tulsa, July 19th 2024, <https://utulsa.edu/news/data-centers-draining-resources-in-water-stressed-communities/>.

¹¹ Jariwala, Hiral & Syed, Huma & Pandya, Minarva & Gajera, Yogesh. (2017). " Noise Pollution & Human Health: A Review ".

cardiac arrhythmias.¹² Research shows that long-term, daily exposure to noise levels starting above 65 decibels can trigger a fight or flight response which impacts the endocrine and autonomic nervous system, raising risks of cardiovascular disease for those exposed.¹³ Additionally, the Application does not discuss how the proposed smokestacks, which warehouses do not have, will also affect the health of the local community, including those using the neighboring athletic fields, and the nearby homes.

Just because two buildings may be similar in their outward appearance, does not mean they are functionally similar enough to be automatically approved under Section 1502.J.

C. Data centers are not consistent with nor do they share the same general character as manufacturing, and the Applicant has failed to establish that they are.

The Application states that “Manufacturing plants process raw materials into physical products, while data centers process raw data into finished information products . . .”¹⁴ The Application appears to spin similarities in wording of products but not in reality of what is actually produced nor their method of production. As stated above regarding the other compared uses, a manufacturing facility can vary on its size, functionality, energy use, etc. based on the end product being manufactured. A data center has one purpose, to keep the servers cool and working. This process may require greater amounts of power and water, with limited flexibility in resource consumption in order to avoid an entire system failure.

The Application attempts to compare data centers and manufacturing by stating “[b]oth rely on complex physical infrastructure” and that “[b]oth require precise control over their environment to ensure quality and operational efficiency”.¹⁵ Yet again, “manufacturing” is a broad term, and any manufacturing project presented to the Zoning Hearing Board would require more details on the specific product, means of production, required resources, water and energy needs and sources, quality and quantity of pollution emitted to the air and water as a result of the manufacturing process, information about noise pollution, etc, all of which would impact decision-making. Therefore, it is unreasonable to compare a data center—which has a clear need for control over its environment, operational efficiency, and specific physical infrastructure—to manufacturing generally. Thus, the Application is not of the same general character as manufacturing, and has no basis to be accepted pursuant to Section 1502.J.

D. The Applicant has failed to provide the information necessary to support an evaluation or demonstration of similarity necessary to support the grant of a special exception.

The Application is missing key facts and information that would inform a consideration or determination by the Zoning Hearing Board or the public as to whether or not the Application is within the “same general character as any permitted use” under section 1502.J of the code. This missing information prevents the Zoning Hearing Board from undertaking the necessary evaluations pursuant to the Township Code and the

¹² *Id.*

¹³ *Id.*

¹⁴ *Supra* 9.

¹⁵ *Id.*

state constitution, and prevents the public from being able to make a full and informed public comment on this matter. Public comment is an essential part of the decision-making process and helps to ensure the Zoning Hearing Board has all of the information necessary to render a fully informed and defensible decision.

There are many outstanding issues and questions with the Application. In addition to the questions and concerns identified above, answers to the following questions should be provided before any decision is made:

- Exactly how bright will the lights be on site and how long will they be on for?
- Can the developer guarantee the exact decibel range of the site and how long this sound will permeate for? What are the potential health implications from that level and duration of noise and at what distances?
- How tall will the smokestacks on site be?
- What will the air emissions from the site actually be? What types of pollutants will be emitted?
- What is the expected level of air pollution on a per hour and daily basis?
- What is the expected route of the air pollution plume and how will it impact children and families when they are engaged in activity on the fields, in their homes, and in their yards?
- What are the health implications of any anticipated air emissions?
- Exactly how many natural gas generators will be on site? How long and how often will these generators be expected to run?
- What greenhouse gas emissions are expected from the generators, and what is their expected contribution to climate change?
- How will the natural gas be delivered to the site?
- Where will the natural gas be extracted from?
- How many gallons of water per day will the Application use?
- Where will water used for the Application's cooling and operations come from?
- If water for the Application is withdrawn from water wells, what will the impact be on local water supplies for residential use and/or emergency services?
- If water for the Application is withdrawn from the Schuylkill River, what will be the volume of that withdrawal, what will be the impact on the local ecosystem, what is the infrastructure needed to support that withdrawal, and what agencies would need to review and approve that withdrawal?
- What are any expected water and/or water pollution discharges and discharge amounts anticipated from the Application?

II. The Applicant has provided no evidence to show compliance with performance standards required by the Zoning Ordinance.

Section 1504 of the Zoning Ordinance requires all uses in the Heavy Industrial District to comply with the performance standards set out in Article XXXV. The Applicant has failed to provide evidence to show compliance with the performance standards required by the Zoning Ordinance.

III. The Applicant has failed to meet the burden of establishing that the grant of a special exception will not be contrary to public interest.

In its Zoning Ordinance, Plymouth Township elected to place the burden on the Applicant of establishing that granting a special exception will not be contrary to the public interest.¹⁶ Section 2101.D.3 provides that, “[i]n determining whether the allowance of a special exception or a variance is contrary to the public interest, the Board shall consider whether the application, if granted, will: (a) substantially increase traffic congestion in the streets; (b) increase the danger of fire or panic or otherwise endanger the public safety; (c) overcrowd the land or create an undue concentration of population; (d) impair an adequate supply of light and air to adjacent property; (e) be consistent with zoning and uses; (f) adversely affect the comprehensive plan of the Township; (g) unduly burden water, sewer, school, park or other public facilities; (h) be detrimental to the appropriate use of adjacent property; or (i) endanger the safety of persons or property by improper location or design of facilities for ingress or egress; or (j) otherwise adversely affect the public health, safety, morals or general welfare.”¹⁷

This Application directly contradicts Plymouth’s 2040 Comprehensive Plan and, as a result, will adversely affect the Township’s ability to achieve its long-term community vision, which includes prioritizing sustainability and fostering a safe, family-oriented community.¹⁸

On page 20 of the Comprehensive Plan, the area in which the Application is proposed to be located will be transitioning from “Industrial” land use to “Mixed Use Business & Employment.”¹⁹ The Comprehensive Plan provides that this portion of the riverfront area desires a mix of high-intensity office, retail, hotel, restaurant, and entertainment uses.²⁰ Additionally, “[m]ulti-family residential may also be appropriate when integrated with a mixed-use development served by a transit station.”²¹ None of these various uses will be served by siting this Application in its proposed location—in fact, the placement of any data center here is likely to drive away businesses, families, and visitors that otherwise would have wanted to be located near the river or enjoy the proposed retail or entertainment spaces.

As addressed above, the Application may unduly burden water and energy supplies and the nearby public facilities including Alan Wood Park, Tee’s Golf Center, and the Proving Grounds soccer fields. These are the public facilities that are currently in existence, but there is good reason to believe that more will be developed/advanced in the future. As the Township moves forward in implementing the transition to Mixed Use Business & Employment, even more facilities will be impacted by the Application or may choose to locate somewhere else entirely if the Application is advanced. Therefore, it can also be said that the siting of

¹⁶ Plymouth Township Zoning Ordinance Section 2101.D.1; *Timber Place Associates v. Plymouth Township Zoning Hearing Board*, 59 Pa.Cmwlth. 582.

¹⁷ *Id.*

¹⁸ Montgomery County Planning Commission, Plymouth 2040 Comprehensive Plan, December 2019 at 3.

¹⁹ *Id.* at 20.

²⁰ *Id.* at 22.

²¹ *Id.*

a data center in this location would be detrimental to the appropriate use of adjacent property because data centers have numerous deleterious effects on the health and welfare of both people and the environment.

If the special exception were granted in this case, at least four of the ten considerations to be made by the Zoning Hearing Board go directly against the public interest.²² Not only did the Applicant fail to establish that the allowance of the special exception will not be contrary to the public interest, the Applicant failed to address the issue entirely—the public interest is not discussed anywhere in the Application. Because the Applicant has not met the burden to establish the special exception for the Application is in the public interest, the Zoning Hearing Board must deny the Application for special exception.

IV. The Zoning Hearing Board should deny the application for special exception pursuant to Section 1503.N of Plymouth’s zoning ordinance.

A. The Zoning Hearing Board should deny the special exception pursuant to Township Code 1503.N because the use would be injurious to adjacent properties and public health, safety and welfare, etc.

Under Section 1503.N of the Plymouth Town Code, uses that “may be, dangerous to the public health, safety, morals or public welfare, or which constitutes a public hazard, whether by fire, radioactivity, explosion or otherwise, or which is noxious or offensive by reason or odor, dust, fumes, smoke, steam, gas, vibration, glare, noise or toxicity” are prohibited.

Data centers are dangerous to public health in several ways. Air emissions are just the start. Natural gas generators, like the ones possibly required for the Application, are known to release emissions of nitrogen oxides (“NOx”), Volatile Organic Compounds (“VOCs”), and Carbon Monoxide (“CO”). NOx is known to cause damage to the human respiratory system, which can range from irritation and coughing to permanent lung damage and worsening symptoms of asthma, according to the U.S. Environmental Protection Agency (“USEPA”)²³ and the federal Agency for Toxic Substances and Disease Registry (“ATSDR”).²⁴ Even “low levels of nitrogen oxides in the air can irritate [the] eyes, nose, throat, and lungs, possibly causing [one] to cough and experience shortness of breath, tiredness, and nausea. Exposure to low levels can also result in fluid build-up in the lungs 1 or 2 days after exposure”.²⁵ VOCs can cause difficulty breathing, nausea, and irritate one’s eyes, nose and throat.²⁶ Some VOCs are known to cause cancer.²⁷ CO makes it difficult for the

²² United See Section 2101.D.3 (f), (g), (h), and (j).

²³ United States Environmental Protection Agency, Basic Information about NO₂, <https://www.epa.gov/no2-pollution/basic-information-about-no2#:~:text=Effects%20of%20NO,-2&text=Breathing%20air%20with%20a%20high,about%20Particulate%20Matter%20and%20Ozone>.

²⁴ ToxFAQs for Nitrogen Oxides at <https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=396&toxid=69>.

²⁵ *Id.*

²⁶ American Lung Association, <https://www.lung.org/clean-air/indoor-air/indoor-air-pollutants/volatile-organic-compounds>.

²⁷ *Id.*

body to bind oxygen to cells when it diffuses across lung tissue and into the bloodstream, causing difficulty breathing.²⁸

Data centers pose further risks to public welfare and health when it comes to their water consumption. The developer has not made clear in the Application how much water the facility will need, nor where it will be sourced from. The only information provided in the Application is that a closed loop system will be used. The Application however makes no mention of where the water will come from, how much will be used, and what the process will be for wastewater generated by the facility. Will the applicant draw from the Schuylkill River and or on site deep water wells? These are possibilities with water impacts the Zoning Hearing Board must consider.

When a Meta Data Center was built in Georgia, the tap for residents Beverly and Jeff Morris's home went dry.²⁹ Within a year, the couple's bathroom and kitchen taps were brought down to a trickle, also affecting their dishwasher, ice maker, washing machine, and toilet to the point of basically nonfunction. They have already spent \$5,000 to remedy some of the water problems, but replacing their well would cost \$25,000. This cost is too high for the couple and Mr. Morris has been forced to delay his retirement as a result. The issues were traced to sediment buildup in the water and potentially caused by the Meta Data Center's construction adding sediment to the groundwater.

Depending on the size, large data centers are known to consume upwards of 5 millions gallons of water per day.³⁰ In places like Arizona, where Meta, Microsoft, and Google are all building data center facilities, the state has revoked permits for construction of new homes because there is a lack of groundwater as they are facing drought conditions in addition to the heavy water withdrawal of data centers.³¹ When a data center consumes cooling water from potable sources in already water-stressed regions, it not only increases local water insecurity, but increases the risk of waterborne diseases, poor hygiene, and dehydration.³² What is to stop the Application from switching to pulling water from the Schuylkill River and/or the deep water wells if there is a need for more water for cooling? A closed loop system is not immune from water evaporation and will need replenishment. Reports show even with a 2% bleed on a monthly basis, the contaminants in the system will still rise quicker than in an open air tower that takes on water continuously.³³ This could have serious impacts on the groundwater for residents and businesses and diminish the quality of life and public welfare if people are not able to drink water from their taps, power their washing machines, water

²⁸ World Health Organization, Air quality, energy and health, <https://www.who.int/teams/environment-climate-change-and-health/air-quality-and-health/health-impacts/types-of-pollutants>

²⁹ Eli Tan, *Their Water Taps Ran Dry When Meta Built Next Door*, The New York Times, July 14, 2025. <https://www.nytimes.com/2025/07/14/technology/meta-data-center-water.html>.

³⁰ Eric Olson, Anne Grau, & Taylor Tipton, *Data Centers Draining Water Stressed Communities*, The University of Tulsa, July 19th 2024, <https://utulsa.edu/news/data-centers-draining-resources-in-water-stressed-communities/>.

³¹ Luke Barrat and Costanza Gambarini, "Revealed: Big tech's new datacentres will take water from the world's driest areas," The Guardian, April 9, 2025, <https://www.theguardian.com/environment/2025/apr/09/big-tech-datacentres-water>.

³² Yu Tao and Peng Gao, Global data center expansion and human health: a call for empirical research, ScienceDirect, <https://www.sciencedirect.com/science/article/pii/S2772985025000262>, May 21, 2025 at 1.

³³ Ganesh Hegde, *Closed-Loop Cooling: Water Saver or Chemical Time Bomb?*, KETOS, <https://ketos.co/closed-loop-cooling-water-saver-or-chemical-time-bomb>, June 11, 2025.

their gardens, or use essential appliances like toilets and sinks. If the groundwater in the area is impacted by drought conditions and further constricted by the water withdrawals of the facility, quality of life will certainly be diminished.

When it comes to noise levels, one has to realize a data center does not have a closing time. The facility and its cooling systems will be running 24/7, 365 days a year. Noise need not be blasting and booming to cause serious and lasting impacts. On the 8th floor of an apartment building in Manhattan near Interstate 95, the noise level of nearby traffic reached 66 decibels.³⁴ Psychologists discovered the children that lived on the lower and noisier floors of the building had a hard time distinguishing between similar-sounding words like “thick” and “sick”.³⁵ Constant exposure to even low levels of noise can have impacts on not just one’s enjoyment of life and property, but disrupt their sleep, increase stress, and raise the risk of cardiovascular disease.³⁶

B. Based on the information provided, it is the position of GAFTG and DRN that the Zoning Hearing Board cannot grant the special exception and fulfill its constitutional obligations found in Article I, Section 27 of the Pennsylvania state constitution.

Article I, Section 27 of the Pennsylvania state constitution reads:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.³⁷

Ensuring and securing proper interpretation, application and enforcement of Article I, Section 27—Pennsylvania’s Green Amendment—is of fundamental importance to the people of Plymouth Township. It is their rights and entitlements at issue, and it is the government's duty to ensure full compliance with the state constitution.

C. The Zoning Hearing Board cannot grant a special exception based on the information submitted without violating the people’s constitutional environmental rights because – among other things – Article I, Section 27, also known as the Pennsylvania Green Amendment, includes an obligation to undertake a robust and well-informed pre-action environmental review.

³⁴ *Noise Pollution Isn’t Just Annoying - It’s Bad for Your Health*, BrainFacts.org, June 27, 2018, <https://www.brainfacts.org/Thinking-Sensing-and-Behaving/Diet-and-Lifestyle/2018/Noise-Pollution-Isnt-Just-Annoying-Its-Bad-for-Your-Health-062718>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ PA Constitution, Article I, Declaration of Rights § 27, Natural Resources and The Public Estate.

The Zoning Hearing Board is subject to the rights and obligations in the Pennsylvania Green Amendment.

The environmental rights and natural resource protection entitlements of the Pennsylvania Green Amendment belong to all the people of Pennsylvania, including future generations. The Pennsylvania Supreme Court has affirmed that the obligation to ensure government action does not infringe upon the environmental rights protected by the PA Green Amendment, and to ensure protection of the state's natural resources for both present and future generations, falls to all governmental bodies and officials, including local government. The Zoning Hearing Board, as a local government body, is under obligation to fully comply with the PA Green Amendment.

As explained by the PA Supreme Court in Robinson Township, Delaware Riverkeeper Network, et. al. v. Commonwealth of Pennsylvania (2013) and subsequently in PEDF v. Commonwealth of Pennsylvania (2017):

- Speaking with regards to environmental rights recognized by the Amendment, the court makes clear: *"...the constitutional obligation binds all government, state or local, concurrently."*
- The court goes on to explain, with regards to the trustee obligations in the Amendment:
"Moreover, public trustee duties were delegated concomitantly to all branches and levels of government in recognition that the quality of the environment is a task with both local and statewide implications, and to ensure that all government neither infringed upon the people's rights nor failed to act for the benefit of the people in this area crucial to the well-being of all Pennsylvanians."
- *"Trustee obligations are not vested exclusively in any single branch of Pennsylvania's government, and instead all agencies and entities of the Commonwealth government, both statewide and local, have a fiduciary duty to act toward the corpus with prudence, loyalty, and impartiality."*

At this point, it is settled law in Pennsylvania that the term 'Commonwealth,' as used in Article I, Section 27, "encompasses all agencies and entities of the Commonwealth government, both statewide and local,' meaning that each one has 'a fiduciary duty to act toward the corpus with prudence, loyalty, and impartiality.'" (See e.g. Carnahan v. Slippery Rock Twp. Zoning Hearing Bd., 305 A.3d 211, 2023).

It is important that the Zoning Hearing Board ensures that it is fully carrying forth its duties as required by Article I, Section 27 by ensuring its actions do not infringe upon protected environmental rights and ensuring it fully carries out its trustee obligations as recognized in the Amendment.

The PA Green Amendment includes the obligation to undertake a robust, pre-action analysis. The Zoning Hearing Board does not have the information necessary to perform such an analysis on the Application before it.

The Zoning Hearing Board must ensure that its actions and decisions comply with the constitutional mandates included in Article 1, Section 27 of the Pennsylvania constitution. This obligation includes assessing the constitutional implications of proposed actions and decisions in order to ensure a proposed action will fulfill the substantive obligations of the constitution to protect the environmental rights of Pennsylvanians and that it will fulfill the natural resources trustee obligations mandated by Article I, Section 27. This assessment of the constitutional implications of proposed action with regards to environmental rights and natural resource protection obligations must take place *before* the government renders its decision and implements the proposed action.

As explained by the PA Supreme Court in *Robinson Township, Delaware Riverkeeper Network, et. al. v. Commonwealth of Pennsylvania*:

“Clause one of Section 27 requires each branch of government to consider in advance of proceeding the environmental effect of any proposed action on the constitutionally protected features. The failure to obtain information regarding environmental effects does not excuse the constitutional obligation because the obligation exists a priori to any statute purporting to create a cause of action.” (*Robinson Township, Delaware Riverkeeper Network, et. al. v. Commonwealth of Pennsylvania*, 83 A.3d 901 (Pa. 2013)).

The PA Green Amendment also identifies Pennsylvania government (including state and local) as the trustee of the state's natural resources with fiduciary obligations to conserve and maintain these resources for the benefit of present and future generations. “As a fiduciary, the Commonwealth has a duty to act toward the corpus of the trust -- the public natural resources -- with prudence, loyalty, and impartiality.” (*Robinson Township, Delaware Riverkeeper Network, et. al. v. Commonwealth of Pennsylvania*, 83 A.3d 901 (Pa. 2013)). “Although a trustee is empowered to exercise discretion” with respect to government’s obligation as a trustee of Pennsylvania’s natural resources, that discretion “does not equate “to mere subjective judgment.”” (Pa. Env’tl. Defense Foundation (“PEDF”) v. Commonwealth of Pennsylvania, 161 A.3d 911 (Pa. 2017)). The duty of prudence requires the Zoning Hearing Board to secure and consider a robust body of information that will allow it to fully and fairly assess the implications of the proposed data center for natural resources, and for its own constitutional duties vis-à-vis conserving and maintaining those resources.

Furthermore, the Pennsylvania Commonwealth Court has confirmed that government action “is constitutionally inadequate unless the [government] completes an appropriately thorough environmental review” and “factors the results into its ultimate determination regarding the reasonable necessity of the proposed siting” of a project. (See *Township of Marple v. Pennsylvania Public Utility Commission*, No. 319 C.D. 2022, opinion not reported).

In order to fulfill its constitutional obligations to ensure its actions do not infringe upon environmental rights directly, nor empower others to do so, and to ensure it fulfills its obligations as a trustee of Pennsylvania's natural resources, the Zoning Hearing Board is constitutionally obligated to undertake a robust analysis of

the proposed data center with regards to impacting environmental rights and natural resources. This robust analysis must take place *before* the Zoning Hearing Board renders its decision.

Given what we know about the environmental impacts of large-scale data centers, such as the one proposed, this robust analysis must include assessment of the impacts of the Application, its siting, and its operations for water quality, water quantity, water ecosystems, air quality, climate change, ambient noise and lighting, human health, aquatic life, ecosystems, and wildlife.

The information provided by 900 Conshohocken LLC does not provide the details nor the quality of information necessary for the Zoning Hearing Board to undertake the required pre-action constitutional review. For example, in addition to the information and concerns provided above, the application fails to include information regarding water quality and quantity impacts for surface water and groundwater; fails to include details on air quality impacts and the potential implications for local human health and contributing to climate change; fails to include solid information on the noise and light impacts of the Application and potential impacts on surrounding communities including human health; fails to discuss the potential impacts of air emissions for those engaging on the nearby sports fields and residences; and fails to include firm information regarding energy needs and impacts for climate change, fossil fuel extraction, energy resources and potentially energy costs.

D. The Zoning Hearing Board must deny the special exception because of the harms to environmental rights and public natural resources pursuant to Article I, Section 27.

The PA Supreme Court has made clear that the environmental rights articulated in Article I Section 27 are “neither meaningless nor merely aspirational”, and ensures an “obligation on the government’s behalf to refrain from unduly infringing upon or violating the right...”

The court has also made clear that government’s duty, as trustee, to conserve and maintain the state’s natural resources, “implicates a duty to prevent and remedy the degradation, diminution, or depletion of our public natural resources.” (*Robinson Township, Delaware Riverkeeper Network, et. al. v. Commonwealth of Pennsylvania*, 83 A.3d 901 (Pa. 2013) and subsequently in *PEDF v. Commonwealth of Pennsylvania* (2017):).

Experience and data are increasingly confirming that large-scale data centers inflict significant consequences for the environment: they are a serious source of air pollution, can require significant volumes of water, have had implications for water quality and ecosystems, inflict significant and constant noise and light with consequences for surrounding human and natural communities, require high levels of land disturbance including compaction and runoff, and are powered by fossil gas that has lasting consequences for advancing climate change. It is unclear how, given the size and location of the Application, that 900 Conshohocken LLC can be approved in a way that will protect environmental rights and natural resources in compliance with the constitutional duties of the government and the rights of the people.

V. Delaware Riverkeeper Network and Green Amendments For The Generations recommends the Zoning Hearing Board deny the request for special exception variance.

Delaware Riverkeeper Network is a nonprofit organization that works throughout the four states of the Delaware River watershed, including New York, New Jersey, Pennsylvania and Delaware, to protect the Delaware River, its tributary streams and communities. Delaware Riverkeeper Network has supporting members in the communities that will be impacted by this data center proposal.

Green Amendments For The Generations is a nonprofit organization that works throughout Pennsylvania and nationwide to secure, implement and enforce constitutional Green Amendments that recognize and protect, at the highest constitutional level, the inalienable human rights of all people to a clean, safe and healthy environment, and ensures all government officials within a state serve as trustees of the state's natural resources with a duty to protect them for present and future generations. Green Amendments For The Generations has supporting members in the communities that will be impacted by this data center proposal.

Given the inability of the Zoning Hearing Board to meet the requirements of the Township Code and provide the required constitutional review, and given the high and unavoidable natural resource and environmental consequences of this Application to the degree information has been provided, the Zoning Hearing Board should deny the requested special exception.

Respectfully submitted,



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