

**BEFORE THE BOARD OF SUPERVISORS OF
ALLEN TOWNSHIP, NORTHAMPTON COUNTY, PENNSYLVANIA**

**CHALLENGE TO THE SUBSTANTIVE VALIDITY OF THE ALLEN TOWNSHIP ZONING
ORDINANCE AND REQUEST FOR CURATIVE AMENDMENT PURSUANT TO SECTIONS
609.1 AND 916.1 OF THE MUNICIPALITIES PLANNING CODE**

Applicants are the Trustees of the Trust for Willow Brook Farm under Paragraph Four of the C. T. Fuller Revocable Agreement of Trust dated August 7, 1987, as amended (the “**Willow Brook Trust**”), and the Alexandra H. Fuller Family Trust dated November 8, 2011 (the “**Alexandra Family Trust**”), hereinafter collectively referred to as “**Landowners**”). The Landowners, by and through their attorneys, Kaplin, Stewart, Meloff, Reiter & Stein, P.C., hereby challenge the substantive validity of the Allen Township Zoning Ordinance (“**Zoning Ordinance**”) and request the adoption of a curative amendment pursuant to Sections 609.1 and 916.1 of the Pennsylvania Municipalities Planning Code, and in support thereof aver as follows:

The Property

1. Landowners are the owners of the ±211.5-acre property located on the west side of Willowbrook Road (“**Willow Brook Property**”) in Allen Township, Northampton County (“**Township**”).
2. The Willow Brook Property is part of the overall Willow Brook Farm containing 266.71 acres of land located in four different municipalities (“**Willow Brook Lands**”).
3. A number of buildings are located on the Willow Brook Property, including but not limited to the main house, service quarters and guest homes, horse stables, barns, an equestrian center, two indoor riding arenas, a golf course, Pro Shop and Grill, and various maintenance buildings.
4. Approximately 43.72 acres of the Willow Brook Property (81.96 acres of Willow Brook Lands) is currently operated as part of the Willowbrook Golf Course.
5. The Willow Brook Property is located in the Township’s R-1 Low Density Residential

zoning district.

The Surrounding Properties

6. Prior to 1998, the Willow Brook Property was part of a larger \pm 1200 acre tract of land located on both the east and west sides of Willowbrook Road, and north of West Bullshead Road which was owned by C. Thomas Fuller and/or WBF Associates, L.P. (“**Fuller Tract**”).

7. In 1998, the Lehigh Northampton Airport Authority (“**LNAA**”) acquired 631.49 acres of the Fuller Tract located on both the east and west sides of Willowbrook Road (“**LNAA Property**”) by de facto condemnation pursuant to an Order of the Lehigh County Court of Common Pleas dated June 15, 1998 and recorded August 1, 2007 at Book 2007-1, Page 282445 in the Office of the Recorder of Deeds for Northampton County.

8. On January 23, 2015, Rock Lehigh Valley, LLC (“**Rock**”) entered into an Agreement with LNAA to purchase approximately 260 acres of the LNAA Property located on the east side of Willowbrook Road (“**FedEx Property**”) for the development of a 1,166,369 square foot FedEx Ground Regional Hub Facility (“**FedEx Ground Facility**”) and \pm 970,000 square feet of industrial warehouse buildings on Radar Drive. The FedEx Ground Facility is now occupied. The FedEx Property was formerly part of the Fuller Tract and was condemned by LNAA and sold to Rock.

9. The FedEx Property is located on the east side of Willowbrook Road and has more than 3,900 linear feet (approximately .75 miles) of frontage on Willowbrook Road. Approximately 2,800 linear feet (approximately .5 miles) of the FedEx Property’s frontage on Willowbrook Road is directly across from the Willow Brook Property.

10. The FedEx Property is located in the I/A Industrial-Airport zoning district.

11. The Rockefeller Group (“**Rockefeller**”) subsequently entered into an Agreement with LNAA to purchase and/or develop approximately 80 acres of the LNAA Property immediately adjacent to and along the south side of the Willow Brook Property (“**Rockefeller Lot 5 Property**”) for the development of a 1,030,000 square foot industrial facility (“**Rockefeller Industrial Facility**”).

12. The Rockefeller Lot 5 Property is also located in the I/A zoning district.

13. Rockefeller has obtained preliminary and final land development approval from the Township for the development of Rockefeller Lot 5 with the Rockefeller Industrial Facility which is now under construction.

14. The southwest side of the Willow Brook Property abuts land located in North Catasauqua and Northampton Boroughs which have been approved for the development of 164 single-family detached dwellings. The northwest side of the Willow Brook Property abut land located in Northampton Borough which is currently being designed for fifty-five, 5,000 SF lots

15. To the north, the Willow Brook Property abuts the R2 Medium Density Residential zoning district in the Township which has been developed with age-restricted twins, townhouses and single-family detached dwellings, all on small fee simple lots.

16. The northeast side of the Willow Brook Property abuts the A-Agricultural zoning district in the Township and has been developed with the Wayne A. Grube Memorial Park.

17. As depicted on the Township Zoning Map, a copy of which is attached hereto as Exhibit "A", the Willow Brook Property is not contiguous with any other R-1 zoned land in the Township.

The Invalidity of the Zoning of the Undeveloped Portions of the Willow Brook Property

18. As set forth in the following Counts of this Challenge, Landowners believe that the R-1 zoning of the undeveloped portions of the Willow Brook Property constitutes impermissible spot zoning, is confiscatory, arbitrary and irrational, prevents the reasonable use of the undeveloped portions of the Willow Brook Property, and is therefore substantively invalid.

19. In order to cure the invalidity of the zoning of the undeveloped portions of the Willow Brook Property, Landowners seek a curative amendment: (a) rezoning a 55.47 acre portion of the Willow Brook Property, on the west side of the Catasauqua Creek, to the R-2 zoning district so that it can be developed with 73 age-restricted single-family detached dwellings, 48 age-restricted semi-detached dwellings, and 54 age-restricted townhouses ("West Tract"); (b) rezoning a 38.04 acre

portion of the Willow Brook Property, on the east side of the Catasauqua Creek, to the R-3 zoning district so that it can be developed with 214 multifamily dwellings (“**North Tract**”); and rezoning a 42.26 acre portion of the Willow Brook Property, on the east side of the Catasauqua Creek, to the R-3 zoning district so that it can be developed with 322 multifamily dwellings (“**South Tract**”) as depicted on a Willow Brook Farm Challenge Plan dated December 1, 2018, prepared by Philip C. Seibert, RLA (“**Challenge Plan**”) attached hereto as Exhibit “B”. A copy of Landowner’s Proposed Curative Amendment to the Zoning Map is attached hereto and made part hereof as Exhibit “C”.

20. As depicted on the Challenge Plan, approximately 25.00 acres of the Willow Brook Property will continue to be used as a farm and equestrian center (“**Farm Tract**”).

21. As depicted on the Challenge Plan, approximately 39.93 acres of the Willow Brook Property (plus 42.03 acres in North Catasauqua Township) will continue to be used as a golf course and clubhouse and permitted accessory uses (“**Golf Tract**”).

22. As depicted on the Challenge Plan, the proposed development of the West Tract has been designed to comply with all use and dimensional requirements of the R-2 Medium Density Residential zoning district in a manner consistent with the age-restricted twins, townhouses and single-family detached dwellings located in the R-2 District abutting the north side of the Willow Brook Property.

23. As depicted on the Challenge Plan, the proposed development of the North Tract has been designed to comply with all use and dimensional requirements of the R3 High Density Residential zoning district in a manner compatible with the Catasauqua High School and Wayne A. Grube Memorial Park abutting the north side and west side of the North Tract, respectively.

24. As depicted on the Challenge Plan, the proposed development of the South Tract has been designed to comply with all use and dimensional requirements of the R3 High Density Residential zoning district in a manner compatible with FedEx Ground Facility and Rockefeller Industrial Facilities abutting the east and south sides of the South Tract, except Section 27-804.3.I of

the Zoning Ordinance which unconstitutionally restricts the number of dwelling units in a multifamily building to 12 dwellings.

COUNT I

SPOT ZONING

25. Paragraphs 1 through 24 above are hereby incorporated by reference as though fully set forth herein.

26. The Willow Brook Property is an "island" of R-1 zoned land that is totally surrounded by parcels of land which are zoned and/or used for purposes which are not permitted in the R-1 zoning district, with the exception of the Wayne A. Grube Memorial Park.

27. There is no legitimate police power justification to single out the undeveloped portions of the Willow Brook Property for different treatment from the abutting properties, in that:

A. The undeveloped portions of Willow Brook Property are similar to the abutting properties in terms of topography, proximity to highways, and proximity to commercial uses and access to gravity public sewerage and water utilities.

B. The R-1 zoning of the undeveloped portions of the Willow Brook Property runs entirely counter to the purpose of the R-1 zoning district set forth in the Township Comprehensive Plan, which states that the R-1 zoning district is intended to be "a transition between the rural and suburban landscape of the Township." The Willow Brook Property is not situated between rural and suburban land. Rather, it is situated between industrial and suburban lands.

28. The R-1 zoning designation of the undeveloped portions of the Willow Brook Property constitutes unlawful spot zoning.

COUNT II

ARBITRARY AND IRRATIONAL ZONING

29. Paragraphs 1 through 28 above are hereby incorporated by reference as though fully set

forth herein.

30. Pursuant to Section 27-601 of the Zoning Ordinance, only the following uses are permitted by right to be located on the undeveloped portions of the Willow Brook Property in accordance with its R-1 zoning:

- A. Farming including pasturing, truck gardening, horticulture, and similar enterprise.
- B. Single-family detached dwellings.
- C. Public conservation areas and associated structures for the conservation of open space, water, soil, forest, and wildlife resources.
- D. Public municipal buildings and facilities, including libraries.
- E. Accessory uses customarily incidental to the above permitted uses.
- F. Commercial forestry.
- G. No-impact home-based business.
- H. Church or place of worship.
- I. Vineyard.
- J. Winery.

31. Pursuant to Section 27-602 the Zoning Ordinance, only the following uses are permitted to be located on the undeveloped portions of the Willow Brook Property by conditional use in accordance with its R-1 zoning:

- A. Conversion of existing building.
- B. Publicly owned educational institutions and schools.
- C. Country club.
- D. Family farm support business (site plan required).
- E. Farmer's market.
- F. Fitness center or exercise center.

- G. Golf course.
- H. Horse riding academy (non-commercial).
- I. Microbrewery.
- J. Microdistillery.
- K. Nanobrewery.
- L. Personal care home.

32. Under the Township's R-1 zoning district regulations, the only private uses permitted "by right" on the undeveloped portions of the Willow Brook Property are single-family detached dwellings, farming, commercial forestry, winery and vineyard.

33. The undeveloped portions of the Willow Brook Property are not farmed and are not suitable for farming due to their topography, location adjacent to existing and proposed industrial uses and karst geology.

34. The undeveloped portions of the Willow Brook Property are not suitable for the development of single-family detached dwellings due to their location adjacent to existing and proposed industrial uses.

35. The undeveloped portions of the Willow Brook Property are not heavily wooded and are not suitable for commercial forestry.

36. The naturally occurring arsenic in the soils on the Willow Brook Property, and its karst geology, make the Property unsuitable for a vineyard or a winery.

37. Under the Township's R-1 zoning district regulations, the only non-farming private uses permitted by conditional use on the undeveloped portions of the Willow Brook Property are country club and golf course, fitness center, non-commercial horse-riding academy, microbrewery, micro distillery or nanobrewery and personal care home.

38. A fitness center is not a reasonable use for the undeveloped portions of the Willow Brook Property.

39. A non-commercial horse-riding academy is not a reasonable use for the undeveloped portions of the Willow Brook Property.

40. A personal care home is not a reasonable use for the undeveloped portions of the Willow Brook Property.

41. A microbrewery, micro distillery or nanobrewery is not a reasonable use for the undeveloped portions of the Willow Brook Property.

42. The R-1 zoning of the undeveloped portions of Willow Brook Property effectively unreasonably prevents any feasible use of the undeveloped portions of the Willow Brook Property.

43. The R-1 zoning of the undeveloped portions of the Willow Brook Property bears no relationship to rational planning or zoning purposes considering the adjoining zoning and land uses.

44. The restrictions on the use of the undeveloped portions of the Willow Brook Property is greater than necessary for the protection of the public health, safety and welfare, is unduly restrictive, and prevents the reasonable use and development of the undeveloped portions of the Willow Brook Property.

45. The singling out of the undeveloped portions of the Willow Brook Property for different treatment than surrounding properties is unnecessary, arbitrary and irrational.

COUNT III

CONFISCATORY ZONING

46. Paragraphs 1 through 45 above are hereby incorporated by reference as though fully set forth herein.

47. Although the Willow Brook Property is privately owned, the Township Official Map designates a portion of the Willow Brook Property as "quasi-public open space".

48. Although the Willow Brook Property is privately owned, the Future Land Use Map of the Township Comprehensive Plan Official Map designates the entire Willow Brook Property as

“public or quasi-public open space”.

49. Upon information and belief, the Township has intentionally zoned the entire Willow Brook Property R-1 in order to prevent the development of the undeveloped portions of the Willow Brook Property so that it will remain in its open state so that it can be used as public open space as an extension of Wayne Grube Park.

50. The R-1 zoning of the undeveloped portions of the Willow Brook Property is illegal and confiscatory.

COUNT IV

UNREASONABLY RESTRICTIVE R-3 DISTRICT REGULATIONS

51. Paragraphs 1 through 50 above are hereby incorporated by reference as though fully set forth herein.

52. Landowners' Challenge Plan depicts on the South Tract the development of 322 dwelling units in 15 multi-family buildings.

53. However, Section 27-804.3.I of the Zoning Ordinance limits the number of dwelling units in a “condominium style” building to 12 units per building.

54. If Section 27-804.3.I of the Zoning Ordinance is interpreted to apply only to condominium units which are individually owned and not to multifamily units which are rented, then the Zoning Ordinance's imposition of different standards upon condominiums and rental apartments unlawfully regulates the form of ownership through zoning and is unconstitutional.

55. If Section 27-804.3.I of the Zoning Ordinance is interpreted to apply to multifamily units which are rented, then Section 27-804.3.I's limitation of 12 units per multifamily building is greater than necessary for the protection of the public health, safety and welfare and is unconstitutional and effectively prevents the economically feasible development of multi-family dwellings within the Township.

56. Section 27-804.3.I of the Zoning Ordinance is unconstitutionally restrictive and invalid.

57. In order to cure the invalidity of the Section 27-804.3.I of the Zoning Ordinance, Landowners seek a curative amendment eliminating the 12 unit limitation for multifamily buildings (“**Proposed Curative Zoning Text Amendment**”). A copy of the Proposed Curative Zoning Text Amendment is attached hereto and made part hereof as Exhibit “D”.

COUNT V

UNCONSTITUTIONALITY OF UNREASONABLY RESTRICTIVE ROAD WIDTH REGULATIONS

58. Paragraphs 1 through 57 above are hereby incorporated by reference as though fully set forth herein.

59. Section 27-804.3.E of the Zoning Ordinance governing the R-3 District requires that where townhouse or multifamily dwelling buildings are located on one lot:

E. All buildings must have frontage on a public or private street, with a minimum cartway of 40 feet with curb and sidewalk and sixty-foot right-of-way (*if public*).

60. Therefore, Section 27-804.3.E of the Zoning Ordinance distinguishes between public roads and private roads and does not require private roads to have a minimum cartway of 40 feet with curb and sidewalk and sixty-foot right-of-way.

61. However, Section 22-406.K of the Subdivision and Land Development Ordinance (“**SALDO**”) requires that all local streets serving townhouses and multifamily dwellings have a 60 foot right-of-way, two twelve-foot travel lanes, two eight-foot parking/gutter lanes and a total paved width of 40 feet, and does not distinguish between public and private roads.

62. Section 27-804.3.E of the Zoning Ordinance and Section 22-406.K of the SALDO conflict with one another.

63. Moreover, Section 22-406.K of the SALDO’s imposition of a 40-foot wide cartway width and parking/gutter lanes for townhouses and multifamily dwellings in the R-2 and the R-3 district is unreasonable, excessive, unnecessary, arbitrary, irrational and discriminatory, in that:

A. There is no legitimate reason to require a 40 foot wide cartway width and two twelve-foot parking/gutter lanes for townhouses and multifamily dwellings in the R-2 and R-3 districts, while requiring that such uses provide 4 off-street parking spaces per dwelling in the R-2 district and 2 off-street parking spaces in the R-3 district, in that the cartway width is excessive where on-street parking will not be necessary;

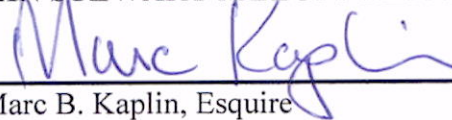
D. A 40-foot wide cartway width creates traffic and pedestrian safety issues by encouraging and allowing vehicles to travel at high rates of speed far in excess of the low vehicle speeds recommended for residential neighborhoods;

E. A 40-foot wide cartway width creates unnecessary impervious coverage and stormwater runoff;

F. A 40-foot wide cartway width is well beyond that required to protect the public health, safety and welfare.

64. In order to cure the invalidity of Section 22-406.K of the SALDO, Landowners seek a curative amendment eliminating the required 40 foot wide cartway width for townhouses and multifamily dwellings in the R-2 and R-3 district (**“Proposed Curative SALDO Text Amendment”**). A copy of the Proposed Curative SALDO Text Amendment is attached hereto and made part hereof as Exhibit “E”.

KAPLIN STEWART MELOFF REITER & STEIN, P.C.



By: Marc B. Kaplin, Esquire

EXHIBIT "A"
ALLEN TOWNSHIP ZONING MAP