

CITY OF EASTON
ZONING HEARING BOARD

NOTICE OF DECISION

Mr. Donald Haas
667 Exton Commons
Exton, Pennsylvania 19341

**RE: Request for §298-13(A)(2)/watercourse relocation
in flood plain and §298-13(A)(6)/installation of
roadway and retention basins in flood plain
Special Exceptions in connection with proposed
construction of 1M+/- square foot warehouse
Property: 535 Wood Avenue (listed as 0 Wood Avenue
in the Appeal), Easton (AR District/Block Class A)
Hearings held: September 18, 2025, October 27, 2025,
December 1, 2025, January 15, 2026**

Dear Mr. Haas:

Please be advised that, by a unanimous vote (with one [1] member absent for each hearing), the Easton Zoning Hearing Board (hereinafter "Board") denied your request for the above-requested Special Exceptions in connection with your proposed relocation of a waterway and installation of a roadway and retention basins incidental to the construction of a 1M+/- square foot warehouse on the above-referenced property, based upon the information and documentation submitted with your Application and the testimony and exhibits offered at the time of the noted hearings.

In arriving at its decision, the Board made and reached the following findings and conclusions:

FINDINGS OF FACT:

(1) The Appellant is the principal landscape architect for Easton Wood Avenue Propco LLC, the equitable owner of the property, in addition to which the Application included an executed Consent by/on behalf of the title owner thereof, Abruzzi Trust; accordingly, this Appeal was properly before the Board;

(2) Individuals who were sworn at the commencement of the sundry hearings and offered testimony were as follows: The Appellant, Donald Haas, on behalf of Easton Wood Avenue Propco LLC (hereinafter sometimes referred to as the "True Appellant"), represented by Marc B. Kaplan, Esquire and Craig R. Lewis, Esquire, of Kaplan Stewart Meloff Reiter & Stein, P. C. with offices at Union Meeting Corporate Center, 910 Harvest Drive, P. O. Box 3037, Blue Bell, Pennsylvania 19422-3037; objector Kimberly Wagner, resident at 721 Cattell Street in Easton; Mr. Jeffrey Smith, a professional on behalf of the True Appellant, who maintains an office at 1818 Market Street, Philadelphia, Pennsylvania 19103; Mr. David Brandes, a professor of Civil and Environmental Engineering at Lafayette College, called by Attorney Shaughnessy on behalf of the below-named objectors he represented; objector Bruce McCutcheon, resident at 619 W. Lafayette Street in Easton; objector Mary Arlia, resident at 261 Northampton Street, Apartment 6 in Easton; objector Ben Cohen, resident at 200 High Street; objector Jennifer Rush, resident at 195 Cedar Crest Boulevard, Allentown, Pennsylvania, 18101, on behalf of those who were sworn at the Initial Hearing but not able to attend Hearing 2 above; specifically, the owners/operators of Threebirds Coffee House at 226 Bushkill Street in Easton; objector Brett Webber, resident at 120 Morrison Avenue in Easton; Mr. Dru Germanowsky, a professor of geology at Lafayette College,

called by Attorney Shaughnessy on behalf of the objectors he represented; Dr. Frank Browne, a Civil Engineer on behalf of the True Appellant, no address given; objector Greg Meyer, resident at 350 North 14th Street in Easton; objector Ghen Zando-Dennis, resident at 1032 Lehigh Street in Easton; and Mr. Dwayne Tillman, Easton Zoning Officer and Secretary to the Board;

(3) In addition to the foregoing, at the sundry meetings, Edward Shaughnessy, Esquire, who maintains an office at 731 Lehigh Street in Easton, appeared on behalf of objectors Dennis Lieb, resident at 1208 Chidsey Street in Easton and Catrian Huynh, resident at 1274 Simon Blvd., Unit G101 in Easton; Cody Harding, Esquire, who maintains an office at 410 North 10th Street in Easton, appeared on behalf of objectors Tim Haas, resident at 1400 Bushkill Street in Easton, and Stoneroot, Inc, dba Stop Wood Warehouse, which maintain an address of 138 South 11th Street in Easton; and Jeff Fleischaker, Esquire, of Gross McGinley, L.P., with offices at 33 South 7th Street, P. O. Box 4060, Allentown, Pennsylvania 18105, appeared on behalf of objector Charles Pax, 672 Wolf Avenue in Easton;

(4) In further addition to the foregoing, at the commencement of each of the noted meetings, an announcement was made on the record to all in attendance that anyone who wished to participate in any way during the course of the proceeding and/or to be considered an interested party for the purpose of receiving a copy of the Board's decision were given an opportunity to affix their name and address to a "sign-in" sheet and, absent any objection thereto, each individual whose name and address appears on those sheets will be mailed a copy of this decision;

(5) The application for hearing was proper and proper notice of each hearing was given; to-wit: at the initial, above-noted hearing, the above-named Secretary of the Board announced that the same had been properly advertised in a local newspaper, confirmed under oath the requisite posting of the property in accordance with the mandate of the Zoning Ordinance and that one (1) area property owner was notified by mail of the hearing date and, prior to each subsequent meeting, publication was either made or the necessity obviated by its announcement on the record at the meeting immediately prior thereto, the same applied to notice to the one (1) neighbor in the notification area under the Zoning Ordinance but, in each instance, the property was re-posted with the new meeting date;

(6) The property is situated in Block Class A of the Adaptive Reuse Zoning District and within the Flood Hazard Overlay, within the latter of which, under §298-13(A)(2) of the Floodplain Management portion of the Zoning Ordinance, the alteration and/or relocation of a waterway is permitted only by Special Exception and, under §298-213(A)(6) thereof, the installation of roadways and retention basins are also permitted only by Special Exception, all subject to compliance with the specific and general requirements set forth in, *inter alia*, the applicable portions of Sections 298-1 through 298-40 thereof and under §595-40(C) of the Zoning Ordinance; hence, the relief sought from the Board;

(7) At the commencement of the hearing on September 18, 2025 (herein sometimes referred to as the "Initial Hearing", with the subsequent hearings sometimes herein referred to as "Hearing 2", "Hearing 3", and "Hearing 4"), Dwayne Tillman, Secretary to the Board as aforesaid, read into the record the Resolution of the Easton Planning Commission dated August 6, 2025, the entirety of which is incorporated herein by reference, which recommended denial of the subject Appeal for the reasons stated therein;

(8) Also at the commencement of the Initial Hearing, it was announced on the record by that, inasmuch as Board member Vulcano Hall could not be present at the Initial Hearing, she would be precluded from participating in the remaining proceedings and in the vote on this matter, such that the Attorney for the True Appellant and the Attorneys for the objectors agreed that the matter would continue and be heard by only four (4) of the five (5) Board members; specifically, those who were present at the Initial Hearing;

(9) Exhibits presented by/on behalf of the True Appellant and accepted by the Board without objection consisted of the following:

- A-1: Northampton County Tax Map for the subject property;
- A-2: The within-mentioned Consent from Abruzzi Trust;
- A-3: City of Easton Zoning Map;
- A-4: FEMA FIRMETTE 42095C0278E;
- A-5: Overall Site Plan for (proposed) Easton Commerce Park, prepared by Bogia Engineering, Inc., dated April 1, 2023, last revised March 20, 2025;
- A-6: Existing Conditions Plan;
- A-7: Proposed Plan of Relocation of (what they termed as) unnamed tributary;
- A-8: Relevant Approvals Secured:
 - A. Easton Area Joint Sewer Authority – Pennsylvania Department of Environmental Protection Sewage Facilities Planning – Chapter 94 Consistency Determination dated September 27, 2024;
 - B. Pennsylvania Department of Environmental Protection Approval of Act 2 Combined Remedial Investigation/Risk Assessment/Cleanup Plan dated December 17, 2024;
 - C. Pennoni Associates, Inc. (Easton Stormwater Consultant) – Recommendation for Approval of Stormwater Management Plans dated January 14, 2025;
 - D. Lehigh Valley Planning Commission – Bushkill Creek Watershed Act 167 Stormwater Management Ordinance Consistency Letter dated February 26, 2025;
 - E. Pennsylvania Department of Environmental Protection – National Pollutant Discharge Elimination System (“NPDES”) Individual Permit for Discharges of Stormwater Associated with Construction Activities Issuance dated April 15, 2025 (Permit NO. PAD480218);
 - F. Pennsylvania Department of Environmental Protection – Water Obstruction and Encroachment Issuance dated April 15, 2025 (Permit No. E4802224-006);
 - G. Pennsylvania Department of Environmental Protection – Act 537 Planning Module Exemption Approval dated June 2, 2025;
 - H. Email correspondence with Nick DiPaolo of Northampton County Conservation District confirming NCCD’s approval of Erosion and Sedimentation Control;
 - I. Conditional Approval of Preliminary/Final Land Development Plan for Easton Commerce Center issued by Wilson Borough Council dated February 27, 2025;
 - J. Preliminary Jurisdictional Determination; and
 - K. Pennsylvania State Programmatic General Permit-6 Verification Letter issued by the U.S. Army Corps of Engineers on September 26, 2025, pursuant to and consistent with Section 404(c) of the Clean Water Act;
- A-9: Expired Special Exception permit dated July 8, 2025;

A-10: Pennsylvania Commonwealth Court's decision in *Williams Holding Group LLC v. Board of Supervisors of West Hanover Township*, 101 A.3d 1202 (Pa. Cmwlth. 2014);

A-11: Recommendation of Planning Bureau [office staff] for Special Exception Approval issued July 29, 2025;

A-12: CV of Donald Haas, RLA, ASLA, CBLP;

A-13: Floodplain Management Ordinance §298-14 entitled "Special Exception Application Requirements";

A-14: Hydrology & Hydraulic Modeling and Floodplain Management Analysis prepared by Bogia Engineering, Inc. dated May, 2023, last revised September, 2024;

A-15: CV of Jeffrey Smith, P. G.;

A-16: Langan Summary regarding former Elementis Pigments Facility – 1525 Wood Avenue, Easton, PA dated September 3, 2025;

A-17: Pennsylvania Department of Environmental Protection Receipt of Notice of Intent to Remediate dated March 22, 2024;

A-18: Pennsylvania Department of Environmental Protection Receipt of Report dated September 26, 2024;

A-19: Act 2 Combined Remedial Investigation/Risk Assessment/Cleanup Plan prepared by Langan Engineering & Environmental Services, LLC dated September 23, 2024;

A-20: U. S. Environmental Protection Agency Cleanup Plan Sufficiency Letter ("Comfort Letter") dated August 15, 2025;

A-21: CV of Frank Browne, Ph.D., P. E.; and

A-22: Rebuttal Presentation prepared by Dr. Browne;

(10) During his opening statement, legal counsel for the True Appellant advanced the following:

- a. The component of the project before the Board consists of the relocation of (what he referred to as) an unnamed tributary, and the installation of an access road and stormwater management basins in the flood plain;
- b. The subject parcel is irregularly shaped, comprised of approximately 62 acres in Wilson Borough, approximately 15 acres in Palmer Township and approximately 29 acres in the City of Easton;
- c. The historical industrial operations on the site ceased some time ago and the property has been vacant, and has become overgrown, since that time;
- d. Bounded by Wood Avenue on South, Hackett Avenue on the West, wooded areas to the North and the Buskill Creek, flowing in a North/South direction to the East, the entirety of the parcel is located North of U. S. Route 22;
- e. The [what was referred to as an] unnamed tributary runs through the property in a West to East direction, through an underground tunnel near the Wood Avenue frontage;
- f. The property is situated within Easton's Street Corridor Overlay of the Adaptive Reuse Zoning District, also in the Flood Hazard area;

- g. 72,000 square feet of the proposed warehouse is to be situated within the City of Easton, with the remainder to be situated in adjacent Wilson Borough, while no development is proposed in Palmer Township;
- h. They are proposing no modifications or disturbances to the Bushkill Creek itself;
- i. Referring to Exhibit A-6, the existing location of the subject tributary is shown left to right, extending underground approximately three hundred (300') feet, which they propose to relocate and daylight by bringing it above ground;
- j. The proposed 40' wide access road is to cross the culvert/daylighted tributary;
- k. Exhibit A-7 depicts the proposed relocation and improvements, with the relocated tributary to run West to East;
- l. They have received the permits and approvals which comprise Exhibits A-8A through A-8H;
- m. He argued that securing all of the (above) permits and approvals established compliance with all applicable requirements under the Zoning Ordinance [with which the Board disagreed];
- n. He referred to Exhibit A-11, the review by the Easton Planning staff and recommendation of approval to the Easton Planning Commission [which, the Board noted, was based solely on review of the plans and other documentation submitted to them, but sans any of the hours of evidence and testimony presented to the Planning Commission, which ultimately led to the recommendation of denial to the Board]; and
- o. At the inquiry of the undersigned Solicitor to the Board, he acknowledged that, notwithstanding all of the approvals and permits obtained, his client still had to comply with the Special Exception requirements of the Easton Zoning Ordinance and the Floodplain Management portion of the Ordinance;

(11) As educed from the testimony of Mr. Donald Haas, on behalf of the True Appellant, elicited in part via the inquiry of Attorney Kaplan (and partially by Attorney Shaughnessy, on behalf of objectors Dennis Lieb and Catrian Huynh, with respect to his qualifications):

- a. As partially reflected on Exhibit A-12, his CV, he is a landscape architect with twenty (20) years' experience, presently a Branch Manager for Bogia Engineering where, *inter alia*, he serves as the Project Manager for endeavors such as that before the Board, having worked previously with stormwater quality and stream restoration, he reads and interprets Federal regulations "daily" and, at regular intervals, interacts with DEP and the Army Corps of Engineers;
- b. He prepared the Plans they have presented with the subject Appeal;
- c. He is not a physical engineer, has no Engineering degree, nor is he licensed;

- d. He participated in the preparation of all reports presented, including the hydraulics and hydrology reports, but did not know what was used to calculate the flow rates [which the Board found odd];
- e. He was accepted as an Expert witness on 'this issue' by one (1) other Zoning Board (Amity Township), as a result of which the Board did accept him as an expert witness as a landscape architect with respect to land development;
- f. Referring to Exhibit A-6, the area marked in blue depicts the FEMA flood plain and the purple represents their own modeling using a FEMA formula;
- g. Exhibit A-3 depicts the property situated in the AR Zoning District, and the portions thereof in the Flood Hazard Overlay;
- h. Exhibit A-4 is the FEMA mapping showing the flood plain on the property, with the 100-year flood plain shown in blue (FEMA also includes any other flood hazard areas);
- i. On Exhibit A-7, the proposed new flood area is depicted in red and, he opined, they meet the requirements of §298-13A2, 3 and 6 with respect to their proposed relocation of the subject tributary;
- j. He also opined that their proposed relocation and corresponding improvements will have no adverse impact, in that, using the formula developed by the Army Corps of Engineers, the flow will be "virtually the same" post-relocation as it is now and, further, that the fish habitat will be improved by daylighting the subject tributary in that fish do not swim up the tunnel presently, because it is too dark;
- k. A-14 is their Hydrology and Hydraulics Report which, he advanced, was reviewed by a [unnamed] certified Engineer and, as such, he further advanced, is their certification as required by the Ordinance;
- l. The stream will be designed to flow freely and there will be no impediments to its flow, as a result of which he further opined that there will be no increase in the flood elevation [though, the Board noted, he did not say under what conditions he was referring to];
- m. He advanced that they comply with all of §298-13 of the Flood Management portion of the Ordinance, in addition to which they have conditional approval from FEMA and, once FEMA confirms that the "as built" complies with the plans they submitted, FEMA will issue their formal letter;
- n. Moreover, the Army Corps of Engineers has "essentially signed off", but requires an escrow for future maintenance, which they will post, so that there is nothing left to be done with FEMA [other than as set forth above, which the Board noted, is not guaranteed];
- o. He advanced the DEP is encouraging them to daylight the subject tributary to get water away from contaminated soils where fish can live [though, the Board noted, he did not describe where the referenced contaminated soils are, nor how the water is presently exposed to the same inside an enclosed tunnel];

- p. They are not doing any work in the Bushkill Creek itself and the material they will use for their proposed relocation and improvements will be those that are required, will be compacted and, he advanced, their design will comply with all DEP requirements [though, again, the Board noted that this does not automatically translate to compliance with the Zoning Ordinance, as was intimated by/on behalf of the True Appellant];
- q. With regard to §298-27 of the Flood Management portion of the Ordinance, he opined that their design complies, in that there will be stormwater inlets at the end of the proposed driveway, to manage the roadway stormwater runoff as it crosses over the culvert and will be directed into the proposed basins and filtered;
- r. He described Exhibit A8C as the Pennoni review of their stormwater design which, he asserted, indicated that it is consistent with City requirements, as does Exhibit A8b;
- s. He advanced that the Lehigh Valley Planning Commission agrees with their Act 167 stormwater plan design [again, the Board observed, based upon the review of submissions only and not upon the presentation of any evidence or testimony];
- t. He further advanced that the email from the Conservation District denoted safe compliance, in that no silt or sediment would go into the stream [which the Board questioned given that their methodology and calculations were, they felt, successfully challenged];
- u. There will be no private sewage disposal component as part of the proposed relocation and improvements before the Board;
- v. All utilities will be placed above the base flood elevation, as will the proposed roadway [though he did not say how much above, in either instance, the Board noted];
- w. Only the proposed culvert will be situated below the base flood elevation but, he advanced, is designed to carry all resulting waters through it [designed, but not guaranteed, especially noting, the Board observed, all that came after his testimony, set forth below];
- x. No portion of the proposed warehouse will be in the flood plain;
- y. He opined that the proposed storm water basins will keep the stormwater discharge at the same level as at present, as far as discharge from the subject tributary into the Bushkill Creek; and
- z. He advanced that the proposed stormwater basins have been designed to handle up to the 100-year storm [though not the channel itself, the Board observed];

(12) Upon the cross-examination of Mr. Haas by Attorney Cody Harding, legal counsel for Stop Wood Warehouse Coalition, a community organization comprised of over 500 residents of the City, and Mr. Tim Haas, who resides on the North side of the property and represents Stoneroot Inc. :

- a. A-7 has no topographical lines on the map [as, the Board noted, do none of the other maps submitted on behalf of the True Appellant, which is required under the Flood Management Ordinance];
- b. 60% to 70% of the storm water basins are situated in the City of Easton portion of the property;
- c. There was no 3D modeling submitted with their materials filed with the City; and
- d. They are still awaiting final approval from the Army Corps of Engineers but anticipate the same once they post the required escrow (which they will not do until all necessary approvals are in hand);

(13) Upon the cross-examination of Mr. Haas by Attorney Jeff Fleischaker of Gross McGinley, representing objector Charles Pax, who resides on Wolf Avenue in Easton;

- a. FEMA gets a more technical plan than A-7, though the latter does depict the final version of the tributary relocation; and
- b. They are proposing that the tributary be relocated first, since it involves the moving of dirt;

(14) Per the further cross-examination of Mr. Haas by Attorney Shaughnessy:

- a. USGS STIR is the hydrology method and Stream Stats, last updated in 2019, was used to determine flow rates;
- b. They did not use area ratio analyses to his knowledge;
- c. Some of the permits they acquired, above, are conditioned upon the premise that there is no post-completion increase in flow rates;
- d. Spring Brook is the name of what they had been referring to as the unnamed tributary;
- e. He does not recall the classification of the soil used for their modeling here, since there are so many different types on the property and, he agreed, the type of soil is important in estimating the flow rate since some are more absorbent than others; and
- f. The proposed basins will not reduce the amount of runoff on a 10-year, 20-year or 100-year storm but, he advanced, the Ordinance addresses rate, not volume;

(15) Objector Kimberly Wagner, resident at 721 Cattell Street, asked Mr. Haas about the letter from Wilson Borough Solicitor Stanley Margle, dated in February of 2025, which granted a waiver to the True Appellant relative the sewer module for the property; particularly, why the waiver was given, in response to which he indicated that the waiver was given in that Wilson does not treat the sewer from the site, so they have no interest in the sewer plan;

(16) As deduced from the testimony of Mr. Jeffrey Smith, on behalf of the True Appellant, as also elicited in part via the inquiry of Attorney Kaplan:

- a. Per his CV which was introduced as Exhibit A-15, he is with Langen Engineering Services, LLC, where he is in environmental services, including business, management and development, he has 37 years of experience as an environmental consultant (27 with Langen), from Phase I studies to complicated environmental cleanups and litigation support and, though he does not typically testify before Boards, he has testified as an expert witness in Superfund and other environmental litigation, as a result of which he was accepted by the Board as an expert without objection;
- b. He was retained by the True Appellant to perform due diligence, in that there had been concerns about the activities on the property dating back to 1846, which led to the remedial investigation they did and the cleanup plan they presented;
- c. They came up with a voluntary cleanup plan and, when presented, EPA and DEP collaborate on approvals;
- d. They prepared reports on the site, which is presently inactive;
- e. He explained Act 2, established in 1995, which is a standard voluntary cleanup program with a long list of technical standards and requirements which necessitates public notice and has held up nationally as a model for the country, in that it is risk-based depending on the intended use of the property, under which, if followed, one secures releases from both agencies releasing the landowner, with an assurance that they will not go after the property owner;
- f. The redevelopment of a brownfield plays a part in determining what the cleanup will entail;
- g. With the above-referenced public notice provided, the public then has 30 days within which to provide comments;
- h. Operations commenced on the site circa 1876, involving work with oxide and pigments;
- i. They did [what he described as] exhaustive due diligence, including exhaustive studies;
- j. The green areas on the Redevelopment Plan are those where they will be adding a lot of clean fill;
- k. They investigated groundwater and did many soil samplings;
- l. Using non-residential standards in their evaluations, there were places on the site that exceeded those standards;
- m. They did a risk assessment based on site specific data;
- n. Their plan relies on fill placed over contaminated soil (greater than 10');;
- o. There will be no use of groundwater on site;

- p. He opined that their plan will permit the construction of a building which the occupants of, and visitors to, will not be exposed to anything, referring to their report which was submitted as Exhibit A-19;
- q. He advanced that the EPA has no concerns with respect to what they are proposing but has not issued final approval on groundwater, observing that they seem to want them to make it "pristine" in case it migrates off of the property, as reflected in Exhibit A-20 [which caused the Board to wonder if they will be able to meet that standard];
- r. On the plan they presented, the red areas are those where deeper cuts of soil will be made, the yellow are those where the cuts will not be as deep, the green are the fill areas, and the blue are the deep fill areas; and
- s. The channel (tributary) is being moved to a non-contaminated area [which made the Board wonder why they were later told that DEP wanted them to move some soil from the present site of the tributary to the new site, since the soils at the present site are contaminated];

(17) In response to the inquiry of Attorney Shaughnessy, Mr. Smith indicated that they did only two (2) soil borings, one at Spring Brook's present location and the other where it is intended to be moved and, with the borings at least 10' to 15', there was limestone in them;

(18) In response to the inquiry of Attorney Fleischaker, Mr. Smith acknowledged that the EPA could change their approval if they do not satisfy them with respect to groundwater;

At Hearing No. 2 on October 27, 2025:

(19) At the commencement of the hearing, Attorney Kaplan offered Exhibit A-8J (the NTDES Permit, providing Preliminary Jurisdictional Determination) and Exhibit A-8K (Pennsylvania State Programmatic General Permit-6 Verification Letter issued by the U. S. Army Corps of Engineers on September 26, 2025, pursuant to and consistent with the Section 404(c) of the Clean Water Act, each of which were the subjects of part of Mr. Haas' testimony, the latter of which permits intrusion into wetlands, per his testimony; these Exhibits were accepted by the Board without objection;

(20) As deduced from the testimony of Dr. David Brandes, on behalf of the objectors, as elicited in part via the inquiry of Attorney Shaughnessy and, with respect to his qualifications, via the cross-examination of Attorney Kaplan:

- a. As depicted in his CV offered as Exhibit O-1, accepted by the Board without objection, he is a professor of Environmental Engineering at Lafayette College;
- b. He has his Bachelor's Degree in Civil Engineering, his Master's Degree in Environmental Systems Engineering and his PhD in Civil Engineering with a concentration in Water Resources Engineering;
- c. He has been studying the Bushkill Creek since the summer of 1999, having invested thousands of hours doing so since that time, concentrating on understanding stream flows, runoff and watersheds, primarily to assist in his teaching;
- d. One of the long-term studies he has done, since 2018, concerns how the Creek responds to dam removals, of which there have been four (4) in the last decade;

- e. He has published studies on water quality monitoring in the Bushkill Creek, as well as others on detention basin hydraulics;
- f. He has studied its "flashiness"; i.e., how rapidly it reacts to storms and water runoff;
- g. He has recently been looking at why some watersheds respond more rapidly than others, his studies relating to watersheds and runoff processes, using hydraulics to mitigate the impact of development, the main factor in that study, he found, being the amount of impervious surface;
- h. He maintains no license and does not design systems such as the one Bogia Engineering designed for them in this instance, though Attorney Kaplan indicated that he did not object to his qualification as an expert, and he was so recognized by the Board;
- i. He advanced that he is familiar with the Clean Water Act and, though he admitted that he has never actually submitted the paperwork to secure the permits that Bogia did, he has spent the past twenty-six (26) years teaching others how to do it;
- j. He reviewed the hydrology and hydraulics analysis and Stormwater Management Report prepared by Bogia Engineering, the former of which presents a modeling of existing conditions and proposed conditions, and the latter of which looked at the runoff curve number and the pre- and post-development runoff to determine compliance with the Easton Ordinances;
- k. He studied Bogia's report regarding existing conditions using Stream Stats, which he described as a USGS package of regression models, specifically using estimates where no volumes are available, to measure flow;
- l. He described the peak flow rate as how much water is passing within a given period of time (the peak of the hydrograph curve), in showing pre- and post-storm flows, while describing volume as the amount of water generated from a site;
- m. He advanced that Act 167 permits municipalities to regulate peak flows from development sites;
- n. His conclusion relative to all of the foregoing is that, with the relocation and improvements proposed by the True Appellants, there would be a substantial increase in runoff volumes from the site, at least during a 5-year, 10-year on up to a 100-year storm;
- o. While he has no reason to doubt Bogia's peak flow models, he opined that the first impact would be increased volume using standard model TR55, based on the proposed increase in impervious surface (2.7 acres to 54 acres, per the evidence provided by the True Appellant);
- p. Pursuant to the foregoing, specifically, he opined that, during a 10-year storm, there would be an increase of 4.5 inches, which would increase the volume by 6 million gallons, and during a 100-year storm, an increase of 7.44 inches, which would increase the volume by 10 million

gallons of water, all of which would cause both sediment and erosion downstream, as a result of those large increases in flows;

- q. He concentrated his review on the HEC-RAS modeling, in connection with which he advanced that "the output is only as good as the input", opining that the input utilized by the True Appellant was faulty;
- r. With respect to the above, while he has no issues with the geometry or slope issues used by the True Appellant, there are no flow rates available for the subject tributary and, he advanced, Bogia estimated the same based on the nearest stream gauge near Tatamy by Route 33, and then did a lineal scaling to estimate the flow of Spring Brook, instead of using a stream gauge at Spring Brook [which, the Board noted, in view of his later testimony that it should have been placed for two years to provide sufficient data, the Appellant spent securing all of their permits and could easily have done], which he advanced they could have done without problem, to show the actual flow rate, but they apparently chose not to do that [leaving the Board to wonder why];
- s. He did measure the Spring Brook watershed, which consists of 3.2 square miles which, taken directly from the report of Bogia, is 67% developed, 9% forested, with 0% wetlands, describing it as a highly developed but small watershed; he advanced that most of the developed portion has been in existence for some time and the runoff therefrom feeds into Spring Brook;
- t. In contrast, using a program called "Model My Watershed", he further advanced that the Bushkill watershed, which has a gauging station there, measures 31.2 square miles, which is 7% developed, 7% forested and 2% wetlands [i.e., markedly different from the Spring Brook watershed, in that it is much larger but much less developed than Spring Brook] and, at that gauge, flows are influenced by the pumping from the quarry which is located up the street;
- u. In summary (of the foregoing), he claimed that the estimates used by Bogia did not take into consideration what he described as the substantial difference in watersheds, noting that nothing compares lineally, as a result of which he would expect Bogia's numbers to be severely underestimated to measure post-construction flow, meaning that the proposed mitigation (culvert) by Appellant is undersized and he opined that a larger channel would be needed to handle the expected, additional flow, citing authority for his conclusions;
- v. He observed that the Bogia report itself states that they did not use information for a small watershed and, therefore, the conclusion/result is not guaranteed;
- w. Specifically, he pointed out that Bogia's post-construction report itself warns that some of the data they use is outside of normal parameters, advancing that, in itself, should have been a red flag for them, calling it an extrapolation of an equation well beyond the bounds of its intended use, especially considering the carbonate nature of this watershed [which is more fully discussed below by another witness for the objectors];

- x. In observing that Bogia's estimate for the Spring Brook flow is 621 cfs (cubic feet per second) which, he opined, is "grossly underestimated", he added that you need the 100-year flow for HEC-RAS and, with no data on Spring Brook, the mien they used for their study was 136 acres when Spring Brook is only 2.3 acres, he further opined that, once the channel is relocated [if it were to be, as presently proposed], the channel would overflow, run across the site and result in flooding;
- y. He further pointed out that, in their own report, the Stream Stats method for the 100-year runoff states that 'none of the regression equations take into consideration any urban development or impervious land cover and, as a result, some of the effects may not be captured', which he called an underestimate at best, since nothing will be captured without taking those things into consideration; and
- z. In conclusion, he opined that, because the channel was not correctly designed using the right data, it will flood;

(21) At the inquiry of the undersigned Solicitor to the Board as to whether the channel could be enlarged **after** relocation if it was discovered that he was right about Bogia's calculations being grossly underestimated, he responded by stating that, at that point, the damage would have already been done;

(22) As further educed from the cross-examination of Attorney Kaplan:

- a. Upon the observation of Appellant's counsel to him that the proposed channel is larger than what is presently there, he responded that he was unaware of that, but still couldn't say that would make a difference without the necessary base data; and
- b. He admitted that, by issuing permits, DEP, etc., disagreed with him to the extent that what was being proposed apparently met their own (DEP) requirements but, he observed, as Bogia had stated, DEP only requires that they meet the requirements for a two (2)-year storm, and that they do not meet all of the requirements of the Zoning Ordinance;

(23) At the inquiry of Attorney Harding, posed to Dr. Brandes:

- a. He has worked with the DEP;
- b. The DEP is wrong at times;
- c. With respect to the current health of the Bushkill Creek, he opined that it is a recovering urbanized stream on the improve; and
- d. There is some threat to aquatic life with the transport of sediment via stormwater runoff;

(24) Objector Xavier Garcia-Molina, resident at 651 N. 13th Street in Easton which, he pointed out, is only 85' from the Bushkill Creek itself and 697' from the site where the Creek will meet the relocated tributary, showed photographs taken from his window depicting what he described as the noticeable difference in water levels between pre- and post-storms [with which the Board agreed], the photo on the left having been taken "last Monday" (no rain) and that on the right after only 1.26" of rain,

after 24 hours, where the water is very much elevated and flowing all the way up to the existing banks, also pointing out the warnings that appear on the Appellant's (Bogia's) reports that the numbers they used are estimates only, in addition to which he pointed out another warning in Bogia's report which, at his request, True Appellant's counsel declined to put Mr. Haas back on "the stand" to address the same [obviously, the Board wondered why];

(25) Objector Bruce McCutcheon, resident at 619 Lafayette Street, on behalf of Trout Unlimited, presented Exhibit O-3, accepted by the Board without objection, a prepared statement, the summary of which included an observation that the Bushkill Creek, classified by the State as a Class A trout stream, is [what he characterized as] a treasured resource that attracts fishermen from all over which, he advanced, helps the local economy, that their organization was founded in 1972 and, since that time, they have made significant investments in the creek, have collaborated with numerous agencies to improve it, planted literally hundreds of trees to limit runoff and erosion, asserting that runoff pushes the water temperature above a safe limit for trout and that, if the Board does not require more than is required by DEP, it would have an irreversible effect on the creek;

(26) Objector Mary Arlia, resident at 251 Northampton Street, on behalf of the Bushkill Stream Conservancy, advanced that the proposal of the True Appellant represents a threat to their mission in that they have done a lot of work in the nature of Bushkill plantings and bank repairs, having received and invested \$1.25 M in grants since 2020 to restore Riparian buffers which, she further advanced, have just now returned to a satisfactory condition after nearly a century of exposure to the industrial effects from this site, while opining that, with the change in the weather patterns in Pennsylvania, the construction and improvement-related runoff into the creek from what is proposed by the True Appellant will adversely affect all of the improvements they have made;

(27) Objector Ben Cohen, resident at 200 High Street, also an Engineering professor at Lafayette College, had his students conduct a study of the Lehigh Valley and its vulnerability to the effects of climate change, including flooding events anticipated during the next 50 years, noting that we have had four (4) major floods in the past twenty-six (26) years, the trend toward which is expected to continue and increase, according to their study, as a result of which the City of Easton passed its own climate action plan;

(28) Objector Jennifer Rush, resident at 195 Cedar Crest Boulevard, appeared on behalf of the owners of ThreeBirds Coffee House at 226 Bushkill Street in Easton (Jennifer Murray and Joseph Langen), who were sworn at the prior hearing but were not able to attend this hearing (No. 2), to read their statement, which indicated that, after they purchased the subject property in 2018, they invested a considerable amount of money renovating it and adding the subject coffee house, that the Bushkill Creek is within the site line of their property and, as a result, water backs up to their property in common storms presently, and they are concerned that [considering what Dr. Brandes indicated would happen with] the present proposal of the True Appellant would infiltrate their business and their home;

(29) Brett Webber, an architect with an office at 120 Meridian Avenue (no further address provided), advanced that professionals assume responsibility for the accuracy of their calculations and that, even if the testimony "tonight" was valid and permits issued to the True Appellant, it doesn't mean that the information upon which those permits were issued was not flawed; and

(30) As educed from the re-direct examination of Mr. Don Haas, elicited in part via the inquiry of Attorney Kaplan, he opined that time and concentration were not taken into consideration by the Engineer for the Objectors [though, the Board noted, he did not explain in what respect, nor how those components might affect calculations] and, he advanced, the warning page mentioned by Mr. Garcia-Molina is required to appear as part of Bogia's report [though, the Board observed, if they had installed a gauge at the site of the tributary to obtain exact numbers, that warning would likely not have had to be included but, even if it was still required, the numbers would be exact];

At Hearing No. 3 on December 1, 2025:

(31) As educed from the testimony of Mr. Dru Germanoski, professor of geology at Lafayette Collette, elicited in part via the inquiry of Attorney Shaughnessy:

- a. As reflected on his CV offered as Exhibit O-4 and accepted by the Board without objection, he earned his Bachelor's Degree, Master's Degree and Graduate Degree, all in geology, with a focus on earth surface processes, specifically including rivers, streams, surface waters, etc.;
- b. He has spent his professional career in Easton, mostly at Lafayette, though he is a registered professional geologist in Pennsylvania as well, has performed academic research and written publications, having conducted studies of rock formations, rivers and other waterways, literally, all over the world;
- c. He teaches a number of environmental courses, including relative to waterways, with his major areas of interest in rivers, including their behaviors and reactions, and earth surface geology;
- d. He advanced that, with the humid weather which prevails in our area, streams are usually flowing but do lose surface water in droughts;
- e. He has conducted studies of contaminants flowing into rivers and has also done consulting work related to sinkholes and groundwater contamination;
- f. He is a member of KARST of Northampton County, a group of geological engineers that works with governmental agencies, with the Bushkill Creek being a material focus of their studies because of its location [in proximity to Lafayette College];
- g. One of the areas of concentration of his/their studies has been the removal of three dams from the Bushkill Creek and, specifically, its reaction to those removals [though, the Board noted, he did not provide any results of those studies];
- h. Having studied the area for 38 years, he described the subject site, inclusive of Spring Brook [sometimes herein referred to by the Appellant as the unnamed tributary] as one which where carbonate rock prevails, which he further explained are metamorphic rocks; specifically, [what he referred to as] the Franklin Formation [which

includes the subject site and, specifically, Spring Brook] was formed of carbonate rocks, results in subsurface instability and the potential for sinkholes, since carbonate rock can be dissolved by weakly acidic acid and, therefore, can be dissolved by normal rain, which can be acidic and which presents the potential for collapse of the surface into the subsurface, especially since carbonate rocks are typically fractured and, since they are soluble, subject to erosion;

- i. As examples, he [with Attorney Shaughnessy] showed slides of a sinkhole in Bushkill Street in the 1990's, one of a large building in Allentown, and one in Hanover Township in 1999 where a detention pond had been located;
- j. They also showed slides of other sinkholes in both the Schoeneck Creek (in Northampton County, where carbonate rock is also known to exist) and in the Bushkill Creek itself, and asserted that the same thing can happen here unless a geological survey is done of the area where Spring Brook is to be relocated, given the like, carbonate nature of the rock which is prevalent on the site, to assure that there are no existing pockets or other weaknesses that would result in such a sinkhole in the intended relocation area;
- k. The type of surface water realignment as that proposed here can cause these types of erosion/sinkhole problems, as a result of which, he opined, the True Appellant should have performed a geologic study under the location where the tributary is proposed to be relocated, to assure that does not happen which, he advanced, from the reports submitted by/on behalf of the True Appellant; specifically, though they did study the areas where the warehouse itself is proposed to be located, they did not do in the area where they are proposing to relocate the subject tributary;
- l. He advanced that, with moving all of the earth around, as proposed by the Appellant, his concern with the Franklin Formation is that pieces of asbestos can break off and become airborne, causing additional environmental issues and, in support thereof, he showed a bag of [what he referred to as] asbestos tremolite which he, himself, collected from the Bushkill approximately 1/4 mile away, which had been exposed from a construction site at that location;
- m. In conclusion, he asserted that he would not recommend relocation of the tributary unless and until a full geological study is done of the intended site, to assure the True Appellant themselves that they will not be creating or running into any of the foregoing issues or problems;

(32) As further deduced from the testimony of Mr. Germanoski, at the cross-examination of Attorney Kaplan:

- a. He does not know of any sinkholes on the property presently but, he advanced, that is because there has been no study performed and, therefore, he also has no knowledge that none exist, also pointing out, however, that no streams have previously been relocated on this site;

- b. A standard sinkhole can be remediated but, in a situation such as that proposed, it becomes problematic and, should it occur, the dynamics can last for decades;
- c. He did concede that there would be excavation done in the area where the tributary is to be located and that geology testing could be done at that time [though the Board noted that none of the testimony on behalf of the True Appellant indicated their intent to do so]; and
- d. Asked whether he had any knowledge of Jeff Smith's testimony relative to the materials handling procedure to be employed if their excavation does disclose contaminated materials, he responded that he did not see anything in their reports about that but did not hear Mr. Smith's testimony [though the Board noted that, even if there was a method in place to handle contaminated materials if discovered during excavation, they still would not know if the rock/materials over which they intended to relocate the stream were sufficient to support their intended structures, as presently proposed];
- e. With respect to the three (3) detention basins which are part of the Appeal before the Board, though he acknowledged that they are proposed to be lined, he is still concerned about contamination beneath them, since contamination can move laterally as well as vertically and create the issues he had testified to;
- f. When asked whether, in summary, his recommendation would be that a full geological study be done of the area where the stream is to be relocated prior to effecting the same, his response was simply in the affirmative; and
- g. At the inquiry of Attorney Harding on behalf of the two (2) objectors named hereinabove, Chestnut Hill, which he described as a ridge, does encompass this site, extending from the Delaware River to this site but, when asked about whether any of the water from the enclosed pipe which presently runs through Spring Brook (and is proposed to be daylighted by the True Appellant) seeps into the rock beneath it, he could not respond since he has no knowledge whether the pipe is porous or not;

(33) Objector Kimberly Wagner, resident at 721 Cattell Street in Easton, referred to the cover page of the Existing Conditions Plan presented by the Appellant which, she stated, indicates that there is no known geologic rock or morphological condition on the site that may have the potential to cause pollution [which, the Board noted, was inconsistent with the testimony just provided by Dr. Germanoski, especially considering that there was no evidence that they had done any studies to establish that] and, further, advanced that the report indicated their intent to blast some of the rock in order to achieve the proposed relocation;

(34) Attorney Shaughnessy moved into evidence the slides that were shown to the Board, which were accepted without objection as Exhibit O-5;

(35) As deduced from the testimony of Dr. Frank Browne, on behalf of the True Appellant, elicited in part via the inquiry of Attorney Kaplan:

- a. He holds a Bachelor's Degree in Civil Engineering, a Master's Degree in Engineering and Ph. D. in Environmental Engineering, and is licensed in Pennsylvania, New Jersey and New York;
- b. He was an adjunct professor at Villanova University for many years [though he did not state what he taught there];
- c. He assisted with the preparation of the DEP manual and gave workshops on its use to DEP employees;
- d. He advanced that the Pennsylvania Manual dictates that roadways be put on bad [what he referred to as "D"] soil;
- e. In the early 2000's, he started looking at erosion and water quality; i.e., more than just rate;
- f. He was involved with the gauging stations at, and created a stormwater management plan for, Independence, Missouri which, he further advanced, was the first project to address both quantity and quality; and
- g. He advised that, years ago, it was said that both volume and rate have to be controlled but, he opined, during a two (2)-year storm, only volume has to be controlled to prevent erosion; and
- h. He advanced that the dissolution of carbonate rock takes thousands of years [though the Board noted that we have been through thousands of years, which leaves that issue as an unknown, absent any studies];

(36) Further educed from Dr. Browne's testimony via cross-examination by Attorney Harding:

- a. He has been involved in the project for 6 months, but not its design which, he indicated, was done by Bogia Engineering;
- b. He is familiar with Bogia, in that Bogia purchased his practice eight (8) years ago and he now works as a consultant to Bogia, in addition to which, at the further inquiry of Attorney Harding, he acknowledged that his current firm is sometimes referred to as a division of Bogia Engineering [which the Board saw as somewhat of a conflict of interest right off the bat, as he was testifying about the work of a company he consults for], although Attorney Harding did acknowledge his expert status in stormwater management, but not in the Bushkill Creek or the area of the site, as were the experts for the objectors;
- c. He disagrees with Dr. Brandes that there will be an increase in runoff volume as a result of the relocation proposed, for the reasons set forth in the summary of his testimony set forth in Exhibit A-22;
- d. He opined that the new (proposed) channel will produce the same flow as the old channel; and

- e. He posited how, since the new (proposed) channel is bigger than the old channel, the new channel would flood when the old channel doesn't [though, again, the Board noted that the record was devoid of any evidence or testimony that it doesn't flood, and made them question why that was not addressed by the True Appellant if, in fact, it doesn't flood presently];
- f. Referring to their map, he detailed the three (3) proposed basins in green, with blue depicting the existing stream where, he observed, the channel is okay but goes through toxic soil, while the new channel proposed, shown in pink, he indicated has no toxic soil [though the Board did not recall any evidence or test results to that effect];
- g. He opined that the new channel would control the two (2)-year storm runoff volume;
- h. Pursuant to the foregoing, he opined that 98% of the runoff would be discharged into the detention basins [though the Board did not recall the Bogia engineer testifying to that] and, though he also observed that the existing channel and the new channel would have the same flow, resulting in the same discharge, the new channel will be larger than the existing channel;
- i. Referring to the second slide, all of the permits the True Appellant has gotten, he discussed what he referred to as Dr. Brandes' "dismissal" of the importance of the weight of such approvals [but which the Board, even from the testimony provided, concluded did not, on their own, establish compliance with the Zoning Ordinance];
- j. He advanced that the DEP only requires that a two (2)-year storm volume be controlled and that, if DEP thought there would be downstream erosion they would not have approved their plan [which, the Board noted, could only be established if the data they used to calculate that volume was accurate, though put into question by the witnesses for the objectors but, moreover, that it does not address anything "above" a two (2)-year storm, which is certain to occur and, considering all of the time, effort and money that has been invested in improving and maintaining the creek, is certain to have an adverse effect on the creek by way of sediment deposition, erosion and unsafe temperatures for the trout that are available for those who fish there, to the detriment of the local economy, per the testimony of the experts and others for and on behalf of the objectors];
- k. He further advanced that, in an area where there is no gauging station, use of the nearest watershed and prorating those numbers is a normally used engineering practice [though, again, the Board questioned why, when they certainly had the time and, considering all of the other money they spent on securing the approvals for this project, they elected not to install gauging stations at the site so that exact data could have been secured and, ostensibly, they would be able to design their proposed system accordingly and would not have had to go through the current, arduous and likely more costly proceeding through the Planning Commission and this Board];

- l. Referring to Dr. Brandes' differentiation of the development in the two (2) relevant watersheds, he showed the USGS map of the Bushkill watershed, which did show different percentages than shown by Dr. Brandes [but the Board questioned whether there was any duty to report changes in development to a watershed to USGS and whether those percentages were up to date, noting that, while Dr. Brandes was a "disinterested" witness, Dr. Browne was reviewing the work of the same company he consults for and is still actively involved with], resulting in his observation that, since his assessment was that Spring Brook is 65% developed and 20% crops, it would **seem** [emphasis added] that there would be a greater runoff in Spring Brook;
- m. He advanced that the prorated flows were not used to design the proposed channel but to calculate the deposition (settling) of sediment in the channel and opined that, even if underestimated, flooding would not occur;
- n. He stated that they used Stream Stats which, he asserted, is what most use, in that it is an interactive program which permits you to enter a location and it will provide the user with a flow rate, though [oddly, the Board thought] he didn't have those calculations with him but advanced that they were submitted to the sundry agencies to secure their permits;
- o. Pursuant to the foregoing, he referred to Region 4 (Southeast Pennsylvania) statistics of Stream Stats in advancing that Spring Brook is above the minimums;
- p. He repeated that, comparing the existing channel to that proposed, the flow will be the same but the new channel will be 30% to 70% larger in the volume it can handle, and that it was designed not to have any erosion during any flow condition [though the Board noted that he did not explain how that was possible and could not understand how it could be], again positing that, if it is bigger, how can it flood [which, again, absent any testimony relative to whether it floods now or not, the Board found to be rhetorical];
- q. DEP wants them to take uncontaminated soil from the existing site and move it to the new site [though there was no indication why, nor was there any explanation how they would be able to tell the uncontaminated soil from that which they did say was contaminated in and around the existing site];
- r. He then asserted that, though the cost to purchase a gauge (for Spring Brook, as was suggested by Dr. Brandes) would, in fact, approximate \$1,500.00, with another \$1,500.00 to install it, but then estimated costs of another \$80,000.00 to \$100,000.00 [though he did not explain what those additional, estimated costs would consist of]; and
- s. He concluded by asserting that no one uses gauging to measure a 100-year storm but, rather, uses Stream Stats, as they did [which, the Board observed, did not address anything between a two (2)-year storm and a 100-year storm];

At hearing no. 4 on January 15, 2026:

(37) As educed from the cross-examination of Dr. Browne by Attorney Shaughnessy about, *inter alia*, his actual involvement in the project of the True Appellant:

- a. He did not generate the design of the system proposed by the True Appellant;
- b. At the request of True Appellant's legal counsel, he only reviewed the plans that had been prepared for, and presented to the Board on behalf of, the Appellant by Bogia, for whom he works as a consultant;
- c. At the further inquiry of Attorney Shaughnessy, he acknowledged that his website "advertises" FX Browne, Inc./Bogia Engineering, a division of Bogia Engineering, that he can be contacted via that website, that he manages Bogia projects and one if its engineers and that 100% of his work is done for Bogia Engineering [which led to the Board's assessment that he was called in to, essentially, review the work of the company he works for, and caused them to ponder how he would ever, under those circumstances, question the work of his own company or say or do anything but endeavor to support whatever it was that they put forward];
- d. Attorney Shaughnessy showed him a recommended volume control guide, within which it states that one needs to take into consideration any impervious surfaces changes, the vegetation, improvements, wetlands, etc., when calculating runoff volume, with which he agreed, as he further agreed that he helped prepare that manual and was part of the oversight committee for that publication;
- e. The new channel is larger than the old, but he has no idea if the old channel ever flooded which [as observed by the Board, noted above], Attorney Shaughnessy advanced, called into question the inquiry Dr. Browne made at the prior hearing about how the new, larger channel could flood if the existing channel never did;
- f. In response to the foregoing, Dr. Browne advanced that he had never been to the site when it was raining;
- g. He doesn't recall the topography of the site;
- h. There is usually overflow with a two (2)-year storm which, he agreed, could cause erosion;
- i. He has never seen Spring Brook [the existing tributary] and has no idea if it ever flooded [which, again, was wholly inconsistent with his prior intimations];
- j. When asked about the condition of and effects on the property and, particularly, the existing channel/tributary on the dates that had been brought up during the hearing when there were rain events of 5", 6" and 8", he stated that he had no idea, as he has never been to the site and, in fact, has only seen the Bushkill Creek one (1) time many years ago;

- k. When shown maps of the Bushkill Watershed and the Spring Brook Watershed, he opined that they were more similar than Dr. Brandes said they were [but, the Board noted, he did not say in what respect{s}]; and
- l. When shown Exhibit O-6, he didn't know where Northampton County was on the map and, when pointed out to him, he agreed that Northampton County is actually in Region 3, not Region 4, though he acknowledged that Bogia had used Stream Stats for Region 4 in performing their calculations for the channel they proposed;

(38) As educed from the re-direct testimony of Dr. Browne at the inquiry of Attorney Kaplan:

- a. The map (O-6) does not conclusively denote where Region 4 ends [though, the Board noted, he did not say that it included Northampton County or, specifically, the property or the site of the proposed improvements]; and
- b. Stream Stats was used to design the proposed channel and, in that regard, he advanced that, by using Stream Stats, one does not have to see the site to do the calculations for the design [though, again, the Board noted that he did not contradict or clarify his earlier statement that Bogia had used the data for the wrong region, or whether there was a difference in the data for the two regions which would have made a difference in whether the calculations they ran were or were not correct], though he did add that, to use Stream Stats, you have to use a topographical map and then go to Stream Stats to determine the volume and flow [and, the Board noted, they failed to present a topo map with their Appeal or with the Exhibits presented at the hearing, as is specifically required under the Zoning Ordinance, leaving the Board to wonder why they did not];

(39) Objector Gregg Meyer, resident at 350 N. 14th Street, queried of Dr. Browne whether calculations were done before or after the removal of the three (3) dams referenced in the testimony, in response to which he indicated that he would have to look back at the data to determine that since it could matter if they were done before or after, but he did not have that information with him;

(40) Objector Bruce McCutcheon, resident at 619 W. Lafayette Street, queried of Dr. Browne who would be responsible if the channel did flood after it was relocated and daylighted as proposed, which Dr. Browne was unable to answer; and

(41) Objector Ghen Zando-Dennis, resident at 1032 Lehigh Street, a member of the Board of Directors of the Carl Sterner Arts Trail, established in 2011 with the assistance of a \$9M grant from the State, described the trail, which at points, parallels the creek, as a unique community resource, and urged the Board to reject the request(s) of the True Appellant to assure the protection of that valuable community asset, but did not provide a legal reason for his urging; and

(42) No other witnesses appeared to testify in favor of nor opposition to this Appeal.

In his closing argument, Attorney Kaplan addressed the following:

- 1) Citing the 1980 Bray case, he described a Special Exception use as one which is permitted under the Ordinance unless "something horrible, horrible" is shown; that their obligation is to show that their proposed use fits into the special exception category and that they comply with the objective criteria set forth for that special exception which, he argued, they do;
- 2) He asserted that case law states, if DEP, ACE and like agencies have determined compliance, it is not up to the municipality to undermine that [which the Board, with their legal counsel, determined to be a legal misstatement; otherwise, there would be no need for a Zoning Ordinance in that those outside agencies would determine what is best for a municipality, and that certainly is not the case];
- 3) He asserted that, once they meet their burden, it shifts to the objectors and that their burden is very high, to show with specific testimony that what is being proposed will cause harm to the community which, he asserted, the objectors have not;
- 4) Further to the foregoing, he advanced that Dr. Brandes said nothing specific but only attacked the methods used by Bogia, asserting that Dr. Browne established that they had followed proper methodology, which is what the Zoning Ordinance requires [with which the Board disagreed].

In his closing argument, Attorney Tyler, filling in from the Gross McGinley office, asserted that the True Appellant had to establish compliance with, *inter alia*, §298-28 of the Flood Management Ordinance and must meet the general requirements of the Zoning Ordinance for a Special Exception, under §595-40 thereof, which they did not do, observing that there was no testimony or evidence presented about sediment runoff from the long-time industrial site itself, and arguing that the issuance of the permits secured by the True Appellant do not, in and of themselves, translate to compliance with the requirements of the Zoning Ordinance or the Flood Management Ordinance.

In his closing argument, Attorney Shaughnessy, in addition to putting on Dr. Brandes, who has specific knowledge of the creek and the area, put on the testimony of an expert geologist, whose testimony, he advanced, went unrefuted, in that they have no idea what is under the area where they intend to relocate Spring Brook since they did no testing to make that determination, arguing that Bogia "did it wrong", which will result in a dangerous situation.

CONCLUSIONS OF LAW:

In order to grant the relief requested, it is necessary for the Board to conclude that the application complies with the requirements necessary for the approval of a Special Exception under applicable law, as set forth in the Pennsylvania Municipalities Planning Code and in the Floodplain Management portion of the Easton Zoning Ordinance; specifically, §§298-13(B) and (C), 298-14, 298-20, 298-30 and 298-40(C) of the latter, as well as §595-40(C) of the Zoning Ordinance itself.

During their lengthy discussion, the Board concentrated more on the channel issue than they did on the issue of the driveway and/or the proposed detention basins [since virtually all of the testimony presented by both sides keyed primarily on that issue] and, as it does in many cases [and, as has been specifically recognized by the Courts of our Commonwealth] felt that the issue of whether the channel was properly designed to prevent flooding once it was relocated and daylighted came down to the testimony presented by the experts of the True Appellant compared to that of the testimony of the experts presented by the objectors.

The members first looked at the Intent of the Floodplain Management Ordinance, as set forth in §298-2 thereof, including **without limitation**, subsection E, the import of which is to minimize public and private losses due to flood conditions in areas prone to flooding which, per the photos presented by the objectors and the common knowledge of the Board members and any long-term member of the community, this area is known to be, especially considering the testimony presented relative to all of the time, effort and money that has been invested by sundry organizations to restore the health of the Bushkill Creek and its suitability for trout fishing, and the millions of dollars invested in the Karl Stirner Arts Trail which is situated adjacent to the site and parallels the creek, as well as the proximity of the properties of those who testified to the same during these proceedings, rendering it critical, in their minds, to assure, without uncertainty, that all of these resources, natural and man-made, and of course life and private properties, remain protected.

Next, in direct contradiction to the assertion by True Appellant's counsel that a municipality cannot "overrule" permits issued by "higher" or different governmental agencies, the Board next turned to §298-10C of the Floodplain Management Ordinance, which states that "Any new construction, development, uses or activities allowed within any identified flood hazard area shall be undertaken **in strict compliance** with the provisions contained in this chapter and any other applicable codes, ordinances and regulations" (emphasis added) but, more to the point, §298-13(2), the very enabling portion of the Ordinance which permits their proposed uses also contradicts their counsel's foregoing statement of the law, as it provides that "Flood control structures including dams, culverts, bridges, **and altered or relocated watercourses** with permits and/or approvals from the PA DEP, PA Public Utilities Commission, and/or United States Army Corps of Engineers.....**The approval of a permit by any of the preceding state or federal agencies for one of the uses allowed in the Flood Hazard District shall in no way affect or conflict with the requirements imposed upon the use under the regulations of the Flood Hazard District.**" (emphasis added). Accordingly, with the tenure of the undersigned Solicitor and, in fact, at least one of the Board members spanning more than three decades and their knowledge that this provision has never been challenged in any Court, the Board concluded that they were bound to follow this directive.

The Board next looked at some of the requirements imposed by §298-15; specifically, the Certifications required under subsections (5) through (9) thereunder, inclusive. In that regard, the Board's conclusion was that three (3) of the Certifications provided by the True Appellant were deficient in what they were required to represent.

Specifically, under subsection (7), they are required to submit "A statementwhich contains a complete and accurate description of the nature and extent of pollution that might possibly occur from the development during the course of a base flood, including a statement concerning the effects such pollution may have on human life". The five (5)-line Certification submitted by/on behalf of the True Appellant did not meet that requirement.

Next, under subsection (8), the True Appellant was required to submit "A statement which contains a complete and accurate description of the effects the proposed development will have on base flood elevations and flows"; the four (4)-line statement submitted on behalf of the True Appellant also failed to meet that requirement.

Finally, under subsection nine (9) of this provision, the True Appellant was required to submit "A statementwhich contains a complete and accurate description of the kinds and amounts of any loose buoyant materials or debris that may possibly exist or be located on the site below the base flood elevation and the effects such materials and debris may have on base flood elevation and flows"; the four and one-third (4-1/3) line statement submitted likewise failed to meet this requirement.

The Board further noted the requirement set forth in §298-14(A)(3)(b) of the Floodplain Management Ordinance, which requires the True Appellant to submit "A plan of the entire site, clearly and legibly drawn at a scale of one inch being equal to 100 feet or less, showing.....**Topography based upon the North American Vertical Datum (NAVD) of 1988** (emphasis added), showing existing and proposed contours at intervals of two feet"; True Appellant provided no such Plans.

Finally, the Board looked at the objective requirements set forth in §298-14B which, in pertinent part here, provides that "No application for a special exception permit shall be approved unless it can be determined that the structure or activity will be **located, constructed and maintained** in a manner which will:

(2) Prevent **any significant possibility** of pollution, increased flood levels or flows, or debris endangering life and property." (emphasis added).

The reasons for the Board's denial are set forth throughout this opinion in brackets, from place to place, noting the Board's observations of the testimony and opinions provided, primarily, by the experts who testified on behalf of the True Appellant. In summary, the Board felt strongly that the testimony of the primary expert presented by the True Appellant, Dr. Browne, was tainted in that he had reviewed, was defending and opining on the work of the very company he is actually affiliated with and employed by; i.e., though he stated that he did not do the work himself, he might as well have and the Board felt that it was tantamount to him defending and opining on his own work, while the experts presented by the objectors were disinterested and wholly unattached from the project, albeit ostensibly paid for their time to perform the review services they provided, as all experts are. More specifically, in the first instance but, without limitation, the Board concluded that the True Appellant did not fully, successfully challenge the testimony of the objectors' expert, Dr. Brandes, that the data used by the Appellants to determine the rates of flow and volumes of water to result from the proposed relocation were flawed, and this was strengthened by the objectors' counsel eliciting from Dr. Browne an admission that, in using Stream Stats, Bogia used the data from the wrong Region and, the Board noted, did not affirmatively indicate that, depending on the difference in the development, impervious surface, etc., in the two (2) regions, it would **not** have made a significant difference in the results they arrived at. Further, the Board considered the unrefuted testimony of Dr. Germanoski on behalf of the objectors about the carbonate rock which prevails in this area and the absence of any geological testing done to determine the type of rock which exists under either the location where they intend to relocate Spring Brook and/or where they intend to install the three (3) detention basins, in addition to noting the passing comment about having to blast to accommodate their proposed improvements, and the absence of any testimony or evidence relative to the full extent of the blasting and other steps they must take to accomplish their relocation and installations, combined with the remaining

bracketed observations set forth throughout the above, in concluding that the True Appellant failed to meet their burden of establishing that their planned structures or activities would be **located, constructed and maintained** in a manner which would prevent **any significant possibility** of pollution, increased flood levels or flows, or debris endangering life and property. (emphasis added).

Moreover, for all of the reasons set forth above, the Board further concluded that the True Appellant failed to meet their burden of establishing compliance with §298-20 of the Floodplain Management Ordinance, which provides that "No encroachment, alteration, relocation or improvement of any kind shall be made to any watercourse **unless** it can be shown that the activity will not reduce or impede the flood-carrying capacity of the watercourse **in any way.**" (emphasis added). Finally, with regard to the objective requirements of the Ordinance, the Board noted that §298-30 requires that the True Appellant establish that "The finished elevation of all new streets shall be no more than one (1') foot below the regulatory flood elevation" and found the record to be devoid of any testimony by or on behalf of the True Appellant to establish that.

It was also the unanimous conclusion of the Board, as constituted at these meetings, that though the True Appellant, arguably, established compliance with some of the general criterion set forth in §595-40(C) of the Zoning Ordinance, they did also fail to establish compliance with some of the others, as follows:

- (1) With respect the uses presently before the Board, they did not conclude that the proposed uses will cause overcrowding of the land beyond what would normally be expected from the proposed use;
- (2) The uses will not impair the adequate supply of light and air to adjacent properties, so they are compliant in that regard;
- (3) The Board concluded, however, that though the True Appellant may have established that the uses would not result in an overburdening of the water, sewer, schools or parks, there were just too many questions left unanswered by their testimony that the Board found they did not establish that the proposed uses would not result in an overburdening of "other public facilities" (i.e., the creek) beyond those which would normally be associated with such use;
- (4) Given the foregoing and the likelihood of flooding caused by what the Board believed was the more credible testimony of the experts for the objectors that the proposed channel was under-designed or undersized, they also failed to establish that the proposed uses would not change the character of any surrounding residential neighborhood; particularly neighborhoods such as the one where Threebirds Coffee Shop is, where the water already reaches their property line in a typical storm;
- (5) The Board felt that Subsection 5 does not apply to this Appeal;
- (6) Again, arguably, the Board concluded that there was no reason to believe that the uses presently proposed would cause congestion in the public streets or transportation systems beyond what would normally be expected;
- (7) For all of the reasons set forth hereinabove, the Board further concluded that the True Appellant failed to establish that the proposed use will not create a significant hazard to the public health and safety,
- (8) The Board also felt that Subsection 8 does not apply to this Appeal; and

- (9) Likewise for all of the reasons set forth herein, the Board concluded that the True Appellant failed to establish that proposed use, located on the particular property, having all of the characteristics as proposed, and considering the characteristics of neighboring lands, will not cause negative impacts over and above those typically associated with such uses and operated in a usual manner.

DECISION:

In consideration of all of the foregoing, a Motion was made by Mr. Civitella and seconded by Mrs. Panto to deny the requested special exceptions:

Ayes: Mr. Civitella, Mrs. Panto, Mr. Loeb sack and Mrs. Thomas;

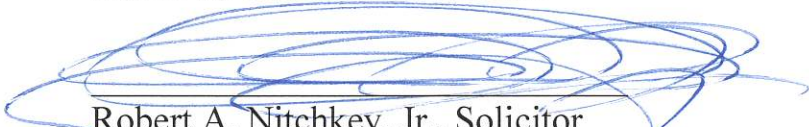
Nays: None;

Absent: Mrs. Vulcano Hall.

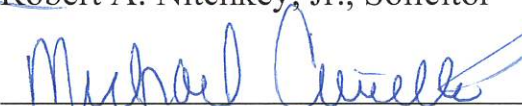
The requested special exceptions were denied by a unanimous vote of the Board, as constituted at these meetings.

CITY OF EASTON
ZONING HEARING BOARD

DATE: 2/24/2026


Robert A. Nitchkey, Jr., Solicitor

DATE: 2-24-24


Michael Civitella, Chairman

xc: Marc Kaplan, Esquire
Edward Shaugnessy, Esquire
Cody Harding, Esquire
Jeff Fleishaker, Esquire
Ms. Kimberly Wagner-
Ms. Jennifer Rush-
Mr. Bruce McCutcheon-
Mr. Benjamin Cohen-
Mr. Brett Webber-
Mr. John McClure, 239 W. Wayne Avenue, Easton 18042
Mr. Fred Stine, fred@delawareriverkeeper.org
Mr. James Toia, Karl Stirner Arts Trail, P. O., Box 1028, Easton 18042
Ms. Mary Arlia-
Ms. Karen Adams
Ms. Jennifer Murray
Mr. Xavier Garcia-Molina, 651 N. 13th Street, Easton 18042
Ms. Cheri L. Palmer, 204 North 11th Street, Easton 18042
Mr. James Gerry, 44 South 10th Street, Easton 18042
Mr. Matthew Burzilui, 10 W. Broad Street, Hopewell, NJ 08525
Mr. Gregg T. Meyer-
Ms. Colleen G. O'Neal, 138 South 11th Street, Easton 18042
Mr. Ghen Zander Dennis-
Ms. Patti Berger, 1221 Jackson Street, Easton 18042
Ms. Diane Coker, 604 Pardee Street, Easton 18042