
MINUTES

October 10, 2016
Regular Public Meeting

Board of Commissioners

Township of Whitehall

A. CALL TO ORDER

- 1) The regular Public Meeting of the Whitehall Township Board of Commissioners was called to order at 7:00 p.m. on Monday, October 10, 2016, in the Public Meeting Room of the Whitehall Township Municipal Building, 3219 MacArthur Road, Whitehall, PA, with the following in attendance:

COMMISSIONERS

Phillips M. Armstrong, President
Dennis C. Hower, Vice President
Thomas Slonaker, Secretary
Jeffrey L. Dutt
Philip J. Ginder
Joseph J. Marx, Jr.
Linda K. Snyder

TOWNSHIP PERSONNEL

Edward D. Hozza, Jr., Mayor
John D. Meyers, Deputy Mayor
Charles Fonzone, Attorney
Frank Clark, Township Engineer
Michael Marks, Acting Police Chief
Lee Rackus, PZ&D
Patricia Sweeney, Executive Secretary

The meeting was formally opened with the Pledge of Allegiance to the Flag and for a moment of silence for the hurricane victims.

2) APPROVAL OF MINUTES

- a) Commissioner MARX moved, seconded by Commissioner DUTT to approve the minutes of the following meeting:

Regular Public Meeting – September 12, 2016

Seven Commissioners were present with six voting “yes” and Commissioner HOWER abstained. Motion carried

B. PRESENTATIONS

Mayor HOZZA stated we are celebrating the promotion of one of our own police officers, Sergeant COLEMAN.

Acting Chief MARKS noted it is a very important from a leadership standpoint in promoting individuals to keep our streets safe and officers where they need to be. He commented on Sergeant COLEMAN’s 18 years of service, began his career on January 5, 1998 with the Patrol Division where he has served with distinction, was a canine officer handling K-9’s Elan, then Nitro until 2014, was promoted to Corporal on November 8, 2015 and to Sergeant on October 9, 2016. Mayor HOZZA presented Sergeant COLEMAN with his badge of office and thanked him for his past and continued service. Sergeant COLEMAN stated it is an honor and privilege to serve Whitehall Township and looks forward to many more happy days with everyone.

Christopher GRIM, EMA Coordinator, reported on the status of the Township's Emergency Management Agency, currently has 4 volunteers along with the addition of Lt. BEALER as a volunteer and police liaison. He noted Deputy Scott ALTEMOSE received his PA Advanced Municipal Certification, will have his Professional after 2 more classes and other volunteers have been taking classes as well. The Emergency Preparedness Expo at Lowe's on September 10th was a success with numerous Emergency Services Agencies participating. Assisted with the Annual Fall Festival Parade, participated in the National Night Out, coordinated with local responders for the IRT 10K Run/Walk, the D&L half marathon, responded to numerous emergencies most notably the multiple house fire in Hokendauqua, successfully received own radio frequency with a repeater placed at Eagle Point, secured two Kawasaki Mule UTV's for use by fire, police and EMA thru a loaner program, the only cost being insurance on the units and maintenance, to purchase a unit would cost \$11,000, also secured KNOX boxes on all Township owned playground buildings, not only for emergency situations but when needed to set up temporary shelters or warming centers. The EMA, along with the assistance of the Administration, purchased the Nixle notification program which has the ability to notify the population of a significant event, to take in anonymous tips for the police and to send messages via text or email to specific groups. The EMA and Fire hosted the NIMS 300 and 400 classes for fire officers, taught by the County thru a grant since NIMS compliance is mandated thru Federal, State and Local laws and any federal monies the Township receives such as those from snow storm Jonas, can be audited. He noted the Board will be approving the Emergency Operations Plan tonight with no major changes, with the exception of adding sink holes to the list of possible disasters and including language of Unified Command in some sections. Other plans being worked on include a Continuity of Government Plan (COOP) to assist the school district, Lehigh Valley Mall and assisted living facilities to update their plans. The EMA will continue to work hard to keep the Township prepared and appreciates the assistance received from the Board.

President ARMSTRONG stated on behalf of the board, are proud that with the number of weather emergency events that have occurred to know we are prepared beforehand because of him and his department. Mayor HOZZA noted the need to sign up for the Nixle early warning system in order to be contacted during an emergency. Information on how to sign up was in the last newsletter and is how the Township will notify everyone of an impending emergency or a police matter in the Township.

Mayor HOZZA stated many are here because they saw the Zoning Notification Signs posted throughout the Township. He noted several years ago the Township had a request to convert the former Fuller Sportswear Factory at 215 Quarry Street into workforce housing by a non-profit called Pathstone. At that time, the Zoning Board denied their request based on the 2 parking spaces per unit regulation, except for senior housing which is 1 parking space per unit. Pathstone appealed the Zoning Hearing Board's decision in Lehigh County Court. The Township was then notified by Lehigh County, who manages our federal Community Development Block Grant funds used for various projects throughout the Township such as ADA ramps and repaving streets, that a Washington based attorney working for Pathstone who specializes in fair housing discrimination, filed a right-to-know request for all of the records pertaining to these funds. That law firm also went after West Chester County in New York where their taxpayers had to come up with \$63M because a federal court ruled their zoning policies were discriminatory. The Township's insurance policy attorney met with the attorney for Pathstone to try to come to a conclusion or mediation of the issue which involved an adaptive re-use ordinance, so the postings on basically commercial properties, that in many years have become unoccupied, are so the adaptive re-use ordinance could be used on that property but none of the properties posted other than 215 Quarry Street have any projects planned. Mayor HOZZA referred to a document from a resident on Summit Street claiming Whitehall Township is building affordable housing and stated we are not in the business of building housing. On the advice of counsel, the postings were just to notify that the adaptive re-use may be used on that

property if a new owner or developer so chooses but would still need to have the plans approved by the Township and apologized for the confusion.

Attorney FONZONE stated he was born in Fullerton, has many relatives living in the community and read a statement which is attached to these minutes. He noted losing this case would be a terrible hit to their pocketbooks. The problem is not that we do not have minorities living in the Township since we are the second highest community in Lehigh County with respect to the number of minorities, but the federal government wants the community to be like a loaf of bread, where every slice you take has the same number in every part of the community, doesn't make much sense because some people want to live with their friends, is how the Township was approached by HUD who has a tremendous amount of resources and that same attorney also punished Los Angeles for \$300M. The Township receives federal financial assistance used in areas that need it, the present federal administration has been aggressive in respect to affordable housing, we are now in their crosshairs, are coming after us with 2 different acts, and does not believe the community has discriminated against anyone. The Supreme Court passed a law where in order to bring a case of discrimination you don't have to prove intention, can be deemed to have discriminated by looking at a section of a community and saying there is no diversity in the people living there. He noted HUD has had 100 days to make a determination as to whether there is a just cause to bring against us, has been 173 days in trying to cooperate with them, everyone has given their statements but the matter is still continuing. Attorney FONZONE stated he is the one who had all of the properties posted that might possibly be susceptible to utilization of this ordinance because an attorney from one of the prominent property developers in Whitehall asked if the properties were posted, so more were posted than what are eligible for in the ordinance, was done because the statistics used from the tax assessment office say 5,000 sq. ft., did not want someone coming in saying their property is 4,972 sq. ft., the ordinance does no more than reduce the requirement of 2 parking spaces per unit to 1.2, which is not a big reduction. This began when the community was trying to have these properties developed long before any questions about affordable housing because there are a lot of empty buildings with no one showing any desire to redevelop them, even tried getting a LERTA, a tax incentive program and a CRIZ, similar to the one being used in center City Allentown, both instituted by the State and is only after that when Pathstone came in trying to redevelop the building with the biggest complainers being those with a financial interest who have created a terrible scare factor. Cannot say we didn't discriminate or pass a law that contradicts the Supreme Court, thinks the passage of this adaptive reuse ordinance shows good faith on behalf of the community and could lead to further discussions but if we tell HUD in Philadelphia we are not interested, will go to a court of HUD'S choosing which could be Philadelphia and does not think it would be a level playing field.

Dennis MAKOVSKY stated the size of the parking spaces are also being reduced, does not understand why you only need 1 car per unit with affordable housing since doesn't the federal government pay rent to the owner. Attorney FONZONE stated they have certain rules but knows the question he raised is considered discrimination. Mr. MAKOVSKY stated if he buys a former plant, redoes it, the rental person pays 40-50%, gets the rest from the federal government, he loses no money, so why should he be given the opportunity for half of the parking spaces and other variances. Attorney FONZONE stated the Malls have gotten the same break with parking areas. Mr. MAKOVSKY stated if he would build a new apartment, would need twice the space. Mayor HOZZA stated if 215 Quarry Street is developed by Pathstone, have told us that similar to Strawberry Patch and Zephyr Apartments, must show the rental manager your income which qualifies you to live at that facility, that location was chosen because it is close to LANTA, everyone living in that facility has to have a job, is workforce housing, is a new concept and Pathstone has been doing these projects up and down the Mid-Atlantic region. Attorney FONZONE stated Pathstone had an expert testify there was no problem with parking in that area which is a frequent excuse when you don't like what is happening in the area, the federal government has recognized that, have published articles on this type

of housing having less automobiles than normal apartment houses and if you question the financing of the people, it is considered discriminatory.

Margaret KALNAS stated she lives directly across from 215 Quarry Street, there is no backdrop when you get on the sidewalk, couldn't see or read the public notice sign hidden behind a car, where are the residents supposed to park, where will kids from there going to play, in the streets to get hit by a fire truck and get killed, nobody wants them in their yards, need to look at the safety factor, she lives alone, doesn't want people coming into her yard ripping it up and breaking her windows, is bad enough with the crime they have now without adding more, if Pathstone wants these people living there, should have someone living there for security because they have no police protection and need to be protected by the law as well as they do, it works both ways. Attorney FONZONE stated her comments and statements are discriminatory and if representatives from HUD are here, the people who are going to suffer will be all the people in this community.

Joel ZIMMERMAN, Spring Mill Road, Whitehall, stated the field posted on Spring Mill is considered OSI, if this only applies to existing older properties and any new construction would not fall under this, with an affirmative response. Mr. ZIMMERMAN asked how much federal money comes to the Township that puts us at this risk. Mayor HOZZA stated we are on probation, have not received any federal funding for 2 years, the amount is different from year-to-year, the highest being \$200K. Attorney FONZONE stated it is not only the money put is the punitive damages.

Lori GIRARDI, 731 Second Street, Whitehall, asked how many properties were posted. It was noted 16-20.

Jim HAVASSY, 5111 Second Street, Whitehall, stated he filed a right-to-know for the list. Mayor HOZZA stated the list will be posted on the Township's new website. Mr. HAVASSY asked if only 215 Quarry Street actually brought this action, not the properties that were posted and if this passes will it be the end of the claims we are discriminating. Attorney FONZONE stated HUD will make a decision, this ordinance is another step that shows our willingness to work this matter out as opposed to saying "let's go to the mat and see who wins", if you go to mat and loose, have absolutely no negotiating power, are still at the stage where certain adjustments can be made that would not be harmful to the community. Mr. HAVASSY stated then if Pathstone is given the right to develop that property, Whitehall Township would still not come out clean as far as discriminatory practices in housing. Attorney FONZONE replied in the negative, doesn't know what the effect would be because there has been no discussion, if you turn your back on them will never get a chance to have discussion, need to take the opportunity to see what we can arrive at. Mr. HAVASSY stated he is the owner of one of the properties, has no intention of developing it, has an office in the building, if this passes and do not have enough properties to take advantage, the Township is still not compliant with the federal government, then will the Township takes steps to coerce him to convert his property, understands the concern of the millions of dollars of liability but also if we don't have enough properties posted to take advantage of this, will not be within the parameters of being discriminatory or not and will encourage people like him to develop their property. President ARMSTRONG stated the ordinance states the building must be vacant, the ordinance cannot force him to do something and are only talking about 215 Quarry Street. Commissioner HOWER stated everything looked at over the last 5 years was to try to redevelop these vacant properties because they are eyesores, are dangerous, have multiple safety issues, are not trying to force him to change the business in his own establishment, is not what the ordinance does. Mr. HAVASSY stated if 50 years down the line his daughter sells the building, could the new owner not take advantage of this. Commissioner HOWER stated it would depend on a lot of parameters that would have to be met. Attorney FONZONE noted since his building is not vacant, this would not apply to him.

Mark MILLER, 4121 Alice Lane, Whitehall, stated a lot were posted that are not underutilized, what criteria is considered underutilized as he knows of one used for storage. Attorney FONZONE stated the buildings were posted so an owner could not claim they were not notified, is his obligation to find out whether it fits in or not. Mr. MILLER stated the ordinance should include something along that line that any government cannot deem a property underutilized and open to this type of development. Attorney FONZONE stated is just giving notice his building could fall into that category and he may want to be in that category. Mr. MILLER stated he chooses not be in that category and if there is anything in the ordinance that allows it to be back doored. Attorney FONZONE stated there is nothing but if it is a property determined to be beyond use, the community could do something but no one is saying that. Mr. MILLER stated the community has the right to inspect the property, can post notices it is inhabitable, have regulations they can do it by and makes people upset when properties are being posted without the owner's knowledge. Attorney FONZONE asked what we would do if those owners complain later they should have been posted. Mr. MILLER asked why they would complain if they had no desire to develop.

Dennis MAKOVSKY, 4321 Jay Street, Whitehall, asked about the A thru H requirements in the ordinance. Attorney FONZONE stated it is all the residential districts.

Michele FABIK for Joanne FABIK, 735 Second Street, Whitehall, asked if in Section 1, paragraph F, number 3 the words on-site be specified and defined as on property and not to include along the street, feels it leaves it open to interpretation and in Section 1, paragraph F, numbers 1, 2 and 4 do specify on-site, understands the permit parking Ordinance 3038 is still in appeal process and how will neighbors learn of the results of the appeal. President ARMSTRONG stated you cannot designate a parking spot on the street, the street is public parking, even a handicapped sign would be open to any person who is handicapped to use, do not say on-site because it would also cause another problem if a developer meets the parking requirements, they may purchase a private parking area across the street to designate spaces, no developer can say you have a designated spot on the street, the only way would be if the Board issued a permit which is not part of this ordinance. Ms. FABIK asked how the 1.2 spaces were arrived at. Attorney FONZONE stated she was told at the last meeting that the attorney for the insurance company had spoken to the attorney for HUD. Ms. FABIK stated without specifying the on-site in paragraph 3, it might appear there is one guaranteed spot or less per the 49 units and gives the possibility of 8 or more on street spaces depending on what happens with the permit parking ordinance. Commissioner HOWER stated it could also mean they will be reducing the number of units, did go from 1 to 1.2, noted the LVPC commented that while such a modest increase is of local concern, does not advise increasing minimal standards for off street parking provisions particularly in medium or high density settings which would describe several of the residential zoning districts to which these provisions would apply and a growing number of municipalities have come to the realization their minimum parking requirements are often overly generous resulting in a glut of parking where it is not needed and these municipalities have often relaxed or completely eliminated minimal off street parking requirements, so you have other municipalities saying there is no minimum and thru negotiations we went to 1.2. Ms. FABIK asked what the fee for permit parking would be, it was noted that is yet to be determined. President ARMSTRONG stated a developer came in last month with his attorney, had great conversation, worked out an excellent compromise, we gave a little, they gave a little but right from the beginning of this particular development, never had that opportunity. Pathstone has a fantastic record where they have been but when they came to Whitehall it was not a sit down and talk about what they needed, was more or less here it is, if you don't like it, this is what will happen, were very upset about that, it was more of threats than negotiations, have finally gotten back to the negotiating table and resulted in the 1.2.

Commissioner HOWER stated as a Commissioner since 2011, on the Legal and Legislative Committee from the first day, have been debating this for about 4 years, current and past members

have spent a ton of time trying to get it right, the problem is there are numerous building in the Township of different sizes in different neighborhoods where something needs to be done, did everything we could to get some resolutions to these issues, is a negotiator by trade, does not like to be pushed into a corner and told this is how it will be, is a great Township, grew up and went to the Fullerton School which is an adaptive re-use building with 14 businesses, so what they are doing here isn't unprecedented but have always tried to do what is right for the community, some will like it, some won't, but is part of the job. Commissioner HOWER read a letter from Pathstone's Attorney, Michael Allen, who has sued other communities (copy attached to these minutes) and stated when we get letters like this, does not make him happy to come here for any kind of vote. The Board and our Legal and Legislative Committee has worked to find a solution to redevelop these projects, is thoroughly disgusted with the letter since there is no way the Township of Whitehall is discriminatory or racist, are here to do the right thing for our community, hopes everyone understands they are here to do the best thing for the community, none of them want to be sued for \$60M because then taxes would need to be quadrupled. President ARMSTRONG stated if it had only started with the other side coming into the community and explaining it to the residents in that neighborhood about what they were doing, they are here to work for them but need to understand the need to protect all of the residents of Whitehall, is a balancing approach, hopes there is not one resident that feels we didn't take this seriously, are back at the negotiating table and does this ordinance guarantee they will accept it, no, but may be something that will work, trying to do the best to meet everyone's needs, is more of an emotional issue than a factual one sometimes, need to get back to just looking at the facts of the case and some of them are not what we would like them to be.

Commissioner HOWER stated if Pathstone would have come and actually engaged this community to see everything that is good about this Township, wouldn't be in this situation but instead of talking and trying to work something out, they went to an attorney in Washington, DC who couldn't find Whitehall Township on a map, is not right that we have been painted into this and with articles in the newspaper saying we are being sued for racial housing discrimination, are ridiculous claims but it is the reality we live in today, we are in a litigious society. It was noted the second reading of the ordinance will be on October 24th at 7:00 p.m.

Commissioner DUTT stated he is disgusted with the whole process, people have different opinions, if they are disgusted to go and vote your conscience in 28 days if we do not want other people telling the Township what we should be doing and if the Supreme Court made that decision, vote for legislators who will change it.

C. COURTESY OF THE FLOOR

Chris FEIDLER, 5046 Foxdale Drive, Whitehall, stated the UGI dump on North Coplay Road has a lot of health risks as Mike HOBEL, the owner who is leasing the property, is grinding asphalt which can cause health problems, have been using it as a transfer station, finding dust that is sticky, has broken many rules to the agreement, saw article in the paper that Mr. HOBEL, Mayor HOZZA and UGI met resulting with installing a gate, a camera and the hours of operation being posted and if this will stop the illegal activity. Mayor HOZZA stated at the meeting the pictures provided by him were dated September 13th and were within the hours of operation. Mr. HOBEL did state the asphalt in the beginning was thrown into the quarry, is now being separated, pulled off site, recycled and did not indicate there was a grinding machine on site. UGI was only aware of Great Western and UGI trucks coming into the site, the pictures showed other trucking companies. UGI has sent a list of all the trucking companies authorized by them to use the site. Mr. HOBEL indicated those not identified with UGI were coming to remove the asphalt. Mayor HOZZA stated there is a conditional use with conditions imposed on Mr. HOBEL and UGI for bringing in material to the quarry, is not sure if the Township can legally deny the owner of the property the right to remove material. Mr. FEIDLER asked if he has the proper permits to grind material, act as a transfer station and bring stone out.

Frank CLARK stated the grinding machine is used to grind the asphalt into 4 inch chunks. Mr. FEIDLER stated a cylinder in his backyard placed by DEP is loaded with muck on the bottom of it, the quarry is only 100 yards from their homes, if UGI needs a place to dump to go to Coplay Aggregates as they are damaging their properties and health. Frank CLARK asked what the stuff in the cylinder is. Mr. FEIDLER stated DEP has not gotten back to them. Mayor HOZZA stated DEP took 3 days to call him back, which was the same day of the citations and the meeting. Mr. FEIDLER stated Mr. MULLIN of DEP stated the muck on their properties is directly related to the HOBEL property. President ARMSTRONG stated he was in their neighborhood and saw the dust.

Frank CLARK stated testimony is the sticky stuff has only occurred in the last 2 years, cannot raise a concern until he has the lab results to find out what it is to take care of any violations, needs to prove it first, and has not been aware of the sticky substance until recently. Mr. FEIDLER stated DEP found contaminants in the quarry. Mayor HOZZA stated UGI turns in a quarterly report, legally need to know what right the Township would have to tell a Public Utility, governed by the PUC and a private land owner that we are shutting you down, need to have proof to defend the Township in the courts. Mr. FEIDLER stated Mr. HOBEL has been grinding asphalt without a permit and using the site as a transfer station without a permit. Mr. CLARK stated for 6 of the 8 years the operation was never an issue, cannot accuse someone of a violation without proof, the tested material being brought in by UGI is from construction material of replacing old gas lines but if they are processing the material at the quarry for sale or re-use, cannot do that and have to stop, needs the test results from DEP because the Township cannot enforce any of the DEP mining regulations but if the Township has evidence, can take it to DEP and ask them enforce the sections they are in violation of, has the quarterly reports from 8 years from the lab who analyzed the material coming in from UGI and can compare them with the DEP report. Mr. FEIDLER said he was told there were contaminates in the quarry. Mr. CLARK stated from the reports he gets there has only been 4-5 instances in the past 8 years of material not acceptable as clean fill, most was arsenic trapped in the soil, they found those piles which were then picked up, put in drums and shipped to an authorized landfill in Maryland. If the DEP report from Mr. FEIDLER's property can be matched up with any of the reports he has, has something to go to the State with and will contact Mr. MULLIN to see what facts he knows to build a case.

Valerie UMSTEAD, 5027 Foxdale Drive, Whitehall, stated the Mayor told her to contact DEP who has jurisdiction, the dust was probably coming from the Northampton Paper Mill, the dust got so bad she could not see out of her rear window, the dust gets worse as you get higher on the street and homes closer to the UGI site, is a horrible problem, have friends living near Fox Hollow who have no issues, does not believe it is Lafarge and is a health issue. Mayor HOZZA asked if Mr. MULLIN was going to forward any test results to the PA Department of Health, with a negative response. Ms. UMSTEAD stated they need resources to assist them with this.

Nicole MORBER, 5016 Fox Run Lane, Whitehall, stated DEP stated it is still an active investigation, still collecting data and asked if HOBEL has the legal permits for what he is doing. Mr. CLARK stated he has permits to deposit clean fill only from UGI contractors, the material comes from urban sources, is tested and approved before it gets pushed into the quarry. UGI uses about 10 trucking firms to bring the material in and the blacktop was taken out by SCHEUERMANN who did not bring in fill. Ms. MORBER stated there are children in the neighborhood who have breathing problems, her daughter has asthma, their properties and vehicles are being ruined, if Mr. HOBEL is doing something not in his agreement, as per an environmental attorney, you can legally pause that until he abides by the legal obligations set forth. Mr. CLARK stated if it is found to be the cause of the fugitive dust that is outside of the regulatory limits set by DEP, then we can say to DEP they must enforce their regulations in regard to the UGI quarry.

Commissioner MARX stated when conditions are attached, should have some legal right since there are conditions that haven't been met: violation of time, trucks going in on Saturdays and Sundays, is not gated, doing some type of grinding operation. He stated a HOBEL family member told him it was being used as a transfer station, UGI trucks would dump the spoils, then be refilled with some type of stone or aggregate to go back and refill the trench as a cost savings, believes he has violated 3 of the conditions and is there any avenue we can take. Attorney FONZONE stated he would first have to see some proof, then file something with the court, need to do it systematically, has to see the agreement, get the proof, see if the proof violates the terms of the agreement, if it does can then seek relief. Commissioner MARX asked how much proof needs to be provided, have police reports, gate is still down. Commissioner GINDER noted the police cannot shut it down because it's a resolution and not an ordinance. Attorney FONZONE stated if the resolution is being violated, can try to enforce it. Commissioner DUTT asked how long will it take to get the results from DEP and if there is documentation from the last one. Mr. FEIDLER stated 30 days for the cylinder but threw the other paperwork away. Commissioner GINDER asked how long it will take to look at the conditional use and find out if anything going on can immediately be enforced but if not, then have to wait for DEP. Attorney FONZONE stated he will need to see the written opinion of the conditional use. Commissioner GINDER asked what needs to be done so the police can enforce these things. Mayor HOZZA stated the police have the list of the authorized trucking companies. Acting Chief MARX stated it needs to be an ordinance in order for them to enforce it, then can site the ordinance with the magistrate's office, can then be enforced and ruled on in a court of law. Mayor HOZZA asked if it has been done legally in the state converting a conditional use resolution into an ordinance and has it been challenged in court. Commissioner MARX asked who the enforcing body is and if the quarterly testing on the soil is based on tonnage. Mr. CLARK stated it is a minimum of quarterly or if there is an abundance of stock piles before they move it. Commissioner MARX stated he understands Mr. HOBEL spreads this product almost every day, thought it was going to take 30 to 50 years to fill, is almost 80% filled after 7-8 years, so how much product has been put in without being tested, is there any legal way to have borings done to look at what is there, why does Whitehall have to be the dumping ground and believes Mr. HOBEL has pushed this over the edge quickly.

Jeff MORBER, 5016 Fox Run Lane, Whitehall, stated since they cannot add any additives in, how can they take asphalt out. Commissioner MARX stated they are using a screen, taking the dirt with the asphalt mixed in, putting it in a shaker. Commissioner SNYDER stated taking out material was never a condition. Mr. CLARK stated asphalt, by DEP regulation, is clean fill and can be pushed right in and arsenic is calculated by parts per million that occurs in the sample. Mayor HOZZA questioned if they are in separate piles, are they test sampling both piles. Mr. CLARK stated he would check with the independent lab.

Nicole MORBER, 5016 Fox Run Lane, Whitehall, stated the DEP stated there are 2 components and the Township is not enforcing their half of only allowing 8-10 trucks per day into the facility. Chris FEIDLER stated a transcript states there would be 0 to 20 trucks per day and has pictures of 1,500 trucks in one week. Commissioner MARX stated the sampling lab is AECOM.

Jeff WARREN, 4568 Pharaoh Street, Whitehall, stated AECOM is an environmental consultant, collects the sample, submits it to a lab to analyze, sends the results back to AECOM who writes a report. He stated the one thing missing from the conversation is the beneficial reuse material. The State gives landfills the ability to use any material called clean fill to reclaim the land. The Township has very little authority or control other than the trucks bringing it in, locking the gates, or hours of operation but the PA DEP does, might be getting cooperation from one agent but it is there mission to protect the environment, deals with environmental clean-up all the time as a geologist, if there is an environmental concern here, the State Environmental Protection can stop the operation with a cease and desist order, has had issues with them also, keeps getting the run around, keep coming up with excuses until folks get wound up, if this was regulated fill, the Township should be getting a tipping

fee from every truck and is why it is the State's responsibility and the Township cannot tell the State what to do.

Kelly ZAHRADNIK, 5033 Foxdale Drive, Whitehall, understands about the State but the Township needs to help them, emailed the Township, no one got back to her and how can they get the results from the testing. Mr. CLARK stated Mr. FEIDLER would be notified. Mayor HOZZA stated the Township has been told by DEP not to call with complaints, the resident must call. Ms. ZAHRADNIK stated when they bought their homes, their recreation taxes went to Cementon. Mayor HOZZA explained the Township is divided into recreation zones, their neighborhood is in the Cementon recreation zone set years ago, the choice at that time was the recreation fee over land which was ~\$1500 per lot with part going to the Recreation Fund and the rest to the district and most of the district funds went to build the Community Building at Cementon Park.

Chris FEIDLER stated everything revolves around Mike HOBEL breaking the rules. President ARMSTRONG stated they have been unaware of this until recently, has visited the area, all agree it is a bad situation, nobody here wants it to continue but need the evidence, is a shame the State isn't acting quicker on this, is why DEP is there and would be on us immediately if we didn't do anything correctly. Commissioner MARX stated Mr. HOBEL was spoken too, UGI representatives were met with, the riot act has been read to them, are aware of the situation, understands UGI did not like what they heard, no one wants to deal with the DEP, there is action being taken. Commissioner SNYDER stated she has heard this for years, received phone calls.

Ron CARTER, 5454 N. Coplay Road, Whitehall, stated his house is on the block where every truck goes in and out, cannot utilize the outside or open the windows, his finance Tina SCHASIA has stood out in the street and asked the truck drivers why their trucks aren't covered, have been complaining since 2012. Tina SCHASIA stated she is shocked to hear the fill was to take 20-30 years, her partner had fungal pneumonia which comes from dust and dirt. Mr. CARTER stated it is because his immune system is compromised and is prone to getting infections. Commissioner HOWER stated this would not be swept under the rug, will do whatever to get some answers, have had many complaints from residents on the quarries, the DEP says it is okay but doesn't agree. Mr. CARTER stated he filed a complaint with the DEP citing 3 different companies, Lafarge, Coplay Aggregates and the HOBEL dump, got a call from Mr. MULLIN who stated it was HOBEL who was in violation of fugitive particulate matter, was told by Mr. MULLIN he would have to file a freedom of information to find out the results of the meeting.

D. PULBIC HEARING AND VOTING ON ORDINANCES

1. BILL NO. 17-2016 (First Reading)

TITLE: AN ORDINANCE AMENDING THE WHITEHALL TOWNSHIP CODIFIED ORDINANCES, CHAPTER 27, ZONING, BY AMENDING THE GENERAL REGULATIONS TO PERMIT 'ADAPTIVE RE-USE' FOR AFFORDABLE AND MULTI-FAMILY HOUSING AS A PERMITTED USE IN ALL RESIDENTIAL (R-1, R-2, R-3, R-3A, R-4, R-5, R-5A, AND R-6) ZONING DISTRICT. (Legal & Legislative)

President ARMSTRONG read Bill No. 17-2016 to the Board.

2. BILL NO. 23-2016

TITLE: AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF A PROPOSAL FOR THE PURCHASE OF IN CAR CAMERA SYSTEM FOR FIFTEEN (15) POLICE

VEHICLES IN ACCORDANCE WITH SECTION 3.20 IN THE HOME RULE CHARTER WHICH REQUIRES AUTHORIZATION OF ACQUISITIONS IN EXCESS OF \$25,000 BY ORDINANCE. (POLICE)

President ARMSTRONG read Bill No. 23-2016 to the Board.

Commissioner GINDER moved to approve, seconded by Commissioner HOWER.

Commissioner MARX asked the Chief if they will meet his needs and do everything we need them to do. Acting Chief MARX stated the company is from Texas, is state of the art compared to what was purchased 8 years ago, and is 100% behind Watch Guard.

Seven Commissioners were present and voted “yes”. Bill No. 23-2016 was approved.

3. BILL NO. 24-2016

TITLE: AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF A PROPOSAL FOR THE PURCHASE AND INSTALLATION OF NEW FINANCIAL MANAGEMENT SOFTWARE, FOR THE WHITEHALL TOWNSHIP MUNICIPAL BUILDING, IN ACCORDANCE WITH SECTION 3.20 IN THE HOME RULE CHARTER WHICH REQUIRES AUTHORIZATION OF ACQUISITIONS IN EXCESS OF \$25,000 BY ORDINANCE. (ADMIN)

President ARMSTRONG read Bill No. 24-2016 to the Board.

Commissioner MARX moved to approve, seconded by Commissioner DUTT.

Commissioner SLONAKER asked if this does everything. Deputy Mayor MEYERS stated it does more than what we have now, has a paperless component which will save time on processing purchase orders, has better recording capability, will be ~ 60% less in annual maintenance fees, the City of Easton uses this and previously had Sun Guard Pentamation like us.

Seven Commissioners were present and voted “yes”. Bill No. 24-2016 was approved.

E. PUBLIC HEARING AND VOTING ON RESOLUTIONS

1. RESOLUTION NO. 2947

TITLE: A RESOLUTION CONDITIONALLY APPROVING THE MAJOR SUBDIVISION/LAND DEVELOPMENT PLAN OF MARVIC SUPPLY, LOCATED AT 3325 SEVENTH STREET, WHITEHALL TOWNSHIP, LEHIGH COUNTY, PENNSYLVANIA, INDEX #1888-16. (DEVELOP)

President ARMSTRONG read Resolution No. 2947 to the Board.

Commissioner SNYDER moved to approve, seconded by Commissioner DUTT. There were no questions or comments.

Seven Commissioners were present and voted “yes”. Resolution No. 2947 was approved.

2. RESOLUTION NO. 2950

TITLE: A RESOLUTION APPROVING THE EMERGENCY OPERATIONS PLAN OF WHITEHALL TOWNSHIP, LEHIGH COUNTY, PENNSYLVANIA.
(ADMIN/BOC)

President ARMSTRONG read Resolution No. 2950 to the Board.

Commissioner GINDER moved to approve, seconded by Commissioner HOWER. There were no questions or comments.

Seven Commissioners were present and voted “yes”. Resolution No. 2950 was approved.

Attorney FONZONE stated there has been a lot of discussion about conditional uses, has a copy of the opinion in regards to DVS Enterprises, extra effort was made to try to enforce things called into question, has asked Mr. SCHEUERMANN to also execute the agreement. Commissioner GINDER stated he was under the impression what was agreed to and what wasn't should be listed at the end of the order but does not see anything about maintaining the streets and if we can enforce it. Attorney FONZONE stated the findings of fact has everything discussed including a reference specifically to the streets, also incorporates the transcript, conditions in the letter from the engineer, it was written because of the situation that has arisen with the HOBEL quarry and why he incorporated the transcript, the order, and the findings of fact and to have Mr. SCHEUERMANN sign it also. Commissioner GINDER asked if it is enforceable, with an affirmative response. After discussion, it was agreed to have any future conditional use made enforceable.

F. REPORTS OF PUBLIC OFFICIALS

1. Commissioner SLONAKER distributed a report on the Police Pension Plan and noted the passing of former employee Elsie MARTUCCI.
2. Commissioner DUTT congratulated the Recreation Department, the volunteers and everyone involved with the parade. He noted the Fall Festival is October 15th from 11:00 am to 4:00 pm at Whitehall High School, had a Town Hall Recreation meeting with the Recreation Commission and residents and noted there will be some changes in the future.
3. President ARMSTRONG congratulated the Recreation Department on the parade and the Stroll Along the Trail which raised \$5,000 to purchase a sight enhancement machine for the library, thanked the Lions Club and all the volunteers that day with over 45 stands/vendors. He asked everyone to come out for the Fall Festival, is a complete volunteer day and noted Chief Wahoo could not make it this year.
4. Mayor HOZZA stated Elsie MARTUCCI was given a great send off on Saturday. He noted grass pick up will continue until we get frost, the Cameron Tract will be open on Saturday's in October for yard waste and the Haunted Parkway is every Friday and Saturday night in October weather permitting.

G. ADJOURNMENT

1. MOTION – Commissioner DUTT moved, seconded by Commissioner HOWER to adjourn the meeting at 10:25 pm.

From: Charles J. Fonzone
Solicitor for Whitehall Township
Board of Commissioners Meeting
October 10, 2016

Good Evening:

I know that you believe the Board of Commissioners can resolve the problem of the claims of discriminatory practices under the Federal Fair Housing law and the Civil rights Act of 1964 by simply saying we have not discriminated.

Since April 20, 2015, we have been dealing with these claims and trying to protect the Township from a result that would place us in a position where the Township will not recover – for a long-long time.

Because the Township has been the recipient of Federal financial assistance – the conflict is also being investigated by the U.S. Department of Housing and Urban Development under Title VI of the Civil Rights Act of 1964 as amended.

Title VI states:

No person in the United States shall, on the grounds of race, color or national origin be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance.

Since we are also a recipient of Community Development Block Grant funds, we are also being investigated under Section 109q of the Housing and Community Development Act of 1974.

Section 109 of this Act states:

No person in the United States shall, on the grounds of race, color, sex, religious or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded in whole or in part with funds made available under this chapter. Federal law is at play here – it sets out stages the U.S. Department of Housing and Urban Development must take. They must conduct an impartial investigation, and at the same time, encourage all sides to reach an agreement where appropriate, through conciliation. This was to be done in 100 days. So far we have tried for 173 days to resolve what is a daunting task.

Do we have some arguments we can make in our defense? Of course.

Does the U. S. Department of Housing and Urban Development have such arguments? Yes and they have more – we believe HUD is especially emboldened in these types of cases because of the recent U.S. Supreme Court decision allowing for disparate impact theory in FHH cases. As such, we do believe HUD may be motivated to make an “example” out of Whitehall if we cannot resolve this within the administrative agency.

So where does that leave us?

The County of West Chester New York, which is larger than Whitehall, was seriously punished in a case similar to ours which turned out unfortunate for them. They are the subject of a 38 page Stipulation and Order of Settlement and Dismissal, the monies due under this matter are in the range of \$63,625,000.00 not counting possible penalties for not adequately performing the terms of the agreement. There are also nine other activities they must do to affirmatively further fair housing. See Exhibit "A" which is attached hereto, incorporated herein by reference and made a part hereof.

Depending on the determination of the U.S. Department of Housing and Urban Development, the charges against the Township could be dropped or if the Department finds there is reasonable cause to believe an unlawful discriminatory housing practice has occurred – we have to, within 20 days, determine whether we are to have the case heard by an Administrative Law Judge – or have the case referred for trial in the appropriate U.S. District Court which most likely would be in Philadelphia.

It should be obvious that we are necessarily facing an uphill battle if we miss the opportunity to continue our discussions with HUD in an attempt to resolve this matter. If we lose the initial determination, we have lost any leverage we may have to control our own destiny. It is my considered legal opinion that the Adaptive Re-Use Ordinance is one way of showing our good faith in attempting to resolve this dispute.

The Comprehensive Planning Commissioner of the Lehigh Valley Planning Commission has reviewed this ordinance and has found the amendment to be consistent with the County Comprehensive Plan. See Exhibit "B" which is attached hereto, incorporated by reference and made a part hereof.

\$21,600,000 – County to pay to County's account with HUD

- HUD will make the funds available to the County for development of new affordable housing units that will affirmatively further fair housing in the County

\$8,400,000 – County to pay to the United States

- Required to pay \$30,000,000, but receive credit for \$21,600,000 paid to County
- This amount is due and payable immediately. If County fails to pay by its due date, interest shall accrue at 12% per year, compounded daily.

\$2,500,000 – County to pay to Realtor's Counsel

- Expenses, attorneys' fees, and costs of Realtor's claims against County

\$30,000,000 – County must secure resources sufficient to ensure the equitable relief is funded for County fiscal years 2009 through 2014 for land acquisition, infrastructure improvement, construction, acquisition, or other necessary direct costs of development of new affordable housing units that affirmatively further fair housing. This is in addition to the \$21,600,000 above and must be met solely through County funds, and not from any federal, state, or other funding sources

\$250,000 (2010-2011) – fees and expenses of Monitor

\$875,000 (\$175,000/year for each year from 2012-2016) – fees and expenses of Monitor

\$63,625,000

Plus, County must:

- complete an analysis to the impediments to fair housing choice within the County. In its analysis, the County must commit to collecting data and undertaking actions to further fair housing and identify actions the County will take to address and overcome the effects of those impediments
- solicit CDBG proposals that would affirmatively further fair housing
- advertise the rights of all persons to fair housing and avenues to rectify allegations of housing discrimination, including informing the public of where complaints may be filed and requiring County agents to refer complaints and possible violations to HUD
- create and fund campaigns to broaden support for fair housing and to promote the fair and equitable distribution of affordable housing
- educate realtors, condominium and cooperative boards, and landlords with respect to fair and affordable housing activities
- affirmatively market affordable housing within the County and in geographic areas with large non-white populations outside, but contiguous or within close proximity to, the County and include language in developer's agreements that the developer meet these same marketing requirements and hire consultants to carry out outreach activities, where appropriate
- centralize the intake of potential homebuyers for affordable housing that affirmatively furthers fair housing
- promote legislation currently before the Board of Legislators to ban "source-of-income" discrimination in housing
- pay for consultants and public education, outreach, and advertising to affirmatively further fair housing

Exhibit A



Lehigh Valley Planning Commission

LIESEL DREISBACH
Chair

STEPHEN REPASCH
Vice Chair

JOHN DIACOGIANNIS
Treasurer

BECKY A. BRADLEY, AICP
Executive Director

September 30, 2016

Mr. Charles Fonzone
Gross McGinley LLP
33. S. Seventh Street, P.O. Box 4060
Allentown, PA 18105

**RE: Zoning Ordinance Amendments
Adaptive Re-Use for Affordable Housing in Residential Districts (resubmission)
Whitehall Township
Lehigh County**

Dear Mr. Fonzone:

The Comprehensive Planning Committee of the Lehigh Valley Planning Commission (LVPC) first reviewed these zoning ordinance amendments at its meeting on April 26, 2016, pursuant to the requirements of the Pennsylvania Municipalities Planning Code (MPC). At that point, the Committee found the amendment to be consistent with the County Comprehensive Plan. The LVPC has reviewed this new resubmission exclusively in light of changes from the original submission in April, and the resubmission remains consistent with the County Comprehensive Plan.

The LVPC has a few considerations within the amendment that it would like to address separately:

- **§27-199.1(C).** This new definition of multi-family housing is consistent with the County Comprehensive Plan.
- **§27-199.1(F)(3).** This resubmission has increased the minimum parking requirements from 1.0 off-street parking space per unit to 1.2 per unit (for Affordable Housing) and 2.0 per unit (for Multi-Family Housing). While such a modest increase is fundamentally a matter of local concern, the LVPC generally does not advise increasing minimum standards for off-street parking provisions, particularly in medium or high-density settings, which would describe several of the residential zoning districts to which these provisions would apply. A growing number of municipalities have come to the realization that their minimum parking requirements are often overly generous, resulting in a glut of parking where it is not needed. These same municipalities have often relaxed or completely eliminated minimum off-street parking requirements, thereby recognizing that the developer will perform the due diligence necessary to determine the appropriate number of parking spaces in proportion to the size of the development.

Feel free to call me if you have any questions about this review. Kindly send a copy of the amendment that is approved by Board of Commissioners within 30 days, as required by the MPC.

Sincerely,

Eric McAfee, AICP, LEED AP
Director of Community Planning

Cc: Lee Rackus

09/30/16 REC'D
Exhibit B

RELMAN, DANE & COLFAX PLLC

1225 19TH STREET NW SUITE 600
WASHINGTON DC 20036-2456

TEL 202-728-1888
FAX 202-728-0848
WEBSITE WWW.RELMANLAW.COM

July 28, 2016

Michael Miller
Margolis Edelstein
The Curtis Center, Ste. 400E
170 S. Independence Mall W.
Philadelphia, PA 19106-3337

RE: *PathStone Housing Corp. of Pennsylvania v. Township of Whitehall, et al.*
Title VIII Case No.: 03-15-0314-8; Title VI Case No.: 03-15-0314-6;
Section 109 Case No.: 03-15-0314-9

Dear Mr. Miller:

As I have repeatedly informed you, time is of the essence with respect to resolution of the PathStone's claims, which are embodied in its February 25, 2015, housing discrimination Complaint filed with HUD. Your clients are aware the Lofts represents a \$10 million investment that would eliminate a blighted and disused building; create good jobs in construction, management, and maintenance of the property; and return the parcel to the property tax rolls. PathStone has time-limited financing from the Pennsylvania Housing Finance Agency for the Lofts, which will be lost if it does not soon receive the permits necessary to proceed with the development.

At your request, PathStone held off on litigation because the Township Commissioners seemed inclined to approve an Adaptive Re-Use Ordinance ("Ordinance") that would reduce off-street parking requirements for affordable multi-family developments to one space per apartment unit as the Ordinance was recommended for enactment by the Township Planning Commission on April 20th after being moved forward by the Legal and Legislative Committee at its March 9th meeting. PathStone exercised additional patience so that the Township's Legal and Legislative Committee could conduct a workshop session on July 13, 2016, to discuss how neighborhood concerns about parking could be addressed separately. After that session, you called to tell me that the Township Commissioners would meet on August 8, 2016, for final passage of the Ordinance.

I have subsequently learned that the Commissioners intend to amend the Ordinance at or before their August 8, 2016, meeting to require two off-street parking spaces per unit. That ratio simply echoes the existing requirement, which the Township's Zoning Hearing Board ("ZHB") agreed to waive for Whitehall Manor Retirement Condos, Inc. and unanimously denied for PathStone, and which forms the basis of PathStone's housing discrimination Complaint now pending at HUD (and which is about to be referred to DOJ).

Your clients have permitted their public processes to be infested by the stereotypical and discriminatory views of the predominantly White neighbors surrounding the parcel on which the Lofts is to be developed. In public hearings in 2014, the ZHB was influenced by opponents' scurrilous claims that the Lofts would be "HUD housing what's it going to do to your property value?" and "if this is allowed, we're going to need a lot more police surveillance in the neighborhood." As recently as June 6, 2016, the Board of Commissioners' workshop session on the proposed Ordinance was dominated by comments such as the following:

- Pathstone "is trying to put a slum in our district."
- "There are a lot of kids already in the neighborhood" and "I don't want to see my neighborhood ruined."
- "It's a slap in the face to the adjacent residents to turn the property over to HUD. I would rather see the building vacant with rats than have apartments."
- "I'm fearful of what is moving in as this element will cause crime as the affordable housing is going to invite more crime."

As I am sure has become apparent to you, opponents' vigorous support for existing off-street parking is purely pretextual. But your clients have consistently responded to these pretextual concerns by refusing to waive the requirement for the Lofts project because it is likely to have an integrative effect. And now it appears that the Ordinance—which would have reduced the off-street parking requirement on the Lofts parcel and others in the Township, in an effort to revitalize neighborhood eyesores—has also been hijacked for the same discriminatory purposes.

Please share this letter immediately with the Township Commissioners, so that they are fully informed that passage of the Ordinance with a requirement of two off-street parking spaces per apartment unit will be understood as an endorsement of the expressed discriminatory views expressed in public hearings, and ratification of your clients' previous discriminatory actions. I would encourage you to copy any written response to Danielle Sievers and Melody Taylor-Blancher at HUD and Christopher Belen and Catherine Bendor at DOJ, inasmuch as I am copying them on this letter.

As a consequence of its discriminatory actions with respect to PathStone, Lehigh County has already disqualified the Township from receipt of Community Development Block Grant ("CDBG") funds.

Michael Miller
July 28, 2016
Page 3

Should PathStone lose its financing because of your clients' endorsement and ratification of discrimination, PathStone will have no alternative but to file an action for damages, attorneys' fees and costs under the Fair Housing Act, Title VI of the Civil Rights Act and other relevant authorities. Should the Township not remedy its past acts, it should anticipate that HUD will soon issue findings that the Township has violated the Fair Housing Act, Title VI and Section 109 of the Housing and Community Development Act of 1974. Furthermore, I understand that DOJ will be opening an investigation concerning the Township's exercise of zoning and land use authority including, but not limited to, PathStone's proposed development of the Lofts. Finally, your client should understand that so long as it has unresolved findings from HUD or DOJ, it will be ineligible to receive CDBG funds through Lehigh County, and will also be placed on HUD's Civil Rights Threshold List, making it ineligible for a wide range of HUD grant and loan programs.

It appears to me that your clients have one last chance to salvage a win-win resolution. We are happy to meet with you and your client by phone in the coming week to determine whether some voluntary resolution is still possible. Please advise concerning your client's interest in and availability for such a meeting.

Sincerely,



Michael Allen

CC: Wendy Carter
Catherine Durso
Danielle Sievers, U.S. Department of Housing and Urban Development
Melody Taylor-Blancher, U.S. Department of Housing and Urban Development
Christopher Belen, U.S. Department of Justice
Catherine Bendor, U.S. Department of Justice



Eastburn and Gray, PC

Attorneys at Law

John A. VanLuvanee
60 East Court Street
P.O. Box 1389
Doylestown, PA 18901
215-345-1342
jvanluvanee@eastburngray.com

October 18, 2016

Board of Commissioners
Whitehall Township
3219 MacArthur Road
Whitehall, PA 18052

Attn: Phillips M. Armstrong, President

Re: Bill No. 17-2016

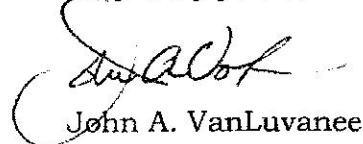
Dear Mr. Armstrong:

I represent Quarry Street Whitehall Development, L.P., the owner of a property located at 212 Quarry Street in the R-5A zoning district.

I previously appeared at the Commissioners meetings held May 5, 2016 and June 13, 2016 on the above-referenced Bill. At those meetings, I expressed the reasons for my client's opposition to the Bill. I have reviewed the most recent draft of the Bill. The change in the requirement to 1.2 parking spaces per affordable housing unit does not address my client's parking concerns. To my knowledge, the Township has not conducted any parking studies to justify the distinction made between affordable housing units which would require 1.2 parking spaces and other multi-family housing which will require 2 parking spaces per unit. My client is concerned that if a project is developed across the street from its property, a serious parking shortage will quickly develop. This is unacceptable.

I will not be able to attend the Council meeting on October 24, 2016 because of a previously-scheduled hearing that I need to attend in another township. That hearing was scheduled before notice was given that Bill No. 17-2016 would be discussed on October 24. Accordingly, I request that this letter be made a part of the record of the October 24 hearing as evidence of my client's participation in the hearings on this Bill and its continued opposition to it.

Very truly yours,



John A. VanLuvanee

JAV/eah

cc: Charles J. Fonzone, Esquire
Quarry Street Whitehall Development, L.P.
Mickey Thompson, Esquire