

ENTERED AND FILED  
2019 JUL 25 PM 2:10  
PROTHONOTARY'S OFFICE  
LANCASTER, PA

LAW OFFICE OF WILLIAM J. CLUCK  
By: William J. Cluck, Esquire  
Attorney Id. No. 52892  
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Harrisburg PA 17104  
717-238-3027

Attorney for Appellant,  
Mary Bolinger

MARY BOLINGER	:	
	:	IN THE COURT OF COMMON PLEAS
Appellant	:	
	:	LANCASTER COUNTY, PA
v.	:	
	:	CIVIL ACTION - LAW
BOARD OF COMMISSIONERS OF MANHEIM TOWNSHIP	:	LAND USE APPEAL
	:	
Appellee	:	NO. 19-06956

**NOTICE OF APPEAL**

Mary Bolinger ("Appellant"), by her undersigned attorney, pursuant to L.C.R.C.P. No. 27, hereby appeals the approval of the Board of Commissioners of Manheim Township ("Board"), Lancaster County, Pennsylvania of the conditional use application filed by RV Holdings, LP and Hurst Family Estate, LP for a master site planned development and states the following:

7-25-2019  
\$178.25 fund  
check 1077  
receipt  
108609

**1. Name and Address of the Appellant**

a. Mary Bolinger owns the brick farmhouse, which is now a bed and breakfast, located at 1383 East Oregon Road, Lititz. She was recognized as a party by the Board.

**2. Name and Address of the Governing Body that Rendered the Decision**

a. Board of Commissioners of Manheim Township has an address of 1840 Municipal Drive, Lancaster PA 17601.

**3. Name and Address of the Applicants to the Local Agency**

a. The applicants are RV Holdings, LP and Hurst Family Estate, LP ("Applicants"). RV Holdings, LP, has an address of 154 E. Farmersville Road, Ephrata, PA 17542 and Hurst Family Estate, LP has an address of 2900 Oregon Pike, Lititz, PA 17543.

**4. Name and Address of the Owners of the Real Estate Which was the Subject of the Decision and Identification of the Real Estate**

a. The real estate which was the subject of the decision consists of two parcels. The property owned by Hurst Family Estate, LP consists of approximately 48.5 acres, located on the west side of Oregon Pike (Pennsylvania Route 272) ("Site A") and the property owned by RV Holdings, LP consists of approximately 26.74 acres, located on the east side of Oregon Pike (Pennsylvania Route 272) and on the west side of Pennsylvania State Route 222 ("Site B").

**5. Chronology of the Matter**

- a. The conditional use application was filed on or about October 2, 2018.
- b. The Board held hearings on the following dates:

- i. January 14, 2019,
  - ii. January 28, 2019,
  - iii. February 11, 2019,
  - iv. February 25, 2019,
  - v. March 11, 2019,
  - vi. March 25, 2019,
  - vii. April 8, 2019,
  - viii. April 22, 2019,
  - ix. May 13, 2019, and
  - x. May 28, 2019.
- c. The date of the written decision was June 24, 2019. The date of the written findings of fact and conclusions of law was July 8, 2019.
- d. The date the written decision was mailed was June 25, 2019.

**6. The Purpose for Which the Application was Made**

- a. Applicants proposed to develop Site A and Site B as a master site planned development as set forth in the Application. Applicants requested the Board to consider the Application for approval of the conditional use of the proposed master site planned development of Site A and Site B pursuant to Section 2406.2.A and Section 2406.3.B of the Zoning Ordinance, and conditional use approval of modifications to the design standards for a master site planned development pursuant to Section 2406.2.B of the Zoning Ordinance.

b. Site A is the location of the Oregon Dairy market and restaurant, barn, corn maze, and a residence, and will include a grocery store, retail establishments, a restaurant, apartments, single family homes, a bank, and park.

c. Site B is the site of the former Shawnee motor lodge and will include a hotel, social club, apartments, pool and pool house, commercial space, office space and a restaurant.

#### **7. The Basis for Mary Bolinger's Standing to File the Appeal**

a. Ms. Bolinger was granted party status by the Board.

b. Ms. Bolinger owns the brick farmhouse, which is now a bed and breakfast, located at 1383 East Oregon Road, Lititz PA 17543. It is an historic residence.

c. Ms. Bolinger, noted her concerns about the effect of the development on Manheim Township generally and on her bed and breakfast establishment at the corner of East Oregon Road and Creek Road. She testified that reduced traffic on East Oregon Road may reduce the visibility of her business and adversely affect her business. Finally, she noted concerns that blasting for the project site may affect her historic building.

d. The law has recognized that users of nearby land understandably have an interest in the proper implementation of land planning policies through zoning, in relation to the benefits to be gained, not only with respect to the land value of a titleholder, but also with respect to the enjoyment of the land by a user of it, whether in connection with residential occupancy or business operation. *Active Amusement Co. v. Zoning Bd. of Adjustment*, 84 Pa. Commw. Ct. 538, 545, 479 A.2d 697, 701 (1984).

## **8. Legal and Factual Grounds for the Appeal**

### **a. Standards for Conditional Use**

A conditional use is one specifically recognized by the legislature as consistent with the zoning plan. *Aldridge v. Jackson Twp.*, 983 A.2d 247 (Pa. Cmwlth 2009). As such, it is presumed the particular type of use does not, of itself, adversely affect public interest.

*Id.* In addressing an application for a conditional use, a local governing body must employ a shifting burden of persuasion. *Id.* First, the applicant must persuade the local governing body its proposed use is a type permitted by conditional use and the proposed use complies with the requirements in the ordinance for such a conditional use. *Id.* Once it does so, a presumption arises the proposed use is consistent with the general welfare. *Id.* The burden then shifts to objectors to rebut the presumption by proving, to a high degree of probability, the proposed use will adversely affect the public welfare in a way not normally expected from the type of use. *Id.*

The Applicants' proposed use failed to comply with the objective requirements for such conditional use. The Board's approval of the conditional use application constitutes an error of law or an abuse of discretion where it was based on findings that were not supported by substantial evidence.

### **b. Township Zoning Ordinance – Overlay Areas**

The Zoning Ordinance of Manheim Township 2014, as amended, provides in Section 102 that “[t]his ordinance is enacted for the following purposes: ... preservation of the natural, scenic, and historic values in the environment and preservation of forests, wetlands, aquifers, and floodplains.”

The Zoning Ordinance includes Article XXIV. T-ZONE OVERLAY AREAS<sup>1</sup>.

One of the overlay areas is T-5 Oregon Village Overlay Area. Section 2406 of the Zoning Ordinance provides the purpose of the T-5 Overlay Area is “to permit as an option in specific circumstances and by conditional use a coordinated master site planned development process which permits a mixture of medium and higher density residential development via providing a variety of dwelling types and a mixture of various office, commercial uses and hospitality services by capitalizing on the transportation opportunities and public utilities while protecting the surrounding agricultural uses and historic character of the Village of Oregon. The intent of the Board of Commissioners in enacting the Oregon Village Overlay Area is:

[A – I Omitted]

J. To protect and preserve historical structures.”

The objective criteria for conditional use approval include Section 2406.13, which provides in relevant part: “The applicant shall prepare and submit a master site plan with its application for conditional use. Such master site plan shall include the following specifications and accompanying documents:

[A-D Omitted]

E. All existing land uses and lot lines within two hundred (200) feet of the proposed development, including the location of all public and private streets, drives or lanes, railroads, historic sites and other significant natural or man-made features.”

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<sup>1</sup> Overlay districts, as their name implies, are zoning districts which are superimposed on a zoning map over already existing zoning districts, and feature additional land use rules beyond those governing the underlying zoning district.

**c. The Conditional Use Application**

The Application ("Application") of RV Holdings, LP and Hurst Family Estate, LP ("Applicants") submitted under Section 2406 of the Zoning Ordinance of Manheim Township - 2014, as amended ("Zoning Ordinance"), requests conditional use approval of a master site planned development located on the property owned by Hurst Family Estate, LP consisting of approximately 48.5 acres, located on the west side of Oregon Pike (Pennsylvania Route 272) ("Site A") and on the property owned by RV Holdings, LP consisting of approximately 26.74 acres, located on the east side of Oregon Pike (Pennsylvania Route 272) and on the west side of Pennsylvania State Route 222 ("Site B") and approval of design standard modifications.

Applicants propose to develop a residential component and a mixed center component of the master site planned development as provided for in Section 2406.6 of the Zoning Ordinance. The residential component is located, in part, on Site A and, in part, on Site B and includes approximately 41.3 acres. The mixed use component is located on Site A and includes approximately 34.5 acres. Site A is the location of the Oregon Dairy market and restaurant, barn, corn maze, and a residence, and Site B is the site of the former Shawnee motor lodge.

Applicants have failed to meet the specific requirements of Zoning Ordinance Section 2406.13.E by failing to identify historic sites within two hundred (200) feet of Site A and Site B, including properties within the Village of Oregon.

There are approximately thirty-five (35) properties in the immediate area of the Village of Oregon that constitute historic properties. The proposed use will have a destructive effect on the physical characteristics of the historic area and detract from the aesthetic of the historic properties in the Village of Oregon. Applicants' proposed plan does not provide for the protection and preservation of historic structures within the Village of Oregon. As a result of the construction related to the proposed use, the integrity of the historic structures within the Village of Oregon will be threatened by the vibrations from the excavation and construction and the increased traffic that will result from the proposed use.

**d. Bolinger's Historic Bed and Breakfast Site**

Ms. Bolinger testified that last year, approximately half of the guests at her bed and breakfast learned of it when they drove past the property and saw the sign outside. Ms. Bolinger testified credibly that the redirection of traffic from Oregon Road and Creek Road through the proposed development on Site A will reduce Ms. Bolinger's revenue. Ms. Bolinger testified credibly regarding her concerns that excavation and construction on Site A may damage her property, which was built in the 1860s.

Randolph Harris, was qualified as an expert with respect to historic resources and structures in Lancaster County, specifically structures and resources in the Village of Oregon. Mr. Harris testified credibly that the Village of Oregon could be considered a national historic site. Mr. Harris provided credible testimony that properties along Oregon Road, including a grist mill, the neighboring miller's house and a barn, are all historic properties listed on the



National Register of Historic Places. Mr. Harris testified credibly that there are approximately thirty-five (35) properties in the immediate area of the Village of Oregon that constitute historic properties by the Township's own definition.

The Board's July 8, 2019 written findings, at Paragraph 50, contend the Application complies with Section 2406.13 where "Sheet 2 of Exhibit A- 12 includes identification of adjoining landowners, lot lines, structures, streets, trees, slopes, and streams within 200 feet of the proposed development." The written findings of fact include a parenthetical at Paragraph 50: (Protestants' witness, Mr. Harris, stated that the Applicants' conditional use plans did not identify those structures that he identified as historic resources located within 200 feet of the proposed development. (Hearing 3/25/19, N.T. 624). Section 2406.13.E which identifies those items to be identified on the plan uses the term "historic sites" which is not a defined term in the Zoning Ordinance. "Historic resources" and "Historic buildings" are defined terms in the Zoning Ordinance and these defined terms are not used in this section of the Zoning Ordinance)."

The Board erred in its rejection of Mr. Harris' testimony on the basis that the term "historic sites" is not defined. There are rules that apply to undefined terms. In *H.E. Rohrer, Inc. v. Zoning Hearing Bd. of Jackson Twp.*, 808 A.2d 1014, 1016 (Pa. Cmwlth 2002), Commonwealth Court observed "undefined terms are given their plain meaning and *any doubt is resolved in favor of the landowner and the least restrictive use of the land.*" 808 A.2d at 1016-1017 (*emphasis in original*). A given phrase must be interpreted in context and read together with the entire ordinance. 808 A.2d at 1017.

The Zoning Ordinance also addresses how to address undefined terms. Section 501 of the Zoning Ordinance addresses “Word Usage” as follows: “Words not herein defined shall take on the meanings as defined in the latest edition of the Merriam-Webster Collegiate Dictionary. Words and phrases shall be presumed to be used in their ordinary context, unless such word or phrase is defined differently within this article.”

The Zoning Ordinance defines Historic Building<sup>2</sup> and Historic Resource.<sup>3</sup> Historic Building is an historic resource and an historic resource includes a site which possesses historical significance.

Ms. Bolinger’s bed and breakfast is an historic site and Applicants failed to comply with the objective criteria in the Zoning Ordinance by failing to include it on the plan.

**e. Historic Resources and the Environmental Rights Amendment**

The Environmental Rights Amendment (ERA), (Article I, Section 27 of the Pennsylvania Constitution), states:

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

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<sup>2</sup> HISTORIC BUILDING - A building which constitutes an historic resource and which is identified on the Historic Resources Map.

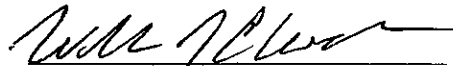
<sup>3</sup> HISTORIC RESOURCE - A building, structure, site, district or object which possesses historical significance based on its architecture or its association with one or more historical events or persons.

Ms. Bolinger has a right to the preservation of her historic property and the Township has a duty as trustee of these historic resources to conserve and maintain this historic resource for the benefit of all the people. As applied to this Application, it is incumbent on the Applicants to ensure blasting activity during construction does not adversely affect the site.

**9. Request for Relief**

Appellant requests this Honorable Court set aside the Board's approval of the Application.<sup>4</sup>

Respectfully submitted,



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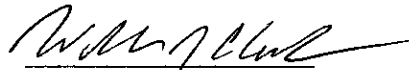
Date: July 25, 2019

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<sup>4</sup> Appellant incorporates by reference as if fully set forth herein the Notice of Appeal submitted by Attorney Miller on behalf of her clients that were admitted as parties in the hearing.

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.



**William J. Cluck**

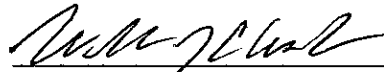
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Notice of Appeal was served on this date pursuant to upon the following:

Via First Class Mail: Counsel for Board  
STACEY MORGAN BRUBAKER, ESQUIRE  
BRUBAKER, CONNAUGHTON, GOSS & LUCARELLI, LLC  
480 New Holland Avenue, Suite 6205  
Lancaster, PA 17602

Via First Class Mail: Counsel for Applicants  
CAROLINE M. HOFFER, ESQUIRE  
MICHAEL W. DAVIS, ESQUIRE  
BARLEY SNYDER, LLC  
126 East King Street  
Lancaster, PA 17602

Date: July 25, 2019

  
\_\_\_\_\_  
William J. Cluck, Esquire

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA  
PROTHONOTARY  
CIVIL COVER SHEET

PLEASE LIST NAMES AND ADDRESSES OF ADDITIONAL PARTIES ON A SEPARATE SHEET.

ALL PARTY INFORMATION IS REQUIRED INCLUDING ZIP CODES. ALL PARTY INFORMATION MUST MATCH THE PLEADING. PLEASE DO NOT STAPLE THE COVER SHEET TO THE PLEADING. IF AN EVENT NEEDS TO BE SCHEDULED, A CAO SCHEDULING COVER SHEET MUST ALSO BE ATTACHED.

TYPE OF ACTION: LAND USE APPEAL **19-06956**

For Prothonotary Use Only:  
DOCKET No: CI -

**PARTY INFORMATION**

PLAINTIFF'S NAME: MARY BOLINGER

DEFENDANT'S NAME: BOARD OF COMMISSIONERS

ADDRESS: 1383 East Oregon Road  
*If confidential, use 2nd sheet*

ADDRESS: MANHEIM  
1840 Municipal

MUNICIPALITY: Litz

MUNICIPALITY: Lancaster

TWP/BOROUGH: \_\_\_\_\_

TWP/BOROUGH: \_\_\_\_\_

DOB: \_\_\_\_\_ TELEPHONE #: \_\_\_\_\_  
*(mm/dd/yyyy) (#####)*

DOB: \_\_\_\_\_ TELEPHONE #: \_\_\_\_\_  
*(mm/dd/yyyy) (#####)*

PROTHONOTARY'S OFFICE  
LANCASTER, PA  
2019 JUL 25 PM 2:10  
ENTERED AND FILED

**FILING ATTORNEY / FILING PARTY INFORMATION**

FIRM/OFFICE: Law Office of William J. Cluck

FILING ATTORNEY/PARTY: William J. Cluck AOPC: (Attorney ID) #: 52892

ADDRESS: 587 Showers Street CITY: Harrisburg STATE: PA ZIP CODE: 17104

TELEPHONE #: 717-238-3027 EMAIL: BILLCLUCK@BILLCLUCK.COM  
*(#####)*

**TAX LIEN INFORMATION**

MUNICIPALITY: \_\_\_\_\_ MAP REFERENCE: \_\_\_\_\_

DEED BOOK: \_\_\_\_\_ DEED PAGE: \_\_\_\_\_ DEED DATE: \_\_\_\_\_

SALE PRICE: \_\_\_\_\_ TAX YEAR: \_\_\_\_\_ TAX LIEN AMOUNT: \_\_\_\_\_

PROPERTY DESCRIPTION: \_\_\_\_\_

**PFA/SVPO/PFI INFORMATION**

HEARING DATE: \_\_\_\_\_ SOCIAL SECURITY #: (Defendant - Last 4 digits) \_\_\_\_\_

POLICE DEPARTMENT: \_\_\_\_\_

PREVIOUS PETITIONS: YES  NO  If 'YES', File Date: \_\_\_\_\_

# Supreme Court of Pennsylvania

Court of Common Pleas  
Civil Cover Sheet

LANCASTER

County



For Prothonotary Use Only:

Docket No:

19-06956

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

<b>Commencement of Action:</b> <input type="checkbox"/> Complaint <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Petition <input type="checkbox"/> Transfer from Another Jurisdiction <input type="checkbox"/> Declaration of Taking		Notice of Entry ENTERED AND FILED JUL 25 PM 1:10 CLERK OF COURT LANCASTER COUNTY
Lead Plaintiff's Name: MARY BOLINGER	Lead Defendant's Name: BOARD OF COMMISSIONERS OF MANHEIM TWP	
Are money damages requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Dollar Amount Requested: (check one) <input type="checkbox"/> within arbitration limits <input type="checkbox"/> outside arbitration limits	
Is this a Class Action Suit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this an MDJ Appeal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Name of Plaintiff/Appellant's Attorney: William J. Cluck <input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)		

SECTION B

**Nature of the Case:** Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

<b>TORT (do not include Mass Tort)</b> <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Libel/ Defamation <input type="checkbox"/> Other: _____	<b>CONTRACT (do not include Judgments)</b> <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other _____ <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other _____ <input type="checkbox"/> Other: _____	<b>CIVIL APPEALS</b> Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other _____ <input type="checkbox"/> Zoning Board <input checked="" type="checkbox"/> Other: BOARD OF COMMISSIONERS MANHEIM TWP
<b>MASS TORT</b> <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____	<b>REAL PROPERTY</b> <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____	<b>MISCELLANEOUS</b> <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input type="checkbox"/> Other: _____
<b>PROFESSIONAL LIABILITY</b> <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional: _____		