



BOARD OF SUPERVISORS
WORKSHOP
July 13, 2021
4:00 p.m.

AGENDA

LOCATION:
Township Building
140 Pottstown Pike
Chester Springs, PA 19425

- I. Call to Order
 - A. Salute to the Flag
 - B. Moment of Silence
 - C. Inquire if any Attendee plans to audio or video record the Workshop
 - D. Executive Sessions held June 21, and June 23, 2021 re: legal matters
- II. J. Snodgrass Lot Consolidation Plan – Introduction Page 2
- III. Park Road – Traffic, Speeding Update
 - Police Chief DeMarco
 - Chris Williams, McMahon Associates
- IV. Comcast Cable Franchise Audit, Agreement Renewal Page 17
 - Discuss Cohen Law Group's Proposal
- V. Open Session
- VI. Adjournment



UPPER UWCHLAN TOWNSHIP

TO: Board of Supervisors

FROM: Gwen Jonik, Township Secretary

RE: Introduction of Preliminary/Final Lot Consolidation Plan
For Jeffrey Snodgrass

DATE: July 9, 2021

Rob Hulnick, Esq., will attend the July 13, 2021 Supervisors Workshop to introduce the Board to a lot consolidation plan. He represents Mr. Snodgrass, the owner of the 2 adjacent parcels to be consolidated.

The Township Planning Commission reviewed the Plan at their June 10, 2021 meeting. Mr. Hulnick advised that Mr. Snodgrass wants to consolidate the parcels for increased horse pasture / agricultural use. He has no plans to develop the consolidated property, though he might construct a pole barn. The Planning Commission approved a recommendation for the Board of Supervisors to approve the Plan.

The Applicant's Engineer's waiver request letter, dated June 29, 2021, is attached.

Gilmore & Associates reviewed the Plan. Dave Leh's June 30, 2021 letter is attached.

The County Planning Commission reviewed the Plan. Their July 1, 2021 review letter is attached.

Also attached is an aerial photo and the Plan, revised June 29, 2021.

Approval of the Plan will be requested at your July 19, 2021 meeting.



SUBDIVISION / LAND DEVELOPMENT APPLICATION

Preliminary Submittal

Final Submittal

The undersigned hereby applies for review of the Plan submitted herewith and described below:

1. Name of Subdivision / Development: Black Horse Farm
2. Plan Dated: 5/19/2021 County Deed Book/Page No. 5239/1419, 10521/1002
3. Name of property owner(s): Jeffrey Snodgrass

Address: 36 Krauser Road

State/Zip: Downington, PA 19335 Phone No.: _____

Email: _____

4. Name of Applicant (If other than owner): _____

Address: _____

State/Zip: _____ Phone No.: _____

Email: _____

5. Applicant's interest (If other than owner): _____

6. Engineer, Architect, Surveyor, or Landscape Architect responsible for Plan.

J. David Shula, P.L.S., Chester Valley Engineers, Inc.

Address: 83 Chestnut Road, P.O. Box 447

State/Zip: Paoli, PA 19301 Phone No.: (610) 644-4623 Ext. 112

Email: dshula@chesterv.com

7. Total acreage: 10.524 Ac. Number of Lots: 2

8. Acreage of adjoining land in same ownership: (If any) 0

9. Describe Type of Development Planned: Lot Consolidation only, no construction or development of any kind is proposed.

10. This Application shall be accompanied by: the Application Fee as listed below, an aerial image of the property, and the quantity of plans/supporting information as detailed in the Township Code §162-8.B.(1)(b) and/or §162-8.C.(1)(d).
[One-half of the required plan submissions may be of a reduced size, i.e. 11 x 17]

11. List all subdivision and zoning standards or requirements which have not been met and for which a waiver or change is requested.

§162-9.B.(2)[10], §162-9.B.(2)[11], §162-9.B.(2)[17], §162-9.C.(2)(a)[6],
§162-9.C.(2)(a)[8], §162-9.C.(2)(a)[14]

12. The Applicant or his/her agent shall enter into a Subdivision / Land Development Review Escrow Agreement (attached) and place into escrow with the Township at the time of application an amount estimated by the Township to cover all costs of engineering and professional planning reviews (not including County application fee), legal services and other professional services used by the Township in connection with the application.

Signature of Property Owner or Applicant:

By: Jeffrey Snodgrass
Date: 6/1/2021

*Development subject to ACT 209 Impact Fee.

*Park & Recreation Fee per residence is levied. Contact Township Offices to determine amount.

SUBDIVISION / LAND DEVELOPMENT APPLICATION FEE

1-2 Lots \$250

3-5 Lots \$500
Plus \$25 for each Lot over 3

Over 5 Lots \$1000
Plus \$50 for each Lot over 5

Form revised January 2015

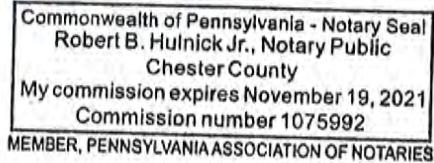
Commonwealth of PA:

County of Chester:

On this 1st day of June, 2021, before me, the undersigned notary, personally appeared Jeffrey Snodgrass, known to me or satisfactorily proven, to be the person who signed the attached Subdivision/Land Development Application for the purpose therein contained.

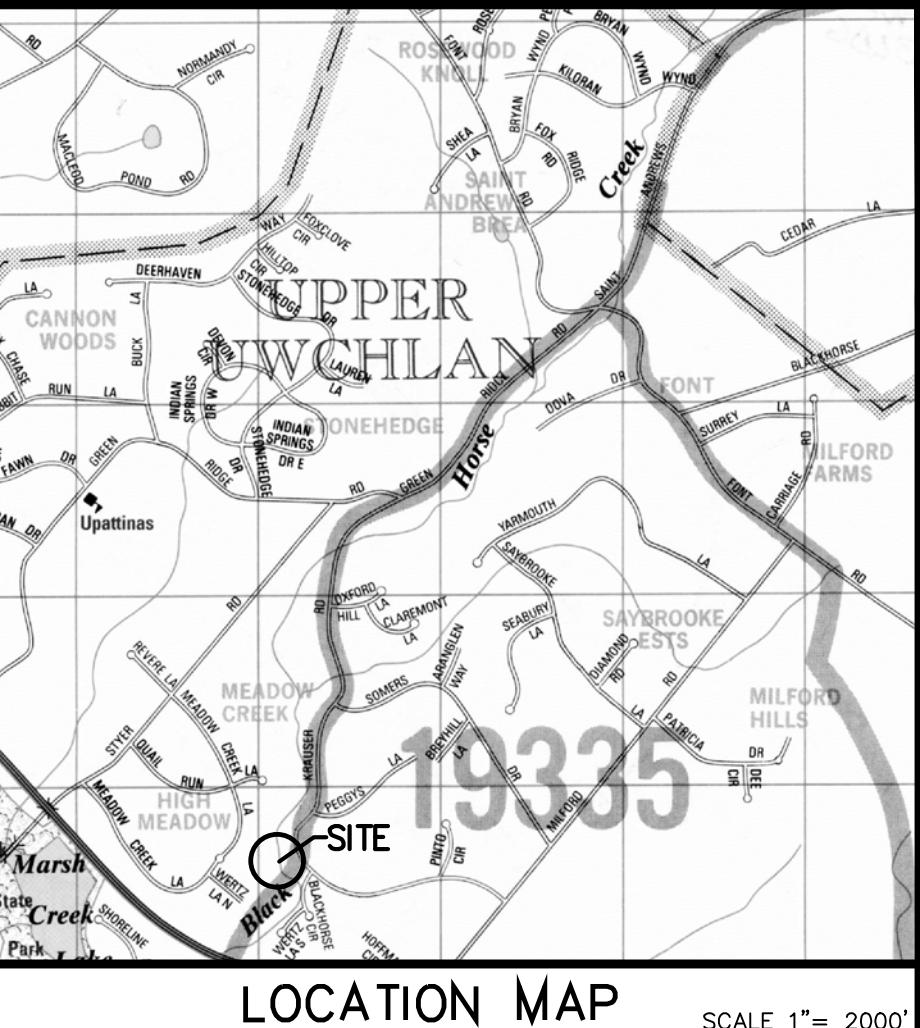
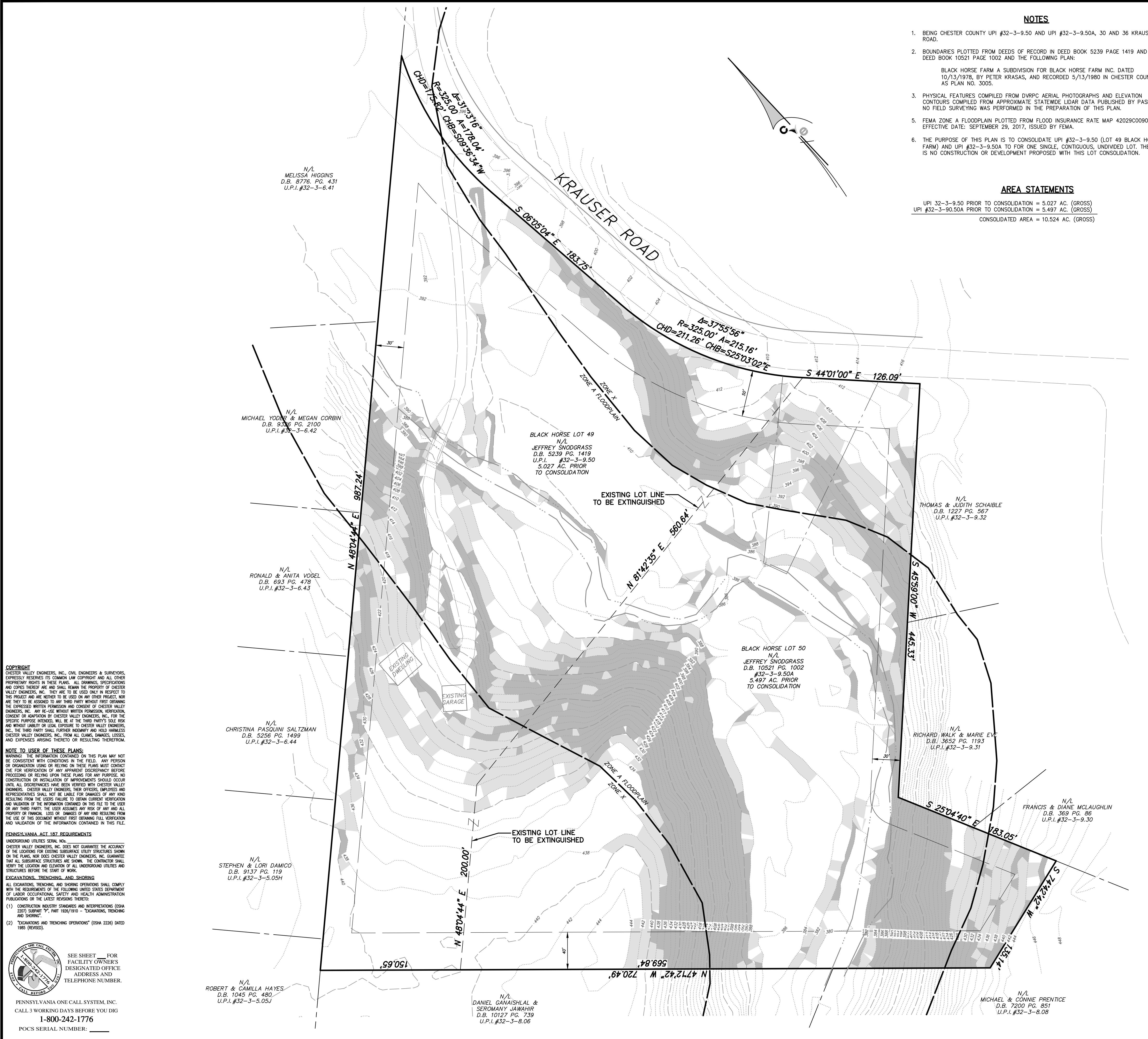
A blue ink notary seal, which is a stylized, swirling mark that looks like a signature or a logo.

NOTARY



Map

COUNTY OF CHESTER
PENNSYLVANIA



**PRELIMINARY/FINAL
LOT CONSOLIDATION PLAN
FOR
JEFFREY SNODGRASS**
UPPER UWCHLAN TOWNSHIP - CHESTER COUNTY - PENNSYLVANIA
PROJECT NO. 21562

OWNER/APPLICANT
JEFFREY SNODGRASS
36 KRAUSER ROAD
DOWNINGTON, PA 19335
(610) 220-1458

**Chester Valley
ENGINEERS, INC.**
83 Chestnut Road, P.O. Box 447, Paoli, PA 19330
(610) 644-4621 (610) 889-3143 Fax
www.chestervalley.com

SCALE 1" = 50'
DATE 5-19-21
DRAWN BY JHB
CHECKED BY JDS
DRAWING



83 Chestnut Road
P.O. Box 447
Paoli, PA 19301
610-644-4623
610-889-3143 Fax
www.chesterv.com

June 29, 2021

Upper Uwchlan Township
Board of Supervisors
140 Pottstown Pike
Chester Springs, PA 19425

RE: Jeffrey Snodgrass Lot Consolidation – Waiver Request Letter
30 and 36 Krauser Road, Upper Uwchlan Township Chester County, PA
CVE Project No. 21562-0000

Dear Board of Supervisors:

Please accept this letter as a request for granting of the following waivers from the Upper Uwchlan Township Subdivision and Land Development Ordinance due to the simple application to consolidate the subject properties with no proposed construction or development:

1. §162-9.B.(2)(b)[10] Provide site information within 100 feet of the properties.
2. §162-9.B.(2)(b)[11] Delineation of wetlands.
3. §162-9.B.(2)(b)[17] To allow contours from statewide lidar data and not from field survey.
4. §162-9.C.(2)(a)[6] Show existing and proposed street monuments.
5. §162-9.C.(2)(a)[8] Location and invert elevations of existing storm and sanitary structures.
6. §162-9.C.(2)(a)[14] Cartway geometry.

Please also be advised that the applicant wishes to deed restrict the consolidated property from further subdivision, a note addressing this has been added to the plan.

Very truly yours,
CHESTER VALLEY ENGINEERS, INC.

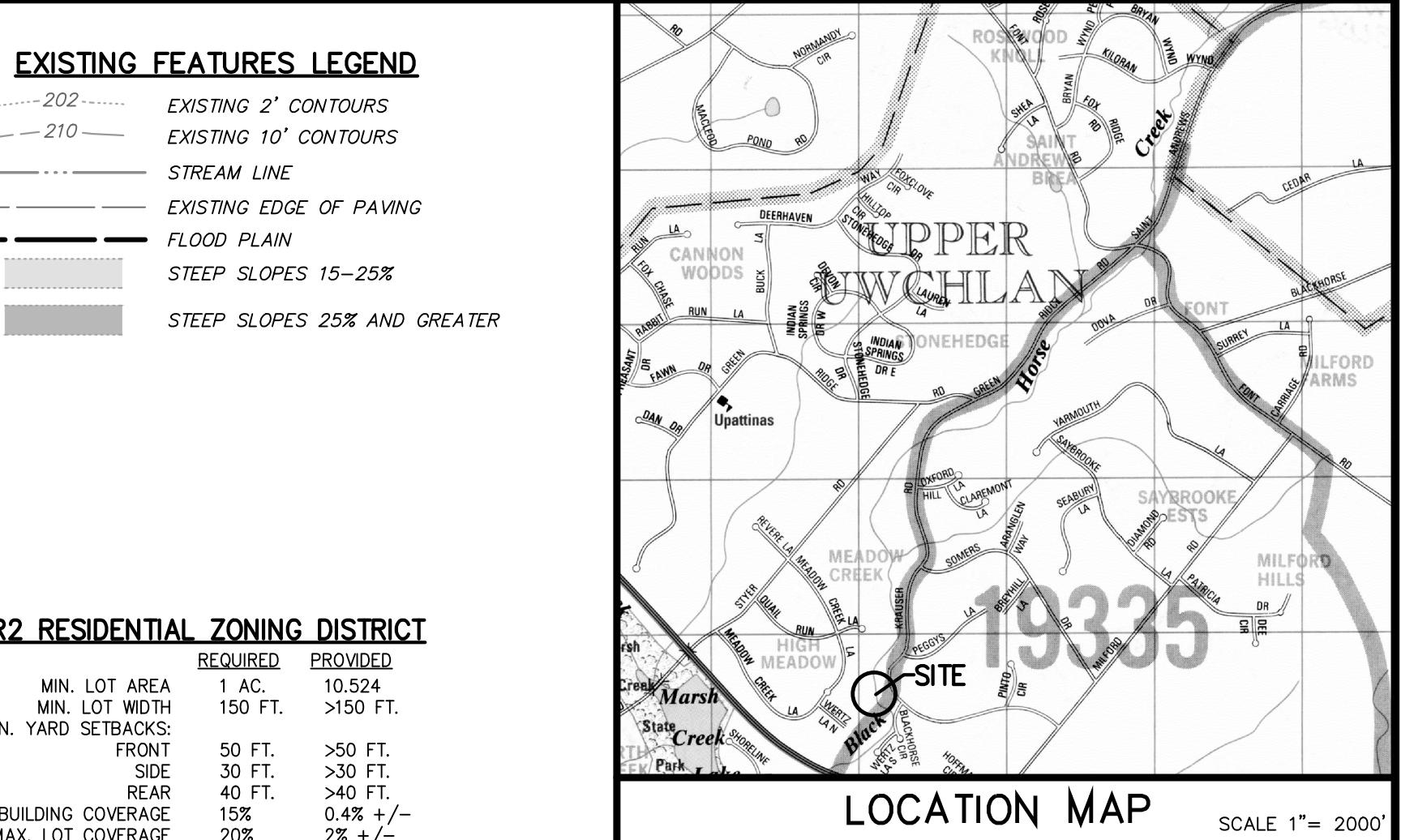
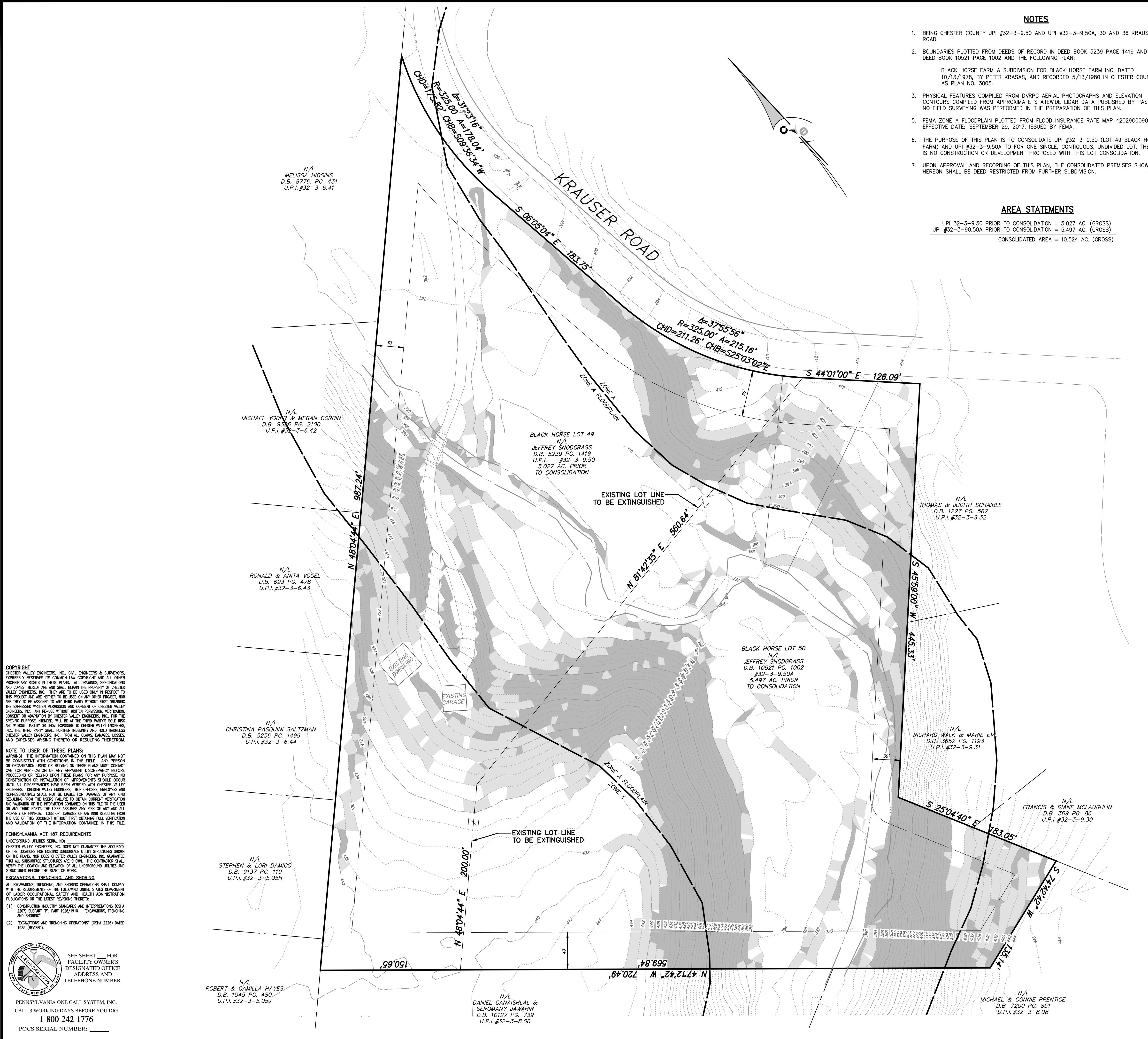
A handwritten signature in black ink that reads 'J. David Shula'.

J. David Shula, P.L.S.
Vice President, Surveying

Est. 1955

PAOLI

EAGLE



COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CHESTER

SS: _____

ON THIS, the _____ DAY OF _____, A.D. 20____, BEFORE ME, THE SUBSCRIBER, A NOTARY PUBLIC OF THE COMMONWEALTH OF PENNSYLVANIA, RESIDING IN _____, PERSONALLY APPEARED _____, WHO BEING DULY SWEORN ACCORDING TO LAW, DEPOSES AND SAYS THAT HE/SHE IS THE OWNER OF THE PROPERTY SHOWN ON THIS PLAN, AND THAT SHE ACKNOWLEDGES THE SAME TO BE HIS/HER ACT AND PLAN AND DESIRES THE SAME TO BE RECORDED AS SUCH ACCORDING TO LAW.

NOTARY PUBLIC: _____
MY COMMISSION EXPIRES: _____

OWNER: _____

REVIEWED by the Planning Commission of Upper Uwchlan Twp., Chester Co., Pa., this _____ day of _____, 20____.

Chairman _____
Vice Chairman _____
Member _____

APPROVED by the Board of Supervisors of Upper Uwchlan Twp., Chester Co., Pa., this _____ day of _____, 20____.

Chairman _____
Vice Chairman _____
Member _____

APPROVED by the Upper Uwchlan Twp., Engineer _____
Date _____

REVIEWED by the Chester County Planning Commission this _____ day of _____, 20____.

Director _____
Secretary _____

Recorded in the Office of the Recorder of Deeds of Chester County at West Chester, Pennsylvania in Plan Book _____, Page _____, on the _____ day of _____, 20____.

(Deputy) Recorder of Deeds _____

Scale in Feet
0 10 20 30 40 50 100 150 200
1" = 50'

1 6/29/2021 NOTE #7: CORRECTED ORDINANCE SECTIONS IN WAIVER LIST
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June 30, 2021

File No. 21-06025T

Mr. Tony Scheivert
Upper Uwchlan Township Manager
140 Pottstown Pike
Chester Springs, PA 19425

Reference: 36 Krauser Road (Snodgrass)
Lot Consolidation Plan
Upper Uwchlan Township, Chester County, PA

Dear Tony:

Gilmore & Associates, Inc. (G&A) is in receipt of the following document:

- Preliminary / Final Plan titled "Lot Consolidation Plan for Jeffrey Snodgrass" prepared by Chester Valley Engineers, Inc. dated 05/19/21, last revised 06/29/21.
- Waiver Request Letter Prepared by Chester Valley Engineers, dated June 29, 2021.
- Subdivision / Land Development Application Dated June 1, 2021

G&A, have completed our first review of the above referenced lot consolidation plan for compliance with the applicable sections of the Township's Zoning Ordinance, Subdivision and Land Development Ordinance, and wish to submit the following comments for your consideration.

I. OVERVIEW

The proposed project is a simple consolidation of 2 adjacent parcels both of which are owned by the Applicant. lot line change between adjoining parcels on Milford Road in Upper Uwchlan Township, Chester County, Pennsylvania. The parcels are located within the R-2 Residential District. The parcels involved are UPI# 32-3-9.50 and UPI# 32-3-50A. UPI# 32-3-9.50 currently contains an existing dwelling and accessory garage, while UPI# 32-3-50A appears to be unimproved. No development or improvements are proposed with this application. A summary of the existing and proposed lots is as follows:

Reference: 36 Krauser Road (Snodgrass)
Lot Consolidation Plan
Upper Uwchlan Township, Chester County, PA

File No. 21-06025T
June 30, 2021

<u>Parcel</u>	<u>Lot Area</u>
UPI# 32-3-9.50	5.027 Acres
<u>UPI# 32-3-9.50A</u>	<u>5.497 Acres</u>
Combined Lot	10.524 Acres

II. ZONING ORDINANCE REVIEW

We have no zoning comments.

III. SUBDIVISION & LAND DEVELOPMENT ORDINANCE REVIEW

1. (W) Section 162-9.B(2)(b)[10] - A waiver has been requested from this section which requires site information be provided within 100 feet of the property. We have no objection to this waiver request
2. (W) Section 162-9.B(2)(b)[11] - A waiver has been requested from requiring on site wetlands to be delineated. As there is no construction associated with this project, we have no objection to this waiver request.
3. (W) Section 162-9.B(2)(b)[17] - A waiver has been requested to allow for the use of lidar information rather than field data to delineate site contours. As there is no construction associated with this project, we have no objection to this waiver request.
4. (W) Section 162-9.C(2)(a)[6] – A waiver is being requested from the requirement to provide the location of existing and proposed street monuments. We believe that the installation of property boundary markers is important for demarcation of right of way as well as use in property boundary work. Therefore, we would recommend this waiver not be granted and the monuments be installed.
5. (W) Section 162-9.C(2)(a)[6] - A waiver has been requested to not require providing location and invert information for existing storm and sanitary facilities. As there is no

Reference: 36 Krauser Road (Snodgrass)
Lot Consolidation Plan
Upper Uwchlan Township, Chester County, PA

File No. 21-06025T
June 30, 2021

construction associated with this project, we have no objection to this waiver request.

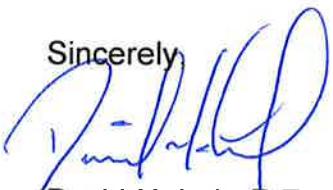
6. (W) Section 162-9.C(2)(a)[6] - A waiver has been requested to not require providing cartway geometry information for Krauser Road. As there is no construction associated with this project, we have no objection to this waiver request.

IV. GENERAL COMMENTS

1. Please provide a legal description for the newly created single lot.
2. Please remove the signature lines for the Vice Chairman and member for the Upper Uwchlan Township Planning Commission signature block.

Based on our review of the application, **we would recommend Minor Subdivision Plan Approval be considered at this time, contingent upon the applicant addressing the above referenced comments as well as any raised by the Board of Supervisors.**

If you have any questions, please do not hesitate to contact me.

Sincerely,


David N. Leh, P.E.
Municipal Services Manager
Gilmore & Associates, Inc.

cc: Upper Uwchlan Township Board of Supervisors (via e-mail only)
Kristin Camp, Esq. – BBM&M LLP
Jeffrey Snodgrass – Applicant (via e-mail only)
J. David Shula, PLS – CVE Inc. (via e-mail only)



THE COUNTY OF CHESTER



COMMISSIONERS

Marian D. Moskowitz
Josh Maxwell
Michelle Kichline

Brian N. O'Leary, AICP
Executive Director

PLANNING COMMISSION

Government Services Center, Suite 270
601 Westtown Road
P. O. Box 2747
West Chester, PA 19380-0990
(610) 344-6285 Fax (610) 344-6515

July 1, 2021

Gwen A. Jonik, Secretary
Upper Uwchlan Township
140 Pottstown Pike
Chester Springs, 19425

Re: Preliminary/Final Subdivision Plan – Black Horse Farm
Upper Uwchlan Township - SD-06-21-16765

Dear Ms. Jonik:

A preliminary/final subdivision plan entitled "Black Horse Farm ", prepared by Chester Valley Engineers, Inc. and dated May 19, 2021, was received by this office on June 7, 2021. This plan is reviewed by the Chester County Planning Commission in accord with the provisions of Section 502 of the Pennsylvania Municipalities Planning Code. We offer the following comments on the proposed subdivision plan for your consideration.

PROJECT SUMMARY:

Location:	South of Krauser Road, north of the Pennsylvania Turnpike
Site Acreage:	10.52 acres
Lots:	2 lots
Proposed Land Use:	Residential/agricultural
Municipal Land Use Plan Designation:	Suburban/Site Responsive
UPI#:	32-3-9.50, 32-3-9.50A

PROPOSAL:

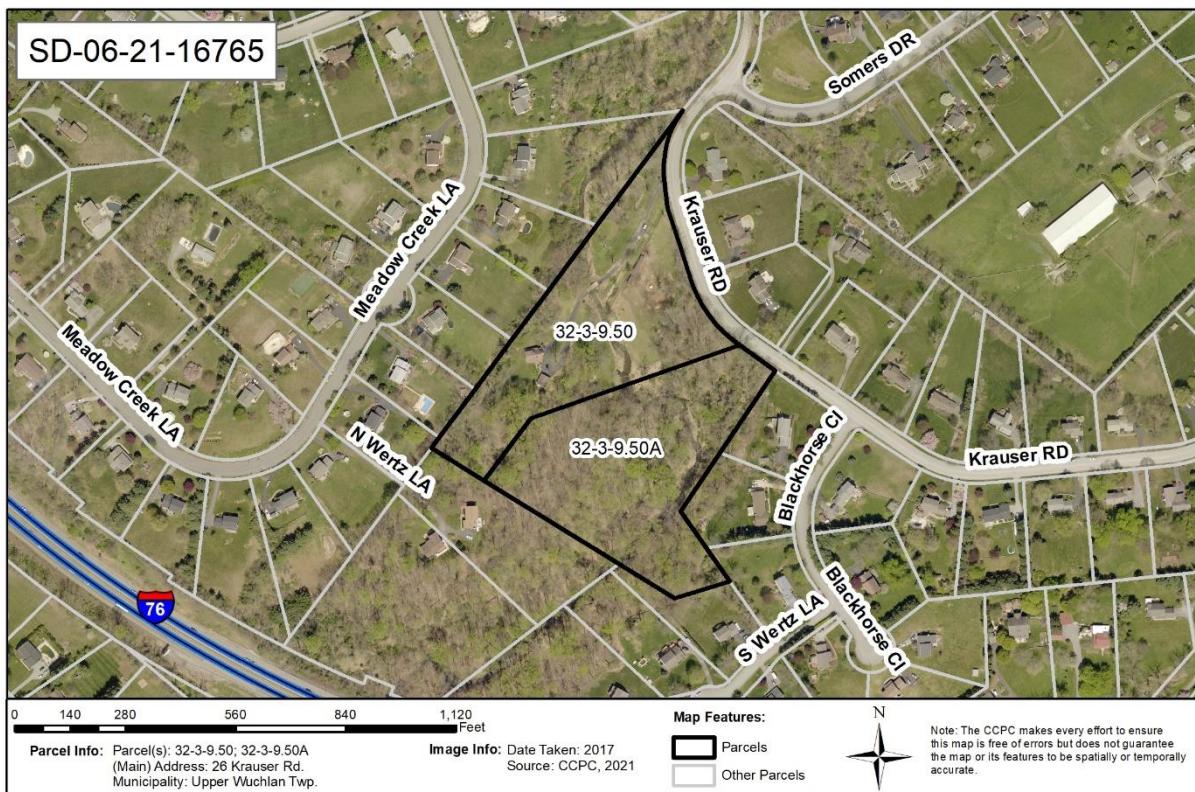
The applicant proposes to consolidate two lots. The site, which is served by on-site water and sewer facilities, is located in the Upper Uwchlan Township R-2 Residential zoning district. The site contains a dwelling and garage, and no additional development is proposed by this subdivision.

RECOMMENDATION: The County Planning Commission recommends that the issues raised in this letter should be addressed and all Township issues should be resolved before action is taken on this subdivision plan.

COUNTY POLICY:

LANDSCAPES:

1. The site is located within the **Suburban Landscape** designation of [Landscapes3](#), the 2018 County Comprehensive Plan. The vision for the **Suburban Landscape** is predominantly residential communities with locally-oriented commercial uses and facilities, accommodating growth at a medium density that retains a focus on residential neighborhoods, with enhancements in housing diversity and affordability. The proposed subdivision is consistent with the objectives of the **Suburban Landscape**.

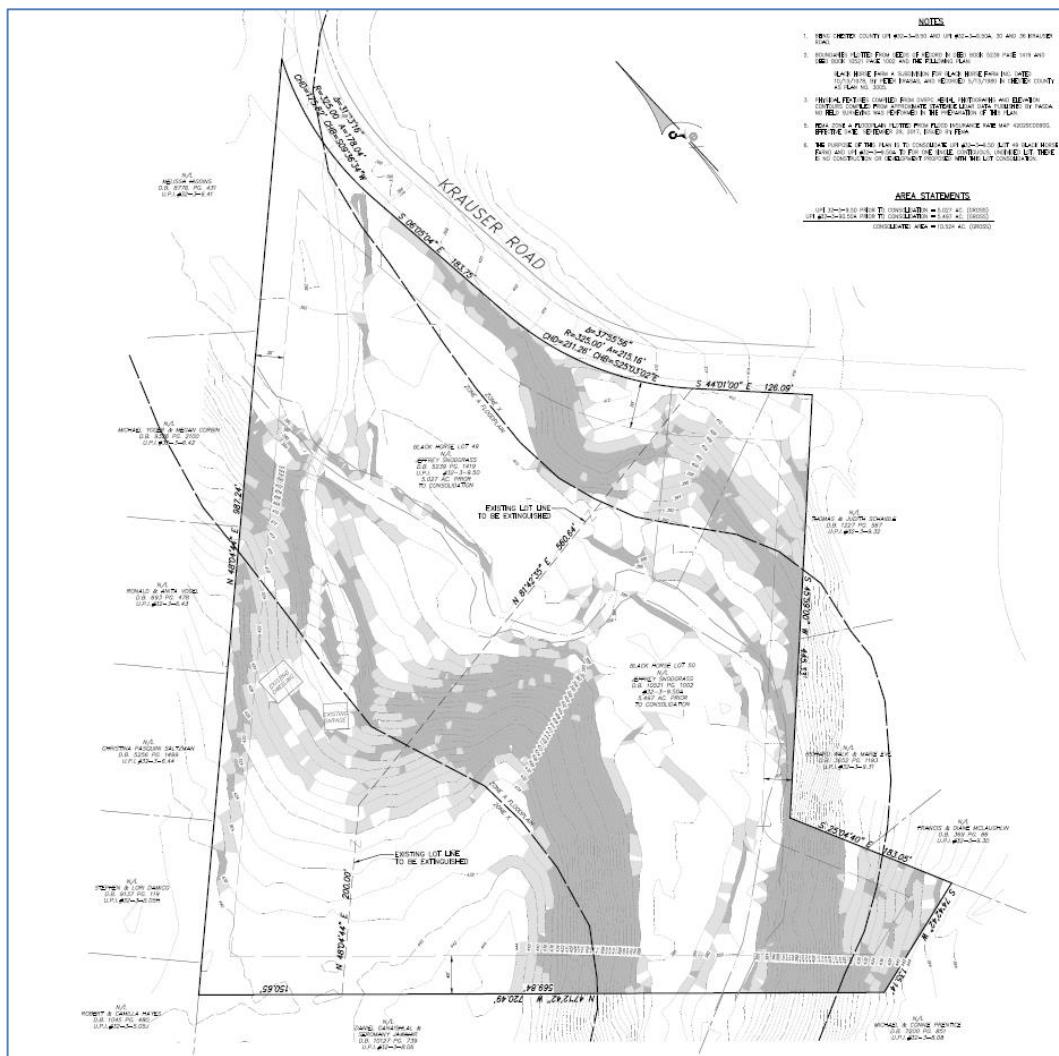


PRIMARY ISSUES:

2. We recommend that the applicant work with the Chester County Conservation District to protect the floodplain area from degradation, and ensure that the pasture within the floodplain does not contribute to siltation and excessive runoff. The Chester County Conservation District's mission is to conserve soil for clean water by promoting sustainable use of natural resources through education and technical assistance. It works with landowners and land users to conserve the County's natural resources. Learn more at: <https://www.chesco.org/205/Conservation-District>
3. The Pennsylvania Fish and Boat Commission has identified Blackhorse Creek as a wild trout waterway that supports naturally reproducing populations of trout. If additional improvements to the property are planned, such as clearing existing woodlands for additional pasture area, the applicant should strive to minimize impacts to the stream channel and adjacent riparian area. The

applicant should avoid clearing trees or brush directly adjacent to the stream to limit channel disturbance and to minimize thermal impacts. Any additional livestock watering access points should be appropriately stabilized using rock, geotextile fabric, or vegetation, to prevent erosion within the stream channel.

4. A significant area of these parcels are located within the FEMA Flood Hazard Zone A, and is therefore contained within the Township's Flood Hazard District. The applicant should ensure that any future improvements within the Flood Hazard Area comply with the provisions included for this overlay district in the Township's zoning ordinances.
5. Due to significant environmental constraints such as the floodplain, steep slopes and wetlands on the site, we recommend that the applicant deed-restrict the site from further development.
6. The Act 247 referral form that was submitted with the application indicated that the development's name is "Black Horse Farm", and the plan is titled "Jeffrey Snodgrass". The applicant may wish to clarify the names for consistency.



**Detail of Black Horse Farm
Preliminary/Final Subdivision Plan**

Page: 4

Re: Preliminary/Final Subdivision Plan – Black Horse Farm

Upper Uwchlan Township - SD-06-21-16765

ADMINISTRATIVE ISSUES:

7. A minimum of four copies of the plan should be presented at the Chester County Planning Commission for endorsement to permit recording of the final plan in accord with the procedures of Act 247, the Pennsylvania Municipalities Planning Code, and to meet the requirements of the Recorder of Deeds, and the Assessment Office.

This report does not review the plan for compliance to all aspects of your ordinance, as this is more appropriately done by agents of Upper Uwchlan Township. However, we appreciate the opportunity to review and comment on this plan. The staff of the Chester County Planning Commission is available to you to discuss this and other matters in more detail.

Sincerely,



Wes Bruckno, AICP
Senior Review Planner

cc: Chester Valley Engineers, Inc.
Jeffrey Snodgrass



Cohen Law Group

Responses to Questions from Upper Uwchlan Township Regarding Proposal for Cable Franchise Renewal with Comcast

June 23, 2021

Upper Uwchlan Township's current franchise agreement with Comcast is set to expire on February 5, 2022. The Cohen Law Group ("CLG") has submitted a proposal to assist the Township in conducting a franchise fee audit and franchise renewal negotiations with Comcast. At the Board of Supervisors meeting on June 21, 2021, Board members posed questions that were conveyed to CLG by Manager Tony Scheivert. The following are the questions and CLG's responses.

Question #1: The proposal includes a single flat fee for both the franchise fee audit and franchise renewal discussions with Comcast. Would you please separate out the flat fees for each of these two projects?

Response: The combined flat fee in the proposal was \$13,320, which included a 10% discount on our standard fee for this combined project of \$14,800. The discount is due to our firm's longstanding relationship with the Township. The flat fees for the individual projects are \$5,900 for the franchise fee audit and \$8,900 for franchise negotiations with Comcast. After applying the same 10% discount to each project, the individual fees are \$5,310 for the audit and \$8,010 for the negotiations, for a total of \$13,320. We have revised our proposal to reflect these individual fees.

Question #2: Has the CLG found franchise fee underpayments for the other municipalities for whom it has conducted franchise fee audits?

Response: CLG has performed franchise fee audits on behalf of municipalities for over 15 years. In the past 3 years, we have conducted over 100 such audits and have found underpayments approximately 65% of the time. In nearly every instance in which underpayments were found, it resulted not only in retroactive fees being paid to the municipality, but also in increased franchise fee revenue for the municipality going forward.

In the past few weeks alone, CLG discovered underpayments in franchise fee audits for North Huntingdon Township (Westmoreland County, PA; Comcast underpayment of \$31,322) and the Town of Athens, NY (Charter/Spectrum underpayment of \$19,841; homes passed list review not completed yet). Solely by way of example, CLG conducted franchise fee audits of Comcast for 10 municipalities in York County in 2016-17. Underpayments were found in 7 of them. The highest underpayment was for Windsor Township in the amount of \$112,209, which was paid in full by Comcast.

There is no guarantee, of course, that there will be underpayments as a result of a franchise fee audit for Upper Uwchlan Township. What is certain is that, as a result of the audit, there will be full accountability for the Comcast franchise fee line item in the Township's budget.

Question #3: When was CLG's most recent Comcast franchise renewal completed in Chester County?

Response: Our most recent Comcast franchise renewal in Chester County was completed on behalf of South Coventry Township in late 2020. That being said, our records indicate that the franchise expirations for most of the current Comcast agreements in Chester County, with the exception of Upper Uwchlan, will occur between 2024 and 2030.

Comcast franchise renewals occur on a regional, rather than on a county basis, as part of Comcast's Freedom Region. Comcast's Freedom Region consists of the City of Philadelphia as well as Bucks, Chester, Delaware and Montgomery Counties in Pennsylvania. Comcast's franchise renewal policies and its Franchise Directors who negotiate the renewals are the same throughout the Freedom Region. Over the past year and based on our records, CLG has completed Comcast franchise renewals for 12 municipalities in Bucks County, 1 in Chester County, 1 in Delaware County, and 4 in Montgomery County.

Finally, over the past years, CLG has completed franchise renewal negotiations with Verizon on behalf of approximately 45 municipalities in these four Counties, including 19 renewals in Chester County (one of which was Upper Uwchlan Township). In short, our law firm has negotiated more cable franchise renewal agreements than any other firm in Pennsylvania and surrounding states.

Thank you again for the opportunity to submit a proposal and answer questions regarding a franchise fee audit and cable franchise renewal for Upper Uwchlan Township. Please feel free to contact me if you have any further questions or need any further information.

*Dan Cohen
Cohen Law Group
413 South Main Street, Third Floor
Pittsburgh, PA 15215
(412) 447-0130 x11
dcohen@cohenlawgroup.org*



**REVISED PROPOSAL TO PERFORM
CABLE FRANCHISE RENEWAL SERVICES**

submitted to

UPPER UWCHLAN TOWNSHIP

by the

COHEN LAW GROUP

**413 South Main Street
Pittsburgh, PA 15215**

www.cohenlawgroup.org

(412) 447-0130

JUNE 23, 2021

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I. INTRODUCTION

The Cohen Law Group (“CLG”) welcomes this opportunity to submit a proposal for legal services to assist Upper Uwchlan Township (the “Township”) in a franchise fee audit and cable franchise renewal negotiations with Comcast of Southeast Pennsylvania, LLC (“Comcast”). The Township’s current franchise agreement with Comcast expires on February 5, 2022. As such, now is the time to begin the renewal process. Franchise renewal is the best opportunity for the Township to obtain significant benefits and to assert its legal rights with the cable company. In addition, we have reviewed the Township’s current Comcast agreement and found that it does not provide the Township with the revenue and many other benefits that it could receive under federal law.

There have been dramatic changes in video technology since the beginning of the Township’s current cable franchise agreement over 14 years ago, including the expansion of digital technology, high definition (HD) format, the growth in video-on-demand programming, and, perhaps most important, internet-based video (also referred to as video streaming or “over-the-top” technology). There have also been major changes in both the franchise operations of Comcast as well as federal law and regulations applicable to cable franchising. For example, the Federal Communications Commission (“FCC”) recently issued its 2019 *Third Report and Order*, which made fundamental changes to the cable franchise process and benefits available to municipalities.

Municipal officials have three critical roles when it comes to renewing (or, in the rare circumstance, not renewing) a cable franchise. First, they are effectively the landlords of their cable company. The cable company utilizes the municipality’s public rights-of-way to operate its cable system. Municipal officials manage those rights-of-way as a public trust and are entitled to a fair return for the cable company’s use of those public properties.

Second, municipal officials have an obligation to protect and advance the interests of their residents. This means not only getting the best possible services from the cable operator today, but also doing everything possible to prepare for the future. Video technology changes very rapidly. A cable franchise agreement must provide for the benefits available from existing technologies as well as those that may become available from future technologies.

Third and finally, municipal officials are consumers of telecommunications services in all three forms -- voice, video and data. From internet access at Township Building to television service at the Fire Station, municipalities use a wide range of telecommunications services. They are entitled, therefore, to the most efficient, state-of-the-art services at the best possible prices.

Our law firm is uniquely qualified to represent the Township in cable franchise renewal negotiations. For over 23 years, our firm has specialized in cable franchise matters on behalf of local governments and we have negotiated more franchise agreements than any other law firm in Pennsylvania and surrounding states. We have represented over 500 municipalities in six states in negotiations with their cable companies. The company with which we've conducted the most cable franchise negotiations is Comcast. We know the company's negotiators, its corporate franchise policies, and its negotiating tactics.

The principal of the firm is Dan Cohen. He has assisted municipalities in cable, wireless, and broadband issues for over 25 years. He is a Board member of the National Association of Telecommunications Officers and Advisors ("NATOA"), which is the national organization that advocates for local governments in these fields. Aside from being a telecommunications attorney, Mr. Cohen is especially qualified to represent municipalities, because he was a municipal official himself. As a member of the Pittsburgh City Council for 12 years prior to founding CLG, he understands the practical needs and the financial constraints facing municipal officials.

CLG has developed a three-step approach to cable franchise renewal projects. The first step is identifying the client's specific needs. Since clients' needs often become better defined as the negotiation progresses, we maintain flexibility throughout the process to achieve a franchise agreement that accomplishes the client's specific goals. Second, we negotiate firmly and deliberately with the cable operator in order to reach agreement in a timely fashion. Finally, we work efficiently to achieve results that are cost effective for the client. We are keenly aware of the fiscal constraints facing municipalities, and focus on keeping attorneys' fees as low as possible.

II. POTENTIAL FRANCHISE BENEFITS

There are significant benefits available to municipalities in a cable franchise renewal agreement. The key to receiving these benefits is to know the law and regulations relating to each benefit and to negotiate from strength to obtain them from the cable operator. The following is a list of some of the more important potential benefits along with a brief comparison **in bold** with the Township's current Comcast agreement with respect to each benefit:

- 1. Franchise Fee Revenue.** Under federal law, municipalities may assess a franchise fee of up to 5% of the cable company's "gross revenues" for cable services derived from the municipality. The central subject of negotiation with the cable operator is the specific revenue sources to be included in the definition of "gross revenues." CLG has developed a comprehensive list that now includes **27 cable revenue sources**. **The Township's current franchise agreement includes only 18 revenue sources. We can add new revenue sources into the renewal agreement and thus increase franchise**

fee revenue to the Township. Please note that all franchise fees are passed through to cable customers as a separate line item on their bills.

2. **Franchise Fee Accountability.** In addition to franchise fee revenue, it is also important for municipalities to require franchise fee accountability. In a franchise agreement, these include detailed franchise fee reports with each payment, the right to conduct franchise fee audits with penalties for underpayments, and protections against franchise fee reductions due to bundled service discounts (referred to as the “triple play” of internet, television, and telephone services).

The Township’s current agreement has some accountability measures, but they are weak.

3. **Legal Protections of the Rights-of-Way.** Because cable companies place wires and equipment in the public rights-of-way, the franchise agreement should include legal protections for the Township, such as safety standards, repair and restoration of property damage within a specified time, emergency removal of equipment, indemnification of the Township, and full insurance coverage. **The Township’s current agreement has virtually no right-of-way protections.**
4. **Customer Service Standards.** In a franchise agreement, municipalities may impose customer service standards to which the cable operator must adhere. It is important to include comprehensive and enforceable standards. Examples include telephone answering time limits for cable company operators, refunds for service outages,

appointment windows for technician visits, and rules for resolving customer billing disputes. **The Township's current agreement includes no customer service standards and only a reference to the FCC's recommended standards, which are limited.**

5. **Courtesy Services.** It is common in a franchise agreement for cable companies to provide free cable television service to community facilities. The major subject of negotiation is typically the community facilities that will receive the service and the level of service received. The FCC's 2019 *Third Report and Order* ruled that the value of these "courtesy services" may be offset against franchise fees; however, **our firm is in discussions with Comcast now to persuade the company to continue to provide free cable services to public safety facilities.**
6. **Enforcement.** Once the cable operator agrees to provide certain benefits to the Township, the Township must be able to enforce these obligations. Practical enforcement tools are needed to ensure that the company meets its contractual obligations. These may include monetary fines, a performance bond, and the right to revoke the franchise in extreme cases. **The only means of enforcing the Township's current agreement is to either sue Comcast or terminate the agreement, neither of which is a practical or effective enforcement mechanism.**
7. **Competitive Equity.** Cable operators typically request that, if another company provides cable services in the Township and the

Township grants it a franchise agreement, then that agreement cannot be more favorable to the competitor than the current agreement is to Comcast. While in theory this is a fair principle, in practice it can impede the prospect of cable competition. **While there is no competitive equity provision in the current agreement, we expect that Comcast will demand one in the new agreement. We will oppose any provision that undercuts cable competition.**

8. Public, Educational and Governmental (PEG) Channel.

Municipalities have a right under federal law to dedicated channel space for public, educational and governmental (“PEG”) programming. PEG Channels may be used to inform citizens by broadcasting government meetings, public safety alerts, and local announcements. If the Township has a channel, the agreement should include improvements such as high definition (HD) format and electronic programming menus. **Note that the current agreement includes financial grant in the amount of \$12,500. We will try to increase this amount in the new agreement.**

9. Reporting Requirements. It can be helpful to obtain information from the cable operator related to financial and customer service issues. A franchise agreement may require the cable operator to provide reports on such matters as franchise fee verification, customer service complaints, and construction activity in the rights-of-way.

10. Length of Term. Because video technology changes rapidly, municipalities typically seek a shorter length of franchise term. Cable companies typically seek longer terms to protect their capital investment in the cable system. The difference between these two positions is resolved through negotiation. **The Township's current agreement is effectively 15 years, which we believe is too long.**

III. SCOPE OF SERVICES

The following is the scope of services that the Cohen Law Group will perform if hired to assist Upper Uwchlan Township in cable franchise renewal with Comcast.

A. Preliminary Setting of Priorities

We will first arrange a video meeting or conference call to kick off the project. We will inform Township officials about the franchise renewal process, including both the formal and informal processes prescribed by the federal Cable Act. We will discuss the Township's legal rights, including the substantive areas in which they have legal authority over the cable operator and those areas in which their legal authority is limited. We will outline the potential benefits to the Township and solicit the concerns of Township officials with respect to Comcast. Finally, we will provide the Township with a public notice and written talking points for a public hearing on cable franchise renewal. Section 626 of the Cable Act includes a "notice and comment" requirement, which is typically satisfied by a public hearing inviting citizen input.

During this preliminary phase, we recommend that the Township perform a franchise fee audit to determine whether Comcast has paid it all the franchise fee revenue to which it is entitled. Franchise renewal is the best time to do an audit, because, if underpayments are found, the

Township has greater leverage to collect the underpayments. The scope of services for a franchise fee audit is discussed below.

B. Franchise Fee Audit

During the preliminary stage, we recommend that the Township perform a franchise fee audit of Comcast. CLG performs such audits on a regular basis, including many Comcast audits. In 2017-20, we performed over 100 franchise fee audits and discovered underpayments over 65% of the time. The Cable Act authorizes municipalities to assess up to 5% of the cable operator's "gross revenues" for cable services derived from the municipality. "Gross revenues" consists of many revenue sources, including both subscriber and non-subscriber revenues. We will prepare a written Request for Information and Documents ("RFID") to Comcast for specific franchise fee financial information relevant to the Township. CLG will then do the following:

- Make a determination of all eligible revenue sources for the Township based upon the municipality's current definition of "gross revenues."
- Review Comcast's supporting documentation for franchise fee revenue, including quarterly spreadsheets, worksheets, and other revenue reports for the Township.
- Identify the revenue sources that the cable operator has included in its franchise fee documentation. Determine whether the cable operator has applied the fee to all eligible revenue sources. Identify any revenue sources to which the municipality is entitled, but which the cable operator did not include in calculating "gross revenues".
- Ensure that all eligible revenues recorded in Comcast's financial records are accurately included in the franchise fee payments in accordance with the Township's franchise agreement.
- Determine whether non-subscriber revenues, such as advertising and home shopping commissions, which are typically recorded on a regional rather than a local basis, have been properly calculated and properly apportioned to each municipality.
- Review certain special revenue sources, such as "trouble call" fees, broadcast retransmission fees, regional sports fees, franchise fee-on-fees, and others, to determine proper inclusion in the calculation of franchise fees for the time period under review.

- Ensure that “bundled service” revenues (i.e. revenues applied to cable, internet, and phone services) have been accurately apportioned to cable service, which is the only service that may legally be subject to the franchise fee.
- Obtain a **“homes passed list”** from the cable operator to determine with specificity whether the cable operator is properly coding all cable customers to the Township as opposed to adjacent municipalities. This includes asking the Township to compare the homes passed database against their residential database for possible errors.
- Re-perform a select number of cable operator calculations determining franchise fee revenues for the period under review. These calculations include, but are not limited to, figures underlying the amounts reported for revenue sources and calculations on the specific items comprising general franchise fee categories such as “miscellaneous revenues” and “installation revenues” (which include, for example, installation, disconnection, reconnection, relocation and change-in-service fees).
- Ascertain trends of major revenue categories to spot discrepancies and/or inconsistencies in the reporting of revenues over time and making inquiries with the cable operator to explain such discrepancies and/or inconsistencies.
- Determine whether there are franchise fee underpayments to the Township for the period under review, the amount of any underpayment, and whether any penalties and/or interest apply in accordance with each municipality’s franchise agreement.

Typically, our investigation includes follow-up questions, requests for further information, and discussions with the cable operator. The time period covered by the audit will be three years, which is the “look back” period in the Township’s current agreement. Once the audit is completed, we will prepare a report that summarizes the results of the audit, describes the areas of inquiry, and includes charts showing subscriber and revenue trends.

C. Drafting of Proposed Agreement

Upon completion of the setting of priorities phase above, our attorneys will draft a proposed agreement with Comcast that provides the Township with the benefits and legal protections to which it is entitled under current law and technology. The agreement will include the results of the setting of priorities stage above, as well as our judgment as to the legal provisions that would advance the Township’s interests and meet its future cable-related needs. We will then submit

the agreement to the Township for informal review and comment before presenting it to representatives of Comcast.

D. Negotiation with Cable Operator

The most important stage in the process is negotiating a franchise renewal agreement with Comcast. CLG has negotiated hundreds of agreements with Comcast on behalf of local governments. We know Comcast's negotiators, as well as the company's franchise policies and its negotiating positions. The working document for these negotiations will be the franchise agreement drafted by CLG and informally approved by the Township. We will preserve the Township's legal rights under the formal process, but proceed to negotiate with Comcast under the informal process outlined in the federal Cable Act. The negotiation typically consists of conference call negotiations with representatives of Comcast, status conferences with the clients, multiple revisions of the proposed franchise agreement, redrafting specific franchise agreement provisions, and editing the final draft of the cable franchise agreement.

E. Consideration by Township Board of Supervisors

After tentative agreement with Comcast has been reached on a franchise renewal agreement, CLG will report to the Township on the substantive provisions of the deal. Specifically, we will present the Township with the final cable franchise agreement (and any side agreements) negotiated by the parties and recommended by CLG. We will also draft an executive summary of the major provisions of the final agreement. Finally, we will draft a recommended short-form ordinance authorizing approval of the agreement for consideration by the Township Board of Supervisors. Pursuant to Pennsylvania law, Second Class Townships must approve cable franchise agreements by ordinance.

IV. PROFESSIONAL BACKGROUND

The Cohen Law Group specializes in representing municipalities in cable, wireless, and broadband matters. Collectively, our attorneys have worked on cable franchise issues on behalf of municipalities for over 60 years. CLG has represented over 500 local governments in six states in negotiations with cable companies. The cable operator with which we have negotiated the most agreements is with Comcast. CLG's full array of legal services includes the following:

- Drafting cable franchise agreements
- Review of current and proposed franchise agreements/ordinances
- Cable franchise renewal negotiations with cable companies
- Franchise fee audits
- Cable compliance reviews
- Drafting of wireless facilities ordinances
- Negotiation of leases for "small cell" facilities
- Negotiation with cellular tower and antenna companies
- Wireless facility litigation
- Drafting of right-of-way ordinances and development of right-of-way fees
- Right-of-way management and enforcement
- Drafting pole attachment agreements
- Pole attachment negotiations with cable and telephone companies

As an active member of the National Association of Telecommunications Officers and Advisors (NATOA) and other professional organizations, CLG stays current with frequent changes in cable, wireless, and broadband law. Dan Cohen has been a Board Member of NATOA for nearly four years. CLG attorneys have written articles on cable and wireless matters that have been published in *Pennsylvania Township News*, *Pennsylvania Borough News*, the *Pennsylvania Municipal Reporter*, *Public Management Magazine*, and *Government Procurement Magazine*. They are also frequent speakers at municipal conferences.

Prior to providing professional counsel to municipalities on cable and telecommunications matters, Dan Cohen served as an elected municipal official for 12 years on the Pittsburgh City Council. He served as Chair of Township Council's Cable Television Committee for 10 years and

also served on the Mayor's Telecommunications Committee. He led Pittsburgh's efforts to regulate cable rates, which resulted in a refund ordered by the FCC for all City of Pittsburgh cable customers. Mr. Cohen graduated from Yale University and Stanford Law School.

In addition to Mr. Cohen, CLG includes a strong team of attorneys, including attorney Phil Fraga, Stacy Browdie, Mike Roberts, and Joel Winston. Our Office Manager is Akila Iyer.

V. COST OF SERVICES

The following is CLG's fee to conduct franchise renewal negotiations and a franchise fee audit on behalf of Upper Uwchlan Township. We propose to perform these services on a flat fee basis, because our significant experience with these projects lends predictability to our efforts on behalf of the Township. In addition, a flat fee provides "price certainty." Our flat fees for this project, before the discount, are as follows:

Flat Fee for Franchise Renewal Negotiations: \$8,900

Flat Fee for Franchise Fee Audit: \$5,900

Our standard flat fee for these two projects is \$14,800; however, given our longstanding relationship with the Township, **we will apply a 10% discount such that the total flat fee is \$13,320.** Please note that this fee does not include expenses, such as postage and copying costs, which are kept to a minimum. We typically bill one-third of the fee for at the beginning of each project, one-third at the middle of each project, and one-third at the conclusion of each project.

The flat fee amounts above also do not include the unlikely possibility of services requested outside the scope of services in this proposal or any significant unforeseeable developments. In the event of such developments, we would contact the Township to discuss such them prior to

rendering services related to such developments. If such services are authorized, CLG would charge a fee of \$250 per hour. While it is not expected that travel will be necessary for this project, if it becomes necessary, our travel rate is one-half of our standard rate or \$125 per hour. Thank you for the opportunity to submit this proposal.