

## **LEET TOWNSHIP ZONING HEARING BOARD**

IN THE MATTER OF:

### **SPECIAL EXCEPTION APPLICATION OF QUAKER VALLEY SCHOOL DISTRICT**

#### **CONCLUSIONS OF LAW**

1. The Zoning Hearing Board satisfied all procedural requirements of the Municipalities Planning Code and the Sunshine Law.
2. It is an abnormal risk for a school not to implement an emergency management plan that included an emergency-only road (*EOR*) if reasonably recommended by the first responders.
3. If an *EOR* reasonably recommended by first responders is not implemented by Quaker Valley School District (*QVSD*), the risks to public safety and welfare would be substantial, serious, highly probable and virtually certain.
4. Leet Township's special exception ordinance shifts the burden of persuasion in proving issues addressing risks to health, safety and welfare from the objectors to the applicant as permitted by law.
5. The *EOR* issue is matter of health, safety and welfare.

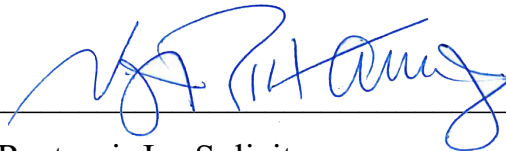
6. QVSD failed to meet its burden of persuasion to prove that, if first responder reasonable EOR recommendations were not implemented, the risks would nevertheless be normal for a school without a resulting serious and highly probable risk of harm to public health, safety and welfare.
7. Applicable case law does not permit a zoning hearing board to use a condition to rectify a failure to meet a burden of proof and, as a result, ZHB could not simply grant the application with the EOR condition attached. Instead, it had to deny the application altogether. And even if ZHB was mistaken about the burden shifting, objectors satisfied the burden of persuasion.
8. The school will be a regular public high school with a normal curriculum and normal extra-curricular activities and sports.
9. It is not the curriculum, activities or sports that control the zoning analysis under the public health, safety and welfare standard. Instead, it is whether the *risks* created by the school are abnormal risks when compared to the risks created by other schools and, if so, whether those abnormal risks pose a serious highly probable or virtually certain danger to the public.
10. In its Decision, ZHB did not impose details normally left to the development phase for the Planning Commission and Township Commissioners.
11. In a *special exception* case, the Planning Commission and Township Commissioners have no authority to decide whether a risk is abnormal or not

for a particular use. That authority rests with them in a *conditional use* case but not in a special exception case. Giving them that authority in a special exception case converts a special exception into a conditional use.

12. A conditional use is nothing more than a special exception which falls within the jurisdiction of the municipal body rather than the zoning hearing board.

13. The SALDO does not give the Planning Commission and Township Commissioners authority over private roads. Their authority under the express language of the SALDO covers public streets.

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A handwritten signature in blue ink, appearing to read "V. Restauri, Jr.", is written over a horizontal line.

Vincent J. Restauri, Jr., Solicitor

March 28, 2022

