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Barkeyville Borough Council
RD1, Pittsburgh Road, Harrisville, PA 16038
March 6, 2007

**STATEMENT TO BOROUGH COUNCIL AT MARCH, 6, 2007 MEETING
REGARDING THE POSITION OF ZONING OFFICER**

It was one month ago, at the last Council meeting, that I briefly addressed the Council about my concerns related to a large asphalt factory that had been permitted for construction in Barkeyville by the Zoning Officer at the time, Gary Dovey. At that time, Dovey, the Oil Region Alliance and Hawbaker were unknown to most of us citizens. One month ago, we had only just learned about the proposed asphalt facility and had arrived at the Council meeting with enough information to alarm us, but not enough to fully understand the situation.

A month has passed, and I am here tonight to inform the Council that our group of concerned citizens has done a fair amount of homework since then and found the situation to be far worse than we originally suspected.

There are some on the Council, as I understand it, who believe that Gary Dovey was a competent Zoning Officer who had an impressive grasp of the pertinent Ordinances and Codes, specifically the Pennsylvania Municipalities Planning Code, the Barkeyville Borough Zoning Ordinance and the Subdivision and Land Development Ordinance. I'm curious to know who on the Council tonight continues to believe that Mr. Dovey was an appropriate Zoning Officer for Barkeyville Borough.

My own personal review of the Barkeyville Zoning Ordinance has brought to light some important sections. I will condense them into one sentence here: ***"No structure shall be located, erected, constructed, ...nor...used or be designed to be used except in full compliance with all the provisions of this Ordinance...It shall not emit any noxious, toxic or corrosive fumes or gases nor shall it emit any offensive odors...No pollution of air by fly-ash, dust, vapors or other substances shall be permitted which is harmful to health, or to animals, vegetation or other property."*** [See Appendix #1]

Does the Barkeyville Zoning Officer have the authority to override the Zoning Ordinance and permit businesses that would violate the aforementioned zoning restrictions? Some would argue that Gary Dovey did have the authority to make that determination and therefore allow the Hawbaker facility to be located in Barkeyville. A review of the Pennsylvania Municipalities Planning Code, however, reveals exactly the opposite.

Section 614. Appointment and Powers of Zoning Officer. For the administration of a zoning ordinance, a zoning officer, who shall not hold any elective office in the municipal-

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ity, shall be appointed. The zoning officer shall meet qualifications established by the municipality and shall be able to demonstrate to the satisfaction of the municipality a working knowledge of municipal zoning. ***The zoning officer shall administer the zoning ordinance in accordance with its literal terms, and shall not have the power to permit any construction or any use or change of use which does not conform to the zoning ordinance.*** Zoning officers may be authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of their employment.

The Glenn O. Hawbaker company had submitted public documents to the PA DEP on October 17, 2007 that indicated that the company could be expected to produce somewhere between 212 and 1,447 tons of toxic air pollution annually, which would be a clear violation of our Zoning Ordinance. Our Ordinance specifically prohibits any noxious, toxic or corrosive fumes or gases, offensive odors or pollution of air by fly-ash, dust, vapors or other substances harmful to health, or to animals, vegetation or other property. The Hawbaker air pollution emissions would include Hazardous Air Pollutants, Volatile Organic Compounds, smog, soot and other harmful gasses, vapors and pollution that can cause eye, nose, and throat irritation, headaches, loss of coordination, nausea, damage to the liver, the kidneys and the central nervous system, and cancer, among other things. I have included, in Appendix #2, a more comprehensive list of the adverse health effects that the Hawbaker facility's air pollution is expected to emit.

It appears, with all due respect to Mr. Dovey, that he did not have a competent grasp of either the Barkeyville Zoning Ordinance or the Pennsylvania Municipalities Planning Code. What appears to be a gross oversight on the part of our prior Zoning Officer has led to the permitting of a \$100 million company for construction of an industry that is not permissible according to our Zoning Ordinance. Certainly, there was a conflict of interest on the part of Mr. Dovey. His employment with the Oil Region Alliance, the corporation that was selling the property in the Industrial Park to Hawbaker, could have provided Mr. Dovey with an additional incentive to close a deal with Hawbaker, thereby clouding Mr. Dovey's judgement.

In any case, Barkeyville now has a very large problem to deal with. Clearly, the Hawbaker facility is not permissible in the Borough without violating our Zoning Ordinance. Violations of our Ordinance are enforceable by the Zoning Officer. Violators can be fined \$500/day plus Court costs. If Hawbaker were to construct the asphalt facility and then emit any noxious, toxic or corrosive fumes or gases, offensive odors or pollution, dust, vapors or other substances harmful to health, they would be in violation of our Ordinance whether that had a DEP permit or not. They would then be subject to enforcement proceedings and fines according to Sections 616 and 617 of the Pennsylvania Municipalities Planning Code (see Appendix #3).

Since it appears that it was our previous Zoning Officer who has created this problem, and since he has resigned, and since the Borough Council has not stepped forward to rectify the problem, a group of Borough residents and landowners has stepped forward to challenge the Hawbaker Zoning Permit. I am one of those people. We are not doing this because we are against Hawbaker, asphalt, progress, jobs, the Oil Region Alliance or the Borough Council. We are simply doing this because the Zoning Permit was issued in error. Our purpose is to protect Barkeyville by ensuring that our Zoning Ordinance is respected and followed. We are not blaming the Borough Council for this problem and we hope that we will have your full understanding and support.

Some will argue that we cannot contest the Hawbaker Zoning Permit because the 30 day period for appeal has elapsed. However, our Zoning Ordinance states, "Section 802 APPEALS: *Any person or Borough official aggrieved or affected by any provision of this Ordinance or by any decision of the Zoning Officer may appeal to the Board within a reasonable time.*" It does not limit the time to 30 days. Furthermore, the PMPC states that the 30 day time limit is not enforceable if we can prove that we had no knowledge of the permit approval when the permit was rendered on New Year's Eve. Since the Hawbaker permit was not made public until February 6th, our appeal of February 21st is well within our rights. [Appendix # 4]

The submission of our Appeal must be followed by the cessation of all development on the affected property until such time as the Appeal is decided. If Barkeyville had a Zoning Officer, this sort of notification could more easily be delivered and enforced.

Some will argue that my application to act as interim Zoning Officer for Barkeyville Borough is not worthy of consideration due to a "conflict of interest." Where were the concerns for a conflict of interest when Mr. Dovey was appointed? Why would my position as a Zoning Officer for Barkeyville be a conflict of interest? Whose interest would it conflict? The citizens of Barkeyville? I have been a resident here for going on 28 years and have raised a family here with two children still at home (one in college). I have sold land in Barkeyville to my step son where he has built his home. My business is located here. My future is here, as is many of yours. My intention is to ensure that Barkeyville's Zoning Ordinance is not subject to a gross violation such as a smokestack industry within the Borough limits. I find it hard to believe that this is a conflict of interest for Barkeyville.

My advice is that if there is a Zoning Officer appointed here tonight, that person should have no connection whatsoever to Gary Dovey, Hawbaker, or the Oil Region Alliance. Then you *would* have a conflict of interest. Furthermore, any Zoning Officer should be a local person with a stake in the community and with family, children or grandchildren who must breathe the air here. An appropriate Zoning Officer would be a person who has their future in the immediate area, not someone who will create problems for us, then move away. Otherwise, we are likely to further exacerbate our existing problem. We, the citizens of the Barkeyville area must rely on our elected local government to make wise decisions. Please don't let us down.

Thank you for allowing me to speak.

Joseph C. Jenkins

APPENDIX #1

104 COMMUNITY DEVELOPMENT OBJECTIVES: This Ordinance and accompanying Zoning Map are intended to promote, protect and facilitate the public health, safety, morals, general welfare, coordinated and practical community development, proper density of population, civil defense, the provisions of adequate light and air, police protection, vehicle parking and loading space, transportation, water, sewerage, schools, public grounds and other public requirements as well as preventing the overcrowding of land, blight, danger and congestion in travel and transportation, loss of health, life or property from fire, flood, panic or other dangers. The specific objectives upon which this Ordinance has been based include the

following:

104.1 To support and encourage order and beauty in the development of Barkeyville Borough's environment for the convenience and pleasure of present citizens and future residents through sound land development practices and the provision of adequate public utilities and facilities.

104.2 To encourage future land development to complement a logical, harmonious and efficient pattern of future Borough growth.

104.3 To encourage future residential use to occur in a harmonious arrangement within compact neighborhood units.

104.4 To preserve strategic properties suitable for industrial development for the establishment of suitable diversified industry in the Borough.

104.5 To guide commercial development in such a way as to minimize adverse influence on adjacent roads or land values; to maintain and protect existing commercial uses; and to encourage new commercial facilities to locate in functionally designed centers with safe and adequate roadway access.

104.6 To protect property values to insure a suitable, attractive and efficient community environment.

104.7 To encourage development of integrated and cohesive development and to foster growth in those areas best suited and situated for such uses.

104.8 To encourage developers to incorporate adequate public facilities and open spaces in neighborhood design.

104.9 To preserve wetlands, aquifers, forests, flood plains and farmland.

104.10 To establish Zoning Districts for business and industry which will capture the economic development potential of Interstate 80.

105 COMPLIANCE: No structure shall be located, erected, constructed, reconstructed, moved, altered externally, converted, or enlarged, nor shall any structure or land be used or be designed to be used except in full compliance with all the provisions of this Ordinance and after the lawful issuance of all permits and certificates required by this Ordinance, except that the Borough of Barkeyville is exempt from this ordinance in the pursuit of its municipal functions.

302 DEVELOPMENT REGULATIONS FOR ANY BUSINESS USE:

302.1 Provisions of Use: Any permitted principal and/or accessory business use shall be subject to the following regulations:

(5) It shall not emit any noxious, toxic or corrosive fumes or gases nor shall it emit any offensive odors.

303 DEVELOPMENT REGULATIONS FOR ANY INDUSTRIAL USE:

(5) It shall not emit any noxious, toxic or corrosive fumes or gases nor shall it emit any offensive odors.

ARTICLE V

501 SPECIAL CRITERIA FOR CONDITIONAL USES AND SPECIAL EXCEPTIONS: Conditional Uses will be granted or denied by Borough Council after a review and recommendations by the Barkeyville Borough Planning Commission. In addition to determining compliance of the proposed Conditional Use with these guidelines and expressed criteria as set forth by the Ordinance, Borough Council may also set forth reasonable conditions for approval which it feels are necessary to preserve and protect the neighborhood and community. Special Exceptions may be granted by the Zoning Hearing Board after

review and recommendations by the Borough Planning Commission in accordance with these express standards and criteria. In granting a Special Exception, the Board may attach reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance and to protect the neighborhood. The preservation and integrity of existing development in neighborhoods must be carefully weighed and given priority in each decision. Conditional Uses and Special Exceptions must satisfy all other requirements for the Zoning District in which they are to be located. Special criteria to be followed in granting either a Conditional Use or Special Exception are as follows:

501.11 HEAVY INDUSTRY: Heavy industry will be allowed in the 1-2-Industrial District and the IP - Industrial Park District as a Conditional Use provided the use will satisfy the Performance Standards of Section 606. Outside storage yards abutting or immediately across a street from any R-Residential District shall be screened with a solid fence or wall facing the R-Residential District.

606 PERFORMANCE STANDARDS: No use, land or structure in any district shall involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or person in the Borough. Furthermore, every use of land or structure in any district must observe the following performance requirements:

606.6 AIR POLLUTION: No pollution of air by fly-ash, dust, vapors or other substances shall be permitted which is harmful to health, or to animals, vegetation or other property.

APPENDIX #2

HEALTH EFFECTS OF VOLATILE ORGANIC COMPOUNDS

(<http://www.epa.gov/iaq/voc.html#Health%20Effects>):

Eye, nose, and throat irritation; headaches, loss of coordination, nausea; damage to liver, kidney, and central nervous system. Some organics can cause cancer in animals; some are suspected or known to cause cancer in humans. Key signs or symptoms associated with exposure to VOCs include conjunctival irritation, nose and throat discomfort, headache, allergic skin reaction, dyspnea, declines in serum cholinesterase levels, nausea, emesis, epistaxis, fatigue, dizziness.

The ability of organic chemicals to cause health effects varies greatly from those that are highly toxic, to those with no known health effect. As with other pollutants, the extent and nature of the health effect will depend on many factors including level of exposure and length of time exposed. Eye and respiratory tract irritation, headaches, dizziness, visual disorders, and memory impairment are among the immediate symptoms that some people have experienced soon after exposure to some organics. At present, not much is known about what health effects occur from the levels of organics usually found in homes. Many organic compounds are known to cause cancer in animals; some are suspected of causing, or are known to cause, cancer in humans.

HEALTH EFFECTS OF HAZARDOUS AIR POLLUTANTS (<http://www.epa.gov/ttn/atw/pollsour.html>):

Hazardous air pollutants, also known as toxic air pollutants or air toxics, are those pollutants that cause or may cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental and ecological effects. EPA is required to control 188 hazardous air pollutants. Examples of toxic air pollutants include benzene, which is found in gasoline; perchlorethylene, which is emitted from some dry cleaning facilities; and methylene chloride, which is used as a solvent and paint stripper by a number of industries.

HEALTH EFFECTS OF SULFUR OXIDES (<http://www.cleanairtrust.org/sulfurdioxide.html>):

High concentrations of sulfur dioxide (SO₂) can result in breathing problems with asthmatic children and adults who are active outdoors. Short-term exposure has been linked to wheezing, chest tightness and shortness of breath. Other effects associated with longer-term exposure to sulfur dioxide, in conjunction with high levels of particulate soot, include respiratory illness, alterations in the lungs' defenses and aggravation of existing cardiovascular disease.

Environmental Effects: Sulfur dioxide and nitrogen oxides are the major precursors of acid rain, which has acidified soils, lakes and streams, accelerated corrosion of buildings and monuments, and reduced visibility. Sulfur dioxide also is a major precursor of fine particulate soot, which poses a significant health threat.

Sources: Combustion of fuel containing sulfur -- mostly coal and oil. Also produced during metal smelting and other industrial processes.

APPENDIX #3

Section 616. Enforcement Penalties. (616 repealed Dec. 21, 1988, P.L.1329, No.170)

Section 616.1. Enforcement Notice.

(a)

If it appears to the municipality that a violation of any zoning ordinance enacted under this act or prior enabling laws has occurred, the municipality shall initiate enforcement proceedings by sending an enforcement notice as provided in this section.

(b)

The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record.

(c)

An enforcement notice shall state at least the following:

(d)

In any appeal of an enforcement notice to the zoning hearing board the municipality shall have the responsibility of presenting its evidence first.

(e)

Any filing fees paid by a party to appeal an enforcement notice to the zoning hearing board shall be returned to the appealing party by the municipality if the zoning hearing board, or any court in a subsequent appeal, rules in the appealing party's favor.

(1) The name of the owner of record and any other person against whom the municipality intends to take action.

(2) The location of the property in violation.

(3) The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of the ordinance.

(4) The date before which the steps for compliance must be commenced and the date before which the steps must be completed.

(5) That the recipient of the notice has the right to appeal to the zoning hearing board within a prescribed period of time in accordance with procedures set forth in the ordinance.

(6) That failure to comply with the notice within the time specified, unless extended by appeal to the zoning hearing board, constitutes a violation, with possible sanctions clearly described.

Section 617. Causes of Action. In case any building, structure, landscaping or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of any ordinance enacted under this act or prior enabling laws, the governing body or, with the approval of the governing body, an officer of the municipality, or any aggrieved owner or tenant of real property who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation. When any such action is instituted by a landowner or tenant, notice of that action shall be served upon the municipality at least 30 days prior to the time the action is begun by serving a copy of the complaint on the governing body of the municipality. No such action may be maintained until such notice has been given.

Section 617.1. Jurisdiction. District justices shall have initial jurisdiction over proceedings brought under

section 617.2.

Section 617.2. Enforcement Remedies.

(a)

Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of any zoning ordinance enacted under this act or prior enabling laws shall, upon being found liable therefor in a civil enforcement proceeding commenced by a municipality, pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by a municipality as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the municipality may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of zoning ordinances shall be paid over to the municipality whose ordinance has been violated.

(b)

The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.

(c)

Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the municipality the right to commence any action for enforcement pursuant to this section.

APPENDIX #4

Section 914.1. Time Limitations.

(a)

No person shall be allowed to file any proceeding with the board later than 30 days after an application for development, preliminary or final, has been approved by an appropriate municipal officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner **unless such person alleges and proves that he had no notice, knowledge, or reason to believe that such approval had been given.** If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan pursuant to section 709 or from an adverse decision by a zoning officer on a challenge to the validity of an ordinance or map pursuant to section 916.2 shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative approval.

APPENDIX #5

Section 915.1. Stay of Proceedings.

(a)

Upon filing of any proceeding referred to in section 913.3 and during its pendency before the board, **all land development pursuant to any challenged ordinance,** order or approval of the zoning officer or of any agency or body, and all official action thereunder, **shall be stayed unless the zoning officer or any other appropriate agency or body certifies to the board facts indicating that such stay would cause imminent peril to life or property,** in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the board or by the court having jurisdiction of zoning appeals, on petition, after notice to the zoning officer or other appropriate agency or body. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the board by persons other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such persons to post bond as a condition to continuing the proceedings before the board.