

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW**

ALEXANDER PARENTI, et al.,	:	
	:	
Appellants	:	
	:	
v.	:	No. CV-2020-003024
	:	
UPPER DARBY TOWNSHIP COUNCIL and	:	LAND USE APPEAL
UPPER DARBY TOWNSHIP,	:	
	:	
Appellees	:	
	:	
and	:	
	:	
UPPER DARBY SCHOOL DISTRICT,	:	
	:	
Intervenor	:	

**Paul A. Bucco, Esq., counsel for Appellants
Courtney N. Richardson, Esq. and Rebecca Geiser, Esq., counsel for Appellees
Clair E. Wischusen, Esq. and Andrew R. Stoll, Esq., counsel for Intervenor**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

AND NOW, this 19th day of February, 2021, upon consideration of the Petition to Post Bond Pursuant to 53 P.S. § 11003-A(d) (the "Petition" or "Bond Petition") filed by Intervenor Upper Darby School District (the "District" or "Intervenor") and the Response of Appellants¹ in Opposition to the District's Bond Petition (the "Petition Response"); having conducted an evidentiary hearing on September 2 and 3, 2020 (the "Evidentiary Hearing") with the above-identified counsel and their respective witnesses participating, and the record having been closed at the conclusion of the

¹ "Appellants" refers to Alexander and Margaret Parenti, h/w; Tara Parenti; James and Lorraine Pray, h/w; Joseph and Wendy Bergantz, h/w; Michael and Barbara Concannon, h/w; Timothy and Jane Hanahan, h/w; Donald and Bernadette Clark, h/w; Charles and Barbara Shultz, h/w; David and Dina Paul, h/w; Timothy & Annette Fenning, h/w; Greg and Diane Slomiana, h/w, and Joseph and Amy Sullivan, h/w, all of whom together filed a Notice of Appeal of the Upper Darby Township Council's approval of the District's August 29, 2019 application for preliminary and final land development approval for what is defined hereinbelow as the "Aronimink Project" at issue in this matter.

Evidentiary Hearing; the parties having submitted (1) post-hearing proposed findings of fact (with citations to the record) and conclusions of law (with citations to legal authority) in support of their respective positions on the request for relief in this Petition², and, at the parties' request, (2) additional written submissions for the Court's consideration in connection with the Bond Petition³; the Court hereby enters the within findings of fact, conclusions of law, and Order.

PROCEDURAL HISTORY OF THE MATTER GIVING RISE TO THE APPEAL

1. On August 29, 2019, the District submitted to Upper Darby Township (the "Township") an application for preliminary and final land development approval of a proposed project to expand Aronimink Elementary School (the "Aronimink Project"). See I-7; see also N.T. 9/2 at 37 & 268.
2. The approval process concerning the application for the Aronimink Project took approximately seven months. See N.T. 9/2 at 92 & 145.
3. The application for approval of the Aronimink Project included multiple components, including, but not limited to (a) land development plans showing the design and specifications for the Aronimink Project; (b) a traffic impact study for the Aronimink Project; and (c) stormwater management plans and designs. See, e.g., I-7.
4. In connection with the application for the approval of the Aronimink Project, the District sought and obtained three waivers from complying with three sections of

² These submissions will be referred to herein as "Intervenor's Proposed Findings" and "Appellants' Proposed Findings".

³ These submissions will be referred to herein as "Intervenor's Supplemental Submission" and Appellants' Supplemental Submission".

the Delaware County Subdivision and Land Development Ordinance (“SALDO”)—a waiver from SALDO § 300.1 (the “Preliminary/Final Waiver”); a waiver from SALDO § 805.C.2 (the “Additional Driveway Waiver”); and a waiver from SALDO § 805.C.3 (the “Driveway Distance Waiver”).

5. The application for approval of the Aronimink Project was reviewed by the Delaware County Planning Commission (“DCPC”), an advisory board that reviews and provides recommendations for land development applications submitted to Delaware County municipalities. See N.T. 9/2 at 146.
6. In the Fall of 2019, the DCPC reviewed the application for the Aronimink Project several times, providing comments and recommendations to the District for further refinement of the application. See I-14; I-18; I-20; see also N.T. 9/2 at 149-55.
7. On or about October 17, 2019, the DCPC recommended that the Aronimink Project be approved, finding that the application complied with the municipal codes, the SALDO, and the applicable zoning district provisions. See I-18; see also N.T. 9/2 at 152-53 & 157.
8. During the course of the extensive approval process, multiple consultants engaged by the Township reviewed the application for the Aronimink Project, including (a) Bryan Proska, P.E. (Traffic Engineer); (b) Alex Rodriguez, P.E. (Stormwater Engineer); (c) Michael Galante, P.E. (Civil Engineer); and the Township Zoning Officer. Each of these consultants recommended approval of the Aronimink Project.
9. In March and April 2020, Upper Darby Township Council (the “Council”) held

virtual public meetings to consider the Aronimink Project.

10. On April 1, 2020, Council passed a Resolution granting preliminary and final land development approval for the Aronimink Project, subject to compliance with certain review letters from the Township Engineer, the Township Traffic Engineer, the Township Stormwater Engineer, and the Delaware County Planning Commission.

11. On April 30, 2020, Appellants—owners and residents of real property abutting the campus of the Aronimink Elementary School—filed a Notice of Appeal, raising five errors purportedly made by Council in approving the Aronimink Project. At the Evidentiary Hearing, Appellants withdrew one of those grounds for appeal, leaving the following at issue, both for purposes of this Bond Petition and for the remainder of the appeal:

- a. whether the three SALDO waivers were improperly granted;
- b. whether the format of the April 1 Council meeting transformed the meeting into a hearing, triggering additional notice requirements;
- c. whether Council violated the Pennsylvania Sunshine Act in connection with its meeting(s) concerning the Aronimink Project; and
- d. whether the Aronimink Project will result in a violation of Appellants' rights under Article 1, Section 27 of the Pennsylvania Constitution.

12. On June 8, 2020, the District filed the instant Bond Petition, arguing that Appellants' grounds for appeal are frivolous and that the appeal was brought to delay the Aronimink Project. The District asserts that the delay caused by the appeal will lead to significant financial damages for the District and its

taxpayers—including Appellants—in the magnitude of \$1,041,597 for the first year of the delay.

13. As noted above, a two-day Evidentiary Hearing on the Bond Petition took place on September 2 and 3, 2020.

14. The following witnesses testified on behalf of the District at the Evidentiary Hearing: Dr. Daniel McGarry, Superintendent of Schools for the Upper Darby School District; Mr. Frank Salerno, Director of Elementary Education for the Upper Darby School District; Mr. Thomas Friese, expert in civil engineering; Mr. Michael Kelly, expert in architectural design and construction administration; Mr. James Markham, expert in traffic engineering; Mr. Bryan Proska, expert in traffic engineering; Ms. Alison Dobbins, Director of Special Projects for the Office of the Mayor of Upper Darby Township; and Mr. Michael Galante, expert in civil engineering.⁴

15. The following witnesses testified on behalf of the Appellants at the Evidentiary Hearing: Appellant Margaret Parenti; Appellant Tara Parenti; Mrs. Dorothy Bieter; Appellant Charles Shultz; Appellant Tim Hanahan; Mr. Vincent Fioravanti, expert in civil engineering and municipal engineering;⁵ and Appellant Amy Sullivan.

16. Exhibits marked as A-1, A-2, A-3, I-1, I-2, I-3, I-4, I-7, I-8, I-9, I-10, I-11, I-12, I-13, I-14, I-16, I-17, I-18, I-20, I-22, I-23, I-24, I-25, I-27, I-28, I-32, I-33, I-37, I-40, I-41, I-47, I-48 were admitted into evidence on the first day of the Evidentiary

⁴ Messrs. Friese, Kelly, Markham, Proska, and Galante were qualified as experts in their respective fields, without objection by Appellants, at the Evidentiary Hearing.

⁵ Mr. Fioravanti was qualified as an expert in his field, without objection by Appellees/Intervenors, at the Evidentiary Hearing.

Hearing. Exhibits marked as A-2, A-3, A-4, A-5, I-34, I-35, I-36, I-38, I-39, I-42, I-43, I-44, I-45, and I-49 were admitted into evidence on the second day of the Evidentiary Hearing.

APPLICABLE STANDARD

In considering whether to grant a petition for a bond pursuant to Section 1008(4) of the Pennsylvania Municipal Planning Code, a court must, after a hearing, determine whether the appeal at issue is frivolous and brought for purpose of delay. Specifically, the Code provides as follows:

If the appellants are persons who are seeking to prevent a use or development of the land of another, whether or not a stay is sought by them, the landowner whose use or development is in question may petition the court to order the appellants to post bond as a condition to proceeding with the appeal. After the petition is presented the court shall hold a hearing to determine if the filing of the appeal is frivolous and is for the purpose of delay.

53 P.S. § 1108(4). At the hearing, the court is permitted to take evidence on the merits of the case in order to make its determination as to whether the appeal is frivolous. Importantly, the findings of the court with respect to a bond petition, although related to the merits of the appellants' arguments, are not final decisions with respect to the merits of the case should the appeal proceed. See Leonard v. Zoning Hearing Board of Cheltenham Twp., 457 A.2d 132 (Pa. Commw. Ct. 1983) (affirming trial court setting of bond upon determination that property owners' appeal was frivolous and brought to delay the expansion of a facility adjacent to the property of the appellants).

To determine whether the filing of the appeal is "frivolous", the Court must ask not whether the appellant will win or lose the ultimate appeal, but whether the appellant's contentions have a likelihood of success and/or whether the continuation of the contest is reasonable. In re Langmaid Lane Homeowners Ass'n, 465 A.2d 72 (Pa.

Commw. Ct. 1983).⁶ If the answer to that question is “no”, then an appellant may proceed with the appeal—and could, of course, eventually prevail on his appeal, at which juncture a court would apply a different standard⁷—but the appellant must file a bond to do so.⁸ The burden to prove that continuation of the appeal is unreasonable (and therefore that the appeal is frivolous) is on the landowner—here, the District. See 53 P.S. § 11003-A(d) (“It shall be the burden of the landowners to prove the appeal is frivolous.”).

If the court determines that a bond is appropriate, the court has “sound discretion” to set the amount of the bond, see 53 P.S. § 1003-A(d), but the record from the hearing must provide a factual basis upon which to determine the amount of the bond. Such factual basis can be provided by witness testimony or by statements in the petition as to estimated costs pertaining to the appeal. See Destefano v. Turtle Creek Zoning Bd. of Adjustment, 387 A.2d 940 (Pa. Commw. Ct. 1978) (affirming order directing posting of bond where petition provided factual basis, all parties had opportunities to present arguments and call witnesses, and there was no indication that

⁶ Our Commonwealth Court has recognized that a variety of phrases describe this standard. Langmaid, 465 A.2d at 75 (multiple internal citations omitted) (noting two variations—“A frivolous appeal is ‘one presenting no justiciable questions and so readily recognizable as devoid of merit on the face of record that there is little prospect that it can ever succeed.’ and ‘[A frivolous action is] an action in which the plaintiff’s realistic chances of ultimate success are slight.’”). The Langmaid Court noted that there is no discernable difference among the phraseology describing a frivolous action, and explained—as noted hereinabove—that the answer to the question “is the appeal frivolous” depends on whether the continuation of the contest is reasonable.

⁷ See Leonard, 457 A.2d at 134 n.4 (noting that at a hearing on a petition to post bond, “[t]he court does not . . . decide the merits of the case, and is not held to the standards applied when the court hears the appeal”).

⁸ The Langmaid Court did not decide the issue of whether a court must make a separate finding, beyond determining that the appeal is frivolous, that the appeal is for the purpose of delay, in order to require the posting of a bond. The Langmaid Court stated that the record from the trial court supported the determination that the appeal therein had been brought for purposes of delay, and noted further that it is “hard to imagine any reason for filing a frivolous appeal by a person seeking to prevent the use of another’s land if not for delay.” Langmaid, 465 A.2d at 75 & n.9.

the court refused to hear testimony or evidence). In cases similar to the present one, courts have considered various forms of evidence of estimated damages due to a one-year delay occurring as a result of an appeal. See Devlin v. Zoning Hearing Bd. of the City of Easton, 387 A.2d 938 (Pa. Commw. Ct. 1978) (to support bond request, school district provided evidence of, inter alia, the need for the new elementary school and a variety of probable increased costs due to delays from the appeal, and but for the appeal, nothing else prevented the School District from moving forward with the project), cited in In re Kuzmiak, 845 A.2d 961 (Pa. Commw. Ct. 2004) (affirming requirement to post bond where school district introduced evidence of traffic impact statements to show that the appeal was frivolous and evidence of damages it would suffer as a result of the objector's appeal).

FRAMEWORK FOR FINDINGS AND ANALYSIS

In evaluating whether to require the posting of a bond, the Court must examine the record under the above-identified standard in relation to the contentions on appeal. This bears emphasis. New arguments and/or challenges to the Aronimink Project and/or the conduct of the parties that are not identified in the Notice of Appeal are beyond the scope of not only this Petition but also the appeal in general. See Hertzberg v. Zoning Bd. of Pittsburgh, 721 A.2d 43, n.5 (Pa. 1998) (affirming Commonwealth Court's refusal to consider appellant's argument related to proposed use that was not identified in his notice of appeal). To that end, Appellants' Notice of Appeal contains factual allegations as follows:

- The District sought three SALDO waivers to accommodate increased student enrollment, which increased student enrollment will lead to increased traffic in the vicinity surrounding Aronimink. See Notice of Appeal ("NOA") ¶¶ 21-24;

- The Aronimink Project impacts Appellants because of the increased traffic, increased diesel emissions, its impact on the use of public space, and its impact on the sewer and stormwater management system in the vicinity. See NOA ¶ 25;
- To consider and approve the Aronimink Project, the Township held a special meeting, when it should have held a public hearing. This impacted notice requirements and negatively impacted Appellants' ability to participate in the process. The remote means by which the Township's meetings were held and the inclusion of certain Rules of Decorum also contributed to Appellants' ability to submit comments and have them considered. See NOA ¶¶ 26-46.
- There was inadequate evidence to support the granting of the SALDO waivers, which was contrary to the public interest and adverse to the promotion of public health, safety and general welfare. See NOA ¶¶ 37 & 47-50.⁹

The legal issues identified in the Notice of Appeal, as supported by the factual allegations cited above and further described in the "Counts", are as follows¹⁰:

- Violation of Delaware County Subdivision and Land Development Ordinance—Improper Grant of Waivers. Specifically, in addition to the factual allegations described above, the Notice of Appeal avers as follows:
 - The three SALDO waivers were contrary to the public interest and there was no hardship in complying with the SALDO provisions as written. See NOA ¶ 55;
 - Council failed to make certain findings that the waivers were not detrimental to the public welfare, contrary to the public interest and/or injurious to Appellants' property rights. See NOA ¶¶ 56-59;
- Violation of the Pennsylvania Municipalities Planning Code § 508. Specifically, in addition to the factual allegations described above, the Notice of Appeal avers as follows:
 - The question and answer format of the meetings during which the Aronimink Project was considered and approved and the presentations by professionals and the District transformed the meeting to a hearing, which triggered additional notice requirements. See NOA ¶ 67;

⁹ The NOA includes additional averments pertaining to the impact of the Aronimink Project on sewer and stormwater management. See NOA ¶¶ 38-42 & 61-65. As noted hereinabove, the challenge based on these allegations was withdrawn by Appellants at the Evidentiary Hearing.

¹⁰ Once again, as noted previously, Appellants withdrew Count II, alleging a violation of storm water management requirements in the Delaware County SALDO, at the Evidentiary Hearing.

- There was insufficient notice to Appellants of the “hearing”, which precluded Appellants from participating fully in the consideration and approval process for the Aronimink Project. See NOA ¶¶ 68-69;
- The Township failed to make a finding that the legal standard of 53 P.S. § 10512.1 was met. See NOA ¶ 70.
- Violation of the Pennsylvania Sunshine Act. Specifically, in addition to the factual allegations described above, the Notice of Appeal avers that the inclusion of certain Rules of Decorum materially interfered with Appellant’s rights to public participation at an open meeting, in violation of 65 P.S. § 710.1. See NOA ¶¶ 73-75.
- Violation of the Constitution of the Commonwealth of Pennsylvania, Article I, Section 27. Specifically, in addition to the factual allegations described above, the Notice of Appeal avers that the Aronimink Project negatively affects the natural, scenic, historic, and esthetic values that Appellants enjoy. See NOA ¶¶ 78-80.

As will be noted in the Discussion and Additional Findings section hereinbelow, Appellants’ Proposed Findings include findings and conclusions that appear to relate to challenges to the approval of the Aronimink Project that do not fall within the scope of the issues and averments set forth in their Notice of Appeal (as described above). To the same end, Appellants’ Supplemental Submission introduces theories of relief and/or objections to the Aronimink Project that were not articulated in the Notice of Appeal.

These include:

- The application for approval of the Aronimink Project, as presented to the Delaware County Planning Commission, failed to consider the full intended scale and use of Aronimink.
- The Aronimink Project is a “community center,” a forbidden new “community use” and impermissible “Community Asset”.
- There was impermissible delegation of public comment during Council’s April 1, 2020 meeting to consider and approve the application for the Aronimink Project.
- The novel and unique public meeting format at the meetings to consider and approve the application for the Aronimink Project and the

technological problems attendant to that format precluded full participation by the public, including Appellants.

It is telling that none of these theories or issues was advanced in Appellants' initial Petition Response. And, as noted above, none of these contentions, theories, and/or allegations of wrongdoing was averred in the Notice of Appeal. Indeed, for example, the phrases "community center", "community use", and "Community Asset", although prominently featured in Appellant's Proposed Findings and their Supplemental Submission, are wholly absent from the Notice of Appeal or Appellants' initial Petition Response. Except as the evidence in support of such "new" contentions and related proposed findings relates to the issues actually on appeal, the Court finds that these arguments do not bear on the instant Petition.

FINDINGS OF FACT

1. Aronimink Elementary School ("Aronimink") is located on approximately nine acres of land in Drexel Hill, Delaware County, Pennsylvania, owned by the District. See N.T. 9/2 at 31 & 131.
2. Aronimink is a pre-existing, non-conforming use in the Upper Darby Township R-1 zoning district. See I-12 & I-13.
3. Aronimink has been used as a school since the 1930s. See N.T. 9/3 at 32; see also I-13. In addition, Aronimink has been used and is currently used by the Aronimink Elementary School community as well as by members of the surrounding community for a variety of uses, including sports, cultural events, and public events, including, but not limited to, voting. See N.T. 9/2 at 44-47, 66-68, 116-17.
4. The Aronimink Project includes a three-story addition with classrooms and a

gymnasium, a new bus loop and separate parent drop-off and pick-up areas, and a new parking area. See N.T. 9/2 at 33 & 131-35. The new gymnasium is intended to expand the existing gym that, in the past, has been available for a variety of uses. See N.T. 9/2 at 43-47; 66-68, 98-100.

5. Overall, the primary purpose of the Aronimink Project is to expand the educational use of Aronimink, see N.T. 9/2 at 258-60, and to make access to Aronimink safer than it is today. See N.T. 9/2 at 132-35, 242-43, 270-71, 284-85. Specifically, for example, the District seeks to improve vehicular and pedestrian traffic conditions and developed plans to increase safety on the Aronimink property. See N.T. 9/2 at 133-35, 270-71, 291-93.
6. The plans related to traffic included land development plan sets, see I-7, I-17, I-21, I-25, and I-28; a traffic impact study, see I-7, I-11, I-17, I-21, I-25, I-28 & N.T. 9/2 at 268-77, 323-28; review letters from the Township Traffic Engineer and response letters thereto, see I-23, I-25 & N.T. 9/2 at 285-88, 330-31; and a study relating to the "Aronmink Elementary School Parent Drop-off Queues." See I-28.
7. The plans related to traffic were designed to comply with the terms of the SALDO, PennDOT standards, guidelines from the Institute of Transportation Engineers, and industry best practices. See N.T. 9/2 at 326. They were reviewed and recommended for approval in multiple communications, beginning in November 2019 and culminating in the Township Civil Engineer's review letter dated March 27, 2020. See I-40; see also I-19, I-24; I-32.
8. The District held in the range of 10 to 15 public meetings about the Aronimink Project prior to the approval of the project on April 1, 2020. See N.T. 9/2 at 34-

35. Many community residents, including, but not limited to several of the Appellants in this case, attended these public meetings. See N.T. 9/2 at 35-37. The District provided the public with frequently asked questions (FAQ) documents as well as written response to questions received by the District during the public meetings. See N.T. 9/2 at 35.
9. Representatives of the District held small, neighborhood meetings for residents to discuss the Aronimink Project. See N.T. 9/2 at 35.
10. As noted in the Procedural History hereinabove, the District engaged a variety of consultants and review bodies who scrutinized the Aronimink Project from various perspectives and with different areas of focus. These included the DCPC, the Township Traffic Engineer, the Township Stormwater Engineer, the Township Civil Engineer, and the Township Zoning Officer.
11. The Township Civil Engineer, Michael Galante, reviewed the plans for the Aronimink Project as to traffic circulation, off-site improvements, stormwater management design, grading, and ADA accessibility. See N.T. 9/3 at 99-100. Mr. Galante's review included consideration of abundant documents concerning the Aronimink Project and discussions with other consultants engaged in connection with the Aronimink Project. See N.T. 9/3 at 101-03. Ultimately, Mr. Galante recommended approval of the Aronimink Project and three SALDO waivers. See I-40; see also N.T. 9/3 at 103-110, 112-17.
12. A Township Council meeting on the application for the Aronimink Project was scheduled for March 18, 2020. See N.T. 9/3 at 9.
13. On March 6, 2020, in light of the then-looming COVID-19 pandemic, Governor

Wolf issued a stay-at-home order prohibiting in-person municipal meetings. See N.T. 9/3 at 7-10 & 17. As a result, Township Council was not permitted to meet in-person but was still obligated to hold public meetings to handle Township business, including, but not limited to, voting on land development applications. See N.T. 9/3 at 7-13.

14. On March 16, 2020, the Township met with the District to test the Township's technical capabilities to conduct the then-upcoming meeting on March 18, 2020 and to determine whether the technology would allow public participation in the meeting. See N.T. 9/3 at 8-9. The Township postponed the March 18, 2020 meeting in order to work out any technical limitations before conducting a meeting at which the Township anticipated public participation. See N.T. 9/3 at 9.
15. Township Council scheduled another public meeting for March 25, 2020 and provided abundant notice of that meeting by various means. See N.T. 9/3 at 10, 14-15; see also I-34; I-35. The notices advised the public as to the date and time of the meeting, the way(s) in which the public could participate and/or access the meeting, how the public could submit comments, and the agenda for the meeting, which included a link to the presentation about the Aronimink Project. See N.T. 9/3 at 14-18; see also I-35; I-36. The notices also included "Rules of Decorum" that provided guidelines for the conduct of the public meetings, including that participants would not be permitted to "disrupt or prevent the conduct of the business of the meeting." See I-34, I-35, I-43; see also N.T. 9/3 at 19. The "Rules of Decorum" have been part of Township Council agendas for public meetings since January 2020. See N.T. 9/3 at 20-22.

16. At the outset of the Township Council public meeting on March 25, 2020, the Township Solicitor advised that conducting public meetings via remote means is legally permissible and does not contravene the Sunshine Act. See I-36; see also N.T. 9/3 at 67-69.
17. The District's application for the Aronimink Project was discussed during the Township Council meeting on March 25, 2020. See I-36.
18. Members of the public had access to the March 25, 2020 meeting via YouTube and the Township's website, the links to which had been publicized in the previously noted notices to the public. See N.T. 9/3 at 15-17; see also supra. People accessed the link to the March 25, 2020 public meeting more than 1,000 times. See N.T. 9/3 at 17. Comments about the Aronimink Project were submitted by various means—including via email and telephone—to the public meeting on March 25, 2020 by members of the public, including one or more of the Appellants in this case, and were read into the record and considered by Township Council. See I-36, I-38, I-39 & N.T. 9/3 at 59-61. Notice was provided that the application for the Aronimink Project would be discussed again at the then-upcoming Township Council meeting scheduled for April 1, 2020, when the application would be submitted for a vote by Council. See I-36.
19. After the March 25, 2020 public meeting, the District Superintendent provided written responses to all of the public comments submitted in connection with that meeting and provided those responses to the Township for the Township's consideration in connection with the application for the Aronimink Project. See I-39.

20. Township Council scheduled another public meeting for April 1, 2020 and provided abundant notice of that meeting by various means. See I-42; I-43; see also N.T. 9/3 at 42-46. The notices advised the public as to the date and time of the meeting, the way(s) in which the public could participate and/or access the meeting, how the public could submit comments, and the agenda for the meeting, including a link to the presentation about the Aronimink Project. See I-42 & 43; see also N.T. 9/3 at 24-25, 42-46.
21. The District's application for the Aronimink Project was discussed during the Township Council meeting on April 1, 2020. See I-44; I-45; see also N.T. 9/3 at 53, 55-56.
22. Comments about the Aronimink Project were submitted by various means—including via email and telephone—to the public meeting on April 1, 2020 by members of the public, including one or more of the Appellants in this case, and were read into the record and considered by Township Council. See N.T. 9/3 at 59-61.
23. Appellant Margaret Parenti participated in the public process concerning the Aronimink Project from August 2019 through April 2020 by attending school board meetings, school district meetings, zoning hearing(s), Planning Commission meeting(s), and the virtual public meetings of Township Council on March 25, 2020 and April 1, 2020. See N.T. 9/3 at 151-52. Mrs. Parenti was aware that public notice of the meetings had been provided in advance of the meeting. See N.T. 9/3 at 155. At various of these meetings, Mrs. Parenti had the opportunity to ask questions, submit comments, and get answers related to the

- Aronimink Project. See N.T. 9/3 at 151-54.
24. During the time that she has lived at her home, across the street from Aronimink, Mrs. Parenti has observed people using the athletic fields at Aronimink on weekends for football and soccer. See N.T. 9/3 at 172. She acknowledges that Aronimink currently hosts community events. See N.T. 9/3 at 180. Mrs. Parente votes at Aronimink. See N.T. 9/3 at 182.
25. Mrs. Parenti has concerns about increased traffic that she believes the Aronimink Project will cause. See N.T. 9/3 at 173-75. Mrs. Parenti communicated her concerns to the Upper Darby School Board and others but feels that her concerns were “unheard.” See N.T. 9/3 at 175. Mrs. Parenti was familiar with the traffic study that had been done in connection with the Aronimink Project and characterized it as “def[y]ing common sense” while also asserting that she is “not an expert so I don’t understand it.” See N.T. 9/3 at 176.
26. Appellant Tara Parenti, daughter of Appellant Margaret Parenti, participated in the public process related to the Aronimink Project by sending emails and viewing videos of meetings, which videos were posted publicly. See N.T. 9/3 at 192.
27. Ms. Parenti expressed concerns about the traffic issues created by the Aronimink Project. See N.T. 9/3 at 193, 196. She emailed her concerns to the Upper Darby Township Mayor, who responded to her, called her, and sent her links to the Township Council meeting of April 1, 2020. See N.T. 9/3 at 196. There were opportunities to submit concerns about the Aronimink Project, by telephone or prior email, for the April 1 meeting. See N.T. 9/3 at 196.

28. Ms. Parenti was familiar with the traffic study that had been done in connection with the Aronimink Project and questioned and characterized it as “not a true traffic study” while asserting that she is “not a traffic engineer.” See N.T. 9/3 at 194.
29. Appellant Charles Shultz participated in the public process related to the Aronimink Project by attending one meeting. His other commitments prevented him from participating in the process in any other ways. See N.T. 9/3 at 227. Mr. Schultz knew about the Township Council meetings on March 25 and April 1 related to the approval of the Aronimink Project before they occurred. He did not participate in these meetings because he had “some other business.” See N.T. 9/3 at 230. He has access to the internet from his home. See N.T. 9/3 at 231.
30. Mr. Schultz raised concerns about several aspects of the Aronimink Project with Township Council and/or the District but did not submit any questions or ask for any information about how these concerns would be addressed. See N.T. 9/3 at 229; 231.
31. Mr. Schultz is unaware of any provision of the Delaware County SALDO that the Aronimink Project—and, specifically, the expansion of the gymnasium component thereof—may violate. See N.T. 9/3 at 232.
32. Appellant Amy Sullivan participated in the public process leading up to the approval of the Aronimink Project, beginning in the Fall of 2019 and through its approval in April of 2020. See N.T. 9/3 at 302. She attended a community meeting in the August or September of 2019 as well as Township Council meetings and School Board meetings. See N.T. 9/3 at 303. She participated in

many of these meetings, including school board meetings and the Township Council meetings in March and April of 2020, by providing public comment—she emailed her comments into the meeting(s). See N.T. 9/3 at 307. The public comments Ms. Sullivan submitted included a petition that was signed by more than 400 members of the community. See N.T. 9/3 at 308.

33. Ms. Sullivan raised concerns that the Aronimink Project, in particular the community use of the gym at Aronimink, would affect “our community in general, the safety of children” and the “safety of anyone” by causing traffic issues, parking difficulties, and noise level issues. See N.T. 9/3 at 305-06; 316. Ms. Sullivan is aware that Aronimink and the surrounding property is currently used by the community, for example to “have a catch”, walk dogs, kick a soccer ball. See N.T. 9/3 at 317-18. She requested that, as part of the Aronimink Project, a bocce court be included so that adults could enjoy the outdoors on the Aronimink property. See N.T. 9/3 at 317.

34. The District responded directly to Ms. Sullivan about the concerns she raised. See N.T. 9/3 at 311 & 318. The Township was included on these communications. See N.T. 9/3 at 319.

35. Ms. Sullivan objected to moving forward with the Aronimink Plan at the March and April 2020 Township Council meetings because she and others sought to delay the project. See N.T. 9/3 at 319-20. Ms. Sullivan described the Aronimink Project as an important project that she and others felt “should have been postponed until more people had time to process it, to see how the . . . financial impact of the pandemic on the community before th[e] luxury of . . . spending this

kind of money.” See N.T. 9/3 at 319-20.

36. Ms. Sullivan questions whether Township Council, in reviewing the Aronimink Project and deciding whether to approve it, was “up to speed on all of the moving parts of this whole project.” See N.T. 9/3 at 323.

37. The District made extensive efforts to respond to and, where possible, accommodate comments and concerns they received from members of the community, including but not limited to those raised by one of more of the Appellants in this case. See N.T. 9/2 at 33-37 & N.T. 9/3 at 333-37.

38. The Aronimink property is currently used by members of the community (including Appellants, as noted herein), both during the hours when school is in session and after hours—in the evenings and on weekends. See N.T. 9/3 at 337. The fields around the school are in use by community members from August through November, including during the evenings and on weekends. See N.T. 9/3 at 337. The community currently uses, and has used, the gymnasium for sports and other township recreation programs by obtaining a permit for such use from the Township. See N.T. 9/3 at 337.

39. The District has assessed extensively its ability to finance the Aronimink Project and has concluded that moving forward with the Aronimink Project at this time, and not later, will have minimal financial impact on the taxpayers in the community the District serves. See N.T. 9/3 at 339. Delaying the Aronimink Project will increase the cost of the Aronimink Project. See N.T. 9/3 at 339.

40. The appeal of the decision by Council to grant preliminary and final land development approval for the Aronimink Project has prevented the District from

moving forward with the Aronimink Project. See N.T. 9/2 at 251.

41. The appeal of the decision by Council to grant preliminary and final land development approval for the Aronimink Project has caused and will continue to cause the District and its taxpayer residents to incur additional costs, in the amount of at least \$1.041 million, related to the Aronimink Project. See I-47; see also N.T. 9/2 at 246-54 & 56-59. Specifically, the delay of the Aronimink Project caused by the appeal will result in at least the following: (1) increased construction costs of 3.5% per year, with an increase of \$935,000-947,415 in the first year of delay; and (2) additional transportation, building operation, and lease costs in the amount of \$94,182. Id. I-47; see also N.T. 9/2 at 94-96.

DISCUSSION AND ADDITIONAL FINDINGS

In support of the request that Appellants be required to post a bond to continue their appeal, the District asserts that each of the objections to the Township's approval of the Aronimink Project lacks merit and has no likelihood of success. Specifically, the District suggests that the record created at the Evidentiary Hearing shows the following, with respect to the issues raised by Appellants in their Notice of Appeal:

- (1) Township Council properly granted the District the Preliminary/Final Waiver, the Additional Driveway Waiver, and the Driveway Distance Waiver;
- (2) Township Council was not required to hold a hearing to approve the Aronimink Project, and the notice it provided about the meetings held to discuss, consider, and approve the Aronimink Project complied with all applicable laws;
- (3) the meetings at which Township Council discussed, considered and approved the Aronimink Project offered opportunities for public comment and complied in all ways with the Sunshine Act;
- (4) the decision to approve the Aronimink Project comported with the

Environmental Rights Amendment to the Pennsylvania Constitution.¹¹

Further, the District asserts that Appellant's position on each of these issues not only lacks legal support under Pennsylvania law—which the District suggests supports *its* position, not Appellants'—but also lacks support in the record established at the Evidentiary Hearing.

While the burden in the context of this Petition is on the District to prove that the continuation of the appeal is unreasonable—*i.e.*, the District must show that the issues raised by Appellants in their Notice of Appeal are “so readily recognizable as devoid of merit on the face of the record that there is little prospect that [they] can ever succeed”, see Langmaid, 465 A.2d at 75—the Court notes for completeness sake what Appellants urge the Court to find in its ruling on the Petition. That is, Appellants contend that their appeal is not frivolous “because there was a clear abuse of discretion in proceeding with preliminary and final appeal, and granting two other waivers in a novel Council Meeting format in which official business was conducted, including approval of a project that failed to evaluate the full impact on the abutting community.” Appellants' Proposed Findings ¶ 85. Specifically, Appellants urge the Court to find that the appeal is not frivolous because it raises meritorious issues concerning (1) the granting of the three SALDO waivers for the Aronimink Project (which waivers Appellants suggest were granted improperly from both a procedural and substantive standpoint); and (2) the conduct of the meetings at which Township Council approved the Aronimink Project, (which Appellants suggest violated the Municipal Planning Code and the Sunshine Act). Appellants do not appear to propose any findings expressly related to their challenge to

¹¹ As noted hereinabove, at the Evidentiary Hearing, Appellants withdrew an additional ground for their appeal, related to alleged noncompliance with stormwater-related requirements implicated by the Aronimink Project.

the Township's compliance with Section 27 of the Pennsylvania Constitution.

Appellants devote significant effort to proposing findings describing the Aronimink Project as a development that would violate an Upper Darby Zoning Ordinance which provides that community recreation centers are forbidden uses in an R-1 zoning district. See, e.g., Appellants' Proposed Findings ¶¶ 3-24; 90-97. While this is not itself one of the grounds for appeal, see supra ("FRAMEWORK FOR FINDINGS AND ANALYSIS"), the Court has considered the witnesses' testimony on this point in the context of Appellants' challenge as to whether Council properly granted the Preliminary/Final Waiver. The testimony does not appear bear on any of the other grounds for appeal. Similarly, Appellants propose abundant findings related to the inadequacy of the traffic study performed in connection with the Aronimink Project. See, e.g., Appellants' Proposed Findings ¶¶ 25-35; 99-101. These issues likewise relate to the ground for appeal related to the granting of the SALDO waivers and the Court has considered them in that context.

As the party with the burden to show that each of the four grounds of appeal lacks merit on the face of the record such that there is little prospect of the appeal's success, the District elicited testimony at the Evidentiary Hearing—both by direct examination of its own witnesses and by cross-examination of Appellants' witnesses—and introduced documents in connection with each ground for appeal. In examining its own witnesses, the District elicited testimony that the Court finds supports Intervenor's position with respect to the four issues raised on appeal. In cross-examining the witnesses called by Appellants, the District elicited testimony that the Court finds also supports Intervenor's position with respect to the four issues on appeal. In addition to

the witnesses cited in the factual findings hereinabove, the District cross-examined Appellants' expert, Vincent Fioravanti, and two other witnesses not cited in the findings set forth above—Ms. Dorothy Bieter and Appellant Tim Hanahan.¹² The Court finds that the testimony of Ms. Bieter and Appellant Hanahan relates to the grounds for appeal related to the SALDO waivers and the notice provided by the Council related to the meetings concerning the Aronimink Project.

The testimony of Appellants' expert, Mr. Fioravanti, purports to challenge the propriety of the granting of the three SALDO waivers.¹³ See N.T. 9/3 at 244-45; 249-57. Although proffered as Appellants' expert, without objection by any party, that qualification alone does not carry the day if the expert's opinions are not supported credibly. On cross-examination, the District elicited testimony from Mr. Fioravanti that calls into question whether the opinions he offered in support of Appellants' appeal are reliable or helpful. See, e.g., N.T. 9/3 at 261-65; 282-84. Key among the admissions elicited from Mr. Fioravanti are that he did not review all of the plans submitted in connection with the Aronimink Project (including the final version of the plans), see N.T. 9/3 at 262-65, and that he had not reviewed the traffic study submitted in connection with the Aronimink Project. See N.T. 9/3 at 263. Mr. Fioravanti also admitted that he is

¹² Ms. Bieter testified that, although she is not an Appellant in this action, her concerns about the Aronimink Project relate to safety, traffic, loss of green space, and the cost of the Aronimink Project, particularly the use of taxpayer money. See N.T. 9/3 at 206-07, 210. Like several of the other Appellants, Ms. Bieter testified that she had notice of the Council meetings at which the Aronimink Project was discussed and that she participated in those meetings and to which she submitted public comments. See N.T. 9/3 at 211-14; see also I-39 & N.T. 9/3 at 218-22 (indicating that the District provided a response to Ms. Bieter about the concerns she had raised about traffic). Appellant Hanahan testified about his concerns related to traffic and safety, that he participated in at least one of the two Council meetings, and that he submitted comments about his concerns prior to that meeting. See N.T. 9/3 at 235-37.

¹³ In addition, Mr. Fioravanti offers testimony about the proposed use for the Aronimink Project. As noted hereinabove, the Court considers this aspect of Mr. Fioravanti's testimony in the context of the ground for appeal related to the SALDO waivers, as the nature of the use of the property—whether it is a forbidden "community use" in this area—is not one of the grounds of appeal raised by Appellants.

not a traffic engineer and did not perform any studies related to the impact the Aronimink Project had on traffic. See N.T. 9/3 at 282-84. The Court finds that these admissions severely limit the credibility of Mr. Fioravanti's opinions in connection with Appellants' arguments related to the SALDO waivers. As such, the Court finds that Mr. Fioravanti's testimony does not provide a record basis for the Court to conclude that Appellants' arguments with respect to the propriety of the SALDO waivers have any prospect of success as this appeal continues.

The record created at the hearing on a bond petition reveals whether the appeal (and specifically, the grounds for appeal raised by Appellants) presents a justiciable question of whether appellants' contentions have a likelihood of success. In other words—and seen through the lens of the District's burden to demonstrate that the appeal is frivolous—if the facts set forth in the record are insufficient to demonstrate that the continuation of the contest is reasonable, then the appeal may continue, but only upon the posting of a bond by Appellants. The Court finds that the District has met its burden.

CONCLUSIONS OF LAW

1. The District's plans in connection with the Aronimink Project were complete and accompanied by appropriate studies.
2. The Township's review process, conducted over the course of many months, was thorough and comprehensive, and included many series of reviews by a variety of relevant experts in zoning, engineering, planning, and transportation.
3. The application for approval of the Aronimink Project complied with the Delaware County SALDO by virtue of several waivers, which were granted based on

careful review by the Township and its various experts who recommended the waivers, and in accordance with the law. See Telvil Constr. Corp. v. Zoning Hearing Bd. of East Pikeland Twp., 896 A.2d 651, 656-57 (Pa. Commw. Ct. 2006) (distinguishing between attempts to get benefits of certain zoning ordinances where a zoning hearing board has denied variances, and situations where local governing bodies act within their discretion to grant SALDO waivers, based on “proof less rigorous than that required in order to obtain a variance from the Zoning Hearing Board”); see also id. at 656 (“under the MPC, the power to grant [SALDO] waivers resides with the [local governing body], who may relax [SALDO] standards upon proof less vigorous than required in order to obtain a variance”) (emphasis added); accord 53 P.S. § 10512.1 (permitting municipalities to grant waivers from a SALDO); see also Miravich v. Twp. of Exeter, 6 A.3d 1076 (Pa. Commw. Ct. 2010) (“[T]he MPC places virtually no procedural requirements on a [local governing body] considering subdivisions and land development proposals.”).

4. Council exercised lawful discretion to grant the three SALDO waivers, since the Township enacted its own waiver requirements in adopting the Delaware County SALDO. See 53 P.S. § 10503(8) (SALDO may include provisions for administering waivers or modifications to minimum standards of ordinance).
5. The Delaware County SALDO expressly provides broad discretion to the DCPC and the Township to recommend and/or grant SALDO waivers under certain circumstances. See SALDO § 1105; see also SALDO §§ 103(A)(4) & 801(D).
6. The record does not contain evidence to support the claim that the SALDO

waivers are contrary to the public interest; to the contrary, the evidence supports the conclusion that the waivers are consistent with the intent and purpose of the SALDO. Accord Monroe Meadows Hous. P'ship, LP v. Mun. Council of Monroeville, 926 A.2d 548, 553 (Pa. Commw. Ct. 2007) (“a waiver [is] proper where . . . literal enforcement of a requirement would frustrate the effect of improvements.”); see also Whitehall Manor, Inc. v. Planning Comm'n of City of Allentown, 79 A.3d 720, 735-36 (Pa. Commw. Ct. 2013) (same).

7. The SALDO waivers in connection with the Aronimink Project were supported by the Township engineer and the District provided a detailed written submission providing justification for the waivers, in accordance with the Delaware County SALDO. See I-41; see also SALDO § 1105(D)(1). These detailed submissions and the support of the Township engineer provided a reasonable basis for the Council to exercise its lawful discretion to grant the three SALDO waivers. See SALDO § 1105(D)(3).
8. The Aronimink Project does not propose any changes to the current way in which the property is used, which includes primarily school use, but also longstanding use of the property, building, and grounds by members of the Upper Darby community for non-school activities, including but not limited to recreational, leisure, and civic activities. See, e.g., N.T. 9/2 at 47, 66-67; see also N.T. 9/2 at 144-48, 275.
9. Because the Aronmink Project is merely an extension of an existing use and the District's plans were designed to meet the requirements of both preliminary and final plan approval, the District's request for permission to obtain simultaneous

preliminary and final land development approval for the Aronimink Project, see I-41, complied with the law and common practice, pursuant to which applicants for land development plan approval may seek permission to obtain preliminary and final approval of their plan simultaneously. See Whitehall Manor, 79 A.3d at 736 (upholding grant of waiver to allow concurrent submission of preliminary and final land development plan where, *inter alia*, no SALDO provision expressly prohibited concurrent approval of preliminary and final land development plan); Miravich, 6 A.3d 1076 (township's decision to defer consideration of waiver requests until final plan stage did not constitute abuse of discretion). See also N.T. 9/3 at 107 & 109.

10. Granting the Preliminary/Final Waiver was also consistent with Sections 801(D)

and 103(A)(4) of the Delaware County SALDO. See N.T. 9/3 at 107 & 109.

Indeed, the Township Engineer recommended approval of the waiver from section 300.I. of the SALDO only after careful review of the plans and after consultation with other consultants. See I-40 & N.T. 9/3 at 105-09; see also N.T. 9/3 at 99-102, 105-06.

11. The Township had discretion under section 1105(A)(1)(c) of the SALDO to grant the District a waiver permitting three nonresidential driveways, and supported its decision with well-founded conclusions, including but not limited to conclusions about safety, preservation of existing uses, and the overall purpose of the Aronimink Project. See, e.g., I-41 and N.T. 9/2 at 292-93; see also N.T. 9/3 at 344.

12. Multiple expert witnesses at the Evidentiary Hearing offered credible testimony

that the Additional Driveway Waiver was warranted because it improves safety, does not contravene the requirements of the SALDO, and contributes to a site design that is safer than that which exists currently. See N.T. 9/2 at 292-93; N.T. 9/3 at 112-14. In contrast, there is no credible evidence in the record to support the claim that the Additional Driveway Waiver contravenes the purpose and intent of the SALDO in ensuring a safe design and was therefore improvidently granted. See, e.g., Monroe Meadows, 926 A.2d at 553 (noting that waiver is proper where development offers substantial equivalent, additional requirement offers little or no additional benefit, and literal enforcement of a requirement would frustrate the effect of improvements); see also Whitehall Manor, 79 A.3d at 735-36 (same). Moreover, the Township Engineer recommended approval of the waiver from section 805C.2 of the SALDO only after careful review of the plans and after consultation with other consultants. See I-40 & N.T. 9/3 at 112-14; see also N.T. 9/3 at 99-102, 105-06.

13. The Township had discretion under section 1105(A)(1)(c) of the SALDO to grant the Driveway Distance Waiver and properly determined that the waiver furthered the purpose and layout of the Aronimink Project and required the fewest number of variances and waivers. See, e.g., I-41 and N.T. 9/2 at 292-93; see also N.T. 9/3 at 344. This conclusion was supported by the Township Engineer, who recommended approval of the waiver after careful review of the plans and after consultation with other consultants. See I-40 & N.T. 9/3 at 116-17; see also N.T. 9/3 at 99-102, 105-06.

14. There is no credible evidence in the record to support a claim that the

comprehensive review of how the Aronimink Project would impact traffic was inadequate to the point of substantiating a claim that the SALDO waivers were improvidently given. To the contrary, the record indicates the following: In designing the Aronimink Project, the District's experts and consultants sought to further the District's goal of improving and/or making safer the existing vehicular and pedestrian traffic conditions at Aronimink. See I-9 & I-11; see also N.T. 9/2 at 130-35, 240-43, 270-71, 292-96. The plans related to traffic safety in connection with the Aronimink Project (the "Traffic Plans") were designed to comply with the terms of the SALDO, PennDOT standards, the institute of Transportation Engineers' guidelines, and industry best practices. See N.T. 9/2 at 326, 335-36. These Traffic Plans included, but were not limited to, land development plan sheets, a Traffic Impact Study, review letters from the Township Traffic Engineer and responses thereto. See I-7, I-11, I-17, I-21, I-23, I-25, I-28. The Traffic Plans were reviewed and revised extensively by experts who ultimately supported them and recommended approval of the Aronimink Project based, in part, on the Traffic Plans. See I-19, I-24, I-32, I-40.

15. While, as noted in findings hereinabove, there was testimony from several witnesses, including some Appellants in this matter, that they have concerns about the Aronimink Project related to safety and the impact it will have on traffic in the area, each of these witnesses also testified that they do not have expertise in the field of traffic planning or engineering. Also as noted hereinabove, Appellants' expert similarly conceded not only that he is not a traffic engineer but also that he did not himself perform any traffic counts or studies. He also agreed

with the expert opinions of the Appellees/Intervenor that the design of the Aronimink Project as it relates to traffic was safe. See N.T. 9/3 at 282-84.

16. The process for the Township's approval of the Aronimink Project provided multiple opportunities for public comment; indeed, the Appellants who provided testimony at the Evidentiary Hearing acknowledged not only having had notice of the various meetings, but also having participated in the process, to varying degrees, including some receiving feedback in connection with the comments they raised.
17. While there is testimony in the record from witnesses who suggested or even stated that their concerns pertaining to the Aronimink Project were not "heard", there is a difference between not having an opportunity to make comments, offer suggestions, or voice concerns related to a proposal and not getting the outcome one desires. The record in this case is replete with evidence, much of which is cited throughout these findings, showing not only that there were multiple opportunities for interested parties to provide comments, suggestions, and/or concerns, but also that many of the witnesses did so participate. Put differently, the record reflects input by Appellants and others (some of whom represented having participated in the earliest stages of planning for the Aroniminnk Project) as well as abundant and extensive efforts to respond thereto by the District, the Township and the Council.
18. The application for approval of the Aronimink Project did not run afoul of any requirement to hold a formal hearing before its approval by the Township because the MPC does not require public hearings for consideration and

approval of land development proposals like the Aronimink Project. Indeed, unlike in other contexts like zoning, “the MPC places virtually no procedural requirements on a [local governing body] considering subdivisions and land development proposals.” Miravich, 6 A.3d at 1079 (emphasis added). Accord 53 P.S. § 10508(5) (“Before acting on any subdivision plat, the governing body or the planning agency . . . may hold a public hearing thereon after public notice) (emphasis added); Edwards Eng’g Corp. v. Davies, 471 A.2d 119, 121 (Pa. Commw. Ct. 1984) (public hearings not mandatory for approval of subdivision plan applications).

19. The absence of a public hearing in connection with the Township’s approval of the Aronimink Project does not present a valid ground for an objection to the process that led to the approval of the Aronimink Project, particularly where the Township provided not only abundant notice of the several meetings at which the Aronimink Project was discussed and considered but also ample opportunities for public comment in relation to the Aronimink Project. See, e.g., 53 P.S. § 10508(5) (public hearing optional, not required, before governing body acts on application for subdivision plat); accord 65 P.S. § 709 (“An agency shall give public notice of each special meeting or each rescheduled regular or special meeting at least 24 hours in advance of the time of the convening of the meeting specified in the notice.”); see also Eastern Consolidation & Distribution Servs., Inc. v. Bd. of Comm’rs of Hampden Twp., 701 A.2d 621, 624-25 (Pa. Commw. Ct. 1997) (rejecting argument that objectors to land development plan were deprived of notice and opportunity to be heard because, *inter alia*, objectors’

attorney appeared at meeting where plan was approved and presented objectors' concerns). The notice provided to the public, pertaining to the discussion of the Aronimink Project, satisfied the notice requirements. See I-42 & N.T. 9/3 at 42.

20. There is no credible evidence in the record to support a claim that the way in which the Aronimink Project was considered and approved materially interfered with Appellants' right, under Pennsylvania's Sunshine Act, to participate in the meetings at which the Aronimink Project was discussed and approved. The testimony provided at the Evidentiary Hearing demonstrates that Council provided "a reasonable opportunity" at each of its meetings for public comment regarding matters under consideration. See 65 P.S. § 710.1(a).

21. Council's adoption and implementation of the Rules of Discretion at its meetings, including at the meetings to consider and approve the Aronimink Project, do not contravene the Sunshine Act. See 65 P.S. § 710 (expressly permitting adoption of rules and regulations necessary for the conduct of meetings and the maintenance of order) and 65 P.S. § 710.1(a) (allowing for adjustments to timing of public commentary); accord Baravordeh v. Borough Council of Prospect Park, 706 A.2d 362, 367 (Pa. Commw. Ct. 1998) (limiting comments made at meeting before borough council to current business did not violate Sunshine Act).

22. There is no evidence to support the contention that the Rules of Decorum interfered in any way with any person's reasonable opportunity to provide comments; indeed, the evidence includes testimony from several witnesses, including Appellants, that they participated in the process whereby Council considered and approved the Aronimink Project, including by making public

comment submissions and receiving feedback about their comments. See I-34, I-35, I-36, I-38, I-39, I-42, I-43; see also N.T. 9/3 at 60.

23. Conducting the meetings in which the Aronimink Project was discussed and approved via remote means did not impact any person's right to have a reasonable opportunity to provide public comment, particularly where conducting virtual meetings is lawful, see I-36 & N.T. 9/3 at 68-69; see also 35 P.S. § 5741(a) & (f), and the meetings at which the Aronimink Project was discussed and approved did in fact include significant consideration of public comments. See I-34, I-35, I-36, I-38, I-39, I-42, I-43; see also N.T. 9/3 at 60.

24. The record reflects little, if any, evidence indicating that the Aronimink Project will impact any natural scenic, esthetic, or historical resources; to the contrary, the record indicates that the Township balanced concerns of that nature with the educational benefits of the Aronimink Project, which its consultants found were consistent with the esthetic and historic resources. See, e.g., I-14 & N.T. 9/2 at 150-51 (DCPC noting expressly that "[t]he School District of Upper Darby should be commended" for the manner in which the District designed the plans to maintain the local historic resource of the school itself).

25. The evidence presented at the Evidentiary Hearing suggests that there is little prospect that any of the arguments raised by Appellants can succeed.

26. In light of the factual findings set forth above and the case law cited herein, the Court finds that the evidence presented at the Evidentiary Hearing suggests that Appellants' realistic chances of ultimate success are slight and on the face of the record, Appellants' claims are devoid of merit; therefore, the continuation of the

contest is not reasonable. See Langmaid, 465 A.2d 72, cited supra, and cases cited therein.

27. The testimony of at least one witnesses suggesting that Appelles and Intervenor rushed to complete a process that would have benefited from additional time and/or consideration is belied by the overwhelming record evidence (cited throughout these findings) pertaining to not only the lengthy time period during which the Aronimink Project was considered, but also the extensive and detailed analysis, by many and varied experts, of the multiple aspects of the Aronimink Project that needed to be—and were—addressed before it could be presented for approval.

28. The evidence presented at the Evidentiary Hearing supports the conclusion that Appellants are seeking to delay the Aronimink Project by objecting to its approval. Filing this appeal is a vehicle to further delay the Aronimink Project. See C.A.N.D.L.E. v. Bd. of Comm'rs, 502 A.2d 742 (Pa. Commw. Ct. 1985); see also Langmaid, 265 A.2d 72 at n.9.

29. Evidence at the hearing, including but not limited to the facts cited hereinabove, establishes that the District will suffer damages estimated to total \$1,041, 597.00 in one (1) year as a result of the delay caused by the Appeal, which damages include increased operation costs, transportation costs, construction costs, and lease costs. See I-47. These delay damages are lawful components of a court-ordered appeal bond. See In re Kuzmiak, 845 A.2d at 966 (planning service delay costs, bidding delays, additional construction management services, and additional project related costs supported request for appeal bond). Accord In re:

Order of Nether Providence Zoning Hearing Bd., 358 A.2d 874 (Pa. Commw. Ct. 1976) (affirming trial court's exercise of discretion in setting of bond where record provided basis for amount of bond)

30. Evidence introduced at the hearing supports the estimate that the delay caused by the Appeal will extend for a one-year time period and that such estimation is reasonable. Accord Devlin, 387 A.2d at 940 (evidence supporting costs related to one-year delay of project caused by the appeal supported requirement to post bond).

In consideration of the above Findings of Fact and Conclusions of Law, which the undersigned submits are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion", see Valley View Civic Ass'n v. Zoning Bd. of Adjustment, 462 A.2d 637, 640 (1983), it is **HEREBY ORDERED AND DECREED** that Intervenor's Bond Petition is **GRANTED** and Appellants shall, within ten (10) days of the date of this Order, jointly and severally post bond(s) in the amount of \$1,041,597.00, as a condition of continuing their Land Use Appeal filed on April 30, 2020. This Court shall retain jurisdiction to require Appellants to post an additional bond(s) if the Land Use Appeal continues beyond one (1) year from the date of this Order. Upon Appellants' posting of the bond, the Court will convene a status conference to determine an appropriate schedule for the remainder of the appeal.

BY THE COURT:



KELLY D. ECKEL, J.