

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

IN RE: SOUTH MOUNTAIN COMMONS,)
CARROLL TOWNSHIP, YORK COUNTY)

No. _____

PETITION TO INTERVENE

Pennsylvania Department of Transportation (“PennDOT”) should grant the petition to intervene filed by Wayne Pealer, Catherine Pealer, Brad Pealer and Carroll Citizens for Sensible Growth (“CCSG”) (hereafter, collectively “Petitioners”) because Petitioners’ interests as nearby property owners and concerned citizens will be directly affected by the traffic and road improvements related to South Mountain Commons, a large commercial / residential development in Carroll Township, York County and it is in the public interest to permit nearby property owners to intervene and participate in the review process to insure that their concerns and questions are considered and addressed. In support thereof, Petitioners provide:

1. The Pealers own property located at 90 Spring Lane Road, Dillsburg, PA 17019, which is in close proximity to the proposed Development (see map attached as Exhibit “A”).
2. CCSG is a citizens’ group concerned about large-scale commercial development within Carroll Township. Members of CCSG include the Pealers and other citizens of Carroll Township.
3. JZCM, L.P. is the owner of a number of contiguous lots totaling approximately 131 acres located near the intersection of Route 15 and Route 74 in Carroll Township, York County (“Property”).
4. Lobar Properties and JZCM, L.P. (“Developers”) are in the process of seeking approvals to develop the Property into a large commercial / residential development called South Mountain Commons.

5. Based upon an initial traffic impact study submitted by Lobar to Carroll Township, South Mountain Commons will include 175 townhomes, a 203,819 free-standing discount store, a 15,000 square foot shopping center, three 7,000 square foot high-turnover sit-down restaurants, a 6,000 square foot shopping center and a three lane drive-in bank.

6. Petitioners are extremely concerned about the ramifications of the proposed South Mountain Commons development on the surrounding community (including on their own property and quality of life), particularly as it relates to traffic congestion / safety and stormwater runoff.

7. Petitioners have attended many Township meetings, reviewed the land development plans, studies and reports that Lobar submitted in support of its project and raised concerns / objections to the proposed South Mountain Commons project.

8. Petitioners also retained Douglas W. Plank of the ELA Group, Inc. to review and provide comments on the traffic impact study ("TIS") prepared for South Mountain Commons.

9. Mr. Plank concluded a preliminary review during which he identified numerous problems and shortcomings with the South Mountain Commons TIS; Mr. Plank concluded that the proposed road improvements and mitigation measures within the TIS would not adequately address the anticipated undue traffic congestion generated by the development. See Plank Correspondence attached as Exhibit "B."

10. During the proceedings before the Township, the Developer stated that it would need to submit a TIS to PennDOT as part of the Developer's highway occupancy permit application and, therefore, any problems or shortcomings would be addressed during the review process by PennDOT.

11. The Township conditionally approved the preliminary plans for South Mountain Commons in April of 2007, which included a condition that the Developer submit an HOP application to PennDOT.

12. Petitioners appealed the preliminary land development approval to the York County Court of Common Pleas (which is currently pending before the Court).

13. In the meantime, Petitioners have been routinely inquiring with PennDOT about whether the Developer submitted its HOP applications for South Mountain Commons because Petitioners would like to have their professionals review the applications and associated TIS to determine if the deficiencies previously identified have been addressed.

14. As of October of 2007, the Developer had not yet submitted an HOP application and, therefore, there was no pending matter before PennDOT in which Petitioners could intervene.

15. However, Petitioners and their counsel recently learned that even though no formal application has been submitted the Developer has made an “informal” (but quite substantial) submission to PennDOT for South Mountain Commons, which included the submission of a TIS for PennDOT’s review and approval.

16. The scoping, review and approval of a TIS for a project is extremely important because the analysis and conclusions reached in a TIS directly determine what improvements, limitations or other action PennDOT will require for a development.

17. Petitioners do not know what action, if any, PennDOT has taken on the TIS for South Mountain Commons and because there is no pending “application” Petitioners are caught in a “catch-22”—on the one hand they cannot intervene to get a copy of and review the TIS because no application has yet been filed and on the other hand if Petitioners wait until the

Developer submits a formal application, PennDOT may already have reviewed and approved the TIS (thereby eliminating any meaningful review and input by Petitioners).

18. Petitioners' position is that the TIS for South Mountain Commons is not accurate and misstates the existing level of service and proposed level of service with improvements for key intersections affected by the development. For example, based upon the prior TIS submitted, Petitioners believe that the study, *inter alia*, underestimates existing traffic, underestimates background / other development traffic and fails to accurately identify peak traffic generated by the proposed development such that the projections of level of service for peak hours (and the determination of required improvements) are incorrect.

19. Petitioners believe and aver that the submittal of the TIS by the Developer has resulted or will result in a *de facto* review by PennDOT that will likely lead to agency action *before* a formal HOP application is submitted (including possible approval of the data, analysis and conclusions in the TIS that Petitioners submit is incorrect).

20. Because the agency's review of the adequacy and accuracy of the TIS for South Mountain Commons is the key action that determines how traffic from South Mountain Commons will be addressed, it is imperative that Petitioners and their professionals be permitted to intervene to fully participate in PennDOT's *de facto* review of the TIS.

21. Pursuant to 1 Pa. Code § 35.30, petitions to intervene may be filed at any time following the filing of an application, petition, complaint "or other document seeking agency action."

22. Petitioners as nearby property owners will be directly affected by the traffic generated by South Mountain Commons and therefore they have a substantial interest, both individually and as a local citizens' group, to intervene in this matter. *City Council of Pittsburgh*

v. City of Pittsburgh, 625 A.2d 138 (Pa. Cmwlth. 1993) (holding individual residents of neighborhood had standing because they lived in proximity to proposed use); *Keener v. Zoning Hearing Bd.*, 714 A.2d 1120 (Pa. Cmwlth. 1998) (same); *Pittsburgh Trust for Cultural Resources v. Zoning Bd. of Adj. of City of Pittsburgh*, 604 A.2d 198 (Pa. Cmwlth. 1992).

23. In addition, it is in the public interest to permit nearby property owners and residents to participate in the review process for a major development such as South Mountain Commons because of the public will be adversely affected if traffic from South Mountain Commons is not properly handled (thereby leading to congestion, traffic accidents and safety concerns) due to a flawed TIS.

WHEREFORE, for the foregoing reasons, Petitioners respectfully request the Pennsylvania Department of Transportation to grant the Petition to Intervene and allow Wayne Pealer, Catherine Pealer, Brad Pealer and Carroll Citizens for Sensible Growth to intervene in this matter.

Respectfully submitted,

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