

Brett C. Flower  
717.237.6072  
bflower@eckertseamans.com

March 27, 2026

**Via first class and  
electronic mail**

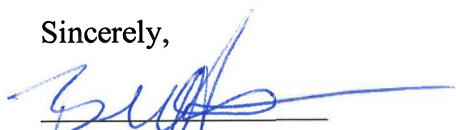
Jeffrey Esch McCombie, Esquire  
McNees Wallace & Nurick, LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108

**Re: Conditional Use Application of Archbald 1, LLC**

Dear Attorney McCombie,

Enclosed please find the written decision of the Archbald Borough Council regarding the conditional use application of Archbald 1, LLC in satisfaction of the service requirements of the Municipalities Planning Code.

Sincerely,

  
Brett C. Flower

Encl.

Cc : Nathan C. Favreau, Esquire  
Donald G. Karpowich, Attorney-at-Law, P.C.  
85 Drasher Road  
Drums, PA 18222  
Attorneys for Jack Swingle  
(for service w/ enclosures)

Tamara Healey  
241 North Main Street  
Archbald, PA 18403  
(for service w/ enclosures)

Jay O'Connor, Esquire  
(email only w/ enclosures)

**BOROUGH COUNCIL OF ARCHBALD BOROUGH,  
LACKAWANNA COUNTY, PENNSYLVANIA**

**IN RE:       APPLICATION FOR CONDITIONAL  
              USE OF ARCHBALD 1, LLC  
              Received December 16, 2026**

**DECISION**

Archbald 1, LLC (“Applicant”) submitted a conditional use application on December 16, 2026, to the Borough of Archbald, Lackawanna County, Pennsylvania (“Borough”) requesting approval to establish a data center campus, pursuant to Archbald Borough Code, Ordinance No: 04-2025 and Chapter 550, on the following fourteen (14) parcels (“Subject Parcels”):

| <b>Parcel Number</b> | <b>Address</b>               | <b>Parcel Number</b> | <b>Address</b>                       |
|----------------------|------------------------------|----------------------|--------------------------------------|
| 840101000103         | 1001 Eynon Jermyn Road       | 730301000204         | Off Route 6                          |
| 840101000102         | 1 Domiano Drive              | 730301000210         | Scranton<br>Carbondale<br>Highway L4 |
| 840101000106         | 2 Domiano Drive              | 730301000209         | Eynon Jermyn<br>Road, Lot 5          |
| 840101000104         | 1 Domiano Drive              | 730301000208         | Eynon Jermyn Road                    |
| 840101000107         | 3 Domiano Drive              | 8404010001           | State Highway<br>Route 648           |
| 730301000202         | Domiano Drive Off<br>Route 6 | 840401000101         | State Highway<br>Route 648           |
| 8401020001           | Off Route 6                  | 8404030002           | Eynon Jermyn Road                    |

A hearing was convened on February 11, 2026, at the Valley View High School auditorium at 6:00 PM before the Borough Council for the Borough of Archbald (“Council”). Public notice of the hearing was properly advertised in the Scranton Times. Written notice of the hearing was properly issued to the owner of each lot that is abutting, immediately across the street, alley, or

railroad from or within a 200 foot radius of the Subject Parcels. Notice of the hearing was posted at the Borough and on the Subject Parcels.

Jeffrey Esch McCombie, Esquire of McNees Wallace & Nurick, LLC was present on behalf of the Applicant. Nick Farris and Adam Davis provided testimony on behalf of the Applicant. Archbald Borough Zoning Officer, Brian Dulay, provided testimony on behalf of the Borough. Archbald Borough Solicitor, James J. O'Connor, Esquire, appeared for the Borough.

Jack Swingle requested party status before Council as a resident residing approximately one half mile from the proposed development. Attorney Nathan Favreau appeared on Mr. Swingle's behalf. Tamara Healey of 241 North Main Street, Archbald, Pennsylvania also requested party status without objection from the Applicant.

The following exhibits were entered into evidence by the Borough:

- Exhibit A: Affidavit of Publication
- Exhibit B: Borough of Archbald notice of public hearing
- Exhibit C: Property owner letters
- Exhibit D: Posting of Borough of Archbald notice of public hearing
- Exhibit E: Planning Commission advisory comments
- Exhibit F: Preliminary code office review

The following exhibits were entered into evidence by the Applicant:

- Exhibit A1: Landowners' information
- Exhibit A2: Landowners' authorization letters
- Exhibit A3: Adam Davis (Hyland) resume/cv
- Exhibit A4: Aerial exhibit
- Exhibit A5: Existing conditions plan
- Exhibit A6: Future land use map
- Exhibit A7: Zoning map

For reasons that will be explained herein, the following exhibits were provided to the Borough as part of the Applicant's conditional use application, but were not entered into evidence as not offered:

Exhibit A8: Concept plan - inset, landscaping, lighting  
Exhibit A9: Jorge Gonzalez-Rodiles (southland) resume/cv  
Exhibit A10: PPL letter dated February 10, 2026  
Exhibit A11: PA American Water letter dated February 6, 2026  
Exhibit A12: Lackawanna River Basin Sewer Authority letter dated January 23, 2026  
Exhibit A13: List of potential permits to develop and operate a data center  
Exhibit A14: Draft campus security plan  
Exhibit A15: Josh Wilson (ATCS) resume/cv  
Exhibit A16: Initial noise monitoring study  
Exhibit A17: Craig Mellott (TPD) resume/cv  
Exhibit A18: Traffic letter

The hearing of February 11, 2026 closed following the testimony of two Applicant witnesses. The date and time of the next hearing on this application was announced as March 19, 2026 on the record (Notes of Testimony (“N.T.”) at 130). The following day, on February 12, 2026, Counsel for the Applicant notified Attorney O’Connor regarding a scheduling conflict of one of his witnesses precluding the Applicant’s ability to appear at the announced date for the continued hearing and specifically recognizing “the procedural due process and planning hurdles” this created for the Borough. Further, Counsel conveyed his lack of availability for the week of March 30, 2026, through April 7, 2026, thereby showing Applicant’s knowledge and recognition that the second hearing would have to be held beyond the 45-day limitation. *See* the February 12, 2026 email correspondence from the Applicant attached hereto and incorporated herein as ***Exhibit 1***.

The Borough accommodated the Applicant’s request and rescheduled the hearing to March 23, 2026. As the hearing date was not announced on the record, it required public notice pursuant to the Municipalities Planning Code, 53 P.S. §§ 10101 *et seq.*, (“MPC”). The Borough submitted notice of the hearing date to the Scranton Times for publication as a newspaper of general circulation within the County. The request for publication of the notice on March 8, 2026 and March 15, 2026 was made by email and correspondence of Attorney O’Connor to the Scranton Times dated March 5, 2026. The March 5, 2026, e-mail and correspondence are attached hereto

and incorporated herein as ***Exhibit 2***. The Scranton Times confirmed its receipt and conveyed its intent to publish the requested notice on March 8, 2026 and March 15, 2026 by e-mail and Order Confirmation dated March 5, 2026. This March 5, 2026 e-mail and Order Confirmation from the Scranton Times is attached hereto and incorporated herein as ***Exhibit 3***.

On March 23, 2026, Zoning Officer Dulay called the Scranton Times seeking the Affidavit of Publication of the hearing. The Scranton Times stated that they had not published the notices as requested. The Scranton Times confirmed its error to the Borough by e-mails dated March 23, 2026 and March 24, 2026. The March 23, 2026 and March 24, 2026 e-mails of the Scranton Times confirming responsibility for its error are attached hereto and incorporated herein as ***Exhibit 4***. The Scranton Times also published an article about the hearing in which it stated that the hearing was not properly advertised due to the error of the paper. The article in which the Scranton Times announced fault is attached hereto and incorporated herein as ***Exhibit 5***.

As the hearing could not be held in accordance with the statutory requirements of the MPC, due to the unforeseen, and admitted, error of the Scranton Times in failing to publish public notice of the March 23, 2026 hearing despite its written assurance it would do so and through no fault of the Borough, the second hearing on the application could not be convened. The members of the public who appeared at the location in preparation of the hearing were notified that the hearing would be rescheduled.

#### FINDINGS OF FACT

1. The first hearing was timely held on February 11, 2026. (N.T. 6).
2. Jack Swingle was granted party status by Council and is represented by counsel. (N.T. 66).
3. Tamara Healey was granted party status by Council. (N.T. 69).

4. The second hearing date was announced on the record at the first hearing. (N.T. 130).

5. The Applicant subsequently requested a different date as the date announced at the conclusion of the initial February 11, 2026 public hearing posed a conflict for a witness. The February 12, 2026 email correspondence from the Applicant attached hereto and incorporated herein as *Exhibit 1*.

6. Counsel for the Applicant specifically recognized in this e-mail “the procedural due process and planning hurdles” this created for the Borough. Further, Counsel conveyed his lack of availability for the week of March 30, 2026, through April 7, 2026, thereby showing Applicant’s knowledge and recognition that the second hearing would have to be held beyond the 45-day limitation. Ex. 1.

7. At the specific request of the Applicant, the March 19, 2026, public hearing announced on the record at the time of the February 11, 2026 public hearing was rescheduled for March 23, 2026.

8. Hearings in this matter are to be held at Valley View High School in its auditorium due to the public interest and participation. As such, the scheduling of hearings is further limited by the availability of the multiple parties, attorneys, Councilmembers, and the venue.

9. In compliance with the Pennsylvania Municipalities Planning Code, specifically 53 P.S. Section 10908(1.2), the Borough properly sought the advertisement of the continued hearing for March 23, 2026. The March 5, 2026, e-mail and correspondence are attached hereto and incorporated herein as *Exhibit 2*.

10. The Scranton Times confirmed its receipt and conveyed its intent to publish the requested notice on March 8, 2026 and March 15, 2026 by e-mail and Order Confirmation dated

March 5, 2026. This March 5, 2026 e-mail and Order Confirmation from the Scranton Times is attached hereto and incorporated herein as ***Exhibit 3***.

11. The Scranton Times did not publish the notice of the hearing as requested. The Scranton Times confirmed its error to the Borough by e-mails dated March 23, 2026 and March 24, 2026. The March 23, 2026 and March 24, 2026 e-mails of the Scranton Times confirming responsibility for its error are attached hereto and incorporated herein as ***Exhibit 4***.

12. The Scranton Times also published an article about the hearing in which it stated that the hearing was not properly advertised due to the error of the paper. The article in which the Scranton Times announced fault is attached hereto and incorporated herein as ***Exhibit 5***.

13. The scheduled hearing date of March 23, 2026 was within 45 days of February 11, 2026.

14. The March 23, 2026 public hearing was not advertised due to no fault of the Borough.

15. Council's deadline to convene the next hearing or issue a decision is 45 days from February 11, 2026, or March 28, 2026.

16. Based upon these novel extenuating circumstances, the Borough sought a written extension of time in which to hold the second hearing from the Applicant. The March 25, 2026 e-mail from the Borough to the Applicant requesting that the Applicant agree, in writing, to an extension of time in which conduct this public hearing, as is permitted by the Pennsylvania Municipalities Planning Code, specifically 53 P.S. Section 10908(1.2), is attached hereto and incorporated by reference herein as ***Exhibit 6***.

17. Although the Borough had previously accommodated Applicant's request to move the March 19, 2026 hearing announced on the record at the time of the February 11, 2026 hearing,

Applicant denied the Borough's reasonable request under these unique extenuating circumstances. Correspondence of counsel for the Applicant declining to grant the Borough's request for an extension is attached hereto and incorporated herein as *Exhibit 7*.

18. Based upon the foregoing, the Borough advertised a special meeting to take place on Friday, March 27, 2026, for the purpose of considering the conditional use application at issue through the Scranton Times with the notice appearing in the paper on March 26, 2026.

19. Based upon the Applicant's refusal to agree in writing to an extension of time in which to conduct the second public hearing under these circumstances, Council held a special meeting on March 27, 2026, for the purpose of issuing a decision on the conditional use application of the Applicant prior to the deadline of March 28, 2026.

20. The Applicant has presented only a portion of its evidence in support of its conditional use application.

21. Council has not heard evidence of the traffic, noise, utility usage or other specific requirements of the application required by Ordinance 04-2025 and Chapter 550, although Council desires to hear such evidence and although Council has offered Applicant an opportunity to present such evidence.

22. The record is not complete as the Applicant has only partially presented its evidence to Council.

23. No public comment has been accepted on this matter.

24. The public and the parties have significant due process interests in the completion of the record in this matter.

### CONCLUSIONS OF LAW

1. The Borough properly opened the first hearing in the matter of the conditional use application of Archbald 1, LLC in accordance with the MPC on February 11, 2026.
2. Jack Swingle and Tamara Healey have standing to participate in this matter as parties due to their proximity to the proposed development location. N.T. 66, 69.
3. The Borough had 45 days from February 11, 2026 in which to convene any subsequent hearing or issue a decision when considering the conditional use application. 53 P.S. § 10913.2(b)(1). The hearing of February 11, 2026, closed following the testimony of two Applicant witnesses.
4. The date and time of the next hearing on this application was announced as March 19, 2026 on the record (N.T. 130). The following day, on February 12, 2026, Counsel for the Applicant notified Attorney O'Connor regarding a scheduling conflict of one of his witnesses precluding the Applicant's ability to appear at the announced date for the continued hearing and specifically recognizing "the procedural due process and planning hurdles" this created for the Borough. Further, Counsel conveyed his lack of availability for the week of March 30, 2026, through April 7, 2026, thereby showing Applicant's knowledge and recognition that the second hearing would have to be held beyond the 45-day limitation. Ex. 1.
5. The Borough acted in good faith setting on the record March 19, 2026 as the continued date for the next hearing on the Applicant's conditional use application.
6. At the specific request of the Applicant, the March 19, 2026 public hearing announced on the record at the time of the February 11, 2026 public hearing was rescheduled for March 23, 2026. The Borough acted in good faith in rescheduling the hearing when the Applicant conveyed its inability to appear at the announced hearing date.

7. In compliance with the Pennsylvania Municipalities Planning Code, specifically 53 P.S. Section 10908(1.2), the Borough properly sought the advertisement of the continued hearing for March 23, 2026. Ex. 2.

8. The Scranton Times did not publish the notice of the hearing as requested. The Scranton Times confirmed its error to the Borough by e-mails dated March 23, 2026 and March 24, 2026. Ex. 4. The Scranton Times also published an article about the hearing in which it stated that the hearing was not properly advertised due to the error of the paper. Ex. 5.

9. Based upon the clear, and admitted, error of the Scranton Times in failing to publish public notice of the March 23, 2026 hearing in contravention of its written assurance to the Borough that it would do so, the current record does not demonstrate compliance with the Ordinances of Archbald Borough.

10. Further testimony is necessary in order to create a complete record and enable Council to render a decision on the merits.

### DISCUSSION

The MPC sets forth the mandatory process for the consideration of conditional use applications by Borough Council. 53 P.S. § 10913.2. Where multiple hearings are necessary, subsequent hearings must occur within 45 days of the prior hearing or council must issue a decision within 45 days of the last hearing. *Id.* § 10913.2(b)(1). Failure of the governing body to convene a hearing or issue a decision within the required time limit results in the decision automatically deemed to have been rendered in favor of the applicant. *Id.* § 10913.2(b)(2).

The MPC requires that all hearings be held pursuant to public notice. *Id.* § 10908. Public notice means:

notice published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days and the second publication shall not be less than seven days from the date of the hearing.

53 P.S. § 10107.

The Borough took the normal and customary actions to hold the second hearing in accordance with the requirements of the MPC by announcing March 19, 2026 as the date of the next hearing on the record.

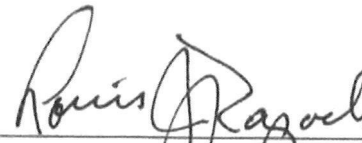
The Applicant subsequently requested a different date as the date announced at the conclusion of the initial February 11, 2026 public hearing posed a conflict for a witness and Applicant specifically recognized “the procedural due process and planning hurdles” its request created for the Borough. Further, Counsel conveyed his lack of availability for the week of March 30, 2026, through April 7, 2026, thereby showing Applicant’s knowledge and recognition that the second hearing would have to be held beyond the 45-day limitation. Ex. 1.

Council could not have held the hearing scheduled for the 23<sup>rd</sup> of March upon learning that the hearing had not been advertised due to the admitted error of the Scranton Times. Council could also not reschedule the hearing to a new date because compliance with the advertising standard of public notice requires that two notices are published in the newspaper for two successive weeks with the second not less than one week prior to the hearing date. Advertisement of a new hearing would have rendered Council out of compliance with the requirement to hold the next hearing within 45 days of the prior hearing resulting in a deemed approval in favor of the Applicant. Such an outcome would prejudice the parties to this action who were unable to present evidence on the record and the public with significant interest in this matter as no public comment was taken.

Under these unique circumstances, Council could not meet the statutory process of the MPC for the consideration of the complete record on the Applicant's conditional use application. The procedural defect was not created by Council as the Borough properly sought advertisement of the March 23<sup>rd</sup> hearing. The record in this matter is currently incomplete as the Applicant only presented two witnesses and a portion of its exhibits. Further, the two recognized citizen parties, the Borough, and the public have not had the opportunity to present evidence or comment as necessary for the consideration of the application to comport with due process. As presented, the testimony is not sufficient for Council to render a decision on the merits as the standards set forth in the Code of Ordinances of the Borough of Archbald have not been fully addressed.

As such, Council hereby denies the conditional use application of Applicant because the record is incomplete. This decision is not based upon the merits of the application as the parties have not completed the presentation of evidence and testimony on the record as is necessary to satisfy the requirements of due process. This decision is made strictly to avoid a deemed approval of the application and should a party appeal, Council supports remand for completion of the record or the holding of evidentiary hearings by the trial court as appropriate remedies to the novel procedural circumstances present here.

BOROUGH COUNCIL  
BOROUGH OF ARCHBALD

A handwritten signature in dark ink, appearing to read "Louis Rapoch", written over a horizontal line.

Louis Rapoch, President  
Archbald Borough Council

Date: March 27, 2026

**Any person aggrieved by this decision of the Borough Council of the Borough of Archbald may appeal to the Court of Common Pleas of Lackawanna County, Pennsylvania within thirty (30) days of the date of this decision.**

**EXHIBIT**

**1**

## Provident/Archbald I - CU Hearing #2

From: McCombie, Esch (jmccombie@mcneeslaw.com)

To: jjoesq1@aol.com

Cc: bdulay@archbaldboroughpa.gov

Date: Thursday, February 12, 2026 at 10:03 AM EST

Jay,

Unfortunately, Nick has a planned family vacation during the week of 3/19. He is not in a position to reschedule their long-standing reservations. As the Applicant, he obviously needs to be at the hearing. I apologize for not bringing this up last night so that a new date could be discussed and put on the record. The 3/19 date was locked in pretty quickly and we were caught a bit off guard. I understand that this creates some procedural due process and planning hurdles for you and Brian, but I'm not sure how else to handle it at this point.

I'm checking with our consultants to confirm availability for the week of 3/23. I'll let you know ASAP if that week is available.

Very much relatedly, I'm out of the country on a family trip at the end of March and start of April, and will be unavailable for a hearing from 3/30 through 4/7.

Let me know if we need to jump on a call to discuss hearing dates.

**Jeffrey Esch McCombie**  
*Co-Chair, Real Estate Group*  
[McNees Land Use Blog](#)



**McNees Wallace & Nurick LLC**  
100 Pine Street  
Harrisburg, PA 17101  
917-838-2854 (c)  
Email: [jmccombie@mcneeslaw.com](mailto:jmccombie@mcneeslaw.com)  
[Website](#) | [LinkedIn](#)

Guided by our Core Values  
Build Authentic Relationships Cultivate Excellence Champion Growth Achieve Balance

The foregoing message may be protected by the attorney-client privilege. If you believe it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error, then delete it. Thank you.

**EXHIBIT**

**2**



*Law Offices of*  
**JAMES J. O'CONNOR, ESQUIRE**  
496 North Main Street  
Archbald, Pennsylvania 18403  
Phone: (570) 876-5832

March 5, 2026

**VIA E-MAIL:** [legals@scrantontimes.com](mailto:legals@scrantontimes.com)

The Scranton Times  
Legal Advertising Department  
Penn Avenue and Spruce Streets  
Scranton, Pennsylvania 18503

**Re: Borough of Archbald – Archbald 1, LLC, Conditional Use Hearing  
My File No.: OC797**

Dear Sir/Madam:

Please be advised that the undersigned represents the Borough of Archbald as its Solicitor. In that regard, enclosed please find a Notice of Public Hearing in connection with a March 23, 2026 conditional use hearing which I would request you advertise in the Scranton Times. As this summary must be advertised once a week for two successive weeks prior to the public hearing, I would ask that you kindly advertise the enclosed summary on March 8, 2026 and again on March 15, 2026, and send the bill for this advertisement, along with the publication affidavit, directly to the Borough of Archbald at its Municipal Building located at 400 Church Street, Archbald, Pennsylvania 18403.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me directly.

Very truly yours,

**JAMES J. O'CONNOR**

Enclosure

cc: Archbald Borough Council (email, w/enclosure)  
Brian Dulay (email, w/enclosure)  
Mary Jane Calzola, Court Reporter (email, w/enclosure)

**BOROUGH OF ARCHBALD  
NOTICE OF PUBLIC HEARING**

The Archbald Borough Council will hold a Public Hearing on Monday, March 23, 2026, at 5:00 p.m., in the auditorium of Valley View High School, 1 Columbus Drive, Archbald, Pennsylvania 18403, on the Application of Archbald I, LLC, for a conditional use in connection with the construction of a data center campus located at lands between the Scranton Carbondale Highway, Business Route 6, SR 6006, and the Eynon Jermyn Road, SR 0123, located in the Borough of Archbald's C/L-1, C-2, R-2, I-2 and DC Overlay Zoning Districts.

James J. O'Connor, Esquire  
Solicitor, Borough of Archbald



Janet Bestrycki &lt;janetbest15@gmail.com&gt;

**Borough of Archbald - Archbald 1, LLC, Conditional Use Hearing - 03.23.26 Public Hearing**

1 message

**Janet Bestrycki** <janetbest15@gmail.com>

Thu, Mar 5, 2026 at 9:47 AM

To: legals legals &lt;legals@scrantontimes.com&gt;

Cc: David Moran &lt;dmoran@archbaldboroughpa.gov&gt;, Dan Markey &lt;dmarkey@archbaldboroughpa.gov&gt;, Brian Dulay &lt;bdulay@archbaldboroughpa.gov&gt;, Jay &lt;jjoesq1@aol.com&gt;, maryjanecalzola@gmail.com

Attached please find Attorney O'Connor's March 5, 2026 correspondence re: request for advertisement of the Notice of March 23, 2026 Public Hearing to be advertised on March 8, 2026 and again on March 15, 2026 in connection with the above referenced matter.

Should you have any questions, please do not hesitate to contact our office directly.

Thank you,

Janet Bestrycki

--

**LEGAL ASSISTANT**  
**LAW OFFICES OF JAMES J. O'CONNOR, ESQUIRE**  
**496 NORTH MAIN STREET**  
**ARCHBALD, PENNSYLVANIA 18403**  
**TELEPHONE: (570) 876-5832**  
**TELEFAX: (570) 876-1600**  
**E-MAIL: janetbest15@gmail.com**  
**E-MAIL FOR JAMES J. O'CONNOR, ESQUIRE: jjoesq1@aol.com**

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**2 attachments** **03.05.26 Scranton Times (Legal)(Archbald 1 LLC).pdf**  
345K **Notice of Public Hearing 03.23.26 (Archbald 1 LLC).pdf**  
185K

**EXHIBIT**

**3**



Janet Bestrycki &lt;janetbest15@gmail.com&gt;

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**Borough of Archbald - Archbald 1, LLC, Conditional Use Hearing - 03.23.26 Public Hearing**

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**DM Legals (Scrantontimes)** <legals@scrantontimes.com>

Thu, Mar 5, 2026 at 10:15 AM

To: Janet Bestrycki &lt;janetbest15@gmail.com&gt;

Cc: David Moran &lt;dmoran@archbaldboroughpa.gov&gt;, Dan Markey &lt;dmarkey@archbaldboroughpa.gov&gt;, Brian Dulay &lt;bdulay@archbaldboroughpa.gov&gt;, Jay &lt;jjoesq1@aol.com&gt;, maryjanecalzola@gmail.com

Hello,  
this has been received and will be published 3/8 and 3/15

Jess

[Quoted text hidden]

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 **AD82902194\_jnl.pdf**  
19K

NEPA - SCRANTON TIMES  
PO BOX 8003  
WILLOUGHBY OH 44096-8003  
(860)241-3054

ORDER CONFIRMATION

Salesperson: ESCALANTE JESSICA

Printed at 03/05/26 10:12 by jesca-st

Acct #: 5819

Ad #: 82902194

Status: New CHOLD

ARCHBALD BOROUGH  
ATTN DAWN  
400 CHURCH ST  
ARCHBALD PA 18403

Start: 03/08/2026 Stop: 03/15/2026  
Times Ord: 2 Times Run: \*\*\*  
TSLEG 1.00 X 28.00 Words: 102  
Total TSLEG 28.00  
Class: X1010 LEGALS & PUBLIC NOTICES  
Rate: CLL Cost: 291.12  
# Affidavits: 1  
Ad Descrpt: BOROUGH OF ARCHBALD  
Descr Cont: BOROUGH OF ARCHBALD NOTIC  
Given by: \*  
P.O. #:  
Created: jesca 03/05/26 10:07  
Last Changed: jesca 03/05/26 10:12

Contact: DANIEL MARKEY  
Phone: (570)876-1800  
Fax#: (570)876-5518  
Email: archbaldadmin@archbaldboroug  
Agency:

PUB ZONE EDT TP RUN DATES  
STTT CL 3 S 03/08,15  
STIN INTR 3 S 03/08,15

AUTHORIZATION

Under this agreement rates are subject to change with 30 days notice. In the event of a cancellation before schedule completion, I understand that the rate charged will be based upon the rate for the number of insertions used.

Name (print or type)

Name (signature)

**BOROUGH OF ARCHBALD  
NOTICE OF PUBLIC  
HEARING**

The Archbald Borough Council will hold a Public Hearing on Monday, March 23, 2026, at 5:00 p.m., in the auditorium of Valley View High School, 1 Columbus Drive, Archbald, Pennsylvania 18403, on the Application of Archbald 1, LLC, for a conditional use in connection with the construction of a data center campus located at lands between the Scranton Carbondale Highway, Business Route 6, SR 6006, and the Eynon Jermyn Road, SR 0123, located in the Borough of Archbald's C/L-1, C-2, R-2, 1-2 and DC Overlay Zoning Districts.

James J. O'Connor, Esquire  
Solicitor, Borough of Archbald

**EXHIBIT**

**4**

Re: Borough of Archbald - Archbald 1, LLC, Conditional Use Hearing - 03.23.26 Public Hearing

From: DM Legals (Scrantontimes) (legals@scrantontimes.com)  
To: bdulay@archbaldboroughpa.gov  
Cc: janetbest15@gmail.com; jjoesq1@aol.com; maryjanecalzola@gmail.com  
Date: Monday, March 23, 2026 at 03:11 PM EDT

Hi Brian,  
When trying to pull this affidavit for you, I realized this did not release for publishing from our system. This ad did not run.

I understand the severity of this, and how this hearing might have to be rescheduled. When you have the new notice please advise, and if there is anything I can do in the meantime let me know.

If you wish to discuss further, please give me a call directly at 570-209-9878.

On Mon, Mar 23, 2026 at 2:24 PM Brian Dulay <bdulay@archbaldboroughpa.gov> wrote:  
Jess,

Please email a copy of the affidavit.

Looking to use this evening.

Thanks,

Brian

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**From:** DM Legals (Scrantontimes) <legals@scrantontimes.com>  
**Sent:** Thursday, March 5, 2026 10:15 AM  
**To:** Janet Bestrycki <janetbest15@gmail.com>  
**Cc:** Dave Moran <dmoran@archbaldboroughpa.gov>; Daniel Markey <dmarkey@archbaldboroughpa.gov>; Brian Dulay <bdulay@archbaldboroughpa.gov>; Jay <jjoesq1@aol.com>; maryjanecalzola@gmail.com <maryjanecalzola@gmail.com>  
**Subject:** Re: Borough of Archbald - Archbald 1, LLC, Conditional Use Hearing - 03.23.26 Public Hearing

Hello,  
this has been received and will be published 3/8 and 3/15  
Jess

On Thu, Mar 5, 2026 at 9:48 AM Janet Bestrycki <janetbest15@gmail.com> wrote:

Attached please find Attorney O'Connor's March 5, 2026 correspondence re: request for advertisement of the Notice of March 23, 2026 Public Hearing to be advertised on March 8, 2026 and again on March 15, 2026 in connection with the above referenced matter.

Should you have any questions, please do not hesitate to contact our office directly.

Thank you,  
Janet Bestrycki

--

**LEGAL ASSISTANT**  
**LAW OFFICES OF JAMES J. O'CONNOR, ESQUIRE**  
**496 NORTH MAIN STREET**  
**ARCHBALD, PENNSYLVANIA 18403**  
**TELEPHONE: (570) 876-5832**  
**TELEFAX: (570) 876-1600**  
**E-MAIL: [janetbest15@gmail.com](mailto:janetbest15@gmail.com)**  
**E-MAIL FOR JAMES J. O'CONNOR, ESQUIRE: [jjoesq1@aol.com](mailto:jjoesq1@aol.com)**

--

**\*\*\* EFFECTIVE JAN. 26, 2026 NEW DEADLINES \*\*\***

**1:00 pm the day prior for Tuesday-Friday editions**

**SATURDAY: FRIDAY @12:00PM**

**SUNDAY: FRIDAY @2:00PM**

**MONDAY: DIGITAL ONLY/NO LEGALS**

**WYOMING COUNTY EXAMINER: FRIDAY WEEK PRIOR @10:00AM**

**VALLEY ADVANTAGE: FRIDAY WEEK PRIOR @10:00AM**

**Jessica Escalante**  
**Legal Clerk**

Scranton Times-Tribune

The Citizens' Voice

The Standard Speaker

Pottsville Republican-Herald

Wyoming County Examiner

The Valley Advantage

570-209-9878

Re: Borough of Archbald - Archbald 1, LLC, Conditional Use Hearing - 03.23.26 Public Hearing

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From: DM Legals (Scrantontimes) (legals@scrantontimes.com)

To: bdulay@archbaldboroughpa.gov

Cc: janetbest15@gmail.com; jjoesq1@aol.com; maryjanecalzola@gmail.com

Date: Tuesday, March 24, 2026 at 09:45 AM EDT

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Due to our error, We will publish this notice when you are ready to publish, at no cost to you.

Rebecca  
Manager  
570-348-9161

On Mon, Mar 23, 2026 at 3:11 PM DM Legals (Scrantontimes) <legals@scrantontimes.com> wrote:

Hi Brian,

When trying to pull this affidavit for you, I realized this did not release for publishing from our system. This ad did not run.

I understand the severity of this, and how this hearing might have to be rescheduled. When you have the new notice please advise, and if there is anything I can do in the meantime let me know.

If you wish to discuss further, please give me a call directly at 570-209-9878.

On Mon, Mar 23, 2026 at 2:24 PM Brian Dulay <bdulay@archbaldboroughpa.gov> wrote:

Jess,

Please email a copy of the affidavit.

Looking to use this evening.

Thanks,

Brian

---

**From:** DM Legals (Scrantontimes) <legals@scrantontimes.com>

**Sent:** Thursday, March 5, 2026 10:15 AM

**To:** Janet Bestrycki <janetbest15@gmail.com>

**Cc:** Dave Moran <dmoran@archbaldboroughpa.gov>; Daniel Markey <dmarkey@archbaldboroughpa.gov>; Brian Dulay <bdulay@archbaldboroughpa.gov>; Jay <jjoesq1@aol.com>; maryjanecalzola@gmail.com <maryjanecalzola@gmail.com>

**Subject:** Re: Borough of Archbald - Archbald 1, LLC, Conditional Use Hearing - 03.23.26 Public Hearing

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Thank you,  
Janet Bestrycki

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**E-MAIL: [janetbest15@gmail.com](mailto:janetbest15@gmail.com)**  
**E-MAIL FOR JAMES J. O'CONNOR, ESQUIRE: [jjoesq1@aol.com](mailto:jjoesq1@aol.com)**

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**\*\*\* EFFECTIVE JAN. 26, 2026 NEW DEADLINES \*\*\***

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Wyoming County Examiner

The Valley Advantage

570-209-9878

**EXHIBIT**

**5**

LOCAL NEWS

## Archbald sets Friday meeting on 18-data-center campus as deadline looms



A child holds a "No Data Centers" sign during a public hearing on the Project Green Mountain data center campus at the Valley View High School in Archbald on Thursday, March 19, 2026. (FRANK WILKES LESNEFSKY / STAFF PHOTO)

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Facing a Saturday deadline to approve or deny a plan to build 18 data centers, Archbald will hold a special meeting Friday on the developer's application.

Council will consider Archbald I LLC's application for Project Scott data center campus at 1 p.m. at the Municipal Building, 400 Church St. The developer proposes to build its campus along Eynon Jermyn Road and Business Route 6. Project Scott proposes up to 18 data centers, each up to 90 feet tall with a 154,850-square-foot footprint across about 400 acres. The campus would border Archbald's Staback Park.

The borough organized the special meeting after a Monday public hearing on the data center project did not take place. The borough canceled the hearing because public notices advertising the hearing did not run in The Times-Tribune.

The newspaper addressed the error in a statement Thursday.

"Due to a clerical error, The Times-Tribune did not publish a legal notice to advertise a public hearing regarding a data center development in Archbald," according to the statement. "Submitted by the borough solicitor's law office March 5 to run March 8 and 15, the legal notices would have advertised a hearing March 23 on a conditional use application filed by Archbald I LLC for an 18 data center campus along Eynon Jermyn Road and Business Route 6."

Monday's public hearing would have been the second regarding Archbald I's project. The borough held its first public hearing on the campus Feb. 11, but the developer behind Archbald I, Provident Realty Advisors of Dallas, Texas, only presented two of its five planned witnesses. The developer planned to provide testimony at a subsequent hearing from a data center engineer, a traffic engineer and a sound and noise consultant. Public hearings also give residents the chance to testify before council votes.

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The Pennsylvania Municipalities Planning Code, which provides the legal framework for municipal zoning, requires subsequent hearings to be held within 45 days, unless the applicant agrees to extend it. If the borough misses that deadline, it is “deemed an approval,” according to the MPC.

If Archbald I does not agree to an extension, council must vote on the project. If council does not vote, the developer’s application will be automatically approved.

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**SIGN UP**

By signing up, you agree to our [Terms of Use](#), [Privacy Policy](#), and to receive emails from The Times-Tribune.

The borough posted notice of Friday’s special meeting Wednesday on its website and published a public notice Thursday in The Times-Tribune.

**2026 > March > 25**

---

**EXHIBIT**

**6**

## Borough of Archbald Special Meeting

---

From: jjoesq1@aol.com (jjoesq1@aol.com)

To: jmccombie@mcneeslaw.com

Cc: jpr@elliottgreenleaf.com; tmisewicz@miehsalliance.com; bflower@eckertseamans.com;  
dmarkey@archbaldboroughpa.gov; bdulay@archbaldboroughpa.gov; janetbest15@gmail.com

Date: Wednesday, March 25, 2026 at 09:30 AM EDT

---

Dear Attorney McCombie,

Based upon the legal advertising error of the Scranton Times in connection with the March 23, 2026 public hearing the Borough intended to conduct on your client's conditional use application pursuant to the Pennsylvania Municipalities Code, please advise if your client will agree, in writing, to extend the time in which to conduct this public hearing pursuant to the MPC.

In the event your client will not agree, in writing, to extend the time in which to conduct this public hearing, attached please find a copy of the Notice forwarded to the Scranton Times this morning, scheduling a Special Meeting of the Archbald Borough Council for Friday, March 27, 2026 at 1:00 p.m., relating to the application of your client, Archbald I, LLC.

Jay

**LAW OFFICES OF JAMES J. O'CONNOR, ESQUIRE**  
**496 NORH MAIN STREET**  
**ARCHBALD, PENNSYLVANIA 18403**  
**TELEPHONE: (570) 876-5832**  
**TELEFAX: (570) 876-1600**  
**E-MAIL: [JJJOESQ1@aol.com](mailto:JJJOESQ1@aol.com)**



Notice of 03.27.26 Special Meeting.docx  
12.7 kB

**EXHIBIT**

**7**

## RE: Borough of Archbald Special Meeting

From: McCombie, Esch (jmccombie@mcneeslaw.com)

To: jjoesq1@aol.com

Cc: jpr@elliottgreenleaf.com; tmisewicz@miehsalliance.com; bflower@eckertseamans.com;  
dmarkey@archbaldboroughpa.gov; bdulay@archbaldboroughpa.gov; janetbest15@gmail.com;  
bkhuri@mcneeslaw.com

Date: Wednesday, March 25, 2026 at 02:51 PM EDT

Hello Jay,

It is unfortunate that this is the path Borough Council is choosing to take. Please review the attached letter and disperse copies to Borough Council for their review. Thank you.

Esch McCombie  
Co-Chair, Real Estate Group  
McNees Wallace & Nurick LLC  
Cell: 917-838-2854  
McNees Land Use Blog

---

**From:** jjoesq1@aol.com <jjoesq1@aol.com>  
**Sent:** Wednesday, March 25, 2026 9:31 AM  
**To:** McCombie, Esch <jmccombie@mcneeslaw.com>  
**Cc:** jpr@elliottgreenleaf.com; tmisewicz@miehsalliance.com; Brett C. Flower  
<bflower@eckertseamans.com>; Dan Markey <dmarkey@archbaldboroughpa.gov>; Brian Dulay  
<bdulay@archbaldboroughpa.gov>; Janet Bestrycki <janetbest15@gmail.com>  
**Subject:** Borough of Archbald Special Meeting

[EXTERNAL]

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Jay

**LAW OFFICES OF JAMES J. O'CONNOR, ESQUIRE**  
**496 NORH MAIN STREET**  
**ARCHBALD, PENNSYLVANIA 18403**  
**TELEPHONE: (570) 876-5832**  
**TELEFAX: (570) 876-1600**

E-MAIL: [JJOESQ1@aol.com](mailto:JJOESQ1@aol.com)



Letter to Council - Opposition to Special Meeting & Reservation of Rights.docx  
198.5 kB



McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Jeffrey Esch McCombie  
Direct Dial/Fax: 717.237.5310  
jmccombie@mcneeslaw.com

March 27, 2026

**VIA E-MAIL AND CERTIFIED MAIL**

Archbald Borough Council  
c/o Jay O'Conner, Esq. Borough Solicitor  
400 Church Street  
Archbald, Pennsylvania 18403

**Re: Archbald I, LLC and Provident Realty Advisors, Inc.  
Conditional Use - Notice of Procedural Objections and Preservation of Rights**

Dear Borough Council:

As you know, we represent Archbald I, LLC and Provident Realty Advisors, Inc. (collectively, "Applicant") in connection with the conditional use application ("Application") Applicant has pending before the Borough Council ("Council") for a proposed data center development commonly referred to as "Project Scott." We write to address the Borough's proposed special meeting, scheduled for March 27, 2026, at 1:00 PM, to act on the Application even though such action is inconsistent with the requirements of the Pennsylvania Municipalities Planning Code, 53 P.S. §§ 10101 *et seq.* ("MPC") and Applicant's due process rights.

By way of background, Applicant submitted the Application on December 16, 2025. The Application includes a written narrative, reports or studies from Applicant's consultants, and various other supporting documents. Applicant went before Council for a hearing on the Application on February 11, 2026. During the hearing, we presented testimony from a representative of Applicant and from the project's Pennsylvania civil engineer. Thereafter, Council ended testimony for the evening due to time constraints but did not set the date for the continued hearing on the record. Applicant's remaining experts, including a second civil engineer with an expertise in data center development, Applicant's sound consultant, and Applicant's traffic consultant were to testify at the continued hearing on a date to be determined.

March 23, 2026, was eventually chosen as the date for the continued hearing. Notice of the continued hearing was required to be provided in accordance with the MPC and the Borough's Zoning Ordinance because the continued hearing's date, time, and location were not put on the record during the February 11, 2026, hearing. It is the Borough's responsibility, and ultimately Council's responsibility, to ensure that the notice requirements of the MPC and the Borough's Zoning Ordinance are met. The Borough failed to advertise notice of the continued hearing in the newspaper in the manner required by the MPC and the Borough's Zoning Ordinance.

Applicant's counsel was made aware of the Borough's error at 3:19 PM on March 23, 2026, while en route to the hearing and less than 2 hours before the hearing was to begin. The Borough's Solicitor correctly concluded that the hearing could not occur due to the Borough's procedural error. Clearly, that failure was entirely outside Applicant's control and was the sole responsibility of the Borough.

At issue is the MPC's requirement that any continued hearing occur within 45 days of the prior hearing, unless

agreed to by the applicant in writing or on the record. If subsequent hearings are not held within the time period allotted by the MPC and the applicant does not grant an extension, the application is deemed approved.

Given that the original hearing on the Application was on February 11, 2026, the MPC requires that the next hearing occur by March 28, 2026. There is insufficient time for the Borough to provide the required notice for a hearing before March 28, 2026. Consequently, earlier today, the Borough's Solicitor informed Applicant's counsel that the Borough would not have another hearing and, instead, that the Borough intends to hold a special meeting on March 26, 2026, to act on the Application – **while the hearing on the Application remains open and incomplete**. To resolve the Borough's self-created procedural issue, the Borough gave Applicant an ultimatum: (a) grant an extension of time or (b) the Borough will move forward with its illegal special meeting and, presumably, attempt to deny the Application.

Applicant declines to be strong-armed into agreeing to an extension for the reasons set forth below.

1. The Borough cannot act on the application without completing the hearing.

Section 913.2(a) of the MPC, 53 P.S. § 10913.2(a), requires that a hearing be conducted before a governing body may approve or deny a conditional use application. The governing body's decision must be based on the record developed at the hearing. Here, the hearing was not completed and, in fact, remains open. Applicant was in the midst of presenting testimony when Council stopped testimony and continued the hearing to a future date.

Any vote to deny the Application before the hearing is completed would violate the MPC's procedural requirements and Applicant's fundamental due process rights. A decision rendered on an incomplete record is, by definition, arbitrary and capricious. Applicant has a right to present its full case before Council renders a decision. The Borough may not deprive Applicant of that right by voting on the Application while the hearing remains open.

We therefore formally object to any action by the Council on the conditional use application at the proposed March 26, 2026, special meeting or at any other meeting while the hearing remains open.

2. The Borough cannot penalize Applicant for the Borough's own failure.

The Borough's present predicament is entirely of its own making. Applicant was prepared to continue the hearing on March 23, 2026. The hearing did not occur because the Borough, and ultimately Borough Council, failed to ensure that the required public notice was provided. Applicant bears no responsibility for this failure. Publication of hearing notices is the Borough's obligation, and the Borough must bear the consequences of its failure to fulfill that obligation.

The Borough's proposed response—to act on the Application without completing the hearing because the Borough itself cannot meet the statutory deadline—would constitute bad faith and a fundamental denial of due process. The MPC's procedural protections exist to ensure that applicants receive a fair and complete hearing. Those protections cannot be circumvented simply because the Borough failed to properly administer the hearing process.

Moreover, requesting that Applicant grant an extension to cure the Borough's own error, and then penalizing Applicant for declining to do so, is an abuse of power. Applicant is under no obligation to waive its statutory rights to accommodate the Borough's failures. The deemed approval provision of the MPC, 53 P.S. § 10913.2(b)(1), exists precisely to protect applicants from municipal delay, municipal procedural failures, and municipal bad faith. Applicant is entitled to invoke that protection.

3. The Borough Council's clear bad faith given its capricious disregard of the evidentiary process and attempts to reach a predetermined result.

Council's attempt to strong-arm Applicant into an extension evidences Council's ongoing bad faith dealings with Applicant. Indeed, over the past month alone, in addition to the situation directly addressed by this letter, Council appointed a Planning Commission member who publicly led the charge against this and other data center projects. That Commissioner led opposition to this and other data center projects and is now in a role to deny Applicant's by right preliminary land development plan that is being processed by the Borough on a parallel path with the Application.

Further, under the influence of those opposed to the Application, members of Council ousted the prior leadership of Council. While this action is not illegal in and of itself, it certainly suggests institutional manipulation for a predetermined outcome.

Given the foregoing, Applicant hereby provides formal notice of its objections to the Borough's proposed course of action. Additionally, Applicant will not take part in the Borough's procedurally deficient meeting, asserts that it has not agreed to an extension of time for the Borough to hold another hearing on the Application, and, now formally declines to do so. Applicant preserves all rights under the MPC and applicable law, including its right to a deemed approval.

To be clear, a purported "decision" rendered without completing the hearing would not constitute a valid decision under the MPC. The Borough cannot satisfy the 45-day requirement by issuing a procedurally defective denial based on an incomplete record. Accordingly, unless the Borough completes the hearing and renders a lawful decision by March 28, 2026, Applicant will assert its deemed approval rights on that date.

We urge the Borough to reconsider its proposed course of action. The record shows that Applicant attempted to work in good faith with the Borough from the start. Unfortunately, the Borough has put Applicant in a position where Applicant cannot trust that the Borough is reciprocating. Therefore, Applicant is prepared to investigate and assert any and all potential claims of impropriety among Borough Council, its appointees, and the public should the Borough act on the Application at the special meeting.

Please feel free to contact me if you wish to discuss this matter further.

Sincerely,



Jeffrey Esch McCombie  
MCNEES WALLACE & NURICK LLC

cc: Dan Markey, Archbald Borough Manager (via email)  
Brian Dulay, Zoning Officer (via email)  
Brett Flower, Esq., Special Counsel (via email)

## **CERTIFICATE OF SERVICE**

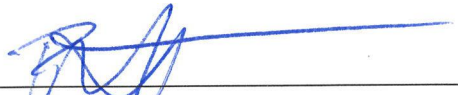
I hereby certify that I served a true and correct copy of the foregoing document on this date by depositing a copy of the same in the possession of the United States Postal Service, first-class mail, postage prepaid, addressed as follows:

Jeffrey Esch McCombie, Esquire  
McNees Wallace & Nurick, LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108  
*Attorneys for Applicant*

Nathan C. Favreau, Esquire  
Donald G. Karpowich, Attorney-at-Law, P.C.  
85 Drasher Road  
Drums, PA 18222  
*Attorneys for Jack Swingle*

Tamara Healey  
241 North Main Street  
Archbald, PA 18403

Date: March 27, 2026

  
\_\_\_\_\_  
Brett C. Flower