**Testimony on the**

**Central Delaware Riverfront Zoning Overlay District**

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Good afternoon. My name is Larry Silver and I am an environmental, zoning and land use attorney with Langsam Stevens & Silver in Center City, Philadelphia. I was asked by the Pennsylvania Environmental Council to review the bill under consideration, and to provide my thoughts on zoning and land development issues. I have also read the well-considered comments of the attorney for the Development Workshop in a May 28 letter to Shelley Smith.

Just so you know, I commute to work by bike most days, year-round, almost 20 miles roundtrip. I try to stay off road where possible, such as on the Schuylkill Banks trail. I am a supporter of the East Coast Greenway and have helped to promote its extension through Philadelphia. When I am riding on the streets of Philadelphia, I do not have the word LAWYER stitched on the back of my spandex. Safety first. ["Safety first" is the theme of my presentation today]

I wholeheartedly support this bill and am confident that it will improve the character, image, functionality and beauty of the City. It seems apparent that the bill may be challenged in court following passage. I strongly suggest two changes to the bill to make a legal challenge to the bill less likely.

First, Section 6 provides for a Waterfront Setback of a certain number of feet (hopefully 100) or minimum percentage (hopefully at least 20%) set back from the Delaware River, for placement of the recreational trail, and provides that the "Commission", i.e., the PCPC, shall consider "exceptions" for a particular property if the setback is determined by it to be "infeasible" based upon "objective standards" to be adopted by Commission regulations. I think it is a mistake for the bill to give to the City Planning Commission the power to grant such exceptions. The contemplated "exception" to the Waterfront Setback is a zoning variance, nothing more nothing less. Philadelphia's Home Rule Charter provides that the Zoning Board of Adjustments "shall" "hear and decide appeals in zoning matters ..." and authorize variances if not contrary to the public interest.[1] The well-known standard for a variance is "hardship" and the case law is well-developed on this point. The ZBA is the board empowered by the Home Rule Charter to consider variances, and has the experience to conduct contested hearings on "hardship", with appropriate procedure, including cross-examination and rulings on evidence. I ask you to protect this Bill by making it consistent with the Home Rule Charter.

Second, Section 12 of the Bill provides that the City Planning Commission shall consider Plans of Development for most properties within the Overlay District and approve such Plans, only "in its discretion" if the Plan "provides for development appropriate in scale, density, character and use in the surrounding community. …" Under the Bill, the City Planning Commission's decision is final, and appealable directly to Common Pleas Court. There may be a

[1] ZBA "shall" "hear and decide appeals in zoning matters ..." and "authorize, upon appeal, in specific cases, such variance from the terms of any zoning ordinance as will not be contrary to the public interest . ...". Home Rule Charter, Chapter 10, Sec. 5-1006:

legal question whether under Pennsylvania law the City may delegate such land development decisions entirely to a Planning Commission, and the Development Workshop has raised it a similar point. There is an easy fix to this potential problem. The Planning Commission can still consider and hold hearings on proposed Plans of Development, but the Commission should be tasked with making a recommendation to City Council for ultimate approval or disapproval.

My final comment addresses the Regulated Access provision of the Bill, Section 8. This comment is not suggesting a legal fix, but rather an improvement and clarification to the Bill. Section 8 provides that "[t]wo or more adjacent property owners may share access via an easement agreement between the parties." This language is too open-ended and subject to abuse. It is possible, as this is worded, for example, for ten adjacent property owners to agree that one access route on one of the properties will be provided to satisfy the requirement. Or 20 adjacent property owners.. Or 30. The Civic Vision contemplated multiple access point to the Recreational trail and the River. Again, the fix here is easy: the sentence should read "Two or more adjacent property owners may share access via an easement agreement between the parties so long as the easement is along the boundary lines between their adjacent properties."

Thank you.