TOWNSHIP OF INDIANA

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION OF THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF INDIANA GRANTING TENTATIVE APPROVAL OF THE INDIANA TRAILS PLANNED RESIDENTIAL DEVELOPMENT PURSUANT TO ARTICLE IV OF THE INDIANA TOWNSHIP ZONING ORDINANCE AND ARTICLE VII OF THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE

I. BACKGROUND

Fox Chapel Estates, L.P. ("Applicant"), seeks Tentative Approval of a Planned Residential Development ("PRD") which is to be located east of Dorseyville Road approximately 0.3 miles north of the intersection with Fox Chapel Road. The PRD consists of the development of the two properties identified as Tax Parcel ID Numbers 620-P-379 and 620-J-114 (collectively, the "Property") in Indiana Township (the "Township").

The Property is located in the Medium Density Residential ("MDR") Zoning District of the Township and consists of approximately 22.8 acres.

The Applicant is the equitable owner of the Property.

The Applicant submitted an Application for Tentative Approval of a Planned Residential Development dated April 13, 2022, along with related plans which were revised on September 1, 2022 ("Plan") and supporting documents and reports (collectively, the "Application") which proposed to develop the Property by creating a PRD consisting of a variety of housing types including 12 townhouse buildings with a total of 57 units, six two-family dwellings with a total of 12 units, one single-family dwelling, and a multi-family residential structure containing 30 condominium units.

The Applicant was previously granted approval on the same property by the Indiana Township Board of Supervisors ("Board") for a planned residential development known as the Fox Chapel Estates PRD ("Fox Chapel Estates").

Although the Board's decision was affirmed by the Hon. Joseph James of the Court of Common Pleas of Allegheny County, the Pennsylvania Commonwealth Court ultimately overturned the Board's approval of Fox Chapel Estates. *Gouwens v. Ind. Twp. Bd. of Supervisors*, 260 A.3d 1029 (Pa. Commw. Ct. 2021) ("*Gouwens II*"); *see also Gouwens v. Indiana Twp. Bd. of Supervisors* (Pa. Commw. Ct., No. 1377 C.D. 2018, filed June 25, 2019), 2019 WL 2587772 (unreported) ("*Gouwens I*").

The Township Subdivision and Land Development Ordinance applicable to the prior Fox Chapel Estates plan was repealed and replaced by Township of Indiana Subdivision and Land Development Ordinance No. 391 ("new SALDO" or "SALDO") which was enacted on April 13, 2021.

Accordingly, the Applicant was required to comply with the new SALDO for the Indiana Trails PRD Application.

The Application, as submitted by the Applicant, has been subject to reviews by the Township's Planning Commission and the Township's Engineer, Nichols & Slagle Engineering, Inc.

In addition to the above reviews, the Application has been the subject of numerous reports, comments, and correspondence from: representatives of the Applicant; the Township's staff; and individual owners of properties either located in close proximity to the proposed PRD, many of whom requested and were granted party status as Objectors.

A public hearing was held before the Board of Supervisors that commenced on October 11, 2022, and was continued to October 27, 2022, before ultimately concluding on November 22, 2022. There were members of the public present at the hearing. Additionally, Alan Shuckrow, Esq. and Alexis Wheeler, Esq. entered their appearances on behalf of Objectors, Matthew and Emily Gouwens. At the close of the public hearing, all parties were permitted to submit proposed findings of fact and conclusions of law on or before January 13, 2023, to be considered by the Township Supervisors.

As required by the provisions of Article IV of the Indiana Township Zoning Ordinance ("Zoning Ordinance") and Section 706 of the Pennsylvania Municipalities Planning Code ("MPC"), the Board of Supervisors, based upon all of the testimony and evidence presented, hereby issues the following:

II. FINDINGS OF FACT

1. The provisions of the above-stated Part I ("Background") are incorporated by reference as if fully set forth at length herein.

2. The Applicant filed the Application on April 13, 2022 ("the Application"). (Applicant's Exhibit 2).

3. The proposed PRD consists of two (2) parcels of land: Allegheny County Block and Lot Nos. 620-P-379 and 620-J-114, totaling approximately 22.8 acres located within the MDR Zoning District in the Township. (Applicant's Exhibit 2; Tr. p. 22: 22-24).

4. The Applicant is the equitable owner of the Property. (Tr. 50:7-11).

5. The PRD proposed by the Application includes four distinct housing types: 12 townhouse buildings with a total of 57 units, six two-family dwellings with a total of 12 units, one single-family dwelling, and a multi-family residential structure containing 30 condominium units. (Applicant's Exhibit 2; Tr. pp. 27: 11-23; 37: 2-8).

6. On May 20, 2022, the Township's engineer, Nichols & Slagle Engineering, Inc., completed its review of the Application and issued a "Tentative PRD Review" letter detailing its findings. (Applicant's Exhibit 4).

7. The Township Engineer also completed a review of the proposed PRD's stormwater management plan and issued a "Storm Water Management Plan Review" letter also dated May 20, 2022. (Applicant's Exhibit 3; Tr. p. 29).

8. The Application was reviewed by the Township Planning Commission ("Commission") at its August 24, 2022 meeting. (Tr. p. 17: 9-10; Planning Commission Meeting Minutes from August 24, 2022 Meeting).

9. On September 1, 2022, the Planning Commission issued a letter to the Board of Supervisors recommending tentative approval of the Application subject to conditions/modifications that the Planning Commission requested at their June 22, 2022 meeting. (Township Exhibit 3; Tr. p. 17: 5-17).

10. A duly advertised public hearing was commenced by the Board on October 12, 2022, at 6:00 p.m., which hearing was continued to October 27, 2022, at 6:00 p.m., before ultimately concluding on November 22, 2022, at 6:00 p.m. (Tr. pp. 1:1-630:1-7).

11. At the October 12, 2022 and November 22, 2022 public hearings, Applicant presented the testimony of four witnesses: Steven Victor from Victor-Wetzel Associates; Michael McLain, P.E. from ACA Engineering; Joshua Haydo, P.E., PTOE from David E. Wooster & Associates; and Thomas J. Comitta, AICP, CNU-A from Thomas Comitta Associates, Inc. (Applicant Exhibits 6,12,14, & 21; Tr. pp. 28-125; 126-144; 168-219; 486-488).

12. Steven Victor is a Pennsylvania registered landscape architect with the land planning firm of Victor-Wetzel Associates, who was qualified as an expert in the area of land planning by the Board. (Applicant Exhibit 6; Tr. p. 28:3-19).

13. The Board finds the testimony of Steven Victor to be credible.

14. Mr. Victor presented an overview of the PRD as reflected in the Application and supporting materials. (Tr. pp. 32:21–58:8).

15. Mr. Victor explained the PRD's features to the Board and testified regarding the PRD's compliance with the Zoning Ordinance requirements for tentative approval of a PRD. (Tr. pp. 32:21–58:8).

16. Section 409 of the Zoning Ordinance sets forth specific development standards for PRDs. (Zoning Ordinance 368, Art. IV, § 409).

Zoning Ordinance Section 409 – Development Standards

409(A) ("Ownership"):

17. Section 409(A) provides that the developer shall control the entire site for the development. (Zoning Ordinance 368, Art. IV, § 409(A)).

18. The Applicant is the equitable owner of the Property. (Tr. p. 50:7-11; Zoning Ordinance 368, Art. IV, § 409(A)).

409(B) ("Minimum Size"):

19. Section 409(b) provides that the site shall not be less than ten (10) contiguous acres. (Zoning Ordinance 368, Art. IV, § 409(B)).

20. The total site area of the two combined parcels which make up the Property is 22.8 acres. (Applicant Exhibits 7 & 10; Tr. p. 50:12-13; Zoning Ordinance 368, Art. IV, § 409(B)).

409(C) ("Frontage"):

21. Section 409(C) provides that the minimum frontage abutting a public right-of-way shall not be less than fifty feet (50'). (Zoning Ordinance 368, Art. IV, § 409(C)).

22. The PRD provides 365 feet of frontage on Dorseyville Road and 415 feet of frontage on Fox Chapel Road, both which are public roadways. (Applicant Exhibits 7 & 10; Tr. p. 50:14-19; Zoning Ordinance 368, Art. IV, § 409(C)).

409(D) ("Access"):

23. Section 409(D) provides that the site must provide for direct access from an arterial or collector street (as identified in the Township Comprehensive Plan) indicated on the development application for tentative approval in order to assure the proper convenient and safe access to the development plan without causing excessive congestion or pedestrian or vehicular traffic hazards on adjacent streets and intersections. (Zoning Ordinance 368, Art. IV, § 409(D)).

24. The PRD provides direct access from Dorseyville Road which is classified by the Township as a "collector street." (Applicant Exhibits 7 & 10; Tr. p. 50:20-23; Zoning Ordinance 368, Art. IV, § 409(D)).

409(E) ("Permitted Uses"):

25. Section 409(E) provides that a mixture of residential dwellings, recreational facilities, open space, green ways, putting greens, swimming pools, and accessory uses incidental to residential may be permitted in a PRD, provided that their arrangement, design, landscaping, pedestrian circulation plan, construction and public utility requirements established in this Section are met and the facilities are intended to be used for and by the owner's, tenants and guests only. (Zoning Ordinance 368, Art. IV, § 409(E)).

26. The PRD provides four distinct types of residential dwellings – multi-family condominiums, townhouses, two-family dwellings, and a single-family dwelling – and the swimming pool, dog park, trails, and recreational facilities, all which are principal and accessory uses permitted in a PRD. (Applicant Exhibits 7 & 10; Tr. pp. 50:24-51:7; Zoning Ordinance 368, Art. IV, § 409(E)).

409(F) ("Permitted Densities and Bulk Requirements"):

27. Section 409(F) provides that the Permitted Densities and bulk requirements are set forth in Table IV-A and Table IV-B, respectively. (Zoning Ordinance 368, Art. IV, § 409(F)).

28. The PRD provides for 4.4 dwelling units per acre which satisfies the density requirement. (Applicant Exhibits 7 & 10; Tr. p. 51:8-12. Zoning Ordinance 368, Art. IV, § 409(F)(1)).

29. The PRD provides proposed setbacks for all residential dwellings of 20-foot front setbacks, 10-foot rear setbacks, and 10-foot side setbacks. (Applicant Exhibits 7 & 10; Tr. p. 51:12-15 Zoning Ordinance 368, Art. IV, § 409(F)(2)).

409(G) ("Common Open Space"):

30. Section 409(G) requires that no less than twenty percent (20%) of the Development shall be set aside for Common Open Space. (Zoning Ordinance 368, Art. IV, § 409(G)).

31. "Common Open Space" is defined as "[a] parcel or parcels of land or an area of water, or a combination of land and water within a development site and designed and intended for the use or enjoyment of residents of a development not including streets, off-street parking areas, and areas set aside for public facilities." (Zoning Ordinance 368, Art. II, § 201).

32. Mr. Victor credibly testified that all areas of open space proposed by the developer, whether active or passive open space, is for the use and enjoyment of residents of the development (Tr. pp 88:7-25, 89-90).

33. The "Existing Conditions" Plan – Sheet 2 – of the Tentative PRD Plans shows that the Property has a perimeter of 4,030 feet which equates to a buffer area of 2.31 acres (4,030 ft. x 25 ft. ÷ 43,560 sq ft = 2.31 acres), therefore, the 25 foot buffer area around the perimeter, equaling 2.31 acres, results in net open space for the Plan, without the inclusion of the stormwater detention facilities or the buffer area, of 8.74 acres (11.05 - 2.31 acres) amounting to 38% of the Property, which is still above the 20% requirement in §409(G) of the Zoning Ordinance. (Applicant Exhibit 7).

34. Accordingly, at least 20% of the PRD will be set aside for common open space, as the Plan has 12.93 acres of total open space with 1.88 acres used by stormwater detention facilities which, if such detention areas cannot be counted under §409(G), still leaves 11.05 acres of net open space amounting to 48% of the Property. (Applicant Exhibits 7 & 10; Tr. p. 51:16-24. Zoning Ordinance 368, Art. IV, § 409(G)).

409(H) ("Common Open Space Maintenance"):

35. Section 409(H) requires open space to be dedicated or otherwise preserved and maintained as to always remain open. The land used for active and passive recreation must be acceptable according to the following provisions: (1) The land shall be deeded to an organization representing the property owners of the development; the organization shall covenant to operate and maintain the land or (2) The land shall be dedicated to the Township for township park use, provided the Township accepts the same. (Zoning Ordinance 368, Art. IV, § 409(H)).

36. The open space will be recorded as part of the Plan and ownership of the open space will be deeded to the Homeowners Association for maintenance and preservation. (Applicant Exhibit 10; Tr. pp. 51:25, 52:3; Zoning Ordinance 368, Art. IV, § 409(H)).

409(I) ("Buffer Area"):

37. Section 409(I) requires a twenty-five foot (25') buffer of land around the perimeter of the development site in which no development may take place. (Zoning Ordinance 368, Art. IV, § 409(I)).

38. The PRD will have 25 feet of buffer around the perimeter of the development. (Applicant Exhibits 7 & 10; Tr. p. 52:4-6; Zoning Ordinance 368, Art. IV, § 409(I)).

39. The Zoning Ordinance defines "Buffer Area" as "[a] strip of land, which is planted and maintained in shrubs, bushes, trees, grass, or other landscaping material and within which no structure is permitted, except a

wall or fence meeting Township standards. This includes open spaces, landscaped areas, fences, walls, berms, or any combination thereof used to physically separate or screen one use or property from another so as to visually shield or block noise, lights, or other nuisances. Buffers are to be maintained by the property owner or homeowners' association." (Zoning Ordinance 368, Art. II, § 201).

40. Article IV, Section 400 of the Zoning Ordinance states that a PRD must comply with all other ordinances and regulations not inconsistent with the requirements set forth in Article IV of the Zoning Ordinance. (Zoning Ordinance 368, Art. IV, § 400).

41. Because Article IV sets forth its own buffer area requirements specifically for PRDs, any buffer area requirements contained in the SALDO which are inconsistent with those set forth in Article IV are superseded and thereby not applicable.

42. The Board finds that the walking trail which the PRD proposes to be located in certain parts of the buffer area is not a structure otherwise prohibited in a buffer area as it is a natural hiking trail that is not cleared or paved but instead part of the landscape to be planted within the buffer area. (Applicant Exhibit 10; Tr. pp. 40:11-14; 80:1).

43. The small portion of the stormwater detention basins which are in the buffer area are amount to a berm which is specifically permitted in the buffer area under the definition of "Buffer Area" as set forth in the Zoning Ordinance. (Zoning Ordinance 368, Art. II, § 201).

409(J) ("Impervious Coverage"):

44. Section 409(J) requires that the total combined building and impervious surface for the entire site may not exceed fifty percent (50%).(Zoning Ordinance 368, Art. IV, § 409(J)).

45. The PRD provides for the development of the Property with only 5.9 acres of impervious surface which encompasses 26% of the Property. (Applicant Exhibits 7 & 10; Tr. p. 52: 7-11; Zoning Ordinance 368, Art. IV, § 409(J)).

409(K) ("Building Grouping"):

46. Section 409(K) requires that each building be used for multi-family dwellings and their accessory use buildings, shall be oriented in such a manner as to ensure proper air, light, and exposure for walls with windows. Each building shall be so arranged to avoid unnecessary exposure to large-scale parking and loading facilities and shall be so situated that there is privacy between buildings and audible privacy (noise) to and from adjacent lots. Any building

used, as a dwelling unit shall be sited so emergency vehicles can access it. (Zoning Ordinance 368, Art. IV, § 409(K)).

47. The PRD ensures that the proposed multi-family dwellings are oriented to allow proper air, light, and exposure for windows and will be situated so there is privacy between buildings, as the layout of the Plan avoids unit backyards facing other unit backyards with units instead backing to the provided open space and preserved vegetation and not being unnecessarily exposed to any large-scale parking and loading facilities. (Applicant Exhibits 7 & 10; Tr. p. 52:12-18; Zoning Ordinance 368, Art. IV, § 409(K)).

409(L) ("Minimum Building Space"):

48. Section 409(L) states that no structure shall be located closer than twenty-five feet (25') from any other structure in the development. (Zoning Ordinance 368, Art. IV, § 409(L)).

49. The PRD provides a minimum of 25 feet of separation between dwelling structures. (Applicant Exhibits 7 & 10; Tr. p. 52:19-21; Zoning Ordinance 368, Art. IV, § 409(L)).

409(M) ("Homeowners Associations"):

50. Section 409(M) states that when the Township is not accepting open spaces or areas used for recreation and storm water detention and areas between buildings, the landowner shall provide an organization (complete with Articles of Incorporation and Bylaws), homeowner's association or trust for such maintenance. (Zoning Ordinance 368, Art. IV, § 409(M)).

51. The PRD provides that a Homeowners Association will be responsible for the maintenance of open spaces (including the recreation areas), storm water detention areas, and areas between buildings. (Applicant Exhibit 10; Tr. pp. 52:22-53:4; Zoning Ordinance 368, Art. IV, § 409(M)).

409(N) ("Roads and Parking"):

52. Section 409(N) requires access to a PRD by a public street. The dimensions and construction of alleys, bikeways, roads, streets and parking areas provided within the PRD will comply with the standards of the Township at the time the application is approved whether the areas are dedicated to the Township or not. If a developer can justify the density of the development and the flow of its traffic, pedestrian and bikeways do not conform to such requirements, the Township Board of Supervisors may allow for lesser standards which shall not be contrary to the community goals and objectives (Article I, Section 104) and the Township Comprehensive Plan. Every single-

family dwelling unit is required to have access to a street or public right-of-way. (Zoning Ordinance 368, Art. IV, § 409(N)).

53. The PRD provides access from Dorseyville Road which is an Allegheny County-owned public street. (Applicant Exhibits 7 & 10; Tr. pp. 50:14-19; 53:5-12; Zoning Ordinance 368, Art. IV, § 409(N)).

54. The objective standard for cul-de-sac street length set forth in the SALDO is 1,200 feet as measured from the edge of the nearest roadway intersection to the centerline of the cul-de-sac. (Township SALDO § 500.04(B)(o)).

55. Darcy Court is 50 feet wide with a cul-de-sac length of 228 feet and Curtis Court is 50 feet wide and has a cul-de-sac length of 838 feet. (Applicant Exhibits 7 & 10; Tr. pp. 35:20-22; 62:11-21).

56. The PRD's compliance with the standard for cul-de-sac street length established in the SALDO overrides any other general concern about vehicular circulation from the provided street length.

57. The streets within the PRD are laid out to promote the orderly and efficient development of the Township and designed to ensure the health, safety, and general welfare of the residents of the Township as they provide for adequate internal circulation with compliant cul-de-sac terminuses to provide for ease of travel. (Applicant Exhibits 7 & 10; Township SALDO § 500.04(B)(o)).

58. The PRD provides an emergency-only access drive to Fox Chapel Road in a substantially similar location of an existing driveway on the Property which will be comprised of a hardened "Grasscrete"-type material that is reinforced to accommodate any type of emergency vehicle. (Applicant Exhibits 7 & 10; Tr. pp. 36:11-37:1).

59. The Township Fire Marshall and Fire Chief do not have concerns regarding emergency access to any dwelling units within the PRD or the design of the streets within the PRD. (Applicant Exhibit 24; Tr. pp. 566:5-567:9).

60. Section 500.04(B)(p) of the SALDO establishes that "PRDs with the total lot count in excess of 50 units shall be encouraged to provide a secondary ***or*** public access to the Development." (Township SALDO § 500.04(B)(p)).

61. The PRD provides secondary access through the emergency-only access drive connecting the Plan to Fox Chapel Road. (Applicant Exhibits 7 & 10).

62. "Access" is cross-defined as a "Street" under the SALDO which is "[a] right-of-way or dedicated land which affords access to abutting property which may include a street, avenue, boulevard, road, highway, freeway, parkway,

lane, viaduct, crosswalk and any other ways used or intended to be used by vehicular traffic, bikeway or pedestrians, whether public or private." (Township SALDO § 200.02(1), (116)).

63. The provided emergency-only access drive in the PRD is a secondary "access" as defined in the SALDO and such secondary access drive affords access to/from the abutting Fox Chapel Road to the PRD. (Applicant Exhibits 7 & 10).

409(O) ("Height Limitations"):

64. Section 409(O) requires that all structures located within the PRD not exceed thirty-five feet (35') in height measured from the finished first floor elevation and the highest peak of the roof. Chimneys, spires, towers, tanks, or similar projections may exceed the prescribed height limitation by not more than ten feet (10'). (Zoning Ordinance 368, Art. IV, § 409(N)).

65. No structures proposed to be constructed will exceed 35 feet. (Applicant Exhibits 7 & 10; Tr. p. 53:13-17; Zoning Ordinance 368, Art. IV, § 409(O)).

409(P) ("Phased Development"):

66. Section 409(P) states that the density (dwelling units per acre) of any phase of the development shall not exceed the allowable net density as permitted by Article IV. (Zoning Ordinance 368, Art. IV, § 409(P)).

67. The development of the PRD will only occur in one phase. (Applicant Exhibit 10; Tr. p. 53:18-21; Zoning Ordinance 368, Art. IV, § 409(P)).

Zoning Ordinance Section 400 ("Purposes"):

68. The PRD incorporates the latest storm water controls, utilizes the best management practices, and creates a diverse neighborhood with multi-family dwellings and high-density cluster development. (Applicant Exhibit 10; Tr. p. 41:18-25).

69. The PRD provides for a mixed residential development at a variety of price points with modern architectural designs including, but not limited to, high ceilings, energy efficient construction, a community pool, and a fitness room to create a more diverse neighborhood. (Applicant Exhibit 10; Tr. pp. 42:22-43:7).

70. The PRD provides four different types of housing – a multifamily apartment structure, townhouses, two-family dwellings, and a single-family dwelling – with various arrangements and designs for different market profiles from the

first-time buyer, the empty-nester buyer, and the maintenance-free buyer. (Applicant Exhibit 10; Tr. p. 43:8-18).

71. The PRD provides for an increased number of units and the clustering of such units create more taxpayers on the same length of public street and utilities than could otherwise be developed under a conventional subdivision plan, thus reducing the burden on the Township for the long-term maintenance of such public services. (Applicant Exhibit 10; Tr. pp. 43:19-44:3).

72. The PRD utilizes the latest durable paving and utility materials, employing storm water management controls which follow the latest NPDES and Pennsylvania Department of Environmental Protection best management practices, and providing dwelling units which have the latest energy conservation technology. (Applicant Exhibit 10; Tr. p. 44:4-14).

73. The PRD was designed in light of the developmental constraints on the Property due to its topography and accessibility through the clustering of the dwelling units to areas where the topography is flatter and, in a manner, to preserve the steeper wooded sloped areas and watercourse on the Property in perpetual open space. (Applicant Exhibit 10; Tr. p. 44:15-22).

Zoning Ordinance Section 401(F) – Criteria for Tentative Approval

401(F)(1):

74. Section 401(F)(1) states that the proposed PRD must comply with all applicable community development objectives of Article I. (Zoning Ordinance 368, Art. IV, § 401(F)(1)).

75. The PRD complies with the objectives of Article I of the Township because:

a. It protects the only environmentally sensitive area, the small watercourse by preserving that area from development;

b. It develops a vacant and underutilized property;

c. There are no sensitive environmental features, scenic landscapes or cultural resources on the Property except for the watercourse that is protected;

d. Except for the watercourse that is protected and preserved, there are no sensitive environmental features, scenic landscapes and cultural resources to be conserved;

e. The PRD is completely consistent with the goal of conserving environmentally sensitive features as the only environmentally sensitive feature is being preserved;

f. The use of a PRD results in the clustering of units which leaves a large portion of the Property preserved in perpetuity for open space;

g. The PRD uses the PRD process as encouraged by Allegheny Places and authorized by the Township Zoning Ordinance; and

h. The PRD provides for community facilities and public services which enrich the quality of life of its residents and is also attractive to new residents by including a community pool, conference room, fitness center, playground, dog park, and nature trails, along with the abundant natural open space, which provide recreation areas as well as passive enjoyment to the residents. (Applicant Exhibits 7 & 10; Tr. pp. 45-49, 490:18-25; 508:5-18).

401(F)(2):

76. Section 401(F)(2) states that where the proposed PRD provides standards varying from those in this Article and the subdivision regulations otherwise applicable to the subject property, a statement that such departure shall be in the public interest and will promote the health, safety, and general welfare of the public. (Zoning Ordinance 368, Art. IV, § 401(F)(2)).

77. As testified to by Mr. Comitta, the correct standard as established under Section 401(F)(2) of the Zoning Ordinance is not from the underlying base zoning district as testified by Mr. Trant but is from the specific requirements and standards established in Article IV of the Zoning Ordinance which specifically establish unique and separate standards and criteria for PRDs outside of the underlying base zoning district. (Tr. p. 491:6-22).

78. This standard is affirmed by the MPC which states that to "the extent to which the development plan departs from zoning and subdivision regulations otherwise applicable to the subject property," the Applicant must provide the reasons why such departures, if any, are in the public interest. (53 P.S. § 10709(b)(2)).

79. The zoning regulations applicable to the subject property for the Indiana Trails PRD are those set forth in Article IV of the Zoning Ordinance, not Article III as alleged by Mr. Trant.

80. The provided use on the subject property is a PRD which is governed by distinct and specific standards and regulations established by the Township in Article IV of the Zoning Ordinance for PRDs specifically. (Zoning Ordinance 368, Art. IV).

81. Therefore, if there are any departures from the regulations for PRDs set forth in Article IV of the Zoning Ordinance, such departures must be in the public interest.

82. The PRD has no departures from the applicable regulations established in Article IV of the Zoning Ordinance or the subdivision regulations otherwise applicable and is therefore in compliance with Section 401(F)(2). (Applicant Exhibit 10).

401(F)(3):

83. Section 401(F)(3) the proposal and methods for the maintenance and conversion of any proposed common open space must be reliable, and the amount and extent of improvements of the remaining land must be appropriate with respect to the purpose, use, and type of residential development proposed. (Zoning Ordinance 368, Art. IV, § 401(F)(3)).

84. The PRD provides that a Homeowners Association will be responsible for the maintenance of common open spaces (including the recreation areas), storm water detention areas, and areas between buildings. (Applicant Exhibit 10; Tr. pp. 52:22-53:4; Zoning Ordinance 368, Art. IV, § 409(M)).

401(F)(4):

85. Section 401(F)(4) states that the physical design of the proposed development plan must adequately provide for internal traffic circulation, and parking, light, air, recreation, and conservation of natural amenities, green ways, and open spaces. (Zoning Ordinance 368, Art. IV, § 401(F)(4)).

86. The PRD adequately provides for internal traffic circulation, off-street parking for residents and visitors, light, air, recreation and conservation of natural amenities, green ways, and open spaces (Applicant Exhibit 10; Tr. pp. 49:21-53:21).

401(F)(5):

87. Section 401(F)(5) states that the tract of the PRD must be harmonious and consistent with the neighborhood in which it is located. The flexibility of design innovation and unique treatment of the site is consistent with the purpose of the Zoning District and adjacent land uses. (Zoning Ordinance 368, Art. IV, § 401(F)(5)).

88. The PRD is harmonious and consistent with the MDR-zoned neighborhoods surrounding where it is located. (Tr. p. 33:15-19; Zoning Ordinance 368, Art. III, § 302(A); Table III-A).

401(F)(6):

89. Section 401(F)(6) requires that the proposed PRD afford a greater degree of protection of natural resources such as slide prone areas, water courses, riparian buffers, flood prone areas and flood plains, dense vegetative cover, trees having calipers of eight inches (8") measured three feet (3') or higher above the ground, than if the property in question were developed in accordance with the Township Subdivision and Land Development Ordinance. (Zoning Ordinance 368, Art. IV, § 401(F)(6)).

90. The PRD affords a greater degree of protection of natural resources than if the Property were developed in accordance with the Township SALDO. (Applicant Exhibit 10; Tr. p. 49:2-20).

91. If a conventional subdivision plan for the Property were to be developed it would result in 2 acres more of disturbance and would have no conservation of open space. (Applicant Exhibit 10; Tr. p. 49:2-20).

92. The PRD affords a far greater degree of protection of natural resources by preserving the natural watercourse on the property and resulting in less disturbance and more preserved, dedicated open space. (Applicant Exhibits 7 & 10; Tr. p. 49:2-20).

401(F)(7):

93. Section 401(F)(7) requires that when a PRD that proposes development over a period of years, the phased development schedule is sufficient to protect the interests of the public and of the residents of the PRD. (Zoning Ordinance 368, Art. IV, § 401(F)(7)).

94. The development of the PRD will only occur in one phase, so Section 401(F)(7) is not applicable. (Applicant Exhibit 10; Tr. p. 53:18-21; Zoning Ordinance 368, Art. IV, § 409(P)).

95. The PRD provides for economic growth and development in accordance with the PRD provisions of the Zoning Ordinance. (Applicant Exhibits 7 & 10; Tr. pp. 45-49, 490:18-25; 508:5-18).

96. There are no farmlands on the Property and the PRD provides for the protection of the existing watercourse on the Property and ensures the perpetual conservation of the significant open space on the Property. (Applicant Exhibits 7 & 10; Tr. pp. 45-49, 490:18-25; 508:5-18).

97. There are no sensitive environmental features, scenic landscapes or cultural resources on the Property except for the watercourse that is protected. (Applicant Exhibits 7 & 10; Tr. pp. 45-49, 490:18-25; 508:5-18).

98. The PRD provides for community facilities and public services which enrich the quality of life of its residents and is also attractive to new residents by including a community pool, conference room, fitness center, playground, dog park, and nature trails, along with the abundant natural open space, which provide recreation areas as well as passive enjoyment to the residents. (Applicant Exhibits 7 & 10; Tr. pp. 45-49, 490:18-25; 508:5-18).

99. The Allegheny County Economic Development (ACED) Planning Division is the designated planning agency for Allegheny County that is charged with reviewing and providing comments on land development and PRD applications to ensure compliance with the County's Comprehensive Plan, "Allegheny Places."

100. The PRD Application was submitted to the ACED Planning Division for review and comment. (Applicant Exhibit 26; Tr. pp. 568:18-569:4).

101. The ACED Planning Division offered no comments upon the submission of the Plan to state that the PRD was not in compliance with Allegheny Places or any other applicable County regulation. (Tr. pp. 568:18-569:4).

102. The PRD will significantly increase the Township's tax base through an increase in real estate tax income as well as local earned income taxes. (Applicant Exhibits 7 & 10; Tr. pp. 54:9-57:21).

103. The PRD is not in a flood-prone area and will not decrease the carrying capacity of the existing streams and floodplains within the Township because of the stormwater management system as described in the Stormwater Management Report. (Applicant Exhibits 7 & 10; Tr. pp. 54:9-57:21).

104. The mixture of housing units will provide greater diversity in new housing as encouraged by the Township's Comprehensive Plan. (Applicant Exhibits 7 & 10; Tr. pp. 54:9-57:21).

105. The PRD does not depart from the standards set forth in Article IV of the Zoning Ordinance or the SALDO applicable to PRD tentative approval. (Applicant Exhibits 7 & 10; Tr. p. 54:5-8).

106. Open space will be conveyed to a homeowners' association, which will maintain the open space for the use of the residents of the Plan. (Tr. p. 52:1-3).

107. There are no designated sensitive environmental features, scenic landscapes, or cultural resources on the Property other than the

watercourse in the corner of the Property which the PRD properly provides protection of and preserves. (Tr. pp. 492:20-493:10).

108. Applicant provided a Geotechnical report demonstrating the PRD's compliance with Section 505 of the Zoning Ordinance regarding Steep Slopes and Slide Prone Areas. (Applicant Exhibit 13).

109. Applicant also presented the testimony of Michael McLain, P.E. (Tr. p. 126:1-24; Applicant Exhibit 12).

110. Michael McLain, P.E. is a Pennsylvania licensed geotechnical engineer, who was qualified as an expert in the area of geotechnical engineering by the Board. (Tr. p. 126:1-24; Applicant Exhibit 12).

111. The Board finds the testimony of Michael McLain, P.E. to be credible.

112. A geotechnical investigation was performed on the Property through the drilling of 14 test borings throughout the Property. (Tr. pp. 127-129).

113. Slope stability was analyzed on the Property. (Tr. pp. 128:25-129:1-22).

114. The grading plan of the PRD was reviewed along with a United States Geological Survey map. (Tr. pp. 132:1-133:1-9).

115. A Geotechnical Report was developed and set forth detailed recommendations which included earth work specifications, compaction requirements, lift thicknesses, keyway details, and bearing capacity requirements to create a stable condition once the grading is completed as well as to rectify any landslide prone soils and permanently ensure slope stability.(Applicant Exhibit 13).

116. The recommendations provided in the Geotechnical Report have been incorporated into the PRD and the results of such recommendations meet industry standard factors of safety, exceeding such standards significantly in some areas, and ensure the long-term stability of the Property. (Applicant Exhibit 13; Tr. p. 126:3-133:20; 144:18-24).

117. Applicant submitted a Traffic Impact Study which demonstrated that the impacts from the PRD to the traffic operations on Dorseyville Road and Fox Chapel Road would be minor or have no impact. (Applicant Exhibits 15, 17, & 19).

118. Applicant also submitted a recent update to the Traffic Impact Study. (Applicant Exhibits 17 & 19; Tr. pp. 170:16-174:25).

119. Applicant also presented the testimony of Joshua Haydo, P.E., PTOE. (Applicant Exhibit 14; Tr. pp. 168:6-170:9).

120. Joshua Haydo, P.E., PTOE is a Pennsylvania licensed and registered engineer specializing in traffic engineering in Southwestern Pennsylvania, who was accepted as an expert by the Board in traffic engineering. (Applicant Exhibit 14; Tr. pp. 168:6-170:9).

121. The Board finds the testimony of Joshua Haydo, P.E., PTOE to be credible.

122. The Traffic Impact Study submitted with the Application studied the intersection of Dorseyville Road and Fox Chapel Road, as well as the site accesses of the PRD, and projected site-generated traffic onto the existing roadway network to identify if there would be any traffic impacts resulting from the Plan. (Applicant Exhibits 15, 17 & 19; Tr. pp. 170:10-174:25; 187:14-188:1).

123. Based on the proposed number of units and the specific variety of units, a connection from the PRD onto Dorseyville Road can be safely installed without any material negative impacts to the existing roadway network. (Applicant Exhibits 15, 17 & 19; Tr. pp. 170:10-174:25; 187:14-188:1).

124. The County issued a highway occupancy permit for the PRD's access to Dorseyville Road. Applicant Exhibits 16 & 18; Tr. pp. 171:14-21; 544:24-555:2).

125. Revisions to the PRD and the unit mix do not change the results of the Traffic Impact Study performed and the highway occupancy permit issued by the County is still valid for the revised plan. (Applicant Exhibits 18 & 19; Tr. pp. 172:17-174:18 & 544:24-555:2).

126. A number of objectors testified raising objections to the impact the PRD would have on traffic by raising general concerns and disapproval with the results of the Traffic Impact Study. (Tr. pp. 339-341; 349-350; 355-356; 372-376; 379-384; 402-405; 410-411; 420-421; 432-434; 441-443; 465-466; 470).

127. However, no objector offered a traffic study, as performed by a licensed traffic engineer, or otherwise, to refute the findings presented by Mr. Haydo.

128. A traffic study was performed in accordance with PennDOT and Allegheny County Traffic Impact Study requirements. (Tr. p. 540:18-22).

129. There are no Wetlands or Flood Plains on the Property. (Tr. p. 34:13-14).

130. The PRD provides streetlights which will be shielded and will not impact the adjoining property. (Applicant Exhibit 23; Tr. pp. 592:1-594:4).

131. A tree survey was performed on the Property. (Applicant Exhibit 7).

132. Allegheny Places was adopted by Allegheny County on November 5, 2008.

133. Subsequently, the Indiana & West Deer Townships Joint Comprehensive Plan was adopted by Indiana Township on September 14, 2010 ("Township Comprehensive Plan").

134. On November 9, 2011, Indiana Township enacted its Zoning Ordinance No. 368. (Zoning Ordinance 368).

135. Article IV of the Zoning Ordinance authorized Planned Residential Developments and prescribed requirements and criteria for PRDs. (Zoning Ordinance 368, Art. IV).

136. A PRD is authorized as a Permitted Use in the MDR District. Zoning Ordinance 368, Art. III, § 302.A and Table III-A).

137. Section 409 identifies the Development Standards that are applicable to a planned residential development plan. (Zoning Ordinance 368, Art. IV, § 409).

138. The Community Development Goals and Objectives are set forth in Section 104 of the Zoning Ordinance. (Zoning Ordinance 368, Art. I, § 104).

139. That section references the goals and objectives found in the Township Comprehensive Plan. (Zoning Ordinance 368, Art. I, § 104).

140. The Property was designated in Allegheny Places Future Land Use Map as Conservation Area and Infill Development. (Allegheny Places, Future Land Use Map).

141. Allegheny Places and the Township Comprehensive Plan are both planning documents that provide general guidance in regard to land use. Neither is legislative. (Allegheny Places – Implementation subpart B).

142. Allegheny Places takes a broad view in order to plan for things important at the county-wide level. Municipal comprehensive plans take a narrower view in order to address matters important to the municipality's interests and responsibilities. (Allegheny Places – Implementation subpart B).

143. Allegheny Places is implemented cooperatively through regulations crafted and adopted by local municipalities. (Allegheny Places, Executive Summary, Page 37).

144. The Township Comprehensive Plan identifies the existing land use for the Property as residential. (Township Comprehensive Plan, Page 54).

145. The Township Comprehensive Plan specifically considered the sensitive areas identified in Allegheny Places. (Township Comprehensive Plan, Page 71).

146. Allegheny Places identified Conservation Areas which included an area on the Property. (Allegheny Places – Future Land Use Map).

147. The Township Comprehensive Plan – Future Land Use Map also identified Conservation Areas but did not include all areas as included by Allegheny Places and did not identify any part of the Property as a Conservation Area. (Township Comprehensive Plan, Future Land Use, Page 72).

148. At the October 27, 2022 public hearing, Objectors, Matt And Emily Gouwens presented the testimony of John K. Trant, Jr. (Tr. p. 245).

149. Mr. Trant is the president of Strategic Solutions. (Objectors Exhibit No. 8; Tr. p. 245).

150. Based upon his education and training, Mr. Trant was accepted as an expert by the Board in zoning and land use planning. (Tr. p. 245: 15-19).

151. Mr. Trant testified about PRDs in general and also focused on the alleged departures of the PRD from the regulations contained in the Zoning Ordinance. (Tr. pp. 245-315).

152. However, Mr. Trant acknowledged that the Applicant is not seeking departures from the PRD regulations in the Zoning Ordinance. (Tr. pp. 281-284).

153. Despite repeatedly stating that the Board had discretion to deny the Application, Mr. Trant was unable to explain to the Board's satisfaction how the PRD did not meet the standards in Article IV of the Zoning Ordinance applicable to PRDs in the MDR Zoning District. (Tr. pp. 277-280).

154. Mr. Trant stated that he had concerns about access and traffic but acknowledged that he is not a traffic engineer. In light of the testimony provided by Mr. Haydo, as well as the Township's Fire Marshal, the Board does not find Mr. Trant's testimony regarding access and traffic to be credible.

155. A significant portion of the testimony provided by Mr. Trant addressed general legal processes and standards related to PRDs. (Tr. pp. 245-315).

156. While the Board finds Mr. Trant to be a generally credible witness, he provided limited testimony with respect to the Applicant's compliance with the objective criteria in the Zoning Ordinance and the Board does not give significant weight to his testimony.

157. At the November 22, 2022 public hearing, the Applicant presented the testimony of Thomas J. Comitta, AICP, CNU-A. (Tr. pp. 486-488).

158. Thomas J. Comitta, AICP, CNU-A, is a Pennsylvania registered landscape architect who was accepted as an expert by the Board in landscape architecture. (Applicant Exhibit 21; Tr. pp. 486-488).

159. Mr. Comitta testified, *inter alia*, that opinion provided by Mr. Trant regarding alleged departures of the PRD was incorrect. (Tr. p. 491:6-22).

160. Mr. Comitta testified that he reviewed and analyzed the Indiana Trails PRD as well as the Township Zoning Ordinance, the SALDO, the Township Comprehensive Plan, Allegheny Places, the Commonwealth Court opinions in *Gouwens I and II*, the Fox Chapel Estates PRD, and the aerial and street views of the Property. (Tr. p. 489:1-20).

161. Mr. Comitta testified that Allegheny Places and the Township Comprehensive Plan are both planning documents that are not legislative and are only meant to provide guidance in regard to land use. (Tr. p. 518:15-20).

162. Mr. Comitta testified that although Allegheny Places designates a portion of the Property for conservation, the Township Comprehensive Plan did not include any of the Property in designated conservation areas, and since it was adopted after Allegheny Places, such indicates a legislative decision to deviate from Allegheny Places in this regard. (Tr. p. 519:4-10).

163. Mr. Comitta explained that the correct standard to review departures of a PRD is not from the underlying base zoning district but from the specific requirements and standards applicable to PRDs, which in Indiana Township are established under Article IV of the Zoning Ordinance. (Tr. p. 491:6-22).

164. The Board finds the testimony of Thomas J. Comitta, AICP, CNU-A to be credible.

Objector Testimony

165. Township residents Matt and Emily Gouwens, Doug Golubic, Nadia Weidner, Joe Bursick, Kyle Rusche, Tony Speer, Steve Funk, Linda Massarelli, Steve Miloser, Andrew Mischetta, Donna Ludwig, Diane Briars,

Cindy Simons, Lois Bentz, Tim Kushon, James Leslie, Thomas Drake, Jamie Anderson, Daniel Walker, Phil Perez, Ned Spells, David McKamish, Steve Huegel, Deborah Krotec, Richard Arnott, Lucy Klimko, Chris Zacharias, Paul Kullmann, and Theresa Lang were confirmed as Party Objectors ("Party Objectors"). (Tr. pp. 21-26).

166. Other Township residents including Carol Walkowski, Denise Schmidt, Amy Plumley, Stephen Ellis, Kelly Brown, Michael Larson-Edwards, Margaux Willis, Brandice Miller, Susan Randall, Elissa Weiss, Nettie Owens, and Gary Schmidt, participated during public comment ("Public Commenters"). (Tr. pp. 444-473).

167. At the public hearings, the Party Objectors and Public Commenters raised concerns regarding the PRD, mainly regarding its alleged impact on traffic in the area; it's alleged impact on local schools; belief that the PRD is not harmonious with the surrounding area, the PRD's impact on natural resources, concerns regarding the developer and the potential builder of the PRD if tentative approval is granted. (Tr. pp. 317-332; 339-473).

III. CONCLUSIONS OF LAW

1. The Pennsylvania Municipalities Planning Code (53 P.S. § 10101, *et seq.*) ("MPC") permits municipalities to enact zoning provisions allowing for a PRD.

2. A PRD is as a permitted use in the MDR District in the Township. (Zoning Ordinance 368, Art. III, § 302(A); Table III-A).

3. The application for a tentative approval of a PRD shall be in lieu of all other procedures or approvals, otherwise required pursuant to Articles V and VI of the MPC. (53 P.S. § 10707(6)).

4. The requirements for approval of a PRD plan under Article IV of the Township Zoning Ordinance are an exception to and are in lieu of the provisions of the SALDO. (Zoning Ordinance 368, Art. IV).

5. While a PRD may incorporate some of the provisions of a zoning or subdivision ordinance, approval of a PRD under the PRD provisions replaces all other zoning and subdivision approvals. (53 P.S. § 10711(d)).

6. The MPC requires municipalities to set forth the standards, conditions and regulations governing PRD developments in accordance with the provisions of Article VII of the MPC. (53 P.S. § 10702(2)).

7. Section 705(a) of the MPC requires that all standards, conditions and regulations by which a proposed PRD shall be evaluated be consistent with

the subsections set forth in Section 705 (b) through (j). (53 P.S. § 10705(a)-(j)).

8. The development standards for a PRD in the Township are set forth in Section 409 of the Zoning Ordinance. (Zoning Ordinance 368, Art. IV, § 409).

9. The provisions for a PRD adopted by the Township are consistent with the Community Development Objectives and the Township Comprehensive Plan.

10. When a municipality enacts a PRD ordinance and permits PRDs in designated areas, it has in practical effect amended its comprehensive plan to permit this type of development. (Ryan on Zoning, Section 12.2.1).

11. To allow a municipality to reject a conforming PRD development because it did not also enact a formal amendment to its comprehensive plan would frustrate the PRD concept and give the comprehensive plan a force and effect that it simply does not possess under Pennsylvania law. (*Doran Investments v. Muhlenberg Twp.*, 309 A.2d 450 (Pa. Commw. Ct. 1973)).

12. A municipality has the flexibility in deciding whether to enact a PRD ordinance but it does not have the ability to block particular developments on an ad hoc basis. (Ryan on Zoning, Section 12.2.1.)

13. According to the Township's Zoning Ordinance, PRDs are meant to "encourage innovations in residential development, to better meet modern housing demands, to create variety in the type, design and arrangement of housing units, to conserve and permit economies in providing public services and to reflect changes in the technology in land development and to relate the development of land to the specific site." (Zoning Ordinance 368, Art. IV, § 400).

14. The Application meets all procedural requirements for tentative approval of PRD. (Findings of Fact ("FOF"), ¶¶ 2, 6-12).

Zoning Ordinance Section 401 – Criteria for Tentative Approval

15. The Application (and supporting materials) satisfies each of the eleven (11) criteria set forth in § 401(C) of the Zoning Ordinance for the Application and associated development plan:

    a. (1) Applicant provided a vicinity map which met the criteria, including enough of the surrounding area to demonstrate the relationship of the development to adjoining uses including neighboring residential development and light industrial facility.

b. (2) Applicant provided a topographical map with all relevant natural features;

c. (3) The overall net density of land use to be allocated to the specific areas of the tract to be developed was illustrated and noted on the plan;

d. (4) The Applicant provided the location and size of the open space and noted that a homeowners association was proposed to own and maintain the open space;

e. (5) Use and approximate height, bulk, and location of buildings and other structures was illustrated and noted on the plan;

f. (6) The feasibility of proposals for the disposal of sanitary waste and storm water and the approval of the servicing municipal authority was illustrated and noted on the plan;

g. (7) The substance of covenants, easements, or other restrictions proposed to be imposed upon the use of land, buildings, and structures, including proposed easements or rights of ways for public utilities was properly and fully included;

h. (8) The provisions for the parking of vehicles and the location of the width of proposed streets, alleys, and public ways were illustrated and noted on the plan;

i. (9) The Application did not include any requests for modification of the of land use regulations applicable to the subject property.

j. (10) The Plan calls for development in one phase so there is no requirement for showing schedule of phases; and

k. (11) The Application includes a written statement by the landowner setting forth the reasons why, in its opinion, a PRD would be in the public interest and would be consistent with the Township Comprehensive Plan for its overall land use development. (Zoning Ordinance 368, Art. IV, § 401(C)).

16. The plans and supporting documents submitted as part of the Application satisfy the criteria contained within §401(C). (Zoning Ordinance 368, Art. IV, § 401(C)).

17. The Application (and supporting materials) satisfies each of the seven (7) criteria set forth in § 401(F) of the Zoning Ordinance for Tentative Approval:

a. (1) the PRD complies with all applicable community development objectives of Article I of the Zoning Ordinance;

b. (2) the PRD provides no departure from the standards set forth in Article IV of the Zoning Ordinance or the SALDO applicable to PRD tentative approval;

c. (3) the PRD provides that open space will be conveyed to a homeowners' association, which will maintain the open space for the use of the residents of the Plan;

d. (4) the design of the PRD adequately provides for internal traffic circulation, off-street parking for residents and visitors, light, air, recreation and conservation of natural amenities, green ways, and open spaces as demonstrated through the PRD's compliance with Section 409 of the Zoning Ordinance;

e. (5) a PRD is a permitted use in the MDR District and therefore PRDs such as the Indiana Trails PRD are harmonious and consistent with the MDR zoned neighborhoods surrounding where it is located. There is also a variety in the lots of neighboring developments with lots as small as 4,692 square feet, so the proposed lot size of the dwellings in the PRD is consistent with adjacent land uses;

f. (6) the PRD also affords a greater degree of protection of natural resources by preserving the natural watercourse on the property and resulting in less disturbance and more preserved, dedicated open space than if the Property were developed in accordance with the Subdivision and Land Development Ordinance. In fact, if the conventional subdivision plan for the Property were to be developed it would result in 2 acres more of disturbance and would have no conservation of open space; and

g. (7) the PRD provides that development will occur in only one phase. (Zoning Ordinance 368, Art. IV, § 401(F)).

18. The Application (and supporting materials) satisfies each of the seven (7) criteria for tentative approval. (Zoning Ordinance 368, Art. IV, § 401(F)).

Zoning Ordinance Section 409 – Development Standards

19. The PRD satisfies all specific development standards for PRDs set forth in Section 409 of the Zoning Ordinance. (FOF ¶¶ 17-67).

409(A):

20. The PRD satisfies the ownership requirement of §409(A) as the Applicant is the owner by contract for the Property. (FOF ¶ 18).

409(B):

21. The PRD satisfies the minimum lot size requirement of §409(B) of 10 acres as the Property to be developed is 22.8 acres. (FOF ¶ 20).

409(C):

22. The PRD satisfies the minimum frontage requirement of §409(C) of not less than 50 feet abutting a public right-of-way as the Plan provides 365 feet of frontage on Dorseyville Road and 415 feet of frontage on Fox Chapel Road, which are both public roadways. (FOF ¶ 22).

409(D):

23. The PRD satisfies the requirement of §409(D) that direct access be provided from an arterial or collector street as Dorseyville Road is a County road which is classified by the Township as a collector street. (FOF ¶ 24).

409(E):

24. The PRD satisfies the permitted uses requirement of §409(E) as the provided four-types of residential dwellings – multi-family condominiums, townhouses, two-family dwellings, and a single-family dwelling – and the swimming pool, dog park, trails, and recreational facilities are all principal and accessory uses permitted in a PRD. (FOF ¶ 26).

409(F):

25. The PRD satisfies the maximum permitted density requirement of §409(F)(1) of 8 Dwelling units per acre as the Plan provides for 4.4 dwelling units per acre. (FOF ¶ 28).

26. The PRD satisfies the permitted bulk & area requirements of §409(F)(2) of a 20-foot front setback, a 10 foot rear setback, and a 10 foot side setback as the Plan provides proposed setbacks for all residential dwellings of 20 foot front setback, 10 foot rear setback, and 10 foot side setback. (FOF ¶ 29).

409(G):

27. The PRD satisfies the Common Open Space requirement of §409(G) of at least 20% of the Property as the Plan has 12.93 acres of total open space with 1.88 acres used by stormwater detention facilities which, if such detention areas cannot be counted under §409(G), still leaves 11.05 acres of net open space amounting to 48% of the Property. (FOF ¶¶ 31-34).

409(H):

28. The PRD satisfies the Common Open Space Maintenance requirement of §409(H) that open space be dedicated or otherwise preserved and maintained by an organization representing the property owners of the development as the open space will be recorded as part of the Plan and ownership of the open space be deeded to the Homeowners Association for maintenance and preservation. (FOF ¶ 36).

409(I):

29. The PRD satisfies the buffer area requirement of §409(I) of 25 feet around the perimeter of the development as such buffer area is provided in accordance with the Zoning Ordinance. (FOF ¶ 38-43).

409(J):

30. The PRD satisfies the maximum impervious coverage requirement of §409(J) of no more than 50% of the development as the Plan provides for the development of the Property with only 5.9 acres of impervious surface or 26% of the Property. (FOF ¶ 45).

409(K):

31. The PRD satisfies the building grouping requirement of §409(K) that multi-family dwellings be oriented to ensure proper air, light, and exposure for windows and be situated so there is privacy between buildings as the layout of the Plan avoids unit backyards facing other unit backyards with units instead backing to the provided open space and preserved vegetation and not being unnecessarily exposed to any large-scale parking and loading facilities. (FOF ¶ 47).

409(L):

32. The PRD satisfies the minimum building spacing requirement of §409(L) that no structure shall be closer than 25 feet from any other structure as the Plan provides a minimum of 25 feet of separation between dwelling structures. (FOF ¶ 49).

409(M):

33. The PRD satisfies the Homeowners' Association requirement of §409(M) as the Plan provides that a Homeowners' Association will be responsible for the maintenance of open spaces (including the recreation areas), storm water detention areas, and areas between buildings. (FOF ¶ 51).

409(N):

34. The PRD satisfies the Roads and Parking requirement of §409(N) that access to a PRD be provided by a public street as the Plan provides access to the development from Dorseyville Road which is an Allegheny County-owned public street. (FOF ¶¶ 53-63).

35. The PRD adequately provides for adequate internal traffic circulation. (FOF ¶¶ 53-63).

409(O):

36. The PRD satisfies the height requirement of §409(O) of structures not to exceed 35 feet as measured from the finished first floor elevation to the highest peak of the roof, as the Plan provides for all townhouses and one and two-family buildings with a maximum height of 25 feet, the multi-family structure with a maximum height of 35 feet, and no incidental structures exceed 25 feet. (FOF ¶ 65).

409(P):

37. The PRD satisfies the phased development density requirement of §409(P) as the Plan provides that development will occur in only one phase. (FOF ¶ 67).

Comprehensive Plan

38. Article I of the Township Zoning Ordinance provides that the purpose of the Zoning Ordinance is to implement the goals and objectives of the most recent Township Comprehensive Plan. (Zoning Ordinance 368, Art. I, § 104).

39. It is well established that comprehensive plans are non-binding and recommendatory in nature and do not actually regulate land use. *Michaels Dev. Co. vs. Benzinger Twp. Bd. of Supervisors*, 413 A.2d 743, 747 (Pa. Commw. Ct. 1980).

40. Further, the Commonwealth Court in *Michaels* has held that "inconsistency between [a PRD] application and the comprehensive plan, standing alone, is not a sufficient basis for the denial of tentative approval." *Michaels*, 413 A.2d at 746.

41. Based on the testimony and evidence provided at the public hearing, the Applicant has demonstrated that the Indiana Trails PRD is in compliance with all applicable provisions of the Township Zoning Ordinance and the Township SALDO for tentative approval of the PRD.

Distinction between Indiana Trails PRD and Fox Chapel Estates PRD

42. The Pennsylvania Commonwealth Court overturned the Board's approval of Fox Chapel Estates on the grounds that the plan: 1) failed to satisfy the "variety requirement" under Section 400 of the Zoning Ordinance; 2) failed to satisfy the "Common Open Space" requirement under Section 401(F)(3) of the Zoning Ordinance; and 3) failed to satisfy the internal traffic circulation requirements of Section 401(F)(4) of the Zoning Ordinance which cited to provisions of the Township of Indiana Subdivision and Land Development Ordinance.

43. The Indiana Trails PRD complies with Section 400 of the Zoning Ordinance by providing for a variety of four housing types – multi-family condominiums, townhouses, two-family dwellings, and a single-family dwelling – as well as Section 401(F) of the Zoning Ordinance by more clearly demonstrating that 48% of the Property will be utilized as Common Open Space, both in accordance with the Commonwealth Court's decision in *Gouwens I and II*. (Applicant Exhibits 7 & 10).

44. The Commonwealth Court's finding regarding internal traffic circulation has no impact on the Application as the Indiana Trails PRD is now subject to and compliant with the new SALDO provisions. (FOF ¶¶ 40-50).

45. The Indiana Trails PRD is a new application under Section IV of the Zoning Ordinance and the bases for the Commonwealth Court's adjudication in *Gouwens I and II* have been directly addressed and complied with in the Indiana Trails PRD.

Public Concern

46. As a general matter, the Party Objectors and Public Commenters voiced concerns regarding the PRD which included its alleged potential impact on local schools and concerns regarding to this particular developer, as well as the potential builder of the homes in the PRD if tentative approval is granted. (Tr. pp. 317-332; 339-473).

47. While the Board acknowledges the validity of these concerns, they cannot be considered as a basis for the Board's decision as they are speculative in nature, generally out of the control of the Township, and are not requirements contained in the Zoning Ordinance.

48. Essentially, because the Applicant met all the requirements of the Township Zoning Ordinance, the Board is required to grant approval.

49. Under Pennsylvania law, a PRD Application that is in compliance with all articulated requirements of the applicable ordinance may only be denied if there are "circumstances of a particular matter [that] might be so exceptional

as to support the conclusion that the plan in one or more respects, stated with particularity, would not be in the public interest." *Doran Investments v. Muhlenberg Twp.*, 309 A.2d 450, 459 (Pa. Commw. Ct. 1973).

50. Further, public interest objections may form the basis of a denial of a PRD Application, "but only if the objections are of a very specific and exceptional nature and have legitimate basis in law and fact." *Michaels*, 413 A.2d at 746.

51. Here, the Board has determined that the public interest objections that were raised were not of such a specific and exceptional nature that would have legitimate basis in law or fact to serve as the basis for a denial.

IV. DECISION

1. The provisions of the above-stated Part I ("Background"), Part II ("Findings of Fact") and Part III ("Conclusions of Law") are incorporated by reference as if fully set forth at length herein.

2. The Application for Tentative Approval of the Indiana Trails Planned Residential Development as attached hereto as **Exhibit A** and incorporated herein is approved as it meets all of the criteria of the Township Zoning Ordinance and SALDO.

3. The approval is conditioned upon Applicant's compliance with the Township Engineer's Stormwater Management Plan and Tentative PRD Review letters which were both dated May 20, 2022, and which are attached hereto collectively as **Exhibit B** and incorporated herein by reference.

4. The approval is also conditioned upon Applicant's compliance with relevant Township Ordinances, and Federal and State statutes and regulations, as well as any third party approvals including the Allegheny County Conservation District, the Pennsylvania Department of Transportation, and the Pennsylvania Department of Environmental Protection, as applicable.

5. The Applicant has agreed to and this approval is conditioned upon Applicant paying to the Township all applicable fees, including but not limited to a traffic impact fee, recreation fee, environmental fund and reimbursement of professional service fees as authorized under the Pennsylvania Municipalities Planning Code.

Accordingly, the APPLICATION FOR TENTATIVE APPROVAL OF THE INDIANA TRAILS PLANNED RESIDENTIAL DEVELOPMENT FILED BY FOX CHAPEL ESTATES, L.P. is **Approved**, subject to the conditions set forth in this Decision.

The foregoing Findings of Fact, Conclusions, and Decision were approved by majority vote of the Board of Supervisors of the Township of Indiana at the public meeting on February 15, 2023.

TOWNSHIP OF INDIANA

By: _____

Title: Mayor, Board of Supervisors

I, as Secretary and Manager of the Township of Indiana, County of Allegheny, Commonwealth of Pennsylvania, certify that this document constitutes an official communication by the Township's Supervisors and accurately reflects their decision on the above-captioned matter which was voted on at a properly advertised public meeting held on February 15, 2023.

_____

Daniel Anderson

Township Manager/Secretary

EXHIBIT "A"

Application for Tentative Planned Residential Development Approval

TOWNSHIP OF INDIANA

3710 Saxonburg Blvd., Pittsburgh, PA 15238

RECEIVED
MAY 11 2022
Dept. of Community & Economic Development
Indiana Township

APPLICATION FOR
TENTATIVE PLANNED RESIDENTIAL DEVELOPMENT APPROVAL

TO: CODE ENFORCEMENT OFFICER, INDIANA TOWNSHIP

THE UNDERSIGNED HEREBY SUBMIT, BY THE FILING OF THE FORMAL APPLICATION, A REQUEST FOR PRELIMINARY APPROVAL OF THE INDICATED PLANNED RESIDENTIAL DEVELOPMENT IN ACCORDANCE WITH THE ZONING AND LAND DEVELOPMENT REGULATIONS OF THE TOWNSHIP OF INDIANA.

1. Name of Applicant Fox Chapel Estates, LP
2. Address of Applicant 375 Golfside Drive
Wexford, PA 15090
Telephone Number 724-935-5257 Email Address: fre@comcast.net
3. Location of Property to be Subdivided Fronting on Dorseyville & Fox Chapel Roads

Total Acreage of Property 22.83 ACRES
4. Present Zoning Classification of Property MDR
5. Proposed Number of Lots **after** Subdivision 16
6. Proposed Name of Plan of Lots ~~FOX CHAPEL ESTATES~~ INDIANA TRAILS
7. Name of Property Owner(s), *if other than applicant* FOX CHAPEL ESTATES
Address of Property Owner(s) 375 GOLFSIDE DRIVE
WEXFORD PA 15090
Telephone Number 412-935-5257
8. Name of Registered Surveyor
Name of Registered Architect VICTOR-WETZEL ASSOCIATES
Name of Registered Engineer

THIS APPLICATION INCLUDES ALL SUPPORTING INFORMATION AS REQUIRED BY THE ZONING AND LAND DEVELOPMENT REGULATIONS OF INDIANA TOWNSHIP AND ALLEGHENY COUNTY. **THE TOWNSHIP'S CURRENT FEE SCHEDULE, WHICH IS SET BY RESOLUTION AS AMENDED, REQUIRES THE APPLICANT TO PAY ALL COSTS INCURRED WITH THE PLANNED RESIDENTIAL DEVELOPMENT APPLICATION.**

4/13/22
DATE

APPLICANT'S SIGNATURE

DAVID A. LUCCI
APPLICANT'S PRINTED NAME

FOR TOWNSHIP USE ONLY

1. Application for Preliminary Approval Received By
Date 5/11/2022 Fee Paid $ 1365.00
Scheduled for Planning Commission Meeting to be Held 5/25/2022

2. Preliminary Approval Granted by Planning Commission on
Preliminary Approval Granted by Board of Supervisors on

EXHIBIT "B"

Township Engineer's Stormwater Management Plan
and Tentative PRD Review letters
dated May 20, 2022

NICHOLS & SLAGLE ENGINEERING, INC.

PROFESSIONAL ENGINEERS

333 Rouser Road, Airport Office Park, Building 4, Suite 600, Moon Township, PA 15108-2773 - 412-269-9440 - Fax 412-269-0533

May 20, 2022

RECEIVED
MAY 23 2022
Dept. of Code Enforcement
Indiana Township

Mr. Daniel Anderson, Manager
Township of Indiana
3710 Saxonburg Blvd.
Pittsburgh, PA 15238

Subject: Township of Indiana
Fox Chapel Estates PRD
Preliminary Storm Water Management Plan Review
Resubmitted: April 13, 2022
NSE No. P465-540(j)

Dear Mr. Anderson:

Pursuant to your request, we have reviewed the resubmitted Fox Chapel Estates PRD Preliminary Storm Water Management Plan as prepared by Lennon, Smith, Souleret Engineering, in accordance with Ordinance No. 230 - Storm Water Management and offer the following comments:

1. Provide ACCD/PADEP approval of the E&S Control Plan/NPDES Permit.

2. Provide the storm sewer design and profiles for the proposed plan.

3. Provide the detention basin drawings and details.

4. Privately owned stormwater facilities will require a Stormwater Management Agreement, access easement and associated bonding. Plans with public roadways shall have publicly owned stormwater management facilities.

5. Provide PADOT HOP permit for proposed storm sewer crossing of Fox Chapel Road and for the gravel access driveway.

6. Provide Allegheny County HOP permit for proposed storm sewer connection along Dorseyville Road.

7. The Owner is required to establish a Special Stormwater Facility Management Fund of $16,000/basin for the proposed facilities to defray the cost of inspecting and maintaining the facility for a period of 10 years.

Should you have any questions regarding this matter, please do not hesitate to contact us.

Very truly yours,

Daniel B. Slagle, P.E.
Principal Engineer

DBS/SAM
cc: Jeff Curti, CEO
Fox Chapel Estates, LP
Victor-Wetzel Associates
Lennon, Smith, Souleret Engineering, Inc.

NICHOLS & SLAGLE ENGINEERING, INC.

PROFESSIONAL ENGINEERS

333 Rouser Road, Airport Office Park, Building 4, Suite 600, Moon Township, PA 15108-2773 - 412-269-9440 - Fax 412-269-0533

May 20, 2022

RECEIVED
MAY 23 2022
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Indiana Township

Township of Indiana
Fox Chapel Estates PRD
Tentative PRD Review
Submitted: May 11, 2022
NSE No. P465-540(k)

Location

The Planned Residential Development (PRD) is located east of Dorseyville Road, approximately 0.3 miles north of the intersection with Fox Chapel Road.

Description

The PRD consists of the development of Parcel 620-P-379 and Parcel 620-J-114 totaling 22.83 acres into 15 lots containing 70 Townhouse Units and 1 lot containing a 30 Unit Apartment Building for a total of 16 lots and 100 dwelling units.

Zoning

"MDR" Medium Density Residential

Ordinance No. 368 - Zoning

Article IV - Planned Residential Developments

Section 401 - Application and Review Procedures

C(6) Provide service availability letters from all utilities.

C(7) We understand covenants, easements, or other restrictions proposed to be imposed upon the use of land, buildings, and structures will be provided during Final Plan approval. Please note HOA protective covenants shall include restrictions on development of the grass strip located between driveways and O&M of the sidewalks and trees. Please provide Home Owner Association (HOA) agreements/covenants. Please provide management structure/ownership for the proposed apartments. Provide site distance triangle easements for both the entrance and access road to detention basin No.3.

Section 409 - Development Standards

B We understand a consolidation plan will be provided during Final Plan approval in order to comply with the 10 acre minimum requirement.

Section 510 - Traffic Impact Study Requirements

A Allegheny County Highway Occupancy Permit (HOP) site distance measurements are measured 10 feet behind the paved surface and adjust the sight distances accordingly. Provide intersection sight distances for proposed access driveway for Detention Basin No.3. Please provide Allegheny County HOP approval for the proposed entranceway into the development and access to Detention Basin No.3.

Ordinance No. 391 - Subdivision and Land Development

Chapter 400: Plan Requirements and Specifications

400.03 - Preliminary Plan

B(14) Provide design/profiles for all existing and proposed utilities for final approval.

B(16) Indicate any natural/artificial features that may impact this development.

B(18) A geotechnical engineer must be on site to certify proper fill compaction/keyway installation/benching. A professional certification shall be required at the conclusion of the project, prior to the release of any bonding, certifying the proper/safe construction of the foregoing.

B(20) Provide Consolidation Plan with recording covenants for final approval.

C.(2) Provide letters from all applicable utilities on service availability. All service lines shall be installed prior to paving or shall be bored. No roadway cuts will be allowed after asphalt roadway is constructed.

C.(3) The Stormwater Management Plan is being reviewed.

400.04 - Final Plan

F. Provide statement affixed to the plan stating: "The Township, by approving and executing this Final Plan, in no way undertakes any responsibility with regard to storm water runoff or wetlands or archeological sites and/or other environmental requirements or matters. Further, the Township undertakes no responsibility for operating any activities at the Subdivision."

G. Provide review letter from the Allegheny County Department of Economic Development. Provide Allegheny County Conservation District/PaDEP approval of NPDES Permit for earth disturbances in excess of one (1) acre. We understand that the plans propose to have all sewerage conveyed to DCDBA and not ALCOSAN. Provide planning module approval to connect to the public sewer system prior to starting any construction.

H. Highway Occupancy Permit - Provide Allegheny County Highway Occupancy Permit to access Dorseyville Road and for the storm sewer connection on Dorseyville Road.

Provide PADOT HOP for the storm sewer crossing of Fox Chapel Road and for the Access Road to Detention Basin #3.

Chapter 500: Design Standards and Specifications

500.04 - Streets

B. Public Streets

g. All utilities including service lines crossing streets shall be installed prior to paving. The pavement shall not be cut after the fact.

500.05 - Storm Sewers and Drainage Facilities

b. Storm sewers installed shall have a minimum diameter of 15 inches and a minimum slope of 1%. Please provide the storm sewer profiles.

c. Reinforced Concrete Pipe (RCP) shall be used under the paved portion of all streets and in all fill areas in excess of 15 feet deep.

d. Roof collector lines shall be PVC plastic pipe either Schedule 40 or SDR 35 having a minimum diameter of 6 inches. All roof collector lines shall be pressure tested to ensure a watertight seal.

500.06 - Protection of Trees and Woodlands

i. Please document all 8-inch trees on the tree survey. The Conservation and Environmental fund fee will be recalculated based on the total number of trees removed from the site. For each tree with a DBH of 21 inches or greater that is removed, the Developer shall provide an additional $1,500/tree to the Township which shall be set aside in the Township's Conservation and Environmental fund for future replanting at locations designated by the Parks and Recreation and/or Shade

Tree Committee. The proposed plan appears to involve removing 60 trees with a DBH of 21 inches or greater or a Conservation and Environmental fund of $90,000.

500.07 - Water and Sewer Systems

B. Sanitary Sewers

Provide the sanitary sewer design and profiles along with the approvals from Deer Creek Drainage Basin Authority and ALCOSAN.

500.08 - Fire Hydrants

Provide approval letter from the Fire Chief for the location of all proposed fire hydrants. Fire hydrants shall be placed not further than 500 feet from each proposed structure. Please document the location of all existing and proposed fire hydrants.

500.10 - Street Lights

Street lights may be required within the public street right-of-way, along all new public roadways, in all new Major Subdivision Plans including PRD based on housing density with a total lot count in excess of 50 units. The Planning Commission shall make recommendations to the Township Supervisors regarding street lights.

500.12 - Monuments

Concrete monuments shall be installed at all outside boundary corners and at or near the beginning and end of tangent sections of all streets to provide permanent horizontal control and shall be installed after the grading of lots has been completed and referenced.

Chapter 700: Infrastructure Impact Studies/Fees

700.02 - Parks and Recreational Areas

F. Please note that in lieu of recreational facilities, the Owner shall be required to pay the Township Recreational Fee of $825 per dwelling unit.

700.03 - Traffic Impact Study

B(c) Please note that the Owner shall be required to pay the Township Roadway Impact Fee of $1,686 per dwelling unit.

700.04 - Stormwater Management Plan

C(d) The Developer shall be required to contribute to the Special Purpose Stormwater Management fund fee of $16,000/basin.

Comments

1. A Township/State roadway bond must be posted if the material is hauled to or from the site.

2. Provide management structure/ownership agreement for the proposed apartment complex.

3. Provide signature of engineer, surveyor or other qualified person responsible for preparing plan.

4. Provide sanitary sewer easement for proposed construction on Parcel ID No. 620-G-362.

5. Provide school bus/mailbox cluster parking area along Olivia Court Cul-de-Sac.

6. We understand that the HOA shall own and maintain the open space areas. Please be advised that the HOA shall be responsible for all ongoing maintenance of lawn areas located within the public right-of-way including the entrance roadway.

7. The Owner shall enter into a Developer's Agreement and post a bond, escrow, or account approved by the Township Solicitor as to form and content, or such other security as may be permitted by the Municipalities Planning Code, in the amount of one hundred and ten percent (110%) of the estimated cost of the infrastructure improvements.

Recommendations

Our review is based on information prepared by others under the assumption that this information is accurate and complete. The Developer shall comply with the Township Ordinances and aforementioned comments and resubmit.

Very truly yours,

Daniel B. Slagle, P.E.
Principal Engineer

DBS/SAM
cc: Jeff Curti, CEO
Irv Firman, Esq.
Fox Chapel Estates, LP
Victor Wetzel Associates
Lennon, Smith, Souleret Engineering, Inc.
James and Mary O'Sell
Edward and Mary McCague