



RESOLUTION NO. 2015-31

APPROVAL OF FINAL PLAN FOR SECTOR THREE (PARTIAL –TOWNHOMES ONLY) OF PRD PLAN FOR ELLIS PRESERVE TOWN CENTER

WHEREAS, the Board of Supervisors of Newtown Township recite the following:

I. Introduction

1. This land development application is submitted by Toll PA XIII, L.P. (“**Applicant**”), equitable owner of 23.174 acres currently owned by Campus Investors Residential 1B, L.P., an affiliate of BPG/Equus, pursuant to an Agreement of Sale dated May 13, 2015.

2. On August 26, 2015, Applicant submitted to the Township an Application for approval of Final Planned Residential Development Plans for this Townhome Section of Sector

3. The Plans are entitled “Ellis Preserve Townhomes Final PRD Plans and Stormwater Management Report” sheets 1 through 45, dated August 21, 2015 and prepared by ESE Consultants, Inc. and concern the construction of 76 townhomes on a 23.174 acre parcel located in the Apartment Office AO zoning district with PRD Overlay. The application and supporting submissions as set forth in this paragraph are referred to as the (“**Application**”).

3. The subject premises of the present application is approximately 23.174 acres generally located at the Southwest corner of Goshen Road and SR 252, currently a part of Tax Parcel #30-00-02840-01 and more particularly described in the legal description attached hereto as Exhibit A and currently with PRD Tentative Approval for 100 townhomes with a minimum of

30% side entry garages, and currently part of a larger Planned Residential Development known as the Ellis Preserve Town Center (also referred to as Ellis Preserve Town Square) and currently planned as a mixed use development.

II. Relevant History

4. The Planned Residential Development is approximately 218.664 acres of land ("**Tract**") known as "Ellis Preserve" located adjacent to Route 3 (West Chester Pike), Route 252 (Newtown Street Road) and Goshen Road in Newtown Township ("**Township**"), Delaware County, Pennsylvania.

5. Pursuant to PRD Ordinance 2009-02, the Tract is located within the PRD Overlay District.

6. On January 22, 2009, BPG, Applicant's predecessor in interest, submitted to the Township an application for approval of its original Tentative PRD Plan ("**PRD Application**") for the Proposed Development, together with the supporting plans and other information required by the Township's PRD Ordinance ("**Tentative Plan Materials**").

7. A public hearing on the PRD Application was commenced before the Board of Supervisors on September 14, 2009 and was concluded on October 13, 2009 ("**Hearing**").

8. The Board of Supervisors found that evidence presented at the Hearing demonstrated that the Proposed Development was consistent with both the objectives of the PRD Ordinance and the Township's Comprehensive Plan and reflected the Township's vision for growth in the Newtown Square crossroads area contained therein. Accordingly, the Board of Supervisors, on December 3, 2009, issued a written decision approving the PRD Application,

with detailed findings of fact and conclusions of law in support of its Decision (“**Original Approved Tentative Plan**”).

9. On or about August 12, 2013, the Township Board of Supervisors passed zoning text amendments to the underlying SU-1 District located generally at Sector 2 of the Amended Tentative Plan and on October 28, 2013, the Township Board of Supervisors also passed zoning map and text amendments for the PRD’s underlying zoning district generally located at Sector 3 of the Amended Tentative Plan, changing the underlying zoning to AO.

10. On or about January 23, 2014, the Applicant submitted an application to amend the text of the PRD Ordinance.

11. On June 9, 2014, the aforementioned PRD text amendment was adopted by the Board of Supervisors by Ordinance No. 2014-001.

12. On or about January 23, 2014, the Applicant also submitted to the Township an application for Amended Tentative Plan approval for the Proposed Development (“Amended Tentative Plan”). The Amended Tentative Plan contains provision for 100 townhomes as part of the relevant portion of Sector 3, with widths ranging from 24-26 feet and a minimum percentage having side loaded garages in accordance with the existing PRD design standards and contains other changes to Sectors 1 and 4 unrelated to this application.

13. The Amended Tentative Plan incorporated all of the materials previously submitted with the original PRD Application.

14. A public hearing on the Amended Tentative Plan was commenced before the Board of Supervisors on June 9, 2014 and June 23, 2014.

15. Immediately following the hearing on June 23, 2014, the Board of Supervisors approved the Amended Tentative Plan for the Ellis Town Center with a number of outstanding conditions as set forth in the Findings of Fact, Conclusions of Law and Decision of December 3, 2009 and a number of new conditions as set forth in the Findings of Fact, Conclusions of Law and Decision of June 23, 2014, both of which are incorporated herein.

16. On September 23, 2014 the Pennsylvania Supreme Court affirmed decisions dismissing challenges to the Township's PRD Ordinance and the Original Tentative Plan Approval.

III. Review of the current Application

17. The current application is related to the townhome portion of Sector 3.

18. Among other things, the application seeks to reduce the number of townhomes from 100 to 76, increases the width of the townhomes to a minimum of 30 feet, and eliminates all side entry garages in favor of front entry garages.

19. To accommodate these changes, there are changes to general lay out of the townhomes, causing a reduction in the amount of open space in this portion of Sector 3, but which will not reduce the amount of overall required open space required throughout the PRD, and all perimeter set backs of 200 feet are maintained.

20. In addition, while the PRD design manual requires 6 foot wide sidewalks, the Application provides for 4 foot sidewalks in the Townhome section of Sector 3, consistent with the Township Zoning Code requirements for residential areas.

21. The Application also includes the subdivision of Sector 3 to create 2 additional lots: 1) the 23.174 acre lot that is the subject of this application, and which is being sold to applicant; an 2) an additional lot consisting of the historic John West house and surrounding grounds which will be retained by the Campus Investors Residential 1B, L.P. The new 23.174 acre lot being purchased by Applicant will withdraw from the Ellis Planned Community, but shall remain part of the Planned Residential Development, the Amended Tentative Plan and remain subject to all of the corresponding provisions and requirements associated with these unless otherwise modified by this resolution.

22. The Township Engineer reviewed the Application and made comments in the form of a review letter dated October 1, 2015. The review letter is attached as Exhibit B.

23. The Newtown Township Fire Marshall reviewed the Application and made comments in the form of a review letter dated August 29, 2015, which among other things, made recommendations regarding the emergency access road, which will not be open to regular vehicular traffic. The review letter is attached as Exhibit C.

24. On October 8, 2015, the Newtown Township Planning Commission considered the Application and recommended approval subject to certain conditions. The Planning Commission October 22, 2015 "Action Memo" related to this recommendation is attached as Exhibit D.

25. On September 17, 2015, the Delaware County Planning Commission reviewed the Application and recommended disapproval on the sole basis that it did not believe that the sole means of ingress/egress and internal traffic circulation for the 76 dwelling units is sufficient for efficiency and safety , subject to certain conditions. The review letter is attached as Exhibit E.

26. The Municipal Authority Engineer, James W. MacCombie, P.E., reviewed the PA DEP Sewage Facilities Planning Module associated with this application and issued comments in the form of a review letter dated February 18, 2015. The review letter is attached as Exhibit F.

27. Applicants engineer, by way of a letter dated March 5, 2015 responded to the aforementioned review letter of the Municipal Authority Engineer. The March 5, 2015 response is attached as Exhibit G.

28. The Municipal Authority Engineer then provided further comments on June 29, 2015, which are attached as Exhibit H.

29. The Developer and the Township have engaged in additional discussions to clarify various conditions and requirements of this approval.

IV. Resolution

NOW THEREFORE, the Board of Supervisors of Newtown Township hereby RESOLVES:

- a) The recitals set forth above are incorporated herein by reference.
- b) The Application, while containing changes from the Amended Tentative Plan Approval and the Original Final Phase I Plan, is generally consistent with the said Plans and any changes contained therein are not contrary to the public interest, provided the conditions set forth below are met to the satisfaction of the Township Engineer, and therefore a public hearing is not required in accordance with Newtown Code Section 172-100.36.G(1) and H(2). and
- c) The Application is approved, subject to:

i) the Applicant must comply with all applicable conditions and promises set forth or incorporated in the June 23, 2014 Amended Tentative Plan Approval and the September 13, 2010 Original Final Phase I Plan Approval, unless expressly modified in the current Application, or subsequently approved by the Board of Supervisors;

ii) the Applicant must comply with all comments, conditions and assurances set forth in Exhibits B through E, G and H, to the satisfaction of the Township Engineer, Township Solicitor, Fire Marshall and Municipal Authority, as appropriate, including but not limited to the ability of all appropriate emergency apparatus being able to travers the emergency access;

iii) BPG/Equus must amend and present for approval of the Township Solicitor and Township Engineer changes to the approved PRD "Design Manual" to reflect any modifications associated with the approval of this Final Plan;

iv) Applicant must obtain necessary planning approval from the Department of Environmental Protection, and approval from the Newtown Township, Delaware County, Municipal Authority for sanitary sewer connection and design and enter into such agreements for connection and treatment as are required by the Municipal Authority;

v) Applicant will execute a Stormwater Management and Maintenance Agreement and contribute to the Township Stormwater Management Maintenance Fund;

vi) Applicant shall obtain an NPDES permit for stormwater discharge;

vii) The applicant shall calculate and quantify to the Township Engineer the reduction of “open space” in the Sector 3 Townhome section between the Amended Tentative Plan and this Approved Partial Final Plan, so that the overall open space requirements can be adequately tracked and benchmarked as the PRD is further developed;

d. Applicant has requested, and the Township grants, a waiver from Township Code Section 148-43(B)(4) allowing for the use of HDPE storm pipe in lieu of RCP as approved by the Township Engineer. However, all storm pipe within the rights of way external to the PRD development will be RCP.

e. Applicant shall comply in all respects with all applicable Township Codes, ordinances and regulations, as well as any applicable County, State or Federal regulations; including but not limited to payment of any fees in lieu of recreation land;

f. Applicant shall enter into a Developer's and Escrow Agreement with the Township to be prepared by the Township Solicitor; and

g. This Approval is contingent upon payment of all outstanding professional fees/escrow replenishment, within 45 days of approval, except as properly challenged in accordance with the MPC.

RESOLVED, this 26th day of OCTOBER, 2015, at a public meeting of
the Board of Supervisors.

BOARD OF SUPERVISORS
NEWTOWN TOWNSHIP

ATTESTED

BY: *Joseph V. Catania*
Joseph V. Catania, Chairman

Stephen M. Nease
Stephen M. Nease, Secretary

