



**RESOLUTION NO. 2016 - 04**

**APPROVAL OF SECOND AMENDED TENTATIVE PLAN**

**PRD PLAN (ELLIS PRESERVE TOWN CENTER)**

WHEREAS, the Board of Supervisors of Newtown Township having considered the Application for approval of the Second Amended Tentative PRD Plan for the Ellis Preserve Town Center (also referred to as Ellis Preserve Town Square) submitted by BPG Development Company/Equus Capital Partners, Ltd. ("**Applicant**"), successor in interest to BPG Real Estate Investors – Straw Party 1, L.P., et al. ("**BPG**"), and following public hearing, the Board of Supervisors of Newtown Township, Delaware County hereby RESOLVES that the application for approval of the Second Amended Tentative PRD Plan for the Ellis Preserve Town Center is hereby APPROVED subject to conditions as set forth hereinafter in the Findings of Facts, Conclusions and Decision, approved this same date.

RESOLVED, this 11<sup>th</sup> day of January, 2016, at a public meeting of the Board of Supervisors.

BOARD OF SUPERVISORS  
NEWTOWN TOWNSHIP

BY: \_\_\_\_\_

  
John A. Nawn, Chairman

ATTESTED

  
Stephen M. Nease, Secretary

**BEFORE THE BOARD OF SUPERVISORS OF NEWTOWN TOWNSHIP,  
DELAWARE COUNTY**

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<b>IN RE: APPLICATION OF BPG REAL ESTATE</b>	<b>:</b>
<b>INVESTORS – STRAW PARTY - 1, L.P. ET AL.</b>	<b>: Application No. 2015-15</b>
<b>FOR APPROVAL OF SECOND AMENDED</b>	<b>:</b>
<b>TENTATIVE PRD PLAN</b>	<b>:</b>

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

Upon consideration of the Application for approval of the Second Amended Tentative PRD Plan for the Ellis Preserve Town Center (also referred to as Ellis Preserve Town Square) submitted by BPG Development Company/Equus Capital Partners, Ltd. (“**Applicant**”), successor in interest to BPG Real Estate Investors – Straw Party 1, L.P., et al. (“**BPG**”), and following public hearing, the Board of Supervisors of Newtown Township, Delaware County approves the application for approval of the Second Amended Tentative PRD Plan for the Ellis Preserve Town Center subject to conditions as set forth hereinafter and submits the following Findings of Facts, Conclusions and Decision pursuant to Sections 405.1 and 405.2 of the Township of Newtown Planned Residential Development Ordinance of 2009, as amended (“**PRD Ordinance**”) and the Pennsylvania Municipalities Planning Code, 53 P.S. Section 10709:

**I. Findings of Facts**

1. The Applicant is the owner of 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.

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

3. The applicant has sought to develop the Tract as a mixed-use development to be known as the “Ellis Preserve Town Center” (“**Proposed Development**”) in accordance with the provisions of the PRD Ordinance.

4. 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**”).

5. 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**”).

6. 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 (“**Approved Tentative Plan**”). The December 4, 2009 findings of fact of fact and conclusions of law are attached hereto as Appendix 1 and are incorporated herein by reference.

7. 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.

8. On September 13, 2010, the Board of Supervisors approved the Final Phase I Plan for Sector 1A of the 13 acre portion of the Proposed Development bounded by West Chester Pike, Route 252 and Winding Way (the “Final Phase I Plan” which reduced the number of buildings with Sector 1A from 7 to 5 and reduced the total square footage within that sector to 39,573 square feet.

9. On June 23, 2014, the text of the PRD Ordinance was amended by the Board of Supervisors, Ordinance No. 2014-001, which among other things modified certain setback distances including from Goshen Road and Route 252, and certain dimensional requirements of residential buildings.

10. On or about June 23, 2014, the Township also approved an amendment to the Tentative Plan (“Amended Tentative Plan”) containing the following modifications to the Approved Tentative Plan:

a. It reflects removal of 71,884 square feet of industrial buildings, the addition of 19,233 square feet of office space and addition of parking spaces within Sector 4 to reflect current conditions;

b. The layout of Sector 1A has been modified to be consistent with the approved Final Plan for Sector IA;

c. The layout of Sector 2 has been modified, but the total office square footage and number of buildings has not changed;

d. The layout of Sector 3 has been modified in a manner consistent with underlying AO Zoning District. These modifications increase the total square footage devoted to townhouses to 300,000 square feet. However, these modifications are permitted by the PRD Ordinance, as amended;

e. The total retail and office square footage and parking configurations within Sector I have been revised to compensate for the residential increase within Sector 3, and the proposed non-residential square footage table has been revised to reflect these changes;

f. The parking calculations have been modified to reflect the square footage modifications;

g. The total amount of open space has been reduced from 71.24 acres (32.56%) to 69.84 acres (31.9%);

h. Existing underlying zoning boundaries were added to the plan.

i. The Development Schedule has been modified to move the townhouse construction in Sector 3 forward, and the dates for final plan submission have been revised accordingly.

j. Minor revisions to utility locations and roadway improvements were made consistent with the revisions noted above.

11. Said July 14, 2014 approval was subject to all unsatisfied conditions of the December 3, 2009 Findings of Fact, Conclusion of Law and Decision, except as modified on July 14, 2014, including the following maximum density and intensity:

**Sector 1**. In addition to the existing buildings, there shall be no more than:

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|----|--|--|
| A. | Commercial/retail/restaurant   | 464,560 square feet  |
| B. | Office   | 14,667 square feet   |
| C. | Residential  | 310 units which shall contain no more than 377,372 square feet of floor area |
| D. | Hotel  | 178,250 square feet  |
| E. | 100,000 square feet of flexible space that may be devoted to either office and/or hotel use. |  |

F. Although the existing office use of the existing cottages is not included within the overall office limitation set forth in B. above, any change in use of the existing cottages from office to commercial/retail/restaurant or expansion of the floor area of any existing cottage shall count towards the commercial/retail/restaurant square footage limitation set forth in A. above.

G. Although the existing fitness facility is not included within the overall commercial/retail/restaurant limitations set forth in A. above, any building addition to the existing fitness facility shall count towards the commercial/retail/restaurant square footage limitation set forth in A. above.

**Sector 4.** 52,651 square feet of space removed from existing buildings in Sector 4 may be added back in the future redevelopment of that Sector.

12. In addition, since the approval of the Amended Tentative Plan, the applicant has received final approval for portions of the plan, which approvals contained variations from the Amended Tentative Plan which the board found to be consistent with the Amended Tentative Plan, including:

a. a Second Amended Final Plan for Phase I and Phase IA on March 9, 2015 related to accommodate a Whole Foods grocery store and other changes to commercial buildings in that Phase;

b. a partial Final Plan for Sector 3 (Townhomes Only) on October 26, 2015 that among other things, increased the permissible size of the townhomes, reduced the number of Townhomes from 100 to 76 and eliminated the side entry garage requirement as set forth on the Amended Tentative Plan; and

c. the Third Amended Final Plan for Phase I and IA on November 23, 2015, related to, among other things, the final approval for the hotel and changing the orientation of building 29.

13. On January 11, 2016, the text of the PRD Ordinance was amended by the Board of Supervisors, Ordinance No. 2016-001, which among other things modified certain allowable building footprints, adjusted allowable footprints of certain commercial buildings and retail spaces, adjusted indoor to outdoor parking ratios for multifamily units and setback and building distance requirements for certain residential buildings.

14. On or about October 26, 2015, the applicant submitted an application for approval of amendments to the Amended Tentative Plan ("Second Amended Tentative Plan"), sheets 1 through 18, dated October 22, 2015 prepared by Glackin Thomas and Panzak, and a memorandum dated October 26, 2015 outlining the plan revisions.

15. In the Second Amended Tentative Plan, the applicant seeks to, among other things:

a. incorporate the aforementioned minor variations granted in the various final approvals referenced in Paragraph 11 above;

b. increase the number of residential units in Section 3 of the PRD from 310 residential units to the 322 multifamily residential units (not an increase in the overall PRD, which permits 410 units), comprised of 256 apartments in three 4 story apartment buildings and 66 condominiums in six 4 story multifamily buildings (consistent with the application for partial final approval for Sector I Phase 3 being considered separately this same evening);

c. incorporate changes to the layout of the building and parking lot for lot at the southwest corner of Winding Way and Route 252 (currently planned as a Wawa);

d. minor changes to the design guidelines manual, including reducing the size of sidewalks in residential areas and the requirements for side entry garages in residential units; and

e. updated development schedule.

16. On November 5, 2015, the Township Engineer, Stantec, issued a review letter.

17. On November 10, 2015, applicant's landscape architect and planning consultants, Glackin, Thomas & Panzak responded to the Stantec review letter making certain representations and assurances.

18. The Second Amended Tentative Plan was reviewed by the Delaware County Planning Commission on November 19, 2015 which recommended approval.

19. The Second Amended Tentative Plan was reviewed by the Township Planning Commission on December 2, 2015, which recommended certain changes, including but not limited to reducing the size of the retaining walls and increasing the area for plantings around building 30 (proposed Wawa) and removal of a newly proposed access road running north and south between the proposed multi-family units and Route 252.

20. The applicant made changes to address these recommendations, Township Planning Commission again revised the application for Second Amended Tentative Approval on December 22, 2015 with a memorandum from Glackin Thomas & Panzak of that same date and revising the 18 page plan sets, and the design guidelines manual, both with revision dates of December 18, 2015.

21. A public hearing on the Second Amended Tentative Plan was commenced before the Board of Supervisors on January 11, 2015 ("**Second Amended Plan Hearing**").



22. At the Amended Plan Hearing, the Township introduced into evidence the following Exhibits in relation to the application for approval of the Amended Tentative Plan (**“Amended Plan Hearing Exhibits”**):

- a. Township-A – Proof of Advertising
- b. Township-B – Affidavit of Mailing
- c. November 19, 2015 Delco Planning Commission Review
- d. December 28, 2015 Township Planning Commission Memo
- e. Stantec Review letter, November 5, 2015 and January 11, 2016
- f. Glackin Response Letter, November 10, 2015

23. At the Amended Plan Hearing, the Applicant introduced into evidence the following Exhibits in support of its application for approval of the Amended Tentative Plan (**“Amended Plan Hearing Exhibits”**):

1. EQUUS-1 - a CD containing the record, transcripts and a copy of the approval from the original Tentative Plan Application and the hearing and record from the Amended Tentative Plan Application ;
2. April 25, 2014 Glackin Response to Engineer Comments;
3. CV of Dennis Glackin;
4. plan entitled “Overall Development Plan – Ellis Preserve Town Square”, sheet ODP, dated January 21, 2009, last revised October 26, 2009;
5. plan set entitled “Ellis Preserve Town Center – Application for Tentative Approval” revised April 24, 2014 consisting of 18 plan sheets;
6. plan set entitled (“Ellis Preserve Town Center – Application for Second Amended Tentative Plan”), sheets 1 through 18, dated October 22, 2015, last revised

December 18, 2015, prepared by Glackin Thomas and Panzak, and a memorandum dated October 26, 2015 outlining the plan revisions;

7. summary of the proposed changes to the Tentative Plan;

8. The Ellis Preserve Design Guidelines, last revised December 18, 2015;

and

9. Glackin Thomas and Panzak letter dated December 22, 2015.

24. At the Amended Plan Hearing, the Applicant presented as witnesses, Dennis Glackin, its Land Planner, and John Forde, who testified in support of the application for approval of the Amended Tentative Plan and were made available for cross-examination.

25. The evidence presented at the Second Amended Plan Hearing demonstrated that the Proposed Development, as depicted on the Second Amended Tentative Plan:

a. Is consistent with the PRD Ordinance as revised to 2015, and the Township's Comprehensive Plan and reflects the Township's vision for growth in the Newtown Square crossroads area contained therein, and with respect to Sectors 2 and 3 of the Amended Plan, consistent with the underlying zoning;

b. Continues to provide adequate amounts and types of open space for the proposed density and types of uses proposed to be located within the Proposed Development; the open space is proposed in locations that are suitable for use by the proposed residents; and the proposals for administration, ownership, maintenance and conservation of the open space are satisfactory;

c. Continues to make adequate provisions for public services, provides adequate control over vehicular traffic, and furthers the amenities of light and air and recreation;

d. Continues to be well suited to accommodate the mix and density of land uses proposed, in that it has adequate access to the surrounding roadway network, contains few environmental constraints, and is compatible with existing land uses in the immediate vicinity;

e. Continues to have a beneficial relationship with the neighborhood in which it is proposed to be established and to the Township by providing for new and varied types of residential uses, integrated retail, office, community facilities and open space and residential uses; mixed use, multi-story buildings and retail shops at ground level and office and apartments above; pedestrian oriented buildings directly accessible from small streets or from a walkable system; open space in excess of ordinance requirements and off-site traffic improvements;

f. Continues to make provisions to protect the interests of the public and the residents of the PRD;

g. Continues to include the necessary protective covenants to preserve the integrity of the PRD over the years and through the various stages of development and to protect the future residents of the PRD;

h. Continues to be an improvement to other development permitted by the existing underlying zoning districts as evidenced in the By Right Applications previously submitted by the Applicant.

## **II. Conclusions**

1. The Property meets the eligibility requirements for the PRD Ordinance as revised to 2016, contained in Section 301 of the PRD Ordinance.

2. The Proposed Development, as depicted on the Second Amended Tentative Plan, satisfies the purpose and intent of the PRD Ordinance as revised to 2016.

3. Although the square footage of the mix of uses within the Proposed Development was modified, it remains within ordinance limits;

4. Although the floor area ratio (FAR) was modified, it remains within ordinance limits.

5. The Proposed Development, as depicted on the Second Amended Tentative Plan, continues to comply with all requirements of the PRD Ordinance as revised to 2016.

6. The Proposed Development, as depicted on the Second Amended Tentative Plan, continues to satisfy all of the Development Standards contained in Article III of the PRD Ordinance as revised to 2016.

7. The Development Schedule for the Proposed Development, as set forth on the Amended Development Section Plan, is reasonable and is in the public interest.

8. The approval of the Second Amended Tentative Plan, subject to the imposition of the conditions set forth below, is in the public interest.

### **III. Decision**

Following consideration of the Applicants' Amended Tentative Plan, Plan Hearing Exhibits, Findings of Fact and Conclusions of Law related to the earlier Tentative Plan and Amended Tentative Plan, the Second Amended Plan Hearing Exhibits, and the testimony presented at the Second Amended Plan Hearing, the Board of Supervisors of Newtown Township, Delaware County grants approval of the application for approval of the Second Amended Tentative Plan for the Ellis Preserve Town Center as submitted, subject to all unsatisfied conditions of the December 3, 2009 Findings of Fact, Conclusion of Law and Decision, and July 14, 2014 Findings of Fact, Conclusion of Law and Decision, except as modified below:

1. The Second Amended Tentative Plan is approved with the maximum density and intensity of use as outlined below:

**Sector 1.** In addition to the existing buildings, there shall be no more than:

- A. Commercial/retail/restaurant            464,560 square feet
- B. Office    14,667 square feet
- C. Residential                                    322 units which shall contain no more than 432,466 square feet of floor area

2. The Second Amended Tentative Plan layout and site design is approved in accordance with the Glackin Thomas and Panzak Second Amended Tentative Plan last revised December 18, 2015 consisting of sheets 1 through 18 and Township and compliance with the aforementioned Stantec review letters and applicant responses.


3. All development within the proposed PRD shall be in accordance with the Town Center Design Guidelines dated December 24, 2007, last revised December 18, 2015. However, compliance with the Design Guidelines shall not apply as it relates to rebuilt or redeveloped building square footage; the Architectural Character and Elevations, and Building Materials of the rebuilt or redeveloped building square footage shall be consistent with the PRD Ordinance revised to 2016.

Approved and executed on this 11<sup>th</sup> day of JANUARY, 2016.

SIGNED:

  
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John A. Nawn, P.E., Chairman

ATTEST:

  
Stephen M. Nease, Township Manager