

In Re: APPLICATION OF SOUTHDOWN HOMES, LP, AND PROGRESSIVE HOUSING VENTURED, LLC.

BOROUGH COUNCIL FOR THE BOROUGH OF DOWNINGTOWN

KARDON PARK CONDITIONAL USE

CONDITIONS OF CONDITIONAL USE APPROVAL

Approved by Borough Council July 1, 2009.

1. Setbacks

- a. Minimum 100 feet from ponds' edge to face of end unit homes. At the discretion of Borough Council, the setback may be reduced to 70'.
- b. Minimum 25' from centerline of paved trail to ponds' edge and 40' to buildings.
- c. Landscaped berms TO BE provided between western edge of paved trail and buildings in order to shield view – berms to be at least 3' in height, and landscaping to emphasize evergreen materials.
- d. Permitted use of limited sections of opaque fencing with periodic breaks on top of and between berms - to be approved by the Planning Commission as part of landscaping plan in the Land Development process.
- e. The end units exposed to the eastern side along the public trail areas where the set-back from the ponds is less than 100 feet shall not exceed two stories plus loft in height.
- f. To the extent that applicant loses units as a result of greater setbacks than required by the Kardon Park Redevelopment District zoning, the Borough Council shall have the right to selectively approve buildings containing a maximum of 11 units, subject to approval by Zoning Hearing Board.
- g. Notwithstanding the requirements of the Kardon Park Redevelopment District Zoning, no residential dwelling will be less than 18 feet wide and no "building" footprint less than 24 feet wide..

2. Roads

- a. Belgium block curbing to be installed on both sides of main spine road and on rear alleys where curb is otherwise provided.
- b. Light fixtures on main spine road to be consistent with the look of Visco street lights but designed so that light is directed downward and wattage and color of light chosen to

minimize light pollution, to be approved by Borough. Light fixtures on alleys to be appropriately sized and lit but consistent in look with fixtures on main spine road.

- c. Light fixtures to be owned and maintained by Homeowners Association with HOA bearing cost of electricity.
- d. Main spine road to be offered for dedication to Borough. The portion of the spine road in East Caln Township will be offered for dedication to East Caln Township. If the Borough accepts dedication of the portion in the Borough, and if East Caln does not take dedication of the portion in East Caln, the Borough may take dedication of the East Caln portion or may not, subject to Council approval.
- e. There shall be no public road connection for vehicles to travel to North Lake Drive, Lake Drive, Farmhouse Lane or Sunset Drive.
- f. All interior roads (alleys) shall be owned and maintained by the homeowners association.
- g. Traffic calming rotary shall be provided on spine road approximately where shown on attached plan.
- h. Sidewalks minimum 5' wide shall be provided on both sides of spine road.

3. Park, Ponds and Trails

- a. Park, Ponds, Victims Memorial and public parking and trails will continue to be owned by Borough and where such land are located within East Caln Township, by either East Caln Township or the Borough should East Caln Township not wish to take dedication. Initial construction of, or improvements to same shall be done by the Developer.
- b. Developer to take measures to improve health and appearance of ponds including installing aeration devices such as fountains, wetlands plantings, and increased water flows to flush ponds. Developer shall provide design, permitting and construction of raceway inlet improvement at Brandywine Creek, the cost of which shall be deemed an "additional improvement" as described in Section 8 below.
- c. Developer will cooperate with Borough in preparing and filing applications to gain public funding for Struble Trail Extension from Norwood Road to Pennsylvania Avenue including fencing and signage as may be desirable. Noise mitigation structures up to 16 feet in height in selected places will be permissible if deemed necessary by Borough Council.
- d. Developer will provide signage for Lions Trail through the open space.

- e. Trails through the site shall be at least 10 foot wide and be built to a spec of 6" stone subbase with 2" ID3 mix wearing course or 4" BCBC and geofabric applied underneath the stone where required by Borough engineer..

The improvements mentioned above including related engineering and consultant fees are intended to qualify in the determination of project 70 release valuation.

- f. Borough and Developer will agree to a cost figure based on estimates of expense to maintain the public ponds, waterways and trails and parkland. The HOA will be responsible for 50% of that cost figure, prepaid on an annual basis. Any costs in excess of that figure will be split evenly between the HOA and the Borough. HOA to own and maintain stormwater facilities other than those associated with the millrace.
- g. During land development, the Borough Solicitor shall review HOA documents and other agreements to assure that all provisions and conditions of approval are properly funded and legally enforceable.
- h. There shall be no pathway or walkway or similar "park" area developed on the eastern side of the lakes, with access there only for maintenance purposes.

4. Environmental

- a. Any environmental safeguards required by any governmental agency shall be implemented.
- b. Any roads and utilities dedicated to the Borough or municipal agencies shall have a clean fill sub-base of materials in areas where future public staff would need to do repairs or maintenance such that no special training or certifications would be required.
- c. Any structural methods of utility support as a result of poor soil conditions shall be designed for a minimum life of 100 years.
- d. All dust control measures involving contaminated soil must be in accordance with appropriate DEP requirements and as approved by the Borough.
- e. During the land development process Developer shall provide two complete sets of all permitting agency approvals or pending applications for any item that will require an approval with a summary of the status of each application or permit. Developer will provide two complete sets of hard copy and one digital copy of all environmental documents used for evaluation, assessment, or other design decisions involving the project. Developer will supplement information at each phase of approval and certify completeness of information at completion of project.

5. Stormwater Control

- a. During land development, the Developer shall design, develop and implement a mechanism of regulating incoming water from the Brandywine, subject to approval by appropriate regulatory bodies, and from storm water run off in order to improve low flow over present conditions and permit the use of the ponds as stormwater basins for run-off from the Developer's impervious surface. The system shall be evaluated for all storms up to and including the 100 year event.
- b. Developer shall design and install a mechanism to insure the continuous flow of water from the Brandywine through the ponds so that they will not dry up.

Stormwater measures that preserve and enhance the public park areas including the ponds are intended to qualify in the determination of project 70 release valuation.

- c. Developer will evaluate existing storm conveyance system from site to the west to convey the 100 year post development storm flows to the Brandywine Creek.

6. Construction Issues

- a. Underground utilities will be owned and maintained by the HOA except for sewer and water mains.
- b. Developer shall minimize the amount of time Victims Memorial and public trails are closed to the public during environmental and wetlands remediation work. A construction sequencing plan will be worked out during land development stage which will include construction of new public trails and Victims Memorial surrounds and parking lot as part of the first phase of construction subject to unforeseen weather related delays and to limitations imposed by regulatory agencies. Such work will be completed by the settlement of the 20th housing unit.
- c. Building facades shall emphasize distinct architectural sections, distinguished by varied materials including brick or veneer fieldstone, roof line breaks, varied colors consistent with the rendering attached.
- d. All buildings shall be built to energy efficient standards such as those put forth by: Energy Star, National Association of Home Builders, or LEED.
- e. During site development when grading and environmental measures are underway, Borough shall insure that adequate inspections are properly conducted by Borough consultants or other agencies provided that such inspections not be redundant and further provided that developer shall reimburse Borough for cost of any inspection fees which it incurs.

7. Miscellaneous

- a. The total number of units in Downingtown Borough shall not exceed 210 homes, 45 live over commercial space condominiums and 20,000 s.f. of commercial space.
- b. The Developer shall post security for all development improvements in accordance with the municipalities planning code. If and when the Developer offers public improvements to the homeowners association, improvements such as the interior roads, utility lines, light fixtures, landscaping, etc., the Developer shall provide additional financial security to the Borough which would have been required had the public amenities been offered for dedication to the Borough.
- c. The homeowners documents will be written to restrict rental occupancy of units as follows:

With respect to the homes, no home may be rented to another person for occupancy for a period of five (5) years after the purchase of the unit. If a unit has been owned by the homeowner for a period of at least five (5) years, the homeowner may rent the unit to others, but subject to the restrictions below.

With respect to the "live over commercial space" units, the five (5) year ownership requirement does not apply.

Conditions applicable to homes and to "live over" units: Not more than twenty five percent (25%) of all of the units shall be occupied by rentals at any given time. The tenant and the lease must be approved by the HOA. The lease should be at least a year in length, unless for cause shown an exception is approved in writing by the HOA. The tenancy shall be subject to other rules and regulations of the HOA, such as the requirement that tenants abide by the rules and regulations of the HOA.

The conditions outlined in paragraph 7c above shall not apply to cases where a third party homeowner remains the occupant of the unit or where a third party homeowner is actively marketing their unit for sale.

- d. If any of the foregoing conditions is, for any reason, found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining conditions. It is hereby declared as the intent of the Borough Council that these conditions would have been adopted had such unconstitutional, illegal or invalid condition not been included.
8. **ADDITIONAL IMPROVEMENTS** – the following additional improvements shall be undertaken by the Developer at Developer's expense, subject to an overall cap of \$600,000. The cap is exclusive of grants or contributions by or on behalf of the Borough. If, on account of grants or the like expenditures under this item 8 are less than the reserve amount, the Borough

may allocate the funds to other Borough projects in the vicinity of the development. The cap will increase at the higher of 3% or the change in the CPI, each year beginning on the second anniversary of land development approvals. The payment of the \$600,000 shall be secured at the time of final land development approval and posted with the otherwise required improvements bond under Article V of the MPC.

It is further agreed that the payment of additional purchase price subject to Paragraph 5 of the First Amendment to Agreement of Sale dated August 17, 2007 shall be divided by the number of units finally approved in the development and paid at the settlement of each unit on a pro-rata basis in addition to whatever other purchase proceeds are due at that time.

The schedule for the completion of the items listed below shall be developed and approved as part of the land development plan. To the extent these items exceed the amount set aside (along with any grants, etc.) individual items may have to be prioritized.

a. Intersection of Green Street and Pennsylvania Avenue.

- i. Multi-way stop signs, Green and Pennsylvania Avenue, subject to input from consultants.
- ii. Parking bump-outs to calm traffic along Pennsylvania Avenue from Green Street to across from Dustin Drive, details of which shall be determined during the land development process.
- iii. Pavers cross walks, 3 sides of PA Ave. and Green St. intersection at grade to improve safety for both vehicular and pedestrian traffic movements.
- iv. Parking along the Green Street from Pennsylvania Avenue, the details of which to be worked out during land development.
- v. Traffic light at 4 way intersection at Green Street and Jefferson Avenue, subject to approval by PA DOT in time to be incorporated into the engineered land development plans.

b. Intersection of Wallace and Pennsylvania Avenue.

- i. Developer to provide design engineering, permitting, restriping, and additional magnetic detectors where needed to the Wallace/PA Avenue intersection in order to provide separate left and right turn lanes heading westbound and to align opposing lanes, provided PADOT approves 10' wide lanes, and further provided Borough removes designated parking spaces on south side of PA Avenue west of the intersection. Developer will complete intersection provided Borough has confirmed that above-referenced parking spaces will be removed one year prior to an agreed deadline.

c. See Paragraph 3.b. and 5.a and 5.b regarding raceway, river water, storm water and pond improvements.

d Sidewalks.

- ii. Replace Sidewalk from western property boundary to eastern property boundary (end of Lake) on property side, 6' wide..
- iii. Visco Lights from western boundary to across from Dustin drive along north side of Pennsylvania Avenue.
- iv. Trails – see paragraph 3.d. and 3.e.

e Traffic Signal Optimization on Surrounding Intersections – subject to approval by PA DOT.

- v. Manor and PA Avenue: Developer to provide design engineering, permitting and construction of new signal head on Manor incorporating a left turn arrow for southbound Manor Ave traffic installed, including any necessary restriping.
- vi. Uwchlan and PA Avenue: Developer to provide design engineering, permitting and construction to add a left turn arrow and optimize signal timing and cycle length.
- vii. Restudy signal timing from Manor to Uwchlan on PA Avenue and adjust signal timing.

Attachments:

Development Concept Plan
Architectural Rendering of Building Façade