

APPEAL OF MATRIX-ASHBOURNE : IN THE COURT OF COMMON PLEAS OF  
ASSOCIATES, L.P. FROM THE : MONTGOMERY COUNTY, PENNSYLVANIA  
DECISION OF THE CHELTENHAM :  
TOWNSHIP ZONING HEARING : NO. 2011-06678  
BOARD DATED FEBRUARY 15, 2011 :

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2014, upon consideration of the Stipulation and Settlement Agreement executed by the parties in the above-captioned litigation, as well as in the litigation at Docket No. \_\_\_\_\_, which by this Order is hereby consolidated with the above-captioned matter, the Stipulation and Settlement Agreement is **APPROVED** by the Court and shall be entered as an Order of the Court.

BY THE COURT:

\_\_\_\_\_  
J.

**Christen G. Pionzio, Esquire**  
**Hamburg, Rubin, Mullin, Maxwell & Lupin, P.C.**  
**375 Morris Road**  
**P.O. Box 1479**  
**Lansdale, PA 19446-0773**

**Attorney for *Matrix Ashbourne Associates,***  
***L.P.***

**APPEAL OF MATRIX-ASHBOURNE : IN THE COURT OF COMMON PLEAS OF**  
**ASSOCIATES, L.P. FROM THE : MONTGOMERY COUNTY, PENNSYLVANIA**  
**DECISION OF THE CHELTENHAM : :**  
**TOWNSHIP ZONING HEARING : NO. 2011-06678**  
**BOARD DATED FEBRUARY 15, 2011 : 2011-17493**

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**STIPULATION AND SETTLEMENT AGREEMENT**

It is hereby stipulated and agreed by and among Matrix Ashbourne Associates, L.P. ("Matrix"), by and through its attorney, Christen Pionzio, Esquire; Cheltenham Township ("Township") by and through its solicitor, Joseph Bagley, Esquire; Cheltenham Township Zoning Hearing Board ("ZHB"), by and through its solicitor, Carol Lauchmen, Esquire; and CC4A ("CC4A"), by and through its attorney, David. C. Onorato, Esquire, as follows:

**BACKGROUND**

At all times relevant to this appeal, Matrix has been the owner of a tract of land containing 107.6 acres, more or less, located at 1100 Ashbourne Road, Cheltenham Township, Pennsylvania, identified as Montgomery County parcel no. 31-00-00688-00-1, commonly referred to as the Ashbourne Country Club ("Property").

The Property is located in the R-1 Residence District ("R-1 District"), the Preservation Overlay District, and the Steep Slopes Conservation District and was formerly located in the Age Restricted Overlay District, all under the applicable provisions of the Cheltenham Township Zoning Ordinance. The Zoning Ordinance has been in effect at all times relevant.

In furtherance of the intent to develop the Property as a residential development, Matrix filed an application with the Cheltenham Township Zoning Hearing Board ("ZHB"), appealing the determination of the Zoning Officer and seeking relief to facilitate the development of the Property as an age-restricted residential development. The age-restricted development had been permitted as a special exception in the R-1 District pursuant to Section 295-242(B)(1) of the Zoning Ordinance.

The plan submitted with the Matrix application proposed to develop the Property as a residential development consisting of 226 lots, on which 156 attached single-family homes and 70 single-family detached homes would be constructed, together with a central clubhouse and 67 acres of "open space" land.

Following the conclusion of the public hearings, on February 15, 2011, the ZHB issued a letter confirming the ZHB's grant of relief to Matrix ("ZHB Notice of Decision"). A true and correct copy of the ZHB Notice of Decision is attached as Exhibit "A". The ZHB Notice of Decision notified Matrix that the ZHB granted a special exception to develop the Property in accordance with the Plan, subject to nine (9) enumerated conditions. Thereafter, the ZHB issued detailed Findings of Fact and Conclusions of Law in support of the ZHB Notice of Decision dated May 27, 2011 ("ZHB Detailed Decision"). A true and correct copy of the ZHB Detailed Decision is attached hereto, as Exhibit "B".

Matrix filed an appeal from the ZHB Notice of Decision, appealing the denial of certain relief and the imposition of certain conditions which was indexed at docket No. 2011-0678. CC4A filed a notice of intervention in the Matrix appeal. The ZHB filed a Motion to Quash the Matrix appeal on the basis that the appeal was untimely filed. CC4A filed an appeal from the ZHB Detailed Decision which was indexed at docket No. 2011-17493.

Matrix, Township, ZHB and CC4A have reached agreement on the terms of a settlement which will resolve all of the issues raised by CC4A's appeal (Docket No. 2011-17493) and Matrix's appeal (Docket No. 2011-06678). This Stipulation and Settlement Agreement ("Agreement") is entered into to confirm the agreement of the parties.

### TERMS OF SETTLEMENT

1. **Settlement Plan.** The parties have agreed on certain terms for the development of the Property consisting of a maximum of 166 dwelling units, which shall include an open market (non-age restricted), residential subdivision containing single family detached residences and townhouse units with no more than 95 townhouse units. Market changes may cause Matrix to develop the Property entirely as single family detached dwellings with no townhouse units. Although the sketch plan for Matrix prepared by Taylor, Wiseman and Taylor dated October 25, 2013 ("Plan") depicts a 166 unit development (with a mix of single family detached dwellings and townhouses), the parties agree that the number of each housing unit may change. Therefore, and notwithstanding anything to the contrary contained herein, the parties agree that the Property shall be developed in substantial conformity with the Plan and with the following terms and physical conditions remaining fixed: the total number of dwelling units at 166 with no more than 95 townhouse units; the impact on steep slopes; the open space; the connection points to exterior road systems; the turning movement restrictions; and the protected buffer areas (together the "Fixed Terms"). For the purposes of this Agreement, the Plan, as described in this paragraph may be modified except for those certainties contained in this Agreement shall be referred to as the "Settlement Plan." The Settlement Plan is made a part of this Agreement and attached hereto as Exhibit "C." In addition, the parties acknowledge that the Property may be developed in accordance with the Uniform Planned Community Act or the Condominium Act and may be designed in a master plan-type procedure with varying phases.

**2. Subdivision and Land Development Procedure.** Matrix may proceed with an application to develop the Property in accordance with and in furtherance of this Agreement by preparing and filing preliminary and/or final subdivision and land development plans (“PFSLD Plans”) with the Township. The PFSLD Plans shall be in substantial conformity with the Settlement Plan and in strict compliance with the terms of this Agreement. The development of the Property shall be contained within the center of the Property as shown in white on the Settlement Plan (see Exhibit “C”); however, in no event, shall the steep slopes be disturbed in excess of what was shown to the Zoning Hearing Board at the public hearings as further discussed in Paragraph 3.j. below. Township agrees to process the PFSLD Plans and any revisions thereto in good faith and will review and process the PFSLD Plans in a single approval process so that Matrix shall not be required to obtain a separate Preliminary Plan approval (as defined in the Township’s Subdivision and Land Development Ordinance (“SALDO”)) prior to submitting Final Plans for review and approval. Instead, if Matrix chooses to combine the Preliminary and Final Plan applications and reviews into one submission, the Township shall consider both at the same time and, if warranted, grant Preliminary and Final Land Development Approval. Nothing herein should be construed to limit the authority of the Township to impose reasonable conditions upon any PFSLD Plan approval. “Reasonable conditions” shall mean any such conditions which do not reduce the density depicted on the Settlement Plan. The Township hereby grants those waivers from the Township SALDO, which are enumerated on the Settlement Plan under the heading “Waivers Granted.” In addition, the Township agrees to grant (during the Subdivision and Land Development process) such other waivers as shall be necessary to implement the Fixed Terms except for any waivers which, in the reasonable opinion of the Township Engineer, would result in an adverse impact upon the public health, safety or welfare. Matrix may request additional waivers not enumerated herein during the review of the PFSLD

Plans. Notwithstanding what is shown on the Settlement Plan and unless waived during the review and approval of the PFSLD Plans, Matrix shall install sidewalks along the entire frontage of Asbourne Road (West to East –meaning to the left of the intersection with Oak Lane Road and to the right) and then continuing North ending at Jenkintown Road, as shown on the Settlement Plan (see Exhibit “C”).

3. **Zoning Requirements.** Matrix shall have the right to develop the Property in substantial conformity with the Settlement Plan and this Agreement, without further zoning approvals or zoning variances now or hereafter required by the Zoning Ordinance, for a period of seven (7) years from the date of the Court Order approving this Agreement. However, the seven (7) year period shall be tolled for the duration of: any appeal of any approval or permit relative to the development of or construction on the Property, any legal maneuver or filing of any sort that interferes with the commencement or completion of the development of or construction on the Property or while a moratorium or prohibition of any sort is pending until such appeal(s), maneuver(s), or filing(s) is/are finally adjudicated or said moratorium or prohibition is lifted. Matrix waives the application of Act 46 of 2010 and Act 87 of 2012 to extend the validity of this Agreement and the Settlement Plan. The variances previously granted by the ZHB in the ZHB Detailed Decision are incorporated herein by reference as though set forth at length. The parties hereby agree that no further zoning relief, including but not limited to variances, is necessary to develop the Property in compliance with the Settlement Plan and this Agreement. The parties further agree that the following requirements shall govern the development of the Property and shall supersede any contrary requirements of the Zoning Ordinance, if any:

- a. **Dwelling Unit Setback.** No residential dwelling units shall be permitted to be constructed within one hundred and forty (140) feet of the perimeter of the Property with road frontage.
- b. **Clubhouse Facility.** Matrix shall not be required to construct a clubhouse facility in connection with the development of the Property.
- c. **Buffers.** Matrix shall preserve the existing mature trees on the perimeter of the Property, unless it is determined that certain trees cannot or should not be preserved due to age, species, condition or the development of the Property.
- d. **Landscaping.** Condition #6 of the ZHB Detailed Decision (see p. 34 of Exhibit “B”) shall be amended and replaced with a condition that requires Matrix to install plantings within the exterior Buffer areas as illustrated on the Settlement Plan (see Exhibit “C”) with 75% of the trees measuring a minimum of 4” – 5” DBH at the time of planting.
- e. **Parking.** There shall be no maximum parking ratio applicable to the development of the Property, but the impervious coverage limitations of 55% of the Property and open space limitations of 45% of the Property shall apply with due credit for the Open Space to be conveyed to the Township as set forth below. The ability to include the Open Space applies only to the development contemplated herein.
- f. **Open Space.** In order to facilitate development of the Property in accordance with the Settlement Plan, the parties acknowledge that the Township will not require open space in excess of the open space shown on the Settlement Plan. Matrix shall transfer 33± contiguous acres of open

space identified on the Settlement Plan colored in green and labeled “Open Space limits” (the “Open Space”) (see Exhibit “C”) to the Township at such time as the first land development and financial security agreements are funded by Matrix. The Open Space shall continuously be used exclusively for the public for recreation, public trail, public access park land, open space and/or natural resources conservation. The Open Space shall not be built upon by Matrix at any time, except in accordance with the easement referred to below in Paragraph “m” (i.e., stormwater management facilities and utilities and as otherwise provided for herein). Matrix shall also pay One Hundred Fifty Thousand Dollars (\$150,000) to the Township as a contribution towards future maintenance of the Open Space (“Maintenance Fund”). The Maintenance Fund shall be paid to the Township by Matrix at such time as the first land development and financial security agreement is funded by Matrix. The parties shall execute and record an access easement to the existing trail in the Open Space in favor of the Township and the public within 90 days of the execution and court approval of this Agreement, providing access to the trail through the Open Space from a point along Jenkintown Road to the point at the pedestrian bridge which is to remain. The access easement shall provide that the easement expires if approval of the PFSLD Plans is not granted within 180 days of their submission. The Township shall obtain insurance coverage for the trail described above and name Matrix as an additional insured on such insurance coverage. Matrix shall be fully responsible for maintenance of the Open Space in accordance with the

Township Property Maintenance Code until at least seventy-five percent (75%) of the residential dwellings constructed on the Property have been sold and occupied. In the event not already constructed, Matrix shall escrow for and construct a pedestrian trail and bridge as depicted on the Settlement Plan as part of the public improvements in the initial phase. The pedestrian trail shall be paved where it is located within ninety (90) feet of the Tookany Creek. The pedestrian trail shall be constructed of natural materials or macadam where it is more than ninety (90) feet from the Tookany Creek, the choice of which type of construction material shall be Matrix's.

- g. **Maintenance Access.** Two small, paved areas, depicted on the Settlement Plan, shall be constructed by Matrix and shall provide maintenance access to the Open Space from Ashbourne Road and from Jenkintown Road for mowers and other powered equipment. An existing maintenance access in the southwest corner of the Open Space off of Mulberry Lane and the one in the northwest corner off of Tookany Creek Parkway shall remain.
- h. **Pedestrian Access.** Pedestrian access to the trail through the Open Space depicted on the Settlement Plan shall be constructed by Matrix at points depicted in the Settlement Plan: (1) adjacent to Ashbourne Road across from its intersection with Hanes Road; and (2) along Jenkintown Road as depicted on the plan. The materials to be used for constructing the trail shall be determined during the subdivision and land development process.
- i. **Trees.** Matrix has removed 3 dead trees within the Open Space area at the time this Agreement is executed. Matrix agrees to remove additional

trees after the PFSLD Plans are recorded and the Open Space transferred to the Township, but is not obligated to spend more than \$50,000.00 on all tree removal within the Open Space. The cost of removing the 3 trees referred above shall be credited against the \$50,000.00. Receipts shall be provided to the Township upon request.

- j. **Steep Slopes.** Disturbance of steep slope areas shall be no greater than what was presented at the ZHB hearings as confirmed by a licensed professional engineer.
- k. **Lines and Grades Plans.** Applicant shall submit Lines and Grade Plans, compliant with the SALDO for areas of disturbance only, as part of Matrix's request for PFSLD Plan approval. This shall replace Condition #3 of the ZHB Detailed Decision (see p. 33 of Exhibit "B").
- l. **Bus Shelters.** Matrix shall provide bus shelters at the three bus stops on Ashbourne Road at Croyden Road, Boyer Road and Ashmead Road.
- m. **Easement.** Matrix and the Township shall execute a mutually agreed upon easement agreement which provides that Matrix or its successors shall be fully responsible for the construction, maintenance, replacement and repair of any and all stormwater conveyance facilities and utilities related to the development of the Property (including sanitary sewer conveyance facilities) including, but not limited to, reseeding and regrading of areas of the Open Space disturbed by Matrix in accordance with the foregoing easement agreement, which are constructed or installed within the Open Space. Notwithstanding the foregoing, Matrix shall be permitted to offer a deed of dedication to the Township for the completed

and approved sanitary sewer facilities within the Open Space without responsibility for future maintenance if the deed of dedication is accepted by the Township.

Matrix and the Township shall also execute a mutually agreed upon easement agreement which provides that the Township shall have a 50' wide permanent easement through the Open Space ("Permanent Easement Area") and a temporary easement area for the construction of two temporary construction areas, one within the Open Space, the other located between Tookany Creek and Tookany Creek Parkway with a construction entrance from Tookany Creek Parkway as more fully described on a Plan attached hereto as Exhibit "D" ("Temporary Construction Easement Areas"), for the construction of a sewer line referred to as the Sewer Interceptor "A" ("Sewer Line"). The Township shall include an invert and a short stub of a pipe for future connection by Matrix at Manhole #50 as part of the Sewer Line work. The Township hereby obligates itself to install the Sewer Line and permit connection by Matrix of the 166 units referred to herein; provided however, that Matrix shall be solely responsible for all costs associated with connecting to the Sewer Line, including but not limited to, the cost of constructing and maintaining the sewer line through the Open Space to connect the 166 units at Manhole #50 (the "Conveyance Line") as well as maintenance of the invert and short stub and the costs referred to in Paragraph 11 of this Agreement. It is anticipated that the Township shall begin construction of

the Sewer Line in April 2015 but the timing of construction of the Sewer Line is solely within the discretion of the Township.

The easement agreement shall be in a form that is commercially acceptable, that is reasonably acceptable to Matrix's mortgagor or potential mortgagor and shall at a minimum include the following terms and conditions:

1. The Township shall be obligated to construct the Sewer Line.
2. The Township shall be obligated to maintain and repair the Sewer Line; Matrix shall be responsible to construct and maintain the Conveyance Line and the connection between the short stub and the Conveyance Line, and to maintain the invert and short stub.
3. The Permanent Easement Area and the Temporary Construction Easement Areas (collectively "Easement Areas") shall be re-vegetated with grass and Matrix shall not be responsible for any cleanup nor any restoration except for cleanup and restoration (if any) in connection with the construction and maintenance of the invert, short stub and Conveyance Line. Neither the Township nor Matrix shall be responsible for any tree replacement within the Easement Areas. Matrix shall utilize reasonable efforts to avoid removing trees within the Open Space when constructing the Conveyance Line
4. The Township shall indemnify and hold Matrix harmless relative to the Township's use of the Easement Areas.
5. Matrix shall be listed as an additional insured in Township's insurance policies for Sewer Line construction at a commercially reasonable amount.
6. Matrix shall be permitted to do work in the Easement Areas, including but not limited to, the installation of the walking trail and the discharge of storm water which discharge shall be reviewed and approved by all applicable governmental agencies, prior to conveyance of the Open Space to the Township and none of which shall interfere with the Township's use of the Permanent Easement Area, the Temporary Construction Easement Areas nor the Township's use of the Open Space.

- n. **Pedestrian Bridges/Permits.** Matrix shall remove several pedestrian bridges as depicted on the Settlement Plan (Exhibit "C"). To the extent necessary to accomplish same, the Township acknowledges that Matrix

shall be entering the floodplain and the riparian corridor to do so. This paragraph shall not relieve Matrix of the obligation to timely obtain a demolition permit(s) and a building permit from the Township and all necessary permits from DEP and other outside agencies (if necessary) to reconstruct the designated pedestrian bridge and remove the other pedestrian bridges.

- o. **Timing of Enumerated Improvements.** The pedestrian trail in the Open Space, the landscaping to be installed in the exterior Buffer Area, the construction of the pedestrian bridge, the removal of all other pedestrian bridges, the bus shelters and the pedestrian access points referenced above, shall all be completed by Matrix before Matrix shall be entitled to a building permit which would permit construction of its 84<sup>th</sup> unit.

4. **Access to Development.** The primary entrance to the Project shall be in the location depicted on the Settlement Plan to create a four-way intersection with Ashbourne Road and Oak Lane Road. The entrance shall be designed to be perpendicular to Ashbourne Road notwithstanding the design shown on the Settlement Plan (see Exhibit "C"). A second means of access shall be provided to the Property at Boyer Road, in substantially the location depicted on the Settlement Plan. The parties acknowledge and agree that the secondary access shall be limited to right-turn-in-only and right-turn-out-only unless otherwise designed by the Pennsylvania Department of Transportation.

5. **Demolition of Existing Buildings.** During the course of construction Matrix shall apply for all applicable permits and demolish all of the existing buildings on the Property.

6. **Building Materials.** The exterior finishes of the houses shall be in keeping with the stone and brick houses in the neighborhood and shall be materials of same or greater quality as stone veneer, cementitious-like siding or siding of natural materials (not vinyl).

7. **House Orientation.** No rear of a house shall face Ashbourne Road. The parties agree that angled houses that could be situated in the lots as shown on the Settlement Plan (see Exhibit "C") are acceptable.

8. **Compacted Fill.** The bottom of the foundation footing for all structures (including building, retaining walls, etc.) within the Property shall be on subgrade competent to support the load being imposed.

9. **Fees.** Matrix shall not be required to pay any maintenance fees or recreational use fees except those referenced above. Matrix shall be responsible to pay all other costs and expenses of subdivision and development including, but not limited to routine land development application fees, the traffic improvements discussed below (see paragraph 13 below), building permit fees, required escrows including, but not limited to, engineering review expenses, and to incur all costs, expenses and fees required by the Township's standard land development and financial security agreement. These fees shall not include sewer connection and EDU fees as Matrix's obligations for these fees are set forth in paragraph 11 below.

10. **Outside Agency Permits.** The parties shall reasonably cooperate with Matrix in obtaining highway occupancy permits, approval of planning modules, NPDES permits, water quality management permits, and any other permits from regulatory agencies having jurisdiction over the development of the Property.

11. **Sewage Capacity.** The Township acknowledges that in accordance with the letter dated September 10, 2007, Matrix has paid for sufficient sewer capacity (EDUs) to service the Property. Any forthcoming credit or refund to Matrix for excess EDUs shall be for the

amount of the purchase price in 2007 only, without interest. Matrix shall apply, if not already received and only if required, for sewer planning modules and obtain approval of same from DEP prior to applying for a building permit from the Township. This Agreement does not relieve Matrix of any responsibilities for any and all sewer inspection fees, sewer rentals, and Right-of-Way Permit Application Fees (\$50 per street opening and inspection fee) which may have to be constructed or incurred in order to provide sewage service to the Property.

12. **Sales.** Matrix shall not lease any of the residential units. The residential units shall be for sale only. However, any subsequent purchaser that is (1) not a related entity (2) not an entity consisting of Matrix's principals and (3) is not a successor or assignee of Matrix, may lease an individual unit.

13. **Traffic Improvements.** Matrix will install those traffic improvements offered at the ZHB hearings, the details of which will be worked out during the review of the PFSLD Plans.

14. **Court Approval.** This Agreement shall be submitted by Matrix, ZHB, Township, and CC4A to the Court of Common Pleas of Montgomery County with a request that the provisions of the Agreement be entered as an Order of the Court in full and final settlement of all issues raised by the appeals. This Agreement is conditioned upon the issuance of Court Approval. It shall be entered on the docket of Case No. 2011-06678 and No. 2011-17493 with the Court retaining jurisdiction over the matters.

15. **Conflicts.** Where this Stipulation and Settlement Agreement conflicts with the ZHB Notice of Decision and/or the ZHB Detailed Decision, this Stipulation and Settlement Agreement shall control.

16. **Successors.** This Agreement shall be binding on and inure to the benefit of the parties hereto, their grantees, heirs, successors, and assigns. Although Matrix is the legal owner

of the Property, the obligations of Matrix contained herein are intended to be binding on any and all subsequent owners of the Property, if not Matrix, and are not to be interpreted as personal obligations of Matrix. With regard to Paragraph 3.M only, Matrix's successors shall include the homeowner's association created by Matrix or its successor in interest.

17. **Counterparts.** This Agreement may be signed in counterparts with the same force and effect as if all the parties had executed the same original of this Agreement.

**IN WITNESS WHEREOF,** Matrix, Township, ZHB, and CC4A and their respective counsel, have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014, with intent to be legally bound.

**Attest:** \_\_\_\_\_ **By:** \_\_\_\_\_  
**Matrix Ashbourne Associates, L.P.**

**Hamburg, Rubin, Mullin, Maxwell & Lupin P.C.**

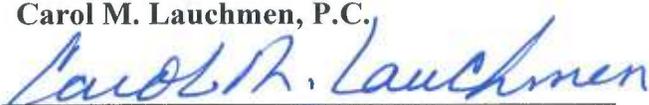
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**Christen G. Pionzio, Esquire**  
**Cheltenham Township**

\_\_\_\_\_  
**Witness** \_\_\_\_\_ **Wisler Pearlstine, LLP**

**By:** \_\_\_\_\_  
**Joseph Bagley, Esquire**  
**Solicitor to Cheltenham Township**

**Cheltenham Township ZHB**

  
\_\_\_\_\_  
**Witness**

**By:**   
\_\_\_\_\_  
**Carol M. Lauchmen, Esquire**  
**Solicitor to Cheltenham Township ZHB**

CC4A

By: \_\_\_\_\_

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**David C. Onorato, Esquire**

**EXHIBIT "A"**

# Ballard Spahr LLP

1735 Market Street, 31st Floor  
Philadelphia, PA 19103-7599  
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February 15, 2011

**VIA FACSIMILE AND REGULAR MAIL**

Peter S. Friedman, Esquire  
Friedman, Schuman, PC  
101 Greenwood Avenue, Fifth Floor  
Jenkintown, PA 19046-2636

Re: Cheltenham Township Zoning Hearing Board -- Appeal No. 3336

Dear Mr. Friedman:

On February 14, 2011, the Cheltenham Township Zoning Hearing Board voted to take the following actions with regard to your Application to Zoning Hearing Board for Zoning Relief, referenced as Appeal No. 3336:

The Zoning Hearing Board has granted the following relief:

1. a variance from the rules and regulation of the "Floodplain District" as outlined Article XXI, Section 295-156 to allow construction or replacement of the existing 8" T.C. Sanitary Sewer Line (if required) within the 100 Year Floodplain Area;
2. a variance from rules and regulations of the "Steep Slope Conservation District" as outlined in Article XXII, Section 295-167 to allow the construction of free-standing structures, building and retaining walls, internal accessways, driveways, parking areas, swimming pools, sanitary sewers, stormwater management facilities and other underground utilities and landscaping;
3. a variance from the rules and regulations of the "Steep Slope Conservation District" outlined in Article XXII, Section 295-168, to allow a variance to be granted for the development without first meeting the requirement to submit plans conforming to the stated Lines and Grades Plan requirements;
4. a special exception in accordance with the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-242.B.1 to permit an Age Restricted Development;

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5. a special exception in accordance with the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-242.B.3 to permit a clubhouse with common areas and meeting rooms, indoor and outdoor recreational facilities and maintenance and security facilities;

6. a special exception in accordance with the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-242.B.3 to permit a swimming pool for the residents of the Age Restricted Community only;

7. a variance from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-243.B.8.a. to allow sanitary sewer facilities, if required, within the floodplain;

8. a variance from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-243.B.8.d. to allow development within areas having a slope of 15% or greater;

9. a variance from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-243.B.8.e. to allow sanitary sewer facilities, if required, within the Riparian Buffer Areas; and

10. variances from the rules and regulations of the "Preservation Overlay District" as outlined in Article XXIV, Sections 295-187, 295-188 and 295-189 only.

The Zoning Board has, in addition, taken the following actions:

1. denied the appeal of the determination of the Zoning Officer and/or Township Engineer regarding man-made steep slopes as provided in Article XXII, Section 295-164.B.2.;

2. denied the request for a determination that the Lines and Grades Plans as submitted with the Application or as revised during the course of the hearings substantially conforms with the requirements set forth in Article XXII, Section 295-168;

3. denied the request for a determination that the number of parking spaces shown on Applicant's plans are not in excess of the maximum permitted under Article XXIX, Section 295-221.F.;

4. denied the request for a variance from the rules and regulations of Article XXIX, Section 295-221.F. to allow parking spaces exceeding 120% of the minimum required parking spaces;

5. denied the request for variances from the rules and regulations of the "Preservation Overlay District," as outlined in Article XXIV, Section 295-190; and

6. denied the request for an interpretation that the rules and regulations of the "Preservation Overlay District," as outlined in Article XXIV, Section 295-187 *et seq.* are not applicable to this Application.

The above grants of zoning relief are subject, however, to the following conditions:

1. At applicant's expense, the Township shall direct a third-party professional geotechnical engineer, acceptable to the Township, to conduct, based upon an adequate number of soil borings, a comprehensive Geotechnical Investigation and Analysis (the "Analysis"). The Analysis shall be performed over the entire development footprint to determine the suitability of the site's soils for the proposed development and the loads to be imposed thereon. The Analysis shall document findings and set forth whatever soil remediation and/or construction methods should be taken to prevent excessive settlement, slope failure and other adverse effects to the maximum practicable extent. The Analysis shall be subject to the review and approval of the Township Engineer. Applicant shall thereafter follow the soil remediation measures and the construction methods as directed by the Township Engineer.

2. The bottom of the foundation footing for all structures (including building, retaining walls, etc.) within the development shall be on a level either a minimum of three (3) feet below the existing pre-development grade or on subgrade competent to support the load being imposed, whichever level is lower. No pile footings shall be permitted.

3. Applicant shall submit Lines and Grades Plans, compliant with no standard less than the Zoning Code, as part of Applicant's submission for preliminary or final land development approval.

4. The development may be built in stages. However, the following infrastructure improvements shall be completed with the first stage: naturalization of the property including the return of portions of the property to a natural state, the allocation of property to public use and the other features of the development plans described by applicant's land planner.

5. No building, including, but not limited to, lots 67, 68, 69 and 70 as illustrated on Exhibit A-26.1, shall have the rear elevation facing Ashbourne Road.

6. 75% of the trees planted on the development shall be a minimum of 4" – 5" DBH at the time of planting, as illustrated on Exhibit A.3, dated July 8, 2010.

Peter S. Friedman, Esq.  
February 15, 2011  
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7. Applicant shall provide bus shelters at the three bus stops on Ashbourne Road at Croyden Road, Boyer Road and Ashmead Road.

8. Unless otherwise prohibited by the decisions of the Zoning Hearing Board or by application of lawful federal, state or local regulations, the development shall be constructed in substantial conformity with the record, including testimony and exhibits, established by the Applicant and its witnesses during the course of the hearing in this appeal.

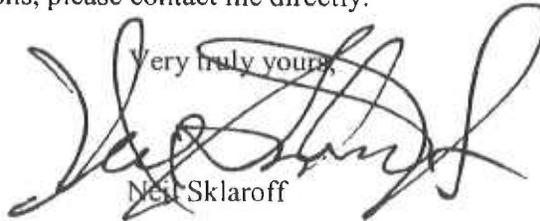
The Zoning Hearing Board will hereafter issue formal written findings of fact and conclusions of law, and appropriate parties will have 30 days from the issuance of those in which they may elect to file an appeal to the Montgomery County Court of Common Pleas. Applicants who elect to take action premised on the decision of the Zoning Hearing Board in advance of the expiration of the appeal period may do so at the applicant's own risk.

Please note that, pursuant to the Article XXVII, Section 295-210, where an application for special exception or variance has been refused or denied by the Zoning Hearing Board, the application may not be renewed within a period of one (1) year, unless there has been a change in conditions and unless the renewed application distinctly sets forth the changed conditions.

In addition, pursuant to Article XXVII, Section 295-211, unless the Zoning Hearing Board stipulates otherwise in its orders and decision, all decisions, grants of zoning relief and reasonable accommodations shall be effective for a period of two (2) years, after which time, if the applicant has failed to commence the use or obtained a building permit, the decision, grant of relief or reasonable accommodation shall cease and be of no effect.

Moreover, a building permit is required for any construction permitted or allowed in accordance with the above decisions.

If you have any questions, please contact me directly.

Very truly yours,  
  
Neil Sklaroff

NS/lb

cc: David Onorato, Esquire  
David S. Lynch  
David Kraynik  
Zoning Hearing Board

**EXHIBIT "B"**

**ZONING HEARING BOARD  
OF CHELTENHAM TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA**

**APPEAL NO. 3336**

Applicant: Matrix Ashbourne Associates, L.P.

Subject Premises : 1100 Ashbourne Road ("Ashbourne Country Club")  
Cheltenham, Pennsylvania

Owner of Premises: Matrix Ashbourne Associates, L.P.

Nature of Application: Applicant appeals from the determination of the Zoning Officer finding that development of the Ashbourne Country Club for age-restricted residences as proposed would violate the Cheltenham Zoning Ordinance of 1929, as amended, and, specifically, Article XXII, Sections 295-156, 164-168, regulating development in a floodplain and in areas designated as having steep slopes, Article XXIX, Section 295-221, regulating the provision of parking areas, Article XXIII, Section 295-242, regulating development in the Age-Restricted Overlay District, and Article XXIV, Section 295-241, regulating development in a Preservation Overlay District.

Applicant seeks the following zoning relief:

- (1) a variance from the rules and regulations of Section 295-156 to allow the replacement of an existing 8" T.C. Sanitary Sewer Line, if required, within the 100 Year Floodplain Area;
- (2) a decision that the determination of the Zoning Officer and/or Township Engineer pursuant to Section 295-164(B)(2) with regard to man-made steep slopes was in error;
- (3) a variance from the rules and regulations of Section 295-167 to allow the construction of free-standing structures, buildings and retaining walls, internal access ways,

driveways, parking areas, swimming pools, sanitary sewers, stormwater management facilities, other underground utilities and landscaping in areas designated as having steep slopes;

- (4) a decision that the Lines and Grade Plans submitted with the Application for Zoning Relief substantially conforms with the Line and Grade Plan(s) requirements set forth in Section 295-168;
- (5) in the alternative to (4) above, a variance from the rules and regulations of Section 295-168 to allow for the submission of plans that do not conform to requirements for Line and Grades Plans;
- (6) a decision that the number of parking spaces shown on Applicant's plans do not exceed the maximum permitted pursuant to Section 295-221(F);
- (7) in the alternative to (6) above, a variance from the rules and regulations of Section 295-221(F) to allow greater parking (568 parking spaces) instead of the maximum permitted of 120% of the required parking spaces;
- (8) a special exception to Section 295-242(B)(1) to permit an age-restricted development;
- (9) a special exception to Section 295-242(B)(3) to permit a clubhouse, meeting rooms, common areas, indoor and outdoor recreational facilities, and maintenance and security facilities appurtenant to an age-restricted development;
- (10) a special exception to Section 295-242(B)(3) to permit a swimming pool for the residents of an age-restricted development;
- (11) a variance from the rules and regulations of Section 295-242(B)(8)(a) to allow sanitary sewer facilities, if required, within the

floodplain;

- (12) a variance from the rules and regulations of Section 295-242(B)(8)(d) to allow development associated with an age-restricted development in areas designated as having a slope of 15% or greater;
- (13) a variance from the rules and regulations of Section 295-242(B)(8)(e) to allow sanitary sewer facilities, if required, within areas designated as Riparian Buffer Areas;
- (14) a variance from the application of all provisions of Article XXIV, the Preservation Overlay District, to allow the development of the proposed age-restricted development; and
- (15) in the alternative to (14) above, a decision, pursuant to Section 295-241, that the rules and regulations of the Preservation Overlay District do not apply to proposed age-restricted development.

Date and Place of Hearings:

September 14, 2009, January 11, 2010, March 8, April 12, 2010, April 20, May 10, June 8, June 21, July 13, July 27, August 9, September 14, October 14, November 23, December 14, 2010, and January 10, 2011

Curtis Hall  
Church Road and Greenwood Avenue  
Wyncote, Pennsylvania

#### **FINDINGS OF FACT**

1. Applicant Matrix Ashbourne Associates, L.P. (“Applicant” and “Matrix”) is the owner of the premises known as 1100 Ashbourne Road, Cheltenham, Pennsylvania (the “Property” and “Ashbourne”).

2. Prior to the holding of hearings in this matter, advertisements, noting the time and place of the hearings and the contents of the appeal, were placed in a newspaper of general circulation.

3. The Property is located in an R-1 Residence District and is improved by a number of buildings that were formally used in the operation of a golf course and country club.

4. In advance of the hearings and during the course of the hearings, Matrix and others filed with the Zoning Officer or presented to the Zoning Hearing Board a number of documents. Because many of the documents reflected duplication or minor revisions that the parties considered inconsequential, the parties agreed to a list of official exhibits that members of the Zoning Hearing Board would have available in deliberating on the requests for zoning relief. The following documents were derived from that list and were made a part of the record (numbers in parenthesis were original exhibit numbers):

ZHB-1. a listing of exhibits;

ZHB-2. copies of the legal notices with regard to the holding of hearing;

ZHB-3. an Application to the Zoning Hearing Board, referenced as Appeal No. 3336 with addendum (the "Application");

ZHB-4. a location map marked as Real Estate Registry Block 61, illustrating the location of the property;

ZHB-5. MEA Land Record Parcel Information on Property dated May 26, 2010;

ZHB-6, 6.01, 6.02. Building and Zoning Committee recommendation letters dated June 8, 2010, July 9, 2009 and September 22, 2009;

ZHB-7. Revised Addendum to Application dated August 14, 2009 (14.1,.2.,3);

ZHB 8. Age-Restricted Overlay District Ordinance No. 215A (10.1 – 10.11);

ZHB 9. R-1 Residence District requirements, Chapter 295, Article III, Cheltenham Code (11.1 – 11.4);

ZHB 10. letter from Peter Friedman, Esquire, dated October 4, 2009, amending the Application (17.1 – 17.2);

ZHB 11. letter from Peter Friedman, Esquire, dated February 19, 2010, amending the Application (18.1 – 18.2)

ZHB 12. Revised Addendum to Application, dated May 10, 2010 (57.1 – 57.2);

ZHB 13. O'Neil Review Letter, dated June 1, 2010 (60.1 – 60.2);

ZHB 14. Amended Zoning Plan prepared by Taylor Wiseman & Taylor, including 2 sheets, prepared August 14, 2009 and last revised May 3, 2010 (61.1 – 61.2);

ZHB 15. Amended Steep Slopes Plan prepared by Taylor Wiseman & Taylor, dated August 14, 2009 and last revised May 3, 2010 (62);

ZHB 16. Current Site Plan submitted June 2, 2010 (63);

ZHB 17. Site Plan – Conceptual Phasing Plan (64);

ZHB 18. Letter from David Onorato, Esquire, dated November 3, 2010 regarding request for relief (66);

ZHB 19. Letter from Peter Friedman, Esquire, dated November 23, 2010 with attachments (87);

A-1.1, 1.2. Amended Zoning Plan, comprised of 2 sheets and dated August 14, 2009, and last revised June 7, 2010;

A-2.1, 2.2. curriculum vitae of Stuart Appel;

A-3.1 – 3.13, 3.15 – 3.25. Plans, photographs and renderings of Ashbourne Country Club prepared by WellsAppel for Matrix Development Group;

A-4. Architectural Review including photographs and design renderings prepared by Laura Staines Giardino AIA, PP of L&M Design LLC;

A-5. certification letter from Stuart D. Appel, FASLA, PP;

A-6. curriculum vitae of Laura Staines Giardino AIA PP LEED AP;

A-7. Decision of the Zoning Hearing Board at Appeal No. 3081;

A-8. curriculum vitae of Joseph J. DeSantis, P.E., PTOE;

A-9. Traffic Impact Study for Ashbourne Country Club;

A-10. Review letter prepared by F. Tavani and Associates, Inc. and dated April 26, 2010;

A-11. Response to Comments letter prepared by McMahon Transportation Engineers and Planners and dated May 25, 2010;

A-12. letter from F. Tavani and Associates to David Kraynik, dated May 28, 2010;

A-13.1 – 13.4. Revised illustrative sections for Ashbourne Country Club prepared by WellsAppell;

A-14. curriculum vitae of Mark Mayhew, P.E.;

A-15.1 – 15.10. series of plans for Ashbourne County Club prepared by Taylor Wiseman & Taylor and dated March 25, 2010;

A-16.1 – 16.24. booklet of reduced and color rendered plans prepared by Taylor Wiseman & Taylor;

A-17. letter from Mark S. Mayhew, P.E. to David M. Lynch, PE, PLS dated July 6, 2010;

A-18.1 – 18,23. memorandum from David M. Lynch, P.E., P.L.S. to the Zoning Hearing Board and dated July 26, 2010;

A-19.1 – 19.5. plans depicting steep slopes prepared by Taylor Wiseman & Taylor and dated September 2, 2010;

A-20. curriculum vitae of Erick W. Hetzel, AICP, LEED AP;

A-21. Fiscal Impact Analysis for Ashbourne Country Club Residential Development prepared by Glackin Thomas Panzak and dated March 25, 2010;

A-22. supplement to Fiscal Impact Analysis;

A-23. Soil Erosion and Sediment Control Plan dated October 5, 2010;

A-24. Exhibit A-23 in reduced version;

A-25. Cross Section Plans last revised October 5, 2010 and consisting of 10 sheets;

A-26. Lines and Grades Plan;

A-27. LEED for Home Checklist;

A-28.1 – 28.5. photographs of sample materials board

A-29. 30 year Limited Warranty for Hardiplank Board;

A-30. Proposed Finding of Fact, Conclusions of law and Memorandum of Law submitted by Matrix Ashbourne Associates, L.P.;

P-1. letter from David M. Lynch P.E., P.L.S. to Mark S. Mayhew, P.E. dated July 21, 2010;

P-2. curriculum vitae of John O. Chambers, Jr., P.E., R.S.;

P-3. "Roads and Streets, Shallow Excavations, and Lawns and Landscaping" for Montgomery County identifying Ashbourne County Club from the Natural Resources Conservation Service and dated July 22, 2010;

P-4. Stormwater Concept Plan for Ashbourne County Club prepared by Taylor Wiseman & Taylor and annotated by John Chambers;

P-5. letter from David C. Onorato to ZHB Solicitor dated November 3, 2010, in support of objection to several of applicants' exhibits; and

P-6. Proposed Findings of Fact, Conclusions of law and Brief of Protestants submitted by CC4A;

5. Peter Friedman, Esquire, represented Matrix throughout the hearings.

6. CC4A is an unincorporated association of individuals which, along with certain named individual members, objected to the Application and participated in the hearings, Matrix having stipulated to the standing of CC4A and certain members as protestants (hereafter, "objectors"). David C. Onorato, Esquire, represented objectors throughout the hearings.

7. The Property includes approximately 104 acres bordered in part by Ashbourne Road, Jenkintown Road and Tookany Creek Parkway.

8. The Property was previously used for a golf course, clubhouse and additional accessory buildings and amenities. The Property's pre-golf course topography was substantially altered by construction and re-grading for the golf course, clubhouse and other features of the golf course.

9. Matrix proposes to develop the Property for an age-restricted community with 70 single-family detached homes and 156 attached single-family homes (clustered in groups of three) (the "Project"). The project includes a central clubhouse and swimming pool. Of the 104 available acres that make up the Property, Matrix proposes to leave approximately 67 acres as open space.

10. The central clubhouse with common areas, meeting rooms, indoor and outdoor recreation amenities and swimming pool is a use customarily incidental to an age-restricted residential community. The Project provides adequate parking for the clubhouse, swimming pool and meeting rooms.

11. In Matrix's design of the Project, of the homes that have frontage along Ashbourne Road, four (numbered 67, 68, 69 and 70 on Applicant's Exhibit A-1, the Amended Zoning Plan) face Ashbourne Road (South) with a rear elevation.

12. In the existing scheme of development along Ashbourne Road and, with few exceptions, throughout Cheltenham Township, the principal public street frontage is addressed by a home's front or side elevation. Matrix's planning expert, Appel, admitted that he was unaware of any existing home in the surrounding developed neighborhoods where the rear of a home faced the street.

13. Mr. Appel testified that the parking requirements in the Age-Restricted Overlay District did not anticipate an age-restricted development of single-family homes. Mr. Appel noted that mention is made of parking lots and the prohibition of parking between a

building and a public street. Mr. Appel testified that the ordinance is premised upon the ability to share parking spaces in a parking lot for multi-family units. There, requiring 1.5 spaces per dwelling is easily accomplished in parking lots where all spaces are open to all residences. In this project, Mr. Appel notes that parking spaces are in driveways which are not available to neighbors.

14. Construction of dwellings with the rear elevation facing the principal public street is contrary to the public interest.

15. The Project includes internal walkways linking the residential areas with the clubhouse and also features public trails through the Property.

16. Age-restricted communities were permitted as a special exception in an R-1 Residence District at the time Matrix submitted its application in accordance with the Age-Restricted Overlay District.

17. The proposed community will be ultimately maintained by a homeowners' association, which will be responsible for maintenance of the access ways, grounds, internal lighting, snow and ice removal, trash collection and, specifically, maintenance of the approximately 67 acres of open space.

18. The Board qualified Stuart Appel as an expert landscape architect and planner. The Board relied, in part, upon Mr. Appel's testimony.

19. Matrix designed the Project to have a principal access at the signalized intersection of Ashbourne and Oak Lane Roads, the current entrance to the country club. Matrix proposes a second egress along Ashbourne Road East (Ashbourne Road turns from a north/south road to an east/west road at the intersection of Ashbourne Road and Oak Lane Road).

20. A network of interior roads provides access within the Project to each of the proposed single-family dwellings, common areas and the clubhouse.

21. Each single-family dwelling will have a two-car garage as well as a driveway that will accommodate two (2) parking spaces. Each residence is set back from the property lines by no less than 122 feet.

22. Matrix proposes best management practices for the treatment of stormwater. Proposed are bio-infiltration swales, water quality basins, and bio infiltration basins which Matrix represents as exceeding the standard for water quality treatment established by the Department of Environmental Protection.

23. Matrix proposes to restore 37 of the 67 acres of open space to natural woodland and meadows.

24. The design and layout of the residences on the property results in a dwelling density of 2.2 per acre, a density which is lower than the density of the surrounding existing residential neighborhoods.

25. Matrix intends the residences to be for sale and not for rent. Purchasers will be limited to those 55 years of age or over.

26. Mr. Appel testified that the proposed age-restricted development will have no adverse effects to the public interests and will be in accordance with the Cheltenham Township Comprehensive Plan. The Comprehensive Plan encourages the development of age-restricted communities.

27. The building coverage for the Project is proposed to be 13.6 acres or approximately 13% of the Property.

28. All buildings are proposed to be set apart by no less than 30 feet.

29. Mr. Appel testified that the proposed lighting and landscaping will comply with the applicable zoning code requirements.

30. The controls governing trash removal and loading areas apply only to the clubhouse, and Mr. Appel testified that the Project is code compliant with regard to those controls.

31. Matrix proposes 116 parking spaces within the rain garden areas, a number which Mr. Appel testified was reasonable and customary for an age-restricted development.

32. Each single-family residence in the Project will have a two-car garage and a driveway that can accommodate two passenger cars.

33. Matrix's architect testified that purchasers of single-family dwellings will have a choice between one-car and two-car garages. However, this testimony is contrary to the testimony of other Matrix witnesses and representations.

34. Article XXIX, Section 295-221(F) limits the maximum number of parking spaces to "[n]o more than 120% of the required minimum parking . . ."

35. Article XXIII, Section 295-245(c)(1) requires, in part, 1.5 parking spaces for each dwelling unit. The Project, as approved and conditioned hereafter, meets the minimum requirements for parking.

36. The Project includes private roadways of 24 feet in width instead of roads of 28 feet in width. Parking is not permitted on roads less than 28 feet in width. The result is an absence of parking along the roadways. Instead, Matrix proposes parking fields that are partially obscured in the landscape and located in rain gardens.

37. Mr. Appel admitted that no home located on Ashbourne Road in the vicinity of the Project does not have the front of the residence face Ashbourne Road. Mr. Appel further agreed that four single-family homes in the Project nearest to Ashbourne Road South face inward toward the central portion of the Project, and Matrix has located the rear of these

residences toward Ashbourne Road South. Accordingly, the rear yards of the four residences are uniquely located between the buildings and Ashbourne Road South.

38. The Board qualified Laura Staines Giardino, AIA PP LEED AP, as an expert in architecture. The Board relied, in part, upon the testimony of Ms. Giardino.

39. Matrix engaged Ms. Giardino to perform architectural services related to the proposed development. Ms. Giardino visited the site and the surrounding neighborhoods, noting, observing and measuring the scale of the neighborhoods, various differences and similarities in the homes surrounding the Property.

40. Ms. Giardino testified that the project team considered the consistency of materials and variations in housing stock in the neighborhoods in arriving at the materials proposed for the Project. Accordingly, Matrix decided on variations in the architecture and in the materials used in the proposed residences.

41. Ms. Giardino testified that the materials proposed for the Project and for the clubhouse are largely sustainable with color choices sympathetic to the neighboring communities.

42. Matrix located the clubhouse and swimming pool at the Property to be centrally located for the benefit of the residents, maintaining a reasonable walking distance from the residences.

43. Ms. Giardino testified that Matrix's choice of materials, placement of windows and doors and architectural design represented a coordinated and unified approach to the development of the Project, which was architecturally in keeping with the surrounding neighborhood.

44. At the hearings, Matrix presented materials representative of those actually to be used in construction of the Project. In addition, Matrix prepared and exhibited a number of color renderings of the proposed Project. Matrix's representatives confirmed that the materials as presented to the Zoning Hearing board are the same materials and color schemes that will be used in the construction of all of the residences.

45. Matrix's proposed entranceways are designed to provide residents and visitors with protections from adverse weather conditions.

46. The Matrix design for the project contains no blank or windowless walls.

47. Various plans for the Project illustrate a network of internal walkways as well as walking trails within the open space. Other outdoor amenities include the clubhouse, swimming pool, rain gardens and outdoor seating at the rain gardens. Each unit, in addition, has a private garden and patio or terrace area.

48. Matrix does not intend to register the Project for LEED certification.

49. Matrix intends to investigate the use of sustainable materials that approach the goals embodied in the LEED certification program and to implement sustainable practices in the construction of the Project.

50. The Board qualified Joseph J. DeSantis as an expert in traffic engineering. The Board relied, in part, upon DeSantis' testimony.

51. DeSantis prepared a traffic impact analysis for the Project. In preparation of the analysis, DeSantis surveyed seven intersections in the community surrounding the Project. DeSantis also developed a trip generation study in order to anticipate the traffic expected to be generated by the Project, which study DeSantis stated was the key to the traffic impact analysis.

52. DeSantis testified that his study was based in part upon statistics derived from data published by the Institute of Traffic Engineers. At morning peak hours, DeSantis said that traffic generated would account for 71 trips entering and exiting the Project. At afternoon peak hours, the Project would generate 87 trips entering and exiting. DeSantis concluded that the traffic generated by the proposed age-restricted development would not be significant.

53. DeSantis also concluded that the traffic impact on individual roadways would be *de minimis*. To the extent that new traffic will impact two intersections, however, DeSantis recommended off-site traffic improvements to ameliorate the impacts at these intersections as well as other actions to improve traffic elsewhere.

54. DeSantis computed the number of required parking spaces for the proposed 226 single-family units to be 339 parking spaces based on a requirement of 1.5 parking space for each dwelling unit. DeSantis computed the zoning code requirement of an additional one parking space for each five dwelling units to add an additional 46 parking spaces. DeSantis added one additional parking space to meet the requirement of one parking space for each full time employee. DeSantis calculated the total required spaces to be 386 parking spaces.

55. Pursuant to the Article XXIX, Section 295-221(F), the maximum number of parking spaces permitted at the Project is 120% of the required parking spaces.

56. DeSantis computed the total number of permitted parking spaces for the Project under Section 295-221(F) to be 442 parking spaces.

57. Matrix proposed 568 parking spaces for the Project.

58. DeSantis offered his opinion that the zoning code's limitation of 120% or 56 additional parking spaces for a total of 442 parking spaces at the Project was not reasonable. DeSantis testified that, in his experience, maximum parking limitations were appropriate for large apartment complex where parking was limited to a large parking lot, given to large expanses of impervious asphalt and excess stormwater run-off leading to environmental issues.

59. Notwithstanding DeSantis' considerable expertise, the Board did not find DeSantis' testimony credible on the maximum parking issue because it was premised on the statement that two-car garages are standard. The statement has no basis in the testimony and was contradicted by common experience and by Giardino's photographs (Exhibit A-4) of residences

in the community which contain no two car garages, numerous one-car garages and several homes with no garages.

60. DeSantis noted that the streets interior to the Project and servicing the carriage homes are “only 24 feet wide,” and that the Fire Marshall and DeSantis would recommend against street parking. DeSantis further testified that the proposed 116 guest parking spaces, laid out in groups of five or seven, would provide convenient, close and accessible parking.

61. DeSantis admitted that, where roads are proposed to be 28 feet wide, on-street parking would be available, although he stated that on-street parking would not be advisable.

62. DeSantis also testified that large portions of the development were not provided with guest parking in designated off-street lots. Accordingly, some dwellings do not have close, convenient and accessible guest parking nearby. However, as DeSantis stated, these areas are serviced by streets with widths of 28 feet, allowing on-street parking nearby.

63. If the Project had been designed entirely with roadways of 28 feet in width, on-site parallel parking could be provided on these streets, and such parking would be convenient and nearby for the residents and their guests.

64. DeSantis testified that on-street parking on streets measuring 28 feet wide was common and, in fact, allowed parking on both sides of a street. Given DeSantis’ estimate of the density of parking in this Project, he stated that there would be rows of parking on both sides. Parking would be sporadic, but that was the typical workings for a residential street.

65. DeSantis did not consider that the configuration of the Project would allow two cars to be parked in each garage and two cars could be parked in each driveway in making his conclusion about the sufficiency of guest parking.

66. Any deficiency in guest parking represents Matrix’s preference and results solely from Matrix’s choice to develop the Project with dwellings, all of which have two-car garages, unnecessarily broad curb cuts and driveways, an absence of green front lawns, and narrow streets that prevent and discourage on-street parking. To the extent that the deficiency represents a hardship, such condition is self-imposed.

67. DeSantis testified that it would not be reasonable to design an age-restricted development with one-car garages. The Board did not find this testimony to be credible.

68. The Board qualified Mark Mayhew as an expert in civil engineering. The Board relied, in part, upon the testimony of Mr. Mayhew. Mr. Mayhew and his colleagues at Taylor, Wiseman & Taylor prepared the civil engineering drawings accepted by the Board as Exhibits A-15.1 through A-15.10. Mayhew also prepared an Amended Zoning Plan, included in Exhibit A-1, and a power point presentation, accepted as Exhibit A-16.1 through A-16.10.

69. Mayhew analyzed the areas designated as having steep slopes which are planned to be disturbed in the course of developing the Property for the Project in order to arrive at an opinion as to which areas were man-made and which areas are naturally occurring.

70. Mayhew studied the topography, soils, vegetation and historic photographs and excavated nine test pits in order to identify areas designated as having steep slopes that he considered to have been man-made steep slopes. Based on his analysis, Mayhew testified that much of the areas proposed to be disturbed that were steep slopes were man-made, likely having been created when the golf course was built in the 1920's and, thereafter, as a result of improvements.

71. Mayhew determined the amount of naturally occurring steep slopes amounts to be 0.11 acres or 0.1 percent of the total site area, an amount which Mayhew considered to be an insignificant disturbance.

72. Mayhew acknowledged that the Township zoning ordinances do not distinguish between naturally occurring and man-made slope.

73. Mayhew calculated that the Property has 14.4 acres of man-made steep slopes and that 10.7 acres or 74% of the man-made steep slopes will be disturbed by the proposed construction.

74. Mayhew testified that the proposed grading of areas of steep slopes is required to construct the residences, provide safe grading around residences and roadways and to provide proper stormwater management.

75. With a single exception (only one residence requires disturbance of non-man-made steep slopes), the disturbances are to man-made steep slopes.

76. Mayhew testified that all of the disturbances proposed for steep slopes can be accomplished in a safe manner and that the protections provided by the Cheltenham Township Subdivision and Land Development Ordinance and the Montgomery County Conservation District will ensure that the disturbances are completed in a safe manner.

77. Mayhew testified that the disturbances of areas designated as having steep slopes would result in no negative impact to downstream water courses, no increase in erosion of slopes, no stream siltation, and no soil failure. Mayhew concluded, therefore, that Matrix had met the requirements of Section 295-164(B)(2) to allow the Township Engineer to exempt the Project from the application of the provisions of the Steep Slope Conservation District.

78. The Township Engineer declined to exempt the Project from application of the provisions of the Steep Slope Conservation District, a determination that the Board will not disturb.

79. A substantial portion of the areas designated as having steep slopes at the Property were a result of the construction of the golf course which operated at the Property for more than 80 years. The construction that resulted in the steep slopes included the terracing and creation of the golf course itself, the construction of the clubhouse and auxiliary building and the

parking lots. The resulting steep slopes are not environmentally sensitive areas, which term is directed toward native and naturally occurring physical conditions. Nevertheless, the ordinances are designed to insure that disturbances of any steep slope on the Property be performed in such a manner as to safeguard the surrounding area and to avoid negative impact to downstream watercourses, increases in soil erosion, stream siltation and soil failures.

80. Confining the Project's development to areas which are not designated as having steep slopes would result in severe limitations on reasonable development and result in haphazard design contrary to the public interest.

81. The Project may be developed in an manner that protects the community and Property from injurious slope erosion, soil failure, stream siltation or increase in stormwater discharge and collection notwithstanding widespread disturbances of areas designated as having steep slopes. Matrix submitted an Erosion and Sediment Control Plan, which plan or an alternative must be approved by the Board of Commissioners in the land development approval process.

82. Sixty-four percent of the Property will remain as open space after the Project is completed. Thirty-six percent of the site will be developed with dwelling units, a clubhouse, and roadways.

83. Due to the construction of the golf course and its amenities, the Property, with regard to steep slopes, suffers from unique topographical conditions resulting in hardship to the Property.

84. Development of the Project will not result in disturbances to floodplains, wetlands, water courses and riparian buffers.

85. Areas designated as having steep slopes which are either naturally occurring or man-made and which are not otherwise located in the floodplain, wetlands, water bodies and watercourses and riparian buffers equal 25.69 acres.

86. While Matrix did not compute the amount of steep slopes to be disturbed, all of the areas of disturbance are accurately illustrated on the submitted plans.

87. Reasonable development of the Property cannot occur without relief from the provisions of the Steep Slope Conversation District and the minimum Net Developable Site Area requirement of the Age-Restricted Overlay District.

88. Matrix submitted with its Application a lines and grades plan, which, in Mayhew's opinion, substantially met the requirements of the Zoning Code at Section 295-168(B). Given the large size of the tract, the complexities in completing a lines and grades plan and the many requirements, Mayhew admitted that the lines and grades plans failed to illustrate certain required elements but further concluded that Matrix's submission met the intent of the Zoning Code.

89. The initially submitted lines and grades plan failed to provide topographical contours at two-foot intervals, having provided four-foot intervals. Subsequently, Mayhew provided a plan with topographical contours at two-foot intervals.

90. Mayhew testified that nothing was lost by not providing the additional contours to the lines and grading plans.

91. The submitted plans failed to illustrate elevations for the top of a foundation walls, basement floors, garage floors and first floors.

92. The information from which these elevations could be determined and/or calculated was available in other forms in the submissions to the Township Engineer.

93. The submitted plans initially failed to illustrate the erosion and sediment ("E&S") control plan.

94. While Mayhew testified that it was too early in the development of the Project to establish the elevations and the E&S control plan and that those would be provided fully in the land development approval process, Matrix and Mayhew ultimately submitted an E&S control plan.

95. Objectors' attorney Onorato voiced an objection to the introduction of an E&S plan, claiming it was an amendment to the original application as it was a required submission. The Board did not agree with objectors and allowed the introduction of the new plan.

96. Mayhew disputed the assertion that the E&S Control Plan was needed on the Lines and Grades Plan in order to determine whether development at the Property would have an adverse impact. Nevertheless, when Mayhew finally prepared and submitted an E&S Control Plan, Mayhew testified that it illustrated measures that Matrix would take to minimize erosion and sediment runoff.

97. Mayhew had originally stated that the absence in the plans of a differentiation in soil types would not hamper the Board's ability to review the Project for adverse effect because differences in soil types can be accounted for by E&S measures including the use of different types of silt fence and other measures. Mayhew represented that Matrix had committed to using "super silt fence," diversion swales and other protective measures during the construction period. The subsequent submission of an E&S Control Plan included a designation of soil types at the Property.

98. An existing terra cotta sewer pipe runs through an area identified as flood plain and riparian corridor. The pipe runs between two manholes, one of which is near a bank of the Tookany Creek. While Matrix proposes no work to this pipe in this Application, Matrix has committed to inspecting the pipe at the suggestion of the Township Engineer. In the event that the pipe fails the inspection in the opinion of the Township Engineer, Matrix has agreed to replace the existing pipe with a PVC pipe in exactly the same place as is located the existing pipe. This pipe replacement would require a variance to allow disturbances in the floodplain and stream bank and to assure restoration of both upon completion of the pipe replacement.

99. Replacing the existing pipe will require disturbing the riparian buffer for a distance of 60 to 70 feet, and the area will be restored to its natural pre-existing condition. It is not possible to replace the pipe without the identified disturbances in the floodplain and riparian buffer.

100. In Mayhew's opinion, the proposed pipe replacement is ordinary maintenance and repair that should not require zoning relief, although Mayhew conceded that new construction in the floodplain and stream bank would require variances. Nevertheless, Matrix concedes that it may require a variance in order to re-construct the sanitary sewer pipe in the floodplain.

101. Failure to grant a variance to allow replacement of the sewer pipe if the pipe should fail would result in failure of sanitary sewer drainage system in the central portion of the Project. In order to avoid use of the existing pipe or its replacement, the drainage would have to be relocated elsewhere, resulting in extensive and additional disturbances of steep slopes including excessively steep trenching to accommodate the topography.

102. The area to be developed for each single-family detached home will contain areas designated as having steep slopes. The area to be developed in connection with each building housing three single-family homes will contain areas designated as having steep slopes.

103. Mayhew calculated that the Property includes 14.4 acres of man-made steep slopes, of which 10.7 acres would be developed pursuant to the Project.

104. Mayhew testified that four units facing Ashbourne Road (South) could not be oriented to face Ashbourne Road because they featured walk-out basements, a standard product for builders. Mayhew further testified that the residences could not be re-oriented without also adding roadway.

105. There are no topographical or other unique physical features to the Property which prevent Matrix from designing and developing Ashbourne Road facing units where the rear-facing dwelling are currently proposed at Ashbourne Road (South). No adverse effect to the community would result from additional roadway to accommodate this orientation to Ashbourne Road (South) even if required.

106. The Board qualified Erik Hetzel as an expert in fiscal and community impact studies.

107. Hetzel prepared a fiscal impact statement that states the net annual fiscal impact of the Project comparing municipal revenues to costs, premised upon annual revenues and costs (excluding transfer taxes) to Cheltenham Township and the Cheltenham Township School District. Hetzel concluded that, upon completion and sale of the units in the Project, the Township would experience positive revenue (excess over costs) of \$203,467. The School District would have annual positive revenues of \$1.76 million.

108. Hetzel's analysis is premised upon age-restricted sales, presumed market values of the dwellings and estimates of earned income of anticipated residents. Hetzel's opinions are also based upon the Project being fully completed and each dwelling being sold.

109. In addition, based upon Matrix's anticipated sales prices, Hetzel stated that the Township and the School District will realize revenues generated from transfer taxes on the sale of dwelling units at the Property. Each would receive \$580,000 from the transfer taxes collected on the initial sale of all of the Project's dwelling units. Hetzel stated that the municipal entities could anticipate additional revenue from the yearly turnover of properties that could result in \$28,890 in additional transfer tax revenues, based on a 7.4% turnover of homes in the Project.

110. The Board qualified, David M. Lynch, the Township's director of Engineering, Zoning and Inspections (the Township's Code Officer) as an expert in civil engineering.

111. In reviewing the Project, Lynch developed a measuring scheme to assess the impacts to receiving water bodies of development in steep slopes. Lynch developed the scheme at the direction of the Board of Commissioners' Building and Zoning Committee for its use in reporting the Project's possible zoning and engineering impacts to the Zoning Hearing Board. Lynch determined that any disturbances to an area designated as having a steep slope would necessarily have a zoning impact. In a report to the Board utilizing this measuring technique, Lynch advised the Board that none of the impacts was *de minimis*. Lynch distinguished a zoning impact from an engineering impact, stating that there could be a zoning impact under the governing provisions and not have an engineering impact. Lynch admitted that his "grading system" was not a standard engineering practice and was developed solely to evaluate Matrix' plan of development.

112. Lynch's Level I engineering impacts included areas with slopes less than 15% and small isolated areas with slopes in excess of 15% or 25% so long as the area does not involve an area of drainage to a waterway. Level I engineering impacts are of little concern and include areas not governed by the regulations for a Steep Slope Conversation District.

113. Level 2 engineering concerns included small, isolated areas of steep slopes in a drainage way and areas of "mass" slopes of 15% to 25% and are, to Lynch, of more severe engineering concern. Disturbances in these areas require remediation to avoid erosion into the drainage areas and waterways.

114. Level 3 engineering impacts includes area within stream banks, riparian buffers, floodplains and mass steep slopes of greater than 25%. Level 3 areas represent potential for more severe impacts.

115. In accordance with his three level engineering analysis, Lynch testified that 168 homes – either single-family or clustered – have no or Level 1 engineering impact. Matrix could build these 168 homes with either no or Level 1 engineering impact. However, Lynch testified that development of these 168 homes would likely not avoid Level 2 or Level 3

impacts to areas designated as having steep slopes due to the additional construction involved beyond the homes (i.e. roadways, etc.).

116. Lynch testified that the greater the number of houses developed, the greater the potential impact on steep slopes and the greater impact, in turn, requires a greater need to mitigate construction's impact on steep slopes.

117. All of the engineering impacts can be adequately addressed by erosion and sediment control measures.

118. Development of land disturbs the natural environment. The steeper the grading of land, the higher the risk of environmental damage. The purpose of the Steep Slope Conservation District is to prevent and avoid soil erosion.

119. The Board qualified John O. Chambers as an expert in civil engineering.

120. Chambers testified that certain soil types present a higher risk of erosion and are less suited for construction, and Chambers identified those soils as they exist on a plan of the Project. Chambers further identified specific lots, at which the soil types having a higher risk of erosion were located. Chambers identified 77 of the proposed dwellings as located on severely limited soils.

121. Chambers testified that the Project will effect steep slopes, will have a negative impact on steep slopes, will have a potential negative impact on the environment when compared with no development.

122. Chambers' opinion was that the Project could be developed without significant impact on steep slopes by not building on steep slopes which could be accomplished by building fewer dwelling units.

123. Chambers opined that the Project was not consistent with the legislative intent of the Steep Slope Conservation District provisions because the Project proposed inappropriate development and excessive grading resulting in an inharmonious element in the development of the Township.

124. Chambers agreed that erosion and sediment control measures can be used to control runoff where development is proposed for steep slopes.

125. Chambers agreed with Matrix's counsel that the risks involved with development in some soil conditions where risk relates to frost action can be addressed with proper design and construction of the Project.

### DISCUSSION

Applicant Matrix Ashbourne Associates, L.P. is the owner of the premises known at 1100 Ashbourne Road in Elkins Park, Pennsylvania. The Property, containing approximately

104 acres, was previously the site of the Ashbourne Country Club. Ashbourne Country Club was originally developed between 1922 and 1924 and operated, for the most part, as a private club. Matrix and related companies had substantial experience operating golf clubs and began to operate Ashbourne Country Club in or about 1995. In 1999, Matrix purchased the Property and continued to operate the club until 2005, at which time Matrix determined that the operation of the Property as a golf and country club was no longer viable.

In an earlier application at Appeal No. 3081, Matrix sought and obtained zoning relief from the Zoning Hearing Board to construct a residential development consisting of three mid-rise residential apartment and condominium buildings with 300 dwelling units and a golf course with accessory clubhouse and buildings. Matrix did not build that project, and the zoning relief has since expired.

Now Matrix proposes to develop the Property for 226 single-family residences, configured as 70 detached single-family homes and 156 single-family attached dwellings arranged in groups of three (the "Carriage Homes"). The Project will also include a community clubhouse with meeting rooms and other amenities and a swimming pool. Of the site's approximate 104 acres, Matrix proposes to keep 67 acres as open space, 37 acres of that space preserved or returned to natural conditions. The Project features a number of walkways, trails, parking areas and stormwater management facilities beneficial to the public interest.

Although the underlying zoning district is an R-1 Residence District, development of the Property is subject to a number of overlay districts including the Age-Restricted Overlay District, the Preservation Overlay District and the Steep Slopes Conservation District. Matrix seeks to develop the property utilizing the provisions available under the Age-Restricted Overlay District. Although subsequently repealed by the Cheltenham Township Board of

Commissioners, Matrix made its application at a time when those provisions were available and continues to pursue the project under the Age-Restricted Overlay provisions.

Matrix designed the Project substantially to conform with the governing zoning controls, but the Project requires special exceptions in accordance with the Age-Restricted Overlay District and variances from the Steep Slope Conservation District, the General Provisions regulating parking, the Preservation Overlay District and the Age-restricted Overlay District. The Board conducted a number of evidentiary hearings, giving almost unlimited time to both Matrix and objectors. Following the submission of briefs and consideration of the record in this matter, the Board granted Matrix most of the requested relief.

Critical to the Project is Matrix's request for special exceptions in accordance with the provisions of the Age-Restricted Overlay to permit an age-restricted, independent living, multiple dwelling development (Section 295-242(B)(1)), a clubhouse with common areas, meeting rooms, indoor and outdoor recreational facilities as well as maintenance and security facilities (Section 295-242(B)(3)), and a swimming pool for residents (Section 295-242(B)(3)). In order to be eligible for the application of the Age-Restricted Overlay, the Project must contain an area of 5 acres or greater in single ownership, be located in a residential, institutional or commercial zoning district and have the necessary frontage on a state road. Here, the Property contains 104 acres owned in single ownership, is located in an R-1 Residential district and enjoys 3,000 feet of frontage on a state road; the Property is, therefore, eligible for application of the Age-Restricted Overlay provisions. See Section 295-241.

Accordingly, since the proposed uses are permitted by special exception and since the Property is eligible for Age-Restricted Overlay treatment, the Board may grant special exceptions to the proposed uses so long as the application meets specific criteria of the

ordinances -- the Performance Standards (Section 295-244) and the Development requirements. The plans of record demonstrate that the Project meets the Performance Standards. The plans of record and the testimony of Matrix's experts establish that the Project meets the Development Requirements.

Section 295-209(A)(2) requires that the Project must not be contrary to the public interest. In Matrix's design, four homes have a rear elevation facing Ashbourne Road (South). The Board concludes that this disrupts the housing pattern in this neighborhood and, therefore, adversely affects the community. The Board concludes that the design can be altered to avoid this result. Accordingly, the Board attaches hereafter a condition that no building in the Project shall have a rear elevation facing Ashbourne Road.

The Board has made its decisions and conclusions based on the plans and representations made by Matrix and its representatives throughout the hearings. The Board's decision that the Project results in no adverse effect to the public interest rests squarely on the entire presentation at the hearings. Hereafter, the Board attaches several conditions to ensure that the Project is developed as presented. So the Board holds Matrix to its promise to provide three bus shelters, to plant 75% of new trees with a 4"-5" DBH at time of planting and that the land to be preserved and returned to a natural state is addressed simultaneously with the first stage of development. With regard to this last condition, the Board notes that the benefits to the community and to Project's residents stem from 37 acres being preserved and returned to its natural condition and not from fewer. Having provided for these and other conditions, the Board concludes that the Project is entitled to special exceptions for the principal and accessory uses.

The bulk of the requested variance relief centers around the prohibition of development in areas designated as having steep slopes, the floodplain and the riparian buffer as

protected by the Steep Slope Conservation District and the Age-Restricted Overlay. Since the Property was last developed for a golf course and golf club principal and accessory buildings, there are numerous areas throughout the Property which qualify as steep slopes and to which the regulations of the Steep Slope Conservation District apply. The Township Engineer included all of the areas designated as having steep slopes -- whether naturally occurring or the result of development -- within the Property's Steep Slope Conservation District. Matrix seeks to have the Board disregard the Township Engineer's determination in delineating the scope of the areas within the Steep Slope Conservation District.

The governing ordinance, Section 295-164(B)(2), empowers the Township Engineer to exempt man-made slopes where he determines the following:

the alteration, regrading, clearing or construction upon such slope can be accomplished without causing erosion of the slope and will not result in soil failure, stream siltation and contamination of surface waters and/or an increase in total runoff into any watercourse . . . and will not be injurious to the [public] health, safety and welfare . . .

The Township Engineer declined to do so. In addition, the Township Engineer made a careful study of the property and determined that all of the elements of the development resulted in zoning impacts and a substantial portion of the development would result in engineering impacts.

Although Matrix offered expert testimony urging a different finding with regard to the development, the Board considered credible the testimony of the Township Engineer and finds nothing persuasive in the record to discard the opinions and determinations of the Township Engineer that man-made steep slopes occurring on the Property should not be disregarded. The Board cannot conclude that development without compliance with protective ordinances will not be adverse to the public interest and specifically notes that, had the Board of Commissioners determined that development in man-made steep slopes would not have the same impact as development in naturally occurring steep slopes, it would have so distinguished such

slopes in the ordinances. Therefore, the Board denies Matrix's request for a determination contrary to that of the Township Engineer.

Alternatively, Matrix sought a variance from the prohibition of Section 295-167 to allow the construction of the Project that disturbs steep slopes. Given the pervasiveness of the steep slopes throughout the Property and the development in the circumstances of the Property, reasonable development is not possible without the disturbance of steep slopes. Disturbances are unavoidable, and the Property would suffer an unnecessary hardship without variance relief.

The Board concludes that any adverse effect inherent in steep slope disturbances can be mitigated if not avoided. The Board notes that objectors' expert testified that proper erosion and sediment controls along with proper design and appropriate construction measures can address the risks and avoid adverse effects. To the extent that proper erosion and sediment controls proposed in Matrix's plans and further designed in the land development approval process do not sufficiently protect the public interest, the Board attaches hereto several conditions as appropriate safeguards to the public interest. The Board conditions relief granted in this decision on Matrix's completion of a Geotechnical Investigation and Analysis as well as an enhanced foundation requirement designed to prevent deterioration of foundations over an extended time period.

The Board further concludes that these measures taken in concert with those implicit in the erosion and sediment control plan, the design of stormwater features, the protections provided in the land development approval process and the general conservation-friendly design result in a plan of development that requires the minimum relief necessary to accommodate reasonable development. As the topographical conditions were not of Matrix's making, Matrix is entitled to a variance from the steep slope provisions in order to construct the

Project and disturb areas designated as having steep slopes. A variance is similarly warranted from Section 295-243(B)(8)(d), a companion to Section 295-167.

The Property has a terra cotta sanitary sewer line that runs toward a manhole in Tookany Creek Parkway public area. The condition of the pipe is uncertain, and the Township Engineer suspects that the pipe will need to be replaced in the event that Matrix connects a portion of its sanitary system to this pipe. Matrix had agreed to replace the pipe with a modern plastic pipeline and to restore the floodplain and riparian buffer upon completion of the work. The pipe, however, lies in the floodplain and the Project's riparian buffer. Matrix, therefore, may require variances from Sections 295-156 (prohibiting certain construction in the floodplain), Section 295-243-242(B)(8)(a) ((excluding floodplain areas from the Net Developable Site Area (NDSA) of an age-restricted development)), and 295-243(B)(8)(e) (excluding riparian buffers from the NDSA). Developing an alternative course for the pipe represents the kind of waste that appellate court decisions do not favor. The Board concludes that a failure to grant a variance to allow the replacement of the pipe would result in an unnecessary hardship. The requested relief is the minimum relief that will afford Matrix relief, will not result in any adverse affect to the public interest and, indeed, will protect the pubic interest by mitigating a failing system through a minimally, and only temporary, invasive process.

In addition, Matrix notes that, while it has not designed its sanitary sewer system to be located in any portion of the floodplain, the final location and design of the sanitary sewer system will be part of the land development process subject to the approval of the Board of Commissioners. Matrix seeks approval to locate portions of its sanitary sewer systems in the floodplain (and to restore the floodplain upon completion of the work) if that is the result of the land development process. Since development of the Project is dependent upon this land

development approval, a failure to grant relief to allow placement of a portion of the sanitary sewer system in the floodplain where such is required by the Board of Commissioners and the application of the land development ordinances would result in an unnecessary hardship. The hardship, a product of the land development process, would not be self-created and will not result in any adverse affect to the public interest. Accordingly, a variance from Section 295-253(B)(8)(a) is warranted.

Matrix submitted a Lines and Grades Plan that was deficient in several respects when measured against the requirements of the Age-Restricted Overlay. During the course of the hearings, Matrix submitted revised plans that complied with more sections of the ordinance. Matrix admits, however, that the Lines and Grades Plan, composed of several sheets of plans, still do not meet all of the technical requirements of the ordinances because the plans do not include information about off-site structures and certain on-site measurements. Accordingly, the Board cannot agree to Matrix's request to make a determination that the submitted plans comply with the ordinance.

However, the Lines and Grades Plans do provide the Board with sufficient information in sufficient quantity and detail for the Board to analyze the Plan's content for the purpose of the application of the Age-Restricted Overlay. While not in the category of matters for which the Board may make a *de minimis* finding, the departure is, indeed, minimal. Hereafter, the Board conditions approval on the submission to the Township of a fully compliant Lines and Grade Plan. With this added protection, the Board concludes that the failure to grant a variance from the requirements for Lines and Grades Plans would result in an unnecessary hardship and will not result in any adverse affect to the public interest.

Matrix also seeks an interpretation of Section 295-241 that the provisions of the Preservation Overlay District do not apply to the Project. Section 295-241 provides, in part, that where the provisions of the Age-Restricted Overlay apply, the “provisions of the underlying zoning district shall not apply.” Here, the underlying zoning district is R-1 Residence District. Section 295-187(A) is the pertinent and controlling section of the Preservation Overlay District:

The Preservation Overlay District is defined and established to include and be an overlay upon all parcels having five or more acres or any residential site with a development proposal of eight dwellings units or more within any residential district designated on the Cheltenham Township Zoning Map. All property within the district used or intended to be developed for residential purposes shall comply with the provisions of this article.

The Preservation Overlay District regulations clearly apply to this Property and Project. However, the certain portions of the regulations are contrary to the Age-Restrict Overlay. The Preservation Overlay District controls serve different planning goals than do the Age-Restricted Overlay zoning controls. To require compliance with both the Age-Restricted Overlay District and the Preservation Overlay District would be contrary to the public interest and result in a hardship upon the Property and the Project. Accordingly, the Board concludes that it is empowered and compelled to grant a variance from Sections 295-187, 188 and 189 of the Preservation Overlay District to the extent that district rules might apply to the Project. Since Section 295-190 does not appear to be contrary, the Board declines to grant a variance from this section.

Lastly, Matrix seeks a further determination that the proposed parking spaces do not exceed the maximum number permitted under the Zoning Code’s Section 295-221(F). Section 295-221(F) limits the number of parking spaces that may be provided to 120% of the minimum parking spaces required for the Project. Section 295-245(C)(1) requires 1.5 spaces for each dwelling (339 spaces), one space for each five dwelling units (46 spaces) and one space for

each employee (1 space). The minimum number of required spaces is, therefore, 386. The maximum number of spaces is 463 (i.e. 120% of 386). Matrix proposes to provide 452 parking spaces in the 2-car driveways and 116 parking spaces in common parking fields. Clearly, Matrix's plan exceeds the maximum number of parking spaces by 105 parking spaces.

While Matrix provided expert testimony that the extra parking may be a good amenity for the Project, there is no record evidence that the Project cannot be developed within the regulations and without an excess of 105 parking spaces. Matrix's expert testimony is firmly based on the allegation that two-car garages are standard in age-restricted or similar development. The record demonstrates otherwise. The testimony also discounts or overlooks entirely the availability of two guest parking spaces in the driveways of the each residence.

Matrix's architect testified that she surveyed the surrounding community in order to design the Project to conform with certain architectural styles. She supported her testimony with photographs of a number of nearby properties and dwellings. None have 2-car garages; none of double-width driveways. Some do not have garages. The Board does not find credible Matrix's testimony that the standard for similar developments is a 2-car garage. In addition, Matrix admits that its choice of narrow roadways, measuring 24 feet in width, does not allow for parallel on-street parking. The decision to provide 2-car garages, double-width driveways and narrow internal streets produces the desire, but not the need, for additional parking in parking fields located throughout the Project. If there is a lack of parking available for the development, the lack of parking is self-inflicted.

Section 910.2(a) of the MPC clearly empowers the Board to grant variance only in a matter where the Board can make all of the following findings where relevant:

- (1) That there are unique physical circumstances or conditions, including the irregularity, narrowness, or shallowness of lot size or shape, or exceptional

topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstance or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.

(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable reasonable use of the property.

(3) That such unnecessary hardship has not been created by the appellant.

(4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

(5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

In order to grant a variance, the Board must be empowered by authority delegated through the MPC. The requirements for a variance are, in this case, clear and bind the Board's discretion. Accordingly, upon the record in this matter, the parking deficiency, if any, is self-inflicted and the Board is without power to grant relief and must deny Matrix's request for variance.

#### CONCLUSIONS OF LAW

1. The proposed age-restricted development is not permitted by the Cheltenham Township Zoning Ordinance without the grant of special exceptions and variances. However, in accordance with the Pennsylvania Municipalities Planning Code and the Cheltenham Zoning Ordinance, the Cheltenham Township Zoning Hearing Board is empowered to hear and decide requests for variances where it is alleged that strict conformance with the governing ordinances would result in unnecessary hardship. Similarly, the Zoning Hearing Board is empowered to grant special exceptions where the application meets the criteria of the zoning ordinances.

2. Matrix proposes to develop an age-restricted residential development comprised of 70 single-family detached homes, 156 single-family multiple dwellings (each with three single-family attached dwellings), a community clubhouse, swimming pool and open space.

3. The community clubhouse, swimming pool and associated amenities are customarily incidental to an age-restricted community.

### SPECIAL EXCEPTIONS

4. Under the circumstances of this matter, Matrix has met its burden in demonstrating that its Project, as described in its Application and supporting documentation, meets the minimum criteria necessary for the application of the Age-Restricted Multiple-Dwelling Overlay District because the Property is greater than 5 acres, the Property is located in an R-1 Residence District and the Property has frontage on a state road that exceeds 2,500 feet. Accordingly, the Project is eligible for Age-Restricted Housing Use.

5. Except as otherwise noted herein, the Project meets the Performance Standards and the Development Requirements of a qualifying age-restricted development.

6. The allowance of a special exception to permit the development of the proposed age-restricted development with the proposed accessory clubhouse, swimming pool and other amenities will not be contrary to the public interest.

7. Construction and operation of the Project will not adversely effect traffic conditions, drainage, air quality, noise levels, natural features of the land, neighborhood property values or neighborhood aesthetic characteristics.

8. Construction and operation of the Project will not adversely effect the provision of public services.

9. Matrix has met its burden in establishing that the Project has met the requirements for the application of the Age-Restricted Overlay District and the Age-Restricted Multiple Dwelling Overlay District, and Matrix is, therefore, entitled to special exceptions pursuant to § 295-242(B)(1) and 242(B)(3) to develop the Project for age-restricted residences and accessory clubhouse, swimming pool and amenities.

### VARIANCES

10. Sections 295-156 and 295-243(B)(8) do not permit construction of sanitary sewer facilities in the 100 Year Floodplain Area or in areas designated as within the riparian buffer.

11. Cheltenham Township may require and Matrix has agreed to replace an existing sanitary sewer line that is located in the 100 Year Floodplain and in the riparian buffer as a condition to constructing the Project.

12. If Matrix is unable, due to the prohibitions in the Zoning Code, to replace the sanitary sewer line, the Property will be subject to an unnecessary hardship which was not created by Matrix.

13. Allowance to replace the sanitary sewer line located in the 100 Year Floodplain and in the riparian buffer and to restore the floodplain and the riparian buffer upon completion of the work is the minimum variance that will provide Matrix with relief and will not adversely affect the public interest.

14. Reasonable construction of a project appropriate for this 104 acre site cannot be completed without the disturbance of numerous areas designated as having steep slopes.

15. The governing Zoning Code regulations, Section 295-167 and, in some respects, Section 294-243(B)(8)(d), do not permit construction of the Project including proposed freestanding structures, building and retaining wall, internal accessways, driveways, parking areas, swimming pool, sanitary sewers, stormwater management facilities and other underground facilities and landscaping in areas designated as having steep slopes.

16. Many of the features prohibited by the steep slope limitations are required by other provisions of the Age-Restricted Overlay District.

17. Allowances from the steep slope limitations to accommodate the development of the Project are reasonable adjustments.

18. The requested variances from the steep slope limitations represent the minimum relief or a reasonable adjustment that will afford relief to Matrix and will result in no adverse affect to the public interest.

19. The Project is designed to restore substantial acreage to a natural state and to avoid development in the floodplain. In the event, however, that, as a result of the land development process, the Board of Commissioners approve a plan of development that place sanitary sewer facilities in the floodplain, a failure to grant a variance to allow such development in the floodplain would result in an unnecessary hardship.

20. Allowance to construct sanitary sewer facilities in the floodplain when required by an approved land development plan will afford Matrix minimum relief and will not result in any adverse effect to the public interest.

21. The submission of a Lines and Grades Plan as required pursuant to Section 295-168 does not meet all of the technical requirements of the ordinance.

22. Matrix's Lines and Grades Plan provides all of the information necessary to address the purposes of a lines and grades plan and provides a satisfactory basis for the Zoning Hearing Board to evaluate the Project with regard to public interest served by the regulations governing Lines and Grades Plans.

23. A variance to allow development of the Project without the submission of a totally compliant Lines and Grades Plan is the minimum variance that will afford Matrix relief and will not result in an adverse effect to the public interest.

24. The Property is subject to the requirements of the Preservation Overlay District, Sections 295-186-190.

25. The Preservation Overlay District is not an underlying zoning district, but is an overlay district.

26. The portions of the Preservation Overlay District applicable to the Project are, in great part, contradictory to the Age-Restricted Overlay District and the Project cannot be complete in compliance with both sets of zoning controls.

27. Imposing both set of controls would result in an unnecessary hardship to the Property.

28. A variance from Sections 295-187, 188 and 189 of the Preservation Overlay District will provide minimum relief to Matrix and will not result in an adverse affect to the public interest.

#### **DENIALS OF REQUESTS FOR RELIEF**

29. The provisions of the Steep Slope Conservation District do not distinguish between man-made and naturally occurring steep slopes in their limitation on certain uses in areas designated as having steep slopes.

30. Matrix failed to present evidence sufficient to demonstrate that the Township Engineer erred in his determination of the boundary of the Step Slope Conservation District at the Property, and, therefore, the Zoning Hearing Board has no authority to set aside the Township Engineer's determination.

31. The required number of parking spaces, premised on the number of proposed dwellings, is 385. Pursuant to Section 295-221, the maximum number of parking spaces is 463. The Project proposes parking spaces greater in number that 463. Matrix failed to demonstrate that its proposed parking spaces are not greater than the maximum permitted by the limitation of the parking regulations. In addition, Matrix has failed to demonstrate why the Project cannot be developed with 463 or fewer parking spaces and, therefore, failed to demonstrate that a failure to grant relief from the parking limitations would result in an unnecessary hardship.

32. Section 295-241 provides that, with regard to the regulations of the Age-restricted Overlay District, contrary regulations contained in the underlying zoning district shall not apply. However, the Preservation Overlay District is not an underlying zoning district and Section 295-241 does not relieve Matrix of compliance with the provisions of the Preservation Overlay District.

#### **DECISION**

**WHEREFORE**, this 14<sup>th</sup> day of February, 2011, the Cheltenham Township Zoning Hearing Board, by a 3-0 vote, grants to applicant(s) the following variances:

(1) a variance from the rules and regulation of the "Floodplain District" as outlined Article XXI, Section 295-156 to allow construction or replacement of the existing 8" T.C. Sanitary Sewer Line (if required) within the 100 Year Floodplain Area;

(2) a variance from rules and regulations of the “Steep Slope Conservation District” as outlined in Article XXII, Section 295-167 to allow the construction of free-standing structures, building and retaining walls, internal accessways, driveways, parking areas, swimming pools, sanitary sewers, stormwater management facilities and other underground utilities and landscaping;

(3) a variance from the rules and regulations of the “Steep Slope Conservation District” outlined in Article XXII, Section 295-168, to allow a variance to be granted for the development without first meeting the requirement to submit plans conforming to the stated Lines and Grades Plan requirements;

(4) a special exception in accordance with the rules and regulations of the “Age Restricted Overlay District” as outlined in Article XXXIII, Section 295-242.B.1 to permit an Age Restricted Development;

(5) a special exception in accordance with the rules and regulations of the “Age Restricted Overlay District” as outlined in Article XXXIII, Section 295-242.B.3 to permit a clubhouse with common areas and meeting rooms, indoor and outdoor recreational facilities and maintenance and security facilities;

(6) a special exception in accordance with the rules and regulations of the “Age Restricted Overlay District” as outlined in Article XXXIII, Section 295-242.B.3 to permit a swimming pool for the residents of the Age Restricted Community only;

(7) a variance from the rules and regulations of the “Age Restricted Overlay District” as outlined in Article XXXIII, Section 295-243.B.8.a. to allow sanitary sewer facilities, if required, within the floodplain;

(8) a variance from the rules and regulations of the “Age Restricted Overlay District” as outlined in Article XXXIII, Section 295-243.B.8.d. to allow development within areas having a slope of 15% or greater;

(9) a variance from the rules and regulations of the “Age Restricted Overlay District” as outlined in Article XXXIII, Section 295-243.B.8.e. to allow sanitary sewer facilities, if required, within the Riparian Buffer Areas; and

(10) variances from the rules and regulations of the “Preservation Overlay District” as outlined in Article XXIV, Sections 295-187, 295-188 and 295-189 only.

The Zoning Board has, in addition, taken the following actions:

(1) denied the appeal of the determination of the Zoning Officer and/or Township Engineer regarding man-made steep slopes as provided in Article XXII, Section 295-164.B.2.;

(2) denied the request for a determination that the Lines and Grades Plans as submitted with the Application or as revised during the course of the hearings substantially conforms with the requirements set forth in Article XXII, Section 295-168;

(3) denied the request for a determination that the number of parking spaces shown on Applicant's plans are not in excess of the maximum permitted under Article XXIX, Section 295-221.F;

(4) denied the request for a variance from the rules and regulations of Article XXIX, Section 295-221.F. to allow parking spaces exceeding 120% of the minimum required parking spaces;

(5) denied the request for variances from the rules and regulations of the "Preservation Overlay District," as outlined in Article XXIV, Section 295-190; and

(6) denied the request for an interpretation that the rules and regulations of the "Preservation Overlay District," as outlined in Article XXIV, Section 295-187 *et seq.* are not applicable to this Application.

The above grants of zoning relief are subject, however, to the following conditions:

(1) At applicant's expense, the Township shall direct a third-party professional geotechnical engineer, acceptable to the Township, to conduct, based upon an adequate number of soil borings, a comprehensive Geotechnical Investigation and Analysis (the "Analysis"). The Analysis shall be performed over the entire development footprint to determine the suitability of the site's soils for the proposed development and the loads to be imposed thereon. The Analysis shall document findings and set forth whatever soil remediation and/or construction methods should be taken to prevent excessive settlement, slope failure and other adverse effects to the maximum practicable extent. The Analysis shall be subject to the review and approval of the Township Engineer. Applicant shall thereafter follow the soil remediation measures and the construction methods as directed by the Township Engineer.

(2) The bottom of the foundation footing for all structures (including building, retaining walls, etc.) within the development shall be on a level either a minimum of three (3) feet below the existing pre-development grade or on subgrade competent to support the load being imposed, whichever level is lower. No pile footings shall be permitted.

(3) Applicant shall submit Lines and Grades Plans, compliant with no standard less than the Zoning Code, as part of Applicant's submission for preliminary or final land development approval.

(4) The development may be built in stages. However, the following infrastructure improvements shall be completed with the first stage: naturalization of the property including the return of portions of the property to a

natural state, the allocation of property to public use and the other features of the development plans described by applicant's land planner.

(5) No building, including, but not limited to, lots 67, 68, 69 and 70 as illustrated on Exhibit A-1, shall have the rear elevation facing Ashbourne Road.

(6) 75% of the trees planted on the development shall be a minimum of 4" – 5" DBH at the time of planting, as illustrated on Exhibit A-3, dated July 8, 2010.

(7) Applicant shall provide bus shelters at the three bus stops on Ashbourne Road at Croyden Road, Boyer Road and Ashmead Road.

(9) Unless otherwise prohibited by the decisions of the Zoning Hearing Board or by application of lawful federal, state or local regulations, the development shall be constructed in substantial conformity with the record, including testimony and exhibits, established by the Applicant and its witnesses during the course of the hearing in this appeal.

This grant of relief is not a waiver of any provision of the Cheltenham Zoning Ordinances not specifically addressed in this decision.

**CHELTENHAM TOWNSHIP ZONING HEARING BOARD**

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**PETER LABIAK, Chairman**

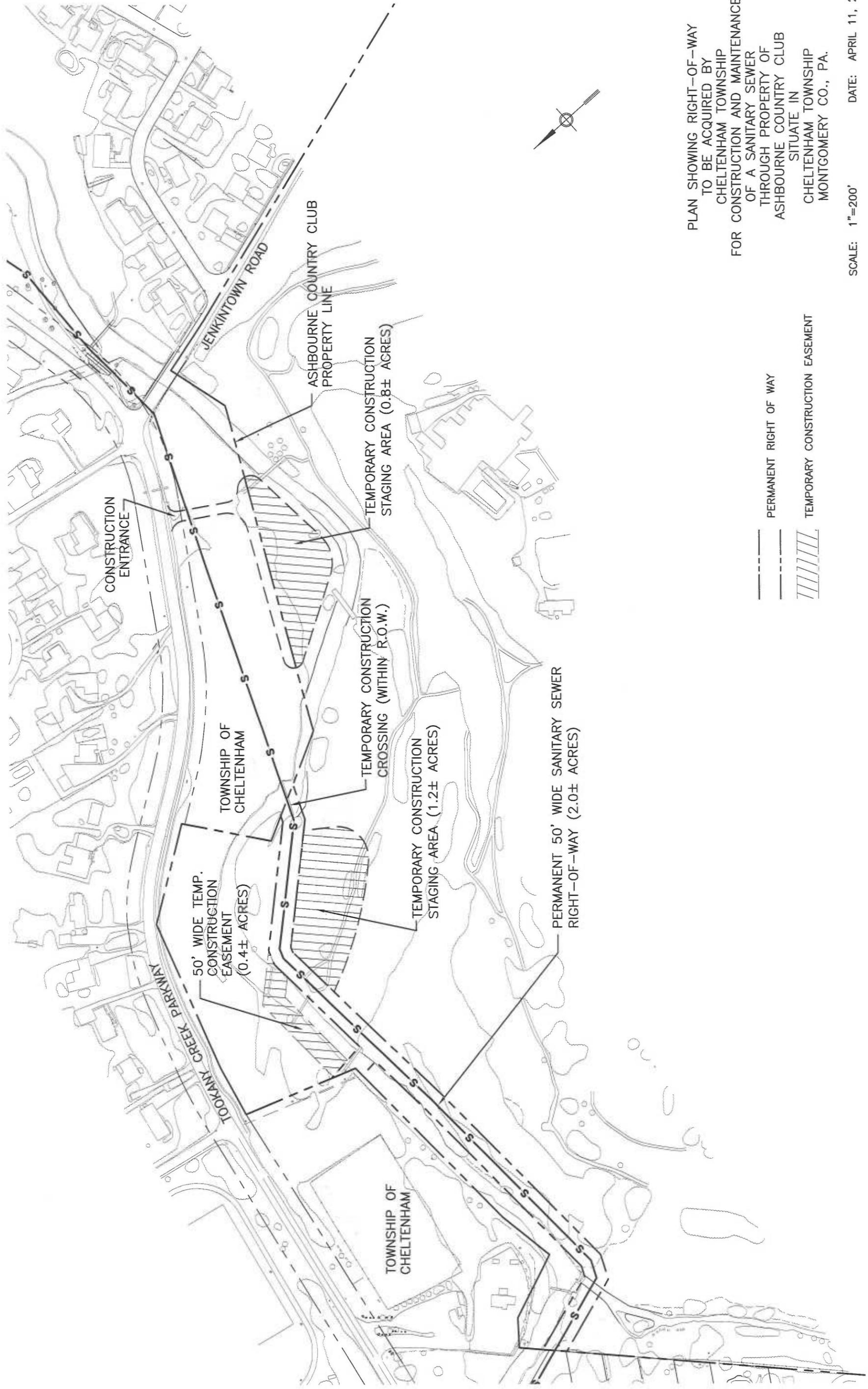
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**ALAN S. GOLD, Vice Chairman and Secretary**

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**AMEE FARRELL, Member**

**THIS DECISION IS OFFICIALLY ISSUED ON MAY 27, 2011.**



PLAN SHOWING RIGHT-OF-WAY  
 TO BE ACQUIRED BY  
 CHELTENHAM TOWNSHIP  
 FOR CONSTRUCTION AND MAINTENANCE  
 OF A SANITARY SEWER  
 THROUGH PROPERTY OF  
 ASHBOURNE COUNTRY CLUB  
 SITUATE IN  
 CHELTENHAM TOWNSHIP  
 MONTGOMERY CO., PA.



SCALE: 1"=200'

DATE: APRIL 11, 2014

