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July 29, 2011

**VIA ELECTRONIC CORRESPONDENCE**  
**AND UNITED STATES FIRST CLASS MAIL**

Michael D. Kracht, Esquire  
WEBER, KRACHT & CHELLEW  
847 W. Market Street  
P.O. Box 258  
Perkasie, PA 18944

Re: Conditional Use Adjudication of Select Properties, Inc. - East Rockhill Township

Dear Mr. Kracht:

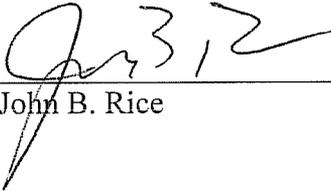
Enclosed herewith for your files is an originally executed Adjudication regarding the above-captioned conditional use application as approved by the East Rockhill Township Board of Supervisors at their special meeting on July 28, 2011.

If you have any questions regarding the enclosed, please do not hesitate to call me.

Sincerely,

GRIM, BIEHN & THATCHER

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

  
John B. Rice

JBR/LDG  
Enclosure

cc: Anne Klepfer (w/encl.) - via email  
Steve Baluh (w/encl.) - via email  
Resident Parties (w/encl.)  
Scott A. MacNair (w/encl.)

**BEFORE THE EAST ROCKHILL TOWNSHIP BOARD OF SUPERVISORS**

**IN RE: CONDITIONAL USE APPLICATION  
OF SELECT PROPERTIES, INC.**

**ADJUDICATION**

Select Properties, Inc., (“*Applicant*”) filed a conditional use application to East Rockhill Township on December 1, 2010. Applicant’s conditional use application requests approval for a Performance Standard Development of 193 new conditional dwelling units on a gross site area of 65.48 acres. Seven hearings on the conditional use application were held before the East Rockhill Township Board of Supervisors from January 31, 2011 to June 14, 2011.

At the hearings before the Board of Supervisors the Applicant was present and represented by Michael D. Kracht, Esquire, of Weber, Kracht & Chellew, and the Township was represented by Special Counsel, Scott A. MacNair, Esquire, of Clemons, Richter & Reiss. The Board of Supervisors was represented by the Township Solicitor, John B. Rice, Esquire, of Grim, Biehn & Thatcher. Several adjacent property owners were granted party status at the hearing and participated throughout the proceedings. The following affected property owners requested and were granted party status to the application:

Jim Snyder 45 Stone Edge Road Sellersville, PA 18960	Steve Owens 1915 Old Bethlehem Pike Sellersville, PA 18960	Michael Bibic 1173 Three Mile Run Road Sellersville, PA 18960	Amy Frank 2094 Hill Road Sellersville, PA 18960
Andrea Swope 2122 Hill Road Sellersville, PA 18960	Jerry/Patricia Clemmer 1819 Old Bethlehem Pike Sellersville, PA 18960	David Nyman 512 Schwenkmill Road Perkasie, PA 18944	Hans Schnitzler 16 Stone Edge Road Sellersville, PA 18960
Tom Rau 2116 Hill Road Sellersville, PA 18960	Andrea Stephenson 2228 Hill Road Sellersville, PA 18960	Sue Clark 46 Stone Edge Road Sellersville, PA 18960	Laurie Farrell 2202 Hill Road Sellersville, PA 18960
Stephen Haldeman 2154 Hill Road Sellersville, PA 18960	Brian Beattie 2150 Hill Road Sellersville, PA 18960	Michael Cooper 24 Stone Edge Road Sellersville, PA 18960	Floyd/Patricia Kramer 215 Three Mile Run Road Sellersville, PA 18960
Ron Kelly 2170 Hill Road Sellersville, PA 18960	Don Nase 2094 Hill Road Sellersville, PA 18960	Victoria Mahmoud 9 Rocky Mountain Circle Sellersville, PA 18960	Willard Ulmer 124 Three Mile Run Road Sellersville, PA 18960

Amy Frank  
145 Jefferson Street  
East Greenville, PA 18041

Ray/Brenda Chernikovich  
12 Stone Edge Road  
Sellersville, PA 18960

Martin Nebel  
57 Stone Edge Road  
Sellersville, PA 18960

Steven/Carol Cortelli  
2119 Old Bethlehem Pike  
Sellersville, PA 18960

Chris Labelle  
1809 Old Bethlehem Pike  
Sellersville, PA 18960

The stenographic record of the hearings was made by Robert W. Harley, RPR, of Court Reporting Associates. Copies of the legal notices for the hearings are on file at the East Rockhill Township Municipal Building. At hearing, the following exhibits were admitted into testimony during the course of the proceedings:

**Applicant Exhibits:**

- A-1 1987 zoning map;
- A-2 Figure 13 from the Comprehensive Plan;
- A-3 Aerial photo;
- A-4 Existing Features Plan;
- A-5 Conditional Use Sketch;
- A-6 Conditional Use Sketch;
- A-7 Context Plan;
- A-8 House photos;
- A-8 House photos;
- A-10 Park with trail and golf course;
- A-11 By Right Plan;
- A-12 John Kennedy CV;
- A-13 Aerial photo of area;
- A-14 Andreas Heinrich CV;
- A-15 Traffic impact study;
- A-16 December 30, 2010 correspondence from Andreas Heinrich;
- A-17 October 29, 2010 correspondence from David Horner;
- A-18 February 15, 2011 correspondence from David Horner;
- A-19 March 24, 2011 correspondence from Andreas Heinrich;
- A-20 Kirk Clauss CV;
- A-21 Agreement of Sale dated April 15, 2008;
- A-22 Agreement of Sale dated October 3, 2008;
- A-23 Bedminster Hunt – four photographs;
- A-24 Bruno Mercuri CV;
- A-25 Photographs of property;
- A-26 DEP correspondence;
- A-27 Moyer Tract subdivision plan dated 1985;
- A-28 Zoning Hearing Board decision dated August 21, 1985;
- A-29 Deeds dated June 30, 2004; and
- A-30 Deeds dated July 31, 2008.

### **Township Exhibits**

- T-1 Army Corps of Engineers correspondence dated November 30, 2010;
- T-2 Steven A. Baluh CV;
- T-3 C. Robert Wynn Associates correspondence dated January 6, 2011;
- T-4 C. Robert Wynn Associates review letter dated January 7, 2011;
- T-5 Judith Stern-Goldstein CV;
- T-6 Boucher & James review letter dated January 6, 2011 regarding By Right Sketch Plan;
- T-7 Boucher & James January 7, 2011 review of Conditional Use Plan; and
- T-8 April 24, 2011 East Rockhill Township Park and Recreation Board correspondence.

### **Board Exhibits**

- B-1 Select Properties application dated November 24, 2010, received December 1, 2010;
- B-2 Proof of publication for legal advertisement for January 31, 2011 hearing;
- B-3 Proof of publication for legal advertisement for February 21, 2011 hearing; and
- B-4 Planning Commission recommendation dated January 25, 2011.

### **FINDINGS OF FACT**

1. The Applicant is Select Properties, Inc. The Applicant's principal is Clay Heckler who is the equitable owner of the subject properties involved in the application.
2. Applicant's conditional use application for a Use B3 Performance Standard Development was filed on December 1, 2010 by Kennedy & Associates, Applicant's planner.
3. The subject properties consist of Tax Map Parcel Nos. 12-008-022, 12-008-022-001, 12-008-022-002 and 12-008-030 and are located in the Suburban Zoning District of East Rockhill Township.
4. The legal owners of the subject properties are Peter McClennen, Edwinna McClennan, Herbert Clauhs, Peggi Clauhs, and General Hancock Enterprise Partnership.

5. The properties consist of a total site area of 65.48 acres and the existing improvements on the site consist of three occupied principal single-family dwellings and various other accessory barns and/or storage buildings.

6. The property is generally bounded by Old Bethlehem Pike, Three Mile Run Road and Hill Road, and is adjacent to the Neighborhood Commercial District and Planned Industrial District opposite Old Bethlehem Pike in West Rockhill Township.

7. The Applicant was represented by Clayton Heckler and the Applicant called as witnesses in support of the application Andreas Heinrich, Heinrich & Klein Associates, Inc., a traffic engineer, Kirk Clauss, Schlosser & Clauss, a civil engineer, John Kennedy, Kennedy & Associates, a planner, and Bruno M. Mercuri, Mercuri Associates, Inc., a hydrogeologist.

8. The Township called as witnesses Steven Baluh of C. Robert Wynn Associates, Inc., a civil engineer and Judith Stern-Goldstein of Boucher & James, Inc., a planner.

9. The Applicant's conditional use hearing application requested the following relief:

- a. Conditional use approval for a Use B3 Performance Standard Development within the Suburban District pursuant to Section 27-701.b.(3) of the Township Zoning Ordinance.
- b. Conditional use approval to modify the minimum required number of dwelling unit classes from three to two pursuant to Section 27-304.B3.n.(1) of the Township Zoning Ordinance.
- c. Conditional use approval pursuant to Section 27-304.B3.p.(4) to modify the public street right-of-way width of 54 feet.
- d. Conditional use approval to construct sanitary sewer facilities within the Riparian Buffer Overlay Zones pursuant to Sections 27-1900.j.(5)(d)(i), and (6)(d)(i) of the Township Zoning Ordinance.

10. The East Rockhill Township Planning Commission recommended approval of the proposed conditional use application, subject to seven enumerated conditions by Memo dated January 25, 2011.

11. The East Rockhill Township Park and Recreation Board, by Memorandum dated April 24, 2011, made twelve recommendations to the Board of Supervisors regarding the conditional use application.

12. A small portion of the subject property is separated from the main parcel proposed to be developed by the Three Mile Run, a major stream identified on Figure 4 of the East Rockhill Township Comprehensive Plan.

13. The East Rockhill Township Comprehensive Plan classifies three streams as significant hydrological resources, Three Mile Run, the East Branch of the Perkiomen Creek and the Tohickon Creek

14. Based on the Figure 4 of the Township's Comprehensive Plan, the watercourse running through the site in a north-south direction and draining to Three Mile Run meets the definition of "Stream Channel" for purposes of riparian buffer protection pursuant to Figure 4 of the East Rockhill Township Comprehensive Plan.

### **DISCUSSION**

Section 913.2 of the Pennsylvania Municipalities Planning Code ("MPC") permits a governing body of a municipality to grant or deny a conditional use in accordance with express standards and criteria set forth in its ordinance. Additionally, Section 913.2(a) permits a governing body to "attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance."

Section 27-2207 of the East Rockhill Township Zoning Ordinance sets forth the general grant of power to the Board of Supervisors to approve conditional use applications and Section 27-2208 sets forth general conditions for conditional uses. Conditional uses are similar to special exceptions in that both are permitted uses within the zoning district, subject to additional scrutiny before the governing body with respect to conditional uses. *White Advertising Metro, Inc., v. Zoning Hearing Board of Susquehanna Township*, 453 A.2d 29 (Pa. Cmwlth. 1982).

The conditional use application before this Board proposes 193 dwelling units, consisting of 83 village house lots, 107 townhouse units, two existing single-family dwelling lots, and a proposed single-family building lot. All three Board members visited the subject property during the course of the conditional use proceedings and had the opportunity to physically examine the property, the adjacent roadways, the natural resources on the site and the Three Mile Run as it traverses through the southern part of the property. It is apparent to the Board from the testimony and evidence presented that, although the use is a use permitted by conditional use, the design and layout alternatives available to the developer are not limited to the single conditional use sketch plan presented to the Board but can be developed in further detail upon the filing of a fully engineered subdivision and land development plan.

In the present case, adjacent property owners raised several concerns with respect to buffering, increased traffic, stormwater management, open space accessibility and fire safety access. These concerns can be addressed with specific conditions attached to this conditional use approval, and similar concerns and/or conditions may be developed by the Township Planning Commission and the Board of Supervisors during the subdivision review process. The Applicant is only seeking zoning approval for the proposed B3 Performance Standard Development, and the Applicant must still secure preliminary and final subdivision plan approval for the proposed use before any construction or occupancy could begin at the site.

As to specific issues which came before the Board during the course of the hearings, traffic safety was discussed in great detail and both the Applicant and the Township submitted traffic engineering reports. Although both engineers agreed that the major intersection of Three Mile Run Road, Park Avenue, and Old Bethlehem Pike would not be currently warranted for a traffic signal pursuant to PennDOT standards, the Township's traffic engineer was not convinced that other potential improvements were not warranted at the foregoing intersection. The Board believes, however, that this intersection should be evaluated before the current buildout proposed by the developer in 2017. Additionally, the Applicant's traffic engineer evaluated background growth in the area but there was no information developed regarding the adjacent commercial and residential zoning in West Rockhill Township. By imposing the condition that a traffic study be performed at a certain point along full buildout, the concerns regard the intersection of Three Mile Run, Park Avenue, and Old Bethlehem Pike can be better evaluated at that time.

It was also apparent to the Board that the construction of an entrance onto Hill Road from an 193 unit development would put substantial traffic and undesirable cut-through traffic from the adjacent Ridge Run Development. The traffic study submitted during the course of the hearings indicates that most of the traffic from this development and existing development will move in the direction of Old Bethlehem Pike but that certain improvements to Hill Road will be necessary given its current condition. Hill Road is an existing narrow township road with no curbing, sidewalks or drainage improvements along either side of the road. Hill Road's current condition necessitates full width improvements in order to ensure that any traffic generated from this site can be moved safely along the road. Furthermore, Hill Road will be used more frequently by pedestrians upon buildout of the proposed project and the improvement of Hill Road will also be necessary for pedestrian traffic and fire safety access in the area.

Although the Applicant requested that the Board not consider Three Mile Run a "major stream" for purposes of increasing their density on the site, the Board will take notice of the East Rockhill Township Comprehensive Plan, Figure 4, Hydrological Resources, which clearly delineates three major streams within the township, Three Mile Run, the East Branch of the Perkiomen Creek and the Tohickon Creek. The Board additionally has witnessed Three Mile Run flood adjacent properties and the entrance to the adjacent Ridge Run Development off of Three Mile Run Road on several occasions. For purposes of determining whether Three Mile Run is a major stream, a reasonable interpretation can be made by examining the existing hydrological resources in the township which are identified on Figure 4 of the Township's Comprehensive Plan. Figure 4 of the Township's Comprehensive Plan clearly delineates Three Mile Run as one of three major streams within the township and accordingly, the portion of the tract which is south of Three Mile Run is separated for purposes of the Ordinance's site capacity calculations.

The application before the Board requests four separate conditional uses as identified in Paragraph 8 of the Findings of Fact, and it is the Board's view that the conditional use approval of a B3 Performance Standard Development and the encroachment within the Riparian Buffer Overlay Zones for sanitary sewer facilities is appropriate, subject to the conditions which are set forth in the Board's Order. As to the modification of the dwelling unit classes, although there was conflicting testimony regarding whether or not the Applicant had truly filed a "by-right plan", the Board believes that the conditions set forth in its Order, particularly the establishment of a minimum percentage of single-family dwellings justifies the reduction in the number of classes of dwelling

units. As to the additional conditions in the attached Order, the Board has relied upon the Township Engineer and the recommendations of both the Township Planning Commission and the Township Park and Recreation Board to fashion reasonable conditions in lieu of denying the application which has not yet been fully engineered pursuant to the Township Subdivision and Land Development Ordinance. Under Section 913.2(a) the Board has the power to attach reasonable conditions and safeguards in addition to those expressed in the Ordinance as it may deem necessary to implement the purposes of the act and of the Zoning Ordinance. Although the B3 Use within the Suburban District permits increased residential densities, the impact of these densities may be modified by the imposition of reasonable conditions which are set forth in this Board's Order.

As to the conditional use request for a modification of the public street right-of-way width from 54 feet to 56 feet, the Board is in agreement that the right-of-way width should be increased, however, based upon the Township Engineer's testimony and reports, a 60 foot right-of-way providing for parking on both sides of a public street is more appropriate given the overall density on the site. Sufficient right-of-way width and cartway width is appropriate in a higher density residential development not only for the safe transportation of its residents, but also to ensure that fire and police services may have quick access to the development's residents.

In that the Board believes that the Applicant has met the minimum requirements of the Township Zoning Ordinance, and that the conditions which are attached to this approval will address the health, safety and welfare concerns of the neighborhood and the Township, the Board hereby enters the following Conclusions of Law and Order.

#### **CONCLUSIONS OF LAW**

1. Applicant's proposed use is a use permitted by conditional use within the Suburban Zoning District pursuant to Section 27-701.b., Use B3 Performance Standard Development.
2. Use B3 Performance Standard Development requires three classes of dwelling units which can be modified provided that the developer lays out a plan in accordance with the required dwelling unit mix and provides sufficient evidence and testimony that an alternative dwelling unit mix will provide for a better designed plan and the construction of additional recreational improvements or amenities for the benefit of the Township.
3. Based on the conditions attached the Board's Order, Applicant's conditional use meets the requirements for a modification of the dwelling unit mix set forth at Section 27-304.B.3.n.(1) of the Township Zoning Ordinance.
4. Applicant's proposed encroachment in the Riparian Buffer Overlay Zones for sanitary sewer service meets the requirements for approval pursuant to Sections 27-1900.j.(5)(d)(i) and (6)(d)(i) of the Township Zoning Ordinance in that the subject property is planned for public sewer under the Township's Act 537 Plan.

5. Based on the conditions set forth in the Board's Order, Applicant's proposed use is in accordance with the Township's Comprehensive Plan and adequately meets the requirements for conditional uses set forth at Section 27-2208 of the Township Zoning Ordinance.

### **ORDER**

**AND NOW**, this 28<sup>th</sup> day of July, 2011, after due deliberation and discussion at public hearing, the East Rockhill Township Board of Supervisors does hereby grant the conditional use application of Select Properties, Inc., subject to the following conditions of approval, each of which the Board deems a necessary and essential component of this approval:

1. The Applicant shall construct a public access trail along the north side of and adjacent to Three Mile Run at a location to be determined by the Township.
2. The Applicant shall construct group mailbox facilities for the multi-family dwelling portion of the development and include with these facilities a cover, benches, and trash receptacles in an architectural style approved by the Township.
3. The Applicant shall construct sheltered school bus stop paved areas at locations to be determined by the Township after consultation with the Pennridge School District.
4. The Applicant shall install bicycle racks, trash receptacles, benches and appropriate shade trees at any recreation or tot lot areas required during the land development process.
5. The Applicant shall engineer and install sanitary sewer connections for all abutting property owners in order to connect to existing public sewer facilities.
6. The Applicant shall install additional buffering and/or a berm for townhouse units abutting all adjacent property lines and shall provide both a planted buffer and a minimum twenty foot (20') strip of open space between the rear lot lines of all existing homes fronting on Hill Road and the lot lines of any adjacent new building lots within the project unless modified by the Township during the land development review process.
7. The Applicant shall provide a riparian buffer zone of seventy-five feet (75') on either side of the stream which bisects the property running in a north-south direction and draining into Three Mile Run.
8. The Applicant shall establish both a Trash District for the finally approved subdivision plan and a Streetlight District for the finally approved plan.

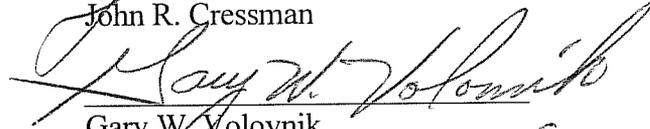
9. Townhouse Area 3, as shown on Exhibit A-6, shall either be removed or relocated to Township Area 2 in order to group all like dwelling unit types.
10. The Applicant shall establish two (2) dwelling unit types, provided that fifty-five percent (55%) of the total dwelling units are single-family dwellings, either village houses or single-family detached houses. The remaining townhouse units shall be located within a maximum of five (5) units per building.
11. All emergency access roads and open space areas, including stormwater basins, shall be owned and maintained by a homeowners association in accordance with homeowner documentation to be reviewed and approved by East Rockhill Township. Notwithstanding the foregoing, the Township reserves the right to accept dedication in whole or in part the open space areas concurrently with review and approval of a fully engineered subdivision plan.
12. The Applicant shall establish a one hundred foot (100') well protection area for the existing well located at the southeast corner of the property adjacent to Three Mile Run in accordance with the requirements of the Pennsylvania Department of Environmental Protection and Chapter 109, unless the Board approves a lesser area during the subdivision plan approval process.
13. The Applicant shall deed restrict Lots 84, 85 and 86 from further subdivision and/or land development.
14. The Applicant shall construct snow storage areas for all roads within the development at locations deemed sufficient by East Rockhill Township.
15. The Applicant shall provide for streetlights at locations to be determined by East Rockhill Township. All fixtures shall be zero cut-off fixtures and shall be a maximum of twenty feet (20') in height.
16. The Applicant shall establish an impervious surface ratio for each lot in compliance with the total site impervious surface limitations.
17. The Applicant shall establish a specific disclosure form to be approved by the Township as a condition of final subdivision plan approval, delineating all easements, conditions, restrictions, and/or assessments for each lot owner prior to the sale of any individual lots.
18. The Applicant shall install all required park and recreation improvements or pay a fee in lieu of the improvements to East Rockhill Township.

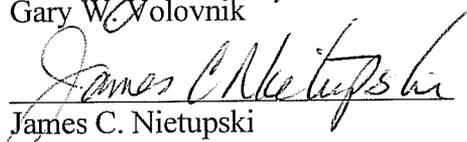
19. As to the townhouse units, the following conditions shall apply:
  - a. No outdoor storage buildings or structures shall be permitted except for decks and/or patios, unless modified by the Township during land development.
  - b. All townhouse units shall front on public streets to be dedicated to East Rockhill Township.
  - c. Sufficient spillover parking shall be installed in close proximity to the townhouse units.
  - d. Architectural features shall be incorporated into the design of each townhouse unit.
20. All roof drains and sump pumps from all dwelling units shall discharge to the overall stormwater management system engineered for the property.
21. The Applicant shall construct traffic calming measures on all new roads during the land development process to the satisfaction of the Township.
22. The Applicant shall construct sidewalks along the Old Bethlehem Pike frontage of the property and a pedestrian bridge across Three Mile Run.
23. Upon seventy-five percent (75%) occupancy of the total dwelling units approved for the property, the Applicant shall perform a traffic impact study, and if the intersection of Three Mile Run Road and Old Bethlehem Pike is warranted for a traffic signal, the Applicant shall establish sufficient financial security to guarantee the design, permitting and construction of the traffic signal.
24. The Applicant shall align the proposed boulevard entrance onto Old Bethlehem Pike opposite Tabor Road in West Rockhill Township and shall construct this entrance onto Old Bethlehem Pike as the primary entrance for all traffic entering and exiting the site. This entrance shall be designed and constructed with a seventy foot (70') right-of-way with two (2) twenty foot (20') paved entrances and a ten foot (10') landscaped island unless modified by the Board of Supervisors during the land development process.
25. Unless modified by the Board of Supervisors during the land development review process, the Applicant shall construct two (2) paved emergency accesses to Hill Road from the site capable of permitting a fire truck to enter the site, one opposite Stone Edge Road and the second through the existing lane as shown on the Moyer Tract Subdivision Plan and required by the Zoning Hearing Board decision dated August 21, 1985. (Exhibits A-27, A-

- 28). Based upon physical conditions at the subject property, the Board reserves the right to eliminate or relocate one of the emergency accesses during land development.
26. The Applicant shall provide full width cartway overlay improvement of Hill Road from a point fifty feet (50') north of the intersection of Stone Edge Road and Hill Road to Three Mile Run Road, including shoulder grading on both sides of Hill Road.
27. The Applicant shall construct a southbound turning lane on Old Bethlehem Pike into the main entrance of the site. Additionally, Old Bethlehem Pike shall be widened and curb and storm sewer shall be installed along the site's road frontage.
28. All streets servicing either the single-family dwellings or townhouse units shall have a thirty-six foot (36') wide cartway with a sixty foot (60') wide right-of-way, and shall comply with the curb, sidewalk and general design standards of Sections 506, 512 and 513 of the Township Subdivision and Land Development Ordinance.
29. Raised crosswalks shall be installed at all road intersections within the development, subject to final approval by the Township during the land development process.
30. The Applicant shall comply with all other applicable Township, County, State and Federal ordinances and/or statutes.

EAST ROCKHILL TOWNSHIP  
BOARD OF SUPERVISORS

  
John R. Cressman

  
Gary W. Volovnik

  
James C. Nietupski

Date of Mailing: July 29, 2011