

**BEFORE THE
BOARD OF SUPERVISORS OF WALLACE TOWNSHIP**

IN THE MATTER OF THE
CONDITIONAL USE APPLICATION OF:

Valhalla Brandywine Partners, L.P.
801 Marshall Road, P.O. Box 9
Glenmoore, PA 19343

RE: Valhalla Brandywine PCCC Conditional Use Application

FOR PREMISES KNOWN AS:

U.P.I. Nos. 31-4-44.1, 31-4-61, 31-4-61.1, 31-4-69, 31-4-79, 31-4-80, 31-4-81, 31-4-84,
31-4-84.1, 31-4-84.2, 31-4-84.3, 31-4-88, 31-4-144, 31-4-145, 31-4-58, 31-4-58.1, 31-4-59, 31-
4-60.1, 31-4-73, 31-4-73.1, 31-4-73.4, 31-4-141, 31-4-143 and 31-4-75

AND NOW, this 5th day of November, 2009, the Board of Supervisors of Wallace Township ("Board") makes Findings of Facts, enters Discussion, reaches Conclusions of Law, and renders a Decision in connection with the Conditional Use Application filed by Valhalla Brandywine Partners, L.P. ("Applicant") in order to develop a Planned Country Club Community pursuant to Wallace Township Zoning Ordinance Sections 402.C.11, 901.C.9 and 1323.A, as well as to permit certain crossings of the Flood Hazard and Wet Soils District (FHWSO) pursuant to Zoning Ordinance Section 1323.E.3.h and for certain steep slope incursions pursuant to Zoning Ordinance Section 1323.E.4.f and Section 1323.F.5. For the reasons set forth below, the Application for Conditional Use relief sought under Section 1323.E.4.f (steep slope incursions in the I Industrial Zoning District) is DENIED, and the Conditional Use relief sought under Sections 402.C.11, 901.C.9, 1323.A, 1323.E.3.h and 1323.F.5 is GRANTED, subject to certain conditions more fully set forth below.

FINDINGS OF FACT AND DISCUSSION

General Background

1. The Applicant is Valhalla Brandywine Partners, L.P., whose principal offices are located at 801 Marshall Road, P.O. Box 9, Glenmoore, PA 19343.
2. Applicant is the equitable owner of 606 acres of land situated in Wallace Township, which is located: on both sides of Marshall Road between the intersections of Creek Road (to the west) and Little Conestoga Road (to the east); and on both sides of Devereux Road between the intersections of Fairview Road and Creek Road (hereinafter "Subject Property").
3. The Subject Property consists of twenty-four (24) separate parcels, the same being uniform parcel identifier numbers 31-4-44.1, 31-4-61, 31-4-61.1, 31-4-69, 31-4-79, 31-4-80, 31-4-81, 31-4-84, 31-4-84.1, 31-4-84.2, 31-4-84.3, 31-4-88, 31-4-144, 31-4-145, 31-4-58, 31-4-58.1, 31-4-59, 31-4-60.1, 31-4-73, 31-4-73.1, 31-4-73.4, 31-4-141, 31-4-143 and 31-4-75.
4. Approximately 544 acres of the Subject Property are located within the FRR Zoning District, while the remaining 62 acres are located within the I Industrial Zoning District.
5. The Subject Property is bounded by Fairview Road to the north, Little Conestoga and Chalfant Roads to the east, the East Branch of the Brandywine Creek to the west, and Marsh Creek State Park to the south.
6. The northern portion of the Subject Property, within the FRR Zoning District, is presently used for agricultural purposes, including pasture land and cultivated lands.
7. The southern portion of the Subject Property, within the FRR Zoning District, is mostly wooded, with an unnamed tributary to the Brandywine Creek flowing from east to west.

8. The southeastern portion of the Subject Property, within the I Zoning District, is comprised of a former quarry and the surrounding lands.

Procedural Background

9. Applicant filed its Conditional Use application on August 29, 2008, seeking approval of a PCCC Planned Country Club Community to be developed on the Subject Property pursuant to Wallace Township Zoning Ordinance Sections 402.C.11, 901.C.9, and 1323 (specifically, Sections 1323.A, 1323.E.3.h, 1323.E.4.f, 1323.F.5, and 1323.F.6.b).
10. After public notice was duly advertised and posted, nineteen (19) evidentiary hearings were held. The hearings were held on the following dates: September 23, 2008, October 7, 2008, October 14, 2008, October 28, 2008, November 10, 2008, November 25, 2008, December 2, 2008, December 9, 2008, January 13, 2009, February 24, 2009, March 10, 2009, March 24, 2009, March 31, 2009, April 14, 2009, April 21, 2009, May 5, 2009, May 12, 2009, June 2, 2009, and June 9, 2009.
11. At the conclusion of the testimony presented at each of the hearings, the Board of Supervisors allowed for a period of public comment on the topics of the testimony that evening and pertaining to the project generally.
12. At the conclusion of the evidentiary hearings on June 9, 2009, the Board of Supervisors granted the parties' request for an opportunity to submit proposed findings of fact, conclusions of law and conditions of approval. Such submissions were initially required to be filed by the parties on or before June 30, 2009, but, upon request by counsel for Applicant and with the agreement of the counsel for the Guardian Parties (defined below), the parties were granted an extension of the time period for such submissions until July 10, 2009, explicitly noting that the period by which the Board of Supervisors

was required to render its decision would be extended from August 6, 2009 to September 4, 2009.

13. Given the extensive nature of the proceedings and the memoranda submitted by the parties, Applicant granted the Township an extension until November 6, 2009, in which to render its decision.
14. The following individuals were granted party status by the Board of Supervisors: Nancy and Andres Andal, Lisa F. Bernal, Louis and Cynthia Cardi, Christopher J. Carroll, George Cavalieri, David and Marian Cooney, William Covaleski, Mark Eschbacher, Peter Halpern, Elizabeth Pfeiffer, Scott H. Juenger, Melanie and Mac Kirkpatrick, Carole Mackrell, Barbara McCoy, John McCoy, Carol Peevey, Stephen Przyuski, Paul Renne, John Traexler, Carl and Louise Walker, C. Ellen Youngdahl, Scott and Kathleen Beagle, Beverly Bock, David Burdick, James Butcher, Benita Butcher, Elizabeth Carpenter, Rebecca Cesarz, Jeff A. Colley, Tim and Karen Cooper, Jennifer Daley, Dominick DeMarzo, Robert Drexel, Adrienne Drexel, Lisa Emery, Stuart Frederick, John B. Frock, Carman Garber, Matt Garber, Bruce Gaskey, Anna Marie Guglielmo, Carl and Noreen Herring, Daniel and Kathleen Hoffman, Frank and Nancy Hollahan, Dan and Janet Johns, Norma Keen, Janice and Roger Keith, Karen and Mark Kinkelaar, Paul T. Kohler, Mary McCabe, Kathleen McGrinder, Carolyn and Evelio Melo, Tish Malloy, Len and Christine Morely, Barry and Sandy Neufeld, Julian Onderdonk, Catherine Poole, John and Susan Potts, Gary and Susan Saidens, Elizabeth and Robert Schieman, Kirsten Schmidt, Barbara Schmunk, Denise Sheehan, Anthony Stevens, David and Diana Vogrin, and Mary Ann Zeiders (collectively, "Neighboring Parties").¹

¹ The Board of Supervisors did not grant party status to The Brandywine Trout and Conservation Club, the Green Valleys Association, the Steepleview Homeowners Association, Bill Brainerd (of Media, Pennsylvania), or the

15. Several, but not all, of the above-referenced individual parties, as referenced on Exhibits G-1 and G-2, were represented by Attorney Jordan Yeager (collectively, "Guardian Parties").
16. Through the course of the hearings, Applicant presented the following witnesses in support of its application: Albert Greenfield, III (Applicant's representative), Charles Dobson, P.E. (Applicant's civil engineer), Mark Evans, AIA (Applicant's architect), Robert J. Wise, Jr. (Applicant's historic resources consultant), David R. Still (Applicant's noise consultant), Richard Voith, Ph.D. (Applicant's economic consultant), Kevin Gillen, Ph.D. (Applicant's economic consultant), Stuart Rosenberg (Applicant's lighting consultant), Christopher Williams, P.E. (Applicant's traffic consultant), J. Russell Bodie (Applicant's LEED/environmental science consultant), and Therese Amitrone (Applicant's environmental consultant).
17. Applicant completed its case-in-chief after the conclusion of the cross-examination of J. Russell Bodie on March 10, 2009, and subsequently presented rebuttal witnesses on June 9, 2009.²
18. The Neighboring Parties began the presentation of their evidence on March 24, 2009, and concluded the same after the completion of the cross-examination of Thomas Comitta on June 9, 2009.

Guardians of the Brandywine (a group comprised of many of the individual residents of the Township, all of whom were separately and individually granted party status).

² Counsel for the Applicant initially stated its position that its case-in-chief concluded on January 27, 2009, a date on which a hearing had been scheduled but which was cancelled due to inclement weather. Counsel for Applicant indicated by letter that it did not waive its right to assert a claim of deemed approval on the basis of the MPC's 100 day rule set forth in MPC Section 908(1.2). However, Counsel for the Applicant subsequently waived any claim of a deemed approval explicitly on the record with respect to the MPC timing requirements applicable to the hearing held on June 9, 2009.

19. The Township Planning Commission, after discussion with the Applicant and in conjunction with the Township Engineer, Castle Valley Consultants, and the Township's Environmental Consultant, Natural Lands Trust, contemporaneous with the conditional use hearings, prepared a list of proposed conditions for incorporation into the instant Decision.
20. Applicant, the Guardian Parties, Neighboring Party Eschbacher, and Neighboring Party Traexler likewise submitted proposed findings of fact, conclusions of law, memoranda, and proposed conditions of approval on or before July 10, 2009.
21. Applicant presented the following exhibits, which were made part of the record:
 - A-1 Letter from counsel for Applicant, dated August 29, 2008, together with Applicant's conditional use application;
 - A-2 Affidavit of service of mailing of notice to property owners adjacent to the Subject Property, together with copies of the letters mailed to such individuals and the Notices of the hearings as advertised on September 8, 2008 and September 15, 2008;
 - A-3 Affidavit of posting of Notice;
 - A-4 U.P.I. Information Sheets for Subject Property;
 - A-5 Consent letters from individual property owners;
 - A-6 Curriculum vitae of Charles A. Dobson, P.E.;
 - A-7 Valhalla Brandywine Conditional Use Compliance Report and Summary, prepared by Charles Dobson;
 - A-8 Curriculum vitae of Mark Evans, AIA;
 - A-9 Professional Report of Mark Evans, AIA;
 - A-10 Amended Valhalla Brandywine Conditional Use Compliance Report and Summary, prepared by Charles Dobson;
 - A-11 Curriculum vitae of Robert J. Wise, Jr.;
 - A-12 Curriculum vitae of Seth Hinshaw;
 - A-13 Historic Resources Impact Study;
 - A-13a Letter from Robert Wise, dated October 28, 2008, with attachments;
 - A-14 Curriculum vitae of Richard F. Voith, Ph.D.;
 - A-15 Curriculum vitae of Lee Huang;
 - A-16 Econsult Report – Analysis of Proposed Valhalla Brandywine Development;
 - A-17 Curriculum vitae of Kevin C. Gillen, Ph.D.;
 - A-18 Econsult Report – Estimating the Potential Market Value of Proposed Valhalla Brandywine Development;
 - A-19 Curriculum vitae of David R. Still;
 - A-20 Environmental Acoustics, Inc. Report – Study of Sound Propagation;

- A-21 Curriculum vitae of Stuart G. Rosenberg, AIA, LEED AP;
- A-22 Stuart G. Rosenberg Architects Report – Professional Report of the Architects for Valhalla Brandywine;
- A-23 Curriculum vitae of Christopher J. Williams, P.E.;
- A-24 Traffic Impact Study for Valhalla Brandywine;
- A-25 Photograph of Property;
- A-26 Photograph of Property;
- A-27 Curriculum vitae of J. Russell Bodie;
- A-28 Preliminary Natural Resources Management Plan for Valhalla Brandywine;
- A-29 Conditional Use Hearing Transcript of 3/24/09;
- A-29b Conditional Use Hearing Transcript of 3/24/09;
- A-30 Conditional Use Hearing Transcript of 1/13/09;
- A-31 Conditional Use Hearing Transcript of 3/31/09;
- A-32 Valhalla Brandywine Conditional Use Application Plan, Sheets 1 and 2 (color);
- A-33 Dobson Comparison Chart;
- A-33b Dobson Incursion Chart – Six Sheets;
- A-34 Regional Resource Protection Plan, dated October 2006;
- A-35 Township Resolution 06-13;
- A-36 Wallace Township Website Excerpt;
- A-37 Township Resolution 93-6;
- A-38 Conditional Use Hearing Transcript of 4/14/09;
- A-39 Wallace Township Zoning Ordinance;
- A-40 Rettew Vegetative Cover Investigation, May 22, 2007;
- A-41 Wallace Township Subdivision and Land Development Ordinance;
- A-42 Wallace Township Ordinance No. 137 of 2008, PCCC Ordinance;
- A-43 Wallace Township Comprehensive Plan;
- A-44 Conditional Use Hearing Transcript of 11/10/08;
- A-45 Conditional Use Hearing Transcript of 5/5/09;
- A-46 150' Stream Incursion Plans (6 sheets);
- A-46a Revised Sheet 5 to Exhibit A-46;
- A-47 Proposed Steep Slope Incursion Chart (3 sheets);
- A-48 Letter from Stephen Wheeler to Charles Dobson, dated June 8, 2009;
- A-51 Curriculum Vitae of Teresa M. Amitrone;³
- A-52 Letter from Denise Yarnoff to Stephen Siana, dated June 4, 2009 (with enclosures); and
- A-53 Letter from Denise Yarnoff to Stephen Siana, dated June 2, 2009.

22. The Township presented the following exhibits into the record:

- T-1 Notice of the Hearing;
- T-2 Letter to Daily Local Newspaper re publication of Notice;
- T-3 Notice posted on the Subject Property;
- T-4 Map of Postings;
- T-5 Proof of Publication of Notice;

³ Applicant's exhibits numbered as A-49 and A-50 were initially handed to the Township by counsel for Applicant but were withdrawn shortly thereafter without any review or substantive testimony related thereto.

- T-6 Conditional Use Application dated August 29, 2008;
- T-7 Public Notice;
- T-8 Letter from Applicant regarding Resident Notices;
- T-9 Curriculum vitae of Don Jacobs;
- T-10 Traffic report of Don Jacobs;
- T-11 List of Approved Parties; and
- T-12 List of Exhibits as of June 2, 2009.

23. The Guardian Parties presented the following exhibits:

- G-1 Letter from Attorney Yeager, dated September 23, 2008;
- G-2 Letter from Attorney Yeager, dated October 7, 2008;
- G-3 Report: LEED for Homes Rating System;
- G-4 Report: LEED for New Construction and Major Renovations;
- G-5 Curriculum vitae of Thomas J. Comitta;
- G-6 Expert Witness Report of Thomas J. Comitta, March 24, 2009;
- G-7 Curriculum vitae of Alan E. Haberstock;
- G-8 Expert Witness Report of Kleinschmidt Associates, April 14, 2009;
- G-9 Botanical Survey of Wallace Township, February 2007;
- G-10 Botanical Survey Map;
- G-11 Skelly and Loy Bog Turtle Phase II Survey, August 2007;
- G-12 Pennsylvania Important Bird Area # 71 – Great Marsh;
- G-13 Bog Turtle Northern Population Recovery Plan;
- G-14 List of Birds Observed on Subject Property;
- G-15 Revised Expert Witness Report of Thomas J. Comitta, May 5, 2009;
- G-16 Revised Expert Witness Report of Thomas J. Comitta, June 2, 2009;
- G-17 Comitta Steep Slope Incursions Chart;
- G-18 Supplemental Report of Kleinschmidt Associates, April 14, 2009; and
- G-19 Letter from Comitta to Township Secretary.

Conditional Use Application

- 24. Pursuant to the Conditional Use Application, Applicant seeks conditional use relief in order to construct a Planned Country Club Community (“PCCC”).
- 25. Section 1323 of the Wallace Township Zoning Ordinance permits a PCCC use within the FRR Flexible Rural Residential and the I Industrial Zoning Districts within the Township.
- 26. Zoning Ordinance Section 1323, establishing regulations for a PCCC use, was enacted on August 21, 2008, after the Township held multiple public hearings to receive input from

Applicant, many of the individuals who ultimately became the Neighboring Parties to this hearing, and the public in general.

27. Generally, the proposed PCCC will be comprised of seven (7) areas/components: 1) the preserved landscape and trails, constituting over 60% of the site; 2) the Retreat, comprised of a spa, a Country Clubhouse and fitness center adjacent to Canyon Lake; 3) the golf course and private golf course clubhouse; 4) the Hillside Neighborhood; 5) the Manor House Neighborhood; 6) the Poplar Neighborhood; and 7) the Heath Neighborhood.
28. With respect to the proposed residential uses, as are more fully described herein and in the Plans presented by Applicant during the Conditional Use Hearings, Applicant has proposed an aggregate of 281 residential dwelling units (being 275 new and 6 existing dwelling units).
29. With respect to the proposed non-residential uses, as are more fully described herein and in the Plans presented by Applicant during the Conditional Use Hearings, the proposed development incorporates a collection of non-residential uses located wholly within the I Industrial District pursuant to Zoning Ordinance Section 1323.D, comprised, *inter alia*, of a spa retreat with 80 guest suites (available to the public as patrons of the spa retreat), a private Country Clubhouse with private dining facilities and 100 guest suites (limited to use by members thereof), as well as various recreational facilities and uses including, but not limited to, indoor and outdoor tennis courts, community swimming pools, gym facilities, bowling lanes, and yoga (collectively referenced as the "Retreat").

30. The Retreat will be comprised of approximately 332,670 square feet of indoor non-residential facilities (including the guest suites) and 82,633 square feet of outdoor non-residential facilities.
31. Applicant has also proposed to construct an 18-hole golf course and a golf course clubhouse situated in the FRR Zoning District, as is more fully discussed below.
32. The proposed development will also incorporate certain agricultural uses, such as organic gardens.
33. The non-residential portion of PCCC development will be developed, held and maintained under single or common ownership.⁴
34. Applicant has presented testimony that a central element of the project design is the incorporation of an internal circulation system utilizing a combination of sidewalks, trails and golf cart paths to connect the various elements of the development for substantial use by the residents and the patrons of the Retreat and golf course uses. Applicant's witnesses stated that the interior circulation system has been designed so that residents and patrons can park their vehicle in one on-site location and to then utilize golf carts to travel to the various amenities of the development. Such design will lessen the impact of the traffic generated by the development as well as the development's environmental footprint.
35. Applicant's consultants testified that the proposed development was designed to satisfy six (6) overall objectives:

⁴ While the Subject Property may be considered as one (1) lot, the proposed development shall be considered as a major subdivision as it proposes conveyance of portions of the Subject Property as condominiums. Shaffer v. ZHB of Chanceford Twp., 964 A.2d 23 (Pa. Cmwlth. 2008).

- a. To protect sensitive natural features using conservation design techniques and employing sustainable techniques such as LEED building standards, as well as utilizing and preserving natural slopes.
- b. To meet or exceed the landscape and ecology design standards established by Audubon International (“Audubon”) pursuant to the Audubon Signature Gold Program, including minimizing the use of pesticides and herbicides and encouraging habitat restoration and native species protection.
- c. To link internal recreational trails to the Marsh Creek State Park and the regional trail network, in consultation with the Wallace Trails Association and the Struble Trail Association.
- d. To screen the majority of the community from public view by enhancing existing woodland areas, complying with and exceeding the required setbacks, and incorporating viewshed protection measures.
- e. To incorporate residential cluster development as a measure to maximize land conservation, open space, trails, recreation areas, and woodland preservation.
- f. To restore and enhance the landscape of the former, abandoned quarry.

Proposed Residential Uses

36. The proposed residential dwelling units will be comprised of a mix of single-family detached dwelling units, two-family, three-family and four-family attached dwelling units, all of which will generally be clustered into four (4) different residential neighborhoods depicted on the Conditional Use Plans: the Manor House Neighborhood; the Heath Neighborhood; the Hillside Neighborhood; and the Poplar Neighborhood.

37. It is proposed that the existing dwelling units on the Subject Property (i.e., the Manor House, the Tenant House, the Wallace Seminary, Big Oak and the David McKnight Farm) will be maintained as residential uses or will be adaptively reused pursuant to the applicable provisions of the Township Zoning Ordinance.
38. With respect to density, the proposed development will incorporate approximately one (1) dwelling unit per every 1.447 acres (after netting out of certain features).
39. The proposed single family dwelling units are broken down number and size as follows: 156 single family detached residences with Unit Areas of greater than 7,500 square feet; 48 single family detached residences with Unit Areas of less than or equal to 7,500 square feet; and 71 two-family, three-family or four family dwelling units.
40. Each of the residential dwelling units will be conveyed and occupied via a condominium form of ownership, which will be governed, *inter alia*, through condominium documents that will be subject to the approval of the Township Board of Supervisors through the course of the preliminary and/or final subdivision and land development application for the project. Applicant testified that it will, and by virtue of this Decision Applicant shall, incorporate a maintenance plan into the condominium documents to address landscaping and other maintenance requirements; such maintenance plan shall be incorporated into the condominium documents, set forth in and evidenced by, a conservation easement and/or through other appropriate means at the Township's discretion.

Proposed Non-Residential Uses

41. The Country Clubhouse portion of the Retreat will consist of 100 guest suites, a dining area with no greater than 270 seats, and the club facility and indoor pool, for an aggregate of approximately 80,000 square feet.

42. The Spa portion of the Retreat proposes to be comprised of 80 guest suites, a restaurant with no greater than 100 seats, and a 21,565 square foot spa.
43. None of the guest suites have been proposed in the portion of the Subject Property within the FRR District.
44. Other non-residential buildings proposed in the I District are to include a dining pavilion with no greater than 450 seats, a boathouse, a pier and pier house, a horse barn, an outdoor skating rink, a community barn building, and support facilities.
45. The above-referenced non-residential buildings are all proposed to be situated in the I District.
46. An aggregate of 565 parking spaces are proposed to serve the non-residential uses within the I District, with the potential that the number of parking spaces be reduced by way of shared parking in order to lessen the amount of impervious coverage attendant with the proposed development.

Proposed Golf Course Use

47. Applicant has proposed an 18 hole golf course and Golf Clubhouse within the FRR District, as permitted by Zoning Ordinance Section 1323, which will be constructed and maintained in accordance with the Audubon Gold Signature Sanctuary Program.
48. Applicant's engineer, Charles Dobson, testified that the golf course will not occupy more than 50% of the required greenway land on the Subject Property.
49. The Golf Clubhouse is proposed to be no more than 20,000 square feet in gross area, containing restaurants (with a maximum of 150 seats), the club facilities, and 2,200 square feet of retail space.
50. The Golf Course and Golf Clubhouse are proposed to be served by 109 parking spaces.

51. Surface parking for the Golf Course and Golf Clubhouse will be constructed with pervious material, as required by Section 1323 of the Zoning Ordinance.
52. Fifteen (15) parking spaces are proposed in the FRR District to service the Manor House and community buildings.

Trails and Internal Circulation Standards

53. The proposed development will incorporate approximately 7.3 miles of new trails on the Subject Property (including cart paths and including a portion of the Struble Trail).
54. Applicant presented testimony that portions of the trail system would be open to the public at large, subject to certain use restrictions and limitations for safety, as approved by the Township in the form of a public use trail easement.
55. Applicant has proposed lighting on the portion of the Struble Trail that traverses the Subject Property, but has indicated that the other trails on the Subject Property will not be lit other than portions of certain internal trails to serve golf carts and for safety and security purposes, as approved by the Township.
56. No parking has been incorporated for the specific use of the trails on the Subject Property.

General Components of the Development and Compliance with the Zoning Ordinance

57. Applicant presented substantial and sufficient evidence, including testimony and exhibits, to establish compliance with the applicable ordinance requirements for the proposed PCCC development, subject to compliance with the conditions set forth herein and excepting the provisions pertaining to certain steep slopes incursions in the I Industrial District pursuant to Section 1323.E.4.f.

Zoning Ordinance Section 1812 – Adequacy of Application Submission

58. Applicant's application submission was complete, pursuant to Zoning Ordinance Section 1812.
59. The Application was accompanied by a Conditional Use Plan, depicting the size and location of the proposed use, the location of all proposed buildings and structures including all proposed facilities, access drives, parking areas, trails, cart paths and dimensional features, in compliance with Zoning Ordinance Section 1812.

Conditional Use Standards

60. Applicant has established compliance with the criteria set forth in Zoning Ordinance Section 1702.
61. Pursuant to Zoning Ordinance Section 1702.A, the proposed development reflects that the proposed uses are consistent with the spirit, purpose and intent of the Wallace Township Comprehensive Plan (noting that the mapping of environmentally sensitive areas shall be subject to the review and confirmation of the Township professional consultants during the preliminary subdivision and land development plan review process). Specifically:
 - a. The proposed development preserves a significant portion of the Subject Property as greenway land.
 - b. The proposed development incorporates extensive measures to limit its environmental impact, such as the LEED and Audubon certification requirements as well as the increased riparian buffers.
 - c. The proposed development limits density to less than that which would otherwise be permitted on the portion of the Subject Property within the FRR District.

- d. The proposed development concentrates the non-residential uses and impact into the Industrial Zoning District, an area designated and zoned for more intensive commercial and industrial uses.
- e. Consistent with the Wallace Township Comprehensive Plan, the layout of the proposed PCCC development has been designed in a way that preserves the sensitive environmental features such as areas of steep slopes, floodplains, wetlands, and woodlands.
- f. Consistent with the Wallace Township Comprehensive Plan, Applicant has incorporated an open space network with recreational resources in an effort to preserve and protect the environmentally sensitive areas.
- g. Consistent with the Wallace Township Comprehensive Plan, open space is retained in areas of new development to maintain the rural character of the Township. In this regard, Applicant submitted an Existing Resources and Site Analysis Plan, based on a boundary topography survey as well as a wetland and stream delineation survey, that mapped all required environmentally sensitive areas. Together with Applicant's other exhibits, such evidence illustrates how Applicant's proposed development will minimize disturbance of such areas.
- h. Consistent with the Wallace Township Comprehensive Plan, scenic vistas and unique natural areas shall be protected from development.
- i. Consistent with the Wallace Township Comprehensive Plan, the preservation of historic resources is promoted, and none of the identified historic resources will be demolished.

- j. Consistent with the Wallace Township Comprehensive Plan, compatible reuse of the historic structures will be incorporated into the proposed development.
 - k. Consistent with the Wallace Township Comprehensive Plan, the proposed development utilizes the concept of clustering in order to preserve larger areas of the Subject Property as open space.
62. Pursuant to Zoning Ordinance Sections 1702.B and C, Applicant has presented sufficient evidence to establish that the proposed development will not substantially injure or detract from the use of the neighboring properties or from the character of the neighborhood, and the use of the property adjacent to the area included in the Plan is adequately safeguarded. Particularly:
- a. The proposed development will provide Wallace Township with a beneficial land use that will protect the natural, scenic and historic character of the Township and the neighborhood surrounding the property. Through the use of conservation design techniques and perimeter landscape buffers, the scenic rural road vistas, heritage trees, historically significant structures and the rural landscape character will be preserved and protected. All landscaping will be required to be designed in accordance with Zoning Ordinance Section 1210 as required by Section 405.D. All suitable existing vegetation will be utilized as part of the screening for the site. The rural character of the area will be maintained through screening and preservation of the existing trees and vegetation, particularly along the roadways so as to maintain the existing viewsheds. Additionally, the landscaping plan will utilize native vegetation, consistent with the Audubon requirements and the Township Ordinance requirements. Parking areas will also be required to be

intensively landscaped, with certain of the parking areas to be pervious, consistent with the objective of creating an environmentally diverse development that is compatible with surrounding landscape.

- b. The proposed development will provide several benefits over the more commercially-intensive land uses that are otherwise permitted in the I Zoning District. Notably, in contrast to the proposed development, the I Zoning District otherwise permits uses such as manufacturing, distribution, warehouse, quarrying and professional offices, all of which would likely generate significantly more traffic and truck traffic, onto the narrow and rural roads and negatively impose higher impacts to neighboring properties.
 - c. Subject to compliance with the conditions of approval imposed herein and as noted more fully below, the proposed development will not substantially detrimentally impact the existing traffic conditions in the area.
63. Pursuant to Zoning Ordinance Section 1702.D, the proposed development has taken into account the effect of the proposed development upon the logical, efficient, and economical extension of public services, facilities such as public utilities, police and fire protection, and public schools, and shall be required to assure adequate arrangements for sanitation treatment. Particularly, the uncontroverted evidence and testimony established the following:
- a. The proposed development has been designed with adequate consideration given to the extension of public services.

- b. Subject to compliance with the conditions imposed hereby, the road system and circulation pattern reflected on the Plan provides adequate access for fire and public services.
- c. The proposed development's community water supply system will be required to be designed and constructed in accordance with all applicable regulations in order to ensure sufficient water capacity to provide the required water flow necessary for fire equipment as well as the network of fire hydrants. Preliminary well testing has been completed, and, based on the well testing, Applicant's engineer testified that adequate water can be made available.
- d. The proposed community sewage treatment and disposal system will be required to be designed and constructed in accordance with all applicable Township and Pennsylvania Department of Environmental Protection requirements to provide adequate sanitation treatment and disposal. Pursuant to the testimony of Applicant's engineer, adequate area can be provided to accommodate the disposal of treated effluent by spray irrigation and drip disposal. Applicant's Engineer testified that soil quality testing has been completed for wastewater disposal.
- e. Applicant testified that the proposed development will be monitored by on-site twenty-four hour security and maintenance personnel, which will lessen and mitigate the impact of the proposed development on policing services.
- f. Applicant has submitted a fiscal impact study to address the potential fiscal impact of the proposed development. While the Township does not find that the net annual fiscal impact of the proposed development will necessarily be as economically beneficial to the Township as represented in the fiscal impact study,

the Township finds that evidence has not been submitted to establish that the proposed development will necessarily have a detrimental net annual fiscal impact to the Township as approved subject to the herein-imposed conditions.

64. Pursuant to Zoning Ordinance Section 1702.E, the proposed development has been guided in its study, review and recommendations by sound standards of subdivision design, as may be subject to further review by the Township's professional consultants through the subdivision and land development review process.

Traffic, Access and Internal Circulation

65. Pursuant to Zoning Ordinance Section 1702.F and G, and subject to the road improvement and traffic calming requirements imposed as conditions of this decision, the proposed development guides the development of arterial and collector road frontage in an appropriate effort to limit the total number of new access points to a minimum and encourages the frontage of buildings on parallel marginal roads or on roads perpendicular to the highway.
66. Specifically, Applicant's testimony and evidence established the following:
- a. There are no proposed accesses to any of the streets that are classified as arterial roads per the Comprehensive Plan. The only accesses provided are to collector or lower order roads. The proposal limits the number of new access points to a minimum necessary to serve the development and also proposes an internal road system so as to limit new intersections;
 - b. Applicant has incorporated minimal points of access for the proposed development, including the use of several existing access points; and

- c. The proposed development includes an internal road system which will encourage fronting buildings on other roads perpendicular to the existing highways.
67. Subject to the conditions imposed herein, including compliance with the recommendations of the Township's traffic consultant (whose report and testimony the Township adopts and finds credible), the proposed development adequately establishes, for the purpose of obtaining conditional use approval, the suitability of the proposed location of the permitted uses with respect to probable effects upon traffic patterns, and provides adequate access arrangements to protect arterial and collector roads from undue congestion and hazard.
68. Don Jacobs, a traffic consultant engaged by the Township, provided an independent review of the Applicant's Traffic Impact Study for compliance with the Township Ordinances.
69. The Traffic Study presented by Applicant analyzed the future traffic conditions with the assumed background growth and the proposed PCCC, and Mr. Jacobs generally concurred with the analysis as set forth in Mr. Jacobs' report entered at Exhibit T-10.
70. Mr. Jacobs submitted a report, which incorporated several recommendations, *inter alia*, encouraging additional study and review during the subdivision and land development plan review process of the potential traffic impacts of the proposed project.
71. Mr. Jacobs included in his report an evaluation of the benefits of a proposed roundabout at the intersection of Little Conestoga, Marshall and Chalfant Roads.
72. Per the testimony and report of Mr. Jacobs, the traffic impact and load at this intersection will be greatly improved with the proposed roundabout, in terms of traffic operations and safety, reduced emissions, traffic calming and aesthetics.

73. The Board of Supervisors finds Mr. Jacobs' analysis as to the benefits of the proposed roundabout to be credible, and, based upon this decision, encourages the Applicant to pursue the roundabout improvement to the greatest extent possible during the preliminary subdivision and land development application plan review process.
74. The Traffic Study incorporated and presented certain improvements that the Applicant has agreed to make (subject to PennDOT approval), including the installation of the roundabout at the existing intersection of Little Conestoga Road, Marshall Road and Chalfont Road.
75. Applicant has provided testimony and evidence that the proposed site accesses were tested for available sight distances and sight lines, which Applicant's witnesses have concluded to be sufficient to satisfy the Township and PennDOT requirements and which the Township Board of Supervisors finds credible in the context of the instant conditional use approval.
76. The proposed development also incorporates walking trails, equestrian trails, golf carts and other types of non-vehicular traffic proposed as part of the PCCC.

Pedestrian Circulation

77. The proposed internal circulation system is compliant with the standards in Section 1323.F.

Water and Wastewater

78. Applicant has proposed a community wastewater system in accordance with the Township's "Ordered List of Preferred Alternatives."

79. The wastewater disposal system is proposed to be integrated with the golf course irrigation system and will be utilized as part of a water reuse program consistent with the conservation of resources required as part of the Audubon Gold Program.
80. Applicant's consultants testified that the amount of area necessary for disposal is available through use of the golf course.
81. Applicant's consultants further testified that both the water and sanitary sewer systems will be designed and permitted in accordance with the requirements of Wallace Township, the Chester County Health Department and the Pennsylvania Department of Environmental Protection, noting that the requisite permits and certificates of adequacy shall be obtained during the subdivision and land development plan review process.
82. Applicant has presented sufficient evidence for purposes of the conditional use proceedings, pursuant to Zoning Ordinance Section 1702.H, to establish that it can and will comply with the Township's sanitary sewer requirements, subject to additional testing to be completed during the subdivision and land development review process and subject to the conditions imposed herein.

FHWSO Crossings

83. The proposed development complies with the applicable PCCC Ordinance and Article VII requirements which limit crossings of the FHWSO for trails and cart paths pursuant to Zoning Ordinance Section 1702.I.
84. Applicant has presented sufficient evidence, for purposes of this conditional use proceeding, to establish that the proposed FHWSO crossings can and will be compliant. Such proposed crossings shall be subject to appropriate testing, inspection and review by the Township during the preliminary subdivision and land development review process as

well as to the conditions imposed by this decision. To wit, the proposed FHWS D crossings for trails and golf cart paths are compliant with the requirements of Sections 1323.E.3.h, 809.C and 809.D since:

- a. Applicant has provided sufficient evidence and testimony to establish that adequate measures can and will be put in place to ensure that the proposed crossings will not create a danger as a result of increased flooding, increased flow velocities, increased stormwater runoff or inadequate drainage.
- b. Subject to the review of the Township's professional consultants during the subdivision and land development review process, the crossings will be designed such that all materials will be set at or above the expected 100 year flood elevation and will be of sound construction so as to not be subject to compromise as a result of a major flood event.
- c. Applicant has presented sufficient evidence to establish, for the purposes of conditional use approval, that all water supply and sanitary sewer systems can and will be designed and constructed in accordance with the requirements of the Township and DEP requirements such that the FHWS D crossings will not cause disease, contamination or unsanitary conditions.
- d. Applicant has presented sufficient evidence to establish for the purposes of conditional use approval that the crossings proposed can and will be designed to withstand major flood events, will not be susceptible to flood damage, and that additional storm water runoff will not occur as a result of these crossings.
- e. The proposed crossings are to be part of a larger trail network designed to serve the proposed development and the general public.

- f. Applicant has presented sufficient evidence that the small number of crossings provided is necessary for the interconnection of the existing and proposed trails.
- g. The Township finds that Applicant has limited the number of crossings of the FHWSO to those necessary in order to create a complete trail network within the proposed development.
- h. The creation of a larger, more interconnected trail system for use by the public is consistent with the spirit, purpose and intent of the Wallace Township Comprehensive Plan.
- i. As the limited number of FHWSO crossings will be at or above the 100 year floodplain elevation, the proposed use is also consistent with the Flood Plain Management Program.
- j. As the crossings will be required to be constructed at or above the 100 year flood elevation, there will be no impact on the expected heights, velocity, duration, rate of use and sediment transport of the flood water.
- k. The following sections are not applicable and/or relevant to the proposal: Section 809.C.12; Section 809.D.1, Section 809.D.2.a, Section 809.D.2.c; Section 809.D.2.e; Section 809.D.2.f; Section 809.D.2.g; and Section 809.D.2.
- l. Applicant provided evidence to support (and shall be required to establish during the preliminary subdivision and land development plan review process) that the proposed crossings will be adequately engineered and constructed to resist water pressure and to prevent flotation in the areas where the same are proposed.

85. Applicant provided evidence to support (and shall be required to establish during the preliminary subdivision and land development plan review process) that the crossings can and will be adequately constructed and braced to resist rupture or collapse.

Lighting

86. Applicant provided testimony that the proposed development will comply with the lighting requirements set forth in the Township ordinances, and that the lighting will be very low intensity, not visible from the streets, and sensitive to the character of the surrounding area. Applicant presented testimony to establish that all areas within the PCCC development can and will conform with the lighting standards addressed in Zoning Ordinance Section 1702.J, as well as the LEED sustainable approach to site lighting.
87. Full cut-off light fixtures will be used.

Proposed PCCC Uses

88. Pursuant to Zoning Ordinance Section 1702.K, the proposed uses in the development comply with the requirements of Zoning Ordinance Section 1323 pertaining to PCCC developments.
89. The proposed development includes a mixture of all the permitted uses in Section 1323 of the Zoning Ordinance, including Country Club Use, Spa Use, Recreational Retail Use, Recreational Maintenance Use, Recreational Parking Use, Trail Use, Residential Use, Guest House Use, Golf Course Use, Historic Resource Use, Agricultural Use, FRR Maintenance Use, FRR Parking Use, Greenway Land and customary accessory uses.
90. The conditional use application complies with the applicable FRR Zoning District standards.

91. The proposed 275 new residential dwelling units and 6 existing residential units (a total of 281 residential dwelling units) is less than the permitted two hundred ninety-nine (299) residential dwelling units pursuant to the Tier IV density calculations in the FRR Zoning District regulations.
92. No motorized water craft use is proposed within the proposed development, except as required for emergencies.
93. Additionally, Applicant has indicated that the trails on the Subject Property will be open to the public (subject to the terms of a public use easement agreement with the Township to be approved during the preliminary subdivision and land development plan review process).

Greenway Land

94. The PCCC complies with the Greenway Land requirements of Zoning Ordinance Article XI and Sections 404 and 1323.E.2. Particularly:
 - a. Applicant is proposing 390.08 acres of Greenway Land, approximately 1.63 acres in excess of the minimum required Greenway Land of 388.45 acres.
 - b. A minimum of 3% (11.65 acres) of this area is required to be in the form of neighborhood greens, whereas the total area of neighborhood greens being provided is 12.91 acres (or 3.25% of the provided Greenway Land of 390.08 acres).
 - c. Only land areas in the FRR District were counted as Greenway Land, pursuant to Zoning Ordinance Section 1323.E.2.a.
 - d. No more than 50% percent of the required Greenway Land is comprised of the golf course.

- e. The Greenway Land has been designed such that it is largely undivided and located within the proposed development, to be owned by a condominium association and subject to a conservation easement or a deed restriction as required pursuant to Zoning Ordinance Section 1323.E.6.d.3.
- f. Lastly, the proposed Greenway Land was identified according to the four step process outlined in Section 402 of the Subdivision and Land Development Ordinance.

Neighborhood Greens

- 95. Subject to confirmation by the Township during the preliminary subdivision and land development review process and as may be required pursuant to Condition 3 herein, at least 80% of all residential dwelling units are within 1,500 feet walking distance of a neighborhood green as shown on the Plan.

General Area, Bulk and Height Requirements

- 96. The Subject Property is approximately 606 acres, which exceeds the 200 acre minimum tract size set forth in the Zoning Ordinance Section 1323.E.3.a.
- 97. Subject to the review of the Township professional consultants through the subdivision and land development plan review process, which may result in the reduction of the number of proposed residential dwelling units or the reduction of the size of the proposed non-residential uses in order to comply with the impervious coverage requirement, the impervious area calculations associated with non-residential buildings in the FRR Zoning District result in an equivalent of fifteen (15) residential dwelling units, which, when added to the proposed 281 dwelling units is less than the 299 residential dwelling units permitted in the Tier IV density calculation of the FRR Zoning District.

98. All residential buildings shall be set back a minimum of 100 feet from Residential Zoning District boundaries and all non-residential buildings shall be set back a minimum of 200 feet from Residential Zoning District boundaries.
99. The accessory buildings and structures (such as detached garages or other accessory buildings) are set back a minimum of 25 feet from property lines which abut Residential Districts.
100. The Plan has been designed in accordance with the 100 foot setback for house sitings from Class A Lands.
101. Applicant provided testimony to establish that vegetative screening will be incorporated into the perimeter setback areas along the existing road frontages and within the Subject Property boundaries as applicable to comply with the requirements set forth in Section 1211 and 1323.E.3.c.
102. Subject to the review and confirmation of the Township professional consultants during the preliminary subdivision and land development review process, Applicant presented evidence to demonstrate that the proposed development results in the following impervious coverage: 29.4% of impervious coverage in the I District 29.4%, which is less than the 35% permitted maximum; and 9.15% of impervious coverage in the FRR District, which is less than the 10% permitted maximum of 10%.
103. The improvements in the proposed development comply with the required fifty (50) feet riparian buffer requirement, and, pursuant to the representations of the Applicant during the conditional use hearing and the conditions imposed herein, Applicant shall provide a 150 foot riparian buffer setback, as measured from all bodies of water except from the quarry pursuant to Zoning Ordinance Section 1323.

104. All non-residential buildings in the FRR District and I Districts are proposed to be 35 feet or less in height (except as permitted by the ordinance for certain mechanical equipment, chimneys and similar projections).
105. The minimum distance between newly constructed non-residential buildings is proposed to be at least fifteen (15) feet or greater as required by Section 1323.E.4.c. Compliance with the minimum building separation requirements shall be a condition of this decision with the potential for modifications to the precise layout of the proposed improvements pursuant to Condition 3 herein.
106. The proposed development incorporates and complies with the internal circulation standards set forth in Section 1323.F and Section 1215.
107. The proposed retail use will consist of no more than 10% of the building area, with a total maximum area of 7,000 square feet.
108. The dock proposed for access to Canyon Lake will not be utilized for motorized recreational use and will not contain storage of petroleum or sanitary facilities, pursuant to Zoning Ordinance Section 323.E.4.e.

Use of Historic Structures

109. The proposed restoration of historic structures and existing structures is in accordance with the underlying ordinance, subject to the modifications and review of the Township Historical Commission.
110. None of the historic resources are proposed to be demolished and there are no substantial changes proposed for the historic resources.
111. Applicant's Historical Consultant testified that the overall impact to the historic resources is low, since most, if not all, of the development is in areas where there are no historic

resources including the Hillside neighborhood, Poplar Neighborhood and the Retreat area, and that appropriate buffers can be incorporated to lessen the impact in those areas where historic structures are located.

Steep Slopes

112. Applicant's engineer, Chuck Dobson, testified that the total acreage of steep slopes within the FRR and the I Zoning Districts is 48.76 acres.
113. The steep slope disturbance calculations for the proposed development are set forth at Applicant's Exhibit A-47.
114. It is noteworthy that the Dobson Comparison Chart and the Dobson Slope Incursion Chart at Exhibits A-33 and A-33b do not establish the level of slope disturbance to be effectuated by the proposed development on the Subject Property. Instead, these exhibits were introduced by Applicant in support of its assertion that the calculations submitted by Mr. Comitta were inferior and in error.
115. As agreed by Mr. Comitta and Mr. Dobson, the amount of steep slopes proposed to be disturbed on the entire tract is relatively minimal. Particularly, the amount of steep slopes proposed to be disturbed is approximately 1.07 acres, which is less than 1% of the entire tract area (considering the import of the integrated elements of the proposed development) and is only approximately 2.2% of the steep slopes on the Subject Property.
116. Of the proposed steep slope incursions, .35 acres of steep slope disturbance are attributable to building incursions, none of which individually exceed .08 acres. Further, .72 acres are attributable to cart path/driveway/trail/grading improvements, none of which individually exceed .24 acres.

117. Per Mr. Dobson, most of the steep slopes in the I District are man made, as a result of the prior quarrying on the Subject Property.
118. Applicant did not establish through its witnesses all of the requisite elements of Zoning Ordinance Section 1323.E.4.f with respect to the steep slope incursions in the I District attributable to the non-residential buildings. Specifically, Applicant's engineer, Chuck Dobson testified on at least two (2) different occasions that he could not address whether the encroachment of the non-residential buildings into steep slope areas in the I District is necessary for Applicant to reasonably utilize the tract or that such encroachments will minimize grading and removal of vegetation.
119. Applicant did not provide the Township with sufficient evidence to allow the Board of Supervisors to conclude that: certain minimal revisions cannot be made to the orientation and location of certain of the buildings in the I District to reduce or further minimize the extent of steep slope incursion therein, or that the proposed .35 acres of building incursions into steep slope area in the I District are necessary for Applicant to reasonably utilize the tract.
120. Contrary to the contention by Mr. Comitta, cart paths are permitted to cross steep slope areas pursuant to Zoning Ordinance Section 1323.F.5.
121. There are three minor encroachments into steep slopes in the FRR District totaling 0.06 acres. These three encroachments are *de minimis* intrusions that are necessary for the installation of cart paths around the locations of golf holes 10, 11 and 15; none of these encroachments are for buildings.
122. The Township finds that Applicant has presented sufficient evidence to establish for conditional use purposes that:

- a. The encroachments into steep slope areas in the FRR District and I District are minimal.
- b. The encroachments in the FRR District are necessary to reasonably utilize the Subject Property for the uses proposed which are permitted pursuant to Section 1323.E.4.f.
- c. The encroachments in the FRR District and the non-building encroachments in the I District are necessary for the connectivity of trails and cart paths throughout the development.
- d. Subject to compliance with the conditions imposed herein and the requirement that Applicant undertake ongoing maintenance of the golf cart paths, trails and buildings proposed, the proposed steep slope encroachments will not cause a subsequent public expenditure for public works and disaster relief.
- e. Applicant has presented sufficient evidence for the purpose of this conditional use application to conclude that reasonable measures will be taken to protect Township residents from property damage and personal injury resulting from stormwater runoff and erosion attributable to the increased encroachment into steep slopes areas.
- f. Applicant will minimize grading, removal of vegetation, and the amount of disturbance with respect to the steep slope incursions in the FRR District.
- g. The proposed encroachments in the FRR District will restrict sedimentation and will reduce the alteration of natural drainage patterns that would aggravate flooding in the immediate area and in downstream areas.

- h. Adequate stormwater management control measures can and will be incorporated to protect against the derogation of any environmentally sensitive features of the area.
123. Applicant shall modify the plans to eliminate those limited steep slope incursions by the proposed buildings in the I District, provided, however, that nothing herein shall be construed to preclude Applicant from submitting a subsequent conditional use application pursuant to Section 1323.E.4.f, which may incorporate a request for approval of more, less or the same amount of the proposed building/improvement steep slope incursions in the I District.

Parking

124. As noted more fully above and subject to the conditions herein, the proposed development satisfies the Zoning Ordinance requirements respecting parking on the Subject Property.

Noise

125. While the Applicant presented evidence from David R. Still, a noise consultant, as to the potential levels of noise that could emanate from the Subject Property as developed, such is not a requirement of either the Section 1323 or other pertinent provisions of the Zoning Ordinance.
126. A neighboring party, Robert Schieman, testified as to his general belief and observations as to the noise conditions in the general area.
127. The noise study presented by Mr. Still is an insufficient basis upon which to conclude that the proposed development will have no deleterious impact from a noise perspective.

128. However, no party presented sufficient evidence to support a claim that the proposed development would violate the noise limitations set forth in the Township's ordinances or that noise from the proposed development would create any substantial public health, safety or welfare concern.
129. Applicant has testified that it would comply with any applicable noise limitation restrictions set forth in the Township Ordinances, and, indeed, Applicant shall be required to do so. Therefore, noise is not a basis upon which to conclude that the conditional use application should be denied.

Signs

130. Applicant provided testimony that it will comply with the Township's sign requirements.⁵ Particularly, Applicant has provided evidence that:
- a. No more than two entrance signs, equal to or lesser than 24 square feet in size, have been proposed at the public entrance to the county clubhouse and the spa and wellness/fitness center within the I District.
 - b. Only one sign, equal to or lesser than 24 square feet in size, will be incorporated at the entrance to the private Golf Clubhouse within the FRR District.
 - c. No other signage will be visible from public right of way, except for trail and directional signage, being subject to the review of the Township.
 - d. Non-residential signage will comply with the standards for the Commercial District as set forth in Zoning Ordinance Section 1323.E.4.j and Article XV.

LEED

⁵ The instant decision shall not be construed to be approval of any particular number, size or location of signs. Such shall be a component of the preliminary subdivision and land development plan review process.

131. Applicant has also presented testimony to establish that the buildings can and will be certified as “LEED Housing” for the residential buildings and will be certified as “LEED Construction” for the proposed non-residential buildings.
132. As a component of the required LEED certification for the residential dwelling units, Energy Star high-efficiency appliances and high-efficiency heating systems, building insulation and energy consumption elements will be utilized in connection with the construction and use of the dwelling units.
133. Additionally, materials for the buildings will be selected for their sustainability, with the focus being on use of recycled materials and local materials within a 500-mile radius of the site.

Golf Course

134. The golf course will comply with Section 1323.E.6.a, in that it will include tee boxes, fairways, managed rough, greens, cart paths, accessory buildings less than 10,000 square feet in area and practice facilities (excluding commercial driving ranges).
135. The golf course will not operate before sunrise or after sunset and will not be lit for nighttime use, pursuant to Zoning Ordinance Section 1323.E.6.b.

Golf Course – Audubon Certification

136. Applicant has submitted a preliminary Natural Resources Management Plan, together with the testimony of J. Russell Bodie, to establish sufficient evidence that it can and will comply with the requirement that the golf course obtain certification under the Audubon Gold Signature Sanctuary Program.
137. The Natural Resources Management Plan will be incorporated as a component of the required greenway management plan, and shall address water conservation, management

of water bodies, management of invasive vegetation and plant species/wildlife, and a pesticide management plan for the proposed development.

138. Pursuant to the observations of various consultants presented during the conditional use hearings, invasive plant species are abundant on the Subject Property. The proposed development will incorporate measures to remove and control the extent of these invasive plant species, with native plants to be incorporated in their place.
139. The Audubon Gold Signature Program and the Natural Resource Management Plan approved as a component of the PCCC development will address riparian buffers, air quality, noise levels and light pollution, all of which components are required to be in compliance with this Decision.
140. However, Applicant is unable to obtain such Audubon certification until after the instant conditional use process, and it is therefore appropriately incorporated as a condition hereof.
141. Applicant will be annually recertified under the Audubon Gold Program. The recertification will be subject to review and approval by the Township.
142. Applicant has further presented sufficient evidence to establish that it can and will comply with the Township's greenway management plan requirements, the specific details of such compliance shall be subject to further review and approval during the preliminary subdivision and land development plan review process.

Environmental Performance Standards

143. The proposed development complies with the applicable environmental performance standards set forth in Zoning Ordinance Section 1209. Specifically:

- a. No building will be erected and no activity is proposed that will result in noxious, injurious, or offensive dust, smoke, odor, fumes, noise, vibration, gas, illumination, or similar substance or conditions.
- b. No evidence was presented to establish that any of the uses proposed will result in excessive dust, vapors, fumes, gases or odors as a result of unauthorized open burning.
- c. Additionally, no evidence was presented to establish that the proposed use will involve the emission of smoke, dust, dirt, fly ash or other particulate matter or of noxious, toxic or corrosive fumes vapors or gases in such quantities as to be evident or perceptible at the property line. Nor was any evidence presented to imply that radioactive vapors or gases will be emitted from the facility in harmful amounts as defined by any federal or state agency.
- d. No evidence was presented to establish or imply that the proposed use will result in any harmful, offensive or bothersome odors, scents or aromas.
- e. No evidence was presented to establish that there will be any storage of solid or liquid waste that would be stored for over 30 days on the Subject Property, or that refuse containers will not be appropriately enclosed.
- f. Subject to Applicant's compliance with the conditions contained herein, Applicant has presented sufficient evidence, for the purpose of conditional use approval, to establish that the proposed development will not endanger groundwater levels and quality of water in the area. *Inter alia*, Applicant shall be required to submit a detailed hydrogeologic study during the preliminary subdivision and land development plan review process, which must demonstrate

that there is no negative impact to groundwater supplies and water quality in the area. Additionally, all fuel storage shall be within an approved container that is protected from rupture or spillage onto the ground.

- g. Applicant has provided sufficient evidence to establish that there will be no chemical or industrial wastes generated by the proposed development. In this regard, storage containers for heating oil or diesel fuel will not be located in an area where the seasonal high water table is within four (4) feet of the surface of the ground.
- h. Applicant has presented sufficient evidence from which to determine that the proposed use will not result in excessive heat, radiation or electromagnetic interference.
- i. Applicant has presented sufficient evidence to establish that it can and will comply with the Zoning Ordinance requirements pertaining to noise.
- j. Applicant has further presented sufficient evidence to establish that woodland removal will be limited to that which is permitted by the Zoning Ordinance Section 1323 and Section 1209, noting that woodland disturbance and removal will only be permitted as depicted on an approved subdivision and land development plan.

Testimony by Non-Applicant Parties

- 144. The Neighboring Residents generally expressed concern that the proposed development would create health, safety and general welfare concerns from an environmental and traffic standpoint, as well as that the proposed development would change the rural character of the Township.

145. The Board of Supervisors finds that sufficient or credible evidence was not presented so as to establish that the proposed development would create a sufficient public health, safety or general welfare concern so as to warrant denial of the instant conditional use application on such grounds.
146. At most, the Neighboring Residents presented evidence to establish that additional review and testing of the various environmental aspects of the proposed development is warranted during the subdivision and land development plan review process in order to ensure that adequate environmental protections are incorporated.
147. An unrepresented party, John McCoy, presented testimony pertaining to the proposed entrance off of Little Conestoga Road, which testimony included the submission of following exhibits:
- M-1 Power Point Slide Presentation Handout – without pictures; and
 - M-2 Power Point Slide Presentation Handout – with pictures.
148. In recognition of the testimony of Mr. McCoy, Applicant shall be required as a condition of this decision to incorporate a vegetative buffer between the McCoy property and any proposed improvements in the vicinity of his property line, to be approved by the Township during the preliminary subdivision and land development review process.
149. Mr. McCoy also testified as to his belief of the traffic conditions along Little Conestoga Road. It is noted that Applicant shall be required to obtain an HOP (Highway Occupancy Permit) from PennDOT in order to establish that any proposed access to or from Little Conestoga Road complies with all applicable PennDOT safety requirements.
150. William Covaleski, an unrepresented party, presented evidence and testimony in opposition to the proposed development.

151. Mr. Covaleski is a Township resident. He is also part-owner and the head brewmaster of Victory Brewing in Downingtown.
152. Mr. Covaleski testified as to his concern that the proposed development would affect the temperature and quality of the water in the east branch of the Brandywine Creek (and thus the quality of beer produced by his business), given that Victory Brewing uses the water as an ingredient in the brewing process.
153. The Township finds that sufficient evidence was not produced to substantiate Mr. Covaleski's claim.
154. Notably: a) sufficient evidence was not presented to demonstrate how and the extent to which the temperature and mineral content of the water from the east branch of the Brandywine Creek would change as a result of the proposed development; b) the proposed development is approximately nine (9) miles upstream from the Downingtown Water Treatment Facility, from which Victory Brewing obtains the water for its beer; and c) no evidence was presented to establish the intervening effect on the temperature or mineral content of the water treated by the Downingtown Water Treatment Facility (which likely will effect the water temperature and constitution of the water subsequently used by Victory).
155. John Traexler, an unrepresented party, presented testimony pertaining to his views on the traffic and sight distance that may result from the proposed development, which testimony included the submission of following exhibits:
- Traexler-1 Comparison Chart of PennDOT Safe Sight Distances; and
Traexler-2 Petition.
156. *Inter alia*, Mr. Traexler noted his hope that the proposed Lexington Manor access point be removed from consideration given that he lives on Lexington Manor and would not

like to experience any additional traffic. The Township notes that the particular design and layout of the access points shall be subject to further review and approval by the Township during the subdivision and land development process.

157. Mr. Traexler further noted his position that only two (2) access points can be permitted pursuant to Section 1206.D of the Zoning Ordinance. This assertion is in error. Zoning Ordinance Section 1206.D provides in pertinent part that “In all other uses [with more than 100 feet of street frontage], **normally** a maximum of two accesses shall be allowed” (emphasis supplied). Access is also addressed by Zoning Ordinance Section 403.A.3, which provides that “although two access ways into and out of subdivisions containing more than 15 (fifteen) lots are generally required for safety, proposals for more than two entrances onto public roads shall be discouraged if they would disrupt traffic flow.” First, it bears emphasis that, to the extent of any ambiguity in these provisions, they must be read in the light most favorable to the landowner. Here, by incorporating the qualifier “normally,” the Township Board of Supervisors recognized that this alleged limitation has exceptions in instances where the limitation is not appropriate. Also, Section 403.A.3 does not prohibit, but only discourages, excessive points of access. In the instant matter, permitting only two (2) access points for the entire proposed development is inappropriate because of the size and scope of the proposed development and the Subject Property, being separated by existing roadways. Limiting the number of access points would create public safety concerns, with a likely increase in the length and environmental impact of the proposed internal roads.

158. Skip McGrew, formerly of the Township Planning Commission, prepared a report entitled “Financial Impact of the Valhalla Brandywine Development Project,” dated

December 2, 2008, which was submitted and discussed during the conditional use hearing on December 2, 2008. This report notes the range of potential fiscal impacts of the proposed development on the Township.

159. As noted above, pursuant to Mr. McGrew's report, the Township does not assume a significant or substantial net annual fiscal benefit to the proposed development. Evidence has not been submitted to establish that the proposed development will necessarily be detrimental to the fiscal condition of the Township as would require the denial of the instant conditional use application. Nonetheless, in order to mitigate against any potential deleterious fiscal impact, the below-referenced conditions have been imposed, which limit further development inconsistent with the proposed development, which incorporate protections for the proposed greenway land, and which provide for an emergency services monetary contribution to the Township.
160. Attorney Jordan Yeager, on behalf of the Guardian Parties, introduced the testimony of Alan Haberstock and Tom Comitta.
161. Mr. Haberstock testified as to potential environmental considerations attendant upon the development of the Subject Property for the proposed PCCC use, as is also more fully set forth in his report and testimony.
162. Section 1323.E.3.g requires a minimum riparian buffer of fifty (50) feet, which can be increased by the Township during the conditional use process.
163. The Guardian Parties initially demanded that Applicant incorporate riparian buffers at a minimum of 100 feet, and subsequently riparian buffers of 150 feet. Once the Applicant agreed to these requests for increased riparian buffers, the Guardian Parties increased their demand for more extended riparian buffers beyond that previously requested.

164. Alan Haberstock, one of the consultants presented by the Guardian Parties, testified that he believed the riparian buffers areas required by the Zoning Ordinance to be inadequate and that buffers of 500 to 750 feet should be provided for certain features.
165. No party was able to establish that 500 to 750 foot riparian buffers are required by the Zoning Ordinance or of any other governmental regulation adopted in the Commonwealth of Pennsylvania.
166. The Guardian Parties, through Mr. Haberstock, correctly and appropriately noted that the evidence was not presented on which to calculate the “average buffer width.” Accordingly, the riparian buffer width shall be as set forth in the conditions below.
167. A bog turtle habitat (but no bog turtles) was located on the Subject Property. As a component of the Natural Resources Management Plan, Applicant will be required to undertake measures to enhance and protect any bog turtle habitats located on the Subject Property.
168. No evidence was presented to support that any endangered species were listed as located in a PNDI search of the Subject Property.
169. While the Neighboring Parties presented evidence as to the potential disturbance of Exceptional Natural Areas through the proposed development, this issue (as it relates to the portion of the proposed development within the FRR District) is more appropriately considered during the subdivision and land development review process. See Wallace Township Zoning Ordinance Section 403.A.4 (“Demonstration by the applicant that these features will be protected by the proposed application shall be a prerequisite to the approval of both the conceptual preliminary plan and the final plan.”).

170. Mr. Haberstock initially testified and noted in his initial report that he believed that vernal pools could be located on the Subject Property. However, the location that Mr. Haberstock referenced was actually a man-made pond in the northern portion of the parcel.
171. Applicant, its consultants, the Township professional consultants and the consultants from the Neighboring Parties represented by Attorney Yeager conducted a site visit on April 23, 2009, for the purpose of collectively observing the condition of the Subject Property.
172. The site visit took place after Mr. Haberstock submitted and presented his initial testimony and initial report.
173. As a result of the site visit, Mr. Haberstock submitted a supplemental report at Exhibit G-18, in which he again noted his belief that vernal pools could be located on the Subject Property.
174. Testimony was provided that, during the site visit, neither Applicant's consultants nor Mr. Haberstock stated or indicated that they observed any vernal pools on the Subject Property.
175. During this site visit, Mr. Haberstock did not notify any of the other consultants that he had located any vernal pools or ephemeral wetlands, as would be expected among consultants during such a site walk.
176. While Mr. Haberstock referenced in his supplemental report the possibility of other vernal pools on the Subject Property, sufficient evidence was not established to substantiate the location of the same, and, accordingly, no evidence was presented

sufficient to establish that the proposed development would detrimentally impact the same.

177. No photographs, mapping or other delineation of other observed vernal pools was presented as evidence during the conditional use hearings.
178. Even if the area identified as a vernal pool by Mr. Haberstock were to be classified as a vernal pool, Mr. Haberstock conceded in his supplemental report that the location of this pond appears to be adequately buffered pursuant to the proposed development.
179. While the environmental characteristics of the Subject Property and the proposed development will undergo further review during the subdivision and land development review process, no party presented sufficient evidence to establish that the proposed development would pose a particularized harm to the public health, safety or welfare as a result of any alleged environmental impact.
180. Mr. Comitta provided testimony to critique the land planning aspects of Applicant's plans, as is more fully set forth in his reports and testimony.
181. At several points during the hearings, Mr. Comitta testified in contradiction to his prior testimony and the reports that he prepared, which were entered into the evidence at Exhibits G-6, G-15 and G-16.
182. As noted during the hearings, aspects of Mr. Comitta's reports were internally inconsistent and it was unclear whether Mr. Comitta reviewed various components of Applicant's exhibits that related to and addressed topics of his testimony.
183. By his own admission, Mr. Comitta also based certain of his calculations and testimony on data that was not as accurate as the data relied upon by Applicant's witnesses.

184. While Mr. Comitta submitted a series of revised reports in an attempt to correct certain internal inconsistencies or errors in his prior reports, he nonetheless refused to acknowledge the errors, inaccuracies or inconsistencies of his prior testimony or reports, which casts doubt as to the objectivity of his review.
185. As was elicited during his testimony, Mr. Comitta also incorporated unstated assumptions into his calculations that could substantially impact the results thereof.
186. Mr. Comitta incorrectly testified that the definition of “Buffer” set forth in Wallace Township Zoning Ordinance Section 201 requires all buffer areas to be “free of airborne particles.”
187. Wallace Township Zoning Ordinance Section 201 defines “Buffer,” as “an area of land to be used as a barrier to visibility, noise, glare and airborne particles, possibly containing an earthen mound, berm, fence, wall, and/or vegetative plantings, and maintained as an effective screen between two parcels or uses of land.”
188. While this definition notes that the purpose of a buffer is to serve as a barrier to airborne particles, the definition does not require that the buffer be free from airborne particles.
189. Applicant’s project has not been designated as a Traditional Neighborhood Development, as implied or stated by Mr. Comitta’s report or testimony.
190. References by Mr. Comitta to Palmetto Bluff or other purported “destination resort TNDs” were irrelevant and immaterial to whether the proposed development complies with the applicable conditional use criteria set forth in the Wallace Township Zoning Ordinance.

191. References by Mr. Comitta and the Guardian Parties to a Botanical Survey at Exhibit G-9 and G-10 do not establish that the proposed development is not entitled to the conditional use approval presently sought.
192. Compliance and consistency with the Botanical Survey is not a requirement of conditional use approval, and the Botanical Survey was shown to conflict with certain observed conditions on the Subject Property, such as the extent of invasive species actually located thereon.
193. No credible evidence was submitted to establish an evidentiary foundation for the Botanical Survey so as to permit the parties and the Township to sufficiently understand the efforts that were undertaken or to judge the propriety and accuracy of the Botanical Survey or mapping.
194. Mr. Comitta incorrectly asserted that the Wallace Township Comprehensive Plan was the oldest plan to have gone without an update out of all municipalities in Chester County. During his testimony, the inaccuracies in his assertion were demonstrated, noting that he disregarded Comprehensive Plan updates by the Township, and that, in reviewing the age of comprehensive plans of other municipalities, he excluded those which were older but currently undergoing an update.
195. The Board of Supervisors finds that Mr. Comitta exaggerated aspects of his findings in an apparent effort to bolster his claims as to the potential adverse impact of the proposed development and the basis for denying the conditional use application.
196. The Board of Supervisors does not find Mr. Comitta's testimony to be credible as to any particularized public health, safety or welfare concerns associated with the proposed development.

197. The parties opposing the Conditional Use Plan failed to adequately establish that the proposed development would have any measurable impact on the water temperature of the Upper East Branch of the Brandywine Creek or other water courses traversing the Subject Property, such as would cause the proposed development to create an environmental harm or threat.

DISCUSSION

While the Township will not delve in depth as to every possible issue in the discussion portion of this Decision (as has been addressed by the findings of fact above), the Board finds that the Applicant has satisfied all of the required criteria to be granted conditional use approval (subject to certain conditions and with the limited exception of the request for relief pursuant to Zoning Ordinance Section 1323.E.4.f with respect to the incursions of certain proposed buildings in the I District into steep slopes).

The standard of review for conditional use proceedings is well-established. The existence of a conditional use provision in a zoning ordinance indicates a legislative acknowledgement that the use is consistent with the zoning plan and a conditional use application should only be denied where the adverse impact on the public interest exceeds that which might be expected in normal circumstances. In re Application for Conditional Use Approval of Saunders, 636 A.2d 1308 (Pa.Cmwlt.1994). It bears mention that conditional use proceedings usually involve only the proposed use of the land, and do not involve the full design details of the proposed development, which are later addressed during the land development process. In re Thompson, 896 A.2d 659 (Pa. Cmwlt. 2006).

Generally, an applicant for a conditional use has the initial burden of proving compliance with the specific criteria set forth in the Zoning Ordinance. K. Hovnanian Pa. Acquisitions, LLC v. Newtown Twp. Bd. of Supervisors, 954 A.2d 718 (Pa. Cmwlth. 2008). Once the applicant has shown compliance with the ordinance, the conditional use application must be granted unless objecting parties present sufficient evidence that the proposed use has a detrimental effect on the public health, safety and welfare. In re Thompson., 896 A.2d at 670. In considering this standard, the degree of impact required to justify a denial on these grounds must be greater than what is normally expected from that type of use and not just speculative of possible harms. Sunnyside Up Corporation v. City of Lancaster Zoning Hearing Board, 739 A.2d 644, 650 (Pa. Cmwlth. 1999).

Further, the level of evidence that must be established in order to obtain conditional use approval is determined on a case by case basis and will vary among municipalities based on the use requested and the language of the ordinance. Id. It is well established that an interpretation of a zoning ordinance by the agency charged with its execution and application is given great deference. In re Brickstone Realty Corp., 789 A.2d 333 (Pa. Cmwlth. 2001).

In order to obtain a conditional use approval for a PCCC development, Wallace Township Zoning Ordinance Section 1812.D provides that the Board of Supervisors shall use as its guide, and may determine to be mandatory, the standards established for review of special exception applications set forth in Zoning Ordinance Section 1702. In turn, Zoning Ordinance Section 1702 provides that the Board should consider whether:

- A. The proposed use is consistent with the spirit, purpose and intent of the Wallace Township Comprehensive Plan;
- B. The proposed use will not substantially injure or detract form the use of the neighboring properties or from the character of the neighborhood, and that the use

of the property adjacent to the area included in the proposed change or plan is adequately safeguarded;

- C. The proposed change will serve the best interests of the Township, the convenience of the community and the public welfare;
- D. The proposed change will not have a materially adverse affect upon the logical, efficient, and economical extension of public services, and facilities such as public utilities, police and fire protection, and public schools, and assure adequate arrangements for sanitation in specific instances;
- E. The proposed use is guided in its study, review and recommendations by sound standards of subdivision design, where applicable;
- F. The applicant has made efforts to guide development of arterial and collector road frontage as defined by the Comprehensive Plan insofar as possible, so as to limit the total number of new access points to a minimum and encourage the frontage of buildings on parallel marginal roads or on roads perpendicular to the highway;
- G. The proposed use meets all of the specific standards and regulations for eligibility which appear in the section of this Ordinance authorizing the proposed conditional use;
- H. Adequate sanitation and public safety provision will be provided through the proposed use;
- I. The proposed use complies with the provisions of Article VIII ("Flood Hazard and Wet Soils District"), where an application involves an activity or structure within any floodplain area;
- J. Adequate lighting will be providing for the parking, loading, access and service areas, yet is arranged in order to minimize direct glare or hazardous interference onto any highway or neighboring properties;
- K. Require compliance with all applicable regulations under the controlling zoning district, Article XII – General Regulations, and Article XIII – Supplemental and Supporting Standards;
- L. Impose such conditions, in addition to those required, as are necessary to assure that the general purpose and intent of the Zoning Ordinance is complied with, which conditions may include, but are not limited to, harmonious design of buildings, plantings and its maintenance as a sight or sound screen, and the minimizing of noxious, offensive or hazardous elements;
- M. Weigh each case on its own merits, separately, based on pertinent information presented or known to the Board, and without regard to any previous case; and

- N. Consider and apply all relevant provisions of the Municipalities Planning Code, including but not limited to 53 P.S. § 10910.2 (relating to variances) and 53 P.S. § 10912.1 (relating to special exceptions).

Wallace Twp. Zoning Ordinance § 1702.

Instantly, the Board of Supervisors finds that Applicant has established its compliance with the applicable conditional use criteria set forth in the Zoning Ordinance for a PCCC, as is set forth more fully in the Findings of Fact above (subject to certain conditions and with the limited exception of the request for relief pursuant to Zoning Ordinance Section 1323.E.4.f with respect to the incursions of certain proposed buildings in the I District into steep slopes). Applicant has proposed, and presented testimony to establish, that it can and will comply with the applicable requirements. Applicant has proposed a PCCC in the FRR and I Zoning Districts, with a tract size in excess of the minimum required tract size of 200 acres. The proposed development will comport with the required building and accessory building setbacks from the property lines that abut residential districts; will comport with and exceed the riparian buffer requirements; and will comply with the LEED and Audubon requirements set forth in Zoning Ordinance Section 1323. All of the uses proposed as components of the PCCC are permitted pursuant to Section 1323 of the Zoning Ordinance, with the non-residential facilities concentrated in the I Zoning District (with the exception of the golf course and Golf Clubhouse, which are permitted in the FRR District pursuant to Section 1323 as well as pursuant to the underlying Zoning Ordinance provisions).

The development will incorporate open space and environmental protections that will comply with, and even exceed, the Zoning Ordinance protections, with a density lesser than that which could have been constructed on the Subject Property using other forms of development. Moreover, in complying with the open space, LEED, greenway management and Audubon

requirements, the Applicant's proposed use has not been established to be detrimental to the public health, safety and welfare. Applicant has established that, through the greenway management plan and the Natural Resource Management Plan as will be subject to the Township's ultimate approval during the subdivision and land development review process, it can and will incorporate measures to assure that adequate environmental protections are adhered to, such as management efforts to control the proliferation of invasive species on the Subject Property. It bears mention that the potential (and likelihood) that the Plans and components thereof (including the Natural Resources Management Plan) may be revised during the subdivision and land development review process does not defeat the right to conditional use approval. In re McGlynn, 974 A.2d 525 (Pa. Cmwlth. 2009). Accordingly, pursuant to the Findings of Fact more fully established above, the Board finds that Applicant has satisfied its burden of establishing its right to conditional use approval for the PCCC use.

FHWSD Crossings

Applicant has also applied for conditional use approval for a limited number of crossings of the FHWSD in order to provide for an internal trail network and for utilities. Pursuant to Section 1323.E.3.h, crossings of the FHWSD is permitted by conditional use for a PCCC (in lieu of special exception approval), subject to the applicant satisfying the applicable requirements set forth in Zoning Ordinance §§ 809.C and D. Additionally, in order to minimize erosion, stream crossings may be permitted subject to compliance with Section 1323.E.3.g above. The Township finds that, for the purposes of the instant conditional use application, no more than five (5) new stream crossings may be permitted, the locations and design of which shall be subject to approval of the Township, upon consultation with the Township's professional consultants, during the preliminary subdivision and land development review process.

Additionally, up to two (2) of the existing stream crossings may be utilized for golf cartway paths, improved up to a width of twelve (12) feet, as will also be subject to Township approval during the preliminary subdivision and land development application review process.

Steep Slopes

As a component of its application, Applicant has also requested relief pursuant to Zoning Ordinance Section 1323.4.f, in order to disturb 1.07 acres of steep slopes for various non-residential building, trail and cartway encroachments in the FRR and I District. While the Board finds that Applicant established its right to conditional use relief for certain steep slope encroachments in the FRR District, Applicant did not establish all of the requisite elements of Zoning Ordinance Section 1323.E.4.f with respect to the non-residential building encroachments in the I District.

Section 1323.E.4.f provides that:

The limitation on constructing on steep slopes areas within the I Industrial Zoning District may be eased or waived by the Board of Supervisors subject to Conditional Use such that newly constructed non-residential buildings and structures in the I Industrial Zoning District can be constructed on limited steep slope areas within the portion of a tract located in the I Industrial Zoning District, subject to conditional use approval by the Board of Supervisors, and to the extent that applicant establishes that: a) such encroachment into steep slopes areas is necessary to reasonably utilize such tract; b) such encroachment will not cause a subsequent public expenditure for public works and disaster relief; c) reasonable measures shall be taken to protect residents from property damage and personal injury resulting from runoff and erosion attributable to the increased encroachment into steep slopes areas; d) such encroachment will minimize grading and removal of vegetation; e) such encroachment will restrict sedimentation and the alteration of natural drainage patterns that would aggravate flooding in the immediate area and in downstream areas; and f) adequate stormwater management control measures will be undertaken to ensure against the derogation of any environmentally sensitive features of the area. To the extent that such conditional use approval is granted, the Board of Supervisors may impose reasonable conditions to ensure the above-referenced protections will be provided.

Through the testimony of Mr. Dobson and as depicted on Exhibit A-47 and subject to the below-referenced conditions, Applicant has identified the nominal steep slope incursions proposed by the PCCC development. However, Mr. Dobson testified on at least two (2) different occasions that he could not address whether the encroachment of the non-residential buildings into steep slope areas in the I District is necessary for Applicant to reasonably utilize the tract or that such encroachments will minimize grading and removal of vegetation. Applicant did not otherwise provide the Township with sufficient evidence to allow the Board of Supervisors to conclude that the proposed .35 acres of building incursions into steep slope area in the I District are necessary for Applicant to reasonably utilize the tract.

It bears mention that nothing herein shall be construed to preclude Applicant from submitting a subsequent conditional use application pursuant to Section 1323.E.4.f for approval of the proposed building/improvement steep slope incursions in the I District.⁶ It further bears mention that the remainder of the proposed encroachments into steep slopes (i.e., those other than the encroachments by the non-residential buildings) in the I and FRR Districts are approved by this Decision, and that the steep slope incursions resultant from golf cart paths are explicitly permitted pursuant to Zoning Ordinance Section 1323.F.5.

Vesting Period

Additionally, Applicant has requested an extension of the five (5) year vesting period set forth in Section 508 of the Pennsylvania Municipalities Planning Code. This issue is more appropriate for consideration during the subdivision and land development plan review process,

⁶ Moreover, nothing herein should be construed to limit the extent of the steep slope incursions in the I District that would be subject to any such further conditional use application by Applicant. The Board of Supervisors expresses no opinion herein as to whether a greater, lesser or any steep slope encroachment in the I District than that which Applicant had proposed for buildings may be reasonably necessary to utilize the tract. Instead, the Board of Supervisors notes that sufficient information was not presented during the course of these conditional use hearings in order to provide the Board with the ability to render a decision as to whether the proposed encroachment in the I District is necessary to reasonably utilize the tract.

after the plans have been further refined and after the Applicant has set forth its proposed phasing for the construction of the development. Accordingly, this request is denied at this time.

CONCLUSIONS OF LAW

1. The Board has exclusive jurisdiction to hear and decide Applicant's conditional use application pursuant to the Pennsylvania Municipalities Planning Code and Wallace Township Zoning Ordinance.

2. Any and all of the Findings of Fact set forth above that can be interpreted or construed to be Conclusions of Law are incorporated herein as Conclusions of Law.

3. Subject to compliance with the below-imposed conditions and pursuant to the above-referenced findings of fact, Applicant has satisfied the requirements of Zoning Ordinance Sections 402.C.11, 901.C.9 and 1323 in order to obtain conditional use approval of a Planned Country Club Community.

4. Applicant has not satisfied Zoning Ordinance Section 1323.E.4.f with respect to the steep slope incursions for the non-residential buildings in the I District.

5. Subject to compliance with the below-imposed conditions and pursuant to the above-referenced findings of fact, Applicant has satisfied Zoning Ordinance Section 1323.F.5 with respect to steep slope incursions proposed in the FRR District on the Subject Property.

6. Subject to compliance with the below-imposed conditions and pursuant to the above-referenced findings of fact, Applicant has satisfied Zoning Ordinance Section 1323.E.3.h with respect to the FHWS Flood Hazard and Wet Soils District crossings proposed on the Subject Property.

7. Sufficient evidence was not presented to establish that the proposed development would constitute a threat to the public health, safety or welfare.

8. The imposition of the below-listed conditions is reasonable, appropriate and necessary to effectuate and implement the purpose of the Wallace Township Zoning Ordinance.

DECISION

AND NOW, this 5th day of November, 2009, in consideration of the application of Applicant Valhalla Brandywine, L.P. and all of the testimony and evidence adduced in the hearings related thereto, the Wallace Township Board of Supervisors hereby: GRANTS Applicant's request for conditional use approval of the proposed Planned Country Club Community pursuant to Zoning Ordinance Sections 402.C.11, 901.C.9 and 1323; DENIES Applicant's request for steep slope incursions of non-residential buildings in the I District pursuant to Zoning Ordinance Section 1323.E.4.f; GRANTS Applicant's steep slope incursions pursuant to Zoning Ordinance Section 1323.F.5; and GRANTS Applicant's request for FHWSO crossings pursuant to Zoning Ordinance Section 1323.E.3.h, all of the foregoing being subject to the following conditions:

1. Satisfaction of Conditions. All of the below conditions must be satisfied within one (1) year of the date of the instant Decision, unless extended in writing by the Township Board of Supervisors or except as otherwise explicitly specified herein. Pursuant to Wallace Township Zoning Ordinance Section 1812.H, the instant conditional use approval shall expire two (2) years from the date of this Decision. Such two (2) year time period shall be tolled by the time period of any appeal of the instant decision and shall be tolled during the pendency of any preliminary and final subdivision and land development applications before the Township. The

tolling of this two (2) year period shall cease upon the rendering of an unappealable decision on such final plan application. The Board shall also have the discretion to grant further time extensions.

2. Compliance with Ordinances and Regulations. The Subject Property and Proposed Development shall comply with all relevant terms and provisions of the Wallace Township Zoning Ordinance (including the provisions of Section 1323 pertaining to PCCC uses), the Wallace Township Subdivision and Land Development Ordinance, and all other applicable regulations, except to the extent that variances and/or waivers are granted thereto. All conditions referenced in the Findings of Fact above are additionally incorporated into this decision as conditions of approval.

Applicant shall further be required to obtain all required outside agency approvals. In doing so, the Applicant shall ensure that the Township shall be invited to, and, to the greatest extent possibly, notified at least five (5) business days in advance of any meeting between Applicant and representatives of any outside agencies whose approvals are required.

3. Modifications. Applicant's development shall generally comport with the plans presented to the Board of Supervisors during the conditional use process. However, certain modifications to the proposed or existing improvements (including, but not limited to buildings, roads and parking areas) may be necessary as part of the preliminary subdivision and land development review process as directed and approved by the Township during such process and to comply with this Decision, as well as to facilitate and enhance environmental, engineering and design requirements of the project. Such modifications will be permitted without the need for further conditional use approval from the Board of Supervisors provided that such modifications: do not result in increased density; do not result in increased floor area for the proposed non-

residential uses; do not increase the proposed impervious coverage beyond that permitted in Zoning Ordinance Section 1323; do not increase the number of road access points; do not change the uses proposed; and do not decrease the amount of proposed greenway land (i.e., 390 acres).

4. Withdrawal of Inconsistent Pending Applications. Per Applicant's agreement in its proposed conditions of approval, Applicant shall withdraw all other Conditional Use applications pertaining to the property pending at the time of the instant decision, any pending appeals regarding the Township ordinances and any pending appeals from prior Zoning Ordinance determinations by the Zoning Officer. Such withdrawals shall occur no later than the date on which final subdivision and land development plan approval is granted and such approval becomes unappealable (i.e., after the expiration of the appeal period from such approval, or, if such approval is appealed, after the expiration of the appeal period from the subsequent land use appeal decision where no further appeal is timely filed).

5. Density. The instant decision grants Applicant approval for no more than 281 residential dwelling units (comprised of no more than 275 new single family dwelling units, as well as the six (6) existing dwelling units located on the Subject Property). The maximum number of residential dwelling units shall be decreased in the event of Applicant's inability to comply with the applicable provisions of the Township Zoning Ordinance and Subdivision and Land Development Ordinance during the preliminary subdivision and land development review process, but in no event shall the number of new residential dwelling units exceed 275. Each of the five (5) historic residences on the Subject Property may be converted into more than one (1) residential dwelling unit notwithstanding the maximum density referenced herein (as an incentive to preserve such historic buildings), subject to compliance with Article X and Section 1323.C of the Zoning Ordinance, subject to approval by the Board of Supervisors during the

preliminary subdivision and land development application process, subject to compliance with the density requirements, and provided that the footprints of the historic residences are not expanded.

6. Golf Clubhouse. The instant Decision grants approval of no more than one Golf Clubhouse in the FRR District portion of the Subject Property. The Golf Clubhouse shall not exceed 35,000 square feet in building floor area and shall not contain more than 200 restaurant seats, including banquet seats.

7. Guest Suites (Country Clubhouse). No more than 100 guest suites shall be permitted in the Country Clubhouse (limited to use by members thereof).

8. Guest Suites (Spa Retreat). No more than 80 guest suites shall be permitted in the spa retreat (available to those members of the public who are patrons of the spa retreat).

9. Size of Spa Retreat. The Retreat shall be comprised of no more than 334,000 square feet of indoor non-residential facilities (including the guest suites) and 85,000 square feet of outdoor non-residential facilities, subject to compliance with all requirements of Section 1323.

10. Residential Zoning District Boundary Setbacks. All proposed residential buildings shall have a minimum setback of 100 feet from any Residential Zoning District boundary, and all proposed non-residential buildings shall have a minimum setback of 200 feet from any Residential Zoning District boundary. Accessory buildings and structures shall have a minimum setback of 25 feet from any Residential Zoning District Boundary.

11. Riparian Buffers. During the course of the preliminary subdivision and land development application, Applicant shall identify all of those instances where a 200 foot riparian buffer from the east branch of the Brandywine Creek would be encroached upon, and, to the greatest extent reasonably possible as determined by the Township Board of Supervisors,

Applicant shall take into consideration design modifications to remove such encroachments from the 200 foot riparian buffer area. Nonetheless, Applicant shall provide a 150 foot riparian buffer from the edge of any water course, body of water, or wetland on the Subject Property, in which buffer areas there shall be no structures added, vegetation removed (other than maintenance required by the Natural Resources Management Plan or greenway management plan), or earth disturbed, except as follows:

- a. Up to 5% of the entire 150 foot riparian buffer area may be disturbed, provided that the area of disturbance must be a minimum of 50 feet from any water course, body of water, or wetland, to the extent necessary to permit: existing structures; new structures in the areas of the Manor House and at the base of the quarry as shown on Exhibit A-46; existing trails; utilities (including, but not limited to, approved sewer and water facilities), subject to the approval of the Township Board of Supervisors in consultation with the Township professional consultants; and stormwater management facilities (including basins and other related facilities), subject to approval of the Township Board of Supervisors in consultation with the Township professional consultants. Adequate engineering measures shall be incorporated by the Applicant to protect against the possibility of outflow to the buffered water course during construction or operation of the structure and to prevent, to the extent reasonably possible as determined by the Township Board of Supervisors, any other deleterious environmental impacts.

- b. Existing structures within the Manor House neighborhood, as shown on Exhibit A-46, shall be permitted to remain, and Applicant shall revise the plans to ensure that the proposed structures depicted on Exhibit A-46 and A-46a are relocated outside of the 150 foot buffer area as shown on these exhibits.
- c. Existing stream crossings may continue to be used for trails and may be used for utilities, subject to approval of the Township Board of Supervisors, upon consultation with the Township professional consultants. Up to two (2) of the existing stream crossings may be utilized for golf cartway paths and may be improved up to a width of twelve (12) feet.
- d. No more than five (5) new stream crossings shall be permitted, the locations and design of which shall be subject to approval of the Township, upon consultation with the Township's professional consultants, during the preliminary subdivision and land development review process.
- e. The Cornog Quarry, designated by the Applicant as Canyon Lake, is governed by and subject to the requirements of Section 1323.E.4.e (regarding buffers from existing man-made bodies of water).
- f. Removal of invasive or hazardous vegetation within the buffer area shall be permitted when in compliance with the approved Natural Resources Management Plan and the greenway management plan approved by the

Board of Supervisors during the subdivision and land development review process.

12. Groundwater. Groundwater generated by wells installed on the Subject Property cannot be exported from the Subject Property or used to increase water levels in the Cornog Quarry (designated by Applicant as Canyon Lake).

13. Steep Slopes. No grading or construction shall be permitted on slopes having a grade of 20% or greater, except as approved herein, except as approved in a subsequent conditional use approval related to such encroachments, or unless as otherwise permitted by Zoning Ordinance Section 1323.

14. Impervious Coverage. The total impervious coverage for the portions of the proposed development in the FRR District and the I District shall not exceed those limitations set forth in Zoning Ordinance Section 1323.

15. Public Easement for Roads. As a condition of any subdivision and land development approval of the PCCC project, Applicant shall grant to the Township a public use easement for all roads, alleys, sidewalks and trails, the final locations and design of which easements shall be determined and shall be subject to the approval of the Township during the preliminary subdivision and land development plan review process. As approved by the Township, reasonable limitations can be imposed upon the public's use of the trails traversing the Subject Property in order to prevent misuse of the trails or use of the trails in a manner that creates a public health, safety or welfare concern (such as use of the trails at night or the use of golf cart paths in locations where errant golf balls could create a danger). Per Applicant's proposed conditions to approval, Applicant shall open the portion of the Struble Trail under Applicant's legal or equitable ownership to the public for its intended use upon final subdivision

and land development approval of the first phase of the development. Applicant (or its assignee, agent and/or the HOA/Condominium Association) shall be responsible for maintaining the trails subject to the public use easement in perpetuity, except as to those trails which the Township or other appropriate conservancy or governmental entity accepts public dedication.

16. Trails. Applicant shall provide a public system of trails within the PCCC, linking Marsh Creek State Park, the proposed PCCC development and the Struble Trail, the exact course, location, dimensions and improvement of which shall be subject to the Township's approval during the preliminary subdivision and land development plan review process. In doing so, Applicant shall fulfill its unsolicited representation to make a voluntary charitable contribution through the grant of an easement on, or otherwise convey, a portion of the Struble Trail on the Subject Property to a qualified entity approved by the Township, at a time to be determined by the Township as determined during the preliminary subdivision and land development plan review process.

17. Non-vehicular Crossings. Applicant shall fully investigate the use of grade-separated crossings for proposed non-vehicular crossings on Marshall Road (e.g., pedestrian, equestrian, or golf cart crossings).

18. Pedestrian Tunnel. During the preliminary subdivision and land development review process, Applicant shall provide to the Township a feasibility analysis, pursuant to fully engineered plans, to assess the viability of incorporating a pedestrian tunnel for the crossing of Marshall Road by pedestrians and golf carts, and, based on that review, if required by the Township, shall construct the same at no cost to the Township.

19. Lighting. All lighting plans for the proposed development shall be reviewed by the Township, in consultation with its lighting consultant, and shall be in conformance with the

Township's ordinances governing the same. Applicant agrees to take reasonable steps to prevent aerial light pollution and light spill-over to adjacent residential properties, including the use of full cut-off lighting fixtures.

20. Trail Lighting. The trails shall not be lit, except for those portions of the internal circulation trails where lighting is explicitly approved by the Township through the subdivision and land development plan review process.

21. Golf Course Lighting. Neither the golf course nor any component thereof (as set forth in Zoning Ordinance Section 1323.E.6.b) shall be utilized after sunset or before sunrise. The golf course shall not be lit for nighttime use.

22. Water Supply and Sanitary Sewer System. The entire PCCC and all uses therein requiring water and sewer service shall be served by public water or an on-site community potable water system, as determined in the sole discretion of the Township Board of Supervisors, and an on-site community sewage collection treatment and disposal system, the design of which shall be subject to the review and approval of the Township through the subdivision and land development plan review process.

- a. To the extent permitted by law, and subject to any required Federal or State agency approvals, Applicant shall provide an interconnection with the Glenmoore Wastewater Treatment Facility to supplement the irrigation needs of the proposed golf course and to minimize the need for groundwater withdrawal for irrigation purposes.
- b. Wastewater and water storage facilities shall be located so as to minimize the visual impact thereof.

- c. The planning, design and permitting of the water and wastewater facilities shall be subject to the review and participation by the Township and the Township Municipal Authority. To the greatest extent possible, Applicant shall coordinate with the Township and Municipal Authority in order to allow them to participate in any meetings of the Applicant and the Pennsylvania Department of Environmental Protection where the water and wastewater systems are to be discussed, and shall provide the Township and Municipal Authority with at least five (5) business days' advance notice of any such meetings.
- d. Stream discharge from the wastewater facilities shall not be permitted.
- e. The water and wastewater facilities shall, at the election of the Township, be subject to a continuing offer of dedication, at no cost, to the Township.

23. Preservation of Scenic Views: Subject to approval of the Township during the preliminary subdivision and land development review process, the open, scenic views along Devereux Road shall be preserved, except where landscaping may be required in accordance with Section 1007 of the Township Zoning Ordinance. Screening shall be incorporated and utilized: along both sides of Marshall Road; along the western side of Chalfant Road, south of Marshall Road; and along the western side of Little Conestoga Road, from its intersection with Marshall Road to the end of the Subject Property abutting Little Conestoga Road. Within the tract perimeter setback line, additional landscaping shall be incorporated in order to enhance and/or replace the existing, deteriorating evergreen buffer. New plantings shall include a mixture of deciduous and evergreen trees and shrubs, native to southeastern Pennsylvania, the

extent, design and timing of which is to be determined during the preliminary subdivision and land development plan review process.

24. Water Supply. Applicant shall comply with all requirements set forth by Wallace Township Ordinances, pursuant to applicable requirements of the Chester County Health Department and the Pennsylvania Department of Environmental Protection, to ensure that adequate water supply is available to serve the proposed development, and to ensure that it complies with all applicable laws, ordinances and regulations designed to mitigate any adverse effects to surrounding homeowners, wetlands, and streams.

25. Wastewater Disposal. Applicant shall comply with the wastewater disposal certification requirements of Audubon, as well as all standards, regulations, laws and ordinances established by the Township, the Pennsylvania Department of Environmental Protection, the Delaware River Basin Commission, and the Chester County Health Department.

26. Stormwater. Applicant shall comply with all applicable stormwater management requirements, including the requirements of the Pennsylvania Department of Environmental Protection, the Chester County Conservation District and as required pursuant to the Audubon certification process.

27. Certificate of Adequacy. During the subdivision and land development review process, Applicant shall obtain from the Chester County Health Department and shall submit to the Township certificates of adequacy regarding water and sewage facilities to service the Subject Property.

28. Natural Resources Management Plan. The proposed development shall comply with, and obtain certification under, the Audubon Gold Signature Sanctuary Program as required by Zoning Ordinance Section 1323. As a component of Applicant's compliance with the

Audubon Gold Program and the greenway management plan, the Applicant shall submit an environmental monitoring plan to the Board of Supervisors for their review and approval during the preliminary subdivision and land development application, in accordance with the following:

- a. Elements of the Audubon Gold Program shall include, but are not limited to, surface water and water courses, ground water quantity and quality, air quality, light pollution and noise levels.
- b. The scope of the Audubon Gold Program shall include the entire area on which the golf course is located and any water course or ground water source which may, in the judgment of the Natural Resource Manager approved by the Township with input from Audubon International, be affected by construction and operation of the golf course.
- c. Baseline monitoring shall be conducted by the Applicant for four seasonal periods prior to the start of construction pursuant to the Audubon Gold Program. Seasonal monitoring shall continue if the construction extends beyond the four seasonal periods.
- d. A defined level of environmental impact at which some corrective action is required by the Applicant shall be established for each element in accordance with the Audubon Gold Program and the Township requirements.
- e. Seasonal monitoring, funded by Applicant or its successors, shall be conducted by a Natural Resource Manager, who is approved by the Township with input from Audubon International for the entire period during which the golf course is constructed and operated. Evidence of

compliance with the Audubon Gold Program shall be submitted to the Township in such a manner and times as may be directed by the Township.

- f. The Applicant's Natural Resources Management Plan and greenway management plan shall address limitations on the use of pesticides on the Subject Property, being subject to the approval of the Township. *Inter alia*, the Applicant's Natural Resources Management Plan shall permit the use of only those pesticides that: 1) pass the Risk Assessment as described in the Natural Resources Management Plan; and 2) can be, and have been, analyzed by a laboratory for a determination that the detection levels are the lesser of either $\frac{1}{2}$ of the HAL Health Advisory Level or equivalent, or $\frac{1}{10}^{\text{th}}$ of the LC50 (i.e., the Lethal Concentration 50%) level. In no event shall application of fertilizers, pesticides, herbicides, or fungicides be permitted within twenty-five (25) feet of any stream, pond, or wetland, except for those approved by the U.S. Environmental Protection Agency for aquatic use.
- g. The selection of the Natural Resource Manager shall be subject to the approval of the Township.

In the event that Applicant is unable to attain or retain certification under the Audubon Gold Signature Sanctuary Program, or in the event that Audubon International ceases to promulgate rules and regulations governing continued certification under the Audubon Gold Signature Program, Applicant shall be subject to the jurisdiction of the Township Board of Supervisors for compliance with an equivalent program that is selected or established by the

Township in its reasonable discretion, or shall be required to file a further conditional use application in order to establish the requisite showing for relief herefrom. In either instance, Applicant shall otherwise maintain compliance with the Natural Resources Management Plan and greenway management plan approved by the Township through the subdivision and land development review process.

In the event that the Township determines that future amendments to the Audubon Gold Signature Sanctuary Program reduce or lessen the requirements imposed by the Natural Resources Management Plan approved by the Township through the subdivision and land development plan review process, the standards and requirements of the approved Natural Resources Management Plan and greenway management plan shall nonetheless continue to control, unless such reduced or lessened standards are approved by the Township Board of Supervisors.

29. Golf Carts. Golf carts to be used within the development shall be electric, battery-powered or powered by technology of equal or lower sound and emission outputs, except for emergency and security golf carts.

30. Specimen Tree Preservation. Applicant shall establish and preserve a non-disturbance area of at least five (5) feet from the canopy of the following trees: 1) the William Penn oak tree situated on the southeastern side of Marshall Road; 2) the tulip tree on the northwestern side of Marshall Road, within the proposed Poplar Neighborhood; and 3) the oak tree in the hedgerow to the east of the existing Glen Oak Farm. During the preliminary subdivision and land development plan review process, Applicant shall have the above-referenced trees evaluated by a certified arborist, who shall recommend reasonable care and stabilization measures to be implemented by the Applicant. The Township expects, and

expressly reserves the right to require, that additional specimen trees will be preserved, as will be further considered during the preliminary subdivision and land development review process.

31. Woodland Preservation. Applicant shall incorporate the maturing to mature woodlands into the Greenway Land. Such woodlands are characterized by a canopy dominated by tulip tree and other species, including beech, hickory, red oak, ash and walnut with spring ephemerals within the understory. The woodlands also contain invasive understory plants, such as multiflora rose, shrub honeysuckle, autumn olive and vines. The exact boundaries of maturing to mature woodlands shall be identified on the Existing Resources and Site Analysis Plan submitted during the preliminary subdivision and land development plan review process, and in accordance with Section 401.D of the Township Subdivision and Land Development Ordinance. Trees within the Greenway Land shall not be removed except for selective cutting of trees: 1) that are dead or diseased; 2) necessary to install utility lines, including storm sewer lines, sanitary sewer lines, and water lines; 3) to establish or maintain trails or the health of wooded areas, as approved by the Township; and 4) to manage the woodlands by removing invasive plant species.

Pursuant to the observations and recommendations of the Planning Commission and Applicant, the woodlands are generally located in the following areas:

- a. Adjacent to the unnamed tributary to the East Branch of the Brandywine Creek;
- b. Within a contiguous area along said unnamed tributary, located between Little Conestoga Road, the Manor House, and the northwestern parcel boundary of the Heath neighborhood;

- c. Within a contiguous area along said unnamed tributary, located along both sides of the Brandywine Creek, including an area northwest and following approximately 1,000 linear feet of Marshall Road extending westward to the highest elevation point on the tract;
- d. Within a contiguous area southeast of Cornog Quarry (a.k.a., Canyon Lake); and
- e. On the Heim tract, east of Glenmoore Village, along the western property line.

32. Stormwater Management. Applicant shall comply with the Chester County Model Stormwater Ordinance, the Township's Stormwater Management Ordinance, the NPDES II requirements, and the LEED certification requirements.

33. LEED Certification. The residential buildings in the proposed development shall be certified as "LEED Housing" and the new non-residential buildings shall be certified as "LEED Construction."

In the event that Applicant is unable to attain the required LEED certifications, or in the event that the LEED certification standards cease to be promulgated prior to receiving such certifications, Applicant shall be subject to the jurisdiction of the Township Board of Supervisors for compliance with an equivalent program that is selected or established by the Township in its reasonable discretion, or shall obtain further conditional use approval in order to establish the requisite showing for relief herefrom. In either instance, Applicant shall otherwise establish and maintain compliance with those applicable LEED certification standards, or their equivalents, as approved by the Township.

34. Traffic.

a. Traffic calming. For the purpose of increasing safety of the roadways adjoining the proposed development and in accordance with the applicable standards and approvals required by the Pennsylvania Department of Transportation, the following traffic calming measures (at a minimum and as may be more fully considered, with such additional improvements or conditions as may be imposed by the Township during the preliminary subdivision and land development plan review process) shall be incorporated into the proposed development as follows:

i. A roundabout located on property owned or to be acquired by Applicant shall be constructed by Applicant at the intersection of Little Conestoga, Marshall and Chalfant Roads. The roundabout shall be fully engineered and designed in conformance with PennDOT specifications. Should PennDOT refuse to approve the roundabout application, after the Applicant utilizing its best efforts to obtain such approval, Applicant shall install traffic signals at this intersection, which shall be installed and designed to PennDOT specifications. Applicant shall be responsible for the costs to design, permit and construct any such traffic improvements.

ii. Traffic calming measures for vehicular and non-vehicular travel shall be provided in the proposed development, such measures to be further considered during the preliminary subdivision and/or land development plan review process. Applicant shall reimburse

the Township for the professional consultant review fees of the Township traffic consultant in reviewing the traffic calming measures. Applicant shall be responsible for the costs to design, permit and construct any such traffic improvements.

b. Access. Site access and street design shall be determined during the preliminary subdivision and land development plan review process, subject to the approval of the Township. *Inter alia*, Applicant shall address the following issues of concern during the preliminary subdivision and land development review process:

i. Applicant shall provide analysis to support that it has proposed the minimum number of access points necessary to provide a safe and efficient traffic circulation pattern.

ii. The vehicular access to the Golf Club and Heath neighborhood proposed by the Applicant shall be subject to further review and consideration by the Township during the preliminary subdivision and land development plan review process; it being expressly understood that this Conditional Use decision shall not be an approval of the same.

c. Traffic Impact Study. During the preliminary subdivision and/or land development plan review process, Applicant shall submit an updated and revised Traffic Impact Study, which shall be subject to the approval of the Township and which shall address the following in addition to any PennDOT requirements:

- i. The intersection of Little Conestoga and Styer Roads shall be included in the updated and revised Traffic Impact Study;
- ii. The Traffic Impact Study shall be revised such that the PennDOT TIS future year projections are made consistent with the projected build-out timeline for the proposed development;
- iii. The Township shall be invited to, and, to the greatest extent possible, shall be notified at least five (5) business days in advance of any PennDOT meeting during which the Traffic Impact Study scope, content or other traffic-related issues are discussed;
- iv. Applicant shall be responsible for the costs to design, permit and construct any traffic improvements required by PennDOT as part of the Highway Occupancy Permit, any traffic improvements as required by approved subdivision and land development plans for the proposed development, any traffic improvements as contemplated by this Condition 34, and any traffic improvements identified as being the responsibility of Applicant in the revised and updated Traffic Impact Study;
- v. Applicant shall attempt to amicably acquire any necessary rights-of-way to implement the traffic improvements required herein or as are ultimately required or deemed necessary or appropriate by the Township. In the event that Applicant is unable to do so and the Township secures any additional rights-of-way, including through the exercise of eminent domain, Applicant shall pay all

applicable Township expenses in doing so, including a payment or award of just compensation to the condemnee pursuant to the provisions of the Eminent Domain Code, 26 P.S. § 1-101, et seq. (or such other amount as may be negotiated by the Township and the condemnee). In doing so, Applicant shall also reimburse the Township for all appraisal fees, attorney fees and engineering fees, together with any other costs and expenses incurred by the Township related thereto; and

- vi. Applicant shall comply with all recommendations of the Township's Traffic Consultant, as set forth in his report dated March 19, 2009, and presented as Exhibit T-10, to the extent that Applicant has not already satisfied such recommendations.

35. Historic Resources. No demolition shall be permitted of any historic structures on the Subject Property absent further approval by the Township subject to Article X of the Zoning Ordinance. Additionally, Class 1 historic resources on the Subject Property shall be maintained, in at least their current condition, until such time as Applicant obtains approval from the Township for the adaptive reuse thereof.

Additionally, Applicant shall investigate and provide the Township with a feasibility analysis for relocating the green for Hole 1 on the golf course such that it is relocated at least seventy-five (75) feet from the David McKnight, Glen Oak farmhouse.

36. Residential Design Standards. Applicant shall utilize design techniques in an effort to create compact and walkable neighborhoods, which are sensitive to the rural landscape.

More specifically:

- a. Applicant shall produce design standards for the residential buildings during the course of the preliminary subdivision and land development plan review process for residential buildings, non-residential buildings, streetscape elements, and passive recreation elements of the proposed development.
- b. Compliance and consistency of any future development with said design standards shall be required in any applicable homeowner association or condominium/community association documents. In doing so, the design standards shall describe how the new buildings will draw on Chester County's rural residential and agricultural palette, with references to the existing 18th and 19th century residences and outbuildings preserved on the Subject Property.
- c. Applicant shall also address the pairing of these design standards with the English Cotswold village tradition of the same period. The Applicant shall also submit the proposed design standards to the Historical Commission and Planning Commission for their timely review during the preliminary subdivision and land development review process so that recommendations from such commissions can be made to the Township Board of Supervisors for its consideration.

37. Gambling. Consistent with Applicant's representations during the conditional use hearing process, the Subject Property shall not be used for gambling purposes. Applicant shall deed restrict the Subject Property in perpetuity, in form and substance approved by the Township

and Township Solicitor, to preclude the use of the Subject Property for gambling, a casino use, or any slot machine use.

38. Time Shares. Consistent with Applicant's representations during the conditional use hearing process, time shares shall not be permitted. Applicant shall deed restrict the Subject Property in perpetuity, in form and substance approved by the Township and Township Solicitor, to preclude the use of any of the approved residential uses as time shares. Applicant shall also incorporate restrictions in the condominium association documents, in form and substance approved by the Township and Township Solicitor, in order to preclude the use of any of the approved residential uses as time shares.

39. Noise. In the use of the Subject Property as proposed by the Conditional Use application, Applicant and the subsequent property owners and users of the Subject Property shall comply with Noise Ordinance provisions then in effect.

40. Security. Applicant shall provide on-site, twenty-four (24) hour private security to monitor and patrol the proposed development.

41. Greenway Management Plan. The proposed development shall comply with the Greenway Management Plan requirements of Wallace Township, which provisions may be wholly or partially satisfied through submission of an approved Natural Resources Management Plan.

42. McCoy Vegetative Buffer. Applicant shall incorporate into the plans a vegetative buffer bordering the Subject Property's boundary with the McCoy property, as set forth in the Wise report and subject to the approval of the Township during the preliminary subdivision and land development review process.

43. Parking. During the preliminary subdivision and land development review process, Applicant shall submit to the Township for approval a shared parking analysis in order to establish the number of parking spaces by which the number of spaces for the Retreat area can be reduced. In being granted a reduction of the number of parking spaces, Applicant shall submit a conservation easement, subject to the approval of the Township, in order to establish and preserve a reserve parking area of a size sufficient to accommodate the number of reduced parking spaces and any required or appropriate circulation areas.

44. Subdivision and Land Development Application. Applicant's proposed project shall be deemed a major subdivision and land development in accordance with the Township SALDO.

45. Scope of Approval. It shall be noted that the instant approval is a conditional use approval of the PCCC Use as proposed by the Applicant and does not constitute subdivision or land development approval of the proposed development. Instead, based on the plans, testimony and other evidence presented, Applicant has submitted evidence to establish that the use and proposed development comport with Sections 402.C.11, 901.C.9 and 1323 of the Zoning Ordinance, and that Applicant's proposed development will and can satisfy the requirements with respect to the minimum tract size, the minimum required greenway, the maximum permitted density, the maximum permitted impervious coverage, and other applicable ordinance provision requirements. The calculations for all of the above area and bulk requirements shall be subject to the review of the Township professional consultants through the subdivision and land development process. No waivers, variances or special exceptions to any ordinance of the Township have been specifically requested by the Applicant nor are any impliedly granted by this Decision unless they are expressly set forth herein.

46. Existing Resources and Site Analysis Plan. *Inter alia*, Applicant's Preliminary Subdivision and Land Development Plan shall include an Existing Resources and Site Analysis Plan, containing all information required by Wallace Township Subdivision and Land Development Ordinance ("SALDO") Section 502.C. In doing so, the Applicant shall consider and, as applicable and appropriate as determined by the Township, shall take into account the Kleinschmidt Modeling Proposal dated June 30, 2009, submitted by the Guardian Parties.

47. Four Step Design Process. Applicant shall demonstrate compliance with, and is required to obtain Township approval of, the four-step design process for subdivisions in the FRR District pursuant to SALDO Section 502.E, during either a voluntary sketch plan review or during the Preliminary Subdivision and Land Development application review process.

48. Phasing. If Applicant proposes to implement the PCCC development in phases, Applicant shall incorporate all phases into the Preliminary Subdivision and Land Development application and shall otherwise comply with the Pennsylvania Municipalities Planning Code regarding the same.

49. Environmental Performance Standards. The proposed development shall comply with the Environmental Performance Standards set forth in Zoning Ordinance Section 1209. *Inter alia*, Applicant shall submit a detailed hydrogeologic study for submission and approval of the Township during the preliminary subdivision and land development plan review process to demonstrate that the proposed development will not have a negative impact to the groundwater supplies and the water quality in the area.

50. Storage Tanks. Underground storage tanks shall not be permitted in the proposed development, with the exception of underground storage tanks for the storage of potable water or untreated stormwater. Furthermore, all storage tanks utilized for containing environmentally

deleterious materials shall be double contained so as to prevent improper release of such materials should the initial containment components fail.

51. Golf Course Conservation Easement. In the event that the proposed golf course, or any portion thereof, as approved during the subdivision and land development review process, is not constructed or is abandoned, the area approved as the golf course shall be maintained as undeveloped open space. The area comprising the golf course shall be subject to a conservation easement held by the Township, which easement shall be monitored by a third-party, such as a land trust or conservancy, approved by the Township. The area approved as the golf course shall be deed restricted in perpetuity against any use other than: the golf course or other recreational use as approved herein and through the subdivision and land development plan; or as undeveloped greenway land.

52. Emergency Services Monetary Contribution. As of the time of final subdivision and land development approval for the first phase of the proposed development, Applicant shall commit to an unrestricted monetary contribution to the Township for disbursement to the various Township emergency services providers (e.g., ambulance, fire and police services) in the amount of \$250,000.00, payable in installments of \$25,000 over a 10 year period, in order to help to offset any potential increased costs for labor and additional equipment necessary to service the proposed development.

53. Professional Consultant Review Fees. Applicant shall, within thirty (30) days of receipt of the instant Decision, reimburse the Township for all outstanding engineering, administrative, legal and other review fees associated with Applicant's conditional use application and the alternative conditional use applications for the Subject Property. Should Applicant wish to dispute any of the above-referenced fees, it must notify the municipality and


the municipality's professional consultant no later than thirty (30) days after the transmittal of any bill for services, and shall identify with specificity the basis for the objection to any charge for fees, cost, expense, etc. The failure of Applicant to contest such fees within such timeframe constitutes a waiver of the right to contest any such fees charged. Should Applicant contest any fee, it shall nonetheless remit payment of the disputed fees, without prejudice to its position in disputing the same. The procedure set forth in the Municipalities Planning Code, 53 P.S. § 10510(g)(2) through (5), shall then be utilized to resolve all timely disputed fees. Any balance not timely paid shall bear interest at the rate of one and one-half percent (1-1/2%) per month.

54. Applicant shall submit to the Township a professional consultant review escrow in the amount of \$50,000 at the time of a sketch plan or subdivision and land development application, which escrow amount shall be drawn upon by the Township from time to time for payment of professional consultant review fees incurred by the Township during the sketch plan, preliminary subdivision and land development plan or final subdivision and land development plan review process to the extent that Applicant does not pay the same within thirty (30) days of receipt of an invoice of the Township's professional consultants. Applicant shall replenish the professional consultant review escrow to the above-referenced amount upon notice from the Township that it has decreased below \$10,000. Applicant shall be able to contest any professional consultant review fees within the time periods set forth in the Pennsylvania Municipalities Planning Code, but Applicant's doing so shall not preclude the Township from drawing down those contested fees pending resolution of the contest regarding the same. The Township's action in drawing down shall be without prejudice to Applicant's ability to timely submit an appropriate contest. The procedure set forth in the Municipalities Planning Code, 53 P.S. § 10510(g)(2) through (5), shall be utilized to resolve all timely disputed fees.

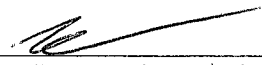
55. Acceptance of Decision. This decision shall be accepted in writing by the Applicant within fifteen (15) days of its receipt thereof, failing which the instant application shall be deemed denied by the Board of Supervisors as failing to comply with the provisions of the Wallace Township Zoning Ordinance referenced and described hereinabove. This time period may be extended by the Wallace Township Board of Supervisors. In the event that Applicant fails to accept the conditions imposed by the instant decision, Applicant's failure to satisfy the instant conditions shall constitute the reasons for such deemed denial.

56. Binding. This decision and conditions contained herein are binding on Applicant, its heirs, successors and assigns, for the benefit of the Township in general and the ultimate users/property owners of the Subject Property.

Wallace Township Board of Supervisors



Bryan McDonough, Chairman



Robert Jones, Vice-Chairman



William T. Moore, Member

By counter-signature below, Applicant agrees to and accepts each of the conditions to the grant of its application for conditional use approval set forth above.

Date: _____

By: _____
Authorized Agent for Applicant

