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September 5, 2008

Via E-Mail

Joseph V. Catania, Chairman
Newtown Township Board of Supervisors
209 Bishop Hollow Road
Newtown Square, PA 19073

RE: BPG – Proposed Settlement Agreement

Dear Joe:

I have received a copy of Bruce Irvine's August 21, 2008 review memorandum of the proposed BPG Settlement Agreement. Bruce has raised questions concerning why various provisions were included in the Settlement Agreement and whether these provisions are acceptable to the Township. My answer to virtually all of Bruce's questions is as follows:

Each of the issues raised in Bruce's memo deal with items that were specifically discussed with three of the Township Supervisors, two members of the Township Planning Commission, the Township Engineer, Township Planner, Township Sewer Engineer, Township Traffic Engineer, Township Manager and representatives of BPG in our various meetings concerning the proposed Settlement Agreement. Mike Sheridan represented the Township in many of these negotiation sessions since Bruce was out of town for the entire month of July. Bruce is apparently unaware that many of the specific questions that he raises with regard to matters such as density, mix requirements, building massing, size and layout, building heights, stormwater management, parking space size and number, shared parking, impervious coverage, replacement of general SALDO requirements with specific design standards more applicable to a town center form of development, the degree of permitted flexibility in design, off-site traffic improvement phasing, the procedure for resolving conflicts between the respective professional consultants, sewer, fire protection and building inspection, were specifically discussed and resolved at these meetings to the satisfaction of all of the participants.

There are only a few of Bruce's comments that require specific further response:

2. In Item 2, Bruce points out that the Township Planning Commission does not enter into agreements and requests that the reference to the Planning Commission in Background paragraph J be eliminated. We have no problem eliminating the reference to the Planning Commission in that paragraph.

5. In Item 5, Bruce states that the “indoor amusement, recreation or assembly” use permitted in the Town Center Sector should be defined or examples given. However, the “indoor amusement, recreation or assembly” use is the same use already permitted in the C-1 zoning district and should be given the same meaning presently given to that term by the Township. Moreover, the term “amusement” is specifically defined in the Township Code, Chapter 152, Article IV, Section 152-26.

8. In Item 8, Bruce questions whether parking structures are included within the permitted building coverage in the Town Center Sector. Under the definition of “building” contained in the Zoning Ordinance, a parking structure clearly constitutes a building and would therefore be included in the building coverage. We believe this is clear on its face and does not require further explanation.

19. In Item 19, Bruce questions whether the 700 foot fire hydrant separation complies with the Code. We have revisited this issue and reviewed the Code and the Code requires a maximum 600 foot separation between fire hydrants. Since this is a safety issue, we agree with this comment and will change the Settlement Agreement to require a 600 maximum separation distance.

22. In Item 22, Bruce questions whether any unexpended funds for traffic improvements should be earmarked for future traffic improvements without regard to time or use. As we discussed at our various meetings, Act 209 requires that unexpended funds be returned to the developer if not used within a specific period of time, and further requires that such funds be used for improvements which will benefit that development.

26. In Item 26, Bruce suggests that the Township require financial security to be posted at the time of final plan approval rather than at the time of recording of the final plan. However, there is no requirement for this in either the MPC or the SALDO and we do not understand why it should be required only for this applicant.

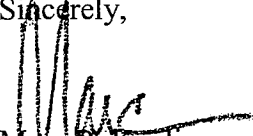
30. In Item 30, Bruce points out that there is an inconsistency on pages 42 and 43 regarding who should be responsible for the recording of the plan. I believe it was discussed at one of our meetings that the Township desires that BPG be responsible for the recording of the plan. Therefore, we will revise page 43 to be consistent with page 42 and to state that BPG shall be responsible for the recording of the plans. The word “release” will also be changed to “execution” as requested.

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I have enclosed a revised draft of the Settlement Agreement which incorporates the changes we have agreed to make. Also enclosed is a blacklined version so that you can easily see the changes that were made.

We look forward to discussing this matter with you further at the September 11, 2008 meeting scheduled by the Board to review the proposed Settlement Agreement.

Sincerely,



Marc B. Kaplin

MBK:lk
Enclosure

Cc via e-mail (w/enclosure):

Ross Lambert
John DiPompeo
Stephen Spaeder
John P. Forde
Loretta M. Kelly, Esquire
Robert Dwyer
Dennis Glackin
Wendi Kapustin