

Town Center - Review memorandum of BPG Settlement Agreement

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TO: NEWTOWN TOWNSHIP BOARD OF SUPERVISORS

FROM: BRUCE A. IRVINE, ESQUIRE

DATE: August 21,2008

RE: Review Memorandum of BPG Settlement Agreement Dated July 31,2008

1. On page 4, paragraph 2, the 14± acres of open space is depicted as part of the Town Center Concept Plan, Sector 1 not Sector 2 Concept Plan.

Further, paragraph 4 mentions the preservation of the amount of green space equal to Sector 4 green space which currently exists; however, what is the amount of green space that currently exists? We do not know.

2. On page 5, paragraph J, the Township Planning Commission does not enter into agreements and does not negotiate. The reference to the Township Planning Commission should be eliminated.

3. Paragraph K - 1. The additional material of "Master Stormwater Plan" contains nothing. Further, the Township's landscaping specialist should review the Master Landscaping Plan and the design criteria pertaining to landscaping before it gets into any agreement.

4. On page 8, paragraph (1) (c) it defines residential as 310 units but does not refer to them in square footage. What is the size and type of these residential units and how was 310 units arrived at? Also, the Town Center was allowed 100,000 square ft. in a flex building devoted to accommodation of office and hotel or solely office or solely hotel. Please note that this building can be five (5) stories and within 75 feet of the curb line of West Chester Pike. Should not the flex building be eliminated? Paragraph (f) should indicate that expansion of the floor area of any existing cottages should be counted also towards office square footage limitation.

5. On page 10, (6) places of indoor amusement, recreation or assembly, should be defined or examples be given.

6. On Page 11, (B) are the Mix requirements realistic? In residential uses 82,000 square feet of residential use is the minimum and 410,000 residential use is the maximum. In the Town Center sector there shall be at least a minimum of 165,000 square feet retail or maximum of 618,500 square feet. Is such flexibility intended?

7. On page 12, (C) no building shall have a footprint in excess of 40,000 square feet except one (1) building shall be permitted a building footprint of up to 75,000 square feet and two (2) buildings may have a building footprint up to 45,000 square feet. Does this provision not preserve the Big Box concept on BPG's 12 plus acres on the corner of Winding Way and Clyde Lane? The By-Right Plan indicated a 100,000 square ft. building

and two (2) 50,000 square ft. buildings. Further, in paragraph (D) (1) five story buildings can be erected 35ft. from existing or proposed curb lines of Route 3. This distance is not based on right-of-way lines. Also, the flex building which is west of Winding Way may be erected five (5) stories tall. Is 75 ft. sufficient from the proposed curb lines? Also, what is the set-back for buildings along Clyde Lane and Winding Way?

8. On page 13, at the top of (D) (5) is structured parking included within the 30% of the area of the proposed Town Center occupied by buildings? If it does include structured parking, it should be stated. Further, highways, private streets and parallel parking are not in accordance with Newtown's ordinance. Also, paragraph (F) (5) "Oversized Vehicle Parking Areas" are not identified in the Town Center Concept Plan. Also, (F) (6) where efficiencies may be derived from shared parking and more open spaces provided, the Agreement directs that BPG shall be permitted sharing of parking spaces. The word *shall* should be eliminated and the word *may* substituted. Also, the determination by the Board of Supervisors of shared parking should be made at the time of the preliminary land development plan approval process-which would be the same as in (7) on page 14. Further, why is on-street parking counted as part of the over-all parking requirement; and what is the over-all parking requirement?

9. On page 15, (0) (3) residential buildings within the Town Center may be five (5) stories or 65 feet, plus 27 feet for unoccupied architectural elements. Are several condominium buildings planned? Is 27 feet for unoccupied architectural elements excessive? Again, in mixed use

buildings, the maximum height is five (5) stories or 65 feet with a 27 ft.

non-occupied architectural elements limitation.

10. On page 16 (1) (3) the non-residential building height is no more than four (4) stories or 60 feet, again with a 27 ft. unoccupied architectural limitation. Here, the building is reduced by one (1) story but only by five (5) feet from the other uses. Also, (4) no building within 75 feet of West Chester Pike (1 presume curb lines) shall be greater than sixty (60) feet in height and unoccupied architectural elements cannot exceed 27 feet above the main roof line. Hence, buildings east of Winding Way may be built sixty (60) ft. high to 35 ft. setback from West Chester Pike.

11. On page 17, (K) the Town Center design guidelines for the typical street is not consistent with §148.27 of SALDO.

12. On page 19, (B) is inconsistent with page 18. For changes to the Master Plan or the Town Center Concept Plan, the consent of the Township should be in their sole discretion and should include lay-out of streets and location of uses. Paragraph (B) should eliminate *Permitted Town Center Plan Changes*.

13. Page 20, (A) All uses permitted in the SU-I District shall be permitted by right in Sector 2. What is the purpose of changing the requirement of conditional use to permitted by right in light of the fact, that only two (2) office buildings are in the concept development. SU-1 allows several other uses. Further, §(B) (4) allows a 70 ft. building plus 27 feet of unoccupied

architectural elements. Is this height acceptable? Our parking ordinance requires five (5) parking spaces per 1,000 square feet; however, § (B) (5) page 22 reduces that to three and one-half (3.5) parking spaces; also the existing parking within Sector 2 may be modified accordingly. However, the Board of Supervisors previously approved the existing parking and office building in Sector 2 (MOB) under the requirement of five (5) per 1,000. Again, how can this requirement apply to existing parking when, by warranty deed, BPG has conveyed out that existing parking and reserved none of this as a common element?

14. On page 21, where are the over-sized vehicle parking areas identified?

15. On page 21 ,Section 7 and page 22 (A) & (B) my same comments pertain as stated regarding changes to Sector 1.

16. On page 23, (B) (1) single family dwellings may be built on 6,000 square feet. How was this lot area arrived at? Further, there is no minimum lot area for Townhouses or two (2) family residential and twin dwelling units within Sector 3.

17. On pages 25 & 26 - Changes to Sector 3 Concept Plan. My comments for changes to Sector 1 would be the same. On page 27, top of the page, there is no impervious cover within Sector 4 shown on the Development Sector Master Plan? Page 27 goes on at (B) (1) indicating impervious coverage for Sector 4 based upon the tract as a whole. How can this occur if the impervious cover within Sector 4 shall not be increased by more than 1 % of the impervious coverage of Sector 4 shown on the Development Sector

Master Plan? The maximum height of the buildings of 70 feet plus 27 feet for non-occupied structures is greater than the ordinance provisions of SU-1, parking is reduced to 1.5 parking spaces and off-street parking is reduced from 10x20 to 9x18.

18. On pages 28 & 29, green areas within the tract may include paving for site amenities, hence shall not count as impervious coverage requirements of the tract. Why should site amenities such as plaza areas, walkways, etc. be part of the green area and also not count as impervious requirements when it would be impervious coverage?

19. On page 30, bus shelters shall be provided along Routes 3 & 252; however, I believe the supervisors did not allow this when a previous independent request was made by others. Further, does the seven hundred (700) feet apart of fire hydrants comply with the code? Paragraph (L) allows construction of improvements or disturbance of areas of man-made steep slopes shall be permitted without any hearing by the Board. How can the Board agree to this when it does know where steep slopes are on the property and whether these steep slopes are man-made?

20. On page 31, existing conditions and preservation inventory requires identification of all existing trees. Applicant wants relief from this requirement because of the size of the tract which is 212 acres and not 219 acres as indicated by the applicant. Does Newtown's landscaping professional agree with this? The same pertains to paragraph 2. In paragraph 3, since no plans have been submitted how is it known there will

be minimal disturbance of natural steep slopes and hence Chapter 134

Steep Slopes Conservation shall not be applied.

21. On page 32, why are not street design requirements under Section 148-27 required? There are no street design or requirements specified such as in our ordinance.

22. On pages 33 & 34, is the amount of \$8,600,000.00 an appropriate indication of BPG Entities "fair share" contribution toward off-site road improvements? Please note that if the road improvements costs by BPG come under that amount, those additional monies may be applied toward traffic improvements on Routes 3 & 252 only and must be returned within five (5) years of receipt of the funds If not used. Should they not be earmarked for future Township road improvement without a limitation to placement and time?

23. On page 34 & 35, the road improvement phasing is not set for any particular term but rather is geared to occupancy of non-residential buildings. This means that the second office building could be completed and occupied before any road improvements are made West Chester Pike. The phasing is also not tied into the four (4) sectors comprising the properties in the Settlement Agreement. Again, this phasing is extremely complicated, absolutely discretionary with the applicant and leaves Newtown Township uninformed.

24. On page 36, development of all sectors may be installed in phases or any combination of two (2) or more and sub-phases as solely determined by respective BPG entities. Again, there is no input by the Township in order to insure and plans its infrastructure.

25. On Page 37 (A), the applicant agrees to comply with Applicable SALDO Requirements; however, if BPG wishes to replace any provisions of the SALDO Ordinance with their own

provisions which they claim are equal or better than the solution intended by the replaced SALDO provisions, they may do so and if a dispute arises between the Township and BPG then an independent engineer, mutually agreed upon, shall make a final and binding decision. Again, the Township gives up its right to be the final arbitrator of disputes involving development as well as any Court. (B) The independent engineer's decision shall be final and binding on all parties should be eliminated from the agreement.

26. On page 38, in the first paragraph, the word "will" should be replaced with the word "may". BPG is placing the Township in the precarious position of granting the preliminary plan development even if other governing ordinances interfere with the development when it has "no idea what the ordinances may be since no plans have been submitted. Hence, the reason for the word substitution. Also, in 16 (A) it should be added "and other governing ordinances." In 18 (A) after the word "Standards" there should also be added "and other applicable ordinances."

27. On page 39, at the top of the page, after the word "Standards" there should be added "or other applicable ordinances." Further, is the period of thirty (30) days too short to negotiate between the Township engineer and the BPG Sector 1 parties and engineer for resolution of the controversy. My comments (#25) regarding "Paragraph 15.B" are applicable to procedures outlined on page 39.

28. On pages 40 & 41, is thirty (30) days sufficient for the engineer to determine whether preliminary plans have been properly converted into final plans? Also, on page 41, the procedure set forth in paragraph 15 should be again reviewed and the finality of the decision should not be binding. It is to be

noted that in the process of approval of preliminary plans and final plans Newtown Township Planning Commission is excluded.

29. On page 42, Section 509 (b) of the Municipalities Planning Code, the Board of Supervisors cannot sign the plan until the Financial Security Agreement is executed, I believe the County also has a requirement that no plan will be filed over sixty (60) days from the date of approval. I would suggest that the improvement agreement, delivery of financial security and payment of fees by BPG not be at such time as when they desire to commence to construction of any of the improvements depicted on the Final Plan but rather at the time of approval of the Final Land Development Plan. It should be noted that our ordinance indicates that Preliminary Plan Approval shall expire if the applicant fails to obtain final approval in one (1) year.

30. On page 43, at the top of the page, it indicates that the Township Solicitor shall cause signed copies of the Final Plans to be immediately recorded in the Office of the Recorder of Deeds of Delaware County, however, page 42 indicates the Final Plans shall be delivered to BPG for the purpose of recording in the office-of the Recorder of Deeds. Further, separate phases of the sectors will only be identified prior to recording of the plans by BPG. Identity of the phases should be at the time of approval of the Final Plan.

In the second paragraph, the word "release" should be replaced with the word "execution". My same comments would pertain to paragraph 20 as they have pertained to Sector 1, Submission and Approval of Development

Plans.

31 On page 44, the BPG Entities' right to develop the tract in accordance with the existing zoning ordinance would terminate upon issuance of the first building permit. Why should not this be upon approval of the agreement?

32. On page 45, 300,000 gallons per day of sewage flows is to be designated for BPG development, which is approximately 1/3 of the treatment capacity, ~i allocated to Newtown Township by CDCA. How was this determined in view of the enormous flexibility BPG has in this agreement for accommodation of uses, with each use having its separate and distinct capacity requirement, for example restaurants, residences, offices, senior housing, etc.?

33. On page 48, BPG can substitute its judgment for Newtown Township's determination as to whether the permit application conforms to the standards of the UCC and the National Fire Protection Code and they can have their own reviewer review the building permits and within five (5) days after receipt of certification by the reviewer that the building permit application is in proper form, a building permit must be issued by the Township. The Township is again giving up the procedure as outlined in the MPC if an applicant disagrees with the determination of the Code Enforcement Officer. Also, BPG's reviewer only has to agree as to proper form and not whether the permit application conforms to the standards of the UCC and the Fire Protection Code. I do not think this was intended by BPG. but the word "form" is in the agreement on page 48. Further, if BPG

believes that Newtown Township incorrectly applied the UCC or unduly delays the issuance of an Occupancy Permit, BPG can get their own independent inspector. Again, the provisions of the Municipalities Planning Code pertaining to appeal from the determination of the Code Enforcement Officer is not applied.

34. Lastly, on page 49, it is interesting to note that there are no indications that BPG would assist the Township for increased costs to its infrastructure which would clearly be necessitated by this development. Also, does BPG intend to provide its own police force, private security, ambulance service, fire protection, etc?

I hope the aforesaid has been of some assistance to you. If you have any questions, please do not hesitate to contact me.

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