

BEFORE THE BOARD OF SUPERVISORS
WEST VINCENT TOWNSHIP

IN RE:

APPLICATION OF WEST VINCENT ASSOCIATES, LTD. FOR
CONDITIONAL USE APPROVAL

INTRODUCTION

West Vincent Associates, Ltd. ("Hankin" or "Applicant") has filed an application ("Application") with the Board of Supervisors ("Board") of West Vincent Township ("Township"), requesting (a) amendments to the Township Zoning Ordinance ("Zoning Ordinance"), creating regulations for a proposed "Unified Development Area District" ("UDA"); (b) the rezoning of approximately 307.2 acres of land located immediately northeast of the intersection of Routes 401 and 100, being Chester County Tax Map parcels 25-7-5, 25-7-6 and 25-7-20 (the "Property"), to the proposed UDA zoning classification; and (c) conditional use approval to develop the Property in accordance with a proposed master development plan (the "Plan") as required under the proposed UDA ordinance provisions.

The Application was properly advertised (*N.T. 9/16/98 p. 4*) and the Board held public hearings on the Application on September 16, 1998, September 24, 1998, October 5, 1998 and October 21, 1998. The testimony given at public hearings on another proposed development of the Property on August 29, 1996, September 11, 1996, October 21, 1996, October 29, 1996, November 18, 1996, November 26, 1996, December 11, 1996, January 2, 1997, February 6, 1997, February 26, 1997 and March 12, 1997 was incorporated into the record of these hearing as an Exhibit. *N.T. 9/16/98 p. 14-15, Ex. A-3.*

The Applicant was represented by Stephen S. Aichele, Esquire. All members of the Board of Supervisors have participated in the hearings in this matter and the rendering of this Decision. Appended hereto as Appendix A is a list of the exhibits admitted into the Record of this proceeding.

FINDINGS OF FACT

1. The Applicant presented six witnesses at the hearings: Richard J. Guarini ("Guarini"); James L. Fuller ("Fuller"); R. Douglas Stewart ("Stewart"); Christopher J.



Williams ("Williams"); C. Thomas deLorimier ("deLorimier"); William E. Palkovics ("Palkovics") and Edward B. Walsh ("Walsh").

2. Guarini is a registered professional engineer and Executive Vice President for The Hankin Group. Guarini testified on behalf of Applicant.
3. Fuller is a registered architect and Director of Planning and Design for the Hankin Group. Fuller testified as an expert in architecture, planning and design.
4. Stewart is the President of R. Douglas Stewart & Associates, Ltd. Stewart testified as an expert in land planning.
5. Williams is a Transportation Engineer for McMahon Associates, Inc. Williams testified as an expert in traffic.
6. DeLorimier is a consultant for URS-Greiner/Woodward-Clyde. DeLorimier testified as an expert in the sewage treatment aspects of civil engineering.
7. Palkovics is a Professional Soil Scientist for DelVal Soil and Environmental Consultants, Inc. Palkovics testified as an expert in hydrogeology and soils.
8. Walsh is the President of Edward B. Walsh & Associates. Walsh testified as an expert in the stormwater management aspects of civil engineering.
9. The following persons and entities entered appearances as parties in this matter: Peter Rogers ("Rogers"); The Concerned Citizens of West Vincent ("CCOWV"); Morris Huston ("Huston"); Steve Minski ("Minski"); Alice Waters ("Waters"); Jean Warrick ("Warrick") and Fred Uebelhoer ("Uebelhoer").¹
10. Other persons not parties to the hearings were present and made comments on the record, however, none of these persons presented testimony or evidence contrary to that offered by Hankin.
11. The Township also retained consultants to review the Plan and the reports of the Township's consultants were made a part of the record in this matter.

¹ Green Valleys Association and its expert witness Thomas Cahill did not enter appearances as parties to the hearings. However, Tom Cahill did testify as an expert regarding water balancing models for the subject Property. At the time of his testimony the Township and Applicant gave Mr. Cahill party status and his testimony was cross examined accordingly.

12. The Application was submitted to the Township Planning Commission for review and recommendation in accordance with the Zoning Ordinance section 2111.B.3.

13. The Application was submitted to the Chester County Planning Commission for review and comment in accordance with the Zoning Ordinance section 2111.B.3. The Chester County Planning Commission issued a letter dated October 2, 1998 recommending that the Township give favorable consideration to the conditional use submission. *Ex A-40.*

14. The Applicant owns the Property. The Applicant is associated with The Hankin Group. Guarini testified on the relationship of the Applicant and The Hankin Group:

- Q. What is the relationship between the landowner, West Vincent Associates, and the Applicant?
- A. Essentially West Vincent Associates' primary principals are the same principals of The Hankin Group, the point being that The Hankin Group generally again monitors construction, is fully involved - all the same participants in West Vincent Associates would be the same participants of The Hankin Group.
N.T. 9/16/98 pp. 23-24; Ex. A-6.

Guarini also testified:

- A. ... I want to emphasize that in looking at this development, as all the developments that we do, our primary goal is to stay with it, retain ownership until the final buildout, and possibly beyond that.
N.T. 9/16/98 pp. 27-28.

15. The portion of the Property located within the Township consists of 246 acres zoned R-2 Residential at the time of the Application and 52.4 acres zoned L-I Limited Industrial at the time of the Application. *N.T. 9/16/98 pp. 22-23.*

16. The Property is bordered on the southwest by Route 401, on the west by Route 100, on the north by Birchrun Road and Westover Lane and on the east by Fellowship Drive. *N.T. 9/16/99 p. 22.*

17. The Applicant submitted a unified master development plan creating a neo-traditional village. The internal circulation of the village is designed to be pedestrian friendly and to promote a sense of community. The Plan proposes a variety of uses for the tract including residential, retail and office uses. *N.T. 9/16/98 pp. 28-30, 71.)*

18. The Plan proposes 97,000 square feet of retail space and 140,000 square feet of office space to be located along the western portion of the tract nearest Route 100 and 401. *N.T. 9/16/98 pp. 28-30, 40.*

19. Fuller testified that the retail and commercial buildings on the Property are designed to have characteristics of a village with sloped roofs and appropriate building materials. The buildings will be constructed from the materials listed in Section 1553(D)(3) of the Zoning Ordinance. *N.T. 9/16/98 p. 71.*

20. The Plan initially proposed 307 residential units consisting of garden lots and single family detached units with an average lot size of 7,320 square feet. The residential areas are located toward the eastern portion of the Property and end at Westover Lane. *N.T. 9/16/98 pp. 39, 49, 54-57, 83, 85.*

Suitability of Tract and Relationship to Comprehensive Plan.

21. The Applicant submitted a Natural Habitat Analysis prepared by R. Douglas Stewart & Associates which identifies the natural habitats existing on the Property and addresses the impact of the proposed development on these habitats. Stewart testified that the Analysis revealed no significant adverse impact on the natural habitats. *N.T. 9/16/98 pp. 103-105, Ex. A-16.*

22. The parties to the hearings presented no testimony contrary to the findings of the Natural Habitat Analysis or to the expert testimony of Stewart.

23. The Applicant submitted an Environmental Analysis and Natural Features Plan prepared by R. Douglas Stewart & Associates. The Analysis identifies the existing natural features on the Property and analyzes the impact the development would have on these features. Stewart testified that the Analysis concluded that there were no significant adverse impact on the natural features. *N.T. 9/16/98 pp. 103-106, Ex. A-5.*

24. The Plan is designed to preserve existing natural features, viewsheds and vistas currently existing on the Property. *N.T. 9/16/98 pp. 30-31, 43, 56-57.*

Fuller testified:

- A. One major view shed that we've maintained is that from Route 401 looking generally toward the east. It's a large open field sloping down from the road. By maintaining that we're maintaining one of the most significant view sheds for people driving down 401.

And in general most of the existing trees on the site are being maintained.
N.T. 9/16/98 pp. 36-37.

Stewart testified:

Q. In your expert opinion, which of the plans makes the best overall use of the tract that is in best compliance with the Township's goals and the comprehensive plan?
A. That would be the subject plan of tonight's hearing, which is part of the UDA application.

Q. Locating all the uses on the tract, did you pay particular attention to the suitability of the topography and drainage, the compatibility with the surrounding uses, and the significant natural features as you've described on the natural feature plan?

A. Yes, we did... That's part of the process, looking at the natural features plan first, and then that tells us where the building should be sited.

N.T. 9/16/98 pp. 104-106.

25. The parties to the hearings presented no testimony contrary to the findings of the Environmental Analysis or the testimony of Hankin's expert witnesses that the Plan would have no significant adverse impact on the natural features on the Property.

Open Space.

26. The Plan is designed to keep significant portions of the site as open space. The open space will be tied together with a trail system. *N.T. 9/16/98 pp. 30-31, 43, 56-57; 62, 75, 102-104; Exs. A-7, A-8.* Fuller testified:

Q. Approximately how much of the tract will either be designated as open space or retained in private usage in the case of the farmstead but deed restricted to agricultural use?

A. At least 60 percent of the tract will be maintained or designated as open space, which amounts to approximately 180 acres.

Q. Just for the record, run through the location of each of the open space parcels again. I know you did it relatively quickly.

A. A significant area of open space is the view shed from 401. The stand of trees.

Q. That will be extending north from 401?
A. Extending north from 401 would be an open field area. North of that, a stand of trees. And north of that, some additional open area, park area.

The entire area east of Westover Lane is kept as open space including, as I said, the farmstead which will also have some spray irrigation existing on it.

At the very northern portion of the tract is another stand of trees that is going to remain intact. And then there are smaller pieces of open space, as I've said, within the housing area.

One stand of trees on the ridge line and also small open parks throughout the housing development. In addition, there is a wetland area meadow on the northern side.

N.T. 9/16/98 pp. 51-52.

27. The Township submitted a letter prepared by Natural Lands Trust. Natural Lands Trust reviewed the Plan and submitted comments. The review determined that the Plan was a "forward thinking design". *N.T. 10/21/98 p. 444, Ex. WV-3.*

28. The parties presented no testimony contrary to Hankin's expert witness testimony that the Plan is designed to preserve open space, viewsheds and vistas on the Property.

Community Impact.

29. The Plan is designed to be compatible with the surrounding area and to prevent adverse impact to neighboring properties, as Stewart testified:

Q. ... You heard the previous testimony by Mr. Fuller, I believe, that Hankin Group, the applicant would follow the architectural guidelines of the UDA in all respects. Will following those guidelines ensure the consistency of the character of the surrounding areas?

A. Yes, I believe it would.

Q. And in your expert opinion as a land planner, would the proposed development you see here on the master development plan detract in any way from the surrounding areas?

A. I don't believe it would.

Q. In your expert opinion, have the surrounding properties been safeguarded with respect to the designs, admittedly conceptual, of the proposed buildings?

A. Yes.
N.T. 9/16/98 pp. 106-107.

30. The parties to the hearing presented no testimony contrary to Hankin's expert witness testimony that the Plan safeguards the surrounding properties.

31. The Applicant submitted a Community Impact Analysis prepared by R. Douglas Stewart & Associates, Ltd. which analyzes the impact of the Plan on Township services. Stewart testified that the Analysis concluded that there was no significant adverse impact from the development and that the proposed development provides an annual Post Development Net Positive Fiscal Impact of \$96,916 to the Township. N.T. 9/16/98 pp. 107-109, Ex. A-17.

32. The parties to the hearing presented no testimony contrary to the Community Impact Analysis or to Stewart's testimony that the development would have no adverse impact on community services.

Traffic Impact.

33. The Applicant submitted a Traffic Analysis for the Property prepared by McMahon Associates, Inc. The Analysis studied the current and future (year 2008) traffic levels of service at the intersections of Route 100 and Horseshoe Trail Road, Birchrun Road and Horseshoe Trail Road, Route 100 and Birchrun Road, Westover Lane and Birchrun Road, Horseshoe Trail Road and Fellowship Road, Westover Lane and Fellowship Road, Fellowship Road and Route 401, Blackhorse Road and Route 401, Rachel Drive and Route 401, Route 100 and Route 401 and Route 401 and St. Andrews Road. The Analysis studied the future traffic levels with and without development to determine the Plan impact. Williams testified as to the results of the Analysis. N.T. 9/24/98 pp. 145-157, Ex. A-19.

34. The Traffic Analysis concluded that the projected volume of traffic without the Plan would be at acceptable levels of service at all the intersections studied except the intersections of Birchrun Road and Route 100 and Route 100 and Route 401. These two intersections would have unacceptable levels of service. N.T. 9/24/98 pp. 149-151, Ex. A-21.

35. The Traffic Analysis also concluded that the projected volume of traffic with the Plan would be at acceptable levels of service at all intersection except the intersections of Birchrun Road and Route 100 and Route 100 and Route 401. These two intersections would have the same unacceptable levels of service as would occur without the Plan. N.T. 9/24/98 pp. 156-157, Ex. A-22.

40. Williams testified regarding the proposed access points for the Property. The proposed access points include an unsignalized access point on Birchrun Road; an unsignalized access point at Route 401 with a separate right turn lane onto Route 401; the proposed connector road from Birchrun Road to Route 401; an access point at Route 401 opposite Rachel Drive; and five access points along Westover Lane. Williams testified that the proposed access points on the Plan were adequate in number to service the proposed development. *N.T. 9/24/98 pp. 164-166.*

41. The Township submitted a letter prepared by Traffic, Planning and Design, Ltd. ("TPD"), the Township's traffic consultants. TPD performed a review of the Traffic Study submitted by Hankin. TPD recommended that the proposed improvements should be reviewed further to address any safety and adequacy issues of the improvements. *N.T. 10/21/98 p. 442, Ex. WV-1.*

42. The parties to the hearings presented no testimony contrary to the findings of the Traffic Study or to Williams' expert testimony regarding traffic impacts.

Sewage Treatment

43. Applicant submitted a Sewer and Water Feasibility Study and a Preferred Sewage Treatment Plan for the Property prepared by URS-Greiner/Woodward-Clyde. The Sewage Treatment Plan proposes a spray irrigation system for sewage disposal on the Property. DeLorimier testified regarding the results of the Study and the preferred sewage treatment plan. *N.T. 9/24/98 pp. 209-210, Exs. A-26, A-27.*

44. The sewage disposal system would be located in the northeast area of the Property. The system would consist of a treatment lagoon, two storage lagoons and eighteen and one half acres of sprayfields. There would be auxiliary spray fields, if necessary, located to the south on the Property. The total spray irrigation system proposed would occupy approximately 36 acres. *N.T. 9/24/98 pp. 210-214, 236, Exs. A-26, A-27.*

45. The spray irrigation system is designed to handle twelve million gallons of capacity with ninety two days of storage. The system is designed to handle estimated flows of one hundred ten thousand gallons of sewage. *N.T. 9/24/98 p. 215.*

46. There is at least one hundred feet of buffer from the treatment and storage lagoons and the nearest external property line. *N.T. 9/24/98 p. 216.*

47. DeLorimier testified that the capacity and flows would be adequate to service the entire Property as developed:

Q. Is it your opinion as an expert based on all the available information that you have that the proposed method of wastewater treatment disposal can adequately serve the needs of the development you see on the master development plan?

A. Yes.

Q. Will the system that you have proposed here be designed and constructed to safeguard the public health, safety and welfare as well as the environment?

A. Yes, it will.

and

Q. (from Board) Tom, I know that the 537 plan hierarchy indicated spray irrigation first. In your expert opinion is that the best system for the land and the type of soil that's represented on this property?

A. Every indication I have is yes. I mean, this is a good site for spray irrigation, and there's plenty of open space. There's good soils, and there's plenty of places to spray. So, yes, I would say yes, this is a good site.

N.T. 9/24/98 pp. 217-218, 222.

48. DeLorimier testified that there is no possibility of ground water contamination from the treated spray. N.T. 9/24/98 p. 217.

49. The parties to the hearings presented no testimony contrary to the findings of Sewer and Water Feasibility Study or to deLorimier's expert testimony on sewage disposal systems.

50. Palkovics testified to the soils and underlying geology of the site. His testimony indicated that the soils located within the spray fields and proposed sewage treatment system areas are considered deep, well-draining soils. N.T. 10/5/98 pp. 304-305.

51. Palkovics confirmed that the Property would be appropriate for a spray irrigation system based upon the soils and underlying geology:

Q. Dr. Palkovics, have you done, in your opinion, sufficient study to render an opinion with respect to the feasibility of that spray system that you've heard Tom deLorimier testify to? First of all, you have heard his testimony; is that correct?

A. Yes, I have.

Q. And you have done sufficient study to make a determination with respect to the feasibility of that system?

A. Yes, I have.

Q. And in your expert opinion, is the system that you've heard described, taking into account the rock formations and the soils on that site, feasible?

A. Yes. I believe the system is feasible.

Q. And in your expert opinion, given the geology and soils there on the site and taking into account the type of system that you've heard Mr. deLorimier testify to, will there be any substantial degradation in the groundwater purity as a result of the system on the site?

A. No. Based on our feasibility studies, based on the soil testing and the follow-up shallow wells that we now have installed and are currently testing, there will be no adverse impact, and it will be a desirable system in that it recharges groundwater in a very environmentally sensitive manner, managing nutrients in relation to proposed crops that are grown on the site.

N.T. 10/5/98 pp. 305-307.

Water Service.

52. The Applicant proposes providing water to the development on the Property by a public water supply system to be built by Philadelphia Suburban Water Company.
N.T. 10/5/98 p. 302, Ex. A-30.

53. Applicant's proposed water system will not adversely affect the public health safety or welfare. Palkovics testified:

Q. Dr. Palkovics, you've testified that there's public water proposed to service that site; is that correct?

A. Yes, I have.

Q. Given the presence of the public water supply, is there any adverse impact that you see on the township's water supply because of this development?

A. No, there is no adverse impact.

and

Q. (from Board) You don't see this [the supply of water to the site by Philadelphia Suburban Water Company] is going to change the character or quality of the water for the surrounding property owners?

A. No, I do not.
N.T. 10/5/98 pp. 305-307, 310.

54. The parties to the hearing presented no testimony contrary to the testimony of Palkovics as to the suitability of the underlying geology and the soils at the Property for spray irrigation and as to the feasibility of supplying public water to the Property.

55. Green Valleys Association ("Green Valleys") presented a study prepared by their expert witness, Mr. Thomas Cahill ("Cahill"), on water balancing for the Property. Cahill testified that water to the proposed development could be obtained on-site and that this would be balanced by the recharge achieved by the proposed stormwater management facilities and spray irrigation system. Cahill testified on the findings of his Study and presented a water balancing model for the Property. N.T. 10/21/98 pp. 444-447. Green Valleys supported the Plan and requested Hankin to consider development of the site in balance with the water system using the water resource concepts advocated in the Green Valleys' water resource plan. N.T. 10/21/98 pp. 444-477.

Cahill testified:

A. It is fair to say that our appearance here is very different from the prior hearings when Green Valleys was clearly in an adversarial position, and this is a very different situation in that in looking at the plan, we thought that it did have a great deal of reasonable ideas to it, and our objective is water. . . .
N.T. 10/21/98 p. 452.

Stormwater Management.

56. The Applicant submitted a Hydrological Study for the Property prepared by Edward B. Walsh & Associates. The Study presented the data for stormwater effects from the proposed development and indicated stormwater management areas needed to control runoff. Ex. A-32. Walsh testified:

Q. Mr. Walsh, in your opinion it's feasible to manage the storm water on the site as generally shown on these plans?

A. Yes.

Q. Have the natural features on the site been incorporated into your storm water management plan?

A. Yes. The areas of wetlands and floodplain which are along the northern section of the commercial property have been left untouched. That's the same with the residential section. The northern wetland areas and Worsham soil areas have been left untouched.

The area to the south of Exhibit A-35, the wetland and Worsham soil areas have also been left untouched. For the most part, the wooded areas along these wetlands have been left untouched.

N.T. 10/5/98 pp. 354-355.

57. Walsh testified regarding the stormwater management facilities designed for the Property. The stormwater management facilities would consist of areas of drainage designed to control and spread out the stormwater for increased recharge. The facilities would include a number of underground storm seepage beds located in the commercial areas and above ground detention basins. *N.T. 10/5/98 pp. 349-350.*

58. The stormwater management facilities designed for the Property would control post-development stormwater to pre-development levels and have been designed to handle the 100 year storm. *N.T. 10/5/98 pp. 349-351, 374.*

Erosion and Sedimentation.

59. Walsh testified to the erosion and sedimentation control measures to be taken on the Property. Erosion and sedimentation control would be achieved by a series of sediment traps, diversion swales, inlet protection devices and sediment basins situated in different areas of the Property. *N.T. 10/5/98 p. 352.* Walsh testified:

Q. Has your plan generally been calculated to protect against soil erosion and water contamination?

A. Yes. . . .
N.T. 10/5/98 p. 355.

60. The parties to the hearings presented no testimony contrary to the findings of the Hydrologic Study or to the expert testimony of Walsh as to the feasibility of stormwater management on the Property.

61. The Township submitted a letter prepared by Castle Valley Consultants. Castle Valley Consultants performed a review of the Plan and addressed the issues arising from it. *NT 10/21/98 p. 444, Ex. WV-4.*

DISCUSSION

The Applicant's eligibility for conditional use approval, as contemplated in this proceeding, is dependent upon the adoption of the Zoning Ordinance Amendments to create the "Unified Development Area District (UDA)" overlay, and the rezoning of the 307.2 acre tract of land owned by the Applicant in the UDA Overlay District. These first two steps are, by nature, legislative determinations by this Board. In the event that the Board were to vote not to adopt the UDA Zoning Ordinance Amendment, nor to rezone the Applicant's tract of land to the UDA Overlay zoning classification, there would be no authority contained in the Zoning Ordinance of the Township for the proposed conditional use approval to develop the Property in accordance with the Applicant's proposed master development plan. As such, this conditional use decision is different from the type of conditional use proceeding where the zoning ordinance authorization for conditional use approval is already in place prior to the filing of the application.²

²A summary of the standards by which a conditional use application is to be adjudicated by a Board of Supervisors is essentially as follows: Conditional uses are specifically authorized under Section 603(c)(2) of the Pennsylvania Municipalities Planning Code ("MPC") "pursuant to express standards and criteria set forth in the Zoning Ordinance. In allowing a conditional use, the governing body may attach such reasonable conditions and safeguards, in addition to those expressed in the Ordinance, as it may deem necessary to implement the purposes of this Act [MPC] and the Zoning Ordinance."

Conceptually, a conditional use is an analogous to a special exception, the primary difference being that a special exception is adjudicated by a municipal zoning hearing board, whereas a conditional use application is adjudicated by the governing body of a municipality. Brentwood Borough v. Cooper, 60 Pa. Cmwlth. 462, 431 A.2d 1177 (1981); Greensburg City Planning Commission v. Threshold, Inc., 12 Pa. Cmwlth. 104, 315 A.2d 311, (1974).

The authorization within the zoning ordinance of conditional uses indicates in general a legislative acceptance that such uses are consistent with the zoning and comprehensive plans for the township and should be denied only where the adverse impact on the public interest exceeds that which might be expected under normal circumstances from the authorized uses. Appeal of the Estate of Achey, 86 Pa. Cmwlth. 385, 484 A.2d (1984).

We feel, therefore, that it is appropriate to set forth an analysis of the combined legislative/conditional use application here presented. In this regard, it would be indeed foolish either for us as the Board of Supervisors or the residents of the Township as affected parties to view the Unified Development Master Plan in a vacuum. To the contrary, the Applicant has submitted and processed, concurrently with this application, a "by-right" plan under the use, area and bulk regulations of the West Vincent Township Zoning Ordinance of 1987—i.e., before the enactment in December, 1998 of the Township's new and revised Zoning Ordinance. The "by-right" plan has been placed on hold during the post-hearing negotiations which have occurred between the Township Solicitor and the Applicant's attorney. Should this Board choose to reject the UDA concept, the by-right plan will certainly be reactivated by the Applicant. Hence, the choice facing this Board is not one of development versus no development of the Hankin tract, but rather a choice between the by-right plan now pending, and the UDA Master Development Plan.³

Since an application for a conditional use is analogous to a special exception, the burden of proof standards are those enunciated by the Pennsylvania Commonwealth Court in Bray v. Philadelphia Z.B.A., 48 Pa. Cmwlth. 523, 410 A.2d 909 (1980) apply. The standards set forth in the Bray decision can be summarized as follows:

An Applicant for a special exception has both the persuasion burden and the initial evidence presentation duty to show that a proposal for a special exception complies with the "terms of the ordinance" which expressly govern such a grant. Bray v. Philadelphia A.B.A., 410 A.2d 909 (Pa. Cmwlth. 1980). These are the "threshold requirements" for the issuance of a special exception, (and in the instant case for conditional use approval).

Once having demonstrated compliance with these specific requirements of the ordinance, an applicant identifies its proposal as one which the zoning ordinance expressly designates to be appropriate in the district and, therefore, is presumptively consistent with the promotion of health, safety and general welfare. Therefore, the burden is placed on objectors to an application for special exception or conditional use to demonstrate that the proposal would be detrimental to public health, safety and welfare, and that the proposal should be denied on such basis. Where there are general, non-specific or non-objective requirements contained in the ordinance, these matters are generally not part of the threshold requirements for which the applicant has the persuasion burden and evidence presentation duty. Bray, supra.

³Indeed, rejection of the UDA Ordinance Amendments and this conditional use application would serve to present the Applicant with certain additional options for development of the tract. The Applicant would be able to "pick and choose" between segments of the now-pending by-right plan and the newly enacted provisions of the Township Zoning Ordinance of 1998. Consequently, it is possible that, for example,

Subsequent to the close of the hearings on this matter, the Township Solicitor presented to the Applicant's attorney a variety of requests for modifications to the Master Development Plan and ancillary matters. Among these requests were: (i) that the total number of dwelling units in the residential section of the plan be reduced, (ii) that the connections from the residential area to Westover Lane be substantially reduced or eliminated, (iii) that traffic control "baffles" be incorporated into the design in order to channel traffic from the residential area either toward Route 401 or to Birchrun Road (rather than to enable such traffic to conveniently utilize Westover Lane and Fellowship Road, which are more rural in character and which lead to more rural sections of West Vincent Township), (iv) that substantial portions of the open space areas be dedicated to the Township rather than retained in private ownership under and subject to deed restrictions, (v) that the Applicant, in addition to the highway improvements proposed during the course of the testimony, be willing to install an "opticon" signalization at the Ludwig's Corner intersection, and (vi) that the Applicant donate to the Township substantial impact fees for purposes of (a) any additional highway improvements which may in the future be deemed by the Board to be desirable, (b) for upgrading emergency service facilities and equipment serving West Vincent Township in the vicinity of Ludwig's Corner, and (c) the acquisition of open space areas (either in fee or by acquisition of development rights). These discussions have resulted in the "revised alternative site plan" dated 4/22/99, incorporating the above terms and conditions, a copy of which is appended to this Decision as Exhibit "B".

In addition to these improvements in the Master Development Plan, the Applicant is engaged in discussions with the Chester County Commissioners, resulting in a commitment by the Commissioners, with financial assistance from the Hankin Foundation, to locate a new branch of the new Chester County Library within the office/retail component of the Master Development Plan.⁴

the Applicant could proceed with the industrial development contemplated under the by-right plan, coupled with a more intense residential development in the R-2 zoned section of the Property under the "Tier IV" provisions of the new zoning ordinance, which would yield a greater number of dwelling units than the 147 proposed under the by-right plan.

⁴The library space is not in addition to the office and retail space which will not exceed 240,000 square feet of floor area, but rather will be included in this total.

With these features in mind, we can compare the UDA Master Development Plan for which conditional use approval is sought with the other development alternatives available to the Applicant, focusing on the now pending "by-right" Plan.

Intensity of Use - Nonresidential.

The by-right plan proposes 370,000 square feet of office, warehouse, and manufacturing floor space, to be divided among five buildings. In contrast, the UDA plan proposes no industrial uses, but rather a combination of retail and office type uses in a village center complex, spread over a total of not less than eight buildings. Clearly, the intensity of nonresidential uses is substantially greater under the by-right plan than under the UDA Master Development Plan.

Intensity of Use - Residential.

Under the by-right plan, the Applicant proposes a total of 140 single-family detached homes in a cluster development configuration. The UDA Master Development Plan as initially submitted proposed a total of 307 dwelling units characterized as "garden units". The concept proposed in the Master Development Plan is for a neo-traditional neighborhood residential component, with a substantial segment of the housing being in attached dwellings (i.e., townhouses or twins) and the remainder in garden lot detached homes. During the post-hearing discussions, the Applicant has agreed to reduce the intensity of the residential component of the Master Development Plan to 272 dwelling units. While this number of dwellings remains substantially above the total of 147 proposed under the by-right plan, there are two elements of the intensity of residential use which must also be factored in: (a) the use of garden lot and the mix of attached housing within the community will create smaller "family units" for the neo-traditional community in comparison to the cluster single-family development proposed under the by-right plan (i.e., smaller families will create less fiscal pressure on the school district and less per unit automobile trip generation); (b) under the 1998 Zoning Ordinance, the Township's Engineer has calculated that, in lieu of the 147 cluster units proposed in the by-right plan under the old Zoning Ordinance, approximately 240 dwellings could be constructed under a "tier 4" R-2 development on the Applicant's property. Thus, the residential intensity proposed under the UDA Master Development Plan is palatable, especially in light of the amenities, open space configuration, and other attributes of the Master Development Plan which we discuss below.

Open Space - Amount and Configuration

While the total amount of deed restricted open space which will result under the UDA Master Development Plan (approximately 180 acres) is not substantially different from the open space areas proposed under the by-right plan, the configuration of the open space under the UDA Plan is far superior to the scattered open space configuration depicted on the by-right plan. Under the UDA Plan, the entire area east of Westover Lane will be permanent open space, and the entire area north of Route 401, west of Fellowship Road, and south of the extensive wetland area of the tract will also remain as permanent open space. In contrast, the by-right plan proposes to construct some of the new housing east of Westover Lane, and also proposes a substantial segment of the housing in the quadrant of the Applicant's property south of the wetlands area, north of Route 401, and west of Fellowship Road. As we see it, the open space configuration under the UDA Plan is far superior, for two reasons: First, the view sheds from Westover Lane to the east and from Route 401 to the north (and similarly from Fellowship Road to the west in the lower segment of the property) will remain in tact under the UDA Plan, whereas these two view sheds will be grossly impaired under the by-right plan. Secondly, the open space configuration under the UDA Plan forms a classical "green belt" around the Ludwig's Corner Village development proposed under the Master Plan. As such, the green belt open space to the north, east and south of the village development will serve to define and, therefore, limit the Ludwig's Corner development area. This type of perimeter green belt around a village type development is the very essence of desirable town planning - it would be, in our view, a tragic loss of opportunity to reject this open space offer from the Applicant.

Discussions with the Applicant have also resulted in an irrevocable offer of dedication of the vast majority of the open space areas within the tract - depicted as open space area A, B and C on the revised alternative site plan. These areas will, therefore, be permanently devoted to view shed and passive recreational uses, under the direct control of the Township Board of Supervisors. Under the by-right plan, in contrast, all open space areas would remain in the ownership and control of the homeowners association - albeit it subject to restrictive covenants which would prevent future development of these open space areas.

Aesthetic Considerations

It is perhaps an understatement to remind the readers of this Decision that single story industrial, warehouse and manufacturing buildings are generally not aesthetically pleasing. The by-right plan proposes a total of five warehouse, manufacturing and office buildings ranging in size from large to huge. It is hard to conceive how these buildings could be made attractive to the eye in comparison to the type of village-center architecture and building configurations described by the Applicant in the hearings on

the UDA Master Development Plan. Indeed, under the by-right plan, the Township has absolutely no control over the aesthetics of the industrial segment of the development, including but not limited to roof pitch, size of buildings, and the materials used for exterior facades. By contrast, the Applicant has committed in the UDA Master Development Plan to provide a series of not less than eight buildings (again, for a substantially lesser total square footage than the five buildings to be constructed under the by-right plan) with pitched roofs, porticos, cupolas, and other architectural features which will lend visual appeal to the retail and office component of the UDA Master Development Plan. In addition, substantially more landscaping will be incorporated into the retail and office segment of the UDA Plan than would be provided under the industrial by-right plan.

Although perhaps less obvious, another aesthetic component to the UDA Master Development Plan is the road linkage between the residential component of the village and the retail/office component of the village. By contrast, under the by-right plan, the maximum amount of separation between the industrial component and the residential component is proposed. The residential component under the by-right plan is, therefore, isolated and eastward oriented - toward Westover Lane, rather than (as under the UDA Plan) westward oriented toward the Ludwig's Corner Village.

Other Amenities:

The Applicant's offer to devote a portion of the retail/office component of the UDA development to a branch facility of the Chester County Library is an attractive addition to the UDA Plan.

Highway Improvements.

Under the by-right plan, the Applicant does not propose to provide any improvements to the road system in the vicinity of the property, while in contrast, the Applicant under the UDA Plan will provide a series of highway improvements, including (i) dedication of the connector road or "bypass" road from Route 401 north to Birchrun Road, in conformity with the Township's "Official Map" for a Ludwig's Corner (northbound) bypass road⁵; (ii) construction of the connector or bypass road itself; (iii) substantial improvements to the Route 401/Route 100 intersection, so that

⁵This initial segment of the northbound bypass, standing alone, will not be usable as a one-way northbound component, but rather will be designed as a two-way access road to the UDA development, compatible with ultimate conversion of the road to a one-way northbound bypass road.

the levels of service at the intersection will actually be improved over today's level of service after full construction of the proposed UDA development; (iv) opticon signalization upgrade of the intersection; (v) improvement to Route 100 at Birchrun Road, to provide a southbound left turn lane to Birchrun Road; (vi) channelization of traffic away from Westover Lane and Fellowship Road; (vii) protected left turn lanes along the Route 401 points of access to the development.

Other Fiscal Contributions.

In addition to the substantial road work contemplated under the UDA Plan, the Applicant has also agreed to make substantial impact fee contributions as a component of the conditional use approval of the UDA Plan. Under the by-right plan, by contrast, no impact fees are offered or can they be demanded by the Township under the Municipalities Planning Code for a by-right development.

Convenience to Existing Residents in the Vicinity of Ludwig's Corner.

We believe that the type of village shopping facilities and office facilities proposed by the Applicant as part of the UDA plan will provide additional conveniences - shopping facilities and restaurants in particular - to the existing residents of West Vincent Township, Upper Uwchlan Township and East Nantmeal Township in the vicinity of Ludwig's Corner. Given the development pressures along the Route 100 corridor, the type of village retail facilities here proposed are in this sense an asset to the community. Many residents of West Vincent Township will be able to utilize the village retail facilities with less miles driven from home to shop than under existing circumstances. While we would prefer that the Ludwig's Corner area remain undeveloped, given the choices here presented, the retail, library and office facilities will provide greater convenience to the community than would an industrial development.

For these reasons, we find the Applicant's proposed UDA Master Development Plan to be far preferable as a form of development to the by-right plan. Hence, it is our decision to pass the Zoning Ordinance and Zoning Map amendments necessary for implementation of the UDA concept, and to grant conditional use approval to the Applicant's proposed Master Development Plan, subject to the imposition of a variety of conditions as more fully set forth in our Order hereinbelow.

CONCLUSIONS OF LAW

1. The Board has exclusive jurisdiction to hear and decide conditional use requests pursuant to the Pennsylvania Municipalities Planning Code ("MPC") Section 909.1(b)(3) and the Zoning Ordinance Section 2111.B.

2. Hankin is the owner of the Property and has standing to apply for conditional use approval.

3. The hearings were properly advertised and conducted in accordance with the Zoning Ordinance and the MPC.

4. The Application and Plan were duly submitted to the Township Planning Commission and the Chester County Planning Commission for review and comment.

5. The UDA ordinance creates an overlay district which is affixed to a property by a conditional use approval. The UDA allows a master plan combining various commercial and residential uses to develop a property to be submitted to the Township for consideration.

6. Hankin submitted a unified master plan (the "Plan") for development of the Property in accordance with the UDA provisions. The Plan proposes the development of approximately 97,000 square feet of retail space, 140,000 square feet of office space and 307 residential units.

7. The Application and Plan conform with all standards required under Zoning Ordinance-Section 2111 for conditional uses:

- a. Relationship to Comprehensive Plan The size, scope, extent and character of the proposed conditional use is consistent with community goals and objectives of the West Vincent Township Comprehensive Plan.
- b. Relationship to the Zoning Ordinance. The proposed conditional use promotes the harmonious and orderly development of the Township and is consistent with the spirit, purpose and intent of the Zoning Ordinance. The proposed conditional use will not adversely affect the public health, safety and welfare of Township residents.
- c. Suitability of the Tract. The proposed conditional use is suitable for the tract taking into consideration the environmental conditions, highway access and availability of sewer and water facilities.
- d. Impact on Existing Neighborhood Character. The proposed conditional use is consistent with the character and type of

development in the area surrounding the location for which the use is proposed. The proposed conditional use will not substantially impair, alter or detract from the use of surrounding property or the character of the neighborhood in light of existing uses and zoning classifications of the area, the number, extent and scope of nonconforming uses in the area; and the presence or the absence in the neighborhood of uses of the same or similar character to the proposed conditional use.

e. Impact on Circulation. The proposed conditional use is suitable with respect to traffic patterns and volumes, access, and off-street parking and protect the surrounding neighborhood and road system from undue congestion and hazards and the use will develop street and highway frontage so as to limit the total number of access points and encourage the frontage of buildings on marginal access roads or on interior service roads.

f. Community Facilities. The proposed conditional use is a logical, efficient and economic extension of public services and facilities such as public water, sewers, police and fire protection and public schools. The proposed conditional use assures adequate provisions for water supply and sewage disposal.

g. Performance Standards. The proposed conditional use will not adversely affect adjacent properties and such properties have been adequately safeguarded from the proposed conditional use.

h. Economic Impact. The proposed conditional use will not have a significantly adverse impact on the fiscal condition of the Township and will not detract from any property values of the neighborhood.

8. The Application and Plan comply with the UDA provisions of the Zoning Ordinance:

a. The Property is eligible for application of the zoning overlay under Article XVA, Section 1552.

b. The Application is complete and meets all requirements for submissions under Article XVA, Section 1558.

c. The Application and Plan meet all criteria for review under Article XVA, Section 1559.C:

- i. The natural environments of the tract are adequately protected.
- ii. The location of subdistricts are in accordance with the criteria of Section 1559.D.2.
- iii. The traffic improvements are designed to alleviate potential vehicular traffic congestion.
- iv. Provisions to maintain and preserve proposed open space have been provided.
- v. Historic sites and structures have been preserved.
- iv. The Plan is consistent with and suitable to the purpose and spirit of Section 1551.

9. The Plan conserves natural features identified in the Township's Open Space, Recreation and Environmental Resource Plan.

10. The Plan conforms with the Township's overall objective of conserving the interconnected network of open space.

11. The proposed Plan would not adversely affect the public health safety or welfare.

12. The Application and Plan are appropriate and the requested conditional use is hereby granted.

ORDER

AND NOW, this ~~27~~²⁷ day of May, 1999, conditional use approval, pursuant to §1859.B of the West Vincent Township Zoning Ordinance (as amended by the enactment of Article XVIII of the Zoning Ordinance--"Unified Development Area District") is hereby granted to the Applicant, The Hankin Group, as representative of the title owners of the property concurrently being rezoned to the "Unified Development Area-UDA" Overlay District, and as more fully described in our

Findings of Fact hereinabove, for a combination of (i) planned community shopping center ("PSC" or "retail") uses, as set forth in §1856 of the Zoning Ordinance, (ii) office park uses, as more fully set forth in §1855 of the Zoning Ordinance, and (iii) residential uses, as more fully set forth in §1854 of the Township Zoning Ordinance. The conditional use approval herein granted is expressly subject to the Applicant's compliance with each of the following conditions:

A. Site Design.

1. The retail and office components of the development shall be located in the western sector of the property, to be situated on approximately 32 acres, in the location and substantially in the configuration as set forth in the "Revised Alternative Site Plan for Ludwigs Corner" prepared by The Hankin Group, dated 4-22-99, as appended hereto as Exhibit A (hereinafter referred to as "Site Plan"). Subject to the constraints hereinbelow set forth, the retail/office segment of the development shall be limited to a maximum of 240,000 square feet of gross floor area (i.e., the building footprint of each building, multiplied by the number of stories in the building). Within this total, not less than 80,000 square feet, nor more than 120,000 square feet, shall be devoted to retail uses, and not less than 120,000 square feet, nor more than 160,000 square feet, shall be devoted to office uses, including the proposed branch of the Chester County Library.

2. All of the retail and office uses shall be located to the west of the proposed "connector road" as depicted on the Site Plan, with the exception of one office building or the library building which may be located to the southeast of the connector road, just north of Conestoga Road, as depicted on the Site Plan.

3. The maximum impervious coverage of the portion of the site to be devoted to retail and office uses shall be 75%. The remaining 25% of the area within this segment of the tract shall be devoted to landscaped green area. (Parking lot "islands" shall be landscaped, and shall be credited toward this minimum 25% landscape area requirement.)

4. Parking shall be provided for retail uses at the ratio of 1 space per 200 square feet of gross retail floor area. Parking shall be provided for office uses at the rate of 1 space per 250 square feet of gross floor area. These parking ratios may be modified in the Land Development Plan approval based on a parking analysis related to the proposed uses that demonstrates, to the satisfaction of the Board, that a lesser number of spaces will be appropriate to serve the present and future needs of the project. The Board may, in conjunction with any reduction in parking ratios, require the Land Development Plan to provide for reserve areas (not to exceed, in the aggregate with the

paved parking, the total number of required parking spaces) if additional parking is needed in the future.

5. The Applicant, having obtained a commitment from the Chester County Board of Commissioners for locating a satellite County library facility within the office/retail segment of the tract, shall include (within the total of 240,000 square feet of retail and office uses) the branch library within the village center. It is suggested that the optimum location for the library facility would be within the building proposed to be located at the northeast corner of the Conestoga Road and connector road intersection; but other building locations shown on the Site Plan will be permitted for the Library. Parking shall be provided for the library facility at the rate of one space per 250 square feet of gross floor area, or at a lesser rate demonstrated to the Board to be appropriate. If the Applicant is unable to locate a library on the property, then the office buildings shown on the Site Plan shall be permitted, with the total office square footage being reduced by 10,000 square feet (i.e., total of office and retail to be reduced to 230,000 square feet).

6. No single retail building shall contain more than 55,000 square feet of gross floor area; no single office building shall contain more than 60,000 square feet of gross floor area. The office/retail development shall comprise a minimum of eight separate buildings, designed substantially as depicted on the site plan appended hereto as Exhibit A, to give the appearance and ambience of a neo-traditional village center, as described in the Community Impact Analysis submitted as Exhibit A-17, with the buildings to be substantially as depicted in the renderings submitted as Exhibit A-11 (pitched roofs, architectural features such as cupolas, dormer windows, weather vanes, covered walkways in the front of the retail shops etc.) unless specific approval for any substantial departure from such appearances, design and materials are given by the Board of Supervisors at the time of land development plan approval.

7. Access to the retail/office segment of the development shall be substantially in accordance with the "Conceptual Improvement Plan" by McMahan and Associates, Inc, dated September 24, 1998, but in any event, shall include the following features:

(i) construction of the proposed "connector" road connecting from Conestoga Road ("Access B") to Birchrun Road ("Access F"), having a minimum right-of-way width(s) of 60 feet for the boulevard section, and 50 feet in the northern section of the connector road; building setbacks from the right-of-way shall be substantially similar to that shown on the Site Plan, but not less than 15 feet from the adjacent street right-of-way line;

(ii) the "village link road" terminating at its western end within the retail/office area, and extending across the connector road as a boulevard into the residential area to the east;

(iii) an unsignalized access driveway ("Access A") from Conestoga Road into the retail/office segment of the property, to be provided with a separate eastbound left turn lane and a separate westbound right turn lane; and

(iv) a new unsignalized site access driveway from Birchrun Road into the retail/office segment of the tract ("Access E"). The intersection of the connector road and Conestoga Road ("Access B") will be signalized, if warranted and permitted by PennDOT, and will provide two inbound lanes and two outbound lanes for separate left turn and right turn movements. The connector road intersection with Birchrun Road ("Access F") will have a separate outbound and inbound lane for full movement access, to be stop-sign controlled on the connector road approach to Birchrun Road. A separate driveway from the connector road into the retail segment of the site, approximately one-third of the way south from the Birchrun Road intersection, shall also be provided, as shown on the Site Plan.

8. In addition, the Applicant, with the assistance of Township representatives, shall seek to provide a separate point of egress from the retail segment of the property to the Exxon tract located immediately to the west (separating the subject property from Route 100).

9. The residential segment of the development shall substantially conform to the Site Plan in terms of development area, open space areas, road system and housing types. Specifically, the residential development shall contain, in addition to the farmstead, a maximum of 272 dwelling units, of which approximately 75 shall be townhouse or attached dwellings (generally in buildings containing between three and five dwelling units), 180 shall be small lot, single family detached dwellings, and 17 shall be larger lot, single family detached dwellings, abutting Westover Lane. (The actual mix of units may be modified by approval of the Board of Supervisors during the course of land development plan approval, but shall substantially conform with the prescribed housing mix, as depicted on the Site Plan.) The Westover Lane lots shall include building envelopes with a minimum thirty-five (35) foot setback from Westover Lane.

10. The residential development area of the site shall not extend beyond the general boundaries of the residential development area, as depicted on the Site Plan.

11. The remainder of the residential segment of the site shall be set aside as restricted open space areas. The total open space areas shall constitute not less than 180 acres of the total gross tract area, as depicted on the Site Plan. Open space uses and ownership shall be as more fully set forth hereinbelow.

12. Access to the residential segment of the development shall be as follows:

(i) the "village link road" connecting the residential development to the connector road, and extending across the connector road into the retail/office segment of the development;

(ii) an unsignalized access drive ("Access C") from Conestoga Road, located directly opposite Rachel Lane, said Access C to have a separate left turn lane for eastbound Conestoga Road traffic, but shall not be signalized;

(iii) a road access at the bend in Fellowship Road, at the point depicted as "no left turn onto Fellowship Road" on the Site Plan (traffic from the development to southbound Fellowship Road shall preclude left turns, and all traffic exiting the development to Fellowship Road shall be channeled southbound, toward Conestoga Road);

(iv) a single access point toward the northern end of the residential area to Westover Lane, at the point depicted on the Site Plan as "no right turn onto Westover Lane" (as indicated, all traffic exiting from the development to Westover Lane shall be channeled northbound—turning left—onto Westover Lane.) (Traffic traveling southbound on Westover Lane from Birchrun Road will be permitted to turn right into the development, or to extend straight southbound on Westover Lane.) The 17 larger lot, single family dwellings fronting on Westover Lane shall not have driveway access to Westover Lane; to the contrary, all driveway access to these lots shall be from internal roads or alleys within the residential segment of the development, as depicted on the Site Plan.

13. During the course of preliminary land development plan review, the Applicant shall submit proposed intersection designs for all points of access, together with signage and, where applicable, signalization. All such designs shall be reviewed by the Township's Traffic Engineer and consultant during the course of preliminary land development plan review.

14. The Applicant shall provide pedestrian circulation by way of sidewalks and, where applicable, pathways, including a walking trail system convenient to the residential area, the design and details of which shall be submitted and reviewed during

the course of preliminary land development plan review. Without limiting the foregoing, the Applicant shall preserve the equestrian perimeter trail along the "Bailey Farm" to Westover Lane and continuing along Westover Lane, in substantially the same configuration as now exists.

15. As part of the Applicant's preliminary land development plan submission, the Applicant shall submit detailed lighting plans for both the retail/office segment of the development and the residential segment of the development. The Applicant is encouraged not to provide for street lights in the residential area, but rather to provide for "post lights" between the front facade of each dwelling and the street. With respect to lighting within the retail/office segment of the development, the Board of Supervisors shall have the discretion to determine the appropriate lighting fixtures to be utilized, consistent with (a) safety, (b) the village ambience to be achieved, and (c) minimization of "sky glow" or other "light pollution," but will accept Rudd high pressure sodium lights, directed straight downward, mounted on twenty-foot wood poles, and spaced to provide light intensity at a level prescribed in the West Vincent Subdivision and Land Development Ordinance.

16. As part of the Applicant's preliminary subdivision and land development plan submission, the Applicant shall provide an overall landscaping plan for the retail/office portion of the development, to utilize extensive landscaping, similar to that shown on the Site Plan, within and bordering the retail/office segment of the property, with undulating berms (with gentle and naturalistic slopes, harmonious with natural land forms, planted predominantly with native-specie trees, shrubs and wildflowers) along the road frontages of Birchrun Road and Conestoga Road, as well as extensive trees and shrubs. The landscaping plan shall be designed and specify such species of trees and shrubs, so as to achieve the goals set forth in paragraph 1 of Randall Arendt's Memo to Allen Heist, dated March 20, 1999 ("Arendt Memo"). Landscape plans for the residential portion of the development shall include substantial buffering along the west side of Westover Lane, where homes will back onto Westover Lane.

B. Stormwater Management.

17. The Applicant shall comply with all federal, state and township regulations pertaining to stormwater management. In addition, the Applicant shall, even if not otherwise required by regulation, utilize to the maximum extent feasible and where practicable, "best management practices" for stormwater management facilities, substantially as described in Exhibit A-37 (*Pennsylvania Handbook of Best Management Practices for Developing Areas*). The Applicant shall consider the use of "bio-retention" islands, subsurface recharge beds and/or porous paving within the commercial and office area parking lots, as described in paragraph 5 of the Arendt Memo.

18. To the maximum extent feasible and where practicable, the Applicant shall utilize stormwater management techniques that promote recharge and pollutant removal effectiveness, compatible with the pollutant characteristics of the stormwater runoff, as there are substantial areas of the tract which are suitable in terms of soil type for recharge (primarily Glenelg soil areas of the tract), and the area being developed is a headwaters area of an Exceptional Value watershed.

19. All details of the stormwater management systems shall be submitted at the time of preliminary land development plan submission, and shall be subject to further review and approval by the Township Board of Supervisors, upon the advice of the Township's consultants.

C. Utilities.

20. Development of the tract shall utilize public water. Unless otherwise directed by the Board of Supervisors at the time of preliminary land development plan approval, water shall be provided by extension of the Philadelphia Suburban Water Company mains to the subject property and the Township will not object to an extension of the franchise area for the Philadelphia Suburban Water Company into the Township, so long as the extension includes only the Applicant's property. The water mains shall be extended along Pottstown Pike (Route 100) to the site, rather than via Blackhorse Lane or other overland route, unless the Applicant and the Township Board of Supervisors shall agree to an alternative route during or prior to land development plan review. In order to minimize the cost differential projected between bringing the water lines via Blackhorse Lane versus bringing the water lines via Pottstown Pike (Route 100), the Township and the Applicant will work cooperatively toward utilizing an existing (if available) or new (if needed) utility easement on the west side of Route 100, so that the water line need not be placed under the paved portion of Route 100. In addition, the Township and the Applicant will cooperate in seeking contributions for such water line extension from other potential beneficiaries thereof, such as Exxon, Sunoco and the Ludwigs Inn. In the event that, in spite of such efforts, it is determined by the Board and the Applicant that it is not feasible to extend the water mains along Route 100, and the mains are ultimately extended via Blackhorse Lane or other overland route, the Applicant shall, in such event, further extend the water mains to the intersection of Route 100 and Route 401, and provide a fire hydrant at such terminus.

21. Sanitary sewage collection, treatment and disposal systems shall be substantially in accordance with the exhibits and testimony presented by the Applicant during the course of the hearings, to wit; being a system of not more than three lagoons, together with spray irrigation land disposal of treated wastewater.

22. The sewage collection treatment and disposal system shall be designed in accordance with Department of Environmental Protection standards, such that the systems shall be in quality and all other design specifications and characteristics, no less than the standard for the East Marlborough Township System (Wollaston Road Wastewater Treatment Plant) designed by Tatman and Lee, and shall be suitable for dedication to the Township; the Applicant shall, upon completion of the sanitary sewage collection, treatment and disposal systems, irrevocably offer same at no cost to the Township (or a Township municipal authority, if applicable) for dedication. Design of the sewage collection, treatment and disposal system shall contain sufficient capacity only for the development to be constructed on the Applicant's property and shall conform with the following:

a. At the time of preliminary subdivision and land development plan submission, and prior to municipal approval of the Act 537 Sewage Facilities Planning Modules, the Applicant shall prepare a detailed hydrogeologic evaluation to the reasonable satisfaction of the Township's consultants. The report shall evaluate the effect of the proposed wastewater system on the groundwater table and stream flow.

b. At the time of preliminary subdivision and land development plan submission, and prior to municipal approval of the Act 537 Sewage Facilities Planning Modules, the Applicant shall prepare a crop management plan to the reasonable satisfaction of the Township's consultants. ~~The crop management plan shall demonstrate the ability to provide for the continued agricultural use of the irrigation site which eliminates crop planting and harvesting conflicts with wastewater irrigation demands.~~

c. The wastewater treatment and disposal system shall be designed to PaDEP standards to provide safeguards against the potential for lagoon overflow, including automatic measuring devices for lagoon depths via telemetry, inclusion of rainfall in the lagoon storage capacity calculations, diversion terraces below the lagoons, and additional spray field area.

d. The lagoon design shall provide a minimum water depth of four (4) feet in all storage ponds. Additionally, to the greatest extent possible, the existing hedgerows shall be preserved to serve as a visual buffer from the lagoons.

e. At the time of preliminary subdivision and land development plan submission, and prior to municipal approval of the Act 537 Sewage Facilities Planning Modules, the Applicant shall provide geo-technical information to the reasonable satisfaction of the Township's consultants. The geo-technical data shall demonstrate

that the lagoons will comply with DEP guidelines in regards to the separation of the lagoon bottom from bedrock and the water table.

f. The lagoon design shall provide supplemental aeration in all lagoons to minimize odor and improve aesthetics.

g. The lagoon design shall provide for the ability to remove each lagoon from service for maintenance as required by the DEP guidelines.

h. The site area to be dedicated as part of the wastewater system should include as much of the areas east of Westover Lane as possible to allow for an irrigation system compatible with the agricultural use of the site and to minimize conflicts with any residential uses on the property.

i. The siting of the sewage system shall be in compliance with testimony regarding placement to minimize disturbance of neighbors and natural features.

j. In the event of a dispute between the Applicant's design engineers and the Township's reviewing engineers as to compliance with these standards, the Applicant and the Township shall submit the unresolved issue(s) to a mutually acceptable third party professional, who shall choose either one position or the other (but may not "split the difference" or make a determination different from one or the other submitted to him), and whose determination shall be final and binding upon the Applicant and the Township.

23. The Applicant shall subsidize the operation and maintenance costs of the sanitary sewage collection, treatment and disposal facilities until such time as there are a sufficient number of connections thereto to enable the customer base to reasonably bear the cost of operation and maintenance. The details of this arrangement shall be determined by the Township during the course of land development plan review.

D. Open Space Use and Ownership.

24. In order that the open space areas shall act effectively as a buffer between the developed portions of the site and neighboring properties, and to provide high quality views for the future residents of the development, and for those passing by or through the site, it is essential that the rural character of the open space areas be retained; consequently, the uses of the open space areas shall be limited to agricultural, passive recreation, horseback riding, grazing, or allowance of the land to return naturally to forest (so long as maintenance to control substantial weed growth is continued). No earth disturbance shall occur in Open Space Parcels "A," "B" or "C,"

except as necessary for construction of the sewage systems, other utilities and/or recreation uses.

25. Trees in the open space areas may not be removed except for selective cutting to establish trails or to maintain the health of wooded areas. Without limiting the foregoing, the hedgerows existing in Parcel B shall be preserved to the greatest extent feasible.

26. No new structures shall be erected within the open space areas, with the possible exception of fenced pasture areas within open space area "C" as depicted on the Site Plan, if, at the time of land development plan review, the Board and the Applicant agree on a plan for such facilities, and/or structures approved by the Township accessory to approved passive recreational uses.

27. The Applicant shall make an irrevocable offer of dedication to the Township for open space areas A, B and C, as depicted on Exhibit A. In addition, the Applicant shall make an irrevocable offer of dedication to the Township or, at the Township's direction, West Vincent Township Land Trust, for the remaining open space area of 2.467 acres located in Upper Uwchlan Township, bordering the site within West Vincent Township. The deed of dedication to the Township will contain restrictions, in a form acceptable to the Township Solicitor, to assure that the use and maintenance described in paragraphs 24, 25 and 26 above are continued in perpetuity. All existing wells located within the open space areas, with the exception of wells to be used as monitoring wells, and the well serving the Farmstead shall be abandoned in conformity with the Chester County Health Department's requirements prior to commencement of construction of the development.

28. The farmstead area located at the northeast corner of Westover Lane and Fellowship Road (to the south and west of open space area B) may be retained by the Applicant as a farmstead tract, not exceeding 13 acres of land in total. The farmstead tract shall be deed restricted against any further development, and shall be used in perpetuity for agricultural or other open space purposes as hereinabove defined; provided, however, that it shall also be deed restricted to prohibit the application of sewage sludge thereon. The farmstead may be retained in private ownership as a farmstead, subject to these conditions.

29. All remaining open space areas, including those either within or bordering the residential development areas, shall be transferred by the Applicant to a homeowners association, consisting of all owners of dwelling units within the residential segment of the development. The open space shall be governed in accordance with a Declaration of Covenants, Restrictions, etc. to be submitted by the

Applicant during the course of preliminary land development plan review, and subject to approval by the Township Board of Supervisors, in consultation with the Township Solicitor. The Declaration shall incorporate conservation land management guidelines prepared by Natural Lands Trust, as referenced in paragraph 6 of the Arendt Memo. At the time of Land Development Plan submission, the Applicant shall submit detailed plans for the "pocket parks" depicted on the Site Plan, including community park space with active recreation facilities (which need not be regulation athletic fields).

E. Traffic; Highway Improvements.

30. The following minimum highway improvements shall be effected by the Applicant, concurrently with the development of the project, in accordance with a schedule to be established as part of the Applicant's preliminary land development plan approvals and in accordance with Township or (as applicable) PennDOT requirements:

a. The Applicant shall dedicate to the Township the right-of-way width hereinabove described for the connector road, and shall construct the connector road between Birchrun Road and Conestoga Road, in accordance with the testimony and exhibits presented during the course of the hearing. The connector road shall be a "boulevard" in its southern portion, as depicted on the Site Plan and on the "Conceptual Improvement Plan - Hankin Tract" prepared by McMahon Associates, Inc., dated September 24, 1998 ("Improvement Plan"), and shall be consistent in right-of-way width and cartway design for ultimate conversion by the Township, if the Township so determines, to a one-way "northbound" bypass road, containing a minimum of two thru-lanes northbound, and any turning lanes approaching Birchrun Road deemed appropriate by the Township's consulting traffic engineer.

b. Conestoga Road shall be improved as shown on the Improvement Plan and the Site Plan with (i) dedicated left-turn lanes for eastbound traffic at Access Points A, B and C, as hereinabove described. Intersections A and B shall also have a right-turn decel lane, to be reviewed and approved in terms of design by the Township's consulting traffic engineer and PennDOT.

c. (i) The intersection of the northern residential street with Westover Lane (at the point of "no right turn onto Westover Lane" as shown on the Site Plan) shall be improved at Applicant's expense so as to direct traffic flow in accordance with this restriction. The exact intersection design shall be submitted by the Applicant as part of the preliminary land development plan submission, subject to review and approval by the Township consultants.

(ii) Westover Lane, from its intersection with Birchrun Road south to the new street intersection, shall be improved by repaving to meet Township paving standards, without curbing and without on-street parking. The cost of such repaving shall be credited against the impact fees to be paid pursuant to paragraph 31 of this Order.

d. (i) The intersection between the southern residential street and Fellowship Road (depicted as "no left turn onto Fellowship Road" on the Site Plan) shall be improved at Applicant's expense in accordance with a design to be submitted by the Applicant as part of the preliminary land development plan submission, subject to review and approval by the Township consultants, in order to direct traffic in accordance with the traffic pattern hereinabove prescribed.

(ii) Fellowship Road from the point of this intersection south to Route 401 (including the portion within Upper Uwchlan Township) shall be widened to up to 20 feet and improved by repaving to meet Township paving standards, without curbs and without on-street parking. The cost of such repaving shall be credited against the impact fees to be paid pursuant to paragraph 31 of this Order.

e. The commercial access driveway with Birchrun Road (Access E) shall be improved with a separate eastbound right-turn lane, or decel lane, on Birchrun Road.

f. The Applicant shall provide for a separate left-turn lane on southbound Pottstown Pike (Route 100) at the intersection of Birchrun Road, for southbound traffic to turn left onto Birchrun Road. The exact design and configuration shall be submitted by the Applicant concurrently with preliminary land development plan submission, subject to review and approval by the Township consultants and approved by PennDOT.

g. The Applicant shall construct the intersection improvements in the vicinity of the intersection of Pottstown Pike (Route 100) and Conestoga Road (Route 401) as are depicted on the Improvement Plan, and shall make such upgrades to the intersection signalization (i) as PennDOT shall require, and (ii) to provide emergency vehicle pre-emption (commonly called an "Opticon" system). The Township shall, at Township's expense) from the impact fees set forth below) acquire any additional right-of-way necessary to construct these improvements at the Route 100/Route 401 intersection.

31. In addition to the specific highway improvements to be constructed by the Applicant, as set forth in paragraph 30, the Applicant shall transfer to the Township, as a fund to be set aside by the Township for purposes of (i) right-of-way acquisition

and any other highway improvements in the vicinity of the development deemed desirable by the Board of Supervisors, (ii) contributions to the acquisition or improvement of fire fighting, rescue or other emergency service vehicles or equipment, and/or (iii) acquisition of open space land and/or development rights within lands of West Vincent Township:

(1) at the time of occupancy of each dwelling unit, the sum of \$500 per dwelling unit;

(2) at the time of occupancy of each retail building in the development, the sum of \$.50 per square foot of retail space; and

(3) at the time of occupancy of each office building within the development (excluding library space, for which no highway assessment shall be made), the sum of \$.40 per square foot of office space.

F. General

32. Except as set forth in Exhibit B appended hereto ("List of Waivers") and any other waivers reasonably related to implementation of the approved Site Plan, the Applicant shall comply with the Township's Subdivision and Land Development Ordinance of 1998. Consistent with the letter and intent of Article XV-A of the Zoning Ordinance, this Conditional Use Approval is granted for a Unified Development Area recognizing that the unique blend of uses and design required to achieve the purpose of our Ordinance and the long-range planning and zoning goals of the Township would not be achievable by more traditional application of zoning and subdivision and land development standards. Each use and design shown on the Site Plan is intimately interrelated to each of the others, and this Conditional Use Approval is based on the cumulative effect of all those interrelationships. Accordingly, (i) no Land Development Plan shall be approved which constitutes a material change to the uses or designs shown on the Site Plan unless Applicant first obtains an amendment to this Order approving such material change, and (ii) it being recognized that the very purpose of a Unified Development Area is to create communities that are impossible to create using more traditional land development methods, where development of the Site Plan requires design standards different from those provided in the relevant Township Ordinances, the Township will grant such waivers to those Ordinances as are reasonably required to develop the UDA in accordance with the Site Plan.

33. The Applicant shall reimburse the Township for all costs incurred by the Township in connection with the rezoning and conditional use applications for this

tract. Reimbursement shall be made within 30 days of issuance by the Township of an itemized accounting of costs incurred.

34. At such time as the Applicant files its preliminary subdivision and land development plans, the Applicant shall pay an Application Fee, to cover the Township's administrative costs, expenses and overhead, in the amount of \$5,000, together with an escrow fund of \$25,000 upon which the Township may draw for reimbursement of its engineering, planning, traffic engineering, legal and any other consultants' review fees. All such review fees (but not the Application Fee) for preliminary and/or final plan reviews paid from the Applicant's escrow (or otherwise paid by the Applicant) shall be considered as an advance against and, hence, shall be credited toward the impact fees specified in paragraph 31.

35. The Applicant shall conform with all representations made during the course of the conditional use hearings (whether or not specifically incorporated in this Order), unless the Board of Supervisors shall authorize a change requested by the Applicant. Where representations made during the Conditional Use hearings are inconsistent with this Order, then this Order will be controlling.

36. This Conditional Use approval is specifically contingent upon the Applicant's withdrawal of the now-pending "by-right" plan within 15 days after approval by the Township Board of Supervisors of the preliminary or preliminary/final land development and subdivision plans for the first phase of the UDA development.

Concurrently with this Order, (i) \$5,000 of the application fee of \$19,700 shall be retained by the Township, and (ii) the remaining balance thereof (\$14,700) shall be applied against the review fees incurred by the Township for engineering, traffic engineering, planning and legal consultants with respect to the by-right plan. The Applicant shall reimburse the Township for any remaining balance of such review fees.

37. The Applicant's preliminary subdivision and land development plans may be submitted in a series of phases and the first phase plans shall then include an overall phasing plan.

38. The Board of Supervisors shall have the right, upon request of the Applicant, to modify any of the conditions set forth herein without reopening the hearing record on the conditional use application.

BY ORDER OF THE BOARD OF SUPERVISORS

Attest:

Cinda M. Cleaver

[Signature]
[Signature]
[Signature]