

**BEFORE THE
BOARD OF SUPERVISORS OF
SMITHFIELD TOWNSHIP**

**In Re: Application by Shawnee Stage 1, LLC, Shawnee Sun Mountain LLC,
and Shawnee Stage 4, LLC, for 2021 Amended Tentative Approval of the
Shawnee Valley Planned Residential Development**

**FINDINGS OF FACT,
CONCLUSIONS AND DECISION**

BACKGROUND

A. The original grant of tentative approval for the Shawnee Valley Planned Residential Development (“SVPRD”) was approved and issued by the Smithfield Township Board of Supervisors (“Board”) on July 26, 1988 (“Tentative Approval”). The Board issued its decision in the form of findings of fact (“Findings of Fact”) based on the evidence and setting forth the terms and basis of the Tentative Approval. The Tentative Approval provided for the development of a total of 1602 residential dwelling units on a 1006-acre site in Smithfield and Middle Smithfield Townships fronting on Mt. Nebo, Hollow and Mosier’s Knob Roads by Shawnee Development, Inc. (“SDI”).

B. The SVPRD, as originally proposed and approved, was to be developed in four (4) stages. Each stage included sub-phases. According to the original development schedule, the SVPRD was projected to be completed over a period of approximately fifteen (15) years. The Tentative Approval expressly provided SDI with the ability to extend the deadline for completion of the stage and phases of the development (“Extension” or “Extensions”). SDI submitted

letters to the Board requesting an Extension, or where none was required, providing an update on the progress of the SVPRD (“Update”), on an annual basis.

C. On April 26, 2005, after public hearing, the Board unanimously approved a motion of an Amended Tentative Approval and issued amendments to the Findings of Fact (“2005 Amended Findings of Fact”) in support of and summarizing the bases for the 2005 Amended Tentative Approval (“2005 Amended Tentative Approval”). The 2005 Amended Findings of Fact incorporated the Findings of Fact by reference.

D. The 2005 Amended Tentative Approval was appealed by third party appellants to the Court of Common Pleas of Monroe County. Following briefing and oral argument, an Opinion was issued, and an Order dated May 11, 2006, was entered by the Honorable Ronald E. Vican, President Judge, dismissing the appeal. In his Opinion, Judge Vican held that the Board has the authority under the MPC and the PRD Ordinance to consider and approve amendments to the Tentative Approval.

E. A subsequent developer, C&M Homes (“C&M”), submitted final plans for Stage Ib (“Stage Ib Plans”) of the SVPRD which plans were consistent with the 2005 Amended Tentative Approval. Stage Ib Plans received Final Approval from the Board on December 14, 2005. An attempted appeal of this approval was quashed by the Court of Common Pleas of Monroe County which action was not further appealed or contested.

F. The Board, SDI and C&M executed a document dated as of November 13, 2007, titled “Agreement and Conditional Use Application regarding Amended Tentative Approval of Shawnee Valley Planned Residential Development”. On November 20, 2007, the Board, SDI and C&M executed a document dated November 20, 2007, “Addendum to the November 13, 2007, Agreement and Conditional Use Application”. The November 13, 2007, Agreement and the November 20, 2007, Addendum are hereinafter referred to collectively as the “11/13/07 Agreement”.

G. On November 20, 2007, C&M and SDI (together hereinafter collectively referred to as “Prior Developers”) filed an Application for a Public Hearing (“Application”) requesting a conditional use hearing on their request for further amendment to the Tentative Approval of the Shawnee Valley Planned Residential Development, as previously amended by the 2005 Amended Tentative Approval. The Application included the plan identified and referred to in the 11/13/07 Agreement as the “Settlement Plan”.

H. The Settlement Plan included no changes to Stage Ib of the SVPRD except for the agreement for 5 acres of Stage Ib along Hollow Road previously approved for commercial use to be converted to open space use. The Application also included changes to tentative plans for Stages II, III and IV.

I. The Application was reviewed by the Smithfield Township Planning Commission at a public meeting on December 5, 2007. At the conclusion of its meeting, the Planning Commission unanimously recommended that the Application be approved with the suggestion that the Township Solicitor work

with the applicants to refine the language in the agreement to better define the term “general public” where it is used in the November 20, 2007, Addendum regarding the amenities in Stage IV.

J. Although neither Article 7 of the MPC nor the PRD Ordinance requires that amendments to a previously approved Tentative Approval of a PRD be reviewed by the Monroe County Planning Commission, the Application was delivered to the Monroe County Planning Commission. The County Planning Commission issued a review letter dated December 11, 2007.

K. On December 28, 2007, after public hearing, the Board unanimously approved a motion of an Amended Tentative Approval and on January 3, 2008, issued amendments to the Findings of Fact (“2007 Amended Findings of Fact”) in support of and summarizing the bases for the 2007 Amended Tentative Approval (“2007 Amended Tentative Approval”). The 2007 Amended Findings of Fact incorporated the 2005 Finding of Facts and the Findings of Fact by reference.

J. On January 28, 2008, Shawnee Preservation Society et al (“SPS”) filed a land use appeal with the Monroe County Court of Common Pleas against the Board and C&M and SDI challenging the validity of the 2007 Amended Tentative Approval (“SPS Appeal”).

M. On October 30, 2008, C&M and SDI executed a Settlement Agreement and Mutual Release (“C&M Settlement Agreement”) under which SDI assumed all rights and obligations under the terms of the SVPRD Approvals and C&M

released and assigned all such rights and obligations to SDI. Further, C&M agreed to and did withdraw from the SPS Appeal.

N. On October 8, 2009, SPS and SDI and the Board concluded extensive and detailed discussions and executed a Settlement Agreement (“SPS Settlement Agreement”) which was approved and entered by the Honorable Ronald E. Vican, President Judge. The Terms of the SPS Settlement Agreement generally include, but are not limited to, making the following changes to the 2007 Amended Tentative Approval:

1.a. Conditional elimination of a number of units in Stage Ib, building height limitations and conditional enlargement of certain conservation setbacks beyond those required under applicable regulations;

1.b. Conditional revisions to the locations and types of certain roadways along with certain conditions and restrictions to the same;

2. Both above conditioned that “provided that all approvals are given for the elimination of the road access across the Sun Mountain Lake dam and for the elimination of any new roadway connections to Hollow Road at Sun Mountain”;

3. Agreement to hold open for purchase until November 30, 2012, of approximately 500 acres of land contained in Stage II and III to be made by a governmental agency or non-profit organization whose purpose is land conservation (“Land Conservation Buyer”);

4. Adoption of building height limits in Stage IV limited to that approved under the 2007 Amended Tentative Approval;

5. Modifications to the placement of site plan features, modifications to the selection of exterior colors, designs and materials and concealment of exterior lighting in Stage IV;

6. Limitations to tree clearing, enhancements of landscape and adoption of native species in Stage IV;

7. Removal of all lands included in the SVPRD and certain Tax Parcels 16-733200-66-9769 and 16-733200-67-7668 owned by Ski Shawnee (“Ski Shawnee Parcels”) from the land uses shown on the Official Map for Smithfield Township;

8. Other various obligations and responsibilities related to blasting, bog turtle habitat management and SVPRD projected development schedule;

9. Provisions for discussion of matters of concern and designation of representatives for each party and for dispute resolution.

10. Conditions and limitations on SPS, individual members and related individuals to appeal, challenge or interfere, including statements or communications, with public participation, Township approvals or agency approvals.

O. On December 22, 2010, an amendment to the SPS Settlement Agreement making modifications requested by the Trust for Public Lands (“TPL”), acting as the Land Conservation Buyer, was executed (“SPS First Amendment”). On September 12, 2011, a second amendment to the SPS Settlement Agreement making further modifications requested by the Land Conservation Buyer, was executed (“SPS Second Amendment”). On or about September 15, 2011, the two

Amendments and a Joint Motion to Approve Amendments were submitted to the Court of Common Pleas of Monroe County, (“Joint Motion to Approve the Settlements”) and were subsequently approved by the Court and recorded.

R. In late 2014 and early 2015, SDI sold and the TPL purchased, the majority of the SVPRD lands in Stage II and III, consisting of approximately 550 acres, thereby fulfilling one of the most important provisions and obligations of SPS Settlement Agreement. The land was subsequently transferred from TPL to the National Park Service (“NPS”) for conservation and was added to The Delaware Water Gap National Recreation Area for conservation and recreation purposes. The NPS owned land remains included in the SVPRD plan and is governed to remain as conservation land and PRD open space under the provisions of the SPS Settlement Agreement. However, the NPS land uses for Stages II and III remain unchanged and are shown as single-family home and townhome development in the “2007 Amended Tentative Approval”.

S. The Annual Updates which SDI provided each year stated that SDI contemplated “a possible sale to a former Wyndham executive which is being explored for Stages 1b and IV”. On or about December 17, 2020, SDI sold its land holdings within the SVPRD to three business entities formed by the former executive, Shawnee Stage 1, LLC, Shawnee Sun Mountain, LLC and Shawnee Stage 4, LLC (“Shawnee LLC’s”).

T. Shawnee LLC’s (hereinafter referred to as “Developer”) consulted with its traffic engineering consultant and concludes that the Pennsylvania Department of Transportation will not approve the elimination of the previously

planned road access across the Sun Mountain Lake dam and the elimination of the previously planned roadway intersection with Hollow Road at Sun Mountain. Therefore, under the conditions of the SPS Settlement Agreement paragraph II.A.1.a., the Developer is no longer obligated 1) to eliminate the Sun Mountain Dam roadway crossing and intersection, 2) to eliminate the 33 lots associated with that roadway and 3) to increase the buffers on Shawnee Lake. However, the Developer proposes a compromise solution in a proposed Third Amendment to the SPS Settlement Agreement (the “Proposed SPS Third Amendment”) to still eliminate the 33 lots associated with that roadway and to increase the buffers on Shawnee Lake in exchange for the Board approving and SPS agreeing for the Developer 1) to construct the roadway across the Sun Mountain Dam, 2) to construct the corresponding intersection with Hollow Road and 3) to construct single family homes on three previously existing subdivided lots (Tax Parcels 16/3/1/10, 16/3/1/11, 16/3/1/12, and 16/3/1/13) located on Knob Lane. SPS has not responded timely to this proposed compromise. Therefore, the proposed 2021 PRD Amendment is planned as if the Proposed SPS Third Amendment is agreed but the Developer further reserves the unconditional right to proceed with clearing the conditional buffer and constructing the 33 lots.

FINDINGS

55. When the Prior Developers applied for, submitted, presented, and obtained conditional approval for the 2007 Amended Tentative Approval of the SVPRD, they numbered their list of additional 2007 Findings of Fact as number

1 through 17, rather than continue numbering after the last Finding of Fact in prior 2005 Amended Tentative Approval, number 37. This created Findings of Fact which duplicated numbers and potentially confuses information. Therefore, the 2007 Amended Tentative Approval Finding of Fact is re-entered, herein attached, with no factual changes except renumbered sequentially as marked from number 38 to 54. Further, the Conclusions numbered in the 2007 Amended Tentative Approval are also renumbered as 1 through 11.

56. On September 16, 2021, Developer filed an Application for a Public Hearing (“Application”) requesting a conditional use hearing on their request for further amendment to the Tentative Approval of the Shawnee Valley Planned Residential Development, as previously amended by the 2005 Amended Tentative Approval and the 2007 Amended Tentative Approval. The Application included the plan identified as the 2021 Amended Tentative Plan for Shawnee Valley (“2021 Amended Tentative Plan”).

57. Although neither Article 7 of the MPC nor the PRD Ordinance requires that amendments to a previously approved Tentative Approval of a PRD be reviewed by the Monroe County Planning Commission, the Application was delivered to the Monroe County Planning Commission. The County Planning Commission issued a “courtesy review” letter dated September 20, 2021.

58. On October 01, 2021, Developer filed a minor revision to the Findings and the exhibits submitted with the Application for Public Hearing.

59. The 2021 Amended Tentative Plan included changes to Stages II, III, and IV which could be approved by the Township as part of the Final Plan

process under the MPC, but which can be better addressed as an amendment to the Tentative Approval.

60. The public hearing on the Application was then held pursuant to public notice given in accordance with the provisions of the MPC and the ordinances of Smithfield Township on DATE TO BE INSERTED at 7:00 PM at the Smithfield Township Municipal Building (the “Public Hearing”).

61. At the Public Hearing, the Township entered into evidence proof of publication and posting of the property as well as the Application and copies of the letters from the Smithfield Township Planning Commission dated INSERT DATE HERE.

62. At the Public Hearing, the Developer presented testimony and the following Exhibits which were accepted into evidence:

Exhibit A. SHAWNEE VALLEY PLANNED RESIDENTIAL DEVELOPMENT CUMULATIVE FINDINGS OF FACTS AND APPROVALS including 2007 Amended Grant of Tentative Approval dated January 3, 2008

Exhibit B.1. 2007 Amended Tentative Plan dated July 17, 2007

Exhibit B.2. 2021 Amended Tentative Plan dated July 14, 2021

Exhibit B.3. Shawnee Valley Planned Residential Development 2021 - Land Use Comparison Chart

Exhibit C.1. SPS Settlement Agreement dated December 8, 2009

Exhibit C.2. First Amendment to SPS Settlement Agreement dated December 22, 2010

Exhibit C.3. Second Amendment to SPS Settlement Agreement
dated September 12, 2010

Exhibit C.4. Proposed Third Amendment to SPS Settlement
Agreement

Exhibit D. Letter from the Shawnee Valley Owners Association
(SVOA) Board of Directors dated DATE TO BE INSERTED

Exhibit E. Letter from the Shawnee Fire Company #36 Volunteer
Fire Department dated June 15, 2021

63. At the Public Hearing, Developer entered into evidence the SHAWNEE VALLEY PLANNED RESIDENTIAL DEVELOPMENT CUMULATIVE FINDINGS OF FACTS AND APPROVALS including 2007 Amended Grant of Tentative Approval (Applicant's Exhibit A), along with the 2021 Amended Tentative Plan (Applicant's Exhibit B.2) and the Comparison Table which is titled "Shawnee Valley Planned Residential Development 2021 - Land Use Comparison Chart" ("Comparison Table") (Applicant's Exhibit B.3).

64. As shown in the 2021 Amended Tentative Plan and as summarized on the Comparison Table, the 2021 Amended Tentative Plan proposes to:

A. Revise Stage II and Stage III boundary to sub-divide approximately 13 acres of land into a separate parcel and change the land use of the remainder of the Stage II and Stage III land from single family and multi-family residential land use into Open Space as defined in previous PRD Tentative Approvals, including eliminating roadways and stream crossings, all in compliance with the SPS Settlement Agreement;

B. Reduce the total number of units from 1,245 units to 962 units comprised of 462 residential single family and multi-family units and 500 time-share units, resulting from deleting 136 townhouse units and 114 single family home lots from Stage II and III and deleting 33 zero lot line units between Sun Mountain Recreation Area and Knob Lane, all in compliance with the SPS Settlement Agreement, conditioned on the unconditional right, subject only to compliance with all of the standard provisions and processes for PRD Amendments, to reinstate up to 283 Residential Units elsewhere in the PRD through the submission and approval of a subsequent PRD Amendment.;

C. Provide for conservation buffers and building setbacks as prescribed in the SPS Settlement Agreement, except allowing for proposed Lakeview Drive to cross the Sun Mountain Lake Dam and intersect with Hollow Road at the Sun Mountain Recreation Club as previously planned, engineered and preliminarily approved by governmental agencies in the Final Approval of Stage 1B and excluding from the buffer and adding 3 single family home units on previously sub-divided lots on Knob Lane, all in compliance with the SPS Settlement Agreement and the proposed Third Amendment to SPS Settlement Agreement;

D. Reduce the number of developed acres from 310 acres to 153 acres a total of which 68 acres has already been developed; Reduce the total number of miles of roadway within the planned residential

development from 11.7 miles to 8.9 miles total of which 3.0 miles have already been built in prior stages;

E. Increase the total acres of open space from 655 acres to 828 acres; Increase the percentage of open space from 64 percent to 80 percent (where only 25% was required under the applicable provisions of the Zoning Ordinance and only 35% was recommended as the minimum in the 2001 Smithfield Township Comprehensive Plan).

F. Reduce the number of Joint 105 stream crossings from 28 impact areas to only 13 impact areas of which 7 have already been completed. The remaining 6 have been reviewed and approved under the joint jurisdiction of the US Army Corp of Engineers and the Pennsylvania Department of Environmental Protection.

65. The 2005 Amendment and the 2007 Amendment reduced the number of units and the acreage of commercial land use. The 2021 Amendment further reduces the number of units. The SVPRD as revised by the 2021 Amended Tentative Plan exceeds the open space requirements and contains fewer units than is allowable. Developer recognizes the desirability to adapt the SVPRD to meet changing market conditions and opportunities. Therefore, Developer hereby reserves the right to submit for and obtain approval for future Amendments to increase the number of residential units and to reinstate commercial uses, subject to the compliance with applicable Township Ordinances including any conditions and variances granted by the Board.

CONCLUSIONS

1. The Board has the power and authority under Article 7 of the MPC and the PRD Ordinance to consider the Application and to further amend the Tentative Approval and Amended Tentative Approvals of the SVPRD.

2. The public hearing on the Application held **DATE TO BE INSERTED** was properly advertised and the property was properly posted and all applicable procedural requirements for the hearing were satisfied.

3. With respect to the existing Findings of Fact and Conclusions as enumerated in the 2007 Amended Grant of Tentative Approval (Applicant's Exhibit A):

a. To the extent that Finding of Fact #4 in the Tentative Approval, Finding of Fact #32 in the 2005 Amended Tentative Approval, Finding of Fact #51.d in the 2005 Amended Tentative Approval and Conclusion #3.c in the 2007 Amended Tentative Approval are inconsistent with the information shown on the 2021 Amended Tentative Plan and the Comparison Table, said Findings are amended to incorporate the updated information as hereinabove set forth.

b. Finding of Fact #5 in the Tentative Approval, Finding of Fact #33 in the 2005 Amended Tentative Approval and Finding of Fact #51.b and Conclusion #3.b in the 2007 Amended Tentative Approval are amended to acknowledge that of the total of 962 units, 500 units are set aside for time-share or other fractional ownership or use programs.

c. Findings of Fact #7 and #8 in the Tentative Approval, Finding of Fact #34 in the 2005 Amended Tentative Approval and Findings of Fact #51.d and Conclusion #3.c in the 2007 Amended Tentative Approval are amended to confirm the SVPRD as amended by the 2021 Amended Tentative Plan proposes 828 acres of permanent open space; that the acreage proposed to be covered by impervious surfaces will be reduced from that which is shown in the 1988 Tentative Approval, the 2005 Amended Tentative Plan and the 2007 Amended Tentative Plan (together the “Tentative Plan and Amendments”); and to recognize that these totals are subject to adjustment as final plans are submitted for the Stages Ib and IV of the SVPRD.

d. Finding of Fact #28 is amended to read “Prior to Final Approval for construction in the property, Applicant shall own by Deed in fee ownership all stages and phases of the property subject to this plan which are submitted for Final Approval.”

4. The 2021 Amended Tentative Plan is deemed to be consistent with the previously approved Tentative Plan and Amendments. To the extent the 2021 Amended Tentative Plan deviates from the previously approved Tentative Plan and Amendments, the Board finds that such amendments are in the public interest. The Board further finds that:

a. The Development Plan is consistent with the Comprehensive Plan for the development of Smithfield Township in that, inter alia, (i) it proposes a greater percentage of Open Space (80% vs. 25%) than the

minimum recommended in the plan, (ii) it proposes a lower density (0.94 units per acre vs. 1.7 units per acre) than the maximum recommended in the plan; and (iii) that it does not impact one of the areas identified as “Prime Natural and Historic Resources That Should Be Protected” which are enumerated in Section 3.1.2 of the Comprehensive Plan;

b. The purpose, location, and amount of common open space as shown on the 2021 Amended Tentative Plan substantially exceeds the requirements of the PRD Ordinance and will preserve, promote, and enhance open space values in the Township;

c. The 2021 Amended Tentative Plan ensures that the SVPRD makes adequate provision for public services; provides adequate control over vehicular traffic; and furthers the amenities of light and air, recreational and visual enjoyment; and

d. The 2021 Amended Tentative Plan will not adversely impact the neighborhood in which the SVPRD is being developed and will be more beneficial to that neighborhood than would development pursuant to the previously approved Tentative Plan and Amendments.

e. This iteration of the 2021 Amended Tentative Plan is a significant improvement over earlier versions that have been approved.

5. The Board finds that future Amendments to the SVPRD which increase the number of units, or which add commercial uses that adapt the SVPRD to meet changing market conditions and opportunities will be acceptable

to the Board, subject to compliance with applicable Township Ordinances including any conditions and variances granted by the Board.

6. The development schedule set forth in the most recent update letter submitted by the Developer and approved by the Board on December 9, 2020, shall supersede any previously approved development schedule, until such further updated schedule may be provided by the Developer.

7. Numerous persons requested and were granted party status by the Board at the Public Hearing. These parties were permitted to present testimony, exhibits and other items of evidence, and to cross examine the witnesses and express opinions related to SVPRD.

8. Although some of these parties cross examined witnesses and expressed opinions related to the SVPRD, no party presented any testimony, exhibits or other items of evidence that would support a conclusion that the 2021 Application and 2021 Amended Tentative Plan should be denied because the 2007 Amended Tentative Plan (Exhibit A) is a better plan.

9. No evidence was presented in opposition to the 2021 Amended Tentative Plan and no opinions were expressed that the 2021 Amended Tentative Plan should not be approved as an amendment to the previously approved Tentative Plan and Amendments.

10. No evidence was presented by any person granted party status that causes the Board to conclude that the 2021 Amended Tentative Plan is not in the best interests of the public as a further amendment to the SVPRD Tentative Plan.

11. No evidence was presented by protestants that the 2021 Application as opposed to the previously approved Tentative Plan and Amendments “would present a substantial threat to the community”.

12. The Developer’ testimony and exhibits show that they have met the express standards and conditions of the applicable Township Ordinances and no evidence was presented by the protestants to show that the Developer had not met these standards and conditions.

DECISION

AND NOW, this _____ day of _____, 2021, the Application is approved, subject to the conditions set forth on Schedule A attached hereto and made a part hereof.

Attest:

**Board of Supervisors
Smithfield Township**

SCHEDULE A

See Attached Document Entitled **Approval With Conditions** which enumerates the ## conditions of this approval.

APPROVAL WITH CONDITIONS

Supervisors hereby approve the 2021 Application for Amended Tentative Approval of the Shawnee Valley Planned Residential Development which approval is further subject to the conditions as set forth hereinafter:

1. Developer shall develop Stages Ib and IV of the Shawnee Valley PRD substantially in accordance with the terms of the Findings of Fact #1 through #65, the 2021 Amended Tentative Plan (Exhibit B.2) and as summarized on the Comparison Table (Exhibit B.3).
- 2.