

**SHAWNEE VALLEY  
PLANNED RESIDENTIAL DEVELOPMENT**

**CUMULATIVE FINDINGS OF  
FACTS AND APPROVALS**

**SECTION 1  
1988 FINDINGS OF FACT**

**SECTION 2  
2005 FINDINGS OF FACT**

**SECTION 3  
2007 FINDINGS OF FACT WITH  
CONCLUSIONS**

# SECTION 1

SHAWNEE VALLEY PRD

1988 FINDINGS OF FACT

FINDINGS OF FACT

1. On April 8, 1988, an application for tentative approval of Shawnee Valley, a Planned Residential Development, was filed with Ralph Snavely, Zoning Officer of Smithfield Township, pursuant to Section 5.5 of the Zoning Ordinance No. 38, as amended, and pursuant to the Municipalities Planning Code, Act 247.

2. Pursuant thereto, a public hearing was held on June 8, 1988, at 7:00 P.M., at the Smithfield Township Municipal Building and again on June 29, 1988, at 7:00 P.M., at the Smithfield Township Municipal Building.

3. The Applicant, Shawnee Development, Inc., either owns, has agreements of sale, or is lessee under a lease with a term in excess of forty (40) years for the 1,012 acres of land proposed to be developed, of which 1,006 acres is situated in Smithfield Township. The proposed Planned Residential Development (PRD) is identified as the Shawnee Valley PRD.

4. The Application proposes the development of 1,601 dwelling units (of which 1,571 are located in Smithfield Township) comprised of 555 single family detached units, 249 single family attached (double or triplex) units; 677 single family attached (townhouse) units, and 120 multi-family condominiums. We believe that the proposed land use plan conforms to and is consistent with permitted uses under the PRD section of the Ordinance, and, therefore, supersedes the provisions of the Township Subdivision and Land Development Ordinance with regard to conventional lot and roadway requirements.

5. Of the 677 single family attached units, 158 are set aside for vacation timesharing villas, and 120 are set aside for vacation quarter-sharing townhouses. The remainder will be designed for an undetermined combination of vacation and primary use.

6. The Application proposes an average gross residential density of 1.6 dwelling units per acre, well below the maximum density of 7 units per acre permitted by the PRD Ordinance, and is, therefore, consistent with Section 5.5.5.1 of the Zoning Ordinance.

7. 522 acres are proposed as permanent open space, comprising more than 50% of the area, which is greater than the 25% requirement of Section 5.5.5.3 of the Ordinance. All wetlands and a majority of steep slope areas are proposed to be located in such common areas to be owned and maintained by Applicant until transferred to a homeowners association. Protective covenants to be recorded will permanently protect the common areas from adverse impacts from development.

8. The proposed development will have 13% of the area covered by buildings, roads and parking areas and other impermeable surfaces, as compared to the maximum coverage of 40% permitted by the PRD Ordinance.

9. Community centralized sewer and water service is planned to serve the Shawnee Valley PRD, which is feasible for the proposed development. Should expansion of the proposed Sewer Treatment Plant become necessary in order to continue to serve the Shawnee Valley PRD, Township approval will be granted as long as all permit requirements (local, state and federal) are met.

10. Adequate control of storm water drainage is feasible for the proposed development. Applicant will provide detailed procedures for storm water management in the final plan application for each stage.

11. The requirement for location of commercial uses should be modified to permit the commercial activities allowed as part of a PRD to be located at the location previously approved for the Shawnee Village PRD commercial area and as an expansion of this area previously approved, the total area of which will not exceed 5% of both PRD's.

A. Other non-residential uses, including common facilities, sales office, model homes, open space and recreation, are designed on the plans submitted and are customary uses permitted in the PRD Section, and are, therefore, consistent with the Zoning Ordinance. - 49

B. Non-residential uses necessary for and accessory to the development and/or the maintenance of a PRD, such as administrative offices, maintenance facilities, and association meeting facilities, are also consistent with the PRD Section in the Township Zoning Ordinance. Such uses may be designated within the common areas at the time of final plan application for each stage.

12. The requirement for a 60' right-of-way for collector streets should be modified to conform to the required 50' right-of-way for collector streets in the Subdivision and Land Development Ordinance.

13. All streets are subject to the following rights-of-way and cartway widths:

A. Collector Streets: Mosier's Knob Road, Hollow Road, Mt. Hebo Drive, and Shawnee Valley Drive to have 50' rights-of-way and 20' cartways with 5' shoulder on each side on Shawnee-owned property.

B. Local Streets: to have 40' rights-of-way and 20' cartways with 5' shoulder on each side on Shawnee-owned property.

C. Private drives serving cluster single family housing to have 16' cartways.

D. Parking court drives to have 20' cartways.

E. Road alignments may be adjusted horizontally and vertically as part of final plans for each stage and phase.

14. The requirement for two off-street parking spaces should be modified to permit off-street parking spaces to be located in group parking areas and parking courts.

15. The alignment of roads and locations of parking courts, private cluster drives and structures is approximate, and may be shifted as a part of final plan application for each stage or sub-phase, provided the purpose of the overall circulation system and structure location pattern is maintained.

16. The requirement in the PRD Ordinance of not more than 600' in length for a cul-de-sac shall be modified to allow 800' length cul-de-sacs to parking courts and parking drives as allowed in the Subdivision Ordinances. (Clearwater Pond and Woodsbluff, for example).

17. Landscaped islands of 20' in diameter in cul-de-sacs shall be permitted, as long as a paved width of 20' is maintained around the turnaround.

18. Local roads may include a 40' right-of-way (as allowed by the PRD Section 5.5.9.5) and 18' cartway with 6' shoulders as allowed by Sub. Regs (table 4 as amended).

19. Hillside Drive shall be classified as a local road. Due to topographical constraints, standards for a collector road designation cannot be met. However, the importance of this road is so great that its existence, albeit as a local road, is a great benefit.

20. An auxiliary bus parking lot for the Shawnee Mountain Ski Area is to be located along Shawnee Valley Drive, with its entrance across from Sky View Drive. Natural treed buffers along Shawnee Valley Drive and Hollow Road will conceal its view.

The new bus parking lot replaces the existing bus parking lot eliminated as a result of the location of the intersection of Shawnee Valley Drive and Sky View Drive.

21. Building set-back areas shall be as follows:

A. Minimum front yard set-back of 20' from any adjoining street rights-of-way and/or 15' from the edge of any designated group parking area.

B. All buildings shall be set-back a minimum of 50' from any PRD perimeter property line, except where abutting other lands of the Owner.

C. All buildings shown on plans are illustrative regarding general location and approximate footprint size. All buildings shall be placed within building envelopes during final plan preparation.

22. The proposed development will take place in four stages including sub-phases within each stage, over a period of approximately fifteen (15) years. Each stage will contain various sections. Approximately 25% of the dwelling units are proposed in each stage.

A. An application for final approval of Stage I or Stage I sub-phases is intended to be filed not later than 12 months after Tentative Plan Approval. Estimated completion time is 36 months.

B. An application for final approval of Stage II or Stage II sub-phases is intended to be filed not later than 6 months after the completion of Stage I construction. Estimated completion time is 36 months.

C. An application for final approval of Stage III is intended to be filed not later than 6 months after the completion of Stage II construction. Estimated completion time is 36 months.

D. An application for final approval of Stage IV is intended to be filed not later than 6 months after the completion of Stage III construction.

E. The Board of Supervisors recognizes that the national economy could affect the progress of the development; under such circumstances, annual extensions may be allowed.

23. The proposed development incorporates lands included as Stages III and IV of the previously approved Shawnee Village PRD, which stages will be developed as proposed in the present Shawnee Valley PRD in lieu of the development proposed in the previously approved Shawnee Village PRD.

Notwithstanding the transfer of the lands of Stages III and IV of the Shawnee Village PRD to the Shawnee Valley PRD, Shawnee Village PRD continues to comply with all open space, density, and impervious surface requirements.



24. Low intensity lighting will be provided at each final stage application, as either free-standing port lights and/or by lighting attached to individual dwellings.

25. A comprehensive plan for community signage will be presented at the time of final plan submission for Stage I. It will provide for the following types of signs:

A. Shawnee Valley Entrance Signs (Major)  
Hillside Drive and Hollow Road  
Shawnee Valley Drive and Hollow Road  
Lakeside Drive and Hollow Road  
Mt. Nebo Drive and Shawnee Valley Drive  
Mosiers Knob Road and Copenhagen Lane  
Mosiers Knob Road and Upper Ski Lodge Road

B. Village Identification Sign(s) for each Neighborhood (Village)

C. Facility Identification Signs

- 1) NorthSlope Recreation Area
- 2) Sun Mountain Recreation Area
- 3) Lakeside Restaurant
- 4) Model homes and Sales Area
- 5) Etc. (e.g. Operations Center, NOA Meeting Hall)

D. Directional Signs for Dwellings/Villages

E. Dwelling Unit Numbering

F. Street Signs

26. The provisions of the Traffic Improvement proposal of June 28, 1988 submitted earlier shall be incorporated herein. The highlights of this agreement are as follows:

A. Applicant has agreed to make specific improvements to certain State and Township roadways and intersections;

B. Applicant has agreed to grant rights-of-way to the Township (and the State) along certain Township roads (and State roads) for nominal consideration for the improvement of such roads by the Township (and/or the State);

C. Applicant has agreed to aid in the provision of a traffic signal system at the intersection of Buttermilk Falls Road and Route 209;

D. Applicant has agreed not to offer any new roads for dedication to the Township unless it requests Applicant to do so;

E. The Township has agreed to assist in the obtaining of necessary rights-of-way from private property owners, including condemnation if necessary;

F. The Township has agreed not to impose future (so-called growth) fees, if any, on Shawnee Valley.

27. The requested tentative plan approval is to be under the provisions of the current Smithfield Township Zoning Ordinance No. 38, Section 5.5 et seq., as well as the Municipalities Planning Code (Act 247) Article 7 et seq. The submission of final plans for all stages, as well as for revisions to and/or expansions of this PRD will likewise be under the current Zoning Ordinance No. 38, Section 5.5 et seq., and the Municipalities Planning Code, Article 7 et seq.

28. Applicant shall own by Deed all of the property subject to this plan in fee ownership prior to final approval.

# SECTION 2

SHAWNEE VALLEY PRD

2005 FINDINGS OF FACT

AMENDED GRANT OF TENTATIVE APPROVAL  
of  
SHAWNEE VALLEY PLANNED RESIDENTIAL DEVELOPMENT

FEB 10 2006

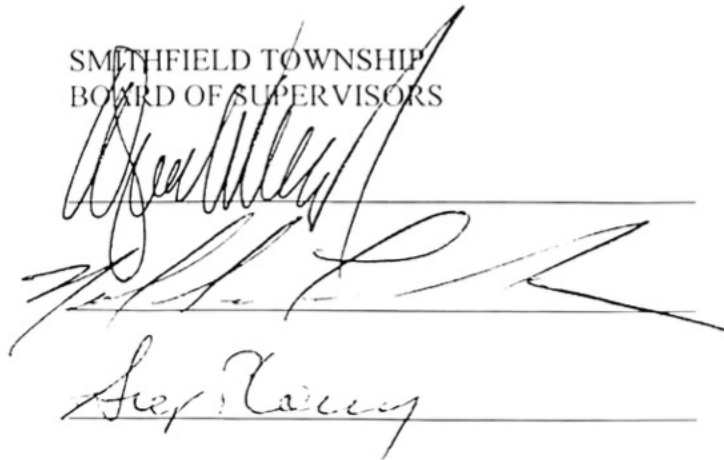
The Board of Supervisors of Smithfield Township, following a public hearing held April 26, 2005, pursuant to public notice, hereby grants Amended Tentative Approval of the Shawnee Valley Planned Residential Development and in support of its decision issues the following findings of fact:

29. Findings of Fact #1 through #28 attached hereto as Exhibit "A" are confirmed as the Findings of Fact that formed the basis of the Tentative Approval ("Tentative Approval") of the Shawnee Valley Planned Residential Development ("Shawnee Valley") granted July 26, 1988. These Findings of Fact supplement and amend the Findings of Fact attached as Exhibit "A".
30. C&M Shawnee Land Holdings, LP ("C&M") filed an application with the Township ("Application") requesting an amendment to the Tentative Approval. The Board of Supervisors chose to hold a public hearing on the Application which hearing was held on April 26, 2005, at 7:00 P.M. at the Smithfield Township Municipal Building and these Additional Findings are derived from the evidence received into the record at that hearing.
31. The evidence submitted by C&M at the hearing included, among other matters, (i) revised Sheets 1 and 2 of the Tentative Plans labeled "2005 Land Use & Circulation Plan With Staging" and "Staging Plan," respectively, prepared by Urban Research & Development Corporation which revised sheets show a revision date of April 6, 2005 to the original tentative plan dated April 6, 1988, (ii) tables summarizing and comparing the 1988 and amended 2005 plans and showing the revised unit configuration between stages and the proposed open space, developed and disturbed acreages and (iii) a Narrative Summary (together the materials are referred to as the "Amended Tentative Plan").
32. The Amended Tentative Plan proposes certain adjustments to the location of the single family detached and attached units which are consistent with the permitted uses under the PRD section of the Ordinance and the existing approval. To the extent that the information concerning the 1988 plan as set forth in Finding of

- Fact #4 is inconsistent with the Amended Tentative Plan, said finding is amended to incorporate the updated information set forth on the Amended Tentative Plan.
33. Finding of Fact #5 is amended to recognize that 527 of the units located in Smithfield Township are now set aside for use as part of timesharing and other fractional ownership or use programs.
34. Findings of Fact #7 and #8 are amended (i) to confirm that the Amended Tentative Plan proposes 585 acres of permanent open space and that the acreage proposed to be disturbed by impermeable surfaces will accordingly be reduced and (ii) to recognize that these amounts are subject to adjustment as Final Plans are submitted for the Stages, but will consistent with the amounts and limits provided in the PRD Ordinance.
35. Finding of Fact #22 is amended (i) to recognize that the four stages shall be substantially as shown on the Amended Tentative Plan and that the stages need not contain approximately 25% of the dwelling units each and (ii) to confirm that the projected schedule for the filing of the applications for final approval of each stage shall be as approved November 23, 2004 unless such schedule is accelerated or is hereafter extended or amended.
36. The Amended Tentative Plan is deemed to be consistent with the Tentative Approval.
37. Except as expressly amended by Findings of Fact 29 through 36 or amended by implication by the Amended Tentative Plan, Findings of Fact 1 through 28 as set forth on Exhibit "A" are ratified and confirmed.

Dated April 26, 2005

SMITHFIELD TOWNSHIP  
BOARD OF SUPERVISORS



The image shows three handwritten signatures in black ink, each written over a horizontal line. The signatures are stylized and cursive. The top signature is the most prominent, followed by a second signature below it, and a third signature at the bottom. The text 'SMITHFIELD TOWNSHIP BOARD OF SUPERVISORS' is printed above the top signature.

# SECTION 3

SHAWNEE VALLEY PRD

2007 FINDINGS OF FACT  
WITH CONCLUSIONS

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

**In Re: Application of C&M Shawnee  
Land Holdings, L.P. and  
Shawnee Development, Inc.**

**FINDINGS OF FACT, CONCLUSIONS AND DECISION**

**BACKGROUND**

✓ A. The original grant of tentative approval for the Shawnee PRD was approved and issued by the 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 Shawnee PRD, as originally proposed and approved, was to be developed in four (4) stages. Each stage included subphases. According to the original development schedule, the PRD was projected to be completed over a period of approximately fifteen (15) years. The Tentative Approval expressly provided the developer with the ability to extend the deadline for completion of the stage and phases of the development ("Extension"). SDI submitted a letter to the Board requesting an Extension, or where none was required, providing an update on the progress of Stage I ("Update"), on an annual basis.

C. On April 26, 2005 after public hearing, the Board unanimously approved a motion an Amended Tentative Approval and issued amendments to the Findings of Fact ("Amended Findings of Fact") in support of and summarizing the bases for the Amended Tentative Approval. The 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. C&M submitted final plans for Stage Ib ("Stage Ib Plans") of the Shawnee PRD which plans were consistent with the 2005 Amended Tentative Approval. Stage Ib received final approval from the Township 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.

#### **FINDINGS**

**38. -1-** The Smithfield Township Board of Supervisors, 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, an



Addendum to the November 13, 2007 Agreement and Conditional Use Application was made and executed by Township and Developers. The November 13, 2007 Agreement and the November 20, 2007 Addendum are hereinafter referred to collectively as the "11/13/07 Agreement".

**39. 2.-** On November 20, 2007, C&M and SDI (together hereinafter collectively referred to as "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 Amended Grant of Tentative Approval dated April 26, 2005. The Application included the plan identified and referred to in the 11/13/07 Agreement as the "Settlement Plan".

**40. 3.-** The Settlement Plan proposes no changes to Stage Ib of the PRD except for the agreement to convert to open space use about 5 acres of Stage Ib along Hollow Road which had been set aside in the final plan approval for commercial use.

**41. 4.-** The Settlement Plan proposes 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.

**42. 5.-** 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.

**43. -6.-** 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.

**44. 7.-** A duly advertised hearing on the Application was scheduled for December 11, 2007 at 7:30 P.M. at the Smithfield Township Municipal Building. The hearing was opened on that date but was continued to December 21, 2007 at 7:00 P.M. because the Board determined that notice of the hearing had not been posted on the property.

**45. 8.-** The continuation of 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 December 21, 2007 at 7:00 PM at the Smithfield Township Municipal Building (the "Public Hearing").

**46. -9.** 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 December 6, 2007, the Monroe County Planning Commission dated December 11, 2007 and a letter from John J. Donahue, Superintendent, Delaware Water Gap

National Recreation Area, United States Department of the Interior – National Park Service dated December 11, 2007.

**47. 10.** At the Public Hearing, the Developers presented testimony and the following Exhibits which were accepted into evidence:

A-1 2005 Amended Grant of Tentative Approval

A-2 November 13, 2007 Agreement

A-3 November 20, 2007 Addendum to November 13, 2007 Agreement

A-4 2007 Tentative Plan

A-5 Comparison Table (1988 – 2005 – 2007)

A-6 2005 Tentative Plan

**48. 11.** At the Public Hearing, the Amended Grant of Tentative Approval (Applicant's Exhibit A-1) was received into evidence. The 11/13/07 Agreement, being comprised of the Agreement and Conditional Use Application regarding Amended Tentative Approval of Shawnee Valley Planned Residential Development (Applicant's Exhibit A-2) and Addendum to Agreement and Conditional Use Application (Applicant's Exhibit A-3), was also received into evidence. In addition, the plan identified as "Settlement Plan" in the 11/13/07 Agreement, being a plan prepared by Urban Research & Development Corporation, revised through July 17, 2007 and entitled "2007 Amended Tentative Plan for Shawnee Valley Stages II, III and IV" (hereinafter sometimes referred to as "2007 Amended Tentative Plan") was entered into evidence as Applicant's Exhibit A-4.

49. 12. At the Public Hearing, Developers ratified and confirmed the terms of their agreements as set forth in the 11/13/07 Agreement. Accordingly, the Board incorporates the 11/13/07 Agreement into these findings of fact, by so doing, also ratifies and confirms the agreements of the Township as set forth therein.

50. 13. At the Public Hearing, Developers entered into evidence as Applicant's Exhibit A-5 a table which is attached as Exhibit C to the 11/13/07 Agreement and which is titled "Comparison of 1988 Tentative Approval, 2005 Amended Tentative Plan and 2007 Amended Tentative Plan" ("Comparison Table").

51. 14. As summarized on the Comparison Table, the Settlement Plan proposes to:

- a. Increase the total acreage in the Shawnee Valley Planned Residential Development from 1,006 acres to 1,025 acres;
- b. Reduce the total number of units from 1,602 units to 1,245 units comprised of 745 residential units (496 of which have been previously approved as Stage Ia and Ib) and 500 time-share units;
- c. Reduce the number of developed acres from 378 acres to 310 acres; proposes to reduce the total number of miles of roadway within the planned residential development to 11.7 miles;
- d. Increase the total acres of open space to 655 acres; proposes to increase the percentage of open space to 64 percent (where only 25 percent 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).

**52. 15.** 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 Shawnee Valley PRD.

**53. 16.** Superintendent Donahue noted in his letter:

a. "I commend the board of supervisors for your persistent efforts to improve the final plans for the Shawnee Valley Planned Residential Development..."

b. "I do not hesitate to comment that this iteration of the development plan is a significant improvement over earlier versions that have been approved."

**54. 17.** Although some of these parties cross examined witnesses and expressed opinions related to the Shawnee Valley PRD, no party presented any testimony, exhibits or other items of evidence that would support a conclusion that the 2007 Application and Settlement Plan should be denied because the 2005 Amended Tentative Plan (Exhibit A-6) is a better plan.

### **CONCLUSIONS**

**1. 18.** 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 Approval of the Shawnee Valley PRD.

2. ~~19.~~ The public hearing on the Application held December 21, 2007 was properly advertised and the property was properly posted and all applicable procedural requirements for the hearing were satisfied.

3. ~~20.~~ With respect to the existing findings of fact as enumerated in the 2005 Amended Grant of Tentative Approval (Applicant's Exhibit A-1),:

a. To the extent that Finding of Fact #4 in the Tentative Approval and Finding of Fact #32 in the Amended Tentative Approval are inconsistent with the information shown on the 2007 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 and Finding of Fact #33 in the Amended Tentative Approval are amended to acknowledge that of the total of 1,245 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 and Finding of Fact #34 in the Amended Tentative Approval are amended to confirm the PRD as amended by the 2007 Amended Tentative Plan proposes 655 acres of permanent open space; that the acreage proposed to be covered by impervious surfaces will be reduced from the 1988 Tentative Approval and from that which was shown on the 2005 Amended Tentative Plan; and to recognize that these totals are subject to adjustment as final plans are submitted for the Stages II, III and IV of the PRD.

d. Findings of Fact #22 in the Tentative Approval and Finding of Fact #35 in the Amended Tentative Approval are amended to acknowledge that Stages II, III and IV of the PRD shall be developed substantially as shown on the 2007 Amended Tentative Plan and that those Stages need not contain approximately 25 percent of the dwelling units in each Stage. Findings of Fact #22 and #35 are further amended to confirm that the projected schedule for the filing of applications for final approval of each stage shall be as set forth in section 20 of the 11/13/07 Agreement, 2007, unless such scheduled is accelerated or is hereafter extended or amended by the Board of Supervisors.

e. Exhibit D to the 11/13/07 Agreement is a "Schedule of Supplemental Zoning Criteria for Shawnee Valley Planned Residential Development". To the extent that those supplemental zoning criteria are inconsistent with the zoning criteria set forth in Finding of Fact 12 through 21, those findings of fact are amended and in the event of a conflict the zoning criteria in the Schedule will control.

4. 21. The 2007 Amended Tentative Plan is deemed to be consistent with the Tentative Approval as modified by the Amended Tentative Plan. To the extent the 2007 Amended Tentative Plan deviates from the Tentative Approval and the Amended Tentative Plan, 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 (64% vs. 35%) than the minimum recommended in the plan, (ii) it proposes a lower density (1.2 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 2007 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 2007 Amended Tentative Plan and the agreements of the Developers as set forth in the 11/13/07 Agreement ensure that the PRD 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 2007 Amended Tentative Plan will not adversely impact the neighborhood in which the PRD is being developed and will more beneficial to that neighborhood than would development pursuant to the Tentative Approval or Amended Tentative Plan.

e. The terms, conditions and agreements contained within the 11/13/07 Agreement are sufficient to protect the interests of the



public, the future residents of the PRD, and the integrity of the 2007 Amended Tentative Plan.

f. The development schedule set forth in the attached conditions shall supersede any previously approved development schedule.

g. This iteration of the development plan is a significant improvement over earlier versions that have been approved.

5. 22. Developers have not abandoned their rights under the Tentative Approval and 2005 Amended Tentative Approval by filing the Application.

6. 23. As stated in the 11/13/07 Agreement, to the extent any of the provisions of the 11/13/07 Agreement are inconsistent with the Tentative Approval and/or Amended Tentative Approval and the findings of fact that are a part of those decisions, the prior findings of fact are amended to incorporate the provisions of the 11/13/07 Agreement. To the extent the provisions of the 11/13/07 Agreement are not inconsistent with the Tentative Approval and/or Amended Tentative Approval and the findings of fact that are a part of those decisions, the prior findings are ratified and confirmed and shall remain in full force and effect.

7. 24. Many opinions and arguments were expressed in opposition to the Shawnee PRD in general. No evidence was presented that the 2007 Amended Tentative Plan is not better for the Smithfield Township community than the existing Amended Tentative Plan from 2005.

8. -25. No evidence was presented by any person granted party status that causes the Board to conclude that the 2007 Amended Tentative Plan is not in the best interests of the public as a further amendment to the Shawnee PRD Tentative Plan.

9. -26. As stated in Judge Vican's opinion and order of May 11, 2006 quoting the Commonwealth Court in Bailey v. Upper Southampton Township, 690 A.2d 1324, 1326 (Pa. Cmwlth. 1997), "As long as the applicant brings himself within the provisions in the ordinance, he has made his prima facie case and the application must be granted unless protestants present sufficient evidence that the use would present a substantial threat to the community."

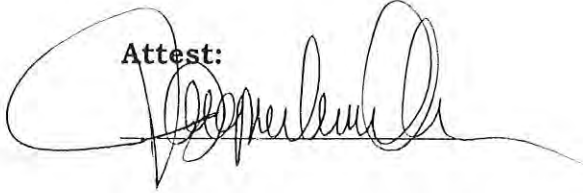
10. 27. No evidence was presented by protestants that the 2007 Application as opposed to the 2005 Amended Tentative Plan or the Tentative Plan from 1988 "would present a substantial threat to the community".

11. 28. The Developers' 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 Developers had not met these standards and conditions.

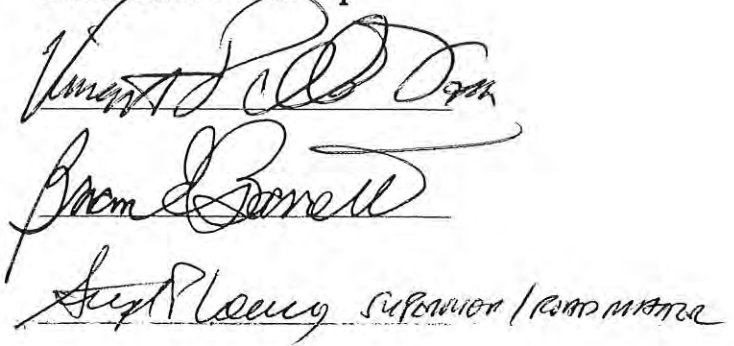
**DECISION**

AND NOW, this 5<sup>th</sup> day of ~~December~~ <sup>JANUARY 2008</sup>, 2007, 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**



*James J. ...*  
*...*  
*Sept 16, 2007 SUPERVISOR / ROAD DISTRICT*

**SCHEDULE A**

See Attached Document Entitled **APPROVAL WITH CONDITIONS** which enumerates the 30 conditions of this approval.

## **APPROVAL WITH CONDITIONS**

Supervisors hereby approve the 2007 Application for Amended Tentative Approval of the Shawnee Valley Planned Residential Development including and under and subject to the provisions, terms and conditions set forth in the 11/13/07 Agreement as amended by Addendum dated 11/20/07 (together the "11/13/07 Agreement") and further approve the annexation of the Egger Tract as an integral part of Stage IV of the Shawnee Valley PRD which approvals are further subject to the conditions as set forth hereinafter:

1. SDI and C&M shall develop Stages II, III and IV of the Shawnee Valley PRD substantially in accordance with the terms of the 11/13/07 Agreement, the Settlement Plan set forth therein and all other exhibits.
2. As more particularly set forth in Paragraph 6.B. (including the formula set forth in the footnote thereto) of the 11/13/07 Agreement, the number of residential units to be developed within Stages II and III shall not exceed the number equal to 549 less the number of residential units permitted on the Final Plans for Stage Ib. These units will be a mix of single-family detached dwellings and multi-family or townhouse style units.
3. SDI and C&M will reimburse the Township for all reasonable costs incurred by Township for a traffic study if required so that Mosier's Knob Road may be posted at a legally enforceable speed limit of 25 miles per hour.
4. SDI and C&M shall develop and construct new roads to be developed within Stages II and III which will intersect Mosier's Knob Road (except for the northeasterly most roadway entrance onto Mosier's Knob Road which will be restricted to use by emergency vehicles as set forth below) and the driveways to be developed on Mosier's Knob Road to serve units which will have frontage on Mosier's Knob Road substantially in accordance with the "Standards for Driveway and Road Access to Mosier's Knob Road" and the "Shawnee Valley PRD Mosier's Knob Road Access Plan" attached to the 11/13/07 Agreement as Exhibit "B".
5. SDI and C&M shall develop Stage IV, including the Egger Tract, in substantially the manner depicted on the Settlement Plan.
6. Stage IV shall contain no residential units and shall contain not more than five hundred (500) units, including two-key lock-off type units (each of which two-key lock-off type unit shall be deemed a single unit), which units shall be restricted to use as timeshare and resort transient lodging units.

7. SDI and C&M shall not develop any additional units in the portion of Shawnee Valley located in Middle Smithfield Township. The Middle Smithfield portion of Stage IV shall remain part of the open space within Shawnee Valley.

8. SDI shall insure that the amenities which are included within Stage IV shall not be open to the general public and that the owners and purchasers of timeshare units in Shawnee Village (including SDI's 41 units under construction at Ridgetop) will not have deeded rights to own or use the amenities built in Shawnee Valley Stage IV unless they also purchase an interest in one of the 500 units in Stage IV and whole ownership home owners and purchasers in Stages I, II and III of Shawnee Valley will also not have deeded rights to own or use the amenities built in Shawnee Valley Stage IV unless they also purchase an interest in one of the 500 units in Stage IV. The owners of the Stage IV timeshare and lock-off units, when not in residence or bona fide guests of persons in residence or when not on site as bona fide prospective purchasers of additional timeshare interests, shall be deemed members of the general public to which the amenities shall not be open.

9. Stage IIb shall contain no units, including residential, timeshare or resort transient lodging, however, a utility corridor and easement shall be allowed to provide utility services between Hollow Road and all or a portion of Shawnee Valley Stages II, III & IV.

10. SDI will finalize certain all easements from Ski Shawnee, Inc. which are necessary for the construction and development of an access road ("Access Road") across the lands of Ski Shawnee, Inc. to connect Stage IV to Hollow Road in substantially the manner depicted on the Settlement Plan. SDI shall provide recorded copies of such easements to the Township. The access road to Stage IV shall be permitted to start within Stage IIb as shown on the Settlement Plan.

11. C&M shall pay to the Township the sum of \$500.00 per residential unit approved and constructed in Stages Ib, II and III for a total maximum payment by C&M of \$274,000.00, subject to adjustment for inflation in accordance with the provisions of the 11/13/07 Agreement.

12. SDI shall pay to the Township the sum of \$500.00 per timeshare or resort transient lodging unit approved and constructed in Stage IV for a total maximum payment by SDI of \$250,000.00, subject to adjustment for inflation in accordance with the provisions of the 11/13/07 Agreement.

13. That the Developers shall cooperate with the Township in support of improvements the Township intends to seek in the area of the intersection of River Road and Hollow Road pursuant to Paragraph 13A of the 11/13/07 Agreement.

14. SDI and C&M shall be required to comply with the applicable permitting and approval requirements of all required outside agencies.

15. SDI and C&M shall design all lots such that no wetlands subject to the jurisdiction of the US Army Corps of Engineers ("USACOE") shall be contained within the building envelope of any lot and that with respect to any lot which contains a wetland or floodplain area, SDI and C&M shall establish a conservation easement or other restriction approved by the USACOE prohibiting encroachment into those areas, which easement or restriction shall be enforceable by the homeowners association(s) or the authorized regulatory agency..

16. If required by U.S. Fish and Wildlife, SDI and C&M shall establish a conservation easement together with a Management Plan approved by U.S. Fish and Wildlife for the protection of any bog turtle or other protected species habitat within Stages Ib, II, III and IV.

17. SDI and C&M shall submit final plans for Stage II not later than January 1, 2010, shall commence construction of the first phase of Stage II within six (6) months of receipt of all required permits and approvals and shall commence construction of the last phase of Stage II not later than five (5) years from commencement of construction of the first phase of Stage II. SDI and C&M shall apply for and diligently pursue such permits and approvals promptly following receipt from the Township of final approval which final approval is subject to receipt of such permits and approvals.

18. SDI and C&M shall file final plans for Stage III not later than January 1, 2010, shall commence construction of the first phase of Stage III within six (6) months of receipt of all required permits and approvals and shall commence construction of the last phase of Stage III not later than five (5) years from commencement of construction of the first phase of Stage III. SDI and C&M shall apply for and diligently pursue such permits and approvals promptly following receipt from the Township of final approval which final approval is subject to receipt of such permits and approvals.

19. SDI and C&M shall file final plans for Stage IV not later than January 1, 2010, shall commence construction of the first phase of Stage IV within six (6) months of receipt of all required permits and approvals, and shall commence construction of the last phase of Stage IV not later

than ten (10) years from commencement of construction of the first phase of Stage IV. SDI and C&M shall apply for and diligently pursue such permits and approvals promptly following receipt from the Township of final approval which final approval is subject to receipt of such permits and approvals.

20. The development schedule set forth in Conditions 17, 18 and 19 which is based on Paragraph 20 of the 11/13/07 Agreement shall supersede any previously approved development schedule.

21. All roads within the Shawnee Valley PRD shall be privately owned. SDI and C&M shall prepare a document in a form acceptable to the Township Solicitor which shall expressly provide that Township shall have no obligation to accept dedication of any of the internal roads within the Shawnee Valley PRD and shall record such document.

22. That SDI and C&M further shall grant the residents of Stage IV the right to use any open space and pedestrian trail system that may be constructed in Stages I, II and/or III and the residents of Stages I, II, and III shall be granted the right to use any open space and pedestrian trail system that may be constructed in Stage IV. SDI and C&M shall prepare documents to be recorded granting these rights, which may be made subject to reasonable rules and regulations governing such usage. Such documents shall provide that the residents of Stages I, II and III shall not be liable for any of the costs of construction, maintenance or repair of the open space and pedestrian trail system that may be constructed in Stage IV and that the residents of Stage IV shall not be liable for any of the costs of construction, maintenance or repair of the open space and pedestrian trail system that may be constructed in Stages I, II and/or III. The Township Solicitor shall approve the form of such documents, and SDI and C&M shall present the Township with proof that the documents have been recorded.

23. C&M and SDI shall reimburse the Township for all reasonable fees, including professional fees, due in the future to the Township in accordance with its standard fee schedule in effect from time to time which relate to the review and approval of Final Plans for Stages II, III and IV (whether filed pursuant to the 2007 Application for Shawnee Valley Stages II, III and IV following its approval by the Board of Supervisors or pursuant to the 2005 Amended Tentative Plan), monitoring of outside agency approvals related to such approvals, the inspection of required improvements, review of financial security and similar legal documents arising from and as the final plans for Stages II, III and IV are hereafter filed, reviewed, approved and the improvements constructed.



24. On December 21, 2007, Marianne Higgins filed an appeal of the May 11, 2006 Order (No. 3796 Civil 2006). In the event that that appeal is withdrawn, discontinued, stricken or otherwise has terminated favorably to the Developers within 180 days from December 21, 2007, and that any appeal from this Approval or any appeal or legal challenge filed to the 11/13/07 Agreement or from the Board's action in approving the Agreement or Addendum is withdrawn, discontinued, stricken or otherwise has terminated favorably to the appellees within 180 days from the commencement of any such appeal, then, in that event, C&M shall be subject to the following conditions:

A. that no lots having frontage on Hillbrow Road or Mosier's Knob Road in Stages II and III will be developed or sold to a third party prior to November 1, 2012, except that Developers may design and construct utilities lines and stormwater facilities in proximity to these lots and for future service to these lots if such utilities lines and stormwater facilities are related to provision of utilities service to or the stormwater management needs of other portions of Shawnee Valley, and

B. that it will grant to the Township or a permitted assignee of the Township, including a public entity or a certified land trust designated by the Township, the option to buy the lots having frontage on Hillbrow Road or Mosier's Knob Road in Stages II and III for a price equal to 90% of their appraised fair market value as approved/improved lots, provided that such option is exercised by the Township or a permitted assignee not later than November 1, 2012 and that the purchase is completed not later than December 31, 2012.

25. That, as set forth in §27 of the 11/13/07 Agreement, within thirty (30) days following the expiration of all appeal periods (or if there is an appeal then within thirty (30) days from the final resolution of all such appeals in a manner favorable to the Developers) related to (i) the approval of the 11/13/07 Agreement by the Board; (ii) the approval of this Application; (iii) the 2005 Amended Tentative Approval; (iv) the Final Approval of Stage Ib, or (v) any outside agency permit or approval related to any of these approvals:

A. SDI and C&M shall collectively pay the Township the sum of \$75,000 on account of professional fees incurred in connection with the Shawnee Valley PRD as set forth in §27 of the 11/13/07 Agreement, and

B. SDI further agrees that, in addition to the payment provided for under paragraph A. above, it will pay to the Township the sum

of \$100,000.00 as set forth in §27 of the 11/13/07 Agreement.

In the event that the Developers are required to and do expend additional sums as a result of appeals or other actions filed by any party in opposition to those permits and approvals, then and in that event, the amounts so expended by the Developers, or either of them, shall reduce on a dollar for dollar basis the \$100,000.00 payment due the Township as set forth in §27 of the 11/13/07 Agreement.

26. The terms of these conditions shall prevail over any provision of the 11/13/07 Agreement which is inconsistent herewith but which specifically deals with the same subject matter, otherwise the terms of the 11/13/07 Agreement shall be given full effect.

27. The Township may record a memorandum of this Decision in the Office of the Recorder of Deeds of Monroe County, Pennsylvania at the expense of the Developers sufficient to give notice to the public that the Shawnee Valley PRD is approved to be developed as a planned residential development subject to the terms and conditions as set forth in the decision made this date. Upon request of the Township, Developers shall execute such a memorandum which shall be in form and substance satisfactory to the Township and the Developers. The Memorandum of this Decision shall be recorded prior to the recording of final plans for any phase of the Shawnee PRD Stages II, III or IV developed pursuant to the terms of the 11/13/07 Agreement and the Settlement Plan and this Second Amended Grant of Tentative Approval.

28. Developers shall at all times comply with and adhere to the evidence which they presented to the Board of Supervisors at the hearing held on December 21, 2007.

29. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in Articles V, VI and VII of the Pennsylvania Municipalities Planning Code.

30. The foregoing conditions shall be binding upon the Developers and their respective successors and assigns.