COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

SHAWNEE PRESERVATION SOCIETY, HOLLY CADWALLADER, MARTHA CARBONE and TIMOTHY CARBONE, her husband, and ROBERT L. BOWER,	:	**NO. 1246 CIVIL 2023**
Plaintiffs	:	
vs.	:	
SMITHFIELD TOWNSHIP BOARD OF SUPERVISORS, SHAWNEE STAGE 1, LLC, SHAWNEE SUN MOUNTAIN, LLC, SHAWNEE DEVELOPMENT, LLC, and TED HUNTER,	:	**DEFENDANTS SHAWNEE STAGE 1, LLC; SHAWNEE SUN MOUNTAIN LLC; AND TED HUNTER'S MOTION FOR JUDGMENT ON THE PLEADINGS**
	:	**DEFENDANT SMITHFIELD TOWNSHIP BOARD OF SUPERVISORS' MOTION**
Defendants	:	**FOR JUDGMENT ON TH PLEADINGS**

OPINION

This matter comes before the Court on two separate Motions for Judgment on the Pleadings. The alleged underlying facts of this case involve the long term plan to build a private residential development on 1,006 acres located in Smithfield Township. Approval for the project was first sought from the Defendant Board of Supervisors in 1988 by way of a Planned Residential Development ("PRD") application. This allows for application for a tentative approval, followed by application for final approval, which can be obtained in stages. Defendant Shawnee Development, LLC, (formerly Shawnee Development, Inc.) ("SDI") was set to develop the residential community at that time. Defendant SDI continued to renew its permits and updated Defendant Board until 2005. In 2005, Defendant SDI requested and received approval for an amendment to the original plan ("2005 Tentative Plan"). Plaintiff Shawnee Preservation Society and a number of concerned citizens appealed the approval of the 2005 tentative plan.

They were unsuccessful and the 2005 Tentative Plan was approved. However, development of the property did not commence at that time. In 2007, Defendant SDI filed for another amendment which was approved by the Township. Several parties at the time, including Plaintiff Shawnee Preservation Society, appealed the 2007 approval to this court. On December 8, 2009, the parties in that action entered into a Settlement Agreement to resolve the issues, which was approved by this court. Hence, the 2007 Amended Plan became known as the 2007 Tentative Plan as Amended by the Settlement Agreement. ("2007 Tentative Plan").

At some point after 2009, Defendant SDI sold its interests to Defendants Shawnee Stage 1, LLC and Shawnee Sun Mountain, LLC, (collectively "Defendant Developers") which are both owned and managed by Defendant Hunter. In 2021, Defendant Developers applied to Defendant Board for final approval to begin developing Stage IB and Stage IV according to the 2007 Tentative Plan. Plaintiffs herein alleged the final approval sought would have violated the terms of the Settlement Agreement. Plaintiffs objected and Defendant Developers then re-submitted plans to instead develop under the 2005 Tentative Plan. Plaintiffs argue this also violates the Settlement Agreement.

Plaintiffs initially filed a Complaint in this matter on June 26, 2023. After Preliminary Objections were filed, Plaintiffs submitted an Amended Complaint.[1] The Amended Complaint brings two causes of action. The first is for Declaratory Judgment under 42 Pa. C.S.A. §7531. Plaintiffs request the Court declare that Defendant Developers be permitted and required to develop Stage IB and Stage IV in accordance with the 2007 Tentative Plan as Amended by the Settlement Agreement. Plaintiffs also bring a claim in mandamus against Defendant Board. The Settlement Agreement was attached to Plaintiffs' Amended Complaint.

[1] Preliminary objections were also filed as to the Amended Complaint, but were overruled.

On December 1, 2023, Defendant Developers and Defendant Hunter filed a Motion for Judgment on the Pleadings. The motion argues judgment on the pleadings is appropriate as to Count I of the Amended Complaint because this case deals solely with the Court's interpretation of the parties' Settlement Agreement and does not necessitate further discovery or testimony. Moving Defendants argue that nowhere in the Settlement Agreement did their predecessors abandon the right to proceed with the 2005 Tentative Plan in regards to Stages IB or IV. A request for oral argument was denied by order of the Court on December 5, 2023. On December 18, 2023, Defendant Board also filed a Motion for Judgment on the Pleadings as to Count II against them in the Amended Complaint for mandamus relief. Oral argument was not requested by Defendant Board. This matter was ordered to be submitted on briefs. Plaintiffs have responded to both motions and oppose the Defendants' interpretation of the Settlement Agreement and stating that a Writ of Mandamus is appropriate in this matter.

DISCUSSION

"We note that the granting of a motion for judgment on the pleadings may be appropriate in cases that turn upon the construction of a written agreement." Gallo v. J.C. Penney Cas. Ins. Co., 476 A.2d 1322, 1324 (1984) (internal quotations omitted). Likewise, a writ of mandamus may be granted by judgment on the pleadings where the material facts of the case are uncontroverted. Fraternal Ord. of Police v. Shapp, 348 A.2d 502, 503 (1975).

Under Pa. R.C.P. 1034, any party may move for a Judgment on the Pleadings after the pleadings have closed. Pa.R.C.P. No. 1034. A Judgment on the Pleadings is very similar to a demurrer in that it is only appropriate when "there are no disputed facts and the moving party is entitled to judgment as a matter of law." Sw. Energy Prod. Co. v. Forest Res., LLC, 2013 Pa. Super. 307, 83 A.3d 177, 185 (2013). "A trial court must confine its consideration to the pleadings and relevant documents. The court must accept as true all well pleaded statements of fact, admissions, and any documents properly attached to the pleadings presented by the party

against whom the motion is filed, considering only those facts which were specifically admitted." Coleman v. Duane Morris, LLP, 2012 Pa. Super. 281, 58 A.3d 833, 836 (2012). Essentially, a judgment on the pleadings is only appropriate when the moving party's case is so strong that a trial would be fruitless. Sw. Energy Prod. Co. v. Forest Res., LLC at 185.

The moving defendants collectively argue that in regards to Stage IB and Stage IV, Defendant Developers are not bound by the 2007 Tentative Plan as Amended by the Settlement Agreement, and may proceed under the previous 2005 Tentative Plan. Plaintiffs disagree with this position and assert that Defendant Developers may not revert back to any previous plans, other than the terms of the Settlement Agreement amending the 2007 Tentative Plan. The Settlement Agreement controls the issue before the court. Now that the pleadings are all filed, it is clear that no other issues or documents control the question of law in this matter. The sole issue is how the Settlement Agreement addresses the development proposed; either pursuant to the 2005 Tentative Plan, or the 2007 Tentative Plan with modifications agreed to in the Settlement Agreement. There are no facts at issue and the Settlement Agreement appears clear and unambiguous.

In terms of interpreting settlement agreements, such should be "regarded as contracts and must be considered pursuant to general rules of contract interpretation." Friia v. Friia, 780 A.2d 664, 668 (2001). The interpretation of a contract is a matter of law. Seven Springs Farm, Inc. v. Croker, 748 A.2d 740, 744 (2000), *aff'd*, 801 A.2d 1212 (2002). As the Superior Court explained in Seven Springs Farm, "[w]hen the language of a contract is unambiguous, we must interpret its meaning solely from the contents within its four (4) corners, consistent with its plainly expressed intent. We may not consider extrinsic evidence unless the terms are ambiguous. A contract is not ambiguous merely because the parties do not agree on its construction." Id. (internal quotations omitted) (internal citations omitted).

In support of their position, Defendants argue that Defendant Developers have a "final, unchallenged right to proceed with the 2005 Amended Tentative Plan." *See* Settlement Agreement, Section I.C. However, that one sentence cannot be read in isolation of the rest of the document. The standard for contractual interpretation requires an examination of the entire four (4) corners of the document.

The Settlement Agreement begins with a series of "WHEREAS" clauses which outline the procedural history up until that point. Of note is the top line of Page 3, which states: "WHEREAS, [the 2005 litigation] was resolved in favor of the Township and, and [sic] SDI has the right to proceed with the 2005 Amended Tentative Plan . . ." The remainder of Page 3 then outlines the history of the 2007 Tentative Plan. The top of the next page begins with the following clause: "WHEREAS, the parties have reached an agreement on certain terms and conditions to settle the Appeal and govern the development of [the property]; and WHEREAS, the parties hereto desire to set forth terms and conditions relating to the settlement of the Appeal and development of the [property]." Settlement Agreement, p. 4.

It is necessary to reproduce the next section of the Settlement Agreement in its entirety:

"I. GENERAL MATTERS

A. Recitals. The recitals set forth above shall be incorporated into this Agreement by reference thereto.

B. 2007 Amended Tentative Approval. The 2007 Amended Tentative Approval consists of the following documents, attached hereto as Appendix A:

1. *Agreement and Conditional Use Application Regarding Amended Tentative Approval of Shawnee Valley Planned Residential Developments,* (including Attachments A-B), dated Nov. 13, 2007;

2. *Addendum to Agreement and Conditional Use Application Regarding Amended Tentative Approval of Shawnee Planned Residential Development,* dated Nov. 20, 2007;
3. *2007 Amended Tentative Plan for the Shawnee Valley Planned Residential Development,* dated July 17, 2007; and
4. *Findings of Fact, Conclusions and Decisions In re; Application of C&M Shawnee Land Holding, L.P. and Shawnee Development, Inc.,* by the Board of Supervisors of Smithfield Township, dated Jan. 3, 2008.

The 2007 Amended Tentative Approval shall be incorporated into the Agreement in full. **The 2007 Amended Tentative Approval shall be deemed reaffirmed, supplemented and amended by this Agreement. In the event of conflict or inconsistency between any of the terms of the 2007 Amended Tentative Approval and this Agreement, the provisions of this Agreement shall control and any conflicting or inconsistent provisions of the 2007 Amended Tentative Approval shall be deemed to have been superseded.**

C. Reservation of Rights. **The parties agree that SDI has a final, unchallenged right to proceed with the 2005 Amended Tentative Plan. In addition, the parties recognize that, absent an Appeal and so long as this Agreement remains legal and in effect, SDI has the right to proceed with the 2007 Amended Tentative Plan as modified by this Agreement.** The parties also recognize that, if this Agreement is declared null and void or legally of no effect, all parties and the Appeal shall return to the same legal status and position as if this Agreement has never taken effect. Accordingly, the parties agree:

1. Upon execution of this Agreement by all parties, the parties will present this Agreement with a request for approval to the Hon. Ronald

E. Vican, President Judge of the Court of Common Pleas of Monroe County.

2. If approved and entered by the Court, Appellants shall immediately move to dismissal of the Appeal with prejudice.

3. Provided that:

   a. This Agreement is executed by all the parties as provided herein;

   b. Further, provided that this Agreement is approved by the Court as drafted, or with modifications acceptable to SDI;

   c. Further, provided that Appellants dismiss the Appeal with prejudice; and

   d. Further, provided no appeal or challenge is filed challenging the validity of the Agreement or the Township's actions in relation thereto; then SDI agrees to abandon its rights to develop Stages II and III pursuant to the 2005 Amended Tentative Approval.

   e. SDI specifically reserves the right to proceed with final plans for Stages II, III, and IV under the 2005 Amended Tentative Approval and/or the 2007 Amended Tentative Approval during the pendency of any appeals or legal challenges with respect to this Agreement or any continuation of the Appeal."

See 2007 Settlement Agreement (bold typeface and underline added).

The "WHEREAS" clauses first make it clear that the developer had a right to proceed with the 2005 Tentative Plan at the time of execution of the Settlement Agreement. *See*

Settlement Agreement, p. 3. On the next page, the document states that "the parties have reached an agreement on certain terms and conditions to settle the Appeal and govern the development of the PRD." *See* Settlement Agreement, p. 4. The Appeal that was referenced related to the approval of the 2007 Tentative Plan and subsequent appeal of that approval to this court. This language confirms the parties' intention to resolve the 2007 Tentative Plan dispute with the Settlement Agreement. None of the whereas clauses refer to settling or modifying the 2005 Tentative Plan. The Reservation of Rights section of the Settlement Agreement then begins with the statement that "SDI has a final, unchallenged right to proceed with the 2005 Amended Tentative Plan" and that "[i]n addition, the parties recognize that, absent the Appeal and so long as this Agreement remains legal and in effect, SDI has the right to proceed with the 2007 Amended Tentative Plan as modified by this Agreement." Settlement Agreement, Subsection I.C.

Moving Defendants argue that this language is a clear indication that the 2005 Tentative Plan remains in effect if they elect to develop under that Plan. Plaintiffs point to other language of the Settlement Agreement as an abandonment of the 2005 Plan rights, or in the alternative, language that is contradictory, or ambiguous, or that there are still facts in dispute. For example, the Plaintiffs point out that the developers reserved the right to proceed with final plans for Stages II, III, and IV under the 2005 Tentative Plan and/or the 2007 Tentative Plan during the pendency of any appeals of the Settlement Agreements, but did not mention Stage IB in that section. *See* Settlement Agreement, Subsection I.C.3.e.

We agree with Defendants that the language of the Settlement Agreement within the four (4) corners of the document clearly allows for SDI, and its successors herein, to pursue approvals under the 2005 Tentative Plan for Stages IB and IV. The terms of the Settlement Agreement were to settle the 2007 amendment issues only, in the event the Developer wanted to develop under that Plan in the future. First, the Settlement Agreement sets forth in the

"WHEREAS" clauses that the matter involves an appeal of the 2007 Tentative Plan that was approved and the settlement of that appeal. The "WHEREAS" clauses do not state it involves the 2005 Tentative Plan or settlement of that Plan. The "WHEREAS" clauses also state in part that the Higgins/Barrett/ Chase appeal of the 2005 Tentative Plan was resolved in favor of the Township and Developer, and that "SDI has the right to proceed with the 2005 Amended Tentative Plan." Next, in Section I, General Matters, the first clause under "Recitals" states that all of the "recitals set forth above ["Whereas" clauses], shall be incorporated into this Agreement by reference thereto." The next paragraph, Section I.B., pertains to the parties' general agreement as to the 2007 Amended Tentative Approval. (emphasis added). At the end of Section B of the Settlement Agreement, it reads that the "2007 Amended Tentative Approval shall be deemed reaffirmed, supplemented and amended by this Agreement." The Section says nothing about the 2005 Tentative Plan being supplemented and amended by this Agreement. In fact, nowhere in the Settlement Agreement does it say that the 2005 Tentative Plan is supplemented and amended, other than Section I.C.3.d, that if certain conditions precedent are met, then the developer agrees to abandon its rights to develop Stages II and III pursuant to the 2005 Plan. (emphasis added). There would be no reason for these sections if the Developer no longer had a right to proceed under the 2005 Tentative Plan. These sections affirm the rights the Developer has under the 2005 Tentative Plan, which were no longer appealable or able to be challenged, and what can be done new under the 2007 Tentative Plan.

The next section, Section I.C., Reservation of Rights, is the clearest indication that the parties intended to still provide the Developer with the right to proceed under the 2005 Tentative Plan if they so choose. The section is titled "Reservation of Rights," and it does just that. A reservation of rights in a written instrument reserves some right to a party or parties to that written instrument. *See* Black's Law Dictionary, 6th edition. The very first sentence under the "Reservation of Rights" section is the clause: "[t]he parties agree that SDI has a final,

unchallenged right to proceed with the 2005 Amended Tentative Plan." As the Defendant Developers noted, that sentence "contains no ifs, ands or buts" about the rights under the 2005 Tentative Plan that was previously approved by the Township, and appealed unsuccessfully by other parties in a separate action. There were no qualifiers before or after that sentence. The sentence is clear and unambiguous. The only meaning of that sentence is that the right is reserved for the developer to pursue the 2005 Tentative Plan for development.

The reason the parties included this in the very first sentence under the "Reservation of Rights" clause is not germane to the question before us. Under the Motions for Judgment on the Pleadings standard, we can only interpret language from the four (4) corners of the Settlement Agreement. However, the parties to that Settlement Agreement deemed it important enough to include that language in the agreement, and to specifically reserve such right to proceed under the 2005 Tentative Plan to Defendant Developers' predecessor, SDI. Despite litigation and a settlement agreement as to the proposed 2007 Tentative Plan, the parties still specifically included a reservation of right to the developer, acknowledging a final unchallenged right to proceed under the 2005 Tentative Plan. It shows the intent of the parties that the Developer could pursue the 2007 Plan with modifications, or pursue the 2005 Plan.

Plaintiffs essentially argue that the above referenced clause only has meaning and effect if the Settlement Agreement had been declared null and void on appeal. The argument being that the cited language is only an acknowledgment of the rights the Developer had prior to the lawsuit over the 2007 Tentative Plan and the Settlement Agreement entered into to resolve the appeal of that Plan. Plaintiffs then claim that when reading the rest of the Settlement Agreement in full, the meaning of the language under the "Reservation of Rights" as to the 2005 Tentative Plan was only intended to acknowledge that the right existed if there is no 2007 Tentative Plan approval, or if the Settlement Agreement, in which the reference to the 2005 Plan is made, were not to exist. In other words, an acknowledgment of a fallback to the 2005 Plan

rights only if there is no 2007 Plan approval. But, if that were the case, why didn't the parties just say so? Instead, the language appears in the first sentence under the Reservation of Rights clause, and it is clear and unambiguous in its meaning. The Developer could proceed with the 2005 Plan or the 2007 Plan with modifications. Parties do not reserve a right that does not exist.

The Plaintiffs then look to other language in other sections of the Settlement Agreement to rationalize a different meaning than the clear language as stated. For example, the Plaintiffs mischaracterize the very next sentence under the "Reservation of Rights" clause of Section I.C. That sentence states "[i]n addition, the parties recognize that, absent an Appeal and so long as this Agreement remains legal and in effect, SDI has the right to proceed with the 2007 Amended Tentative Plan as modified by this Agreement." (emphasis added). The clause "in addition" is clear and unambiguous when immediately following the first sentence in the "Reservation of Rights" section in which the parties agree to SDI's right to proceed under the 2005 Tentative Plan. That means that the parties agree that the Developer also has the right to proceed with the 2007 Plan, giving the Developer the choice of which Plan to pursue for development approval. Plaintiffs seem to imply the above language means Defendant Developers only have a choice to pursue the 2005 Plan if there is an appeal and the Settlement Agreement is not deemed legal. However, Plaintiffs later acknowledge in their own brief that this second sentence in Section I.C. also gives the Defendants the right to proceed under the 2007 Plan, as modified by the Settlement Agreement. *See* Plaintiffs' Brief p. 7. The operative wording being also, synonymous with "in addition to," or conferring rights to do both, and not one or the other.

We also note that the second sentence acknowledges that it pertains to the right to proceed with the 2007 Plan, as modified by the Settlement Agreement. In other words, the sentence acknowledges the agreement of the parties, that in addition to Developer's right to proceed under the 2005 Plan, previously approved and upheld on appeal, the Developer could proceed on their 2007 Plan as it is being modified, or altered, pursuant to the parties' agreement

in the settlement document. Those modifications are then set forth later in the Settlement Agreement. This is further indication that the Settlement Agreement is intended to clarify and set forth rights of the Developer to proceed with a development pursuant to the 2007 Plan with modification of that Plan. This sentence has no effect on the Developers right to proceed under the 2005 Plan, a right acknowledged throughout the document, and supports an interpretation of the Settlement Agreement that the Developer may proceed under either the 2005 Plan, or the 2007 Plan as modified by the Settlement Agreement.

The next sentence under Section I.C. is also clear and unambiguous. It contains another agreement of the parties, in addition to the prior two (2) sentences containing the above agreements. It states "[t]he parties also recognize that, if this Agreement is declared null and void or legally of no effect, all parties and the Appeal shall return to the same legal status and position as if this Agreement had never taken effect." That language covers the parties' acknowledgment that if the Settlement Agreement was later declared null and void, the parties would still be in the same position as before the Settlement Agreement was executed. That would be an appeal over the 2007 Plan approval, and an approved 2005 Plan. Nothing in this language has any effect on the Developer's right, previously acknowledged in the Settlement Agreement, to proceed under the 2005 Plan if they so choose. Again, there is no language that the Developer was waiving or abandoning their right to develop under the 2005 Plan in these sections of the Settlement Agreement.

The next agreement of the parties in Section I.C., is subparagraph 1, which provides that when fully executed, the Settlement Agreement would be submitted to the court for approval. This occurred, and as both parties acknowledge, the Settlement Agreement was approved by the court with no further appeal. Subparagraph 2 of Section I.C. provides that upon approval by the court, the appeal of the 2007 Plan would be dismissed with prejudice. The

parties agree and acknowledge this was done as well. Neither of these two subparagraphs reference a waiver or abandonment of the 2005 Plan.

The Settlement Agreement at subparagraph 3 of Section I.C. then contains a set of conditions precedent, meaning that if certain conditions are met, then certain rights of the Developer would be effected. The subsection states:

> "3. Provided that:
>
> a. this Agreement is executed by all parties herein;
> b. further, provided that this Agreement is approved by the court as drafted, or with modifications acceptable to SDI;
> c. further, provided that Appellants dismiss this Appeal with prejudice; and
> d. further, provided that no appeal or challenge is filed challenging the validity of this Agreement or the Township's actions in relation thereto, then SDI agrees to abandon its rights to develop Stages II and III pursuant to the 2005 Amended Tentative Approval.
> e. SDI specifically reserves the right to proceed with final plans for Stages II, III and IV under the 2005 Amended Tentative Plan Approval and/or the 2007 Amended Tentative Approval during the pendency of any appeals or legal challenges with respect to this Agreement or any continuation of the Appeal."

Settlement Agreement pp. 5-6.

This section finally mentions a waiver or abandonment of a right to the 2005 Plan. That is the right to proceed to develop Stages II and III pursuant to the 2005 Plan. Plaintiffs argue that by not discussing Stage IB, and only mentioning Stage IV in Subsection C.3.e, the above language was intended to mean that the parties did not intend to reserve the right to proceed under the 2005 Plan for Stage IB and Stage IV. In the alternative, Plaintiffs argue that the language creates an issue of material fact to be decided which defeats the Motions for Judgment on the Pleadings. However, in reading each of the subsections involving the conditions precedent, a simple breakdown of the language is clear and unambiguous, and nullifies the Plaintiffs' arguments.

The first four (4) conditions precedent of Subsections C.3.a-d were met, as agreed by all parties. The only actual effect of the conditions precedent is contained in Subsection C.3.d, which states that provided no appeal or challenge is filed as to the Settlement Agreement, then the Developer agreed to abandon its rights (which were previously acknowledged in the Settlement Agreement) to develop Stages II and III pursuant to the 2005 Amended Plan (emphasis added). In other words, if the Settlement Agreement was executed by all parties, adopted by the court, with no further appeal or challenge to the Settlement Agreement, then in exchange for entering into the Settlement Agreement, and for the other terms of that Agreement, the Developer agreed to modify or amend rights it had to develop Stages II and III under the 2005 Tentative Plan.

If the parties had not intended to agree that the 2005 Tentative Plan remained in effect despite the Settlement Agreement, with the Developer having the right to proceed thereunder, then there would be no need for this subsection language abandoning rights to develop Stages II and III under the 2005 Plan. In fact, this is an explicit acknowledgment that despite the 2007 Tentative Plan and the Settlement Agreement, the Developer had reserved the right to develop pursuant to the 2005 Plan except as to Stages II and III, which were specifically bargained away by the Developer in Section C.3.d. The language reinforces the prior language within the "Reservation of Rights" clause, that despite the 2007 Tentative Plan approval, the litigation over that approval, and the Settlement Agreement to resolve that litigation, the Developer still had the right to proceed under the 2005 Tentative Plan. The only exception thereto, as specifically noted, was the abandonment or waiver to develop Stages II and III pursuant to the 2005 Tentative Plan. The language clearly means that the Developer was bargaining away rights it had under the 2005 Plan, in order to get certain rights in the 2007 Plan

should they pursue it.[2] The language in all of Section I.C. confers a right to the Developer to proceed either under the 2007 Plan with modifications set forth in the Settlement Agreement, or the 2005 Plan, except as to Stages II and III, which the Developer specifically waived in order to settle the 2007 Plan litigation. By this language, the Developer clearly has the right to develop Stages IB and IV under the 2005 Tentative Plan. They did not waive that right like they did with Stages II and III. The language of the Settlement Agreement only requires Stages II and III, when developed, be done according to the 2007 Plan with the modifications of the Settlement Agreement.

The parties' decision not to include Stages IB and IV in that subsection, and only Stages II and III, is convincing that these stages were to remain a viable development plan according to the 2005 Tentative Plan. Furthermore, under the rules of contract interpretation, the decision not to include other stages is to be viewed as intentional, and the maxim of *expressio unius est exclusio alterius* is applied. *See* Empire Sanitary Landfill, Inc., 739 A.2d 651 (Pa. Cmwlth. 1999). By explicitly stating that the right to develop Stages II and III pursuant to the 2005 Tentative Plan was being abandoned by the Developer as part of the Settlement Agreement, the Developer was also specifically reserving its rights, acknowledged in the "Reservation of Rights" clause, to develop the other stages, including IB and IV, pursuant to the 2005 Tentative Plan. There was no other abandonment or waiver of any other rights to the 2005 Tentative Plan in the Settlement Agreement. Again, this language is clear as to what the intentions of the parties were; proceed under the 2005 Plan, except as to Stages II and III, or proceed under the 2007 Plan with modifications of the Settlement Agreement.

Plaintiff argues that because Stage IB is not mentioned in these sections of the Settlement Agreement, and Stage IV is only mentioned in Section I.C.3.e, that the parties

[2] Although barely mentioned by the parties, these rights in the 2007 Plan were a major shift to allow for a water park and time share units, as opposed to what was allowed in the 2005 Plan.

intended to exclude those stages from being reserved by the Developer to develop pursuant to the 2005 Tentative Plan. They essentially argue that by not being mentioned, it means they fall under the 2007 Plan and Settlement Agreement. But, if that were the case, the parties would not have needed to specify that Stages II and III would be abandoned by the Developer from development under the 2005 Plan. Plaintiffs' argument is backwards and does not make sense.

The final subsection under the "Reservation of Rights" Section I.C.3.e is not really a condition precedent. It states:

> "e. SDI specifically reserves the right to proceed with final plans for Stages II, III and IV under the 2005 Amended Tentative Approval and/or the 2007 Amended Tentative Approval during the pendency of any appeals or legal challenges with respect to this Agreement or any continuation of this Appeal."

Settlement Agreement, p. 6.

Plaintiffs argue that this section of the Settlement Agreement, in acknowledging a right to develop Stages II, III and IV while any appeal was pending as to the Settlement Agreement, does not reserve a right to proceed under the 2005 Plan for Stages IB and IV. Again, Plaintiff argues that the failure to specify anything about Stage IB here or anywhere else, and only mentioning Stage IV for development in the event of an appeal, means the parties did not intend to reserve a right under the 2005 Plan, or that at the very least, there is a factual issue to survive these motions.

The language in Subsection I.C.3.e is clear and unambiguous. It is not a condition precedent in which the Developer would forfeit or waive a right to do something. Rather, it is a reservation of rights for the Developer to pursue a final plan approval for Stages II, III and IV under the 2005 Tentative Plan and/or the 2007 Tentative Plan that was subject to litigation at the time. By the language used, it is clear that the Developer could pursue those approvals during appeals or challenges to the Settlement Agreement. In other words, the Developer would not be prevented from seeking final approvals while an appeal or challenge was pending. This was

another specific right afforded to the Developer in the Settlement Agreement, although it would be at their risk in the event the Settlement Agreement was deemed null and void and the litigation over the 2007 Plan continued. That is likely why the parties included language that the Developer simply reserved the right to move ahead, and for them to decide whether to pursue approvals under the 2005 Plan, the 2007 Plan, or some combination, and thus, the "and/or" language.

It is immaterial that the subsection did not specify Stage IB or any other stage(s) except II, III and IV. Perhaps the Developer did not have intentions of moving forward with Stage IB at the time. In any case, the reason is irrelevant. The important factor is that nowhere in the Settlement Agreement does it prohibit the Developer from developing Stage IB under the 2005 Plan, nor is there contradictory language about Stage IB in the Settlement Agreement. To the contrary, various sections of the Settlement Agreement recognize the Developer's right to proceed under the 2005 Plan. The only caveat to that is the conditions precedent that if the Settlement Agreement is signed, approved and unchallenged, all of which occurred, then the Developer waived its right to proceed under the 2005 Plan with regard to Stages II and III only.

As for the mention of Stage IV in Subsection I.C.3.e, the language merely affords a right to the Developer to pursue those listed sections for approval while any appeal or challenge was pending, as opposed to the opposite, which would be staying any action while an appeal or challenge was pending. It is immaterial that Stage IB was not mentioned. That just means that the Developer could not proceed for approval of that stage while an appeal was pending, like they could for the other stages specifically mentioned.

Again, the language cited just confers a right while a legal challenge was taking place. It does not preclude any future development of Stages IB or IV pursuant to the 2005 Tentative Plan, as it simply does not address that, nor does it supersede the other language of the Settlement Agreement regarding rights under the 2005 Plan. There is no ambiguity and no

factual issues created by the Settlement Agreement regarding the development of Stages IB and IV pursuant to the 2005 Plan as previously approved.

Finally, we note that the "Terms of Agreement" at Section II of the Settlement Agreement refers to Stages IB, II and III as developed under the 2007 Tentative Plan. But, it has no effect on the Developer's rights to develop according to the 2005 Plan. At Section II.A.1 of the Settlement Agreement, there are terms stated as to Stage IB. The terms essentially limit a certain number of units in and around Shawnee Lake and change some design requirements. Nowhere within this Section is there any language about Stage IB only being allowed if it were subject to the 2007 Tentative Plan with modifications of the Settlement Agreement. This language is included and applies with regard to Stage IB only if the Developer develops according to the 2007 Tentative Plan which is what the Settlement Agreement specifically addressed. As noted above, the language of the "Reservation of Rights" clause of Section I.C. already set forth the Developers' right to pursue the 2005 Tentative Plan, except as to Stages II and III, if conditions precedent were met. Therefore, nothing in this Section prevents the Developer from pursuing approval of Stage IB under the 2005 Plan. As prior language noted, at Section I.C., if the Developer chose to pursue approval under the 2007 Plan, with such plan modified by the Settlement Agreement, then certain restrictions/modifications would apply. The restrictions/modifications on Stage IB in the Settlement Agreement only apply if the Developer pursued approval under the 2007 Plan. The Developer is not seeking to do so, and therefore, the Settlement Agreement modifications do not apply. There are no ambiguities or facts in dispute on that issue.

The same applies to Stage IV, referenced in Section II.A.2 with Stages II and III. Only Stages II and III must adhere to the 2007 Plan and Settlement Agreement per the exception spelled out in Section I.C. Stage IV is treated the same as Stage IB, as there is no language requiring it be submitted for approval under the 2007 Plan, as modified by the Settlement

Agreement. Rather, it falls under the same reservation of rights language as Stage IB in which the Developer can seek approval under the 2005 Plan; or, the Developer could choose to develop Stage IV under the 2007 Plan, in which case the modifications of the Settlement Agreement would apply. In short, the Settlement Agreement reserved the right for the Developer to seek final approval under the 2005 Tentative Plan, except as to Stages II and III. The Settlement Agreement does not otherwise waive or abandon the Developers' right to develop according to the 2005 Tentative Plan. For all of these reasons, we will grant the Developers' Motion.

The other claim of the Plaintiffs is an action in mandamus to force the Township to take action according to the 2007 Tentative Plan as modified by the Settlement Agreement. The Township seeks Judgment on the Pleadings dismissing the claim. Mandamus is to be used to "coerce the performance of single acts of specific and imperative duty..." Russell v. Osser, 261 A.2d 307, 308-309 (Pa. 1970). It may not be used to force a general course of official conduct by a government entity. Id. A writ of mandamus also is not appropriate where the dispute arises under a contract. A writ of mandamus also is not appropriate where the dispute arises under a contract. York-Green Associates v. Bd. of Supervisors of South Hanover Twp., 486 A.2d 561 (Pa. Cmwlth. 1985).

The Plaintiffs have requested a writ of mandamus ordering that the Defendant Board of Supervisors take all necessary steps to permit the development pursuant to the 2007 Tentative Plan as modified by the Settlement Agreement. The Amended Complaint fails to set forth facts necessary to grant the extraordinary relief of mandamus. The allegations do not set forth that the Township has refused or failed to take action on a pending application. Rather, Plaintiffs appear to be seeking an order requiring the Board of Supervisors to take specific action as to what must be submitted to them to comply with a settlement agreement. That remedy is based upon a contract dispute, which cannot be the basis of a mandamus action. Furthermore, the request would result in the court telling the Township how to act on a submission, when

mandamus relief is only appropriate to force a Township to act on a matter for which it refuses to act. Finally, the facts asserted and the request for relief would force the Township to adopt a general course of official conduct as it relates to any plans the Developer may submit now or in the future. There is an adequate remedy at law, which is the interpretation of the Settlement Agreement as it effects the Developer's rights. As such, there is not a right to relief in mandamus.

For all of these reasons, we will grant the Motions for Judgment on the Pleadings filed by the Defendant Developers and Defendant Township.

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

SHAWNEE PRESERVATION SOCIETY, HOLLY CADWALLADER, MARTHA CARBONE and TIMOTHY CARBONE, her husband, and ROBERT L. BOWER,	:	**NO. 1246 CIVIL 2023**
Plaintiffs	:	Monroe County PA Prothonotary MAR 11 '24 PM3:40
vs.	:	
SMITHFIELD TOWNSHIP BOARD OF SUPERVISORS, SHAWNEE STAGE 1, LLC, SHAWNEE SUN MOUNTAIN, LLC, SHAWNEE DEVELOPMENT, LLC, and TED HUNTER,	:	**DEFENDANTS SHAWNEE STAGE 1, LLC; SHAWNEE SUN MOUNTAIN LLC; AND TED HUNTER'S MOTION FOR JUDGMENT ON THE PLEADINGS**
Defendants	:	**DEFENDANT SMITHFIELD TOWNSHIP BOARD OF SUPERVISORS' MOTION FOR JUDGMENT ON TH PLEADINGS**

ORDER

AND NOW, this 11th day of March, 2024, upon a review of the Pleadings, the Settlement Agreement attached to Plaintiffs' Complaint, and the briefs of the parties, the Motion for Judgment on the Pleadings filed by Defendants Shawnee Stage 1, LLC, Shawnee Stage Mountain, LLC and Ted Hunter is GRANTED. The Defendant Developers have the right to proceed under the Settlement Agreement at issue with plans for Stages IB and IV under the 2005 Tentative Amended Plan Approval. The Plaintiffs' Amended Complaint is DISMISSED as to these Defendants with Prejudice.

BY THE COURT:

DAVID J. WILLIAMSON, J.

cc: Leo V. DeVito, Jr., Esq.
Erika A. Farkas, Esq.
Ronald J. Karasek, Esq.
Michael E. Peters, Esq.
John A. VanLuvanee, Esq.
Shawnee Development, LLC

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

SHAWNEE PRESERVATION SOCIETY, HOLLY CADWALLADER, MARTHA CARBONE and TIMOTHY CARBONE, her husband, and ROBERT L. BOWER,	:	**NO. 1246 CIVIL 2023**
Plaintiffs	:	
vs.	:	
SMITHFIELD TOWNSHIP BOARD OF SUPERVISORS, SHAWNEE STAGE 1, LLC, SHAWNEE SUN MOUNTAIN, LLC, SHAWNEE DEVELOPMENT, LLC, and TED HUNTER,	:	
Defendants	:	**DEFENDANT SMITHFIELD TOWNSHIP BOARD OF SUPERVISORS' MOTION FOR JUDGMENT ON TH PLEADINGS**

ORDER

AND NOW, this 11th day of March, 2024, upon a review of the Pleadings, the Settlement Agreement attached to Plaintiffs' Complaint, and the briefs of the parties, the Motion for Judgment on the Pleadings filed by Defendant Smithfield Township Board of Supervisors is GRANTED. The Plaintiff has failed to aver a cause of action in mandamus. The Plaintiffs' Amended Complaint is DISMISSED as to Defendant Township with Prejudice.

BY THE COURT:

DAVID J. WILLIAMSON, J.

cc: Leo V. DeVito, Jr., Esq.
Erika A. Farkas, Esq.
Ronald J. Karasek, Esq.
Michael E. Peters, Esq.
John A. VanLuvanee, Esq.
Shawnee Development, LLC