

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MAJESTIC WOODS, LP,

Appellant,

v.

BOARD OF SUPERVISORS OF
SOUTH PARK TOWNSHIP,
PENNSYLVANIA,

Appellee.

CIVIL DIVISION

No. SA-26-000202

**BRIEF IN OPPOSITION TO LAND USE
APPEAL**

Filed on Behalf of:

Board of Supervisors of South Park Township

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MAJESTIC WOODS, LP,

CIVIL DIVISION

Appellant,

No. SA-26-000202

v.

BOARD OF SUPERVISORS OF
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Appellee.

BRIEF IN OPPOSITION TO LAND USE APPEAL

AND NOW, comes the Appellee, the Board of Supervisors of South Park Township, by and through its attorneys, Irving S. Firman, Esquire, J. Andrew Salemme, Esquire, and Tucker Arensberg, P.C., and does hereby file this Brief in Opposition to Land Use Appeal:

INTRODUCTION

Appellant, Majestic Woods, LP, (“Appellant” or “Developer”) appeals from the denial of a proposed residential development in South Park Township that would have included the construction of 108 homes. The Board of Supervisors (hereinafter “the Board”) voted unanimously 5-0 to deny Developer’s land development application. For the reasons that follow, this Court should affirm.

STATEMENT OF ISSUES

Whether the Board should be affirmed as its decision was based on the substantial evidence of record and the Board did not abuse its discretion in denying a land development application to construct 108 residential homes where the Developer:

- (1) amended its original preliminary plan to include a 300-foot retaining wall to be maintained by the Township and removed a tree line, fire hydrant, cleanout,

water box and water meter where said changes endanger the safety and welfare of the public;

- (2) did not timely object or appeal the condition of obtaining an NPDES permit and only belatedly made a legal objection to the condition after-the-fact when seeking approval of the Final Plan because they had not received the applicable permit;
- (3) did not establish that the Plan promoted, protected and facilitated public health, safety and general welfare or prevented overcrowding, blight, danger of congestion in travel and transportation and instead endangered the community and created additional travel transportation dangers.

Suggested Answer: Yes. The Board decision to deny the application should affirmed.

STATEMENT OF FACTS

Developer is the equitable owner of approximately sixty-three acres (“the Property”) in South Park Township (“the Township”) along Sleepy Hollow Road. Part of the Property is located within an R-1 Low-Density Single Family Residential Zoning District while another portion of the Property is within an R-2 Medium Density Single Family Residential Zoning District. (SPT00706; SPT01970). Developer submitted a preliminary subdivision plan to the Township on March 6, 2024. The preliminary plan proposed 106 homes within the R-2 District and an additional two homes within the R-1 District. (*Id.*). Thereafter, on March 22, 2024, Developer submitted a preliminary land development plan. The preliminary plans did not include construction of a retaining wall.

The Planning Commission initially voted to recommend denial of the preliminary plans at a public meeting on April 24, 2024. Subsequently, on May 13, 2024, the Board approved the preliminary plans subject to meeting nine conditions, (SPT00713-00714), and sent a letter to the Developer on May 17, 2024, listing those conditions. (SPT00716-SPT00717). Included within

the conditions was the requirement that Developer obtain an NPDES¹ permit. (SPT00715; SPT00717). According to counsel for Developer, Developer “agreed to all nine of the conditions proposed by the preliminary plan approval.” (SPT01968). Indeed, Developer did not object to the condition at that time; however, at subsequent public meetings, Developer would belatedly argue that it could not be required to obtain the NPDES permit as part of the initial approval process. (SPT01777; SPT02357). Developer only submitted an application for the NPDES permit on December 8, 2025. (SPT01968-01969; SPT02002).²

In addition, the third condition of the preliminary approval required improvements to be made to Sleepy Hollow Road. (SPT00715; SPT00716-00717; SPT02001). In response, on October 1, 2025, a consultant for Developer, Wooster and Associates, LLC (“Wooster”) provided a letter to the Township Code Enforcement Officer in response to a review letter of August 14, 2025, in which Developer proposed adding as part of the plan a retaining wall. (SPT00762; SPT01413). The Township Engineer responded on October 9, 2025, by noting that the wall appeared to be nine feet high and requested that a detail for the proposed wall be provided. (SPT01428-01432). The Township further requested Developer to contact additional Township property owners that would be impacted by any construction of the proposed retaining wall and suggested Developer to provide those property owners with the option of the retaining wall or a grading easement.

In a November 12, 2025 letter, the Township Engineer again notified the Developer that Developer had failed to provide the required detail for the retaining wall. (SPT01855-01858).

¹ NPDES is short for National Pollution Discharge Elimination System.

² Although the township engineer indicated that submission of the permit application could only occur after approval of the final plan, that is not accurate as evidenced by the fact that Developer belatedly requested the NPDES permit before final approval.

Developer, on November 20, 2025, responded that the wall would be a poured-in-place retaining wall and provided a construction detail. That same date, Developer submitted its Final Plan, which now included a retaining wall from six inches to three feet high - and not the proposed eight feet in height wall.

The Township Planning Commission held a public meeting on November 25, 2025, where Developer presented the Final Plan. Developer had not obtained the NPDES permit from the Allegheny County Conservation District. For the first time, Developer's attorney contended that the NPDES permit, as a third-party permit, could not be a condition of approval. (SPT01777).

South Park residents voiced widespread disapproval of the Plan. Township resident Tim Foster noted that the Allegheny County Conservation District had not even received an application for the NPDES permit, let alone issued the required permit. (SPT01757-01758; SPT01760). In support of this position, Mr. Foster submitted an e-mail from Matt Gordon, the director of the Allegheny Conservation District, reflecting that as of November 25, 2025, no final plan or application for the NPDES permit had been submitted. (SPT01757).

Another resident, Jason Sobeck, also objected and raised a safety concern regarding a culvert and its ability to withstand increased traffic as well as the primary access to the development being over the culvert. (SPT01762). He also raised the NPDES permit issue and pointed out that Developer had not applied for the permit. (SPT01762-01763; *see also* SPT02351-02352). Mr. Sobeck was concerned about the lack of an inspection report concerning a culvert since it was the single main access point for the development and maintained that there was not a reliable and safe means of ingress and egress for residents, school buses, and emergency vehicles. (SPT01762; SPT01764). He contended that any blockage of the culvert would result in the entire development being inaccessible to vehicles. (SPT01764). In addition, he pointed out that while

Developer had proposed a retaining wall, it did not show any drainage that would be needed behind the wall. (SPT01765). Another resident, Tom Priano, also voiced concerns about the bridge culvert and it being the single access point. He asserted that the bridge culvert was not intended for heavy construction equipment or daily traffic to over 100 homes and that the weight limit for the bridge culvert was unknown. (SPT01770).

The Planning Commission again voted to recommend denial of the Final Plan. (SPT01782). Thereafter, Developer presented the Final Plan to the Board of Supervisors on December 8, 2025, at a public meeting. Again, South Park residents appeared and reiterated their objections to the Final Plan repeating largely many of the same objections that they had made at the November 25, 2025 meeting. (*See generally*, SPT0201-02169). The Board of Supervisors tabled the vote on the Final Plan. (SPT02169-02270).

Thereafter, the Final Plan was again considered at a public meeting of the Board on January 27, 2026. South Park residents again appeared and repeated their extensive objections to the Final Plan, including many of the prior objections that the citizens had raised during the November and December public meetings. (SPT02351-02356). By a unanimous 5-0 vote, the Board voted to deny the Final Plan. (SPT02357). The Board issued its written decision on February 3, 2026. (SPT02358-02360).

In its decision letter, the Board described in detail the bases for the denial of the Final Plan. The Board noted that the Developer had changed the original preliminary plan, which had not included the 300-foot retaining wall and removal of tree line, a fire hydrant and relocation of cleanout, water box and water meter. (SPT02358). The Board determined that these changes would endanger the health, safety and welfare of the public and noted that the proposed wall would

require continuing maintenance by the Township and did not allow for a sufficient shoulder for the safety of motorists. (*Id.*).

In addition, the Board pointed out that the Developer had not complied with the preliminary plan's requirement that Developer obtain an NPDES permit, and had only submitted an incomplete application for said permit. (SPT02359). The Board further found that Developer had not presented written documentation that the Final Plan complied with Sections 118-4 A and B of the Township SALDO.³ (*Id.*). The Board concluded that the Final Plan did not meet the requirements of Sections 118-4 A and B because it endangered "the public health, safety and general welfare of the community and creates additional danger in travel transportation, particularly related to the amendments of the plan that were first shown to the Board of Supervisors in the Final Approval stage of the proceedings." (*Id.*). Developer filed this Land Use appeal.

LEGAL STANDARD

In a land use appeal, where a full and complete record was made before the municipality and additional evidence is not taken, a reviewing court's standard of review is limited to determining whether the governing body committed an abuse of discretion or an error of law. A conclusion that the governing body abused its discretion may be reached only if its findings are not supported by substantial evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Morris v. South Coventry Township Board of Supervisors*, 836 A.2d 1015 (Pa. Cmwlth. 2003). Assuming the record demonstrates the existence of substantial evidence, the trial court is bound by its findings which are the "result of resolutions of credibility and conflicting testimony rather than a capricious disregard for evidence." *See Vanguard Cellular System, Inc. v. Zoning Hearing Board of*

³ The Decision Letter contained a typographical error that referenced Section 188-4 A and B instead of Section 118-4 A and B.

Smithfield Township, 568 A.2d 703 (Pa. Cmwlth. 1989). Further, “the presence of inadequate independent grounds for denial does not vitiate the legitimate substantive grounds for denial identified by the [Board of Supervisors].” *Delchester Developers, L.P. v. London Grove Twp. Bd. of Supervisors*, 161 A.3d 1106, 1113 (Pa. Cmwlth. 2017). Indeed, “if legitimate, a single reason may support a denial.” *Kassouf v. Twp. of Scott*, 883 A.2d 463, 473 (Pa. 2005).

ARGUMENT

Developer incorrectly assumes that conditional preliminary approval of its plan mandated that the Township approve its final plan and that a Board of Supervisors is a mere “rubber stamp” when the township engineer and other township personnel indicate that a plan technically complies with zoning and SALDO provisions. But such a rationale would obviate any necessity of public hearings. Yet, public hearings are required and offer the opportunity to establish whether prior assessments are accurate and can withstand scrutiny. What is more, Developer begins from the false premise that its Final Plan was substantially the same as its conditionally approved preliminary plan. Here, the Final Plan was not the same as the preliminary plan, and Developer did not actually comply with certain conditions included with the conditional approval of the preliminary plan--and it did not object to the condition of obtaining a NPDES permit until after it failed to obtain the permit and was seeking approval of its Final Plan. Thus, Developer waived any objection to the NPDES permit requirement. In addition, the Board properly found, based on the substantial evidence of record, that the Final Plan creates additional travel transportation dangers due to its failure to address concerns related to a narrow culvert and associated impacts to safe access to the proposed development. As such, the Board’s decision should be affirmed.

- i. *The Board should be affirmed as it did not abuse its discretion in denying approval of a proposed 108 residential home development where the Applicant changed its original preliminary plan to include a 300-foot retaining wall to be maintained by the Township and removal of a tree line, fire hydrant, cleanout, water box and water meter which changes endanger the safety and welfare of the public.*

There is no dispute that the original preliminary plans that were approved by the Board did not include the 300-foot long retaining wall and other associated changes included as part of constructing the wall. Moreover, the initial proposed retaining wall itself was distinct from the wall proposed during the public meetings in November and December of 2025 and in January of 2026. Thus, contrary to Developer's position, the preliminary plans and final plans were not substantially identical.

Since the preliminary plans and final plan were not substantially identical, the Board was not required to approve the final plan under Section 508(4) of the Municipalities Planning Code - and the case law it relies on is inapposite. In addition, the originally proposed retaining wall was approximately eight feet high. The proposed retaining wall in the Final Plan varied in height with its maximum height being approximately three and one-half feet high. (SPT01993; SPT01996). Indeed, one neighbor who lived directly below the proposed development, Bonnie Gildea, expressed significant concern that erosion or collapse onto the roadway might occur since no explanation had been provided by the Developer as to why the eight-foot wall was not necessary and instead a much smaller wall was subsequently being proposed. (SPT02089-02090; *see also* SPT02354).

Here, Developer failed to establish that the smaller retaining wall - that was not part of the preliminary plan or the initial version of the Final Plan - would adequately protect against landslides or other erosion problems, nor did it show that the removal of the tree line would not create potential erosion and land movement issues during heavy rains. Instead, Developer offered

only that it had adjusted the road and wall location to reduce the impact of the wall. (SPT02097).

The Board should be affirmed.

- ii. *The Board should be affirmed as it did not abuse its discretion in denying approval of a proposed 108 residential home development where the Applicant did not timely object or appeal the condition of obtaining a NPDES permit and only belatedly made a legal objection to the condition after-the-fact when seeking approval of the Final Plan because they had not received the applicable permit.*

The preliminary plan was approved by the Board subject to nine conditions. One of those conditions was a requirement that Developer obtain an NPDES permit prior to approval of the Final Plan. Developer did not object to that condition at the time it was provided, and claimed to have accepted each of the nine conditions, including obtaining the NPDES permit. However, after-the-fact, upon multiple residents raising its failure to obtain the NPDES permit, Developer belatedly asserted that the NPDES permit was a third-party permit and that the plan could not be conditioned upon receipt of that permit. But this objection, after it had already accepted the condition, was too late. Developer's failure to appeal that condition after preliminary approval waived its challenge.

In *In re Appeal of Busik*, 759 A.2d 417, 421 (Pa. Cmwlth. 2000), the Commonwealth Court held that, "If a governing body imposes a condition that the applicant believes is illegal or otherwise unacceptable, the applicant has the right not to accept and to appeal the denial of the application to the court of common pleas. However, the applicant has a duty to exercise its right to appeal within the time prescribed by statute." *See also Bonner v. Upper Makefield Township*, 597 A.2d 196, 200 (Pa. Cmwlth. 1991). Pointedly, it is well-settled that "the subdivider had the power to reject the condition and to appeal. Her choice not to do so constituted a waiver of any challenge to the validity of the condition, and that waiver is binding upon her successor." *Id.* at

201. In short, “the acceptance of conditions imposed on a subdivision plan constitutes a waiver of future challenges to those conditions.” *Id.*

Here, if Developer believed that requiring the NPDES permit prior to final approval was an invalid and/or illegal condition, it should not have accepted the condition and instead should have appealed. Since it did not do so, and instead accepted the condition only to later belatedly object when that condition was asserted by citizen objectors as grounds for rejecting the final plan, it waived any challenge to the condition. *See Busik, supra*, at 421.

While Developer cites myriad cases in its Notice of Appeal for the proposition that failure to obtain a third-party permit is not grounds to deny a final plan, in none of those cases did the developer agree to the condition in the first instance and waive an objection thereto by agreeing to the condition. For example, in *Harrisburg Fore Associates v. Board of Supervisors of Lower Paxton Township*, 344 A.2d 277, 281-282 (Pa. Cmwlth. 1975), the Commonwealth Court simply noted in *dicta* that,

we note that before Appellant can open the access roads proposed, it must obtain a permit from the Pennsylvania Department of Transportation (PennDOT) which would necessitate compliance with similar or more stringent standards related to road volume and sight distance. *See Nagorny v. Zoning Hearing Board*, 4 Pa. Commonwealth Ct. 133, 286 A. 2d 493 (1972). To us, it would appear to be more reasonable and consistent with the mandate of Section 508(2) to condition final subdivision approval upon the issuance of this opening permit rather than to abort the plan at conception.

Similarly, again in *dicta*, the Commonwealth Court in *Valley Run, Inc. v. Board of Comm'rs*, 347 A.2d 517, 520 (Pa. Cmwlth. 1975), set forth, “PennDOT, of course, has the responsibility for administering the issuance of its own permits, although, as we noted in *Harrisburg Fore, supra*, it may be appropriate for a municipality to condition *final* subdivision approval upon the issuance of a permit from PennDOT.” *Traymore Associates v. Board of Supervisors of Northampton Township*, 357 A.2d 729 (Pa. Cmwlth. 1976), also does not compel a

different result, which merely affirmed conditional approval of a final plan upon issuance of a PennDOT permit.

Nor do *Glendon Energy Co. v. Borough of Glendon*, 656 A.2d 150 (Pa. Cmwlth. 1995), *Morris v. South Coventry Township Board of Supervisors*, 836 A.2d 1015 (Pa. Cmwlth. 2003), *Borough of Jenkintown v. Board of Commissioners of Abington Township*, 858 A.2d 136 (Pa. Cmwlth. 2004), and *Ellzey v. Upper Gwynedd Township Board of Commissioners*, 241 A.3d 694 (Pa. Cmwlth. 2020), alter the analysis. In none of those cases did a party expressly agree to and accept as a condition of its plan to obtain a permit before final approval and then only later object when it came to light that the condition had not been satisfied.

Indeed, *Morris, supra*, actually compels the opposite conclusion. There, the Commonwealth Court noted with approval a conditional preliminary subdivision plan approval letter that stated, “preliminary subdivision plan approval is conditioned on receipt *by the time for final approval* of any and all necessary governmental permits and approvals from other governmental agencies[.]” *Morris, supra* at 1026 (emphasis in original). The *Morris* Court added,

the Township's SALDO provides procedures for its review of preliminary plans, and the subsequent attachment of conditions thereto. (SALDO, Section 405(B)(2).) Any final plan must comply with the preliminary plan, and the conditions as attached, and must include submission of all required permits from agencies having jurisdiction over ancillary matters necessary to effect the subdivision or land development, such as PennDOT or the EPA.

See id. at 1020 n. 15. Accordingly, the Township in *Morris, supra*, required submission of permits with its final plan where conditional approval of the preliminary plan had been granted. That is precisely what occurred here, and Developer failed to submit the NPDES permit because it did not even seek such permit until after presenting the final plan.

The Board did not err in denying the final plan where Developer agreed to the condition of obtaining an NPDES permit and did not object or appeal that condition, and then did not obtain that permit before submitting its final plan. The Board should be affirmed.

- iii. *The Board should be affirmed as it did not abuse its discretion in denying approval of a proposed 108 residential home development where the substantial evidence of record supports its determination that Applicant did not establish that the Plan promoted, protected and facilitated public health, safety and general welfare or prevented overcrowding, blight, danger of congestion in travel and transportation and rather endangered the community and created additional travel transportation dangers.*

The proposed plan did not adequately address travel transportation dangers related to the bridge/culvert which was to serve as the primary means of ingress and egress to the development, including but not limited to heavy equipment needed to construct the development. (SPT02058-59; SPT02064-02065; SPT02352). Instantly, multiple residents expressed credible concerns over both the width of the culvert and its ability to withstand frequent use and its capacity for heavy equipment to traverse over it. (SPT02022-02023; SPT02064-02065; SPT02352). The residents disputed Developer's position that the roadway on top of the culvert could be expanded to 24 feet, and photographs were presented illustrating the narrow nature of the culvert. (SOT02338; SPT02135-02136; SPT02157-02162).

Additionally, it was highlighted that the culvert was put in place in 1999 and had a life expectancy of between 25 to 50 years. (SPT01770; SPT02023; SPT02041). Jason Sobeck, a Township resident who opposed the development, testified that, "Nobody's been taking about the culvert of the bridge. The developer just kind of glossed over it. It's an old culvert, it's end of useful length." (SPT01762). He added, "[W]e don't know the weight limit, there's no PennDOT inspection reports." (*Id.*; SPT01764; SPT02057; SPT02070; SPT02073; *see also* SPT01770). Mr. Sobeck continued, asserting that the plan, "remains a one-way in, one-way out subdivision dependent on a narrow substandard bridge or culvert at the Sleepy Hollow and Stolz intersection."

(SPT01764; SPT02057). Sobeck also pointed out that, “A single access over a culvert creates an unacceptable risk if blocked by flood, storm damage, or a fallen tree, potentially preventing emergency response for more than a hundred homes.” (SPT01762; *see also* SPT02058-02059). He reiterated, “A subdivision of this scale can not lawfully proceed without safe, reliable ingress and egress for residents, school buses, and emergency vehicles.” (*Id.*).

Tim Foster posited, “This structure was never designed, engineered or rated for the burden of logging trucks, excavation equipment, continuous construction traffic, moving trucks, delivery vehicles, school buses, fire trucks, ambulances and other emergency rescue vehicles.” (SPT02023). At the January 2026 Board meeting, Jason Sobeck noted that while the Township Engineer had previously opined that the culvert could hold approximately 35 tons,⁴ that was distinct from a load rating. (SPT02351-02352). He highlighted that a Caterpillar 390F excavator weighed 95.1 tons, a TigerCat 880 shovel logger weighed 47 tons, a John Deere 909M tracked feller buncher weighed over 40 tons, and that a Hitachi excavator weighed over 77 tons. (SPT02352). Mr. Sobeck contended that a stamped load rating report was needed since the plan revolved around the single access point over the culvert. (SPT02352).

In *Reeves Fam. Real Estate, L.P. v. Board of Supervisors*, 273 A.3d 1277 (Pa. Cmwlth. 2022), the Commonwealth Court reversed a trial court and reinstated a Board’s denial of tentative approval of a planned residential development where the Board, as here, rejected the plan based on public safety concerns related to a culvert/single access bridge. There, similar to here, 83 of 94 proposed residences would be accessible by a single access bridge over a culvert and stream. Because blockage of that bridge/culvert would cause that portion of the development to be inaccessible, the Board rejected the plan and found that it violated the public safety and public

⁴ The Township Engineer at the December 2025 meeting indicated that the culvert was rated to hold 36 tons. (SPT02165).

interest sections of their ordinance. The same result should follow here. There was ample credible testimony presented by multiple residents that the aged and narrow culvert was the principal access point for the entire subdivision and that it could not be widened as claimed by Developer. Similarly, there was no evidence presented by the Developer that the culvert could withstand the heavy machinery that would be needed to develop the Property.

CONCLUSION

The decision of the Board may be affirmed so long as any single reason is adequate. Here, there are multiple grounds to affirm. Initially, Appellant/Developer begins from the erroneous presumption that its final plan was sufficiently similar to the preliminary plan that was conditionally approved. However, the addition of an approximate 300-foot retaining wall and removal of trees and other items to effectuate such construction was not part of the originally approved preliminary plan.

Even if that ground were not sufficient, and it is, Developer expressly agreed to all of the conditions of the conditional approval of the preliminary plan, and did not challenge the condition related to obtaining an NPDES permit within thirty days. Instead, it did not initially even seek to apply for the permit and belatedly objected to the condition only after numerous residents objected to approval of the final plan in its absence. Thus, Developer waived any challenge to the condition by not rejecting the condition and timely appealing the conditional preliminary approval on that basis. A party cannot agree to a condition, fail to meet the condition, and complain that the condition is illegal only after the period of time in which to contest the condition has passed. Developer's failure to contest the NPDES permit requirement within the appropriate time is fatal to its position.

Finally, Developer did not sufficiently establish that the culvert/bridge was adequate to safely allow ingress and egress into the development or could withstand frequent heavy equipment traffic that would be utilized for construction of the development. For any and all of the aforementioned reasons, this Court should affirm.

TUCKER ARENSBERG, P.C.

Dated: October 6, 2026

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Township

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

TUCKER ARENSBERG, P.C.

Dated: October 6, 2026

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *BRIEF IN OPPOSITION TO LAND USE APPEAL* was served via Email on this 6th day of October, 2026, on the following individuals:

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Irving S. Firman, Esquire

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Filed on behalf of Appellant,
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Counsel of Record for this Party:

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

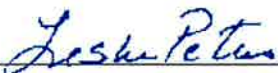


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BOARD OF SUPERVISORS OF SOUTH	)	
PARK TOWNSHIP, PENNSYLVANIA,	)	
	)	
Appellee.	)	
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BRIEF IN SUPPORT OF LAND USE APPEAL

Appellant, Majestic Woods, LP (hereinafter referred to as “**Appellant**” or “**Applicant**”), by and through its undersigned counsel, Bowles Rice, LLP, hereby files the within Brief in Support of Land Use Appeal (the “**Brief**”):

INTRODUCTION

The instant appeal involves a planned development located along Sleepy Hollow Road in South Park Township, Allegheny County, Pennsylvania containing approximately sixty-three and 160/1000ths (63.160) acres known as Majestic Woods (“**Majestic Woods**”). Despite confirmation by the staff and consultants for South Park Township that the Majestic Woods final plan (the “**Final Plan**”) fully met all Township ordinance requirements and the conditions imposed upon the preliminary plan approval, a newly-elected Board of Supervisors (the “**Board**”) voted to deny the Final Plan. The Board’s decision was an abuse of discretion, not supported by substantial evidence in the record, and constituted an error of law, such that it must be reversed.

FACTUAL BACKGROUND

The property comprising the Majestic Woods development is located in in the R-1 and R-2 zoning districts in South Park Township, in a primarily wooded area along Sleepy Hollow Road. SPT00125. The Applicant plans to subdivide the property into one hundred and eight (108) single-family lots. *Id.* The uses proposed in each of the R-1 District and the R-2 District are uses permitted by right. SPT01434; MW000031; MW000034. On or about March 6, 2024, the Applicant submitted to the Township a preliminary plan (the “**Preliminary Plan**”) for the Majestic Woods development. SPT00086.

On April 24, 2024, at a regular meeting of the Township of South Park Planning Commission (the “**Planning Commission**”), the Planning Commission accepted Appellant’s application as administratively complete but voted to not recommend the Preliminary Plan. SPT00687. At a meeting of the Board of Supervisors held on May 13, 2024, the Board approved the Preliminary Plan subject to certain conditions. SPT00716.

Following preliminary approval, the Township engineer, Daniel S. Deiseroth of Gateway Engineers, Inc., issued a series of letters relating to, *inter alia*, the conditions imposed upon the approved Preliminary Plan, to which Appellant duly responded. SPT00778, SPT01428, SPT01855, SPT01956. In his letters, Mr. Deiseroth requested additional information regarding the proposed road widening, culvert extension, and construction of a retaining wall. *Id.*

On or about November 20, 2025, Appellant submitted the Final Plan, which Final Plan incorporated and responded to the comments of the Township staff and consultants. SPT01604. In his letter dated November 21, 2025, Mr. Deiseroth stated that the Final Plan “revisions listed above address the technical comments of my previous four review letters and **meet the technical requirements of the South Park Township Zoning Ordinance, South Park Subdivision and**

Land Development Ordinance.” SPT01957 (emphasis added). Aaron Laughlin, Township Public Works Director, concurred, stating:

As requested, I reviewed the final submission of the subdivision identified as Majetic [sic] Woods. The issues related to Public Works, **which include all proposed public improvements, have been designed to meet or exceed established Township standards.** Particularly, the proposed cast-in-place concrete retaining wall which will be located within the Township's right-of-way. The structure will have no impact upon Township maintenance or snow removal activities. SPT01959 (emphasis added).

The Township’s Planning Consultant, Carolyn Yagle, AICP, PLA, NAP, from Environmental Planning & Design, in her letters dated October 10, 2025, November 13, 2025, and November 25, 2025, noted that the Final Plan “carries forward the identical number of lots and their general configuration/layout as presented on the previously approved Preliminary Plan Submission.” SPT01435 and SPT01863.

The Final Plan was declared administratively complete but was not recommended for final approval by the Planning Commission at its regular meeting on November 25, 2026. SPT01965. At a public meeting of the Board of Supervisors held on December 8, 2025, the Board considered but did not vote on the Final Plan, tabling the application until the next regular meeting. SPT02169. At the meeting, Mr. Deiseroth reiterated that “the plans did address the technical comments listed in my previous letters and that we were down to just the third-party permits related to the project.” SPT02008. In an exchange with a meeting participant, Irvin Firman, Solicitor for the Township, commented on the Final Plan’s compliance with the local ordinances:

MR. FOSTER: So can I just ask a clarifying question? Do you believe all of the ordinances have been met as written in our South Park Township –

MR. FIRMAN: Yeah.

MR. FOSTER: SALDO ordinances?

MR. FIRMAN: I believe the -- well, yes, I believe all of the ordinances have been met procedurally as required by the ordinance. SPT02031.

At a public meeting on January 27, 2026, the South Park Township Board of Supervisors voted to deny approval of the Final Plan. SPT02358. The Board issued a written decision on February 3, 2026, denying the Final Plan for the following reasons:

1. The Applicant failed to comply with Condition 3 of the Preliminary Approval. The Developer must make improvements to Sleepy Hollow Road as depicted on the Victor Wetzel plan entitled "Overall Preliminary Plan" Sheet 200, with the revised date of April 30, 2024. The Developer changed the plan and as such failed to comply with the Preliminary Approval condition. Further, there was not sufficient evidence to support the reasons for the changes to the Plan nor was there a request to waive or modify Condition 3. There were changes to the Sheet 200 that endanger the health, safety and welfare of the public including a previously unshown retaining wall 300 feet in length immediately adjacent to the proposed paving, moving of a fire hydrant, removal of tree line, and relocation of cleanout, water box, and water meter. The wall as proposed will require continuing maintenance as infrastructure to be maintained by the Township, and due to its location next to the curb, does not allow for sufficient shoulder (flat area adjacent to the curb) necessary for the safety of motorists and snow removal. (See Exhibit "A").

2. The Applicant failed to comply with Condition 5 of the Preliminary Approval -- "Developer must obtain an NPDES Permit for the development." The only documentation received on the issue was an email from Matt Gordon of the Allegheny County Conservation District noting that the Developer submitted an application for an NPDES Permit, but that it was determined to be an incomplete application.

3. The Developer failed to comply with Sections 188-4 A and B of the Township of South Park Subdivision and Land Development Ordinance ("SALDO") by failing to present written documentation that the Plan complies with the sections set forth below:

A. To promote, protect and facilitate one or more of the following: the public health, safety and general welfare; coordinated and practical community development; proper density of population; civil defense; disaster evacuation; the provision of recreation, open space and harmonious design; the provision of adequate light and air, police protection, vehicle parking and loading space, transportation, water, sewerage, schools, public grounds and other public requirements; and

B. To prevent one or more of the following: overcrowding of land; blight; danger and congestion in travel and transportation; and loss of health, life or property from fire, panic or other dangers.

4. Not only did the Developer fail to present documentation meeting the above requirements, the Board of Supervisors specifically finds that Sections 188-4 A and B were not met as this development endangers the public health, safety and general welfare of the community and creates additional danger in travel transportation, particularly related to the amendments of the plan that were first shown to the Board of Supervisors in the Final Approval stage of the proceedings.

SPT02358 - SPT02359.

On or about March 2, 2026, Appellant filed the instant appeal, asserting that the Board's decision to deny the Final Plan was improper. As set forth below, none of the comments support or justify the denial of the Final Plan, such that the Board's decision must be reversed.

LEGAL STANDARD

In a land use appeal, "where a full and complete record was made before the Board and the trial court took no additional evidence," the scope of review requires a determination of "whether the board committed a manifest abuse of discretion or an error of law." *Ctr. Lime & Stone Co. v. Spring Twp. Bd. of Supervisors*, 787 A.2d 1105, 1108 (Pa. Commw. 2001) A board "abuses its discretion if its findings are not supported by substantial evidence." *Id.* "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.*

ARGUMENT

I. Appellant Complied with Condition No. 3 of the Preliminary Plan Approval.

The first reason asserted by the Board for denial of the Final Plan involves the claimed failure to comply with Condition 3 as set forth in the Board's May 17, 2024 preliminary approval. SPT00716- SPT00717. The Board asserted as follows:

1. The Applicant failed to comply with Condition 3 of the Preliminary Approval. The Developer must make improvements to Sleepy Hollow Road as depicted on the Victor Wetzel plan entitled "Overall Preliminary Plan" Sheet 200, with the revised date of April 30, 2024. The Developer changed the plan and as such failed to comply with the Preliminary Approval condition. Further, there was not sufficient evidence to support the reasons for the changes to the Plan nor was there a request to waive or modify Condition 3. There were changes to the Sheet 200 that endanger the health, safety and welfare of the public including a previously unshown retaining wall 300 feet in length immediately adjacent to the proposed paving, moving of a fire hydrant, removal of tree line, and relocation of cleanout, water box, and water meter. The wall as proposed will require continuing maintenance as infrastructure to be maintained by the Township, and due to its location next to the curb, does now allow for sufficient shoulder (flat area adjacent to the curb) necessary for the safety of motorists and snow removal. (See Exhibit "A"). SPT02358 - SPT02359.

Condition 3 of the Preliminary Plan approval required the following:

3. The Developer must make the improvements to Sleepy Hollow Road as depicted on the Victor Wetzel Plan entitled, "Overall Preliminary Plan," Sheet 200, with the revised date of April 30, 2024. This includes but is not limited to the following:

a. Onsite improvement on the development frontage to reconstruct the road to Township Standards from the eastern side of the development (Curtis Drive) to the eastern line of the Nickoloff property.

b. Offsite improvement to reconstruct the road to the Township paving thickness standards to a width of at least 24 feet for another 500 feet to the west.

c. Offsite improvement to widen to 24 feet and overlay the remaining portion of the road to the intersection of Stoltz Road with two inches (2") of wearing course.

d. Offsite improvement to modify the culverts under Sleepy Hollow Road as necessary to allow for a 24-foot cartway to extend to Stoltz Road. SPT00716- SPT00717.

The Township, its staff and its consultants understood that aspects of the Preliminary Plan would be revised to comply with the conditions imposed upon the Preliminary Plan approval. The language of Condition 3 **required** modifications to the Preliminary Plan including, but not limited to, widening of the road in question for an additional five hundred (500) and "[o]ffsite improvement to modify the culverts under Sleepy Hollow Road *as necessary* to allow for a 24-

foot cartway to extend to Stoltz Road.” *Id.* (emphasis added). For the Township to claim that it denied the Final Plan due to modifications from the Preliminary Plan which it required, makes clear that this is merely pretext.

In fact, there was significant correspondence between the Applicant and the Township’s consultants discussing modifications to the Preliminary Plan. On July 10, 2025, Mr. Deiseroth requested “detailed plans” regarding “the proposed onsite and offsite improvements to the Township portion of Sleepy Hollow Road.” SPT00754. On August 5, 2025, Appellants’ consultant, Adam J. Law of David E. Wooster & Associates, LLC submitted sheets detailing the offsite work requested by the Board’s consultant. SPT00775. Mr. Deiseroth responded on August 14, 2025 that the submission was insufficient and requested additional, detailed construction information. SPT00779. On October 1, 2025, Mr. Law responded, providing updated plans showing the required cross sections as well as a proposed retaining wall to address grading requirements. SPT01416. On October 9, 2025, Mr. Deiseroth made additional comments including requesting additional details for the proposed retaining wall. SPT01430. Mr. Law again responded to these comments via letter dated November 5, 2025 and thereafter provided the requested retaining wall detail. SPT01743-SPT01744. On November 21, 2025, Mr. Deiseroth sent a final review letter stating that “[t]he revisions listed above address the technical comments of my previous four review letters and meet the technical requirements of the South Park Township Zoning Ordinance, South Park Subdivision and Land Development Ordinance.” SPT01957.

As detailed in the above-referenced correspondence, the Applicant and Township consultants and staff had an ongoing working relationship relating to the modifications required for the Final Plan. On multiple occasions, Mr. Deiseroth requested modifications to the plans to comply with Condition 3 required by the Township. The Applicant complied with these requests

in good faith, to the satisfaction of Mr. Deiseroth. The Township now cannot assert that the Applicant's efforts to comply with the demands of the Township's own consultants is a valid reason to deny the Final Plan.

At the November 25, 2025 Planning Commission meeting, the Township's consultants and staff confirmed that Appellant had complied with the conditions of the Preliminary Plan approval.

Mr. Deiseroth stated:

As I've reviewed this plan several times since August, provided the developer with comments. They've come back and forth with comments or answered my comments and questions, they've revised the plans. So I just give that as a background to the Planning Commission that this isn't -- this is an iterative process where something this complex, there's always comments, there's always things that need addressed when you do something of this detail. So as we stand before you here tonight, we've reviewed all these documents, we've gotten the plans, as Mr. Wetzel went over. We paid particular attention to the work that had to occur along Sleepy Hollow Road and the details related to that. There was some iterations of the design that they came up with. **They finally come up with something that's acceptable, that meets the conditions that were dictated by the preliminary approval, so I'm satisfied with that.** The stormwater management plan in its final form meets the township requirements for stormwater management. They provided a geotechnical -- a final geotechnical report that addresses the issue with some of the coal mines that are located in the area and the grouting that will be required related to that. **So with that all being said, in my mind, the plan meets the technical requirements of the South Park Subdivision of Land Development Ordinance.** SPT01753 (emphasis added).

Regarding Condition 3, Mr. Deiseroth also stated that:

The third condition was the developer must make improvements to Sleepy Hollow Road depicted on the Victor-Wetzel plan entitled Overall Preliminary Plan Sheet 200 with revised date of April 30, 2024. This includes, but is not limited to the full on-site improvements -- on-site improvement on the development frontage to reconstruct the road to township standards from the eastern side of the development, Curtis Drive, to the eastern line of the Nikoloff property. **That condition has been met as depicted on the plans.** Off-site improvement to reconstruct the road to the township pavement thickness the standards to a width of at least twenty-four feet for another five hundred feet to the west. **And yes, that condition has been met by the plans that have been submitted.** The third is off-site improvement to widen to twenty-four feet and overlay the remaining portion of the road to the intersection of Stoltz Road with two inches of wearing course. **That condition has been met by the submission of the plans tonight.** And then off-site improvements to modify

the culverts under Sleepy Hollow Road as necessary for a twenty-four-foot cartway to extend Stoltz Road. And I think, as we knew the plan back then, there was not a final plan on how they were supposed to cross the culvert. As planned tonight, there will be no modification required to the culvert to cross the road. As they've depicted, the alignment has changed. They're going out into the further as you approach Stoltz Road on the left, they're going further to that direction to come across the road or come across the culvert directly across it. **And they're going to require them to move an existing utility pole to make that happen, so that condition has been met.** SPT01755 (emphasis added).

When the Planning Commission asked the Township Code Enforcement Officer Thomas Bonidie whether the Final Plan had “met all the current South Park requirements,” Mr. Bonidie answered, “yes.” SPT01754. When asked the same question, Mr. Deiseroth answered, “[y]es. They have.” *Id.* Finally, when asked the same question, Township Planning Consultant Carolyn Yagle answered, “[m]y perspective is zoning, and the answer is yes.” As such, all of the Township’s staff and consultants agreed that the Final Plan met all Township requirements.

The Township now also asserts that the retaining wall was not previously disclosed to the Township, however, as stated in the above-referenced correspondence, the need for the retaining wall was well-known and extensively discussed with the Township engineer. Further, the Planning Commission even commented on the fact that the proposed retaining wall was now reduced in height, with the Chairman H. Russell Bracker stating: “I know in some of the earlier plans, that wall was higher.” SPT01755. The Township was well aware of the modifications to the Final Plan necessary to comply with Condition 3, which were in large part based on the comments of their engineer.

Mr. Deiseroth commented that the “[t]he developer must obtain approval of fire hydrant locations. **That has already been taken care of.**” SPT01755 (emphasis added). As Michael Wetzal noted at the December 8, 2025 Board of Supervisors meeting: “[t]he developer must -- Item No. 7, the developer must obtain Township approval of the fire hydrants. That has already

been addressed and completed by the fire chief.” SPT02003. At no time did the Township indicate that moving a fire hydrant was an issue, nor did it provide the applicant with an opportunity to modify the Final Plan accordingly.

Similarly, the issue of the removal of trees was also not discussed by the Township, despite Mr. Wetzel identifying the need for removal of trees within the road right-of-way. As Mr. Wetzel stated: “[w]ith the wall and the grading, there’ll be some of the trees removed within the road right-of-way in itself” and “[t]o build this wall, there will be some trees that will need to be removed as part of that area.” SPT01752, SPT01996-SPT01997. The Township engineer, Mr. Deiseroth, agreed that the modifications made to the Final Plan met Condition 3, including the retaining wall, met the “technical requirements of the South Park Subdivision of Land Development Ordinance.” SPT01753. The issue of “relocation of cleanout, water box, and water meter” was never raised at any point in any of the regular meetings of the Planning Commission or the Supervisors. SPT02358 - SPT02359. This issue therefore appears to have been invented post hoc to justify denial of the Final Plan.

Finally, the alleged lack of sufficient shoulder of the widened roadway was addressed multiple times by the Board’s experts and consultants. Mr. Bonidie stated that the proposed retaining wall “will have no impact upon the township maintenance or snow removal.” SPT01754. Aaron Laughlin, Public Works Director concurred, writing: “[t]he structure will have no impact upon Township maintenance or snow removal activities.” SPT01959.

The Township’s engineer stated that “[w]e **paid particular attention to the work that had to occur along Sleepy Hollow Road and the details related to that.** There was some iterations of the design that they came up with. They finally came up with something that’s

acceptable, that meets the conditions that were dictated by the preliminary approval, so I'm satisfied with that." SPT01753 (emphasis added).

The record is clear that each the Township's staff and consultants stated that the Final Plan complied with the Township's Subdivision and Land Development Ordinance, the Township's Zoning Ordinance and the conditions of Preliminary Plan approval. In *Raum v. Bd. of Sup'rs of Tredyffrin Twp.*, 370 A.2d 777, 798 (Pa. Commw. 1976) the Court stated:

A municipality has a legal obligation to proceed in good faith in reviewing and processing development plans. The duty of good faith includes discussing matters involving technical requirements or ordinance interpretation with an applicant, and providing an applicant a reasonable opportunity to respond to objections or to modify plans where there has been a misunderstanding or difference of opinion.

A municipality acts in bad faith when it raises entirely new objections to a plan after the applicant has diligently revised its submissions to address previously identified deficiencies. Under *Raum*, an applicant must be provided a fair and meaningful opportunity to present documentation and supplemental information. In this case, the Board's conduct mirrors the precise administrative overreach condemned in *Raum*. The record demonstrates that the applicant worked with municipal staff and consultants and revised its Final Plan to comply with all of the comments provided. Rather than approving the Final Plan, which its staff and consultants agreed met all Township requirements, the Board denied the Final Plan based upon objections not discussed with the applicant or raised at any of the meetings. The Board breached its fundamental duty of good faith by weaponizing the approval process to engineer a denial rather than facilitate good faith review of the plan.

The record demonstrates that the Applicant and the Township's staff and consultants engaged in a collaborative effort regarding required modifications to the Final Plan. The Applicant fulfilled its good faith duty to provide revised plans and responses to the comments of Township

staff and consultants. The Township ignored the recommendations of its own staff and consultants to give into the organized opposition of a few local residents.

Moreover, pursuant to Municipalities Planning Code § 10508(4)(i) of the Municipalities Planning Code:

When a preliminary application has been duly approved, the applicant shall be entitled to final approval in accordance with the terms of the approved preliminary application.

53 P.S. §10508(4)(i) (emphasis added).

The Township's solicitor explained this standard for approval of a final subdivision plan, stating: "[t]he only thing that I have, of course, is that preliminary approval in this case was granted. So really the only question is if the plan meets the same as the preliminary plan and meets the conditions, then the obligation is to approve the plan. That's the standard of law." SPT01754.

Carolyn Yagle, the Township's Planning Consultant, identified in each of her letters dated October 10, 2025, November 13, 2025, and November 25, 2025, that the Final Plan "carries forward the identical number of lots and their general configuration/layout as presented on the previously approved Preliminary Plan Submission." SPT01435 and SPT01863. The Final Plan conformed to the approved Preliminary Plan, complied with the Township's Ordinances and further met the requirements of Condition 3 of the Preliminary Plan approval, and therefore, by law, the Township was required to approve it.

II. The Applicant was Not Required to Obtain an NPDES Permit Prior to Final Approval.

The Township's next purported reason for denying the Final Plan involves Condition No. 5 of the Preliminary Plan approval that "Developer must obtain an NPDES Permit for the development." Note that this condition does not expressly require that the NPDES Permit be

received **prior** to the Township's approval of the Final Plan, by its express terms it requires only that the Developer obtain an NPDES Permit. As Mr. Deiseroth explained to the Township:

In particular, I want to address the NPDES permit. An NPDES permit is a National Pollution Elimination Discharge System permit...So after the township reviews the plan, they have to make application for a federal permit. **That federal permit can't be applied for until the local approvals occur.** Because at such time that I feel that the stormwater management meets our requirements, I have to provide documentation in the form of a letter that says as our flood plan and stormwater management ordinance has been met by the current plan, or they can't even get in the door to make application for the NPDES permit...So I just bring that to your attention because that would be one, not really a condition, it's something -- **they can't start the plan without an NPDES permit, but they can't apply for the permit until they work through the process that the township passed.** SPT01753-SPT01754 (emphasis added).

He went on to assert that: "[t]he developer must obtain an NPDES permit for the development. That's still pending because, as I've told you earlier, that's a permit, a third-party permit **that requires our approval from the township before that can occur.**" SPT01755 (emphasis added). As Mr. Deiseroth reiterated:

But the NPDES permit process runs through the Allegheny County Conservation District. And what I think I heard Mr. Foster say was, as deemed appropriate, that things are submitted. **So this plan isn't deemed appropriate to be submitted, as I explained before, until it goes through the township ordinances first.** The federal permit, they need a letter of compliance. I can't write a compliance letter until they run through the process, if that makes sense. **So they really can't get the NPDES permit. And there's several other plans that I'm aware of that I reviewed in other communities, people run through the community process first, and then the NPDES permit follows after that.** So there's an extra layer of scrutiny on it. It takes anywhere from -- well, I'm just explaining the way it happens. When a plan submitted to this board, we have up to ninety days to review it, and if it meets our requirements at that point in time, then we have to make a decision and either approve it or not approve it. What happens is when it goes to the -- for the NPDES application, that can take six months to a year ... And that -- and they -- but again, it's -- the process has reached the point where you can't get that. **In other words, we have to write them a letter that says that it complies with our ordinance first. And they can't write that letter till it runs through this process.** SPT01757-SPT01758 (emphasis added).

Mr. Deiseroth concluded: “[a]nd I mean, I’ve been in this business for forty years. Regulations are very complicated. And in the world today this is -- I represent at least seven different communities, and **everywhere in those communities an NPDES permit follows local approval.** SPT01759 (emphasis added).

The Township’s engineer stated unequivocally multiple times that obtaining a NPDES permit requires approval of the subdivision plan by a municipal body. As such, it was impossible for the Applicant to procure an NPDES permit prior to the Township’s approval of the Final Plan. The Township posits that the Applicant was required to procure the NPDES permit as a condition of approval of the Final Plan, but even the Township’s own engineer acknowledges that the permit cannot be obtained prior to the Township’s approval of the Final Plan, moreover, the condition upon which the Township relies does not expressly require that the NPDES permit be received **prior** to final plan approval.

Pennsylvania courts have also addressed this issue and have ruled that the appropriate course is to condition final approval of a plan on obtaining required third-part permits rather than denying the plan. *See, e.g., Harrisburg Fore Assocs. v. Bd. of Sup'rs of Lower Paxton Twp.*, 143, 344 A.2d 277, 282 (Pa. Commw. 1975) As stated by the Commonwealth Court, “it would appear to be more reasonable and consistent with the mandate of Section 508(2) to condition final subdivision approval upon the issuance of this opening permit rather than to abort the plan at conception.” *Id.* Further, “where an outside agency's approval is required for some aspect of development, the governing body should condition final approval upon obtaining the necessary permit rather than denying.” *McGrath Const., Inc. v. Upper Saucon Twp. Bd. of Supervisors*, 952 A.2d 718, 725–26 (Pa. Commw. 2008) (quoting *Morris v. South Coventry Township Board of*

Supervisors, 836 A.2d 1015 (Pa. Commw. 2003), *petition for allowance of appeal den.*, 860 A.2d 126 (Pa. 2004).

As the Township solicitor stated at the December 8, 2025 regular meeting:

The only other legal issue that you raised -- and the other ones will probably be addressed by the Township Engineer -- was the condition on the NPDES permit. **When it's a third-party approval, technically, it's not a condition under the -- under the case law**, and actually, it's in the *Mets* (sic) case that you had referenced previously. **Those conditions -- third-party approval conditions are considered not conditions**. So that's the -- those are the legal issues, and that's the Township's response. SPT02030-SPT02031 (emphasis added).

As the Township's own solicitor noted, the NPDES permit is a third party approval, which is separate process from final plan approval process governed by the Township. There is no requirement that the sewer planning process be completed prior to the granting of final plan approval, only that it be obtained prior to commencement of construction. See, 25 Pa. Code §102.5(a) ("a person proposing an earth disturbance activity that involves equal to or greater than 1 acre...shall obtain an individual NPDES Permit...prior to commencing the earth disturbance activity.")

The Pennsylvania courts have uniformly held that it is "more reasonable and consistent to condition final approval of the development plan upon obtaining all the required permits from the DEP, rather than rejecting the [preliminary] plan outright." *CACO Three, Inc. v. Board of Supervisors of Huntington Township*, 845 A.2d 991, 996–97 (Pa. Commw. 2004). This Court should therefore reverse the Township's decision and enter an order directing the Township to approve the Final Plan.

III. There is No Requirement to Provide Documentation Under Ordinances Section 188-4 A and B.

The Township's reasons No. 3 and No. 4 for its denial of the Final Plan ostensibly relate to requirements set forth in Sections 188-4 A and B of the Township's Subdivision and Land

Development Ordinance (“SALDO”). The Township’s reason No. 3 asserted that “Developer failed to comply with Section 188-4A and B of the [SALDO] by failing to present written documentation that the Plan complies with the sections set forth below:

A. To promote, protect and facilitate one or more of the following: the public health, safety and general welfare; coordinated and practical community development; proper density of population; civil defense; disaster evacuation; the provision of recreation, open space and harmonious design; the provision of adequate light and air, police protection, vehicle parking and loading space, transportation, water, sewerage, schools, public grounds and other public requirements; and

B. To prevent one or more of the following: overcrowding of land; blight; danger and congestion in travel and transportation; and loss of health, life or property from fire, panic or other dangers.

There is no Section 188 of the Township’s SALDO. The Township’s SALDO does include a Section 118-4. Reason No. 4 asserts that “[n]ot only did the Developer fail to present documentation meeting the above requirements, the Board of Supervisors specifically finds that Section 188-4 A and B were not met as this development endangers the public health, safety and general welfare...and creates additional danger in travel transportation, particularly related to the amendments of the plan that were first shown to the Board of Supervisors in the Final Approval stage of proceedings.”

There is no language in Section 118-4 A or B which requires a Developer to provide additional “written documentation” that a plan meets the requirements of such Section. More importantly, Section 508(2) of the MPC provides that “[w]hen the application is not approved in terms as filed the decision **shall specify the defects found in the application and describe the requirements which have not been met** and shall, in each case, cite to the provisions of the statute or ordinance relied upon.” 53 P.S. §10508(2)(emphasis added).

Reason No. 3 provided by the Township for denial of the Final Plan makes no reference to any specific defect of the Final Plan, nor does it identify any specific requirement of the Township SALDO which is not met by the Final Plan.

Reason No. 4 provided by the Township for denial of the Final Plan similarly makes no reference to any specific defect of the Final Plan nor does it identify any specific requirement of the Township SALDO which is not met by the Final Plan.

In *Whiteland Manor Homes, Inc. v. Borough of Downingtown*, 378 A.2d 1311 (Pa. Commw. 1977), the Commonwealth Court found that the Borough's denial letter, citing only to the provisions of its ordinance and not to the specific deficiencies within the plan or the specific requirements not met, did not comply with the requirements of Section 508(2). Moreover, Pennsylvania courts have made clear that general statements set forth in a SALDO, while they may "point to an admirable and legitimate goal...provide no requirement or criterion by which the courts could review a finding of noncompliance...." *Goodman v. Board of Commissioners of South Whitehall Township*, 411 A.2d 838, 841 (Pa. Commw. 1980).

The *Goodman* Court made clear that when a township has legislatively zoned an area as appropriate for a type of use, the Court cannot uphold "rulings which would effectively amend that zoning; that would be equivalent to letting the township 'hold in reserve unpublished requirements capable of general application for occasional use.'" *Id.* at 840 (citing *County Builders, Inc. v. Lower Providence Township*, 287 A.2d 849 (Pa. Commw. 1972)). The *Goodman* Court went to state that if municipalities were permitted to rely on general language and ignore specific ordinance requirements to reject applications "then there would be no point to the judicial doctrine that a subdivision plan which complies with applicable regulations must be approved." *Id.* at 841.

All Township staff and all Township consultants uniformly stated to both the Planning Commission and the Board of Supervisors that the Final Plans met all requirements of the Township's ordinances.

VI. The Final Plan was Required to Be Approved as it is Substantially the Same Plan as the Approved Preliminary Plan.

During the South Park Township Board of Supervisors December 8, 2025 meeting, Mike Wetzel of Victor Wetzel presented the same PowerPoint presentation provided to the South Park Township Planning Commission on November 25, 2025, with an additional slide indicating that the Preliminary Plan was substantially the same as the Final Plan. MW000258. The Township's Planning Consultant, Carolyn Yagle, AICP, PLA, NAP, identified in her letters dated October 10, 2025, November 13, 2025, and November 25, 2025, that the Final Plan "carries forward the identical number of lots and their general configuration/layout as presented on the previously approved Preliminary Plan Submission." SPT01435 and SPT01863.

In *Rickert v. Latimore Township*, the Commonwealth Court found that the Township erred in rejecting a final plan after the preliminary plan had been deemed approved. The Court stated "[t]o be approved, the final plan needed only to be the same plan as the deemed-approved preliminary plan with the additional engineering details required by the subdivision ordinance. The final plan met this requirement and it should have been approved by the Board of Supervisors." 960 A.2d 912 (Pa. Commw. 2008) (citing *Annand v. Board of Supervisors of Franklin Township*, 634 A.2d 1159, 1161 (Pa. Commw. 1993)).

Section 508(4) of the MPC also requires that "[w]hen a preliminary application has been duly approved, the applicant **shall be entitled to final approval** in accordance with the terms of the approved preliminary application as hereinafter provided. 53 P.S. § 10508(4)(i)(emphasis added). As stated above, during the November 25, 2025 Planning Commission meeting, Mr.

Bracker asked the Township Solicitor Firman if he had any comments or questions. Attorney

Firman responded:

No. The only thing that -- well, I guess, yes. The only thing that I have, of course, is that preliminary approval in this case was granted. So really the only question is if the plan meets the same as the preliminary plan and meets the conditions, then the obligation is to approve the plan. That's the standard of law.

SPT01754.

In *Coventry Park, LLC v. Robinson Township Board of Commissioners*, 2010 WL 9513266 (unreported), the Pennsylvania Commonwealth Court, citing *Graham v. Zoning Hearing Board of Upper Allen Township*, stated that pursuant to Section 508(4) of the MPC:

Once a preliminary plan has been approved, the application is entitled to final approval in accordance with the original preliminary application. Thus, final approval of a subdivision plan is automatic unless the final plan is different from the preliminary plan.

Graham, 555 A.2d 79, 81 (Pa. 1989) (emphasis added).

Mr. Wetzel stated to the South Park Township Planning Commission on November 25, 2025:

“Once again, the lot layouts and road layouts are identical to the approved preliminary plans from 2024....Majestic Woods meets all the zoning requirements by use by right within the project, so they comply with all of the zoning requirements of the R2. We are also not asking for any modifications or variances with this plan. So we’re meeting all the zoning requirements for the R2. And then these are the R1 requirements. We also meet all those requirements... And once again for the R1, we’re not asking for any modifications or variances within the plan.

SPT01750.

During the November 25, 2025 Planning Commission meeting, Township Planning Consultant Carolyn Yagle stated

“[a]nd based upon the plans presented, the zoning is something that we can comment that its carrying forward, the identical number of lots that were shown

within the approved preliminary package. And then also, almost in mirror form, are the same location of the lots that were approved as part of the preliminary package. So we would be in the position to say, as it meets the township's adopted zoning ordinance, that it would be something for this to move forward to the next step, to approval."

SPT01753.

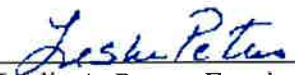
As such, it is clear that the Final Plan is substantially the same as the approved Preliminary Plan with the additional engineering details required by the subdivision ordinance and the necessary modifications required to comply with the conditions imposed by the Board.

CONCLUSION

The record overwhelmingly demonstrates that the Final Plan complies with all SALDO and Zoning ordinance requirements, as well as the Township's conditional approval of the Preliminary Plan and the Board's denial constitutes an error of law and abuse of discretion under *Raum*. For all of the foregoing reasons, the Applicant respectfully requests that this Honorable Court REVERSE the decision of the South Park Township Board of Supervisors and ORDER the approval of the Applicant's Final Plan conditioned upon the receipt of the required third-party NPDES permit prior to construction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **BRIEF IN SUPPORT OF LAND USE APPEAL** was served this **6th day of October 2026**, upon the following, by depositing the same in the United States Mail, First Class, Postage Pre-Paid:

Irving Firman, Esq.
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Counsel for South Park Township
Board of Supervisors