

**RESOLUTION 20-2021
EAST WHITELAND TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

**A RESOLUTION FOR PRELIMINARY LAND DEVELOPMENT PLAN APPROVAL
FOR CONSTITUTION DRIVE PARTNERS, L.P. FOR THE MALIN ROAD
DEVELOPMENT**

WHEREAS, Constitution Drive Partners, L.P. (the “Applicant”) is the legal, titled owner of a 13.6 +/- acre site located at 1 South Malin Road in East Whiteland Township, Chester County, Pennsylvania, in the RRD – Residential Revitalization District, more specifically identified as Chester County UPI No. **42-4-321.2** (the “Property”);

WHEREAS, the Applicant proposes to construct eighty-six (86) townhomes, internal roadways, landscaping, sidewalks, parking areas, lighting, grading, utilities, erosion and sedimentation control, and stormwater management facilities (the “Project”); and

WHEREAS, Applicant has requested review and approval of a Preliminary Land Development Plan entitled “Malin Road Development – 1 Malin Road” prepared by Taylor, Wiseman & Taylor, dated September 22, 2018, last revised October 18, 2020, and consisting of twenty-six (26) sheets.

NOW, THEREFORE, BE IT RESOLVED, by the East Whiteland Township Board of Supervisors, Chester County, this TENTH day of FEBRUARY, 2021, that said application for the Preliminary Land Development Plan is **APPROVED WITH CONDITIONS**:

1. **Preliminary Land Development Plan**: The Preliminary Land Development Plan prepared by Taylor, Wiseman & Taylor, dated September 22, 2018, last revised October 18, 2020, and consisting of twenty-six (26) sheets (the “Preliminary Plan”).
2. **Conditions of Preliminary Plan Approval**: The Preliminary Plan as referenced in Paragraph 1 of this Resolution is hereby approved subject to the following conditions:
 - a. In the Final Plan for the Project, the Applicant must address to the satisfaction of the Township the comments contained in the following letters:
 - 1) ARRO Review Letter (Dated November 3, 2020)
 - 2) McMahon Associates, Inc. Review Letter (Dated November 12, 2020)
 - 3) LandConcepts Review Letter (Dated October 29, 2020)
 - 4) Code & Life Safety Review Letter (Dated August 28, 2020)

- b.** The Applicant shall satisfy all outstanding review comments in the East Whiteland Township Department of Codes & Life Safety review letter dated August 28, 2020 prior to approval of the Final Plan.
- c.** If, upon submission of the existing fire flow documentation, an additional fire hydrant (or hydrants) is deemed necessary by the Township's Fire Code Official or Fire Marshal, the Applicant shall revise the plans to account for the design and installation of an additional fire hydrant(s). The location of the fire hydrant(s) shall be reviewed and approved by the Fire Code Official or Fire Marshal. The corresponding master pit(s) shall also be reviewed by the Fire Code Official or Fire Marshal as part of any review and approval by Aqua.
- d.** The Applicant shall maintain unobstructed access to the Property and the surrounding properties via Malin Road at all times – including during remediation, site work, construction, and roadway improvements. At no time shall the road access be impeded such that emergency personnel are unable to safely access the Property and/or the surrounding properties. This includes any limitation to the existing vertical clearance through the railroad underpass and/or narrowing of the horizontal clearance which would preclude vehicles from travelling safely through the underpass.
- e.** As outlined in the McMahon Associates review letter dated November 12, 2020, the Applicant shall perform traffic signal improvements at the intersection of Lancaster Avenue and Malin Road, including side street split signal phasing on Malin Road, as well as traffic signal equipment upgrades to accommodate the Township's planned adaptive traffic signal system along Lancaster Avenue and to comply with the Township's current traffic signal specifications. The Applicant shall submit a signal permit plan and construction plan for review as part of Final Plan submission. The Township acknowledges that these improvements are ultimately subject to review and approval by the Pennsylvania Department of Transportation.
- f.** The proposed emergency access road connecting Road A to Village Way shall be restricted to use by emergency vehicles only. The access road shall not be used for primary access or general circulation by the residents of the proposed development.
- g.** Prior to recording of the Final Plan, the Applicant shall pay a fee in lieu of dedicating land for Park, Open Space and Recreations (POR) in accordance with Section 175-40.B of the Township's Subdivision and Land Development Ordinance. The fee is presently calculated to be **\$129,000** based on the established fee at the time of the original submission in 2015 (\$1,500 / dwelling unit).

- h.** As discussed with the Historic Commission at its meeting on November 18, 2020, the Applicant shall assist the Commission with the design and pay for the fabrication and installation of an interpretive panel or commemorative plaque describing the historic cemetery on Malin Road. The design, placement, and all relevant aspects of the sign shall be determined prior to approval of the Final Plan.
- i.** The Applicant shall grant unrestricted access to the Township for observation and inspection throughout the course of the building, demolition, site development, and construction process. Specifically, the Applicant shall permit a Township-assigned environmental consultant to observe the demolition of the existing structures and the corresponding site work.
- j.** The Applicant requested zoning relief from the East Whiteland Township Zoning Hearing Board regarding (i) wall height and (ii) development activities within areas of steep slopes and very steep slopes. On April 25, 2017, the East Whiteland Township Zoning Hearing Board issued an Opinion and Order (“ZHB Opinion”) which provided that the Applicant must comply with all of the conditions of approval in the ZHB Opinion. All such conditions of approval are incorporated herein by reference. The Applicant shall comply with all of the Conditions of Approval in the ZHB Opinion, specifically, but not limited to:

 - (1) The Applicant deposited Twenty Thousand Dollars (\$20,000.00) in an escrow account established by the Township, the purpose of which is to fund the Township’s retention of an environmental professional, the selection of whom shall continue to be at the Township’s sole discretion, to provide the Township with guidance on the environmental issues applicable to the Property, including remediation of the Property and the redevelopment of the Property. If the escrow account should fall below Five Thousand Dollars (\$5,000.00) at any time, the Applicant shall replenish such fund to Ten Thousand Dollars (\$10,000.00) upon such occurrence or occurrences.
 - (2) At the time of creation of the homeowners association (the “HOA”), the Applicant shall make a one-time, nonrefundable deposit of Twenty Thousand Dollars (\$20,000.00) into an escrow account to be solely controlled by the HOA, which funds may be used only by the HOA to inspect and/or repair any vapor mitigation systems required to be installed and operated in residential units at the Property.

- (3) The Applicant shall implement the remedial scope of work developed by Environmental Standards (as may be amended) and approved by the Pennsylvania Department of Environmental Protection (the "DEP"), including remediating all unsaturated soils with any concentrations of TCE above Act 2 residential standards in the three (3) identified soil "hot spot" areas of concern, and securing approval from DEP for the unsaturated soils in these three (3) "hot spot" areas of concern to the satisfaction of DEP in addition to meeting all requirements of the Applicant set forth in the March 17, 2005 Consent Order and Agreement, as amended or may be amended, between DEP and Applicant, and in any Remediation Scope of Work developed by or on behalf of the Applicant for the Property and approved by DEP.
- (4) No earth disturbance, construction or redevelopment activities (other than building or demolition activities) shall occur at the three (3) soil "hot spot" areas of concern until the completion of all necessary soil excavation required at the three (3) soil "hot spot" areas in accordance with DEP approved Remediation Scope of Work, as may be amended.
- (5) In addition to securing DEP's approval for the unsaturated soils in the three (3) soil "hot spot" areas of concern, the Applicant shall obtain written confirmation from DEP that soil hot spot remediation was completed in accordance with DEP approved Remediation Scope of Work, as may be amended.
- (6) The installation of vapor mitigation systems on any residential structures (i) located within 100 feet of groundwater with volatile organic containment (VOC) concentrations in excess of Act 2 residential statewide health standards, or (ii) that may be required pursuant to DEP's new vapor guidance. Vapor mitigation systems shall be designed and certified by the Applicant's professional engineer, and shall be reviewed and approved by the Township's special environmental engineer, with the review costs paid for by the Applicant. The Applicant's professional engineer shall also certify that the vapor mitigation systems were installed properly.
- (7) The Applicant shall obtain a stormwater construction NPDES permit from DEP/Chester County Conservation District.
- (8) There shall be reasonable future access granted to DEP and the PRPs to monitor groundwater wells, and to implement any future groundwater remedy that may be selected by DEP.

- (9) Utilities at the site shall be designed and installed by the Applicant to prevent the potential for vapor migration into residential structures, as well as the migration of contaminated groundwater into the utilities.
 - (10) There shall be a recordation of an environmental covenant pursuant to the Uniform Environmental Covenants Act (the "UECA"), requiring residents to operate and maintain their vapor mitigation systems in perpetuity. The requirement to operate and maintain the systems will also be contained within the HOA documents. The recorded UECA covenant shall also require that no subsurface disturbance (other than building construction and utility installation and maintenance activities) will take place within the portion of the site where vapor mitigation systems would be required on residential structures.
 - (11) The Applicant shall comply with all of the provisions of the East Whiteland Township Zoning Code, specifically Section 200-25.1, entitled RRD Residential Revitalization District, unless relief is granted by the Zoning Hearing Board.
 - (12) The Applicant must remediate the soils in the three (3) soil hot spot areas identified by DEP. The remediation must be to the residential statewide health standard for soil and address the related vapor mitigation issue through pathway elimination. The Applicant shall submit a Report for DEP approval demonstrating remediation of the unsaturated soils in these three (3) soil hot spot areas of concern as set forth herein. The said report shall conform to the requirements of 25 Pa.Code 250.411 (Final Report) to the satisfaction of DEP.
 - (13) Until the remediation of the three (3) soil hot spot areas is fully completed, which shall include post-excavation samples and approval of the remediation by DEP, the Applicant shall not start the construction of any residential units or appurtenances thereto on the Property. The only permitted activity during this time shall be the installation of temporary roads to support the remediation process.
 - (14) The Applicant shall submit a demolition plan to the Township and DEP prior to the demolition of any structures on the Property.
- k.** To the extent that the Applicant has not yet complied with the conditions of approval in the ZHB Opinion, it must do so in addition to complying with the following conditions, with the understanding that certain of the conditions of approval in the ZHB Opinion may be satisfied by complying with the following conditions of approval:

- (1) Prior to any construction occurring at the Property, the Property must be remediated by Applicant, or by any other party, which remediation shall be approved by the Pennsylvania Department of Environmental Protection (“DEP”) consistent with the laws and regulations of the Commonwealth of Pennsylvania including, but not limited to, the Hazardous Sites Control Act and the Land Recycling Act (also known as Act 2) and the regulations adopted thereunder. All remediation performed or undertaken at the Property shall meet any and all requirements for residential development under the aforementioned laws and regulations, which shall include any and all applicable covenants, including, but not limited to, those covenants which may be required under the Uniform Environmental Covenants Act (UECA).
- (2) Consistent with DEP’s August, 2020 Final Remedial Alternatives Analysis Report, any remediation at the Property shall address any and all risks associated with vapor intrusion, unsaturated and saturated soil, surface water, dense non-aqueous phase liquid (DNAPL), and groundwater, to the extent applicable, for residential development. The identification of such risks and applicable remediation must be submitted to and approved by DEP.
- (3) Any excavation at the Property for the installation or placement of utilities, or for any other purpose, shall not occur until the Property has been fully remediated in accordance with subparagraph k(1) and k(2) above.
- (4) In conjunction with any remediation or construction at the Property, the applicant must demonstrate that it fully complied with all recommendations provided for in the attached April 6, 2016 letter from the Agency for Toxic Substances and Disease Registry (“ATSDR”), which letter is attached hereto at Exhibit “A,” which is hereby incorporated herein by reference and made a part hereof. This includes, but is not limited to, implementing appropriate best management practices to control dust and vapor emissions during remediation and construction. Air monitoring shall be performed, in accordance with applicable guidance, to ensure that remediation and construction activities do not result in off-site migration of harmful environmental impacts.
- (5) To the extent not addressed elsewhere, the following exposure pathways associated with both unsaturated and saturated surface and subsurface soils, as well as groundwater, at the Property must be evaluated to the satisfaction of DEP:

- Inhalation of vapors volatilized from surface and subsurface soils and, to the extent applicable, groundwater, to the ambient air and any residential indoor air;
 - Leaching of constituents from surface and subsurface soil to groundwater;
 - Dermal contact, direct ingestion, and inhalation of particulates from contaminated soil;
 - Contact with surface water contaminated by runoff from contaminated surface soil;
 - Inhalation of vapors volatilized from surface and subsurface soil into an enclosed space;
 - Incidental soil ingestion, dermal contact with soil and/or groundwater, and inhalation of particulates and volatiles from soil and/or groundwater for a construction/trench worker; and
 - Incidental soil ingestion, dermal contact with soil and/or groundwater, and inhalation of particulates and volatiles from soil and/or groundwater for a trespasser/recreational user.
- l.** The HOA documents shall prohibit the HOA from expending any of the funds escrowed in accordance with Paragraph 2.j(2) hereinabove prior to the Declarant named therein relinquishing control of the HOA to the unit owners.
- m.** The Applicant must obtain any necessary planning modules, permits, approvals, waivers, and/or reviews from all outside agencies, including, but not limited to, the Chester County Conservation District; Chester County Department of Health; DEP; Pennsylvania Department of Transportation; and U.S. Army Corps of Engineers.
- n.** Any outstanding Township fees related to the Project, including but not limited to, all outstanding Township Engineers and Solicitor invoices, and Township administrative costs associated with the Project, shall be paid in full prior to the Township's execution of any Final Plan for the Project.
- o.** The Applicant must complete and execute all covenants, easements, dedication agreements, maintenance agreements, and sewer agreements associated with the Project, and provide all applicable necessary legal descriptions, in forms satisfactory to the Township Solicitor, prior to or contemporaneously with the recording of any Final Plan for the Project. Such agreements include, but are not limited to, a Stormwater BMP and Conveyances Operation and Maintenance Agreement.
- p.** Prior to recording the Final Plan, the Applicant shall execute an Improvements Agreement and a Financial Security Agreement to guarantee the installation of all public Improvements on a form drafted by the

Township Solicitor. If Applicant elects to utilize a bond for the required financial security for this Project, then the Township Solicitor shall have the unconditional right to review the bond and must approve the conditions and language of the bond. At a minimum, the bond shall be issued by an “A++” rated surety, or an equivalency, qualified to do business in Pennsylvania. Further, the bond shall contain language stating that the bond is to be payable upon demand, absolutely, and unconditionally, and in the event that payment is not made, that the bonding company shall be responsible for all attorneys’ fees and costs that are incurred to collect on the bond, plus interest at the annual rate of twelve percent (12%), for so long as the bond remains unpaid. Additionally, the bond is required to automatically renew annually until the improvements detailed on the Final Plan are completed to the satisfaction of the Township Engineer and the final release is issued by the Township, subject to partial releases being permitted in accordance with §509(j) of the MPC, and shall include a 90-day Evergreen Clause that substantively provides:

“It is a condition of this Bond that it will be extended automatically, without amendment, for additional periods of one (1) year from the present of each future expiration date, unless at least ninety (90) days prior to the then current expiration date, East Whiteland Township is notified in writing by overnight courier, at the Township municipal address of 209 Conestoga Road, Frazer, PA 19355, that there is an election not to renew this Bond for said additional period.”

- q. If a condominium or homeowner’s association (“Association”) is formed, the Applicant shall submit the Association declaration and any associated maintenance agreements or covenants to the Township Solicitor for review and approval prior to recording the Plans.
- r. As outlined in General Note 5 on the Plans, the Applicant acknowledges that the Township is not obligated to accept any offers of dedication related to the Plan or the Project.

3. Waivers: The Applicant has requested the following waivers from the East Whiteland Township Subdivision and Land Development Ordinance for the Preliminary Plan:

- a. The request for a waiver from §175-38.C, which requires that all lots shall have direct access to a public street, is hereby:

Granted X Denied

Comments on the Waiver: As stewards of the Township’s finances, the Board of Supervisors does not want the Township to become liable for any

costs related to the environmental remediation of the Property. In the opinion of the Board, such costs will be significant. For these reasons, the Board of Supervisors will not accept any offer of dedication of the roadways within this development. The roadways will remain private, and the lots within the development will, therefore, not take direct access to a public street. The hardship occasioned by the Township's not accepting dedication of the roadways necessitates the grant of this waiver.

- b.** The request for a waiver from **§175-38.C**, which requires that all lots have at least fifty feet (50') of frontage on public street, is hereby:

Granted X Denied

Comments on the Waiver: As stated above, the Board of Supervisors does not want the Township to become liable for any costs related to the environmental remediation of the Property. In the opinion of the Board, such costs will be significant. For these reasons, the Board of Supervisors will not accept any offer of dedication of the roadways within this development. The roadways will remain private, and the lots within the development will, therefore, not have any frontage on a public street. The hardship occasioned by the Township's not accepting dedication of the roadways necessitates the grant of this waiver.

In the event that the Resolution is not delivered to the Township within ten days from receipt, it shall be deemed that the Applicant does not accept these conditions, and approvals conditioned upon this acceptance are revoked, and the application shall be considered to be denied for the reasons set forth in the review letters listed in paragraph two (2).

RESOLVED AND APPROVED this 10th day of February, 2021.

Attest:

**EAST WHITELAND TOWNSHIP
BOARD OF SUPERVISORS**

John Nagel

John B. Nagel
Township Manager

By:

Scott Lambert

Scott Lambert
Chairperson

ACCEPTANCE OF CONDITIONS

I, Jerry O'Connor, being an authorized signatory for the **Applicant**, do hereby acknowledge and accept, on behalf of the Applicant, approval for the Preliminary Plan issued by the East Whiteland Township Board of Supervisors and accept the conditions contained therein, as recited above.

APPLICANT:

CONSTITUTION DRIVE PARTNERS, L.P.
By: Constitution Drive Partners
Acquisition Corporation, its
General Partner

Attest:

Donna Wikert

By:

Jerry O'Connor

2/17/2021

Date

EXHIBIT “A”

**APRIL 6, 2016 LETTER FROM AGENCY FOR TOXIC SUBSTANCES AND
DISEASE REGISTRY (“ATSDR”)**