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**ATTORNEYS FOR
WESTTOWN TOWNSHIP
PLANNING COMMISSION**

**IN RE:
CONDITIONAL USE APPLICATION
OF FOX CLEARING, LLC**

**WESTTOWN TOWNSHIP PLANNING COMMISSION'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Westtown Township Planning Commission (the "Planning Commission"), by and through its undersigned counsel, Kristin S. Camp, Esquire of Buckley, Brion, McGuire & Morris LLP, hereby submits these Proposed Findings of Fact and Conclusions of Law to the Board of Supervisors of Westtown Township (the "Board").

I. PROPOSED FINDINGS OF FACT.

Identification of Applicant and the Property.

1. Applicant ("Applicant") is Fox Clearing, LLC. Exhibit A-2.
2. Applicant is the owner or equitable owner of the following four parcels of property that in total contain 80.88 acres: (i) UPI No. 67-2-23, consisting of 64.956 acres with an address of 1013 Shiloh Road and referred to as the "Stokes Property"; (ii) UPI No. 67-2-8, consisting of 9.133 acres with an address of 1011 Shiloh Road and referred to as the "Galilea Property"; (iii) UPI No. 67-2-9, consisting of 1.133 acres with an address of 927 Shiloh Road and referred to as the "Galilea Property"; and (iv) a 2.19 acre portion of UPI No. 67-2-7.1 to be subdivided from the parent tract of 5.664 acres with an address of 1007 Shiloh Road and currently owned by John R. and Christine M. O'Brien (collectively the "Property"). Exhibit A-2. N.T. 8/14/2023 at p. 27.
3. The Property is located on the east side of Shiloh Road, south of Shiloh Hill Drive, generally opposite the intersection of Oakbourne Road and Hunt Drive. Exhibit A-2. N.T. 8/14/2023 at p. 28.
4. The Property is located within the Township's R-1 Residential Zoning District. Exhibit A-2.

5. The dwelling located on UPI No. 67-2-9 (formerly owned by the Galileas) and referred to as the Miles House is included on the Westtown Township Historic Resource Map. Exhibit B-7.
6. The dwelling located on UPI No. 67-2-23 (formerly owned by the Stokes) and referred to as the Stokes House is included on the Westtown Township Historic Resource Map. Exhibit B-7.

Explanation of the Application and Proposed Development.

7. Applicant filed a conditional use application and amended addendum (the "Application") on May 4, 2023 seeking to subdivide and develop the Property pursuant to Sections 170-601.C(1) and 170-902(A) of the Westtown Township Zoning Ordinance (the "Ordinance"). Exhibit A-2.
8. Applicant submitted with the Application conditional use plans prepared by D.L. Howell & Associates Inc. dated April 14, 2023, consisting of 37 sheets (the "Original Plans"). Exhibit A-2.
9. The Original Plans contemplate subdivision of the Property into 85 lots to be developed with single family dwellings, internal streets, public water and public sewer utilities, landscaping, stormwater facilities, common recreational facilities and open space (the "Proposed Development").
10. Applicant amended the Original Plans and submitted revised conditional use plans with a revision date of June 15, 2023 (the "Revised Plans"). Exhibit A-4.
11. Applicant also submitted a revision to Sheet 1 of 38 titled "Overall Site Plan" with a revision date of August 8, 2023 ("Revised Sheet 1") that did not change the layout for the Proposed Development but provided sight distance values for intersections of Roads A and D at Shiloh Road based on the Applicant's speed study that was submitted with Applicant's July 14, 2023 responses. Exhibit A-11. N.T. 8/14/2023 at p. 76. N.T. 9/11/2023 at p. 247.
12. Revised Sheet 1 also indicated in red print that the Miles House and Stokes House were to be removed and the Briner House and O'Brien House were to remain on Lots 67 and 85 respectively. N.T. 8/14/2023 at p. 76.
13. Applicant also submitted revisions to Sheets 12-16 of the Revised Plans dated August 18, 2023 with a letter from Howell Engineering dated August 22, 2023 ("Revised Sheets 12-16"). Exhibit A-14. N.T. 9/11/2023 at p. 266.
14. Revised Sheets 12-16 included a tabulation of lots that contain precautionary slopes and revisions to certain lot configurations so that

according to Applicant's engineer, all lots within the Proposed Development contain less than 25% precautionary slopes. N.T. 9/11/2023 at pp. 267-68.

15. Applicant is willing to build the Proposed Development with the lot layout and lot sizes depicted on Revised Sheets 12-16. Exhibit A-14. N.T. 9/11/2023 at p. 274.
16. According to Applicant's civil engineer, David W. Gibbons, P.E. ("Gibbons"), the Revised Plans comply with the dimensional requirements for single family dwellings in Sections 170-904.E(10) and (11) of the Ordinance. Exhibit A-4. N.T. 8/14/2023 at p. 39.
17. Consistent with Section 170-1617 of the Ordinance, Applicant submitted a conservation design plan prepared by DL Howell & Associates, Inc. dated April 14, 2023 ("Conservation Plan") which identified the primary conservation areas on the Property, including wetlands, 100 year floodplain, precautionary steep slopes and prohibitive steep slopes. Exhibit A-2. N.T. 8/14/2023 at pp. 32-33.
18. The Conservation Plan also identified the secondary conservation areas on the Property including woodlands, tree lines, scenic views, soils with seasonally high water tables, adjacent open space, parklands and trails. Exhibit A-2. N.T. 8/14/2023 at p. 33.
19. Gibbons testified that when designing the layout for the Proposed Development, he located the lots in areas to avoid primary conservation areas and to minimize intrusion into secondary conservation areas. N.T. 8/14/2023 at p. 34.
20. Sheet 6 of the Revised Plans titled "Open Space Plan" depicts with a black dashed line potential trails located throughout the open space on the Property generally running from the northernmost cul-de-sac (Road C) to the eastern side of the development heading south with possible future trail connections to the property to the East and South. Exhibit A-4. N.T. 8/14/2023 at p. 46.
21. The proposed trails traverse sensitive natural features and thus Applicant proposes to construct them with a natural surface that would have to be periodically mowed. N.T. 8/14/2023 at p. 153.
22. The Revised Plans proposes sidewalks on one side of the proposed internal streets and on both sides of the Road B cul de sac. Exhibit A-4. N.T. 8/14/2023 at p. 167.
23. The base density of the Proposed Development is determined by multiplying the adjusted tract area by 1.1 dwelling units per acre per Section

170-904.A(1), which, according to Applicant, would equate to 71 lots. Exhibit A-2. N.T. 8/14/2023 at p. 36.

24. The Revised Plans provide a density of 3.30 dwelling units per acre. Exhibit A-4.
25. Section 170-904.C(2) of the Ordinance requires that a minimum of 40% of the gross tract area be set aside as common open space for the use and benefit of the residents of the development. N.T. 8/14/2023 at p. 37.
26. Based on the net tract area of the Property, Applicant calculates that 32.35 acres must be set aside as common open space.
27. Sheet 6 of the Revised Plans provides 32.36 acres of minimum required open space highlighted in green and labeled as "Open Space 1", "Open Space 2", and "Open Space 3." Exhibit A-4, Sheet 24. N.T. 8/14/2023 at pp. 99-100.
28. The Revised Plans provide 47.62 acres of open space which equates to 58.8% of the net tract area. Exhibit A-4.
29. Section 170-904.A(2)(a) of the Ordinance permits a density bonus of up to 0.075 dwelling units per acre for every 5% of the gross area of the development tract that is preserved as common open space above the minimum of 40%.
30. Sheet 6 of the Revised Plans depicts the areas of "bonus" open space in orange and label those areas as "Open Space B1", "Open Space B2", "Open Space B3", "Open Space B4", "Open Space B5", and "Open Space B6". Exhibit A-4, Sheet 6. N.T. 8/14/2023 at pp. 99-100.
31. According to Gibbons, the Revised Plans provide 12.2 acres of additional open space (or 15.08%) which are depicted in orange shade on the Revised Plan for a total of 47.60 acres of open space. Exhibit A-4, Sheet 6. N.T. 8/14/2023 at p. 100.
32. Applicant believes that it is entitled to a density bonus of 15 lots or a total of 86 lots because the Revised Plans provide more open space than what is required by Section 170-904.C(2).
33. Areas of base open space (depicted in green) and bonus open space (depicted in orange) are constrained by the two hazardous substance

pipelines and stormwater management areas which are not able to be built upon. N.T. 8/14/2023 at pp. 103-104.

34. Applicant included in its calculation of 47.60 acres of open space areas which are used for stormwater management facilities with open storage and settling ponds that are not accessory to infiltration facilities.
35. Applicant is not entitled to a bonus density of 1.325 dwelling units per acre due to its miscalculation of total open space.
36. The areas of open space that include stormwater management facilities with open storage and settling ponds that are not accessory to infiltration facilities must be deducted from the minimum open space calculation.
37. In order to meet the requirement in Section 170-907.A(2) of the Ordinance which requires an area equivalent to at least 10% of the net tract acreage to be suitable and available to serve particular recreational needs of the residents of the development, the Revised Plans identify an area of open space totaling 6.61 acres.
38. Gibbons testified that this area is equal to 10% of the net tract area and is suitable for active recreation. N.T. 8/14/2023 at p. 45.
39. Applicant has not designed or offered specific improvements to be built in this 6.61 acres of open space but has commented that it will comply with the requirement as directed by the Board. Exhibit B-7.
40. The Proposed Development is intended to be serviced by public sewer from the Township. Exhibit A-2. N.T. 8/14/2023 at p. 48.
41. The Township's sewer engineer, William N. Malin, P.E., from Carroll Engineering Corporation, reviewed the Original Plans and other materials submitted with the Application and issued a review letter dated May 26, 2023. Exhibit B-8.
42. In order to provide public sewer to the Proposed Development, Applicant will have to address the comments in Mr. Malin's review letter (Exhibit B-8) prior to obtaining final land development approval in order to provide public sewer to the Proposed Development.
43. The Proposed Development is intended to be serviced by public water from Aqua Pa. Township. Exhibit A-2. N.T. 8/14/2023 at p. 48.

Hazardous Substance Pipelines.

44. There are two pipelines that traverse the eastern side of the Property generally running in a north-south direction. N.T. 8/14/2023 at p. 91. Exhibit PC-5. N.T. 10/24/2023 at p. 296.
45. One pipeline is owned by Buckeye/Laurel Pipeline Co. and is a 24-inch pipeline located within a 60 foot wide easement to the east of proposed Road C. Exhibit PC-5. N.T. 10/24/2023 at p. 297. N.T. 10/24/2023 at p. 379.
46. The second pipeline is owned by Enterprise and is an 8-inch pipeline located within a 50 foot wide easement to the west of proposed Road C. Exhibit PC-5. N.T. 10/24/2023 at p. 297. N.T. 10/24/2023 at p. 379.
47. The pipelines are on both sides of the proposed cul de sac street labeled as Road C on the Revised Plans. N.T.8/14/2023 at pp. 91-92.
48. A portion of Road C is located within the Enterprise easement. Exhibit A-4. N.T. 8/14/2023 at p. 128.
49. Gibbons testified at the hearing on November 29, 2023 that the Revised Plans could be revised to shift Road C so it was located outside of the Enterprise right of way. N.T. 11/29/2023 at p. 517.
50. Gibbons admitted that the presence of these two pipelines greatly impacted the layout of the lots as the houses can't be built in the pipeline easements and there are certain restrictions imposed by the pipeline owners that Applicant must adhere to when working in the easement or in proximity to the pipeline easement. N.T. 8/14/2023 at p. 92.
51. Gibbons could not state with specificity how deep the two pipelines were, but testified that based on the results of soft digs, he believed they were 2.5 to 3 feet deep to top of pipe. N.T. 8/14/2023 at p. 95.
52. Gibbons did not know if Enterprise imposed a specific minimum setback from its pipeline to a dwelling. N.T. 8/14/2023 at p. 116.
53. Gibbons testified that Buckeye requires a minimum setback of 50 feet from the pipeline to a dwelling. N.T. 8/14/2023 at p. 116.
54. Gibbons did not know the age of the pipelines. N.T. 8/14/2023 at p. 14.
55. Applicant submitted the Right of Way agreement for the Enterprise easement dated June 9, 1941 as part of Exhibit A-4. N.T. 8/14/2023 at p. 159.

56. Gibbons did not know what was being transported in the pipelines. N.T. 8/14/2023 at p. 95.
57. Gibbons testified at the November 29, 2023 hearing that he spoke with a representative from Enterprise who indicated that there is currently no product being transported through the pipeline. N.T. 11/29/2023 at p. 464.
58. Gerald DiNunzio, Jr., who serves as the Township Fire Marshall and Emergency Management Coordinator, reviewed the Original Plans and Application and issued a review letter dated May 26, 2023. Exhibit B-9.
59. Mr. DiNunzio expressed concerns about the limited access to the Proposed Development and stated that the “one way in and one way out” was concerning with a development of this size and could be problematic for first responders. Exhibit B-9.
60. Mr. DiNunzio testified that he believes that both pipelines transport hazardous substances. N.T. 10/24/2023 at p. 379.
61. The Chester County Planning Commission commented in its review letter dated August 8, 2023 that the two pipelines transport hazardous liquids. Exhibit B-17.
62. Gibbons did not take into account any emergency management considerations associated with the pipelines when locating the dwellings on the Revised Plans. N.T. 8/14/2023 at p. 95.
63. The Revised Plans do not propose any emergency access. N.T. 8/14/2023 at p. 96.
64. Gibbons testified that if there was an emergency associated with the pipelines that blocked access to Road C from Road A, there is no means of emergency access for the homes on Road C. N.T. 8/14/2023 at p. 98.
65. Applicant’s traffic engineer, Jon Seitz, P.E. (“Seitz”), opined that there may be instances where residents living in the Proposed Development may be blocked from using any form of vehicular egress in an emergency situation involving the pipelines. N.T. 9/11/2023 at p. 206.
66. Gibbons testified that he would have liked to design the conditional use plans with an emergency access out to Shiloh Hill Drive but cannot because Applicant does not own the property to physically make such connection. N.T. 8/14/2023 at p. 98.

67. Gibbons and Seitz both agreed that that the Proposed Development would be a better, safer design if there was an emergency access provided to the Property. N.T. 8/14/2023 at p. 99. N.T. 9/11/2023 at p. 207.
68. At the November 29, 2023 hearing, Applicant introduced a revised overall site plan revised September 20, 2023 which was admitted as Exhibit A-18. This plan depicted two emergency access driveways from Road C. N.T. 11/29/2023 at pp. 459-460.
69. The two proposed emergency access driveways depicted on Exhibit A-18 are 20 feet in width and will be constructed using grasspave system with lawn over top of a structure support. N.T. 11/29/2023 at pp. 461-462.
70. Gibbons testified that the proposed emergency access driveways depicted on Exhibit A-18 are designed to allow the largest Goshen Fire Company tower truck to adequately traverse the access driveways. N.T. 11/29/2023 at p. 462.
71. Gibbons testified that he believes providing the two emergency access driveways shown on Exhibit A-18 provides a higher level of safety for residents living along Road C. N.T. 11/29/2023 at p. 463.
72. Gibbons confirmed that Applicant is willing to build the emergency access driveways depicted on Exhibit A-18. N.T. 11/29/2023 at p. 475.
73. Gibbons testified that typically pipeline companies do not require any fence or other demarcation to identify where the pipeline easement is located. N.T. 8/14/2023 at p. 158.
74. One restriction of the pipeline requires all utilities to cross the pipelines at a perpendicular angle. N.T. 8/14/2023 at p. 93.
75. The Enterprise easement prohibits dwellings from being built closer than 50 feet to the pipeline. N.T. 8/14/2023 at p. 94.
76. Other restrictions require minimum amount of cover over top of the pipeline. N.T. 8/14/2023 at p. 93.

Retaining Walls.

77. The Revised Plans contemplate the installation of retaining walls spanning over 1,000 feet in length ranging in height from approximately 4 feet to 8.5 feet. N.T. 10/24/2023 at pp. 306-307.

78. The retaining walls are proposed to abut the pipeline easement and may require encroachment into the easement in order to build or maintain. N.T. 10/24/2023 at p. 323.
79. The retaining walls proposed by Applicant require periodic inspections and regular maintenance. N.T. 10/24/2023 at p. 307.
80. The cost to maintain the retaining walls proposed by Applicant is a significant expense for an individual lot owner to bear. N.T. 10/24/2023 at p. 318.

Traffic Conditions and Improvements.

81. Applicant submitted a traffic study last revised April 2023 prepared by its traffic engineer, Jon A. Seitz, from Transportation Resource Group, Inc. ("TRG") with the Application. Exhibit A-2. N.T. 8/14/2023 at p. 49.
82. Seitz also conducted a speed study for vehicles travelling on Shiloh Road from July 10 through July 12, 2023 which was submitted with TRG's July 14, 2023 response letter to the Township traffic engineer review letter. Exhibit A-6. N.T. 9/11/2023 at p. 183.
83. According to Applicant's speed study, the 85th percentile speed is 42 mph in the northbound direction and 41 mph in the southbound direction on Shiloh Road between Oakbourne Road and Hunt Drive. N.T. 9/11/2023 at p. 188.
84. Using the 85th percentile speed, Applicant must remove shrubbery on Oakbourne Road to achieve necessary safe stopping sight distance at the intersection of Road A and Shiloh Road across from Oakbourne Rd. N.T. 9/11/2023 at p. 195.
85. Using the 85th percentile speed, Applicant must perform grading on the Property to achieve necessary safe stopping sight distance at the intersection of Road A and Shiloh Road across from Hunt Drive. N.T. 9/11/2023 at p. 195.
86. Seitz also conducted a crash analysis as a result of the comments in the Chief of Police's email dated June 16, 2023, which was admitted as Exhibit A-5. Exhibit A-6. N.T. 9/11/2023 at p. 186.
87. The Township traffic engineer, Alfred Federico, P.E, reviewed the Original Plans and Applicant's traffic study and issued review letters dated June 7, 2023 (Exhibit B-11) and June 29, 2023 (Exhibit B-14). N.T. 8/14/20-23 at p. 73. N.T. 10/24/2023 at p. 326.

88. Mr. Federico opined that the Proposed Development depicted on the Revised Plans results in a significant traffic hazard due to the internal road configuration with undesirable combinations of horizontal and vertical curvature and the lack of a secondary access to Shiloh Road. N.T. 10/24/2023 at p. 327. Exhibit B-14.
89. Mr. Federico opined that the Revised Plans do not meet certain sections of the Township's Subdivision and Land Development Ordinance ("SALDO") including the following: (i) Section 149-907.E where Road C does not provide the required leveling area of 75 feet approaching the intersection with Road A; and (ii) Section 149-913.B where Road A (between Roads B and C) and Road B (between Roads A and D) do not meet the minimum block length of 500 feet.
90. There is no access from Shiloh Hill Drive to the Property. Exhibit A-4.
91. Applicant does not own the property rights to connect Road C to Shiloh Hill Drive.
92. Even if Applicant owned the property rights to connect Road C to Shiloh Hill Drive, the northern edge of Road C is approximately 5 feet higher than the grade of Shiloh Hill Drive.
93. The Revised Plans propose a retaining wall at the end of the cul de sac on Road C that would also impede the ability to provide a connection of Road C to Shiloh Hill Drive. N.T. 10/24/2023 at p. 329.
94. The internal roads in the Proposed Development are 24 feet in width and do not propose any on street parking. Exhibit A-4.
95. Mr. Federico testified that it would be difficult for an emergency vehicle to navigate the internal roads if they are built at 24 feet in width and if a vehicle was parked on one side. N.T. 10/24/2023 at p. 374.
96. Gerald DiNunzio, Jr., in his capacity as Fire Marshall, issued a review letter dated June 23, 2023 and opined that the internal roads must be wide enough to allow easy movement of fire apparatus even with a vehicle parked on the street. Exhibit B-13.
97. The Township Public Works Director, Mark Gross, reviewed the Original Plan and Application and issued a review memorandum dated June 15, 2023. Exhibit B-12.
98. Mr. Gross recommends that parking be restricted to one side of the street. Exhibit B-12.

99. Applicant's traffic study assumed that the traffic signal at Shiloh Rd./Westtown-Thornton Road and Street Road is retimed reducing green times along Street Road in favor of minor approaches. Exhibit B-14.
100. Applicant must obtain all necessary permits and pay for the cost of this signal retiming.

Stormwater Management.

101. Gibbons prepared a conceptual stormwater management system for the Proposed Development to comply with the Township's Stormwater Management Ordinance and Chapter 102 of the Pennsylvania Department of Environmental Protection's regulations. N.T. 8/14/2023 at p. 49.
102. Gibbons also prepared a revised preliminary stormwater management report with a last revision date of June 13, 2023, that was submitted with the Revised Plans as part of Exhibit A-4. N.T. 8/14/2023 at p. 50.
103. Sheet 12 of 38 of the Revised Plans shows conceptual stormwater management facilities, including five separate community stormwater management systems, vegetated swales, infiltration basins/beds, forebays, level spreaders, drainage pipes and inlets in the streets. N.T. 8/14/2023 at p. 54. Exhibit A-4. Exhibit B-7.
104. Gibbons testified that he believes that the proposed stormwater management system will comply with the applicable Township and DEP regulations and will be fully designed as part of the land development process. N.T. 8/14/2023 at p. 56.
105. The stormwater management facilities are designed with the assumption that each lot will have 4,500 square feet of impervious cover. Exhibit A-4.
106. If additional impervious cover over 4,500 square feet is added to an individual lot, additional stormwater management will have to be designed.

Planning Commission Evidence.

107. The Planning Commission presented the testimony of Robert E. Flinchbaugh, P.E., a Senior Municipal Engineer from Cedarville Engineering Group. N.T. 10/24/2023 at pp. 292-324.
108. Mr. Flinchbaugh reviewed the Original Plans, the Revised Plans, the Application and all supporting documentation and response letters submitted by Applicant over the course of the conditional use hearing process and issued reviews dated June 6, 2023 (Exhibit B-10), June 30,

2023 (Exhibit B-15), August 23, 2023 (Exhibit PC-3) and September 8, 2023 (Exhibit PC-4).

109. Mr. Flinchbaugh opined in his latest review letter dated September 8, 2023, that there are several Ordinance sections that Applicant has still not demonstrated compliance with including Sections 170-907.A(5)(e) and 170-907.A(7). Exhibit B-10.
110. Mr. Flinchbaugh agreed that the Revised Sheets 12-16 which were submitted with Applicant's engineer's response letter dated August 22, 2023 (Exhibit A-14) demonstrated that with a new lot layout all lots contain less than 25% of the total lot area except for lots 15, 21 and 26. Exhibit PC-4. N.T. 10/24/2023 at p. 298.
111. Mr. Flinchbaugh testified that the location of the two hazardous material pipelines within close proximity to 85 dwelling units and only one means of access to Shiloh Road may create a hazard to persons or property, on or off the site, from probability of other dangers, annoyances, or inconveniences.

Historic Resources.

112. The Township Historical Commission reviewed the Original Plans and Application and recommended that Applicant consider the preservation of the Briner House, the Miles House and the Stokes House. Exhibit B-18.
113. Applicant submitted Sheet 37 of the Revised Plans titled, "Alternative Site Plan with Historic Home" which proposes the preservation of the Miles House on proposed Lot 76 and the Briner House on proposed Lot 67. Exhibit A-4.
114. Applicant does not intend to preserve the Stokes House. Exhibit A-4.
115. The Historical Commission recommends that the Stokes House be adaptively reused for the HOA and the Miles House and Briner House be used as private residences. Exhibit B-18.
116. If Applicant preserves a historic site or historic building, it would be entitled to a bonus density pursuant to Section 170-904.A(c)[1] of the Ordinance.

No Lot Alternative Plan.

117. Applicant submitted Sheet 38 of the Revised Plans titled, "Alternative Site Plan with No Lots" which does not propose any lot lines and instead

proposes conveying only the footprint of the dwelling to a lot owner. Exhibit A-4.

118. Gibbons testified that Applicant could build the Proposed Development without conveying lots to the owners of the dwellings and instead having the yard areas designated as common open space owned and maintained by the homeowners association. N.T. 8/14/2023 at pp. 70-71.
119. Subdividing the Property in accordance with the Alternative Site Plan with No Lots (sheet 38) would create difficulties for both the lot owners and the Township when processing applications for accessory structures such as decks, sheds and swimming pools.
120. Mr. Flinchbaugh and the Planning Commission suggest that Applicant add a note to the Revised Plans which restricts the total impervious cover that can be constructed on each lot. Exhibit PC-1.

Planning Commission Recommendation.

121. At the first hearing on the Application held on August 14, 2023, the Board granted the Planning Commission party status over the objection of Applicant. N.T. 8/14/2019 at p. 23.
122. The Township Planning Commission reviewed the Application at several Planning Commission meetings from May 2023 through September 2023 and ultimately voted at its public meeting on September 6, 2023 to recommend to the Board that it deny the Application for the reasons set forth in a letter dated September 11, 2023 from Kristin S. Camp and Michael S. Gill, to the Board (the "September 2023 Recommendation Letter") which was admitted as Exhibit PC-1.
123. The Township Planning Commission recommended that if the Board were to approve the Revised Plan and Application, it impose the conditions that are listed in Exhibit PC-1 in order to protect the public health, safety and welfare. Exhibit PC-1.

II. PROPOSED CONCLUSIONS OF LAW.

1. Applicant has standing to file and prosecute the Application.
2. The Planning Commission has standing to appear as a party to the Hearing.
3. The Property may be subdivided using the flexible design development procedure by conditional use of the Board pursuant to 170-601.C(1) and 170-902.A of the Ordinance.

4. Single family detached dwellings are permitted in a flexible development in the R-1 District pursuant to Section 170-903.A of the Ordinance.
5. Applicant bore the initial burden of proof with regard to the compliance of Applicant's Proposed Development of the Property (as depicted on Exhibit A-4) with the criteria applicable to a flexible development as set forth in Article IX of the Ordinance. See *In Re Appeal of Thompson*, 896 A.2d 659 (Pa. Cmwlth. Ct. 2006).
6. Only if Applicant met its initial burden of proof, as aforesaid, did any burden shift to the Planning Commission (or any other party) to present evidence that the Proposed Development of the Property as depicted on the Revised Plans will have a detrimental effect on the public health, safety, and welfare. See *id.* at 670.
7. The Property is zoned R-1 Residential District.
8. Applicant's calculation of the total area of open space depicted on the Revised Plans is not consistent with Section 170-907.A(5)(e) which only allows open storage areas to be included in the calculation of open space if they are accessory to infiltration.
9. The Original Plans and Revised Plans with 85 lots may not be approved as they do not comply with the bonus density provisions in Section 170-904.A(2)(a).
10. The Township engineer's interpretations of Section 170-907.A(5)(e) in prior subdivision and land development applications have no legal bearing on the Township' engineer's interpretation in this Application.
11. Section 170-402.D(3)(f) of the Ordinance requires that for every lot in the Proposed Development (as opposed to the overall development tract), if the total area of precautionary slopes on the proposed lot exceeds 25% of the total area of the lot, then no more than 50% of the precautionary slopes on that lot may be disturbed, graded or modified.
12. The Property is not suitable for development in accordance with the Original Plans or Revised Plans without hazard to persons or property given the location of two hazardous material pipelines and the lack of an emergency access.
13. The Original Plans and Revised Plans do not comply with Section 170-402.D(3)(f) of the Ordinance.
14. Revised Sheets 12-16 comply with Section 170-402.D(3)(f) of the Ordinance.

15. Without an emergency access that leads to a road other than Shiloh Road, the Proposed Development results in or substantially adds to a traffic hazard.
16. Road C does not provide a leveling area of at least 75 feet as it approaches the intersection with Road A as required by Section 149-907.E of the SALDO.
17. Road A between Roads B and C does not meet the minimum block length of 500 feet required by Section 149-913.B of the SALDO.
18. Road B between Roads A and Road C does not meet the minimum block length of 500 feet required by Section 149-913.B of the SALDO.
19. Applicant has failed to adequately demonstrate that the proposed development depicted on the Original Plans (Exhibit A-2) and on the Revised Plans (Exhibit A-4) does not unreasonably or significantly affect the values protected by Article 1, Section 27 of the Pennsylvania Constitution known as the Environmental Rights Amendment- that is “the right to clean air, pure water and preservation of natural, scenic, historic and esthetic values of the environment.”
20. Applicant is not entitled to conditional use approval for the Original Plans and Revised Plans for the following reasons:
 - (a) The Property is not suitable for development in the manner proposed on the Revised Plans without hazard to persons or property, on or off the site, from probability of other dangers, annoyances, or inconveniences. Section 902.C(2).
 - (b) Applicant did not demonstrate compliance with Section 170-2009.D(1)(h) of the Ordinance by proving that the proposed development will not result in or substantially add to a significant traffic hazard or significant traffic congestion and that the peak traffic generated by the development shall be accommodated in a safe and efficient manner- specifically due to the fact that the Original Plans and Revised Plans do not provide any means of emergency access.
 - (c) There is a high degree of probability that the Proposed Development as depicted on the Original Plans and Revised Plans will cause a substantial threat to the community and a more harmful impact than one would ordinarily expect from a proposed flexible development.
21. In the event that the Board of Supervisors approves the Application and the Original Plans or the Revised Plans, notwithstanding Applicant's failure to

demonstrate compliance with certain criteria applicable to a flexible development, the Board of Supervisors may impose conditions on that approval to mitigate any potential adverse impacts from the proposed use, and is required to reduce the negative impacts to an acceptable level (if it can) by imposing such conditions. See *In re: Appeal of Maibach*, 26 A.3d 1213 (Pa. Cmwlth. Ct. 2011).

III. **CONDITIONS.**

In the event that the Board of Supervisors approves the Application and the Original Plans or Revised Plans notwithstanding the deficiencies noted above, the Planning Commission respectfully requests that the Board of Supervisors impose the conditions set forth in its letter dated September 2023 Recommendation Letter and the following conditions:

- (a) Applicant shall configure the lots with the layout and dimensions depicted on Revised Sheets 12-16.
- (b) Applicant shall install the emergency access driveways depicted on Exhibit A-18.

Date: December 18, 2023

Respectfully submitted,

BUCKLEY, BRION,
McGUIRE & MORRIS LLP

By: 

Kristin S. Camp