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FOX CLEARING, LLC,

Appellant,

vs.

BOARD OF SUPERVISORS OF  
WESTTOWN TOWNSHIP,

Appellee.

IN THE COURT OF COMMON  
PLEAS OF CHESTER COUNTY

NO. 2024-01326-ZB

LAND USE APPEAL

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### **SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (“**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between FOX CLEARING, LLC (“**Fox**” or “**Developer**”), and the BOARD OF SUPERVISORS (“**Board**”) OF WESTTOWN TOWNSHIP (“**Township**”) (each a “**Party**”, collectively the “**Parties**”).

### **BACKGROUND**

1. Fox Clearing, LLC, is a Pennsylvania limited liability company having a business address of 227 Granite Run Drive, Suite 100, Lancaster, Pennsylvania 17601.

2. The Board of Supervisors of Westtown Township is the governing body of Westtown Township having a principal place of business located at 1039 Wilmington Pike, West Chester, Pennsylvania 19382.

3. Fox is the owner and/or equitable owner of four parcels of land totaling approximately 81 acres located along Shiloh Road in the Township, more specifically designated as Uniform Parcel Identifier (“**UPI**”) #67-2-23 (64.956 acres); #67-2-8 (9.133 acres); #67-2-9 (1.133 acres); and #67-2-7.1 (5.664 acres) (collectively, the “**Property**”).

4. The Property is located on the east side of Shiloh Road about one-half mile south of Little Shiloh Road, generally opposite the intersections of Shiloh and Oakbourne Roads and Shiloh Road and Hunt Drive.

5. The Property is in the Township's R-1 Residential Zoning District ("**R-1 District**") of the Township's Zoning Ordinance.

6. Section 170-601.C.(1) of the Zoning Ordinance permits residential development in accordance with the provisions of Article IX (Flexible Development Procedure) of the Zoning Ordinance by conditional use. Single-family detached dwellings are permitted in flexible developments pursuant to Section 170-903.A of the Zoning Ordinance.

7. On May 4, 2023, Fox submitted a Conditional Use Application ("**Application**") to develop the Property under the Flexible Development Procedure of the Zoning Ordinance.

8. Fox proposed to develop the Property with a single-family residential development consisting of eighty-five (85) single-family homes together with the construction of internal streets, utilities, stormwater management facilities, landscaping, lighting, community recreation facilities and other associated development improvements ("**Proposed Development**").

9. The Proposed Development proposed the demolition and removal of the existing Stokes house and the Miles house while the O'Brien house and the Briner house are proposed to remain on the Property.

10. The Proposed Development will be serviced by public water and public sewer.

11. On August 14, 2023, the Board commenced a hearing on the Application that concluded on December 27, 2023 after four (4) nights of testimony.

12. On December 27, 2023, the Board voted orally to deny the Application and on February 1, 2024, the Board issued the written decision denying the Application ("**Decision**").

13. On February 14, 2024, Fox appealed the Decision ("**Appeal**").

14. Subsequent to Fox filing the Appeal, the Parties negotiated and agreed upon a

settlement of the Appeal.

15. By entering into this Agreement, the Parties now desire to memorialize in writing their understanding of the terms of the settlement, including modifications to the Proposed Development.

**NOW, THEREFORE**, in consideration of the facts set forth in the Background of this Agreement, and in consideration of the mutual covenants and agreements contained herein, the Parties hereto, intending to be legally bound hereby, agree as follows:

1. **Incorporation of Background.** The Background to this Agreement is incorporated into the body of this Agreement as if fully set forth herein at length.

2. **Approval of the Agreement.** Execution of this Agreement by the Board shall occur only after the Board has voted to approve this Agreement at a public meeting and after public comment.

3. **Settlement of Land Use Appeal and Court Approval.** This Agreement shall serve as the basis for a negotiated settlement of the Appeal. Immediately after the Parties execute this Agreement, counsel for the Parties shall execute and file a Joint Motion to Approve Settlement Agreement by attaching a copy of this Agreement and requesting the Court enter an Order approving this Agreement.

4. **Proposed Development and Future Use of the Property.** The Parties agree to permit Developer to design, engineer, construct, develop, and/or use the Property for seventy-eight (78) single family homes (“**Modified Proposed Development**”) substantially in accordance with the conceptual site plan entitled “Settlement Plan – Overall Site Plan” prepared by DL Howell dated February 28, 2024, last revised October 25, 2024, a copy of which is attached as **Exhibit “A” (“Settlement Plan”)**.

The Modified Proposed Development proposes the construction of an additional internal street to connect to proposed Road “C” in the Modified Proposed Development.

The Modified Proposed Development also proposes the construction of a school bus stop together with a car pullover area. The school bus stop and car pullover area will be further designed during the land development process and is subject to input from the West Chester Area School District.

At the time of this Agreement, the Modified Proposed Development has been determined to deviate from the Township’s Zoning Ordinance, Subdivision and Land Development Ordinance (“**SALDO**”) and Stormwater Management Ordinance (“**SWMO**”) as detailed in attached **Exhibit “B”**. Additional SALDO and SWMO waivers may be requested during review of the Land Development Application set forth below.

5. **Land Development Application.** After the execution of this Agreement and the issuance of the Court’s Order approving this Agreement, the Developer, at its discretion, will cause its engineer to prepare and submit a land development application (“**Land Development Application**”) for the Modified Proposed Development substantially in accordance with: (i) the Settlement Plan and (ii) the terms of this Agreement (collectively, the “**Standards**”). If the Land Development Application complies with the Standards and the applicable Township Ordinances, as may be further modified or waived in accordance with the Pennsylvania Municipalities Planning Code and the SALDO, then the Board shall approve the Land Development Application.

6. **Disputes with Regard to Land Development Application.** If any disputes arise between the Parties with respect to the engineering of the Land Development Application, then the Parties shall communicate and meet to resolve such disputes. If the Parties cannot resolve

their dispute, then the Parties may avail themselves of the mediation option provided for in the Pennsylvania Municipalities Planning Code or either Party may petition the Court for appropriate relief and enforcement of this Agreement.

7. **Sanitary Sewer for the Modified Proposed Development.** The Modified Proposed Development shall be serviced by public sanitary sewer via the Township public sewer system with treatment and disposal at the Chester Creek wastewater treatment plant. An on-site sewer pump station and force main will be constructed to convey wastewater generated by the Modified Proposed Development into the Township's public sewer system connecting at an existing manhole at the intersection of Shiloh Road and Farm Lane.

8. **Sewage Facilities Planning.** On May 7, 2023, the Pennsylvania Department of Environmental Protection ("DEP") approved sewage facilities planning for a portion of the Property. The Developer shall prepare and submit to the Township a revised sewage facilities planning module for the Modified Proposed Development to be constructed on the entire Property. The Township shall review the planning module in accordance with DEP's sewage facilities planning regulations and any applicable Township ordinances. Upon approval of the planning module, the Township shall forward it to DEP for DEP's review and approval. The Township shall assist the Developer in responding to DEP review comments and requests for additional information.

9. **Sewer Tapping Fee for the Modified Proposed Development.** At the time of building permit application for each single-family home in the Modified Proposed Development, the Developer shall pay the then current sewer tapping fee per equivalent dwelling unit ("EDU") for conveyance and treatment capacity in the Township public sewer system.

10. **NPDES Permit.** The Developer shall obtain the required stormwater NPDES

permit from DEP or Chester County Conservation District for the Modified Proposed Development.

11. **Dedicated and Non-dedicated Improvements.**

(A) Open Space: The open space in the Modified Proposed Development shall not be offered for dedication but shall be owned and maintained by a future homeowners' association created for the Modified Proposed Development.

(B) Shiloh Road Additional Right of Way and Road Calming: The Developer shall offer the additional right of way along Shiloh Road delineated on the Settlement Plan and the Board shall accept dedication of the additional right of way at the time as specified in a future development improvements agreement between the Parties. Concurrent with the recording of the final land development plans, the Developer shall contribute fifty thousand dollars (\$50,000) to the Township to be used for traffic calming measures along Shiloh Road.

(C) Traffic Signal Retiming at Route 926 and Shiloh Road: As part of the Modified Proposed Development, the Developer shall retime the exiting traffic signal at Route 926 and Shiloh Road to optimize levels of service at the intersection post-Modified Proposed Development.

(D) Roads and Sidewalks: The roads and sidewalks in the Modified Proposed Development shall not be offered for dedication but shall be owned and maintained by either the individual homeowners or a future homeowners' association created for the Modified Proposed Development.

(E) Retaining walls: The retaining walls in the Modified Proposed Development shall not be offered for dedication but shall be owned and maintained by a future homeowners' association created for the Modified Proposed Development.

(F) Trails: The trails constructed in the Modified Proposed Development shall not be offered for dedication but shall be owned and maintained by a future homeowners' association created for the Modified Proposed Development and shall be subject to an easement for public pedestrian use only (no bicycles or motorized equipment).

(G) Sewer: The Modified Proposed Development's sewer collection system and pump station will be dedicated to and accepted by the Township in accordance with a future development improvements agreement to be entered into between the Parties.

12. **Site Grading and Earth Disturbance.** The Developer may not commence site grading and clearing until the Developer has obtained the required Erosion and Sedimentation Control adequacy approval and NPDES permit for the Modified Proposed Development and has posted the required financial security for such grading and disturbance with the Township.

13. **Future Homeowners' Disclosure.** At the time of entering into agreements of sale for the new home lots in the Modified Proposed Development, the Developer shall disclose in writing the existence and locations of the two (2) pipelines on the Property and the general contents being conveyed through the pipelines to any individual new home purchaser.

14. **Miscellaneous.**

(A) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

(B) **Specific Performance and Enforcement of Settlement Agreement.** The Parties agree that, in addition to all remedies at law, either may petition the Chester County Court of Common Pleas for specific performance and/or enforcement of this Agreement without having to exhaust administrative remedies. The Parties further agree the Court shall retain jurisdiction of the Appeal for purposes of enforcing the terms of this Agreement.

(C) **Entire Agreement.** This Agreement shall constitute the entire agreement among the Parties and supersedes all prior negotiations, understandings and agreements of any nature whatsoever with respect to the subject matter hereof.

(D) **Amendment.** This Agreement may be amended upon the written consent of the Parties to this Agreement, which shall not be unreasonably withheld. No waiver or discharge of any provision of this Agreement shall be effective against any party unless that party shall have consented thereto in writing.

(E) **Assignment.** This Agreement may be assigned by the Developer, subject to the Board's approval, which shall not be unreasonably withheld. No assignment shall be effective without the assignee's or successor's written assumption and acceptance of the obligations under this Agreement.

(F) **Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania.

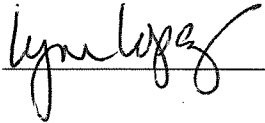
(G) **Notices.** All notices or other communications required or permitted to be given under the terms of this Agreement shall be in writing and shall be sent by certified mail, postage prepaid or by private carrier guarantying next day delivery, to the address referenced in the Background above.

(H) **Counterparts.** This Agreement may be executed in multiple counterparts such that all counterparts together shall create a fully executed and complete Agreement.



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first above written.

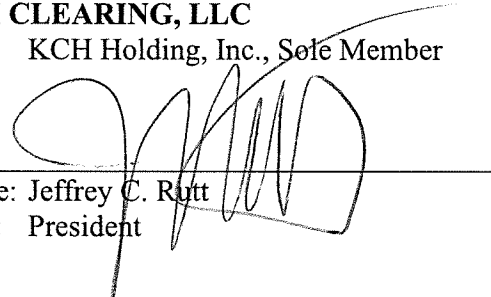
ATTEST:

  
\_\_\_\_\_

**FOX CLEARING, LLC**

By: KCH Holding, Inc., Sole Member

By: \_\_\_\_\_  
Name: Jeffrey C. Rutt  
Title: President



**BOARD OF SUPERVISORS OF  
WESTTOWN TOWNSHIP**

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
Name:

By: \_\_\_\_\_  
Name:

By: \_\_\_\_\_  
Name:

**EXHIBIT "A"**

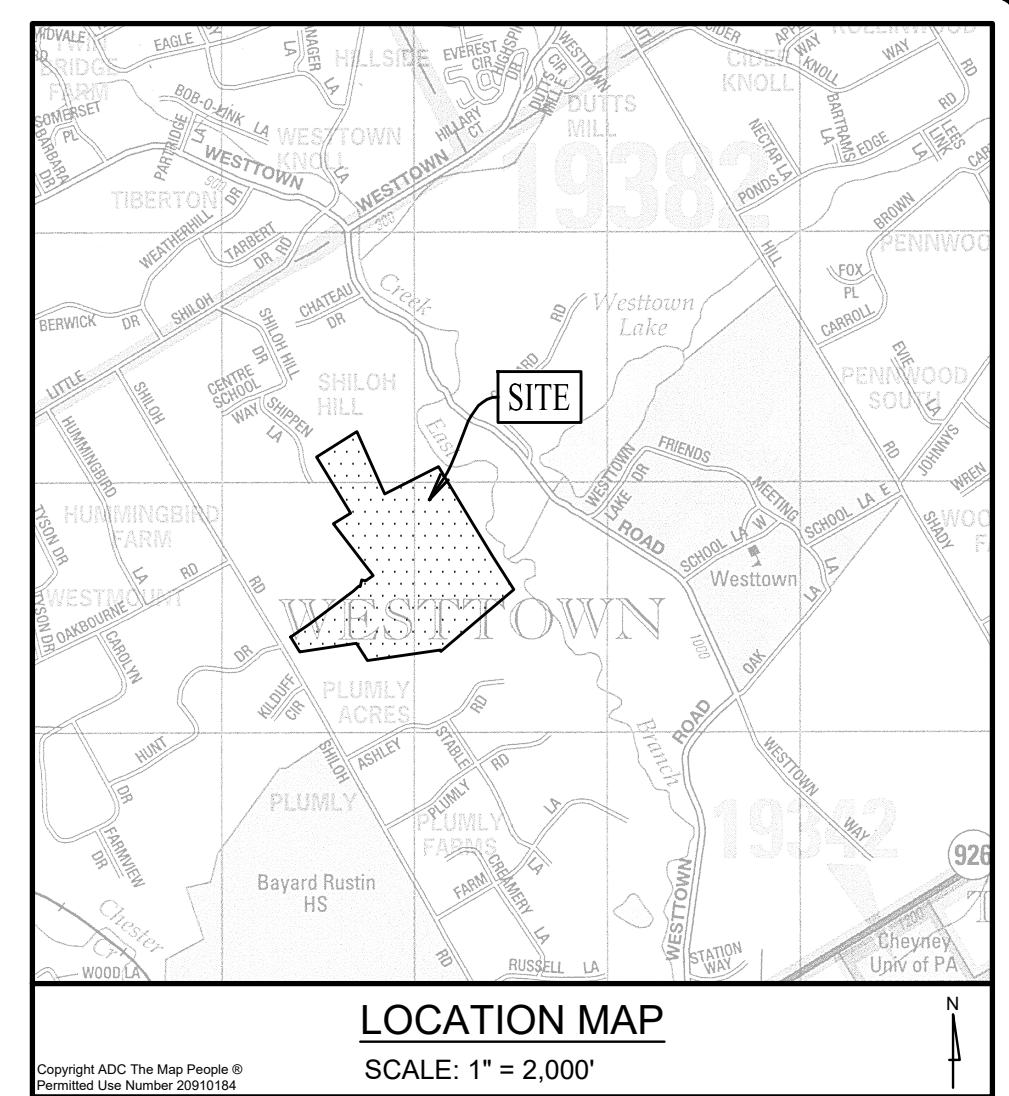
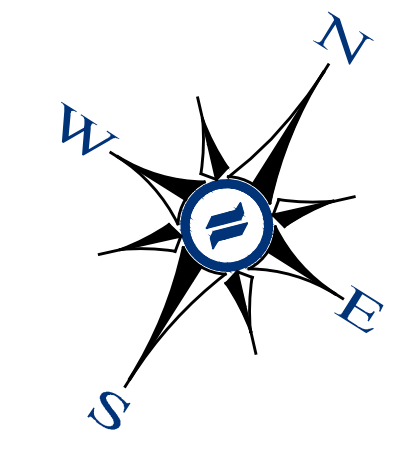
**SETTLEMENT PLAN**

RESIDENTIAL DEVELOPMENT

ART. VI - R1 RESIDENTIAL DISTRICT
SECT. 170-501.2: CONDITIONAL USES
(2) RESIDENTIAL DEVELOPMENT (FLEXIBLE DEVELOPMENT PROCEDURE - ARTICLE IX)

DRAWING INDEX

Table with 3 columns: SHEET NUMBER, DRAWING NUMBER, SHEET TITLE. Lists various site plan, landscape, and lighting drawings.

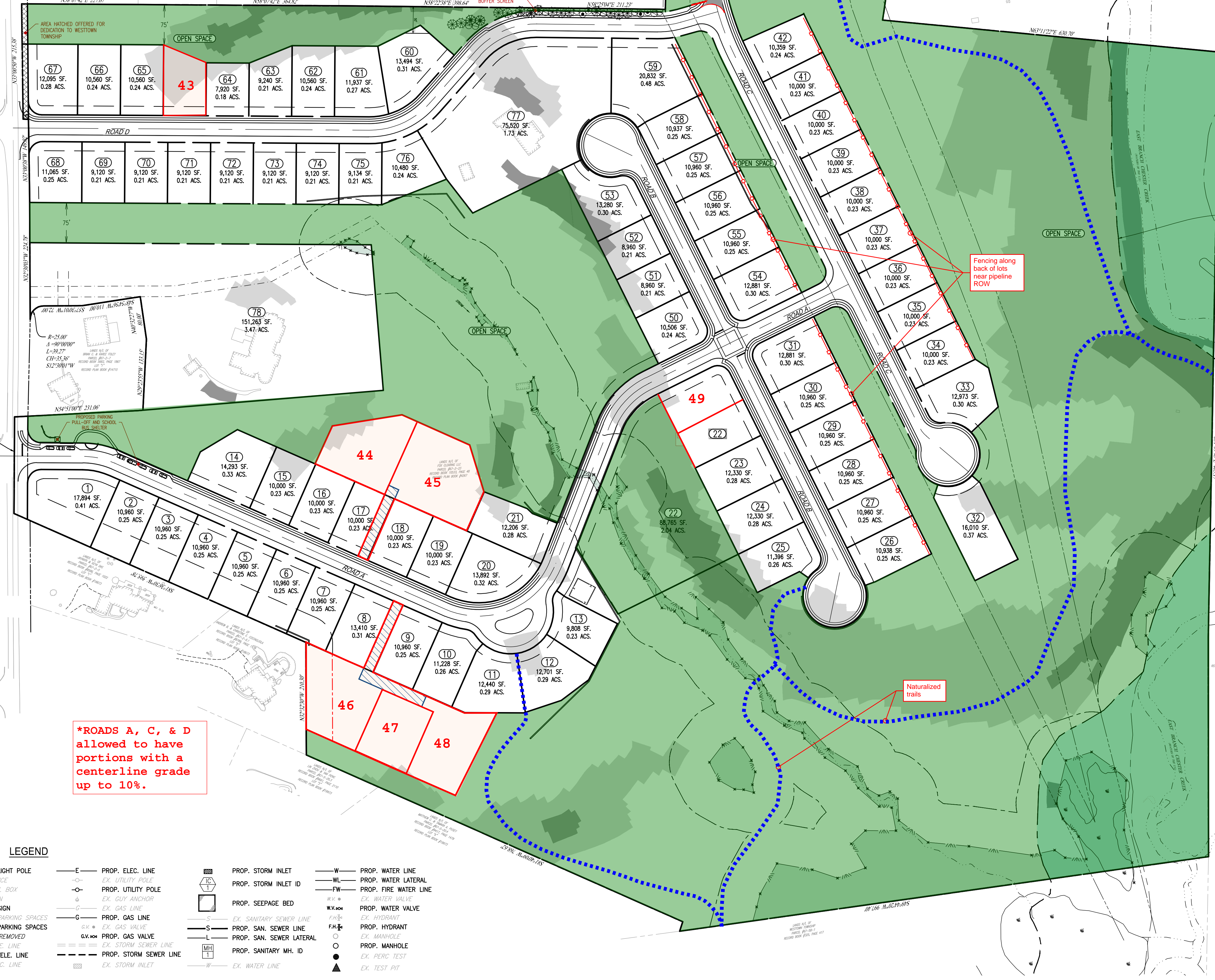


TRACT AREA CALCULATION table showing gross and net areas, density calculations, and open space requirements.

OPEN SPACE
MINIMUM OPEN SPACE = 40% GROSS TRACT AREA
REQUIRED GROSS TRACT = 80.886 ACRES

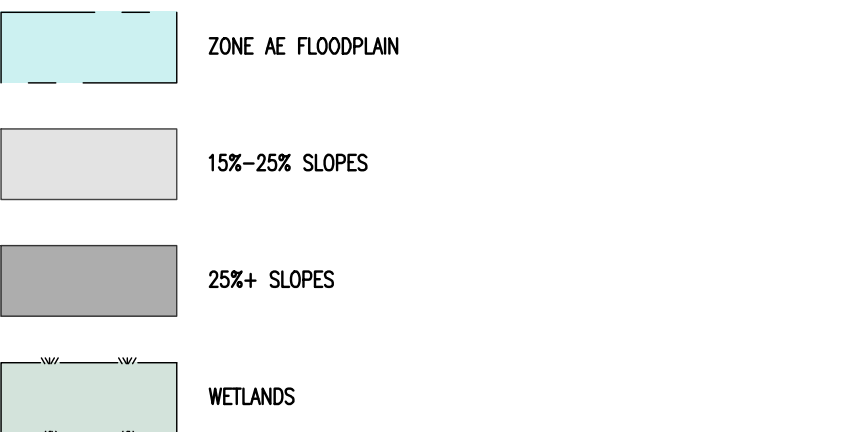
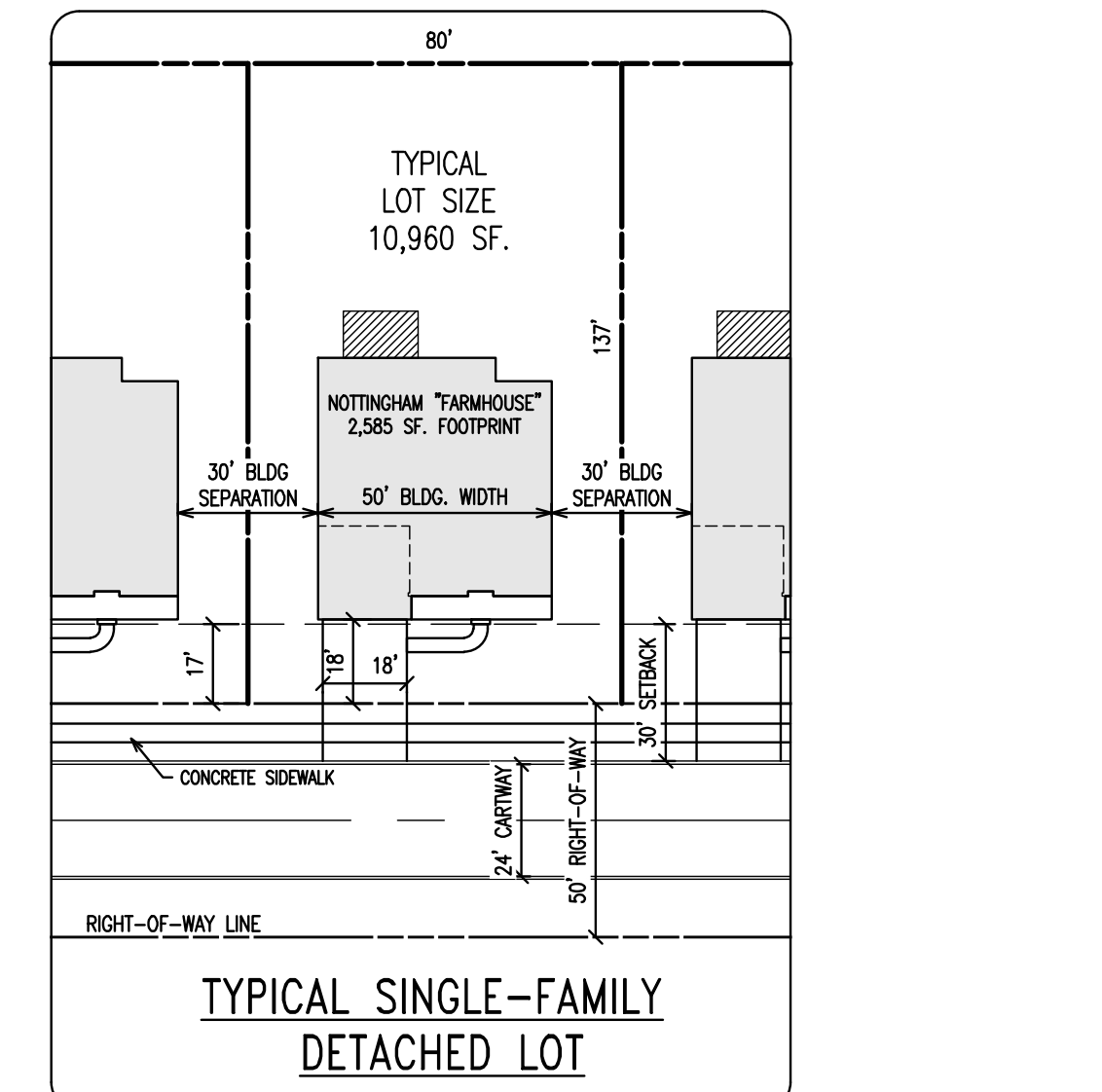
DENSITY CALCULATION
BASE DENSITY: 1.1 D.U. / TRACT AREA
BONUS DENSITY: +0.075 D.U. / 5% OF ADDITIONAL OPEN SPACE

PRECAUTIONARY STEEP SLOPES (15-25%)
GROSS TRACT AREA = 80.886 ACS (3,523,402 SF)
25% OF THE GROSS TRACT AREA = 20,221 SF



GENERAL NOTES
1. RECORD OWNER/MAILING ADDRESS: FOX CLEARING, LLC
2. SITE ADDRESS: 1013 SHILOH ROAD
3. TAX PARCEL #: 67-2-23
4. SOURCE OF TITLE: RECORD BOOK 10533 PAGE 48

REFERENCE PLAN(S)
1. PLAN ENTITLED 'PLAN OF SUBDIVISION FOR WILTON R. STOKES', PREPARED BY HENRY S. CONROY INC., DATED 10/29/1982, LAST REVISED 1/20/1983.



LEGEND table defining symbols for property lines, easements, utility lines, and other site features.

RECORD OWNER/APPLICANT: FOX CLEARING, LLC
OVERALL SITE PLAN
SCALE: 1"=100'

Project information sidebar including location map, title block, and sheet identification: RED-LINE MARKUP, REVISED 10/25/24, C01.1.

**EXHIBIT "B"**

**LIST OF ZONING DEVIATIONS/ SALDO AND SWMO WAIVERS**

## **EXHIBIT “B” - ZONING DEVIATIONS AND SALDO/SWMO MODIFICATIONS**

### **Subdivision and Land Development Ordinance §149-904.A**

This section of the ordinance states that, “*On all streets there shall be minimum center-line grade of 1% and a maximum of 7%.*”

#### ***Modification:***

To allow a few sections of Roads A, C and D to exceed 7% but be no more than 10%.

Please note that the subsequent section, §149-904.B states “*The center-line grade may be increased up to 10% upon the recommendation of the Township Engineer and the approval of the Board of Supervisors.*”

### **Subdivision and Land Development Ordinance §149-904.C**

This section of the ordinance states that, “*The center-line grade on a cul-de-sac public street shall not exceed 7%, and the grade of the diameter of the turnaround shall not exceed 4%.*”

#### ***Modification:***

To allow a stretch of Road C (a cul-de-sac street) to exceed 7% but be no more than 10%

### **Subdivision and Land Development Ordinance §149-907.E**

This section of the ordinance states that, “*Where the grade of any street at the approach of an intersection exceeds 4%, a leveling area of at least 75 feet measured from the curblineline of the street being intersected shall be provided. The grade of this area shall not exceed 2%.*”

#### ***Modification:***

To allow leveling areas to be 4%, which exceeds the required 2%.

### **Subdivision and Land Development Ordinance §149-913.B**

This section of the ordinance states that, “*Blocks shall have a minimum length of 500 feet.*”

#### ***Modification:***

To allow blocks to be smaller than 500 feet.

### **Stormwater Management Ordinance § 144-311.B(2)**

This section of the ordinance states that, “*Storm sewers shall be reinforced concrete when constructed within rights-of-way of streets.*”

#### ***Modification:***

To allow the use of High Density Polyethylene Pipe (HDPE) subject to Township inspection and approval of installation.

### **Stormwater Management Ordinance § 144-311.C(3)**

This section of the ordinance states that, “*The bottom of the basin shall have a minimum slope of 2% and any channel shall have a minimum slope of 0.5%.*”

#### ***Modification:***

To allow infiltration basins to have a flat bottom with 0% slope as required by the PA BMP Manual for infiltration BMPs.

**Zoning Ordinance §170-1514 – Outdoor Lighting**

To reduce the required amount of lighting in consultation and agreement with Township consultants, Planning Commission and Supervisors to maintain more rural lighting levels.

**Zoning Ordinance §170-402.D.(3)(f)**

This section of the ordinance states that, *“If the total of all area(s) of precautionary slopes on a lot exceed 25% of the total area of a lot, then no more than 50% of the precautionary slopes on that lot shall be disturbed, graded, or modified.*

***Modification:***

To allow Lot 43 on the settlement plan to disturb more than 50% of the precautionary steep slope on said lot.