



density incentive provisions of its Zoning Ordinance and as a regional impact development under the Zoning Ordinance. Applicant had neared completion of construction of Phase I of the project by the beginning of 2015 (which, as of the date hereof, is complete), and, following the February 23, 2015 amended conditional use approval, Applicant proceeded with seeking the necessary approvals for Phase II, including obtaining outside agency permits as well as final plan approval from the Township. During the Phase II approval process, Applicant was notified by the City of Lancaster (“City”) that the City would not provide public water service to the remainder of the Devon Creek project.

5. Applicant now seeks approval to amend the conditional use approval of June 17, 2008, to revise the source of public water to be an on-site community public water system, and to make minor modifications to the Phase 2 plan. The request for amendment of the conditional use approval does not propose any other changes to the approval; the request does not affect density, does not materially affect stormwater management design, and all conditions of the prior approvals will continue to apply without modification. Moreover, the instant proposal will not affect the existing homes in Devon Creek; such homes’ water supply will continue to be served by the City.

6. Notice of the hearing was duly posted and advertised in accordance with the provisions of the Pennsylvania Municipalities Planning Code and the Zoning Ordinance.

7. The initial hearing was held before the Board of Supervisors on March 18, 2019 at the Township’s office located at 2250 Old Philadelphia Pike, Lancaster, Pennsylvania, 17601. The hearing was continued to a later date to permit the Township staff to review Applicant’s responses to the Township’s review letters (Exhibits A-13 and A-14), and allow for additional testimony, if appropriate. The hearing was resumed on June 15, 2020.

8. At the hearings, Applicant was represented by counsel Craig Robert Lewis, Esquire, and testimony was offered on behalf of Applicant by Christopher Venarchick, a landscape architect with RGS Associates, and Larry Miller of Miller and Sons.

9. Supervisors Meyer, Blowers, Buckwalter and Demme were present and heard testimony at both hearings.

10. The witnesses together described in detail, both orally and with the benefit of exhibits, the proposed amendments to the conditional use approval relating to the remainder of the project. The exhibits included the following: (1) June 17, 2008 Conditional Use Approval decision; (2) Amendment to Conditional Use Approval dated February 19, 2010; (3) Preliminary Plan Approval dated February 19, 2010; (4) Phase 1A Final Plan Approval dated March 24, 2011; (5) Amendment to Conditional Use Approval dated February 23, 2015; (6) Traffic Impact Study Updated Analysis, prepared by Traffic Planning and Design, dated February 20, 2015; (7) Application of Amendment to Conditional Use Approval dated February 8, 2019; (8) draft Service Agreement with City of Lancaster; (9) Phasing and Open Space Plan; (10) Phase 2 Preliminary Plans - Cover Sheet and Rendering; (11) Pump House Plan dated January 5, 2019; (12) Public Water Supply Permit Application - Engineer's Report; (13) DM/A Review Letter dated March 11, 2019; (14) DM/A Review Letter dated March 12, 2019; (15) Rendered Landscaping Plan; (16) Correspondence from Pennsylvania Department of Environmental Protection with Public Water Supply Permit; and (17) executed Service Agreement with City of Lancaster.

11. Mr. Venarchick testified that the proposed amendments regarding the supply of public water will not in any material way alter or diminish Applicant's compliance with the conditional use approval, as previously amended.

12. Mr. Venarchick described the Phasing and Open Space Plan (Exhibit A-9) and Phase 2 Preliminary Plans (Exhibit A-10), opining that the requested revisions in said plans will not have a detrimental impact upon the public health, safety, or welfare or otherwise impair the appropriate use, enjoyment, or development of adjoining properties.

13. Phase 2 would face one-half of the northwest corner of the Property under construction (built out). The area identified on the Phase 2 Preliminary Plan at Sheet 2 alters the Phase 2 line, and includes an area where a community well could support the water necessary for the project; the well is located just outside the flood plain. In close proximity to the area is the proposed well structure, a portion of which is below grade for the storage tank, and the other portion being an above-grade utility building (which Mr. Venarchick testified is very similar to the previously proposed and approved sanitary sewer pumping station).

14. Applicant also proposes to extend Hampshire Avenue to cross the stream and include a temporary cul-de-sac, which would fall within the ultimate intended roadways of the full build-out. There would also be a small access driveway approximately twelve (12) feet wide, in order to gain access to the proposed well structures.

15. The overall water distribution pipe system would remain essentially the same. The only proposed difference is that, at the point where the City line terminates in Phase 1 (for those houses already built-out), there will be a meter. At that location, the systems are separated, but the piping layout is the same.

16. The proposed well and pump house are located within a designated open space lot of approximately 3.2 acres, meeting the requirements under the Zoning Ordinance for minimum open space area. The open space lot was originally designated as a park. The proposed structures would only cover approximately one (1) acre of the open space lot.

17. Mr. Venarchick testified that the proposed public water supply improvement facilities will not impact the ability of the open space lot to be used for passive and/or active recreation.

18. The Township engineer's review letter dated March 12, 2019 (Exhibit A-14) requested certain updated information regarding zoning data, scheduled construction time, breakdown of proposed units, and size of the revised open space lot. Mr. Venarchick testified that the Phase 2 Preliminary Plan (Exhibit A-10) appropriately addresses each of the Township's comments.

19. The proposed water pump station is consistent in architecture, material construction, and visual aesthetics with the existing pump station, which was built to the Township's Authority's standards; the design and layout of the proposed water pump station are included in Applicant's Pump House Plan dated January 5, 2019 (Exhibit A-11).

20. Applicant proposes to include vegetation buffering along the street and, if possible, evergreen shrubs or trees around the pump house, as set forth on the Rendered Landscaping Plan (Exhibit A-15). Applicant proposes to work with existing grades (dropping off down to the floodplain), including introducing a retaining wall.

21. Mr. Miller testified that the infrastructure improvements required by the City (in connection with the initial planned public water supply system) were practically impossible, financially and physically. Applicant attempted to locate additional land on which to put a water tower, but was unsuccessful in doing so. Applicant then presented an alternative plant proposal to the City, but the City declined to take over the operation of said plant.

22. In light of the City's decision, Mr. Miller's firm was requested to investigate the opportunity for an alternative public water supply for Devon Creek.

23. Applicant, through Miller and Sons, prepared the Public Water Supply Permit Application (Exhibit A-12) seeking approval from the Pennsylvania Department of Environmental Protection (DEP) for a public water system that involves a well on the Property. The Application was provided to Township staff for consideration and review prior to submission to DEP. Mr. Miller testified that the water system proposed by the Application is sufficient and appropriate to serve the Devon Creek community.

24. The Permit Application to DEP included a complete construction and operational financial plan, which includes information regarding construction costs, developer reimbursement, ongoing maintenance costs during the construction phases (of the Devon Creek residences), and user fees once the residences are built out. The plan is written out for forty (40) years of financial operations. At the end of the 40 year timeframe, there would be sufficient funds in the homeowners' association fund to support the rebuilding of a new facility, if necessary.

25. DEP sets the standards for both the gallons per minute as well as the size of the holding tank for the entirety of the community.

26. While the developer will build the system and the permit is held by Brookfield Development Corporation, the system will be eventually transferred to the homeowners' association for operation of the system through a management company with DEP approval.

27. Applicant obtained the public water supply permit from DEP on or about February 24, 2020 (Exhibit A-16).

28. Applicant's Service Agreement with the City (Exhibits A-8 and A-17) requires the City to provide an emergency backup connection to the public water supply system; such backup is in addition to the water tank constructed as part of the proposed system.

29. The water supply system will provide adequate volume and pressure to serve residents and to provide fire service to Devon Creek.

30. The well and well head protection zone will not create an impediment to continued use of the open space area for passive or active recreational purposes. Use of the open space for recreation purposes will not pose a greater risk of contamination or pollution to the proposed water supply system than any other public water supply system.

31. Mr. Miller described the design of the pump house, explaining that the 300,000 gallon concrete storage tank is located below grade, and the pump station sits above grade on top of the tank. The pump station is approximately 36 ft. x 44 ft. in dimension. The peak of the station's roof is approximately 18 ft. in height.

32. The top of the tank will be covered by a poured concrete slab, painted with a gray emulsion paint that gives it a clean look. The slab will be visible, and the residents could, theoretically, walk over and across the top of it without harming the system. DEP requires the slab to be visible and not covered by grass.

33. The pump house will be locked and monitored with cameras for security purposes. The tank is secured so as not to permit access to it. There is an internal support system--a baffle wall system--to serve as foundational support and also to keep the water moving in the tank. Mr. Miller testified that the lifespan of the tank is several hundred years.

34. Under the City's emergency support obligation, the City interconnection will not tie into the proposed infrastructure or distribution piping of the community. Mr. Miller explained that there will be two (2) supply lines servicing the plant; one being the well, which will be responsible for 99.9% of the service, the other being a two-inch water line from the City's system to be used if the well is shut down for any period of time. The City's line will

service 55 gallons per minute, for any extended period of time; this is not adequate pressure for fire safety purposes. The line, however, flows into the 300,000 gallon tank, which is used for fire safety.

35. The 300,000 gallon tank operates independently from the well (i.e., if the well is not functioning, the tank will continue to function).

36. Questions and comments from the public were solicited. Residents expressed their concerns with the Applicant's ability to adequately maintain the system, the financial viability of the operational plan, and the concern with neighboring wells running dry.

37. Applicant's counsel explained that all aspects of the system must and will be constructed and maintained in accordance with DEP standards, as confirmed by DEP in the permitting and inspection process.

38. Applicant and Township staff agreed to twenty-seven (27) conditions that would apply to the approval (Township Exhibit 1). Applicant verbally indicated its consent to the conditions at the June 18, 2020 hearing.

## II. DISCUSSION.

The Devon Creek development has already received conditional use approval, as amended in 2010 and 2015, under the following two sections of the Zoning Ordinance: Section 1938 regarding Optional Density Incentive Provisions within the R-2 Residential District and Section 1936 regarding Regional Impact Development, particularly the residential portions thereof. Applicant seeks approval to amend the conditional use approval of June 17, 2008, to revise the source of public water to be an on-site community public water system, and to make minor modifications to the Phase 2 plan. The request for amendment of the conditional use approval does not propose any other changes to the prior approvals. As testified, the request



does not affect density, does not materially affect the stormwater management design, and all conditions of the prior approvals will continue to apply without modification. The requested modification to the prior approvals involves substitution an on-lot community public water system for public water. The proposed system has been approved and permitted by DEP.

As set forth in the Findings of Fact, inclusive of the testimony and evidence submitted, the Board finds that the proposed amendments to the conditional use approval are generally consistent with the applicable Zoning Ordinance requirements for Optional Density Incentive Provisions and Regional Impact Development in the R-2 Residential Zone. The Board recognizes that all requirements of the Zoning Ordinance, relating to the Applicant's proposed amendments, have been met, that all the reasonable questions involving the development and operation of the proposed system have been answered, and further recognizes that the conditions proposed by Township staff and accepted by the Applicant, further support the conclusion that the Application deserves approval.

### III. CONCLUSIONS OF LAW.

Provided that the conditions imposed by this decision are met, the Applicant's proposed amendments to the Board's conditional use approval dated June 7, 2008, subsequently amended on February 19, 2010 and February 23, 2015, the instant proposal satisfies the relevant requirements of the Zoning Ordinance in Sections 1938 and 1936.


IV. DECISION.

The Board of Supervisors hereby grants conditional use approval for the Proposed Use subject to the terms and conditions attached hereto as Exhibit A. All prior decisions in this case remain in full force and effect unless expressly modified by this Decision. Any violation of any of the conditions imposed by this Decision shall be considered violations of the Zoning Ordinance and shall be subject to enforcement in the same manner as Zoning Ordinance violations.

Decision made this 20th day of July, 2020 by a vote of 2 to 1.

BOARD OF SUPERVISORS FOR THE  
TOWNSHIP OF EAST LAMPETER

By:   
Corey Meyer, Chairman

Attest:   
Ralph M. Hutchison, Secretary

# **EXHIBIT A**

## **Conditions of Approval of Conditional Use Application**

1. The Applicant, Homeowner's Association, or other owner of the community water system, which has been approved and permitted by the Pennsylvania Department of Environmental Protection as a public water system (hereinafter referred to in these Conditions as a "community water system"), shall complete an annual audit report, which shall include the financial information related to the community water system, and provide a copy of that report to the Township within thirty (30) days of the issuance of the report, but in no event later than 180 days from the end of the owner's fiscal year.

2. All fire hydrants connected to the community water system shall be painted a color, to be determined by the first-response fire department, different from the color of the fire hydrants which are supplied by the public water system of the City of Lancaster.

3. Applicant shall submit revised calculations for the community water system to the Township and any other required government entity, incorporating the projected water needs for the swimming pool provided as an amenity to community residents.

4. Applicant shall provide written verification from the City of Lancaster that Applicant supplied the approved Pennsylvania Department of Environmental Protection Water Supply Permit to the City of Lancaster.

5. Applicant shall provide notes on all future plan submissions that the community water system includes all distribution pipes, valves, and all other apparatuses associated with the system and that all such apparatuses shall be constructed in accordance with City of Lancaster specification, with the exception of minor changes, such as the color of hydrants and similar items, as if the system were to be a public water system of the City of Lancaster. Applicant shall have the construction inspected by a third-party inspection agency, selected from a list of inspection agencies acceptable to the City of Lancaster, at the time of inspection, to ensure that the construction satisfies these standards. All costs of inspection shall be the responsibility of Applicant. Applicant shall provide copies of the inspection reports to the Township.

6. In accordance with DEP regulations, Applicant, and any successor owners of the community water system, shall maintain a readily-accessible inventory of all apparatuses in the community water system to ensure that emergency repairs required for the system may be completed without delay. A list of the required inventory shall be provided to the Township.

7. Applicant shall provide a fully executed copy of the Service Agreement with the City of Lancaster, identified as Exhibit 8 in the Conditional Use Application, to the Township.

8. Applicant shall provide a wellhead protection zone easement, in accordance with DEP regulations, for the well and shall erect appropriate signage identifying the wellhead protection zone.

9. Applicant shall amend all required declarations, covenants, restrictions and associated Homeowner's Association documents to reflect the change in the community water system for those properties not served by community water supplied from the City of Lancaster.

10. Applicant, and any successor owners of the community water system, shall provide all copies of reports required by Chapter 109, when issued, to the Township. These shall also be provided to the City of Lancaster.

11. Applicant, and any successor owners of the community water system, shall provide to the Township copies of all emergency notices related to the community water system, when issued to residents. These shall also be provided to the City of Lancaster.

12. Applicant shall remove the lot on which the well, storage tank and building are located from all open space requirements for the development. Applicant shall submit a revised open space plan and calculations to ensure compliance with the Township Zoning Ordinance.

13. Applicant shall comply with Section 1925.6 and Finding of Fact No. 72 of the 2008 Conditional Use Decision with respect to buffering and screening.

14. Applicant shall install a meter, approved by the East Lampeter Sewer Authority, on the sewer line for the backflow and other discharge from the community water system.

15. Applicant, and any successor owners of the community water system, shall allow access by Township representatives for meter-reading purposes.

16. Applicant, and any successor owners of the community water system, shall calibrate the meter no less frequently than annually, and shall maintain and replace the meter, as needed.

17. Applicant shall install a de-chlorination system at the overflow for the community water system. The location and design of the system shall be approved by the Township, and Applicant, or any successor owners, shall properly operate and maintain the system.

18. Applicant shall enclose the well, concrete pad and building, including the generator facility, with fencing, including a locked gate, to prevent the community from accessing those areas.

19. If and when the streets are offered for dedication to the Township, Applicant shall provide to Township, in a written form acceptable to Township, a utility easement between Applicant and Township, granting to Applicant and its successors an easement for that portion of the community water system to be located within the right-of-way of any public street within the development. Nothing in this Condition shall be interpreted to require the Township to accept dedication of any street in the future, and Township may require financial guarantees and/or other requirements at the time of the proposed dedication and provision of the easement to cover the costs of repairs to dedicated streets within the development as a result of necessary repairs to the community water system. In the event that streets are not accepted for dedication by the Township, Applicant shall grant the Township and/or the East Lampeter Sewer Authority (ELSA) any necessary easements for the sewer and storm drainage facilities of ELSA. Applicant shall place a note on the revised and recorded plan confirming the items set forth in this Condition.

20. The community water system may not be transferred without the current owner's first providing to Township written information concerning the proposed transfer and the ability of the proposed transferee to properly operate the system.

21. Applicant, and any successor owner of the community water system, shall notify Township at least Thirty (30) days prior to the proposed sale or transfer of the community water system to another person or entity. All requirements in these Conditions shall be binding on the successor owner of the community water system, and Applicant, or the then-owner of the community water system, in the event of a subsequent transfer, shall not be relieved of any obligations or requirements of these Conditions until the transferee shall have submitted an acknowledgement, in writing, of its acknowledgement of its obligations under these Conditions; provided, however, that nothing in this Condition shall be construed to relieve the transferee of its obligation to be bound by the Conditions, regardless of whether the transferee submits the written acknowledgement.

22. Applicant, and any successor owners of the community water system, shall repair any public street damage to the specifications and acceptance of the Township.

23. Applicant shall provide a revised phasing plan for the entire project and identify changes from the most recent previously-approved plan.

24. Township shall issue no certificates of occupancy for any homes or residential dwelling units that would connect to the community water system until Applicant provides documentation from the Pennsylvania Department of Environmental Protection that the community water system is functional and operational. Applicant shall provide a notice to any person who enters into an agreement of sale for the purchase of any property in the development prior to DEP's issuance of an operation permit for the system informing the purchaser that the water system has not been approved for operation and must be approved for operation before a certificate of occupancy will be issued for the dwelling being purchased. The Township may include language on the building permit indicating that no certificate of occupancy will be issued for the dwelling until an operation permit for the water system has been issued by DEP.

25. Applicant shall comply with Section 1936.11 of the Township Zoning Ordinance in constructing the improvements for the community water system.


26. All conditions imposed in the original Conditional Use approval dated June 17, 2008, as amended in 2010 and 2015, shall remain in full force and effect, unless those conditions

conflict with the conditions of this Decision. In the event of any conflict between those conditions and the conditions of this Decision, the conditions of this Decision shall apply.

27. All conditions shall be binding on the Applicant, its successors and assigns, including, but not limited to, the Homeowner's Association.



The undersigned certifies that a copy of this Decision has been, personally or by First Class Mail, postage prepaid, served upon Applicant c/o Craig Robert Lewis, Esquire, Kaplin Stewart, P.O. Box 3037, Blue Bell, PA 19422.

  
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Ralph M. Hutchison, Secretary

Date: 7/21, 2020