

TOWNSHIP OF DERRY
BOARD OF SUPERVISORS MEETING MINUTES
APRIL 14, 2020

CALL TO ORDER

Due to the Coronavirus (COVID-19) pandemic, the March 24, 2020 Board of Supervisor's meeting was cancelled. On March 30, 2020, PA Governor Wolf put Dauphin County under a Stay-at-Home Order. In order to ensure public safety during the COVID-19 crisis, the April 14, 2020 meeting was held by audio and video conferencing via a Zoom Virtual Webinar and shown live on YouTube on the Derry Township YouTube page.

Chairman Abruzzo called the April 14, 2020 Regular Meeting of the Township of Derry Board of Supervisors to order at 7:03 p.m. via video conferencing with a Zoom Virtual Webinar through the on-line Meeting Room. He advised that all public meetings are recorded for providing accurate notes. After the Pledge of Allegiance, a roll call was performed.

IN ATTENDANCE:

SUPERVISORS

E. Christopher Abruzzo, Chairman
 Natalie L. Nutt, Vice Chairwoman
 Carter E. Wyckoff, Secretary
 Richard D. Zmuda
 Susan M. Cort

ALSO PRESENT:

Christopher Christman, Township Manager
 Chuck Emerick, Director of Community Development
 Thomas Clark, Director of Public Works
 Chief Garth Warner, Police Department
 David Sassaman, Hershey Volunteer Fire Company
 Matthew Mandia, Director of Parks and Recreation
 Cheryl Lontz, Manager of Payroll & Employee Benefits
 Laura O'Grady, Director of Hershey Public Library
 Lauren Zumbun, Economic Development Manager
 Matt Bonanno, HRG Engineer
 Julie Echterling, Recorder

VISITOR/PUBLIC COMMENTS:

Mrs. Tracy Brown spoke about the email she sent to the Board about the Cacao Way project. She is concerned about backed up traffic that is in this area without this development. She discussed the Starbucks drive-through and the outlet traffic. There are additional backups on East Derry Road, and trains that cause delays. She spoke about the fact there are no sidewalks on Northeast Drive or Derry Road. Without sidewalks, residents would have to walk in a dangerous area or drive, which will add to the already existing traffic. She asked the Board to look at the big picture and ask if this is a safe project.

Mr. Ken Gall, Hershey Trust, read his email that he sent to the Board. He spoke about the partnership they have with Monarch, which is a great company. He spoke about looking at the long term and making a significant investment in the Township with these apartments. The apartments would be for young professionals and would be offered at the market rate.

In addition to the public comments received during the meeting, there were public comments submitted prior to the meeting. They are attached to the minutes as page 9.

ADOPTION OF MINUTES

Supervisor Cort made a motion to adopt the minutes for the March 5, 2020 Board of Supervisors Special Meeting. Supervisor Zmuda seconded the motion. **Motion carried 5-0.**

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Vice Chairwoman Nutt made a motion to adopt the minutes for the March 10, 2020 Board of Supervisors Regular Meeting. Supervisor Cort seconded the motion. **Motion carried 5-0.**

NEW BUSINESS:

APPOINTMENT OF TOWNSHIP SOLICITOR:

Mr. Christman discussed the RFP process for the position of Township Solicitor. He spoke about the interviews conducted by the Selection Committee. The Committee's unanimously recommended the appointment of Grim, Biehn and Thatcher. The Board members shared their appreciation of the tremendous contribution and longevity that Solicitor Yost has made to Derry Township and would like to honor his service during a regular meeting when things return to normal.

Chairman Abruzzo made a motion to appoint the firm of Grim, Biehn and Thatcher located at 104 South Sixth Street, Perkasio, PA 18944 at an hourly rate of \$165/hour fixed for FY2020-FY2022 to the position of Township Solicitor for the Township of Derry. Supervisor Cort seconded the motion. **Motion carried 5-0.**

SETTLEMENT AGREEMENT: DEVELOPMENT PLAN FOR TOWNEPLACE SUITES HOTEL, PLAT 1328:

Mr. Emerick showed the Board the plans for the hotel. He spoke about the applicant (Bears Creek Hershey Hotel II, LLC) and the Board of Supervisors working to find an acceptable solution and reasonable compromise to settle the dispute surrounding the approval of the demolition of six dwelling units and the construction of a hotel in the 500 block of West Chocolate Avenue, originally proposed under Plat 1309. Below are the three Plats and their history:

- Plat 1309 was filed with the Township on October 10, 2018, and the design plans were ultimately denied by the Board of Supervisors on January 22, 2019. Thereafter, the applicant, filed a Land Use Appeal from the denial of the development plan and a Local Agency Appeal regarding the denial of the design plans. Plat 1309 proposed 84 rooms
- Plat 1315 was a second plan filed in tandem with filing the appeals. Plat 1315 was accompanied by complementary design plans. Plat 1315 was also denied by the Board of Supervisors on October 8, 2019. The applicant again filed appeals from the denial of Plat 1315.
- Plat 1323 was filed, in the hopes of getting a plan approved under the existing 2017 Zoning Ordinance without court actions, with complementary design plans on November 26, 2019. Plat 1323 and the design plans are still under consideration by the Township; however, the applicant again seeking approval, has submitted the Settlement Plans. Plat 1323 proposed 76 rooms.

He stated the Settlement Plans, represent the subdivision and land development of 554-574 West Chocolate Avenue. The Settlement Plans are under the 2017 Zoning Ordinance, which was in effect when Plat 1309 was submitted. Under the Settlement Plan, the applicant proposes to combine the six lots into a single development tract having a gross area of 0.8082 acres, with no new street right-of-way being dedicated. The property will all be razed to make way for a five-story, 60-foot-high, 80-room hotel. He noted the design elements of the Settlement Plans are generally consistent with prior plans. A total of 80 extended-stay hotel rooms are being provided and 6 employees anticipated on the maximum shift, require a total of 85 parking spaces on the property. The applicant is proposing a total of 87 parking spaces comprised of 64 standard spaces (15 elevated), 17 compact spaces, 4 accessible spaces, and 8 bicycle spaces. The applicant is also proposing a 6-space Zagster bike rack to meet the initial demand for 4 bicycle parking spaces. Per Section 185-42.A of the Subdivision and Land Development Ordinance, the use will not generate 100 or more peak hour trips; therefore, a traffic study is not

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required. The plans indicate that the hotel use will generate 40 AM peak hour trips and 46 PM peak hour trips. The applicant is proposing a subsurface stormwater management facility with an impervious liner. A conveyance pipe and inlet will be constructed to direct the stormwater from the underground stormwater management facility to the existing stormwater system in West Chocolate Avenue. The maximum impervious coverage permitted on the property is 85% of the lot area, and the applicant is proposing coverage at 83.51%.

He noted that any approval of the Settlement Plans would include acknowledgement that the 5 waivers summarized on the cover sheet, in addition to any other deviation of ordinance standards, are also approved. He recommended approval of the Settlement Plans, including Plat 1328 and the design plans through approval of the Settlement Agreement, conditional with conditions. He noted the zoning recently adopted replacing the 2017 ordinance creates three districts downtown. These changes will allow softer development closer to the residential areas. He noted that under the new zoning this plan wouldn't be allowed. He noted the applicant will withdraw their other plans with this settlement.

Mr. Lee Stinnett, Attorney for the Township, provided a brief history of the lawsuit and judge McNally's request to have the parties come to a resolution. He spoke about the meetings with, Staff and the applicant. He noted they worked together toward a resolution and approval of the 2020 plan submitted. The agreement will not allow for any additional expansion without Township approval. He stated both parties are releasing each other, and this will end the dispute. They will work on a press release for this agreement. He noted the agreement has a provision outlined for when the courts open up again.

Supervisor Cort made a motion that the Settlement Plans, including the Preliminary/Final Subdivision and Land Development Plan for Towneplace Suites Hotel, Plat 1328, and the design plans received by the Township on April 3, 2020, are approved through approval of the Settlement Agreement, subject to compliance with the following items:

1. A performance security is provided to guarantee the installation of required improvements, and the accompanying Agreement to Provide Financial Security is signed no later than October 14, 2020.
2. The applicant provides calculations indicating that the fire hydrant flow rates satisfy the rates needed under the "Fire Suppression Rating Schedule" as published by the Insurance Services Office, New York, New York, or the current National Fire Prevention Association standard which apply to the building type being considered, as may be applicable, no later than October 14, 2020.
3. Two originals of the signed and notarized Stormwater Best Management Practices Operation and Maintenance Agreement are provided no later than October 14, 2020.
4. A digital file of the final plan in an Auto CAD or DXF compatible format is provided no later than October 14, 2020.
5. The Stormwater Best Management Practices Operation and Maintenance Agreement is recorded concurrently with the plan.
6. The property consolidation deed referencing the Stormwater Best Management Practices Operation and Maintenance Agreement is recorded concurrently with the plan.
7. The agreement regarding the operation and maintenance program for the Autostacker spaces, including information related to the anticipated method of loading and unloading the Autostacker, is recorded concurrently with the plan.

Supervisor Zmuda seconded the motion. **Motion carried 5-0.**

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CONDITIONAL USE APP NO. 2019-08 - 50 NORTHEAST DRIVE-CACAO WAY, LLC.:

Mr. Emerick noted there was a public hearing on January 28, 2020, that discussed the plan to raze the existing former Milton Hershey School student home at 50 Northeast Drive and construct a 4-story, 75-unit market rate apartment building. The property is within the Hershey Mixed Use zoning district. The lot has frontage on Northeast Drive, East Derry Road, and P Street (an alley). He stated the Master Plan proposes 126 parking spaces. Twenty percent of the spaces are proposed as compact spaces, which is the maximum allowance permitted by the Zoning Ordinance. The applicant has offered a voluntary fee in lieu of a traffic study of \$35,066.82. The applicant has acknowledged that they will need to provide a fee in lieu of land dedication for park, recreation, and open space use. If the Conditional Use is approved, the applicant will need to file a final land development plan with the Township. He discussed a few of the conditions of the approval of the decision.

Vice Chairwoman Nutt asked about the pedestrian access and bike trail extensions. Mr. Emerick showed her the proposed path on Google Earth. Chairman Abruzzo asked about the traffic congestions. Mr. Emerick spoke about the draft results from the Greater Hershey Transportation Study. He spoke about a potential light at Park Ave. He noted that the apartments would be residents of the Township, not tourists, and residents typically know how to avoid traffic.

Chairman Abruzzo made a motion to adopt the Decision for Conditional Use Application No. 2019-08 subject to the following conditions being met:

1. Cacao shall comply with the zoning regulations governing the use and design of the property or obtain any zoning relief necessary to develop the property in general conformance with the plans presented at the January 28, 2020 Board of Supervisors' public hearing regarding Conditional Use Application No. 2019-08.
2. At the time of the applicable final land development plan approval, Cacao shall, in addition to the requirements contained within this Decision, adequately address all comments in the January 14, 2020 Planning Commission letter addressed to Cacao, including, without limitation, all comments in the January 21, 2020 HRG letter. If a conflict exists between the January 14, 2020 Planning Commission letter and this Decision, the requirements of this Decision shall prevail.
3. The building design shall be substantially in compliance with the plans and elevations presented as part of this Conditional Use request. Any substantial modification will require approval by the Derry Township Board of Supervisors at a public meeting and shall follow the terms of Chapter 225 (Zoning), Section 225-501.58 of the Code of the Township of Derry, as may be appropriate.
4. The development shall be in substantial compliance with the plans and testimony presented at the January 28, 2020 Board of Supervisors' public hearing regarding Conditional Use Application No. 2019-08 and as modified to address the Township's and HRG's review comments.
5. The development of the Multifamily Apartment Dwellings will be permitted in accordance with Chapter 225 (Zoning), Section 225-501.2 of the Code of the Township of Derry, as proposed on the plans presented at the January 28, 2020 Board of Supervisors' public hearing regarding Conditional Use Application No. 2019-08.
6. All site signage shall meet the signage requirements of Chapter 225 (Zoning) of the Code of the Township of Derry.
7. Cacao will pay the fee in lieu of land dedication for park, recreation, and open space use upon approval of the final plan for the proposed development, as calculated at that time, or will install the improvements related to the north/south pedestrian and bicycle connection of an equal amount.

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8. Cacao will pay the contribution in lieu of a traffic study upon approval of the final plan for the proposed development.
9. Cacao will provide a speed hump or other traffic calming measure, as approved by the Board of Supervisors during the final plan approval, to ensure that traffic through the site proceeds in a safe manner.
10. To the greatest extent possible, Cacao will continue to work with the Township to obtain a bicycle/pedestrian connection from East Derry Road to Northeast Drive, whether on the subject lands or adjacent lands.
11. It is understood that some parts of the Master Plan submission are schematic in nature. Any areas that have been depicted that may later be found to be out of compliance with the Township's regulations are not to be considered an entitlement, waiver, or variance unless specifically requested in the Conditional Use documents and approved by the Board of Supervisors.
12. The authorization granted herein shall not relieve Cacao from filing for and seeking Township approval of any permit, land development, subdivision, site plan, or other approvals which may be required by other Township, state, or federal regulations, or from otherwise complying with all applicable regulations.
13. The authorization granted herein shall be valid for two years and shall expire if a zoning permit, building permit, or certificate of use and occupancy is not obtained within two years of the date of adoption of this Decision.
14. This approval includes waivers of requirements of Chapter 185 (Subdivision and Land Development) of the Code of the Township of Derry, which waivers were detailed during the January 28, 2020 Board of Supervisors' public hearing regarding Conditional Use Application No. 2019-08, as follows:
 - a. From Section 185-22.D.(3) regarding providing additional street right-of-way and cartway width. Additional street right-of-way width and cartway width shall only be required for P Street.
 - b. From Section 185-22.D.(5) regarding installation of curbs. No new curbs will be required, except to the extent of replacing existing modified curbs.
 - c. From Section 185-34 regarding installation of sidewalks. Sidewalks shall only be required as depicted on the plan, with the stipulation that the developer provides the required fee in lieu of sidewalk installation, as determined by Section 185-34.A.(4).(b), in conjunction with the approval of the final plan for the proposed development.
15. Except as specifically approved or waived herein, the use and design of the development shall comply with all other applicable requirements under the Township's ordinances and regulations.
16. The authorization granted herein is based on and is specific to the circumstances and evidence presented during the January 28, 2020 Board of Supervisors' public hearing regarding Conditional Use Application No. 2019-08. The authorization granted herein may not be expanded or otherwise substantially altered without further action by the Board of Supervisors, except as may be permitted or otherwise authorized by Chapter 225 (Zoning), Section 225-501.58.A.10 of the Code of the Township of Derry.
17. The Master Plan shall be recorded at the Dauphin County Recorder of Deeds Office in accordance with the requirements of Chapter 185 (Subdivision and Land Development) of the Code of the Township of Derry.
18. Any violation of any condition imposed herein shall be a violation of Chapter 225 (Zoning) of the Code of the Township of Derry and shall be enforced as provided in the regulations.

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19. This approval and the conditions set forth herein shall run with the land and shall benefit and burden Cacao's successors in interest to the subject property.

Vice Chairwoman Nutt seconded the motion. Chairman Abruzzo recognizes the concerns from the residents on this plan. He believes the project is better now because of the residents' comments. He noted they need to pay attention to the traffic in this area especially in the summer. **Motion carried 5-0.**

SECURITY: STORMWATER MANAGEMENT PLAN - 120 EAST AREBA AVENUE FOR RUNNING QUAIL PROPERTIES, LLC, S-2020-002

Supervisor Zmuda made a motion that the Board of Supervisors accept a cash financial security in the amount of \$8,159.00 and enters into the Agreement to Provide Financial Security with Lee Cohen for the Stormwater Management Plan for 120 East Areba Avenue, S-2020-002. Supervisor Cort seconded the motion. **Motion carried 5-0.**

RESOLUTION 2020-11-DEFERMENT OF INTEREST & PENALTIES ASSOCIATED WITH REAL ESTATE TAXES:

Mr. Christman stated as part of the global pandemic associated with COVID-19, governments at all levels are taking action to bring financial relief to their respective constituencies. On April 01, 2020, the Dauphin County Board of Commissioners approved a resolution to defer all interest and penalties associated with the collection of real estate property tax for the County of Dauphin until December 31, 2020. As a separate municipal government, the Township of Derry must also approve a local resolution establishing a deferment of interest and penalties associated with the collection of local real estate taxes.

Supervisor Zmuda made a motion that the Board of Supervisors approve Resolution 2020-11, a Resolution of the Township of Derry Board of Supervisors Adopting a Real Estate Tax Deferment of Interest and Penalties Associated with Real Estate Taxes Levied and Due Upon Tax Parcels within the Township of Derry Pursuant to and consistent with the Second Class Township Code, Act of May 1, 1933 (P.L. 350, No. 60) as Amended. Vice Chairwoman Nutt seconded the motion. **Motion carried 5-0.**

APPOINTMENTS TO THE SHADE TREE COMMISSION:

Supervisor Zmuda made a motion to un-table action/discussion on the appointing of members to the Shade Tree Commission. Supervisor Cort seconded the motion. **Motion carried 5-0.**

Mr. Christman stated at the March 10, 2020 Board of Supervisors Meeting, Ordinance 2020-01 was amended to remove the requirement that two Supervisors are members of this Commission so that all five members of the Shade Tree Commission would be residents of the Township and have direct experience in forestry, horticulture, landscape architecture, planning, zoning, environmental science, arboriculture, or related fields. He stated the following applied for the Commission:

- | | |
|---------------------|--------------------|
| 1. Frederick Wilson | 5. Charles Gassert |
| 2. Teresa Peschel | 6. Matthew Weir |
| 3. Sandra May | 7. Geoffrey Crout |
| 4. David Heidelmark | 8. David Warren |

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Supervisor Zmuda made a motion to appoint Sandra May for a one-year term, for a two-year term David Heidelmark, for a three-year term Frederick Wilcox, for a four-year term Matthew Weir, and for a five-year term David Warren. Vice Chairwoman Nutt seconded the motion. **Motion carried 5-0.** Chairman Abruzzo spoke about the outstanding group who applied and thanked everyone for applying.

AWARD LINE PAINTING FOR INTERSECTIONS WITHIN THE TOWNSHIP:

Mr. Clark discussed the bidding process for line painting this year in the Township. Three bids went out and one was received from Alpha Space Control Company.

Chairman Abruzzo made a motion to award the contract, for line painting at six Township intersections, to Alpha Space Control Company for a cost of \$22,715. Supervisor Zmuda seconded the motion.

Motion carried 5-0.

ROAD CLOSURE REQUEST: ANNUAL ST. JOAN OF ARC CHURCH FESTIVAL:

Chief Warner spoke about the request for road closures for the annual St. Joan of Arc Church Festival on June 11 through June 13. They have requested West Areba Avenue, between Valley Road & Glen Road be closed to traffic for added safety due to heavy pedestrian traffic.

Vice Chairwoman Nutt made a motion to approve the request to close the 300 block of West Areba Avenue on the evenings of June 11, 12, and 13, 2020 from 5:00 p.m. to 10:00 p.m. for the annual St. Joan of Arc Festival. Supervisor Cort seconded the motion. **Motion carried 5-0.**

CORRESPONDENCE BOARD/COMMITTEE INFORMATION:

Supervisor Zmuda hopes everyone is home and safe. Supervisor Cort spoke about everyone listening to the Governor and hope to be back to normal soon. She thanked the first responders and healthcare workers. Vice Chairwoman Nutt agreed with what had been said and thanked teachers for all they are doing. Supervisor Wycoff thanked Staff. Chairman Abruzzo spoke about the work behind the scenes with Staff and the Board. He thanked everyone involved and for their support during this time.

REPORTS:

<u>Police:</u>	Chief Warner spoke about their second year CALEA accreditation review being in compliance. They appreciate the support from the BOS, Staff, residents and businesses. Supervisor Cort thanked him for the videos they are putting out. He noted this Friday, Dauphin County is going blue to support first responders and health care workers.
<u>Fire</u>	Mr. Sassaman stated they had 55 calls in March, and they are fully staffed for any call. He thanked the community for the donation of masks for them. The new truck went into service at 4 p.m. today.
<u>Public Works</u>	Mr. Clark stated PPL is still working on Elm Avenue and have a waiver to do so. He stated the work on the 322 ramps and water lines is on hold. They are mowing as needed. They are maintaining the trails as people are out walking. He noted that recycling is closed and bulk pickups at curbside are suspended.
<u>Accounting:</u>	Mrs. Lontz spoke about the 2019 field audit and the new accounting software which they hope to go live by June 1 st .
<u>Library</u>	Mrs. O'Grady spoke about the digital services they are providing online. She spoke about the eblast they will be doing on unemployment.

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<u>Recreation</u>	Mr. Mandia stated the auction is complete and all items have been removed. They are having virtual meetings with the contractor so that once this is lifted, they can react in a timely manner.
<u>Engineer:</u>	Mr. Bonanno spoke about a sheet from the Tri-County update and the stormwater feasibility study. They are doing analysis and looking at providing services. As of March 3, they believe the minimum savings would be 30%. He stated the next step is visioning. He asked everyone to send Jerry Dukes their comments.
<u>Community Development:</u>	Mr. Emerick noted that they have relaxed sign enforcement.
<u>Economic Development</u>	Mrs. Zumbrun spoke about the efforts to help downtown businesses including restaurants that are open. The Art Show is cancelled for May 30. There are a few residents who are working to do a virtual 5k.
<u>Manager:</u>	Mr. Christman stated on March 5 the Proceed Order for the Recreation Center was approved with the stipulation that Staff report back for possible change orders. He would like to have a public meeting on April 21 at 7 p.m. via a Zoom Webinar where they can provide an update and change orders can be discussed. Supervisor Cort made a motion to authorize the manager to advertise a special public meeting on April 21 starting at 7 p.m. Vice Chairwoman Cort seconded the motion. Motion carried 5-0. Mr. Christman noted at the regular meeting in May, he will have a tax collection update with the revenues for the Board.

ACCOUNTS PAYABLE and PAYROLL:

Supervisor Zmuda made a motion to approve accounts payable in the amount of \$1,360,032.43. Vice Chairwoman Nutt seconded the motion. **Motion carried 5-0.**
Supervisor Cort made a motion to approve two payrolls of \$640,057.07. Supervisor Zmuda seconded the motion. **Motion carried 5-0.**

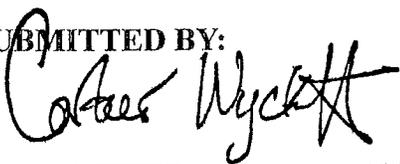
VISITOR/PUBLIC COMMENTS:

Mrs. Linda Eyer, 2321 Raleigh Road, thanked Mr. Christman for the financial statements.
Mr. Peter Nelson thanked the Board for choosing their firm to be the Township's Solicitor.
Mr. Kevin Ferguson, Quail Hollow Road, asked if they could let the community know the change orders before the special meeting. Chairman Abruzzo stated they will take it under consideration.

ADJOURNMENT:

Supervisor Zmuda made a motion to adjourn the meeting at 9:00 p.m. Supervisor Cort seconded the motion. **Motion carried 5-0.**

SUBMITTED BY:



Carter E. Wyckoff, Township Secretary

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Public Comments received prior to the meeting.

From: [Linda Eyer](#)
To: [Christopher Christman](#)
Subject: for 4/14/2020
Date: Tuesday, April 14, 2020 2:27:03 PM

Regarding item on agenda regarding the settlement with Bears Creek. The judgement repeatedly mentioned bad faith on the part of the township supervisors. Will any monetary settlement costs be disclosed? Typically they are not when E&O settles, but if insurance does not pay due to the bad faith actions of the two former board members and one current member, will it be disclosed if general funds pay for the settlement?

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Linda Eyer

From: [Ken Gall](#)
To: [Christopher Christman](#)
Cc: [Charles Emerick](#); [Christopher Christman](#)
Subject: 50 Northeast Drive
Date: Monday, April 13, 2020 4:10:16 PM

Derry Township Board of Supervisors:

First, I want to thank you and all Derry Township staff for all their efforts during this extremely difficult period. I am following up on our comments at the conditional use hearing in January concerning the multi-family development proposed by Monarch Development. After several years of working on alternative proposals for this lot, we believe the proposed market rate apartments that will be primarily targeted to young professionals with some empty nesters seems to fill a market need and will positively impact the surrounding neighborhoods. The negative impacts, if any, are minimal, especially when compared with alternative retail/commercial development concepts for the site. As mentioned at the hearing, the Monarch/Hershey Trust deal structure is a long term land lease, and with all the challenges over the past couple months, we are pleased to have partnered with a developer looking at the long term and one with continued interest in making a significant investment in Derry Township.

Thanks

Ken Gall
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