

**KAPLIN STEWART MELOFF REITER & STEIN, P.C.**

**By: Marc B. Kaplin, Esquire  
John J. Mahoney, Esquire  
Attorney ID Nos. 04465, 32946  
Union Meeting Corporate Center  
910 Harvest Drive, P.O. Box 3037  
Blue Bell, PA 19422  
610-260-6000**

---

**Attorneys for Appellants**

**IN RE: APPEAL OF PREIT/CORNERSTONE  
JOINT VENTURE**

**: COURT OF COMMON PLEAS  
: CHESTER COUNTY  
:  
: No. 03-03903  
: LAND USE APPEAL**

**JOINT MOTION FOR ENTRY OF AGREED ORDER**

TO THE HONORABLE JUDGES:

PR New Garden/Chesco Limited Partnership and PR New Garden Limited Partnership (collectively "PREIT") and the Board of Supervisors of New Garden Township ("Board") respectfully submit this Joint Motion for Entry of Agreed Order, and in support thereof avers as follows:

1. On October 10, 2001, an application ("Application") was submitted to the Board for approval of a Conditional Use to develop multiple parcels of land, comprised of approximately 182.2 acres, located in New Garden Township ("Township"), adjacent to the north and south sides of Route 41, east of Sharp Road and adjacent to Sunny Dell Road ("Initial Property"), as a Unified Development pursuant to Article XI of the Township's Zoning Ordinance ("Zoning Ordinance"). The Application was accompanied by a Conditional Use Plan prepared by Chester Valley Engineers, Inc. ("CVE"), dated 10-10-01 ("Conditional Use Plan"), which depicted the development of a 467,183 square foot retail center, seventy-four (74) single-

family dwellings, both of which would be located on the south side of Route 41, and a ninety-five (95) unit age-restricted residential community, to be located on the north side of Route 41.

2. At the time the Application was filed Michael L. Pia, John J. Pia, Louis J. Pia, M&J Mushrooms, LP, Kaolin Mushroom Farms, Inc., and Michael L. Pia and John J. Pia, Trustees under Trust Agreement of 9-25-02 (collectively, the "Pias") were the owners of the Initial Property and PREIT/Cornerstone Joint Venture was the equitable owner of the Initial Property. PREIT is the successor to the equitable interest in the Initial Property formerly held by PREIT/Cornerstone Joint Venture. On January 11, 2006 PREIT completed the purchase of the Initial Property from the Pias. PREIT has also acquired approximately 4.863 acres of land ("Additional Property") which is contiguous to the Initial Property. The Initial Property and the Additional Property comprise a total of 187.05 +/- acres, and are more fully described on Exhibit "A" of the Settlement Agreement described herein, and are hereinafter collectively referred to as the "Property".

3. The Property is located in the Township's Unified Development Zoning District.

4. A hearing was convened by the Board on November 29, 2001, and further hearings were conducted on the following dates: December 19, 2001, January 10, 2002, January 24, 2002, February 20, 2002, March 13, 2002, April 10, 2002, May 8, 2002, May 22, 2002, June 13, 2002, July 18, 2002, July 25, 2002, August 22, 2002, September 16, 2002, October 23, 2002, December 3, 2002, December 11, 2002, January 7, 2003 and January 14, 2003 ("Hearings").

5. The record was closed on January 14, 2003.

6. The New Garden Township Planning Commission, the New Garden Township Sewer Authority ("Authority"), a citizens group known as NGCAOD and various individual residents ("Residents") participated in the Hearings.

7. On April 23, 2003, the Board issued a written decision (“Decision”) approving the Application (“Approval”). However, the Board imposed ninety-seven (97) conditions (“Conditions”) on the Approval.

8. On May 14, 2003 PREIT/Cornerstone Joint Venture filed an appeal (“Appeal”) to the Court of Common Pleas of Chester County (“Court”), asserting that seventy-six (76) of the Conditions were improper, unlawful and/or constituted an abuse of the Board’s discretion (“Contested Conditions”).

9. On May 23, 2003, the Township intervened in the Appeal. In addition, the Authority and the Pias (the “Intervenors”) intervened in the Appeal.

10. Because the Pias no longer have an interest in the Property they have lost their standing to participate in the Appeal. Therefore they are not parties to this Agreement.

11. Some of the Residents filed a notice of intervention; however, these Residents failed to follow the procedure prescribed by 53 Pa.St.§11004-A and the Pennsylvania Rules of Civil Procedure and, therefore, are not parties in this land use appeal.

12. PREIT has proposed to the Board an alternative plan for the development of the Property. The alternative plan is comprised of: (i) a multi-tenant retail center on the portion of the Property that is contiguous to the south side of Route 41 (“Retail Center”); (ii) a “town center” on the portion of the Property located to the south and west of the Retail Center (“Town Center”); (iii) a Retail Building (convenience store) containing no more than 6,300 square feet plus no more than twelve (12) gasoline or diesel fuel dispensing pumps adjacent to the north side of Route 41 (“Convenience Store”); and (iv) an age-restricted residential community on the north side of Route 41 (“Age-Restricted Community”). The Retail Center, Town Center and Age-Restricted Community are depicted and/or described on the plan attached to the Settlement

Agreement, marked as Exhibit “B” thereof, prepared by Langan Engineering, dated January 20, 2007, identified thereon as drawing SK-38, and entitled “Concept Plan” (referred to herein as the “Concept Plan”). The Concept Plan depicts two (2) alternative layouts for the Town Center, identified as Town Center Options A and B, and also provides a narrative description of a town center, identified as Town Center Option C.

13. Certain voluminous additional material related to the Concept Plan was submitted to the Board pertaining to a host of land development related subjects, including transportation impacts and improvements, architectural renderings, storm water management, building design criteria and similar subjects.

14. Having developed a desire to settle the dispute which resulted in this Appeal through the approval of an alternative plan for development of the Property, the parties have engaged in extensive settlement discussions and participated in three (3) separate public meetings, conducted on December 18, 2006, March 13, 2007 and June 25, 2007, at which meetings all of the supporting material identified herein (and prior versions thereof) were examined, explained, and discussed by the Board and the public.

15. PREIT and the Board have developed a comprehensive agreement (“Settlement Agreement”) by which the pending land use appeal can be resolved and settled. A true and correct copy of the Settlement Agreement together with all exhibits identified therein is attached hereto and marked as Exhibit 1 and incorporated herein.

16. The Board has concluded that it is in the best interest of the Township to settle this litigation and to enter into the terms of a Settlement Agreement. Likewise, PREIT has agreed to settle the pending land use appeal based on the terms set forth in the parties Settlement

Agreement. Both parties agree that the terms of the Settlement Agreement should be enforceable by Court Order.

17. The Authority has no objection to the entry of the Order agreed to be entered by PREIT and the Board.

WHEREFORE, the parties hereto respectfully request that this Honorable Court enter an Order, the form of which is attached hereto, approving the terms of the attached Settlement Agreement and providing that the terms thereof are enforceable as an Order of this Court.

Respectfully submitted,

---

Marc B. Kaplin  
John J. Mahoney  
Kaplin Stewart Meloff Reiter & Stein, P.C.  
910 Harvest Drive, P.O. Box 3037  
Blue Bell, PA 19422-0765

Attorneys for PR New Garden/Chesco Limited  
Partnership and PR New Garden Limited  
Partnership ("PREIT")

---

George A. Brutscher  
Brutscher, Foley, Milliner & Land, LLP  
213 East State Street  
Kennett Square, PA 19348

Attorney for New Garden Township

