

STATUTORY RESOLUTION NO. 06 - 2016

RESOLUTION APPROVING AND ENTERING INTO A CONSENT DECREE AND AUTHORIZING SUBMISSION TO THE BUTLER COUNTY COURT OF COMMON PLEAS FOR APPROVAL PURSUANT TO AND COMPLIANT WITH OHIO REVISED CODE SECTION 505.07 TO SETTLE COURT ACTION TO REZONE PROPERTY PREVIOUSLY UNDER ZONING MAP AMENDMENT APPLICATION AND PRELIMINARY DEVELOPMENT PLAN CASE NO. ZMA 05-13 CROSSINGS OF BECKETT

WHEREAS, on December 17, 2013, Silverman and Company, Inc. (“Silverman”) filed an application and Preliminary Development Plan (PDP) for a Zoning Map Amendment to a PUD District, Case No. ZMA 05-13 Crossings of Beckett (the “Application”), with the West Chester Township Community Development Department with respect to 36.29 acres of land located at the south-east corner of State Route 747 and Tylersville Road, West Chester, Ohio 45069 and containing parcel numbers M5610-004-000-035, M5610-004-000-002, M5610-004-000-059, and M5610-004-000-001 (together the “Property”), seeking a zoning map amendment to change the zoning from “Suburban Residence District” (R-1A) to “Commercial Planned Unit Development” (C-PUD) and simultaneous approval of a Preliminary Development Plan for a retail development that included 130,773 square feet of a Kroger Marketplace with a fuel center, 56,000 square feet of retail space, 22,000 square feet of retail./office space, and six (6) outlots; and,

WHEREAS, the Application came before the West Chester Township Board of Township Trustees at a public hearing on March 4, 2014, and on March 11, 2014 the West Chester Township Board of Trustees voted to deny the Application; and,

WHEREAS, Silverman, together with the Property owners, initiated litigation to challenge the decision of the West Chester Township Board of Trustees in the Butler County Court of Common Pleas; and,

WHEREAS, after significant litigation, court-directed mediation, and negotiations among the parties to the litigation, a proposed consent decree was mutually drafted with the intent to satisfy concerns raised by the West Chester Township Board of Trustees on March 11, 2014 and settle the litigation; and,

WHEREAS, Revised Code Section 505.07 grants the West Chester Township Board of Trustees the authority to settle a court action involving a zoning issue subject to referendum under section 519.12 of the Revised Code; and,

WHEREAS, by advertisement more than fifteen days in advance, a meeting of the West Chester Township Board of Trustees was held on February 23, 2016 for the purpose of allowing the West Chester Township Board of Trustees to meet, consider, and take action on the proposed consent decree; and,

WHEREAS, all those present who wished to be heard voiced their opinions with respect thereto; and,

WHEREAS, the West Chester Township Board of Trustees, having heard from the public and weighing all input on the matter, finds the proposed consent decree is fair and reasonable; satisfies the concerns raised by the West Chester Township Board of Trustees when it initially denied the Application; will preclude further costs related to litigation of this matter; and on the whole is in the best interest of the Township;

NOW THEREFORE, BE IT RESOLVED, the West Chester Township Board of Trustees does hereby agree to:


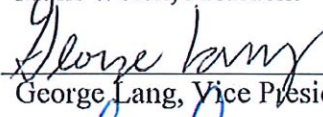

SECTION 1. Approve the proposed consent decree attached hereto as Exhibit 1

SECTION 2. Direct the West Chester Township Administrator and legal counsel to enter into the proposed consent decree on behalf of West Chester Township, and to submit the same to the Butler County Court of Common Pleas for its consideration and approval pursuant to R.C. 505.07.

SECTION 3. Find and determine all formal actions of the Board of Trustees concerning and relating to the adoption of this resolution were adopted in an open meeting of this Board and all deliberations of the West Chester Township Board of Trustees and of any of its committees that resulted in formal action were in meetings open to the public in compliance with all legal requirements, including 121.22 of the Ohio Revised Code.

SECTION 4. Constitute this resolution to be effective immediately

Adopted this 23rd day of February, 2016.

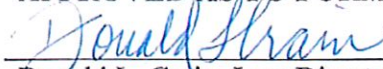
 _____ Mark Welch, President	<u>YES</u> Yes/No
 _____ George Lang, Vice President	<u>YES</u> Yes/No
 _____ Lee Wong, Trustee	<u>Yes</u> Yes/No

ATTEST:



Bruce Jones, Fiscal Officer

APPROVED AS TO FORM:



Donald L. Crain, Law Director

approval of the Application, with certain conditions and modifications (the "Zoning Commission Resolution").

- D. On March 4, 2014, the Trustees properly conducted a public hearing regarding the Application and the recommendation from the Township Zoning Commission, and on March 11, 2014, the Trustees voted to deny the Application pursuant to Resolution No. 07-2014 (the "Trustee Resolution" and, together with the Zoning Commission Resolution, the "Resolutions").
- E. Silverman filed an administrative appeal from the decision of the Trustees to the Butler County Court of Common Pleas on April 9, 2014, which appeal was designated as Case No. CV 2014 04 1006 (the "Administrative Appeal").
- F. Plaintiffs subsequently filed a complaint for declaratory judgment naming the Trustees as defendant in the Butler County Court of Common Pleas on June 13, 2014, which action was designated as Case No. CV 2014 06 1623 (the "Declaratory Judgment Action").
- G. The Administrative Appeal and Declaratory Judgment Action were consolidated before this Court on July 2, 2014.
- H. In order to avoid the ongoing uncertainty, delay and expense of litigation, the parties agree that the dispute between them should be resolved upon the terms and conditions set forth in this Decree.
- I. The parties acknowledge that upon entry of this Decree by the Court, the Resolutions shall be of no further force or effect as they relate to the parties, the Property, the Application, or the Development.
- J. The parties recognize, and the Court, by entering this Decree finds, that this Decree has been negotiated at arms' length and in good faith, that the required statutory notices have been provided, and that this Decree is fair, reasonable, and in the public interest;

NOW THEREFORE, pursuant to the authority granted to this Court and to the Trustees by R.C. 505.07, and upon the agreement of the parties, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

1. **APPROVAL OF THE REQUESTED ZONE CHANGE**

The zoning designation for the Property is hereby changed from R-1A to C-PUD, and the official Township Zoning Map shall be altered to reflect this change. The entry of this Decree eliminates the need for the Township or the Trustees to follow any other procedures set forth in R.C. 519.12 in order to effectuate this change.

2. THE PRELIMINARY DEVELOPMENT PLAN IS APPROVED WITH MODIFICATIONS AND CONDITIONS

2.1 Approval of Preliminary Development Plan. The Preliminary Development Plan is hereby approved with conditions, as modified by this Decree. As used in this Decree, "Phase 1" and "Phase 2" refer to the portions of the Preliminary Development Plan designated Phase 1 and Phase 2.

2.2 Revised Preliminary Development Plan. A revised Preliminary Development Plan shall be submitted by Silverman to the Township Community Development Department within thirty (30) days after entry of this Decree reflecting the following changes:

- a) The Preliminary Development Plan shall be revised to illustrate, and Note #8 shall be revised to reflect, the following: the location of the non-restricted cross-access connections for the adjacent property to the south (the "TriHealth Property") shall be (i) a full access connection approximately four hundred feet (400') from the State Route 747 right-of-way and which shall be generally aligned with the interior parking lot curb-cut on Site Drive A, which is east of the Service Drive C intersection, and integrated with the approved "loop road" on the TriHealth Property, as generally depicted on Exhibit A attached hereto and made a part hereof; and (ii) a right-in only connection on Site Drive A, which shall be aligned with the temporary right-in approved on the TriHealth Property, as generally depicted on Exhibit A. Exact locations of the non-restricted cross access connections to the TriHealth Property for the benefit of all properties south of the Development shall be approved by the Butler County Engineer's Office and the Township Community Development Department. A non-restricted access easement benefitting the TriHealth Property and other properties south of the Development shall be required to the property line and shall be illustrated on the Phase 1 Final Development Plan;
- b) Note #1 shall be revised as follows: Parking for Phase 1, Phase 2, and each outlot shall be substantially in accordance with the West Chester Township Zoning Resolution (the "Zoning Resolution") as approved by Zoning Commission as of the date of submission of the Final Development Plan for Phase 1, Phase 2, or any outlot, respectively.
- c) Note #9 shall be revised to reflect the dedication of all rights-of-way for Phases 1 and 2, respectively, and shall be recorded with the final plat for each respective phase;
- d) The open space parcel/area and proposed landscape areas on the south side of Tylersville Road (the "Phase 1 Buffer") shall be revised as described in Section 2.11(c) herein and as shown on Exhibit B attached hereto and made a part hereof;
- e) Additional landscaping shall be added behind the Kroger Marketplace for Phase 1 to reflect the requirements of Section 2.11(e) herein;

- f) The sidewalk along Tylersville Road shall terminate at the east Property line;
- g) An interior sidewalk shall be illustrated along Service Drive C on all outlots and tied into the surrounding sidewalk network;
- h) Access to Site Drive B shall be illustrated providing access to Beckett Road for the parcels east of the tree line to the north and south of Site Drive B (collectively, the "East Parcels"). The exact locations of cross access connections for the East Parcels shall be approved by the Butler County Engineer's Office and the Township Community Development Department. Access easements benefitting the East Parcels shall be required to the property line and shall be illustrated on the Phase 1 Final Development Plan;
- i) Note #6 shall be replaced with the following language: The Phase 1 Buffer described in Section 2.11(c) herein and depicted on Exhibit B of the Consent Decree shall be installed during Phase 1;
- j) Note #11 shall be revised to allow for a maximum of three (3) drive-up/drive-through restaurants. As high volume traffic generators, the permitted drive-up or drive-through restaurants shall be allowed on outlots 3 through 6. If restaurants are developed on the remaining outlots, said restaurants shall be of the non-fast food nature and shall be sit-down dining.
- k) An additional note shall be added to read: A detailed storm water drainage plan shall be provided with the Final Development Plan for each phase, which shall demonstrate adequate detention/retention is being provided for all properties in both phases, including the outlots, and which shall be reviewed and approved by the Butler County Engineer's Office, the Butler County Floodplain Administrator and the Township Community Development Department; and
- l) In order to be consistent with adjacent residential uses, an additional note shall be added to codify all structures in Phase 1, Phase 2, and each outlot shall be constructed with at least fifty percent (50%) of every exterior building elevation with stone, brick or some other masonry material determined acceptable to the Township Community Development Department. Additionally, buildings on outlot 1 only shall be constructed with pitched roofs. No buildings or structures anywhere in the Development, other than on outlot 1, shall require pitched roofs.

2.3 Traffic Impact Study Approval. Applicant shall provide documentation with Phase 1 Final Development Plan submittal demonstrating a final Traffic Impact Study as revised or approved by the Ohio Department of Transportation and the Butler County Engineer comments.

2.4 Cross-Access Connection to State Route 747. The non-restricted cross-access connections to the TriHealth Property shall be constructed with the development of Phase 1 as they are generally described in Section 2.2(a) of this Decree and depicted on Exhibit A attached hereto and made a part hereof. Non-restricted access to the signalized intersection is critical to

the TriHealth Property and properties south of the TriHealth Property. This cross-access easement will help alleviate traffic flows, better manage traffic circulation in the area and reduce trips onto State Route 747. At the Phase 1 Final Development Plan stage, a draft copy of the non-restricted cross-access easement shall be submitted to the Township Community Development Department for review and, provided the easement establishes the non-restricted cross-access connections as generally described in Section 2.2(a) of this Decree and depicted on Exhibit A, shall be approved by the Township Community Development Department. An approved easement shall be required prior to the issuance of any Zoning Certificate.

2.5 Cross-Access Connection to Beckett Road. A non-restricted cross-access easement shall be provided on Site Drive B for the benefit of the East Parcels which shall provide access to Beckett Road. The exact location of the access points on Site Drive B shall meet the spacing requirements of the BCEO for distance from Beckett Road. At the Phase 1 Final Development Plan stage, a draft copy of the cross-access easement shall be submitted to the Township Community Development Department for review and, provided the easement establishes the access to Beckett Road as described in Section 2.2(h) of this Decree, shall be approved by the Township Community Development Department. An approved easement shall be required prior to the issuance of any Zoning Certificate.

2.6 Dedication of Right-of-Way. All required rights-of-way for Phases 1 and 2 respectively shall be dedicated with the applicable governing authority per the Butler County Thoroughfare Plan prior to the issuance of a Zoning Certificate for any building in each phase.

2.7 Drainage Plans. A detailed storm water drainage plan shall be provided with the Final Development Plan for each phase, which shall demonstrate adequate detention/retention is being provided for all properties in both phases, including the outlots. A detailed storm water drainage plan shall also be provided with each subsequent Final Development Plan to demonstrate appropriate tie in to the Development's overall drainage plan.

2.8 Permitted Uses. Permitted Uses shall include the Principally Permitted Uses of the B-1 District, excluding Subsection 21.025, and the Principally Permitted Uses of the B-2 District, excluding Subsections 22.022 (the Kroger Fuel Center shall be specifically permitted), 22.023, 22.024 (low intensity print shops such as Kinko's/FedEx shall be specifically permitted), 22.025, 22.026, 22.027, 22.028, 22.029, 22.0211, 22.0212, 22.0213, 22.0214 and 22.0215.

2.9 Outdoor Displays and Sales. Outdoor displays and sales shall only be permitted for the Kroger Marketplace occupied space, subject to the following conditions: Limited to areas under a permanent canopy, awning or roof that is attached to the principal building, as long as a 5' minimum pedestrian walkway is maintained at all times; display area shall not exceed 50% of the building's length of any wall adjoining the display area's location. Any outdoor display and sales at the Fuel Center shall be reviewed at the Final Development Plan Stage and shall only be permitted if it is very limited in nature and incorporated into the design of the kiosk. All other uses shall comply with the typical requirement that all business be conducted in an enclosed building.

2.10 Signage. Freestanding signage for Phases 1 and 2, excluding outlots, shall be approved at their respective Final Development Plan stages. Freestanding signs that are

illustrated on the Preliminary Development Plan do not constitute approval of any signage. Each outlot shall be permitted one monument sign, which shall not exceed 25 square feet of display area per side, shall not exceed 8 feet in height, shall be set back a minimum of 10 feet from any street right-of-way, and shall have a sign base that is consistent with the exterior building materials for the principle building. Building signage for the entire site shall be subject to Article 20 of the Zoning Resolution for all retail uses and Article 17 of the Zoning Resolution for all office uses. Fuel canopy signage shall be specifically approved at the Final Development Plan stage. Any building signage on the east, north and south elevations shall not be illuminated, unless it is specifically approved at the Final Development Plan stage.

2.11 Landscaping. A detailed Landscaping Plan shall be provided with each Final Development Plan, which shall appropriately address the following requirements:

- a) Street trees along State Route 747 and the section of Tylersville Road west of the Phase 1 Buffer shall be consistently coordinated with regard to location, spacing, and tree type and shall be illustrated on the Phase 1 Final Development Plan; provided, however, that the exact locations and arrangements of trees on any outlot may, consistent with the overall design for such trees and with the approval of the Township, be changed to accommodate site specific conditions.
- b) Extensive landscaping shall be provided throughout the site, especially in the highly visible areas, such as the main entrances, the corner of State Route 747/Tylersville Road, the Phase 1 Buffer, and the open space areas along the east Property line.
- c) A final, engineered depiction of the Phase 1 Buffer is attached hereto as Exhibit B and incorporated herein by reference. As depicted on Exhibit B, the Phase 1 Buffer shall include a mix of deciduous and evergreen trees, including the following or substantially similar tree varieties: (i) October Glory Red Maple, (ii) Scarlet Oak, (iii) Colorado Blue Spruce, (iv) Colorado Green Spruce, (v) Austrian Pine, and (vi) Kettleri Juniper. At the time of planting, all deciduous trees shall have trunks measuring a minimum of two and one half inches (2.5") in caliper, and all evergreen trees shall be six feet (6') or higher. All mounding in the Phase 1 Buffer shall be constructed as depicted on Exhibit B and shall not be lower than six feet (6') from the grade of Tylersville Road. Exhibit B shall not be modified by Zoning Commission but instead compliance with Exhibit B must be accepted as a requirement for Final Development Plan approval. In the event of a conflict between anything in this Decree or the Zoning Resolution and Exhibit B, Exhibit B shall control. Additional Phase 1 open space and buffering must also be installed contemporaneously with the development of Phase 1 in a manner generally consistent with the Preliminary Development Plan and shall be approved during the Final Development Plan approval for Phase I.
- d) All remaining buffering for the Property shall be approved during the Phase 2 Final Development Plan stage, and must be generally consistent with the conceptual drawing attached hereto as Exhibit C.
- e) With the exception of the Phase 1 Buffer, all open space areas in Phase 1, including the portion behind the proposed Kroger Marketplace, shall incorporate

sufficient plantings to provide year round screening to the East Parcels and to minimize noise from the delivery area and light spillover. This area shall include a solid row of evergreen trees along the service drive curb line, and a significant amount of native species that are staggered in the stream buffer to provide a dense buffer to the east. Other means of buffering, such as a fence/wall may be determined as necessary at the Final Development Plan stage. All plantings and other buffering improvements shall be subject to the Butler County Floodplain Administrator due to its location within the 75' stream buffer. The required buffer shall also extend to the east side of Site Drive A near the "Storm Water Detention Area" to minimize the effects of headlights from the anticipated drive-thru and delivery traffic. This required buffer shall be installed prior to the issuance of a Final Inspection Certificate for Phase 1, and shall contain trees and other plants that are a minimum of six feet (6') in height at the time of planting. Said landscape shall not impede nor detrimentally impact storm water or drainage to adversely affect the existing/future residential to the east.

- f) All islands in the parking lot areas shall be planted islands and not concrete or striped islands, except for the areas near the handicapped spaces. The Township Community Development Department may specifically recommend striped islands near the Kroger main entrance at the Final Development Plan stage if it is determined that they would improve pedestrian safety.
- g) All landscaping areas, excluding parking lot islands and the area bounded by the east elevation (rear) and south elevation (side) of Kroger Market Place building (the "Non-Irrigated Area" as generally depicted on Exhibit D attached hereto and made a part hereof), shall be irrigated with a permanently installed system. All landscaping, regardless of whether or not permanently irrigated, shall be maintained in good condition.

2.12 Photometric Analysis. A Photometric Analysis shall be provided with each Final Development Plan, which shall demonstrate that the foot candles are being minimized at the property lines and 0.02 foot candles are being maintained along all property lines that are adjacent to existing and planned residential. Specific light fixture details shall also be provided, which shall utilize a design that minimizes glare and light spillover onto adjoining properties. Any street lighting at the entrances that are required by the BCEO and/or ODOT for safety purposes may be permitted.

2.13 Building Elevations. Detailed building elevations shall be provided with all Final Development Plans, which shall illustrate that the requirements of Section 2.2(1) above have been met. Alternative building materials may be considered for accent purposes only. The rear elevation of the Kroger Marketplace building, which includes delivery docks in close proximity to existing and planned residential uses, shall be enhanced with quality building materials and measures to reduce sounds that are typical of such delivery areas.

2.14 Internal Access Easements. Cross-access easements shall be required for all private drives for internal access of both Phases, all outlots, and to property lines. Cross-access easements shall be clearly illustrated on all subsequent Final Development Plans. Cross-access easements shall be required to be recorded prior to the issuance of a Zoning Certificate.

2.15 Open Space. All Final Development Plans shall reflect the open space areas as illustrated on the revised Preliminary Development Plan. All outlots shall provide a minimum of 15% open space for each outlot.

2.16 Sidewalks. If any sidewalks located along a public roadway are located on private property, a public use easement shall be provided ensuring public use of the sidewalk.

2.17 Lot Lines. The exact location of the lot lines and lot sizes shall generally follow the layout on the Preliminary Development Plan. Final lot layout shall be approved at the Final Development Plan Stage. At no time shall an outlot be permitted on Tylersville Road, except for a portion of Outlot 1 as illustrated on the approved Preliminary Development Plan.

2.18 Property Owner's Association. Prior to the approval of any lot splits, a Property Owner's Association (POA) shall be created, which shall be responsible for the maintenance of the following items: 1) All open space areas, which shall be maintained in good condition and free from trash and litter; 2) All common access drives and parking areas; 3) All sidewalks; 4) All drainage ways and storm water facilities, which shall be maintained to perform their designated function; and 5) All common landscaping as it is illustrated on approved Final Development Plans. A Reciprocal Easement Agreement may be permitted if it achieves the same purpose as a POA. A draft copy of the required document shall be provided to the Township Community Development Department for review, and, if the document satisfies items 1 through 5 of this Section 2.18, shall be approved by the Township Community Development Department. The required document shall then be recorded and a copy provided to the Township.

2.19 Concerns of Public Agencies. All comments and concerns of all state, county and Township agencies shall be adequately addressed during Final Development Plan approval.

2.20 Storm Water and Drainage. Due to the Blue Line Stream to the east of the Property, the development shall be subject to all storm water or drainage requirements by any governing entity, including the *Butler County Flood Damage Prevention Regulations* as regulated by Butler County. The developer shall be required to make any and all improvements at its sole expense so as to not detrimentally or adversely impact any adjoining properties or adjacent roadways.

3. CONSTRUCTION OF PHASE 1 BUFFER AND LETTER OF CREDIT

3.1 Deadline to Complete Phase 1 Buffer. Except as otherwise stated in this Section 3.1, the Phase 1 Buffer must be constructed as described in Section 2.11(c) herein and depicted on **Exhibit B** within either (i) two (2) years after issuance of the Final Building Permit for the approximately 130,773 square foot space intended as a Kroger Marketplace, or (ii) ninety (90) days after issuance of the Final Certificate of Occupancy for the approximately 130,773 square foot building intended as a Kroger Marketplace, whichever shall result in the earliest possible completion date. The Trustees and the Township shall, to the extent reasonably possible, promptly process any parcel cut-up and parcel consolidation related to the creation of the new tax parcel(s) required to accommodate development of the Phase 1 Buffer.

3.2 Force Majeure. Should some event not reasonably foreseeable or otherwise caused by or under the control of Silverman or any subsequent owner or developer of the Property render timely completion of the Phase 1 Buffer impossible or unreasonably difficult or more costly (including, without limitation, acts of God, fire, floods, extreme weather conditions, vandalism, delays in issuance of zoning or building permits caused by Butler County or the Township, labor disputes or contractor bankruptcy, or material shortages) ("Force Majeure Event"), then the deadline for completion of the Phase 1 Buffer as set forth herein shall be extended on a day-by-day basis for the duration of such event. Should a Force Majeure Event cause damage to work already completed with regard to the Phase 1 Buffer, Silverman shall be afforded a reasonable time, in addition to the extension described above, to repair such damage.

3.3. Letter of Credit. Contemporaneously with the issuance of a Final Building Permit for the approximately 130,773 square foot space intended as a Kroger Marketplace, Silverman shall provide to the Township (and shall maintain with the Township on a continuing basis) an unconditional, irrevocable letter of credit in an amount equal to Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) in order to ensure the completion of the Phase 1 Buffer. The Letter of Credit shall have a maturity date of not less than two (2) years three (3) months from the date of the issuance of a Final Building Permit. This letter of credit will be released by the Township to Silverman promptly upon completion of the Phase 1 Buffer.

4. GENERAL RELEASE OF CLAIMS

Upon entry of this Decree by the Court, and except as to those obligations expressly created by this Decree, Plaintiffs irrevocably and unconditionally release, acquit and forever discharge the Township, York Risk Services, Inc., York Risk Pooling Services, Inc., Public Entity Risk Services of Ohio, Ohio Township Association Risk Management Authority, and any and all of their employees, agents, Trustees, directors, subsidiaries, affiliates, predecessors, successors, heirs, and assigns, from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, liquidated damages, actions, causes of action, suits, rights, demands, liens, costs, losses, warranties, and debts of any nature whatsoever, known or unknown, suspected or unsuspected and the like in connection with the Application from the beginning of time until the date of this Decree.

Upon entry of this Decree by the Court, and except as to those obligations expressly created by this Decree, the Trustees and the Township irrevocably and unconditionally release, acquit and forever discharge the Plaintiffs and any and all of their employees, agents, subsidiaries, affiliates, predecessors, successors, heirs, and assigns, from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, liquidated damages, actions, causes of action, suits, rights, demands, liens, costs, losses, warranties, and debts of any nature whatsoever, known or unknown, suspected or unsuspected and the like in connection with the Application from the beginning of time until the date of this Decree.

This Decree does not constitute an admission of liability by either party, but is entered into only to bring an end to the litigation and allow each party to conduct its lawful business without hindrance from the other.

5. NON-DISPARAGEMENT

The parties agree that they will, acting in good faith, refrain, either directly or indirectly, from disparaging one another as it relates to the Application or the Development, provided that the parties act to carry out the terms, conditions, and spirit of this Decree without unreasonable delay. The parties agree that this pledge is essential to this Decree.

6. EFFECT ON PARTIES AND PROPERTY

This Decree procedurally effectuates a rezoning and Township Zoning Map Amendment related to the Property and approval of a Preliminary Development Plan for the Property in the same way that the Trustees' approval of the Application would have altered the zoning designation and regulations and amended the Township Zoning Map applicable to the Property. Except as set forth herein, this Decree is not intended to constitute a waiver by any party of any rights or remedies at law or in equity. As such, the obligations and rights under this Decree run with the Property and belong both to Plaintiffs and to any future owners or developers of the Property.

Except as expressly provided herein, this Decree is not intended to establish any restrictions or obligations as to the Property or the parties. With the exception of the Phase 1 Buffer described in Section 2.11(c) herein and depicted on **Exhibit B** (which shall not be altered absent a rezoning of the Property or submission of an entirely new application for preliminary development plan approval), Plaintiffs will be required to obtain Final Development Plan approval in the manner set forth within the Township Zoning Resolution. Plaintiffs may still petition the Township for changes to the Preliminary or Final Development Plan for the Property. Requests for minor modifications to the Preliminary or Final Development Plan for the Property shall be considered by Township staff, and requests for major modifications to the Preliminary or Final Development Plan for the Property shall be submitted to the Township Community Development staff for consideration by the Trustees.

Similarly, this Decree does not prevent the Township from creating or changing zoning regulations or designations that may apply to the Property in the future in the same manner as may be done with any other approved Planned Unit Development within the Township.

This Decree shall supersede the Resolutions in all respects as they relate to the parties, the Property, the Application, and the Development.

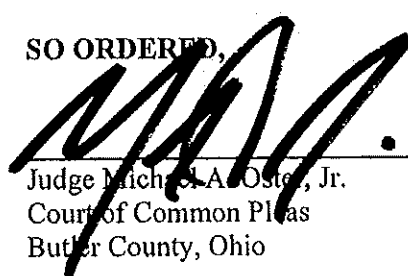
7. COURT COSTS AND ATTORNEY FEES

Each party is responsible for its own attorney fees and court costs associated with the prosecution of the Administrative Appeal and the Declaratory Judgment Action.


8. FINAL ORDER

All plats, plans, applications, and other data submitted by Plaintiffs to the Township, unless contrary to anything provided in this Decree, are hereby incorporated into this approval of Plaintiffs' rezoning request and request for preliminary development plan approval. Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment of the Court. The Court finds that there is no just reason for delay and, therefore, enters this judgment as a final judgment.

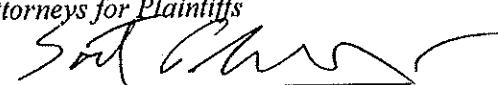
Dated: 3/9/16

SO ORDERED,


Judge Michael A. Oster, Jr.
Court of Common Pleas
Butler County, Ohio

Agreed: 

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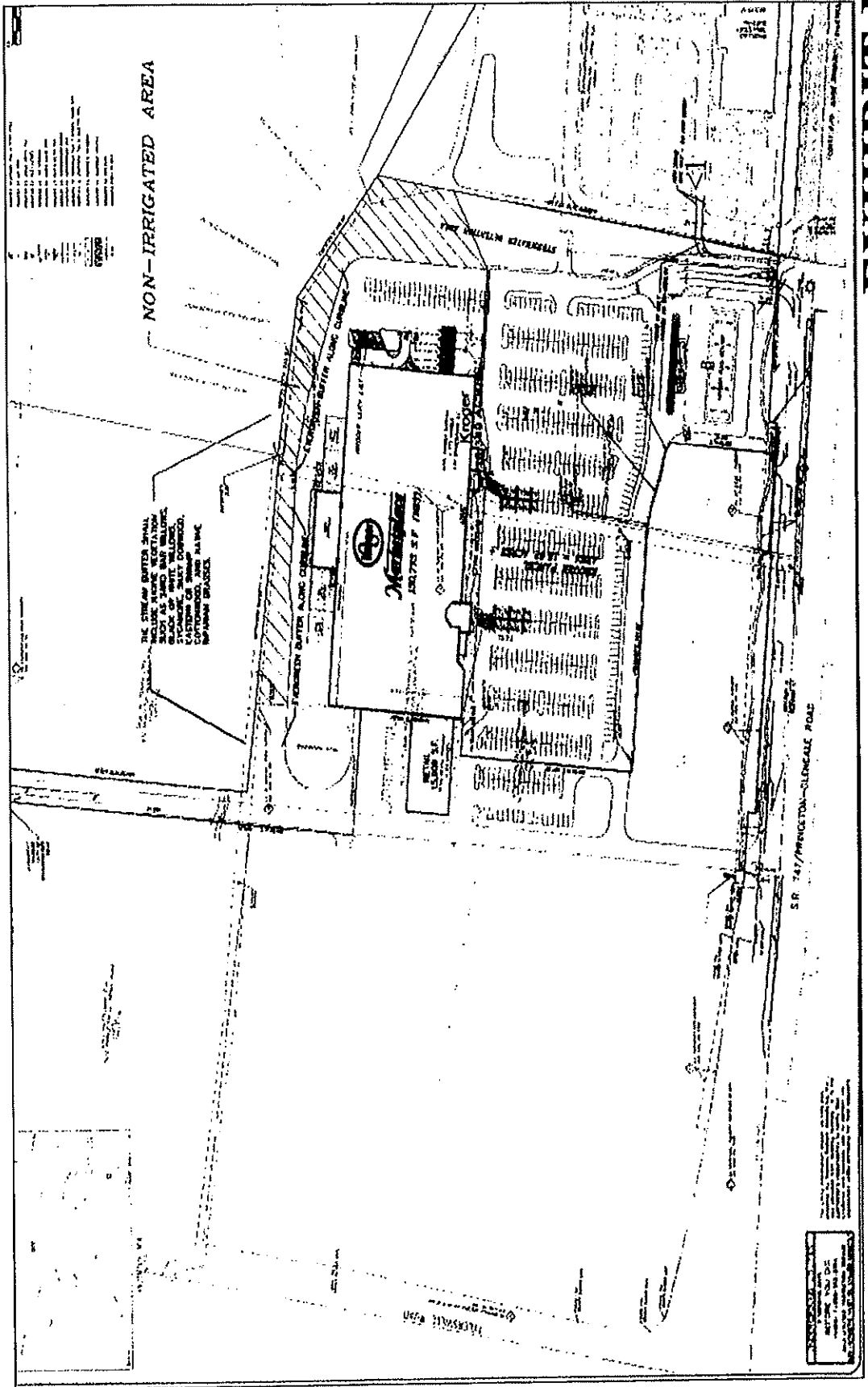


EXHIBIT D