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RESOLUTION OF MEMORIALIZATION

West Windsor Township Planning Board
Mercer County, New Jersey
PB90-6, Garden State Land Holding Company
"Weatherstone", Lots 14 and 145
Block 21, Southfield Road

WHEREAS, the Applicant, Garden State Land Holding Company, has made application to the West Windsor Township Planning Board for preliminary major subdivision approval with waiver; and

WHEREAS, the Board held public hearings on this matter on July 11, 1990, August 8, 1990, August 22, 1990, and deliberated and decided the matter at an open meeting on September 5, 1990; and

WHEREAS, the Board considered the testimony of the following witnesses who were duly sworn upon their oath:

Philip Evans - Garden State Land

John H. Rea, P.E. - Applicant's Traffic Consultant

Gerald C. Lenaz, P.P. - Township Planner

Barbara Wethe - Resident

Penelope Kovacs - Resident

Richard T. Coppola, P.P. - Applicant's Planning Consultant

Geoffery Brown, P.E. - Applicant's Civil Engineer

Elmer W. Bergman, P.E. - Township Engineer

Thomas Bauer - Township's Registered Landscape Architect

Conrad Stout - Resident

Charles Carol - Resident

Martin Timins - Resident

Jeanene Coleman - Resident

Rae Roeder - Resident

John Roeder - Chairman, Township Environmental
Commission; and

WHEREAS, the Board considered the application set and
subdivision plans together with the following exhibits marked
into evidence:

- A-1 Map entitled "Plan of Weatherstone" dated December
1, 1990
- A-2 Report entitled "Traffic Impact Analysis - Garden
State Land Group, Cranbury Golf Course, dated
12/20/89", prepared by John H. Rea, P.E.
- A-3 Aerial photograph with overlay of proposed subdi-
vision
- A-4 Rendered plan entitled "Sanitary Sewer Plan of
Weatherstone" dated January 12, 1990 prepared by
Princeton Junction Engineering Co.
- A-5 Map entitled "Wetlands Vegetation Map", revised
May, 1990
- A-6 Map entitled "Potential Future Development Plan"
prepared by Princeton Junction Engineering Co.
dated July 11, 1990
- A-7 Subdivision plan revised July 27, 1990
- A-8 Letter of interpretation (LOI) from Richard Brown,
NJDEP dated 6/1/90
- A-9 Preliminary plat of Weatherstone revised August
22, 1990
- A-10 Sketch of Weatherstone Drive and Southfield Meadows
entrances onto Southfield Road
- A-11 Map entitled "Potential Future Development Plan

dated 8/20/90

B-1 Transcript of proceedings before West Windsor
Township Planning Board - March 21, 1990

B-1(1) Memorandum of Bergman Hatton Associates, Engineers
by E. Wengrowski, R.S. dated 6/29/90

B-2 Memorandum of Bergman Hatton Associates, Engineers
by E. Bergman, P.E. dated 6/29/90

B-3 Memorandum of Bergman Hatton Associates, Engineers
dated 8/8/90

B-4 Memorandum of Melillo & Bauer, Landscape Architects,
dated August 8, 1990

B-5 Memorandum of BCM, Inc., Environmental Engineers
dated July 11, 1990

B-6 Resolution of Memorialization for application
PB87-9 "Windsor 571 Associates", Southfield Road
dated July 13, 1988 and Resolution of Memorializa-
tion PB88-9 "Garden State Land Holding Company",
Westbrooke Residential Village, Section 2, dated
November 16, 1988

B-7 Aerial photograph with site plan

B-8 West Windsor Township Site Plan Review Advisory
Board (SPRAB) Minutes of April 26, 1990; and

WHEREAS, the Board has based its review of this
application upon the testimony presented, the exhibits offered
and their own knowledge and expertise of the subject matter
and, after due deliberation, make the following findings of
fact:

1. The Application. This is an application for preliminary, major (conventional) subdivision approval of a tract consisting of 120.3 acres located in the R-2 residential zoning district. The subject property is located on Southfield Road and is presently known as the Cranbury Golf Course. The Applicant originally applied for subdivision approval for 49 lots that would provide 47 single-family detached residential lots and a detention basin lot consisting of approximately 9 acres. The lands remaining were proposed to consist of 59.22 acres.¹

The subject property has approximately 1,500 feet of road frontage on an existing Township road, Southfield Road. The Big Bear Brook and its associated wetlands form the northerly property line. To the northeast is an existing single-family residential development twenty-five homes, served by a single street; the development is known and has been referred to during the proceedings as "Golf View Manor". To the west of the subject property are lands owned or controlled by entities related to the Applicant engaged in the construction of single-family dwellings. The subdivisions to the west owned or controlled by related, Garden State Land entities are known as "Shadow Oaks" and "Princeton Oaks". To the south of the subject property lie vacant lands and beyond

¹ During the second evening of hearings, August 8, 1990, the Applicant amended its application to include an additional proposed lot (Lot 49) consisting of 7 acres of what was originally part of the "lands remaining". An additional lot, consisting of about 5 acres, was added to the application, on August 22, 1990, all as described hereafter in paragraph 3.

those lands to the south is an existing Township road, Village Road East.

2. The Plan. The Applicant proposes creation of 47 conventional single-family dwelling lots in the R-2 residential zone. Minimum lot size in that zone is .75 acres. A residential cluster option is available in the R-2 residential zone where the tract is served by either public water or public sewers. The Applicant did not chose to design the project as a residential cluster development.

The development would be served by the Township's water franchisee, Elizabethtown Water Company. The Applicant proposes to serve each lot with an on-site subsurface sewage disposal system (septic system).

As has been mentioned in paragraph 1 (The Application) above, the Applicant has proposed a layout which leaves, as "lands remaining", approximately half of the tract or roughly 60 acres.² These lands remaining have sometimes been referred to in the hearings as the possible site for a nine hole golf course. The lands remaining, however, assumed an unusual configuration. The southerly portion of the tract, (which includes the course's club house and the "Bog" restaurant, both prior nonconforming uses), included a strip of

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In reading this Resolution, a map of the proposed layout should be available to assist in understanding the location of the various features of the proposal as described herein.

land which formed the west side of the proposed major loop road in this development, Weatherstone Drive. Accordingly, a long narrow intrusion (approximately 10 acres) formed the westerly boundary of Weatherstone Drive leaving that road as a "single loaded" road for many hundreds of feet. Ultimately, the articulated rationale for the unusual configuration of the lands remaining was that the area in question would provide the land necessary for the ninth hole of the proposed nine hole golf course.

The Applicant's land planner testified that the layout of the subdivision and the number of residential lots proposed (47) was driven by three considerations, as follows:

1. The Applicant's stated avoidance of submission of the development for approval to the Department of Environmental Protection, Division of Water Resources in accordance with N.J.S.A. 58:11-25 requiring certification by NJDEP of development applications consisting of 50 or more realty improvements.

2. The "possible" preservation of a nine hole golf course.

3. Market conditions indicating that some number, under 50 homes, would be the appropriate number of homes to offer to the market as a result of this subdivision.

3. Road Layout and Traffic Circulation. Access to the proposed new residential subdivision will be from Southfield Road at a point immediately north of the existing entrance to the golf course. The new road serving the subdivision will run

parallel to the existing golf course access road just north of that roadway. The new access road will be provided with a landscape median separating inbound and outbound traffic flows. The new entrance drive, known as Weatherstone Drive, is intended to serve both the proposed single-family dwelling lots and the restaurant and, possibly, the golf club house and related facilities. The old drive will be abandoned. This separated, median boulevard is proposed to consist of an 80 foot wide right-of-way. This cross section design, with median dividers and landscape islands in the center, is not permitted or provided for in the Township's subdivision ordinance and is the subject of the waiver request by the Applicant.

The residential development is proposed to be served by a single loop road which will be double loaded with residential lots in some places and single loaded in other areas. Weatherstone Drive is intersected by Inverness Court which is a proposed large cul-de-sac which protrudes into the center of the circle formed by the loop road. Inverness Court is proposed to serve ten single-family dwelling lots. The rear yards of those lots back up to the rear yards of the lots with frontage on the interior portions of the loop road, all in accordance with the exhibits referred to in this resolution. An additional cul-de-sac, St. Andrews Court, intersects Weatherstone Drive loop road and proceeds in a northerly direction to the northwest corner of the development tract and provides access for six single-family residential lots.

In apparent response to Board concerns with regard to

the configuration of lands remaining, particularly in the northwest portion of the tract, the Applicant purported to amend its plan to create an additional lot consisting of seven acres, representing a portion of lands originally denoted as "lands remaining" so that the same would be "related to" the current subdivision application.³ The amended plan was marked as Exhibit A-7 entitled "Subdivision Plan revised July 27, 1990" and provides for an additional lot, consisting of approximately seven acres, now labeled Lot 49. The Applicant testified that this new lot (Lot 49) would not be used as the site for single-family dwellings as part of this application; however, they were unwilling to restrict it as open space or for the ninth hole of the golf course. Rather, it was stated that this lot would "probably" be the subject of a development application at "some other time". The Applicant indicated that new Lot 49 has the potential for seven or eight additional single-family lots which are not part of the current application but may be the subject of a future development application brought by the Applicant, a related entity or a third party developer.

The Applicant testified that St. Andrews Court was originally a longer road which intruded further into the Township's designated Greenbelt and into areas of the development currently characterized by mature trees. In an

³ This amendment was shown to the Board for the first time on August 8, 1990 and is depicted on Exhibit A-7.

effort to save trees and to provide less paving, St. Andrews Court has been shortened with the result that the lots have smaller frontages, front yard and width dimensions all as permitted by ordinance.

Prior to formal presentation of the development application to the full Planning Board, the Applicant had been advised by the Site Plan Review Advisory Board (SPRAB) that the area of Southfield Road in question is the site of a prior Board approval (in 1988) of a large single-family dwelling application presented by Toll Brothers, Inc., entitled "Southfield Meadows". Southfield Meadows contains approximately 117 single-family residential dwellings and has access on the opposite side of Southfield Road (east side) from the Applicant's tract. The Applicant, therefore, was referred to the Toll Brothers approval and advised that the access to the Applicant's subdivision should form a crossing intersection (across Southfield Road) with the approved access to the Southfield Meadows subdivision.

Despite this advice, the Applicant presented a plan showing its major access road (Weatherstone Drive) offset by 230 feet from the Southfield Meadows access. During the August 8 hearings, the Chairman of the Planning Board pointed out to the Applicant that the Southfield Meadows access was required to be changed, by resolution of the Board, from that shown in the hearing and, therefore, the alignment of the Weatherstone access road was offset from the ultimate location of the Southfield access. In response, on August 22, the Applicant

presented to the Board a revised plan showing a new location for Weatherstone Drive, located 230 feet to the west and alligning with the approved Southfield Meadows access.

The effect of this shifting was to create a new lot, this one, designated as Lot 50, consisting of approximately five acres. This new lot represents lands between the northerly line of the development tract, at this point, and the newly relocated Weatherstone Drive, now some 230 feet to the south. In effect, this caused a triangular gore which was labeled as Lot 50. The Applicant indicated that this lot might someday yield up to five single-family residential lots but that the Applicant had no plans to construct a single-family home or homes on it as part of this development application. It was conceived by the Applicant that this lot would be maintained by a homeowners association. In the alternative, the developer might maintain it". . . in accordance with local ordinance". There was much discussion during the hearings and later during deliberations as to which of the two proposed access roads would be superior. As will be discussed infra, the Board determined that neither one of these proposed access roads is suitable.

Despite repeated requests by the SPRAB Board, the Applicant failed to provide a plan for the possible, future development of the balance of the tract. In fact, it was not until the public hearings held on July 11 that the Board, the public and the Board's professionals were presented with a plan showing the possible development of the balance of the tract.

This foreclosed the possibility of addressing the proposed layout of the road system at a SPRAB level because that Board, and, indeed, the Board's professionals, did not appreciate how the Applicant would plan to integrate the road system with the balance of the tract (lands remaining).

A. Off-Tract Traffic Impacts. The Board considered the testimony and the report of the Applicant's Traffic Consultant, John H. Rea. The traffic study was, apparently, performed during December of 1989 when the golf course was not in heavy use. The Board did not find the testimony of the Traffic Consultant either useful or persuasive. For example, he testified that the originally proposed Weatherstone access was aligned, center line to center line with the Southfield Meadows major point of access. Further, he testified that it did not matter that traffic studies and counts were performed in December when golfers were not travelling to and from the golf course.

In any event, the Applicant has agreed to pay certain off-tract traffic obligations.

As testified to by the Township's Planning Consultant, the project will have an impact on the following off-tract roadway intersections:

Route 571/Southfield Road

Village Road East/Southfield Road

Based upon application of the formula contained in the Township's off-tract improvement ordinance, the Applicant's total proportionate share of the cost of

improvements at these intersections necessitated by this development is determined to be \$28,576 or \$608 per lot. Typically, a condition of approval would have been that the Applicant enter into an agreement with the Township Committee to pay its fair share of off-tract road and street improvements necessitated by the development in question. During the hearings, the developer waived any right to claim a credit for existing golf course traffic being replaced by these 47 residential homes.

B. Southfield Road Improvements. During the hearings, the Applicant agreed to install the necessary improvements at the intersection of Southfield Road and the entrance to the development (Weatherstone Drive) including tapering into the existing cartway of Southfield Road in accordance with plans, dated May 29, 1990, submitted by the Applicant. For the balance of Southfield Road along the frontage of the remaining lands, the Applicant agreed to dedicate five feet of its property for additional right-of-way to conform to the Master Plan and to perform the engineering design work for half-width roadway improvements along the frontage of the balance of the tract. The Board would have imposed a condition that the Applicant perform the above but would not be further obligated for any improvements to Southfield Road with this application. Further Southfield Road improvements would be considered with respect to the development of the remaining lands.

3. Utilities.

A. Sanitary Wastewater Disposal. The Applicant proposes that each lot shall be served by an on-site subsurface sewage disposal system (septic system). There is currently pending a requested 208 Wastewater Management Plan amendment to include this area of the Township into the sewer service area. NJDEP has not acted on that application. The Board finds that even if an approval of the 208 amendment were granted, this site would likely be constructed with septic systems; however, dry line sanitary sewers will be installed as a condition of any approval in the event that the amendment is granted. Approval to construct any on-site system would be subject to the review of the West Windsor Township Board of Health or its administrative officer.

B. Stormwater Management. The single stormwater detention basin, shown as Lot 48, consisting of nine acres, has been sized to accommodate stormwater runoff, by gravity, with respect to the lots submitted in this application, together with additional runoff from the potential future lots on "lands remaining". Prior to presentation of the application to the Board, the Township Engineer requested the Applicant's Engineer to revise the drainage plans to avoid much of the original land disturbance and to preserve existing trees. This was accomplished by the Applicant. While the ordinances require a drainage pipe system designed to handle the 25 year design storm, the Applicant has agreed to install a drainage line to drain a major on-site "sump" area with drainage pipe that is one pipe size larger than required to carry the 100 year design

storm. In the event of an approval, the Applicant would be required to submit final drainage plans, consistent with these findings, to the office of the Township Engineer, for his review and approval. Discharge from the detention basin is expected to concentrate outflow of 54 cfs from the basin into the wetlands associated with the Big Bear Brook stream corridor. The Applicant must mitigate the impact of that concentrated flow into this area and obtain NJDEP approval of the proposed method and/or technique therefor.

C. Potable Water. The proposed subdivision would obtain potable water service from the Elizabethtown Water Company line currently located in Southfield Road.

4. Environmental Concerns. Although primarily used as an 18 hole golf course with associated facilities, including a restaurant, the development tract contains significant amounts of environmentally restrained lands. For example, the northerly boundary along the Big Bear Brook exhibits large amounts of freshwater wetlands. In addition, significant stands of mature upland forest are planned for removal as a result of the location, in the northerly portions of the tract of a nine acre detention basin lot and six homes.

To mitigate tree loss, the Applicant has agreed to establish "conservation areas" within lots and to have the improvement footprints staked out on those lots prior to tree disturbance. Fencing and other means of assuring that the conservation areas of those lots would be required. The Board has agreed, in principle, with this method of preservation, to the extent possible of trees on single-family dwelling lots.

NJDEP has issued a letter of interpretation (LOI) formally delineating the wetlands boundaries on the site. In the event of approval, the Applicant would have been required to install orange snow fences or equivalent along the upland side of all transition area buffers prior to construction.

The detention basin has been reviewed by the Township's Environmental Consultant and its configuration as presented represents the best attempt at saving as many trees as possible. Minor final design issues relating to reforestation have not been resolved. Any approval would have been conditioned upon agreement with respect to the final design of the basin by the Applicant, the Township Engineer, the Township Landscape Architect and the Township Environmental Consultant.

There are approximately 11 acres of the Township's designated Greenbelt as the same appears on the Township's Master Plan, within this development tract. A condition of approval would have been that the Applicant agree with the Environmental Commission as to the designation of the Township's Greenbelt limit line on the plans and the monumentation thereof. All Greenbelt boundaries and areas of proposed grading would be delineated with orange snow fence or equivalent prior to any disturbance. These boundaries would be clearly marked on all plans, including monumentation, and the construction specifications would clearly state the requirement to mark these boundaries prior to site disturbance.

For approximately the past three years, the Planning

Board has engaged the services of BCM Eastern, Inc., Environmental Engineers, to study the groundwater condition of the Big Bear Brook basin. This study is in response to the numerous development applications which have been filed proposing use of on-site subsurface sewage disposal systems. The Board has found, in the past, that the proximity of large development applications to the Bear Brook threatens to impair the ecological quality of the Bear Brook drainage basin as a result of increased algal growth and low levels of dissolved oxygen and high levels of ionized ammonia and the presence of infiltrated bacteria into the groundwater with resultant adverse impacts upon human health. Developers within this drainage basin have been requested to contribute to the cost thereof.

These concerns have been articulated in resolutions of approval including PB87-51, West Windsor Estates II; PB88-1, West Windsor Estates II, Sections 3 and 4; PB83-32, Calton Homes, marked into evidence in these hearings as Exhibit B-6 and PB87-9, Windsor 571 Associates, marked into evidence with Exhibit B-6. The particular concern for groundwater and surface water quality in this drainage basin has been a long standing matter of record with the Planning Board in West Windsor Township as revealed in the findings and conditions expressed in those resolutions of approval. The Applicant, in this case, was asked whether it would contribute to the cost of such studies and it has refused. Of more significance, however, is the Applicant's stated avoidance of the NJDEP

review of developments with respect to determination of impact on regional ground and surface water quality and on potable wells in the area. This program, involving certification of subdivisions consisting of 50 or more realty improvements is provided for in N.J.S.A. 58:11-25.1. Standards therefor entitled "Guidelines for Review of Major Subdivisions Under the Realty Improvement Sewerage and Facilities Act" have recently been promulgated. The Applicant, however, has justified an application of just under 50 proposed development lots, in part, to avoid the rigors of such review, and therefore the safeguards designed to be protected by NJDEP. The Board finds that avoidance of both the Township's groundwater monitoring and the State's certification program is a serious shortcoming representing a major flaw in the development application all as more particularly discussed hereinafter.

5. Ownership and Maintenance of Features of the Development. The application before this Board was for a single-family, conventional, residential subdivision. Specifically, the Applicant requested preliminary major subdivision approval with waiver. Cluster residential developments are permitted in the zone; however, the Applicant has not applied for a residential cluster, planned development.

The proposed design of the subdivision as submitted by the Applicant renders several portions of the tract in need of ownership and maintenance after conveyance of all lots. The internal streets are proposed to be dedicated to the Township

of West Windsor. However, the south side of the main entrance boulevard is to be lands remaining (part of the 60 acres) and the north side of that boulevard contains a 50 foot wide strip which is part of Lot 1, a single-family dwelling lot. The length of this strip is some 800 feet. The Applicant proposes that the extensive landscaping on that strip be maintained by a "Homeowners Association". Similarly, the Applicant urges that a homeowners association be established for the ownership and maintenance of the detention basin and the ownership and maintenance of the landscaped median boulevard dividers and two cul-de-sac islands. The detention basin is planned for the northerly portion of the tract and abuts seven of the proposed 47 lots and consist of 9 acres.

The Township of West Windsor has developed a mechanism for the conveyance and maintenance of features such as detention basins and the like in the absence of a planned development. This mechanism, provided for in Resolution 86-R139, was drafted in concert with area developers to provide for a fair and efficient turnover of ownership and maintenance responsibility with respect to features such as detention basins and providing to the Township, based on actuarially determined numbers, an amount sufficient to provide for the maintenance of these facilities for a 25 year period.⁴ Essentially all developers have availed themselves of this

⁴ A copy of Resolution 86-R139 is attached to this Resolution as Schedule A.

procedure in the absence of a planned development.

The Applicant has stated his unwillingness to proceed based on the established policy and resolution.

Rather, the developer assumes the position that the Township must acquiesce in the establishment of a homeowners association (N.J.S.A. 40:55D-43). Owners associations are recognized in that section in the presence of planned developments including residential clusters. Subsection B and C of that provision allow for the municipality to assume maintenance responsibilities in the event that the owners association fails to do so. Additional liens may be imposed on tax bills of properties within a planned development in the event that the municipality must expend general funds for the maintenance of these facilities. No such provision exists in the absence of a planned development. The Board, therefore, finds that the Applicant has proposed no apparent resolution of the issue as to the ownership and maintenance of the cul-de-sac islands, median boulevard dividers and the nine acre detention basin.

6. Decision of Board. The Board has determined to DENY Applicant's request for preliminary major subdivision approval, with waivers for the following reasons:

A. The layout of the proposed improvements, including internal streets and access are inadequate and poorly conceived. As stated earlier, one of the reasons advanced for the design of the layout of this development is the preservation of nine holes of the existing 18 hole golf course.

The Board does not find that there is credible evidence in the record that preservation of the nine hole golf course is either possible or even sincere. For example, the application itself states on addendum A the following:

The Applicant has no current plans to continue use of the golf course operation.

The subject of preserving a nine hole golf course arose during the SPRAB proceedings. In this connection, Applicant's representative, Philip Evans, made a statement at the SPRAB hearing of April 26, those minutes, marked as Exhibit B-8 as follows:

"Chairman Hetzel also noted that there will be nine holes remaining on the golf course if this plan is approved and implemented."

"Mr. Evans stated that he did not think anyone would like to play on a nine hole course, all the outings call for 18 hole courses, 90% of the business at the location are the large outings. This is a public course but all of the current membership are for 18 holes."
[from page 3 of Minutes of April 26, 1990, Exhibit B-8]

During the course of the hearings before the Planning Board, it was pointed out that the current 18 hole golf course is irrigated from Big Bear Brook at the north end of the property where development is currently proposed. Mr. Evans was asked how he planned to irrigate the remaining nine holes which are at the south end of the tract. He indicated, quite frankly, that he had no idea and had not thought about watering greens and fairways with respect to the nine hole course that might remain.

The ninth hole is proposed to be located in what originally was lands remaining but has since been designated as Lot 49. The width of that fairway would be 220 feet. That is, there is a 220 foot distance from the westerly sideline of proposed Weatherstone Drive to the property line. The Township Landscape Architect, Thomas Bauer, testified that published standards with regard to the width of fairways indicates that the same should be at least 300 feet in width. The Board is concerned that safety issues arise with respect to children and vehicular traffic juxtaposed to a fairway which is of insufficient width.

When asked, Mr. Evans, testified that there was no market study requested or obtained by Garden State Land with respect to operation of any golf course and that there had only been "internal discussions" concerning the feasibility and viability of a golf course for the remaining nine holes.

It should also be noted that the Applicant's Traffic Engineer stated in his report that "at this point in time, Garden State Land does not have definite plans for the operation of the remaining nine hole golf course". That document was introduced into evidence by the Applicant at the July 11, 1990 hearing as Exhibit A-2.

With the above in mind, the Board finds that it is unlikely that a golf course will be operated on the lands remaining for any appreciable period of time if at all. Accordingly, one of the primary design objectives that drives the layout of this tract is unrealistic and, as a result, the

design presented suffers. If the planning process with respect to the layout of the design had not been artificially constrained by the notion to preserve a portion of the tract for a 9 hole golf course, a more comprehensive, efficient and safe layout for the system of roads and neighborhoods could have been created.

As testified to by the Township's Planning Consultant, the neighborhoods created by the loop road and internal cul-de-sac are too monolithic. Few if any discreet neighborhoods, typical of most developments in the Township exist. The scale of the Inverness Court cul-de-sac is too large. A superior layout would have smaller neighborhoods associated with cul-de-sacs that emanate from the center of the tract rather than to develop a large circular loop road around the periphery.

The Township Planner, Gerald C. Lenaz, further testified that the proposed road system was inefficient for service by Township maintenance and emergency personnel. Many homes would face a street that was not double loaded, at least not for the moment. The configuration and timing with respect to the homes to be installed on the west side of Weatherstone Drive and St. Andrews Court should be part of the current application and should not await a later application at an uncertain time in the future. Adequate control over future construction traffic within these lands remaining and the phasing of the development have been denied the Planning Board by virtue of the layout, plan and configuration of lands remaining as submitted by the Applicant.

The creation of new Lot 49, the seven acre lot which is proposed to be "associated" with this development application but contain no homes, currently, does not respond to the problem. It would be more convenient and beneficial to both the Township and to future residents if both sides of Weatherstone Drive and St. Andrews Court were to be planned, constructed and phased together. This would further eliminate problems and concerns with regard to bonding, inspection, approval and acceptance of the road system.

The design not only is poor with respect to the road layout serving proposed lots, it also forecloses a better overall layout and design for the entire tract. For example, within lands remaining, will be the existing Bog Restaurant, the existing club house and associated maintenance facilities. These structures and uses represent prior nonconforming uses allowed by previous variances. Significant issues involving location of streets, as the same relate to the entrance drive, lot size and buffering remain with regard to integrating these existing non-conforming uses into the proposed residential neighborhoods. The configuration of the proposed access drive and internal streets foreclose a review of the entire central portion of the tract which should be planned as a unit and not separated as proposed.

The Board finds that it is not enough for an applicant to comply with all of the technical standards in the zoning and subdivision ordinances. The Board is aware that the Applicant must do more than simply comply with all technical

standards and requirements. If Planning Boards were required to approve all subdivision applications which facially comply, there would be no need for the existence of Planning Boards. The Board finds, for the reasons expressed herein, that the layout of the proposed roads and neighborhoods is fatally flawed and the application must be DENIED. [Popular Refreshments, Inc. v. Fuller's Milk Bar, etc., 85 N.J. Super. 528 (App.Div. 1964); Hilton Acres v. Klein, 35 N.J. 570 (1961).]

B. The location and design of Weatherstone Drive as the single point of access to the development is inadequate. The stated preservation of a nine hole golf course dictates the location of the single access to the interior street system, Weatherstone Drive. A superior plan would have been to provide more than one access point. For example, if the entire tract had been before the Board, it could have planned a second, future access through lands to the south which would then intersect, when developed, with Village Road West. An alternative would have been to provide for two points of access onto Southfield Road to serve the interior of the development. On the other hand, a single access should serve fewer than 47 lots. The proposed response, a median divided roadway is not a standard road cross section in accordance with the ordinance and creates other planning issues such as curb cuts and the maintenance of the center islands. (Previously, the Board approved a similar access road with median dividers to serve a development later known as "Princeton Chase";⁵

⁵ This development is a cluster, planned residential development with a Homeowners Association.

however, that development had limited frontage on the public road in question and was the only feasible way to provide safe and efficient access.)

As previously stated in paragraph 2.A, the Applicant originally proposed that Weatherstone Drive access Southfield Road at the northeasterly corner of the tract. It was later pointed out to the Applicant that a development on the opposite side of Southfield Road, Southfield Meadows, containing 117 lots was previously approved with an access which will enter Southfield Road 260 feet to the southwest. The Applicant was requested to redesign Weatherstone Drive and return to the Board. It did so; however, the way in which Weatherstone Drive was relocated created additional and, in some respects more troubling planning issues such as the five acre "gore" (Lot 50) between the northerly sideline of realigned Weatherstone Drive access and the northeasterly boundary of the development tract. Without the stated need to preserve the nine hole golf course, a more efficient and better planned access drive could have been provided. The Board finds that a crossing intersection between this development and the Southfield Meadows development is an important planning consideration and should be adhered to; however, the way in which the entrance drive has been presented to effect that goal is to create unacceptable planning and road layout difficulties within the interior portion of the tract. The crossing intersection is necessary to provide through movements to these adjoining developments and to provide more efficient traffic

patterns on Southfield Road, particularly in a southerly direction to Village Road East which in turn leads to the town's major schools and parks. The Board took a consensus vote with respect to the access road and two members agreed that a crossing intersection, as shown was superior, two members preferred the original offset alignment and five members indicated that neither one of the proposals was acceptable and rejected both proposals as being insufficient in terms of planning and traffic safety.

C. The Applicant has purposely attempted to avoid review of its development application by the New Jersey Department of Environmental Protection, Division of Water Resources, with respect to the certification of subdivisions consisting of 50 or more improvements. The Board is particularly troubled that, at no time, will any aspect of this development tract, consisting of 112 acres, probably ever be reviewed by the DEP for groundwater and surface water quality. The Applicant appears to be successfully on its way to a "checkerboard" development pattern of this tract so that it will never have to submit to DEP's review. The Board is mindful that the Department of Environmental Protection has recently adopted standards for certification of subdivisions consisting of 50 or more realty improvements under the authority of N.J.S.A. 58:11-25.1. A serious failing of this application is that the Applicant not only refuses to participate in the local groundwater monitoring program, he has articulated a stated objective to avoid State review as well.

Concern for groundwater quality in this particular drainage area is a matter of long standing record with regard to applications before the Board as referred to in paragraph 4 above. (See also: NJ Department of Environmental Protection, Division of Water Resources, Wastewater Facilities Management Element, Bureau of Construction and Connection Permits -- "Guidelines for Review of Major Subdivisions Under the Realty Improvement Sewerage and Facility Act", N.J.S.A. 58:11-25.1, et seq.)

D. The Applicant has not proposed a resolution of the issue of the ownership and maintenance of certain facilities associated with the development application which are not to be privately owned by end users. Specifically, the Board refers to the nine acre detention basin (Lot 48), the proposed landscaped median dividers, the proposed cul-de-sac island and the proposed landscape feature on the north side of the entrance boulevard, part of residential Lot No. 1. The Applicant has testified that he will continue to maintain and operate the Bog Restaurant with its licensed bar. Part of the ambiance associated therewith will be the entrance boulevard. The Applicant has stated that the maintenance responsibility for the entrance boulevard will be the burden of a "homeowners association". Further, the Applicant proposes that a homeowners association should own and maintain the nine acre detention basin which will serve not only the lots associated with this development but also lots to be constructed on lands remaining. Finally, cul-de-sac landscape islands are proposed to be

maintained by the homeowners association. These features benefit only a few lots. For example, the detention basin lot abuts seven of the 47 single-family dwelling lots and is not even visible from the rest. The cul-de-sacs in question are fronted by only three or at the most four lots.

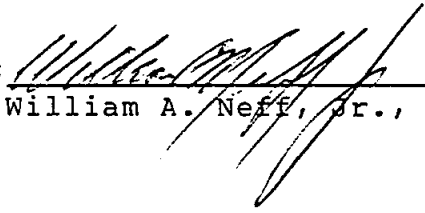
The layout of this conventional subdivision is not appropriate for a homeowners association because so few lots benefit from the costs which ultimately must be born by all. If this were a cluster development, common open space would have been provided to benefit all or most of the lots; however, in this configuration, the Board finds that it is very unlikely, as a practical matter, that a homeowners association would survive.

The Board notes that the Municipal Land Use Law provides for homeowners association in the case of planned developments such as residential clusters. The municipality, in N.J.S.A. 40:55D-43 is protected in the event that the homeowners association, in a planned development, fails to adequately maintain its open space. Such protection does not apply in the case of conventional subdivisions where a homeowners association is imposed as a matter of convenience to the developer. The Township has provided a fair and orderly procedure with regard to the ownership and maintenance of features such as those at issue here by virtue of Resolution 86-R139. That resolution, drafted in concert with developers in West Windsor Township provides, on an actuarial basis, for the maintenance, by the Township, of these features for a

period of 25 years. Each developer pays its fair share of the cost of maintenance of these facilities in return for the municipality assuming ownership, control and liability with respect thereto. The Applicant has stated its unwillingness to follow the procedures and policies referred to in that resolution. The Board, therefore, concludes that the Applicant has advanced no apparent resolution of the issue of ownership and maintenance of the facilities and features referred to herein, detention basin, cul-de-sac island plantings, entrance boulevard for restaurant and subdivision and median landscape dividers for restaurant and subdivision. Accordingly, the Applicant has failed to establish cause for approving the applied for preliminary major subdivision. Morris County Fair Housing v. Boonton Township, 228 N.J. Super. 635 (1987), Field v. Franklin Township, 190 N.J. Super. 326 (App.Div. 1983).

NOW, THEREFORE, BE IT RESOLVED by the West Windsor Township Planning Board this 17th day of October, 1990 that the application for preliminary major subdivision approval, with waiver, be and the same is hereby DENIED for the reasons set forth above.

WEST WINDSOR TOWNSHIP PLANNING BOARD

By: 

William A. Neff, Jr., Chairman

CERTIFICATION

I certify this to be a true and exact copy of a Resolution of Memorialization adopted by the West Windsor Township Planning Board, Mercer County at a public hearing on the 17 day of October, 1990.

WEST WINDSOR TOWNSHIP PLANNING BOARD

By: Eleanor Clausen
Eleanor Clausen, Secretary