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UPPER CHICHESTER TOWNSHIP  
BOARD OF COMMISSIONERS  
DELAWARE COUNTY, PA

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Creekside Village Walking Trail Removal

- - -

Thursday, December 8, 2011  
Commencing at 6:30 p.m.

- - -

Upper Chichester Township Municipal Building  
Furey Road  
Boothwyn, PA

- - -

BOARD MEMBERS:

- JIM STEWART, President
- JOE NEARY, 4th Ward
- NICOLE WHITAKER, 2nd Ward
- JOE BAIOTTO, 3rd Ward
- JOE DIMARCO, 1st Ward

**ORIGINAL**

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COUNSEL APPEARED AS FOLLOWS:

HOWARD J. GALLAGHER, III, ESQUIRE  
Solicitor for the Township

- - -

ALSO PRESENT:

- JUDY LIZZA  
Township Manager
- LISA CATANIA  
Township Engineer

- - -

E X H I B I T S

TOWNSHIP'S

4	<u>Number</u>		<u>Marked</u>	<u>Rec'd</u>
5	T-1	Legal Notice	5	5
6	T-2	Ordinance Amendment	5	5
7	T-3	Proof of Publication	5	5
8	T-4	Letter dated 11-9-11	5	5
9	T-5	List of Property Owners	5	5
10	T-6	Affidavit	5	5

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P R O C E E D I N G S

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4 THE PRESIDENT: I would like to  
5 call the meeting to order. All rise for the Pledge  
6 of Allegiance.

7 (Pledge recited).

8 THE PRESIDENT: This is a public  
9 hearing regarding Creekside Village. This is an  
10 amendment to their PRD. I will turn the meeting over  
11 to our solicitor, Mr. Gallagher.

12 MR. GALLAGHER: Thank you. That  
13 is correct. This is an advertised public hearing  
14 concerning a proposed amendment to the Planned  
15 Residential Development known as Creekside Village at  
16 Naaman's. Specifically, the issue is the removal of  
17 the walking trail from the plan.

18 I have a few exhibits I would  
19 like to mark into evidence and then I believe I will  
20 turn it back to you, Mr. President, for comments from  
21 the public.

22 T-1 would be the legal notice  
23 advertising tonight's hearing.

24 T-2 is the proposed Ordinance  
25 itself.

1  
2 T-3 would be the proof of  
3 publication indicating that the legal notice was  
4 advertised in the Delaware County Daily Times on  
5 November 14th and November 21st, 2011.

6 T-4 is a letter notifying the  
7 property owners of tonight's meeting. That letter is  
8 dated November 9th, 2011. It states that the  
9 township will be holding a public hearing at 6:30  
10 this evening on Thursday, December 8th, as regards to  
11 the advisability of extinguishing the walking trail  
12 in the Planned Residential Development known as  
13 Creekside Village at Naaman's. This was sent by the  
14 township manager, Judy Lizza.

15 T-5 lists all of the property  
16 owners to whom this letter was sent. This letter was  
17 sent by certified mail, return receipt requested, and  
18 I have in my possession green cards. The original  
19 signed return receipt green cards have been assembled  
20 by the township as have the envelopes which were  
21 returned as not delivered.

22 Finally, I have as Exhibit T-6 an  
23 affidavit signed by Judy Lizza, our township manager,  
24 attesting to the fact that the November 9th letter  
25 was sent to the property owners at Creekside Village

1  
2 by certified mail, return receipt requested.

3 I would move for the admission of  
4 those exhibits, and that is all I have.

5 THE PRESIDENT: So moved.

6 (Above-described documents marked  
7 Township Exhibit T-1 thru T-6, for identification,  
8 and received into evidence).

9 THE PRESIDENT: Now, as to  
10 citizen comments, we have announced why we are here.  
11 This was a public notice for a changing in the  
12 Ordinance for removal of the walking trail at  
13 Creekside Village. Do any citizens have any  
14 questions or comments? If so, please come to the  
15 podium and give us your name and address so you can  
16 be on the record.

17 MR. KIRK: My name is Richard  
18 Kirk. I live at 26 Brentwood Road in the Creekside  
19 Village Development. In your letter that was sent  
20 out registered to the residents, you identified the  
21 trail as being extinguished. I wonder if you can  
22 comment on exactly what that means. Is it removal  
23 from the plans and documents or is it actually  
24 removal from the property itself?

25 Is it actually going to be

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removed? Could you explain that to us?

MR. NEARY: The trail is going to be removed. Right now it's not stable as you know. So the intent is to instead of having the bonding company be responsible for restoring it, we are just going to ask them to remove it. We will, however, make some allowance to keep access to the detention basin either by just mowing it or maintaining it, but we are going to eliminate the trail.

MR. KIRK: So the timbers that are currently buried in the side of the trail will actually be pulled out and removed, or will it just be covered over?

MR. NEARY: That is my intention.

THE PRESIDENT: Correct.

MR. GALLAGHER: We are meeting with them Monday morning. We can discuss that with them or clarify that.

MR. NEARY: Well, wouldn't it cheaper for them to remove it, in your opinion?

MS. CATANIA: I don't know that that would be the case, but as it stands right now they are awaiting a punch list, a final punch list, because this was one of the outstanding items they

1  
2 are aware of. We can put whatever we want on the  
3 punch list, and I guess they will answer it  
4 accordingly on how they are proposing to take care of  
5 it.

6 MR. NEARY: The intent is to  
7 remove the entire trail, the timbers and everything  
8 else.

9 MR. KIRK: There is an  
10 observation deck which was considered part of the  
11 walking trail. Was it the intent to have that  
12 removed as well?

13 MR. NEARY: The one on the pond,  
14 no. That is what I am saying. You want to keep some  
15 type of access to that.

16 MR. KIRK: That was installed as  
17 part of the walking trail improvement. I don't know  
18 that we would want that liability necessarily out  
19 there still. To me that is a liability.

20 MR. NEARY: It's never been  
21 brought to my attention that that needed to be  
22 removed as well.

23 MR. KIRK: Well, with no access  
24 to that observation deck other than through a wooded  
25 area in the future if the walking trail is removed,

1  
2 it's a perfect opportunity for young adults and  
3 children to play on the observation deck. Somebody  
4 could get hurt. It's a liability issue.

5 MR. NEARY: I indicated that we  
6 maintain some type of access to that.

7 MR. KIRK: We need to maintain  
8 access to the pond to do maintenance work on the pond  
9 itself. The Homeowners Association is responsible  
10 for that. We need to maintain the pond and muck it  
11 out to make sure that the outfall is not plugged, so  
12 we have to get back there for that purpose.

13 But the observation deck itself,  
14 there is no immediate access by trail for residents  
15 to go back there and see it. To me it's just an  
16 opportunity for kids basically to go out there and  
17 play on it and party on it, and there is the  
18 potential liability that somebody could get hurt.

19 MR. NEARY: If that had been  
20 brought to my attention before, we could have added  
21 it to the resolution. As I said, this is the first  
22 time that I have heard this particular comment in  
23 regards to the deck.

24 MR. KIRK: I guess probably it  
25 was assumed that the deck was all part of the initial



1  
2 installation of the walking trail, and it was assumed  
3 that if it was going to be removed, it would be part  
4 of that as well.

5 MR. NEARY: I wasn't on the board  
6 when the original plans were put in place, so I don't  
7 know what was construed to be the trail. If someone  
8 told me "the trail," I would think just the  
9 particular trail that ran behind it, not the deck  
10 that people could use. I don't know what the intent  
11 was behind the deck.

12 MR. KIRK: I would just like to  
13 request that that be considered by the board in their  
14 discussions with the insurance companies regarding  
15 the removal of it.

16 MR. NEARY: I have no feel for  
17 what the residents' feelings are for that particular  
18 aspect of it. I have a feeling for the people who  
19 responded. We had well over 150, I think just short  
20 of two hundred, but I did the survey awhile ago.

21 I have been somewhat out of the  
22 loop for a little bit, but I know overwhelmingly  
23 people asked that the trail be removed. That was the  
24 response. I did not ask them about the deck over the  
25 detention basin, because I didn't know that that was

1  
2 an issue. We can certainly talk to them about it,  
3 but in your reading, was that part of it? I don't  
4 know how to respond to Rich about the deck.

5 MR. GALLAGHER: You can consider  
6 it part of the walking trail arguably. Even though  
7 it's an observation platform, it is part of the  
8 walking trail. But if you are concerned about the  
9 feelings of the residents of Creekside or their  
10 opinion in that regard, I don't know what to tell  
11 you. It's a little late to be discussing that.  
12 Arguably, I think it is part of the walking trail  
13 itself.

14 MR. NEARY: I wish I had known  
15 that. I would have made it a little clearer in the  
16 letter that we were talking about the trail and the  
17 deck over the detention basin.

18 MR. BIAOCCO: Is it considered  
19 part of the base, the deck?

20 THE PRESIDENT: It's in the  
21 township right-of-way; is that correct?

22 MS. CATANIA: Actually, the basin  
23 itself is what is considered open space number 7  
24 which is owned and maintained by the Homeowners  
25 Association. The background that I can give you is

1  
2 during the original PRD hearings, there were quite a  
3 few residents here at the hearings that were  
4 requesting that there be a trail through the open  
5 space area because of the flora and the fauna that is  
6 back there.

7                   It is township open space where  
8 the trail is currently. The observation deck, I do  
9 believe -- and I did not research it because I wasn't  
10 aware of it -- was something that was required under  
11 the DEP approvals for the project. I am not a  
12 hundred percent certain of that.

13                   THE PRESIDENT: That is a whole  
14 different discussion.

15                   MS. CATANIA: And it is not  
16 something that I reviewed because it wasn't anything  
17 that I thought was coming up this evening.

18                   THE PRESIDENT: Mr. Neary and  
19 Mr. Kirk, you had discussions with all of the  
20 residents. I am saying you had open meetings about  
21 this and has this ever come up?

22                   MR. NEARY: No. I mean, not to  
23 my knowledge. I don't recall this ever being raised,  
24 this issue being raised.

25                   MR. KIRK: Okay, let me clarify

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one thing. My opinion about this is the deck was installed as part of the walking trail at the same time. It was an oversight on our part or your part or somebody else's part for not specifically pointing out that one specific feature of the walking trail. I apologize for that on our part. However, it was installed as part of the walking trail at the same time it was put on the plan.

This is something that the residents had requested be removed, the walking trail in general, so I would assume that that would extend to the observation deck which is part of the walking trail. It wasn't specifically pointed out to the contrary, so I would still think that that would apply.

MR. GALLAGHER: You were out, Mr. Neary, but Lisa Catania mentioned something about the deck being required as part of the DEP approval process, which is something totally different.

MS. CATANIA: And I don't know that. I have not gone through the DEP information. I do know that there was talk about fox. There was talk about the deer and how much open space was going to be there, and I know that it was placed on the

1  
2 plan as part of the DEP information, because there is  
3 wetlands there as well, and it was part of the  
4 mitigation plan. Whether or not it's something that  
5 DEP actually required, I don't know. I don't recall.

6 MR. GALLAGHER: It was in the  
7 year 2000.

8 MS. CATANIA: It was in the year  
9 2000. I am getting older. I don't recall it.

10 MR. KIRK: Did DEP require it as  
11 part of the walking trail or did DEP require it as  
12 part of the pond and the wildlife around there?

13 MS. CATANIA: I don't recall all  
14 of the facts of it. I didn't do any of the research.  
15 There are a lot of PRD hearing notes that I do have  
16 back in my office. I believe I still have them.

17 THE PRESIDENT: I would say, in  
18 my opinion, unless Mr. Neary has a contrary thought,  
19 for the betterment of progress we will take note of  
20 your concern. We are not making a decision tonight.  
21 We will look into the records and see how this plays  
22 into it, whether it's part of the DEP stuff or just  
23 part of the trail.

24 It is a little troubling that we  
25 are discussing this tonight when we thought we were

1  
2 just talking about a trail, and I don't know that we  
3 are going to hear from other residents who are  
4 against it, but we have had correspondence in the  
5 last couple of days, e-mails and letters, to continue  
6 our support to remove the trail.

7 I would say for the record that  
8 we accept Mr. Kirk's statements and clarify it before  
9 we make a decision.

10 MR. NEARY: Agreed.

11 MR. KIRK: I appreciate that.  
12 Thank you. One last question. Do you have a  
13 schedule for this work, any anticipated schedule for  
14 this work to be done?

15 MR. NEARY: We can't until we  
16 pass the Ordinance. I can't tell you I am going to  
17 pull it out by a date if I do not know that we are  
18 going to pass the Ordinance.

19 MR. KIRK: Is it scheduled for  
20 the coming year or the following year?

21 MR. NEARY: It would be next year  
22 at some point because, as you know, we declared the  
23 builder in default and we have a time limit on that.  
24 That is why we wanted to get this presented and  
25 adopted hopefully tonight, so that we could give it

1  
2 to them and say this has to be done as part of the  
3 punch list.

4 MR. KIRK: Okay, thank you. I  
5 appreciate it.

6 THE PRESIDENT: Any other  
7 questions or comments from any other residents?

8 MR. URBAN: Good evening. My  
9 name is George Urban, 4000 Village Way at Creekside  
10 Village.

11 First of all, I want to thank the  
12 board for taking the time and energy to put together  
13 the Ordinance that was given and, specifically, based  
14 on the costs by keeping it, the cost that would be  
15 associated with keeping this would be really  
16 horrendous to the whole community, everybody in Upper  
17 Chichester Township. So, again, thank you for that.

18 One of the comments that I did  
19 make in a response was that the observation deck  
20 would be costly maintenance and replacement item as  
21 well, and that it can be removed rather than repaired  
22 or replaced at some future time.

23 I wasn't thinking when I put that  
24 together to incorporate it with the removal of the  
25 walking trail per se. But with what was said a

1  
2 moment ago, I think it would be worthwhile to  
3 incorporate that in at the same time rather than have  
4 it out there, and eventually a decision has to be  
5 made to repair it or replace it. And if any of that  
6 kind of work is done, it's going to be very, very  
7 costly.

8                   Again, I want to thank the board  
9 for everything you have done in expediting this and  
10 getting this taken care of as quickly as it has been.  
11 I appreciate it.

12                   THE PRESIDENT: Any other  
13 residents who have any questions or comments?

14                   MR. CONNOR: Good evening. My  
15 name is Jim Connor. I live at 4000 Village Way. I  
16 want to reiterate what Rich and George said with  
17 regard to the deck. At the time when the trail came  
18 to be built, I know at the beginning phase, the  
19 planning stage, everybody seemed to want the trail.  
20 But I know at the time all that construction work was  
21 done there, nobody that I knew within the  
22 development -- I can't say nobody -- but the majority  
23 of people in the development didn't want that trail  
24 built for the same reasons that Rich appointed out.  
25 They didn't want it to be a gathering place,



1  
2 although, as Joe said, it is still nice to have  
3 access back there.

4                   So I would agree with them that  
5 the deck should be removed. If you go down there at  
6 any time, my unit overlooks it. Thank you, Rich, for  
7 calling it a pond. There has been some argument over  
8 there whether to call it a pond. I bought there  
9 because it's a very nice thing to look at. I spent a  
10 good deal of time out there myself working on it.

11                   I go down there and make sure it  
12 is completely clear. I take a big rake and scrape  
13 algae out of there during the summer. I also scrape  
14 out beer bottles and wine bottles and so forth and so  
15 on. So if you put that deck there, if I am 16 or 17,  
16 it looks like a good place to party for me. So I  
17 would urge the board to take the deck into  
18 consideration as part of the trail removal.

19                   Also, is everybody aware of how  
20 far that trail runs? I am assuming there is a good  
21 deal of work there. Is there a bond that covers the  
22 removal of the trail?

23                   MR. NEARY: There is a bond that  
24 exists to address punch list items that have not been  
25 completed.

1  
2 Correct me if I am wrong, either  
3 that trail is on the list and either has to be  
4 corrected or put back into its original state or  
5 better state, but that's on the punch list.

6 MR. CONNOR: So when the trail is  
7 removed, I am assuming that some type of arrangement  
8 will be made to either seed it or do whatever it  
9 takes to provide a certain amount of aesthetic appeal  
10 rather than leave an open dirt track back there?

11 MR. NEARY: I would imagine we  
12 could put seeding. Even the township can put seeding  
13 back there if it is in the open area.

14 MS. CATANIA: The reality is that  
15 the municipality's planning security agreement, there  
16 are line items in that agreement, and the trail was  
17 in that. As part of my punch list, I had to verify  
18 whether things were completed or they had  
19 deficiencies and needed to be fixed.

20 As part of this, if the trail is  
21 going to be removed, which I assume it is, then I  
22 would put in there that the trail would have to be  
23 removed and the area properly restored, which means  
24 it would get soil because it obviously has a depth to  
25 it. Also, it would have to be seeded. That would be

1  
2 my scope.

3 Remember that this entire punch  
4 list is not the township workforce that is doing the  
5 work. It's actually a contractor that is going to be  
6 hired by the bonding company. So at this point we  
7 don't have any indication that they won't do it, but  
8 once they review the punch list, then we will know  
9 how far they are going with the punch list.

10 MR. CONNOR: I would assume there  
11 is some kind of township oversight on that though.

12 MS. CATANIA: I would hope so.

13 MR. CONNOR: Thank you very much.

14 MR. NEARY: The engineer would  
15 inspect the work to see if it meets standards.

16 MR. CONNOR: Thank you.

17 THE PRESIDENT: Any other  
18 citizens who have questions or comments?

19 MR. SULLIVAN: My name is Bill  
20 Sullivan. I am actually the chairperson of the  
21 landscape committee over at Creekside, so we take an  
22 interest in the deck. Just for your information,  
23 there has been some damage to that deck already. So  
24 if it remains sitting there, more could be done, just  
25 so you know that it's not in the same condition that

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it was put up. There have been some rails that have been kicked out. That's all.

THE PRESIDENT: Thank you, sir.

Any other questions or comments?

(No response).

THE PRESIDENT: Any questions or comments from the board?

(No response).

THE PRESIDENT: This hearing is closed. Thank you.

(At 6:55 p.m., proceedings were concluded.)

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C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me in the above cause and that this is a correct transcript of the same.

  
\_\_\_\_\_  
THOMAS P. CORCORAN,  
Court Reporter

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