

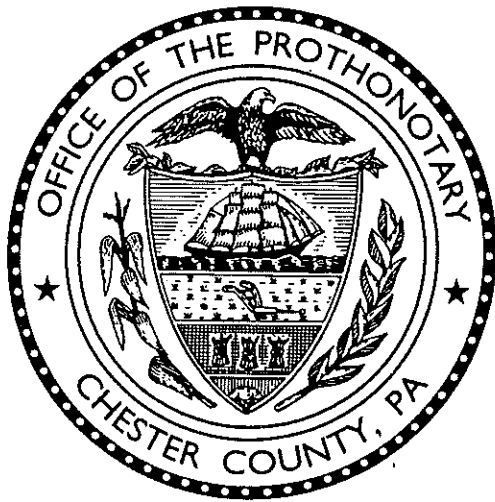
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MAY 05 2008

BY:

04-08887 IR RE: APPEAL OF HERITAGE BLDG GROUP FROM DECISION OF BOARD OF SUPERVISOR OF LONDON GROVE

VINCENT B. MANCINI, ESQUIRE
VINCENT MANCINI & ASSOC
414 E BALTIMORE PIKE
MEDIA, PA 19063

The enclosed order has been entered by the Court and filed with the Prothonotary's Office. Copies have been sent to attorneys whose appearances have been entered and to unrepresented parties. If you are a party to this action and have representation, give this notice and order to your attorney.



Stewart
Attorneys at Law

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DEC 03 2007

B.

Deborah L. Arbuckle
Direct Dial: (610) 941-2573
Direct Fax: (610) 684-2110
Email: darbuckle@kaplaw.com
www.kaplaw.com

BY:

December 3, 2007

VIA COURIER

Prothonotary
Chester County Court of Common Pleas
2 North High Street
West Chester, PA 19380

**RE: In Re: Appeal of Heritage Building Group, Inc. from the Decision Dated
October 6, 2004 of the Board of Supervisors of London Grove Township**

Dear Madam/Sir:

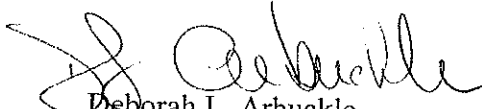
Enclosed for filing please find the following:

1. Joint Motion for Approval of Settlement Agreement and for Entry of Agreed Order; and
2. Praecipe for Determination.

Kindly time stamp the extra copies enclosed as proof of filing and return same to the courier.

Please do not hesitate to contact me should you have any questions.

Sincerely,


Deborah L. Arbuckle
Paralegal

DLA:dla
enclosures

cc: William P. Lincke, Esquire (w/enclosures)
Vincent Mancini, Esquire (w/enclosures)

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: Marc B. Kaplin, Esquire
Gregg I. Adelman, Esquire
Attorney ID Nos. 04465, 84137
910 Harvest Drive
P.O. Box 3037
Blue Bell, PA 19422
(610) 260-6000

Attorneys for Heritage Building Group, Inc.

IN RE: APPEAL OF HERITAGE BUILDING	:	IN THE COURT OF COMMON
GROUP, INC. FROM THE DECISION DATED	:	PLEAS OF CHESTER COUNTY,
OCTOBER 6, 2004 OF THE BOARD OF	:	PENNSYLVANIA
SUPERVISORS OF LONDON GROVE	:	
TOWNSHIP	:	
	:	No. 04-08887
	:	LAND USE APPEAL

PRAECIPE FOR DETERMINATION

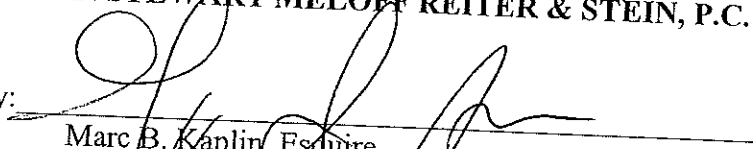
TO THE PROTHONOTARY:

Kindly submit the following matter to Judge Ronald C. Nagle for determination:

Joint Motion for Approval of Settlement Agreement and for Entry of Agreed Order.

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By:



Marc B. Kaplin, Esquire
Gregg I. Adelman, Esquire

Dated: December 3, 2007

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: Marc B. Kaplin, Esquire
Gregg I. Adelman, Esquire
Attorney ID Nos. 04465, 84137
910 Harvest Drive
P.O. Box 3037
Blue Bell, PA 19422
(610) 260-6000

Attorneys for Heritage Building Group, Inc.

IN RE: APPEAL OF HERITAGE BUILDING	:	IN THE COURT OF COMMON
GROUP, INC. FROM THE DECISION DATED	:	PLEAS OF CHESTER COUNTY,
OCTOBER 6, 2004 OF THE BOARD OF	:	PENNSYLVANIA
SUPERVISORS OF LONDON GROVE	:	
TOWNSHIP	:	No. 04-08887
	:	LAND USE APPEAL

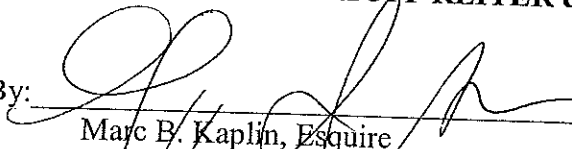
CERTIFICATE OF SERVICE

I, Gregg I. Adelman, Esquire, do hereby certify and attest that a true and correct copy of the foregoing Praecipe for Determination was served, via first class regular mail, postage prepaid, upon the following parties:

William P. Lincke, Esquire
Beatty Lincke
2 W. Market St., 6th Floor
West Chester, PA 19382

Vincent B. Mancini, Esquire
414 E. Baltimore Pike
Media, PA 19063

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: 

Marc B. Kaplin, Esquire
Gregg I. Adelman, Esquire

Dated: December 3, 2007

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

By: Marc B. Kaplin, Esquire
Gregg I. Adelman, Esquire
Attorney ID Nos. 04465, 84137
910 Harvest Drive
P.O. Box 3037
Blue Bell, PA 19422
(610) 260-6000

Attorneys for Heritage Building Group, Inc.

BEATTY LINCKE

By: William P. Lincke, Esquire
Attorney ID No. 23123
2 West Market St., 6th Floor
West Chester, PA 19382
(484) 356-0555

Solicitor for London Grove Township
Board of Supervisors

IN RE: APPEAL OF HERITAGE BUILDING GROUP, INC. FROM THE DECISION DATED OCTOBER 6, 2004 OF THE BOARD OF SUPERVISORS OF LONDON GROVE TOWNSHIP	:	IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
	:	
	:	No. 04-08887
	:	LAND USE APPEAL

SETTLEMENT AGREEMENT

This Settlement Agreement ("**Agreement**") is made this day of September 5

2007, by and between Heritage Building Group, Inc. ("**Heritage**") and the Board of Supervisors of London Grove Township ("**Board**") (collectively, the "**Parties**").

Background

A. On September 18, 2002, Heritage Building Group, Inc. ("**Heritage**"), filed a conditional use application ("**Application**") accompanied by an engineered plan entitled "Yeatman Tract-Site Plan" prepared by Langan Engineering dated September 17, 2002, last revised July 9, 2003 ("**Conditional Use Plan**") to construct a 374-unit townhome development ("**Proposed Development**") on 76.81 acres of land adjacent to Glen Willow Road ("**Property**") in London Grove Township ("**Township**");

B. 60.38 acres of the Property lies in the Township's Residential Medium ("**RM**") Zoning District and 16.43 acres of the Property lies in the Township's Residential High Density

("RH") Zoning District;

C. Sections 601.B.1 and 801.B.1 of the Township Zoning Ordinance permit the construction of the Proposed Development on the Property when authorized as a conditional use by the Township Board of Supervisors ("**Board**");

D. Public hearings on Heritage's Conditional Use Application were held before the Board on December 16, 2002, January 22, 2003, March 6, 2003, April 10, 2003, May 12, 2003, July 16, 2003, August 26, 2003, September 22, 2003, October 30, 2003, February 23, 2004 and March 22, 2004 (the "Hearings");

E. During the Hearings and in response to testimony from the Township's Traffic Engineer and Civil Engineer, Heritage submitted additional drawings which depict, among other things (i) the construction of a "roundabout" at the proposed entrance to the Proposed Development adjacent to Glen Willow Road, and (ii) an alternative main entrance to the Proposed Development over adjacent private property presently owned and controlled by the Butlers, Rakos and the Pyles ("**Secondary Access Road**") as is further described herein.

F. On October 6, 2004, after several extensions granted by Heritage, the Board voted to approve Heritage's Conditional Use Application subject to fifty-one (51) conditions ("**Conditional Use Approval**"), a copy of which is attached as **Exhibit "A"**.

G. On November 4, 2004, Heritage filed a Notice of Appeal of the Conditional Use Approval ("**Land Use Appeal**") contesting Conditions #1, 3, 4, 5, 8, 9, 10, 11, 14, 15, 19, 22, 23, 24, 26, 27, 28, 33, 34, 35, 36, 38, 39, 40, 44, 46, 49 and 51 of the Conditional Use Approval ("**Contested Conditions**").

H. On May 9, 2005, oral argument on the Land Use Appeal was held before the Court.

I. On August 12, 2005, November 10, 2005, January 25, 2006, May 18, 2006 and December 19, 2006 Judge Nagle entered Orders, copies of which are attached hereto as **Exhibit "B"**, granting the Parties additional time in which to reach a resolution of the Contested Conditions.

J. Through multiple meetings and discussions ("**Negotiations**"), the Parties have been able to resolve and/or reach an agreement on a majority of the Contested Conditions.

K. During the Negotiations, Heritage modified the Conditional Use Plan in an effort to resolve the Contested Conditions. Copies of the modified Overall Site, Landscaping and Grading/Drainage Plan sheets are attached as **Exhibit "C"** ("**Conceptual Plans**").

L. The Board agrees that Heritage shall be permitted to utilize the design depicted on the Conceptual Plans and the terms of this Agreement to engineer a combined preliminary/final subdivision and land development plan ("**Preliminary/Final Plan**") for the Proposed Development that will be submitted to the Township and reviewed in accordance with the Township Zoning, Subdivision and Land Development Ordinance ("**SALDO**") and applicable regulations to the extent not modified by the terms of this Agreement.

M. Therefore, the Parties desire to resolve a majority of the Contested Conditions and partially settle the Land Use Appeal by entering into this Settlement Agreement which shall be presented to the Court for its consideration and approval.

N. The Parties agreed to submit the remaining unresolved Contested Condition set forth herein to the Court, upon which the Court issued a decision on April 3, 2007, a copy of which is attached as **Exhibit "D"**.

NOW, THEREFORE, the Parties hereto, intending to be legally bound, agree that Heritage's Conditional Use Approval is hereby modified as follows:

1. **Incorporation Of Background.** The Background to this Agreement is incorporated into the body of this Agreement as if fully set forth herein.

2. **Approval of the Agreement.** The Board shall approve and execute this Agreement at its regularly scheduled public meeting on September 5, 2007.

3. **Revised and Replaced Conditions of Conditional Use Approval.** Heritage's Conditional Use Approval to construct the Proposed Development on the Property is modified as follows:

a. **SEWER (Revising and Replacing Contested Conditions ##1, 3, 4, 5 and 8).**

(1) Heritage shall be permitted to provide sanitary sewage service to the Property and Proposed Development via the London Grove Township public sanitary sewage system or a community sanitary sewage system. During preliminary/final land development, Heritage shall prepare and present a sewage facilities planning module to be reviewed and approved by the Township and DEP in accordance with the Sewage Facilities Management Act [35 P.S. §750.1 et seq.] and the regulations promulgated by DEP thereunder [25 Pa. Code §71.1 et seq.].

b. **WATER (Revising and Replacing Contested Conditions ##9, 10, 11 and 14).**

(1) Heritage shall be permitted to provide water service to the Property and Proposed Development via the London Grove Township public water supply system or a community water supply system as long as such water system has been approved by DEP and/or any governmental agency/unit having appropriate jurisdiction. During Preliminary/Final land development, Heritage shall provide to the Board details of the water supply system that it

proposes will service the Property and Proposed Development and demonstrate that such water supply is adequate to service the needs of the Proposed Development.

c. STORM WATER MANAGEMENT (Revising and Replacing Contested Conditions ##15 and 19).

(1) Contested Condition #15 is hereby deleted in its entirety.

(2) Heritage shall be permitted to grade, construct and install stormwater management facilities within the 75-foot property line setback area substantially similar to that which is depicted on the Conceptual Plans.

(3) The Conceptual Plans depict the total area that is to be utilized for stormwater management purposes and the use of both infiltration berms and conventional stormwater management techniques (wet basins and/or dry basins). No additional stormwater area shall be required unless the total area provided on the Conceptual Plans is deemed insufficient to satisfactorily reduce the post-development rate of flow to the pre-development rate of flow through the above-referenced infiltration berms and conventional stormwater techniques.

Heritage shall perform percolation and soil testing, including testing for the presence of limestone, in the locations designated on the Conceptual Plans for stormwater basins and/or infiltration berms to determine the feasibility of infiltration in accordance with the Township Ordinance. Heritage shall meet with the Township Engineer prior to conducting such testing. If such testing reveals that the ground located in the stormwater basin and infiltration berm areas depicted on the Conceptual Plans will percolate, then Heritage shall infiltrate stormwater.

If such testing reveals that the soils or subsurface geology in those locations designated on the Conceptual Plans to be used for stormwater basins and/or infiltration berms do not permit infiltration of stormwater, then Heritage shall construct wet basins in the areas designated on the

Conceptual Plans to be used for stormwater basins. Heritage shall be permitted to use grasslined swales to convey stormwater to and from those basins. In order to install and construct the wet basins or "permanent ponds", Heritage requires and the Board grants waivers of the following Township Stormwater Management Ordinance provisions:

(a) Section 303.05-C Part 2:

(i) Maximum stormwater basin depth of ten (10) feet;

(ii) Required stormwater basin volume and detention time.

Heritage estimates that it will require 108 hours of detention time instead of the maximum permitted 72 hours. Heritage will install aerators in the wet basins;

(iii) Required stormwater basin length to width ratio, including permitted use of permanent baffles to avoid "short circuiting" the basin. The depth of the pool in the wet basins shall be based on published EPA guidelines or the latest research on the maximum efficient water depth for water quality in wet basins. The use of baffles will be permitted providing that the baffles are constructed of a permanent type of material and results in a permanent installation. Wood or plastic shall not be considered permanent. Sediment removal from the basins containing the baffles must be possible utilizing standard backhoe type of excavators and such sediment removal shall not be unusually difficult to perform. Heritage will install split rail fencing around the perimeter of the constructed basins; and

(iv) Prohibition against stormwater discharge flowing across adjacent properties. Heritage will use level spreaders (or other energy dissipaters) to discharge collected stormwater in areas in close proximity to the Property boundary lines in order to maintain the pre-development rate of flow at existing discharge areas. Heritage shall not be required to obtain stormwater drainage easements from adjacent property owners provided

Heritage does not increase the rate of flow post-development at existing stormwater discharge areas. In no event shall Heritage be required to utilize any stormwater management technique that is inconsistent with or prevents Heritage from obtaining an NPDES permit from the Chester County Conservation District or DEP.

(4) Heritage shall be permitted to utilize a "closed" stormwater piping system within the streets of the Proposed Development.

(5) Heritage shall not propose the use of infiltration berms as sediment traps. Instead, Heritage shall be permitted to use one or more of the basins in the locations depicted on the Conceptual Plans as sediment catch basins that will be converted to a conventional stormwater detention basin after completion of construction if those basin locations will not infiltrate. If the basins appearing on the Conceptual Plans can infiltrate, Heritage shall be permitted to construct a temporary sediment catch basin in another feasible location on the Property that shall be filled upon completion of construction activities. In areas where infiltration berms are to be constructed, Heritage shall install temporary orange construction fencing and silt fencing around such areas in order to protect the proposed infiltration berm areas from any disturbance or sedimentation. Heritage shall not install and construct the infiltration berms until such time as areas upstream and tributary to the proposed infiltration berm areas have been permanently stabilized.

(6) Pursuant to Section 610 of the Township SALDO, the Township Engineer shall review and comment upon Heritage's erosion and sedimentation control plan ("E&S Plan") after Heritage has obtained Chester County Conservation District's and/or DEP's approval of the E&S Plan as well as obtained any required temporary NPDES permit associated with construction activities and use of any basin as a sediment catch basin and Heritage has

modified the E&S Plan according to the comments and/or modifications from the Chester County Conservation District and/or DEP. Heritage may conduct earthmoving or disturbance activities throughout the year provided that Heritage complies with approved E&S Plan controls.

d. LANDSCAPING, BUFFERING AND FENCING (Revising and Replacing Contested Conditions ## 22, 23, 24, 26 and 44).

(1) Heritage shall be permitted to grade, construct and install landscaping and buffering in the 75-foot property line setback area substantially similar to that which is depicted on the Conceptual Plans.

(2) Heritage shall install landscaping and buffering along the perimeter of the Property, except for the southwestern corner of Heritage's Property adjacent to the Truitt Property, in order to screen the Proposed Development from adjacent properties.

(3) The Parties agree that the Court shall decide the Truitt fence issue (Condition #24).

(4) As a result of the additional grading in the 75-foot property line setback area as depicted in the Conceptual Plans, Heritage has eliminated the need for retaining walls in all but four (4) locations. Heritage will agree to landscape the bottom tier of any retaining wall over six (6) feet in height in those four (4) locations, but the Parties agree that such landscaping details shall be deferred until after Heritage's submission of its Preliminary/Final Plans.

(5) Heritage shall landscape the crest of the open hill near PA Route I with an elevated landscaped berm as depicted on the Conceptual Plans to screen residences and mitigate noise from PA Route 1, but the Parties agree that such landscaping and berm details shall be deferred until after Heritage's submission of its Preliminary/Final Plans.

e. ACCESS, STREETS AND PARKING (Revising and Replacing Contested Conditions ## 27, 34, 35, 36, 38, 39 and 51)

(1) Contested Condition #38 is deleted in its entirety.

(2) Heritage shall construct the parking areas along the internal streets of the Proposed Development as depicted on the Conceptual Plans to prevent cars from backing out directly into the street right-of-way.

(3) Heritage shall only be required to provide a minimum of 2.5 parking spaces per dwelling unit for the overall Proposed Development. Currently, the Conceptual Plans depict a parking ratio of 3.1 spaces per dwelling Unit for the overall Proposed Development.

(4) Heritage shall design and configure the streets of the Proposed Development substantially similar to the layout as depicted on the Conceptual Plans. Heritage shall design and construct the parking areas and streets to conform to Township construction specifications.

(5) Heritage shall design and install traffic calming devices at appropriate locations along the streets of the Proposed Development, but such design details shall be deferred until after submission of Heritage's Preliminary/Final Plans.

(6) Heritage shall offer the streets of the Proposed Development for dedication to the Township and the Board shall accept dedication of the streets of the Proposed Development after completion of construction and final inspection and approval in accordance with Section 510 of the MPC.

(7) Heritage shall install the roundabout access from Glen Willow Road to the Proposed Development as depicted on the Conceptual Plans in accordance with Federal

Highway Administration standards on roundabouts as long as there is sufficient land on Heritage's Property to install and construct the roundabout in such a manner. If there is insufficient room on Heritage's Property to construct the roundabout in accordance with Federal Highway Administration standards, then Heritage shall be permitted to construct a boulevard entrance as was originally proposed.

(8) The Township has imposed a condition requiring Heritage to procure a secondary access from the Proposed Development to PA Route 41 ("Secondary Access"). The Secondary Access requires the obtaining of land, easements and/or rights-of-way over multiple properties located between Heritage's Property and PA Route 41 in which Heritage does not control nor has any ownership interest. While Heritage believes that it is not required to do so under Pennsylvania law, Heritage investigated procuring the Secondary Access. However, it determined that the cost of constructing the Secondary Access is prohibitive in light of the anticipated infrastructures costs (e.g. road, water and sewer) associated with the Proposed Development. Moreover, the Township continues to pursue a roundabout option at that intersection, which is inconsistent with the proposed Secondary Access/Route 41 intersection.

(9) Therefore, the Parties agree that the Secondary Access conditions (Conditions ## 34 & 35) are withdrawn and are no longer at issue.

(10) Regardless of whether there is a Secondary Access, Heritage shall engineer the Preliminary/Final Plans and construct the Proposed Development substantially similar to that which is depicted on the Conceptual Plans providing an area with a stubbed street connection to the Butler property, the location of the said stubbed street connection shall be clearly identified on the Preliminary/Final Plans.

(11) If signal warrants are met, Heritage shall install a traffic signal at

the intersection of Glen Willow Road and PA Route 41 provided PennDOT approves and issues a traffic signal permit for that intersection.

(12) Heritage shall pay a traffic impact fee of \$1,000 per approved dwelling unit (e.g. 374 approved units = \$374,000 traffic impact fee) (“**Traffic Impact Fee**”). The Traffic Impact Fee represents all of the potential off-site road improvements, including but not limited to: (i) improvements to Glen Willow Road beyond improvements made by Heritage to that portion of Glen Willow Road that fronts along Heritage’s Property; and (ii) any improvements along PA Route 41, including installation of traffic control devices (collectively, (i)-(ii) are the “**Off-Site Road Improvements**”).

Heritage shall post a letter of credit for the Traffic Impact Fee as part of the financial security posted under the Township Financial Security Agreement for the Proposed Development (“**Traffic Impact Fee Escrow**”). The Board shall grant a credit against and partial releases of the Traffic Impact Fee Escrow in the amount of Heritage’s costs to install and construct any of the Off-Site Road Improvements that Heritage may be required to install and construct in accordance with the terms of this Agreement. Any balance under the Traffic Impact Fee Escrow remaining thereafter shall be contributed to the Township. The Traffic Impact Fee may also be used to assist in the obtaining and/or construction of the Secondary Access by the Township or other property owners/developers.

(13) Heritage shall provide the Township with video and audio transcripts of Glen Willow Road’s preconstruction condition. Heritage shall repair Glen Willow Road to its preconstruction condition, including in accordance with the Township’s specifications for retrenching, should damage result to Glen Willow Road from construction activities. The cost to return Glen Willow Road to its preconstruction condition as a result of

damage from construction activities shall not be included as an Off-Site Road Improvement.

f. **HISTORIC HOUSE (Revising and Replacing Contested Conditions ## 28 and 33).**

(1) Heritage shall maintain the existing apartment uses in the existing historic building located on the Property as depicted on the Conceptual Plans. Prior to renovating the historic building, Heritage shall use an historic consultant to document and photograph the historic building. Heritage shall renovate the existing historic building on the Property in accordance with applicable Township building code requirements and shall use an historic consultant when preparing the architectural plans to renovate the historic building.

(2) Heritage will construct the Proposed Development as depicted on the Conceptual Plans to preserve the views of the historic house from Glen Willow Road.

g. **RECREATION (Revising and Replacing Contested Condition # 40).**

(1) Heritage shall pay to the Township a recreational impact fee in the amount of \$1,625.00 per approved unit for an estimated \$607,750.00 (\$1,625 x 374 units).

(2) In accordance with Section 615.H.4 of the Township SALDO, Heritage shall post a bond in the amount of \$607,750.00 as a condition of final approval and prior to the recording of the final approved plan to secure payment of the total recreation impact fee.

(3) Upon submission of a building permit application for each unit, Heritage shall pay \$1,625 and the Township shall reduce the bond securing the total recreation impact fee accordingly by issuing a release consistent with the total recreation impact fee payments made by Heritage with each permit application.

(4) Upon Heritage's last payment of \$1,625, the Township shall

immediately release the remaining bond securing the total recreation impact fee.

h. **MISCELLANEOUS (Revising and Replacing Contested Conditions ## 46 and 49).**

(1) Heritage shall submit a "reliance letter" to the Township regarding the Phase I Environmental site assessment performed on the Property.

(2) Heritage agrees to pay \$103,000 to the Township representing Township the conditional use application fees, including engineering, traffic engineering and legal review fees, within thirty (30) days of the Court's final and unappealable Order approving this Agreement.

4. **Settlement of Land Use Appeal, Court Approval of the Agreement and Court Disposition of Remaining Issues on Appeal.** This Agreement shall serve as the basis for a negotiated partial settlement of the Land Use Appeal. Immediately after the Board's approval and execution of this Agreement, counsel for the Parties shall execute and file a Joint Motion, in a form substantially similar to that which is attached as **Exhibit "E"**, which shall attach this Agreement as an exhibit, request that the Court approve the Agreement and enter the Order attached to the Joint Motion upon the Parties as a partial settlement of the Land Use Appeal. The Parties agreed to submit the Truitt fence condition (Condition #24) to the Court, which entered an Order dated April 3, 2007 (Exhibit "D") deciding the Truitt fence condition, thereby disposing of all issues in the Land Use Appeal.

5. **General Provisions.**

(a) **Governing Law.** This Agreement shall be interpreted and constructed in accordance with the laws of the Commonwealth of Pennsylvania.

(b) **Notices.** All notices or other communications required to be

given under the terms of this Agreement shall be in writing, and shall be sent by certified mail, postage prepaid, or by private carrier guaranteeing next day delivery addressed as follows:

If to Board:

Board of Supervisors
London Grove Township
372 Rose Hill Road, Suite 100
West Grove, PA 19390
Attn: Steven Brown, Township Manager

With a copy to:

William P. Lincke, Esquire
Beatty, Cramp, Kauffman & Lincke
2 West Market Street, 6th Floor
West Chester, PA 19382

If to Heritage:

Heritage Building Group, Inc.
2500 York Road
Jamison, PA 18929
Attn: Mr. Jon Tresslar

With a copy to:

Marc B. Kaplin, Esquire
Kaplin Stewart Meloff Reiter & Stein, P.C.
Union Meeting Corporate Center
910 Harvest Drive
P.O. Box 3037
Blue Bell, PA 19422

Or to such address or addresses and to the attention of such other person or persons as any of the parties may notify the others in accordance with the provisions of this Agreement.

b. **Entire Agreement.** This Agreement constitutes the entire understanding among the Parties. This Agreement supersedes any and all prior understandings and agreements regarding the subject matter contained herein.

c. **Assignment.** This Agreement may be assigned by Heritage upon 30-days prior written notice to the Board of Heritage's intent to assign this Agreement. No assignment shall be effective without the assignee's or successor's written acceptance of all of the obligations hereunder.

d. **Binding Effect.** The obligations hereunder shall run with the land and shall bind the Parties' successors and assigns.

e. **Specific Performance and Enforcement of Settlement Agreement.** In addition to all remedies at law, either party may petition the Court of Common Pleas retaining jurisdiction over the enforcement of the terms of this Agreement for specific performance of this Agreement without having to exhaust any administrative remedies.

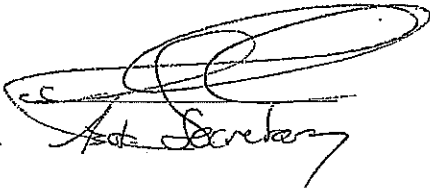
f. **Amendment.** This Agreement and the Settlement, Preliminary and Final Plans may be amended subject to the Board's approval, which shall not be unreasonably withheld.

g. **Counterparts.** This Agreement may be executed in multiple counterparts such that all counterparts together shall create a fully executed Agreement.

h. **Non-waiver.** By entering into this Agreement and using the Conceptual Plans as a basis for the Preliminary/Final Plans to be submitted, the Township is in no way waiving the applicability or enforcement of other applicable Township Ordinances and regulations that are not contemplated in this Agreement or the Conceptual Plans.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first above written.

ATTEST:




ATTEST:

Marilyn Venegas
Township Secretary

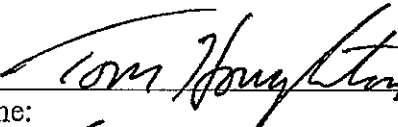
HERITAGE:


HERITAGE BUILDING GROUP, INC.

By: 
Name: Charles C. Sturges, III
Title: President

BOARD:

LONDON GROVE TOWNSHIP BOARD
OF SUPERVISORS

By: 
Name:

By: 
Name:

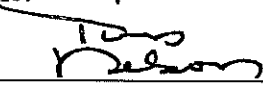
By: 
Name:

EXHIBIT "A"

BEFORE THE LONDON GROVE TOWNSHIP BOARD OF SUPERVISORS
CHESTER COUNTY, PENNSYLVANIA

**IN RE: CONDITIONAL USE APPLICATION OF HERITAGE BUILDING
 GROUP, INC.**

DECISION OF BOARD OF SUPERVISORS OF LONDON GROVE TOWNSHIP

In 2002, Applicant Heritage Building Group, Inc. filed an application seeking conditional use approval in connection with a proposed 374-unit townhome development on 76.81 acres of land adjacent to Glen Willow Road in London Grove Township known as tax parcel no. 59-05-0126.

Public hearings were held by the Township Board of Supervisors in connection with the application on December 16, 2002, January 22, 2003, March 6, 2003, April 10, 2003, May 12, 2003, July 16, 2003, August 26, 2003, September 22, 2003, October 30, 2003, February 23, 2004 and March 22, 2004.

The London Grove Township Board of Supervisors hereby APPROVES the conditional use application of Heritage Building Group, Inc. subject to the following list of CONDITIONS:

CONDITIONS

SEWER

1. This approval is conditioned upon the Township's receipt of DEP approval to include the property in the Township's Act 537 Plan.
2. Applicant acknowledges that the Municipal Authority's existing collection, conveyance, treatment and disposal system does not have adequate capacity for this development. Inclusion of this property into the Municipal Authority's sewer system will require an upgrade to the treatment and spray irrigation system. Applicant will pay its pro rata share of the cost to upgrade the treatment and

disposal components of the Municipal Authority's system, including land acquisition, design, permitting and construction.

3. If the Municipal Authority does not have adequate funding for the acquisition of land, design, permitting and construction of the treatment and disposal facilities necessary for the sewage generated by this development, the Applicant shall provide necessary funds. Should capacity beyond the needs of this development be provided, the Applicant would be eligible for reimbursement under the Municipal Authorities Act.

The Authority has reserved the right to request that the Applicant provide land, in an area approved by the Authority, suitable for spray irrigation of the wastewater generated by the development. The Applicant must obtain a DEP Part II Permit for the spray irrigation land. The Authority has also reserved the right to review all field work and hydrogeological analyses associated with preparation of the Part II permit application as well as the Part II Permit application. The Part II Permit Application will contain final design drawings in accordance with the LGTMA Standards and/or the Municipal Authority Engineer's approval. Buffers associated with the wetted spray area will be screened. All costs incurred by the Municipal Authority during the review of the field work, preparation of the Part II Permit Application and observation of the construction of facilities will be the responsibility of the Applicant. The Applicant will only be granted approval for the number of homes (a home is defined as a single family home generating 225 GPD of sewage, whether detached, attached, townhouse, condo or apartment) the spray land can accommodate on an annual average basis. For example, if the spray land permitted capacity is 900gpd, the number of homes equals 4. All spray lands, buffers, rights of way, etc. will be dedicated to the LGTMA, at no cost to the LGTMA, in accordance with other items contained herein.

4. Applicant's subdivision and land development plans shall provide a layout of the proposed sanitary sewer system that demonstrates the ability to provide safe, efficient and permanent facilities for the collection and conveyance of the sewage generated by the development to the Authority's collection and treatment system. Applicant agrees to pay for the design, permitting and construction costs for the collection and conveyance of sewage generated by this development to the Authority's system. Applicant further agrees to pay for the design, permitting and construction costs associated with upgrading the Authority's collection and conveyance facilities that are overloaded by the sewage generated from this development.
5. Applicant shall provide all easements, rights-of-way or property acquisitions required to install sewer infrastructure, both on and off the developed property. All such property shall be offered to the Municipal Authority for dedication and shall be free and clear of all liens and encumbrances. An Environmental Site Assessment on each property shall be provided for Municipal Authority review.

6. Applicant shall apply to the London Grove Municipal Authority for plan and permit review and approvals on the Municipal Authority's forms, including all applicable application fees and escrow deposits during land development plan review and construction.
7. Applicant shall design all sewer infrastructure in accordance with the Municipal Authority's Standard Specifications and Details for Water Mains and Sanitary Sewers.
8. Applicant shall be responsible for paying the then current sewer tapping fee at the time the subdivision plan is recorded or if requested by the Municipal Authority, provide money necessary for the Municipal Authority to acquire land for spray irrigation.

WATER

9. The Applicant shall provide for the cost of the design, permitting and construction of a 12" water main from Lake Road and Raymond Avenue to the site generally following Lake Road to Baltimore Pike, east on Baltimore Pike to the existing Wawa water main and then from the existing Wawa water main along Route 41 then north to the site.
10. Applicant shall provide additional facilities, including a 500,000 gallon elevated storage tank and associated piping or a ground level tank, UL rated booster pumping station with backup power on a minimum of one acre of land to be located north of the tract and south of Route 1 on parcel 59-5-124.1 N/F Robert J. and Bonnie Kenney, Deed Book 4345 page 128. The grade elevation of the site shall be no less than 380 feet above sea level. If the land is unobtainable, Applicant agrees to provide one acre of land, with a minimum grade elevation of 380 feet, within the proposed development.

The LGTMA and LGT reserve the right to select the style of tank, color scheme and logo, review the tank design, have facilities for cellular communications, observe construction, etc. At the sole discretion of the LGTMA, a ground level storage tank of same size and UL rated fire pumping system may be installed to provide for fire flow comparable to the fire flow provided by the elevated tank. All facilities will require approval from the Fire Marshall and be designed in accordance with the most current AWWA and NFPA standards. All facilities, piping, land and easements shall be offered to the LGTMA, at no cost to the LGTMA, in accordance with other items contained herein. All costs incurred by the LGTMA during the design, permitting and observation of the construction of these facilities will be the responsibility of the Applicant.

11. Applicant shall provide all easements, rights-of-way or property acquisitions required to install water infrastructure, both on and off the developed property. All such property shall be offered to the Municipal Authority for dedication and

shall be free and clear of all liens and encumbrances. An Environmental Site Assessment on any property offered for dedication shall be provided for Municipal Authority review.

12. Applicant shall design all water infrastructure in accordance with the Municipal Authority's Standard Specifications and Details for Water Mains and Sanitary Sewers. Water mains within the development shall be looped with no dead end mains.
13. Applicant shall apply to the London Grove Municipal Authority for plan and permit review and approvals on the Municipal Authority's forms, including all applicable application fees and escrow deposits during land development plan review and construction.
14. Applicant shall be responsible for paying the then current water tapping fee at the time the plan is recorded.

STORMWATER MANAGEMENT

15. Applicant shall have a Pennsylvania registered geologist/hydrologist determine whether water seepage through the ground in the area located approximately 500 feet northwest of the existing house is a natural spring, intermittent swale or watercourse.
16. Applicant shall perform percolation tests at all proposed infiltration facilities both prior to submission of the preliminary plan and after construction is complete and the contributing drainage areas are stabilized. If perc rates are less than during design, the developer must take corrective action as designated by the Township.
17. Applicant shall provide for a minimum ten (10) foot wide access way around the infiltration berms to allow for construction and future maintenance.
18. Applicant shall comply with the storm water management comments in the URS review letters.
19. Applicant agrees that no infiltration device may be used as a sediment trap and all infiltration devices shall be located "offline" of discharges from sediment traps.
20. Applicant agrees to plant the bottoms of the infiltration berms with vegetation as recommended by Township consultants.

FENCING, BUFFERING AND LANDSCAPING

21. Applicant shall submit land development plans which provide for a 75-foot perimeter buffer around the property. The Township will not oppose variance applications to allow the following in buffer areas: (i) stormwater grading; (ii)

grading to eliminate retaining walls; (iii) landscaping; (iv) infiltration berms in locations to be approved by the Township Engineer; (v) active recreation; (vi) fencing and (vii) walking trail.

22. Applicant shall submit a landscaping plan, which provides for landscaping within all open space, buffer, storm water management and retaining wall areas. Retaining walls that are over six (6) feet in height shall be landscaped at the bottom and on tier.
23. Applicant shall landscape the crest of the open hill near Route 1 in accordance with the URS comment letters of March 1, 2004 and September 10, 2003..
24. Applicant shall install fencing on Applicant's property along the perimeter of the property adjacent to the Truitt property of a construction and material to be agreed upon by Applicant, the Township and the State Police. The height of the fence shall be a minimum of 10' (if approved by the Zoning Hearing Board). If the applicant is required to seek a variance for a fence of that height they shall be required to do so and the Township will support the application. Plantings that do not exceed the height of the fence shall be required along the development side of the fence. Said fence and landscaping shall be acceptable to the State Police and Township.
25. The Township and the developer shall work together in good faith to discuss and address retaining wall, yard area and storm water management issues as raised in the URS review letters for lots 32-37 and 108-121.
26. Applicant will comply with URS comment 30 of March 1, 2004 and comment 31 of September 10, 2003.

PARKING

27. Parking for the apartments shall be as described in comment 29 of the March 1, 2004 URS letter and comment 30 of the September 30, 2003 URS letter. In the townhouse area of the development, if a minimum of a 25' wide cartway is provided, on-street parking is permitted on one side of the street only. If a minimum of a 26' wide cartway is provided, parking is permitted on both sides of the street.

The number of parking spaces for the entire development may be less than required by Township Ordinance under the following circumstances:

- a. The agreed to cartway width option as described above results in more total parking than required by Ordinance for off-street parking; and
- b. The number of total spaces provided is acceptable to the Township; and
- c. The applicant seeks and receives a variance. The Township will support the applicant in its variance request.

HISTORIC HOUSE

28. Applicant shall retain and renovate the historic house located on the property near Glen Willow Road in accordance with the recommendations of the Township Historical Commission.
29. The property shall be developed so that the view of the historic house from Glen Willow Road will be preserved and remain unobstructed by buildings or structures.
30. Applicant shall preserve a perimeter of 25 feet of open space surrounding the house.
31. Applicant shall be permitted to use the building for no more than three apartments.
32. Applicant shall work in good faith with the Township Historical Commission and its consultant to resolve the outstanding matters contained in the April 9, 2003 Wise Preservation Planning letter.
33. Prior to performing any renovations to the House, Applicant shall document the structure and the area of historic significance around the structure through the use of a qualified historic consultant.

ROAD ISSUES

34. Applicant shall provide road access to Route 41. The Township shall approve the location, design and specification of the road. The applicant shall be responsible for all costs associated with acquiring and constructing this road and intersection access.
35. The applicant shall provide to the Township a revised Traffic Impact Study that accounts for trip redistribution to the second access and determines whether additional improvements are required. The applicant shall be obligated to construct the improvements identified in the revised Study.
36. The applicant shall improve Glen Willow Road to meet the PennDOT Resurfacing, Restoration and Rehabilitation (3R) Design Criteria, contained in PennDOT Publication 70M, Guidelines for the Design of Local Roads and Streets.
37. The intersection of Glen Willow Road and the development access shall be constructed as a roundabout per the May 1, 2003 letter from Traffic Planning and Design.

38. Applicant shall comply with the following during land development: Comments 1-9 in the February 18, 2004 TPD letter, Comments 1-9 in the September 4, 2003 Traffic Planning and Design letter; Comments 11-16 of the April 8, 2003 Traffic Planning and Design letter, Comments 17-24 of the October 23, 2002 Traffic Planning and Design letter.
39. The applicant shall contribute an amount equal to \$1000 multiplied by the peak hour afternoon vehicular trips identified by Traffic Planning and Design. This contribution shall be in addition to the physical road improvements required by this decision.

RECREATION

40. Applicant shall provide a minimum of four tot lots and one picnic area as active recreation for the development. The Parks and Recreation Board shall comment on the locations and equipment and the Board of Supervisors shall approve of these items.
41. Applicant shall provide the recreation fee to the Township as required by Township ordinance.

LIGHTING

42. Applicant shall submit a lighting plan, which complies with the Township's current lighting ordinance requirements and shall utilize the Township-selected light standard to be uniform with the other new developments.
43. Applicant shall comply with the points raised S. Stubbe letter dated November 5, 2003.

NOISE/GLARE

44. The Applicant shall install sound mitigation devices in connection with the proposed homes near U.S. Route 1.

ZONING

45. Applicant shall ensure that the rear yards do not extend into the 75' perimeter.

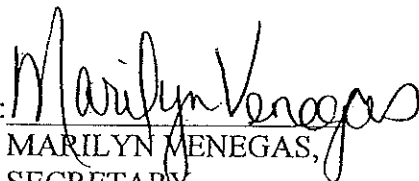
MISCELLANEOUS

46. Applicant shall pay all outstanding plan review charges, including but not limited to engineering, traffic engineering and legal review charges within 30 days of the conditional use decision.
47. Applicant's Land Development Plans shall designate waste and recycling removal areas. These areas shall be located so as not to interfere with traffic and/or parking. These areas shall be screened with a solid fence and landscaping on at least three sides in accordance with URS comment letters of March 1, 2004 and September 10, 2003.
48. Applicant understands that the plans show a maximum number of dwellings and there is no guarantee that this number will be approved during the land development process.
49. Applicant shall submit a Phase I Environmental site assessment.
50. Installation of any utilities along Glen Willow Road, in addition to the general construction vehicle access generated by the construction of this development, will cause significant damage to this road. Applicant shall reconstruct Glen Willow Road after the community has been constructed. Applicant shall provide the Township with a professionally prepared video and audio transcript of the road's condition before construction is begun. This will act as a documented record of the physical condition of Glen Willow Road.
51. The roads of the development, regardless of whether public or private, must be designed and constructed to Township standards.

Date: 10-6-04

LONDON GROVE TOWNSHIP
BOARD OF SUPERISORS

ATTEST:


MARILYN MENEGAS,
SECRETARY


THOMAS D. HOUGHTON, CHAIRMAN

EXHIBIT "B"

1475-10
Heritage 1 AUG 15 2005
London Grove
cc: GIA

IN RE: APPEAL OF
HERITAGE BUILDING
GROUP, INC. FROM THE
DECISION DATED
OCTOBER 6, 2004 OF THE
BOARD OF SUPERVISORS
OF LONDON GROVE
TOWNSHIP

IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

NO. 04-08887

Land Use Appeal

Marc B. Kaplan, Esquire, Attorney for Plaintiff Heritage Building Group, Inc.
Vincent B. Mancini, Esquire, Attorney for Intervener Nancy Trait
London Grove Township Board of Supervisors

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OFFICE OF THE
PROthonARY
CHESTER CO., PA.

ORDER

AND NOW, this *12th* day of August 2005, given the efforts expended

by all parties in their attempt to resolve this matter and with the agreement of all counsel of record, it is hereby ORDERED AND DECREED as follows:

This matter is hereby remanded to the London Grove Township Board of Supervisors for the following purposes:

- a. The Parties shall have a period of thirty (30) days from the date this Order is docketed to continue their discussions and attempts to resolve this matter; and
- b. If the aforesaid thirty (30) day period expires without a resolution by the parties, the London Grove Township Board of Supervisors shall then have an additional thirty (30) days within which to adopt and file Findings of Fact and Conclusions of Law, with the Court.¹

BY THE COURT:

Ronald C. Nagle
Ronald C. Nagle J.

¹ Heritage Building Group, Inc. ("Appellant") has appealed to the Court fifty-one conditions attached by the Board to its approval of the Appellant's conditional use application. However, the Board's written decision does not set forth the findings of fact and conclusions of law upon which those conditions are based, which the Court believes essential to the proper determination of the Appeal.

**KAPLIN STEWART MELOFF
REITER & STEIN, P.C.**
By: Marc B. Kaplin, Esquire
Gregg I. Adelman, Esquire
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BEATTY LINCKE
By: William P. Lincke, Esquire
Attorney ID No. 23123
2 West Market St., 6th Floor
West Chester, PA 19382
(484) 356-0555

FILED
05 NOV 14 AM 8:32
OFFICE OF THE
PROTHONOTARY
CHESTER CO. PA.

Attorneys for Heritage Building Group, Inc.

Solicitor for London Grove Township
Board of Supervisors

HERITAGE BUILDING GROUP Appellant	:	IN THE COURT OF COMMON PLEAS CHESTER COUNTY, PENNSYLVANIA
v.	:	No. 04-08887
LONDON GROVE TOWNSHIP BOARD OF SUPERVISORS Appellee	:	LAND USE APPEAL

ORDER

AND NOW, this 10th day of NOVEMBER, 2005, upon consideration of the Joint Motion filed by Appellant Heritage Building Group, Inc. and Appellee London Grove Township Board of Supervisors for an extension of time to explore a settlement of the contested issues of the above-captioned Land Use Appeal, it is hereby ORDERED and DECREED that:

- a. The parties to the Land Use Appeal shall have thirty (30) days from the date of this Order to finalize their discussions and attempts to resolve the Land Use Appeal;
- b. If the aforesaid thirty (30) day period expires without a resolution by the parties, the London Grove Township Board of Supervisors shall then have thirty (30) days to adopt and file Findings of Fact and Conclusions of Law with the Court in accordance with the Pennsylvania Municipalities Planning Code;

c. A teleconference call with the Court shall occur on the 27th day of January 2006 at 9:15 a.m./p.m.; and to be initiated by PLAINTIFF TO CHAMBERS @ 610 344 6184 AND ALL OTHER PARTIES

d. Thereafter, this Court will consider the Record of the Land Use Appeal, including oral argument held thereon, and render a decision on the Land Use Appeal.

BY THE COURT

Ronald C. Nagle, J.

Copies to:
William P. Lincke, Esquire
Marc B. Kaplin, Esquire
Vincent Mancini, Esquire

IN RE: APPEAL OF
HERITAGE BUILDING
GROUP, INC. FROM THE
DECISION DATED
OCTOBER 6, 2004 OF THE
BOARD OF SUPERVISORS
OF LONDON GROVE
TOWNSHIP

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IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

NO. 04-08887

Land Use Appeal

OFFICE OF THE
PROthonotary
CHESTER CO. PA

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FILED

Marc B. Kaplan, Esquire, Attorney for Plaintiff Heritage Building Group Inc.
Vincent B. Mancini, Esquire, Attorney for Intervener Nancy Trait
William P. Lincke, Esquire, for London Grove Township Board of Supervisors

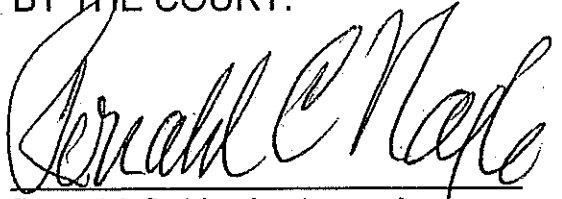
ORDER

AND NOW, this 25th day of January 2006, following

telephone conference conducted by the Court with all counsel on January 25, 2006, it appearing to the Court that the parties have not concluded settlement negotiations, but wish to continue further negotiations toward a resolution of the appeal, and it further appearing to the Court that the parties are making a good faith effort in attempting to resolve the complex issues which this appeal presents, the Court's Order of November 10, 2005 is, at the request of the parties and with the concurrence of their respective clients, continued in effect for a further period of thirty (30) days from this date. Otherwise, the requirement of paragraph (b) of the Court's November 10, 2005 Order shall be timely implemented and completed by the London

Grove Township Board of Supervisors.

BY THE COURT:



Ronald C. Nagle J.

1495-16
Heritage / London Grove
cc: GHA

IN RE: APPEAL OF
HERITAGE BUILDING
GROUP, INC. FROM THE
DECISION DATED
OCTOBER 6, 2004 OF THE
BOARD OF SUPERVISORS
OF LONDON GROVE
TOWNSHIP

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IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

NO. 04-08887

Land Use Appeal

OFFICE OF THE
PROTHONOTARY
CHESTER CO., PA

06 MAY 18 AM 9:36

FILED

Marc B. Kaplan, Esquire, Attorney for Plaintiff Heritage Building Group Inc.
Vincent B. Mancini, Esquire, Attorney for Intervener Nancy Trait
William P. Lincke, Esquire, Attorney for London Grove Township Board of Supervisors

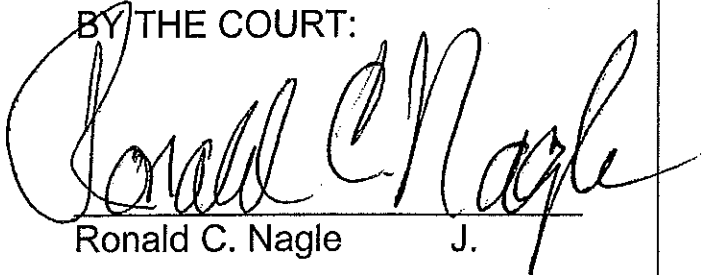
ORDER OF COURT

AND NOW, this 18th day of May 2006, following

conference conducted by the Court on May 17, 2006 with all counsel present to review progress on the efforts of the parties to resolve the complex issues presented by this land use appeal, the Court being satisfied that some progress has been made, although difficult issues remain outstanding for possible resolution, at the request and with the concurrence of the parties, it is ORDERED that a further conference is hereby scheduled for Wednesday, June 21, 2006 at 1 P.M. prevailing time in the undersigned's Court Room No. 4. Upon request of any party, the Court may require the presence of representatives of the local governing body and municipal authority authorized to act on their behalf and an authorized representative of the Appellant and the Intervener. Pending said

conference, implementation of the Court's Order of August 12, 2005, as amended by its Order of January 25, 2006, shall be DEFERRED.¹

BY THE COURT:



Ronald C. Nagle J.

¹ By Order dated August 12, 2005, I directed the Township's Board of Supervisors to make and adopt findings of fact and conclusions of law necessary to support the conditions imposed upon Heritage by the Board's October 6, 2004 Decision, which is the subject of the instant appeal. Since that date, the parties have been attempting to resolve the issues encompassed by the conditions. I have by subsequent Orders, at the parties' joint request, extended the date for the Board's adherence to my August 12, 2005 Order. At today's conference, counsel for the Board and the Appellant reported that they have made progress in resolving what they characterize as miscellaneous issues (there are numerous of these); however, sewer and water issues and road access issues, which I recognize are among the most difficult of resolution, remain outstanding. At the request of the parties, I have granted additional time for further meaningful discussions relative to the sewer, water and road issues, with the expectation that a good faith effort will be made toward their resolution. The parties will be expected to report significant progress in dealing with and resolving the foregoing issues at the next scheduled conference; otherwise, I will require the Board's adherence to paragraph "b" of my August 12, 2005 Order within the timeframe specified therein.

IN RE: APPEAL OF
HERITAGE BUILDING
GROUP, INC. FROM THE
DECISION DATED
OCTOBER 6, 2004 OF THE
BOARD OF SUPERVISORS
OF LONDON GROVE
TOWNSHIP

IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

NO. 04-08887

Land Use Appeal

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PROthonotary
CHESTER CO., PA

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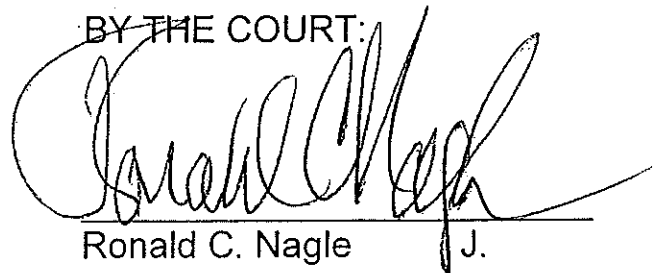
Marc B. Kaplan, Esquire, Attorney for Plaintiff Heritage Building Group Inc.
Vincent B. Mancini, Esquire, Attorney for Intervener Nancy Trait
William P. Lincke, Esquire, Attorney for London Grove Township Board of Supervisors

ORDER OF COURT

AND NOW, this *19th* day of December 2006, following

receipt of correspondence from the Appellant of renewed settlement negotiations with the Township intended to reach an amicable settlement of the appeal, and telephone conference with counsel for the parties with respect to same, upon concurrence of the parties, the Court grants the parties an additional 30 days within which to conclude settlement negotiations and a written settlement agreement, or, in the alternative, reduce the number of issues on appeal. IT IS SO ORDERED.

BY THE COURT:



Ronald C. Nagle J.

EXHIBIT "C"