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November 10, 2008

**VIA FACSIMILE**

Carroll Township Board of Supervisors  
Carroll Township Municipal Building  
555 Chestnut Grove Road  
Dillsburg, PA 17019

Re: South Mountain Commons

Dear Board of Supervisors:

I understand that you will be reviewing the status of the South Mountain Commons Development subdivision plan at your meeting on November 10, 2008. Unfortunately I am scheduled to be at another hearing and therefore I am unable to attend. However, I wanted to provide you with my clients' position regarding the current status of this subdivision plan.

As you know on September 10, 2008, the Honorable Stephen P. Linebaugh sustained the appeal filed by Carroll Citizens for Sensible Growth and the Pealer family to the Supervisors' approval of the South Mountain Common subdivision plan. Judge Linebaugh concluded that the subdivision plan submitted by JZCM violated the requirements in the Township's ordinances and, therefore, the Board abused its discretion in approving the plan.

After providing a thorough and well reasoned opinion, Judge Linebaugh entered an Order stating that "the above-captioned matter is hereby remanded to the Carroll Township Board of Supervisors for further proceedings consistent with the Opinion of even date herewith entered by this Court." JZCM did not appeal Judge Linebaugh's decision and, accordingly, it is now binding and must be followed.

As you know, pursuant to section 909.1 (b) (2) of the MPC, 53 P.S. § 10909.1 (b) (2), the MPC grants the governing body of a municipality exclusive jurisdiction to render decisions on subdivision and land development plans. Accordingly, the Judge properly remanded this matter to allow the Board, who has exclusive jurisdiction, to amend its April 25, 2007 decision from a conditional approval to a denial based on the reasoning set forth in the Judge's Opinion and with the appropriate citations to the relevant ordinance provisions. However, as of this date, my understanding is that the Board has not issued an amended decision consistent with the Judge's Opinion and as required by the MPC, but instead has not taken any action at all. Accordingly, I am asking that the Board take immediate action to amend its April 25, 2007 decision from a conditional approval to a denial based upon the reasons set forth in Judge Linebaugh's decision.

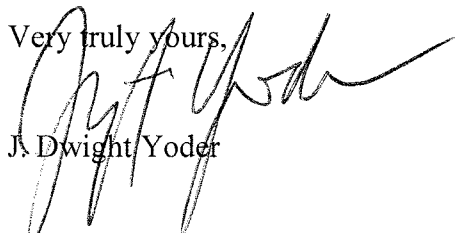
I also would note that the Judge's opinion did not remand the matter to allow the Board to take additional evidence, but only to correct its prior decision. While a remand to acquire additional evidence may be appropriate in certain situations (for example, when there are unresolved factual issues that require additional testimony or evidence), that is not the case in the instant matter. In fact, Judge Linebaugh denied my client's request to supplement the record after he concluded that all parties had ample opportunity to present all of the information and evidence they wanted to present. Moreover, on appeal JZCM never requested a remand or an opportunity to present additional evidence or submit new plans. Therefore, it is clear that the only reason the Judge remanded this matter to the Board was to allow the Board to enter an appropriate decision denying JZCM's subdivision plan pursuant to the requirements of the MPC (based on the reasons set forth in the Judge's opinion).

Finally, as you know, following the decision on JZCM's subdivision application, the Township adopted important amendments to its land use ordinances—amendments that further protect the safety, health and welfare of the citizens of the Township. My client has learned that JZCM may be submitting another subdivision plan at some point in the future for South Mountain Commons. If JZCM decides to submit another subdivision plan, the Township must evaluate that submittal based on the ordinances as they exist at the time JZCM submits its new plans, which would include the new amendments that were adopted since JZCM submitted its prior application on May 9, 2006 (which the Court found to be defective). JZCM cannot submit a defective subdivision application and, then, when that application is held to be invalid, expect that a new application can simply be submitted that need not comply with subsequent amendments. If JZCM wanted to be protected against any subsequent amendments, it had to submit a subdivision plan that complied with the previous ordinances prior to their adoptions. It chose not to do so even after the very problems set forth in Judge Linebaugh's opinion were raised by my clients prior to the Board's April 2, 2007 decision. In short, by not correcting these problems when the matter was before the Board, JZCM assumed the risk that the Township would not adopt any new amendments that may affect a new plan submittal.

Accordingly, I would ask the Board to take immediate action to formally deny JZCM's May 9, 2006 subdivision plan for the reasons set forth in Judge Linebaugh's decision and to make it clear that any subsequent submissions by JZCM for the South Mountain Commons development will be evaluated against the ordinances in effect on the date of those submissions.

Thank you for your consideration of this matter.

Very truly yours,

  
J. Dwight Yoder

JDY/kasm

cc: Steven A. Stine, Esquire (via facsimile)  
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