BEFORE THE BOARD OF SUPERVISORS OF EAST FALLOWFIELD TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA

In Re:

Application of	:	**No. C - 3 - 10**
Real Estate Finders' LLC	:	
for Conditional Use Approval	:	

DECISION AND ORDER

AND NOW, this 27th day of July, 2010, the Board of Supervisors of East Fallowfield Township hereby grants, subject to the conditions specified hereinbelow, the application of Real Estate Finders, LLC for conditional use approval pursuant to Sections 27-1402.3(B)(1)(b), 27-1902, 27-1903 and 27-1904 of Chapter 27 of the Township of East Fallowfield Code of Ordinances (the "Code"), said Chapter 27 being the codification of the East Fallowfield Township Zoning Ordinance (the "Zoning Ordinance"), to allow disturbance of 3,559 square feet of very steep slopes for grading along Strasburg Road to provide sight distance for an existing driveway serving Lot 1 of a proposed eleven (11) lot single family residential subdivision on the property located at 2133 - 2135 Strasburg Road, and enters the following factual findings, conclusions and discussions of reasoning in support of the grant of the Application.

I. Background of the Application

By application received May 14, 2010 and revised on June 21, 2010 ("Application"), Real Estate Finders, LLC (the "Applicant") requested approval by the Board of Supervisors of East Fallowfield Township ("Board" and the "Township" respectively) for conditional use approval to allow the disturbance of very steep slopes on Applicant's property located at 2133 - 2135 Strasburg Road. The property consists of approximately 34.746 acres and is located within the R-1 Low Density Residential Zoning District. The property is also known as UPI (tax parcel) no. 47-8-21.

Notice of the scheduling of a public hearing for June 28, 2010, was published in the Daily Local News, a newspaper of general circulation in the Township, on June 13 and June 20, 2010, and the public hearing was opened pursuant to public notice on June 28, 2010. The Board entered

exhibits into the record and the Applicant's case in support of the Application was presented to the Board through the testimony of Stephen J. Sauselein, P.E. of Edward B. Walsh; together with the presentation of certain documentary exhibits. Its Solicitor, Vincent M. Pompo, Esquire of Lamb McErlane PC, represented the Board.

The record in this matter consists of the transcribed notes of testimony taken at the public hearing conducted on June 28, 2010, together with the documentary exhibits marked for identification and admitted into the record by the Board. This Decision and Order is promulgated pursuant to Zoning Ordinance §§27-902 & 27-1903.B. and the enabling provisions of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, as amended, 53 P.S. §10101 et seq.

II. Findings of Fact

1. During the public hearing, the following exhibits were presented into the record:

   B-1 - Public Notice;

   B-2 - Proof of Publication;

   B-3 - Affidavit of posting of the Property;

   B-4 - Copy of the East Fallowfield Township Zoning Ordinance;

   B-5 - Conditional Use Application;

   B-6 - Memorandum from East Fallowfield Township Planning Commission dated June 7, 2010;

   B-7 - Letter from Chris Della Penna dated May 25, 2010;

   B-8 - Letter from Chris Della Penna dated June 26, 2010; and

   B-9 - Memorandum from Historic Commission dated June 9, 2010.

   A-1 - Plan prepared by Edward B. Walsh & Associates, LLC, dated March 26, 2007 and last revised June 21, 2010.

2. The Applicant is Real Estate Finders, LLC, the record owner of the property located in the Township of East Fallowfield at 2133 - 2135 Strasburg Road (the

"Property").

3. The Property consists of 34.746 total acres, and is located within the R-1 Low Density Residential Zoning District.

4. The Applicant obtained preliminary plan approval for the proposed subdivision and land development of the Property into eleven (11) single family residential dwelling lots and related improvements, including but not limited to a cul-de-sac serving ten (10) of the proposed dwelling lots (the "Development").

5. Lot 1 of the Development's proposed 11 lots contains historical structures, including a single family residential dwelling that is provided access by way of an existing driveway ("Lot 1").

6. The Applicant proposes to retain the historical structures on Lot 1, including the dwelling. The Applicant proposes to maintain access by way of the existing driveway in its current location.

7. As part of final plan approval for the Development, the Applicant is required to obtain a Highway Occupancy Permit ("HOP") from the Pennsylvania Department of Transportation ("PennDOT") for the Development. PennDOT granted the HOP on the condition that the Applicant grades the embankment along Strasburg Road, west of Lot 1's existing driveway to provide adequate sight distance for the existing driveway.

8. The embankment grading will require the disturbance of 3,559 square feet of very steep slopes (greater than 25 percent slope), approximately 14.2% of the very steep slopes located on the Property.

9. The proposed embankment grading required as a condition of the HOP is not located within the right-of-way of the cul-de-sac the Applicant proposes to

dedicate to the Township.

10. The construction of the Development is compatible with the existing single family residential dwellings located within the neighborhood.

11. There is no detriment to the public health, safety, or general welfare by the proposed disturbance of the very steep slopes.

12. Subject to the conditions of the HOP, the existing driveway provides a safe and adequate access to Strasburg Road.

13. The proposed location and layout of the grading for the existing driveway is the only feasible location to avoid greater disturbance of natural resources, including very steep slopes and wetlands, to provide adequate sight distance.

14. The Applicant failed to demonstrate that the existing driveway provides adequate access for emergency vehicles.

15. The East Fallowfield Township Historic Commission granted approval conditioned on the Applicant revising its final subdivision and land development plan per the Historic Commission's recommendations, as agreed to by the Applicant.

16. The East Fallowfield Township Planning Commission reviewed and approved the conditional use application on the condition of the Historic Commission and Township Engineer's approval.

17. By the instant Application, the Applicant seeks to obtain conditional use approval to allow the disturbance of very steep slopes on the Property to provide proper sight distance for Lot 1's existing driveway by grading the embankment to the east of the existing driveway.

III. Conclusions of Law

1. The Board has jurisdiction of this Application for conditional use approval.

2. Approval of the Application as conditioned hereinbelow is consistent with the evidence of record and the criteria and standards specified in Sections 27-1402.3.B and 27-1903 of the Code.

3. The proposed grading of up to 15% of the very steep slopes for the proposed driveway is permitted by conditional use under Section 27-1402.3(B)(1)(b) of the Zoning Ordinance.

IV. Order

The Board finds and concludes that the Applicant will have met the requirements of the Zoning Ordinance for conditional use approval, if, and only if, the Application is amended and supplemented in accordance with the conditions specified hereinbelow. In granting the Application, the Board has relied upon the testimony, plans and exhibits presented by the Applicant in this proceeding and said testimony, plans, exhibits and documentary evidence are hereby incorporated as additional conditions of approval, the Applicant being strictly bound by all the representations made in the testimony, plans, and exhibits and documentary evidence.

The following conditions are imposed and attached pursuant to Section 603 (c)(2) of the Municipalities Planning Code and Zoning Ordinance Sections 27-1902.E. and 27-1903.B. Any violation of the conditions during or following construction will be treated as a violation of the Zoning Ordinance. This Decision and Order grants only zoning, conditional use approval in accordance with their express terms for the Development as described in the Application and by the testimony and exhibits. Nothing contained in this Decision and Order shall be construed to abrogate or limit the obligation of the Applicant to comply with the applicable requirements of the Township's Subdivision and Land Development Ordinance ("SLDO"). Except as expressly augmented and clarified by these conditions, review of the land development application shall be in accordance with all of the otherwise applicable standards, specifications, and regulations of the

Township and of all other agencies with jurisdiction over the Property, the Development, or any aspect thereof. Any proposed development or use of the Property different in any aspect from the Applicant's proposal will require conditional use application to and approval from the Board. For the purpose of this Decision and Order, and specifically the following conditions, the term "Applicant" shall include the Applicant's successors and assigns and interests with respect to the Property and the Application:

1. Any material deviation or change from the testimony, plans and exhibits presented on behalf of the Applicant, or from this decision and any conditions imposed hereby shall require an amendment to this decision and order by the Board of Supervisors following proper application and hearing.

2. As a condition of final plan approval of the Development, the Applicant shall go before the Historic Commission and demonstrate that the Applicant's final subdivision and land development plan is revised in accordance to the Historic Commission's recommendations, to the satisfaction of the Township Engineer.

3. As a condition of final plan approval of the Development, the Applicant shall demonstrate that the existing driveway provides adequate emergency access, to the satisfaction of the Township Fire Chief.

4. Within 30 days of the date of this Decision and Order, the Applicant shall pay in full all fees charged by Township consultants for review of the Conditional Use Application and plans and preparation of this Decision and Order.

5. The Applicant shall express to the Board in writing within fourteen (14) days of the date of this Decision and Order, its agreement to the above conditions or the Application is denied; the Board expressly finding and concluding that the Application in the absence of compliance with the said conditions is inconsistent with the objective criteria set forth in the applicable provisions of the Zoning Ordinance.

ADOPTED and **ORDERED** this 27th day of **July, 2010**.

BOARD OF SUPERVISORS
EAST FALLOWFIELD TOWNSHIP

Chris Amentas, Chairman

Chris Makley, Vice Chairman

George Broadbent, Jr., Member

Gary Barach, Member

Mark Toth, Member

ATTEST:

Denise Miller, Secretary