

**BOARD OF COMMISSIONERS OF RADNOR TOWNSHIP, PA**

**Docket No.** 2012-CU-13

**Applicant:** E.S. III LP  
107 Twaddell Mill Road  
Wilmington, DE 19807  
Attn: Edgar Scott, III

**Owners:** The Robert L. Montgomery Trust dated 6/4/12  
Mellon Bank, N.A. and W. Gresham O'Malley, Trustees  
Montgomery, McCracken, Walker & Rhoades, LLP  
123 South Broad Street  
Philadelphia, PA 19109  
and  
The Sydney F. Tyler Trust # 6 dated 5/30/17  
First Union Bank, Trustee  
Montgomery, McCracken, Walker & Rhoades, LLP  
123 South Broad Street  
Philadelphia, PA 19109

**Subject Property:** The subject property consists of 27.65 acres of the balance of the original Ardrossan Farm, Portfolio No. 36040202300, Block-Unit 06-03-008:000.

**Requested Relief:** The Applicant requests conditional use approval of a Density Modification Development, pursuant to §280-90 through §280-100 of the Radnor Township Zoning Ordinance ("Zoning Ordinance"), in order to develop up to 6 residential lots, one of which will accommodate an existing structure on the property.

**Hearing History:** The original application was filed in Radnor Township on August 5, 2013. A revised application was submitted to Radnor Township on August 29, 2013. The hearing was held on November 21, 2013 at the Radnor Township Building, 301 Iven Avenue, Wayne, PA. The Applicant, and all other parties, agreed to commence this hearing at the conclusion of several nights of hearings held on a similar conditional use application for a Density Modification Development of the "Main Tract" of the Ardrossan Farm, consisting of 311.54 acres.

**Appearances:** Applicant by: John C. Snyder, Esquire  
Saul Ewing LLP  
1200 Liberty Ridge Drive  
Suite 200  
Wayne, PA 19087-5569

Radnor Township by: John B. Rice, Esquire  
Grim, Biehn & Thatcher  
104 South Sixth Street  
P.O. Box 215  
Perkasie, PA 18944

Radnor Township Tax  
Payers Association by: James Ettelson, Esquire  
Offit/Kurman  
10 Penn Center  
1801 Market Street  
Suite 2300  
Philadelphia, PA 19103

Radnor Conservancy by: David C. Toomey, or  
Ginny Kreitler  
332 Walnut Avenue  
Wayne, PA 19087

Ginny Kreitler, Pro Se: 646 Lakeview Circle  
Newtown Square, PA 19073

Leslie Morgan, Pro Se: 12 Farm Lane  
Wayne, PA 19087

Colleen Price, Esquire  
Pro Se: 536 Atterbury Road  
Villa Nova, PA 19085

Brian Price: 536 Atterbury Road  
Villa Nova, PA 19085

Radnor League of Women  
Voters, Pro Se P.O. Box 7113  
Wayne, PA 19087  
c/o Barbara Schraudenbach

**Date of Issuance:** January 7, 2014

## DECISION

### FINDINGS OF FACT:

1. The hearings in this matter were conducted by William J. Bolla, Esquire who was appointed as the Hearing Officer to determine the application pursuant to §908 of the Pennsylvania Municipalities Planning Code, 53 P.S. §10908.
2. The Applicant is the equitable owner of the subject property pursuant to a valid Agreement of Sale with its Owners dated July 31, 2013.
3. Radnor Township was granted party status through its solicitor John B. Rice, Esquire.
4. The Radnor Township Tax Payers Association was granted party status through its counsel, James Ettelson, Esquire. It is a civic organization consisting of Radnor Township taxpayers and organized as a Pennsylvania nonprofit corporation. Its purpose is to “unite local residents to discuss projects and public improvements and disseminate information of public interest to the community”.
5. The Radnor Conservancy was granted party status through its President, David C. Toomey, and alternate representative, Ginny Kreitler. The Conservancy is dedicated to the protection of open space and the environment of Radnor Township and organized as a Pennsylvania Non-Profit Corporation.
6. In addition, Ms. Kreitler entered her appearance as a Radnor Township resident, living on property located in the vicinity of the subject property.
7. Leslie Morgan was granted party status. She is a Radnor Township resident who lives on property in the vicinity of the subject property.
8. Colleen Price, Esquire, was granted party status. She is a Radnor Township resident who lives on property in the vicinity of the subject property.
9. Brian Price was granted party status. He is a Radnor Township resident who lives on property in the vicinity of the subject property.
10. The Radnor League of Women Voters was granted party status through its Vice-President, Barbara Schraudenbach. The League of Woman Voters is a civic organization that monitors zoning, planning, transfer and acquisition of land in Radnor Township and supports the protection of open space and recreational lands within its borders.
11. The subject property is as depicted on Exhibit W-4, a Conditional Use Plan for the development of 6 residential lots, prepared by Momenee and Associates, Inc., dated July 31, 2013 (the “Plan”). It consists of approximately 27.65 acres.

12. The subject property is identified as the “Wheeler Tract”, the remaining balance of the original Ardrossan Estate<sup>1</sup> containing an existing former schoolhouse building consisting of 2,378 square feet, which is to be converted to a single family dwelling on one of the lots proposed. It has slightly sloping terrain with a significant portion being located within the flood plain of Darby Creek, which runs along the western boundary of the subject property.

13. Darby Creek is an impaired stream located along the west of the subject property. The subject property is in the Darby Creek watershed and the protection of the watershed and its riparian area is encouraged by the terms of the Zoning Ordinance in a Density Modification Development.

14. The subject property is located in the AC, Agricultural-Conservation Zoning District of Radnor Township. Its net area, after deduction of existing road rights-of-way; 50% of slopes greater than 20% grade; wetlands; and 50% of flood plains; is 16.34 acres. The Applicant proposes to develop portions of the subject property as a Density Modification Development, creating 6 residential lots pursuant to the Plan.

15. The construction of single family detached dwellings on the subject property is permitted, by right, pursuant to §280-9.A of the Zoning Ordinance.

16. Pursuant to §280-10.B.1, the minimum lot area for a residential building lot in the AC Zoning District is 2 acres. According to the testimony, the resultant permitted density on the subject property would be 8 units.

17. The use regulations of the AC Zoning District also permit, when authorized as a conditional use, a Density Modification Development provided that the proposed development meets the objective criteria of Article XIX of the Zoning Ordinance, contained at §280-90 through and including §280-100.

18. A Density Modification Development encourages the creation and maintenance of common open space within a development by allowing residential lots of varying sizes and allowing them to be less than the 2 acre minimum required in the AC District. It also provides a density bonus to the development upon the provision of a minimum of 15% common open space. As applicable to this matter, the permitted density would result in the yield of 8 residential units on the subject property, upon the provision of 15% common open space.

19. In order to prevail upon its request for conditional use approval, the Applicant must evidence compliance with Article XXIII of the Zoning Ordinance, which outlines the intent, process, procedure, and standards for approval of conditional uses.

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<sup>1</sup> The Ardrossan Estate is a property of historic significance in Radnor Township, being the last remaining undeveloped major estate within its borders. It also served as the inspiration for the Academy Award winning film “The Philadelphia Story”. Portions of the estate, both to the north and south of Newtown Road have been subdivided into large estate lots and developed as such. The subject property is part of the remaining core of the Ardrossan Estate.

20. One of the standards for approval set forth at §280-137.2 is that the use shall meet the requirements of §280-145 relative to special exception applications before the Township Hearing Board.

21. Further, §280-137.A requires that the proposed use must meet all of the specific standards and regulations set forth in Article XIX, regarding Density Modification Developments.

22. Therefore, factual determinations are necessary to judge whether the Applicant has presented satisfactory evidence of compliance with each of the objective standards set forth in §280-90 – §280-100.

23. §280-90 states the objectives and intent of the Zoning Ordinance amendment that provided for Density Modification Developments. It allows modification of lot area, yard, and use requirements for a single family dwelling development in order to: A) Encourage conservation and use of open space; B) encourage land development which preserves trees and natural topography, prevents soil erosion and promotes the best interests of Radnor Township from an aesthetic, ecological and natural resource standpoint; and, C) encourage attractive arrangements of dwellings by permitting the design and layout of dwellings to be closely related to the physical characteristics of the site in harmony with the surrounding tracts.

24. §280-90.C indicates that the Density Modification Development Ordinance was based upon the Comprehensive Plan of Radnor Township.

25. §280-91.A requires that any Density Modification Development contain at least 15% common open space. The Plan, as well as the testimony of the Applicant's civil engineer, David R. Fiorello, who was qualified to testify as an expert in civil engineering, evidences that the common open space to be provided in connection with this application represents 16.04% of the tract size.

26. In compliance with §280-91.C, the Applicant has evidenced that the common open space shall be contiguous to the subject property and will not be separated from it by existing roads.

27. Consistent with §280-91.D, the Plan evidences that consideration was given to the arrangement and location of the common open space to take advantage of the physical characteristics of the site and allow its easy access and view from dwelling units, at the same time preserving natural features.

28. The Applicant has agreed to compliance with §280-91.E at the appropriate time during land development.

29. The common open space consists of a combination of land and water within the subject property designed and intended for the use and enjoyment of residents of the development with consideration given to the site considerations set forth in §280-95.

30. The Plan evidences compliance with §280-91.G regarding buffer strip requirements.

31. §280-92.A.1 sets forth three standards for Density Modification Developments in the AC Zoning District as follows:

- A. The minimum tract size must be at least 20 acres. The gross area of the subject property is 27.65 acres. Its area net of ultimate rights-of-way is 25.38 acres. Its adjusted tract area, accounting for a reduction in natural resources to be preserved, is 16.34 acres.
- B. The evidence indicates that the maximum yield for the development of the subject property under any Zoning Ordinance provision is 8 residential lots. The Plan proposes 6 residential lots.
- C. Buildings must not be located within 75 feet of an existing street right-of-way line or within 50 feet from any adjacent property line. The Plan proposes compliance with this standard.

32. This application is consistent with the use regulations set forth at §280-93.

33. The Plan evidences compliance with the dimensional requirements of §280-94 of the Zoning Ordinance.

34. The Plan, as well as the testimony of the Applicant's engineer, indicates that streams on the subject property are being preserved and wooded slopes impacted as little as possible. The natural resource features on the property have been adequately preserved and/or consideration given to their disturbance.

35. In compliance with §280-96, the Applicant proposes that the development of the subject property shall be served by sanitary sewers and public water supply.

36. The Plan evidences compliance with §280-97 regarding the dimensional yard setback requirements for a Density Modification Development.

37. In compliance with §280-98, the evidence adequately establishes that the location of residential structures on the property will take advantage of existing topography and natural features, sunlight exposures and viewsheds.

38. The Applicant proposes ownership and maintenance of the common open space in a homeowner's (or similar) association, in compliance with the requirements of §280-99.

39. §280-100.A requires compliance with the conditional use requirements of Article XXIII of the Zoning Ordinance, and the Applicant proposes compliance therewith.

40. §280-100.B requires disclosure of the landowners' interest in the land to be developed. The Applicant proposes the creation of up to 6 single family dwelling lots, to be owned in fee by intended Buyers. The common open space will be owned and maintained by an association of the property owners, or similar entity.

41. Up to 6 residential lots are proposed on the subject property, in compliance with §280-100.2.

42. The storm water management feasibility narrative (Exhibit W-8) establishes the feasibility of providing adequate storm water management facilities for the subject property and its development consistent with applicable Township and State requirements.

43. Consistent with §280-100.3, the Applicant proposes that a homeowners' association, comprised of the owners of the residential building lots, be created to own and maintain the common open space, except for any portions of it which are deeded in fee to a conservation organization, such as the North American Land Trust or the Natural Lands Trust. However, even assuming conveyance to such a Trust, the association may retain responsibility to maintain the common open space area.

44. The Plan adequately exhibits the approximate height, bulk and location of dwellings and other structures on the subject property.

45. The Applicant established, through its sanitary sewer feasibility narrative (Exhibit W-7), the ability of the proposed lots to be served by public sewer.

46. The evidence establishes that the proposed development can be served with a public water supply system.

47. The Plan evidences compliance with the requirement for the provision of parking of vehicles and the location of proposed streets and public ways within the subject property, consistent with §280-100.A.7.

48. The Applicant incorporated within the record of this proceeding, a copy of Exhibit MT-22, that was received into evidence in connection with the Plan submitted for the Main Tract of the Ardrossan Farm. §280-100.A.8 requires a statement that shows the ecological and economic impact of the development on the Township and surrounding areas. The Applicant presented Exhibit MT-22, a Statement of Ecological and Economic Impacts, dated July 30, 2013, prepared by Glackin Thomas and Panzak, Inc., and the credible testimony of its planner, Erik Hetzel, to establish that the economic impact of the proposed development on Township services and the Radnor School District, will yield a net positive for both, for a home valued much less than expected for those to be developed on the subject property. No ecological impact was identified.

49. §280-100.A.9 requires that traffic studies be conducted on roads surrounding, or nearby, the subject property. The Applicant incorporated into the record of this proceeding, a copy of Exhibit MT-19 from the hearing on the Main Tract of the Ardrossan Estate, an “Ardrossan Farm-East Parcel Transportation Impact Study” dated July 26, 2013, prepared by Traffic Planning and Design, Inc., and the testimony of Robert G. Richardson, PE, to establish the results of the traffic studies conducted. Mr. Richardson was qualified to testify as an expert in the field of traffic engineering.

50. The credible evidence presented indicated that all intersections that were studied function at levels of service, both before and after the proposed development, of “A” or “B”, on a scale of “A” through “F”.

51. Richardson established that all required sight distances for the proposed entrance and exit to and from the subject property meet PennDOT desirable sight distance standards, or will be required to meet such standards during the land development process.

52. The Applicant has agreed to update the traffic studies during land development to account for the closure of a bridge on one of the roads studied (Darby-Paoli Road) and to consider the impact of schools being in session, as the study was performed during the summer. There are an inordinate number of schools within the vicinity of the subject property.

53. The Township’s Traffic Engineer has identified intersections and/or areas of the Traffic Impact Study which need to be updated and/or addressed. The Applicant has agreed to cooperate with the Township’s Traffic Engineer in that regard.

54. Zoning Ordinance §280-100.A.6 requires that the Applicant present the substance of covenants, grants of easements, or other restrictions proposed to be imposed upon the land, buildings and structures.

55. The Plan delineates the following areas:

- A. The areas containing up to 6 proposed residential lots;
- B. The 4.08 acres of proposed common open space;
- C. The areas proposed for internal street rights-of-way; and
- D. The areas not presently proposed for residential use or for common open space, identified by the Applicant as “Non-Residential Lots”.

56. The areas of Non-Residential Lots are not restricted against future development for residential use, but may not be developed as such under any approval granted in this Decision, even though the area of the Non-Residential Lots is subject to this Density Modification Application.



57. The Applicant presented the testimony of its managing partner, Edgar Scott, III, concerning the Non-Residential Lots.

58. Mr. Scott credibly established that the Applicant desires to see limited development of the subject property, with preservation of its natural features and vistas. In order to financially justify the limited development of the subject property as proposed, the Applicant needs to achieve maximum value of the residential lots created.

59. The Plan evidences that the Applicant has sited the proposed residential lots to take advantage of the natural features of the property, with proximity to, and vistas of, common open space and wooded areas.

60. Scott's testimony is found to be sincere with regard to the Applicant's intent concerning the Non-Residential Lots, in that:

- A. It is the Applicant's intent to market the Non-Residential Lots to enable their preservation by the use of lawful tax provisions of the Internal Revenue Code that will permit significant, and practical tax advantages to intended buyers;
- B. Scott has had successful experience in marketing lots for that purpose as part of his involvement on behalf of developers of other portions of the original Ardrossan Estate; and
- C. Scott has identified a number of potential purchasers of such restricted lots, either to enable the tax advantages available, or to preserve the vistas on the subject property, if they are property owners, or both.

61. Any future development of the Non-Residential Lots, for purposes other than preservation, requires a new conditional use application to be filed and hearings held to determine compliance with then applicable zoning, or Subdivision And Land Development Ordinance (SALDO) requirements.

62. §280-134 of the Zoning Ordinance sets forth the intent of conditional uses, and the procedures necessary to obtain them. This Section recognizes that uses permitted by conditional use constitute major uses that have the potential for substantial impact upon the community.

63. The Applicant has complied with the application submission and content requirements of §280-135 of the Ordinance.

64. This application has been reviewed consistent with the requirements of §280-136.B through and including E regarding the hearings held on the application.

65. §280-136.F recognizes the ability to attach conditions to any approval, if those conditions are deemed necessary, including specific modifications to otherwise applicable area and bulk requirements.

66. The Applicant has established that the subject property is historic and unique and that it contains one existing driveway from Darby-Paoli Road. The Applicant intends to seek waivers of specific SALDO regulations with regard to road width and design requirements in order to permit the internal road system to maintain its historic nature and to avoid unnecessary disturbance of the natural features of the site.

67. However, the Applicant's engineer, Mr. Fiorella, credibly established that if such waivers were not granted, those requirements could be met without redesigning the layout of the Plan but, perhaps, with negative impacts upon existing historic and/or natural features.

68. The decision to grant specific waiver requests from the Subdivision and Land Development Ordinance of Radnor Township is not a subject of this Density Modification Conditional Use application and is within the jurisdiction of the Radnor Township Board of Commissioners during the land development plan review process.

69. The Plan, as well as Exhibit MT-11 provides that:

- A. Storm water management for the proposed development will be provided by structural BMPs with an underground detention/recharge pipe system to control runoff from proposed public and private roads, driveways and lots; and
- B. Ground water seepage beds will be installed on each lot in order to capture and recharge storm water runoff from the property.

70. None of the parties, other than the Applicant, took any position or presented any evidence in connection with this application.

71. No evidence was presented during this hearing to indicate that the Plan was not in compliance with the applicable Zoning Ordinance provisions.

72. No evidence was presented during this hearing that would establish a high degree of probability that the proposed use would adversely affect the public welfare.

73. Radnor Township was a party to this action. It expressed no objection to the proposed Plan but did request the imposition of conditions to ensure compliance during subdivision and land development.

## CONCLUSIONS OF LAW

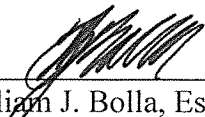
1. The Applicant has presented competent and credible evidence that establishes that the Plan meets the objectives set forth in §280-90 of the Zoning Ordinance.
2. Further, it establishes compliance with all of the objective standards of Article XIX.
3. The Applicant has complied with all applicable provision of Article XXIII with regard to the application submission and content provisions of §280-135.
4. As authorized by §280-136.F, conditions of approval will be imposed.
5. The proposed use meets all of the standards set forth in §280-145, applicable to special exception applications.
6. Development of the subject property as proposed in the Plan will not result in any adverse impacts upon nearby properties that are not contemplated by the provisions of the Zoning Ordinance.
7. The development of the subject property as proposed will be less impactful than a residential development permitted by right in the AC Zoning District by subdivision into two acre building lots.
8. The proposed development will be less impactful than one that would be permitted pursuant to the Density Modification Development provisions of the Ordinance, with a maximum yield of 8 residential lots.
9. The approval herein granted permits no more than 6 residential lots on the subject property, located as depicted on the Plan, subject to appropriate modification during subdivision and land development.

## DECISION

The conditional use request of the Applicant is hereby approved for the development of the subject property into up to 6 single family residential lots, as depicted in the Plan, subject to compliance with all other applicable governmental ordinances and regulations and the following specific conditions:

1. In the event that the Applicant, or any of its successors or assigns, proposes to build any additional dwellings beyond the proposed maximum limit of 6, such additional development shall be considered through submission of a new Conditional Use Application, meeting all Zoning Ordinance requirements of Article XIX for a Density Modification Development, and shall require a new subdivision application. Any such submission shall not be considered an amendment of the existing proposed plan for development.
2. All new lots and proposed new or existing residential buildings shall provide for individual on-lot storm water management through seepage pits or other non-structural BMPs in accordance with the Radnor Township Storm Water Ordinance. Any and all roof drains and sump pumps shall be tied into such on-lot storm water facilities.
3. The Applicant shall perform such studies and make such improvements as are necessary in order to establish sufficient sewage capacity within the Township's main transmission line servicing the property.
4. The Applicant shall modify and update the Traffic Impact Study with regard to conducting new traffic counts when the nearby schools are in session and re-examination of any intersection, as determined by the Radnor Township Traffic Engineer.
5. The Plan shall be subject to modification by the Board of Commissioners of Radnor Township, as appropriate, during the Subdivision and Land Development review process.

Respectfully submitted,

  
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William J. Bolla, Esquire  
McNamara, Bolla & Panzer  
116 East Court Street  
Doylestown, PA 18901  
Hearing Officer