



BOARD OF SUPERVISORS
WORKSHOP,
CONDITIONAL USE HEARING

January 11, 2022

5:00 p.m.

REVISED AGENDA

LOCATION:
Township Building
140 Pottstown Pike
Chester Springs PA 19425

Masks or face coverings are required.

- I. Call to Order
 - A. Salute to the Flag
 - B. Moment of Silence
 - C. Inquire if any Attendee plans to audio or video record the Workshop
- II. First Amendment to Expansion Agreement ~ Preserve at Marsh Creek
Introduction to the First Amendment to the Agreement with
McKee Builders to expand the Township's sewer treatment
plant for sewer capacity to service the Preserve.
- III. Upland Farm Barn ~ Construction Update
- IV. Open Session
- V. Adjournment

5:30 p.m.

Conditional Use Hearing #2
Application: Alpha Phlyte Fitness

**FIRST AMENDMENT TO AGREEMENT FOR THE EXPANSION OF THE ROUTE 100
CENTRAL WASTEWATER TREATMENT PLANT**

THIS FIRST AMENDMENT TO AGREEMENT FOR THE EXPANSION OF THE ROUTE 100 CENTRAL WASTEWATER TREATMENT PLANT (the “**First Amendment**”) is entered into as of this 28th day of December, 2021 by and between UPPER UWCHLAN TOWNSHIP (the “**Township**”), UPPER UWCHLAN TOWNSHIP MUNICIPAL AUTHORITY (the “**Authority**”), and THE PRESERVE AT MARSH CREEK LLC (“**McKee**”).

Background

A. Township is the owner and Authority the operator of a sewage treatment plant commonly known as the Route 100 Wastewater Treatment Plant (the “**Plant**”). McKee is the owner of an active adult residential real estate project within Upper Uwchlan Township known as “The Preserve At Marsh Creek” (the “**Project**”) at which it is constructing and will construct residential units for sale pursuant to an approved subdivision and land development plan (the “**Plan**”).

B. Sewage generated by McKee’s current and planned residential units is to be treated at the Plant but in order to do so for the entire Project the Plant’s treatment capacity must be expanded. On November 18, 2019, the Township, the Authority and McKee entered into the Agreement for the Expansion of the Route 100 Central Wastewater Treatment Plant (the “**Agreement**”) which provides the terms and conditions under which McKee would expand the treatment capacity of the Plant (the “**Expansion**”). Section 3 (a) (iv) of the Agreement provides that the construction firm awarded the construction contract for the Expansion shall be required to post a performance and payment bond in the amount of 110% of the contract price naming McKee, the Authority and the Township as obligees (the “**Completion Bond**”). The Agreement is incorporated herein by reference.

C. McKee’s work in building the Project and expanding the Plant is funded in part by third party financing provided by its lender (the “**Lender**”). The Township, the Authority and McKee desire to amend the Agreement to provide for the assignment by McKee to Lender of McKee’s rights and obligations under the Agreement if, but only if, McKee suffers an uncured event of default under either this Agreement or the Lender’s financing (a “**McKee Default**”).

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the parties agree as follows:

1. Paragraph 12(e) of the Agreement is hereby amended and shall read as follows:

(e) Assignment. McKee may not assign its rights or delegate its duties under this Agreement except to a wholly owned subsidiary or an affiliate with common ownership, experience and financial standing as McKee which assignee agrees in writing to fulfill the

obligations of McKee hereunder. Further, McKee may provide Lender with a collateral assignment of its rights under the Agreement (the “**Collateral Assignment**”), which Collateral Assignment may provide for the further assignment of such rights and a delegation of McKee’s duties under the Agreement to Lender or Lender’s assignee (in either case, the “**Assignee**”) if a McKee Default occurs, under the conditions that any such delegation of duties shall require the consent of the Authority and the Township, such consent not to be unreasonably withheld if (a) the Assignee agrees in writing to assume all of the obligations and duties of McKee under this Agreement and to fulfill the obligations of McKee hereunder without delay, (b) the Assignee demonstrates that it has the financial backing and resources, as determined in the Authority’s and the Township’s reasonable judgment, to complete the Expansion, and (c) the Assignee provides written assurance from all applicable sureties or bonding companies that such assignment shall not interfere with, limit or void any policy or bond then securing the completion of the Expansion, or provides a substitute bond or completion guaranty as such financial security for the completion of the Expansion Project, in form and amount, and with sureties or bonding companies satisfactory to the Authority and Township. Notwithstanding the foregoing, if the McKee Default arises under the Expansion Agreement, such assignment to Assignee shall not prevent, pause, or otherwise interfere with the Authority’s and/or Township’s exercise of their rights under the Completion Bond as obligees thereunder to require completion of the Expansion. The Township and Authority may assign all or any part of their respective rights and delegate all or any part of their respective duties to the other party. Except as specifically set forth in this First Amendment, all the other terms and conditions of the Agreement shall remain in full force and effect.

2. Neither the Agreement nor this First Amendment shall be modified except in a writing authorized and signed by all of the parties.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

Attest:

**THE PRESERVE AT MARSH CREEK, LLC, a
Pennsylvania limited liability company**

By: _____

Name: _____

Title: _____

Attest:

UPPER UWCHLAN TOWNSHIP

, Secretary

By: _____

, Chairman

Attest:

**UPPER UWCHLAN TOWNSHIP MUNICIPAL
AUTHORITY**

, Secretary

By: _____

, Chairman