

HILLSBOROUGH TOWNSHIP
SOMERSET COUNTY, NEW JERSEY

MASTER PLAN AMENDMENT-LAND USE ELEMENT
JANUARY 2009

Prepared for the Township of Hillsborough Planning Board
Adopted: January 29, 2009

ACKNOWLEDGEMENTS

PLANNING BOARD-2009

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Robert Ringelheim, PP, AICP, Township Planner
Rebecca Marshall, Assistant Planner/Zoning Officer
Debora Padgett, Clerk to the Planning Board and Board of Adjustment
Marge Shotyk, Zoning Clerk

INTRODUCTION

The 2008 Master Plan Reexamination Report recommends that the Planning Board consider the request from Pat Richard, LLC, to rezone the Roycefield Trade Park property located at 330 Roycefield Road (subject property). This amendment to the Land Use Element of the Hillsborough Master Plan addresses the issues raised by the request and provides an analysis of the land use and zoning impacts.

There is also an amendment to permit volunteer fire companies and first aid or rescue squads as a principal permitted use in the RA, RS, R, R1, R2, CR, AH, RCA and PD Districts which includes the area of the existing first aid/rescue squad facility on Hamilton Road near Old Somerville Road. This will enable improvements to be made to expand the existing facility which is presently located in the R Residential District.

1. ROYCEFIELD TRADE PARK

GOALS AND OBJECTIVES

The proposal under consideration to change the zoning of the subject property from ED, Economic Development, to I-2, Light Industrial, is in conformance with the goals and objectives adopted by the Planning Board in the 2005 Master Plan Amendment-Phase 2, as provided below:

7. Economic Development

- a) Provide expanded employment opportunities by encouraging development in appropriate areas for this purpose consistent with available infrastructure and supporting services.
- b) Promote employment opportunities and commercial services in locations compatible with existing and proposed development.
- c) Encourage commercial development or redevelopment in suitable area of the community that are most economically useful for commercial purposes.

PROPERTY DESCRIPTION

The subject property, known as the Roycefield Trade Park is located at the rear of the Veterans Industrial Park/Defense Logistics Agency property (General Services Administration Depot). The subject property contains 20.81 acres and has frontage along Roycefield Road.

The surrounding uses include the General Services Administration Depot, including the Veterans Industrial Park and Defense Logistics Agency property, to the east. The Somerset County Public Works/Emergency Services Training Academy facility is located to the south with a mix of industrial, commercial and residential properties along Roycefield Road from Valley Road to Dukes Parkway West. The Duke Farms property is

located to the north. The surrounding area in relation to the subject property is highlighted on the 'Existing Land Uses' map in Appendix A.

EXISTING ZONING

The subject property is located in the ED, Economic Development Zone District, as indicated on the 'Existing Zoning' map in Appendix A, and which permits the following uses:

- Offices and office buildings
- Corporate conference center
- Restaurants
- Theaters, gymnasiums, tennis and pool facilities
- Fiduciary institutions
- Libraries and museums
- Medical centers
- Hotels/motels
- Retail sales of goods and services limited to products manufactured by that company
- Child-care centers
- Schools

In addition, light manufacturing is permitted as a conditional use subject to a minimum 50 acre lot size, noting that the subject property contains 20.81 acres.

ZONING HISTORY OF THE SUBJECT PROPERTY

The Hillsborough Board of Adjustment approved a use variance for 2 construction-contracting businesses on the subject property in 2002, specifically permitting construction, building and special trade contractor uses and light manufacturing uses. Site plan approval for the 2 buildings was granted in 2004.

The Board of Adjustment subsequently granted use variance approval for 2 additional new buildings and the reuse of an existing building on the subject property in 2005. The resolution specifically prohibits retail and manufacturing uses on the site.

Copies of these resolutions are included in Appendix A.

ZONE CHANGE REQUEST

Pat Richard, LLC, the owner and developer of the Roycefield Trade Park Condominium located at the subject property, which is also known as Tax Map Block 142, Lot 23B, has requested a change in the zone designation from ED, Economic Development, to I-2, Light Industrial.

As previously noted, the ED District does not permit contractor uses or light manufacturing uses. Pat Richard, LLC, further indicates that these uses are generating the most interest in moving to the Roycefield Trade Park. Therefore, every time a new contractor or light manufacturing use is proposed a new use variance must be obtained from the Board of Adjustment. This is a cumbersome process that makes development of the subject property less predictable and, as a result, much more difficult.

The I-2 Light Industrial Zone District permits the following uses:

- Offices and office buildings
- Warehousing, shipping and receiving completely within an enclosed building
- Assembling finished products completely within an enclosed building
- Research
- Lumberyards
- Utilities
- Restaurants
- Child-care centers
- Contractor facilities which shall be provided within an enclosed building

The permitted uses in the I-2 District include both the contractor facilities and light manufacturing uses that have already been approved or requested at the Roycefield Trade Park. This is a more appropriate land use designation as it incorporates the land uses that are being developed at the subject property.

It is also noted that the I-2 District is located across Roycefield Road from the subject property so the zone boundary can be extended without creating an isolated or 'spot zone.'

RECOMMENDATION

In order to permit the build-out of the proposed 13 building complex at the subject property under the current ED District zone designation, there would have to continue to be separate use variance applications submitted for each new contractor or light industrial use. Furthermore, it is noted that the uses and lot area requirement (2 acre minimum) in the I-2 District are compatible with the proposed build-out of the subject property.

Finally, the I-2 District is located across Roycefield Road from the subject property and would not create any land use conflicts in order to extend the zone boundary.

Therefore, it is recommended that the land use designation should be changed for the subject property to permit contractor facilities and light industrial uses as found in the I-2 District and as described in this report.

2. HAMILTON ROAD FIRST AID/RESCUE SQUAD

GOALS AND OBJECTIVES

The proposal to change the principal permitted uses in the RA, RS, R, R1, R2, CR, AH, RCA and PD Districts to include volunteer fires companies and first aid or rescue squads is in conformance with the goals and objectives adopted by the Planning Board in the 2005 Master Plan Amendment-Phase 2, as provided below:

9. *Community Facilities and Utilities*

- c) *Provide for expanded public facilities as part of new developments that reflect population growth and protect natural and historic features.*
- e) *Program and plan for the expansion of necessary public services, such as utilities community facilities and recreation, at a reasonable cost in response to the proposals in the land use plan element.*
- g) *Establish a system so that required capital improvements can be programmed & planned in advance.*

Expansion of the Hillsborough First Aid & Rescue Squad, located at 34 Hamilton Road, has been proposed as a result of recent developments in the surrounding area. The proposed change in the zoning regulations as affecting the subject area which includes the First Aid & Rescue Squad facility will permit the improvements to proceed.

PROPERTY DESCRIPTION

The subject Hamilton Road First Aid/Rescue Squad fronts onto Hamilton Road. This area is east of Route 206 where the Town Center is proposed and is part of the future Transit Village, as recommended in the 2005 Master Plan Amendment-Phase 2.

The surrounding uses include residential development, the Central Jersey Nursery and the Glen-Gery brick quarry along Hamilton Road. The Volunteer Fire Company Number 2 fronts onto Route 206 and Hamilton Road near the subject area. There are residences, a child-care center and the Avalon Assisted Living Facility along the north side of Amwell Road near the subject area. The surrounding area is highlighted on the 'Hamilton Road Area' map in Appendix B.

EXISTING ZONING

The subject property is located in the R, Residential Zone District, as indicated on the 'Existing Zoning' map in Appendix B and which permits the following uses:

- Single family detached dwellings.

- Libraries, parks and playgrounds, cemeteries, community center (noncommercial) and golf courses.
- Neighborhood convenience center in conjunction with planned developments containing more than 300 dwelling units.
- All farm and agriculture activities.
- Home occupations

Volunteer fire companies and first aid or rescue squads are permitted as a conditional use in the R District, as well as in the RA, RS, R1, R2, CR, AH, RCA and PD Districts where most of the other First Aid/Rescue Squads and the Fire Companies are located in the Township. However, since there are no conditions, as required by recent case law, this use is no longer permitted.

ZONING HISTORY AFFECTING THE FIRST AID & RESCUE SQUAD

As a result of a change in the interpretation of how impervious coverage was being calculated, there was litigation between the Township and Country Classics. In 2005, the Township entered into an Agreement with Country Classics which obligated a payment to the Township of \$1.15 million to the Township for the purchase of an emergency service vehicle and for other emergency medical service purposes. This has been targeted for the expansion and renovations to the Hamilton Road First Aid & Rescue Squad facility. A copy of the Agreement is included in Appendix B.

RECOMMENDATION

Presently, in order to expand the existing first aid & rescue squad facility on Hamilton Road, a use variance would be required. Clearly, the intent to permit volunteer fire companies and first aid or rescue squads in the R District is indicated by the inclusion as a conditional use, however, because of recent case law it is recommended that the principal permitted uses in the RA, RS, R, R1, R2, CR, AH, RCA and PD Districts be amended to permit volunteer fire companies and first aid or rescue squads to address any other future emergency service needs.

**APPENDIX
A**

Pat Richard, LLC
548 East Main Street
Bound Brook, NJ 08805
Tel (732) 271-9658 Fax (732) 560-7313



September 30, 2008

Hillsborough Township
Mayor Anthony Ferrera
379 South Branch Road
Hillsborough, NJ 08844

Re: 330 Roycefield Road, Hillsborough, NJ
Lot 23B, Block 142
Request to Re-Zone Property from ED to I-2

Dear Mayor Ferrera:

I am co-partner of Pat Richard, LLC the owner and developer of the 21 acre Roycefield Trade Park Condominium at 330 Roycefield Road in Hillsborough.

I have followed your efforts as Mayor to make Hillsborough more business friendly and have been impressed by the progress that you have made. In particular, I noticed how you and the Township Committee quickly responded to the needs of the businesses and commercial property owners on Route 206 South between Park and Brown Avenues by re-zoning them back to the I-1 Light Industrial District from the Highway Services District.

The Roycefield Trade Park Condominium is in a similar situation as the above properties. I am appealing to you and the Township Committee for similar support.

My property is in the Economic Development Zone (ED). This creates an economic hardship for my partner and I. We would prefer to be in the I-2 Light Industrial District, which is the same district that the other commercial properties along Roycefield Road are in.

I have included some background information I believe would be helpful in explaining how this problem developed and why our proposed solution makes sense and is in the best interest of the Township.

The Township until recently has had four ED Zones. Two are Federal properties, GSA Belle Mead Depot and the Veterans Industrial Park/DLA. A third is further west of the northern Federal property and is along the Norfolk Southern railroad tracks on Valley Road, Auten Road and Beekman Lane. The fourth, was Bryce Thompson's property off of Route 206 South. It is close to the southern boundary of the Township and is near the GSA Belle Mead Depot. To help make it more economically viable, Bryce Thompson's property was recently re-zoned to the Highway Services District.

Because the zoning did not fit commercial needs, none of these four ED Zones has ever been developed.

Pat Richard, LLC's industrial park was originally part of the northern federal property which lies between Route 206 and Roycefield Road and that is why it is in the same zone.

I believe that in expectation that this large federal property would be put up for sale, it was zone zoned ED. This sale has not happened and the property is still under federal ownership and is currently being managed primarily for warehouse uses under a long term leasing arrangement.

The underlying premise for putting this federal property in the ED Zone was never fulfilled. This situation is analogous to the Commercial Development Zone (CDZ) on the East Side of Route 206 off Willow Road. Development never occurred here too because its underlying premise was that a connector interstate highway would be built in its vicinity but this too didn't happen. As a result, the Township's 2005 revised Master Plan now sees this as a Transfer of Development Rights (TDR) area and no longer one for commercial development.

The problem for Pat Richard, LLC is that most of the companies that have expressed interest in moving their business to 330 Roycefield Road are ones that would be suitable for light industrial zoning. While the ED Zone does permit light industrial as a conditional use, the minimum acreage requirement is 50 acres and our property is 21 acres.

Currently, we have constructed two buildings, one of which is occupied. Two others have either been started or construction is expected to begin in the next month or so.

We plan to build a total of 13 buildings. With the current 50 acre minimum lot sizes we are required to go to the Zoning Board of Adjustments to obtain a use variance for each and every building, buyer or tenant. This is a significant expense to us and is a drain on the ability of the Zoning Board to hear other applications.

In addition, we often find ourselves in a "catch 22" situation that the Zoning Board requires us to identify the intended buyer and prospective buyers are often reluctant to commit if they know that it will be necessary for them to first obtain a variance.

If Roycefield Trade Park Condominium were in the I-2 Zone with its 2 acre minimum, we would be able to pursue the light industrial applications that are best suited for this property. These applications would be consistent with other commercial properties in the immediate vicinity on Roycefield Road and there would be also be no need to file applications with the Zoning Board for each new buyer.

Preliminary discussions have been held with the Township Planner and I believe that he is supportive of our writing to you to seek the zoning change.

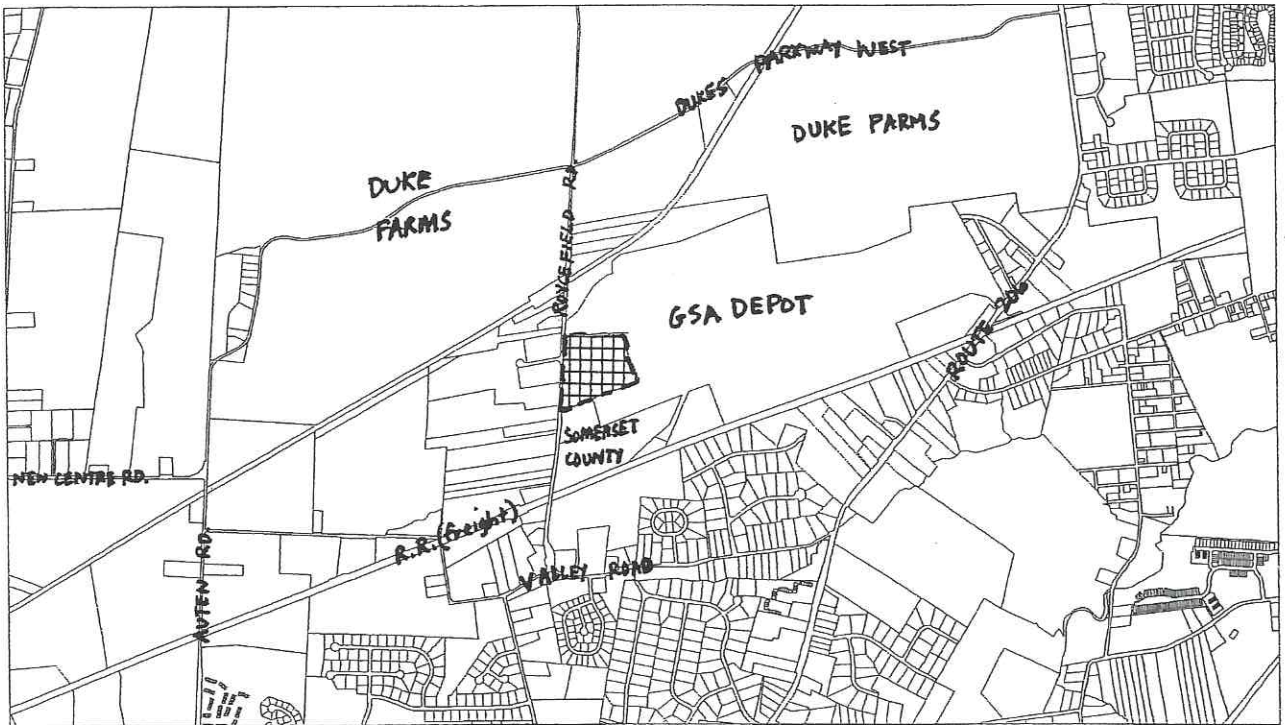
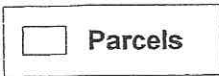
Finally, our industrial park has only limited visibility from Roycefield Road. It is not near any residential area and would fit in perfectly with our industrial neighbors.

Thank you for considering this request. The sooner that it can be acted upon and rezoning can occur, the sooner we will be able to bring desirable new businesses to Hillsborough Township, thereby increasing both commercial ratable and new jobs.

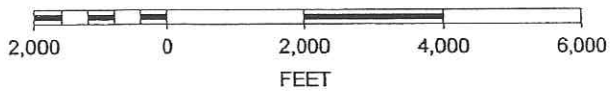
Sincerely,

Patrick McCann
Partner

EXISTING LAND USES



SCALE 1 : 32,775



N

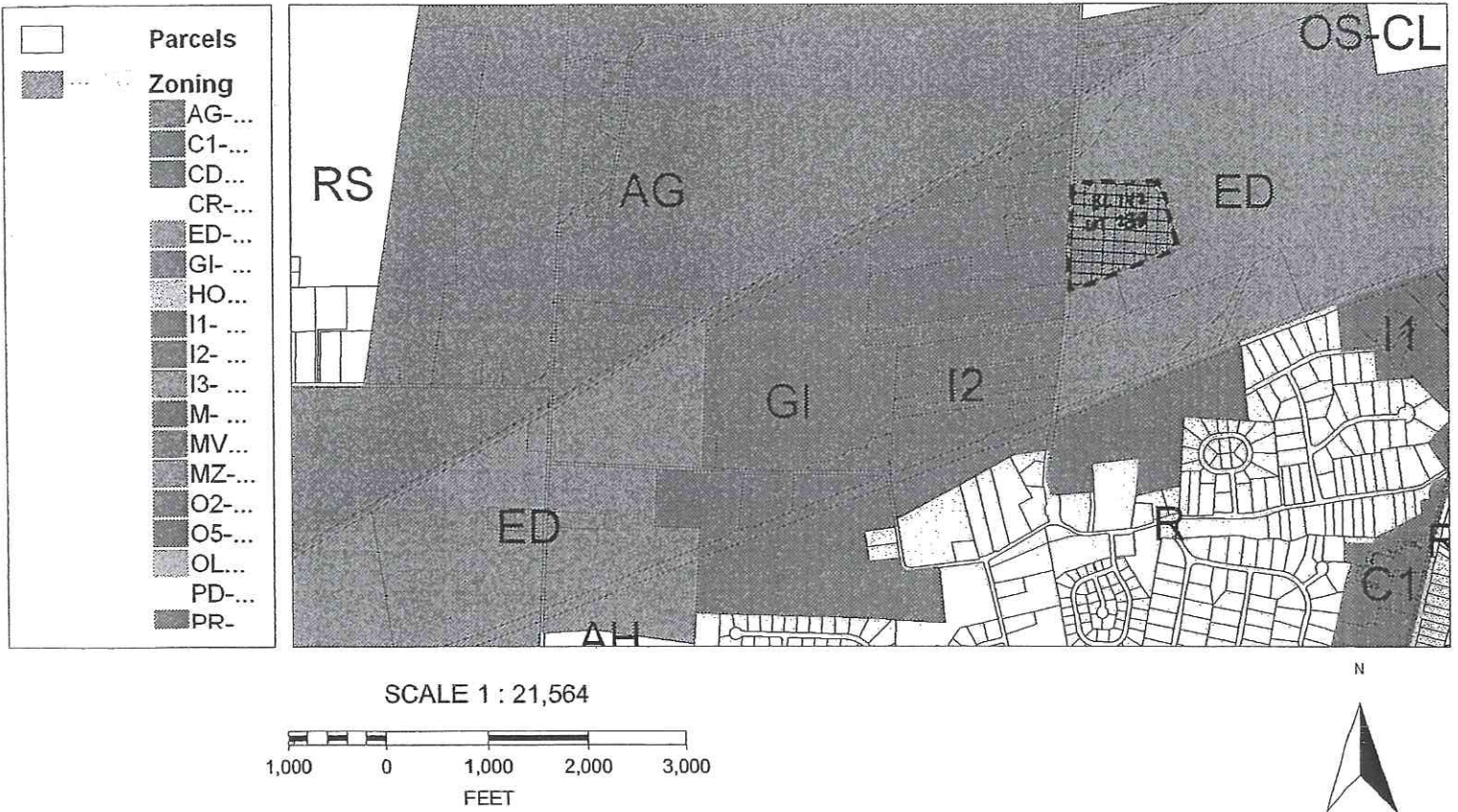


LEGEND



SUBJECT PROPERTY- ROYCEFIELD TRADE PARK
(BLOCK 142, LOT 238)

EXISTING ZONING



LEGEND



SUBJECT PROPERTY - ROYCE FIELD TRADE PARK
(BLOCK 142, LOT 23B)

RESOLUTION OF BOARD OF ADJUSTMENT

TOWNSHIP OF HILLSBOROUGH

SOMERSET COUNTY, NEW JERSEY

PAT RICHARD, LLC

APPLICATION: BA-01-20

WHEREAS, Pat Richard LLC has applied to the Hillsborough Township Board of Adjustment on a bifurcated application for a use variance and bulk variance, (with site plan and additional variance approval being sought at a later time), in order to construct two (2) 10,000 square foot buildings on land the Applicant is a contract purchaser of, more specifically known as Block 142, Lot 23B located at 330 Roycefield Road, pursuant to the provisions of N.J.S.A. 40:55D-70(d) and N.J.S.A. 40:55D-70(c); and

WHEREAS, a public hearing was held on said application by the Board of Adjustment on November 7, 2001 and December 5, 2001; and

WHEREAS, Joseph Chesla, the owner of Alpine Builders, asked questions concerning the application but neither he nor did any other person object to the application; and

WHEREAS, the Board, after carefully considering the evidence presented to it by the applicant, the application and documents filed by the applicant, the appropriate township officials, agencies and experts retained, have made the following findings of fact:

1. The property is located at 330 Roycefield Road, in the ED zone and is known as Block 142, Lot 23B on the Hillsborough Township tax map.
2. The Applicant is a contract purchaser of the aforementioned property.
3. Lawrence Vastola, Esq., appeared on behalf of the applicant at the hearing.
4. John A. Madden, AICP appeared on behalf of the applicant at the hearing.
5. Mr. Holloway of Birdsall Engineering, Inc., a licensed professional planner appeared on behalf of the Board of Adjustment at the hearing.

6. The applicant desires, in the first phase of its project, and the only phase currently before this Board, to locate two construction-contracting businesses on the subject property which would necessitate the construction of two 10,000 square foot buildings on two acres each.

7. The two construction companies that would relocate to the property are owned by Mr. Richard Scagliotta and Mr. Patrick McCann, principals of Pat Richard, LLC.

8. The proposed construction of the two 10,000 square foot buildings would require a use variance to permit construction, building, special trade contractor uses and light manufacturing in the (ED) Economic Development zone and would require a bulk variance for minimum lot area where 50 acres is required and the subject lot area is 20.8 acres.

9. John Madden, AICP, on behalf of the applicant, stated the following regarding the subject property:

- a. It was once used by the Federal Government as a tank farm for storage of whale oil.
- b. It is undeveloped with the exception of one poorly maintained existing structure.
- c. It is overgrown with low vegetation and has no maintained buffer.
- d. It has an irregular rectangle shape.
- e. It is presently in a blighted condition, which detracts from businesses across from Roycefield Road.
- f. Poor environmental and aesthetic conditions of properties surrounding the subject property detract uses permitted in the ED District such as hotels and office buildings.

10. John Madden, AICP, on behalf of the applicant, stated that the applicant could not purchase adjoining property in order to bring the lot size into conformity as the Somerville Depot property, which surrounds the subject property on three sides is owned by the Federal Government and not for sale.

11. John Madden, AICP, on behalf of the applicant, further stated that an all season landscaped buffer would be provided around the entire property and that the two proposed buildings would be built along with a detention basin and an access road designed to serve the full lot in later phases of the project.

12. Mr. Richard Scagliotta, a principal of Pat Richard, LLC and owner of Adamsville Maintenance, testified that the two proposed 10,000 square foot buildings would be used for office space, the storage of pumps and machinery and for minor mechanical repairs.

13. Mr. Richard Scagliotta, further testified that he would provide structures and dedicated storage areas to house and organize his company's outdoor storage.

14. Mr. Patrick McCann, a principal of Pat Richard, LLC and owner of his own construction business, testified that he would also provide structures and dedicated storage areas to house and organize his company's outdoor storage on the subject property.

15. The Board expressed concern that the transportation of large equipment to and from the site may not be possible due to the narrow traffic lanes of Valley Road.

16. Mr. Frank Scarantino, the Township Engineer indicated that trucks would be prohibited from accessing Valley Road from Roycefield Road.

17. Mr. Joseph Chesla, testified that he has trucks similar to the applicants across the street from the proposed site and he has no problem accessing the local road system.

18. Mr. Hollaway, the Planner expert retained by the Board, testified that it is his opinion that the proposed use is particularly suited for the proposed site and would improve the aesthetic environment.

WHEREAS, the Board has made the following ultimate findings and conclusions based upon the foregoing findings of fact:

A. The applicant has shown special reasons to satisfy the requirements for granting a use variance pursuant to the provisions of N.J.S.A. 40:55D-70(d).

B. The applicant has shown that the project as proposed, and as hereinafter conditioned, promotes a desirable visual environment, provides a good redevelopment solution for the property and that the proposed site is uniquely suited to the proposed use.

C. The granting of use variance and bulk variance for lot area, as hereinafter conditioned, will not cause substantial detriment to the public good and will not substantially impair the Master Plan and Zoning Ordinance.

WHEREAS, at the conclusion of the hearing on December 5, 2001, the Board has taken action by voting on said application and in accordance with N.J.S.A. 40:55D-10(g) of the Municipal Land Use Law, has directed that a resolution memorializing such action be prepared.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment on this 9th day of January, 2002, on the basis of the evidence presented to it, the foregoing findings of fact and ultimate findings and conclusions, that the Board of Adjustment of the Township of Hillsborough, does hereby grant the use variance and bulk variance for minimum lot area as applied for, subject to the following conditions:

1. The granting of the use variance shall not be construed to eliminate satisfaction of all other requirements of the Zoning Ordinance, Conditional Use Ordinance or other requirements of the Agencies, Boards and Authorities of the Township of Hillsborough.
2. The granting of the use variance shall be construed to include satisfaction of the uniform construction code of the State of New Jersey.
3. Compliance with applicant's representations and agreements as well as the conditions set forth in the findings of fact hereinabove.
4. Compliance with the terms and conditions and/or requirements of the November 28, 2001 planning report prepared by Birdsall Engineering, Inc.
5. Applicant shall provide for structures and dedicated storage areas to house and organize outdoor storage of equipment.
6. Applicant shall provide an all season landscaped buffer around the entire property.
7. Applicant shall be required to seek additional use and bulk variance approvals for all other phases of their project.
8. Applicant shall maintain undeveloped portions of the site by mowing the existing vegetative cover.
9. No painting of machinery will occur in the proposed building.
10. Any and all fees properly due and owing the Municipal Board of Adjustment for hearing for the application must be paid.

Certified to be a true copy of a resolution by
the Hillsborough Township Board of Adjustment
held on January 9, 2002.



Fred Sterritt
Chairman

VOTE ON MOTION

FOR

Jo-Ann Delasko

Eileen Miller

Mark Tomczak

Craig Voorhees

Dr. Fred Sterritt

AGAINST

ABSTENTIONS

VOTE ON RESOLUTION:

FOR

Jo-Ann Delasko

Eileen Miller

Mark Tomczak

Craig Voorhees

Dr. Fred Sterritt

AGAINST

ABSTENTIONS

**RESOLUTION OF THE BOARD OF ADJUSTMENT
TOWNSHIP OF HILLSBOROUGH
SOMERSET COUNTY, NEW JERSEY**

**PAT RICHARD, LLC
APPLICATION NO. BA-03-45**

WHEREAS, the Applicant, Pat Richard, LLC, has applied to the Hillsborough Township Board of Adjustment for Preliminary and Final Major Site Plan Approval, Bulk variances and waivers in order to construct two (2) 10,000 square foot buildings with 5,000 square foot attached covered storage areas and other related improvements on the Property designated as Block 142, Lot 23B, on the Hillsborough Township tax map, located at 330 Roycefield Road; and

WHEREAS, a public hearing was held on the application by the Board of Adjustment on March 24, 2004; and

WHEREAS, a member of the public appeared and gave comment upon the application; and

WHEREAS, the Applicant was represented by Lawrence A. Vastola, Esquire of Middlesex, New Jersey, and the testimony of the following individuals was presented:

- a. A principal of Pat Richard, LLC, Richard Scagliotta.
- b. Michael K. Ford, P.E. of Van Cleef Engineering Associates, Hillsborough, New Jersey.
- c. Vincent Agovino, Ph.D. of AVA Environmental Consultants, Inc., Hainesport, New Jersey.

These witnesses provided the foregoing testimony on behalf of the Applicant:

1. The property is located in the Township's ED "Economic Development" Zoning District. The Applicant has previously applied for and received and use variance and bulk

variance for minimum lot size under Application No. BA-01-20, which was approved by the Hillsborough Township Zoning Board of Adjustment at a hearing on December 05, 2001, and as memorialized by written Resolution dated January 09, 2002. In general, the aforementioned Resolution grants a use variance for the use of the proposed buildings for construction, building, special trade contractor uses and light manufacturing uses and approves a bulk variance for minimum lot area of 20.8 acres where a minimum 50 acres is required. The aforementioned Resolution and the current application are only for development of a portion of the property designated as Phase 1.

2. The Applicant's current application is for preliminary and final site plan approval, and the Applicant has submitted engineering plans entitled "Phase 1-Site Plan and Final Construction Drawings" prepared by Van Cleef Engineering Associates dated December 15, 2003 consisting of eleven (11) sheets. The Applicant has also submitted architectural building elevations and floor plans prepared by Gordon L. Todd Associates, Architects, Planners, P.C. dated May 22, 2003, consisting of two (2) sheets. The Applicant has also submitted a Storm Water Management Plan prepared by Van Cleef Engineering Associates, dated December 15, 2003 and an Environmental Impact Statement prepared by AVA Environmental Consultants, Inc. dated January 30, 2004.

3. The application requires a bulk variance pursuant to N.J.S.A. 40:55D-70(c) variance for minimum side yard setback. The ED Zone requires 150' side yard setback for properties that front on a collector road, the Planner's report notes that Roycefield Road meets the criteria for a collector road and the Applicant proposes a 135.42' side yard setback.

4. In accordance with the aforementioned engineering and architectural plans, the Applicant proposes to construct two (2) 10,000 square foot buildings with each building also

having an attached 5,000 square feet of covered outdoor storage in which to locate two (2) construction/contracting businesses. The outdoor storage will consist of equipment and machinery associated with the Applicant's business, no materials will be stored outdoors. The development of Phase 1 of the property requires the aforementioned waivers as noted in the Township's Planners Report dated January 26, 2004:

(a) Hillsborough Ordinance Section 188-68.J requires fourteen (14) spaces for the office use provided and six (6) spaces for the warehouse/storage use provided for a total of twenty (20) spaces. The Applicant has provided for twenty-eight (28) spaces and the site plan notes that twenty-eight (28) additional spaces could be accommodated and will be "banked" for future use. The banked spaces will be constructed when the Applicant determines they are needed or if requested by the Township. The construction of the spaces shall be subject to review and approval by the Township Engineer.

(b) Hillsborough Ordinance Section 188-68.E(1) requires parking stalls to have a minimum measurement of 10' x 20'. The proposed parking stalls measure 10' x 18' requiring a waiver. The Board Engineer's report of March 24, 2004 notes that Hillsborough Ordinance Section 188-68.E(1) also requires a 2-way aisle width of 30' where 24' is proposed which also requires a waiver. The Board granted the Applicant's request for a waiver.

(c) Hillsborough Ordinance Section 188-68.I(3). The Planner's Report indicates that based upon the office space and warehouse/storage space that a total of two (2) loading spaces are required for each building and are to be paved. The plans submitted provide for a loading and storage area behind each building on a gravel surface although no formal loading spaces are indicated. Therefore, a waiver from this section is required. The Board granted the Applicant's request for a waiver.

(d) Hillsborough Ordinance Section 188-164.A requires a tree preservation/replacement plan and other related requirements. The Planner in his report notes that the tree preservation/replacement plan on sheet five (5) of the Engineering Plans is unclear and either a waiver should be granted or the aforementioned Plan on the Engineering Plans be revised. The Board granted the Applicant's request for a waiver.

(e) The Applicant proposes a total of eight (8) free standing light fixtures at 15' feet in height and twelve (12) wall mounted fixtures. It is noted that the loading area at the rear of each building has wall mounted lighting fixtures to illuminate these areas. The Applicant is requesting a waiver from the requirements for lighting including light intensity areas to be illuminated and like requirements of Hillsborough Ordinance Section 188-57. The Board granted the Applicant's request for a waiver.

(f) The Landscaping Plan on sheet five (5) provides for a total of sixty-three (63) trees including Red Maple, Norway Spruce and White Pines which are proposed to be planted along the front of the buildings and parking areas facing Roycefield Road. The prior Resolution granting the use variance and the minimum lot size bulk variance in condition six (6), requires that the: "Applicant shall provide an all season landscape buffer around the entire property." The proposed Landscaping Plans should be revised to reflect additional landscaping to buffer the remaining property lines where no landscaping is presently provided on the aforementioned Landscaping Plans and it is recommended by the Planner that the Applicant mix the White Pines and Norway Spruce on both sides of the private drive. The Applicant agreed to revise the landscape plan to provide a mix of the evergreen trees rather than large groupings of each species. The Applicant also agreed to construct a 4' high chain link fence to separate the

Phase 1 portion of the property from the remainder of the property to prevent illegal dumping and other unauthorized access to that portion of the property.

(g) The plans and architectural drawings submitted do not indicate any signage. The Applicant will submit any proposed signage to the Zoning Officer for determination as to whether the sign meets with Township standards, if not, an application for waiver and/or variances will be submitted to this Board.

5. The Applicant agreed, that should this Application be granted, to comply with the Board Engineer's Report submitted in conjunction with this application dated March 24, 2004, to submit any required revisions to the plans and/or drawings for the Board Engineers review and approval.

WHEREAS, the Board has made the ultimate findings and conclusions based upon the foregoing facts:

1. The Applicants have shown sufficient hardship to satisfy the requirements of N.J.S.A. 40:55D-70(c), and to obtain the requested waivers, as a condition herein.

2. The Applicant has shown that the requested waivers or exceptions from Township development standards are reasonable and within the general intent and purpose of the standards and that the literal enforcement of the standards would be impracticable or exact undue hardship because of peculiar conditions pertaining to the development of the property in question.

3. The granting of these variances will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the Master Plan and Zoning Ordinance.

WHEREAS, at the conclusion of the hearing on March 24, 2004, the Board has taken action by voting on said application in accordance with N.J.S.A. 40:55D-10(g), of the Municipal Land Use Law and has directed that a Resolution memorializing such action be prepared.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment on this 19th day of May, 2004, on the basis of the evidence presented to it and the foregoing findings of fact and conclusions of law, and as more fully set forth on the record that:

1. The bulk variance requested by the Applicant for a side yard setback of 135.42' where 150' is required is hereby granted.
2. Preliminary and Final Major Site Plan approval is granted for Phase 1 as delineated on the submitted site plan, subject to the conditions set forth herein.
3. The Applicant's request for certain waivers are granted as set forth herein.
4. The Applicant agrees as a condition herein that they shall comply with the Engineer's Report submitted in conjunction with this application dated March 24, 2004.
5. The Applicant shall construct a 4' high chain link fence to separate the Phase 1 portion of the property from the remainder of the property to prevent illegal dumping and other unauthorized access to that portion of the property.
6. All outdoor storage shall be within the proposed 5,000 s.f. covered storage area and shall be limited to equipment and machinery associated with the Applicant's business. No bulk materials shall be stored on the property.
6. The Applicant shall submit revised plans and/or drawings to the Board Engineer for approval as a condition of this approval.
7. The Applicant must comply with all conditions set forth in the Resolution approving Application No. BA-01-20 pursuant to a hearing before the Board on December 05, 2001, as memorialized by written Resolution dated January 09, 2002.
8. The Applicant shall comply with all representations made during the course of the hearing and shall submit revised plans and specifications as required.

9. The granting of this application shall not be construed to eliminate satisfaction of all of the requirements of the Zoning Ordinance, Conditional Use Ordinances or other requirements of the agency, boards and authorities of the Township of Hillsborough.

10. The granting of this application shall not be construed to include satisfaction of the Uniform Construction Code of the State of New Jersey.

11. Any and all fees properly due and owing the Hillsborough Board of Adjustment for the hearing and for the application must be paid.

Certified to be a true copy of a resolution by the
Hillsborough Township Board of Adjustment held on
May 18, 2004



PAUL DRAKE
Chairman

VOTE ON MOTION

FOR

Greg Bonin
Rick Nunn
Charles Senders
Jo-Ann Delasko (Alternate #1)
Barry Quick (Alternate #2)
Mark Tomczak
Chairman Drake

AGAINST

NONE

ABSTENTIONS

NONE

ABSENT

Walter Dietz
Vince Canterelli

VOTE ON RESOLUTION:

FOR

Absent
Absent
Charles Senders
Jo-Ann Delasko (Alternate #1)
Absent
Mark Tomczak
Chairman Drake

AGAINST

ABSTENTIONS

ABSENT

RESOLUTION OF BOARD OF ADJUSTMENT
TOWNSHIP OF HILLSBOROUGH
SOMERSET COUNTY, NEW JERSEY

PAT RICHARD, LLC (Amended Phase 1 and Phase 2)
APPLICATION: BA-05-2

Applicant: Pat Richard, LLC
Location: 330 Roycefield Road
Tax Lot: Block 142, Lot 23B
Hearing Date: July 6, 2005
Request: Amend previously-approved use variance and final site plan approval (application BA-03-45, called "Phase I" by the Applicant) to grant use variance for two additional new buildings; use variance to renovate and use a building existing on the property; a variance, approved by the Board in "Phase I", for motor vehicle parking and vehicle storage; for design waivers; and for preliminary and final site plan approval.

District: ED

Relief requested:

Use variance for two buildings, the first having an area of 6,000 sq. ft., to be used for a plumbing contractor; and the second having an area of 7,000 sq. ft. to be for a heating contractor;

A variance for motor vehicle parking and vehicle storage as shown on the approved plans;

Bulk variance for lot area:

Required: 50 AC; Existing: N/A; Proposed: 20.8106 AC;

Bulk side-yard variances:

Required: 150 ft.; Existing: N/A; Proposed: 100.34 ft.;

Design waiver for undersize parking spaces;

Design waiver for not providing required loading spaces;

Design waiver for 30 and 25 foot access driveways;

Design waivers for portions of driveway loading and storage areas to be gravel surface without curbs;

Design waiver for no site lighting in rear loading areas; and

Preliminary and final site plan approval.

Relief Granted:

Use variance as requested;

Bulk side-yard variances as requested;

Design waivers as requested;

Preliminary and final site plan approval.

Plans: Phase 2 and Amended Phase 1 - Site Plan and Final Construction Plans prepared for Lot 23B in Block 142, prepared by Van Cleef Engineering Associates, dated, December 15, 2003 and last revised on June 22, 2005, 11 sheets.

WHEREAS, the required, existing and proposed conditions are as follows:

Minimum Lot Size:

Required: 50 AC; Existing: N/A; Proposed: 20.8106 AC;

Minimum Lot Depth:

Required: N/A; Existing: N/A; Proposed: 863.69 ft.;

Minimum Lot Width:

Required: N/A; Existing: N/A; Proposed: 1,027 ft.;

Minimum Front Yard:

Required: 150 ft.; Existing: N/A; Proposed: 162.02 ft.;

Minimum Side Yard:

Required: 150 ft.; Existing: N/A; Proposed: 100.34 ft.;

Minimum Rear Yard:

Required: 150 ft.; Existing: N/A; Proposed: 896 ft.;

Maximum Impervious Coverage:

Required: 60%; Existing: N/A; Proposed: 31%;

Maximum Building Height:

Required: 60 ft.; Existing: N/A; Proposed: 25 ft.;

Maximum FAR:

Required: 0.3; Existing: N/A; Proposed: 0.053

WHEREAS, Applicant has applied to the Hillsborough Township Board of Adjustment for a use variance and bulk variances, pursuant to the provisions of N.J.S. 40:55D-70(c)&(d), for the Relief Requested; and

WHEREAS, a public hearing on the application was held by the Board of Adjustment on the Hearing Date, at which time Applicant, represented by its attorney Lawrence A. Vastola, was given the opportunity to present testimony and legal argument, and the Board of Adjustment's consultants and members of the public were given the opportunity to be heard; and

WHEREAS, the Applicant presented testimony to the Board as more fully set forth on the record from the following individuals:

Michael K. Ford, PE, Van Cleef Engineering Associates, Applicant's engineer; and

Roger DeNiscia, Applicant's planner; and

Mr. Shafer, attorney for the landscape contractor in support of Applicant; and

Mr. Gappuso, Vice President of the landscaping contractor.

1. Mr. DeNiscia testified that one of the proposed uses in this application is a landscape contractor, which will employ between 75 to 100 employees who travel in teams or crews of 4-5 workers. The second proposed use is a HVAC contractor, which will have 10 employees, 6 company vehicles and operate only 5 days a week. The third proposed use is a plumbing contractor which will employ 3-4 people and have 2-4 vehicles stored on site.

2. The property is located in the Township's ED, Economic Development zoning district. The property is currently abandoned.

3. The permitted, required, existing and proposed conditions are as noted above.

4. The Applicant's Request is as noted above.

WHEREAS, one member of the public appeared to ask questions on the application; and

WHEREAS, the Board has made the following findings of fact and conclusions of law:

- a. The Applicant has shown sufficient evidence to substantiate the need for relief pursuant to N.J.S. 40:55D-70(c) & (d), subject to certain conditions.
- b. The construction of the Relief Granted will not alter the general character of the neighborhood.
- c. The Applicant has demonstrated sufficient hardship as to the Relief Granted.
- d. The granting of the Relief Granted, as conditioned in this Resolution, will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the Master Plan and Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED, on the basis of the evidence presented to it, and the foregoing findings of fact and conclusions of law, that the Board of Adjustment does hereby GRANT the Relief Granted as noted above, subject to the following:

1. Applicant is required to comply with the following conditions:

- a. All construction to be substantially as shown on the Plans, except as noted in paragraph 4 below.
- b. The driveway to the parking area of the two buildings proposed in this application shall be paved.
- c. Primary hours of operation of the uses on site are from 7:00 a.m. to 4:30 p.m. 5 days a week, with some Saturdays.
- d. Fencing satisfactory to the Township Planner shall be erected to prevent access to the rear of the site.
- e. There shall be no retail or manufacturing on the site.

- f. The long access drive to the existing building shall be paved.
- g. Additional parking spaces described on the Plans as "banked" parking spaces shall be constructed as and when required by the Township Zoning Officer.
- h. Applicant shall comply with all conditions set forth in the Resolution approving Application No. BA-01-20 pursuant to a hearing before the Board on December 05, 2001, as memorialized by written Resolution dated January 09, 2002, and the Resolution approving Application No. BA-03-45 pursuant to a hearing before the Board on March 24, 2004, as memorialized by written Resolution dated May 19, 2005.
- i. Applicant shall provide an all season landscaped buffer around the entire property satisfactory to the Township Planner.
- j. Applicant shall comply with the comments of the Fire Official on this application, including an alternate access for emergency vehicles at the Southwest corner of the property.

2. The grant of this application shall not be construed to reduce, modify or eliminate any requirement of the Township of Hillsborough Land Use and Development Ordinance, other Township Ordinances, or the requirements of any Township agency, board or authority, except as specifically stated in this Resolution.

3. The grant of this application shall not be construed to reduce, modify or eliminate any requirement of the State of New Jersey Uniform Construction Code.

4. Applicant is required to comply with Applicant's representations to and agreements with the Board of Adjustment during the hearing on this application.

5. Applicant shall provide off-tract improvements or fees pursuant to section 188-67 of the Township Land Use and Development Ordinance as required by the Township Engineer.

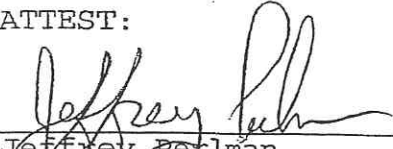
6. Applicant shall pay an affordable housing fee of 1% of the equalized assessed value pursuant to section 188-139 of the Township Land Use and Development Ordinance.

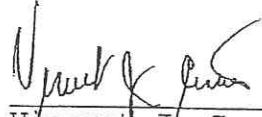
7. All fees assessed by the Township of Hillsborough for this application and the hearing shall be paid prior to any construction.

BE IT FURTHER RESOLVED, that this Resolution, adopted ⁵09-07, 2005, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: Yes: Canterelli, Kennedy, Quick, Wetter, Passalacqua; No: none; Abstain: none. Absent: Dietz Valcheck, Gwiazdowski.

RESOLUTION DATE: SEPTEMBER 7, 2005

ATTEST:


Jeffrey Perlman,
Assistant Planner/Zoning Officer
Secretary


Vincent J. Canterelli
Chairman

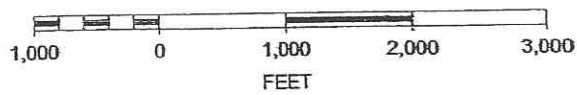
VOTE ON THE RESOLUTION					
MEMBER	YES	NO	NOT ELIGIBLE	ABSTAIN	ABSENT
CANTERELLI	✓				
DIETZ			✓		
KENNEDY					
VALCHECK	✓				
GWIAZDOWSKI					✓
QUICK	✓				
SHERIDAN			✓		
WETTER, alt 1	✓				
PASSALACQUA, alt 2	✓				

**APPENDIX
B**

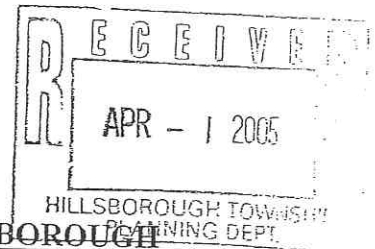
EXISTING ZONING
HAMILTON ROAD AREA
NOVEMBER 2008



SCALE 1: 17,490



AGREEMENT BETWEEN
COUNTRY CLASSICS AND THE TOWNSHIP OF HILLSBOROUGH



WHEREAS, the parties in Cornelius VanCleaf, et.al v. Hillsborough Township Committee, et.al entered into a Consent Order of Dismissal With Stipulation, L-13035-78, Superior Court of New Jersey, Law Division, Somerset County, (July 16, 1980)

WHEREAS, the Consent Order provides that the development, Country Classics, shall be subject to the provisions of Article VI (Zoning District and Standards) of the Hillsborough Land Development Regulations Ordinance as the same was in existence and in effect on September 7, 1978;

WHEREAS, Article VI provided for an impervious coverage of 15% of the site and whereas in 1978, Hillsborough interpreted a stone driveway as being 50% impervious coverage;

WHEREAS, this interpretation continued through the development of Phase I and II of Country Classics and continued as the official municipal interpretation until recently;

WHEREAS, Hillsborough has recently changed its interpretation that a stone driveway is 50% impervious to an interpretation that a stone driveway is 100% impervious coverage;

WHEREAS, Country Classics, Inc., successor to Plaintiff Cornelius VanCleaf, et.al and developer of Country Classics' development submits that this change in interpretation of the Land Development Ordinance is the equivalent of a zoning change, which is prohibited by the Consent Order;

WHEREAS, the parties have agreed to resolve this matter by negotiation rather than by a declaratory judgment and/or other legal action to obtain a judicial interpretation of the Consent Agreement;

WHEREAS, the development in the eastern portion of Hillsborough Township where Country Classics, Inc. and other developments exist has caused an acute need for emergency medical services in that portion of Hillsborough Township;

WHEREAS, Country Classics, Inc. is prepared to make an equitable contribution to that emergency medical services need which partially arises out of its development and pursuant to this settlement which avoids the need for litigation;

WHEREAS, the parties also recognize that there was an error in Chapter 188, 66D (3) which should have provided:

A single-family residence that was built under court mandated standards may have additions to the principal building and/or accessory structures, paved driveways and patios constructed on the lot that create impervious surface in excess of the current impervious surface standard for the zone without the need for a variance, provided that the impervious surface coverage will not exceed the court mandated standard or 20 percent of the lot area, whichever is greater, and provided that the homeowner can provide a grading and drainage plan in accordance with the Township standards and approved by the Township Engineer.

WHEREAS, the Ordinance instead inadvertently provided the word "lesser" rather than "greater" and all parties are equally desirous to correct this error.

WHEREAS the Township has adopted a Resolution authorizing its mayor and clerk to execute this Agreement on its behalf and Country Classics, Inc. hereby authorizes its president to execute this Agreement on its behalf;

NOW THEREFORE, on this 5th day of April, 2005, IT IS AGREED between Country Classics, Inc. and the Township of Hillsborough as follows:

1. All parties hereby agree that, consistent with the original meaning and interpretation of Article VI of the Hillsborough Development Regulations, stone driveways shall be deemed to be fifty percent impervious coverage for the remainder of Phases III and IV of the Country Classics development.

2. Country Classics shall make payments to the Township for these emergency medical service purposes as follows:

a. Country Classics shall pay \$5,000 per unit for the first 230 units built in accordance with Paragraph 1 for a total of \$1,150,000. Payment shall be at the time of issuance of the certificate of occupancy for each of the first 230 units in Phases III or IV.

b. In the event that the Township needs \$150,000 for the purchase of an emergency service vehicle any time after January 1, 2006, and Country Classics has not yet paid \$150,000 pursuant to 2a because it has not obtained thirty (30) certificates of occupancy pursuant to Paragraph 1 above, the following adjustment shall be made: Provided no litigation or administrative action has delayed the project's construction in accordance with the impervious coverage provision of Paragraph 1, then upon thirty (30) calendar days notice, Country Classics shall pay to the township the difference between \$150,000 and the money it has already paid pursuant to Section 2a.

c. Such payment shall be credited against subsequent certificate of occupancy payments as they come due to avoid duplication of payments.

3. All obligations to the Township's affordable housing trust fund, either through previous Country Classics litigation and/or the Township's current affordable housing fee

ordinance, or both, whichever is greater, shall remain in full force and effect for the duration of Phase III and Phase IV of the development.

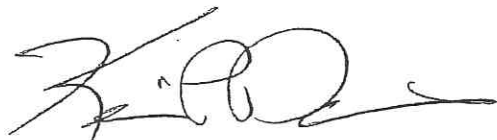
4. The Governing Body shall introduce an ordinance amending Chapter 188-66D (3) in the manner described in the preamble and shall vote upon it within the next 60 days after this Agreement is executed.

5. In the event of a challenge to any portion of this agreement, all parties will defend it. To the extent that the challenge can be resolved by a procedural action, all parties agree to take such procedural action.

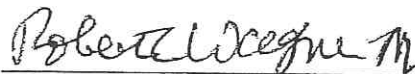
6. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, we set our hands and seal the date first set forth above.

The Township of Hillsborough



Attest: Kevin P. Township Clerk
Davis

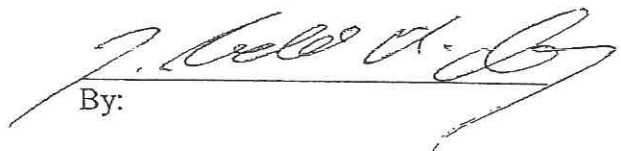


By: Robert Wagner, Mayor

President
Country Classic, Inc.



Witness:



By: