

**TOWNSHIP OF UNION  
PLANNING BOARD RESOLUTION**

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*Applications for Final Approval and for Amended  
Preliminary and Final Major Subdivision Approval  
- "Lookout Pointe" (formerly "Spruce Run Estates,"  
"Hunterdon Hills" and "Rupell Run Subdivision"*

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**Applicant:** *Toll Brothers, Inc.  
3103 Philmont Avenue  
Huntington Valley, PA 19006*

**Owner:** *Alpheus Albert  
PO Box 5266  
Clinton, New Jersey 08809*

**Property:** *Block 11, Lot 8  
Rupell Road  
Union Township, Hunterdon County*

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**WHEREAS**, Toll Bros., Inc. (the "Applicant"), is the Purchaser under Contract of a property owned by Alpheus Albert and located on Rupell Road in the Township of Union, County of Hunterdon, State of New Jersey and known as Block 11, Lot 8 on the Tax Map of the Township of Union and which property is located in the "CR" Zone (the "Property"); and

**WHEREAS**, the Applicant has filed the necessary application for final major subdivision approval, and then subsequently continued its application as an amendment to its preliminary approval and also for final major subdivision approval (the "Application"), together with the appropriate filing fees with the Administrative Officer; and

**WHEREAS**, the Township of Union Planning Board (the "Board") previously granted preliminary major subdivision approval, which approval was memorialized by Resolution of the Board on April 5, 1995 (the "Preliminary Approval"); and

**WHEREAS**, the Board previously denied the Application for Final Major Subdivision Approval on May 23, 2002, which denial is intended to be memorialized in this comprehensive Resolution to the Board; and

**WHEREAS**, the Applicant, based in part upon the basis of the decision of the Board for initial denial, immediately continued its application as an amendment to the Preliminary Approval previously granted and for final approval of the Major Subdivision; and

**WHEREAS**, the Board determined, at the request of the Applicant, to incorporate into the record of the Application for an amendment of its preliminary and final applications, all of the filings presented by the Applicant for the Final Application; including, the plans, documents, reports, letters, exhibits, testimony, colloquy and transcripts of the Application for Final Major Subdivision and the Board's consideration of the completeness of the said application, and to treat the hearings on the Application as a continuation of the hearings on the Final Application, and further, as incorporating the Board's consideration and hearings of the application which was the subject of the Preliminary Approval; and

**WHEREAS**, the Applicant has submitted a plan entitled "Lookout Pointe (formerly known as Hunterdon Hills and Spruce Run Estates and Rupell Road Subdivision), Block 11, Lot 8, Union Township, Hunterdon County, New Jersey" dated April 4, 2001, with a last revision date of March 8, 2002 and which plan was prepared by Eastern States Engineering, Inc. and signed and sealed by Jeffrey W. Franz, P.E., N.J. License No. 40873; and

**WHEREAS**, on behalf of the Township of Union and the Board, the Board's various professional consultants and reviewing agencies have reviewed the various plans and testimony presented to the Board, and submitted their written and verbal reports, including:

1. the Board's Engineer, Robert Bogart, P.E., in written reports dated June 21, 2001, September 25, 2001, January 15, 2002 and March 14, 2002;
2. the Township's Professional Planner, Carter Van Dyke, P.P., in written reports dated June 22, 2001, September 20, 2001, September 27, 2001, October 15, 2001, November 19, 2001, December 10, 2001, January 14, 2002 and February 15, 2002;
3. the Board's Geologist Matt Mulhall, in a written report dated March 19, 2002;
4. the Union Township Environmental Commission, in a report dated December 5, 2001; and

**WHEREAS**, the Board, as reflected in the transcripts of the public hearings, also considered the reports, letters and testimony of certain third-parties-in-interest; including, members of the public and also including, but not limited to:

1. the New Jersey Water Supply Authority, in written reports dated August 22, 2001 and December 4, 2001 and in oral testimony from Daniel J. Van Abs, Ph.D., AICP; and
2. the Rutgers Environmental Law Clinic, in letters dated November 21, 2001, March 28, 2002 and November 14, 2002.

**WHEREAS**, the Planning Board has reviewed the Application, and the written reports of its consultants as well as other agencies having jurisdiction over the application, and considered the testimony of the Applicant, as presented through its representatives, Vice President, Tom Argyris, Engineers, John Baiunno, P.E., Jeffrey Franz, P.E. and Jim Takacs, P.E. and Wastewater

Management consultant, Andrew Higgins and received and reviewed reports prepared by Eastern States Engineering in response to the aforementioned professional reports from the Board's experts, dated October 24, 2001, December 10, 2001 and March 11, 2002 and letter reports from the Applicant's counsel Carl S. Bisgaier, Esq. dated June 25, 2001, November 29, 2001, December 17, 2001 and April 22, 2002 all as presented through the Applicant's Attorney, Flaster/Greenberg, P.C., by Carl S. Bisgaier, Esq. and Frank Wisniewski, Esq. at public hearings conducted on April 26, 2001, May 24, 2001, June 28, 2001, August 23, 2001, September 27, 2001, October 25, 2001, December 4, 2001, December 20, 2001, January 24, 2002, March 5, 2002, March 26, 2002, May 23, 2002 and November 14, 2002; and

**WHEREAS**, the Board received the following exhibits into evidence:

Final Application and for Amended Preliminary and Final Application:

- A-3 Notice documents;
- A-4 Site Plan;
- A-5 Stormwater Basin and Management Plan;
- A-6 Grading and Utility Plan;
- A-7 N.J. Water Supply Authority Letter;
- A-8 Sewerage Treatment - Site Plan with Disposal Beds;
- A-9 Sewerage Treatment - Building Layout Plan;
- A-10 Sewerage Treatment - Building Design Plan;
- A-11 CV - Andrew Higgins, P.E.;
- A-12 Barn Face - Exposure: Southern;
- A-13 Barn Face - Exposure: Eastern;
- A-14 Barn Face - Exposure: Western;
- A-15 Barn Face - Exposure: Northern;
- A-16 Pictures of Barn Prior to Demolition; and
- A-17 Carl S. Bisgaier, letter to Board.

Amended Preliminary and Final Application:

- T-1 Notice documents;
- T-2 DEP Wetland Permit;
- T-3 DEP-NJPDES Permit;
- T-4 Site Plan; and
- T-5 Barn Plans; and

**WHEREAS**, the Board received evidence of the following outside agency approvals having been obtained by the Applicant:

- 1. May 27, 2001: DEP-NJPDES, preliminary approval;
- 2. June 12, 2001: Hunterdon County Soil Conservation District;
- 3. June 21, 2001: Hunterdon County Planning Board, unconditional preliminary approval;
- 4. June 21, 2001: Hunterdon County Planning Board, conditional final approval;

5. January 30, 2001: Hunterdon County Department of Health Letter of Non-Jurisdiction;
6. June 28, 2002: DEP Statewide General Permit, Water Quality Certification, Access Waiver for General Permits and Transition Area Waiver averaging; and
7. August 20, 2002: DEP-NJPDES, final approval.

### **APPLICATION FOR FINAL MAJOR SUBDIVISION APPROVAL**

**BASED ON THE FOREGOING AND UPON DUE DELIBERATION, THE BOARD MAKES THE FOLLOWING FINDINGS WITH REGARD TO THE APPLICATION FOR FINAL MAJOR SUBDIVISION APPROVAL:**

8. The Recitals set forth above are incorporated herein.
9. The Applicant submitted a proper application for final major subdivision approval with the Administrative Office, which application as to form (not contents) and the required documentation was deemed complete by the Administrative Office.
10. The applicant secured a certified list of neighboring property owners within two hundred feet of the said property and submitted proof of service of notice of the said application on the adjoining property owners, which notice was served by certified mail, return receipt requested, and the applicant also supplied the certified receipts together with an Affidavit of Service attesting to the mailing of the notices to the said adjoining property owners.
11. A copy of the notice of application served on neighboring property owners was submitted to the Board together with an Affidavit of Proof of Publication of the said document in the official newspaper of the municipality at least ten days prior to the date of the initial public hearing.
12. All application fees have been paid and the taxes on the Property are current.
13. The Board reviewed the application and related documents and the recommendation of the Board's Engineer and based thereon deemed as complete the application for final major subdivision approval.
14. The Applicant, through its representatives, confirmed that there would be full compliance by the Applicant with the reports of the Township's professionals, based on the Applicant's response letters and the testimony and commitments made by the Applicant through its representatives during the course of the public hearings, all as set forth above.
15. All conditions of Preliminary Approval, except to the extent modified in the plans submitted and subject to the foregoing professional report and testimony would be continued as a condition of final approval of the Application.

16. The Application was open to the public for comment, and members of the public as well as members of the environmental commission expressed their views and asked questions of the Applicant's witnesses which the Board considered and deemed satisfied and/or were taken into consideration by the Board.
10. Testimony confirmed that the prior contract purchaser of the Albert property had secured the preliminary approval for development of the site. However, due to either disagreements or contractual provisions, the owner of the property was able to void the agreement. After preliminary approval had been granted, the Planning Board learned of the intention of the owner to demolish the large barn structure on the property which had been preliminarily approved in the prior developer's subdivision application to be restored to include market, as well as low and moderate income housing units. At the direction of the Board, the Board Attorney wrote to the owner advising him that the barn was in integral part of the preliminarily approved plans, and demolishing the barn would adversely impact the preliminary approval which had been previously granted. Nonetheless, the owner demolished the barn and the subsequently executed a contract with the current developer for the sale of his property.
11. A major concern of the Board with regard to the Final Application was the demolition of the Barn which previously was located on the Property. It was the position of the Board that the rehabilitation and maintenance of the Barn had been a material part of the Preliminary Approval and that the demolition of the Barn was a major change in the facts and, therefore, the matter was not appropriate for action on an application for Final Approval but would require an amendment to the Preliminary Approval.
12. Additionally, also of primary concern to the Board was failure of the prior applicant and/or the owner of the property and/or the current applicant to apply for an extension of the rights granted by preliminary approval pursuant to *N.J.S. 40:55d-49*.
13. The Applicant offered testimony and took the following position with regard to the demolition of the Barn and the extension of preliminary approval:
  - a. The relevant section of the Ordinance, 30-7.8 refers only to the need to "restore and permanently preserve" a building or structure and that the concept of "restoration" includes replication of the original architectural features or reconstruction of the original form or structure;
  - b. The current Applicant committed to undertake such replication, reconstruction and preservation and to include two (2) COAH units;
  - c. The plans submitted as to the Barn structure were identical to the plans approved at the time of the Preliminary Approval (comparing Sheet C-20 with Sheet SD09.08;
  - d. The current Applicant had pictures of the original Barn and would replicate the structure consistent with the original architectural features except as modified consistent with the approved plans;

- e. The Barn is intended to include two (2) units of Affordable Housing pursuant to the Township's Housing Element and Fair Share Plan (the Housing Element having been adopted by the Board) (the "Compliance Plan");
  - f. On October 2, 1996, COAH granted substantive certification to the Compliance Plan which included the two (2) units in the development then known as Hunterdon Hills.
  - g. Subsequently, due to the belief by the Owner that the Barn was in a deteriorated conditioned and represented a danger to the public health and safety, the Barn was demolished;
  - h. Upon learning of the demolition of the Barn, and the apparent loss of the potential to construct the two (2) units of Affordable Housing, and for unrelated reasons, COAH informed the Township that it would be required to amend its Compliance Plan to address the shortfall in units;
  - I. The Township was then informed that the Applicant intended to reconstruct the Barn and to provide the said units in a replicated structure;
  - j. Based thereon, the Township resubmitted an amended Compliance Plan to COAH which included the two (2) units of Affordable Housing in Hunterdon Hills;
  - k. The Township submitted evidence to COAH that the two (2) units of Affordable Housing were part of a development for which the Planning Board approvals were still in effect;
  - l. Based on the foregoing representations, on December 6, 2000, COAH approved the amended Compliance Plan citing, in part, a reference to the Hunterdon Hills project as the "inclusionary development with Planning Board approvals in place."
  - m. Based on this history, the current Applicant argued that the Preliminary Approval was in place and that an application for Final Approval was appropriate.
14. The application was open to the public at each hearing date and extensive questioning of the applicants various witnesses was made part of the record of the proceedings. As a result of issues raised by the Planning Board and members of the public, the applicant agreed to undertake and incorporate in its plans, numerous modifications sought by the Planning Board, and including but not limited to installing a current, "state of the art" package treatment plant with proven reliability, rather than the obsolete package plant system that had originally been proposed in 1994 leading to the original preliminary approval.
  15. Notwithstanding the foregoing, on May 23, 2002, the Board determined that the demolition of the Barn and the proposal to reconstruct and replicate the Barn was a major change in the Preliminary Approval and would require the submission of an application for and amendment to the Preliminary Approval.

A motion was made by Mr. Hess and seconded by Ms. Nargi to grant final major subdivision approval.

**VOTE ON  
DECISION**

**BOARD MEMBER**

<u>Absent</u>	Hirt
<u>N</u>	Grossi
<u>N</u>	Martin
<u>Y</u>	Brandt
<u>N</u>	Haynes
<u>N</u>	Hess
<u>N</u>	Bischoff
<u>N</u>	Nargi
<u>N</u>	Ricker
<hr/>	
<u>N</u>	Lukasik (1 <sup>st</sup> Alt)
<u>DNP</u>	Rosol (2 <sup>nd</sup> Alt)

Motion to approve failed by Board vote of 8-1 against approval.

**CONTINUING APPLICATION TO INCLUDE AMENDMENT TO PRELIMINARY  
AND FINAL MAJOR SUBDIVISION APPROVAL**

**BASED ON THE FOREGOING AND UPON DUE DELIBERATION, THE BOARD MAKES THE FOLLOWING FINDINGS WITH REGARD TO THE APPLICATION FOR AMENDED PRELIMINARY AND FINAL MAJOR SUBDIVISION APPROVAL:**

1. The findings set forth above with regard to the application for Final Major Subdivision Approval are incorporated herein.
2. The Applicant submitted a proper application for amended preliminary and final major subdivision approval with the Administrative Office, which application as to form (not contents) and the required documentation was deemed complete by the Administrative Office.
3. All application fees have been paid and the taxes on the Property are current.
4. The Board reviewed the application and related documents and the recommendation of the Board's Engineer and based thereon deemed as complete the application for final major subdivision approval.

5. Upon continuation of its application to include the requested amendment to the preliminary approval so as to recognize the demolition of the barn and applicant's proposal for reconstruction, incorporation of all of the modifications requested by the Planning Board, and application for final major subdivision approval, the applicant requested and the Board incorporated into the record, all of the prior filings and testimony presented by the applicant during its previous application for final approval, and including but not limited to the plans, documents, reports, letters, exhibits, testimony, colloquy and transcripts of the application for final major subdivision. The applicant made available to the public in advance of the hearings, five (5) complete transcripts of the prior proceedings, as well as providing additional copies to the Board and its professionals for their review and use.
6. The Applicant, through its representatives, has confirmed that there would be full compliance by the Applicant with the reports of the Township's professionals, based on the Applicant's response letters and the testimony and commitments made by the Applicant through its representatives during the course of the public hearings, all as set forth above.
7. All conditions of Preliminary Approval, except to the extent modified in the plans submitted and subject to the foregoing professional report and testimony would be continued as a condition of final approval of the Application.
8. The Application was open to the public for comment, and members of the public as well as members of the environmental commission expressed their views and asked questions of the Applicant's witnesses which the Board considered and deemed satisfied and/or were taken into consideration by the Board.
9. With regard to the Barn restoration, the Applicant took the following position in addition to the representations previously made:
  - a. Since the denial of the application for Final Approval, the Township submitted an application to COAH for an extension of its substantive certification, which application included a representation that the Township would continue to abide by the terms and conditions of its certified Compliance Plan;
  - b. The said certified Compliance Plan continues to rely on the two (2) units of Affordable Housing in the Barn as part of the Hunterdon Hills approval;
  - c. The Applicant would restore the Barn consistent with the Preliminary Approval and seeks to amend the said approval in recognition of the demolition of the Barn and the need for the perceived need for the Planning Board to review the Applicant's proposal for its replication and reconstruction.
10. The Board considered the applicant's proposal for restoration of the barn structure to replicate the former barn existing on the site, however to be built with new and modern materials and to include the two low and moderate income units which are part of the municipality's Fair Share Plan approved by COAH.

11. The Board also acknowledged that although the Township Development Regulations affecting this subject property had been modified after the grant of preliminary approval, nonetheless the Township did not seek to amend its Fair Share Plan, nor to eliminate the two approved COAH units from this site, which would have required an application to COAH upon notice to all affected property owners and developers. Absent such application by the Township and approval by COAH, it was determined that a Development Regulation Ordinance Amendment would not be applicable to this subject property. Accordingly, the actions of the Township in resubmitting and re-certifying the two COAH units on the subject property effectively granted extensions of the preliminary approval so as to maintain the viability of the two COAH units on this tract.
12. The Board accepts the proposal of the Applicant to reconstruct and to replicate the Barn as set forth on the plans and exhibits and as represented in the testimony of the Applicant and to provide for the two (2) units of Affordable Housing as part of the Barn reconstruction and replication.
13. During the course of the Board's review of the Application, a question arose as to whether a variance may have been necessary at the time of the Board's review and approval of the application for Preliminary Approval with regard to Ordinance Section 30-5.5b.2b relating to the setbacks of garages for Village Homes. It is noted that the aforementioned approval was granted in 1995 and no objection previously had been raised with regard to this issue.
14. The present plans are identical to the plans previously approved with regard to the footprint of the buildings and the location of the garages. The garages proposed by the current Applicant provide for side entry garages. The effect of the side entry garage is that the structure front shows no garage and cars will not be parked in front of the residence, rather cars will be parked at the side of the building, with each driveway extending back from the front of each building. Further, given the provision of side entry garages, the garages could be located in the rear half or the front half of the building without any impact on the appearance of the Building from the street or impact on the streetscape.
15. The Board's Planner testified that this effectuates the intent and purpose of the Ordinance which is to avoid cars parking in front of the buildings and giving the appearance of a townhouse development. The Board agreed that a variance was not necessary, however, if one were deemed necessary, the Board accepted the testimony proffered that the benefits of granting the variance would outweigh any detriment in that the Board prefers the side entry garages, and the design is consistent with the intent and meaning of the Ordinance and does not have a detrimental impact on the Ordinance or the zone plan.

**NOW THEREFORE, BE IT RESOLVED** by the Planning Board of the Township of Union, Hunterdon County, New Jersey on the 25<sup>th</sup> day of November, 2002 that amended preliminary and final major subdivision approval be granted as hereinafter set forth:

In its deliberations and conditional approval, the Planning Board relied upon and gave specific consideration to the representations made by the applicant and the statements made in the application for amended preliminary and final major subdivision approval and the subdivision plat presented to the Board, and upon the agreement by the applicant that it would accept and incorporate as conditions of this approval, all commitments made in the application, plan and associated documents and testimony before the Board and which are hereby made a condition of this approval as follows:

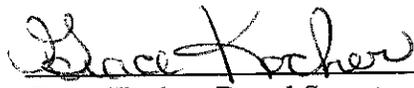
1. All of the information as shown on the amended preliminary and final major subdivision application and plat and other documents referenced in the Planning Board Engineer and Planner reports, and as may be required to be amended in accordance with this Resolution are adopted by references of the complete application and modified plans were set forth herein and the same remain part hereof. The commitments made by the applicant and its representatives in their recorded testimony and as set forth in the previous findings of fact shall be satisfied.
2. The applicant shall comply with all items contained in the Planning Board Engineer's reports, and the Township Planner's reports, and which are not otherwise modified by a specific condition herein.
3. The final major subdivision plat shall not be executed by the Township until all conditions of preliminary and final approval are satisfied.
4. Conservation Easements shall be shown on the final major subdivision plat, and the Conservation Easements shall also be marked in the field by appropriate markers approved by the Township Engineer. In addition, the Deed to each lot shall describe, by Metes and Bounds Description, the specific Conservation Easement area on that lot. The Conservation Easements, as well as any other Easements and Deeds on the property shall be submitted to the Union Township Planning Board, and the Board Engineer, Planner and Attorney, and the Township Attorney for their review and approval prior to recording.
5. All homeowners association documents shall be submitted to the Union Township Planning Board, and the Board Planner and Attorney for review and approval prior to recording.
6. The approval herein memorialized shall not constitute, nor be construed to constitute any approval, direct or indirect, of any aspect of the final plan or the improvements to be installed, which are subject to third-party jurisdiction and which require approvals by any third-party agencies. This Resolution of approval is specifically conditioned upon the Applicant securing the approval and permits of all other agencies having jurisdiction of any aspects of the proposed development.
7. During construction, the Applicant shall comply with all requirements of the Development Regulations of the Township of Union, this approval and any Developers Agreement entered into with the Township of Union. Such compliance shall also be binding upon the Applicant's agents, servants, successors and assigns.

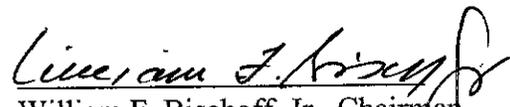
8. Final major subdivision approval shall in no way be construed as acceptance of any street, drainage system or other improvement required by the Board, nor shall such approval obligate the Township in any way to repair, exercise jurisdiction over any street, drainage system or other improvement prior to acceptance of the improvement by the governing body.
9. The Board reserves the right to revoke and withdraw any approval granted herein, upon notice to the Applicant and public hearing, in the event that there is any deviation from or alteration of the plan hereby approved, unless prior written approval for such deviation or alteration has been obtained from the Board. Minor deviations and field changes may be authorized in writing by the Township Engineer.
10. The Applicant shall pay all on-tract and off-tract contributions required by the Township Ordinances and applicable to the subject development and approval; as well as posting such additional inspection and review fees as may be required by the Township of Union; and shall post the applicable Performance/Maintenance Bonds and execute a Development Agreement with the Township as may be required and approved by the Township Attorney.
11. In the event this applicant sells or otherwise transfers this property to any other applicant, assignee, person or entity, the escrow accounts and Bonds posted by the applicant herein, shall not be released in whole or in part, until the successor applicant, developer, assignee, person or entity has posted sufficient review and inspection escrows and Bonds as determined by the Township Attorney and Chief Financial Officer, and countersigns the existing Development Agreement or executes a new Development Agreement with the Township as directed by the Township Attorney.
12. Neither the Board nor its employees nor any of the Board's professional consultants will perform any services in furtherance of this approval if there is a deficiency in any escrow or inspection fee account. The applicant will have a continuing duty to maintain a positive balance in all accounts until all conditions have been satisfied and all charges have been paid.
13. There is hereby incorporated and made a part of this conditional approval, all of the conditions of the previously granted preliminary major subdivision approval, as though such conditions were set forth at length herein, to the extent not inconsistent or modified by this approval.
14. The applicant shall carry out and satisfy all of the terms and conditions of the Consent Order and Stipulation of Settlement in the matter of Toll Bros., Inc., etc. v. Township of Union, etc., et. al., before the Superior Court of New Jersey, Docket No. HNT-L-000381-02, and dated January 2, 2003, and which is hereby made a part hereof.

A Motion to grant amended preliminary and final major subdivision approval was made by Mrs. Hirt and seconded by Mr. Brandt.

<u>VOTE ON DECISION</u>	<u>BOARD MEMBER</u>	<u>VOTE ON RESOLUTION</u>
<u>Y</u>	Bischoff	<u>Y</u>
<u>Y</u>	Brandt	<u>Y</u>
<u>N</u>	Grossi	<u>--</u>
<u>Y</u>	Haynes	<u>--</u>
<u>Y</u>	Hess	<u>--</u>
<u>Y</u>	Hirt	<u>--</u>
<u>Y</u>	Martin	<u>Y</u>
<u>N</u>	Nargi	<u>--</u>
<u>DNP</u>	Roth	<u>--</u>
<hr/>		
<u>DNP</u>	Rosol (1 <sup>st</sup> Alt)	<u>--</u>
<u>N</u>	Lukasik (2 <sup>nd</sup> Alt)	<u>--</u>

The foregoing Resolution memorializing the actions taken by the Township of Union Planning Board was duly adopted by the Planning Board by a vote of a majority of the aforesaid members who voted to approve the application at its regular meeting held on February 4, 2003

  
 Grace Kocher, Board Secretary  
 Union Township Planning Board

  
 William F. Bischoff, Jr., Chairman  
 Union Township Planning Board