

IN RE:

BEFORE THE BOARD OF SUPERVISORS

APPLICATION OF

WESTTOWN TOWNSHIP

WEST CHESTER AREA
SCHOOL DISTRICT

CHESTER COUNTY, PENNSYLVANIA

DECISION

West Chester Area School District (hereinafter "District" and "Applicant") has filed a conditional use application with Westtown Township (hereinafter "Township") for the approval by the Board of Supervisors (hereinafter "Board") of a single-family home development consisting of 50 homes under the Flexible Development Procedure, §170-900 through §170-908, of Article IX of Chapter 170, Zoning, of the Code of the Township of Westtown (hereinafter "Zoning Ordinance").

The application relates to approximately 49.978 acres of real estate owned by the District where Rustin High School is located, being lot 1 of a proposed subdivision as shown on the overall Subdivision Plan, Drawing Number CO1.2, which is part of Exhibit A-6 (hereinafter "Property"). Lot 2 on the overall Subdivision Plan is the remainder of the tract being subdivided, which consists of 95.086 acres (hereinafter "Rustin Property"). The Property is located in the A/C Agricultural/Cluster Residential District of the Township, wherein residential development under the Flexible Development Procedure is permitted by conditional use by the terms of §170-501.C(2). Under the Flexible Development Procedure, single-family detached dwellings are permitted within a flexible development by §170-903.A.

Hearings on the application were heard by the Board on November 18, 2013, December 19, 2013 and January 13, 2014. Chairman Thomas F. Haws, Jr., and members Carol A. DeWolf and Charles P. Barber participated in the first two hearings. Mr. Haws and Ms. DeWolf participated in the third hearing with Supervisor Michael T. DiDomenico, who succeeded to the seat of Mr. Barber in January, 2014. Mr. DiDomenico attended and observed the first two hearings and has familiarized himself with the entire record of proceedings. He will participate in this Decision and Order.

The Applicant was represented by Ross A. Unruh, Esquire. Residents Cynthia Pruitt and Lori Basher, of 1004 Ashley Road, and Kevin Haskins of 1021 Ashley Road, were represented by J. Dwight Yoder, Esquire. Several unrepresented residents were accorded party status at the hearing. They are:

Joe Yesulaitis	1003 Farm Lane
Jeannette Donahue	1057 Creamery Lane
Joyce Jasinski	1003 Dunning Drive
Robert Bates	1000 Ashley Road
Barbara Jones Menkins	1034 Shiloh Road
Mary Wood	906 Shiloh Road
Jeff Watkin	1003 Ashley Road
John Gerald	1002 Ashley Road
Ken Rosen	1005 Ashley Road
Delvin Dinkins	1001 Plumly Road
Maureen Gillespie	1068 Creamery Lane
Marshall Jones	1030 Shiloh Road
Rita Pearson	1059 Farmview Drive
Michael Graham	1002 Dunning Drive
Zinta Smith	1051 Farmview Drive
Robert Pingar	1003 Russell Lane

After receiving the testimony and evidence presented by the Applicant and all other parties, the Board makes the following:

Findings of Fact

1. Notice of the hearing was duly published in the Daily Local News and posted at the Township Building and on the Property and mailed to those persons identified in a notice list made part of the record.

2. The hearing was duly convened, and the Applicant presented evidence in support of its position.

3. The following Board exhibits were presented and accepted into evidence at the hearing:

Board Exhibits:

- B-1 Conditional use application dated September 17, 2013.
- B-2 Notice of hearing scheduled for November 18, 2013 (including list of persons who received notice).
- B-3 Proof of publication from Daily Local News.
- B-4 Letter dated October 18, 2013 from Robert F. Pingar, PE of URS to Elaine Adler.
- B-5 Message dated November 6, 2013 from Christie M. Pace to Elaine Adler offering comments on F. Tavani traffic impact study.
- B-6 Memo dated November 6, 2013 from Robert Pingar to Westtown Township Planning Commission.
- B-7 Letter dated November 21, 2013 from Ronald T. Bailey, Secretary, Chester County Planning Commission to Elaine Adler.
- B-8 Letter dated October 13, 2013 from Christie M. Pace of McCormick Taylor to Elaine Adler (first review of conditional use).
- B-9 Letter dated November 1, 2013 from Dave Gibbons, PE of D.L. Howell to Elaine Adler.
- B-10 Message from Elaine Adler to Robert F. Adams, Esquire reporting Westtown Township Planning Commission vote of recommendation.
- B-11 Proof of publication of hearing rescheduled for December 19, 2013.
- B-12 Memorandum from Chris Patriarca to Board of Supervisors offering comment on conditional use application.

Applicant Exhibits:

- A-1 Deed in lieu of condemnation dated March 29, 2002.
- A-2 Farm lease dated March 4, 2002.

- A-3 Conditional use application dated September 17, 2013 with cover letter from D.L. Howell & Associates dated September 19, 2013.
- A-4 Letter dated October 18, 2013 from Robert Pingar, PE of URS.
- A-5 Curriculum vitae of Denny L. Howell, PE of D.L. Howell & Associates, Inc.
- A-6 Conditional use plan set consisting of 16 sheets prepared by D.L. Howell.
- A-7 Memorandum dated May 3, 2013 from Sandy G. Martin of McCormick Taylor to Elaine Adler.
- A-8 Aerial photograph of Property and Rustin Property prepared by D.L. Howell.
- A-9 Plan of "lot out" of Property under base zoning.
- A-10 Rendered site plan of development of Property and Rustin Property in aerial view.
- A-11 Existing resources plan of Property.
- A-12 Potential Development Area Concept Map showing constrained land areas.
- A-13 Stadium light setback plan.
- A-14 Letter dated October 3, 2013 from Christie M. Pace of McCormick Taylor to Elaine Adler (first review letter).
- A-15 Letter dated November 1, 2013 from Dave Gibbons to Elaine Adler responding to McCormick Taylor review.
- A-16 Cross section plan showing section view/profile through community.
- A-17 Photographic perspectives of proposed development from Shiloh Road.
- A-18 Color comprehensive plan map.
- A-19 Curriculum vitae of Frank Tavani, PE, PTOE.
- A-20 Transportation impact assessment dated June 30, 2013 prepared by F. Tavani and Associates, Inc. with cover letter of same date.
- A-21 Message from Christie Pace of McCormick Taylor to Elaine Adler commenting on Tavani traffic study.
- A-22 Letter dated November 12, 2013 from Frank Tavani, PE to Christie Pace responding to traffic issues raised in review.
- A-23 Ray Ott, Jr. curriculum vitae.
- A-24 Fiscal impact analysis for Rustin residential project dated December 17, 2013 prepared by Ray Ott & Associates.
- A-25 Opinion of Westtown Township Zoning Hearing Board on special exception application of West Chester Area School District.
- A-26 Plan of "The New Bayard Rustin High School."
- A-27 Professional profile of John J. Coyle, 3rd, MAI, CRE.
- A-28 Letter dated December 18, 2013 from Ross A. Unruh, Esquire to Ronald T. Bailey, Secretary, Chester County Planning Commission.
- A-29 Intergovernmental Cooperation Agreement between West Chester Area School District and Westtown Township dated January 27, 2003.
- A-30 Revised residential subdivision plan of Property incorporating 50-foot buffer.
- A-31 Fire truck turning template.
- A-32 Landscape berm grading plan dated January 13, 2014.
- A-33 Plan of potential "no cul-de-sac" layout.

Thomas Comitta Associates Exhibits:

- TCA-1 Memorandum dated January 8, 2014 from Thomas J. Comitta, AICP to Township officials, et al offering review comments on Rustin residential conditional use application.
- TCA-2 Thomas Comitta recommended alternative plan dated January 13, 2014.

Resident Exhibits:

- Y-1 Letter dated January 10, 2014 from J. Dwight Yoder, Esquire to Board of Supervisors.

4. The tract of which the Property is a part consists of approximately 175 acres, which was acquired by the District by deed in lieu of condemnation dated March 29, 2002, marked Exhibit A-1. The 2002 deed described the property being conveyed as consisting of two parcels: UPI # 67-5-9, containing 12.628 acres of land west of the SEPTA rail line; and UPI # 67-5-6, containing 162.349 acres of land. The Property and the Rustin Property are part of the larger 162.349-acre parcel located east of the SEPTA rail line.

5. The District is intending to retain over 100 acres of area, which exceeds the minimum typical high school required acreage of 42 acres as per the testimony of Kevin Campbell, Director of Facilities and Operations of the District.

6. A portion of the Property is subject to a farm lease between the District's predecessor, Westrum Maple Shade, LP and Marshall L. Jones, III and Elizabeth D. Jones marked Exhibit A-2, which consists of an area of nine acres and requires that the leased area be used for farm purposes and not for residential purposes. The area subject to the farm lease will be part of the calculated area of open space for the development of the Property.

7. The District consulted with an appraiser and with a civil engineer to determine the best financial yield for the District taxpayers from the use and sale of the approximately 50-acre Property and concluded that the proposed development of the Property would be viable.

8. The Property, as proposed to be developed, will be served by Westtown Township public sewer. The District constructed a pump station on the Rustin Property that has been dedicated to the Township, having a pumping capacity of 270,000 gallons per day.

9. The District controls adequate sewage treatment capacity in the Township's Chester Creek wastewater treatment plant and can acquire additional capacity as necessary to serve the proposed 50-lot development on the Property. The Rustin pump station has adequate available capacity for this project as per the opinion of the Township sewage engineer URS Corporation (Exhibit B-4).

10. URS has concluded, based upon its review of the drawings and proposed sewer system for the development of the Property, that service to the proposed community can be accomplished with no apparent negative impacts on the Township-owned facilities and that it is consistent with the Township Act 537 Sewage Facilities Plan (Exhibit B-4).

11. The Property will be sold to a developer pursuant to a public bidding process. If no bids are accepted and a price is negotiated, court approval will be required.

12. The fiscal impact analysis prepared by Ray Ott & Associates concludes that a residential development of the size proposed for the Property will generate tax revenues for the Township of \$75,807 and will require expenditures by the Township of \$56,880, resulting in a net surplus of approximately \$18,927 (Exhibit A-24).

13. The conditional use plan appears in a plan set of multiple pages marked Exhibit A-6.

14. The Applicant's engineer took into consideration the comments of the McCormick Taylor review letter dated May 3, 2013 and marked Exhibit A-7.

15. The proposed development of the Property is shown on an aerial GIS image, which also depicts the relationship of the property to the Rustin Property and to the surrounding residential communities of the Township.

16. Exhibit A-8 demonstrates that, other than the Rustin Property, the Property is entirely surrounded by single-family residential homes which also appear on a depiction of the surrounding homes contained in Exhibit A-9.

17. The development of the Property is demonstrated on a rendered aerial photograph marked Exhibit A-10 to be surrounded by parcels of open space and an athletic field, together with a proposed 39-space parking lot which extends to one of the driveways on the Rustin Property which is the main access to Rustin High School from Shiloh Road.

18. The proposed athletic field shown on Exhibit A-10 is offered as part of the plan for the benefit of the Township. The District will convert it to passive open space for the benefit of the Property in the event the Township declines to accept the athletic field for Township purposes.

19. The residential density of the proposed development on the Property will be 50 dwelling units calculated as per the "tract area calculation" on sheet 1 of Exhibit A-6, which yields this number of units when the net tract area of 45.718 acres is multiplied by 1.1, leaving

an open space area of 60.56% of the Property, including the area subject to the Jones family lease.

20. The proposed development of the Property took into consideration the existing ridge lines, wooded areas, wetland areas and environmentally sensitive areas as shown on the aerial photograph which is the same as Exhibit A-10 without the housing area superimposed thereon.

21. The proposed open space areas also appear on the aerial photograph as Exhibit A-12, which shows how the open space corresponds with the wetland steep slope and wooded areas of the Property.

22. Stormwater for the developed property will be handled by three detention basins, one being the existing basin along Shiloh Road, the second being located below lots 33 to 30, and a third behind lot 25.

23. The closest of the proposed lots (21 and 22) of the proposed development to the Rustin Property football field will be at least 1,800 feet from the football field lights, as demonstrated by Exhibit A-13.

24. By a vote of four to two, the Westtown Township Planning Commission voted on November 20, 2013 to recommend approval by the Board of the development proposal subject to three conditions, including expansion of the traffic study to include a missing intersection, a community impact study and a retrofit of the existing stormwater management basin (along Shiloh Road) to improve phosphorus reduction (Exhibit B-10).

25. The first review comments of Township engineer McCormick Taylor appeared in a letter dated October 13, 2013 marked Exhibit A-14, to which D.L. Howell responded by letter

dated November 1, 2013 marked Exhibit A-15 which, in the opinion of Mr. Howell, adequately answered the comments of the Township's engineer first review letter.

26. The visibility of the proposed homes on the Property from Shiloh Road is demonstrated in the cross-section plan marked Exhibit A-16 and the rendered photograph marked Exhibit A-17 viewed from a point north of Plumly Drive and south of Ashley Road, being the area of the project most visible along Shiloh Road.

27. The plan for the Property development is consistent with the locations shown on the Agricultural/Cluster Residential Option shown on the Township Comprehensive Plan and marked Exhibit A-18 with respect to the general locations of the open space on the conditional use plan as compared to the Comprehensive Plan.

28. The District intends to connect the existing cross country trail serving the High School with a continuous trail through the open space on the Property, as shown on Exhibit A-10.

29. Frank Tavani, PE, PTOE presented a traffic impact study marked Exhibit A-20, including all typical elements of a traffic impact study as indicated in the table of contents of the "transportation impact assessment" in which he concluded that the proposed community will not generate the need for traffic improvements because there is no turning movement or intersection that is significantly or measurably impacted by the community.

30. Township engineer Christie Pace, from McCormick Taylor, offered three comments to the Tavani traffic impact study to which Mr. Tavani responded in his letter dated November 12, 2013, marked Exhibit A-22. One of the comments related to why the Shiloh Road/Dunning Drive/Rustin High School Drive intersection was not one of the study

intersections. Mr. Tavani agreed it would be acceptable to study this intersection at the land development review process. Mr. Tavani concluded that the single road access to the proposed development (Road A on Exhibit A-10) will be adequate as a full-service driveway to serve the community because it will be at a level of service "C" or better during both peak hours, which is an acceptable performance level.

31. John L. Coyle, III, real estate broker and appraiser, offered the testimony that the homes in the proposed community to be developed will be between 2,800 and 3,200 square feet and will have price range between \$532,000 and \$672,000, or an average of \$602,000.

32. Mr. Coyle concluded that a price of \$600,000 would fit the market in the Westtown region, which would compare favorably with the prices of homes sold in the Plumly development across Shiloh Road in the range of \$530,000 to \$580,000 in recent years.

33. Township planning consultant, Thomas Comitta, was asked to evaluate the conditional use plan of the District. Based upon his review of the Zoning Ordinance, the Subdivision and Land Development Ordinance and the complete conditional use application, together with supporting documents, being the Growth Management Plan, the Comprehensive Plan, the Open Space Recreation and Environmental Resources Plan, Mr. Comitta offered testimony and written exhibits.

34. Mr. Comitta concluded initially in reviewing the Zoning Ordinance and the ways in which the development site is zoned, the opportunities which it makes available for density and open space, and the various guidelines and standards relating to those factors, that all of the "metrics" relating to the development, as proposed, work. His review found no problem with the computations that were presented by the plans and through the testimony. His approach in this

case was to evaluate the merits of the plan developed under these ordinances and documents, and to make recommendations.

35. The Comitta report TCA-1 makes eight major findings and observations relating to the proposed conditional use plan and then proceeds to offer to the Board 11 recommended conditions for conditional use approval of the application if the Supervisors are inclined to grant such approval.

36. Mr. Comitta has provided recommended enhancement 1 of 2 as part of TCA-1, which provides a basis for the Board to request that certain additional pedestrian circulation amenities be added to the plan, including a sidewalk recommended to be located on the west side of Shiloh Road.

37. In enhancement plan 2, Mr. Comitta recommends the placement of additional evergreen trees in 54 locations to screen views from neighbors on the east side of Shiloh Road and the placement of additional berming on the west side of Shiloh Road.

38. Mr. Comitta finds that the continuous trail around the Property is necessary for compliance with the trails plan of the Township made part of TCA-1.

39. Mr. Comitta favors an internal green area within the neighborhood as part of common open space for consistency with the Township Growth Management Plan.

40. Mr. Comitta recommends further that there be a compliant plan submitted by the Applicant which incorporates the revisions and conditions that may be imposed by the Board of Supervisors in an approval of this application.

41. Consistent with his recommendation for an internal green area within the proposed community, Mr. Comitta proposed as Exhibit TCA-2 a "Recommended Alternative

Plan" showing the 50 lots proposed but eliminating the two cul-de-sacs internal to the community. This will provide internal open space in the form of a "green" that will serve as a pedestrian gathering area and will achieve greater consistency with the Township Comprehensive Plan in this respect.

42. The Applicant was able to demonstrate in Exhibit A-30a that a 50-foot buffer could be maintained between the road serving the proposed community and the Rustin Property and the improvements on the Property, as is also demonstrated on Exhibit A-30b.

43. The fire truck turning template marked Exhibit A-31 demonstrates that fire trucks will be able to maneuver in and out of the emergency ingress/egress utilizing the proposed parking lot adjacent to the proposed athletic field.

44. In response to recommendations for berming of the Property along Shiloh Road, the Applicant presented a landscape berm plan marked Exhibit A-32 for berming along the western side of Shiloh Road utilizing random-width berms that appear natural and not simply a straight linear berm.

45. Exhibit A-33 is the Applicant's proposal for a loop road layout for the 50-lot community on the Property which eliminates the two cul-de-sacs. It is consistent generally with the recommendation of Mr. Comitta appearing in his Exhibit TCA-2. This plan also shows a continuous trail encircling the proposed community depicted on Exhibit A-33 in a clockwise direction starting at the School athletic field and ending at the 39-space proposed parking lot.

46. Mr. Comitta agreed that the berms should be configured in a manner that would facilitate the pedestrian crossing of residents of Plumly to the Property for their safe access to the proposed trail system on the Property.

47. Exhibit A-33 is not a substitute for the layout that appears in the plan set Exhibit A-6, and the trails and berm could be implemented on either plan. Mr. Unruh represented that if the Board prefers the plan layout shown in Exhibit A-33, the District would use that plan.

48. The Property will have impervious cover of 16.35%, including the proposed parking lot.

49. The Zoning Ordinance does not establish a maximum impervious cover area per lot, but Mr. Howell indicated that any impervious cover above 4,269 square feet per lot would require on-lot stormwater management. The 4,269 square feet per lot is a coverage number suggested by Mr. Howell. It assumes areas of coverage for house, driveway, patios and other normal residential impervious cover features. The stormwater management and/or infiltration requirements for coverages in excess of the 4,269 square foot number or such other coverage area determined by the Township engineer would be established at the land development review process.

50. On behalf of his clients, Pruitt, Basher and Haskins, Dwight Yoder, Esquire submitted Exhibit Y-1, a letter dated January 10, 2014 in which he highlighted three concerns of his clients with respect to the proposed development. Those concerns related to a proposed landscaping buffer along Shiloh Road, a more comprehensive trail system within the proposed design of the common open space and a request for independent review of the stormwater runoff from the Property, particularly as it flows toward Ashley Road.

Discussion

Residential development under the Flexible Development Procedure of Article IX of the Zoning Ordinance is permitted in the A/C District under §170-501.C(2) by conditional use. A

conditional use, as defined in the Statement of Intent of §170-2009.A, is one that has the potential for substantial impact on the community and that shall, therefore, comply with the standards and procedures for conditional uses generally that are contained in §170-2009.B through D, and with the relevant stipulations of the district in which the conditional use is authorized. Section 170-501.C(2) incorporates by reference the standards of Article IX, §§170-900 through 908. The Board is required to evaluate this application under these standards and those contained in §170-2009. The Pennsylvania Municipalities Planning Code, 53 P.S. §§10101-11202 provides for conditional use at §603(c)(2) and allows the Board to attach "...such reasonable conditions and safeguards, other than those related to off-site transportation or road improvements, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance."

The Board will approve this application. In the discussion that follows, we will identify the reasons for approval and the need for certain conditions of approval that we find to be necessary and appropriate.

The Board has benefitted by and relied on the review comments and testimony of its consultants and its Planning Commission in considering this application. (We note that some of those exhibits have been identified in the Record as both Board exhibits and Applicant's exhibits.)

This project will be served by public sewer. The Applicant controls and/or can obtain sufficient additional sewage treatment capacity to serve the proposed community. URS Corporation has advised the Township that the proposal for the sanitary sewer system for this 50-lot residential development is acceptable with no apparent negative impacts on Township-owned

sewage facilities and that the proposal is consistent with the Township's Act 537 Sewage Facilities Plan (Exhibit B-4).

The Tavani Associates transportation impact assessment (Exhibit A-20) was reviewed by McCormick Taylor (Exhibit B-5) and its comments were addressed and satisfied, in our opinion, by the Tavani response letter (Exhibit A-22). We find the Tavani traffic study to have met the supplementary studies requirement set forth in §149-804 of the Subdivision and Land Development Ordinance, with the exception of the inclusion of one study intersection – the intersection of Shiloh Road/Dunning Drive/Rustin High School driveway, which we will require at the land development review phase. The submission of this study during the conditional use phase was helpful to allow us to have concluded at this stage what Mr. Tavani has concluded on page 9 of the study. Those conclusions (which we endorse) are: the proposed site driveway will operate at acceptable levels of service, the impact of the project on local roadways and intersections in the surrounding area is minimal, the peak hour trips will not significantly impact the levels of service at any intersection in the study area, no roadway improvements are needed to mitigate the impacts of the site as developed, and no turning movement restrictions are required at the proposed point of site access.

Township engineer McCormick Taylor provided review letters dated May 3, 2013 (Exhibit A-7) and October 3, 2013 (Exhibit A-14). The former was a sketch plan review performed by Sandy G. Martin, PE and submitted months before the conditional use application was filed. The latter was the first conditional use review written by Christie Pace, PE. The D.L. Howell letter of November 1, 2013 (Exhibit A-15) responds to both McCormick Taylor reviews, which deal largely with the same issues. We find that the D.L. Howell response letter and the

testimony and exhibits presented by the Applicant address the review comments of our Township engineer satisfactorily.

There was strong resident interest in this project. Understandably, residents are puzzled as to why the District is acting as a residential developer. The explanation for this was provided by Kevin Campbell at the first hearing. The District, like any other property owner, is entitled to develop its land under the ordinances of the Township and, in the case of the District, with other laws controlling the sale of its property.

Objection to this proposal by the neighbors is understandable, as any development will have impacts. However, the Board is required to review this application under its ordinances and approve it if it is in compliance, adding reasonable conditions. That the development of the Property will turn open land into 50 housing sites and it will generate traffic and stormwater is not reason enough to cause us to reduce the density or otherwise restrict the development, except in those reasonable ways that will improve and/or mitigate any adverse impacts that were identified at the hearing. It had to be expected by the Supervisors who adopted the Flexible Development Procedure that development under its terms would have some impacts. We are not able to conclude from all the evidence presented that any aspect of this residential proposal is inconsistent with the statement of intent of §170-900.A and B, or that those identified impacts cannot be mitigated or improved by the imposition of reasonable conditions.

Township planning consultant Thomas Comitta provided analysis and testimony that was very helpful in defining where changes and improvements to the project design could be made, and in assisting us in defining appropriate conditions of approval. Of primary interest to the Board is Mr. Comitta's conclusion that the "metrics" of the proposed development all work under

the Zoning Ordinance. This is a single-family detached dwelling community allowed under the Flexible Development Procedure by §170-903.A. The calculations of density under the standards of §170-904.A have been verified. The amount of acreage contained within the Property for purposes of calculating maximum density under §170-904.B is required to be calculated, as determined under §170-1519.A of the Zoning Ordinance. This calculation yields the net acreage against which the required common open space (60% for Flexible Development in the A/C District) under §170-904.C is determined. This metric has also been satisfied. The maximum net residential density for single-family detached housing is four units per acre under §170-904.E(1)(c) of the Zoning Ordinance. This metric has also been satisfied.

Mr. Comitta concluded that while the metrics of the Zoning Ordinance have been met, the merits of the conditional use plan need to be considered. While this plan is technically compliant, Mr. Comitta made observations on how it could be improved. He made "Major Findings" in paragraphs 1.1 through 1.8 of Exhibit TCA-1 and he offered corresponding "recommended conditions for conditional use approval" in paragraphs 2.1 through 2.8 of this exhibit, which relate back to the Major Findings. Additionally, TCA-1 offers the condition 2.9, that no more than 50 total dwelling units should be included in the future land development plans, that the overall design and layout be revised as per Exhibit TCA-2, and that a compliant conditional use plan be submitted by the District to demonstrate compliance with his comments and those of other Township consultants and staff. We find the Comitta comments to be well-founded and a good basis for the imposition of conditions of approval.

We will comment on Mr. Comitta's recommendation relating to the proposed ball field. If we were to retain the field which the Applicant has kindly offered to the Township, we would

implement the Comitta recommendations relating to field orientation. We have concluded that we will approve the inclusion of the ball field in this plan. It will meet an important need for athletic fields in the Township. We will address the ownership, installation and maintenance responsibility and use of the field and the adjacent parking lot in the Order that follows.

With respect to Mr. Comitta's recommendations on the sidewalks along Shiloh Road, we agree this is necessary and that it will be integral to the circumferential walking trail around the Property. The sidewalk may be better designed than that shown in Mr. Comitta's plan so that it meanders in a configuration that will complement the berming plan that needs to be incorporated along Shiloh Road as set forth in Exhibits A-32 and A-33, both of which we endorse. The additional evergreen plantings and the crosswalks shown as recommended enhancements in the plans attached to Exhibit TCA-1 are significant improvements which we endorse.

Exhibit TCA-2 from Mr. Comitta, eliminating the two cul-de-sacs and providing for a continuous loop road, depicts a major improvement in layout aesthetics and circulation for the proposed community. It implements the concept of a "commons" or a "green" as part of the open space of the community in a manner that is consistent with the Township's Growth Management Plan. D.L. Howell came up with a substantially similar plan identified as Exhibit A-33. This plan has been offered by the Applicant as an acceptable alternative layout. We prefer that design and will make such a plan a condition of our approval of this application.

Whatever final form the plan takes, it is important that there be a sufficient buffer between the site improvements to the Property and the Rustin Property driveway and athletic field, we believe 50 feet is a minimum acceptable buffer.

The subject of stormwater management was an issue of concern to some residents, particularly those affected by the existing basin on the Property located by Shiloh Road. This basin is intended to be made part of the stormwater management proposal for the community. Section 170-2009.B(6)(3) requires that there be adequate handling of stormwater demonstrated at the conditional use stage. Mr. Howell has described the location and functioning of three stormwater basins to be used on the Property. Those locations are shown in Exhibit A-6, sheets CO6, CO6.1, 2 and 3. A recommendation for phosphorus-reducing Best Management Practices (hereinafter "BMPs") relating to stormwater management is contained in the McCormick Taylor review letter (Exhibit B-8). The Applicant's engineer responded that the suggested BMPs can be best addressed at the land development stage. We agree, and will ask the Applicant to demonstrate the feasibility of implementing this BMP at the land development stage and, if determined by the Board to be feasible and reasonable, it will be incorporated in the final land development plan.

It does not require any special action by this Board in a conditional use proceeding to require the land development proposal of the Applicant to be compliant with all applicable requirements of the Township Stormwater Management Ordinance. The Applicant will need to demonstrate such compliance at the land development stage. For purposes of conditional use, we find this application to have demonstrated sufficiently the feasibility of the stormwater proposal for the project.

Impervious cover is not regulated by the Flexible Development Procedure standards. Mr. Howell testified that the impervious cover was approximately 16.35%, assuming a certain level of impervious surface on each dwelling lot. At the land development stage, we will require on-

lot stormwater management measures to be implemented when individual lot coverage exceeds 4,269 square feet, or such other reasonable square footage as may be determined by the Township engineer in its review of the land development plans.

The Township Planning Commission and the Township's planning director offered proposed conditions and observations, as set forth respectively in Exhibits B-10 and B-12. We believe most, if not all, of these comments were made elsewhere and will be addressed adequately in the Order of the Board, or will be the subject of the future land development review.

On the basis of the foregoing Discussion, the Board will approve this conditional use application for 50 single-family dwelling units, subject to the conditions hereinafter imposed.

Conclusions of Law

1. The hearing was duly advertised, all required notices were given and the hearing was duly convened.
2. The Board has jurisdiction of this application.
3. The Zoning Ordinance in §170-501.C(2) permits the proposed single-family detached dwelling residential development in accordance with the provisions of the Flexible Development Procedure, as set forth in Article IX of the Zoning Ordinance.
4. The proposed 50-unit single-family detached dwelling development on the property meets the density standards of §170-904.A(1) of the Zoning Ordinance.
5. Applicant's proposal complies with the area and bulk regulations §170-502 of the Zoning Ordinance.

6. The Applicant has demonstrated compliance with the design standards of §170-503 and §170-905 of the Zoning Ordinance.

7. The application is consistent with the Township's Comprehensive Plan and Growth Management Plan.

8. The Applicant has complied with all relevant provisions of §170-2009.B of the Zoning Ordinance relating to the submission and content of conditional use applications, including the demonstration of compliance with all standards applicable to the particular conditional use being requested.

9. The Applicant has satisfactorily complied with the conditional use provisions of §170-2009.D of the Zoning Ordinance relating to standards of review for the application.

10. The fiscal impact of the proposed development has been satisfactorily addressed in the report submitted to the Township by the Applicant to justify the approval of the conditional use under §170-2009.

11. The proposed development complies with the open space standards of §170-907.A and B of the Zoning Ordinance.

12. The Applicant's conditional use plan shows an acceptable grading feasibility plan and stormwater management plan for the proposed three stormwater detention basins.

13. The Applicant's "no cul-de-sac" layout plan marked Exhibit A-33 constitutes an acceptable layout under the ordinance in lieu of that proposed as part of Exhibit A-6.

14. The traffic impact study (Exhibit A-20) submitted as required by §170-2009.B(3)(b) meets the requirements of the Zoning Ordinance and demonstrates no requirement for roadway or intersection improvements as set forth in the study.

15. The foregoing Conclusion of Law shall be subject to and conditioned by all applicable conditions of approval imposed by the Board in the Order that follows:

The Board, therefore, enters the following:

ORDER

AND NOW, this 5th day of May, 2014, upon consideration of the testimony and evidence of record, the Board of Supervisors of Westtown Township hereby APPROVES the conditional use application of the West Chester Area School District, under and subject to compliance by the Applicant with the following conditions:

1. Except as modified by the terms of this Order and the conditions contained herein, the proposed flexible development project shall be developed and used substantially in accordance with the testimony and exhibits presented to the Board, unless such compliance is inconsistent with any condition of approval contained in this Order.
2. The Township will accept dedication of the completed parking lot constructed as per the approved plans and the open space designated for the multi-purpose ball field, either in fee simple title or as a permanent easement from the homeowners' association of the new community. The Township will accept operation and maintenance responsibility for the same. The ball field shall be reoriented in a manner that avoids batters at the home plate area looking into the sun in a westerly direction. The parking lot and field shall be otherwise installed as per specifications determined by the Township at the land development phase.
3. The Township reserves the right to make the athletic field parking lot available to the District upon such terms and conditions as may be agreed to by the Township and District,

including, but not limited to, the use by the Township, under a cross-easement agreement, of District parking areas.

4. The athletic field shall be subject to such use restrictions, including hours of operation, as may be determined by the Township. The Township shall have the right to lease the field to organized youth athletic organizations as it elects to do in its sole discretion.

5. The Applicant shall prepare and submit a compliant conditional use plan (hereinafter "Compliant Plan") within 90 days of the date of this Order to demonstrate satisfaction with all stated conditions of this Order, as well as any outstanding comments of Thomas Comitta, McCormick Taylor, URS or any other Township consultant or Township staff member review, whether or not specifically stated in this Order.

6. The Compliant Plan shall include revisions from the plans presented to the Board at the hearing to include the following:

a. The lot layout shall not show any cul-de-sacs, but, rather, shall have a continuous loop road with an internal open space green area, substantially as shown in the Comitta plan (Exhibit TCA-2) and the Howell plan (Exhibit A-33).

b. No more than 50 total dwelling units shall be included in the Compliant Plan or in any future preliminary or final land development plan submitted pursuant to this approval.

c. Berming along Shiloh Road shall be provided substantially as shown in Exhibit A-32.

d. Additional landscaping shall be provided along the west side of Shiloh Road and along the perimeters of the various lots in order to screen views of the proposed

development, substantially in accordance with the Comitta Recommended Enhancement Plan (Exhibit TCA-1, Sheet 2 of 2).

e. The Property shall have a continuous walking trail around the proposed community. That portion of the trail along Shiloh Road shall be laid out in such configuration as is necessary to complement the Shiloh Road berms and to provide safe pedestrian access to the west side of Shiloh Road, as shown in the Comitta Recommended Enhancement Plan (Exhibit TCA-1, Sheet 1 of 2) and the Howell plan (Exhibit A-33). The surface composition of the walking trail along Shiloh Road shall be such as is approved by the Board during the land development phase.

f. Pedestrian crosswalks shall be added at the four locations shown on Exhibit TCA-1, Recommended Enhancement Plan, Sheet 1 of 2, and across Shiloh Road at Plumly Road, where the Property access road is proposed to be constructed.

g. The requirements of the Township open space standards of §170-907 of the Zoning Ordinance and §149-921 of the Subdivision and Land Development Ordinance shall be incorporated to define areas of "Lawn," "Natural Area," Recreation Area," "Crop Land or Pasture," "Stormwater Detention Area," and any other required designations therein identified.

7. Preliminary/final subdivision plan approval shall be obtained by the District consistent with the Compliant Plan before any sale of the Property to a developer or builder.

8. Preliminary/final subdivision plans shall include demonstrated compliance with the Subdivision and Land Development Ordinance and the Township Stormwater Management Ordinance and shall include the stormwater management BMP addressing phosphorus reduction.

9. Preliminary/final subdivision plans shall provide for on-lot stormwater management measures where individual lot coverage exceeds 4,269 square feet, or such other square footage as may be determined by the Township engineer to be necessary to mitigate stormwater runoff from the individual lots, as determined at the land development phase.

10. Subject to Township engineer's review and approval, the preliminary/final subdivision plans shall demonstrate the minimum amount of cuts and fills as are necessary to balance the Property in a manner that will avoid unnecessary disturbance of existing natural grades.

11. The Applicant shall provide the Pennsylvania Natural Diversity Index ("PNDI") results and a wetlands study at the land development phase.

12. The Township shall determine at the land development phase which trails on the Property require public access and maintenance by the Township. The District shall provide all easements necessary to enable such access. The trails shall be located and the surfaces shall be improved by the District in the manner and to the specifications the Township determines at the land development review phase. The trails on the Property, including the sidewalk along Shiloh Road, will be part of the community open space of the Property. The Township reserves the right to direct, as part of final plan approval, that all trail maintenance shall be the responsibility of the homeowners' association for the community.

13. The District shall acquire, at its expense, all additional EDUs necessary to provide public sewage conveyance and treatment to the proposed community.

14. It is not intended that the athletic field or the parking lot will be lighted, other than by security lighting as may be required. Where required, the District shall provide street lights at

such locations in the community and the athletic field parking lot as are directed by the Township at the land development phase, consistent with the Township outdoor lighting regulations of §170-1514 of the Zoning Ordinance and this condition. All lighting shall be subject to review and approval by the Township lighting consultant.

15. Emergency access to the developed portion of the Property from the athletic field parking lot shall be provided. It shall be gated and shall be available for use only by emergency vehicles. The District shall provide to the Township an easement from Shiloh Road on the Rustin access drive for ingress and egress to the athletic field and parking lot for all authorized users of those facilities.

16. The District shall provide at the land development phase a supplemental traffic impact study focusing on the intersection of Shiloh Road/Dunning Drive/Rustin High School Driveway. The District shall implement appropriate measures in mitigation of any adverse impacts therein identified, subject to Board approval.

17. After the subdivision and sale of the 49.978-acre Property, neither the Rustin Property, consisting of 95.086 acres, nor any other part of the remaining land conveyed to the District by the deed marked Exhibit A-1, shall be subdivided, sold or used for other than the school purposes approved by the special exception granted by the Zoning Hearing Board in 2002 (Exhibit A-25).

18. This approval is not intended and shall not be construed to be a waiver of any other applicable provision of the Zoning Ordinance of Subdivision and Land Development Ordinance or any other ordinance or requirement of the Township or other regulatory body, it being the intention of the Board that the development and use of the Property as proposed, and as

conditioned hereby, shall comply with all applicable ordinances and requirements, except as may have been modified herein.

WESTTOWN TOWNSHIP
BOARD OF SUPERVISORS



Carol A. De Wolf, Chair



Thomas F. Haws, Jr.



Michael T. DiDomenico