

**Supreme Court of Pennsylvania
Court of Common Pleas
Civil Cover Sheet
CHESTER County**

Filed and Attested by
PROTHONOTARY
08 Mar 2018 04:56 PM
B. Blewitt

For Prothonotary Use Only:
Docket No: **2018-02620-ZB**

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

S
E
C
T
I
O
N
A

Commencement of Action	
<input type="checkbox"/> Complaint	<input type="checkbox"/> Writ of Summons
<input type="checkbox"/> Transfer from Another Jurisdiction	<input type="checkbox"/> Declaration of Taking
Lead Plaintiff's Name: TOLL PA XVIII, LP	Lead Defendant's Name: WESTTOWN TOWNSHIP BOARD OF SUPERVISORS
Are money damages requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Dollar Amount Requested: <input type="checkbox"/> Within arbitration limits (check one) <input type="checkbox"/> outside arbitration limits
Is this a Class Action Suit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this an MDJ Appeal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name of Plaintiff/Appellant's Attorney: Gregg I. Adelman, Esquire	
Check here if you have no attorney(are a Self-Represented [Pro Se] Litigant)	

S
E
C
T
I
O
N
B

Nature of the Case: Place "X" to the left of the ONE case category that most accurately describes your PRIMARY CASE . If you are making more than one type of claim, check the one that you consider most important.		
TORT (do not include Mass Tort) <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Libel/Defamation <input type="checkbox"/> Other:	CONTRACT (do not include Judgments) <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other <input type="checkbox"/> Employment Dispute: <input type="checkbox"/> Discrimination <input type="checkbox"/> Employment Dispute: Other <input type="checkbox"/> Other	CIVIL APPEALS <input type="checkbox"/> Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other <input checked="" type="checkbox"/> Zoning Board <input type="checkbox"/> Other:
MASS TORT <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other:	REAL PROPERTY <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other:	MISCELLANEOUS <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgement <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations <input type="checkbox"/> Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input type="checkbox"/> Other:
PROFESSIONAL LIABILITY <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical		

Other Professional		
--------------------	--	--

**Chester County
Court of Common Pleas
Cover Sheet**

Docket No:
2018-02620-ZB

Plaintiff(s): (Name, Address) <p align="center">TOLL PA XVIII, LP 250 GIBRALTER ROAD HORSHAM, PA 19044</p>	Plaintiff's/Appellant's Attorney(circle one) (Name, firm, address, telephone and attorney ID#) <p align="center">Gregg I. Adelman, Esquire (610) 941-2552 Kaplin Stewart Meloff Reiter & Stein, P.C. attorney ID#: 084137 910 Harvest Drive P.O. Box 3037 Blue Bell, PA 19422</p>
--	--

Defendant(s): (Name, Address) <p align="center">WESTTOWN TOWNSHIP BOARD OF SUPERVISORS 1039 WILMINGTON PIKE WEST CHESTER, PA 19382</p>	Are there any related cases? Please provide case nos.
--	---

Defendants who are proceeding without counsel are strongly urged to file with the Prothonotary a written statement of an address AND a telephone number at which they can be reached

Commencement of Action (if applicable): Agreement for an Amicable Action Motion to Confirm Arbitration Award
 Notice of Appeal

If this is an appeal from a Magisterial District Judgement, was appellant Plaintiff or Defendant in the original action?

Jury Trial Demanded Yes No

Nature of case if not on previous cover sheet - Please choose the most applicable

<input type="checkbox"/> Annulment <input type="checkbox"/> Custody - Conciliation Required <input type="checkbox"/> Custody - Foreign Order <input type="checkbox"/> Custody - No Conciliation Required <input type="checkbox"/> Divorce - Ancillary Relief Request <input type="checkbox"/> Divorce - No Ancillary Relief Requested <input type="checkbox"/> Foreign Divorce <input type="checkbox"/> Foreign Protection from Abuse <input type="checkbox"/> Paternity <input type="checkbox"/> Protection from Abuse <input type="checkbox"/> Standby Guardianship	<input type="checkbox"/> Writ of Certiorari <input type="checkbox"/> Injunctive Relief <input type="checkbox"/> Mechanics Lien Claim <input type="checkbox"/> Issuance of Foreign Subpoena <input type="checkbox"/> Name Change <input type="checkbox"/> Petition for Structured Settlement
---	--

Arbitration Cases Only

Arbitration Date

Arbitration Time

Defendants are cautioned that the scheduling of an arbitration date does not alter the duty of the defendant to respond to the complaint and does not prevent summary disposition form occurring prior to the arbitration date.

This matter will be heard by a Board of Arbitrators at the time and date specified but, if one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial *de novo* on appeal from a decision entered by a judge.

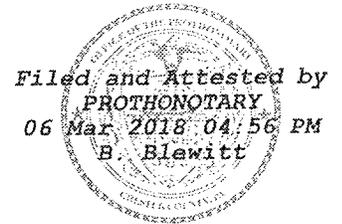
Notice of Trial Listing Date

Pursuant to C.C.R.C.P. 249.3, if this case is not subject to compulsory arbitration it will be presumed ready for trial twelve (12) months from the date of the initiation of the suit and will be placed on the trial list one (1) year from the date the suit was filled unless otherwise ordered by the Court.

To obtain relief from automatic trial listing a party must proceed pursuant to C.C.R.C.P. 249.3(b), request an administrative conference and obtain a court order deferring the placement of the case on the trial list until a later date.

These cover sheets must be served upon all other parties to the action immediately after filing.

Submit enough copies for service.



KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: Marc B. Kaplin, Esquire
Gregg I. Adelman, Esquire
Attorney I.D. Nos. 04465, 84137
Union Meeting Corporate Center
910 Harvest Drive
P.O. Box 3037
Blue Bell, PA 19422
(610) 941-2552

Attorneys for Appellant
Toll PA XVIII, L.P.

IN RE: APPEAL OF THE FEBRUARY 12, 2018	:	BEFORE THE COURT OF
DECISION OF THE WESTTOWN TOWNSHIP	:	COMMON PLEAS OF
BOARD OF SUPERVISORS DENYING	:	CHESTER COUNTY, PA
TOLL PA XVIII, L.P.'S CONDITIONAL USE	:	
APPLICATION FOR A FLEXIBLE	:	CASE NO.
DEVELOPMENT OF CREBILLY FARM	:	LAND USE APPEAL

NOTICE OF APPEAL

Toll PA XVIII, L.P. ("**Toll**" or "**Applicant**"), by and through its attorneys, Kaplin Stewart Meloff Reiter & Stein, P.C., hereby files this Notice of Appeal from the February 12, 2018 decision of the Westtown Township Board of Supervisors ("**Board**") denying Toll's application for conditional use approval of a proposed residential flexible development on approximately 322 acres of land located in Westtown Township ("**Township**"), Chester County, Pennsylvania commonly known as "Crebilly Farm". In support of its appeal, Toll alleges as follows:

BACKGROUND

1. Appellant, Toll, is a Pennsylvania limited partnership, with its principal place of business located at 250 Gibraltar Road, Horsham, Pennsylvania 19044.
2. Appellee, the Board, is the governing body of the Township and is the body charged with the duty to render decisions on conditional use applications.
3. Toll is the equitable owner of approximately 322 acres of land bordered by Route 202, Route 926, West Pleasant Grove Road and South New Street in the Township commonly known as the "Crebilly Farm" ("**Property**").

4. Crebilly Farm Family Associates, L.P., David M. Robinson, Laurie S. Robinson and David G. Robinson, et al. (collectively, the “**Robinson Family**”) are the legal owners of the Property.

5. The Property is zoned Agricultural/Cluster Residential and R-1 Rural Suburban Residential and is substantially farmed.

6. The Property is located in an area designated for cluster residential use under both the Township Comprehensive Plan and the Westtown Township Zoning Ordinance (“**Zoning Ordinance**”).

7. Pursuant to Article IX, Sections 170-900 et seq. (“**Flexible Development Regulations**”) of the Zoning Ordinance, a flexible residential development is a use permitted by conditional use on the Property.

8. On or about October 18, 2016, Toll submitted a Conditional Use Application (“**Application**”) for the development of a 319-unit (317 new, 2 existing) flexible residential development of the Property (“**Proposed Development**”) together with conditional use site plans, a stormwater management report, a traffic impact study, a fiscal impact study, a geotechnical investigation report and sewer/water feasibility letters (“**Application Materials**”).

9. On December 22, 2016, the Township Zoning Officer determined the Application to be administratively complete.

10. The Township Planning Commission held meetings on the Application on December 15, 2016, January 10, January 24, February 13 and February 16, 2017.

11. On February 16, 2017, the Township Planning Commission reviewed the Application at a public meeting and recommended conditional approval of the Application.

12. The Board held ten (10) hearings on the Application on February 22, March 29, April 19, May 23, June 20, July 25, August 29, September 19, October 24 and November 27, 2017 (collectively, the “Hearings”).

13. At the Hearings, several individuals and groups requested and were granted party status in the Hearings.

14. At the conclusion of the November 27, 2017 hearing, Toll and the parties represented by counsel agreed to submit proposed findings of fact and conclusions of law on or before December 15, 2017 and the Board announced they would vote on the Application on December 28, 2017, with the written decision on the Application to be issued within 45 days thereafter, on or before February 12, 2018.

15. On December 28, 2017, the Board orally voted to deny the Application.

16. On February 12, 2018, the Board issued a written decision denying the Application (“Decision”). A copy of the Decision is attached as **Exhibit “A”**.

17. In its Decision, the Board acknowledged that Toll complied with all of the applicable objective conditional use criteria contained in the Zoning Ordinance’s Flexible Development Regulations. Specifically, the Board acknowledged that:

a. The Proposed Development is a permitted use on the Property (*Paragraph 54*).

b. The Proposed Development does not intrude into any Primary Conservation Resources except as permitted (*Paragraph 57*).

c. The Proposed Development includes permitted forms of residential use (*Paragraph 61*).

- d. The Proposed Development includes permitted forms of accessory uses (*Paragraph 62*).
- e. The Proposed Development complies with the maximum permitted density (*Paragraph 63*).
- f. The Proposed Development complies with the maximum permitted net residential density per acre (*Paragraphs 64 and 65*).
- g. The Proposed Development exceeds the minimum required sixty percent (60%) open space and complies with the open space design standards (*Paragraphs 66-70*).
- h. The Proposed Development provides the required pedestrian pathways (*Paragraph 71*).
- i. The Proposed Development will have a private homeowners' association to own, operate and maintain the open space areas, streets, stormwater facilities, recreational facilities and all other private improvements as required (*Paragraph 72*).
- j. The Proposed Development complies with the maximum total impervious coverage limitations (*Paragraphs 73-75*).
- k. The Proposed Development complies with maximum permitted building heights (*Paragraph 76*).
- l. The Proposed Development complies with maximum permitted townhome building dimensions and number of units per building (*Paragraph 77*).
- m. The Proposed Development complies with the minimum building to building separation distance (*Paragraphs 78-80*).
- n. The Proposed Development complies with the required building, exterior street and property setbacks (*Paragraphs 81-83*).

- o. The Proposed Development exceeds the minimum required off-street parking spaces per dwelling unit (*Paragraph 84*).
- p. The Proposed Development includes the required landscaping (*Paragraph 85*).
- q. The Proposed Development includes the required screening (*Paragraph 86*).
- r. The Proposed Development provides public water from Aqua Pennsylvania (*Paragraph 109*).
- s. The Proposed Development feasibly provides on-site wastewater treatment and drip disposal to service the wastewater generated by the Proposed Development (*Paragraph 128*).

GROUND FOR APPEAL

18. Notwithstanding the Board's acknowledgment that the Proposed Development complies with the applicable objective conditional use criteria of the Township Zoning Ordinance, the Board denied Toll's Application for the following alleged reasons:

- a. Failure to provide a public "collector" road through the Property between W. Pleasant Grove Road and Route 926 to enable vehicles to cut through the Property;
- b. Failure to mitigate the alleged traffic impact of the Proposed Development on the off-site intersection of Route 926 and South New Street;
- c. Failure to revise the Application Materials to show alternative access locations Toll considered in response to traffic review comments; and
- d. Failure to include "scenic views" as a Secondary Conservation Area.

19. The reasons for denial set forth in the Board's Decision constitute an abuse of the Board's discretion, are improper as a matter of law and are not supported by substantial evidence.

20. Specifically, the Board's Decision is erroneous, in part, for the reasons set forth below.

Failure to Provide a Public Collector Road Through the Property

21. The Board contends that Toll is required to construct a public collector road through the Property because the Township's Comprehensive Plan suggests that a "road link" be constructed through the Property between West Pleasant Grove Road and Route 926 to "encourage persons who wish to turn westward from southbound Route 202 to take [an] alternative route, and thereby remove some of the turning movements from the Route 926/202 intersection."

22. The "road link" is suggested to alleviate existing traffic congestion at the Route 926/202 intersection.

23. The "road link" is not required to mitigate any traffic impacts caused by the Proposed Development.

24. The Township's Comprehensive Plan does not provide any specific objective criteria regarding the design or standards for the "road link".

25. As a matter of law, a conditional use applicant is not required to prove consistency with a municipality's comprehensive plan and a general statement in the Zoning Ordinance requiring consistency with the Township's Comprehensive Plan cannot serve as a basis to deny the Application. *Aldridge v. Jackson Twp.*, 983 A.2d 247, 258-259 (Pa. Cmwlth. 2009); *Schatz v. New Britain Twp.*, 141 Pa. Cmwlth. 525, 531, 596 A.2d 294, 297 (1991).

26. The Zoning Ordinance does not require construction of the "road link" on the Property.

27. The proposed “road link” depicted on the Comprehensive Plan is partially located on additional properties other than those involved in this Application over which Toll has no control.

28. The Township’s official road map does not delineate a future road through the Property between West Pleasant Grove Road and Route 926.

29. The Board lacks the authority to require Toll to construct a public collector road through the Property between West Pleasant Grove Road and Route 926.

**Failure to Mitigate the Alleged Traffic Impact at the Intersection of
Route 926 and South New Street**

30. The Board contends that Toll is required to construct turn lanes at all four approaches to the intersection of S. New Street and Route 926 in order to mitigate the traffic impact of the Proposed Development.

31. As a matter of law, an increase in traffic at an already impaired intersection is not a sufficient basis to deny a conditional use application when the proposed use generates traffic normally generated by that type of proposed use. *In re Brickstone Realty Corp.*, 789 A.2d 333, 341-342 (Pa. Cmwlth. 2001).

32. In order to defeat a conditional use application on traffic grounds, there must be conclusive evidence to a high probability that the proposed use will generate “abnormal” traffic patterns not normally generated by that type of proposed use that will pose a substantial threat to the health and safety of the community. *Id.*

33. Neither the Township nor any other party presented evidence which demonstrated there will be a high probability the Proposed Development will generate “abnormal” traffic patterns not normally generated by that type of proposed use that will pose a substantial threat to the health and safety of the community.

34. The intersection of S. New Street and Route 926 is a signalized intersection that is under the jurisdiction and control of the Pennsylvania Department of Transportation (“PennDOT”) and not the Township.

35. The design and improvement, if any, of the intersection of S. New Street and Route 926 is governed by PennDOT standards and evaluated as part of the PennDOT Highway Occupancy Permit application process.

36. Per PennDOT Publication 282 [HOP Operations Manual (July 2017)], Appendix A, PennDOT standards do not require mitigation of an intersection as a result of a new development’s increase in traffic if the new development results in less than a 10 second delay of efficiency at the intersection.

37. Toll submitted a Traffic Impact Study and presented expert traffic testimony at the Hearings that demonstrated the Proposed Development will not result in an increased delay greater than 10 seconds at the intersection of S. New Street and Route 926.

38. Under Section 502-A of the Municipalities Planning Code [53 P.S. § 10502-A], the intersection of S. New Street and Route 926 is an off-site intersection that does not provide access to the Proposed Development.

39. Section 503-A(b) of the Municipalities Planning Code [53 P.S. §10503-A(b)] prohibits the Township from requiring Toll to make off-site road improvements as part of the Proposed Development.

**Alleged Failure to Revise the Conditional Use Plan to
Show Alternative Accesses for the Proposed Development**

40. In response to Township and PennDOT review comments, during the conditional use process Toll agreed to modify the locations of certain accesses to the Proposed Development if the Township and/or PennDOT so required.

41. Toll submitted amended or supplemented traffic impact studies to the Township during the course of the Hearings, including diagrams and plan excerpts, which analyzed any impacts or changes in traffic patterns as a result of the access modifications and demonstrated compliance with the applicable conditional use criteria and ordinance requirements.

42. The Township Traffic Engineer reviewed, commented and testified at the Hearings concerning the amended or supplemented traffic impact studies.

43. The Board contends that Toll was also required to submit a revised conditional use plan which depicted the modified accesses to the Proposed Development.

44. Toll did not amend its conditional use plan to show the potential modified locations of the accesses because:

a. PennDOT has not yet required the modification of the proposed accesses because no formal HOP application has been submitted;

b. Toll demonstrated that the Application, as submitted, complies with all applicable ordinance requirements with regard to the location of the proposed accesses;

c. The amended/supplemented traffic studies presented at the Hearings adequately described and analyzed the modified access locations; and

d. The Township informed Toll that any and every modification to the conditional use plan would require a new review by the Township Planning Commission, thereby unnecessarily delaying the Hearings.

Alleged Failure to Include “Scenic Views” as a Secondary Conservation Area

45. The Board contends that Toll did not take into account “scenic views” as a Secondary Conservation Resource, 50% of which are required to be preserved under the Zoning Ordinance.

46. The term “scenic views” is not defined and has no specific criteria provided under the Zoning Ordinance.

47. The term “scenic views” is entirely subjective.

48. The Board alleges that a portion or all of the Property contains “scenic views” because Revolutionary War troops may have crossed the Property on their way to the Brandywine Battlefield approximately 241 years ago.

49. The Board does not contend that the existing natural features of the Property are “scenic”.

50. The Township does not have a historic preservation or protection ordinance or any such provisions in the Zoning Ordinance.

51. As a matter of law, the alleged involvement of the Property as a periphery to the Battle of Brandywine 241 years ago cannot be considered to create a current “scenic view”.

52. The Secondary Conservation Resource requirement to preserve “scenic views” also directly conflicts with the Section 170-905.G of the flexible development zoning regulations which requires screening around the perimeter of the Proposed Development in accordance with Section 170-1508 of the Zoning Ordinance.

53. Specifically, Section 170-1508 of the Zoning Ordinance requires “a completely planted visual barrier or landscape screen of sufficient density *not to be seen through* and of sufficient height to constitute an effective screen and give maximum protection and *immediate visual screening...*” (emphasis added).

54. Toll cannot provide the required screening around the Proposed Development while also preserving subjective and undefined “scenic views” of the Property from the external streets and internal viewsheds.

55. For the foregoing reasons and others contained in the record of the Hearings, the Board's Decision constitutes an abuse of discretion, is improper as a matter of law and is not supported by substantial evidence.

56. Therefore, this Court should sustain this Appeal, reverse the Board's Decision and approve Toll's Application.

WHEREFORE, Toll PA XVIII, L.P. respectfully requests that this Honorable Court:

- A. Sustain this Appeal;
- B. Reverse the Board's Decision denying Toll's Conditional Use Application;

and

- C. Approve Toll's Conditional Use Application; and
- D. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

**KAPLIN STEWART MELOFF REITER
& STEIN, P.C.**

By: 

Marc B. Kaplin, Esquire
Gregg I. Adelman, Esquire

Dated: March 6, 2018

Attorneys for Applicant
Toll PA XVIII, L.P.

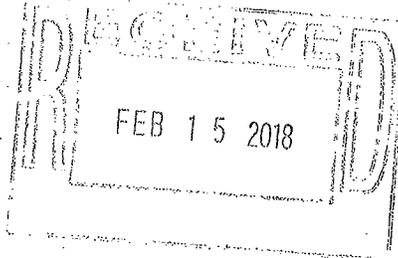
EXHIBIT "A"

Westtown Township Board of Supervisors February 12, 2018 Decision



Gawthrop Greenwood, PC
Attorneys at Law

17 East Gay Street, Suite 100, P.O. Box 562 p. 610.696.8225
West Chester, PA 19381-0562 www.gawthrop.com



Patrick M. McKenna
610.696.8225 x155
610.344.0922 fax
pmckenna@gawthrop.com

February 12, 2018

VIA FIRST CLASS MAIL & EMAIL TO:

gadelman@kaplaw.com
Gregg I. Adelman, Esquire
Union Meeting Corporate Center
910 Harvest Drive
P.O. Box 3037
Blue Bell, PA 19422

VIA FIRST CLASS MAIL & EMAIL TO:

asemon@tollbrothersinc.com
Andrew Semon
Division President
Toll Brothers
4 Hillman Drive, Suite 120
Chadds Ford, PA 19317

**Re: Decision of the Board of Supervisors, Westtown Township
Application of Toll PA XVIII, LP for Conditional Use Approval of Crebilly Farm**

Dear Mr. Adelman and Mr. Semon:

Enclosed herewith please find the written Decision of the Board of Supervisors of Westtown Township denying the Conditional Use Application of Toll PA XVIII, LP for a flexible development of Crebilly Farm.

Thank you both for the courtesy of an extension of time in which to provide the written Decision of the Board.

Very truly yours,


Patrick M. McKenna

Enclosure
cc w/ enc:

Robert Pingar, Township Manager (via email and first class mail)
Kristin S. Camp, Esquire (via email and first class mail)
Mark P. Thompson, Esquire (via email and first class mail)
Fronfield Crawford, Jr., Esquire (via email and first class mail)
Kathy L. Labrum, Esquire (via email and first class mail)
John J. Rendemonti, Esquire (via email and first class mail)
All parties of record (see list, attached) (via first class mail only)

IN RE:

CONDITIONAL USE APPLICATION
OF TOLL PA XVIII, L.P.

BEFORE THE BOARD OF
SUPERVISORS OF WESTTOWN
TOWNSHIP, CHESTER COUNTY,
PENNSYLVANIA

PARTIES:

1. West Chester Area School District
c/o Gary Bevilacqua, 109 Macroom Avenue, West Chester, PA 19382
2. Thornbury Farm Trust and Estate of H.B. Spackman
c/o Randell Spackman, 1256 Thornbury Road, West Chester, PA 19382
3. Brandywine at Thornbury Homeowners' Association
c/o Peter D. DuFault, 110 Forelock Court, West Chester, PA 19382
4. Westminster Presbyterian Church
c/o Edward E. McFalls, 10 W. Pleasant Grove Road, West Chester, PA 19382
5. Quarry Swimming Association
c/o Chris Feryo, 1146 S. New Street, West Chester, PA 19382
6. Radley Run III Homeowners' Association
c/o Tom Martin, 1020 Radley Drive, West Chester, PA 19382
7. West Glen Homeowners' Association
c/o Gary Bevilacqua, 109 Macroom Avenue, West Chester, PA 19382
8. Arborview Homeowners' Association
c/o William Hofmann, 100 Hidden Pond Way, West Chester, PA 19382
9. Westtown Village, LLC
c/o Kurt Wolter, P.O. Box 611, Devon, PA 19333
10. Gadaletto's Seafood Market
c/o Andrew Gadaletto, 1193 Wilmington Pike, West Chester, PA 19380
11. Bradley and Amy Harkins, 1081 South New Street, West Chester, PA 19382
12. Leonard Mammucari, 523 West Pleasant Grove Road, West Chester, PA 19382
13. Phillip Jones, 1007 Jennifer Lane, West Chester, PA 19382
14. Allison Corcoran, 1007 Dunvegan Road, West Chester, PA 19382

15. Ben Skupp, 1015 Dunvegan Road, West Chester, PA 19382
16. Dianna Lararis, 1054 Dunvegan Road, West Chester, PA 19382
17. Ed Boyer, 1059 Dunvegan Road, West Chester, PA 19382
18. Amy Murnane, 1046 West Niels Lane, West Chester, PA 19382
19. Ches Crognale, 609 John Anthony Drive, West Chester, PA 19382
20. Robert Duall, 1163 Lake Drive, West Chester, PA 19382
21. Scott Sobers, 108 Hidden Pond Way, West Chester, PA 19382
22. Walter Pavelchek, 1050 South New Street, West Chester, PA 19382
23. Phillip Yeager, 1048 South New Street, West Chester, PA 19382
24. Jim Cahill, 9 Jacqueline Drive, West Chester, PA 19382
25. David Pryze, 1050 Dunvegan Road, West Chester, PA 19382
26. Jennifer Kramer, 1046 Dunvegan Road, West Chester, PA 19382
27. Megan Bruns, 4 Jacqueline Drive, West Chester, PA 19382
28. Ed Skros, 1146 Fielding Drive, West Chester, PA 19382
29. Eileen Carey, 1106 Fielding Drive, West Chester, PA 19382
30. Jim McDermott, 1025 Dunvegan Road, West Chester, PA 19382
31. Patricia and Dennis McFadden, 1010 General Green Drive, West Chester, PA 19382
32. Matthew Reichert, 301 West Pleasant Grove Road, West Chester, PA 19382
33. Carol Weller, 1150 Lake Drive, West Chester, PA 19382

IN RE:

CONDITIONAL USE APPLICATION
OF TOLL PA XVIII, L.P.

BEFORE THE BOARD OF
SUPERVISORS OF WESTTOWN
TOWNSHIP, CHESTER COUNTY,
PENNSYLVANIA

DECISION

Toll PA XVIII, L.P. ("Toll") filed a conditional use application ("Application") with the Westtown Township Board of Supervisors ("Board") pursuant to Article IX, §§170-900 et seq. of the Westtown Township Zoning Ordinance, for conditional use approval of a proposed residential flexible development of parcels bounded by Route 202, Route 926, West Pleasant Grove Road and South New Street in Westtown Township, Chester County, Pennsylvania (UPI Nos. 67-4-29, 67-4-29.1, 67-4-29.2, 67-4-29.3, 67-4-29.4, 67-4-30, 67-4-31, 67-4-32, 67-4-33, 67-4-33.1 and 67-4-134), consisting of approximately 322 acres of land commonly and collectively known as "Crebilly Farm."

I. INTRODUCTION AND PROCEDURAL BACKGROUND

On or about October 18, 2016, Toll submitted the Application to the Township proposing a 319-unit (317 new, 2 existing) residential development of Crebilly Farm referred to during the hearings as "Plan A." See Exhibit B-6. The Application contained two (2) alternate conditional use site plans: one proposing thirty (30) foot spacing between carriage/townhomes in the 319-unit development; and one proposing a 397-unit (395 new, 2 existing) residential development under the density bonus provisions of Article IX of the Zoning Ordinance. See Exhibit B-6. Though the Application contained alternate conditional use site plans with regard to the development of Crebilly Farm, the only one of those options for which the Application was deemed administratively complete by the Township is that referred to as "Plan A." See Exhibits B-6, B-10. Toll did not

present during the hearings any plans for development of Crebilly Farm other than those marked as Exhibits A-3, A-6 and A-7.

On or about November 17, 2016, the Township Zoning Officer reviewed the Application for completeness and issued a letter highlighting certain items that were missing from the Application for "Plan A." *See* Exhibit B-10. On December 9, 2016, Toll responded to the Zoning Officer's completeness determination and submitted additional information for "Plan A." *See* Exhibit A-11. On December 22, 2016, the Zoning Officer determined the Application for "Plan A" to be administratively complete. *See* Exhibit B-10.

On November 16, 2016, December 15, 2016, January 10, 2017, January 24, 2017 and February 13, 2017, the Township Planning Commission met and reviewed the application. *See* Exhibit B-21. On February 13, 2017, the Township Planning Commission issued its recommendation on the Application as further outlined and memorialized in a letter from its solicitor dated February 16, 2016. *See* Exhibit B-21. The Board held hearings on the Application on the following dates: February 22, 2017; March 29, 2017; April 19, 2017; May 23, 2017; June 20, 2017; July 25, 2017; August 29, 2017; September 19, 2017; October 24, 2017; and November 27, 2017. *See* N.T. generally. At the conclusion of the November 27, 2017 hearing, the Board requested any interested party to submit proposed findings of fact and conclusions of law on or before December 15, 2017, and continued the hearing on the record until December 28, 2017 so that it could announce its oral decision on the Application. The Board voted and announced its unanimous oral decision to deny the Application on December 28, 2017. *See* N.T., pp. 1905-1906. Toll agreed to permit the Board an extension of time until February 12, 2018 to submit the written decision in support of the oral decision rendered on December 28, 2017. *See* Exhibit B-33; *see also* N.T., pp. 1760-1762. Accordingly, this written Decision followed.

After receiving the evidence presented by Toll and having reviewed the same, the Board makes the following:

II. FINDINGS OF FACT

A. The Parties

1. Westtown Township ("Township") is a Township of the Second Class having a business address of 1039 Wilmington Pike, West Chester, PA 19382. *See* N.T., cover page; Exhibit B-6.

2. Toll is the equitable owner of Crebilly Farm, which consists of approximately 322 acres of land being UPI Nos. 67-4-29, 67-4-29.1, 67-4-29.2, 67-4-29.3, 67-4-29.4, 67-4-30, 67-4-31, 67-4-32, 67-4-33, 67-4-33.1 and 67-4-134. *See* N.T., pp. 122-123; Exhibits B-6, A-5.

3. Crebilly Farm Family Associates, L.P., David M. Robinson, Laurie S. Robinson and David G. Robinson are the legal owners of Crebilly Farm. *See* N.T. p. 123; Exhibits B-6, A-4.

4. The Westtown Township Planning Commission ("Planning Commission") is the Township planning agency created pursuant to Section 107 the Pennsylvania Municipalities Planning Code, 53 P.S. §10107 ("MPC")¹. The Planning Commission was made a party to the hearings for the Application. *See* N.T. pp. 66-69.

¹ Toll objected to the party request of the Planning Commission maintaining that the MPC limits the role of planning commissions to presentation of testimony before any board, and that the MPC does not authorize the grant of formal "party status" to the conditional use hearing, including the right to cross-examine adverse witnesses. *See* N.T., p. 68; *see also* 53 P.S. §10209.1(b)(10.1); 53 P.S. §10908(5). The Board overruled Toll's objection relying on the Order of the Hon. William P. Mahon of the Court of Common Pleas of Chester County in the matter of *Londonderry Twp. Planning Commission v. Londonderry Twp. Bd. of Supervisors, et al.*, C.C.P. Chester County, Nos. 2005-04519-LU and 2005-04485-LU (Feb. 7, 2006). The Board found the *Londonderry* case to be controlling and directly on-point to the issue at hand; namely, whether a planning commission may act as a party, with the right to present testimony and cross-examine witnesses, in a zoning hearing under the provisions of the MPC. In that case, Judge Mahon reaffirmed that a planning commission may participate as a litigant in zoning hearings, though it is specifically prohibited from appealing the Board's decision to the Court of Common Pleas. *See* Order of February 7, 2006, fn. 1, p. 3, *citing In re Stagebrush Promotions, Inc.*, 512 A.2d 776, 782 (Pa. Cmwlth. 1986) ("[W]hile the Municipalities Planning Code does not specifically provide for participation of planning commissions as litigants in zoning hearings, such involvement has long been upheld by this Court."); *Application of Maida Blouch*, 362 A.2d 1139 (Pa. Cmwlth. 1976) (finding no error in permitting a township planning commission to appear as a party before the Board of Supervisors and to offer evidence for the Board's consideration.).

5. Thornbury Township ("Thornbury") is an adjacent municipality duly formed and existing under the laws of the Commonwealth of Pennsylvania. Thornbury was made a party to the hearings for the Application. *See* N.T. pp. 50-52; Exhibit B-29.

6. Birmingham Township ("Birmingham") is an adjacent municipality duly formed and existing under the laws of the Commonwealth of Pennsylvania. Birmingham was a party to the hearings for the Application. *See* N.T. pp. 62-64; Exhibit B-29.

7. Neighbors for Crebilly, LLC ("Neighbors for Crebilly") is a Pennsylvania limited liability company formed for the purpose of advocating on behalf of its members in favor of responsible development of the Crebilly Farm. Neighbors for Crebilly was made a party to the hearings for the Application. *See* N.T. pp. 38-49; Exhibit B-29.

8. West Chester Area School District ("WCASD") is the public school district for the Township duly formed and existing under the Pennsylvania School Code of 1949, as amended. WCASD was made a party to the hearings for the Application. *See* N.T., pp. 60-61; Exhibit B-29.

9. Thornbury Farm Trust and Estate of H.B. Spackman (collectively "Spackman") own the property located at 1256 Thornbury Road at the intersection of Route 926 and South New Street located in Thornbury Township, Chester County. Spackman was made a party to the hearings for the Application. *See* N.T., pp. 27-29; Exhibit B-29.

10. Brandywine at Thornbury Homeowners' Association ("Brandywine HOA") is comprised of the property and unit owners of the Brandywine at Thornbury residential development located along Bridlewood Boulevard and Route 926 in Thornbury Township. Brandywine HOA was made a party to the hearings for the Application. *See* N.T., pp. 30-31; Exhibit B-29.

11. Westminster Presbyterian Church is the owner of the property located at 10 West Pleasant Grove Road adjacent to the northeastern corner of Crebilly Farm. Westminster Presbyterian Church was made a party to the hearings for the Application. *See* N.T., pp. 31-32; Exhibit B-29.

12. Quarry Swimming Association is the owner of the property located at 1146 South New Street across from Crebilly Farm. Quarry Swimming Association was made a party to the hearings for the Application. *See* N.T., p. 33; Exhibit B-29.

13. Radley Run III Homeowners' Association ("Radley III HOA") is comprised of the property and unit owners of the Radley Run III residential development located along Birmingham Road in Birmingham Township. Radley III HOA was made a party to the hearings for the Application. *See* N.T., pp. 55-58; Exhibit B-29.

14. West Glen Homeowners' Association ("West Glen") is comprised of the property and unit owners of the West Glen residential development located along Dalmally Drive to the east of Route 202. West Glen was made a party to the hearings for the Application. *See* N.T., pp. 58-61; Exhibit B-29.

15. Arborview Homeowners' Association ("Arborview HOA") is comprised of the property and unit owners of the Arborview residential development located along West Pleasant Grove Road across from the Property. Arborview HOA was made a party to the hearings for the Application. *See* N.T., pp. 207-209; Exhibit B-29.

16. Westtown Village, LLC is the general partner of the owner of the Westtown Village Shopping Center located at 1193 Wilmington Pike at the northeast corner of the intersection of Routes 202 and 926 across from Crebilly Farm. Westtown Village, LLC was made a party to the hearings for the Application. *See* N.T., p. 80-81; Exhibit B-29.

17. Gdaleto's Seafood Market is a business tenant in the Westtown Village Shopping Center located at 1193 Wilmington Pike at the northeast corner of the intersection of Routes 202 and 926 across from Crebilly Farm. Gdaleto's Seafood Market was made a party to the hearings for the Application. *See* N.T., pp. 52-53; Exhibit B-29.

18. The following Township residents were granted party status to the hearing:

- a. Bradley and Amy Harkins, 1081 South New Street;
- b. Leonard Mammucari, 523 West Pleasant Grove Road;
- c. Phillip Jones, 1007 Jennifer Lane;
- d. Vasilios Moscharis, 1150 Old Wilmington Pike;
- e. Allison Corcoran, 1007 Dunvegan Road;
- f. Ben Skupp, 1015 Dunvegan Road;
- g. Dianna Lararis, 1054 Dunvegan Road;
- h. Ed Boyer, 1059 Dunvegan Road;
- i. Amy Murnane, 1046 West Niels Lane;
- j. Ches Crognale, 609 John Anthony Drive;
- k. Robert Duall, 1163 Lake Drive;
- l. Scott Sobers, 108 Hidden Pond Way;
- m. Walter Pavelchek, 1050 South New Street;
- n. Phillip Yeager, 1048 South New Street;
- o. Jim Cahill, 9 Jacqueline Drive;
- p. David Pryze, 1050 Dunvegan Road;
- q. Jennifer Kramer, 1046 Dunvegan Road;
- r. Megan Bruns, 4 Jacqueline Drive;
- s. Ed Skros, 1146 Fielding Drive;
- t. Eileen Carey, 1106 Fielding Drive;
- u. Jim McDermott, 1025 Dunvegan Road;
- v. Patricia and Dennis McFadden, 1010 General Green Drive;
- w. Matthew Reichert, 301 West Pleasant Grove Road;
- x. Carol Weller, 1150 Lake Drive.

See N.T., pp. 24-113, 174-175, 204-218, 339-341; Exhibit B-29.

19. The following individuals and municipal corporations requested and were denied party status to the hearing by the Board:

- a. Pennsbury Township, Chester County;
- b. Patrick S. McDonough, 7 Oakbourne Road;
- c. William Worth, 1075 Meetinghouse Road;
- d. Stacey Whomsley, 989 Regimental Drive;
- e. Sally Hammerman, 1020 East Street Road;
- f. Edmund and Jennifer Stafford, 951 South New Street;

See N.T., pp. 24-113, 174-175, 204-218, 339-341; Exhibit B-30.

20. Toll stipulated and agreed to the grants of the party status requests except for the Planning Commission and Neighbors for Crebilly. *See* N.T., pp. 205-206.

B. The Exhibits

21. During the course of the hearings, the Board marked and admitted the following exhibits into evidence:

- Exhibit B-1: Notice of Hearing for February 22, 2017
- Exhibit B-2: Proof of Publication of Hearing Notice in the Daily Local News on February 1, 2017 and February 8, 2017
- Exhibit B-3: Affidavit of Posting of Notice by Chris Patriarca, Westtown Township Zoning Officer, dated February 3, 2017, with list of property owners receiving Notice of Hearing
- Exhibit B-4: Tax parcel map depicting the location of the subject eleven (11) parcels
- Exhibit B-5: Westtown Township Code, Chapter 170, Zoning
- Exhibit B-6: Conditional Use Application of Toll PA XVIII, L.P., dated October 2016
- Exhibit B-7: Letters dated November 3, 2016, January 18, 2016 and January 19, 2016 from Gregg I. Adelman, Esq. granting extensions to Westtown Township to conduct Conditional Use Hearing
- Exhibit B-8: Letter dated November 3, 2016 from Gregg I. Adelman, Esq. requesting recusal of John Snook, Westtown Township planning consultant
- Exhibit B-9: Letter dated November 29, 2016 from Patrick M. McKenna, Esq. denying request for recusal of John Snook, Westtown Township planning consultant
- Exhibit B-10: Conditional Use Application Completeness Review Letters (2) from Chris Patriarca, Westtown Township Zoning Officer, dated November 17, 2016 and December 22, 2016
- Exhibit B-11: Pocopson Township Resolution #2017-4 dated January 23, 2017, expressing concerns with Conditional Use Application
- Exhibit B-12: Review letter from Chester County Planning Commission, dated December 7, 2016
- Exhibit B-13: Review letter from McCormick Taylor, Westtown Township Civil Engineer, dated December 9, 2016

- Exhibit B-14: Review letter from Carroll Engineering Corporation, Westtown Township Sanitary Sewer Consultant, dated January 6, 2017
- Exhibit B-15: "Historical Aspects of Crebilly Farm" prepared by Westtown Township Historical Commission, dated December 2016
- Exhibit B-16: Review letter from John Snook of the Brandywine Conservancy, Westtown Township Land Planner, dated December 15, 2016
- Exhibit B-17: Fiscal Impact Analysis and Peer Review by Todd J. Pool of Award Planning, Westtown Township Fiscal Impact Consultant, dated February 3, 2017
- Exhibit B-18: Review letters (2) from Al Federico of Kimley Horn, Westtown Township Traffic Engineer, dated December 27, 2016 and February 6, 2017
- Exhibit B-19: Review from Westtown-East Goshen (WEGO) Police Chief Brenda M. Bernot, dated January 23, 2017
- Exhibit B-20: Email review from Daniel Matthews, Jr. of Fame Fire Company, dated February 12, 2017
- Exhibit B-21: Letter from Kristin S. Camp, Esq., dated February 16, 2017 with the recommendation of the Westtown Township Planning Commission for the Conditional Use Application
- Exhibit B-22: Transportation Impact Study Scoping Meeting Application prepared by McMahon Transportation Engineers and Planners, dated November 7, 2016
- Exhibit B-23: Pennsylvania Department of Transportation Preliminary Review of Transportation Impact Study Scoping Meeting Application, dated December 6, 2016
- Exhibit B-24: Five (5) page presentation of "Battle of Brandywine – Flanking Movement of Cornwallis Impacting Crebilly," prepared by Sean Moir of Western Heritage Mapping
- Exhibit B-25: Review letter from Cedarville Engineering Group, LLC, Westtown Township Stormwater Management Consultant, dated February 22, 2017
- Exhibit B-26: Willistown Township Resolution #11 of 2017 dated February 27, 2017, expressing concerns with Conditional Use Application
- Exhibit B-27: Pennsbury Township Resolution #2017-3-15-1 dated March 14, 2017, expressing concerns with Conditional Use Application
- Exhibit B-28: Review letter from Al Federico of Kimley Horn, Westtown Township Traffic Engineer, dated April 3, 2017

- Exhibit B-29: Party status forms for individuals and entities granted party status
- Exhibit B-30: Party status forms for individuals and entities denied party status
- Exhibit B-31: Email chain between Mark Thompson, Esq. and Patrick M. McKenna, Esq. dated October 17 – 19, 2017 regarding testimony of Dr. Samuel Watson
- Exhibit B-32: Toll PA XVIII, L.P.'s Objections to Conditional Use Exhibits
- Exhibit B-33: Email from Gregg Adelman, Esq. to Patrick McKenna, Esq. dated November 20, 2017 regarding extension for written decision
- Exhibit B-34: Planning Commission Response to Toll Objections to Exhibits
- Exhibit B-35: Public Statements

See N.T., p. 1759.

22. During the course of the hearings, Toll offered the following exhibits, which were admitted into evidence:

- Exhibit A-0: Aerial photo exhibit board for party status, dated February 7, 2017
- Exhibit A-1: Curriculum Vitae of Emily Stewart
- Exhibit A-2: Plan A-Proposed Development, plan set, 45 sheets, dated October 7, 2016
- Exhibit A-3: Revised/Supplemental plan sheets, dated December 8, 2016
Sheets 1-4D, 5-23, 44A-45)
- Exhibit A-4: Deeds for Property
- Exhibit A-5: Redacted Agreement of Sale
- Exhibit A-6: 317 Unit Conditional Use Plan Color Rendering (60 ft. townhouse spacing),
Sheet 4A of 45, dated December 8, 2016
- Exhibit A-7: 317 Unit Conditional Use Plan Color Rendering (30 ft. townhouse spacing),
Sheet 45, dated December 8, 2016
- Exhibit A-8: Geo-Technology Associates, Inc. wastewater feasibility report, dated October
11, 2016
- Exhibit A-9: Carroll Engineering Corporation sewer report, dated January 6, 2017

Exhibit A-10: McCormick Taylor review letter, dated December 9, 2016

Exhibit A-11: ESE response letter, with attachments, dated January 31, 2017

- a. Plan A - Proposed Development Sheets 1-23, 44A-45 dated October 7, 2016 and last revised December 8, 2016
- b. Boundary Survey, dated August 22, 2016 and last revised October 3, 2016
- c. Philips Lighting Plan, dated December 20, 2016 and last revised December 28, 2016
- d. Lot Consolidation Plan, dated August 9, 2015 and last revised October 16, 2015
- e. Stormwater Management Narrative, dated October 2016 and revised December 2016

Exhibit A-12: Curriculum Vitae of Jeff Madden

Exhibit A-13: ESE Stormwater Management Narrative, dated October 2016

Exhibit A-14: GTA Report of Preliminary Geotechnical Exploration, dated August 2016

Exhibit A-15: AQUA Will-Serve Letter, dated February 27, 2017

Exhibit A-16: Curriculum Vitae of Paul S. Scott

Exhibit A-17: GTA Report of Preliminary On-Site Wastewater Feasibility Evaluation, dated March 2017

Exhibit A-18: Curriculum Vitae of Robert J. Wise, Jr.

Exhibit A-19: RGA Historic Structures letter, dated December 13, 2016

Exhibit A-20: Cartographic Map 3.5 of Brandywine Battlefield

Exhibit A-21: Archibald Robertson manuscript map and text of the Battle of Brandywine

Exhibit A-22: GTA Supplemental Preliminary On-Site Wastewater Disposal Feasibility Evaluation, dated April 13, 2017

Exhibit A-23: Curriculum Vitae of Frederick E. Ebert, P.E.

Exhibit A-24: Ebert Engineering, Inc. Wastewater Engineering Report, dated April 18, 2017

Exhibit A-25: Curriculum Vitae of David C. Babbitt, AICP, NJPP

Exhibit A-26: Babbitt Fiscal Impact Analysis, dated October 13, 2016

Exhibit A-27: Babbitt fiscal impacts tables (3 tables)

Exhibit A-28: Curriculum Vitae of Nicole Kline, P.E.

- Exhibit A-29: McMahon Associates Transportation Impact Study, dated October 13, 2016
- Exhibit A-30: Kimley Horn review letter, dated December 27, 2016
- Exhibit A-31: Kimley Horn review letter, dated February 6, 2017
- Exhibit A-32: Kimley Horn review letter, dated April 3, 2017
- Exhibit A-33: McMahon Associates response letter & revised Transportation Impact Study, dated January 20, 2017
- Exhibit A-34: McMahon Associates response letter, dated March 3, 2017
- Exhibit A-35: McMahon Associates response letter, dated May 19, 2017
- Exhibit A-36: McMahon Associates minutes of PennDOT Scoping Meeting, dated December 2, 2016
- Exhibit A-37: E-mail from Francis Haney, regarding December 2, 2016 Scoping Meeting minutes
- Exhibit A-38: Westtown Township Zoning Ordinance, Chapter 170, Article XV, 1508-Screening
- Exhibit A-39: ESE Landscape Plan, dated December 7, 2016
- Exhibit A-40: McMahon Traffic Evaluation, dated August 29, 2017

See N.T., p. 1759.

23. During the course of the hearings, the Planning Commission offered the following exhibits, which were admitted into evidence:

- Exhibit PC-1: Battle of Brandywine Map (page 282) from book titled Brandywine by Michael C. Harris
- Exhibit PC-2: Pages 314-321 from book titled Brandywine by Michael C. Harris
- Exhibit PC-3: Minutes from Scoping Meeting on April 17, 2017
- Exhibit PC-4: Curriculum Vitae of Stephen D. Dadio, CPSS/CPSC, Environmental Manager with Cedarville Engineering
- Exhibit PC-5: Westtown Township Stormwater Management Ordinance – codified in Chapter 144 of the Westtown Code

- Exhibit PC-6: Goose Creek TMDL and Pollutant Reduction Plan dated June 9, 2017
- Exhibit PC-7: Curriculum Vitae of Kevin Matson, P.E., Municipal Group Manager with McCormick Taylor
- Exhibit PC-8: Correspondence dated March 23, 2017 from Kevin M. Matson, P.E., the Township Engineer, to Chris Patriarca, Westtown Township Planning and Zoning Administrator
- Exhibit PC-9: Memorandum dated January 30, 2017 from Kevin M. Matson, P.E. to Chris Patriarca
- Exhibit PC-10: Curriculum Vitae of Albert Federico, P.E., PTOE, Senior Project Manager
- Exhibit PC-11: Conditional Use Application
- Exhibit PC-12: Minutes of February 13, 2017 Township Planning Commission
- Exhibit PC-13: PennDOT letter, dated March 3, 2017
- Exhibit PC-14: Excerpt, 2001 Westtown Township Growth Management Plan
- Exhibit PC-15: Curriculum Vitae of William N. Malin, P.E.
- Exhibit PC-16: Curriculum Vitae of Sean Moir
- Exhibit PC-17: Overall Lot Layout Plan A prepared by ESE Land Planning and Surveying, dated October 7, 2016 and last revised December 8, 2016 with mark-up notations during the testimony of Michael C. Harris
- Exhibit PC-18: Animated map prepared by Sean Moir, President of Wester Heritage Mapping, which shows the advancement of Hessian troops through the Crebilly Farm area during the Battle of Brandywine
- Exhibit PC-19: Curriculum Vitae of John D. Snook
- Exhibit PC-20: Photo of Crebilly Farm from Sandy Hollow battle reenactment

See N.T., p. 1759.

24. During the course of the hearings, Neighbors for Crebilly offered the following exhibits, which were admitted into evidence:

- Exhibit NC-1: Curriculum Vitae of J. Michael Miller
- Exhibit NC-2: Battle of Brandywine rendering showing troop movements

Exhibit NC-3: Three color photographs of Crebilly Farm

Exhibit NC-4: Stormwater Management Review by Michele C. Adams of Meliora Designs, dated October 24, 2017

Exhibit NC-5: ESE Aerial Photo of Crebilly site w/Topo & Streams

Exhibit NC-6: ESE Aerial Photo of Crebilly site w/Topo & Streams and Basins

See N.T., pp. 1542-1646.

25. During the course of the hearings, WCASD offered the following exhibit, which was admitted into evidence:

Exhibit SD-1: West Chester Area School District Fiscal Impact Report by Todd J. Poole, dated January 25, 2017

See N.T., p. 1717.

26. During the course of the hearings, Thornbury offered the following exhibit, which was admitted into evidence:

Exhibit Thornbury Township 1: Curriculum Vitae of Frank Tavani, P.E.

See N.T., p. 1431.

C. The Property

27. The parcels that comprise Crebilly Farm are bordered by Route 202 (East), Route 926 (South), West Pleasant Grove Road (North) and South New Street (West) in Westtown Township, Chester County, Pennsylvania, and consist of approximately 322 acres of land made up of the following eleven (11) tax parcels: UPI Nos. 67-4-29, 67-4-29.1, 67-4-29.2, 67-4-29.3, 67-4-29.4, 67-4-30, 67-4-31, 67-4-32, 67-4-33, 67-4-33.1 and 67-4-134. *See* N.T., pp. 4, 122; Exhibits B-4, B-6, A-2, A-3.

28. Most of Crebilly Farm is situated within the A/C Agricultural/Cluster Residential District of the Township, while a portion of Crebilly Farm is situated within the R-1 Rural Suburban Residential District of the Township. *See* N.T., p. 122; Exhibit B-5.

29. Crebilly Farm is located in an area designated for cluster residential use, among other uses, under the Township's comprehensive plan ("Comp Plan"), known as the "Growth Management Plan for Westtown Township," dated July 2, 2001. *See* Exhibits B-5, PC-14.

30. A majority of Crebilly Farm is currently farmed, though it is also used for residential uses. *See* N.T., p. 1393; Exhibit B-6.

31. Crebilly Farm is located in two (2) different watersheds – the Brandywine Creek Watershed and the Chester Creek Watershed – neither stream section of which are exceptional value or high quality watersheds. *See* N.T., pp. 182-183; Exhibit A-13.

32. A portion of the Radley Run, and Tributary 00074 to the Radley Run, traverse Crebilly Farm. *See* Exhibits A-2, A-3 A-13.

33. There is a pond located near and along the Route 926 frontage of Crebilly Farm. *See* N.T., p. 127; Exhibits A-2, A-3.

34. Crebilly Farm is characterized by slopes which measure in excess of twenty-five percent (25%) ("Steep Slopes"). *See* N.T., pp. 125-126.

35. The Steep Slopes are dispersed through Crebilly Farm but, generally, lay along the watercourses along Route 926 and at the northeast corner of the intersection of Route 926 and South New Street. *See* N.T., pp. 125-126; Exhibits A-2, A-3.

36. In addition to Steep Slopes, certain other primary conservation resources are present on Crebilly Farm, including several delineated wetlands and the 100-year floodplain area (collectively, the "Primary Conservation Resources"), which floodplain area is located in the southwestern corner of Crebilly Farm, along the Radley Run and the pond. *See* N.T., pp. 127-130; Exhibits A-2, A-3.

37. Crebilly Farm is also characterized by certain secondary conservation resources including, woodline, woodlands, tree lines, large specimen trees with diameter measuring greater than eighteen inches (18"), scenic views, seasonal high water table, adjacent parkland, and adjacent trails (collectively, the "Secondary Conservation Resources"). *See* N.T., pp. 127-130; Exhibits A-2, A-3.

38. The most densely wooded areas of Crebilly Farm are located in the northeastern corner along West Pleasant Grove Road, and in the southwestern corner near the intersection of Route 926/South New Street. *See* N.T., p. 128; Exhibits A-2, A-3.

39. As calculated by Toll, the area of the Secondary Conservation Resources measures approximately 27.28 acres. *See* N.T., p. 130; Exhibit A-3.

40. When identifying and calculating the areas of the Secondary Conservation Resources, Toll did not take into account scenic views of Crebilly Farm relative to the Battle of the Brandywine. *See* N.T., pp. 1382-1386.

41. There are no identifiable geological rock formations or outcroppings on Crebilly Farm. *See* N.T., pp. 127-128; Exhibits A-2, A-3.

42. The geology of Crebilly Farm is primarily located within the Glenarm Wissahickon formation of the Piedmont Province and the soils are generally classified as silty sand or sandy loam. *See* Exhibit A-14.

43. The seasonal high water table soils on Crebilly Farm are located along the tributary to the Radley Run. *See* Exhibits A-2, A-3.

44. Toll did not take into account all land visible from adjacent public roads, measured as viewed from a height of four (4) feet above the surface of the road looking in any direction or angle across Crebilly Farm, based on winter conditions when existing vegetation offers the least obstruction of view as part of its site analysis submission as required by the Flexible Development Procedure of Article IX. *See* Exhibit B-6.

D. Existing Structures on Crebilly Farm

45. Crebilly Farm has multiple existing structures on it including, single-family homes, stables, barns, springhouses, equestrian facilities, sheds and additional accessory structures. *See* Exhibits A-2, A-3, A-19.

46. The farmstead on Crebilly Farm located along South New Street contains the following structures: (a) David G. Robinson (Joshua and Lydia Hunt) farmhouse; (b) serpentine garage; (c) former stable; (d) springhouse residence; (e) David and Laurie Robinson house (1119 New Street); (f) corncrib; and (g) barn yard wall. *See* N.T., pp. 533-538; Exhibits A-2, A-3, A-19.

47. The equestrian center located east of the New Street farmstead contains the following structures: (a) carriage house; (b) horse barn (stables); (c) blacksmith shop; (d) stud barn; (e) caretaker's house (1127 New Street); (f) block garage; (g) barn #2; and (h) farm shop. *See* N.T., pp. 533-538; Exhibits A-2, A-3, A-19.

48. The farmstead on Crebilly Farm located along Route 926 (Street Road) contains the following structures: (a) barn #1; (b) scale house; (c) corncrib; (d) former springhouse converted to chapel; and (e) modern single-family home. *See* N.T., pp. 533-538; Exhibits A-2, A-3, A-19.

49. The eastern portion of Crebilly Farm contains the following structures: (a) Darlington Tavern; (b) garage; (c) Michael Brennan house; (d) block outbuilding; and (e) J.Q. Taylor tenant house. *See* N.T., pp. 533-538; Exhibits A-2, A-3, A-19.

50. The Darlington Tavern is eligible for inclusion in the National Register of Historic Places. *See* N.T., p. 537.

E. Proposed Flexible Development

51. Toll presented the testimony of Emily Stewart, RLA, AICP, and she was accepted as an expert witness by the Board in the field of land planning. *See* N.T., pp. 114-174; Exhibit A-1.

52. Ms. Stewart is employed by ESE Consultants, Inc., a wholly-owned subsidiary of Toll. *See* N.T., pp. 116-117, 120; Exhibit A-1

53. The Planning Commission presented the testimony of John Snook, and he was accepted as an expert witness in the field of land planning. *See* N.T., pp. 1367-1428; Exhibit PC-19.

54. A flexible residential development is permitted by conditional use in the Agricultural/Cluster Residential and R-1 Rural Suburban Residential Zoning Districts. *See* N.T., pp. 123-124; Exhibit B-5.

55. Toll proposes to construct a 319-unit residential development of Crebilly Farm consisting of two (2) existing homes, 200 new single-family homes and 117 new town/carriage houses (the "Flexible Development") under the flexible development provisions of Article IX of the Zoning Ordinance. *See* N.T., p. 146; Exhibits A-2, A-3, A-6.

56. The Flexible Development would also include the construction of internal streets, utilities, stormwater management facilities, landscaping, screening, community recreation facilities and other associated improvements. *See* Exhibits A-2, A-3, A-6.

57. The Flexible Development does not intrude into any Primary Conservation Resources except as permitted for regulated activities such as watercourse or wetland crossings to provide for development related aspects, including utilities and to provide ingress and egress to the Flexible Development. *See* N.T., pp.132-137; Exhibits A-2, A-3, A-6.

58. Toll will destroy a portion of the Secondary Conservation Resources, which are characterized by mature woodlands along Crebilly Farm's West Pleasant Grove Road frontage, in order to construct certain of the townhome style dwelling units. *See* N.T., p. 226; Exhibit A-3.

59. Toll did not include any area of Secondary Conservation Resources for scenic views from inside Crebilly Farm, nor any area of scenic views from existing streets and trails, as required by §170-1617.C(1)(c) of the Zoning Ordinance, by reference to §170-905.A(1). *See* Exhibits B-6, A-2, A-3, A-6, A-7.

60. Toll did not include as part of its required site analysis any area for lands visible from any adjacent public road as measured and required by §170-905.A(1)(m) of the Zoning Ordinance. *See* Exhibits B-6, A-2, A-3, A-6, A-7.

61. Single-family detached dwellings and townhomes are permitted forms of residential use under the flexible development procedure of the Zoning Ordinance. *See* N.T., p. 145; Exhibit B-5.

62. A community clubhouse and recreation facilities are permitted accessory uses under the flexible development procedure in the Zoning Ordinance. *See* N.T., p. 145; Exhibit B-5.

63. The maximum density (without any bonus) of the Flexible Development permitted under the flexible development procedure of the Zoning Ordinance is 319 dwelling units. *See* N.T., p. 146; Exhibit B-5.

64. The proposed Flexible Development has a net residential density of 2.2 single-family detached homes per acre, which is less than the four (4) units per acre permitted under the flexible development procedure in the Zoning Ordinance. *See* N.T., pp. 146-147; Exhibits A-2, A-3, A-6.

65. The Flexible Development has a net residential density of 6.7 town/carriage homes per acre, which is less than the ten (10) units per acre permitted under the flexible development procedure in the Zoning Ordinance. *See* N.T., pp. 146-147; Exhibits A-2, A-3, A-6.

66. The Flexible Development provides 197.15 acres of open space, which is sixty-one percent (61%) of the gross area of Crebilly Farm. *See* N.T., p. 149; Exhibits A-2, A-3, A-6.

67. The minimum required open space under the flexible development procedure of the Zoning Ordinance is sixty percent (60%). *See* N.T., p. 149; Exhibits B-5, A-2, A-3, A-6.

68. Over half of the open space for the Flexible Development is located outside of the 100-year floodplain areas, wetlands and steep slopes greater than twenty-five percent (25%). *See* N.T., p. 152; Exhibits A-2, A-3.

69. The open space area of the Flexible Development will have a minimum width of seventy-five (75) feet and a minimum area of half ($\frac{1}{2}$) an acre, which are the minimums required under the flexible development procedure of the Zoning Ordinance. *See* N.T., pp. 152-153; Exhibits A-2, A-3, A-6.

70. The open space area of the Flexible Development provides sufficient area for up to ten percent (10%) of the net tract acreage for active recreation. *See* N.T., p. 153; Exhibits B-5, A-2, A-3.

71. The Flexible Development provides sidewalks, walking trails and fitness trails, which will be created from existing driveways and paths or otherwise newly constructed, connecting the residential community to the open space areas. *See* N.T., pp. 153-154; Exhibits A-2, A-3, A-6.

72. Toll intends to create a homeowners' association with regard to the Flexible Development. The open space areas, all private improvements (including stormwater facilities), recreational facilities and streets (if not accepted for dedication by the Township) will be owned, operated and maintained by the proposed homeowners' association. *See* N.T., p. 154; Exhibits B-6, A-2, A-3.

73. The total impervious coverage for the townhouse development area of the Flexible Development is thirty-seven percent (37%). *See* N.T., p. 149; Exhibits B-5, A-2, A-3, A-6.

74. The maximum total impervious coverage under the flexible development procedure of the Zoning Ordinance for the townhouse development area is forty-five percent (45%). *See* N.T., p. 149; Exhibits B-5; A-2, A-3, A-6.

75. There is no maximum impervious coverage under the flexible development procedure for the single-family home development area for the Flexible Development. *See* N.T., p. 149; Exhibits B-5.

76. The dwellings proposed for the Flexible Development will be equal to or less than the thirty-eight (38) feet in height, which is the maximum height permitted under the flexible development procedure of the Zoning Ordinance. *See* N.T., p. 150; Exhibits A-2, A-3, A-6.

77. No row of proposed townhomes in the Flexible Development exceeds 120 feet in any dimension and does not contain more than five (5) units in a single row. *See* Exhibits A-2, A-3, A-6.

78. Toll proposed a separation distance of no more than thirty (30) feet between the single-family detached dwellings in the Flexible Development, where thirty (30) feet is the minimum required under the flexible development procedure of the Zoning Ordinance. *See* N.T., p. 150; Exhibits A-2, A-3, A-6.

79. Toll initially proposed a separation distance of at least sixty (60) feet between the townhomes, where sixty (60) feet is the minimum required under the flexible development procedure of the Zoning Ordinance. *See* N.T., p. 150; Exhibits B-6, A-2, A-3, A-6.

80. Toll requested a modification under the flexible development procedure of the Zoning Ordinance to reduce the townhome separation distance from sixty (60) feet to thirty (30) feet. *See* N.T., pp. 150-152; Exhibits B-6, A-7.

81. The setback from curb for single-family detached dwellings and townhomes in the Flexible Development is equal to or greater than thirty (30) feet, where thirty (30) feet is the minimum required under the flexible development procedure of the Zoning Ordinance. *See* N.T., p. 150; Exhibits B-6, A-2, A-3, A-6.

82. The setback from right-of-way line of an exterior street for townhomes in the Flexible Development is equal to or greater than 100 feet, where 100 feet is the minimum required under the flexible development procedure of the Zoning Ordinance. *See* Exhibits A-2, A-3, A-6.

83. The setback from all perimeter property lines for single-family detached dwellings in the Flexible Development is equal to or greater than fifty (50) feet and for townhomes it is equal to or greater than 100 feet, which are the minimums required under the flexible development procedure of the Zoning Ordinance. *See* Exhibits A-2, A-3, A-6.

84. The Flexible Development provides a minimum of two (2) parking spaces per dwelling unit driveway in addition to a two (2) car garage for each dwelling unit, which exceeds the minimum of two and a half (2½) parking spaces per dwelling unit required by the flexible development procedure of the Zoning Ordinance. *See* N.T., p. 165; Exhibits B-5, A-2, A-3, A-6.

85. The Flexible Development proposes landscaping throughout the development, including on the lots and near the proposed dwelling units. *See* Exhibits A-2, A-3.

86. The Flexible Development provides screening around portions of the perimeter of Crebilly Farm and to the rear of the proposed homes along South New Street. *See* N.T., pp. 1393-1399; Exhibits A-2, A-3, A-38, A-39.

87. On December 9, 2016, the Township Engineer wrote a review letter with regard to the Application and the Flexible Development. *See* Exhibits B-13, A-10.

88. On behalf of Toll, Jeff Madden, P.E. of ESE Consultants, a wholly-owned subsidiary of Toll, issued a letter dated January 31, 2017, in response to the Township Engineer's review. *See* Exhibit A-11.

89. Emily Stewart testified that in her opinion, the January 31, 2017 response letter of Jeff Madden "adequately addressed the zoning issues [which] were cited in the" December 9, 2016 review letter of McCormick Taylor. *See* N.T., pp. 160-162.

90. The Board does not find credible any testimony of Emily Stewart with regard to any non-land planning issues set forth in the December 9, 2016 review letter from McCormick Taylor. *See* N.T., pp. 114-174, 221-273 generally; Exhibits B-13, A-10.

91. More specifically, the Board finds that Toll did not present testimony or documentary evidence with regard to the architectural design of the proposed dwelling units in the Flexible Development as required by §170-904.E.5 of the flexible development procedure of the Zoning Ordinance. *See* N.T., p. 166; Exhibits B-5, A-11.

92. Initially, Ms. Stewart testified that the roadway network proposed within the Flexible Development was consistent with the provision of the Comp Plan calling for a collector road across Crebilly Farm from West Pleasant Grove Road to Route 926. *See* N.T., p. 173.

93. However, on cross-examination, Ms. Stewart eventually admitted that she was aware that the Comp Plan contemplates a direct collector road through Crebilly Farm from West Pleasant Grove Road to Route 926, and that the roadway network depicted on Exhibits A-3 and A-6 are inconsistent with the Comp Plan. *See* N.T., pp. 224-225.

94. Ms. Stewart did not testify that she was aware of the design standard requirements of §170-503 of the Zoning Ordinance, nor did she testify as to whether or how those design standards apply to the Flexible Development proposed by Toll. *See* N.T., generally pp. 114-174, 221-273; Exhibit B-5.

95. The Board does not find credible any testimony by Ms. Stewart as it relates to the road network of the Flexible Development and whether it is consistent with the Comp Plan or the requirements of the Zoning Ordinance. *See* N.T., generally pp. 114-174, 221-273.

96. The Board specifically finds as credible the testimony of Mr. Snook as it relates to Toll's failure to adequately provide a collector road from West Pleasant Grove Road to Route 926. *See* N.T., pp. 1387-1389.

F. Stormwater Management

97. Toll presented, and the Board accepted, the testimony of Jeffrey Madden, P.E. ("Madden") as an expert witness in the field of civil engineering and site design. *See* N.T., pp. 176-193; Exhibit A-12.

98. Mr. Madden is employed by ESE Consultants, a wholly-owned subsidiary of Toll. Madden prepared the Stormwater Management Narrative marked as Exhibit A-13. *See* N.T., pp. 178, 180; Exhibits A-12, A-13.

99. Under existing conditions, stormwater from all but approximately ten (10) acres of Crebilly Farm drains toward the west to a culvert under South New Street, and the remainder of the stormwater flows from Crebilly Farm to the east to a culvert under Route 202. *See* N.T., pp. 181-182.

100. The proposed Flexible Development includes nine (9) stormwater basins generally located at the lower portions of Crebilly Farm along the watercourses that will collect stormwater runoff conveyed off the individual lots and units into the storm sewers in the internal roadways or from overland flow. *See* N.T., pp. 184-185; Exhibits A-11, A-13.

101. Though Mr. Madden testified that Toll would "decide during the land development process" what best management practices to implement, he offered his opinion that "the overall stormwater management system will control the required rate and volume of both the township and DEP regulations." *See* N.T., p. 187.

102. Mr. Madden further testified that Toll would, during the land development process, analyze the feasibility of Toll's compliance with comments, which Cedarville Engineering, Inc. offered in its review letter regarding best management practices ("BMPs") for the Township's MS4 requirements. *See* N.T., pp. 187, 191-193; Exhibit B-25.

103. Mr. Madden was unable to “state right now how [water quality] will be maintained or will be done []” but, instead, stated only that “we have rules.” *See* N.T., p. 279.

104. Mr. Madden testified that Toll did not do any testing to establish the levels of nitrates or Total Suspended Solids within either watercourse to which stormwater from Crebilly Farm flows. *See* N.T., pp. 331-332.

105. There is no evidence to confirm that the Flexible Development will meet the Township’s requirements with regard to the reduction of nitrates and Total Suspended Solids within either watercourse to which stormwater from Crebilly Farm will flow in the post-development condition.

106. Section 170-2009.B(3) of the Zoning Ordinance requires an accurate site plan to be submitted as part of any conditional use application. Nevertheless, “[d]etailed grading plans, stormwater calculations, and similar engineering details are not required to be submitted” until a land development application is made pursuant to Chapter 149 of the Township Code. Further, the approximate location of stormwater basins and swales must be shown.

107. Any conditional use application must, however, contain sufficient information, e.g., preliminary site grading and road profiles, preliminary stormwater management analysis, etc., to preliminarily determine compliance with the Township natural feature, site analysis, conservation design process (if applicable) and density requirements. *See* §170-2009.B(3)(d) of the Zoning Ordinance.

108. In addition to demonstrating compliance with all standards applicable to the conditional use being requested, the site plan must demonstrate adequate handling of stormwater, in the form of a preliminary written analysis and conclusions as to anticipated methods, prepared by a registered professional engineer.² See §170-2009.B(6)(c) of the Zoning Ordinance.

G. Water and Sanitary Sewer

109. Toll proposes that Aqua Pennsylvania will supply the Flexible Development with public water. See N.T., pp. 158-159; Exhibit A-15.

110. Toll presented the testimony of Paul S. Scott, P.G., a Senior Hydrologist and Vice-President with Geo-Technology Associates, Inc. See N.T., pp. 345-403, 413-425; Exhibit A-16.

111. The Board accepted Mr. Scott as an expert witness in the field of hydrology. Toll did not offer, and the Board does not accept, Mr. Scott as an expert in the fields of wastewater treatment or wastewater disposal. See N.T., pp. 345, 358.

112. With regard to wastewater disposal, Mr. Scott "evaluated aquifer permeability, infiltration rates, soil structure and texture" at the northwestern portion of Crebilly Farm. See N.T., p. 348.

113. Mr. Scott concluded that the northwestern corner of Crebilly Farm where his firm conducted test pits and borings is "feasible for a drip irrigation system." See N.T., pp. 350-351, 413-414; Exhibit A-23.

114. The Board does not credit any portion of Mr. Scott's testimony regarding wastewater treatment or wastewater disposal.

² The Board notes that a great deal of testimony was offered by Toll, the Planning Commission and especially Neighbors for Crebilly on the issue of whether the Application as presented demonstrates compliance with the preliminary stormwater requirements of the Zoning Ordinance for a conditional use application. While the Board strongly considered all of this evidence, the Board views the evidence and testimony related to the location of the stormwater basins and the design of the stormwater system, and the narrative and testimony of Michele C. Adams, PE, LEED AP, as appropriate for land development consideration.

115. In accordance with the Township's Wastewater Management (Act 537) Plan, Toll seeks to treat and dispose of the wastewater generated by the proposed Flexible Development via an on-site wastewater treatment plant with land application via drip disposal. *See* N.T., pp. 155-157, 350-352, 428-440, 1232; Exhibits A-8, A-9, A-17, A-24.

116. The proposed on-site wastewater treatment options and drip disposal are wastewater systems permitted by the Pennsylvania Department of Environmental Protection. *See* N.T., pp. 433-440.

117. Toll presented the testimony of Frederick E. Ebert, P.E., President of Ebert Engineering, Inc. *See* N.T., pp. 425-426; Exhibit A-23.

118. Mr. Ebert was accepted by the Board as an expert witness in the field of wastewater engineering and permitting. *See* N.T., p. 427.

119. Mr. Ebert testified with regard to three (3) methods of on-site wastewater treatment as follows: (1) Sequential Batch Reactor; (2) MLE or Modified Bardenpho; and (3) Biologically Engineered Single Sludge Treatment. *See* N.T., pp. 430-433.

120. Mr. Ebert further testified that, of the three (3) foregoing methods of on-site wastewater treatment, his preference for use on Crebilly Farm is the Sequential Batch Reactor method. *See* N.T., pp. 440-441.

121. The drip irrigation method of wastewater disposal requires the use of an effluent storage tank. Further, the drip irrigation method of wastewater disposal continues to operate during the winter months. *See* N.T., p. 435.

122. Toll did not investigate, and was unable to offer evidence with regard to, any potential problems associated with placement of a drip irrigation wastewater disposal system proximate to a stormwater management basin. *See* N.T., p. 395.

123. Toll was unable to offer any assurance that residents at the proposed Flexible Development will not enter upon areas to be designated as drip irrigation wastewater disposal areas. *See* N.T., p. 399.

124. A community on-lot disposal system of the type described by Mr. Ebert must be operated and maintained by a licensed professional operator. *See* N.T., p. 439.

125. Public sewer for the proposed Flexible Development is available if the Township amends its Wastewater Management (Act 537) Plan to place Crebilly Farm in the Township's public sewer area. *See* N.T., pp. 1229-1241; Exhibits A-9, B-14.

126. Mr. Ebert recommends that if feasible, new developments such as the proposed Flexible Development should connect to public sanitary sewer service, and that connection to public sanitary sewer service is "significantly less expensive" than use of a community on-lot disposal system." *See* N.T., pp. 441-442.

127. Mr. Ebert supported the recommendation of the Township's sanitary Sewer Consultant, William N. Malin, P.E., that Toll connect the proposed Flexible Development to the Township owned and operated wastewater collection, conveyance and treatment system. *See* N.T., pp. 443, 1233-1234; Exhibit PC-15.

128. It is feasible for Toll to provide on-site wastewater treatment and drip disposal to service the wastewater generated by the proposed Flexible Development. *See* N.T., pp. 352, 433-440; Exhibits A-8, A-9, A-17, A-24.

H. Streets, Access and Traffic

129. Toll presented the testimony of Nicole R. Kline, P.E., PTOE, Senior Project Manager for McMahon Associates, and she was accepted by the Board as an expert in traffic engineering. *See* N.T., pp. 650-797, 999-1121, 1494-1505; Exhibit A-28.

130. The scope of the several transportation studies which Ms. Kline prepared includes the intersections of Routes 202/926, Route 202/West Pleasant Grove Road, Route 926/Bridlewood Blvd., Route 926/South New Street, South New Street/West Pleasant Grove Road, and the several site accesses to the Flexible Development along West Pleasant Grove Road and Route 926. *See* N.T., p. 655; Exhibits A-29, A-33 A-36.

131. Toll initially proposed the following accesses for the Flexible Development: (a) a Route 202 right in/right out only access; (b) a Route 926 full movement signalized access at a "T" intersection; (c) a West Pleasant Grove Road access opposite Dunvegan Road; (d) A West Pleasant Grove Road access opposite Hidden Pond Way; and (e) an emergency access to South New Street. *See* N.T., pp. 140, 656-659, 900-904; Exhibits A-2, A-3, A-6, A-29, A-33, A-34, A-35, A-40.

132. As a result of the review comments from PennDOT and the Township, Toll agreed to modify the accesses to the proposed Flexible Development as follows: (a) the Route 926 signalized access would be moved opposite Bridlewood Blvd. to create a 4-way intersection; and (b) the easternmost West Pleasant Grove Road Access that was originally opposite Hidden Pond Way would be located to the west in order to provide adequate sight distance without reprofiling West Pleasant Grove Road. *See* N.T., pp. 659-660; Exhibits A-2, A-3, A-6, A-29, A-33, A-34, A-35, A-36, A-37, A-40.

133. As a result of the review comments from the Township, Toll was willing to eliminate the Route 202 right in/right out only access. *See* N.T., pp. 660, 1494-1495; Exhibit A-40.

134. Notwithstanding Ms. Kline's testimony with regard to changes in access to the Flexible Development, and notwithstanding that Toll discussed such changes with PennDOT, Toll did not revise the Flexible Development plans to depict the location of the relocated access intersection of Route 926/Bridlewood Blvd., the easternmost West Pleasant Grove Road access, or the Route 202 access. *See* N.T., pp. 682, 1131, 1138; Exhibits A-3, A-6, PC-3, PC-12.

135. The Board finds, as a matter of fact, that it cannot fully consider the merits of the location of the access points to/from the Flexible Development without the benefit of a plan showing precisely what Toll intends to develop on Crebilly Farm, nor can the Board conclude that the access points comply with the Zoning Ordinance unless and until such plan has been submitted and reviewed by its consultants.

136. The proposed Flexible Development is anticipated to generate approximately 2,742 vehicle trips per weekday, with 210 vehicle trips during the weekday morning peak hours and 266 vehicle trips during the weekday afternoon peak hours.³ *See* N.T., pp. 660-661; Exhibits A-29, A-33, A-34, A-35, A-40.

137. The proposed Flexible Development will cause an increase in overall delay at the intersection of Routes 202/926, which would require certain improvements at that intersection in order to mitigate the traffic impacts and to maintain what would be future conditions without the Flexible Development. *See* N.T., pp. 663-668; Exhibits A-29, A-33, A-34, A-35, A-36, A-37, A-40.

³ Ms. Kline testified during the hearing on May 23, 2017 that the weekday daily traffic generation from the proposed Flexible Development totaled approximately 1,400 vehicles per day. *See* N.T., pp. 660-661. Ms. Kline further testified that the weekday morning peak hour trips totaled 223 trips, and the weekday afternoon peak hour trips totaled 266 trips. *See* N.T., pp. 660-661. Ms. Kline's testimony specifically referenced page 9 of Exhibit A-33, the Transportation Impact Study for the Proposed Development, last revised January 20, 2017. *See* N.T., pp. 661-662. Notwithstanding Ms. Kline's testimony, Exhibit A-33, upon which the Board relies to make its finding of fact, actually notes the weekday daily traffic generation from the proposed Flexible Development totals 2,742 vehicles (not 1,400), and the weekday morning peak hour trips totals 210 trips (not 223). Given that Ms. Kline's testimony conflicts with the revised Traffic Impact Study that she prepared, the Board concludes that it cannot fully credit and rely on her testimony as to the stated traffic impacts from the proposed Flexible Development.

138. Independent of Toll's proposed Flexible Development, PennDOT contemplates the completion of certain improvements at the intersection of Routes 202/926. *See* N.T., p. 665.

139. In order to mitigate the traffic impacts of the proposed Flexible Development to the intersection of Routes 202 and 926, Toll will provide a separate southbound Route 202 right-turn lane, and provide a second eastbound Route 926 left turn-lane and eliminate the split phasing operations of the existing traffic signal at the intersection. *See* N.T., pp. 664-668, 1494-1496; Exhibits A-29, A-33, A-34, A-35, A-36, A-37, A-40.

140. In the event that PennDOT does not complete the Routes 202/926 intersection improvements prior to the time when Toll proceeds with the development of Crebilly Farm, Toll agrees to complete such improvements. *See* N.T., p. 665.

141. Toll will also complete roadway widening along Crebilly Farm's respective frontages along West Pleasant Grove Road and South New Street. *See* N.T., pp. 668-669.

142. Ms. Kline confirmed that left turn lanes at all four (4) approaches to the intersection of Route 926/South New Street are warranted under existing conditions, but she maintains they are not improvements for which Toll should be responsible. *See* N.T., p. 697.

143. The improvements warranted for the intersection of Route 926/South New Street are not off-site improvements and are instead properly considered as necessary on-site improvements for the Application. *See* Exhibit A-6.

144. PennDOT, at a minimum, will require Toll to provide left turn lanes at all four (4) approaches to the intersection of Route 926/South New Street, as well as replace and upgrade all of the signal equipment and mast-arms at the intersection. *See* Exhibit PC-13.

145. Further, PennDOT required Toll to complete a roundabout analysis as of March 3, 2017 for the intersection of Route 926/South New Street. *See* Exhibit PC-13.

146. The Planning Commission presented the testimony of Albert P. Federico, P.E., Senior Project Manager for Kimley Horn, and the Board accepted him as an expert in the field of traffic engineering. *See* N.T., pp. 1125-1184, 1191-1229; Exhibit PC-10.

147. Mr. Federico testified that the Flexible Development on Crebilly Farm in the manner contemplated pursuant to Exhibits A-3, A-6 and A-7 will necessitate longer left turn lanes at all four (4) approaches to the intersection of Route 926/South New Street. *See* N.T., pp. 1144-1145.

148. The Board finds credible, and agrees with, Mr. Federico's testimony that "if [Toll] does not provide the left turn lanes or contribute toward the turn lanes that the traffic generated from the development will not be able to be safely and efficiently managed on the existing road network as modified or upgraded by [Toll]." *See* N.T., p. 1145.

149. The Board finds that the traffic impacts from the proposed Flexible Development will adversely impact the traffic conditions at the intersection of Route 926/ South New Street, and that Toll has failed to mitigate such impacts.

I. Historic Preservation and Impacts

150. Toll presented testimony from Robert J. Wise, Jr., Principal Senior Historic Preservation Planner with Cultural Resource Consultants, and the Board accepted him as an expert in the field of historic preservation and planning. *See* N.T., pp. 530-531; Exhibit A-18.

151. The Planning Commission presented testimony by Michael C. Harris, author of "A Military History of the Battle that Lost Philadelphia but Saved America, September 11, 1777," and he was accepted by the Board as an expert on the Battle of Brandywine. *See* N.T., pp. 1267-1304; Exhibits PC-1, PC-2.

152. The Planning Commission presented testimony from Sean Moir, President of Western Heritage Mapping, and the Board accepted him as an expert in the field of mapping of historic events. *See* N.T., pp. 1304-1356; Exhibit PC-16.

153. Mr. Wise testified with regard to historic resources located on Crebilly Farm, as well as his opinion as to the role Crebilly Farm played in the Battle of Brandywine. *See* N.T., pp. 530-602, 613-650.

154. Mr. Wise prepared a report with regard to historic resources located on Crebilly Farm and concluded that the entirety of Crebilly Farm is eligible for listing on the National Register of Historic Places as a "gentlemen's farm." *See* Exhibit A-19.

155. According to Mr. Wise, the proposed Flexible Development would "delete the eligibility" of Crebilly Farm for listing on the National Register of Historic Places. *See* N.T., p. 556.

156. An examination of the manner in which to mitigate the adverse impacts of development upon historic resources is within the normal purview of a historic planner. Nevertheless, Mr. Wise was not asked by Toll to consider the manner in which Toll could mitigate the adverse impacts of the Flexible Development on Crebilly Farm's eligibility for listing on the National Register of Historic Places. *See* N.T., pp. 558-559.

157. The Board concludes that it cannot fully credit and rely on the testimony and report of Mr. Wise since he failed to consider any manner in which Toll would mitigate the adverse impacts of the proposed Flexible Development on the historic resources of Crebilly Farm.

158. One structure on Crebilly Farm is eligible for individual listing on the National Register of Historic Places: the serpentine structure located at the southeast corner of Crebilly Farm known as the "Darlington Tavern." *See* N.T., p. 537.

159. Toll intends to retain the Darlington Tavern structure as part of the Flexible Development. *See* N.T., pp. 539, 558, 638.

160. Upon completion of the traffic improvements to the intersection of Routes 202/926, the cartway of Route 926 will not be less than twelve (12) feet closer to the Darlington Tavern structure than it is under existing conditions. *See* N.T., pp. 689-690.

161. Roadway improvements at the intersection of Routes 202/926 “would likely have an adverse impact upon” the Darlington Tavern structure. *See* N.T., p. 565.

162. Nevertheless, Mr. Wise did not consider how to mitigate the adverse impacts of the Flexible Development on Crebilly Farm’s eligibility for listing on the National Register of Historic Places. *See* N.T., pp. 566-567.

163. There are four (4) areas of historic resources on Crebilly Farm, including an area referred to as the “Joshua Hunt Property” and another area referred to as the “Eli Hunt Property.” *See* N.T., p. 533; Exhibit A-19.

164. The Joshua Hunt Property “will be parceled out, so it will not be part of” the Flexible Development of Crebilly Farm. *See* N.T., p. 539.

165. The only structure at the Joshua Hunt Property which will be demolished is “the former springhouse [which dates] to the early 1800’s, but then [] was enlarged as a residence.” *See* N.T., p. 539.

166. Except for the barn and the springhouse at the Eli Hunt Property, Toll will destroy all of the existing structures at the Eli Hunt Property. *See* N.T., p. 539.

167. The equestrian center on Crebilly Farm will be partly used by Toll for a community center associated with the Flexible Development. *See* N.T., p. 540.

168. Though Mr. Wise was able to testify about Toll’s intentions with regard to the disposition of some historic resources on Crebilly Farm, he was “not exactly sure of the final plans” that Toll has for those historic resources. *See* N.T., pp. 539-540, 570.

169. The boundaries of areas subject to study with regard to the Battle of Brandywine have expanded since the early 1960’s. *See* N.T., pp. 545-546; Exhibit A-20.

170. Crebilly Farm is not located within the boundaries of the Battle of Brandywine National Historic Landmark. *See* N.T., p. 546; Exhibit A-20.

171. The fact that the entirety of Crebilly Farm is not identified on the Brandywine Battlefield Preservation Plan as being located within part of the study area associated with the Battle of Brandywine is not determinative of whether or not there was action associated with the Battle on Crebilly Farm. *See* N.T., pp. 575-576.

172. There “was action associated with the [Battle of Brandywine] in close proximity” to Crebilly Farm. *See* N.T., p. 576.

173. It is likely that Hessian troops moved across the western portion of Crebilly Farm immediately before engaging Continental troops at the Battle of Brandywine. *See* N.T., pp. 582-583, 1290; Exhibits B-12, PC-1, PC-17, PC-18.

174. Skirmishes between Hessian troops and Continental troops likely occurred on Crebilly Farm, including Continental troops firing-upon Hessian troops as the Hessians crossed Crebilly Farm. *See* N.T., pp. 1334-1336; Exhibit PC-18.

175. Mr. Wise was not able to definitively refute the likelihood that Hessian troops moved across Crebilly Farm immediately before engaging Continental troops at the Battle of Brandywine, or that skirmishes between those troops occurred on, or immediately south of, Crebilly Farm. *See* N.T., pp. 586-587.

176. Further information about the role that Crebilly Farm played in the Battle of Brandywine is important to a modern understanding of the importance of the Battle of Brandywine. *See* N.T., p. 600.

177. Mr. Moir’s work with regard to mapping the events associated with the Battle of Brandywine served as a basis for the Chester County Planning Commission-established battlefield swath. *See* N.T., p. 1336; Exhibit B-12, PC-18.

178. Other than reconfiguration of the Flexible Development in a way that removes the Chester County Planning Commission-identified battlefield swath from the development plans, the “best way” to develop that information would be from an archeological investigation of Crebilly Farm. *See* N.T., pp. 1291-1293.

III. LEGAL DISCUSSION

A. Legal Standards

Under §603(c)(2) and 913.2(a) of the Municipalities Planning Code (“MPC”) (53 P.S. §10603(c)(2) and §10913.2(a)), the Board, as the governing body of the Township, has the authority to grant conditional uses pursuant to the express standards and criteria set forth in the Zoning Ordinance and to attach such reasonable conditions and safeguards in addition to those expressed in the Zoning Ordinance, as it may deem necessary to implement the purposes of the MPC and the Zoning Ordinance. *See Clinton County Solid Waste Auth. v. Wayne Twp.*, 643 A.2d 1162 (Pa. Cmwlth. 1994).

Generally, a conditional use is a form of permitted use. *See Pennridge Dev. Enterprises, Inc. v. Volovnik*, 624 A.2d 674 (Pa. Cmwlth. 1993). The fact that a use is permitted as a conditional use evidences a legislative decision that the particular type of use is not adverse to the public interest *per se*. *See Visionquest National, Ltd. v. Board of Sup’rs of Honeybrook Twp.*, 569 A.2d 915 (Pa. 1990). A conditional use is nothing more than a special exception which falls within the jurisdiction of the municipal governing body rather than the zoning hearing board. *See In re Thompson*, 896 A.2d 659, 670 (Pa. Cmwlth. 2006), *citing Collier Stone Co. v. Township of Collier Bd. of Commissioners*, 735 A.2d 768 (Pa. Cmwlth. 1999). Because the law regarding conditional uses and special exceptions is virtually identical, the burden of proof standards are the same for both. *Id.*, *citing Sheetz, Inc. v. Phoenixville Borough Council*, 804 A.2d 113 (Pa. Cmwlth. 2002), *appeal denied*, 573 Pa. 669, 820 A.2d 706 (2003).

Initially, both the burden and the duty fall upon the applicant to affirmatively prove they comply with “specific requirements” of the ordinance. A conditional use applicant must demonstrate that it is entitled to a conditional use by establishing compliance with the specific criteria for the use detailed in the zoning ordinance. *See Bray v. Zoning Bd. of Adjustment*, 410 A.2d 909 (Pa. Cmwlth. 1980); *Thompson, supra* at 670. An applicant seeking conditional use approval must prove compliance with both the use-specific and general conditional use standards and criteria explicitly set forth in the applicable zoning ordinance. *See In re AMA/American Marketing Ass’n, Inc.*, 142 A.3d 923, 932 (Pa. Cmwlth. 2016). A key element in evaluating conditional use decisions by a governing body is whether requirements contained in the zoning ordinance are specific and objective or vague and subjective. In the case of the latter, a requirement may be either one that may not be enforced or one for which an applicant bears no initial evidentiary burden. *See Williams Holding Grp., LLC v. Bd. of Sup’rs of W. Hanover Twp.*, 101 A.3d 1202, 1213 (Pa. Cmwlth. 2014).

The burden then shifts to any objectors to establish that the proposed use is not, in fact, consistent with the promotion of health, safety and general welfare in the community. *Id.* Any protestants must present sufficient evidence to establish that there is a high degree of probability that the use will cause a substantial threat to the community. *See In re Cutler Group, Inc.*, 880 A.2d 39 (Pa. Cmwlth. 2005). Such evidence must be more than a mere speculation of harm. *See Szcwyczyk v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 654 A.2d 218 (Pa. Cmwlth. 1995), *citing Abbey v. Zoning Hearing Bd. of the Borough of East Stroudsburg*, 559 A.2d 107, 110 (Pa. Cmwlth. 1989). The adverse impact upon the public interest must exceed that which might be expected in normal circumstances. *See Brentwood Borough v. Cooper*, 431 A.2d 1177 (Pa. Cmwlth. 1981).

Conditional use proceedings involve only the proposed use of the land, and do not involve the particular details of the design of the proposed development. *See Thompson, supra* at 670, *citing Schatz v. New Britain Twp. Zon. Hearing Bd. of Adjustment*, 596 A.2d 294 (Pa. Cmwlth. 1991). What must be demonstrated in order to obtain conditional use approval must be determined on a case by case basis and will vary among municipalities based upon the use requested and the language in the ordinance. *Id.* An applicant for conditional use must demonstrate that his proposed use meets the applicable requirements of the zoning ordinance **when** the application is submitted. *See Thompson, supra* at 680, *citing Edgmont Twp. v. Springton Lake Montessori School, Inc.*, 622 A.2d 418 (Pa. Cmwlth. 1993)(emphasis in original). A promise to comply or conditions compelling future compliance cannot cure an otherwise noncompliant application. *Id.* (“If we were to adopt a rule that to obtain a special exception all that would be required is for an applicant to promise to come into compliance at some future date, it would make the approval process meaningless because once an applicant promises it would be entitled to receive the special exception.”).

Notwithstanding provisions of the Zoning Ordinance to the contrary, a conditional use applicant is not required to prove consistency with a municipality’s comprehensive plan. *See Aldridge v. Jackson Twp.*, 983 A.2d 247, 258-259 (Pa. Cmwlth. 2009). This is true because “as a matter of law, where a zoning ordinance allows a conditional use, there is legislative acceptance that the use is consistent with the zoning plan.” *Id.* at 259 (citations omitted). A recommendation set forth in a comprehensive plan but not specifically legislated into the zoning ordinance cannot defeat the granting of a conditional use. *Schatz, supra* at 297. Conversely, however, the opposite axiom must also be true: where a recommendation of the comprehensive plan is specifically legislated into the zoning ordinance, such requirement can defeat the grant of a conditional use application if not complied with by the applicant. *Id.*

A local governing body is entitled to considerable deference in interpreting its zoning ordinance. *See In re AMA, supra* at 934. In a land use proceeding, such as a conditional use hearing, the Board is the ultimate fact-finder and the exclusive arbiter of credibility and evidentiary weight. *See Joseph v. North Whitehall Twp. Bd. of Sup'rs*, 16 A.3d 1209, 1218 (Pa. Cmwlth. 2011), *citing Nettleton v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 574 Pa. 45, 828 A.2d 1033 (2003). Moreover, the fact-finder does not capriciously disregard competent evidence by choosing to accept one witness' testimony over another witness' testimony. *Id.*

B. Zoning Ordinance Requirements

Conditional use applications are governed generally by the provisions set forth in §170-2009 of the Zoning Ordinance. Pursuant thereto, Toll has the burden to demonstrate compliance with the standards for conditional use contained within §170-2009 of the Zoning Ordinance, and compliance with other relevant provisions of Chapter 170, Zoning, and to indicate the means by which potential impacts from the proposed use will be mitigated. *See* Zoning Ordinance ("Z.O."), §170-2009.B(1) of the Zoning Ordinance. In addition, where specific conditional use submission requirements are contained within another article of Chapter 170, Zoning, and are applicable to a particular conditional use authorized by that article, those requirements shall be adhered to and shall prevail in any instance of conflict or overlap. *See* Z.O., §170-2009.B(5).

Applications for flexible development in the Township are governed by Article IX, Flexible Development Procedure, of the Zoning Ordinance. Section 170-902 of the Zoning Ordinance provides that the flexible development procedure of Article IX may be applied in the A/C and the R-1 Districts of the Township where approved by the Board as a conditional use. In addition, the conditional use design standards found in the A/C Agricultural/Cluster Residential District (§170-503) and the R-1 Residential District (§170-603) also apply to an application for flexible development, unless the design standards of the Flexible Development Procedure in Article IX

“exceed” or “address matters not covered by” the enumerated design standard criteria of the A/C and R-1 Districts got conditional use approval. *See* Z.O., §170-503.B and §170-603.B. Accordingly, it is within this statutory framework that the Board must consider the Application for the proposed Flexible Development.

C. Legal Analysis

The flexible development procedure outlined in Article IX of the Zoning Ordinance applies to all of the following in the Township:

- (a) land under single ownership, planned and developed as a whole; (b) in a single development operation or a programmed series of development operations including all lands and buildings; (c) dwellings and related subordinate facilities; (d) comprehensive and detailed plans which include not only streets, utilities, lots or building sites, and the like, but also site plans, site analyses, floor plans and elevations for all buildings as intended to be located, constructed, used and related to each other, detailed plans for other uses and improvements on the land as related to the buildings, lighting, landscaping; and (e) a program for provision, operation and maintenance of such areas, improvements, and facilities as will be for common use by some or all of the occupants of the development, but will not be provided, operated or maintained at general public expense unless acceptable to or found necessary by the Board of Supervisors.

See Z.O., §170-901. In consideration of conditional use approval for a flexible development, the Board must determine the reasonableness of the increase in density potentially authorized under the ordinance, in the context of the physical characteristics of the site, and in the context of justification of increased density through provision for additional public and/or private amenities and/or through increased efficiency in public services. *See* Z.O., §170-902.A.

Among other uses, single-family detached dwellings, twin dwellings, open space and/or noncommercial recreational uses incorporated into the design of the development, and uses customarily accessory to permitted residential and open space uses are permitted uses in a flexible development. *See* Z.O., §170-903. Section 170-904 of the Zoning Ordinance addresses the base density and bonus density permitted for a flexible development in the Township. Here, the Application and Flexible Development proposed by Toll does not seek any bonus density as may be

permitted by the Board, and, accordingly, the bonus density provisions and standards of §170-904 are inapplicable.⁴

As outlined above, the proposed Flexible Development does comply with the applicable ordinances of the Township in many respects. Nevertheless, after careful consideration, the Board concludes that Toll failed to comply with a number of relevant provisions of the Township's Zoning Ordinance thus necessitating the denial of the Application.

Collector Road

During the hearings, much was made by Toll, the Planning Commission and other parties, about the fact that the Application was inconsistent with the Comp Plan of the Township in materials ways. *See* for example N.T., pp. 222-237, 1387-1389, 1403. Indeed, §170-2009.D(1)(b) of the Zoning Ordinance requires the Board when reviewing and acting upon an application for conditional use to evaluate whether the proposal is consistent with the Township's Comp Plan and the promotion of the public health, safety, and general welfare. *See also* Z.O. §170-902.D (requiring the location and conformity of the area of the Flexible Development to be consistent with the Comp Plan). More specifically, there was a good deal of discussion during the hearings regarding whether the proposed internal road network of the Flexible Development was consistent with the Comp Plan's vision of a collector road running from the jughandle of Stetson Elementary School at Skiles Blvd. south past the existing church to Route 926, along the west side of and parallel to Route 202. *See* N.T., pp. 222-225, 1064-1067, 1140-1142, 1168; Exhibit PC-14.

⁴ The Board notes that a portion of the expert report and testimony of Michelle C. Adams, P.E., LEED AP, President of Meliora Design, as offered by Neighbors for Crebilly, relied on portions of the Zoning Ordinance that are applicable only when a flexible development application seeks bonus density. Specifically, a portion of the report and testimony of Ms. Adams relied on §170-903.A(3)(c)[1] and [2] of the Zoning Ordinance, which by its very terms, provides "[p]erformance standards for use of bonus density." As Toll has not sought any bonus density for the Flexible Development, the Board declined to rely on her report and testimony as it related to these issues.

Initially, Toll maintained that the internal system of circuitous roadways was consistent with the Comp Plan's vision of a collector road along the west side of and parallel to Route 202 on Crebilly Farm, connecting West Pleasant Grove Road and Route 926. *See* N.T., p. 173; Exhibits A-3, A-6. However, when pressed on the issue, Emily Stewart eventually admitted during her testimony that the proposed roadway system was inconsistent with the Comp Plan's notion of a collector road on the west side of and parallel to Route 202 on Crebilly Farm. *See* N.T., pp. 222-225. Cognizant of the emphasis placed upon this issue by the various parties, and as outlined in the Comp Plan, Toll rightly points out in its Proposed Findings of Fact and Conclusions of Law that a conditional use applicant is not required to prove consistency with a municipality's comprehensive plan because comprehensive plans do not have the effect of zoning ordinances, but instead only recommend land uses which may or may not eventually be contained within a zoning ordinance. *See Aldridge v. Jackson Twp., supra.* Where, however, a recommendation of a comprehensive plan is specifically legislated into the zoning ordinance, then the recommendation has the effect of law and may properly provide a basis to deny a conditional use application. *See Schatz v. New Britain Twp. Zon. Hearing Bd. of Adjustment, supra.*

In this case, the collector road connection from Skiles Blvd. to West Pleasant Grove Road south to Route 926 is specifically legislated through a requirement contained in §170-503.C(3) of the Zoning Ordinance. As noted herein, where a design standard requirement is not specifically addressed in the Article IX requirements for a flexible development, the design standards of §170-503.A apply to Toll's Application, which govern all uses permitted by conditional use in the A/C District. *See* Z.O. §170-503.B. Section 170-503.A(7) of the Zoning Ordinance requires compliance with the access and traffic control provisions of §170-503.C of the Zoning Ordinance by a conditional use applicant in the A/C District. Section 170-503.C provides in relevant part as follows:

C. Any applicant shall, as a condition of any applicable zoning, subdivision or land development approval, prove to the satisfaction of the Board of Supervisors that the proposed use or development will provide safe and efficient vehicular and pedestrian traffic access, circulation and control, consistent with the following:

- (1) Traffic access shall be fully coordinated with adjacent existing and future development, including but not limited to providing and promoting appropriate traffic access to/from adjacent properties.
- (2) Traffic access to use(s) within any development site shall be provided by a fully developed internal network of local roads or private drives, paths and trails which also shall link any proposed use or development to existing or proposed intersections or other points of controlled and/or signalized access to collector and/or arterial highway(s).
- (3) Continuous collector street(s) and trail(s) shall be developed as part of the subject use or development to provide internal through connection(s) between existing collector and/or arterial streets and trail(s), as applicable, and as required by the Board of Supervisors to provide reasonable access to the subject use or development. (Examples may include but are not limited to: a through collector street connecting the intersection of Skiles Boulevard and U.S. Route 202 with West Pleasant Grove Road and PA Route 926); a through collector street connecting Walnut Hill/Shady Grove Roads to Westtown Road; and a through collector street connection to PA Routes 352 and 926.)⁵

The “continuous collector street” requirement of §170-503.C is a clear legislative implementation of the Comp Plan’s vision of a road west of and parallel to Route 202 on Crebilly Farm running south from West Pleasant Grove Road to Route 926. *See* Exhibit PC-14. As noted by the Comp Plan, this “continuous collector street” would encourage southbound Route 202 traffic wishing to travel westbound to take advantage of this alternate route, removing additional traffic and westbound turning movements from the intersection of Routes 926 and 202, and intersection that currently operates at an F Level of Service. *See* N.T., p. 727; Exhibits PC-14, A-33. Further, the “continuous collector road” would alleviate traffic concerns for vehicles seeking to travel from the

⁵ A “collector street” is defined by the Zoning Ordinance as “[a] street designed and located to provide means of access to traffic off local streets and to provide access for through traffic between residential neighborhoods and districts within the Township to major streets and/or a street uses for access to nonresidential properties, i.e., commercial, industrial, professional, etc.” *See* Z.O. §170-201.

west side of Crebilly Farm and the Township (South New Street area) northbound on Route 202, without having to utilize the intersection of Route 202/926, by connecting West Pleasant Grove Road north to Skiles Blvd. at Stetson Elementary School. As such, Toll's proposed Flexible Development failed to provide a required "continuous collector street" from West Pleasant Grove Road to Route 926.

Since none of Toll's witnesses or exhibits made reference to the collector street mandate of §170-503.C of the Zoning Ordinance, and in light of the inconsistency of the testimony of Emily Stewart, the Board refuses to credit any of her testimony as it relates to the compliance of the internal roadway system with the Comp Plan's requirement of a parallel collector road. More importantly, the Board concludes that the circuitous internal roadway system of the proposed Flexible Development fails to comply with the requirement of §170-503.C(3) of the Zoning Ordinance for a "continuous collector street" connecting the intersection of Skiles Boulevard and Route 202 with West Pleasant Grove Road and Route 926. *See* Exhibits B-6, A-3, A-6, PC-14. Indeed, access points of proposed Roads L and K from West Pleasant Grove Road to the Flexible Development direct all vehicular access through the heart of the Flexible Development traversing from the west side to the east side of Crebilly Farm to multiple stop intersections at Roads J, D, B, and A before finally exiting to Route 926. *See* Exhibit A-6. As such, on its face, the Flexible Development plans fail to provide the "continuous collector street" From West Pleasant Grove Road to Route 926 as required by the Zoning Ordinance.

Moreover, the Flexible Development fails to comply with the dictates of §170-503.C(1) and (2). During the hearing, mention was made of a conditional use/land development application (known commonly as the Fair Share Development) previously approved by the Township located north of West Pleasant Grove Road fronting on Route 202. *See* N.T., pp. 1060-1061, 1159-1160;

Exhibit B-4.⁶ Consistent with §170-503.C(1), Toll was required to coordinate traffic access to the proposed Flexible Development with adjacent existing and future developments, which coordination includes providing and promoting appropriate traffic access to/from adjacent properties. Here, Toll failed to present evidence demonstrating how it attempted to coordinate traffic access with the proposed Flexible Development and the Fair Share Development and the associated collector road. The Fair Share Development is further evidence of implementation of the Comp Plan's request for a continuous collector street from Skiles Blvd. south to West Pleasant Grove Road. The Board recognizes that due to site constraints, it is not likely that the collector road on the north side of West Pleasant Grove Road could align exactly to continue straight south down to Route 926. Nevertheless, Toll's evidence failed to address this issue including what discussions or attempts were made to coordinate with the Fair Share Development project. Further, while Toll verbally committed to move the location of the site access onto Route 926 to align with Bridlewood Blvd. (admittedly because PennDOT was requiring it), the plans presented to the Board don't actually reflect that intersection as Toll refused to revise the plans to conform to their testimony during the pendency of the hearing. *See* Exhibits B-6, A-3, A-6. As noted above, an applicant for conditional use must demonstrate that his proposed use meets the applicable requirements of the zoning ordinance when the application is submitted. *Thompson, supra* at 680 (A promise to comply or conditions compelling future compliance cannot cure an otherwise noncompliant application.).

⁶ The tax parcel map included as Exhibit B-4 actually shows the area of the Fair Share parcel located immediately to the east of the development on Hidden Pond Way and immediately to the west of Route 202, as well as the location of the proposed collector road associated with the Fair Share development shown linking Stetson Elementary School/Skiles Blvd. with West Pleasant Grove Road. Moreover, the April 17, 2017 minutes of the PennDOT scoping meeting with Toll and various representatives of Westtown Township and Thornbury Township evidence that Toll was well aware of the Fair Share development and even questioned PennDOT about the alignment of any future collector road with the Fair Share Development. *See* Exhibit PC-3. It is evident to the Board that Toll did not seek to construct the continuous collector road unless bonus density was granted by the Township because Toll would not construct homes along the continuous collector road, thereby reducing their overall lot yield. *See* Exhibit A-36.

Further, §170-503.C(2) requires Toll to link its road network for the Flexible Development to existing or proposed intersections or other points of controlled and/or signalized access to collector and/or arterial highway(s). The proposed Flexible Development does not comply with §170-503.C(2) as the proposed access to Route 926 does not align/link with Bridlewood Blvd. as presented to the Board.⁷

Traffic

Among the many issues discussed during the course of the hearings, perhaps none was more thoroughly debated than the current traffic problems attendant to the area of Crebilly Farm (including the intersections of Routes 926/202, Route 926/S. New Street, S. New Street/W. Pleasant Grove Road, and Route 202/W. Pleasant Grove Road) and the traffic impacts and proposed mitigation for the proposed Flexible Development. Frustration with increased vehicular traffic and the delay that such increase necessarily causes is a problem common to and shared by all of the Township's residents, as well as those who work and reside in the area of the Township. Common sense dictates that the Flexible Development proposed by Toll necessarily adds additional vehicular traffic to already over-saturated local and State roadways. Recognizing this fact, § 170-2009.D(1)(h) of the Zoning Ordinance requires a conditional use applicant to prove to the satisfaction of the Board, by credible evidence, that the proposed use will not result in or substantially add to a significant traffic hazard or significant traffic congestion, and further requires that the peak traffic generated by the development to be accommodated in a safe and efficient manner. The traffic analysis done by the Board must also consider any improvements to streets that

⁷ Equally important to the Board's conclusion that the Application fails to comply with §170-503.C is the fact that Toll's verbal commitment to move the access intersections at both Route 926 and at West Pleasant Grove Road, but refusal to present a revised plan to that effect, precludes meaningful review and comment from the Township's consultants. As such, it cannot be said that the proposed relocated intersection and accesses to Route 926 and to West Pleasant Grove Road comply with the Township's Zoning Ordinance justifying a grant of conditional use. See *Thompson, supra* at 680.

the applicant is committed to complete or fund. Pennsylvania law recognizes that it is improper to require Toll to mitigate existing traffic concerns in the area of the Flexible Development as it can hardly be said that Toll is responsible for such existing traffic problems since it has not yet constructed the Flexible Development. It is proper, however, to require Toll to mitigate any on-site traffic impacts contributed by the proposed Flexible Development. Stated differently, Toll may not make the traffic conditions at the studied intersections worse after full build out of the Flexible Development than exist today.

Toll recognized that the proposed Flexible Development detrimentally impacts the traffic conditions at the intersection of Routes 202/926 and is committed to mitigating those impacts, despite the fact that the intersection already operates at an F Level of Service and that it is in the preliminary design phase for improvement by PennDOT. *See* N.T., 663-668, 1496-1496; Exhibits A-29, A-33, A-34, A-25, A-36, A-37, A-40, PC-3. Notwithstanding, Toll refuses to acknowledge that the proposed Flexible Development detrimentally impacts the traffic conditions at the intersection of Route 926/South New Street requiring improvements to mitigate the impacts, despite the fact that left turn lanes are currently warranted at all four approaches to the intersection, that PennDOT at a minimum has required the left turn lanes, and that without the turn lanes the traffic generated from the proposed Flexible Development will not be safely and efficiently managed. *See* N.T., pp. 697, 1145; Exhibit PC-13. Ms. Kline testified that because the turn lanes at the intersection of Route 926/South New Street are already warranted under existing conditions, Toll should not be responsible for any improvements. The Board does not find Ms. Kline credible on this issue as she did not distinguish any difference between the current condition of the intersection of Route 926/South New Street and with the current condition of Routes 926/202, and why in the one instance Toll is responsible to mitigate its traffic impacts from the Flexible Development but not in the other. Her testimony is further belied by the fact that PennDOT has

already concluded that Toll is responsible to implement the intersection improvements for Route 926/South New Street. *See* Exhibit PC-13. As such, the Traffic Impact Studies and the Flexible Development plans submitted by Toll should have included the left turn lanes at all four (4) approaches to the intersection of Route 926/South New Street. The Board concludes that the Application is deficient and not in compliance with §170-2009.D(1)(h) of the Zoning Ordinance because Toll did not offer credible evidence demonstrating how it intended to mitigate its traffic impacts to the intersection of Route 926/South New Street.⁸

Flexible Development Design Standards

Applications for conditional use approval for a flexible development pursuant to Article IX of the Zoning Ordinance are required to meet certain design standards contained within §170-905 of the Zoning Ordinance. Further, §170-905.A(1) of the Zoning Ordinance requires compliance with the applicable conservation design standards contained within §170-1617 of the Zoning Ordinance. More specifically, the design standards of §170-905.A(1) of the Zoning Ordinance requires Toll to submit a site analysis that identifies certain items and which demonstrates compliance with the conservation design standards found in §170-1617. Among the items that must be identified in the site analysis pursuant to §170-905.A(1) are scenic views and all lands visible from any adjacent public road.⁹ Further, by reference to §170-1617.C(1)(c) of the Zoning Ordinance, Toll is required to

⁸ It is also noted that as early as March 3, 2017, PennDOT required Toll to provide a roundabout analysis for the intersection of Route 926/South New Street. *See* Exhibit PC-13. Indeed, the roundabout analysis requirement was reiterated at a meeting on April 17, 2017 between Toll, PennDOT, Westtown Township and Thornbury Township. *See* Exhibit PC-3. Nevertheless, at no time during the course of the hearings did Toll present any evidence regarding a roundabout analysis or checklist, nor was any plan or report presented to the Township during the hearing depicting or discussing the viability of a roundabout for the intersection of Route 926/South New Street. As such, while it is evident to the Board that some form of traffic improvements are necessary at the intersection, either by way of turn lanes or a roundabout, Toll has steadfastly refused to accept responsibility for these improvements during the conditional use process. This is further evidence of Toll's failure to comply with the provision of §170-2009.D(1)(h) of the Zoning Ordinance.

⁹ Section 170-905.A(1)(m) requires Toll to identify all lands visible from any adjacent public road. Visibility is measured as viewed from a height of four (4) feet above the surface of the road looking in any direction or angle across the subject property, and must be based on winter conditions (whether actual or estimated at the

identify existing resources on a site analysis map of Secondary Conservation Areas including “scenic views from inside the site” and “scenic views from existing streets and trails.” Moreover, §170-1617.C(3)(b) requires Toll to provide a “written and graphic analysis of how the proposed development will respect and incorporate the important resources of the site and be coordinated with resources, open space/trail corridors and views from surrounding properties,” which analysis may involve an overlay map showing important natural features and proposed development.

The Board credits the testimony of John Snook as presented by the Planning Commission that the Application does not contain or comply with §170-1617.C(3)(b) because Toll’s submission of the required written and graphic analysis is incomplete. *See* N.T., pp. 1375, 1410. Further, the Board credits Mr. Snook’s testimony that the Application is deficient for failing to adequately map scenic views (from inside Crebilly Farm and from existing streets and trails), which are defined as Secondary Conservation Areas as required by §170-905.A(1)(m) and §170-1617.C(1)(c) of the Zoning Ordinance. *See* N.T., pp. 1376-1377. Mapping of the Secondary Conservation Areas is particularly relevant for discussion, review and comment by the Planning Commission in the presentation of the Application for approval of the Flexible Development. *See* §170-1617.A (“As part of an application for a flexible development ... the applicant shall ... demonstrate to the satisfaction of the Planning Commission that the [conservation design] process was followed in designing the proposed development.”). The Board agrees with Mr. Snook’s observation that the “conservation design” process outlined in §170-1617 of the Zoning Ordinance is “an iterative process” that includes working with the Planning Commission in the first instance to identify Primary and Secondary Conservation Resources and how the impacts from the Flexible Development may be mitigated. *See* N.T., p. 1375. Mr. Snook correctly points out the importance

time of inventory) when existing vegetation offers the least obstruction of view. Areas predominantly obscured from view may be excluded from inventory of visible lands subject to the Township’s approval.

of mapping the Secondary Conservation Resources as part of the Application, and through meeting with the Planning Commission, because the Zoning Ordinance permits Toll to disturb up to 50% of the Secondary Conservation Areas for the Flexible Development. *See* N.T., pp. 1377-1376. As Mr. Snook concludes, you cannot correctly identify which 50% of the Secondary Conservation Areas may be disturbed unless all of the Secondary Conservation Areas are mapped and considered by the Board. *See* N.T., p. 1377; Exhibit B-16.

Most important to Mr. Snook, and as thoroughly discussed by Toll, the Planning Commission, Neighbors for Crebilly¹⁰ and other parties, is the relevance of the scenic views to the

¹⁰ Neighbors for Crebilly has advanced the argument that the entirety of the Application should be denied because the case of *Pennsylvania Environmental Defense Foundation v. Com.*, 161 A.3d 911 (Pa. 2017) (“*PEDF*”) imposes a constitutional and fiduciary duty on the Township to protect its natural and historic resources. However, the reliance by Neighbors of Crebilly on *PEDF* is misplaced and ascribes to the Township both obligations and powers that the Township simply does not enjoy. While *PEDF* reflects an evolution in thinking about Article I, §27 of the Pennsylvania Constitution, its holding thus far has been found to apply only to public resources. The Supreme Court did not expand the power of any level of government to act in derogation of long-established private property rights. Article I, §27 of the Pennsylvania Constitution describes “Pennsylvania’s public natural resources [...] the common property of all the people,” and the Commonwealth as trustee of those resources with the responsibility, as stated in *PEDF*, of managing “the corpus of Pennsylvania’s environmental public trust.” *Id.* at 916. In *PEDF*, the Court defines “public natural resources” to include, specifically, “state forest and park lands.” *Id.* at 931. The corpus, in turn, consists of those natural resources and “proceeds from the sale of trust assets.” *Id.* at 931, 933. The land that is subject to the present land development application does not belong to the Township and, if sold, the proceeds would not belong to the Township. The land is not among the public natural resources that the Township has the fiduciary obligations of a trustee to maintain. Furthermore, while the Court reaffirmed the holding of earlier cases that the public trust provisions of §27 are self-executing, it specifically notes that the Court in those cases “refus[ed] to speak to whether the right was self-executing for purposes of enforcement against private property” and did not, in that instance, extend that holding. *Id.* at 937. More recently, Judge Sommer of the Court of Common Pleas of Chester County reviewed the application of Article I, §27 to privately held land in a land use decision. *See Rapp et al. v. Zoning Hearing Bd. of East Whiteland Twp. et al.*, C.C.P. Chester County, No. 2017-05486-ZB (Nov. 1, 2017). The *Rapp* case was an appeal of a zoning hearing board decision granting certain variances for the former industrial site known as the “Bishop Tube Site.” Citing to *PEDF*, the appellants in *Rapp* argued that the zoning hearing board failed to consider the general population’s right to clean air and clean water in making their decision. Judge Sommer disagreed with the appellants’ argument and distinguished *PEDF* as follows: (1) the land in question in *PEDF* was owned by the Commonwealth, while the land in *Rapp* was privately owned; (2) at issue in *PEDF* was the Commonwealth’s desire to lease land it hold in public trust, while the land in *Rapp* was not owned by the Commonwealth; (3) the Commonwealth wanted to lease state-owned land for oil and gas exploration, while in *Rapp* the developer wanted to use the land to construct townhomes; and (4) the land in *PEDF* was natural, unspoiled land devoted to conservation and maintenance, while the land in *Rapp* was previously used to an industrial use that had been rezoned in an attempt to allow for its reuse. *Id.* at 9-10. The Board is obligated to follow and apply the reasoning of Judge Sommer from the *Rapp* case to the instant Application. *See Thompson, supra* at 670 (The

interpretation of the Battle of the Brandywine as the landscape of Crebilly Farm is mostly intact and very similar in appearance to what was likely present during the Battle in September 1777. *See* N.T., p. 1378; Exhibits NC-2, NC-3, PC-20. While the Board acknowledges that Crebilly Farm is not located within the Battle of Brandywine Battlefield National Historic Landmark, it does conclude that based on the evidence presented it is likely that Brandywine Battle action associated with Hessian troop movement occurred across the western portion of Crebilly Farm immediately before engaging Continental troops. *See* N.T., pp. 546, 576, 582-583, 1290; Exhibits B-12, PC-1, PC-18, A-20. The fact that the entirety of Crebilly Farm is not identified on the Brandywine Battlefield Preservation Plan as being located within part of the study area associated with the Battle of Brandywine is not determinative of whether or not there was action associated with the Battle on Crebilly Farm. *See* N.T., pp. 575-576.

Toll contends (1) that it has properly considered the Primary and Secondary Conservation Areas as part of its Application, and (2) that notwithstanding such compliance, it did not need to include any reference to scenic views because the term is not defined by the Zoning Ordinance and there are no objective criteria to determine what constitutes a scenic view. *See* N.T., p. 1390. Toll seemingly takes no issue with the benefit it may derive through disturbance of no more than 50% of the Secondary Conservation Areas so long as Toll may choose what may be included as a Secondary Conservation Area. What may or may not be considered a scenic view is within the purview of the

law regarding conditional uses and special exceptions are virtually identical and the burden of proof standards are the same for both).

As demonstrated above, the *PEDF* case is clearly distinguishable from the facts of the present Application submitted by Toll. While the Township clearly has a responsibility to its residents to protect its natural and historic resources, the land development process legislated by the Township is designed to fulfill such obligation. *Neighbors for Crebilly* makes no argument that the relevant Zoning Ordinance provisions are unconstitutional or otherwise fail at that task. Rather, they suggest that *PEDF* imposes a heightened obligation on the Township to weigh land development/conditional use applications against Article I, §27. However, to do so would be an inappropriate usurpation of power not afforded to the Township, in contravention to the property rights of private individuals.

Board to determine as a matter of fact. Here, though, Toll refused to engage in the “iterative process” described by Mr. Snook for the consideration of scenic views (particularly as it impacts the relevance of the Battle of Brandywine) and how it may mitigate any impacts derived from the Flexible Development. *See* N.T., pp. 1375-1386.

It is the opinion of the Board that Toll may not derive a benefit for the Flexible Development through the disturbance of no more than 50% of the Secondary Conservation Areas while at the same time unilaterally determining on its own which items constitute proper Secondary Conservation Resources for the Flexible Development. Toll is not without remedy on this issue as it could at any time have sought a determination from the Zoning Officer for clarification on mapping of the scenic views and/or whether it was required to be included as part of the Application (and taken any subsequent appeal if necessary), or it could have filed a substantive validity challenge to the ordinance contending it is invalid. Here, Toll chose not to avail itself of these remedies nor even attempt to comply with the mandates of the Zoning Ordinance.

Further, simply because the term “scenic view” is not defined in the Zoning Ordinance does not preclude a common sense or ordinarily accepted meaning and application of the term by Toll or the Township.¹¹ The rules of statutory construction apply to ordinances as well as to statutes. *See Kohl v. New Sewickley Twp. Zon. Hearing Bd.*, 108 A.3d 961, 968 (Pa. Cmwlth. 2015), *citing In re Holtz*, 8 A.3d 374, 378 (Pa. Cmwlth. 2010). A statute’s plain language generally provides the best indication of legislative intent and, thus, statutory construction begins with the examination of the text itself. *Id.*, *citing Malt Beverages Dist. Assoc. v. Liquor Control Bd.*, 918 A.2d 171, 176 (Pa. Cmwlth. 2007) (*en banc*), *aff’d* 601 Pa. 449, 974 A.2d 1144 (2009). In reading the plain language of a statute, “[w]ords and

¹¹ Section 170-200 of the Zoning Ordinance governs the interpretation of terms contained in the Zoning Ordinance. Where terms are not defined in the Zoning Ordinance, then the definition of the term as provided in the Subdivision and Land Development Ordinance applies. If a term, phrase, or word is not defined in either Ordinance, then the term, phrase or word shall have its ordinarily accepted meaning or such as the context may imply.

phrases shall be construed according to rules of grammar and according to their common and approved usage.” *Id.*, quoting 1 Pa.C.S. §1903(a). To define an undefined term, the Board may consult definitions in statutes, regulations or the dictionary for assistance. *See Manor Healthcare Corp. v. Lower Moreland Twp. Zon. Hearing Bd.*, 590 A.2d 65, 68 (Pa. Cmwlth. 1991).

Mr. Snook recognized the fact that the term “scenic view” is not defined, and instead opined on its common and ordinary usage.¹² *See* N.T., pp. 1391-1393. Importantly, Mr. Snook’s opinion was based upon factors that enhance the scenic value of Crebilly Farm, such as the historical interpretation on the Battle of Brandywine. *See* N.T., p. 1391. Accordingly, the Board credits Mr. Snook’s testimony regarding Toll’s failure to identify and map the scenic views as required by §170-905.A(1)(l), §170-1617.C(1)(c) and §170-1617.C(3)(b) of the Zoning Ordinance. Further, the Board can discern no discussion or evidence presented by Toll to demonstrate compliance with §170-905.A(1)(m) of the Zoning Ordinance requiring the identification of all lands visible from any adjacent public road, which section provides a clear basis for determination. Further, Toll did not maintain during the hearing or in its Findings of Fact or Conclusions of Law that compliance with §170-905.A(1)(m) is improper or otherwise inapplicable to the Application. Accordingly, the Board concludes that Toll has waived any such argument.

IV. CONCLUSION

For the foregoing reasons, the Board concludes that the Application for the proposed Flexible Development must be denied. Accordingly, the Board enters the following Order:

¹² The term “scenic” is defined as, “[o]f, pertaining to, or having picturesque natural landscapes.” David Rattay, Editor, *Reader’s Digest Illustrated Encyclopedic Dictionary*, Vol. 2, p. 1495 (1987). The term “view” is defined as, “[a] prospect or vista; visual access or vantage; a picture of a landscape.” David Rattay, Editor, *Reader’s Digest Illustrated Encyclopedic Dictionary*, Vol. 2, p. 1829 (1987).

IN RE:

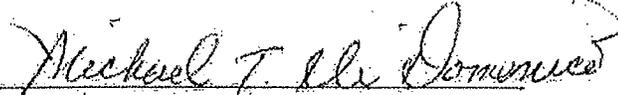
CONDITIONAL USE APPLICATION
OF TOLL PA XVIII, L.P.

BEFORE THE BOARD OF
SUPERVISORS OF WESTTOWN
TOWNSHIP, CHESTER COUNTY,
PENNSYLVANIA

ORDER

AND NOW, this 28th day of December, 2017, upon consideration of the conditional use application of Toll PA XVIII, L.P. pursuant to Article IX, §§170-900 et seq. of the Westtown Township Zoning Ordinance, for conditional use approval of a proposed residential flexible development of parcels bounded by Route 202, Route 926, West Pleasant Grove Road and South New Street in the Township, Chester County, Pennsylvania (UPI Nos. 67-4-29, 67-4-29.1, 67-4-29.2, 67-4-29.3, 67-4-29.4, 67-4-30, 67-4-31, 67-4-32, 67-4-33, 67-4-33.1 and 67-4-134), consisting of approximately 322 acres of land located in the A/C Agricultural/Cluster Residential District and the R-1 Rural Suburban Residential District of Westtown Township, IT IS HEREBY ORDERED that the application is DENIED for the reasons contained in the attached Decision.

**BOARD OF SUPERVISORS OF
WESTTOWN TOWNSHIP**


Michael T. Di Domenico, Chair


Carol R. DeWolf, Vice-Chair


Thomas F. Haws, Police Commissioner

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: Marc B. Kaplin, Esquire
Gregg I. Adelman, Esquire
Attorney I.D. Nos. 04465, 84137
Union Meeting Corporate Center
910 Harvest Drive
P.O. Box 3037
Blue Bell, PA 19422
(610) 941-2552

Attorneys for Appellant
Toll PA XVIII, L.P.

IN RE: APPEAL OF THE FEBRUARY 12, 2018	:	BEFORE THE COURT OF
DECISION OF THE WESTTOWN TOWNSHIP	:	COMMON PLEAS OF
BOARD OF SUPERVISORS DENYING	:	CHESTER COUNTY, PA
TOLL PA XVIII, L.P.'S CONDITIONAL USE	:	
APPLICATION FOR A FLEXIBLE	:	CASE NO.
DEVELOPMENT OF CREBILLY FARM	:	LAND USE APPEAL

CERTIFICATE OF SERVICE

I, Gregg I. Adelman, Esquire, do hereby certify that on March 6, 2018, a true and correct copy of the foregoing Notice of Appeal was served via first class mail, postage prepaid, upon the following:

Patrick M. McKenna, Esquire
Gawthrop Greenwood, PC
17 East Gay Street, Suite 100
P.O. Box 462
West Chester, PA 19381-0562
Solicitor to the Westtown Township Board of Supervisors

Kristin S. Camp, Esquire
Buckley Brion
118 West Market Street, Suite 300
West Chester, PA 19382-2928
Solicitor to the Westtown Township Planning Commission

Fronefield Crawford, Jr., Esquire
220 West Gay Street
West Chester, PA 19380
Solicitor to Birmingham Township

Kathy L. Labrum, Esquire
Donaghue & Labrum LLP
104 West Front Street
Media, PA 19063
Solicitor to Thornbury Township

Mark P. Thompson, Esquire
Lamb McErlane, PC
24 E. Market St. PO Box 565
West Chester, PA 19381
Attorney for Neighbors for Crebilly, LLC


Gregg I. Adelman