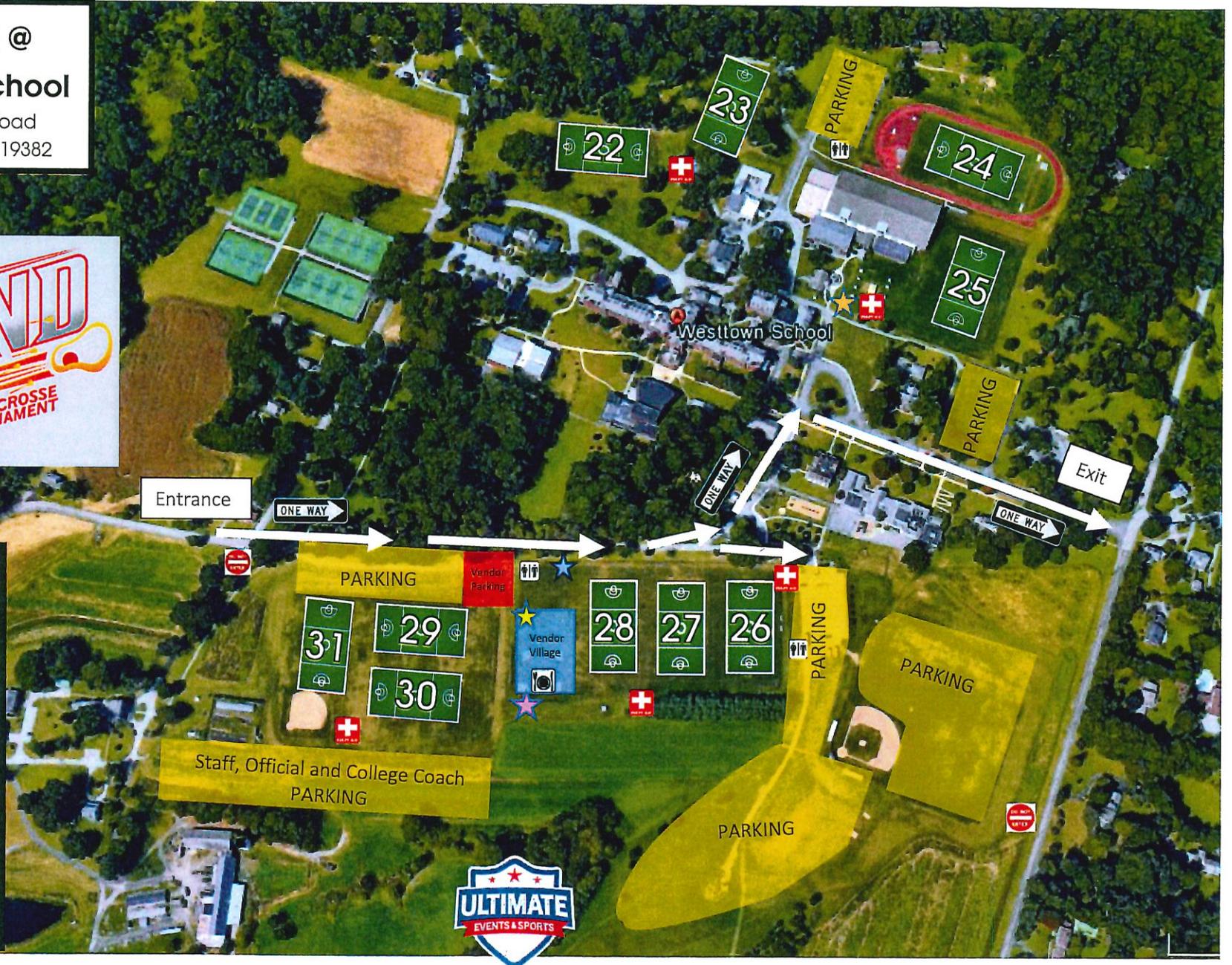


Sat July 6 - Sunday July 7 8AM - 8PM Traffic

The Grind @ Westtown School

975 Westtown Road
West Chester, PA 19382



- Headquarters
- College Coach
- Tent
- Information
- Tent
- First Aid
- Referee Tent
- Bathrooms
- Food



ZARELLI - 1 pmm 7/23/19



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The Grind

0

Sat, Jul 06, 2019-Sun, Jul 07, 2019, 8:00am-8:00pm

The Grind 2019 is currently SOLD OUT. Click here to have your team added to the: [WAITLIST](#). We are currently looking at expanding the event where possible. Stay tuned for updates.

- [Highlights](#)
- [Hotel Accommodations](#)
- [College Coaches](#)
- [Recruiting](#)
- [Divisions](#)
- [Schedule](#)
- [Game Details](#)
- [Cost](#)
- [Rules](#)
- [Policies & Procedures](#)
- [Important Dates](#)
- [Sponsorship & Vending](#)
- [Further Information](#)
- [Roster Details](#)
- [Location](#)
- [Map/Directions](#)



The Grind by Ultimate Events & Sports (PA) promo video



by FRONT

Highlights

One of the LARGEST and MOST COMPETITIVE tournaments in the Nation! **Bringing together teams from ALL across the country and International teams!**

Championship Format with weighted brackets. Teams will be grouped by similar levels of play to help ensure all games are competitive.

Awards will be provided for the Champions of each bracket.

Over 250 college coaches attended in 2018.

Following all USL rules

More playing time offered by most tournaments; offering the athletes MORE playing time to be seen by the college coaches, and offering the teams the best value for their fee

Certified USL Officials will be used on all games, and staff will be on all fields to provide a safe and professional atmosphere.

Hotel Accommodations

We are pleased to announce that we are working with JETT Travel Inc. to provide our teams with their housing needs. If you are in need of housing, please use the information and booking link below to reserve your overnight accommodations. This is a STAY TO PLAY tournament and all reservations must be made through the JETT Travel booking system! Please contact JETT Travel, jetttravelinc.assist@gmail.com, if you have any questions or need any assistance.

Booking Options:

Option 1- Send the booking link out to your teams and allow them to book wherever they choose to book individually.

Option 2- Have a team manager or coach hold room blocks for your families. The team manager will then send out the block information and families will book within that block. Blocks will only be held for 14 days. Rooms that are not picked up within your block after the 14 days will be released back into the system.

SUGGESTIONS FOR BOOKING A BLOCK FOR YOUR TEAM: Enter the check in date you wish to start the block, number of nights you wish to stay, and then select 1 room and click check rates. On the next screen, click on view rates for a property you would like to select. If the property has the ability to accommodate a block, a green "hold block" button will appear with the amount of rooms available in red. To book the block, click on the green button and fill out the information on the next screen!

Click here to ***BOOK YOUR ROOM***

Send this link to parents/families: <http://groups.reservetravel.com/group.aspx?id=30595>

College Coaches

COLLEGE COACH REGISTRATION



*approx 200
Coaches*

Colleges who attended in 2018:

Adrian College
Alderson Broaddus University
Albright College
Allegheny College
Alvernia University
Arcadia University
Averett University
Babson College
Bard College
Bates College
Bentley University
Bethany College
Binghamton University

Messiah College
Methodist University
Millersville University
Misericordia University
Monmouth University
Montevallo University
Mount Union
Moval College
Mount Aloysius College
Muhlenberg College
Neumann University
Newbury College
Niagara

Juniata College
 Kean University
 Kennesaw State University
 Kent University
 Kenyon College
 Lafayette College
 Lancaster Bible College
 Lebanon Valley College
 Lewis University
 Lindenwood College
 Little Rock University
 Lock Haven University
 Long Island University
 Loras College
 Louisville
 Lycoming College
 Madonna College
 Marian University
 Marist College
 Marywood College
 McDaniel College
 Medaille College
 Mercer University
 Mercyhurst
 Meredith College
 Messiah College

US Naval Academy
 Utica College
 Vassar College
 Villanova University
 Virginia Commonwealth University
 Virginia Wesleyan University
 Walsh University
 Washington College
 Washington & Jefferson College
 Wells College
 Wesleyan University
 West Chester University
 Westminster College-PA
 Widener University
 William & Mary
 Williams
 Wilmington University
 Winthrop University
 Wittenberg University
 Wofford College
 Wooster College
 Yale University
 York College of PA
 Young Harris College

Please note, all RSVP'd coaches will receive electronic rosters and a grid schedule as well, prior to the event. In addition all rosters and schedules will be in Coach Packet. If you would like to attend this tournament to recruit, please RSVP by emailing [Becky Wells](mailto:Becky.Wells@connectlax.com)

Recruiting

Ultimate Events and Sports has teamed up with ConnectLax and Coach Packet in 2018 to bring the college coaches and participants the best video coverage and profile distribution. ConnectLax is the exclusive video provider for this event, and Coach Packet will provide all electronic player profiles to all coaches in the country. All fields with 2020-2023s ONLY will be filmed and distributed for FREE to all college coaches in the Nation through Coach Packet. All games are filmed at elevation in professional HD. Individual game film or highlight video for the participants will be available to purchase through ConnectLax.

To order INDIVIDUAL GAME FILM:



Get Game Film

[Order Game Film](#)

Elevated, professional HD 1080p60 game film of all your games.

Today & Save

Bloomsburg University	North Carolina Wesleyan College
Boston University	North Greenville University
Brevard College	Northwestern
Bridgewater College	Notre Dame
Bridgton Academy	Notre Dame of Maryland University
Brockport College	Oglethorpe University
Brown	Ohio Northern University
Bryant University	Pace University
Bryn Athyn College	Peace University
Bryn Mawr College	Penn State University
Bucknell University	Piedmont College
Buffalo State	Post University
Butler	Quinnipiac University
Caldwell University	Roanoke College
Canisius College	Robert Morris University
Catawba College	Robert Wesleyan University
Cazenovia College	Saint Josephs University
Chatham University	Saint Leo University
Chestnut Hill College	San Diego State University
Christopher Newport University	Scranton
Cleary University	Seton Hill University
Coastal Carolina University	Shippensburg University
Colby College	Slippery Rock University
Colgate	Skidmore College
Colorado State- Pueblo	Smith College
Cornell	Southern Connecticut State University
Cortland	Southern Wesleyan University
Dartmouth	St. Francis University
Davenport University	St. Mary's College
Dean College	Stetson University
Delaware Valley University	Stockton University
DeSales University	Susquehanna University
Drew University	Swarthmore College
Duke	Syracuse University
East Stroudsburg University	Temple University
Eastern University	The College of New Jersey
Elizabethtown College	The Savannah College of Art and Design
Fairleigh Dickinson University	Tiffin University
Ferrum College	Transylvania University
Florida Southern College	Tufts University
Franklin and Marshal College	University of Bridgeport
Franklin Pierce	University of California, Davis
Frostburg State University	University of Charleston
Gannon University	University of Cincinnati
Georgetown	University of Connecticut
Gettysburg College	University of Cumberland
Gordon College	University of Delaware
Goucher College	University of Detroit Mercy
Grand Valley State University	University of District of Columbia
Gwynedd Mercy University	University of Findlay
Hartwick College	University of Maryland, Baltimore County
Haverford College	University of Massachusetts
Highpoint University	University of Michigan
Huntingdon College	University of Virginia-Wise
Indiana University of Pennsylvania	University of Richmond
Iona College	Upper Iowa University
Johns Hopkins University	Ursinus College

.@Ultimategoallax holds tryouts for its 3 regions in one location to unify teams

Monday, 10th July 2017

Categories: [Club](#), [Girls/Women's](#)

By Chris Goldberg

Phillylacrosse.com, Posted 7/10/17

It was the ideal way to combine **travel team tryouts** with teaching and development **all in one day**, and for **multiple regions**.

Michele DeJuliis and her Ultimate Lacrosse Club staff has players in three strong regions, in **South Jersey, Montgomery County and Chester County**. In an effort to combine forces, Ultimate held its 2017-18 tryouts today at Westtown School with all regions working together.

The event drew about 500 girls – many of whom will make the club teams from 2018 to 2026-plus. With about 30 coaches working, the players spent 2 hours on drills and skill development with players from each region. Meanwhile, coaches had ample time to evaluate and teach.



Ultimate Founder and Director Michele DeJuliis directs Monday's tryout

"It was a great opportunity to see other competition from across the boards and all regions," said DeJuliis. "We're one team, ultimately, and we want them to have that opportunity to play together at tournaments and other places. They are buddies and we want them to see that we stand together."

DeJuliis – known by all as "DJ" – was a four-time All American at Penn State, captain of the USA National Team that won a gold medal, an assistant coach at Princeton, a 2013 National Lacrosse Hall of Fame inductee, a 2017 Eastern PA Chapter Hall of fame inductee and the first commissioner of the United Women's Lacrosse League. She recently founded the Women's Professional Lacrosse League.

DeJuliis, who founded Ultimate in 2001, is most interested in developing the sport. She said about 370 Ultimate players attended a 2-day skills camp earlier this summer at Westtown to help bind the region. Many of these players competed the past weekend at The Grind, a tournament run by DeJuliis' Ultimate Events and held at five Chester County sites.

"This freshens it up and makes it really competitive," she said. "These kids rise to the occasion even after a long weekend (of tournament lacrosse). They come out and even though it is hot, they pick each other up and back each other up."

ZARELLI-2 PMM 7/23/19

"This gives our coaches the chance to get eyes on every kid. If a kid wants feedback, we provide them with good information on things they can do to improve on or what did great. It's another opportunity to better their skills."

DeJuliis said some players will not make the teams, but if the players are strong enough some can be placed on a second age-group squad and players can change positions. Training options are provided for all players.

DeJuliis said her focus on development is strengthened by the new recruiting rules. Now that D1 coaches cannot communicate with players until Sept. 1 of their junior years, the crazy pressures to commit as freshmen and sophomores has ended.

"It's a good thing because it allows kids to have their high school life back," said DeJuliis. "They can play multiple sports if they want to. They deserve that. This does increase the workload of us as a staff, but that's our job – to get information to them and to help them in the process between now and Sept. 1 of their junior years so they can really figure out what kind of school they want to go to."

"What kids want at 13 or 14 is often very different than what they will want at 18. So for them to have the opportunity to explore all their options and not feel pressure to go somewhere or lose an offer for a school here or there is great. Now, they can relax. They are still staying on top of it and educating themselves on schools they are interested in."

What is the mission of Ultimate lacrosse?

"We are all about development; that's a key part of their success as student-athletes. We always preach to them to work hard in the classroom and off the field. With great development comes recruiting. We don't focus on (getting D1 commits). We want them to get the training they need to be the best they can. Obviously, we want to educate them and their parents through the (recruiting) process and to update them with the latest changes so they are well prepared."

"It is important that we give them the tools they need to be successful. A hot topic is character development. We want our kids not only to be great players but great people."

"So doing the right thing, and making good decisions is important. That goes into social media and helping them understand life skills better than they would otherwise understand. We always talk about that you're representing yourself, your school, your club, and your coaches. They need to respect themselves, their teammates and coaches, officials and fans. We reiterate that all the time. When we see something that's out of character of what we want the club to represent we address it. We have a role as leaders in our sport and athletics in general and we have enough coaches that have awesome experience that believe in the same things."

Tags: [Ultimate Goal](#)

This entry was posted on Monday, July 10th, 2017 at 8:58 pm and is filed under [Club](#), [Girls'Women's](#). You can follow any responses to this entry through the [RSS 2.0](#) feed.



200511-2 DMM 113210





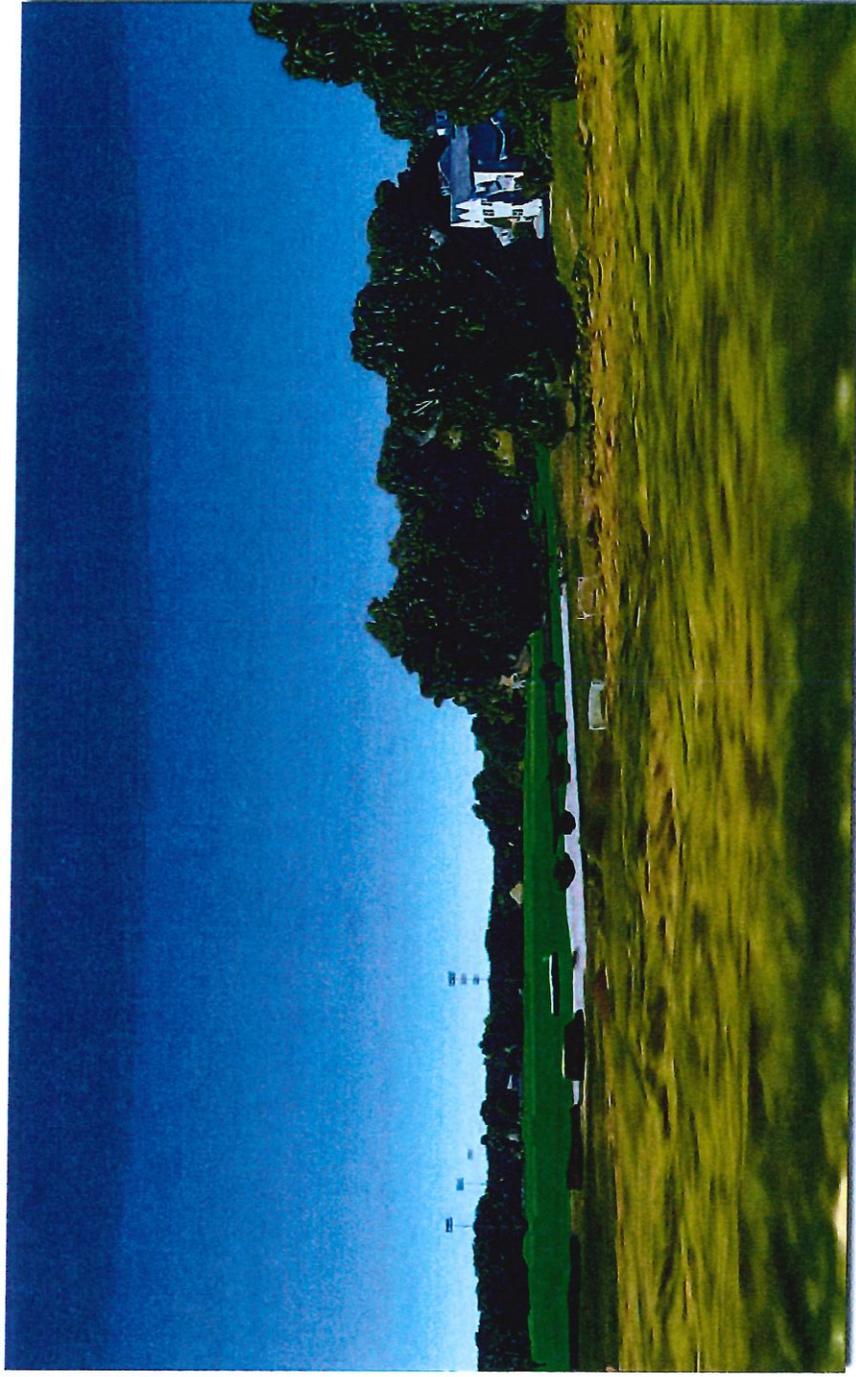


Neighborhood Perspective Overview



ZANEU-4 P.M. 7/23/19

Neighborhood Perspective 1



Neighborhood Perspective 4



Neighborhood Perspective 5



SAY NO TO 220 LIGHTED NIGHTS!

Westtown School is asking to light their turf fields with six 85' poles
 220 nights, 6 days a week, 10 months a year, to be rented to outside organizations,
 resulting in:

INCREASED TRAFFIC, NIGHTTIME NOISE, DISRUPTION OF NIGHT SKY

We, the undersigned, **oppose** Westtown School's Conditional Use for 220 lighted nights rented to outside organizations. Please save our rural community.

Print Name	Signature	Address	Phone or E-Mail
MICHAEL DIDOMENICO	M. De Domenico	1530 Woodland Rd W.C. PA	610 399 1752
Janietta Lusk	JLusk → limit # of lights to less than 100	1017 S. Chester Rd	janietta@aol.com
SEAN REYNOLDS	Sean P. Reynolds	1177 Avonlea Cir. Green Mills PA 19342	STREYNOLDS@COMCAST.NET
Beverly Longo	Beverly Longo	1009 S. Chester Rd W.C. 19389	-
PHILIP LONGO	P. Longo	1009 S. CHESTER RD W. CHESTER, PA 19382	
ANNE MARIE CANGIN	Anne Marie Cangin	742 Bracken Cr. West Chester PA 19382	amcangin@verizon.net

ZANEU-6 7/23/19

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Print Name	Signature	Address	Phone or E-Mail
Thomas Foster		734 Westbourne Rd	610-399-1728
Michael Ney		900 Hummingbird Ln.	
Martha W. Donaldson		1009 Muelyn Dr.	610-436-8264
Alan S. Donaldson		1009 Carolyn Dr.	610-436-8264
Thomas Bare		1057 Windy Knoll Rd.	TM BARE W HOTMAIL.COM
Ana Bare	Ana Bare	1057 Windy Knoll Rd	
Diane Chesko		1025 S. Concord Rd.	wqc-39@yahoo.com
William Chesko		"	"
Margaret Key		1114 Talleyrand Rd	610 399 9552
EVA FOSTER		734 Westbourne Rd	610-399-1728
CHARLES ERSEINE		915 SHILOH RD	610 304 9434
STEVE DEKEO		726 Westcroft Pl.	610 399 0398
Betsy Walsh		620 Westbourne Rd	610-399-9786

CP

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Print Name	Signature	Address	Phone or E-Mail
Chadwick Wingrave		928 Hunt Drive	cwingrave@ smaill.com
Ross D. Clark		916 S. MESSA PARRAS EIR RD	7
Joe Paoluccio		107 Sage Rd WEST CHESTER	
Jane McSwitt		1010 CAROLYN Dr	jmcd1578e verizon.net
Julie Duncan		1116 Talleyrand Rd	jclazduncan@gmail.com
Terry May		900 Hummingbird Lane	
Susan Alloway		915 Sage Rd. WC	Susieku99@yahoo.com
Joseph Piarkowski		913 Trullo Hill	
Robert J. Fox		1628 S. Coventry Lane	robertjfox@hotmail.com
Julie Stolnis		923 Sage Rd WC 19382	
P.J. Boer McEnte		914 Hummingbird	
ANN MURPHY		1095 BARNVIEW LN.	A FOUR WINDS VENTURES LLC
ROBERT WINTNER		1010 FARM Lane	
Robert Marks		515 Coventry Ln	

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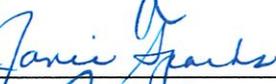
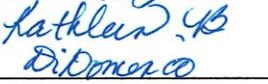
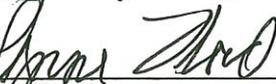
Print Name	Signature	Address	Phone or E-Mail
JERROLD	Lakoff	1505 WOODLAND RD	610-399-1941
Criddle	Susan	1412 Johnny's Way	610-399-1305
Criddle	Dana	1412 Johnny's	610-399-1305
Andrew Colket	Andrew	1089 POWDERHORN DR.	484.919.6250
Donna K Engh	Donna K Engh		
Juanita Mattiola	J Mattiola	905 Chickadee Ln,	610-613-5453
JOHN WHORISKEY	John Whoriskey	1117 BUTTERNUT RD	610-399-9468
MAUREEN Whoriskey	Maureen Whoriskey	1117 Butternut Rd	610-399-9468
Jeanne MAREK	Jeanne Marek	1111 Butternut RD	
Christie Lunde	Christie Lunde	1075 Powderhorn Drive	
Dennis Platt	D J Platt	1069 Edgemoor Chase Dr.	
Ana Southern	Ana Southern	1138 Cardinal Drive West Chester	610 399-9457
HOWEN SCHNEZ	Howen Schnez	1002 Woodlark Rd	484-359-8377
CATHY LAKE	Cathy Lake	1505 WOODLAND RD	

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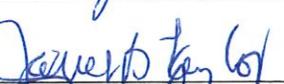
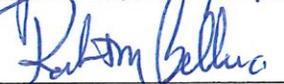
Print Name	Signature	Address	Phone or E-Mail
HELEN KOSHGERIAN		WESTTOWN 1056 EDGEWOOD CHASE DR.	momkosh@aol.com
Leslie DiPietro		1198 Avonlea Cir Glen Mills, PA	ldipietro7@gmail.com
PATRICIA RYAN PLATT		1069 EDGEWOOD GLEN MILLS PENN	plattcourt@verizon.net
Janice Sparks		1115 Cardinal Drive West Chester, Pa. 19382	
Diane Cribble		1412 Admire Way West Chester PA 19382	diane.cribble@ verizon.net
Kathleen B DiDomenico		1520 Woodland Rd West Chester, PA 19382	kdnkids@yahoo.com
JOAN DONOHUE		1060 POWDERHORN DR. GLEN MILLS 19342	
Anne Hood		1080 Edgewood Chase Glen Mills PA 19342	
DONNA TESTA		1514 WOODLAND RD WEST CHESTER, PA 19382	donnamtesta@ verizon.net
DIANA ZUNKE		1516 Parkway Way 19382	
GINA LOMBARDI		1537 Mapleboro Rd WEST CHESTER, PA 19382	
STEVEN RODIN		1514 WOODLAND RD W.C. PA,	steventodino gmail.com
Michelle Pownall		1005 Robby Drive W.C. 19382	
Janice York		1149 Westtown Rd w.c. PA	

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Print Name	Signature	Address	Phone or E-Mail
Zinta Smith	Zinta Z Smith	1051 Farm View Dr.	
Wally Kahn	WJ Kahn	917 Skippen Ln. W.C. 19382	-
Donel Manke	Donel Manke	909 Typoon Drive	
ISRAEL BONILLA		700 OAKBOURNE RD W.C. 19382	ijbonilla@yahoo.com
Gerri Zumbano	Gerri Zumbano	1000 Farm LA.	
Susan Bauer	Susan Bauer	927 Thorne Dr, 19382	-
Robert Jones		909 SAGE RD 19382	610-931-2803
HARRIS WEAVER		909 SAGE RD 19382	610-716-0312
MARY ANNE Gerald		1002 Ashley Rd 19382	610-399-4824
ROSALYN PALLATT		1119 Tully road	610-399-6177
JANET Taylor		2104 Carey road	610-399-1197
Bob Bellucci		1090 Barnview Ln	610-399-0547
ROBERT MILLER		900 THORNE	remiller20 verizon.net

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Print Name	Signature	Address	Phone or E-Mail
^{Weber} MARGARET	<i>Margaret Weber</i>	919 Hunt Dr. W.C., PA	19
Randolph Staples	<i>Randolph Staples</i>	509 Coventry LN	Staples.trev98@aol.com
Jeff Clark	<i>Jeff Clark</i>	1102 Talleyard Rd. W. Chester	JNMCLARK@aol.com
Jenni SHEEHAN	<i>Jenni Sheehan</i>	615 WESTAOURNE RD WEST CHESTER PA 19382	
TIM FARRELL	<i>Tim Farrell</i>	1007 CAROLYN DR WEST CHESTER PA 19382	6104550201
Carmie Winfield	<i>Carmie Winfield</i>	1015 Carolyn Dr. WEST CHESTER PA 19382	
Patricia Conrisciani	<i>Patricia Conrisciani</i>	1003 Plumley Rd. West Chester, Pa. 19382	
Edwards. Thompson	<i>Edwards. Thompson</i>	917 Tyson Dr West Chester, PA 19382	
Patricia KYLE	<i>Patricia Kyle</i>	1097 BARNVIEW LN W. CHESTER PA 19382	
PATRICIA MCGOLDRICK	<i>Patricia McGoldrick</i>	939 Thorne Drive WC PA 19382	dave939@verizon.net
DAVID MCGOLDRICK	<i>David McGoldrick</i>	939 THORNE DRIVE WESTCHESTER PA 19382	dave939@verizon.net
<i>David McGoldrick</i>		1016 ASHLEY	
Michael Hany	<i>Michael Hany</i>	1192 Westboyne Rd W.C. PA 19382	
J. Piorowski	<i>J. Piorowski</i>	913 Tredis Lane	

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Print Name	Signature	Address	Phone or E-Mail
Jane Darmata	Jane Darmata	1598 S Coventry Ln West Chester PA	610-431-0337
Rich Leinhauser	RL	920 TYSON DR WEST CHESTER PA	610 6965312
Stephanie Marchesani	SM	1628 S. Coventry Ln W.C. PA 19382	610 909 5962
CAROL WEISS	Carol Weiss	1014 CAROLYN DR West Chester PA	610-399-5751
Penelope McIlroy	PENELoPE MCLROY	908 TYSON DR. WEST CHESTER, PA.	610-436-6355
David McIlroy	David McIlroy	908 TYSON DR W.C. PA	" " "
Mark Winfield	Mark Winfield	7015 Carolyn Dr. West Chester PA 19382	
BILL FAIR	Bill Fair	1187 WESTBOURNE WEST CHESTER PA	610.399.6698
DASIG CHRIS	Chris Dasig	1005 Plumley Rd WEST CHESTER	610.399. 484 716 1633
Willie Gonzalez	Willie Gonzalez	1103 Station Way West Chester, PA 19382	610-999-5779
Wanda Gonzalez	Wanda Gonzalez	1105 Station Way West Chester, PA	610 506 8822
Bob York	Bob York	1149 Westtown Rd W.C. PA 19382	610 246 3673

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Print Name	Signature	Address	Phone or E-Mail
DANA POETHNER		909 HUMMINGBIRD LN WC 19382	
Kathleen Bowen		502 Coventry Lane West Chester	
TED HARTZ		914 TYSON DR W.C. PA 19382	
Beth Staples		509 Coventry Lane West Chester PA 19382	
Cory Staples		509 Coventry Lane	
ANTHONY SARGENT		1008 Plumby Rd West Chester, PA 19382	
JANICE BERRY		725 Westcroft Pl	
Suzanne McDoyne		1040 Carolyn Dr. West Chester	
Wm Doyle		1008 Carolyn Dr W.C. 19382	
WENDY STIGRA		1121 Talleyrand Rd. WC, PA 19382	

Commonwealth Docket Sheet

Docket Number: 644 CD 2015

Page 1 of 5

June 25, 2019



CAPTION

In Re: Appeal of AMA/American Marketing Association, Inc. from the Decision of the Borough Council of Ambler Borough, dated March 18, 2014 Denying its Application for Conditional Use for a Townhouse Development

Appeal of: AMA/American Marketing Association, Inc.

CASE INFORMATION

Initiating Document: Notice of Appeal

Case Status: Closed

Case Processing Status: January 31, 2017 Completed

Journal Number: 33a-05-2016

Case Category: Civil Case Type(s): Zoning/Land Use

CONSOLIDATED CASES

RELATED CASES

Docket No / Reason	Type
643 CD 2015 Ct Order - Sua Sponte	Consolidated

COUNSEL INFORMATION

Appellant AMA/American Marketing Association, Inc

Pro Se: No

IFP Status:

Attorney: Sommar, Kevin J.
 Law Firm: Sommar, Tracy & Sommar
 Address: 210 S Broad St
 Lansdale, PA 19446-0227
 Phone No: (215) 368-3121 Fax No: (215) 368-4094

Appellee Maple Avenue Park Partners

Pro Se: No

IFP Status:

Attorney: Garrity, James J.
 Law Firm: Wisler Pearlstine, LLP
 Address: Wisler Pearlstine Llp
 460 Norristown Rd Ste 110
 Blue Bell, PA 19422-2323
 Phone No: (610) 825-8400 Fax No:

3 2017/11/27 PMM 7/13/19

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COUNSEL INFORMATION

Appellee **Borough of Ambler**
 Pro Se: No
 IFP Status:
 Attorney: Bresnan, Joseph Edward
 Law Firm: Dischell, Bartle & Dooley, PC
 Address: 1800 Pennbrook Parkway Ste 200
 P.O. Box 107
 Lansdale, PA 19446
 Phone No: (215) 362-2474 Fax No: (215) 362-6722

FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
04/17/2015	Notice of Appeal	85.50	04/22/2015	2015-CMW-H-000923	85.50
06/28/2016	Petition for Reargument	15.00	06/28/2016	2016-CMW-H-001517	15.00

AGENCY/TRIAL COURT INFORMATION

Order Appealed From: March 19, 2015 Notice of Appeal Filed: April 17, 2015
 Order Type: Order Dated
 Documents Received: April 22, 2015

Court Below: Montgomery County Court of Common Pleas
 County: Montgomery Division: Montgomery County Civil Division
 Judge: Carluccio, Carolyn Tornetta OTN:
 Docket Number: 14-08599 Judicial District: 38

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content Description
Trial Court Record	October 02, 2015	1 stack

Date of Remand of Record: January 31, 2017

BRIEFING SCHEDULE

None

None

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
April 17, 2015	Notice of Appeal Filed AMA/American Marketing Association, Inc		Appellant	
June 4, 2015	Notice of Docketing Appeal Exited Commonwealth Court Filing Office			06/04/2015
June 17, 2015	Docketing Statement Filed Sommar, Kevin J.	AMA/American Marketing Associatio	Appellant	
October 2, 2015	Trial Court Record Received Montgomery County Court of Common Pleas			

Document Name: Briefing schedule may be viewed at 643 CD 2015.

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DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
October 5, 2015	Order Filed Quigley, Keith B.			10/06/2015
	Document Name: The trial court having certified the record in the above-captioned matters (643 and 644 CD 2015) Comment: to this court without the local ordinance or code relevant to this appeal, Appellant is hereby directed to file a copy of the entire applicable zoning or other relevant ordinance or code with this court and serve a copy thereof on all adverse parties within fourteen (14) days of the date of this order or the above-captioned appeals will be dismissed as of course.			
October 5, 2015	Order Sua Sponte for Consolidation Quigley, Keith B.			10/06/2015
	Document Name: The above-captioned matters (643 and 644 CD 2015) are hereby consolidated. Appellant's brief (4 copies) and rep. record (4 copies) shall be filed and served by November 16, 2015.			
October 27, 2015	Compliance with Order Sommar, Kevin J.	AMA/American Marketing Associatio	Appellant	
	Document Name: Zoning Ordinance in compliance with 10/5/15 order			
November 6, 2015	Application for Extension of Time to File Sommar, Kevin J.	AMA/American Marketing Associatio	Appellant	
	Document Name: 1st brief ext. request			
November 6, 2015	Order Granting Application for Extension of Time to File Krimmel, Michael			11/09/2015
	Document Name: Upon consideration of appellant's request for extension of time to file briefs and reproduced record, and it appearing that said request is not opposed, said request is granted and appellant's brief (4 copies) and reproduced record (4 copies) shall be filed on or before December 16, 2015.			
January 21, 2016	Application to Strike Garrity, James J.	Maple Avenue Park Partners	Appellee	
	Document Name: Motion of Maple Avenue Park Partners, LLP to Strike Portions of AMA/American Marketing Association, Inc.'s Reproduced Record. Comment:			
February 1, 2016	Answer to Application to Strike Sommar, Kevin J.	AMA/American Marketing Associatio	Appellant	
February 2, 2016	Tentative Session Date Krimmel, Michael			
	Document Name: May 2016 (Philadelphia)			
February 8, 2016	Order Filed Oler, J. Wesley, Jr.			02/09/2016
	Document Name: Argument on the motion of appellee Maple Avenue Park Partners to strike pmiions of appellant's reproduced record and the answer in opposition thereto is set for March 21, 2016, at 1:30 p.m., via telephone call. The argument shall be conducted by telephone call to the offices of counsel of record, and shall originate from the chambers of a designated judge of the Commonwealth Court sitting in Harrisburg CELL PHONES MAY NOT BE USED.			

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DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
March 21, 2016	Memorandum and Order Leadbetter, Bonnie Brigance			03/21/2016
	Document Name: NOW, March 21, 2016, upon consideration of appellee Maple Park Partners'			
	Comment: "Motion To Strike Portions of Appellant's Reproduced Record," appellant's answer thereto, and after oral argument on the issue by counsel of record, the Motion is granted. Pages 3 la-4la, 116a-154a, and 166a-l 72a of the reproduced record are stricken and shall not be considered by the Court in disposition of the appeal. See Fotta v. Workmen's Comp. Appeal Bd. (US. Steel/USX Corp. Maple Creek Mine), 626 A.2d 1144, 1147 n.2 (Pa. 1993) (review is limited to matters appearing in the record); B.K. v. Dep 't of Public Welfare, 36 A.3d 649 (Pa. Cmwlth. 2012) (same). The Chief Clerk shall attach a copy of this order to all copies of appellant's reproduced record. Appellee's request for counsel fees is denied.			
April 4, 2016	Argument Scheduled mkrimmel2			04/04/2016
	Document Name: FRIDAY, May 13, 2016 at 9:00 A.M., Before a Panel of Judges sitting in Courtroom 410			
	Comment: Bucks County Justice Center, 100 North Main Street, 4th Floor, Doylestown, Pennsylvania 18901. Note: This case is No. 34 on the list.			
June 14, 2016	Affirmed Simpson, Robert E.			06/14/2016
	Document Name: Memorandum Opinion (27 pages)			
	Comment: The orders of the Court of Common Pleas of Montgomery County are AFFIRMED.			
June 28, 2016	Application for Reconsideration/Reargument Sommar, Kevin J.	AMA/American Marketing Associatio	Appellant	
	Document Name: Petition for Reconsideration or Rehearing En Banc			
July 13, 2016	Answer to Application for Reconsideration Garrity, James J.	Maple Avenue Park Partners	Appellee	
	Document Name: Maple Avenue Park Partners, LLP's Answer to Pet. for Reconsideration or Rehearing En Banc of			
	Comment: American Marketing Association, Inc. and Petition for Attorneys' Fees.			
July 19, 2016	Answer to Application for Reconsideration Bresnan, Joseph Edward	Borough of Ambler	Appellee	
August 5, 2016	Order Denying Application for Reconsideration Leavitt, Mary Hannah			08/05/2016
	Document Name: Upon consideration of appellant's petition for reconsideration or rehearing en banc and			
	Comment: appellees' answers in response thereto, the petition is denied. Upon consideration of appellee, Maple Avenue Park Partners, LLP's petition for attorneys' fees and appellant's answer in opposition thereto, the petition is denied.			
January 31, 2017	Remitted Commonwealth Court Filing Office			
February 21, 2017	Acknowledgement of Record Remittal Montgomery County Court of Common Pleas			

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SESSION INFORMATION

Journal Number: 33a-05-2016
 Consideration Type: Oral Argument - Panel
 Listed/Submitted Date: May 13, 2016

Panel Composition:

The Honorable Robert E. Simpson	Judge
The Honorable Anne E. Covey	Judge
The Honorable Rochelle S. Friedman	Senior Judge

DISPOSITION INFORMATION

Final Disposition:	Yes	Judgment Date:	
Related Journal No:		Disposition Author:	Simpson, Robert E.
Category:	Decided	Disposition Date:	June 14, 2016
Disposition:	Affirmed	Disposition Comment:	The orders of the Court of Common Pleas of Montgomery County are AFFIRMED.
Dispositional Filing:	Memorandum Opinion	Filing Author:	Simpson, Robert E.
Filed Date:	6/14/2016 12:00:00AM		

REARGUMENT / RECONSIDERATION / REMITTAL

Filed Date:	June 28, 2016
Disposition:	Order Denying Application for Reconsideration
Disposition Date:	August 5, 2016
Record Remittal:	January 31, 2017

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Appeal of AMA/American :
Marketing Association, Inc. from :
the Decision of the Borough Council :
of Ambler Borough, on May 21, 2014 :
dated May 22, 2014 Denying its : No. 643 C.D. 2015
Application for Final Land :
Development Approval for a :
Townhome Development :

Appeal of: AMA/American Marketing :
Association, Inc. :

In Re: Appeal of AMA/American :
Marketing Association, Inc. from :
the Decision of the Borough Council :
of Ambler Borough, dated March 18, :
2014 Denying its Application for : No. 644 C.D. 2015
Conditional Use for a Townhouse : Argued: May 13, 2016
Development :

Appeal of: AMA/American Marketing :
Association, Inc. :

BEFORE: HONORABLE ROBERT SIMPSON, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: June 14, 2016

In these consolidated zoning and land development appeals, AMA/American Marketing Association, Inc. (Applicant) asks whether the Court of Common Pleas of Montgomery County¹ (trial court) erred in affirming the

¹ The Honorable Carolyn Tornetta Carluccio presided.

decisions of the Ambler Borough Council (Council) that denied Applicant's applications for conditional use and final land development approval for its proposed townhome development. Applicant argues Council erred in denying its conditional use application and final land development plan where Council's findings were not supported by substantial evidence. Upon review, we affirm.

I. Background

Applicant owns property with frontage on Chestnut Street in the Borough of Ambler (Borough), Montgomery County (property). The property consists of approximately 4.58 acres and is zoned OC Office Campus. It also lies within the RO Redevelopment Overlay district. Transit-Oriented Developments (TODs) are permitted by conditional use in the RO district under the 1996 Zoning Ordinance of Ambler (zoning ordinance).

In February 2013, Council granted conditional, preliminary approval of Applicant's land development application for a proposed townhome development. Council conditioned its grant of preliminary land development approval on Applicant's resolution of all outstanding items in the review letter prepared by Gilmore & Associates, Inc. (Borough's Engineer), which included numerous issues under the zoning ordinance and the Borough's Subdivision and Land Development Ordinance (SALDO).

In addition, Applicant filed a conditional use application with Council. In particular, Applicant requested approval for the proposed design, placement and installation of a 40-townhome TOD along with roadways, drives, parking, stormwater management facilities and related improvements.

Council held a hearing on the conditional use application.² An adjoining property owner requested and was granted party status. After the hearings, Council issued a decision in which it denied Applicant's conditional use application. In so doing, it made the following findings.

Matthew Z. Kensil, P.E., who was recognized as an expert in civil engineering, testified on Applicant's behalf (Applicant's Engineer). Council noted that Applicant's Engineer never worked on a TOD. Applicant's Engineer testified that the standards that apply to all conditional use applications in the RO district are set forth in Section 27-413 of the zoning ordinance. He testified the additional standards that apply specifically to TOD conditional use applications in the RO district are provided for in Section 27-2703(E)(4) of the zoning ordinance.

Applicant's Engineer explained that the property is zoned OC, and it is located within 500 feet of an existing rail station and supporting parking lot. The property has approximately 1,000 feet of frontage on a commuter rail line.

Applicant's Engineer testified that Applicant's development proposes connections for both public water and sewer. He testified the townhomes in the proposed development would incorporate unspecified, but varying architectural elements. Applicant's Engineer testified the development proposes sidewalk connections to adjacent tracts, but no sidewalk would be provided along Chestnut

² Prior to the conditional use hearing, Council approved a text amendment to the zoning ordinance, which permitted Applicant to place its proposed townhome development on a 4-acre lot if it had 750 feet of railroad frontage and was within 500 feet of a railroad station or its parking lot. This text amendment is not directly at issue here.

Avenue. He also testified Applicant would hire a private trash hauler for garbage and recycling collection if the Borough would not collect trash for the development. Applicant's Engineer further testified the development proposes a landscaped buffer along adjacent property lines, but only where feasible. Applicant's Engineer testified proposed lighting fixtures within the development would be a maximum of 15 feet in height, that all proposed lighting fixtures are to be designed and installed so as to minimize spillover onto adjacent properties and a lighting plan was in the process of being revised so as to conform with all requirements in the zoning ordinance and the SALDO.

Applicant's Engineer testified the homeowners' association documents for the development would be provided to the Borough. Applicant's Engineer also testified a traffic impact study conducted for a previous development indicated acceptable traffic impact on intersections within 1,000 feet of the property. Applicant's Engineer testified the property is immediately adjacent to a property that is currently under the jurisdiction of the U.S. Environmental Protection Agency (EPA) as a brownfield Superfund site as a result of asbestos stockpiles on that property. Applicant's Engineer also testified the Borough Planning Commission had not yet issued any recommendation as to the proposed development. Applicant's Engineer testified that 10 common (or overflow) parking spaces, in addition to garages, are proposed as part of the development. Applicant's Engineer testified that if the adjacent property were not the subject of a proposed development, the property would have no sidewalk connection to the train station.

Council also made the following conclusions of law. A conditional use is a special exception that falls within the jurisdiction of the municipal legislative body rather than the zoning hearing board. Section 603(c) of the Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, P.L. 805, as amended, 53 P.S. §10603(c). A local governing body may grant a conditional use pursuant to its police power to regulate land use. Clinton Cnty. Solid Waste Auth. v Wayne Twp., 643 A.2d 1162 (Pa. Cmwlth. 1994). The fact that a use is permitted as a conditional use, rather than prohibited, reflects a legislative decision that the use is not *per se* adverse to the public interest. K. Hovnanian Pa. Acquisitions, LLC v. Newtown Twp. Bd. of Supervisors, 954 A.2d 718 (Pa. Cmwlth. 2008); Susquehanna Twp. Bd. of Comm'rs v. Hardee's Food Sys., Inc., 430 A.2d 367 (Pa. Cmwlth. 1981).

In order to show an applicant is entitled to the conditional use, the applicant initially bears the burden of establishing the application complies with the zoning ordinance's objective standards. Visionquest Nat'l, Ltd. v. Bd. of Supervisors of Honey Brook Twp., Chester Cnty., 569 A.2d 915 (Pa. 1990); City of Hope v. Sadsbury Twp. Zoning Hearing Bd., 890 A.2d 1137 (Pa. Cmwlth. 2006). Satisfaction of the applicant's burden establishes a legislative presumption that the use is consistent with the health, safety, and welfare of the community. Susquehanna Twp. If the applicant satisfies this initial burden, the burden shifts to any objectors to rebut this presumption by establishing the use will have a detrimental impact on the surrounding community. Joseph v. N. Whitehall Twp. Bd. of Supervisors, 16 A.3d 1209 (Pa. Cmwlth. 2011); Sheetz v. Phoenixville Borough Council, 804 A.2d 113 (Pa. Cmwlth. 2002).

A local governing body hearing a conditional use application is free to reject even uncontradicted testimony if it finds it lacking in credibility, including testimony offered by an expert witness. Taliaferro v. Darby Twp. Zoning Hearing Bd., 873 A.2d 807 (Pa. Cmwlth. 2005).

Here, Council determined Applicant did not meet its burden of establishing its proposed conditional use complied with the objective standards set forth in the zoning ordinance. More particularly, Applicant did not present sufficient evidence or testimony to satisfy the specific conditional use criteria set forth in Section 27-2703(E)(4) of the zoning ordinance. To that end, Applicant did not demonstrate:

- a. that the lot to be developed is in one ownership or subject to an application filed jointly by the owners of each lot under consideration - §27-2703(E)(4)(a)(6);
- b. that the development would be designed to be compatible in use with existing Borough development, and in its residential and nonresidential components in terms of architecture, building materials, massing, and scale - §27-2703(E)(4)(a)(7);
- c. that the development would comply with maximum building and impervious surface coverage requirements - §27-2701(E)(4)(b)(2);
- d. that the development would comply with yard setback and building height requirements - §27-2703(E)(4)(b)(3);
- e. that the development would comply, with maximum building length requirements - §27-2703(E)(4)(b)(4);
- f. that the development would satisfy the various building spacing requirements - §27-2703(E)(4)(b)(5);

- g. that the building front facades would be orientated towards an internal or external street or driveway - §27-2703(E)(4)(b)(6);
- h. that there would be no blank walls in the development - §27-2703 (E)(4)(b)(7)(a);
- i. that the development would provide all pedestrian connection requirements - §27-2703(E)(4)(d)(2);
- j. that all sidewalks within 300 feet of the transit station would be a minimum of five feet in width §27-2703(E)(4)(d)(4);
- k. that site amenities, such as bicycle racks, benches and trash receptacles would be provided in appropriate locations - §27-703(E)(4)(d)(5);
- l. that parking would be provided for residential units at a rate of 1.5 spaces per unit - §27-2703(E)(4)(e)(1);
- m. that parking spaces would be interconnected and cross-easements would be provided to ensure shared use where appropriate - §27-2703(E)(4)(e)(2);
- n. that off-street parking and garages would be designed such that vehicular access to such parking or garages would not unnecessarily obstruct the primary internal driveways or existing external streetscape - §27-2703(E)(4)(e)(3);
- o. that dedicated areas for trash loading and disposal would be provided for, and that such areas would be located to the side or rear of buildings and would be screened from view from public streets - §27-2709(E)(4)(f)(1), (2);
- p. that the development would comply with all applicable landscape buffer requirements - §27-2703(E)(4)(g);
- q. that the development would comply with all open space requirements - §27-2703(E)(4)(h);
- r. that the development would comply with light placement and illumination requirements - §27-2703(E)(4)(i)(1);

s. that the development would comply with all lighting design requirements - §27-2703(E)(4)(i)(2);

t. that the development would, comply with all light spillover requirements - §27- 2703(E)(4)(i)(4); and,

u. that the development would comply with all access and interior circulation requirements - §27-2703(E)(4)(k).

Borough Council's Dec. & Order, 4/24/14, Concl. of Law No. 9.

Council further determined Applicant did not present sufficient evidence to satisfy the general conditional use criteria contained in Section 27-413(1)(D) of the zoning ordinance. Specifically, Applicant did not demonstrate the proposed development:

a. would not be detrimental to or endanger the public health, safety, or welfare - §27-413(1)(D)(1). In this regard, no evidence was presented to demonstrate how the use of the yards associated with townhomes would be limited or monitored to account for the yards being placed over remediated asbestos;

b. would not impede the normal and orderly development and improvement of the surrounding properties for permitted uses - §27-413(D)(2);

c. would include adequate utilities, access roads, drainage facilities and other necessary infrastructure - §27-413.1(D)(3); and,

d. had or would have taken adequate measures to provide ingress and egress, designed to minimize congestion on public streets - §27- 413.1(D)(4); while the ordinance recognizes the ability to satisfy these requirements in the future from the evidence presented it did not appear that Applicant could provide proper ingress and egress under any scenario.

Concl. of Law No. 10. Council also determined Applicant did not present sufficient evidence to satisfactorily address the concerns raised in the review letters prepared by the Borough's Engineer. For all these reasons, Council denied Applicant's conditional use application.

Shortly thereafter, Council denied Applicant's application for approval of its final land development plan based primarily on Applicant's failure to obtain conditional use approval. Council also stated Section 22-308(I)(7) of the SALDO required Applicant to submit copies of all necessary permits from governmental agencies from which approval was required by federal or state law. Here, Applicant did not show it received the required permits from the Pennsylvania Department of Environmental Protection (DEP) or the Montgomery County Conservation District. Council also noted the Montgomery County Planning Commission voted to deny making a recommendation to Council on Applicant's plan until Council granted conditional use approval. Additionally, the Planning Commission recommended that approval be withheld until any comments and legal questions regarding the proposed Chestnut Street right-of-way were resolved to the Borough's satisfaction.

Applicant appealed Council's decisions denying its conditional use and final land development applications to the trial court. The trial court consolidated the appeals. Without taking additional evidence, the trial court affirmed both decisions.

Applicant appealed to this Court, and the trial court directed it to file a concise statement of the errors complained of on appeal, which it did. The trial court subsequently issued an opinion pursuant to Pa. R.A.P. 1925(a) in which it explained, in relevant part:

In [its] [o]pinion, [Council] explains that it denied [Applicant's] conditional use request due to the fact that at the hearing [Applicant] failed to meet [its] burden in establishing compliance with the [zoning] [o]rdinance's objective standards and criteria. Indeed, [Council's] Decision and Order [cites] numerous [o]rdinance criteria that [Applicant] failed to meet. In this regard, the trial court respectfully requests that the appeal court see [Council's] Decision and Order, Paragraphs 8, 9, 10 and 11 Moreover, [Council's] findings and conclusions are all supported by the record from the conditional use hearing.

That is, the underlying record clearly demonstrates that [Council] had substantial evidence to support [its] conclusion that [Applicant] failed to meet the express standards and requirements of the [zoning ordinance]. To illustrate such substantial evidence, the trial court again respectfully requests that the appellate court review the *Notes of Testimony from Conditional Use Hearing dated March 18, 2014, pgs. 22-30; pgs. 34-42; pg. 53; pg. 56; and pgs. 60-61*. A review of the record shows that there was substantial testimony presented by [Applicant's] own engineer indicating that [Applicant's] application did not meet the [zoning ordinance] criteria. In fact, the trial court notes that [Council] cited numerous deficiencies as a basis for its denial. However, in actuality, [Council] could have denied the request with only one deficiency. This is because a conditional use must comply with all ordinance requirements. In short, in [its] discretion, [Council] could have denied [Applicant's] conditional use request on any one of the [25] enumerated deficiencies that it cited in its Order. ...

[Applicant] argues that [Council] misinterpreted and misapplied Sections 27-413 and 27-2703 of the [zoning ordinance] when it denied [Applicant's] conditional use request. The trial court is unable to address this appellate claim given that [Applicant]

fails to specify how [Council] misinterpreted and/or misapplied the specific [zoning] [o]rdinance [s]ections cited. Further, any misapplication argument is of no moment because ... there was no abuse of discretion by [Council] when it denied [Applicant's] conditional use request.

Lastly ... [Council] denied [Applicant's] final subdivision and land development plan approval because [Applicant] did not first obtain a conditional use. It is well settled law that subdivision and land development approval cannot be granted until the conditional use approval is first obtained. *In re Thompson*, 896 A.2d 659, 670 [(Pa. Cmwlth. 2006)]. Here the conditional use was denied on April 17, 2014, and thereafter, [Applicant] applied for final subdivision and land development plan approval. Accordingly, [Council] correctly denied the final plan request due to the fact that [Applicant] had not received a conditional use.

Tr. Ct., Slip Op., at 4-5, 6-7 (emphasis in original). This matter is now before us for disposition.³

³ Before this Court, Intervenor Maple Avenue Park Partners, LLC (MAPP) filed a motion to strike certain documents from Applicant's Reproduced Record on the ground these documents were not part of the record before Council, and, although Applicant attempted to supplement the record before the trial court with these documents, the trial court denied Applicant's request. Applicant filed an answer to MAPP's motion, and a single judge of this Court heard oral argument. Thereafter, the single judge entered the following order:

[U]pon consideration of appellee [MAPP's] 'Motion To Strike Portions of Appellant's Reproduced Record,' [Applicant's] answer thereto, and after oral argument on the issue by counsel of record, the Motion is granted. Pages 31a-41a, 116a-154a, and 166a-172a of the reproduced record are stricken and shall not be considered by the Court in disposition of the appeal. *See Fotta v. Workmen's Comp. Appeal Bd. (U.S. Steel/USX Corp. Maple Creek Mine)*, 626 A.2d 1144, 1147 n.2 (Pa. 1993) (review is limited to matters appearing in the record); *B.K. v. Dep't of Public Welfare*, 36 A.3d 649 (Pa. Cmwlth. 2012) (same).

Cmwlth. Ct. Order, Dkt. Nos. 643, 644 C.D. 2015, 3/21/16, at 1.

II. Issues

On appeal,⁴ Applicant argues Council's denial of its conditional use application constitutes an error of law or an abuse of discretion where it was based on findings that were not supported by substantial evidence. Applicant also contends Council's denial of its final land development plan constitutes an error of law or abuse of discretion where it was based on findings that were not supported by substantial evidence.

III. Discussion

A. Conditional Use

1. Contentions

Applicant argues this matter involves its consolidated appeals of Council's denial of its conditional use and final land development applications. Applicant contends, although Council previously granted conditional preliminary land development approval for Applicant's townhome development, the zoning ordinance also required conditional use approval of all uses in the zoning district in which the property is located.

Although conditional use approval concerns the use of the property, which Council already preliminarily approved, Applicant maintains, it proceeded with its conditional use application and subsequently its final land development

⁴ Where, as here, the trial court did not take additional evidence, our review is limited to determining whether Council abused its discretion or committed an error of law in granting the conditional use application. Aldridge v. Jackson Twp., 983 A.2d 247 (Pa. Cmwlth. 2009).

In addition, where the trial court takes no additional evidence, the scope of appellate review in a land development appeal is limited to determining whether the local governing body committed an error of law or an abuse of discretion. Kassouf v. Twp. of Scott, 883 A.2d 463 (Pa. 2005).

application and plan. Applicant asserts Council denied the conditional use application based on findings unsupported by substantial evidence. Thus, it argues, Council's denial of its conditional use application was an error of law and an abuse of discretion and should be overturned.

In response, Maple Avenue Park Partners, LLC (MAPP), which owns property adjacent to Applicant's proposed development, which it seeks to develop as an apartment complex, asserts the law (as well as the zoning ordinance itself) is clear that an applicant seeking conditional use approval must prove compliance with both the specific and general conditional use standards and criteria set forth in the applicable zoning ordinance. See, e.g., Thompson.

MAPP maintains Section 27-413(1)(D) of the zoning ordinance sets forth general conditional use standards and criteria that must be satisfied by all proposed conditional uses. Additionally, Section 27-2703(E)(4) of the zoning ordinance sets forth TOD-specific conditional use standards and criteria that must also be satisfied by all proposed TOD uses.

After a review of the evidence and testimony submitted during the hearing, MAPP argues, Council concluded in Conclusion of Law No. 9 that Applicant did not demonstrate compliance with 21 of the TOD-specific conditional use standards and criteria set forth in Section 27-2703(E)(4) of the zoning ordinance. Council further concluded in Conclusion of Law No. 10 that Applicant did not demonstrate compliance with four of the general conditional use standards and criteria set forth in Section 27-413(1)(D) of the zoning ordinance.

MAPP contends Applicant fails to advance any evidence or valid argument in support of its claim that any (let alone all 25) of Council's conclusions related to Applicant's failure to comply with the express conditional use criteria applicable to Applicant's proposed development were not supported by substantial evidence. To the contrary, it argues, Council's conclusions of law were clearly supported by the record, specifically, by the complete lack of any evidence Applicant submitted at the hearing to establish compliance. In fact, MAPP maintains, in its opinion, the trial court explained Council's findings and conclusions were all supported by the record from the hearing.

In short, MAPP argues, because Council's conclusions on Applicant's conditional use Application were clearly supported by substantial evidence, and were properly affirmed by the trial court, this Court should affirm.

In particular, MAPP points out, the trial court directed this Court's attention to certain pages of the hearing transcript in which Applicant's Engineer, its lone witness, explicitly testified the conditional use application: (1) did not include sidewalks as required by §27-2703(E)(4)(d)(2) of the zoning ordinance, Reproduced Record (R.R.) at 75a; (2) did not comply with all applicable landscaping buffer requirements required by §27-2703(E)(4)(g) of the zoning ordinance, R.R. 86a; (3) did not include a lighting placement, design, illumination or spillover plan as required by §§27-2703(E)(4)(i)(1), 27-2703(E)(4)(i)(2), 27-2703(E)(4)(i)(4) of the zoning ordinance, R.R. at 87a-88a; (4) did not meet the parking requirement of 1.5 spaces per residential unit (if Council excluded from that calculation the garages, which often times are used for additional storage), as

required by §27-2703(E)(4)(e)(1) of the zoning ordinance, R.R. at 92a; (5) did not include a conceptual utility plan as required by §27-413(1)(D)(3) of the zoning ordinance, R.R. at 93a; and, (6) that the DEP Act 2⁵ process (which has not occurred) would have to be completed before a determination could be made as to whether the proposed development would be detrimental to or endanger the health, safety and welfare of the general public, as required by §27-413(1)(D)(1) of the zoning ordinance, R.R. at 93a. Thus, MAPP asserts, as confirmed by the trial court, Council's denial of the conditional use application was supported by substantial evidence, and was therefore not an abuse of discretion or an error of law.

For its part, the Borough contends Applicant's central argument is that conditional use approval must be granted because preliminary conditional land development approval was previously granted. The Borough asserts Applicant cites no legal authority for this novel proposition, having backed away from the authority it cited to the trial court. The Borough argues it is legally incorrect to state the grant of a preliminary conditional land development approval compels the grant of conditional use approval.

The Borough further maintains Applicant also attempts to challenge some of Council's specific determinations as set forth in Council's findings of fact and conclusions of law. Aside from the issue of ingress/egress, the Borough asserts, Applicant did not present these arguments before the trial court, a point

⁵ "Act 2" refers to the Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995, P.L. 4, No. 2, 35 P.S. §§6026.101–6026.908.

which the trial court acknowledged in its opinion. Therefore, the Borough asserts, Applicant's contentions on these issues are waived.

The Borough adds that from a fair reading of the record, see R.R. at 68a, it is fairly easy to see what happened here. Applicant's counsel walked his expert witness through the various points raised in the Borough Engineer's review letter. However, that review letter did not purport to offer comment on every conditional use standard or criterion in the zoning ordinance. By addressing the letter, rather than the full list of criteria in the zoning ordinance, the Borough asserts, items were skipped entirely. The Borough argues that this placed Applicant in the untenable position of arguing it did not have to address each conditional use standard or criterion on the ground that the preliminary land development approval is, according to Applicant, tantamount to a conditional use approval.

2. Analysis

At the outset, we note, Council is the fact-finder here, with exclusive province over matters of credibility and weight to be afforded the evidence. Caln Nether Co., L.P. v. Bd. of Supervisors of Thornbury Twp., 840 A.2d 484 (Pa. Cmwlth. 2004). As such, Council may reject even uncontradicted testimony if it finds it lacking in credibility. Id. We will not engage in fact-finding or disturb Council's credibility determinations on appeal. Id.

Further, a conditional use is one specifically recognized by the legislature as consistent with the zoning plan. Aldridge v. Jackson Twp., 983 A.2d

247 (Pa. Cmwlth. 2009). As such, it is presumed the particular type of use does not, of itself, adversely affect public interest. Id.

In addressing an application for a conditional use, a local governing body must employ a shifting burden of persuasion. Id. First, the applicant must persuade the local governing body its proposed use is a type permitted by conditional use and the proposed use complies with the requirements in the ordinance for such a conditional use. Id. Once it does so, a presumption arises the proposed use is consistent with the general welfare. Id. The burden then shifts to objectors to rebut the presumption by proving, to a high degree of probability, the proposed use will adversely affect the public welfare in a way not normally expected from the type of use. Id.

In addition, a local governing body is entitled to considerable deference in interpreting its zoning ordinance. Id.

Section 27-2703(E) of the zoning ordinance permits a TOD by conditional use in the RO district. Section 27-413(1)(D) of the zoning ordinance sets forth four criteria that are generally applicable to all conditional use requests in the Borough. Additionally, Section 27-2703(E)(4) contains numerous detailed “Conditional Use Standards” specific to TODs. Id.

Here, Council determined Applicant’s conditional use application contained 21 deficiencies when viewed in light of the specific conditional use standards applicable to TODs, and the application did not satisfy any of the 4

general conditional use criteria. As the Borough argues, with the exception of its argument relating to ingress and egress for the development, in its brief to the trial court Applicant did not challenge Council's determinations regarding Applicant's failure to satisfy the standards required for conditional use approval of its proposed TOD. See Certified Record (C.R.), Tr. Ct. Dkt. No. 2014-08599, Br. of Appellant AMA/American Marketing Association. Nor did Applicant identify or challenge any of Council's findings or conclusions regarding Applicant's failure to comply with the conditional use standards in its land use appeal to the trial court. R.R. at 5a-7a.⁶ As such, Applicant's challenges to Council's determinations regarding its failure to comply with nearly all of the zoning ordinance's conditional use criteria

⁶ The only arguably relevant contentions in Applicant's land use appeal were:

5. During the course of the Hearing held on March 18, 2014 [Applicant] presented testimony to demonstrate that [Applicant] would be able to meet the requirements of the Borough Ordinance for the Conditional Use in its Final Land Development Plans.

6. The March 18, 2014 Denial by Council of [Applicant's] Conditional Use Application did not indicate that [Applicant] was unable to satisfy the requirements to obtain Conditional Use Approval[.]

* * * *

14. [Applicant] is entitled to Approval of its Conditional Use Application in accordance with the provisions of the Borough Ordinance[.]

* * * *

16. The action of Council in Denying [Applicant's] Application for Conditional Use is not authorized by any code, ordinance, or statute and is contrary to same and therefore procedurally defective, void and of no effect.

Reproduced Record at 6a, 7a (emphasis added).

are waived. See Berner v. Montour Twp., 120 A.3d 433 (Pa. Cmwlth. 2015) (failure to raise issue before trial court results in waiver).

Nevertheless, even if not waived, our review of the record supports Council's determinations regarding Applicant's failure to satisfy several of the zoning ordinance's conditional use standards applicable to TODs. In particular, Applicant did not clearly establish compliance with the following zoning ordinance provisions: (1) Section 27-2703(E)(4)(d)(2) (stating that convenient pedestrian connections shall be provided from all residential entrances to parking areas, open space and recreational areas, as well as to the transit station to be served by the TOD); (2) Section 27-2703(E)(4)(g) (relating to required planting buffers); (3) Section 27-2703(E)(4)(i)(1), (2), (4) (relating to lighting standards); (4) Section 27-413(1)(D)(3) (imposing a requirement that adequate utilities are present or will be provided); (5) Section 27-2703(E)(4)(b)(2) (relating to maximum building and impervious coverage requirements); (6) Section 27-2703(E)(4)(b)(4) (relating to maximum building length requirements); (7) Section 27-2703(E)(4)(b)(5) (setting forth building spacing requirements); (8) Section 27-2703(E)(4)(b)(6) (pertaining to building orientation); (9) Section 27-2703(E)(4)(b)(7)(a) (stating that blank walls are not permitted); (10) Section 27-2703(E)(4)(e)(2) (parking areas shall be interconnected and cross-easements provided to ensure shared use is provided where appropriate); and, (11) Section 27-2703(E)(4)(e)(3) (off-street parking and garages should be designed such that vehicular access to such parking or garages does not unnecessarily obstruct primary internal driveways or the existing external streetscape). Thus, even if Applicant properly preserved its challenge to Council's

determinations that it did not satisfy the zoning ordinance's conditional use criteria, Council acted properly in denying Applicant's conditional use application.

Indeed, on cross-examination Applicant's Engineer testified:

Q. ... I noticed a number of the specific conditional use standards. Your response was that they will be addressed later in the land development process; is that right?

A. That's correct.

Q. So lighting and all of the other requirements set forth by [the Borough's Engineer] under conditional use standards are going to be addressed not now but later in the land development process?

A. That's correct.

R.R. at 87a-88a (emphasis added). Clearly, Applicant's Engineer's testimony was insufficient to satisfy Applicant's burden to obtain the requested conditional use. As we explained in Thompson:

An applicant for special exception or conditional use must demonstrate that his proposed use meets the applicable requirements of the zoning ordinance when the application is submitted. A promise to comply or conditions compelling future compliance cannot cure an otherwise noncompliant application. 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.

Id. at 680 (emphasis added) (citations omitted).

In addition, while Applicant asserts Council's conclusions on the numerous deficiencies are in error because Applicant addressed these deficiencies on the plans it submitted with its conditional use application, Applicant did not use the plans it now references during the hearing on its conditional use application in an effort to prove compliance with the various conditional use criteria. Indeed, those plans were not made part of the record of the conditional use proceeding before Council, the fact-finder here. See C.R., Tr. Ct. Dkt. No. 2014-08599, Return of the Record of the Borough Council of the Borough of Ambler. Rather, Applicant relied on the testimony of its Engineer, who did not address all of the applicable conditional use standards applicable to TODs.

Further, we reject Applicant's argument that Council's grant of conditional approval to Applicant's *preliminary land development plan* requires approval of Applicant's conditional use application. To that end, Applicant's proposal required *both* conditional use approval and land development approval. As set forth above, in order to obtain conditional use approval Applicant was required to prove compliance with the *zoning ordinance's* criteria relating to conditional uses. Indeed, "satisfying the criteria for conditional use is just one step of the subdivision approval process. In fact, subdivision approval cannot be granted until the conditional use approval is first obtained. See Residents Against Matrix v. Lower Makefield Township, 845 A.2d 908 [(Pa. Cmwlth. 2002)] (a governing body cannot approve an application for final subdivision and land development when the applicant did not first apply for approval for the intended use.)" Thompson, 896 A.2d at 670.

Thus, Council's conditional grant of approval to Applicant's preliminary land development plan does not compel a grant of Applicant's conditional use application. To that end, the Borough's letter granting conditional approval of Applicant's preliminary subdivision plan expressly required that Applicant obtain zoning approval. R.R. at 21a-24a. Moreover, contrary to Applicant's assertions, neither Williams Holding Group, LLC v. Board of Supervisors of West Hanover Township, 101 A.3d 1202 (Pa. Cmwlth. 2014) nor McGrath Construction Inc. v. Upper Saucon Township Board of Supervisors, 952 A.2d 718 (Pa. Cmwlth. 2008), hold that the grant of preliminary subdivision or land development approval compels a grant of conditional use approval.

In addition, although Applicant appears to assert that, in denying its conditional use application, Council improperly applied criteria that relate to subdivision and land development applications and plans rather than zoning applications, our review of Council's decision reveals Council denied Applicant's conditional use application based *solely* on Applicant's failure to comply with the zoning's ordinance's express criteria relating to conditional uses, not on any SALDO provisions. As we stated in Thompson (with emphasis added):

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. See, e.g., [Sheetz]; [In re Brickstone Realty Corp., 789 A.2d 333, 340 (Pa. Cmwlth. 2001)]; Schatz [v. New Britain Twp. Zoning Hearing Bd. of Adjustment, 596 A.2d 294 (Pa. Cmwlth. 1991)]. In Schatz, we held that a zoning board could not reject an application for a special exception as not being in the best interest of the community because the application did not address the issues of adequate sewage capacity, storm water management or water supply requirements. We held that 'such issues are to be

addressed further along the permitting and approval process. Zoning only regulates the use of land and not the particulars of development and construction.’ Schatz, 596 A.2d at 298; compare East Manchester Township v. Dallmeyer, 609 A.2d 604 (Pa. Cmwlth. 1992) (we allowed the more stringent requirements for water supply and sewage to be considered because these requirements were a part of the township’s special exception requirements).

Similarly, in Brickstone Realty, we held that detailed design information such as floor plans, even if required by the ordinance, is not relevant to the consideration of a special exception or conditional application. All the ordinance required for approval of the use was information indicating the nature, size, and location of the proposed use. 789 A.2d at 339.

In Sheetz, the applicant sought a conditional use permit for construction of a service station. The application was denied by borough council on the grounds that the applicant failed to demonstrate compliance with requisite standards of a ‘service conditional use.’ The application did not show the required 40-foot buffer zone or planted buffer screen, which were required for the conditional use for a service station. The borough council reasoned that the applicant was not entitled to approval of its application by allowing them to establish compliance later in the context of a land development plan application. Thus, the applicant failed in its burden of establishing its application’s compliance with the necessary requirements as a precondition to approval. We opined, the applicant ‘is not permitted to evade these requirements because a service station is a conditional use, and upon review, [b]orough [c]ouncil properly denied the application.’ Sheetz, 804 A.2d at 115.

In In re Application for Conditional Use Approval of James Saunders, 636 A.2d 1308 (Pa. Cmwlth. 1994), [appeal denied, 657 A.2d 494 (Pa. 1995)], the applicant sought a conditional use permit to develop a 367-unit mobile home park on the property. The zoning ordinance listed a mobile home park as a conditional use in the agricultural district. The township supervisors denied the application on the basis that the application was deficient in various areas, especially failing to comply with the zoning ordinance’s requirements of

showing a centralized sewer and water system. Our review of the record revealed that the applicant presented testimony, diagrams and descriptions of the proposed water and sewage facilities. We opined that approval of a use is only the first step along the road for an applicant to receive an occupancy permit. We held that the information provided by the applicant was adequate to meet the requirement set forth in the zoning ordinance that the mobile home park have ‘central sewer and water’ and that the [s]upervisors erred in denying the conditional use application on the basis that the application itself did not meet the requirements for adequate water and sewage. James Saunders.

What we garner from these cases is that an applicant seeking conditional use approval must demonstrate compliance with the express standards and criteria of the ordinance that relate specifically to the conditional use. As illustrated above, those criteria will vary from ordinance to ordinance.

Id. at 670-71. Here, Council denied Applicant’s conditional use request based on its failure to comply with the express standards for conditional uses set forth in the zoning ordinance. No error is apparent in that decision. Thompson.

B. Final Land Development Plan

1. Contentions

Applicant further argues, because Council should have granted Applicant’s conditional use application based on the evidence submitted, if Applicant was able to satisfy the conditions of its preliminary land development approval, it should have received final land development approval. Thus, Applicant asserts Council’s denial constitutes an error of law and an abuse of discretion.

MAPP responds it is clear that subdivision and land development approval cannot be granted until conditional use approval is first obtained. Thompson. MAPP argues Applicant requested consideration of its final land development application at Council's May 2014 meeting, which was after the March 2014 denial of its conditional use application and the subsequent issuance of Council's written decision in April 2014. In accordance with applicable law, MAPP contends, Council voted unanimously to deny final land development approval based on, among other things, Applicant's failure to secure the prerequisite conditional use approval for the proposed development. MAPP argues Council's decision is in accordance with the law and therefore, was properly affirmed by the trial court.

Similarly, the Borough contends Council denied Applicant's conditional use application for a host of reasons. It was then required to deny Applicant's final land development application as such approval requires first that conditional use approval be obtained, and it was not.

2. Analysis

As indicated above, because final subdivision and land development approval cannot be granted until a conditional use approval is first obtained, Thompson; Residents Against Matrix, and because Applicant failed to obtain conditional use approval for its proposed development, no error or abuse of discretion is apparent in Council's denial of Applicant's final land development application.

IV. Conclusion

For all the foregoing reasons, we affirm the orders of the trial court that affirmed Council's decisions denying Applicant's conditional use application and final land development plan.

ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Appeal of AMA/American :
Marketing Association, Inc. from :
the Decision of the Borough Council :
of Ambler Borough, on May 21, 2014 :
dated May 22, 2014 Denying its : No. 643 C.D. 2015
Application for Final Land :
Development Approval for a :
Townhome Development :

Appeal of: AMA/American Marketing :
Association, Inc. :

In Re: Appeal of AMA/American :
Marketing Association, Inc. from :
the Decision of the Borough Council :
of Ambler Borough, dated March 18, :
2014 Denying its Application for : No. 644 C.D. 2015
Conditional Use for a Townhouse :
Development :

Appeal of: AMA/American Marketing :
Association, Inc. :

ORDER

AND NOW, this 14th day of June, 2016, the orders of the Court of
Common Pleas of Montgomery County are **AFFIRMED**.

ROBERT SIMPSON, Judge