

Exhibit B-21

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**October 3, 2019**

**Memorandum**

**To: Westtown Township Planning Commission  
Will Ethridge  
Robert Pingar**

**From: John D. Snook**

**Re: Toll Brothers New Conditional Use Plan Submission for Crebilly Farm**

**Introduction**

I have received the Toll Bros. submission package for a new Conditional Use application for development of Crebilly Farm under the provisions for use of the Flexible Development Procedure in the A/C Agricultural/Cluster Residential District, as they existed on the date of submission and not as subsequently amended. I have reviewed the submitted documents overall as well as the pertinent zoning ordinance provisions. I have not reviewed in detail the several technical submissions which require specific review by other members of your consulting team. These reviews will be reported to the Planning Commission and in testimony, as appropriate, during the public hearing process.

With one notable exception, the new Plan is essentially the same, from an impact perspective, as the 2016 submission, the exception being the inclusion of the "connector road," which does cause the relocation of some of the dwellings, but the total dwelling count is not changed.

The new Plan is still deficient in a few ways regarding conformance with submission requirements and with the Conservation Design process. It is notably deficient in conformance with the new Comprehensive Plan as required for a Conditional Use by several sections in the Zoning Ordinance. These issues are highlighted below.

**Plan Conformance with Submission Requirements.**

Will Ethridge prepared an excellent and thorough review of the "completeness" of the new Conditional Use application. I will not duplicate his points here except to stress a couple of points. Toll Bros. rebutted many of Will's points, and not entirely accurately.

Written Narratives.

Will notes the lack of written narratives to adequately describe how the information provided has been used to influence the Plan. Toll argues that the Ordinance does not specifically require “written narratives.” How does one assume from plan sheets how the information has been used without a narrative?

In fact, §170-1617.C(3)(b) requires that:

*The applicant shall 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 on surrounding properties.*

The Planning Commission may certainly ask the Applicants to demonstrate how the information presented was used to inform the planning process!

National Historic Landmark.

§170- 905.A.(1) (j) requires the indication of “*Historic resources, including structures, sites, traces, and relationship to the bounds of any National Register historic district.*” Not only have they not identified “sites and traces,” Toll argues that the Brandywine Battlefield National Historic Landmark is not on the property and does not need to be mapped nor analysis of impact to be provided. The ordinance does not say “on the property,” it says “relationship to.” The National Landmark is part of the National Register (NR) and is, in fact, a superior designation to a regular NR Historic District. The National Landmark’s formal boundary has not been altered in 50 years, despite continuing study of a larger area by the National Park Service, which administers the National Register. But even the old formal boundary does directly adjoin Crebilly Farm on New Street and Street Road, PA 926. The formal Study Area used by the National Park Service includes most if not all of Crebilly Farm.

Scenic Views/Scenic Landscapes.

§ 170-905.A(1), “Site Analysis,” also requires inventory of:

- (l) Scenic views.
- (m) *All lands visible from any adjacent public road. Visibility shall be measured as viewed from a height of four feet above the surface of the road looking in any direction or angle across the subject property, and shall be based on winter conditions (whether actual or estimated at the 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 Township approval.*

§ 170-1617.C(1)(c) requires inventory of:

- (c) *Other important existing resources on the site shall be added to the map, including woodlands, tree lines, large specimen trees over 18 inches in trunk diameter, scenic views from inside the site, ridgelines, and scenic views from existing streets and trails. These resources are known as "secondary conservation areas." The Planning Commission may require the identification of scenic views beyond those identified by the applicant. This map, or an accompanying map, shall also show: . . .*

§ 170-1617.C(2) (part) requires:

*Potential development areas also shall be delineated so as to minimize intrusion into secondary conservation areas. Land development activities and associated land disturbance shall not be permitted within more than 50% of secondary conservation areas, except where this standard is modified at the discretion of the Board of Supervisors as a condition of preliminary or final subdivision/land development plan approval or conditional use approval as applicable. In consideration of modification of this standard, the Board shall consider the nature of the intended land use and the anticipated scope of land disturbance normally associated with such use, as well as any planning or design measures proposed by the applicant to mitigate any environmental, aesthetic, or other community impacts resulting from land disturbance within secondary conservation areas.*

§ 170-2009.B(1) further states that

*It shall be the burden of the applicant to demonstrate compliance with the standards for conditional use contained in this section and with any other relevant stipulations of this chapter, and to indicate means by which potential impacts from the proposed use will be mitigated.*

Toll has argued that "scenic views" are "not applicable" and has stated that on multiple plan sheets. In requiring identification of scenic views as "secondary conservation resources," with the provision that at up to 50% of secondary resources could be disturbed, it was clearly the intent of the zoning text to see scenic views mapped upon the landscape, even though there was no specific text definition of "scenic views." A response of "not applicable" is clearly inadequate, especially in the context of the new Comprehensive Plan (see below). How can 50% or any area be measured if not mapped?

The Applicant did choose to identify "views from adjacent roadways" via an arrow along the road frontage and a photograph, but did not map the area in the view, nor include any proposed means to assess nor mitigate impacts.

The Board is required to consider design measures proposed by the applicant to mitigate any environmental, aesthetic, or other community impacts resulting from land disturbance within “secondary conservation areas.” There is no indication that the overall plan has been designed, nor the locations of house sites and other land disturbance have been selected or designed, nor that any mitigation has been proposed, in respect of secondary conservation areas, since scenic views, a key component, have been ignored.

It is important to note, as this process moves forward with the Planning Commission, that §170-1617.C(1)(c) specifically notes that “*The Planning Commission may require the identification of scenic views beyond those identified by the applicant.*”

§170-906 and §170-1617 make it quite clear that the Conservation Design process and review of any Flex Development proposal is intended to be undertaken cooperatively with the Planning Commission, to ensure that community conservation objectives contribute to ultimate development design. While the Ordinance infers that the Applicant should engage the Planning Commission prior to formal submission, that is not explicitly stated, and it is understandable that the Applicant would want to start the process with a formal submission in order to protect their standing. Nevertheless, it is very important that cooperative engagement with the Planning Commission to fine-tune the Conservation Design process occur NOW during the scheduled Planning Commission meetings, a process which did not adequately occur the last go-round. Such a process can result in a revised Plan that can be submitted to the Board that reflects mutual Township and Applicant objectives.

### **Other Key Plan Issues**

The Plan shows reasonable density calculations while leaving some uncertainty as to measurement of resources that must be netted out of density calculations as noted in Will Ethridge’s completeness review.

§ 170-2009.C(7) provides that the Board, at its sole discretion, may attach conditions requiring provision for additional utility or traffic safety facilities. § 170-2009.D(1)(f), among general standards for conditional use approval, further stipulates that “the demand created by the proposed use upon public services and facilities such as water supply, sewage disposal, police and fire protection, emergency services, open space and recreation facilities, and the public school system has been considered and, where necessary, adequate arrangements for expansion or improvement are assured.” § 170-2009.D(1)(h) adds that “the burden of proof shall be upon the applicant to prove to the satisfaction of the Board of Supervisors, by credible evidence, that the use will not result in or substantially add to a significant traffic hazard or significant traffic congestion. The peak traffic generated by the development shall be accommodated in a safe and

efficient manner. Such analysis shall consider any improvements to streets that the applicant is committed to complete or fund.”

It is unclear that the Plan adequately deals with improvements to public infrastructure which may be necessary or desirable to serve the site adequately nor address the ability of the Board, at its sole discretion, to attach conditions requiring provision for additional public facilities. I defer such issues to other qualified members of your consulting team.

Submitted plans meet minimum open space requirements numerically. And the required sixty percent open space is a considerable amount. But you would hardly know it looking at the plans. Much of the open space is located in relatively narrow swaths along stream corridors which are required to be reserved in any extent. Larger areas of open space are principally devoted to either stormwater management or sewage disposal (if the development is not able to be served by extended public sewer service).

An important open space objective on this tract should be to preserve significant areas of the Brandywine Battlefield and to respect the setting of the historic Crebilly farmstead fronting on Street Road (PA 926). As noted above, much of this tract has been included in the study area for the Brandywine Battlefield Preservation planning efforts undertaken by the Chester County Planning Commission on behalf of the National Park Service. We know, particularly from more recently discovered British and German records, that British and Hessian troops, as well as American scouts and possibly snipers, were in action in the western and southwestern portions of the tract. One can hardly argue that protection of the still remaining landscape setting of the largest single battle in the War for Independence does not fit into the conservation mandate of the Pennsylvania Constitution. Thus, it is very important to configure the open space in this regard. Development plans should relocate areas planned for development in the western-most and southwestern portions of the tract. Doing so will remove development from the immediate viewshed of the historic farmstead as well, and also relieve the very large distance at which some new homes will be from primary external access. If on-site sewage disposal fields are utilized, these could be intentionally placed in areas that would visually remain open space, as to an extent they have in the current Plan. An archeological survey, potentially including ground penetrating radar in selected areas, should be seriously considered.

§ 170-907.A(2) requires that ten percent of the net tract acreage be suitable, available and developed for active recreational purposes; this would total 27 acres. § 170-907.A(3) also provides for requirement of public pedestrian trails. While significant community recreational areas are provided in the current Plan, it would be even better if a significant portion of the required recreational lands and facilities included a literal

“parkway” along the connector road, including a parallel off-road bicycle/pedestrian route, and affording an interpretive location with view toward the Brandywine Battlefield.

Pursuant to conditional use requirements to adhere to the Comprehensive Plan and Open Space Plan recommendations, pedestrian trails should be included in the open spaces along Pleasant Grove Road, New Street, and Street Road to join with the “parkway” and circle the western portions of the tract entirely. There is no reason why these facilities cannot circumvent the outholdings held by Robinson family members.

### **Constitutional Requirement**

As stated in regard to the prior plan submission, the submitted Plan does not provide a clear response to the Pennsylvania constitutionally guaranteed right *“to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.”* Article 1, § 27 of the Constitution goes on to state *“Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”*

Recent court cases have held that the obligation of the Commonwealth extends to its municipalities. This does not mean that development cannot occur, but infers that development permitted under applicable ordinances should be designed in clear view of conservation opportunities.

### **Plan Conformance with the Comprehensive Plan.**

The Applicant seems to have missed the fact that a new Comprehensive Plan was adopted in March of 2019 and, thus, was in force at the time of this new application.

While providing for a “connector” road parallel to Route 202, as clearly spelled out and generally located in the new Comprehensive Plan, consistency with other key recommendations of the Comprehensive Plan and supporting ordinance provisions are either ignored or not fully clear.

These include traffic and sewer improvements; dedication of open space, publicly accessible trails, and preservation of scenic and historic resources.

The Zoning Ordinance includes a number of specific requirements for consistency with the Westtown Township Comprehensive Plan, which are excerpted below. Notable are requirements for site layout and open space to conform to the Comprehensive Plan. In that regard, the new Comprehensive Plan includes specific references to scenic preservation at Crebilly Farm and mapping of open space there, as detailed below.



Current Comprehensive Plan Excerpts, in Cultural Resources (Chapter 6) and Future Land Use (Chapter 11)

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“Scenic landscapes . . . have been consistently defined as those landscapes visible from the public right-of-way, which are characteristic of the natural heritage and historical settlement of the land.”

“A special aspect to scenic landscapes in Westtown is the interpretive value of remaining open space subject to action in the Battle of the Brandywine. The Battle occurred on September 11, 1777, was the largest single battle in the War for Independence in terms of troops employed, and was instrumental in an ultimate American victory. From recently discovered diaries of both British and German (Hessian) troops, the western portion of Westtown was involved in the forward advance of those troops toward definitive action in Thornbury and Birmingham Townships. Crebilly Farm remains as an important interpretive landscape relative to the battle.”

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“The Future Land Use Map groups the Township into the following general categories:

- Neighborhood Conservation;
- Mixed Use Areas;
- Open Space; and
- Greenway Corridors.

These categories reflect the intended future character of the areas as generally mapped, including existing and future development over the 10-20 year planning horizon of this Plan.”

The “Future Land Use Map” in the adopted Comprehensive Plan (at the end of Chapter 11) indicates the portion of Crebilly Farm that the Chester County Planning Commission has termed the “Brandywine Battlefield Swath” as “Open Space.” The corridor along Radley Run is mapped as “Greenway Corridor.”

**Recommended Follow-Up**

- Applicant should immediately embark on working with the Planning Commission to effectively complete the Conservation Design process as intended by the Zoning Ordinance.
- The Planning Commission should identify (and map) scenic views pursuant to §170-1617.C(1)(c) and consistent with the new Comprehensive Plan.
- Open space should be redesigned consistent with the Future Land Use Map in the new Comprehensive Plan.



- Areas planned for development, other than sewage disposal, in the western-most and southwestern portions of the tract should be relocated to provide for concentration of significant open space in the area of the Brandywine Battlefield, in scenic views and in the immediate viewshed of the historic farmstead off Street Road.
- Relocation of new homes as noted above also should relieve the large distance at which some new homes will be from primary external access to the tract.
- Unit count mix (single-family versus townhome or carriage house) should be adjusted to facilitate relocated development areas.
- Consideration should be given to reducing the minimum distance between multi-family dwellings (townhomes) to effect greater flexibility in meeting open space objectives.
- The Applicant, in coordination with the Township, should develop the connector road so as to make it continuous to the new connection to Skiles Blvd., T-ing in the connections to Pleasant Grove Road. This may or may not require cooperation with Westminster Presbyterian Church to provide additional right-of-way, depending on design.
- A “parkway” should line the “connector” road, with the Township agreeing that it meets requirements for active recreational lands.
- The trails system should be designed to include the three-mile publicly-accessible perimeter trail envisioned by the Comp Plan, looping along Pleasant Grove Road, New Street, Street Road and the “parkway” noted above.
- An archeological survey, potentially including ground penetrating radar in selected areas, should be seriously considered.
- All recommendations from the remainder of the consulting team should be fully considered.

**Specific Comp Plan References in the Zoning Ordinance (excerpted)**

§ 170-902.D (Flex)

*The location and conformity of the area shall be such that the flexible development thereof pursuant to this article would be consistent with the Westtown Township Comprehensive Plan.*

§ 170-906.B (Flex)

*The Planning Commission shall act as the principal agent for the Board in reviewing and commenting on proposals for flexible development. As such, it shall receive and review the plans and documents, particularly with reference to the criteria for location and*

design as contained in §§ [170-902](#), [170-904](#), and 170-905 of this chapter. In addition, the Planning Commission shall evaluate the consistency of the proposed development with the Westtown Township Comprehensive Plan, and other matters required for consideration by the Board in § [170-2009](#) of this chapter.

§ 170-907.A(1) (Flex)

- (1) The open space shall be laid out to the satisfaction of the Board in accordance with the best principles of site design, and shall be consistent with the intent of the Township's Comprehensive Plan and Parks, Recreation and Open Space Plan.

§ 170-907.A(3) (Flex)

- (3) Where applicable or deemed appropriate or contained in the Township's Comprehensive Plan or Parks, Recreation and Open Space Plan, provision for pedestrian trails for public and/or private use shall be provided. This provision need not be in addition to the 10% requirement of Subsection A(2) above unless the Board determines that the entire 10% minimum must be designated for active recreation.

§ 170-2009.C(3) (CU requirements)

- (3) At least 30 days prior to the date of the hearing, one copy of the application shall be furnished to the Township Planning Commission, together with a request that it submit recommendations to the Board for consideration at the hearing. The Planning Commission, in its review of the conditional use application, shall evaluate in particular the generalized site plan in relation to the Township Comprehensive Plan and the physical development of the Township.

§ 170-2009.D(1)(b) (CU requirements)

D. Standards for conditional use approval.

- (1) In reviewing and acting upon an application for conditional use, the Board of Supervisors shall evaluate the degree of compliance with the following standards:
  - (a) The uses proposed shall be limited to those authorized as conditional uses within the district in which the lot or parcel is situated.
  - (b) The proposal shall be consistent with the Township Comprehensive Plan and with the purpose of this chapter to promote the public health, safety, and general welfare.

§ 170-101 **General purpose.**

*This chapter is enacted for the purpose of promoting the health, safety, general welfare, and coordinated and practical community development of the Township; is in accordance with the Westtown Township Comprehensive Plan; and is designed to lessen congestion on the roads and highways, to secure safety from fire, panic and other dangers, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue congestion of population, to facilitate the adequate provision of transportation, vehicle parking, water, sewage facilities, schools, parks and other public requirements, to conserve the value of buildings, and to encourage the most appropriate use of land throughout the Township.*

§ 170-102 **Community development objectives.**

A. *This chapter is intended to carry out the goals and objectives of the Westtown Township Growth Management/Comprehensive Plan (Plan), which goals and objectives are hereby incorporated by reference. The plan has been formulated to implement the purposes set forth in § 170-101, above, in the respects therein stated, and more particularly with a view toward the following community development objectives:*

- (1) To avoid environmental harm from development.*
- (2) To preserve prime farmland and forests.*
- (3) To conserve the open and scenic character and natural beauty of Westtown Township.*
- (4) To provide for a variety of residential living environments.*
- (5) To prevent conflicts between land uses and to protect the property value of residents.*
- (6) To closely coordinate the road system with desired land uses.*
- (7) To manage access along Route 202 and other major roads to ensure safe and efficient transportation.*
- (8) To prevent strip commercial development, especially along Route 202.*
- (9) To provide for businesses only in locations with safe access that would not interfere with through traffic.*
- (10) To provide adequate community facilities, including a balance of passive and active open space.*
- (11) To stress continued cooperation with neighboring communities.*
- (12) To carry out the plan through a continuous program of planning and action.*