

August 27, 2021

Mr. Jon Altshul, Township Manager
Westtown Township
1039 Wilmington Pike
West Chester, PA 19382

**RE: Stokes Estate
John D. Snook Conditional Use Review**

Dear Mr. Altshul:

This letter is in response to John D. Snook's June 30, 2021 review of the above referenced conditional use application.

Listed below are our responses to the concerns identified in their review of the plans. Also, enclosed for your review are copies of the updated plans. Where applicable, D. L. Howell & Associates, Inc. has addressed each of these comments indicating what action has been taken to resolve the issues. **Any comments that are statements and do not require any action have been omitted in the list of responses.**

Plan Conformance with Submission Requirements.

Maggie Dobbs prepared an excellent review of the "completeness" of the Conditional Use application submission and found it incomplete. I will not duplicate her points here except to stress those relevant to my review.

It is notable that Maggie Dobbs and some of the other consultants noted discrepancies in the attribution of "net-outs" to base density calculation and in the calculation of potentially available bonus density (see §170-904.A(2)). I will not dwell on this issue except to note that use of bonus density also requires a higher level of certain design standards. Recalculation of bonus density, frankly, may also provide room for better design.

DLH Response: Per the response to Ms. Dobb's review, the open space plan has been updated to provide a tabulation and proper depiction of areas designated as base open space and then areas utilized incrementally toward the bonus open space. Areas utilized incrementally as part of the bonus open space exclude the certain areas not allowed to count toward bonus open space as listed in the ordinance Section 170-904.A(3)(a)[2].

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

DLH Response: Per Pennsylvania law, the conditional use application is not required to comply with the Township Comprehensive Plan.

Conservation Design Process

§170-906 and §170-1617 make it quite clear that the Conservation Design process must be followed for any use of the Flexible Development Procedure. It is also clear that the Site Analysis requirements of both §170-905.A(1) and §170-1617 are required to be met at the time of Conditional Use review. §170-906 and §170-1617 further stress that review of any Flexible 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 during scheduled Planning Commission meetings. Such a process can result in a revised Plan that can be submitted to the Board that reflects mutual Township and Applicant objectives.

DLH Response: The flexible development regulations do not require the applicant to have a cooperative engagement with the Planning Commission. Rather, the regulations just require Planning Commission review and recommendation.

Most of the features required for site analysis by §170-905.A(1) and §170-1617 are included on the plan sheets identified as "Existing Resources Plan." Not indicated are general geologic characteristics, drainage basin and subbasins, historic resources, paths and trails, scenic views, lands visible from public roads, or adjacent private or public open spaces. The complete lack of evaluation of historic resources, scenic views and trails and open space connections is of particular concern since it also is adverse to the purposes of the Comprehensive Plan.

DLH Response: General geologic characteristics are now provided on the Conservation Plans and Existing Resources Plan. Drainage basins and subbasins are indicated by the topographic contours provided. The existing residential buildings are now specifically called out on the Comprehensive plan and also shown on the Existing Resources Plan. There are no known existing paths or trails located within the vicinity of the proposed project. The Applicant has included photos from all applicable public roadways with this resubmission. The term "scenic views" is subjective and is not enforceable as determined by the Chester County Court.

Not consistently indicated are "approximate locations of natural features and principal buildings on those properties that are within 150 feet of the perimeter lot lines." Existing vegetation is somewhat rudimentarily denoted as "trees, brush, and field" (as opposed to "woodland, meadow, pasture, cropland, ornamental garden," etc.). Certain individual trees are indicated, presumably as deciduous or conifer, as the legend does not specify, nor are species nor sizes indicated. Approximate location of areas with a seasonally high water table are not specified, although general soil types are indicated. Predominantly hydric soils are mapped in the Comprehensive Plan (Chapter 5) and show substantial areas on this tract.

Some items related to future development, including finished topography and conceptual stormwater management are indicated or inferred on the "Grading Feasibility Plan." Not included are site stabilization or

erosion and sedimentation control plans. While listed among the required inventory items, these are more reasonably finalized after the initial planning review with the Planning Commission.

DLH Response: Generally, both the Conservation Plans and Existing Resources Plan provide locations of existing features and principal buildings within 150', and an aerial image has also been provided as part of the Conservation Plans to provide additional information that the physical survey cannot provide. Individual trees within the planned disturbed area have been surveyed and their sizes and species are indicated on Existing Resources plan sheets C02.2 through C02.4. Soils with seasonal high water table are now indicated with a hatch on the Conservation Plans. Erosion Control and site stabilization requirements will be provided and detailed as part of the Land Development Process and are not required as part of the conditional use process.

What has not clearly occurred or been demonstrated is adherence to the Conservation Design Process as set forth in §170-1617.C. As noted in §170-1617.B, *"This process is intended to show how the special features of the property relate to resource areas on adjacent lands, and how the development will properly relate to the features of the land that are most worthy of conservation."* Inventoried resources have not been specifically grouped and identified as "primary" and "secondary" conservation areas and, thus, there is no indication as to how the open space and development layouts respect those features or their prescribed disturbance limitations set forth in §170-1617.C(2). A plan entitled "Potential development areas concept map" has been submitted but does nothing specific to demonstrate compliance with this section. It is notable that the house lot lines are misleading as an indicator of resource disturbance limits; the "Grading Feasibility Plan" clearly shows extensive disturbance outside individual house lots in areas that may be mapped as "primary" or "secondary" conservation areas.

DLH Response: The conservation plans have been updated to include a tabulation listing the areas of both primary and secondary conservation areas, including the amount of disturbance proposed to the secondary conservation areas. Additionally, the proposed limit of disturbance has been added to the "Potential development Areas Concept Map".

Written Narratives

There is also a lack of written narrative to adequately describe how the information provided has been used to influence the Plan in accordance with the required Conservation Design process. How does one assume from plan sheets how the submitted 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 Applicant to demonstrate how the information presented was used to inform the planning process!

DLH Response: A written narrative is not required. The plans provided depict the analysis in both graphic and written tabular form.

Comprehensive Plan and related Zoning Provisions

§170-902.D stipulates: *“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.”* The current Westtown Township Comprehensive Plan was adopted in March of 2019.

Consistency with certain recommendations of the Comprehensive Plan and supporting ordinance provisions are either ignored or not fully clear. These relate to open space, recreation, trails, and preservation of historic and scenic resources.

Nearly the entirety of the Stokes Tract is indicated as “Open Space” on the “Future Land Use” map, other than a sliver of land along the East Branch of the Chester Creek, indicated as “Greenway.” The open space designation means that, from a comprehensive planning perspective, it was desired to preserve the property as open space. However, the Comprehensive Plan also recognizes the Stokes Tract as “unprotected open space and potentially developable” on the “Protected and Unprotected Open Space” map. Thus, the desire would be to protect as much open space as possible in the context of residential development and notably the “primary” or “secondary” conservation areas, intended to be identified through the Conservation Design process. This also applies to the sliver indicated as “Greenway,” which largely comprises “primary” conservation areas, although not identified as such in submitted plans.

Development of recreational opportunities, notably including publicly accessible trails, and including connection to adjacent open space (such as Plumly Farm Open Space and Westtown School), is strongly recommended in the Comprehensive Plan (see Chapter 7), and also in § 170-907.A(3) of the flexible development standards. Trail and open space connections are further clearly recommended for the “Open Space” and “Greenway” designations on the “Future Land Use” map (see Chapter 11). The “Trails and Bikeways” map (Chapter 9) shows “proposed trails” on the adjacent open space properties which should be connected to as well as linking the East Branch of the Chester Creek corridor up to Shiloh Road.

§ 170-907.A(2) also requires that ten percent of the net tract acreage be suitable, available and developed for active recreational purposes; this would total approximately 6 acres. No active recreational facilities are indicated in the submitted plans.

DLH Response: Pennsylvania Law does not require a conditional use application to be consistent with the Comprehensive Plan. Additionally, an area suitable for active recreation is now depicted on the Open Space plan if required by the Board of Supervisors.

The Township Historic Resources Map and the Comprehensive Plan note the entire Stokes Tract as “of local historical value.” While several existing structures are shown on the submitted plans, there is no indication of historic value. As indicated, these structures include a residence, a barn and silo, a garage, and a trailer. The residence and barn and silo are probably historic and should be considered for preservation under the provisions for the flexible development and the Conservation Design process.

In regard to scenic landscapes, the Conservation Design process requires 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.” How can 50% of any area be measured if not mapped? In a prior Court case, it was determined that a plan denial could not be upheld on the basis of failure to inventory scenic views, as scenic views were not specifically defined. That case was decided in the context of the prior Growth Management Plan which preceded the current Comprehensive Plan. On page 6-5 of the

current Comprehensive Plan is found: *“Scenic landscapes (mapped version of “scenic views) ” . . . 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.”* Nor have views from adjacent public roads been identified in submitted plans, a requirement that was upheld in the prior Court case. Regardless of legal requirements (or not) to identify scenic views, § 170-1617.C(1)(c) (part) further stipulates that the *“Planning Commission may require the identification of scenic views beyond those identified by the applicant, meaning views or landscapes that the Planning Commission itself believes to be scenic and included in the identification of “secondary” conservation resources, particularly in accordance with the 2019 Comprehensive Plan.*

DLH Response: The Township does not have a historic preservation ordinance. Scenic views are subjective and not enforceable. The Applicant has included photos of views from all applicable public roadways with this resubmission.

Impact Assessment

In regard to all of the issues noted relative to the Comprehensive Plan or the flexible development provisions or the Conservation Design process, § 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.”*

No resources have been specifically identified as “primary” or “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 to reflect any proposed mitigation of impacts to identified nor unidentified resources!

DLH Response: Primary and Secondary Conservation areas are mapped on the provided plans as discussed above.

CCPC Review and Site Design Issues

On January 6, 2021, the Chester County Planning Commission (CCPC) issued an excellent review of the sketch plan presented at the time of consideration of amendment to the Sewage Facilities Plan. Because the current Conditional Use Plan is not dissimilar to that sketch plan (other than a few less dwelling units), the Township has not requested an additional review from CCPC at this time. It is very important that the Planning Commission and the Applicant review the CCPC letter during the current review process.

The letter notes that consistency with the County Conservation Plan (Landscapes) for the applicable “Natural” and “Suburban” landscape designations should carefully respect the noted resources and site constraints. CCPC particularly notes the lack of information regarding historic resources and the lack of provision for trail and open space connections.

CCPC also notes that the Stokes Tract is part of a Township adopted Agricultural Security Area, which is entirely inconsistent with the proposed development plans. This needs to be resolved prior to development approval and the property removed from the Agricultural Security Area.

The submitted plan is very linear in nature, reflecting the constraints imposed by the two pipelines but ignoring constraints that should be imposed by natural and historic resources (“primary” and “secondary” conservation areas) in order to be consistent with the lay of the land.

CCPC has further suggested review and potential use of three alternative plan approaches, which I fully support. One of them involves a change to all attached dwellings and one a mixed dwelling type alternative, both permitted under the flexible development provisions. The third alternative is entirely single-family residences, as proposed here. I recognize that dwelling unit differentiation is a market decision by the Applicants. All three plans are far more consistent with the preservation objectives of the Township and include development of trails consistent with the Comprehensive Plan and the flexible development stipulations.

I strongly encourage the Planning Commission and the Applicants to fully consider these alternative plan suggestions!

DLH Response: The CCPC review comments are non-binding recommendations that are subjective that do not require a response.

Constitutional Requirement

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.

DLH Response: Article 1 Section 27 of the PA Constitution does not apply to a conditional use application or to privately owned lands.

Addendum:

Specific Comprehensive 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.

DLH Response: Pennsylvania Law does not require a conditional use application to be consistent with the Comprehensive Plan. The Applicant will demonstrate compliance with the applicable objective specific

and general conditional use criteria at the hearing on the conditional use application before the Board of Supervisors.

I trust that all of their comments have been addressed adequately. Please do not hesitate to contact me at 610-918-9002 with any questions.

Sincerely,
D.L. HOWELL & ASSOCIATES, INC.



Denny L. Howell, PE
President



David W. Gibbons, PE
Senior Engineer