

**IN RE: THE APPLICATION OF : BEFORE THE BOARD OF SUPERVISORS
TOLL MID-ATLANTIC LP COMPANY, INC. : EAST BRADFORD TOWNSHIP
: CHESTER COUNTY, PENNSYLVANIA**

DECISION

The Board of Supervisors of East Bradford Township, Chester County, Pennsylvania (the "Board"), after proper advertisement, met at either 6:30 P.M. or 7:00 P.M. on the following dates to hear evidence on the Application of Toll Mid-Atlantic LP Company, Inc. (the "Applicant") for conditional use approval to permit 60 townhouse dwelling units pursuant to a proposed Zoning Ordinance amendment to the Zoning Chapter of the East Bradford Township Code ("Code") at 250 North Bradford Avenue, East Bradford Township, Chester County, Pennsylvania, the former Daily Local News property identified as UPI No. 51-5-86.2 (the "Property"): Tuesday, April 9, 2019; Tuesday, May 14, 2019; Tuesday, June 11, 2019; and Tuesday July 9, 2019.

The Applicant was represented by Louis Colagreco, Esquire. Andrew Semon from Toll Brothers testified on behalf of the Applicant, and Matthew Hammond, with Traffic Planning & Design, also testified on behalf of the Applicant. Present at the hearings were Chairman Vincent M. Pompo, Esquire, Vice Chair John D. Snook, and Member J. Patrick Davis. Also present were Ross A. Unruh, Esquire¹, Township Solicitor, Mark Lucas, Township Engineer, and Mandie Cantlin, Township Manager. The Township Planning Commission was granted party status.

¹ Amanda J. Sundquist, Esquire appeared at the June 11, 2019 hearing. Andrew Rau, Esquire appeared at the July 9, 2019 hearing.

I. FINDINGS OF FACT

1. The Property is located at 250 North Bradford Avenue, East Bradford Township, Chester County, PA (UPI No. 51-5-86.2) and contains an office building which had been known as the Daily Local News building.

2. The following exhibits were presented into evidence:

- B-1 - Application, which includes an Illustrative Landscape Plan, Community Spaces Plan, Conditional Use Site Layout Plan, Conditional Use Existing Features Plan, Conditional Use Stormwater Plan, an Environmental Impact Assessment, Redacted Sales Agreement, and some other incidental submissions and referrals
- B-2 - Affidavit of Posting the public notice on the Property
- B-3 - Proof of Publication
- B-4 - Proposed Residential Overlay District Ordinance
- B-5 - Landowner's acknowledgment
- T-1 - April 19, 2019 Letter from Gilmore and Associates
- T-2 - Environmental Advisory Council Meeting Minutes for March 25, 2019
- T-3 - April 17, 2019 Letter from Thomas Comitta and Associates
- T-4 - April 22, 2019 Letter from the Chester County Planning Commission with its comments and review on the proposed zoning ordinance amendment
- T-5 - April 22, 2019 Letter from the Chester County Planning Commission with its review of the conditional use application
- T-6 - April 23, 2019 Memorandum from Mark Lucas to the East Bradford Planning Commission
- T-7 - Extract of the Planning Commission Meeting Minutes of April 23, 2019 addressing Chester County Towns Daily Local Residential Overlay Ordinance and commenting and making a recommendation with respect to the conditional use application
- T-8 - April 24, 2019 Memorandum from Melissa Needles to the East Bradford Township Planning Commission

- T-9 - April 26, 2019 Letter from Gilmore Associates
- T-10 - May 14, 2019 Memorandum from Mr. Lucas to the Planning Commission
- T-11 - Excerpt from the May 28, 2019 East Bradford Township Planning Commission Meeting Minutes
- T-12 - May 28, 2019 Memorandum from Gilmore Associates
- A-1 - East Bradford Township Conditional Use Application and Cover Letter dated December 21, 2018
- A-2 - East Bradford Township Zoning Ordinance (*incorporated by reference*)
- A-3 - Ordinance creating the R Residential Overlay District
- A-4 - Agreement of Sale between 250 N. Bradford Avenue LLC and Toll Mid-Atlantic LP Company dated September 27, 2018
- A-5 - Affidavit of Mailing of Notice to Property Owners
- A-6 - Amended Conditional Use Plan Set prepared by ESE Planning dated January 20, 2018 and last revised March 20, 2019, consisting of:
 - a) Sheet 1: Illustrative Landscape Plan
 - b) Sheet 2: Community Spaces Plan
 - c) Sheet 3: Site Layout Plan
 - d) Sheet 4: Existing Features Plan
 - e) Sheet 5: Stormwater Management Plan
- A-7 - Environmental Impact Statement prepared by ESE Planning dated December 20, 2018
- A-8 - Rendered Perspective of Proposed Townhouses
- A-9 - Off-Site Trail Sketch
- A-10 - Curriculum Vitae of Matt Hammond
- A-11 - Transportation Impact Study prepared by TPD dated October 15, 2018
- A-12 - Combined Entrance Sketch and Truck-turning Diagram
- A-13 - Illustrative Landscape Plan – ALT prepared by ESE Planning dated May 14, 2019

A-14 - Illustrative Landscape Plan – ALT prepared by ESE Planning dated June 11, 2019

The Code and Zoning Map were incorporated into the record by reference.

3. The Applicant is the equitable owner of the Property.
4. In the application the Applicant proposed to construct 60 townhouses pursuant to a site layout plan set forth Exhibit A-6. This was a subsequent revision depicted on the site layout plan marked Exhibit A-13.
5. The Property is located in the C-2 Commercial District which did not permit the proposed development of townhouses. Accordingly, the Applicant proposed an ordinance (Exhibits A-3 and B-4) which would create an R Residential Overlay District, which when enacted would permit the proposed townhouse development.
6. Concurrent with the conditional use hearing on the application was a hearing to consider of the proposed ordinance change set forth in Exhibits A-3 and B-4.
7. The property is 6.1 acres located at the southwest corner of the intersection of Bradford Avenue and Strasburg Road.
8. The Applicant is proposing two points of ingress and egress. One is an intersection with Bradford Avenue across from DeBapiste Lane. The other is an intersection with Strasburg Road across from the Giant Food Store Shopping Center driveway.
9. South of Property and southwest of the Property is land comprising the Bradford Square residential development. West of the Property is an Ace Hardware store.
10. The Plan proposes:
 - (a) Road A.
 - (b) Alley A and Alley B.
 - (c) Green areas between certain units.

- (d) Open Space areas A and B which will also be stormwater management facilities (which will be wet during and after rain events).
- (e) Dog park in southeast corner.
- (f) Sidewalks throughout the interior of the Property.
- (g) Sidewalks along the Strasburg Road and Bradford Avenue road frontage.
- (h) Cross walk across Strasburg Road on the west side Bradford Avenue.
- (i) Cross walk across Bradford Avenue along the north side of Strasburg Road.
- (j) The proposed dwelling units are stepped into the grade as more particularly depicted on site cross section – A.

11. Applicant represented that much of the existing vegetation will be retained.

12. Applicant is proposing public water and sewer.

13. Applicant shall require a PennDot Highway Occupancy Permit for the Strasburg Road intersection.

14. Applicant shall require approval from the Chester County Conservation District for erosion and sedimentation control plans, a NPDES Permit for stormwater management, and PA DEP approval for a sewage planning module.

15. In response to comments from the Board Members during the April 14, 2019 hearing, during the May 14, 2019 hearing the Applicant presented a revised plan Exhibit A-13. It depicted a reduction in number of units from 60 to 56 and it provided for an additional green space area west of dwelling unit number 1.

16. As a result of discussions among the Applicant's representatives and the Board of Supervisors during the May 14, 2019 hearing, during the June 11, 2019 hearing the Applicant presented a revised site layout plan (A-14). It is the Exhibit A-14 site layout plan for which the Applicant is requesting the Board to consider and grant conditional use approval.

17. The following are the changes to Exhibit A-14 from the prior site layout plans (which are Exhibits A-6 and A-13):

- a. At the southwest corner of Road A, there is an L-shaped intersection with stop movements in both directions.
- b. Road A will be private.
- c. The number of dwelling units has been reduced to 56 from 60.
- d. Between units 51 and 52, there is a common open space green area in the center of the Property for use by the property owners.
- e. There is a sidewalk from Road A intersection along the south site of Strasburg Road extending northwest to the adjacent Ace Hardware Store property.
- f. The interior sidewalks are now four (4) feet wide for the common areas, but remain at three (3) feet into the individual units.

18. The common open space green area will have the following amenities: paver patio area, picnic tables, possibly an outdoor kitchen, and a fire pit. In addition, since the common green area is relatively flat, it is an area for recreation activities such as Frisbee and soccer.

19. Applicant agreed that during the land development process to provide an access and utility easement on the Property to the adjacent Ace Hardware property. In addition, the easement would provide for an offer of dedication to the Township conditioned

upon the Township agreeing to accept dedication of Road A, which is proposed to be a private road.

20. Provided the Township obtains the necessary right of way, the Applicant shall extend an asphalt trail from Applicant's property line to connect with an existing Bradford Square Homeowners Association trail, and to resurface the Bradford Square Homeowners Association trail to Hillsdale Road. Applicant represented that the Bradford Square Homeowners Association is agreeable to this proposal.

21. The plan identified as Exhibit A-14 complies with the area and bulk and design standards set forth in the proposed Zoning Ordinance Amendment to the Code.

22. During the hearings, and in particular during the hearing on June 11, 2019 and the Board of Supervisors hearing on July 9, 2019, the Applicant and the Board of Supervisors discussed proposed conditions. The Applicant has agreed to the conditions which are incorporated in this Decision and Order.

II. DISCUSSION

Applicant requires conditional use approval in order to build 56 townhouse dwelling units on the Property. A conditional use has been considered by the courts to be similar to a special exception. More particularly, the existence of a conditional use indicates a legislative decision that the use is consistent with the zoning plan and should be denied only where the adverse impact upon the public interest exceeds that which might be expected under normal circumstances. Brentwood Borough v. Cooper, 431 A.2d 1177 (Pa. Commw. Ct. 1981). Therefore, where an applicant brings himself within the terms of a conditional use, the application must be granted unless the evidence indicates that the use will result in substantial injury to the public interest. Susquehanna Township Board of Commissioners v.

Hardee's Food Systems, Inc., 420 A.2d 367 (Pa. Commw. Ct. 1981). Also, reasonable conditions may be imposed upon the granting of a conditional use. 53 P.S. §10913.2.

The testimony and exhibits establish that the Applicant has met the objective standards in the Code and the proposed Zoning Ordinance Amendment to the Code in order to be able to build the proposed 56 townhouse dwelling units on the Property. However, as indicated in the Findings of Fact, this Decision and Order proposes 34 conditions to which the Applicant has agreed. Finally, this Decision and Order will not be effective until five (5) days after its date on which the proposed Zoning Ordinance Amendment is in full force and effect.

III. CONCLUSIONS OF LAW

Applicant has established entitlement to conditional use approval for the 56 townhouse dwelling units on the Property but subject to the adoption of the proposed Zoning Ordinance Amendment for (Exhibit A-3 and B-4) being in full force and effect.

IV. ORDER

AND NOW, this 9th day of July, 2019, the Board of Supervisors of East Bradford Township hereby DENIES conditional use approval for the site layout plans set forth in Exhibit A-6 and Exhibit A-13 for failure to comply with the Zoning Chapter of the East Bradford Township Code and in particular the proposed Zoning Ordinance Amendment. Furthermore, the Board of Supervisors hereby GRANTS conditional use approval to the Applicant to have 56 townhouse dwelling units in accordance with the site layout plan depicted on Exhibit A-14 for the Property located at 250 North Bradford Avenue, East Bradford Township, Chester County, Pennsylvania, identified as UPI No. 51-5-86.2, effective July 15, 2019 and subject to the following conditions:

1. The use and development of the Property shall be substantially in accordance with the testimony and exhibits presented by the Applicant during the hearings. The maximum number of dwelling units shall be 56. The revised plan marked Exhibit "A-14" depicting the central green shall be the approved layout.

2. The Applicant shall comply with the Subdivision and Land Development Ordinance ("SALDO") and the Stormwater Management Ordinance requirements for this project (subject to any waiver requests granted by the Board of Supervisors in its discretion), and shall submit land development plans pursuant to the Township's Subdivision and Land Development Ordinance, substantially in accordance with the plans submitted as Exhibits A-1 through A-14, except as modified by the conditions of this Order.

3. The Applicant shall provide public sanitary sewer service to the project, pursuant to a planning module to be reviewed by the Township prior to submission to PaDEP. The Applicant, at Applicant's expense, will construct any additions to or improvements of the collection system necessary to serve the project, and shall pay to the water purveyor all required fees.

4. The Applicant shall provide public water service to the project.

5. The townhouse dwellings shall be owned as "footprint lots" pursuant to the Pennsylvania Uniform Planned Community Act. The Applicant shall submit its proposed Declaration of Covenants, Conditions and Restrictions to govern the community to the Township Solicitor for review and approval as part of the land development plan review process.

6. Applicant shall retain as much of the existing healthy vegetation along the southern and southwestern property lines within the 20' landscape buffer as recommended by the

arborist. In that regard, Applicant shall engage the services of an arborist to identify healthy vegetation to be retained and invasive species which shall be removed.

7. The existing landscape material in the southern and western boundaries shall be supplemented per the numerical planting requirements of the Zoning Ordinance with a variety of trees and understory plantings as recommended and approved by the Township landscape consultant.

8. In addition to the proposed interior sidewalks, there shall be sidewalks along the Bradford Avenue and Strasburg Road frontages, with widths consistent with Exhibit A-14 and Condition #16.

9. The sidewalk along Strasburg Road shall be extended west to connect to the ACE Hardware store driveway, with the ACE Hardware property owner permission if needed. In addition, the land development plans shall depict for the benefit of the ACE Hardware property owner, easements for sanitary sewer, public water and a motorized vehicle access large enough to accommodate expected deliveries to the ACE Hardware property. The motorized vehicle access easement shall be offered for dedication to the Township upon plan recordation; with the condition that said easement may only be accepted for dedication upon the Township acceptance of Road "A" for dedication as a public street. However, the exact location of the easements and timing of dedication shall be determined more precisely during the land development process. The motorized vehicle access easement shall contain a continuing offer of dedication to the Township. The Applicant shall run utility lines for sanitary sewer and public water to the ACE Hardware property line for potential future connection.

10. Applicant shall use its best efforts to obtain permission from the Bradford Square Homeowners Association for the installation of the offsite trail as depicted on Exhibit "A-9", but subject to the Township assistance with obtaining the required right of way.

11. Road A may be offered for dedication to the Township so long as there are no Belgium block curbs, and if it is designed in accordance with the SALDO regulations unless the Township Engineer recommends waivers. The alleys depicted on E-1 of Exhibit "A-6" and on Exhibit "A-14" shall not be offered for dedication.

12. Stormwater management facilities designed and constructed for the project shall detain/retain volumes of stormwater and manage rates of stormwater discharge as required by the Township Code. Stormwater management shall be accomplished with the design and construction of subsurface facilities for all required design storms to enable year-round use of the surface of the facility area for community space (the elevation of the maximum volume of runoff necessary in the facility to accommodate the Code compliant design shall be located below the surface of the ground). Hydrograph computations shall be completed using the Soil Cover Complex Method. The Rational Method shall not be used for any hydrograph computations.

13. At the point of connection to the Bradford Square walkway, the Applicant shall improve the public walkway up to the edge of Hillsdale Road and shall clearly demark the location where the private Bradford Square HOA walkway diverges from the public walkway. See attached as Exhibit "A".

14. The ongoing routine and regular maintenance of the exterior public walkways situated on the Property, also extending to the existing trail on Bradford Square Homeowners Association Property, and including the trail to the dog park, shall be the

responsibility of the Applicant-created Homeowners Association. Routine and regular maintenance includes, but is not limited to snow removal, weed removal and mowing. The Township shall be responsible for future repaving of the public walkways and trail.

15. Subject to PennDOT approval, and the Township securing the consent of West Chester Borough if needed for PennDOT permitting purposes, the Applicant shall provide raised, or otherwise safe, crossings across Strasburg Road at the new entrance across from the shopping center driveway, and also at the intersection of Strasburg Road and Bradford Avenue, north to south and east to west across the north leg of Bradford Avenue as depicted on Exhibit "B" hereto.

16. The sidewalks shall be constructed a minimum of 5-feet wide where public, a minimum of 4-feet wide where leading internally to more than one unit, and 3-feet wide only where leading to the entrance of a single unit.

17. The Applicant shall prepare and implement a plan to maintain, and replace as necessary, all existing trees not otherwise to be removed in the course of construction as approved by the Township.

18. Applicant shall make a contribution for the acquisition or improvement of firefighting, rescue and ambulance and other emergency services equipment, securing the safety of the proposed development and residents. The manner of this emergency service contribution shall be at a rate of \$200 per dwelling unit, payable for each dwelling unit concurrently with the application for a building permit for each dwelling.

19. The Applicant shall secure all non-municipal permits and approvals necessary for construction of the project, prior to the commencement of construction. Such permits and approvals shall include, but not be limited to, (i) Chester County Conservation District

approval of the erosion and sedimentation control plans, (ii) NPDES permit for stormwater management (including post-construction stormwater management plans and maintenance procedures, to be included within the Community Declaration documents), and (iii) DEP approval of the planning module for sewage.

20. The Applicant shall post performance guarantees for the installation of all improvements necessary for development of the Community, including stormwater, landscaping and lighting facilities, at the time of recordation of the final subdivision and land development plans. The Applicant shall record the Township required Agreement, specifying the maintenance program for the stormwater management facilities to be constructed on-site as part of the site improvements. A time-stamped copy of the O&M Agreement shall be appended to the Declaration of Covenants, Conditions and Restrictions as an exhibit thereto, and the Public Offering Statement to be provided to prospective homebuyers shall make specific reference to the maintenance responsibilities of the Homeowners Association with regard to stormwater management facilities, to be set forth in the Post-Construction Stormwater Management Plan to be submitted as a component part of the subdivision and land development plans for the project.

21. Applicant shall remit the fee in lieu of recreational open space as required by Section 95-34.1 of the Code. To the extent permitted by the Code, the Applicant shall receive credit toward reducing the required fee in lieu for the provision of the central green space depicted on Exh. A-14, the dog park area, the trail work on Bradford Square property, and the subsurface stormwater management facility areas.

22. Applicant shall investigate minimum sight distance requirements for the proposed Road A intersection with Strasburg Road and report its findings to the Board of Supervisors

prior to any filings of a subdivision and land development application for the project, particularly if a portion of the embankment along the ACE Hardware property must be removed to provide minimum sight distance according to PennDOT standards.

23. Applicant shall obtain a PennDOT assessment of the warrant to construct a left turn lane into the development and ACE Hardware from westbound Strasburg Road, and address related Bradford Avenue sight distances, and report its findings to the Board of Supervisors prior to any filings of a subdivision and land development application for the project.

24. Applicant shall depict on the subdivision and land development plan locations for deposition of removed snow, ice and winter maintenance materials for both the Township Public Works Department and the Homeowners' Association winter maintenance contractor as part of a winter maintenance plan. The winter maintenance plan for the development shall not include depositing snow, ice and winter maintenance materials in or over the stormwater management areas, nor shall the plan require the Township to remove those items from the property.

25. Applicant shall depict on the plans snow emergency routes where the road proposed to be dedicated to the Township is immediately adjacent to proposed parking areas, parallel or head in.

26. Applicant shall notify initial buyers that the project is within a mixed use commercial district that will be subject to truck deliveries to ACE Hardware and future commercial users of the ACE Hardware property within the settlement documents, a copy of which shall be provided to the Township for review and approval.

27. In consideration for the Township becoming the permittee of drainage facilities within the PennDot rights-of-way, Applicant shall provide an endowment of 50 percent of

the Township-approved itemized actual cost of the installation of the drainage facilities within the PennDOT rights-of-way to the Township for perpetual maintenance of the storm drainage facilities, with exception to any facilities constructed that are connected to the stormwater management facility outlet structures.

28. Lighting for the development shall be designed per the requirements listed in the Zoning Ordinance, with particular attention given to public walkways and pedestrian crossings of Bradford Avenue, Strasburg Road and the main internal roadway constructed for the project. No other lighting shall leave the tract boundary.

29. The hours of the dog park shall be regulated by the Homeowners' Association, limited in hours not exceeding 6am to 10pm prevailing time, but in no case shall noise from the operation of the dog park exceed noise levels permitted in any other residential zoning district.

30. The unit facades shall be as presented in Exhibit A-8 by the Applicant. The declaration and other Homeowners' Association documents shall indicate that the proposed facades shall remain in perpetuity.

31. The Applicant shall present turning templates during the land development process indicating that standard delivery trucks (UPS, FedEx, and similar) can navigate all areas of the project without the need to travel out of lane. The Applicant shall present turning templates during the land development process indicating that expected emergency vehicles (as provided by the associated fire companies) can navigate the site without the need to travel off of the cartway.

32. The name of the development shall be West Chester Crossing. Individual street and alley names shall be historic to the general area, with such street and alley names being finally determined in the subdivision and land development process.

33. During the land development plan process, the Board of Supervisors reserves the right to make such modifications to the project as may be requested by the Applicant as the Board of Supervisors deems to be in the public interest, without the necessity of reopening the conditional use hearing, subject to the Board's providing prior notice of the proposed modifications to parties of record in the conditional use hearing.

34. The Applicant shall, within sixty (60) days of the date hereof, reimburse the Township for Township expenditures related to this application, including fees payable to Township consultants, the Township Solicitor, and costs of a court stenographer for appearances and transcripts in the amount over and above the initial application fee.

ATTEST:



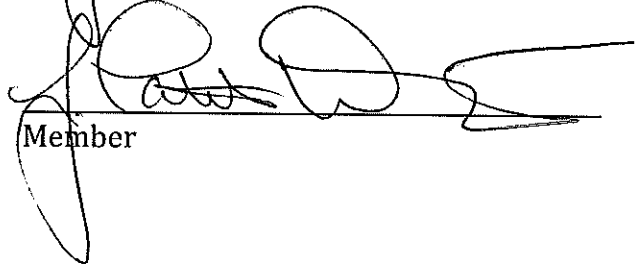
Secretary

**EAST BRADFORD TOWNSHIP
BOARD OF SUPERVISORS**

Chairman



Vice Chairman



Member