

**Tinicum Township Planning Commission Minutes**  
January 3, 2023 (Continuation of 10/25/22 Meeting)

Members Present: John Clement, John Cole, Terry Johnston, Carl Ruthardt, David Upmalis, Neil Sullivan

Others In Attendance: Steve Baluh of Wynn Associates, Zak Tretton of Creamery Road, Daniel Lyons of Fox Rothschild LLC, Dan Humes from Van Cleef Engineering, David C. Babbitt of David C. Babbitt & Associates, Township Supervisor Eleanor Breslin, Township Manager Teri Lewis, township residents

Call To Order: Dr. Upmalis

Public Comment: None

Approval of Minutes:

**MOTION** by Mr. Cole to approve the minutes of the planning commission meeting held on September 27, 2022 and continued to October 11, 2022. Seconded by Mr. Johnson. Unanimous Vote to Approve.

New Business

1. LD 2022-3: Land Development of Tretton & CU 2022-1: Conditional Use of Tretton TMP 44-001-022-002, 31 Creamery Rd, Ottsville

Continuation of Planning Commission review on October 25, 2022.

The applicant proposes to renovate an existing barn as a commercial wedding venue and requests multiple waivers and four Conditional Use approvals.

Mr. Johnson stated that as an aggrieved party to the proposed development, he would recuse himself from the proceedings. Dr. Upmalis advised that Mr. Johnson would not vote on the matter but could participate as a member of the public.

Dr. Upmalis noted that the applicant was requesting both preliminary and final approval and that there were numerous inconsistencies in the application. He asked if the applicant had received communication between PennDOT and the former engineer as discussed in the previous meeting. Daniel Lyons of Fox Rothschild LLC, representing the applicant, said that communication was by telephone and so there was no written record.

Dr. Upmalis then led a review of Van Cleef Engineering's letter to the Township dated November 22, 2022, in response to the Land Development and Conditional Use review from Wynn Engineering dated September 22, 2022:

Dr. Upmalis noted that the emails with the Township Solicitor and Engineer referenced in item #15 were not included for review by the Commission. Mr. Lyons replied that the applicant is exempt from a hydrogeologic study because the property does not exceed the 100 gallons-per acre per-day threshold. Mr. Ruthardt asked for an explanation of the discrepancy between the projected amount of water use per day in the application (1100 gallons) and the county's projection (2200 gallons). Mr. Lyons said he didn't know the numbers off the top of his head but assured the commission that this issue had been discussed at length between himself, Township Solicitor Steve Harris, M2 Associates and expert Dave Fennimore. Mr. Ruthardt asked Mr. Baluh if M2 Associates had reviewed the applicant's Planning Module. Mr. Baluh said not to his knowledge, adding that the discrepancy in the water flow projections was due to the use of two different standards: in the Planning Module, the restaurant standard of 10 gallons-per-day was used while in the well study the standard of 5 gallons-per-day was used. He said that the County Health Department had determined that 10 gallons-per-day was the appropriate projected use for this development. Mr. Ruthardt said that the correct calculation would mean the applicant was not exempt from a hydrogeological study according to the Township's ordinance and Mr. Baluh agreed. Mr. Lyons said it was his opinion that the matter was settled, again citing emails among the experts. Dr. Upmalis stated that those emails needed to be reviewed by the Commission before the matter could be settled. Mr. Lyons agreed that he would provide them.

Regarding item #20(G) and Component 4A, a Planning Module for the septic was submitted, but Ms. Lewis noted that the application fee had not been received and that the Planning Module cannot be reviewed without Land Development. Dr. Upmalis said the 60-day clock had not begun since the application fee had not yet been paid.

Regarding item #20(H), Dr. Upmalis asked if the response is in keeping with standard procedure, and Mr. Baluh replied that it is.

Regarding the applicant's response to item #1, Mr. Clement objected to the applicant's response that FEMA has no designated floodplain areas on the property and thus the Township's Floodplain Overlay map is "outdated" and compliance is not required. He noted that the Floodplain Overlay map was created by the Township, not FEMA, drawing on information gathered from USGS elevations, hydric soil mapping, and a flood insurance study. He showed a close-up of the Floodplain Overlay map, which clearly indicates that a majority of the proposed development is within the overlay, including a large portion of the parking lot and the entire reserved septic

system. A conversation then followed with Mr. Lyons and Mr. Humes about whether FEMA's floodplain mapping negates the Township's Floodplain Overlay map. Mr. Clement pointed to Ordinance 224, which requires that an applicant conduct a floodplain study on any property where a watercourse exists but where FEMA maps don't identify any floodplain areas. Mr. Baluh recommended a flood study for the creek be conducted and presented to the Township in accordance with the Township Ordinance.

Dr. Upmalis led a discussion of Mr. Baluh's review memorandum dated December 12, 2022.

Regarding comment 1B, Dr. Upmalis questioned whether there was any other suitable location for the reserve septic system. Mr. Cole also questioned the location of the stormwater management system and why it couldn't be moved to create a location for the reserve septic system that is outside of the steep slope and floodplain overlays. Mr. Ruthardt noted, as discussed in previous meetings with the applicant, that perc tests had been done in the parking area and that it was reasonable to think that similar soils exist behind the parking area. He asked why perc tests had not been conducted in that area and added there was no documentation to show that a reserve system couldn't be placed there. Mr. Humes replied that the area for the reserve septic system was determined to meet percolation requirements by both Mr. Valentine and the Bucks County Health department, adding that construction of the parking lot required bringing in fill to meet grading requirements, and since reserve septic systems aren't allowed in areas where fill has been applied, that area was unsuitable. Mr. Baluh said the Ordinance calls for testing throughout the site to determine what areas are suitable and what areas are not. Mr. Ruthardt noted that the standard procedure in Tinicum is to figure out where the septic system can go and then work from there. Mr. Cole asked how old the existing septic system is. Mr. Humes said he did not know. Mr. Cole said the Commission's priority is to ensure the safest location for a future septic system and that it appeared the proposed site wasn't appropriate. Dr. Upmalis reiterated that the applicant had not provided sufficient information to prove that the reserve septic system could not be placed in a safer location. Mr. Lyons said that regardless of where the system was located, relief from the same regulations would still be required, but Mr. Ruthardt replied that the magnitude of relief was at issue – the further from waterways, steep slopes, and floodplain areas the better. Mr. Lyons asked if specific locations for percolation testing were identified the applicant would have those areas tested. Mr. Baluh marked the relevant areas on the map.

Regarding Comment 2, Mr. Ruthardt said that the plan did not accurately reflect neighboring property lines and driveways. It was noted that those inaccuracies had subsequently been corrected.

Regarding Comment 3, a discrepancy was noted between outbuildings and features as presented on the map with what is actually on the property. Mr. Ruthardt said it was his recollection that the applicant's settlement agreement with the Township included retaining the milkhouse. Mr. Humes and Mr. Lyons disagreed and said it was to be removed.

Dr. Upmalis said the plan indicates that the house has two bedrooms, but as noted in previous meetings, public records indicate the house has three bedrooms. The existing driveway, loading area, and trash removal process were also discussed.

Regarding Comment 5, Dr. Upmalis asked why the fence along the road didn't extend further – the concern being that cars might stop in the road to let guests out, thereby creating an unsafe situation. Mr. Lyons said the agreement stipulated trees be planted and that a living wall was preferable. Mr. Ruthardt said trees wouldn't address the concern, and Mr. Lyons agreed that they would consider extending the fence.

Regarding Comment 6, Mr. Ruthardt referenced Ordinance 161, which prohibits trucks from backing into or out of a driveway, noting that PennDOT has similar rules and that the existing plan doesn't include a turnaround area for trucks and shows the driveway being 9 feet wide rather than 12. He asked if the driveway complied with grading requirements and Mr. Humes said he believed it did, adding that there would mostly be vans making deliveries to the site. Mr. Cole said most trucks would back in rather than attempt turning around in a tight spot and that even some vans would have trouble. Mr. Humes agreed that the area was tight, but that he believed a truck or van could accomplish a turnaround with, if not a 3-point turn, a four or five-point turn. Dr. Upmalis suggested the applicant consult a traffic consultant to determine if cars and trucks can reasonably do what is proposed and Mr. Lyons agreed.

Regarding Comment 7, Mr. Humes said the plan allows for 56 parking spaces, including 3 handicapped spaces. Mr. Ruthardt asked if interior plans had been submitted, saying that the Commission needs to see how the space will be designed to comply with the maximum allowable square footage of 2500. Mr. Lyons replied that the plan clearly states 2500 square feet, that submission of interior plans is part of the building permit stage, that review of the interior is the responsibility of the building inspector, and that the Township's ordinance does not require an applicant show every single detail prior to land development approval. Mr. Clement said that up to now the only solution the applicant had suggested for reducing the interior square footage to 2500 from approximately 4500 was the employment of cones and drapes. He asked if any more thought had been put into a more permanent solution. Mr. Lyons said the plan included a combination of curtains, ropes, and drapes with tables on the other side of the drapes to block access and

“do not enter” and/or “employees only” signs on chains. Mr. Baluh noted that he had never heard of such a method being used as a permanent barrier. Mr. Clement said if the applicant were able to demonstrate a safer, more permanent method it would help allay the Commissions concerns. Dr. Upmalis concluded that the submission of such a plan was recommended so the Township and the Board of Supervisors could have a clear understanding of what is proposed.

Mr. Cole noted there were 6 employee parking spaces proposed and asked who would use those spaces. Mr. Lyons said it would be caterers, DJ’s, photographers, florists, security, musicians, etc. Mr. Cole questioned whether 6 employee spaces was sufficient to service a 175-person event.

Regarding Comment #9, Mr. Humes noted an additional requested waiver with regard to Section 515(E)1 for a total of seven requested waivers.

Regarding Comment #10 and an ADA compliant ramp, Mr. Humes said the applicant would comply.

Regarding Comment #11, Dr. Upmalis asked if there are traffic issues to consider now that the Johnston driveway has been properly located on the plan, specifically whether the driveway might be more safely placed further from the Johnston driveway. Mr. Baluh said residents generally prefer not to have a commercial driveway directly across from their driveway, but for safety reasons it’s preferable, either that or further separated. Mr. Humes said moving the driveway would require changes in grading, fill, etc.

Regarding Comment #12, Mr. Cole asked what plans are in place for the possibility of overflow parking. Mr. Lyons replied that with regard to the Ordinance and the settlement agreement with the Township, the plan was compliant, adding that the applicant had asked for the ability to have both off-site parking and on-site overflow parking but had been denied. He said factors to consider were the popularity of ride sharing and the option of providing shuttle service to and from hotels. Dr. Upmalis said a plan for shuttle service would be of great benefit. As an alternative solution, the option of reducing the maximum allowable number of guests was discussed, with the suggestion that an average of 2.4 people per car for 56 parking spaces would accommodate a maximum of 134 guests.

Regarding Comment #13, Mr. Humes said applicant doesn’t anticipate the driveway changing.

Regarding Comment #14, Mr. Cole said a conservation easement as mentioned on P.3 of the Environmental Impact Assessment was unlikely given that further development was already limited due to the existing

topography, impervious percentage, and the normal criteria required by a conservancy group.

Regarding Comment #15, Mr. Ruthardt asked why well-monitoring wouldn't be conducted given the projected increase in water use on the property. He said he would like to see the issue resolved as a matter of safety and identifying the effect on neighboring wells. Mr. Lyons said they could have additional conversations regarding that matter.

Regarding Comment #17, Mr. Humes said the lighting changes would be noted on the plan.

Regarding Comment #20, Mr. Humes said the applicant would follow up with requested details as previously discussed.

Regarding Comment #22, Mr. Humes said the typo on the plan would be corrected.

Regarding Comment #23, Mr. Humes said all items were "will comply".

Dr. Upmalis asked for public comment.

Matt MacMillan of Park Road asked whether the corn cribs and garage were used in the calculation of impervious coverage, as it was his understanding that those areas not be included as pervious after removal. Mr. Humes replied that to his knowledge all current impervious coverage matches what was on the prior zoning plan and stipulated agreement plan. Mr. MacMillan said that a commercial property in the state of Pennsylvania requires a hydrogeologic survey. Mr. Lyons said there are permitting requirements for commercial wells depending on the withdrawal rate of the well and that they had not been made aware that a survey would be required. Mr. Baluh said depending on established thresholds, permits might be needed from either the Health Department or the DEP. Mr. Baluh said he would contact the Health Department for clarification on what is required.

Dr. Upmalis asked about the use of asphalt millings. Mr. Humes said the use of asphalt millings was in keeping with the rustic quality of similar properties in the township. Mr. Lyons presented photos of 18 such properties nearby. It was noted that only one was a commercial property and that some of the examples showed gravel and not asphalt millings. It was further noted that asphalt millings can't be lined, which is of particular concern in the current situation where there's limited parking and considerable traffic.

Mr. Ruthardt said there was no walkway for safe pedestrian access from the parking lot to the barn and that in this case it would be desirable, especially in a tight parking lot with no turnaround. Mr. Lyons said that one of the owners could be stationed in the parking lot to help direct traffic and that it was rare that all the

allotted handicapped spaces would be occupied, which would provide a turnaround area. It was agreed that a more permanent solution was required, but that changes were limited by the allowable impervious. Mr. Lyons said relief on the allowed impervious area would solve all of the identified issues but that a waiver request on imperviousness had been denied.

Dr. Upmalis reviewed the 7 requested waivers and 4 conditional uses:

1. Waiver for Preliminary and Final Plan approval to occur simultaneously rather than in two stages as called for in the Ordinance.
2. Waiver of requirements for the paving and marking of all parking areas.
3. Waiver of requirements for street improvements, curbs, sidewalks etc.
4. Waiver of street tree requirements
5. Waiver of requirements for pedestrian crosswalks and islands for the approximately 300-foot-long parking lot.
6. Waiver of the requirement for a maximum 36-car parking lot
7. Waiver of the requirement that all area design and parking requirements comply with Tinicum Township Zoning Ordinance, specifically regarding the extension of the 9-foot-wide driveway to the loading area as shown in the plan approved in the stipulated agreement. It was noted that a 12-foot width is normally required. Mr. Lyons said the original plan included a 15-foot-wide turnaround area, but that has been modified based on previous comments that a parking area for the residence was needed. Again, it was agreed that the maximum allowable imperviousness coupled with the maximum allowable number of guests presented a number of problems, and Mr. Cole reiterated that it was the characteristics of the property itself that limited the scope and magnitude of safe and reasonable use there. Mr. Sullivan asked if the applicant would consider a reduction in the number of guests allowed. Mr. Lyons said that number had already been reduced and that the applicant was not agreeable to lowering it further, largely because the ability to market the venue as capable of hosting 175 guests provides a marketing advantage.

Dr. Upmalis reviewed the four requested Conditional Uses:

1. Allow construction of a water management facility in the Steep Slope Overlay.

2. Allow construction of a retaining wall and fence, wetland basin and future reserve septic system and minor portion of parking lot within the riparian buffer.
3. Allow substantial property improvement within the Tohickon Creek Watershed Overlay District.
4. Permit replacement sewage system in an otherwise prohibited area.

Regarding Waiver #1, Mr. Clement said at the October 25<sup>th</sup> meeting the Commission had already decided against abandoning the process outlined in the Township's Ordinance calling for both a preliminary and final approval, and that the process was created to ensure accurate and thorough review. Dr. Upmalis added that a thorough application had not yet been submitted and that there were still numerous unresolved issues, including loading area, driveway, reserve septic, overflow parking, floodplain, interior floor space, hydro testing requirements, and a thorough septic assessment.

**MOTION** by Mr. Ruthardt to recommend denial of a waiver to allow for simultaneous preliminary and final plan review. Seconded by Mr. Cole. Unanimously approved.

The Commission agreed that with an incomplete plan it was impossible to make a recommendation of approval to the Board of Supervisors and that it would be unfair and unreasonable to burden the Board of Supervisors to make a decision when there are so many missing pieces and unresolved issues in the applicant's plan. Dr. Upmalis suggested and it was agreed that it would be to the applicant's benefit to suspend the timeframe again and come back to the Planning Commission with those identified issues resolved. Mr. Lyons suggested that if the Planning Commission recommended denial and the Board of Supervisors didn't approve the plan that the applicant would then challenge in court and ultimately win, costing the Township a lot of money. Dr. Upmalis advised that he was confident the Planning Commission had thoroughly performed its due diligence and had been working in good faith to protect the community's interests and safety. Mr. Cole said he understood the applicant's frustration, but that the Commission's role was simple: to follow the Township's Ordinance and ensure the safety of Tinicum's residents. He added that from the beginning his concern has been the number of cars on the property, which continues to be a major safety concern.

Mr. Lyons asked if a definitive list of issues could be compiled and Mr. Baluh agreed to work with the applicant on that. Mr. Sullivan asked which of the requested waivers were not objectionable and Mr. Baluh said the Commission could give the applicant guidance on which waivers could potentially be acceptable. As numbered above, it was agreed that Waiver #2 should be denied and that the parking area should be paved. It was agreed that Waivers #3, #4 and



#6 were not objectionable and that Waivers #5 and #7 remain unresolved. Mr. Baluh suggested that applicant obtain guidance from PennDOT regarding the parking area, driveway width and turnaround sooner rather than later to make sure what is being proposed will pass State requirements.

The four Conditional Uses were reviewed but no definitive recommendations were made.

After a lengthy private discussion with the applicant, Mr. Lyons asked if the Commission would recommend preliminary approval now, provided a list of identified issues he outlined were addressed and resolved to the satisfaction of Mr. Baluh. It was determined that the presented list was incomplete, and the Commission again agreed that there were too many unresolved issues to recommend preliminary approval at this point. Mr. Lyons agreed to suspend the clock and present an updated application at the next meeting of the Planning Commission.

Discussion

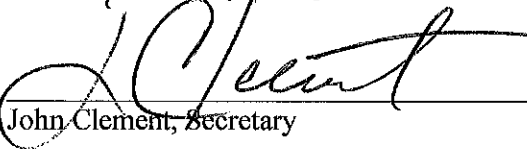
None.

Adjournment

**MOTION** by Dr. Upmalis to adjourn. Seconded by Mr. Cole. Unanimous Vote to Approve.

**TINICUM TOWNSHIP PLANNING COMMISSION**

  
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Dr. David Upmalis, Chairperson

  
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John Clement, Secretary