

John –

Here are some thoughts on where there is opportunity to challenge. I've put the three main issues from their appeal into this, and added one other item.

There were a few others issued noted in the appeal, but they seemed more minor and I did not comment on.

- **C.22.b Issue: Toll did not submit a plan that complies with the requirement...of the JMZO that every effort has been made to provide for a maximum amount of farmland preserved for agriculture.**

Response: This should be a big issue for Toll for several reasons:

- o *Toll is stating that “the maximum amount (overwhelming majority) of class I, II, & III agricultural soils ...are preserved”.*
 - o *However, **preserving agricultural soils** is absolutely NOT the same as **preserving farmland**. Toll is trying to make the two seem equivalent, but they are NOT by definition.*
 - o *Zoning Code Article X.1005.A.3 clearly states that “... the plan for open space areas shall clearly demonstrate that every effort has been made to provide **a maximum amount of farmland preserved for agriculture.**” This means two things:*
 - *They need to preserve existing farmland*
 - *It needs to be preserved for agriculture*
 - o *It is clear from the site design that they placed nearly all homes on farmland. How is that “maximizing” farmland for agriculture? In fact, this plan eliminates 65% of the existing farmland.*
 - o *Additionally, their plan has a very narrow barrier ring of “open land” around the homes (along the road), which cannot effectively be farmed. Thus, this portion cannot reasonably be called “farmland”.*
 - *Again, how is that “maximizing” farmland? This is especially critical, as the JMZO states that the farmland should be “preserved for agriculture”, which means it should be realistically and economically feasible for farming.*
 - *Also, there is ZERO chance that barrier property will be farmed – if they tried, you would have every homeowner in the development complaining about the nuisance, noise, dust etc. I think they will also complain about the larger 30+ acre of farmland left, but that probably won't be a worthwhile challenge legally.*
- **C.22.d Issue: Toll has not proven that the open designated on the plan is not leftover or unusable land as required ...**

Response: This should also be a big issue for Toll for several reasons:

Toll hasn't addressed this meaningfully as I read it. They are trying to justify their use by saying:

- *The open spaces are designated as forestry or agriculture*
- *The open space is contiguous*
- *The open space has access for farming*

Here is where that falls very short of what is required

- *The proposed open space includes two highly gerrymandered sections of open space along Durham Rd and the middle section of Twining Bridge. These sections comprise ~5 acres with portions running no wider than 20 feet. These are clearly "leftover" lands needed to meet the open space acreage requirement.*
 - *As stated previously, these lands cannot realistically be used for farming and have been added only to ensure they meet the 85+acres of open space criteria.*
 - *Also, if you remove this "leftover" ring of land, they would not meet the open space criteria.*
 - *If the open space is "usable", why is <40% able to be used for farming?*
 - *If the non-farmland space was to be used, how would that be possible? It has a high acreage of stream, wetland, and steeped areas, and these are not readily accessible. It is very clear, Toll has lumped undevelopable lands and presented them as "open space".*
 - *Finally, the open space will largely be hidden behind the homes. Thus, the open space is not visible, I don't know how this can fit any definition of open space.*
- **C.22.e Issue: Toll has not proven that the open space designated within the proposed development is arranged so as to encompass a single land area...**

Response: Toll has not addressed this issue either and should be further challenged.

The open space is highly gerrymandered.

- *It will be a challenge to farm the interior lands – it's a small area and likely on the fringe of being economically feasible.*
- *New homeowners are very likely to try to "claim" the open space around their areas by building fences, putting in landscaping, etc. Maintaining such a thin piece of open space will not be easy for the township, and, frankly, it's why this open space plan should not be approved (basically, don't approve things that CANNOT be maintained!).*

- *There will be almost no access to the non-farmland open space – physically or visually. It will be difficult to get to these areas, may will require you to trespass to get to them, or you would worry about farming equipment or slipping, etc.. I have no idea how the Township could see benefit in this open space as designed.*

Finally, I think there is one more point to make, which gives the Board of Supervisors a ton of discretion. This decision should be just a checklist – that is what Toll Brothers wants – but legally your judgement matters and it not just a checklist!

- Specifically, Zoning Code Article X.1005.A.5 dictates that the open space should be “...laid out to the satisfaction of the Board of Supervisors according to sound site design principles.”
 - While is this is very “general” in nature, you would be well within your rights to look at the design of the open space and state it does NOT meet “sound design principles”. For example:
 - The gerrymandered lands around the houses are NOT valued open space. All these do is provide a better view of the homes. Open spaces should be clustered, not created in thin strands of property.
 - All open space is in the interior, so as to not be visible. Open spaces should be visible - that is part of a sound design plan.
 - There is very limited access to the open space, and what is available is off of a busy road.
 - This open space design limits usability of the land for a park, trail, etc. There is no ability to provide for reasonable access for such purposes, which does not appear to be a “sound” design plan.

Best Regards
Steve Pfanstiel
Newtown Resident