

**Benner Township Supervisors**  
**June 3, 2024**

The regularly scheduled meeting of the Benner Township Board of Supervisors was called to order at 7:00 p.m. by the Chairman, Randy Moyer with members Larry Lingle and Kathy Evey present. Also in attendance were Shelly Mato, Mike Tylta, Allan Corman, Ralph Houser, Jr., John Elnitski, Allen Strouse, Treva Strouse, Gene Stocker, Douglas Mason, Thomas Eby, Deb Smeal, Jacob Michael, Tom Moyer, Brian Grove, Tanner Hillard, John Kostas, James Lanning, Tammy Chronister, Larry Chronister, Rod Beard and Sharon Royer.

**PERSONS TO ADDRESS THE BOARD**

Shelly Mato – Centre Region COG: Mrs. Mato was present to give the Board an update on the latest garbage and recycling contract. Mrs. Mato noted that only two bids were received for the new Garbage contract. The most cost effective and best overall contract was to go with Burgmeier's Hauling out of Altoona with Centre County Recycling and Refuse Authority continuing to collect recyclables along with handing the billing and billing related customer service matters. The fees for the new contract for year 1 will be \$31.09 a month for a 95-gallon cart, \$29.83 for a 65-gallon cart or \$28.01 for a 35-gallon cart. These fees include recycling. Carts are to be used for the new contract and will be owned by the hauler. Savings by switching to Bergmeier's and CRRRA saved residents an average of \$7.48 per month over the existing hauler's bid. Several residents expressed concerns with the carts and longer driveways. Mrs. Mato noted that they realize that the carts will be a problem with those that have very long driveways, and that the contractor will work with those individuals to make something work. Bulk waste will be handled differently than in the past. Items that fit in the refuse cart can be placed in there at any time. The first four large bulk items (furniture, rugs, etc.) collected from each residence, each year are included in the cost as well as the first four bulk recyclable items (appliances, TVs, computers, printer, 4 car tires). Residents will register their items at any time all year and they will be scheduled for collection within 2 weeks. Excess refuse, extra items and special collections will have additional fees. It was noted that this new contract will begin April 1, 2025. Notices will be sent out to residents for them to select their cart size later this year as the carts will need to be ordered.

Gene Stocker: Mr. Stocker asked Mr. Moyer several questions relative to properties along Barnes Lane and his interest in them. He also questioned the zoning density in the township in various zoning districts and questioned when and why they were changed. Discussion was also held concerning water contaminates and the timeline of the testing that was done once PFAS was found in the State of the Art well.

John Kostas: Mr. Kostas questioned Mr. Lingle if there was any risk to the Township as far as PFAS litigation with the Township having membership on the Centre County Airport Authority. Discussion was held. Mr. Lingle noted that just because you find PFAS on someone's property doesn't mean that they placed it there. Discussion was held concerning the dirt that was removed when the additional parking lots were installed and where that ground was taken.

Tom Eby: Mr. Eby noted that the Water Authority just received their permits for the modifications for the Grove Park well. Equipment will now be ordered to update the treatment process for the nitrates.

Doug Mason: Mr. Mason asked questions regarding the proposed new North Central Regional Game Commission Office. It was noted that the land development plans have not yet been



requirements of the position. Mr. Beard noted that some larger municipalities, the Board isn't involved with the hiring process at all that the department heads take care of it. In smaller ones where there is board involvement, with meeting restraints, it could possibly take months to go through the process to get a new employee on board. It was noted that if Mr. Moyer was appointed and was no longer a Supervisor then a new Board member would need to be appointed to be the recruitment appointee. Mrs. Evey questioned if the open position has been advertised yet. Mr. Lingle noted that currently the applicants that have applied in the past are being looked at. More discussion was held. Mr. Moyer declined the appointment of recruitment appointee.

Mrs. Evey made a motion to appoint Dennis O'Leary to handle the job interview process and have his recommendation brought back to the Board for their approval. Due to the lack of a second, the motion died.

Mr. Beard noted that if there was an HR Department, or Roadmaster that was authorized to hire by the Board of Supervisors within the budget parameters then additional board action would not be required.

Mrs. Evey made a new motion to authorize Dennis O'Leary to interview and hire a new road department employee so long as it stays within the budget parameters. Mr. Moyer seconded the motion.

Vote: Mrs. Evey – yes

Mr. Moyer – yes

Mr. Lingle - no

Village of Nittany Glen Phase IV Surety: It was noted that the improvements for Phase IV of the Village of Nittany Glen have been completed. Confirmation has been received by Mr. Franson that the work is complete and that he recommends that the surety be released. Mr. Moyer moved to release the surety for the Village of Nittany Glen Phase IV. Mr. Lingle seconded the motion.

Vote: Mrs. Evey – yes

Mr. Lingle – yes

Mr. Moyer – yes

Sewage Planning Module for Logan Greene Phase 2A & 2B: Mrs. Royer indicated that DEP requires sewage planning module approval from both Spring and Benner Townships since the development straddles the townships' lines. The necessary acceptance letters from SBWJA for conveyance and Bellefonte Borough for treatment capacity have been received. Mr. Moyer moved to approve the Logan Greene Phase 2A & 2B sewage planning module. Mr. Lingle seconded the motion.

Vote: Mrs. Evey – yes

Mr. Lingle – yes

Mr. Moyer – yes

Letter from the Centre County Agricultural Land Preservation Board Re: Corl 44.22 Acre Parcel: A letter was received from the Centre County Agricultural Land Preservation Board indicating that they have approved to accept the 44.22 acre parcel owned by the Corls into the program. The letter indicated that they will reach back out after the appraisal is completed but they are asking for the Township to consider making a contribution towards the purchase of the development rights.

Sewage Planning Module for the Bellefonte Warehouse: The sewage planning module for the proposed Bellefonte Warehouse in the Benner Commerce Park was presented. The necessary acceptance letters from SBWJA for conveyance and Bellefonte Borough for treatment capacity have been received. Mr. Moyer moved to approve the sewage planning module for the Bellefonte Warehouse. Mr. Lingle seconded the motion.

Vote: Mrs. Evey – yes

Mr. Lingle – yes

Mr. Moyer – yes

## **CORRESPONDENCE**

The following correspondence was received by the township:

1. SBWJA Minutes – April 22, 2024 & May 13, 2024
2. BTWA Minutes – April 16, 2024
3. Centre County Planning Commission
  - a. Letter of Comprehensive Plan Consistency for Kepler Pool grant
  - b. Comments on Spring Township rezoning proposals
  - c. Village of Nittany Glen Phase III-A Comment letter
  - d. Time Extensions
    1. WaWa
    2. McDonalds
    3. Cascade
    4. Belle Rose Townhomes
    5. Benner Pike Tru by Hilton
  - e. Comment letter Bellefonte Warehouse
  - f. Notice of Minor Land Development Plan Restek Corporation
4. Conservation District
  - a. Sullivan's Mini Storage NOT approval letter
  - b. Lyn Lee Farms NPDES Permit approval letter
  - c. SCi Benner K9 NPDES Application Completeness letter
5. May Zoning/Building Permit Report
6. Engineering Review Letters
  - a. Benner Pike Tru by Hilton Hotel – Franson 2<sup>nd</sup> review
7. Paper on Spring Creek and Bald Eagle Creek Surface Water Survey Re: PFAS by David Roberts
8. Notice of Benner Township Water Authority Application for Nitrate Removal Project Grove Park Water System
9. Notice of NPDES Amendment for Logan Greene Subdivision Phase 2A
10. Notice from DEP Re: Bellefonte Borough Annual Wasteload Management Report
11. Grove Park Water System Annual Water Quality Report
12. Bellefonte EMS Annual Joint Meeting invitation July 30<sup>th</sup> at 7 p.m.

## **ADJOURNMENT**

The meeting was adjourned at the time being 8:25 p.m.



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Sharon Royer, Sec.

BEFORE THE SUPERVISORS OF BENNER TOWNSHIP  
CENTRE COUNTY, PENNSYLVANIA

IN RE: :  
: :  
Conditional Use Application of: : No. 2024-  
**Duane and Jill Grove** :  
Tax Parcel No. 12-002-,096H,0001 :  
Bellefonte, PA :

**CONDITIONAL USE DECISION**

**Background**

This Decision involves the Conditional Use Application by Duane and Jill Grove, to the Benner Township Supervisors, for a Conditional Use for a boarding facility for animals. The parcel is located in Benner Township, Centre County, Pennsylvania, having an address of 147 Grove Drive, Bellefonte, PA 16823. The Tax Parcel Number of the subject property is 12-002-,096H,0001.

**Hearing**

The hearing occurred on May 6, 2024, commencing at 6:45 p.m. at the Benner Township Municipal Building, 1224 Buffalo Run Road, Bellefonte, Pennsylvania. The following Supervisors were present: Chairman Randy Moyer, Larry Lingle, and Kathy Evey. A quorum was present, and the hearing was duly convened.

**Parties Appearing for the Applicant**

Applicants: Duane and Jill Grove

**Parties Appearing in Opposition to the Conditional Use Application**

No one appeared in opposition.

**Appearing for the Municipality**

Mike Lesniak, Zoning Officer.

**Other Attendees**

Other persons attending the Conditional Use Hearing included:

Sharon Royer, Township Secretary/Treasurer  
Rodney A. Beard, Township Solicitor

See attached sign-in sheet.

### **Procedure**

Randy Moyer, Chairman of the Benner Township Supervisors, called the hearing to order.

It was noted for the record that the hearing was properly noticed and advertised. No objections to notice were made at the hearing. Solicitor Rodney Beard provided an explanation of the procedures and requirements for the hearing.

The Stenographer, Heather Boring, swore in all witnesses who were intending to testify at the hearing.

### **Exhibits**

The Applicants presented the following exhibits:

1. Conditional Use Application;
2. Centre County GIS Aerial Parcel Map;
3. Tax Card for Parcel 12-002-096H-0001; and
4. Deed for property.

The Township presented the following exhibit(s):

1. None.

### **Testimony**

The Applicant, Duane Grove, testified that they (Groves) currently have dogs and would like to start a kennel/boarding facility. The subject parcel is surrounded by cornfield. The Applicants have discussed the proposal with their neighbors to the front, and the neighbors have no objection to the proposal. The Applicant's mother owns all the other surrounding ground.

### **Discussion**

The Supervisors questioned the Applicants regarding various aspects of the proposal and the intended operations, and reviewed Section 14.16 and Section 21.14 of the Zoning Ordinance. Specific questions pertained to hours of operation, dog barking issues, potential soundproofing, maximum number of occupants (dogs and cats), and vegetation to limit sound traveling.

Based upon the testimony and evidence presented at the hearing, the Supervisors make the following findings and conclusions:

### **FINDINGS OF FACT:**

1. The subject parcel consists of approximately 10.044 acres.
2. The lot is currently adjoining parcels 12-002-,095Q,0000 and 12-002-,096-0000 owned by Shirley L. Grove.
3. Electric power is provided by West Penn/First Energy Power Company.
4. The subject parcel is located in the Agricultural Zoning District.
5. The Conditional Use Application shows that the Applicant intends to construct a 20'x50' boarding facility for cats and dogs, and a 24'x24' parking lot.
6. The property is currently used for crop farming.
7. The property is currently in "Clean and Green," for tax assessment purposes.
8. The proposed use is classified as a Conditional Use in the Schedule of Uses for the Agricultural Zoning District of the Benner Township Zoning Ordinance, and as listed in Section 14.16 of the Zoning Ordinance.
9. The Applicant indicated approval of all provisions of Section 14.16 of the Zoning Ordinance pertaining to Animal Hospitals and Kennels, and indicated the proposal would be constructed in accordance with those provisions.
10. The Conditional Use Application was submitted to Benner Township on March 27, 2024, and all fees were paid by or for the Applicants.
11. The hearing on the Conditional Use Application was duly advertised in the Centre Daily Times on April 10, 2024, and April 26, 2024. The notice of the conditional use hearing was posted on the subject property on April 26, 2024.
12. No persons appeared at the hearing in opposition to the proposed conditional use.

### **CONCLUSIONS OF LAW:**

1. The hearing on this matter was properly advertised and noticed, and there were no objections to notice or holding the hearing.
2. A conditional use is a request for zoning approval that falls within the jurisdiction of the municipal legislative body (Board of Supervisors) rather than the zoning hearing board. See Section 603(c) of the Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, P.L. 805, as amended, 53 P.S. §10603(c).
3. The Supervisors, as the governing body, may grant a conditional use pursuant to the

police power to regulate land use. Clinton Cnty. Solid Waste Auth. v Wayne Twp., 164 Pa. Commw. 632, 643 A.2d 1162 (Pa. Cmwlt. 1994).

4. The fact that a use is permitted as a conditional use in the Zoning Ordinance, rather than prohibited, reflects a legislative decision that the use is not *per se* adverse to the public interest. K. Hovnanian Pa. Acquisitions, LLC v. Newtown Twp. Bd. of Supervisors, 954 A.2d 718 (Pa. Cmwlt. 2008); Susquehanna Twp. Bd. of Comm'rs v. Hardee's Food Sys., Inc., 59 Pa. Commw. 479, 430 A.2d 367 (Pa. Cmwlt. 1981).
5. In order to show an applicant is entitled to the conditional use, the applicant initially bears the burden of establishing that the application complies with the zoning ordinance's objective standards. Visionquest Nat'l, Ltd. v. Bd. of Supervisors of Honey Brook Twp., Chester Cnty., 524 Pa. 107, 569 A.2d 915 (Pa. 1990); City of Hope v. Sadsbury Twp. Zoning Hearing Bd., 890 A.2d 1137 (Pa. Cmwlt. 2006).
6. Review of the objective standards set forth in Section 14.16 of the Benner Township Zoning Ordinance pertaining to Animal Hospitals and Kennels by the Board of Supervisors showed that all criteria were satisfied by the Applicant.
7. The proposal did not give rise to safety, health, or traffic concerns.
8. If the applicant satisfies the initial burden of showing that the proposal complies with the objective standards set forth in the Zoning Ordinance, the burden shifts to any objectors to rebut this presumption by establishing the use will have a detrimental impact on the surrounding community. Joseph v. N. Whitehall Twp. Bd. of Supervisors, 16 A.3d 1209 (Pa. Cmwlt. 2011); Sheetz v. Phoenixville Borough Council, 804 A.2d 113 (Pa. Cmwlt. 2002).
9. The Board of Supervisors is the fact-finder in a conditional use application matter, with exclusive province over matters of credibility and weight to be afforded the evidence. Caln Nether Co., L.P. v. Bd. of Supervisors of Thornbury Twp., 840 A.2d 484 (Pa. Cmwlt. 2004). As such, the Board of Supervisors may reject even uncontradicted testimony if the Board finds such testimony lacking in credibility. *Id.* The Supervisors fact-finding and credibility determinations will not be disturbed on appeal. *Id.*
10. The Supervisors hearing a conditional use application are free to reject even uncontradicted testimony if the Board finds it lacking in credibility, including testimony offered by an expert witness. Taliaferro v. Darby Twp. Zoning Hearing Bd., 873 A.2d 807 (Pa. Cmwlt. 2005).
11. Further, a conditional use is one specifically recognized by the Zoning Ordinance as consistent with the zoning plan for the township. Aldridge v. Jackson Twp., 983 A.2d 247 (Pa. Cmwlt. 2009). As such, it is presumed the particular type of use does not, of itself, adversely affect public interest. *Id.*
12. In addressing an application for a conditional use, a local governing body must employ a shifting burden of persuasion. *Id.* First, the applicant must persuade the local governing body its proposed use is a type permitted by conditional use and the proposed use



complies with the requirements in the Zoning Ordinance for such a conditional use. *Id.* Once the applicant does so, a presumption arises that the proposed use is consistent with the general welfare. *Id.* The burden then shifts to objectors to rebut the presumption by proving, to a high degree of probability, the proposed use will adversely affect the public welfare in a way not normally expected from the type of use. *Id.*

13. In addition, a local governing body is entitled to considerable deference in interpreting its zoning ordinance. *Id.*

14. Section 21.14 of the Benner Township Zoning Ordinance provides as follows:

**21.14 Conditional Use** - Where the Board of Supervisors, in this Ordinance, has stated conditional uses to be granted or denied by the Board of Supervisors pursuant to express standards and criteria, the Board of Supervisors shall hear and decide requests for such conditional uses in accordance with such standards and criteria below:

- A. The location of the use, including with respect to the existing or future streets giving access to it, is in harmony with the orderly and appropriate development for the district in which the use is to be located.
- B. The nature and intensity of the operations involved are in harmony with the orderly and appropriate development of the district in which the use is to be located.
- C. The grant of the conditional use shall not materially increase traffic congestion on roads and highways, nor cause nor encourage commercial or industrial traffic to use residential streets.
- D. The applicant must meet all specific requirements for the specified use in accordance with Article 14, and general requirements in accordance with Article 15, herein.
- E. In granting a conditional use, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in this Ordinance, as it may deem necessary to implement the purposes of this Ordinance and the Pennsylvania MPC, Act of 1968, P.L. 805, No. 247, as reenacted and amended.

15. The proposed conditional use, as presented, would not alter the essential character of the neighborhood.

16. The proposed conditional use does not present safety concerns.

17. The proposed conditional use is not harmful to the health, safety, and welfare of the community.

18. The proposed conditional use does not negatively impact the orderly and appropriate development of the area where the proposed conditional use is to be located.

19. The nature and intensity of the operations encompassed by the proposed conditional

use, which are minimal, are in harmony with the orderly and appropriate development of the area where the proposed conditional use is to be located.

**DETERMINATION:**

At the conclusion of the hearing, the Supervisors directed the Solicitor to prepare an appropriate Conditional Use Decision, based on the discussion at the hearing, containing conditions as discussed at the hearing.

**Conditions**

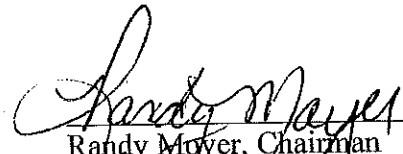
1. It shall be a condition of this approval that the proposed boarding facility for animals shall be developed substantially in accordance with the proposal submitted by the Applicant to the Board of Supervisors at the hearing that occurred on May 6, 2024.
2. The proposed conditional use shall be developed in accordance with Section 14.16 of the Benner Township Zoning Ordinance, and all other applicable provisions of the Benner Township Zoning Ordinance, other Township ordinances and requirements, and the Centre County Subdivision and Land Development Ordinance.
3. The Benner Township Board of Supervisors specifically reserves the right to make additional comments and requirements for the proposed development as part of any land development planning process that will occur subsequent to this zoning approval.
4. The landowner shall permit appropriate personnel of Benner Township access to the subject premises at all reasonable times to determine compliance with these conditions and compliance with the Benner Township Zoning Ordinance and other ordinances or regulations applicable to the property.
5. The proposed Boarding Facility/Kennel shall not usually allow animals outside between the hours of 9:00 pm and 6:00 am daily.
6. The Applicant/operator of the facility shall utilize soundproofing in the construction of the facility to limit the travel of dog barking noise outside of the facility, and shall also utilize vegetation as needed around the facility to limit the travel of noise beyond the confines of the facility so that neighbors are not irritated with dog barking noise.
7. The facility shall not usually house more than twenty-five (25) dogs and cats as the total number of occupants of the facility. For instance, 15 cats and 10 dogs would be the maximum number of animals allowed in the facility.
8. That any conditions contained herein applicable to the Applicant and/or the subject premises shall continue to apply to such parties, their respective heirs, personal representatives, successors and assigns as the case may be, and shall be deemed conditions running with the land.

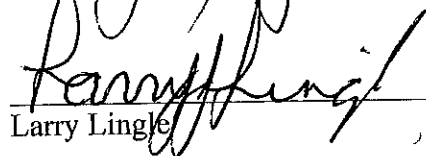
9. That the Applicant, and any Lessee or operator occupying the premises, and any successors or assigns thereof, shall comply with all provisions and conditions of this Conditional Use Decision.
10. That any failure to comply with any of the foregoing conditions shall result in imposition of the penalties prescribed for violation of the Benner Township Zoning Ordinance.
11. All necessary building permits for construction of the kennel facility shall be obtained in accordance with the Uniform Construction Code.

**Decision**

Upon Motion of Randy Moyer, seconded by Larry Lingle, and unanimously approved, the Benner Township Supervisors hereby APPROVE the Conditional Use Application presented by Duane and Jill Grove, for a boarding facility for animals. This decision shall be null and void if the Applicant does not accept the foregoing conditions within sixty (60) days from the date of this decision.

Dated the 3<sup>rd</sup> day of June, 2024

  
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Randy Moyer, Chairman

  
\_\_\_\_\_  
Larry Lingle

\_\_\_\_\_  
Kathy Evey

BEFORE THE SUPERVISORS OF BENNER TOWNSHIP  
CENTRE COUNTY, PENNSYLVANIA

IN RE:

Conditional Use Application of:

Duane and Jill Grove

Tax Parcel No. 12-002-,096H,0001

Bellefonte, PA

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:  
:  
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:  
:  
:

No. 2024-


ACCEPTANCE/REJECTION OF CONDITIONS

The undersigned Applicant hereby makes the following response to the conditions imposed in the above referenced application:


ACCEPTED

REJECTED

BY:

  
\_\_\_\_\_  
Duane Grove

BY:

  
\_\_\_\_\_  
Jill Grove