

BEFORE THE SUPERVISORS OF BENNER TOWNSHIP  
CENTRE COUNTY, PENNSYLVANIA

IN RE: :  
: :  
Conditional Use Application of: : No. 2021-\_\_\_\_\_  
Maison Lodging, LLC – Doug Colkitt :  
and Marina Elnitski :  
For Campground/RV Park Development :  
in the Agricultural District :  
Tax Parcel Nos. 12-317-19 and :  
12-317-20 :  
Bellefonte, PA :

**CONDITIONAL USE DECISION**

**Background**

This Decision involves the Conditional Use Application by Maison Lodging, LLC – Doug Colkitt, and Marina Elnitski, to the Benner Township Supervisors, for a Conditional Use for a 100-unit RV Park/Campground development in the Agricultural zoning district of the Township. The Application shows that the subject parcels are generally located between Buffalo Run Road/Route 550 and Raymonds Lane and Seibert Road.

This Conditional Use Application is the second Conditional Use Application regarding the subject property for the proposed use. The first Application was denied by Conditional Use Decision dated October 4, 2021, with written decision dated November 1, 2021.

The Tax Parcel Numbers of the subject properties are: 12-317-19 and 12-317-20.

The subject parcels consist of approximately 43 acres and 34 acres, respectively.

The subject parcels are located in the Agricultural Zoning District.

The Conditional Use Application shows that the Applicant intends to construct a 100-unit campground/recreational vehicle park. The development will consist of 60 campground/RV lots designated as “RV-A Spaces,” and 40 lots designated as RV-B Spaces.” The development will have utility services, internal road system, a clubhouse, recreational areas, and stormwater management facilities. Each campground/RV lot lot will have brick pavers to allow for pervious coverage.

Each RV-A Space will have dimensions of approximately 40 feet by 100 feet, and each RV-B Space will have dimensions of approximately 45 feet by 90 feet, or 70 feet by 70 feet, as depicted on the plan.

The proposed campground/RV 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 14.18 of the Benner Township Zoning Ordinance.

The Conditional Use Application was submitted to Benner Township on October 25, 2021, and was amended/resubmitted on December 1, 2021, and all fees were paid by or for the Applicants. The Benner Township Planning Commission reviewed the Conditional Use Application on November 23, 2021.

### **Hearings**

The initial hearing on the Conditional Use Application was duly advertised in the Centre Daily Times on November 24, 2021, and December 2, 2021. The notice of the conditional use hearing was posted on and near the subject property on November 18, 2021.

The hearing commenced on December 9, 2021, at the Benner Township Municipal Building, 1224 Buffalo Run Road, Bellefonte, Pennsylvania. The Applicants, Maison Lodging, LLC, Doug Kolkitt, and Marina Elnitski, were not present at that time, but were represented at the hearing by John Elnitski, son of Marina Elnitski, and Gregory Schrock, from L.R. Kimball engineering firm.

Following presentation of testimony on behalf of the applicant and members of the public, the Supervisors unanimously voted to deny the conditional use application.

### **Parties Appearing for the Applicant**

Applicant: Applicants did not appear, but was represented at the hearings by John Elnitski, mother of the owner of the subject parcels, and Gregory Schrock, of L.R. Kimball engineering firm, who prepared the plans for the conditional use application.

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

Several members of the public and adjoining landowners appeared in opposition to the conditional use application.

### **Appearing for the Municipality**

Mike Lesniak, Zoning Officer, was ill the night of the hearing and was not in attendance.

### **Other Attendees**

Other persons attending the Conditional Use Hearings included:

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

## Procedures

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.

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

John Elnitski, on behalf of the Applicants, provided explanations of the intended use of the subject parcels and also addressed revisions to the plan from the previous submission that were intended to satisfy provisions of the Zoning Ordinance that the previous Conditional Use Application did not satisfy. Several members of the public provided testimony, and questioned Mr. Elnitski, regarding aspects of the proposed Conditional Use and intended operations of the campground/RV park.

## Exhibits

The following exhibits were presented at the hearing:

- Exhibit 1 – 10/20/21 Application for Conditional Use
- Exhibit 2 – 11/30/21 Application for Conditional Use
- Exhibit 3 – Engineer Map for Conditional Use
- Exhibit 4 – 11x17 Photometrics Plan
- Exhibit 5 – 4/20/76 Right of Way Agreement
- Exhibit 6 – Land Use (416 Campground/Recreational Vehicle Park)
- Exhibit 7 – Facebook Messages
- Exhibit 8 – Printout from goPSURV.com
- Exhibit 9 – Compilation of Campgrounds around Airports
- Exhibit 10 – 12/9/21 Geig Letter/Memo of Law
- Exhibit 11 – Fala Letter
- Exhibit 12 – Evey 11/23/21 Letter
- Exhibit 13 – Pages 10 through 15 from the Conditional Use Decision, dated November 1, 2021, denying the prior application

## **FINDINGS OF FACT**

1. The applicant is Maison Lodging, LLC.
2. The applicant is owned by Doug Colkitt.
3. Doug Colkitt is a resident of Florida.
4. The owner of the subject properties is Marina Elnitski.
5. Marina Elnitski also submitted a signed Conditional Use Application for the proposed conditional use, and is an applicant.
6. Doug Colkitt did not appear at any of the hearings.
7. Marina Elnitski did not appear at any of the hearings.
8. John Elnitski is the son of Marina Elnitski.
9. John Elnitski appeared at the hearings representing the owner of the properties and the applicant.
10. The conditional use application comprised two properties, having tax parcel numbers of 12-317-19, and 12-317-20.
11. Tax parcel number 12-317-19 consists of approximately 43 acres.
12. Tax parcel number 12-317-20 consists of approximately 34 acres.
13. Tax parcel number 12-317-20 currently serves as an airport, commonly known as the Bellefonte Airport, and consists primarily of a runway for landing and takeoff of planes and hangar/related structures for storage of airplanes and other airport operations.
14. The Bellefonte Airport is used as a flight training facility and often is used to teach inexperienced pilots how to fly airplanes.
15. Tax parcel number 12-317-19 is currently being used for farming of crops.
16. The plans and drawings presented with the conditional use application showed that a subdivision was intended that would reduce the size of tax parcel number 12-317-19 and add additional ground onto tax parcel number 12-317-20.
17. The intended subdivision was to provide additional setback from the airport runway located on tax parcel number 12-317-20 to the campground/RV development.

18. It was not clear from the application and the drawings submitted whether the subdivision of the properties would occur, as the notation on the drawings referred to the line as "Potential Subdivision Line."
19. Access to the subject parcels is provided by SnowBird Lane, a private lane/right of way.
20. Tax parcel number 12-317-19 has frontage along Raymonds Lane, a public township road.
21. The conditional use application did not show that Raymonds Lane would be used for access to the campground/RV/tiny home development.
22. Properties utilized for residential purposes adjoin the subject parcels.
23. There is a public elementary school – Benner Elementary – located approximately 500 feet to the northeast of the subject property.
24. Students attending the elementary school either walk to the school or are bussed to the school.
25. Busses leave the school each school day at approximately 2:30pm to 3:30 pm.
26. The proposed use will generate significant additional traffic when campers and RVs are moving into and out of the campground/RV park.
27. The applicant's representative testified that the primary intended use of the campground/RV park development was to accommodate persons wishing to attend Penn State football games and other Penn State related activities.
28. The applicant's representative discussed some of the operational items that were discussed at previous hearings on the prior Conditional Use Application for the same proposed use on the same parcels. The applicant's representative also reviewed items from the prior written Conditional Use Decision that the Board of Supervisors previously determined were requirements of the Zoning Ordinance that had not been satisfied in the prior Conditional Use Application.
29. The applicant did not present to the Board of Supervisors an operational agreement addressing how the campground/RV park would be operated and governed.
30. There are no existing appropriate traffic control measures to address safety concerns with the significant additional traffic consisting of large RVs and camper vehicles interacting with busses transporting schoolchildren to and from the elementary school that is in close proximity to the proposed conditional use.

31. The essential character of the neighborhood is currently low density residential and agricultural.
32. The existing Bellefonte Airport is a pre-existing use.
33. At the hearing, members of the public objecting to the proposed conditional use raised concerns primarily related to safety issues, increased traffic, possible alcohol use/abuse at the campground during Penn State events, and noise.
34. Members of the public testified that the location of the use is not a good fit for the Township – the proposed use will change the essential character of the neighborhood.
35. Members of the public also testified that the Bellefonte Airport, which is located on the parcel adjoining the parcel upon which the campground/RV/ development is proposed to be located and is part of the conditional use application, provides pilot training and flight instruction which leads to inexperienced pilots that increases the likelihood of accidents.
36. The proposed conditional use will materially increase traffic congestion in the area.
37. The proposed conditional use will materially increase safety concerns in that, individuals staying at the campground/RV park will have a likelihood of engaging in Penn State football tailgating and reveling activities in close proximity to an operating airport and operating equestrian facility and adjoining residential properties.
38. Inexperienced pilots frequently fly into and out of the Bellefonte Airport for flight instruction and training purposes.
39. Inexperienced pilots present a higher risk of accidents occurring.
40. The applicant’s representative noted that he felt all requirements of the Zoning Ordinance were satisfied, including security fencing and screening from adjoining residential uses, but the plans referred to “Optional Privacy and Security Fence (see note),” – the note indicated that privacy and security fencing would be determined after plan is reviewed by the Bureau of Aviation.
41. Only minimal recreational areas were defined on the applicants drawing; the applicant’s representative stated that he felt the open space within each individual RV-A and RV-B Space should be included in the calculation of required recreation area for a campground.
42. The Benner Township solicitor, in response to a question from the Benner Township Zoning Officer regarding the areas that may be included in the calculation of recreation space, had opined that recreation areas, as defined in the Benner Township Zoning Ordinance, were intended to be open and utilizable by all patrons of the campground facility, and individual lots spaces occupied exclusively by individual campers, would not appropriately be included in the calculation of recreation area.

43. The applicant's representative did not review all items required for the proposed conditional use at the hearing, but referred to the prior conditional use application for the same use on the same parcels, and indicated that the Supervisors could take notice of all the information and testimony submitted at the prior hearings on the prior application.

### CONCLUSIONS OF LAW

1. 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).
2. 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. Cmwltth. 1994).
3. 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. Cmwltth. 2008); Susquehanna Twp. Bd. of Comm'rs v. Hardee's Food Sys., Inc., 59 Pa. Commw. 479, 430 A.2d 367 (Pa. Cmwltth. 1981).
4. 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. Cmwltth. 2006).
5. 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. Cmwltth. 2011); Sheetz v. Phoenixville Borough Council, 804 A.2d 113 (Pa. Cmwltth. 2002).
6. 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. Cmwltth. 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.*
7. 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. Cmwltth. 2005).

8. 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. Cmwlth. 2009). As such, it is presumed the particular type of use does not, of itself, adversely affect public interest. Id.
9. Promises by the Applicant to comply with provisions of the zoning ordinance in the future are not sufficient to allow granting of a conditional use application; to do so would render the entire review process meaningless. Edgmont Township v. Springton Lake Montessori School, Inc., 154 Pa. Commw. 76, 622 A.2d 418, at 420 (Pa. Cmwlth. 1993); Appeal of Baird, 113 Pa. Commw. 637, 537 A.2d 976 (Pa. Cmwlth. 1988); In Re Thompson, 896 A.2d 659, at 680-681 (Pa. Cmwlth. 2005).
10. In addressing an application for a conditional use, a local governing body must employ a shifting burden of persuasion. Aldridge v. Jackson Twp., 983 A.2d 247 (Pa. Cmwlth. 2009). 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.
11. In addition, a local governing body is entitled to considerable deference in interpreting its zoning ordinance. Id.
12. 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.

13. The conditional use application did not satisfy all the objective criteria set forth in the Benner Township Zoning Ordinance for a campground/recreational park use.
14. The conditional use application did not provide adequate area for active and passive recreation.
15. Because the applicant failed to satisfy the objective criteria of the Benner Township Zoning Ordinance to allow a campground/RV park within the Agricultural Zone, the burden did not shift to objectors to show that the proposed conditional use would be harmful to the health, safety and welfare of the community in which it is proposed to be located. However, the objectors to the proposed use provided substantial credible testimony and evidence that the proposed conditional use would alter the essential character of the community and neighborhood in which it is proposed to be located, and would be harmful to the general health, safety and welfare of the community.
16. The proposed conditional use, as presented, would alter the essential character of the neighborhood.
17. The proposed conditional use presents significant safety concerns in that it would promote the aggregation of individuals in a dense campground/RV park setting near an operating airport used for aviation and flight training purposes, thereby exposing patrons of the campground and the public to risk of accidents.
18. The proposed conditional use presents significant safety concerns in that it would promote the aggregation of individuals attending Penn State football games and engaging in tailgating activities near an operating airport and an adjoining equestrian facility.
19. The proposed conditional use is harmful to the health, safety and welfare of the community in that it would promote the aggregation of individuals attending Penn State football games and engaging in tailgating activities near adjoining residential properties.
20. The proposed conditional use would be harmful to the general health, safety and welfare of the community in which it is proposed to be located.
21. The proposed conditional use is not in harmony with the orderly and appropriate development of the area where the proposed conditional use is to be located.
22. The nature and intensity of the operations encompassed within the proposed conditional use are not in harmony with the orderly and appropriate development of the area where the proposed conditional use is to be located.
23. The nature and intensity of the operations encompassed within the proposed conditional

use are harmful to the general health, safety and welfare of the community where the proposed conditional use is to be located.

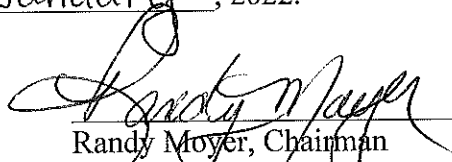
24. Although campgrounds and RV parks may be permitted as a conditional use in the Agricultural Zoning District of the Township, the proposed location of the campground/RV park that is the subject of this application make it unsuitable in light of the general health, safety, and welfare concerns of the community and neighborhood where it is proposed to be located.

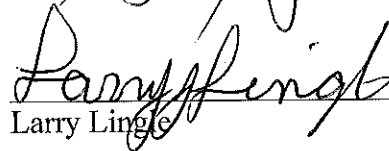
**Decision**

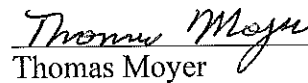
Upon Motion of Larry Lingle, seconded by Thomas Moyer, and unanimously approved, the Benner Township Supervisors hereby DENY the Conditional Use Application presented by Maison Lodging, LLC – Doug Colkitt and Marina Elnitski, for the Bellefonte Airport Campground/RV Park because the proposed conditional use is not consistent with, and would be injurious to, the health, safety, and welfare of the community.

Decision rendered on December 9, 2021.

Written Decision dated the 3<sup>rd</sup> day of January, 2022.

  
Randy Moyer, Chairman

  
Larry Lingle

  
Thomas Moyer