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[Ferguson Township Board of Supervisors: Deny Toll Brothers development plan](#)

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Petition update

Legal Tools for PRD Denial and Corrective Zoning Amendment



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Jul 20, 2015 — Draft letter to be submitted to Ferguson Township supervisors this evening.

Full text online (no attachments)

<https://steadystatecollege.files.wordpress.com/2015/07/7-20-15-watt-to-ferguson-township-legal-tools.pdf>

Re: Legal Tools to Deny Final PRD Approval and Correct Invalid Zoning

Dear Supervisors & Township Counsel:

The Ferguson Township Planning Commission split 3-3 on Feb. 23, 2015 on a motion to approve the Toll Brothers “Cottages” Tentative Planned Residential Development application. On March 2, the Board of Supervisors approved the Tentative PRD in a 3-1 vote. After several months of plan revisions and public engagement, the board is currently scheduled to vote on the Final PRD on or before September 22, 2015.

Public statements by supervisors in recent months have indicated that some supervisors feel constrained in terms of legal options at this point, with limited power to deny the plan and rezone the parcel to Rural Agricultural, given the underlying rezoning to R4 enacted by a previous Board on September 7, 2004.

However, the current Board has received significant new information regarding the close relationship between land development activity on the subject parcel and public water security in the four months since the Tentative PRD review on March 2. That new information has included evidence submitted by concerned residents and State College Borough Water Authority officials that R4 zoning and the Toll Brothers PRD plan are both inconsistent with the Centre Region Comprehensive Plan, which identifies the land as an ecologically sensitive drinking water recharge and natural filtration area for the Harter and Thomas wells (SCBWA Wellfields 1 and 3) and an agricultural security area.

A strong legal case can be made that the PRD application is inconsistent with the intent of the Ferguson Township PRD ordinance, and can therefore be denied.

The grounds for PRD denial under Ferguson Township Code Section 27-407 include:

Intent - Section 1E - The proposed development does not “encourage a pattern of development which preserves trees and natural topography and prevents soil erosion.”

Intent - Section 1F - The proposed development does not “provide a character of development which is compatible with surrounding land uses,” including groundwater recharge and filtration and farming.

Findings of Fact - Section 2B(6)(b) - The proposed land development “would not be in the public interest” in protecting valuable drinking water resources and agricultural security land.

Findings of Fact – Section 2B(6)(b)(1) - The proposed land development “is not consistent with the Centre Region Comprehensive Plan” which calls for protection of valuable drinking water resources and agricultural security areas.

Findings of Fact – Section 2B(6)(b)(5) – The proposed development will have an “adverse relationship to the larger neighborhood in which it is proposed to be established,” the neighborhood now including groundwater recharge and filtration, and agricultural uses.

Residential Density – Section 5C(4) – The proposed development will “adversely affect existing uses on adjacent lands which are different from the proposed uses in the PRD.” Those uses are currently groundwater recharge and filtration, and agriculture.

Additional Applicable Ordinances and Laws – Section 9B – The proposed development is not “in compliance with the Township’s Stormwater Management Ordinance [Chapter 26, Part 1]” insofar as the proposed development violates Chapter 26-301-11 prohibiting “ANY REGULATED ACTIVITY THAT ADVERSELY IMPACTS DOWNSTREAM PROPERTIES, STRUCTURES, PUBLIC FACILITIES, [or] THREATENS THE PUBLIC HEALTH OR SAFETY” (emphasis in original) and is not in compliance with Chapter 26-302 – “Sensitive areas and water quality sensitive developments have been identified which require special consideration with regard to stormwater management. A. Sensitive areas are defined as those areas that, if developed, have the potential to cause catastrophic loss to a Water Authority well field. These areas consist of the delineated 1-year zone of contribution and direct upslope areas tributary to the wells (see Appendix B, Exhibit 1).”

An additional, related ground for PRD denial is that the current PRD plan includes stormwater detention basins located on 5.5 acres of land currently zoned Rural Agricultural and outside the RGB/SSA. Stormwater detention is not a permitted use of RA land under Ferguson Township law. Development is not a COG-endorsed use of land outside the RGB/SSA. RA land is not eligible for direct conversion to PRD zoning, and inclusion of the 5.5 acre parcel within the RGB/SSA requires subdivision and regional authorization by all six municipalities.

Furthermore, the underlying Sept. 7, 2004 RA to R-4 rezoning can be reversed as invalid. The Pennsylvania Municipalities Planning Code contains provisions empowering municipalities to rectify past errors, by adopting “Municipal Curative Amendments.” See Act 247 of 1968, Section 609.2.

The grounds for a Municipal Curative Amendment include the demonstrated invalidity of the September 7, 2004 rezoning from RA to R-4, as evidenced by regional planning staff and elected representative recommendations – between March and September 2004 - that the rezoning request be denied.

Ferguson Township elected representatives are in a strong legal position to protect public water supplies and valuable agricultural soils, by denying the current PRD application and reinstating Rural Agricultural zoning. Exhibits supporting this two-part legal strategy are attached for your review and consideration.

The Board also enjoys widespread political support for taking those two actions as evidenced by community petitions that have garnered more than 2,100 signatures to date.



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 **Henry Brzycki** · Pennsylvania State University
Well done Ms. Watt!
Like · Reply ·  3 · Jul 20, 2015 10:28am

 **Loralee Swab** · Penn State
Thank you for all the hard work you have put into this. It is so important to our community; thanks again!!
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Keep up the good fight!
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