

TOWNSHIP OF LOWER MAKEFIELD
BOARD OF SUPERVISORS
MINUTES – FEBRUARY 21, 2022

A special meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on February 21, 2022. Dr. Weiss called the meeting to order at 8:22 p.m.

Those present:

Board of Supervisors: James McCartney, Chair (joined meeting in progress)
Fredric K. Weiss, Vice Chair
Suzanne Blundi, Treasurer
John B. Lewis, Supervisor

Others: Kurt Ferguson, Township Manager
David Truelove, Township Solicitor
Fred Ebert, Sewer Engineer

Absent: Daniel Grenier, Secretary Board of Supervisors

PURPOSE OF SPECIAL STUDY

Why This is Required

Mr. Ebert stated this is a PADEP requirement whenever there is a change in how wastewater is managed and handled within Lower Makefield Township. He stated that will always remain Lower Makefield Township's responsibility to do that. He stated in this case there is a selected alternative to sell the public sanitary sewer system that Lower Makefield Township owns. He stated the sale of the Sewer system does not impact the portion of Lower Makefield that the Township of Falls Authority owns and maintains, and that is not subject to the sale.

Mr. Ebert stated the change is the institutional implementation of the Act 537 Plan which identifies who owns and operates the public sanitary sewer system. He stated in this situation Lower Makefield Township has entered into an Agreement of Sale which will be consummated in the near future. Prior to that DEP requires Lower Makefield Township to amend its Act 537 Plan to identify that Lower Makefield Township will no longer be the owner and operator of the sewer facilities, and that it will now be Aqua Pennsylvania Wastewater Inc. He stated what they want to evaluate is making sure that the customers will

not be impacted and that anyone who comes in will have a full understanding of who will own and operate the sewers, who the customers will pay their bills to, and who will take responsibility for all of the existing Inter-Municipal Contracts and Agreements and other Contracts that are associated with this.

Mr. Ebert stated it also identifies what changes will be made as far as who will be reviewing Land Development Plans with respect to sanitary sewer; and while they will still have to comply with the Township Code, the actual public portion will be subject to Aqua Pennsylvania's review and approval and developers will have to comply with that. He added that the private portion of the public sewer system which had been described previously as being behind the right-of-way lines, part of the Lateral Ordinance, or outside of the Easement will still remain under the jurisdiction of Lower Makefield Township; and will not be impacted by that.

Mr. Ebert stated this is required so that when someone looks at the 537 Plan for Lower Makefield Township, they understand who owns, operates, and maintains the public sanitary sewer system, and that Lower Makefield Township will always be responsible for the identification of the public Sewer Service Area, but the implementation of the public sanitary sewer system will change from Lower Makefield Township to Aqua Pennsylvania. Mr. Ebert stated this is most often done when there is a sale of a sewer system but is also done when there is the establishment of an Authority.

Mr. Ebert stated what DEP is concerned about is that all of the Agreements are assigned to Aqua Pennsylvania, that there is no lack of service, that Aqua will fully "step into the shoes" of Lower Makefield, that they can carry out the duties of Lower Makefield Township, that they have qualified staff to be able to own and operate the system, that there will be financial people who be able to bill and collect bills, be able to insure that "everyone pays for the long-haul," and it will be able to be operated to the same level as when Lower Makefield Township owned it.

Limited to Changes to Act 537 Plan by the Sale of Sewer Study

Mr. Ebert stated there is no change to the public Sewer Service Area, and the entire Township is still identified to be publicly-sewered. He stated there are existing on-lot systems that have not connected yet, but they have the opportunity to connect. He stated it does not change any population projections, and it does not create any new pump stations or any new Sewer

Service Areas. He stated if you are currently serviced by Morrisville, you would remain in Morrisville; and they are not changing any of the Service Areas in any way. The change is that the people will now be customers of Aqua Pennsylvania, and the bills will be regulated by the PUC. Mr. Ebert stated the Township will no longer be responsible for the operation and maintenance so that if there is an issue with any of the operations or maintenance, it will be the responsibility of Aqua Pennsylvania. He stated Aqua Pennsylvania will be responsible if there are any overflows and for reporting them. He stated Aqua Pennsylvania will be responsible for reporting overflows and preparation of the Chapter 94 Reports. Mr. Ebert stated any Planning Modules that come before the Township or Sewage Facilities Exemptions and sewer conveyance capacity will have to be Certified by Aqua. He stated all of the treatment will still remain with either Bucks County Water and Sewer Authority or Morrisville as far as certifying the treatment capacity.

Mr. Ebert stated even though the Township is selling the Sewer system, the Township still controls, and Aqua cannot change, the Sewer Service area that goes to Morrisville or the Sewer Service area that goes to Bucks County Water and Sewer Authority. He stated that responsibility and obligation remains with Lower Makefield Township, and Act 537 planning will always be part of Lower Makefield Township. He stated the Lateral Ordinance will also remain with Lower Makefield Township. He stated the Operations and Maintenance Agreements with any low-pressure systems and individual grinder pumps will remain with Lower Makefield Township.

Mr. Ebert stated we need to provide documentation of the change to DEP. He stated DEP is not judging whether it is a good or bad decision to sell the system, and they just need to have Lower Makefield identify it so that when someone looks at the official Sewage Facilities Plan for Lower Makefield Township they understand that it is no longer owned by Lower Makefield Township and/or previously their Authority, and that it is now owned, operated, and maintained by Aqua and that all contractual obligations have been taken care of by Aqua Pennsylvania

Mr. Truelove stated Aqua has purchased systems from other Municipalities, and he noted East Norriton and Cheltenham Township in Montgomery County; and he asked Mr. Ebert if he is familiar with those. Mr. Truelove stated they went through the same basic format that we are discussing this evening, and Mr. Ebert agreed. Mr. Ebert added that DEP reached out in a letter explaining that and used both of those as examples, and the format is the same.

He stated the requirements are the same for anyone selling their Sewer system, assigning it to an Authority, or becoming part of a Regional Authority. He stated in all cases it is the identification of who is going to be the owner and operator and how that impacts the residents to make sure that there will be no lack of service, that all the contractual obligations are there, and an existing resident or someone moving in can look at this as our official document that identifies all of this.

Dr. Weiss asked if the Township is responsible for the 537 Plan even though we no longer own the Sewer system what happens if Aqua is not compliant, and what can the Township do to enforce the 537 Plan. Mr. Ebert stated the enforcement comes from DEP who will make Aqua do it, and DEP also has the ability to go into a Consent Order and Agreement with Aqua for compliance; and if they do not voluntarily enter into a Consent Order and Agreement, DEP can take action against Aqua for not implementing the 537 Plan. Mr. Ebert stated normally when you hear this, it is a developer going after the Township for not implementing this; but DEP will go after Aqua and advise them that have to follow it. He stated if Aqua were to say that they were not going to allow someone to connect to the public Sewer service and there is no Connection Management Plan or Corrective Plan, they cannot do that. He stated Aqua cannot change the Service Areas. He stated DEP can also state that Aqua is required to implement our Plan; and if they are not effectively implementing the Act 537 Plan, DEP will take enforcement actions against them to force them to implement it. He noted that there is a situation in another Township where connections are being limited due to overflows, and DEP is taking enforcement actions against Aqua Pennsylvania to make sure that they are taking the necessary corrective actions to be able to implement the 537 and provide service as envisioned, identified, and defined by the Township in its Act 537 Plan.

Mr. Ebert stated Aqua Pennsylvania only implements the Plan; and if the Township were to have a major Zoning change and change an Area where they would drastically reduce the proposed density by purchasing a large amount of open space or were to have a higher density, the Township would have to document that by updating their 537 Plan and then provide that to Aqua Pennsylvania to implement that and to obtain the necessary treatment and conveyance capacity and charge for that. He stated there will be a partnership with Aqua Pennsylvania on all future Act 537 Plans. He stated Aqua Pennsylvania has the ability to

have input, but ultimately whether or not the Township will change a Sewer Service Area, that remains with the Township. He stated if Aqua Pennsylvania were not to implement the 537, DEP would come down on them for the enforcement of implementing the 537 Plan to meet the needs of the community.

Mr. Ebert stated one of the concerns is that if it is a growth area, that somehow the Township would be limited in its ability to do a Zoning change to allow a project that they wanted to see go through because there was not sewer capacity. He stated the Township's enforcement action against Aqua Pennsylvania would be to modify the Act 537 Plan and have DEP enforce it against Aqua. He stated the control of the Act 537 Plan is not only a planning tool, it is also an implementation tool so that the Township can implement the SALDO, Zoning and any changes to it, and the Comprehensive Plan. He stated as Zoning Plans and Comprehensive Plans change or large developments that were not anticipated come through that are allowed by Zoning, that would involve a larger modification and it would be handled through the Planning Module which modifies the Act 537 Plan. Mr. Ebert stated the Township has to review and approve the Planning Modules; and as part of that there is input from Aqua Pennsylvania primarily on the conveyance of sewer through its lines, and also making sure that they are purchasing the required treatment capacity or participating in a treatment plant expansion in Morrisville or additional capacity from the City of Philadelphia or the reduction of I & I.

Mr. Ebert stated the Act 537 Plan also gives the Township the ability to make sure that Aqua does not let the system go or that there is excessive I & I after the Township just spent significant monies in the last two years to improve that. He stated it keeps the obligation for the Lateral Ordinance with the Township and the enforcement and responsibility for that. He stated he knows Aqua Pennsylvania evaluated that in their purchase of the system – the fact that the Township was taking proactive steps for things that the Township was willing to control to keep the operating costs as low as possible for all of the customers whether they were being billed by Lower Makefield as they are today or whether they will be billed by Aqua in the future.

Mr. Lewis stated questions from the Board of Supervisors were not to be considered until Agenda Item #8, and his assumption was that they were to wait until after the Sewer engineer completed his presentation. Dr. Weiss stated he feels it is important to “get everyone on the same page” before we start the presentation so we know what we are dealing with.

Dr. Weiss stated he understands that it is still the Township's 537 Plan, and Aqua is responsible for implementing it. He stated the Township can change it if the needs change, and we would be partners with Aqua in making sure that whatever needs to be done is being done appropriately; and Mr. Ebert agreed. Mr. Ebert added that the responsibility remains with the Township because the Township has a vision for its Comprehensive Plan, SALDO, and Zoning; and there are changes with that over time that would impact the amount of wastewater that goes through the system. He stated DEP recommends that without any major changes that the Township "refresh and amend" the Township's Act 537 Plan every ten years. He stated the primary purpose of that is that it is a living document that gets monitored yearly through the Chapter 94 Report to see how it is being implemented and to make sure that adequate capacity is there. He stated Aqua will be doing the Chapter 94 Report; and if they get into a projected overload or there is not adequate treatment capacity to meet the flows looking five years forward, DEP at that point will order the Sewage Facilities Planning to address that.

Mr. Ebert stated Aqua could not go out to get a Permit or make any changes without it either being consistent with the Act 537 Plan or the Act 537 Plan being amended in order to allow for that change. He stated Aqua could not build a treatment plant in the Township without an Act 537 Plan. He stated they also cannot upgrade a pump station without it being consistent with the Act 537 Plan. Mr. Ebert stated this is why we previously did the Special Study for the Neshaminy Interceptor as to how we were going to reduce our flows. He stated we also had to adopt the Yardley Borough Special Study when they wanted to enlarge the interceptor that flows through Yardley Borough, and we were responsible to pay as we had a financial obligation. He stated they had to make sure that it was adequately sized for our flows. He stated there is an acknowledgement of the Agreement, and public needs to know that we have an Agreement where we have financial responsibilities to enlarge a portion of the Sewer system. Mr. Ebert stated minor sanitary sewer line sections do not require planning if they are less than 250 EDUs.

Mr. Ebert stated a low-pressure system would require Township control of the individual grinder pumps even though Aqua Pennsylvania would own the low pressure system, and he noted Dogwood Drive as a low-pressure Sewer system. Dr. Weiss asked if the homeowners or the Township are responsible for the individual grinder pumps; and Mr. Ebert stated the homeowners are, but they are responsible to have an Oversight Agreement with the Township.

Mr. Lewis asked as a point of order that the Sewer engineer be permitted to complete his presentation without “questions or guidance.” Ms. Blundi stated she does have some questions she would like clarified, and did not want this to go too far as there may be some misunderstanding; however, she recognizes that if Mr. Ebert proceeds with his presentation, they may have more of an understanding. Dr. Weiss asked if the Board understands the difference between the responsibilities, enforcement, and “who owns what and what happens,” and if they should go on with the presentation. Mr. Blundi stated she was going to ask who would be sending out the bills, but she would be willing to wait until Agenda Item #8 to ask that question.

Mr. Lewis stated he also has questions, but he was respecting the Agenda and was going to wait to #8 when he was going to ask his questions. He stated he was trying to be respectful of the Sewer engineer and to let him complete his presentation. Dr. Weiss stated while he appreciates that if there is a misunderstanding it is also good to have an opportunity to have the chance to ask questions before Mr. Ebert gets into the details. Mr. Ebert stated he is willing to proceed at the discretion of the Board.

EXECUTIVE SUMMARY OF SPECIAL STUDY BY SEWER ENGINEER

Sale of Sewer System

Mr. Ebert stated as previously noted this is the sale of not only the wastewater facility meaning the sanitary sewer lines, but also the assignment of the Easements, and the manholes. It is also Aqua’s responsibility to operate and maintain the system in accordance with DEP requirements and all of the Township’s contractual obligations. He stated there are significant contractual obligations with Bucks County Water and Sewer Authority and the Neshaminy Interceptor Agreement that was entered into. He stated we still have a Corrective Action Plan that needs to be complied with as well as a Connection Management Plan of which we have done a very good job staying in compliance with that. He stated all of those responsibilities will get assigned to Aqua Pennsylvania.

Mr. Ebert stated in this situation, no land is transferring, and it is all Easements and the actual facilities within those that are being transferred along with the obligation to update them. He stated any Maintenance Contracts that we have entered into have to be observed. He stated there is a three-year Contract for emergency generators and an existing Contract with the alarm system. He stated all of those obligations will transfer over to Aqua.

Mr. Ebert stated all of this is documented since DEP would not be privy to the actual Agreements that exist, and this document puts that in the public forum for DEP to help implement that.

Change in Ownership

Mr. Ebert stated the change in ownership is also included. He stated what the Special Study also does is confirms that the existing sewage facilities, planning, Service Areas, and Contract Areas do not change. He stated a Special Study is a modification or amendment to the base Act 537 Plan. He stated they confirmed that this Special Study does not change the previous Sewage Facilities Planning other than the institutional identification of who is responsible for it.

Mr. Ebert stated it does identify the evaluation of alternatives, but here it is really only institutional of who owns and operates it and not the effectiveness of them, and it is more of an identification of who does that.

Transfer of Existing Agreements and Obligations

Mr. Ebert stated while the written text is only about twenty pages, the document itself is thick because they have to identify what Contracts exist and make sure that they are all identified and transferred. He stated they are identifying that Easements being transferred over is a requirement of the Purchase Agreement. He stated DEP can rely on this when enforcing actions against Aqua Pennsylvania or determining compliance by Aqua Pennsylvania.

Mr. Ebert stated it is all to be done in a public forum it is required that the public has a chance during the thirty-day Public Comment period to make comments. Mr. Ebert stated this was also given to the Lower Makefield Township Planning Commission, the Bucks County Health Department, and to the Bucks County Planning Commission for their review and comment which is a requirement of all Act 537 Plans. He stated any Act 537 Plan could impact flow projections, density, and Zoning; and that is why we go to the outside agencies for review. Mr. Ebert stated the thirty-day Public Comment period ended today, and there were no Public Comments.

Mr. Ebert stated in the Appendices they identify the existing Sewer Agreements and Obligations that Lower Makefield Township currently has that have to be transferred and effectively implemented by Aqua Pennsylvania. He stated it also goes through all of the transfer of the Permits. He stated we had some facilities which were “pre-regulatory” that were not Permitted, and we submitted all of those Permits on Friday and today into DEP so that they exist and can be transferred.

Mr. Ebert stated that is important because the compliance with those Permits is in the name of Lower Makefield Township and/or the Sewer Authority, and they need to be transferred so that those obligations will be with Aqua Pennsylvania.

Mr. McCartney joined the meeting at this time, but he asked that Dr. Weiss continue as Chair.

Mr. Ebert stated with the change in ownership all the operations and maintenance, billing, financial responsibilities, long-term operation and maintenance, and Capital Reserve will all be transferred from the Township to Aqua Pennsylvania. He stated it also identifies that Aqua is a Public Utility Commission regulated entity, and that they have to comply with all of the requirements of the Public Utility Commission. He added that while the Township can set rates as it sees fit to maintain the operation and maintenance, Debt obligations, and establish a Capital Reserve Program, now there will be a level of scrutiny by the Public Utility Commission. He stated the public this other avenue to go through to voice any concerns. Mr. Ebert stated concerns can be addressed by amendments to the Act 537 Plan to address any issues that would exist within the public sewer service area.

Mr. Ebert stated the majority of the Agreements which are basically the Neshaminy Interceptor Agreement, the Yardley Borough Inter-Municipal Agreement, and the Morrisville Municipal Agreement are all contained within this document so that it very clear that Aqua Pennsylvania is stepping in to assume all the responsibilities of those. He stated they are also including all of the more recent Act 537 Plan Amendments whether that be a Special Study in the case of Neshaminy or Yardley Borough, and that there is a clear identification of all of the pump stations, the current capacity of those pump stations, as well as transferring the Permits for those pump stations. He stated when you transfer of the Obligation, you transfer the Permit requirements.

Existing Public Sewer Service Areas

Mr. Ebert stated the most important part of the Executive Summary is that this does not change the Sewer Service Area; and while there is a new owner, the method of sewerage people, how it conveyed through certain service areas, how it is going to the ultimate treatment, and how the Agreement that governs treatment capacity is not changing; and Aqua Pennsylvania cannot change that. Mr. Ebert stated the first step in any of those changes is the Act 537 Plan, and Aqua cannot do that without the Township. Mr. Ebert stated the Township also has to be reasonable in partnering with Aqua Pennsylvania so that if there is a major change, there is enough time for Aqua to be able to implement it and comply with all regulatory requirements.

SUMMARY OF COMMENTS FROM THE BUCKS COUNTY PLANNING COMMISSION,
BUCKS COUNTY HEALTH DEPARTMENT, AND LOWER MAKEFIELD TOWNSHIP
PLANNING COMMISSION

Mr. Ebert stated we were obligated to get comments from the Bucks County Planning Commission which did provide a letter identifying that the Hearing date was February 21, and they do need to ratify the letter. Mr. Ebert stated they asked the Bucks County Planning Commission how does this change in selected alternative for the sale of the Sewer system impact the Bucks County Planning Commission and its ability to implement its role in the growth and long-term planning for the County.

Mr. Ebert read the letter received into the Record as follows: “We commend the Township Officials for undertaking this update of the Sewage facilities to facilitate the sale of the Sewer system. The Special Study is intended to supplement the Township’s existing Sewage Facilities Planning document and proposes no changes to the evaluation or planning of existing or future sewage facility disposal capacity or infrastructure.” Mr. Ebert stated that is what he has represented to the Board tonight, and he agrees with the comments from the Bucks County Planning Commission.

Mr. Ebert stated that if this is adopted by Resolution by the Board of Supervisors, it will go to DEP which may have questions that the Township will have to respond to. He stated it will ultimately be approved by DEP and Bucks County Planning Commission because they rely on this as part of the review of the Township’s SALDO or any other matters in Lower Makefield that come before the Bucks County Planning Commission for Land Development,

Comprehensive Planning, etc. and they need to have a copy of the final approval. Mr. Ebert stated while the Board is approving this tonight, DEP will most likely ask for clarifications that the Township will need to respond to. He stated it most likely will not require a new Resolution. Mr. Ebert stated the responses to DEP will be on Township letterhead so the Board of Supervisors will be kept advised.

Mr. Ebert stated the second agency is the Bucks County Health Department and their letter stated “The Special Study is being updated prior to the sale of the Sewer system to Aqua focusing on the identification and evaluation of the existing sewage facilities, evaluation of alternatives, and identification of future operation and maintenance responsibilities after the Sewer system is transferred.” He stated their conclusion is “that the Study states that Lower Makefield is entirely served by public sewers although a limited of number of properties may have individual on-lot sewer systems.” He stated they then go on to say: “The Department requests that talks continue to ensure that all operations of Shady Farm Brook connect to public sewer.” He stated they then go on with the most important statement that states, “The Department has no adverse comments regarding the Lower Makefield Township Act 537 Sewage Facilities Special Study.”

Mr. Ebert stated the last review was with the Township’s Planning Commission, and this went before the Planning Commission on two occasions. He stated he was not able to attend the first time it was reviewed although he was able to attend the second time and able to answer their questions. He stated after much discussion the Planning Commission recommended to approve the Special Study as the Special Study will not impact the Planning Commission’s ability to regulate Zoning and SALDO. He stated they could not reach a consensus as to the impact on the Township’s Comprehensive Plan. Mr. Ebert stated he feels that was primarily related to identification as to what is a private system, and they did not know how the Comprehensive Plan could be impacted because it is a hypothetical question whereas the Zoning and SALDO are defined regulations and they could clearly make a determination as to whether it had an impact or not on that.

ROLE OF THE TOWNSHIP IN PA DEP ACT 537 PLANNING MOVING FORWARD

Mr. Ebert stated this sale does not impact the Act 537 process at all other than the Township will be working in concert with Aqua Pennsylvania, and they will be “almost like a Planning Commission to the Township.” He stated the Township

will want to hear their recommendation and work with them, but it is still the Township's Plan, and the Township can approve what they want to approve and change it or not as the Township sees fit.

QUESTIONS BY THE BOARD OF SUPERVISORS

Mr. Lewis thanked Mr. Ebert for his service to the Township.

Mr. Lewis asked what would happen in the event of a merger with a neighboring Municipality with regard to the 537 Plan and sewer conveyance. Mr. Ebert stated both Municipalities would have to modify their Act 537 Plans to select the alternative of a merger and it would go through the same process as is being done here. He stated a merger would not be allowed without Act 537 Plan approval.

Mr. Lewis asked if that would require the Township to get agreement from Aqua for that as well. Mr. Ebert stated he believes that it would. He stated the merger would be subject to an Agreement which would be included in the Act 537 Plan so Aqua would be a Party to that Agreement. He stated that Agreement would be the basis of the approval of an Amendment to the Act 537 Plan. He stated while you could technically approve an Act 537 Plan Sewage Facilities Planning for a merger, he believes DEP would question the implementability of it without an Agreement that would be ready to be executed that would include Aqua Pennsylvania as a Party to that Agreement.

Mr. Lewis stated he believes Aqua would then have final say in some measure or at least veto authority. Mr. Ebert stated DEP would look at the implementation of the 537 Planning. He stated the Township could approve a merger, but he does not believe DEP would approve it without the agreement of Aqua as he feels they would say you need to have an Agreement to prove that this is implementable.

Mr. Lewis stated there are parts of the Township that are not developed; and as the Bucks County Health Department mentioned they were suggesting that we encourage them to join the public Sewer system. Mr. Lewis asked what would be the process for that. He stated there could be a large, couple hundred acre parcel, which is not currently attached to the sewer conveyance system, to be developed; and he asked what the process would be related to the 537 Plan and SALDO. Mr. Ebert stated the entire Township is in a public Sewer Service Area, and there is no area that is identified for individual, on-lot sewer systems.

Mr. Lewis stated there are a few on-lot systems; however, Mr. Ebert stated they are still in the public Sewer Service Area even though they are getting their service by individual on-lot systems. He stated the 537 Plan would not change because they have access to public sewer. Mr. Ebert stated if it were more than 250 EDUs, Planning Module approval would be required. He stated if there is a pump station or a low-pressure system, Planning would be required. He stated it if was a simple extension of a gravity sanitary sewer and is less than 250 EDUs there would be no Act 537 Planning required.

Mr. Ebert stated if there was a needs area of individual, on-lot systems that fail, the Supervisors could do a Special Study or a Planning Module that would set an implementation schedule for public sewers to be extended out there and then be connected, and then it would be the obligation of Aqua Pennsylvania to have that sewer system installed, and the residents would have to pay the cost of the Tap-In Fees.

Mr. Lewis stated in the case of a large development going on-line, this would create a large customer for Aqua with very little infrastructure costs because those would be borne by the developer. Mr. Lewis stated a new development could be a “tremendous Revenue boom” to Aqua. He stated in the case of an on-lot system situation where you are extending the pipe, the Revenue would not be as appealing for them from an economics perspective; and Mr. Ebert agreed.

Mr. Lewis asked if the Township could capture any of the Revenue for a new development that would be creating a new customer for Aqua that could be a lucrative customer for Aqua; and Mr. Ebert stated the Township could not since the Township sold its sewer system.

Mr. Lewis stated Mr. Ebert was involved in the analysis of our Sewer system and gave guidance to professionals about that. Mr. Lewis stated in 2019 Mr. Ebert had mentioned significant issues in terms of where we had I & I and helped develop a Plan that the Township followed as to what Mr. Ebert suggested; and Mr. Ebert agreed. Mr. Lewis stated when the analysis was brought out, the theory was that if we did the one increase at that time, there would not be a need for a Sewer rate increase until 2026 given what was provided and “everyone attested to that.” Mr. Lewis asked Mr. Ebert if he still believes, that given that we did all of that, that would have been the case. Mr. Ebert stated he was not involved in the financial side of it, and he was involved in what needed to be done in order to reduce I & I and was calculating the cost of upgrades, replacements, and lining projects to determine long-term financial pay back by having lower treatment costs. Mr. Ebert stated he was not involved in rate setting.

Mr. Lewis asked Mr. Ebert if he would agree that we did follow everything he had suggested, and Mr. Ebert agreed that they implemented the Plan very well.

Mr. Lewis asked Mr. Ebert if he had at any time suggested that our Sewer system was at risk for catastrophic failure. He added that he had reviewed all of the Board Minutes/Sewer Committee Minutes, and he never heard that term “catastrophic failure;” and he asked Mr. Ebert if he had advised the Board about that at any time. Mr. Ebert stated the only things he clearly said was that we needed to replace the metal can at the Brookstone pump station because it was rising out of the ground and was going to rupture; and if we did not replace that with new submersible pumps that would be a catastrophic failure if we had not done that. He stated if we had not replaced the Stackhouse pump station, we could no longer buy parts for it or access it to maintain it. Mr. Ebert stated catastrophic failure would mostly be with the steel cans that are now thirty to forty years old that were in pump stations, and that is what he would consider to be the highest risk for a catastrophic failure.

Mr. Lewis asked Mr. Ebert if he ever suggested that the system in any way was at risk for catastrophic failure; and Mr. Ebert stated he did not, and it was just isolated components.

Mr. Lewis showed a notice from Aqua and a cover letter that is purported to be from Lower Makefield Township, and he asked if Mr. Ebert was involved in this; and Mr. Ebert stated he was not. Ms. Blundi asked if there is a date on it that would help reference it, and Mr. Lewis stated it is undated. Mr. Ferguson stated that letter went out when Aqua sent their required Notice from the PUC.

Dr. Weiss asked the relevance of this to the 537 Plan. Mr. Lewis stated he feels it is directly related to the 537 Plan. Mr. Lewis objected to being interrupted, and Dr. Weiss stated as the Acting Chair he has the right to ask that the comments be relevant to the 537 Plan. Mr. Lewis stated it relates directly to Pages 13 and 14 of the Special Study that Mr. Ebert presented this evening.

Mr. Lewis stated the letter states: “In any event the Township rate would have been higher had the Township kept the system given future construction and Capital requirements, and this is without factoring in a catastrophic failure of the system.” Mr. Lewis stated in Mr. Ebert’s discussion, he indicated that there could have been components of a pump house that could have been at risk for catastrophic failure, but at no time had he suggested that the system was at risk for catastrophic failure; and Mr. Ebert agreed.

Mr. Lewis stated Mr. Ebert had mentioned East Norriton and Cheltenham which both had similar Special Studies, and Mr. Ebert agreed. Mr. Lewis stated they were both purchased by Aqua, and Mr. Ebert agreed. Mr. Lewis asked Mr. Ebert if he knows what their rate increase was in August, 2021 that they went to the PUC for; and Mr. Ebert stated he did not. Mr. Lewis stated it was 33% which is higher than the Notice of Proposed Acquisition and Rate Base Addition from Aqua. He stated he opposes the sale of the Sewer system.

Mr. Lewis stated Mr. Ebert had “counseled other Supervisors that he did not understand why we were building all of this stuff out if we were eventually going to sell the Sewer system, and he indicated that we had done all of those things to the letter.” Mr. Lewis asked Mr. Ebert if he would have selected Aqua as the preferred Bidder. Mr. Ebert stated he did not have a vote on that. He stated he was asked to come up with a Budget as to what it would cost to properly maintain the system if we were not going to sell the Sewer system. Mr. Ebert stated he did show what needed to be done in the short-term if we were going to keep the system, and he is proud of the progress that was made over the last two years.

Mr. Lewis stated the Board agreed that they had to do it to make sure the system was sound, and we did all of those things, and the system is sound; and at no time was it ever at risk for catastrophic failure. Mr. Lewis stated there was nothing in Mr. Ebert’s Report that we were at risk for catastrophic failure. Mr. Lewis stated the letter from the Township does not have a signer, and this letter was not voted on by the Board of Supervisors.

Mr. Ferguson stated the letter was from him. Mr. Lewis asked Mr. Ferguson if in his mind did that accurately reflect an accurate assessment of where we stood, and Mr. Ferguson stated it did absolutely. Mr. Lewis stated that is against what Mr. Ebert just stated, and Mr. Ferguson stated Mr. Lewis is taking that out of context as to what that meant. Mr. Ferguson stated the letter stated that the outline of the costs as projected as Mr. Ebert stated was a short-term lining project that would take sixty years to get done; and those costs would be set unless there was a catastrophic failure such as something that was going on that we could not predict that would not be covered by the current rate base whether that would be a pump station or a rupture because of weather which would be a catastrophic failure the same way Mr. Ebert described a pump station catastrophic failure of hundred of thousands of gallons of sewage which would not necessarily be something that we contemplated in the rate as it was going out.

Mr. Lewis asked Mr. Ferguson if what he was telling the Board in November and December of 2019 when he was asking the Board to approve the 2020 Budget was wrong. Mr. Ferguson stated it was not. Mr. Ferguson stated in 2019 we set the rate so that we could start lining pipes at a minimal level. He stated it will take sixty years to line 25% of the Township. Mr. Ferguson stated what Mr. Ebert was saying was that we were getting started because we had not done any lining in the history of the Township other than one year. He stated this was an attempt to begin to show DEP that we were serious about lining; and if DEP decided that we needed to increase how much we were doing or that I & I had increased substantially, that we may have had to increase how much we were doing because DEP may not find that to be adequate. Mr. Ferguson stated we were doing several hundred thousand dollars a year in lining, and it would take sixty years to get to between 25% and 30% of the Township at the rate we were currently doing it.

Mr. Lewis stated Mr. Ferguson had stated at that time that if we implemented exactly what he said that we would not have a rate increase until 2026, and Mr. Ferguson agreed. Mr. Lewis stated that argues the case why we would sell the Sewer system if we knew we were guaranteed that there would be no rate increase until 2026. Mr. Ferguson stated in 2026 there would potentially be a 70% to 80% increase. Mr. Lewis stated that was never presented; however, Mr. Ferguson disagreed adding that \$50 million translated on an amortization rate over twenty years is around 64% to 65% so at the time it would have been around 60% to 70% on \$50 million. He stated we looked at four options, and they were all \$50 million to \$65 million.

Mr. Lewis stated that liability does not go away, and the difference is that Aqua America gets to mark that up and pass that onto ratepayers. Mr. Ferguson stated they would also pass that on in an economy of scale so that it is not being passed onto 12,000 ratepayers, but is being passed onto several hundred thousand ratepayers.

Dr. Weiss asked how this relates to the Special Study. Mr. Lewis stated he does feel it relates to the Special Study. Dr. Weiss stated questions and comments should be kept to the 537 Plan as the time for discussing the appropriateness of the sale is long gone. He suggested Mr. Lewis discuss that on his social media pages or during a Public Comment, but at this point the discussion is on the 537 Plan. Dr. Weiss stated there is nothing relative to the Special Study that Mr. Lewis is discussing as he is discussing the inappropriateness of the sale.

Mr. Lewis stated he began his discussion about contingencies and changes in the Municipality structure of Lower Makefield and then he discussed the impact of a new development as it relates to the Special Study of the 537 Plan. He stated he then asked the Township engineer about the status of the facilities that are the conveyance system. He stated all of that was directly relevant under Pages 13 and 14 of the Special Study which discusses the process around this.

Mr. Lewis stated he recognizes that he is not going to change any minds, but he wants the Record to accurately reflect the questions he asked Mr. Ebert related to the status of the system, and that was answered; and that is directly related to the 537 Plan.

Ms. Blundi stated earlier Mr. Ebert stated the reason for doing this was to make sure that all the documents lined up. She stated we remain an entity in terms of the 537 Plan and the land that is within Lower Makefield Township. She asked if the sale is approved who will be billing customers going forward, and Mr. Ebert stated it will be Aqua Pennsylvania Wastewater Inc. although he is not sure what the actual bill will say. He stated that there may be one additional bill that goes out from Lower Makefield Township which would still collect that money as well as any monies that were due while the Township owned and operated the facility. Mr. Ebert stated he believes that they are trying to end it on a clear billing cycle, but depending on when the transfer takes place, there may be one more bill; but moving forward all of the bills will come from Aqua Pennsylvania and/or their affiliate.

Mr. Ferguson stated there will be a meter reading at the end of February. He stated Bucks County Water and Sewer Authority does our billing, and the thirty-day notice has been given. He stated the last bill will go out in early March, and there will be a note on the Bucks County Water and Sewer bill that this is the last bill from Lower Makefield Township and that subsequent bills which would be mid-April and will be a month-to-month basis. He stated those who pay their bills through their bank should make sure to get the new Code so that the payment will go to Aqua and not Bucks County Water and Sewer. Mr. Ferguson stated they will post this information on Facebook and it will be on every bill that is coming out in early March.

Ms. Blundi stated there will be a duality that continues past when the last bill goes out because the Township as the owners of the 537 Plan will still always have a vested role in insuring compliance and that things are handled the way they were intended to be handled under the Plan. She stated Mr. Ebert noted

that DEP will be enforcing any problems in the future, and Mr. Ebert agreed. Mr. Ebert stated that is the same way that it is enforced now, and DEP is the regulatory authority.

Mr. Ferguson stated some people have asked about the Lateral Ordinance. Mr. Ferguson stated currently the Township is implementing this, and the Township engineer's office reviews the videos to see if there are issues with the laterals. Mr. Ferguson stated the Township would still issue the Lateral Certificate, but he asked Mr. Ebert what the process would be going forward if there was a problem that needed to be resolved and about the interaction with Aqua if there was an issue with a lateral. Mr. Ferguson stated the Township never stopped a property from Closing, but both property owners were made aware that there was a problem. He asked if there would be anything done differently. Mr. Ebert stated that process will not change because the Township is not selling that portion of the Sewer system. He stated what will change is that if there is a deficiency in the public portion of the sanitary sewer lateral that will go from Lower Makefield's responsibility to Aqua Pennsylvania's responsibility. He stated on the private portion that remains exactly as it is today; and since it is an Ordinance, it is enforced by the Township and Aqua has no control over that.

Mr. Ferguson stated Bucks County Water and Sewer had put a moratorium on Building Permits in 2012 because of the lack of follow through on implementation of a 537 Plan. Mr. Ferguson stated while he does not anticipate that would happen, he asked in the event that it did, would that be resolved by the Township bringing suit against Aqua. Mr. Ebert stated the Township would amend the Act 537 Plan to include a Corrective Action Plan, and Aqua would have to implement that. He stated if they did not implement that, then DEP would take action against Aqua. He stated DEP would take an enforcement action; but it is not a lawsuit, rather it is an implementation of fines of up to \$10,000 per day per violation. Mr. Ferguson stated our moratorium was seven years, and he wanted to make sure that the Township would not have to deal with a PUC company if they let that go. Mr. Ebert stated the Township should still look at the Chapter 94 Report every year to make sure that Aqua is implementing the Corrective Action Plan and that the flows adjusted for development connections are trending downward. He added that our flows very clearly trended significantly downward due to the work done and because it has not been as rainy. Mr. Ebert stated any Planning Module that goes through needs a Capacity Certification; and the Township, when they review the Planning Modules, should review that and make sure that there is adequate capacity. He stated the Chapter 94 is a five-year projection, and the Township will have to work with Aqua Pennsylvania on the Chapter 94 Reports,

and will need to give them how many connections were made and what are our future connections. Mr. Ebert stated this is why he stressed with the Sewer Authority the importance of the Chapter 94 Reports.

Mr. McCartney asked if there was an issue with a sewer lateral, he understands that would not hold up Closing; and he asked if there is a process where the money for repairs could be held in Escrow and asked if the broker or the Township would deal with that. Mr. Ferguson stated he feels that would be something that the parties participating in the sale would deal with. He stated they would be required to make the improvement, and if the property Closes, it would be required of the new property owner; but they would know that was a requirement. Mr. McCartney stated in other Municipalities where they have a Use and Occupancy Permit and there is something holding up use and occupancy, a Municipality may issue a Temporary Use and Occupancy although he understands that is something that we are not currently doing as far as the Sewer Laterals and are instead allowing occupancy to happen and putting the responsibility on the new owner. Mr. Ferguson stated we would allow for that to go forward but it would be a citation that would be active on the site and a certain amount of time would be given. Mr. Ferguson stated in the few instances when that has happened, we have had communication with both the buyer and seller so that they were clear on that.

Mr. McCartney stated he felt the presentation spoke for itself, and he thanked Mr. Ebert for putting it together. He apologized to the other Supervisors as he was held up in the airport.

Dr. Weiss stated when we had approved the 537 Plan, there was a timeline of six years, and we had budgeted a certain amount of money per year which was how the last rate increase was determined. He asked if the sale to Aqua effects the timeline at all, and is that just a Township parameter or is it part of the Agreement of the Sale. Mr. Ebert stated he does not believe the exact line items of the Budget that were approved are a requirement of the sale, but compliance with the Corrective Action Plan is. Mr. Ebert stated he believes a majority of what was lined out are a requirement of the Corrective Action Plan. He stated the Township's Budget implemented the Corrective Action Plan. He stated Aqua is responsible for the Corrective Action Plan. He stated there is also Planning Approval in the 537 Plan for the pump station upgrades.

Dr. Weiss stated Mr. Lewis had mentioned a possible merger between systems. He asked if Aqua owns the Sewer system, how would the Township entertain a merger with a neighboring Municipality. Mr. Ebert stated Aqua would have to be a Party to the Agreement for that merger. Mr. Ebert stated he would not prepare a 537 Plan that could not be implemented. He stated the only way a merger is able to be implemented is if all necessary Parties come to a documented, written Agreement of how it would be implemented.

Dr. Weiss stated if Yardley Borough decided to sell their system to Aqua, it would be Aqua's responsibility to deal with the Borough, and the Township would not be part of it; and Mr. Ebert agreed.

Dr. Weiss asked if there is a large parcel of land which extends between Townships, and the owner decided to develop the property through all the Townships and there is a contiguous Sewer system between the Townships would the 537 Plan have to be modified by Lower Makefield and the other Municipalities to put the development in place along with Aqua for DEP to handle a new 537 Plan. Mr. Ebert there would have to be an amendment to the Act 537 Plan to allow that to happen. He added that if the flow direction changes, treatment provider changes, or the flow path changes, that would be a significant change that would have to come back to the Board of Supervisors.

Dr. Weiss stated if one Municipality decided to merge with another Municipality, that would also require an Act 537 change, and Mr. Ebert agreed.

QUESTIONS FROM THE PUBLIC

Mr. Ferguson stated we did the advertisement with the thirty-day timeframe for Public Comment and questions. He stated he checked with his Assistant at 7:15 p.m. leading up to this meeting; and up to that point in time, which was past the expiration point, there were no submissions.

There was no one from the public wishing to speak on this matter.

APPROVAL OF RESOLUTION #22-5 TO ADOPT THE SPECIAL STUDY AS PART OF THE LOWER MAKEFIELD TOWNSHIP ACT 537 SEWAGE FACILITIES PLAN

Ms. Blundi moved and Mr. McCartney seconded to approve Resolution #22-5 to adopt the Special Study as part of the Lower Makefield Township Act 537 Sewage Facilities Plan. Motion carried with Ms. Blundi, Mr. McCartney, and Dr. Weiss in favor and Mr. Lewis opposed.

PUBLIC COMMENT

There was no one from the public wishing to speak at this time.

Mr. Ebert stated it was a pleasure to serve the Township.

There being no further business, the meeting was adjourned at 9:55 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'James McCartney', with a large, stylized flourish extending to the right.

James McCartney, Chair

