

TOWNSHIP OF LOWER MAKEFIELD
PLANNING COMMISSION
MINUTES – NOVEMBER 14, 2022

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on November 14, 2022. Mr. Bruch called the meeting to order at 7:30 p.m.

Those present:

Planning Commission: Ross Bruch, Chair
 Adrian Costello, Vice Chair
 Dawn Stern, Secretary
 Tony Bush, Member
 Tejinder Gill, Member

Others: James Majewski, Community Development Director
 Barbara Kirk, Township Solicitor
 Andrew Pockl, Township Engineer
 Daniel Grenier, Supervisor Liaison

APPROVAL OF MINUTES

Mr. Costello moved and Mr. Gill seconded to approve the Minutes of September 12, 2022 as written. Motion carried with Mr. Bruch abstained.

DISCUSSION AND MOTION ON PROPOSED ORDINANCE TO AMEND THE
DIMENSIONAL STANDARDS IN THE RESIDENTIAL ZONING DISTRICTS TO PROVIDE
FOR AND TO ESTABLISH MANDATORY OPEN SPACE REQUIREMENTS

Mr. Majewski stated the genesis of this Ordinance is that there is a desire on the part of the Township Board of Supervisors to try to encourage preservation of more open space within the Township. He stated they want to mandate more open space within developments. He stated under our current Zoning a property can be developed without any open space at all, and the only open space we have in some developments are detention basins which are used for stormwater management. He stated we do offer two options that would preserve 50% of the open space in a development which are optional. He stated one is the Farmland Preservation option which is only in the R-1 Zoning District which is the northern

end of the Township. He stated we also established an Open Space Cluster option in the RRP, R-1, R-2, and R-3 Zoning Districts which was done as part of our Low-Impact Development Ordinance which was adopted in 2006/2007.

Mr. Majewski noted the Farmview Development off of Dolington/Woodside, which is one of the developments that the Township worked in cooperation with Realen Homes to try to preserve as much open space as possible. He stated they clustered down the development to half the size of what it could have been; and instead of one acre lots, they made half acre and slightly less sized lots with 50% open space. He stated in one of the developments where this was done, we got 145 acres; and in total, we got almost 300 acres of open space that was preserved with the Farmland Preservation option.

Mr. Majewski stated the Township also utilized the concept of Performance Zoning, which is where you preserve natural features such as wetlands, water courses, floodplains, woodlands, and steep slopes. He stated you protect those from development and mandate that there is no building or limited building in those areas. He stated those areas are mapped so that they are identified and deducted from the site's potential development, and the remaining areas can be developed at a higher density than what would have been permitted under the Ordinance. Mr. Majewski stated this is so that the developer is "made whole." He stated if there were 100 acres with nothing on it, they could get 90 lots; but if half the land was constrained by the features he noted, they could cluster down and use half-acre lots and still get roughly the same net lot number so that it is not really a taking.

Mr. Majewski stated the Open Space and Farmland Options are optional, and not mandated. He stated what we are looking at now is to try to mandate some amount of open space, and we came up with the number of 25% open space which is similar to the Performance Zoning; but instead of considering resource-protected land, we are considering open space which is like resource-protected land, and the developer is to preserve a certain amount of the property and to balance that we would also decrease the minimum lot size and increase the density. Mr. Majewski stated this would allow the developer to come up with the same number of lots, but we get open space. Mr. Majewski stated we also made it is a sliding scale so that if they give more than 25%, the developer can get a little bit more lots and/or smaller lot sizes as the amount of open space increases. He stated if the developer were to provide 30% open space, they could get a couple of extra lots, and the Township would get more open space.

Mr. Majewski stated some key items in the Ordinance regarding open space are that not less than 25% of the land is designated as open space and that the smallest area they could have would be 20,000 square feet which is roughly half an acre.

Mr. Costello stated he understands that this would not apply to any development less than two acres, and Mr. Majewski agreed because they would not be able to meet the 20,000 square foot minimum.

Mr. Majewski stated also included in the Ordinance is that the open space must be contiguous to the lots in the development so that they try to have it that people are backing up to open space or that the open space backs up to Township open space. Mr. Majewski stated the Subdivision and Land Development Ordinance has a lot of criteria also on open space, and small, odd pieces of property cannot be used as the open space in order to meet the requirements. He noted Item #4 which states: "Consideration shall be given to the arrangement, location, and landscape of the open space to provide some aesthetics to the development."

Mr. Majewski stated they should also try to arrange the open space in a manner that would have easy access and view of the dwelling units so that even if there are slightly smaller lots, the homeowners have something to look out at like at a lot of the Farmland Preservation developments. He added that not all of the lots in the development could have the open space view. He stated in Heather Ridge in the northern part of the Township, there are about twenty-five lots around the rim that back up to Farmland Preservation, and it creates a nice vista for the development.

Mr. Majewski showed a slide of the Reserve at Yardley across from Charles Boehm on Big Oak Road which is about eighteen acres. He stated under our current Zoning if this piece of property had no environmental resources, they could currently lot it out entirely without any consideration being given to open space. He stated theoretically the density would be thirty-one lots with a minimum lot size of 16,500 square feet. He stated that property did have a lot of constraints, and the effective open space area is not within stormwater basins and other criteria, and this development netted out five acres of open space out of 17.5 acres. He stated the lots average about $\frac{1}{3}$ rd of an acre to $\frac{1}{2}$ an acre.

Mr. Bush stated he is not sure that development is a good example because there is an issue with it because when that development was approved, one of the problems was that the back yards were tiny and for a number of lots, if someone wanted to put on a patio, deck, etc. they would need to get an exception. He stated it was because of the resource issues on that particular property that those lots were designed the way they are. He asked if the goal is to get smaller lots, are they so small that if someone wants to get a pool, a patio, or a porch that they have no chance to do it without getting exceptions. Mr. Majewski stated under our Ordinance it has a sliding scale for lot size and also impervious surface so that the smaller the lot, the higher the impervious percentage, and the larger the lot, the amount of impervious goes down. He stated on this development there are a number of properties that do have patios, etc. He added that our Ordinance also reserves 3% of the impervious surface for the homeowners so that a developer cannot use up all of the impervious surface and leave the property owner without the ability to put up a shed or a patio.

Mr. Bush stated he brought this up because in that development it was an issue, and he recalls that there were a number of units that were boxed in the day they moved in. Mr. Majewski stated that is not true to his knowledge because they had that extra 3%. He stated if you have a 20,000 square foot lot, 3% of that is 600 square feet which would be a 20' by 30' patio, and they could still do that. He added that the only way that they would be boxed in would be if they voluntarily indicated they wanted a bigger house and agreed to have their 3% taken away, and they would have to sign off in writing that they were aware of that.

Mr. Majewski stated under our current Zoning they could have 16,500 square foot lots, 110' by 150' as an average dimension. He stated typically the roads and the stormwater management take up about 30% of the land, and the area in the middle is typically where the detention basin would be located. He showed an aerial of the Reserve at Yardley, and stated a typical lot yield on a development would be twenty to twenty-one lots under our current Zoning. He stated under the proposed Cluster Zoning, they would have to provide 25% open space, and in the Reserve at Yardley that would be about 4.4 acres, and he showed an area in the upper right corner that would be about 4.4 acres, and the rest of the property would have slightly smaller lots of 16,000 square feet, and they would get nineteen lots. He stated the developer would potentially lose one lot; however, the roadway network would be smaller and they would not have the entire loop road going around, so they would not have to construct that road, the extra utilities, and the stormwater management basins would be smaller

because there is a little bit less of everything. He stated while what he has shown is a “rough example,” they would net out about the same under what is being proposed for this development in the R-2 Zoning District than if they had a lot with no environmental constraints and lotted it all out.

Mr. Bruch asked if the stormwater management basin counts as part of the 25% open space, and Mr. Majewski stated it does not.

Mr. Majewski stated he ran several different scenarios for different size and shape properties, and he came up within 5% of the number of lots one way or another. He stated it would not impact the developer to any great extent financially.

Mr. Majewski stated the advantages of Cluster Zoning over conventional Zoning is that you get additional open space for the enjoyment of residents, you have the opportunity to preserve some natural features and open areas, and possibly provide linkages between open space areas if there was a piece of property that abutted another development with some type of open space or environmental constraints; and you could tie those pieces of open space together to get a larger piece of open space. He stated for the developer the advantages are shorter lengths of roads and utilities which would result in lower costs, less impervious surface which would mean less stormwater infrastructure and those both result in lower construction costs for developers. He stated there are also lower long-term maintenance costs for the Township if we have to plow less roads.

Mr. Costello stated he understands the open space piece of this and that the Supervisors are trying to come up with a creative idea to make sure we are capturing as much open space that we can that we have left; however, in the Master Plan we came up with R-1, R-2, R-3 and lot sizes accordingly for various reasons. He stated now it is being recommended to take R-1 which currently has a minimum lot size of about 40,000 square feet; and there is the potential where someone who bought a house in an area of the Township zoned a certain way and the lot had to be about one acre, and that there are 15,000 square foot lots being built next door. He stated there is a risk of changing the nature of the neighborhood that was designed over the years by allowing something different.

Ms. Kirk stated that is assuming that there is a lot of open space in those Districts. She stated an effect may be that the mandatory requirements for open space would only come into play if there is a large piece of ground that is still available for development or an existing development is “demolished to the ground,” and started from scratch. Mr. Costello stated someone with a three-acre property could subdivide the lot into four 15,000 square foot lots. Ms. Kirk stated this started out as a Cluster Overlay to provide incentives for preservation of open space. She stated when she did the Overlay because of all the different Zoning Districts, it conflicted with what was already in some of the Zoning Districts for preservation of open space; and it made more sense to do a uniform mandate in each Residential District for the preservation of open space.

Mr. Majewski stated it should be noted that in the R-1 Zoning District in the northern area of the Township most of the lots are not one acre because most of them took advantage of the clustering. Mr. Majewski showed an aerial view of the northern part of the Township, and it can be seen that almost all of the developments are cluster developments. He stated Heather Ridge is one with half acre lots or less, and Farmview lots are a little less than a half-acre. He stated one of the few that is not that way is Meetinghouse Glen where there were not a lot of resources and they did not do Farmland. Preservation. He stated those have the one acres lots as does Gatefield.

Mr. Bush stated “that is looking backwards.” He asked how many undeveloped parcels there are that this could apply to. Mr. Majewski stated there are a number of parcels left including one off of Twining Road, another parcel of 85 acres, and 130 acres of land adjoining a Newtown Township parcel that is 50 to 80 acres. Mr. Majewski stated the Grey Nun Academy parcel is another large parcel, as is the Torbert Farm, and the Wright Farm across from Makefield Crossing North which is 50 acres. Mr. Bush asked if the Wright Farm does not have a Deed Restriction on it; however, Mr. Majewski stated the one he is referring to is the other Wright Farm which is 50 acres and abuts up to Farmland Preservation and the east portion of the preserved Wright Farm.

Mr. Costello stated he feels what is proposed seems small. He noted the developers trying to develop the Harris Tract were trying to squeeze all of the houses in a corner of the property and get credit for the dump area. He stated the Board of Supervisors would not allow that. Mr. Costello asked if there is a piece of a property that is not developable could a developer decide to make that the open space and take credit for it. He stated if this would allow for that, he would not be in favor of it. He stated they should have controls around it such that whatever is open space has to be either

currently-protected land such as a wetlands or it has to be developable land which could have been built on. He stated he does not feel they should be able to take credit for a piece of “junk that they do not even want to build on,” and give it to the Homeowners Association or the Township and then squeeze the houses on the part of the property that is easy to build on.

Mr. Bush stated he agrees with Mr. Costello; and he does not feel we should adopt an Ordinance where we are setting up the Township for “heartache.” Mr. Bush stated he feels controls need to be built in since the situation Mr. Costello has described could happen, and the Township probably could not stop it with this Ordinance. Mr. Majewski stated they would have to try to find some entity to take the property.

Mr. Majewski stated with regard to the 15,000 square foot lots that is when you have 68% or more of the property preserved. He stated if you had 100 acres that would mean you are preserving 68 of the acres and only developing on 32 of the acres, and he feels the smaller lot size would not be noticed. He stated if you are up to 67%, you are still at the 22,000 square foot/half acre lot size.

Mr. Bruch asked about the comment Mr. Majewski made with regard to finding some entity to take the property, and he assumes he was referring to the open space; and Mr. Majewski agreed. Mr. Bruch stated his fear is that it would be part of a Homeowners’ Association and new residents to that development might not be fully mindful of what that entails.

Mr. Grenier asked if there is a requirement when you are preserving land to put it under some kind of preservation easement that would have to be dedicated such as a 501C3 or some other entity besides the HOA. Ms. Kirk stated there is not. She added that under the current Zoning Regulations ownership of open space can be either by the Township, a property owners’ association, Farmland Preservation, a Conservancy or Land Trust, or an individual owner of a non-residential development or multi-family development such as an apartment complex. Ms. Kirk stated it does have to be shown on a Final Development Plan that gets Recorded in Doylestown so there will be a Plan Note as to the designation of the open space which will be a matter of Record. She stated if someone violates that, there is an enforcement mechanism by the Township against whoever violates it for failing to comply with the Recorded Plan.

Mr. Bruch asked what if that were a Homeowners' Association that did not comply, and Ms. Kirk stated you would file suit against the Homeowners' Association. Mr. Bruch stated if he were buying a new house in the community he might not do his proper due diligence to understand the implications of what he was risking. Ms. Kirk stated that is why you have a Title Company do a Title Search. She stated this is no different than having a search done and determining if there are Utility Easements running across a property you are looking to buy. Mr. Bruch stated he was looking to try to protect people who were not looking out for themselves. Mr. Majewski stated this was a concern of the Board of Supervisors and has been all along in the discussions with the Quaker Group about the Harris Tract. Mr. Majewski stated the Board of Supervisors wanted more concrete details on how they were going to preserve the land properly so it would not be a burden on the Township or the property owners.

Mr. Costello stated if a developer would do this, would the land that is preserved be public land or land that only the neighbor "could touch." Ms. Kirk stated there is a distinction between passive and active open space. She stated if it is preservation of woodlands, that would be determined as passive open space. She stated active open space could include a common area which is defined under the Ordinance and that common open space is an "area or a combination of land and water intended for use or enjoyment of residents not including streets." Mr. Costello stated if it were left to a neighborhood association, he would assume they would not want it open to everyone. Ms. Kirk stated generally when land is developed and subject to a Homeowners' Association, the Final Land Development documents usually provide that they have to prepare the necessary Declarations and By-Laws subject to Township solicitor review. She stated it could be part of Land Development that the preserved open space is not solely limited to use by the residents of that development but is to be open to the public.

Mr. Bruch stated it indicates that this would not apply to anything under two acres; however, even at two acres with half an acre being devoted to open space, he feels that is more difficult and less beneficial to the "grand idea." He stated if they are talking about 25, 50, or 100 acres that makes sense; however, at ten acres or five acres, that amount of open space does not make sense as to how to manage that. He stated he would suggest that they consider that under a certain level of acreage, well above two, it should be either optional or work differently. He stated the Planning Commission

previously heard a proposal from a resident to divide his tract into four or five lots, and he questions how that would have worked had this Ordinance been enacted, and it would have been difficult to apply this in that situation.

Mr. Costello stated he likes the spirit of this and we may be mature enough in our development cycle where these concerns are not that highly likely; however, he still feels that there needs to be some tighter, higher-end controls on the developer.

Ms. Kirk stated part of the problem was coming up with a percentage that would work universally across all lots so there would not be Challenges of being discriminatory as to whether the Lots are in R-1 versus R-2. She stated 25% across the board does not seem significant; but if you change it for a smaller lot and make it only 15%, there could be Challenges as to what was our basis for backing that up. Mr. Bruch asked if they could give the developer the option if it was under ten acres. Ms. Kirk stated that would defeat the purpose of trying to mandate preservation of open space.

Mr. Grenier stated the Supervisors did not have any technical discussion on this when it was voted to advertise. He stated they did not discuss percentages or any of the details. He stated other Townships have higher base percentage requirements – 50% or higher – and they do not allow for protected resources to count toward that 50%, and they “bump up” the percentages from there which makes sense. He stated they try to make it whatever the base requirement is plus those resources that they want to protect. He stated that leads to different types of developments. He stated stormwater management is not included, and there are requirements to make sure that the open space is contiguous or has a minimum size; and if there are two or three different sections of a lot that have open space, you cannot have half an acre of open space in some sections and put everything else in another location and try to count those half acres as open space.

Mr. Grenier stated there is discussion in the Ordinance about Performance Standards, and Ms. Kirk had touched on this a little bit in terms of the actual definition of open space as it applies to the Ordinance; and he would like to look at that. He stated at the Park & Recreation Board meetings there is a very wide-ranging thought process behind what is defined as open space – everything from a soccer field to “other things with no trees or anything else on it that might be open space that is simply used for League use,” and he asked if that would qualify as open space in this setting. He stated we would want to make

sure all of that is clear. He stated if we are looking to protect resources, watersheds, habitats, etc. as most Open Space Ordinances are looking to do, we want to make sure that with a 100 acre parcel, we are not ending up with 25 acres of turf fields and calling it open space as that would not accomplish the goal of protection of resources goals. He stated he wants to make sure that the definitions are very clear moving forward.

Mr. Grenier stated in terms of who is responsible for the open space, with stormwater management a lot of times stormwater basins, etc. are deeded over to the Township and we are ultimately responsible for management; but oftentimes if a group does not know that they own or have to maintain open space, eventually it “gets lost in the paperwork and whether or not it gets enforced is another issue and a lot of Townships do not enforce once it is done.” He stated if we want to maintain open space in the long term, which he feels is the goal of this, we need to look at means to make sure that it works appropriately.

Mr. Pockl stated with regard to the definition of open space, currently it is: “A combination of land and water within a development site designed and intended for the use and enjoyment of residents not including streets, parking areas, areas set aside for facilities including detention and retention basins, or resource-protected land.” He stated right now the Zoning Code does exclude resource-protected land and stormwater management facilities from being included in the open space.

Ms. Kirk stated there is a discrepancy in Section 200-74 which does define open space as including resource-protected land so there is an issue between the definitions. Mr. Majewski stated that is actually a problem with our Definitions Section, and Mr. Dresser from the EAC pointed that out. Mr. Majewski stated we have a definition for open space under Definitions which then says, “see common open space,” and common open space talks about something that is different than the open space as defined in 200-74. Mr. Majewski stated the common open space is more for a townhouse development versus open space, and this needs to be straightened out because there are several different ways to define open space; but the intent has been that open space can be areas with natural resource-protected lands, and it can be areas with recreation fields, open fields and a “lot of things.” He stated we want a development to have some of that in whatever form or shape the Township feels is most appropriate as to the use of it.

Mr. Pockl stated recreational areas like tennis courts or turf fields are not specifically prohibited in this so if we want to restrict that, that is something where the definition needs to be updated. Mr. Majewski stated right now we actually mandate as part of the development that developers either provide us with open space for recreation, which would be improved recreational open space, or they give us a Fee-In-Lieu of that if our Park Board determines that the piece of property we would be getting is not really usable. He stated for the last twenty years, he does not feel we have taken any land as recreation land that he can recall. He added that prior to that the Fred Allan softball fields were part of the Hidden Oaks Development, and that was Dedicated by the developer to the Township and was their obligation for recreation land when they dedicated that land to the Township. Mr. Bruch stated the Township now maintains that, and Mr. Majewski agreed. Mr. Majewski stated he agrees that it does need to be spelled out more clearly.

Mr. Costello asked in this process when there is a private entity declaring open space, if the Township does not take ownership of it, what are the controls around what the Homeowners' Association would be allowed to do with that land. Ms. Kirk stated based on the documents that she has seen for the few that have come through during her tenure, it is generally issues of being open space with no structures or anything built on it; and it is to be used passively as a walking area, etc. She stated there are also Conditions as to maintenance that the Homeowners' Association is responsible for such as maintaining the grass, etc.

Mr. Costello stated hypothetically an 80-acre farm if it were to be developed would not have trees on it, and he asked if they would take a quarter of that lot and plant some trees or could they not plant trees and just have a big lawn for use by the neighbors. Ms. Kirk stated usually what is done is a developer would present a Landscape Plan to the Township as part of the development with a listing of plants. She stated she has not seen anything like this to be able to compare it to. She stated she assumes it would depend on what the natural features of the land were; and if it were an open area, they might plant a meadow. She stated that would all be part of Land Development.

Mr. Grenier stated there are certain landscape buffer requirements and property lines; and if there was a large agricultural fields, he asked how those landscape buffers would tie into this.

Mr. Majewski stated it is not without precedent that we take a large, flat piece of land and use it; and he noted the open space at Bexley Orchard where there is a piece of property that is one and a half acres, and they surrounded it with the twin units, and it is just flat open land.

Mr. Costello asked if the Township is calling this open space, is there still a requirement over time as to what that land can and cannot be or could a Homeowners' Association do anything they want with it as long as they do not build something on it. Ms. Kirk stated legally the Condominium documents, once approved, are binding. She stated there would be a Note on the Plan that gets Recorded so that if in the future a Homeowners' Association was going to "flip" the open space, the Township could sue to have it preserved based on the Recorded Plan and Note. Mr. Costello stated while the current Board may have an idea as to what open space means, he would hope that we are doing something when future Boards are in place, so that the definition and concept behind that piece of open space is generally consistent with what the original definition was. He asked if the original developer plants a lot of trees and twenty years from now the Homeowners' Association wants to cut down all of the trees and have a meadow, would that still be open space or is that a private yard for the Homeowners' Association.

Ms. Kirk stated generally something of that nature is also included in the Final Plan as to those schematics so there will be something that is Recorded of Record to reflect that. Ms. Kirk stated that if money were spent to plant trees, she doubts money would be spent to take them all down. Mr. Costello stated the people twenty years from now may not care. Mr. Majewski stated the Township has a lot of open space areas where they have had to spend a lot of money taking down trees.

Mr. Bruch stated as to the point of who benefits, especially at the smaller levels, it will inevitably benefit the surrounding homes far more than the general community.

Ms. Kirk stated in Makefield Glen, the Township purchased a parcel of open land and converted it to the Dog Park. She stated that was always open land, and she is not sure that was part of the overall development scheme. Mr. Majewski stated it was part of the overall development scheme to have a soccer field there, and they made an Agreement with the HOA to amend the Plan to allow the Township to purchase it and use it as a Dog Park.

Ms. Kirk stated that is the only time she can recall where designated open space was converted to something else, but it did go through the Township for that.

Mr. Pockl stated the Township may want to increase the percentage of woodlands to remain within the open space. He stated currently it is designated by Zoning District, and it is 70% for R-3, 75% for R-2, and 80% for R-1, which theoretically could be increased to 85% which is similar to what is in Zone RRP. Mr. Pockl stated that would prevent a developer or an HOA from coming in and saying they are going to establish an area as open space and then clear out the trees on 30% of that land to have an open meadow, etc.

Mr. Majewski stated those percentages are overall for the whole development, and not for a specific piece of open space so it is on a tract-wide basis. Mr. Majewski stated he does not believe that we can increase those numbers as we are at the limit of how far you can go with tree protection without leaving yourself open to a legal Challenge.

Mr. Costello stated a positive of this is that it would probably reduce the number of people with any real objection to the Tree Ordinance because they are given more space to plant trees.

Mr. Pockl stated his other item was that the Township may want to consider language that either restricts or allows the open space to be enclosed with a fence. Mr. Majewski stated currently when you go through Land Development all of those options are on the table. He added the EAC commented that we should somehow delineate or demarcate the limits of the open space with a fence or something so that people have a better understanding of the limits, especially when it is an individual homeowner backing up to open space. He stated there is one development where there are about twenty-five properties that have been encroaching on our open space, and we now have to tell them to “get out.” He stated delineating the open space a lot better is essential. He stated the way they laid out the open space in that development would not have been approved by the Planning Commission today.

Mr. Grenier asked if there are access requirements to the open space written into this proposal; and Ms. Kirk stated she does not believe there is anything in the proposed Amendment as to access specifically to the open space area, and it was just designating what is mandated to be open space. Mr. Pockl stated it does state that the area must be contiguous. Mr. Grenier stated

if they put open space in the middle of the development, no one else could benefit from it if you do not back up to it; and he asked if we should mandate some type of access which could be an Easement or make sure that the open space itself is laid out in such a way that there will be access/

Ms. Kirk stated this is an Amendment to the Zoning Ordinance, and some of these specific requirements being discussed are for designation or delineation of the open space and Access Easements; and she asked if that should all fall under Subdivision and Land Development.

Mr. Majewski stated with regard to Mr. Grenier's comment about the open space being in the middle, our Subdivision and Land Development Ordinance does have open space standards; and one of them says that open space shall be linked with trails that are accessible to the residents of the Subdivision. He stated it is contemplated that there would be a way to access this open space although there may be an unusual situation where it does not. He stated the goal is for open space to be enjoyed by being able to walk it, view it, etc. for as many residents as possible. He stated it is primarily for the benefit of the people who are closest to it, but the intent is try to also make it enjoyable for the rest of the Township. He stated if there could be a piece of property where you could put open space that backs up to a road so that you are not looking at the backs of houses and can see open space that would be a win/win. He stated Chapter 178-87 does have Open Space Standards and lays out a lot of criteria for open space.

Mr. Bruch stated if there is additional open space with trees that would not otherwise be there, the entire community does benefit; however, with regard to access to it, that would be different and would be a benefit to those around it.

Mr. Pockl stated the rest of the items he has are minor things or typos that Mr. Majewski may want to change.

Mr. Bush stated he agrees that the goal of preserving open space is a laudable one; however, he feels the process here was "backwards, and that has been done over and over again." He stated the Planning Commission is supposed to provide recommendations to the Board of Supervisors on Ordinances like this one and "over and over again we get handed an Ordinance or something that the Supervisors have already taken action on;" and it has been advertised publicly which he believes means that it would need to be-readvertised when it gets changed. He stated it should have come to the Planning Commission, the EAC,

and whoever was going to provide recommendations ahead of time so that it was done in a more-orderly fashion. Mr. Bush stated this has been discussed before, and he is going to keep raising the same point. He stated it would be “nice if whoever is pushing this down to the Planning Commission, would follow the process.”

Mr. Bush stated he agrees that the definition of open space needs to be better defined. He stated he is also concerned about some of the smaller developments which could be challenging. He stated the Planning Commission has looked at a few projects this year, and he questions how they would work if this were in place. He stated in other communities there have been tear downs on bigger parcels, and there is no reason to think that will not happen here, and it may be challenging to apply this to those lots.

Mr. Bush stated with regard to encroachment, he feels there are a lot of developments in the Township where people are encroaching on open space; and how to delineate the open space is probably very important. Mr. Bush stated Mr. Majewski had shown a view of Big Oak Bend; and he stated he drives by there, and feels that there is much more that could have happened there in terms of what that open space looks like. He stated he was not on the Planning Commission when that project was developed, and he feels this gets back to the definition of open space; and he asked if open space is just a grass field that is mowed. Mr. Majewski stated there are many definitions of open space, and “one size does not fit all.” He stated there is passive open space, there is active open space, there is visual open space and nature. Mr. Bush stated the one at Big Oak Bend is not active or passive other than it is passive in that “nobody is on it.” Mr. Majewski stated he did not know that the Township owned that, and that is why they have done an inventory of Township property. He stated it turns out that is classified as active recreation land. Mr. Bush stated this gets back to what Ms. Kirk was discussing about enforcement when she stated there is an Agreement and it is written in the Deed so that the Township has enforcement; however, two generations of owners later “nobody remembers a thing, and the Township does not even know that it is active recreation space.” Mr. Majewski stated we do now. Mr. Bush stated he has lived here for decades, and the Township has not known that so it gets back to all the points that have been made tonight which gets back to his initial point that this is the kind of thing that needs to come to Planning, the EAC, and Park & Rec long before it gets advertised by the Supervisors. He stated while the Ordinance sounds good with laudable objectives, it needs a lot of work. Mr. Bush stated this was “thought about upside-down,” and they need to start with how they are defining open space as well as how they are looking at the smaller lots.

Mr. Bush asked Mr. Grenier when this is scheduled for a vote by the Board of Supervisors. Mr. Grenier stated he does not believe it is on the next Agenda. Mr. Majewski stated it is not on the Board's next Agenda because it would not have had that timeframe.

Ms. Stern stated she agrees with Mr. Bush that it sounds like this was done backwards. She stated she feels they have to look at the large tracts that are there now and see how they would fit in with something like what they are trying to do and whether this would even apply to a smaller tract of two acres. She stated she feels they need to see what is really out there first and then come to some parameters as to what could be done with regard to the open space.

Mr. Majewski stated there are several very large tracts of land, and one of the concerns is that a developer could come in and spread out one acre lots with no open space at all.

Mr. Gill stated what is being proposed would just be a "collective lawn" versus everyone having individual lawns at their house. He asked if we would rather have houses with acre lots or a big piece of grass in the middle that gets mowed. He stated he feels this "task was delegated to us to come up with ideas and try to write this," and he feels it might need a lot more research including looking at the different lots that this could potentially happen on, and come up with a better plan as far as uses for the land and whether there should be public access where people could be looking at people playing in their back yard and dealing with noise pollution.

Mr. Majewski stated he did not intend for this to come up for a vote tonight, but he wanted to get everyone's feedback. He stated we did get feedback from the EAC. He stated he felt the Planning Commission was generally in favor of this, but perhaps they are not in favor of adding open space. He asked that he be provided with any additional comments the Planning Commission has. He stated the Bucks County Planning Commission will be providing comments on it as well which he will provide to the Planning Commission. He stated he could also provide answers and information before the next Planning Commission meeting if anyone has additional specific questions.

Mr. Grenier stated with regard to Mr. Bush's comments about process, we have had this discussion a number of times over the past few years with different Ordinances in terms of process. Mr. Grenier stated he voted not to advertise

this particular Ordinance as he wanted the Planning Commission, the EAC, Park & Rec, and a few others to look at this because it did not start with any of those groups which is where most of the Ordinances would start with and develop. He stated he is not sure who it started with, and it was probably a Supervisor or two who wanted to push it forward. He stated he does not feel it was fully vetted before it was advertised; and “with our history on the Board, he would not be surprised that it is voted on to keep it as is at the first available Board meeting because that is just the way this Board has gone.” He stated he does not want that to happen because all of the comments that the Planning Commission has brought up tonight are important ones that need to be addressed. He stated he feels we need to better define what type of open space would go in one of these developments because it is a wide-open definition, and there are a lot of other issues. He asked that the Planning Commission members either formally as an Advisory Board or individually, get their comments to the Board of Supervisors so that they are on the Record and can be addressed. He stated he does not want this to be passed as is, as he does not feel it is ready; and he agrees that these are laudable goals, but more details need to be worked out.

Mr. Bruch stated with regard to the problems with the small lots, if something was unworkable from the owner’s standpoint, he assumes they would seek a Variance so there is relief and it may not be as much of an issue as he originally thought. Mr. Bush stated while he understands that there is an “escape valve,” he asked if that is a fair cost to push onto a property owner. Mr. Bush stated he feels that needs to be discussed. He also asked if we are limiting their property rights which could be an infringement on what they own, and he asked if that is something that we should be concerned about.

Mr. Costello stated he is looking at this from the other direction, and in the three years he has been on the Board he believes the Planning Commission, the Zoning Hearing Board, and the EAC have “caught a lot of things because developers/property owners are required to go before the Township to rationalize it and discuss it.” He stated his biggest concern is that he feels there are too many potential loop holes the way it is written right now. He stated this ranges from a single property owner who wants to subdivide his lot and could do things that his neighbors would not expect up to the Harris Tract and trying to “sneak through something that they could not get through ten years ago because they did not have the means to do it.”

Ms. Kirk stated looking at this legally, there are two diverse groups with one being the developers who want to maximize as much as they can build in order to maximize financial profit versus Zoning regulations which are to benefit the Township and preserve certain features that the Township wants to maintain. She stated trying to strike a balance between the two is extremely difficult. She stated that is why a random number of 25% was chosen because if you try to do it specifically to each of the Districts, you are opening yourself up to a Challenge as to the Constitutionality or whether you are discriminating one group against another. She stated part of that is trying to keep in mind all of those issues as well.

Mr. Costello stated right now we have a stated process, and the Township is saying we want more open space so we will give developers a little latitude on development density so we can get more open space. He stated while he wants that, he does not want there to be any other loop holes or “missing of processes.” He stated he feels the risk here is we are leaving ourselves open to the law of unintended consequences. Ms. Kirk stated she is not sure everyone is aware that not all of the Residential Zoning Districts have mandates for open space. Mr. Costello stated he does understand that; and while he likes the general concept and having clustered open space areas to make the Township feel a little less developed and little bit more rural with more trees that can take up more ground water, he does not want to provide people a way to use this to their advantage and not to the Township’s advantage. Ms. Kirk stated that is always a possibility; and Mr. Costello stated while he realizes that, he is trying to minimize it.

Mr. Majewski stated given the comments this evening, he has some ideas as to how to narrow it down a little bit as well as to address the discrepancy in the definition of open space so that it is clarified.

Mr. Bush stated he feels we should make a recommendation to the Board of Supervisors to withdraw the advertised Ordinance while it gets re-worked as Mr. Majewski is already saying that he is going to re-work it, the EAC has provided comments, and he knows Park & Rec was asked for comments but have not given any yet. He asked why there is a rush to get this through when it is still being worked on. He stated they should either withdraw the advertised Ordinance or at least hold it up until it gets amended and re-advertised.

Ms. Kirk stated she was under the impression that it was advertised in order to kick start getting the reviews done. Mr. Bush stated that is not the way it is normally done. Mr. Grenier stated that is “unnecessary for them to review any Ordinance.” He stated we have initiated Ordinances from the EAC, the Planning Commission, and others for years; and he had mentioned that at the Board of Supervisors’ meeting. He stated you do not have to advertise an Ordinance in order for any of these groups to review it.

Mr. Majewski stated what is required is that any proposed Ordinance that revises Subdivision and Land Development or Zoning must be sent to the local Planning Commission and the Bucks County Planning Commission with a minimum of thirty days for them to review it so that they can offer their comments, and that is prior to having a Hearing. He stated it is fine if it is more than thirty days. Mr. Majewski stated he looked and does not feel that it was actually advertised yet, and they may have been waiting to see how the Planning Commission meeting went. Mr. Bush stated Mr. Grenier stated it was “voted to be advertised,” and Mr. Majewski stated it was “authorized to be advertised.” He added he does not believe it was physically advertised yet.

Mr. Bush stated he would like to recommend that it not be advertised until it gets re-worked since it looks like it needs a lot of work at this point. Mr. Majewski stated Mr. Bush could make a recommendation with wording being that they would recommend that the Ordinance not be formally advertised and heard until the Planning Commission has a chance to make some revisions.

Mr. Bush moved, Ms. Stern seconded and it was unanimously carried to recommend to the Board of Supervisors that it not be advertised until it gets re-worked.

Mr. Majewski asked the Planning Commission members to send him any comments or concerns so that they can be addressed.

Mr. Bruch stated he is heavily in favor of open space where it can be applied; and he feels it is a great concept and a great idea to strive for although this does need some tweaking. Other Commission members agreed.

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

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Mr. Bruch stated an e-mail was received from Doug Marshall from Yardley Crest who commented that he is a big fan of open space.

Ms. Stern asked that the Planning Commission be provided a copy of Mr. Pockl's comments; and Mr. Majewski stated once he and Mr. Pockl go over a few things, he could forward that onto the Planning Commission.

There being no further business, Mr. Costello moved, Mr. Gill seconded and it was unanimously carried to adjourn the meeting at 8:51 p.m.

Respectfully Submitted,

Dawn Stern, Secretary