

TOWNSHIP OF LOWER MAKEFIELD
PLANNING COMMISSION
MINUTES – APRIL 10, 2023

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on April 10, 2023. Mr. Costello called the meeting to order at 7:35 p.m.

Those present:

Planning Commission: Adrian Costello, Chair
 Tejinder Gill, Vice Chair
 Colin Coyle, Secretary
 Tony Bush, Member
 John DeLorenzo, Member

Others: James Majewski, Community Development Director
 Dan McLoone, Planner
 Barbara Kirk, Township Solicitor
 Andrew Pockl, Township Engineer
 Fredric K. Weiss, Supervisor Liaison

ELECTION OF SECRETARY

Mr. Costello stated a new Secretary needs to be elected as Dawn Stern is no longer on the Planning Commission. Mr. Bush moved, Mr. Coyle seconded and it was unanimously carried to elect Mr. Coyle as Secretary.

APPROVAL OF MINUTES

Mr. Gill moved, Mr. Coyle seconded and it was unanimously carried to approve the Minutes of March 13, 2023 as written.

#685 – 1566 LLC MAJOR SUBDIVISION – FINAL APPROVAL
Tax Parcels #20-018-001, 20-018-001-002, 20-018-002, #20-016-027
R-1 Residential Low Density Zoning District
1566 Newtown-Yardley Rd, 1472 Newtown-Yardley Rd, 1069 Creamery Rd,
Buck Creek Drive

Proposed plan to consolidate 4 existing lots, remove 2 existing houses and re-subdivide the property to create 6 new single-family dwelling lots and one 14-acre lot containing an existing house and ponds

Mr. John VanLuvanee, attorney, was present with Mr. Mark Havers, engineer. Mr. VanLuvanee stated also present are Mr. and Mrs. Katzoff whose property is the larger property that is not being subdivided, but they are conveying a small piece of property to facilitate the extension of Buck Creek Drive. They are also interested because one of the review letters mentions the pond which is on their property.

Mr. VanLuvanee stated this project was given Preliminary approval last summer by the Board of Supervisors with the Conditions of approval memorialized in a July 21, 2022 letter. He stated in February the two Variances which were necessary to facilitate the crossing of the wetland and wetland buffer was granted by the Zoning Hearing Board, and those are Conditions of the approval.

Mr. VanLuvanee stated they have review letters from Remington Vernick, the Township's traffic engineer, and a letter from the Environmental Advisory Council. He stated there are a few issues that need to be discussed. He noted the Remington Vernick letter Comment #2 which indicates that an existing animal pen encroaches into the wetland buffer and a Variance is required. Mr. VanLuvanee stated he disagrees with that conclusion. He stated it is an existing Condition, and they are not subdividing that property. He stated the wetland buffer is 50' in that area, and Mr. Havers has advised that the encroachment may be 5 square feet. He stated it is an existing fence, and they are not putting anything into that buffer. He stated it is his opinion that the Comment does not apply.

Mr. VanLuvanee stated with regard to Comment #4, the Board of Supervisors granted a Waiver on that center line profile. He noted Comment #5 which indicates that they should get approval from PECO; however, there are no street lights proposed. He stated Comment #74 indicates that no street lights are proposed, and he does not feel Comment #5 requires any action.

Mr. Pockl stated they have removed the street lights, and therefore Comment #5 requires no action.

Mr. VanLuvanee noted Comment #6 with regard to tree replacement. He stated a Waiver had been requested and a justification letter was sent to the Township. He stated the Supervisors decided to defer action on the Waiver request. He stated there are a lot of comments about trees in the EAC review letter.

Mr. VanLuvanee stated as can be seen in the tree inventory which was submitted with Preliminary there are hundreds and hundreds of trees on this property. He stated as can be seen from an aerial which was taken in the summer, even the Katzoff property is basically covered with a canopy. Mr. VanLuvanee stated they are willing to walk the site with an expert to see if there are logical places to put in some extra trees. He stated they know that eventually they will have to negotiate a fee. He stated they do not want to plant a lot of trees that will “end up killing each other as they get bigger.” He stated there are more than enough trees on the property already which is one of the reasons that they asked for the Waiver. He stated they disagree with the EAC’s comment that there are a lot of places where trees could be planted. Mr. VanLuvanee stated they might be able to put in some shrubs, understory, and fill in some gaps; and they would be willing to look into this with someone from the Township.

Mr. Costello stated there was another Plan where this was discussed and it was noted that it did not have to be all shade trees, and it could be shrubbery. Mr. VanLuvanee stated that is the kind of input that they would like to have. Mr. Costello stated based on his reading of the EAC comment’s his interpretation was that they felt there was flexibility in terms of what would be a constructive planting plan.

Mr. VanLuvanee stated they would like some direction on that, and they would like to see if they can come up with a proposal which would be a combination of plantings and a Fee-In-Lieu before they go to the Board of Supervisors.

Ms. Kirk noted the alternative option proposed by the EAC on page 3 of their review letter. Mr. VanLuvanee stated that is not acceptable to his clients. He added that Mr. and Mrs. Katzoff have lived on their property for forty years, have landscaped it, and they are very happy with the way it looks; and they are not willing to change the physical appearance of what they have worked forty years to maintain and arrive at.

Mr. Pockl stated the genesis of his comment was that he wanted to have shown on a Plan a general idea of where the trees were that were 10" or larger on the property that were planned to be removed. He stated he had a previous discussion with the design engineer who was amenable to providing him with additional information to address that comment. Mr. VanLuvanee stated Mr. Havers has that information as a complete inventory was done on the whole property, and all of the trees were itemized. Mr. Havers stated he felt that he had sent that, and will send it to Mr. Pockl tomorrow. Mr. VanLuvanee stated it is a 13 to 14 page tabulation of the trees.

Mr. Coyle stated in the EAC letter, Item B indicates that they would recommend shade-tolerant shrubs and understory trees. Mr. VanLuvanee stated the question is how to start quantifying that in a way to satisfy the Township. He stated they may be able to come to a combination of a partial Waiver given the characteristics of the site, plus planting of trees and payment of a Fee-In-Lieu.

Mr. Costello stated the Tree Ordinance has been strengthened and is a big focus area of the current Board of Supervisors. He stated he is not inclined to approve anything that goes outside of that; however, in the past we have had the EAC, which came up with the standards on that, work with Applicants to come up with a solution that the Board of Supervisors could support. Mr. Bush stated he knows that the EAC is not in favor of having mostly shrubs without trees. He stated he personally would not be in favor of a Waiver, but he would be in favor of a Fee-In-Lieu going to the tree bank. Mr. VanLuvanee stated he is not averse to that. He stated he feels everyone can agree that there is not room for 740 replacement trees on the property, and he feels consideration of a partial Waiver once they have planted all the trees that would fit on the site without overcrowding each other along with a Fee-In-Lieu could be arrived at. He stated they did not want to go out and plant 250 shrubs on the property, and then be told that they cannot have shrubs; and they are just looking for direction.

Mr. Costello stated he feels the EAC would be open to sitting down and coming up with a workable solution in the spirit of the Tree Ordinance. Dr. Weiss stated he feels the best thing to do would be to get together with the Township Manager and the Community Development official to come up with a plan recognizing that we are not real flexible with the Tree Ordinance. He stated the ratio of trees versus Fee-In-Lieu could be considered.

Mr. Pockl stated the purpose of the comment was that there are trees to be removed and replaced, and the focus is for a buffer or reforestation of the lot; and any shrubs that are provided should not be planted around the proposed homes or shrubs to be used to beautify the homes in the development. He stated these would be shrubs that would be used to reforest the property. Mr. VanLuvanee stated they understand the purpose, and they just want to come up with a solution. He asked if he could contact Mr. Majewski to set up a meeting on this, and Mr. Majewski agreed adding that he would also see if someone from the EAC would be available to sit in on this as well. Mr. VanLuvanee stated they can then see where there might be space as it looks different in the field than on the Plan.

Mr. Costello stated he believes that the EAC has some specific ideas. Mr. Majewski stated the other project where the EAC suggested understory trees and shrubs came after their review letter for this project, and he feels the EAC would be open to having this discussion.

Mr. Bush stated they are requesting Final Approval this evening. He stated the Plan is dated February 10, and he wished that they would have had this discussion with the EAC and the Township before coming in this evening for Final Approval. Mr. VanLuvanee stated they are trying to resolve it before they get to the Board of Supervisors. He stated he was ill last month and was not able to attend the Planning Commission meeting. He stated he was looking for the direction he just got, and he wanted to understand how the Township wanted him to proceed with this.

Mr. VanLuvanee noted Comment #15 with regard to the Environmental Impact Report. He stated Princeton Hydro was there and did the final report, and in the report they noted that there was some murkiness in the pond. Mr. VanLuvanee stated a stream feeds the pond and it goes over a dam and over the years DEP has required his clients to make some improvements. He stated they are not taking the dam out. He added that there are some large fish in the pond, and when they go down the bottom, they temporarily stir up the sediment. He stated since it is part of the stormwater management system and since all of the water eventually drains into that pond before it leaves the property, they feel that the NPDES Permit covers the situation; and if there are issues, DEP will come out and tell his clients to modify the dam or the NPDES Permit Conditions would have to be satisfied. He stated the Ordinance does not say that conditions that are identified have to be mitigated. He stated if they were digging up the pond or changing it in connection with the Permitting, that would be a different issue;

but he sees no reason to require any mitigation upfront especially since his clients will have the obligation under the NPDES Permit to keep the pond in whatever condition the Permit imposes.

Mr. Pockl stated the NPDES Permit requires water quality improvements from the development, but it is not a water quality improvement of 100%, and it is a certain volume requirement for the proposed development. He stated it is not mitigating any current water quality issues that are on the site.

Mr. VanLuvanee stated he is not sure that there is a water quality issue. He stated Princeton Hydro was on the site, and while the water it could be cloudy today, tomorrow it may not be. Mr. VanLuvanee stated he confirmed with his clients that that is what the situation is. He stated there is a dam at one end, and it is not free-flowing. He stated the dam will tend to hold back some sediment. He stated with the dam at the end of the pond, he is not sure what kind of mitigation they would be looking for.

Ms. Kirk asked to what extent Bucks County Conservation District will be involved with respect to water quality in the pond. Mr. VanLuvanee stated to the extent they need to be involved to issue the NPDES Permit. He added that they are not changing the pond. He stated it is an existing pond, and it is not being affected by the development. Mr. Pockl stated that was not true. Mr. VanLuvanee stated it is being effected to the point that there will be additional stormwater going into it which is why he stated that as part of the NPDES Permit any Conditions imposed as part of the NPDES review would need to be complied with, and his clients have a maintenance obligation. He added that Mr. and Mrs. Katzoff are going to retain the pond, and they will have the responsibility just as they have had for the last forty years to take care of the pond.

Mr. Coyle stated he understands that there is a pond with sediment in the bottom, and when the fish move around, the sediment gets picked up. He stated they are improving/changing the land and changing the storm-water run-off profile, and they are proposing to use the pond as a holding place for stormwater. Mr. VanLuvanee stated that is incorrect. Mr. Havers stated there are stormwater facilities on the project area which are 500' to 1,000' away. He stated it does ultimately go to that pond. Mr. VanLuvanee stated that is how it goes today. Mr. Havers stated they are doing on-site water quality improvements upstream which will benefit the pond by providing cleaner water going to the pond. Mr. Coyle asked if the concern is potentially unclean water in the pond being pushed out into local streams.

Mr. Havers stated the pond is on a stream, and they are not changing the pond in any way. He stated it will continue to do what it does today although it may get a little cleaner water coming into it from the improvements upstream; however, they are not releasing or holding back any more water. Mr. VanLuvanee stated the Katzoffs have owned the property for forty years, and the pond and the dam were in place when they bought the property.

Mr. Coyle stated while he is sensitive to that, they are now changing the area around it; and when you do that, you are subject to different requirements. Mr. VanLuvanee stated they do not feel they are, and he does not believe that the Ordinance requires mitigation. Mr. Coyle asked if there is an issue on that for the Planning Commission to decide and asked if it is appropriate at the County level. Mr. Majewski stated he believes that when the Ordinance was written the intent was that when you have a downstream water body, you assess where the water body currently is in terms of its health so that later during the process of the development if an issue arises there is a baseline from which to work to determine if there has been an adverse impact by the ongoing development. Mr. Majewski stated in this case the report that was done is the baseline of where the pond is right now; and during construction if there appear to be any problems, we can do further tests to determine if it has been exacerbated by the development or not.

Mr. Coyle stated Mr. Pockl's letter does not state that changes are required, rather it states that changes may be required such as additional dredging, etc. Mr. Pockl stated the developer's expert went out and assessed the water quality within the pond, and Mr. Pockl's office noted that it exceeds DEP recommended thresholds for water quality at this time. He stated now is the time to do maintenance. Mr. Coyle stated it seems that issue is not actually tied to approving these Plans, and it is just that an expert has gone out and advised that they are "beyond their obligations and they need to take a look at the pond and do some work on it."

Mr. VanLuvanee stated they did what the Ordinance required which was to provide the report. He stated he agrees with Mr. Majewski that the purpose of the report is to provide the baseline.

Ms. Kirk asked if the items numbered 1 through 14 that have not been addressed, are they all "will comply;" and Mr. VanLuvanee agreed. Mr. Coyle noted Item #2 – the animal pen encroachment. Mr. VanLuvanee stated it is his view that since it is an existing condition, it is not an issue. He stated they are not proposing to encroach into the wetland buffer although they did put it on the plan to show

where it is. He stated it would be a different issue if they were proposing an animal pen that would be into the buffer. He added it is a very de minimus encroachment. Ms. Kirk stated the animal pen was existing prior to the Zoning Ordinance and could be construed as a legally non-conforming structure. She stated she would defer to the Township which has aerial maps of the structures to ascertain if that is in fact true.

Mr. VanLuvanee stated if this is a real issue, he is not sure if the Township has buffer averaging; and they could increase by 5' on one side and cut around the pen. Ms. Kirk stated if that is true, they would have to go back to the Zoning Hearing Board because that is something that would fall under Zoning. Mr. VanLuvanee stated he is familiar with some Municipalities that use wet-land buffer averaging where there is something existing like this, and they could do a cut-out around it. He stated he does not feel it applies, but that would be a compromise. Mr. Havers stated he does not believe buffer averaging would require a Zoning Variance. Mr. Majewski stated we do have buffer averaging; and if there is a case where it would make sense to reduce the buffer slightly, you can augment it by increasing it elsewhere. He stated they will look into when this was built in relation to the Ordinance; and if it is something that requires buffer averaging Mr. Pockl can work with Mr. Havers to come up with something that would be agreeable to the Board of Supervisors.

Ms. Kirk asked if it would make sense to defer Item #2 to the same time as Item #6 and they could look at those two issues at that time, and this was agreeable to all.

Mr. VanLuvanee stated they know that Item #3, with regard to PennDOT, needs to be resolved. He stated Item #4 is a Waiver. He stated item #5 is not applicable at this point. He stated tree replacement was deferred. He stated Item #7 discusses infiltration testing which will be resolved. Mr. Pockl stated that has been resolved. Mr. VanLuvanee stated they will comply with Items #8 to #14. Mr. VanLuvanee stated Item #15 is the issue that was just discussed. He stated Items #16 and #17 are Waivers.

Ms. Kirk noted the additional Waivers on Page #7, one of which is not to provide sidewalks. Mr. VanLuvanee stated that was granted by the Board of Supervisors subject to Fee-In-Lieu. Ms. Kirk stated the bike ways are no longer an issue, and the Sanitary Sewer Easement is no longer an issue. She stated with respect to the tree plantings, that is subject to the meeting with the Township.

Mr. VanLuvanee noted the traffic engineer's review letter of January 31, 2023 and Comment #1 indicated they like to see the street at 36'. Mr. VanLuvanee stated the Ordinance permits 26', and that is what they showed on the Preliminary Plan. He stated he does not know what the purpose would be to go to 36' as he feels they would want people to slow down when coming into a cul-de-sac. He stated going to 36' would also put the Plan over for impervious surface. He stated 36' is not an Ordinance requirement, and they are not agreeing to Comment #1.

Mr. VanLuvanee stated Comment #2 is about the Waiver for sidewalks which is payment of Fee-In-Lieu and Comment #3 is the Waiver for the length of the cul-de-sac which was granted by the Board of Supervisors. He stated they will comply with Item #4, which involved clear sight triangle adding that has already been done and is on the Plan. He stated Comment #5 is a comment and not an Ordinance issue, and Mr. Havers' response was already listed in the letter. Mr. VanLuvanee stated Comment #6 is the Traffic Impact Fee, and there is no issue about that.

Mr. VanLuvanee noted the EAC letter which was mostly about the tree replacement issue. He stated Comments #2 and #3 relate to the bayberry tree issue, and they will comply. He noted there is also an Aqua review letter, which is an outside agency which has to be resolved.

Ms. Kathy Tipton, 1078 Creamery Road, stated her property will be greatly impacted. She stated she owns Lots #50, #51, and #52 on Creamery Road and has lived there since 1999. She stated they have enjoyed the quiet serenity of the woodlands in their back yard and the farmlands in the front which is why they purchased the property. She stated her comments relate to this development and the next proposed development that the Planning Commission will be discussing this evening. Mr. Costello asked that Ms. Tipton speak to just this development at this time. Ms. Tipton stated 1566 LLC will be developed right behind her house. She stated she understands that Lots #3 and #4 will probably be about 45' from her fence line, and she is very concerned about the trees. She stated she wants the privacy and wants to make sure that her property still has a buffer and that people are not looking into her back yard. She stated they have enjoyed looking at the woods. She stated she knows that there is going to be a "water garden back there and a couple other things," and she wants to make sure that her property is going to be protected from people being able to look into her property. She stated they are also concerned about their fence line. She stated she has fencing all along the back of her property, and she understands that the developer will be coming in and taking care of the

underbrush which she has been taking care of since 1999. She stated her husband has had to jump over the fence and take care of that; and she would like to know who is responsible for that after everything is built. She asked how far the new lot will go back, and who will be in charge of the buffer and the “water garden.” She asked what happens if the “water garden” does not work. She stated her property is higher than her neighbor’s, and she asked what happens if the “water garden” does not work and there is water run-off and her cement barrier falls down and she is “now in her neighbor’s back yard.”

Ms. Tipton stated the traffic is also “horrendous.” She stated she knows that there are only six homes proposed for this development, but currently for her to get out of her driveway someone has to “grant her or she has to put her car in the road for somebody to stop.”

Ms. Tipton stated she is very disappointed that this is happening. She stated she understands that “he wants to get out of it what he wants to get out of it,” but his house is “way far away from where the rest of us are going to see all of those houses.” Ms. Tipton stated she did not buy her property to look at peoples’ houses, and she bought her property to look at a nice woodlands in the back yard.

Mr. Majewski stated after everything is done, the property owner who abuts Ms. Tipton’s back yard will be responsible for the maintenance of the property. He stated we will also be monitoring the rain garden to make sure that it functions properly throughout its lifespan. Mr. VanLuvanee noted that if it does not, it would drain the other way and would not drain toward Ms. Tipton’s property. Mr. Coyle stated he believes that her concern was undermining a structure on her property. He stated he feels that when they are doing the site walk, they should take into consideration preserving the privacy of the sight lines for the existing residents. Mr. VanLuvanee stated they already show buffering on the Landscape Plan; and if there is a request to supplement that, that is not an issue.

Mr. VanLuvanee stated with regard to the traffic, there is one house that goes out to Creamery Road today, and there will be one house that goes to Creamery Road after the Subdivision is built.

Mr. Bush asked the expected life of the “water garden,” and Mr. Majewski stated theoretically it should last a very long time. He added that the Township does enter into Stormwater Operations and Maintenance Agreements with every homeowner that has these types of facilities on their property to make sure that

they are functioning properly, and there are enforcement mechanisms that can make the homeowner fix them if the need arises at some point in the future. Ms. Kirk stated those Agreements are Recorded.

Mr. Fred Seabright, 1530 Buck Creek Drive, stated his house is right against the development. He asked that any accommodation on the trees not abridge the buffer to his home. He stated it was previously stipulated that there was going to be a tree buffer put in there. Mr. Majewski stated they are talking about adding more trees in locations where that might work. Mr. VanLuvanee stated they already show a lot on the Landscape Plan in Mr. Seabright's direction.

Mr. Coyle moved and Mr. Bush seconded to recommend to the Board of Supervisors Final Subdivision and Land Development approval be granted subject to compliance with the Conditions and items noted in the review letter of January 31, 2023 prepared by the Township engineer, comments provided by the EAC outlined in their letter dated February 10, 2023, as well as the comments by the Township's traffic engineer, SAFE Highway, in a letter dated January 31, 2023 subject to the following:

With respect to the existing animal pen and replacement of trees being removed as required by the Township's Ordinances, a meeting will be held with the Applicant, Township Manager, Township Community Development Director, as well as a member of the EAC to come up with an alternative plan to present to the Board of Supervisors that would be satisfactory to all parties involved regarding the animal pen and the tree replacement.

Items that have been already addressed as to the Waivers that have been approved include those Waivers as outlined in the review letter under #4 and #5 as well as the Waiver approved to not provide sidewalks but are subject to a Fee-In-Lieu of the sidewalk installation.

No street lights are proposed so items involving approval from PECO or any other entity for street lights has been resolved.

With regard to the information as to the Environmental Impact Report, the recommendation would be that the Report provides a base line for the condition of the pond which could be monitored throughout the term of the construction of the project.

As far as the EAC letter, the Applicant will comply with the planting of the Bayberry tree outlined in the wetlands and wetlands buffer as well as their Item #3 for the planting of a Northern Bayberry in lieu of 26 Southern Bayberry trees.

The existing cartway of 26' as shown on the Final Plan will remain in effect.

Motion carried with Mr. DeLorenzo abstained.

ACKNOWLEDGE RECEIPT OF PLAN #691 – TORBERT MAJOR SUBDIVISION
Tax Parcel #20-016-011 – R-1 Residential Low Density Zoning District
1700 Yardley-Newtown Rd

Proposed subdivision of a 106-acre lot into 78 single-family dwelling units

Mr. Majewski stated the Township just received Plans for this Subdivision for the property at the intersection of Creamery Road and Route 332 (Newtown-Yardley Road). He stated the developer has indicated that no Variances are required and it is a By-Right Plan. He stated the lots are proposed to be about one acre. He stated there are two entrance roads into the project – one on Creamery Road directly off Doe Trail Lane and another further to the south closer to Route 332.

Mr. Majewski stated the Plans have been forward to our Township engineer and other consultants as well as our volunteer Committees. He stated we typically give them 30 days in which to review the Plans and come up with comments. He stated we will also be scheduling a site walk for Planning Commission and EAC members. He stated he will also contact the developer to see if their engineer or representative are available to tour the property with them. He stated the Township has 90 days from the next Planning Commission meeting following the submission of the Plans, so that mean 90 days from tonight the Board of Supervisors needs to take action on the Plan or an Extension of time needs to be granted from the developer; and that is quite often the case as the Plans get reviewed and revisions made and Plans are re-submitted for further review. Mr. Majewski stated prior to the Planning Commission meeting when this will be considered, there will be an advertisement in the newspaper prior of the date that the meeting will be held. He stated the Planning Commission typically meets the second Monday of the month.

He stated notice of the meeting will also be posted on the Township's Website the Thursday or Friday prior to the Monday meeting. He stated if anyone is interested, they should e-mail him, and he will send them an e-mail when the Plan will be considered. Mr. Majewski stated the Planning Commission just received the Plans and have not had a chance to review them.

Mr. Bush stated there are a number of people present this evening who are interested in this. He asked if the Township has engaged in any efforts with the property owner or the developer to preserve any portion or the entirety of the property. Mr. Majewski stated a week prior to the submission, there was a pre-Application meeting; and the Applicant came in and indicated that they would be submitting Plans. He stated at that time, they were notified of our Open Space Ordinance, and if they would be willing to consider that; and he feels they were open to that possibility.

Ms. Jillian Buehler, 1708 Clydesdale Circle, called in and stated her development backs up to this farm, and their neighborhood is very concerned about the traffic patterns. She stated she was rear-ended at the intersection. Ms. Kirk stated the only reason this item is on the Agenda is for confirmation that an Application has been received. She stated there have been no reviews, and it is not ready for Planning Commission review. She stated there will be future meetings specifically looking at the Application in addition to all of the comments from the Township professional consultants as to what needs to be done and not done. Mr. Costello stated nothing is being decided tonight, but they are willing to listen to what the public wants to say.

Ms. Buehler stated she feels the entire community is really concerned and they only received the letter in the mail about this today. She stated they want to start voicing their concerns early on. She stated they are concerned about the traffic and the drainage into their neighborhood as well as the Schools.

Mr. Costello stated when this matter comes before any Board or Commission, the Agenda will be posted beforehand.

Dr. Weiss stated the Township only received the Application a few days ago. He stated all concerns will be taken into consideration during this process adding it will be a long process. He stated it will be a very transparent process.

Mr. Scott Kramer, 1010 Farmal Court, stated his property backs up to 332. He stated he just got the information today and sees that it is a huge project with almost 80 homes, and in the initial paperwork there is already an initial request for 14 Waivers from the Township's SALDO rules. He stated there are Waivers requested from the Traffic Impact Studies, 4 SALDO deferrals, and there is apparently no water access of record as yet and the Sewer Application is in a situation where there is no room presently. He stated he feels that is a lot of requests from the outset. He asked that the Township look carefully at this as this project will likely effect the nature of the community. Mr. Kramer stated he has been a Lower Makefield resident for a long time, and he does not recall a housing project of his size since he has been in Bucks County; and he asked if the Planning Commission and others in our local Government have thought about opening up their resources to address this and the variety of issues that are effected when an "almost full Town is seeking a large development project like that" that will not only impact traffic for those who live nearby but virtually every Lower Makefield resident looking to get on 295 where there are already some traffic issues. He asked if there has been consideration of additional resources the cost of which could be borne by the developer of this "big Plan."

Mr. Costello stated there are a lot of resources and different areas of expertise, and he feels it is too early to state whether we need any other help. He stated he understands their concerns and suggested that people continue to come to the meetings and continue to bring up their concerns.

Mr. Kramer asked what is the Planning Commission's experience with projects of this size. Mr. Bush stated it is not just the Commission, and there are professionals behind the Commission. He stated while there are some newer members on the Planning Commission, he was on the Planning Commission when the Matrix project went through, and that involved far more homes that what is being talked about here. He stated many of the Township professionals now are the same ones who were involved in that project. He stated everyone has qualifications and bring different things to the table. He stated no one has any pre-conceived notions, and they are considering what the residents say and what the developer will put before them.

Mr. Kramer stated he feels there is a great deal of negotiation that is involved in the interaction between Government and the developers, and he wants to make sure that our representatives are fully armed for this significant task.

Ms. Kathy Tipton, 1078 Creamery Road, stated she is going to have construction behind her and possibly this huge development in front of her. She stated she opposes it. She asked if there is a way so that there can be open space or preservation, that it be moved away from Creamery Road, or that there not be entrances on Creamery Road and instead be on Yardley-Newtown. Mr. Majewski stated one of the reasons they have both entrances on Creamery Road is because the Ordinance requires that you take access from the lower order, less-busy road. He stated in order for them to put an entrance onto Yardley-Newtown Road, they would require a Waiver. Mr. Bush stated there is a traffic stop light at Yardley-Newtown Road where there is a T-intersection so theoretically it could possibly be there. Mr. Majewski stated he was just indicating it would require a Waiver.

Mr. Majewski stated we are going to have to look at the traffic as it relates to this project. Mr. Gill asked if they would be required to do traffic studies, and Mr. Majewski stated he believes that a Traffic Study is in the packet although he has not looked at it yet.

Ms. Sara Jones, 1728 Clydesdale Circle, stated she is concerned about many things. She stated in the past two days when they found out about this, there have been a huge amount of people on social media forums who are concerned. She asked if there is any way that any part of it could be used as open space. She stated she knows that at Snipes there was talk about that being fields or a sports complex, and she asked if there is any way that they could make that an option for the farm.

Ms. Karen Fell, 1550 Doe Trail Lane, asked the formal mechanism for a resident to send in comments at this point. Mr. Majewski stated the Township has just purchased new software that allows residents to better interact with the Township. He stated there is an on-line citizen request portal on LMT.org and you can provide comments and photographs for this project or any other concerns about the Township. Ms. Fell asked who that gets funneled to, and Mr. Majewski stated eventually it will go to the Planning Commission and anyone else who needs to look at it. Mr. Majewski stated he would also look at it, and if it is related to this project it would go to the Planning Commission and traffic-related issues would go to the traffic engineer or the Township engineer. Mr. Coyle stated at the Board of Supervisors meeting when this platform was introduced it was indicated that if you are uncomfortable or have a problem using the platform, you can come to the Township office, and someone at the office will assist you.

Mr. Brian Powers, 1519 Buck Creek Drive, stated he only got the letter today, and he is very concerned with the traffic. He stated it is “insane” that there will be two entrances on Creamery Road. He stated he is also very concerned about the open space and drainage.

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

Ms. Kirk stated the most recent version that she worked on with Mr. Majewski should have been included in the Planning Commission’s packet. She stated there are five different definitions in the existing Ordinance dealing with open space including common open space, green space, open lands, open space, and resource-protection land. Ms. Kirk stated she is recommending that the definition of common open space as it exists gets deleted from the Ordinance because the new definition being provided for open space encompasses that idea of common open space. Ms. Kirk stated open lands as we have in the Ordinance are resource-protected lands including farmland which is part of a Farmland Preservation Conditional Use Development or common open space. She stated we can get rid of common open space. Ms. Kirk stated she is under the impression that this Ordinance is to create two distinct ideas of open space – that which is resource-protected land which is not going to be effected by this Ordinance, and then open space which is intended to be used for the residents. Ms. Kirk asked if that is correct.

Mr. Bush stated they have discussed the resource-protected space a number of times, and it was his understanding that was included in the 25%. He stated he understood from Ms. Kirk and Mr. Majewski that we could not have that in addition to the 25%.

Ms. Kirk asked if it would therefore make sense to get rid of references that say resource-protected land definitions. She stated she is trying to make it so that there are no conflicting provisions. Ms. Kirk stated we are getting rid of the term common open space and there is a new definition for open space. She stated there is also a definition for green space which seems to be duplicative of the open space definition we are doing. Mr. Majewski asked where green space is in the Ordinance, and Ms. Kirk stated it is in the existing Ordinance in Definitions.

Mr. Costello stated the open space would only be open space for those living in the development. Mr. Coyle stated it could be put on the border of the development. Ms. Kirk stated they will consider that as to ownership. Mr. Bush noted the Section which indicates it is for the “use and enjoyment of residents,” and at the last meeting there was discussion as to who that would be. Ms. Kirk stated it would be the Township residents, and “residents” was open-ended. Mr. Bush stated if there is an HOA it would not be for all residents. Ms. Kirk stated that is a different question to be addressed.

Mr. Coyle stated there is a clear definitional difference between green space and open space. He stated green space specifies open space to be used for active or passive recreation, community gardens, or resource-protection. He stated all of that should be Deed-restricted against future development. Ms. Kirk asked if they are comfortable with keeping green space as it exists in the definitions. She stated she is trying to get opinions as to whether we are having definitions that conflict with one another. Mr. Coyle stated he feels open space is a broader definition and green space is more narrow, and it is up to the Board of Supervisors whether they want that tool, but he feels it is a fitting tool for us to have.

Mr. Majewski stated green space was something specific to a Traditional Neighborhood Development. He noted specifically the Flowers Fields Development; and as part of that it is required to have a little bit of green space within it. He stated it is different from open space, and it is only for the Traditional Neighborhood Development. Ms. Kirk asked if we should clarify that in the definitions, and Mr. Majewski stated it reads as follows: The open space in a Traditional Neighborhood Development ...”.

Mr. Costello stated what they have been talking about is essentially creating green space, but we are calling it open space. Ms. Kirk stated it is interchangeable. She stated Bucks County Planning Commission in their original assessment said that we should have consistent terminology. She stated some things say open space and some say natural-resource protected land, and she wants to make sure we are all on the same page and do not need to change any other definitions that we have. Mr. Majewski stated that is why the definition that he put in for open space basically matches SALDO. He stated currently there is a difference between SALDO open space, Zoning open space, and Zoning common open space; and by eliminating common open space and matching the Zoning open space with SALDO, there will be one consistent definition of open space. Mr. Coyle stated he sees a lot of value in collapsing those as he found the definitions to be confusing.

Mr. Gill stated the current definition does not include retention basins and resource-protected lands. Mr. Majewski stated they are not included under the current definition or the proposed definition and that matches the SALDO definition which was clarified about ten years ago.

Ms. Kirk noted the section which says, “not including streets , parking area, areas set aside for facilities,” adding she would put a parenthesis and change the next “including to such,” and put in “such as detention and retention basins.” She stated in one section it says “not including” and in another it says “including.” Mr. Majewski stated that would make sense. He stated we will also have to do a SALDO Amendment for that as well because SALDO matches this.

Ms. Kirk stated her other question relates to the Bucks County Planning Commission comment as to ownership of open space. She stated we had a section already under Section 200-74 which deals with ownership. She stated it says “open lands,” but we could change that to read “open space” if Mr. Majewski agrees. She stated it then says who owns it and how it gets maintained. She stated if it is owned by the Township or Farmland Preservation it could be used for the public in general. She stated if it is owned by a property owners’ association or some sort of Conservancy or Land Trust, then the use may be limited just to those people in that development. She stated we do not make a reference in our Open Space Ordinance that brings you to Section 200-74 so we may want to make a comment to that effect.

Mr. Majewski stated Section 200-74 says that “open lands include the resource-protected land and common open space” so we should eliminate the word “common” in Section 200-74 A.2 and then that provides that direct link that is consistent.

Ms. Kirk asked if we should end have at the end of this Ordinance a repetition of Section 200-74 but with those changes where it just says “open space.” Mr. Majewski stated eliminating “common open space” make sense; but when we do that we have to find out where else “common open space” is and make sure it is consistent either being removed or being changed to “open space” so that there is consistency.

Mr. Coyle stated Section 200-7 says “open space is for the enjoyment of the residents,” and 200-74 says “it has to be owned and maintained by somebody.” Ms. Kirk agreed. She stated if someone comes in with open space, they can either offer it for Dedication to the Township at which point it would then become public or they could try to offer it as part of Farmland Preservation

Corporation because that entity under the Township governance has its own land. She stated if it is a property owners' association such as townhomes or condos, then that could make it limited just to the residents of that development being able to use the open space. She stated she feels this covers what had been referenced as to ownership and how it gets maintained because whoever owns it has to maintain the land. Mr. Coyle stated if a property owners' association owns and maintains the land they may own and maintain it for the enjoyment of those specific residents, and Ms. Kirk agreed. Ms. Kirk stated with regard to the open space, she does not feel it was the intent to make everything public, and the whole mechanism was to ensure that there was green land available instead of every inch being used up to build something on it, and Dr. Weiss agreed. Ms. Kirk stated it will be indicated that ownership will be held as set forth in Section 200-74.

Mr. Bush stated he understands that they will go back through and make sure that all the references to common open space and open space are in sync. Ms. Kirk stated she is suggesting that we eliminate the definition of common open space. Mr. Majewski stated they will go through and search "common open space" and find every single instance so that it is consistently just called "open space." Ms. Kirk asked if we need to do that or can we just say "delete in its entirety the definition of common open space which shall now be referred to simply as open space" and then say "to replace the definition of open space with." Mr. Bush stated he feels they need to delete every single specific spot.

Mr. McLoone will provide to Ms. Kirk every place where it says "common open space."

Mr. Costello stated we have the red-line draft version of the Ordinance, and what has been discussed is changing everything to be consistent with the definition, but the real question is if we have the right Ordinance for the open space process for developers. Ms. Kirk stated this is a way to insure that any future development plan has green areas instead of trying to maximize all of the building lots. Mr. Costello stated he feels they have indicated that the spirit of that is agreeable. Mr. McLoone stated we are essentially decreasing sprawl in tandem with maximizing open space.

Mr. Costello stated he feels this is not the only priority for the Township, and there are other things like the Master Plan and R-1, R-2, R-3 and "other things that we do;" and we are now changing this to potentially alter what we already have in our Master Plan for how we are supposed to design developments within specific areas of the Township. He stated ultimately the question comes down to what kind of controls are needed. He stated there only needs to be

a two-acre piece of property for this, and we need to make sure that this is not abused for some purpose other than what we really intended. He stated this is what they have been debating for the last few months.

Ms. Kirk stated the mechanism that has been installed in the Ordinance is saying to developers that if they agree to donate “x-amount” as open space, they will be permitted to increase the density that otherwise they would not normally have had by giving open space in an amount that cannot exceed what they would have gotten anyway. Mr. McLoone asked if that could be labeled as a density bonus so that it would catch their eye. Mr. Bush stated it is not a density bonus because we are not giving them more units. Mr. Costello stated we are limiting them to the maximum number of units if they did not do anything.

Mr. Costello asked what would stop a developer from giving a significant amount of open space and build a 100-unit apartment building that is ten stories tall. Mr. Majewski stated apartment buildings are not permitted, and they would have to be single-family and be a minimum of 16,000 square feet. Mr. Costello stated he gave an extreme example that he knows does not exist. He noted what was done in Matrix. He stated if they put 100 homes on the Torbert Farm built exactly like what was built at Matrix in the middle of R-1, that is not really what was the intention of the R-1 Zone. Ms. Kirk stated they cannot easily compare this to Matrix because Matrix ended up in litigation, and part of what was permitted to be built was the result of that litigation. Mr. Bush stated while that is true, across the street there is another age-restricted development on Dobry Road; and while there was no litigation there, it is still the compact, close-together housing.

Mr. Costello stated he feels when R-1 was designed it was designed to be larger homes with larger yards with everything spread out. He stated people were paid to put those Ordinances together, and there was a purpose to that. He stated he wants to make sure that we understand what the limits are that we are willing to compromise; and when it is decided what the limit is, a hard cap should be put on. Mr. Costello stated he does not feel he can approve this if there is not a high-level cap.

Mr. Majewski stated Matrix has lots that are 2,000 square feet to 6,000 square feet; and these lots would be a minimum of three times bigger and match about what 800 existing homes in the northern part of the Township are already built at. He stated it could not be Matrix, an apartment building, townhouses, or lots that are 6,000 square feet.

Ms. Kirk stated she felt there was a cap being put on this because at the last meeting there was a concern that if there was going to be some kind of compromise where if a developer were giving 25% open space, in exchange we were going to allow the density to increase. She felt it would be capping it by saying they would not be able to put in more than they would have normally been able to put in.

Mr. Coyle stated it is written clearly in the table that in R-2 you used to be able to build on a .6 acre lot, and if you give more land to be preserved as open space they will be able to build on a half-acre lot which he feels is a reasonable accommodation. He stated there will be more development in the Township, and this would encourage developers to save as much land as possible without putting asphalt on it. He stated the ratios are relatively small, and he does not see anything that is talking about incredibly small lot sizes. Ms. Kirk stated she does not believe there is a section left in the Township that would enable them to have such small lot sizes.

Dr. Weiss stated there are three major developable areas, two of which are in the beginning phases of development. He stated there are also some minor R-2 sections. He stated the major part of the Township that is still developable is R-1. He stated he understands that this Ordinance gives hard limits as to how small a lot could be in R-1 and R-2. He stated he feels the density issue has been taken care of at this point. He stated if 70 acres are approved on a 100-acre lot, he does not feel it is an issue keeping 25% open space and going from one-acre lots to 8/10ths of an acre. Mr. Costello stated he would not have an issue going from one acre to 8/10ths of an acre.

There was discussion about the proposed Torbert Development discussed earlier this evening, and Mr. Costello stated he did not feel that they would be required to comply with this Ordinance. Dr. Weiss stated they may be required to comply because we advertised the Ordinance, and we have received a preliminary decision from the Township solicitor that because it was advertised, going forward any proposed development should adhere to this Ordinance. Mr. Bush asked if it was advertised or approved for advertisement. He stated previously the Planning Commission was told that it was only approved for advertisement as opposed to being advertised. Dr. Weiss stated once it is approved for advertisement, it goes through the process of advertisement. He stated it should have been advertised months ago. Mr. Bush stated the first time it came before the Planning Commission the Commission raised the issue of advertising an Ordinance and then coming to

the Planning Commission and asking for their opinion. He stated they were told that it was only voted to approve for advertising, and it was not actually advertised. Dr. Weiss stated they advertised it for the purpose of notifying developers that if they were going to plan something, they need to adhere to what we have proposed. Mr. Bush stated he wished the Planning Commission had been told this when they first started talking about this. Dr. Weiss stated he was not the Liaison last year so he cannot speak to what happened last year. He stated the Ordinance has been advertised. He added it will have to be re-advertised if we are making major changes.

Ms. Kirk stated she does not believe that the Ordinance was actually advertised, although it was approved to be advertised which triggered it going to the Planning Commission. She stated their preliminary legal opinion about the Pending Ordinance Doctrine has now been changed in that there was a decision rendered by the Commonwealth in November, 2022; and they were waiting to see if it was going up to Appeal to the Supreme Court, and so far nothing has changed. She stated the Commonwealth Court decision has clarified that the Pending Ordinance Doctrine does not apply to Subdivision or Land Development Applications. She stated when an Application is submitted for Subdivision or Land Development whatever Ordinances are on the books at the time of the Application being submitted are what governs; and not what is being considered in the future. She stated this will not be a mandatory requirement for any Application that may come in while the Township is still working this out and before adoption.

Dr. Weiss stated he misunderstood then what happened last year. Ms. Kirk stated their pending assessment was a Pending Ordinance Doctrine, but the Commonwealth Court has now changed that. Dr. Weiss stated whatever the Planning Commission agrees to tonight will be considered by the Board of Supervisors at their next meeting as this will be on the Agenda to be advertised. He stated one major development has now submitted an Application, and there is another area of developable land which has a sale sign on it. He stated if we are going to do an Open Space Ordinance, he feels we should come to a recommendation today, although he added that is a decision for the Planning Commission.

Mr. Costello asked if this Open Space Ordinance will supersede what the normal Ordinance is. He asked if a developer will be required to follow the Open Space Ordinance. Mr. Majewski stated a developer would not be allowed to lot out all of the property if this Ordinance goes through, and 25% minimum of the property would be required to be open. Mr. Costello stated they are

therefore changing the Master Plan. Dr. Weiss stated he feels the intent of the Master Plan was to preserve the character of the Township as it is. He stated everyone wants open space, and this is a way of addressing it without major expense to the taxpayers.

Mr. Bush stated the proposed Ordinance as is would probably be inconsistent with certain aspects of the Master Plan and consistent with other aspects of the Master Plan, but it is a change to the Master Plan. He asked if open space for the benefit of the residents who buy into a community is really benefitting the rest of the Township sufficient to justify doing this. He stated he is not sure that it does. He stated if the open space is preserved land that is not recreational space, but is resource-protected land, then he feels it does benefit the community.

Mr. Bush stated at the last meeting when this was discussed he had asked if the developer could be required to put a fence around it if more than half of the 25% was resource-protected land. Mr. Bush stated Mr. Majewski had discussed the expense associated with doing that, and that it had been considered years ago in the context of other Ordinances. Mr. Bush stated the maintenance for that would be an expense as well. Ms. Kirk stated she was not able to find anything that would or would not require fencing. Mr. Bush stated he has repeatedly stated that every time there is resource-protected land in the Township it often becomes an extension of people's back yards even though he understands that is being looked into more by the Township including looking at aerial photos, sending people out to properties, and that there is more enforcement. He stated if there is going to be 25% resource-protection of a property, he feels it needs to be for the benefit of the community and not just additions to people's back yards who buy into the development. He stated he feels that we need to look into fencing or some other kind of demarcation if a significant portion of the land is resource-protected.

Dr. Weiss stated he agrees that we should not be allowing encroachment into Township open space, and that is an enforcement issue although it could be addressed in an Ordinance. He stated the Ordinance has been re-written so that 25% of the land would be made open space, and the density would be the same, and they would just be smaller lots. He stated it should be clear that the resource-protected property should not be in the calculations for density. Mr. Bush stated he felt that they were told that it was, and Dr. Weiss stated it should be changed in the red-line/final draft. He stated he had a meeting with the Township Manager and Mr. Majewski on this, and that should have been changed.

Mr. Majewski stated if there is 50% of a property in resource-protected land, you cannot ask for them to give 25% above that since you would in essence be taking their land without compensation. He stated there is no density that could compensate for that unless you put in townhouses and lots such as are at Matrix. Dr. Weiss stated he recalls that if they go with a 15,000 or 20,000 square foot minimum, that is the amount of open space you can get between the resource-protected and developable land so overall you are not hurting anyone, and he thought that was supposed to be taken care of.

Mr. Bush stated he feels we need legal direction as to whether that is possible. Ms. Kirk stated she is now confused since the definition as she reads it says, “open space does not include resource-protected land.” Dr. Weiss stated that was what he thought. Ms. Kirk stated it says, “an area of land or water or a combination within a development designed and intended for the use or enjoyment of residents not including streets, parking areas, areas set aside for facilities such as detention and retention basins, or resource-protected land.” She stated it is not including resource-protected land, and Dr. Weiss agreed. He stated that is as he read it and so has the Township Manager. Ms. Kirk stated there is a good possibility that someone may make a claim against the Township for a de facto taking of land if they own a lot that has a lot of natural resource-protected land, and they are still being obligated to put up 25% for open space. She stated under that scenario, their lot may become technically unbuildable.

Dr. Weiss asked if we could add a clause saying that if the 25% minimum would encroach on the minimum lot size, that we could reduce the amount of open space. Ms. Kirk stated based on Mr. Majewski’s calculations, the 25% would encroach on the lot size. Dr. Weiss stated if it does encroach, we make it less than 25%. He added there must be some compromise to keep a minimum lot size that works in R-1 like in Yardley Hunt or in some of the northern Township developments and still get a decent amount of open space. He stated no one made it a hard and fast rule that it has to be 25%. Ms. Kirk asked if it would be easier to just include resource-protected land within that 25%. Dr. Weiss stated we are trying to get maximum open space without hurting the developer, and they need to consider how to do that.

Mr. DeLorenzo noted the proposal that was looked at tonight. He asked if they were under the new rules, what would it look like. He asked if there would be benefit from that open space or would it just be open space alongside 332. He stated it is subjective whether this would really be to our benefit in certain circumstances to change all of these rules and find out that we are not really

gaining anything. He stated no one would be walking along 332 and enjoying the open space. He stated while you would see open space, you would also see a higher density of properties.

Mr. Coyle stated if he were the developer, he would put the open space along I-95 because no one wants to buy a house that abuts a highway. Mr. Coyle asked if there is a mechanism to indicate that the preserved open space has to be subject to the approval of the Township Board of Supervisors. Ms. Kirk stated the mechanism would take it out of the realm of the Zoning Ordinance and create something under SALDO because the Board of Supervisors has the final say on Subdivision and Land Development Applications. Mr. Coyle stated he feels that if we want to preserve more land, we should have a preference of where that land gets preserved. He stated it may be sensible to bias that toward buffering neighboring properties instead of having a “patch of trees” off on one side of the property to be developed. Mr. DeLorenzo stated he is not sure that gives overall benefit to the community. He stated if they are going to have open space just so a resident who is used to having a woods next to them does not have to have it change, it does not do anything for the rest of the community since the community would not be going back there. Ms. Kirk stated the concept was not just benefitting people who have access to the open space, but it was benefitting the Township in the preservation of the characteristics of the Township as it was before all the farmland was developed into Residential, and Dr. Weiss agreed. Mr. DeLorenzo stated there are “hard space requirements” for each lot. He stated there will be a lot of open space, but then you will see a lot of density, and he asked if that might look even worse.

Dr. Weiss stated he is the author of this Ordinance. He stated if you look at other Townships with cluster developments, and he particularly noted Newtown and Northampton, they have lots that are 20,000 square foot lots instead of 40,000 square foot lots. He stated the clusters are basically half-acre lots and then an enormous amount of green space that comes up to the road which gives the illusion of park land, meadow land, or woodland. He stated it is a matter of opinion whether that is more aesthetic than “cookie-cutter” houses every acre. Dr. Weiss stated most of the people in the Township are tired of more houses, and they are trying to decide what can be done to preserve as much open land as possible and still give the developer the ability to build on their land. He stated the Board of Supervisors is willing to hear any recommendations the Planning Commission has to make this a better Ordinance. He stated the residents of the Township have made it very clear that further development in the Township is not the way to go. Dr. Weiss stated there are also property rights for land-owners, and we cannot change that. He stated we can buy up all of the land

which would be cost prohibitive and take hundreds of acres of possible taxable land off the rolls forever, get the rest of the developable land into an area where the landowner can develop and make a profit but still give us enough open space, or we can go in another way.

Ms. Kirk stated Newtown Township has a Cluster Development Overlay District which is applicable to R-1, R-1A, R-2, and R-3 Zoning Districts regarding a gross tract area of at least 25 acres that permits a cluster development community as a Conditional Use. Ms. Kirk stated a Conditional Use falls under Zoning, but it does not go to the Zoning Hearing Board, rather it goes to the Board of Supervisors. Ms. Kirk stated Northampton Township has something similar, but it is not an Overlay District, and they call it a Cluster-Designed Subdivision; and that is also a Conditional Use which means that it falls under Zoning regulations but goes to the Board of Supervisors to hear it. She stated both of those Ordinances are dealing with specific cluster design. Ms. Kirk stated we first started out doing this as a cluster design, but she was told that the Township's Zoning Ordinance already provides a requirement for maintenance of open space so it did not make sense making a cluster design. She stated to avoid the appearance of singling out a single District, we did it across the board. She stated the mechanism is a little different in that it is under Zoning, and it is open space across the board, but the concept is the same which is to create more of a cluster design within those Residential Zoning Districts. Ms. Kirk stated it is very hard to formulate provisions to regulate the use of land so that it does not appear to be prohibitive or discriminatory.

Mr. Coyle stated he is generally in favor of the Ordinance change. He stated Dr. Weiss described a scenario in Newtown Township where the open space borders the front of the neighborhood, and that is where his concern comes in as there is nothing in the Ordinance that gives a preference to where or how the open space should be preserved. He stated if there is a provision that gets approved by the Board of Supervisors that it will be negotiated every time, he would be in favor of that. Mr. Coyle stated his other concern is with the language where it talks about the maximum density on net buildable site area cluster. He stated he would prefer that the language state "each additional percent beyond 24, beyond 31 or beyond" so that it is clarifying that the prior break point is the threshold and it clarifies that every percent above that is what you are getting credit for.

Ms. Kirk stated that she relied on the Township for the calculation.

Mr. Majewski stated he feels what Mr. Coyle has suggested is clearer.

Mr. Majewski showed the section of the Comprehensive Master Plan about future actions and recommendations, one of which being that we continue to use cluster development so he does not feel that we are inconsistent with the Comprehensive Master Plan.

Dr. Weiss stated the goal of this Ordinance is to preserve as much open space as possible. Mr. Bush stated Dr. Weiss keeps saying that and that the Township residents are against further development. He stated in many instances the Township residents have come out in opposition about development in varying degrees, but this Ordinance will not stop any development. He stated it is not going to change the amount of development in an appreciable way; and Mr. Majewski had indicated that if this had been in place when the Torbert Plan had been submitted, it might have eliminated about five houses. He stated it may change the appearance of what it looks like, but it is not changing the amount of development appreciably.

Mr. Majewski stated they cannot just tell someone that they are getting five or ten less lots on their property, and they have to be compensated for that loss. He stated this Ordinance will provide open space. He noted driving up Woodside Road or Dolington Road where they did Farmland Preservation, it gives the illusion that we are still a farming community. He stated if we preserve 25% of the Torbert Farm, it gives the illusion that there is still open land in our Township. He stated the houses will still be there, but they will be tucked away a little bit. Mr. Bush stated as was discussed earlier, it requires that there be “some teeth” in the Ordinance so that the open space is in the front of the development and not back along I-95.

Ms. Kirk stated she has looked at the Newtown and Northampton Ordinances and she does not see anything in them that indicates where the open space has to be. She stated the Newtown Ordinance does require a perimeter buffer area of 100' around the cluster development community.

Dr. Weiss stated 200-12 gives the full table of standards in the proposed Ordinance, and he feels it is pretty well defined. Mr. Majewski stated it would not prevent someone from figuring out a place that would be more advantageous to them financially; and he is not sure how we would stop that other than through the Land Development process. Mr. Coyle asked if that negotiation exists already in the normal order of things, and Dr. Weiss stated that is the normal order of business in most Townships.

Mr. Costello asked if the open space has to be contiguous, and Mr. Majewski stated it does not. He stated there could be a central green in the middle of the lots and there could be a perimeter buffer. He stated they could give several half acre pieces spread throughout the community. Ms. Kirk stated under the definitions, it cannot be leftover areas or remnants of land after making a lot so there is a mechanism to insure that the open space to be created is not a piece that is leftover.

Mr. Costello asked if we would consider sound-buffering mounds with trees on them off of Yardley-Newtown Road. Ms. Kirk stated she feels that would be in SALDO. Mr. Majewski stated buffers are required from collector roads.

Ms. Kirk asked if we are going back to doing a Cluster Overlay design and having it cover Residential Zoning Districts. Dr. Weiss stated he feels 200-12 is sufficient. Ms. Kirk stated that is the Performance Standards for the Residential resource-protection area for each of the Residential Districts. Dr. Weiss stated he feels that is sufficient.

Ms. Kirk noted Page 8 of the version that she provided under Section #200-25 dealing with standards for single-family dwellings in the R-3 Zoning District adding Table #200-26 deals with anything that is not a single-family home; and she asked if new Performance Standards for #200-26 should be included.

She stated there were three areas that she had questions about. She stated under #200-29 there were no standards for detached dwellings and #200-34 did not have any Table of Performance Standards for single-family, two-family, and multi-family dwellings. Ms. Kirk stated she took this Ordinance and went through each Section of the existing Zoning Ordinance to see if we clarified the Table of Performance Standards for each and every Section. Mr. Majewski stated #200-26 deals with the attached and townhouses, and they require 40% open space so they are already required to be clustered; and that is why those sections are not altered at all.

Mr. Majewski stated with regard to the question about buffering we do require a Type II buffer for reverse frontage so if there are lots backing up to a major road, they are required to do extensive buffering with berms as can be seen along Edgewood Road. Ms. Kirk stated that has to be dealt with already in terms of Subdivision and Land Development. Mr. Coyle asked if it is worth stating that here in the open space definition or would that be

redundant, and Mr. Majewski stated he will look into that as well as some of the other items that were discussed to clean up the Ordinance. He stated they can then review this again at the next meeting of the Planning Commission.

Mr. Bush stated he feels we need to get a firm opinion on whether the 25% includes resource-protected land or is it in addition to the resource-protected land. Ms. Kirk asked what he would recommend; and Mr. Bush stated if it is not legal, it should not be in the Ordinance. He added that if it is not going to be held enforceable by a Court, he questions why it would be put in here. He stated he feels the Township would want a legal opinion as to whether or not it would be enforceable.

Mr. Coyle stated resource-protected land is not included in open space in the current draft. Mr. Majewski stated he feels there is the need for punctuation as that is not what it means. Ms. Kirk asked if that means that we are including resource-protected lands as part of open space, and Mr. Majewski agreed. Mr. Bush stated he believes Dr. Weiss had a different point of view on this. Dr. Weiss stated he is in favor of whatever is enforceable. He asked if the Planning Commission can recommend going forward with whatever definition we get as a legal opinion, would that be acceptable.

Ms. Kirk stated she doubts she will find any authority that has a definitive answer; but she feels that if it appears that there is a de facto taking of land without just compensation, it is not going to be enforceable. She stated if the Township is taking more land than what would otherwise be considered reasonable, it will not be enforceable. She stated if there is a lot that has 25% of resource-protected land under the Ordinance and the Township is demanding another 25% as being open space, she believes that will not be enforceable.

Dr. Weiss stated theoretically if there was a 100 acre lot with 25% resource-protected land, that leaves 75 acres of developable land; and with streets and buffers, they might be able to build 60 homes. He stated the proposed Ordinance indicates that we need 25% open space excluding the nature-resource protected land. Ms. Kirk stated Dr. Weiss is saying that we would need 25% of the remaining 75 acres as open space, and Dr. Weiss agreed. Dr. Weiss stated they could still put 60 homes on the property, but instead of 42,000 square foot lots, they would be 27,000 square foot lots. He asked how this would be taking anything from the developer. Ms. Kirk stated that would not be considering the dimensional standards that would otherwise

be required. She stated they may be increasing the impervious surface and may not be able to maintain all of the dimensional standards that otherwise apply.

Mr. Coyle stated if he owned a 100 acre piece of land that had 25 acres of wetlands on it and someone else owned 100 acres of land that did not, and that owner was able to develop all of that, he would sue the Township. Dr. Weiss stated both property owners could build the same amount of homes. Ms. Kirk stated that is not taking into consideration the size of the individual lots as those individual lot sizes have an impact on the financial aspect of what a developer can buy. She stated if there are 16 homes on 75 acres versus 16 homes on 100 acres, the homes on the 100-acre site have more land available to them and the developer could charge a higher amount of money. Dr. Weiss stated he has been told that Real Estate values in a cluster development are no different or might be more than the traditional R-1 development.

Dr. Weiss stated while he wants to get a recommendation from the Planning Commission to the Board of Supervisors, he would be happy to delay this if the Planning Commission needs more time; but it cannot go on forever.

Mr. Coyle stated he would be comfortable approving the Ordinance as proposed with minor adjustments and with resource-protected land counting toward the open space count. Mr. Costello asked if we are including the 25 acres in what we have today for resource-protected lands, does this change anything for resource-protected lands whether it is part of open space or not. Mr. Majewski noted the Torbert Farm, and stated if there was 1 acre of resource-protected land, they would be required to provide 25 acres, but if it had 40 acres of woods and were only able to disturb 25% of that, they would be giving us 30 acres of open space in the form of resource-protected woodlands so we would not get more open space beyond that, which is how the Ordinance has been written for about 30 years as we value protecting our natural resources and with that we increase the density accordingly. He stated this proposed Ordinance is saying that we also value open space and want to treat that accordingly; and if the Township is given open space, the developer can cluster down to something smaller.

Mr. Costello stated that other than a broad definition of open space that we clarify, we are not really giving any other input as to what is the open space. Ms. Kirk stated we are saying that they cannot consider other improvements such as stormwater management facilities, streets, and parking lots. She stated she understands that now they are saying that it includes resource-protected land. Mr. Coyle stated that is what he would be in favor of. Ms. Kirk stated if

there is a totally flat lot they would have to preserve 25% open space, and if there is another lot with woodlands or woods that meets the 25%, they could not build in those areas, and that would be preserved as open space. She stated she feels if they take more land to prevent someone from developing their property, they will have an argument that it is a de facto taking, and the developer would need to be reimbursed.

Mr. DeLorenzo stated Dr. Weiss has indicated that developers seem to be appreciating the smaller lot sizes, so we would be giving them that choice. Ms. Kirk stated she is concerned about taking more land from a developer who already has land that is encumbered by natural resources. Mr. DeLorenzo stated he is not talking about resource-protected land. He stated if there is a 100-acre property with no resource-protected land, they would be asked to give up 25 acres and still have the same number of houses. He stated if there is a trend toward smaller lots, he does not feel we would lose by giving the developer the choice. He stated they could get smaller lots for density. Ms. Kirk stated in one of the other Ordinances it says the maximum density cannot be more than 150% of what would otherwise exist. Mr. DeLorenzo stated they would be risking no lawsuit whatsoever and would be increasing the chance of possibly getting open space.

Dr. Weiss stated if we include protected lands, they can tell the developer that as long as the lot size meets the minimum requirements, they can include as much protected space as the possibly can. Dr. Weiss stated if it becomes a legal issue to include the protected space, he would remove that.

Mr. Costello asked if they would have to do anything differently if the Ordinance were not in place if the resource-protected lands on the site were less than 25%. Mr. Majewski stated the difference would be that they would have to have designated part of it as open space in the form of a Conservation Easement or some land that is not just for the benefit of one person. Ms. Kirk stated there is an ownership provision that states it cannot be developed, built, or used except as consistent with the Recorded Plans.

Mr. Costello stated after the last few big lots are developed, what will be left are people wanting to subdivide smaller lots and some of the smaller developments that have been done in the past. He stated this will apply to anything that is two acres or more. He asked if a developer were to build

two houses, would a neighborhood association have to be created to maintain the open space. Ms. Kirk stated a Conservation Easement could be created on it that would maintain it as open space.

Mr. Majewski stated as proposed if there was a two-acre lot, they would have to designate 25% of that as open space which would be a half-acre of open space. He stated his initial recommendation was not to make it a two-acre minimum but to make it four acres as a minimum so that there would be one-acre minimum open space as one acre would be a little more substantial. He added a half-acre might make sense in some cases, but it is difficult to enforce.

Mr. Costello asked how this proposed Ordinance will work with smaller developments. Ms. Kirk stated because it falls under Zoning if someone comes in with a plan to create two one-acre lots, but because of the buildable area they cannot meet the requirements of this Open Space Ordinance, they would make an Application to the Zoning Hearing Board for a Variance which is no different from a developer making an Application to the Board of Supervisors for a Waiver. Mr. Costello asked if someone had a flat, two-acre property that they wanted to subdivide into two, how would they handle the half-acre, and would they have to create a separate entity that owns it. Ms. Kirk stated it can be owned by an individual owner. Mr. Coyle stated it would have to have a Conservation Easement on it, and the owner would have to agree never to touch it.

Ms. Kirk stated we may have to revise Section #200-74 that says open land “shall” be owned rather than “may” be owned and/or maintained by one of the following entities, and put in there “the Township, a property owners’ association, or individual subject to a Conservation Easement.”

Mr. Coyle stated if there is a four-acre property, they could not “stick an acre in the middle of a muddy forest that they give to the Township as a gift,” unless the Township wants it.

Dr. Weiss stated there are about a dozen quarter-acre open space lots in the southern end of the Township in Arborlea, Westover, and neighboring developments.

Ms. Kirk stated if the ownership section is revised to make it mandatory it would be clear; and if there is a half-acre that is owned by an individual lot owner, it would have to be preserved and subject to a Recorded Conservation Easement as approved by the Township.

Mr. Bush stated a definition was provided by e-mail from Mr. Majewski to the Planning Commission, and he has suggested language to clean it up. He stated everything up to the “maximum density” should be deleted, and it should start with the “maximum number of dwelling units permitted on a particular tract shall not exceed,” and take out “in no circumstances be greater than.” He stated it would basically say that the maximum number of dwelling units permitted on a particular tract shall not exceed the number of dwelling units that could be constructed. Mr. Majewski was in favor of taking away the extra clause. Mr. Bush stated he wanted to make it straight-forward and direct.

Mr. Costello stated there had been previous discussion about fencing, and he asked if there should be language included that the open space needs to be clearly delineated and not encroached upon. Mr. Majewski stated we have that language although it may need to be revised. He stated there had been a lot of discussion about fencing many years ago. He stated the existing language is as follows: “The Applicant shall provide a method of physically delineating private lots from open space.” Mr. Costello stated Mr. Bush had indicated previously that he was not comfortable with it just being shrubbery or trees. Mr. Majewski stated we could add in fencing as an alternative and it would be whatever is most suitable to the situation.

Ms. Kirk stated she feels that would be under the Table of Performance Standards for each Section. Mr. Majewski stated he feels we also need to do a complimentary SALDO Amendment to add in fences. Ms. Kirk asked if we need to add a new #6 to say: “All open space shall be clearly delineated.” Mr. Majewski stated he feels it is clear under SALDO although fences might make sense. He stated if they are not subdividing, open space would not be required, and it would just be a lot. Ms. Kirk asked Mr. Majewski if he feels Mr. Costello’s concern is addressed under SALDO, and Mr. Majewski agreed adding that we should add in fences. Mr. Majewski stated that there is no foolproof method, and there was once someone who relocated the Farmland Preservation fence and claimed 25 extra feet of farmland.

Mr. DeLorenzo asked the smallest lot size that would be effected by this open space requirement. Mr. Majewski stated it would be a two-acre lot that was subdivided into two. Mr. DeLorenzo stated if this were to go into effect, someone with a two-acre lot would have to give up 25% of that. He stated when you look at that and setbacks, etc. he feels we may be open to potential litigation.

Dr. Weiss noted Section #20-12 Open Space #2 states: “No areas designated as open space shall be smaller than 20,000 square feet so there would have to be at least a half-acre of open space. Mr. Majewski stated if there were two acres, one-quarter of two acres is about half an acre so there would be an acre and a half left and there would be two three-quarter acre lots.

Mr. DeLorenzo asked if the impervious is on the remaining .75 of an acre. He stated he feels someone with that small of a lot made argue that their value was ruined because they were going to put a pool on the property and can no longer do that. Mr. Coyle stated the lot does not have to be a three-quarter of an acre lot, and they could divide it into two one-acre lots with a quarter-acre Conservation Easement on each of the two lots. Mr. DeLorenzo stated they would still be down to .75. Mr. Coyle stated if it is all on your lot, it still counts toward your impervious calculation. Mr. Majewski stated if it is a Conservation Easement you own the underlying land. Mr. Coyle stated you own the full acre, but you just cannot develop one quarter of it. Mr. DeLorenzo stated if it is included in the impervious, he feels it is less of an issue. Ms. Kirk stated people often come to the Zoning Hearing Board and request a Variance for something like this and she would get them to agree to a Declaration of Restrictions that says that the remaining buffer area shall forever remain open and nothing else can ever be built on it, and that gets Recorded. Mr. Coyle stated having a Conservation Easement can impact your ability to sell the land, and it could take a little bit longer to sell a property with a Conservation Easement, but it is still your acre. Ms. Kirk stated with regard to the issue with regard to being able to have a swimming pool, the Law says: “A reasonable use of the property;” and it does not necessarily mean that you are entitled to every accessory structure there is, but there are ways of dealing with this.

Mr. Majewski stated the larger the lot size, the less impervious surface you get. He stated when you go from three-quarter acres to an acre, you lose 2% on the impervious surface so it almost balances out. Mr. Coyle stated that as long as you can count the Conservation as part of the total lot size, that is fine.

Ms. Kirk stated she understands that she is cleaning up some of the definitions of open space and the definition of the maximum number of dwellings units. She stated she will add the additional column in the Table that Mr. Majewski provided as to what would normally be the maximum number of units as was on the other version. She stated she will work with Mr. McLoone and include a reference to any Section that says “common open space” and have it changed and refer to just “open space.” She stated she will make a reference to Section #200-74 regarding ownership of the changes discussed about open land and that it “shall” be owned and maintained; and if it is an individual owner, it is subject to some kind of Conservation Easement or other Recordable instrument so it remains open space. She stated it will also be indicated that it is including the resource-protected land.

Mr. Costello stated this essentially says that we are going to try to require at least 25% of a development to be open space and that will allow the developer to put in denser housing to compensate. He stated they will be allowed to build the same number of houses. He added that about one-third of an acre is the smallest that it could get. Mr. Bush stated it would be required that it be cluster housing.

Ms. Kirk stated Mr. Majewski will look at SALDO, Mr. Majewski stated he will put that as another Amendment. He stated at the same time we could also address the issue of the outdated submission requirements so that we do not require twenty-five sets of Plans.

Mr. Costello asked why it was decided to take the Ordinance down to two-acre developments. He asked if they are prepared to tell everyone that wants to subdivide a piece of land that is two acres that they have to give up a quarter of it. Mr. Bush stated this could mean a lot of additional work for the Zoning Hearing Board because those with smaller pieces of property will have to go to the Zoning Hearing Board. Dr. Weiss stated that is what happens now. Mr. Costello stated the Planning Commission has seen several developments that would have fallen under this. Mr. Coyle stated he feels that the residents would appreciate that this requirement is applying to smaller development efforts. He stated if it is found that it is a problem and everyone needs a Variance which is Waived every time, the threshold could be increased. He stated it would be harder to ratchet it down after it is on the books.

Ms. Kirk stated she will do a cleaner version and the Sections that she is changing will be put in a red-line version which will be circulated to everyone.

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Mr. Costello stated he feels the intent is good, but they want to make sure that we do not get something that the Township was not anticipating. Mr. Majewski stated we have done a number of cluster subdivisions in the Township so we do have some experience in this.

There being no further business, Mr. Coyle moved, Mr. Gil seconded and it was unanimously carried to adjourn the meeting at 10:20 p.m.

Respectfully Submitted,

Colin Coyle, Secretary