

TOWNSHIP OF LOWER MAKEFIELD
PLANNING COMMISSION
MINUTES – MARCH 13, 2023

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on March 13, 2023. Mr. Costello called the meeting to order.

Those present:

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

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

APPROVAL OF MINUTES FROM THE 2/13/23 MEETING

The Minutes were approved 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 Road, 1472 Newtown-Yardley, Road, 1069 Creamery Road,
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. Costello stated that the developer for 1566 LLC Major Subdivision was not available this evening. Mr. Majewski stated that they will appear at the meeting on April 10, 2023.

#688 – 1273 LINDENHURST RD MAJOR SUBDIVISION
Tax Parcel #20-003-020 (formerly Plan #665 – Weldon Homes)
R-1 Residential Low-Density Zoning District
1273 Lindenhurst Road

Proposed subdivision of a 3.03 acre lot containing an existing stone dwelling and stone barn into 3 single-family residential lots (creating 2 new building lots)

Mr. Stephen Zaffuto, attorney, was present with Mr. Heath Dumack, engineer.

Mr. Zaffuto stated they are proposing to subdivide one existing lot into three Residential lots. There is currently an existing house and outbuildings which will remain on Lot #1. Lots #2 and #3 will be created as additional single-family dwelling-use lots with pools. The Applicant has previously obtained Variances from the Zoning Hearing Board related to the Plan, and one Variance was granted to increase the density per acre and another was granted to allow the building setbacks to be measured from the property line/ultimate right-of-way instead of from the limits of the resource-protected land on the property. He stated these were granted subject to Conditions which will be shown on the Final Plans. Mr. Zaffuto stated they are working through the Land Development process and the review letters which have been received.

Ms. Kirk stated the Conditions imposed by the Zoning Hearing Board were that the historic house on Lot #1 will be retained and not demolished, the Applicant will use best efforts to maintain the integrity of the existing barn structure on Lot #1, and a Conservation Easement in the form of a Recorded Declaration of Restrictions will be filed of Record to preserve the remainder of the undisturbed natural resources which can and will be enforced by the Township.

Mr. Coyle asked if the stone wall at the base of the driveway of the existing property is considered part of the existing structure and under the protection order to preserve; and Ms. Kirk stated it is not, and they were just talking about the house and the existing barn.

Mr. Dumack stated the site is on the westerly side of Lindenhurst Road and has the existing farmhouse and a barn to the rear of the site which is Lot #1. He stated Lots #2 and #3 are proposed to be two new homes with a schematic pool design for the future. He stated both new lots will have underground storm systems, one for Lot #2 and one for Lot #3. Testing has occurred, infiltration testing has been evaluated, and the Township engineer has reviewed the results.

Mr. Dumack stated he received a review letter from Remington Vernick last fall, and the Plans were revised and resubmitted. The review letter from Remington Vernick dated February 3 is the current review. He stated Page #1 is the synopsis of the project. Page #2 Section H is the beginning of the comments. Mr. Dumack stated they will comply with Items #1 through #14 aside from Item #5.

Mr. Dumack stated Item #5 is a Waiver which is included in the Waiver request which is on the next page (page 3). He stated he knows that they need to do a NPDES Permit (Item #3) as they are in excess of one acre of disturbance. He stated the dry wells themselves are fed with a series of smaller pipes from 8” to a 15” diameter, and they are asking for a Waiver. He stated the majority of these pipes are downspout leaders, etc.; and they do not feel that they need an 18” diameter pipe for a downspout leader. Mr. Pockl stated he would support that Waiver.

Mr. Dumack stated the stormwater report is Item #10 through Item #14, and they are all will comply. He stated he believes these are more housekeeping issues than anything substantial. Mr. Coyle asked if that means that they are withdrawing the Waiver request if they are going to comply. Mr. Dumack stated Items #10 through #14 are not Waiver requests, and they are all will complies in the Comment list. Mr. Majewski stated the exception is Comment #5 which is a Waiver request.

Mr. Dumack stated Section 3 is the granted Variances from April 19, 2022.

Mr. Dumack stated Section 4 is the requested Waivers, and twelve Waivers have been requested. He stated Item #1 is from Section 178-12 B to not require a separate Preliminary and Final Submission. He stated their opinion is that the project itself is of minor magnitude, and they can move forward with the project as Preliminary/Final and not separate submissions and separate reviews. Mr. Pockl stated he would support that Waiver.

Mr. Dumack stated Item #2 is a Waiver request from Section 178-19 to not require the submission package as specified by this Section and instead as stipulated by the Township. Mr. Majewski stated our Ordinance has not caught up to what we want in the way of submissions, and we do not want 25 sets of Plans/reports. He stated we prefer minimal amounts of paper and everything in electronic format.

Mr. Dumack stated Item #3 is a Waiver request from Section 178-20 B to permit a Plan scale of 1" equals 30 instead of the required 1" equals 100 for Grading and Stormwater Plans. He stated this is a small site, and to go to 1" equals 50 or 1" equals 100, it would be very difficult to see the detail.

Mr. Coyle stated it would be a benefit to the Township to have the Plans at a higher resolution, and Mr. Dumack agreed. Mr. Majewski stated he does not believe that Waiver request #3 is needed because the Ordinance says that the Plans shall be not less than 1" equals 100 and 1" equals 50, and the way he interprets that means that it could not be a 200 scale which while a larger number is a smaller scale.

Mr. Dumack stated Item #4 is a Waiver request from Section #178-20 C 6 and is a request to allow 1' contours instead of the 2' contours. He stated the 1' contours give a better resolution. Mr. Coyle asked if they should check to make sure that is "also no less than;" and Mr. Majewski stated he did, and it does say 2'. He added that this is something that needs to be addressed adding that he has discussed previously his goal early this year is to go through the entire SALDO and clean up all of the items that are out of date.

Mr. Dumack stated Item #5 is a Waiver request from Section #178-20 C 9 to not require existing buildings and their uses, driveways, sewer lines, storm drains, culverts, bridges, Utility Easements, quarries, Railroads, and other significant manmade features within 200' of the site be shown. He stated they are presenting an aerial photo on the Plan set, and he has a hard copy with him this evening and the cover sheet.

Mr. Dumack stated Item #6 is a Waiver request from Section #178-40 A to permit the existing right-of-way and cartway widths to remain. He stated in order for them to go to the ultimate right-of-way for a Collector Road which has a required width of 80', they would be creating a small jut-out of excess width, and the remainder of Lindenhurst Road north and south of this location would not have that. He stated he feels that could create a hazard with this widened area and then narrow, and he would prefer seeing that the existing right-of-way and cartway width remain as is. Mr. Majewski stated at the time that Lindenhurst Road was re-constructed in the 1990's, PennDOT acquired right-of-way from this property and a number of others so this is the ultimate right-of-way that PennDOT envisioned for this road going forward; and there is no need for the Township to require this. He stated he believes that the existing right-of-way that PennDOT acquired in the 1990's is sufficient for all purposes needed.

Mr. Dumack stated Item #7 is a Waiver request from Section 178-47 A to not require sidewalks. He stated there are no sidewalks at least within 1000' south of this site and in excess of that distance north.

Mr. Coyle stated while he understands that there are no sidewalks, they are improving and changing the property and the land. He stated he believes that expanding sidewalks throughout the Township is one of our stated goals, and it would seem appropriate to take the opportunity when someone is going through a construction project to discuss whether we should move forward rather than making the taxpayers pay for that sidewalk at a later date if it is decided at some point in the future to put in a sidewalk on Lindenhurst.

Mr. Costello stated they have had this discussion in the past about sidewalks, and he believes that this concern would be covered by the Applicant paying the Fee-In-Lieu of sidewalks. Mr. Majewski stated another alternative besides a full Waiver is to have them provide money so that if in the future it does become practical to hook in a sidewalk, or if it is decided to put in something across the street where these residents could cross the road to get to a sidewalk, the Fee-In-Lieu would be appropriate to help pay for the sidewalk. Mr. Bush stated he would be in favor of the Fee-In-Lieu as he does not feel that there is any other sidewalk in the immediate area. Ms. Stern stated she would agree that makes sense. Mr. Costello stated sidewalks are a priority for the Board, and he feels the Planning Commission should recommend the Fee-In-Lieu.

Mr. Dumack showed the lower portion of the Plan which is the area around Lindenhurst. He stated at Lot #1, they start ramping up in elevation. He stated the south side of the retaining wall in this vicinity is around 4 ½' to 5' high so it would be impractical to put a sidewalk on that side of the street. He stated the eastern side of Lindenhurst is developed, and flat and level which would make more sense for a sidewalk location. He stated the client has acknowledged he is fine paying the Fee-In-Lieu although the sidewalks would work better on the other side of the street.

Mr. Dumack stated Item #8 is a Waiver request from Section 178-93 F 3 C to allow the use of 8", 12", and 15" pipes instead of the required 18" pipes. He stated the smaller diameter pipes for the most part are for downspout leaders and low-volume pipe flows. He stated trying to put an 18" pipe for a downspout leader underground pipe is not good. He stated HDPE pipe (plastic, flexible pipe) is designed to have the capacity to have 1' of cover over it as opposed to concrete which is normally 2'.

Mr. Dumack stated Items #8 and #9 Section 178093 F 3 H relate together.

Mr. Coyle stated he understands with regard to Item #8 that it makes sense that we would not want to convert a downspout into an 18" pipe once it hits the dirt. He asked if they are requesting permission to use an 8" pipe in any place in which the Code required 18" pipe as appropriate for drainage, and Mr. Dumack stated they are not looking for the 8" to do that, but they do have larger pipes – the 12" and the 15" which are utilized. He stated the water conveyance is nominal in size, so they are asking for the larger of the range for yard inlets, etc. Mr. Majewski stated our Ordinance was set up for pipe systems in roadway, and conveying water to large detention basins; and in that case, we prefer to have the 18" pipe so that there is plenty of carrying capacity to channel that water into a detention basin. He stated for the newer, on-lot systems that is not necessary.

Mr. Dumack stated Item #10 is a Waiver request from Section 174-12 K to not require a minimum 24-hour stormwater detention. He stated the volumes of water that they are containing are so small that they could not keep the water in the sub-surface system for 24 hours. He stated the infiltration rate is reasonable enough that it is flowing. He stated he would not want to compact the sub-grade down to reduce the infiltration rate, and he would rather keep the infiltrations the way we have it.

Mr. Pockl stated the intention of the requirement is to detain the stormwater so that you are not infiltrating it so fast that you are creating a sink hole; and he feels that with the infiltration rates that are on site and the amount of volume that they are infiltrating, there is not a potential risk being created in this situation. Mr. Coyle stated he assumes that Mr. Pockl would support the Waiver request, and Mr. Pockl agreed.

Mr. Dumack stated Item #11 is a Waiver request from Section #178-85 H 4 A to not provide all 69 replacement trees on site. He stated they are providing 38 replacement trees on site and are looking to provide a Fee-In-Lieu for the remaining 31 trees as per Section #178-85 H 4 D.

Mr. Bush stated it was noted earlier that one of the Conditions of the Variances was creation a Conservation Easement, and Mr. Dumack agreed. Mr. Bush asked where that is shown on the map, and Mr. Dumack stated it is not shown yet. Mr. Dumack showed the proposed location on the rendering shown. Mr. Bush asked if there is room for additional trees to be planted. Mr. Dumack stated while there is, the landscape architect at the time went with 38 trees and did not want to over crowd everything based on mature growth.

Mr. Costello asked between the Fee and the planting of the trees, how does that differ from what the Code requires; and he asked if they are meeting our requirements. Mr. Majewski stated he believes if the calculations on the Plan are correct, they would not need a Waiver for this.

Mr. Dumack stated Item #12 is a Waiver request from Section #178-20 G to not require an Environmental Impact Assessment. He stated with regard to the site itself, they have not asked for a single Variance with regard to resources, steep slopes, or woodlands; and everything they have done is based on Zoning and SALDO so they are asking for relief from having to do an EIA. Mr. Pockl stated they have provided a lot of the information that typically would go into an EIA, and he would support the Waiver.

Mr. Costello stated we have a specific Variance for the setbacks to be different next to a protected area. Mr. Dumack stated the way the Ordinance reads is when you have steep slopes for example, the requirement is that you have to set your setback based on the limit of that steep slope. He stated they are not disturbing anything in excess of what they are allowed to disturb. He noted some irregular steep slope areas along the frontage where the retaining wall is and along Lindenhurst Road itself; and what that would do would be to force the front yard setback even further back in some instances potentially not allowing a building lot.

Mr. Coyle stated with regard to the EIA, they are putting in new structures and changing stormwater retention, and there is a lot around permeable surface and water retention. He stated they are pretty close to Core Creek. He stated he wants to make sure that the Township is comfortable that the proposed changes do not need to be reviewed or captured in any other way, and what has been received provides comfort that we do not have to look further at that impact. Mr. Pockl stated it does. He stated they have provided a detailed stormwater management report to demonstrate that they have met the Township's water quality requirements and the rate of run-off requirements. He stated his office had provided some comments regarding the stormwater report, and the Applicant indicated that they would comply; and there would be sufficient room on site if they had expand either one of the on-lot stormwater management systems to comply with some of the comments. Mr. Pockl stated he is confident that there are adequate resources on site to address those.

Mr. Coyle stated since they are requesting Preliminary and Final at the same time, he understands we would still have the opportunity to review that they did comply with the standards, and Mr. Pockl stated agreed that would be before the Record Plan is signed.

Mr. Dumack stated they also received a review letter from the Bucks County Planning Commission which summarized what was in the Remington Vernick letter. He stated the Fire Service Director review letter indicates everything was acceptable. Mr. Dumack noted the review letter from Ebert Engineering, the Sewer engineer through Aqua, and everything there is a will comply. He added they will have to comply with that in order to get sewer service. He stated the last review letter is from the Township Police Department, and they commented that since the frontage is overgrown and heavily vegetated, the trees should be limbed up and the brush be removed in order to improve the line of sight. He stated they will comply with all of those comments. Mr. Pockl stated because it is a State road, PennDOT would be reviewing this as well, and Mr. Dumack stated PennDOT still needs to do their review. He stated they will be applying for two driveway permits, one for each lot, and PennDOT has the ultimate say in how those driveways get configured.

Ms. Kirk stated the Traffic Engineer's review letter assesses the Impact Fee calculated at \$6,452, and she asked if there is any dispute over that. Mr. Dumack stated while he does not have a copy of that letter, they will comply.

Mr. Dumack stated they are down two Waivers and are therefore asking for ten Waivers rather than twelve.

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

Mr. Coyle moved and Mr. Gil seconded to recommend to the Board of Supervisors approval of the Preliminary/Final Subdivision and Land Development Plan subject to compliance with all of the Township professional review letters with the exception of the Waivers requested as more fully set forth in the review letter from Remington Vernick dated 2/3/23 for those items listed as Waivers #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, and #12. As to the Waiver for the sidewalks, the Planning Commission recommends approval subject to payment of a Fee-In-Lieu of installation of the sidewalks and further that the Zoning Hearing Board Conditions imposed at the time of the approval of the Variances be placed on the Final Plans for Recording.

Ms. Stern asked what was the final decision with regard to Waiver #11 with regard to the trees. Mr. Costello stated it was determined that it is not an actual Waiver because they are complying. Mr. Majewski stated they can either plant the trees or alternatively pay the Fee, and they have done a combination so they are in compliance.

Motion carried unanimously.

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

Mr. Costello stated Mr. Majewski provided updates based on the last discussion. Mr. Majewski stated the questions were primarily concerned about what the potential impact could be on development sites, and he went through and looked at a number of different size and shape properties with different types of resources. He stated what he found was that there was a not great deal of difference in the density for a project.

Mr. Majewski showed a slide of the Fieldstone/Harris property which had been discussed previously. He stated he did calculations to compare what would be permitted under our existing Zoning; and when you take out the natural resources on the site and apply the currently permitted density, you would get between 36 to 39 lots as a by-right plan. He stated they would still have to do something with the existing dump. He stated using the proposed Open Space Ordinance, 25% would be mandated to be open space, and that would net about the same number of lots. He stated he did the same calculation if there was 30% open space required, and it was about the same numbers. He stated he also did calculations if there was 35% and 40% open space required. He stated the net of the proposed Ordinance on most properties that are in the R-2 Zoning District is that there is no change in density, and we would get more open space on smaller lot sizes.

Mr. Majewski stated by using a minimum of 25% open space, you potentially reduce the amount of impervious surface that would be generated by a project by anywhere from 10% to 25% which is one of the benefits of clustering. He stated this is also a benefit to the developer as they would have less amount of roads, pavements, and driveways.

Mr. Costello noted the 40% example, and he asked if the net buildable area includes roads and lots; and Mr. Majewski stated it includes roads and detention basins. Mr. Costello stated he still feels that there should be a “floor for how tightly you can pack” no matter how much open space is being given. Mr. Majewski stated in this case, the lots would be comparable to Yardley Hunt. Mr. Costello asked if it could not theoretically be taken down to a point where the houses would be built right next to each other, and Mr. Majewski stated it could not and it mimics what we already have in a number of areas in the R-1 and R-2 Zones. He stated in the R-1 Zoning District in the northern end of the Township there are the Farmland Preservation lots; and while they are theoretically net one acre lots, since we saved half of the farmland, they go down to lots that are one-third to one-half acre. He stated those are selling for close to \$1 million.

Mr. Costello stated the Township came up with the different Residential and Business Districts because under the Master Plan we wanted some input into what the environment would be like. He stated he agrees with the spirit of what is being proposed; however, he feels at some point other factors should come into play. He stated if a developer uses this, there could be a strip of woods but also a block of houses that was really not the intent for the Residential Districts. He stated he wants to protect the Township from someone taking this further than what was intended.

Mr. Bush stated this Ordinance has been discussed previously a number of times, and the last time it was before the Planning Commission it was indicated that there would be significant changes and the Planning Commission would get it back. He stated the Planning Commission just got it this evening with some red-lined changes. Mr. Majewski stated the red-line is what they previously had. Mr. Bush asked what is new, and Mr. Majewski stated it is what is highlighted in yellow. Mr. Bush there were a lot of open issues when it was previously discussed, and looking at the document quickly he cannot tell if any of them have been addressed.

Mr. Bush stated the last time this was discussed, there was significant discussion about what was permitted with regard to the 25%, and whether that was in addition to or inclusive of resource-protected land. He stated he believes it was indicated that we could not do 25% plus resource-protected land because 25% of the property could already be resource-protected land so it would then mean 50% of the property would not be developable under the proposed Ordinance. Mr. Majewski stated that is correct. Mr. Bush asked if that has been addressed. Mr. Majewski stated if we were to take whatever the

resources were and add another 25% on top of that it would squeeze it down so far that we would be taking away a developer's right to use their property. Mr. Majewski stated he had planned to discuss a tonight scenario where that played in.

Mr. Bush stated he believes Dr. Weiss was pushing for that or felt it was a good idea; and if that cannot be enacted, he is glad it is not in the proposed Ordinance.

Mr. Bush stated there was also the issue of how open space was defined, who would be responsible for it, and how we would prevent encroachment. He stated any number of the developments in the Township have open space that has been designed into the developments, and within a very short period of time, there are all kinds of encroachments. He asked what can be done to prevent that in this scenario since in this scenario it will be a larger portion of land and it may be easier for people to encroach even more so than in a typical neighborhood built without this Ordinance in place.

Mr. Majewski stated the problems we have are mainly in the older developments where we did not have anything in place that required demarcation of the preserved area whether it was through signing, fencing, or monumentation. He stated newer developments are better controlled, and we have not had those issues. He stated it has been laid out that the open space must be marked in some fashion to show where it begins and ends. He stated we also came up with a policy last year to defend against encroachments into those areas, and we now look at aerial photos to ascertain whether or not people have encroached into our area. He stated we have identified a number of people who have to remove things out of the open space that they put in there.

Mr. Bush asked if there is an Ordinance about that or is it just a policy; and Mr. Majewski stated that is the defense against encroachments policy, and there is an Ordinance that lays out what is required for a Subdivision and Land Development for open lands. Mr. Majewski showed a slide on Chapter 178-87 A 2 which indicates, "The Applicant shall provide a method of physically delineating private lots from open space areas such method shall include shrubbery, trees, markers, or other methods acceptable to the Township." He stated the goal is to mark it out in some way so that people do not keep increasing their lawn further out which has been observed in developments from about twenty-five years ago.

Mr. Bush stated there may be a better barrier in the new developments, but you do not have to go that far back in time to see encroachment. He stated he is glad that there is at least an Ordinance requiring this and glad that we have addressed the issue of going more than 25% with resource-protected land.

Mr. Majewski stated another item that had come up was the definition of open space as there are a number of definitions throughout the Ordinances, and there was a slight inconsistency. He stated he took the definition for open space that was within the Subdivision and Development Ordinance which is similar to the one that is in the Zoning Ordinance which states, "Open space is an area of land or water or a combination of land and water within a development site designed and intended for the use or enjoyment of residents not including streets, parking areas, areas set aside for facilities including detention and retention basins, or resource-protected lands. Open space shall not include land occupied by Commercial, Industrial, Residential or other non-recreational uses, land reserved for future parking areas, for non-recreational uses, stormwater management facilities, waste water management facilities and/or the lots for lots of dwelling units. Open space shall not include leftover areas, remnants of land remaining after lotted out for usable areas." Mr. Majewski stated that came from our Subdivision and Land Development Ordinance, and he combined the second section of the one definition with the other so it is clear under Zoning what we allow for as open space.

Mr. Costello asked what is meant by use and enjoyment of "residents," and asked if that means that anything deemed as open space can be used by any resident; and Mr. Majewski stated that is not necessarily correct. He added residents could be the people who have the open space in their back yard, or if there is a Homeowners Association, it could be for the benefit of those people who live within that development. He stated it could also be the residents as a whole if there was a piece of open land along the road where trees were planted which could be enjoyed by all residents driving by.

Mr. Costello asked how it would be made clear who can use certain areas of open space. Mr. Bush stated there needs to be consistent definitions throughout all of the Ordinances as to what open space is and who are considered "residents." Mr. Majewski stated he feels what is proposed is consistent. Mr. Bush stated he felt it was indicated that it was a combination of two definitions. Mr. Majewski stated under the old Open Space definition in Chapter 178, it has the first sentence of what is proposed and then the other two sentences are from another section. Mr. Bush stated it should be the same

definition everywhere, and Mr. Majewski stated that will be a later amendment of SALDO that we will do. He stated it is in the body of SALDO exactly what this says verbatim.

Mr. Bush stated we also need to consider the issue of who are the residents who have access, and that cannot be left ambiguous. Mr. Majewski stated he will ask Ms. Kirk to consider how to define this. Mr. Bush stated he feels the definition of residents should indicate who has access to the land. Mr. Costello stated it seems that it would be enjoyed by some residents, but depending on the situation, it might not be available to all residents and would only be available to a pre-determined set of residents. Ms. Kirk agreed that it could public versus private. She stated generally speaking if there is going to be a Homeowners Association, there would be by-laws, rules, and regulations that have to be reviewed by the Township, and that would limit access to open space; and the Homeowners Association would be the ones to police that with signage, etc. She stated if it is public open space, similar signage can be posted to indicate that it is open to the entire Township. She stated she is not sure that we could specifically define residents; but during the course of reviewing Plan, we would make the differentiation as to whether it is only going to be for those in that development or open to the entire public.

Mr. Coyle stated he does not know that it is appropriate to make the distinction since if it is private land, the public would not be able to walk on without their permission; and if they were to develop that land, and preserve some of it as open space for soil erosion, to create an environment for animals, etc., he does not know that we should specify in the Code that they have to let anybody from the Township walk on the private land. Mr. Bush stated that is not what is being suggested, and what he is saying is that the Ordinance should state that it has to be clearly designated whether it is public open space or private open space. Mr. Majewski stated that is in the Subdivision and Land Development Section of the Ordinance.

Mr. Costello asked if there is a signage requirement for open space, and Mr. Majewski stated it is in the Ordinance that there has to be a sign. Mr. Costello stated that sign could say that it is private open space or is open to the public so that it is clear whether the public can go onto it or not. Mr. Majewski stated the Ordinance leaves it up to the developer with input from the Township, and they can choose whether or not to dedicate land to the Township or if the Township feels they do not want to accept dedication, we can leave it to the developer to have their own Homeowners' Association. He stated the land can also be dedicated to a conservancy of some kind or

some other viable organization. He stated there are a number of requirements that are in the Ordinance as to how to do that and the paperwork required, and all of that is outlined in the Subdivision and Land Development Ordinance.

Mr. Costello stated we probably have defined open space right now that is not open to the public. Dr. Weiss stated an example is the Patterson Farm which is a working farm that the Township owns, and there is signage indicating there is to be authorized personnel only. He stated the Code specifies this already.

Dr. Weiss stated there is developable land remaining in the Township, and he would like to see that a certain amount is reserved in open space and we can shrink the lots accordingly. He stated he agrees that we should not end up with 1/8th acres lots in R-1 Zoning just to have 40% to 50% open space. He stated he feels that we can put in the Code that the limit for R-1 Zoning would be 30% and for R-2 Zoning 25% or whatever the Planning Commission suggests so that we do not get “postage-sized lots.” He stated, if that is what the Planning Commission recommends, he does not feel the Board of Supervisors would disagree with that. He stated he feels it would be easy to put those limits in. Mr. Costello stated that would make him more comfortable. He stated he understands what the Board of Supervisors and Mr. Majewski are trying to accomplish, but he wants to make sure that it is done right and it is a positive for the Township. Mr. Majewski stated people have reacted very positively to the cluster developments we have done in the northern part of the Township. He stated this Ordinance will provide the opportunity for more open areas.

Mr. Costello stated he is just trying to make sure that some developer will not find a way to take advantage of this, and he agrees with Dr. Weiss about putting a limit on it so that we are not put into a situation that we do not want.

Mr. Majewski stated he was tasked with going through a number of examples to see what would happen, and that is what he was reviewing earlier this evening. He discussed another theoretical example in the R-1 Zoning District of about 100 acres with little resource-protected land, and if they were to pay a Fee-In-Lieu of recreation there would be no open space, or if they were to provide recreation, it would result in approximately 4 acres of open space for 100 lots. He stated with the proposed Ordinance with 25% open space required, we would get 26 acres of open space on the property, and they would still have 80 acres. The lot yield would be approximately 94 to 99; and while there would be less than a 10% difference in density, the developer would benefit in that they would be able to shorten the amount of roads they build and shorten the amount of utilities. He stated the Township would benefit by getting about

15% to 20% less impervious surface. He stated if they were to provide a higher amount of open space, the developer could get a few more lots but it would not drastically increase.

Mr. Majewski showed another theoretical example of a property with about 20% of natural resources; and they could theoretically get about 67 to 70 lots or less once the roads, etc. are considered. He stated we would gain an extra five acres of open land with the proposed Ordinance, and they could theoretically get 10% more lots. He stated if more open space were given, they would get a little extra bonus. Mr. Costello asked how they could build more lots, and Mr. Majewski stated that they would be smaller lots if they choose to preserve more open space. Mr. Majewski stated this would be similar to what was built in the northern end of the Township. He added this is an incentive to the developer to provide more open space. Mr. Costello stated he feels this leaves us open to changing the nature of the Township if the right controls are not put around it. He stated someone could give us 70% open space, but that would result in a development that was not what was designed in the Master Plan with a really dense neighborhood in the middle of the adjoining developments that are not like that. Mr. Pockl stated we are not changing the yard setbacks from the underlying Zoning District.

Mr. Coyle asked if the concern around increasing the density is the total number of population in an area, the look of the neighborhood, etc.

Mr. Majewski showed a slide of an example on the northern end of the Township with one-acre Zoning which is the Dolington Estates development which is all lots and no open space versus the Farmland Preservation lots of about 500 lots where they are clustered down but have the open space all around them. He stated what is being proposed is not unprecedented.

Mr. Bush stated he does not feel they were contemplating Farmland Preservation, and Mr. Majewski agreed that is a separate entity. Mr. Bush stated going forward in the future, it will be challenging to find people to farm those properties, and he does not feel we should add more farmland when there are no farmers to farm it.

Mr. Bush stated if something is resource-protected open space, he feels it should be fenced in; and he does not feel having bushes is sufficient. He stated while Mr. Majewski indicated the problem of encroachment was with the older developments, it is also in new developments and it is often encroachment into resource-protected open space. He stated he feels attractive fences should be installed.

Mr. Majewski stated when we passed that part of the Ordinance about fifteen years ago, that was a discussion item; and one of the concerns with fences was who would own and maintain the fence. He stated if they were put on Township land, we would be required to maintain them which we do not have the capability to do; and if it were put on private land, we are forcing them to own and maintain the fence. He stated that does not mean that could not be done although at that time, it was decided not to require the fence. Mr. Bush agreed that is a legitimate concern; but if we are going to take 25% of a property which is resource-protected and not to be used by anyone, we should require a fence to make sure that it is actually maintained as resource-protected property. He stated the time to consider this is now.

Mr. Gill asked if the Township would be responsible for the open space if it is for public use. Mr. Majewski stated there is the option of someone dedicating the open space to the Township; and if it is dedicated to the Township, the Township owns it and has to maintain it. He stated if it is kept in private ownership either as a Homeowners' Association, a Conservancy, or some other group they would have the responsibility for owning it and maintaining it. He stated at the time that would be done, there would be a Declaration of Restrictions and Covenants which would be reviewed by the Township to make sure that there are sufficient protections included for the Township to enforce them. Dr. Weiss stated that is all decided during the meetings with the developer in deciding how they are going to do the Preliminary and Final Plan. He stated the process of determining it whether it will be private, public, or a third party is already in the Township Code as to how that is done. He stated the proposed Ordinance is just for the Township to insist that a certain percentage of the land be in open space, and the lots can be smaller. He stated he believes that the Board of Supervisors would agree that there should not be more lots when providing the additional open space, and the incentive to the developer would be less paving and impervious surface in the development which means less expense to the developer. He stated he does not feel the current or future Boards would be in favor of adding more lots to a smaller buildable area, but are in favor of dedicating 25% open space especially since there are so few developable lots left in the Township. Dr. Weiss stated the Board is looking at millions of dollars in expenditures to buy open space versus getting it from the builder in trade for slightly smaller lots.

Mr. Bush stated that would suggest that the open space contemplated in this proposed Ordinance would be public open space as opposed to private open space. He stated if the Township were to spend money to buy open space presumably that would be public open space. Dr. Weiss stated looking

at some of the townhouse developments in the Township, there are acres of open space that can be enjoyed by the public. He stated the Dog Park is surrounded by a Homeowners' Association. He also noted Rose Hollow and Palmer Farms which are cluster developments/higher-density housing that have open space areas that are private land but are enjoyed by the Township in that it is open space. He stated when the general public is driving by green space rather than cement, whether it is in private or public hands, he feels it is a good thing. He noted the Wright Farm is in private hands, but it is enjoyed by the residents in general when they drive by. Mr. Majewski stated we also have development rights on some properties that are privately owned. Dr. Weiss stated with the 1,000 acres of developable land we have left, it would be nice to be able to protect some of it without spending millions of dollars of taxpayer money or going into debt for generations for a few acres of open space. He stated this proposed Ordinance tries to address that issue.

Ms. Stern asked how much public open space we currently have in the Township. Mr. Majewski stated the public open space is in a number of forms. He stated there are natural areas such as the Five Mile Woods, resource-protected lands spread throughout a number of developments throughout the Township, Farmland Preservation land which is controlled by the Farmland Preservation Corporation, and open space in the form of parks throughout the Township. He stated there is also open space, which while it does not meet the current definition in the Ordinance of open space, would include stormwater management areas which are Township-owned lands that are open. He stated he believes we own approximately 1,000 acres of open land. Ms. Stern asked how much of that is for public use, and Mr. Majewski estimated that about two-thirds of that is for public use. He added that the areas that have not been dedicated to the Township that are privately owned open space is probably about 100 acres. Mr. Bush asked Mr. Majewski if he included the Golf Course, and Mr. Majewski stated he did not and that is another 200 acres. Ms. Stern asked what kind of open space they are contemplating preserving by doing this. She asked if it would be more private open space for a particular development or public use overall. Mr. Majewski stated that would depend on the property. He added some properties about open space that we already own and control or areas that are natural lands. He stated some areas might be along major roadways where if they cluster the development and keep the houses set back from the roadways, if we use monies that we have in the tree bank to re-forest those areas, it will create a nice visual buffer so when you drive down the road you do not just see house after house, and you can see open lands and houses beyond that through the trees. He stated small-scale recreational

areas could be put in for a neighborhood. He stated there are a number of ways to do open space, and in Lower Makefield we have done almost all of them that you can think of.

Ms. Stern stated she feels that if we are talking about whatever is left to develop in the Township, we are probably talking about mostly private open space; however, Mr. Majewski stated that is not necessarily correct. He stated it would be a choice between the Township and the developer, and in many instances, the developers prefer to give the open space to the Township if they can although in other cases they like to retain it under their control if they have a certain standard they like to have for how it is maintained and how it will look.

Mr. Coyle stated in the Zoning Code today we have both open space and common open space as definitions, and he understands that this is just exploring the definition of open space which currently says, “see common open space.” Mr. Coyle asked if we are going to strike “common open space,” and have one definition, and Mr. Majewski stated common open space is actually a definition that is contained within multi-family housing so it is a distinct separate definition. He stated that was one of the conflicts we had which is why it was decided to go with what was in the Subdivision and Land Development Ordinance because that was the one which was most recently adopted.

Mr. Bush asked that the Planning Commission be provided items like this in advance of the meeting, since the Planning Commission was just handed this tonight and we have talked about this at three or four other meetings; and it would be helpful to have had a chance to review it before coming in.

Ms. Stern stated that she agrees with Mr. Costello that we need controls for minimum lot size and increase in maximum density for each project so that developers cannot take advantage of this situation. Mr. Costello stated that would make him feel more comfortable.

Mr. Coyle stated he agrees with Mr. Bush that this would be a good time to look at enforcement around encroachment of protected lands.

Ms. Kirk stated we have already started implementation of enforcement, and she has been working with the Township Code Officer identifying problem areas and trying to get those issues resolved. Mr. Bush asked how the Township is identifying those locations, and Ms. Kirk stated they are doing so using aerial photos and personal inspection. Mr. Bush asked if the Township is

looking at every property or is it just done when someone makes a complaint. Ms. Kirk stated it is both based on identifying certain locations. She stated if there is a complaint filed, it has to be investigated, and the Township is also starting to do a review of all of the Township-owned properties via aerial photos. She stated if there appears to be an encroachment, the Township has to do an actual inspection at the property to see if the aerial photo is accurate. She stated Notices of Violation are being sent to the property owners.

Mr. Bush asked what happens if it is found that a property owner has encroached into the resource-protected land. Ms. Kirk stated most of them involve structures. She noted an example in one of the older developments where an aerial photo showed what appeared to be a chicken coop-type structure on Township land. She stated it was confirmed that it existed, and Notice was sent to the property owner about having to remove it. She stated since she has not heard anything further about seeking enforcement, she believes that the property owner complied and removed the offending structure.

Mr. Bush asked about those instances where there are no structures, it is just someone who is “co-opting” land. Ms. Kirk stated that is sometimes hard to prove and generally they see structures encroaching on the land as opposed to someone planting trees, etc. Mr. Majewski stated we are usually not upset when someone plants trees, and it is the cutting down of trees that we are concerned about. He stated we do have aerial photography that goes back to the 1930’s that helps them look into this. He stated recently there was someone who thought that their neighbor had gone into the open space, but when they reviewed the aerials of the past, it was found that the lots all had resource-protected land except for this one lot where the farm field jutted out about 50’ to 60’ beyond their lot; and while they do cut the grass back there, it has been like that for forty years.

Mr. Coyle stated if we were particularly worried about new developments he feels it would be good to encourage the adoption of an HOA as it has been his experience that HOAs are pretty strict about enforcement especially if the Township has strict fines on them. He stated that could be a way to protect resource-protected land without the Township having to pay for fencing as it would put the onus on the Homeowners’ Association.

Ms. Kirk stated when she appears at specific Zoning Hearing Board Appeals when there are issues with respect to natural resources, she has been insisting that there be a Deed Restriction Recorded so that there is something clearly of Record to prevent any further development on the natural resource-

protected area. She stated something could be done for open space as well. Mr. Majewski stated that had not always been done, and Ms. Kirk took the lead on that; and he feels we are in a better place going forward because of that. Dr. Weiss stated we can always beef up Code Enforcement as time goes by and the Township gets better at these issues.

Dr. Weiss stated with regard to moving forward with the Ordinance, the Board of Supervisors was scheduled to address this on Wednesday evening, but it does not seem that there is a resolution yet on some of these issues. He asked if the Planning Commission would find acceptable a 30% max in open space with a corresponding 30% in lot size reduction and no increase in the number of lots or alternatively asked if the Planning Commission would recommend something else.

Mr. Costello stated this going in the direction of what he has been talking about. He added it may be different for R-1, versus R-2, versus R-3. He stated he would be amenable to something along the lines that Dr. Weiss is suggesting. He stated he is looking for some control on the extreme end.

Mr. Bush stated he believes that Ms. Kirk had indicated earlier that it would not be possible to have different percentages in different Residential Zoning areas. Ms. Kirk stated that was the original thought because it was felt that it could be challenged more easily if we were to differentiate between different Zoning Districts. She stated certain Zoning Districts are built out to the point where there is not going to be anything available anyway so the theory was to try to keep a consistent percentage across the board so it did not appear that we were requiring greater open space preservation in R-1 versus an R-2 District.

Dr. Weiss asked if saying percentage of the land versus the acreage itself would answer that. Ms. Kirk stated she felt that was what they wanted to do, but instead of doing specific different calculations for each Zoning District, trying to keep it equal across the board so there would not be as much of a chance for a challenge.

Mr. Majewski stated it is his understanding that each Zoning District is slightly different, and R-1 is a lower density, R-2 is a slightly higher density, and R-3 is slightly higher than R-2. Mr. Costello stated he takes that to mean that in the Master Plan we had a vision of different types of neighborhoods, and there was a different rationale between the different Residential Districts; and he feels that we should make sure that if we are changing that, we should be aware of what should be the limit.

Mr. Coyle stated with regard to the creation of additional lots in return for the additional preserved space, if that were not an option for the developers would the developers still see this proposed amendment as a benefit to develop in a way that would result in an increase in preserved land. Mr. Majewski stated he does not feel the developers would give extra open space if they were not going to get extra lots. Mr. Costello stated they would be able to build less roads; however, Mr. Majewski stated that is typically not enough of an incentive unless the site lay-out suits that.

Dr. Weiss asked if it is felt that the property values would decrease for a property on a smaller lot even with more open space around it. Mr. Majewski stated when you have open space near your lot, the value of your land typically goes up because you are gaining the benefit of having open area. Dr. Weiss asked why the Township would offer more lots to a developer when a slightly smaller lot with more open space would be an incentive for them to charge more for the home that they are building. Mr. Majewski stated initially the number was 25%, and he believed that one of the Supervisors had asked why there could not be more open space and would 30% or 40% not be better, and that is why we did the sliding scale. He stated if the thought is that we should just make it 25%, we could stay with that which was the original idea. Dr. Weiss asked the Planning Commission what they would accept in order to have this go forward.

Dr. Weiss stated he could take this item off of the Board of Supervisors' Agenda for Wednesday if the Planning Commission wants to finetune the Ordinance between now and next month; however, he would like them to move forward at some point. He stated he understands Mr. Costello's concerns that we do not want to have very small lots with 80% open space.

Mr. Majewski stated the lot sizes will be no different than what is in most of the developments in the north end of the Township. He stated a lot of the lots are 16,000 square feet, and that is what is in the Ordinance so that there will be little difference other than instead of one acre lots, we are going down to half-acre lots and gaining the open space. He stated we are not going down to townhouse level.

Mr. Coyle stated he feels that lots that back up to open space are very attractive and you could pay a smaller tax rate because you have less acreage, but you get the benefit of enjoying looking out at the open space. He stated the scenarios that Mr. Majewski illustrated showed that adding just a small number of lots in exchange for a relatively significant increase in protected open space

allows us more flexibility in working with the developer to shield potential new developments from the roads when they are set behind a screen of trees which he feels is attractive.

Mr. Costello stated he agrees that the concept is attractive, but he is concerned that if we do not consider everything now, there could be an issue in the future.

Mr. Gill asked if there is a way to move this forward by indicating that we want there to be some kind of limitations on it such as percentages, etc. and let the Board of Supervisors decide on the details. Mr. Bush stated while the Board of Supervisors could do that, the job of the Planning Commission is to make a recommendation to the Board of Supervisors on the proposed amendment to the Ordinance. He stated he feels the Planning Commission needs to reach a consensus tonight or at the next meeting and then let the Board of Supervisors make the final decision.

Mr. Bush asked if any neighboring Townships or other communities in Bucks County have this type of Ordinance already in place. Mr. Majewski stated Ms. Kirk looked into that, and many of them have much higher densities in their Cluster Ordinance which we felt was not suitable for Lower Makefield. Mr. Bush asked what were the Municipalities and the densities. Ms. Kirk stated while she does not have that exact information with her this evening, one she recalls is Buckingham Township but the Open Space regulations imposed in that Township were in response to a variety of challenges to their overall Ordinance so as part of settling matters, they made modifications. She stated she believes Northampton and Newtown Township are similar to what Lower Makefield is proposing. She stated when the 25% was decided on it was akin to what was in Ordinances of others within our area. Dr. Weiss stated he believes that Northampton Township is 25%. He stated he lived in a cluster development in Northampton Township where the half-acre lots became third-acre lots, and land was incorporated into open space.

Mr. Costello asked why we would not just do 25%; and Ms. Kirk stated that is where we started, but the Commission was concerned about density. Ms. Stern asked if we could put in 25% overall and put a limit on the increase in maximum density per Zone. Ms. Kirk stated she feels we could do that, but she would recommend that it be across the board, and she would have to rely on Mr. Majewski for those numbers and calculations. She stated we could have a requirement that there be 25% preserved open space but lot size could not be reduced by 25% without open space or something similar.

Ms. Kirk stated the next Planning Commission meeting is April 12, and she suggested that we try to have something to the Planning Commission using a 25% calculation and language about limiting the lot size reduction. She stated at that point the Planning Commission can decide whether or not to recommend that to the Board of Supervisors. Ms. Stern asked if that would address the maximum density, and Ms. Kirk stated it would. Dr. Weiss stated if this is the consensus of the Planning Commission, he will take this item off of the Agenda for the Board of Supervisors on Wednesday and postpone it until the April meeting; and hopefully between now and that meeting, there will be something put together that the Commission can recommend.

Mr. Bush stated he also feels we should address the resource-protected land maybe through an HOA having a fence up that the HOA would be responsible for if it is a situation where a majority of the land, possibly more than half, is resource-protected. Dr. Weiss stated if Ms. Kirk can come up with language on that, they could consider it next month. Ms. Kirk stated she does not know if we can impose that kind of requirement upon lands that are being privately maintained. Mr. Coyle stated we could encourage them to very strictly enforce the protection or face steep fines. Dr. Weiss stated that could be subject to argument. Ms. Kirk asked if it would have to be fencing, and she asked if it could be signage and/or fencing. Mr. Bush stated there is already signage. Dr. Weiss stated from his experience over the last six years, when a developer comes to the Township with Plans, by the time it reaches the public, it is pretty well modified. He stated he is not too concerned as to how we will address the open space, and he is more concerned about getting the open space; and we can work on enforcement although he does not feel that is part of this unless Ms. Kirk feels it can be incorporated.

Mr. Costello stated he likes the idea of picking a number which they are comfortable with which would set a limit. He stated developers have asked for exceptions in the past; and if a developer were to indicate that he could provide 30% open space, they would consider that. Mr. Majewski stated they would have to go through a Variance and prove a hardship, and he does not know if providing us more open space rises to the level of a hardship.

Ms. Kirk asked what is the general consensus as to how to maximize the amount of the density, and she asked if it would be to not have it be increased by more than 25% or 15%. Mr. Costello stated he would defer to Mr. Majewski as to what is enforceable. He asked that Mr. Majewski consider what would be the way to do this so that it does not make it completely onerous on a developer and for the Township to make sure that what the developer is telling us is accurate. Ms. Kirk

stated we need to consider the maximum density permitted; and asked if we are going with 25% open space, are we going to indicate that the maximum density cannot be increased by any more than 10% or 15%. Mr. Costello stated he does not know what that specific number should be, but he does feel that there should be a number there. Dr. Weiss stated we can review what other Townships have and come up with something that would fit Lower Makefield. Ms. Kirk stated she is not sure the other Townships' Ordinances dealt with a maximum on density, but she will look into that. Dr. Weiss stated he believes Northampton did.

Mr. Costello stated he does not believe that the Planning Commission is opposed to the concept. Dr. Weiss stated he understands that they are just looking for clarification on the content, and he wants it to be as clear as it can be.

OTHER BUSINESS

Dr. Weiss noted that tonight is Ms. Stern's last meeting, and he thanked her for her service on the Planning Commission.

There being no further business, Mr. Bush moved, Ms. Stern seconded and it was unanimously carried to adjourn the meeting at 9:30 p.m.

Respectfully Submitted,

Dawn Stern, Secretary

