

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – APRIL 4, 2023

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on April 4, 2023. Mr. Solor called the meeting to order at 7:30 p.m.

Those present:

Zoning Hearing Board: Peter Solor, Chair
James Dougherty, Vice Chair
Matthew Connors, Member
Mike McVan, Member
James Brand, Alternate Member

Others: James Majewski, Community Development Director
Russ Sacco, Zoning Hearing Board Conflict Counsel
James McCartney, Supervisor Liaison

Absent: Judi Reiss, Zoning Hearing Board Secretary

APPEAL #23-1999 – CELLCO PARTNERSHIP, DBA VERIZON WIRELESS
Tax Parcel #20-034-008
375 STONY HILL ROAD YARDLEY, PA 19067

Mr. Sacco stated he was appointed Conflict Counsel for the Zoning Hearing Board at their March 21, 2023 meeting. He stated at that meeting the Hearing was Continued to this evening, April 4, 2023. At that original March 21, 2023 Hearing date the solicitor for the Zoning Hearing Board recused himself due to a potential conflict of interest as well as did one of the Board members. He stated there are five Board members hearing the Appeal this evening, and this Appeal will probably go on for a couple of Hearings.

Mr. Sacco stated there are a number of attorneys involved in this Appeal. He stated the Appellant is present and is represented by Christopher Shubert. Congregation Beth El is represented by Ed Murphy. Mr. Sacco stated we received an e-mail this afternoon from Mr. Murphy indicting that he was recently retained by the Congregation but was unable to attend this evening. Mr. Sacco stated he has been in contact with Gregory Heleniak, attorney, who was recently retained by a few neighbors, and indicated that he wanted an opportunity to prepare for the Hearing. Mr. Sacco stated in order to move the Hearing process along but

not prejudice the Parties, we wanted to utilize this evening’s Hearing to identify the Parties who will be taking part in the proceeding and lay the groundwork for the next Hearing. At the end of tonight’s Hearing, the matter will be Continued until a date certain.

Mr. Sacco noted the large number of people present this evening and added that they will all have an opportunity to speak with regard to the Application at a later Hearing. He stated Testimony will not be taken this evening. He stated typically the Applicant will present Testimony including their witnesses, and the attorneys representing Parties will have an opportunity to cross-examine those witnesses as will the Board. He stated the public will have an opportunity to comment although not necessarily to cross-examine witnesses, unless they take Party Status. He stated establishing Party Status may take some time which is why we wanted to have the Hearing this evening. Mr. Sacco stated various Exhibits will be presented during the Hearings.

Mr. Sacco marked Exhibits as follows: The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors dated March 24, 2023 was marked as Exhibit B-3. An e-mail from the Appellant’s attorney dated March 6, 2023 to Mr. Majewski requesting the Continuance to April and also waiving the time requirements under the Municipal Planning Code to hear the Hearing was marked as Exhibit B-4. Mr. Sacco stated we are having our initial Hearing within 50 days. The Application dated February 13, 2023 including the Addendum to that Application was marked as Exhibit A-1. The twelve-page Plan that was submitted with the Application was marked as Exhibit A-2.

Mr. Heleniak stated he is present representing eight families who are in the immediate proximity of the subject property and all received mailed notice from the Township. He provided a list of those he is representing including a print-out from the Bucks County GIS Parcel Records highlighted in blue being the subject parcel where Beth El is located and the properties highlighted in green are the properties of the families he represents as follows:

- Anthony and Maureen Mannarino – 405 Stony Hill Road
- Stephen and Deborah Cianci – 364 Twig Lane
- Paul and Francene Oleyar - 387 Twig Lane
- Perryne and Chintan Desai – 388 Twig Lane
- Thomas and Dawn Mier – 389 Twig Lane
- Michael and Corinne Rossi – 390 Twig Lane
- John and Laura Muldowney – 392 Twig Lane
- Leonard and Seniz McMullen – 394 Twig Lane

Mr. Heleniak asked that they be recognized as Parties both individually and collectively represented by himself. Mr. Solor stated the Board accepts that.

Mr. Solor asked Mr. Sacco to discuss what qualifies as Party Status to help distinguish whether you can be a Party or not. Mr. Sacco stated the property owners just referenced by Mr. Heleniak all live on Twig Lane and many of the properties are adjacent to the subject parcel and many are in the direct vicinity of it. Mr. Sacco stated you do not have to be adjacent to the parcel to have Party Status, but you have to be impacted by the Application. He stated this is a cell tower so that could be a little subjective; however, you do have to establish that you would be impacted by the Application if it in fact were granted. Mr. Sacco stated if you are not a Party it does not mean that you cannot speak for or against the Application. He stated being a Party means that you are actually partaking in the Hearing and that you have the right to Appeal the Decision of the Zoning Hearing Board whether it is favorable or not favorable. He added that it also means that you can partake in cross-examination of the Witnesses. He stated everyone will have an opportunity to speak for or against the Application. Mr. Sacco asked if there are others who would like Party Status; and if they do, they need to establish where they reside and why they feel they should have Party Status.

Mr. Shubert stated in order to protect his clients he needs to protect the issue of an Objection to Party Status with regard to some of the clients that Mr. Heleniak is representing based upon his review of the Tax Map Parcels. He stated the issue is with regard to adjoining property owners, and there is a presumption that there would be a direct and adverse effect of any proposed development on adjoining property, and that is just a presumption; and it does not mean that there would necessarily be a direct and adverse effect on that particular property owner in the vicinity of the property. He stated he does not have a problem with what Mr. Heleniak has identified as his clients except for the properties are on the north side of Twig Lane which would be 389 Twig Lane (Mier), 387 Twig Lane (Oleyar), and 364 Twig Lane (Cianci). He stated he would like to preserve his right to Object to Party Status for those. He added that in the event that all but these individuals are dropped out, that is where it would become relevant.

Mr. Sacco stated Mr. Heleniak indicated that all of the Parties that he represents received Notice from the Township, and Mr. Heleniak agreed. Mr. Solor stated they are also on the Notice list that the Board was provided. Mr. Majewski stated the Notice list includes all properties that are within 300' of the subject property of the Appeal. Mr. Solor indicated after further review that 364 Twig Lane is not on the list that they were provided.

Those requesting Party Status were asked to sign in with their name and address.

Mr. Thomas Hughes stated he is at Parcel #20-060-088, 391 N. Flint Court, and he is directly adjacent to the property in question. He stated his name shows up on the Plans Z-2 right next to the chart for the various lot allowances. He stated he is requesting Party Status.

Mr. George Fox stated he owns 417 Stony Hill Road and a few properties next to it that did not get the letter although the 417 Stony Hill Road property did. He requested Party Status.

Mr. Solor reiterated that Party Status means that you can cross-examine Witness, but any member of the public can speak; and you do not need Party Status for that.

Mr. Ray Willhoft, 304 Cinnabar Lane, stated he did get a letter and he is requesting Party Status.

Mr. Shubert asked if he could have his neighbor who was unable to attend listed as a Party. Mr. Sacco stated that is not permitted. He added that as indicated no substitutive Testimony is being taken this evening. He stated during Testimony someone may feel that they will be impacted when they did not feel previously they would be impacted, and they could then request Party Status so it could be requested at the next Hearing.

Mr. Larry Smith, 386 Twig Lane, stated he got the letter and he requested Party Status.

Mr. Gerry Stoffel, 305 Cinnabar Lane, called in and stated they received the letter and are requesting Party Status.

Ms. Lara Ginzburg, 397 N Fieldstone, stated their property is to the right of the subject property, and she requested Party Status. She stated she did receive a letter.

Mr. Brian Cohen stated he received a letter and lives at 383 Hidden Oaks Drive. He stated his property is directly across Stony Hill from the property. He requested Party Status.

Mr. Sacco stated he has represented Mr. Cohen numerous times over the past few years and there is a potential conflict of interest representing the Board and representing an Objector. He stated while a decision does not need to be made this evening as we are not getting into any substitutive Testimony, he will need appropriate Waivers from the Board, Mr. Cohen, and from all Parties at this point.

Mr. Shubert asked Mr. Sacco if he is still representing Mr. Cohen, and Mr. Sacco stated it is an on-going representation. Mr. Shubert stated he will take this under advisement with his client. Mr. Sacco asked the Board to do the same although they do not have to make a decision this evening.

Mr. Darryl Belinski, 308 Cinnabar Lane, stated he is adjacent to the walkway to Congregation Beth El. He did receive a notice and he requested Party Status.

Mr. Christian Schwartz stated he and his wife live at 306 Cinnabar, and they received Notice. He requested Party Status.

Ms. Maria DiDonato, 388 Tall Meadow Lane, requested Party Status. She did not receive a notice, but she stated she is on the next block. Mr. Solor stated they will take this under advisement, and there will be a discussion at the next meeting as to why she believes that she has Party Status.

Mr. Shubert stated if a person requesting Party Status has not received the letter from the Township, he would note his Objection to them.

Mr. Solor reiterated that you do not have to have Party Status in order to speak to the Appeal. He stated Party Status is just that you want to have the ability to be represented if there is future litigation or you want the ability to Appeal to the Court of Common Pleas.

Ms. Nancy Gaston Festa, 379 Hidden Oaks Drive, stated she did get notification. She requested Party Status.

Mr. John Sullivan, 400 Stony Hill Road, stated they did get a letter and requested Party Status.

Mr. Thomas Cloud, 429 Stony Hill Road, stated they are three lots over and approximately 850' from the proposed tower. He stated their concern are health issues. He stated he did receive the letter. He requested Party Status.

Mr. Solor stated while people are requesting Party Status, the Board still gets to make the decision whether you have Party Status or not.

Ms. Lisa Liccione, 2311 Weinmann Way, stated she did not receive a letter but she is a resident of the Township, and she requested Party Status.

Mr. Solor asked Ms. Liccione her proximity to the location, but she did not know. She stated it is probably within a half mile.

Ms. Sheryl Duffy, 331 N. Flint Court, called in and stated she received a letter and would like to request Party Status.

Mr. Dan Madden, 379 Twig Lane, stated they did not receive a letter but would like to request Party Status.

Mr. Solor stated as he noted earlier, we will review next time whether these requests will be acknowledged or not acknowledged.

Ms. Abigayl Armbruster, 377 Twig Lane, stated they did not get a letter but would like to request Party Status.

Mr. Hughes asked how it was determined who would be getting a letter. He stated he heard earlier that it was within 300' of the property, but there is a 155' structure that will go up; and he asked how it was determined that 300' was adequate for who would and would not be getting a letter. Mr. Sacco stated the Township Zoning Ordinance indicates that anyone who is within 300' gets a letter.

Mr. Majewski stated the Township Ordinance says that only adjoining property owners get Notice, and that follows the Pennsylvania Municipalities Planning Code. He added that for some time Lower Makefield has used 300' which exceeds the minimum requirement of the State Municipalities Planning Code and our Township Ordinance.

Mr. Matt Thorn called in and stated they live at 360 N. Flint Court. He stated they did receive a letter and are requesting Party Status.

Dr. Jeffrey Sibner, 352 Tall Meadow Lane, stated they did not receive Notice and are probably just off the 300', and are requesting Party Status.

Mr. Sacco stated those requesting Party Status will be reviewed and addressed at the next meeting; and just because you signed up to have Party Status does not mean that you cannot withdraw that request as well and it does not mean that additional persons cannot take Party Status at the next Hearing.

Mr. Sacco stated substitutive Testimony will be presented at the next Hearing by the Applicant after a ruling is made on those who requested Party Status. He stated he understands May 2 was a date that worked for the attorneys, and this was acceptable to the Board. Mr. Majewski noted there is one other Appeal to be heard that evening, but that should take no longer than a half hour. Mr. Solor stated they will probably hear that Application first as the Appeal being heard this evening will take a longer time that evening and will most likely be Continued to a third Hearing as well.

Mr. Connors moved, Mr. Dougherty seconded and it was unanimously carried to Continue the Appeal to May 2, 2023.

Mr. Sacco stated there will not be any further Notice in the mail, and by Continuing this Hearing to a date certain, May 2, that is sufficient Notice. Mr. Majewski stated the meeting will be a hybrid where you can attend in person or call in. He stated the meeting can be watched on YouTube, Facebook, and the Township's Cable TV Channel. He stated we typically post the Agenda for the meeting on the Thursday or Friday before that meeting. He stated the Plans that were submitted in support of the Application are available on the Zoning Hearing Board Webpage at LMT.org.

Mr. Dougherty asked Mr. Shubert if it is possible for his client to produce a rendering of the cell tower. He stated he knows that there was a drawing in the Plan, but he feels a rendering would help them better make a decision. Mr. Shubert stated he is going to suggest to the client that they conduct a balloon test where they would fly a balloon at the targeted height and that will provide an accurate representation of what is proposed and the residents could view that. He stated the balloon is bright orange and about 6' in diameter. He stated they want to make sure that it can be seen when taking photographs. He stated normally when there is a situation where there is a lot of concern expressed by the residents, he would provide notification of when the balloon would be flying. He stated that is normally done first thing in the morning when the winds are the quietest. He stated the balloon can usually be kept up for a couple of hours depending on the winds. He stated once winds get up to 8 to 10 miles per hour, it flies around too much. He stated he could coordinate this

with the Township, and he assumes it could be posted on the Township Website as to when a proposed test would be done. Mr. Majewski stated we could put notification out on our social media channels.

Mr. Hughes asked if they could still get a rendering of the 155' structure against the background. Mr. Shubert stated they would do a photo simulation and take pictures around the neighborhood to give a better idea of what it would look like.

There being no further business, Mr. Connors moved, Mr. Dougherty seconded and it was unanimously carried to adjourn the meeting at 8:15 p.m.

Respectfully Submitted,

Peter Solor, Chair