

TOWNSHIP OF LOWER MAKEFIELD
PLANNING COMMISSION
MINUTES – DECEMBER 11, 2023

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on December 11, 2023. Mr. Costello called the meeting to order at 7:34 p.m.

Those present:

Planning Commission: Adrian Costello, Chair
 Colin Coyle, Secretary/Supervisor Liaison
 Tony Bush, Member
 John DeLorenzo, Member

Others: James Majewski, Community Development Director
 Dan McLoone, Planner
 Barbara Kirk, Township Solicitor
 Paul DeFiore, Township Engineer

Absent: Tejinder Gill, Planning Commission Vice Chair

APPROVAL OF MINUTES

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

#693 – 1511 LINDENHURST MINOR SUBDIVISION

Final Plan Approval

Tax Parcel #20-003-017

R-1 Residential Low Density Zoning District

1511 Lindenhurst Road

Subdivide lot containing an existing single-family dwelling into 2 single-family Residential lots (creating 1 new building lot)

Ms. Erika Miller, attorney, was present with Mr. Heath Dumack, engineer.

Ms. Miller stated this is a simple Subdivision and they are taking a six-acre

lot and subdividing it into two, and building one Residential dwelling on the new lot. Ms. Miller stated they have gone through Zoning approvals and have been granted Variances from Section #200-51.B.4.d to permit a disturbance of 12% of wetland buffer where 100% is required, Section #200-51.B.5.d.3 to permit disturbance of 10.3% of Class 3 steep slopes where 100% is required, and to permit a minimum building setback to be measured from the Lot line instead of the Special Setback requirement. Ms. Miller stated these were conditioned upon replanting the 50' buffer to comply with the SALDO, no use as an Airbnb, and the removal of a rear shed.

Ms. Kirk stated the Deed Restriction was not only to replant the buffer but to prevent any further encroachment into the wetland buffer, further encroachment into steep slopes, and no use of either lot as an Airbnb.

Mr. Dumack stated this parcel is an irregularly-shaped lot with approximately 1,110 plus feet of frontage on Lindenhurst Road. He stated it has an extraordinarily-substantial frontage. He stated the parcel is bisected by an existing drainage feature/stream cutting the parcel in two and also crossing Lindenhurst Road going east toward the Delaware River. He stated there is an existing house on the northern piece. He stated the intent is to sub-divide the one lot into two,

and they are proposing one new, single-family home, which would be south of the existing house. He stated the intent is to use the existing driveway as a shared driveway between the two homes.

Mr. Dumack stated as noted by Ms. Miller, Variances were applied for and granted in February. He stated they are here tonight looking for Final approval. He stated there are stormwater management controls in place for both lots, an infiltration bed along the southern side of the new parcel, and for the existing home, there is a ballast pit east of the existing house. He stated infiltration tests were done, and the stormwater controls were designed accordingly.

Mr. Dumack stated there is a six-page letter from the Township engineer, which they can go through.

Mr. Costello noted the small piece to the left of the site which is “almost lopped off,” and he asked if that is part of the lot on the left.

Mr. Dumack stated in order to make the acreages work, they are utilizing that as part of the lot. Mr. Majewski stated the reason for the odd configuration of the lot is because Lindenhurst Road at one time came up through that area and then took a sharp bend and came back down and took another bend; and that is how they arrived at this odd configuration.

Mr. Dumack noted Page 2 of the Township engineer's review letter dated November 10, 2023, and he stated Items #1 through #4 are all "will comply." He noted that they will also comply with everything on Page 3. Mr. Dumack stated they will comply with Items #18, #19, #21, and #22 on Page 4.

Mr. Dumack stated Item #20 relates to a Waiver that they are requesting with regard to sidewalks. Mr. Dumack stated there is about 1,150' of frontage along Lindenhurst Road. The aerial was noted, and Mr. Dumack showed on the side street where there is a small stub sidewalk; and coming from the other direction, while it is not shown on this aerial, there is a bike trail on the east side of Lindenhurst which terminates before the frontage of the subject property. He stated it seems that the stream and the culvert that bisect the property and cut across Lindenhurst seem to be the restrictive factor.

He stated there is not a lot of space between the edge of the shoulder/the guardrail on the PennDOT road, and the actual end of the culvert. He added that he has been out to the site several times, most recently this weekend, to look at the culvert and how it might be feasible to put sidewalks in.

He stated he believes that it is feasible up to the culvert on either side.

He stated his client is willing to put some sidewalk in; however, when dealing with the culvert, the guardrails, and PennDOT, it becomes an issue. He stated the Applicant would like some direction or some relief.

Mr. Costello asked if there is any precedence we can look to on this or is this unique. Mr. Majewski stated this is a lot of frontage for two lots. Mr. Costello stated he is focused on the culvert being a roadblock. Mr. Dumack stated the Record Plan shows the guardrail and the positioning. Mr. Majewski stated the bike path continues on the east side of Lindenhurst Road from Woodside all the way up to Upper Makefield. He stated it is north of the subject site on Lindenhurst Road on the opposite side of the road. He stated it then continues on the south side of Woodside all the way down to Dolington and Woodside and then north and south and east and west. He stated it is a pretty extensive bike path system in this area. He stated the Bike Path Master Plan that was adopted by the Township proposed to have the bike path continue on the east side of Lindenhurst Road all the way down to Twining Road. He stated there is a restriction with the guiderail and the culvert, and there is about 6' between them which is about enough room; but he believes it is only about 5' on the west side of the culvert.

Mr. Majewski stated the existing bike path in front of the Heather Ridge Development is on the east side of the road and continues on partially onto this project and stops.

Mr. Majewski stated one alternative is to have the developer continue a bike path up to Woodside Road and cross over to maintain the bike system.

He stated while they are obligated to put a sidewalk in, they are not obligated to put a bike path in. He stated they could put a sidewalk connection in along Lindenhurst Road all the way down connecting to the bike path. He stated the third alternative is a Fee-In-Lieu so that the Township at some point in time can put the bike path where it is proposed to be on the Master Plan.

Mr. Majewski stated there is a little bit of a steep slope adjacent to the curb in the area of the project just south of the property line that would require a little bit of grading work to put the sidewalk in such as a 2' retaining wall.

Mr. Costello asked if there is a red light at the intersection, and Mr. Majewski stated the intersection of Woodside Road and Lindenhurst Road is controlled by a traffic signal. Mr. Costello asked if the culvert is creating a unique situation in that if we wanted them to put something in, there is not really a way to do so. Mr. Majewski stated while he believes it could fit through there, it would be narrow. He stated we would require a safety railing so that people would not fall off into the creek.

Mr. Majewski noted the locations of the traffic signal and the property line, and stated you could cross at the intersection and then continue on the bike path either to the east or to the north.

Mr. Bush stated the Bucks County Planning Commission suggested that this is part of the Newtown/Scudders Falls Bridge Trail that has been identified, and that it is on the Township's walkway system map; and that the Township should work with the Applicant to install this trail segment in accordance with the study and SALDO. He stated while the County will not be providing any funding, it is worth noting that if the rest of the trail gets built from Newtown to the Scudders Falls Bridge, we do not want a gap here.

Mr. Majewski stated he lives in Heather Ridge; and while he personally would like to see this connected, he does understand the Applicant's issue with the culvert, the grading, and the sidewalk, whereas on the other side of the road which is where it is on our Master Plan and where it is on the County's Master Plan for bike paths, it would be more feasible. He stated maybe having the Applicant construct it on the other side of the road if the Township were to obtain the right-of-way, if necessary, might be a practical solution. He stated that would not require any alterations to the traffic signal so there would not be that expense. He stated they could bring it down to where they cross Heather Ridge Drive.

Mr. Coyle asked the cost differential between sidewalk and bike path.

Mr. Majewski asked Mr. Dumack if he knew the difference in price between a 5' sidewalk and an 8' bike path, and Mr. Dumack stated they came up with approximately \$30,000 for the concrete sidewalk. He stated while he does not know what the price would be for the asphalt bike path, given the cost of asphalt versus concrete, he believes it would probably be about two-thirds the cost of the concrete work.

Ms. Miller asked what side of the road would either of those be on; and

Mr. Dumack stated the concrete sidewalk would be on the west side of Lindenhurst and the asphalt bike path would be on the east side of Lindenhurst.

Mr. Coyle stated he does not believe that we have a desire to force the developer to build a sidewalk that we do not want. He stated he believes those on the EAC would be happy to have less impervious surface there.

He stated building a sidewalk to nowhere is more square footage that rain cannot penetrate.

Mr. Costello stated there has been a general consensus and desire to develop our sidewalk/bike path system. He stated while he is not inclined to waive this, he understands that this is a situation which requires some

level of flexibility. He stated in the past we have agreed to a Fee-In-Lieu of, so that when the network is built out over time, there are funds that will help us do that.

Mr. DeLorenzo asked what side of the street are the electrical wires. He stated Woodside has been closed for six months because there is a hole in the middle of the new bike path. It was noted they are on the east side where the proposed bike path would go. Mr. DeLorenzo stated it is an expensive issue moving the poles.

Mr. Majewski stated on the east side of the road where the bike path is proposed on the Township Master Plan and the County Master Plan, there is a lot of room from the pavement to the right-of-way so poles there would not be an issue. He stated there is also no issue with grades or woods. He stated the only issue would be the same as on the west side where there is the guiderail and the culvert, and there is a similar issue on the east side, although there is more room on the east side.

Mr. DeLorenzo stated it would be a bike path on the east side or a sidewalk to nowhere on the west side.

Mr. Costello stated the Township has a plan to put a bike path on that road which would also act as a sidewalk, and it is across the street from this development. He stated he does not feel that we would ask a developer to put in a sidewalk that is not on his property. Mr. Coyle stated we could if we obtained the necessary rights-of-way to develop on the land across the street; and while the developer has someone laying asphalt, it would be convenient for them to have that same crew lay the asphalt for the bike path across the street.

Mr. Coyle asked if the developer would be willing to undertake that effort if the Township were able to get the property clearances to develop on the east side of the road. Mr. Dumack stated he feels that in exchange for not building the sidewalk and doing a Fee-In-Lieu of the sidewalks on the Applicant's side, that the Applicant would do that.

Mr. Majewski stated if the sidewalk were installed on the Applicant's side of the street, it would connect to the bike path near Heather Ridge Drive and to a crossing at Woodside. He stated while it would be a connection, it would not be the bike path connection that we had envisioned in our Master Plan for years, and that would need to be on the east side of the road.

Ms. Kirk stated they are discussing having a 1,150' bike path installed across Lindenhurst from the property on the east side to be constructed at the Applicant's expense, and Mr. Coyle agreed. Mr. Dumack stated that would

be in exchange for not paying a Fee-In-Lieu of sidewalks on the Applicant's side. Ms. Kirk stated we do not know what will happen in the future, and she asked if it would not make more sense to do a Fee-In-Lieu knowing that the money would then be there to pay for it. She stated it could take years to get the acquisitions of rights-of-way and land. She stated she has never seen what is being discussed done before.

Ms. Miller stated she agrees with Ms. Kirk, and she believes that her client is open to a Fee-In-Lieu.

Mr. Costello stated he feels the Fee-In-Lieu is worth exploring. Ms. Kirk stated she believes the Fee is \$50 per linear foot, which would be over \$57,000 and would be more than sufficient to install the bike path across the road. She stated depending on how long it takes to acquire the Easements, it could take a few years, and the development could be constructed and sold by that time.

Ms. Miller stated she was not sure about the Fee-In-Lieu rate, and she understood that Mr. Dumack had estimated it to be \$30,000 for the concrete sidewalk on the development side of the street.

Mr. Coyle asked if the sidewalk were to be constructed on the west side how narrow would it be crossing the stream. Ms. Miller provided a close-up Google image of the culvert on their side. Mr. Majewski stated it was his recollection that it would be 5' or 6', so that would be a one-lane crossing on the east side. Mr. Majewski stated with regard to right-of-way acquisition, there is only one parcel that would require right-of-way to be obtained.

Ms. Kirk stated as a general rule, you want to make sure that your Conditions are simple enough that if they need to be enforced, you know that you can do so. Ms. Kirk stated she is not sure how long it would take to obtain the right-of-way. Mr. Coyle stated if he were to withdraw the thought of having the developer build on the other side of the street, the three options would be to have them build the concrete sidewalk on their side, allow them to build a bike path if the Township decides the bike path on the developer's side is what they want, or negotiate a fee. Ms. Miller stated she believes her client would be open to any of them. Mr. Coyle stated the Planning Commission could make a decision on all the other matters, and leave this one issue open for negotiation after the fact. Ms. Miller stated this was the only item that they felt would require a lot of discussion. Mr. Bush stated he feels that the Planning Commission can still make a recommendation. He added they need to consider if it should be a bike path or a side walk. Mr. Coyle stated he feels it should be a bike path. Mr. Bush

stated they are not required to install a bike path, and Mr. Coyle agreed.

Mr. Bush stated he would agree that the Planning Commission would want to recommend a bike path in lieu of a sidewalk. Mr. Dumack stated if they were to do a Fee-In-Lieu of, the Fee in lieu of sidewalks would be utilized for the bike path and earmarked as such, and the Fee would be paid as part of the development.

Mr. Coyle stated it would not have to be earmarked toward a bike path or a sidewalk in that particular area. He stated the sidewalk Fee-In-Lieu goes into a General Sidewalk Fee-In-Lieu Fund, and it could be used anywhere in the Township at the Board's discretion. Mr. Majewski stated it could be earmarked for this. Mr. Coyle stated if they did construct a bike path on that side of the road, it would be narrowed to somewhere between 5' and 6' in width; and if there were a 5' or 6' clearance, it would end up to be a 2' bike path. Mr. Majewski stated he would have to look into that. He stated he does bike in that area periodically, and he has no problem biking in the grass strip between the guiderail and the head wall. Mr. Coyle asked if there is a minimum standard for the width of a bike path, and Mr. Dumack stated he believes that it is 4'. Mr. Majewski stated that would be like a sidewalk.

Mr. Coyle stated we could recommend granting a Waiver from the construction of the sidewalk if they are able to construct a bike path of our standard 8' width which is no less than 4' where it crosses the stream. If that is determined on the site to not be feasible, we would negotiate a Fee-In-Lieu of development with the Township.

Mr. McLoone stated the Department of Transportation indicates that a bike lane should be a minimum of 4' wide.

Mr. DeLorenzo stated we are talking about potentially the bike path being on the east side versus the west side of the street, and he asked where it eventually ties in going south to the existing bike path. Mr. Coyle stated a portion of it is already built on the west side, and it crosses into the start of this property at what would be designated as Lot 2 on the Plans and then it ceases. He stated it continues down to the next intersection on the east side of the road.

Mr. DeLorenzo stated you would cross either north of this property or south of this property, and Mr. Coyle agreed. Mr. Coyle stated the north crossing already has a traffic control.

An aerial of the road was shown. Mr. Majewski stated the part on the right is the east side of the road where the Bike Path Master Plan shows it.

He stated it is fairly flat in that area, and there is a lot of room between

trees and utility poles off the road. He stated on the parcel that the Applicant owns, there is a little bit of a slope coming off of the curb and/or trees so that to build the bike path you would be more on top of the curb. He added that across the street is where the bike path is on the Bike Path Master Plan.

Ms. Miller stated one of the reasons we are running into this problem is because of the wetlands, and it was mentioned that the EAC did not want to increase impervious.

Mr. Majewski noted on the aerial where the bike path ends near the end of the Applicant's property at Heather Ridge. Mr. Coyle stated that is the existing stub of the bike path on the west side of the road, and then you go the length of the Applicant's entire property, and the bike path picks up again across the street on the east side of the road where the traffic signal is located. He stated the Master Plan has the bike path on the east side of the road, but someone built a portion of it on the west side of the road.

Mr. Coyle asked Mr. Majewski if he is opposed to putting the bike path on the west side of the road; and Mr. Majewski stated it is more problematic engineering-wise with the grade, the trees, and a little bit of a slope whereas on the east side where it is on the Master Plan, there are a lot less obstructions.

Mr. Coyle stated to build there, we would have to condemn a portion of the land or negotiate purchase rights, and Mr. Majewski agreed. He added he would have to check how much right-of-way there is in that area.

Mr. Bush stated if it was built on the east side, there is no connection piece south of that, and Mr. Coyle stated you would be crossing at an uncontrolled crossing.

Mr. Costello stated there is an option that they build the bike path as opposed to the sidewalk on the Applicant's side of the road and the other option is that they pay a Fee-In-Lieu to be used when the Township eventually wants to bring the bike path up on the other side. Mr. Coyle stated it could cost a lot more than \$57,000 to get the rights. Mr. Costello stated if it is feasible, he likes the idea of continuing an already-existing bike path along the front of the property and north of that there is a street with a signal where they could cross the street and go where the Township originally intended it.

Mr. Costello noted the shared driveway, adding we need to make sure that it is Deeded in such a way that someone is responsible for it. Ms. Kirk stated generally if it is a shared driveway, there would be a Cross Easement between both property owners and it would list who is responsible for what.

Mr. Costello asked what was the intent of the Zoning Hearing Board with regard to the 50' buffer. Mr. Majewski stated at the Zoning Hearing Board the Applicant had showed the 100' buffer that was required; and one of the Variances that they requested was to have a 12% encroachment into that in order to do a little bit of grading off of the house and to put their infiltration trench in where they got good test results. He stated one of the Conditions that the Zoning Hearing Board had was that they should re-vegetate 50' of that buffer so that twenty years from now when the trees grow in, they would technically not have needed the Variance because they would then have the 50' buffer that was required. He stated on the Plan, they inadvertently took off the 100' line and showed it as 50', and the EAC was questioning how they had a 50' buffer when it should be 100'. He stated they just have to re-draw that line in and spell it out. Mr. Dumack stated that is a "will comply," and they had a little bit of a miscommunication between one of his engineers and one of his designers.

Mr. Costello asked if other than the discussion on the sidewalk, was there anything else that was a not comply issue or a Waiver. Mr. Coyle stated generally the EAC prefers that we not waive the requirement for a Registered Landscape Architect review of the Landscape Plan, and Mr. Dumack stated they would agree to that.

Mr. DeFiore stated his office is fine with the comments made with regard to the sidewalk issue. He stated the Planning Commission had a comment regarding the sanitary note that is on the Plan since it indicates that it is an on-lot system.

Mr. Dumack stated everything will be public sewers, and they are pumping it to an existing main extension that was provided as part of the Toll Development behind the existing house.

Mr. Dumack stated with regard to Waivers #2 and #3, they are suggesting that the agreement takes the place of those items. Ms. Miller stated they are no longer requesting Waiver #4 regarding the landscape architect.

Mr. Costello noted the fact that they are going from an 18" pipe to a 6" pipe.

Mr. Dumack stated those are predominantly pipes from downspout leaders. He stated Lower Makefield is not the only Municipality with this requirement; and in some instances he feels it is historic from the requirements to use concrete pipe, and with the other types of pipes being utilized more frequently, there is not a need for an 18" pipe for a downspout leader; which is why they are asking for that relief. Mr. DeFiore stated he would ask for calculations for the roof leaders to show the conveyance capability of the pipes, adding that 18" is excessive. Mr. Coyle stated we granted that same Waiver on the historic property on Lindenhurst that is redeveloping. He also stated with regard to

Waiver #8 the Board of Supervisors recently accepted a similar Waiver for the Pointe based on the change of materials and manufacturers' specifications which are 1' of cover and not 2' of cover.

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

Mr. Coyle moved, Mr. Costello seconded and it was unanimously carried to recommend to the Board of Supervisors approval of the Final Plan and that the Applicant be granted a Waiver from the Code requirement that requires sidewalks and bike paths given that they will construct a bike path consistent with our standard 8' bike path width along their frontage where feasible.

Where not feasible such as the stream crossing, the Applicant will be permitted to go to as low as a 4' width. If the Applicant determines and engineering determines that such a bike path is not feasible for construction, they will negotiate a Fee-In-Lieu with the Township. In addition the Applicant's request for Waiver #4 to not require the Landscape Plan be signed and sealed by a Registered Landscape Architect is withdrawn by the Applicant. Approval subject to compliance with all other recommendations of the Township engineers and consultants and the remaining Waivers are subject to the discretion of the Board of Supervisors.

COMMENTS FOR BUCKS 2040 DRAFT VISION PLAN

Mr. Bush stated it has some good ideas, and it hits the highlights. He stated while they talked about alternate transportation, he did not see anything about encouraging development of charging stations for electric cars or hydrogen cars. He stated for economic development, it seemed to focus on re-purposing older buildings and properties for different types of Commercial use. He stated there is also a separate section on the need to encourage housing and more-affordable housing, but it did not marry the two concepts together. He stated he feels that there is more that could have been included. He stated with regard to economic development, there was nothing about attracting certain types of industries.

Mr. McLoone stated he agrees with Mr. Bush. He added that in terms of the EV stations, he attended a Webinar of the Bucks County Planning Commission, and he believes that they have a best practice standards guide and education about it.

Mr. Majewski stated they did include one phrase in the Plan on Page 47 under Opportunities and Directions where they were talking about the Infrastructure Investment and Jobs Act which will enable Pennsylvania to receive a lot of money to build a network of EV chargers. Mr. Majewski stated he agrees that they touched very lightly on many things.

Mr. Coyle stated with regard to economic development, while it does not really have anything to do with the County, he feels we need to keep a close eye on what happens with the development of the Airport in Trenton. He stated at the Board level, we are working to slow that down if not stop it; but if it continues, we need to accept this reality and work with local business owners and others to make sure that it is to the benefit of the Township. He stated we have a lot of under-utilized Commercial space in the north end of the Township, and we should see what we can do to make sure that gets filled out.

Mr. Coyle stated they did talk about change in Pandemic work patterns. He noted the impact this has had on local businesses because people are not commuting to work in the morning like they used to. He stated he does not feel the Township has looked at how people live and work in LMT has changed.

Mr. DeLorenzo stated the Pandemic was so recent, and he does not feel that we have an understanding of what the fall-out will eventually be.

Mr. Costello stated he feels that the Township needs to look at ways to make sure that we are a business-friendly Township because we have already developed the Real Estate for them, and they are not in it.

Mr. McLoone stated from 2018 to 2021 there was a 6% decrease in those who drove to work and a 7% increase in those who work from home. Mr. Bush stated it is still really evolving, and he has read that some of the larger law firms in the Country are now requiring their younger associates to go from three days to four days in the office, and they are going to be compensated based on their attendance in the office. He stated he understands that there are other industries that are requiring that as well. He stated there are other businesses that are going in the other direction so it is far from settled.

Mr. Costello stated he feels the Vision Plan is a good-looking report with a lot of interesting data, but he feels that they need a front summary section and then direct the reader to where they can get more information.

Ms. Kirk asked if the Planning Commission should advise the County that they need to wait another year to see how things pan out given the Pandemic before creating such a Vision Plan.

Mr. Costello stated he feels that there will probably be something that happens next year, and the County wanted to say what they want to see in the next twenty years; but they put so much in the document that it seems that all they are saying is “look how much work we did.” He stated

he feels they should have a summary which indicates what they found to be important and what they feel the Townships should focus on.

Mr. Coyle stated he would have liked to see recommendations on how the Townships could implement the vision. He stated we talk about climate change and improving infrastructure. He stated we recommended approval of a bike path earlier and he knows that the EAC recommends the use of pervious paving, but that is not in our Code today. He stated we could change our Codes to indicate that there should be pervious pavement for bike paths and other things in the future. He stated it would be good if we could get some help from the County and suggestions as to what could be done and how to craft Ordinances.

Mr. McLoone stated they were good about indicating that Townships need to be more realistic about what their Zoning Ordinances say since a lot of them are out of date and he noted particularly parking lot minimums, walkability, and connectivity.

Mr. Costello stated he feels that they did a lot of good work, but they need to indicate what they feels is important in a summary, and people could then look at what they feel is important as opposed to needing to read the entire 70-page document. Ms. Kirk stated if the Planning Commission

feels that is important, they could let the County know that. Mr. McLoone stated the last part is called “Big Ideas,” and we could recommend that they add a fifth section or re-work the fourth section to list specific recommendations that Townships should do. Mr. Costello stated while he was calling it an Executive Summary, what Mr. McLoone is talking about is what he was looking for. Mr. McLoone stated on the County’s Website it stated that this is a draft Plan which is the initial document of the Bucks 2040 Building Our Future Together Comprehensive Plan, and he feels the document we are reviewing is part of the overall bigger picture, and the Comprehensive Plan will probably be more encompassing.

Mr. Coyle stated #4 under Big Ideas talks about encouraging mixed-use spaces and discourages the use of cars which goes to the town-planning concept, but in Lower Makefield the residents have indicated that they do not want a mixed-use. He stated he would like to know what is in the document that he as a member of the Planning Commission should pay attention to compared to what should be considered by other branches of Government. Mr. Costello stated he feels this is more for the professionals and the Councils, Boards of Supervisors, Mayors, etc. since they are the ones who set the rules. He stated the Supervisors do not have to do what the Planning Commission recommends, and Mr. McLoone agreed that the Planning Commission is an Advisory Board.

Mr. Bush stated the Planning Commission is able to make recommendations to the Board of Supervisors. Mr. Costello stated he agrees; but if the Board of Supervisors wants to do something different from what the Planning Commission recommends, it is totally within their purview to do that.

Ms. Kirk asked what the Planning Commission wants to do, if anything, by way of a comment since the deadline is Friday. Mr. Costello stated he would propose that while they have provided a lot of good information, it is not clear what is being recommended and they should put together a summary.

Mr. McLoone agreed to draft an e-mail to be circulated to the Planning Commission that would indicate what has been discussed by the Planning Commission which would then be sent to the County. Mr. Majewski stated what Mr. Costello just indicated seems to be the sentiment of the Planning Commission.

Mr. McLoone stated anyone in the Township who wants to make comment, should send it to Bucks2040@buckscounty.org. He added that the next County meeting on this is January 3 from 2 to 3. He stated community input is the most important part of the Plan, and they are looking for public comment. Mr. Majewski stated the County had a number of open house forums for this Plan including one that was at Lower Makefield Township, although there were only about fifteen to twenty people in attendance.

He stated that was more than the prior open house they had where no one attended. Mr. Majewski stated we tried to heavily advertise it, and we only had fifteen to twenty people who expressed an interest.

TABLING DISCUSSION OF AMENDMENT TO ORDINANCE AMENDING THE DEFINITION OF OPEN SPACE

Ms. Kirk stated once the Zoning Ordinance was amended to deal with the open space issue and the partner amendment to the Subdivision and Land Development Ordinance was presented to the Board of Supervisors, there were questions as to the definition of open space. She stated she has provided to the Planning Commission the definition that was approved and recommended by the Planning Commission for open space and the sections highlighted in yellow are the additions that were suggested. She stated she has been asked by the Supervisors through direction from the Township Manager to prepare Amendments to both Zoning and SALDO to modify the definition of open space. She also provided a copy of the original version.

Mr. Coyle stated it indicates “develop recreational amenities containing impervious surfaces;” and he asked if he made a pickleball court with a pervious surface, could he include it. Ms. Kirk stated she would change it to “not including recreational facilities.” Ms. Kirk stated she did not create this, and it was done at the request of one of the Supervisors.

Ms. Kirk stated if a developer wanted to build cluster-style housing and they were going to put a golf course in for their residents, that facility is not to be counted as the open space according to what she understood the Supervisor was asking for.

Mr. Coyle stated he feels the parentheticals actually hurt the Township.

Ms. Kirk stated that was recommended by one of the Supervisors.

Mr. Majewski stated he feels that the wording is off, and it may have been intended to be recreational facilities containing impervious surfaces – for example courts, pool facilities, and other developed recreational amenities.

Mr. Coyle stated while he understands that, you can build a volleyball court on open space, and it is still open space because sand is a pervious surface. He stated he feels “recreational facilities” should be the end of it. He stated if it is open space, there is no recreational facility that could be built on it.

Mr. Costello stated when the Planning Commission was re-doing the Ordinances, we were considering cluster-type communities; but this would apply to everything. He stated if we were to buy a farm and wanted to put in a driveway to a maintenance facility that would not be considered open space any more. Mr. Coyle stated the open space is only applicable through

the Open Space Ordinance that we put in. He stated putting in a driveway on a farm would be limited by the current impervious surface requirements.

Mr. Bush stated what was done previously was to clarify the definition of open space in the Ordinances so that they would be uniform. Ms. Kirk agreed that was what was done, and they went through every Section where there was a definition of open space to make sure that everything matched in the Ordinances.

Mr. Bush asked about the Five Mile Woods since it is considered a recreational facility, and under this definition, it would not be considered as open space.

Ms. Kirk stated possibly we should add “not including active recreational facilities.” She stated there are passive recreational facilities like woods that are kept in their natural state and are open to the public, but there are also active recreational facilities such as basketball courts. Mr. Bush stated there are other parcels besides the Five Mile Woods, and it is unknown what there could be in the future. Ms. Kirk stated she was satisfied with the first definition.

Mr. Coyle stated before the Planning Commission moves forward with any action, he feels we need more direction from the Board of Supervisors on what is the problem they are trying to solve. Mr. Coyle stated he could discuss this with the Board of Supervisors to find out what the goal is.

Mr. Bush asked what generated this, and Ms. Kirk stated it was a request from Mr. Grenier. Mr. McLoone stated he believes that it specifically related to the recreational facilities aspect in the definition. Mr. Majewski stated he felt it was recreational facilities with impervious surface such as buildings, pools, basketball courts, etc.; although hearing the discussion this evening it could be all recreational facilities. Mr. Majewski stated he agrees with Mr. Coyle that we need more clarification. Mr. Coyle stated he felt it was clear when we went through the process, that you could not build any structure on open space.

Ms. Kirk suggested instead of “recreational facilities,” we say “facilities containing impervious surfaces such as courts, pool facilities, and other developed amenities.” Mr. Coyle stated he feels we need to speak to Mr. Grenier about this. He added if he wanted to build a large pickleball complex, he could put down pervious asphalt. Mr. Majewski stated he agrees we need to have more clarification. Mr. Majewski stated there has been an argument against allowing the wholesale use of porous pavement for Residential as he had people tell him that they wanted their entire back yard as porous pavement.

Mr. Coyle stated the intent of the Board is not clear enough to give the Planning Commission direction.

Mr. Coyle moved and Mr. Bush seconded to Table this item to the next meeting of the Planning Commission.

Mr. McLoone stated the Amendments to the Ordinances have been approved, and this is much more of a smaller scale.

Mr. Coyle stated he will contact Mr. Grenier and discuss this further.

Motion carried unanimously.

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

DISCUSSION OF AMENDED WIRELESS COMMUNICATIONS FACILITIES ORDINANCE

Mr. Majewski stated a lot of the legal aspects of cell tower regulations have been changed at the Federal level. He stated our Ordinance was done about fifteen to twenty years ago, and is out of date with the current thinking on wireless communications facilities. He stated ours was mainly based on tower-based facilities when it was done to regulate the location of and the parameters under which you could put a cell tower in the Township. He stated we went to a consultant law firm who are experts in cell towers, and they provided a draft Wireless Communications Facilities Ordinance. He stated this version is for the tower-based and non-tower-based wireless communications facilities both defined. He stated we have it left to the way it is now

that they are only permitted in the areas designated under our former Radio and Telecommunications Facilities District Overlay. He stated there are only a few areas of the Township where they are permitted – one is along I-95 near the rest area where there is an existing tower, another is along I-95 near the Hampton Inn where there is another tower, and another is in the C-3 Zoning District between the Falls Township border on the west side of Oxford Valley Road up to the limit of the C-3 Zone, and there is a tower there on Old Oxford Road. Mr. Majewski stated there is a tower behind the Township Building which was installed before the Ordinance was in place so that is not in the Overlay District that currently exists and is grandfathered in.

Mr. Majewski stated this Ordinance clarifies definitions to be more in keeping with the current legal practices and legal standards from the Federal Government. He stated the small wireless communications facilities are typically not towers, but are more like telephone poles without wires; and it is a wireless communications relay tower.

He stated several years ago these were to be the next thing in wireless communication; however, that has not yet taken hold much in our area.

He stated there are some in Northampton Township and Doylestown Township. He stated this Ordinance would regulate those in accordance with the Government standards. He stated we would allow them to be

located within public rights-of-way. He stated one area of concern was in a Residential developments where there were no poles, and putting in a tower in the middle of a development. He stated this Ordinance would require utilities to be located underground or located on existing poles, and they could not create a new pole in a development, Zoning District, or portion of an area where all the utilities were already underground. He stated they could only be on major roads and other areas where there were already poles.

Mr. Majewski stated a lot of information has been included in the Ordinance, and this is just the first look at it.

Mr. Costello asked if this has any impact on the “current discussion,” and Mr. Majewski stated their Plan has already been submitted so it would not be applicable to them.

Mr. Majewski stated there had been discussion about alternative locations for poles. He stated currently the proposed Ordinance contemplates that we have a District where pole are allowed, and we are remaining with that District. He stated the Planning Commission should consider if we should look to possibly expand that District whether it is allowing wireless communication facilities on top of existing Commercial buildings so that you could

expand the area that is covered by these cellular facilities or should we look at where in the Township towers could be placed that might provide the best coverage for cell service without unduly impacting neighborhoods with a 150' tower in the back yard.

Mr. Coyle discussed the difference between 5G and 4G and stated with 5G they are able to deliver the signal with lower power with the smaller, more cost-affordable for the carrier, towers. He asked Mr. Majewski if we could invite representatives from the tower and wireless industry to come in and provide their input to the Township on the proposed Ordinance. Mr. Majewski stated he would be in favor of seeing if we could work with them to come to a happy medium.

Mr. Bush asked if what is proposed is a standard model Ordinance that has been modified for Lower Makefield, and Mr. Majewski stated it is a newer model Ordinance because the laws have changed over the last year or so. Mr. Majewski stated there is not much tailoring to Lower Makefield other than the fact that we only allow the towers in our Overlay. He stated that is why the question came up if we would want to allow them in areas other than just the Overlay. Mr. Bush stated if the technology is moving away from the towers and more to the poles, why would we want to open up more areas for towers. Mr. Coyle stated

he works in this industry and the movement away from towers toward poles is largely driven by urban environments where they cannot build towers, and where it is very expensive to rent the top of a building. He stated that has led to better technology to “live peacefully” in an environment like Lower Makefield where people do not want a 150’ tower. Mr. Costello stated he would like to engage on this and craft something that does give a bit more leeway since if we do not give leeway, they will “build whatever they want,” and cite the Telecommunications Act of 1972 and Court filings. He stated he feels the suggestion to allow the construction of towers on top of Commercial buildings or poles is a good idea as it would let them cover more parts of the Township without having to build giant towers.

Mr. Bush asked how high would the towers be on top of a Commercial building, and Mr. Coyle stated the definition of the small facilities is 50’ or less. Mr. Coyle stated he knows third parties who build these, and he would like to talk to them to find out if we agree to this will there be 50’ towers on top of every 50’ building and then we would have 100’ eyesores.

Ms. Kirk stated it was mentioned that some of the small facilities were installed in Northampton, and she was at the Township when that came in. She stated they were not called small cell tower facilities, and they actually received Certification from the Public Utilities Commission

which made them utilities, and that meant that they could put their boxes on existing towers within the rights-of-way because they were utilities.

Ms. Kirk stated she does not know if the consultants know if it is going toward the direction of these facilities being considered utilities, and this may then all be moot. Mr. Majewski stated he is not sure; and he added that he knows that the biggest problem they had in Northampton was that they had decided to go into developments where there were no other above-ground utilities and put these poles in someone's yard.

Ms. Kirk stated that was true as long as it was within an existing Utility Easement, and the reason they could do that was because they were declared and Certified as a utility by the PUC.

Mr. Costello stated it seems that this Ordinance is trying to “nudge people in the direction we want them to go.” Mr. Majewski agreed. He stated if we push them in a direction that gives them a little bit of latitude but not too much and also regulates it, they may not sue us. Mr. Majewski stated there are some areas of the Township where depending on your provider it is a dead zone. He stated to the extent that we can reduce that likelihood, it does benefit the community; but we also do not want to allow everything, anywhere.

Mr. Majewski stated the Planning Commission can consider this at a future meeting. Mr. Costello stated he would like to look into this further. Mr. Coyle stated as written now, the Ordinance says you can still only put these small facilities in the Overlay area, which is basically the Kohl's Shopping Center and a stretch along I-95. He stated his concern is that this does not really change anything, and it will not protect the Township from the carriers. He stated he feels we should consider something that is a bit more friendly and broad to some degree. Mr. Majewski stated he felt the small facilities were allowed in the right-of-way, and this can be clarified. Mr. Coyle stated the non-tower wireless communications facilities are only allowed in the Telecommunications and Radio Facilities Zone. He stated he is not sure that this refers to the small wireless communications facilities.

Mr. Majewski stated no action is required at this time, and this is just the start of the discussion. He stated a lot of information has been provided, and he did not expect any decisions this evening.

Ms. Kirk asked because this is governed so closely with Federal regulations would the Planning Commission like to have someone who drafted the Ordinance come before the Planning Commission at the next meeting to review this, and Mr. Costello stated he feels that would help them understand what this addresses versus what we already have. Mr. McLoone

asked if they were looking to have Mr. Kratzer attend or someone from the Cohen Law Group, and Ms. Kirk stated she feels it would be best to have someone from the Cohen Law Group since this was crafted with the idea of the force of the Telecommunications Act and updated Federal regulations. Mr. Majewski stated if they are available, he will have them come to the next Planning Commission meeting or a subsequent meeting. Ms. Kirk stated they could be available via Zoom.

Mr. Costello stated he sees in the proposed Ordinance where they would be allowed to build non-tower wireless communications facilities, which are defined in the Definition Section; but there is nothing here that he sees that defines where you are permitted to build a small wireless communications facility, which is also separately defined. Mr. McLoone stated there were other attachments and that may have been in one of those. Mr. Costello stated while that may be true, the Amended Wireless Ordinance says where you are allowed to build certain facilities; and while it includes the definition of a small wireless facility, it does not say anything about where you are allowed to put them.

Mr. Majewski stated he just wanted to introduce the topic and also see if anyone on the Planning Commission wanted to consider expanding out of the limited Overlay District in some fashion.

Mr. Coyle stated the only defense we have when it comes to carriers citing the Telecommunications Act, would be that we provided other possible routes to solve their problem, and that would be what we want to achieve here.

Mr. Bush stated Mr. Majewski had indicated there were towers along I-95 near the Hampton Inn and the rest stop, and he asked if there are other areas along I-95 that are also designated in the Overlay area currently.

Mr. Coyle stated we had told Verizon that rather than build on the Synagogue property, they could build at the approved Zone by Kohl's, but the only space to build there is on the private property in the Five Mile Woods or on the water tower but that is full and has no further capacity according to Verizon.

Mr. Majewski showed a map and noted the Telecommunications Overlay which is in the area along the north side of I-95 between the development at Upper Hilltop Road and Taylorsville Road across the street from the Delaware River Joint Toll Bridge Commission and the limited area behind the Hampton Inn where there is an existing tower. He stated there is also an existing tower behind the radio towers on the hill on Woodside Road.

Mr. Majewski stated another area where towers are allowed is a large area and is most of the C-3 Zoning District. He stated this is the west side

of Old Oxford Valley Road, the west side of Oxford Valley Road, and it cuts in behind the Makefield Executive Quarters. He stated there is a tower off of Old Oxford Valley Road at 135 Old Oxford Valley Road. He stated there are no other locations within the Township under our current Ordinance where we permit that Zoning.

Mr. Coyle asked where they would be allowed to build a tower today; and Mr. Majewski stated they could build a tower today off of Dobry Road and Old Oxford Valley Road. Mr. Bush stated that would be in the Matrix Development. Mr. Majewski stated they could not put it in the Matrix Development because of the Settlement Agreement. Mr. Bush asked if the location that is shown off of Old Oxford Valley Road would be behind the Shell Station, and Mr. Majewski agreed. He added it backs up to Regency of Yardley South. Mr. Majewski stated in adjoining Municipalities there is the tower in Yardley Borough at the Yardleyville Shopping Center on Afton Avenue, but that is not a very tall tower. He stated there is another tower in Falls Township on Stony Hill Road near the Interchange with Route 1, and there is another at the former Marrasso's Garden Center along West Trenton Avenue. He stated there are other towers off of Yardley-Langhorne Road in Middletown and in Upper Makefield there is one on the Gunser Farm, which is on Highland Road and Stoopville.

Mr. Majewski asked the Planning Commission to consider this further including the possibility of allowing these on top of non-Residential buildings and to consider at what height they would be permitted. He added 50' on top of the Giant Shopping Center may not work, but it may work at some other dimension.

Mr. Coyle stated the way the technology is moving, while in the past your phone would not work in an airport, now there are small antennas all over the airport that take the signal and run it back to the nearest actual point where the cell phone carrier has their network. He stated large towers with large antennas using big power are inefficient since your signal diminishes as you get farther away from the tower. He stated they are moving toward an idea where on the utility poles there would be distribution points for cellular service as opposed to giant towers. Mr. Coyle stated the 5G antenna could be the size of a laptop. He stated if they were on a telephone pole you would probably not notice it, and it would be a black rectangle on the pole.

He stated Ms. Kirk raised a good point in that if they do not have existing poles to put these on, they could install a small mast and hang these off the top of it; and that is what he feels we want to avoid with this Ordinance so they are not putting them anywhere they want including your front yard. He stated the goal is to avoid Verizon doing that.

Mr. Majewski stated he will clarify that this proposed Ordinance will not allow that in areas that have everything underground so that they could not just put a pole in the middle of a development that does not have poles.

Mr. Coyle stated in the short term that should satisfy the carriers since your phone will pick up whatever signal is strongest so moving signals to the small distributive systems will reduce the burden on the tower and the existing towers will have better throughput and better capabilities for those who are still on it for the 4G customers. Mr. Majewski stated Verizon is saying that they need more towers even with the new technology coming up. He stated the limitation with the tower is that there are limitations based on the height of the tower, the surrounding topography, vegetation, and buildings that are in the way.

There being no further business, Mr. Bush moved, Mr. Costello seconded and it was unanimously carried to adjourn the meeting at 9:25 p.m.

Respectfully Submitted,

Colin Coyle, Secretary