

TOWNSHIP OF LOWER MAKEFIELD  
BOARD OF SUPERVISORS  
MINUTES – FEBRUARY 17, 2016

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on February 17, 2016. Chairman Benedetto called the meeting to order at 7:32 p.m. and called the Roll.

Those present:

Board of Supervisors:      Jeff Benedetto, Chairman  
   John B. Lewis, Vice Chairman  
   Kristin Tyler, Secretary  
   Judi Reiss, Treasurer  
   David Fritchey, Supervisor

Others:                              Terry Fedorchak, Township Manager  
   David Truelove, Township Solicitor  
   Mark Eisold, Township Engineer  
   Kenneth Coluzzi, Chief of Police

PROCLAMATION RECOGNIZING TOM ROCHE ON 42 YEARS OF SERVICE WITH THE LOWER MAKEFIELD TOWNSHIP POLICE DEPARTMENT AND PRESENTATION OF RANK INSIGNIAS TO THE NEWLY-PROMOTED OFFICERS

Mr. Benedetto stated it is his honor tonight to recognize Tom Roche on 42 years of service with the Lower Makefield Township Department. Mr. Benedetto read the Proclamation into the Record.

Chief Coluzzi thanked that Board of Supervisors for recognizing Mr. Roche's outstanding service to the community. He stated Captain Roche desired that every person under his command advance throughout their careers and become successful, and he led by example and inspired the Officers under him to be the best that they could be. He stated it is appropriate that tonight Captain Roche present the four newly-promoted Officers with their rank insignias. Rank insignias were presented by Captain Roche to the following:

Brian Holder – Corporal  
Timothy Reeve – Sergeant  
Jason Brain – Lieutenant  
Robert L. Lewis - Captain

Chief Coluzzi recognized the families of the Officers present this evening.

PUBLIC COMMENT

Mr. Lou Cappelli, attorney with Florio Perrucci Steinhardt & Fader, was present and stated they have been retained to represent Bordentown Township, New Jersey in opposition to the Elcon Recycling Services project proposed in Falls Township. Mr. Cappelli asked that Lower Makefield join them in the opposition to this project which they believe unnecessarily exposes the entire Delaware Valley to a potential environmental catastrophe. He stated they propose to bring in 210 tons of chemical hazardous waste which will be transported over our roads and rails, and this is not in the best interest of the residents. He stated placing this plant within one half mile of the Delaware River where many Municipalities obtain their drinking water poses a potential environmental catastrophe. He also noted they propose to place the plant in the five hundred year flood zone. Mr. Cappelli stated his firm also anticipates being retained by additional Counties and Municipalities in Bucks County and New Jersey. He asked if the Board of Supervisors have taken a position with regard to this potential development.

Ms. Tyler stated the Board agrees that from what they know, this project is not a good fit; however, none of the Board members have sufficient factual information to make a full-blown decision. Ms. Tyler stated Phase I has been approved, and she asked Mr. Cappelli what he will be doing over the next six months with regard to this matter. Mr. Cappelli stated they will be opposing the project in every way possible. He stated they will review the Permit that has been issued, and they will oppose the issuance of the second Permit. He stated they will also be contacting the members of the governing bodies at all levels in Pennsylvania asking them to oppose the project.

Ms. Tyler asked Mr. Cappelli what legal recourse he believes the surrounding communities have such as filing a lawsuit or an injunction. Mr. Cappelli stated while he does not want to get into legal strategies, he does believe they have standing. Ms. Tyler asked if they have engaged with Elcon yet; and Mr. Cappelli stated they have not since they were just retained, but they believe that those who oppose the project should not wait until a second Permit is issued to do so. Ms. Tyler asked Mr. Cappelli if he himself is an elected official; and Mr. Cappelli stated he is the Director of the Camden County Board of Freeholders.

Mr. Benedetto stated last evening there was a meeting of the Falls Township Board of Supervisors, and they indicated that they were concerned about speaking out about something they did not have any standing over at this time. Mr. Cappelli stated a member of his firm did attend that meeting. Mr. Benedetto stated the judgment of the Counsel for Falls Township was that they would potentially compromise the review by the DEP; however, Mr. Cappelli stated he disagrees.

Mr. Cappelli stated they have just been retained, and they are just learning the issues. He stated they feel that if Counties and Municipalities on both sides of the River unite in strong opposition to this project, that could have some influence.

Mr. Benedetto stated at the last meeting of the Board of Supervisors, they had indicated that they were going to see if they could have someone from Elcon attend the March 2 meeting; and he asked Mr. Fedorchak for an update on this. Mr. Fedorchak stated there will be two representatives from Elcon attending that meeting, one individual who is involved with their public relations with respect to this project, and the second who has an understanding of the technical aspects of the facility.

Mr. Benedetto stated he personally does not see any upside to this project, and he would like to do everything within his power to stop this from coming to this area or any populated area. He stated he knows that in Israel they have looked to move into an area in the desert. Mr. Benedetto encouraged everyone to come to the meeting on March 2.

Ms. Reiss stated Lower Makefield is up River from the proposed site so she is not sure if their standing is that strong; however, she still feels it is in everyone's best interest to be at the March 2 meeting with questions. She stated she does not feel there is a upside to this project, but she feels it is fair that the Board hears them out.

Ms. Tyler stated if Mr. Cappelli is looking for buy-in from Lower Makefield, he should send to them what position they are going to take, what legal recourse they believe there is, what his hourly billings are, and who else has signed on. Mr. Cappelli stated their legal hourly billing is \$175 per hour; however, he does not feel that is relevant since at this point all they are talking about this evening is the safety of the residents. Ms. Tyler stated she assumed that Mr. Cappelli was looking for buy in from Lower Makefield Township and that he would like to represent them. Mr. Cappelli stated he is not asking to represent the Township, and all he has asked was that they oppose this project with other Municipalities that oppose it.

Mr. Jeff Hirko, 1450 Dolington Road, asked if the Board was aware that Ms. Sandy Guzikowski's farm on Big Oak Road is for sale. He stated if the Board is looking to acquire ground for open space, they should consider this. It was noted that there are approximately forty-five acres on that site. Mr. Fedorchak stated they will look into this. Mr. Benedetto stated he read today that there was discussion around the County Commissioners approving easements for some of the farms in Bucks County, and this is something they have discussed. He stated Ms. Guzikowski's farm is a cornerstone in the Township on the southern side. Mr. Hirko stated he has heard that Ms. Guzikowski has been talking to developers.

Two Pennsbury High School students were present to discuss their charity event for Covenant House which is a local homeless shelter for homeless teens. One of the students stated in the past they held a student sleep out at the Trenton Thunder field, and up to the date of the event they raise funds. She stated last year they raised \$21,000. She reviewed what Covenant House provides for homeless teens. She stated the Trenton Thunder Game will be held on April 8, and they need to sell six hundred tickets to the Game. She stated they will then sleep out that evening after the Game. She noted the flyers which were distributed this evening, and added that those interested can also go to their Facebook Page – teens 4 teens 2015. Mr. Benedetto asked about on-line donations, and was advised information about donations is included on their Facebook page.

Mr. Doug Uhlmann, 206 Arborlea Avenue, stated on February 23 Elcon will have an informal informational meeting at the Sheraton on Oxford Valley Road from 6 p.m. to 9 p.m.

Mr. Alan Dresser, 105 E. Ferry Road, member of the EAC, stated in October the Township engineer gave a report about the amount of parkland and open space in the Township and compared it to other areas. Mr. Dresser stated he has done some additional research and found that Townships similar to Lower Makefield actually have a higher percentage of open space than does Lower Makefield. Mr. Benedetto stated he feels that open space is a priority, and they need to do have a sense of urgency. He stated they also need to reach out to Ms. Guzikowski about either a Conservation Easement or sale, and Mr. Dresser stated the EAC is willing to help with this. Mr. Lewis stated the EAC has done a catalog of properties, and this property was on that list.

Mr. Lewis asked if the EAC has looked at Elcon, and Mr. Dresser stated he plans to attend the meeting about Elcon next week to get more information including their Phase II Application once it is submitted.

#### APPROVAL OF MINUTES

Ms. Reiss moved, Mr. Fritchey seconded and it was unanimously carried to approve the Minutes of February 2, 2016 as written.

#### APPROVAL OF FEBRUARY 1, 2016 AND FEBRUARY 16, 2016 WARRANT LISTS AND JANUARY, 2016 PAYROLL

Ms. Tyler moved, Mr. Fritchey seconded and it was unanimously carried to approve the February 1, 2016 and February 16, 2016 Warrant Lists and January, 2016 Payroll as attached to the Minutes.

#### TABLING CONSIDERATION OF TOWNSHIP SOLICITORSHIP

Mr. Benedetto stated this Board has set a good tone this year, and he would like to continue in this vein; and he would like to Table this matter until another time so that they can all come to an agreement on this as they are all trying to do what is best for the Township. He feels this can be resolved amicably among the Board. The matter was Tabled.

#### BRAAM UPDATE ON TRENTON MERCER AIRPORT LEGAL EXPENSES

Ms. Holly Bussey, 20 Knoll Drive, and Ms. Eileen Killeen, 1116 University Drive, were present. Ms. Bussey thanked the Board for their time continuing the discussion. Ms. Bussey stated this issue has been going on for over fifteen years.

Ms. Killeen stated on January 1, 1970 the President signed Legislation that was passed by both Houses of Congress called the National Environmental Protection Act which was an Act that was designed to protect and advance the quality of the human environment. She stated that one of the major things that came out of this was that any actions that were going to be taken by Federal entities would require assessments on what the impact would be. She stated two of those are the Environmental Assessment which is more concise and not as comprehensive and the Environmental Impact Study which is much more comprehensive and includes public comment. She stated BRAAM also discusses the term, Categorical Exclusion, and this is documented in the Act; and it gives an option to the Federal Agencies to state that the environmental assessments do not need to be done because there is no significant impact. She stated this is how the FAA granted operating specs to Frontier Airlines to operate out of Trenton Mercer Airport in 2012 without undertaking an Environmental Assessment of an Environmental Impact Study.

Mr. Benedetto asked if they had done an EIS, and it came back as a negative impact, would they have had to follow it; and Ms. Bussey stated if it had come back as a negative impact, there would have had to be certain mitigation. She stated in the document the mitigation would be outlined, and they would have to come back with a plan as to how they plan to mitigate the issues that the Assessment brought up. Mr. Benedetto stated the EA initially came back as FONSI, and Ms. Bussey agreed noting this means Finding of No Significant Impact. Mr. Benedetto stated BRAAM then challenged that, and Ms. Bussey agreed. Ms. Bussey stated this went to Court, and they outlined specific things that needed to be done; but at the same time the FAA withdrew the Operations Application from Southwest and Eastwind folded so it never went further.

Ms. Reiss stated possibly the FAA is not being more forthright because they feel BRAAM's aim is to shut Frontier down. Ms. Reiss stated she feels if they would "tweak" how they arrive and depart by yards and work on better time schedules, she feels it would solve a lot of the issues. She is concerned that Frontier, FAA, and everyone else feel that BRAAM will not consider it a win until the Airport is closed. Ms. Killeen stated BRAAM stands for Bucks Residents for Responsible Airport Management, and it is often misconstrued that they want to close down the Airport. She stated they understand the convenience and economic benefits to the community of having the Airport, but they want them to be good neighbors; and they are not being good neighbors or following the law. Ms. Killeen stated with regard to the environmental impact studies, the noise is a very tangible symptom; but the assessments would show items beyond the noise. Ms. Killeen stated she personally is very concerned about the pollution and stated the Philadelphia Metro area has some of the worst pollution, and asthma in children is very high. Ms. Bussey stated their Website clearly states what their goals are, and closing the Airport is not one of them.

Ms. Bussey reviewed the history of the Airport and BRAAM. She stated when Eastwind folded and Southwest withdrew BRAAM took a break, and she now feels they should have forced the FAA to make an EIS take place. Ms. Tyler asked if the failure to do that will be fatal now; but Ms. Bussey stated she does not believe that since in the Court's eyes what happened up until 2006 is not relevant until they reintroduce it to the issue at hand. She added they are using other developments and also the Categorical Exclusion as their defense this time. She stated Frontier has been given carte blanche to do whatever they want based on their own business plans. She stated without the EIS, there is no accountability; and they can do whatever they want.

Mr. Benedetto asked if the best case scenario would be a Stipulation of Settlement where they would agree to certain noise abatements, and Ms. Bussey stated that would come after the EIS. Ms. Bussey stated the EIS would indicate the issues, and they would have to propose how they would mitigate those issues; and the community would indicate that they want flight control, flight patterns, time of day, curfews, noise abatement, etc.

Mr. Benedetto asked where they are now in their timeframe. Ms. Killeen stated they are in the Third Circuit Court of Appeals in Philadelphia, and they just submitted a Brief. Ms. Killeen stated the FAA had indicated that BRAAM's case had no merit. Ms. Tyler stated what the Decision said was that the Court they were in did not have jurisdiction to make a Finding, and that is what is on Appeal to the Third Circuit. Ms. Tyler stated the question is where they have been told the Case should have been filed, although she recognizes that this is a legal question and Ms. Bussey and

Ms. Killeen probably do not have the answer to that question. Ms. Tyler stated the Board has read the Decision, and they will read the Briefs. Ms. Tyler stated the Decision indicated that they were in the wrong Court.

Ms. Killeen stated there were two points in their Brief – one being that which was documented in 2006 about if another low fare, high frequency carrier was reintroduced with more than twenty-four flights per week, it would trigger an EIS and the other was that the FAA granted a Categorical Exclusion to give Operating Specs to Frontier Airlines so that they did not have to do an EIS. Ms. Tyler stated that is not what the Decision related to.

Mr. Fritchey stated he read a copy of Judge Sheridan's Opinion; and Mr. Fritchey stated that while he is very sympathetic to BRAAM's position, what concerns him as a lawyer is that while there are well-intentioned people who feel that have a valid legal position and that their rights should be vindicated and that the law is structured to facilitate that result, there are also certain procedural aspects that have to be followed. He stated Courts have certain jurisdictions and there are procedures that have to be followed, and BRAAM failed to follow them at their peril even though they have a great case on the merits. Mr. Fritchey stated he has read the Opinion, and it seems that the Federal Judge in New Jersey is "throwing BRAAM's lawyer under the bus." Mr. Fritchey stated there was an Order issued by the FAA, and BRAAM wanted to Appeal the Order on the merits; but the law says that in order to Appeal an Order of the FAA, you have to do it within sixty days and file the action either in the Court of Appeals for the District of Columbia or the Court of Appeals for whatever Federal Circuit you are in which in this case is the Third Circuit. Mr. Fritchey stated the action that BRAAM filed was filed in the District Court of the District of New Jersey not in the Third Circuit Court of Appeals. Mr. Fritchey stated the Order cites a Federal Statute, and it seems unequivocal that the lawsuit had to be brought in the Third Circuit. Mr. Fritchey stated he does not fault the representatives of BRAAM for not understanding this since these are legal matters. Mr. Fritchey stated the Opinion indicates that they filed in the wrong Court, and what the District Court did was dismiss their complaint with prejudice which means that they lose as far as the District Court is concerned. He stated BRAAM has now taken an Appeal of an Injunction Action brought in the District Court to the Third Circuit because the Third Circuit has jurisdiction over all Appeals arising from the District Courts; however, he feels it is unlikely that the Third Circuit will rule that the Judge read the law wrong. Mr. Fritchey stated while he hopes he is wrong, he is inclined to believe that the Third Circuit will agree with the Judge and the jurisdiction should have been in their Court in the first instance and the lawsuit should have been brought to the Third Circuit and it was not. Mr. Fritchey stated the other problem is that these Actions are supposed to be brought within sixty days,

and more than sixty days have passed. Mr. Fritchey stated this does not speak to the merits of what the FAA did or did not do, but he does not feel this will go well for BRAAM because the lawsuit was not timely brought within the sixty days.

Ms. Bussey stated she knows there was something about filing this in a timely manner, and there was discussion about whether or not the FAA had actually notified and had Public Hearings which they did not. Mr. Fritchey stated while this is true and the degree to which they made their Order public is questionable, he is not sure how that will get them around a filing in the wrong Court beyond the sixty days. Mr. Fritchey stated he appreciates that this does not give them any sense of justice.

Ms. Bussey stated she feels if Mr. Potter were not ill, he could respond to this more accurately than she can; and she feels the Brief that he submitted would address these issues. She stated they could arrange for the Township to have a conversation with Mr. Potter. Ms. Tyler stated they could ask Mr. Potter to send his Brief to Mr. Truelove and ask Mr. Potter to provide a cover letter laying out the positions which Mr. Truelove could review.

Ms. Tyler asked how quickly the Third Circuit would make a decision; and Mr. Truelove stated the Brief from the FAA is due by March, and he is not sure whether Mr. Potter was planning to provide a reply Brief. Mr. Truelove stated his experiences with the Third Circuit is that it could go anywhere from four months to fifteen months. Ms. Tyler stated the Board is hearing what the residents are saying, and she noted the number of e-mails they received. She stated they appreciate the quality of life issues, but they need to see if there is a sustainable legal position moving forward. She stated she is also an attorney, and when she read the Decision she was unsure where Mr. Potter would be able to take this recognizing that Mr. Potter is not here to explain these issues. Ms. Tyler stated she would also like to see the information from Mr. Potter as well. Mr. Truelove stated he and Mr. Fritchey discussed this matter earlier today, and he was able to access through the Federal Court Pacer System, the Decision, Mr. Potter's Brief, and the Appendix which is the underlying Record. Mr. Truelove stated he can e-mail this to everyone. Mr. Truelove stated after review of these documents, he would also like to have the opportunity to speak to Mr. Potter; and the Board of Supervisors can then determine how they wish to proceed.

Mr. Fritchey stated he also feels they would like to get a copy of the Government's Brief which should be filed around March 1. Mr. Truelove stated he will be able to access that as well. Ms. Tyler advised Ms. Bussey they will not therefore need the documents to be sent to Mr. Truelove by Mr. Potter since Mr. Truelove is able to access them.



Ms. Killeen stated that she is concerned not only how it is today; but also that if there is no recourse or accountability, there will be growth. She stated the area between Philadelphia and New York is some of the highest air traffic space in North America. She showed a slide that shows that there is a prediction of growth of 47% over the next ten years. She stated Mercer County has talked about more aggressively designing and building terminals to handle more people, and they have done an RFP to move cell phone towers to bring in planes lower. Ms. Bussey stated if the cell towers are moved, it will allow the planes to fly lower; and it will also allow them to stay lower for a longer period of time.

Mr. Fritchey stated Mr. Potter brought an injunctive action in District Court in New Jersey, and he asked if part of the Prayer for Relief included not removing those towers; and Ms. Bussey stated when he originally filed that particular Suit, the cell towers were not being looked at, and this is a recent development in the last six months.

Ms. Reiss stated she has contacted Freeholder Lucy Walter who is setting up a meeting with the Mercer County Commissioners, and possibly they could get an agreement between Mercer and Lower Makefield as she is sure there are people in Mercer County who are as concerned as are those in Lower Makefield; and it may be to everyone's advantage to find a good way to make this a win/win for everyone. Ms. Bussey stated Ms. Walter goes back with this issue as long as she does.

Ms. Bussey showed a slide showing how much money they have raised and how much has been put toward this issue starting in 2013. She stated the private donations represent approximately 51% and 49% is from Municipalities with total available funds of \$5554,898. Mr. Benedetto asked if Lower Makefield is the largest single contributor private and public; and Ms. Bussey stated they are, but barely. She agreed they were the largest Municipal contributor.

Mr. Benedetto noted the number of e-mails they have received about this issue. He stated while he lives relatively close to where the planes fly and he does see them from his home in Silver Lake, he had a discussion with a resident from Orchard Hill who indicated that there is a huge difference in just this short distance. That individual indicated that if they expand, there would be an impact on more people based on the radius. Mr. Benedetto stated he has now come around to the feeling that if this does not get "nipped in the bud now," everyone is going to suffer the potential consequences.

Mr. Benedetto asked if they are asking for help with current expenses or future expenses. Ms. Bussey stated the Board previously had asked about anticipated expenses from filing the Brief to the end, and they had been asked to provide a

Budget for the steps involved. Ms. Bussey stated currently they are “in the hole” for \$21,000, and this was for 2013 to 2015. Total fees were approximately \$76,000 and approximately \$54,000 has been paid. She stated BRAAM feels that they can take care of the \$21,000 owed, and they have a fundraiser planned.

Mr. Fritchey stated he understands that they are being billed by Mr. Potter at a rate of \$250 per hour, and Ms. Bussey agreed. Ms. Killeen stated she was curious about the rate as she was present at the last Supervisors’ meeting when they were discussing the hourly rate for the Township solicitor and the fact that all those who had interviewed had agreed to \$145 per hour. She stated she contacted a relative who is an environmental lawyer in Philadelphia, and he indicated \$250 per hour was a reasonable rate and that some environmental lawyers charge corporations \$700 a hour.

Ms. Tyler asked Mr. Truelove to ask Mr. Potter to provide copies of his legal bills to BRAAM from 2013 to the present so that they can review them. Mr. Benedetto stated Mr. Cappelli who was present earlier this evening to discuss Elcon indicated that he was charging \$175 an hour.

Ms. Bussey stated Ms. Tyler had previously asked how much it would cost to get through the Third Circuit Appeal, and she showed a slide of Mr. Potter’s estimate with a projected low of \$28,000 and a projected high of \$44,000. Ms. Bussey stated BRAAM was going to request \$35,000 from Lower Makefield Township; and while they would not have to have this all up front, they were going to ask that the Township cover the Brief.

Ms. Tyler stated if the Township goes forward with them, she feels the Township would want their own counsel to join Mr. Potter so that they would have some control over the litigation. Ms. Bussey stated she feels Mr. Potter would welcome this. Mr. Fritchey stated he does not feel the Township was consulted about the procedural course of action that was taken that has gotten to this point.

Mr. Fritchey asked if Mr. Potter’s estimate is the cost to do a reply Brief and Oral Argument if he gets to that point or is this the cost projected for taking the Appeal to the Third Circuit including the Brief that he has already submitted and other work he has done up to this point in time. Ms. Tyler stated she feels Mr. Truelove should speak to Mr. Potter about this.

Ms. Bussey stated they appreciate the support the Township is giving them, and they would like them to walk in partnership with them.

Mr. Fritchey stated the Board of Supervisors are the stewards of taxpayer money, and they have a responsibility to make sure that litigation that is moving forward is moving forward in effective channels. Mr. Fritchey stated there is also the situation with Elcon, and he does not feel they want to “bankroll” litigation being directed by someone else with the Township having very limited, if any, input.

Ms. Bussey stated she understands the need for the Board of Supervisors to have information and to talk to Mr. Potter; but added this also comes at a price to BRAAM. Ms. Killeen stated she is delighted that the Supervisors want to get more information, and they welcome this. She stated they also welcome their guidance and a partnership. She noted that the Supervisors are not only stewards of the tax dollars, but they are also stewards of the community.

Ms. Joanne Guiniven, 986 Cultipacker, stated she is gratified that the Board is engaged and supportive. She stated while it is a quality of life issue, it is also a financial issue for the Township. She stated if the property values go down for a large swath of the Township, the taxes for the rest of the Township will have to go up or there will have to be less services.

Mr. Matthew Bulger, 219 Taylorsville Road, stated he is encouraged that the Board is interested in doing its due diligence, and that the Board paid attention to the e-mails sent to them about this issue. He stated from 9/12 to 9/13 Trenton Mercer Airport was rated as the highest rated airport in the Country in terms of growth. He stated in the third quarter of 2013 there were 117,000 passengers served, and in 2013 as a whole there were 325,000 passengers served. He stated from March, 2014 through March, 2015 that number has grown to 395,000 passengers served. Mr. Bulger stated the aim of Mercer County Executive Brian Hughes is that by the end of 2017, there will be 875,000 passengers served. Mr. Bulger stated those who live in the flight path are also subject to exhausts on a daily basis.

Mr. Peter Kakoyiannis, 1413 Silo Road, stated he is happy to hear that the Board is interested in this. He stated sometimes you have to pay legal fees or you could lose by default. He stated the Township has invested money in the past against Aria and other issues, and he feels this issue is the same as it is a quality of life issue.

Mr. Larry Wind, 1054 Bucks Creek Circle, stated he is a financial supporter of BRAAM but he also regularly complains on the Airport site about the flights over his home; and he has done this so consistently that the Manager of the Airport has called him personally and indicated he was particularly concerned about Mr. Wind’s comment that the flights were dangerously low. Mr. Wind stated he had advised him that when he can read the numbers on the plane and see the landing gear, he considers that to be dangerously low. Mr. Wind stated he was given phone numbers for people at the FAA to call to document the altitude of some of the flights that he

has been complaining about, and he would be willing to share those numbers with BRAAM. Mr. Wind stated spending money on the purchase of open space will seem irrelevant to the quality of life in the Township with the airplanes coming in and the expansion of the Airport. Mr. Wind stated if Mr. Potter got them in the wrong Court, he feels there could be a case for malpractice.

Mr. Fritchey read the concluding paragraph of the Opinion of Judge Sheridan as follows:

“At the heart of this lawsuit, the lawsuit challenges the Order of the FAA that amended Frontier’s Ops Specs, but failed to decide as best this Court can tell the EIS issue. As such under Section 46110A, the Court of Appeals” (Third Circuit) “ has exclusive jurisdiction over this suit to the extent there is a dispute over the meaning of the FAA’s Order or whether the FAA met its obligations under NEPA in categorically excluding any Environmental Assessment. Approval of Frontier’s Ops Specs is a decision that falls within the provisions of Section 46110A because that Section provides that review of the Orders of FAA falls fairly within the exclusive jurisdiction of the Circuit Courts. As such, when one looks at all the facts, this is a Case for the Circuit Courts to decide. Despite the fact that the decision making of the FAA may have been somewhat ambiguous, it still yields sufficient notice to the Plaintiffs” (BRAAM) “that any Appeal or review of an FAA decision should proceed before the Circuit Courts. As such the complaint is dismissed with prejudice.”

Mr. Fritchey stated there is an Appeal to the Third Circuit; and while the Third Circuit Court may say the Judge incorrectly interpreted the Sections of the United States Code that the Judge has cited, there was the sixty day period during which they were supposed to take the lawsuit in the correct Court. He stated while the Third Circuit may say Judge Sheridan is wrong, this does not happen often.

Mr. Truelove stated he agrees with Mr. Fritchey, and he added that the date of that Opinion was May 15 which was nine months ago. Mr. Truelove stated when you go through a Federal agency process the Administrative Procedure Act prescribes the method for the process. Mr. Truelove stated one of the arguments may be that they did not exhaust the process, but the Court has indicated that would also be an appealable issue to the Circuit Court as well; and this all should have gone to the Circuit Court. He stated they do have to look into this further, but it is disturbing

since they may not have had the opportunity to argue the merits of their case because they were in the wrong Court from the beginning. Mr. Truelove stated while they just received the information, the language in the Opinion is troubling.

Ms. Reiss stated she has been in the Buck Creek Development, and some planes do fly very low. She stated she is concerned that the Case was not given a fair Hearing in the right place. Ms. Reiss stated U. S. Representatives and Senators are the ones who can push the FAA, and it might be worthwhile to visit their offices with photographs and videos with sound. Ms. Killeen stated they will be getting a new Congressman soon, and they are trying to work with the Legislators as well. Mr. Lewis stated the Board could help with their lobbying efforts. He stated in addition to looking at the Mercer County option which Ms. Reiss is exploring, there is an opportunity to petition Representative Fitzpatrick and ask him to re-address this situation in a more favorable light. He stated everyone in BRAAM should be doing this as well. Mr. Benedetto stated he spoke to Mr. Brian Fitzpatrick who is running for Congress, and he is interested in meeting with BRAAM as well.

Ms. Tyler asked Mr. Wind if he is making individual complaints, and Mr. Wind stated he is. Ms. Tyler stated Mr. Wind may have legal recourse and asked if BRAAM's prior actions would preclude Mr. Wind as a resident from recourse against the Airport. Mr. Wind stated there may be a Class Action status since there are hundreds who are effected by the flight path. Ms. Tyler stated he would not be bound by the actions of BRAAM, so there may be life beyond the Third Circuit.

Mr. Wind stated he is going to buy a few share of Frontier stock which will entitle him to go to their Board meetings and make comments there.

Mr. Benedetto stated the Board is looking forward to continuing communication and moving ahead.

#### DISCUSSION OF TEN YEAR LEASE WITH CHARLANN FARMS AT PATTERSON FARM

Mr. Sam Stewart was present with his nephew, Timmy. Mr. Stewart stated he would be interested in a ten year Lease since ten years would spread their risk out over time.

Mr. Benedetto stated when they were discussing a partnership with the Artists of Yardley, they also wanted to have a partnership with Charlann Farms; however, there are certain requirements under the Second Class Township Code which require a bidding process.

Mr. Truelove stated the bidding process is required for Mr. Stewart's situation because he is a for-profit entity. He stated under the Township Code any conveyance or Lease in excess of \$1,500 requires the bid process to be implemented. He stated while the sentiment of the Township may be that they would like to enter into a Lease with Mr. Stewart directly, the bid process is required. He stated the difference with the Artists of Yardley is that the same Code Section allows exemptions from the Bid process for certain organizations which are non-profit organizations that provide community service activities. Mr. Truelove stated in order to qualify for this, they have 501C3 non-profit information from them; and they promote themselves as a community service activity organization. Mr. Truelove stated it may be best to go to a ten year lease program as opposed to a three or five year program, and Mr. Stewart would be invite to participate in the Bid process as he has in the past.

Mr. Benedetto asked when the Lease runs out with Mr. Stewart, and it was noted it runs out in April. Mr. Benedetto stated they did receive an inquiry from an individual who sent a letter to Mr. Fedorchak indicating an interest in farming the Patterson Farm. Mr. Benedetto stated Mr. Stewart is a tremendous steward of the Farm, and is also a great partner not only with the Township and its residents, but also with the Artists of Yardley; and they want to get the process started.

Mr. Fedorchak stated they need to do this quickly and get it advertised. He stated they have a proposal that they put together in the past, and they could copy that.

Ms. Tyler asked if they will do a Bid Alternate with a ten year term, five year term, etc. Mr. Fedorchak asked what the Board would be comfortable with, and Ms. Tyler stated she would like to have Mr. Stewart farming the property as long as he cares to. Mr. Fedorchak suggested it be a five year Lease with an option. Mr. Lewis stated his only problem with this is that there are certain Department of Agriculture Programs that Charlann Farms could be eligible for with a ten-year Lease. Mr. Stewart stated with a longer-term Lease there are Grants and Programs that the Government can give farms. Timmy stated that the minimum would be five years, but a longer term would give more opportunities. Mr. Benedetto suggested a seven year Lease, with a three year option.

Ms. Tyler asked if this is a privileged discussion that could take place in Executive Session, and Mr. Truelove stated the Lease and the contents of the RFP could be discussed in Executive Session. Mr. Benedetto stated they are anxious to get this put out to Bid quickly because the current Lease expires in April, but they want to do it the right way as they are required.

Mr. Stewart stated they have been involved in farming for five generations. He stated they also get along well with the Road Crew and Mr. Fedorchak working with the leaves which are good for the property. He stated they know how to spread the leaves, and they have received awards for their yields.

Mr. Benedetto asked that this matter be put on the Executive Session Agenda for March 2.

Ms. Tyler asked Mr. Stewart the minimum staffing he needs to run the Farm as well as the number of pieces of equipment. Mr. Stewart stated they split it up with grains and vegetables so that they can spread their risk. He stated in this way, they are always working to make the ground better. He stated for vegetables they have four full-time workers, but in the summer they have ten to fifteen. He stated if it was totally organic, they could need approximately two hundred workers. Mr. Stewart stated for grain you only need two to three people, but that market is very volatile. He stated he is aware of only one other farmer in the area that grows vegetables with a crew. Ms. Tyler asked the total number of acres they farm, and Timmy stated it is 176 at Patterson Farm and 450 throughout the Township. Mr. Fedorchak stated this Lease is just for the Patterson Farm.

Mr. Lewis stated he feels part of the value of switching crops is to keep the soil at a certain level, and he asked if that should be required in the Lease. Mr. Lewis asked Mr. Stewart how many pieces of equipment he uses specifically at Patterson Farm, and Mr. Stewart estimated it would be approximately thirty pieces of equipment. Mr. Lewis stated if they are looking at potential Bidders, he feels they would have to have the same kind of equipment; and this is something they would want to put in a Bid request. Ms. Tyler stated they want to qualify the Bidders. Mr. Stewart stated there are not a lot of farmers left who are qualified in the area.

Timmy stated there are not a lot of young people like himself interested in farming, and they are asking for a long-term Lease so that he can invest in the business and stay here and farm.

Mr. Lewis stated the sense of the Board is that they want to stabilize what is going on at Patterson Farm for a long period of time so that people feel comfortable, and Charlann Farms is definitely a part of the stakeholders.

Ms. Donna Doan, Patterson Farm Preservation, asked if there is an alternative they could consider since Patterson Farm Preservation as a 501C3 and they could take the Lease, and then lease it to Mr. Stewart. Mr. Truelove stated it is the Township that has to put it out to Bid. Ms. Doan stated Patterson Farm Preservation could be the Bidder, and Mr. Truelove stated this may be possible. Ms. Tyler stated

Mr. Stewart may lose his standing for Grants; however, Ms. Doan stated he just has to have a Lease. Ms. Tyler stated this is a significant legal issue. Mr. Truelove stated it may be considered a “sham” to circumvent the Bidding process, and it could be considered illegal. Mr. Benedetto stated he feels they could discuss this in Executive Session.

Ms. Doan stated Patterson Farm Preservation was founded on the idea of farm preservation, although they also have plans to fix up the buildings. Ms. Doan asked Mr. Stewart what impact it would have on him if he were to lose this amount of ground particularly given the quality of the ground.

Ms. Tyler stated she feels it would obviously have a negative impact. Ms. Tyler asked Mr. Stewart if he has an attorney who helps him with Leases, and Mr. Stewart stated they do not. Timmy stated if they were to lose the Patterson Farm, he would be looking to move elsewhere because there is not enough ground in Lower Makefield for him to make a feasible plan.

Mr. Benedetto asked Mr. Stewart about his interest in the pack house. Mr. Stewart stated currently they take everything back to the main farm, and it is difficult to move tractors on the roads. He stated the Government is starting to have a lot of requirements regarding food safety, and a lot of farmers are backing away from vegetables.

Mr. Benedetto stated a long-term Lease is of mutual interest.

#### DISCUSSION AND APPROVAL TO MOVE FORWARD WITH JENNINGS TRACT PURCHASE

Ms. Judy Stern Goldstein, engineer, was present. She provided information this evening showing the overall Jennings tract which is approximately 9.39 acres in size located in the Residential Resource Protection Zoning District. She stated it has frontage on Taylorsville Road and McKinley Avenue, and it backs up to the Canal. She noted a portion colored in green which winds up directly with the bridge that goes over the Canal and leads to the towpath. Ms. Goldstein stated the area in green is 3.0 acres, and it is land that is currently proposed to be entered into the Bucks County Municipal Open Space Program with the Board’s approval. Ms. Goldstein showed another photo of the site showing the Canal and the roadways. She stated the site is mostly wooded, and there is a portion of floodplain adjacent to the Canal.



Ms. Goldstein stated the three acres will afford access to the bridge, the Canal, and the towpath to the residents of Lower Makefield. She stated it is an important link which has been a de facto link in the past, but not one with public access granted to it although people have been using it without really having permission to do so.

Ms. Tyler asked Ms. Goldstein to show on the slide where people are taking access, and Ms. Goldstein stated it is her understanding that they are accessing from Taylorsville all the way through the parcel. Mr. Matthew Bulger, 219 Taylorsville Road, stated access is not off of Taylorsville Road; and he showed where the residents are accessing through the stub road on Meadow Drive. He stated there is currently a foot path that goes from Meadow Drive which runs parallel to the property line and goes to the bridge.

Mr. Fedorchak stated over the long term the configuration shown will allow for access to come off of Taylorsville Road for the entire region. He stated he understands Yardley Borough is in the process of constructing a sidewalk or bike path along that road so at some point in the future he would anticipate that Lower Makefield would look at extending that a short distance up into this three acre area and provide direct access that way and formalize it.

Ms. Goldstein reviewed the history of the Bucks County Open Space Program. She stated each Municipality was granted an allocation based on a formula, and Lower Makefield's allocation in 2007 was \$824,605; and the remaining funds allocated to Lower Makefield are \$438,355. Ms. Goldstein stated she understands that the negotiated purchase price for the Jennings Tract three acres was \$225,000. Mr. Fedorchak agreed and added that was based on one appraisal, and he understands the Open Space Program requires two appraisals. Ms. Goldstein stated it does require two, and they need to be funded by the Municipality. Mr. Fedorchak stated assuming the Board goes forward, he will need to get a second appraisal.

Ms. Goldstein stated assuming a purchase price of \$225,000, the Municipal match would be 25% which would be \$56,250; and the County would then be funding \$168,750. Ms. Goldstein stated the Resolution provided to the Board has a dollar amount in it of the match. She stated the Resolution needs to be part of the Grant Application. She stated the Resolution also states that the Township has the funds for the match readily available. She stated the Resolution would also designate Mr. Fedorchak as the Township Manager with the authority to submit the Grant Application on behalf of the Township. Ms. Goldstein stated they need to make sure that the second appraisal will confirm the purchase price so that they are entitled to do it. She stated they also need to have a survey prepared which is required as part of the Grant Application. She stated the underground utilities would also need to be known. She stated they also need a Title Search unless they can find the actual

easement for the pump station and the extension of Meadow that comes into the site. She stated they need to document all of the encumbrances on the property. Ms. Goldstein stated they also need to do a Subdivision since this is an outright purchase of a parcel, and it is not an Easement. She stated they need to create the parcel so it can be purchased. She stated if the Township authorizes this, they can start the process which could happen fairly quickly over the next several months.

Ms. Tyler moved and Mr. Fritchey seconded to approve moving forward with the Jennings Tract purchase as outlined by Ms. Goldstein this evening.

Mr. Alan Dresser stated he feels they are effectively getting this property for \$19,000 an acre which is a good deal. He stated there will then still be approximately \$270,000 in County money available after this.

Motion carried unanimously.

#### APPROVE MAINTENANCE AGREEMENTS FOR HEACOCK ROAD AND STONY HILL ROAD QUIET ZONES

Mr. Eisold stated these Agreements are required by PennDOT to delineate what PennDOT is responsible for and what the Township will be responsible for with respect to the Quiet Zones on the two State roadways – Heacock and Stony Hill Roads. Mr. Eisold stated they had put together a draft Agreement which was reviewed by Mr. Garton who had a few comments which were incorporated into the Agreement. Mr. Eisold stated he worked with Mr. Fedorchak to make updates to the Township's requirements. He stated he has tonight four copies of the Agreement as well as the attachment, Appendix A, which includes the PennDOT plan to do the work. Mr. Eisold stated the Agreement says that PennDOT will be responsible as they always are for the road surface and pavement markings on the surface of the road, and the Township would be responsible for the concrete center median islands that are proposed as well as any of the signage which is normal. He stated this will be submitted to PennDOT for their review.

Mr. Benedetto asked about the changes that Mr. Garton suggested, and Mr. Eisold stated one was that he wanted to be very specific as to what exactly the items were that PennDOT was responsible for and what the Township would be responsible for.

Mr. David White, Gayle Drive, thanked the Board for proceeding with this project.

Ms. Tyler moved, Mr. Fritchey seconded and it was unanimously carried to approve the Maintenance Agreements as outlined by Mr. Eisold.

**TABLING CONSIDERATION OF DEED OF CONSERVATION EASEMENT AND EASEMENT OF RESTRICTIVE COVENANTS WITH ST. IGNATIUS OF ANTIPOUCH PARISH**

Mr. Truelove stated he feels it may be best to defer this to a future meeting due to some internal issues and most importantly because the individual who was authorized to sign on behalf of the Church was the late Monsignor Shoemaker. Mr. Truelove stated they hope to have this matter resolved in March. It was agreed to Table this matter.

**SUPERVISORS' REPORTS**

Mr. Benedetto stated the Zoning Hearing Board met last evening; and while the Pennsbury School District was on the Agenda, it was Continued at the request of the School District to March 15. He stated the Christian Brothers Automotive Corporation which had a proposed shop near Dobry and Oxford Valley Roads was withdrawn. Mr. Benedetto stated the Zoning Hearing Board selected Mr. Flager as their new Solicitor.

Ms. Reiss stated the Seniors had a successful Valentine's luncheon.

Ms. Tyler stated there are some Applicants for the Historic Commission, and she believes that they will be interviewed before the next Board meeting. Ms. Tyler commended Ms. Steil and Ms. Grant on their efforts digitizing a lot of documents and maps of the Township's history. Ms. Tyler stated in the future each time the Township receives an Application for a Board of Commission a letter of acknowledgement should be sent stating it has been received, and if the Board is inclined, they will contact the Applicant for an interview. Mr. Fedorchak stated he typically does this now by e-mail.

Mr. Fritchey stated the Park & Recreation Board will meet tomorrow evening at 7:30 p.m. and a discussion of the Revere Road tennis courts and the dog park are on the Agenda.

**APPOINTMENTS TO BOARDS AND COMMISSIONS**

Mr. Lewis moved, Ms. Reiss seconded and it was unanimously carried to re-appoint Kaaren Steil to the Historic Commission.

Ms. Reiss moved, Mr. Lewis seconded and it was unanimously carried to re-appoint Mark Bortman to the EAC.

Mr. Benedetto stated they received a resume from Kim Rhoades who is interested in serving on the Special Events Committee, and he asked for a Motion to appoint her to that Committee. Ms. Tyler stated she has not been interviewed. Ms. Reiss stated this is someone who volunteered. She stated she has not heard back from over half of the standing Committee, and she would like to get the Committee started with at least a reasonable quorum of five people. She stated Ms. Liney needs help with the Family Day, and Ms. Reiss stated she would like to get this started soon. Ms. Reiss stated she has spoken to Ms. Rhoades, and she feels she is highly qualified.

Ms. Reiss stated Ms. Rhoades is very well connected in the community, she has overseen family nights, she works with Bible Fellowship Church, and she has been an Operations Manager. Ms. Tyler suggested they appoint Ms. Rhoades in the interim until they have the opportunity to interview her since she is not comfortable dispensing with the Board's process of interviewing appointees.

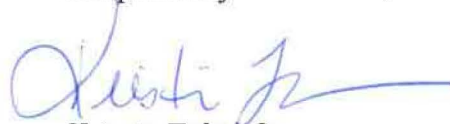
Ms. Tyler moved, Mr. Fritchey seconded and it was unanimously carried to appoint Kim Rhoades to the Special Events Committee in an interim capacity until such time that the Board has the opportunity to formally interview and appoint her.

Mr. Benedetto asked that she be brought in for an interview on March 2.

Ms. Tyler asked that others interested in the Special Events Committee which will be a benefit to the community send their letter of interest to Mr. Fedorchak.

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

Respectfully Submitted,



Kristin Tyler, Secretary