

TOWNSHIP OF LOWER MAKEFIELD
BOARD OF SUPERVISORS
MINUTES – APRIL 21, 2010

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on April 21, 2010. Chairman Smith called the meeting to order at 7:35 p.m.

Those present:

Board of Supervisors: Ron Smith, Chairman
 Greg Caiola, Vice Chairman
 Matt Maloney, Secretary
 Dan McLaughlin, Treasurer
 Pete Stainthorpe, Supervisor

Others: Brian McCloskey, Finance Director
 David Truelove, Township Solicitor
 James Majewski, Township Engineer
 Kenneth Coluzzi, Chief of Police

Absent: Terry Fedorchak, Township Manager

PUBLIC COMMENT

Mr. Alex Kuhn, 807 Combine Lane, stated he is from Boy Scout Troop 230. He provided to the Board this evening his proposal for his Eagle Scout project. Mr. Kuhn stated Ms. Helen Heinz suggested this project which is to build and install eight single-sided "Welcome" signs for the Township. He stated the possible locations for these signs are included in his report as well as a drawing of the proposed sign. Mr. Kuhn asked if there are any funds available in the Township Budget to help fund the project. He stated he has rough estimates for the materials from 84 Lumber and Home Depot. He stated he has received a \$200 Grant from the Historic Commission so the funds needed from the Township would be \$377.20.

Mr. Smith stated they discussed a similar project approximately two years ago, but there was no money in the Budget to proceed at that time. He stated he recalls that the total cost at the time was going to be \$10,000. Mr. Smith stated he does feel that they should be able to afford \$377.20. Mr. Smith stated he would like Mr. Kuhn to work with the Township's Public Works Department and to make sure that what is done is aesthetically pleasing and durable, and Mr. Kuhn agreed. Mr. Stainthorpe asked that Mr. Kuhn also work with the Economic Development Commission which has also been considering a signage program where they were going to try to attract sponsors for signs. He suggested he attend the next Economic Development Committee meeting to discuss his proposal.

Mr. Kuhn asked if he would have to go through the Zoning Board, and was advised that this would not be necessary. Mr. Kuhn stated because of the approval process he is required to follow, the earliest he could begin the project would be May 13 with an anticipated completion date in October, 2010. Mr. Truelove stated he should submit his project to the Zoning Department showing the dimensions of the signs.

Mr. Caiola stated he agrees with Mr. Stainthorpe that this project should be coordinated with the Economic Development Commission. Mr. Stainthorpe stated their next regular meeting is next Tuesday. Mr. Caiola stated the Economic Development Commission may have ideas for other signs at other locations, and this is why coordination is needed. Mr. McLaughlin asked Mr. Kuhn if he is looking for guidance on locations for the signs, and Mr. Kuhn stated Ms. Heinz provided the locations which are listed in his report. Mr. Stainthorpe stated the Board of Supervisors would make the final decision on the locations for the signs. Mr. McLaughlin expressed concern for his safety installing these signs, and Mr. Kuhn was advised to work with Public Works.

Ms. Irene Kohler, representing Residents Against Frankford Relocation (RAFR) stated there have been rumors concerning the ongoing commitment of the Board of Supervisors in the fight against the relocation of the Frankford/Aria Hospital. She stated there will be additional costs to the Township residents for this Hospital including additional Police costs. She stated the Township would also need at least one or two additional office personnel to handle the death and birth certificates. She stated this is a non-tax ratable hospital that is not needed or wanted at a location that could generate tax revenue for the Township rather than costing the Township money. Ms. Kohler stated the Appeal is in Court, and she asked that the Board members publicly confirm their opposition. All Board members confirmed their opposition. Mr. Caiola stated they are still appealing this matter in Court and would not be expending the money if they were not opposed. Ms. Koehler stated RAFR will hold a meeting at the Township Building next Thursday evening.

Mr. Stainthorpe asked Mr. Truelove if it is true that the Township would be responsible for birth and death certificates; and Mr. Truelove stated he does not feel this is true, and this is a County function as far as he knows, and the Township would not be responsible for this. Ms. Koehler asked that they contact Hopewell Township where Capital Health is located.

Mr. Andrew Martin, 201 Garber Drive, stated given the enormity of the costs for a new Hospital which would be a massive burden on the taxpayers in perpetuity, he feels it would be a wise and judicious use of the Township's money to fight the building of the Hospital; and he hopes the Supervisors agree.

Mr. Harold Koopersmith, 612 B Wren Song Road, read a letter he wrote to his friends in the Eastern Mid-Atlantic Racing Thoroughbred establishments regarding the recent presentation about possible leasing of the Patterson Farm for the purpose of constructing an equine facility.

Mr. Sol Bress, stated he is a long-time resident of Lower Makefield. He showed a bag of unsolicited newspapers, Community Trend, which is delivered every week. He stated these are being thrown at the driveway and often end up in the street. He stated the newspapers he has were collected from the streets in Heacock Meadows where he owns property. He stated many people living in that development are renters, and they are not picking up these papers and throwing them out. He asked if there is an Ordinance that could be passed that would prohibit the unsolicited distribution of these newspapers.

Mr. Maloney noted Mr. Jerry Gruen also brought this issue to his attention, and he asked Mr. Truelove what can be done about this. Mr. Truelove stated he would have to research this since it potentially implicates some First Amendment issues. He stated a carefully crafted Ordinance may be possible to deal with this problem, and at the direction of the Board, he would work on this.

Mr. Bress stated oftentimes these are found not in the driveways, but in the streets which causes problems particularly in the winter. It was noted there have been a number of times when people have had problems with these damaging their snow blowers. Mr. Bress stated he does know that there are other Municipalities that have outlawed distribution of these free newspapers.

Mr. Smith stated in Philadelphia there are free newspapers, but they are in boxes at different locations and are not being thrown in front of buildings. Mr. Smith stated there is also a problem in the Township with a litany of advertising signs being placed up and down the streets of Lower Makefield which are an eyesore. He stated he picked up approximately sixty of them from one company, and gave them to the Zoning Enforcement Office. He stated the Zoning Office sent out a letter to that company. Mr. Smith asked that Mr. Truelove look into these matters and come back to the Board at their next meeting to discuss the Ordinances already in place and consider what they could add to address the problems.

Mr. Caiola asked if there is a number listed in the paper which could be called if someone does not want this newspaper delivered to their home. Mr. Bress stated he called the Circulation Director and advised her of the problem. She indicated that if an owner does not want to receive the paper, they can call them, and they will stop delivery; however, since they go through carriers quickly, the new carrier usually just begins delivering the paper again. Mr. Bress stated since Heacock Meadows is composed of 95% renters, the owners are not often aware of this problem and the renters do not care.

Mr. Jerry Gruen, 10 Twin Circle, stated during the winter he contacted one of the Supervisors about this problem advising him that he also had this problem; and it damaged his snow blower twice this season. He suggested that they put a flyer in the paper and those interested could subscribe to it and receive it rather than having to tell them not to deliver it. He stated he personally called them twice asking that they not deliver the paper, and as soon as they changed their delivery person, he started getting it again. Mr. Smith stated the Township solicitor is going to look into this matter to make sure they are not depriving them of their right to free speech. Mr. Gruen stated possibly the Township Manager could contact them to put a flyer in their paper to see who actually wants the paper and they may not have to draft an Ordinance.

Ms. Carly Newbaum, 1604 S. Crescent Boulevard, stated she is a member of the Bible Fellowship Church and she asked that the Board approve the temporary classrooms that are greatly needed. Mr. Smith stated this matter is on the Agenda this evening, and they have already received a number of e-mails from other members of Bible Fellowship Church.

APPROVAL OF MINUTES

Mr. Caiola moved, Mr. McLaughlin seconded and it was unanimously carried to approve the Minutes of April 7, 2010 as written.

APPROVAL OF APRIL 5 AND APRIL 19, 2010 WARRANT LISTS AND MARCH, 2010 PAYROLL

Mr. McLaughlin moved Mr. Caiola seconded and it was unanimously carried to approve the April 5, and April 19, 2010 Warrant Lists and March, 2010 Payroll as attached to the Minutes.

FINANCE DIRECTOR'S FIRST QUARTER REPORT

Mr. Brian McCloskey was present and stated they had a brief presentation last month on where they ended in 2009. He provided to the Board this evening the first quarter financial report for the period ending March 31 and added this was also presented to the Citizens Budget Commission last evening and is also posted on the Township Website. He stated they are slightly better than anticipated. He stated the Township is not cyclical in the way of receiving 25% of their revenue each quarter and are very different from a traditional business. He stated as reported last month, there was a significant cost impact from the winter snow storms; but Harrisburg released liquid fuels revenues about a month

earlier so the revenues this year versus the same time last year are higher. He stated they are not greater in total, but they have received the funds earlier than they did last year to help with the winter storm costs. He stated they do have to make up ground for the paving and repair work necessary. Mr. McCloskey stated he is cautiously optimistic that the Township will be within Budget for 2010.

Mr. McCloskey stated there are some positive signs of stability most notably for the Township business enterprises. He stated the Pool membership numbers are up and the Golf Course is up despite the bad winter weather. He stated they met Budget on the revenue side for March; and through Sunday, they were 75% toward the Budget for the month of April and there are still eleven days left. He stated the deed transfer tax is still lagging for this year, but the last two months were stable and equaled the previous year. Mr. Smith stated he has heard from some Realtors that people in Lower Makefield are beginning to be able to sell their homes for a decent price, and this will be a good sign for the transfer tax. Mr. Caiola stated he also feels people are pricing their homes more realistically which should help them sell their homes more quickly. Mr. Smith stated the unemployment rate across the Country is still high.

Mr. McLaughlin stated expenses are 17% of Budget which would imply that they are better than Budget. Mr. McCloskey stated last year, the Township was at 13% of Budget at this same time. Mr. McLaughlin asked if they are trending toward being at or below Budget, and Mr. McCloskey stated he still believes that the Township will be at or under Budget which is where they have been the last couple of years. He stated they must “tighten up” a bit because of the impact from the storms which is why they are higher this year than they were last year so they need to find savings throughout the rest of the year. Mr. Smith stated he knows the Township employees are doing a wonderful job in order to keep Township expenditures down, and he asked Mr. McCloskey to thank them.

CITIZENS BUDGET COMMITTEE UPDATE

Mr. Joe Menard, Chairman of the Citizens Budget Committee, stated they did review this report last evening with Mr. McCloskey, and they agree with what he has presented. He stated the Citizens Budget Committee met with representatives of the Senior Citizens, and they have provided Mr. McLaughlin and Mr. Stainthorpe with a detailed memo on that meeting. He stated they are discussing what the Senior Citizens can do in terms of their membership, marketing, publicity, and steering them on a path toward determining exactly what their needs are. He stated there was discussion on whether the Township should be considering a Senior Citizens Center or a Community Center. He stated they will eventually be coming back to the Board of Supervisors to get very specific direction on this. He stated he and Michael Landy will be attending the Senior Citizens meeting

the end of this month and will get more detailed information to discuss with them, and they will then come back to the Board of Supervisors requesting specific direction on a number of points in order to help them move forward. Mr. Smith asked if the Senior Citizens have presented a business plan. Mr. Menard stated they have a very in-depth slide presentation which is a good foundation, and the Citizens Budget Commission is helping them turn that into a more definitive business plan to include items the Board of Supervisors will be looking for such as membership, fundraising, commitment to funding, and services and facilities they are looking for, etc. Mr. Menard stated one of the paramount questions is whether there is land and/or a building in the Township that could be considered if they want to go forward with a Center, and they will be coming back to the Board of Supervisors to get direction on how to move forward.

Mr. Menard stated with regard to Park and Recreation, they are still considering the field issue. Mr. Caiola stated he and Mr. Stainthorpe did meet with the user groups a few months ago, and since then they have had some discussions with Mr. McCloskey and Mr. Fedorchak. Mr. Caiola stated they have asked Mr. Majewski to put something together for Samost as a result of those discussions. Mr. Menard stated Mr. McDonald from the Park & Recreation Board attended their meeting last evening, and he indicated that there was some progress made on the Stoddard tract with respect to some of the drainage issues. Mr. Caiola stated there was some very positive feedback from PAA on the maintenance of the fields this year. He stated they received a great letter from Mr. Birkhead, who runs PAA, thanking Ms. Liney and the crew for getting the fields in good shape. Mr. Menard stated the Citizens Budget Commission did discuss the active fields program, and they will contact Mr. Fritchey, Chair of the Park & Recreation Board, to discuss their ideas with the Park Board, and then have the Park & Recreation bring the whole package back to the Board of Supervisors. Mr. Caiola stated he would like to attend the meeting when the Citizens Budget Commission meets with the Park & Rec Board and asked to be advised when this meeting occurs. Mr. Caiola stated they have asked Mr. Majewski to put together a drawing for the Samost Tract for two fields, and he is working on this so that they will have a better sense as to what the true need is and the dollar amount so the Citizens Budget Committee can consider this as well.

Mr. McLaughlin stated in the commentary Mr. McCloskey provided it indicated that they did not really have a good sense about the collection of the Local Services Tax, and Mr. McCloskey stated they will have a better idea about this the end of April since this is when the taxes are due from Birkheimer.

Mr. Maloney asked Mr. McCloskey how much they got from the State for liquid fuels, and Mr. McCloskey stated it was just under \$700,000 which is what was expected. This was released in March as opposed to April. Mr. Maloney stated they are still \$100,000 lower in revenue than last year and up \$240,000 on expenses relative to last year primarily due to the storms. Mr. Maloney asked if they should expect to be about 2% lower since they budgeted expenses about 2% lower than last year. Mr. McCloskey

agreed. He stated they also budgeted revenue slightly lower than last year. He stated the \$100,000 noted by Mr. Maloney can be pinpointed in the January Deed Transfer Tax. Mr. Maloney stated it seems that they are approximately \$300,000 over in expenses and \$100,000 under in Revenue if you adjust for the liquid fuels transfer and the impact of the storms.

Mr. McCloskey stated they are still hopeful that despite an improving economy the interest rate environment will stay favorable, and they will be able to refinance the next set of Bonds in September if the market remains close to where it is now; and this will provide relief in the Debt Service Fund for 2011 and beyond. Mr. McLaughlin asked when the savings from the last refinancing will show up, and Mr. McCloskey stated they will start to show up in the next quarter since they just did the sale April 3. He stated they will save a couple hundred thousand dollars a year over three years with a three year total of approximately \$900,000 which will be split between the Debt Service and the Golf Course.

Mr. Menard stated some of the winter expenditures due to the storms have been charged to liquid fuels, but the problem they want to discuss going forward is taking a longer term look at the capital improvement requirements for the Township. He stated Mr. McCloskey made an excellent presentation when they were discussing the sale of the sewer system, and Mr. Menard stated he feels they should take that presentation and take it forward to see where they are today since they have used some of the Capital Improvement Fund monies in last year's Budget, and some of it is planned for this year. He stated with liquid fuels a lot of that is used for roadway construction, and he feels they should look at capital planning to see what they need to do, if anything, between now and the end of the year. Mr. Smith suggested that they discuss this at next month's Supervisors meeting. Mr. McCloskey stated Mr. Fedorchak did ask Mr. Majewski to prepare a capital improvement target budget which is a five-year plan, and Mr. Majewski did provide a "wish list" of road reconstruction and improvements. He stated they must make a decision at some point if they are going to cut the paving budget for 2010 or see savings someplace else in order to make up the shortfall due to the storm costs. Mr. Maloney asked if the Board of Supervisors will be receiving a recommendation for what should be done, and Mr. McCloskey stated they will wait for the second quarter finance report which will have more firm numbers to average out to determine where they will be by the end of the year and will have some idea as well with regard to the Local Services Tax; and they will then have to determine, if needed, where they can make cuts to recommend to the Board of Supervisors. Mr. Maloney asked if they would have normally bid out the paving by that time, and Mr. McCloskey stated normally the bidding starts in June with the actual work done in August and September. He stated bids could be prepared and advertised with the caveat that they may not award in total. Mr. Menard stated this is why they want to do this now so that they do the right pre-planning before they get into that process.

DISABLED PERSONS ADVISORY BOARD UPDATE

Ms. Lisa Huchler-Smith, Chair of the Disabled Persons Advisory Board, was present with Board member, Mr. George Crawford. Ms. Smith stated their mission is to educate the public and community with respect to the Americans With Disabilities Act. She stated their Board reviews all Building Permits for developments including Matrix, plans for Edgewood Village, and Floral Vale. She stated they have a good working relationship with developers of new projects. She stated transportation is a huge issue for disabled residents, but they feel at this time Lower Makefield is too small to handle such a large problem like transportation; and their goal for this year is to support a County-wide solution. Ms. Smith stated they continually update their Website and are working on getting a presentation for the Cable TV Channel as well. Ms. Smith stated one of their members has asked that they consider programs for disabled children in the community, and they are considering a dance/movement class for children between the age of three to seven during the summer for four to five weeks. She stated they also continue to look at handicap parking. Ms. Smith stated they continue to work with the Police Department on updating the Emergency Database Form so that the first responders know whether or not a 911 call received from a home involves someone with a disability so that their needs can be addressed. She stated this form is on the Township Website, and it can be downloaded and e-mailed, brought in, or mailed to the Police Department. She stated they like to update this once a year. She stated they also included an article in the Township Newsletter with this information.

Ms. Smith stated their goal this year was to reach out to the other Township Committees. She stated she has made a presentation to the Economic Development Committee about discussing with area business owners handicap accessibility and tax credits that are available if a business would want to update and make accessibility changes. She stated there are also incentives for hiring handicapped people. She stated she also attended a Park & Recreation Board meeting to ask them to consider in the planning stages handicap accessibility to fields. Ms. Smith stated they did apply for a Grant to get a handicapped accessible playground at Memorial Park, but they did not receive that Grant. Mr. Caiola stated Home Depot and Lowe's can be approached about projects such as this as well. Mr. Caiola asked if they have a sense as to how many children in the community have disabilities, but Ms. Smith stated she does not have accurate numbers at this time. She noted the playground being considered would have been an all-inclusive playground and not exclusively for handicapped children. Ms. Smith stated they have also had discussions with the Historic Committee about addressing handicap accessibility to the historic structures.

Ms. Smith stated a problem has been identified at the CVS near Edgewood Village where there is a brick path which would be difficult for someone in a wheelchair or using a walker to access. She stated she understands that the Veterans Committee is considering a brick pathway for the Veterans Monument, and this should be considered particularly

since Veterans who may have disabilities may want to visit the Monument. Mr. Maloney stated stamped concrete can be made to look like brick. Mr. Smith suggested Ms. Smith contact Nancy Frick and have someone contact CVS to address this problem.

Ms. Smith stated she understands that the Artists of Yardley are using one of the homes on the Patterson Farm, and she stated she has loaned her ramp to the Township previously to access that home. She stated she would be willing to lend her ramp again if they have a need for ramp access; and if they find that her ramp is needed more frequently, perhaps the Township should consider purchasing one. She stated the cost would be approximately \$500.

Ms. Smith stated she has tried to reach out to some of the other Townships, but the one meeting she attended in another Township did not go well. She stated she has found that Boards in other Townships are not as supportive of their Committees as the Lower Makefield Township Board is, and she thanked the Board of Supervisors for their support.

Ms. Smith addressed the need for parking lot etiquette adding that those parking next to a handicap spot need to stay out of the area which is striped since that area is needed in order to deploy the handicap ramp. Mr. Smith stated possibly there is a way to make the public aware of this by posting something on the Township TV Channel. Ms. Smith stated there is also a need for a wheelchair accessible table in restaurants so that the wheelchair can be pulled up to the table. Mr. Smith asked that she continue to work with the Economic Development Committee so that when new businesses come in they can accommodate some of the goals Ms. Smith has discussed. Ms. Smith stated their first year they did send out a business owners letter, and they could do this again.

DISCUSSION AND TABLING OF STIPULATION AND AGREEMENT IN REGARD TO COMCAST BOX INSTALLATION MATTER

Mr. Truelove stated this matter started approximately two and a half years ago when there was a lack of communication by some at Comcast with the Township with regard to a proposal to upgrade their system. He stated they had submitted inconsistent Application forms which did not have all the information necessary as to what was going to be placed, where they were going to be placed, and how many would be placed. He stated as a result their requests were denied, and Comcast filed an Appeal with the Zoning Hearing Board. He stated the Zoning Hearing Board issued a mixed decision; and while the Township did not get everything they were looking for, Comcast was compelled to meet certain requirements and do certain things with respect to Permitting. Mr. Truelove stated Comcast was looking to replace boxes with a new type of pedestal box in order to assist their new technology. He stated the Ordinance and Agreement that were enacted in February 2006 did provide some provisions and allowed them rights-of-

way access to place the pedestals. He stated what they were previously doing was placing these wherever they wanted without Permit approval and review. Mr. Truelove stated the Township did Appeal to the Court of Common Pleas hoping that there may be some intervening Court rulings that would assist the Township in the interpretation of the Ordinance, but unfortunately this did not occur. He stated they did, however, engage in substantial negotiations with Comcast which resulted in the proposed Agreement and Stipulation. He stated this final document has gone through some revisions primarily for the benefit of the Township; and he, Mr. Majewski, and Ms Frick were all involved in the review of the document to make sure that all the concerns from every perspective were going to be met to the extent that they felt they could obtain with the law and Ordinance the way they are written.

Mr. Truelove stated in the proposed Agreement there are very strict guidelines for Comcast to comply with as to Permits, the Application process, locations, and upgrades. He stated they are required to obtain Permits except for aerial upgrades. Mr. Truelove stated the Township was in a challenging situation as they wanted to make sure that they did whatever they could within the law to make any provider who is erecting something meet all the Permitting requirements. He stated Comcast is providing a service to the residents of the Township; and if Comcast is claiming that they need certain things to provide this service, the Township has to make sure they are not becoming an unnecessary hindrance to this process as well. Mr. Truelove stated they have had helpful communication with the new representatives from Comcast, and he feels they now have a healthy relationship going forward; and this document provides the structure for this. He stated in the last year and a half since the Zoning Hearing Board matter concluded, a lot of work has gone forward; and the Township has not heard any complaints. He stated a settlement is a result of compromise; and while neither side is completely happy, he feels that this is the best they can do and is good for the Township since they do have the police powers through the Permitting process to regulate.

Mr. Caiola stated he is pleased that they have gotten to this point; and when Comcast changed leadership, they approached the Township and indicated they needed to communicate with the Township more thoroughly. He agrees with Mr. Truelove that this is the best they can do considering the Township Ordinance and the fact that the Township was able to get a majority of the items they wanted in place. Mr. Maloney complimented Mr. Caiola for getting involved in this matter, working with the Township solicitor, and building a relationship with the representatives from Comcast. Mr. Truelove agreed that Mr. Caiola was extremely helpful in this process.

Mr. Stainthorpe moved and Mr. Caiola seconded to approve the Agreement.

Mr. Zachary Rubin, 1661 Covington Road, stated he is the Chair of the Electronic Media Advisory Committee. He stated he has not seen this Agreement and does have questions. Mr. Rubin stated in September, a Comcast representative came in front of the Electronic Media Advisory Committee and assured them that from then on, there would be absolutely no above-grade construction of pedestals; and Mr. Rubin asked if this is in the Agreement. Mr. Truelove stated it is not. Mr. Truelove stated this was never represented to them and the technology itself is not mentioned in the Agreement. Mr. Rubin asked if they can put above-grade pedestals in the Township right-of-way according to this Agreement, and Mr. Truelove stated they could as the Ordinance now exists, and they have done this. He stated he does not know if they intend to do this going forward as technology changes. He stated the way the Zoning Hearing Board interpreted the Ordinance, gave them the right to do so. Mr. Rubin stated if they are going to do this, they would have to apply for Permits to do so, and Mr. Truelove agreed they would if it were an upgrade. He stated the only thing that would not be considered an upgrade would be the contents of the pedestals, but the replacement of the pedestals would be considered an upgrade.

Mr. Maloney stated the Township never received the representation that Mr. Rubin has indicated was made to his Committee, and they feel that what they have in the Agreement is as good as they could get. Mr. Truelove stated he never heard what Mr. Rubin has indicated was agreed to with regard to the above-grade pedestals.

Mr. Rubin asked that the Agreement be put on the Township Website so that it could be reviewed by the public, and Mr. Truelove agreed. He stated the reason he could not provide it prior to this evening's meeting was because as a representative party involved in the Settlement negotiations, until they get to the point it is finalized, they could not post it. They did supply it to Mr. Goldberg as soon as it was technically available.

Mr. Rubin stated from the start of the Appeal of the Zoning Hearing Board's denial of their Permitting to put these pedestals in the Township, to his knowledge, they have put in any above-grade pedestals. Mr. Truelove stated he does not know this for sure, but it may be that the upgrades did not require this. Mr. Truelove stated he was under the impression that Comcast has done a fair amount of work, but he does not know exactly what they have done. Mr. Rubin stated it is his understanding that they have not put in any above-ground pedestals since the Zoning Hearing Board Appeal. Mr. Rubin stated they had asserted in front of the Zoning Hearing Board that because of their new interactive upgrades, they would have to put above-ground pedestals; and since they have done upgrades and not put in above-ground pedestals for the last fifteen months, he feels their testimony in front of the Zoning Hearing Board misrepresented their technology on the grounds that they claimed they had to above ground because of the electronics. He stated he feels this should be investigated. He stated he also feels they should make sure that they do not put them above ground in the Township since this is inappropriate for the Township.

Mr. Smith stated the Zoning Hearing Board had ruled on an Ordinance that had been in effect for some period of time, and Mr. Truelove agreed. He stated the Ordinance was officially enacted in February, 2006 and authorized to be advertised in 2005. Mr. Smith noted litigation that went back to 1996, and there was an Ordinance in effect at that time. Mr. Truelove stated this was a different Ordinance and the new one was enacted because the Franchise Agreement had to be updated in late 2005, and was put in place in February, 2006. Mr. Smith stated the Zoning Hearing Board was left with an interpretation of the Ordinance at that time, and Mr. Truelove agreed. He stated their ruling stated that because of the wording of the Ordinance, a Variance was not required and there was a “by right” of Comcast to erect these pedestal; but the Permitting process still had to be met, and this is where the Township was able to have more “teeth.” He stated Ms. Frick had been frustrated with the fact that she would issue Permits but sometimes the circumstances and standards were not always consistent, and now they have a structure in place that is very explicit as to what Comcast must submit and the review process for Permitting.

Mr. Bernie Goldberg stated he is a member of the Bucks Creek Homeowners Association which represents approximately 300 homes, and they feel betrayed by Mr. Truelove and Mr. Fedorchak since from the beginning of the Appeal process, they became Parties to the Appeal process, had raised money, and would have hired their own lawyer to represent the community in the Appeal process and been a Party to the negotiations. He stated they were assured by Mr. Truelove that if there was any change, he would be notified, and he was not contacted. He stated they found out Monday that this matter was being discussed this evening, and he could have brought 100 people to the meeting if he had known about it in advance. He asked that the Board table their vote until the next meeting so that residents of Sandy Run can be present to discuss how they feel.

Mr. Goldberg stated the Agreement that has been negotiated says “nothing.” He stated it says that they will provide the location on a map of where they will put things, but the Township must approve it and that all public discussion and Appeal process before the Zoning Hearing Board does not apply. Mr. Truelove stated it says that there is no requirement for Land Development Approval because it is a by-right process; but they do have to go through the Permit process, so if there is a rejection of a Permit, the Zoning Hearing Board still may be involved in that. Mr. Goldberg asked how the Township could reject it since the Agreement says they cannot and states, “The Township shall issue the Permit within fourteen days of receipt of the complete Permit Application for same and it shall not require Comcast to secure any further Permits, Special Exceptions, Variances, or any other approvals prior to the erection of above-ground pedestals within the Township.” Mr. Truelove stated the Permit Application still has to meet all the requirements stated above that. Mr. Goldberg stated the only thing it says is the “Permit Application may be submitted for all the above-ground pedestals to be erected in the given Township. The Permit Application shall consist of the following: a map or Plan

depicting the location of all the pedestals described in the Permit Application including identification of whether the pedestal is or will be placed in the right-of-way, within easements, or in private property, the addresses of the locations of the pedestals, and brief description.” Mr. Truelove stated there is also a provision below that with respect to upgrades. Mr. Goldberg stated all it says is that they will give the Township the location they are going to put it in, and the Township will approve it. Mr. Truelove stated the Zoning Hearing Board’s Decision said this. Mr. Goldberg stated the Township Appealed that Decision. Mr. Truelove stated they did and he was frustrated with this since the Township was “hamstrung” by the way the Ordinance is worded, and the Township cannot challenge its own Ordinance. He stated they had hoped that there would be some way in the intervening time for some case law to come out that would assist the Township.

Mr. Goldberg stated the Decision rendered by the Zoning Hearing Board was rendered almost “behind closed doors.” He stated he questions whether the Sunshine Laws prevailed because there were discussions which were not in front of the Board, and they came into the room and made a decision with really no discussion. He stated he feels there were lots of issues they could have challenged what was decided. He stated as soon as they sign this Agreement, Comcast will start constructing in Sandy Run and the residents will not be happy. He stated there is a comment in the Agreement which he found frustrating which indicates that “none of the residents who had received Party status at the Zoning Hearing Board proceedings filed Appeals or any notices of intervention.” Mr. Goldberg stated they did not do so because of a discussion he had with Mr. Truelove. He stated the residents would have had a lawyer representing them if they felt they needed to be party to this. Mr. Truelove stated his only recollection was that he indicated that the Township was representing the Appeal vigorously, and he does not believe he ever indicated that they were representing anyone other than the Township; although they were representing all the issues and interests that were raised before the Zoning Hearing Board. He stated regardless of the number of lawyers involved, they still would be dealing with the same Ordinance which they cannot circumvent. He stated even if the Sunshine Act was a viable issue, this would still not change the way the Ordinance is written. Mr. Truelove stated they do not want to spend litigation money spending the taxpayers’ money in an imprudent way. He stated they tried to do the best they could, and they felt what they could do was limited. Mr. Truelove stated he feels they have gotten more out of this for the Township than they had in the beginning.

Mr. Goldberg stated he does not feel they got anything, and they have agreed to allow them to build anything they want, anywhere they want in the community. Mr. Goldberg stated during the Appeal process, Comcast indicated there were three sizes of boxes they were going to use. He stated he showed them a picture of a box that they built in the community in the right-of-way which looked nothing like those boxes, and they indicated they did not build it; and in fact when you open it up it says “Comcast” inside. He stated

they do not negotiate in good faith and do not do what they are saying. He stated if the Township approves this Stipulation, all they are saying is “tell us where you are going to build it, and we will approve it because we have to.”

Mr. Truelove stated they do have the right to build in the rights-of way under the Ordinance. He stated the Township does have the police power to regulate by Permitting to make sure they meet all the Permitting requirements, and they did not have this before. Mr. McLaughlin asked if this gives the Township the right to reject a Permit, and Mr. Truelove stated there may be safety issues, and they could not put them where it may become a public safety hazard. He stated the Township does not have the ability to do more than what is in the Settlement Agreement.

Mr. Goldberg stated he does not feel they have anything more to lose since this Agreement would be no worse than what they would get if they went into Court and fought the Appeal. He stated this Agreement does not do anything more than the Township already has. He stated all this says is that Comcast has to tell the Township where they want to put it, and the Township has to approve it by this Agreement. Mr. Truelove stated this is what the Zoning Hearing Board said, and they also have the right under this Agreement to do more of a review of upgrades, which is something that the Zoning Hearing Board did not address.

Mr. Goldberg suggested that someone look into more detail as to whether or not Comcast is in violation of any portion of the Cable Agreement; and if there are any violations, it should be torn up and they should start again. He stated he feels there are violations where they have not done things that were promised with regard to programming, service, and revenue. He stated the Township is allowing them to do anything they want in the community. He stated Comcast can build towers in the right-of-way, and the Township cannot do anything about it. He stated this Agreement indicates that provided they tell the Township in advance what it looks like, they can do anything they want in the right-of-way. Mr. Truelove stated structures are limited in their dimensions in the Township. Mr. Goldberg asked where that limitation is noted in this document, and Mr. Truelove stated the Ordinances limit the size of structures, and this is a separate part of the Zoning Ordinance in the Township. Mr. Goldberg stated he showed them pictures of where they had built something in the right-of-way on Drexel Drive, and they denied they built it. He stated he submitted this at the Zoning Hearing Board. He stated this Agreement does not say they will adhere to the Ordinances. Mr. Truelove stated anyone that comes into the Township has to adhere to the Ordinances; and while this does indicate that the structures can be built in the right-of-way, the structures themselves must be built to comply with the general provisions of the Zoning Ordinance. He stated it does not have to specifically state this in this Agreement since everyone in the Township has to adhere to the Zoning Ordinance.

Mr. McLaughlin asked Mr. Goldberg what he would like to see in the Agreement. Mr. Goldberg stated this started in 1995 when he woke up and found that there was a cable box in front of his home. He stated in Sandy Run, the utility right-of-way is in between the sidewalk and the curb; and if they put something in the right-of-way the residents cannot camouflage it with landscaping. He stated two days later there was a second box installed next to it. He stated these just appeared and there were no Building Permits. He stated they filled the Township room with 500 people who were very angry about what had been done. He stated an Ordinance was passed which indicated that in order to build anything in the Township, you have to get a Building Permit if it is larger than one cubic foot. He stated they were comfortable with this because under the Building Permit process, you have public debate in front of the Zoning Hearing Board; and this is what they wanted as they wanted to have the right to discuss what they are doing and consider alternatives. He stated there are alternatives since if you have Verizon, everything is underground. Mr. McLaughlin asked what specifically he would like in the Agreement and a number of people in the audience stated they wanted it all underground. Mr. Truelove stated Comcast's engineer's testimony was that this was not feasible for them.

Mr. Maloney stated based on the Zoning Hearing Board's ruling and the Ordinance that existed, Ordinance 357 did not require them to submit Plans ahead of time for any box. He stated what they have in this proposed Agreement is more than what the Township had under Ordinance 357. Mr. Goldberg stated he does not feel they got anything according to the proposed Agreement. Mr. Maloney stated Ordinance 357, which is the law which prevailed, did not require them to submit Plans ahead of time indicating anything. He stated this proposed Agreement requires them to submit Plans for what the structures are and does require them to meet the standards of safety and welfare which are above and beyond what Ordinance 357 originally required. He stated what is proposed gives the Township, through the Permitting process, the right to indicate that what is proposed is not a safe structure. He stated if there was a structure built during the past few years that exceeds the dimensions permitted in the R-1 or R-2 Zoning District where Mr. Goldberg lives, that structure may be illegal and Mr. Goldberg could submit a complaint to the Zoning Office. Mr. Maloney stated with the proposed Agreement and the good faith relationship with Comcast, they can address those structures which they feel were improperly built. He stated if they exceed the dimensionality, they can go through the proper recourse with the Code Enforcement process. He stated the proposed document can only address the structures going forward and not the structures already built, and this is why they have enforcement policies.

Mr. Truelove stated there are authorities at different levels which cannot be controlled one of which is Federal law. He stated he is concerned that they could be in Federal Court trying to defend not enforcing an Ordinance that the Township drafted and approved, and they will then get a Court Order advising what the Township has to do and they will have no power at all. He stated he too is frustrated with this matter, but they did

not have as much “ammunition” as he would like. He stated if the Board wants to fight this and not settle with Comcast in this way, he will proceed; but he does not feel it will end well, feels it will be costly, and could end much worse than where this Agreement is.

Mr. Rubin stated because of the issues at Sandy Run in 19996, they had an Ordinance that indicated they could not put pedestals above ground without a Building Permit. He stated in the Franchise Agreement with Comcast which went into an Ordinance, it indicated they have the right to upgrade. He stated he feels that Comcast can upgrade without putting pedestals above ground. He stated it is true that they have electronics in their pedestals where Verizon just has fiberglass; but for the last two years Comcast has been upgrading with their existing system below ground. He stated the only reason they want to put them above ground is because it is cheaper and they are constantly repairing the below-ground pedestals because of the rain. He stated there are technologies to make them waterproof, and it is a cost object with them and not technology. Mr. Rubin stated he supports Mr. Goldberg’s request that the Board postpone this matter until the next meeting so that they can get more information on this before it is accepted. He stated these pedestals are an eyesore above ground. Mr. Caiola stated Comcast customers may feel differently because this could cost them more money.

Mr. Smith stated he feels they should get answers to the questions raised this evening before making a decision and also allow time for other members of the public to make comments.

Mr. Stainthorpe stated he would be willing to postpone the matter, but they must consider the legal issues and what they can and cannot do; and he does not feel that they have the legal authority to force Comcast to put these facilities underground as the Township’s Ordinance does not give the Township this authority.

Mr. Goldberg stated when he read the document he felt totally betrayed, and he does not feel they could wind up any worse since provided Comcast tells the Township where they will put these and what they will look like, the Township has to approve it. Mr. Stainthorpe stated it must be read in context with the whole Ordinance. Mr. Goldberg stated it does not reference any Ordinances. Mr. Maloney stated the overruling document in the Municipality is the Zoning Ordinance. Mr. Goldberg stated this document does not reference the fact that they are going to adhere to any Ordinance, and it gives Comcast permission under paragraph 2 to tell them where it will be, what it will look like, and the Township has to approve it. Mr. Stainthorpe stated the Ordinance was not specific about getting a Permit, and this is where this proposed document gives the Township more “teeth.” He added he feels this is the best that the Township can get. He stated while they could do more research, if they are going to be in violation of the law, or do something that will involve frivolous dollars for litigation, he is not in favor of it.

Mr. Goldberg stated Sandy Run is still willing to fight this as a community. He stated they were willing to fight this from the beginning and put up money. He stated they felt it was wrong that the decision made by the Zoning Hearing Board was influenced in an unduly way, and they felt there might have “been some deals made.” Mr. Goldberg stated he does not see how they could do any worse even if they were to lose an Appeal because all it says is Comcast could build and not get a Permit while under the proposed Agreement it states they will tell the Township where they will build. He stated Comcast does not know where their boxes are now as they do not have a map. He stated the Township should not allow this to go on. He stated he does not understand how this Agreement got signed, and he feels the community has gotten a bad deal and a deal was made without telling anyone.

Mr. Smith stated he does want to look at this further. He stated he agrees with Mr. Stainthorpe in that he does not want to waste taxpayer dollars on litigation, but he would also like to see if there is a way they could modify this.

Mr. Stainthorpe withdrew his Motion to approve.

Mr. Goldberg asked that the matter be scheduled for the second meeting in May, and it was agreed to table the matter to May 19, 2010.

Mr. McLaughlin stated while they can step back and look at it again, he does not feel they will fight a fight they are going to lose; and if the Township solicitor feels strongly that a fight would not turn out well, this will be a compelling reason not to proceed. He stated the Board is the stewards of taxpayers’ money, and he does not feel they should fight to get to the same place or worse off. Mr. Goldberg stated they may be no better off than they are, but they could force this back to the Zoning Hearing Board which is where they want it. He stated he would like to see the attorney that represents the Zoning Hearing Board replaced since he was doing legal interpretation of a Contract behind closed doors which he found offensive.

Ms. Sandy Goldberg stated for the last two years they have talked to the Board about safety issues with Comcast. She stated there is a coil hanging off a pole coming from I-95 at the intersection of Creamery and Mirror Lake Roads. She stated she notified the Township about this previously. Mr. Smith asked that the Township engineer look into this and discuss this with the Zoning Enforcement Officer. Ms. Goldberg stated they moved into their home thirty-four years ago and all utilities were required to be underground. She stated they do have the technology to put this underground; and the Township made a bad decision, and the pedestals should never have been allowed to be above ground since they have the technology to put them underground. She stated in 1996 she spoke to the State Utility Commission, and they indicated utilities are required to follow the Ordinances of the Township and this protects the citizens. She stated the right-of-ways were put in front of the properties because it was required that utilities be

put underground. She stated if they were going to build pedestals, they should have been put in the back since no one wants to see this in the front of their property. Ms. Goldberg stated she would like to know what the new Ordinance states which they have to adhere to since the previous Ordinance referenced the requirement for a Permit for anything 12" by 12". Mr. Maloney stated the Ordinance associated with the new Franchise Agreement does not have any dimensions referenced. Mr. Truelove stated the new Ordinance was enacted in late 2005. Ms. Goldberg suggested that they have a Utility Commission in the Township to deal with all of these issues; and if a new company comes in, there would be definite criteria. Mr. Smith stated they could address this at the May 19 meeting as well as the other issues raised this evening.

Mr. Jerry Gruen stated he was on the Zoning Hearing Board when this matter was considered, and they did the best they could with the Contract that was handed out by a previous Board in the Township. He stated at the advice of their Solicitor they voted that Comcast would be required to apply for Building Permits; and they were told that when they applied for Building Permits, the Township could tell Comcast which way they wanted the pedestals to be built whether they should stay underground or above ground; and they felt they had ruled in favor of the Township since they would be able to control what Comcast could build under the regulations of the Building Permit. He also suggested that if Mr. Goldberg and his neighbors are very unhappy with Comcast, they should switch to Verizon and this will send a clear message to Comcast if two hundred to three hundred residents overnight change to another company.

Mr. Zachary Rubin stated the Electronic Media Advisory Committee will hold their next meeting on May 13 which is the week before the Board of Supervisors meeting, and they will invite Comcast to discuss this and provide a synopsis to the Board of Supervisors on May 19.

Mr. Gruen stated the technology was discussed at the Zoning Hearing Board, and Comcast indicated that Verizon's technology was totally different than Comcast's since Verizon uses fiber optic cables that do not need transformers. He stated they were told that they cannot use underground, but he has heard that on the West Coast transformers are being set underground on pedestals that rise up when they need repair. He stated Comcast denied that the technology was available. Mr. Smith asked that Mr. Gruen provide this information to Mr. Rubin.

DISCUSSION AND APPROVAL OF BIBLE FELLOWSHIP'S EXPANSION PLAN

Mr. Pete Anderson, engineer, was present. Mr. Truelove stated the original Plans for the Church were approved for a phased Plan. He stated the Congregation has grown substantially so that the next Phase that would be anticipated would not be practical. He stated they are proposing to place four modular units on the property and request relief from Land Development with the proviso as recommended by the Planning Commission that the modulators will be on the site no more than seven years. They would have to meet all Permitting requirements.

Mr. Anderson stated the Plan was approved in 1999 for a Phase IA, Phase IB, and Phase II. He stated the Phase IA building and all public improvements have been built. He stated Phase I B and Phase II have not been built. He stated they are trying to decide what to do with regard to their permanent building, but in the interim they would like to build the four portable classrooms to be placed in the area shown in yellow and pink on the Plan shown this evening. Mr. Anderson stated the impervious surface will be less than the Plan that was approved and everything else is in compliance. Mr. Anderson stated this interim step will give the Church some time to make decisions as to their permanent construction.

Pastor Bob Travis was present and noted the packet he provided to the Board about the Church. He stated they moved into the present building in 2000 and the packet outlines the Church's history. He stated they have experienced significant growth. He stated the packet also describes the activities taking place in the Church and the community. He noted page 3 of the packet which shows how the Church has grown from an average of 200 attending on Sunday mornings in 2000 to the current time with 598 attending on a Sunday morning. He stated the building was designed to hold about 250 on a Sunday. He also noted the overcrowding being experienced for their children's ministries. He stated they are looking at short-term, intermediate, and long-term growth plans; and the portable classrooms will meet their short-term growth. He stated they can use these as they consider their long-term plans whether to proceed with construction of Phase II as was previously approved or whether they should move the Church. He stated they are in the process of looking at land in Lower Makefield to move the facility.

Mr. Smith stated he would like a commitment that these modulators will not become permanent fixtures, and Pastor Travis stated they are seriously considering a long-term solution. He stated they did make an offer on land in the Township; and while it does not appear that this will go through, they are actively pursuing other options. Mr. Smith stated the modulators at Edgewood Elementary School were only going to be there for a limited period of time, but they have been there a significant period of time. Pastor Travis stated they met with the Township's Planning Commission, and it was in their

Motion that the modulars could be there for seven years. Mr. McLaughlin asked if the property is sold would that seven years carry with the new owner, and Mr. Truelove stated it would.

Mr. Stainthorpe moved and Mr. Maloney seconded to approve the Expansion Plan subject to conditions set forth in the Planning Commission's recommendation memo.

Mr. Stainthorpe asked that they make sure these modulars are repainted and attractive as he understands they are being purchased from Council Rock and may be at the end of their useful life. Pastor Travis stated they have made a commitment to put vinyl siding and new roofs on each of the units to match the existing building.

Mr. John Ray, 524 Palmer Farm Drive, stated he is a member of the Church and urged the Board to pass this Motion. He stated they want to be good citizens, and this will help them meet the needs of the community.

Motion carried unanimously.

GRANT EXTENSION OF TIME FOR CAPSTONE TERRACE

Mr. Maloney moved, Mr. Caiola seconded and it was unanimously carried to grant an extension of time for Capstone Terrace Final Land Developmental Plan to 9/15/10.

APPROVAL OF 2010-2011 FUEL BIDS

Mr. Stainthorpe stated these are bids on gas and heating oil through the Bucks County Consortium.

Mr. Stainthorpe moved, Mr. Caiola seconded and it was unanimously carried to approve the 2010-2011 Fuel Bids through the Bucks County Consortium as recommended by the Director of Public Works.

SUPERVISORS' REPORTS

Mr. Caiola stated the Citizens Traffic Commission is discussing their October event and making a determination where it will be held this year. He stated the Veterans Committee held a fundraiser at the Yardley Inn last week. He stated the Bucks County Performing Arts Center will be holding a fundraiser in September.

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Mr. Maloney stated the Zoning Hearing Board heard the Williams Lane cell phone tower matter at their last meeting, and they will vote on this at their next meeting, Monday, May 17. He urged those interested to attend as additional public comment will be taken prior to the vote. Mr. Maloney stated next Wednesday from 5:30 p.m. to 7:30 p.m. at Makefield Highlands, the Economic Development Committee will have a Meet and Greet for the local businesses

Mr. Smith stated the Board of Supervisors will have on their May Agendas deer management, the Patterson Farm, and R8 rail line out of Newtown.

There being no further business, Mr. Maloney moved, Mr. Caiola seconded and it was unanimously carried to adjourn the meeting at 9:50 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Matt Maloney', written in a cursive style.

Matt Maloney, Secretary



Township of Lower Makefield

BOARD OF SUPERVISORS
 Ron Smith, Chairman
 Greg Caiola, Vice-Chairman
 Matt Maloney, Secretary
 Daniel McLaughlin, Treasurer
 Pete Stainthorpe, Supervisor

**APRIL 2010 WARRANT LISTS AND
 MARCH 2010 PAYROLL COSTS FOR APPROVAL
 APRIL 21, 2010 BOARD OF SUPERVISORS MEETING**

04/05/10 Warrant List	\$	546,157.03	
04/19/10 Warrant List		764,535.21	
Manual Checks:			
04/05/10		150,143.88	
04/19/10		200.00	
Total Warrants & Prepays			\$ 1,461,036.12
<u>PAYROLL COSTS:</u>			
March 2010 Payroll		235,262.78	
March 2010 Payroll Taxes, etc.		141,024.44	
Total Payroll Costs			\$ 376,287.22
TOTAL TO BE APPROVED			\$ 1,837,323.34

