

TOWNSHIP OF LOWER MAKEFIELD
BOARD OF SUPERVISORS
MINUTES – MAY 19, 2010

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on May 19, 2010. Chairman Smith called the meeting to order at 7:35 p.m. noting that the Board met in Executive Session for one half hour discussing real estate matters. Mr. Maloney called the roll.

Those present:

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

Others: Terry Fedorchak, Township Manager
 David Truelove, Township Solicitor (joined meeting in
 progress)
 Bucky Closser, Township Solicitor (left meeting in
 progress)
 James Majewski, Township Engineer
 Kenneth Coluzzi, Chief of Police

PUBLIC COMMENT

Ms. Virginia Torbert, 1700 Yardley-Newtown Road stated the Board of Supervisors had previously requested the Township solicitor to investigate the lease/sale of the Satterthewaite property. She requested that the solicitor also investigate the legal limits of this under the Township's own Ordinances and Pennsylvania law as to what the Township can ask the purchaser to do if the Township were to sell this property. Mr. Smith stated this is part of what they have asked the solicitor to investigate.

Mr. Ben Shriber stated he is a sophomore at Pennsbury. He commended the Township for participating in the hazardous waste/computer collection program, and added that the next collection date is on August 14 at the Bucks County Technical School. He stated he would like to encourage participation by writing an article for Pennsbury. He stated he would also like to work with the Township in this way as future green projects arise. Mr. Smith suggested he work with the Township's Environmental Advisory Council through Mr. Fedorchak.

APPROVAL OF MINUTES

Mr. Caiola moved, Mr. McLaughlin seconded and it was unanimously carried to approve the Minutes of May 5, 2010 as written.

APPROVAL OF MAY 3 AND MAY 17, 2010 WARRANT LISTS, AND APRIL, 2010 PAYROLL

Mr. McLaughlin moved, Mr. Caiola seconded and it was unanimously carried to approve the May 3 and May 17, 2010 Warrant Lists, and April, 2010 Payroll as attached to the Minutes.

MAY FINANCE DIRECTOR'S REPORT

Mr. Brian McCloskey, Finance Director, was present with Mr. Joe Menard, Citizens Budget Commission. Mr. Smith stated he received today a copy of a memo sent to Mr. Fedorchak from Mr. McCloskey indicating that the Township's bond rating has been adjusted in a positive manner from AA2 to AA1 because the rating agencies have been looking closely at the corporate bond market and subsequent ratings and felt that the Municipal ratings should be more closely aligned with the corporate ratings; and therefore, Lower Makefield's rating along with a number of other Municipalities has been raised. Mr. Smith stated the memo also indicates that the actual operating results in the General Fund for the year 2009 were better than expected. Mr. McCloskey stated this is positive news, and is a combination of the Township results and even more so the rating agencies looking at Municipalities like Lower Makefield and aligning them more in line with the corporate markets. He stated not every Municipality has been upgraded. Mr. Smith commended Mr. McCloskey, Mr. Fedorchak, and all the employees for doing a good job. Mr. Maloney stated this was a broad-based market adjustment in general of Municipal bonds upward reflecting the fact that corporations are doing worse than they did previously relative to Municipal bonds. Mr. McCloskey stated Lower Makefield and a number of other Municipalities did benefit from this although not every Municipality benefited.

Mr. McCloskey stated he provided a packet to the Board of Supervisors which is an interim report in between the more comprehensive quarterly reports. He stated a summary has been provided. He stated the trends identified in the quarterly report have been sustained through April. He stated April is a big month for tax collection, and the real estate taxes are coming in as expected. He stated they get about 90% of their tax revenues between March and May. He thanked Ms. Cecchine, Tax Collector, for her work. Mr. McCloskey stated there are still concerns with the Deed Transfer Tax as they are behind where they expected to be. He stated April of 2010 did exceed April, 2009;

but they are still under by \$100,000 off of last year's pace. He stated the next few months will tell a lot about the housing market in Lower Makefield. He stated Lower Makefield does not necessarily correlate with the rest of the Country with regard to the housing rebound as the median price in Lower Makefield is much higher than in other parts of the Country. Mr. Maloney stated they did Budget \$80,000 less than last year, and Mr. McCloskey agreed.

Mr. McCloskey stated this is the first quarter they have received the Local Services Tax; and the tax collector for this tax, Berkheimer, has advised that since this is the first time the Township has had this revenue item, they should see six to eight consecutive quarters of an increasing number as this begins to take hold throughout the Township. He stated while the numbers seem low, they are not alarmed at this point. He stated they are constantly getting phone calls from people looking to register for this new tax.

Mr. Maloney noted the receipts to date for this are \$18,000. He asked what they took in for April, and Mr. McCloskey stated 95% of it was taken in April, since it was due April 30 and is normally paid quarterly. He stated it is due the 30th day following the end of the quarter. He stated the next quarter they would expect to see this increase.

Mr. McCloskey stated expenses are somewhat high and this is a timing issue since twice a year they have an extra payroll, and one of these was in April, while last year it was in May. He stated if you take out this extra payroll, they are actually somewhat behind in expenses.

Mr. McCloskey stated with regard to the business funds, the Pool membership is trending higher than last year at this time. He stated the Golf Course had another good month and the second in a row that they made revenue budget. He stated they are dependent on the weather. Mr. Maloney stated he feels the new management team at the Golf Course is doing an excellent job.

Mr. Maloney stated there was an irregularity last month related to the sewer system, and Mr. McCloskey stated they paid an extra transmission fee the first quarter, so this is now evened out. He stated there will be some timing differences until they get to the end of the year. The sewer system is a business fund.

Mr. Smith asked Mr. Robert Smith from the Economic Development Committee to report on this year's economic development compared to last year. Mr. Smith stated there are new businesses moving into the Township bringing in hundreds of jobs into Lower Makefield. He stated the real estate situation in Lower Makefield is better than in neighboring Municipalities as the inventory is lower, the prices are more stable, and the properties are on the market for less time than in Municipalities such as Upper Makefield. He stated the Federal programs have expired so they will have to watch this in the future.

Mr. Smith stated the new management team is very active in the community and are doing a lot of promotions and new programs.

Mr. Maloney stated despite the snow storms of the winter, the Township is now basically even on expenses other than the extra payroll. He stated last month, this was not the case; and he asked what has happened that has allowed the Township to neutralize the effect of the storms. Mr. McCloskey stated a number of items have come in under Budget including professional fees and overtime. He stated recording fees for the volunteer committees are also down significantly. Mr. Maloney stated on the revenue side they are down \$225,000, and \$100,000 of this is the deed transfer tax.

Mr. McCloskey stated interest income is down but added that interest expense is also down to an even greater amount.

Mr. McLaughlin stated they have not yet seen the real benefit of the re-financing, and Mr. McCloskey stated they will not see this for another two months. He stated this is for Golf and the Debt Service Fund. He stated debt service interest is down about \$15,000 over this same time last year.

DISCUSSION OF CONSIDERATION TO REIMBURSE ADMINISTRATIVE COSTS FROM THE GOLF COURSE

Mr. McCloskey stated the Board of Supervisors asked that this matter be considered, and he had asked Mr. Menard to be present this evening as the Citizens Budget Committee had discussed last evening the idea of an overhead charge from the Golf Course.

Mr. McLaughlin stated he had requested that this matter be put on the Agenda. He stated he feels there is a time and place when a project needs help from the Township and when they need to start to become like the rest of the Township business enterprises. He stated the Golf Course benefits not only from its current management team, Applied Golf, but also uses some services that the Township provides; and these services come at a cost. He stated over the past five years, the Township has agreed to tabulate this amount but not charge the Golf Course for that time and service which he feels was appropriate.

He stated he feels at some point they should bill the Golf Course for the services the Township is providing; and he has asked Mr. McCloskey and Mr. Fedorchak to come up with a fair and reasonable charge for the services that the Golf Course consumes.

Mr. McLaughlin stated this is not a punitive measure, but the other business funds do pay for these services; and since this is taxpayer money supporting the Golf Course, he feels it is time that the Golf Course pays its fair share. He stated he feels the Citizens Budget Committee is in favor of this.

Mr. Menard stated in July, 2009 the Citizens Budget Committee wrote a letter to Mr. Fedorchak outlining procedures on how to do this. He stated the Township already does a calculation for the Pool in the amount of \$100,000, \$250,000 for the Sewer, and approximately \$75,000 for Park & Rec. He stated they felt that at some point in time, the Golf Course should be charged its allocated costs of the Township administration. He stated they recognized that as a start-up entity, they require some additional time in terms of Township service. He stated in the long-term, once the Bonds are paid off, there should be funds which the Township could appropriate from the Golf Course and reimburse the Township for some of the investment up front. He stated it does not matter when they do this, and the Citizens Budget Committee was only suggesting that they keep track of the calculation so that at some point in time they can go back to Year 1 showing the charges over the course of time. He stated 2010 may be a good year to consider an amount to charge the Golf fund. He stated he feels they could wait until October when they have the full results from this season, and see where the finances of the Golf Course are. He stated they also need to consider the potential liability from the lawsuit and the potential for additional costs for the land and additional capital needs to maintain the Golf Course.

Mr. Maloney stated he agrees that the business entities should be paying their share of the Township costs. Mr. Menard stated he feels the Township is very conscientious about having the business entities being fairly charged. Mr. Maloney stated he would prefer that there be a policy decided before they look at the books for the Golf Course. He stated he does not feel they should be charged in 2010 since there is a new management company, and this would be changing their mandate mid-stream. He stated he would prefer indicating that beginning in 2011, the Board will begin charging whatever they feel is a proper allocation. Mr. Maloney stated he would like the Citizens Budget Committee to meet with the Golf Committee, Mr. McCloskey, and Mr. Fedorchak to discuss this matter. He stated it should also be remembered that the Township also uses Golf Course resources such as hosting free events for the Economic Development Committee, uses the Golf Course golf carts for a number of Township events, etc.; and payment needs to be going both ways.

Mr. Maloney stated many of the past Supervisors involved in this project in the late 1990s had indicated that once the debt was paid off, the Course was going to pay for the Park & Rec program; and while this is twenty years away, this seems to indicate that the Course will be a source of cash in the future, but today the Township cannot be a source of cash for the Golf Course. He stated if the Course is going to operate as its own entity, the cash flow in the future should be reinvested in the Course, and they need to consider this long term.

Mr. Menard stated there are capital requirements currently at the Course, and as the Course ages, there will be an increasing need for this in terms of refurbishment.

Mr. Stainthorpe stated one of the issues with the previous management company was that the Township Manager was spending an inordinate amount of time managing the Golf Course. He stated he would like them to go forward through this year and measure not only how the Golf Course does, but also how much time the Township Manager has to put against it. He stated he does feel they should start paying their share in 2011 and be on the same footing as the sewer system, Pool, and the other Enterprise Funds. He stated if Applied Golf does what they said they could do, the Manager's involvement should be less. Mr. Stainthorpe stated the promise made with regard to the Golf Course was that it would not take any taxpayer money, and it would be run from the income that it generated. He stated it is still owned by the Township and therefore by the taxpayers; and when they get to the point in the future to the extent that they can help fund Park & Rec, he feels this would be great recognizing that the first priority is to reinvent funds in an appropriate manner in the Course in order to keep the Course as a healthy business.

Mr. Smith asked if there is a defined Capital Reserve Fund now for the Golf Course, and Mr. Maloney stated they have a Cash Reserve; and if they need to take funds out of Cash Reserve to invest in repairs and maintenance they do so. He stated this was done in 2008 and 2009. Mr. Maloney stated this Cash Reserve is approximately \$200,000 per year. Mr. Smith stated he would like there to be a Capital Reserve Fund for the Golf Course which he feels is a better way to plan, and he feels they should have a policy in place. Mr. Maloney asked that the group consider this as well when they consider the amount to be charged to the Golf Course for Township administrative services. Mr. Maloney stated it may be best to set up an escrow account for the expenses as opposed to removing it from the cash flow of the Course. He stated when the debt service is less, the Golf Course could then pay off the debt to the Township very quickly.

Mr. Smith asked that they put together a policy within the next few months so that the Board of Supervisors can consider it at a future meeting.

Mr. McLaughlin stated he feels the management expenses on behalf of the Golf Course should be lower than those expended for Park & Rec and the Pool since there is a management team in place at the Golf Course.

Mr. McCloskey stated they do have a formula they use for the charge-backs to the Enterprise Funds. He stated last year with the transition, he and Mr. Fedorchak spent a lot of time on the Golf Course. Mr. McLaughlin stated he feels it should be future management use and not historical since that would be front-loaded.

Mr. Smith asked if there is a defined Capital Reserve Plan for the Pool, and Mr. McCloskey stated there is not. Mr. Menard stated they are considering this as well. Mr. Maloney stated the Golf Committee has put a lot of pressure on he and Mr. McCloskey to have a Capital Reserve Plan for the Golf Course, but there was not cash flow to fund it. Mr. McCloskey stated the Sewer Fund has a Capital Reserve that

has been in existence for a number of years. Mr. Smith stated he does not want any Board to be able to take funds from the Golf Course and put it toward other items in the Township and allow the Golf Course to suffer.

It was agreed that the group will report back to the Board of Supervisors with a proposed policy in August. Mr. McLaughlin stated he also feels there should be a capital reserve policy for both the Pool and the Golf Course. Mr. Menard stated the Pool previously had a Capital Reserve Fund; and Mr. Stainthorpe stated he feels those funds were used to make improvements at the Pool such as the slide, etc. Mr. Menard stated the Citizens Budget Committee would recommend that all of the Enterprise Funds have a Capital Improvement Fund so that there is a fixed, stable contribution to the Fund so that the Operating Budget is not going off course.

Mr. Harold Koopersmith, 612 B. Wren Song Road, stated the taxpayers also have to make good on the public employees pension. He asked if the stock market were to continue to fall will the taxpayers have to make this up again. Mr. McLaughlin stated every two years, the Township is assessed a contribution rate based on how the Pension Fund itself has done in those two years, and this contribution stays fixed regardless of whether the market goes up or down. Mr. Maloney stated next year, the Township will have to pay what they paid this year regardless of what happens since it is a two-year contribution. He stated the amount they are paying now assumes that they earn 8% return in that two-year period; and if they earn more than 8%, they will have a smaller contribution than they had in the prior years. If the earnings are less than 8% over the two years, the contribution will go up. Mr. Maloney stated currently they are still about 30% up from the asset value when they set the current contribution schedule, and in all likelihood the contribution will go down when they update the schedule again for 2012 and 2013. Mr. Koopersmith stated it may be time for the Supervisors to authorize a voluntary trust fund or endowment to supplement the Budget and not have to go through this on a meeting by meeting basis and see how much money could be raised in a trust fund or endowment and this money could be managed to supplement the Budget so that there could be money for ball fields, a Senior Center, etc.

**GRANTING OF EXTENSIONS – TRIOLO-FLOWERS FIELD AT YARDLEY
AND DOGWOOD DRIVE (A/K/A HARMONY LANE)**

Mr. Caiola moved, Mr. Stainthorpe seconded and it was unanimously carried to grant an extension to the following:

Troilo-Flowers Field at Yardley Preliminary Plan – August 20, 2010
Dogwood Drive (a/k/a Harmony Lane) Preliminary Plan – September 7, 2010

ZONING HEARING BOARD MATTERS

With regard to the Aron Galonsky, 1194 Waterwheel Drive, Variance request to construct a fence resulting in encroachment into a drainage easement, it was agreed that the Township would participate but not oppose.

With regard to the John Sherrard, 275 Daleview Drive, Variance request to construct an addition resulting in greater than permitted impervious surface, it was agreed to leave the matter to the Zoning Hearing Board.

APPOINTMENTS

Mr. Stainthorpe moved, Mr. Caiola seconded and it was unanimously carried to appoint the following:

- Michael Blank - Farmland Preservation
- Ellen Conoscenti - Historical Commission
- Scott Weaner - Reappointed to Citizens Traffic Commission
- Dennis O'Brien - Electronic Media Committee
- Geoff Goll - Reappointed to Environmental Advisory Council

SUPERVISORS' REPORTS

Mr. Caiola stated the Bucks County Performing Arts Society will have a Concert this Sunday in Yardley Borough. He stated the Citizens Traffic Commission addressed a number of citizen traffic concerns on 332, and one by Derbyshire and Big Oak.

Mr. Maloney noted a problem with the light at Quarry Road and Lindenhurst after 10:00 p.m., and Mr. Majewski agreed to look into this matter.

Mr. Maloney stated they are introducing a number of great youth programs at the Golf Course this summer.

Mr. McLaughlin stated the Citizens Budget Commission reports that there is progress in their discussions with the Senior Citizens group formulating the needs of the group in terms of a Senior/Community Center.

Mr. Stainthorpe stated the Electronic Media Committee met and discussed Comcast which will be discussed later this evening. He stated they are continuing to look at streaming video online on the Township Website.

Mr. Smith stated Ms. Helen Heinz has sent the Board a very detailed memo regarding the Satterthwaite property.

OTHER BUSINESS

Mr. Smith stated Mr. McLaughlin had raised the issue of access to professional services by the various volunteer Boards and Commissions. Mr. McLaughlin stated there were concerns with the financial constraints in this year's Budget; and he felt that other than Planning and Zoning which have their own legal representation, he feels all the Committees should follow the policy that if they want to utilize professional services, they need to work with their Board liaison and Mr. Fedorchak to get that approved, and that direct contact by any Committee member directly to that professional service should be avoided. Mr. Smith stated he agrees and feels these requests should come from the Chairperson of the individual Committee working with the Supervisor liaison and Mr. Fedorchak.

Mr. Maloney stated the Township sends their solicitor and engineer to the Planning Commission and the Zoning Hearing Board. He added because the Environmental Advisory Council has land use review and authority, he feels they need to fall into the same category as the Zoning Hearing Board and Planning Commission. Mr. Stainthorpe stated the Township does not send their solicitor to the Environmental Advisory Council, and the EAC reviews are not conducted at the EAC public meeting as typically they go out and walk the sites involved, and they then write their review. Mr. Maloney stated currently anyone on the Planning Commission can call the Township solicitor and engineer and ask a question, and there is not a process for that currently. He stated he feels this should be the same for the EAC.

Mr. McLaughlin asked how they would stop someone from utilizing the consultants in an irresponsible manner. He stated it could be possible that someone would contact the Township attorney and use an hour of his time without the Manager or Board liaison being aware of this; and the Township could be faced with a huge bill. Mr. Maloney stated he agrees that this is possible, and he feels the constraints should be put on all of the volunteer Boards and Commissions or not at all. Mr. Smith and Mr. McLaughlin agreed that this would be a good policy.

Ms. Torbert stated the Citizens Traffic Commission recognizes that they have to work through their liaison; and if they need to access professional services, they go through the Township. She stated she agrees with Mr. Maloney that the EAC's profile in the Township was enhanced several years ago, and they are an integral part of the Land Development process. Mr. Smith stated no one has indicated otherwise. Ms. Torbert stated because of this she feels it is important that the EAC has access to the professionals. She stated she does agree that the request for information should come

from the Chairman of the EAC but they should not have to go through their Supervisor liaison or Mr. Fedorchak for permission although she does feel they should copy the Township Manager. She stated she feels if the Board is going to make everything controlled in this fashion, it will cut down on the kind of independent advice that they would want to get. Mr. Smith stated he does not feel that this will cut down on the independent advice they would get from the professionals if they were to follow a procedure with requests made through the Township Manager before contacting one of the Township professionals.

Ms. Torbert stated she does not feel the EAC, Planning, or Zoning should have to clear asking simple questions of the professional staff through the Township Manager. Mr. Smith stated this is a management and budgetary consideration. He stated in the past when a policy was not in effect any member of any Committee could call the professionals about any aspect, and they wanted to have a procedure in place to be followed. He stated they are not saying that they cannot ask questions, they are just putting in place a policy for doing so. Ms. Torbert stated she feels the Planning Commission, Zoning Hearing Board, and EAC should be treated differently because they have a different role by Ordinance/Resolution.

Mr. McLaughlin stated the Board of Supervisors is responsible for the fiscal wellbeing of the Township on behalf of the taxpayers. He stated he does not feel the Board is fulfilling that mandate if they do not make sure that there is money in the Budget, and they are asking that the Committees work through their liaison and Mr. Fedorchak before they spend money on the professionals. Ms. Torbert stated she feels this is a dangerous precedent, and they are setting up a “gate-keeper.” Mr. McLaughlin stated by law the Board is the “gate-keeper.” Mr. Maloney stated he does not feel he should have to ask Mr. Fedorchak if he wants to talk to the professionals, and Mr. McLaughlin stated he would not. Mr. Maloney stated he feels they are creating too much bureaucracy, and Mr. McLaughlin stated they are trying to control spending.

Mr. Stainthorpe stated the intent when the policy was established was to not have anyone on any of the volunteer committees acting on their own and calling the Township professionals. He stated there are now over twenty volunteer Boards with five to seven members each, and they cannot have all of them going to the professionals. Mr. Maloney stated while he agrees with this, he feels each Supervisor is responsible enough to be the “gate-keeper,” and he does not want to have to delegate to Mr. Fedorchak his ability to ask the professionals a question. Mr. Stainthorpe stated this is not what is being requested.

Mr. McLaughlin stated he feels that since they are judging Mr. Fedorchak on how he is meeting the Budget, it is fair to ask him about the funds in the Budget and can they afford to ask the professionals a specific question. Ms. Torbert stated she feels that

Mr. Fedorchak has a tight rein on this. Mr. McLaughlin stated there was a problem and everyone agreed that people were having access to the professionals. Ms. Torbert stated she does not feel there is a problem any more. Mr. McLaughlin stated he wants to make sure that there is a policy in place. Ms. Torbert stated she still feels the EAC, Planning Commission, and Zoning should be treated a little differently, and the liaison should be given the authority to allow them to make this decision. Mr. Smith stated this is what they are indicating. He stated if he approves the contact as the liaison to a specific Board, he will just contact Mr. Fedorchak and let him know that he has given them approval to contact one of the professionals. He stated they are just trying to keep control over the costs, and he feels they will still be getting independent advice from the professionals following this policy.

Mr. Closser left the meeting at this time. Mr. Truelove joined the meeting at this time.

REVIEW AND APPROVAL OF COMCAST STIPULATION AND AGREEMENT

Mr. Robert Smith, Vice President Government Affairs for Comcast, was present. Mr. Truelove stated in the 1990's there was a substantial dispute between Comcast's predecessor, Lower Bucks Cablevision, and several resident groups in the Township which resulted in a Settlement Agreement which was signed in 1996. He stated in February, 2006, Ordinance 357 was enacted which modified the Settlement Agreement; and that Ordinance was in effect at the time the dispute took place that led to the matter this evening. Mr. Truelove stated in 2008 there was substantial testimony before the Zoning Hearing Board where a Decision was issued, and an Appeal was taken. He stated what they have this evening is a proposed Settlement Agreement which has gone through several iterations after discussions between the Township solicitor's office, the Township staff, and Comcast representatives including Mr. Robert Smith and their counsel, Mr. Garton.

Mr. Truelove stated there are some things that cannot be discussed this evening because they are litigation strategies which are not appropriate to disclose publicly. Mr. Truelove stated while this is an emotionally-charged issue, some statements were made previously about individuals insinuating that there were "back-room deals" or that certain individuals had some interest at stake; and he discouraged everyone from making any such statements.

Mr. Truelove stated 1996 the Settlement Agreement had certain provisions in general to the Township and some which were specific to Sandy Run. He read from the document which indicates that at the time Lower Bucks Cablevision agreed that in Sandy Run they would do the following: "attempt to canvass the residents concerning their wishes with respect to the construction of a 750 megahertz plant, and endeavor to construct a cable system consistent with the desires of the resident." He stated the words "endeavor" and

“attempt” do not require commitment and they are “best efforts language.” He stated there was also language which indicated that if Lower Bucks Cablevision were unable to obtain sufficient homeowners’ easements, they were able to place the pedestals in the rights-of-way. He stated everyone should be aware that the prior Settlement Agreement was not an ironclad commitment by Lower Bucks Cablevision to do certain things. He stated much of what is in the prior Settlement Agreement is what is being proposed in the Settlement Agreement being discussed this evening including blanket permitting process, upgrades, etc.

Mr. Truelove stated that while the 2006 Ordinance was passed prior to the time when he was the Township solicitor, he understands that it did go through the normal process, was advertised, and there was public discussion. It also grants the grantee, which is now Comcast, under the Cable Act a non-exclusive franchise which means others can use the right-of-way if necessary, “to construct and operate a cable system in, along, among, upon, across, above, over, under, or in any manner connected with public ways within the franchise area; and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across, or along any public way and all extensions thereof and any additions thereto such as poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, etc.” He stated this was the law that the Township was dealing with at the time of the Zoning Hearing Board Decision.

Mr. Truelove stated the Zoning Hearing Board Decision rested on interpretation of the Ordinance comparing it with the General Ordinance involving structures in rights-of-way; and there is a conflict between the Ordinances. He stated the more specific Ordinance, which in this case is the Franchise Ordinance, does allow under the language the pedestals to be constructed; and this was the difficulty the Township had at the time of the Zoning Hearing Board case. He stated if the Township would have to go through the Appeal Court, he feels it would be a very difficult argument to make since this is the Ordinance that was enacted by the Township. He stated the Zoning Hearing Board’s Decision with respect to Permitting was very strong in the language that they expressed.

Mr. Truelove stated he is very happy that Mr. Robert Smith is now involved; and feels that if he had been involved from the beginning, they would not be in the situation they are now in. Mr. Truelove stated he feels there was previously a breakdown in communication. Mr. Truelove stated the proposed Settlement Agreement, similar to the 1996 Agreement, calls for a blanket Permitting process. He stated they have also included, after negotiations with counsel for Comcast, the requirement noted in Section 6 which states “pedestals which will be erected pursuant to this Agreement shall be in compliance with all applicable Codes, nothing herein shall supersede the requirements imposed upon Comcast by the Franchise Agreement and/or Ordinance #357.” He stated it also indicates that upgrades which may include obsolete equipment, etc. require Permitting.

Mr. Truelove stated with regard to the notice requirements, he feels they could work out details with Mr. Smith under the blanket Permitting process as to notification of the various residents and developments when those Applications are made. He stated he understands that there may be some dissatisfaction; but based on the facts and the law, he feels they have negotiated a fair resolution of this matter. He stated he is concerned that if they had to proceed to Court and lost, they might lose some of the leverage they have. Mr. Truelove stated in the last several months, the discussions with Comcast have been much more positive.

Mr. Stainthorpe moved and Mr. Caiola seconded to approve the Agreement as currently written and authorize the solicitor and Township officials to sign the Settlement Agreement.

Some members of the audience asked for a summary of the Settlement Agreement. Mr. Truelove stated there are rigorous Permitting requirements for Comcast before they can erect or install pedestals, and they must submit complete and accurate Building Permit Applications on a development by development basis. He stated there are also requirements for what activities require Permits including road opening, upgrades, etc. Mr. Truelove noted paragraph 6 which references compliance with Ordinance #357 and other applicable governing laws. He stated he does not know of any other Municipality that has as rigorous oversight of this type of process as Lower Makefield does with this proposed Agreement; and many other Municipalities have no requirements. He stated the Township has been very diligent trying to work on this within the confines of the law.

Mr. Maloney stated Mr. Caiola, Mr. Truelove, and Mr. Robert Smith have done a great deal of work on this matter. He stated he also now understands that there are over above-ground pedestals within the area in question that were erected by parties besides Comcast including Verizon and PECO. He stated this issue was never brought up when this was at the Zoning Hearing Board.

Mr. Ron Smith stated he is concerned that the former solicitor for Lower Makefield was responsible for drafting the Ordinance, and he questions how the Zoning Hearing Board allowed someone to represent a client when that individual had drafted the exact Ordinance. He feels this was a conflict of interest. Mr. Maloney agreed and stated this was also true with regard to the Hospital.

Mr. Bernie Goldberg, 1304 University Drive, Sandy Run, stated in Sandy Run there are telephone and cable pedestals installed in the community but they are not in the right-of-way. He stated there is nothing else in the right-of-way in Sandy Run except a power pedestal at the corner of Yale and University Drive. Mr. Maloney stated they had heard continually through e-mails and at the Zoning Hearing Board that everyone other than Comcast could put their equipment underground, and this argument was not factual since there are other entities besides Comcast building things above the ground. He stated he

does recognize the comment made by Mr. Goldberg with regard to the right-of-way; but most of the comments they had heard from people did not make a distinction with regard to the right-of-way; but rather it was indicated that everyone besides Comcast puts everything under the ground, and this is not the case.

Mr. Robert Smith, 1476 Brookfield Road, Vice President Government Affairs for Comcast, stated he is responsible for six States and the District of Columbia. Mr. Smith apologized for the fact that they are currently in this position. He stated in 2007 in the course of upgrading the cable system, Comcast technicians installed pedestals throughout the Township without first obtaining Permits, and this was clearly inappropriate. He stated they also did not appropriately respond to very reasonable requests from the Zoning & Planning Department. He stated he was not involved in this, but went to his boss and asked to be able to get involved in this situation. He stated once the Zoning Hearing Board Decision was rendered, Comcast asked for a meeting, apologized for what happened, and presented a Plan that ultimately became the basis for this Settlement Agreement. He stated under this Plan they would respect the Permit requirements and would voluntarily come in and meet with Mr. Fedorchak before they did anything other than routine maintenance and repairs. He stated they have already done this on a few occasions recognizing that there has not been much construction in the Township.

Mr. Smith stated in order to keep up with advancements in technology, they do have to periodically upgrade the cable system. He stated they have tried to upgrade delicately in order not to exacerbate the situation. He stated they have upgraded all of the aerial plants which are the ones strung between utility poles on the main thoroughfares. He stated they have also upgraded the plant in the existing pedestals around the Township and upgraded the plants that exist in the rear yard easements and in some of the underground vaults. He stated there are approximately thirty nodes, and they have upgraded all but approximately three of them. He stated this does not mean that there are not portions of the Township that have not been upgraded. He stated they will not finish the Plan until they meet with Mr. Fedorchak to lay out a Plan. He stated once they finish, everyone in the Township will benefit.

Mr. Smith stated it should be noted that the 1996 Agreement has expired. He stated he has been in Lower Makefield for six years and has always heard and it was noted in numerous Township Minutes that all of the other devices are underground. He stated he had always heard that those opposed would only accept everything underground; and the first time he heard a distinction between this and the comment that the only problem was equipment above ground in the right-of-way, was last week at the Electronic Media Advisory Committee. He stated there are in fact various utility devices in the utility easements, in the rights-of-way, and huge cabinets mounted on utility poles at ground level in Sandy Run, in Lower Makefield, and in suburban Townships across the Nation. He stated this is what the right-of-way is for. He stated while he understands that there are some Township residents who would prefer that the devices be in a side yard utility

easement, they cannot assume that everyone feels that way. He stated not all of the utility easements are in the side yards, and many of them are in the middle of the front yard. He stated if that were his home where his children play, he would have a problem with this. He stated they are always willing to work with residents on a case-by-case basis to try to make adjustments, but sometimes these adjustments are not technically feasible because of the architecture of the plant. He stated if they were required to get resident input, he questions how many residents would be required to have input; and he questions what would happen if there was a dispute and how it would be resolved.

Mr. Smith stated they applied for Permits for seventy-two devices. He stated approximately ten of them were not put in; and all but three of them that were not put in were in Sandy Run. He stated if they could proceed without having to put these in, this is what they would like to do. He stated they would also be willing to talk to the residents, and if there is room to move them, they will do so; however, he feels codifying this in a legal document that would last for the length of the Franchise is not practical. He stated he feels the Settlement Agreement memorializes the Decision of the Zoning Hearing Board and incorporates the language of the Franchise Agreement which incorporates all of the Township's generally-applicable Codes – building, construction, safety, and fire.

Mr. Smith stated some of the criticism of the proposed Settlement Agreement was that it indicates that the Township “must” grant a Permit if Comcast applies for it; however, if you read past Section 5, it states in Section 6 “all pedestals constructed under this Settlement, must comply with all Codes and the Franchise Agreement.” Mr. Smith stated he believes that there are adequate protections. He stated the Township has, and is willing to exercise, their enforcement power which is why they are present this evening. He stated Comcast was issued a Cease and Desist Order, initially applied for Permits, and they were denied which required Comcast to go to the Zoning Hearing Board.

Mr. Smith urged approval of the Settlement Agreement which he feels reflects a good faith effort on the part of both parties to address issues that have come up and saves both parties lengthy and potentially costly litigation.

Mr. Caiola asked if the Comcast engineers look at every situation to see if there is an option to put something underground. Mr. Smith stated during the Zoning Hearing Board Hearings, there was an expert witness who was an executive from Motorola who sells equipment to Comcast, Verizon, and practically every other video provider in the Country, and he testified that Motorola never recommends that their electronics be installed underground. He stated all counsels present cross-examined this Witness who reiterated this on multiple occasions. Mr. Smith stated the reasons he gave for this were water, ice, and dissipation of heat. Mr. Smith stated the devices are watertight and not waterproof; and whenever these devices are opened, which they have to do to add, delete, and modify services, you run the risk of getting water in there. They also have to do normal routine repairs and maintenance and conduct certain tests under FCC standards.

Mr. Smith stated he read today on the Motorola website spec sheets on various pieces of equipment and the specifications for virtually every piece of equipment sold to broadband communications companies indicates that it is designed to be strand or pedestal mounted. Mr. Smith stated strand is the steel strand that runs between two utility poles and pedestals are above ground. Mr. Smith stated at the last meeting a member of the public discussed the situation in California, and Mr. Smith stated he worked for two years in California for Comcast immediately before moving to Lower Makefield; and their situation is very different. He stated in most of California there is no snow, very little rain, and very little temperature fluctuation; and there are some situations where the cable vendors do not follow the manufacturer's rules, but this is not advisable in an area like Lower Makefield where the weather fluctuates. Mr. Smith stated they do not choose pedestals over underground vaults because of cost; but rather they choose them because they provide the best opportunity to deliver advance services, and they are following the manufacture's recommendations for the utilization of the equipment.

Mr. Zachary Rubin, Chair of the Electronic Media Advisory Committee, stated at the Board of Supervisors' meeting held on April 21 he had asserted that at the Electronic Media Advisory Committee's January, 2010 meeting they had been assured by Mr. Smith, the Comcast representative, that they would not put any more pedestals above ground; and Mr. Rubin stated that after discussing this with Mr. Smith and checking the Minutes, this was an inaccurate statement and what was said was that Comcast agreed not to put in any more pedestals above ground while they continued to talk with the Township. Mr. Rubin stated he had also asserted that the above-ground pedestals are placed for cost-savings reasons since if the vaults were underground they could do the job but the repairs were higher; and Mr. Rubin stated this was a private opinion and not reflective of any testimony from the Committee. He stated Mr. Smith advised him that the testimony by the Motorola engineer before the Zoning Hearing Board contradicted Mr. Rubin's personal opinion.

Mr. Rubin stated at the last meeting of the EMAC they discussed the Stipulation Agreement and Mr. Smith made a presentation. After the presentation, the Committee voted to urge the Board of Supervisors to reject the proposed Stipulation Agreement as currently worded. He stated one of the reasons was that they felt that there was not enough language in the Agreement that was friendly to the residents of the community; and they wanted to see more language added. Mr. Rubin stated they wanted to have a meeting with the Township solicitor to discuss this, but were very cognizant of the professional fees being charged to the Township. He stated with the permission of their Liaison, Mr. Stainthorpe, they did communicate to the Township solicitor through e-mail and asked him to put into the Stipulation notification of residents as to the placement of pedestals in front of their homes. He stated they feel the way the Stipulation is currently worded, Comcast would go to the Township with a map indicating where it will be placed; and unless there is a Variance, the residents would not be notified. He stated they would also like there to be input by the residents as to where the pedestals will be placed.

Mr. Rubin stated they also believe that there should be a requirement to remove obsolete equipment. He stated at their meeting last week it was pointed out that in Sandy Run there is some equipment which was put in by the previous owners of the cable system that has never been removed. He stated they would like assurances that if the equipment is no longer being used, it will be removed at the company's expense. Mr. Rubin stated it was also noted that there are a number of problems with boxes/pedestals that are unlocked or damaged, and it is not known to whom they belong so they would ask that all pieces of equipment be labeled with a name and phone number so that a resident can report damage and expedite the procedures to fix it.

Mr. Truelove stated he did have an e-mail exchange with Mr. Rubin after he had a discussion with the counsel for Comcast. Mr. Truelove stated he felt that in the Permitting Application process, they could include a notification requirement. He stated he feels the problem with "obsolete" equipment is determining what is obsolete or not. Mr. Rubin stated he feels Comcast could make this determination. Mr. Truelove stated with regard to the labeling, the Township may consider making this a requirement in the Permitting process of all Applicants. He stated with regard to putting these items in the Stipulation/Agreement he is concerned that others may have more requests for inclusion, and they may never be able to get to a point where they have an Agreement that meets the overall goal.

Mr. Ron Smith stated he feels the suggestion with regard to labeling is an excellent idea. He stated at a previous meeting, Mrs. Goldberg complained about a hanging utility wire; and it took the Township about a week to determine who owned it. He stated once they found who the responsible party was, they had it removed. Mr. Truelove stated Comcast was able to help them determine that the owner of that wire was Verizon. Mr. Maloney stated he does agree that the Township should know who owns the boxes, and the Township should have a map identifying the owners. He stated he is concerned that labeling on the actual boxes could invite vandalism by someone who is angry with a specific company. Mr. Ron Smith stated he feels there are different ways of labeling that would not be conducive to vandalism. Mr. Robert Smith stated he would be willing to work with the Township on this, but he does not feel it needs to be part of the Settlement Agreement.

Mr. Caiola asked Mr. Rubin how much obsolete equipment he feels is in the Township that is not being used. Mr. Rubin stated there was testimony at their meeting last week that there are neighborhoods which have Lower Bucks Cablevision equipment, but he does not know the magnitude. Mr. Ron Smith stated there may be something in the Agreements or Ordinances that indicate that a successor company may be responsible for the removal of equipment owned by their predecessor. Mr. Robert Smith stated they would be willing to investigate any alleged safety violations, abandoned plants, etc. He stated there has been no evidence presented that this is a problem. Mr. Ron Smith stated they have been shown pictures in the past showing boxes with wires protruding.

Mr. Robert Smith stated the Verizon wire example just discussed was brought to Comcast's attention in July, 2008; and they responded within days to Ms. Frick that it was not a Comcast wire and it was Verizon's.

Mr. Bernie Goldberg stated he has been involved in this issue since 1994. He stated they have never indicated that they are against putting in cable boxes. He stated the problem they have is the cable boxes were installed in the right-of-way in front of their homes. He stated in the 1996 Settlement Agreement, they agreed that they could put in cable boxes – just not in the right-of-way. Mr. Goldberg stated in Sandy Run there are three cable boxes which have been installed in the right-of-way and one PECO power transformer in the right-of-way. He stated in their community even the power transformers are underground in the right-of-way which is very unique, and this is part of the issue.

Mr. Goldberg stated he is present on behalf of the Buck Creek Homeowners' Association which must exist by the Titles and Deeds of the properties in Sandy Run because the community owns a joint piece of property of eleven acres for which they are responsible to maintain and pay taxes. He stated all utilities in Sandy Run are underground including the electric transformers except for the one transformer at the corner of Yale and University Drive which was installed in the very late stages of the community. Mr. Goldberg stated they have very wide streets with relatively small lots especially in the front yard. He stated most of their lots are in the rear yards. He stated the utility right-of-way is between the sidewalk and the curb. He stated they cannot by Ordinance camouflage anything with landscaping that is put in the utility easement. He stated there are previous cable pedestals (bullets) in many of the back yards that are no longer functioning; and once they put the cable system in the right-of-way, they discontinued using those.

Mr. Goldberg stated this issue began when two boxes were put in front of his home by Lower Bucks Cablevision in 1994. He stated he contacted the cable company, and Ms. Brenda McCullough, General Manager, of Lower Bucks Cablevision indicated that they had the right to install those boxes; and there was nothing he could do about it. He stated the community fought for over two years about these above-ground boxes, and Ordinances were adopted restricting construction of any above-ground structure in the right-of-way. He stated this is all that this issue has been about. He stated the Township opposed the Cable Company and prevailed in a lengthy Zoning Hearing Board, and a Settlement Agreement was signed in 1996.

Mr. Maloney stated that Settlement Agreement does allow for construction of pedestals in the right-of-way if an agreement cannot be reached. Mr. Goldberg stated this is correct. He stated they are concerned about what this is doing to the community and what little control has been exercised over what has been going on.

Mr. Goldberg stated Section #321 states that they would try to keep it underground; and if they could not keep it underground, the cable company would work with the resident to try to get it out of the right-of-way. He stated it also stated that if they could not reach an accord with the resident owner, they could then put it in the right-of-way, which he felt was fair. Mr. Goldberg stated this agreement was with Time Warner. Mr. Truelove stated he feels that Time Warner wholly owned Lower Bucks Cablevision. Mr. Goldberg stated he feels Comcast acquired their Franchise from Time Warner.

Mr. Goldberg showed a picture of a box at 1161 University Drive/1167 University Drive which was installed last year. He stated it was installed between two driveways, and he is concerned that this is a safety problem. He stated he feels there were other areas where they could have put this box.

Mr. Goldberg stated during the Zoning Hearing process, the Township requested maps of where the cable boxes were in the community, and Comcast could not at that point provide maps of where anything was; and they did not know where everything was. He stated what has happened in the past is that subcontractors are hired, and they install these anywhere they want.

Mr. Goldberg showed a picture of a box at 1186 Temple Drive which he stated is in clear violation of any of the Zoning Ordinances, and the size of this box is not allowed. He stated he opened this box which was unlocked and inside the box were several batteries and a power supply, and he is concerned that children could get in this. He stated they reported this box being open, and it took over two months to get it locked.

Mr. Goldberg showed a number of other pictures of boxes which were not installed in the right-of-way; and it shows that people were able to camouflage these with landscaping.

Mr. Stainthorpe asked if these were Comcast boxes or Verizon boxes, and Mr. Goldberg stated all of them are Comcast boxes. Mr. Robert Smith stated throughout Lower Makefield Township and in Sandy Run, Verizon has some facilities underground and some in the utility easement. He stated there are some Fios terminations in above-ground housings that look like Comcast's. He stated he has not done a survey to tell if Verizon has theirs in utility easements or the right-of-way; but not all of the Fios devices are underground. Mr. Goldberg stated in Sandy Run the only thing in the right-of-way is a power transformer at the corner of Yale and University Drive and three Comcast pedestals on University Drive.

Mr. Goldberg noted a picture at the property of 501 Liberty Drive, of a Comcast vault outside of the right-of-way, and he asked why the pedestal was not put back with the vault.

Mr. Goldberg stated this has been going on unabated in the community. He stated they do not want this in Sandy Run, and they have fought this battle once before. He stated he was given a copy of the proposed Settlement Agreement before the April 21 meeting, and he learned this evening that there is another one from May 12 which he was not provided. He stated he had called Mr. Fedorchak and no one returned his call; and he feels he is being considered the “enemy” versus the Board of Supervisors. He stated they are a community of homes that has fought very hard to maintain their property values, safety, and aesthetics of their community. Mr. Smith stated he does not feel anyone on the Board of Supervisors is treating Mr. Goldberg like an “enemy.”

Mr. Goldberg stated when they went to the Zoning Hearing Board, they had grounds for an Appeal. He stated he had attended Zoning Hearing Board meetings for two years and had never before seen the Zoning Hearing Board ask the residents to leave and have a private conversation off the record with the petitioner, but it did happen. He stated the Zoning Hearing Board meeting was run by the Zoning Hearing Board Solicitor and not the Chairman of the Zoning Hearing Board. He stated one of the Zoning Hearing Board members also referenced the Contract to him before it had been introduced.

Mr. Goldberg stated he feels there were questionable ethics including the fact that the former Township solicitor represented the vendor in this issue. Mr. Goldberg stated he challenged this, and the Zoning Hearing Board solicitor ruled that it was not a conflict of interest. Mr. Goldberg stated he feels there were grounds for Appeal. He stated the Township also never really finished presenting its case.

Mr. Goldberg stated the Settlement Agreement they are trying to agree on indicates that Comcast can build within the right-of-way notwithstanding the provisions of Lower Makefield Township Ordinances. Mr. Goldberg stated it also indicates that Comcast agrees to submit Building Permits, Applications that contain a map with the address and location of where the pedestals are going to be, and a brief description of the size. It then states that the Township shall issue the Permit within fourteen days of receipt and shall not require Comcast to secure any further Permits, Special Exception, Variances or other prior approvals. He stated basically they have no right to appeal.

Mr. Ron Smith stated when you read the Settlement you cannot read just one provision without reading the other provisions in the Agreement. Mr. Goldberg stated he did read the whole thing as well as the Franchise Agreement which rescinds all of the prior Ordinances that are not in it prior to January 1, 1996.

Mr. Truelove stated it rescinds those that apply to the right-of-way issue; but does not rescind the General Ordinances. He stated it only rescinds the prior Ordinances that deal with this subject matter. Mr. Robert Smith stated it rescinds the prior Cable Franchise, and Mr. Truelove agreed. Mr. Goldberg stated this is not what it says.

He stated in the Franchise Agreement in the first paragraph it says, “It rescinds all of the Ordinances that effect construction in the right-of-way.” He stated therefore Paragraph 6 has “no teeth” because they have rescinded it in deference to the Franchise Agreement. Mr. Truelove stated this is incorrect. Mr. Truelove stated the Ordinance that was passed rescinds all prior Franchise Agreements and Ordinances that deal with the subject matter; however, they cannot rescind the General Ordinances that also apply otherwise in the Township.

Mr. Truelove noted the 1996 Agreement which indicated that with regard to Sandy Run Section 3.21 states that they will “attempt to canvass the residents concerning their wishes with respect to the construction of a 750 megahertz plant, endeavor to construct a cable system consistent with the desires of the residents in which a) the cable wires and pedestals are placed in the rear yards of residents’ properties; b) the cable wires are placed primarily in the right-of-way and pedestal boxes are placed in the front yards of residents’ properties, or c) to the degree practical a combination of a and b. The parties agree and understand that construction of a, b, or c if it is not possible without easements and releases acquired from the owners of the properties on which the pedestals are to be placed provided sufficient property owners easements and releases are required, LBC will attempt to construct one of the systems described in the paragraph.” Mr. Truelove stated if that does not work and they cannot “endeavor,” “attempt” or meet those other requirements, with all the different property owners, “LBC if they are unable to obtain the owners’ easements and releases within 90 days of the Agreement, the parties agreed that in Sandy Run, LBC may construct a cable system in which the cable wires are placed primarily in the right-of-way and pedestal boxes are placed in either the right-of-way or the front yard of residents’ properties.”

Mr. Truelove noted Section 3.24 which states, “The Township shall issue a blanket Sandy Run Permit within fourteen days of receipt of the Permit Application. The Township shall not require LBC to obtain further Permits, Special Exceptions, Variances, or other approvals for Sandy Run under the Zoning Ordinance or any other Ordinance. The Township will not deny LBC’s Application for blanket Building Permits for future construction on any ground including but not limited to issues of compliance with the requirements of the Zoning Ordinance. The Parties agree that upon approval of the Permit Application, LBC may go forward with its construction without further approval from or notice to the Township.”

Mr. Truelove noted Section 3.25 of the 1996 Agreement on Preservation of Rights: “As to pedestals to be placed in the future which are not part of the upgrade, new construction, future construction, or Sandy Run, the Parties agree that notwithstanding anything within this final Settlement Agreement, a) LBC expressly preserves all rights to contest or challenge the appropriateness, legality, applicability, or enforceability of any Permitting process, official action, or any Township Ordinance now in place or hereafter adopted on any ground now or hereafter available.”

Mr. Truelove stated what Mr. Goldberg claims this legal document says, is not what the document says. Mr. Goldberg stated until 2007 it worked. Mr. Toadvine stated if he had to defend the Agreement before it expired, he would have had no more success defending it than he did before the Zoning Hearing Board. Mr. Goldberg stated it worked for them in Sandy Run. He stated he has now shown pictures from their community which show that it is a “run-away train” with no oversight. He noted particularly the emergency supply in the right-of-way which is in clear violation of the sizing constraint in the Township’s Zoning Ordinances. Mr. Truelove stated based on what he knows of the Ordinance, it does not violate the Ordinance with respect to structures. Mr. Truelove stated the prior Agreement which Mr. Goldberg relied on did not give them any more rights, and he feels even less rights, than what they are considering this evening. Mr. Goldberg stated he feels it is embarrassing what the Township has allowed to happen.

Mr. Ron Smith asked how recent were the boxes placed to which Mr. Goldberg is objecting to, and Mr. Goldberg stated all of the boxes that are in the right-of-way are part of the upgrade and the tall, light green ones are recent. Mr. Smith asked Mr. Goldberg if it is his understanding that all of the boxes are Comcast boxes, and Mr. Goldberg stated all the ones he showed pictures of are Comcast boxes. Mr. Smith asked if the property owners which have those boxes have Comcast service, but Mr. Goldberg stated he did not know. Mr. Smith asked if someone wanted to switch from Comcast to fiber optics, what would happen to the Comcast box. Mr. Goldberg stated as he understands it, the location of the cable box has nothing to do with that residence’s service, and it is because it is either a booster or some kind of distribution panel so it would not move. He stated he feels the penetration of Comcast customers in Sandy Run is not as high as it is in the rest of their system; and because of this issue, a vast majority of Sandy Run has moved to Verizon or Dish. Mr. Smith asked if that is correct and the vast majority of the residents in that area have gone somewhere else, why is the box still there; and he asked if there is any obligation on Comcast to remove them. Mr. Maloney stated this is a utility, and the purpose of them being in business is to offer a service. Mr. Goldberg stated no one is trying to constrain a service being provided to the community by a competing or alternate vendor. He stated in the past Comcast was not a good neighbor and has not respected what they are doing to Sandy Run.

Mr. Maloney stated a number of those boxes that have been erected were erected years ago when Lower Bucks was in the Township, and they are providing a business function.

Mr. Harold Koopersmith reported on a bill dispute he had with Comcast when he switched to Verizon. He stated both Verizon and Comcast are arrogant and both bait and switch on their advertising and marketing.

Mr. William Garner, 1503 Yale Drive, stated he is an engineering consultant who has been designing amplifiers for almost forty-seven years. He stated the Motorola amplifiers have a temperature range up to 140 degrees and should be able to work in an insulated box without burning up. He stated he has been advised by a competitor that he had seen Motorola amplifiers underground and working underwater for two weeks. He stated some of the Comcast boxes are not amplifiers but rather splitters and will serve more than one home and they have a long cable run. He stated Verizon uses armor cast boxes not plastic boxes like Comcast uses.

Ms. Sandy Goldberg stated in the late 1970's Lower Bucks Cablevision put structures in the rear yards. She stated in 1996 they received letters that everything was being moved to the front. She stated they still have the "bullets" in the back yards which she feels are probably not being used. Ms. Goldberg stated she attended the Electronic Media Committee meeting where Mr. Robert Smith was present. She stated she feels the Township needs to develop rules that indicate that if there are going to be structures they should have a plan, and it should be safe for children playing in the area. Mr. Ron Smith stated he does feel they need to have a plan and the first thing they need to do is determine who is responsible for all of these structures so they can call someone if there are problems that need to be resolved. Ms. Goldberg thanked the Electronic Media Committee for recommending that the Agreement not be approved as written. She stated Mr. Robert Smith stated at that meeting that it is not realistic for a large corporation to know or understand all the Codes and Ordinances of all the Townships where they do business. She stated the Ordinances and Codes are why the residents moved to Lower Makefield, and they provide safety and protect the property values. She stated she feels it is the responsibility of the large corporations to understand those rules. Ms. Goldberg stated as their customers, Comcast should try to please them. Ms. Goldberg stated Mr. Smith also discussed how fast they reacted when any resident called Comcast if a snow plow, lawn mower, bike, or car broke any of their structures. Ms. Goldberg stated she feels this proves her point that these structures need to be set back away from the sidewalks and away from where children play because they are hazards. She stated if there is nothing in the Agreement that says this, they need to include it.

Ms. Laurie Procera, 1236 University Drive, stated years ago when there was a previous change, she did receive a letter from the cable company indicating that there were going to be changes and new boxes placed; and if she had any questions or concerns about where the box was going to be located, she could call the number provided. She stated she did call the number provided, and the individual looked at a chart and indicated her address was not involved. She asked if it is possible to do this again and have them send out letters to the residents so that the residents can make a call and take some responsibility. She stated the boxes are ugly, and she asked if there was not some way to camouflage them if they have to be in the right-of-way. Ms. Procera stated she agreed that they may not want to put labels on the boxes because someone may have a problem with an individual company, and she suggested that the boxes be numbered and the

Township have the code. She stated she has a telephone box between her and her neighbor's property outside of the right-of-way, and her neighbor covers it with a bush so it is not offensive.

Mr. Rich DiLullo stated he has lived in Sandy Run for thirty years and one of the selling points was that there were all underground utilities. He questions how they could go nearly forty years with all underground utilities; and yet with all the advances they have, these have to be above-ground boxes.

Mr. Howard Greenberg, 1212 University Drive, stated if there are technical solutions to this problem, he feels they should look into them rather than looking at an obsolete 1996 document. He feels they should be able to put these underground.

Mr. Mark Edelman, 1306 University Drive, stated Mr. Robert Smith indicated that one of the things they were upgrading were the underground vaults; and he asked why they cannot have all underground vaults. Mr. Smith stated their cable system is based on Motorola distribution equipment, and Motorola does not recommend that their equipment be placed underground. He stated if they do not follow the manufacturer's standards, you run the risk of failure. He stated possibly they could last underwater for two weeks, but he questions what would happen after two weeks. He stated their primary concern is water ingress, freezing, and the fact that they are water tight and not waterproof. He stated in the interest of trying to mitigate this problem, they have tried to upgrade around Comcast's desire to move everything out of the rear yards and put them in the right-of-way which is their preference. He stated they would also like to take the vaults they do have and turn them into pedestals because the pedestals provide them with the best opportunity to provide advanced services and have system reliability. He stated he understands that the residents would prefer that the pedestals be in the utility easements and not in the right-of-way; and where possible, they will do this, but this is not always possible based on system architecture. Mr. Smith stated he feels people think they are seeking approval for a big project, but they are not. He stated this Settlement Agreement is seeking to remedy problems that were caused in 2007 which have been corrected, and this memorializes the remedy. He stated the majority of the pedestals that they planned to put in were adequately Permitted with detailed maps, and they received those Permits. He stated there are only a handful that they stopped work on. He stated there are three in Sandy Run and seven throughout the rest of the Municipality.

Mr. Robert Smith stated they understand that the people do not want them to convert the vaults to pedestals, but they have to keep the system running and make upgrades in order to deliver advanced services. He stated they are launching 3D and more On-Demand movies. He stated the vaults are not the way to go and the engineer from Motorola indicated a number of times under oath at the Zoning Hearing Board meeting they never recommend that this equipment be used underground. Mr. Smith stated they want to take them out of the ground and put them into pedestals. He stated he is not an engineer and is

not qualified to debate the engineering design. Mr. Smith stated all of the companies use above ground and below ground, and Comcast has made the decision that the vaults are not the way to go for the Motorola electronic equipment; and they were in the process of converting them all to pedestals, and since they previously made mistakes about how they went about this, they stopped doing it. He stated they had to continue working on the cable system in order to keep it running and upgrade. He stated the underground vaults are not acceptable, and do not meet manufacture's standards for how to use the equipment.

Mr. Edelman stated he felt when Mr. Truelove read the Agreement that there were different requirements for different neighborhoods; and Mr. Truelove stated what he indicated was that similar to the 1996 Agreement, every time an Application is made for upgrades or any type of work in a development, each development will be identified, and one Permit is to be issued if other requirements are met in the Application. He stated they have to identify the different locations in that development, the addresses, and the work to be done. He stated if the information has been verified as adequate, which lately it has been, the Permit will be issued. He stated this is practical for the Township, the residents, and Comcast since this allows them to work in an organized, cohesive way. He stated it is the same process for each neighborhood and not different from neighborhood to neighborhood.

Mr. Stainthorpe stated there is a group from a neighborhood present this evening that is clearly passionate about this issue, and he does not question their sincerity. He stated while it would be easy to tell the residents that they are going to continue to fight this, the Board must look out for the interests of all the Township residents. He stated this is a legal matter and not a discussion of Comcast technology. He stated the Township does not have the right to tell them what kind of technology they have to use, nor can they tell Verizon, PECO, etc.; and they just grant them access to the right-of-way. Mr. Stainthorpe stated there is a legal document that a previous Board voted to approve and was signed. He stated the Board does not have an opportunity to change that document until it expires in 2016 when they will have an opportunity to renegotiate. He stated the Settlement they are considering is for a specific Court action. He stated he does not feel they can win this as they cannot Appeal their own Ordinance. He stated this is a financial and legal matter, and he cannot justify spending thousands of dollars fighting this further. He stated he feels this is a good Agreement, and he feels the Township and citizens are protected; and he will vote to approve it for those reasons.

Mr. Ron Smith stated he would like to offer an Amendment to the Motion. He stated Comcast has indicated that they are going to do their best to work with the residents. He stated many Contracts he has seen over the years have a "best efforts" clause which would encompass what Mr. Robert Smith has indicated they would do.

Mr. Smith moved to amend the Motion to include that they would do their best efforts, within reason, to satisfy the homeowner as to the location of the pedestal box where possible and to remove any and all abandoned equipment.

Mr. Smith stated this language could go in paragraph 1, 2, or 6 of the proposed Agreement.

Mr. Stainthorpe stated there was similar language suggested by the Electronic Media Advisory Committee, and Mr. Truelove had indicated that it did not have any “teeth,” and this amendment seems to suggest the same thing. Mr. Stainthorpe asked if this would be appropriate in a Settlement Agreement. Mr. Truelove stated this would be similar to what was in the 1996 Agreement where they used terms such as “endeavor” and “attempt.” He stated it does show good faith, but he does not feel they could compel someone to do something based on this.

Mr. Truelove stated both Mr. Stainthorpe and Mr. Caiola would have to accept this Amendment.

Mr. Stainthorpe stated if Comcast is not agreeable to this, they would have to start all over, and he questions if this really has any “teeth” that would make the citizens better off. Mr. Truelove stated the language itself expresses an intent but does not express a commitment.

Mr. Robert Smith stated he appreciates the thoughtfulness and effort put into this by all parties. He stated he would like to have this matter resolved, and he is concerned about the language because he believes it creates unreasonable expectations. He stated he understands the sincerity with which Mr. Ron Smith has offered this; but noted there are 10,000 households in the Township most of whom are not present because they do not see this issue in the same way that the Sandy Run residents see it. He stated if they open the door for residents to believe that they have a say as to where a telecommunications network can place its devices, they may be disappointing people. He stated in this instance, resolving Comcast’s failure to obtain Permits in a timely manner, there are only a handful of proposed devices that have not yet been built. He stated he is not sure that they will get to those; but if they do, that would be the context where they would be comfortable in working with those homeowners to resolve the placement there. He stated he is concerned that people may take this language being suggested in ways that was not intended, and he would not want to create any further disappointment.

Mr. Ron Smith stated he understands this point but wanted to try to make a good faith effort to resolve the problem and bring the two sides together.

Mr. Robert Smith stated Mr. Truelove has done an excellent job. He stated the Franchise document is the controlling document in the relationship between the Municipality and the company. He stated the only thing the Ordinance supersedes is previous Cable Franchises. He stated Ordinance #357, Section 2.4 is the most applicable clause. He stated it states, "Nothing in this Franchise Agreement shall a) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, b) be construed as a Waiver of any Codes or Ordinance of general applicability promulgated by the Franchising Authority, or c) be construed as a Waiver or release of the rights of the Franchising Authority in and to the public ways." Mr. Smith stated he feels this is the language that gives the Township the ability to enforce what is constructed. He stated the language in the Settlement Agreement is about process. He stated where it states, "requires no further Permits," it means that they have decided that they are going to do this by Subdivision and not make them come in with fourteen separate documents for fourteen pedestals.

Mr. McLaughlin asked if they could put stipulations in the Permitting process on a specific Permit that requires Comcast to move or relocate a pedestal based on feedback from a disgruntled resident. Mr. Truelove stated if it does not meet the Ordinance requirements or there are safety reasons, this would be possible; but they would have to review this on a case-by-case basis. Mr. McLaughlin stated he feels the Permitting process is when the Township protects the citizens; and Mr. Truelove agreed and stated this was always the case and the Zoning Hearing Board recognized this and strongly came down on the side of the Township with respect to Permitting, and this is also reflected in the Settlement Agreement. Mr. McLaughlin stated the Township can deny a Permit if something is wrong or they do not feel it is appropriately protecting or representing the wishes of the Township, and Mr. Truelove stated this is correct if the standards are met. Mr. Maloney stated this would be true if it were an engineering or safety issue. Mr. McLaughlin stated he feels they are protected through the Permitting process. Mr. Truelove stated if the Applications for Permits had been properly submitted, they would not be here this evening. He stated this would also have been the case in 1996 with that Agreement as well.

Mr. Goldberg stated when this started Comcast put notices in 102 locations in Sandy Run.

Mr. Rubin stated Mr. Smith made a Motion to amend the Motion that was on the floor; and if it was properly Seconded, this is a subsidiary Motion that does not need the maker of the original main Motion for permission nor the second. Mr. Truelove stated there was no second. Mr. Smith asked if there was a second to his Amendment, but there was not.

Mr. Smith stated there is a difference between the Board of Supervisors and the Zoning Hearing Board. He stated the Board of Supervisors has no control over the Zoning Hearing Board other than appointing the members. He stated at the Zoning Hearing Board both the Township and the Buck Creek Homeowners were Parties of interest and they were able to participate in the proceedings. Mr. Goldberg stated Buck Creek Homeowners Association was never a Party, but there were a number of individual participants who signed on as Parties. Mr. Smith stated Mr. Goldberg previously indicated that if he had known that the Township was not going to do certain things, they would have followed through with their Appeal. Mr. Smith stated recently there was another group that had asked if the Township would represent them if they were Appealing a Zoning Hearing Board matter, and he advised that group that the Board would protect the interests of the Township, and while sometimes this may coincide with the interests of a particular group which has Party status, sometimes it may not. He advised the group that they could not count on the Township to do everything they want them to do; and if they wanted to file an Appeal, they must do so. Mr. Smith stated he feels that in the Comcast matter there appeared to be some miscommunication between Mr. Goldberg and some other Parties as to whether or not the Appeal was going to be followed through and how far.

Mr. Goldberg stated he had multiple conversations with Mr. Truelove who indicated he represented the Township but also told him that he would keep him informed, and he would be “the second person” to know if anything changed. He stated if the residents needed to represent themselves, they were prepared to do that.

Mr. Smith stated he wants to make sure that those who have Party status follow through with their Appeal if they feel there are issues to Appeal. He feels in this case, there was miscommunication; and if Mr. Goldberg knew this was going to happen tonight, he would have filed through with an Appeal. Mr. Smith stated he is therefore going to vote against the proposed Agreement because the language he suggested in his Amendment was not seconded. He stated this has nothing to do with the work that was done by all involved which he feels was good.

Mr. Maloney stated the issue has been whether it was an above ground or below ground issue; and what he heard in all the comments other than the Goldbergs was an assertion that these should be below ground; and the residents keep asking why they cannot be put below ground. Mr. Maloney stated this is not a Comcast issue, but is an issue among all the utilities in that neighborhood and in the Township as they are all above ground in at least part of their network. Mr. Maloney stated with regard to the engineering he stated you are to follow the manufacturer’s specifications; and for anyone to assert otherwise as being an acceptable way of doing business is not how most engineers in business feel.

Motion carried with Mr. Smith opposed.

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There being no further business Mr. Caiola moved, Mr. Stainthorpe seconded and it was unanimously carried to adjourn the meeting at 11:10 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

**MAY 2010 WARRANT LISTS AND
 APRIL 2010 PAYROLL COSTS FOR APPROVAL
 MAY 19, 2010 BOARD OF SUPERVISORS MEETING**

05/03/10 Warrant List	\$	435,158.52	
05/17/10 Warrant List		330,291.88	
Manual Checks:	05/03/10	1,102.00	
	05/17/10	39,732.49	
	05/17/10	100.00	
Total Warrants & Prepays			\$ 806,384.89
PAYROLL COSTS:			
April 2010 Payroll		420,634.59	
April 2010 Payroll Taxes, etc.		215,155.95	
Total Payroll Costs			\$ 635,790.54
TOTAL TO BE APPROVED			\$ 1,442,175.43

