

TOWNSHIP OF LOWER MAKEFIELD
BOARD OF SUPERVISORS
MINUTES – SEPTEMBER 2, 2009

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on September 2, 2009. Chairman Maloney called the meeting to order at 7:35 p.m. noting that the Board met in Executive Session prior to the meeting to discuss legal and Zoning matters. Mr. Caiola called the roll.

Those present:

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

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

PUBLIC COMMENT

Ms. Helen Bosley, 546 Palmer Farm Drive, stated she was unable to attend the entire meeting of the Board held on August 19 and understands that a statement was read into the Minutes by Mr. Truelove at the end of that meeting. She asked that Mr. Truelove reread the comments and explain the nature of the comments. Mr. Truelove re-read the comment from the 8/19/09 Board of Supervisors Minutes (page 40 of 40 under Other Business) with regard to the Frankford Hospital Zoning Hearing Board process. He stated the purpose of the statement was to demonstrate that while the Board of Supervisors has the right to oppose the Application at the Special Exception process, if the matter goes to Land Development, the Board of Supervisors will have the responsibility to review it. He added the point was that the Board of Supervisors has not stated any position with respect to the Land Development process since they are not at this point yet, and therefore has not taken any position which would jeopardize the opportunity to take a position if and when it gets to that point. Ms. Bosley stated the Board of Supervisors voted unanimously to oppose the Special Exception, and Mr. Truelove stated this is correct; and the Board has the right to take a position on that discreet issue. He stated if the matter goes beyond that issue, there are different issues presented; and the process changes so that the position of the Board of Supervisors in the Special Exception process should not be taken as an indication as to how the Board may proceed further.

Ms. Bosley stated Mr. Maloney indicated that in Executive Session this evening, the Board discussed legal and Zoning matters; and she asked if one of the Zoning matters related to Frankford Hospital. Mr. Truelove stated it did not.

Ms. Bosley asked if Mr. Truelove is indicating that it is inappropriate for a Supervisor to specifically make comments outside of the nature of what Mr. Truelove has indicated that the Supervisors unanimously approved. Mr. Truelove stated an individual Supervisor does have the right to make certain statements; however, what an individual Supervisor says at a different time is not necessarily binding on the entire Board and does not represent the sentiments of the entire Board with respect to a specific issue.

Ms. Bosley stated since this is a contentious issue, she was concerned that the statement was made at the end of the night. Mr. Truelove stated the statement was made at the point on the Agenda near the Zoning Hearing Board issues the Board was considering so that it was an appropriate time to make the statement. Ms. Bosley stated because the Frankford Hospital issue is a contentious issue within the Township, consideration should be given by the Board of Supervisors to bring that Zoning portion of the Agenda to the front. Mr. Truelove stated the Zoning Hearing Board matter with respect to Frankford Hospital has concluded and the attorneys are preparing Findings of Fact and Conclusions of Law. The Zoning Hearing Board will make its determination, and the Parties will have the right to take whatever appropriate steps they feel they have to. Mr. Truelove stated he does not feel there is anything further with respect to the Special Exception that the Board will have to discuss publicly.

Mr. Gene Heeber, 134 Old Oxford Valley Road, stated he is involved with the road being moved with respect to the Matrix project. He stated he is not against Matrix or the development, but he is concerned with the potential for water problems. He feels the developer is proceeding too fast and has indicated they are proceeding in a certain way and will correct the problems after it is done which Mr. Heeber does not feel is the appropriate way to proceed. Mr. Heeber stated he has discussed this with Mr. Majewski who has addressed some of his concerns. Mr. Heeber stated there is a pipe that needs to go across the road and the original pipe is collapsing. He stated the surveyor has indicated they are going to add a pipe on the end and not going to replace the old pipe which is collapsing. Mr. Heeber stated on the other side, they are dumping all of the water on the Heeber property. Mr. Heeber provided pictures to the Board this evening.

Mr. Majewski stated there is a problem with the drainage, and he has met on site with Mr. Heeber, Mr. Hoffmeister, and representatives for Matrix to see what can be done. Mr. Majewski stated Matrix advised today that they did not feel they could do certain things, but Mr. Majewski stated he plans to look at this further to see if there is a solution that all could agree on.

Mr. Heeber stated Matrix owns the property on both sides of the road and he is asking that they not dump the water on his property and that Matrix keep the water on their own property since they are making the changes. Mr. Heeber stated they have raised the road, and the grade is all pitched to the Heeber property. Mr. Maloney asked if the grading is

consistent with the Plan; and Mr. Majewski stated it is consistent with the Plan; however, they need to modify the Plan somewhat.

Ms. Suzanne Curran, 930 Piper Lane, stated she visited the Boxwood Farm Subdivision which is being developed on Oxford Valley Road on which there is an existing historic stone home. She stated when she was on the Historic Commission three to four years ago, they worked to preserve this home; and she noticed that the home is being completely left to rot. She stated the doors are hanging open and the rear of one part of the home has been chopped off and is open to the elements. She stated it does not appear that the developer, Joe Marrazzo, is doing anything to try to save the structure.

Mr. Stainthorpe stated the developer is required under the Development Agreement to save the structure, and there are penalties in place if he does not do so. Mr. Maloney asked that Mr. Habgood be asked to check the structure from a Code Enforcement perspective. Mr. Fedorchak stated he believes that the bond that the developer posted covers in part the work that the developer has to do on the house.

APPROVAL OF MINUTES

Mr. Caiola moved, Mr. Smith seconded and it was unanimously carried to approve the Minutes of August 19, 2009 as written.

APPROVAL OF JULY 20, AUGUST 3, AND AUGUST 17, 2009 WARRANT LISTS AND JULY, 2009 PAYROLL

Mr. Stainthorpe moved, Mr. Caiola seconded and it was unanimously carried to approve the July 20, August 3, and August 17, 2009 Warrant Lists and July, 2009 Payroll as attached to the Minutes.

DISCUSSION OF PROPOSED SALE OF ELM LOWNE

Mr. Truelove stated the Elm Lowne Committee has met for quite some time to discuss available options with regard to this property. He stated Ms. Stark and Mr. Calabria specifically worked on issues related to the potential sale of Elm Lowne and drafted a Façade Easement which would be appropriate to consider if the Township at some point in the future decides to proceed with the sale of Elm Lowne. Mr. Truelove stated the Second Class Township Code does allow for the sale of property owned by the Township provided it is in excess of \$1,500. Mr. Truelove stated under the Second Class Township Code there are three basic ways real property can be sold: public bid, public auction, or conveyance to certain entities such as non-profits or other qualified entities under the Second Class Township Code which would not require the public bid or public auction

process. He stated the Elm Lowne Committee did a commendable job putting together some of the conditions that would go with the sale to preserve some of the historic aspects of the property and any potential buyer would have to be advised of these issues going forward. He stated these specifically relate to preserving the façade and the historic nature of the structures which are visible from the street.

Mr. Stainthorpe asked if the Township has received an appraisal, and Mr. Fedorchak stated he anticipates receiving the final appraisal next week. Mr. Stainthorpe stated until they have the appraisal, he does not feel they should take any action. He stated he feels putting the property up for sealed bids is the proper way to proceed as this is the way the Township purchased it. He stated he has reviewed the proposed Façade Easement and feels it may be too restrictive and may discourage potential buyers.

Mr. Maloney stated he does agree they need to thoroughly review the Façade Easement. Mr. Maloney stated much of it seems to involve materials and technique. He asked if the authority in terms of the judgment of those items will fall back onto the Board of Supervisors or the Historic Commission; and Mr. Fedorchak stated the way it is currently structured, it would be run through the Township Zoning Department and treated like any other Permit, and the Façade Easement would be the standard the Zoning Department would be using to determine what would be appropriate. Mr. Maloney stated if the Zoning Officer makes a determination that what is proposed in the Permit is not in accordance with what has been referenced in the Easement, the Applicant could request a Variance which would be a Zoning Hearing Board matter, and Mr. Fedorchak agreed.

Mr. Smith stated the Elm Lowne Committee does not want to see with this property what has happened with other historic properties in the Township which they refer to as “demolition by neglect.” He stated he hopes that this matter will be put on an early, future Agenda no later than October. He stated it is his understanding that both the Elm Lowne Committee and the Historic Commission are in favor of the sale of the property as they feel that the property in the right hands will be kept in better condition than it is today. Mr. Smith stated there is also some concern as to where the proceeds from the sale of this property will go. He stated he understands that there will be savings in costs to the Township after the sale, but they also need to know where the proceeds from the sale will be utilized. Mr. Maloney stated he understands that there is a debt which would first need to be paid down, and Mr. Fedorchak stated this would be approximately \$400,000.

Mr. Maloney asked if there is a reason why oversight for the Easement could not be directed to the Board of Supervisors, and Mr. Truelove stated the Board of Supervisors would only have the right to do Conditional Use oversight as the Municipalities Planning Code which governs Zoning matters, reposes the right in the Zoning Hearing Board for Variances. He stated the Board of Supervisors does from time to time oversee Conditions on Plans. He stated he could look into this further to see if there is a

mechanism in place for the Board of Supervisors to have oversight. Mr. Stainthorpe stated they did have some experience recently with the old Yardley house on Dolington Road when Façade Easements were put in place during the Land Development process. He stated he recalls that when they wanted to make some modifications to the house, they did come before the Board of Supervisors, but this was probably related to the Land Development; and Mr. Truelove agreed. Mr. Stainthorpe stated in that case, the process worked well as they maintained the character of the house, and the owners were able to do the expansion they were looking for. Mr. Maloney stated he feels the Board of Supervisors may be in the best position to make the right compromises rather than having it fall to a specific Committee which may have a more narrow focus.

Mr. Maloney stated even if they do not have the appraisal before September 16, he feels the Board can still discuss the Easement at the next meeting. Mr. Truelove stated he assumes the Board is asking that his office find out if there is a mechanism that allows the Board of Supervisors to have oversight prior to September 16, and Mr. Maloney stated this would be appreciated. Mr. Maloney asked that the Board review the proposed Easement as well as the one from Montgomery County which was used as an example. Mr. Fedorchak also suggested that Ms. Stark attend the Board meeting on September 16. Mr. Smith asked that the Board also discuss at that meeting where the proceeds will go if the property is sold recognizing that the debt will need to be paid off first. He stated he feels some of the members of the Elm Lowne Committee and the Historic Commission were hopeful that net proceeds could go toward maintenance of some of the other Township properties. Mr. Maloney agreed this could be discussed, but reminded that the Board had an in depth discussion at the last meeting about what the Board can and cannot do in terms of binding itself to doing anything in the future.

Ms. Helen Bosley stated she believes the Elm Lowne property is six acres, and Mr. Fedorchak stated it is between eleven and twelve acres. Ms. Bosley asked if there is value for the Township to subdivide this property. She stated in this way rather than having a family that wishes to live in a historic building saddled with eleven acres, possibly there is a parcel they would like to have that does not include excess acreage; and the property could then be subdivided so that perhaps two to three lots could be developed with additional homes built.

Mr. Smith stated he sat through the Elm Lowne Committee meetings, and he does not feel they had any intent to subdivide the property, and the consensus of that Committee was to keep the property in tact and maintain its integrity after the sale. He noted this is not binding on the Board of Supervisors.

Ms. Bosley stated some of the land in the front of the house closest to I-95 consists of a huge parking lot, and the beauty of the property is the buildings that are lower than the parking lot. She does not understand the value of the two acre parking lot.

Mr. Maloney stated no matter what is done with the property, even if it were subdivided, they would need to take up the asphalt and gravel and restore soil. Mr. Maloney stated he feels the value to the Township is in preserving a parcel that large to the extent they can by deed restricting it, and he would be in favor of restricting the deed so that it cannot be subdivided in the future. He stated he is not interested in an additional \$100,000 to \$200,000 as opposed to preserving this large parcel.

Mr. Stainthorpe stated that once the Board discusses what they want to do with the property, he feels all options should be discussed. He stated he feels the engineer should look at the property so that they are in position to consider how many lots they could get and how much it could yield financially so that the Board can consider if it is worth it or not to subdivide the property. Mr. Maloney stated his opinion is that there is no dollar amount that they could get which would be worth subdividing the property.

Mr. Fedorchak stated they have had the Township engineer look at the possibility of parceling out a two acre section which would be butting up against I-95 and Dolington Road which is the northernmost point of the property, and it has been determined that this can be done. Mr. Fedorchak stated one of the assumptions that the appraiser will base the appraisal on will be that the new property owner will be allowed to subdivide up to a two acre lot. He stated he can ask the appraiser that she provide not only a number for that assumption but also a value for the scenario that there will be no subdivision of the property, and Mr. Maloney asked that this be done.

Ms. Bosley asked if there are other areas on the property other than this two acre piece along I-95 that have a potential for subdivision. Mr. Fedorchak stated they have not looked into this. Mr. Stainthorpe stated if they sold the property with no restrictions, they could theoretically divide it into ten more lots; but he does not feel anyone wants this to be done. He stated he feels there are certain portions of the property which he feels should be kept in tact, but the area where the parking lot is located is of less scenic and intrinsic value; although this is a decision they should make once they have numbers.

Mr. Zachary Rubin, 1661 Covington Road, stated he is opposed to the sale of this property. He stated he was also opposed to the sale of the Tomlinson House and is opposed to the sale of property on the Patterson Farm. He stated Elm Lowne has not had a lot of public access. He stated he is not advocating putting a tent on the property and having a lot of noise on the weekends, but added the Township has a limited number of places to hold fundraisers. He stated Elm Lowne has been used in the past for this purpose. He stated while there have been problems with the property financially, he does not feel the Township should have a problem maintaining these historical properties for the good and welfare of the Township. He asked how much the Township paid to purchase the property and for what reason was the property purchased. Mr. Fedorchak stated it cost approximately \$700,000. Mr. Maloney stated open space preservation money was used for this, and Mr. Fedorchak agreed it was from an Open Space Bond.

Mr. Rubin asked when a Township purchases a property for open space is it for the public use, and Mr. Fedorchak agreed. Mr. Rubin stated if a private owner purchases a space that is supposed to be open space for the community and puts a fence around it, even if they do not change the façade, he questions if this is still open space. He stated the Township has a policy of purchasing open space, and he does not feel the Township has a policy to close space. Mr. Smith stated this is why he asked where the funds would go if and when they sell this property as they were originally purchased with certain restrictions with open space funds, and there may be restrictions as to what the Township can do with the proceeds. Mr. Smith stated he has attended and hosted fundraisers at Elm Lowne, but stated the Township is not in the business of maintaining properties for fundraisers as he does not feel this is a wise use of tax dollars. He stated it was also a very broad interpretation by a prior Board to use open space money to buy a house, a barn, and a lake on twelve acres.

Ms. Sue Herman stated she feels Elm Lowne is a wonderful asset for the Township and hopes there is a way for the Township to hold onto it. She stated if it is to be sold, she does not feel it should be subdivided.

DISCUSSION AND APPROVAL OF ORDINANCE NO. 379 AMENDING THE TOWNSHIP CODE IN CONNECTION WITH A DEER MANAGEMENT PROGRAM

Mr. Truelove stated prior to the authorization for advertisement, Mr. Fedorchak had received some information from the Game Commission which resulted in a number of minor changes to the proposed Ordinance. He stated the matter has been advertised for consideration this evening. This Ordinance will enable the Township to conduct a deer management program subject to rules, regulations, and terms or conditions to which the Township will consent and which have been discussed for approximately three years. Mr. Truelove stated Mr. Magyar reviewed all the Township Ordinances that would be effected, and did a comprehensive review to see what changes needed to be made. Mr. Truelove stated they also want to be consistent with any guidelines to be imposed by the Game Commission.

Mr. Maloney stated what is proposed is very narrow in basically exempting people engaged in the deer management program to engage solely in the activity that has been discussed at prior meetings and will be done during very controlled hours in very controlled ways to allow for the discharge of different type of firearms and hunting equipment on Park & Rec lands.

Mr. Truelove stated this is not a Zoning Ordinance governed by the Municipalities Planning Code, and the timeframes are actually governed by the Second Class Township Code which are much shorter than the MPC. He stated there has still been significant public input throughout the entire process.

Mr. Maloney stated Ms. Torbert has made her concerns known, and the Board has indicated that they disagree. He stated the Board has read the Ordinance and is prepared to vote on it this evening. He stated he feels the language in the Ordinance is as narrow as it can be and still allow gamesmen to come onto the land and carry out their job.

Ms. Torbert asked how they will handle the helicopters as White Buffalo has shown helicopters as one of the tools they use. Mr. Maloney stated there are no plans to use helicopters in Lower Makefield, and Mr. Fedorchak agreed that White Buffalo will not use helicopters. Mr. Stainthorpe stated the Agreement they voted on with White Buffalo is very specific as to the techniques they will use, and there is no mention of helicopters.

Ms. Torbert stated she hopes in the future that this is not the process the Board will use for Ordinances as she has been extremely disappointed with the process.

Mr. Smith moved, Mr. Caiola seconded and it was unanimously carried to approve Ordinance No. 379.

ZONING HEARING BOARD MATTERS

With regard to the Lucille Asensio, 711 West Melissa Circle, Variance request to construct a fence within the landscape buffer easement. it was agreed that the Township should participate to ensure that no vegetation is removed unless they plan to replace it.

With regard to the James McCoy, 1609 Yardley Road, Variance request to construct a three-car garage encroaching into the side yard setback, it was agreed that the Township should participate. The Applicant also seeks confirmation that the impervious surface exceeds the permitted since it is non-conforming having been installed by prior owners. Mr. Truelove stated if the Board of Supervisors decides to oppose this Application, they would need a vote on this and specific direction as to how to participate and what issues should be raised. Mr. Truelove stated they will address the issues raised by Mr. Majewski and any concerns expressed by the neighbors.

Mr. Truelove stated the third matter is Matrix' Variance request to permit installation of two free-standing, on-premises signs (one for the CVS Pharmacy and one for the PNC Bank) and to permit an electronic message sign for the CVS which will be internally illuminated. Mr. Truelove stated his office and the Township engineer's office have indicated that there is not sufficient detail provided at this time, and the Township should participate in order to get more details so that they can determine what the Township's position might be. Mr. Maloney stated their request to the Zoning Hearing Board would be that they defer judgment on this matter to a future meeting so that the Board of Supervisors has an opportunity to review more specific plans. Mr. Smith stated he feels this issue would be of interest to the residents and asked for more information.

Mr. Truelove stated they are asking for two free-standing signs, one for the CVS and one for the PNC Bank which requires a Variance. He stated the more compelling issue that would be new for Lower Makefield is the request by CVS for an electronic message sign, and they should decide whether or not they want to oppose this recognizing that there may be other locations in the Township where this might become an issue as well which would be of concern to the Township and its residents. Mr. Smith stated there are a number of residents in the Yardley Corners Development which may be impacted by this, and he asked if they would be notified. Mr. Fedorchak stated they would be notified since they are within 200'.

Mr. Rubin asked if the existing CVS at Mirror Lake Road has a free-standing sign, and it was noted they do. Mr. Rubin asked if there was a Variance for this; and Mr. Majewski stated since they only have one sign, a Variance was not required. He stated one sign is allowed on a lot; but in the case of the Matrix property, they have two businesses on one lot, and they are requesting two signs – one for each business. Mr. Rubin noted there is an existing bank in the area of the Matrix property, and he asked if there was a Variance for that sign; and it was noted that property was developed as a result of a Court Order. Mr. Rubin stated he would urge the Board to oppose the Variance.

Mr. Smith moved to oppose the Variance. There was no second, and the Motion died for lack of a second.

SUPERVISORS' REPORTS

Mr. Caiola stated the Economic Development Committee is planning a second Meet and Greet for October, and they are looking for a location for this event. The public is invited to this as well as local business owners. He stated he attended the Citizens Traffic Commission meeting, and they will be participating at the Community Pride Day with information on traffic safety and the event they will be holding on October 24.

Mr. Maloney stated the Golf Committee has been interviewing finalists for the golf management company. He stated Kemper is the incumbent, and they will interview before the Board of Supervisors as will an alternative selected by the Golf Committee.

Mr. Smith stated Community Pride Day will be held on Labor Day. He stated it is a free event. He reviewed the events to take place including the Battle of the Bands, 5K Race, games, a food court, and it will end with fireworks. He stated they are still looking for volunteers to help that day.

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APPOINTMENTS

Mr. Simon moved, Mr. Caiola seconded and it was unanimously carried to appoint Roger Owen to the Citizens Budget Commission.

OTHER BUSINESS

Mr. Simon stated there are trees in the Township hanging over sidewalks which can be dangerous to those using the sidewalks, and he asked that residents that have this condition on their property take care of this situation.

There being no further business, Mr. Smith moved, Mr. Simon seconded and it was unanimously carried to adjourn the meeting at 9:00 p.m.

Respectfully Submitted,



Greg Caiola, Secretary