

TOWNSHIP OF LOWER MAKEFIELD  
BOARD OF SUPERVISORS  
MINUTES – NOVEMBER 15, 2006

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on November 15, 2006. Chairman Santarsiero called the meeting to order at 7:35 p.m. Mr. Caiola called the roll. Mr. Santarsiero noted the Board met in Executive Session for half an hour to discuss real estate matters.

Those present:

Board of Supervisors:            Steve Santarsiero, Chairman  
   Ron Smith, Vice Chairman  
   Greg Caiola, Secretary/Treasurer  
   Grace Godshalk, Supervisor  
   Pete Stainthorpe, Supervisor

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

PUBLIC COMMENT

Mr. Sam Conti asked the status of the Patterson Farm Master Plan. Mr. Santarsiero stated they were going to bring Mr. Marshall in for tonight's meeting, but they had a number of other items to consider. They plan to have him come in the first meeting in December. Mr. Conti stated in June the EAC discussed composting in Lower Makefield and asked what has been done on this matter. Mr. Santarsiero stated the EAC is in the process of preparing a proposal which they hope to present to the Board of Supervisors in a month or two.

Mr. Art McNew, 603 Stony Hill Road, stated he and his wife presented a letter to Mr. Fedorchak about their concerns regarding traffic and accidents near their residence. They have lived at their residence for twenty years and have experienced numerous incidents including cars hitting the utility poles on their property as well as their mailbox and post, trees, bushes and their light post as well as numerous near misses with vehicles sliding across their lawn. He stated over the last fifteen months there have been three major incidents. In August, 2005, their truck was hit in their driveway resulting in \$2500 in damage. In August of this year, a vehicle slid approximately 150 feet across their lawn, knocking down two twenty foot trees and again hitting their truck resulting in \$1500 in damage. On November 13 a car slid across their driveway, missed their vehicle

by five feet and destroyed shrubbery and their lawn. He stated there has been a recent emphasis in the Township placed on the quality of life with regard to train noise, air traffic, and trash collections; and they hope the same importance will be placed on the protection of life which is at risk at their property and the property of their neighbors.

Mr. Santarsiero stated traffic and safety is a very important concern of the Board and is a quality of life issue. He stated they are working on this and have established a Citizens Traffic Commission to inventory all areas in the Township that have problems so that they can prioritize them and make improvements to the road. He stated they have heard from Chief Coluzzi that Stony Hill Road is one of the worst roads in the Township. He stated they will be having hearings early in 2007 with the Traffic Commission to elicit statements from residents to begin work on this. He stated they have retained a traffic engineer, TPD, to help them work through these issues and look for Grants and other monies to begin to improve the roads in the Township. He stated two weeks ago they discussed the need for a bikepath at Black Rock Road because of safety concerns.

Mr. McNew stated his home is not the only one being impacted in this area. He stated the speed limit in this area is 45 miles per hour. He stated the last three accidents involved young drivers, driving on wet roads. Mr. Smith asked if they could put the speed machine in this area, and Chief Coluzzi stated they have had it in this area but it is difficult to do so because there are no shoulders. Chief Coluzzi stated he agrees that this is a very dangerous roadway. He stated there is routine enforcement in this area. Mr. Santarsiero noted the location of Charlann Farm across the street from this location and stated they may be willing to have the speed machine located on their property. Mr. Santarsiero stated they are going to have to consider what would be the best engineering plan to address the traffic concerns on Stony Hill Road.

Mrs. Godshalk asked that they do something immediately and feels they can petition the State to lower the speed limit as she feels 45 miles per hour is too high for this road. She feels this can be done before the Citizens Traffic Commission comes before the Board of Supervisors. Mr. McNew stated one of the Police Officers suggested that he install large boulders on his property; but he is aware of someone who did this and when someone ran into them, they sued the property owner and won. Mr. Majewski stated last year they did request that PennDOT do a speed study with the aim of lowering the speed limit, and they indicated the speed was appropriate for Stony Hill Road although there are a numbers of areas on this road where there are problems. Mrs. Godshalk stated she disagrees with this since it is a single-lane road with no shoulders. She feels they should have PennDOT come out again.

Mr. Smith asked if there are other traffic-calming measures they could take, and Mr. Santarsiero stated they would have to have a study to determine what would be appropriate. Mr. Stainthorpe stated they could not implement traffic-calming on a State road without Permits. Mr. Santarsiero stated he would like the traffic engineer to look at

the situation and advise what they could ask the State to do on this road on a short-term basis. Chief Coluzzi stated he will contact TPD and ask them to look at this road again, and the Board of Supervisors was in favor of proceeding in this way. Mr. Smith also asked that they bring in the speed machine at this location and increase enforcement in the area.

Mr. Barry Wood, 20 Glen Drive, stated he is concerned with the impact of heavy rain on those who live between the Canal and the River. Mr. Santarsiero stated they are going to consider this later on this evening.

#### CONFIRMATION OF PROCLAMATIONS

Mr. Santarsiero announced the confirmation of the following Proclamations:

Pennsbury Scholarship Foundation for fifty years of service  
Ross E. Seckel – Attainment of the Rank of Eagle Scout  
Mathias Stephen Heinz – Attainment of the Rank of Eagle Scout  
Peter Rowland Kuhn II – Attainment of the Rank of Eagle Scout

Mr. Santarsiero congratulated those attaining the rank of Eagle Scout on their accomplishment on behalf of the Board.

Mrs. Godshalk stated she attended the Pennsbury Scholarship Foundation Fiftieth Anniversary Meeting. She stated last year they gave out \$1.6 million to Pennsbury graduates as scholarships. She stated there are three named Scholarships in her son's memory, and he was the first Pennsbury graduate to have a named Scholarship. She stated since then there have been six other graduates who have died young, and their parent's have set up named Scholarships as well. She stated it is an extremely worthwhile organization in which to set up a Memorial.

#### APPROVAL OF MINUTES

Mr. Smith moved, Mr. Caiola seconded and it was unanimously carried to approve the Minutes of November 1, 2006 as corrected.

#### DISCUSSION AND APPROVAL OF MATRIX PRELIMINARY/FINAL PLAN

Mr. Russell Tepper, Mr. Chris Burkett, and Marc Brookman, Esquire, were present on behalf of Matrix.

Mrs. Godshalk asked if they have anything to present with regard to questions raised at the last meeting. Mr. Brookman stated they did submit to the Township an illustration as to where entrance ways and parking could be located for the open space. The Board members indicated they did not receive this. Mr. Tepper showed the Plan they prepared showing a concept for the parking lay out for the open space with two access points off Old Oxford Valley Road, one of which is opposite the Mobile Station driveway and one opposite the trucking operation. They have shown parking for twenty cars.

Mrs. Godshalk asked about the location of the gazebo and benches. Mr. Tepper stated the pavilion and benches were already shown on the Plan submitted to the Township previously. He stated if the Township would like to change the location, they would be willing to consider this.

Mr. Santarsiero stated the Township wanted to maintain some flexibility as to the open space so that they could consider input from the representatives of RAM, other community members, and the Park and Recreation Board. He stated he is less concerned about a lack of specificity for this part of the Plan as it was conditioned from the onset that the Township would consider this at a later time with resident input. He feels the representation being shown is good to have, but does not feel they should hold up their approval on this tonight. Mr. Stainthorpe stated he would like to reserve the right to be flexible on this, but appreciates the Applicant submitting this Plan as it indicates that they have made a commitment to provide parking although he does not feel it necessarily means they will put it at this location.

Mrs. Godshalk asked about the figure of \$150,000 previously referred to by the Applicant that the Township would get from taxes as a result of this development. She stated because of the tax rate, she feels it would be more than five times the amount the developer referred to. Mr. Tepper stated they have not done any further analysis on this. They estimated this amount some time ago, and they could provide the information on that analysis to the Township.

Mrs. Godshalk stated she has received a number of calls from people concerned with the possibility of school children residing in this community, and she asked who will monitor this. Mr. Brookman stated as previously discussed, an age-qualified community can discriminate based on age under Federal and State law which permits them to limit children under the age of nineteen from residing in an age-qualified community. It also requires that at least one resident of the dwelling be fifty-five years of age or older. He stated at the last meeting, they indicated that documents would be submitted to the Township that contain this requirement of the Board of the Homeowner's Association indicating that records are to be kept to verify the age of the residents who reside in the community as part of Federal requirements. He stated a resident from the Township who is involved with another Township Homeowners' Association had stated that there are requirements that must be met with regard to HOAs and the residents who reside in the community who would be most concerned that the requirements be complied with. He

stated there are procedures to be followed if someone is found to be in violation. He added it was also previously noted that if their were children in the community who were attending School, a Pennsbury School bus would be coming into the community so people would be aware that there was a violation occurring.

Mrs. Godshalk stated under the Federal law, 20% of the homes could be owned by non-age-qualified people. She stated she hopes everything is spelled out in the Agreements. She noted this will be the largest development in the Township.

Mr. Santarsiero stated these concerns were addressed at the last meeting, and it was indicated that the HOA will keep a watch on this. He stated the Pennsbury School District has an incentive to do this as well to insure that there are not School-age children admitted to the system from this community. He stated he does have a concern that in the long-run, they are not sure if the status of these communities as age-qualified will survive forty years in the future. He stated they still feel this is a viable alternative for the site and much better than what was originally approved, and he feels it is worth the risk.

Mrs. Godshalk stated she feels they should have the tightest rules possible. She stated the Homeowners Association will not take effect until a certain percentage of the homes are sold. Mr. Brookman stated the Homeowners Association will take effect the first day an assessment is charged; although the control of the Board does not take effect until 75% of the units are sold. He stated the developer is required as a member of the Executive Board of the Association to enforce these requirements and is required by the State and Federal Government to maintain records to insure that the age qualifications have been met.

Mr. Stainthorpe stated he does not feel this will be a problem since there are age-qualified communities everywhere, and he does not feel young families are anxious to move into an over fifty-five community. Mr. Caiola stated he feels between the HOA and the Federal Government, they will be covered. Mr. Smith stated at the last meeting there was a resident from Makefield Glen who spoke to these concerns. Mrs. Godshalk stated there was an age-qualified development in the community and it was challenged and the Township lost. Mr. Smith stated this was twenty years ago.

Mr. Garton stated the original Settlement proposed as a maximum six hundred age-qualified housing units divided equally between single-family dwellings, town homes, and multi-family units. The development that was ultimately submitted by the developer reduced that number by approximately eighty units. The Agreement provided for the various reviews of the proposed Plan, and it also provided for certain payments to the Township besides the normal real estate taxes which will be accruing. He stated the developer agrees to pay \$1.375 million to the Township in three equal payments beginning at the completion of each 200 units. In addition, they will pay \$1,650 when each Certificate of Occupancy is issued for the potential review and approval of a

widening of the bridge on Big Oak Road over I-95. They will also pay the present value of \$75,000 per year for ten years in three equal installments beginning with the fourth anniversary of the first Certificate of Occupancy and annually thereafter. In addition, they will provide open space and other amenities discussed as well as the road improvements depicted on the Plan.

Mr. Stainthorpe asked about stormwater management and noted the letter from the Environmental Advisory Council who questioned the wisdom of diverting stormwater from Brock Creek to Mill Creek. He stated he also saw Minutes from the Middletown Planning Commission, and they were not in favor of diverting the water to Mill Creek which flows through Middletown. He asked if the letter from the EAC includes opinions of that Council or a recommendation from the environmental engineer. Mr. James Bray, Chairman of the EAC, was present and stated the letter was approved by the EAC by a vote of seven to zero. Mr. Stainthorpe asked about the opinion of the environmental engineer on this. Mr. Santarsiero stated Birdsall, the environmental engineer, had a conflict so Mr. Fazio reviewed the Plan as the conflict engineer.

Mr. Fazio stated at several of the meetings this issue was discussed. He stated they also discussed the amount of volume the Applicant is taking care of in terms of this development. He stated the calculations stated that while they are moving the areas around, the volumes and the peak flows going toward Middletown and toward Lower Makefield will be less as a result of the proposed development as opposed to the pre-development conditions. He stated at the previous meeting, the Applicant did show the numbers comparing pre and post-development. He asked that the Applicant's engineer again address this question and go through the numbers again.

Mr. Stainthorpe stated he was satisfied with the prior presentation, but when he received the letters from the EAC and from Middletown, he was concerned. He stated if the Township engineer is verifying the calculations are correct, he is satisfied. Mr. Fazio stated the calculations the Applicant provided stated that the water that will flow in the direction of Middletown will be less in the post-development condition than it is currently.

Mr. Santarsiero stated he saw the response Matrix had written to the EAC's letter with regard to whether a sufficient number of perc tests had been done on the site to substantiate the figures presented to the Board of Supervisors at their last meeting. He stated the EAC was concerned that only four tests were done. He stated the letter they received today from Matrix indicated that they had done seventeen tests. Mr. Brookman stated the letter came from their engineer indicating seventeen tests were done on the property. Mr. Santarsiero asked Mr. Fazio if he is satisfied that this is a sufficient number of test samples, and Mr. Fazio stated he is.

Mr. Smith stated the adjacent parcel of land located in Middletown will also be built by Matrix, and he assumes they would not take any negative action in Lower Makefield which could jeopardize that project.

Mr. Caiola asked if Middletown's concerns were addressed by Lower Makefield. Mr. Fazio stated he did not hear anything about this from Middletown Township. Mrs. Godshalk noted the Board of Supervisors received the Middletown Township Planning Commission Minutes in their packet. She stated they also indicate that Middletown is concerned about Middletown residents who may live in the age-qualified community on the Middletown side having to cross Big Oak Road to gain access to the clubhouse. She asked if the size of the Clubhouse to be built on the Lower Makefield side will be used by those residing in the possible Middletown age-qualified community. Mr. Tepper stated the Clubhouse they are building is large enough to accommodate all residents of the community both on the Lower Makefield and Middletown side assuming they get approval to build an age-qualified community on the Middletown portion of the site. Mr. Tepper stated Matrix feels comfortable with people crossing Big Oak Road.

Mrs. Godshalk noted the Truth-In-Advertising Ordinance which requires the developer to spell out what potential homeowners are buying, noting if they are building another community in Middletown where residents will be allowed to share in the facilities, the Lower Makefield purchasers should be aware of this. Mr. Brookman stated at this time, they do not have permission to build an age-qualified community in Middletown, and this would require a Zoning change. He stated they will be going back to Middletown Township to listen to and respond to what they feel is best for the property. He stated the Settlement Agreement with Lower Makefield Township requires that any use that would ultimately be approved in Middletown Township must be compatible with what is in Lower Makefield. They will disclose as required by State law what is permitted for the Middletown portion, and that document will be updated when they know what Middletown's desires are with regard to that parcel. He stated they will explain to potential purchasers that they are legally required to provide for the site in Middletown something that is compatible with the Lower Makefield use. He stated they will also explain that if they are successful in getting the age-qualified development in Middletown, there will be a sharing of all the facilities and this will be disclosed as required to all potential homeowners.

Mr. Bray stated the EAC was also concerned that there are at least six major water courses on the site that have not been delineated by the Applicant. He stated Lower Makefield Township has broadly-defined "water course," and has provided them with substantial protection. He feels this is a large oversight with respect to the property. He stated they included this concern in their letter to the Township. Mr. Fazio stated he respects the work done by Mr. Bray, but stated his office's review was consistent with the manner the Township enforces their Ordinances. He stated the Ordinance is broad and there is a certain amount of interpretation involved. His office feels the Plan correctly

shows the significant water courses and provides for their protection under the pertinent Ordinances. He recognizes that this is a disagreement between himself and Mr. Bray.

Mr. Garton stated if they reviewed the Ordinance in itself, it would appear that every water course would have to be identified and a buffer provided; and those water courses would include farm ditches created during the course of an agricultural use. He stated this issue was raised from the onset, and he did discuss it with the Township engineer and their interpretation as Mr. Fazio has indicated is consistent with their long-term interpretation in the Township. He also reviewed some cases dealing with wetlands, Waters of the Commonwealth, and Waters of the United States, and he feels it is clear that the law can be regulated in the manner which the Ordinances provide, and he is satisfied that the interpretation as it has been for the last twelve years is consistent with the law. He stated the EAC's strict interpretation would not be supported by the United States Supreme Court.

Mr. Bray stated he disagrees with Mr. Fazio and Mr. Garton's opinion and feels the guidelines and definitions are clear, concise, definitive, and not subject to argument. He stated they feel it has been overlooked over the years, and it is not a subject of interpretation.

Mr. Larry Borda, 508 Heritage Oak Drive, stated this proves that the efforts of a small group of dedicated people can make a difference. He noted his concerns with the previous plan for big box retail and reviewed the history of the project and RAM's involvement. He thanked everyone who worked on behalf of RAM. He also thanked the members of the Planning Commissions of both Lower Makefield and Middletown who voted against the big box retail. He stated his major concern was with traffic and it continues to be so with the addition of the additional homes proposed. He is also concerned with stormwater run off. Mr. Borda asked if the volumes of discharge will be less post-development, and Mr. Chris Burkett stated the volumes in the very frequent storms (one and two-year storms) will be less post-development. This will not occur in the 25, 50 or 100 year storms, but this is not what is required by the Ordinance. They are also meeting the requirements of the NPDES. He stated the requirements in Middletown are the same as in Lower Makefield Township. He stated there was a watershed study done which goes across borders, and the requirements they have met in designing the facility are the same requirements that Middletown has. He stated they meet or exceed the discharge requirements. He stated while total volume will be more for those storms over the two-year storms, the peaks have been reduced. He stated the project also meets water quality standards that have not yet been adopted by either Township. Mr. Borda stated over the past ten years his neighborhood is seeing water in what were previously dry swales as a result of increased development. He stated despite these concerns, he still feels it is in the Township's best interest to approve the project.



Mr. Jeff Goll, 5 S. Homestead Drive, stated he is also a member of the EAC and is a licensed professional engineer in the Commonwealth of Pennsylvania. He stated as a member of the EAC he did assist in the preparation of the letter to the Supervisors from the EAC. He asked Mr. Burkett if they did seventeen infiltration tests or seventeen test pits, and Mr. Burkett stated they were seventeen backhoe test pits excavated on the site. They also had a soil scientist on site to determine if a perc test was reasonable. He stated the four perc tests were done in areas where they had an idea that it would have favorable conditions. Mr. Goll asked which perc test was done, and Mr. Burkett agreed to provide further information on this if necessary. Mr. Goll stated he does not feel four test pits for 126 acres is appropriate. Mr. Burkett reviewed the procedures they followed in the field. He stated based on the stormwater management plan, they determined where it would be best to do the perc tests. Mr. Goll stated he still questions the adequacy of four test pits for this site. Mr. Burkett again reviewed the process which was done. Mr. Fazio was asked if he concurs with what Mr. Burkett has done, and Mr. Fazio stated he does.

Mr. Goll stated Mr. Fazio had asked Mr. Burkett to provide water quality calculations even though they are not required. Mr. Goll stated their initial calculations showed that they were not meeting the target rate, and Mr. Fazio had noted this and they then included additional measures Mr. Fazio had requested but took credit for the resource protected woodlands and wetlands. He stated he feels the resource protected woodlands are 100% protected. Mr. Burkett stated while Mr. Fazio and he had discussions about water quality treatment, they did not indicate that they would meet any DEP stipulations. He noted these have not been adopted by DEP at this time. He stated they agreed to make their best effort including incorporating LID techniques throughout the project as suggested by the EAC, and they agreed to look at how they could best meet a reasonable requirement. He stated Mr. Fazio had asked that they go back to their design and try to come up with some additional improvements, and they did make some improvements in water quality. Mr. Goll stated he feels they only took credit for the resource protected woodlands. Mr. Burkett stated in the existing condition as a farm field there was significant siltation and chemicals coming off the property. The woodlands and wetlands were used as a filtering device, and they will continue to be used as such.

Mr. Tepper stated the issues being discussed by Mr. Burkett and Mr. Goll have been discussed numerous times, and they have responded to this in the past. Mr. Tepper asked if the Board would like to continue this dialogue. Mr. Santarsiero asked Mr. Fazio, as their expert on these issues, whether this issue that Mr. Goll is now raising is an issue that should be considered. Mr. Fazio stated he respects Mr. Goll's opinions, but feels that they have made Matrix do things over and above what is in the Ordinance, and they have done so. He stated he is satisfied with the level of effort they have put in to get pollutants out of the water. Mr. Goll asked if it is acceptable to use wetland and woodlands, and Mr. Fazio stated he has already provided an opinion on this.

Mr. Goll asked about wetland delineations on the site. He asked that the Applicant not be permitted to do any construction until the wetland delineations have been done. He stated the crossing of the dam is also not in compliance with the Army Corps of Engineers permitted requirements as they have not yet satisfied their wetland mitigation requirements for putting a roadway over a dam. He stated they have also asked for deed restrictions on all the open space, and the Applicant has refused. They have also asked for payment for future maintenance costs to insure that the infiltration systems will function and be maintained. He stated he also wants to contradict Mr. Tepper's testimony at the last meeting when Mr. Tepper indicated that they had satisfied all thirty of the EAC's comments since they actually satisfied only a third. Mr. Goll stated the EAC put significant time into a review of the Plan, and they question whether the Applicant is abiding by the stormwater regulations and the law and protecting the neighbors.

Mr. Fazio stated there are several Permits that the Applicant needs to obtain before they can start construction.

Ms. Virginia Torbert spoke on behalf of the Citizens Traffic Commission. She stated she and two other members reviewed the Matrix Plans. She stated the full Commission has not had an opportunity to study it. Ms. Torbert noted the Plan for the project and stated they understand that improvements will be made to Oxford Valley Road as part of the approval. She stated they did not see the Plans for this as part of the submission. Mr. Tepper stated the Highway Occupancy Permit was obtained a number of years ago as part of the retail/office plan, and the improvements proposed at that time are still those to be considered as part of this Plan. Ms. Torbert stated the Township does not have these Plans. She asked if they could supply these to the Township, and Mr. Tepper agreed to do so.

Ms. Torbert noted Big Oak Road on the Plan and stated they are concerned that the new streets that will intersect with Big Oak Road will only be controlled by stop signs. She stated she is concerned that those living in the development will need to make a left hand turn onto Big Oak Road which will be very difficult. She asked if they have considered traffic signals for at least one of the intersections or having a restriction on left-hand turns. Mr. Tepper stated as part of their design effort for Big Oak Road, their engineer studied what the appropriate intersection improvements would be along Big Oak Road and additional signals were not warranted other than those already proposed.

Mr. Santarsiero stated the Planning Commission reviewed the Plan and recommended approval, and he felt that they had considered these issues. Mr. Fazio stated he has reviewed the Plans but would have to defer to the traffic engineer. He believes that was dealt with. Ms. Torbert stated she did speak to the TPD representative today who indicated that he would prefer to wait until it is constructed to see what happens. Mrs. Godshalk stated she feels it should be included on the Plan. Mr. Santarsiero stated

if the professionals are indicating they would recommend waiting, he feels that they should do this since they have indicated it is not possible to determine at this time what the volume would be to see if something else is necessary. Ms. Torbert stated the representative from TPD did indicate that trips for this type of development are one third that of other developments, but she feels that the residents will at some time have to make left turns onto Big Oak Road particularly in the summer when Sesame Place is open. Mr. Santarsiero stated they could include in the approval a contingency with respect to that and have something put in escrow to deal with this. Mr. Tepper stated their traffic engineer did the appropriate analysis to determine if traffic signals were warranted, and they are not warranted based on the traffic analysis that was done. Mr. Santarsiero stated the Township has their own traffic engineer to whom they would look for guidance. Ms. Torbert stated they have recently received surveys from people living along Township Line Road particularly in the Palmer Farm Development, and a number of them mentioned problems with the area currently. Mr. Santarsiero stated they should recognize that there are improvements that are going to be made.

Ms. Torbert noted the intersection of Oxford Valley Road/North Street which is the first entrance off Oxford Valley Road and asked if left turns will be restricted onto Oxford Valley Road. Mr. Tepper stated that intersection will be right in/right out only.

Ms. Torbert stated they understand that the developer has applied for a warrant for a traffic signal at Tall Pines, and Mr. Tepper stated the traffic signal had been previously approved for the intersection of Tall Pines and Oxford Valley Road, and they were asked to restudy this to see if it is still warranted based on the current Plan. They are in the midst of doing this at this time.

Ms. Torbert noted people are concerned with the intersection with the Township Line and the railroad tracks; and she has heard that Middletown Township has indicated they are hoping that when the Middletown parcel is constructed, Matrix will do something with that intersection. Mr. Santarsiero agreed this is an intersection that they will have to deal with in conjunction with Middletown.

Mr. Rich Meyers, representing the Delaware Riverkeeper Network, stated he is concerned with diverting a portion of the flow into the Mill Creek watershed which has severe flooding problems. He feels this should be further addressed. He stated he does not feel the number of test borings is as important as the location. He stated while he has not seen the Plans, if some of the infiltration facilities will be put in areas where they will be placing fill on the site, generally if you are using an area for infiltration, one of the first priorities is that that area is not to be disturbed at all during construction. He stated there was also discussion of a dam structure on the property, and he asked who will own this when it is completed. He stated they may be in a situation with the dam where there are very specific requirements the Township or the HOA should be aware of.

Mr. Stainthorpe stated he has never heard about a dam with regard to this project.

Mr. Fazio stated there is the potential that there is a regulated structure on the site.

He stated the developer has to identify the presence of the structure and also needs to make sure they get all approvals required.

Mr. Burkett stated there is no dam on the site. He stated the area in question is the loop road that runs through the wetlands. This area had fill placed on it in 1988 when Bellemead had an approval to build a warehouse/office facility in the area, and they placed the fill under a DEP Permit. At the time their intent was to back up water into the wetland area for in-line storage and use it as a dam embankment. He stated it was approved the DEP, and there are actually utility lines in the dam embankment. He stated stormwater management inlets and pipes were also placed in the embankment. Since that time, the Applicant moved away from in-line storage as it is no longer a favorable activity in the view of the Army Corps of Engineers and the DEP because of secondary impacts in the wetlands from allowing water to stand in there for extended periods of time. The Applicant under the old approval, moved to open up the culverts so it would not impound water and instead it would act as a culvert and not a dam. He stated under the current proposal they are providing all the stormwater management in the upland areas on either side of the wetlands, and they will not impound any water in the wetlands. He stated the culverts that were placed in that embankment will be opened up. He stated currently there is a flow-restricting device in the concrete structure; and they will saw cut a hole in it four feet wide, and eight feet high to allow all the water that runs through once it has discharged from the stormwater management basins. He stated they are working with DEP to allow the fill to stay in place and will mitigate the wetland losses that were there.

Mr. Meyers suggested that they confirm that DEP will not consider this a dam. Mr. Santarsiero stated the DEP would have to consider this before they issued any Permits.

Mr. Gary Cruzan, President of RAM and one of the parties to the Settlement Agreement, stated they need to keep in mind that this is a settlement; and the original Plan would have generated 90% more traffic and possibly a lot more engineering issues. He stated during the negotiations an independent consultant prepared an economic feasibility study which showed the Township would get \$482,000 in revenue and make a profit after all expenses of \$137,000 per year based on the original 600 units. Mrs. Godshalk asked if they have a list of the expenses. Mr. Cruzan stated they did it on a per capita basis. Mr. Cruzan stated age-restricted housing was demanded by RAM so it would not have a negative impact on the School District. He stated the study showed that the School District would get \$3.346 million annual based on the 600 units without generating any school costs. He stated he has now adjusted the numbers downward slightly because the density was reduced so the correct numbers show that the Township will get \$419,000 in revenue and make a profit of \$119,000 annually. The School District will get \$2.9 million. He stated this is \$900,000 more than the Big Box plan. He stated the Big Box Plan would have generated a traffic and drainage nightmare compared to this Plan. He

stated the project was three years in Court with multiple suits and three years in negotiation. He stated they do want to make sure it is engineered correctly.

Mr. Smith asked if Mr. Cruzan would recommend approval of the Plan, and Mr. Cruzan stated he does not feel they have a choice. He stated this is a settlement of litigation, and he feels it is a great outcome compared to the original Plan. He stated he feels the Big Box Plan would have ruined that part of the Township.

Mr. Stainthorpe stated while the economic projections are good, they are not really part of the land approval process nor are they guarantees and are only a best estimate. He stated they have agreed to the Settlement based on the revenue projections, but noted that tax revenue is not part of the Land Development approval, and they are applying the Ordinances and looking at stormwater management.

Mr. Santarsiero asked that Mr. Tepper show a copy of the Big Box Plan. Mr. Santarsiero stated the reason he is on the Board of Supervisors is because five years ago he became involved in the fight to stop the original Big Box development. He stated they now have a new Plan that entails far less impervious surface coverage, far less impacts to the environment, and far less impacts with respect to stormwater run off. He feels while the current Plan is not a perfect Plan, it would be wrong for the residents of the Township, the EAC, or the Board of Supervisors to lose track of the big picture. He stated they started with something that would have irreparably changed the character of the Township. He stated that Plan would have generated significant traffic, been subject to the ups and downs of the economy, and brought in more crime to the area. He stated the current Plan includes 522 housing units and will greatly reduce the volume of traffic coming into Lower Makefield through the area. He stated the traffic engineer has advised that the improvements proposed are more than adequate to deal with the traffic concerns. He stated while it is true that the financial benefits are not part of the land development process, it is part of the Settlement that they were able to reach with Matrix and this will benefit the Township. Mr. Santarsiero stated given the fact that no development at the site is not realistic, he is concerned that if the current proposal falls through, the Applicant could proceed with the original Plan or a new developer could come in and under the C-3 Zoning propose something that is potentially worse. He stated it was that risk which compelled them to negotiate and come up with something they felt was better for the Township in the long run. He asked everyone to remember that when the Board considers this Plan, they consider it in the context of what could have been and what might be if the Plan is not approved.

Ms. Helen Bosley, 546 Palmer Farm Drive, stated she is pleased that a solution has come to this contentious issue. She complimented the Board of Supervisors, those present and previous, who have been involved in trying to resolve the issue. She stated the Township history is much longer than just the last five years and included in that are many efforts by many people who have put together developments throughout the Township which

have made the Township what it is. She stated the development of the Golf Course was one of these which saved the School District from additional students as well as saved a lovely part of the Township as open space.

Mrs. Godshalk stated she has been fighting this project for twelve years and recognizes that this is a compromise, but feels there are still a lot of shortcomings with this Plan. She stated by reading the Middletown Minutes and hearing Mr. Brookman and Mr. Tepper state that the Zoning is not in place for age-qualified in Middletown; she feels it is almost there from reading the Minutes. She feels they should be doing these two tracts together. She feels the developer should be able to sit down with Middletown Township and she would then be more in favor of voting in favor of the Plan if Middletown Township were involved. She is also concerned with seniors living in three-story structures with elevators. She stated elevators cannot be used in a fire, and she is concerned with the residents exiting the building in the event of a fire. She would prefer to see seniors living in low-rise buildings. Mr. Santarsiero stated the Fire Department did send a letter which was included in the Board's packet, and they recommended approval of the Plan. Mrs. Godshalk stated individuals she has spoken to from the Fire Department are concerned.

Mr. Smith moved and Mr. Stainthorpe seconded to grant Preliminary/Final Approval for the Octagon Center, Plans dated 7/14/06, last revised 10/11/06 subject to the following:

- 1) Continued compliance with the terms and conditions of the Settlement Agreement dated 5/18/06 with the further understanding that the terms and conditions of said Settlement Agreement shall be incorporated by reference to this Approval and terms and conditions of the Settlement Agreement shall take precedence over any inconsistent provisions contained within this Approval;
- 2) Compliance with the review letter received from Remington, Vernick & Beach dated 10/18/06 and 9/26/06 related to the sanitary sewer system with the understanding that the Applicant shall not be required to effectuate repairs to the Yerkes Interceptor Line;
- 3) Compliance with the Remington, Vernick & Beach letter dated 10/18/06 authored by Chris Fazio;
- 4) Compliance to the extent required with the Historic Commission's letter dated 10/19/06;
- 5) Compliance with the comments received from James Yates dated 10/17/06;

- 6) Compliance with the Police Department memorandum dated 10/13/06;
- 7) Compliance with the two letters dated 10/19/06 received from TPD with the understanding that the Applicant does not need to revise the Plan consistent with Comment #4 related to the Big Oak Road improvements and the PennDOT Permitting process;
- 8) Receipt of all Permits and Approvals from any agencies having jurisdiction over such matters including but not limited to PennDOT, Bucks County Conservation District, Department of Environmental Protection, and the Army Corps of Engineers;
- 9) The open space proposed to be provided as part of the Plans shall be lotted out and conveyed to the Township;
- 10) If the Heritage Conservancy has no objection, the Township is to receive an easement over that portion of the site on which any archeological artifacts will remain;
- 11) The Plans shall be revised to include a parking area to the open space with the exact location to be determined subsequent to this Approval;
- 12) The Condominium documents associated with the project shall be reviewed and approved by the Township and said documents shall include provisions to the effect that the obligation to maintain the storm drainage system, and if it is determined to be a dam, the dam shall rest with the Homeowners Association; but should the Association fail to do so, the document shall provide that the Township has the right of access and the right to maintain said facilities with any costs incurred by the Township to be reimbursed to the Township by the Homeowners Association. Said documents further to include methods for guaranteeing compliance with the age-qualified designation;
- 13) The Board grants Waivers identified in correspondence from Gilmore & Associates dated 10/10/06;
- 14) Funding and execution of Development and Financial Security Agreements;
- 15) Developer shall notify potential buyers in writing of the possibility that age-qualified housing may be placed in the portion of the holdings in Middletown Township and those residents will be permitted to use common facilities.

- 16) A determination be made by the Township traffic engineer upon build-out whether a traffic signal is necessary at Big Oak Road and that the developer fund this if necessary.

Mr. Brookman agreed to the Conditions of Approval.

Mr. Caiola thanked the Planning Commission, Environmental Advisory Council, and RAM for their work on this project. He stated he is still concerned about whether there is an encroachment into the wetlands and woodlands and asked if this is still an issue. Mr. Brookman stated the testimony that was given by the engineer indicated that they exceeded the requirements set forth in the proposed Ordinance, and their obligation was to do their best effort under the Settlement Agreement to achieve those results.

Mr. Smith noted his concern with the crime issue referenced in conjunction with the Big Box Plan as well as the traffic considerations. He also feels it is important to recognize Mr. Cruzan's comments that they are 90% better off with this Plan as opposed to the Big Box Plan. He stated he would also like to acknowledge the excellent job done by Mr. Bray and Mr. Goll. He stated the Township engineer and Mr. Burkett have satisfied some of his concerns. He is concerned with waiting for Middletown to make a decision. He stated Mr. Stainthorpe stated they should look at the land use separate from budgetary items but stated he does not feel they can ignore this and the taxes that this Plan will bring to the Township. He stated they are currently in the midst of Budget Workshops, and they desperately need revenues coming into the Township. He stated this Plan will bring in added revenue. He noted a recent newspaper article indicating that there is a market for this type of housing; and while he has some reservations, he would advocate voting for this Plan.

Mr. Santarsiero stated under this Plan the traffic problems associated with the previous development go away, and the traffic engineer has recommended approval of the Plan. He stated the improvements proposed are more than adequate to handle the additional traffic flows related to this use. He stated what will happen with Middletown was a recurring issue in their discussions, and he visited the Middletown Board of Supervisors on more than one occasion to voice the Township's concern about what would happen in Middletown, as did other representatives of RAM. He stated they were ultimately able to negotiate with Matrix an assurance that what will go into Middletown will be consistent with what is being proposed in Lower Makefield. While the Middletown Board of Supervisors will make the ultimate decision, he hopes that they will cooperate with Lower Makefield as Lower Makefield tried to cooperate with them. Mr. Santarsiero stated he respects the EAC, and noted he proposed that the EAC be turned into a full review Board. He still feels that this is a much better Plan than what was previously presented, and there is a very real risk that something worse could come if they do not vote for this Plan before them this evening. He feels this project will benefit the



Township both from a financial standpoint and also because it provides housing stock that does not currently exist.

Mrs. Godshalk stated while it is not being discussed tonight there is commercial and office proposed for this tract. She stated there is a history of Homeowners Associations in the Township petitioning the Township to take over their Association, and she asked if they have Deed restrictions on this that the Township will never be required to take over the maintenance of this. She noted the Township did have to take over the maintenance of the open space in Yardley Hunt as well as some other developments. Mr. Garton stated he did review what is covered in the covenants and feels they are covered. Mrs. Godshalk stated she would like to have this in the Deed restrictions. Mr. Garton stated it is not in the Deed restrictions. It is in the Declaration filed of record related to the creation of the Condominium. Mrs. Godshalk stated they had this before and lost. Mr. Garton stated with respect to Yardley Hunt that was a decision made by the Board of Supervisors because they felt it made sense to take over the open space.

Mr. Borda asked if the proposed traffic improvements contemplate development of the Middletown site the same as proposed for Lower Makefield, and Mr. Santarsiero stated it anticipates similar development.

Motion carried with Mrs. Godshalk opposed.

A short recess was taken at this time. The meeting was reconvened at 10:05 p.m.

#### DISCUSSION AND MOTION ON RAILROAD QUIET ZONES

Mr. Majewski stated at the last meeting he was asked where quiet zones have been applied for; and while there are some throughout the County, there are none locally. A list has been provided to the Board of Supervisors of these locations. He stated there was also a comment made about an automated horn system and instead of the train sounding the horn as they approach the intersection, there would be a stationery horn at the roadway crossing. This horn has a sound profile that while as loud as a train horn, the extent of where the noise goes is much less. He stated it is projected up and down the road to warn the vehicles as opposed to going down along the railroad tracks. He stated because the train engineer currently must use the horn twenty seconds before they hit the intersection, you could impact people for approximately one quarter of a mile with the regular train horn. The stationery horn is called a wayside horn. The horns are comparable as it relates to decibel level.

A video was shown of an example of a quite zone indicator. Mr. Majewski stated in Lower Makefield the four crossings are relatively close together. He stated with the wayside horn you would only get the horn sound at the crossing. A video was also

shown of a median crossing device called quick kurb. Mr. Majewski stated with the automatic horn system, the train sound is not loud unless you are right at the crossing. He stated while the sound of the wayside horn is just as loud as the train horn, the difference is where the sound is projected. Mr. Majewski presented a graphic as to the difference in sound projection for the wayside horn and the regular train horn.

A gentleman asked if there are State or Federal laws related to the decibel level of freight trains compared to commuter trains. He stated the freight trains are much louder. Mr. Truelove stated the maximum decibel level permitted for any train is 110 decibels. Mr. Majewski stated the SEPTA trains have an older style horn system, and the engineer has control over how loud they can make the horn.

Mr. Santarsiero stated in the spring of 2005, the Federal Railroad Administration allowed for quiet zones which means trains would not have to blow their horn coming into the intersection provided safety measures are implemented at the crossing. He stated the wayside horn may or may not be one of the items they accept. He stated this may be an option for daytime hours. He stated one of the options would be the channelized lane as seen in the video or there could be a double gate system. He stated they have identified three intersections which could be candidates for a quiet zone in the Township.

Chief Coluzzi stated at the last meeting he indicated he was not comfortable with quiet zones; and the more he learns about it, the less comfortable he becomes. He feels there is a grave concern for public safety. He stated train horns control activity all along the track. He stated the engineers may be a little lax in keeping their eyes out at crossings if the train horn is not used. He does not feel the delineators as shown will hold up to traffic. He stated people from Operation Lifesaver across the U.S. have indicated that these devices become toys for children to play and jump on and become a liability to the Municipality which cannot get out quickly enough to repair them. He stated if they are not repaired quick enough and the Railroad is not notified that there is a problem and that they need to use the horn, the Township would be accepting a great deal of liability. He is not comfortable recommending to the Board that they proceed with this. He would suggest that they look into alternate measures to quiet the horns, but does not feel this is one of them.

Mr. Jim Coyne was present and stated he agrees with the Chief. He stated the ambulance facility is in this area and putting these obstructions in the railroad would be a detriment to them as well. He stated he is also concerned with the fact that once the devices are hit a few times, they deteriorate. He stated he also has concerns during snow conditions because some of the most dangerous areas are railroad crossing, and they are a priority. He stated he does not want to see the Township get into a liability situation where they are making exceptions for safety. He stated he would be in favor of looking into other alternatives. He stated if these devices are not repaired promptly, the liability would come back to the Township.

Mr. Santarsiero stated he assumes because the Federal Railroad Administration has promulgated these rules and would have to sign off on the creation of a quiet zone, he feels the Township would be protected. Mr. Truelove stated there is a liability cap for local Governments, and he feels they would probably be covered. He stated he did contact David Meyers, the Regional Administration for the FRA, and he indicated that most of the trains in the general area do comply with the 110 decibel maximum; however, he did indicate that if there were complaints about either the level or frequency, they could register these complaints with his office. He stated detailed information about the number of the locomotive, time of the incident, railroad, and any other information that could be provided would be needed. Mr. Meyers stated he is not opposed from his perspective to the quiet zones, but he did indicate there was a substantial Application process in order to get a quiet zone approved. Mr. Santarsiero stated according to the letter written to the Board by Mr. Truelove, he indicated that Mr. Meyers was actually a proponent of the quiet zones, and Mr. Truelove stated in their discussion he indicated that the quiet zones had worked in some of the areas where they had been developed. He did caution that there is a stringent review process.

Mrs. Godshalk stated last week on Edgewood Road, the Township Police had to be the gatekeepers at the railroad crossing because the gates did not operate. She asked if there was a quiet zone established, how would the railroad know if the gates were not operating so that the engineers would know they had to sound the horn. Mr. Santarsiero stated establishing a quiet zone does not take away the authority of the engineer to sound the horn if they feel it is necessary. Mrs. Godshalk asked how the engineer would know the gate was not going down. Mr. Santarsiero stated they should look into this to see if there is signalization in place as was shown in the video where there was an indicator advising that the wayside horn was operational.

Mr. Stainthorpe stated he is the Liaison to the Emergency Management Committee and they had a thorough discussion of this matter at their last meeting. He stated in general he was in support of the quiet zone, but the more he listens to the safety professionals, the more concerned he gets. He stated he does hear the concerns of the people in the neighborhoods and recognizes that it is a problem for their quality of life; however, as a Township Supervisor, their first obligation is to provide for public safety. He stated the only obligations they have which are enumerated in the Township Code are to maintain roads and to provide for public safety. He stated he feels the automated horn system is worth pursuing and feels this may be a good compromise and still provide for a high level of safety. He noted one of the members of the Emergency Management Committee had discussed the quiet zone with an engineer from Norfolk/Southern who felt it was a terrible idea. He noted the presence of Pat Frain, a Township resident who is also an engineer. He feels this is a very difficult decision for a Township Supervisor to make; and while the popular decision for those residents present this evening would be to proceed, he feels it may not be the right decision.

Mr. Smith stated they were told that this was a stringent Application process, and he feels they have a responsibility to explore it and proceed with the Application process. He stated he is concerned about public safety but feels this must also be balanced with the quality of life issue. He stated he feels they must also consider acceptance of responsibility by those who would drive around the barriers. He stated he does not feel the automated train whistle solves the problem, and he would prefer the quick kurb. He stated he would only be in favor of a limited quiet zone for those hours of the day which effect people the most which would be from 10:00 p.m. to 7:00 a.m. or some other times when most people are sleeping.

Mr. Caiola stated he did not see any Website where these devices were actually removed because they did not work. He stated Mr. Truelove indicated the FRA will work with the Township, and they will make recommendations as to how to handle this.

Mr. Stainthorpe asked the cost to apply and whether they would have to put up the barriers before they got approval. Mr. Majewski stated they do not have to put up the barriers before they get approvals. He does not feel it costs anything to make an Application. Application involves notification of the effected stakeholders; and during the process, they will find out the requirements to get something approved.

Mr. Santarsiero asked how long it would take before something could be done if they vote to go forward tonight with the Application. Mr. Majewski stated it would take six months to go through the review process, and you would then have to put the project out to bid so it could be up to one year before the construction was completed.

Mr. Santarsiero stated he does have concerns with the safety aspects, but does feel these quiet zones have been implemented elsewhere and have worked and it does not seem that there was an increase in accidents or fatalities. He stated if they limit the hours of operation to the overnight hours, they would further reduce the possibility that there could be accidents. He also asked that they consider not only putting together an Application for the channelized crossing but also look into the cost and effectiveness of the wayside horn and the impact on the surrounding residents and the best solution may be to have the channelized crossing as well as the wayside horn for use during the day.

Mr. Joe Ardin, 314 New Gate Road, Langhorne, stated there is new technology that exists called digitized Doppler directional sound wave which channels the focus of the sound and does not dissipate over depth of field and this might help solve the problem.

Mr. James Webb, Heritage Oaks, asked if they are looking into this crossing by crossing, and Mr. Santarsiero stated currently they are looking at three crossings – at Edgewood Road, Stony Hill Road, and Heacock/Oxford Valley Road. He stated the one at Big Oak Road is not a candidate because of the other traffic problems associated with it. He stated a vote tonight would involve presenting the engineering to the FRA as to what they would do at each of these intersections. He stated the review process is very stringent

and they may not agree to it. He stated they may in the alternative permit one or two of them to proceed. Mr. Webb stated he is a Real Estate appraiser, and there is a stigma attached to any house near the tracks. He stated at Heritage Oaks there is an inconsistency between the train horns and the wayside horn would at least be consistent. He stated he feels limiting this to the evening hours only is short-sighted since some people are sleeping during the day. Mr. Santarsiero stated their concern with respect to the hours of operation was not just because of the time people were sleeping, but because during the overnight hours there would be fewer cars traveling on the roads which may reduce the potential for accidents.

Mr. Pat Frain, 16 Delaware Rim Drive, stated he has been a certified locomotive engineer for twenty-two years. He stated from January 2006 to July 2006 there were 1600 grade crossing accidents in the Country resulting in 211 deaths. He stated he has had many close calls with grade crossing and did have a fatality with a trespasser on the tracks. He stated it is a safety concern with the cars and pedestrians and it is a safety concern to the train engineers as well. He noted the difference in the horn levels stating the SEPTA train horns are air driven. He stated the new equipment being manufactured is electronic and there is no way to adjust the levels. He stated if there is an accident at a grade crossing, they will download the black box which will tell what the engineer was doing, whether the bells were sounding, the horn was blowing, etc.; and if the engineer is found to be not in compliance, he is personally subject to monetary fines and could be brought up on criminal charges. He stated the FRA has given the engineers a range of sounding the horn fifteen to twenty seconds before reaching the crossing as opposed to the previous requirement that the horn be sounded one quarter mile away from the crossing which does cut down on the time the horn is blowing if the train is moving slower. He stated they should also consider that freight trains do carry hazardous chemicals. He stated he is skeptical about the quiet zones.

Mr. Smith stated the fatalities he noted could not be broken down by quiet zone or non quiet zone, and Mr. Frain agreed. Mr. Smith stated a lot of these incidents do involve trespassers and also young people and incidents involving substance abuse, and these incidents have not been broken down on the website. Mr. Frain stated he did speak to a Union Official about the quiet zones, and he indicated there was a 26% increase in incidents in quiet zones; but Mr. Frain has not been able to verify this. Mr. Frain stated he does not have a problem with exploring different options. He noted FRA.DOT.GOV is a website which has information about quiet zones. Mr. Frain noted the problem with gate malfunctions adding there are rules for the engineers to follow. He stated his concern is if the horn fails or something goes wrong mechanically, the first engineer through may not know that there is a malfunction.

Mr. Santarsiero asked if the dispatcher knows if there is a malfunction at the crossing, and Mr. Frain stated someone usually reports it first. Mr. Santarsiero asked if the engineer sees a light or sign to indicate the gates are not working, and Mr. Frain stated if

the gates are not down you can see that from a distance. He stated if the gates are down and people are going around it, the engineer cannot tell what the problem is. Mr. Frain stated you are only 100% sure of the situation if you use the horn. He stated there have been many engineers who have been killed at grade crossings because someone went through the gate. He stated as an engineer he likes to be able to pull the horn both for his own safety and for the safety of those on the road. He stated he does feel that there is a quiet zone in Lebanon Valley. Mr. Smith asked if Mr. Frain could provide the Township engineer with some of the information as to the quick kurb and the wayside horn locations so that the Board of Supervisors could visit the sites.

Mr. Ken Martin, 18 Austin Road, stated he was a dispatcher for Amtrak for thirty-one years. He stated he is concerned with the liability issue. He stated railroads are an attractive nuisance. He stated if the Township reduces the safety factor, the Township may be liable. He stated there is no time during a twenty-four hour day when someone is not going to do something foolish. He stated he feels there might be more hazards at 2 a.m. than during other times. He stated Amtrak has been doing away with grade crossings at great expense. Mr. Martin stated he has been involved as a dispatcher when gates have malfunctioned. He also noted the difficulty of stopping a running freight train. Mr. Smith asked Mr. Martin if he had an objection to the Board exploring this process, and Mr. Martin stated he does not but feels the liability is there around the clock.

Mr. Mike Lanctot, 467 Jenny Drive, stated currently they do not have statistics of increased accidents at these quiet zones. He noted there are accidents now even with the engineers blowing the horn. He stated this is impacting their quality of life. He stated if the statistics are not that much different, he feels they could have a quiet zone.

Mr. Bob Daily, 507 Long Acre Lane, stated he would be in favor of the wayside horn concurrent with the channelized crossings. He stated they all recognize the need for safety. He stated he feels a great deal of effort went into considering these quiet zones. He stated he feels issues with regard to snow removal and liability are addressable items.

Mr. Frank Thurber, 9407 Sheffield Drive, stated he feels the Board of Supervisors should leave the trains alone. He stated he agrees the number of trains going through the Township has increased, but feels this is a Federal problem and does not feel the Board should do anything.

Mr. George Shotz, 62 Libby Lane, asked if there were additional visual cues they could add that would make the situation safer. Mr. Santarsiero stated there could be additional signage and a light system. Mr. Majewski stated there could be a flashing red light signal similar to the type that is installed when a new stop sign is installed.

Mr. Scott Finder, Ashley Estates, stated the idea of changing something that relates to safety is of concern, but he feels they can look at this closely. He stated the risks are

higher with car fatalities than with train fatalities. He stated many people try to beat the train, and a horn may not stop this either. He asked that they find a way to make the company selling the wayside horn to provide a sample of what it will sound like on the site as the wayside horn may actually make the situation worse as there are some trains passing by where the sound is not that objectionable. He stated he feels they should apply for a quiet zone for twenty-four hours. He stated if they look at the facts and they determine it is more likely that there are accidents at certain times of the day when they have the quiet zones, they could then limit it.

Mr. Stainthorpe stated while he will vote to make Application, as part of the Motion he would like there to be a requirement that there be at least two public meetings before the Board votes to accept anything. He feels the Board should take the next six months to look into this further and feels they should proceed with caution. Mrs. Godshalk stated she is concerned about proceeding against the judgment of their experts including the Police Chief, the Road Superintendent, and a train engineer. Mr. Santarsiero stated at this point they are only voting to proceed with the Application.

Mr. Smith moved and Mr. Caiola seconded to begin the process of applying for Quiet Zone consideration; and in the event that it is approved, that there be two public meetings before any Quiet Zone measure is adopted.

Mr. Santarsiero moved to amend the Motion that they also look into the wayside horn possibly to operate during the day and apply for the channelized Quiet Zone for the hours of 10 p.m. to 7 a.m. and that they try to get the manufacturer of the wayside horn to do a demonstration on the site.

Mr. Caiola stated he is concerned about the time limit of 10:00 p.m. to 7:00 a.m. and would prefer that it be 11:00 p.m. to 6:00 a.m. Mr. Santarsiero agreed to change his Amendment to be 11:00 p.m. to 6:00 a.m. Mr. Majewski stated he is not sure that they are allowed to change the Quiet Zone times from 10:00 p.m. to 7:00 a.m. and possibly they could investigate this further. It was agreed to leave the time from 10:00 p.m. to 7:00 a.m. Mr. Caiola seconded the Amendment.

Motion on the Amendment carried with Mrs. Godshalk opposed.

Motion as Amended carried with Mrs. Godshalk opposed.

A short recess was taken. The meeting was reconvened at 11:40 p.m.

## DISCUSSION OF DEER OVERPOPULATION

Mr. Santarsiero stated Mr. Byron Shissler was invited to a seminar conducted by the Environmental Advisory Council where he gave a very informative talk on the problem of deer overpopulation. Mr. Santarsiero stated there is no doubt that there is a deer problem in the Township which has caused accidents, property damage, and the spread of Lyme Disease. He stated Mr. Heilferty, who is also present this evening, is the Naturalist for the Five Mile Woods; and he is acutely aware of the impact on the special flora in the Five Mile Woods by a large herd of deer. Mr. Santarsiero stated they are considering retaining Mr. Shissler to serve as a consultant on this issue, take public comment, and then make a decision as to how to proceed.

Mr. Heilferty stated he manages the Five Mile Woods, and they have been aware of the deer problem in the Woods since the inception of the Preserve in 1980. He stated since that time, the Friends of the Five Mile Woods have become keenly aware of the problem and the impact on the health of the eco-system. He stated he too has observed the damage being done to the Woods. He stated Dr. Ann Rhoades from Morris Arboretum has been involved with the site and indicated that there is a significant deer problem in the Woods. He stated they also coordinated with the Audubon Society and installed three deer exclosures which keep deer out of certain areas of the Woods; and for the five to six years since they have been installed, they have seen the vegetation which has come back in these exclosures. He stated four years ago he contracted with an individual who flew the Preserve; and on the 300 acre Preserve and the 300 acres adjacent to the Preserve, there are fifty-five to sixty deer in the area. The appropriate number of deer for this amount of land would be ten to fifteen deer. He stated they consulted with Mr. Shissler and walked through the Preserve, and he confirmed that the property does have a problem. Mr. Heilferty stated he has had discussions with a number of people about what they can do about this problem. He stated deer/car collisions and Lyme Disease are also problems. He stated they do have good base line data for the Five Mile Woods through expert testimony and the effects seen in the deer exclosures.

Mr. Shissler stated the issues are ecological, human safety, and economics. He stated there are a number of ways to deal with the problem. He stated it is a value decision that the Township will have to decide. He stated there will be a diversity of opinions on this issue. He stated as a first step, he would suggest gathering data, determining where the deer are located, and consider what technique will work in each area of the Township. He stated they will look at the Township situation and then define the options.

Mr. Smith asked if this is a good time of year to conduct such a study. He also asked how long it would take. Mr. Shissler stated this can be done at any time of the year. He stated they would not be able to start until January, and it would take ninety days. Mr. Santarsiero stated they were only quoted hourly rates. Mr. Shissler stated they would do it hourly if they wanted to do it piecemeal, or they could submit a specific proposal.



Mr. Stainthorpe stated he would prefer to see a specific proposal. He stated he feels there are two pieces to the problem. He stated he feels Five Mile Woods must be dealt with, and then they should consider the overall Township. Mr. Santarsiero agreed.

Mr. Santarsiero stated he would like a study of the entire Township because while the problem may be most quantifiable in the Five mile Woods, it does exist throughout the Township. Mr. Santarsiero stated from what he heard from Mr. Shissler at the recent seminar, he feels it would be very difficult to deal with one area in isolation unless they were considering putting up a fence around the Five Mile Woods. Mr. Santarsiero stated he feels if they are going to address the issue, it should be for the entire Township and not just the Woods. Mr. Stainthorpe stated he would envision that they would have options presented to them following the study as to how they would like to proceed and the costs involved with each option.

Mr. Smith stated he understands a study was just approved for the Upper Makefield area, but Mr. Shissler was not aware of this. Mr. Smith stated when you look at the situation on a Township-wide basis, the problem will not stop at the Township boundaries; and he feels they will have to look at this on a regional basis as well. Mr. Shissler stated they can manage deer on very localized levels; although if there are large areas of open space which are adjacent to open space in other Townships, this must be considered.

Mrs. Godshalk stated she has a home in the Poconos where they have dealt with this issue, and they have a hunt. She asked what Mr. Shissler is considering. Mr. Shissler stated in Townships such as Lower Makefield the issue is not to provide recreational hunting but to control the out-of-control deer population. Mrs. Godshalk asked how they would pinpoint the herd in such a large area, and Mr. Santarsiero stated this would be part of the study. Mr. Santarsiero stated at the Seminar, Mr. Shissler indicated the right way to proceed was to quantify the problem and then consider how they can reduce the problem. Mr. Shissler stated they want to determine how to solve the problem and find a way to reduce the impacts the deer are having in the Township.

Mr. Joe Ardin, 314 New Gate Road, Langhorne, stated he has been a hunter for over forty years and what they have been doing for the Chester and Delaware County communities is urban deer management. He stated he provided to Mr. Fedorchak information on his organization which is a non-profit organization of hunters who resolve deer management issues at no charge to the community or to the homeowners. Currently they manage over sixty properties. He stated State law has changed to address urban deer management issues. He stated the safety zone for a controlled bow hunting environment which is what they are looking at in Lower Makefield Township is fifty yards from an occupied house or dwelling. He stated if a local landowner gives him permission, he can hunt off their back porch. He stated deer are a renewable natural resource and the problem will come back. He stated if they killed every deer in the Five Mile Woods, deer will migrate back in. He recommended that they move forward with getting an expert opinion and they can discuss the various options available to the Township, and they would be willing to offer

their support. He stated they have worked with East Goshen, West Goshen, and East Bradford Townships which have similar situations to Lower Makefield. He stated they are available to the Township and to local residents.

Mr. Sam Conti stated the farmers have advised him that they lose approximately 30% of their crops to deer each year.

Mr. Shissler was asked to put together a proposal for a ninety day study.

#### UPDATE ON FLOODING MITIGATION EFFORTS

Mr. Majewski stated he did prepare a response to some of the questions that were raised, and he forwarded this response to Mr. Burgess and the Board of Supervisors. He has also agreed to meet with RAFT to go over any further questions they have.

Mr. Burgess, 15 Glenn Drive, noted the work that is being done on the towpath with regard to the sewers and asked if there has been any discussion about doing some work in conjunction with this. Mr. Stainthorpe stated they are in a Contractual arrangement with a Contractor and are locked in at a price, and he only has to restore the Canal to what it was. He would be concerned about changing the Contract at this point, and the other Supervisors agreed.

Mr. Fedorchak stated they have included as part of the Capital Infrastructure Grant Application, to raise the towpath the entire length within Lower Makefield.

Mr. Truelove stated he has been in contact with Governor Rendell's office for a number of weeks; and they are attempting to set up a meeting in approximately two weeks with himself, Mr. Santarsiero, and Representative Steil at the Governor's invitation to discuss moving forward on funds which were allocated in the 2000 Capital Budget. They want to discuss Canal dredging, culvert widening, Canal lock reconstruction, and possibly some overflow issues to provide some additional relief.

Mr. Barry Wood stated they have been working on this for some time, and there has been some progress; but when there is consistent heavy rain, he gets concerned. He stated on July 6 he appeared before the Board of Supervisors and was advised that there was \$2.5 million that had been released by the Republican Leadership Caucus and this was on the desk of the Governor. He found out that this was true and he wrote letters to the Editor approximately one month ago. He stated on two occasions Mr. Santarsiero indicated publicly that he had talked to the Governor's office and the responsibility was with the Legislative leaders. He stated he discussed this with Mr. Steil and was advised that Mr. Santarsiero was incorrect and that the release of the money had already been accomplished, and the Republican Leadership Caucus had released the money five years

straight. He stated they again released it when they re-caucused in January of this year and again July 1, 2006. He stated he is happy to hear that they are meeting with the Governor. He stated in the letter which was sent to him by Mr. Steil, the Governor admits that the responsibility is in his office. He stated he would be willing to go with them when they meet with the Governor.

Mr. Santarsiero stated he is only reporting on what the Governor's office told him which was that it rests with the Legislature. Mr. Santarsiero stated when they were at the Canal one month ago Mr. Steil was present. They had a discussion about the Canal, and Mr. Steil explained the process of the Caucus getting funds but noted the funds had not yet been appropriated. He stated Mr. Steil advised that this was a project that had been authorized for a number of years. Mr. Santarsiero stated he asked him about the appropriate steps, and whether this was only an issue for the Governor or did the Legislature as a whole of all the Caucuses have to weigh in; and Mr. Steil indicated that they all had to be part of this. Mr. Santarsiero stated his understanding from that conversation is that it was not only an issue involving Governor Rendell signing a check. Mr. Santarsiero stated when they discussed with Mr. Steil the possibility of having the meeting with Governor Rendell, Mr. Santarsiero suggested getting those involved from the House and Senate involved as well at the meeting, and Mr. Steil indicated this was a good idea.

Mr. Wood stated Mr. Steil's letter of 11/5/06 indicates the Legislature has authorized a debt ceiling sufficient to complete the proposed projects for the Fiscal year 2006/2007 and the project has been placed on a list of projects provided to the Governor by the House Republican Caucus and it is now the Governor's decision when and if the project will be funded. Mr. Santarsiero stated this was not his understanding. He stated this is why it is good that they are having the meeting.

Ms. Virginia Torbert stated authorization is not the same as appropriation. She stated Mr. Steil explained that the money had been authorized for four to five years, and it has been on the Republican Caucus' list, but this is not the same as money being appropriated. She stated she does not feel Mr. Steil ever put in his letter that the money was ever appropriated.

Mr. Santarsiero stated he feels everyone agrees that they want to get the money.

Mr. Stainthorpe stated he speaks to Mr. Steil twice a week, and Mr. Steil believes he was misrepresented. Mr. Stainthorpe stated he is getting the feeling that certain people are trying to take credit for the project. He wants to see the project get done. Mr. Santarsiero stated he feels politics was injected into this when Mr. Wood wrote the letter which put Governor Rendell in an impossible situation. Mr. Santarsiero stated he feels they should get past this, and work toward getting this done. Mr. Smith suggested that Mr. Steil come in to discuss this so they can speak to him directly.

APPROVAL OF ORDINANCE NO. 366 – RIGHT-OF-WAY ORDINANCE

Mr. Truelove stated this relates to the cable franchises and will ultimately generate revenue to the Township in the appropriate manner.

Mr. Caiola moved, Mr. Smith seconded and it was unanimously carried to approve Ordinance No. 366.

APPROVAL OF ORDINANCE NO. 367 – VERIZON FRANCHISE AGREEMENT

Mr. Truelove stated this is the Ordinance which grants a Franchise to Verizon and is the same as that which was passed previously for Comcast. This was negotiated essentially by the Consortium of Townships with Verizon. He stated representatives from Verizon are present this evening if there are any questions.

Mr. Stainthorpe moved, Mr. Caiola seconded and it was unanimously carried to approve Ordinance No. 367.

Mr. Bill Keaton, 14 S. Circle, asked if the Board of Supervisors looked into the fact that many Lower Makefield residents live in the Morrisville Central Office area. Ms. Mary Lou Frier from Verizon stated there are four wire centers serving the Township. Mr. Keaton asked if the Morrisville Center Office will be slated for fiber optics, and Ms. Frier stated they will.

APPROVAL OF EQUIPMENT RENTAL BIDS

Mr. Fedorchak stated bids were placed by the Public Works Department for rental of various pieces of equipment that may be needed from time to time.

Mrs. Godshalk moved, Mr. Stainthorpe seconded and it was unanimously carried to award the equipment rental bids to McAllister, Bray Bros., Scotts, and Guide Mark, Inc. for the 2006-2007 season.

DENY REQUEST FOR DEDICATION OF THE WOODS AT MAKEFIELD

Mr. Santarsiero stated a request for Dedication of the Woods at Makefield has been received but they have been advised that there are still a number of outstanding items. Mr. Santarsiero also noted problems with the detention basin and standing water. He stated there was supposed to have been vegetation planted which was to have taken root and only one third of the basin has vegetation. Mr. Majewski stated as a result of

problems the developer had, they went out and re-tested the ph level of the soil and came back with a different planting **recommendation**. The basin has since been replanted, and they should see the results in the spring. Mr. Santarsiero stated he does not feel it is appropriate that they go another summer without vegetation growing in the detention basin. He asked that they come back to the Board in April to discuss this, and Mr. Majewski stated they will be monitoring this situation closely.

Mr. Stainthorpe moved, Mr. Smith seconded and it was unanimously carried to deny the request for Dedication of the Woods at Makefield.

#### ZONING HEARING BOARD MATTERS

With regard to the Yardley-Makefield Fire Company Variance request to permit construction of a detached garage/accessory building in excess of permitted height, it was agreed to leave this matter to the Zoning Hearing Board.

With regard to the David and Nancy Willard, 1298 Enoch Court, Variance request to permit construction of a fence encroaching into the drainage easement, it was agreed that the Solicitor should participate to insure that certain conditions are met.

#### SUPERVISORS REPORTS

Mr. Santarsiero stated the Southeastern Bucks League of Municipalities will meet on November 30 at Yardley Borough at 7:30 p.m.

Mr. Smith stated the Farmland Preservation Corporation is very concerned about the leaf disposition throughout the Township, and would like to discuss this further with the Township. He stated the Citizens Budget Commission will meet next Monday. He added that there is a vacancy on that Commission.

Mr. Caiola stated the Memorial Committee attended the Park & Recreation Board and discussed possible changes at Memorial Park. The Park & Recreation Board is going to look into this further as only four members were present and their vote on this matter was two to two.

Mr. Stainthorpe stated the Golf Committee met Monday and the Course is having a very good year with the warm fall weather helping a lot. He stated there was an extensive discussion about non-golf events during the off season at the Club House. The Committee is in favor of this, and there are nine events already booked in December which will bring in \$8,000 in profit. Mr. Stainthorpe stated the Emergency Management Committee met and a presentation was made by two individuals involved with ham radio.

The Committee felt that at this time there was not enough value to the services they were offering to consider any changes to the Zoning Ordinance to permit towers. If there was a need for ham radio service, it was felt the Township should invest in them themselves. The Committee did not see any big gaps in the communication system that this would fill.

Mrs. Godshalk stated the Memorial Committee did meet with the Park Board, and there was a general consensus that they were in favor of what the Memorial Committee presented although there was discussion as to what they could do with one soccer field. She stated that soccer field is for pick-up games only and was planned before the Snipes Tract was purchased where there will be many soccer fields. She stated they also felt that an Arboretum area would be appropriate in front of the Memorial where a softball field and playground had been planned. She stated she feels the engineers are going to look into this further, and they will discuss it again.

APPROVAL TO READVERTISE ORDINANCE NO. 363 AND ORDINANCE NO. 364

Mr. Truelove stated the Ordinances require re-advertisement because of comments from the Bucks County Planning Commission.

Mr. Stainthorpe moved, Mr. Caiola seconded and it was unanimously carried to re-advertise Ordinance No. 363 amending the Subdivision and Land Development Ordinance to provide low impact standards for storm water management and Ordinance No. 364 amending the Codified Zoning Ordinance to provide low impact development standards.

APPROVAL TO RESCIND ORDINANCE NO. 365

Mr. Truelove stated he would recommend that there be a vote to rescind the re-advertisement of Ordinance No. 365 as the proposed Ordinance is moot.

Mr. Caiola moved, Mr. Stainthorpe seconded and it was unanimously carried to rescind Ordinance No. 365.

AUTHORIZE EXPENDITURE OF FUNDS TO RELINE A SECTION OF THE DERBYSHIRE SANITARY SEWER INTERCEPTOR

Mr. Fedorchak asked that the Board authorize the expenditure of \$49,900 to reline a 1,300 foot section of the Derbyshire Sanitary Sewer Interceptor which they have identified as being a major source of infiltration. He stated some time ago the Bucks

County Water and Sewer Authority had directed the Township to begin to identify major sources of infiltration and take corrective action. He stated Township staff met with the Authority staff, and the Authority has made the Township aware that they currently have a contract with a company which has given the Bucks County Authority a very competitive price to do this work. He stated he feels if the Township had bid it themselves it would have been much more expensive.

Mrs. Godshalk questioned why this was not on the Agenda, and Mr. Fedorchak stated this only occurred within the last few days.

Mr. Stainthorpe moved and Mr. Smith seconded to authorize spending \$49,900 as outlined by the Township Manager to reline a 1300' section of the Derbyshire Sanitary Sewer Interceptor which has been identified as a source of infiltration. Motion carried with Mrs. Godshalk opposed who noted they did not get anything on this prior to the meeting.

Mr. Stainthorpe noted Mr. Hoffmeister has done a good job dealing with the inflow situation; and at the meeting of the Bucks County Water and Sewer Authority, they voted to lift the moratorium on two out of three of the connections in the Township. He feels this work will get them to lift the third.

#### ANNOUNCEMENT OF SPECIAL MEETING

Mr. Santarsiero announced that there will be a Budget meeting on Monday at 5:30 p.m. and a Special Meeting of the Board for the purpose of advertising the Budget will be held on November 28 at 7:30 p.m.

There being no further business, Mr. Smith moved, Mr. Stainthorpe seconded and it was unanimously carried to adjourn the meeting at 12:45 a.m.

Respectfully Submitted,

Greg Caiola, Secretary

