

TOWNSHIP OF LOWER MAKEFIELD
BOARD OF SUPERVISORS
MINUTES - JANUARY 21, 2002

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on January 21, 2002. Chairman Fegley called the meeting to order at 7:40 p.m. noting that the Board had been meeting in Executive Session since 6:00 p.m. to interview candidates for various Boards and Commission and to discuss legal matters. Mr. Fegley stated there is a list to be signed by anyone who wishes to speak during the Matrix discussion. He noted that they will allow a few additional minutes for those who have not yet signed up. Once the presentation has started, they will take the list and call only on those who have signed up. He stated they will not recognize anyone else from the audience. Mr. Fegley stated the Board will not tolerate any disrespect from anyone at any time, and one verbal warning will be given before those disrupting the meeting will be asked to leave.

Those present:

Board of Supervisors: Scott Fegley, Chairman
 Grace Godshalk, Vice Chairman
 Wesley Hackman, Secretary/Treasurer
 Frank Fazzalore, Supervisor
 Pete Stainthorpe, Supervisor

Others: Terry Fedorchak, Township Manager
 Jeffrey Garton, Township Solicitor
 John Koopman, Township Solicitor
 Duke Doherty, Township Engineer
 Kenneth Coluzzi, Chief of Police

PUBLIC COMMENT

There was no public comment at this time.

APPROVAL OF MINUTES

Mr. Hackman moved, Mr. Fazzalore seconded and it was unanimously carried to approve the Minutes of 1/7/02 as written.

APPROVAL OF FINAL PLAN OF MATRIX OCTAGON CENTER PLAN

Mr. Fegley asked if there was anyone else interested in signing up to speak. Seeing none, the list was closed.

Mr. Joseph Taylor, Mr. Marc Brookman, Mr. Russell Tepper, Mr. Frank Tibani, Mr. Bob Rodgers, Ms. Pam Conti, Mr. Chris Burkett, and Mr. Richard Johnson were present representing Matrix.

Mr. Taylor stated they started the process with the Board approximately two years ago and have spent time with the Township professionals. They have had a thorough review by them and the Board of Supervisors at a number of public meetings.

Mr. Brookman presented a sketch of the proposal. He stated they are requesting Final Land Development and Subdivision Approval for the property located in Lower Makefield Township. He stated they have 138 acres located at Big Oak and Oxford Valley Roads. The property is zoned C-2 and C-3. In 1988 the land was the subject of an Approval which permitted 1,282,000 square feet of industrial and commercial uses. In December of 2000, the Board of Supervisors agreed to amend the Master Plan Approval Agreement and revisions to the Master Plan. What is before the Board this evening shows this and contains a variety of uses including retail, offices, and hotel. The approval reduced the intensity of development by 292,000 square feet bringing it to 990,000. The first phase of that could have included the retail use, one of the four office buildings, and the limited service hotel. The Application which has been prepared provides for two retail stores and one office building. The Master Plan approval Agreement also called for substantial road improvements. Mr. Brookman stated all of the signals, widening, and road relocations are part of the first phase of the project for which they are seeking approval this evening.

Mr. Brookman stated the Plans have been reviewed by all Township consultants including Skelly & Loy, PCS, CKS, and the Police and Fire Chiefs. He stated they did appear before the Planning Commission over a series of public meetings, and they made revisions to the Plans consistent with the requests of the Planning Commission with respect to the parking lots and the height and location of lighting. They are requesting certain waivers. He noted Section 11.173a(2) which would permit the record plan size to be 1" equals 120' because of the scope of the size of the project. They are also requesting a waiver from Section 11.92d to permit a three to one slope for the retention basin in order to minimize any disturbance to the natural features. They will retain the basins as private property, and the Township will have no responsibility for them. The Planning commission did recommend approval of these waivers.

Mr. Brookman noted the most recent PCS letter and stated they will comply with all items. He noted the CKS letter and stated they have obtained approval from the City of Philadelphia and the Bucks County Water and Sewer Authority for waste water sewage disposal. They have had to modify their application increasing their calculations, but it is still less than what was previously approved for this site. They have been in discussions with the Water Company and are working toward an Agreement with them. Mr. Brookman stated they will comply with all other items in the CKS letter.

Mr. Stainthorpe asked if it is their intention to build Tall Pines Road in Phase I. Mr. Brookman stated as part of the Planning Commission review process, they agreed with the Planning Commission that they would cul-de-sac the road right past the first office building. He stated they felt installing the road could create liabilities and potential problems. He noted this area will be used for construction, and there would be no way to monitor who was coming in. He stated they will put down a stone base that would permit emergency vehicles to access and this detail is shown on the Plan. Mr. Stainthorpe stated he feels installing the road tells the Township that the developer is committed to completing the project. He is concerned that approving this project as proposed tonight gives the Applicant the opportunity to complete the most profitable portion, and they could then leave the Township. Mr. Brookman stated they will place in escrow the funds for all the Phase I improvements. Mr. Fazzalore noted all road improvements will be done before they start in

the retail section. Mr. Brookman stated they will be completed in tandem, but will be completed before the retail portion is opened.

Mrs. Godshalk stated it appears Phase I is not really a true configuration of a Phase because it is not contiguous. She stated they are leaving out a major building which requires them to go to the Zoning Hearing Board. She feels that before the Plan is approved, it should go to the Zoning Hearing Board. She stated this is a major building on a major road, and there are serious traffic problems in this area. She does not see the new Plans helping the traffic situation. She stated she feels the Board members have made a mistake and they should work with the Applicant to come up with another Plan that would take out the big boxes. She stated she feels it would be more suited for a major office complex. She stated she feels if the Board of Supervisors approves this tonight, their names will go down in infamy. She stated she feels if the Board of Supervisors votes against this Plan, they will have the majority of the community supporting them.

Mr. Hackman stated although most of the people in the room may feel this is a poor Plan, he feels it is a good Plan because the current Zoning Ordinance that was passed more than eight years ago included large retail in this area. He stated if any mistake was made, the mistake was made eight years ago. He stated he has reviewed the Minutes of all the meetings held by the Planning Commission and the Board of Supervisors during that time, and the Minutes do not show one single person objecting to large retail stores in this area. He stated the Applicant has a right to build according to the Ordinance. The large retail stores which seem to be the focus of the discord are permitted. He stated someone else could come in and put six big box retail stores according to the Ordinance, if not by the Board of Supervisors, then by the Courts. He stated the fact that this is a mixed use development will result in peak traffic being spread out.

Mr. Hackman stated there was to be an access road built near the large retail stores out to Oxford Valley Road. Mr. Brookman noted this road on the plan. Mr. Hackman stated he feels this road should be built since it will take pressure off the intersection of Big Oak and Oxford Valley Roads. Mr. Brookman stated this will be right-in, right-out and will be a private road. Mrs. Godshalk asked how far it is from Big Oak Road, noting she does not feel it is 800' away as required. Mr. Hackman stated this was discussed some time ago with the idea being it would help to spread out the traffic.

Mr. Hackman asked about and was shown the location of the proposed cul-de-sac. He noted they have subdivided this into nine lots and by stopping the road, the road frontage would not be improved. He stated the highways should be improved in front of the office buildings they are building. Mr. Tepper stated the Tall Pines Road cul-de-sac goes to a point beyond the office building. He stated the road would serve future office buildings and not the building built in Phase I. Mr. Hackman stated he feels the road should be completed through because people coming up Township Line Road and Big Oak Road from the north may want to come in that way to get to the office building. He stated this would also eliminate the need for barriers, etc. Mr. Hackman stated he feels the major road system should be completed.

Mr. Hackman noted the access road to the parking lot in the bottom right on the Plan. Mr. Tepper noted the green area which he stated is land bank parking so that they can preserve green space if it is determined that they do not need this for additional parking. Mr. Hackman stated this was going to be an access to the parking lot, and Mr. Tepper stated this is still their intention. In the future it would provide a circulation road to all of

the parking lots, but not to the first building. Mr. Tepper stated the level of traffic generated by the office building (90,000 square feet) does not justify building this lot. They are required to have only 320 parking spaces for this office building. He stated they are providing the parking required by Ordinance and are land banking additional space for parking if required. Mr. Hackman stated he feels there should be a driveway between the parking lot and the curb cut so people can use it. Mrs. Godshalk asked if they have received approval for a curb cut from the State, and Mr. Tepper stated they are in the process of receiving approval. Mrs. Godshalk stated Dobry Road is only 200' from this proposed curb cut so she does not feel this can get approval. Mr. Doherty stated he feels the access road was a request made by the Board of Supervisors and is not needed for the traffic as shown in the traffic counts. He stated the traffic counts that were done did not take this into account, and the traffic will work with the roadway system as proposed. The Board of Supervisors requested the additional accesses. He noted he agrees that they do not meet the 800' requirement. Mr. Hackman stated he feels they considered this a driveway - not a road. He stated it is the driveway to the parking lot and was there to provide an extra access way. Mrs. Godshalk stated she feels this is a road - not a driveway. Mrs. Godshalk stated she does not feel that half of the potential cars going into this driveway is a safe condition.

Mr. Tepper stated the road improvements are all within the existing rights-of-way. He reviewed the intersection improvements proposed and stated there is sufficient room to install these within the existing right-of-way. He stated these improvements are over and above what the project necessitates as additional improvements were added at the request of the Board of Supervisors to handle additional land not owned by Matrix. Two through lanes will be heading west on Big Oak Road at the intersection. Mr. Hackman asked if there will be a right-turn lane on Oxford Valley Road, and Mr. Tepper stated there will.

Mr. Hackman stated Big Oak Road does not line up now to the border of Middletown Township, and he asked if they have permission from Middletown to have it line up. Mr. Tepper stated they are working with Middletown on this at the current time. Mr. Hackman asked what will happen if they do not receive permission. Mr. Brookman stated there is a legal process in the Second Class Township Code where they would petition the Court of Common Pleas if necessary in order to do these improvements.

Mr. Hackman noted the detention basin in the bottom right hand corner of the Plan and asked if this is part of Phase I. Mr. Tepper stated it is not. Mr. Hackman asked where the stormwater will go and Mr. Tepper showed the basin south of Tall Pines Road. Mr. Hackman stated while this may work in total, it must also work in Phases. Mr. Tepper stated it has been designed to work in total and in Phases. He stated when they develop Phase II, they will detail what needs to be done and apply for the necessary approvals.

Mr. Hackman noted sheet 14 regarding sequence of construction. He stated it seems that they have a surplus of soil on the retail side which they plan to re-locate. Mr. Tepper stated the first Phase of the development does create a surplus of soil, but the project as a whole does not have any surplus. He noted the location where they will stockpile the surplus soil in Phase I.

Mr. Hackman asked if they will close Big Oak Road while new Big Oak Road is being built, and Mr. Tepper stated they will not shut down the public roads, and the PennDOT drawings show the sequence of construction.

Mr. Hackman asked how dirt will be moved across Big Oak Road. Mr. Tepper stated the movement of that material and other construction vehicles coming from the south side to the north side will be via the uncompleted portion of Tall Pines Road, and this is why they did not want to complete Tall Pines during this first Phase. He stated they feel this is a safety issue. He stated they are also concerned from a trespassing standpoint. They feel the cul-de-sac with an appropriate barrier is suitable. The access to the stockpile was noted on the Plan. Mr. Taylor stated they have to have a crossing of Big Oak Road which will be up near I-95. Mr. Fazzalore asked if this will be an ugly mound of dirt, and Mr. Tepper stated they do not feel it will be; and he stated they will design it in such a way so that it is bermed. They can also put landscaping materials in that area which they could then transplant at a later time. Mr. Taylor stated they are well aware of the Township's concern about what the eye will see coming down Oxford Valley Road.

Mr. Hackman noted the lot lines for Phases 1, 2, and 3. He asked if they will do the landscaping all along Oxford Valley Road, and Mr. Tepper stated this will all be done as part of Phase I as a result of requests made during meetings with the Township and the Yardley Corners residents. This will be from the most northerly portion of their property down to the intersection. Mr. Taylor stated they will find a way to reflect this on the Plans.

Mrs. Godshalk stated the 1988 Master Plan did not include any big boxes. It only included offices and warehousing. In 1994, the Township Solicitor indicated that they did not have any big boxes in their Master Plan and that they should probably include this. They felt that it would be safe to put it in this area since they already had a Master Plan with Bellemead, and this is how they inherited the big boxes.

Mr. Stainthorpe stated he has heard a rumor that Sears may not be part of this. Mr. Taylor stated they have no binding contracts with anyone yet. They are not selling any specific user types. He stated he understands at the current time from Sears that they do not intend to proceed. He stated he understands that Lowe's does intend to proceed although they do not have a binding contract with them at this time. Mr. Stainthorpe stated he does not feel a furniture store would draw much traffic, and he is more concerned about what else may now go in since Sears is not going to proceed. He stated a Lowe's is being built in Middletown, and he does not feel building another one at this location would seem to fit. He stated he would like to do what they can to protect the Township from empty big box stores. Mr. Taylor stated they have been in business for over twenty years. They feel this project will be very successful with the improvements they have proposed. He admitted the economy has changed; but as a firm, they are willing to make the traffic improvements up front rather than doing them in phases as is done in most other construction. They have done this as a way to evidence to the Township their commitment to the project. He stated it is very unusual to commit to \$5 million in improvements for only the first phase of a project. He stated they believe in the investment and the traffic improvements and engineering designs they have come up with.

Mr. Fazzalore stated in the Agreement they have committed to \$1,375,000 and asked how much will be given at the first Phase. Mr. Tepper stated he feels it is \$200,000 per building in the first Phase. He stated there is also some language in the Master Plan that discusses the outside date by which it must all be paid. Mr. Fazzalore asked if there are any restrictions on how this can be spent, and it was noted there are none. Mr. Fazzalore stated they are also paying \$100,000 a year for Police and Fire protection, and Mr. Tepper stated this is correct and will be given in perpetuity. The \$100,000 starts in the first Phase.

Mrs. Godshalk stated she understands they are going to be selling the stores and they will not be owned by Matrix. Mr. Tepper stated the retailers will own a condominium unit. Mrs. Godshalk stated the retailers will be paying their own taxes, and Mr. Tepper agreed. He added that the maintenance of the entire project will be the responsibility of the Association that will be created for the entire project, and Matrix will be the managing agent for the Association even after construction is completed. Mrs. Godshalk stated she is concerned that if the big box retailers go out of business, the taxes will not then be paid. Mr. Taylor stated he is very proud of what Matrix has accomplished in the past. He stated the retailers have a strong commitment to the community. He noted that some of the office buildings may also be owned by the end users. Mrs. Godshalk stated she is concerned because a lot of businesses have gone out of business in this area. Mr. Taylor stated he is aware of this concern.

Mr. Hackman asked how long they anticipate it will take to develop Phase I. Mr. Tepper stated once construction commences, they expect completion of all road improvements and site work in less than one year. The buildings will be done within twelve to eighteen months.

Mr. Stainthorpe stated he is familiar with the work done by Matrix and has worked in one of their developments. He stated they are a first quality developer and are a group they would like to work with in Lower Makefield Township.

Mr. Fegley asked the Township solicitor to comment on the Zoning. Mr. Garton stated the Agreement provided that if in fact Matrix proceeded with the Plan for constructing the limited service hotel, that Application would require a Special Exception to be granted by the Zoning Hearing Board but that the Board of Supervisors would not be in opposition to that Application. The Master Plan Agreement as amended did not approve a limited service hotel but did say if they decided to proceed with this use, they would have to obtain a Special Exception. Mr. Garton stated the current Ordinance permits large box retailers in this Zoning District. In 1988, it did not provide for this use, but for a variety of reasons, it was permitted at a later time in this Zoning classification. Mr. Garton stated during the course of discussions with this applicant, it was made known by public comment that the applicant could file under the current Ordinance an Application for big box retail. The Board of Supervisors felt it was important to restrict big box retail to a limited use and to continue to maintain the traffic improvements and office use. The Board of Supervisors agreed in the Amendment that big box retail would be permitted in the Amended Master Plan Agreement. He does not therefore feel the big box retail requires any action from the Zoning Hearing Board.

Mr. Larry Borda, 508 Heritage Oak Drive, stated one year ago and he and many others came before the Board of Supervisors to express their dissatisfaction with this project. Four thousand, five hundred people have signed petitions against this project. He stated ten months ago they asked the Board of Supervisors to search for creative solutions to this problem but they have seen nothing. He stated the more they find out about the project, the more upset they become and the more they are contributing time and money to fight against this massive mistake. He stated most of the people who have moved into the adjacent area moved there with the understanding that it would be developed as shown on the Bellemead Plan. The Amendment which was agreed to changed this to permit retail. Mr. Borda stated they do not feel they received adequate notice of the major changes which were taking place. Instead of spending money to purchase this property, the Board of Supervisors decided to condemn a farm and build a Golf Course which few people in the Township will

see or use. He stated the Board bypassed the normal review process of the Planning Commission and as of this evening, the Zoning Hearing Board as well. Mr. Borda stated the Planning Commissions of Lower Makefield and Middletown Townships have voted unanimously to reject the Octagon Center. He stated this project is not an example of smart growth for the community. Mr. Borda stated he will provide information to the Board following his comments, and this information includes the legal reasons why this project should not be approved. He stated the Amendment allows for a new **engineering** study if it is found that Matrix's engineering plan is in error. Mr. Borda stated the failure of Matrix's engineer and Parsons-Brinckerhoff to do weekend counts is in error, and Parsons-Brinckerhoff should be directed to revise their traffic counts and take into consideration Holiday traffic or seasonal peaks from Sesame Place. Mr. Borda stated he feels this is a shopping center, and a Special Exception is required from the Zoning Hearing Board in order for them to proceed. He stated the Board of Supervisors is not empowered to grant a Special Exception. He stated Matrix should be required to show that this project will not have an adverse impact on the community. He stated they do not feel that this project can proceed without an access from I-95. He stated they recognize that ratables are an important issue, but they are against an illegal use in return for a very limited tax benefit to the Township residents. He stated this use will have a major impact on pollution, traffic, and crime. He stated they feel the project should go to the Zoning Hearing Board. Mr. Borda stated if the project is legal as the Board of Supervisors contends, it will be approved by the Zoning Hearing Board.

Mr. Stainthorpe asked if RAM is successful and stops Matrix, what should the Township do about commercial zoning in the Township and where should it be located. He stated it appears that the Township will be in Court with either Matrix or RAM. He stated he does not see that this area will continue to be open space. Mr. Borda stated he knows that the Board has indicated that they are looking for ground to purchase with open space funds. He would like to see an effort made to purchase the property that is currently designated as open space which is shown in Phase II. Mr. Borda stated the law dictates what can go in there. They are of the opinion that the Zoning language specifically defines retail stores. He stated the developer must be able to show that there will be no adverse impact on the community. Mr. Stainthorpe asked where in the Township could they put this zoning. Mr. Borda stated they understand there is a requirement to have a certain balance of Zoning, but he understands that if it were available as Commercial Zoning, the Township could still purchase it on the open market.

Mr. Fegley stated the Township solicitor has advised the Board that they cannot legally require them to go to the Zoning Hearing Board on the issue of large box retail. Mr. Fegley stated RAM is therefore asking the Board of Supervisors to disregard their own legal counsel. Mr. Borda stated in this instance he feels Mr. Garton is wrong. He stated they could also ask Parsons-Brinckerhoff to do additional traffic studies because of the failure to do weekend counts. Mr. Fegley stated he did have a lengthy discussion with Mr. Roeper about the traffic studies, and Mr. Roeper expressed the opinion that the Planning Commission did not feel the additional studies would make a difference because based on the Parsons-Brinckerhoff studies, all of the traffic improvements that could be made have been provided for with the exception of a ramp off of I-95 which would be located in Middletown and over which Lower Makefield Township has no jurisdiction. Mr. Borda stated if the current accommodations within the Township will not accommodate the traffic that will be generated, they cannot therefore prove that it will not have an adverse impact. He feels this is a reason why they could tell Matrix that they cannot come in with big box.

Mr. Gary Cruzan, 1597 Clark Drive, reviewed his education and experience. He stated he feels the matter must go to the Zoning Hearing Board. He stated the plan has a hotel on it and does not conform to Zoning since it is part of the overall Plan. He stated legally the Board of Supervisors cannot act on this prior to it going to the Zoning Hearing Board. Mr. Cruzan stated this was approved in 1988 under the Planned Office Park option in the C-3 Zoning which required it be 70% Office. He stated Phase I does not comply since it is 80% Retail. He stated all approvals under the original Bellemead option have expired because they were never renewed, and the Building Permit has expired. He stated it is also unclear if the Bellemead Agreement is valid so therefore the Amendment is questionable. Mr. Cruzan stated the Master Plan and Amendment will ultimately be found to be illegal when it is challenged in Court. He stated retail stores, shopping centers, and hotels under the 1988 Ordinance are Special Exceptions and are not permitted by right, and this requires action by the Zoning Hearing Board. He stated under the current Ordinance big box retail is excluded from the definition of large retail stores. He stated their attorney has told them that they do not have to provide for every type of commercial. Mr. Cruzan stated Judge Rubinstein ruled that the Board of Supervisors did not have the authority to grant Variances or Special Exceptions. He noted Bellemead had to go to the Zoning Hearing Board prior to approval and Matrix requires even more exceptions. Mr. Cruzan stated the Octagon Center cannot be legally approved by the Board of Supervisors, and the Board of Supervisors should not be hearing the Application tonight. He stated it should be sent to the Zoning Hearing Board without the Board acting upon it. He stated if the Board decides to act outside their authority and approve the Octagon Center, they should require Matrix to post a \$200 million Performance Bond to guarantee completion of all Phases of the project as planned. Otherwise the Township can be left with only Phase I which amounts to a shopping center and is the most objectionable and non-conforming Phase of the project. He stated without the posting of the bond, they cannot guarantee that Matrix will not come back in with more requests for Amendments and for more big box stores.

Mr. John Allen was called but was not present. Mr. Borda stated Mr. Allen's comments were given at length at Planning Commission meetings, and a summary of his opinion will be provided in the information to be given to the Board of Supervisors this evening.

Mr. Steven Santarseiro, 530 Southridge Circle, stated he moved to the Township six years ago because he felt it would be an ideal place to raise his children; and no matter what happens, he will remain in the area. He stated he is deeply troubled by the proposed development of big box retail that will change the character of the Township. He stated he is also troubled by the lack of responsiveness from the Board of Supervisors with the exception of Mrs. Godshalk and Mr. Stainthorpe. He stated he feels the members of the Board of Supervisors have treated RAM with something less than respect. He is particularly concerned with the statement in the Bucks County Courier Times that there would be the need for extra police protection this evening. He stated these are concerned citizens and not an unruly mob, and their commitment to this effort should be commended. He stated he is confident that they will prevail in this issue and there will not be big box stores in this area in the future. He feels this issue should be sent to the Zoning Hearing Board.

Ms. Dana Weyrick was called but stated she would not speak at this time.

Ms. Lisa Pflaumer was called but was not present.

Mr. Michael Upton, 13303 Cornerstone Drive, stated while a developer has the right to develop within the law, a lot of the residents have been concerned with the glut of the type of retail which has been proposed. He stated it does not appear that this will be a good investment. He stated they do not know who the tenants will be and whether they will be profitable. He stated down the road there are a myriad of retail establishments that will be similar if not exactly the same as what Matrix proposes. He asked that the Board of Supervisors consider this further as it seems to be a shaky business proposition.

Mr. Michael Kaine, 1552 Brock Creek Drive, stated Matrix is a very credible company and also raises funds for charity. He stated he does not feel Matrix or the Board of Supervisors are bad people, but he does feel this is a bad plan. Mr. Kaine stated he was disturbed to read in the newspaper that three of the Board members had already made a decision on the Plan. He stated he feels this Board has held secret meetings to sell a public building without a public bid. He stated they also decided to build a Golf Course without a public Referendum and have ignored the recommendations of their Golf Course Committee. He stated this Board has not provided proper notice, although they may have met the legal requirements. He stated they also ignored the recommendations of their Planning Commission. He feels the decision to bring in the Police shows a lack of respect for the residents of the Township. He stated the Board seems out of touch with the concerns of the community. He stated they feel the Courts will eventually rule against the Board of Supervisors' decision. Mr. Kaine stated there was a lack of a traffic count during a summer weekend or a Holiday. Mr. Kaine stated he feels this matter should be sent to the Zoning Hearing Board since this is the group that, unlike the Planning Commission, cannot be ignored.

Mr. David Kelliher was called but stated he would not comment at this time.

Mr. Zachary Rubin, 1661 Covington Road, stated at this tract of land he would like to see exactly what was proposed for this site for many years which is a corporate headquarters. He stated for thirteen years Bellemead could have developed office buildings and they did not. He does not feel the residents should be penalized for this. He stated he is against big box retail because for the last eight years since the Courts of Oxford Valley and Home Depot Shopping Center Stores have been built, he has had problems with the traffic in this area. Mr. Rubin stated Matrix promised to preserve the land that the Octagon School house remains were on and rebuild them, and they have not done so.

Mr. James Driscoll was called but stated he would not comment at this time.

Mr. Sal Licitra was called but stated he would not comment at this time.

Mr. Tony Bush, Southridge Circle, was called but stated he would not comment at this time.

Mr. Carl Ewald, Esq. was called but stated he would not comment at this time.

Mr. Jack Robertson, 1081 General Green Road, Washington Crossing, was called but was not present.

Mr. Paul Deiwellles, 554 Gordon, was called but was not present.

Ms. Judy Curly, 551 River Road, asked that the Board of Supervisors not build the project.

Mr. George Hynson, 525 River Road, stated he represents a group that is great in number and that group is the silent majority. He stated this group wants to cut the taxes as they are paying too much in taxes at the present time. He stated the landowner is entitled to develop his property within the law. He stated he has lived in the Township for thirty-one years. He stated the School Board is out of control. He stated the Zoning for the type of development Matrix has proposed was permitted in the 1980's, the 1990's and reiterated this evening. He stated Matrix is a first-class operation, and he is concerned that they may get someone else they will not want. He asked that the Board of Supervisors stand up for the law.

Ms. Virginia Torbert, 1700 Yardley-Newtown Road, asked if Mr. Garton could advise of any scenarios under which they could restrict Matrix without exposing the Township to liability. Mr. Garton stated it is incumbent upon Matrix to comply with all conditions of the Agreements as they exist. If the Board of Supervisors decides that they do not want to abide by the Agreement they made, he feels this would be problematic and would have an economic consequence. Ms. Torbert stated she too was disturbed by the newspaper article which appeared yesterday because of the Board's practice to announce their decisions before meetings actually take place. She feels this shows a lack of respect for public opinion. She stated this did not start with this issue and has been going on for years.

Mr. Fegley stated he takes full responsibility for the request for Police protection this evening which was based on the last meeting that was held on this topic in April of last year during which many people in the audience were disrespectful and approached the Board especially during breaks with nasty comments and shaking of fingers. He stated he did not want this evening's meeting to go in that direction. He stated he is pleased that this meeting has been conducted in a civil manner. Mr. Fegley stated with regard to commenting to the Press prior to the meetings, the papers called and asked which way they were leaning and to be truthful and since that matter has been discussed for over two years, during which he heard RAM's position, he felt he could indicate how he was considering voting. He did indicate how he was leaning; however he stated he is listening to everyone's comments tonight and still reserves the right to vote when the vote comes up.

Mr. David Meglen, 1012 Randolph, was called but was not present.

Mr. Bob Slaman, 50 Bedford Place, stated he has been a resident for over forty years and is in favor of Matrix. He noted he wants the \$2.3 million they will be contributing to the School District. He stated while RAM has 4,500 signatures, there are 21,000 people living in the Township who did not sign the petition. He stated he wants the tax ratables that Matrix will provide.

Mr. Joseph Piusecki, 110 Overlook, was called but stated he would not comment at this time.

Mr. Shelia Gallagher was called but was not present.

Mr. Gordon Principi, 318 Emerald Drive, stated he has lived in the Township for forty years. He commented on the significant changes that have occurred over the years. He stated he feels the Township should do the right thing for the children. He stated he does not feel that they need to develop the tract at all. He stated he feels they should buy the land back from Matrix and construct something for the children. He reviewed the number of

retail stores that have gone out of business in the area recently. He stated he feels the Township can survive without the Matrix money.

Mr. Fegley again called upon Ms. Weyrick who declined to comment at this time. The public comment portion of the meeting was concluded at this time.

Mr. Stainthorpe stated Mr. Cruzan indicated that because the hotel is on the plan, the whole Plan should go before the Zoning Hearing Board. Mr. Garton stated he does not feel this is correct since they are only making application for Phase I at this time. Mr. Stainthorpe stated Mr. Cruzan indicated that the percentage of Retail is not legal. Mr. Garton stated the original Master Plan Agreement did not have those percentages in it to his knowledge. Mr. Garton stated he does not feel it is relevant to their decision this evening.

Mr. Garton stated there were some open issues brought up this evening one of which was the completion of Tall Pines Road. Mr. Stainthorpe stated he now accepts Matrix's explanation that mixing construction traffic with regular traffic is not safe; however, he does feel the full frontage of the building should be improved. Mr. Hackman stated when Phase I is completed he does feel the road should be constructed since at that point there would not be mixing of construction and regular traffic. He stated he feels the complete road pattern should be built in Phase I. Mr. Taylor stated they would rather not build that portion of the road; however, if the Board required them to do so they will concede. Mr. Hackman stated the Plans show that they are putting in the subbase anyway. Mr. Taylor stated they may not know the configuration of the remaining Phases at that time since building designs may change because of user demands. He agreed that it is highly unlikely that particular road will change. He stated the Township has their Bond and if they disappear, there are funds available for the Township to complete the road. The developer would prefer not completing it at that time if they do not have to, but they will agree with the Board's decision.

Mr. Garton stated the second open question is the access from Old Oxford Valley Road to New Oxford Valley Road with the right-in and right-out. Mr. Hackman stated this would allow another exit from the big box without going to the intersection. Mr. Taylor stated they do not know what the two retail lots will contain. If they are just to put in the road, it will be a significant restraint.

Mr. Garton stated there was also discussion on the access driveway near the green area. Mr. Taylor stated they would agree to do this.

Mrs. Godshalk moved to send the Matrix Plan to the Zoning Hearing Board to review the Variances that Matrix is asking for according to the Master Plan that has been approved by the Board of Supervisors. Mr. Fegley stated he would second for the purpose of discussion.

Mr. Hackman stated the Township's legal counsel has told them that Zoning Hearing Board approval is not necessary and this is a permitted use. The Agreement and Zoning Ordinance permits this. He stated he feels it would be illegal to send it to the Zoning Hearing Board. Mrs. Godshalk stated the Master Plan has included a use that requires a Zoning Hearing Board approval and before they approve this, it should be reviewed at this time so they know what direction they are going. Mr. Hackman stated it is not part of this Phase, and it could just as easily be an office.

Mr. Fegley stated he read the 1988 Zoning Ordinance and the current Ordinance and while he is not a Land Use attorney, he does not know whether or not RAM is right in its legal opinion, or if the Township solicitor is right. He stated that listening to the comments tonight his feeling is with a project of this size they should give it additional consideration. He stated he still does not feel that this tract will be preserved as open space. He stated he does not feel that the delays of a Zoning Hearing Board hearing would bring about would be that much more substantial. Mr. Hackman asked if he is talking about the big box or the hotel, and Mr. Fegley stated he is talking about the big box since technically they do not know if they are planning on going forward with the hotel. Mr. Hackman stated they have an Agreement with Matrix permitting them to proceed with what they have proposed. He asked if Mr. Fegley is suggesting that they renege on this. Mr. Fegley stated he is not saying this. He feels there is a difference in legal interpretation. He stated he attempted to read the two Ordinances and feels lawyers on either side could make arguments. He stated this is unlike any other development project they have ever had in the Township. Mr. Stainthorpe stated if there is a lack of confidence with where they are going legally, perhaps they should seek additional advice. Mr. Fazzalore asked why they are paying the Township solicitor if they are not going to follow his legal advice.

Mrs. Godshalk noted when the DeLuca hotel was approved, they stated that any hotel that was approved should be on a major highway, and she does not feel Oxford Valley Road is a major highway at this time. Mr. Hackman stated a hotel is permitted on the other corner by right.

Mr. Taylor stated the hotel is currently not a viable investment. If the hotel were a use that was troubling the Board to this degree, they would have removed it and come back to the Board of Supervisors and the Zoning Hearing Board at a later time if they desire to have it. He stated they were trying to show a mixed-use development. He stated they believe outside of the Agreement, they could develop far more big boxes, and there is far more demand for big box than there is for office. He stated office has not been built there because the traffic in the area will not permit corporate development. He stated in order to put the traffic improvements in, they must proceed in the way they have proposed. He stated after several years they were able to come up with this mixed use development, and he implored the Board not to undue what they have done. Mr. Fazzalore stated Big Oak Road is in deplorable condition, and the taxpayers will have to pay to repair it. He stated the hotel they were in discussions with is building a hotel on East Cabot Boulevard so they will not be building on this site.

Mr. Borda stated a big box retail center is significantly different than office space. He stated big box pulls in people from all over the area and brings in a significant amount of congestion, crime and pollution. He stated he feels two big boxes qualifies it as a Special Exception.

Mr. Hackman stated he does not feel this is a subject to be reviewed by the Zoning Hearing Board. He stated the current Ordinance permits big retail stores. Mr. Hackman stated this is a matter of property rights and the residents' rights do not supersede the property rights of this developer.

Mr. Borda stated they cannot bypass the Zoning Hearing Board if this is a shopping center. Mr. Hackman stated Mr. Garton has indicated that RAM is incorrect, and he has confidence in the Solicitor's advice. Mr. Borda stated if the Township solicitor is correct, the Zoning Hearing Board will support that decision.

Mr. Cruzan stated the Judge's decision stated that they had to go before the Zoning Hearing Board. Mr. Hackman stated it said they had to go to the Zoning Hearing Board for a hotel. Mr. Borda stated he does not feel the Board of Supervisors should rush to a decision.

Mr. Brookman stated before the Board tonight is essentially the Plan they approved in 2000. Since that decision, they have gone through the Planning Commission review process. The Planning Commission stated they believed they complied with the Township criteria and the requests made by the Township consultants. The issue of use is not even before the Board of Supervisors. That decision is set forth in the Ordinance and was part of the Agreement they entered into in excess of a year ago. He stated the Ordinance defines a shopping center as primarily retail. This center is not primarily retail. He stated it is primarily office. The retail portion of this Center is 20,000 square feet out of a total of 990,000 square feet. He stated the Courts have addressed the issue before, and the Courts have stated that when there is an ambiguity with respect to the interpretation of the Law, it is to be decided in favor of the landowners. He stated the Board of Supervisors already decided this issue when they granted their approval in December of 2000. Mr. Brookman stated the Plan complies with the Ordinance. Mr. Brookman stated sending this to the Zoning Hearing Board is ducking the issue since it has already been decided by the Board of Supervisors, the Ordinance, and the Courts. Mr. Brookman stated while he recognizes the concerns of the Board of Supervisors, he feels those who are present this evening are only a vocal minority. He stated there were numerous public comments when Mr. Cruzan objected to this Application prior to 2000. Mr. Brookman stated they have heard the comments of approximately twenty-five to thirty people opposed to this project. This project has been considered by the Township for over two years and to go back against the Agreement exceeds the Board's authority. He feels they must follow the language of their Agreement. The only aspect that ever required a Special Exception was the hotel, and the Board of Supervisors put in the Agreement that they would support the Special Exception and Variances to fulfill this Plan.

Mr. Borda reviewed the definition of shopping center and stated he feels this project is a shopping center. He stated a shopping center requires a Special Exception, and this is the responsibility of the Zoning Hearing Board.

Mr. Garton stated in the absence of the agreement by the Applicant to an extension or their agreement to go to the Zoning Hearing Board, the Board of Supervisors has until March to make a decision. If the Board does not make a decision by that time, it is a deemed approval.

Mr. Taylor stated while he understands the emotions, one year ago they signed an Agreement with the Township and have already spent over \$1.5 million on the project. He stated the Board of Supervisors has an obligation to approve this tonight since they have met the tests they were obligated to complete. He stated they have tried to be cooperative, and they have been as responsive as possible. He stated they will not go to the Zoning Hearing Board and will not agree to any further extensions.

Mrs. Godshalk noted the comment regarding percentage of retail and stated they do not meet the standards for square footage in Phase I for a combination of shopping and office. Mr. Brookman stated the Agreement indicated that in Phase I they could come in with more retail than they have actually come in with. They were also required to do all of the traffic improvements in Phase I. By coming in with less today, the traffic improvements are

overdesigned because they will not only deal with what they are constructing, but for what is designed for Middletown Township as well.

Mr. Fegley stated he wishes that they would go to the Zoning Hearing Board, but it appears that they are not willing to do so. He stated he is concerned that legally they would be in trouble if they required them to do so.

The Motion on the table was re-read for the benefit of the Board but did not carry as Mrs. Godshalk voted in favor and Mr. Fazzalore, Mr. Fegley, Mr. Hackman, and Mr. Stainthorpe were opposed.

Mr. Hackman moved and Mr. Fazzalore seconded to approve the Final Plan of Matrix dated 4/12/01, last revised 10/21/01 subject to the following conditions:

- 1) Compliance with the PCS letter dated 1/16/02;
- 2) Waivers be granted relating to the scale of the drawing and slope for grading purposes along the detention basins of Big Oak Road;
- 3) Compliance with CKS letter dated 1/15/02;
- 4) Compliance with the letter to be received from PCS and Parsons-Brinckerhoff related to Big Oak and Oxford Valley Road improvements;
- 5) Compliance with the PennDOT review letter dated 11/9/01 and any supplements and additions thereto and obtain all permits related thereto;
- 6) With respect to the cul-de-sac on Tall Pines Road that the entire stretch of Tall Pines Road be completed when Phase I is completed;
- 7) PennDOT improvement to the intersection of Route 1 and Oxford Valley Road and the signalization at Township Line Road and Big Oak Road be completed prior to the addition of any site generated traffic or occupancy permits;
- 8) Receipt of all permits and approvals by agencies having jurisdiction including PennDOT as well as utility providers;
- 9) Compliance with the terms and conditions of the Master Plan Development Agreement entered into between Bellemead and the Township dated 5/11/88 as amended by the First Amendment to the Matrix Plan Agreement dated 12/4/00;
- 10) Funding and execution of Development and Financial Security Agreements;
- 11) Complete all Phase I improvements prior to the first occupancy permit;

- 12) The access road from Old Oxford Valley Road to New Oxford Valley Road to be completed when the retail uses adjoining same are proposed;
- 13) Access to the parking lot along Oxford Valley Road to be installed as part of Phase I.
- 14) Berm and landscaping along Oxford Valley Road to be part of Phase I.

Mr. Taylor agreed to the conditions.

Mrs. Godshalk stated she feels this is a Preliminary/Final Plan. Mr. Garton and Mr. Doherty stated they understood that this was a Final Plan. Mrs. Godshalk stated she feels there is a difference between Preliminary/Final and Final Plan. Mr. Garton stated there is no difference. Mr. Fegley stated the document speaks for itself. Mr. Brookman stated the Plans they submitted were Final Subdivision and Final Land Development Plans. The Agreement permitted the Applicant to go from the Master Plan Agreement into Final Plan.

The Motion as stated carried with Mrs. Godshalk opposed.

SIGNING MYLARS FOR HADDAD SUBDIVISION

Mylars were signed following the meeting.

APPROVAL OF JANUARY 7, 2002 AND JANUARY 21, 2002 WARRANT LISTS AND DECEMBER, 2001 PAYROLL

Mr. Hackman moved, Mr. Fazzalore seconded and it was unanimously carried to approve the January 7, 2002 and January 21, 2002 Warrant Lists and December, 2001 Payroll as attached to the Minutes.

SUPERVISORS' REPORTS

Mr. Fegley stated a Sub-Committee for the Memorial has been formed. He stated Mrs. Godshalk has been out to inspect different sites with several impacted family members. Mr. Fedorchak is moving forward to get proposals from architects. Mr. Fegley stated he feels that a dedication date of 9/11/02 is optimistic and it would be more realistic to have the ground-breaking at that time. He stated no decisions have been made on a specific site at this time. Ms. Torbert asked if any consideration has been given to School participation in the design of this project. Mr. Fegley stated they have not gotten this far, but he would prefer that it be left to professionals to design. He stated he feels it is more important to have input from the impacted families. Mrs. Godshalk stated a group of widows and parents did meet with Mr. Fedorchak and visited a number of sites. She stated everyone that visited North Park was in favor of this location, and they would like to raise money for a Memorial. She does not feel that they need to hire expensive architects as they do have an idea of what they would like to have for the Memorial. They feel this is

something that could be developed in phases. She stated Mr. Fedorchak has set up another meeting for Wednesday, January 30 with the other families involved. Mr. Fegley stated the Park & Recreation Board will also discuss this at their meeting.

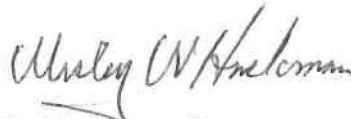
Mr. Hackman stated the Golf professionals are working hard to put final plans together for the Golf Course. He stated the Clubhouse architect and the construction management firm along with the engineer and Golf Course architect are meeting to discuss how the core areas will fit together. They hope to have several different ideas by the end of the week. He noted that Scott Arterburn plans to attend the Golf Course meeting next Monday at 7:00 p.m., and he invited the Board to attend. The Golf Course architect has the detailed grading plan. They are modifying this somewhat, and he feels they will have this completed by the end of the week. They will then know more about the budgets. He hopes within two weeks to be able to come before the Board of Supervisors. Mr. Fazzalore stated that unless he sees a Well Agreement signed, he will not vote in favor of this. He stated he also feels there should be a decision on how much money will be paid before they start construction. Mr. Hackman noted the Agreement they had asked Keystone to agree to. Mr. Garton stated they could make this a condition of Land Development. Mr. Fegley stated he feels they should have a hydrology expert come in to make a presentation. He stated now that the placement of the practice facility has been changed, the concerns he hears about from the neighbors in the area are with regard to the wells and where the surface water will go. Mr. Hackman stated he would like to bring in all the professionals to make a presentation. Mrs. Godshalk stated when they considered sewers for Edgewood Village and Hillside Lane they tested the existing wells first, and Mr. Hackman stated they will do this before they start pumping and then measure it again after pumping. Mrs. Godshalk stated she is concerned that the Golf Course may later be blamed for non-functioning systems which may already be non-functioning. She stated she feels they should determine the condition of the existing sewer and water systems at the current time.

APPOINTMENTS

Mrs. Godshalk moved, Mr. Fazzalore seconded and it was unanimously carried to appoint the following to the Historic Architectural Review Board, with the first person taking the longest term: Andrea Haddad, Nancy Gaston Festa, and Wendi Grant.

There being no further business, Mr. Fazzalore moved, Mr. Fegley seconded and it was unanimously carried to adjourn the meeting at 11:10 p.m.

Respectfully Submitted,



Wes Hackman, Secretary



Township of Lower Makefield

BOARD OF SUPERVISORS

Frank J. Fazzalore, Chairman
Scott I. Fegley, Vice-Chairman
Grace M. Godshalk, Secretary/Treasurer
Wesley W. Hackman, Supervisor
Frederick M. Allan, Supervisor

**JANUARY, 2002 WARRANT LISTS AND
DECEMBER 2001 PAYROLL COSTS FOR APPROVAL
@ JANUARY 21, 2002 BOARD OF SUPERVISORS MEETING**

01/07/02 Warrant List	\$ 231,229.51	
02/02 Prepaid Expenditures	70,673.72	
01/21/02 Warrant List	383,711.68	
Total Warrants & Prepaids		685,614.91
PAYROLL COSTS:		
December, 2001 Payroll	298,589.67	
12/01 Payroll Taxes, etc.	22,552.99	
Total Payroll Costs		<u>321,142.66</u>
TOTAL TO BE APPROVED		\$ <u>1,006,757.57</u>

