

TOWNSHIP OF LOWER MAKEFIELD
BOARD OF SUPERVISORS
SPECIAL MEETING
MINUTES - FEBRUARY 26, 2002

A Special Meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on February 26, 2002. Mr. Fegley called the meeting to order at 3:00 p.m. He asked for a moment of silence in memory of Kathy Shovlin, an active member of the community, who recently passed away.

Mr. Fegley stated the sole purpose of the Special Meeting is to discuss the Home Rule Charter Referendum Initiative which has been filed. He noted he has a meeting to attend at 4:00 and hopes that the meeting will not go beyond 3:45 p.m.

Those present:

Board of Supervisors: Scott Fegley, Chairman (left meeting in progress)
 Wes Hackman, Secretary/Treasurer
 Frank Fazzalore, Supervisor
 Pete Stainthorpe, Supervisor

Others: Terry Fedorchak, Township Manager
 John Koopman, Township Solicitor

Absent: Grace Godshalk, Supervisor

PUBLIC COMMENT

There was no public comment at this time.

HOME RULE CHARTER DISCUSSION

Mr. Fegley asked Mr. Koopman for an update and the implications of what this Home Rule Initiative means.

Mr. Koopman stated a Petition has been filed with the Board of Elections seeking a Referendum question to be placed on the Primary Election ballot for this May referring to the Electors of the Township a question as to whether a Government Study Commission should be appointed to look into the possibility of alternative forms of Government for Lower Makefield Township. Mr. Koopman stated the General Form of Government for a Second Class Township in the Commonwealth of Pennsylvania is the form of Government that Lower Makefield and the vast majority of Second Class Townships in both Bucks County and throughout the State have. He stated this calls for a five person Board of Supervisors form of Government where the powers of the Municipality are exercised by the five member Board of Supervisors by vote of the majority of the Board.

Mr. Koopman stated under the Pennsylvania State Statutes there is a provision for the adoption of alternative forms of Governments for Second Class Townships. There are State Statutory Provisions that go into detail and govern the procedure that is involved in

studying whether an alternative form of Government should be adopted and the procedure for adopting that form of Government. Mr. Koopman stated the Home Rule Charter and Optional Plans Law provides that there are two ways the procedure can be initiated - one is by an Ordinance of the Municipality which is not the case in this instance. The other is by Petition of the Electors or registered voters of the Municipality. If a Petition is filed with the County Board of Elections that is signed by 5 percent of the registered voters voting in the last Gubernatorial Election, requesting a Referendum question on the formation of a Committee to study optional forms of Government, that Referendum will be placed on the next Election whether it be a Primary Election or a General Election. In this case such a petition was filed on February 19 with the County Board of Elections and that Petition seeks to have placed a Referendum question for the Primary Election on May 21. The question is "Shall a Government Study Commission of nine members be elected to study the existing form of Government of the Municipality, being Lower Makefield, to consider the advisability of the adoption of an optional form of Government or Home Rule Charter, to recommend the adoption of an optional form of Government, or to draft and recommend a Home Rule Charter." Mr. Koopman stated that Petition will have to be examined by the Board of Elections and by the County Solicitor to determine whether it is sufficient. Assuming that the Petition meets the requirements of the State law and is not successfully challenged by some other Elector, this Referendum question will be placed on the ballot for the Primary Election in May. Not only will the question be placed on the ballot, but also placed on the ballot will be names of persons who are running for the position of Local Government Study Committee. Mr. Koopman stated two questions will be on the ballot - the Referendum Question and, even if the Elector votes in the negative for that question - they will also be asked to vote for members of the Commission so that if the Referendum passes there will be nine people who will be elected to the Study Commission that will be established in the event the Referendum does pass.

Mr. Koopman stated people who are seeking to be elected to the Government Study Commission must circulate nomination petitions starting now and must be filed on or before March 12 with the Board of Elections. Any registered voter in Lower Makefield Township regardless of political affiliation can circulate petitions asking that their name be placed on the ballot for election to the Commission. If the Referendum is defeated, the process stops at that point. If the Referendum is adopted then nine people will be elected to the Commission; and they will thereafter examine, hold hearings, and make a determination whether they would recommend an optional form of Government for Lower Makefield. They have nine months from the date the Commission is established to make a recommendation to the Township. The Commission may elect to come back and state they do not recommend an optional form of Government and the process would stop at that point. They can also recommend various optional forms of Government including Home Rule. He stated one other optional form of Government is the type used by Bristol Township which has the Mayor/Council form of Government. If the Commission recommends an optional form of Government, that recommendation would again be placed on another Election ballot for a vote of all voters of Lower Makefield as to whether or not there should be a new form of Government; and if so whether the form of Government recommended by the Commission should be adopted. If a majority of the Township voters vote in favor of a new form of Government, the new form of Government takes place and there are General Elections to fill the positions that are created by the new form of Government.

Mr. Koopman stated at this time all that has been filed is the Petition for the Referendum question. Along with that there will shortly be Nomination Petitions for people who would

like to be elected as members of the Government Study Commission. He stated he believes those Petitions need two hundred signatures in order for that name to be placed upon the ballot. At that Election you then vote for or against the Referendum and vote for nine members of the Commission in the event the Study Commission is created.

Mr. Hackman stated he first learned about this matter Friday and was given the one hundred and eight page document which includes information just discussed by Mr. Koopman. He read from the document which indicates "after the Petition has been signed by one third the number of registered voters required, written notice of this fact should be filed by the circulators in the office of the County Election Board and the office of the Municipal Secretary. Mr. Hackman stated he is the Secretary and he never received any notice whatsoever. He stated this was filed at the County in total and not filed after one third the number of registered voters required. He would ask about the validity of the Petition itself. He asked who would make this determination. Mr. Koopman stated the County Board of Elections and the County Solicitor will review the Petition and review the Statute and make a determination whether all of the mandatory requirements of the Statutory Provisions and the Election Code Provisions have been met before this is placed on the Ballot. He stated that in addition to the County Solicitor and Board of Elections, any Elector or registered voter in the Township would have the right to examine the Petition and also to take a position whether the Petition that has been filed meets all the requirements of the Home Rule Optional Plan Statute as well as the Election Code Statute. They would have the opportunity to file an Election Contest or Election Petition if they conclude that the Petition does not meet the requirements of the law. Mr. Hackman stated since this was not filed with the Township Solicitor, how do they notify the County about this. Mr. Koopman stated they can direct the Township Manager to advise the Board of Elections that nothing has been filed with the Township. He stated the Township was never formally notified of the Petition as he understands it ; and the Township at it's initiative received a copy of the Petition, but nothing was formally served upon the Township by either the Board of Elections or by the circulators or the filers of the Petition. Mr. Fedorchak acknowledged that this was correct. Mr. Koopman stated the Township would therefore be within its rights to notify the Board of Elections that the Township was never officially served with anything. Mr. Koopman stated his office can look at this issue and advise the Board whether they feel this is something that renders the Petition defective if this is the Board's desire.

Mr. Hackman asked for a consensus of the Board that they direct the Township Manager to notify the Election Board that they have not received any notice. This was acceptable to the Board of Supervisors.

Mr. Hackman stated the Petition has been signed by a number of people - according to the paper - 659 individuals signed the Petition which states "we the undersigned registered voters." He asked who will audit this to see if these individuals are registered voters. Mr. Koopman stated he feels the Board of Elections will look at this issue to insure the persons who have signed are registered voters. He noted this is also within the rights of any citizen and registered elector of the Township to look at this issue. If they have concerns about the validity of the Petition, they would have the right to file a Election contest challenging the appropriateness of the Petition also. He stated the Board of Elections has the duty initially to determine if this is Prima Facia Valid, but this does not preclude any member of the Electorate to do so likewise. Mr. Fazzalore stated from past experience he does not feel the Board of Elections actually checks the signatures, and he feels someone in the Township will have to do this. Mr. Koopman stated it is Board of

Elections' obligation to determine whether the Petition is Prima Facia Valid but he is not sure whether or not that involves actually looking at every signature and making a determination whether or not they are registered voters. Mr. Hackman stated he would therefore like to direct the Township Manager when they are advising the County of the filing requirements to also request that the County check the signatures to see if they are registered voters. Mr. Fazzalore stated if they refuse to do this, he would like the Township to be advised.

Mr. Fazzalore stated he questions why so few Municipalities in the State have made a determination to proceed with Home Rule. He stated he is familiar with some of the towns which have opted for this and noted they are so poor they had to do so because they had no tax base. Mr. Fazzalore asked if Lower Makefield would remain a Second Class Township if a change to the form of Government is made, and Mr. Koopman stated they will. He noted this is based on population. Mr. Fazzalore stated he would like to caution the residents of Lower Makefield Township about Home Rule as there is unlimited taxing ability under Home Rule. He stated the current and past Boards have gone for almost fifteen years without an increase in taxes other than for Open Space. Mr. Fazzalore stated he would not be in favor of giving politicians unlimited monies to spend.

Mr. Fazzalore noted Page 45 of the document regarding transition provisions.

Mr. Koopman stated depending on whether it is Home Rule or an optional form of Government, there are provisions for the continuation in office of certain elected officials depending on the form approved and circumstances as to whether there are Council people at large.

Mr. Stainthorpe asked the requirements and limitations as to what the Supervisors can do as a Board as opposed to what they can do as average citizens. Mr. Koopman stated as a Board they are not directly involved in the process of the Government Study Commission. One of the provisions of the Statute indicates that filing and circulating Nomination Petitions to be member of the Study Commission is done on a non-Partisan, non-Political basis. He stated whoever files their Petition and gets two hundred signature, their names will appear on the Ballot. They will not appear as Republicans or Democrats.

Mr. Stainthorpe asked if a Supervisor could be on that Board, and Mr. Koopman stated that any registered voter in the Township can file a Nomination Petition with the Board of Elections and seek to be on the Study Committee. This could be a Supervisor, member of some Township Board or Commission, or a Township employee. There are no restrictions. He stated the purpose of the Commission is to be a non-Partisan, non-Political Committee that will study whether a different form of Government is beneficial to the Township. He stated its purpose is not, as noted in the paper, to look into issues as to whether Supervisors in the past did something wrong or right. He stated if a Supervisor wishes to serve on the Commission they would file as an individual - not as a member of the Board of Supervisors. He stated the Board of Supervisors do have an oversight function and it would be appropriate for them to inquire into the appropriateness and validity of the Petition and whether the Statutory requirements were met. He stated beyond that he does not feel the Supervisors would have any role officially in the runnings of the Committee. Individually, however, they could be a member of the Committee.

Mr. Fazzalore stated on the last Referendum, at the Township's expense and without recommending yes or no, they put out a flier that showed the advantages and disadvantages. He asked if they would have this right under this instance. Mr. Koopman stated he would have to take this under advisement and report back to the Board of

Supervisors. He stated the Petition and the Study Commission is governed not just by the Statute referred to about Optional Form of Government but also controlled by the Election Code and there must be advertisement by the Township and the Board of Elections that the Referendum is going to be on the Primary Election Ballot. For those interested in being a member of the Government Study Commission, they should be aware that they will be required to comply with the Ethics Law Disclosure Statements that need to be filed. He stated there are also Campaign Financing Reports which must be filed. Mr. Koopman stated he feels the Board of Supervisors has the right to make the public aware of the Question and the need to vote for members of the Commission as well as on the Referendum Question. He stated one of the problems people make at the polls is that they feel that since they are not in favor of the Referendum, they do not have to vote for members of the Commission. He stated he feels the Board may want to explain this to the voters to make sure it is clear what their responsibilities are with regard to voting.

Mr. Stainthorpe asked how a new form of Government would impact land use laws, zoning laws, and any decision that the current Board may have made. Mr. Koopman stated in his opinion it will not effect the zoning laws since you would still be governed by the Municipalities Planning Code and Zoning and Subdivision Ordinances, regardless of the form of Government. Mr. Koopman stated if anyone feels an optional form of Government will change the control the Township has over its land use laws, they are mistaken. He stated it will also not undo approvals or agreements that the prior Board of Supervisors have made that the Township is contractually bound to or matters that were formerly approved. You cannot undo what has been done by Government in the past. Mr. Stainthorpe stated while he understands that it is Citizens for a Better Government, not RAM, which filed this Petition, he feels it should be understood that this will not undo the decision made on Matrix. Mr. Koopman stated this is correct.

Mr. Fegley stated he understands that if Home Rule were successful, it would also give the Supervisors the power to set their own salaries; and Mr. Koopman stated this is correct. He noted the current Supervisor salary is \$4,375 per year. Mr. Fegley stated he personally views this as a retaliatory move by Residents Against Matrix even though it has been filed by a different name, and he disagrees with the comments that were in the article in the Courier Times about the current Board acting illegally and improperly with regard to the Matrix decision. Mr. Fegley stated he feels the Board acted on sound professional engineering and legal advice.

Mr. Stainthorpe asked if a citizen were to put together his own slate of nine people, would he need 200 signatures for each petition. It was noted this was correct. Mr. Stainthorpe asked if the same 200 people could sign all nine petitions, and it was noted this could be done. Mr. Koopman stated you can sign petitions for as many people as you can vote which in this case would be nine.

Mr. Stainthorpe stated he applauds any citizen group that chooses to participate in Government by whatever means; however, he feels it is important to keep in perspective that this Township will not be ruined, nor made better, nor be that greatly effected by one development. He stated he feels this form of Government has worked well for the last three hundred years. He stated the Township has an outstanding Police Department, Fire Protection, outstanding recreation facilities, quality homes and developments, the best roads in the area, a high credit rating, and low taxes which equates to a well-run Township.

Mr. Fegley stated while he must leave the meeting at 3:45 p.m., the other Supervisors have indicated that they are willing to stay and continue to listen to public comment.

Mr. Jerry Mays asked if there are an unlimited number of nominees which can be on the ballot for the nine positions, and Mr. Koopman stated this is correct as far as he can tell. Mr. Koopman stated the direction which the voters will receive is that even if you vote negative or against the Referendum to establish the Committee, you will still be asked to vote for members of the Committee because if the Committee is formed, you may want to have some input as to who will be on the Committee. Mr. Mays asked if the Committee will exist if the Referendum is defeated, and Mr. Koopman stated it will not. If a majority of the Electorate vote against the establishment of the Government Study Commission, then the Commission is not formed; and the issue cannot be brought up again for another four years. He stated you would not know this when you vote for or against the Referendum however; so most people would advise members of the Electorate that even if you are voting against the Referendum, it is wise to vote for members of the Committee so that if a Committee is formed, the people you want on the Committee will have input. He stated the Committee could also study it and then recommend that there be no change in the form of Government which is an option. Mr. Mays asked how this procedure will be funded; and Mr. Koopman stated if the Committee is formed, the Committee members serve without compensation but the Township does have an obligation to pay the "reasonable" expenses of the Committee in performing its duties. Mr. Koopman stated the Township tax base will have to support the expenses of the Committee if formed. Mr. Hackman stated the Committee can hire consultants, lawyers, accountants, and whatever they think is necessary to do their job.

Mr. Paul Krupp, University Drive, asked if it is a simple majority that votes up or down on the Referendum, and Mr. Koopman stated it would be a majority of those voting.

Mr. Albert Roeper asked inasmuch as the number of people who signed the Petition is based on the number who voted in the Governor's Election, must the signers have voted in that Governor's Election. Mr. Koopman stated they would not. He stated that number established the number who have to sign the initial Petition. The only requirement to signing the Petition is that you have to be a registered voter in Lower Makefield Township. He stated in order for the Petition to be valid it would have to be signed by the requisite number of registered voters, but it does not matter whether or not that registered voter voted in the last Governor's Election or not. Mr. Hackman stated that number also determines how many signatures need to be on the Nominating Form for the candidates for the Committee. Mr. Hackman stated it is the lesser of two hundred or 2% of those who voted in the Governor's Election. Mr. Koopman stated the way they have calculated it, it comes to about the same number both ways.

Ms. Yvonne Beers, Weinman Way, stated she was approached at the Giant Supermarket and unfortunately did sign the Petition. She stated the gentleman who approached her said they were having a Petition for term limits. She stated in her personal opinion she feels that some of the people on the Board of Supervisors have been on for too long so this sounded good to her. Her next question to the gentleman was did this have anything to do with Matrix, and the gentleman stated absolutely not. She stated she advised him that she was in favor of Matrix and would not sign it if it had anything to do with Matrix. He again indicated absolutely not. She stated she was very disturbed to find out later from the paper that this did have a hand in this. Mr. Fegley stated it appears she would have a right to challenge the petition. Ms. Beers stated she would question if anyone else was caught in

this same situation. Mr. Koopman stated this may be the basis of a challenge but by adding up the numbers it appears that 5% would be approximately 500 signatures on the Referendum Petition and it appears there are 650 signatures. Mr. Fegley stated someone would have to contact the people on the Petition and ask them were they advised, as she was, that this had nothing to do with Matrix. Mr. Koopman stated if this was a misrepresentation made to a large number of people that caused them to sign it, that may be grounds for a challenge. If it is one individual, it may not be. Mr. Koopman stated there are about 650 signatures on the Petition and the minimum required is about 500.

Mr. Fegley left the meeting at this time and the meeting was turned over to Mr. Hackman.

Mr. Zachary Rubin, 1661 Covington Road, stated it is the basic right of a citizen to petition the Government for redress of a grievance and that is what close to 700 people did. He stated he does not think the Board of Supervisors should go on record to try and oppose the right of the people to petition the Government for a redress of a grievance. He stated the question on the Petition is to form a Commission to study the Government. He asked if the Board of Supervisors is going to be against the study of the Government. He stated there is nothing on there that talks about Matrix. It is a Commission to study the Government. He stated the Commission will come back with recommendations or no recommendations for the people to have a right to decide. He stated this is basic Democracy. He stated the Board of Supervisors has gone to Referendum in the last couple years and this is all they are asking the people of Lower Makefield to do is to decide this question by this Ballot. Mr. Rubin stated in order to form a Study Commission to get on the Ballot, there are two ways - by Statute of the Municipality or by Petition by the citizens. The one-third requirement to notify the local Municipality is to protect the Petitioners that they are in the middle of a Petition drive and it is to notify the Municipality that they cannot put a Ballot question on by Statute. He stated they ascertained that the Municipality was not going to put any question or a Referendum in the May Primary therefore, that Provision is moot. It is to protect the petitioners and is not a technicality that was missed by people who are passing this along. Mr. Rubin stated one of the reasons why these petitions are circulated, from his personal opinion, is because the Board on January 21, 2002 made a Motion which was properly Seconded to take a Master Plan to the Zoning Board. He saw the CEO of a North Jersey developer get in front of the Board and state they would not go in front of the Zoning Hearing Board. He stated nothing then happened with that Motion that was properly seconded. He stated he feels this was astonishing. He is concerned with the way the Supervisors respond to a group of people - Residents Against Matrix - who has 4500 people sign a Petition versus a North Jersey developer. He stated at the January 21 meeting, one of the Supervisors indicated they would be sued by RAM or by Matrix, and questioned what was the difference. Mr. Rubin stated he feels there is a big difference between 4500 concerned citizens suing the Township versus a North Jersey developer.

Mr. Hackman stated he does not know why the document was written the way it was, but it states the notification is a mandatory part of the Ordinance and it cites two cases where the petitioners did not properly notify the Election Board and the Municipality and in both cases, the Petition was denied. Mr. Hackman stated this is not optional - it is part of the law and was not done. He stated he will pursue this personally since as Secretary it is his responsibility to let the Election Board know whether or not the Municipality was properly notified. He also stated Matrix was probably one of the easiest decisions he ever made. He noted the Zoning Ordinance in the District that covers the Matrix property under Permitted Uses permits large retail stores. He stated they have every right to develop that property and in fact could have put possibly ten big retail stores on the property. He stated Matrix

had no requirement to go before the Zoning Hearing Board, and the reason the Supervisors approved it is that it is permitted. He stated many of the traffic problems in the area are in the neighboring Townships, and Lower Makefield has no responsibility or authority to do anything about traffic problems in neighboring Townships. He stated RAM has challenged the Board's decision, and he feels the Courts will uphold the Township decision since it was proper. Mr. Fazzalore stated he would like to see no further discussion regarding Matrix at this time and instead discuss the Petition. Mr. Hackman stated he only brought this matter up because he feels this proposal is an outcome of the Matrix decision.

Mr. Ralph Thompson stated he has lived in the Township for twenty-eight years and feels that the Board of Supervisors over the years has done a superb job of controlling growth, and Lower Makefield is one of the best managed Townships in the State.

Mr. Hank Miiller stated he feels the taxing authority is unlimited under Home Rule, and Mr. Fazzalore agreed. He noted that at the current time they are restricted to 19 mills. Mr. Miiller stated there are potential hazards that must be considered by those on the Study Commission since under Home Rule there is no limit while the at the current time there is a Statutory cap. There was discussion on the possibility of an income tax, and Mr. Fedorchak stated at the current time the Township does have this option, but under Home Rule there would be no cap on this either. Mr. Fedorchak stated what you typically see when a community goes to Home Rule is that there is a Wage Tax that is significantly greater than those that are not Home Rule. He noted there is also a sharing provision for the School District. Mr. Miiller stated the members of the Home Rule Study Commission must consider everything, and not only one issue.

Mr. Gary Cruzan, 1597 Clark Drive, stated he disagrees that large retail stores are permitted under the Ordinance since he does not feel Lowe's is a permitted use. He stated they feel all the big box stores are excluded from the definition, and they expect that they will win the Court case.

Ms. Sally Conlon, Edgewood Road, stated she understands that the Township is expected to pay "reasonable" expenses for the Commission, and she asked if there is a cap. She was advised that there is no cap. Mr. Koopman stated it could cost the Township a considerable sum of money for the Commission to pursue its duties.

Mr. Mike Burns stated with regard to the prior statement regarding Motions made and Seconded, when Mrs. Godshalk's Motion was Seconded, it was Seconded for the purpose of Discussion only. He stated he feels Lower Makefield Township works and the Township's services and the Schools are the best in the Nation. He stated the job of Government is much broader than whether or not one development can have so much importance so as to destroy what is one of the best communities in the State. He asked if the Township can sue the Citizens for Better Government to pay for this Commission. It was noted it was felt this was not possible. Mr. Hackman stated the Law is clear that this matter can be brought up by either the Board of Supervisors or by citizens raising this issue. Mr. Fazzalore stated the Board has discussed this possibility in the past but felt that the unlimited taxing ability is something they would not want to live with.

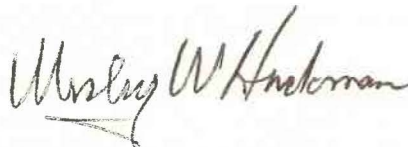
Mr. George Schrader, 44 Black Rock Road, stated he would like to see a Commission started just to see if everything is being run properly.

February 28, 2002

Board of Supervisors - page 9 of 9

There being no further business, Mr. Fazzalore moved, Mr. Stainthorpe seconded and it was unanimously carried to adjourn the meeting at 4:00 p.m.

Respectfully Submitted,

A handwritten signature in black ink, reading "Wesley W. Hackman". The signature is written in a cursive style with a prominent initial "W".

Wes Hackman, Secretary

