

TOWNSHIP OF LOWER MAKEFIELD  
BOARD OF SUPERVISORS  
MINUTES - AUGUST 5, 2002

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on August 5, 2002. Chairman Fegley called the meeting to order at 7:30 p.m. noting that the Board had been meeting in Executive Session since 6:30 p.m. to discuss legal matters.

Those present:

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

Others:                         Terry Fedorchak, Township Manager  
                                      Jeffrey Garton, Township Solicitor  
                                      Robert Williams, Township Engineer  
                                      Kenneth Coluzzi, Chief of Police

**PUBLIC COMMENT**

Mr. John Carr, 901 Hunt Drive, asked if there is a policy regarding response to requests for information addressed to the Township. Mr. Fegley stated although there is no written policy, if he personally receives a letter, he does respond to it. Mr. Carr stated he would like to provide to the Board and Mr. Fedorchak this evening information regarding a problem in their neighborhood about which he has written to the Township in the past but has not received a response. Mr. Hackman asked the nature of the problem, and Mr. Carr stated it is with regard to a wood-burning device in their neighborhood. Mr. Hackman stated the Board is very much aware of this problem and is working on it. Mr. Fegley stated there are some concerns because of personal property rights. Mr. Carr stated he has significant information indicating this device is emitting pollutants. Mr. Fedorchak stated he would be willing to meet with Mr. Carr tomorrow and discuss the details of what the Township has done and what they plan to do over the next few weeks.

Ms. Lorraine Cooper, 8 McKinley Avenue, submitted a letter to the Board this evening requesting that the Board look into obtaining land adjacent to her property that would insure future access to the Delaware Canal Towpath. She noted the property is currently for sale. She suggested the use of Open Space Funds to purchase some of the land. She noted there is currently an informal path being used to access the Towpath. Ms. Cooper provided a map of the area. Mr. Fedorchak and the Township engineer were asked to look into this matter.

Mr. Joseph Taylor, representing Matrix, was present to provide an update. He stated they are still pursuing all required approvals and the litigation so that hopefully they will be able to proceed with the project late this year or early next year. He stated their potential users are still very supportive. They understand that if there is to be any modification of the approvals, they would commence this discussion in public before the Board of Supervisors. They are still committed to bringing to the Township the development that was approved by the Board. Mrs. Godshalk thanked Mr. Taylor for coming before the

Board this evening. She stated she was concerned that they had previously contacted Mr. Steil about their project and she would prefer that they contact the Supervisors in the future. Mr. Taylor stated the only reason they contacted Mr. Steil initially was to discuss the possibility of a connection from their project to I-95. Mr. Taylor apologized for any unintended insults.

Ms. Sue Herman stated there are two Swamp Road projects on the DRBC TIP Program. She stated both projects have been approved by the State Transportation Commission. She noted that the Wrightstown Board of Supervisors are asking the Newtown Township Board of Supervisors to partner with them in opposing the Swamp Road culvert replacement. Ms. Herman stated that Mr. Steil has indicated that the weight-restricted culvert is going to be downgraded in the near future so that even the empty quarry trucks will not be able to use it which will result in more trucks on local roads. She asked that the Board of Supervisors pass a Resolution asking that the Swamp Road culvert replacement be "fast-tracked." Mr. Fazzalore stated he understands that there are now two culverts that are to be replaced in the area. Mr. Fegley stated he understood from Mr. Steil that the culvert replacement was to be expedited. Ms. Herman stated she did discuss this with PennDOT and understands that it is not on a fast track and is just on the normal schedule.

Mr. Fazzalore moved to support expediting the replacement of the Swamp Road culvert with a direction to the Township Manager to put it in the proper form for Board signature.

Mr. Fedorchak stated he understands that Wrightstown and Newtown are tying in the culverts with the complete renovation of Swamp Road and this could take a significant amount of time. It is therefore important to separate out the culverts.

Mr. Hackman seconded the Motion, and the Motion carried unanimously.

Ms. Virginia Torbert stated she read in the Newtown Township Board of Supervisors' Minutes that the signal timing of the By-Pass will take two years for the system to be operational. Mr. Fedorchak agreed to look into this. Ms. Torbert also expressed concern with the safety of the railing which has been installed at the CVS. Mr. Fedorchak agreed to look into this matter as well.

#### APPROVAL OF MINUTES

Mr. Fazzalore moved and Mr. Hackman seconded to approve the Minutes of July 15, 2002 as written. Motion carried with Mr. Stainthorpe abstained.

#### DISCUSSION OF FCC RULING ON CABLE MODEM FEES

Mr. Elliott Paul was present and reviewed the impact this ruling would have on the Township. He stated if this passes, the Township will only receive the Franchise Fee for the television service and not for the Internet access. Mr. Fazzalore stated he learned of this matter through his association with the Pennsylvania State Association of Township Supervisors. Mr. Hackman asked that Mr. Fedorchak contact the State Association of Township Supervisors to find out who else is participating and what monetary contribution they are looking for.

STATUS REPORT ON TRENTON-MERCER AIRPORT EXPANSION PROJECT AND AUTHORIZATION FOR MR. POTTER TO PROCEED

Mr. Paul Krupp, Mr. William Potter, Esq., Mr. Bill Lynch, and Mr. John Edwards, Mayor of Hopewell Township were present. Mr. Krupp stated the Board of Supervisors previously agreed to retain Mr. Potter in an attempt to define the Environmental Assessment and follow up with the ultimate objective of requiring a full-blown Environmental Impact Statement. Mr. Edwards read to the Board the letter he wrote to the FAA commenting on the public hearing which was held. He noted that many people were not permitted to comment who had signed up to speak and many people were unable to access the meeting due to overcrowded conditions. Mr. Edwards stated he has received no response to his letter to date. He noted that the Mercer County Chosen Board of Freeholders voted unanimously to extend the comment period and to hold another public meeting but the Administration has chosen not to agree to this. Mr. Hackman asked the opinion of Mr. Edwards' Congressman about this matter and Mr. Edwards stated he feels the same as Mr. Edwards does. Mr. Hackman noted the letter and attached information provided by Mr. Potter and asked who received this information. Mr. Potter stated this information was sent to numerous individuals including the FAA, the Board of Freeholders, and Congressmen.

Mr. Fegley stated he does not feel another public hearing would have a significant impact on the Mercer County decision and asked how they could force them to do the Environmental Impact Statement. Mr. Potter stated he does feel a second public hearing would be a good interim step as it may force the Freeholders to make a decision in their favor. Mr. Potter stated he would recommend proceeding with litigation which he estimates could cost between \$7,000 and \$10,000. The Board noted they had already agreed to pay up to \$10,000 for Mr. Potter's services and to date he has charged approximately \$3,000.

Mr. Edwards stated the transgressions at the public hearing were significant. He noted that Mr. Prunetti will be up for re-election in November and a delay could help in that it could impact the outcome of that election.

Mr. Potter stated the FAA makes the decision whether or not there should be an Environmental Impact Statement and this brings in the U.S. Congress. Mr. Fegley stated he feels it makes more sense to use Congressional influence on the FAA as opposed to attacking Mercer County in a Mercer County Court. Mr. Stainthorpe stated Mr. Greenwood has advised him that the FAA is not returning his phone calls. Mr. Edwards stated he is concerned that the finding will come in as a Finding of No Significant Impact and it will then be sent back to Mercer County.

Mr. Garton stated he feels the quickest way to end this will be a political decision and a little money spent now will force the political forces to re-consider this rather than having to go to Federal Court.

Mr. Stainthorpe asked if anyone else is helping Lower Makefield pay for this. Mr. Fegley stated he would feel better if others were involved financially such as Yardley Borough, Wrightstown, and the County.

Mr. Lynch stated he has moved out of the Township because of the airplane noise. He reviewed what they were told about the Airport program seven years ago which were very

minimal improvements as opposed to what is now proposed. Mr. Lynch showed the plans for the Airport expansion which are significant.

Mr. Hackman moved and Mrs. Godshalk seconded to agree to proceed to the next step.

Mr. Fegley stated at the next status report he would like to know that there are other Municipalities getting involved. Mr. Fedorchak agreed to contact other Municipalities in Pennsylvania and the County Commissioners. He asked that Mr. Edwards help with Municipalities in New Jersey. Mr. Fegley stated he feels a lawsuit would have more impact if it were a joint lawsuit including Townships from both sides of the River.

Ms. Judy Curly stated she was also at the public hearing and it was inadequate for the number of people present. She stated the only people who were permitted to speak were those in favor of the expansion project.

Motion carried unanimously.

#### APPROVAL OF MISKIEL/DARRAH PRELIMINARY/FINAL MINOR SUBDIVISION

Mr. Garton stated the Board must resolve the location of Lot #1. He stated the Planning Commission has recommended a new location and asks that the Township grant a 10' easement through Township property so that the driveway for Lot #1 can access Schuyler Drive.

Mr. McMaster, attorney, was present with Mr. Jim Ceglia, engineer. Mr. McMaster provided a Revised Plan this evening. He stated originally the two homes fronted on Sandy Run Road. The Planning Commission recommended that rather than building the house on Parcel #1 at the location shown, that it be moved back to the intersection of Schuyler and Hudson. The property in question does not have frontage on Schuyler Drive and they would need to have an 10' wide easement from the Township to take access. This would alleviate some of the concerns that had been expressed by the Planning Commission over natural resources. Mr. McMaster reviewed the history of the property including the Court Order.

Mr. Hackman stated according to the original Plan, it would appear that the building envelope for Lot #1 would not be large enough to accommodate the type of house seen in Lower Makefield. He stated it appears that they are therefore creating a non-buildable lot. Mr. Garton stated they are creating a building envelope that may not accommodate the house type that has been seen in the past but a ranch or Cape Cod may fit. Mr. McMaster stated they are showing that a house 45' wide by 25' deep would fit within the building envelope. On the alternative Plan they have shown a larger house.

Mrs. Godshalk stated Schuyler Drive was built as an arterial road and she does not feel there should be a driveway coming out at this location. Mr. Fegley stated there are driveways coming out onto Edgewood Road. The proposed driveway would come out across from Hudson. Mrs. Godshalk stated she would prefer that they obtain a Variance to get a larger home rather than move the lot and have the driveway come out to Schuyler. Mr. Stainthorpe stated since this is the only available lot in the area, there would be not other driveways coming out onto Schuyler. Mr. Hackman stated the area is wooded and is conservation land and he would prefer that the driveway come out at Sandy Run.

Mr. Hackman moved and Mrs. Godshalk seconded that they not grant the easement. Motion carried with Mr. Fazzalore, Mrs. Godshalk, and Mr. Hackman in favor and Mr. Fegley and Mr. Stainthorpe opposed.

There was discussion on the frontage improvements. Mr. McMaster stated they would suggest that no improvements be required but that if they are required, that they be delayed until building permits are drawn. Mr. McMaster stated there are no curbs or sidewalks on this side of the road up to Edgewood Road. It was agreed that the applicant should make a payment of \$5,000 in lieu of frontage improvements.

Mr. Stainthorpe moved and Mr. Fazzalore seconded to approve the Miskiel/Darrah Preliminary/Final Minor Subdivision Plan dated 10/14/09, last revised 5/7/02 for Sheet 1 and 5/23/00, last revised 10/26/00 for Sheet 2 subject to:

- 1) Compliance with PCS letter dated 6/6/02 without the grant of the easement;
- 2) Payment of Fee-In-Lieu of Recreation according to the Ordinance;
- 3) Applicant to pay a Fee-In-Lieu of Frontage improvements in the amount of \$5,000 to be paid before Subdivision Plans are recorded;
- 4) Compliance with outstanding CKS issues;
- 5) Receipt of all permits and approvals by agencies having jurisdiction;
- 6) Payment of any Township expenses to the extent not paid.

Mr. McMaster agreed to the Conditions and the Motion carried unanimously.

#### DISCUSSION OF WATER AND SEWER EASEMENTS FOR TOWERING OAKS OF YARDLEY

Mr. Merrick Wilson was present. Mr. Garton reviewed the Court Order relating to this matter. Mr. Stainthorpe stated the Farmland Preservation Corporation was opposed to granting the necessary easements across their land since typically when this is done the land is never restored to the satisfaction of the farmer. They asked that they run the water and sewer around the perimeter of the property. Mr. Williams stated the longer it is run, the more it will cost and since there are only seven lots, the burden would be steep. Mr. Garton stated the Township is obligated to procure the easements.

Mr. Wilson stated it was designed in this way so that they could provide a gravity feed. He stated the Township required them to have public water even though they were more than 1500' away and the Township agreed to provide the easements necessary in order to do this.

It was the consensus of the Board that Mr. Garton should notify the Farmland Preservation Corporation that if they do not grant the easements, the Township will have to condemn the property.

Mr. Samuel Conti stated the farmer who is farming the property now has indicated that he will not be able to farm it properly if there are manhole covers. Mr. Fegley stated there is a Court Order in place and the Township does not have a choice in this matter.

APPROVAL OF FINAL PLANS FOR D'AMATO SUBDIVISION/WOODS AT MAKEFIELD

Mr. Edward Murphy, attorney, and Ms. Beverly Curtin were present. Mr. Garton noted the open issue is the access points to the project. Mr. Murphy had indicated at the last meeting that they were not willing to change the access points which were approved at the Preliminary Plan stage. Mr. Hackman stated the Board tabled this matter at the last meeting as Chief Coluzzi was unavailable and they wanted his opinion.

Chief Coluzzi stated he did submit a letter to the Planning Commission after reviewing the roadway plans along with Mr. Coyne and Mr. Hoffmeister and they recommended that the road be opened up so that the larger vehicles would not have difficulty making certain movements on the cul-de-sacs. However, at a subsequent meeting, the Board of Supervisors recommended that changes be made to the Plans after listening to input from the existing residents. Mr. Stainthorpe stated the neighbors were present at the Planning Commission and Board of Supervisors' meetings and felt that the Board had agreed to the access as shown on the Plans being presented by Mr. Murphy. He does not feel it is right to now change this without the neighbors being present.

Mr. Garton stated the developer has vested rights that if they meet the conditions of Preliminary Plan, the Final Plan has to be approved. Mrs. Godshalk asked if they would be willing to look at Oxford Valley Road. Mr. Curtin stated they did look at this previously and they agreed to do whatever the Board of Supervisors asked. They then proceeded with the direction given them by the Board with input from the residents. Mr. Hackman stated the main thing that has changed is that the Board looked at this site on the Road Tour and then felt the alternative was better.

Ms. Curtin stated they have provided an emergency access. Mr. Murphy stated the emergency access will be stone underneath with grass on top and it will be demarcated so it can be accessed by emergency vehicles. Mr. Williams stated they are looking into the type of barrier to be used for the emergency access. He will work with the Chief, Mr. Coyne, and the Fire Department on what would be acceptable.

Mr. Murphy stated the name of the development will be Woods at Makefield.

Mr. Stainthorpe moved and Mr. Fegley seconded to approve the Final Plans for D'Amato/Woods At Makefield, Plans dated 5/6/02, last revised 5/24/02 subject to:

- 1) Continued compliance with Conditions of Preliminary Plan approval which was granted on 5/6/02;
- 2) Compliance with PCS letter dated 6/18/02 including Fee-In-Lieu;
- 3) Compliance with CKS letter dated 6/12/02;
- 4) Compliance with Jim Yates' letter dated 6/25/02;
- 5) Funding and execution of Development and Financial Security Agreements;
- 6) Township will not take ownership of the Open Space but will take ownership of the basin with normal compensation.

Mr. Murphy agreed to the Conditions of approval. Motion did not carry as Mr. Fegley and Mr. Stainthorpe voted in favor and Mr. Fazzalore, Mrs. Godshalk, and Mr. Hackman were opposed.

Mr. Garton stated the Board must make a Motion to deny the Plans based on reasons for denial.

Mrs. Godshalk moved and Mr. Hackman seconded to reject the Plans because of the input from the Chief of Police regarding health, safety, and welfare of the citizens who will live not only in the new development but in the development it is being attached to.

Motion did not carry as Mrs. Godshalk, and Mr. Hackman voted in favor, Mr. Fegley and Mr. Stainthorpe were opposed, and Mr. Fazzalore abstained.

Mr. Garton stated this will result in no action being taken and the Plan will be deemed approved with no conditions.

After further discussion, Mr. Fazzalore agreed to change his vote and vote in favor of approval of the Plans although he feels this is a poor decision. He stated he is concerned that denying the Plan will result in costing the taxpayers money in a Court action.

Mr. Stainthorpe moved and Mr. Fegley seconded to approve the Final Plans with Conditions as previously noted.

Ms. Virginia Torbert asked if the Solicitor could determine what legal grounds there could be to turn down the Plan. Mr. Garton stated the developer has received Preliminary Plan Approval and they can only be turned down if they do not meet the conditions of Preliminary Plan Approval or if they have violated Ordinances. Ms. Torbert asked that the Solicitor review the Ordinances to see if there are some Ordinances that relate to the safety of the public for which the Plan would be in violation since they do have another meeting between now and the time the plan expires.

Motion carried with Mr. Fazzalore, Mr. Fegley, and Mr. Stainthorpe in favor and Mrs. Godshalk and Mr. Hackman opposed.

#### DISCUSSION OF MASSETTI PROPERTY

Mr. Garton stated the Board is being asked to meet with Mr. Massetti and his counsel at a public meeting to discuss a reduction in fees. The Board was willing to entertain discussion.

#### APPROVE WITHDRAWAL OF GRANGE HALL CONDITIONAL USE APPLICATION

Mr. Hackman moved, Mr. Fazzalore seconded and it was unanimously carried to accept the withdrawal of the Grange Hall Conditional Use Application.

#### DENY DEDICATION OF ESTATES AT PEBBLE CREEK

Mr. Hackman moved, Mr. Fazzalore seconded and it was unanimously carried to deny the request for Dedication of Estates at Pebble Creek based on outstanding issues in the CKS and PCS letters.

#### SIGN MYLARS FOR FIRST BAPTIST CHURCH

Mylars for the First Baptist Church were signed following the meeting.

Mrs. Godshalk left the meeting at this time.

#### DISCUSSION OF COST ESTIMATE TO ALIGN DOLINGTON ROAD WITH CREAMERY ROAD

Mr. Williams noted the information he provided to the Township which indicates he is estimating it will cost slightly more than \$1 million to align Dolington Road with Creamery Road. This information will be provided to the Board in their next packet. Mr. Hackman asked how this will impact the installation of the utilities for the Fire Company. Mr. Williams stated he will need to do a preliminary review to insure that the utilities will be in the right-of-way. Mr. Fedorchak stated the road has been placed on the Official Map and they have sent letters to the utility companies so that there will not be a cost to the Township.

#### AWARD BID FOR HILLSIDE AND SPRING LANES DRAINAGE AND ROADWAY IMPROVEMENTS

Mr. Williams stated the low bidder withdrew his bid due to a clerical error. They re-bid the project and are now recommending that the bid be awarded to the new low bidder whose bid was approximately \$58,000 less than the second low bidder on the prior bid.

Mr. Fazzalore moved and Mr. Stainthorpe seconded to award the bid for Hillside and Spring Lanes drainage and roadway improvements to N. Abbonizio Contractors, Inc. in the amount of \$539,615.50. Mr. Hackman stated he will not vote on this due to a conflict of interest. Motion carried with Mr. Hackman abstained.

#### APPROVAL OF 2002 PAVING PROJECTS

Mr. Hackman moved, Mr. Stainthorpe seconded and it was unanimously carried to approve the 2002 Paving Project Contract #1 to James D. Morrissey in the amount of \$254,315.45.

Mr. Hackman moved, Mr. Stainthorpe seconded and it was unanimously carried to approve the 2002 Paving Project Contract #2 to Dosch-King Emulsions, Inc. in the amount of \$48,674.50.

#### STATUS REPORT ON SANDY RUN BRIDGE PROJECT

Mr. Williams stated he met with the contractor and it will take six weeks for the structure to be completed once plans are accepted. Demolition will be started while they await delivery of the structure.



**APPROVAL OF INTERGOVERNMENTAL AGREEMENT WITH MIDDLETOWN TOWNSHIP TO PROVIDE ANIMAL CONTROL SERVICES**

Chief Coluzzi stated the current Animal Control Officer has not been able to provide adequate services to the community. Middletown Township has offered use of their Animal Control person. Chief Coluzzi will monitor the time of this individual.

Mr. Hackman asked if there is any information on how many calls they usually have for this type of service. Chief Coluzzi agreed to look into this. He stated currently they pay \$20,000 a year for the services of the Animal Control Officer, and he feels under the new system it will cost a great deal less. He noted this will be on a month to month basis and they can terminate the Contract at any time if the rates become a problem.

Mr. Hackman moved, Mr. Stainthorpe seconded and it was unanimously carried to approve the Intergovernmental Agreement with Middletown Township to provide Animal Control Services.

**ZONING HEARING BOARD MATTERS**

The Nancy Krupewicz, 4 Patrick Lane, Variance request to add a porch encroaching into the front yard setback was noted, and the Board decided to leave this to the Zoning Hearing Board.

The Robert and Linda Waterhouse, 14 Wendover Road, Variance request to construct a garage resulting in greater than the permitted impervious surface was noted, and the Board decided to leave this to the Zoning Hearing Board.

The Richard and Amy Sichel, 1713 Meetinghouse Lane, Variance request to construct a fence within an easement was noted, and the Board decided to leave this to the Zoning Hearing Board.

The Michael and Mindy Goldberg, 1721 Meetinghouse Lane, Variance request to construct a fence within an easement was noted, and the Board decided to leave this to the Zoning Hearing Board.

The Kevin Donovan, 312 Robin Hood Drive, Variance request to construct a shed resulting in greater than the permitted impervious surface and within the 10 foot setback was noted, and the Board decided to leave this to the Zoning Hearing Board.

**SUPERVISORS REPORTS**

Mr. Fazzalore noted there was a meeting of the Pension Committee, but he had nothing further to report at this time.

**TABLING APPROVAL OF RESOLUTION NO. 2016 ESTABLISHING FEES FOR RENTING ELMLOWNE**

Mr. Hackman, Moved, Mr. Fazzalore seconded and it was unanimously carried to table Approval of Resolution No. 2016 until Mrs. Godshalk is present.

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DISCUSSION OF REQUEST OF SCOTT AND JENNIFER PETOFF TO REFUND  
LATE PENALTY ON TAX BILL

After discussion it was the consensus of the Board that this could set a precedent and no refund of the late penalty should be made. No action was taken by the Board.

OTHER BUSINESS

Mr. Stainthorpe commended the Chief on the apprehension of the molester involved in the Kohl's incident.

APPOINTMENTS

Mr. Fazzalore moved, Mr. Stainthorpe seconded and it was unanimously carried to appoint Glenn Hamilton and Brian Golder to the Uniformed Pension Committee.

There being no further business, the meeting was adjourned at 10:15 p.m.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Wes Hackman".

Wes Hackman, Secretary