

TOWNSHIP OF LOWER MAKEFIELD  
BOARD OF SUPERVISORS  
MINUTES – MARCH 3, 2021

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held remotely on March 3, 2021. Ms. Blundi called the meeting to order at 7:30 p.m. and called the Roll.

Those present:

Board of Supervisors: Suzanne Blundi, Chair  
James McCartney, Vice Chair  
John B. Lewis, Secretary  
Frederic K. Weiss, Treasurer  
Daniel Grenier, Supervisor

Others: Kurt Ferguson, Township Manager  
David Truelove, Township Solicitor  
Andrew Pockl, Township Engineer  
Kenneth Coluzzi, Chief of Police  
James Majewski, Director Planning & Zoning  
Monica Tierney, Park & Recreation Director

#### COMMUNITY ANNOUNCEMENTS

Ms. Tierney stated information on Park & Recreation digital recreation opportunities can be found on the Township Website.

Ms. Tierney stated March 29 through April 1 they will be hosting an Egg-Stravanganza where they will hide eggs in the Township parks. She stated if you find an egg, you should bring it to the Community Center and you will get a prize.

Ms. Tierney stated there is a 10K a day, six-week, Stepping Into Summer Challenge. Registration is now active. All participants receive a t-shirt; and if you finish the Challenge, you get a medal. Information is on the Township Website.

Ms. Tierney stated they are putting activity bags for the Seniors. About seventy-five Seniors are participating, and they have had many donations already. She stated those interested in donating should contact the Township.

Ms. Tierney stated Pool Registration is open, and March 5 is the last day to get the resident discount.

Ms. Tierney stated Mr. John Love will speak about the first Jack Pepper 3 on 3 Basketball Tournament. Mr. Love stated he is with Falcons Elite which is a newly-formed youth basketball organization. He stated they are looking to raise money for the American Cancer Society, and they will hold the event at the three Pennsbury Middle Schools for Grades 3 through 12. All proceeds raised through registration or sponsors will go to the American Cancer Society. Mr. Love stated information is on Falcons Elite.com as well as on Facebook. Ms. Tierney stated they will also put a link on the Township Website.

Mr. Grenier thanked the Public Works Department for the work they have done with all of the snow storms. He also advised residents that ticks are out already.

#### APPROVAL OF MINUTES

Mr. McCartney moved, Mr. Lewis seconded and it was unanimously carried to approve the Minutes of February 17, 2021 as written.

#### ENGINEER'S REPORT

##### Approve Award of Base Bid and Alternates 1 through 3 for the 2021 Liquid Fuels Road Program to Harris Blacktopping, Inc. in the Amount of \$642,892.85

Mr. Pockl stated this was discussed at the last meeting, and there was an award contingent upon the review period for the public to review the qualifications for Harris Blacktopping; and they have not received any comments or questions.

Mr. Grenier moved and Mr. McCartney seconded to award the Base Bid and Alternates 1 through 3 for the 2021 Liquid Fuels Road Program to Harris Blacktopping, Inc. in the amount of \$642,892.85.

Mr. Grenier asked if all the paperwork is in, and Mr. Pockl stated it is including the hard copies for the Bid Bond. Mr. Grenier stated the Budget was \$650,000 with three fewer roads on this list, and they were able to still come in under the Budget adding three roads that were on next year's list.

Motion carried unanimously.

Approve Advertisement of Entrance Improvements Project at the Township Community Center

Mr. Pockl stated he met with Ms. Tierney and the Park & Recreation staff to review some upgrades they wanted at the Community Center most notably the entrance vestibule where they will be changing the doors to a more user-friendly door. He stated they will be more durable, lighter, and easier to open for Seniors and children. He stated they will also have an automatic, push-button open.

Mr. Pockl stated they have put together a Bid package to be Bid on PennBid. Contingent upon authorization this evening, the schedule would be to advertise this Friday, March 5, and next Tuesday, March 9; and then open Bids on Thursday, April 1. He stated a potential Award would be at the first Board meeting in April. Mr. Pockl stated they did reach out to a few vendors/potential Bidders to determine if this would come in at a price over the threshold for Public Bidding, and two vendors responded indicating that it would; and that is why they are proceeding with Bidding this on PennBid.

Mr. Ferguson stated Mr. Pockl forwarded the documents to get input from the Disability Advisory Board regarding these doors, and some of their comments were incorporated into the documents.

Dr. Weiss moved and Mr. McCartney seconded to advertise the Entrance Improvements Projects at the Township Community Center.

Mr. Grenier stated it was indicated that this would probably be above the Bid requirement, and he asked what is the estimated cost if they are close to what had been Budgeted based on preliminary discussions. Mr. Pockl stated he would not want to give out the estimate in advance of a Public Bid. He stated the threshold for Public Bid is \$21,300. Mr. Grenier stated he wanted to make sure that they were in range of what is in the Budget.

Mr. Grenier stated the existing doors are only a few years old, and they have found that they already have to replace them because they are not serving the purpose they want them to serve. He asked if there was anything that indicated the existing doors were not the right doors or if there was a deficiency where the Township could be made whole. Mr. Pockl stated the existing doors are wood doors with glass panels, and wood doors are generally more Residential in nature. He stated he does not know if that is enough evidence in order for the Township to proceed with anything

Mr. Grenier is suggesting. He added that the new doors are proposed to be aluminum and glass. Mr. Grenier stated he was asking if they met what they were supposed to meet per the spec that was put out, if the architect designed the door that they were supposed to, and if the doors were installed correctly. He stated if they could save money, that would be preferable.

Mr. Pockl stated this project does pre-date him so he has no knowledge whether anything was done incorrectly or not. He stated he believes that there was Grant funding for the Community Center, and everything was done in accordance with that Grant. He stated in this current project, they are asking to salvage the doors to see if they can be used somewhere else within the Township where they might be a more appropriate use.

Mr. Ferguson stated in that building there were a number of things that were scaled back as the project went on including the building not being wired when it was built. He stated his understanding is that this was originally speced out to have commercial-grade doors, and that was something that was scaled back as the project went on and costs exceeded what the original projections were. He stated they had to go back and make sure it was wired after the fact, and that is comparable with the doors as well. Mr. Ferguson stated these were supposed to be ADA-accessible doors. He stated the existing doors are difficult to open, and they are also Residential-grade doors. He stated they are proposing to upgrade the doors and make them the way they should have been all along. Mr. Ferguson stated he would defer to Mr. Truelove to see if there is something that they could recoup.

Mr. Truelove stated he would have to look at all the documents and reviews that were done by those charged with inspecting them to see whether there was any kind of lack of sufficient review before he could provide an answer. He stated he could look into this if the Board wishes him to, and he would have to coordinate with Mr. Pockl and Mr. Majewski on this.

Mr. Majewski stated the doors that are currently at the Community Center were what was speced out by the architect, and they were installed properly. He stated the problem is that for a high-use, public building, the doors are not suitable; and they selected a lower-quality door than what should have been put into a Community Center.

Dr. Weiss stated at the last Disability Advisory Board meeting they reiterated their concerns with how the doors should open, and provided that is specified in the Bid, he does not see a problem.

Motion carried unanimously.

#### PROJECT UPDATES

Mr. Ferguson stated with regard to the Township Properties there was a meeting with Mr. Pockl and the staff regarding the Inventory that the Board has. He stated there were times over the last few years where certain properties have had cost estimates done to make them usable or habitable structures. He stated they are in the midst of having staff internally go back over those numbers, add inflationary numbers to them, and walk the properties to make sure that there is nothing that has changed significantly in those repair guidelines.

Mr. Ferguson stated there are a couple of the properties that have not had estimates done most notably the one barn at Patterson Farm and the house at the Golf Course, and they have asked Remington Vernick to prepare a range in costs as far as what the main issues would be and provide a range as to what it would cost to accomplish those objectives. He stated they will focus on those two properties.

Mr. Ferguson stated they would not give a cost estimate on the Faringer House that has a tenant in it or other properties unless the Board wants them to do that. He stated they were going to put a report together on what they felt were the properties that they wanted to focus on that are truly assets in the Township.

He stated they will meet again early next week to establish a timeline for the Board when the report will be updated beyond just the Inventory to include the estimates and lists of what they believe would need to be undertaken to make them structurally-sound. He stated they are talking about what it would take to make it possible for someone to enter the building safely. He stated he will have a timeframe for the Board at least by the next meeting.

Mr. Grenier stated they have previously discussed coming up with plans for future uses of the buildings. He stated when Remington Vernick does the analysis there would be a base cost to make it safe to enter, and he asked if

there is an opportunity to get a “rough order of magnitude cost for making it usable without specifying a use.” Mr. Ferguson stated some of the issues are obvious such as foundations, roof replacements, asbestos, etc. He noted the house at the Golf Course would probably have a limited scope for use. He stated they would start with a report with some estimates; and if the Board wants to go further, they can do that. He stated his objective at this point was to get started with a process. Mr. Ferguson noted Remington Vernick had previously put together estimates on the Satterthwaite House which at that time were about \$700,000 for structural improvements and there was also environmental remediation that was estimated as well. He stated this would be a guideline for the Board to understand what it could cost if we were to start to put investments into these properties.

Mr. Ferguson stated the Bids are due on March 8 for Sandy Run Road. He stated this is on PennBid, and more than twelve packets were picked up. He stated they hope to have this before the Board to award at the next meeting.

#### MANAGER’S REPORT

##### Approve Financing for Two Toro Triplex Greens Master 3320 Hybrid Golf Course Mowers at a Total Cost of \$86,734 with TD Bank for Three Years at 2.4%

Mr. Ferguson stated the Board recently approved the purchase of two mowers for the Golf Course. He stated TD Bank was the low bidder for three years at 2.4%. He stated this item will be in the Golf Budget as an obligation of the Golf Course. He stated the other Bid that came in was 3.9%.

Mr. McCartney moved and Mr. Lewis seconded to approve financing for two Toro Triplex Greens Master 3320 Hybrid Golf Course mowers at a total cost of \$86,734 with TD Bank for three years at 2.4%.

Mr. Grenier asked if they are at the Budget number. Mr. Ferguson stated they re-configured some numbers so “they have landed essentially at the same spot under the Capital.” He stated they Budgeted \$60,000 in Capital. He stated originally the discussion was that would all go into bunker upgrades that are done; and they have lowered the bunker number down to about \$40,000, and this will fill in the difference that will be in the \$60,000 Budget line item. Mr. Grenier asked if there are any “nuances surrounding the 2.4 versus the 3.9% such as hidden conditions.”

Mr. Ferguson stated it is just the straight 2.4. He stated they also eliminated all of their filing fees so there is not an up-front cost. He stated the first payment would be due in April so there will be three quarterly payments this year which is what the presentation was at the previous Board meeting.

Motion carried unanimously.

Award 2021 Pool Painting Contract

Mr. Ferguson stated last year they had awarded the Pool Painting Contract, and a week later everything was shut down due to the Pandemic so they did not paint the pools. He stated the vendor had purchased the paint when the Contract was awarded, and the Township paid the contractor for that paint and that paint has been held at the Township. He stated the Bid for 2021 was to paint all of the pools, and it was included in the documents that the paint that the Township already had would be utilized which would lower the cost.

Mr. Ferguson noted the memorandum in the Board's packet from Mr. Majewski. Two Bids were received, and the lower Bidder came to the site and spoke to the staff. The low Bid was in the amount of \$39,180; and \$36,000 has been Budgeted. This is to paint all four pools. The low Bidder was Titan Industrial Services Inc.

Dr. Weiss moved and Mr. Lewis seconded to award the Bid to Titan Industrial Services, Inc. at a cost of \$39,180.

Mr. McCartney asked if this will come out of the Pool Budget, and Mr. Ferguson agreed. Mr. McCartney asked if there could be any issues using paint that has been sitting for a year. Mr. Ferguson stated it should not be a problem. He stated that paint is for two of the pools, and the contractor will be bringing the paint for the other two pools.

Mr. Grenier asked how long it has been since the different pools have been painted, and he asked how long the "paint jobs" are typically good for. Mr. Ferguson stated the cost of the paint that the Township bought last year was about \$13,000 or \$14,000. He stated the smaller pools and the lap pool would need to be painted every other year, but the Olympic pool would need to be painted every year. Mr. Grenier asked the color, and Ms. Tierney stated it is the same as always which is white.

Motion carried unanimously.

2020 Sanitary Sewer Project Update/2021 Sewer Projects

Approve Change Order No. 2 for Lower Makefield Contract SWR 20-1 CIPP Lining Project in the Amount of \$17,685

Mr. Fred Ebert stated with regard to this Contract, construction was substantially completed on January 25. The contractor is completing the close-out documents. There were two issues during construction. One was a minor bulge that occurred which would have restricted the capacity of the pipe. The contractor repaired that at no cost to the Township.

The second issue they had is subject to a Change Order. He stated there was a ruptured host pipe which caused the liner to burst. Mr. Ebert stated in this case it was a clay pipe. He stated prior to the installation of the liner, they televise the pipe to make sure that there are no visible pipe defects or anything that could cause an issue during the insertion of the liner. He stated in this case, there was nothing visible; however, you cannot see behind the pipe. He stated when the contractor was inserting the liner using the inversion method the pipe broke, and they believe that was because there was most likely no backfill behind the pipe to resist the forces. He stated there can be issues with the pipe because of underground springs, etc. that wash out backfill.

Mr. Ebert stated the contractor put a Change Order together, and they negotiated with the contractor so that the contractor would not charge for any labor or equipment; and they would just charge for the liner that was ripped, the replacement liner, and repairing the existing pipe. He stated this Change Order is in the amount of \$17,685. He added this was reviewed and recommended for approval by the Sewer Authority.

Dr. Weiss moved and Mr. McCartney seconded to approve Change Order No. 2 for Lower Makefield Contract SWR 20-1 CIPP Lining Project in the amount of \$17,685.

Mr. Grenier asked when the pipe ruptured, and Mr. Ebert again noted that it was during the inversion process. He stated when the pipe broke, it ruptured the liner so that it could not be utilized. Mr. Grenier asked if that happened in December or January, and Mr. Ebert stated it was November 18. Mr. Ebert stated an emergency repair had to be done immediately because of all the water rushing in. Mr. Grenier asked if there were any downstream impacts outside of the pipe, and Mr. Ebert stated there were not. Mr. Ebert stated the contractor did a good job. Mr. Grenier asked if there are any monies outstanding after the payment request. Mr. Ebert stated



after the payment request which includes the Change Order, there is still the 5% retainage which he wanted to hold until all the paperwork was completed, reviewed, and approved. He stated he will be back next month before the Board on this Contract and the manhole liner Contract.

Mr. Grenier asked how this project ended up versus the Budget versus the Bid. Mr. Ebert stated the total Change Order is 9.5%, and they had included a 10% contingency. He stated the Bid was significantly lower than the estimate because of the volume, so they are well within the Budget even with the Change Order.

Motion carried unanimously.

Approve Payment Request No. 2 for Lower Makefield Contract SWR 20-1 CIPP Lining Project in the amount of \$44,045.50 (Payment Request Includes Change Order for \$17,685)

Mr. Ebert stated this includes the Change Order that was just approved. He stated this was reviewed and approved by the Sewer Authority at their meeting on February 25, 2021.

Mr. Grenier moved and Dr. Weiss seconded to approve Payment Request No. 2 for Lower Makefield Contract SWR 20-1 CIPP Lining Project in the amount of \$44,045.50.

Mr. Ferguson stated when they cut a check it will be for \$44,000; and the actual amount of the payment if you took out the Change Order was the \$44,000 minus \$17,000. He stated they had to do the Change Order first to authorize the \$44,000 payment.

Motion carried unanimously.

Contract SWR 20-2 Update

Mr. Ebert stated this is the Sanitary Sewer Manhole Rehabilitation which went very smoothly. He stated construction was completed on December 11 and the Certificate of Substantial Completion was signed and authorized on February 17. They are holding \$3,220 of retainage until they get all the Maintenance Bonds, etc. approved by the Solicitor. No action was required by the Board on this.

Contract SWR 20-3 – Brookstone Pump Station Update

Mr. Ebert stated they went out and put notifications at every residence in the area and coordinated with the Homeowners Association. He stated this project is very close to a lot of residences and they wanted to communicate effectively. He stated they were thanked by the residents for this notice. He stated the contractor mobilized on February 15 and established the by-pass pumping and demolition on February 18. They have been delayed somewhat because of the storm. Some free upgrades have been done by the contractor. All materials came in quickly for this project.

Contract SWR 20-4D – Stackhouse Pump Station

Mr. Ebert stated this is the relocation and replacement of the Stackhouse Pump Station and there have been delays in getting the generator, pipes, and valves. The shop drawings are approved, and they are waiting for everything to be delivered. He stated this project is on the edge of the banks of the Canal, and he does not want to mobilize and disturb this area, and then “disappear” as they wait for the equipment to be received, and have to come back and mobilize again to complete the job. He stated they are waiting until all the materials are in the contractor’s shop before they go out and mobilize. They have met with one homeowner on the trees that have to be removed, and the trees have been marked and pictures were taken so that there is no question as to which trees are being taken down. There is one homeowner who was away, and they will meet with them when they return. The contractor is waiting for a response from his vendors with regard to the equipment.

Mr. Grenier asked if this is the last of the 2020 projects, and Mr. Ebert agreed. Mr. Grenier asked how they are doing Budget versus what they are looking at spending for 2020. Mr. Ebert stated they will be very close. He stated they had to adjust the Contract. He stated while they were under on the lining and the manhole Contracts, they had to increase this Contract by about \$50,000 over the original Budget. He noted that this had been discussed previously with the Board of Supervisors. He stated the net result is that they will be very close, still allowing for a 10% contingency on the two outstanding Contracts, to what the Budget was in 2020. Mr. Grenier stated he felt that when the Board discussed this in the fall was that they were saving close to \$125,000 across all projects. Mr. Ebert stated it was just under \$100,000 but this job came in at

\$50,000 more. He stated they are approximately \$50,000 under, and it could be slightly more if they do not use any of the 10% contingency. He stated there was also the \$17,000 Change Order.

Approve Advertisement of Sewer Manhole Lining for 2021

Mr. Ebert stated this is a continuation Contract as part of the Corrective Action Plan. He stated while this is technically required as part of the Corrective Action Plan in the Neshaminy Service Area, they have agreed that they have to address the I & I in Morrisville as well. He stated this is for the structural repair of deteriorating manholes. The total 2021 line item Budget for this is approximately \$36,050. He stated this has been broken up into the two Service Areas. For the Neshaminy portion there are three manholes all of which discharge existing pump stations that show active deterioration in them. He stated the engineer's cost estimate is \$13,940.50. He stated this is slightly lower than the Budget, and he is doing this to allow for any Change Orders that may occur,

Mr. Ebert stated in the Morrisville Municipal Sewer Authority area, there are four manholes. He stated for one of the manholes, they had lined the sanitary sewer main as part of the Lining Project, and as they did that they identified a manhole that had a significant I & I leak which they were able to temporarily plug; but they wanted to come back and do a permanent fix since the plug will not last for long. He stated two other manholes show active deterioration which the Sewer operator identified. Mr. Ebert stated the last manhole is a force main discharge; and while it is not in "bad shape yet," it is clear that it will be a problem in the near future. The cost estimate is \$18,590, and the Budget is \$20,600. He stated it is slightly under to allow for Change Orders. He stated he is more concerned about Change Orders on this because of the existing leak that is in the one manhole, and they may have to go in and do another temporary repair.

Mr. Ebert stated the Contract was recommended to be Bid by the Sewer Authority on February 25, and they are requesting authorization to Bid this via PennBid.

Dr. Weiss moved and Mr. McCartney seconded to authorize advertisement of sewer manhole lining for 2021.

Mr. Grenier stated Mr. Ebert had indicated that the one manhole was not in bad shape at this time, and he asked the unit cost if they were to remove that from the package. Mr. Ebert stated it would be relatively low at about \$2,500. He stated the concern he has is this is a discharge to the Maplevale force main, and he feels they will have hydrogen sulfide attacking it. He stated this manhole is the shortest out of the four manholes and the price is on a vertical-foot basis so there is a nominal savings by removing it. Mr. Grenier stated previously Maplevale had a major back-up in the road, and Mr. Ebert agreed.

Motion carried unanimously.

Approve Payment Request No. 2 from AJM Electric, Inc. for the Brookstone Pump Station Upgrade Electrical Contract in the Amount of \$8,100

Mr. Ebert stated the electrical contractor is mobilizing and starting work. The majority of this request is for materials and work completed to date. He stated they are still holding a 10% retainage because less than 50% of the job is completed.

Dr. Weiss moved, Mr. Lewis seconded and it was unanimously carried to approve Payment Request No. 2 from AJM Electric, Inc. in the amount of \$8,100.

Approve Advertisement of Sewer Main Lining for 2021

Mr. Ebert stated this is a requirement of the PA DEP Corrective Action Plan to remove existing I & I. He stated there were a lot of significant leaks that were done in the first pipe lining Contract. He stated one of the projects in the Neshaminy Service Area is a continuation of what was done in 2020. He stated a continuation project is the best way to remove I & I. These lines are going to pump stations where there are issues. He stated the 2021 Budget is \$401,700 with \$180,250 going to Neshaminy and \$221,450 to the Morrisville Municipal Authority portion.

Mr. Ebert stated in the Neshaminy Service Area, they will be doing about 3,076 linear feet of sanitary sewer main which is a continuation of the project done last year in the Falls Contract area. He stated this is also where they had seen the leaking manhole. He stated that is an engineer's cost of

\$177,291.40 which is close and contains a 10% contingency. He stated there is always a risk of Change Orders on these jobs because they do not know what is behind any of the pipes.

He stated for the Morrisville Service area it is to line approximately 1,900 linear feet of 10" sewer main and 1,720 linear feet of 12" main. He stated this is a portion of Buck Creek that we know has not been lined and is in poor shape. He stated this was reviewed with and approved by the Sewer Authority at their meeting on February 25.

Dr. Weiss moved and Mr. McCartney seconded authorization to Bid the Sewer main lining for 2021.

Mr. Grenier asked Mr. Ebert if he has designed these projects, and Mr. Ebert stated they are designed and are being reviewed by the Solicitor's office at this time. They are ready to be Bid next week. Mr. Grenier asked the schedule from Bid to construction. Mr. Ebert stated he usually gives them 120 days to complete it. He stated he feels the jobs will be done before June/July.

Mr. Grenier stated if they are not done by that time, it puts them up against when they anticipate the Closing on the Sewer system to be. He asked what would happen if the projects were not completed by the time the Township Closes on the sale of the Sewer system; and he asked if that would be on the Township or the purchaser of the Sewer system. Mr. Ebert stated while he feels they should get a legal opinion, since the Contract is with the Township, the Township would be required to complete the Contract. Mr. Ebert stated his concern is what would happen if the Closing is delayed, and the Township is not in compliance with the Corrective Action Plan which would jeopardize the ability to have EDUs released under the Connection Management Plan for all the projects that have gone through the approval process.

Mr. Grenier asked Mr. Ebert if he has had discussions with DEP about compliance issues, and if DEP had any issues with the Corrective Action Plan. Mr. Ebert stated they have not so far which is why the EDUs are there. He stated he did have discussions last year with DEP when we were delayed because of COVID, and they had no issues with that; however, he does not want to be in that position again and jeopardize any projects that the Board of Supervisors wants to see go through the development process that the Board approved.

Mr. Ferguson stated the estimate at this time is for a fourth quarter Closing.

Motion carried with Mr. Grenier opposed.

Additional 2021 Projects Discussion

Mr. Ebert stated the Silver Lake Pump Station Upgrade is included in the 2021 Budget. He stated these pumps are at the end of their mechanical life, and they have to manually back flush the filters and the pumps. Three of the shafts have broken already this year. He stated there are operators out there on emergency calls on a weekly basis. He stated they cannot defer this project, and it is under design right now. A Bid package will be ready for the Board's consideration at the April meeting.

Mr. Ebert stated also included in the Budget which they are actively working on is the Buck Creek liner. He stated he needs to televise the line, and he has not been able to identify which portion of the interceptor has been previously lined. He stated they will need to televise it in order to confirm the scope of work. He stated this in an Easement – not a roadway. He stated they have not been able to get a television truck out there because of the snow. He stated because the flows are excessively high they need to by-pass pump it. A contactor is lined up to by-pass this so that they can televise it although that has been delayed by the weather. He stated he hopes to bring this in front of the Board in April, weather permitting.

Mr. Grenier asked if they have heard anything from MMA in terms of what they have in store for 2021 and what projects we may have to do with them.

Mr. Ebert stated he has not heard from them at all. Mr. Ferguson stated over the last few months, we have been reconciling 2018. He stated the Township gets items when MMA's audit is done, and the Township asks for verification. He stated he has not heard about anything for this year. Mr. Ferguson stated even if MMA is doing something this year, the practice has been that Lower Makefield would not get that bill until eighteen months from now as far as our portion goes. Mr. Grenier asked if we have done any proactive communication.

Mr. Grenier asked if we have heard anything about their plans for the treatment plant. Mr. Ebert stated he has not heard anything. Mr. Grenier stated when the Sewer sale goes through, we will still be involved with dealing with MMA in our rates.

Mr. Lewis asked if they have had any discussion with MMA about Capital projects for "out years." Mr. Ferguson stated they have not. He stated the Public Works Director has reached out to MMA, but they tend to not give the Township advance notice of expenses. Mr. Lewis stated if the sale were to pass, any bill that MMA would provide thereafter would not be the Township's responsibility.

Mr. Ferguson stated he feels that anything prior to the sale would be the Township's responsibility. Mr. Lewis asked if this was confirmed in the Contract, and Mr. Truelove stated he would have to look at all the information. Mr. Ferguson stated the discussion internally has been that if the sale were to go through, the Township would have ongoing obligations so that the Sewer Fund would have to be kept open to satisfy debts we would have. Mr. Lewis stated he does not feel there is any incentive for MMA to want to delay any projects when they could push them forward and know that they would get instant payment. Mr. Ferguson stated he does not feel it would be instant payment. He stated the way it has been for years is that the Township gets a bill from MMA for projects two years prior. He stated in the last three years the Township has asked for back-up for those bills. He stated as he has advised the Board in the past, the Township has "shed off tens of thousands if not hundreds of thousands in bills" as the Township concluded that some of those items were not in fact Capital Expenses or MMA was not able to produce invoices to pay those bills. Mr. Ferguson stated when the sale goes through, if there is a Capital Expense that happens after the sale date, he feels that would go to Aqua. If it was something prior to the sale, that may be the Township's responsibility although they will have to look into this in the Asset Purchase Agreement.

Mr. Lewis stated he knows that MMA previously gave the Township access to their drop box to see all of their invoices and activities in the past so that there might be some sense of what could be coming in the future so that we would have that information since it is a contingent liability that we might face.

#### SOLICITOR'S REPORT

Mr. Truelove stated the Board met in Executive Session starting at 6:45 p.m. and items related to litigation, Real Estate, and informational items were discussed.

#### Discussion of Amending Section 99-8 of the Code of Ordinances Related to Responsible Contractors to Reduce the Public Review Time to 14 Days for Contracts that are Deemed "Recurrent" and Motion to Direct Solicitor to Develop Revised Language

Mr. Truelove stated there have been prior discussions about amending Section 99-8 of the Code of Ordinances related to Responsible Contractors

specifically as it relates to the timeframe for public review for what they are trying to describe as “recurrent Contracts.” He stated he feels the Liquid Fuels Road Program would be considered to be a recurrent program as it occurs every year, and usually some of the same contractors Bid on the project so a shorter review period would seem to make sense. He stated possibly similar to that would be the Pool painting project. He stated one that would not be subject to that provision would be the Sandy Run project which is unique and not recurrent.

Mr. Truelove stated the proposed amendment is to add a Sub-Section 1 to state “The review period prescribed in this Section is reduced to a period of no more than fourteen days for public inspection for those Contracts that are recurring, i.e. occur on a regular basis such as annually. Such “recurring Contracts” include for reference purposes only annual street and road re-surfacing Contracts and Municipal Pool re-painting Contracts. He stated the Board could direct advertisement with that language or could consider this further.

Mr. Lewis moved and Mr. Grenier seconded to direct the solicitor to develop revised language related to recurrent Contracts to allow the time period to be reduced from twenty-one to fourteen days.

Mr. Lewis suggested that they have the definition of what a recurrent Contract is separate from the language. Mr. Lewis stated he feels those kinds of Contracts can be done through an expedited review process. He stated they are dealing with the same vendors although the same vendor is not always winning the road Contract which is good as there is competition.

Mr. Grenier asked if there are any nuances to these recurring Contracts that Mr. Pockl, Mr. Majewski, or Mr. Ferguson would recommend adding. Mr. Truelove stated he will ask for their comments and report back to the Board. Mr. Ferguson stated he does not feel that it needs to be quantified down to the Contract. He stated they are now starting to do trails every year; and while many of the Contractors might be those they know, until they know that pattern, they may not be Contractors they know. He asked if there is a way to make the determination that is it recurrent when they go through the process. He stated there could be additional projects that become annual projects such as inlet or basin repairs. Mr. Truelove suggested that there be a clause about applicable technical and/or engineering review so that in addition to quantitative, there is also a qualitative element as well.



Mr. Truelove stated they want to make sure that it is sufficiently definitive but also flexible enough so that as time goes on and circumstances change that we are able to do this without amending the Ordinance every time. He stated he will draft something and provide it to the Board, Mr. Pockl, Mr. Majewski, and Mr. Ferguson; and he would welcome any input.

Motion carried unanimously.

#### ZONING HEARING BOARD MATTERS

With regard to the Matthew T. Scanlan Variance request for the property located at 1230 Silver Stream Drive, Yardley, PA 19067 in order to permit the installation of an open rail black aluminum fence in a Stormwater Easement, it was agreed to leave the matter to the Zoning Hearing Board.

With regard to the William Connell Variance request for the property located at 701 Jade Road, Yardley, PA, 19067 in order to permit the installation of an in-ground pool with patio and equipment pad which will increase the impervious surface from the existing 20.9% to 24.0% where 18% is otherwise required, it was agreed to leave the matter to the Zoning Hearing Board.

With regard to the Gabriel Deck and Alexandra Calukovic-Deck Variance request for the property located at the intersection of Woodland Drive and West School Lane, Yardley, PA, 19067 in order to permit setbacks on resource protected lands to be measured from the Lot lines whereas the setbacks would otherwise be measured from the limit of the resource protected lands; fill within a floodplain; a 35.2% disturbance within a floodplain area whereas 100% of the floodplain would otherwise be protected; a 40.8% disturbance of a wetland buffer area whereas 100% of the wetland buffer area would otherwise be protected, the single-family dwelling unit on a flag lot containing 28,750 square feet (exclusive of the area of the lane or flag pole) whereas 40,000 square feet would otherwise be required; a Lot width of 134 feet whereas 160 feet would otherwise be required; and a lane or flag pole with a width of 18 feet whereas a 25 foot width is otherwise required.

Mr. Truelove stated Mr. Majewski had indicated that after reviewing the Application the extent of the relief could be reduced a little by moving the house further away from the stream and re-configuring the house lay-out. Mr. Truelove stated he would recommend participation by the Township.

Mr. Grenier stated he would be leaning more toward opposition based on these numbers since there are significant impacts to multiple resources.

Mr. Grenier moved and Mr. Lewis seconded to oppose.

Dr. Weiss stated he would be in favor of participating but not opposed if Mr. Majewski feels that there is a way forward for the landowner. He stated if it is not realistic, he would agree to oppose.

Mr. Grenier stated the level of impact of 35% in the floodplain and 40% of the wetlands buffer are big impacts. He stated this could impact not only this property but neighbors as well.

Ms. Blundi stated Mr. Truelove indicated he heard from Mr. Majewski who indicated that by shifting the house, the numbers could be cut in half. Mr. Grenier stated he would still be opposed because these are big numbers even if they are cut in half. He stated he would consider it if it were down to 5% with “interesting mitigation.”

Mr. Lewis stated by announcing the Board’s opposition, it may cause the Applicant to amend their proposal and come back with something that might be closer. He stated the Zoning Hearing Board could then continue its work to resolve more minor issues and not have to go up against such a major issue.

Mr. Majewski stated they do have room to reduce their disturbance in the floodplain and the wetlands buffer by shifting the house around, and whether the Board gives that input to the Applicant through participation or opposition to the Application is up to the Board.

Mr. Grenier stated he feels it sends a stronger message if the Board opposes this based on the current design, and hopefully that may have the Applicant take a closer look at this to see where they could make improvements rather than having the Zoning Hearing Board have to make a decision on the current design. He stated if the Board opposes, that may encourage the Applicant to re-consider this and come back with a better plan that has reduced the impacts a great deal.

Mr. Lewis stated this would also probably save the Zoning Hearing Board hours of Testimony if the Applicant came back with a Revised Application. He stated the Zoning Hearing Board does try to find accommodations that meet the

needs of the property owner and the neighboring community and they end up doing recommendations on the spot whereas if this can be done now, it could save the Zoning Hearing Board some of that work.

Motion to oppose carried unanimously.

With regard to the Sunil Dhar Variance request for the property located at 1201 Silver Stream Drive, Yardley, PA 19067 in order to permit the installation of an in-ground pool with decking which would increase the impervious surface from the existing 18.6% to 22.3% where 19% is otherwise required, it was agreed to leave the matter to the Zoning Hearing Board.

#### APPROVAL OF CERTIFICATE OF APPROPRIATENESS FOR 657 HEACOCK ROAD – RITE AID (REVISED)

Mr. Jerry Canavan was present. Mr. Majewski stated the Appeal was before the Board about two months ago for a change to the Rite Aid sign. This is for the Rite Aid in the Edgewood Shopping Center which is where the McCaffrey's is. They had initially proposed a color change which the Board of Supervisors had approved; however, Rite Aid then decided to keep the existing color. HARB reviewed the Revised Application and unanimously recommended approval as submitted.

Mr. McCartney moved, Mr. Grenier seconded and it was unanimously carried to approve the Certificate of Appropriateness for 657 Heacock Road – Rite Aid (Revised.)

#### PUBLIC COMMENT

There was no Public Comment at this time.

#### DISCUSSION ITEMS

##### Short Term Lodging Ordinance Update

Mr. Ferguson stated last year there was discussion about some experiences the Township has had with the Short Term Lodging Ordinances, and he wanted to get input from the staff as to how it could be strengthened so that the Township

would have the oversight necessary and changes that would be needed to do that. He stated the staff put together a draft of the comments that they worked on with Ms. Kirk. They also looked at comparable Ordinances to see what others were doing. He stated included in the Board's packet was the original version of the Ordinance along with the red-lined version where there are changes proposed.

Ms. Kirk stated she wanted the Board to be able to see the comparison between the Ordinance that the Board previously approved and what is proposed. She stated she included an overall provision that states that the Ordinance that was previously approved will be repealed in its entirety and will be replaced with a new Ordinance which is attached as Exhibit A.

Ms. Blundi stated this is on as a Discussion Item, and they will not publish anything tonight. She stated when this was passed in 2018, she believes that Lower Makefield was one of the first Townships to try to address this emerging issue. She stated while it has served the Township well, we have also learned that there are areas for improvement.

Ms. Kirk stated before she started doing the revision, she was provided a copy of a similar Ordinance issued by Palmyra Township which is in the Pocono Mountain region. She attempted to reach their solicitor to see if there were any Claims filed or opposition to the Ordinance, but she was not able to speak with him; however, she was not able to find anything of Public Record to indicate that there were any challenges to that Ordinance. Ms. Kirk stated she also did an updated review on some of the Cases dealing with Airbnbs, most of which involved the various Municipalities trying to pigeonhole this type of facility under Zoning regulations. Ms. Kirk stated she feels it would be wise for the Board to continue to have a Short-Term Lodging Facility Ordinance as a stand-alone Ordinance and not under the Zoning regulations because some of the applicable Law is different when it involves Zoning versus a stand-alone Ordinance relative to public health, welfare, and safety.

Ms. Kirk stated they tried to tighten some of the definitions, added a few definitions, and clarified that if there is a residential home being offered for short-term lodging regardless of who is doing the offering, the owner of the property is going to be the ultimate person responsible whether they have an agent offering it, an agency, etc.; and this way the owner cannot indicate they did not know what the contractor/agency was doing. Ms. Kirk stated they also tried to update what would be the License

requirements so that there is a clear understanding and acknowledgement by the person seeking the License that they cannot have less than 70 square feet for the bedroom to be used, that they have read all of the regulations, that they provide a telephone number of who is the contact regarding the short-term lodging facility, confirm that there is a clear posting of the emergency numbers and addresses, and that they provide the Township with the information relative to who is going to be doing the marketing/ advertising so that there is a mechanism for the Township to double check and make sure that it is not being advertised falsely as opposed to what the Ordinance otherwise requires.

Ms. Kirk stated the staff also asked that instead of doing one annual inspection, that two annual inspections be scheduled to make sure that everything is being met under the terms of the Ordinance as well as property maintenance. Ms. Kirk stated any change to the proposed short-term lodging would require a renewal or changed License to be issued by the Township. She stated if they indicated that they were only offering two of the bedrooms for short-term lodging, they cannot offer four bedrooms without it being approved by the Township under the License. Ms. Kirk stated she tried to address issues that came up in the past with respect to exterior lighting, noise generated by the occupants, etc.

Mr. Ferguson stated another provision they added was that whatever it was indicated *per the License issued that could be rented, must be the way that it is marketed*. He stated if the License indicates that they can rent two rooms, advertising that there are three rooms to rent would be a violation of the Ordinance, and the Township would not have to physically inspect and see that there are three renters at once; and just advertising that would be a violation. Ms. Kirk stated that is a separate section that was added to the Ordinance.

Mr. Grenier noted Section 130-10 – Enforcement and Penalties. He stated it indicates that the first violation is a \$1,000 fine, and the second violation is \$1,000 and not more than 90 days imprisonment. He stated a new one added was that if the owner commits the same or similar violation within one year of receiving a Notice of Violation as set forth in the Ordinance, no additional Notice shall be required to be served on that owner or the Township initiating enforcement action.

Ms. Kirk stated there is a distinction as to whether an Ordinance is being enforced under the Zoning regulations or Property Maintenance. She stated this would be enforced under Property Maintenance. She stated under the Law, that requires the Township to issue a Notice of Violation when a complaint is lodged and give the property owner so much time to correct it. If that is not corrected within the timeframe given by the Township, the Township can then follow a Non-Traffic Summary Offence Citation in the local Magisterial Court. Ms. Kirk stated that is the triggering mechanism where a Hearing will then be held in front of a Judge, and a Fine could be imposed. She stated what this additional provision is saying is that if the Township has gone through the step of notifying a property owner of a Violation and less than a year has passed and another Violation occurs, the Township can skip the part about giving written Notice to Correct and just File immediately in the District Court.

Mr. Grenier asked Ms. Kirk to explain enforcement inequity. Ms. Kirk stated with Summary Offences when they relate to issues dealing with public health, safety, and welfare, there is a separate section in the Statute that outlines all of them.

Ms. Kirk stated rather than go through the process of trying to get Fines which is all a Magisterial District Judge can do is issue fines, the Township has reserved the right to File an Action in Doylestown and ask for a specific performance or a specific injunction to prevent someone from using the property as a short-term lodging facility. She stated that is a separate mechanism that is available to the Township under this Ordinance. Mr. Truelove stated that would be more immediate relief; and if the person would not comply with whatever Order the Judge might issue, they can be held accountable. Mr. Truelove stated some people might not mind paying a fine or if they do not pay the fine, it would be a lien on the property as opposed to this action which would have more oversight over the person themselves. Ms. Kirk stated if there is an individual who has continued to use the property for short-term lodging without getting the appropriate License or appropriate marketing provided to the Township, and the Township has verbally advised them of what they need to do multiple times, and they are not complying and still using the property, this allows the Township to go right to Doylestown to stop it.

Mr. Grenier asked if there is any information on the number of Enforcement Actions/Fines that have been issued based on the Ordinance to date.

Mr. Ferguson stated the provision for Fines in this Ordinance is not the Township going after the Fine, it is when we would go before a Judge; and this gives that Judge or Magistrate the capability of looking at the Ordinance so if they choose to impose a Fine, this sets the parameters for what that could be. Ms. Kirk stated Fines could not happen unless there is a Judge that issues them. Mr. Ferguson stated he believes the total Judgement they have received is \$5,000.

Mr. Grenier noted Section 130-1 B5 the new language at the bottom of Page 4. He stated he is uncomfortable with that particular language. Ms. Kirk stated that was included in one of the Ordinances she looked at which was a response to a Supreme Court Decision on Airbnb where the Supreme Court overturned a decision in the Commonwealth Court on the basis that the locale of where the Airbnb was being operated disturbed the residential nature of the area. She stated this language could be taken out.

Mr. Lewis stated he is pleased to see this is now considered mainstream. He stated while he is generally comfortable with many of the edits, he shares Mr. Grenier's concern specifically around the language noted. He stated it could cause concern and be perceived of as being exclusionary. Ms. Kirk stated this is not an exclusion under a Zoning Ordinance, and it is a Property Maintenance style Ordinance. Mr. Lewis stated he does understand that.

Ms. Blundi stated the language being discussed is as follows: "To preserve the traditional character of Residential neighborhoods that could be negatively impacted by this type of use (referring to the Airbnb) and to help preserve the quantity and quality of residential housing for year-round residential use." Ms. Blundi stated she understands the case that Ms. Kirk is trying to address and why the Courts would want to see some of this language included although there is probably a way to work on it so that it meets both needs.

Mr. Lewis stated there is value in offering all different types of housing and all types of different rental circumstances. He stated the challenge is that sometimes short-term rentals have profound negative consequences in certain neighborhoods based on the type of rental that it is used for. He stated he does not want it perceived that the intent of the Ordinance is to be exclusionary in any way. He stated Lower Makefield welcomes everyone who is law abiding to the community to live here, and we want to make sure that there is fair and equitable treatment.

Mr. Lewis stated the Township has not lost any Cases under our existing Ordinance which was well drafted originally, and these are good enhancements. Mr. Lewis asked if we faced any Court Challenges with the Ordinance, and Ms. Kirk stated there were none that she was aware of.

Mr. McCartney asked with regard to the language discussed earlier, if an example would clarify what the advantage would be to have that language included. Mr. McCartney stated he feels an example would be a residential neighborhood that borders a college, and a fraternity may decide to rent one of the houses within the residential section which could potentially be not a traditional use within a particular neighborhood. Ms. Kirk stated there could be a dense residential neighborhood consisting of single families living there, and one of the units could be used frequently for short-term lodging like an Airbnb which could have an impact due to the quality of the neighborhood because of the density. She stated the Township has been dealing with a situation where there is a residence that borders another Municipality; and because of the way it has been used it has not only impacted our Township, but it has impacted the residents of the other Municipality as well.

Mr. McCartney asked what is the market for this use and what is the draw of Lower Makefield for short-term Airbnb rentals other than during soccer tournaments or other sporting events. Ms. Kirk stated in light of the Pandemic people may not want to go to a hotel, and there may be a greater demand to be able to use a short-term rental if a family is trying to visit someone in the area. Mr. Ferguson stated he believes that the Township's Golf Course is also a draw for people who would come to golf for the weekend. Ms. Blundi stated she is aware of a house that was rented out to those attending a dance camp in the area.

Mr. Lewis stated he has seen times when there are more frequent rental opportunities by a number of companies. He stated with regard to the fraternity-house concept, that is a situation where there is a use that is not in character or would be expected in a residential community. He stated in the past Municipalities dealt with this in a number of ways, including creating Ordinances which indicated that no more than two unrelated people could live together which is exclusionary for many and led to a Supreme Court Case. Mr. Lewis stated that is why these Ordinances are so difficult to write. He stated they want to address the activities that are causing a bad experience for people. He stated there are also situations where houses are being rented to more people than the house



could occupy which is a significant public health issue, and there was a case involving that, which was before the Zoning Hearing Board. Mr. Lewis stated he wants to allow people the flexibility to do short-term rentals responsibly.

Ms. Kirk stated the language they are discussing is not the substance of the Ordinance, and it is more of a preamble to explain what the intent was to draft the Ordinance. She stated it can be taken out if the Board does not want it included as she does not feel it will make a big difference.

Dr. Weiss stated he is in favor of the language although it could be modified slightly. He stated given recent history and the Case before the Zoning Hearing Board having something like this in the Ordinance gives direction for future Boards, the residents in the neighborhood, and the Zoning Hearing Board if necessary to stop practices that would be a detriment to the Township. He feels this language would be appropriate.

Mr. Grenier stated he understands that Ms. Kirk has indicated that this language is not specifically needed to enforce the Ordinance, and Ms. Kirk agreed.

#### Patterson Farm Lease

Mr. Ferguson stated there are 175 acres that are leased at Patterson Farm, and the Lease is expiring the end of April. He stated he proposes to bring this back before the Board on March 17 for a formal Motion to advertise. He stated this would be advertised for thirty days. He stated when this was put out to Bid five years ago, two Bids were received. He stated the Board was provided a copy of the previous Lease to see if there were any changes they may want to make.

Mr. Grenier stated he would like to see if they could get some alignment with the Farmland Preservation Leases and looking at issues related to resource buffers, wetlands and stream buffers, to make sure we do not impact them. He stated he would also like to look at different farming practices from an environmental perspective to protect the watersheds. He stated he would also be interested in not dictating what is grown but have “people come up with interesting ideas for different crops or uses in terms of where there may be food insecurity issues to promote some of those issues and get those willing to farm the land to integrate into the community more than just feed corn;” and while not mandate that, but provide those as options.

Ms. Blundi noted the declining number of farmers, and stated she would like to see more interest and to help encourage farming as much as possible.

Mr. Lewis stated he would like to offer a five and a ten-year Lease option. He stated Farmland Preservation Leases are ten years. He stated previously the Township Leases were one-year with auto renewal, and they extended it to five years because there were certain farming benefits for having extended Leases. He stated when they talked to the farmers last time most of the benefit was at five years; but if there is someone who would like a ten-year Lease he feels the Township should consider that as well. He stated they want to find as many farmers as possible.

Ms. Donna Doan, 2814 Langhorne-Yardley Road, Yardley, suggested that the Township go with what the Farmland Preservation Corporation did in moving to a ten-year Lease. She stated that would allow the farmers to make some financial decisions that have to be made. She stated Bright Farms and AOY are on a ten-year Lease. She stated Styer's in Middletown just went with a twenty-year Lease. She stated this would help the farmer and would be helpful in maintaining agriculture in our community.

#### SUPERVISORS REPORTS

Mr. Lewis stated the Trenton-Mercer Airport Review Panel will meet tomorrow and the Committee has been working on draft letters to the New Jersey Department of Environmental Protection, the current Acting Commissioner, and the FAA. He stated these are designed for elected officials to reach out to the New Jersey Department of DEP. They are around how Mercer County is structuring a large project into segments to make it harder to collectively do an Environmental Assessment and analyze the increased air traffic capacity of the Airport. It is also designed to limit noise review, air pollution, and potentially water pollution reviews. He stated the Committee will review those letters tomorrow.

Mr. Grenier stated the Electric Reliability Committee had asked if the Township had any data surrounding installation of in-house generators in the Township as a way to inform the Committee of the potential lack of reliability which has an economic impact on residents. He stated they also asked if the Township had a response from PECO to come before the Electric Reliability Committee and/or the Board of Supervisors.

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Mr. Ferguson stated he believes it was PECO's intent to go before the Electric Reliability Committee either in March or April. He stated he knows they were working on answering the questions that the Committee had put forth in a letter that came to the Board in November. He stated they advised that they were working on a presentation to address those points, and he will follow up with them to get a specific date.

There being no further business, the meeting was adjourned at 10:00 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John B. Lewis". The signature is stylized with a large, circular flourish on the left side and a long, sweeping tail on the right.

John B. Lewis, Secretary

