

TOWNSHIP OF LOWER MAKEFIELD  
PLANNING COMMISSION  
MINUTES – DECEMBER 22, 2008

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on December 22, 2008. Chairman Bush called the meeting to order at 7:35 p.m.

Those present:

Planning Commission:        Tony Bush, Chairman  
   Karen Friedman, Vice Chair  
   Dean Dickson, Secretary  
   Mark Fried, Member  
   John Pazdera, Member

Others:                             Nancy Frick, Director Zoning, Inspection & Planning  
   John Donaghy, Township Solicitor  
   James Majewski, Township Engineer

APPROVAL OF MINUTES

Ms. Friedman moved, Mr. Pazdera seconded and it was unanimously carried to approve the Minutes of November 10, 2008 as written.

RECOMMENDATION ON PROPOSED AMENDMENT TO THE TOWNSHIP ZONING ORDINANCE BY ADDING A NEW ARTICLE XIIC THAT ESTABLISHES A NEW AMATEUR RADIO OVERLAY DISTRICT WHICH SHALL ALLOW AND PROVIDE FOR THE REGULATION OF THE ERECTION AND USE OF AMATEUR RADIO TOWERS AND SUPPORT STRUCTURES IN CERTAIN DESIGNATED AREAS IN THE TOWNSHIP

Mr. Steve Levin and Mr. Dominic DiClementi were present. Mr. Bush stated this item has been before the Planning Commission approximately six times in the last eighteen months. He stated since Mr. Levin and Mr. DiClementi were last before the Planning Commission in September, a State Act was put into effect which was not in effect when they were last present. He stated the Planning Commission and Township Solicitor have read this Act and are aware of its contents. He stated he assumes both Mr. DiClementi and Mr. Levin have seen the most recent version of the proposed Ordinance so they have seen the changes since they were last before the Planning Commission, and they agreed.

Mr. Dickson stated they had attempted to establish 35' as the height, but the Act supersedes this and they put it at 65'. Mr. Donaghy stated the way it was previously was 35' and up to 65' with a Conditional Use, and he does not feel this is permissible any longer. Mr. Bush stated the Statute says that Municipalities can enact an Ordinance as long as it serves a legitimate purpose and defines legitimate purpose as "health, safety, and aesthetic objectives of the Municipality," and Mr. Donaghy agreed. Mr. Bush asked Mr. Donaghy if it is his assessment that the proposed Ordinance meets those qualifications, and Mr. Donaghy stated he believes so. He added that you start with the premise that you are going to permit antennas/towers of 65' which comes within the requirements of the Statute, and there are limited restrictions on that with regard to setback requirements, etc. that are related to health, safety, and aesthetic purpose. He stated he was surprised that they put in "aesthetic purposes" since typically, this is not usually part of Zoning issues. He stated you are also permitted to exclude the towers/antennas from Historic Districts and historic buildings which was already in the proposed Ordinance.

Ms. Friedman stated in the Senate Bill, they have used the words, "reasonably accommodate," and she asked how they would work with this as it seems vague. Mr. Donaghy stated the Statute is very vague, but it is clear that they must start with the premise of the height of not less than 65' and work back from that in determining the appropriate restrictions. Ms. Friedman stated she does feel that they have reasonably accommodated the towers in the proposed Ordinance.

Mr. Dickson stated he feels the Ordinance has addressed the issue of safety as the Planning Commission previously discussed. He stated he feels they have reasonably accommodated those who wish to pursue this hobby but they are also looking out for the health, safety, and welfare of the other residents as well.

Mr. Donaghy stated many of the changes made to the proposed Ordinance were made as a result of the comments made by the Planning Commission and not only as a result of the Statute.

Mr. Bush asked about the provision regarding the height of the tower having to fall within the tower owner's property, and it was noted this is shown on Page 5.

Mr. DiClementi asked that the clause regarding additional insurance be deleted since if it is going to be restricted to falling within your own property, he feels asking them to have this kind of insurance probably goes beyond the intent. Mr. Donaghy stated this was an issue that was discussed a number of times particularly with regard to the requirement for the Township to be named as an additional insured. Mr. Donaghy stated he does not feel the Township would have any liability unless it were to fall on Township property.

Mr. Donaghy stated it might be reasonable to state that they must have their own insurance, but he has always questioned the idea of naming the Township as an additional insured. Mr. Bush asked if this would be homeowners' insurance, and Mr. Donaghy agreed. Mr. Donaghy stated this would be no different than if they had a tree that fell over. Mr. Bush stated the Township does not normally require that someone have homeowners' insurance as this is up to the individual homeowner so the question is if this is a situation where the Township can require homeowners' insurance for someone when in the ordinary course of events, they do not. Mr. Donaghy stated they might be able to require homeowners' insurance, but he does not feel they need to have the Township named as an additional insured. Mr. Dickson stated if the tower were next to a Township-owned property and the tower fell on it, the Township would have the same rights to claim against the tower owner as would any other resident. Mr. Donaghy stated he feels they could state that they must have reasonable homeowners' insurance. Mr. Dickson suggested they indicate "Applicant shall present to the Township evidence of homeowners' insurance at least the minimum of \_\_\_\_\_," and then continue with the rest of the paragraph as proposed, "such insurance policy shall insure the Applicant against any damage caused..." He stated this would therefore delete the whole issue of the Township. It was agreed to remove the "Township" reference. There was discussion on what would be considered "reasonable" insurance, and Mr. Donaghy stated he feels \$100,000 would be reasonable, and Mr. DiClementi stated he did not have a problem with this and they would not then have to have a separate rider. Ms. Friedman asked if they should put a number in the Ordinance which may not be the correct number in the future. Mr. Donaghy agreed but stated unless they came up with a formula, he does not know what Ms. Frick would have to work with. Mr. Donaghy stated if they leave it open and just state "reasonable," he questions who would interpret what is reasonable. Mr. Bush stated there are numbers like these in many of the Township Ordinances which are set when passed and not often reviewed later.

Ms. Friedman asked if you put in a pool is it assumed that you have homeowners' insurance or do you have to report the fact that you have added this to your home. She stated the insurance company may state that the homeowner never advised that they had the tower and they will then not cover them. Mr. Fried stated if you put a trampoline in your back yard, you have to tell your insurance carrier; so he feels the homeowner is under obligation to tell them; but the question is whether the Township is responsible for enforcing this. Ms. Friedman stated she feels it is fair and reasonable to request that the insurance company knows about the tower. Mr. DiClementi stated he does not have a problem with this requirement because he would do it anyway. Ms. Friedman stated they need to make an Ordinance that covers everyone. It was agreed to leave it at a minimum of \$100,000.

Mr. Majewski advised Mr. Donaghy of a number of minor corrections to be made to the proposed Ordinance.

Mr. Dickson moved, Ms. Friedman seconded and it was unanimously carried to recommend to the Board of Supervisors that the Township amend the Township Zoning Ordinance by adding Article XIIC that establishes a new Amateur Radio Overlay District which shall allow and provide for the regulation of the erection and use of amateur radio towers and support structures in certain designated areas in the Township that corresponds with Senate Bill 884 of the General Assembly of Pennsylvania changes to include “the Township” will be deleted as additional insured in Section F.8 and the corrections noted this evening by Mr. Majewski and Mr. Donaghy.

#### OTHER BUSINESS

Ms. Frick stated she was asked to poll the Planning Commission to see if the members would be interested in receiving Development Plans on PDF or would they still prefer to get them in hard copy. She asked that the Planning Commission consider this. Mr. Bush stated it may be difficult to see some details on a PDF. Ms. Frick stated years ago they went to 11 by 14 and it was difficult to read the Notes. She stated they are considering this again because of concerns with saving money. Ms. Frick stated they do have to be a certain size to be recorded at the Recorder of Deeds office. Mr. Fried asked if it was possible to also provide it as a PDF noting he can increase the size on the screen. Mr. Bush stated the problem is when you print them so that you can look at it during the meeting and they would need at least one or two full size sets at the meeting.

There being no further business, Mr. Dickson moved, Ms. Friedman seconded and it was unanimously carried to adjourn the meeting at 8:05 p.m.

Respectfully Submitted,

Dean Dickson, Secretary