

TOWNSHIP OF LOWER MAKEFIELD  
PLANNING COMMISSION  
MINUTES – JANUARY 12, 2009

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on January 12, 2009. Mr. Bush called the meeting to order at 7:40 p.m. Ms. Appelson was welcomed as Supervisor Liaison.

Those present:

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

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

REORGANIZATION: ELECTION OF OFFICERS

The meeting was turned over to Mr. Donaghy who called for the election of Chairman of the Planning Commission for 2009. Mr. Dickson moved and Mr. Bush seconded the nomination of Karen Friedman. There were no further nominations and the Motion carried unanimously. The meeting was turned over to Ms. Friedman.

Ms. Friedman called for nominations for Vice Chairman. Mr. Bush moved and Mr. Dickson seconded the nomination of John Pazdera. There were no further nominations and the Motion carried unanimously.

Ms. Friedman called for nominations for Secretary. Mr. Dickson moved and Mr. Pazdera seconded the nomination of Mark Fried as Secretary. There were no further nominations and the Motion carried unanimously.

APPROVAL OF MINUTES

Mr. Pazdera moved, Mr. Bush seconded and it was unanimously carried to approve the Minutes of December 8, 2008 as written.

#582 – SANDRA MIDDLEMISS PRELIMINARY PLAN DISCUSSION

Robert Pelke was present with Sandra Middlemiss. Mr. Pelke stated they were previously before the Planning Commission in August, and there were some concerns about the cemetery to the west of the site. The Planning Commission recommended that they meet with the Historical Commission which they did in September. He stated the Historic Commission recommended that there be a 20' restriction along the southwest side of the property, and they have added this to the Plan. The location of this was shown on the Plan to the Planning Commission.

Mr. Pelke stated the property is located in both Lower Makefield and Yardley Borough, but all the proposed construction is in Lower Makefield. The property is in the R-2 Zoning District.

Mr. Pelke stated they are requesting four Waivers, three of which were discussed at the August meeting. Mr. Pelke stated the first Waiver is the requirement for paving cores. He stated the road was paved in 2006 by the Township so they do not feel there is a need to supply paving cores at this time. Mr. Pelke stated the second Waiver has to do with sidewalks along both sides of the street. He stated there are no sidewalks in the existing Subdivision, and construction of sidewalks would require the removal of trees. Mr. Pelke stated the third Waiver is the requirement for a 56' wide right-of-way. He stated this came about when they had a meeting with the Environmental Advisory Council. He stated there are some trees on the site that the EAC indicated they would like to have saved. He stated if they move the houses up an additional 3' they could save the trees the EAC was concerned about. Mr. Pelke stated they are also requesting a Waiver for the requirement for an Environmental Assessment as they are only proposing two new houses. He stated if this were a vacant piece of land, the Environmental Assessment would not be required for a Minor Subdivision for two new houses.

Mr. Pelke stated the Plan went before the Pennsbury School District which had no comments about the project. Mr. Pelke stated they have the Sewer Planning Module Waiver so there is no effect on the sewers. They have had discussions with American Water who has agreed to serve the site and has capacity. He stated in connection with the Sewer Planning Modules, you must do a search with regard to endangered species; and while they came up with one possible species, this was cleared by the Pennsylvania Fish and Boat Commission. He stated this is why he does not feel there is a need for the Environmental Assessment.

With regard to the request for Waiver of the Environmental Assessment, Mr. Majewski stated the Ordinance is applicable because the Subdivision does involve three or more dwelling units or lots although there are only two new dwellings proposed. He stated the EAC has indicated they would like to see an EIA.

Mr. Rick Ewing, member of the EAC, was present and stated they sent a letter dated 11/21/08 which was sent by e-mail to the Planning Commission. A copy was provided to the Planning Commission this evening. Mr. Ewing stated the EAC has reviewed the Plan and the Plan reflects a number of their comments. He stated the last report they received was not written in a point by point basis to address all of their issues so he had to get most of the information from the general report and the map. He stated he feels the biggest concern for the Planning Commission is the EAC's determination that the project does qualify under the Low Impact Development Ordinance to have an Environmental Impact Assessment. He stated the EAC uses that to evaluate what will be the impact of the project from an environmental point of view. He stated the property borders the cemetery and the Canal. He stated they have made a recommendation and are waiting to see if the 1.5 acres by the Canal will be deed restricted just in case in the future there was a developer with a Plan to develop that. Mr. Ewing stated this is an older property with a lot of mature trees and it does fit the spirit of the EIA, and they feel that they would not want to see a Waiver granted for this.

Mr. Bush stated he felt there was already a Conservation Easement on the 1.5 acres noted by Mr. Ewing, and Mr. Pelke stated this is proposed. Mr. Majewski noted Comment 10 of the CMX letter requests that they provide a form of the draft for the Conservation Easement to both the Yardley and Lower Makefield solicitors to make sure that it contains all the necessary information to secure that property. Mr. Donaghy stated they would have to review the Easement to see in whose favor and by whom it is enforceable because depending on the terms, it may permit further development in that area and might also permit Waivers by whomever is the body that is the grantee of the easement if in fact the Planning Commission and Board of Supervisors are in agreement with the EAC's recommendation to place certain restrictions of record on future use.

Mr. Pelke stated they will comply with Item #10 in the CMX letter dated 12/19/08.

The Planning Commission was in favor of granting Waivers 1 through 3 as requested by the Applicant.

Ms. Patricia Sims, 1712 Yardley Commons, stated she has significant water now adjacent to her condo. She noted the location on the Plan where water runs whenever it rains. She stated with two additional homes and the increase in impervious surface, she feels this will add to the run off.

Ms. Friedman asked how the EAC feels about the stormwater run off; and Mr. Ewing stated they originally had comments and some of these have been addressed, but they were interested in getting additional calculations. He stated they want to look at the drainage analysis and the coefficients used. He stated this is why they wanted their comments to be addressed on a point by point basis. Ms. Friedman asked that the Applicant provide the EAC with a finished report for their review, and Mr. Pelke agreed to do so.

Mr. Majewski stated he reviewed the revised report and there are still a few items outstanding which he would like to have addressed with regard to stormwater management that are outlined in his letter. He stated for the most part they are complying. Mr. Majewski stated they have replaced a number of underground infiltration beds with rain gardens and are piping the stormwater from the proposed homes and the existing garage into either underground infiltration beds or into the rain gardens. All of the new impervious surface being generated will be addressed on site so the impact off site should be marginal.

It was the consensus of the Planning Commission that they would like the EAC to get the additional information requested and that the Applicant follow Mr. Majewski's comments.

Mr. Donaghy stated with regard to the Conservation Easement, they would like to make sure that it restricts further development. The Planning Commission was in favor of this. Mr. Majewski stated he would like the form of the Easement to be reviewed by both the Yardley Borough and Lower Makefield Solicitors, and Mr. Pelke agreed to provide this.

Mr. Fried asked what is the typical cost of the EIA, but neither Mr. Majewski nor Mr. Ewing were aware of the cost. Mr. Fried stated he is curious as to the financial burden on the property owner. Mr. Pelke stated he feels they generally run about \$10,000.

Mr. Donaghy noted Exhibit 6 of the Subdivision and Land Development Ordinance has an outline of what is required in an EIA. Mr. Fried asked Mr. Ewing their primary concerns, and Mr. Ewing stated the EIA is usually the starting point for the EAC so that they can understand what resources are on the property and what the environmental impact would be of building on the site. He stated they have found the EIA to be of value in making their final recommendations. Mr. Fried stated normally they are dealing with a large development as opposed to the current proposal which is a three lot Subdivision which is the minimum required for an EIA.

Mr. Pelke stated there are two parts to the EIA – one is the impact on the natural resources of the site and the other is the impact on the community such as on the School District, garbage collection, traffic, etc.

Mr. Fried asked the Applicant if she had an estimate as to the overall cost of the project, and Ms. Middlemiss stated every piece has been quite significant. She stated she wanted to save a beautiful house and then have an opportunity to subdivide and enhance the community with these beautiful lots. She stated each step is a cost. She stated she would hope that she would not have to absorb the additional cost of the EIA as they are working hard to save the ambience of the community including the trees which she felt was a big part of the concern of the Township as well as the stormwater management which they

are complying with. She is not sure what new information this additional cost to her will bring to the Township. Mr. Fried stated he would like to be able to reach a balance by giving the EAC what they need but also not put too much of a burden on this Applicant.

Mr. Ewing stated when they wrote and approved the Low Impact Development Ordinance this is exactly where they wanted to start. He stated this property has a number of historical and environmental concerns as well as proximity to the Canal, and they do not know what they will find until the EIA is done. He stated this property does meet the minimum requirement of three lots.

Ms. Friedman stated there a number of questions about the property's location regarding historic issues and its proximity to the Canal and Yardley Commons. Ms. Friedman stated she feels the Planning Commission would be remiss if they did not ask for a study that addresses the environment. She stated she does not feel they need to address the community assessment with regard to schools, trash collection, etc. as there are only three lots. She stated if there was a way to reduce the costs to the Applicant by splitting the EIA and only addressing the environmental concerns, she would be in favor of this. She stated she is concerned about the stormwater, dirt flowing into the Canal during and post development, and impervious surface. She stated Yardley Commons needs to be protected from any additional water and they also need to consider the historic area and the impact to the Canal.

Mr. Fried asked if it is possible to split the EIA so that they focus only on the environment. Mr. Majewski stated there is the possibility that they could grant a partial Waiver so that the Applicant would comply with certain aspects of the EIA and this would give the EAC, the Planning Commission, and the Board of Supervisors a better level of comfort that this project will not have an adverse environmental impact. He stated they could put a limited EIA together that would waive certain aspects, comply with what everyone is looking for, yet not be as much of a cost burden to the Applicant. The Planning Commission was in favor of this, and Mr. Ewing felt that this was fair as well.

Mr. Dickson noted the T & M Associates letter of January 7, 2009 which addresses the SALDO. He stated there is a comment about "hardship," and he asked Mr. Donaghy if "hardship" would not be a Zoning Hearing Board issue. Mr. Donaghy stated if they are requesting a Waiver from the provisions of the Subdivision and Land Development Ordinance, this is strictly an issue for the Planning Commission and Board of Supervisors to consider. He stated "hardship" can be an issue in granting a Waiver. Mr. Donaghy stated if they are requesting relief from the Zoning Ordinance, this would be something for the Zoning Hearing Board to consider.

Mr. Dickson noted Mr. Majewski's letter of 12/19/08 under Item #7 it states, "Due to the site restrictions for woods and tree protection, it may be difficult to provide these facilities for any additional impervious surfaces that may be added in the future, including house sizes larger than shown, patios, pools, shed, walkways, etc."

Mr. Dickson stated it appears they have met the minimum requirements, but if there is additional impervious surface added, it will potentially create a discharge problem that the neighbors in Yardley Commons have raised. Mr. Majewski stated one of the issues that he has with voluntary restrictions by an Applicant such that rather than providing stormwater management for the entire lots' allowable impervious surface, is that in the future, if the homeowner wants to install a shed, patio, etc. they would then have to provide additional stormwater management when it could have been sized up front to account for this. He stated Lot #3 with the large area that will be under a Conservation Easement would not be permitted to develop that area so there is only a certain amount of additional impervious surface that could be put on the lot. He stated this is also true for Lot #1 since a good portion of the property will remain undisturbed as protected woodlands. He stated the problem is if someone wants to construct a larger house than what is shown on the Plan or install a patio, etc., they will have to change the Plan and upgrade the system which may involve cutting down additional trees which is problematic. He stated he feels there should be a reasonable idea of what will be put on the property for impervious surface. He stated there are a number of constraints on all three of the lots for setbacks, woodlands protection, etc. He feels the house sizes on the Plan might be a little bit smaller than what someone probably will want to build.

Mr. Dickson noted the Historical Commission Minutes of 8/9/08 there were two comments for the Plans that were in effect as of August as follows: "Mr. Berger stated the Plans conform to the Township's new LID Ordinance and stormwater management practices which are both very strict." Mr. Majewski stated the Plans they have now submitted substantially comply to LID although there are some changes that need to be made to fully comply as noted in the EAC and Mr. Majewski's letter. Mr. Dickson stated the statement that was made by Mr. Berger on August 9 was apparently not true at that time; but Mr. Majewski stated he feels that they were complying although they have not fully complied. Mr. Dickson stated Mr. Wells and Mr. Berger also talked about the water run off and "how building the houses will improve the run off." Mr. Majewski stated his experience is that the more impervious surface that is put down, the condition either gets worse or stays about the same. He stated occasionally it does improve it although the goal is that it will not be any worse after development than it was before development.

Mr. Dickson stated in the 11/19/08 Bucks County Planning Commission letter with regard to the property that lies within the Borough it states, "A portion of the site near the Canal is located within the Borough's FF Flood Fringe Overlay District." Mr. Dickson asked how that affects the potential for approval of the project. Mr. Pelke stated a portion of the property is in the 100 year floodplain down near the Canal, but they are not going

near that. He stated he does not see the effect on the floodplain. He stated the 100 year flood boundary is approximately 60' up from the Canal. Mr. Dickson stated he assumes that this would be noted in any correspondence with the Borough. He also asked if they should notify the Friends of the Canal about this. Mr. Majewski stated the property is partially within Yardley Borough; however, for tax purposes, it only pays taxes to Lower Makefield Township and it does not appear on the tax maps of Yardley Borough.

Mr. Donaghy asked if Yardley Borough has addressed this issue, and Mr. Bush stated they did send a number of letters indicating they were fine with what Lower Makefield was doing. He noted the letter of 8/18/08 in which they attach a copy of the Borough's Resolution No. 08-08 agreeing that the Land Development submission can be reviewed by Lower Makefield and that they would like to be kept apprised of the buffering and stormwater management.

Mr. Bush stated when the Applicant was before the Planning Commission in June they discussed the Historical Commission's concern about the unmarked gravestones on the western side of the property, and as a result of this they have agreed to a 20' wide non-disturbance restriction. He asked if there was ever a determination made that there are unmarked gravestones on that portion of the property or did they agree to the restriction out of an abundance of caution. Ms. Middlemiss stated it was agreed to out of an abundance of caution. Mr. Bush asked if there is any concern about water running toward the cemetery, and Mr. Majewski stated all water runs from the cemetery through the Applicant's property.

Ms. Judy Wells, 501 Yardley Commons, stated she does not represent Yardley Commons but is one of the owners. She stated she was at the Historic Commission meeting and there has never been an official determination that any unmarked graves are there, and there is no fence around the cemetery as it is open and there is just a lot of brush. There have been suspicions that there may be some graves outside of the cemetery. Ms. Wells stated she was the one who was quoted by Mr. Dickson in the Historic Commission Minutes, although he had indicated it was "Mr. Wells," but she does not feel that conversation took place. Mr. Dickson stated the Minutes state, "Ms. Wells and Mr. Berger talked about the water run off and how building the houses will improve the runoff." Ms. Wells stated she does not recall that conversation happening. She stated she would never agree to that statement.

Ms. Wells stated with regard to the EI statement, she would be curious if there was ever an environmental impact study done on any of the area developments including Yardley Commons. She feels it would be a good idea that they do this study for this new development since it may not have been done for the developments surrounding this property. She asked about the Conservation Easement being requested, and Ms. Friedman stated it is part of Lot #3 on the way to the Canal. Ms. Wells stated she understands that they are concerned with the hillside and would not want there to be building on that as it is a significant slope.

Ms. Wells stated her family has been at Yardley Commons for twenty years, and they have experienced significant water problems and the stormwater management done for Yardley Commons was very minimal. She stated the Association has spent a great deal of money in the last number of years to have engineers prepare studies and do stormwater management on the property. She stated she is at the bottom of the hill, and the cost for the work done in her area was approximately \$80,000. She stated additional funds are also going to be spent on stormwater management in Yardley Commons so they are very concerned about water run off. Ms. Wells stated she does see water coming off the subject property down onto Yardley Commons because Yardley Commons is lower than the subject property.

Ms. Wells asked if there is a way she could get a copy of the Plan to take to their engineer adding that she has requested this in the past and was denied a copy of the Plan. She stated they would be willing to pay for it. She stated she would take it to Yardley Commons as it is not for her personally. One gentleman from the audience stated since Ms. Wells is not representing Yardley Commons, he does not feel she should be making that request on behalf of Yardley Commons although she could request this personally. Ms. Frick asked if she contacted the Applicant's engineer, and Ms. Wells stated she did. Mr. Pelke stated this would be up to Ms. Middlemiss if she wants to release the Plans. Ms. Frick stated the Township does not have any extra copies of the Plan. Ms. Middlemiss stated she would have to consider this. Ms. Friedman stated if she is seeing water coming from this property, in many instances development helps ameliorate those problems as the Township does address stormwater very rigorously during the development process. Ms. Wells stated she just wants to make sure that whatever they are doing will not make the situation worse.

Ms. Patricia Sims stated along a portion of the cemetery there is a stone fence and she asked where on the Plans the stone fence is being shown and questions if that has been removed to increase the size of the lots. She stated she does not want the historic property to be compromised in order to squeeze in an additional house. Mr. Pelke stated they are off the stone wall that is along the property line, and they are also giving the deed restriction of 20' from the property line. Ms. Sims stated she does not see it going all along the line. Mr. Pazdera stated he is able to see the stone wall on three sides although he cannot see it on the property line. Mr. Pelke stated the stone wall along the property line is basically non-existent although there is a hedge. Mr. Majewski stated it should be labeled on the plans that there is a stone wall/hedgerow along the property line. Ms. Sims advised where she feels the wall exists, and Ms. Frick stated it is being shown on the Plan on three sides but does not show on this property. Ms. Sims further noted where the wall is in the Borough and the entire area has beautiful historic properties including the Canal and Lake Afton. Ms. Friedman stated it is not their responsibility to go into that much detail on their Plans. She stated they can document on their Plans that the wall exists. Ms. Friedman asked Mr. Pelke if he will be adding to the plans the fourth

side of the wall, and Mr. Pelke stated the wall is non-existent along the property line and it is not a defined wall although there are some stones. Mr. Pelke stated they will not remove anything, and Ms. Frick suggested that they could show what there is and list “to remain” on the Plans. Mr. Majewski stated there is a hedgerow with stones and labeling what it is would be sufficient. Ms. Frick stated this is actually on Township property, and Mr. Pelke agreed. Mr. Majewski stated they have located the end of the defined wall on their Plans along the roadway and further out into the property and generally he believes it runs straight between those two points; although if it meanders, surveyors have language that they could use such as “stone and hedgerow generally along the property line.” He stated they could also put a Note which states, “Not to be disturbed.” Mr. Pelke agreed to identify this as suggested by Mr. Majewski.

Mr. Richard Cylinder, 2308 Yardley Road, stated they have never seen a stone wall in that section. He asked about the provisions for the 20’ easement discussed, and Mr. Pelke stated there will be no grading or disturbance within that easement.

Mr. Majewski stated there is a Note on the Plan which states: “A perpetual Deed Restriction shall be attached to the Deed of Lot #1 for the 20’ wide strip along the westerly line of Lot #1 to restrict any earth disturbance greater than 2’ in depth.” Mr. Majewski stated by restricting it to no greater than 2’ in depth, they would not be disturbing any graves. Mr. Majewski stated that area is also within a resource protected area for woodlands so they could not cut down trees. Mr. Cylinder asked if they could plant trees in this area, and Mr. Majewski stated they could plant flowers or small shrubs provided they did not go below 2’. Mr. Cylinder asked who has the right to control this, and it was noted Ms. Frick will. Mr. Cylinder asked about the resource protection area, and Ms. Frick stated the Township enforces all Notes that are on the Plan. Mr. Donaghy stated he feels it would be better to have a separate covenant for Lot #1 that was placed on record and that it clearly includes who would enforce this which he would expect to be the Township. Mr. Donaghy stated with regard to the Conservation Easement on the other side, it was discussed earlier that the Solicitor will review this proposed Easement to see who may enforce it, but the intention would be to make sure that the Township is a party that can enforce it and added there may also be other parties that can enforce it depending upon its terms. This area is approximately 1.46 acres.

Mr. Cylinder asked if there will be a provision that there can be no further Subdivision of the lot which has the existing house, and Ms. Friedman stated they discussed adding something along these lines to make sure that they outlined as many details as they could to protect it. Mr. Donaghy stated if the Township wants there to be a restriction, the appropriate way would be to place a restriction of record and not simply a Note on the Plan. He stated it appears that the proposal is to go beyond simply stating there can be no further Subdivision and place restrictions upon any further development in that area. He stated there could be a Note that states “No further Subdivision,” and someone could still develop the area.

Mr. Cylinder stated there was earlier discussion about potential endangered species and asked for further clarification. Mr. Pelke stated as a requirement when applying for the exemption for the Sewer Module, you must do a project environmental review and it lists potential environmental impacts. He stated one was raised, but when they contacted the Pennsylvania Fish and Boat Commission which has jurisdiction, they provided a letter that no adverse impact was expected from the proposed project. Mr. Cylinder asked what the potential impact was, and Mr. Pelke stated there was the potential of an endangered species in the vicinity of the project, but when they went through to the Commission, they indicated there would be no impact.

Mr. Lee Winston, 1911 Yardley Commons stated earlier the Planning Commission asked for a limited Environmental Assessment, and Ms. Friedman stated this was their suggestion, although they are not sure if this is possible. Mr. Majewski stated they can do a limited review, and Ms. Friedman stated they are going to check off items which may not be necessary and they will focus more on what they are concerned about.

Mr. Pelke noted the CMX letter dated 12/19 Item #2, and stated they are removing eleven trees. He stated the Environmental Advisory Council indicated there were thirteen, but then included two large yews as trees and they are actually large bushes.

Mr. Pelke noted Item #5 which he assumes involves moving the driveway further west, and they will comply with this request to provide greater separation. They will comply with Item #6.

Mr. Pelke stated Item #7 relates to the additional stormwater facilities. He stated Lot #2 is basically at the maximum impervious allowed. He stated Lots #1 and #3 have the areas of resource protection, and they could not get to the maximum impervious ratio on those lots which is why they wanted to self-impose the restriction on the lots themselves. He stated with the Conservation Easement and the resource protection line, they could not get 25% of the gross area. Mr. Majewski stated he feels they should add a little extra area for Lot#1 to permit the installation of a patio and they may want to leave a little extra for Lot #3 in case they would like to install a shed. Lot #2 is currently at the maximum as they are permitted 25% and they are currently at 24.9%. Mr. Pelke stated this is why they might have a concern about shifting the driveway.

Mr. Pelke stated they will comply with Items #8 through #11.

Ms. Friedman asked if there is something they should do to address the rear yard of Lot #2, and Mr. Majewski stated they do have an extra 3% as the homeowner can go an additional 3% over the 25%.

January 12, 2009

Planning Commission – page 11 of 11

Mr. Pelke asked how to proceed with the Waivers, and Mr. Majewski stated the EAC has now been given direction from the Planning Commission to look into the requirements of the EIA to determine what they really need and come to an accommodation with the Applicant to satisfy what they feel is appropriate for the Application. Mr. Ewing agreed to be in touch with the Applicant. Mr. Donaghy stated the Applicant should also look at the form that is attached to SALDO as to what they feel is appropriate.

There being no further business, Mr. Dickson moved, Mr. Bush seconded and it was unanimously carried to adjourn the meeting at 9:15 p.m.

Respectfully Submitted,

Mark Fried, Secretary