

TOWNSHIP OF LOWER MAKEFIELD
PLANNING COMMISSION
MINUTES – MAY 11, 2009

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on May 11, 2009. Chairperson Friedman called the meeting to order at 7:35 p.m.

Those present:

Planning Commission: Karen Friedman, Chair
 John Pazdera, Vice Chair
 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

APPROVAL OF MINTUES

Mr. Fried moved, Mr. Dickson seconded and it was unanimously carried to approve the Minutes of February 23, 2009 as corrected.

Mr. Pazdera moved, Mr. Bush seconded and it was unanimously carried to approve the Minutes of March 23, 2009 as written.

#573 – NORMAN & PATRICIA O’ROURKE – PRELIMINARY/FINAL PLAN APPROVAL

Edward Murphy, attorney, was present and stated the Plan has been pending for some time. He stated it involves a property that is slightly less than three acres with frontage on Route 532 south of Stoopville Road. The proposal involves a Minor Subdivision creating one lot slightly less than one acre and the retained lot slightly less than two acres. The Plan was reviewed some time ago and was then revised. The Plan was then the subject of a Zoning Hearing Board Application heard last summer for which they received a Variance. As a result of that relief, the Plans were revised; and this is the Plan that is currently before the Planning Commission.

Mr. Murphy noted the 3/23/09 review letter from Mr. Majewski which includes the history of the Variance received and the Waivers being requested. They will comply with Items #3 through #5. There is no Item #2 in Mr. Majewski's letter.

Mr. Dickson asked about a Bucks County Conservation District letter which indicates a number of items to be addressed and Mr. Murphy stated there was a subsequent letter from the Bucks County Conservation District which indicated that the items were adequately addressed.

Mr. Murphy asked that the Planning Commission consider this as a Preliminary/Final approval.

Mr. Jim Bray, EAC, stated the EAC had reviewed several Land Use Applications and they had not heard back from the developers on their comments, and he felt that this may be one of them. Mr. Murphy stated this is not one of them, and they have addressed the EAC comments in their Revised Plans. Mr. Bray asked if the responses from the developer were forwarded to the EAC, and Mr. Murphy stated they did submit revised Plans, but he does not control to whom the Revised Plans are sent. Ms. Frick stated there was a memo from the EAC dated 12/2/08 regarding a site visit. Mr. Bray stated he does not remember that site visit; and while they did put forth some recommendations, he does not feel they had any serious concerns. Mr. Majewski stated the EAC was concerned about the location of the entrance and the clearing that was involved. The Plan has been revised to address that issue. Mr. Murphy stated to minimize disturbance of trees, they requested the driveway meander through the trees. The Plans were revised to show this. Mr. Bray stated they also commented that it would be a good idea to remove some of the invasives, but he did not know if this was included in the memo from the EAC.

Mr. Dickson moved, Mr. Fried seconded and it was unanimously carried to recommend to the Board of Supervisors approval of the Plan dated last revised 2/10/09 subject to compliance with the Remington Vernick letter dated 3/23/09, the Bucks County Department of Health letter dated 3/23/09, and the letter from the Bucks County Planning Commission dated 4/27/09 authored by Lisa Wolf (copy attached). The Planning Commission further recommends approval of the Waivers as requested in the 3/23/09 Remington Vernick letter. The Planning Commission recommends that this be considered Preliminary/Final Plan Approval, and that the Applicant pay applicable fees for Final Plans.

DISCUSSION OF PROPOSED GREEN BUILDING RESOLUTION

Mr. Jim Bray and Ms. Lisa Grayson, members of the EAC, were present. Mr. Bray reviewed the history of this proposed Resolution and the reasons why the EAC was interested in pursuing this. He stated the mission of the U.S. Green Building Council summarizes the EAC's feelings toward the proposed Resolution which is to "transform the way buildings and communities are designed, built, and operated enabling an environmentally and socially-responsible, healthy, and prosperous environment that improves the quality of life." Mr. Bray noted Ms. Grayson's "day job" is to set up training programs to train certified contractors in green building, and she worked on the EAC's sub-committee to consider a Resolution for the Township. Mr. Bray stated the EAC felt it was best to set up a Code for the Township first since they feel leading by example is the most productive approach. The second and third steps would be to set up Codes for Residential and Commercial which could be more challenging since in the State of Pennsylvania, Municipalities fall under the Uniform Construction Code; and if the Uniform Construction Code is lesser of a requirement than the LEED Certification, there could be issues of Constitutionality. He stated this means that for Residential and Commercial buildings, they would probably have an incentive-type Code. He stated Doylestown Township has such a Code that primarily refers to Residential, and they will be looking at their Code. Mr. Bray stated to date, he does not feel there is a Municipality in Pennsylvania that has a Green Building Resolution similar to what they are proposing this evening. He feels what they have proposed is easy to understand. He stated it will be reviewed by the Township solicitor prior to May 20 when they propose to present the matter to the Board of Supervisors. He stated they welcome comments from the Planning Commission.

Ms. Grayson provided this evening information from the U.S. Green Building Council indicating what is occurring Nationally as to the number of Municipalities adopting Green Building Ordinances. Ms. Grayson stated last week a number of people from the Township toured the George School Library which will be a LEED Gold Building.

Mr. Bush asked Mr. Donaghy the advantage of having this passed as a Resolution as opposed to just adopting this as a policy. Mr. Donaghy stated if it is adopted by Resolution, the feeling may be that it would be binding upon future Boards of Supervisors; although he was not consulted on this. He stated he is not sure if they are intending that this would be an Ordinance or just a non-binding Resolution. He stated a Municipality can adopt an Ordinance which would be binding upon itself and they would have to comply with the terms unless it was amended. Mr. Bush stated the document flips back and forth between using the term "Ordinance" and "Resolution."

Mr. Bray stated his copy does not do this and they use the term "Resolution."

Mr. Bush asked if there would be a legal consequence of having this be a Resolution or a policy other than for public relations. Mr. Donaghy stated while he has not looked into

this, he is not aware that there would be a difference between adopting it as a policy or as a Resolution as opposed to adopting it as an Ordinance which is a more formal process. Mr. Bray stated he did discuss this with Mr. Truelove and Mr. Closser who advised that if it is an Ordinance it is a more formal type of procedure including advertisement and going through the Planning Commission and would be binding upon the Township but that a Resolution would also be binding and would be more than a policy. Mr. Bray stated he feels a Resolution would be a less formal procedure but the Township would still have to follow its dictates. Mr. Donaghy stated an Ordinance would be binding, but a Resolution is only binding to the extent that it stays in effect. He added a Resolution can be changed by another Resolution and you do not have to go through a process of amending as you would with an Ordinance. He stated an Ordinance is a formal adoption that is part of the Municipal Code and it would be binding while a Resolution could be changed by another Resolution at any time without going through any formality. Mr. Bray stated he discussed this with Mr. Maloney who indicated that if this went forward as an Ordinance rather than a Resolution, he would not have a problem with that. Mr. Donaghy stated they would have to decide if they really want this to be an Ordinance which is binding.

Ms. Friedman stated she does not feel the Planning Commission can appreciate how impressive the George School project was just by reading what has been provided. She stated many of the things done in a green building do not add cost to the project and for those items where there are higher up front costs, there are savings across time. She stated the internal environment is also healthier with a green building. Ms. Grayson stated by using nature in siting a building, you can save money. She stated LEED looks at six major factors when designing buildings including siting the building, water efficiency on the property, fixtures used, stormwater management, energy and atmosphere, indoor air quality, and materials used. She stated the drywall used at the George School is all recycled content, and this results in no increased costs to the building. She stated it is manufactured locally and is easily sourced. She stated as green building becomes more mainstreamed, the products will be more readily available at local stores and through major suppliers. She stated at the George School they are using geo-thermal heat pumps, and there will be circulating water through the system which will require no additional energy to heat and cool the building for the life of the building. The only energy it will take will be to operate the fan system. She stated this results in low maintenance and low cost and there will not be any energy for heating and cooling of that facility over the lifetime of the building.

Ms. Grayson stated green building also makes use of daylight to minimize the need for artificial light. She stated materials used in the buildings are also looked at in terms of the contents that are in the materials used such as carpeting, paints, and adhesives; and materials are used that minimize respiratory problems. She stated the amount of time lost due to sickness is dramatically decreased in green buildings. Ms. Friedman also noted how duct work is zoned so that there is less traversing of duct work throughout the building which results in more efficiency and less dust.

Ms. Friedman stated she feels they must consider how strict they want to make this as to enforceability. Ms. Grayson stated the current proposal is for Municipal properties only and would only apply to new buildings or major renovations of 2500 square feet or more built by the Township. Mr. Bush asked how they arrived at the figure of 2500 square feet, and Mr. Grayson stated they looked at other Ordinances. Mr. Bush stated while he feels this is a great idea, he felt a number of areas did not have sufficient discussion as to how they arrived at certain numbers. Ms. Grayson stated they considered the size and extent of existing Township facilities and also what they have seen in other Municipal Ordinances. She stated while what they are proposing is somewhat optional, they are highly recommending that the Township agree to build or renovate to a LEED silver standard. She stated everything would be considered up front in the initial planning process. She stated they are recommending that the Township go through the LEED checklist and the Township could decide at the later time if they want to go through the actual certification process. She stated the certification process does add expense as a third party would come in to review the documentation and a plaque is then given if they are certified. Ms. Grayson stated there is grant money to pay for the documentation and certification costs. Mr. Bush asked about the costs for certification, and Ms. Grayson stated there is a registration cost of approximately \$500 and it is then a per square foot cost.

Mr. Bray stated while he personally would like this to be a mandated Ordinance, the EAC felt from a paperwork standpoint the Resolution was the most appropriate way to go.

Ms. Friedman stated the Planning Commission was not provided the LEED checklist, and she asked if there is wording from the checklist that should be in the Resolution. She stated she does not feel the Planning Commission has enough information to advise what they would like to see in a Resolution because they would need more of an understanding of what a LEED building means. She stated possibly this additional information could be provided to the Planning Commission; and they would review this and then forward a copy of their suggested changes to the EAC. Ms. Grayson agreed they should have provided a LEED checklist so that the Planning Commission could see the different categories. Ms. Friedman stated she would appreciate the Planning Commission being provided with any more information they have on the concept of a LEED building.

Mr. Bush stated in the proposal there is a lot of discussion about green design and construction decisions, and he is not sure how broad they intend that to be. He stated some places have enacted Ordinances or Resolutions concerning the actual construction where there have to be mufflers on building equipment so that it is not just the building itself but also the equipment used to build the building; and this has had some mixed results. He asked if they intend to cover that aspect of the construction process as well since that is not clear in the proposal. Ms. Grayson stated the mufflers are not covered in LEED, but construction is. She stated LEED is a checklist and there are seven

prerequisites – things that have to happen for a building to be a LEED building. She stated five of those seven are the contractors' responsibility. She stated the others are a "shopping list," and there is a point structure which determines what type of LEED Certificate you can receive. She stated the checklist and point scoring system are scheduled to be changed soon, and it will be more regionalized.

Mr. Bush noted the term, "sustainable community" under the "Purpose and Intent" and stated he is not sure the public at large understands what this term means. He suggested that they include this in the definitions in the beginning. He stated he would also like to see the information requested by Ms. Friedman.

Mr. Bray stated they are scheduled to go before the Board of Supervisors with this on May 20, and they have people coming to that meeting from the outside. It was noted that the Planning Commission will not be meeting again prior to that time. Ms. Grayson stated they would be agreeable hold off taking this to the Board of Supervisors, assuming the Board of Supervisors is agreeable, if the Planning Commission feels they need more time.

Ms. Appelson stated it was indicated that the LEED checklist is going to be changed, and she feels it is important for them to see what the requirements are and how flexible/inflexible they are. She stated she would not want to agree to go for a LEED Certification if the process is going to be very onerous, so they would need to have a clear understanding of what is required. Ms. Grayson stated the new system has not been publicly announced yet. She stated her understanding is that it will be more regionalized and they will be weighting the point system. She stated she does not feel any of the changes will be major or onerous.

Mr. Majewski stated he feels the wording of Section 7, Item #1 is awkward and should be re-worded.

Mr. Bray stated if the Planning Commission needs more time, they could change their date before the Board of Supervisors.

Mr. Fried stated it appears that the intent of the EAC is beyond getting this Resolution, and that this is actually part of a process they want for both Residential and Commercial. Mr. Bray stated he does not feel the Ordinances for Residential or Commercial will change, and he feels they would be incentives that could be put on top of the Codes. Mr. Fried stated they noted the Constitutionality issue which is why they could not change the Residential and Commercial Ordinances. He asked if this impacts the Municipality as well. He asked if someone from the community could indicate that by doing this it is costing the taxpayers more. Mr. Bray stated the Township solicitor indicated that the Township is similar to a private entity, and they can put in the Codes what they want, and it can surpass the Uniform Construction Code for the Municipality. Mr. Donaghy stated it is not a Constitutional issue, it is the Statewide Construction Code.

Mr. Fried stated they also indicated that they were not sure whether it would cost more, and he asked if they have a feeling for costs of other projects that have taken place around the Country. Ms. Grayson stated the costs are coming down dramatically as expertise increases and green products are more readily available. She stated they were told that at the George School it was 1.75% to 2% more up front, but those costs are recouped within five years on average. Mr. Fried asked if it would be worth it to include something that the cost impact be looked at the same time so that the Township would have the ability to deal with that up front by indicating that it may cost more up front but over the long term, the money would be made back. Mr. Bray reiterated that the initial cost can be nothing to 1.75% higher on average; however, the buildings are 30% to 40% more efficient so that costs over the life of the building are less with these initiatives. Mr. Majewski stated this is why private developers are doing this as well and noted the 777 Township Line Road building and the Floral Vale building. Mr. Fried stated he wants to make sure that the average resident can understand why they are doing this and the cost savings that will result in the long run.

Mr. Fried stated he was also concerned about the dynamic nature of the LEED Certification. He stated if a new checklist comes out, the Resolution should give the Board of Supervisors the opportunity to decide if they want to adopt the new checklist as opposed to the draft Resolution which indicates it is done automatically. Ms. Grayson stated she feels the Board of Supervisors should adopt what is in front of them and not something that has not been presented as yet.

Mr. Bray stated they are looking into obtaining funds that are available for green building through the stimulus money.

FRANKFORD HOSPITAL DISCUSSION

Ms. Friedman stated the Planning Commission sent a letter of recommendation to the Zoning Hearing Board, and she had discussed whether they could send something more detailed. She stated she testified at the Zoning Hearing Board but she was not able to be present as an official member of the Planning Commission because she had no legal right to do so. She feels the letter that the Planning Commission sent to the Zoning Hearing Board had no weight as there was no detail as to the Planning Commission's thoughts as to why they do not feel the Hospital is appropriate for that location. She stated she feels it is important that the Planning Commission take a detailed stand. She asked that the Planning Commission appoint a representative to go to the Zoning Hearing Board to re-testify, and she indicated she would be willing to do this. She would also like there to be a separate meeting to discuss the Hospital as she would like to present a bullet point list of all the Planning Commission's objections.

Mr. Dickson agreed that Ms. Friedman should be the representative of the Planning Commission, but stated he does have questions as to what the Planning Commission is able to do in terms of the Zoning Hearing Board regulations and the law. Mr. Donaghy stated under the Township's Zoning Ordinance, when there is an Application for a Special Exception, the Planning Commission may submit a recommendation but it is only for certain limited items and they must do so within a specific period of time. He stated this is what was done. He stated beyond that the Planning Commission has no involvement at all in Special Exceptions. He stated any citizen can attend the meetings and make comment.

Ms. Friedman stated she does not feel the Planning Commission was able to do their job as they did not have sufficient information upon which to give an opinion that has any value. Mr. Donaghy stated the Zoning Ordinance specifically states what the Planning Commission's role is on a Special Exception Application. He stated he suspects that if Ms. Friedman were to be appointed to speak on behalf of the Planning Commission there will probably be an objection that the Planning Commission does not have standing to participate since the Township is already a Party to the proceedings, and the Planning Commission is not a separate entity.

Ms. Friedman stated she does not feel the Planning Commission followed the Ordinance by giving an opinion which is what is stipulated in the Zoning Ordinance. Mr. Donaghy stated they did give it within the time period that is provided in the Ordinance.

Ms. Appelton asked if the Planning Commission could supplement the original recommendation, and Mr. Donaghy stated there is nothing in the Ordinance that permits this.

Ms. Friedman stated the Zoning Hearing Board Chairman did indicate during her testimony that the Planning Commission had thirty days to amend it, but she stated she did not feel that this was the Planning Commission's impression and they felt that they had to get the recommendation in by the last meeting. Mr. Donaghy stated there is a specific time period within which the Planning Commission must make their recommendation. He stated during the thirty day time period they could have made a submission and then a re-submission. He stated the Zoning Hearing Board could always request further input from the Planning Commission. Ms. Friedman stated she did have a Zoning Hearing Board member approach her off the record stating that he felt she was not treated properly as to what could have been said and done at the meeting and that she should re-approach with this particular request in mind to have something more formal to present to them with the backing of the entire Planning Commission.

Mr. Donaghy stated the Township is a Party to this matter; and he feels before the Planning Commission, as an arm of the Township, would take any further action, they should consult with Counsel. He stated his office is representing the Township on this matter, although he personally is not doing so. He stated short of the Zoning Hearing Board requesting further information from the Planning Commission, he does not feel the Planning Commission is permitted to participate. Ms. Friedman stated she assumes she should speak to Mr. Truelove about this; and Mr. Donaghy stated while this is correct, he feels Mr. Truelove would agree with him. Ms. Friedman stated this is not the information she has been getting from Mr. Truelove. Mr. Donaghy stated he will speak to Mr. Truelove about this as he feels there would be an objection raised. Mr. Majewski stated at the meeting it was suggested by Mr. VanLuvanee that the Planning Commission could have sent something back to the Zoning Hearing Board since they have been discussing this Application for the last nine months. Mr. Donaghy stated the Ordinance is very specific as to the timing, and he feels Mr. VanLuvanee would object if Ms. Friedman were to reappear as a member of the Planning Commission.

Mr. Bush stated they had very little information to go on when they were present as they did not have any traffic studies. He stated Frankford was present on the very narrow issue of whether the Planning Commission would support the Special Exception; and based on what they had, the Planning Commission indicated they would not support it. He stated they do not have any more information before them this evening than they did the night the matter was presented to the Planning Commission. Mr. Dickson stated the Planning Commission still does not formally have the traffic report. Ms. Friedman stated while the Planning Commission did ask for this at that time, it was indicated it was not available. She stated it was available a few days later. Mr. Fried stated the Applicant indicated that the traffic report was not done, and he asked if that was correct. Ms. Friedman stated she does not have the timeline in place as she did not want to put together a timeline of facts until she had permission from the Planning Commission to proceed. She stated she feels this is an abhorrent project for the proposed location, and she feels that the Planning Commission should do as much as they can to get their opinions on paper in support of the Township.

Mr. Fried asked if they are allowed to comment in terms of the long-range plan of the Township as opposed to the narrow scope of the Special Exception since a Hospital has a broader impact. Mr. Donaghy stated the role of the Planning Commission in giving advice to the Zoning Hearing Board is to give advice on planning matters. Ms. Friedman stated she feels excessive traffic would be part of this as well as a helicopter pad which they refused to talk about, despite being questioned about this by the Planning Commission. Mr. Fried asked if they could comment on how this project impacts the Master Plan of the Township. Mr. Dickson stated he understands that the Planning Commission is not able to approach the Zoning Hearing Board at this point. Mr. Donaghy stated under the Ordinance they could not, but he would be willing to discuss this with

Mr. Truelove to see what his intentions were if he has suggested to Ms. Friedman that it would be helpful to the Township to have the Planning Commission make further comments. Mr. Donaghy agreed that the Planning Commission did have very limited information at the time. He stated if they wanted to consider something further, they would have to get additional information.

Mr. Donaghy stated the Planning Commission filed a report within the time period required that they did not support the Application as they did not have sufficient details.

Ms. Friedman read from Section 200-98 of the Zoning Ordinance as follows: “No Application for a Permit shall be granted by the Zoning Hearing Board for any Special Exception use until said Board, the Zoning Board, has first received and considered an advisory report thereon from the Planning Commission with respect to the location of such a use or relation to the need and growth pattern of the area where appropriate, with reference to the adequacy of the site area, the arrangement of buildings, driveways, parking areas, off-street truck loading and other pertinent features of the site plan.” She asked if the Planning Commission feels they did this. Mr. Dickson stated they did not have this information. Ms. Friedman read further as follows, “The Planning Commission shall have thirty days from the date of its receipt of the Application within which to file its report. In the event that said Commission shall fail to file its report, such Application will be deemed to have been approved. The Commission may have representation at the public hearing held by the Zoning Hearing Board on such Application.” She stated she feels this would allow the Planning Commission to follow up on the fact which she stipulated in her testimony that the Planning Commission never had information to make a viable recommendation.

Mr. Donaghy stated he feels they can have representation, but he would strongly advise that any participation by the Planning Commission be in consultation with the Township and that no action be taken until this has taken place. Ms. Friedman agreed to work with the Township counsel and asked if the Planning Commission was in agreement with this as well. Mr. Dickson stated he feels Mr. Donaghy should discuss this with Mr. Truelove and if they reach a resolution as to what the Planning Commission can do as a board, the Planning Commission could proceed.

Mr. Bush asked if the statement made about Planning Commission representation is a decision made by the Planning Commission or the Zoning Hearing Board; and Mr. Donaghy stated the Planning Commission could have someone attend to explain their report; and the Planning Commission would make the decision whether or not to send a representative but only to discuss the report.

Ms. Appelson stated the Application is now much more detailed. Mr. Donaghy stated the Application has not changed, but the information is now much greater.

Mr. Fried asked what constitutes a proper Application. Mr. Donaghy stated this is an Application to the Zoning Hearing Board for a Special Exception; and all they have to do when they come before the Planning Commission is provide the Application which was made to the Zoning Hearing Board which is relatively minimal. He stated this is not like an Application for a Subdivision or a Land Development Approval. Ms. Frick stated they did indicate to the Planning Commission that they would be back with the Land Development Application. Ms. Friedman stated she does not feel what was presented was sufficient for something of this magnitude. Mr. Donaghy stated for a Special Exception they only have to submit what is required in the Ordinance. He stated what has become an issue is what kind of evidence they have to provide to the Zoning Hearing Board in order to support their request for a Special Exception. He stated the Applicant has taken the position that they only have to submit limited evidence and they do not have to show that they meet all the various requirements of the SALDO and other provisions of the Zoning Ordinance, and that they only have to show that they meet certain criteria to get the Special Exception; and that the burden is on the Township to show that it would be a danger to the health, safety, and welfare of the community. The Township has taken the position that the burden is actually much heavier on Frankford Hospital given the nature of the requirements for a Special Exception in Lower Makefield, and that they have to show evidence that they can meet most of the SALDO requirements as part of the Special Exception consideration. He stated this is why this matter has gone on for so long.

Mr. Donaghy stated if the Hospital does get the Special Exception, this would mean that a determination has been made that the Hospital can use the property for the purposes it has requested under the provisions of the Special Exception. He stated once they get this approval, they would then have to come in with a Subdivision and Land Development Application and go through that whole process. He stated at that point it will come back to the Planning Commission and they will come through with a much more detailed presentation.

Mr. Donaghy stated he will discuss this matter with Mr. Truelove; and if he feels it would be helpful for the Planning Commission to provide a further report, they will try to find a way to get this done.

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OTHER BUSINESS

Ms. Friedman stated she received a copy of a letter from RRTS expressing their concern about meeting minutes regarding traffic improvements for the Stoopville Road traffic calming project. Mr. Majewski reviewed the work that is proposed for this area. It was noted that no action was needed by the Planning Commission and that this was just provided for informational purposes.

There being no further business, Mr. Dickson moved, Mr. Bush seconded and it was unanimously carried to adjourn the meeting at 9:10 p.m.

Respectfully Submitted,

Mark Fried, Secretary