

TOWNSHIP OF LOWER MAKEFIELD
PLANNING COMMISSION
MINUTES – SEPTEMBER 12, 2016

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on September 12, 2016. Mr. Wallace called the meeting to order at 7:35 p.m. and called the Roll.

Those present:

Planning Commission: Chad Wallace, Secretary
 Craig Bryson, Member
 Charles Halboth, Member

Others: Steve Ware, Keystone Municipal Services
 Barbara Kirk, Township Solicitor
 Maryellen Saylor, Township Engineer
 Judi Reiss, Supervisor Liaison

Absent: John Tracey, Chair of Planning Commission
 Dawn DiDonato-Burke, Vice Chair of Planning
 Commission

APPROVAL OF MINUTES

Ms. Kirk stated even if Planning Commission members were not present, they can still vote on the Minutes. Mr. Halboth moved, Mr. Wallace seconded and it was unanimously carried to approve the Minutes of August 22, 2016 as written.

DISCUSSION AND APPROVAL OF FIELDSTONE (HARRIS TRACT) FINAL MINOR SUBDIVISION PLAN

Mr. Chris Jenson, engineer, was present. He stated this is a thirty-nine acre parcel on Edgewood Road which they propose to subdivide into two lots. Mr. Jenson stated Lot #1 will be approximately twenty-two acres, and this Lot is located on Edgewood Road west of Schuyler Drive. He stated Lot #2 is at the rear of the property, and will consist of sixteen acres. Mr. Jenson stated currently Brock Creek runs through the southeast corner of the property. He stated the intent of the subdivision is to separate out environmentally-sensitive areas that include an unregulated landfill area in order that it can be remediated in the future, and also so that the front lot as noted in the review letter can be developed in the future.

Mr. Wallace asked if there is a letter from the Environmental Council; and Mr. Ware stated this is only a Minor Subdivision, and they will have input later on during Land Development.

Mr. Jenson stated he just received the Township engineer's review letter, and he has not had a chance to go over it in great detail. He stated he believes that they will comply with all three comments under Zoning, but he will have to consult with the Applicant on this.

He stated as part of the Application, they are requesting a few Waivers which are listed in the review letter because they are proposing no development as part of this Application as it is simply a lot split creating two lots out of one lot, and they are not proposing any new improvements as part of this Plan.

Mr. Marc Kaplan, attorney, joined the meeting along with Mr. Larry Dugan, J. P. Orleans. Ms. Kaplan was provided the review letter from the Township engineer this evening. Mr. Kaplan stated many generations of Planning Commissions have seen plans for this property, and the biggest problem is the unregulated landfill that is in the back of the property. He stated he feels they are the fourth developer with this property. Mr. Kaplan stated they wanted to see if there was an economically feasible way of dealing with the landfill that would satisfy everybody including the Township and the future homeowners of the remaining acreage. He stated there was a prior developer, and there was a basic understanding on the number of lots of approximately thirty-two four to thirty six lots along the road where it was clean.

Mr. Kaplan stated Orleans became involved, and they hired Mr. Jeff Goll; and they reviewed all the different iterations of how it could be fixed. Mr. Kaplan stated some of them did not work as you cannot come in and take out all the materials because that would be incredibly expensive. Mr. Kaplan stated they looked at Mr. Goll's Plans, and they then went to the DEP with their idea. He stated the property has been tested, and there is nothing really bad, and they feel they should leave it alone and do as little as possible. He stated DEP had the head of every Department including Act 2, stormwater, and solid waste management; and they said "please don't mess with it – clean up the wetlands in the middle and some other things and make sure it has a 2' cap over whatever the stuff is that was down there and has been there a long time." Mr. Kaplan stated from the reports he has seen it seems like it is landscaping material and some other things. He stated it is non-toxic. Mr. Kaplan stated they brought in Mr. Bill Bowman from New Jersey who was one of the biggest site contractors in South Jersey, and they have been trying to work with him on how they can go in there and protect everyone. He stated they do not want to have to carry a lot of stuff out or bring a lot of stuff in.

Mr. Kaplan stated in the past he has worked on properties where part of it is contaminated, and they have subdivided the clean portion from the bad portion. He stated once there is a separate lot for the “bad stuff,” you can submit a Notice of Intent to Remediate (NIR) under Act 2, and go through the process. He stated all that is currently before the Planning Commission for now is to draw a line and get it Subdivided.

Mr. Kaplan stated they have been working on a Stipulation with the Township; however, Ms. Kirk stated she has not seen it. Mr. Kaplan stated Mr. Truelove had indicated he read it and gave it to someone. Ms. Kirk stated she was going to ask if there was any projection of some sort of Stipulation or Easement for Lot #2, Mr. Kaplan stated this property was involved in litigation, and it was put on hold some time ago, so there is still an outstanding Appeal case. Mr. Kaplan agreed to provide Ms. Kirk a copy of the draft Stipulation which he prepared. Mr. Kaplan stated he and Mr. Dugan had met with Mr. Garton when he was the Township solicitor, and Mr. Garton had made some suggestions which were included as revisions, and they gave it to Mr. Truelove in April. Mr. Kaplan stated there was a meeting with everyone adding he believes Mr. Ware was present, and they discussed how it would have to be changed. Mr. Kaplan stated Mr. Jenson was also supposed to meet with Mr. Eisold and go through the SALDO issues that do not work in this situation, and Mr. Goll was to meet with Phil Getty from Boucher & James regarding the environment issues. Mr. Kaplan stated all of this has been done. Mr. Kaplan stated Mr. Getty is in agreement with how Mr. Goll wants to clean up the site.

Ms. Reiss asked if the DEP has looked at what is on the site, and Mr. Kaplan stated they have. Ms. Reiss stated the Board of Supervisors and the Planning Commission should get a report of what is there. Mr. Kaplan stated this has been going on for over ten years. Ms. Reiss stated she would still like to see the information they have. Mr. Kaplan stated after the meeting in April, Mr. Goll met with Mr. Getty and gave him everything. He stated this has been reviewed by DEP a number of times informally; however, no developer ever got to the point where they could make it work economically. He stated at this point all they want to do is draw a line which will allow them to submit an Application under Act 2 where they designate the area that is subject to remediation. He stated once DEP approves this, the Applicant will submit Subdivision Plans.

Mr. Wallace asked about the open Court case, and Mr. Kaplan stated this goes back to 2000. Ms. Kirk asked if this is Zoning or the Denial of a Subdivision Application. Mr. Dugan stated there was a Denial of an Application; and Quaker, who was the owner of the property, took a Land Use Appeal which has been pending for a number of years. Mr. Dugan stated what Quaker and J.P. Orleans felt was the most efficient way to propose the development of the property was to have a

Stipulation Agreement which would be for Lot #1 and Lot #2, Lot #2 being the area that had the unpermitted landfill. Mr. Dugan stated they intend to clean it up and remediate it in accordance with the Act 2 requirements as required by DEP.

Ms. Kirk asked Mr. Kaplan if JPO is doing the Stipulation as the Successor in Interest to the original Applicant. Mr. Kaplan stated with regard to the Stipulation that is going back and forth it is Quaker Group Bucks Associates, Quaker Group Bucks II L.P., JPO Fieldstone, and Orleans Conservatory Group. He stated Orleans Conservatory Group is the overriding Orleans General Partner. He stated they have a different Limited Partnership for each deal they do. Mr. Kaplan stated there are the two Quaker entities – one was the equitable owner when they got started, and one of the Quaker entities that owns it now. Mr. Kaplan asked Mr. Jenson in whose name the Subdivision Application was submitted, and Mr. Jenson advised him it was in JPO Fieldstone. Mr. Kaplan stated they are the equitable owner under the MPC. He stated Quaker will be their co-applicant to DEP.

Mr. Wallace asked Ms. Kirk if it is appropriate for the Planning Commission to comment on this since there is open litigation; and Ms. Kirk stated based on Mr. Kaplan's representation, what the Planning Commission could do is recommend approval of the request subject to the filing of the Stipulation with the Court that resolves the open Land use Appeal to the satisfaction of the Township.

Mr. Kaplan stated when he started this, he drafted an Agreement; and he had stated that once the Agreement is signed and approved by the Court, they will submit a Subdivision. Mr. Kaplan stated they have now finished the Subdivision Plan, and they have eliminated all of the questions under the Subdivision Plans assuming that Mr. Jenson and Mr. Eisold can work it out.

Ms. Kirk stated while JPO may be the equitable owner, for right now it is still docketed as Quaker Group, and Mr. Kaplan agreed.

Mr. Kaplan stated the Stipulation takes into account basically complying with the Zoning Ordinance, although they may have to "tweak" aggregate side yards. Ms. Kirk stated the Planning Commission does not have authority to recommend any approvals or Variances from Zoning. She stated this is why she indicated that the Stipulation should be subject to the Township's approval. She stated the Applicant may have to go before the Zoning Hearing Board for Variances.

Ms. Reiss noted # 9 of the Township engineer's review letter with regard to bike paths. She stated the Board is desperately trying to get the bike paths connected, and she would not want to give a Waiver on the bike path as it could be five to six years before anything else happens which could hold the Township up on trying to get the bike paths connected. Ms. Kirk stated this is being applied strictly to the

Minor Subdivision, and any future development will be reviewed under SALDO, and the bike path requirement will again be raised. Ms. Kirk stated this is a request for a Waiver that only the Board of Supervisors has the authority to approve. She stated while the Planning Commission may say they have no opposition to granting the Waiver, the ultimate authority rests with the Supervisors. Mr. Kaplan stated there will be no construction proposed with the request tonight, and they can deal with the bike paths when they come back with the Land Development Subdivision; and he does not feel that they will have an objection to a bike path. Ms. Kirk stated when they come in for Land Development, they will have to submit all the required Governmental reviews for the Plans including the DEP review of how they are going to do the remediation. Mr. Dugan stated their purpose tonight is only to do the Minor Subdivision so that they can separate this into two Lots and do the remediation on Lot #2.

Ms. Kirk asked where they are with the Stipulation. Mr. Kaplan stated over a year ago they met with Mr. Garton and they then prepared the Stipulation. Mr. Garton provided comments, and when Mr. Truelove came on, Mr. Kaplan gave Mr. Truelove the document. He stated Mr. Truelove gave him a long letter, and they then met most recently three weeks ago. Mr. Kaplan stated ten days ago he sent Mr. Truelove a revised Stipulation. Mr. Kaplan stated he talked to Mr. Truelove who indicated that he had read it quickly and he believed Mr. Truelove distributed it to the Supervisors; however, Ms. Reiss stated she did not see it. Mr. Kirk stated she never saw a copy either, and Mr. Kaplan stated Mr. Truelove has it.

Ms. Kirk stated her concern is she feels the Stipulation needs to be resolved first because that gives Mr. Kaplan's client the actual standing to come in with the Application. Mr. Kaplan stated at their last meeting the program was that both the Stipulation and the Subdivision would be considered by the Supervisors later this month at the same time. Mr. Dugan stated the intention was that the final draft of the Stipulation Agreement would be provided to Mr. Truelove so that he could circulate it to the Supervisors well in advance of the September 21 meeting, and that they would be on the Agenda that night for the Supervisors consideration. He stated they are basically done, and they are waiting to make their presentation before the Board.

Mr. Bryson stated he needs clarity on why they are doing the drawing of the line now in lieu of doing it when they come in with the Land Development Application. He stated after they Subdivide it, technically they could start selling, change it, and switch ownership, etc. He stated once the Subdivision line is drawn, it could go forward legally and get subdivided and go through the Land Development process; and he would like to know what recourse anyone has of making sure that it gets

done per the Stipulation of Act 2. Mr. Kaplan stated the Stipulation does all those things that Mr. Bryson just indicated. Mr. Bryson asked if the same entity will own Lot #1 and Lot #2, and Mr. Kaplan stated they will.

Mr. Kaplan stated there is a contaminated site in the back; however, Mr. Dugan stated it is not contaminated, and there has been no evidence of contamination. He stated it is an unpermitted landfill. Mr. Bryson stated it will still fall under the Act 2 regulations, and Mr. Dugan agreed. Mr. Kaplan stated part of the property must go through the Act 2 process. Mr. Bryson asked if it has to be an individual lot in order to do that. Mr. Kaplan stated it will be remediated with a site specific program as opposed to complying with State-wide health standards. He stated it will be fine environmentally, but it will not meet all the State-wide health standards. He stated it will get a site specific approval, and he added he has done many of these.

Ms. Reiss stated they are talking about health and people eventually having houses here, and Mr. Kaplan is saying they are not going to reach the State health standards. Mr. Kaplan stated there will be a totally approved safe plan. He stated Act 2 is such that you can either check the box or have an alternative plan. He stated this will get approved under an alternative plan, and when you have an alternative plan you get a Deed Restriction Recorded. He stated they totally agree with the Deed Restriction being Recorded against the unregulated landfill, but they cannot have a Deed Restriction Recorded against the clean property or they will never sell them. He stated in order to start the DEP process, they need to have a separate parcel so that they can use the Parcel Number in the NIR.

Ms. Kirk asked if there is a possibility that there would be a Deed Restriction on Lot #2 that specifies that it is subject to the Terms and Conditions of a Stipulation being Recorded. Mr. Kaplan stated under the Environmental Covenants Act they have to Record it, and they will Record a Declaration which will say what the Township wants it to say. He stated it will be undeveloped and will remain as passive open space. Ms. Kirk stated it should be subject to the Terms and Conditions of the Stipulation which she feels will address the issue of somewhere down the line this Lot being “flipped” by the ultimate owner. Mr. Kaplan stated the Lot will go to the Homeowners Association. Mr. Kaplan stated it must be owned by someone and there are three possibilities. He stated one of them is the Township, but the Township does not want it. Mr. Kaplan stated there is a small possibility that the Heritage Conservancy will take it. He stated he has talked to Jeff Marshall, and this is a possibility. He stated if that does not happen, it will be owned by the Homeowners Association and will be totally Deed Restricted. He stated it will contain the restrictions that the Deed will require and the restrictions that the Township will require which could be the same.

Ms. Kirk stated what she is asking for at this stage is if the Subdivision is approved, that it would be subject to Lot #2 having a Restriction Recorded that would be subject to the Terms and Conditions of the Stipulation. She stated she feels this Condition may address some of the concerns of the Planning Commission.

Mr. Kaplan stated he feels that is fine. Ms. Kirk stated that would get Recorded at the Prothonotary's Office and the other would get Recorded at the Recorder of Deeds. Mr. Kaplan agreed they could do this. Ms. Kirk stated she feels this would help the Township have a little more "teeth" in enforcing it if JPO Fieldstone leaves.

Mr. Bryson stated he understands that there will be a mechanism in place that states that they cannot get started until the work on Lot #2 is approved. Ms. Kirk stated she has not seen anything yet, but she feels the language would have to be fairly comprehensive to address the issues that brought it to Court. Mr. Bryson stated he is still concerned that there are two separate ownerships which could create a problem in the future. Mr. Kaplan stated this provides that they will go through the Act 2 process and get the approval. He stated they will come into the Township with the Land Development Plan. He stated Orleans does not want to buy the property until the Act 2 work is done. all of the documents are signed, and the Environmental Covenants are Recorded because they want to be able to say to their homeowners that everything has been done and approved by DEP.

Mr. Bryson stated the other reason he does not understand the Subdivision is if DEP approves it and the Act 2 is done, it will become an open lot where it could benefit the residents of the Subdivision and in general it could become a nice passive open park if it is capped; and he asked why they would not want that as part of the Subdivision as a benefit to the potential homeowners. He asked why they are subdividing it if the homeowners are going to be responsible for it. Mr. Kaplan stated he has to Record an Environmental Covenant. Mr. Bryson asked if the Covenant has to be a separate lot, and Mr. Kaplan stated it has to be a separate lot or they will never sell the houses. Ms. Kirk stated they are going to do a site specific plan; and in order for that to be effected, DEP is going to Record restrictions.

Mr. Halboth stated Lot #1 will not be tainted by Lot #2, and Mr. Dugan agreed.

Mr. Kaplan stated until they go through the Act 2 process and understand what can be done on the property after remediation, they will not know until then whether anyone can do anything more than a walking trail or whether it must be totally passive although they will get to that at some time in the future. Mr. Bryson stated if it is done correctly and capped correctly, it is an opportunity for passive recreation.

Mr. Peter Fedun, 547 Winchester Drive, asked why they are doing anything with Lot #2. Mr. Kaplan stated it has to be properly remediated under the DEP regulations. Mr. Kaplan stated there are wetlands that they need to work on in the center of the property, and there is a culvert that is failing that they need to fix. He stated they also have to make sure that there is a uniform cover over the landfill. Mr. Fedun asked if there are bog turtles there, and Mr. Kaplan stated there are not. Mr. Kaplan stated those that would buy a property on Lot #1 will know that they are buying next to property that has gone through the entire Act 2 process. Mr. Fedun stated Lot #2 has been like this for many years. Mr. Kaplan stated in order for them to develop Lot #1, Lot #2 must go through the Act 2 process to get a clean bill of health. Mr. Kaplan stated Act 2 is a voluntary process, but it is a very sophisticated process that Pennsylvania put into effect approximately fifteen years ago; and it takes care in an orderly way of how to deal with all sites that do not meet standards.

Mr. Fedun asked if they do a good job of cleaning this up, what will prevent someone from developing it, and Mr. Kaplan stated the Deed will say that they cannot do that.

Dr. Helen Heinz, 1355 Edgewood Road, asked when she will get her sewers at 1986 prices as there was an Agreement with Mr. Garton years ago for the three existing homes. She stated that the Township condemned their frontage which included their septic system/sewer in connection with this development and Yardley Estates. She stated they had an agreement with Mr. Garton and Mr. Dillon. Dr. Heinz stated if they are considering working with Mr. Marshall and the Heritage Conservancy she feels it would be a big asset to have the 1763 house included as part of the land as it was there when Washington was walking through the Township. She stated the current plan shows the line going through the house, and she feels they could re-draw the line so that it is on Lot #2. Dr. Heinz reviewed the history of the house.

Dr. Heinz stated they would have to have a very deep sewer in the front. She stated the last Plan had a detention basin in an area which would then not allow them to hook up. She stated three homes were left out when Yardley Hunt was built. Mr. Wallace asked about the agreement Dr. Heinz referred to, and Dr. Heinz stated it was “tabled,” and she feels Mr. Garton has it. She stated it was always a part of the plan that if sewer was available, outlying houses would be hooked up. She stated they have been held hostage for thirty-two years because they wanted to expand their house; and with the septic system, they had to stop with three bedrooms when they had ten children.

Mr. Kaplan stated he reviewed the Title Report, and there is no such agreement. Mr. Kaplan stated they could extend a sewer line to the end of the developer's property and put a manhole there, and the three property owners' at their own expense could put in a grinder pump and run a line and connect to the sewer system. He read the language in the Stipulation that relates to this.

Mr. Ralph Tettermer, 1343 Edgewood Road, asked where they would be connected, and Dr. Heinz showed the location on the Plan. Mr. Tettermer stated this is too far, and will do them no good. He stated they could tie into the pressurized main. Ms. Kirk stated nothing has been recorded anywhere that there was an agreement. Mr. Tettermer stated he attended every Township meeting when this was discussed, and when he brought this up they all said "fine." Mr. Wallace asked if the agreement was that the developer would pay for this, and Dr. Heinz agreed. Mr. Kaplan asked who said this, and Mr. Tettermer stated it was the original developer; however, Mr. Kaplan stated there has been no development. Mr. Kaplan stated the sewer line is across the street, and they will have to bring in the sewer at a certain level.

Mr. Halboth stated he feels this discussion is more applicable to a Final Development discussion and these points should be considered in the future.

Dr. Heinz stated the historic house should be part of the discussion at this time. Ms. Reiss asked if they could adjust the line in order to save the house. Mr. Kaplan stated in the past when there was an interest in the Township to save barns, etc. the Township was not interested in taking responsibility for them. Mr. Kaplan stated he has no idea what condition the house is in. Ms. Reiss asked if the Heritage Conservancy would take it; and Mr. Kaplan stated he has had two discussions with Mr. Marshall if they would take the land, and if they take the land, the developer has to make a big contribution so that the Conservancy would have the income to keep it up. He stated the other alternative is to give it to the HOA which will have to pay for it monthly or once a year.

Mr. Kaplan stated this is a huge piece of property which is a "big mess," and will cost a fortune. He stated there have been four or five developers come through, and each one of them has "fallen on their face." He stated they have reviewed everything that has gone on before. He stated they cannot be responsible for the house. Mr. Kaplan stated when Mr. Garton told him about the sewer, Mr. Kaplan told him how they could do it. Ms. Reiss asked if the house is salvageable. Mr. Kaplan stated the question is who would spend the money to investigate whether the house is salvageable and who will maintain and insure it.

Mr. Dugan stated these old houses are not always attractive to a lot of the new home buyers, and it is very difficult to do.

Mr. Kaplan asked Dr. Heinz if the house has not been changed so many times that it is not close to what would be eligible for the Registry; and Dr. Heinz stated it would not be eligible but it is still valuable locally. She stated she feels they would work with the developer to put it on a lot and try to sell it. Dr. Heinz stated she feels they can discuss this in the future; however, Mr. Kaplan stated he would like to deal with it now as he does not want to make any promises. He stated there is only so much that they can do in dealing with the unregulated landfill, and they are not going to take on any more obligations.

Dr. Heinz stated she assumes that they are going to build all thirty-five units in order to make this pay, and Mr. Kaplan agreed. Dr. Heinz asked if he feels he will get this from the Township; and Mr. Kaplan stated if they do not, they will not be able to make this work.

Dr. Heinz stated she agrees that the sealing of the lot is the best way to go.

Mr. Halboth asked if they anticipate any maintenance being required for the capping system; and if so, what would be required. Mr. Jeff Goll stated the cap will have to be monitored and maintained which would include fixing any erosion; and if the pipe were to malfunction, they would have to fix that. He stated if the vegetation were to become sparse, they would have to make sure that there is enough vegetative cover to maintain stability. Mr. Halboth asked who would do this, and Mr. Goll stated it would be the responsibility of the Homeowners Association. Mr. Kaplan stated there is a very small chance that the Heritage Conservancy might take it.

Mr. Fred Childs, 1345 Lexington Drive, stated while the Subdivision itself is not a subject for discussion this evening, it has been indicated that there will be thirty-four to thirty-six houses in the Subdivision; and he asked if the Planning Commission has taken any action since the last time he saw a Plan that had only thirty-two units. Mr. Bryson stated whatever was previously submitted under another developer is null and void; and at this point, they are only being presented with this Subdivision, and they are only acting on the Subdivision and nothing else. Ms. Kirk stated if they present a Plan for thirty-five lots, it still has to go through the Township engineer's review and meet the Zoning requirements. Ms. Kirk stated thirty-five lots is not a foregone conclusion that they will get those. Mr. Kaplan stated their Plan shows thirty-three lots.

Mr. Childs asked if the Township engineer has any input with regard to the Subdivision, and Ms. Kirk stated they did submit a review of the proposed Plan. Mr. Childs asked if the engineering firm has a relationship with the developer, and it was noted that they do not or it would be a conflict of interest.

A short recess was taken at this time.

The meeting was reconvened at 8:50 p.m. and Ms. Kirk stated the Planning Commission had a few logistical questions she answered with respect to their ability to make a recommendation about this Plan. She stated if the Planning Commission were inclined to recommend approval of the proposed Subdivision Plan she would structure it based on three Conditions:

- 1) That the three comments set forth in the Township engineer's review letter dated September 9, 2016 be met, those being under the provisions "Miscellaneous Comments;"
- 2) That any approval of this Subdivision Plan be subject to the approval and filing of the pending Stipulation that is intended to satisfy the prior Land Use Appeal still pending in Doylestown which is entered into subject to the Township's satisfaction;
- 3) The proposed Lot to be designated as Lot #2 would be Deed Restricted so that it is subject to the Terms and Conditions of the filed Stipulation and further subject to the Act 2 remediation work being commenced at the time of any further Land Development or Subdivision approvals

Mr. Kaplan stated the items referred to in the proposed Motion are the Miscellaneous Items, and Ms. Kirk agreed.

Mr. Bryson stated they were also looking for the charts noted on Page 2 of the Township engineer's letter, and Ms. Kirk stated that would require compliance with the Zoning Ordinance anyway.

Mr. Kaplan stated the Site Capacity Calculations were done previously based on the overall lot. Mr. Bryson stated the Site Capacity Calculations shown on the Natural Resource Plan list the resources for the entire site, and Mr. Kaplan agreed. Mr. Bryson stated they need to make two charts to show that both Lots are in compliance. Ms. Saylor stated they want to see the whole Site Capacity and then the individual lots Site Capacity. Ms. Saylor stated once they have Subdivided, this is a requirement in the Zoning Ordinance. Mr. Kaplan stated what he has been told from day one is that all of the thirty-two/thirty-three lot Plans that have been before the Township for all years were all done on Site Capacity Calculations for the overall property. Ms. Saylor stated what is required is that when you create a lot they need to show Site Capacity Calculations for that lot. She stated since the Subdivision is creating two lots, they would require Site Capacity Calculations for each lot. Mr. Kaplan stated they will have to deal with that in the Stipulation. He stated he does not know whether it is a problem or not. He stated they have taken all of the density that could be built on the entire lot which is fifty to sixty houses, and they have put thirty-two on the one lot; and they will then divide that up. He stated this is the only way they can do it.

Ms. Kirk stated she does not feel Mr. Kaplan is understanding what is being requested. She stated they are asking for Site Calculations for Lot #1 and Site Calculations for Lot #2. She stated the Applicant's engineer already went through those three things and stated they would be "will complies." Mr. Jenson stated he stated he said "will comply once he spoke to the Applicant." Mr. Kaplan stated he does not want there to be a mistake, and he does not know what Mr. Jenson stated before he arrived this evening.

Mr. Bryson asked if the ability to have thirty-three lots is based on the density allowed for Lot #1; and Mr. Kaplan stated it is not, and it is based on the density of the entire parcel. Mr. Kaplan stated there were Site Capacity Calculations shown for the entire site which showed there could be well over fifty lots, and everyone agreed that they would do thirty-two or thirty-three. Mr. Kaplan stated they are not changing anything; but in order to get this cleaned up, they have got to separate the two lots. Mr. Bryson stated while he appreciates this, if the density is greater on Lot #1 regardless of anything else, they will have to get a Variance. Mr. Kaplan stated this is why they are doing the Stipulation. Ms. Kirk stated that is why she said that it would have to be subject to the Township's approval. She stated the Township does not have the authority to waive the power of the Zoning Hearing Board; however, Mr. Kaplan stated that is true except if they enter into a Stipulation that is Court approved. Ms. Kirk disagreed. Mr. Kaplan stated there are dozens of cases. Ms. Kirk stated she does not know what are the terms of the Stipulation.

Mr. Kaplan stated the whole reason that they are doing the Stipulation is because this is such an unusual situation trying to clean up something that has not been cleaned up for thirty-two years. Mr. Kaplan agreed that the Board of Supervisors does not have the authority to grant Variances; however, there is a long line of cases that say in order to resolve litigation, the Court may approve a Stipulation that varies the Zoning requirements. He added this is being done in very minor ways here.

Mr. Bryson asked if they know the density for Lot #1, and Mr. Jenson stated they did not calculate this. Mr. Bryson stated he understands what they are saying is that in order to get this cleaned up, they need a density of thirty-three. He stated while he does not disagree with this, what he is missing is how they go to the Stipulation without Zoning approving it.

Ms. Kirk stated she now understands that this Subdivision is being provided to carve out the environmentally-contaminated section; and if it were not for that environmentally-contaminated area, there would be no need for this Subdivision Plan so the Site Calculations based on the whole thirty-nine acres would be different. Ms. Kirk stated she would suspect that the Stipulation is addressing that rather than carve it into two lots and impose Site Calculations on the two lots separately, they are going to use the original Site Calculations for the entire parcel knowing that Lot #2 is being carved out to deal specifically with cleaning up the contaminated area. Mr. Bryson stated another way to look at it is that if the Subdivision Line was not there, they would be well under the density for the entire Site; and Mr. Kaplan agreed.

Ms. Reiss asked if they are going to have lots that are “postage stamps.” Mr. Bryson stated he feels they will be conforming lots, but he questions if that is a discussion for tonight, and Ms. Kirk stated it is not.

Mr. Kaplan stated if they did not have this problem that they have to go to DEP for this separately divided lot, they would not have a Subdivision Plan now, and they would come back with the whole thirty-nine acres; and they would ultimately end up with the same Subdivision Line, the same Deed Restriction, and the same development. He stated what they will provide is that in any Stipulation and Agreement that in any calculation with regard to density that the two lots be counted as one lot for Site Capacity Calculations. Mr. Bryson stated while he does not disagree, they cannot avoid putting a chart on there that says they are creating two lots since they are creating two lots with a certain capacity listed. He stated the Stipulation and using the overall calculations can be worked out during Land Development.

Ms. Kirk stated she does not know what the basis of the pending Land Use Appeal was, and she is also not quite sure what the language of the proposed Stipulation would include which is why the caveat should be that the Stipulation be subject to Township approval. Mr. Bryson stated he still does not understand the objection of putting in the density charts for the two lots being created. Mr. Kaplan stated they would be misleading. He stated there is a provision in the Stipulation that states for purposes of calculating density the two lots are considered as one.

Ms. Saylor stated when they discount the natural resources, she is not sure how many lots they will get; and Mr. Kaplan stated that calculation was done by someone in the Township engineer's office years ago. Mr. Nick Casey was present and stated it was over fifty lots.

Mr. Bryson stated he understands they are saying that the thirty-three lots is based off of a density that is at discount because they are cleaning up the environmental problem, but he still does not understand why they cannot do two Zoning charts to lay out what the two Lots have provided. He stated they could stipulate this with a Note on the Plan that says, "even though the charts say this, there is a previous Agreement." Mr. Kaplan stated once they say these are two lots for density purposes, they are imposing another set of regulations which are not really relevant. He stated the whole idea is to cluster two thirds or three fifths of what could have been built on the whole property on one portion and leave the rest of it alone.

Ms. Kirk stated rather than going through the remediation process with DEP for the entirety of the lot, they are creating a whole separate lot to carve out and contain that area so the fact that they need to put the Site Calculations on the Plan subject to the Terms and Conditions of the Stipulation should not make that big of a difference. Mr. Kaplan stated this is fine provided they say that this would be if they were two lots; but what they have said in the Stipulation is that for the purposes of Site Capacity Calculations the two lots are counted as one.

Ms. Reiss stated they want to be able to take out the part they cannot build on which she understands; but after they do that and they make it two lots, they want to treat it like they did not really do that. She stated if they are making two lots, and Zoning says they need the capacity on each lot, that is what she as a Supervisor will look at. Mr. Kaplan stated they are not just breaking it up into two lots and abandoning the first lot. He stated they are going to remediate the one lot the way the Township has wanted it remediated. He stated when they have the new homeowners, the Township is going to want the two lots to be separate so it is clear that the property was remediated and approved. He stated the reason they are doing the Stipulation is because the law is clear that in a Stipulation if they agree to vary the Zoning requirements, they can do it as long as the Court approves it; and they do not have

to go to the Zoning Hearing Board. He stated there are numerous cases that say this, and he litigated one two years ago that went all the way to the Pennsylvania Supreme Court; and he agreed to provide Ms. Kirk with the law.

Ms. Kirk stated the Motion that was previously discussed was subject to the three Conditions, one of which was the Township engineer's review letter Miscellaneous Comments; and the Motion could be modified to be subject to compliance with the whole Township engineer's review letter.

Mr. Halboth asked if the site was one lot but it was developed exactly in accordance with the way that Mr. Kaplan has it laid out for two lots, would it satisfy all the appropriate requirements; and Mr. Kaplan stated it would. Mr. Halboth stated dividing it into two lots really is a mechanism to allow them to move forward in an alternative method with DEP for remediation of the contaminated area. Mr. Kaplan agreed.

Mr. Bryson stated the sticking point is that they are creating two lots, and there are Zoning regulations for both lots; however, Mr. Kaplan is saying that as part of the Stipulation the Court can agree that the DEP remediation can override this. Mr. Kaplan stated for a long time the Court has stated that where there is litigation in order to settle litigation the Parties can agree to submit a Stipulation to the Court that varies the Zoning requirements. He stated the Parties do not grant that Variance. He stated that in order to encourage settlements of Zoning litigation the Court after review can approve what otherwise would be a Variance.

Mr. Halboth moved, Mr. Bryson seconded and it was unanimously carried to recommend to the Board of Supervisors approval of the Final Minor Subdivision Plan subject to:

- 1) Compliance with the Township engineer's review letter and comments dated 9/9/16;
- 2) Approval and filing of the proposed Stipulation regarding the pending Land Use Appeal concerning this property subject to Township approval;
- 3) That Lot #2 will be Deed Restricted in the interim as well to indicate that Lot #2 is subject to the Terms and Conditions of the filed Stipulation as well as Act 2 remediation work commencing before any further Subdivision or Land Development Approval.

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

Respectfully Submitted,

Chad Wallace, Secretary