

TOWNSHIP OF LOWER MAKEFIELD
BOARD OF SUPERVISORS
MINUTES – MAY 2, 2012

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on May 2, 2012. Chairman Stainthorpe called the meeting to order at 7:30 p.m. Mr. Stainthorpe announced that the Township Manager, Terry Fedorchak, is absent due to family matters, and Mr. McLaughlin was called out of town.

Those present:

Board of Supervisors: Pete Stainthorpe, Chairman
 Dobby Dobson, Secretary
 Jeff Benedetto, Treasurer
 Kristin Tyler, Supervisor

Others: Jeffrey Garton, Township Solicitor
 Mark Eisold, Township Engineer
 Kenneth Coluzzi, Chief of Police

Absent: Dan McLaughlin, Vice Chair Board of Supervisors
 Terry Fedorchak, Township Manager

PUBLIC COMMENT

There was no public comment at this time.

APPROVAL OF MINUTES

Mr. Dobson moved, Ms. Tyler seconded and it was unanimously carried to approve the Minutes of April 18, 2012 as written.

APPROVAL OF RESOLUTION #2248 – RECOGNIZING FREDERICK (FRED) M. ALLAN

Mr. Stainthorpe stated they spoke at length a few weeks ago about Mr. Allan and had discussed at that time doing something more permanent to honor him, and they are prepared to move forward with that this evening. He stated they have drawn up a Resolution to re-name the girls softball complex the Fred Allan Complex.

Mr. Dobby read Resolution #2248 into the record.

Ms. Tyler moved and Mr. Dobson seconded to approve Resolution #2248.

Mr. Stainthorpe stated he knew Fred Allan very well for a number of years, and he is pleased to be able to do this. He stated he will always be a part of the community especially for those who knew him so well, but this will make him a part of the community when those who knew him are no longer around. He stated Mr. Allan made a great impact, and they want to recognize him for that and do something that will last in perpetuity. Mr. Dobson agreed and stated he knows all that he has done for the community.

Mr. Greg Caiola, 929 Pickering Drive, stated as Commissioner for PAA, he is present to endorse this Resolution with the full support of the PAA Board. He stated many of the Board members worked with Mr. Allan long before he did, and they recognize the impact he has had on the community. He stated PAA voted to support the endeavor for the new signage and will pay \$200 toward the cost.

Mr. Jim McCaffrey asked those who were present on behalf of Fred Allan and to support the Resolution to stand, and many people in the audience did so. Mr. McCaffrey stated on behalf of the Christine McCaffrey Community Emergency Fund that Mr. Allan founded and ran for many years, they thank the Board for recognizing Mr. Allan in this way.

Mr. Allan's daughter stated she has her best memories of her Dad at the fields, and she hopes that many more girls who play softball there will share some of this. She stated she appreciates that the Board is doing this.

Motion carried unanimously.

Mr. Stainthorpe stated once the sign is ready, they will have a ceremony to unveil the sign to officially recognize the fields as the Fred Allan Complex.

**PRESENTATION OF LOWER MAKEFIELD TOWNSHIP'S PRESERVATION
AWARD TO THOMAS AND DANIELLA KOVALCIK, JAMES KOVALCIK AND
ANDY LARSON**

Ms. Ellen Conoscenti and Ms. Rosanne Friehs of the Historic Commission were present. Ms. Conoscenti stated this is being presented to Thomas and Daniella Kovalcik, James Kovalcik, and Andy Larson who were responsible for restoring the Grange Hall located at 1669 Edgewood Road. Ms. Conoscenti stated their restoration of this property is an excellent model of preservation, and they have maintained the historical and architectural integrity of Edgewood Village. Ms. Conoscenti stated they turned it into a

two-story office building, with the lower level dedicated to their offices, Federated Lending Corporation. Ms. Conoscenti stated the original Grange Hall was built in 1920 and she showed pictures of the original structure and pictures of the restoration.

Ms. Tyler, Historic Commission Liaison, presented the plaque this evening. Ms. Tyler stated Thomas and James Kovalcik are life-time residents of Lower Makefield.

Mr. Stainthorpe stated being able to give awards like this is what makes Lower Makefield special. He thanked the volunteers who serve on the Historic Commission for their work in putting the award together and the award winners for helping to preserve the character of the community.

APPROVE BRIGHT FARM LEASE

Mr. Garton stated at the prior meeting the Board authorized Mr. Fedorchak and himself to meet with representatives of the Bright Farms organization to have discussions with respect to preparing a Lease for the Board's consideration. Mr. Garton stated at the last meeting, there were issues concerning the greenhouse's location near the rear of Mr. Miller's property and some other questions arose about trees. Since then the EAC made a tour of the Patterson Farm, and there were further discussions; and the Plan shown depicts the new location where it is proposed that the greenhouse will be located which is close to 95 off of Stony Hill Road with an access way through the existing Child Care facility. Mr. Garton stated it is also intended as part of this process that the Township in concert with the tenant will be constructing a small detention basin. He stated the tenant will be reusing most of their stormwater, and this detention basin will help alleviate some of the issues Mr. Miller raised about water getting to his property. Mr. Garton stated shown in green on the Plan is the access easement that they are almost finished negotiating with the owners of the Child Care facility, and this will be acquired at no cost.

Mr. Garton stated it is proposed that the Lease would be for a period of ten years; and at the expiration of the ten year term, the tenant has an option for two additional three-year periods. The last offer as to Lease payments was for the first sixty months it would be \$20,000 a year, for the next year it would be \$25,000, and for the balance of the term it would go up by the cost of living Urban Wage Earner of Philadelphia, Department of Labor Statistics. Mr. Garton stated the payments are to be paid in monthly installments of \$1,667 a month, they would pay all utilities, and they would pay their proportionate share of the taxes including all the taxes that would be assessed because of the improvements.

Mr. Garton stated the tenant has the obligation to complete the greenhouse and related facilities. They are to use the premises solely for the greenhouse and all improvements will belong to the tenant. He stated the Township has the right to inspect the premises. He stated they will not permit any hazardous waste to be applied to the ground. He stated they will have use of the access and utility easement. He stated the tenant will also participate in the final grading and preparation of the detention basin. They will also have the responsibility of bringing all the utilities to the location including electric, gas, water, and sewer. They will also comply with any and all Township requirements, and they will be required to secure any and all Approvals from the Township with respect to the Land Development Application. He stated they will also agree to maintain the property in good condition.

Mr. Garton stated they will provide insurance naming the Township an additional insured in the amount of \$2 million. He stated if the property is destroyed by fire, they have the obligation to re-build unless the fire occurs in the last three years. Mr. Garton stated if the property were to be condemned, the Township and tenant would participate in the outcome of that process. Mr. Garton stated the tenant can assign the Lease to someone else provided the assignee operates a greenhouse. Mr. Garton stated also included in the Lease are issues related to default and remedies.

Mr. Garton stated the Lease includes certain rules and regulations about keeping the property in good order and repair. He stated the tenant is to post \$25,000 to guarantee that all the improvements will be removed at the expiration of the Lease.

Mr. Sal Grasso from Bright Farms was present and stated they would like the Board to take into consideration that there are significant land development costs including Permitting fees, engineering fees, and bringing all the utilities to the site.

Mr. Dobson moved and Ms. Tyler seconded to approve the Execution of the Lease.

Mr. Dobson asked about the thirty-six months for completion, and he asked if this is after Land Development. Mr. Garton stated it is not – and it is from the time the Lease is signed. Mr. Dobson stated he feels this seems like a long time. Mr. Grasso stated they have every intention to complete this by the end of this year. Mr. Benedetto stated he understood that this was one of Bright Farms' requests to change it to thirty-six months and it was initially to be the end of the year. Mr. Grasso stated this is correct, and they do have every intention of completing it by the end of the year. He stated they had made the thirty-six month request in case of issues with financing or any other reason. He stated the construction schedule now begins in July, and it would be completed by October. He stated it is a simple greenhouse structure, and it should not take any longer than that.

Mr. Benedetto stated he feels thirty-six months seems excessive. Mr. Stainthorpe stated he agrees that this is quite a bit of time; but he does not have a problem with them being cautious as he has been part of start-up businesses in the past, so he has no problem granting that amount of time just in case they need it.

Mr. Benedetto asked Mr. Grasso if they have a Lease Agreement with the supermarket in New Jersey where they have a facility; however, Mr. Grasso stated he is not aware of this facility. He stated they have a Lease Agreement in Long Island with a private landowner. Mr. Benedetto asked the terms of that Lease Agreement; however, Mr. Grasso was unable to answer this. Mr. Grasso stated they are building a greenhouse in St. Paul, Minnesota with a landowner there. It is a ten-year Lease with two, three-year options as well. Mr. Benedetto stated the \$20,000 a year for five years seems generous on the part of the Township, and he would like to know what their other Lease terms are as he does not know if what they are proposing for the Township is typical. Mr. Grasso stated this site is very different because there are no utilities or driveway to the property. He stated there are also Land Development costs such as Permitting and Filing Fees. He stated the Land Development of this project is much higher than past projects he has dealt with.

Mr. Benedetto noted Page 18 regarding security deposits. He stated initially they had discussed an escrow account; and if the plan now is for a Letter of Credit, if Bright Farms goes out of business, the Township will have to line up for repayment with everyone else. Mr. Garton stated while he cannot speak to whether or not the \$25,000 is sufficient or not, the Letter of Credit will not need to be “chased down” because the Township will have the Letter of Credit in their hand, and they could draw the funds from the bank. He stated this would be similar to approving a Subdivision where the developer posts a Letter of Credit to guarantee the completion of streets; and if they do not, the Township can draw the funds. Mr. Benedetto stated this would be in addition to the security deposit, and Mr. Garton agreed.

Mr. Benedetto asked Mr. Grasso if Bright Farms has an escrow account with their other Lease, and Mr. Grasso stated they do not.

Mr. Benedetto noted the new proposed location, and stated he understands that Bright Farms was in favor of moving it to this location. Mr. Grasso stated they are open to anywhere on the Farm. He stated this location is a drier piece of land, and the EAC and the community were in favor of this new location.

Mr. Benedetto asked if the proposed detention basin is something that came up because of Mr. Miller’s comments, and Mr. Garton stated the detention basin was an initiative from the Township side. Mr. Grasso stated this is acceptable to them as well.

Ms. Tyler asked if LMT Greenhouse LLC was formed for the specific purpose of this project, and Mr. Grasso stated it was. Ms. Tyler asked if there is a parent company affiliated with LMT Greenhouse LLC, and Mr. Grasso stated it is Bright Farms. Ms. Tyler asked the relationship directly between Bright Farms and LMT Greenhouse, but Mr. Grasso stated he did not know. Ms. Tyler asked for an address for LMT Greenhouse LLC; and Mr. Grasso stated while he does not have it, he could provide this.

Ms. Tyler asked the location of the greenhouse on Long Island, and Mr. Grasso stated it is in Huntington. Ms. Tyler asked the size of the greenhouse, and Mr. Grasso stated it is 2,000 square feet. Ms. Tyler asked the annual rent at that location, but Mr. Grasso did not know.

Ms. Tyler asked with regard to the security for removal of the greenhouse, would he agree that LMT Greenhouse LLC would be responsible for the actual cost of removal without a cap of \$25,000; and Mr. Grasso agreed.

Ms. Tyler asked Mr. Grasso if he was in a position to offer the Township a higher amount of annual rent; and Mr. Grasso stated because of the Land Development costs, there is not much “wiggle room” to make this financially viable. Ms. Tyler asked if they would consider stepping up the annual rent each year for the first five years of the project in recognition of the up-front costs. Mr. Grasso stated they have had a few meetings at the Township to determine the rents, and they would like it to stay as proposed. Ms. Tyler stated she is not comfortable with that amount of annual rent. She asked if they would consider keeping the first year at \$20,000, and increasing it \$1,000 each year until they reach the five-year mark at \$25,000; and Mr. Grasso agreed to this. Mr. Garton stated after six years, it would then go up by the cost of living.

Ms. Donna Doan, 2814 Yardley-Langhorne Road, asked if notifications were sent out to the residents of Edgewood Village with regard to this meeting, and Mr. Benedetto stated he does not believe so. Ms. Doan stated Mr. Miller had taken issue previously that he had not received notification. Mr. Stainthorpe stated there was no special notification, and none is required by law. Ms. Doan stated Mr. Grasso’s statement that the community is in favor of this project is not true, and she stated she is against this project. Ms. Doan stated she does not feel Mr. and Mrs. Patterson should have endured condemnation of their Farm so that it could be broken up. She stated she stands for preservation, and this issue will complicate the Conservation Easement issue she has been pushing for. She stated she feels it is more beneficial to have the Conservation Easement and get the \$2 million by selling the development rights than to parcel out the Farm and make money piecemeal or not make money. She stated she saw a lot of hesitation on the part of Mr. Grasso about specifics of the project, and it is clear that they have not done a project of this size. She stated she has a concern that the taxpayers are going to be left to foot the bill especially for the removal of the structure. She stated she does not feel the

removal of the building will cost only \$25,000. She stated she felt there was a building needed for washing and processing the produce, and Mr. Grasso stated that is part of the greenhouse structure itself.

Mr. Stainthorpe stated they have already discussed making a change to the Lease so that they would be responsible for the actual removal costs.

Mr. Garton stated it is also important to understand that the area where this is proposed is on the existing Conservation Easement already granted to the County, and the County in a letter from the Chief Clerk and person in charge of the program, confirmed that they were satisfied and agreed to this use so it will not effect any new Application. He stated it is on the existing area that was already preserved by the prior actions ten to twelve years ago. Ms. Doan asked what Conservation Easement this is as she felt the Bucks County Conservation Easement was on seventy acres adjacent to Route 332, and Mr. Garton stated it includes the portion where this is proposed to be located. Ms. Doan asked if this is a Farmland Preservation Conservation Easement, and Mr. Garton stated it is. Ms. Doan stated she would like to have a copy of this as she was not aware that this existed, and Mr. Garton suggested she contact Mr. Fedorchak and ask him to provide this.

Ms. Doan stated she feels the Pattersons did a lot for the community, and she feels they should be given the same courtesy as Mr. Allan was just given of perpetual preservation of their Farm. She stated this is what they wanted, and they saved the Township millions of dollars over the years.

Ms. Doan stated she also has a problem with the proposed detention basin, and she asked why farmland always has to be given up. She stated there was not a flooding problem in this area until there was construction in Woodside, and now that there is a problem it has to be solved by giving up prime farmland.

Ms. Doan stated Shady Brook already has a hydroponic greenhouse, and she does not feel it is right that they should be using taxpayer-owned land to bring in a company from New York City to compete with local farmers who have been on their land for four to five generations. She stated to indicate that the community is behind Bright Farms is absolutely not true.

Mr. Dobson moved and Ms. Tyler seconded to Amend the Motion consistent with the two comments made by Ms. Tyler as far as the rental change and that they are bearing the full cost of the removal of the structures in the event that is necessary. Motion carried with Mr. Benedetto opposed.

Motion as Amended authorizing execution of the Contract carried with Mr. Benedetto opposed.

APPROVE EXTENSION – SCAMMELL’S CORNER

Ms. Tyler moved, Mr. Benedetto seconded and it was unanimously carried to grant an Extension of time to Quaker Group Bucks II, L.P. for Scammell’s Corner to 6/29/12.

ZONING HEARING BOARD MATTERS

Mr. Garton stated with regard to the Ewa Sadok Zoning Hearing Board matter, the Board had expressed concern about the fence in the front yard; and he advised the Board that they have withdrawn the request for the fence Variance in the front yard so that will no longer be an issue.

Mr. Garton stated the Board met in Executive Session for approximately thirty minutes prior to this evening’s meeting to discuss a matter of potential litigation related to a prior Zoning Hearing Board Application.

CONDITIONAL USE HEARING AND APPROVAL FOR NEW CINGULAR WIRELESS PCS, LLC

Mr. Garton stated this is a Conditional Use Application from New Cingular Wireless for the location at 135 Old Oxford Valley Road. The Applicant has filed a Conditional Use Application with the Township requesting Approval to add antennas on the existing wireless communications monopole and to replace the existing equipment on the site. The tower is located on Tax Parcel #20-32-2, and this Application was made pursuant to Article 13A Section 200-50.1 of the Lower Makefield Township Zoning Ordinance. Notice of the Hearing appeared in the Bucks County Courier Times on 4/13/12, and 4/20/12. The property was posted on 4/3/12 by the erection of six signs at various locations on the referenced property. A copy of the Certification from Nancy R. Frick, Director of Zoning, Inspection, & Planning was received and made a part of the Record. Mr. Garton stated the Application as well as all reports and recommendations received from the Township engineer, Planning Commission, and others will be incorporated into the Record.

Mr. Garton stated the Plans were dated 4/23/12. A Structural Analysis was also performed with the most recent date being 4/23/12. The Lower Makefield Township Planning Commission at its meeting on 4/23/12 recommended Approval with Conditions.

No one present requested Party Status.

Ms. Kate Durso, attorney, was present with three Witnesses who were sworn in. Ms. Durso provided this evening Exhibits A-1 through A-9.

Ms. Durso stated the first Witness would be Patricia Marquis who would confirm that she is employed by Network Building and Consulting, LLC which company has been retained by New Cingular Wireless to provide site acquisition services. She would confirm that she is responsible for getting the necessary approvals from the tower owner, and she would authenticate Exhibit A-1 in the package which is the underlying Lease Agreement between AT & T Wireless PCS of Philadelphia and the underlying property owner. She would also confirm and verify Exhibit A-2 in the package which is a short form sub lease between the current owner of the tower and AT & T Wireless PCS of Philadelphia, LLC. She would also verify that the tower was sold by AT & T Philadelphia to SBA Towers, and confirmation of that is part of Exhibit A-2; and that New Cingular Wireless is managed by AT & T Mobility the successor in interest to AT & T Philadelphia PCS, LLC. Ms. Marquis agreed that this would be her Testimony and that she had nothing further to add.

Ms. Durso stated the second Witness would be Joseph Frega who would confirm that he is a professional engineer Licensed by the Commonwealth of Pennsylvania and prepared the Plan that was submitted with the Application. He would authenticate Exhibit A-3 which is the Revised Zoning Plan last dated 4/23/12. He would confirm that he is familiar with the property, and that the Plan accurately depicts the existing improvements and the proposed improvements. He would confirm that New Cingular has six panel antennas and one dish antenna at the 131.5' elevation and 3 panel antennas at the 114.5' elevation, and that the proposal is to add two panel antennas at the 131.5' elevation and one panel antenna at the 114.5' elevation. He would confirm that a Structural Analysis was performed to confirm that the pole can accommodate the proposed antennas and meet the industry requirements. He would authenticate Exhibit A-4 in the package which is a Structural Analysis package including the most recent Structural Analysis as well as the prior Analysis and a mapping report confirming all the improvements located on the structure. Mr. Frega would also verify that the Structural Analysis confirms that the addition of the antennas would not have any adverse effect on the structural integrity of the facility and will be done in accordance with industry standards. He would confirm that the proposed improvements will not generate any noise or fumes so as to constitute a nuisance. He would also verify Exhibit A-5 in the package which is a cost estimate prepared by his office verifying that it would cost \$3,190 to remove the proposed improvements in the event they would become abandoned. Mr. Frega agreed that this would be his Testimony and that he had nothing further to add.

Ms. Durso stated the final Witness would be Andrew Peterson who would confirm that he is a radio frequency engineer employed by DBM Engineering PC to provide radio frequency services to New Cingular. He would verify Exhibit A-6 in the package which are the FCC Licenses for New Cingular to provide 4G services to Lower Makefield Township and the surrounding area. He would verify Exhibit A-7 in the package which are the specifications sheets for the proposed antennas for this installation. He would verify Exhibit A-8 in the package which is an RF Emissions Compliance Report. He would confirm that analysis confirms that the proposed additional antennas would have emissions well below the maximum permitted by the FCC. He would also verify that the Emissions Compliance Report is a cumulative Report that took into consideration all of the equipment at the site as well as the proposed antennas. He would confirm that the operations of the facility would not result in any radio frequency interference and verify Exhibit A-9 in the package which is an Affidavit from New Cingular Wireless verifying that the antennas would not cause any interference with other users of the radio spectrum. Mr. Peterson would confirm that the facility would be in compliance with the FCC and FAA requirements, and that the proposed equipment would not cause any adverse impact on surrounding properties or public health, safety, and welfare. Mr. Peterson agreed that this would be his Testimony and that he had nothing further to add.

Mr. Garton stated they will receive Exhibits A-1 through A-9.

Mr. Benedetto moved and Ms. Tyler seconded to approve the Conditional Use subject to the following:

- 1) Receipt of all Permits by any agencies having jurisdiction over such matters to the extent applicable;
- 2) Applicant to provide a financial guarantee so as to insure the removal of the facilities in the event there are abandoned or otherwise discontinued which financial guarantee shall be in accordance with the provisions of the Lower Makefield Township Zoning Ordinance;
- 3) Applicant shall pay all Township expenses incurred in connection with the Application to the extent not paid;
- 4) Applicant to comply with Section 200-50.1 of the Lower Makefield Township Zoning Ordinance to the extent same has not been previously demonstrated within the Application.
- 5) To the extent any signs are to be erected, same shall comply with the Township's Sign Ordinance;
- 6) Compliance with the Boucher & James report dated 4/30/12 to the extent that it has not been previously satisfied.

Ms. Durso agreed to accept the Conditions. The Motion carried unanimously.

SUPERVISORS REPORTS

Mr. Benedetto stated there are number of Veterans Square Monument events which will be held. He noted Zumbathon will be this Sunday from 2 p.m. to 4 p.m. at Veterans Square Park. He stated the rain venue would be the Masonic Lodge across the street. He stated Yoga in the Park started on Tuesday and will be every Tuesday in May from 6:30 p.m. to 8:00 p.m. He stated they are also getting a great response for the Trenton Thunder versus Reading Phillies Game on Friday, July 20th at 7:00 p.m.; and he asked those interested in tickets to contact him at 267-981-0209.

Ms. Tyler encouraged everyone to come out and support the Lower Makefield Township Seniors who will have a flower sale on May 12 at the Pool parking lot. She also noted that Pool Memberships are still available, and there is an extra two weeks of summer this year because of the Pennsbury School calendar.

APPROVE SALE OF EQUIPMENT/VEHICLES

Chief Coluzzi stated the Director of Public Works, Hank Hoffmeister, is requesting approval to advertise for sale per the PA Code the following vehicles:

- 1988 International dump truck
- 1995 Ford Explorer
- 2003 Efficiency Trench Box
- 2003 Ingersoll-Rand roller
- 2001 Bradco Skid Steer back-hoe attachment
- 1998 and 2003 New Holland tractors
- 1990 GMC Sierra pickup truck

Mr. Stainthorpe stated these items will be placed on Municibid. Chief Coluzzi stated this is an option as well as the more conventional, traditional way as far as advertising.

Ms. Tyler moved, Mr. Dobson seconded and it was unanimously carried to approve the sale.

Ms Tyler stated they should make sure that these vehicles are taken off the Township's automobile insurance policy.

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There being no further business, Ms. Tyler moved, Mr. Benedetto seconded and it was unanimously carried to adjourn the meeting at 8:30 p.m.

Respectfully Submitted,

Dobby Dobson, Secretary