

TOWNSHIP OF LOWER MAKEFIELD
BOARD OF SUPERVISORS
MINUTES – JANUARY 15, 2020

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on January 15, 2020. Dr. Weiss called the meeting to order at 7:30 p.m. and called the Roll.

Those present:

Board of Supervisors: Frederic K. Weiss, Chair
 Daniel Grenier, Vice Chair
 James McCartney, Secretary
 Suzanne Blundi, Treasurer
 John B. Lewis, Supervisor (by phone)

Others: Kurt Ferguson, Township Manager
 David Truelove, Township Solicitor
 Andrew Pockl, Township Engineer
 Kenneth Coluzzi, Chief of Police

DISCUSSION REGARDING PUBLIC COMMENT

Dr. Weiss stated Public Comment will take place at the end of the meeting and those wishing to speak should sign up on the sheet on at the table by the door.

REMARKS BY BOB HARVIE, BUCKS COUNTY COMMISSIONER

Mr. Harvie offered congratulations to Supervisor McCartney and Supervisor Blundi on their election as Supervisors. He thanked the Board for all they have done for the people of Lower Makefield. He stated the County Commissioners are taking steps to make improvements including facilitation of meetings and communication between the County and the Townships. He stated he is trying to get to as many of the local meetings as he can. Mr. Harvie stated the Bucks County Drug and Alcohol Commission will be holding three free trainings on Narcan with the first to be held in Fairless Hills later this month. He stated these are open to anyone. Mr. Harvie stated the previous County Commissions voted in December to purchase new voting machines which have a paper ballot, and he described how the new machines will work. He stated there will be training for the poll workers, Judges of Elections, machine operators, etc. which will be offered from February through April at the three campuses of the Community College; and there will also be free demonstrations for members of the public held all over the

County from February through April. He stated they are working with the League of Women Voters to advertise the trainings. He stated there will be a special election for Mr. DiGiorlamo's seat in Bensalem, and the machines will be used for that election in March as well as the primary to be held this year in April.

Dr. Weiss thanked Commissioner Harvie for attending their meeting and providing an update this evening and congratulated him on his election. Ms. Blundi congratulated Commissioner Harvie and urged him to work with the Township on getting some additional funds for our Library.

COMMUNITY ANNOUNCEMENTS

Dr. Weiss stated information on the Makefield Highlands Winter Music Series is on the Website, and he stated on January 24 from 5 p.m. to 7 p.m. the Tony Forliano Jazz Duo will be performing. He stated Makefield Highlands will also have a Concert Dinner on January 17 with Matthew Schuler performing. The cost is \$65 per person and tickets can be ordered at Makefieldhighlandsgolf.com.

Dr. Weiss stated the 2020 Pool registration opens on January 20, 2020, and there is more information on the Township Website . He stated the LMT Park & Recreation and register at <https://register.communitypass.net/LowerMakefield> The Pool Camp registration opens on January 31, and more information can be found on the Township Website – Department of Parks and Recreation. He stated Park & Recreation and The Pool are hiring for all summer positions, and there is information on the Township Website about this as well.

APPROVAL OF MINUTES

Ms. Blundi moved, Mr. Grenier seconded and it was unanimously carried to approve the Minutes of December 18, 2019 as written and January 6, 2020 as amended.

ENGINEER'S REPORT

Approve Escrow Release #5 for Scammell's' Corner (JP Orleans)

Mr. Pockl stated the development has been constructed and Certificates of Occupancy for all homes have been issued. He stated the developer has

submitted all the As-Built Plans which his office has reviewed and approved. Mr. Pockl stated there are several items that need to be addressed that came to his attention as a result of residents calling the Township. He stated one of these is removal of fencing that was installed during construction, and vegetation has grown in over the fencing; and the fencing needs to be removed.

Mr. Pockl stated there is also an item with regard to rain garden #3 which is the rain garden in the center of the cul-de-sac of University Drive where the Township wanted a physical barrier between the roadway and the raingarden which was not installed. Mr. Grenier asked if the physical barrier would be curbing, and Mr. Pockl stated it would not be since the purpose of the rain garden in the middle of the cul-de-sac is to take all the run off from the roadway and let it drain over land into the rain garden so this would be more like a wood stake with reflectors around the perimeter so snow plows can see that there is not a paved center area.

Mr. Grenier asked if the Bucks County Conservation District commented on the sedimentation control measures. Mr. Pockl stated his office walked through the site with the developer's landscape contractor, and there were items that were missed. He will meet with the developer on site tomorrow to have the fencing pulled out. Mr. Grenier asked if the County Conservation District has to inspect it. Mr. Pockl stated the developer needs a Notice of Termination on the NPDES report which was their Stormwater Permit during construction. He stated they also need an approval from DEP that all measures were installed correctly and implemented. Mr. Pockl stated while his office has reviewed it and feels it is correct, DEP has different requirements. He stated once there is a sign off from DEP and a receipt of the Notice of Termination as well as addressing the site items, he feels he would be ready to recommend the Dedication of the public improvements. He stated at this point with regard to Item b. under Engineer's Report, he is recommending Denial of Dedication of the public improvements for Scammell's Corner.

Mr. Grenier stated the amount that Mr. Pockl is recommending be released for Item a. is in the amount of approximately \$62,000, and there will be approximately \$51,000 left over; and Mr. Pockl agreed. Mr. Pockl what he is recommending be released is a portion of the contingency and the remainder of the line items, and there would still be \$51,000 as part of the contingency. Dr. Weiss stated the proposal is to release part of the Escrow that is remaining for work that they have already completed, and Mr. Pockl is recommending Denial of the Dedication at this time; and Mr. Pockl agreed. Mr. Pockl stated he feels that any kind of remediation work that would be required would be less than the \$51,000 they will still have.

Ms. Blundi asked if there is a downside to waiting and is it imminent that they will get the sign off from DEP. Ms. Blundi stated she understands there are water issues in that area, and she is concerned that the \$51,000 may not be enough. She stated the residents living there have indicated that there are sometimes water issues. She asked if they can wait for DEP's feedback. Mr. Pockl stated the developer's engineer needs to submit a request for the Notice of Termination from DEP, and they had not done that yet as of last Thursday. Mr. Pockl stated once the request is submitted the Conservation District will come out and physically inspect the improvements and issue a letter indicating if they are comfortable signing off. He stated that could happen within a two-week timeframe. Dr. Weiss stated possibly they could postpone everything until the next meeting.

Mr. Pockl stated the developer had submitted the Escrow Release in early December, and there are requirements within the Municipalities Planning Code that the Township must act within thirty days or the developer could make an argument for all of the funds. Mr. Truelove stated this is correct with regard to the Escrow once they have satisfied the Conditions that are subject to that. Dr. Weiss asked if they have satisfied the Conditions on that segment, and Mr. Pockl stated it is his opinion that they have. Mr. Truelove stated he believes it is forty-five days that the Township has to act. Mr. Ferguson stated he believes that the approximately \$50,000 remaining would be sufficient to address anything they would have to do, and Mr. Pockl agreed.

Mr. Pockl stated even after the \$51,000 is released if there is landscaping that needs to be addressed, there is a Maintenance Bond for eighteen months which he believes is approximately \$70,000 which would be withheld. Mr. Grenier asked if this would be for trees that they were supposed to plant as part of the Landscape/Tree Replacement Plan or for trees that were not successful. Mr. Pockl stated the tree count of trees planted was correct, but some of the landscaping/trees that were planted were planted after the typical growing period for this past fall so they will not know whether they are viable until the spring. He stated some of them were planted in November.

Mr. Grenier stated since they are close to the forty-five day window, and would be over it by the next meeting, they would not want to put the Township at risk. He stated there is also the contingency discussed by Mr. Pockl.

Mr. Grenier moved, Ms. Blundi seconded and it was unanimously carried to approve Escrow Release #5 for Scammell's Corner in the amount of \$62,233.23.

Denial of Dedication of Public Improvements for Scammell's Corner (JP Orleans)

Mr. Grenier stated Mr. Pockl has already recommended Denial of Dedication.

Mr. Grenier moved, Ms. Blundi seconded and it was unanimously carried to deny Dedication of Public Improvements of Scammell's Corner as outlined by the Township engineer.

Approve Advertisement of 2020 Road Program

Mr. Ferguson stated there was a lot of discussion on the Three-Year Paving Plan that was presented as part of the Budget, and 2020 is the first year. He stated this is money that comes from the Liquid Fuels Fund which is not direct local tax dollars, rather it is State tax money that the Township receives which can be used for certain things. He stated this is the fund used to buy rock salt and pave roads. He stated the Budget as outlined calls for paving 3.33 miles of road this year. He stated the Township has 138 miles of roads, and the eventual goal would be to begin to do more roads than 3.33 miles. He stated assuming a blended rate for roads in the Township is twenty years, recognizing that some roads do not have to be paved that often and others have to be paved more often, this means they would need to pave approximately 6.9 miles a year to pave all the roads every twenty years. Mr. Ferguson stated a group of the roads proposed to be paved in 2020 were last paved in 1985, others were paved in 1979, and others were paved in 1987. Mr. Ferguson stated he did include in his Manager's Report having Bid Alternates that were not part of the Budget.

Mr. Pockl stated they took core samples of the existing roads that are in the 2020 Road Program and some roads had not been paved for a long time, and the cross section of the roads were significantly less than what is a typical new roadway. He stated these roads have a high priority for being repaved.

Mr. Pockl reviewed the road segments that are to be completed under the Base Bid. Mr. Pockl reviewed what would be considered in the Alternate Bid if Bids come in favorable and there are additional funds available and the Board wishes to award Alternate Bids. Mr. Ferguson stated Mr. Pockl had advised that some of the Bids may come in at a better savings than anticipated, so they worked internally to come up with Bid Alternates; and Mr. Hucklebridge and Mr. Pockl worked together on what would be within reason.

Mr. Grenier stated he gets a lot of feedback about the northern section of Maplevale near the bridge, and that section of road is in poor repair so he would like to see if there is anything that can be done there. Mr. Pockl stated he had a discussion with the Director of Public Works about this stretch of roadway, and Mr. Hucklebridge was going to reach out to the owner who was completing the construction work in that area and see if it was possible for them to repave the road rather than have the Township do it, and that is why it was left off of the Township Road Program. Mr. Grenier stated if any support is needed to encourage that to be done, he would be willing to help adding that approach should be followed whenever possible.

Mr. Pockl stated if the Board agrees to go out to Bid, it would be put on PennBid with a pre-Bid meeting at the Township Building the end of the month; and then have the Bid opening on February 13 so that the Board could potentially award the Bid at their second meeting in February. He stated they could then start construction the beginning of April. He stated he anticipates a 90-day construction period which would be April, May, and June. Mr. Pockl stated this will also give some flexibility if the contractors have issues meeting that schedule.

Mr. Ferguson stated it has been his experience that the first Township that gets out their Bid tends to get the best pricing as the contractors want to lock in their work. He stated the Township has a Three-Year Paving Plan so that in the summer and fall, the Public Works Department will work on inlet repairs on roads that they intend to do next year so that they will not have to spend as much money on that and could therefore do more roads.

Mr. Pockl stated the estimates they did to fit the proposed roads in the Budget were based off the last two years' unit prices. He stated they have looked at the asphalt rate index, and it is slightly down from last year. He stated while they have increased the estimated numbers on unit prices from last year, the asphalt index price for PennDOT 6 indicates that asphalt prices are a little lower than what they were this same time last year.

Mr. Grenier moved, Ms. Blundi seconded and it was unanimously carried to advertise the 2020 Road Program as outlined by the Township engineer.

Approve Change Order No. 1 for the Laurel Lane Drainage Improvements Project for \$0.00

Mr. Pockl stated they had a line item for removal and replacement of existing fence on the property at 2200 Stackhouse Drive. Mr. Pockl stated in order to

gain access to the site, they had to remove a portion of the homeowners 8' high wood fence, and they were required to replace it afterwards. Mr. Pockl stated while they were willing to put the fence back in, the property owner wanted additional improvements done. The fence was located in the rear portion of his driveway, and he wanted some additional site features with river stone put down at the end of his driveway so that any stormwater run-off coming down the driveway would hit the river stone as opposed to causing further erosion on his property as well as planting some evergreen trees. Mr. Pockl stated the contractor did that instead of replacing the entire length of fence which was 45 linear feet of fence that they were to remove and replace. He stated they removed the fence, replaced a portion of it, and then did the other work. Mr. Pockl stated the property owner was happy with the work as was the Director of Public Works, and Mr. Pockl stated he feels it is a fair value for the amount of work that was in the Contract; and this is why they are issuing the zero cost Change Order.

Mr. Grenier asked Mr. Truelove if there needs to be any Agreement signed because of the change. Ms. Blundi stated they are technically authorizing something that has already happened. Mr. Truelove stated he would need to see the original document in order to give an opinion. Mr. Grenier stated he wants to make sure that the homeowner could not come back to the Township indicating that the fence was not replaced.

Mr. Pockl stated there is still some work outstanding on the project, and that work requires them to come back and re-seed in the spring the area that was disturbed to make sure that the plantings germinate and it is stabilized. Mr. Pockl stated they are also required to re-pave the driveway at 2200 Stackhouse Drive.

Dr. Weiss asked if it would be appropriate to memorialize the Board's decision with a letter sent to the property owner, and Mr. Pockl stated he feels that would be appropriate.

Mr. Grenier moved, Mr. McCartney seconded and it was unanimously carried to approve Change Order #1 for the Laurel Lane Drainage Improvements Project for \$0.00 as outlined by the Township engineer.

There was discussion as to who should send out the letter to the property owner memorializing the Board's actions. Mr. Pockl stated he feels it would be appropriate to send a copy of the Change Order along with a cover letter to the property owner.

Ms. Blundi moved, Mr. Grenier seconded and it was unanimously carried to direct the Township solicitor to draft a letter memorializing the Change Order to the Laurel Lane Drainage Improvements Project at 2200 Stackhouse Drive.

Approve Pay Application No. 1 for the Laurel Lane Drainage Improvements Project

Mr. Pockl stated this would be for all the line items of the work completed with the exception of paving the homeowners' driveway, re-seeding, and withholding the proper amount of contingency. He stated they are recommending Pay Application No. 1 in the amount of \$67,663.75. Mr. Grenier asked if this is all per the Agreement, and Mr. Pockl agreed.

Ms. Blundi moved, Mr. McCartney seconded and it was unanimously carried to approve Pay Application No. 1 for the Laurel Lane Drainage Improvements Project in the amount of \$67,663.75.

PROJECT UPDATES

Sandy Run Road

Mr. Ferguson stated with regard to Sandy Run Road, the Citizens Traffic Commission will meet Wednesday, January 22; and the Township traffic engineer will be making the presentation to the Commission that he made recently to the Board of Supervisors and the public with regard to the alternative for an interim measure to open Sandy Run Road which involves the round-about.

Multi-Use Trail

Mr. Ferguson stated this is the project that they have discussed previously for which the Township is getting a sizable Grant. The trail will go around the ball fields. He stated. they have had staff coordination monthly with the goal of having a presentation to the Board of Supervisors in its final form in May. He stated the hope is that the work will start in the fall with some of the work including paving being done the following spring.

MANAGER'S REPORT

Mr. Ferguson stated the Township has ten leaf trailers, many of which are older as well as a tub grinder and other equipment. He stated the Township made a Grant Application for \$306,416, and we received word today that the Grant was awarded in its entirety to the Township. He stated while there is a Township match, they considered that match satisfied with the purchase of the new skid steer that was part of the 2019 Budget. Mr. Ferguson stated the leaf trailers are approximately \$100,000 a piece; and the Township will be getting three of them which will be purchased in time for the 2020 Leaf Program.

Approval of Resolution No. 2409 Authorizing Destruction of Certain Specific Records

Mr. Ferguson stated they request this be done every year in order to approve destruction of certain Township records per the outline of the Second Class Township Code.

Ms. Blundi moved, Mr. Grenier seconded and it was unanimously carried to approve Resolution No. 2409 Authorizing Destruction of Certain Specific Records.

Approval to Authorize Purchase of 2020 Chevy Equinox through CoStars at a Cost of \$24,537.00

Mr. Ferguson stated as part of the 2020 Budget the Board approved the purchase of a vehicle for the Code Enforcement Department. He discussed the condition of the Department's current vehicle which is an old Police car which had been donated by the Police Department. Mr. Ferguson noted the Budgeted amount was \$24,500.

Mr. McCartney moved, Mr. Grenier seconded and it was unanimously carried to authorize the purchase of the 2020 Chevy Equinox as requested in the amount of \$24,537.00.

Approval of Resolution No. 2412 Authorizing the Township Manager to Sign Right-Of-Way Plans for Township Route T-344, Lower Makefield Township, Multi-Use Trail

Mr. Ferguson stated this relates to the earlier discussion about the multi-use trail. He stated one of the items they need to secure as part of the project is an Easement with PA Water. He stated as he had outlined in his Management

Report, there is a water tower located in that area. He stated this Resolution will allow him to sign the necessary documents. He stated this is required by the State as part of the Grant.

Mr. Grenier moved, Ms. Blundi seconded and it was unanimously carried to approve Resolution No. 2412 authorizing the Township Manager to sign Right-Of-Way Plans for Township Route T-344, Lower Makefield Township, Multi-Use Trail as outlined by the Township Manager.

Mr. Truelove stated the Board met in Executive Session beginning at 6:45 p.m. and items related to Real Estate, personnel, and informational items were discussed.

ZONING HEARING BOARD

With regard to the Pennsylvania American Water Company Special Exception request for property located at 1145 Edgewood Road in order to continue its use as a Utility and a Variance request in order to allow greater than permitted impervious surface Ms. Blundi moved, Mr. Grenier seconded and it was unanimously carried to have the solicitor participate.

With regard to the Andrew Scheurer Variance request for the property located at 1525 Derbyshire Road in order to allow construction of an addition resulting in greater than permitted impervious surface, it was agreed to leave the matter to the Zoning Hearing Board.

Mr. Truelove noted that the property is not in the floodplain. He stated in the future he will have Mr. Majewski comment on any impervious surface Applications.

APPROVAL OF CERTIFICATE OF APPROPRIATENESS - 1703 LANGHORNE-YARDLEY ROAD (DR. KATHLEEN GEORGE – ORTHODONTIC SPECIALIST) - NEW BUSINESS SIGNS

Mr. Ferguson stated information on this was in the Board's packet which included a letter from HARB outlining the details of their unanimous vote for approval.

Mr. Grenier moved, Ms. Blundi seconded and it was unanimously carried to approve the Certificate of Appropriateness for 1703 Langhorne-Yardley Road, Dr. Kathleen George, Orthodontic Specialist, for new business signs as outlined by the Township Manager.

DICUSSION ITEMS

Mr. Truelove stated at the last meeting the Board discussed the process of engaging an outside law firm to represent the Township in the opioid litigation. He stated he was asked to vet several firms that do this type of litigation, and after their analysis they are recommending that they Board appoint Bern & Partners as the lead firm for any potential suits. He stated they have experience in pending opioid litigation that has been filed on behalf of many entities, and they also have a roster of clients that includes many public sector, Municipal, and County clients.

Mr. Grenier noted the RFP process the Township has been going through, and one of the things they have done over the last couple of years is to look at the Professional Service Agreement Terms and Conditions. He stated he assumes that Bern has not gone through that to see if they are able to accept our Terms and Conditions, and Mr. Truelove stated he did not provide that to them. He stated an outside counsel like this would have limited capacity. He stated he could supply it to them to see if they would sign it if that is the sense of the Board. Mr. Grenier stated his only concern is to make sure that they enter into an Agreement with proper Terms and Conditions that protect the Township. Mr. Truelove stated every law firm has an obligation to provide services in a way that maintains client confidentiality and to make sure that there are no conflicts of interest.

Mr. Grenier stated the idea would be to make a Motion to direct the Township solicitor to move forward but add the caveat that it is subject to the firm's acceptance of Terms and Conditions negotiated with the Township solicitor and Manager.

Ms. Blundi stated she is not sure how that applies in this situation since there is not a Fee for services in this relationship. She stated they do not get paid unless there is a recovery, and it is on a contingency basis. She stated they could discuss this when documentation is submitted. She stated it is not the typical retention where the Township would be paying this firm; and if the Township were to recover something, they would get a percentage of that.

Dr. Weiss asked if they could accept the recommendation of the solicitor contingent upon the final Contracts. Mr. Truelove stated he would be willing to discuss this with Bern and compare their proposal with the document Mr. Grenier is discussing. He added he feels they will be able to work something out.

Mr. Grenier moved, Mr. McCartney seconded and it was unanimously carried to direct the Township solicitor to move ahead with the firm Bern & Partners LLP on the opioid litigation subject to review of Contact terms.

SUPERVISORS REPORTS

Ms. Blundi stated she attended the January meeting of the Board of Auditors, and she looks forward to working with them this year.

Mr. McCartney stated the current Chair of the Park & Recreation Board indicated at their last meeting that he would be resigning from the Board at the end of that meeting so there is a vacancy on the Park & Recreation Board. Mr. McCartney asked those interested in serving to submit an Application to the Township. Mr. Grenier stated Dave Gordon has been on the Board for years, and he did a great job. Mr. Grenier thanked him for his hard work over the years.

Dr. Weiss stated the Planning Commission met and discussed the Pennsylvania American Water Company Easement and made a recommendation to the Zoning Hearing Board that it be approved. Dr. Weiss added that the Board of Supervisors earlier this evening indicated that they would have the solicitor participate in this matter. Dr. Weiss stated the Environmental Advisory Board met and voted to recommend that the Board of Supervisors consider the passage of the Green New Deal, and he had advised them that the Board is considering it and will respond in the near future. Dr. Weiss stated the Historical Commission met and one of the main items on their Agenda is to replace Civil War Veteran stones at the Slate Hill Cemetery. He stated we have finally received approval from the Courts to do so, and the Historical Commission will be setting up a date to beautify and replace the stones at the Slate Hill Cemetery. Dr. Weiss thanked all of those involved in getting this approved.

PUBLIC COMMENT

Mr. Zachary Rubin, 1661 Covington Road, stated he is opposed to this Agenda, specifically putting Public Comment at the end of the meeting rather than at the beginning. He stated he has been attending Board of Supervisors meetings for twenty-eight years, and each Board has recognized the importance of community input. He stated the Board of Supervisors are representatives of the community, and he asked how they will know what the community wants or needs unless they are heard from. Mr. Rubin stated he feels putting Public Comment at the end of the meeting stifles debate, and it limits public input. He stated the Chair who makes the Agenda is deliberately limiting community input. He asked if the four other Supervisors concur with this.

Mr. Rubin stated meetings in the past have gone on for two to three hours, and if Scouts or grade-school children want to come in and make public comment, this would mean that they would have to wait until 11:00 p.m. or 11:30 p.m. on a School night. He stated he feels this should be changed and it should not be put at the end of the meeting. Mr. Rubin stated there have been times in the past when Public Comment went on for an hour or more, and it is the Chair's responsibility to control Public Comment.

Mr. Rubin stated he would "demand" that the other Supervisors and the community put pressure on the Chair to change this "egregious" Agenda.

Dr. Weiss stated the change was his decision alone, and it is the prerogative of the Chair. He stated the meeting this evening was approximately one and a half hours long including Public Comment. He stated Mr. Rubin's point about certain groups wishing to address the Board is a valid one; and if they indicate in advance that they want to make a presentation to the Board, they have the right to call, and they will set it on the Agenda prior to Public Comment.

Dr. Weiss stated he does not feel this stifles the ability of have comment. He stated there is a full Agenda, and people are invited to comment during the meeting on the Agenda items. He stated if there is an item that is not on the Agenda that someone wishes to have put on the Agenda, they can contact the one of the Supervisors, and the members of the community have the right to contact their elected officials prior to the meeting. Dr. Weiss stated the business of the Board is important, and there are major developments that are of issue. He stated Public Comment at the beginning of the meeting can "get out of hand and people speak out of turn causing more delays which can give Board members the problem of truncating their deliberations as they have seen many times." Dr. Weiss stated

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many Municipalities and Townships in the County place Public Comment at the end of the meeting for that reason. Dr. Weiss stated they are giving this a try; and if it does not work, they can go back, but for now Public Comment will be at the end of the meeting.

There being no further business, Mr. McCartney moved, Ms. Blundi seconded, and it was unanimously carried to adjourn the meeting at 8:40 p.m.

Respectfully Submitted,

James McCartney, Secretary