

TOWNSHIP OF LOWER MAKEFIELD  
PLANNING COMMISSION  
MINUTES – OCTOBER 22, 2018

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on October 22, 2018. Ms. Burke called the meeting to order at 7:35 p.m. and called the Roll.

Those present:

Planning Commission: Dawn DiDonato-Burke, Vice Chair  
Chad Wallace, Secretary  
Craig Bryson, Member  
Charles Halboth, Member

Others: Jim Majewski, Director Planning & Zoning  
Barbara Kirk, Township Solicitor  
Andrew Pockl, Township Engineer  
Dan Grenier, Supervisor Liaison (joined meeting  
in progress)

DEFER APPROVAL OF MINUTES

It was agreed to defer the Minutes of October 8, 2018.

SALDO ORDINANCE AMENDMENTS DISCUSSION AND MOTION

Mr. Majewski stated this is part of the ongoing process, and they have done some SALDO Amendments one dealing with Notice as well as submission requirements. He stated this is a continuation and the information had been provided to the Planning Commission in their packets.

Mr. Majewski stated the Minor Subdivision Lot Line Change was discussed at the last meeting, and they discussed that there is no Preliminary and Final for a Minor Subdivision Lot Line Change; and there is only one Approval necessary. He stated at the last meeting it was recommended that those be combined. He stated they need to make some minor changes to some of the other Sections of that Ordinance.

Mr. Majewski stated for the Information and Standards, these are some items which had been discussed previously including having a location map; and instead of being 800' from the property since they are requiring 1,000' for the Notice it would make sense to have the Key Map show this graphically on the Plan so everyone will know what the actual radius is that is being notified. Mr. Majewski stated the second part

is the benchmark referencing the more current datum. He stated the current requirements talk about United States Coast and Geodetic Benchmarks. He stated that was the old datum which was changed approximately twenty-five years ago or more. He stated this would be updating that and show the benchmark that will be put on site is an area that will not be disturbed so that they do not have an on site benchmark that could be wiped out during construction.

Mr. Majewski stated the next Section is 20-20C9 adds in that a recent digital orthophotograph of the area with features labeled may be used to provide this information. He stated this is a common Waiver on almost every Application where they show a lot of the information on the Plans, but then they supplement it with an aerial photograph which, in his opinion, provides even better information. He stated this will allow that to be used provided it is properly labeled, and they would no longer require Waivers from that Section.

Mr. Majewski stated the next Section deals with stormwater management, and instead of an 18" minimum pipe size, they are looking to go down to a 15" minimum pipe size. He stated there are a lot of pipes that do not require that big of a pipe, and having a 15" minimum pipe size makes more sense. He stated the 18" originally came from DOT standards which were from forty years ago, and they are outdated.

Mr. Grenier joined the meeting at this time.

Mr. Majewski stated the next item deals with the incremental pipe size changes, and we currently require that pipes be increased in pipe size by 6" in diameter. He stated if there was an 18" pipe, they would have 18," 24," 30," and 36." He stated there are intermediate pipe sizes that are available. He stated they would have 15," 18," 21," and 27." Mr. Bryson stated there are also elliptical pipes that you may need for coverage purposes, and there are different pipe configurations. He asked if they could not just say it needs to meet the required capacity per review by the Township engineer. He stated then they would not be restricted by sizes. He stated there is a whole range of pipe configurations that are commonly used.

Mr. Pockl stated this would vary depending on the material of the pipe adding that concrete pipe increases by 3", and HDPE pipe increases by 2". Mr. Bryson agreed adding that ductile iron pipe you can get at any size. Mr. Wallace stated if someone is looking to build in the Township, they should be given guidance on certain things. Mr. Bryson stated it would be subject to approval by the Township engineer. Mr. Bryson stated if it is left as proposed, anytime someone wants to use an elliptical pipe, they would have to come in for a Waiver. Mr. Pockl stated it states, "or equivalent thereto." Mr. Halboth stated in diameter – not area; and if they said

“cross sectional area,” that would be a different matter. Mr. Bryson stated this specifically says, “diameter.” Mr. Pockl stated it states, “equivalent pipe arches may be used in lieu of circular pipe” in the Section before.

Mr. Majewski stated Mr. Pockl had pointed out that some pipes do not use the 3” increment. Ms. Kirk asked if that is the lowest increment that they use. Mr. Pockl stated HDPE increases by 2”, and HDPE does not have a 15” pipe and it is 14”, 16”, 18”, and 20”. Ms. Burke asked if it should be a minimum of 2”. Ms. Kirk asked if it should be re-worded to read: “Shall not be less than 2”. Mr. Pockl stated he feels the best way to do it is a combination that the pipe shall be sized for the appropriate hydraulic capacity as demonstrated to the Township engineer, and you can also say that the next equivalent pipe size beyond what the capacity indicates would be acceptable. He stated if the hydraulic analysis indicates that they need a 16” pipe, they would have to go up to an 18” pipe.

Mr. Majewski stated elsewhere in the Ordinance they specify that you size the pipe appropriately so they would just need to re-word it to include that it shall not be less than 2” in accordance with manufacturer’s standards. This was acceptable to the Planning Commission. Mr. Pockl stated they should specify inside diameter. Ms. Kirk stated that would be the same for the next Section where it states, “unless otherwise specified by the manufacturer.”

Mr. Majewski stated they know that the pipe diameter is the pipe diameter inside. Mr. Grenier asked if pipe diameter is defined in the Definitions.

Mr. Bryson asked why they would use cast iron rather than ductile since cast iron is more of a sanitary use, and ductile iron is more of a stormwater use. Mr. Pockl stated cast iron is significantly less expensive. Mr. Bryson stated the standard is that ductile is supposed to be used for storm and cast is for sanitary. Mr. Bryson asked if they could just state “iron pipe” and leave it to the discretion that it would be ductile or cast.

Mr. Pockl stated it should state, “when measured to the bell of the joint,” and not “to the top of the pipe.”

Mr. Majewski stated they had previously discussed grading. Mr. Majewski stated instead of having a three to one slope going into a steep slope, you have to have a flatter slope around the building which allows water to drain away yet provides the stability of the soil upstream, or if there is a slope coming in away from the building so that you do not have a slope coming straight into the building or leaving from the building straight out where the building is not protected.

Mr. Pockl stated his only concern is if there is a sidewalk around the perimeter of the building you would allow a cross slope of 5%. Mr. Bryson stated when they would review it, the sidewalk would have to be 2%, and all they are saying is that the maximum can be 5%; but if they are required to put in a sidewalk with an ADA cross slope at 2%, they would still have to provide that. Mr. Majewski stated they are requiring that they provide sufficient earth on the downslope side of a building so that it is stable, and upslope of a building where a slope is coming into it, you would have a clear area and not just have a slope coming right into the building that would wash into the building. Mr. Bryson stated he would be in favor of this.

Mr. Wallace moved, Mr. Bryson seconded and it was unanimously carried to recommend approval of the SALDO Ordinance Amendments subject to the revisions as discussed this evening.

Mr. Majewski stated they have done some of the SALDO issues which have either been enacted by the Board of Supervisors or the Planning Commission has indicated they were in favor of the changes. He stated he proposes to continue moving on over the next several months until they go through the entire Subdivision and Land Development Ordinance. He stated he plans to first do some of the easier ones that are not controversial or overly technical. He stated eventually they will have the Township solicitor's office put this in the form of an Ordinance incorporating everything the Planning Commission has agreed to and then send that Ordinance to the Board of Supervisors to be adopted.

Ms. Kirk asked Mr. Majewski how many of these changes does he intend to do until he sends it to the Solicitor's office for an updated Ordinance. She asked if he is looking to do the whole SALDO and then send over the suggested revisions for drafting or will he do a certain number and then send it over. Mr. Majewski stated he would like to do the entirety of the rest of SALDO; however, if they get to a point where they are having difficulty on certain Sections, they could move forward with the bulk of it. Ms. Kirk stated she is asking because she does not know if some of the suggested changes they are proposing would be applicable to new Applications coming in; and if there was a need to start implementing the changes on those new Applications.

#### HERITAGE TREE ORDINANCE

Mr. Jim Bray and Mr. Alan Dresser, Environmental Advisory Council, were present. Mr. Bray stated several years ago the EAC noticed that there was a very large tree behind one of the buildings on the Patterson Farm which was a cucumber magnolia. He stated they measured the tree and felt that trees such as this should have some protection in the Township. He stated currently there is no device to protect, old

heritage trees. He stated after taking measurements, they found that this tree is the largest of this type in the State of Pennsylvania and it could be the largest of type in the United States of America. He stated these trees have no protection in our Township.

Mr. Bray stated they feel that it would be a good idea to come up with an Ordinance that would protect these trees since they are part of our heritage and history. He stated they also feel that an Ordinance like this is a very progressive Ordinance which you see in communities that have a good basis of environmental law which we have in Lower Makefield Township. He stated over the years the Environmental Commission has been instrumental in writing or promoting various Ordinances such as our LID Stormwater Management Ordinance, the Native Plant Ordinance, the Green Building Code, an Impervious Pavement Ordinance, and a Tree Bank Ordinance.

Mr. Bray stated the EAC started to write an Ordinance and the purpose and intent was to establish and maintain the maximum sustainable amount of tree cover on public and private lands in Lower Makefield, to maintain these heritage trees in a healthy and non-hazardous condition, and to establish and maintain appropriate diversity in tree species. Mr. Bray stated in defining heritage trees, the Ordinance is very inclusive; and the idea is not to be exclusive. He stated there are a lot of reasons behind what they would consider a heritage tree to be. He stated one of the reasons would be size, and the size of the tree itself could make it exceptional. Mr. Bray stated there is a book put out by the Pennsylvania Forest Association called "Big Trees in Pennsylvania," and they list by species those that are the largest in the State of Pennsylvania.

Mr. Bray stated other reasons to classify a tree as a heritage tree are ecologic value and historic significance. Mr. Bray stated there is a rare species of tree, the Franklinia tree, growing in the Slate Hill Cemetery; and he discussed the tree's historic significant. He stated this is the kind of tree they are looking to protect.

Ms. Burke stated while she feels this is a great idea, she feels what is proposed is too restrictive. She stated she feels it would be a great idea to preserve them on public property, but it would be up to a private owner if they would want to protect a tree on their property. She stated if they were to impose this on a private owner, she does not feel every home in the Township should be subject to this; and she suggested that this not apply to any property less than 10,000 square feet unless the private owner wanted it to. Mr. Dresser stated this is the way it is written, and he noted the top of Page 5. Ms. Burke stated while she saw this, it was confusing; and when there was discussion of maintenance and preservation it was not clear.

Ms. Burke stated she does not feel it should apply to any property less than 10,000 square feet because it would be too restrictive to require a homeowner to get Permits to chop down a tree and get an arborist's certification. Mr. Dresser stated that would only happen if they had voluntarily put their tree in the program.

Mr. Wallace asked what would happen in the property changes hands; and the new owner does not want it registered, but the it has already been registered. Mr. Bray stated the way the Ordinance is written is that there would be a Deed Restricted Covenant. Mr. Bray stated if they opt into the program, they would ask for a Deed Restriction which would follow the sale. Mr. Dresser stated the new buyer would know this.

Mr. Halboth asked what would be in it for the property owner. He stated if a property owner values the tree, they would take care of it. He stated if they sign into the program, the only thing they are doing is creating liability for themselves and extra work. He stated the idea of restricting the transfer of the property by having it travel with the transfer of the property is not right. Mr. Halboth asked why anyone would want to do this. Mr. Dresser stated he would do it for the pride of doing it because he enjoys trees and thinks they are important. He stated on his property he has at least three trees he would put in the program; however, he is selling his property. He stated it would make him feel good to know that they would be protected after he sells his property. Ms. Burke stated he could always put a Deed Restriction on his own, and he would not need the Township or an Ordinance to do that. Mr. Dresser stated he would need a lawyer and have to pay money.

Ms. Kirk asked where is it in the proposed Ordinance that indicates that if a private owner's request for inclusion is accepted that they must do a Deed Restriction. Mr. Bray noted Page 5 under 1B where it states, "Future owners of the property where the tree is located will be subject to all terms of this Ordinance." Ms. Kirk stated that does not say that if they are asking to be in the heritage tree program they must submit a Deed Restriction. She stated she can foresee that if an owner has the tree included in the program and there is no Deed Restriction, if the property is sold, the new owner would know nothing about it. She stated if they were to cut the tree down, the Township would be enforcing the Ordinance against the second owner who had none of this information.

Mr. Pockl stated another issue could arise that an owner has a tree on their property that they want to designate as a heritage tree, but their neighbor has a portion of the drip line on their property, and they would then be restricted to put a shed within a certain portion of their yard because the heritage tree drip line extends over onto their property. Mr. Grenier stated a lot of these old trees were also used as property markers at corners so they could be on multiple properties.

Mr. Bryson stated many people purchase their home and do not realize that there is a PECO easement in their rear yard and they want to build a pool. Ms. Kirk stated they would have constructive notice because you get a Title Search. Mr. Bryson stated he feels this would have to go in the Title Search; however, Ms. Kirk stated the way it is written there is nothing that requires that it be Recorded of Record. Mr. Bray stated they felt it was in it; and if it is not, it should be, and they will see that it is included.

Mr. Bray stated he feels having your tree in this program is a matter of pride. He stated he has a number of trees on his property; and if they were so designated as a heritage tree, he would be very proud of that. Mr. Bray stated he feels a lot of people in our Township feel the same way.

Mr. Bray stated with respect to trees that might be on corners and other situations, the EAC is one of the main instruments in finding out where these trees are and whether in fact they should in fact be classified as a heritage tree. He stated they know that if a tree is on a corner, they would not recommend that it be a heritage tree because of the problems associated with dual ownership. Ms. Kirk stated they might want to create certain exemptions in the Ordinance to deal with that. She stated if this is passed, the EAC in the future may not be comprised of the same people who have the same thought process as the current EAC members. She stated they may want to carve out an exemption if there is a drip line or a proposed heritage tree effects multiple property owners. Mr. Dresser stated all the property owners would have to agree. She stated they could indicate that it would not be accepted unless all effected property owners agree.

Ms. Burke stated she was not in favor of the language on Page 5 G 1.D allowing the Zoning Director to impose additional conditions on any Township Permit to assure compliance. Mr. Bray stated they could take that language out.

Mr. Bryson stated some of these trees would be close to reaching the end of their life cycle, and they could become dangerous structurally. He stated he feels there should be something included that if it is deemed unsafe, it can come down. Ms. Burke stated she also feels it is too restrictive and burdensome on a homeowner that they would have to get an arborist to certify that it is dying which would be an additional cost along with the cost to cut the tree down.

Mr. Dresser noted Page 6 discusses emergency conditions which relate to an imminent threat to life and property, and he stated it would not just be subject to a certified arborist. Mr. Bray stated if these trees pose any kind of hazard in the future, they can be taken down. Mr. Bryson stated he feels it needs to be spelled out more clearly.

Mr. Bryson stated he likes the program since it is voluntary and you do not have to do it. He agrees that it is burdensome on the homeowner, but they would have bought into it. Ms. Burke stated she feels they need to make some changes based on the comments made this evening. Ms. Burke also noted the Maintenance and Preservation Section, and she feels it needs to be made clear this is only if the owner opts into the program. Mr. Bryson stated it should be made part of the Title.

Mr. Bryson stated there could be instances where one of these trees could reach over onto a neighbor's property; and an insurance company may require that it be cut down over that property. He stated he feels they need to consider those instances in the Ordinance. He stated he trusts that the current EAC members would not consider a tree that was clearly impacting a neighbor's property; however, once the current Board members are no long on the EAC, there is nothing in the Ordinance that speaks to those issues.

Mr. Bray agreed that is a good point and was something that they did not consider when they wrote it. He stated they based this on what other communities had throughout the United States especially in the far West. He stated they have been before the Planning Commission in the past with other Ordinances, and they have offered good points that they had not considered before. He stated what they then end up with is a much stronger Ordinance.

Mr. Wallace stated his concern is with the restriction on the next owner and how this would be managed. He asked if this was addressed in the other Ordinances they looked at. Mr. Bray stated they did not have much of an issue with this. He stated they need to consider the limited number of trees they are considering. He stated there is a list from Audubon of Bucks County, which did a tree survey throughout the County in 2005; and they listed in Lower Makefield Township thirty trees of significance. He stated eight of those are on public property, and twenty-two are on private property.

Mr. Bray stated the way the EAC foresees this, the first thing they would like to do is to put the Patterson magnolia and then the Franklinia tree in the program. He stated they are talking about adding possibly three to four trees a year. He stated the idea is not to have a huge quantity, but to publicize what they are doing throughout the Township throughout the year so that people know that this is a community that prizes trees and promotes the growth of trees. Mr. Bray stated he does not feel that there will be an issue with subsequent owners. Mr. Bray stated when he bought his properties there were restrictions that came with them, and if he did not like the restrictions, he would not have bought the properties. He stated he feels if they take the time and effort to denote a tree that has special significance in the Township, he feels it should follow the Deed.



Mr. Bryson stated the only reason to enact this is because it has “teeth to it” for the Township to enforce. He stated if they did not want enforcement from the Township, they could just do a historic tree registry and have people nominate trees. Mr. Bryson stated the Supervisors will have to decide if they are willing to obligate resources to enforce this. Mr. Grenier stated they have Code Enforcement that would have to take over this role. Mr. Dresser stated he does not feel it will take a lot of resources. Mr. Bryson stated if there is a lawsuit, it could cost the Township a lot of money. Mr. Bryson stated he feels the Ordinance needs to be very clear with regard to enforcement about the trees that could be subject to some kind of issue such as ownership, etc. He stated while he would like to see the tree on the Patterson Farm in the program, the Township then becomes financially obligated to pay for the arborist and maintenance to insure that they are abiding by the Ordinance.

Mr. Grenier stated he does feel they should take a close look at where there may be questionable trees such as those straddling a property line or if there is a large tree on a property that hangs over an adjacent property. He stated they also have to be careful about trees such as ash trees where there are blights and the potential for future blights and how they will deal with that. Mr. Grenier stated he would be in favor of an exemption where they do not allow for the listing of any tree that is listed as a threatened or endangered species by any Federal or State agency as it is against the law to show those specific locations.

Mr. Grenier stated one of the definitions shown is circumference at breast height but the definition goes directly to diameter instead of circumference, and he asked that they look into this. Mr. Majewski stated he has never seen the circumference designation, and he asked that they clarify the definition.

Mr. Bray stated they are very mindful of any extra work that would have to be done by the Township staff; but with the small number of trees in the program, he does not feel that will be a problem.

Mr. Wallace asked if there are resources they could investigate at the State level that does preservation of heritage type trees or any other organizations that have heritage tree Ordinances to see if they could dovetail with someone else to help with the costs associated with this. Ms. Kirk stated she feels they would have to be registered at the State level then, and not the local level. Mr. Grenier stated there are non profits involved in this.

Ms. Burke asked that they consider the comments made this evening and then bring it back to the Planning Commission.

Ms. Kirk stated she feels in order for a tree to be accepted as a heritage tree, the property owner must sign and Record a Deed of Restriction or Restrictive Covenant; and they could make that subject to the approval of the Township and EAC to verify.

Mr. Bryson stated he feels that there should be a standard form to make it easy, and it would indicate that the property is registered with the tree program; and it could be taken to Doylestown and Recorded. Mr. Bryson stated once it is nominated and accepted, they would have to fill out this standard form so that it could be Recorded. Mr. Bray stated he did rough out a form like that earlier today as he anticipated this might happen. He stated they do have the nomination form that is part of the Ordinance as well as the consent to publish form; but he agrees that they also need the additional registry form.

Mr. Pockl asked if the tree itself get tagged, and Mr. Bray stated he feels that would be up to the owner. He stated they could prepare a plaque if the owner wished. He stated they would issue a paper certificate. Mr. Grenier stated there was, and there will be again, a sign for the cucumber magnolia at the Patterson Farm. He asked if they were envisioning a sign like that, and Mr. Bray stated that sign was expensive. He stated the EAC was not in favor of spending that much money but the Board of Supervisors was excited about the tree; and they spent almost \$1,000 for this plaque which is on a medal pedestal and will last a long time. He stated he does not envision that for the other trees in the program, and he envisions something more simple and less expensive. Mr. Bray discussed what they do at Bowman's Hill to provide information next to the trees.

Mr. Bray reviewed the list of changes the Planning Commission has suggested; and he stated once they have made the clarifications, they will come back at a later time. Ms. Kirk stated she could provide her notes to Mr. Bray.

Mr. Halboth asked that they consider the top of Page 6 Item G 2 where in two locations they state it is unlawful to do certain things; and he stated if that is how they are going to leave it, someone will have to determine what the penalties will be. Mr. Grenier noted Page 7 under Enforcement Remedies for Violation, Item 2 needs items filled in that section as well.

Mr. Grenier stated in the Ordinance it indicates that the EAC would determine certain things, and he asked if this is common that an Advisory Board would have this authority. Ms. Burke stated it indicates that it would be subject to Appeal to the Board of Supervisors for a final decision. Mr. Grenier stated that is just for an Appeal. He stated someone could go to the EAC and ask to be included in the program, and the EAC could then just approve it according to this Ordinance.

Mr. Grenier stated when a Plan comes before the Planning Commission it is for a recommendation for approval which then goes to the Board of Supervisors; and he asked if a tree getting into the program should go first to the EAC for a recommendation and then to the Board of Supervisors to vote on. Ms. Kirk stated she felt that was in the Ordinance. Mr. Bray stated the EAC does not make policy, but they can make recommendations.

Mr. Pockl stated in the Ordinance they have Permits for removal or major pruning, and he asked about relocation of a tree. He stated everything they have talked about are large trees; however, the minimum requirement is 9" circumference which is a relatively small tree that theoretically could be transplanted or relocated onto a property, and he asked if they considered that. Mr. Bray stated they had not considered that. Mr. Bryson stated there could be heritage trees that are relatively small depending on the species.

Mr. Pockl noted the Section "Enforcement – Remedies for Violation" and asked what would happen if a contractor goes in and puts in a pool and the heritage tree on the property dies twelve months later. Mr. Bray stated the pool should not have been built in the first place. Mr. Pockl stated the Township would not be out there every day, all the time inspecting how the contractor is doing the work. Mr. Dresser stated "if it dies, it dies." Mr. Majewski stated he feels this is something the Township would have to be cognizant of to make sure that they had an appropriate tree protection fence around it although that does not guarantee that it will live. He stated if the tree dies, that is just something that could happen.

Mr. Grenier stated in the Section on the Tree Protection Plan, it states, "It shall be prepared by a certified arborist," and he stated most of the tree protection plans they do are with Erosion Sediment Control Plans are prepared by civil engineers, landscape architects, and surveyors. He stated there are guidelines published by the Conservation District so an arborist would never look at one of those Tree Protection Plans. He stated he does not feel it should have to be prepared by a certified arborist. Mr. Pockl stated he feels they should indicate that Plans for Building Permits should have the tree surveyed, the drip line shown, and the size and the species because they do not always get that. He stated if there is a heritage tree on the property it should be individually surveyed and pointed out.

Mr. Bray asked what they should include if they do not use the term "arborist." Ms. Kirk suggested "or comparable specialist." Mr. Grenier stated they should just have "shall be prepared," and it would not need to be any specific name. He stated it is required for the Plans where they have specific tree protection plan details that are required by the County that would apply to large trees as well.

Mr. Pockl stated while it goes without saying, he feels they should specifically call out that heritage trees should not be used for cabling, roping, signs, lighting, or nailing into. Ms. Kirk stated this would be considered “prohibited activities.”

Mr. Majewski stated they should change “Zoning Director” to “Zoning Officer.”

Mr. Bray stated possibly in December or early next year they can come back to the Planning Commission with the revised draft. He thanked the Planning Commission for their input which he feels will make this a much better Ordinance.

#### OTHER BUSINESS

Mr. Majewski stated the next Planning Commission meeting is November 12, and the formerly Dunkin’ Donuts project will be on the Planning Commission Agenda. He stated Plans are available. He stated they also received an updated traffic study today which is also available. Mr. Majewski stated even though it is Veterans Day, and the Township Office will be closed, they will still have the meeting that evening. Mr. Bryson asked if the traffic impact study that was submitted is for the new development, and Mr. Majewski agreed.

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

Respectfully Submitted,

Chad Wallace, Secretary

