

TOWNSHIP OF LOWER MAKEFIELD
PLANNING COMMISSION
MINUTES – SEPTEMBER 24, 2018

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on September 24, 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: James Majewski, Director Planning & Zoning
Barbara Kirk, Township Solicitor
Isaac Kessler, Township Engineer
Dan Grenier, Supervisor Liaison

APPROVAL OF MINUTES

Mr. Bryson moved, Mr. Halboth seconded and it was unanimously carried to approve the Minutes of May 14, 2018 as written.

SALDO ORDINANCE AMENDMENTS

Recommendation Regarding Tree Replacement Requirements

Mr. Majewski stated in 2016 Boucher & James had done a memo where they had come up with some possible suggestions to change the Ordinance to work better; however, that failed to be progressed by the Planning Commission as there were too many issues that were not satisfactorily resolved. Mr. Majewski stated the EAC has since looked at the Tree Replacement Ordinance and is looking to reduce the number of Waiver requests that are given for Subdivision and Land Development for tree replacement.

Mr. Majewski stated the Tree Replacement Ordinance does not allow for trees that are actually replaced to be counted as replacement trees. He stated there are trees required for street trees, buffer trees, and trees that the developers decides to plant on their own that are required for some reason do not count as replacement trees. He stated one of the suggestions is that those trees should count; and those trees would be street trees, buffer trees, parking lot trees and any tree that is planted would count as replacement trees for what is due.

Mr. Bryson stated the last time the issue he had was that there was a recalculation that was trying to reduce the number of trees and he did not feel that was the right thing to do; however, he is in agreement with the Ordinance now being proposed. He feels this is more reasonable and is an appropriate way to handle this.

Mr. Wallace stated the complaint with the Tree Ordinance was that it was onerous plus it was not being applied and Waivers were being granted. Mr. Bryson stated everyone was asking for a Waiver because it required so many trees and they could not physically be put on the Lot.

Mr. Grenier stated he was on the EAC prior to becoming a Supervisor; and the first thing he had asked for when he got on the EAC was to “tweak” this Ordinance. He stated he is familiar with many Tree Ordinances in other areas, and he felt ours was a little onerous. He stated he had suggested that credit should be given for planting each tree. Mr. Grenier stated they ran numbers to see how it would impact if it were changed; and they found that while there was not a lot of change for most projects, it did simplify the process and made it a lot easier for the developers to understand what their requirements were and a lot easier to do the math. Mr. Grenier stated they are also giving them credit for something they are doing anyway which made sense.

Mr. Wallace noted the Table provided which compares what is proposed to what they have currently, and he feels it brings the numbers to a more reasonable level.

Ms. Kirk stated part of the problem was that the numbers under the old calculation were such that they were so onerous that there were threats of litigation since the Township was asking for more trees than what presently existed on the property.

Mr. Halboth asked what was the intent of the Ordinance in the first place and asked if there was a “master mathematical calculation” for the density of trees throughout the Township or an environmental/ecological goal they were trying to maintain or are they just talking about numbers of dollars since he is missing the meaning behind all of these numbers. Ms. Kirk stated initially it was created to prevent a developer from coming in and stripping an area so that there were no trees on the property. She noted particularly Scammells Corner where a private person came in and cut down everything on that heavily wooded area. She stated they wanted to make sure there would be trees to help maintain stormwater management.

Ms. Kirk stated she is not sure how they came up with the calculations. Mr. Grenier stated there are various ways a Township can do this depending on what the Township wants to look at. He stated generally they wanted to replace tree biomass. He stated they wanted to consider the size of the trees being taken down and what they need to replace that with.

Mr. Majewski stated he was part of the drafting of the Ordinance and there was discussion that if there were larger trees being cut down, the more environmental benefit from stormwater, groundcover, and soil stability from the root system would be impacted so the larger the tree that is cut down, the more you would have to replace.

Mr. Halboth asked if the revisions that are being proposed could be tied back to an original base line calculation that says they are still basically achieving most of what the original intent was. Mr. Bryson stated the requirements were resulting in a calculation of replacement trees that would not fit on the site when they included the street trees, parking lot trees, etc. He stated what is being proposed is a way to keep it manageable. Mr. Halboth stated he felt the previous conversations they had varied a little too far into economic matters, etc. which he did not feel was the scope of the Planning Commission; and Mr. Bryson agreed. Mr. Bryson stated if the EAC is in favor of what is now being proposed, he is in favor of it.

Ms. Kirk stated when this was first presented to the Planning Commission in 2016 they had not received materials ahead of time that enabled them to understand what they were achieving and no one other than a representative from the engineer's office at the time was present. She stated she feels the Planning Commission felt that they were being told that the Township should follow what they do in other Townships. She stated the presentation was not given appropriately for the Planning Commission to be able to understand what the driving force was.

Mr. Majewski stated currently there is an issue by some developers as to the ratio of how many trees and of what size. He stated currently for trees that are between 10" and 18" you have to replace with four trees for every one removed of that size, and for 18" to 30" trees you have to replace seven trees for each of those, and if the tree is greater than 30" it is ten trees that are required. He stated for the Dogwood Drive Subdivision, the 279 trees to be removed equated to 1,278 trees; and this where the issue was. He stated when there is a site that is heavily wooded, it becomes more problematic.

Mr. Grenier stated in terms of the developable land left in the Township, the sites left are currently heavily wooded; and this is a way to protect woodlands moving forward and protect open space. Mr. Grenier stated they are currently going through the MS4 Application for stormwater management, and they are getting pollution reduction mandates from the State DEP and their main focus is stream restoration adding forested areas back to stream areas, retrofitting of stormwater basins with more vegetation so the more trees they take out, the more of that they are going to have to do. He stated the Township will be spending money for all of those projects to be in compliance with DEP requirements.

Mr. Bryson moved, Mr. Wallace seconded and it was unanimously carried to approve the proposed Amendments from the Environmental Advisory Council dated June 13, 2018.

Recommendation Regarding Submission Requirements

Ms. Burke stated her only comment on these was with regard to the Notices. Mr. Majewski stated that was already discussed and was authorized to be advertised, and they took into account the comments the Planning Commission had after they saw the initial draft. He stated it has been advertised for adoption by the Board of Supervisors.

Mr. Bryson asked if this is about notification to the neighbors or notification to the public for these Ordinances. Mr. Majewski stated the public notification had two components – one was that when a Plan first comes in that they notify everyone within 1000' feet. He stated initially the draft had 500', and they changed it back to the 1000' feet which was what it had been initially.

Mr. Majewski stated they are also to notify by regular mail and Certified mail and post the property so that people driving by can see that something is going on there. Ms. Kirk stated there was also a distinction between whether it is an abutting or adjacent property within a certain number of feet. Mr. Majewski stated the abutting requirement was just for Minor Subdivision and Subdivision and Land Development required notification to everyone with 1000' feet by Certified Mail so that the Township can guarantee that they did receive notice and also by regular mail and that the property be posted. Mr. Majewski stated the second component is that once you submit the Preliminary Plan they advertise it in the newspaper so that it is out for the whole public to see.

Ms. Kirk stated the section that is being presented tonight is dealing with how many copies of the proposed Plan have to be submitted.

Mr. Majewski stated E is what the Planning Commission had already looked at and recommended. He stated E is not applicable to what they are doing tonight.

Mr. Bryson stated he did not recall that the Planning Commission came to a final conclusion on the public notification to the neighbors. Ms. Kirk stated the Planning Commission made a recommendation as to additional requirements that should be considered. Mr. Majewski stated the Ordinance that had previously been provided to the Planning Commission had a 500' notification, and the Planning Commission recommended 1000'. Mr. Majewski stated all of the Planning Commission recommendations were taken into consideration by the Board of Supervisors. Mr. Bryson stated what is before the Planning Commission this evening is more procedural internally within the Township; and if the Township administrative staff is okay with this, he would agree. Ms. Burke agreed as well.

Mr. Bryson moved, Mr. Wallace seconded and it was unanimously carried to approve the Ordinance for submission requirements as outlined in the memo provided by the Township except for Notice requirements which are not applicable to this.

OTHER BUSINESS

Ms. Kirk stated she would like to present an Amendment to the Planning Commission and she provided information to the Planning Commission this evening noting page 3. She stated Mr. Kaplan came before the Planning Commission approximately a year ago to subdivide an existing Lot on Dolington, and Mr. Merrick Wilson came in as he had the development adjacent to Towering Oaks and made an argument that Mr. Kaplan should not be permitted to install an on-site septic system because the Towering Oaks site had sanitary lines already running through it although those lines were not Dedicated to the Township and it was a private system.

Ms. Kirk stated what she has provided the Planning Commission is the result of the Court's Decision in that Appeal filed by Merrick Wilson. She stated the Court agreed with the Township's argument that you cannot force private property owners to enter into Contracts dealing with sewage disposal. However she added there is one word missing in the Subdivision Ordinance dealing with the connections for sewer systems. She noted Sub paragraph 1 says: "If a sanitary system is within 1,500

feet;” and that is what Mr. Wilson was banking on. Ms. Kirk stated the second provision says: “If public sewer systems are not available, then you can go through and have on-lot septic systems.”

Ms. Kirk stated she would recommend that the Planning Commission strongly recommend that Sub Section 1 should read: “If a public sanitary sewer system...” to avoid any further potential litigation involving this issue.

Mr. Bryson asked if they could say “publicly-owned sanitary system;” and Ms. Kirk stated that would be fine, and if it is done that way, she would recommend that both paragraphs should reflect the exact same language.

Mr. Bryson moved, Mr. Halboth seconded and it was unanimously carried that under current Section 178-103 B of SALDO under Subsection 1 we change the first sentence from “if a sanitary sewer system is within 1500’ “ to state “if a publicly-owned sanitary system is within 1500’” and that the same wording be included in Subsection 2.

UPDATE AND MOTION ON PROPERTY MAINTENANCE CODE AMENDMENTS

Mr. Majewski stated the Board of Supervisors authorized advertisement of an Ordinance to update the Property Maintenance Code. Mr. Majewski stated the Planning Commission had discussed this approximately six months ago, and at that time he had pointed out that the Township was using the BOCA 1993 Property Maintenance Code; and he had recommended an update to the current Property Maintenance Code which at that time was the 2015 Property Maintenance Code.

Mr. Majewski stated since that time the 2018 Code came out, and it was reviewed and felt that is what the Township should be using since that is the latest version. Mr. Majewski asked that the Planning Commission weigh in on this.

Ms. Kirk stated she did not think the Planning Commission had authority to review the Property Maintenance Code; and Mr. Majewski stated while they do not, when the Township embarked on the Ordinance Amendment process, he was bringing things to the Planning Commission since there is not an Ordinance Review Committee. Mr. Majewski stated he wanted to run it past the Planning Commission to see if they had any input. He stated this is not necessary or required, but he wanted to advise the Planning Commission; and the Planning Commission had previously indicated that it made sense to update the twenty-five year old Code to modern standards.

Mr. Majewski stated this will clarify and streamline some things and more clearly define issues that have come up over the past twenty-five years. Mr. Majewski stated it does not really impose additional burdens on homeowners, and it just provides a more clear mechanism for the Township to enforce the Codes legally and for people to be able to follow them because it is more clearly spelled out.

Ms. Kirk stated when they did Act 45, there was a provision that if you did not adopt it the way the State set forth, you had to go through the State Department of Labor. Ms. Kirk asked if adopting the 2018 version will trigger any of the requirements of the State Department of L & I. Mr. Majewski stated the Pennsylvania Uniform Construction Code does not cover Code Enforcement and Property Maintenance, and it deals strictly with all the Building Codes.

Mr. Majewski stated the Township decided to adopt a Property Maintenance Code as a number of other Municipalities in the area have done.

Mr. Halboth asked if the Township's Ordinance that refers to the Code have any additional language modifying the Code or is it a simple reference. He stated in looking at the 2015 Code, there is at least one fill-in-the-blank section that the local Municipality has to make a decision on as to a criteria for taking action. He stated there is at least one gap in the 2015 Code, and he does not know whether it was changed in the 2018 Code since he does not have that Code. Mr. Majewski stated there are a number of those, and he noted Exhibit A where they have the fill-in-the-blanks and those will be completed. He stated they did take out things having to do with the Board of Appeals since that has its own set of procedures, and they did not want it to be in conflict. Mr. Majewski stated they also set the amount of the fine in accordance with State standards. Mr. Majewski stated there is a section about weeds and the height of weeds; and they had to mandate a height, and they went with 10" which is what they currently use; however, they put in an exception for naturalized areas, riparian buffers, managed meadows, and other no-mow Zones as determined by the Municipality so that if they are asking people to use bio-friendly means, they will not be in violation of the Property Maintenance Code by doing so. Mr. Majewski reviewed some other items where they had to fill-in-the-blanks.

Mr. Grenier stated since they update every three years, are we making it so that it will be the latest revision like they did with the Green Building Ordinance. Mr. Bryson stated he is not in favor of that. Mr. Wallace stated something could come up that the Township is not aware of that they would not be in favor of which would automatically be approved. Mr. Majewski stated for those reasons, they did not include an automatic update. Mr. Grenier asked if they should include something that the Township has to at least review this every three years so that

they do not let it go. Mr. Majewski stated they will be doing updates on a regular basis, but he does not feel that is something they would want to quantify in this Amendment.

Ms. Kirk noted the proposed revision under Subsection F – Failure to Comply. Ms. Kirk asked if the current language indicates that it is a fine of not less than \$100 or more than \$1,000 per day for each and every day the violation exists. Mr. Majewski stated that is not what it states, and Ms. Kirk stated that is not what the proposed Amendment states; and she is asking if they have that currently in our Sections. Ms. Kirk stated some of the Property Maintenance Code provisions state that each and every day a violation exists constitutes a separate offense. She stated if someone was given Notice on October 1 to correct a violation, and it remains uncorrected for thirty day, you can technically fine them \$30,000. Mr. Majewski stated the current Ordinance does have that per day item. Ms. Kirk stated she would recommend that it be included since more times than not if you get an “obstinate” property owner who is not willing to correct something as quickly as you say, when you remind them that they could be facing a fine of up to \$30,000 they will probably start working on it.

Ms. Burke stated she does not like that mandatory language; and she stated while she agrees it is a deterrent, she does not like the wording “shall be,” and she suggested that they have more discretion. Ms. Kirk stated it is not automatic, and the Township would have to file a Citation in Court. She stated each and every day that the violation exists constitutes a separate offence. Ms. Burke stated if there was a way to make it a little more discretionary she would be more comfortable with it. Ms. Kirk stated she feels it has “more teeth” to it if they leave it “each and every” day which is what they currently have. Ms. Burke stated while she agrees with that, she does not like “shall be liable.” Mr. Halboth suggested “may be liable for a maximum of,” which would provide flexibility on the valuation; and Ms. Burke stated she would be in favor of that as long as there is discretion. Ms. Burke stated the wording could be “may be liable for a maximum of \$1,000 for each and every day that the violation exists.”

Mr. Bryson stated he has been involved with instances like this, and there is always flexibility with the Township to tell them to clean up and give them a few days, and then indicate that they are going to fine them. Ms. Kirk stated there are requirements, and the Township has to issue a formal Notice of Violation. Mr. Bryson stated while he realizes this, in most cases the entities give them plenty of fair warning that if they do not do something they will fine them; and the “ultimate hammer” is when the Township does fine them, and then they get moving. Mr. Bryson stated his experience is that it is always discretionary, and Ms. Kirk agreed with respect to reaching the amount of the fine.

Ms. Kirk stated personally from enforcing these Ordinance in other cases, you usually go to the District Judge who will enter in an amount; and most times the Judges are fairly lenient. She stated sometimes you get someone who is obstinate and files an Appeal to Doylestown, and the Township would the have to go there on a Summary Appeal and wait a long time for the Hearing just to enforce a fine of \$500. Mr. Grenier stated those hours waiting would be the lawyer's billable time which the Township would have to pay for. Mr. Bryson stated this is why they try not to get to that point. He stated if it costs the homeowner \$3,000 to clean up the trash, they would pay the fine.

Mr. Majewski stated the Township could always file another Citation the following week. Ms. Kirk stated if they are going to put in enforcement provisions, they should maximize them to the benefit of the Township.

Mr. Wallace asked how it currently reads, and Mr. Majewski stated it reads as follows: "A fine of not more than \$1,000 plus Court costs and reasonable attorney fees. Each day that a violation continues after due notice has been served, in accordance with the terms and provisions thereof shall be deemed a separate offence." Mr. Majewski stated this indicates that once a property owner has been given Notice for the violation, if they go to Court on it, they could owe \$30,000 in fines waiting for the Hearing. Mr. Majewski stated he does not believe the Judge would impose that amount.

Mr. Wallace stated Ms. Burke has indicated she would prefer it they changed it from "shall" to "may." Ms. Burke stated she would be in favor of adding the language back in provided they change it from "shall" to "may." Mr. Gruen stated this would allow for Township discretion. He stated the goal is to bring them into compliance.

Mr. Majewski stated it does state "after due Notice has been served" which means that when the Township serves them Notice that they are in violation, if they do not do it the next day, technically we are saying they are subject to a \$1,000 fine. Ms. Burke stated it will state "you may be subject to a fine of not less than \$100 to \$1,000." Ms. Burke stated they are just changing the "shall" to a "may."

Mr. Majewski stated he sees the wording that they used to have being problematic, and there is a reason why it is not in the proposed. He stated he would rather just fine them and go to Court in a timely manner; and if they do not clean it up, they would collect that money and fine them again and just keep fining them. Ms. Burke stated they would then have the argument that they were just there yesterday. She stated she feels if it is spelled out, it clears up that issue.

Ms. Kirk stated from her standpoint with regard to enforcement that language has been beneficial in gaining a resolution.

Mr. Halboth stated this is the Maintenance Code which is for a facility that is “just sitting there,” and it is not the presence of an on-going project of some sort which, in his opinion, would then default to the Building Code. Mr. Halboth stated if he has a contractor working on his house, and for some reason they fall behind because of weather, etc., and there is a pile of trash left as a result of the delays on the project, he does not feel that is the type of situation that should trigger this type of response. He stated when he hears “maintenance” he thinks more of people who have left their homes or buildings fall into disrepair and not someone who is in the process of actually trying to improve it, and then being fined. Mr. Majewski stated it would apply to a property if they do not progress their project in a reasonable manner, and they have had that situation before. Ms. Kirk stated there was a situation where a property owner hired a contractor to put on an addition. She stated the contractor took half the money and left, and ten years later there was still a six foot deep hole along the side of the property with nothing having been done. Mr. Majewski stated the hole was filled in a few years ago, and they built the foundation and garage addition; however, then they did not finish it and there were no doors, windows, etc. Ms. Kirk stated that is the type of scenario that would trigger this for something that was a remodeling project. Mr. Halboth discussed a situation taking in his neighborhood. Ms. Kirk stated in the situation she was discussing it sat there in that condition for a number of years, and it required the threat of Court action to get the property owner’s attention and compliance; and then after they started to work, it again sat there half finished for a number of years. Mr. Majewski stated in that situation, he does not believe the Township ever collected any fines for that and they never enforced “the every day is a separate violation.” Mr. Majewski stated they finally got action by the new Code Enforcement Officer progressing that project forward.

Ms. Kirk stated she still feels they need to include that provision because it gives the Township some “teeth” in their enforcement.

Ms. Burke moved, Mr. Bryson seconded and it was unanimously carried to amend the Code to read “may be liable to a fine of not less than \$100 or more than \$1,000 for each and every day that a violation exists.”

DISCUSSION OF CADDIS DEVELOPMENT

Mr. Majewski stated that the Plans came in for the Caddis Development, and he e-mailed the Planning Commission about this and they were available to be reviewed on-line. He stated if anyone wants a hard copy, there is one available at the Township Office. Mr. Majewski stated this matter is tentatively scheduled to be on the Planning Commission Agenda on October 8. Mr. Majewski stated it is in for Final Land Development Approval. He stated it is the Assisted Living project to be located on Dobry Road, and they received Preliminary Approval from the Board of Supervisors and are coming back for Final Approval. He stated there have not been a lot of changes from Preliminary to Final. Mr. Bryson asked if they will still have the driveway on Oxford Valley Road, and Mr. Majewski stated they will.

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

Respectfully Submitted,

Chad Wallace, Secretary