

TOWNSHIP OF LOWER MAKEFIELD
PLANNING COMMISSION
MINUTES – JUNE 13, 2022

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on June 13, 2022. Mr. Costello called the meeting to order at 7:39 p.m. and called the Roll.

Those present:

Planning Commission: Adrian Costello, Vice Chair
 Dawn Stern, Secretary
 Tony Bush, Member

Others: James Majewski, Community Development Director
 Dan McLoone, Planner
 Barbara Kirk, Township Solicitor
 Andrew Pockl, Township Engineer
 Daniel Grenier, Supervisor Liaison

Absent: Ross Bruch, Planning Commission Chair
 Tejinder Gill, Planning Commission Member

APPROVAL OF MINUTES

Mr. Bush moved, Ms. Stern seconded and it was unanimously carried to approve the Minutes of May 9, 2022 as written.

DISCUSSION AND APPROVAL OF PROPOSED AMENDMENTS TO CHAPTER 173
(DELAWARE RIVER SOUTH WATERSHED STORMWATER MANAGEMENT ORDINANCE)
& CHAPTER 174 (NESHAMINY CREEK WATERSHED STORMWATER MANAGEMENT
ORDINANCE) TO MEET UPDATED NPDES MS4 REQUIREMENTS

Mr. Majewski stated the Township has two Stormwater Management Ordinances – Chapter 173 is the Delaware River South Watershed Act 167 Stormwater Management Ordinance, and we also have Chapter 174 which is the Neshaminy Creek Watershed Act 167 Stormwater Management Ordinance. He stated those two Ordinances cover the entire Township. He stated the Neshaminy Creek Watershed is in the northwestern section of the Township, and that is basically Core Creek which runs through the northwestern part of the Township and drains into Newtown Township and/or Middletown. He stated the remainder of the Watershed flows into the Delaware River to the east and south.

Mr. Costello asked if the Planning Commission has to vote on this, and Mr. Majewski stated it is not a requirement that the Ordinance be reviewed by the Planning Commission. He stated the Planning Commission is required to review all Ordinances that are related to Zoning or Subdivision and Land Development. He stated this is a stand-alone Ordinance; however, the Planning Commission most closely deals with the issues related to stormwater as it relates to development of property so the Township decided to forward this on to the Planning Commission to get their input on the Ordinance prior to it being discussed and advertised by the Board of Supervisors. He stated the Planning Commission could vote to recommend approval to the Board of Supervisors or vote for any changes they feel are necessary.

Mr. Pockl stated the Township has a Permit with DEP who has issued to the Township a National Pollutant Discharge Elimination System Permit for the stormwater discharges that are conveyed through the Township's MS4 system which stands for the Municipal Separate Storm Sewer System. Mr. Pockl stated that is generally all the inlets, pipes, stormwater management basins, and the systems that drain to Waters of the Commonwealth or streams within the Township.

Mr. Pockl stated DEP issues the Permit to the Township, and the Township has two Ordinances as noted by Mr. Majewski – Chapter 173 and Chapter 174 which handle discharges within the Neshaminy Creek Watershed and the Delaware River Watershed. He stated those two Ordinance are virtually identical although there are some differences in the amount of run-off that can be discharged in each of the locations. He stated it is a requirement of Municipalities by DEP to be in compliance with their model Ordinance of 2022 in order to maintain an NPDES Permit for the Township's MS4 system.

Mr. Pockl stated his office completed a comprehensive review of the model Ordinance and compared that with the Township's existing Stormwater Ordinances and found a few items that need to be updated in the Township's Ordinances and those have been included in the Planning Commission's packet. Mr. Pockl stated the Township's Stormwater Ordinances do not contain a section for Waivers, and this would be for developers or property owners who can demonstrate a hardship for which they can request a Waiver from the Township's Stormwater Management Ordinance. He stated an example of a typical Waiver could be that they do not want to remove additional trees on their property in order to install the stormwater management system or their property has the type of soil which, if stormwater were infiltrated

into the ground, it could cause a pollutant concern or a concern for sinkholes being created so that the soils may not be conducive for infiltration of stormwater management. DEP is requiring a section in the Ordinance to include a provision for Waivers which the Township currently does not have.

Mr. Pockl stated the next item is Article 4F which would be the submission of As-Built Plans and Certificates of Completion for any BMPs installed in compliance with the Stormwater Management Ordinance. He stated BMP stands for Best Management Practice, and this would be either rain gardens, stormwater infiltration systems meaning underground stone seepage beds, or raised surface retention basins, etc. He stated planted trees could also count as a BMP. He stated currently the Township does not have a requirement to submit As-Builts for the BMP systems. He stated in the past for large developments, we have required that from developers so that it could be signed off on or if they were getting an individual NPDES Permit from DEP for the project; but for smaller projects if someone were installing a building addition or a pool on their property and they were putting in a small stormwater BMP/infiltration system on their property, that is where As-Built Plans and Certificates of Completion have not been required by the Township in the past; but they would now be required as part of this Ordinance adjustment.

Mr. Pockl stated the next item is Fees and Expenses. He stated the model Ordinance requires that Review Fees would be required for a Site Plan, Administrative costs, review costs, and attendance at meetings and inspections. Mr. Pockl stated currently our Ordinance does require Fees from developers and property owners implementing stormwater management BMPs which does include Administrative costs and review costs and inspections; however, it does not include attendance at meetings and so that is a small language change that will be added to the Ordinance.

Mr. Pockl stated the other item would be Transmission of Written Reports concerning inspections to the Municipality. He stated this would just be inspection reports that get filed to the Township. He stated currently there is no requirement for that in the Ordinance, and it would be a change to make that a requirement.

Ms. Kirk stated before Waivers, there was an Erroneous Permit provision, and she asked if that should be included as well. Mr. Pockl stated it should. He added that any Permit or Authorization issued or approved based on false, misleading, or erroneous information provided by the Applicant would be void without the necessity of any proceedings for revocation. He stated any work

undertaken or use established pursuant to the Permit or other authorization would be unlawful. He stated that language would have to be included in the new Ordinance as well.

Mr. Pockl stated if the Township were not to include these items in their Ordinances, the Township would run the risk of not obtaining their NPDES Permit for the next cycle which begins in 2023. He stated we have to implement these adjustments by September of this year.

Mr. Bush asked Mr. Pockl if he knows of any reason why the Planning Commission should not recommend these modifications. He also asked what would be the consequence for not obtaining the Permit for the Township. Mr. Pockl stated not obtaining the NPDES Permit could have significant consequences, and the Township would have a stormwater management system that would not be allowed to discharge run-off into the Waters of the Commonwealth or they would enact fines that could be a large amount as it would be fines per day every day that stormwater discharges into Waters of the Commonwealth. Mr. Pockl stated he sees no reason why the Planning Commission would hold up a recommendation.

Mr. Grenier stated the EAC saw that this was on the Planning Commission's Agenda. He stated the EAC had worked on the Low-Impact Design Ordinance, Riparian Zone Ordinances, and other items that are discussed within this Model Ordinance; and they have asked that they be given the opportunity to review and comment on the Ordinance to provide input prior to the Planning Commission and the Board of Supervisors voting on it and recommending approval. Mr. Grenier stated he believes that generally the EAC would be in favor of everything that is here, but he feels there are also a couple of opportunities to make it even better based on some of our current Ordinances. He stated the EAC indicated that they could get comments back within the next two weeks with their meeting schedule, and they would provide those comments to the Township and the Planning Commission to be part of the Planning Commission's discussion. Mr. Grenier stated he personally will not vote on anything at the Board level until he gets the EAC's feedback.

Mr. Bush stated he understands that this has to be approved by September of this year so there is time, and Mr. Pockl agreed. Mr. Bush stated he feels it makes sense to hear what the EAC has to say and there is time to get that information and then make a recommendation to the Board of Supervisors. Mr. Pockl stated if the EAC has language they would prefer

over the language that DEP uses he would caution that if words are changed that could fundamentally change the meaning of things, we could run the risk that DEP would not accept those changes.

Mr. Grenier stated in the DEP language it may allow for a Riparian Zone that is only 35' offset from the top of bank whereas we have a couple different Riparian Zones and 35' is less protective than what our Ordinance has. He stated it would be good to get comments from the EAC, and he does not believe they would do anything less than the DEP.

Ms. Kirk stated she was under the impression that our Stormwater Management was acceptable but needs to include the additional provisions that Mr. Pockl just summarized in order to comply with the Model Ordinance, and Mr. Pockl agreed. Ms. Kirk stated she was not under the impression that there were to be any other substantive changes such as riparian buffers as set in our Ordinance versus the Model Ordinance, and Mr. Pockl stated that was news to him as well. Mr. Costello stated he also thought that the Planning Commission was only discussing the changes that Mr. Pockl has indicated to make us compliant. He stated if there are other changes we want make to our Ordinance beyond that, there could be more discussion but for the purposes that were laid out in the Agenda, it was just these changes that Mr. Pockl has discussed. Mr. Costello stated a decision needs to be made on this by September and there could be problems with groups meeting over the summer. He stated he would be in favor of recommending approval of this to the Board knowing that the EAC has the opportunity to go before the Board of Supervisors if they want to with any changes beyond the scope of what was discussed by Mr. Pockl. He stated those recommendations from the EAC could come back to the Planning Commission as well.

Mr. Pockl stated for the most part our Ordinance is in compliance with the DEP Ordinance as written, and the only changes would be what he reviewed with the Planning Commission tonight. Mr. Costello stated we are not taking anything away, and the only thing we are doing is talking about the few items that currently our Code does not have, and we would be adding those to make our Code compliant. Mr. Pockl stated we are not adopting DEP's Model Ordinance, rather we are adding language to our Stormwater Management Ordinance that brings us in compliance with Sections of the DEP Model Ordinance.

Mr. Bush asked what the EAC wants to changes noting that Mr. Grenier gave an example. He asked if they are things that are not in the Model Ordinance that we already have or it is something else. Mr. Grenier stated the issue is that the EAC had not really seen it yet, but they did a quick, cursory review of the Model Ordinance versus “what they have now, and they do not have any background.” Mr. Grenier stated normally when we would do an environmental-related Ordinance it would go to the EAC first versus going to the Planning Commission first. He stated the EAC is usually more technical in nature given their membership, and they would provide technical comments. He stated the Planning Commission would then make their comments after hearing from the EAC, and then it would go to the Board of Supervisors for a vote by September.

Mr. Bush asked if the Planning Commission is scheduled to meet in July, and Mr. Majewski stated the Planning Commission is scheduled to meet on July 11. Mr. Bush asked Mr. Majewski if he anticipates that there will be Agenda items for that date, and Mr. Majewski stated there may be a Plan for 1566 LLC.

Mr. Bush stated with regard to the process, he has talked about this at previous Planning Commission meetings and has also talked about the process with two other Supervisors and what has happened over the last year. He stated he believes that there needs to be good channels of communication between the Board of Supervisors, the Planning Commission, and other Committees like the EAC. He stated even if the EAC’s input is nominal, it should be solicited; and he feels there is time for that to happen. He stated if the Planning Commission is meeting in early July, this matter could get to the Board of Supervisors in plenty of time for them to do what they need to do by September. Mr. Bush stated he is in favor of pushing this off even if just for one meeting as it will give the opportunity for more people to have input and it gives the EAC the respect that they should be getting in this particular instance.

Mr. Bush stated there was another situation recently where he felt input from a citizens advisory board should have been sought but was not sought, and that was the Play For All Report which was recently approved by the Board of Supervisors. He stated it is a Master Plan for Park & Rec. He stated under the State Statute, there is one Commission in the Township that has advisory input which is the Planning Commission; however, no input was sought from the Planning Commission on the Play For All Report. He stated some stakeholders did give input, but the Plan was approved and really should have been before the Planning Commission at some point for our input as it is involved with Master Planning which is what the Planning Commission is charged with;

and that did not happen. Mr. Bush stated he knows of a lot of stakeholders who were not contacted and whose input was not sought with regard to that Plan. He stated the Library is across the parking lot from the Township Building which is on Township property. He stated they do a significant amount of community programming for all ages, and the Play For All Report had a section in it about extending the Community Center and doing more community programming; but there was no effort to investigate any possibility of any collaboration with the Library where programming is already taking place. Mr. Bush stated this is all about communication, and he feels the Township has done a bad job about communicating with volunteer advisory boards about input. He stated if there are advisory boards, the Township should be using them. He stated this seems to be a re-occurring situation. He stated he would be in favor of letting the EAC have input and the Planning Commission could deal with this in July.

Ms. Kirk stated she would recommend that if the Planning Commission is stating that they have no opposition to the inclusion of the specific Sections in our Stormwater Ordinance for both Chapters 173 and 174, when the memo is drafted outlining the results of this meeting, a copy of that memo would be given to the EAC with the specific provisions that were discussed attached. She stated she feels that the EAC is under a misconception that there is an attempt to try to bring our Ordinance more akin to the Model Ordinance than what we are really trying to do. Mr. Grenier stated he does not feel there is a misconception, but since the EAC was not part of the process, they did not know what “was there.” He stated they were just caught by surprise because they did not get a chance to review this.

Mr. Costello stated while he agrees there should be communication, he does not feel that the Planning Commission was asked to do anything that would change anything in what we have in our Code other than voting on the recommendations to get our current Code to meet the DEP requirements while still maintaining the substance of our Code. He stated we are just adding some Administrative things and making sure we are in compliance with some language, and we are not taking away anything that we already have. Ms. Kirk agreed. Mr. Majewski stated he also agrees, and it is basically all Administrative issues.

Mr. Pockl stated we are tightening some things. He stated requiring an As-Built Plan for a Pool Permit or for when a homeowner installs a storm-water management underground seepage bed to comply with the Model Ordinance is going to be a cost to the homeowners that they did not have previously.

Mr. Grenier asked if this at all changes the definition of impervious. He stated for some reason the Township does not include the area of the actual pool as impervious in our Ordinance, and he asked if this gets us in line with what typical stormwater management rules would talk about. Mr. Pockl stated all this would require is an As-Built Plan for the stormwater management system making sure that as constructed, the stormwater management system is sized for the impervious area that was installed. Ms. Stern stated that is required by the DEP, and Mr. Pockl stated that would be required as part of the new Township Stormwater Management Ordinance. He added it is already required for large developments that have an individual NPDES Permit through DEP. He stated any large development that has a disturbance of more than one acre needs an NPDES Permit individually from DEP.

Mr. Grenier asked if it defines exactly what needs to be included in an As-Built Plan. He asked if a surveyor is needed to go out and take elevations. Mr. Pockl stated it indicates that the “As-Built submission shall include a Certification of Completion signed by a qualified professional certifying all permanent stormwater management BMPs have been constructed according to the approved Plans and specifications. Latitude and longitude coordinates for all permanent stormwater management BMPs shall be submitted at the central locations of the BMPs. If any Licensed, qualified professionals contributed to the construction plans the Licensed qualified professional must sign the Completion Certificate.”

Mr. Costello stated he understands that while these new requirements may be considered by some to be more onerous than it has been in the past, the State of Pennsylvania is indicating the Township has to do this; and Mr. Pockl agreed.

Mr. Costello asked if there is a scenario where the Township would ignore what the DEP is telling us to do and we would not require that. Mr. Pockl stated that would not be wise. Mr. Pockl stated he therefore feels that since we are not taking away anything from our Ordinance and are only agreeing to add things to get us State compliance, unless the Planning Commission has a specific comment or issue on one of the items presented by Mr. Pockl, he does not feel we need to wait to make a recommendation provided we copy the EAC so that they have the chance to see this and weigh in before the Board of Supervisors votes on this. He stated he does not know what the EAC would tell the Planning Commission that would change their recommendation to the Board of Supervisors.

Mr. Bush stated he agrees and he understands from Mr. Pockl stated that if the Township does not do this, the Township would not obtain its Permit and have potentially significant financial ramifications. He stated he agrees that these changes need to be adopted as there is no reason not to adopt them so there would be no reason to wait. He added it does sound like there may be some additional potential changes to the Ordinance unrelated to these specific changes to put these two Ordinances in compliance with the Model Ordinances. He stated the EAC may have other changes, and they could bring them to either the Planning Commission or the Board of Supervisors before September so that they can be included. He suggested that the Planning Commission recommend that the Supervisors adopt these changes but not vote on them until they give the EAC the opportunity to comment if there is anything else that should be changed. Mr. Costello stated he would agree.

Mr. Bush stated a number of meetings ago the Planning Commission was asked to give an advisory opinion on something that the Board of Supervisors had already voted to advertise, so “our opinion meant nothing.” He stated he feels we need to give the EAC the opportunity to comment, not necessarily on these changes, but on any additional changes that they think would be appropriate. Mr. Costello stated he agrees adding that he is not arguing with the spirit of what Mr. Bush is suggesting, but sometimes things do not move as quickly over the summer because a lot of people are away and Boards do not meet as often. He stated he is comfortable with including language in the Motion to suggest that the EAC look at this and make sure that all of their input has been incorporated before the Supervisors make a final decision.

Ms. Stern stated the recommendation would be that this be approved subject to EAC review and comment, and Mr. Costello agreed. Ms. Stern asked if the the EAC has a meeting scheduled between now and the end of the summer since the concern is what would happen if the EAC did not get their review done by September. Mr. Grenier stated he believes that they will meet before then. Mr. Costello stated they will copy this to the EAC; and if they want to have a voice, it would be in their best interest not to take a long time to make their comments. He stated if the EAC were recommending changing anything else in the Ordinance, that would have to go back through the process. Mr. Costello stated hopefully in the future, the EAC would see something like this before it comes to the Planning Commission for a recommendation.

Mr. Grenier stated during his next Supervisors’ Report he can report that the Planning Commission recommended approval of these changes with the caveat that it be sent to the EAC for their review and opinion as well. Mr. Grenier

stated this would also send a message to the Township Administration that they should be including the EAC from the beginning with Ordinances that are EAC-driven as that has not happened recently.

There was discussion as to the wording of the recommendation.

Mr. Bush moved, Mr. Costello seconded and it was unanimously carried to recommend approval of the revisions as presented by the Township engineer subject to the timely review and comments by the EAC before the Board of Supervisors' final review and consideration prior to the DEP deadline.

OTHER BUSINESS

Mr. Majewski reviewed some Plans that may be coming before the Planning Commission shortly.

Mr. Grenier advised the Planning Commission that tomorrow night HARB will be reviewing the renderings for the barn/restaurant at Prickett's Preserve.

There being no further business, Ms. Stern moved, Mr. Bush seconded and it was unanimously carried to adjourn the meeting at 8:26 p.m.

Respectfully Submitted,

Dawn Stern, Secretary