

TOWNSHIP OF LOWER MAKEFIELD  
BOARD OF SUPERVISORS  
MINUTES – OCTOBER 19, 2016

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on October 19, 2016. Chairman Benedetto called the meeting to order at 7:35 p.m. and called the Roll.

Those present:

Board of Supervisors:                    Jeff Benedetto, Chairman  
    John B. Lewis, Vice Chairman  
    Kristin Tyler, Secretary  
    Judi Reiss, Treasurer  
    David Fritchey, Supervisor

Others:                                        Terry Fedorchak, Township Manager  
    David Truelove, Township Solicitor  
    Mark Eisold, Township Engineer  
    Kenneth Coluzzi, Chief of Police

PROCLAMATION HONORING PENNSBURY SCHOLARSHIP FOUNDATION

Mr. Benedetto read the Proclamation Honoring the Pennsbury Scholarship Foundation into the Record. Mr. Jeffrey Smith, President, thanked the Board for the Proclamation. Ms. Sherry Kleban, Secretary, was present and announced their upcoming Banquet on November 12 at the Sheraton Hotel. She stated their speaker will be Pennsbury Graduate and Foundation Recipient, Chris Lehmann, who is the founding Principal of the Science Leadership Academy in Philadelphia. She stated information on the event is on the School District Website for those wishing to attend. Mr. Truelove noted that Chris Lehmann is the son of former Supervisor, Sidney Lehmann.

PUBLIC COMMENT

Ms. Kaaren Steil, Chair of the Historic Commission, announced that they will be sponsoring the Garden of Stones Twilight Tour at the Slate Hill Cemetery at the corner of Yardley-Morrisville Road and Mahlon Drive. She stated it will be on Saturday, October 29 from 3 p.m. to 8 p.m. , and the cost of the Tour is \$5. She stated they will also be selling Lower Makefield Township Mercer tiles for \$5. She stated the Historical Society will also bring their historical maps. Ms. Steil stated information about the Tour is on the Township Website and TV channel.

Resolution. Mr. Lewis stated many in law enforcement support this Resolution as well. He stated they are asking for the opportunity to have their voice heard in Harrisburg. He stated recently Pennsylvania passed Act 192 which was found to be un-Constitutional which limited the rights of Municipalities, and all they are doing in this Resolution is reasserting our rights for local control. He stated with the Municipalities speaking up, hopefully it will have an impact and change the dialogue in Harrisburg.

Ms. Reiss stated she is a gun owner and does not want anyone to take her gun away from her. She stated she sees this as a safety issue, and she does not want people on the no fly list to be able to get guns. She stated she is also concerned about the number of shells in a clip. She stated this is a Resolution only, and they are not making a law. She stated she also wants to make sure the laws they have are enforced, and that they tighten the loopholes.

Mr. Benedetto stated he takes issue with the statement that this is not an Ordinance; and if they are going to pass a Resolution telling the legislators to change the laws, they are then trying to change the laws to restrict gun rights. He stated he feels what they are considering is a waste of time. Mr. Benedetto stated the Supervisors all took the Oath of Office to uphold the Pennsylvania Constitution which talks specifically about the right to bear arms in Section 21 which he read. Mr. Benedetto stated he feels it is safer to have a gun in a park when someone is shooting people as he feels gun-free zones are an invitation to people coming in with guns who do not care about the laws. He stated Section 7 of the proposed Resolution discusses allowing Municipalities to limit gun possession and use on Municipally-owned properties which he feels actually creates a problem that does not currently exist in the Township as the Township does not have a problem with guns in the Parks. He stated he feels they will have a problem if they pass this Resolution or an Ordinance like this. Mr. Benedetto stated Section 6120(a) of the Pennsylvania Uniform Firearms Act expressly preempts local Municipalities from passing gun restrictions, and they are asking the legislators to allow Lower Makefield to have their own gun laws that restrict gun possession. He stated he feels this Resolution is a waste of Township time and resources; and if they pass this, he feels that a resident who is a lawful gun owner who has a license to carry is going to challenge the law which will result in significant legal bills for the Township.

Mr. Fritchey stated he has sympathy with the enhancement of gun safety laws, and he feels the laws that the Commonwealth of Pennsylvania has enacted are riddled with loopholes and exceptions that do not make us safer. He particularly noted straw purchases of guns by people buying them and re-selling them privately to criminals is all too common. Mr. Fritchey stated he also takes issue with large volume clips and civilian ownership of assault weapons. Mr. Fritchey stated he does however see this Resolution as a “feel-good” action without real impact and a

distraction from the Board's duties. He stated the Board of Supervisors do not get to make policy decisions like this. He stated those who feel strongly about these issues should learn the positions of the two individuals running for the Pennsylvania State House of Representatives since the individual who is elected will be in a position to consider these issues. He stated this Resolution is not doing much more than giving an unsolicited recommendation to a body that has not asked for it. He stated he feels the Supervisors are here to do the Township's business and he noted a number of items the Board needs to work on.

Constable Peter LaChance, stated he is a resident of Lower Makefield. He stated his main concern is that too many times groups, individuals, and politicians try to change what cannot be changed. He stated in the Pennsylvania Constitution there is a procedure to make changes, and he does not want there to be any discussion about changing the Constitution unless you go through the procedure for doing so. He stated he feels this Agenda item is a huge waste of time, and does not belong in front of the Board of Supervisors. Mr. LaChance stated the Commonwealth Constitution with regard to firearms and the right to have them is not about hunting, and it is about killing bad people who are going to kill your or your family or somebody else. He stated no people he is aware of in Lower Makefield have an automatic weapon license; and if they are around, the Chief would know about it.

Mr. LaChance stated he is not sure why this particular Agenda item was not taken care of when it first came up and they had the votes to knock it out, and he asked why they had not done that. He stated it seems to him that perhaps there is a possibility that this is a political discussion. He stated if they want to consider this in the future, they should change the Pennsylvania State Constitution as that is the proper procedure. Ms. Tyler stated the reason a vote was not taken when this issue first came up was because there was no public notice and it was not on the Agenda.

Mr. Bob Abrams, Teich Drive, stated most gun owners are very responsible citizens; and it is not the gun owners that are the problem, it is the sanctuary city where a criminal/terrorist comes in and does not care what the Ordinance says. He stated responsible gun owners are doing nothing but trying to protect themselves. He stated it is his decision what he needs to protect himself, and it is not the decision of the Board of Supervisors. He stated he is protected by the Pennsylvania Constitution. He stated the Board should stop trying to control everything and make a political footprint, and instead they should be doing the business of the Township. He stated he feels this Resolution is a waste of the taxpayers time and money.

Mr. Rick Garnier, 31 Homestead Drive, stated he feels they should respect the Pennsylvania Constitution and respects the rights of the people. He stated he feels there are more important things that the Board of Supervisors should be doing. He stated someone coming into Lower Makefield from Falls could be considered a felon because Lower Makefield has an Ordinance that they do not know about. He stated he does not feel there is a gun problem in Lower Makefield.

Mr. David Appelbaum, 39 Breece Drive, stated he respects the Constitution but is also a forty year advocate of gun control and gun safety. He stated he applauds them for putting through something that would advocate gun safety which is not a change to the Constitution but only common sense.

Mr. Mike Ricchini, 1611 S. Crescent Boulevard, stated there are over 4,000 gun laws in the Country. He feels this is a waste of time when the Board of Supervisors should be working on roads and potholes and other local issues. He stated there are no loopholes, and you do have to get a background check. He also stated every gun that is sold at a gun show or on-line goes through a Federal Firearm Licensed dealer so there are no loopholes. He stated the death rate is at 1950s levels so he does not feel there is a great problem. Mr. Ricchini stated in the State of Pennsylvania, if you have a criminal record or are found guilty, you are not legally able to buy a firearm. He reviewed the procedures needed to be followed in order to purchase a firearm in New Jersey which has very strong laws about this yet Atlantic City, Camden, and Newark, are high crime areas.

Mr. Zachary Rubin, 1661 Covington Road, stated he is in support of the Resolution; and he added he disagrees with Mr. Fritchey's interpretation of what a Township is supposed to do. Mr. Rubin stated according to the MPC a Second Class Township is responsible for maintaining roads and the health and public safety of its residents. He stated he feels if they maintain peace in the public parks and Municipal properties, that is part of what a Township is supposed to do. Mr. Rubin stated there is no mention of automatic weapons in the Resolution. He stated for 219 years since the Republic was founded, the Supreme Court never ruled that an individual had a right to carry or bear arms, and it was in 2008 that a Decision was made indicating that an individual does have the right to bear arms. He stated for 219 years the interpretation was that "people" means collective people such as a militia. He stated the 2008 Decision does say they can limit the type of weapons.

Mr. Rubin noted #7 of the Resolution states: "Allowing Municipalities to limit gun possession and use on Municipality-owned properties," and he noted for thirty-four years the Township had that Resolution; and he does not think anyone was shot when it was a gun-free zone. Mr. Rubin stated he feels Mr. Benedetto had a specious argument about having a gun-free zone saying if people could carry, it would prevent mass murders. Mr. Rubin stated last year 33,000 people were killed by gun

violence. He stated he does not know how many people have shot up in gun free zones, but it does not equal 33,000 people. He stated all this Resolution is asking for is that the General Assembly and Federal Legislation change a law. He stated the Board of Supervisors passes Resolutions all the time asking elected representatives to protect our water rights, protection from airplanes, etc.; and this is all they are asking for. He stated no one is asking for them to change the Constitution, and just asking that there be a change to certain parts of the State law that states Municipalities cannot pass stricter gun safety laws than the State Legislature. He stated he strongly supports this Resolution.

Ms. Tyler stated Pennsylvania law provides that no County, Municipality, or Township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth. She stated Section 6120(a) has been interpreted to preempt local Ordinances banning assault weapons. In *Ortiz versus Commonwealth*, the Supreme Court of Pennsylvania struck down local assault weapon bans in Philadelphia and Pittsburgh under what is now Subsection 6120(a). The Court found that the Legislature had denied all Municipalities the power to regulate the ownership, transfer, or possession of firearms. The Court stated that the Pennsylvania Constitution requires that Home Rule Municipalities not perform any power denied by the Legislature. The Court also noted that firearm regulation is a matter of concern in all of Pennsylvania, and the Legislature is the proper forum for the imposition of such regulation.

Ms. Tyler stated that similarly, in *Schneck versus Philadelphia* a Lower Court held that Section 6120(a) preempted a city Ordinance requiring a license for the acquisition of a firearm within the city. On the other hand a Lower Court has held that Section 6210(a) does not preempt Ordinances which regulate firearm possession that is already unlawful. Thus, where plaintiffs attempted to carry firearms into a courthouse in violation of an Ordinance which forbids the possession of firearms in any County facility, and where State law already barred the possession of firearms in courthouses, the Ordinance was not preempted. Later, in *Minich versus County of Jefferson*, the Court rejected a claim that the county lacked authority to enact the same Ordinance. The Court held that the County had authority to enact the Ordinance pursuant to a Statute which allows County Commissioners to prescribe fines and penalties for violations of a public safety Ordinance.

In *Clarke versus House of Representatives*, an Intermediate Appellate Court held that Section 6120(a) preempted several firearm-related Ordinances enacted by the City of Philadelphia in May of 2007. These Ordinances would have limited handgun purchases to one per month, mandated the reporting of lost or stolen firearms,

required a local license to acquire a firearm or bring a firearm into Philadelphia, required annual renewal of this license, allowed a firearm to be confiscated from someone posing a risk of harm, prohibited the possession or transfer of assault weapons, and required anyone selling ammunition to report the ammunition and the purchaser to the Police Department.

Among other things, the City argued that Section 6120(a)'s reference to firearms and ammunition when carried or transported allows local governments to regulate uses of firearms and ammunition that do not involve carrying or transporting them. The court rejected this argument, relying on *Schneck and Ortiz*. The Court also rejected the City's argument that the *Ortiz* decision should be revisited because of changing circumstances particularly the increase of gun violence in Philadelphia. This decision was affirmed, without a published opinion, by the Supreme Court of Pennsylvania.

In *National Rifle Association versus Philadelphia*, an Intermediate Appellate Court held that Section 6120(a) preempted two firearm-related Ordinances adopted by Philadelphia in June, 2008. More specifically, one Ordinance would have banned assault weapons and the second Ordinance would have prohibited any person from acting as a straw purchaser by purchasing a handgun on behalf of an ineligible person. Despite the City's argument that both of these Ordinance only regulated activity that was already unlawful, the Court held that the Supreme Court of Pennsylvania's decision in *Ortiz* was controlling. The Supreme Court of Pennsylvania refused to hear the case on Appeal, thereby affirming the decision without a written opinion.

In 2015, Pennsylvania enacted a law granting membership organizations such as the NRA standing to enforce Section 6120(a). It also allows a plaintiff to recover attorney's fees if successful in the lawsuit.

Section 6120(a) provides:

- (1) No political subdivision may bring or maintain an action at law or in equity against any firearms or ammunition manufacturer, trade association or dealer for damages, abatement, injunctive relief or any other relief or remedy resulting from or relating to either the lawful design or manufacture of firearms or ammunition or the lawful marketing or sale of firearms or ammunition to the public.
- (2) Nothing in this subsection shall be construed to prohibit a political subdivision from bringing or maintaining an action against a firearms or ammunition manufacturer or dealer for breach of contract or warranty as to firearms or ammunition purchased by the political subdivision.

Ms. Tyler stated Section 6120(a) has been held to preclude negligence suits by local jurisdictions against gun manufacturers. In Philadelphia versus Beretta, Philadelphia and a number of civic organizations sued several gun manufacturers, alleging that the defendants' marketing and distribution schemes were responsible for allowing access to firearms by criminals and other prohibited purchasers, thereby harming Philadelphia's residents. Liability was predicated on the defendants' alleged negligence and the creation of a public nuisance.

The Federal District Court, in upholding the Constitutionality of Section 6120, held that the State Legislature may contract the power of Home Rule Municipalities such as Philadelphia. Finding the City's lawsuit was based on power it could only have received from the State Legislature, and that this power had been revoked by Section 6120, the Court dismissed the action, holding that the power to regulate firearms within the State by legislation or litigation now lies exclusively with the State Legislature.

Other State laws also restrict the ability of Municipalities to enact firearm laws. Title 53 PA Constitution Section 2962(g) states that a Municipality shall not enact any Ordinance or take any other action dealing with the regulation or the transfer, ownership, transportation, or possession of firearms. She stated that is the present state of the law in Pennsylvania.

Mr. Lewis stated this Resolution is asking the Legislators to change the laws, and stated it is not un-Constitutional to make a recommendation. Mr. Lewis stated people come before the Board asking them to deal with the FAA as it relates to the Trenton-Mercer Airport and FEMA as it relates to flood issues; and the Board often reaches out to Federal and State agencies to petition them to make changes in their policies, and this is part of the Board's job. He stated he can appreciate that there are some people who do not want there to be any changes to gun laws; however, he is making this Motion because he feels the Township's rights to control what happens on their properties are being limited. He stated he is also making the Motion because he feels gun safety is important and it is important for the Board to protect the health, safety, and welfare of the community. He stated the question of how important this is versus other things the Board does is a fair argument, and he is willing to concede it; however, he does not feel it is a fair argument that just because all these things have been struck down and because the Township had an Ordinance for thirty-four years and the State changed the law, that the Township is no longer allowed to petition the State to reconsider the decision, and he feels that is "way off the charts." Mr. Lewis stated he feels our community would benefit from having the Legislature look at gun safety. He stated instead the Legislature "kowtows to the National Rifle Association," and they do whatever the National Rifle Association tells them to do. Mr. Lewis stated he is asking for Township rights to be restored to where they were five years ago, and they are not asking to take away anyone's weapons.

Ms. Tyler stated Mr. Lewis made reference to the fact that the Board petitioned on Mercer Airport and with flooding issues, but that was because those issues directly impacted Township residents. She stated if Chief Coluzzi were to come to her and tell her that there is a gun problem in Lower Makefield, she would be willing to fight that fight.

Chief Coluzzi stated he sees this Resolution as just a position statement. He stated a few years ago Mr. Garton was asked to relook at an Ordinance because it might have been in violation of the Pennsylvania Constitution, and they had to change it. He stated the chances of changing this at the State level are very slim; however, the Board is entitled to make a position statement. He stated gun safety is a very important issue, and the International Association of Chiefs of Police have been advocating for gun safety for years; although they are not advocating any violation of the Second Amendment or advocating for removing weapons from anyone's hand, but common sense approaches to gun safety have been on the table for years.

Mr. Benedetto stated he has found some of this hypocritical. He stated if they are so worried about the health, safety, and welfare of the citizens of the Township, there is an issue that Supervisor Lewis crafted a Resolution on in May which is Elcon.

Mr. Benedetto stated he will be putting this on the Agenda, and they can vote on this at the next meeting; and they will see who is concerned about the health, welfare, and safety. Mr. Benedetto stated this is an issue that directly impacts the community, and he has seen numerous signs about Elcon in the community.

Mr. Benedetto stated Ms. Baxter will be able to educate the Board on the number of Municipalities which have passed Resolutions to protect their citizens.

Mr. Benedetto stated he feels the Resolution that is being presented does nothing to protect the safety of the Township, and it is a non problem that does not exist in the Township; and he feels it has been brought up for political purposes.

Mr. Abrams stated he had an opportunity to speak to one of the Township Police Officers, and he asked him if the Township offers gun safety courses; and he was advised that they do not. Mr. Abrams stated if they are interested in the safety of the residents, he feels they should bring up a Motion that for a nominal fee, the Township should offer gun safety programs. He stated he feels what is being proposed to be sent to Harrisburg is a waste of time. Ms. Reiss agreed that they should have a gun safety program.

Mr. Lewis moved and Ms. Reiss seconded to approve Resolution No. 2313 urging State and Federal Lawmakers to enact stronger protections against gun violence. Motion did not carry as Mr. Benedetto, Mr. Fritchey, and Ms. Tyler were opposed and Mr. Lewis and Ms. Reiss were in favor.



APPROVAL OF RESOLUTION NO. 2315 APPROVING OPTIONAL 457 DEFERRED COMPENSATION PLAN FOR ELIGIBLE EMPLOYEES

Mr. Truelove stated the employees of the Township have the opportunity to invest in Deferred Compensation Plans which are governed by Internal Revenue Code 457. He stated currently one provider exists with the Township which is ICMA; however, the PBA and some other employees have made them aware of some other options which are available in other Municipalities one of which is Beirne Wealth Management. He stated they offer considerably lower fees than ICMA. He stated the purpose of this Resolution is to offer the employees the opportunity to use this firm for a lesser fee.

Mr. Lewis moved, and Ms. Tyler seconded to approve Resolution No. 2315 approving optional 457 Deferred Compensation Plan for eligible employees.

Mr. Lewis stated he wanted to make sure that there was full disclosure on the fees that they were paying for their retirement plans. Mr. Truelove noted the e-mail from the Plan provider to Officer Pell indicated that the proposed fees for Beirne would be .25 to .5 which is less than the fees through ICMA.

Mr. Benedetto asked if this is a DROP Plan, and Mr. Truelove stated it is not. He stated it is a Deferred Compensation Plan and it something that is available to the employees if they want to engage in it. Mr. Benedetto stated he wanted to make sure that there would not be a significant cost to the Township, and Mr. Truelove stated this is not the Pension Plan. Mr. Fedorchak stated the Township does not guarantee a rate of return for this Deferred Compensation Plan. He stated the employee puts what they want into the 457 Plan which is similar to a 401K; and the Township matches up to a certain fixed number, which is currently \$1,000.

Motion carried unanimously.

DISCUSSION AND MOTION ON TOWNSHIP TREE ORDINANCE

Mr. Benedetto stated his interest in this is to have a change or a revoking of the Ordinance. He stated he feels they should send this to the Planning Commission for their review, and the Board will only discuss it this evening but not take a vote on it. Mr. Benedetto stated he feels the concept of the Ordinance was good keeping the tree canopy in the Township and having developers try to keep as many trees on site as possible, and if not, to pay a penalty; however, he feels it is way too punitive and in every situation he has been involved with Waivers were granted. He stated the Township also granted a Waiver to themselves for the Community Center.

Mr. Benedetto stated every developer including the Township and the School District has asked for Waivers. He stated there are more trees being replaced by other Ordinances than this Tree Bank Ordinance. He stated the Township also has enough money to do all of the projects that Boucher & James looked at, and they have the money to do over 950 trees which is every Phase they talked about.

Ms. Reiss stated she is the Liaison to the Planning Commission, and she does not feel that is the appropriate place to have this reviewed since they do not look at trees or flood zones; and she feels it should be Zoning or the EAC. Mr. Benedetto asked Mr. Truelove if the Planning Commission would be the proper place to review a change in the Ordinance, and Mr. Truelove stated that would be appropriate. He stated there could also be other Committees looking at it depending on what the Board wants to do although Planning Commission is appropriate for the purposes of reviewing Ordinances and changes related to Land Development.

Mr. Fritchey asked Mr. Truelove if the Planning Commission is the only place or the best place for this discussion; and Mr. Truelove stated under the Municipalities Planning Code, the Planning Commission is an appropriate forum to consider Ordinance Amendments and items that deal specifically with Land Development. Mr. Fritchey asked if it is the exclusive one; and Mr. Truelove stated it is not, and it is up to the Board of Supervisors how it wants to determine the process. Mr. Fritchey stated he understands that the initial proponent of the Tree Ordinance was the EAC, and Mr. Truelove stated he believes that it was. Mr. Truelove stated this was part of a comprehensive Ordinance Amendment and was part of the Low Impact Development Ordinance process which took a good part of 2006 to consider, and many different entities weighed in on it including the EAC and Planning. Mr. Fritchey stated he feels it would be appropriate for all interested Boards and Committees of the Township to weigh in on this, and Mr. Truelove stated that would be up to the Board of Supervisors. Mr. Benedetto stated they could do that at the Planning Commission like they did with the Master Plan.

Mr. Lewis stated he strongly opposes the Motion. He stated he cannot speak about specific cases where Waivers were granted because he did not approve them, and he was not here for the St. Ignatius track Waivers; and he recalls that after the Board did this, they felt that they had “rolled over” too easily, and they went back and asked if they could have a little more which he feels was embarrassing and wrong. Mr. Lewis stated as it relates to the School District, he feels that was part of a larger accommodation; and they had in fact agreed to participate and pay the Tree Ordinance fee as part of their original meeting with them. Mr. Lewis stated if the concern is that they have waived in enforcement, that is a fair concern; and he would argue that they should enforce the Ordinance as drafted, and enforce all Ordinances.

Mr. Lewis stated Mr. Benedetto's primary argument was that he feels it is extortion and it is limiting business in Lower Makefield Township. Mr. Lewis stated there are less than 1,000 developable acres left in Lower Makefield, and he feels the primary goal should be to try and find how many of those they can protect through open space. He stated he feels they should enforce the Ordinances; and while he appreciates Mr. Benedetto might want to make a change, he disagrees with his change, and he would like to see draft language before he would move to give it to any of the Committees to review. He stated he would also argue that the Environmental Advisory Council is the proper place for this to get started.

Mr. Benedetto stated the proper place is the Planning Commission, and the EAC can weigh in on it as they have on the Master Plan. He stated other groups in the Township can weigh in on it as well at the Planning Commission. He stated Boucher & James and their arborist can also come in and show other Ordinances and how it works in other Townships. He stated the EAC members can also state why they feel it is a good idea to continue to do this or they may be in favor of changing it slightly. Mr. Benedetto stated he also feels they are continuing to overlook the fact that the Township does have \$250,000. He also stated the practical matter is that it has not once been enforced as written.

Mr. Lewis stated they most recently had a situation where a developer did not want to abide by what they had agreed to as part of the Developer's Agreement; and someone who was an advocate for that particular developer said that we were not being business friendly. Mr. Lewis stated that developer did comply, and there were some modifications made giving them a choice as to how large a caliper of tree would be planted.

Mr. Benedetto stated you would have to know other business owners in the community to know that it is actually a "business killer." He again noted that the Township has \$250,000 that would pay for every Phase of what they just went through and approved.

Ms. Reiss stated it is the lack of Liquor Licenses that is the "killer," and it is not the Tree Ordinance. Mr. Benedetto stated the Board of Supervisors has no control over that.

Mr. Lewis stated they just did a business survey; and going through the raw data there was s no "hue and cry" over the Tree Ordinance nor was there last year. He stated they are asking the business community what are their issues, and some people did complain about the Sign Ordinance. He stated if people were telling them about problems with the Tree Ordinance in the survey, he would give more weight to that.

Ms. Tyler stated she feels the EAC did a wonderful job putting together the Tree Ordinance, and it was well intentioned; however, she feels Mr. Benedetto has a very fair point that the Township has more money and more trees than they have real estate to plant them. Ms. Tyler stated she feels they should keep some in reserve to address Ms. Reiss' concerns about storm damage. She stated she has had discussions with our professionals as to how the Township's Tree Ordinance compares to Ordinances of other like Municipalities, and Lower Makefield's is quite stringent. She stated there are occasions where the legality of the Ordinance could come into question. Ms. Tyler stated she feels they should have a discussion and know exactly what is needed in the Township and review the Tree Ordinance. She stated aside from the Tree Ordinance, other Township Ordinances require street trees and parking lot trees; but the Tree Ordinance does not have an offset for that requirement. She stated because of this, there are occasions when they have to plant more trees than they had taken out; and she feels this is something that should be remediated. She stated there is also an issue that is only going to get worse where the barrier along I-95 was not extended; and if we have extra trees, perhaps we could build a barrier of trees. She stated she feels the Board is just doing their job by reviewing the Tree Ordinance and getting the weigh in from the Planning Commission and the EAC.

Mr. Fritchey stated he feels that the Tree Ordinance serves a good purpose. He stated if they remove mature trees, the amount of water they absorb is not remediated by planting a lot of small trees, and they need to be cautious about that although there may be adjustments needed as to the tariff on developers; and if other Township's Ordinances indicate that Lower Makefield's costs to developers are uniquely high, they should adjust them in some fashion. He stated he feels the concept of the Tree Ordinance is fundamentally sound, and it is to protect the ecological balance of the community. Mr. Fritchey stated as to the issue of whether it is the EAC or the Planning Commission reviewing this, he does not feel they should exclude advice from any Advisory Board if they have an appropriate weigh-in on it. Mr. Fritchey stated they also have Boucher & James who are quite capable of identifying similar communities and what type of Ordinances they have and a compilation and report can be provided to the Board with some guidance on how to move forward correctly. He stated he does believe that they should have an Ordinance that is enforced since if they are constantly giving Waivers and ignoring the Ordinances, it undermines the rule of law in the Township. He stated they need to have defensible Ordinances that are based on reason that have reasonable financial consequences, and be prepared to enforce them.

Mr. Alan Dresser, EAC, stated they want developers to plant trees on their site as opposed to putting money in the Tree Bank. He stated they can only put money in the Tree Bank if the Board of Supervisors approves it. He stated the EAC would rather the developers plant them on the site where they were taken down.

Mr. Benedetto stated at the DeLorenzo's site if they had been required to plant them on the site, they would have had to plant 109 trees on their one acre parcel.

Mr. Dresser agreed that is a site where they could not do it, but there are many sites where you can. Mr. Dresser stated Mr. Benedetto indicated that this has never been enforced, and Mr. Benedetto stated he meant since the time he has been on the Board of Supervisors. Mr. Dresser stated a number of projects met the Tree Replacement Ordinance with no Waivers including Freeman's Farm, Manor Care, Middlemiss, and Moon Nurseries. He stated Bright Farms did not have problems meeting the requirement but wanted to put money in the Tree Bank instead although the Township never collected the money. Mr. Dresser stated there is a lot of construction taking place in the Township.

Mr. Benedetto asked Mr. Dresser if he would have a problem amending the Ordinance, and Mr. Dresser stated he understands the point made by Ms. Tyler that currently they cannot count street trees or parking lot trees as part of the replacement trees; and he would have no problem taking that out. Mr. Benedetto asked about changing the requirement from 10" to 12" before replacement is required. Mr. Dresser stated in Solebury their Ordinance kicks in at 8" so they are more strict than Lower Makefield. Mr. Benedetto noted for the DeLorenzo's tract if the number had been changed from 10" to 12", they would have had to replace significantly less trees. Mr. Dresser stated with regard to the large trees taken down, the Ordinance does not come anywhere near replacing them. Mr. Benedetto stated in many cases the trees have to come down because they are in the middle of the development, so the intent of trying to maintain the trees already on the site is not being met. Mr. Dresser stated the Township tree cover will be met with the replacement trees.

Mr. Dresser stated he feels if they are going to the Planning Commission, there should be a proposal. Ms. Tyler stated she feels the Planning Commission should weigh in on this under the guidance of the arborist and Boucher & James who can provide comparative Ordinances. She stated Mr. Dresser could comment as well. Mr. Fritchey stated he feels the EAC should make a recommendation as well and participate fully. He stated there are no proposed changes at this point. He stated Mr. Benedetto has indicated that he feels that what is required of developers who are paying money into the Tree Bank is excessive and has a negative impact on business. Mr. Fritchey stated he feels most of the Board is willing to look at the situation since there is a pattern where the Board historically has been giving Variances from the Tree Ordinance financial requirements; and if they are consistently giving Variances, it undermines the credibility of the Ordinance and the Board itself. Mr. Fritchey stated he feels they need to have a policy that they are all comfortable with and that they feel works.

Mr. Benedetto stated he would like to see what the Planning Commission in consultation with the EAC has to say about some changes.

Ms. Tyler stated if Mr. Benedetto's statement is correct that the Township has more money and more trees than they need to plant, they should consider an alternative use for the Tree Bank which are other beautification measures such as rain gardens, plantings, etc.

Mr. Fritchey stated he feels a rational approach would be to have Boucher & James do a survey of what other communities are doing that seem to be working compared to Lower Makefield and that there be a discussion with the Planning Commission, the EAC, and any other interested parties. He stated if there is to be a proposed revision to the Ordinance the Township solicitor should get involved once there is a concrete proposal.

Mr. Benedetto withdrew his Motion.

Ms. Tyler moved and Mr. Benedetto seconded that the Planning Commission undertake a review of the Tree Ordinance in conjunction with input from the EAC and the Township engineer's arborist, Judy Goldstein, and look at the Tree Ordinance versus the Comprehensive Plan versus similar Ordinances in other communities versus the potential for tree build out and alternative uses for excess tree funds. Motion carried with Mr. Benedetto, Mr. Fritchey, and Ms. Tyler in favor and Mr. Lewis and Ms. Reiss opposed.

#### UPDATE ON QUIET ZONES

Mr. Eisold stated the work at Stony Hill Road and Heacock is progressing on schedule, and they expect to have Stony Hill open and the work on Heacock completed next week. He stated the work on Edgewood is being delayed until November 9 after the Election, and the sign will be changed to show the new date.

Ms. Tyler asked Mr. Eisold if there is a waiting period or a training period within which the Railroad will have to comply once the Quiet Zones are constructed. Mr. Eisold stated there is a specific process with a specific timeframe, and he will find out all the details. Ms. Tyler stated the residents will be most interested in knowing when the horns will stop. Ms. Tyler asked Mr. Eisold to also find out what the remedy is if there are any issues with the horns continuing. Mr. Eisold stated every train engineer will have to abide by this eventually; but the question is what happens if they do not, and how long until they learn to do that.

#### DISCUSSION AND MOTION ON CSX ENGINEERING/CONSTRUCTION AGREEMENT FOR QUIET ZONES

Mr. Eisold stated this Agreement dated October 4 was provided to the Township, and a copy was sent to Mr. Truelove. Mr. Eisold stated CSX put this Agreement together. He stated initially there was discussion about a charge of over \$300,000, but CSX had intertwined the Quiet Zones work and replacing the crossings at the three intersections which they view as the Township's responsibility. Mr. Eisold stated they all agree the work needs to be done, but that was not supposed to be part of the Quiet Zones project nor would the Township be willing to spend that kind of money for that work. Mr. Eisold stated CSX was asked to revise their numbers which they have done, but he feels the number is still a big number for preliminary engineering, construction inspection, and flagging; and this adds up to \$53,819. Mr. Eisold stated while he feels this is still excessive, it is much less than \$300,000. Mr. Eisold stated the money will be escrowed; and anything not spent should come back to the Township.

Ms. Tyler stated they are asking the Township to pay them in advance for any work they might perform, and Mr. Eisold agreed that is what is in the Agreement. Ms. Tyler asked if that is standard for this type of Agreement, and Mr. Truelove stated he believes it is for the Railroads. Ms. Tyler stated it seems that CSX is telling the Township it is the Township's job to fix the Railroad tracks, and Mr. Eisold agreed they are saying that. He stated CSX has indicated they believe that there is an Agreement somewhere that states that is the case. Mr. Eisold stated the Township may want to take exception to that. Mr. Truelove stated they could approve the Agreement subject to the removal of that item. Mr. Eisold read that Item which is Item 10.2 on Page 5. Ms. Tyler stated she finds it hard to believe that the Township would be permitted to do any work on the tracks upon which the CSX trains run from a liability standpoint. Mr. Truelove stated they also just had the presentation from CSX about the pole they are installing, and he does not feel CSX can put the responsibility back on the Township if it is something in the same area; and if the Federal law gives CSX the right to make all these decisions, it should be CSX's responsibility.

Ms. Reiss noted the problems at Edgewood Road when they put in the third rail; and Mr. Eisold stated that was SEPTA, and they have come forward and are willing to work with the Township on this road issue; and that road will be addressed when the Quiet Zone work is done to minimize the grade change.

Ms. Tyler asked what would happen if they did not approve the Agreement this evening since construction is already being done on the Quiet Zones. She stated she is not comfortable with Item 10.2 and is not comfortable with the \$54,000 number. Ms. Tyler stated CSX is charging them 10% of the cost of the project for engineering for a project they are not engineering.

Mr. Fedorchak asked Mr. Eisold if there are any safety considerations as Mr. Eisold indicated there was flagging component, and he assumed it would be CSX staff that would be performing the flagging; and Mr. Eisold agreed. Mr. Fedorchak stated if there are situations where the CSX trains have to be controlled in some way because of the Township's work, he feels this is something they do need. Mr. Eisold stated SEPTA has been working with the Township on flagging; and while they have tried to get CSX involved, CSX has not attended any of the site visits. Mr. Eisold stated when work was done at Stony Hill Road and Heacock, their track was shut down; and they spoke to some of their field personnel and made sure there were no safety issues. Mr. Fedorchak stated he feels some of the proposed Agreement may be to the Township's benefit. He suggested that they exclude the clauses they are uncomfortable with and consider approving the Agreement with those exclusions. Mr. Eisold stated they have contacted CSX numerous times, and their answer has always been that until the Agreement is signed they do not want to do anything. Mr. Fedorchak stated he does feel that the Township needs to cooperate with them.

Ms. Tyler asked Mr. Truelove which are the terms that cause him concern, and Mr. Truelove stated the primary one is the one Mr. Eisold pointed out which is Section 10.2 on Page 5. Mr. Eisold stated his concern is that it is not the asphalt roadway that is the issue, it is the wood structure that they put next to their rail; and they want the Township to pay for that even though it is part of CSX's rail. He stated the wood has deteriorated in many areas. Mr. Lewis asked if they are moving to a rubberized surface in lieu of the wood; and Mr. Eisold stated the two SEPTA crossings were done with a concrete surface which is very solid and smooth, and lasts much longer than a wood surface.

Ms. Tyler moved, Mr. Benedetto seconded and it was unanimously carried to approve the CSX Engineering/Construction Agreement for the Quiet Zones with the exception of Section 10.2, and additionally CXS should provide actual costs for flagging fees, engineering fees, and construction insurance fees rather than an estimate.

Mr. Truelove stated the Board met in Executive Session and informational items as well as information on a real estate sale and purchase, PBA, and Township litigation were discussed.



APPROVAL OF AMENDMENTS TO SCAMMELLS CORNERS DEVELOPMENT AGREEMENT TO PERMIT A PERFORMANCE BOND IN LIEU OF THE LETTER OF CREDIT.

Mr. Larry Dugan, Senior Vice President of J.P. Orleans, was present. Mr. Truelove stated they had requested consideration some months ago to permit a Performance Bond in lieu of the Letter of Credit for the Scammells Corners project; and in doing so, they have drafted some documents to enable that. He stated the Applicant's counsel has reviewed the documents and agreed to them. The Applicant has supplied the Performance Bond and executed documents reflecting the proposed Agreement subject to the Board's approval.

Mr. Dugan stated they are in the process of refinancing the Scammells community, and as part of that refinancing they are requesting the replacement of the Letter of Credit with the Performance Bond. He stated Mr. Truelove prepared documents which their lender, the bonding company, and the developer have executed; and they delivered the original Performance Bond to Mr. Truelove.

Ms. Tyler asked Mr. Truelove the difference from the Township's perspective between a Performance Bond and a Letter of Credit. Mr. Truelove stated both are permitted under the Development Agreement so this is not something which is out of the norm. He stated a Letter of Credit is a document that is extended by a financial institution based upon the credit of the entity requesting it to secure performance. He stated a Performance Bond is assurity where they pay a fee, and there is one more step than a Letter of Credit to make sure that work is performed in accordance with the Agreement and they back up, based upon their investigation, the performance of the entity requesting the Performance Bond. Mr. Dugan stated a Performance Bond is issued by an insurance company.

Mr. Lewis asked if there is a fee that was paid to have the Township draft the documentation, and Mr. Dugan stated they paid the escrow fees that will be charged by the Township and the Township solicitor was part of this.

Ms. Tyler moved, Mr. Lewis seconded and it was unanimously carried to amend the Scammells Corners Development Agreement to permit a Performance Bond in lieu of a Letter of Credit.

APPROVAL OF CERTIFICATE OF APPROPRIATENESS – CIGAR BARN, 724 STONY HILL ROAD

Ms. Tyler stated the Cigar Barn and Edgewood Café were both contacted about having permanent signs, and they were both responsive. A picture of the proposed sign for the Cigar Barn was shown. Ms. Tyler stated the sign for the Cigar Barn came before HARB at their last meeting, and they recommended approval.

Ms. Tyler moved, Mr. Benedetto seconded and it was unanimously carried to approve the Certificate of Appropriateness for the Cigar Barn.

Ms. Tyler complimented the HARB for looking for consistency throughout the Edgewood Village area. She added the compliance they are getting from the businesses is wonderful.

ZONING HEARING BOARD MATTERS

With regard to the Don and Lorraine Marchand Variance request for the property at 671 Leslie Lane in order to permit construction of a fence resulting in encroachment into special setback of Edgewood Road, it was agreed to leave the matter to the Zoning Hearing Board.

With regard to the Ernest and Carol Martelli Variance request for the property at 2 Simpson Road in order to permit construction of an addition resulting in greater than permitted impervious surface and encroachment into the side yard setback, it was agreed to leave the matter to the Zoning Hearing Board.

SUPERVISORS REPORTS

Ms. Tyler stated they had received from PECO by request through Counsel the quarterly report that they file with the PUC. She stated the Township has not had one of these for approximately two years. She also stated the Township has not had a copy since the \$10 million remedial work in Bucks County was done, and she asked the Solicitor to make a formal request to PECO for the latest local Electrical Reliability Report as it relates to Lower Makefield.

Mr. Benedetto stated the fundraising event for the Lower Makefield Township Community Fund at Makefield Highlands was wonderful. He stated the event was well attended and Makefield Highlands did a great job hosting it. Mr. Benedetto stated as part of the evening they dedicated a bench at the Course in honor of Pete Stainthorpe.

Mr. Lewis stated the Citizens Budget Commission met on Monday and began the process of working through its review of the 2017 Budget. Mr. Lewis stated he understands Mr. Fedorchak is starting to schedule the Budget Workshops. Mr. Fedorchak stated he is looking at introducing the Preliminary Budget on November 16 with Budget Hearings on Monday, November 21, Tuesday, November 22, and possibly Wednesday, November 30 all beginning at 6:00 p.m. Mr. Lewis asked if those meetings will be televised, and Mr. Fedorchak stated they have never televised them in the past.

Ms. Reiss stated Farmland Preservation would like to be put on a future Agenda so that they can explain to the public what they do. Ms. Reiss stated Special Events still needs volunteers. Ms. Tyler stated there are a number of people who were on Special Events previously; however, Ms. Reiss stated most of them do not respond to her e-mails. She stated she will call them again. Ms. Tyler suggested she ask Ms. Ellison to reach out to them to ask for their assistance with the Veterans Parade.

Ms. Tyler reminded everyone about the upcoming Twilight Tour on October 29 at the Slate Hill Cemetery from 3 p.m. to 8 p.m.

Mr. Benedetto stated at the Makefield Highlands event, a representative from J.P. Orleans indicated that while they were working at Scammells Corners, they found different artifacts. Mr. Benedetto stated he told him to contact the Historic Commission so that they might be able to put it on display. Ms. Tyler stated the Historic Commission is going to try to provide a number of artifacts to be displayed at the Community Center.

Mr. Fritchey stated the Annual Veterans Day Parade and Ceremony will take place on Sunday, November 6. He stated there is a Press Release the Veterans Committee provided indicating the Parade begins at 1:00 p.m. with the Ceremony to be at Veterans Square Park following the Parade. All Veterans, Scouts, School, Athletic and Community groups are invited to march in the Parade and attend the Ceremony; and those interested can contact Ms. Becky Cecchine. He stated the Parade is a “shine-only” event, and parking is available at the Woodside Church, the Masonic Lodge, and the Edgewood Shopping Center.

Mr. Fritchey stated the Park & Recreation Board met last evening, and there has been significant Scout participation working on projects in the Township including a trellis at the Inclusive Playground at Memorial Park as well as the planting of several trees. Mr. Fritchey stated at the Park Board meeting they had a Girl Scout Troop make a proposal to build and install five bat houses for the Park system. Mr. Fritchey stated the Revere tennis courts have opened and are being used by those playing pickleball. He stated at Memorial Park, the five Arboretum signs for the initial phase

planted on Arbor Day were installed this morning; and the one kilometer running/walking/biking path has been carved out, and hopefully the asphalt path will be constructed within the next week.

APPROVE AWARD OF 2016-2017 SNOW PLOW CONTRACT

Mr. Fedorchak stated the Public Works Department has recommended that the Board approve Contracts for a number of companies, the names of which he provided to the Board. Mr. Fedorchak stated the Public Works Department can field between fifteen to seventeen pieces of equipment in a snow storm situation; but when there are significant storms, they need additional help as they are responsible for 145 miles of roadway. He stated by adding these seven companies, they can bring in another forty pieces of equipment.

Ms. Tyler moved, Mr. Fritchey seconded and it was unanimously carried to award the 2016-2017 Snow Plow Contract as outlined by the Township Manager.

APPROVE AWARD OF 2016-2017 LEAF COLLECTION CONTRACT

Mr. Fedorchak stated they are recommending the Board approve awarding contracts to a number of companies, the names of which he provided to the Board. He stated the Township can field eight crews on a regular basis during the leaf pick-up program depending on the availability of staff, etc. He stated if the weather is favorable throughout the season, that is usually all that they need; however, if they run into any issues with weather, they need additional help.

Ms. Tyler moved, Ms. Reiss seconded and it was unanimously carried to award the 2016-2017 Leaf Collection Contract as outlined by the Township Manager.

Mr. Benedetto asked if the leaf collection schedule is available, and Mr. Fedorchak stated he was told it is; and they will post it on-line and the TV Channel.

RESCIND SEPTEMBER 7, 2017 AWARD OF 2016-2017 SALT CONTRACT TO MORTON SALT, INC.

Mr. Fedorchak stated at the September 7 Board of Supervisors meeting they awarded a Contract for salt to Morton Salt; however subsequent to that, it was determined by the Consortium that there were some deficiencies in the Bidding process, so the Board needs to rescind that Award.

Ms. Tyler moved, Mr. Fritchey seconded and it was unanimously carried to rescind the September 7, 2016 Award of 2016-2017 Salt Contract to Morton Salt, Inc.

**APPROVE AWARD OF 2016-2017 SALT CONTRACT TO MORTON SALT, INC.  
THROUGH BUCKS COUNTY CONSORTIUM**

Mr. Fedorchak stated it is recommended that the Board award the Contract for salt to Morton Salt at the price of \$56.13 per ton which is approximately \$7.80 less than what was paid last year.

Ms. Tyler moved, Mr. Fritchey seconded and it was unanimously carried to award the 2016-2017 Salt Contract to Morton Salt, Inc. through the Bucks County Consortium as outlined by the Township Manager.

**APPROVE RESOLUTION FOR SALE OF PARK & RIDE PROPERTY**

Mr. Truelove stated they found out this week that they will be able to schedule the Settlement for the sale of the Park & Ride property, and a Resolution is needed authorizing the sale of the property which has already been approved several meetings ago. He stated this Resolution will also allow the execution of all pertinent documents relative to thereto. Mr. Truelove stated the Resolution prepared by his office reflects that information.

Ms. Tyler moved, Mr. Fritchey seconded and it was unanimously carried to authorize the Chairman of the Board to execute the necessary documents authorizing the sale of the property to the Delaware River Joint Toll Bridge Commission as outlined by the Solicitor.

**OTHER BUSINESS**

Ms. Reiss asked what is the earliest time trash trucks are allowed to operate in the Township since trash trucks were on her street at 6:11 a.m. Mr. Truelove stated the earliest permitted times are 6:00 a.m. during the week and 7:00 a.m. during the weekend. Ms. Reiss expressed concern with the noise they are making so early in the morning as trash is being picked up almost every day on her street.

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There being no further business, Ms. Tyler moved, Mr. Lewis seconded and it was unanimously carried to adjourn the meeting at 10:50 p.m.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Kristin Tyler", with a long horizontal flourish extending to the right.

Kristin Tyler, Secretary