

TOWNSHIP OF LOWER MAKEFIELD  
BOARD OF SUPERVISORS  
MINUTES – NOVEMBER 7, 2007

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on November 7, 2007. Chairman Smith called the meeting to order at 7:30 p.m. A moment of silence was held in honor of Officer Chuck Cassidy, a Philadelphia Police Officer, who lost his life last week. Mr. Santarsiero called the roll. Mr. Santarsiero noted the Board earlier this evening held a short public session in order to conduct interviews for Board and Commission vacancies and then met in Executive Session for thirty minutes to discuss real estate matters.

Those present:

Board of Supervisors:            Ron Smith, Chairman  
   Greg Caiola, Vice Chairman  
   Steve Santarsiero, Secretary/Treasurer  
   Pete Stainthorpe, Supervisor

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

Absent:                                Grace Godshalk, Supervisor

Mr. Caiola congratulated Mr. Stainthorpe on his re-election as Township Supervisor and Mr. Maloney on his election as Supervisor. He stated while Mrs. Godshalk and Mr. Santarsiero were not successful in their bid for Election, he feels they should be congratulated for their efforts.

**PUBLIC COMMENT**

Mr. Jim Bray, 12 Terracedale Road, stated at the last meeting Public Comment took almost two hours which he feels is excessive. He stated while he recognizes the importance of public comment, he feels if a speaker cannot make their point in two to three minutes, he feels as a courtesy to others, that item should more properly be discussed as an Agenda item at a future meeting. He asked that the Board consider a proposal to limit Public Comment to three minutes and come up with a program to monitor that this time limit is not exceeded. He feels this would be more considerate to others.

Mr. Santarsiero stated possibly they could have a time limit for Public Comment at the beginning of the meeting and reserve time at the end of the meeting for people who want to continue to speak. He stated in this way they are not pushing back Agenda items as has happened in the past so that people who have come out to a meeting for a particular Agenda item have to stay very late in the evening.

Mr. Smith stated while he recognizes the reasons for limiting Public Comment and the problems with Township Agenda items being interrupted, he also feels Public Comment is very important. He noted the Zoning Hearing Board has a rule that they do not meet beyond 11:00 p.m.; and if they do not complete an item, it is tabled until the next meeting. Mr. Smith stated he would hope that the Township would use common courtesy rather than having a hard and fast rule. He stated Public Comment should not be public debate; and while the Board does have to respond to items which are brought up, he would like to continue Public Comment as it is and if it gets out of hand, they could consider something else in the future.

Mr. Stainthorpe stated he noted at the last meeting that he was concerned about the politicizing taking place by both Parties, and feels that now that the Elections have passed, he feels Public Comment will come back to a normal range of time. He stated he feels everyone should respect each other's time and treat the meeting as a place where Township business is conducted. He stated he would not want Public Comment restricted to a set number of minutes as he feels there are important issues which are brought to the attention of the Board during this time.

Mr. Santarsiero stated he was not suggesting that the public not have a full opportunity to be heard only that if they could not complete their comments in the initial part of the meeting, that there would be an opportunity at the end of the meeting so that the rest of the meeting is not delayed.

Mr. Sam Conti, Farmland Preservation, asked if the Board of Supervisors had an opportunity to meet with the Falls Township Rifle and Pistol Association. Mr. Caiola stated while an offer to meet with them at their facility had been made at the last meeting, those individuals did not have the authority to do this. They did ask that they be considered in the deer management program. Mr. Conti asked if the Board of Supervisors would have an objection to the farmers contacting the Falls Township group and engaging them for their farms. Mr. Fedorchak stated he feels this would be a decision of the individual property owners. Mr. Conti stated he was asking about the Farmland Preservation properties. Mr. Fedorchak stated he feels they should work with the Pennsylvania Game Commission on this, and he agreed to provide contacts. Mr. Smith also asked that he communicate with Chief Coluzzi as well.

Ms. Marielle Wolf, 22 Houston Road, representing the Special Events Committee, reminded everyone about the upcoming Veterans' Day Parade to be held at 1:00 p.m. this

Sunday on Edgewood Road. There will be a Ceremony immediately following at the Edgewood Pocket Park. She stated they will have a large American flag to be carried by Lower Makefield Township and County Politicians. Further information is available on the Township Website.

Ms. Virginia Torbert, 1700 Yardley-Newtown Road, congratulated Mr. Stainthorpe and Mr. Maloney on their election as well as Mrs. Godshalk, Mr. Santarsiero, and Ms. Wachspress on running an excellent race. Ms. Torbert asked for an update on the negotiations with Aark. Mr. Smith stated they are having an on-going dialogue, and this matter was also discussed during Executive Session. Mr. Fedorchak stated he and Mr. Majewski will be meeting with representatives of Aark this Friday. He stated they asked that Aark put together a Land Development Plan as they need to build a number of different structures on the property in order to accommodate all the birds and animals. This will ultimately need to be presented to the Board of Supervisors. Ms. Torbert asked if they will be required to go through Land Development, and Mr. Truelove stated they have to see what they are going to present; and he is in discussions with their attorney. He stated they have been able to discuss this in Executive Session as it involves negotiations, and they can only provide some public information at this time. Mr. Smith stated he has been receiving e-mails about the good work done by Aark. He stated he is optimistic that something will be worked out very shortly.

Ms. Torbert stated she is concerned about the philosophy of the Board noting a prior Board felt that the buildings should be either sold or rented out. She stated she does not feel this is the philosophy of the current Board, and she feels the philosophy should be told to the Township Manager and the Township Solicitor. She stated she felt the idea of having the Aark at Patterson Farm was that this was a non-profit organization, that there was a public benefit in bringing them to the Township, and they were not expecting Aark to rent it as if they were a corporation. She felt Aark would be providing a function, paying utilities, and fixing up the buildings. She stated if this is not the way they are going to proceed and are going to require the Aark to recoup the Township's investment, and get market value, she is concerned about this.

Mr. Truelove stated there are legal issues which need to be considered first. He stated one of the preliminary issues is whether Aark is an organization which can lease the property without requiring the Township to go through a bid process. He stated the Board also has a fiduciary responsibility to the Township.

Ms. Torbert stated she would like some direction in terms of the policy issues. Ms. Torbert stated she is concerned that if this takes too long, Aark will go somewhere else.

Mr. Stainthorpe stated they need to stay within the framework that Mr. Truelove has set up such that the negotiations need to stay private. He stated the Board of Supervisors has

been kept informed, and the Township Manager and the Solicitor know the direction the Board wishes to go. He stated to bring this to a public forum at this time is not appropriate.

Mr. Santarsiero stated the Board of Supervisors is communicating their feelings to the staff as to what they would like them to communicate to Aark in order to get this done. He stated this will ultimately result in an offer to Aark and a discussion as to whether this will work. He stated he believes that there is an interest on the part of the Board of Supervisors to come to an agreement with Aark. He stated they are aware that Aark does have time constraints.

Mr. Smith stated he recognizes the public benefit of having Aark at the Patterson Farm.

Ms. Lisa Huchler-Smith representing the Disabled Persons Advisory Board stated there has been a vacancy on their Board since August but they have not received any resumes. She stated this would be a great opportunity for residents to volunteer their services. Mr. Caiola stated there are also vacancies on the Cable TV Advisory Board, Elm Lowne, and HARB.

#### APPROVAL OF MINUTES

Mr. Caiola moved, Mr. Santarsiero seconded and it was unanimously carried to approve the Minutes of October 17, 2007 as written.

#### DISCUSSION AND MOTION ON ENVIRONMENTAL STEWARDSHIP AWARD

Mr. Jim Bray and Ms. Laura Brandt were present from the Environmental Advisory Council. Ms. Brandt noted the information provided to the Board in their packet on the Environmental Stewardship Award program. She stated tonight they are looking for approval from the Board for this program which they would like to institute next year. She stated all Township residents are eligible whether they be individuals or groups who have made significant achievements in improving or sustaining the quality of the environment especially in the areas of pollution prevention, resource conservation, low-impact development, sustainability, environmental education, and environmental leadership. If the winner is a non-profit organization an award of \$500 will be given to the organization. If the winner is an individual, not representing a non-profit organization, they must donate the \$500 award to one of the following environmental organizations: Bowman's Hill Wildflower Preserve, Five Mile Woods, Friends of the Delaware Canal, or the Delaware Riverkeeper Network which were selected because of their environmental awareness concerns. Ms. Brandt stated they are accepting nominations from January 1, 2008 to September 30, 2008. The winner will be notified by

November 30, and they hope to have the award presentation at a Board of Supervisors' meeting in December, 2008. Ms. Brandt stated anyone in the Township can make a nomination. Ms. Brandt stated information will be posted on the Township Website, distributed to Schools and Scout Groups, other organizations, and it will be advertised in the local newspapers.

Mr. Stainthorpe asked if there will be one award or one for each of the categories, and Ms. Brandt stated there will be only one award. Mr. Smith asked who will fund the award, and Ms. Brandt stated the EAC does have a Budget. Mr. Bray stated because of the Smart Power program, they partnered with Community Energy and they receive \$20 for every new membership which they feel this will be enough to fund the award for the initial year. Thereafter, they feel their Budget will pay for it.

Mr. Smith asked if they have given any consideration to doing a matching award of \$500 to a High School Senior as a Scholarship. He stated he feels there are people in the community who would help fund this Scholarship. Mr. Caiola stated he feels the Board of Supervisors would be willing to help support the funding effort for this second award. Mr. Bray and Ms. Brandt stated they would be in favor of this.

Mr. Stainthorpe moved, Mr. Caiola seconded and it was unanimously carried to approve the Lower Makefield Township Environmental Stewardship Award Program as presented and modified this evening.

#### DISCUSSION AND MOTION ON ELM LOWNE

Ms. Anita Grossman, 1368 Heller Drive, congratulated Mr. Stainthorpe, Mr. Santarsiero, Mrs. Godshalk, Mr. Maloney, and Ms. Wachspress on how they conducted themselves during the campaign. Mr. Smith stated he feels it was good to be able to televise the debate and learn how the candidates felt about the various issues.

Ms. Grossman thanked Mr. Caiola, Mr. Santarsiero, and Mr. Smith for visiting her home so that they could hear the sound of the parties at Elm Lowne. She also thanked the entire Board for putting a moratorium in place for booking any additional events. She stated even if they could control the amplification of the microphone, music, and the DJ, they could still not control people from enjoying themselves at a party which also generates noise. She played a short recording of sounds from a recent party at Elm Lowne. She presented a petition signed by sixty-two residents who live in the neighborhood. She stated these signatures were collected in a two-day period during which time she was unable to contact a number of residents. She stated this is a Residential piece of property that is being used for Commercial purposes. She showed a map of the property which is surrounded by residences.

Mr. Smith stated he was concerned with defraying some of the costs of maintaining Elm Lowne which is an expensive property to maintain. He stated they now question whether what they agreed to was an appropriate way to defray the costs. He stated he feels the Board now recognizes that this is a problem, but they must decide what they can do now to correct the situation. Mr. Smith stated he recognizes that this is a quality of life issue. He stated they do have a Contract that was entered into, and they must consider the legal ramifications of this as well. He stated they did place a moratorium on any further functions being booked. Mr. Smith stated they must also consider the functions which have already been booked for 2008.

Mr. Stainthorpe stated when Open Aire Affairs came to the Board it seemed like a good way to fund Elm Lowne since the Township was not doing a good job of marketing the property. He stated they did not consider the Zoning implications and he now sees that this is a Commercial enterprise being run in a Residential neighborhood. Ms. Grossman stated she does not feel what was done was done with any malice, and the Board did not realize the impact it would have on the residents. She stated with respect to the Contract, she feels there is no reason why the Contract cannot be terminated this evening. Mr. Santarsiero stated he agrees that this use is interfering with the residents' right to enjoy their property.

Mr. Santarsiero moved and Mr. Caiola seconded to terminate the Contract with Open Aire Affairs pursuant to the terms of the Contract within the next six months except that the remaining events scheduled be allowed to take place pursuant to the terms of the Contract provided that Open Aire Affairs agrees not to schedule any additional events at the property from this date forward.

Mr. Santarsiero stated if they do not allow for the affairs already booked to take place, the Township would be open to suit by those individuals who have already booked events at the property. Mr. Caiola stated with respect to the affairs which are still to take place, they need to ensure that they monitor those events so that the sound is different than what has been happening in the past. Mr. Smith stated he hopes that Open Aire Affairs will take the appropriate steps to remedy the situation for the remaining events. He stated if the Chief feels there is a noise problem during an event, he should do what is necessary to control the situation. Mr. Fedorchak stated possibly they can work with the noise engineer to develop a set of performance standards for the remaining events.

Mr. Stainthorpe stated Open Aire Affairs was invited to attend this evening but were unable to attend. He feels before this action is taken, Open Aire Affairs should have the opportunity to be heard. Mr. Caiola agreed and stated since a Moratorium has been placed, there is nothing they could do further at this time. He stated there would be no harm to have a discussion with them and give them an opportunity to speak.

Mr. Santarsiero stated his only concern is that they do not have a legal basis to enforce the moratorium, and it is only voluntary on their part. Mr. Smith stated he is concerned because Open Aire Affairs has had an opportunity to correct the problem in the past; and while they have taken some steps to do so, he does not feel there is anything they will be able to do which will cure the problem any better than what they have done already.

Mr. Truelove stated there are no legal “teeth” in the moratorium other than they are complying with the Township’s request at this time. He stated he would advise that they vote to terminate the Contract at this time, and that Open Aire Affairs be invited to attend the next meeting; and if they are able to convince the Board to rescind or modify the Motion that evening, the Board could do so at that time. Mr. Caiola stated they did receive a letter from Open Aire Affairs relative to the moratorium, and they indicated that they were unable to attend the meeting this evening.

Mr. Truelove stated the Contract does state that either party can terminate the Agreement with six months’ notice without cause. He stated the Board could hear from them at the next meeting. Mr. Truelove stated he understands that since the moratorium was placed, they have not booked anything additional, but it would still be appropriate to take the action proposed this evening so that there would be something to enforce legally going forward.

Ms. Ruth Lox, Heller Drive, stated when she is in her house she is not impacted by the noise. She stated when she is outside heading in the direction of Elm Lowne, it is very loud, and she feels very sorry for the people who live so close to the property. She stated she feels the Contract may be invalid since it is a Commercial use. Mr. Truelove stated if this is the case, it would be the Township’s responsibility since the Township entered into it. Mr. Truelove stated it is a valid Contract noting there is no reference to Zoning in the Contract.

Mr. Jerry Garth, 1396 Heller Drive, stated he is an attorney and he looked at the Contract and appreciates the action being considered by the Board of Supervisors. He stated with regard to the events which have been booked next year, he feels there should be no more parties going forward since it is an illegal use of the property. He feels the laws of the Township should be enforced to prevent any further Commercial use of a Residential property. He suggested that Mr. Truelove provide an opinion on this.

Mr. Smith stated they have identified the legal issues and will seek the Solicitor’s advice as to how to best proceed once they take the first step which is to approve the Motion proposed this evening. Mr. Smith stated he understands that there are fourteen parties already booked, and they do not want a repeat in 2008 of the noise experienced in 2007 by the residents. Mr. Smith stated they also need to address in the future what they can do with Elm Lowne.

Mr. Santarsiero suggested that they vote on the issue this evening and Mr. Truelove can then advise on the ramifications of an earlier ending of further activities on the site.

Mr. Craig Calabria, Miller Place, stated he would like to see the Motion re-stated to only terminate the Contract without comment on the other events which have been booked being allowed to proceed. Mr. Santarsiero stated they need to have further discussion with the Solicitor with respect to the Township's potential liability.

Motion carried unanimously.

#### RE-SCHEDULE NEXT BOARD OF SUPERVISORS' MEETING

Mr. Smith stated the next meeting of the Board was scheduled for 11/21/07 which is the evening before Thanksgiving; and it has been suggested that the meeting be re-scheduled. Mr. Santarsiero moved, Mr. Caiola seconded and it was unanimously carried to re-schedule the 11/21/07 meeting to 11/28/07.

Mr. Santarsiero asked that the Elm Lowne matter be put on that Agenda for an update.

#### APPOINTMENTS

Mr. Santarsiero moved, Mr. Caiola seconded and it was unanimously carried to re-appoint Helen Heinz to the Historical Commission and appoint Elaine Low to HARB.

#### SIGN MYLARS FOR FIORELLO GROVE

Mylars were signed following the meeting.

#### SUPERVISORS' REPORTS

Mr. Stainthorpe stated he understands the Township Channel will be on-line shortly on Channel 29 on Verizon.

Mr. Caiola stated the Regional Traffic Task Force did consider the report at length at their meeting, but no official action was taken. There was no firm vote to suggest that this was the final report. He stated there are still issues to be resolved and there is still opportunity for all of the communities involved to offer their recommendations and comments. The report will be provided to the Board of Supervisors. The Regional

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Traffic Task Force will next meet in March, 2008. Mr. Smith thanked Ms. Torbert and Ms. Herman for attending the Regional Traffic Task Force meeting.

Mr. Smith again noted the upcoming Veterans' Day Event to be held on Sunday at 1:00 p.m. He stated there will be a bus to pick up those who are participating at the Yardley Borough event to be held earlier that day. He stated uniforms are not necessary.

There being no further business, Mr. Santarsiero moved, Mr. Stainthorpe seconded and it was unanimously carried to adjourn the meeting at 8:55 p.m.

Respectfully Submitted,

Steve Santarsiero, Secretary