

TOWNSHIP OF LOWER MAKEFIELD  
BOARD OF SUPERVISORS  
MINUTES - MAY 20, 2008

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on May 20, 2008. Chairman Maloney called the meeting to order at 7:30 p.m. noting that the Board met in Executive Session prior to the meeting to discuss legal matters. Ms. Appelson called the roll.

Those present:

Board of Supervisors:           Matt Maloney, Chairman  
  Ron Smith, Vice Chairman  
  Terri Appelson, Supervisor (left meeting in progress)  
  Greg Caiola, Secretary  
  Pete Stainthorpe, Treasurer

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

**ANNOUNCEMENT BY MS. APPELSON – RESIGNATION FROM BOARD OF SUPERVISORS AND ACCEPTANCE OF RESIGNATION**

Ms. Appelson stated she must resign her position of Supervisor with regret and disappointment and has submitted a letter of resignation explaining the basis for her resignation. Ms. Appelson stated in March she was offered a position with the New Jersey Attorney General's Office to serve as Deputy Attorney General in the Department of Law and Public Safety, and while interviewing for the job there was no indication that serving as a Township Supervisor in Pennsylvania would be of concern or a conflict of interest. It was not until after she began working at the Department of Law and Public Safety that concerns were raised. She stated the Board of Ethics of the New Jersey Attorney General's Office advised that it was a conflict of their Board of Ethics rules for any high level employee or legal staff to engage in any political activities including any elected office that is partisan in nature. This prohibition applies even to those positions held outside of New Jersey. She stated she sought an initial review of this Ethics directive, but was unsuccessful in her attempts to convince the Ethics Board that such a prohibition should not apply to political positions held in Pennsylvania. She stated she has been directed by her employer to resign her position as Township Supervisor and has been advised that she may not seek election. Ms. Appelson stated she therefore is submitting a letter of resignation.

Ms. Appelson stated she regrets having to resign the position as she was enjoying serving the community and was looking forward to the opportunity to continue to serve the residents of Lower Makefield after the Election. She stated over the past few months she had the honor of interfacing with a wonderful group of people and feels privileged to have been able to work along side such an honorable and committed Supervisory Board which has always demonstrated its steadfast commitment to maintaining and improving the quality of life in Lower Makefield. Ms. Appelson stated she also had the privilege of serving as liaison to the Environmental Advisory Council, the Planning Commission, and the Sewer Authority and has been consistently impressed by the vast knowledge, expertise, and dedication the members of these Commissions have. She expressed her gratitude to the Board of Supervisors for giving her the opportunity to serve as Township Supervisor and apologizes for this unanticipated chain of events that have occurred outside of her control. She thanked the residents of Lower Makefield for the support and encouragement she received while holding this position. She stated she feels the community will continue its tradition of thoughtful, intelligent decision-making focused on assuring Lower Makefield's well-earned reputation as one of the most desirable communities in which to live.

Mr. Maloney stated he and the Board are sorry that this had to happen and that Ms. Appelson was able to serve for such a short period of time.

Mr. Caiola moved and Mr. Smith seconded to accept Ms. Appelson's resignation.

Mr. Smith stated although her tenure was not as long as he would have desired, Ms. Appelson did a wonderful job, and he feels the Board and Township will miss her. He thanked her for her service. Mr. Caiola stated he feels the State of New Jersey was in error in their decision.

Motion carried unanimously.

Ms. Appelson left the meeting at this time.

Mr. Maloney stated they again have a vacancy on the Board, but have substantially less time to prepare for this than they did for Mr. Santarsiero's absence. He stated he does not feel it would be in the Board's best interest to find a replacement who is part of the upcoming Election, and feels they should seek someone who would take this seat but does not intend to run for the seat in the fall. He stated this individual could then be productive over the next six months. He stated they will accept resumes until Friday, May 29 from interested parties and these should be sent to Mr. Fedorchak. He suggested that those who applied in the fall who are still interested in serving, write a letter indicating continued interest, but they will not need to be interviewed again. He stated he hopes to conduct interviews at the next Supervisors' meeting on June 3 and then render a

decision on June 17. He suggested that the interviews be limited to five to eight minutes per candidate at the June 3 meeting.

Mr. Stainthorpe stated he agrees that the candidates that applied for Mr. Santarsiero's seat should express their continuing interest, but does not feel they need to be interviewed again. He stated he agrees that it should also be opened up to the public

Mr. Caiola agreed and stated the person selected will be serving for six months and will be involved with the Budget so he feels they should select someone who has some proficiency in this area and be up to speed on Township issues. He agrees that the individual selected should not be someone who is running for Election for the position of Supervisor in November.

Mr. Smith stated it is important that they follow the process that was initiated approximately ten years ago when a Township Supervisor passed away. He feels there are a number of individuals in the Township who would be willing to serve for this limited period of time.

Mr. Fedorchak agreed to put up a notice on the Township TV channel and Website tomorrow.

#### APPOINTMENT OF BOARD OF SUPERVISORS SECRETARY

Mr. Stainthorpe moved, Mr. Smith seconded and it was unanimously carried to appoint Mr. Caiola as Secretary.

#### PUBLIC COMMENT

Mr. Sam Conti discussed the sale of the Township's water supply system years ago to PA American Water Company after which rates were significantly increased. He stated when this occurred he made a survey of the water rates of the surrounding communities and found they were all significantly lower than Lower Makefield's rates. He did advise the Supervisors of this, but no further action was taken by the Supervisors. He stated PA American Water Company subsequently sold its business to a German holding company; however, the Corporation continued to run the Water Company with no change in the operation. He stated approximately twenty-four months ago the German holding company wanted to sell back the PA American Water Company. Mr. Conti stated he became aware of the German ownership through notification from the Office of the Consumer Advocate in Harrisburg. He stated at the next Township meeting, he raised

this issue before the Board and provided the notification from the Consumer Advocate to Mr. Santarsiero. Mr. Conti stated he later learned that the principals operating the PA American Water Company bought back ownership of the company. He stated recently the Township residents received notification of a proposed rate increase of approximately 13.8%. He stated they have indicated in the notice that they are looking for a rate increase of \$58 million per year and indicate that this was a result of the Pa American Water Company investing \$310 million to improve water quality, service, and reliability. He stated he asked a Water Company representative what was the source of their funds for this \$310 million, and the representative indicated that it was money made available by the investors. Mr. Conti stated the individual made no mention of the revenue generated by rates paid by the consumers. Mr. Conti stated rate increases have to go through the PUC, and he is suspect of some of the information that the Water Company provides to the PUC. He stated the more costs they have, the more revenue they receive. Mr. Conti expressed concern with the number of workers the Water Company employs to do work that could be done by fewer employees and the costs this generates.

Mr. Conti stated in the notice from the Water Company regarding the rate increase, it indicated that those interested can send a letter to the PUC why you object to the rate increase and express any concerns about the company. Mr. Conti stated he feels they could find a number of concerns if they were to delve into the financials over the past years. Mr. Conti stated on May 1 he received a letter from the Office of the Consumer Advocate and they relayed the same information provided by the PA Water Company. They also indicated that over the next several months, the Office of the Consumer Advocate will represent the interests of the consumers and will participate fully in this case. Their expert witness will review the filing including costs and expenses claimed. He stated they will also request that the PUC schedule Public Hearings in areas served by PA American Water Company and requests for a Public Hearing will be granted if the PUC determines there is substantial interest.

Mr. Conti suggested that the Township Supervisors take a more active interest in looking at these rate increases and get copies of the filing, financial statements, and work with Mr. Santarsiero so that he can represent the Township with the PUC. Mr. Maloney stated the Board will consider what they feel is a potential way to go forward with this request.

Ms. Kaaren Steil, 1027 Darby Drive, stated she is a member of the Historic Commission. She stated they held their Second Annual Open House Tour on Sunday, May 3; and despite the inclement weather, more than 100 guests traveled by trolley to visit historic buildings in the Township and the Garden of Reflection. She reviewed the events which took place that day. She stated the Lower Makefield Tiles and the Historic Landmark Books which were sold at the event are still available for sale in the Township Office and the Township Tax Office. Ms. Steil stated some of the Historic Commission members will travel tomorrow to the Designer Showcase House in Solebury to get ideas on the work necessary to possibly transform the Janney-Brown House as a creative, designer

showcase house in the next few years. She stated the Township Budget already provides upkeep maintenance at the Janney-Brown farmhouse which would already be taken care of should this event become a reality. She stated to use and keep a Township treasure in the public eye, the Historic Commission is entertaining another use for the Janney-Brown House on the Patterson Farm property and this would be a temporary historical display on the first Sunday of each month between the hours of 1:00 p.m. and 4 p.m. She stated the displays would be changed monthly and there are many interested groups offering what they have to share with the public. She stated there would have to be a small monetary donation given by those going through the home. Ms. Steil stated the Historic Commission is also continuing to work on the oral histories of long-time residents. She stated they are also still collecting pictures for the proposed book that would be written about the Township. She thanked Mr. Fedorchak for attending their meetings and Mr. Maloney for attending the Open House.

Mr. Harold Koopersmith, 612 B Wren Song Road, thanked the Board of Supervisors for opening up the Pool this weekend and stated he hopes it will be another great season. Mr. Koopersmith noted a circular he received for the Primary just concluded which he feels was character assassination. Mr. Smith stated he feels he was the victim of two smear campaigns and he appreciates Mr. Koopersmith's candor.

Mr. Stephanie Weinstein, 1528 Brock Creek Drive, stated she understands that the Board did address the train horn issue in the past, but she would like to have this issue brought up again because of the train horns that are blowing directly in her back yard. She stated she is a mortgage broker and a real estate agent and this affects the value of the homes. She stated she did look online and learned about the quiet zones; and while she understands that this can be expensive, she is willing to work on this with the Township. She stated the trains are much more frequent and are louder than when she first moved into her home five years ago. Mr. Majewski stated about one year ago the Township made Application to the Federal Government to silence the train horns; but unfortunately after a lot of research and working with CSX, it was determined that they could not silence the train horns because the circuitry that exists at all the crossings is antiquated, and without upgraded circuitry, they cannot silence the horns. Ms. Weinstein asked how they could get the circuitry upgraded, and Mr. Majewski stated CSX would have to upgrade the circuitry. Ms. Weinstein asked what the people in the community can do.

Mr. Smith stated they were looking into whether it was feasible to have the quiet zones as well as the conduct of the engineers on the trains as to their use of the horns. He stated he felt they were going to follow up with CSX about the decibel level of the horns. Mr. Caiola stated he felt CSX and others indicated it was a safety/liability issue. Mr. Smith stated SEPTA trains are quieter than CSX although there could be different rules and regulations. Mr. Stainthorpe stated he recalls that what they would have had to do was so onerous it would have been almost impossible to monitor it as you would have to have the exact time, train number, etc. which would involve being right at the tracks.

Ms. Weinstein stated she would be willing to do this. Mr. Stainthorpe stated the Board did consider this issue for months. He stated he saw in the news recently that there is a quiet zone in Edison, New Jersey; and the cost to do this was in excess of \$1.5 million which is not something the Township could afford to do. Mr. Majewski stated technically it is not currently feasible to do this because of the presence of the SEPTA train lines and the electronic interference generated by the electric wires; so that the technology needed to establish a quiet zone does not work under these conditions. Mr. Caiola stated the Board did commit approximately a year ago when they stopped discussing this that they would remain updated on what is happening technology-wise, although they would still have to consider the costs.

Mr. Maloney stated if there is a way to monitor the train noise of the CSX trains, this is something that the residents could work on if they would like to do this. He stated they may be able to work with CSX to see if there is a procedure for monitoring the behavior of the engineers. Ms. Weinstein agreed to work with the Township on this.

Mr. Smith asked if there has been an increase in the number of loud trains, and Ms. Weinstein stated previously there were approximately four loud trains a day, and now there are approximately twenty to twenty-five.

Ms. Virginia Torbert, Citizens Traffic Commission, stated she does not feel they fully explored the option of monitoring the loud trains once they knew that the quiet zones were not feasible. Ms. Torbert asked if the regulations related to the trains are State regulations or Federal regulations, and Mr. Truelove stated they are Federal regulations. Ms. Torbert stated there has been anecdotal reporting of different behavior by some of the engineers in terms of how long and loud they are blowing the horns, and she feels there must be some mechanism that they can address. Mr. Truelove stated he is not familiar with the remediation proceedings, but could look into this.

Mr. Dave Kimbell, Big Oak White Tail Management Association, stated his group has proceeded to move forward to procure insurance that will allow Lower Makefield Township to be listed as a co-insured as well as the individual properties.

#### APPROVAL OF MINUTES

Mr. Smith moved, Mr. Caiola seconded and it was unanimously carried to approve the Minutes of May 6, 2009 as written.

#### PARK & RECREATION 2015 PRESENTATION

Mr. Maloney stated in January he asked that they engage in a process in the Township of putting together a public version of what the Township already does which is to have a

long-term Plan of the Township. He stated the intent is to show the needs and wants of the various Departments in the Township.

Mr. David Fritchey stated he feels Lower Makefield has one of the best Park systems in the Delaware Valley, and it distinguishes Lower Makefield from any of the other Suburban Townships. He stated the Park system enhances the quality of life and adds to the property values of the residences. Mr. Fritchey stated the Park system is not yet completed and they try from year to year to make it better. He stated in 1979 the Township purchased the Five Mile Woods Nature Preserve, in 1981 they dedicated the Community Pool and Park, in 1989 the front sixty acres of Macclesfield Park was dedicated, Kids Kingdom was dedicated in 1992, the rear thirty acres of Macclesfield Park was dedicated in 1997, the Lower Makefield softball complex was dedicated in 1999, Makefield Highlands Golf Course was dedicated in 2004, and Phase I of Memorial Park was completed in 2006 to include the Garden of Reflection. Mr. Fritchey stated there are other phases to the Park system that they have yet to complete including Samost, Snipes, and the rest of Memorial Park. He stated the Park & Recreation Board meets periodically to plan parks and establish recommendations to make to the Board of Supervisors concerning the policies about parks and ultimately the Board of Supervisors makes final decisions on capital expenditures and the operating Budget.

Mr. Fritchey stated with regard to LMT 2015, the Board of Supervisors asked the Park & Recreation Board to make a presentation concerning how they would spend money over the next five years to attempt to complete the Park system. He stated there are three major capital projects they would recommend completing in order to complete the Park system. He stated the first would be completion of Memorial Park, the second the Snipes tract, and the third is the Samost tract. He stated they feel they would need approximately \$6 million in order to complete the Park system and this could be done through a twenty year Municipal Bond adding that at this particular time, the interest rates are low so it may be an advantageous time to borrow money.

A map of Memorial Park was shown. Mr. Fritchey stated this Park located in the north end of the Township consists of 62 acres. It was purchased in 1996 at a price of \$1.556 million. He stated there was a Comprehensive Plan prepared in 1992 and the planning consultants identified the need for a Community Park which would not be an athletic complex but would cater to families, pick-up games, and provide a wide variety of potential uses. He stated they noted that this was needed because the Township population was rapidly expanding with considerable development in the north end of the Township. He stated they also noted that the land needed to be purchased while open land was still available so that they would not have to begin condemnation proceedings on private residences at a future time. Mr. Fritchey stated in 2000 the Board of Supervisors adopted the final Concept Plan for the Park. This Plan was revised in 2003 in the wake of the events of 9/11, and the Garden of Reflection was built in the Park which was intended to have memorials all along. Phase I of the Park cost \$1 million and

was completed in 2006. The Garden of Reflection was dedicated at that time. He stated at this time they have over \$2.5 million invested in this Park, and they feel there is an additional \$2 million needed to be invested to complete it. He stated from time to time they have sought Grants some of which have been successful and some of which were not. There is currently a Grant Application pending but the Grant money is limited and could be \$100,000 to \$500,000. He stated he feels they would probably have to complete the Park through tax monies or through a Bond issue. Mr. Fritchey noted the plan for the Park and the number of items proposed to be added in Phases II, III, and IV to include tennis courts, a softball field, playgrounds, picnic pavilions, a trail system, and additional parking. He stated currently there are two basketball courts, two sand volleyball courts, community gardens, and restroom facilities as well as the Garden of Reflection. He stated they have owned the tract of land for thirteen years, and have had an approved Concept Plan for this Park for a significant amount of time.

Mr. Fritchey stated the Snipes Tract was purchased in 1998 for \$1.2 million. They purchased this tract because there was an insufficient number of soccer fields in the Township and the turf at Macclesfield Park was being severely degraded because of the tremendous volume of use at Macclesfield Park. He stated the Board of Supervisors approved a Development Plan in 2007. The cost to develop the Snipes Tract would be approximately \$3 million. The result of development would be additional space for soccer fields, particularly for younger children involving approximately ten fields which could be rotated. They would also build a restroom/concession stand/pavilion as a combined building as well as a skate park. There would be parking for 350 cars. They would also continue the bikepath connection along Quarry and Dolington Roads. Mr. Fritchey stated this is a facility that has been laying fallow for ten years and it would be a great benefit to everyone if they could develop this tract. He stated they have children skateboarding at a number of places in the Township some of which are inappropriate and a skate park would fulfill an important need as well as the soccer needs. He commended YMS for investing \$800,000 of their own money to put in a turf field at Macclesfield Park which he feels saved Macclesfield Park while the Township was not developing Snipes.

Mr. Fritchey noted the third project would be the development of the Samost Tract across from the Township Municipal Complex between the softball complex and the Little League Complex. This tract consists of 23 acres and was purchased by the Township in 2000 for \$1.5 million. They estimate it would cost approximately \$1 million to complete the development. Upon completion they feel it would have a 60' and a 90' base line ball field, eight tennis courts, a road to connect softball to baseball, some multi-purpose field space, a tot lot, and some skate park pieces.

Mr. Maloney noted there were Plans shown for Memorial Park and Snipes, but there is not a final Plan for Samost, and Mr. Fritchey stated there has not been a Plan adopted for the Samost Tract as there were a number of possibilities in play one of which was the building of a Senior Center. He stated a proposal could be made to the Board of Supervisors for this Tract if the Park & Recreation Board were directed to do so. He stated the Township has not been spending money for Parks over the last few years; and they felt they already had approved Plans for the two other sites which had not been acted upon. He stated the needs could also change in the future, although he feels the Park & Recreation's vision for this Tract has been fairly constant with the exception of whether or not a Senior Center was to be built.

Mr. Fritchey stated if the Township were to borrow \$6 million, they have projected a schedule showing the approximate annual debt service for all three projects. He stated if there was a Bond Issue, they would probably have to have a 1 mill tax increase. He stated 1 mill generates \$41, which over the expanse of the Township would generate revenue of approximately \$520,000 a year. He stated the current millage rate is 1.53 mills which equal \$60 which he feels is a great bargain as it results in the Park system they have for \$60 a year. He stated if they were to increase this by \$41 to have a Bond Issue of this magnitude, this would be \$101 a year; and he feels this would enhance the quality of life and be of benefit to the Township children, families, and property values.

Mr. Fritchey stated there are other smaller capital projects and maintenance items which would be in the capital budget. He showed a graphic of needs at Macclesfield Park including an upgrade of the lighting system which would cost approximately \$120,000 which they would propose doing in 2011. He stated there is also a significant need for additional restroom capacity at Macclesfield Park and this would cost approximately \$25,000 which they propose to be done in 2012. He stated there is also the need to resurface parking lots which would cost approximately \$100,000 which they propose doing in 2013. He stated there is also the possibility that Field H would have a fence particularly if they were to complete the Snipes Tract and be able to move a lot of the youth soccer venues to that location. The fencing would cost approximately \$50,000.

Mr. Fritchey stated Community Park was built in 1978 and there are four tennis courts and one basketball court. They have discussed converting the tennis courts to basketball courts because there are few Township basketball courts, and they anticipate being able to install additional tennis courts elsewhere.

Mr. Fritchey stated there are also pavilions that need to be added to the Park system and the need for a new truck for the Park crew.

There was discussion on bikepaths. Mr. Fritchey stated in 1995 consultants came up with a Township Bikepath/Greenway Plan, and the Board of Supervisors adopted an Official Map in 1997. The intent of this Master Plan was to have developers complete the links to

the bikepaths where developments were constructed and to do so at no cost to the Township; and that part of the Plan has worked out well. He stated the difficulty is that there were established areas of the Township where no bikepaths had been built and the building of bikepaths or the linkage between segments of bikepaths was interrupted by private property where there were not bikepaths. He stated in order to do all of these link ups, they would have to engage in condemnation proceedings which are costly and often unpopular. He stated there are figures projected for bikepaths which are extremely modest - \$25,000 in 2010, \$45,000 in 2013, and \$50,000 in 2014. He stated they feel this would be used for linking up segments of bikepaths in neighborhoods where all the neighbors were in agreement that they wanted this so that the Township would not have condemnation costs.

Mr. Fritchey stated the Park & Recreation Board recently considered the possible completion of bikepaths in a particular neighborhood which would be a stretch of 4/10ths of a mile of bikepath, and the Township engineer estimated that the construction cost for this would be approximately \$128,000 which would use up the entire five year amount budgeted. It was noted this would be just for construction costs and does not include engineered plans or condemnation costs or litigation costs if they had to proceed through eminent domain. He stated to complete the entire 1997 Plan would be extremely expensive and could be politically infeasible.

Ms. Liney stated for the day-to-day operation of the Park system – approximately one-third is for personnel services, one-third is maintenance and repairs and small capital items, and one-third inter-fund transfers and debt service. She stated the revenue sources are the \$60 (1.53 mills) which for the past decade has been raised only \$15. She stated the program fees and rentals, sponsorships, and Grants are approximately \$200,000 and they have a small amount of fee-in-lieu which this year is expected to be approximately \$50,000. She stated they do balance their revenue and expenditures trying to be fiscally responsible.

Mr. Maloney stated some of the expense is debt service, and he asked when this debt will be retired. Mr. Fedorchak stated he feels it would be in fifteen years. Mr. Maloney stated capital projects aside, what has been described by Ms. Liney are the needs which cannot be deferred. Ms. Liney stated these costs are necessary to maintain the top-notch facilities currently in the Township. Mr. Maloney asked what types of capital projects they have done over the past few years, and Ms. Liney stated they have not done too much.

Mr. Smith stated he served for a long time on the Park & Rec Board and some of these items were discussed fifteen years ago. He asked about the ADA playground proposed for Phase II at Memorial Park. Ms. Liney stated while Kids Kingdom is ADA compliant, this would be a notch-higher. Mr. Majewski stated it would be specifically designed for people with disabilities and is similar to a park that was built in Northampton Township.

Mr. Smith stated he feels such a playground is long overdue and should be a priority. Mr. Caiola stated in New Jersey, they have been successful in obtaining funds for such playgrounds through Grants, private companies, and service organizations. Mr. Smith stated he would be in favor of this as soon as possible. Mr. Smith stated during the Annual Road Tours, they have been discussing these items for a number of years. He stated this is a difficult economic time, but for the Township to remain a first-class Township, they need to make these purchases and acquisitions. He noted the recent partnership between the Township and YMS when YMS built the turf field at Macclesfield Park at their own cost. Mr. Fritchey stated if this had not occurred, Macclesfield Park would be seriously degraded; and this has allowed operations to continue as they are currently in the wake of the decision by the Township not to build the Snipes tract. Mr. Smith stated he feels it is important to improve the Park system to provide for future generations. Mr. Smith noted a Park in another Township where they partnered up with a Corporation to build a recreation facility. He stated he would hope that the Park & Recreation Board would explore corporations and organizations which might contribute to help alleviate the cost of building some of these facilities. Mr. Fritchey stated the Park & Recreation Board has always been in favor of corporate sponsorships.

Mr. Maloney stated in past years there were funds coming in from developers who paid fee-in-lieu of recreation when significant development was taking place in the Township. Mr. Maloney stated they now need to consider what is the right level for the Park & Rec program for the Township when it needs to be financed by the taxpayers and not the developers.

Ms. Liney stated the Community Pool was dedicated in 1981 with a membership of 800 families. The Pool is entering its 28<sup>th</sup> year of operation and has experienced over 100% growth in its membership. The operating budget is a user-based Budget so no tax dollars support the Pool. The Budget addresses the on-going maintenance and administrative items while providing for growth and expansion at the complex. Projects done this season include satisfying the Federally-mandated drain compliance issues, restoration of the dual slides and the tot fountain, renovations to the rear restrooms which were done with in-house labor, and installation of upgraded ultra-violet sanitation equipment for the tot and intermediate pools. They continue to look to the future to balance renovations with fiscal responsibility and recognize that they cannot do everything at once.

Mr. Maloney stated they are now showing in 2012 the significant renovation previously discussed so it appears that this was put off for a period of time. Ms. Liney stated she feels this is the soonest they could do this, but the Park Board will continue to discuss this; and if they were to do this in phases, they could possibly move this up. Mr. Maloney stated this was to be financed with revenue from the Pool and asked if they do not have the fund base to pay for this capital project at this time. Mr. Stainthorpe stated they were always going to have to borrow money to do this, but the borrowing

would be paid from Pool revenue. He stated the problem was how far over Budget the bids came in when they put this out to bid. Mr. Fedorchak stated they put it out to bid twice, and the second time the total cost was \$250,000 over what had been Budgeted, so they decided to consider this further. Mr. Fritchey stated the Pool consultant had provided an estimate which they felt was doable, but the actual bids came in significantly beyond what had been estimated.

Ms. Virginia Torbert , Citizens Traffic Commission, stated they get a lot of feedback from the public about bikepaths, and a number of residents do not understand why the Township does not have more bikepaths. She stated they have advised them about the complications and difficulties involved in extending the bikepaths that were expressed this evening. She asked about the Scudders Falls Bridge situation since in their latest update the Delaware Joint Toll Bridge Commission is still considering putting a bike/pedestrian lane on the new Scudders Fall Bridge on the southbound side, and she asked if the Township is planning for linking this up to something. Ms. Torbert stated if the Toll Bridge Commission is willing to go ahead and fund this, there will be some funds available that the Township could possibly tap into. She stated they are also going to widen Woodside and Taylorsville Roads, and this is the time to try to access some funds. She also noted the economic stimulus funds that are currently available, some of which are available for bikepaths.

Mr. Harold Koopersmith stated he feels the Board needs to be creative in their approach and also feels they should take a survey to see who is willing to pay and who will use these services and develop only one park so that they have to borrow less money.

Ms. Weinstein stated she would suggest that they develop only two of the three Parks and sell the third piece of property for which they do not have a plan and use those funds to get the quiet zones implemented.

#### REVIEW OF FIELDSTONE (HARRIS PROPERTY) ENVIRONMENTAL STUDY

Mr. Nick Casey, Quaker Group, Mr. William Kerr, attorney, Mr. Mark Gallagher, and Ms. Peg Hill, environmental attorney, were present. Mr. Kerr stated they were present two to three months ago to present a Plan for the Harris property, and issues were raised by the Board regarding the fact that there is an old landfill on a portion of the property. The proposal was removal of some of the landfill materials, capping, and closure of the balance of the landfill in conjunction with DEP's Act II process. He stated there were previously questions about the types of materials that would remain in the landfill and questions with regard to the Act II process. He stated on April 23, they did submit to Mr. Fedorchak an Executive Summary which summarized the various environmental studies that have occurred over the years on the site which determined what is in the landfill. As part of that package they also submitted a summary of the history of the development proposals for the property.

Mr. Mark Gallagher presented a power point presentation of the tract. Aerial photos of the site were shown which were taken in 1953, 1970, and 1984 along with photos of the existing conditions. He stated between 1965 and 1970 the site was used for gravel and sand mining and toward the later point of that period leaf and landscaping debris began to be brought to the site for disposal. He stated in 1985 the landfill operations ceased, and this gave a chance for a lot of vegetation to cover the landfill. He stated development occurred adjacent to the site off Long Acre Road to the southwest of the Harris landfill. By 2005 most of the adjacent properties had been developed, and the Harris landfill was seen in the photos to have a good vegetation cover. He stated currently the landfill outside of some larger debris items located primarily in the northern part of the landfill, is mostly meadow with young trees and most people in the area would not recognize that this was an area that the State would have designated as a landfill.

Mr. Gallagher stated there are some areas of debris which are sticking outside of the original soil cap. He noted a picture of the stream channel which drains through the center of the site and there is concrete rubble lining the channel. He stated this part of the site is still unstable. He noted an area along Brock Creek including a slope on the left hand side of the landfill where there is waste exposed and there is at least one seep where the iron floc material is coming out of the landfill and into Brock Creek.

Mr. Gallagher stated the site started as a sand and gravel mine and as was common during that period of time, if someone dug a hole or created a depression, the logical thing to do was to fill it in over time. He stated the Harris Farm was located in a very rural landscape and many times people allowed others to bring materials to their property where there was a hole and just fill it in. He stated they have documentation that the site received some material as early as the 1940's. He stated filling ceased in 1985 when the DEP issued a stop work order and the landfill was closed. He stated at that time a soil cover was placed over the waste which was roughly 2' at its thickest. He stated PADEP investigated the site, and three wells were installed. Sampling of those seepage areas shown in the photographs were collected; and in 1999 the DEP concluded that the landfill posed no threat to the health, safety, and welfare of the public, but they did request that a clean soil cap of 2' be placed over the entire landfill.

Mr. Gallagher stated as part of the Princeton Hydro investigations in 1999 sixty-seven test pits were placed throughout the site, soil samples were taken within the pits, and seeps were tested and found to contain an iron oxide. In 2003, eleven additional pits were excavated, and samples were taken. Three additional wells were installed in 2003 to get a better handle on the groundwater, and in 2005 four additional wells were installed. In one of the wells in 2003, they found a MTBE and the other four wells were taken to locate the extent of that plume. This occurred on the northern part of the site closer to the barns so it was on the north side of the creek. MTBE is an additive to gasoline or diesel fuel and had to do with the cleaning of landscaping equipment which was part of the landscaping operation that was being run from the property and there was

poor “housekeeping” and it got into the groundwater. He stated this was over a two-year period and once they stopped, the plume dissipated. The last sample showed that there was no MTBE in the groundwater.

Mr. Gallagher showed a map which indicated the location of the test pits throughout the site. He stated these were fairly well dispersed throughout the landfill area. He stated they tried to characterize as accurately as possible the contaminants/debris which were there. He noted an area where the bedrock is very shallow and there is a soil cover over the bedrock but there was no waste.

Mr. Gallagher stated based on the sixty-seven test pits, they estimate that there is about 127,000 cubic yards of fill, and 37,000 cubic yards of that is the existing soil cap and that cap is made up 90% of soil, and the remaining 10% is miscellaneous debris primarily concrete and asphalt rubble. He stated the underlying landfill is estimated to be 90,000 cubic yards, 50% of which is soil and topsoil mixed in from road or demolition projects, 10% concrete and asphalt, 20% lumber, timber, and landscape refuse such as leaves, wood, branches, and 20% metal debris and Municipal waste which Ms. Kerr stated under Pennsylvania law is defined as what you would throw away from your house or household waste. Mr. Gallagher stated the types of material they found included rugs and shoes including an area where there is a 5’ thick layer of shoes.

Mr. Gallagher stated they have concluded that based on the sampling results, the groundwater has not been negatively impacted by the landfill contents and there is no dissolved contaminants in the groundwater or in Brock Creek. He stated the MTBE that was detected adjacent to the landfill area closer to the barns and garages on the property were sampled and studied, and the plume was initially identified. He stated subsequent sampling over a two-year period indicated that the MTBE had dissipated, and they could not find them in their samples.

Mr. Gallagher showed a photo of the seepage area along Brock Creek and is the type of seep that is often found along landfills or historic fill areas that look “horrible.” He stated that part of the landfill is saturated with water which creates a “reducing environment,” and iron in a reduced state is gray. Once it reaches the air on the outside of a landfill, it oxidizes and turns red much like rust. As part of this reaction you get an iron oxidizing bacteria that typically associates with that type of seepage. He stated it therefore looks a lot worse than it really is.

Mr. Gallagher stated in 2000 it was proposed to stabilize the Brock Creek bank and cap the rest of the site with 2’ of clean material. He stated in 2003, K. Hovnanian proposed to build single-family homes on the landfill; and because of that change in land use, it was proposed to remove all of the material. He stated the project evolved, and the current proposal was to have a 2’ cap. The Township’s environmental consultant also recommended that they remove 100’ of material from the edge of Brock Creek and from

the property line along the homes on Long Acre Lane. He stated although that is not a requirement for the closure and is typically a requirement for a new landfill, they do feel it makes sense in this case with their overall position that they want to do this in a manner that the Township finds acceptable and is consistent with the developer's ecological objectives for the site. He stated the amount of waste associated with the 100' setback is about 25% of the total waste in the landfill especially along Brock Creek which is the area where the waste is at its thickest.

Mr. Gallagher stated one of the things they wanted to do was make the process as transparent as possible, and they have been working with the Township and their environmental consultants since 1999 as well as meeting with the DEP and sharing information and working with the Township's Environmental Advisory Council. He stated Birdsall Engineering, the Township's environmental consultant, has reviewed the proposed Plan and their last review letter generally accepted the concept. He stated as they proceed with the closure they contemplate working closely with the Township and the DEP through the Act II process.

Mr. Stainthorpe stated he indicated that Birdsall agrees in "concept" and asked if there are details with which they disagree or are there details still to be considered.

Mr. Gallagher stated Birdsall agreed in concept, but had offered some suggestions and the developer has agreed to work with them through the rest of the process and they feel Birdsall's recommendations were reasonable.

Mr. Gallagher showed a cross-section of the removal of fill to 100' from Brock Creek. They will provide an additional buffer between the waste and the edge of Brock Creek. The proposed cap would be a minimum of 2'. He noted the area along Long Acre Road where they are proposing to remove 100' of the waste along the edge of the development.

Mr. Gallagher showed a picture of what the landfill would look like at the end of the process. He stated currently the area is dominated by non-native, invasive species; and with proper guidance and stewardship, they feel it could be converted into a healthy meadow. The area is about 12 acres so there would be a meadow of close to 10 acres with a riparian woodland along Brock Creek and the area at the mouth of the creek on the eastern part of the property would be restored to the historic floodplain and they would establish a new wetland community along Brock Creek.

Ms. Peg Hill stated Act II is a statute passed in 1995 by the Pennsylvania Legislation, and the intent was to encourage re-development of brownfields. She stated Pennsylvania was one of the lead States, and the Pennsylvania Act II program is considered the "star" of all brownfields programs in the Country. Ms. Hill stated another Statute was passed in December, 2007 called the Pennsylvania Uniform Environmental Covenants Act; but it did not become effective until 2008. She stated they are trying to work this Statute with Act II. She stated the purpose of Act II is to eliminate the hazards to public health.

Ms. Hill stated Pennsylvania has thousands of sites that are brownfields that can be cleaned up under Act II. She stated it is a voluntarily clean up program and is not mandated by DEP. She stated Act II provides uniform clean-up standards. She stated it also provides liability relief ; and if you proceed with an Act II clean up, DEP will provide a protection from liability from environmental laws in Pennsylvania and a covenant not to sue. She stated there is a standardized review time and time limits. She stated there is also a portion of Act II which provides for financial assistance although it is not relevant for this development.

Ms. Hill stated there are a number of standards for remediation options. She stated when you enter into an Act II clean up program with DEP, you select what the remediation options will be. She stated DEP has identified meeting certain concentrations for soil and groundwater that you can try to meet for State-wide health standards or you can try to meet a site-specific standard. She stated she is most familiar with these as she has worked with many developers who have chosen site-specific standards. She stated in this case you look at the use of the property to try to come up with an overall clean up that recognizes the unique features of the site. She stated the Harris project will use the site-specific standard.

Ms. Hill stated if you are going to participate in the Act II program, you submit a notice of intent to remediate to the State, identifying the engineers, the level of contaminants, and the scope and extent of contamination. She stated the next step is the characterization stage which involves on-site testing. She stated at this site there has been such extensive investigation of the contaminants that have been there over the years, that this stage has been completed. She stated you then look at the points of compliance by which you are going to achieve the standards that you propose to DEP. She stated a risk investigation report goes to DEP after the contaminants have been characterized. She stated they are ready to submit this now to DEP for this site. She stated you would next remediate the contamination. She stated sometimes this can just be placement of a cap or deed restrictions. She stated DEP is looking to see that you have demonstrated attainment of the standard that you have selected.

Ms. Hill stated they will have to enter into a Uniform Environmental Covenant under the new statute that was passed in 2007. This will become part of the Deed and be recorded. It lays out whether there will be any engineering controls such as maintenance of the cap, restrictions on groundwater use, etc. She stated DEP must approve this as well, and they have a model covenant which they like to see adhered to using the actual verbiage contained in that covenant. She stated they will also have to deal with post-remediation care and monitoring, and this Plan is referenced in the Environmental Covenant.

Ms. Hill noted with regard to the liability protection, if you comply with the standards, you receive liability protection and DEP will indicate that they will not seek to enforce any environmental laws against you because you have voluntarily cleaned up the site.

She stated this includes protection from citizen suits and contribution actions under Pennsylvania Law. She stated citizens suits does not mean “common law actions” but are citizen suits under Federal and State Statutes. She stated most environmental laws have a provision where they allow a citizen to file a suit against a Party using the enforcement authority of that particular Statute, and this is what you are protected against. What it does not provide protection against are “common law actions,” so that if someone were seeking property damage or a personal injury claim, there is no protection from this. She stated there is also no protection from the EPA but the Commonwealth of Pennsylvania has entered into a memorandum of Agreement with the EPA so that you can go to EPA and advise them that they are doing the voluntary clean up meeting the EPA standards, and request some liability relief. She stated the liability protection applies to current owners, future owners, developers, occupants, successors or assigns, or any person that is participating in the clean up.

Ms. Hill stated there are “reopeners” in Act II which include fraud, new areas of contamination that were unknown at the time that you implemented the clean-up plan, if the remedy fails, or if there is an increased risk due to substantial changes in exposure or new toxicology information.

Mr. Gallagher stated they want to develop a scenario that fits with the overall landscape of the Township. He stated one of the reasons they picked a meadow was because it is a very uncommon habitat in southeast Pennsylvania. He stated the Five Mile Woods is a wonderful forest, and managing an area as a meadow is more time-consuming and requires maintenance; and this is one of the reasons they reached out to the Heritage Conservancy and the Natural Lands Trust to see if they would have an interest in the long-term maintenance of the meadow at this site. He stated both expressed interest. Mr. Smith asked if they gave any indication of the cost to maintain this and who would pay for it. Mr. Gallagher stated they would have to set up an endowment for the long-term maintenance. He stated one of the reasons these groups indicated there were interested was because it was revitalization of damaged lands into something useful; and both groups felt this could be a good example of how to convert damaged land into a more-productive use. He stated as part of their mission statement as land managers, this would help them provide a unique example.

Mr. Gallagher stated the site is currently dominated by non-native, invasive species neither of which are productive to native species. He stated Bowman’s Hill has developed a Plant Stewardship Index (PSI) which is a way to measure the nativeness of a site and is something the EAC recommended that they use on this project to look at what is there currently and then to track the progress of development of the meadow over time. Mr. Gallagher showed examples of what type of species they could plant. He stated establishment of meadows has become more commonplace with the increase in the number of native landscape nurseries. They feel this site could be very productive in a very short period of time. They feel this could be an amenity to the Township and to the

development project. He stated they are proposing creating riparian forest along the length of Brock Creek by moving the waste by 100' and increasing the flood storage of that section of Brock Creek. He showed pictures of landfills which have been developed

Mr. Casey stated with regard to the proposed residential development, they have gone through a process with the Environmental Advisory Council both with regard to the closure of the landfill and development of the front portion of the site which has not been impacted by the landfill. He stated they have met with the Township's engineer and the Township's environmental consultant as well. He stated in the Executive Summary there is a final review letter from the EAC where they have basically concurred with the proposal. He stated there are certain issues the EAC is interested in pursuing including the process through DEP for the Act II closure and the developer's efforts to comply with the Low Impact Development standards in developing the front portion of the property.

Mr. Casey noted the site yield calculation which was based on the Township's Ordinances. He stated they had interaction with the EAC, the Township engineer, and the Township's solicitor and concurred that they would take out entirely the twelve acre landfill from the calculations even though portions of that were being removed and being restored to an ecologically-beneficial aspect of the site. They came up with lot yields of 35 to 58 lots that could be developed using the cluster and non-cluster provisions. He stated they were proposing to use the non-cluster provisions with a payment in lieu of recreation land which would have allowed 38 lots, but they are proposing a 35 lot development on the front portion of the site. He showed a graphic of the different options available under the lot yield calculations which have been reviewed by the Township engineer.

Mr. Casey stated the proposed development shows the 35 lots with access from Edgewood Road with a circular drive through the site. They intend to extend sewer from Schuyler onto the property and feel they can provide 75% of the lots with gravity sewer at a relatively low depth by extending a sewer from that location and have the remainder on individual pumps. This proposal has been reviewed with Mr. Hoffmeister who is in agreement with the concept that they have proposed. He has requested that they give consideration to extending the sewers to the edge of their property along Edgewood Road so that the Township could extend it to the few lots immediately to the west that are not on the public system.

Mr. Casey stated there is a stand of white pine trees on the right side of the entrance road which are on the existing driveway that serves the Harris farmhouse, and the EAC asked that they look at re-aligning the road to some degree to try to preserve those trees. Mr. Casey stated they agreed to look into this and initially they will have an arborist look at the trees to see if they are of value to save, and they would have to work out certain details with the Township engineer to insure that there is proper sight distance and proper

alignment with proper tangent lines coming off of Edgewood Road. He stated they did have a site visit with the Township engineer, and there was a general concurrence that they may be able to do something that would not create any unsafe conditions as far as entry into the site.

Mr. Casey stated they would propose that the development of the site improvements for the residential development would be performed concurrent with the closure of the landfill to take advantage of excess materials that would be generated from the front portion of the site to provide the amount of fill that would be necessary for proper cap and proper grading of the rear portion of the site which would also minimize the amount of traffic moving materials on and off the property.

Mr. Stainthorpe stated several times when they were discussing Act II, Ms. Hill used the term “we” enter into an Agreement with the State, and he asked if the “we” is Quaker Group or the Township; and Ms. Hill stated it would be Quaker Group. Mr. Stainthorpe stated he assumes they want to be able to proceed through the planning review process provided they remediate the landfill area. Mr. Casey stated there is a formal approval process that they have to go through with the State, but before they proceed further and invest more in the process, they wanted to make sure that they were moving forward with the understanding that the Township feels that this is a sound plan, recognizing that there are certain mandates that have to be met to be prescribed by DEP and there will be oversight by the Township’s environmental consultant and the EAC.

Mr. Stainthorpe asked what Birdsall feels about this proposal. Mr. Arie Kremen, Birdsall Engineering, stated they have worked with Princeton Hydro for the last few years, have seen the site, and received reports Princeton Hydro prepared based on monitoring data. Mr. Kremen stated he has also reviewed reports that were prepared by the previous consultants and engineers and concluded that the site does not have a severe contamination and DEP agrees with this as well. He stated they have suggested the removal of the waste 100’ from the floodplain and removal of the waste 100’ from the property line with Long Acre. He stated the 2’ cap is an appropriate solution for a landfill of this character. He stated there are some minor details still to be worked out on the design.

Mr. Stainthorpe stated Mr. Casey noted the remediation of the landfill would be done at the same time they are developing the property, and Mr. Casey stated it would be at the same time that they are doing the site improvements which is basically the earth work as there will be an exchange of soils between the front and back portion of the site. He stated they will segregate the materials that have to be disposed of off the site. He stated they want to minimize the materials coming in and going off of the site. He stated the capping would be completed before any homes were completed.

Mr. Maloney asked about where the landfill ends in comparison to where they are proposing homes to be built. Mr. Gallagher noted the slide showing the extent of the landfill and stated the closest home would be on the other side of the loop road.

Mr. Casey stated while the current limits of the landfill is shown, there is a basin proposed on the south side of the loop road across from where the homes are so the waste in the area would be removed to accommodate the basin and the waste that currently exists closest to the homes would be removed. Mr. Maloney stated he understands that they are not only removing 100' from the stream and 100' from Long Acre, but also backing it off even further as well because of the basin, and Mr. Casey agreed.

Mr. Maloney asked the size of the basin proposed, but Mr. Casey did not have this information.

Mr. Maloney stated they have discussed the composition of the material currently existing in the landfill and the metal debris is what is of the most concern. He stated at some point there was discussion that there was the dumping of chemicals of some sort, and he asked if this is what is contemplated as Municipal waste. Mr. Maloney stated he is trying to determine what is volatile and what is non-volatile. Mr. Gallagher stated they did not uncover anything significant when they did the excavations. He stated it is the lab results which guide you to what your concerns are. He stated they did groundwater work so that if there was dumping of something of more concern such as a chemical or solvent, it was not showing up in the groundwater sampling. He stated there were some metals associated with the soils, but they are not in the groundwater. He stated most of the condemnation tended to be in the soils and much of it is typical of the period of time when they were placed there.

Mr. Stainthorpe stated it appears that they have tested the site significantly; and if DEP and the Township engineers sign off, he would not have a problem with having the developers move forward. He stated he recognizes that they would not begin any clean up until they get a Final Development Approval. He stated if there will be no cost to the Township and no liability to the Township and someone in the future maintains the meadow at no cost to the Township, he does not have a problem with them moving forward.

Mr. Caiola asked Mr. Kremen how he compares his findings for this site to other projects he has been involved in. Mr. Kremen stated there are landfills significantly worse than what they have encountered at this site. He stated this landfill has been closed for many years. He stated the MTBE plume moved fairly quickly off site. He stated he feels the site is fairly stable and there is no indication that degradation is ongoing. He feels this is one of the better landfills he has worked with.

Mr. Smith stated he is still disturbed with this situation. He asked how long the Quaker Group has had the property, and Mr. Casey stated a summary of their history with the property was included in the information submitted. He stated Quaker Group became

involved with the property in 1998; and at that time the property was under Agreement with Eastern Equities with the Harris Estate. Quaker entered into an Agreement with Eastern Equities to purchase the property once Eastern received all Final Approvals. At the same time, Eastern Equities submitted an Application for developing forty-nine lots on the property without disclosing any information regarding landfill activities that had occurred previously. That Application was filed in 1998, and in March, 1999 when they went before the Planning Commission questions were raised which brought the issue of landfill activities to the surface.

Mr. Smith stated they have had the property for approximately ten years, and Mr. Casey agreed. Mr. Smith stated this property has been a nuisance and there has been a history of short dumping in the area as shown in the photos. He stated there have been no steps taken to clean this up. He stated the property has also been used by those on all-terrain vehicles which has resulted in numerous complaints from the residents. He stated he is in favor of doing something with the property, but he is concerned that no steps have been taken to correct the problems to this point. Mr. Smith stated in addition to protecting the Township, he is also concerned about protecting the people who will move into these homes and what will happen after the developer is gone.

Ms. Hill stated the purchasers would enter into the same Environmental Covenant which Quaker will enter into; and they will understand that there are groundwater deed restrictions. The only maintenance will be with regard to the landfill area which will be maintaining the cap, and this is where the two groups discussed earlier would come into play as they would be undertaking that obligation. Ms. Hill asked Mr. Smith if his concerns were health related, and Mr. Smith stated there are people who move into these homes not knowing everything that is in these Covenants. Ms. Hill stated these Environmental Covenants are very standard throughout the State and there are hundreds of homes being sold in the Commonwealth of Pennsylvania where people are buying properties that have Environmental Covenants. She stated these Covenants clearly lay out the restrictions. She stated in this particular development, the only limitation will be the groundwater use and there will be a meadow that has to be maintained.

Mr. Smith stated following the presentation in March, he received a number of e-mails asking if there could be further problems once they start disturbing the ground. Mr. Gallagher stated this could happen anytime you are dealing with a landfill; and if they find something, they will remove it in accordance with the DEP requirements. He stated based on the testing, they do not have any indication that they will find anything. Mr. Caiola stated this happens in other projects where there were no prior indications that there were any environmental issues. Ms. Hill stated at this location there will be on-going remediation, and they will take active steps to remediate the landfill. She stated if the landfill is not remediated under Act II, it will stay in its existing condition. She stated the Quaker Group has no obligation to remediate the landfill.

Mr. Maloney stated Birdsall did recommend that there be monitoring of the gas release while excavation is being done, and he asked if this would be part of the monitoring of the rest of the soil that was not tested to make sure that when they do start to disturb things, there are not differences in characteristics than what the tests yielded.

Mr. Casey stated there is a protocol that will be established when they start the activities on the site of testing and monitoring that must be ongoing as to air quality, water quality, and the materials that are removed and backfilled into the site. He stated there will be oversight by DEP and by the Township as well to insure that if something unexpected is encountered, it will be dealt with.

Mr. Smith noted the last letter he had from Birdsall was dated 11/13/07 and asked if this was the last time that someone from Birdsall saw the property. Mr. Kremen stated it is not and they participated in a meeting four to six weeks ago at the Township. He stated in 2008/2009 they also reviewed some of the Plans that were discussed earlier by Mr. Gallagher. Mr. Smith noted that according to the 11/13/07 letter from Birdsall it indicated, "in general the proposed closure plan is generally acceptable," and he asked what this means. Mr. Kremen stated it means that the approach to the closure of the landfill is acceptable. He stated there were some details that needed to be considered in the final design. Mr. Smith stated the last paragraph of the 11/13/07 letter states, "The proposed Plans should be closely monitored by the Township to insure that all aspects of the Plan are properly implemented. As indicated previously, we continue to recommend that the Township not accept ownership in any form of the site." Mr. Kremen stated this is correct because they do not feel that the Township should take ownership of the site or have any responsibility. Mr. Smith asked if this is to protect the Township from liability, and Mr. Kremen stated this is correct as he understands the law.

Mr. Maloney stated Ms. Hill stated there remains common law exposure for the property owner and he understands that this would be an open end on the liability spectrum for Quaker. Ms. Hill stated this is correct if there were some sort of negligence cleaning it up or there could be common law claims against anyone who contributed to disposing of waste in that landfill. Mr. Maloney asked to the extent that the Township's environmental engineers take a role in monitoring and reviewing the work, does that window remain open for the Township. Mr. Maloney asked Mr. Truelove if the Township is also a Party to the clean up process, and Mr. Truelove stated there is also the Torte Claims Act which is a protection for the Township. Mr. Truelove stated there are not a lot of environmental type causes of action under the common law other than fraud or misrepresentation. Ms. Hill stated with respect to someone monitoring, she has consultants monitoring what someone else is doing and typically you enter into Indemnification Agreements or contractually you make sure that you are not undertaking any risk that you should not be undertaking and this can be easily worked out for the Township. Mr. Truelove stated this would be in any of the approval letters and/or the Development Agreement that would be part of the approval process when they get to that point.

Mr. Stainthorpe stated when Ms. Hill was discussing the general procedures of Act II she discussed notification to the Federal EPA, and Ms. Hill stated this is only if you want to apply. She stated Pennsylvania has entered into a Memorandum of Agreement with the EPA because across the Country there were a lot of people who were cleaning up sites that were getting liability relief from different States and some developers, banks, etc. also indicated they would like to have something from the EPA saying that the EPA would not come after them and impose any liability under the Federal statutes. A number of States entered into a Memorandum of Agreement with the EPA. She stated Pennsylvania did this as well in 2004, but typically you would only want to approach EPA to enter into this Memorandum of Agreement if there was a real risk that EPA was going to come after someone for contamination of a site. She stated EPA will not typically over file over a State unless there is some imminent danger, and this landfill clearly has no substantial or imminent danger.

Ms. Virginia Torbert asked if it is contemplated that the landfill area will be fenced in, and Mr. Casey stated this is not part of the proposal at this time. Ms. Torbert stated children from the development would theoretically be able to play in the landfill area, and Mr. Casey stated it is going to be developed as a properly-capped meadow. Ms. Torbert stated she is concerned that older children may disturb the area digging, etc. She asked what would happen if a child became sick and the impact to the Township. Ms. Hill stated the site has been extensively studied and there has been ongoing groundwater monitoring for years; and there is no indication that this landfill presents any harm to anyone or the environment. Ms. Torbert stated there could still be something they do not know about. Ms. Hill stated the landfill has been there for years and she has not heard of any problems. Ms. Torbert stated presumably there have been children playing there, and Mr. Caiola stated there have been children riding motorbikes there for years. Mr. Truelove stated Ms. Hill has already mentioned indemnification agreements; and if anything were to come to litigation, the indemnification provisions that they would include would protect the Township.

Mr. Smith stated while he appreciates this, he feels that they have an obligation to protect the residents as well. Mr. Caiola stated the DEP does not have the reputation of signing off on properties that could potentially endanger people and are very stringent where this is concerned.

Ms. Torbert asked how many of the other examples that were given of landfills were comparable to this situation since a number of the examples were situations where the landfill had been cleaned up. She asked how many were landfills which were capped and then had residences right next to them. Ms. Hill stated the materials were not all removed at any of the examples that were shown. She stated for landfill redevelopment across the United States there are caps placed over the landfill and then the development occurs right over the landfill. She stated when they say “cleaned up” there could have been some waste removed in some areas and caps placed on pipes on top of the landfill and

this is “remediation” of a landfill. She stated under State and Federal law, remediation obligations include putting on a cap or there may need to be a methane collection system although that is not applicable to this site. She stated in 1986 DEP indicated that they should just close this site and put a cap over it. She stated DEP does not feel there is any concern about this landfill. Mr. Caiola stated there are different levels of remediation depending on whether it is an industrial use, recreation use, or residential use.

Ms. Torbert asked how much will be disclosed to the potential homeowners and subsequent owners of the properties. Mr. Maloney stated it is attached to the Deed and they would have to go through this process every time the property is sold. Ms. Torbert stated she is still concerned about what they do not yet know about what was dumped at this property as this was a trash dump for a number of years and she is concerned about the 20% which is Municipal waste and metals.

Ms. Anna Kitsis stated she is not aware of where this is located but as a member of the public she feels Mr. Smith is trying to protect the public. She asked if the test reports are available for public review. She stated she is concerned that this could be connected to a creek that would eventually connect to the Delaware and the water that they drink. She is not concerned about the Township getting sued and is more concerned about the wellbeing of the public. Mr. Caiola stated while the Board of Supervisors are not experts about this, they do hire experts to advise them and they listen to their concerns and recommendations. He also noted the recommendation from the PA DEP with regard to this issue.

Mr. Maloney stated he feels after ten years they have gotten to a point where enough research has been done and there has been an appropriate level of due diligence. He would not be opposed to having the developer go to the next step of land development. Mr. Caiola stated he agrees. Mr. Smith stated he is still disturbed with the concept and is uncomfortable with the environmental report. He would not be comfortable with them moving ahead at this point in time.

#### APPROVAL OF O' ROURKE TRACT MINOR SUBDIVISION/PRELIMINARY/ FINAL PLAN

Edward Murphy, attorney for the Applicant was present. Mr. Truelove stated this is a Minor Subdivision of 2.48 acres of land located on the southeast side of Washington Crossing Road between Stoopville Road and Gauks Lane. He stated it is in the R-1 Zoning District and currently has a 2 ½ story frame dwelling unit served by an existing on-site well and septic system, pool, patio, driveway, and tennis court. He stated the proposal is to subdivide the property into two single-family residential lots. Lot #1 will be the new lot to be 0.958 acre building lot and Lot #2 to be the existing dwelling to remain on 1.879 acres. He stated there was a prior Zoning Hearing Board Decision

allowing the slight reduction in the size of the one lot in order to enable two lots to be developed with certain requirements for buffering and other issues which were referenced in the Zoning Hearing Board Decision.

Mr. Stainthorpe moved and Mr. Caiola seconded to approve the Preliminary/Final Plan dated 4/17/06, last revised 2/10/09 subject to the following Conditions:

- 1) Compliance with Remington Vernick engineers letter dated 3/23/09 authored by James Majewski;
- 2) Compliance with Remington Vernick engineers letter dated 2/19/09 sanitary sewer review letter;
- 3) Compliance with Bucks County Department of Health letter dated 4/7/09;
- 4) Compliance with Bucks County Planning Commission letter dated 4/27/09;
- 5) Compliance with Pennsbury School District review letter dated 2/18/09;
- 6) Compliance with 12/5/08 review letter from the Bucks County Water and Sewer Authority;
- 7) Compliance with Conditions set forth in the Zoning Hearing Board Approval listed in the Decision dated 8/5/08;
- 8) Compliance with the 5/21/06 Fire Services Inspection Report from James V.C. Yates, Fire Protection Consultant;
- 9) Receipt of all Permits and Approvals by any agency having jurisdiction over the Application including but not limited to the Bucks County Conservation District, the Pennsylvania Department of Transportation, and the Pennsylvania Department of Environmental Protection;
- 10) Where not otherwise addressed, compliance with all applicable provisions of the Lower Makefield Township SALDO and Zoning Ordinances;
- 11) Where not otherwise addressed, compliance with all applicable stormwater management regulations, Ordinances, and statutes including but not limited to the Neshaminy Creek Watershed Stormwater Management Ordinance;

12) Compliance with the Lower Makefield Township Planning Commission memorandum dated 5/12/09.

Mr. Murphy agreed to the Conditions of Approval.

Mr. Maloney stated he recalled that there was discussion about moving the driveway in order to avoid as many trees as possible, and Mr. Majewski stated they did a site visit with the Applicant's landscape architect, the EAC, and himself; and they adjusted the driveway slightly to take the most advantageous route.

Motion carried unanimously.

APPROVAL OF EXTENSIONS – CINO-HARMONY LANE, FERRI TRACT A/K/A FREEMAN'S FARM, MIDDLEMISS SUBDIVISION

Mr. Caiola moved, Mr. Stainthorpe seconded and it was unanimously carried to approve the following Extensions:

Cino-Harmony Lane Subdivision	– 9/7/09
Ferri Tract Subdivision a/k/a/ Freeman's Farm	– 9/5/09
Middlemiss Subdivision	– 9/21/09

SUPERVISORS' REPORTS

Mr. Stainthorpe stated at the last Cable TV Advisory Board meeting they came to the conclusion that there is not a lot of action taking place with the Cable TV companies and in September the Board would like to come before the Supervisors to present a proposal to become the Township's communication committee. They propose to maintain their current jurisdiction but expand it somewhat to the website, upgrading the TV channel and some other items they have discussed. Mr. Stainthorpe stated he feels this is a good idea.

APPROVE REJECTION OF BIDS RECEIVED AND RE-ADVERTISEMENT FOR BIDS FOR NEW GARAGE DOORS

Mr. Fedorchak stated they went through the process but the low bidder did not meet the requirement that he pay laborers prevailing wage and there is also an issue with the next lowest bidder so they feel it would be best to reject the bids and re-advertise.

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Mr. Stainthorpe moved, Mr. Caiola seconded and it was unanimously carried to reject the bids and re-advertise.

#### AWARD CONTRACT FOR UNIFORM RENTAL AND/OR PURCHASE

Mr. Caiola moved, Mr. Stainthorpe seconded and it was unanimously carried to award the Contract for uniform rental and/or purchase to Aramark Uniform Services.

#### DISCUSSION OF MEMORIAL DAY PARADE – 5/25/09

Mr. Maloney stated the Supervisors will be walking in the Yardley Memorial Day Parade this year.

There being no further business, Mr. Smith moved, Mr. Stainthorpe seconded and it was unanimously carried to adjourn the meeting at 11:00 p.m.

Respectfully Submitted,

Greg Caiola, Secretary