

TOWNSHIP OF LOWER MAKEFIELD  
BOARD OF SUPERVISORS  
MINUTES - OCTOBER 6, 2010

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on October 6, 2010. Chairman Smith called the meeting to order at 7:35 p.m. Mr. Maloney called the roll.

Those present:

Board of Supervisors:            Ron Smith, Chairman  
                                         Greg Caiola, Vice Chairman  
                                         Matt Maloney, Secretary  
                                         Dan McLaughlin, Treasurer

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

Absent:                                Pete Stainthorpe, Supervisor

Mr. Smith announced that Item VII.a. on the Agenda – Consideration of an Amendment to the O/R District Height Restrictions, will not be discussed this evening, but will be discussed at a future meeting.

PUBLIC COMMENT

Mr. Harold Koopersmith, 612 B Wren Song Road, stated the Board of Supervisors does not collect any campaign contributions when they make their decisions and stated those in Harrisburg and Washington should be more like the Board of Supervisors. Mr. Koopersmith stated he is working on a special project for the Board of Supervisors and asked how much the Township pays into the Pension Fund for the employees, and Mr. Fedorchak stated it will be approximately \$700,000 for 2011. Mr. Koopersmith asked if they have had a chance to assess what the Township needs are for the next three years for major projects, and Mr. Caiola stated this will be part of the Budget discussion in late October/early November. Mr. Caiola stated funds are always set aside for road work, and other potential projects are being considered for the Pool and possibly ball fields and a Senior Center. Mr. McLaughlin suggested that Mr. Koopersmith attend the Citizens Budget Committee meetings which are open to the public and held the third Tuesday of every month at 7:00 p.m. Mr. Smith also noted that the Budget Workshops will begin in November, and the public is invited to attend these as well.

Mr. Koopersmith read into the record letters he wrote to the Federal Reserve Board, Great Britain, and Harrisburg.

Ms. Virginia Torbert was present on behalf of the Citizens Traffic Commission to invite the community to their Third Annual Safe Driving Event to be held October 22 from 10 a.m. to 12:30 p.m. at the William Penn Middle with the theme being Driving Toward Zero Accidents. She stated they will focus on teen driving and distracted driving. They will have the safety simulator sponsored by the PADY Association and State Farm which will provide a driving experience for attendees. She stated they will also have a speaker who will discuss insurance issues. She stated the Lower Makefield Police will participate as well. Ms. Torbert stated the event is free, and they will serve refreshments. She stated they will video the event and put it on a CD so that it can be put on the Township channel. Mr. Smith asked that the Township make sure they show this prior to the Senior Prom.

Ms. Roseanne Friehs, Historical Commission, invited the Board of Supervisors and the community to attend an Open House at Elm Lowne this Sunday from 1:00 p.m. to 5:00 p.m. She stated this will be a family event and include ghost stories, refreshments, and a pumpkin judging contest. She stated since the house is for sale, this may be the last time that the community has an opportunity to tour Elm Lowne. She stated the event has been posted on the Township Website and flyers have been sent out.

Ms. Sue Herman, President of Residents for Regional Traffic Solutions, Inc., expressed concern with the potential for roadway expansion based on recent actions taken by certain politicians in Newtown Township. She stated funds which had been secured for a multi-use trail along Stoopville Road have been transferred to improvement of the intersection at Stoopville Road and Route 413 which she feels is an integral step toward a northern By-Pass along Stoopville Road. She stated the north-south highway would connect I-78 to I-95. She showed maps of the proposed connection and noted a number of reports which refer to this connection. Ms. Herman stated she is concerned about the quality of life for those residing on Stoopville Road and providing safe travel in all transportation modes. Ms. Herman expressed her concern with the actions taken by Mr. Dave Steil and Mr. Rob Ciervo. Ms. Herman asked that the Board of Supervisors advise Mr. Ciervo that his actions will add more truck traffic and create a highway environment that will effect Stoopville and Lindenhurst Roads and change the quality of life throughout the region.

Ms. Helen Bosley, 546 Palmer Farm Drive, stated she frequently drives from Lower Makefield to Doylestown and the corner of Stoopville and 413 is not an easy intersection. She stated she feels most people would want their representatives to do what they can to have it upgraded. She stated she does not feel this should be brought into a political issue.

Mr. Truelove stated the Board met in Executive Session starting at 6:30 p.m., and they discussed items of personnel, litigation, and Zoning.

#### ANNOUNCEMENT OF LOWER MAKEFIELD TOWNSHIP BEING NAMED FIRST PLACE BUCKS BEAUTIFUL GARDEN

Mr. Smith noted the letter received from Laura Brandt, EAC, who applied for and received \$200 for a Bucks Beautiful Garden Matching Fund Grant through the Central Bucks Chamber of Commerce. He stated these Grants are to encourage planting of gardens visible from Bucks County roads. Mr. Smith stated the garden is considered a “native plant demonstration,” and it is located on Edgewood Road on the Tax Office side of the Municipal Building. On September 17 the garden was judged and earned First Place in the Community Garden category. The Township and the EAC will receive recognition later this month at an awards ceremony. Mr. Smith thanked Laura Brandt and the EAC for applying for the Grant and doing great work with this community garden.

#### APPROVAL OF MINUTES

Mr. Caiola moved, Mr. McLaughlin seconded and it was unanimously carried to approve the Minutes of September 15, 2010 as written.

#### DISCUSSION OF A REVISION TO THE HOLDING TANK PERMIT ORDINANCE AND AUTHORIZE ADVERTISEMENT

Mr. Truelove stated the Township has a Section related to holding tank Permits in the Township depending on certain factors. He stated they have found out that the Township’s language, which was drafted approximately thirty years ago, needs to be updated to include more specific reference to the Bucks County Department of Health. Mr. Truelove stated once the revisions are advertised, the Board can consider enacting it at their next meeting on October 20, 2010.

Mr. Caiola moved, Mr. McLaughlin seconded and it was unanimously carried to authorize advertisement.

## DISCUSSION OF MODIFICATION TO THE CELL TOWER ORDINANCE

Mr. Truelove stated the Township has an Overlay District, and the only place where cell towers are permitted by right are in the Overlay District with certain other conditions to be applied; otherwise, they must go through a much more stringent process through the Zoning Hearing Board. Mr. Truelove stated there has been some recent litigation involving cell towers in the Township. Mr. Truelove stated Mr. Smith had circulated an article about a Township in Long Island which has a very stringent Cell Tower Ordinance which so far has withstood legal challenges.

Mr. Smith stated he received this article from a member of the Planning Commission about a Municipality in New York which had enacted a very stringent Cell Tower Ordinance which prevents the building of cell towers in residential neighborhoods and gives setback requirements from schools and churches. Mr. Smith stated he is opposed to putting cell towers in residential neighborhoods and feels the Township has an adequate Overlay District; however, this has not stopped certain companies from coming in and trying to put cell towers in the neighborhoods. Mr. Smith stated he would not want to enact an Ordinance which would not hold up in Court, and he would suggest that the solicitor be directed to do some research on this Ordinance in New York and other Municipalities that have similar Ordinances in place to see if they have held up under lawsuits. Mr. Smith stated if it is felt after this research is done that they can make the Ordinance more stringent than it is currently, they could move ahead with something more stringent.

Mr. McLaughlin asked Mr. Truelove if he feels the current Ordinances are inadequate. Mr. Truelove stated there is pending litigation challenging the Township's current Ordinance. He stated in the time since the Overlay District was enacted, Federal regulations have changed in favor of the cell tower companies; and the FCC has taken the approach that they are promoting cell tower construction to provide for communication and security. He stated they do still allow Municipalities to have Ordinances which can restrict and regulate; however, it is good to review the Ordinances in conjunction with the changing Federal law to see if there is some way to restrict this but still withstand legal challenges.

Mr. Maloney stated after observing enforcement issues that arise, he feels this is a topic for which they should be putting in place the most stringent law they can have. He stated he feels it is better to have more stringent laws than to have to oppose a certain Application. He stated the Zoning Hearing Board will defer to the Township laws that are on the books.

Mr. Caiola stated he feels it is important to put something stricter in place unless they hear something different from the Township attorney. He stated he feels it is important to be proactive.

The Board agreed to have the Township solicitor do additional research on this. Mr. Truelove was asked to report back to the Board in thirty days.

Mr. McLaughlin asked if this could impede build-out of new technology facilities in the Township not knowing what technology will be in twenty years. He asked if an Ordinance could cause a tele-communication company not to want to do business in the Township. Mr. Truelove stated their experience is that cell tower companies rarely step away from a battle. Mr. Truelove stated the Township needs to balance quality of life versus the cost it takes to litigate and the fact that the laws are changing at the Federal level which may impact the Township. He stated the Board is charged with making these policy decisions, and his office tries to carry them out from a legal perspective. He stated it is always good to see if a reasonable regulation can be crafted to be ahead of the curve. He stated new technology does change more rapidly than does the law.

Mr. Maloney stated the Township needs to give direction to the cell phone companies as to what they feel is acceptable as far as intrusion within property rights and public domain. He stated the cell phone companies will respond to the constraints given to them. He stated there are many places in the world where cell phone towers are not an option, and the advent of satellite cell communication is a good example of how technology has responded to the physical demands.

Mr. Zachary Rubin, 1661 Covington Road, stated in 1996 the Tele-Communication Act was passed by the Federal Government which gave carte blanche powers to the tele-communication companies. He stated since then the Township put in place a very restrictive Overlay Ordinance. Mr. Rubin asked the Township Manager if any cell company has been able to build a cell tower outside of the Overlay District since the Overlay Ordinance was put in place; and Mr. Fedorchak stated none have been built outside of the Overlay District without the cooperation of the Township, adding there is a tower located behind the Township Building, and this was negotiated with the Board of Supervisors. Mr. Rubin stated there was no opposition from the community for that tower, and Mr. Fedorchak agreed. Mr. Rubin stated he feels this Board of Supervisors and previous Boards of Supervisors have fought every single attempt to build a cell tower outside of the Overlay District, and he feels the Board will continue to do so. He stated he would support a very stringent law if it is possible. Mr. Rubin thanked the current and past Boards for fighting cell companies who tried to change things in the Township. Mr. Smith stated they are trying to be proactive given the fact that there could be different courts with different opinions.

Mr. Fedorchak was asked to put this matter back on the Agenda for the first meeting in November.

## DISCUSSION OF LAND DEVELOPMENT APPLICATION PROCESS

Mr. Truelove stated questions have been raised about what constitutes a complete Application. Mr. Truelove stated he and Mr. Donaghy from his office, who has significant expertise in Zoning and Land Development issues, have been discussing the process and reviewed a number of cases. Mr. Truelove stated he understands that some of the different Township review Boards have felt that the Applicants do not always submit everything they should at a certain stage. Mr. Truelove stated there is a difference between a complete Application at the Application stage versus the Approval stage. He stated the Courts have looked at this, and they require the Municipalities to have a “good faith” process in place. Mr. Truelove added that Lower Makefield has the reputation of having the most stringent review process of any Municipality in the area. He stated the Applications received in the Township have to meet certain criteria. He stated if an Applicant is requesting a Waiver, this must be noted. He stated this is not on the Application form, and this may be one area which could be considered for review and they could have a requirement that the specific Waivers being requested should be checked off on the form itself as opposed to a separate letter which is usually what is submitted.

Mr. Truelove stated the challenge is that if they require all Applicants at the very beginning to submit every single document required, the review process would become a non-issue. He stated it would also require the Township to spend a great deal of review money at the beginning since it would require the engineer to look at every Application from the beginning as if it were the Final Approval. Mr. Truelove stated they also do not want the Township to get itself in a position where the Courts would consider an Application to be deemed approved when the Township has not had the opportunity to review everything. He stated one of the advantages Lower Makefield has over many others is that there are a lot of reviewing agencies and Boards that give the Plans due consideration. He stated they have a good give and take, and it is a dynamic process; and this would be lost in the process. Mr. Truelove stated the Township and the professionals are constrained by what the Courts have told them not to do, and the Township must make sure they are not overstepping their bounds.

Mr. Truelove stated they could continue the discussion at a future time, and they could give consideration to possible modification of the forms to include the Waiver Sections. He stated he would leave this to Ms. Frick who is very vigilant in this process and to Mr. Majewski. He would not at this point recommend changing the process, other than possibly modifying the forms as noted.

Mr. Majewski stated he agrees with Mr. Truelove that they are “hamstrung.” He stated an issue did come up with Waivers requested for studies that are required by the Ordinance; however, if an Applicant requests a Waiver, you cannot legally reject the Plan and not accept it to start the ninety day clock since they did request a Waiver. Mr. Smith asked if he will work with Ms. Frick and look at the forms, and Mr. Majewski stated he will.

Mr. Alan Dresser, 105 E. Ferry Road, stated he is a member of the EAC, and they brought up this issue in the past. He stated he disagrees with Mr. Truelove. Mr. Dresser stated he has been involved with DEP in New Jersey reviewing Permit Applications, and it does not make sense the way it is done in Lower Makefield. He stated when they submit an Application, there is supporting documents which goes with it. He stated there is a list of things they need to submit with the Application according to the Ordinance. He stated sometimes Applicants will submit everything; but sometimes they will not, and they then get things piecemeal through the process which he does not feel is a very intelligent way to proceed. He stated if the Township were to follow the process the EAC has suggested, the Township would get all the supporting information with the Application which would give the Township engineer, traffic engineer, and review Boards more time to look at the information earlier in the process so that they can do a better review. He stated he also feels they would get better Preliminary Plan Applications because if an Applicant has to do all the reports up front, they will identify problems that they would not identify until later on in the process. He stated he feels the process will also be smoother. He stated the Ordinance requires that an Application is complete only when all the items listed are submitted and states that the Township should not accept the Application unless all the items listed are attached. Mr. Dresser stated with regard to Edgewood Crossing, the Applicant did not have the EIS or the Traffic Study, and the Planning Commission had to send it on to the Board of Supervisors with reservations and would have liked to have had the additional information so that they could give the Supervisors a clearer picture on their thoughts.

Ms. Virginia Torbert, Citizens Traffic Commission, stated she agrees with Mr. Dresser. She stated a reputation for stringency is not a substitution for actual stringency, and she feels the Aria case is another example where they came in with a very incomplete Application, and the Planning Commission had a very short period of time with inadequate information and could not give the Board of Supervisors the benefit of their experience. Ms. Torbert stated input from the Commissions can only have an effect if it is given early on. She stated the Township does not have a reputation for taking its Boards and Commissions seriously, and it never will if the Board does not get tough in telling the developers that they must tell the Township exactly what they are going to do and provide all the studies so that the citizen volunteers can review all the information and provide the Supervisors the best advice.

Mr. Smith stated at this time they are looking into this and added they do listen to the recommendations of the advisory Boards and Commissions. Ms. Torbert stated she feels the professionals want to do things the way they have always done things, and the Board of Supervisors needs to push back against this or nothing will change. Mr. Smith stated he feels over the last few years they have tightened up the Ordinances with regard to land development and made it more restrictive. Ms. Torbert questioned what changes have been made, and Mr. Smith noted the Low Impact Development Ordinance. Ms. Torbert asked how low impact development will be enforced if the developer does not complete the Environmental Impact Assessment. Mr. Smith stated they will continue to look into these matters; however, they do not want to make it so difficult that they preclude any kind of development. Ms. Torbert stated she does not feel the developers will go away if the Board advises them that they mean what they say.

Mr. Caiola stated both the Traffic Commission and the EAC are now part of the review process, and this was not done in the past. He feels there is an honest effort by the Board to work with the advisory commissions. He stated he also feels that there needs to be a certain amount of flexibility in certain situations. Ms. Torbert stated there is a difference between one minor issue and not having the entire Environmental Impact Statement until two days before it is to be considered by the Board. Ms. Torbert stated she is not saying the Township should be totally inflexible, but she feels that what has been happening is there have been major pieces of information which have not been provided. Ms. Torbert stated she does not feel a Courts would say Lower Makefield would have to approve a Plan if there was not a Traffic Study or an Environmental Impact Statement.

Mr. Maloney stated the tendency of the staff and professionals is to feel that the process that is in place is the right one since they would not do it if they did not feel it was correct. He also stated that the administration and professionals are often asked by the Board to look into other alternatives, and this is why they are discussing this matter. However, he stated they are not going to change it just for the sake of change if they feel the positives of remaining with the current process outweigh the negatives. He stated it is his understanding that the downside of adjusting the current administrative practices is that there would be no “back and forth” with the developer until the time that the entire Application was submitted. He stated this would then take the “teeth” out of the EAC, Traffic Commission, and other review boards since the developers go to those organizations to get feedback and input so that they can work collaboratively and come up with better solutions that meet all the parties’ needs. He stated he would be concerned that if they are forced to wait until the Application is submitted before they consider Waivers, changes, etc., the developer then has no incentive to go before the advisory boards because the Application is submitted and it is what it is going to be. He stated if that is the outcome of making changes, he feels it lessens the effectiveness of the committees.

Mr. Truelove stated this is his concern as well, and this is where the deemed approval comes in. He stated there is case law that strengthens this perspective. He stated he does not want to put the Township in a weaker position. Mr. Truelove stated the process usually works, but he recognizes that there have been times when there has been dissatisfaction. Mr. Truelove stated while he respects Mr. Dresser's experience in New Jersey, New Jersey and Pennsylvania laws are interpreted very differently. He stated the Courts have to reflect the sentiment of legislators and others, and Pennsylvania is one of the most diverse of any State in the Country. He stated they can consider strengthening the process in some ways. He stated if there was more regulation early on, it would result in more work for himself and Mr. Majewski and it would be financially very beneficial to them.

Ms. Torbert stated she recognizes that this is a challenging issue. She stated Mr. Maloney indicated that the developers would not have an incentive to go before the Boards and Commissions, and asked if this could not be a requirement. Mr. Truelove stated the developer's argument could be that their Application is complete, and nothing else can be required of them so they may feel that they should go straight to the Board of Supervisors and there could be a situation where there is a deemed approval. Mr. Truelove stated he recognizes that Application does not mean Approval, and this is when the Courts say they have a good faith obligation to engage in the give and take process. He stated you cannot differentiate between a small or large developer; and if you require a two-lot subdivision developer to have an EIS and a Traffic Impact Statement, they may say they cannot afford to do it, and you are then shutting them out of the process. He stated if they cannot ask for Waivers from the beginning, this will not bode well for the Township at the Court level if it is challenged.

Mr. Dresser stated just because they submit a complete Application initially, it does not mean they would not have to revise it later on. He stated if a developer such as Aria submits an Application and they do not submit the EIA or the Traffic Study until ten days before the ninety days runs out, the Board would have to make their decision in those ten days. Mr. Truelove stated he feels they could deny it under those circumstances.

Mr. Truelove stated Aria is not an appropriate comparison since to date they have only heard the Zoning matter, and it has not come in for Land Development. Mr. Truelove stated a developer could submit all the documents; and while the Township may disagree that it meets the criteria, if the developer gets denied, they could have a Court review it and the Court may disagree with the Township and indicate that it was complete initially, and it is deemed approved. Mr. Truelove stated most developers work with the Township in the process, and this is why there are review letters and modifications to the Plans.

Mr. Truelove stated he does not want to be in a position where he is defending an Ordinance or a process that puts the Township on the wrong end of a legal decision. Mr. Dresser stated if the Application is bad and violates the Ordinance, the Township can deny it based on the violation of the Ordinance.

Mr. Truelove stated he will continue to work on this, reviewing Appellant cases and working with Mr. Majewski, Mr. Dresser, and Ms. Torbert as he has in the past.

Mr. Smith thanked the EAC and the Citizens Traffic Committee for their work for the Township.

#### GRANT CERTIFICATES OF APPROPRIATENESS

Mr. Caiola moved, Mr. McLaughlin seconded and it was unanimously carried to grant the following Certificates of Appropriateness:

706 Stony Hill Road replacement sign – Wachovia Bank to Wells Fargo  
679 Heacock Road replacement sign - Wachovia Bank to Wells Fargo

#### APPROVAL OF EXTENSION OF TIME TO GATHERINGS AT YARDLEY SUBDIVISION

Mr. Caiola moved, Mr. McLaughlin seconded and it was unanimously carried to grant an extension of time to Gatherings at Yardley (Scott Tract) Subdivision to January 15, 2011.

#### DISCUSSION OF HARMONY LANE A/K/A DOGWOOD DRIVE

Mr. Edward Murphy, attorney, was present with Mr. Greg Glitzer.

Mr. McLaughlin stated there was a discussion at the Planning Commission and they have asked that the Board of Supervisors consider the ultimate ownership of Open Space Lot #6, whether there should be a “T” intersection or a “sweep” in the road, and that the Board consider the sewer issue.

Mr. Majewski stated initially the Applicant submitted the Plan as a ten-lot subdivision with a cul-de-sac at the end of Dogwood Lane which is only approved for the first 200 feet of the road, and they had a “T” intersection off of that where the lots fronted on, and that had a cul-de-sac. He stated there was discussion at an earlier Planning Commission meeting several years ago, and the residents along Dogwood Drive were concerned about speeding along the straight portion of Dogwood Drive. Subsequent to that as the Applicant went through the process, they met with the Township and were trying to find a resolution to some of these issues; and they ultimately reduced the lot count from ten to five lots. He stated in order to address the speeding issue, they made the extension of Dogwood Drive curve into the property and terminate in a cul-de-sac; and they left the last two lots at the end of the existing terminus of Dogwood Drive as a stub road that then

comes into the new re-aligned Dogwood Drive. Mr. Majewski stated at the last Planning Commission meeting, the residents were concerned about the curve in the road and indicated they felt it created a more unsafe condition than having a “T” intersection and felt that the curve in the road would make people speed more than the straightaway.

Mr. Smith asked if the Citizens Traffic Commission has looked at this, and Ms. Torbert stated she recalls questioning the arrangement with the curve, but she feels they were told that it was going to be a dead end. Mr. Murphy stated this Plan has been discussed for a number of years. He stated because of uncertainties about the arrangement, they brought this Plan to the Board of Supervisors last November to discuss two issues. He stated one of the issues was whether or not the Board wanted to encourage the developer to do a green street, and the Board indicated that they were in favor of this. He stated this street would eliminate curbing and they were going to provide roadside swales and infiltration within the street itself.

Mr. Murphy stated the second issue raised at that time was the very question that they are present this evening to discuss which is the configuration of Dogwood Drive and whether it should be a sweep as shown on the current Plan versus the more traditional “T” intersection where access to the five lots would come off of Dogwood Drive.

Mr. Murphy stated last November, the Board of Supervisors directed the developer to pursue the lay out and configuration of Dogwood Drive as it is being shown on the Plan. He stated since November, they have revised the Plan and engineered the new street configuration as directed by the Board of Supervisors in November; and that is the Plan that they took to the Planning Commission for review. He stated the Planning Commission has now asked that this issue be re-visited by the Board of Supervisors. Mr. Murphy stated he does not know whether or not the Citizens Traffic Commission has reviewed the Plan, and Mr. Glitzer stated they do have a review letter from the Township traffic consultant.

Mr. Murphy stated with regard to the open space issue, the Applicant assumed that the Township did not want to be in the business of owning real estate anymore if they did not have to, and that the open space would be owned and maintained by a Homeowners’ Association. Mr. Maloney stated he does not feel the Township wants to take ownership of this open space. Mr. McLaughlin stated the Planning Commission was hesitant to recommend that a Homeowners Association take over this open space since they felt this was a long-term risk to the maintenance of the lot, and there could be homeowners who do not want to contribute or do the maintenance that needs to be done to the Township’s standards. Mr. Majewski agreed with Mr. McLaughlin but added they were also concerned that if the Township owned the open space, it would be a maintenance burden for the Township. He stated they also were concerned that if it were owned by a Homeowners’ Association, since there were only five houses that would be part of the Association, long term there may be the problem that they would not properly take care of the area.

Mr. Smith stated he assumes that there are other areas in the Township where they defer maintenance to the Homeowners' Association, and Mr. McLaughlin stated he feels that this is why the Planning Commission had expressed concern as it had been a failure in some other instances. Mr. Caiola asked the size of the tract, and Mr. Murphy stated the total site is fourteen acres, and the open space represents almost nine acres. He stated it is 100% wooded with a creek. Mr. Smith asked what maintenance would be required, and Mr. Majewski stated the maintenance burden on the Township would not be that large other than policing it to make sure people are not constructing things within it and that dumping is not taking place. Mr. Smith stated he does not feel a Homeowners Association should have this since it would basically be maintenance free.

Mr. McLaughlin stated there could be possible obstructions to the stream if someone were to throw things there. Mr. Glitzer stated he feels with the stub of Dogwood Drive, it could be a potential dumping ground. He stated trees could also fall which may block the stream. Mr. Smith stated he feels this makes a stronger argument for the Township to be in control of this land as opposed to five residents. Mr. Murphy stated Township ownership of the land is acceptable to the developer. Mr. McLaughlin asked if there is access to the lot so that the Township can police it, and Mr. Glitzer stated there is access from Dogwood Drive and Spur Road.

Mr. Maloney stated with the regard to the "T" intersection, he understands that it was initially proposed to be a "T," the curve was suggested and Plans were revised to show a curve, and at the most recent Planning Commission meeting, it was recommended that it be a "T" intersection. Mr. Maloney stated he understands that the existing residents expressed preference for the "T" as well. Mr. Glitzer stated there was a shift to the curve when they went from the ten lot plan to the lower impact five lot plan, and they were considering what to do with the existing stub and existing dead end at Dogwood Drive. He stated the ten lot Plan had a cul-de-sac to be constructed on the end of Dogwood Drive in addition to the internal cul-de-sac. He stated they felt with the significant reduction in density, this was no longer feasible; and they were trying to preserve the woodlands which is why they went with the green street concept away from the surface basin. He stated they also did not want to have massive paving which would result in more pavement for the Township to plow and overlay in the future. He stated there was also discussion about the traffic calming aspect of the curve. He stated they also wanted to have lots on a road which they could turn around on.

Mr. McLaughlin stated the residents had indicated that this is a unique situation since Dogwood Drive is a private road after a certain point. He stated there was discussion that the Township only plows up to a point; and after that point, it is not supported by the Township with regard to snow plowing or leaf collection. Mr. Glitzer stated it is platted as a street along the same Subdivision Plan that established Delaware Rim Drive. He stated the Deeds to the properties on either side stop at the right-of-way line so it is a public road, although there is no formal dedication. He stated he feels there are a number of roads in the Township that have no formal offer of dedication.

Mr. Majewski stated the ownership of the road was the fourth issue that the Planning Commission had discussed, but the Township solicitor at that meeting had indicated that issue is up the Applicant to resolve. Mr. Murphy stated since the Planning Commission meeting, Mr. Glitzer's office has done further research on this.

Mr. Glitzer showed the Plan as currently proposed with the sweep configuration which would pick up the five new lots in the development as well as the first three lots along Dogwood Drive. He stated the last three would be on the remaining stub which would be more a shared access driveway than a road. He stated while he does not have a full Title Report on the bed of the road, he did show the Plan dated 3/26/57 and recorded in 6/57 and shows Delaware Rim Drive, Dogwood Drive, and a road called Dell Drive were platted and Dogwood Drive was only approved to the first six lots. He stated there was concern as to the actual Deeds for the adjoining residents and whether they went to the center line; and if in fact was there an ability to reclaim half of the road bed, and he feels with this plat and the access to the lots regardless of how far the Township maintains, this proves that this is a public street, although this would be an issue for the solicitor.

Mr. Majewski stated ultimately this issue with regard to the ownership of the road must be decided. He stated the initial part of the road, the first 200 feet which the Township acknowledges they own and maintain, was constructed when the development was constructed in the 1960's; however, the next several hundred feet was constructed by some of the homeowners as they started building houses going down Dogwood Drive. He feels this was constructed some time after 1980 up to 1990 so the ownership of that is still in question.

Mr. Smith asked Mr. Majewski his position with regard to the curve versus the "T," and Mr. Majewski stated from an engineering perspective he sees no difference between the two. He stated with the "T" intersection, they will still have the straightaway coming from the end of the road heading up the hill. He stated with the curve, the last couple of lots are left out from being under Township jurisdiction.

Mr. Glitzer showed the alternative Plan that had the "T" intersection which was for the ten-lot Plan. He stated if they were to have the "T," they would align the "T" with the common boundary line to eliminate any headlight glare problems.

Mr. Smith asked Chief Coluzzi about the safety aspects, and Chief Coluzzi stated they had submitted a memo some time ago, and they were satisfied with either configuration. He stated there was a "No Parking" issue that came up, and the Police Department felt it was unenforceable.

Mr. McLaughlin stated at the Planning Commission they discussed that with the sweep scenario, there was no stop sign at the intersection where the sweep and Dogwood hit. He stated he understands that under the “T” configuration there would be a stop sign, and Mr. Majewski stated there would be a stop sign for the five lots coming out, but there would be no stop sign on the straight portion of Dogwood Drive where it now exists.

Mr. Maloney stated the original design was for a “T” intersection, and Mr. Murphy agreed. Mr. Maloney asked if the curve was proposed because of a preference by the developer or was this in response to what they had heard from the Board; and Mr. Murphy stated it was in response to the discussions with the Board of Supervisors. Mr. Murphy stated last November when the sweep was recommended, it was felt this would be a traffic calming measure to reduce speeds, and now the residents feel the sweep would encourage traffic to go faster and they would prefer the “T.” Mr. Majewski stated the Planning Commission did note that only two of the residents that lived on Dogwood Drive were in favor of the “T,” and they wanted to get input from all of the residents who lived along the road.

Ms. Carolyn Fogel, 12 Dogwood Drive, stated she lives in the last house on Dogwood Drive; and she feels that when the residents refer to traffic, they do not mean a major amount of cars. She stated they mean one car speeding. She stated a lot of children use this road to ride their bikes and go in and out of the woods and down to the creek. She stated children from the new neighborhood off of Delaware Rim use it as well. She stated they want the “T” to have a stop sign so that it will remind people to stop. She stated she lives on Dogwood Drive, and there are people who do not stop at the stop sign at Dogwood Drive turning right onto Delaware Rim. She stated with regard to ownership of the road, her road is not plowed and there is no leaf pick up. She stated this issue needs to be addressed, and the whole road needs to be taken care of. She stated the residents down her end of Dogwood Drive would be interested in the “T.”

Ms. Torbert stated she does not feel the curve would result in traffic calming, and she feels they should have the “T” with the stop sign.

Ms. Danielle Farrell, Township sewer engineer, was present and stated they have been reviewing the sewer matter for some time. She provided a Plan of the area this evening. She stated the development area is hatched in pink. She stated the blue area shows approximately seventy homes; and in accordance with the Township’s Act 537 Plan, this is where the State has the Township obligated to provide sewer. She stated the 537 Plan is a wastewater management tool that the Township is required to prepare for the State. She stated the Township’s current adopted Plan is dated 1999, and in that Plan it listed six areas that were to be sewerred within a five or ten year timeframe. She stated two of them have been sewerred and four remain. She stated the ten year timeframe

elapsed in 2009. She stated one of the remaining areas is referred to as Sunnyside Lane and Delaware Rim, and this is approximately 70 homes. She stated the property being developed is in the heart of that area.

Ms. Farrell noted Land Development Ordinance Section 178.104 which states, “Where a proposed Subdivision adjoins other properties which are not served by public water or public sewer, utility installations necessary to provide service to such properties shall be constructed.” She stated they reviewed this Application approximately one year ago and requested what is shown on the Plan she provided outlined in the yellow and orange to be provided public sewer. She stated this is approximately twenty-four homes. She stated a few months ago they were asked to reduce their request, and they have reduced it down to nineteen homes which eliminates the orange area and leaves just the yellow area. She stated these are the homes that are immediately adjacent to the Development property. She stated they then discussed the homes to the left of the Subdivision property, and they have discussed that there are environmentally-sensitive features on the site. She stated they recognize that putting pipe under those features would be financially-burdensome and would require Regulatory Approval so they just asked for an easement through the property so that if the Township were to put the pipes in, the Township could install the pipes; and they would not require the developer to install the actual pipes.

Ms. Farrell stated the most recent submission they received for review indicates that the Developer feels it is only appropriate to sewer eight homes, and they re-aligned the easement in such a way that her office did not find was most effective to run the sewer pipe in the future to the adjacent homes. She stated they are passing this onto the Board for their recommendation as to how they would like them to address the situation. She stated they have approached this three times, and each time they have not come to common ground with the Developer.

Mr. Smith stated the Township is required by the Act 537 Plan to provide sewers in this area within a certain period of time, and it seems this time has passed; and Ms. Farrell agreed.

Mr. Murphy stated the Ordinance says that when a proposed Subdivision adjoins other properties, they are to provide sewers to those properties. He stated they only adjoin a handful of the lots that Ms. Farrell spoke about, and the ones across Dogwood Drive do not adjoin the Development. He stated they were willing to do more when they felt they would have ten lots; but now that they have half as many, they have a limited opportunity to do it. He stated he does understand the Township’s desires since this Developer will probably be the last one there, and the Township wants to try to sewer as many of the lots as possible because it is unlikely that the Township will have another opportunity to have someone else do it. He feels it is overreaching given the nature of the proposed Subdivision and what adjoins them and what does not to suggest that the Developer service the number of properties Ms. Farrell is asking that they do.

Mr. Glitzer stated the Plan they are proposing shows sewerage all the lots along Dogwood Drive, and they can also pick up Parcel #20-8-35. He stated there could be a total of nine properties.

Mr. Smith asked Mr. Fedorchak if he has received any questions from the residents in the area as to whether or not they want sewer service. Mr. Fedorchak stated he has not heard anything one way or the other in the recent past.

Mr. McLaughlin stated his understanding is that the Developer's obligation is that if they touch the "red," they are obligated; and it appears that there are some lots that on Dogwood that do not touch the "red," but they are accommodating them anyway, and Mr. Murphy agreed. Mr. Glitzer stated they could run the sewer line along the common rear property line which is what the Ordinance was probably contemplating; however, there are environmentally-sensitive areas in that location including a large berm which was to be preserved.

Mr. Smith stated he understands that some residents in this area do not want the sewer hook up and some do not want this expense.

Mr. Jeff Fogel, 12 Dogwood Drive, stated he is in favor of the sewer and water, but will not be included under the current Plan. He stated of the four neighbors they talked to, one was in favor of it, and the others were concerned about the expense. Mr. Fogel stated his well is tested each month due to the Golf Course so they do have concerns about the longevity of their well; and if they could get public sewer and water, they would like to get it.

Mr. Smith stated there is a cost factor involved, and he does not want to force anyone to hook up at an expense that may be prohibitive; however, they may be obligated to put it in under the 537.

Mr. Fedorchak stated if they do have to bring in sewers throughout the area, there are ways of minimizing the up-front costs to the property owners through deferred assessments and possibly not requiring that the property tie in to the public sewer right away. Mr. Smith asked if this would satisfy the 537, and Mr. Fedorchak stated they would have to discuss this with the DEP.

Ms. Farrell stated they need to have a pipe in the ground according to DEP whether the homeowners connect to it right away or work out an arrangement with the Township. Mr. Smith stated he understands that they are somewhat overdue in putting in pipe in this area, and Ms. Farrell agreed that they are overdue.

Mr. Murphy stated if they were to serve the six lots on the opposite side of Dogwood, they would run the sewer line and install the grinders, and the homeowners' obligation would be to get a plumber to connect their property into their house. He stated the larger share of the work would be done by the developer. He stated the homeowners' cost would be whatever the Township would charge as a connection fee and the plumber's costs. Mr. Smith stated he understands that it would be the six houses at the top of the diagram. Mr. Glitzer stated it would also be 8-35, 8-55, and 8-56. Mr. Glitzer stated they are tying in at the existing sewer terminus shown on Ms. Farrell's drawing. He stated this is a force main until such point as they can get gravity, and they are trying to stretch that gravity connection as much as possible. He stated the lots on the low end of Dogwood would have to have grinders as would the internal Development lots. Mr. Glitzer stated whether they have the "T" or the sweep configuration, they run north to Dogwood Drive, then due east, and then north again to the terminal manhole in Chanticleer.

Mr. Smith asked Mr. Truelove's position with regard to the interpretation of Act 537 and the Township Ordinance. Mr. Truelove stated it seems like everyone is trying to work together, but he would defer to Ms. Farrell on Act 537 issues. Mr. Smith stated Ms. Farrell has indicated that they do not have any choice, and this should have been done already. Mr. Smith stated some people are going to be effected by this, but the Township is under a legal mandate. Mr. Truelove stated the Township is required to provide access. Mr. Smith stated the homeowners would not have to hook up initially.

Mr. McLaughlin asked the nature of the impasse between the developer and the Township sewer engineer; and Mr. Majewski stated Ms. Farrell has discussed this; and the Ordinance indicates that the Developer has to provide public water and sewer to the boundary line of the Subdivision which would require them to bring sewer and water pipes in the ground out to Spur Road. Mr. Majewski stated what the Sewer Department is looking at, instead of going under the stream to provide service to that side of the development, counterbalancing that by bringing it a little further up Delaware Rim Drive.

Mr. Caiola asked about the black shaded area on the Plan provided by Ms. Farrell. Ms. Farrell stated the origin of the map was 2004, and it is a summary of the OLDS (on-lot disposal system) evaluation that was done of the homes in the area. She stated the lettering seen in the circles is a grade that was given to the on-lot system at that time. She noted one of the lots has a F rating for the septic. Mr. Maloney asked what the R grade means, and Ms. Farrell stated that means it was not inspected.

Mr. Smith asked what the penalty would be if the Township did not comply with the Act 537, and Ms. Farrell stated they would be forced to install.

Mr. Maloney stated if he were to count parcels that were directly abutting the red boundary, he counts ten including two that have a grade F and one that has a grade C. He stated what is being suggested is they will not run to those parcels, and instead they will run to some in the orange area and some on the north boundary of Dogwood Drive as a swap. Mr. Maloney stated he feels they should not lose sight of the fact that under a strict interpretation of the abutting properties, they would have run sewer to three of the worst properties currently in the region; and if they do not, they will have made a trade and indicated that these lots are “more deserving” of the sewer connection than the others. He stated while he appreciates the fact that it is less of a burden on the Developer, it is not obvious that it is what is in the best interest of the community.

Ms. Farrell stated the Land Development Ordinance is one tool, but they must keep in mind that in order to bring sewers to the developed parcel, you would be running sewer down the street of the homes on the other side of Dogwood Drive anyway so to not have provided sewer from the street where you were bringing your main anyhow to the curb line, she feels DEP would weigh in at that point. She stated it is not necessarily something that is included in the Land Use Ordinance, but it would be pressed by DEP. She stated she does not consider this a swap, and added they are all going to be required to be sewerred.

Mr. Maloney stated it is therefore a matter of who has the burden to do what and one view would be that it is the Developer’s responsibility as per the Ordinance to run the sewer line to the property boundary of the abutting lots which would require them to run a sewer line down Dogwood Drive from the terminus noted to the property and then through the woods and across the stream. Mr. Murphy stated this would involve taking down trees, and Mr. Maloney agreed. Mr. Maloney stated if that were to happen he understands that the developer would not then be willing to take the extra effort of bringing the line from Dogwood Drive to each of those property lines that are being suggested today. Ms. Farrell stated if the developer were to provide sewer from the terminus manhole into the property and not connect any of the homes he has run past, the DEP would weigh in and question the Developer why they are not running the lines to the right-of-way.

Ms. Carolyn Foley stated the developer has only discussed sewer and not discussed water, and she asked if he is only running sewer. Mr. Glitzer stated with regard to the extension down Dogwood Drive, it was just sewer that is shown on the Plans; and it did not include an extension of water. He stated this is outside of the purview of the Township’s Sewer Department. He stated it would be a separate negotiation with a different provider. Ms. Farrell stated there is not water service shown in the design for any home other than the five for the development. Mr. Murphy stated this is a Pennsylvania American issue. Ms. Farrell stated according to the Land Development Ordinance, it does include water. Mr. Maloney stated this is not a 537 issue, and Ms. Farrell agreed.

Mr. Maloney stated there is a requirement in the SALDO to bring sewer and water lines to the boundary properties, but 537 only mandates that the Township insure sewage to all lots. He stated Pennsylvania American is not mandated to do anything, and their only obligation is to provide water service to the existing customers.

Mr. Murphy stated they are attempting to negotiate what they feel is a fair trade for the demands being made by the Township given the fact that they only have five lots. He stated to date, they have not had any success in coming to some reasonable approach that they can afford to do and still meet the spirit and intent of the Ordinance. He stated if they cannot come to a resolution, the possibility exists that they will do nothing, and then the Township will have to do it. Mr. Smith stated he hopes that the Township can continue to discuss this with the developer.

Mr. McLaughlin asked if they would consider water for the nine properties, and Mr. Murphy stated they would be willing to discuss this, but they need better direction than they have had to date. He stated until now it has been literal enforcement of the Ordinance, and the developer feels they need to be practical. Mr. Smith stated Mr. Majewski is very fair, and Mr. Murphy stated Mr. Majewski is not part of the sewer discussion. Mr. Smith stated he feels they will be able to get this done.

Mr. Murphy stated they will re-engineer the Plan to show a “T” intersection with open space to be dedicated to the Township. He added that hopefully by the time they come back to the Board, they will be able to have worked out the water and sewer issues. Mr. Smith stated in the past they have been able to work together, and he feels they will be able to get something done for the benefit of everyone. Mr. Murphy stated they are not trying to avoid their obligation, and they are interested in doing what they can for the most people.

#### AWARD 2010-2011 SALT BIDS

Mr. Caiola moved, Mr. McLaughlin seconded and it was unanimously carried to award the 2010-2011 Salt Bid to International Salt Company, LLC through the Bucks County Consortium.

#### ZONING HEARING BOARD MATTERS

With regard to the Ruth Brown and Ronald Angrove Variance request to construct a garage not located in the fourth of the lot farthest removed from the abutting streets, it was agreed to leave the matter to the Zoning Hearing Board.

#### DISCUSS SALE OF ELM LOWNE

Mr. Fedorchak stated they have once again placed the Elm Lowne property up for sale and interested buyers can submit a bid up until Noon on November 16. He stated more details about the property are on the Lower Makefield Township Website, [www.lmt.org](http://www.lmt.org). He stated also posted on the Website is the Bid form that buyers need to use as well as the Agreement of Sale. He asked that those with questions contact him at the Township Office.

#### DISCUSS THE SATTERTHWAITE SUBDIVISION

Mr. Truelove stated the process for creating a Subdivision is ongoing, and it is currently in the technical phase. He stated Mr. Majewski's office is in the process of finalizing the survey so that they know the actual parameters and boundaries. Mr. Majewski stated they are waiting for some maps from PennDOT in order to finalize the survey for the right-of-way taking that was associated with the I-95 ramp that was reconstructed five years ago. He stated he feels he will have everything ready by the end of the month.

#### SUPERVISORS' REPORTS

Mr. Caiola stated there will be a Veterans Day Parade on November 7 at 1:00 p.m. He stated they have been working with the Special Events Committee and have raised approximately 90% of the funds needed through donations from area businesses and individuals. He stated they have a keynote speaker and a number of organizations have signed on to participate. He stated they are open to having additional participants, and those interested should contact the Township. He stated they will be putting up a banner about the event. Mr. McLaughlin thanked Mr. Caiola for working on this event. He stated this item was eliminated from the Budget, and Mr. Caiola and his Committee found a way to raise the money so that it was not a financial burden on the Township. Mr. Caiola thanked Mr. Fedorchak and Ms. Liney as well.

Mr. McLaughlin stated a number of the trees and other landscaping at the new PNC Bank have died, and he asked if they will replace them. Mr. Majewski stated the developer plans to replace these in the fall.

Mr. Maloney stated last week they received Plans for Matrix which involved a tremendous amount of paper. He stated he feels they need to amend the Ordinance to require that these Plans be put on a PDF. Mr. Caiola stated they should make a paper copy available at the Township, but agreed that all of these paper copies are a burden.

Mr. Maloney stated they need to determine who needs a paper copy and they should only make those. He stated the rest can be on a PDF and it can be posted on the Web. Mr. Smith stated he feels this would also be a huge savings to the developer as well.

Mr. Smith stated the Disabled Persons Advisory Council continues to work on the Community Service Award and will have this done in about one month. Mr. Smith recognized representatives from the Historical Commission present in the audience. He stated the signs have been completed by the Eagle Scout working on this project, and Public Works will be installing them shortly. Mr. Smith also acknowledged the presence of the representative from the Yardley Business Association, and she commented on a successful Yardley Harvest Day and thanked the Board of Supervisors for attending. She stated they will have an YBA Showcase on November 13 and Landmark Tours will have a trolley going through Bristol, Morrisville, Yardley, and New Hope from 11:00 a.m. through 10:00 p.m. Mr. Smith asked that they contact Mr. Fedorchak with their events so that he can put them on the Township Cable Channel.

#### APPROVE EASEMENTS FOR BLACK ROCK ROAD

Mr. Fedorchak stated they have successfully concluded negotiations with the two homeowners to acquire easements for the pedestrian trail along Black Rock Road. He stated they will pay \$2,500 for the easements and \$9,500 in landscaping.

Mr. McLaughlin moved, Mr. Caiola seconded and it was unanimously carried to approve the easements as outlined by Mr. Fedorchak.

There being no further business, Mr. Caiola moved, Mr. McLaughlin seconded and it was unanimously carried to adjourn the meeting at 10:05 p.m.

Respectfully Submitted,

Matt Maloney, Secretary