

TOWNSHIP OF LOWER MAKEFIELD
PLANNING COMMISSION
MINUTES – NOVEMBER 26, 2007

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on November 26, 2007. Chairman Dickson called the meeting to order at 7:35 p.m.

Those present:

Board of Supervisors: Dean Dickson, Chairman
 Tony Bush, Vice Chairman
 Karen Friedman, Secretary
 Richard Cylinder, Member
 John Pazdera, Member

Others: Nancy Frick, Director Zoning, Inspection & Planning
 John Donaghy, Township Solicitor
 James Majewski, Township Engineer

Absent: Grace Godshalk, Supervisor Liaison

APPROVAL OF MINUTES

Mr. Cylinder moved, Mr. Pazdera seconded and it was unanimously carried to approve the Minutes of 9/10/07 as amended.

Mr. Bush moved and Ms. Friedman seconded to approve the Minutes of 9/24/07 as corrected. Motion carried with Mr. Pazdera abstained.

DISCUSSION OF PROPOSED ORDINANCE AMENDING AN ORDINANCE OF THE TOWNSHIP OF LOWER MAKEFIELD, BUCKS COUNTY, PENNSYLVANIA AMENDING PROVISIONS OF SECTION 200 OF THE TOWNSHIP ZONING ORDINANCE BY ADDING A NEW ARTICLE XIIC THAT ESTABLISHES A NEW AMATEUR RADIO OVERLAY DISTRICT WHICH SHALL ALLOW AND PROVIDE FOR THE REGULATION OF THE ERECTION AND USE OF AMATEUR RADIO TOWERS AND SUPPORT STRUCTURES IN CERTAIN DESIGNATED AREAS OF THE TOWNSHIP

Mr. Greg Mauro, 915 Princess Drive, Mr. Steve Levin, and Mr. Dominick DiClementi were present.

Ms. Friedman thanked those present for the materials they had provided. She stated she has learned that different heights provide different reaches as to how far they can transmit

to receive or give out a signal and asked in the event of an emergency how far they would need to transmit in order to receive services to the Township. She stated she assumes they would only need to go to the Township Police or to Fallsington. Mr. DiClementi stated the further the better. He stated during 9/11 no cell phone operation was available but from his car, via repeaters, he was able to make contact with his family as the amateur radio systems were working. He stated he can run his transmitter on batteries from his home. He stated he feels a reasonable height would enable them to talk to those in and out of the State.

Ms. Friedman stated she questions how high they would need the tower to be if they are trying to take care of the Township citizens and get help. Mr. Levin stated this would depend on how far a disaster goes out. He stated the height in emergency operation at the local level would be at a higher frequency so higher would be better. Ms. Friedman questioned what height this would be. Mr. Levin stated the higher the better. Mr. Mauro stated looking at local police communications with the equipment on the hill, they are close to the bands close to the FM radio which are higher frequencies. He stated trees can also affect this. He stated there are different reasons for wanting to erect an installation above the tree line.

Ms. Friedman asked how many people in the Township are licensed, and Mr. Levin stated they feel there are 120 who are licensed but only approximately 25 are active. Ms. Friedman asked how many operators they really need in an emergency. Mr. Levin stated this would depend on the emergency. Mr. DiClementi stated he feels the more the better as everyone may not be in the Township at the time of the emergency.

Mr. Cylinder stated the copies of the Ordinances they received were not identified as to whose Ordinances they were. He stated they therefore had no way to contact any of the Municipalities to see if they were effective. Mr. Cylinder stated the Ordinances provided have differences in heights.

Mr. Levin stated under the existing Township Ordinance, you are permitted to attach an antenna to a home if it is 35'; and he did get a Permit for 35' antenna assembly to his house; but he feels this is restrictive as he cannot work on it if something happens to it or pull it up and down.

Mr. DiClementi stated there are many different ways that antennas can be erected. He stated he has been on the air for many years, and his neighbors do not have any issues with it because he has trees; and he was able to nestle the antenna in the trees so it is not an aesthetic issue for his neighbors. He stated if the trees were not there, there would be no other accommodation to elevate an antenna. He stated if this proposed Ordinance is passed, it does not mean that every amateur will put up an antenna as this is expensive. He stated it could cost \$5,000. He stated there should be an Ordinance to regulate this correctly as there may be people who do want to put up something.

Mr. Bush asked if there is a practical, reasonably priced, retractable antenna; and Mr. Mauro stated there are some that crank up and down. Ms. Friedman stated she did some research on this, and they had a base price of \$2,500 but they do not withstand high winds and there might be some problems with stability. Mr. Mauro stated engineers have worked out how large a hole must be dug, wind load, and have contour maps to show winds for various areas, etc.; and the Building Code would oversee this type of construction. Mr. DiClementi stated there are also free-standing towers that do not require guiding and some that do. He stated because of the small lots, he does not feel there will be many guide towers.

Ms. Friedman stated she did research on the towers but saw no pictures with the tower and antenna together. Mr. DiClementi stated the tower is the mechanism on which to mount the antenna. He stated in the proposed Ordinance they have not defined what a tower is, and he has prepared some proposed modifications to the Ordinance to define the tower. He stated he does not feel every antenna should be regulated. He stated if someone wants to put up a small antenna on their back porch, he does not feel it should be regulated by the Township. He feels the intent of the Ordinance should be for the actual tower itself, its location, and the safety of the installation.

Ms. Friedman asked if there are any antennas that could be constructed or leased and placed on the cell phone towers or would this conflict with the wave lengths adding that there are already a number of these in the Township which are significantly high and this would eliminate the need for towers and antenna on many different homes. Mr. Mauro stated a remote installation would be expensive. He stated the purpose of the amateur radio service as defined by the FCC is to establish a base of operators who can assist in emergency communications and establish a base of skilled technical people within the Country. He stated the service is established so that you can operate from a home. He stated in order to promote their craft, amateurs operate regularly in a lot of different environments; and there is a lot of activity on the amateur bands so that the more you operate, the better you get. Ms. Friedman asked if rather than having sixteen, seventy-five foot towers on sixteen separate residences, would it enhance their ability to communicate at a better level if a few of them were attached to the existing cell towers. Mr. DiClementi stated every transmitter that is in the home must be connected to an antenna and they would have to run a wire from the home to the remote location if they were going to pool resources.

Ms. Friedman stated there is a request for 65' tower/antenna assemblies; and she feels there would be a natural, built-in restriction on smaller lots because where you put the antenna, for safety reasons, if it falls, it has to fall within your lot line. Mr. Mauro questioned why they would require that it fall within your property; and Ms. Friedman stated there would be liability if it fell on a neighbor's property. Mr. Mauro stated he has a 25' foot high chimney and were this to fall, it could fall on his neighbor's property. Mr. Mauro asked if there is any other accessory structure or building that needs to

comply with this; and Ms. Frick stated a satellite dish would be the same. She noted a shed would have to be ten feet from the property line; and Mr. Mauro stated he feels his shed is probably higher than ten feet; and Ms. Frick stated it should not be if it falls within the requirements for an accessory building. Mr. Majewski noted that some of the sample Ordinances they provided contemplate having it set back that distance such that if they have a 100' tower, it must be 100' from the property line in a Residential District. Mr. Levin stated if an engineer approved it, it would be structurally sound; and if there was a major disaster, the antenna tower would not fall over.

Mr. DiClementi questioned why the Township is requiring a \$100,000 insurance policy if they are also requiring that the structure only fall within the property. Ms. Friedman stated the tower could fall and then break apart and go out of the confines of the property. Mr. Donaghy stated the language that is in the Ordinance relating to insurance is not limited to property damage and states it would “pay for all damages which may be caused either to a person, persons, or property.” Mr. Cylinder stated one of the Ordinances provided to the Planning Commission shows on page 4 that they require \$1 million insurance coverage.

Mr. Mauro stated he questions the need to have the Township named as an additional insured. Mr. Levin stated his underwriter stated they would not do this and advised him that his homeowners' insurance should take care of any liability. Mr. Cylinder stated it could fall into the street which is owned by the Township and could also hit cars. Mr. Donaghy stated it is not only physical damage from falling. Mr. Mauro stated his shed could fall over and cause damage and no one is requiring him to name the Township as an additional insured for his shed. Mr. Donaghy stated the difference is that they are requesting an additional height for the tower over and above what is permitted to homeowners in those Districts. Mr. Mauro stated he would still request that the requirement that the Township be named as an additional insured be struck from the Ordinance. Mr. Donaghy stated it is not difficult to get the Township named as an additional insured and this is not an unusual request. He stated if they find that this is not possible, they could come back to the Township to indicate that they cannot get this insurance.

Mr. Cylinder stated in the packet of information they provided, it indicated that the higher they go with the antenna, the greater distance they can get out of their radio with lower amounts of power; and a lower antenna would reduce the problems they are discussing but they would have to broadcast at a higher frequency or higher power and in doing so they would interfere with neighbors' electronic equipment. He stated the neighbors may not be in favor of this if it is very high and may also be unhappy if it is low. He asked if there is a height they can go to without impacting the neighbors.

Ms. Frick stated she raised this question when they first came before the Planning Commission and felt it should be handled on a case by case basis before the Zoning

Hearing Board as a Variance request such that they would be required to prove a hardship and the neighbors would also be notified and given an opportunity to speak to the issue. Mr. Mauro stated there is a Federal preemption that tells Townships that they have to let them do this. Mr. Donaghy stated they cannot preempt the use, but Municipalities are permitted to place controls and provide reasonable accommodation. Mr. DiClementi questioned what they would do if they went for a Variance and all neighbors were opposed just that there would then not be a reasonable accommodation. Ms. Frick stated the Decision would be up to the Zoning Hearing Board. She stated she felt it would be good for it to go before the Zoning Hearing Board as they could then look at each piece of property.

Mr. DiClementi stated if someone were living in a townhouse environment, it would not be conducive for a radio operator to erect a 65' tower. Mr. Mauro stated the preemption would not affect any Homeowners Associations so that any Deed-restricted properties would not be affected by the Ordinance. Mr. Bush stated many townhouse communities are not Deed restricted, and this Ordinance as written would enable the use in the Residential Districts. Mr. Mauro stated he does not feel the townhouse developments would permit this under their restrictive covenants. Ms. Frick stated the Township does not enforce those restrictive covenants. Mr. Donaghy stated while there could be restrictions of record that apply to the homeowners, they may or may not include restrictions against antennas. Mr. DiClementi stated almost all of them do. Mr. Donaghy stated in adopting an Ordinance, the Township cannot take the opinion that they do not have to worry about this and the Township must consider it as there may be one development that does not have such a restriction.

Mr. Cylinder asked if they could approve this as a Conditional Use or Special Exception which would require them to have to go before the Board of Supervisors or the Zoning Hearing Board. Mr. Donaghy stated they cannot prohibit the use or place limitations on the facilities that will prohibit their ability to operate amateur radio because of the Federal preemption. He stated they are trying to impose dimensional restrictions. Mr. Cylinder asked if there is any room for judgment or is it only a matter of measurement. Mr. Donaghy stated there may be room for judgment but noted there is specific language on height and spacing as well as the reference to structural soundness which does impose the Federal requirements.

Mr. Cylinder asked if any Federal Agency inspects these when they are installed, and Mr. Mauro stated the local Building Inspector would inspect it. Ms. Frick stated they do have to submit engineered plans. Mr. Levin stated a number of years ago he did have a physical engineer submit Plans, and the Building Inspector indicated it was approved; but due to the Zoning Ordinance, a Permit was not approved. Ms. Frick stated while the Permit was denied, he was given the opportunity to seek a Variance from the Zoning Hearing but chose not to apply. Mr. Levin stated his attorney advised him that if the neighbors sued him, it would not stand up in Court.

Mr. Bush asked how tall the antenna would be that would go onto the support structure, and Mr. DiClementi stated it would be two to three feet above the support structure. Mr. Donaghy stated the total facility would still need to meet the height restrictions. Ms. Friedman stated the Ordinance should clarify that the height restriction given is for the base, the tower, and the antenna in total.

Mr. Cylinder stated that earlier this evening, one of the gentlemen present indicated it should be above the level of trees; and he questions if they will be coming in requesting that trees be cut down. Mr. Levin stated if it were a self-standing structure, they would put it away from a tree. Mr. Cylinder stated he feels most of the Township lots will not offer a lot of options as to where the antenna can be located because the lots are small. Mr. DiClementi stated he feels this is why they will not see antennas in every yard. Ms. Frick asked if it needs to be a minimum distance from the house to meet the operator's need; and those present indicated it does not. Mr. Mauro stated a typical construction is a three-legged tower with twelve to eighteen inches between the legs. He stated they taper as they go up and are typically next to the house and at the highest point, you would attach a house bracket for additional weight-bearing capability so that it does not sway in the wind.

Mr. Dickson stated Mr. Levin had provided addresses of four individuals who have towers, and he visited two of the properties one in Falls and one in Middletown where there were free-standing towers, and took pictures so that he could get an idea of the aesthetics. He stated the property in Falls Township had two separate antennas. Mr. Majewski stated the proposed Ordinance requires fifty feet between similar antennas.

Mr. Dickson asked Mr. Levin how high he would like to build if there were no height restrictions, and Mr. Levin stated he would go 75'. Mr. DiClementi stated the higher the antenna, the most costly it will be. Mr. Dickson reviewed information he read with regard to the impact on neighboring television reception which indicated that doubling the height of the tower from 35' to 70' would reduce the potential for interference by 75% although he is not certain how this relates to cable television.

Mr. Dickson asked if there should be something in the Ordinance regulating the width as well as the height since some of the antenna arrays he saw were very elaborate. Mr. Donaghy agrees they should consider this in the Ordinance as well.

Ms. Friedman noted information provided regarding the potential exposure to electromagnetic fields. Mr. Levin stated what they are working at, it is very minimal. Mr. DiClementi stated what they are working with is safer than cell phones. Mr. Mauro stated by law, they are required to do a radio frequency survey to make sure that they meet the regulations of the FCC. Mr. Cylinder asked how this is monitored, and Mr. Mauro stated it is incumbent on each operator. Ms. Friedman asked if this use interferes with defibrillators, and Mr. DiClementi stated it does not because of the

frequency at which they operate. Mr. DiClementi also noted that since they now have cable television and FIOS, there is no interference from the amateur radio operators on television.

Mr. Cylinder asked the Township engineer's opinion on this Ordinance, and Mr. Majewski stated his concern is with the height and whether it is excessive and what it will look like in the area. He feels 65 feet is too high.

Ms. Friedman asked if there is any language they can put in the Ordinance that will help them understand what they will wind up with on a specific property. She asked if someone would have to come back to the Township to add something additional to their tower after approval from the Township. Ms. Frick stated she assumes it would be an individual's use and it would not involve co-locators. Ms. Friedman stated she would like to be able to insure that they understand what they are going to have on the property when it is approved. Mr. Donaghy stated if the Ordinance as proposed were adopted, if an Applicant comes in and meets all the dimensional requirements, they can go to 65'; but there is no regulation as to what is below this 65' and it could include multiple antennas. Mr. Levin stated the properties Mr. Dickson saw were not typical installations. Ms. Friedman stated it is possible that someone may want to have something with multiple antennas, and she feels the Ordinance should cover this situation.

Mr. Donaghy stated he feels they must consider the width and aesthetics of having multiple antennas. He noted while the Township cannot adversely impact their ability to operate, they can put on reasonable limitations. He stated if the Township makes it too limiting someone could challenge it, and they are trying to come to an agreement with something that is reasonable.

Mr. Cylinder asked if there would be any instance where there could be more than one tower, and Mr. DiClementi stated this would depend on the size of the property although he feels the operators should be reasonable as well. Mr. Cylinder asked if the Ordinance limits it to one tower per property would this be a problem, and those present stated they did not feel it would. Mr. DiClementi stated when you look at the majority of the properties in the Township, he does not feel it would be feasible to have more than one. It was noted the Ordinance does state there cannot be towers closer than 50'.

Ms. Friedman asked about interference from a neighboring tower, and Mr. DiClementi stated there could be interference from a nearby tower, although currently there are few operators in the Township. Mr. Cylinder asked if the field is growing and Mr. Levin stated the Morse Code requirement was taken away so that some new operators are coming into the field. Mr. DiClementi stated he feels there is only a small percentage of operators who will want to put up a tower. He stated he himself will not install one as he is happy with the system he currently has.

Mr. Bush stated he recognizes that those present have indicated they wish to practice this hobby as well as provide a benefit with regard to emergency management, but noted Chief Coluzzi's comments in a letter to Ms. Frick last August indicating he was not taking a position on this. Mr. Bush asked, in an effort to be reasonable, could the Ordinance be drafted such that in R-1 they could have a 65' tower and in R-3 it would be some lesser height or that they be required to have a retractable tower. Mr. Donaghy stated typically with an Overlay Ordinance you have general standards which apply. He stated he feels it would be difficult to put an antenna in the R-3 District because of the setback requirements. Mr. Bush asked about R-2, and Mr. Donaghy stated he feels there may be lots in R-2 which could meet the requirements. Mr. Levin stated his home is in the R-3 District noting he has a corner lot so he has a side property. Mr. Majewski noted there may also be a few lots in the R-4 District which would meet the requirements.

Mr. Dickson stated he assumes that if someone applied for a Building Permit to erect a tower, the neighbors would be notified; and Mr. Frick stated this is not correct. Ms. Frick stated this is the reason why she feels these should go before the Zoning Hearing Board, since neighbors are notified about those Applications. Mr. Dickson stated he is concerned that neighbors will contact the Township when they see these towers going up. Ms. Frick stated this is how the Township learned that Mr. Levin had erected a tower since they received a written complaint from his neighbors. Mr. Dickson asked if they could add to the Overlay Amendment a requirement that the adjoining property owners within a certain radius be notified. Mr. Donaghy stated if they are going to require notification, there would have to be some purpose. Ms. Frick stated the Township would then have to give the adjoining property owners an opportunity to be heard. She stated this is why she feels these matters should go before the Zoning Hearing Board as it would then be on case-by-case basis. Mr. Donaghy stated in the case of a Special Exception or Conditional Use, if the Applicant meets all the requirements of the Ordinance, the burden would shift to any opponent. He stated there could be a denial of the Special Exception or Conditional Use if it is established that there is a danger to health, safety, or welfare of the community. Mr. Donaghy stated he does not feel they could use this as a standard for these proposed towers unless they could indicate that because of the height, it could fall over. Mr. Cylinder stated he feels the neighbors should be able to state their position. Mr. Donaghy stated the opponents would have the right to challenge it based on a danger to health, safety, and welfare.

Mr. Dickson stated he feels they need to find a way to protect the property owners and the Township. Mr. DiClementi stated there must also be a reasonable accommodation under the Federal law; and as long as he meets what the Township feels is reasonable, he does not feel there should be a neighborhood vote as to whether or not the tower can be erected. Ms. Frick stated they also need to understand that this is a structure that the neighbors are going to view from their property. Mr. DiClementi stated this is why certain amateur operators chose not to erect such a tower. He noted he has chosen not to

erect a tower; and he does not feel that there will be many requests for such a structure and only Mr. Levin may actually apply.

Mr. Donaghy stated under the current Ordinance if someone comes in to build a tower of 35', they would get a Permit; and Ms. Frick stated this is correct provided they submit engineered Plans and obtain a Building Permit. Mr. Cylinder asked if they could require them to get a Special Exception if they wanted to go higher than 35', and Mr. Donaghy stated they could do this. Mr. Cylinder questioned the need for an Overlay District with regard to these towers and feels they should state that you can have a tower up to 35' and if you want to higher, you must apply for a Special Exception. Mr. Dickson stated he feels the reason is because of the FCC Regulation which states: "the Township cannot exclude amateur radio antennas." Mr. Cylinder stated the Township can accommodate them without having an Overlay District since it is accommodated in the regular Zoning Ordinance and they can apply for a Special Exception if they want to go over 35'.

Mr. Donaghy stated while they could do this by amending every District separately, the Ordinance would do more than just permit higher towers, since it would also impose a number of restrictions as far as location on the site, fencing, etc. Mr. Cylinder stated they could include all these conditions as part of the Special Exception. Mr. Donaghy stated the issues would be the same whether they do it as an Overlay District or for each separate District as they would still have to address the regulations and limitations as the limitations do not exist in the current Ordinance.

Mr. Dickson asked what would be more advantageous to the Township – an Overlay or Special Exception; and Mr. Donaghy stated a Special Exception is not incompatible with the Overlay and is simply how you apply it to a particular District. He stated a Special Exception would be the procedures to follow in order to get the approvals. He stated the existing Overlay District for telecommunications requires a Conditional Use. He stated the theory for the Overlay is that there are overall restrictions so that you do not have rezone each separate District.

Mr. Bush stated he is concerned about the 65' in some of the more densely Zoned neighborhoods including R-2, R-3, and R-4. Mr. Majewski stated he feels there are possibly four lots in R-4 that would be able to meet the requirements, but there are a number of lots in R-3 which would qualify. Mr. Cylinder stated he feels with the other restrictions in the Ordinance, that many towers could not go to 65' because of the lot sizes. Mr. Donaghy stated they also cannot be in the front yard or closer than 50' to roads, other towers, etc. Ms. Frick stated she feels many lots in the R-3 District could qualify to go to 65'.

Mr. Majewski stated they must consider what is a reasonable accommodation, and he asked if they need to go to 65' which he feels is too high adding possibly there is a height they can agree to which would meet the needs of the amateur radio operators and the needs of the public who have to look at the tower in their rear yard. Mr. Mauro stated they need to consider how low they can go before it is vulnerable to challenge; and he would be willing to do research on this.

Mr. Mauro questioned the language regarding power lines and natural gas conduits since he does not feel this should apply since these are buried to certain depths. Mr. Donaghy stated he will have to look into this. Mr. Majewski stated there could be sparking if the tower falls over. Mr. Pazdera stated with regard to the gas conduit he feels they are referring to where the pipe comes into an individual's home. Mr. Majewski noted other areas in the Township where there are transmission lines.

Mr. Cylinder asked if the FCC has requirements regarding lightning; and Mr. DiClementi stated in the engineering plans, the engineer should indicate the tower is grounded.

Mr. Mauro asked that they consider a change to the proposed Ordinance that would require either fencing or an anti-climbing device as opposed to requiring both.

Mr. DiClementi stated the towers are not electrified. Mr. Donaghy asked what is used as the anti-climbing device, and Mr. Mauro stated it is a metal plate approximately six feet high on the tower. Mr. DiClementi stated he agrees anti-climbing devices should be on the towers.

Mr. Dickson asked that those present provide their recommendations for changes to the proposed Ordinance to the Township solicitor. Mr. Dickson stated they must also clarify that the height include the entire array. He stated the Bucks County Planning Commission indicated they felt that 65' was a reasonable height based on the Zoning. Mr. Dickson stated he feels if they permit 65' it would only really be able to be used in the R-1 District based on the lot size. Mr. Majewski and Ms. Frick disagreed. Mr. Majewski stated there are individual lots which would meet the requirements.

Mr. Cylinder asked if there have been challenges to different heights with regard to this issue; and Mr. Donaghy stated he does not know but Mr. Mauro had indicated he was going to provide some information on this.

It was noted this matter will be considered again probably at the first or second meeting in January.

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There being no further business, Mr. Cylinder moved, Mr. Pazdera seconded and it was unanimously carried to adjourn the meeting at 9:30 p.m.

Respectfully Submitted,

Karen Friedman, Secretary