

TOWNSHIP OF LOWER MAKEFIELD  
PLANNING COMMISSION  
MINUTES – FEBRUARY 25, 2008

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on February 25, 2008. Chairman Bush called the meeting to order at 7:35 p.m.

Those present:

Planning Commission:        Tony Bush, Chairman  
   Richard Cylinder, Secretary  
   Dean Dickson, Member  
   John Pazdera, Member

Others:                            Nancy Frick, Director Zoning, Inspection & Planning  
   John Donaghy, Township Solicitor  
   James Majewski, Township Engineer  
   Steve Santarsiero, Supervisor Liaison (joined meeting in  
   progress)

Absent:                            Karen Friedman, Planning Commission Vice Chair

**#567 – LOTUS TRACT PRELIMINARY PLAN DISCUSSION AND  
RECOMMENDATION FOR APPROVAL**

Mr. Nick Rose, engineer, was present. Mr. Bush noted the last time the Applicant was before the Planning Commission was the end of July. He asked Mr. Rose to highlight changes in the Plan which have taken place between then and now. Mr. Rose stated the Planning Commission asked the Applicant to increase the dimensions of the turn-arounds, and this is now shown on both driveways. Mr. Rose stated they were also asked to move the Lot #1 driveway further away from the existing dwelling, and the driveway has been moved approximately 30 feet. Mr. Rose stated they were also asked to add trees in the rear of the unwooded lot, and they have shown additional trees on the Revised Plan. Subsequently, Mr. Majewski asked for six trees, and the Applicant will agree to do this. Mr. Rose stated they were also asked to study the issue as to whether basements would present a problem. He stated when DeVal Soil dug test pits for the seepage beds, they reached 7 ½ feet and did not hit water. Mr. Rose stated there was evidence of seasonal water at 4 ½ feet to 5' deep. Mr. Rose stated he asked DeVal to provide an opinion as to whether it was felt the existing ground water or the proposed seepage beds would present a problem with basements, and while DeVal recommended some measures that would further prevent any problems with basements, in general it was felt there would not be a problem with having basements. Mr. Rose stated he provided copies of this information to the Township and the Township engineer.

Mr. Rose stated when the Applicant was previously before the Planning Commission there was an issue with regard to a shed in the upper portion of the property; and it was found that the shed was encroaching on the Applicant's property, and it has now been removed. The Plan has been revised to show that there is no shed. Mr. Rose stated they were asked to re-submit Plans, and they did this in August. The Plans were subsequently reviewed, and he feels only minor items are left on the review letters.

Mr. Cylinder stated according to the Minutes when this matter was last heard, a Note was to be added to the Plans that there should be no further subdivision. Mr. Rose stated he did look into this and is not sure what the basis would be for putting that Note on the Plan. He stated this is a by-right Subdivision as they are not requesting any substantive Waivers. He stated such a Note would prevent a lawful subdivision in the future if any regulations of the Township change. He added at the present time, it would not be possible to further subdivide the tract because of the existing Ordinances. Mr. Rose stated he does not feel they would be in a position to bind future owners should the Township regulations change. Mr. Dickson stated the property owner of the Lotus Tract also owns the adjacent Clover Tract which was withdrawn. Mr. Dickson stated the Planning Commission was concerned that at some future time, the owners may attempt to take part of the Lotus Tract and add it to the Clover Tract so that they could create a third dwelling. Ms. Frick stated the Clover Tract could not be subdivided without part of the Lotus Tract.

Mr. Santarsiero joined the meeting at this time.

Mr. Cylinder stated he felt that there was an issue with regard to the soils on the Clover Tract being questionable for building additional housing. Mr. Rose stated the Clover Tract has a substantial amount of wetlands on it which are governed by the State and Federal regulations which prevented it from being a two-lot Subdivision.

Mr. Rose stated if a lawful lot line change could be created that passed all of the Township Ordinances, he does not understand why this Applicant should be asked to further restrict themselves. Ms. Frick stated the note being discussed is a standard note that is always put on Minor Subdivision Plans that any further subdivision of Lot #1 or Lot #2 would be considered a Major Subdivision and road improvements may or may not be considered at that time. Mr. Rose stated they are currently filed as a Major Subdivision since when they started the process, they filed as a three lot subdivision; and rather than re-apply, they continued to have it considered as a Major Subdivision even though it was only two lots. Ms. Frick stated in prior Minutes it was indicated by Mr. Rose that they wanted it to be considered as a Minor Subdivision as they were asking for Preliminary/Final Approval. Mr. Rose agreed that he had indicated that they would like to proceed with Preliminary/Final. Mr. Rose stated he was not aware that proceeding with Preliminary/Final only applied to a Minor Subdivision. He felt that they were at a point where there were so few issues that they could proceed to Preliminary/Final.

Mr. Bush asked if the property owners have an expectation at this time to join part of the Lotus Tract with the Clover Tract, and Mr. Rose stated when the Clover Tract was withdrawn, the owners did look into this and elected to pursue only the Lotus Tract as a two-lot subdivision at this point in time.

Mr. Donaghy asked if the Planning Commission's concern is whether the Lotus Tract would be further subdivided to create a third lot or whether a portion of the Lotus Tract may someday be merged with the Clover Tract. The Planning Commission indicated that the concern was the potential merger. Mr. Donaghy stated if this is the concern, in addition to the note Ms. Frick referred to, they could also include a note which states that no portion could be subdivided in order to be conveyed to or merged with an adjoining tract. Mr. Cylinder stated he is more concerned with the soils than putting lot lines in. Mr. Donaghy stated he is only speaking to the issue that was raised, and added that it is possible that even if no notes are put on the Plan, the physical characteristics would be such that they could not further subdivide unless there were changes in the Ordinance that would permit subdivision of the Lotus Tract or a subdivision whereby they were creating a new lot which is partially in the Lotus Tract and partially in the Clover Tract.

Mr. Dickson stated last year he asked if the Planning Commission voted to approve the Preliminary Plans as presented, could the Commission state that the Plan was being approved with the understanding that there would be no attempt to subdivide the Clover Tract and add it to the adjoining tract to create a third lot and that the Planning Commission was approving this Plan on that basis that these are two distinct pieces of property that happen to be owned by the same individuals. Mr. Donaghy stated without the consent of the property owner you cannot add a Condition that is not consistent with the provisions of the Ordinance so that if all the Applicant is presenting now is this particular Plan, and if it meets all of the requirements of the Ordinance, the Planning Commission cannot require that there be no further subdivision. He stated this is different from what Ms. Frick brought up because to the extent it is a Preliminary Plan, if there is a further attempt at subdivision, they will then have turned it into a Major Subdivision, and they would have to comply with all provisions of Major Subdivision including roadways improvements, etc. and he feels this note could be required as this is a requirement of the Ordinance.

Mr. Cylinder asked the date of the Plan, and Mr. Rose stated the Revised Plan is dated 5/30/05, last revised 8/7/07. Mr. Cylinder stated the Planning Commission was not provided a Plan with this date, and Ms. Frick stated this Plan was in the Planning Commission packet on 8/24/08 and is the Plan which Mr. Cylinder was shown in the office today. Mr. Cylinder asked if they are planning to have basements, and Mr. Rose stated as noted earlier this evening, they do not see any reason to restrict them from having basements given the report received from the soils people that there is no reason to restrict basements.

Mr. Rose stated they are willing to put a note on this Plan that there will be no further subdivision of this tract. He stated if there is no basis in the Ordinance for prohibiting them from joining up with the adjacent tract, he is not sure he could advise his clients to agree to this restriction. He stated they could leave this up to the Township officials at the time that this matter may arise to determine if there are any issues with drainage, wetlands, etc.

Mr. Donaghy stated they are asking for some Waivers, and Mr. Rose agreed that there are two very minor Waivers being requested. He stated one has to do with stormwater management so that they would not have to cut down more woods, and he feels it is a minor Waiver having to do with the release rate for a one-year storm.

Mr. Donaghy asked Mr. Rose if he believes that the Plan submitted complies with all requirements of a Major Subdivision; and Mr. Rose stated it was filed as a Major and to his knowledge reviewed as a Major Subdivision since they started out with three lots. Mr. Bush asked the significance between a review of the Plan as a Major versus a Minor Subdivision, and Mr. Donaghy stated the requirements are different for a Minor Subdivision versus a Major Subdivision with regard to some of the items that have to be provided on the Plan itself and some of the requirements for approval. Mr. Majewski stated he did review it as a Major Subdivision.

Mr. Cylinder asked if there would be a way for them to get around the restrictions if there was a note on the Plan regarding future Subdivision. Mr. Donaghy stated this Condition would be part of the approved plan which would be on record, and the Township could enforce it. Mr. Cylinder asked if they sold Lot #1, would the owners of that Lot have any say in the matter; and Mr. Donaghy stated they could require the Applicants to record a restriction of record that applies to both lots that permits it to be enforced by the other property owner which is not uncommon in these situations. Ms. Frick asked if the Note regarding no further subdivision is on the Recorded Plan and is part of the Conditions of Approval, would it be enforceable, and Mr. Donaghy stated there have been some cases about enforceability so it is safer if it is intended to be enforceable by other lot owners in the Subdivision to make it clear and have it apply to all the lots within the Subdivision. He stated usually there is a separate restriction of record. He stated there have been a number of cases regarding the non enforceability of “no further subdivision” and cases have gone both ways.

There was discussion about the road improvements, and Mr. Rose stated the Planning Commission may want to consider if they really want to widen just this portion of Big Oak Road since the Clover Tract has been withdrawn. Mr. Rose stated they are showing the road widening on the Plan.

Mr. Bush asked if the Applicant provided Mr. Majewski with the results of the water testing in accordance with the 8/9/07 letter from the geotechnical consultant, and Mr. Majewski stated they did receive the stormwater information from the soils testing and Mr. Majewski stated he has verified that information.

Mr. Pazdera asked about the Applicant's response to the Remington/Vernick letter, and Mr. Rose stated they will comply with all items in that letter.

Mr. Bush asked about the safety issue of the road improvements proposed in front of this one tract; and Mr. Majewski stated initially when they were proposing construction of both tracts, they were proposing road improvements from Pine Cone Drive down to Acorn which would have resulted in full road widening. Mr. Majewski stated that now that the adjoining Subdivision has been dropped, and assuming it is developed in the future, it will probably only be one home which would not be required to do road improvements, he questions if they want to have road widening in front of Lots #1 and Lot #2 on the Lotus Tract, although this may be something for the Board of Supervisors to consider.

Mr. Bush stated previously some adjoining property owners to the rear had expressed concerns about flooding; and Mr. Rose stated that evening he did advise that the Applicant proposes extensive stormwater detention systems for the two lots, and they will not increase any flow onto those properties to the rear; and in fact, the Lotus Tract flows will go to the right and into the wetlands on the Clover Tract. Mr. Rose added that soil tests were done in the area where the houses are proposed to be developed and those tests indicated there would not be a problem with construction of these two houses.

Ms. Gayle Lester, 177 Aspen Road, stated her home is behind the property under discussion. She stated she is an original owner and there has always been a steady stream of water in the spring which begins at her property. She stated hers is the first property where there is a decline, and she and her husband have had to put tiles on their property in the back that abuts the Lotus property so that it will drain since otherwise they had standing water in the rear of their property. She stated there is still standing water even today in the woods behind her property. She stated her neighbors were unable to attend the meeting this evening, and it is the same way behind their property as well.

Mr. Majewski stated the Applicant is requesting a Waiver from one of the requirements for stormwater management. Mr. Majewski stated because of the concern with stormwater the Planning Commission was considering the note regarding no further subdivision. He stated if there is no further subdivision and the Applicants construct the underground seepage beds and plant additional trees in the back of Lot #1 to soak up the water before it gets to the neighboring properties, he feels this would be sufficient to address the stormwater management concerns of the neighbors. Mr. Cylinder asked if all the items noted by Mr. Majewski are shown in the Plans as presented, and Mr. Majewski stated they were still discussing this evening the issue with regard to there being no

further subdivision of Lot #2. He also stated that only three trees are shown on the current Plan behind Lot #1, although Mr. Rose did indicate this evening they would be willing to plant the six trees as requested by Mr. Majewski. Mr. Majewski suggested that they plant a species of tree which soaks up water, and they do have a list of these in the Native Plant Ordinance.

Ms. Lester stated currently there are dead trees that are in the pools of water. She stated these are in the woods behind her property and are not on her property. Ms. Lester stated the neighbors would like to be given some kind of recourse such that if the development proceeds, that the neighbors would not have an increase of standing water. Mr. Donaghy stated under the laws of the Commonwealth if a neighboring property owner increases or alters the flow of water onto a neighbor's property, the property owner has recourse through the Courts for damages. He stated this is why part of the requirements for Subdivision and Land Development is that the Applicant must establish that there will not be an increase or change in the water flow onto neighboring properties. He stated there is no obligation for the Applicant to improve the situation. Mr. Donaghy stated the Township tries to ascertain that the proposal will not exacerbate a stormwater situation but the ultimate responsibility lies with the owners. Mr. Majewski stated a typical feature of the Development Agreement with the developer of a Subdivision is that if it should become evident that additional stormwater management is needed that is not shown on the Plan, that the developer is responsible to do this to the satisfaction of the Township engineer. Mr. Dickson asked if the proposal by the Applicant is satisfactory to Mr. Majewski, and Mr. Majewski stated it is subject to the issues he has already raised.

Mr. Rose stated the stormwater management systems they are proposing capture the rainwater from the roofs and driveways, and the water will not be allowed to go back toward the Lester property as it does currently. He added they are not allowing any increased flow off the site; and the only Waiver they have requested is from the requirement to reduce the two-year flow to the one-year flow. He stated they cannot do this because there is such a small opening, it would get clogged. Mr. Rose stated Mr. Majewski has suggested increasing the number of trees from three to six, and they have agreed to do this. This is in addition to the required street trees.

Mr. Donaghy asked if they would be willing to put the Note on the Plan regarding there being no further subdivision, and Mr. Rose agreed to discuss this matter with his client. After discussion with his client, Mr. Rose stated his client feels that if agreeing to this Note on the plan would help the matter proceed, they would be willing to do so. They would ask that the Planning Commission consider this as a Preliminary/Final Plan.

Ms. Lester stated she questions if the Planning Commission members are familiar with the property they are discussing which is a heavily wooded area that geographically looks exactly like the Five Mile Woods. She stated they will remove trees to support the two lots, and questions how installing six new trees will do anything when they have removed

a lot of other trees in order to build the homes. Mr. Rose stated they dug four holes 7 ½' deep in the presence of the Township engineer and there was no water. He stated the Lester's home is 200' from the nearest proposed house, and the proposal is to take water away from the area. Ms. Lester was shown on the Plan how the water will be handled on the site.

Mr. Doug Klumpf, Aspen Road, asked about the improvements to Big Oak Road. Mr. Rose stated originally there was an adjoining Subdivision (the Clover Tract) that went down to Acorn, and at that time it was proposed to widen Big Oak Road from the end of the Lotus Tract to the Clover Tract, and then from the Clover Tract they were going to widen to Acorn. Mr. Rose stated since the Clover Tract was withdrawn, they now question whether widening just in front of the Lotus Tract would be worthwhile.

There was discussion as to whether this should be considered as a Preliminary or Final Plan. Mr. Majewski stated they have not reviewed this as a Final Plan, and there would be additional Notes needed to be put on the Plan, although several of these are included in the CMX letter. There was also discussion about the possible need for an Extension, and Mr. Rose stated they would be willing to grant an extension of time if necessary.

Mr. Pazdera moved, Mr. Dickson seconded and it was unanimously carried to recommend to the Board of Supervisors approval of the Lotus Tract Minor Subdivision as a Preliminary/Final Plan, Plans dated 5/30/05, last revised 8/7/07 with the provision that they make changes to the satisfaction of the Township engineer before going to the Board of Supervisors subject to:

- 1) Compliance with the CMX letter dated 10/12/07;
- 2) Recommend approval of the Waivers subject to the Applicant providing six trees in lieu of three trees in the rear of Lot #1 and that a Note be placed on the Plan, and provide such other evidence to the satisfaction of the Township solicitor, that there will be no further subdivision;
- 3) Recommend that the Board of Supervisors consider fee-in-lieu of frontage improvements on Big Oak Road if so offered by the Applicant;
- 4) Subject to compliance with the Remington/Vernick letter dated 9/13/07.

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There being no further business, Mr. Pazdera moved, Mr. Cylinder seconded and it was unanimously carried to adjourn the meeting at 8:40 p.m.

Respectfully Submitted,

Richard Cylinder, Secretary