

TOWNSHIP OF LOWER MAKEFIELD  
PLANNING COMMISSION  
MINUTES – JANUARY 14, 2008

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on January 14, 2008. Mr. Dickson called the meeting to order at 7:30 p.m.

Those present:

Planning Commission:        Tony Bush, Chairman  
   Karen Friedman, Vice 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

REORGANIZATION: ELECTION OF OFFICERS

The meeting was turned over to Mr. Donaghy who called for nominations for Chairman of the Planning Commission for 2008. Mr. Dickson moved and Mr. Pazdera seconded the nomination of Tony Bush. There were no further nominations, and the nominations were closed. Motion carried unanimously.

The meeting was turned over to Mr. Bush who called for nominations for Vice Chairman of the Planning Commission for 2008. Mr. Dickson moved and Mr. Cylinder seconded the nomination of Karen Friedman. There were no further nominations, and the nominations were closed. Motion carried unanimously.

Mr. Bush called for nominations for Secretary of the Planning Commission for 2008. Ms. Friedman moved and Mr. Pazdera seconded the nomination of Richard Cylinder. There were no further nominations, and the nominations were closed. Motion carried unanimously.

APPROVAL OF MINUTES

Mr. Pazdera moved, Ms. Friedman seconded and it was unanimously carried to approve the Minutes of November 26, 2007 as written.

## DISCUSSION OF AMATEUR RADIO ORDINANCE/AMATEUR RADIO OVERLAY DISTRICT

Mr. Steve Levin, Mr. Greg Mauro, Mr. Dominic DiClementi, and Mr. Tom Mills were present. Mr. Bush stated as a result of some questions raised during the last time this matter was discussed, Mr. Donaghy was going to come back with answers to some legal questions. Mr. Dickson stated they were looking into issues regarding the antenna array as it did not appear there were any restrictions in the proposed Ordinance. Mr. Donaghy stated it was suggested that the definition of height include both the tower and the antenna. He stated the Planning Commission should also consider the design of the antenna array, although it would be difficult to put a limitation based strictly on appearance. He stated he was not able to find in the material sent to him specific limitations on width or size of the antenna other than an acknowledgement some of the Ordinances provided that the height includes both the tower and any antenna to the extent that the antenna extend beyond the tower. Mr. Mauro stated he feels the way to limit the height would be to relate it to the size of the lot and distance to the property line. Mr. DiClementi stated if it is a question as to the total height, he would assume that the permitted height would include the antenna. Mr. Donaghy stated they also felt there should be a definition of tower which would make it clear that the height limitation would apply to the tower with the antenna.

Ms. Friedman stated the Planning Commission received a copy of another Township's Ordinance that indicated that any tower attached to an existing structure may not exceed the height of the existing structure by more than 10' and that no tower could exceed the height of the tallest existing tree located on the site by more than 20'. It was noted trees could continue to grow or they could fall down. Ms. Friedman stated knowing the type of trees on the property, would indicate how tall those trees usually grow.

Mr. Cylinder stated to have a height limitation based on the height of an existing building would create different requirements for different properties, and he feels having a simple height limitation would be easier to administer. He stated it is possible that if someone wanted a higher antenna, they could construct an addition to their building, and then put the antenna on top of that.

Ms. Friedman stated she is concerned with visibility in a neighborhood noting that there would be a big difference between the height of a ranch and a two-story structure in terms of being more visible. She stated if the Ordinance would allow a 65 foot tower it would be very visible; and she would like to find a way to tuck these into residential properties so that they are not as visible.

Mr. Cylinder stated he feels allowing them to go higher than what is permitted now should be through Special Exception or Conditional Use. Ms. Frick stated they did

discuss it as a Special Exception or a Variance. Mr. Donaghy stated you can always ask for a Variance if you can establish a hardship. He stated there was discussion about Special Exception and Conditional Use noting that while they use the same standards for both it would be a different reviewing body. Mr. Cylinder stated they might want to make sure that the neighbors would have the right to comment. Ms. Frick stated if there is only a Building Permit issued, the surrounding neighbors would not be notified. If they go before the Zoning Hearing Board or apply for a Conditional Use, there is public notice.

Mr. Mauro stated he feels the Federal preemption was set up to avoid the problem of one location versus another and to insure that Townships have practical regulations. He stated this helps the amateurs construct the types of facilities they need to effectively communicate without having to go through a lot of machinations with the community. Mr. Donaghy asked if the standards for a Special Exception or Conditional Use were the same standards that are already proposed in the Ordinance such as setbacks, maximum height, etc., would this create an unnecessary imposition on their ability to have a tower. Mr. Donaghy added that if a tower were a permitted use in a particular District through a Special Exception/Conditional Use, they would have to meet certain conditions in order to have the tower. He stated the difference between a Special Exception or Conditional Use and just a Permit would be that the opponents of what they are proposing to do could come in and try to establish that what they were proposing would be a danger to the healthy, safety, and welfare of the community or try to establish that they did not meet the requirements. Mr. Donaghy stated they could not challenge it on the basis that they did not want it or that they felt it was unattractive. He stated for a Special Exception, they would go before the Zoning Hearing Board; and if it were a Conditional use, it would have to go before the Board of Supervisors. He stated this would be different from a Variance which is a request to do something that is not permitted by Ordinance. He stated if the Ordinance states the highest tower permitted is 65' and they want 100', they would have to request a Variance; and the burden would then be on the Applicant that it would be an unnecessary hardship upon the premises to not permit them to have a 100' tower as opposed to a 65' tower. He stated with a Special Exception/Conditional use, the burden is on the Applicant to show that he/she meets the standards but once they have been met, the burden is then shifted to anyone who opposes the Application.

Mr. Cylinder stated at the Hearings, those in support can also come in and speak in favor of the Applicant's request.

Mr. Mauro asked if there would be a fee for a Special Exception, and Ms. Frick stated it is \$500. Mr. Mauro stated they feel this is excessive when there is a Federal preemption. Mr. Donaghy stated he does not feel there is a Federal preemption that applies to things such as height or location on the property. Mr. Donaghy stated the Federal preemption states that the Township should be reasonable. Mr. DiClementi stated their goal is to

have an Ordinance put in place such that once they can show they meet the requirements, they can proceed; and they would like to see a fair and reasonable Ordinance.

Mr. Dickson stated he feels they have to be able to erect a tower, and currently the proposed Ordinance permits 65' so that they would have to come in to get approval by Special Exception for anything higher. Mr. Dickson stated he feels 65' is a reasonable height.

Mr. Bush stated he does not feel they are all in agreement with 65'. He stated while they may want to practice their hobby and assist in emergency management, he still has a problem with 65'. He asked about the possibility of retractable towers, and Mr. Mauro stated they are available, but they cost two to three times more than a non-retractable tower. He stated they are also wider at the base than a typical installation.

Ms. Friedman stated her problem with one maximum height is that she feels each situation should be looked at on its own depending on the proximity of the other houses, the topography, etc.

Mr. DiClementi asked if they could indicate that it could not be more than 65' but that it be determined on a case-by-case basis. Mr. Dickson stated he does not feel there is a way to craft the Ordinance to indicate that no one could go above 65' since they could go before the Zoning Hearing Board to get something higher. Mr. Donaghy stated this is true about any Ordinance requirement. Mr. Mauro asked if they can go before the Zoning Hearing Board today to exceed the permitted height, and Mr. Donaghy stated they can. Mr. Donaghy stated they need to have specific standards in the Ordinance so that the professionals can review them.

Ms. Friedman stated she feels each property would have to be addressed separately, and the Township could choose a number, and anything above that would have to be addressed by the Zoning Hearing Board. Mr. Donaghy stated they could indicate that a certain amount is permitted but they could also have an absolute cap so that no one could go any higher. Ms. Friedman stated she would not want to put in a restriction of 35' so that everyone would have to come in for a Special Exception. Mr. Donaghy stated other Ordinance requirements would also have to be met relating to setbacks, etc. Mr. Dickson noted the proposed Ordinance is suggesting 65' as the height limitation.

Mr. Cylinder stated the prior Minutes indicated that the Township engineer felt that 65' was too high. Mr. Majewski stated he is also a homeowner; and if his neighbor were to put up a 65' tower, he feels this would be an eyesore unless there were certain conditions that warrant it such as a ten acre lot with the tower to be placed in the middle of the lot where there was sufficient buffering from trees and distance from adjoining lots. He

stated on a standard half acre lot, he feels 65' would be obtrusive. Mr. Cylinder asked if there is any engineering basis for this comment; and Mr. Majewski stated from an engineering standpoint, the Township has Zoning laws with height requirements for signs, light poles, buildings, etc. for these same reasons. He stated while a tower may be thinner than a building or billboard, it would still have the same visual impact on allowing the neighbors to enjoy their property. Mr. Cylinder asked if it would be possible for the Township engineer to provide a height limit based on some engineering principle.

Mr. Santarsiero stated he feels it would make sense not to divorce the number from the process; and he feels they should look at both at the same time. He stated if they are going to come up with a range for the height, they may be more comfortable with 65' if they know there will be a Special Exception or Conditional Use Hearing as opposed to it being as of right. He stated he feels they should first consider if the process makes sense; and if so, it would then be easier to come up with the appropriate range. He stated he feels there should be some process but recognizes that \$500 is a lot of money. He stated the problem they have is that any time they write an Ordinance that will apply across the board, there will be a lot of different situations across the Township; and depending on who the Applicant is, it could be a very different situation based on the way the house is situated, the neighborhood, etc. He stated he feels it has merit to allow for due process to give some acknowledgment to these differences..

Mr. Dickson stated he feels most people would have a problem with a tower being erected from an aesthetic point of view.

Mr. Bush asked if the \$500 could be waived. Mr. Donaghy stated while it could, the problem is that they would then be setting up a situation where the Township is losing money on each Application since the fees are intended to cover the costs incurred by the Township. He also questioned why this type of Application would be treated any differently than other Applications. He stated a reason would be needed to differentiate this Application from others. He stated all Applications for Special Exception and Conditional Use require a fee as there are costs involved.

Mr. Cylinder again asked Mr. Majewski if there is an engineering reason to set a height limitation. Mr. Cylinder stated he does not like to rely on aesthetics as the Courts have not been too kind with regard to aesthetics in the past, so if there is a good sound non-aesthetic basis, he feels, this would be helpful. Mr. Majewski stated the shorter the tower, the less danger it is to the residents not only to those who live on the property but also to adjoining properties.

Mr. DiClementi stated he would assume that if they bring in a set of plans for a 50' free-standing tower, designed by the manufacturer to withstand a certain wind load, the Applicant would be required to install it to the manufacturer's specifications. He stated the cell towers adjacent to I-95 are significantly higher and could create a major catastrophe if they fell down. He assumes that when Applications were submitted for those cell towers, the Applicant had to prove that the towers would withstand winds for which they were designed. Ms. Frick noted the cell towers have to go through the Conditional Use procedure.

Mr. Cylinder asked if most towers have guy wires, and Mr. DiClementi stated some do and some do not; and if there is not sufficient room for guy wires, it would be a free-standing tower with a proper base. Mr. Cylinder asked if there are regulations concerning the guy wires themselves as to setback from property lines, etc.; and Mr. Mauro stated this is addressed in the Ordinance, and the guy wires do have to meet the setback requirements

Mr. Bush asked how many 35' towers there are in the Township, and Mr. Levin stated there are none. Mr. Bush asked how many active ham operators have antennas in the Township, and Mr. DiClementi stated there may be many that they do not see as they are placed in trees. Mr. Levin stated he has a 35' antenna attached to his house because this is what he has a Permit to do.

Mr. Mauro stated the way the proposed Ordinance is written, the setback requirements from the property line limit the height of the antenna on the smaller lots. He stated if the lot is big enough, it could go all the way to 65'.

Mr. Majewski asked if there are inspection requirements for the towers after construction and periodically over the years. Mr. Mauro stated he does not feel this is typical although this is something that they could look into. Mr. DiClementi stated he feels it would be reasonable to have this requirement written into the Ordinance. Mr. Mauro stated the retractable towers are more dangerous because there are more moving parts which could wear out quicker. Mr. Majewski stated the cell towers are inspected on a yearly basis to make sure that they are safe. Mr. Cylinder questioned if this could be part of the Zoning Ordinance. Mr. Majewski stated he would have these safety concerns if they are going from 35' to 65'. Mr. Donaghy stated there is a requirement in the proposed Ordinance about maintenance, although it only states that they should maintain it. Mr. Donaghy stated if they were requiring periodic inspection, it would have to be inspected by the Township engineer and not the Zoning Office.

Mr. Cylinder asked if they could require that the tower be removed if the person moves away or it is no longer in use. Mr. Donaghy stated they could do this, although he questioned who would make this determination that it has been abandoned.

Mr. Bush stated he felt there was additional information those interested in this Ordinance were going to provide, and Mr. Mauro stated they were to provide supporting material as to antenna case law, and he provided five or six cases to the Township Solicitor. Mr. DiClementi stated he also gave the Solicitor some suggestions for changes to the proposed Ordinance definitions. Mr. Bush stated the Planning Commission members have not seen these pieces of information. Mr. Mauro stated they also asked that there be a change to the proposed Ordinance requiring a fence and an anti-climbing device as they feel there should be one or the other and not both required. Mr. Cylinder stated there was also a question about the Township being an additional insured. Mr. DiClementi stated they felt that there was no damage to the Township if the antenna fell on the owner's own property. Mr. Cylinder stated it was felt that it could possibly fall onto cars, people, etc. Mr. DiClementi stated he feels it would be the same thing if someone's tree fell.

Mr. Bush asked about the legal cases submitted by the Applicants, and Mr. Donaghy stated he does not recall that there would be a problem if they permitted 65' or even 55' in height and nothing that would adversely affect the Special Exception process. Mr. Donaghy stated based on the cases submitted, he does feel there could be a problem with a 35' height restriction.

There was discussion on the possibility of restricting the height of the horizontal array. Ms. Friedman stated she wants the top of the horizontal assembly to be no higher than 45' with a maximum of the entire structure, including any vertical antenna to be 65'.

Mr. Dickson stated based, upon what they know about the current Zoning, it would be difficult to have this in R-3 or R-4. Ms. Frick stated she and Mr. Majewski feel there are lots in R-3 and R-4 where they could do this; although for much of R-3 and R-4, this would be difficult because of the setback requirements. Mr. DiClementi stated in certain communities, there are also restrictive covenants which are apart from the Township Ordinances.

Mr. Bush noted American Radio Relay League materials Mr. Levin provided to the Planning Commission and stated on the League's Website they define "reasonable" as possibly 60'. Mr. Bush asked if they would be comfortable with that height restriction as opposed to 65'. Mr. Levin stated he feels 65' would be reasonable. Mr. Dickson stated the Planning Commission is also looking at restricting the height of the horizontal array at 45' which in some ways will address the aesthetics noted by Mr. Majewski as best they can. Mr. Bush suggested that they use the total height restriction of 60' as suggested by the American Radio Relay League and that no horizontal element be any higher than 45'. Mr. Mauro stated towers come in 10' sections and the top is 8' plus 1' for the mounting hardware.

Mr. Bush asked that the Planning Commission be provided a revised draft, and they can then decide on the exact height limitations at that time. Mr. Cylinder stated he feels that anything above what they would permit by Ordinance should go before the Township as a Special Exception or Conditional Use. He suggested that they ask the Board of Supervisors which they would like to see. Mr. Santarsiero stated he agrees that one of these procedures makes sense so that everyone can have their positions aired. It will also give the Township assurance that everything has been openly discussed. Mr. Santarsiero stated some things are made a matter of right and some are subject to a Special Exception or Conditional Use because they recognize that there is a difference in terms of applicability across the board. He feels this is a situation where there are potential differences on a case-by-case basis where it may well warrant having a procedure to allow people to address it.

Mr. Mauro asked how much it would cost to go before the Board of Supervisors for a Conditional Use, and Ms. Frick stated it costs \$1,500. Mr. Santarsiero stated if they go before the Zoning Hearing Board, the Board of Supervisors does have the opportunity to weigh in although they are independent of the Board of Supervisors.

Mr. Mauro asked how many objections would hold up based on health, safety, and welfare. Mr. Donaghy noted the vast majority of Special Exception and Conditional Use cases are granted or they go to Court, and frequently the Applicant is successful when they do go to Court. Mr. Mauro stated given the fact that there are only approximately 100 licensed operators in the Township, he does not feel that there are many people who would want to go through the process given the costs and asked if they could consider waiving the Fees. Mr. Donaghy stated he did not feel the Township would do this. Ms. Friedman stated the number of people who may apply may change in the future. Mr. Santarsiero stated the Township could then also be challenged by others having to pay for the process. Mr. Donaghy stated were the Township to waive the fee, the Township would have to pick up the costs. Ms. Frick noted they would be permitted to install the antennas without a Special Exception or Conditional Use provided they did not want to exceed the permitted height or other requirements permitted by right.

Mr. Santarsiero suggested they first agree on language they are comfortable with which can be provided in the next draft, and they can then fill in the heights to be permitted. He stated he also feels it would be good to get the addresses of properties in neighboring Townships which have these higher towers. Ms. Frick stated they do have these addresses.

Ms. Friedman noted page 4 of the proposed Ordinance where there are definitions, and she stated where it states “amateur radio antenna,” she asked if they should state: “amateur radio antenna assembly,” so that the antenna, tower, etc. are considered. Mr. Donaghy stated, as suggested by the Applicants, many of the definitions will have to be changed so that they recognize the difference between a tower and an antenna.

Ms. Friedman noted page 5 regarding the height and stated in an Ordinance from another Township which was provided to the Planning Commission it states, “the tower shall be set back from any property line abutting a Residential lot a distance that is at least equal to 1.5 times the height of the tower.” She stated possibly they could consider 1.25 times so that they are building in a barrier in case something should come off the tower. Mr. Donaghy stated they could look at this by measuring the setback from the array, and Mr. DiClementi stated he feels this is reasonable.

Mr. Bush asked if there are standard size widths for the horizontal arrays, and Mr. Mauro reviewed how the antennas rotate and the widths of the radius. Mr. DiClementi stated they would have to prove to the engineer that whatever goes on the tower can be supported by the tower. He stated if they are going to go higher, the tower would have to be wider to accommodate the wind load. He stated there are manufacturer’s specifications which they must meet.

Mr. Cylinder asked if other types of devices would fit on these towers such as cones and dishes. Mr. DiClementi stated he did not feel they would and stated you must be Federally-licensed to install a tower.

Ms. Friedman noted Page 7 Item #11 regarding placement which states: “it cannot be placed in the Historic/Commercial District,” and Ms. Friedman stated one of the other Ordinances was more definitive and stated: “an antenna may not be located on a building or structure that is listed on a historical register or in a Historic District.” She noted not every historic structure is in a Historic District, and she would like to protect all the historic structures in the Township. Mr. Bush asked if this would be restricted to the building itself or the property as well, and Ms. Friedman stated she feels it should be both the building and the property so it is in keeping with its historic nature.

#### SKETCH PLAN DISCUSSION OF HOSPITAL PROPOSAL

Mr. Dickson stated he understands that the Applicants for the proposed Frankford Hospital are going before the Board of Supervisors although the Planning Commission has not yet had an opportunity to review their Plans. Ms. Frick stated this matter is on for discussion by the Board of Supervisors at their next meeting as noted in the letter to the Planning Commission from Mr. Fedorchak. Ms. Frick stated the Planning Commission members are welcome to attend the Board of Supervisors meeting to comment.

Mr. Dickson stated he reviewed the Office/Research requirements, and this appears to be an allowable use permitted by Special Exception.

Ms. Frick stated she was advised that the Hospital has an option to purchase the property until the end of January. Mr. Dickson stated the parcel the Hospital is considering is owned by Ed Fleming who is not living in this area and has been interested in selling this parcel for some time. It was created as part of a recent Subdivision. Mr. Donaghy stated they did indicate at the time that the Subdivision was considered that it was their intention to sell this parcel to a third party.

Mr. Bush noted another proposed development in this area which will increase traffic in the area greatly. Mr. Cylinder stated between the two proposals, there will be 1,845 parking spaces. He stated they are proposing huge buildings and there will be approximately 240,000 of office/hospital floor space. He stated he feels the two Applicants should be encouraged to work together on traffic studies. Mr. Majewski stated he feels traffic is the biggest issue. Mr. Cylinder stated they must take into consideration both of the projects at the same time. Mr. Dickson stated even before this proposal, a number of the Planning Commission members expressed concerns with traffic in this area. He stated when 777 Township Line Road was reviewed, they were able to document that there would not be heavy volume at the peak hours; but with these two new proposals, there will be a tremendous amount of traffic. He stated this will also impact the Edgewood Village area. Mr. Cylinder stated the traffic at the intersection of Stony Hill Road and Newtown-Yardley Road is already a problem. Mr. Majewski stated he is also concerned with the proposed entrances for the Hospital and the complex across the street where traffic already backs up during the peak hours.

Mr. Santarsiero stated he wants the Citizens Traffic Commission to review this Plan. He stated the stacking on the road going onto 332 is already dangerous. Mr. Cylinder stated he feels this proposal is as bad or worse than Matrix was. Ms. Friedman stated she is also concerned with emergency vehicle access to the proposed hospital.

Mr. Dickson asked if this new facility will replace the existing Frankford Hospital near the Oxford Valley Mall, and Mr. Majewski stated this is his understanding. Mr. Dickson questions why they would abandon an existing facility; and Ms. Frick stated she understands they do not have sufficient room to expand at that location. Mr. Cylinder noted the proposed site is also at the other end of the By-Pass from St. Mary Hospital and questions if this is a conflict. Mr. Dickson stated he does not feel there is anything that indicates there cannot be two hospitals within a certain distance from each other.

Ms. Friedman stated she does not feel this is a good location for a hospital.

Mr. Santarsiero stated he is also concerned with the potential for future expansion of the hospital to the south onto the rest of the Shady Brook property which would result in this becoming a major medical center. Mr. Bush stated what is proposed is part of a regional trend as in New Jersey some of the hospitals in Trenton are moving out of Trenton and into areas in Lawrenceville on I-95. Mr. Santarsiero stated he is also concerned that there is the possibility that one of the hospitals may not stay in business.

Mr. Bush stated the general consensus of the Planning Commission is that they have a lot of concerns with the proposal including traffic and environmental issues.

Mr. Santarsiero noted the LID Ordinance is in place, and they would have to comply with it. Mr. Cylinder stated he feels they need to know the soils on the property as well as the topography so they have an idea as to what they are dealing with. Mr. Dickson stated the property has been farmed for the last ten years.

Ms. Friedman asked how many stories they are proposing, and Mr. Majewski stated he feels it will be three stories. Ms. Friedman stated she does not feel this is an appropriate use for this parcel.

Mr. Santarsiero stated he does not feel they can stop development of the parcel, but feels they should consider what fits best for the community, and he does not feel this is it.

Mr. Cylinder stated he feels they should be made to do a Traffic Study for both of the sites and show that they can make it work. Mr. Donaghy stated it will be a requirement that they complete a traffic study.

#### OTHER BUSINESS

Ms. Friedman stated she received notice from the Pennsylvania Land Use Institute on their series of lectures on land use issues to be held in Berks County. She agreed to provide the information to anyone interested in attending.

Mr. Santarsiero stated as Supervisor Liaison this year, he looks forward to working with the Planning Commission. He thanked the Commission for their service to the Township.

There being no further business, Mr. Dickson moved, Ms. Friedman seconded and it was unanimously carried to adjourn the meeting at 9:15 p.m.

Respectfully Submitted,

Richard Cylinder, Secretary

